THE RETAIL INSTALLMENT FINANCING OF MOTOR VEHICLES — A SURVEY OF RECENT IOWA LEGISLATION[1]

The enactment of Chapter 163 of the Acts of the 57th General Assembly[2] gave Iowa a comprehensive statute relating to the retail installment financing of motor vehicles.[3] This was accomplished by amendments, or more properly, supplements to Iowa Code chapter 322 (1954), which deals primarily with licensing retail motor vehicle dealers and regulating certain of their business practices.[4] In taking this legislative action Iowa joins at least 24 other states in providing statutory regulation on the subject of retail installment financing of motor vehicles.[5]

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[1] Citations to Acts, 57th G.A. c. 163 (Iowa 1957) will be followed by parallel citations to IOWA CODE c. 322 (1958). The latter citations have been made available in advance of publication through the courtesy and co-operation of Wayne A. Faupel, Deputy Code Editor, State of Iowa.

[2] When subsequent reference is made in the text to Acts, 57th G.A. c. 163 (Iowa 1957), the term "Act" will be used.

[3] Motor vehicle is defined as, "any vehicle subject to the registration laws of this state", Acts, 57th G.A. c. 163 § 1(7) (Iowa 1957), IOWA CODE § 322.2(7) (1958), IOWA CODE § 321.18(19) (1954).

[4] Chapter 322 of the IOWA CODE (1954) is titled, "Motor Vehicles—Dealers". In as much as the Act relates primarily to retail installment financing of motor vehicles a question is raised as to whether the Act was properly included in Chapter 322, particularly in view of the following provision in the Iowa Constitution: "Every act shall embrace but one subject, and matter properly connected therewith; which subject shall be expressed in the title. But if any subject shall be embraced in an act which shall not be expressed in the title, such act shall be void as to so much thereof as shall not be expressed in the title." Iowa Constitution Art. III § 29. Chapter 322, prior to amendment by the Act, dealt mainly with licensing of dealers and protecting dealers from coercive practices of manufacturers. The chapter has remained substantially unchanged until the amendment under discussion, except for changes due to Iowa's adoption of the Certificate of Title system.

[5] In 1935 Indiana and Wisconsin passed the first comprehensive statutes regarding motor vehicle retail installment financing. The following are the states which now have such statutes, with an asterisk after those states in which the statute relates only to the retail installment financing of motor vehicles, instead of retail installment financing of other personal property: *California,** CIVIL CODE OF CAL. §§ 2981-2982 (1950); *Colorado,** COLO. REV. STAT. ANN. c. 13, art. 16, §§ 1-10 (1954); *Connecticut,* CONN. GEN. STAT. vol. 2, c. 287, vol. 3, c. 311 (1949); *Florida,** FLA. SESS. LAWS, § 57-799 (1957); *Illinois,* ILL. REV. STAT. § 121½-225 (1957); *Indiana,* IND. STAT. ANN. tit. 58, c. 9 (1951); *Kentucky,** KY. REV. STAT. c. 190 (1956); *Maine,** ME. REV. STAT. c. 60, §§ 305-306 (1954), as amended, H.B. 993, App. May 1957; *Maryland,* MD. CODE ANN. art. 83, §§ 116-152 (1951); *Massachusetts,* MASS. ANN. LAWS c. 255, 11-12A, 13H (1956); *Michigan,** MICH. STAT. ANN. vol. 17, tit. 23, c. 239, § 23.628 (1950); *Minnesota,* MINN. STAT. ANN. §§ 168..166-168.117 (sup. 1957); *Nebraska,** NEB. REV. STAT. 60-617-60.618 (1952); *Nevada,* NEV. REV. STAT. tit. 8, c. 97; *New Jersey,* N. J. REV. STAT. tit. 17, c. 16B (supp. 1950); *New York,** MCKINNEY N. Y. SESS. LAWS c. 595 (1957); Ohio, PAGES OHIO GEN. CODE ANN. §§ 6346.15-6346.27 (supp. 1952); *Oregon,** ORE. COMP. LAWS ANN. tit 42, c. 4, §§ 42.401-42.426 (1940); *Pennsylvania,** PURDENS PA. STAT. ANN. tit. 69, § 601

The provisions of the Act apply only when the seller retains or is given a security interest in the motor vehicle,[6] but in no event does the Act apply to banks, credit unions or trust companies.[7]

This article will be limited to discussing the main provisions of the Act, namely: (1) the form of the retail installment contract;[8] (2) the regulation of insurance practices, finance charges and refund credits; (3) the penalty provisions of the Act and; (4) the possible civil remedies available to the parties for Contracts in violation of the Act.

FORM OF THE CONTRACT — DISCLOSURE AND MECHANICS

Section three of the Act states:

> "No person who is engaged in the business of selling at retail motor vehicles *shall* make and enter into a retail installment contract unless it meets the following terms . . ."[9] (Emphasis added.)

