

**NEW YORK STATE BANKING DEPARTMENT
LICENSED FINANCIAL SERVICES DIVISION
One State Street
New York, NY 10004**

INSTRUCTION SHEET - SALES FINANCE COMPANIES

Instructions for preparing and filing an application for license pursuant to the provisions of Article 11-B of the Banking Law.

GENERAL APPLICATION PROCEDURE

1. Application for a license shall be made upon forms issued by the Superintendent of Banks of the State of New York. (**Forms may be reproduced.**)
2. The application form and other related forms shall be filed in duplicate and under oath at the above address.
3. All forms are to be typed and fully completed. Type "none" or "not applicable" where appropriate. If additional space is required to respond, prepare and annex a signed rider.
4. Full names and addresses must be given, including Zip Codes and Counties, where requested.
5. An applicant, other than a corporation or limited partnership, desiring to do business under a trade name must file a certificate in the office of the County Clerk where business is to be conducted or transacted in accordance with Section 130.1(a) of the General Business Law.

An applicant, if a corporation or limited partnership, desiring to do business under a trade name must file a certificate in the office of the Secretary of State in accordance with Section 130.1(b) of the General Business Law.

A copy of the certificate, certified by the County Clerk or Secretary of State, as appropriate, must be submitted with the application.

6. If the applicant is a corporation, a copy of the Certificate of Incorporation, certified by the Secretary of State of the State of incorporation must be

submitted with the application.

7. Foreign corporations must **ALSO** submit a copy of Application for Authority certified by the Secretary of State as proof of their qualification to do business in this State.
8. If the application is executed outside New York State, County Clerk's Certificate authenticating signatures of notaries taking acknowledgments must be affixed to such application.
9. Applicants are required to list branches, subsidiaries, affiliates and parent company operating in this state, **whether or not engaged in the business of a sales finance company.**

NEW YORK STATE BANKING DEPARTMENT QUESTIONNAIRE

Each individual applicant, each member of a partnership applicant, each director, each officer and each stockholder who owns ten percent or more of any class of outstanding stock of a corporate applicant, and each party in interest of any type applicant must complete the enclosed **QUESTIONNAIRE**. (Form may be reproduced)

STATEMENT OF MERIT

Each applicant must furnish, on its own form, a detailed statement describing the proposed operation. Additionally, the following is to be included:

1. A listing of the names, addresses, and types of businesses of the retail dealers from whom the applicant proposes to acquire retail instalment paper.
2. A detailed projection, by dealer, of the dollar amount of retail instalment paper estimated to be outstanding at the end of the first year of operation.
3. A written statement describing the availability of capital and financing with which to handle the projected volume, listing all sources of capital and financing available to the applicant and including copies of written confirmation of extensions of credit to the applicant.
4. The applicant should submit any additional information which it deems pertinent and which may bear upon a determination that the business will be conducted honestly, fairly, efficiently and in such manner as to command the confidence of the community, within the intent and purpose of the law.

RESUMES

Pursuant to Section 493(1)(a) of the Banking Law, experience is a statutory criteria for licensing. Therefore, **each member** of an applicant (individual, partner, officer, director or ten percent stockholder) is to furnish, on their own form, a resume of their experience within the field of retail instalment financing.

These resumes are to include the names and complete addresses of financial organizations which have purchased retail instalment paper from any member of the applicant or from any business entities in which any members of the applicant held official positions.

FINANCIAL STATEMENTS

A current financial statement is to be submitted by each applicant. If the corporation is a newly formed corporation, a pro-forma financial statement as at the commencement of business is to be submitted.

A current financial statement must also be submitted by each member of a partnership, and each officer, director, and ten percent stockholder of a corporate applicant. If a member's wife is not a member of the applicant, a joint financial statement of husband and wife is not acceptable.

Unless the members of an applicant are experienced in the preparation of financial statements, such financial statements should be prepared by an accountant.

BACKGROUND REPORT CERTIFICATION REQUIREMENTS AND CHECKLIST

In connection with your application to organize a sales finance company supervised by the New York State Banking Department, an investigative background report is required. It is the responsibility of the applicant and its principals (officers, directors, stockholders holding ten percent or more of outstanding stock, partners or individuals, as applicable), to order such reports at their own expense from an independent licensed private investigation company. If assistance is required to select a company, please contact the Licensed Financial Services Division. **Please note that all background investigation reports must be provided directly to the Banking Department by the private investigation company. These reports should be sent to:**

New York State Banking Department
Licensed Financial Services Division
One State Street
New York, NY 10004
Attn: Deputy Superintendent Peter Philbin

The following listing relative to such background reports specifies all requirements and must be submitted as part of the application process.

**New York State Banking Department
Required Background Investigation Information**

No background report will be considered complete unless all the information requested below is included in the investigation report.

1. Comprehensive credit report/history (include the actual report as well as summary).
- 2A.* Civil Court and Bankruptcy Court records for the past 10 years.
- 2B.* Criminal records (felonies, misdemeanors and violations).

*Include federal, state and local courts. Such reports shall contain, at a minimum, court data from courts located in counties in which the applicant both worked and resided and all counties contiguous to those counties.
3. Education records.
4. Employment history.
5. Personal and professional references (at least three of each, excluding relatives), which must be furnished in writing.
6. Media history, if applicable (including electronic search of national and local newspapers, wire services and business publications).
7. Regulatory history, if applicable (HUD, FREDDIE MAC, State Regulators, OCC, NASD, etc.).
8. Department of Motor Vehicle records.
9. All judgments and liens filed with the county clerk (within the past ten years). Such reports shall contain, at a minimum, information on judgments and liens filed with the county clerk in counties where the applicant worked and resided and all counties contiguous to those counties..
10. Licenses granted by any governmental agency or judicial body. (Indicate if they are still in good standing.)

11. Listing of all credit relationships by the applicant such as revolving credit and established credit facilities. Indicate any credit extensions, including loans, on which the applicant is in default (more than 90 days past due). The enclosed Certification forms relative to such background reports shall be submitted with the application for each officer, director, stockholder owning ten percent or more of the outstanding shares, partner or individual, as applicable.

FINGERPRINTING PROCEDURE

Statutory Requirement

Banking Law, Section 22, requires that, "every applicant for a license under articles nine, eleven-B, twelve-B, twelve-C and thirteen-B of this chapter and every applicant filing an application to acquire control of any licensee under such articles shall submit simultaneously with an application, sets of fingerprints in such form and in such manner as specified by the division of criminal justice services, but in any event, no less than two digit imprints." Therefore, the following, at a minimum, must submit fingerprint cards:

1. All persons signing the application,
2. If the applicant is a corporation, all members of the board of directors and any person owning more than 10% of the stock of the corporation, or
3. If the applicant is a partnership, all general and limited partners.

Procedure

Fingerprints are to be taken at a local police department. Two sets of fingerprint are to be taken; one on the blue FBI card and one on the green DCJS card. All fingerprint cards must be complete when submitted to the Banking Department. The police department charge for fingerprinting varies with different municipalities.

A completed green card, a completed blue card and a receipt from the police department indicating where and when the fingerprints were taken are to be submitted for each person fingerprinted.

FINANCIAL INSTITUTION REFERENCES

Each applicant and each member of a partnership, and each officer, director, and ten percent stockholder of a corporate applicant must provide the name and address of the financial institution which provides their checking account services.

Please include specific account identification and a written authorization for the bank

to release account information to the New York State Banking Department. If the financial institution is less than two years duration, kindly provide an additional financial institution reference.

TAXPAYER IDENTIFICATION INFORMATION

One copy of the enclosed Taxpayer Identification Information form must be completed and submitted with the application.

SUBMISSION OF RETAIL INSTALMENT FORMS

A copy of the Retail Instalment Contract, Retail Instalment Obligation, or Retail Instalment Credit Agreement and such other forms as the Department may require as well as the Rate Chart which the applicant intends to use must be submitted with the application.

CERTIFICATE OF COMPLIANCE

The enclosed "Certificate of Compliance" in accordance with Section 296-a(9) of the New York Executive Law is to be completed and returned, in duplicate. The **proper section** of the Banking Law under which application for license is being made is to be entered on the form.

FEES

Two separate checks, which must not be dated more than ten days prior to the submission of the application, payable to the order of the Superintendent of Banks for the license fee and the investigation fee are to be submitted for each location in the following amounts: a.) \$300.00 as the license fee unless the application is filed after June 30th in any year in which case the license fee is \$150.00; b.) \$150.00 as the investigation fee for each location subject to a maximum of \$450.00 if more than three applications are filed at the same time.

AN INCOMPLETE APPLICATION WILL BE RETURNED FOR CORRECTION AND NO APPLICATION WILL BE ACCEPTED FOR FILING UNTIL IT IS COMPLETE IN EVERY DETAIL.

If you have questions concerning the filing of an application contact the Licensed Financial Services Division at (212) 709-5496 or 5502.

NYL - ARTICLE XI-B -- SALES FINANCE COMPANIES

Section

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NYL - § 491. Definitions.

In this article, unless the context or subject matter otherwise requires:

1. "Goods" means all chattels personal, but not including money and things in action.

* 2. "Motor vehicle" or "vehicle" means any device propelled or drawn by any power other than muscular power, upon or by which any person or property is or may be transported or drawn upon a public highway, road or street.

* NB Effective until 94/07/01

* 2. "Motor vehicle" or "vehicle" means any device propelled or drawn by any power other than muscular power, upon or by which any person or property is or may be transported or drawn upon a public highway, road or street. Unless otherwise specified, "motor vehicle" or "vehicle" also means a "mobile home" or "manufactured home". "Mobile home" or "manufactured home" means a structure, transportable in one or more sections, which in the traveling mode, is eight body feet or more in width or forty body feet or more in length, or when erected on site, is three hundred twenty or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to required utilities, and includes the plumbing, heating, air-conditioning and electrical systems contained therein.

* NB Effective 94/07/01

3. "Instalment buyer" or "buyer" or "retail buyer" means a person who buys goods from a retail seller and who executes a retail instalment contract in connection therewith.

4. "Instalment seller" or "seller" or "retail seller" means a person who sells goods to a retail buyer under or subject to a retail instalment contract.

5. "Retail instalment sale" or "sale" means a sale, other than for a commercial or business use or for the purpose of resale, of goods by a retail seller to a retail buyer for a time sale price payable in two or more instalments, payment of which is secured by a retail instalment contract.

6. "Retail instalment contract" or "contract" means an agreement, entered into in this state, pursuant to which the title to, the property or a security interest in or a lien upon the goods, which are the subject matter of a retail instalment sale, is retained or taken by a retail seller from a retail buyer as security, in whole or in part, for the buyer's obligation. The term includes such an

agreement wherever entered into if executed by the buyer in this state and if solicited in person by a salesman or other person acting on his own behalf or that of the seller. The term also includes a contract whereby a security interest in favor of the seller is created or retained and a contract for the bailment or leasing of goods by which the bailee or lessee contracts to pay as compensation for their use a sum substantially equivalent to or in excess of their value and by which it is agreed that the bailee or lessee is bound to become, or for no other or for a nominal consideration has the option of becoming, the owner of the goods upon full compliance with the terms of the contract.

6-a. "Retail instalment obligation" or "obligation" means an agreement, entered into in this state, pursuant to which the buyer promises to pay, in instalments, the time sale price or prices of goods and/or services, or any part thereof. The term does not include (a) a retail instalment contract, (b) a retail instalment credit agreement or (c) an obligation which is intended to be and is ultimately insured or guaranteed under title three of the act of Congress entitled "Servicemen's Readjustment Act of 1944".

6-b. "Retail instalment credit agreement" or "credit agreement" means an agreement entered into in this state, pursuant to which the buyer promises to pay, in instalments, his outstanding indebtedness from time to time to a retail seller, not evidenced by a retail instalment contract or obligation, for one or more items of goods or services, whenever purchased or obtained, which provides for a service charge and under which instalment payments apply to his outstanding indebtedness from time to time.

7. "Sales finance company" means a person engaged, in whole or in part, directly or indirectly, in the business of purchasing or otherwise acquiring retail instalment contracts, obligations or credit agreements made by and between other parties, or any interest therein. The term includes a retail seller of motor vehicles engaged, in whole or in part, in the business of holding retail instalment contracts acquired from retail buyers, which have aggregate unpaid time balances of twenty-five thousand dollars or more at any one time, exclusive of contracts repurchased from a sales finance company or financing agency, under an agreement to repurchase in case of default entered into as an incident to the bona fide sale thereof to a sales finance company or financing agency. The term does not include the pledgee of an aggregate number of contracts to secure a bona fide loan thereon. The term

includes a person engaged, in whole or in part, directly or indirectly, in the business of entering into retail instalment credit agreements with retail buyers pursuant to subdivision eleven of section four hundred thirteen of the personal property law.

8. "Superintendent" means the superintendent of banking.

9. "Person" means an individual, partnership, corporation, association or other group, however organized.

10. Words in the singular include the plural and vice versa.

NYL - § 492. License.

1. No person, except a bank, savings bank, savings and loan association, trust company, private banker or investment company, organized under the banking law of this state and authorized to accept deposits, or licensed lender conducting business pursuant to the provisions of article nine of this chapter, shall engage in the business of a sales finance company in this state without a license therefor obtained from the superintendent, as provided in this article.

1-a. Subdivision one of this section does not apply to corporations subject to the insurance law and corporations and private bankers subject to the banking law in exercising the powers granted to them by chapter eight hundred ninety-seven of the laws of nineteen hundred thirty-four as heretofore or hereafter enacted.

2. Application for a license required under this article shall be in writing, under oath, and in the form prescribed by the superintendent, and shall contain the following:

(a) The exact name of the applicant and date of incorporation, if incorporated;

(b) The complete address where the business is to be conducted, showing the street and number, if any, the office building and room number, if any, and the municipality and county;

(c) If the applicant has one or more branches, subsidiaries or affiliates operating in this state, the complete address of each such place of business; and

(d) The name and resident address of the owner or partners of the applicant or, if a corporation or association, of the directors, trustees and principal officers, and of any stockholder owning twenty per centum or more of its stock; and

(e) Such other pertinent information as the superintendent may require.

3. Where an applicant operates several places of business, separate applications for license shall be made for each such place of business.

4. (a) At the time of filing an application for license, the applicant shall pay to the superintendent the license fee and, upon original application or upon the application subsequent to denial of application, or revocation, suspension or surrender of a license, an investigation fee.

(b) The license fee for each calendar year or part thereof shall be three hundred dollars for each place of business, payable on or before the fifteenth day of December for the next succeeding calendar year, except that if a license is issued after June thirtieth in any year such fee shall be one hundred fifty dollars for that year.

(c) The investigation fee, when required by this section, shall be one hundred fifty dollars, except that, when an applicant files applications for licenses for three or more places of business at the same time, the total investigation fee for all the applications shall be four hundred fifty dollars.

NYL - § 492-a. Changes in control.

1. It shall be unlawful except with the prior approval of the superintendent for any action to be taken which results in a change of control of the business of a licensee. Prior to any change of control, the person desirous of acquiring control of the business of a licensee shall make written application to the superintendent and pay an investigation fee of one hundred fifty dollars to the superintendent. The application shall contain such information as the superintendent, by rule or regulation, may prescribe as necessary or appropriate for the purpose of making the determination required by subdivision two of this section.

2. The superintendent shall approve or disapprove the proposed change of control of a licensee in accordance with the provisions of subdivision one of section four hundred ninety-three of this article. The superintendent shall approve or disapprove the application in writing within ninety days after the date the application is filed with the superintendent.

3. For a period of six months from the date of qualification thereof and for such additional period of time as the superintendent may prescribe, in writing, the provisions of subdivisions one and two of this section shall not apply to a transfer of control by operation of law to the legal representative, as hereinafter defined, of one who has control of a licensee. Thereafter, such legal representative shall comply with the provisions of subdivisions one and two of this section. The provisions of subdivisions one and two of this section shall be applicable to an application made under such section by a legal representative.

The term "legal representative", for the purposes of this section, shall mean one duly appointed by a court of competent jurisdiction to act as executor, administrator, trustee, committee, conservator or receiver, including one who succeeds a legal representative and one acting in an ancillary capacity thereto in accordance with the provisions of such court appointment.

4. As used in this section: (a) the term "person" includes an individual, partnership, corporation, association or any other organization, and (b) the term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a licensee, whether through the ownership of voting stock of such licensee, the ownership of voting stock of any person which possesses such power or otherwise. Control shall be presumed to exist if any person, directly or indirectly, owns, controls or holds with power to vote ten per centum or more of the voting stock of any licensee or of any person which owns, controls or holds with power to vote ten per centum or more of the voting stock of any licensee, but no person shall be deemed to control a licensee solely by reason of being an officer or director of such licensee or person. The superintendent may in his discretion, upon the application of a licensee or any person who, directly or indirectly, owns, controls or holds with power to vote or seeks to own, control or hold with power to vote any voting stock of such licensee, determine whether or not the

ownership, control or holding of such voting stock constitutes or would constitute control of such licensee for purposes of this section.

NYL - § 493. Action by superintendent on application.

1. Upon the filing of an application for a sales finance company's license, and the payment of the fees for license and investigation, the superintendent

(a) May refuse to issue the license if he finds that the applicant, or any person who at the time of filing such application is an owner, director, officer, member, partner, employee, agent, or spouse of the applicant, has duly suffered a revocation of license under this article, or has been found guilty of a violation of any of the provisions of this article, or of any other law regulating retail instalment sales contracts, obligations or credit agreements, or has been responsible for any act or omission in consequence of which a license issued under this article to any person was duly revoked. The superintendent may likewise refuse to issue the license if he shall find that the experience, character and general fitness of the applicant are not such as to command the confidence of the community and to warrant the belief that the business will be conducted honestly and fairly within the purposes and intent of this article. For the purpose of this subdivision, the applicant shall be deemed to include all the members of the applicant if it is a partnership or unincorporated association, and all the stockholders, officers and directors of the applicant if it is a corporation; or

(b) Shall issue and deliver to the applicant a license to engage in business as a sales finance company in accordance with the provisions of this article at the location specified in said application.

2. The superintendent shall approve or deny every original application for a license hereunder within ninety days from the filing thereof with the said fees.

3. If the superintendent refuses to issue a license, he

(a) Shall notify the applicant of the denial, return the sum paid by the applicant as a license fee, but retain the investigation fee to cover the costs of investigating the applicant; and

(b) Within twenty days thereafter shall file a written decision and findings containing the reasons supporting the denial, and shall forthwith serve a copy thereof upon the applicant.

4. Each license issued hereunder shall remain in full force and effect until it is surrendered by the licensee or revoked or suspended as provided in this article.

5. Only one place of business may be maintained under each license, but more than one license may be issued to the same licensee pursuant to this article.

6. No county, city, or other political subdivision of this state may require a licensee under this article to obtain a local license or pay a local fee for the privilege of engaging therein in the business of a sales finance company.

