Retail Installment Sales: History and Development of Regulation

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COMMENTS

RETAIL INSTALLMENT SALES—HISTORY AND DEVELOPMENT OF REGULATION

I. INTRODUCTION

Credit is not a modern innovation. Legal systems have long provided for some regulation of simple credit. However, the recent growth of credit has been phenomenal. It has become an integral part of our economy. It is widespread, with the majority of our consumer population participating in some type of credit arrangement. It is no longer merely a bare arrangement between buyer and seller. Finance companies, credit unions, banks and numerous retail outlets are involved. No longer does the buyer simply postpone payment until his crop is harvested. It is now a matter of numerous forms and complex financial arrangements incorporated in contracts beyond the comprehension of the average consumer.

The widespread use of installment sales is a relatively recent development. Reaction to this device of selling to the consumer has seen a trend in the individual states toward regulation of the credit sale. Wisconsin has considered a comprehensive scheme of regulation in this area to supplement the Motor Vehicle Installment Sales Act passed in 1935. However, such regulation has not been adopted.

Three considerations have prompted this article: 1) the increased use of the installment sale, 2) the national trend toward regulation and 3) the absence of comprehensive legislation in Wisconsin.

This article will trace the historical development of credit regulation and survey legislation enacted in various states, drawing the common elements from such legislation.

II. INCREASE IN THE AMOUNT OF CONSUMER CREDIT

The phenomenal growth of consumer credit is shown on the charts in this section. From 1939 to 1961 there was a rapid increase in the amount of consumer credit. The only exception was the intervention of World War II. Then, goods were diverted from public consumption to war production. Total installment credit outstanding in 1939 was approximately \(4\frac{1}{2}\) billion dollars. In 1961, installment credit outstanding stood at 42 billion dollars, ten times as much. In a corresponding period (1941-61), personal consumption expenditures rose from 81 billion dollars to 328 billion dollars, only four times as much. This makes apparent the widespread popularity of the installment sale.

Financial institutions, as opposed to retail outlets, hold the majority

2 See Charts A, B, C and D infra.
of installment credit outstanding. Commercial banks predominate, holding well over 16 billion dollars in installment credit paper. Finance companies are the next largest holders with well over 10 billion dollars outstanding. The remainder is held by credit unions, consumer finance companies and various retail outlets.

The following charts speak for themselves. Volume itself is not a reason for regulation. It does, however, illustrate the extent to which installment credit has permeated our economy. This, coupled with the possibility of abuses and the need for disclosure as to terms and rates by the seller, has undoubtedly influenced the trend toward regulation.

**Chart A**

**CREDIT OUTSTANDING**

End of Year Totals

Millions of Dollars

<table>
<thead>
<tr>
<th>YEAR</th>
<th>INSTALLMENT</th>
<th>NON-INSTALLMENT</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>TOTAL</td>
<td>CREDIT</td>
</tr>
<tr>
<td>1939</td>
<td>7,222</td>
<td>4,503</td>
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<tr>
<td>1941</td>
<td>9,172</td>
<td>6,085</td>
</tr>
<tr>
<td>1945</td>
<td>5,665</td>
<td>2,462</td>
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<tr>
<td>1954</td>
<td>32,464</td>
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<tr>
<td>1955</td>
<td>38,807</td>
<td>28,883</td>
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<tr>
<td>1956</td>
<td>42,262</td>
<td>31,648</td>
</tr>
<tr>
<td>1957</td>
<td>44,848</td>
<td>33,745</td>
</tr>
<tr>
<td>1958</td>
<td>44,984</td>
<td>33,497</td>
</tr>
<tr>
<td>1959</td>
<td>51,331</td>
<td>39,034</td>
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<tr>
<td>1960</td>
<td>55,757</td>
<td>42,588</td>
</tr>
<tr>
<td>1961</td>
<td>54,902</td>
<td>42,181</td>
</tr>
</tbody>
</table>

*Non-Installment Credit includes single-payment loans, charge accounts and service credits.

**Chart B**

**TYPE OF INSTALLMENT CREDIT OUTSTANDING**

End of Year Totals

Millions of Dollars

<table>
<thead>
<tr>
<th>YEAR</th>
<th>TOTAL</th>
<th>AUTOMOBILE</th>
<th>OTHER CONSUMER</th>
<th>REPAIR AND MODERNIZATION</th>
<th>PERSONAL</th>
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<tr>
<td>1939</td>
<td>4,503</td>
<td>1,497</td>
<td>1,620</td>
<td>298</td>
<td>1,088</td>
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<tr>
<td>1941</td>
<td>6,085</td>
<td>2,458</td>
<td>1,929</td>
<td>376</td>
<td>1,322</td>
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<tr>
<td>1945</td>
<td>2,462</td>
<td>455</td>
<td>816</td>
<td>183</td>
<td>1,099</td>
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<tr>
<td>1954</td>
<td>23,568</td>
<td>9,809</td>
<td>6,751</td>
<td>1,616</td>
<td>6,112</td>
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<tr>
<td>1955</td>
<td>28,883</td>
<td>13,437</td>
<td>7,641</td>
<td>1,693</td>
<td>6,112</td>
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<td>1956</td>
<td>31,648</td>
<td>14,348</td>
<td>8,606</td>
<td>1,905</td>
<td>6,789</td>
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<tr>
<td>1957</td>
<td>33,745</td>
<td>15,218</td>
<td>8,844</td>
<td>2,101</td>
<td>7,582</td>
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<td>1958</td>
<td>33,497</td>
<td>14,007</td>
<td>9,028</td>
<td>2,346</td>
<td>8,116</td>
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<tr>
<td>1959</td>
<td>39,034</td>
<td>16,209</td>
<td>10,630</td>
<td>2,809</td>
<td>9,386</td>
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<tr>
<td>1960</td>
<td>42,588</td>
<td>17,444</td>
<td>11,525</td>
<td>3,139</td>
<td>10,480</td>
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<td>1961</td>
<td>42,181</td>
<td>16,913</td>
<td>11,085</td>
<td>3,183</td>
<td>11,000</td>
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</table>


Ibid.
### Chart C

**INSTALLMENT CREDIT BY HOLDER**

**Millions of Dollars**

<table>
<thead>
<tr>
<th>YEAR</th>
<th>TOTAL</th>
<th>COMMERCIAL</th>
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<tbody>
<tr>
<td></td>
<td>MILLS</td>
<td>BANKS</td>
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<tr>
<td>1939</td>
<td>3,065</td>
<td>1,079</td>
</tr>
<tr>
<td>1941</td>
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<td>1,726</td>
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<tr>
<td>1945</td>
<td>1,776</td>
<td>745</td>
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<tr>
<td>1954</td>
<td>19,450</td>
<td>8,796</td>
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<tr>
<td>1955</td>
<td>24,375</td>
<td>10,601</td>
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<tr>
<td>1956</td>
<td>26,905</td>
<td>11,777</td>
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<tr>
<td>1957</td>
<td>29,078</td>
<td>12,843</td>
</tr>
<tr>
<td>1958</td>
<td>28,514</td>
<td>12,780</td>
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<tr>
<td>1960</td>
<td>36,974</td>
<td>16,672</td>
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<tr>
<td>1961</td>
<td>37,191</td>
<td>16,877</td>
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#### RETAIL OUTLETS