The Act then lists the following items that are required to be included in the Contract; the cash sale price, down payment, difference, insurance costs, official fees, principal balance, finance charge, time balance and the terms of payment.[10] It should be noted that the term "shall" is used in the Act to indicate that the above terms are to be included in the Contract. In such a

(supp. 1956); *South Dakota,** S.D. SESS LAWS c. 241 (1957); *Texas,** VERNONS TEX. LAWS c. 467 (1951); Utah, UTAH CODE ANN. §§ 15-1-12a, 15-1-12b (1953); *Virginia,** VA. CODE tit. 46, § 532 (1956); Wisconsin, WIS. STAT. c. 76, 122, 218 (1955).

Comparison of the Iowa Act with the above statutes will be conducted through footnotes. This comparison will be based in part on information taken from an article by Thomas J. Rogers, Exec. V. Pres., American Finance Conference, in *Time Sales Financing*, Jan.-Feb. 1957, pp. 3-29, and information furnished by Linn K. Twinem, Exec. Sec., Conference on Personal Finance Law.

[6] Acts, 57th G.A. c. 163, § 1(9) (Iowa 1957), IOWA CODE § 322.2(8) (1958).

[7] Acts, 57th G.A. c. 163, § 1(18) (Iowa 1957), IOWA CODE § 322.2(18) (1958).

[8] When subsequent reference is made to a retail installment contract as contemplated by the Act, the term "Contract" will be used.

[9] Acts, 57th G.A. c. 163, § 3(6) (Iowa 1957), IOWA CODE § 322.3(6) (1958).

[10] To serve as a point of reference for subsequent discussion of computations involved in the execution of a Contract and as an illustration of the basic form for including the sale terms in the Contract, the following hypothetical transaction is offered. Assume the sale price of the

context, "shall" would undoubtedly be considered synonomous with "must".[11]

The *cash sale price*,[12] which is one of the items to be disclosed in the Contract, represents the amount the buyer would have paid the seller had the transaction been for cash rather than an installment transaction.[13] This amount is the basis for all subsequent computations and may include all costs incidental to putting the motor vehicle on the street.[14] The *down payment*[15] refers to any initial payment made by the buyer, whether in cash or an amount allowed on another vehicle or other personal property.

The next item mentioned in the Act is the *difference*,[16] which is the balance of the cash sale price remaining after the down pay-

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motor vehicle to be $2,475.00, a down payment of $400.00 cash and $950 trade-in allowance. The terms of sale would appear as follows:

(1)	Cash Sale Price		$2,475.00
(2)	Down Payment		
	Cash	$400.00	
	Trade-in	950.00	−1,350.00
(3)	Difference		1,125.00
(4)	Insurance		
	Health & Accident	$ 29.25	
	Collision	25.00	
	Comprehensive	19.00	73.25
(5)	Official Fees		1.75
(6)	Principal Balance		1,200.00
(7)	Finance Charge		97.50
(8)	Time Balance		$1,297.50

(9) The time balance to be paid in twelve equal installments of $108.13 each, commencing one month from Contract date, the final installment equalling the remaining time balance.

[11] Carter v. Seaboard Finance Co., 33 Cal.2d 546, 203 P.2d 758 (1954). In this case the Court held that the same phraseology in the California statute meant "must".

While the sale terms are required to be disclosed in the Contract, the Iowa Act expressly provides that they need not be in any particular form and additional items may be included to explain the computations involved in stating the time balance. Acts, 57th G.A. c. 163, § 1(12) (Iowa 1957), IOWA CODE § 322.2(12) (1958).

[12] Acts, 57th G.A. c. 163 § 1(12) (Iowa 1957), IOWA CODE § 322.2(12) (1958).

[13] Practically speaking the cash sale price would seem to be what ever the seller wished to charge the buyer involved in the transaction. Any attempt to prove what the cash sale price actually was would hardly seem feasible.

[14] The Act permits the following costs to be included in the cash sale price: taxes, registration, certificate of title, licenses and other such fees; charges for accessories and their installation; charges for delivery, servicing, repairing or otherwise improving the motor vehicle. See note 12, *supra*. Such costs would ordinarily be itemized on a separate instrument, such as a "car order".

[15] Acts, 57th G.A. c. 163, § 1(15) (Iowa 1957), IOWA CODE § 322.2(15) (1958). The Act does not require specifically that the form in which the down payment was received be disclosed. It would be consistent, however, with revealing all relevant terms to expect the down payment to be itemized in full.

[16] Acts, 57th G.A. c. 163, § 3(6)(c)(3) (Iowa 1957), IOWA CODE § 322.3(6)(c)(2) (1958).

ment has been received and thus represents the net obligation of the buyer to the seller. The difference must also be separately disclosed in the Contract.

If it is agreeable to the buyer, the seller may purchase insurance on the motor vehicle, and if this is done the Act requires that the cost of such *insurance* be included in the Contract.[17] When such inclusion is made, the amount of the premiums, the types of coverage, as well as any other benefits acquired, must be fully set out.[18] It is interesting to note that when insurance premiums are included on the Contract, they are added to the amount upon which the finance charge is computed.