7. Any sales finance company in business on the date this act takes effect may continue in operation but must obtain a license within six months from said date in accordance with the provisions of this article.

NYL - § 494. License form; posting; limitations.

1. Each license issued under this article shall state the address at which the licensed business is to be conducted and shall state fully the name of the licensee and, if the licensee is a copartnership or association, the names of the members thereof, and if a corporation, the date and place of its incorporation and the address of its principal place of business. Such license shall be kept conspicuously posted in the licensee's specified place of business and shall not be transferable or assignable.

2. Whenever any licensee hereunder changes its place of business to another location, it shall give immediate written notice thereof to the superintendent, who shall without charge attach to the license or endorse on it in writing a record of the change and the date thereof, which shall be authority for the operation of the business under such license at such new location.

3. No person, except a licensee, may make any representation, directly or indirectly, orally or in writing, that he is licensed under this article, and a licensee may make such a representation

only in connection with the licensee's business as a sales finance company and in accordance with any rules and regulations of the superintendent.

NYL - § 495. Revocation, suspension or surrender of licenses.

1. The superintendent may suspend or revoke any license issued under this article, if he shall find that:

(a) the licensee, knowingly or without the exercise of due care to prevent such violation, has violated any provision of this article, the act of congress entitled "Truth in Lending Act" and the regulations thereunder, as such act and regulations may from time to time be amended, or of any other law regulating instalment sales agreements, or has failed to comply with any demand, or requirement, lawfully made by the superintendent under and within the authority of this article; or

(b) there has been any material misstatement or failure to give a true reply to a question in the application for the license; or

(c) the licensee has defrauded any retail buyer to the buyer's damage; or wilfully failed to perform any written agreement with any retail buyer; or

(d) Any fact or condition exists which, if it had existed at the time of the original application for such license, clearly would have warranted the superintendent of banks in refusing to issue such license originally.

(e) in the case of a licensee other than a natural person.

(1) any officer, director, trustee, or partner of such licensee has been guilty of any act or omission which would be cause for revoking or suspending a license of such party as an individual; or

(2) any other agent or employee of such licensee has been guilty of such act or omission and the licensee has approved or had knowledge thereof or of acts or omission of like character and after such approval or knowledge has retained the benefit, proceeds, profit, or advantage of such act or omission or otherwise ratified it.

2. No license shall be suspended or revoked except after a hearing thereon. The superintendent shall give the licensee at least ten

days' written notice of the time and place of such hearing by registered mail addressed to the principal place of business in this state of such licensee. Any order suspending or revoking such license shall recite the grounds upon which it is based and shall not be effective until ten days after written notice thereof has been sent by registered mail to the licensee at such principal place of business.

3. The superintendent in his discretion may revoke or suspend only the particular license with respect to which grounds for revocation or suspension may occur or exist; but if he finds that grounds for revocation or suspension are of general application to all places of business, or to more than one place of business, operated by such licensee, he shall revoke or suspend all of the licenses issued to said licensee or those licenses to which the grounds for revocation or suspension apply, as the case may be.

4. Any licensee may surrender any license by delivering to the superintendent written notice that such license is thereby surrendered, but such surrender shall not affect the licensee's civil or criminal liability for acts committed prior thereto.

5. No suspension, revocation or surrender of any license shall impair or affect the obligation of any instalment contract, obligation or credit agreement lawfully acquired previously thereto by the licensee.

6. The superintendent shall establish rules as to the form of hearings, findings, and orders which shall be reasonable and in the public interest.

7. The superintendent may, on good cause shown, or where there is a substantial risk of public harm, suspend any license issued pursuant to this article for a period not exceeding thirty days, pending investigation. "Good cause", as used in this subdivision, shall exist only when the licensee has defaulted or is likely to default in performing its financial engagements or engages in dishonest or inequitable practices which may cause substantial harm to the persons afforded the protection of this article.

NYL - § 496. Judicial review.

The refusal, suspension or revocation of a license by the superintendent shall be subject to review in the manner provided by

article seventy-eight of the civil practice law and rules.

NYL - § 497. Investigations and examinations.

1. The superintendent shall have the power to make such investigations as he shall deem necessary to determine whether any licensee or any other person has violated any of the provisions of this article or any other law relating to retail instalment sales, contracts, obligations or credit agreements, and to the extent necessary for this purpose, he may require the attendance of and examine any person under oath, and shall have the power to compel the production of all relevant books, records, accounts, and documents.

2. The superintendent shall have the power to make such examinations of the books, records, accounts and documents used in the business of any licensee as he shall deem necessary to determine whether such licensee has violated any of the provisions of this article or any other law relating to retail instalment sales, contracts, obligations or credit agreements.

3. The expenses incurred in making any examination pursuant to subdivision two of this section four hundred ninety-seven shall be assessed against and paid by the licensee so examined, except that traveling and subsistence expenses so incurred shall be charged against and paid by licensees in such proportions as the superintendent shall deem just and reasonable, and such proportionate charges shall be added to the assessment of the other expenses incurred upon each examination. Upon written notice by the superintendent of the total amount of such assessment, the licensee shall become liable for and shall pay such assessment to the superintendent.

4. All reports of examinations and investigations, and all correspondence and memoranda concerning or arising out of such examinations or investigations, including any duly authenticated copy or copies thereof in the possession of any licensee or the banking department, shall be confidential communications, shall not be subject to subpoena and shall not be made public unless, in the judgment of the superintendent, the ends of justice and the public advantage will be subserved by the publication thereof, in which event he may publish or authorize the publication of a copy of any such report or other material referred to in this subdivision four, or any part thereof, in such manner, as he may deem proper.

NYL - § 498. Complaints.

1. Any buyer having reason to believe that this article, or any other law regulating retail instalment sales, contracts, obligations or credit agreements, has been violated by any person may file with the superintendent a written complaint setting forth the details of such alleged violation. Upon receipt of such complaint, the superintendent, or any person duly designated by him, may inspect the pertinent books, records, letters and contracts of any licensee, and of any retail seller or other person involved, relating to such specific written complaint.
2. The superintendent or any person duly designated by him, shall have the power to hold hearings upon such complaints and to determine the time and place in this state, reasonably convenient to the parties involved, where they shall be held.
3. The superintendent shall make findings on any complaint on which a hearing has been held. The investigation, notice and hearing shall be in accordance with the provisions of this article and one copy of the findings shall be given to each such person involved in the complaint.
4. No licensee or other person shall be subject to examination or investigation by the superintendent except as provided in this article. The superintendent shall have only such powers as are expressly delegated to him by this article.

NYL - § 498-a. Hearings and investigations; subpoena.

In conducting any hearing or investigation pursuant to the provisions of this article, the superintendent, or any person duly designated by him, shall have the power at all times to subpoena witnesses; to take depositions of witnesses residing without the state, in the manner provided for in civil actions in courts of record; to pay such witnesses the fees and mileage for their attendance provided for witnesses in civil actions in courts of record; and to administer oaths. He shall also have the power to compel by order or subpoena the production of and to examine all relevant books, records, accounts and other documents. Any corporation, association, partnership or individual which fails to obey the command of the subpoena without reasonable excuse, or refuses without reasonable cause, to be served or to be examined or

to answer a question or to produce a book or paper when ordered so to do, or fails to perform any act required hereunder to be performed, shall be guilty of a misdemeanor and shall also be subject to the compulsions provided by the civil practice law and rules and, if the person be licensed hereunder, the superintendent shall have the right to revoke the license.

NYL - § 498-b. Regulations and rulings.

The superintendent of banks is hereby authorized and empowered to make such general rules and regulations, and such specific rulings, demands and findings as may be necessary for the proper conduct of the business authorized and licensed under and for the enforcement of this article.

NYL - § 499. Violations and penalties.

Any person who violates or participates in the violation of any provision of this article, or who knowingly makes any incorrect statement of a material fact in any application, report or statement filed pursuant to this article, or who knowingly omits to state any material fact necessary to give the superintendent any information lawfully required by him or refuses to permit any lawful investigation or examination, shall be guilty of a misdemeanor and, upon conviction, shall be fined not more than five hundred dollars or imprisoned for not more than six months or both, in the discretion of the court.

NYL - § 501. Repeal of inconsistent acts.

All acts and parts of acts inconsistent with this article are hereby repealed to the extent of such inconsistency.

NYL - § 502. Severability.

If any provision of this article or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect the remainder of this article or the application of such provision to other persons or other circumstances.

NYR - PART 403 -- SALES FINANCE COMPANIES

(Statutory authority: Banking Law, § 498-b)

Sec.

403.1 Books and records

403.2 Filing of rate charts and agreements

403.3 Advertising

403.4 Changes in directors, officers or stockholders

403.5 Report of arrests, indictments or convictions

NYR - § 403.1 Books and records.

(a) Until payment in full, every licensee shall file each finance agreement or duplicate originals thereof, and all insurance documents relating thereto, except those papers returned to the buyer, so as to be readily available for inspection at any time. All such papers and instruments shall bear a common identifying number. (For the purpose of this Part, the term finance agreements shall include retail installment contracts, obligations and credit agreements as defined in Personal Property Law, section 301 and 401, and Banking Law, section 491.)

(b) Every licensee shall maintain a record which will readily disclose, at any time, the aggregate number and outstanding time balances of all finance agreements held by it.

(c) Every licensee shall maintain an individual ledger card or appropriate combination of records with respect to each finance agreement showing:

(1) The name and address of the buyer.

(2) The name and address of the seller.

(3) The date of the contract.

(4) The amount of the principal balance.

(5) The amount and date each installment is due.

(6) The amount and date each installment is paid.

(7) The installments due as set forth in the contract.

(8) The total credit service charge set forth in the contract.

(9) The amount, if any, charged for credit life insurance as set forth in the contract.

(10) The amount, if any, charged for any other insurance as set forth in the contract.

(11) The amount of any rebate granted for anticipation including the date rebated.

(12) The date and amount of late charge collected, identifying the installment for which it was imposed.

(13) The amount and date any extension or renewal charge is collected indicating the period extended or deferred.

(14) The amount, if any, charged to or paid by the buyer, for official fees.

(d) With respect to any finance agreement whether charged off or not, upon which legal proceedings have been taken, every licensee shall clearly indicate in permanent form on the buyer's ledger card or on a separate sheet or card or file bearing the identifying number, the following:

(1) The date of referral to an attorney for collection.

(2) The name and address of such attorney.

(3) The date and terms of any settlement agreed upon or the results of any legal or summary action taken for or against the licensee.

(4) The amount of attorney's fee incurred by the licensee in connection with litigation and charged to or paid by the buyer or other obligor.

(e) If any goods are repossessed, the licensee shall clearly indicate in permanent form on the buyer's ledger card or on a separate sheet or card or file bearing the identifying number, the following:

(1) Date of repossession.

(2) A record of letters or other communications sent to buyer indicating default or intention to retake.

(3) Itemized list of expenses incurred in the retaking, keeping and storing if charged to or paid by the buyer or other obligor.

(4) Name and address of agency or persons repossessing merchandise.

(5) If the repossessed merchandise is sold, the date, price obtained, and name and address of person or agency to whom sold.

(6) The name and address of auctioneer, if any.

(7) If the licensee is the buyer at sale, the date, price obtained and name and address of person or agency to whom merchandise is resold.

(f) Every licensee shall preserve such books, accounts and records, including cards used in a card system, if any, for at least six years after making the final entry in respect to any finance agreement recorded therein; provided, however, the preservation of photographic reproductions thereof or records in photographic form shall constitute compliance with this section.

NYR - § 403.2 Filing of rate charts and agreements.

(a) Within three business days after a licensee issues, distributes, furnishes or makes available any form or forms of finance agreements to be used by retail sellers in connection with retail installment sales, such licensee shall file with the superintendent one copy of each such form.

(b) Any licensee which issues, distributes, furnishes or makes available any chart or charts setting forth rate or amounts for credit service charges, and/or insurance, to be used in connection with the installment sale of motor vehicles or other goods or services, for the convenience of a retail seller or otherwise, shall file with the superintendent one copy of each of such charts not later than three days after the issuance thereof.

(c) If, at any time, subsequent to filing, the existing charts are altered, amended or changed, or new charts are issued, one copy of the amendments, alterations, changes or new charts shall be filed with the superintendent not later than three days after the issuance thereof.

(d) The term "chart", as used in this section, means all tables, formulae and instructions for the computation of credit service charges or service charges, including rate or tables for the incidental sale of insurance, and all variations thereof caused by or based upon class, geographic area, maturity or any other reason, and includes any and all printed material explaining or describing the manner in which such charts are to be utilized.

(e) Every form of finance agreement and every chart of which a copy is required to be filed with the superintendent pursuant to the provisions of this section shall bear thereon a date of issuance and an identifying symbol consisting of numbers or letter or a combination thereof.

NYR - § 403.3 Advertising.

(a) No licensee shall represent, either orally or in writing, directly or indirectly, by any means whatsoever, including, but not limited to, the use of any office sign (except its duly issued license) or the use and circulation of any letterheads, billheads, blank forms, notes, receipts, certificates, circulars or any written or printed or partly written or printed matter whatever that it is licensed by or subject to the supervision of the superintendent or this State, except by use of the following phrase:

"Licensed, pursuant to Article 11-B of the Banking Law, only for the purpose of engaging in the business of acquiring agreements arising from retail instalment sales."

provided that the use or use and circulation of any written or printed matter containing the

foregoing phrase may only be in connection with the licensee's business as a sales finance company.

NYR - § 403.4 Changes in directors, officers or stockholders.

(a) Every corporate licensee shall within 10 days after the occurrence of the event advise the superintendent, in writing:

(1) of the name and residence of each stockholder owning 20% or more of the stock of the licensee, and of each director and officer who terminates or alters his status with the licensee, and

(2) the name and residence of each person who becomes a stockholder owning 20% or more of the stock of the licensee, or a director or officer.

(b) If paragraph (2) above is applicable, advise the superintendent, in writing, whether or not:

(1) any such person has ever previously applied for a license to do business as a sales finance company in this State, and the disposition of such application;

(2) any such person, previously licensed under article 11-B of the Banking Law, has had such license revoked or suspended;

(3) any such person has ever applied to any other State for a license to engage in the business of acquiring retail installment contracts, obligations or credit agreements, and the disposition of such application;

(4) any license to engage in the business of acquiring retail installment contracts, obligations or credit agreements, issued by any other State to any such person, has ever been revoked or suspended.

(5) any such person has ever been found guilty of violating any other provisions of article 11-B of the Banking Law or any other law regulating retail installment sales contracts, obligations or credit agreements;

(6) any such person has ever been responsible for any act or omission in consequence of which a license issued under article 11-B of the Banking Law to any person has been revoked or suspended.

NYR - § 403.5. Report of arrests, indictments or convictions.

Every licensee shall make a written report to the superintendent of any arrests, indictment or conviction of such licensee, of any member of a partnership licensee, or of any stockholder owning 20% of more of any class of the outstanding capital stock of a corporate licensee, or of any director or officer thereof, or of any party in interest of any other type of licensee, for any crime in any jurisdiction. Such report shall be made to the superintendent within 10 days after the occurrence of the event becomes known to the licensee.

ARTICLE 15--HUMAN RIGHTS LAW

s 296-a. Unlawful discriminatory practices in relation to credit

1. It shall be an unlawful discriminatory practice for any creditor or any officer, agent or employee thereof:

a. In the case of applications for credit with respect to the purchase, acquisition, construction, rehabilitation, repair or maintenance of any housing accommodation, land or commercial space to discriminate against any such applicant because of the race, creed, color, national origin, age, sex, marital status or disability of such applicant or applicants or any member, stockholder, director, officer or employee of such applicant or applicants, or of the prospective occupants or tenants of such housing accommodation, land or commercial space, in the granting, withholding, extending or renewing, or in the fixing of the rates, terms or conditions of, any such credit.

b. To discriminate in the granting, withholding, extending or renewing, or in the fixing of the rates, terms or conditions of, and form of credit, on the basis of race, creed, color, national origin, age, sex, marital status or disability.

c. To use any form of application for credit or use or make any record or inquiry which expresses, directly or indirectly, any limitation, specification, or discrimination as to race, creed, color, national origin, age, sex, marital status or disability.

d. To make any inquiry of an applicant concerning his or her capacity to reproduce, or his or her use or advocacy of any form of birth control or family planning.

e. To refuse to consider sources of an applicant's income or to subject an applicant's income to discounting, in whole or in part, because of an applicant's race, creed, color, national origin, age, sex, marital status, childbearing potential or disability.

f. To discriminate against a married person because such person neither uses nor is known by the surname of his or her spouse.

This paragraph shall not apply to any situation where the use of a surname would constitute or result in a criminal act.

2. Without limiting the generality of subdivision one, it shall be considered

discriminatory if, because of an applicant's or class of applicants' race, creed, color, national origin, age, sex, marital status or disability, (i) an applicant or class of applicants is denied credit in circumstances where other applicants of like overall credit worthiness are granted credit, or (ii) special requirements or conditions, such as requiring co-obligors or reapplication upon marriage, are imposed upon an applicant or class of applicants in circumstances where similar requirements or conditions are not imposed upon other applicants of like overall credit worthiness.

3. It shall not be considered discriminatory if credit differentiations or decisions are based upon factually supportable, objective differences in applicants' overall credit worthiness, which may include reference to such factors as current income, assets and prior credit history of such applicants, as well as reference to any other relevant factually supportable data; provided, however, that no creditor shall consider, in evaluating the credit worthiness of an applicant, aggregate statistics or assumptions relating to race, creed, color, national origin, sex, marital status or disability, or to the likelihood of any group of persons bearing or rearing children, or for that reason receiving diminished or interrupted income in the future.

3-a. It shall not be an unlawful discriminatory practice to consider age in determining credit worthiness when age has a demonstrable and statistically sound relationship to a determination of credit worthiness.

4. a. If so requested by an applicant for credit, a creditor shall furnish such applicant with a statement of the specific reasons for rejection of the applicant's application for credit.

b. If so requested in writing by an individual who is or was married, a creditor or credit reporting bureau shall maintain in its records a separate credit history for any such individual. Such separate history shall include all obligations as to which such bureau has notice with respect to which any such person is or was individually or jointly liable.

5. No provision of this section providing spouses the right to separately apply for credit, borrow money, or have separate credit histories maintained shall limit or foreclose the right of creditors, under any other provision of law, to hold one spouse legally liable for debts incurred by the other.

6. Any person claiming to be aggrieved by an unlawful discriminatory practice engaged in by a regulated creditor, in lieu of the procedure set forth in section two hundred ninety-seven of this chapter, may file a verified complaint with the superintendent, as provided hereinafter; provided however, that the filing of a complaint with either the superintendent or the division shall bar subsequent recourse to the other agency, as well as to any local commission on

human rights, with respect to the grievance complained of.

