

**THE PROPOSED PENNSYLVANIA  
CONSUMER CREDIT CODE:  
THE GOODS AND SERVICES  
INSTALLMENT SALES ACT**

**REPORT OF THE ADVISORY COMMITTEE ON THE  
CONSUMER CREDIT CODE**

**NOVEMBER 2006**

The release of this report should not be interpreted as an endorsement by the members of the Executive Committee of the Joint State Government Commission of all the findings, recommendations or conclusions contained in this report.

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November 2006

TO THE MEMBERS OF THE GENERAL ASSEMBLY:

The Joint State Government Commission is pleased to present this report of the Advisory Committee on the Consumer Credit Code. This report contains legislation, in addition to official comments, that codifies the Goods and Services Installment Sales Act within proposed Part IV (Consumer Credit) of Title 12 (Commerce and Trade) of the Pennsylvania Consolidated Statutes. The recommendations contained in this report represent the consensus of the Advisory Committee gained after extensive analysis and deliberation.

On behalf of the General Assembly, I thank the members of the Advisory Committee for contributing their valuable time and expertise in the considerable effort to modernize, improve and develop consumer credit law in Pennsylvania. I commend the Advisory Committee for its commitment to codify the Goods and Services Installment Sales Act and assist in the legislative process.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Roger A. Madigan".

Roger A. Madigan  
Chair

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## **CONTENTS**

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Introduction .....	1
Summary of Recommendations .....	5
Detailed Table of Contents .....	9
General Provisions .....	13
Goods and Services Installment Sales .....	17
Conforming Amendments to Title 42 .....	59
Transitional Language .....	61
Source Tables .....	63
Appendix: Goods and Services Installment Sales Act .....	67



## **INTRODUCTION**

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The act of December 9, 2002 (P.L.1446, No.186) amended the act of July 28, 1947 (P.L.1110, No. 476), known as the Motor Vehicle Sales Finance Act (MVSFA). Section 20 of the legislation provided the following:

Because many of the circumstances and events that led to the initial adoption of the act in 1947 have substantially changed due to substantial improvements in business practices and expanded Federal regulations, a study of proposals to update and modernize the act shall be conducted by the Joint State Government Commission and the recommendations of the commission reported to the General Assembly. In addition to changes to the act, the commission shall also consider the advisability of merging the provisions of the act of October 28, 1966 (1st Sp.Sess., P.L.55, No.7), known as the Goods and Services Installment Sales Act [GSISA], and other consumer finance legislation into a consolidated Consumer Credit Code which avoids duplication of Federal law and regulations and promotes uniformity of law among the states.

Section 20 further provided for the creation of an eight-member legislative task force consisting of four members of the Senate and four members of the House. In order to assist the Task Force, the Joint State Government Commission was empowered to appoint an advisory committee, which was to include a representative of the Department of Banking, the Consumer Protection Division of the Office of Attorney General, the Pennsylvania Automotive Association, the Pennsylvania Retailers' Association and the Pennsylvania Bankers Association, along with other individuals having knowledge and expertise regarding motor vehicle sales finance, installment sales and consumer protection laws and regulations.

Representative Chris Ross was named Chair of the Task Force. On May 10, 2004, the Task Force held its organizational meeting.

Subsequently, an advisory committee was organized, consisting of the Secretary of Banking, the Agent Supervisor of the Consumer Protection Division of the Office of Attorney General, attorneys, a law professor and representatives of financial institutions, business interests and consumer interests. On September 14, 2004, the Advisory Committee held its organizational meeting, and Representative Chris Ross agreed to assume the chairmanship of the Advisory Committee as well. For organizational purposes, the Advisory Committee formed three subcommittees to facilitate the review of consumer finance legislation and discuss the creation of a consolidated Consumer Credit Code in Pennsylvania.

The MVSFA Subcommittee was specifically charged with reviewing the 1947 Act as amended and making legislative recommendations. The members of the MVSFA Subcommittee represented the interests of the Department of Banking, the Consumer Protection Division of the Office of Attorney General, automobile dealers, and sellers of manufactured housing and recreational vehicles. From March 2005 to January 2006, the subcommittee met a total of nine times.

The Subcommittee on Federal Law and New Financial Transactions (FLNFT) was specifically charged with reviewing the impact of Federal law on consumer finance legislation and determining the extent to which legislation should be proposed for unregulated financial transactions in Pennsylvania. The subcommittee also discussed whether any existing unconsolidated statutes could be brought into consolidated form within the Pennsylvania statutes. In addition, the subcommittee began a review of the Uniform Debt Management Services Act, drafted by the National Conference of Commissioners on Uniform State Laws, for inclusion in a proposed Consumer Credit Code. Several consultants representing credit counseling service providers were invited to participate in the review process to facilitate discussions regarding standard business practices and accreditation. From March 2005 to May 2006, the subcommittee met a total of eight times.

The GSISA Subcommittee was specifically charged with reviewing the 1966 Act as amended<sup>1</sup> and making legislative recommendations. As in the case of the FLNFT Subcommittee, several consultants were invited to participate in the review process. From March to September 2005, the subcommittee met a total of five times.

The Advisory Committee met in February, March, May and September 2006 to discuss the progress of the subcommittees and review the drafts of the proposed legislation. The Advisory Committee also reviewed comments from outside advocacy groups whose interests are affected by the work product of the Advisory Committee.

As a result of the Advisory Committee discussions, consensus was reached on the proposed framework of a consolidated Consumer Credit Code (12 Pa.C.S.),<sup>2</sup> which will contain, along with other statutory provisions, general provisions (Chapter 41) and a modernized, updated Goods and Services Installment Sales Act (Chapter 43).<sup>3</sup> Several GSISA provisions were eliminated from proposed 12 Pa.C.S. Chapter 43 because they are covered by Federal law or because of the restructuring of the statutory provisions into consolidated form.

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<sup>1</sup> See the Appendix for the act of October 28, 1966 (1<sup>st</sup> Sp.Sess., P.L.55, No.7), known as the Goods and Services Installment Sales Act.

<sup>2</sup> Title 12 (Commerce and Trade), Part IV (Consumer Credit) of the Pennsylvania Consolidated Statutes.

<sup>3</sup> A modernized, updated Motor Vehicle Sales Finance Act will become Chapter 42.

The Advisory Committee agreed that the practice of cross-collateralization<sup>4</sup> should be allowed to continue, acknowledging that without the ability to cross-collateralize goods, a seller may not necessarily allow a buyer to refinance, and as a result, the buyer may face multiple monthly payments.

On November 21, 2006, the Task Force met and authorized both the publication of a report, which contains the recommendations of the Advisory Committee relating to proposed 12 Pa.C.S. Chapters 41 and 43, and the introduction of the legislation contained in the report.

This report contains the proposed legislation, notes and official comments. The notes follow the sections and provide the basis for the statutory provisions or explain the differences between the statutory provisions and the GSISA. The comments also follow the sections and explain as necessary the statutory provisions. The official comments may be used in determining the intent of the General Assembly.<sup>5</sup> This report also provides a summary of the recommendations, a detailed table of contents for the proposed legislation, conforming amendments, transitional language and source tables.

Inclusion of any recommendation in this report does not necessarily reflect the endorsement of the Task Force. In addition, while this report represents the consensus of the Advisory Committee, it does not necessarily reflect unanimity among the members on each individual recommendation.

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<sup>4</sup> A cross-collateral clause in an installment sales contract allows an installment seller, if the buyer defaults, to repossess not only the particular item sold but also every other item bought from the seller on which a balance remains due when the last purchase is made. *Black's Law Dictionary* 383 (7<sup>th</sup> ed. 1999). In other words, no item under an installment sale contract is considered paid in full until all the items are paid in full.

<sup>5</sup> 1 Pa.C.S. § 1939.



## **SUMMARY OF RECOMMENDATIONS**

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The proposed legislation in this report creates a statutory framework for the Consumer Credit Code (12 Pa.C.S. Part IV), within which are general provisions (Chapter 41) and an updated, modernized and consolidated Goods and Services Installment Sales Act (Chapter 43). The legislation also repeals the act of October 28, 1966 (1<sup>st</sup> Sp.Sess., P.L. 55, No.7), known as the Goods and Services Installment Sales Act, and makes conforming amendments to the Rental-Purchase Agreement Act (42 Pa.C.S. Ch. 69).

Proposed 12 Pa.C.S. Chapter 43 simplifies and reorganizes the statutory language and makes it consistent with Federal law. For example, the terminology throughout the proposed act is changed from the 1966 Act: (1) “closed-end credit agreement” replaces “retail installment contract,” (2) “finance charge” replaces “service charge” and “time price differential,” (3) “open-end credit agreement” replaces “retail installment account” and “revolving account,” and (4) “late fee” replaces “delinquency charge.” The term “goods” is expanded to include gift cards, electronic media items and items purchased through the Internet; it specifically adds the exclusion of a security covered under the Pennsylvania Securities Act of 1972. The term “services” is expanded to include service contracts and services purchased through the Internet. In addition, the terms “service contract” and “warranty” are specifically defined.

Other principal differences between the 1966 Act and proposed 12 Pa.C.S. Chapter 43 include the following:

- (1) The waiver provision specifically includes any purported waiver effected by a contractual choice of law of another jurisdiction. (§ 4303)
- (2) Goods and services acquired as a result of certain specified solicitations or communications are subject to the provisions of the chapter. (§ 4304(d))
- (3) In attempting to collect a buyer’s obligation, a seller or holder must comply with the Fair Credit Extension Uniformity Act. (§ 4305(a))
- (4) The notice of repossession and acceleration of debt must inform the buyer of the right to cure the default upon the payment of, among other things, extension charges and actual repossession costs. (§ 4309(c)(2)(i)(C) and (D))
- (5) A holder of a subsequent closed-end credit agreement may incorporate by reference a buyer’s previous closed-end credit agreement and a description of the collateral for the items purchased, thereby eliminating the need to include in the

- subsequent agreement another description of the previously collateralized items. (§ 4321(d))
- (6) A closed-end credit agreement shall include a statement that the seller may collect from the buyer late fees, costs of collection, costs from non-affiliated entities and deferment and extension charges. (§ 4322(17))
  - (7) Several of the closed-end credit agreement acknowledgment provisions, based on current practice, are codified into statutory law. (§ 4323(c)(1) and (2))
  - (8) The \$1 charge for a duplicate copy of the statement to the buyer is replaced by “a reasonable fee not to exceed the cost of production.” (§ 4326(b)(2))
  - (9) The reference to minimum finance charges under the refinancing provisions has been eliminated. (§ 4327)
  - (10) A new agreement is required in the event of an add-on sale, and a memorandum is no longer sufficient. (§ 4329(c))
  - (11) Like a closed-end credit agreement, a seller may not obtain the signature of a buyer on an open-end credit agreement application if it contains blank spaces to be filled in after it has been signed. (§ 4332(a))
  - (12) Like a closed-end credit agreement, the written open-end credit agreement must contain the entire agreement of the parties regarding the costs and terms of payment for the goods and services. (§ 4332(d))
  - (13) The dollar amount regarding a late fee provision in a closed-end credit agreement is raised from \$5 to \$10, and the provision stating that “a minimum charge of \$1 may be made” is eliminated. (§ 4343(a)(1))
  - (14) Actual and reasonable costs of collection include official fees, court fees and attorney fees. (§ 4344)
  - (15) The minimum finance charge under an open-end credit agreement is raised from \$0.50 to \$1, and the phrase “and may be imposed for a minimum period of six months” is eliminated. (§ 4345(c)(2))
  - (16) A closed-end credit agreement and an open-end credit agreement may provide for the reimbursement of costs from non-affiliated entities. (§ 4346)
  - (17) The percentage rate for an extension or deferment charge is increased from 1% to 1½% per month simple interest. (§ 4347(b)(3))
  - (18) The minimum charge of \$1 for an extension or deferment period is increased to \$10. (§ 4347(b)(4))

- (19) The rate of the finance charge after the scheduled maturity date of a closed-end credit agreement that has not been paid in full may not exceed the rate of the finance charge under the original agreement.<sup>6</sup> (§ 4348)
- (20) A violation of the chapter is deemed to be a violation of the Unfair Trade Practices and Consumer Protection Law. (§ 4355)

Because of the restructuring, updating and modernization of the original Goods and Services Installment Sales Act, several provisions of the 1966 Act are not codified into proposed 12 Pa.C.S. Chapter 43, including §§ 301, 309, 501(b), 501(b.1), 501(c), 502, 605, 804, 805, 806, 902, 903, 904(b.1), 904(b.2), 904(c), 904.2, 905 and 910 and the last sentence of § 603(a).

The following sections are part of the transitional language of proposed 12 Pa.C.S. Chapter 43: §§ 911, 1301 and 1303 and the second sentence of § 912.

Several provisions of the 1966 Act are moved into the official comments to proposed 12 Pa.C.S. Chapter 43: the last sentence of § 303, § 306.2, the second to the last sentence of § 803 and the first sentence of § 912.

Other provisions of the 1966 Act relating to the conspicuousness of headings, notices, contract provisions and acknowledgments are relocated to § 4103 of the general provisions (Chapter 41). Chapter 41 also contains definitions for terms that will be used throughout Part IV (the Consumer Credit Code) and provisions regarding electronic transactions.

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<sup>6</sup> As a result of the addition of § 4348 to the statutory framework, references to the section were added to §§ 4352(a) and 4353(a) regarding enforcement and penalties.



# **DETAILED TABLE OF CONTENTS**

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## **TITLE 12 COMMERCE and TRADE**

### **PART IV CONSUMER CREDIT**

#### **CHAPTER 41 GENERAL PROVISIONS**

Sec.

- 4101. Short title of part.
- 4102. Definitions.
- 4103. Contracts and agreements.
  - (a) General rule.
  - (b) Clear and conspicuous provisions.
- 4104. Electronic transactions.
  - (a) Effect on other law.
  - (b) Department procedures.

#### **CHAPTER 43 GOODS AND SERVICES INSTALLMENT SALES**

Subchapter

- A. General Provisions
- B. Closed-End Credit Agreements
- C. Open-End Credit Agreements
- D. Costs and Charges
- E. Enforcement and Penalties

#### **SUBCHAPTER A GENERAL PROVISIONS**

Sec.

- 4301. Short title of chapter.
- 4302. Definitions.
- 4303. Waiver.
- 4304. Applicability.
  - (a) Agreements.
  - (b) Offer to sell.
  - (c) Offer to buy.