In line with the customary practice, *official fees*, incurred by the seller in recording matters relating to his security interest in the vehicle, are not prohibited from being passed on to the buyer and if this is done the Act requires that the fees be disclosed in the Contract.[19] The *principal balance*, which also must be disclosed, is the term given to the amount obtained by adding the insurance costs and official fees to the difference between the cash sale price and the down payment.[20] The principal balance represents the obligation owed by the buyer, prior to adding the finance charge, and is the amount upon which such charge is computed. The *finance charge*,[21] of course, indicates the cost to the buyer for the privilege of discharging his obligation in two or more deferred payments, and such cost must be separately disclosed in the Contract.[22] The required disclosure of the finance charge is particu-

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[17] Acts, 57th G.A. c. 163, § 3(6)(c)(4) (Iowa 1957), IOWA CODE § 322.3 (6)(c)(4) (1958).

[18] The types of insurance most frequently required by the seller are collision, comprehensive, fire-theft and extended coverage and sometimes health and accident. A retail installment contract under the Pennsylvania statute was declared void for failing to disclose the insurance charges. Roxy Auto Co. v. Moore, 118 Pa. Super. 45, 122 A.2d 87 (1956). The statutes of other states vary as to the disclosure of insurance charges in the Contract. Some require, as does Iowa, that the terms be disclosed on the face of the Contract. Others allow the insurance and finance charges to be combined on the face of the Contract. Still others allow a combination of these two charges to be shown on the Contract but require a later cost breakdown on delivery of the policies to the buyer, if such insurance is in force. Another Iowa statute indirectly affecting disclosure of insurance terms in the Contract is the *Motor Vehicle Financial and Safety Responsibility Act*, IOWA CODE 321A.39 (1954). This section provides that when liability insurance is not procured by the seller for the buyer the following notice must be printed in large letters above the buyer's signature: "Insurance against liability for bodily injury or property damage is not included in this transaction".

[19] Acts, 57th G.A. c. 163, § 1(13) (Iowa 1957), IOWA CODE § 322.2 (13) (1958).

[20] Acts, 57th G.A. c. 163, § 3(6)(c)(6) (Iowa 1957), IOWA CODE § 322.3(6)(c)(6) (1958).

[21] Acts, 57th G.A. c. 163, § 1(14) (Iowa 1957), IOWA CODE § 322.2 (14) (1958).

[22] Acts, 57th G.A. c. 163, § 3(6)(c)(7) (Iowa 1957), IOWA CODE § 322.3(6)(c)(7) (1958). Another term descriptive of the finance charge is the time price differential. See also note 18, *supra*, regarding

larly advantageous to the buyer, in that it enables him to ascertain the cost of receiving credit, as well as being able to determine the correctness of the charge.

The end result of the computations necessary to properly execute a Contract is called the *time balance.*[23] This amount, which must be disclosed in the Contract, is the sum of the principal balance and the finance charge. The final item which must be disclosed in the Contract is the *terms of payment.*[24] This item contains the agreement of the buyer and seller as to the equal or unequal allocation of the time balance to periodic installment payments, as well as the number and dates of such payments.[25] However, if the time balance is divided into equal amounts, payable at specified intervals from a named date, then each payment is not required to be listed separately in the Contract.

The Act further states that the Contract shall be in writing and complete as to all essential provisions before being signed by either the buyer or the seller.[26] Certain portions of the Contract referred to in the Act must be printed in eight point type, with the required notice to the buyer, regarding his rights before signing, in ten point type.[27] Upon its execution, the seller must deliver to the buyer an exact copy of the Contract, and the buyer's acknowledgement of such delivery must be contained in the body of the Contract.[28]

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combined disclosure of insurance charges and finance charges as permitted under some statutes.

[23] Acts, 47th G.A. c. 163, § 3(6)(c)(8) (Iowa 1957), IOWA CODE § 322.3(6)(c)(8) (1958).

[24] See note 23, *supra.*

[25] See note 10, *supra.*

[26] Acts, 57th G.A. c. 163, § 6(a) (Iowa 1957), IOWA CODE § 322.3(6)(a) (1958). It is permissible after the Contract is signed to add such items as identifying numbers and description of a motor vehicle yet to be delivered or the due date of the first periodic installment. All regulating states require that the Contract be in writing and the majority require that both parties sign the Contract. However, 6 states require only the signature of the buyer.

The Act makes use of the term "holder" as one who is the seller on a Contract or an assignee thereunder. For purposes of this article the term "seller" will include a holder. See Acts, 57th G.A. c. 163, §§ 1(10), (11), (12) (Iowa 1957), IOWA CODE §§ 322.2(10), (11), (12) (1958).