7. In the case of a verified complaint filed with the superintendent the following procedures shall be followed:

a. After receipt of the complaint, the superintendent shall make a determination within thirty days of whether there is probable cause to believe that the person named in the complaint has engaged in or is engaging in an unlawful discriminatory practice. If the superintendent determines there is no such probable cause, the complaint shall be dismissed. If the superintendent determines that there is such probable cause, he shall attempt to resolve such complaint by conference and conciliation. If conciliation is achieved, the terms shall be recorded in a written agreement signed by the creditor and complainant, a copy of which shall be forwarded to the commissioner.

b. If conciliation is not achieved, the superintendent or his designated representative shall conduct a hearing with respect to the alleged violation of this section. All interested parties shall be entitled to adequate and timely notice of the hearing. Such parties shall have the right to be represented by counsel or by other representatives of their own choosing; to offer evidence and witnesses in their own behalf and to cross-examine other parties and witnesses; to have the power of subpoena exercised in their behalf; and to have access to a written record of such hearing. The superintendent or his representative shall not be bound by the strict rules of evidence prevailing in courts of law or equity. The testimony taken shall be under oath and a record shall be made of the proceedings. A written decision shall be made by the superintendent or his designated representative separately setting forth findings of fact and conclusions of law. A copy of such decision shall be forwarded to the commissioner.

c. If the superintendent finds that a violation of this section has occurred, the superintendent shall issue an order which shall do one or more of the following:

(1) impose a fine in an amount not to exceed ten thousand dollars for each violation, to be paid to the people of the state of New York;

(2) award compensatory damages to the person aggrieved by such violation;

(3) require the regulated creditor to cease and desist from such unlawful discriminatory practices;

(4) require the regulated creditor to take such further affirmative action as will effectuate the purposes of this section, including, but not limited to,

granting the credit which was the subject of the complaint.

d. Any complainant, respondent or other person aggrieved by any order or final determination of the superintendent may obtain judicial review thereof.

8. Where the superintendent makes a determination that a regulated creditor has engaged in or is engaged in discriminatory practices, the superintendent is empowered to issue appropriate orders to such creditor pursuant to the banking law. Such orders may be issued without the necessity of a complaint being filed by an aggrieved person.

9. Whenever any creditor makes application to the superintendent or the banking board to take any action requiring consideration by the superintendent or such board of the public interest and the needs and convenience thereof, or requiring a finding that the financial responsibility, experience, charter, [FN1] and general fitness of the applicant, and of the members thereof if the applicant be a co-partnership or association, and of the officers and directors thereof if the applicant be a corporation, are such as to command the confidence of the community and to warrant belief that the business will be operated honestly, fairly, and efficiently, such creditor shall certify to the superintendent compliance with the provisions of this section. In the event that the records of the banking department show that such creditor has been found to be in violation of this section, such creditor shall describe what action has been taken with respect to its credit policies and procedures to remedy such violation or violations. The superintendent shall, in approving the foregoing applications and making the foregoing findings, give appropriate weight to compliance with this section.

10. Any complaint filed with the superintendent pursuant to this section shall be so filed within one year after the occurrence of the alleged unlawful discriminatory practice.

11. The superintendent is hereby empowered to promulgate rules and regulations hereunder to effectuate the purposes of this section.

12. The provisions of this section, as they relate to age, shall not apply to persons under the age of eighteen years.

CERTIFICATE OF COMPLIANCE
With Section 296-a of the
Executive Law of the
State of New York
(for banking organizations and
other applicants in formation)

In connection with the application of _____
(name of institution)

_____ to the Banking
Board _____ (cross out one)
Superintendent of Banks

for _____
(type of application)

pursuant to Section _____ of the New York, Banking Law, the undersigned hereby certifies that the applicant will comply in all respects with Section 296-a of the Executive Law of the State of New York.

(name of organization)

By*

(print or type name and title
beneath signature)

ARTICLE 10--RETAIL INSTALMENT SALES ACT

401. Definitions

In this article, unless the context or subject matter otherwise requires:

1. "Goods" means all chattels personal, other than things in action or money, sold for other than a commercial or business use or for purpose of resale. The term includes goods which, at the time of the sale or subsequently, are to be so affixed to realty as to become a part thereof whether or not severable therefrom, but does not include a motor vehicle as defined in article nine or nine-A of this chapter, nor any goods sold or leased with such a vehicle if they are sold under a retail instalment contract governed by article nine of this chapter or leased under a retail lease agreement governed by article nine-A of this chapter.

In the case of a retail instalment credit agreement, the term also includes all chattels personal, other than things in action or money, sold for a commercial or business use.

2. "Services" means:

(a) In the case of a retail instalment contract, work, labor and services furnished, or agreed to be furnished, for other than a commercial or business use, in the delivery, installation, servicing, repair or improvement of goods or repairs, alterations or improvements upon or in connection with real property, except that such services shall not mean or include any services sold in connection with the sale or lease of a motor vehicle which is evidenced by a retail instalment contract governed by article nine of this chapter or a retail lease agreement governed by article nine-A of this chapter;

(b) In the case of a retail instalment obligation, services of any kind furnished or rendered or agreed to be furnished or rendered, for other than a commercial or business use, except that such services shall not mean nor include (1) services for which the tariffs or the rates, charges, cost or expense is required by law to be filed with or determined or approved by the state or federal government or any official department, division, commission or agency of the state of New York or of the United States, or (2) services by an institution of the university of the state of New York, an elementary school which provides the education required by the state of New York, a nursery school or a kindergarten; and

(c) In the case of a retail instalment credit agreement, services of any kind rendered or furnished or agreed to be rendered or furnished by a retail seller;

and, in the case of a retail instalment credit agreement entered into under paragraph (b) of subdivision eleven of section four hundred thirteen of this chapter, a contract or contracts of insurance issued to a retail buyer.

3. "Retail seller" or "seller" means a person who sells goods or furnishes or renders or agrees to furnish or render services to a retail buyer. The term includes the lessor under a lease of a department in a shop, store or other establishment if the lessor is liable to customers in respect to goods sold or services furnished or rendered by the leased department and the other operations thereof.

4. "Retail buyer" or "buyer" means a person who buys goods or obtains services from a retail seller. When used in subdivision eleven of section four hundred thirteen of this chapter, the term also means any person who is liable for the payment of a fine, as that term is defined in subdivision twenty-one of this section.

5. "Retail instalment sale" or "sale" means a sale of goods, or the furnishing or rendering of services, or an agreement to furnish or render services, by a retail seller to a retail buyer for a time sale price payable in instalments.

6. "Retail instalment contract" or "contract" means an agreement entered into in this state, pursuant to which the title to, the property or a security interest in or a lien upon goods, which are the subject matter of a retail instalment sale, is retained or taken by a retail seller from a retail buyer as security, in whole or in part, for the buyer's obligation. The term includes such an agreement wherever entered into if executed by the buyer in this state and if solicited in person by a salesman or other person acting on his own behalf or that of the seller. The term also includes a contract whereby a security interest in favor of the seller is created or retained and a contract for the bailment or leasing of goods by which the bailee or lessee contracts to pay as compensation for their use a sum substantially equivalent to or in excess of their value and by which it is agreed that the bailee or lessee is bound to become, or has the option of becoming, the owner of the goods upon full compliance with the terms of the contract. The term does not include a contract which is intended to be and is ultimately insured or guaranteed under title three of the act of Congress entitled "Servicemen's Readjustment Act of 1944". [FN1]

7. "Retail instalment obligation" or "obligation" means an agreement, entered into in this state, pursuant to which the buyer promises to pay, in instalments, the time sale price or prices of goods and/or services, or any part thereof. The term includes such an agreement wherever entered into if executed by the buyer in this state and if solicited in person by a salesman or

other person acting on his own behalf or that of the seller. The term does not include (a) a retail instalment contract, (b) a retail instalment credit agreement, or (c) an obligation which is intended to be and is ultimately insured or guaranteed until [FN2] title three of the act of Congress entitled "Servicemen's Readjustment Act of 1944".

8. "Retail instalment credit agreement" or "credit agreement" means an agreement entered into in this state, pursuant to which the buyer promises to pay, in instalments, his outstanding indebtedness from time to time to a retail seller, not evidenced by a retail instalment contract or obligation, for one or more items of goods or services, or merchandise certificates to be used solely in exchange for goods and services with a cash sale price in the face amount of such certificates and not redeemable in cash, whenever purchased or obtained, which provides for a service charge and under which instalment payments apply to his outstanding indebtedness from time to time. The term includes such an agreement wherever entered into if executed by the buyer in this state and if solicited in person by a salesman or other person acting on his own behalf or that of the seller. The term also includes a retail instalment credit agreement entered into by a financing agency with a retail buyer as provided in subdivision eleven of section four hundred thirteen of this article.

8-a. "Retail instalment note" or "note" means a promissory note required by the provision of a retail instalment obligation and conforming to the requirements of subdivision two [FN3] of section four hundred three of this article.

9. "Cash sale price" means the cash sale price stated in a retail instalment contract or obligation for which the seller would sell or furnish to the buyer and the buyer would buy or obtain from the seller the goods or services which are the subject matter of a retail instalment contract or obligation if the sale were a sale for cash instead of a retail instalment sale. The cash sale price may include any taxes and cash sale prices for accessories and services, if any, included in a retail instalment sale.

10. "Time sale price" means the total of the cash sale price of the goods or services and the amounts, if any, included for insurance, official fees and credit service charge.

11. "Credit service charge" means that part of the entire amount agreed to be paid for the goods or services which exceeds the aggregate of the cash sale price thereof and the amounts, if any, included in a retail instalment sale for insurance and official fees.

12. "Service charge" means all charges incident to investigating and making a retail instalment credit agreement and for the extension of credit thereunder.

13. "Principal balance" means the cash sale price of the goods or services which are the subject matter of the retail instalment sale, plus the amounts, if any, included in a retail instalment sale for insurance and official fees, minus the amount of the buyer's down-payment in money or goods.

14. "Time balance" means the total of the principal balance and the amount of the credit service charge, if any.

15. "Holder" means the retail seller who acquires a retail instalment contract, obligation or credit agreement, or note, executed, incurred or entered into by a retail buyer, or if the contract, obligation, credit agreement or note is purchased by a financing agency or other assignee or endorsee, the financing agency or other assignee or endorsee.

16. "Official fees" means the fees or taxes required by law and actually to be paid to the appropriate public officer to perfect the lien or other security interest, on or in goods, retained or taken by a seller under a retail instalment contract or to record a mortgage on real property taken by a seller or holder to secure a retail instalment contract or obligation or note.

17. "Person" means an individual, partnership, corporation, association or other group, however organized.

18. "Financing agency" means a person engaged in this state, in whole or in part, in the business of purchasing retail instalment contracts, obligations or credit agreements or indebtedness of buyers under credit agreements from one or more retail sellers or entering into credit agreements with retail buyers as provided in subdivision eleven of section four hundred thirteen of this article but shall not include a retail seller. The term includes but is not limited to a bank, trust company, savings bank, savings and loan association, private banker or investment company, if so engaged, but shall not include a retail seller.

19. Words in the singular include the plural and vice versa.

20. "Boat" shall mean any vessel or craft designed to transport persons or cargo on the water surface.

21. "Fine" means any indebtedness of any person to a municipal corporation incurred by reason of the violation of any law, rule, ordinance or regulation providing for or regulating the parking, stopping or standing of a vehicle, and any indebtedness incurred for the removal or storage, or both, of a vehicle.

22. "Municipal corporation" means a county, town, city or village, or any

agency, department or subdivision thereof.

s 402. Provisions of retail instalment contracts and obligations

1. A retail instalment contract or obligation shall be dated and in writing; the printed portion thereof shall be in at least eight point type.

2. A contract or obligation shall contain the entire agreement of the parties with respect to the goods and services, including any promise, whether made in writing or orally, by the seller, made as an inducement to the buyer to become a party to the contract or which is part of the contract or which is made incidental to negotiations between the seller and the buyer with respect to the sale of the goods or services that are the subject of the contract, that the seller will compensate the buyer for referring customers or prospective customers to the seller for goods or services which the seller has for sale or for referring the seller to such customers or prospective customers. In any case in which, pursuant to the preceding provisions, the contract contains a promise to compensate the buyer for referring customers or prospective customers to the seller or the seller to such customers, the contract must contain a provision to the effect that the amount otherwise owing under the contract at any time is reduced by the amount of compensation owing pursuant to such promise, and:

(a) Both at the top of the contract or obligation and directly above the space reserved for the signature of the buyer, the words RETAIL INSTALMENT CONTRACT or RETAIL INSTALMENT OBLIGATION, as the case may be, in at least ten point bold type; and

(b) A notice in at least eight point bold type reading as follows: NOTICE TO THE BUYER: 1. Do not sign this agreement before you read it or if it contains any blank space. 2. You are entitled to a completely filled in copy of this agreement. 3. Under the law, you have the right to pay off in advance the full amount due and under certain conditions to obtain a partial refund of the credit service charge.

3. A contract or obligation shall:

(a) Contain the names of the seller and the buyer, the place of business of the seller, the residence or place of business of the buyer as specified by the buyer and an adequate description of the services and goods (including the make and model, if any, in the case of goods customarily sold by make and model); and

(b) Set forth the following items:

(1) All items required to be disclosed by the act of congress entitled "Truth in Lending Act" [FN1] and the regulations thereunder, as such act and regulations may from time to time be amended;

(2) If any instalment substantially exceeds in amount any prior instalment other than the down-payment, contain the following legend printed in ten point bold type or typewritten: THIS CONTRACT IS NOT PAYABLE IN INSTALMENTS OF EQUAL

AMOUNTS: followed, if there be but one larger instalment, by: AN INSTALMENT OF \$..... WILL BE DUE ON or, if there be more than one larger instalment, by: LARGER INSTALMENTS WILL BE DUE AS FOLLOWS (insert the amount or amounts of every larger instalment and its due date.) In the case of a retail instalment obligation, OBLIGATION shall be substituted for CONTRACT in the required legend.

4. No contract or obligation shall be signed by the buyer when it contains blank spaces to be filled in after it has been signed; however, if delivery of the goods is not made at the time of the execution of the contract or obligation and it so provides, the identifying numbers or marks of the goods and the due date of the first instalment may be left blank and later inserted by the seller in the seller's counterpart of the contract or obligation after it has been signed by the buyer.

5. If the cost of any credit unemployment, group credit life or other insurance is included in the contract or obligation and a separate charge is made to the buyer for such insurance:

(a) The contract or obligation shall state whether the insurance is to be procured by the buyer or the seller;

(b) The amount, if any, so included for such insurance, shall not exceed the premiums chargeable in accordance with rate filings made with the superintendent of insurance for such insurance by the insurer; and, if such group credit life or other insurance is cancelled, the refund for unearned insurance premiums received or receivable by the holder of the contract, or the excess of the amount included in the contract for group credit life insurance over the premiums paid or payable by the holder of the contract therefor, together with, in either case, the unearned portion of the credit service charge applicable thereto, shall be credited to the final maturing instalments of the retail instalment contract, provided that no such credit need be made if the amount thereof would be less than one dollar; and

(c) If the insurance is to be procured by the seller or holder, he shall, within thirty days after delivery of the goods or furnishing of the services under the contract or obligation, deliver, mail or cause to be mailed to the buyer, at his address as specified in the contract or obligation, a notice thereof or a copy of the policy or policies of insurance or a certificate or certificates of the insurance so procured.

6. A contract or obligation may provide for the payment by the buyer of a delinquency and collection charge on each instalment in default for a period of not less than ten days in an amount not in excess of the rate provided for in the contract or obligation on such instalment provided that only one such delinquency and collection charge may be collected on any such instalment regardless of the period during which it remains in default.

6-a. A provision in a contract or obligation which provides for the payment of attorney's fees or the costs of attorney's services incurred in a legal action or proceeding for collection shall be null and void.

6-b. A provision in a contract or obligation which provides for waiver of the right to impose any counterclaim or offset arising out of a breach of that contract or obligation by the seller shall be void and unenforceable.

7. All of the terms of an obligation need not be contained in a single document but if they are not then there shall be an original document executed by the parties containing provisions making it applicable to purchases of goods or services, which may not exceed a cash sale price of one hundred seventy-five dollars on each purchase, to be made by the buyer from time to time from a retail seller, which document, together with other written statements relating to the sale of such goods or services shall constitute a retail instalment obligation and shall contain the entire agreement of the parties. In such cases, the original document shall contain those items required to be disclosed by the act of congress entitled "Truth in Lending Act" [FN1] and the regulations thereunder, as such act and regulations may from time to time be amended and shall further contain:

(i) a legend as provided in paragraph (a) of subdivision two hereof,

(ii) a notice to the buyer as provided in paragraph (b) of subdivision two hereof,

(iii) the names of the seller and the buyer,

(iv) the place of business of the seller and the residence or place of business of the buyer as specified by the buyer,

(v) the number of instalment payments, and

(vi) the amount or rate of the credit service charge applicable to purchases thereunder.

At the time of each purchase under such document, the seller shall give the buyer statements which shall contain at the top thereof a legend in at least eight-point bold type: PART OF A RETAIL INSTALMENT OBLIGATION and an adequate description of the goods, accessories and services sold or furnished (including the make and model, if any, in the case of goods customarily sold by make and model) and shall further contain those items required to be disclosed by the act of congress entitled "Truth in Lending Act" [FN1] and the regulations thereunder, as such act and regulations may from time to time be amended. If the seller does not deliver to the buyer at the time of each purchase under such original document a statement in compliance with the act of congress entitled "Truth in Lending Act" and the regulations thereunder, as such act and regulations may from time to time be amended, the seller shall promptly thereafter, and in any event within ten days from the date of such purchase, deliver, mail or cause to be mailed to the buyer at his address shown on the seller's records, such statement. Unless the seller does so, the buyer shall have an unconditional right to cancel such purchase and to receive an immediate refund of any payments made and re-delivery of all goods traded in to the seller on account of or in contemplation of such purchase; upon the written request of the buyer the seller shall prove the accuracy of the calculations in such statement.

Such statement with respect to the first such purchase shall, combined with the original document, constitute the obligation for such purchase; and, on each succeeding purchase pursuant to such original document, the obligation therefor as represented by such original document and such statement shall constitute a subsequent obligation under section four hundred ten.

PERS PROP 402A, Merchandise certificates and obligations therefor

1. A retail seller may issue merchandise certificates to a retail buyer, to be paid for in instalments and to be used solely in exchange for goods and services with a cash sale price in the face amount of such certificates and not redeemable in cash, pursuant to a document executed by the parties as hereinafter provided, which document, notwithstanding the definition of obligations contained in subdivision seven of section four hundred one, shall constitute a retail instalment obligation for the purpose of this article, shall contain the entire agreement of the parties, and shall be subject to all

of the provisions of sections four hundred three to four hundred twelve, inclusive, except the provisions of the second sentence of section four hundred five.