- (d) Subsequent goods and services.
- (e) Exclusivity.
- 4305. Prohibited activities and provisions.
  - (a) Activities.
  - (b) Provisions.
- 4306. Assignment.
- 4307. Venue.
- 4308. Attorney fees and costs.
  - (a) Award.
  - (b) Agreement.
  - (c) Definition.
- 4309. Repossession; acceleration; right to cure.
  - (a) Rights of holder.
  - (b) Prohibited actions.
  - (c) Notice.
  - (d) Rights of buyer; curing default.
- 4310. Lien.
- 4311. Validity.
- 4312. Discharge of obligation.
- 4313. Prepayment of obligation.
  - (a) Right to prepay.
  - (b) Refund credit.
- 4314. Acknowledgment of payment in full.

SUBCHAPTER B  
CLOSED-END CREDIT AGREEMENTS

Sec.

- 4321. General rules.
  - (a) Entire agreement.
  - (b) Signature.
  - (c) Installments.
  - (d) Incorporation by reference.
- 4322. Contents.
- 4323. Copy of agreement.
  - (a) Delivery of copy.
  - (b) Obligation of buyer.
  - (c) Acknowledgment.
- 4324. Agreement resulting from telephone or mail communications.
  - (a) General rule.
  - (b) Applicability.
  - (c) Seller's completion of agreement.
  - (d) Copy of agreement or statement.
- 4325. Purchase money loan; notice.
  - (a) General rule.
  - (b) Notice.
  - (c) Definitions.

- 4326. Statement to buyer.
  - (a) Request; contents.
  - (b) Copies.
  - (c) Applicability.
- 4327. Refinancing.
  - (a) General rule.
  - (b) Charges.
  - (c) Contents of agreement.
  - (d) Consolidation of contracts.
- 4328. New payment schedule.
  - (a) Right to new payment schedule.
  - (b) Payments.
- 4329. Add-on sales.
  - (a) Add-on provisions.
  - (b) Allocation.
  - (c) New agreement.

SUBCHAPTER C  
OPEN-END CREDIT AGREEMENTS

Sec.

- 4331. Establishment.
  - (a) Seller.
  - (b) Financing agency.
- 4332. Requirements.
  - (a) Signature.
  - (b) Separate agreement unnecessary.
  - (c) Heading.
  - (d) Entire agreement.
- 4333. Applicability and effect of subchapter.
  - (a) Security interest.
  - (b) Allocation.
  - (c) Notes; third party rights.

SUBCHAPTER D  
COSTS AND CHARGES

Sec.

- 4341. Applicability.
- 4342. Insurance.
  - (a) Compliance with law.
  - (b) Separate charge; agreement.
- 4343. Late fees.
  - (a) Closed-end credit agreement.
  - (b) Open-end credit agreement.
- 4344. Costs of collection.

- 4345. Finance charges.
  - (a) General rule.
  - (b) Closed-end credit agreement.
  - (c) Open-end credit agreement.
- 4346. Costs from non-affiliated entity.
- 4347. Extension and deferment.
  - (a) General rule.
  - (b) Charges.
- 4348. Interest rate after maturity.

SUBCHAPTER E  
ENFORCEMENT AND PENALTIES

Sec.

- 4351. Willful and intentional violations.
- 4352. Noncompliance; costs and charges.
  - (a) Bar to recovery.
  - (b) Remedy of buyer.
- 4353. Willful violations regarding finance charges.
  - (a) Penalty.
  - (b) Bar to recovery.
- 4354. Corrections.
  - (a) General rule.
  - (b) Concurrence by buyer.
  - (c) No liability.
  - (d) Delivery.
  - (e) Credit.
- 4355. Unfair trade practice.

# GENERAL PROVISIONS

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## TITLE 12 COMMERCE and TRADE

### PART IV CONSUMER CREDIT

#### Chapter

- 41. General Provisions
- 42. Motor Vehicle Sales Finance
- 43. Goods and Services Installment Sales

### CHAPTER 41 GENERAL PROVISIONS

#### Sec.

- 4101. Short title of part.
- 4102. Definitions.
- 4103. Contracts and agreements.
- 4104. Electronic transactions.

#### § 4101. Short title of part.

This part shall be known and may be cited as the Consumer Credit Code.

#### § 4102. Definitions.

The following words and phrases when used in this part shall have the meanings given to them in this section unless the context clearly indicates otherwise:

“Financial institution.” A bank, bank and trust company, trust company, savings bank, private bank, savings association or credit union organized and doing business under the provisions of any law of the Commonwealth, another state or the United States.

“Department.” The Department of Banking of the Commonwealth.

“Records.” Books, accounts, papers, documents, files and other similar business records and information, including information that is:

- (1) stored in an electronic or other medium that uses technology having electrical, digital, magnetic, wireless, optical, electromagnetic or similar capabilities; and
- (2) retrievable in perceivable form.

### Note

**The term “state” within the definition of “financial institution” is defined in 1 Pa.C.S. § 1991 and includes the District of Columbia and the territories of the United States. Section 102(f), (g), (t), (x) and (dd) of the act of November 30, 1965 (P.L.847, No.356), as amended, known as the Banking Code of 1965, defines the terms “bank,” “bank and trust company,” “private bank,” “savings bank” and “trust company.” The term “bank” is defined as a “corporation which exists under the laws of this Commonwealth and, as a bank under the Banking Code of 1933, was authorized to engage in the business of receiving demand deposits on the effective date of this act, or which receives authority to engage in such business as a bank pursuant to this act, but which is not authorized to act as fiduciary.” The term “bank and trust company” is defined as “a corporation which exists under the laws of this Commonwealth and, as a bank and trust company under the Banking Code of 1933, was authorized to engage in the business of receiving demand deposits and to act as fiduciary on the effective date of this act, or which receives authority both to engage in such business and to act as fiduciary as a bank and trust company pursuant to this act.” The term “private bank” is defined as “an individual, partnership or unincorporated association authorized as a private bank under the Banking Code of 1933 to engage in the business of banking in this Commonwealth on the effective date of this act and an individual, partnership or unincorporated association which receives authority, pursuant to this act, to continue in the business of banking as a private bank.” The “savings bank” is defined as “a corporation with or without capital stock which exists under the laws of this Commonwealth and as a savings bank under the Banking Code of 1933 was authorized to engage in the business of receiving savings deposits on the effective date of this act or which receives authority to engage in such business as a savings bank pursuant to this act.” The term “trust company” is defined as “a corporation which exists under the laws of this Commonwealth and was authorized to act as fiduciary on the effective date of this act as a trust company under the Banking Code of 1933, or which receives**

**authority to act as fiduciary pursuant to this act, but which is not authorized to engage in the business of receiving deposits.” The act of December 14, 1967 (P.L.746, No.345), known as the Savings Association Code of 1967, provides for savings associations.**

§ 4103. Contracts and agreements.

(a) General rule.--A contract or agreement under this part shall be dated and in writing.

(b) Clear and conspicuous provisions.--The headings, notices and language of a contract or agreement under this part shall be clear and conspicuous and meet the following requirements:

(1) Except as otherwise provided in this subsection, the language in a contract or agreement under this part shall be in at least eight-point type.

(2) A heading in a contract or agreement under this part shall be in at least ten-point bold type.

(3) A notice or disclosure in a contract or agreement under this part shall be in at least ten-point bold type.

(4) An acknowledgment under this part shall be in at least ten-point bold type.

#### **Note**

**These provisions are derived from the act of July 28, 1947 (P.L.1110, No.476) as amended, known as the Motor Vehicle Sales Finance Act, and the act of October 28, 1966 (1<sup>st</sup> Sp.Sess., P.L.55, No.7), known as the Goods and Services Installment Sales Act. For the purposes of uniformity in this part, some of the provisions from those acts are revised by this section.**

#### **Comment**

**The notices referenced in §§ 4218(b) (revocation or suspension of license), 4229(c) (transfer), 4257 (notice to police) and 4345(d)(3) (finance charges) are not within the scope of subsection (b)(3).**

§ 4104. Electronic transactions.

(a) Effect on other law.--Nothing in this part shall be construed to supersede the provisions of the act of December 16, 1999 (P.L.971, No.69), known as the Electronic Transactions Act.

(b) Department procedures.--The department may establish procedures for electronic transactions under this part, including:

- (1) the filing of applications and renewals for licenses and registrations;
- (2) the filing of reports and other required records; and
- (3) the verification of records and signatures on forms.

# **GOODS AND SERVICES INSTALLMENT SALES**

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## CHAPTER 43 GOODS AND SERVICES INSTALLMENT SALES

### **Note**

**This chapter is based on the act of October 28, 1966 (1<sup>st</sup> Sp.Sess., P.L.55, No.7), known as the Goods and Services Installment Sales Act (GSISA).**

#### Subchapter

- A. General Provisions
- B. Closed-End Credit Agreements
- C. Open-End Credit Agreements
- D. Costs and Charges
- E. Enforcement and Penalties

#### SUBCHAPTER A GENERAL PROVISIONS

#### Sec.

- 4301. Short title of chapter.
- 4302. Definitions.
- 4303. Waiver.
- 4304. Applicability.
- 4305. Prohibited activities and provisions.
- 4306. Assignment.
- 4307. Venue.
- 4308. Attorney fees and costs.
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- 4310. Lien.
- 4311. Validity.
- 4312. Discharge of obligation.
- 4313. Prepayment of obligation.
- 4314. Acknowledgment of payment in full.

§ 4301. Short title of chapter.

This chapter shall be known and may be cited as the Goods and Services Installment Sales Act.

**Note**

**This section is based on § 101 of the GSISA.**

§ 4302. Definitions.

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

“Actuarial method.” The method of allocating payments made on a debt between the amount financed and the finance charge at the interest rate stated in the closed-end credit agreement, as defined in Regulation Z, adopted under the Federal Truth in Lending Act (Public Law 90-321, 15 U.S.C. § 1601 et seq.).

“Buyer.” A person who buys goods or obtains services from a seller in a sale, if the acquisition is not principally for the purpose of resale.

“Closed-end credit agreement.” Either of the following:

(1) A contract for a sale between a buyer and seller in which the buyer promises to pay in installments the outstanding balance incurred in the sale, whether or not the contract contains a security interest, and which contains either of the following:

(i) A finance charge, which is computed and added to the unpaid balance.

(ii) A provision specifying that if the buyer had not contracted to pay in installments, the buyer could have received the goods or services at a lesser price or additional or higher quality goods or services at no added cost.

(2) A contract for a sale between a buyer and seller that includes a security agreement or a contract for the bailment or leasing of goods in which both of the following occur:

(i) The consideration that the bailee or lessee contracts to pay as compensation for the use of the goods is a sum substantially equivalent to or in excess of their value and is an obligation for the term of the lease that is not subject to termination by the bailee or lessee.

(ii) The bailee or lessee agrees to become, or has the option of becoming, the owner of the goods for no or nominal additional consideration upon full compliance with the terms of the contract.

“Finance charge.”

(1) The amount, regardless of how expressed, that a buyer contracts to pay or pays for the privilege of purchasing goods or services to be paid in installments.

(2) Includes all charges incident to investigating and making a closed-end credit agreement or an open-end credit agreement and for the extension of the credit under that agreement.

(3) Excludes the following:

(i) Amounts charged for insurance premiums under section 4342 (relating to insurance).

(ii) Late fees under section 4343 (relating to late fees).

(iii) The costs of collection under section 4344 (relating to costs of collection).

(iv) Costs from non-affiliated entities under section 4346 (relating to costs from non-affiliated entity).

(v) Extension and deferment charges under section 4347 (relating to extension and deferment).

(vi) Attorney fees.

(vii) Court costs.

(viii) Official fees.

“Financing agency.” A person, including a financial institution, engaged in the Commonwealth in whole or in part in the business of purchasing closed-end credit agreements or open-end credit agreements from at least one seller.

"Goods."

(1) Personal property bought primarily for personal, family or household use.

(2) Includes the following:

(i) Certificates, coupons or gift cards exchangeable for goods.

(ii) Electronic media items.

(iii) Items purchased through the Internet.

(3) Excludes the following:

(i) Goods covered under the act of August 14, 1963 (P.L.1082, No.464), known as the Home Improvement Finance Act.

(ii) A motor vehicle covered under Chapter 42 (relating to motor vehicle sales finance).

(iii) A security covered under the act of December 5, 1972 (P.L.1280, No.284), known as the Pennsylvania Securities Act of 1972.

"Holder."

(1) Either of the following:

(i) A seller who acquires a closed-end credit agreement or an open-end credit agreement that is executed, incurred or entered into by a buyer.

(ii) A financing agency or other assignee that purchases the agreement under subparagraph (i).

(2) Excludes a pledgee or holder of a security interest in an aggregate number of agreements to secure a bona fide loan on them.

"Official fees." The fees required by law and actually to be paid to the appropriate public officer to perfect a lien or other security interest that is retained or taken by a seller under a closed-end credit agreement or an open-end credit agreement.

"Open-end credit agreement." A contract:

(1) in which a buyer promises to pay in installments to a seller or financing agency the outstanding balance incurred in a sale, whether or not the seller retains a security interest in the goods sold; and

(2) that provides for a finance charge expressed as a percent of the periodic balances to accrue thereafter, if the charge is not capitalized or stated as a dollar amount in the contract.

"Purchase price." The price of goods sold or services furnished, which may include applicable taxes, as specified in a closed-end credit agreement or an open-end credit agreement.

"Sale." The sale of goods or furnishing of services by a seller to a buyer for a time sale price payable in installments.

“Seller.” A person engaged in the business of selling goods or furnishing services to a buyer.

“Service contract.” A written contract, optional on the part of a buyer, to perform over a fixed period of time or for a specified duration services regarding the maintenance or repair of goods.

"Services."

(1) Work, labor and services for other than a commercial or business use.

(2) Includes the following:

(i) Services furnished in connection with the purchase or repair of goods or the repair of motor vehicles.

(ii) A service contract.

(iii) Services purchased through the Internet.

(3) Excludes the following:

(i) Services covered under the act of August 14, 1963 (P.L.1082, No.464), known as the Home Improvement Finance Act.

(ii) A service contract or warranty covered under Chapter 42.

(iii) Services for which the tariffs, rates, charges, costs or expenses, including in each instance the time sale price, are required by law to be filed with or approved by any of the following:

(A) The Commonwealth.

(B) The Federal Government.

(C) An official department, commission or agency of the Commonwealth or the United States.

“Time balance.” The total of the unpaid balance and the amount of the finance charge.

“Time sale price.” The total of the purchase price and the amounts included for insurance, official fees and finance charge.

“Unpaid balance.” The purchase price and the amounts included for insurance and official fees, less the amount of a buyer's down payment in money or goods.