[27] Acts, 57th G.A. c. 163, § 3(6)(b)(1) (Iowa 1957), IOWA CODE § 322.3(6)(b) (1958). The Act provides that notice to the buyer shall take the following form: "Notice to Buyer: Do not sign contract before you read it or if it contains any blank spaces. You are entitled to an exact copy of the contract you sign". Kentucky and New York require 8 point type throughout the Contract and Massachusetts, Michigan and New York statutes provide for similar notices to the buyer.

[28] Acts, 57th G.A. c. 163, § 9(1) (Iowa 1957), IOWA CODE § 322.17 (1958). The acknowledgement by the buyer will operate as conclusive proof of delivery of the Contract in an action between the parties thereto. A case under the Maryland statute considered the legal effect of non-delivery and stated that such an omission could be grounds for avoiding the Contract. However, the decision did not specifically turn on this point. Stride v. Martin, 184 Md. 446, 41 A.2d 489 (1945). See also Williams v. Caruso Enterprises Inc., 140 Cal. App. 2d. 738, 295 P.2d 592 (1956).

It also provides in the Act that any waiver of the provisions therein, relating to matters of form and disclosure of the sale terms, shall be void and unenforceable.[29] Another provision in the Act, relating to matters of disclosure as well as regulation, is the section permitting the assignment or transfer of Contracts executed in compliance with the Act, to sales finance companies on such terms and conditions as the parties might agree.[30]

REGULATION

In addition to requiring disclosure of the terms of sale in the Contract, the Act also provides regulation of certain of these terms. Regulation has been directed mainly to such items as insurance practices, finance charges and the refund credit that arises when there is a prepayment of the Contract.

Certain restrictions have been imposed in regard to the seller's acquiring insurance on the motor vehicle. It is expressly provided that the seller may not include in a Contract an insurance charge in excess of the applicable premium rates which are filed with the Commissioner of Insurance.[31] The Act does permit dual interest insurance to be purchased by the seller, and also by the buyer, from an agent or broker of the buyer's choice.[32] However, such agent or broker must be acceptable to the seller and only at the seller's option may such insurance charges be included in the Contract. It is possible that the use of the word "acceptable" in this provision of the Act might prove unsatisfactory, due to the difficulty of ascertaining who would be acceptable to the seller.

Although "dual interest insurance" is not defined by the Act, it may reasonably be taken to mean that both the property interest of the buyer, and of the seller, in the motor vehicle, are insured to the extent of such interest at the time of loss. When dual interest insurance is procured by the seller and included in the Contract, the seller is required to send to the buyer, within 30 days of the

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[29] Acts, 57th G.A. c. 163, § 9(6) (Iowa 1957), IOWA CODE § 322.22 (1958).

[30] Acts, 57th G.A. c. 163, § 9(5) (Iowa 1957), IOWA CODE § 322.21 (1958). A sales finance company is identified by the Act to be a person (including the seller) engaging in whole or in part in the business of purchasing Contracts from retail sellers. This is not to be taken to relate to situations in which an aggregate of Contracts are pledged for security purposes. An Indiana statute sought to limit the price at which a Contract could be sold to a finance company. In the case of *Dep't of Financial Institutions v. Holt*, 231 Ind. 293, 108 N.E.2d 629 (1952), such regulation was held invalid. Iowa has apparently avoided this problem by specifically recognizing a right to make such a transfer at any price agreed upon.

[31] Acts, 57th G.A. c. 163, § 3(6)(d) (Iowa 1957), IOWA CODE § 322.3 (6)(d) (1958). It is open to speculation that such regulation was enacted to prevent the channelling of insurance business through the seller's wholly owned agencies or through agencies that give a rebate to the seller. Colorado provides that insurance must be procured from insurers licensed to do business in that state.

[32] Acts, 57th G.A. c. 163, § 9(2) (Iowa 1957), IOWA CODE § 322.18 (1958).

execution of the Contract, the policies or certificates of insurance.[33] If any of this insurance is cancelled during the term of the Contract, unearned premiums, refunded to the seller, are to be credited to maturing periodic installments or applied on payments for other insurance.[34]

The Act also regulates the maximum permissible finance charge that may be included in a Contract. The section providing such regulation is prefaced by the following statement:

> "Notwithstanding the provision of any other existing law, a retail installment transaction may include a finance charge not in excess of the following rates . . ."[35]

This unusual phraseology suggests that the Iowa legislature considers credit sales (except those subject to the Act now under consideration) to be within the purview of the usury statute.[36] This is a question that had not previously been settled in the Iowa law.[37] If this is a proper inference to draw from the language in the Act it would become very significant in credit sales of personal property other than motor vehicles.

The Act sets out as the maximum finance charge that may be added in, depending on the age of the vehicle, a rate equivalent to 1¼%, 1¾%, 2¼%, or, on the oldest vehicle, 2¼% plus $1.00 per month, not to exceed $12.00, per month, simple interest on the declining balance.[38] The finance charge is computed in advance by applying the applicable rate to the principal balance, as reduced

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[33] See note 32, *supra*. In those states recognizing dual interest insurance, various periods of time are allowed for delivering the policies to the buyer. These periods run from 5, 15, 25 to 30 days. Ohio provides that no periodic installment is due until such delivery is made.