2. On each issue of merchandise certificates, the document evidencing the obligation therefor shall set forth a legend as provided in paragraph (a) of subdivision two of section four hundred two, a notice to the buyer as provided in paragraph (b) of subdivision two of section four hundred two, the names of the seller and the buyer, the residence or place of business of the buyer as specified by the buyer, the face amount of the merchandise certificates issued, and all items required to be disclosed by the act of congress entitled "Truth in Lending Act" [FN1] and the regulations thereunder, as such act and regulations may from time to time be amended.

3. A seller may, in such a document, contract for and, if so contracted for charge, receive and collect a credit service charge at rates not exceeding those provided under section four hundred four of this article. Such credit service charge shall be computed on the face amount of merchandise certificates issued to the buyer, less down-payment, if any.

4. The buyer shall have the right to return to the seller at any time all merchandise certificates which have not been exchanged for goods and services, and the seller shall thereupon credit the buyer with the full face amount of such unused merchandise certificates returned and the amount of the pro rata credit service charge thereon, which shall be computed as of the date of issuance of the merchandise certificates so returned. Where the amount of the refund of such credit charge is less than one dollar no refund need be made.

5. (a) Merchandise certificates issued under this section or the cover of the booklet in which they are bound, shall bear:

(i) A legend in at least eight-point bold type stating that the buyer may return unused merchandise certificates so purchased at any time and that the seller will give the buyer credit for the full face amount of any certificates so returned and credit for the pro rata credit service charge if the same is one dollar or more;

(ii) A legend in at least eight point bold type reading substantially as follows: If you wish to purchase, with merchandise certificates a single item of goods or services of greater value than the merchandise certificates you now hold, you may save credit service charge by returning your unused merchandise certificates for credit and purchasing new certificates; and

(iii) In the event the statements required by subparagraphs (i) and (ii) hereof

are set forth on the cover of a booklet in which the merchandise certificates are bound, each certificate shall bear a notice, "NOT GOOD IF DETACHED".

(b) If a retail seller issues merchandise gift certificates to a retail buyer to be paid for in instalments (1) in good faith, and (2) in reliance upon a retail buyers [FN2] statement that the buyer intends to transfer it to another as a gift, then such certificate need not set forth the legends required by subparagraphs (i) and (ii) above; provided the certificate shall bear the legend "GIFT CERTIFICATE" and the seller shall give the buyer at the time of issuance of such certificate a statement, or facsimile of such certificate, which shall identify such certificate, and shall contain the legend required by subparagraphs (i) and (ii) above.

6. Notwithstanding the provisions of subdivision three [FN3] of section four hundred three of this article, the buyer shall have the right to return to the holder of a retail instalment obligation executed on or after October first, nineteen hundred sixty-two, for merchandise certificates, at any time all merchandise certificates which have not been exchanged for goods and services, and the holder shall thereupon credit to the obligation to the extent of the amount owing by the buyer thereon the full face amount of such unused merchandise certificates returned and the amount of the pro rata credit service charge thereon, which shall be computed as of the date of issuance of the merchandise certificates so returned. Where the amount of the refund of such credit service charge is less than one dollar no refund need be made.

402B. Total loss notice and waiver of the gap amount

1. If the retail instalment contract provides that the buyer shall be responsible upon a total loss of the goods occasioned by theft, confiscation or physical damage for the gap amount as defined in paragraph fifty-two of subsection (a) of section one hundred seven of the insurance law, the holder, prior to the execution of the contract, shall by a notice on a separate document conspicuously disclose that fact and the obligations for which the buyer would remain liable in the event of a theft, confiscation or total loss of the goods. If the holder is required under subdivision two of this section to offer to waive its contractual right to hold the buyer liable for the gap amount in the event of a total loss of the goods occasioned by theft or physical damage, the notice shall also: (a) state that for a separate charge disclosed in the notice the holder will waive its contractual right to hold the buyer liable for the gap amount in the event of a total loss of the goods occasioned by theft or physical damage; (b) contain a provision informing the buyer that he or she may, as an alternative to purchasing a waiver, be able to purchase insurance covering the gap amount from an insurance company which has

been licensed by the superintendent of insurance to write non-motor vehicle debtor gap insurance in this state; and (c) contain a provision permitting the buyer to indicate whether he or she wants the holder to waive its contractual right to hold the buyer liable for the gap amount in the event of a total loss of the goods occasioned by theft or physical damage. The notice shall be signed by the buyer. The holder shall provide a copy of the signed notice to the buyer and shall maintain a copy in the holder's files for at least the term of the contract. Failure to provide the notice and to obtain the buyer's signature as required by this subdivision shall invalidate any provision of the agreement which otherwise would obligate a buyer to pay to the holder, after a total loss of the goods occasioned by theft, confiscation or physical damage, the gap amount. No retail instalment contract shall be conditioned upon the buyer's obtaining of non-motor vehicle debtor gap insurance as set forth in subparagraph (D) of paragraph twenty-six of subsection (a) of section one thousand one hundred thirteen of the insurance law.

2. If the retail instalment contract provides that the buyer shall be responsible upon a total loss of the goods occasioned by theft or physical damage for the gap amount, the holder, prior to the execution of the contract, shall offer to waive its contractual right to hold the buyer liable for the gap amount in the event of a total loss of the goods occasioned by theft or physical damage, only if non-motor vehicle creditor gap insurance coverage is available to the holder and such coverage is obtained from a property/casualty insurance company, which has been licensed by the superintendent of insurance of this state to write non-motor vehicle creditor gap insurance in this state. This offer may be made contingent upon the payment by the buyer of a separate charge that shall not exceed the cost of non-motor vehicle creditor gap insurance covering the retail instalment contract. Nothing contained in this section shall be construed to authorize a waiver, in connection with a transaction with respect to which non-motor vehicle creditor gap insurance has not been obtained, of a contractual right to hold the buyer liable for the gap amount in the event of a total loss of the goods occasioned by theft or physical damage.

3. A holder shall not be obligated under subdivision two of this section to offer to waive its contractual right to hold the buyer liable for the gap amount if, during the current calendar year or during the odd-numbered calendar year immediately preceding the calendar year in which the agreement is entered into, the holder has received non-motor vehicle creditor gap insurance declination notices or other evidence of unavailability from every insurance company whose name appears on the insurance department compilation of insurance companies which during that calendar year were authorized to write non-motor vehicle creditor gap insurance in this state. Evidence of these declinations shall be retained by such a holder for a period of six years after the

expiration of the calendar year in which they were issued.

4. In order to enable holders to comply with the requirements imposed by subdivision two of this section, the superintendent of insurance shall compile and make available a periodically updated list of those insurance companies which are authorized to write non-motor vehicle creditor gap insurance coverage in this state.

5. Nothing in this section shall be construed to apply to the holder under a retail instalment contract under which the buyer is not liable upon a total loss of the goods occasioned by theft, confiscation or physical damage for the gap amount.

403. Restrictions on retail instalment contracts and obligations

1. No contract or obligation shall require or entail the execution of any note or series of notes by the buyer, which when separately negotiated, will cut off as to third parties any right of action or defense which the buyer may have against the seller.

2. No contract or obligation shall contain any provision by which:

(a) The buyer agrees not to assert against an assignee a claim or defense arising out of the sale, but it may contain such a provision as to an assignee who acquires the contract or obligation on the sale of a boat, where the principal balance at the time of sale exceeds five thousand dollars, and to whom the buyer has not mailed written notice of the facts giving rise to the claim or defense within ten days after such assignee mails to the buyer, at his address shown on the contract or obligation, notice of the assignment, indicating or containing in the notice or in an enclosure with the notice: the name and address of the assignee, the names of the seller and the buyer and a description of the boat which is the subject matter of the contract or obligation (including the make and model), the time balance of the contract, the number and amount of installments in which the time balance is payable and the due date or period thereof, together with the following legend printed or typewritten in a size equal to at least eight point bold type:

NOTICE:

1. IF THE WITHIN STATEMENT OF YOUR TRANSACTION WITH THE SELLER IS NOT CORRECT IN EVERY RESPECT, OR

2. IF THE BOAT DESCRIBED IN OR IN AN ENCLOSURE WITH THIS NOTICE

HAS NOT BEEN
DELIVERED TO YOU BY THE SELLER OR IS NOT NOW IN YOUR POSSESSION, OR

3. IF THE SELLER HAS NOT FULLY PERFORMED ALL OF HIS AGREEMENTS WITH YOU: YOU MUST NOTIFY THE ASSIGNEES [FN1] IN WRITING AT THE ADDRESS INDICATED IN OR IN AN ENCLOSURE WITH THIS NOTICE WITHIN TEN DAYS FROM THE DATE OF THE MAILING OF THIS NOTICE, OTHERWISE, YOU WILL LOSE YOUR RIGHT TO ASSERT AGAINST THE ASSIGNEE ANY RIGHT OF ACTION OR DEFENSE ARISING OUT OF THE SALE WHICH YOU MIGHT OTHERWISE HAVE AGAINST THE SELLER.

(b) In the absence of the buyer's default, the holder may, arbitrarily and without reasonable cause, accelerate the maturity of any part or all of the amount owing thereunder.

(c) A power-of-attorney is given to confess judgment in this state, or an assignment of wages is given.

(d) The seller or holder of the contract or obligation or other person acting on his behalf is given authority to enter upon the buyer's premises unlawfully or to commit any breach of the peace in the repossession of goods.

(e) The buyer waives any right of action against the seller or holder of the contract or obligation, or other person acting on his behalf, for any illegal act committed in the collection of payments under the contract or obligation or in the repossession of goods.

(f) The buyer executes a power-of-attorney appointing the seller or holder of the contract or obligation, or other person acting on his behalf, as the buyer's agent in collection of payments under the contract or obligation or in the repossession of goods; provided, however, that this paragraph shall not prohibit the inclusion in a contract or obligation of a limited power of attorney or other provision authorizing the holder to execute in the name of the buyer any proofs of insurance claims or losses or to endorse the name of the buyer on any insurance settlement draft or check.

(g) The buyer relieves the seller from liability for any legal remedies which the buyer may have against the seller under the contract or obligation or any separate instrument executed in connection therewith.

(h) The buyer waives any right to a trial by jury in any action or proceeding arising out of the contract or obligation.

Any such prohibited provision shall be void but shall not otherwise affect the validity of the contract or obligation.

3. No retail instalment contract shall contain any provision by which the maturity of any part or all of the amount owing thereon is accelerated where, following the buyer's default and the repossession of the goods, the buyer makes timely tender of an amount which would be sufficient to redeem the goods in the absence of such provision.

4. Except as provided in paragraph (a) of subdivision two of this section, the assignee of a retail installment contract or obligation shall be subject to all claims and defenses of the buyer against the seller arising from the sale notwithstanding any agreement to the contrary, but the assignee's liability under this subdivision shall not exceed the amount owing to the assignee at the time the claim or defense is asserted against the assignee.

404. Credit service charge limitation

1. A seller may, in a retail instalment contract or obligation, contract for and, if so contracted for, the holder thereof may charge, receive and collect a credit service charge computed on the principal balance of the contract or obligation from the date thereof to and including the date when the final instalment is payable, at the rate or rates agreed to by the buyer.

2. Except as provided in subdivision three of this section, such credit service charge shall be computed on the principal balance on contracts or obligations payable in successive monthly instalments substantially equal in amount for a period of one year. On contracts or obligations providing for instalments extending for a period less than or greater than one year, the credit service charge shall be computed proportionately.

3. When a retail instalment contract or obligation provides for unequal or irregular instalments, the credit service charge shall be at the effective rate provided for in subdivision one of this section, having due regard for the schedule of instalments.

4. As an alternative to the credit service charge provided for above, a seller may, in a retail instalment contract or obligation, contract for and, if so contracted for, the holder may charge, receive and collect a credit service charge calculated on the unpaid principal balances of the contract for the time each is outstanding, according to a generally accepted actuarial method at

rates that may vary from time to time and in accordance with the provisions of the contract or obligation. On any contract or obligation with a variable rate credit service charge made pursuant to this subdivision, each rate shall be determined at regular intervals as set forth in the contract or obligation and in accordance with such regulations as the banking board shall prescribe but said rate shall not vary more often than once in any three month period and shall be based on a published index that is (a) readily available, (b) independently verifiable, (c) beyond the control of the holder, and (d) approved by the superintendent.

The banking board shall adopt regulations with respect to retail installment contracts or obligations that provide for a variable rate of credit service charge, including but not limited to: (a) providing for disclosure to the buyer by the holder of the circumstances under which the rate may increase, any limitations on the increase, the effect of an increase and an example of the payment terms that would result from an increase; (b) providing for disclosure to the buyer by the holder of a history of the fluctuations of the index over a reasonable period of time; and (c) providing for notice to the buyer from the holder prior to any rate increase or change in the terms of payment.

5. The credit service charge shall be inclusive of all charges incident to investigating and making the contract or obligation, and for the extension of the credit provided for in the contract or obligation, and no fee, expense or other charge whatsoever shall be taken, received, reserved or contracted for except as otherwise provided in this article.

405. Delivery of copy of contract or obligation; buyer's acknowledgment

The seller shall deliver to the buyer, or mail to him at his address shown on the contract or obligation, an executed copy thereof. Until the seller does so, a buyer who has not received the goods or services shall have an unconditional right to cancel the contract or obligation and to receive immediate refund of all payments made and redelivery of all goods traded-in to the seller on account of or in contemplation of the contract or obligation. Any acknowledgment by the buyer of delivery of a copy of the contract or obligation shall be printed or written in a size equal to at least ten point bold type and, if contained in the contract or obligation, shall also appear directly above the space reserved for the buyer's signature. The buyer's written acknowledgment, conforming to the requirements of this section, of delivery of a copy of a contract or obligation shall be presumptive evidence of such delivery and of compliance with this section and subdivision four of section four hundred two in any action or proceeding by or against an assignee of the contract or obligation without knowledge to the contrary when he purchases the contract or obligation.

406. Notice of assignment; payments

Unless the buyer has notice of actual or intended assignment of a contract, obligation, or credit agreement payment thereunder made by the buyer to the last known holder of such contract, obligation or credit agreement shall be binding upon all subsequent holders or assignees.

407. Statements of account; receipts

At any time after its execution, but not later than one year after the last payment thereunder, the holder of a contract or obligation shall, upon written request of the buyer, give or forward to the buyer a written statement of the dates and amounts of payments and the total amount, if any, unpaid thereunder. Such a statement shall be supplied by the holder once each year without charge; if any additional statement is requested by the buyer, the holder shall supply such statement to the buyer at a charge not exceeding one dollar for each additional statement supplied to the buyer. A buyer shall be given a receipt for any payment when made in cash.

408. Credit upon anticipation of payments

1. Notwithstanding the provisions of any contract or obligation to the contrary, any buyer may pay it in full at any time before the maturity of the final instalment of the time balance thereof and if he does so shall receive and be entitled to receive a refund credit thereon and if the contract or obligation included an amount for group credit life insurance a further refund credit thereon for such anticipation, whether or not the maturity of the time balance of the contract was accelerated by the holder by reason of the buyer's default.

2. Except as provided in subdivision three of this section, the amount of any such refund credit shall be determined according to a generally acceptable actuarial method.

3. If any part of the credit service charge is computed on an instalment of a retail instalment contract or obligation as provided in paragraph (b) of subdivision three of section four hundred four of this article, the amount of such refund credit applicable to that part of the credit service charge shall represent at least as great a proportion of that part of the credit service charge as the number of months to elapse after the month in which prepayment is made to the due date of that instalment bears to the number of months from the date of the contract or obligation to the due date of that instalment.

4. Where the amount of the credit for anticipation of payment is less than one dollar no refund need be made. Where the earned credit service charge amounts to less, there may be retained an amount equal to the minimum credit service charge applicable.

5. The amount of the further refund credit for group credit life insurance shall be equal to the excess of the amount included in the contract for group credit life insurance over the premiums paid or payable by the holder of the contract for such insurance, if such premiums were paid or payable periodically, or the refund for unearned group credit life insurance premium paid or payable in a lump sum, provided that no such further refund credit need be made if the amount thereof would be less than one dollar.

6. In the event (i) the maturity of a contract or obligation is accelerated due to the default of the buyer or otherwise and judgment is obtained, or (ii) repayment is made pursuant to group credit life insurance, the buyer or his legal representative, as the case may be, shall be entitled to the same refund credits as if the contract had been prepaid in full on the date of acceleration or repayment.

409. Refinancing

1. The holder of a retail instalment contract or obligation or note may, upon agreement with the buyer, extend the scheduled due date or defer the scheduled payment of all or of any part of any instalment or instalments payable thereunder. The agreement for such extension or deferral must be in writing and signed by the parties thereto. The holder may charge and contract for the payment of an extension or deferral charge by the buyer and collect and receive the same, at the rate or rates agreed to by holder and the buyer on the amount of the instalment or instalments, or part thereof, extended or deferred for the period of extension or deferral. Such period shall not exceed the period from the date when such extended or deferred instalment or instalments, or part thereof, would have been payable in the absence of such extension or deferral, to the date when such instalment or instalments, or part thereof, are made payable under the agreement of extension or deferral; except that a minimum charge of one dollar for the period of extension or deferral may be made in any case where the extension or deferral charge, when computed at such rate, amounts to less than one dollar. Such agreement may also provide for the payment by the buyer of the additional cost to the holder of the contract or obligation or note of premiums for continuing in force, until the end of such period of extension or deferral, any insurance coverages provided for in the contract or obligation, subject to the provisions of subdivision five of section four hundred two.

2. The holder of a retail instalment contract or obligation or note may, upon agreement in writing with the buyer, refinance the payment of the unpaid time balance of the contract or obligation or note by providing for a new schedule of instalment payments. The holder may charge and contract for the payment of a refinance charge by the buyer and collect and receive the same, but such refinance charge (1) shall be based upon the amount refinanced, plus any additional cost of insurance and of official fees incident to such refinancing, after the deduction of a refund credit in an amount equal to that to which the buyer would have been entitled under section four hundred eight if he had prepaid in full his obligations under the contract or obligation or note, but in computing such refund credit there shall not be allowed the minimum earned credit service charge as authorized by such section, and (2) may not exceed the rate of credit service charge provided under section four hundred four of this chapter. Such agreement for refinancing may also provide for the payment by the buyer of the additional cost to the holder of the contract or obligation or note of premiums for continuing in force, until the maturity of the contract or obligation or note as refinanced, any insurance coverages provided for therein, subject to the provisions of subdivision five of section four hundred two of this chapter. The refinancing agreement shall set forth all items required to be disclosed by the act of congress entitled "Truth in Lending Act" [FN1] and the regulations thereunder, as such act and regulations may from time to time be amended.