“Warranty.”

(1) Either of the following, which becomes part of the basis of the bargain between a buyer and seller for purposes other than resale:

(i) A written affirmation of fact or written promise made in connection with the sale of goods by a seller or manufacturer to a buyer that relates to the nature of the material or workmanship and affirms or promises that the material or workmanship is free of defects or will meet a specified level of performance over a specified period of time.

(ii) Any undertaking in writing in connection with the sale of goods by a seller or manufacturer to refund, repair, replace or take other remedial action with respect to the goods if the goods fail to meet the specifications set forth in the undertaking.

(2) Excludes a service contract and an extended warranty with the characteristics of a service contract.

### **Note**

**The definition of “actuarial method” is based on § 603(b) of the GSISA and is defined in Appendix J of Regulation Z of the Federal Truth-in-Lending Act. The definition of “buyer” is based on § 201(4) of the GSISA (“buyer” or “retail buyer”). The definition of “closed-**

end credit agreement” is based on § 201(6) of the GSISA (“contract” or “retail installment contract”), with the phrase “security interest” replacing “title retention provision.” The definition of “finance charge” is based on § 201(10) (“service charge” or “time price differential”), § 504 and the first sentence of § 906 of the GSISA. The definition of “financing agency” is based on § 201(16) of the GSISA, with the term “financial institution” defined in § 4102. The definition of “goods” is based on § 201(1) of the GSISA, with the term “personal property” replacing “tangible chattels.” Unlike the GSISA definition, the definition of “goods” specifically includes gift cards, electronic media items and items purchased through the Internet and specifically excludes a security covered under the Pennsylvania Securities Act of 1972. The definition of “holder” is based on § 201(13) of the GSISA. The definition of “official fees” is based on § 201(14) of the GSISA. The definition of “open-end credit agreement” is based on § 201(7) of the GSISA (“installment account,” “retail installment account” or “revolving account”). The definition of “purchase price” is based on § 201(8) of the GSISA (“cash sale price”), with the reference to “accessories” eliminated because an accessory would be classified as either a good or a service. The definition of “sale” is based on § 201(5) of the GSISA (“retail installment sale” or “sale”). The definition of “seller” is based on § 201(3) of the GSISA (“retail seller” or “seller”). The definition of “services” is based on § 201(2) of the GSISA, with the addition of the references to a service contract, which is separately defined in this section, and services purchased through the Internet. The definition of “time balance” is based on § 201(12) of the GSISA. The definition of “time sale price” is based on § 201(9) of the GSISA. The definition of “unpaid balance” is based on § 201(11) of the GSISA.

The term “warranty” is not defined in the GSISA. The term “late fee” in this chapter replaces the term “delinquency charge” from the GSISA. The definition of “person” under § 201(15) of the GSISA is eliminated since the term is defined in 1 Pa.C.S. § 1991 as including “a corporation, partnership, limited liability company, business trust, other association, government entity (other than the Commonwealth), estate, trust, foundation or natural person.”

#### Comment

This chapter does not apply to an agreement under the Rental-Purchase Agreement Act (42 Pa.C.S. Ch. 69). Under the definition of “closed-end credit agreement,” paragraph (2) includes as a closed-end credit agreement a contract that is disguised as a bailment or lease. Without paragraph (2)(ii), a legitimate bailment or lease agreement could be construed to be a closed-end credit agreement.

§ 4303. Waiver.

A buyer's waiver of the provisions of this chapter, including any purported waiver effected by a contractual choice of the law of another jurisdiction contained in a closed-end credit agreement or an open-end credit agreement, shall be deemed contrary to public policy and is void and unenforceable.

**Note**

**This section is based on § 102 of the GSISA and expanded to specifically reference the choice of the law of another jurisdiction.**

§ 4304. Applicability.

(a) Agreements.--A closed-end credit agreement and an open-end credit agreement are deemed to be made in the Commonwealth and subject to the provisions of this chapter if either of the following occurs:

(1) The seller offers or agrees in the Commonwealth to sell to a resident buyer of the Commonwealth.

(2) A resident buyer of the Commonwealth accepts or makes the offer in the Commonwealth to buy, regardless of the situs specified in the agreement.

(b) Offer to sell.--A verbal or written solicitation or communication to sell that originates outside the Commonwealth and is forwarded to and received in the Commonwealth by a resident buyer of the Commonwealth shall be deemed an offer or agreement to sell in the Commonwealth and subject to the provisions of this chapter.

(c) Offer to buy.--A verbal or written solicitation or communication to buy that originates within the Commonwealth from a resident buyer of the Commonwealth and is forwarded to and received by a seller outside the Commonwealth shall be deemed an

acceptance or offer to buy in the Commonwealth and subject to the provisions of this chapter.

(d) Subsequent goods and services.--Goods or services that subsequently result from a solicitation or communication under subsection (b) or (c) are subject to the provisions of this chapter.

(e) Exclusivity.--Notwithstanding any provision of law, this chapter shall exclusively govern and regulate the terms and conditions of all extensions of credit, except cash advances, for the purchase of goods and services within the Commonwealth.

**Note**

**Subsections (a), (b) and (c) are based on § 103 of the GSISA. Subsection (d) is not contained in the GSISA. Subsection (e) is based on § 104 of the GSISA.**

§ 4305. Prohibited activities and provisions.

(a) Activities.--In attempting to collect a buyer's obligation, a seller or holder shall comply with the act of March 28, 2000 (P.L.23, No.7), known as the Fair Credit Extension Uniformity Act.

(b) Provisions.--A closed-end credit agreement, an open-end credit agreement or other agreement may not contain a provision by which any of the following may occur:

(1) Except as provided in section 4306 (relating to assignment), the buyer agrees not to assert a claim or defense arising from the sale against a seller or an assignee.

(2) In the absence of the buyer's default in the performance of an obligation, the holder may accelerate the maturity of all or part of the amount owed.

(3) The seller or holder of the agreement, or a person acting on behalf of the seller or holder, is given authority to enter the buyer's premises unlawfully or commit a breach of the peace in the repossession of goods.

(4) The buyer waives a right of action against the seller or holder of the agreement, or a person acting on behalf of the seller or holder, for an illegal act committed in the collection of payments under the agreement or the repossession of goods.

(5) The buyer executes a power of attorney appointing the seller or holder of the agreement, or a person acting on behalf of the seller or holder, as the buyer's agent in the collection of payments under the agreement or the repossession of goods.

(6) The buyer relieves the seller from liability for legal remedies that the buyer may have against the seller under the agreement or a separate instrument executed in connection with the agreement.

(7) The buyer agrees to the payment of a charge by reason of the exercise of the right to rescind or avoid the agreement.

(8) The seller or holder of the agreement is given the right to commence an action on the agreement under the provisions of this chapter in a county other than the county where any of the following occurred:

(i) The buyer signed the agreement.

(ii) The buyer resides at the commencement of the action.

(iii) The buyer resided when the agreement was entered into.

(iv) The goods purchased under the agreement have been so affixed to real property as to become a part of the real property.

(9) An assignment of wages is given.

(10) The seller or holder of the agreement, or a person acting on behalf of the seller or holder, is given authority to execute upon a judgment by confession.

(11) The seller or holder of the agreement, or a person acting on behalf of the seller or holder, is given authority to take a mortgage or other security against residential real estate of the buyer or another obligee to the agreement.

#### **Note**

**Subsection (a) replaces the second sentence of § 604 of the GSISA. Subsection (b) is based on § 401 of the GSISA.**

#### **Comment**

**The Fair Credit Extension Uniformity Act (act of March 28, 2000, P.L.23, No.7) and the Federal Fair Debt Collection Practices Act (15 U.S.C. §§ 1692 et seq.) govern procedures regarding the collection of debts. If a seller or holder violates the Fair Credit Extension Uniformity Act, as provided in subsection (a), the applicable penalties under that act would apply to the seller or holder. The Unfair Trade Practices and Consumer Protection Law (act of December 17, 1968, P.L.1224, No.387) provides that it is an unfair method of competition, and therefore unlawful, to include in any consumer transaction document a confessed judgment clause that waives the consumer's right to assert a legal defense to an action.**

§ 4306. Assignment.

Except as provided in section 4352 (relating to noncompliance; costs and charges), a right of action or defense arising from a sale that a buyer has against a seller is not eliminated by assignment of the buyer's closed-end credit agreement or open-end credit agreement to a third party, regardless of whether the third party acquires the agreement in good faith and for value.

#### **Note**

**This section is based on the first sentence of § 402 of the GSISA.**

§ 4307. Venue.

An action on a closed-end credit agreement or an open-end credit agreement shall be commenced in a county where any of the following occurred:

- (1) The buyer signed the agreement.
- (2) The buyer resides at the commencement of the action.
- (3) The buyer resided when the agreement was entered into.
- (4) The goods purchased under the agreement have been so affixed to real property as to become a part of the real property.

**Note**

**This section is based on § 1205 of the GSISA.**

§ 4308. Attorney fees and costs.

(a) Award.--Reasonable attorney fees and costs shall be awarded to the prevailing party in an action on a closed-end credit agreement or an open-end credit agreement, regardless of whether the action is instituted by the seller, holder or buyer.

(b) Agreement.--A seller may provide for the payment of attorney fees and costs under subsection (a) in an agreement signed by the buyer, if a copy of the agreement is given or furnished to the buyer.

(c) Definition.--For purposes of this section, a defendant is deemed to be a prevailing party if both of the following occur:

- (1) The defendant:
  - (i) alleges in its answer that it tendered to the plaintiff the full amount to which the plaintiff was entitled; and
  - (ii) deposits the amount with the court.

(2) The allegation in paragraph (1)(i) is found to be true.

**Note**

**Subsection (a) is based on the first sentence of § 1001 of the GSISA. Subsection (b) is based on the third sentence of § 906 of the GSISA. Subsection (c) is based on the second sentence of § 1001 of the GSISA.**

§ 4309. Repossession; acceleration; right to cure.

(a) Rights of holder.--If a buyer defaults in the performance of an obligation under a closed-end credit agreement or an open-end credit agreement, the holder, pursuant to the rights granted under the agreement:

(1) may proceed to recover judgment for the balance due or retake the goods; and

(2) shall comply with and be limited by the requirements of 13 Pa.C.S. (relating to the Uniform Commercial Code).

(b) Prohibited actions.--Unless the buyer is in default and the seller or holder provides the buyer with the notice under subsection (c), a seller or holder may not:

(1) accelerate the maturity of the agreement; or

(2) commence legal action or repossess without legal process.

(c) Notice.--

(1) Notice under this section shall be:

(i) sent by certified mail to the buyer's last known address; or

(ii) delivered personally to the residence of the buyer.

(2) The notice shall inform the buyer of all the following:

(i) The right to cure the default within 21 days of the date of receipt of the notice upon the payment of all the following:

(A) The amount in default.

(B) Late fees under section 4343 (relating to late fees).

(C) Extension and deferment charges under section 4347 (relating to extension and deferment).

(D) Actual repossession costs.

(ii) The name, address and telephone number of the seller or holder.

(iii) The total amount due, which is the sum of the items in subparagraph (i).

(iv) The exact date by which the amount due must be paid.

(v) The name, address and telephone number of the person to whom payment must be made.

(vi) Other performance necessary to cure a default arising from other than nonpayment of the obligation.

(3) The seller or holder is not required to provide the notice under this subsection more than once in any 12-month period.

(d) Rights of buyer; curing default.--

(1) The buyer shall have the rights specified in the notice under subsection (c).

(2) The act of curing a default restores to the buyer the rights under the agreement as though no default had occurred.

#### Note

**Subsection (a) is based on § 1101 of the GSISA. Subsections (b) and (c)(1) and (2) are based on the first sentence of § 1102 of the GSISA, except that “extension charges” is added in paragraph (2)(i)(C). Subsection (c)(2)(i)(D) is not contained in the GSISA. Subsection (c)(3) is based on the second sentence of § 1102 of the GSISA. Subsection (d)(1) is implied in § 1102 of the GSISA. Subsection (d)(2) is based on the last sentence of § 1102 of the GSISA.**

§ 4310. Lien.

A contract, other than for services, may not provide for a lien on goods that are fully paid for or have not been sold by the seller.

**Note**

**This section is based on § 403 of the GSISA.**

§ 4311. Validity.

A provision in a closed-end credit agreement or an open-end credit agreement that is prohibited by this chapter is void but does not otherwise affect the validity of the agreement.

**Note**

**This section is based on § 404 of the GSISA.**

§ 4312. Discharge of obligation.

Unless a buyer has notice of the actual or intended assignment of a closed-end credit agreement or an open-end credit agreement, payment made by the buyer to the last known holder of the agreement shall, to the extent of the payment, discharge the buyer's obligation.

**Note**

**This section is based on § 601 of the GSISA.**

§ 4313. Prepayment of obligation.

(a) Right to prepay.--Notwithstanding the provisions of a closed-end credit agreement or an open-end credit agreement, a buyer may prepay without additional charge at any time all or part of the time balance under the agreement.

(b) Refund credit.--

(1) Pursuant to a closed-end credit agreement and subject to this chapter, the seller or holder may accelerate the balance due on the agreement but shall provide a refund credit calculated as of the date of the acceleration if:

(i) the finance charges had been computed and added to the unpaid balance at the time the agreement was entered into; and

(ii) the entire time balance under the agreement is prepaid prior to maturity.

(2) The amount of the refund credit shall be computed by the actuarial method.

(3) If the amount of the refund credit is less than \$1, a refund does not need to be made.

**Note**

**This section is based on § 603(a) of the GSISA.**

§ 4314. Acknowledgment of payment in full.

Upon a buyer's request and after the payment of all sums for which the buyer is obligated under a closed-end credit agreement or an open-end credit agreement, the holder shall deliver or mail to the buyer at the buyer's last known address an instrument that:

(1) acknowledges that the obligation of the buyer under the agreement has been paid in full; and

(2) releases all security in the goods under the agreement.

**Note**

**This section is based on the first sentence of § 604 of the GSISA. The modifying phrase "good and sufficient" from the GSISA (in reference to the instrument) is eliminated.**

SUBCHAPTER B  
CLOSED-END CREDIT AGREEMENTS

Sec.

- 4321. General rules.
- 4322. Contents.
- 4323. Copy of agreement.
- 4324. Agreement resulting from telephone or mail communications.
- 4325. Purchase money loan; notice.
- 4326. Statement to buyer.
- 4327. Refinancing.
- 4328. New payment schedule.
- 4329. Add-on sales.

§ 4321. General rules.