<table>
<thead>
<tr>
<th>YEAR</th>
<th>TOTAL</th>
<th>DEPT. STORES</th>
<th>FURNITURE STORES</th>
<th>HOUSEHOLD APPL. STORES</th>
<th>AUTOMOBILE DEALERS</th>
<th>OTHER</th>
</tr>
</thead>
<tbody>
<tr>
<td>1939</td>
<td>1,438</td>
<td>354</td>
<td>439</td>
<td>183</td>
<td>123</td>
<td>339</td>
</tr>
<tr>
<td>1941</td>
<td>1,605</td>
<td>320</td>
<td>496</td>
<td>206</td>
<td>188</td>
<td>395</td>
</tr>
<tr>
<td>1945</td>
<td>686</td>
<td>131</td>
<td>240</td>
<td>17</td>
<td>28</td>
<td>270</td>
</tr>
<tr>
<td>1954</td>
<td>4,118</td>
<td>1,242</td>
<td>984</td>
<td>377</td>
<td>463</td>
<td>1,052</td>
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<tr>
<td>1955</td>
<td>4,508</td>
<td>1,511</td>
<td>1,044</td>
<td>365</td>
<td>487</td>
<td>1,101</td>
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<tr>
<td>1956</td>
<td>4,743</td>
<td>1,408</td>
<td>1,187</td>
<td>377</td>
<td>502</td>
<td>1,269</td>
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<tr>
<td>1957</td>
<td>4,668</td>
<td>1,393</td>
<td>1,210</td>
<td>361</td>
<td>478</td>
<td>1,226</td>
</tr>
<tr>
<td>1958</td>
<td>4,983</td>
<td>1,882</td>
<td>1,128</td>
<td>292</td>
<td>506</td>
<td>1,175</td>
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<tr>
<td>1959</td>
<td>5,076</td>
<td>2,292</td>
<td>1,225</td>
<td>310</td>
<td>481</td>
<td>1,368</td>
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<tr>
<td>1960</td>
<td>5,615</td>
<td>2,414</td>
<td>1,107</td>
<td>333</td>
<td>359</td>
<td>1,402</td>
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<tr>
<td>1961</td>
<td>4,990</td>
<td>2,097</td>
<td>1,014</td>
<td>315</td>
<td>359</td>
<td>1,205</td>
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</table>

### Chart D

**CONSUMPTION OF GOODS**

**Billions of Dollars**

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Gross National Product</td>
<td>104.4</td>
<td>56.0</td>
<td>125.8</td>
<td>284.6</td>
<td>419.8</td>
<td>442.8</td>
<td>444.5</td>
<td>482.8</td>
<td>504.4</td>
</tr>
<tr>
<td>Personal Expenditure</td>
<td>79.0</td>
<td>46.4</td>
<td>81.9</td>
<td>195.0</td>
<td>269.9</td>
<td>285.2</td>
<td>293.2</td>
<td>314.0</td>
<td>328.9</td>
</tr>
<tr>
<td>Durable Goods</td>
<td>9.2</td>
<td>3.5</td>
<td>9.7</td>
<td>30.4</td>
<td>38.5</td>
<td>40.4</td>
<td>37.3</td>
<td>43.5</td>
<td>44.3</td>
</tr>
<tr>
<td>Non-Durable Goods</td>
<td>37.7</td>
<td>22.3</td>
<td>43.2</td>
<td>99.8</td>
<td>131.4</td>
<td>137.7</td>
<td>141.6</td>
<td>147.3</td>
<td>152.4</td>
</tr>
<tr>
<td>Services</td>
<td>32.1</td>
<td>20.7</td>
<td>29.0</td>
<td>64.9</td>
<td>100.0</td>
<td>107.1</td>
<td>114.3</td>
<td>123.2</td>
<td>132.2</td>
</tr>
</tbody>
</table>

---

6 *Id.* at 1457. Consumer finance companies included with "other" financial institutions until Sept. 1950.
7 *Id.* at 1474.
III. HISTORICAL DEVELOPMENT OF CREDIT REGULATION

Before going into the historical development of retail credit regulation, the function of the modern concept of credit should be considered. This article will not attempt to weigh the pros and cons of consumer credit as a part of economic theory. Economic questions, such as the use of credit restrictions to control inflation, are beyond the scope of this article.

Installment credit has unquestionably played an important role in the development of our economy. It has been viewed as:

... a means of adaptation by both consumers and business to technological, economic, and social developments that have transformed the consumer into an owner of capital goods that provide him with services.9

The function of installment credit is to make goods available to the consumer, before and during the payment period. This enables the consumer to enjoy goods, especially durables, to an extent that would have been inconceivable a century ago. Although, credit in a sense, is nothing more than deferred cash payment, it helps to expand the economy much more than mere cash buying. Rather than save for each individual purchase, the consumer may acquire the item before he has the total cash price. This promotes greater purchasing in our economy. Coupled with the large amount of consumer goods now available, it has led to the present, high volume of installment sales.

From the consumer's point of view, credit provides a method of amortizing the cost of high priced durables over a convenient repayment period.10 In times of emergency, it enables many to overcome the dangers of temporary financial crisis.11 Credit also has a psychological aspect, in that it enables some to "keep up with the Joneses."

Credit in its simplest form, that is, the sale of goods or services with payment postponed, probably outdates recorded history. Provisions effecting credit appeared in the earliest legal systems.12 Simple credit was a natural outgrowth of social contact. It is safe to assume that there have always been those who want in the present and pay in the future.

The seeds of modern installment credit were planted by what is commonly known as the "Industrial Revolution" of the 18th and 19th centuries. Our society passed from an agricultural, home-producing

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9 See generally 1 Board of Governors of the Federal Reserve System, Consumer Installment Credit pt. 1 (1957). In regard to consumer credit and economic instability see pp. 205-32. As to consumer installment credit in relation to economic stability see pp. 235-33.
10 Id. at 21.
11 Id. at 4.
12 Nefeld, supra note 1, at v.
economy to an industrialized and urbanized economy.\textsuperscript{13} As a result of the industrial expansion large amounts of consumer goods became available. Credit has played a major part in moving these goods from the factory to the home.

The magnitude of credit today is far beyond what it was at the turn of the century. Before the modern practices of installment selling developed, several natural restraints in our economy had to be overcome. The financing plans that we are familiar with today did not develop until the 20th century.\textsuperscript{14} It has been suggested that the delay in the development of installment selling was due to a variety of economic, social and psychological factors outside of the law.\textsuperscript{15} Whatever the cause of delay, credit as a device for the sale of goods has now matured. Coincident with the development of credit has been the development of regulation. The beginning was the usury statute. Installment sales legislation has paralleled the recent boom in consumer credit.

Regulation of lending is ancient in origin. From the Code of Hammurabi to the present, legal systems have placed prohibitions on the taking of excessive interest by lenders.\textsuperscript{16} The Bible prohibited the taking of interest in any form.\textsuperscript{17} The denial of interest in any form was incorporated into an early English statute.\textsuperscript{18} In 1545, the taking of interest up to ten percent was legalized in England.\textsuperscript{19} This is the forerunner of our modern usury statutes.\textsuperscript{20} Although usury laws are generally considered as only applied to a loan or forbearance of money, they are relevant to a discussion of installment sales regulation. A few jurisdictions have applied their usury statutes to installment sales. Therefore, in a discussion of credit regulation the applicability of usury statutes must be considered.

Two approaches have been employed in the regulation of credit: legislation by individual states and application of existing usury laws. The main trend has been state control in various degrees. A small number of jurisdictions have attempted to regulate the charge on

\textsuperscript{15} Id. at 142. The author suggests these elements: (a) the types of purchaser; (b) the types of article; (c) the conditions of competition and the practices of trades; (d) popular prejudices; (e) the presence or absence of facilitating institutions; (f) the legal environment or setting.
\textsuperscript{16} Neifeld, supra note 1, at 52.
\textsuperscript{17} "Thou shalt not lend upon usury to thy brother; usury of money, usury of victuals, usury of anything that is lent upon usury." Deuteronomy, xxiii, 19, 20. See also, Leviticus, xxv, 35-37.
\textsuperscript{18} Berger, Usury in Installment Sales, 2 Law & Contemp. Prob. 148, 157 (1935). The statute was 11 Hen. VIII, c. 8 (1494), which prohibited the taking of any interest on a loan of money.
\textsuperscript{19} Ibid. Statute 37 Hen. VIII, c. 9 (1545) Section II.
\textsuperscript{20} Wis. Stat. ch. 115 (1959).
installment sales by applying usury laws to the sale.\textsuperscript{21} There has been considerable controversy over the propriety of applying usury laws to the installment sale.\textsuperscript{22}

Usury as applied to installment sales will be considered next, followed by an examination of modern legislation affecting customer credit.