[34] See note 32, *supra*. Although the provision relating to refunds of insurance premiums is included under the section entitled "dual interest insurance", the wording of the section indicates that it would apply to all insurance.

[35] Acts, 57th G.A. c. 163, § 9(3)(a) (Iowa 1957), IOWA CODE § 322.19(1) (1958).

[36] See IOWA CODE § 635.4 (1954).

[37] The Iowa usury statute specifically refers to "contracts for the sale of personal property". Cases decided under this statute have not necessarily supported a statutory interpretation that the usury statute applies to credit sales. See 1 DRAKE L. REV. 63 (1952) and 43 IOWA L. REV. 87 (1957), which consider this question.

[38] Acts, 57th G.A. c. 163, § 3 (Iowa 1957), IOWA CODE § 322.19(1) (1958). The Act sets up different classes according to the year of the vehicle with a lower rate provided for the newer model cars. Under *Class 1*, a 1¼% rate is applicable to motor vehicles of the current year's model, or the coming year's model if such model is released in the curernt year. For example, this rate would apply to 1958 and 1959 models if the Contract is executed in 1958. *Class 2* applies a 1¾% rate to used motor vehicles of the current year's model and those models of the two prior years. For example, this rate is applicable to the sale of a used 1958, 1957 or 1956 model if the Contract is executed in 1958. *Class 3* allows a 2¼% rate on the sale of those models three and four years prior to the current model. For example, this rate is applicable to the sale of 1955 and 1954 model vehicles if the Contract is executed in 1958. Under *Class 4*, 2¼% plus $1.00 per month not to exceed $12.00 is permitted on the sale of all models more than 4 years prior to the

by each periodic installment payment.[39] The sum of all periodic finance charges, as determined by the advanced computations,

current year's model. For example, this rate is applicable to the sale of 1953 and older models if the Contract is executed in 1958.

The fact that the Act makes the maximum permissible rates dependent on the model of the motor vehicle, indicates the legislature has recognized the varying degrees of risk sustained by the seller in extending credit on the sale of various models of vehicles. The reason for this is that in case of default by the buyer, the seller stands a greater chance of loss trying to resell an older model vehicle than he would on a newer model.

The following is representative of the permissible finance charges allowed by other state statutes. (An asterisk will indicate that the charge may vary according to the age of the vehicle.): *California*, 1% on the unpaid balance multiplied by the months the Contract is to run; *Colorado*, the rates established by the usury statute are used; *Connecticut**, $7.00, $9.00, $12.00, $14.00 and $15.00 per $100.00 principal balance, per year; *Florida**, $8.00 and $17.00 per $100.00 principal balance, per year; *Indiana**, 2%, 3% and 5% per $100.00 principal balance, per year, plus 1.25%, 1.875% and 2.30% per month on the respective declining balances; *Kentucky**, $9.00, $13.00 and $15.00 per $100.00 principal balance per year; *Maine**, $7.00, $11.00 and $15.00 per $100.00 principal balance per year; *Michigan**, $6.00, $7.00, $9.00 and $12.00 per $100.00 principal balance per year; *Nevada*, 1% of the unpaid balance multiplied by the number of months the Contract is to run; *New Jersey*, no rates specified, however, the rates used must be filed with the state; *New York**, $7.00, $10.00 and $13.00 per $100.00 principal balance per year; *Ohio*, $8.00 per $100.00 principal balance plus $.50 for the first $50.00 for each month of the Contract, plus $.25 for the next $50.00 units each month of the Contract; *Pennsylvania**, 6%, 9% and 12% per year on the principal balance; *South Dakota**, 1¼%, 1½% and 2¼% per month on the declining balance; *Utah*, 1% on the unpaid balance, multiplied by the number of months the Contract is to run; *Wisconsin**, $7.00, $9.00, $12.00 and $15.00 per $100.00 principal balance per year.

[39] Referring to the hypothetical Contract, note 10, *supra*, the finance charge would be computed in advance in the following manner, on the declining balance of the $1,200.00 principal balance at the 1¼% rate. In actual practice the finance charge will be determined through the use of pre-figured tables. However, since tables that compute interest in the manner prescribed by the Act are not now readily available, a

is the total finance charge included on the face of the Contract. If the advanced computations result in a total finance charge of

basic understanding of the method involved will be necessary to determine if the charges have been properly made.

