

17:16C-38.2

June 7, 1972

LEGISLATIVE HISTORY OF 17:16c-38.2  
(Retail Installment Sales Contracts)

"Holder in Due Course Doctrine"

1971 Amendment

Previous bills:

1969 - A374 - Passed Assembly  
Died in Senate

L1971 - C399 - A623

Feb.16, 1970 - Introduced by Kaltenbacher and others.

Dec.2, 1971 - Passed in Assembly, amended (50-0).

Dec.6, 1971 - Passed in Senate (27-0).

Jan.10, 1972 - Approved, chapter 399.

No statement on bill.

Amended during passage (copy enclosed of <sup>OCR</sup> ~~original bill and amendment.~~)

Governor's statement on signing (copy enclosed).

No hearings and reports directly pertaining to this bill were located. However, the following listed reports do discuss "holder in due course" as part of the overall discussion of consumer credit.

974.90            New Jersey. Uniform Consumer Credit Code  
c762                 Study Commission  
1971                 First Report  
1971

974.90            New Jersey. Uniform Consumer Credit Code  
c762                 Study Commission  
1971c                First Report  
1971

974.90            Sidney Posel  
c762                 Current Problems in the Law of Consumer  
1971f                credit  
1971

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Newspaper clippings (~~copies enclosed~~)

"Lender liable" Trenton Evening Times August 10, 1971

"Kean will propose buyer pact reform" Newark Star Ledger  
September 9, 1971

Lamendola, Linda "Kravasik urges bill to protect credit buyers"  
Newark Star Ledger October 29, 1971

"Consumers and bill favored by Cahill" Sunday Times Advertiser  
November 11, 1971

"Let the lender be fair" [editorial] Trenton Evening Times  
November 9, 1971

"Return on an investment" [editorial] Bergen Record  
November 15, 1971

"New Jersey consumer bill is victim of delay" Bergen Record  
November 16, 1971

Josephson, Earl "Vote on pro-consumer bill postponed" Trenton Evening Times, November 16, 1972

"Cahill kills concept of second party contracts" Trentonian  
January 11, 1972

1972 bill to amend this law - S874 - In Senate Committee

JH/EH  
Encl.

[OFFICIAL COPY REPRINT]

ASSEMBLY, No. 623

STATE OF NEW JERSEY

INTRODUCED FEBRUARY 16, 1970

By Assemblymen KALTENBACHER, KEAN, DENNIS, GOLD-  
FARB, FIORE, RINALDI, THOMAS, KRAVARIK, MACRAE,  
HAELIG and GARIBALDI

Referred to Committee on Banking

AN ACT to protect the rights of retail buyers, amending and supple-  
menting the "Retail Installment Sales Act of 1960," approved  
June 9, 1960 (P. L. 1960, c. 40).

1 BE IT ENACTED *by the Senate and General Assembly of the State*  
2 *of New Jersey:*

1 1. Section 1 of P. L. 1960, chapter 40 (C. 17:16C-1) is amended  
2 to read as follows:

3 1. In this act, unless the context otherwise requires, the following  
4 words and terms shall have the following meanings:

5 (a) "Goods" means all chattels personal having a cash price of  
6 \$7,500.00 or less, but not including money or choses in action or  
7 goods sold for commercial or business use.

8 (b) "Retail installment contract" means any contract entered  
9 into in this State between a retail seller and a retail buyer evidenc-  
10 ing an agreement to pay the retail purchase price of goods, or any  
11 part thereof, in two or more installments over a period of time<sup>[</sup>,  
12 and pursuant to which title to or a lien upon the goods is retained  
13 or taken by the retail seller for the payment of the retail buyer's  
14 obligation<sup>]</sup>. This term includes a chattel mortgage, conditional  
15 sales contract, or other similar instrument and any contract for the  
16 bailment or leasing of goods by which the bailee or lessee agrees to  
17 pay as compensation a sum substantially equivalent to or in excess  
18 of the value of the goods, and by which it is agreed that the bailee  
19 or lessee is bound to become, or has the option of becoming, the  
20 owner of such goods upon full compliance with the terms of such  
21 retail installment contract.