IV. THE APPLICATION OF USURY STATUTES TO INSTALLMENT SALES

The majority position in the United States is that the general usury statutes do not apply to installment sales.\textsuperscript{23} This position is the result of the time-sale doctrine.\textsuperscript{24} This doctrine holds that the seller may legitimately charge one price for a cash sale and another, greater price for a sale with payment extended over a period of time. The sale of goods does not fall within the prohibition of usury statutes because there is neither a loan of money nor a forbearance; there being no money received by the purchaser and no money due until the date of each installment payment.\textsuperscript{25}

The traditional distinction between usury and the time-sale has been on the basis of the position of the borrower.\textsuperscript{26} The courts have felt that a person borrowing money will often be in difficult straits and easy prey for unscrupulous lenders, thus in need of the protection of the usury statutes. But, the purchaser is not in the same position since he may always refrain from consummating the sale. The Court in \textit{General Acceptance Corp. v. Weinrich}\textsuperscript{27} explained the reason that usury statutes were not applied to a sale:

\textsuperscript{21} \textit{Limiting Consumer Credit Charges by Reinterpretation of General Usury Laws and By Separate Regulation}, 55 Nw. U. L. Rev. 303 (1960).

\textsuperscript{22} \textit{Compare} Berger, \textit{supra} note 18, who argues that based on historical precedents usury laws should be applied to installment sales, \textit{with} Ecker, \textit{Commentary on "Usury in Instalment Sales,"} 2 LAW & CONTEMP. PROB. 173 (1935), who argues that this is not a legitimate conclusion and that usury laws were never meant to control anything like modern consumer credit.

\textsuperscript{23} C. J. S. \textit{Usury} §18 (b) (1955); §§5 AM. JUR. \textit{Usury} §21 (1946); \textit{Limiting Consumer Credit Charges by Reinterpretation of General Usury Laws and By Separate Regulation}, \textit{supra} note 21. Forty-six of the fifty states have usury statutes (all but Colorado, Maine, Massachusetts, and New Hampshire). \textit{Id.} at 303.

The generally recognized elements of usury are set forth in \textit{Restatement}, \textit{Contracts} §526 comment (b) (1932): 1) a loan or agreement for forbearance; 2) the loan, extended debt or claim forborne must be of money or something circulating as money, 3) the debt must be unconditionally repayable; 4) something must be exacted or promised for the use of money in addition to the highest rate of interest permitted by law.


\textsuperscript{25} \textit{Hafer v. Spaeth}, 22 Wash. 2d 378, 156 P. 2d 408 (1945); \textit{Hogg v. Ruffner}, \textit{supra} note 24, at 119, where the court stated: "Such a contract has none of the characteristics of usury; it is not for the loan of money, or forbearance of a debt."

\textsuperscript{26} \textit{General Acceptance Corp. v. Weinrich}, 218 Mo. App. 68, 262 S.W. 425 (1924).

\textsuperscript{27} \textit{Ibid.}
The reason is that the statute against usury is striking at and forbidding the exaction or receipt of more than a specified legal rate for the hire of money and not of anything else; and a purchaser is not like the needy borrower, a victim of a rapacious lender, since he can refrain from the purchase if he does not choose to pay the price asked by the seller.28

The distinction is also justified on the basis of the seller’s need to cover the cost of doing business on credit and as an adjunct to his right to fix his own price.29

The variance of treatment accorded a loan and a sale on time has been criticized as unfounded in historical precedent.30 The distinction has been attacked as blind adherence to unreasoned precedent.31 It has been quesitoned as a distinction difficult to understand.32 Opposition to this criticism is based on precedent beginning with Hogg v. Ruffner.33

Regardless of precedent, it is argued that a fixed charge rate on installment sales is unrealistic and economically unfeasible.34

The usury statutes were not enacted with installment sales in mind. They appeared long before the present boom in consumer credit. Consequently, they are in no way designed to control the installment sale. Their operation is properly confined to the prevention of excessive interest taking on a loan or forbearance of money. It is clear that, aside from the pros and cons of this argument, the majority of jurisdictions in the United States are inclined to maintain the now traditional distinction between a loan and a time-sale.

A minority of jurisdictions have recently applied usury statutes

28 Id. at 428.
30 Berger, supra note 18. The author of this article painstakingly examines the development of usury statutes and English cases interpreting them. He concludes that originally there was no distinction between usury on a loan and usury on a sale of goods.
31 Usury Statutes and Installment Sales, 48 YALE L. J. 1102 (1939).
32 Limiting Consumer Credit Charges by Reinterpretations of General Usury Laws and by Separate Regulation, supra note 21, at 304, the author states: “It is difficult to understand why a consumer should be granted the protection of the usury statute when he makes a loan to facilitate a purchase, but is denied that protection when he makes the same purchase on credit granted by the dealer.”
33 Supra note 24.
34 Meth, A Contemporary Crisis: The Problem of Usury in the United States, 44 A.B.A.J. 637 (1958); Ecker, supra note 22, at 174. The author also refutes the argument that usury laws should be applied to a sale because they might have been originally:

The fact of the matter is that the court in the case of Beetee v. Bidgood was influenced—and properly so—by the ‘rising tide of commercialism’ to cast aside the ‘canonical notion’ that a bona fide sale on terms of a deferred payment of the sales price is in the same category as a loan; and that the court was cognizant of the necessity, in a commercial as distinguished from a ‘canonical’ world, of freeing commercial transactions which depend on the extension of credit from the dangers of forfeiture and penalty.
to installment sales. These cases generally recognize the validity of an increased price in a sale on time, but they strike at the transaction in question as not being bona fide credit sales. The question in these cases does not essentially seem to be accepting or rejecting the traditional time-sales doctrine, but a question of fact: are these transactions bona fide credit sales or merely loans disguised as legitimate installment sales.

These states have not rejected the time-sale doctrine. They do scrutinize the particular transaction with greater emphasis on the usury aspects. In certain circumstances, they will find the dealings are in essence a loan.

These encroachments on the doctrine do not apply to the question of law, but to the approach to the fact questions involved. As to the issue of law, these decisions conform to the traditional view that the transactions must be a bona fide time-sale and the courts will not allow the transaction to be a "cloak for usury." The majority approaches the time-sale as a transaction essentially different in nature than a loan. Unless the arrangement is clearly a subterfuge, they will refuse to apply or consider application of the usury statutes. The minority of jurisdictions quickly bridge the gap between a loan and time-sale, applying more rigid standards to the transaction.

The motives of the minority seem to be to exercise a stricter supervision of financing procedures by the use of the usury statutes.

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36 See, e.g., Hare v. General Contract Purchase Co., 220 Ark. 601, 249 S.W. 2d 973 (1952). The court states:
   We leave unimpaired the doctrine that a seller may, in a bona fide transaction, increase the price to compensate for the risk that is involved in a credit sale. But there may be a question of fact as to whether the so-called credit price was bona fide as such, or only a cloak for usury. [Id. at 978.]
37 These circumstances are generally: 1) where there is close cooperation between the finance company and seller. The court may find that the dealer is in reality the agent of the finance company. What in form appears to be an installment sale will be considered in essence to be a loan. Limiting Consumer Credit Charges by Reinterpretation of General Usury Laws and by Separate Regulation, supra note 21, at 305-307. 2) where there is too close a relation between the buyer and the finance company, the two parties directly negotiating the terms or the finance company imposing terms on the buyer and seller. Id. at 307-308.
38 The author of the law review article referred to feels that the time-sale doctrine is being eroded in several states in cases involving these situations: 1) cooperation between the dealer and the finance company, 2) contact prior to the sale between the buyer and the finance company, 3) improper or misleading itemization of charges, indicating the lack of a genuine time price, or 4) refinancing. Id. at 304-310.
40 Raffel, supra note 35, at 830.
As this has been a very recent trend in this area of the law, it is possible that other jurisdictions will adopt the same approach. However admirable the desire to protect the consumer, this seems to be the wrong approach. As suggested previously, usury laws are unduly harsh and were formulated before the present boom in consumer credit. The better approach appears to be through legislation, leaving the usury statutes to perform their traditional function, the regulation of money-lending.