410. Add-ons to and consolidations of retail instalment contracts and obligations

1. A retail instalment contract or obligation which otherwise conforms to the requirements of this article may contain the promise or agreement of the buyer to pay in substantially equal periodic instalments the consolidated total of the principal balance thereof and the unpaid time balance or balances owing by the buyer under one or more previous contracts or obligations, together with a credit service charge; if it does so:

(a) The contract or obligation shall set forth all items required to be disclosed by the act of congress entitled "Truth in Lending Act" [FN1] and the regulations thereunder, as such act and regulations may from time to time be amended.

(b) Subject to the provisions of section four hundred four and to the provisions of paragraph (c) of this subdivision, the credit service charge to be included in such consolidated total may equal but shall not exceed the larger of the amounts determined by applying the credit service charge at the rate or rates agreed to by the buyer:

(1) to the total of the principal balance of the subsequent contract or

obligation and the principal balance of any previous contract or obligation included in the consolidated total determined by deducting from the then unpaid time balance thereof any then unearned credit service charge in an amount not less than the refund credit for anticipation provided for in section four hundred eight (computed, however, without the allowance of any minimum earned credit service charge), for the period from the date thereof to and including the date when the final instalment of such consolidated total is payable; or

(2) to the principal balance of the subsequent contract or obligation for the period from the date thereof to and including the date when the final instalment of such consolidated total is payable and, if the due date of the final instalment of such consolidated total is later than the due date of the final instalment of any previous contract or obligation included in the consolidated total, on the time balance then unpaid on such previous contract or obligation from the date when the final instalment thereof was payable to the date when the final instalment of such consolidated total is payable.

Provided, however, the maximum credit service charge shall not exceed eight dollars per one hundred dollars per annum on that portion of the amount of the principal balance of the subsequent contract or obligation included in the consolidated total by which the consolidated total exceeds five hundred dollars.

(c) A consolidation of a retail instalment contract or obligation entered into after the effective date of this paragraph with a retail instalment contract or obligation entered into prior to the effective date of this paragraph shall be governed by the limitations on maximum credit service charges contained in subdivision one of this section and section four hundred four as they were in effect immediately prior to the effective date of this paragraph.

2. Where a buyer makes any subsequent purchase of goods under a contract from a seller from whom he had previously purchased goods under one or more contracts and the amounts due under such previous contract or contracts have not been fully paid, and where the total of the time balance of the subsequent contract and the unpaid time balances owing by the buyer under the previous contracts does not exceed three thousand dollars, such contract, if it otherwise conforms to the requirements of this article, may provide that the goods purchased under the previous contract or contracts shall be security for the goods purchased under the subsequent contract but only until such time as (a) the purchase price under the previous contract or contracts is fully paid, or (b) twenty per centum of the time sale price of the goods purchased under the subsequent contract has been paid, whichever event first occurs.

3. When such subsequent purchase is made, the entire amount of all payments made previous thereto shall be deemed to have been applied toward the payment of the previous purchase or purchases. Each payment thereafter received shall be deemed to be allocated to all of the various purchases in the same proportion or ratio as the original cash sale prices of the various purchases bear to one another; where the amount of each instalment payment is increased in connection with the subsequent purchase, the subsequent payments (at the seller's election) may be deemed to be allocated as follows: an amount equal to the original rate, to the previous purchase, and an amount equal to the increase, to the subsequent purchase. However the amount of any initial or down-payment on the subsequent purchase shall be deemed to be allocated in its entirety to such purchase. The provisions of subdivisions two and three of this section shall not apply to cases involving equipment, parts or other merchandise attached or affixed to goods previously purchased or repairs or services rendered by the seller in connection therewith at the buyer's request.

411. Terms of purchase by financing agency

Notwithstanding any contrary provision of the personal property law, lien law, banking law or other law:

1. A financing agency may purchase a retail instalment contract, obligation or credit agreement, or indebtedness of a buyer to be paid under a credit agreement, from a seller on such terms and conditions and for such price as may be mutually agreed upon; and

2. No filing of the assignment, no filing of any financing statement, no notice to the buyer of the assignment, and no requirement that the seller be deprived of dominion over payments upon the contract, obligation or credit agreement or over the goods if repossessed by or returned to the seller, shall be necessary to the validity of a written assignment of a contract, obligation or credit agreement, or indebtedness to be paid under a credit agreement, as against creditors, subsequent purchasers, pledgees, mortgagees or encumbrancers of the seller.

412. Cancellation

After the payment of all sums for which the buyer is obligated under a contract or obligation, and upon written demand made by the buyer, the holder shall deliver, or mail to the buyer at his last known address, such one or more good and sufficient instruments as may be necessary to acknowledge payment in full and to release all security in the goods. This section does not repeal section seventy-two of this chapter [FN1] or section two hundred thirty-eight of the lien law.

412-a. Cancellation of contracts for future consumer services

1. Contract for future consumer services. As referred to in this section, the term "contract for future consumer services" shall mean any contract entered into for consumer services to be performed in the future on a lesson-by-lesson or class-by-class basis and offered, sold or provided by correspondence schools which for the purposes of this section shall mean any plan or method used by any person or persons, firm, corporation or other organization for giving instruction in any form or manner by correspondence under contract.

2. No person, including any business entity, may contract to receive, or demand, in the event of cancellation of a contract for future services, more than the total of:

(a) five percent of the cash price, but not to exceed fifty dollars, and

(b) a pro rata portion of the total price, representing the proportion of services used or completed.

In addition, the seller may receive or demand the cost of any ancillary goods which the buyer has consumed or wishes to retain after cancellation of the contract. In no instance shall the seller collect more than the full contract price from the buyer.

3. Within ten days after a contract for future consumer services has been cancelled, the seller shall tender to the buyer any payments made in excess of the amounts permitted to be retained pursuant to subdivision two of this section.

4. Cancellation. Cancellation shall occur:

(a) when the buyer mails to the seller notice of his intent to cancel, or

(b) where the seller has actual notice of the buyer's intention to cancel, or

(c) where the buyer fails to attend consecutive scheduled classes or lessons constituting at least twenty-five percent of the total lessons or time contracted for, without informing the seller in writing that he intends to remain enrolled.

5. The contract forms used by the seller shall conspicuously disclose the seller's cancellation provisions in compliance with subdivisions two, three, and four of this section and shall contain the following notice in ten point bold face type:

If you cancel this contract (the seller) may keep only five percent of the cash price, but not to exceed fifty dollars, and a portion of the contract price based upon the lessons or services you have used. You may notify the seller of your intent to cancel by mail, addressed to (the seller) at (seller's address).

6. Nothing in this section shall be construed so as to nullify or impair any right or rights which a buyer may have against a seller at common law, by statute, or otherwise.

413. Retail instalment credit agreements

1. (a) A retail instalment credit agreement shall be dated and in writing and the printed portion thereof shall be in at least eight point type. No retail instalment credit agreement shall be signed by the buyer when it contains blank spaces to be filled in after it has been signed by the buyer. The seller, before he shall be able to avail himself of the rates authorized by subdivision three of this section, shall deliver to the buyer a copy of the credit agreement executed by the seller.

(b) Provided that the retail installment credit agreement complies in all other respects with the provisions of this section, a single credit agreement may provide for a retail seller to acquire indebtedness of a retail buyer under a sales slip or memorandum evidencing a purchase. Where a retail seller enters into a credit agreement with a retail buyer the credit agreement may consist of an agreement complying in all other respects with the provisions of this section, but executed only by the retail seller, together with a credit card issued by it to the retail buyer. The credit agreement, however, must then provide that it shall not become effective unless and until the retail buyer or a person authorized by him signs a sales slip or memorandum evidencing a purchase or lease of property or services by use of the credit card and that prior thereto the retail buyer shall not be responsible for any purchase or lease of property or services by use of the credit card after its loss or theft.

2. Every retail instalment credit agreement shall contain:

(a) The entire agreement of the buyer with respect to the subject matter of the credit agreement;

(b) The names of the seller and of the buyer, the place of business of the seller and the residence or place of business of the buyer as specified by the buyer;

(c) Both at the top thereof and directly above the space reserved for the signature of the buyer, the words RETAIL INSTALMENT CREDIT AGREEMENT in at

least ten point bold type;

(d) A provision in at least eight point bold type to the effect that the buyer may at any time pay his total indebtedness; and

(e) A notice in at least eight point bold type reading as follows: NOTICE TO THE BUYER: 1. Do not sign this credit agreement before you read it or if it contains any blank space. 2. You are entitled to a completely filled in copy of this credit agreement.

3. (a) A seller may, in a retail instalment credit agreement, contract for and, if so contracted for, the seller or holder thereof may charge, receive and collect the service charge authorized by this article, which service charge shall not exceed the rate or rates agreed upon by the seller and the buyer, including, in accordance with the provisions of the credit agreement, rates that may vary, from time to time computed, for the purposes of this section, on the outstanding indebtedness from month to month, or if the service charge so computed is less than seventy cents for any month, seventy cents. If the credit agreement provides for a variable rate of service charge, such rate shall be determined at regular intervals as set forth in the credit agreement and in accordance with such regulations as the banking board shall prescribe but said rate shall not vary more often than once in any three month period and shall be based on a published index that is (a) readily available, (b) independently verifiable, (c) beyond the control of the seller and (d) approved by the superintendent, (e) such charges in credit agreements shall be based on the index values, or the index numbers plus or minus additional percentage points provided, however, that variations in the charge must correspond directly to the movements of the index values plus or minus additional percentage points only. Once such charge is established no lending institution may add any factors to increase the charge other than variations in the established index without the prior approval of the banking board.

The banking board shall adopt regulations with respect to credit agreements that provide for a variable rate of service charge, including but not limited to: (a) providing for disclosure to the buyer by the seller of the circumstances under which the rate may increase, any limitations on the increase, the effect of an increase and an example of the payment terms that would result from an increase; (b) providing for disclosure to the buyer by the seller of a history of the fluctuations of the index over a reasonable period of time; and (c) providing for notice to the buyer by the seller prior to any rate increase or change in the terms of payment. The regulations shall allow a seller, holder or financing agency after choosing an approved index to choose a spread and a minimum and maximum rate of service charge at its discretion. A retail instalment credit agreement, whether it provides for a

fixed or variable service charge, may provide for an introductory rate of service charge at either a fixed or variable rate, provided that the terms of such introductory rate, including, if applicable, the date on which the introductory rate shall terminate, are disclosed to the buyer. Such disclosure shall be contained on an application form or pre-approved written solicitation as specified pursuant to subdivisions one and one-a of section five hundred twenty of the general business law. A change in the service charge rate upon expiration of an introductory rate shall not be considered a variable rate or a change in terms. The service charge rate in effect after expiration of an introductory rate may apply to all amounts due under the credit agreement regardless of when incurred, and disclosure of the same shall be provided to the buyer in the written agreement.

(b) If the credit agreement so provides, the service charge may be computed on a schedule of fixed amounts if as so computed it is applied to all amounts of outstanding balances equal to the fixed amount minus a differential of not more than five dollars, provided that it is also applied to all amounts of outstanding balances equal to the fixed amount plus at least the same differential.

(c)(i) For the purposes of this subdivision the term "outstanding indebtedness from month to month" shall mean, at the election of the seller, holder or financing agency either:

(a) the amount unpaid at the beginning of the monthly billing period, including unpaid service charges, less all payments received and credits issued during the billing period, except for credits attributable to amounts not included in the previous balance; or

(b) an amount not to exceed the amount calculated by adding the amounts unpaid for each day of the monthly billing period, including unpaid service charges, after reflecting that day's purchases made, payments received, credits issued and other adjustments, and dividing such sum by the number of days in the billing period.

(ii) A credit agreement may not provide for the imposition of a service charge for any monthly billing period in which there is no previous balance or during which the sum of the payments received and other credits issued which are attributable to amounts included in the previous balance is equal to or exceeds the amount of such previous balance unless the same seller also offers a credit agreement which provides that no service charge will be imposed for any monthly billing period in which there is no previous balance or during which the sum of the payments received and other credits issued which are attributable to amounts included in the previous balance is equal to or exceeds the amount of

such previous balance.

(iii) The term "billing period" as used in this subdivision shall mean the time interval between periodic statement dates, pursuant to subdivision four of this section. A billing period shall be considered to be a "month" or "monthly" if the last day of each billing period is on the same day of each month or does not vary by more than four days therefrom.

(d) Where a retail instalment credit agreement provides that the buyer has the option of avoiding the imposition of an additional service charge by paying the outstanding indebtedness or any portion thereof within a specified period of time, the additional service charge may not be imposed unless the monthly statement showing such outstanding indebtedness or portion thereof is mailed at least fifteen days prior to the date by which payment must be received to avoid that service charge. A seller or holder shall not be prohibited from imposing a service charge, or required to refund a service charge, if failure to comply with the provisions of this paragraph resulted from circumstances beyond the control of the seller or holder, notwithstanding reasonable procedures to insure compliance with this paragraph.

(e) No change in the terms of a retail instalment credit agreement shall take effect unless at least 30 days prior to the effective date of such change, a written notice has been mailed or delivered to the buyer that clearly and conspicuously describes such change and the indebtedness to which it applies, and if the change has the effect of increasing the rate of service charge, either (a) the notice states that the incurrence by the buyer or another person authorized by him of any further indebtedness under the plan to which the agreement relates on or after the effective date of such change specified in the notice shall constitute acceptance of such change, and either the buyer agrees in writing to such change or the buyer or another person authorized by him incurs such further indebtedness on or after the effective date of the change stated in the notice, or (b) the notice advises the buyer that he has thirty days from the earlier of the mailing or delivery of the notice to advise the seller under or holder of a retail installment credit agreement in writing that he does not accept such change, provided that such notice contains an address to which the buyer may send notice of his election not to accept the change and also provided that the notice specifies that the change will take effect absent receipt of the buyer's written objection to the change. Any buyer who has received a notice pursuant to clause (a) who does not agree in writing to the change and no further indebtedness is incurred under the plan to which the agreement relates, and any buyer who gives a timely notice, pursuant to clause (b), electing not to accept the change shall be permitted to pay his outstanding indebtedness in accordance with the terms of the retail installment credit agreement but the seller or holder may terminate the amount of credit

available to the buyer and may require the buyer to return all credit cards issued in connection with a retail installment credit agreement. If such a buyer subsequently uses a credit card to obtain credit under a retail installment credit agreement, such use shall constitute acceptance of the change of terms and shall be deemed to have been accepted and shall become effective as to the buyer as of the date such change would have become effective but for the giving of notice by the buyer. If notice is given pursuant to clause (b) and the buyer does not timely object in writing to the change, such change shall become effective without action on the part of the buyer; provided that in no event shall any such change take effect with respect to (i) that portion of the outstanding indebtedness from month to month which represents indebtedness outstanding prior to January 1, 1981, and (ii) that portion of the outstanding indebtedness from month to month which represents indebtedness incurred, under or pursuant to an agreement in effect on December 1, 1980, between January 1, 1981, and the effective date of such change specified in the first notice mailed or delivered pursuant to clause (a). Indebtedness outstanding prior to January 1, 1981 for purpose of clause (i) above and indebtedness outstanding prior to the effective date of a change for purposes of clause (ii) above shall be determined on the basis of crediting payments and other credits first to that portion of any such indebtedness representing any service charges and then to that portion of such indebtedness representing purchases and other debits in the order in which made. An amendment to a credit agreement deleting a provision that the rate of service charge may vary from time to time may not become effective within one year from the later of the effective date of the credit agreement or the effective date of an amendment to the credit agreement adding a variable rate provision. For purposes of this paragraph, an adjustment in the rate of the service charge as a consequence of the movement in the selected index shall not constitute a change in the terms of that agreement. A reduction in the grace period for the assessment of a fee on any installment not paid when due, shall be considered an amendment to an agreement as set forth in this paragraph. The provisions of this paragraph shall not apply in the case of an agreement which expressly prohibits changing of terms or which provides limitations on changing of terms which are more restrictive than the requirements of this paragraph.

Any service charge, whether assessed by a fixed or variable rate, may be reduced on such terms as the seller may determine, provided that the terms of such reduction, including, if applicable, the date on which the reduction will terminate, are disclosed to the buyer on the written notice announcing the reduction, prior to the effective date of the reduction. A new method of determining a service charge is a reduction in the service charge if the charge determined under the new method never exceeds the charge under the original method. The original service charge or original method of determining the service charge may be applied after the reduction ends to the entire

outstanding indebtedness, including any indebtedness incurred when the reduced service charge applied, and disclosure of the same shall be provided to the buyer in the written notice announcing the reduction. A reduction to a service charge, including the resumption of the original service charge or the original method of determining the service charge, shall not be considered a change in terms for purposes of this paragraph.

4. The seller or holder under a retail instalment credit agreement shall promptly provide the buyer under the agreement with a statement as of the end of each monthly period (which need not be a calendar month) containing

(a) The items required to be set forth pursuant to the act of congress entitled "Truth in Lending Act" [FN1] and the regulations thereunder, as such act and regulations may from time to time be amended; and

(b) A legend to the effect that the buyer may at any time pay his total indebtedness.

5. (a) The fees and charges authorized by this subdivision and subdivision three of this section shall be inclusive of all charges incident to investigating and making the retail instalment credit agreement and for the extension of credit thereunder. No fee, expense, delinquency, collection or other charge whatsoever shall be taken, received, reserved or contracted for by the seller under or holder of a retail instalment credit agreement except as provided in this section. A retail instalment credit agreement may provide for the payment of attorney's fees not exceeding twenty per centum of the amount due and payable under the credit agreement if it is referred to an attorney not a salaried employee of the seller or holder for collection.

(b) In addition to the service charge on outstanding indebtedness permitted under subdivision three of this section, the seller or holder may charge, receive and collect any one or more of the fees and charges described in this paragraph, provided that any such fee or charge is provided for in the retail instalment credit agreement. When credit cards are issued in connection with a retail instalment credit agreement, the retail instalment credit agreement may provide for an annual fee for membership in the credit card plan. If a buyer has requested the issuance of a credit card, the fee for the first year may be charged by the seller or holder at any time. The seller or holder shall in each subsequent year in which an annual fee is payable, send the buyer in or with the statement for the monthly billing period before that in which the fee is to be billed, a notice that the annual fee will be billed in the next monthly statement. A buyer who is not delinquent or otherwise in breach of any term of the agreement with the seller or holder shall have the right during the first six months after the annual fee is billed to notify the seller or holder

in writing, at its address on the credit agreement, to terminate the buyer's account and request a refund of the unused portion of the annual fee previously paid. Upon receipt of the termination notice and refund request from such buyer, the seller or holder shall refund to the buyer the unused pro-rata share of any annual fee previously paid as of the first billing statement date after receipt of the termination notice. The retail installment credit agreement may provide for the assessment of a fee for any installment which is not paid on or before the date on which it is due. A seller or holder that imposes a fee for late payments without allowing a grace period of at least ten days must credit any cash payment made by a buyer to an authorized representative of the seller or holder at all stores, or to a teller at a branch where deposits are accepted, as of the date of the receipt of the payment. The retail installment credit agreement may, in addition, provide for an overlimit charge. The overlimit charge may be imposed whenever the specified credit limit is exceeded but not more than once in a monthly billing cycle. If the overlimit charge is imposed, the credit limit must be disclosed on the monthly billing statement. The retail installment credit agreement also may provide for: (i) a returned payment charge, in the amount set forth in section 5-328 of the general obligations law, for any check or other method of payment that is returned unpaid, excluding payment made by automated teller machine or other electronic media; (ii) a charge for replacement of lost or stolen credit cards, which charge shall be applied only where a buyer has suffered a lost or stolen credit card after two replacements thereof; (iii) a charge for additional credit cards for the buyer's account; and (iv) a charge for copies of sales slips, monthly statements and other documents when such copies are not required by federal or state law governing billing error disputes.