(a) Entire agreement.--Except as provided in section 4329(c) (relating to add-on sales), a closed-end credit agreement shall contain the entire agreement of the parties regarding the costs and terms of payment for the goods and services, including a promissory note or other evidence of indebtedness between the parties relating to the transaction.

(b) Signature.--A seller may not obtain the signature of the buyer on the agreement if the agreement contains blank spaces to be filled in after it has been signed.

(c) Installments.--A closed-end credit agreement may provide for unequal or irregular installments.

(d) Incorporation by reference.--A holder may, in a buyer's subsequent closed-end credit agreement, incorporate by reference the buyer's previous closed-end credit agreement and a description of the collateral for the items purchased under the previous agreement.

**Note**

**Subsection (a) is based on § 302(a) of the GSISA. The language from § 302(a) of the GSISA regarding payments for referrals is**

**eliminated in light of § 3 of the Unfair Trade Practices and Consumer Protection Law (73 P.S. §§ 201-1 et seq.), which declares such payments unlawful. Subsection (b) is based on § 304 of the GSISA. Subsection (c) is based on § 503 of the GSISA. Subsection (d) is not contained in the GSISA.**

**Comment**

**For the calculation of the finance charge under subsection (c), see § 4345(b). Consistent with the Federal Truth in Lending Act, subsection (d) provides that there must be a description of the collateral if there is a security agreement or lien contract. A holder should not be required to redraft a document for a buyer that re-describes previous collateralized items; the descriptions of those items may be incorporated by reference into the new closed-end credit agreement.**

§ 4322. Contents.

Except as provided in section 4329 (relating to add-on sales), a closed-end credit agreement shall contain all the following:

(1) One of the following headings at the top of the agreement or directly above the space reserved for the signature of the buyer:

(i) “Security Agreement” if the seller retains a security interest in the goods as security for the goods or services purchased.

(ii) “Lien Contract” if the seller obtains a lien on other goods or non-residential real estate as security for the goods or services purchased.

(iii) “Closed-End Credit Agreement” if the seller does not obtain security for the goods or services purchased.

(2) The names of the seller and buyer.

(3) The place of business of the seller.

(4) The residence or place of business of the buyer as specified by the buyer.

(5) A description of the goods or services sufficient to identify them. Services or multiple items of goods may be described in general terms, but in detail sufficient to identify them, in a separate writing.

(6) The purchase price of the goods and services that are the subject matter of the sale.

(7) The amount of the buyer's down payment, including the following:

- (i) An itemization of the amount paid in money and goods.
- (ii) A brief description of traded-in goods.

(8) The difference between the purchase price under paragraph (6) and the amount under paragraph (7).

(9) The amount included for insurance, including the specific coverage and cost.

(10) The amount of official fees.

(11) The unpaid balance, which is the sum of the amounts under paragraphs (8), (9) and (10).

(12) The amount of the finance charge.

(13) The time balance, which is the sum of the unpaid balance under paragraph (11) and the amount under paragraph (12), and the following:

- (i) The number of installments required.
- (ii) The amount of each installment expressed in dollars.
- (iii) The due date or period for each installment.

(14) The time sale price.

(15) The following notice provision:

## NOTICE TO THE BUYER

Do not sign this agreement before you read it or if it contains any blank spaces. You are entitled to a completely filled-in copy of this agreement. You have the right to pay off in advance the full amount due. Under certain conditions, you may obtain a partial refund of the finance charge.

(16) The following notice provision:

### NOTICE

A holder of this agreement is subject to all the claims and defenses that the buyer could assert against the seller of goods or services obtained by this agreement or with the proceeds of this agreement. Recovery under this agreement by the buyer may not exceed the amount paid by the buyer under the agreement.

(17) A statement that the seller may collect from the buyer late fees, costs of collection, costs from non-affiliated entities and charges for deferment and extension as provided for in this chapter.

### Note

**Paragraph (1) is based on § 302(b) of the GSISA. Paragraphs (2) through (5) are based on § 303(a) of the GSISA. Paragraphs (6) through (14) are based on § 303(b) through (j) of the GSISA. The undefined term “accessories” in § 303(b) of the GSISA is eliminated since the chapter simply concerns goods and services. Paragraph (15) is based on § 302(c) of the GSISA. Paragraph (16) is based on § 303(k) of the GSISA. Paragraph (17) is not contained in the GSISA. The following comment is based on the last sentence of § 303 of the GSISA.**

### Comment

**The items in this section do not need to be stated in the order given. Additional items may be included to explain the computations made in determining the amount to be paid by the buyer.**

§ 4323. Copy of agreement.

(a) Delivery of copy.--Except as provided in section 4324(b) (relating to agreement resulting from telephone or mail communications), a seller shall provide a legible and complete copy of a closed-end credit agreement to a buyer when the buyer executes the agreement.

(b) Obligation of buyer.--Until the seller completes the obligation under subsection (a), the buyer is obligated to pay only the purchase price under the agreement.

(c) Acknowledgment.--

(1) The seller shall present an acknowledgment to the buyer specifying that the buyer has received a copy of the agreement.

(2) The acknowledgment may be a separate document or contained in the agreement.

(3) If the acknowledgment is contained in the agreement, it shall appear directly above the space reserved for the buyer's signature.

(4) The buyer's written acknowledgment of delivery of a copy of the agreement, in conformity with this subsection, shall be a rebuttable presumption of delivery and compliance with this subsection in an action or proceeding by or against an assignee of the agreement without knowledge to the contrary when the agreement is purchased.

**Note**

**This section is based on § 307 of the GSISA. Subsection (c)(1) and (2) is not contained in the GSISA but is based on current practice.**

§ 4324. Agreement resulting from telephone or mail communications.

(a) General rule.--A closed-end credit agreement that is negotiated and entered into by a buyer and seller by telephone or mail is permitted under this subchapter and subject to this section if:

(1) the seller did not personally solicit the sale; and

(2) a catalog or other printed solicitation that is generally available to the public clearly sets forth the purchase price, time sale price and other terms regarding the sale of the goods or services.

(b) Applicability.--For a sale under this section, section 4323(a) (relating to copy of agreement) does not apply.

(c) Seller's completion of agreement.--If a seller under this section receives a closed-end credit agreement from a buyer and the agreement contains blank spaces, the seller may insert in the appropriate blank spaces the purchase price, time sale price and other terms regarding the sale of the goods or services, as set forth in the seller's current catalog or other printed solicitation.

(d) Copy of agreement or statement.--Prior to the due date of the first installment under the agreement, the seller shall furnish to the buyer either a legible and complete copy of the agreement or a written statement of the items inserted in the blank spaces described in subsection (c).

**Note**

**This section is based on § 308 of the GSISA.**

§ 4325. Purchase money loan; notice.

(a) General rule.--Unless an instrument that evidences or embodies a debt arising from a purchase money loan contains the notice under subsection (b):

(1) a purchase money lender may not take or receive the instrument; and

(2) a seller may not accept the proceeds of the purchase money loan as full or partial payment for the sale.

(b) Notice.--An instrument under subsection (a) shall contain the following notice:

#### NOTICE

A holder of this agreement is subject to all the claims and defenses that the buyer could assert against the seller of goods or services obtained with the proceeds of this agreement. Recovery under this agreement by the buyer may not exceed the amount paid by the buyer under the agreement.

(c) Definitions.--As used in this section, the following phrases shall have the meanings given to them in this subsection unless the context clearly indicates otherwise:

“Purchase money lender.” Either a seller or financing agency making or extending a purchase money loan.

“Purchase money loan.” An advance that is received by a buyer in return for a finance charge or interest that is applied to a purchase of goods or services from a seller who is affiliated, by common control or business arrangement, with the person extending the credit to the buyer.

#### Note

**Subsections (a) and (b) are based on the second sentence of § 402 of the GSISA. The notice in subsection (b) is consistent with the notices under the Federal “Holder-in-Due-Course Rule” (16 C.F.R. Part 433). The term “buyer” replaces “debtor” in the notice. The**

**definitions of “purchase money lender” and “purchase money loan” in subsection (c) are based on § 201(18) and (17) of the GSISA. In the definition of “purchase money loan,” the modifier “cash” is eliminated before the word “advance,” and the phrase “in whole or substantial part” is eliminated from after the word “applied.”**

§ 4326. Statement to buyer.

(a) Request; contents.--At any time after the execution of a closed-end credit agreement and within one year after the last payment is made under the agreement, the holder of the agreement shall upon the good faith written request of the buyer promptly give or forward to the buyer a detailed written statement that accurately states the total unpaid amount under the agreement.

(b) Copies.--

(1) The buyer shall be furnished with one statement under this section each year without charge.

(2) The holder shall upon request furnish the buyer a duplicate copy of the statement upon payment of a reasonable fee not to exceed the cost of production.

(c) Applicability.--This section does not apply to a transaction that, instead of periodic statements of account, the buyer is provided with a passbook or payment book in which payments, credits, charges and the unpaid balance are entered.

**Note**

**This section is based on § 602 of the GSISA, except that the \$1 charge for a duplicate copy is replaced by the reasonable cost of production under subsection (b)(2).**

§ 4327. Refinancing.

(a) General rule.--Upon agreement in writing with the buyer, the holder of a closed-end credit agreement may refinance the payment of the unpaid time balance of the agreement by providing for a new schedule of installment payments.

(b) Charges.--

(1) The holder may contract for and collect the payment of a refinance charge by the buyer.

(2) A refinance charge shall be based on the amount refinanced and include the following:

(i) The additional cost of insurance and official fees incident to the refinancing.

(ii) The deduction of a refund credit in an amount equal to that to which the buyer would have been entitled under section 4313 (relating to prepayment of obligation) if the buyer had prepaid in full the obligations under the agreement.

(3) A refinance charge may not exceed the rate of finance charges under section 4345 (relating to finance charges).

(4) Subject to section 4342 (relating to insurance), an agreement may provide for payment of the additional cost of or premiums for continuing insurance coverage under the contract until the maturity of the contract.

(c) Contents of agreement.--The refinancing agreement shall set forth all the following:

(1) The amount of the unpaid time balance to be refinanced.

(2) The amount of a refund credit.

- (3) The amount to be refinanced after the deduction of the refund credit.
- (4) The amount of the finance charge under the refinancing agreement.
- (5) The additional cost of insurance and official fees to the buyer.
- (6) The new unpaid time balance.
- (7) The new schedule of installment payments.

(d) Consolidation of contracts.--If there is a consolidation of two or more agreements, the provisions of section 4329(a) and (b) (relating to add-on sales) apply.

**Note**

**This section is based on § 702 of the GSISA, except that the reference in the GSISA to minimum finance charges is eliminated.**

§ 4328. New payment schedule.

(a) Right to new payment schedule.--If a closed-end credit agreement provides for the payment of an installment that is more than double the amount of the average of the preceding installments, the buyer upon default of this installment shall have an absolute right to obtain a new payment schedule.

(b) Payments.--Unless agreed to by the buyer, the periodic payments under the new schedule may not be greater than the average of the preceding installments.

**Note**

**This section is based on § 703 of the GSISA.**

§ 4329. Add-on sales.

(a) Add-on provisions.--A closed-end credit agreement that includes an add-on sales provision shall comply with the requirements of this chapter and may contain the following provisions:

(1) The seller may add subsequent purchases made by the buyer to the agreement.

(2) The total price of the goods or services covered by the agreement shall be increased by the price of the additional goods or services.

(3) The seller may increase finance charges and installment payments proportionately.

(4) The terms and conditions of the agreement shall apply equally to the additional goods or services.

(5) The goods purchased under the previous agreement shall be security for the goods purchased under the subsequent agreement, but only until the time sale price under the previous agreement is fully paid.

(b) Allocation.--

(1) When a subsequent purchase is made, the entire amount of all previously made payments is deemed to have been applied toward the payment of the previous time sale price.

(2) A payment received after a subsequent purchase is made is deemed to be allocated to all the various time sale prices in the same proportion or ratio as the original purchase prices of the various purchases bear to one another.

(3) If the amount of each installment 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:

(i) An amount equal to the original installment payment, to the previous time sale price.

(ii) An amount equal to the increase, to the subsequent time sale price.

(4) The amount of an initial or down payment on a subsequent purchase is deemed to be allocated in its entirety to the subsequent purchase.

(c) New agreement.--When a subsequent purchase is made, the seller shall deliver to the buyer prior to the due date of the first installment a new agreement that sets forth all the following:

(1) The information under section 4322(1) through (12) (relating to contents) as it relates to the subsequent purchase.

(2) The unpaid time balance of the prior agreement with the seller.

(3) The new unpaid balance, which is the sum of the amount under paragraph (2) and the amount described in section 4322(11) for the subsequent purchase.

(4) The consolidated time balance, which is the sum of the unpaid balance under paragraph (3) and the amount of the finance charge payable by the buyer to the seller, including the following:

(i) The number of installments required.

(ii) The amount of each installment expressed in dollars.

(iii) The due date or period for each installment.

(5) A statement that the seller is adding the subsequent purchase to the buyer's existing agreement in accordance with the provisions of that agreement.

#### **Note**

**Subsection (a) is based on § 801 of the GSISA. Subsection (b) is based on § 802 of the GSISA. Subsection (c) is based on § 803 of the GSISA but requires a new agreement instead of a memorandum. The last two sentences of the following comment are based on the second to last sentence of § 803 of the GSISA.**

### Comment

The introductory language of subsection (a) specifies that the provisions of the other subchapters (such as those concerning contracts in general and costs and charges) govern add-on sales. For example, a memorandum unsigned by a buyer is no longer adequate when an add-on sale occurs, since Subchapter B requires that a seller must provide the specified disclosures to the buyer, and the buyer must sign a new contract that covers both the previous unpaid purchases and the new purchases. These changes are necessary to preserve “holder-in-due-course” status. The items in subsection (c) do not need to be stated in the order given. Additional items may be included to explain the computations made in determining the amount to be paid by the buyer.

## SUBCHAPTER C OPEN-END CREDIT AGREEMENTS

Sec.

4331. Establishment.

4332. Requirements.

4333. Applicability and effect of subchapter.

§ 4331. Establishment.

(a) Seller.--A seller may enter into an open-end credit agreement upon the request of a buyer or prospective buyer.

(b) Financing agency.--Subject to the other provisions of this chapter, a financing agency may enter into an open-end credit agreement on behalf of a seller from whom the financing agency may, with the buyer’s consent, purchase or acquire the buyer’s indebtedness, to be paid according to the agreement.

### Note

**This section is based on § 901 of the GSISA.**

§ 4332. Requirements.

(a) Signature.--A seller may not obtain the signature of a buyer on an application for an open-end credit agreement if it contains blank spaces to be filled in after it has been signed.