V. Development of Modern Legislation Affecting Consumer Credit

Legislation affecting consumer credit may be categorized in two ways: 1) regulation seeking to produce effects on our general economic welfare, and 2) regulation which protects the individual consumer.

Regulation For Economic Effect

It is apparent that the volume of consumer credit has a direct effect on our national economy. Although the extent of the effect may be questioned, control of the volume of credit can have an inflating or deflating effect. The Federal government has periodically passed legislation in regard to consumer credit. The government may control consumer credit indirectly through monetary policy or directly through devices such as Regulation W. Regulation W directly restricted the use of consumer credit. It was a measure designed to prevent inflation. The Board of Governors of the Federal Reserve System recently recommended that it not be used presently to combat inflationary trends. Federal control of the level of consumer credit is basically an economic question. Whether it should be used during peacetime is highly debatable. This phase of consumer credit regulation

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41 A Minnesota case has been cited as the “bell-weather” case. The case is Seebold v. Eustermann, 216 Minn. 566, 13 N.W. 2d 739 (1944). Minnesota recently held that bona fide installment sales do not come within the operation of the usury statutes. Van Asperen v. Darling Olds Inc., 254 Minn. 64, 93 N.W. 2d 690 (1958).


44 Neifeld, supra note 1, at 226. *Id.* at 213-245, covers extensively Federal control of consumer credit.

45 *Regulation of Consumer Instalment Credit: Views of the Board of Governors, 43 Fed. Reserve Bull. 647 (1957)*: "... the Board of Governors believes that a special peacetime authority to regulate consumer instalment credit is not now advisable. The Board feels that the broad public interest is better served if potentially unstabilizing credit developments are restrained by the use of general monetary measures and the application of sound public and private fiscal policies. [Id. at 648.]

46 Neifeld, supra note 1, at 234-238 for the pros and cons on Federal regulation of consumer credit.
has been mentioned briefly to illustrate one of the two alternate ways in which legislation may affect credit. This type of regulation deals with the volume of credit rather than specific protection for the individual consumer.

**Regulation Protecting the Individual Consumer**

The effect of specific legislation in regard to consumer credit will be dealt with later in this article. This section will trace briefly the historical development of such legislation.

The need for consumer credit regulation has arisen in connection with oppressive practices employed by some sellers and lenders. Such practices as concealing the true interest rate and "kickbacks" to dealers by finance companies have greatly increased public pressure for regulation.

Regulation of consumer credit took place initially within the framework of existing legal principles and has branched out into several areas of specific regulation. The legal development is aptly characterized in a statement by Dr. Louis N. Robinson, appearing in Neifeld's *Manual on Consumer Credit*:

Consumer credit is a new business, or rather several new businesses. Now most new businesses have three legal stages. The first stage is marked by the attempt to use existing legal technique which had been evolved in the course of time to handle other businesses somewhat akin in character to the new businesses. This old technique, seldom, if ever, fits the new businesses and as a result, it is conducted partly outside the law and partly hampered and restricted by existing ill-fitting law...

The second stage of legal existence is the period of experimentation when legislation attempting to regulate or curb the business in one or more of its expressions is passed at the request of an indignant but ill-informed public.

Finally, there is the third stage—when the new business has been brought under law carefully and scientifically worked out to enable the business to live a useful life for the benefit of society.

Specific legislation may be directed toward the business of cash

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47 Hubachek, *The Drift Toward a Consumer Credit Code*, 16 U. Chi. L. Rev. 609, 615 (1949). These practices may be grouped in roughly five categories: 1) concealment of the fact that the transaction is a loan; 2) use of a collateral transaction, such as the sale of something to the borrower on which the lender makes a profit; 3) exaction of charges ostensibly for something other than the use of money, *e.g.*, charges for "services"; 4) in the case of installment loans, discount of the maximum rate of interest permitted by the general usury law with the interest computed on the original amount of the loan for the full period of the contract; without regard to the declining principal balance; and 5) fraud.

48 Dauten, *supra* note 10, at 64.

49 Ibid.

50 Cf., text accompanying note 16 supra.

51 Neifeld, *supra* note 1.

52 Id. at 86-7.
lending or the business of retail installment selling. Regulation of retail installment selling developed at a slower pace than in the area of cash lending. But, it is now gathering momentum and is rapidly maturing.

Regulation of cash lending has seen a full evolution of legal development. Originally, the existing legal framework, consisting of usury statutes was applied to this business. Since the usury statutes often did not permit sufficient returns to cover costs and profits, abuses became widespread. The widespread needs of consumers resulted in legislation allowing loans at a rate greater than allowed by the usury statutes. This legislation has generally passed through the second and to the third stage of legal development. Legislation has been formulated in three areas: installment loan legislation, credit unions and individual bank legislation.

As noted before, legislation regulating the financing of retail installment sales has developed at a slower rate than that affecting the business of cash lending. Retail installment sales have been generally free from regulation due to the time-sale doctrine. The first widespread regulation dealt with the sale of automobiles. Separate legislation covering that area has been enacted in many jurisdictions.

Now rapidly developing are acts covering retail installment sales of goods other than automobiles. These statutes protect the consumer primarily by requiring full disclosure of terms and limiting the permissible time-price differential. The trend is definitely toward regulation. This may be considered a problem for the consumer financing industry. Increased regulation will force a general tightening of lending practices. The virtue of regulation, provided it allows lending institutions and sellers to meet the additional cost of extending

53 Neifeld, supra note 1, at 87.
54 Ibid.
55 Twenty-three states have statutes regulating installment loans for consumer financing. Limiting Consumer Credit Charges by Reinterpretation of General Usury Laws and By Separate Regulation, supra note 21, at 310-13. These acts are to be distinguished from small loan acts. They generally allow rates lower than small loan acts, but greater than general usury statutes. Id. at 311. Such statutes restrict the size of the loan applied to, the period of time the loan may run, amount of interest to be computed and other various restrictions or allowances. Id. at 311-312.
56 Only four states—Delaware, Nevada, South Dakota and Wyoming—do not have laws regulating credit unions. Credit unions are generally regulated as to the size of the loan, amount of interest permissible and period of repayment. Id. at 313-316.
57 Commonly called Morris Plan Banks. The plans enable industrial loan companies to charge a greater amount of interest than allowed by the usury statute. Their importance is generally declining. Id. at 315.
58 Supra note 24.
60 See infra.
61 Dauben, supra note 10.
credit, is that it protects the ordinary consumer. The difficulty in computing the true cost of financing and sharp practices previously noted call for protection. The consumer is many times wary and ill-equipped to analyze the ramifications of an installment sales contract. Legislation calling for a clear and prominent description of the actual terms, coupled with the other recommended safeguards, should provide some measure of protection for the buyer, without crippling the industry or economy.

This survey of the development of regulation leads to an examination of pertinent state statutes now in effect. The common elements of these statutes will be examined. The authors hope that this will help to complete the picture of what has been done in regard to control of credit arrangements.