Sections 190.40 and 190.42 of the penal law shall not apply to fees and charges set forth in this subdivision. For purposes of 12 U.S.C. ss 85, 1831 d, 1463(g) and 1785 (g), the fees and charges permitted under this subdivision are interest under New York law, and all terms, conditions, and other provisions of a retail instalment credit agreement, including without limitation, fees and charges, provisions relating to the method of determining the outstanding indebtedness on which a service charge is imposed and circumstances in which a service charge may be avoided, are material to the determination of the interest rate under New York law.

6. If the cost of any insurance is to be separately charged to the buyer, the retail instalment credit agreement shall state whether the insurance is to be procured by the buyer or the seller or holder. If the insurance is to be procured by the seller or holder, the seller or holder shall comply with the provisions of subdivision five of section four hundred two.

7. No retail instalment credit agreement shall require or entail the execution

of any note or series of notes by the buyer which when separately negotiated will cut off as to third parties any right of action or defense which the buyer may have against the seller.

8. The provisions of subdivisions four and five of section four hundred two A and of sections four hundred six and four hundred twelve hereof shall be applicable to retail instalment credit agreements. The words "credit service charge" in subdivisions four and five of section four hundred two A shall read "service charge" for the purposes of this section.

9. The service charge allowed in subdivision three of this section shall be allowed to a seller or holder under this section only:

(a) If the seller enters into an agreement subject to the provisions of this article with any buyer on or after October first, nineteen hundred fifty-seven;
or

(b) In the case of any buyer who had entered into an agreement with a seller prior to October first, nineteen hundred fifty-seven, if the seller or holder delivers or mails to the buyer a copy of a retail instalment credit agreement in conformity with this section duly executed on behalf of the seller and the seller or holder thereafter complies with all the other provisions of this section.

Nothing in this subdivision contained shall be construed to affect the validity or invalidity of any agreement or alleged agreement made prior to October first, nineteen hundred fifty-seven.

10. No retail instalment credit agreement shall contain any provision by which:

(a) In the absence of the buyer's default, the holder may, arbitrarily and without reasonable cause, accelerate the maturity of any part or all of the amount owing thereunder;

(b) A power-of-attorney is given to confess judgment in this state, or an assignment of wages is given;

(c) The buyer waives any right of action against the seller or holder of the agreement, or other person acting on his behalf, for any illegal act committed in the collection of payments under the agreement;

(d) The buyer executes a power-of-attorney appointing the seller or holder of the agreement, or other person acting on his behalf, as the buyer's agent in collecting payments under the agreement;

(e) The buyer relieves the seller from liability for any legal remedy which the buyer may have against the seller under the agreement or otherwise;

(f) The buyer waives any right to a trial by jury in any action or proceeding arising out of the agreement.

(g) The buyer consents to receive any goods or services on a regular or irregular basis. Any such consent to receive goods or services must be separately agreed to by the buyer in a writing other than the retail instalment credit agreement.

Any such prohibited provision shall be void but shall not otherwise affect the validity of the contract.

11. (a) Provided that the retail instalment credit agreement complies in all other respects with the provisions of this section, a financing agency may enter into a credit agreement with a retail buyer for its own account or on behalf of one or more retail sellers or municipal corporations, which need not be named in the agreement, pursuant to which the financing agency may, with the buyer's consent, purchase or acquire from one or more retail sellers or municipal corporations, which need not be named in the credit agreement, indebtedness of the buyer under a sales slip or memorandum evidencing a purchase or fine to be paid in accordance with the agreement. Such a credit agreement shall contain the name and place of business of the financing agency in lieu of those of a retail seller and may not contain any provision for a security interest in real or personal property or fixtures of the buyer to secure payment or performance of the buyer's obligation under the credit agreement other than a security interest in a specifically identified interest-bearing deposit account of the buyer with such financing agency. A financing agency may in such a credit agreement contract for, and if it has so contracted and delivered to the buyer a copy of the credit agreement executed by it, may charge, receive and collect the service charge authorized by this section. Each sales slip or memorandum evidencing a purchase or fine of the buyer to be paid in accordance with such a credit agreement shall refer to the credit agreement between the buyer and the financing agency by account number or otherwise and contain the names of the retail buyer and the retail seller or municipal corporation.

A financing agency which purchases from more than one seller or municipal corporation indebtedness of a retail buyer to be paid in accordance with such a retail instalment credit agreement entered into by the financing agency with the buyer as provided in this subdivision may charge, receive and collect the service charge authorized by subdivision three of this section only if the service charge so authorized is computed on the buyer's total outstanding

indebtedness to the financing agency from month to month to be paid in accordance with such a retail instalment credit agreement.

(b) A financing agency may enter into a credit agreement with a retail buyer for its own account or on behalf of one or more authorized insurers or insurance agents or insurance brokers, who need not be named in the agreement, pursuant to which the financing agency may, with the buyer's consent, purchase or acquire from one or more authorized insurers or insurance agents or brokers, who need not be named in the agreement, the buyer's indebtedness under a sales slip or memorandum evidencing a purchase of insurance under an insurance contract or contracts, provided that (i) such credit agreement complies with the requirements of paragraph (a) of this subdivision, and (ii) such credit agreement does not permit cancellation of the insurance contract or contracts as a result of default under the credit agreement by the buyer. For purposes of this paragraph, the terms "authorized insurer", "insurance contract", "insurance agent", and "insurance broker" shall be as defined in or have the meanings assigned to them by section one hundred seven of the insurance law.

(c) A single credit agreement entered into pursuant to either paragraph (a) or paragraph (b) of this subdivision may provide for the financing agency to acquire indebtedness of a retail buyer under a sales slip or memorandum evidencing a purchase or, if applicable, a fine pursuant to the other of said paragraphs. Where a financing agency enters into a credit agreement with a retail buyer for its own account, the credit agreement may consist of an agreement complying in all other respects with the provisions of this section, but executed only by the financing agency, together with a credit card issued by it to the retail buyer. The credit agreement, however, must then provide that it shall not become effective unless and until the retail buyer or a person authorized by him signs a sales slip or memorandum evidencing a purchase or lease of property or services or the payment of a fine by use of the credit card and that prior thereto the retail buyer shall not be responsible for any purchase or lease of property or services by use of the credit card after its loss or theft.

(d) A credit agreement entered into pursuant to paragraph (a) or (b) of this subdivision shall contain or be accompanied by a statement making the disclosures required by the act of congress entitled "Truth in Lending Act" and the regulations thereunder, as such act and regulations may from time to time be amended.

(e) A financing agency enters into a credit agreement provided for in this subdivision in this state, for purposes of this article, if the financing agency delivers or mails in this state to the buyer a copy of the agreement executed by the financing agency, provided, however, that in order to reduce

the potential for theft or fraud, a financing agency may mail the credit agreement from outside the state if the credit agreement is prepared and sealed in the state before mailing and prior to being transported to a location outside of the state for actual mailing.

12. No retail instalment credit agreement, or any agreement executed in connection therewith, may provide for the creation of a security interest in any personal or real property (including any goods sold under such agreement) to secure payment of the buyer's outstanding indebtedness under such retail instalment credit agreement. Any such prohibited provision shall be void but shall not otherwise affect the validity of such retail instalment credit agreement; provided however, that a financing agency may require a pledge to such financing agency of a specifically identified interest-bearing deposit account of the buyer maintained at such financing agency as collateral security for a loan made by such financing agency under the authority of this subdivision and provided further that any such financing agency which requires such a pledge shall be subject to the provisions of section five hundred twenty-b of the general business law.

13. (a) Subject to the limitation contained in paragraph (b) of this subdivision, the holder of a retail instalment credit agreement (including for purposes of this subdivision a financing agency which enters into a credit agreement with a retail buyer as provided in subdivision eleven of this section) shall be subject to all claims (other than tort claims) and defenses arising out of the buyer's purchase of goods and services to be paid in accordance with the credit agreement if (1) the buyer has made a good faith attempt to obtain satisfactory resolution of a disagreement or problem relative to the sale from the seller; (2) the amount of the initial transaction exceeds fifty dollars; and (3) the place where the initial transaction occurred was in the same state as the mailing address previously provided by the buyer or was within one hundred miles from such address, except that the limitations set forth in subparagraphs (2) and (3) of this paragraph with respect to a buyer's right to assert claims and defenses against the holder shall not be applicable to any transaction in which the seller (A) is the same person as the holder; (B) is controlled by the holder; (C) is under direct or indirect common control with the holder; (D) is a franchised dealer of the holder's products or services; or (E) has obtained the order for such sale through a mail solicitation made by or participated in by the holder in which the buyer is solicited to enter into such transactions by using the credit agreement with the holder.

(b) The amount of claims or defenses asserted by the buyer may not exceed the amount of indebtedness owing to the holder with respect to such transaction at the time the buyer first notifies the holder or seller of such claim or

defense. For the purpose of determining the amount of indebtedness owing to the holder in the preceding sentence, payments and credits to the buyer's account are deemed to have been applied, in the order indicated, to the payment of (1) service charges in order of their entry to the account; and (2) debits to the account other than those set forth above, in the order in which each debit entry to the account was made.

14. (a) A seller of goods pursuant to the terms of this article shall adopt and apply procedures to reasonably avoid debiting the buyer's account with respect to any transaction, or to reasonably avoid selling or assigning to a financing agency a sales slip or memorandum evidencing a purchase of goods, prior to the date the goods subject to the transaction are delivered to the buyer or the buyer's designee. A seller of goods may debit the buyer's account, or sell or assign to a financing agency a sales slip or memorandum evidencing a purchase of goods, on or after the date of sale where:

(i) the goods subject to the transaction are shipped within ten days of the date of sale and the seller has reason to believe that delivery will be effected not later than fourteen days from the date of sale; or

(ii) the goods subject to the transaction are one of a kind or are to be specifically manufactured for the buyer and are not suitable for sale to others in the ordinary course of the seller's business; or

(iii) the buyer requested delayed delivery of goods that will be available for delivery not later than fourteen days from the date of sale; or

(iv) the buyer and seller have agreed that delivery of the goods will occur at regular intervals or in instalments.

(b) For the purposes of this subdivision, a seller may debit the buyer's account, or sell or assign to a financing agency a sales slip or memorandum evidencing a purchase of goods, on or after the date of shipment where, in the ordinary course of business, delivery is to be effected no later than ten days after the date of shipment.

(c) It shall not be a violation of this subdivision if the seller ships or makes the goods available for delivery as agreed and delivery is delayed due to failure of the buyer to accept said delivery.

(d) The provisions of this subdivision shall not apply to mail order merchandise as regulated by section three hundred ninety-six-m of the general business law.

414. Penalties

1. Any person who shall wilfully violate any provision of this article shall be guilty of a misdemeanor and upon conviction shall be punished by a fine not exceeding five hundred dollars.

2. In case of failure by any person to comply with the provisions of this article, the buyer shall have the right to recover from such person an amount equal to the credit service charge or service charge imposed and the amount of any delinquency, collection, extension, deferral or refinance charge imposed.

3. Notwithstanding the provisions of this section, any failure to comply with any provision of this article may be corrected within ten days after the holder is notified thereof in writing by the buyer and, if so corrected, neither the seller nor the holder shall be subject to any penalty under this section.

4. Subdivision three of this section shall not apply to any person who wilfully violates any provision of this article in connection with the imposition, computation or disclosures of or relating to a credit service charge on a consolidated total of two or more contracts or obligations under the provisions of section four hundred ten, and the buyer may recover from such person an amount equal to the credit service charges and any delinquency, collection, extension, deferral or refinance charges imposed, contracted for or received on all contracts and obligations included in the consolidated total and the seller shall be barred from the recovery of any such charges.

5. Subdivisions one and three of this section shall not apply to any person who violates subdivision two-a of section four hundred three of this article. [FN1]

415. Exceptions

1. The provisions of sections four hundred nine and four hundred eleven of this article shall apply to an instalment sale of goods or services for any use.

2. The provisions of section four hundred eight of this article shall apply to an installment sale of equipment used for production of a farm product, as defined in section two of the agriculture and markets law.

416. Waiver

Any waiver by the buyer of the provisions of this article shall be unenforceable and void.

417. Severability

If any provision of this article or the application thereof to any person or circumstances is held unconstitutional, the remainder of the article and the application of such provision to other persons or circumstances shall not be affected thereby.

418. Short title

This article may be cited as the "Retail Instalment Sales Act."

419. Refund credit on cancellation of credit related insurance or prepayment of contract

The provisions of this article requiring refunds and refund credits with respect to group credit life insurance in cases of cancellation of group credit life insurance or of prepayment of a retail instalment contract or obligation shall also require refunds and refund credits with respect to credit unemployment insurance, group credit accident, group credit health or group credit accident and health insurance in cases of cancellation of such insurance or of prepayment of a retail instalment contract or obligation which included such insurance.

420. Guaranties to sellers of liabilities of buyers under retail instalment contracts

(a) No guaranty given to the seller or to the seller and the seller's assignee of the liabilities of a buyer under a retail instalment contract shall be valid unless the guaranty is incorporated in or endorsed on the contract or identifies the contract and specifies the time balance thereof. A copy of the guaranty and the contract to which it relates shall be given or mailed to the guarantor upon or immediately after the execution and delivery of the guaranty by the guarantor. As used in this section, "retail instalment contract" and "contract" include a retail instalment obligation and a retail instalment contract as defined in the motor vehicle retail instalment sales act, constituting article nine of this chapter. This section does not apply to a guaranty made by a seller or a holder of a retail instalment contract.

(b) No guaranty given to the seller or to the seller and the seller's assignee of the liabilities of a buyer under a retail instalment contract shall relate to any future retail instalment contracts.

421. Security interest in other property

Except as provided in section four hundred ten of this chapter, no retail instalment contract or obligation, or any other agreement executed in connection therewith, may provide for the creation of a security interest in any real or personal property, other than the goods which are the subject matter of the retail instalment sale, to secure the payment of the time sale price under such contract or obligation or any part thereof; provided, however, that the prohibition of this section shall not be applicable to the taking of a mortgage upon real property to secure the payment of the time sale price of a retail instalment obligation, if the transaction which gave rise to such obligation was the furnishing of goods or services for repairs, alterations or improvements upon, or in connection with buildings upon, such real property. Any such prohibited provision shall be void but shall not otherwise affect the validity of the contract or obligation.

422. Claim for deficiency after default and repossession

If a buyer defaults on any instalment of the time sale price under a retail instalment contract, and the holder obtains possession of the goods which are the subject matter of such contract and disposes of such goods as provided by section 9-504 of the uniform commercial code, the buyer shall be liable to the holder for any deficiency to the extent provided in that section; provided, however, that in calculating such deficiency there shall be deducted from the amount thereof as prescribed by such section 9-504, an amount equal to that portion of the refund credit to which the buyer would have been entitled under section four hundred eight of this chapter if, at the time the holder disposed of such goods, the buyer had not been in default and had prepaid in full the balance of the time sale price as the amount realized upon the disposition of the goods bears to the balance of the time sale price.

ARTICLE 10-A--DOOR-TO-DOOR SALES PROTECTION ACT

425. Short title; purpose

This act may be cited as the door-to-door sales protection act. The purpose of this act is to afford consumers a "cooling-off" period to cancel contracts which are entered into as a result of high pressure door-to-door sales tactics.

426. Definitions

In this article:

1. "Door-to-door sale" shall mean a sale, lease or rental of consumer goods or services in which the seller or his representative personally solicits the sale, including those in response to or following an invitation by the buyer, and the buyer's agreement or offer to purchase is made at a place other than the place of business of the seller. The term "door-to-door sale" does not include a transaction:

(a) made pursuant to prior negotiations in the course of a visit by the buyer to a retail business establishment having a fixed permanent location where the goods are exhibited or the services are offered for sale on a continuing basis; or

(b) in which the buyer has initiated the contact and the goods or services are needed to meet a bona fide immediate personal emergency of the buyer, and the buyer furnishes the seller with a separate dated and signed personal statement in the buyer's handwriting describing the situation requiring immediate remedy and expressly acknowledging and waiving the right to cancel the sale within three business days; or

(c) conducted and consummated entirely by mail or telephone; and without any other contact between the buyer and the seller or its representative, other than at the place of business of the seller, prior to delivery of the goods or performance of the services; or

(d) in which the buyer has initiated the contact and specifically requested the seller to visit his home for the purpose of repairing or performing maintenance upon the buyer's personal property. If in the course of such a visit, the seller sells the buyer the right to receive additional services or goods other than replacement parts necessarily used in performing the maintenance or in making the repairs, the sale of those additional goods or services would not fall within this exclusion; or

(e) pertaining to the sale or rental of real property, to the sale of insurance or to the sale of securities or commodities by a broker-dealer registered with the securities and exchange commission; or

(f) where the purchase price whether under single or multiple contracts, does not exceed twenty-five dollars and the products, goods, or merchandise purchased is capable of delivery at one time.

2. "Consumer goods or services" shall mean goods or services purchased, leased, or rented primarily for personal, family or household purposes, including courses of instruction or training regardless of the purpose for which they are taken.

3. "Seller" shall mean any person, partnership, corporation or association engaged in the door-to-door sale of consumer goods or services.

4. "Place of business" shall mean the main or permanent branch office or local address of the seller.

5. "Purchase price" shall mean the total price paid or to be paid for the consumer goods or services, including all interest and service charges.

6. "Business day" shall mean any calendar day except Sunday, or the following business holidays: New Year's Day, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans' Day, Thanksgiving Day, and Christmas Day.

7. (a) "Personal emergency response service" shall mean (i) the provision and maintenance of electronic communication equipment in the home of an individual which signals a monitoring agency for help when activated by the individual, or after a period of time if a timer mechanism has not been reset; (ii) the continuous monitoring of such signals by a trained operator and, in case of receipt of such signal, the immediate notification of such emergency response organizations or persons, if necessary, as the individual has previously specified.