(b) Separate agreement unnecessary.--A buyer does not need to sign a separate account agreement when a new purchase is made under an existing agreement.

(c) Heading.--The following heading shall appear at the top of the agreement or directly above the space reserved for the signature of the buyer:

(1) "Security Agreement" if the seller retains a security interest in the goods as security for the goods or services purchased.

(2) "Lien Contract" if the seller obtains a lien on other goods or non-residential real estate as security for the goods or services purchased.

(3) "Open-End Credit Agreement" if the seller does not obtain security for the goods or services purchased.

(d) Entire agreement.--The written agreement shall contain the entire agreement of the parties regarding the costs and terms of payment for the goods and services.

**Note**

**Subsections (a) and (d) are not contained in the GSISA. For comparable provisions to subsections (a) and (d), see § 4321(a) and (b). Subsections (b) and (c) are based on § 302(b) of the GSISA.**

§ 4333. Applicability and effect of subchapter.

(a) Security interest.--This subchapter does not prohibit the execution of an agreement between a buyer and seller whereby the seller retains a security interest in goods sold to the buyer until full payment has been made.

(b) Allocation.--Section 4329(b) (relating to add-on sales) governs goods sold under an agreement under subsection (a).

(c) Notes; third party rights.--An open-end credit agreement may not require or entail the execution of a note by the buyer that when separately negotiated will eliminate as to a third party a right of action or defense that the buyer may have against the seller.

**Note**

**Subsections (a) and (b) are based on § 908 of the GSISA.  
Subsection (c) is based on § 909 of the GSISA.**

SUBCHAPTER D  
COSTS AND CHARGES

Sec.

- 4341. Applicability.
- 4342. Insurance.
- 4343. Late fees.
- 4344. Costs of collection.
- 4345. Finance charges.
- 4346. Costs from non-affiliated entity.
- 4347. Extension and deferment.
- 4348. Interest rate after maturity.

§ 4341. Applicability.

A seller may contract for or collect a fee, expense or charge only if the fee, expense or charge is specifically set forth in this chapter.

**Note**

**This section is based on § 504 and the second sentence of § 906 of the GSISA.**

§ 4342. Insurance.

(a) Compliance with law.--The following shall comply with the act of September 2, 1961 (P.L.1232, No.540), known as the Model Act for the Regulation of Credit Life Insurance and Credit Accident and Health Insurance:

(1) The seller and buyer, if:

(i) the cost of the insurance is included in the closed-end credit agreement;

and

(ii) a separate charge is made to the buyer for the insurance.

(2) The seller or holder, if the insurance is to be procured by the seller or holder under an open-end credit agreement.

(b) Separate charge; agreement.--

(1) If the cost of insurance is to be separately charged to the buyer under an open-end credit agreement, the buyer and seller must so specify in a signed agreement.

(2) A copy of the agreement under paragraph (1) shall be given or furnished to the buyer.

(3) The agreement shall state whether the insurance is to be procured by the buyer, seller or holder.

**Note**

**Subsection (a)(1) is based on § 305 of the GSISA. Subsections (a)(2) and (b) are based on § 907 of the GSISA.**

§ 4343. Late fees.

(a) Closed-end credit agreement.--

(1) A closed-end credit agreement may provide for the payment by the buyer of a late fee on each installment in default for a period of not less than ten days in an amount not in excess of 5% of the installment or \$10, whichever is less.

(2) Only one late fee may be collected on an installment regardless of the period that it remains in default.

(b) Open-end credit agreement.--

A late fee may be assessed on an open-end credit agreement regarding each minimum payment not paid in full on the payment due date of the statement on which the minimum payment first appears.

**Note**

**Subsection (a)(1) is based on the first sentence of § 306 of the GSISA, except that the dollar figure is raised from \$5 to \$10 and the provision in the GSISA that “a minimum charge of one dollar (\$1) may be made” is eliminated. Subsection (a)(2) is based on the second sentence of § 306 of the GSISA. Subsection (b) is based on § 306.1 of the GSISA. The following comment is based on § 306.2 of the GSISA.**

**Comment**

**A seller or holder may increase the late fee by providing the buyer with a notice of the increase to the extent required and in the manner specified by the Truth in Lending Act (Public Law 90-321, 15 U.S.C. § 1601 et seq.) and its regulations under Regulation Z.**

§ 4344. Costs of collection.

A closed-end credit agreement or an open-end credit agreement may provide for payment of actual and reasonable costs of collection only if any of the following occurs:

(1) If the goods are subject to a security interest, the goods are removed from the Commonwealth without the written permission of the holder.

(2) The buyer fails to notify the holder of a change of residence.

(3) The buyer fails to communicate with the holder for a period of 45 days after a default in making payments due under the agreement.

**Note**

**This section is based on the last sentence of § 306 of the GSISA.**

**Comment**

**Actual and reasonable costs of collection include official fees, court fees and attorney fees.**

§ 4345. Finance charges.

(a) General rule.--Pursuant to this section and the provisions of a closed-end credit agreement or an open-end credit agreement, a seller and holder may charge, receive and collect a finance charge.

(b) Closed-end credit agreement.--A finance charge under a closed-end credit agreement shall be:

(1) measured for a period between the date of the agreement and the due date of the last installment; and

(2) calculated for the period according to the actuarial method or the United States Rule method, at a rate agreed to by the buyer and the seller or holder.

(c) Open-end credit agreement.--

(1) Except as provided in paragraph (2), a finance charge on an open-end credit agreement:

(i) shall be computed based on the outstanding monthly balances; and

(ii) may not exceed the rate agreed to by the buyer and the seller or holder.

(2) A minimum finance charge of \$1 per month may be made for each month, if the finance charge so computed is less than that amount.

#### Note

**Subsection (a) is based on § 501(a) and the first sentence of § 904 of the GSISA. Subsection (b) is based on § 501(a) of the GSISA. Subsection (b) does not incorporate the phrase “having due regard for the schedule of installments” that appears in § 503 of the GSISA. Subsection (c)(1) is based on the second sentence of § 904 and on § 904(a) of the GSISA. Subsection (c)(2) is based on § 904(b) of the GSISA, except that the minimum finance charge is raised from \$0.50 to \$1 and the phrase “and may be imposed for a minimum period of six months” is eliminated. The following comment is based on the first sentence of § 912 of the GSISA.**

#### Comment

**Consistent with the provisions of this chapter, a seller or holder may increase the rate of the finance charge on an open-end credit agreement by providing the buyer with a notice of the increase to the extent required and in the manner specified by the Truth in Lending Act (Public Law 90-321, 15 U.S.C. § 1601 et seq.) and its regulations under Regulation Z.**

§ 4346. Costs from non-affiliated entity.

A closed-end credit agreement and an open-end credit agreement may provide for the reimbursement from a buyer of costs for a service provided by an entity that is not otherwise affiliated with the seller or holder if all the following conditions exist:

- (1) The buyer requests that the seller or holder provide the service.
- (2) The service is for the convenience of the buyer.
- (3) The seller or holder contracts with the entity to provide the service to the buyer or other buyers.

(4) The seller or holder actually incurs the costs of the service provided by the entity.

(5) The costs incurred for the service are reasonable and necessary.

(6) The reimbursement costs received from the buyer do not exceed the costs incurred by the seller or holder.

**Note**

**This section is not contained in the GSISA.**

**Comment**

**This section provides that a seller or holder may be reimbursed by the buyer for certain costs incurred from non-affiliated entities, such as processing fees for electronic checking, credit applications and credit reports.**

§ 4347. Extension and deferment.

(a) General rule.--Upon agreement with the buyer, the holder of a closed-end credit agreement or an open-end credit agreement may extend the scheduled due date or defer the scheduled payment of all or part of an installment payable under the agreement.

(b) Charges.--

(1) A charge may not be made for an extension or a deferment unless the extension or deferment agreement is in writing and signed by the parties.

(2) Subject to paragraph (3), the holder may contract for and collect the payment of an extension or deferment charge by the buyer.

(3) Except as provided in paragraph (4), the charge under paragraph (2) may not exceed an amount equal to 1½% per month simple interest on the full amount or part of the installment for the extension or deferment period, which may not exceed the period:

(i) from the date when the extended or deferred installment would have been payable in the absence of the extension or deferment; and

(ii) to the date when the installment is made payable under the extension or deferment agreement.

(4) A minimum charge of \$10 for the extension or deferment period may be made if the computed extension or deferment charge amounts to less than \$10.

(5) Subject to section 4342 (relating to insurance), the agreement may provide for payment of the additional cost of or premiums for continuing insurance coverage under the agreement until the end of the extension or deferment period.

**Note**

**This section is based on § 701 of the GSISA, except that the percentage in subsection (b)(3) is increased from 1% to 1½% and the dollar figure in subsection (b)(4) is increased from \$1 to \$10.**

§ 4348. Interest rate after maturity.

If a balance remains unpaid at the expiration of the scheduled maturity date of a closed-end credit agreement, the rate of the finance charge for the period beginning at the date of the maturity until payment in full may not exceed the rate of the finance charge under the original agreement.

**Note**

**This section is not contained in the GSISA.**

SUBCHAPTER E  
ENFORCEMENT AND PENALTIES

Sec.

4351. Willful and intentional violations.

4352. Noncompliance; costs and charges.

4353. Willful violations regarding finance charges.

4354. Corrections.  
4355. Unfair trade practice.

§ 4351. Willful and intentional violations.

A person who willfully and intentionally violates, or directs or consents to the violation of, a provision of this chapter shall be guilty of a misdemeanor and upon conviction be punished by a fine of not more than \$1,000 or imprisonment for not more than one year, or both.

**Note**

**This section is based on § 1201 of the GSISA.**

§ 4352. Noncompliance; costs and charges.

(a) Bar to recovery.--If a seller fails to comply with the provisions of this chapter, the seller or holder who acquires a closed-end credit agreement or an open-end credit agreement with knowledge of the noncompliance is barred from recovery of the following costs and charges imposed in connection with the agreement:

- (1) Refinance charges under section 4327 (relating to refinancing).
- (2) Late fees under section 4343 (relating to late fees).
- (3) Costs of collection under section 4344 (relating to costs of collection).
- (4) Finance charges under section 4345 (relating to finance charges).
- (5) Extension and deferment charges under section 4347 (relating to extension and deferment).
- (6) Interest after maturity under section 4348 (relating to interest rate after maturity).

(b) Remedy of buyer.--The buyer shall have the right to recover from the person under subsection (a) an amount equal to the charges under subsection (a) that were paid by the buyer.

**Note**

**This section is based on § 1202 of the GSISA, except that subsection (a)(6) is not contained in the GSISA.**

§ 4353. Willful violations regarding finance charges.

(a) Penalty.--If a seller or holder willfully violates a provision of this chapter regarding the imposition, computation or disclosure of a finance charge on a consolidated total of two or more agreements under section 4329 (relating to add-on sales), the buyer may recover from the seller or holder an amount equal to three times the total of the following, which have been actually paid by the buyer:

- (1) Refinance charges under section 4327 (relating to refinancing).
- (2) Late fees under section 4343 (relating to late fees).
- (3) Costs of collection under section 4344 (relating to costs of collection).
- (4) Finance charges under section 4345 (relating to finance charges).
- (5) Extension and deferment charges under section 4347 (relating to extension and deferment).
- (6) Interest after maturity under section 4348 (relating to interest rate after maturity).

(b) Bar to recovery.--If a violation has occurred under this section, the seller or holder is barred from the recovery of the costs and charges under subsection (a).

**Note**

**This section is based on § 1204 of the GSISA, except that subsection (a)(6) is not contained in the GSISA.**

§ 4354. Corrections.

(a) General rule.--Notwithstanding the provisions of this chapter and subject to subsection (b), a seller or holder may correct a failure to comply with a provision of this chapter in accordance with this section unless a willful violation has occurred.

(b) Concurrence by buyer.--A correction that will increase the amount owed by the buyer or the amount of a payment is not permitted unless the buyer concurs in writing with the correction.

(c) No liability.--If a seller or holder corrects a violation in accordance with this section, the seller and holder are not subject to penalty under this subchapter.

(d) Delivery.--Within 30 days of the execution of the original closed-end credit agreement or open-end credit agreement by the buyer, a correction may be delivered to the buyer in the form of a corrected copy of the agreement.

(e) Credit.--An amount improperly collected from the buyer shall be:

- (1) credited against the indebtedness evidenced by the agreement; or
- (2) refunded to the buyer if the debt has already been satisfied.

**Note**

**This section is based on § 1203 of the GSISA.**

§ 4355. Unfair trade practice.

A violation of any provision of this chapter shall be deemed to be a violation of the act of December 17, 1968 (P.L.1224, No.387), known as the Unfair Trade Practices and Consumer Protection Law.

**Note**

**This section is not contained in the GSISA.**

## **CONFORMING AMENDMENTS TO TITLE 42**

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### § 6902. Definitions.

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

\* \* \*

“Rental-purchase agreement.” An agreement for the use of personal property by an individual primarily for personal, family or household purposes for an initial period of four months or less that is automatically renewable with each rental payment after the initial period and that permits the lessee to acquire ownership of the property. The term shall not be construed to be, nor is it subject to laws governing, any of the following:

\* \* \*

(6) [A retail installment sale, retail installment contract or retail installment account as defined in the act of October 28, 1966 (1<sup>st</sup> Sp.Sess., P.L.55, No. 7), known as the Goods and Services Installment Sales Act.] A closed-end credit agreement, open-end credit agreement or sale as defined in 12 Pa.C.S. § 4302 (relating to definitions).

\* \* \*

### § 6911. Conflict with other law.

In the event of a conflict between this chapter and [the act of October 28, 1966 (1<sup>st</sup> Sp.Sess., P.L.55, No.7), known as the Goods and Services Installment Sales Act] 12

Pa.C.S. Ch. 43 (relating to goods and services installment sales), the provisions of this chapter shall be controlling.

## **TRANSITIONAL LANGUAGE**

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### **APPLICABILITY**

(1) Nothing in Chapter 43 (relating to goods and services installment sales) shall affect the validity of an agreement or contractual relationship entered into prior to April 1, 1967, except that a rate in excess of that allowed by the chapter shall be reduced to the permissible rate on or before April 1, 1967.

(2) The remedies under Chapter 43 for violation of a section of the chapter are not exclusive and shall be in addition to other procedures or remedies for a violation or conduct provided for in other law.

### **REPEALS**

(1) The General Assembly declares that the repeal under paragraph (2) is necessary to effectuate the amendment of 12 Pa.C.S.