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the above bill  
is not enacted and is intended to be omitted in the law.

22 (c) "Retail seller" means a person who sells or agrees to sell  
23 goods under a retail installment contract to a retail buyer, and  
24 shall include a motor vehicle installment seller.

25 (d) "Retail buyer" means a person who buys or agrees to buy  
26 goods from a retail seller not for the purpose of resale, and who  
27 executes a retail installment contract in connection therewith.

28 (e) "Person" means an individual, partnership, firm, corpora-  
29 tion, banking institution, association or any other group of in-  
30 dividuals however organized.

31 (f) "Sales finance company" means and includes any person en-  
32 gaging in this State in the business of acquiring or arranging for  
33 the acquisition of retail installment contracts by purchase, discount,  
34 pledge or otherwise, and any person engaging, directly or in-  
35 directly, in the business of soliciting the purchase of retail install-  
36 ment contracts, or in the business of aiding the retail seller in sell-  
37 ing, assigning or arranging for the sale or assignment of retail  
38 installment contracts.

39 (g) "Motor vehicle" includes all vehicles used for transportation  
40 upon a highway propelled otherwise than by muscular power, ex-  
41 cepting such vehicles as run only upon rails or tracks.

42 (h) "Motor vehicle installment seller" means a dealer in motor  
43 vehicles, who is required to be licensed under chapter 10 of Title  
44 39 of the Revised Statutes and who sells or offers to sell a motor  
45 vehicle to a retail buyer under a retail installment contract.

46 (i) "Cash price" means the minimum price for which the goods  
47 subject to the retail installment contract or other goods of like kind  
48 and quality may be purchased for cash from the seller by the buyer,  
49 as stated in the retail installment contract.

50 (j) "Down payment" means all payments made in cash or in  
51 goods or partly in cash and partly in goods, received by the retail  
52 seller prior to or substantially contemporaneous with either the  
53 execution of the retail installment contract or the delivery of the  
54 goods, whichever occurs later.

55 (k) "Official fees" means the filing or other fees required by law  
56 to be paid to a public officer to perfect the interest or lien, on the  
57 goods, retained or taken by a retail seller under a retail installment  
58 contract.

59 (l) "Time price differential" means that part of the time sales  
60 price as determined under section 27(i) by which the time sales  
61 price exceeds the aggregate of the cash price and the amount in-  
62 cluded in a retail installment contract, if a separate charge is made  
63 therefor, for insurance and other benefits and official fees.

64 (m) "Holder" means any person, including a retail seller, who is  
 65 entitled to the rights of a retail seller under a retail installment  
 66 contract.

67 (n) "Banking institution" means any bank or national banking  
 68 association authorized to do business in this State.

69 (o) "Commissioner" means the Commissioner of Banking  
 70 \***[and Insurance]**\* of New Jersey and includes his deputies or  
 71 any salaried employee of the Department of Banking \***[and Insur-**  
 72 **ance]**\* named or appointed by the said commissioner to perform  
 73 any function in the administration or enforcement of this act.

74 (p) "Payment -period" means the period of time scheduled by a  
 75 retail installment contract to elapse between the days upon which  
 76 installment payments are scheduled to be made on such contract;  
 77 except that, when installment payments are scheduled to be omitted,  
 78 pursuant to section 26, "payment-period" means the period of time  
 79 scheduled by the contract to elapse between the days upon which  
 80 installment payments are scheduled to be made during that portion  
 81 of the contract period in which no installment payment is scheduled  
 82 to be omitted.

83 (q) "Contract period" means the period beginning on the date  
 84 of a retail installment contract and ending on the date scheduled by  
 85 the contract for the payment of the final installment.

1 2. No retail installment contract shall contain any provision  
 2 relieving the holder, or other assignee, from liability for any civil  
 3 remedy sounding in contract which the \***[owner]**\* *\*retail buyer\**  
 4 may have against the retail \***[installment]**\* seller under the retail  
 5 installment contract or under any separate instrument executed in  
 6 connection therewith.