A. RETAIL INSTALLMENT SALES LEGISLATION

This section of the article is devoted to a consideration of the regulatory legislation that has been passed in the retail installment sales field. State regulation of the retail installment sale began in 1935. In that year Indiana enacted a so-called all goods act (that is, one of general application) and Wisconsin enacted a regulation of automobile financing. As of 1959, 31 states had enacted at least some type of Retail Installment Sales Legislation.

There have been several attempts at model bills; however none have received any wide spread acceptance nor have resulted in agreement on the essential requisites of adequate regulation. The Russell Sage Foundation, which drafted the Uniform Small Loans Law, proposed a Preliminary Draft of a Uniform Law to Regulate Installment Selling in 1940 but discontinued its work shortly thereafter. A committee of the National Foundation of Small Loan Supervision proposed An Installment Sales Act Relating To Motor Vehicles in 1948 and in 1953 the same committee issued a report advocating regulation which would cover all installment sales financing. Professor Mors

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62 See supra note 47.
63 See the consideration of individual state statutes infra.
64 IND. LAWS of 1935, ch. 231.
65 WIS. LAWS of 1935, ch. 474.
66 CORNAN, SALES AND SECURED FINANCING (1960); See also 25 Mo. L. REV. 239 (1960) "Today at least the following 30 states have statutes of this general type: California, Colorado, Connecticut, Florida, Illinois, Massachusetts, Michigan, Minnesota, Mississippi, Montana, Nebraska, Nevada New Jersey, New Mexico, New York, North Dakota, Ohio, Oregon Pennsylvania, South Dakota, Tennessee, Utah, Wisconsin."
69 Supra note 67, citing the Report to the National Conference of State Small Loan Supervisors by the Committee Appointed to Study the Regulation of Sales Financing Companies (1948) and (1953).
has also advocated regulation in the retail installment sales field.\textsuperscript{70} The American Finance Conference, a trade association of independent finance companies, has proposed model acts.\textsuperscript{71} However, none of these model acts has made a lasting impression and as a result, the state legislation is almost as diverse as the number of states that have enacted it.

The chart which follows has broken the legislation down into fifteen different headings. Each of the headings represents a problem area in which some or all of the states passing Retail Installment Sales Legislation have found regulation necessary. It should also be noted that the acts vary as to the scope of their coverage. As to coverage they may be classified as 1.) all goods acts, 2.) all goods other than motor vehicles acts, 3.) motor vehicle acts and 4.) revolving credit account acts.\textsuperscript{72} The chart below deals with all goods acts and all goods other than motor vehicle acts. However it should be noted that Connecticut and Maryland, while having all goods acts, regulate financing charges only as to motor vehicle sales. The revolving credit account acts and the motor vehicle acts will be discussed later.

The following matter will consider each of the problem areas indicated by Chart E and attempt to extract the common elements from the various state regulations in each of those areas. Because of the wealth of material contained in these acts and their wide divergence as to substantive content, this may be a somewhat imperfect approach, but the authors feel that it will aid in an understanding of the Retail Installment Sales Legislation on a national basis.

I. Licensing

Several states make no requirement of obtaining a license to do business in the retail installment sales field.\textsuperscript{72} All of those states which do require a license, require it of the sales finance company,\textsuperscript{74} except Florida which requires a license of those “... conducting, engaging in, and carrying on the business of a retailer seller ...”\textsuperscript{75} A sales finance company is typically defined as “a person engaged in whole or in part, in the business of purchasing retail installment contracts

\textsuperscript{71} Id. See, also, \textit{COMMISSIONERS ON UNIFORM STATE LAWS, 1959 HANDBOOK OF THE NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS} 205.
\textsuperscript{72} 25 Mo. L. REV. 239 (1960).
\textsuperscript{73} See Chart E.
\textsuperscript{74} KAN. LAWS SPEC. SESS. (1958), Ch. 9 §16-503; MONT. STAT. 74-603 (1959); NEB. REV. STAT. ANN. §43-310 (Cum. Supp. 1959), all regulate the “sales finance company,” N. J. LAWS or 1960, ch. 40 §2 regulates those “engaged in the business of a sales finance company or in the business of a motor vehicle installment seller,” IND. STAT. ANN. §58-911 (1951) regulates “all persons who purchase retail installment contracts from a retail seller...”
\textsuperscript{75} FLA. STAT. ANN., §520.32 (Supp. 1958).
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<tr>
<th>State</th>
<th>Licensing</th>
<th>Waiver</th>
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<th>Copy to Buyer</th>
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<td>255-7d</td>
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<td>223-74 to 83</td>
<td>255-13G</td>
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<td>Sec. 44</td>
<td>Sec. 28</td>
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from one or more sellers." Thus the only state that has found it desirable to license the retail seller himself is Florida and it should be noted in connection with the Florida statute that the licensing arrangement appears to be not much more than a revenue measure. However, the statutes that do require a license of the sales finance company impose some meaningful regulation. Indiana presents a typical example. The statutes require reports by the licensee and examination of the licensees. The license shall not be granted unless "... the department shall find that the applicant can operate its business economically and efficiently..." The license shall be revoked if the licensee refuses to submit to the required examination or if he willfully refuses to comply with the rules of the department or the provisions of the act.

The licensing power can, of course, be a very powerful weapon in the hands of the state. Violation of the retail installment sales acts can be dealt with much more swiftly and without the heavy burden of proof imposed upon the state by a criminal statute. It would seem to the authors that this weapon could be used against the retail seller with the same force that it is used against the purchaser of retail paper. In view of the fact that no state has required licenses of retail sellers, the necessity for this type of regulation should be well established before the legislature acts in this area.

II. Waiver

Almost every state that has a retail installment sales act has a provision making unenforceable and void, a waiver by the buyer of the rights protected or granted to him by the act. The language of these provisions is basically very simple and direct. These sections rest upon the philosophy, even when fully appraised of the contents of the contract of sale, that the buyer is not capable of protecting himself. A provision such as this seems to be essential to any comprehensive retail installment sales legislation.

III. Disclosure

Provisions requiring disclosure by the seller represent one of the basic philosophies of the retail installment sales acts. That is, if the seller is required to state the essential terms of the contract in such a manner

77 FLA. STAT. ANN., §520.32 and §520.33 (Supp. 1958).
78 IND. STAT. ANN., §58-918 (1951).
81 IND. STAT. ANN., §58-915 (1951).
82 OHIO REV. CODE ANN., §1317.10 (1957) is a typical provision: No agreement of any retail buyer made concurrent with or prior to the execution of any retail installment sales contract is a waiver of sec. 1317.01 to 1317.11 inclusive, of the revised code.
that the average consumer can understand exactly what he is contracting for, the parties should be left to freely contract among themselves. This philosophy is always tempered somewhat by the philosophy mentioned in connection with the disclosure provisions, that the buyer is unable to protect himself. However, the two must be considered together as a whole and as acting upon one another.