Installment Number	Principal Balance As Reduced By Periodic Installment	Rate	Periodic Finance Charge
	$1,200.00	1¼%	$15.00
1	-100.00		
	1,100.00	1¼%	13.75
2	-100.00		
	1,000.00	1¼%	12.50
3	-100.00		
	900.00	1¼%	11.25
4	-100.00		
	800.00	1¼%	10.00
5	-100.00		
	700.00	1¼%	8.75
6	-100.00		
	600.00	1¼%	7.50
7	-100.00		
	500.00	1¼%	6.25
8	-100.00		
	400.00	1¼%	5.00
9	-100.00		
	300.00	1¼%	3.75
10	-100.00		
	200.00	1¼%	2.50
11	-100.00		
	100.00	1¼%	1.25
12	-100.00		
			$97.50

As a result of this lengthy computation it is determined that the finance charge on a principal balance of $1,200.00, is $97.50 and results in a time balance of $1,297.50, or twelve equal installments of $108.13 each. An alternative method for computing the finance charge is available when the amount of each periodic installment is equal. This is done by changing the rate per month on the declining balance to an annual rate. Such a computation for the *Class 1* rate (1¼%) would be as follows:

$$\frac{\$97.50 \text{ annual finance charge}}{\$1,200.00 \text{ principal balance}} = 8.125\% \text{ (rate per year)}$$

When all installments are equal the applicable annual rates for each class would be: *Class 1*, 8.125%; *Class 2*, 11.375%; *Class 3*, 14.625%; *Class 4*, 14.625% per year plus $12.00. If the Contract is to run for more or less than a year the annual finance charge is merely increased or decreased proportionately. For example, assume the hypothetical

less than $25.00, it is permissible to include a minimum charge of $25.00.[40]

The Act also contains regulatory provisions permitting the seller to collect a finance charge of 1% per month on the declining balance, for extending and restating the scheduled due date of any or all installment payments.[41] This provision seems to strike directly at the excessive finance charges sometimes collected by sellers on re-financing agreements and "balloon" contracts.[42] Substantial advantage will be realized by the buyer since this section requires that upon re-financing only 1% per month on the declining balance may be collected, rather than 1% plus the original applicable rate.[43]

The Act specifically reserves to the buyer the privilege of paying the Contract in full at any time before maturity and receiving a refund credit.[44] The method provided by the Act for computing such refund credit is rather complicated due to the fact that the original finance charge is computed and disclosed in the Contract as a single amount. The formula set out provides that after deducting from the total finance charge $25.00 as an acquisi-

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Contract, note 10, *supra*, was for 15 months rather than 12 months. Using the *Class 1* annual rate of 8.125%, the computation would be as follows:

$1,200.00	principal balance
x.08125	annual rate
$ 97.50	annual finance charge
x 1.25	15 month factor (1¼ years)
$ 121.88	15 month finance charge

The Act provides in the case of fractional months that all over 10 days will be considered an additional month in computing the finance charge. Acts, 57th G.A. c. 163, § 9(3)(b) (Iowa 1957), IOWA CODE § 322.19(2) (1958).

[40] Acts, 57th G.A. c. 163, § 9(3)(b) (Iowa 1957), IOWA CODE § 322.19(2) (1958).

[41] Acts, 57th G.A. c. 163, § 9(4) (Iowa 1957), IOWA CODE § 322.19 (1958).

[42] A "balloon contract" is one in which all installments, except the last, represent only a small portion of the total obligation. Upon maturity of the final large installment, the buyer will have the option of transferring his equity in the present motor vehicle to a new one or refinancing this last installment.

[43] At least eight other states provide for extensions and regulate the additional finance charge that may be collected for such extensions. These states are: *Connecticut*, 12% per year true interest; *Kentucky*, $5.00 uniform charge plus 1% per month on the declining balance; *Maryland*, 15% simple interest; *Michigan*, same rate as is provided in original contract; *New Jersey*, $5.00 uniform charge plus 10% simple interest; *New York*, $5.00 uniform charge plus 1% per month on the declining balance; *Pennsylvania*, payments may be extended at 1%, 1½% or 2 % per month or the entire contract may be rescheduled at the original rates; *Wisconsin*, 10% simple interest.

[44] Acts, 57th G.A. c. 163, § 3(6)(c) (Iowa 1957), IOWA CODE § 322.3(6) (1958). All of the states listed in note 5, *supra*, except Massachusetts, provide for a refund credit of the finance charge attributable to a portion of the principle balance paid before maturity. Such a provision, however, would seem to be contrary to the general rule on this matter. See WILLISTON ON CONTRACTS § 1695.

tion cost, the buyer will receive from the remaining finance charge a refund credit approximating the finance charge originally applicable to the now prepaid installments.[45] A trade term frequently used in describing this method of computing the refund credit is the "rule of 78" or the "sum of the digits method".[46] The amount of the refund credit allowed may tend to disappoint the buyer. For example, if a buyer should pay up a twelve month Contract after six months, he might expect to receive one-half of the finance charge as a refund; when in fact, due to the $25.00 acquisition cost and the prescribed method of computation, the buyer would realize only approximately one-fifth of the original finance charge as a refund credit.