(2) The act of October 28, 1966, (1<sup>st</sup> Sp.Sess., P.L.55, No.7), known as the Goods and Services Installment Sales Act, is repealed.

## **EFFECTIVE DATES**

The following shall take effect in one year:

- (1) The addition of 12 Pa.C.S. Part IV (relating to consumer credit).
- (2) The repeal of the act of October 28, 1966, (1<sup>st</sup> Sp.Sess., P.L.55, No.7), known as the Goods and Services Installment Sales Act.
- (3) The amendments to 42 Pa.C.S. §§ 6902 (relating to definitions) and 6911 (relating to conflict with other law).

## SOURCE TABLES\*

GSISA Section	12 Pa.C.S. Section
101	4301
102	4303
103	4304(a), (b) and (c)
104	4304(e)
201	4302 generally
201(17) and (18)	4325(c)
301	--
302(a)	4321(a)
302(b)	4322(1) and 4332(b) and (c)
302(c)	4322(15)
303(a)	4322(2) through (5)
303(b) through (j)	4322(6) through (14)
303(k)	4322(16)
303 last sentence	4322 Comment
304	4321(b)
305	4342(a)(1)
306 first sentence	4343(a)(1)
306 second sentence	4343(a)(2)
306 last sentence	4344
306.1	4343(b)
306.2	4343 Comment
307	4323
308	4324
309	--
401	4305(b)
402 first sentence	4306
402 second sentence	4325(a) and (b)
403	4310
404	4311
501(a)	4345(a) and (b)
501(b), (b.1) and (c) and 502	--
503	4321(c)
504	4302 finance charge and 4341
601	4312

\* These source tables list a provision in the act of October 28, 1966, Special Session 1 (P.L.55, No.7), as amended, known as the Goods and Services Installment Sales Act (GSISA), and its comparable provision in proposed 12 Pa.C.S. Chapter 43. Several GSISA provisions are eliminated from proposed 12 Pa.C.S. Chapter 43 because they are covered by Federal law or because of the restructuring of the statutory provisions.

<b>GSISA Section</b>	<b>12 Pa.C.S. Section</b>
602	4326
603(a)	4313
603(a) last sentence	--
603(b)	4302 actuarial method
604 first sentence	4314
604 second sentence	Replaced by 4305(a)
605	--
701	4347
702	4327
703	4328
801	4329(a)
802	4329(b)
803	4329(c)
803 second to the last sentence	4329 Comment - last two sentences
804, 805 and 806	--
901	4331
902 and 903	--
904 first sentence	4345(a)
904 second sentence and 904(a)	4345(c)(1)
904(b)	4345(c)(2)
904(b.1), (b.2) and (c), 904.2 and 905	--
906 first sentence	4302 finance charge
906 second sentence	4341
906 third sentence	4308(b)
907	4342(a)(2) and (b)
908	4333(a) and (b)
909	4333(c)
910	--
911	Transitional language
912 first sentence	4345 Comment
912 second sentence	Transitional language
1001 first sentence	4308(a)
1001 second sentence	4308(c)
1101	4309(a)
1102 generally	4309(d)(1)
1102 first sentence	4309(b) and (c)(1) and (2)
1102 second sentence	4309(c)(3)
1102 last sentence	4309(d)(2)
1201	4351
1202	4352(a)(1) - (5) and (b)
1203	4354
1204	4353(a)(1) - (5) and (b)
1205	4307
1301	Transitional language
1302	See 1 Pa.C.S. § 1925
1303	Transitional language

<b>12 Pa.C.S. Section</b>	<b>GSISA Section</b>
4301	101
4302 generally	201
4302 actuarial method	603(b)
4302 finance charge	201(10), 504 and 906 first sentence
4303	102
4304(a), (b) and (c)	103
4304(d)	--
4304(e)	104
4305(a)	Replaces 604 second sentence
4305(b)	401
4306	402 first sentence
4307	1205
4308(a)	1001 first sentence
4308(b)	906 third sentence
4308 (c)	1001 second sentence
4309(a)	1101
4309(b) and (c)(1) and (2)	1102 first sentence
4309(c)(2)(i)(D)	--
4309(c)(3)	1102 second sentence
4309(d)(1)	Implied in 1102
4309(d)(2)	1102 last sentence
4310	403
4311	404
4312	601
4313	603(a)
4314	604 first sentence
4321(a)	302(a)
4321(b)	304
4321(c)	503
4321(d)	--
4322(1)	302(b)
4322(2) through (5)	303(a)
4322(6) through (14)	303(b) through (j)
4322(15)	302(c)
4322(16)	303(k)
4322(17)	--
4322 comment	303 last sentence
4323 generally	307
4323(c)(1) and (2)	--
4324	308
4325(a) and (b)	402 second sentence
4325(c)	201(17) and (18)
4326	602
4327	702
4328	703
4329(a)	801
4329(b)	802

<b>12 Pa.C.S. Section</b>	<b>GSISA Section</b>
4329(c)	803
4329 comment - last two sentences	803 second to the last sentence
4331	901
4332(a)	--
4332(b) and (c)	302(b)
4332(d)	--
4333(a) and (b)	908
4333(c)	909
4341	504 and 906 second sentence
4342(a)(1)	305
4342(a)(2) and (b)	907
4343(a)(1)	306 first sentence
4343(a)(2)	306 second sentence
4343(b)	306.1
4343 Comment	306.2
4344	306 last sentence
4345(a)	501(a) and 904 first sentence
4345(b)	501(a)
4345(c)(1)	904 second sentence and 904(a)
4345(c)(2)	904(b)
4345 Comment	912 first sentence
4346	--
4347	701
4348	--
4351	1201
4352(a)(1) - (5) and (b)	1202
4352(a)(6)	--
4353(a)(1) - (5) and (b)	1204
4353(a)(6)	--
4354	1203
4355	--

**GOODS AND SERVICES INSTALLMENT SALES ACT**  
**Act of Oct. 28, 1966, Special Session 1, P.L. 55, No. 7, Cl. 12**  
Special Session No. 1 of 1966  
No. 1966-7

AN ACT

Defining, regulating and relating to retail installment contracts for all goods and services except certain motor vehicles and home improvements; prescribing the requirements of such contracts and limitations on the enforcement thereof; and providing remedies and penalties.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

ARTICLE I  
GENERAL PROVISIONS

Section 101.

This act shall be known and may be cited as the "Goods and Services Installment Sales Act."

Section 102.

Any waiver by the buyer of the provisions of this act shall be deemed contrary to public policy and shall be unenforceable and void.

Section 103. Contracts within this Act.

For the purposes of this act a retail installment contract, contract, retail installment account, installment account, or revolving account is made in Pennsylvania and, therefore, subject to the provisions of this act if either the seller offers or agrees in Pennsylvania to sell to a resident buyer of Pennsylvania or if such resident Pennsylvania buyer accepts or makes the offer in Pennsylvania to buy, regardless of the situs of the contract as specified therein.

Any solicitation or communication to sell, verbal or written, originating outside the Commonwealth of Pennsylvania but forwarded to and received in Pennsylvania by a resident buyer of Pennsylvania shall be construed as an offer or agreement to sell in Pennsylvania.

Any solicitation or communication to buy, verbal or written, originating within the Commonwealth of Pennsylvania from a resident buyer of Pennsylvania, but forwarded to

and received by a retail seller outside the Commonwealth of Pennsylvania shall be construed as an acceptance or offer to buy in Pennsylvania.

#### Section 104. Application.

Notwithstanding any other act, this act shall exclusively govern and regulate the terms and conditions of all extensions of credit by the means of credit cards or credit card operations for the purchase of goods and services within this Commonwealth but excluding cash advances.

(104 added Mar. 25, 1982, P.L.199, No.68)

## ARTICLE II DEFINITIONS

#### Section 201.

Unless the context or subject matter otherwise requires, the definitions given in this article govern the construction of this act.

(1) "Goods" means tangible chattels bought for use primarily for personal, family, or household purposes, including certificates or coupons exchangeable for such goods, but does not include goods which come within the provisions of the act of August 14, 1963 (P.L.1082), known as the "Home Improvement Finance Act," and does not include any vehicle covered by the act of June 28, 1947 (P.L.1110), known as the "Motor Vehicle Sales Finance Act."

(2) "Services" means work, labor and services for other than a commercial or business use, including services furnished in connection with the sale or repair of goods as defined in section 201 (1) or furnished in connection with the repair of motor vehicles, but does not include the services which come within the provisions of the act of August 14, 1963 (P.L.1082), known as the "Home Improvement Finance Act," and does not include any vehicle covered by the act of June 28, 1947 (P.L.1110), known as the "Motor Vehicle Sales Finance Act," or services for which the tariffs, rates, charges, costs, or expenses, including in each instance the time sale price, is required by law to be filed with or approved by the Commonwealth or Federal Government or any official department, commission, or agency of the Commonwealth of Pennsylvania or the United States.

(3) "Retail seller" or "seller" means a person engaged in the business of selling goods or furnishing services to retail buyers.

(4) "Retail buyer" or "buyer" means a person who buys goods or obtains services from a retail seller in a retail installment sale and not principally for the purpose of resale.

(5) "Retail installment sale" or "sale" means the sale of goods or the furnishing of services by a retail seller to a retail buyer for a time sale price payable in installments.

(6) "Retail installment contract" or "contract" means any contract for a retail installment sale between a buyer and a seller which provides for repayment in installments, whether or not such contract contains a title retention provision, and in which a time price differential is computed upon and added to the unpaid balance at the time of sale or where no time price differential is added but the goods or services are available at a lesser price if paid by cash or where the buyer, if he had paid cash, would have received any additional goods or services or any higher quality goods or services at

no added cost over the total amount he pays in installments. When taken or given in connection with a retail installment sale, the term includes but is not limited to a security agreement 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 also includes any contract, obligation or agreement in the form of bailment or lease if the bailee or lessee has the option to renew the contract by making the payments specified in the contract, the contract obligates the bailor or lessor to transfer ownership of the property to the bailee or lessee upon full compliance by the bailee or lessee with his obligations under the contract, including any obligation incurred with respect to the exercise of an option by the bailee or lessee to renew the contract, and the payments contracted for by bailee or lessee, including those payments pursuant to the exercise of an option by the bailee or lessee to renew the contract, are substantially equivalent to or in excess of the aggregate value of the property and services involved. With respect to a sale described in the previous sentence, the disclosures required under this title shall be calculated on the assumption that the bailee or lessee will exercise all of his options to renew the contract, make all payments specified in the contract, and become the owner of the property involved.

((6) reenacted July 11, 1989, P.L.573, No.57)

(7) "Retail installment account" or "installment account" or "revolving account" means an account established by an agreement pursuant to which the buyer promises to pay, in installments, to a retail seller or to a financing agency, his outstanding balance incurred in retail installment sales, whether or not a security interest in the goods sold is retained by the seller, and which provides for a service charge which is expressed as a percent of the periodic balances to accrue thereafter providing such charge is not capitalized or stated as a dollar amount in such agreement.

(8) "Cash sale price" means the cash sale price stated in a retail installment contract 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 installment contract if the sale were a sale for cash instead of a retail installment sale. The cash sale price may include any taxes and cash sale prices for accessories and services, if any, included in a retail installment sale.

(9) "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 service charge.

(10) "Time price differential" or "service charge" means the amount however denominated or expressed which the retail buyer contracts to pay or pays for the privilege of purchasing goods or services to be paid for by the buyer in installments; it does not include the amounts, if any, charged for insurance premiums, delinquency charge, attorney's fees, court costs, collection expenses or official fees. Wherever either of such terms is required to be used under the provisions of this act the other may be used interchangeably.

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

(12) "Time balance" means the total of the unpaid balance and the amount of the service charge, if any.

(13) "Holder" means the retail seller who acquires a retail installment contract or installment account executed, incurred or entered into by a retail buyer, or if the contract or installment account is purchased by a financing agency or other assignee, the financing agency or other assignee. The term does not include the pledgee of or the holder of a security interest in an aggregate number of such contracts or installment accounts to secure a bona fide loan thereon.

(14) "Official fees" means the fees required by law and actually to be paid to the appropriate public officer to perfect a lien or other security interest, retained or taken by a seller under a retail installment contract or installment account.

(15) "Person" means an individual, partnership, corporation, association or other group, however organized.

(16) "Financing agency" means a person engaged in this Commonwealth in whole or in part in the business of purchasing retail installment contracts, or installment accounts from one or more retail sellers. The term includes but is not limited to a bank, bank and trust company, private banker, or investment company.

(17) "Purchase money loan" means a cash advance which is received by a customer in return for a service charge, time-price differential, finance charge or interest which is applied, in whole or substantial part, to a purchase of goods or services from a seller who is affiliated with the creditor by common control or business arrangement.

((17) added Mar. 25, 1982, P.L.199, No.68)

(18) "Purchase money lender" means any creditor or financing agency who makes or extends purchase money loans.

((18) added Mar. 25, 1982, P.L.199, No.68)

### ARTICLE III PROVISIONS OF RETAIL INSTALLMENT CONTRACTS

#### Section 301.

A retail installment contract shall be dated and in writing; the printed portion thereof shall be in at least eight-point type.

#### Section 302.

Except as provided in sections 309 and 803, every retail installment contract shall be contained in a single document which shall contain:

(a) The entire agreement of the parties with respect to the cost and terms of payment for the goods and services, including any promissory notes or any other evidences of indebtedness between the parties relating to the transaction, and 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.

(b) Either at the top of the contract or directly above the space reserved for the signature of the buyer, the words "Security Agreement" or "Lien Contract," as the case may be, shall appear in at least ten-point bold type where a security interest in the goods is retained or a lien on other goods or realty is obtained by the seller as security for the goods or services purchased. Either at the top of the contract or directly above the space reserved for the signature of the buyer, the words "Retail Installment Contract," shall appear in at least ten-point bold type where security is not obtained by the seller for the goods or services purchased: Provided, That a revolving charge agreement or account need not be signed again but a memorandum shall be sent to the buyer by the seller at the time of the issuance of new credit under the contract.

(c) 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 service charge."

### Section 303.

Except as provided in Article VIII of this act, a contract shall contain the following:

(a) 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 goods or services sufficient to identify them. Services or multiple items of goods may be described in general terms and may be described in detail sufficient to identify them in a separate writing.

(b) The cash sale price of the goods, services and accessories which are the subject matter of the retail installment sale.

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

(d) The difference between item (b) and item (c).

(e) The amount, if any, included for insurance, specifying the coverages and the cost of each type of coverage.

(f) The amount, if any, of official fees.

(g) The unpaid balance, which is the sum of items (d), (e) and (f).