It will be noticed that every state has some provisions regulating disclosure and that in most states the provisions are relatively detailed. Every state requires that the contract be in writing and be signed by the parties. Usually the contract is required to be dated and the printed portions thereof are required to be in a minimum size of type, usually 8 point. Specific portions of the contract are required to be in a larger type. The contract is required to contain certain items. The exact items required to be included vary from state to state. The North Dakota Act presents a relatively typical example:

51-1302(5) The contract shall contain the following items:

a. The cash sale price of the personal property which is the subject matter of the retail installment sale;

b. The amount of the buyer's down payment, itemizing the amounts paid in money and in goods and containing a brief description of the goods, if any, traded in;

c. The difference between items a and b;

d. The amount, if any, included for insurance and other benefits and the cost of each type of coverage or benefit, except that motor vehicle material damage premiums need not be separately specified;

e. The amount of official fees, as defined in section 1;

f. The principal balance, which is the sum of items c, d, and e;

g. The amount of the credit service charge;

h. The time balance, which is the sum of items f and g, payable in installments by the buyer to the seller, the number of installments required, the amount of each installment expressed in dollars and the due date or period thereof;

i. The time sale price.

j. If any installment substantially exceeds in amount

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83 See Chart E.
85 Ibid.
87 Fla. Stat. Ann. §520.34(1) (Supp. 1958) and Kan. Laws Spec. Sess. (1958), ch. 9 §16-507(g) requires a "Notice to the Buyer" to be in at least 10 point type. N. D. Laws of 1957, §51-1302(2) requires certain other portions to be in at least 10 point type.
any prior installment other than the down payment, the following legend printed in at least ten-point bold type or typewritten: "THIS CONTRACT IS NOT PAYABLE IN INSTALLMENTS OF EQUAL AMOUNT," followed, if there be but one larger installment, by: "AN INSTALLMENT OF $.................. WILL BE DUE ON .........................," or, if there be more than one larger installment, by: "LARGER INSTALLMENTS WILL BE DUE AS FOLLOWS:.........................," in such latter case inserting the amount of every larger installment and its due date.

The items need not be stated in the sequence or order set forth above; additional items may be included to explain the calculations involved in determining the stated time balance to be paid by the buyer.

The amount of the credit service charge may be expressed as a simple interest charge not exceeding seven percent per year computed on the principal balance unpaid from time to time; if so expressed, the time balance and the time sale price need not be set forth." 88

Another provision commonly found in the various acts and one that can be grouped with the disclosure provision is the prohibition against the seller's obtaining the buyer's signature to a contract while it contains blank spaces. 89

IV. Copy To The Buyer

Supplementing the disclosure requirement and based upon the same philosophy is the requirement that a completed copy of the contract be given to the buyer. Such a requirement is found in practically every state. 90 The problem with these statutes is that an acknowledgment of receipt of a copy of the contract by the buyer contained in the contract which the buyer signs, will bind the buyer and the statute will prohibit collateral evidence to the contrary. 91 Thus such acknowledgements are required to be printed in larger type. However, it remains questionable as to just how much protection these provisions afford.

V. Receipt

These provisions essentially are a part of the disclosure requirement. They are, however, distinguishable in that they operate at a different time. That is, they operate at some time subsequent to the time of contracting. Typically there are two distinct facets to these provisions. The

88 N. D. LAWS OF 1957, §51-1302 (5).
89 ILL. REV. STAT., ch. 121½ §229, permits "... that if delivery of the goods is not made at the time of execution of the contract, the identifying numbers or marks or similar information and the date of the first installment may be inserted in the contract after its execution."
90 See Chart E.
91 CAiLAWS OF 1959, ch. 201 §1803.7; Note that in Ohio, for example, an acknowledgment is only prima-facie proof of delivery. OHIO REV. CODE ANN., §1317.02 (1957). This would seem to be the better rule but, because of the evidentiary difficulties there may be little substantive difference.
seller or the holder, if he be other than the seller, is required upon re-
quest of the buyer to supply a written statement of the dates and
amounts of payments due and the total amount due upon the contract.\textsuperscript{92}
He is also required upon request to supply receipts for cash payments.\textsuperscript{93}
In addition, the seller or holder is required to mark canceled or paid the
original evidence of indebtedness and to return the same to the buyer
upon payment in full.\textsuperscript{94} Some states impose only the latter obligation on
the holder.\textsuperscript{95}

\textbf{VI. Regulation of Charges}

This is one of the basic provisions of these acts. Rate regulation
along with disclosure represent the dual pillars of the acts and at the
same time represent completely opposite though not inconsistent phi-
losophies. The philosophy here is that the buyer, even though fully
appraised of the provisions of the contract into which he is about
to enter, is not fully capable of self-protection. Thus the state limits the
profit which the financier can take on such a transaction.

<table>
<thead>
<tr>
<th>NAME OF STATE</th>
<th>MAXIMUM TIME PRICE DIFFERENTIAL</th>
<th>MINIMUM TIME PRICE DIFFERENTIAL</th>
</tr>
</thead>
<tbody>
<tr>
<td>California</td>
<td>$12.00, but if due date of last installment is 8 months or less, $10.00.</td>
<td>$10.00, but if due date of last installment is 8 months or less, $10.00.</td>
</tr>
<tr>
<td>Colorado</td>
<td>$12.00, but if due date of last installment is 8 months or less, $10.00.</td>
<td>$10.00</td>
</tr>
<tr>
<td>Connecticut</td>
<td>Disclosure provisions only—rates not regulated.</td>
<td></td>
</tr>
<tr>
<td>Delaware</td>
<td>$12.00, but if due date of last installment is 8 months or less, $10.00.</td>
<td>$10.00</td>
</tr>
<tr>
<td>Florida</td>
<td>$12.00, but if due date of last installment is 8 months or less, $10.00.</td>
<td>$10.00</td>
</tr>
<tr>
<td>Hawaii</td>
<td>Same as Industrial Loan Act.</td>
<td>$15.00</td>
</tr>
<tr>
<td>Illinois</td>
<td>Disclosure provisions only—rates not regulated.</td>
<td>$5.00</td>
</tr>
<tr>
<td>Indiana</td>
<td>Set by Department.</td>
<td>$15.00</td>
</tr>
<tr>
<td>Kansas</td>
<td>Set by Department.</td>
<td>$15.00</td>
</tr>
<tr>
<td>Maryland</td>
<td>Disclosure provisions only—rates not regulated.</td>
<td></td>
</tr>
<tr>
<td>Massachusetts</td>
<td>Disclosure provisions only—rates not regulated.</td>
<td></td>
</tr>
<tr>
<td>Montana</td>
<td>Disclosure provisions only—rates not regulated.</td>
<td></td>
</tr>
</tbody>
</table>

\textsuperscript{92} CONN. GEN. STAT., §42-94 (1958).
\textsuperscript{93} \textit{Ibid.}
\textsuperscript{94} CONN. GEN. STAT., §42-95 (1958).
$100 per year on that part of balance exceeding $300, but less than $1000. $7.00 per $100 per year on that part of balance over $1000.

**Nebraska**
$12.00 per $100 per year on balances of $300 or less. $10.00 per $100 per year on that part of balance exceeding $300, but less than $1000. $8.00 per $100 per year on that part of balance over $1000.

If balance is less than $100 and contract life does not exceed 12 months, 75c per each $5.00 or portion thereof.

**New Jersey**
$10.00 per $100 per year.

$12.00 if contract life more than 8 months ($10.00 if contract life 8 months or less.)

**New York**
$10.00 per $100 per year on that part of balance not exceeding $500. $8.00 per $100 per year on that part of balance over $500.

$12.00 if contract life exceeds 8 months—$10.00 if contract life is less than 8 months.

**North Dakota**
$10.00 per $100 per annum.

$15.00, on the assumption that the acquisition cost allowance on refunds is applicable.

**Ohio**
$8.00 per $100 per year plus 5c per month for the first $50.00 unit and 25c per month for each of the next 5—$50.00 units.

$15.00

**Utah**
1% of the unpaid balance multiplied by the number of months of the contract.

$5.00

It should also be noted here that many states have an additional provision requiring that "... the service charge shall be inclusive of all charges incident to investigation and making the contract and for the extension of credit provided in the contract and no fee, expense or other charge whatsoever shall be taken except as otherwise provided in this act..." The seller is also limited to the "effective rate" allowed by statute where the payments are unequal or irregular. The seller is further prohibited from in any way dividing the payments so as to receive a higher rate.

**VII. Insurance Provisions**

The seller is commonly expressly authorized by the various acts to make a separate charge for insurance although he is regulated in this as to amount and as to disclosure of such a charge. The California statute is a good example. Thus if the cost of insurance is included in the contract and a separate charge is made for such insurance, the contract must state whether the buyer or the seller is to pay for the insurance; the rate charged for such insurance shall not exceed the premiums chargeable by the insurer; the seller must deliver a copy of the

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99 See Chart E.
100 Cal. Laws of 1959, ch. 201 §1803.5.
insurance to the buyer; and the provisions of the insurance code will apply to any violations.