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[45] To illustrate how the refund credit is to be computed under the Act, reference is again made to the hypothetical transaction, note 10, *supra*. Assume the buyer has prepaid the last 6 installments of the Contract. The equation to be used for determining the refund credit would be as follows:

$$\text{(1) refund credit} = \frac{\text{(2) sum of prepaid periodic time balances}}{\text{(3) sum of all periodic time balances}} \times \text{(4) finance charge less \$25.00 acquisition cost}$$

Item 3 of the equation is found by adding the first periodic time balance of $1,297.50, the second periodic time balance of $1,187.73, the third periodic time balance of $1,081.24 and so forth, until the sum of all twelve periodic time balances is determined and which in this case is $8,365.62. The same procedure is followed in arriving at the amount of item 2, which in this example happens to be $2,250.37. Working through the equation the following result is obtained:

$$\text{refund credit} = \frac{\$2,250.37}{\$8,365.62} \times \$97.50 - \$25 = \$19.50$$

Subtracting the refund credit of $19.50 from $648.78, the amount of the 6 prepaid installments, leaves the net amount to be paid $629.28.

A shorter method of determining the refund credit is provided by the use of the following formula taken from P-H INSTALLMENT & CONDITIONAL SALES BULL. ¶ 3.7 (Sept. 17, 1957):

$$R = \frac{F \times P(P+1)}{N(N+1)}$$

R = refund credit; F = finance charge less acquisition cost ($97.50 - $25.00 = $72.50); P = number of installments prepaid (6); N = number of installments under the original Contract schedule (12).

$$R = \frac{\$72.50 \times 6(7)}{12(13)} = \frac{\$72.50 \times 42}{156} = \$19.50$$

If the refund credit is determined to be $1.00 or less, no refund need be made by the seller.

[46] The "78" in the "Rule of 78" is obtained by adding the numbers 1 through 12 in the case of a 12 installment Contract. This figure is the denominator of the fraction used to determine the amount of the refunded finance charge. It appears that the "12 installment Contract" gave the rule its name and in a 15 or 21 month Contract the "Rule of 78" would be a misnomer. The "Sum of the Digits Method" seems to be the more descriptive term.

PENALTIES AND SANCTIONS

Certain penalties and sanctions are provided for violations of the Act.[47] These include: (1) conviction for a misdemeanor; (2) revocation of a retail seller's license; and (3) an injuction against the prohibited practices indulged in by the seller. The administration of this Chapter is vested in the Commissioner of Public Safety.[48] The Commissioner has the authority to receive written complaints from buyers regarding alleged violations of this Chapter,[49] inspect pertinent records of the seller relating to the alleged violations,[50] and issue or request the issuance of subpoenas for the purpose of gathering evidence.[51]

Upon conviction for a misdemeanor under the Act, a $500.00 fine may be imposed if the violation was intentional and willful and concerned one of the regulatory or disclosure provisions of the Act.[52] As a "catch all" provision, the Act provides that in the case of violations for which no other penalty is specifically set out, the violating party may be deemed guilty of a misdemeanor and, upon conviction, be subjected to a fine of $100.00 or 30 days in jail.[53]

Another sanction available to aid in enforcing the Act is the revocation of the seller's license. The Commissioner of Public Safety is authorized to revoke or suspend any license of a seller, if after proper notice and hearing, it is determined that the seller has acted in a manner which would have served as grounds for the denial of his application for such a license.[54] The section relating to the grounds for denial of an application provides that no license shall be allowed if, upon hearing, it is established that the seller has not complied with provisions of this Chapter.[55] This sanction is rather effective in that the seller must possess such a license to be allowed to sell motor vehicles at retail in this state.[56]

A final sanction, available against the seller, for violations of the Act is the injunctive process. When there is sufficient evidence that the Act has, or is being violated, the Commissioner of Public Safety, in addition to any other penalty imposed, may seek an injuction against the non-complying party.[57] This sanction is of

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[47] The discussion of penalties and sanctions for violations of the Act will include all applicable sections of IOWA CODE c. 322 (1954). When subsequent reference is made to IOWA CODE c. 322 (1954) as amended, the term "Chapter" will be used.

[48] IOWA CODE § 322.1 (1958).

[49] Acts, 57th G.A. c. 163, § 9(8) (Iowa 1957), (IOWA CODE § 322.24 (1958).

[50] See note 49, *supra.*

[51] *Query:* Is it reasonable to expect such complaints to be forthcoming when at the time of executing the Contract the buyer did not know of his rights under this Chapter?

[52] Acts, 57th G.A. c. 163, § 8 (Iowa 1957), IOWA CODE § 322.14 (1958).

[53] IOWA CODE § 322.14 (1958).

[54] IOWA CODE § 322.9 (1958).

[55] IOWA CODE § 322.6(2) (1958).

[56] IOWA CODE § 322.3(1) (1958).

[57] IOWA CODE § 322.11 (1958).

value in curbing the seller who might attempt the calculated risk of realizing a profit over fines paid out as a result of violations of the Act. It would seem, from the terminology of the Chapter, the penalties and sanctions need not be exercised in the alternative.

CIVIL ACTIONS BETWEEN BUYER AND SELLER

The Act contains no specific reference to civil remedies available to the buyer or the seller on a Contract executed in violation of the Act.[58] This fact becomes significant when such a Contract is involved in an action by a seller for the purchase price or return of a motor vehicle, or an action by a buyer for the return of the purchase price.