(h) The amount of the service charge, if any.

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

(j) The time sale price.

(k) The following provision in at least ten-point, boldface type:

## NOTICE

Any holder of this consumer credit contract is subject to all claims and defenses which the debtor could assert against the seller of goods or services obtained pursuant hereto or with the proceeds hereof. Recovery hereunder by the debtor shall not exceed amount paid by the debtor hereunder.

The items need not be stated in the sequence or order set forth above; additional items may be included to explain the computations made in determining the amount to be paid by the buyer.

(303 amended Mar. 25, 1982, P.L.199, No.68)

### Section 304.

The seller shall not obtain the signature of the buyer to a contract when it contains blank spaces to be filled in after it has been signed.

### Section 305.

If the cost of any insurance is included in the contract and a separate charge is made to the buyer for such insurance, the seller and the buyer shall comply in all respects with the act of September 2, 1961 (P.L.1232), known as the "Model Act for the Regulation of Credit Life Insurance and Credit Accident and Health Insurance."

### Section 306.

A contract may provide for the payment by the buyer of a delinquency charge on each installment in default for a period of not less than ten days in an amount not in excess of five percent (5%) of such installment or five dollars (\$5), whichever is less, but a minimum charge of one dollar (\$1) may be made. Only one such delinquency charge may be collected on any such installment regardless of the period during which it remains in default. The contract may also provide for payment of any actual and reasonable costs of collection occasioned by removal of the goods from the Commonwealth without written permission of the holder, or by the failure of the buyer to notify the holder of any change of residence, or by the failure of the buyer to communicate with the holder for a period of forty-five (45) days after any default in making payments due under the contract.

#### Section 306.1.

On each retail installment account or revolving account a late fee may be assessed on each minimum payment not paid in full on the payment due date of the statement on which such minimum payment first appears.

(306.1 amended June 22, 2001, P.L. , No.44)

#### Section 306.2.

A seller or holder may increase the late fee by providing the buyer with a notice of the increase to the extent required and in the manner specified by the Truth in Lending Act (Public Law 90-321, 15 U.S.C. § 1601 et seq.) and the regulations issued pursuant thereto by the Board of Governors of the Federal Reserve System (Regulation Z) as such act and regulations may from time to time be amended.

(306.2 added June 22, 2001, P.L. , No.44)

#### Section 307.

The seller shall deliver to the buyer, or mail to him, at his address shown on the contract, a legible copy thereof completed in accordance with the provisions of this act. Until the seller does so, the buyer shall be obligated to pay only the cash sale price. 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 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 shall be a rebuttable presumption of such delivery and of compliance with this section and section 304, in any action or proceeding by or against an assignee of the contract without knowledge to the contrary when he purchases the contract. If the holder furnishes the buyer a copy of the contract, or a notice containing the items required by section 303 and stating that the buyer should notify the holder in writing within fifteen (15) days if he was not furnished a copy of the contract, and no such notification is given, it shall be conclusively presumed in favor of the third party that a copy was furnished as required by sections 304 and 307.

#### Section 308.

Retail installment sales negotiated and entered into by mail or telephone without personal solicitation by a salesman or other representative of the seller, where the seller's cash and deferred payment prices and other terms are clearly set forth in a catalog or other printed solicitation of business which is generally available to the public, may be made as hereinafter provided. All of the provisions of this act shall apply to such sales except that the seller shall not be required to deliver a copy of the contract to the buyer as provided in section 307, and, if when the proposed retail installment sale contract is received by the seller from the buyer, there are blank spaces to be filled in, the seller may insert in the appropriate blank spaces the amounts of money and other terms which are set forth in the seller's catalog which is then in effect. In lieu of the copy of the contract provided for in section 307 the seller shall, prior to the due date of the first installment, furnish to the buyer a written statement of the items inserted in such blank spaces.

#### Section 309.

If a retail installment sale is sale of goods or services for a cash sale price of fifty dollars (\$50) or less, then the retail installment contract need not be contained in a single document. If the contract is contained in more than one document, one such document shall be an original document signed by the retail buyer, stated to be applicable to purchases of goods or services to be made by the retail buyer from time to time. In such case such document, together with the sales slip, account book or other written statement relating to each purchase, shall set forth all of the information required by section 303 and shall constitute a separate retail installment contract for each purchase. On each succeeding purchase pursuant to such original document, the sales slip, account book or other written statement may at the option of the seller constitute the memorandum required by section 803.

ARTICLE IV  
RESTRICTIONS ON RETAIL INSTALLMENT CONTRACTS

Section 401.

No contract, obligation or agreement shall contain any provision by which:  
(Par. amended Mar. 25, 1982, P.L.199, No.68)

(a) The buyer agrees not to assert against a seller a claim or defense arising out of the sale or agrees not to assert against an assignee such a claim or defense other than as provided in section 402.

(b) In the absence of the buyer's default in the performance of any of his obligations, the holder may accelerate the maturity of any part or all of the amount owing thereunder.

(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 goods.

(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 goods.

(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 goods.

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

(g) The buyer agrees to the payment of any charge by reason of the exercise of his right to rescind or avoid the contract.

(h) The seller or holder of the contract is given the right to commence an action on a contract under the provisions of this act in a county other than the county in which the contract was in fact signed by the buyer, the county in which the buyer resides at the commencement of the action, the county in which the buyer resided at the time that the contract was entered into, or in the county in which the goods purchased pursuant to such contract have been so affixed to real property as to become a part of such real property.

(i) An assignment of wages is given.

(j) The seller or holder of the contract or any person acting on his behalf is given authority to execute upon a judgment by confession.

((j) added Mar. 25, 1982, P.L.199, No.68)

(k) The seller or holder of the contract or any person acting on his behalf is given authority to take a mortgage or other security against residential real estate of the buyer or any other obligee to the contract. ((k) added Mar. 25, 1982, P.L.199, No.68)

Section 402.

No right of action or defense arising out of a retail installment sale which the buyer has against the seller, other than as provided in section 1202, and which would be cut off by assignment, shall be cut off by assignment of the contract to any third party whether or not he acquires the contract in good faith and for value. No purchase money lender shall

take or receive any instrument which evidences or embodies a debt arising from a purchase money loan nor shall any seller accept as full or partial payment for such sale the proceeds of any purchase money loan, unless any instrument which evidences or embodies a debt made in connection with such purchase money loan contains the following provision in at least ten-point boldface type:

NOTICE

Any holder of this consumer credit contract is subject to all claims and defenses which the debtor could assert against the seller of goods or services obtained with the proceeds hereof. Recovery hereunder by the debtor shall not exceed amount paid by the debtor hereunder.

(402 amended Mar. 25, 1982, P.L.199, No.68)

Section 403.

No contract other than one for services shall provide for a lien on any goods theretofore fully paid for or which have not been sold by the seller.

Section 404.

Any provision in a contract which is prohibited by this act shall be void but shall not otherwise affect the validity of the contract.

ARTICLE V  
SERVICE CHARGE LIMITATION

Section 501.

(a) A seller may, in a retail installment contract, contract for and, if so contracted for, the holder thereof may charge, receive and collect a service charge measured for a period between the date of such contract and the due date of the last installment and calculated for that period according to the actuarial method of computation or by application of the United States rule at a rate which is agreed upon by the seller or holder and the buyer.

(b) Notwithstanding the rates provided for in this section, no issuer of a credit card primarily engaged as a seller or distributor of gasoline shall be permitted to charge, receive or collect a service charge in excess of fifteen percent (15%) simple interest per annum on unpaid balances.

(b.1) Notwithstanding the rates provided for in this section, no bailor or lessor of goods shall be permitted to charge, receive or collect a service charge in excess of eighteen percent (18%) simple interest per annum on unpaid balances in a contract under which the bailee or lessee: (1) agrees to pay as compensation for use of the goods a sum substantially equivalent to or in excess of the value of the goods; and (2) has an option to become the owner of the goods for no additional or nominal additional consideration. This subsection shall not apply to a rental-purchase agreement as defined in 42 Pa.C.S. § 6902 (relating to definitions).

(c) A minimum service charge of fifty cents (50¢) per month may be made for each month if the service charge so computed is less than that amount; such minimum service charge may be imposed for a minimum period of six months.

(501 amended Dec. 20, 1996, P.L.1519, No.197)

Section 502.

Contracts may be payable in successive monthly, semi-monthly or weekly installments.

Section 503.

When a retail installment contract provides for unequal or irregular installments, the service charge shall be at the effective rate provided for in section 501, having due regard for the schedule of installments.

Section 504.

The 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 otherwise provided in this act.

ARTICLE VI  
PAYMENT

Section 601.

Unless the buyer has notice of actual or intended assignment of a contract or installment account, payment thereunder made by the buyer to the last known holder of such contract or installment account, shall to the extent of the payment, discharge the buyer's obligation.

Section 602.

At any time after its execution, but not later than one year after the last payment thereunder, the holder of a contract shall, upon written request of the buyer made in good faith, promptly give or forward to the buyer a detailed written statement which will state with accuracy 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 (\$1) for each additional statement supplied to the buyer. The provisions of this section shall not apply to those transactions wherein, instead of periodic statements of account, the buyer is provided with a passbook or payment book in which all payments, credits, charges and the unpaid balance is entered.

Section 603.

(a) Notwithstanding the provisions of any contract to the contrary, any buyer may pay the contract in full at any time before maturity and in so paying it shall receive a refund credit thereon for such anticipation. In addition, pursuant to any contract provision so stating and subject to the restrictions of this act, as amended, a seller or holder may accelerate the balance due on an installment sales contract, but shall provide a refund credit thereon calculated as of the date of the acceleration. The amount of any such refund credit shall be computed pursuant to the actuarial method. Actuarial method means the method of allocating payments made on a debt between the amount financed and the finance charge pursuant to which a payment is applied first to the accumulated

finance charge and any remainder is subtracted from the unpaid balance of the amount financed. Where the amount of the credit for anticipation of payment is less than one dollar (\$1) no refund need be made. Where the earned service charge amounts to less than the minimum service charge, there may be retained an amount equal to the minimum service charge applicable.

(b) As used in this section "actuarial method" means the method of allocating payments made on a debt between the amount financed and the finance charge at the interest rate stated in the contract, as defined in Regulation Z, Appendix J, adopted under the Federal Truth in Lending Act.

(603 amended Mar. 25, 1982, P.L.199, No.68)

#### Section 604.

After the payment of all sums for which the buyer is obligated under a contract and upon 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 under such contract. A seller or holder shall not, in the course of collecting an obligation pursuant to this act, communicate or threaten to communicate with the buyer's employer or any agent of the employer (other than to verify employment or to leave a message for the buyer to return a telephone call), or any other person not liable for the obligation other than the buyer's spouse, an adult member of the buyer's household or the attorney of the buyer, except to acquire location information with regard to the buyer from such person (without disclosing the fact of the obligation) or as permitted by order of a court or as reasonably necessary to effectuate a post-judgment judicial remedy.

(604 amended Feb. 21, 1991, P.L.1, No.1)

#### Section 605.

(a) A judgment by confession shall not serve as the basis for a levy, execution or garnishment in any action by a seller, holder or assignee arising out of a retail installment sale, contract or account. To enforce a judgment entered by confession, plaintiff shall file an appropriate proceeding and proceed against defendant as in any original proceeding. A judgment entered by confession may be amended or modified by the court in a proceeding filed for the purpose of enforcing the judgment entered by confession; however, the priority of any lien based on the confessed judgment shall not be affected thereby. The parties to the enforcement proceeding shall have the same rights as parties in other original proceedings.

(b) Within sixty (60) days after payment of the full amount due on a judgment entered by confession, plaintiff shall satisfy the judgment and discontinue with the prejudice any proceeding brought for the purpose of enforcing a judgment entered by confession or satisfy any judgment entered in said proceeding. Plaintiff shall not require any act or payment by the defendant to cover the cost of satisfying the judgment. Any such confessed judgment not revived within one (1) year from the date on which the lien of said judgment has lapsed by operation of law shall be considered satisfied and may not thereafter be revived.

(c) The prevailing party in any action to remove, suspend or enforce such a judgment entered by confession shall be entitled to recover reasonable attorney's fees and costs as determined by the court.

(605 added Mar. 25, 1982, P.L.199, No.68)

## ARTICLE VII REFINANCING AND CONSOLIDATION

### Section 701.

The holder of a retail installment contract may, upon agreement with the buyer, extend the scheduled due date or defer the scheduled payment of all or of any part of any installment or installments payable thereunder. No charge shall be made for any such extension or deferment unless the agreement for such extension or deferment is 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, but such charge may not exceed an amount equal to one percent (1%) per month simple interest on the amount of the installment or installments, 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 installment or installments, or part thereof, would have been payable in the absence of such extension or deferral, to the date when such installment or installments, or part thereof, are made payable under the agreement of extension or deferral; except that a minimum charge of one dollar (\$1) 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 (\$1). Such agreement may also provide for the payment by the buyer of the additional cost to the holder of the contract or 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 section 305.

### Section 702.

The holder of a retail installment contract or contracts may, upon agreement in writing with the buyer, refinance the payment of the unpaid time balance or balances of the contract or contracts by providing for a new schedule of installment 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 603 if he had prepaid in full his obligations under the contract or contracts, but in computing such refund credit there shall not be allowed the minimum earned service charge as authorized by such section; and (2) may not exceed the rate of service charge provided under Article V of this act. Such agreement for refinancing may also provide for the payment by the buyer of the additional cost to the holder of the contract or contracts of premiums for continuing in force, until the maturity of the contract or contracts as refinanced, any insurance coverages provided for therein, subject to the provisions of section 305. The refinancing agreement shall set forth the amount of the unpaid time balance or balances to be

refinanced, the amount of any refund credit, the amount to be refinanced after the deduction of the refund credit, the amount of the service charge under the refinancing agreement, any additional cost of insurance and of official fees to the buyer, the new unpaid time balance and the new schedule of installment payments. Where there is a consolidation of two or more contracts then the provisions of sections 801 and 802 shall apply.

Section 703.

In the event a contract provides for the payment of any installment which is more than double the amount of the average of the preceding installments the buyer, upon default of this installment, shall be given an absolute right to obtain a new payment schedule. Unless agreed to by the buyer, the periodic payments under the new schedule shall not be greater than the average of the preceding installments.

ARTICLE VIII  
ADD-ON SALES

Section 801.

A retail installment contract which otherwise conforms to the requirements of this act may contain the provision that the seller may at his option add subsequent purchases made by the buyer to the contract, and that the total price of the goods or services covered by the contract shall be increased by the price of such additional goods or services, and that all service charges and installment payments may at the seller's option be increased proportionately, and that all terms and conditions of the contract shall apply equally to such additional goods or services. The contract may also 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 the time sale price under the previous contract or contracts is fully paid.