VIII. Prepayment Rights

Every state which has enacted a retail installment sales act has expressly granted the buyer the right to make prepayments. The buyer is always given the unconditional right to prepay in full before maturity which prepayment entitles him to a refund credit for such anticipation. The question is how great a refund. Colorado provides that the amount of such refund shall be at least as great a proportion of the time price differential as the sum of the monthly time balances after the date of the prepayment in full bears to the sum of all the monthly time balances under the schedule of payments in the contract less a deduction therefrom of an acquisition cost of $5.00 per $100 or a fraction thereof, of the amount of the base time price but not in excess of $15.00. Thus the buyer is entitled to the return of all financing charges applicable to the time subsequent to prepayment less a deduction not to exceed $15.00. This is the general rule. This right to prepayment is a basic right and is essential to achieve the purposes of the retail sales installment act.

IX. Refinancing

The purpose of provisions of this type is to protect the buyer's rights in the event that the parties agree to a refinancing. The typical statute indicates that the request for such an extension must come from the buyer, but it would seem doubtful that such a provision would have any substantial effect. The principal purpose of these sections is to limit the amount of additional charges that the buyer can take for such refinancing. California and New York have an additional provision allowing the seller or holder to extend the scheduled due date or defer the scheduled payment of all or any part of any installment. North Dakota has only the latter type provision. The distinction between the former and the latter is that the latter is not a new contract or a new size of payment; it is a simple deferral of the then due payments. California and New York allow the financier who defers payment to collect simple interest at the rate of one percent, while North Dakota allows

102 See Chart E.
103 IND. STAT. ANN. §§8-906 leaves the amount of the refund to the department; KAN. LAWS SPEC. SESS. 1958, ch. 9 §16-509—when the amount of refund is less than $1.00 no refund need be made.
104 KAN. LAWS SPEC. SESS. 1958, ch. 9 §16-510.
105 CAL. LAWS OF 1959, ch. 201 §1807; KAN. LAWS SPEC. SESS. 1958, ch. 9 §16-510; N. Y. PER. PROP. LAW §409(2); all limit the refinancing charge to the rate permitted in the original contract. CONN. GEN. STAT. §42-97 (1958) permits a true rate of interest of 12% per annum; N. J. LAWS OF 1960, ch. 40 §44 allows a rate between 1 and 2 percent depending upon classification.
106 CAL. LAWS OF 1959, ch. 201 §1807.1; N. Y. PER. PROP. LAW §409(1).
107 N. D. LAWS OF 1957 §51-1306.
108 Supra note 106.
him a flat fee not to exceed $5.00 plus simple interest at one percent.\textsuperscript{109} It should be noted that only seven states have statutes which specifically authorize refinancing.\textsuperscript{110} However, it would seem that in the absence of such specific authorization parties could contract to refinance at the same rates allowed by the act on the original transaction. On the other hand, the North Dakota statute would seem to leave the situation in doubt. The statute allowing the deferment would seem to infer that refinancing is prohibited.

\section*{X. Add On Contracts}

The add on contract is closely allied with the refinancing arrangement but differs from it in that there are additional purchases. It should also be distinguished from the retail installment account. \cite{Discussed infra.} The provisions relative to add on contracts permit a retail installment contract which otherwise conforms to the requirements of the act to contain provision that the seller may at his option add subsequent purchases made by the buyer to the contract with a corresponding increase in payments and in the price of the goods covered by the contract. The seller may also treat the prior goods as security for the latter but only until the prior goods are completely paid for. Payments are allocated among the goods by either of two methods: 1.) in same proportion as the various cash sale prices bear to one another, or 2.) by treating the amount by which the payments are increased by reason of the add on purchase as attributable to the goods added on and the remainder to the original goods.\textsuperscript{111} The service charge is essentially limited to the same rate as that allowed on the original contract but there are some difficulties in the computation.\textsuperscript{112}

The acts commonly provide for substantially the same disclosure provisions and for copies of the memorandum to be delivered to the buyer.\textsuperscript{113}

\section*{XI. Assignment}

Provisions of the acts regulating the assignment of retail sales paper thereunder are enacted to allow free assignment but with maximum protection to the retail buyer, obligor on the assigned paper. Thus most

\textsuperscript{109} \textit{Supra} note 107.

\textsuperscript{110} See Chart E.

\textsuperscript{111} \textit{Cal. Laws} of 1959, ch. 201 §1808.

\textsuperscript{112} \textit{Cal. Laws} of 1959, ch. 201 §1808.5 permits the service charge of be figured on either: 1) the consolidated total (subsequent contract plus unpaid balance of the previous contract less a refund credit for anticipation) for a period from the subsequent contract to the date of the final payment, or 2) the principal balance of the subsequent contract from the date of the subsequent contract to the date of the final payment on the consolidated total and if the due date of the consolidated total is later than the due date of any previous contract, on the time balance then unpaid on such contract from the date when the final installment thereof was payable to the date when the final installment of such consolidated total is payable.

acts include the specific provision that payment by the retail buyer without notice of assignment to the last known holder discharges the buyer to the extent of the payment.\textsuperscript{114}

\textbf{XII. Repossession and Resale}

In those states that have enacted provisions regulating repossession and resale there is a certain degree of uniformity. The seller is authorized to retake the goods if he can do so without a breach of the peace, otherwise by legal process.\textsuperscript{115} The buyer is given a right of redemption for a period of ten\textsuperscript{116} to fifteen\textsuperscript{117} days from the date of repossession. However, the seller can cut off the buyer's right of redemption by serving upon the buyer written notice of his intention to retake.\textsuperscript{118} The seller is compelled to resell at public sale where the buyer has paid 50% or more of the time sale price.\textsuperscript{119} Where the buyer has not paid at least 50% of the purchase price either of the parties can force a resale.\textsuperscript{120} The seller may recover a deficiency from the buyer where there has been a resale but where there is no resale the buyer is discharged.\textsuperscript{121}

\textbf{XIII. Consequence of Violation}

The consequences of violation of the provisions of the acts generally take some combination of the following four different forms: 1.) the violator is guilty of a misdemeanor punishable by fine of up to $1000\textsuperscript{122} or one year imprisonment,\textsuperscript{123} (to be liable to prosecution for the criminal penalty the violation must be willful); 2.) the provisions of the contract which are in violation of the act will be held to be void but severable from the remainder of the contract;\textsuperscript{124} 3.) the seller is held to forfeit his right to any financing charge, (Nebraska in addition prohibits the seller from collecting the first \$4000 of the principal balance);\textsuperscript{125} and 4.) the seller is made liable to the buyer for three times the total time price differential or charges plus delinquency collection or refinancing charges imposed.\textsuperscript{126}

\textbf{XIV. Prohibited Clauses}

Several of the acts prohibit the seller from including in the contract certain provisions. The philosophy of these sections is that the buyer is not capable of grasping the import of these provisions and even if he were, the buyer is unable to force the seller to delete them from the contract. Some of the prohibited clauses are: 1.) acceleration clauses pro-

\begin{footnotesize}
\begin{enumerate}
\item Del. Laws of 1959, H. B. 550 §4320.
\item Cal. Laws of 1959, ch. 201 §18122.
\item Conn. Gen. Stat. §42-98 (g) (1958).
\item Conn. Gen. Stat. §42-98 (g) & (h) (1958).
\item Cal. Laws of 1959, ch. 201 §1804.4.
\item Del. Laws of 1959, H. B. 550, §4350.
\end{enumerate}
\end{footnotesize}
viding for the arbitrary or unreasonable acceleration of maturity;\(^{127}\)

2.) cognovit provisions;\(^{128}\)

3.) clauses allowing repossession in breach of the peace;\(^{129}\)

4.) clauses making a person the buyer's agent for collection or repossession;\(^{130}\)

5.) wage assignments;\(^{131}\)

6.) clauses waiving a buyer's claims against the seller or waiving a defense.\(^{132}\) North Dakota also prohibits any clause which would allow the seller any security in property other than the subject matter of the contract.\(^{133}\)

XV. Delinquency and Penalty

These provisions most commonly allow the seller to collect a delinquency charge of 5% if the payment is more than 10 days late with a minimum charge ranging from 25c in Colorado\(^{134}\) to $1.00 in California\(^{135}\) and most other states. The seller is also allowed to collect attorney's fees of 15% in Connecticut,\(^{136}\) of a reasonable amount in Florida\(^{137}\) and of 20% in New Jersey.\(^{138}\) No attorney's fees are allowed in California.\(^{139}\)

B. REVOLVING CREDIT ACCOUNTS

Would a retail installment sales act regulate a revolving credit account plan? It seems that a particular act might cover such plans.