In the absence of any statement in the Act concerning civil remedies, it becomes necessary to examine some of the general rules of law concerning the validity and enforceability of contracts executed in violation of a statute, and to see if these rules have any application to non-complying Contracts under this Act. There is considerable authority to the effect that contracts are illegal when executed in a manner expressly prohibited by statute, or where there is a penalty for the doing of a prohibited act.[59] If the statutory penalty is directed to both parties to the contract the Iowa Court has held that neither party may enforce it.[60] However, the Iowa Court has also held where the penalty extends to only one of the parties, the contract is considered unenforceable by that party but not void.[61]. In this latter type of situation, the Court has held that the innocent party, who has performed no act prohibited as to him, may enforce the contract.[62]

Viewing the Act in the light of these general rules, the following provision in the section entitled "Prohibited Acts" becomes significant:

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[58] Representative of penalties and sanctions provided by statutes in other states are; barring recovery by the seller of the balance of the obligation as provided in California, Utah and Ohio; forfeiture of the finance charge by the seller is provided in Colorado, Maryland, New Jersey, New York and Wisconsin.

[59] CORBIN ON CONTRACTS c. 79, 80, 90 *et seq.*; WILLISTON ON CONTRACTS § 1763, *et seq.*; RESTATEMENT, CONTRACTS § 580, 598 *et seq.*; SIMPSON ON CONTRACTS § 172. See collection of Iowa cases in IOWA ANNOTATIONS TO THE RESTATEMENT OF THE LAW OF CONTRACTS § 580, 598 *et seq.*

[60] Dillon and Palmer v. Allen, 46 Iowa 299 (1877) (Contract involving work done by threshing machine was not enforced because the machine was not equipped with all of the safety devices required by statute.)

[61] Lynch v. Kathman, 180 Iowa 607, 163 N.W. 408 (1917) (Unlicensed doctor denied recovery of fee.); Rader v. Elliot, 181 Iowa 156, 163 N.W. 406 (1917) (Unlicensed veterinary unable to recover for services rendered.); Lyon v. Elliot, 199 Iowa 1034, 202 N.W. 881 (1925)) (Unlicensed chiropractor was not permitted to collect fee.)

[62] Toovey v. Ayrhart, 136 Iowa 694, 114 N.W. 181 (1907) (Action against bank was successful even though bank was prohibited by statute from accepting deposit that was subject of action.); Graf v. Employers Liability Assurance Corp., 195 Iowa 445, 180 N.W. 297 (1920) (Insured allowed to recover on insurance policy even though the application was not in compliance with the statute.)

> "No person, who is engaged in the business of selling at retail motor vehicles, shall make and enter into a retail installment contract unless such contract meets the following requirements . . ."[63]

It would appear to be a reasonable interpretation of this provision that the execution of a Contract not in compliance with the Act is prohibited; but, the prohibition only extends to the seller. If this is a correct interpretation, then, applying the rules discussed above, a non-complying Contract could be enforced by the buyer or he could use the fact that it violated the Act as a defense to an action by the seller to enforce the Contract. Looking at it from the seller's standpoint, this would mean that he could neither enforce a non-complying Contract nor prevent its enforcement by the buyer.

To further sustain the theory that the buyer may be granted civil remedies which the seller might be denied, is the general rule that a party will not be denied recovery if he is the party for whose protection the statute was enacted.[64] In the instant situation the general tenor of the Act, as it has been previously discussed, would indicate that the legislature passed the Act for the protection of the buyer. Additional support for this conclusion is found in the section of the Act calling for the liberal construction of its provisions, to the end that the commission and practice of fraud in the retail sale of motor vehicles may be prevented.[65]

CONCLUSION

This Act includes comprehensive provisions as to the form of the Contract, disclosure of terms and the mechanics of executing the Contract. Further regulation has been concerned with computing the finance charge, insurance cost and refund credit. To enforce compliance with the provisions of the Act, penalties and sanctions have been made available. Although no express statement is made concerning a non-complying Contract as it affects civil remedies, it is possible that the buyer would be allowed, and the seller disallowed, an appropriate civil remedy.

GEORGE W. SULLIVAN (August 1958)

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[63] Acts, 57th G.A. c. 163, § 3(6) (Iowa 1957), IOWA CODE § 322.3(6) (1958).

[64] CORBIN ON CONTRACTS § 1540; WILLISTON ON CONTRACTS § 1770.

[65] IOWA CODE § 322.15 (1958). In the case of *Roxy Auto Co. v. Moore*, 118 Pa. Super. 45, 122 A.2d 87 (1956), the Court held that the Pennsylvania statute was enacted to protect purchasers from unscrupulous dealers. In *Stride v. Martin*, 184 Md. 446, 41 A.2d 489 (1945), it was held that the Maryland statute was intended not only to prevent frauds but also to close the avenues to frauds.