Section 802.

When a 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 time sale price or time sale prices. Each payment thereafter received shall be deemed to be allocated to all of the various time sale prices 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 installment 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 time sale price, and an amount equal to the increase, to the subsequent time sale price. 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.

Section 803.

When a subsequent purchase is made the seller shall deliver to the buyer, prior to the due date of the first installment, a memorandum which shall set forth the following:

(a) 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 goods and services sufficient to identify them. Services or multiple items of goods may be described in general terms and may be described in detail in a separate writing.

(b) The cash sale price of the goods, services and accessories which are the subject matter of the new retail installment sale.

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

(d) The difference between item (b) and item (c).

(e) The amount, if any, included for insurance, specifying the coverages and the cost of each type of coverage.

(f) The amount, if any, of official fees.

(g) The unpaid balance, which is the sum of items (d), (e) and (f).

(h) The unpaid time balance of the prior contract or contracts.

(i) The new unpaid balance, which is the sum of items (g) and (h).

(j) The amount of the service charge computed in conformity with section 805.

(k) The consolidated time balance, which is the sum of items (i) and (j), payable by the buyer to the seller, the number of installments required, the amount of each installment expressed in dollars and the due date or period thereof.

The items need not be stated in the sequence or order set forth above; additional items may be included to explain the computation made in determining the amount to be paid by the buyer.

This memorandum shall contain the statement that the seller is adding the subsequent purchase to the buyer's existing contract in accordance with the provisions thereof.

#### Section 804.

Until the seller delivers to the buyer the memorandum as provided in section 803 the buyer shall be obligated to pay only the cash sale price of the subsequent purchase.

#### Section 805.

Subject to the other provisions of Article V, the service charge to be included in a consolidated time balance shall be determined by applying the service charge at the applicable rate specified in that article to either:

(a) The total of the unpaid balance of the subsequent contract and the unpaid balance of any previous contract included in the consolidated total determined by deducting from the then unpaid time balance thereof any then unearned service charge in an amount not less than the refund credit for anticipation provided for in Article VI of this act (computed, however, without the allowance of any minimum earned service charge), for the period from the date thereof to and including the date when the final installment of such consolidated total is payable; or

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

date when the final installment thereof was payable to the date when the final installment of such consolidated total is payable.

Section 806.

The minimum service charge as provided in subsection (b) of section 501 may be used but once in any series of add-on transactions.

ARTICLE IX  
RETAIL INSTALLMENT ACCOUNTS

Section 901.

A retail installment account may be established by the seller upon the request of a buyer or prospective buyer. A statement setting forth the rates of service charge, which shall not exceed those authorized by this article, and describing the balance on which such service charge will be computed, shall be printed in type no smaller than eight point in every application form used by the seller and shall be stated to the applicant when such installment accounts are negotiated by telephone. Subject to the other provisions of this article, a retail installment account may be established by a financing agency on behalf of one or more sellers from whom the financing agency may, with the buyer's consent purchase or acquire indebtedness of the buyer to be paid in accordance with the agreement.

(901 reenacted July 11, 1989, P.L.573, No.57)

Section 902.

At the time a seller accepts the credit of the buyer and establishes a retail installment account for his use, the seller shall confirm this fact to the buyer in writing. Such confirmation shall contain the same disclosures as required by section 901. This confirmation shall also contain a legend that the buyer may at any time pay his entire balance.

(a) The confirmation shall be in type no smaller than elite typewriter characters.

(b) If no copy of the confirmation is retained by the seller, a notation in his permanent record showing that such confirmation was mailed, and the date of the mailing, shall serve as prima facie evidence of such mailing.

(c) Every confirmation given to a buyer after October 1, 1988, must be:

(1) Written in a clear and coherent manner using words with common and everyday meanings.

(2) Appropriately divided and captioned by its various sections.

(d) Any financing agency or retail seller who fails to comply with subsection (c) shall be liable to a consumer who is a party to a retail installment account governed by this act in an amount equal to any actual damages sustained plus a penalty of fifty dollars (\$50). The total class action penalty against any such financing agency or retail seller shall not exceed ten thousand dollars (\$10,000) in any class action or series of class actions arising out of the use by a financing agency or retail seller of a form of confirmation which fails to comply with subsection (c). No action under this subsection may be brought after both parties to the retail installment account have fully performed their obligation under such account, nor shall any financing agency or retail seller who

attempts in good faith to comply with subsection (c) be liable for such penalties. Subsection (c) shall not prohibit the use of words or phrases or forms of agreement required by State or Federal law, rule or regulation or by a governmental instrumentality. A violation of the provisions of subsection (c) shall not render any retail installment account void or voidable nor shall it constitute:

- (1) a defense to any action or proceeding to enforce the terms of such account; or
- (2) a defense to any action or proceeding for breach of contract.

(902 reenacted July 11, 1989, P.L.573, No.57)

#### Section 903.

Each retail seller, before he can avail himself of the service charges permitted by this article, shall display prominently in his main place of business and in each branch thereof, a statement outlining the service charge rates which will conform to this article.

(903 reenacted July 11, 1989, P.L.573, No.57)

#### Section 904.

Subject to the other provisions of this article, the seller or holder of a retail installment account may charge, receive and collect the service charge authorized by this act. The service charge shall not exceed the following rates computed on the outstanding balances from month to month:

(a) On the outstanding balance, a rate which is agreed upon by the seller or holder and the buyer.

(b) A minimum service charge of fifty cents (50¢) per month may be made for each month if the service charge so computed is less than that amount; such minimum service charge may be imposed for a minimum period of six months.

(b.1) Notwithstanding the rate provided for in clause (a), no issuer of a credit card primarily engaged as a seller or distributor of gasoline shall be permitted to charge, receive or collect a service charge in excess of fifteen percent (15%) simple interest per annum on unpaid balances.

(b.2) Notwithstanding the rates provided for in clause (a), no bailor or lessor of goods shall be permitted to charge, receive or collect a service charge in excess of eighteen percent (18%) simple interest per annum on unpaid balances in a contract under which the bailee or lessee: (1) agrees to pay as compensation for use of the goods a sum substantially equivalent to or in excess of the value of the goods; and (2) has an option to become the owner of the goods for no additional or nominal additional consideration. This clause shall not apply to a rental-purchase agreement as defined in 42 Pa.C.S. § 6902 (relating to definitions).

(c) 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 (\$5), provided that it is also applied to all amounts of outstanding balances equal to the fixed amount plus at least the same differential.

(904 amended Dec. 20, 1996, P.L.1519, No.197)

Section 904.1.

(904.1 repealed Feb. 26, 1988, P.L.78, No.15 and repealed July 11, 1989, P.L.573, No.57)

Section 904.2.

(a) Notwithstanding any other provision of this act, there shall be no limitation on the rate of the service charge imposed in connection with retail installment accounts issued to buyers domiciled outside Pennsylvania by a seller or holder of a retail installment account who is otherwise subject to this section: Provided further, That the rate of such service charge shall be set forth in writing and delivered to the buyer. In determining whether a buyer is domiciled in Pennsylvania, a seller or holder of a retail installment account may conclusively assume that such buyer is domiciled outside Pennsylvania if the seller or holder has not mailed any solicitation to the buyer at a Pennsylvania residential address, has not entered into a retail installment account with the buyer pursuant to a personal meeting at an office of the seller or holder in Pennsylvania and does not mail the buyer monthly billing statements to a Pennsylvania residential address.

(b) The Secretary of Banking shall report annually to the General Assembly on the impact of subsection (a) upon the availability of retail installment accounts in Pennsylvania.

(c) (Deleted by amendment).

(904.2 amended Dec. 20, 1996, P.L.1519, No.197)

Section 904.3.

(904.3 repealed Dec. 20, 1996, P.L.1519, No.197)

Section 905.

The seller or holder of a retail installment account shall promptly provide the buyer with a statement as of the end of each monthly period (which need not be a calendar month) setting forth the following:

(a) The balance due to the seller or holder from the buyer at the beginning of the monthly period.

(b) The dollar amount of each purchase by the buyer during the monthly period and, (unless a sales slip or memorandum of each purchase has previously been furnished the buyer or is attached to the statement) the purchase or posting date, a brief description and the cash price of each purchase.

(c) The payments made by the buyer to the seller or holder and any other credits to the buyer during the monthly period.

(d) The amount of the service charge.

((d) amended Mar. 25, 1982, P.L.199, No.68)

(e) The total balance in the account at the end of the monthly period.

(f) A legend to the effect that the buyer may at any time pay his total balance. The items need not be stated in the sequence or order set forth above; additional items may be included to explain the computations made in determining the amount to be paid by the buyer.

Section 906.

The service charge shall include all charges incident to investigating the making of the retail installment account. No fee, expense, delinquency, collection or other charge whatsoever shall be taken, received, reserved or contracted by the seller or holder of a retail installment account except as provided in this article. A seller may, however, in an agreement which is signed by the buyer and of which a copy is given or furnished to the buyer provide for the payment of attorney's fees and costs in conformity with Article X of this act.

Section 907.

If the cost of any insurance is to be separately charged to the buyer, there shall be an agreement to this effect, signed by both the buyer and the seller, a copy of which shall be given or furnished to the buyer. Such 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 section 305.

Section 908.

Nothing in this article prohibits the execution of an agreement between a buyer and seller whereby the seller retains a security interest in goods sold to the buyer until full payment therefor has been made. The provisions of section 802 are applicable to goods sold under such an agreement.

Section 909.

No retail installment account 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.

Section 910.

The provisions of sections 601 and 604 shall be applicable to retail installment accounts.

Section 911.

Nothing in this article shall be construed to affect the validity of any agreement or contractual relationship entered into prior to April 1, 1967, except that any rate in excess of that allowed by this article shall be reduced to the permissible rate on or before April 1, 1967.

Section 912.

Consistent with the provisions of this act, a seller or holder may increase the rate of the service charge by providing the buyer with a notice of the increase to the extent required and in the manner specified by the Truth in Lending Act, Title I of the Federal Consumer Credit Protection Act (Public Law 90-321) and the regulations issued pursuant thereto by the Board of Governors of the Federal Reserve System (Regulation Z) as such act and regulations may from time to time be amended. Any such increase shall be limited in its application to indebtedness incurred after the effective date of this act.

(912 added Mar. 25, 1982, P.L.199, No.68)

ARTICLE X  
ATTORNEY'S FEES AND COURT COSTS; RATE CHARTS

Section 1001.

Reasonable attorney's fees and costs shall be awarded to the prevailing party in any action on a contract or installment account subject to the provisions of this act regardless of whether such action is instituted by the seller, holder or buyer. Where the defendant alleges in his answer that he tendered to the plaintiff the full amount to which he was entitled, and thereupon deposits in court, for the plaintiff, the amount so tendered, and the allegation is found to be true, then the defendant is deemed to be a prevailing party within the meaning of this article.

Section 1002.

(1002 repealed Mar. 25, 1982, P.L.199, No.68)

ARTICLE XI  
REPOSSESSION AND RESALE

Section 1101.

In the event of any default by the buyer in the performance of his obligations under a contract or installment account, the holder, pursuant to any rights granted therein, in proceeding to recover judgment for the balance due or in retaking the goods, shall comply with and be limited by all the requirements of the Uniform Commercial Code.

Section 1102.

A seller or holder may not accelerate the maturity of a retail installment contract, commence any legal action or repossess without legal process unless the buyer is in default and unless the seller or holder shall provide the buyer with notice, sent by certified mail, to the buyer's last known address or delivered personally to the residence of the buyer, informing the buyer (1) of his right to cure the default upon payment of the amount in default plus delinquency or deferral charges within twenty-one (21) days of the date of receipt of such notice, (2) the name, address and telephone number of the seller or holder, (3) total amount due, including amount of delinquency charges, (4) exact date by which the amount due must be paid, (5) name, address and telephone number of the person to whom payment must be made, and (6) other performance necessary to cure a default arising from other than nonpayment herein and the buyer is given the rights so specified. The seller or holder shall not be required to provide such notice more than once in any twelve (12) month period. The act of curing a default restores to the buyer his rights under the retail installment contract as though no default had occurred.

(1102 added Mar. 25, 1982, P.L.199, No.68)

## ARTICLE XII PENALTIES

### Section 1201.

Any person who wilfully and intentionally violates, or shall direct or consent to the violation of, any provision of this act shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than one thousand dollars (\$1,000) or by imprisonment for not more than one year, or both.

### Section 1202.

In case of failure by any person to comply with the provisions of this act, such person or any person who acquires a contract or installment account with knowledge of such noncompliance is barred from recovery of any time price differential or service charge or of any delinquency, collection, extension, deferral or refinance charge imposed in connection with such contract or installment account and the buyer shall have the right to recover from such person an amount equal to any of such charges paid by the buyer.

### Section 1203.

Notwithstanding the provisions of this article, any failure to comply with any provision of the act may be corrected by the holder in accordance with the provisions of this section, provided that a wilful violation may not be corrected, and a correction which will increase the amount owed by the buyer or the amount of any payment shall not be effective unless the buyer concurs in writing with the correction. If a violation is corrected by the holder in accordance with the provisions of this section, neither the seller nor the holder shall be subject to any penalty under this article. The correction shall be made by delivery to the buyer of a corrected copy of the contract within thirty days of the execution of the original contract by the buyer. Any amount improperly collected from the buyer shall be credited against the indebtedness evidenced by the contract.

### Section 1204.

In any case in which a person wilfully violates any provision of this act in connection with the imposition, computation or disclosures of or relating to a time price differential or service charge on a consolidated total of two or more contracts under the provisions of Article VIII of this act, the buyer may recover from such person an amount equal to three times the total of the time price differentials or service charges and any delinquency, collection, extension, deferral or refinance charges imposed, contracted for or received on all contracts included in the consolidated total and the seller shall be barred from the recovery of any such charges.

### Section 1205.

An action on a contract under the provisions of this act shall be commenced in the county in which the contract was in fact signed by the buyer, in the county in which the buyer resided at the time the contract was entered into, in the county in which the buyer resides at the commencement of the action, or in the county in which the goods purchased pursuant to such contract have been so affixed to real property as to become a part of such real property.

ARTICLE XIII  
CONSTRUCTION, REPEALER AND EFFECTIVE DATE

Section 1301.

All acts or parts of acts inconsistent herewith are hereby repealed.

Section 1302. Severability.

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

Section 1303. This act shall take effect April 1, 1967.