If a revolving credit plan involves retail installment sales secured by retention of title to or a lien on the goods sold, the plan is subject to the (Illinois) act. Section 26, which permits addition to and consolidation of contracts and Section 3(9) which permits the financing charge to be stated as a percentage of the monthly unpaid balance, seems to be particularly adopted to such a plan.\(^{140}\)

However, it would seem that a statute such as this would leave the seller with the power to choose between regulation under the act or freedom from it. The seller could free himself of regulation by simply not claiming any security in the goods sold and since the typical revolving credit account sale involves items of relatively small value such a waiver of security interest in the goods sold would not be a serious deterrent.

\(^{127}\) CAL. LAWS OF 1959, ch. 201 §1904.1(g) ; DEL. LAWS OF 1959, H. B. 550, §4311(g) ; MD. ANN. CODE, art. 83 §130(d) (1957) ; N.Y. PER. PROP. LAW, §403(3)(b).

\(^{128}\) CAL. LAWS OF 1959, ch. 201 §1804.1(c) ; N. Y. PER. PROP. LAW, §403(3)(c).

\(^{129}\) DEL. LAWS OF 1959, H. B. 550, §4311(d).

\(^{130}\) CAL. LAWS OF 1959, ch. 201 §1804.1(f) ; DEL. LAWS OF 1959, H. B. 550, §4311(f) ; MD. ANN. CODE, art. 83 §83-130(f) ; N. Y. PER. PROP. LAW, §403(3)(d).

\(^{131}\) MD. ANN. CODE, art. 83 §83-130(g) ; N. D. LAWS OF 1957, §51-1302(13).

\(^{132}\) DEL. LAWS OF 1959, H. B. 550, §4311(a) & (b) ; N. Y. PER. PROP. LAW §403(3)(a).

\(^{133}\) N. D. LAWS OF 1957, §§51-1302(16).

\(^{134}\) COL. LAW OF 1959, H. B. 308, §7.

\(^{135}\) CAL. LAWS OF 1959, ch. 201 §1803.6.

\(^{136}\) CONN. GEN. STAT., §42-91 (1958).

\(^{137}\) FLA. STAT. ANN., §520.37 (Supp. 1958).

\(^{138}\) N. J. LAWS OF 1960, ch. 40 §42.

\(^{139}\) CAL. LAWS OF 1959, ch. 201 §1803.6.

\(^{140}\) Supra note 67.
Thus the best course would seem to be enactment of separate provisions regulating credit accounts. This would have the merit of lending certainty to the law as well as allowing the regulations to take into account the obvious differences between revolving credit accounts and the normal retail installment sale. Such provisions have been enacted in California, Delaware, Florida, Nebraska, New York, North Dakota and Ohio. The following chart indicates the rates allowed by such states:

<table>
<thead>
<tr>
<th>NAME OF STATE</th>
<th>MAXIMUM RATES</th>
<th>MINIMUM RATES</th>
</tr>
</thead>
<tbody>
<tr>
<td>California</td>
<td>$1.00 per month</td>
<td>$1.00 per month</td>
</tr>
<tr>
<td>Delaware</td>
<td>$1.00 per month</td>
<td>$1.00 per month</td>
</tr>
<tr>
<td>Florida</td>
<td>$1.00 per month</td>
<td>None</td>
</tr>
<tr>
<td>Nebraska</td>
<td>None</td>
<td>None</td>
</tr>
<tr>
<td>New York</td>
<td>$1.00 per month</td>
<td>None</td>
</tr>
<tr>
<td>North Dakota</td>
<td>$1.00 per month</td>
<td>None</td>
</tr>
<tr>
<td>Ohio</td>
<td>$1.00 per month</td>
<td>None</td>
</tr>
</tbody>
</table>

C. Motor Vehicle Acts

Several states have acts which regulate only the retail installment sale of motor vehicles. Maryland and Connecticut have acts which cover all goods but which regulate the financing charges only on the motor vehicle installment sales. Wisconsin was the first to enact such legislation and has set the pattern for the other states.

The Wisconsin act divides motor vehicles into four classes: 1.) new vehicles—on which a financing charge of $7.00 per $100 per annum is permitted); 2.) vehicles not more than 2 years old—on which a financing charge of $9.00 per $100 per annum is permitted; 3.) vehicles not more than 5 years old—on which a charge of $12.00 per $100 per annum is permitted; and 4.) all other vehicles—on which a charge of

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141 Supra note 66, at 553.
142 Supra note 65.
143 Wis. Stat., §218.01(6) (1959).
$15.00 per $100 per annum is permitted. This classification of the automobile based upon its age recognizes the seller’s higher security risk on older automobiles. This is the pattern followed by the majority of the states but California, Nevada and Utah have no such graduation on the basis of obsolescence.\footnote{Warren, Regulation of Financing Charges in Rental Installment Sales, 68 YALE L. J. 839 (1957).} The rates permitted by the various acts vary from state to state. On current model automobiles the rates range from $6.00 per $100 in Michigan and Pennsylvania to $9.00 per $100 in Kentucky and Maryland. On older vehicles the rates range to $17.00 per $100 on automobiles four years old in Florida.\footnote{Ibid.}

The Wisconsin statute\footnote{Supra note 143.} also provides for licensing of both the installment seller and the finance companies. A willful failure to comply with the licensing provisions will be a valid defense to an action for the principal balance, the time price differential, interest and other fees. The Wisconsin statute also requires disclosure and that the buyer be given a copy of the contract. A violation of the disclosure provision or of the provision setting the amount of the time price differential will bar recovery of any time price differential.

VI. CONCLUSION

It has been the purpose of this article to trace the historical development of retail installment credit regulations, and to compare legislation enacted by different states and draw the common elements therefrom.

To propose specific legislation in the area of installment sales was beyond the scope of this article. This must be done by the proper state legislative committee. However, the authors feel that in formulating such legislation, consideration should be given to the possible depressing effect of excessively stringent regulation on the economy. Common sense seems to dictate that radical curtailment of the amount of installment sales would have an adverse effect of the overall economy. Regulation should be directed toward protection of the buyer, rather than control of the amount of consumer credit.

In addition, it is felt that in any comprehensive scheme of regulation separate provisions should be made for automobile sales financing, revolving credit plans and so called “all goods” financing. Each involves separate problems meriting individual consideration.

That the purchaser needs some protection seems fairly certain. The 19th century social stigma attached to being in debt, no longer operates as a sanction to protect the consumer. The authors feel that protection given to the purchaser should primarily take the form of disclosure provisions where possible. Particular attention should also be given to
licensing requirements and a maximum rate of interest. However, the maximum rate should give adequate leeway for the forces of competition to establish the rates within the maximum.

Joseph P. Jordan and James H. Yagla