(b) With respect to a "personal emergency response service" as defined in paragraph (a) of this subdivision, the provisions of this article shall apply to the purchase by a consumer of provision for such service, whether or not such purchase is made in a "door-to-door sale" as defined in subdivision one of this section, except where applying any of the provisions of this article conflicts with any provision of section three hundred ninety-one-l of the general business law, in which case the provisions of section three hundred ninety-one-l of the general business law shall prevail. For this purpose, the

transactional exclusions from the definition of "door-to-door sale" contained in paragraphs (a) through (f) of subdivision one of this section shall not apply to the sale or purchase of a personal emergency response service as defined herein, and the term "door-to-door sale" wherever used in this article shall be deemed to also mean any sale, lease or rental of a personal emergency response service to or by a consumer.

427. Buyer's or other obligor's right to cancel

1. In addition to any right otherwise to revoke an offer, the buyer or other person obligated for any part of the purchase price may cancel a door-to-door sale until midnight of the third business day, or until midnight of the seventh business day in the case of a door-to-door sale of a personal emergency response service, after the day on which the buyer has signed an agreement or offer to purchase relating to such sale.

2. Cancellation occurs when written notice of cancellation is given to the seller.

3. Notice of cancellation, if given by mail, shall be deemed given when deposited in a mailbox properly addressed and postage prepaid.

4. Notice of cancellation need not take the form prescribed and shall be sufficient if it indicates the intention of the buyer not to be bound.

428. Form of notice; statement of buyer's rights

1. In a door-to-door sale, the seller shall furnish to the buyer

(a) a fully completed receipt or copy of any contract pertaining to such sale at the time of its execution, which is in the same language, e.g. Spanish, as that principally used in the oral sales presentation and which shows the date of the transaction and contains the name and address of the seller, and in immediate proximity to the space reserved in the contract for the signature of the buyer or on the front page of the receipt if a contract is not used and in not less than ten-point bold face type, a statement in substantially the following form:

"YOU, THE BUYER, MAY CANCEL THIS TRANSACTION AT ANY TIME PRIOR TO MIDNIGHT OF THE THIRD BUSINESS DAY AFTER THE DATE OF THIS TRANSACTION. SEE THE ATTACHED NOTICE OF CANCELLATION FORM FOR AN EXPLANATION OF THIS RIGHT."

(b) at the time the buyer signs the door-to-door sales contract or otherwise agrees to buy consumer goods or services from the seller, a completed form in duplicate, captioned "NOTICE OF CANCELLATION", which shall be attached to the contract or receipt and easily detachable, and which shall contain in not less than ten-point bold face type the following information and statements in the same language, e.g. Spanish, as that used in the contract:

NOTICE OF CANCELLATION

(enter date of transaction)

(Date)

YOU MAY CANCEL THIS TRANSACTION, WITHOUT ANY PENALTY OR OBLIGATION, WITHIN THREE BUSINESS DAYS FROM THE ABOVE DATE.

IF YOU CANCEL, ANY PROPERTY TRADED IN, ANY PAYMENTS MADE BY YOU UNDER THE CONTRACT OR SALE, AND ANY NEGOTIABLE INSTRUMENT EXECUTED BY YOU WILL BE RETURNED WITHIN 10 BUSINESS DAYS FOLLOWING RECEIPT BY THE SELLER OF YOUR CANCELLATION NOTICE, AND ANY SECURITY INTEREST ARISING OUT OF THE TRANSACTION WILL BE CANCELLED.

IF YOU CANCEL, YOU MUST MAKE AVAILABLE TO THE SELLER AT YOUR RESIDENCE, IN SUBSTANTIALLY AS GOOD CONDITION AS WHEN RECEIVED, ANY GOODS DELIVERED TO YOU UNDER THIS CONTRACT OR SALE; OR YOU MAY IF YOU WISH, COMPLY WITH THE INSTRUCTIONS OF THE SELLER REGARDING THE RETURN SHIPMENT OF THE GOODS AT THE SELLER'S EXPENSE AND RISK.

IF YOU DO MAKE THE GOODS AVAILABLE TO THE SELLER AND THE SELLER DOES NOT PICK THEM UP WITHIN TWENTY DAYS OF THE DATE OF YOUR NOTICE OF CANCELLATION, YOU MAY RETAIN OR DISPOSE OF THE GOODS WITHOUT ANY FURTHER OBLIGATION. IF YOU FAIL TO MAKE THE GOODS AVAILABLE TO THE SELLER, OR IF YOU AGREE TO RETURN THE GOODS TO THE SELLER AND FAIL TO DO SO, THEN YOU REMAIN LIABLE FOR

PERFORMANCE
OF ALL OBLIGATIONS UNDER THE CONTRACT.

TO CANCEL THIS TRANSACTION, MAIL OR DELIVER A SIGNED AND DATED COPY
OF THIS
CANCELLATION NOTICE OR ANY OTHER WRITTEN NOTICE, OR SEND A
TELEGRAM, TO
(Name of Seller), AT (Address of seller)

(Place of Business) NOT LATER THAN MIDNIGHT OF

(Date)

I HEREBY CANCEL THIS TRANSACTION.

(Date)

(Buyer's Signature)

and the seller shall complete both copies by entering the name of the seller, the address of the seller's place of business, the date of the transaction, and the date, not earlier than the third business day following the date of the transaction, by which the buyer may give notice of cancellation.

2. In a door-to-door sale, the seller shall inform each buyer orally, at the time he signs the contract or purchases the goods or services, of his right to cancel. Until the seller has complied with this section, the buyer or any other person obligated for any part of the purchase price may cancel the door-to-door sale by notifying the seller in any manner and by any means of his intention to cancel. The period prescribed by subdivision one of section four hundred twenty-seven shall begin to run from the time the seller complies with this section.

3. A door-to-door sales contract or receipt shall not include any confession of judgment or any waiver of any of the rights to which the buyer is entitled under this article including specifically his right to cancel the sale in accordance with the provisions of this article.

4. A door-to-door sales contract or receipt shall disclose conspicuously the seller's refund policy as to all goods, wares or merchandise subject to the door-to-door sales agreement. If the seller fails to disclose conspicuously the applicable refund policy, then the seller shall be liable to the buyer for a cash refund of the total price or a credit of the total price, at the buyer's option, provided that within twenty days from the date of delivery of the

purchased item or items, the buyer makes a demand therefor and provided that the merchandise is in substantially as good condition as when received by the buyer. In no event shall this subdivision be deemed to supercede a refund policy of a seller which allows return of merchandise more than twenty days after the date of delivery of the purchased item or items. The amount paid by the buyer to the seller shall be refunded or credited, as the case may be, within ten business days from the date of return of the seller's merchandise in substantially as good condition as when received by the buyer.

5. This section does not relieve any person, firm, corporation or association subject to the provisions of this section from complying with any other applicable law, ordinance, rule or regulation relating to refund policies which affords the buyer greater protection than do the provisions of this section.

429. Restoration of down payment

1. Within ten days after a door-to-door sale has been cancelled or an offer to purchase revoked, the seller shall tender to the buyer all payments made by the buyer and any note or other evidence of indebtedness.

2. If the down payment includes goods traded in, the goods shall be tendered in substantially as good condition as when received by the seller. If the seller fails to tender the goods as provided by this section, the buyer may elect to recover an amount equal to the trade-in allowance stated in the agreement.

3. If the seller refuses within the period prescribed by subdivision one to return all payments made by the buyer, he shall be liable to the buyer for the said payments and if the buyer is successful in his action therefor or appeal thereon, the court shall award him one hundred dollars plus reasonable attorney's fees and costs, in addition to such payments.

4. Until the seller has complied with this section, the buyer may retain possession of goods delivered to him by the seller and shall have a lien on the goods in his possession or control for any recovery to which he may be entitled.

430. Duty of buyer

1. Except as provided by subdivision four of section four hundred twenty-nine, within a reasonable time after a door-to-door sale has been cancelled or an offer to purchase revoked, the buyer upon demand shall tender to the seller any goods delivered by the seller pursuant to the sale but need not tender at any place other than his residence. If the seller fails to demand possession of

such goods within a reasonable time after cancellation or revocation, the goods shall become the property of the buyer without obligation to pay for them. For the purpose of this section, twenty days shall be presumed to be a reasonable time.

2. The buyer shall take reasonable care of the goods in his possession both before cancellation or revocation and for a reasonable time thereafter, during which time the goods are otherwise at the seller's risk.

3. If the seller has performed any services pursuant to a door-to-door sale prior to its cancellation, the seller shall not be entitled to compensation therefor.

431. Restriction on assignment of obligation

1. A seller shall not negotiate, transfer, sell or assign any note or other evidence of indebtedness to a finance company or other third party prior to midnight of the fifth business day, or in the case of a contract for door-to-door sale of a personal emergency response service, prior to midnight of the ninth business day, following the day the contract was signed or the goods or services were purchased.

2. The assignee of any note or evidence of indebtedness shall be subject to all claims and defenses of the buyer against the seller arising from the sale notwithstanding any agreement to the contrary, but the assignee's liability under this subdivision shall not exceed the amount owing to the assignee at the time the claim or defense is asserted against the assignee. Rights of the buyer under this section can be asserted affirmatively against or as a matter of defense to or set-off against a claim by the assignee.

ARTICLE 9--MOTOR VEHICLE RETAIL INSTALMENT SALES ACT

s 301. Definitions

In this article, unless the context or subject matter otherwise requires:

1. "Motor vehicle" or "vehicle" means any device propelled or drawn by any power other than muscular power, upon or by which any person or property is or may be transported or drawn upon a public highway, road or street except that it shall not include a "snowmobile" as defined in subdivision three of section 21.05 of the parks, recreation and historic preservation law. "Motor vehicle" or "vehicle" also means a "mobile home" or a "manufactured home". "Mobile home" or "manufactured home" means a structure, transportable in one or more sections, which in the traveling mode, is eight body feet or more in width or forty body feet or more in length, or when erected on site, is three hundred twenty or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to required utilities, and includes the plumbing, heating, air-conditioning and electrical systems contained therein.

2. "Retail buyer" or "buyer" means a person who buys a motor vehicle from a retail seller and who executes a retail instalment contract in connection therewith.

3. "Retail seller" or "seller" means a person who sells a motor vehicle to a retail buyer under or subject to a retail instalment contract.

4. "Retail instalment sale" or "sale" means a sale, other than for a commercial or business use or for the purpose of resale, of a motor vehicle by a retail seller to a retail buyer for a time sale price payable in two or more instalments, payment of which is secured by a retail instalment contract. The cash sale price of the motor vehicle, the amount, if any, included for insurance, official fees and credit service charge shall together constitute the time sale price.

5. "Retail instalment contract" or "contract" means an agreement, entered into in this state, pursuant to which the title to, the property or a security interest in or a lien upon a motor vehicle, which is the subject matter of a retail instalment sale, is retained or taken by a retail seller from a retail buyer as security, in whole or in part, for the buyer's obligation. The term includes such an agreement wherever entered into if executed by the buyer in this state and if solicited in person by a salesman or other person acting on his own behalf or that of the seller. The term also includes a contract whereby a security interest in favor of the seller is created or retained and a contract for the bailment or leasing of a motor vehicle by which the bailee or lessee contracts to pay as compensation for its use a sum substantially equivalent to or in excess of its value and by which it is

agreed that the bailee or lessee is bound to become, or for no other or for a nominal consideration has the option of becoming, the owner of the motor vehicle upon full compliance with the terms of the contract.

6. "Cash sale price" means the cash sale price stated in a retail instalment contract for which the seller would sell to the buyer, and the buyer would buy from the seller, the motor vehicle which is the subject matter of the retail instalment contract if the sale were a sale for cash instead of a retail instalment sale. The cash sale price may include any taxes, registration, license and other fees and charges for insurance, for accessories and their installation and for delivering, servicing, repairing or improving the motor vehicle and for other services incidental to the agreement. It also may include the unpaid balance of any amount financed under an outstanding motor vehicle loan agreement or motor vehicle retail instalment contract or the unpaid portion of the early termination obligation under an outstanding motor vehicle retail lease agreement.

7. "Official fees" means the filing or other fees required by law to be paid to a public officer to perfect the interest or lien, in or on a motor vehicle, retained or taken by a seller under a retail instalment contract, and to file or record a release, satisfaction or discharge of the contract.

8. "Credit service charge" means that part of the time sale price by which it exceeds the aggregate of the cash sale price and the amount, if any, included in a retail instalment sale for insurance and official fees.

9. "Financing agency" means a person engaged, in whole or in part, in the business of purchasing retail instalment contracts from one or more retail sellers. The term includes but is not limited to a bank, trust company, savings bank, savings and loan association, private banker or investment company, if so engaged. The term also includes a retail seller engaged, in whole or in part, in the business of holding retail instalment contracts acquired from retail buyers.

10. The "holder" of a retail instalment contract means the retail seller of the motor vehicle under or subject to the contract or, if the contract is purchased by a financing agency or other assignee, the financing agency or other assignee.

11. "Person" means an individual, partnership, corporation, association or other group, however organized.

12. Words in the singular include the plural and vice versa.

s 302. Requirements as to retail instalment contracts

1. A retail instalment contract shall be in writing, shall contain all the

agreements of the parties and shall be signed by the buyer and the seller.

2. The printed portion of the contract shall be in at least eight point type. The contract shall contain printed or written in a size equal to at least ten-point bold type:

(a) Both at the top of the contract and directly above the space reserved for the signature of the buyer, the words "RETAIL INSTALMENT CONTRACT";

(b) A specific statement that liability insurance coverage for bodily injury and property damage caused to others is not included, if that is the case; and

(c) One of the following notices: "NOTICE TO THE BUYER: 1. Do not sign this contract before you read it or if it contains any blank space. 2. You are entitled to a completely filled in copy of this contract when you sign it. 3. Under the law, you have the following rights, among others: (a) To pay off in advance the full amount due and to obtain a partial refund of the credit service charge; (b) To redeem the property if repossessed for a default; (c) To require, under certain conditions, a resale of the property if repossessed. 4. According to law you have the privilege of purchasing the insurance on the motor vehicle provided for in this contract from an agent or broker of your own selection," or "NOTICE TO THE BUYER: 1. Do not sign this agreement before you read it or if it contains any blank space. 2. You are entitled to a completely filled in copy of this agreement.

3. Under the law, you have the right to pay off in advance the full amount due and under certain conditions to obtain a partial refund of the credit service charge. 4. According to law you have the privilege of purchasing the insurance on the motor vehicle provided for in this contract from an agent or broker of your own selection".

3. The seller shall deliver to the buyer, or mail to him at his address shown on the contract, a copy of the contract signed by the seller. Until the seller does so, a buyer who has not received delivery of the motor vehicle shall have an unconditional right to cancel the contract and to receive immediate refund of all payments made and redelivery of all goods traded-in to the seller on account of or in contemplation of the contract. Any acknowledgment by the buyer of delivery of a copy of the contract shall be printed or written in a size equal to at least ten point bold type and, if contained in the contract, shall also appear directly above the legend required above the buyer's signature by sub-division two (a) of this section.

4. The contract shall contain the names of the seller and the buyer, the place of business of the seller, the residence or place of business of the buyer as specified by the buyer and a description of the motor vehicle including its make, year model, model and identification numbers or marks.

5. The contract shall contain:

(1) All items required to be disclosed by the act of congress entitled "Truth in Lending Act" and the regulations thereunder, as such act and regulations may from time to time be amended;

(2) The amount, if any, included for insurance, specifying and describing the coverages and the amount included for each type of coverage; however, if any insurance policy complies with the standard provisions form for automobile physical damage policy or any other automobile physical damage policy form which is equally or more favorable to the insured and which is filed with the superintendent of insurance, the contract need not contain a description of any type of coverage under such standard automobile physical damage policy form or a specification of the amount included in the contract therefor if it contains a specification of the type or types of coverage and the total amount included in the contract therefor.

6. The amount, if any, included for insurance, shall not exceed the premiums chargeable in accordance with rate filings made with the superintendent of insurance for similar insurance. The seller or financing agency, if insurance on the motor vehicle is included in a retail instalment contract, shall within thirty days after execution of the retail instalment contract send or cause to be sent to the buyer a policy or policies or certificate of insurance, written by an insurance company authorized to do business in this state, clearly setting forth the amount of the premium, the kind or kinds of insurance and the scope of the coverage and all the terms, exceptions, limitations, restrictions and conditions of the contract or contracts of insurance. The buyer of a motor vehicle under a retail instalment contract shall have the privilege of purchasing such insurance from an agent or broker of his own selection and of selecting an insurance company acceptable to the seller; provided, however, that the inclusion of the insurance premium in the retail instalment contract when the buyer selects the agent, broker or company, shall be optional with the seller and in such case the seller or financing agency shall have no obligation to send, or cause to be sent, to the buyer the policy or certificate of insurance. Nothing contained in this subdivision however shall be deemed to modify, limit or in any way contravene the provisions of section two thousand five hundred two of the insurance law.

If any such policy or certificate of insurance on the motor vehicle is cancelled, the unearned insurance premium refund received by the holder of the contract, or, if the amount included therefor in the contract exceeds the cost to the holder of the contract for such insurance, the unearned portion of the amount so included, together with the unearned portion of the credit service charge applicable thereto, shall be credited to the final maturing instalments of the retail instalment contract except to the extent applied toward payment for similar insurance protecting the interests of the buyer and the holder of the contract or either of them.

The amount, if any, included for group credit life insurance, credit unemployment insurance, or for insurance other than on the motor vehicle shall not exceed the premiums chargeable in accordance with rate filings made with the superintendent of insurance for such insurance by the insurer. If such group credit life or other insurance is cancelled the refund for unearned insurance premiums received or receivable by the holder of the contract, or the excess of the amount included in the contract for group credit life insurance over the premiums paid or payable by the holder of the contract therefor, together with, in either case, the unearned portion of the credit service charge applicable thereto, shall be credited to the final maturing instalments of the retail instalment contract, provided that no such credit need be made if the amount thereof would be less than one dollar.

6-a. If the buyer is obligated under the terms of a retail instalment contract to maintain insurance on the motor vehicle that is the subject of the contract and if subsequent to the execution of the contract the buyer fails to maintain the insurance, the holder may make advances to procure the equivalent limits of insurance for either the interests of the buyer and the holder or of either of them, and any amount so advanced may be the subject of a credit service charge from the date of such advance as though such amount was part of the amount computed as provided in the closing paragraph of subdivision one of section three hundred three of this article. Each amount so advanced shall be secured by the motor vehicle if so provided in the contract and if the holder notifies the buyer in writing of the advance of such amount and of his or her option to repay such amount in any one of the following ways:

(a) Full payment within ten days from the date of giving or mailing the notice;

(b) Full amortization during the term of the insurance or the remaining term of the contract, at the option of the holder;

(c) If offered by the holder, as a final balloon payment payable one month after the last scheduled payment under the contract;

(d) If offered by the holder, full amortization after the term of the contract, to be payable in instalments which do not exceed the average instalment payable under the contract; or

(e) If offered by the holder, any other amortization plan.

If the buyer neither pays in full the amount so advanced nor notifies the holder in writing of his or her choice regarding amortization options before the expiration of ten days from the date of giving or mailing of the notice by the holder, the holder shall amortize the amount so advanced pursuant to paragraph (b) of this subdivision.

7. The holder of a retail instalment contract may, if the contract so provides, collect a delinquency and collection charge on each instalment in default for a period not less than ten days in an amount not in excess of the rate or rates agreed to in the contract. In addition to such delinquency and collection charge, the retail instalment contract may provide for the payment of attorneys' fees not exceeding fifteen percent of the amount due and payable under such contract where such contract is referred to an attorney not a salaried employee of the holder of the contract for collection, plus the court costs.

8. No retail instalment contract shall be signed by any party thereto when it contains blank spaces to be filled in after it has been signed except that, if delivery of the motor vehicle is not made at the time of the execution of the contract, the identifying numbers or marks of the motor vehicle or similar information and the due date of the first instalment may be inserted in the contract after its execution. The buyer's written acknowledgment, conforming to the requirements of subdivision three of this section, of delivery of a copy of a contract shall be conclusive proof of such delivery and of compliance with this subdivision in any action or proceeding by or against an assignee of the contract without knowledge to the contrary when he purchases the contract.

9. No retail instalment contract shall contain any provision by which the buyer agrees not to assert against an assignee a claim or defense arising out of the sale or require or entail the execution of any note or series of notes, which when separately negotiated will cut off as to third parties any right of action or defense which the buyer may have against the seller. The assignee of a retail installment contract or obligation shall be subject to all claims and defenses of the buyer against the seller arising from the sale notwithstanding any agreement to the contrary, but the assignee's liability under this subdivision shall not exceed the amount owing to the assignee at the time the claim or defense is asserted against the assignee.

10. Notwithstanding any contrary provision of the personal property law, lien law, banking law or other law: (a) a financing agency may purchase a retail instalment contract from a seller on such terms and conditions and for such price as may be mutually agreed upon; and (b) no filing of the assignment, no notice to the buyer of the assignment, and no requirement that the seller be deprived of dominion over payments upon the contract or over the vehicle if repossessed by or returned to the seller, shall be necessary to the validity of a written assignment of a retail instalment contract as against creditors, subsequent purchasers, pledgees, mortgagees or encumbrancers of the seller.

11. Unless the buyer has notice of actual or intended assignment of a retail instalment contract, payment thereunder made by the buyer to the last known holder of such contract shall be binding upon all subsequent holders or assignees.

12. Upon written request from the buyer, the holder of a retail instalment contract shall give or forward to the buyer a written statement of the dates and amounts of payments and the total amount unpaid under such contract. A buyer shall be given a written receipt for any payment when made in cash.

13. No retail instalment contract shall contain any provision by which:

(a) in the absence of the buyer's default, the holder may, arbitrarily and without reasonable cause, accelerate the maturity of any part or all of the amount owing thereon;

(b) a power of attorney is given to confess judgment in this state, or an assignment of wages is given;

(c) the seller or holder of the contract or other person acting on his behalf is given authority to enter upon the buyer's premises unlawfully, or to commit any breach of the peace in the repossession of the motor vehicle;

(d) the buyer waives any right of action against the seller or holder of the contract, or other person acting on his behalf, for any illegal act committed in the collection of payments under the contract or in the repossession of the motor vehicle;

(e) the buyer executes a power of attorney appointing the seller or holder of the contract, or other person acting on his behalf, as the buyer's agent in collection of payments under the contract or in the repossession of the motor vehicle; provided, however, that this paragraph shall not prohibit the inclusion in a retail instalment contract of a limited power of attorney or other provision authorizing the holder to execute in the name of the buyer any proofs of insurance claims or losses or to endorse the name of the buyer on any insurance settlement draft or check;

(f) the seller is relieved from liability for any legal remedy which the buyer may have had against the seller under the contract, or any separate instrument executed in connection therewith;

(g) the maturity of any part or all of the amount owing thereon is accelerated where, following a default consisting solely of the failure to make timely instalment payments and the subsequent repossession of the motor vehicle, the buyer makes timely tender of an amount which would be sufficient to redeem the vehicle in the absence of such provision;

(h) the buyer waives any right to a trial by jury in any action or proceeding arising out of the contract.

14. Any such prohibited provision shall be void but shall not otherwise affect the validity of the contract.

s 302A. Total loss notice and waiver of the gap amount

1. If the retail instalment contract provides that the buyer shall be responsible upon a total loss of the vehicle occasioned by its theft, confiscation or physical damage for the gap amount as defined in paragraph fifty-two of subsection (a) of section one hundred seven of the insurance law, the holder, prior to the execution of the contract, shall by a notice on a separate document conspicuously disclose that fact and the obligations for which the buyer would remain liable in the event of a theft, confiscation or total loss of the vehicle. If the holder is required under subdivision two of this section to offer to waive its contractual right to hold the buyer liable for the gap amount in the event of a total loss of the vehicle occasioned by its theft or physical damage, the notice shall also: (a) state that for a separate charge disclosed in the notice the holder will waive its contractual right to hold the buyer liable for the gap amount in the event of a total loss of the vehicle occasioned by its theft or physical damage; (b) contain a provision informing the buyer that he or she may, as an alternative to purchasing a waiver, be able to purchase insurance covering the gap amount from an insurance company which has been licensed by the superintendent of insurance to write motor vehicle debtor gap insurance in this state; and (c) contain a provision permitting the buyer to indicate whether he or she wants the holder to waive its contractual right to hold the buyer liable for the gap amount in the event of a total loss of the vehicle occasioned by its theft or physical damage. The notice shall be signed by the buyer. The holder shall provide a copy of the signed notice to the buyer and shall maintain a copy in the holder's files for at least the term of the contract. Failure to provide the notice and to obtain the buyer's signature as required by this subdivision shall invalidate any provision of the agreement which otherwise would obligate a buyer to pay to the holder, after a total loss of the motor vehicle occasioned by its theft, confiscation or physical damage, the gap amount. No retail installment contract shall be conditioned upon the buyer's obtaining of motor vehicle debtor gap insurance as set forth in subparagraph (B) of paragraph twenty-six of subsection (a) of section one thousand one hundred thirteen of the insurance law.

2. If the retail instalment contract provides that the buyer shall be responsible upon a total loss of the vehicle occasioned by its theft or physical damage for the gap amount, the holder, prior to the execution of the agreement, shall offer to waive its contractual right to hold the buyer liable for the gap amount in the event of a total loss of the vehicle occasioned by its theft or physical damage, only if motor vehicle creditor gap insurance coverage is available to the holder and such coverage is obtained from a property/casualty insurance company, which has been licensed by the superintendent of insurance of this state to write motor vehicle creditor gap insurance in this state. This offer may be made contingent upon the payment by the buyer of a separate charge that shall

not exceed the cost of motor vehicle creditor gap insurance covering the retail instalment contract. Nothing contained in this section shall be construed to authorize a waiver, in connection with a transaction with respect to which motor vehicle creditor gap insurance has not been obtained, of a contractual right to hold the buyer liable for the gap amount in the event of a total loss of the vehicle occasioned by its theft or physical damage.

3. A holder shall not be obligated under subdivision two of this section to offer to waive its contractual right to hold the buyer liable for the gap amount if, during the current calendar year or during the odd-numbered calendar year immediately preceding the calendar year in which the agreement is entered into, the holder has received motor vehicle creditor gap insurance declination notices or other evidence of unavailability from every insurance company whose name appears on the insurance department compilation of insurance companies which during that calendar year were authorized to write motor vehicle creditor gap insurance in this state. Evidence of these declinations shall be retained by such a holder of such a holder for a period of six years after the expiration of the calendar year in which they were issued.

4. In order to enable holders or their anticipated assignees to comply with the requirements imposed by subdivision two of this section, the superintendent of insurance shall compile and make available a periodically updated list of those insurance companies which are authorized to write motor vehicle creditor gap insurance coverage in this state.

5. Nothing in this section shall be construed to apply to the holder, under a retail instalment contract under which the buyer is not liable upon a total loss of the vehicle occasioned by its theft, confiscation or physical damage for the gap amount.

s 303. Credit service charge limitation

1. A retail seller may contract for in a retail instalment contract and charge, receive and collect the credit service charge authorized by this article at the rate or rates agreed to by the retail seller and the buyer.

The credit service charge authorized by this subdivision shall be computed on an amount equal to the total of the difference between the cash sale price of the motor vehicle and the amount of the buyer's down payment and the amount of official fees, and such charge may be made on the amount included in the contract for insurance as determined under subdivision six of section three hundred two of this chapter.

2. The credit service charge at the rate or rates authorized in subdivision one shall be computed on the amounts on which they are respectively required to be computed as

specified in subdivision one on contracts payable in successive monthly instalments substantially equal in amount extending for a period of one year. On contracts providing for instalments extending for a period less than or greater than one year, the credit service charge shall be computed proportionately.

3. When a retail instalment contract provides for unequal or irregular instalments, the credit service charge shall be at the effective rates provided in subdivision one, having due regard for the schedule of instalments.

4. As an alternative to the credit service charge provided for above, a retail seller may contract for in a retail instalment contract and charge, receive and collect a credit service charge calculated on the unpaid balances of an amount computed as provided in the second paragraph of subdivision one above, for the time outstanding according to a generally accepted actuarial method at rates that may vary from time to time and in accordance with the provisions of the contract. On any contract with a variable rate credit service charge made pursuant to this subdivision the rate shall be determined at regular intervals as set forth in the contract and in accordance with such regulations as the banking board shall prescribe but said rate shall not vary more often than once in any three month period and shall be based on a published index that is (a) readily available, (b) independently verifiable, (c) beyond the control of the retail seller and (d) approved by the superintendent.

The banking board shall adopt regulations with respect to retail installment contracts that provide for a variable rate of credit-service charge, including but not limited to; (a) providing for disclosure to the buyer by the retail seller of the circumstances under which the rate may increase, any limitations on the increase, the effect of an increase and an example of the payment terms that would result from an increase; (b) providing for disclosure to the buyer by the retail seller of a history of the fluctuations of the index over a reasonable period of time; and (c) providing for notice to the buyer by the retail seller prior to any rate increase or change in the terms of payment.

5. The credit service charge shall be inclusive of all charges incident to investigating and making the contract, and for the extension of the credit provided for in the contract and no fee, expense or other charge whatsoever shall be taken, received, reserved or contracted for except as provided in this section, in subdivision seven of section three hundred two and three hundred six and, if expressly provided for in the retail instalment contract the amount of official fees as defined in section three hundred one and the amount, if any, included for insurance pursuant to subdivision five of section three hundred two.

6. Notwithstanding the maximum credit service charge authorized by this

article, such maximum credit service charge shall not apply to any retail installment sale insured or guaranteed in whole or in part by the Federal Housing Administration, the Veterans Administration, or any other department or agency of the United States government.

s 304. Cancellation of contract

After the payment of all sums for which the buyer is obligated under a retail instalment contract, and upon written demand made by the buyer, the holder of such contract shall mail to the buyer at his last known address, good and sufficient instruments to indicate payment in full and to release all security in the motor vehicle.

s 305. Credit upon anticipation of payments

1. Notwithstanding the provisions of any retail installment contract to the contrary, any buyer may pay it in full at any time before the maturity of the final instalment of the time balance thereof and if he does so shall receive and be entitled to receive a refund credit thereon and if the contract included an amount for group credit life insurance, the further refund credit thereon for such anticipation, whether or not the maturity of the time balance of the contract was accelerated by the holder by reason of the buyer's default or otherwise. The amount of any such refund credit shall be the unearned portion of the credit service charge, after first deducting an acquisition cost of fifteen dollars, or, if the contract has been extended, deferred or refinanced, the additional charge therefor, determined according to a generally accepted actuarial method. Where the amount of the credit for anticipation of payment is less than one dollar, no refund need be made.

2. The amount of the further refund credit for group credit life insurance shall be equal to the excess of the amount included in the contract for group credit life insurance over the premiums paid or payable by the holder of the contract for such insurance, if such premiums were paid or payable periodically, or the refund for unearned group credit life insurance premium received or receivable by the holder of the contract, if such premium was paid or payable in a lump sum, provided that no such further refund credit need be made if the amount thereof would be less than one dollar.

3. In the event (i) the maturity of the contract is accelerated due to the default of the buyer or otherwise and judgment is obtained, or (ii) repayment is made pursuant to group credit life insurance, the buyer or his legal representative, as the case may be, shall be entitled to the same refund credit as if the contract had been prepaid in full on the date of acceleration or repayment.

s 306. Refinancing

1. The holder of a retail instalment contract may, upon agreement with the buyer, extend the scheduled due date or defer the scheduled payment of all or any part of any instalment or instalments payable thereunder. The agreement for such extension or deferment must be in writing and signed by the parties thereto. The holder may charge and contract for the payment of an extension or deferred charge by the buyer and collect and receive the same, at the rate or rates agreed to by the holder and the buyer on the amount of the instalment or instalments, or part thereof, extended or deferred for the period of extension or deferral. Such period shall not exceed the period from the date when such extended or deferred instalment or instalments, or part thereof, would have been payable in the absence of such extension or deferral, to the date when such instalment or instalments, or part thereof, are made payable under the agreement of extension or deferment; except that a minimum charge of one dollar for the period of extension or deferral may be made in any case where the extension or deferral charge, when computed at such rate or rates, amounts to less than one dollar. Such agreement may also provide for the payment by the buyer of the additional cost to the holder of the contract of premiums for continuing in force, until the end of such period of extension or deferral, any insurance coverages provided for in the contract, subject to the provisions of subdivision six of section three hundred two.

2. The holder of a retail instalment contract may, upon agreement in writing with the buyer, refinance the payment of the unpaid time balance of the contract by providing for a new schedule of instalment payments. The holder may charge and contract for the payment of a refinance charge by the buyer at the rate or rates agreed to by the holder and the buyer and collect and receive the same, but such refinance charge shall be based upon the amount refinanced, plus any additional cost of insurance and of official fees incident to such refinancing and any accrued collection and delinquency charges, after the deduction of a refund credit in an amount equal to that to which the buyer would have been entitled under section three hundred five of this chapter if he had prepaid in full his obligations under the contract but, in computing such refund credit, there shall not be allowed such an amount as will bring the earned credit service charge up to fifteen dollars. Such agreement for refinancing may also provide for the payment by the buyer of the additional cost to the holder of the contract of premiums for continuing in force, until the maturity of the contract as refinanced, any insurance coverages provided for therein, subject to the provisions of subdivision six of section three hundred two. The refinancing agreement shall set forth all items required to be disclosed by the act of congress entitled "Truth in Lending Act" and the regulations thereunder, as such act and regulations may from time to time be amended.

s 307. Penalties

1. Any person who shall wilfully violate any provision of this article shall be guilty of a misdemeanor and upon conviction shall be punished by a fine not exceeding five hundred dollars.

2. A wilful violation of sections three hundred two or three hundred three by any person shall bar his recovery of any credit service charge, delinquency or collection charge or refinancing charge on the retail instalment contract involved.

3. Notwithstanding the provisions of this section any failure to comply with any provision of this article may be corrected within ten days after the holder is notified thereof in writing by the buyer, or, in the absence of such notice, the seller or holder may voluntarily correct any such failure to comply and, if so corrected, neither the seller nor the holder shall be subject to any penalty under subdivision two of this section.

s 308. Waiver

Any waiver of the provisions of this article by the buyer shall be unenforceable and void.

s 309. Exceptions

The provisions of section three hundred six and of subdivision ten of section three hundred two shall apply to an instalment sale of a motor vehicle for any use.

s 310. Severability

If any provision of this article or the application thereof to any person or circumstance is held unconstitutional, the remainder of the article and the application of such provision to other persons or circumstances shall not be affected thereby.

s 311. Short title

This article may be cited as "The Motor Vehicle Retail Instalment Sales Act."

s 312. Refund credit on cancellation of credit related insurance or prepayment of contract

The provisions of this article requiring refunds and refund credits with respect to group credit life insurance, in cases of cancellation of group credit life insurance or of prepayment of a retail instalment contract shall also require refunds and refund credits with respect to credit unemployment insurance, group credit accident, group credit health or group credit accident and health insurance in cases of cancellation of such insurance or prepayment of a retail instalment contract which included such insurance.

s 313. Guaranties to sellers of liabilities of buyers under retail instalment contracts

No guaranty given to the seller or to the seller and the seller's assignee of the liabilities of a buyer under a retail instalment contract shall be valid unless the guaranty is incorporated in or endorsed on the contract or identifies the contract and specifies the time balance thereof or, if the guaranty relates to one or more future retail instalment contracts, it limits the liability of the guarantor to contracts dated within a period of two years from the date of the guaranty and sets forth the maximum amount for which the guarantor shall be liable. A copy of the guaranty shall be given or mailed to the guarantor upon or immediately after the execution and delivery of the original guaranty by the guarantor.

As used in this section, "retail instalment contract" and "contract" include a retail instalment contract as defined in the retail instalment sales act, constituting article ten of this chapter. This section does not apply to a guaranty made by a seller or a holder of a retail instalment contract.

s 314. Security interest in other property

No retail instalment contract, or any other agreement executed in connection therewith, shall provide for the creation of a security interest in any personal or real property, other than the motor vehicle which is the subject matter of the retail instalment sale (or accessories therefor or special or auxiliary equipment used in connection therewith), to secure the payment of the time sale price under such contract or any part thereof, provided, however, that the prohibition of this section shall not be applicable to the taking of a mortgage or other security interest upon or in connection with real property to secure the payment of the time sale price of a retail installment sale, if the subject matter of the retail installment sale is a mobile home or trailer which is to be annexed to or situated on such real property. Any such prohibited provision shall be void but shall not otherwise affect the validity of such contract.

s 315. Claim for deficiency after default and repossession

If a buyer defaults on any instalment of the time sale price and the holder obtains possession of the motor vehicle and disposes of it as provided by section 9-504 of the uniform commercial code, the buyer shall be liable to the holder for any deficiency to the extent provided in that section; provided, however, that in calculating such deficiency there shall be deducted from the amount thereof as prescribed by such section 9-504, an amount equal to that portion of the refund credit to which the buyer would have been entitled under section three hundred five of this chapter if, at the time the holder disposed of the motor

vehicle, the buyer had not been in default and had prepaid in full the balance of the time sale price as the amount realized upon the disposition of the motor vehicle bears to the balance of the time sale price.

s 316. Notice of buyer's redemption rights

The holder of any motor vehicle installment contract who repossesses or accepts a voluntary surrender of a motor vehicle pursuant to the provisions of article nine of the uniform commercial code, or any contract, shall within seventy-two hours of such repossession or surrender, personally deliver or mail to the buyer at his last known address a written notice setting forth the right of such buyer to redeem such motor vehicle, the dollar amount necessary to redeem, and the name, address and telephone number of the holder from which information may be obtained regarding such redemption.