1 3. No retail installment contract shall require or entail the ex-  
 2 ecution of any note unless such note shall have printed the words  
 3 "CONSUMER NOTE" in 10-point bold type or larger on the face  
 4 thereof. Such a note with the words "CONSUMER NOTE"  
 5 printed thereon shall be subject to the terms and conditions of the  
 6 retail installment contract and shall not be a negotiable instrument  
 7 within the meaning of chapter 3 (Commercial Paper) N. J. S.  
 8 12A:3-101 et seq., or a security interest within the meaning of  
 9 chapter 9 (Secured Transactions) N. J. S. 12A :9-101 et seq. of the  
 10 Uniform Commercial Code. \***[An assignee]**\* *\*Any subsequent*  
 11 *holder\** of a consumer note shall be subject to all claims and  
 12 defenses of the \***[consumer]**\* *\*retail buyer\** against the \***[initial**  
 13 **creditor]**\* *\*retail seller\** arising out *\*of\** the transaction *\*but no*  
 14 *such claim or defense may be asserted against such holder in excess*  
 15 *of the time sales price under the retail installment contract for any*

16 *sale, except that, in the case of the sale of a new motor vehicle, as*  
17 *defined in R. S. 39:10-2, no claim or defense may be asserted against*  
18 *such holder in excess of the time balance under the retail installment*  
19 *contract. No claim or defense which the retail buyer may have*  
20 *against the retail seller arising otherwise than out of the retail*  
21 *installment contract or any separate instrument executed in connec-*  
22 *tion therewith shall be asserted against any subsequent holder\*.*

1 4. Any person who procures the execution of a note in violation  
2 of this act shall be liable to a penalty of not more than \$500.00 for  
3 each offense.

1 5. In the event that a note is executed in connection with a retail  
2 installment contract in violation of this act, no finance, delinquency,  
3 collection, repossession or refinancing charges may be recovered  
4 in any action or proceeding based on the contract or the consumer  
5 note.

1 6. This act shall take effect 90 days after enactment.

ASSEMBLY, No. 623

STATE OF NEW JERSEY

INTRODUCED FEBRUARY 16, 1970

By Assemblymen KALTENBACHER, KEAN, DENNIS, GOLDFARB, FIORE, RINALDI, THOMAS, KRAVARIK, MACRAE, HAELIG and GARIBALDI

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8 (b) "Retail installment contract" means any contract entered  
9 into in this State between a retail seller and a retail buyer evidenc-  
10 ing an agreement to pay the retail purchase price of goods, or any  
11 part thereof, in two or more installments over a period of time<sup>]</sup>,  
12 and pursuant to which title to or a lien upon the goods is retained  
13 or taken by the retail seller for the payment of the retail buyer's  
14 obligation<sup>]</sup>. This term includes a chattel mortgage, conditional  
15 sales contract, or other similar instrument and any contract for the  
16 bailment or leasing of goods by which the bailee or lessee agrees to  
17 pay as compensation a sum substantially equivalent to or in excess  
18 of the value of the goods, and by which it is agreed that the bailee  
19 or lessee is bound to become, -or has the option of becoming, the  
20 owner of such goods upon full compliance with the terms of such  
21 retail installment contract.

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

22 (c) "Retail seller" means a person who sells or agrees to sell  
23 goods under a retail installment contract to a retail buyer, and  
24 shall include a motor vehicle installment seller.

25 (d) "Retail buyer" means a person who buys or agrees to buy  
26 goods from a retail seller not for the purpose of resale, and who  
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28 (e) "Person" means an individual, partnership, firm, corpora-  
29 tion, banking institution, association or any other group of in-  
30 dividuals however organized.

31 (f) "Sales finance company" means and includes any person en-  
32 gaging in this State in the business of acquiring or arranging for  
33 the acquisition of retail installment contracts by purchase, discount,  
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35 directly, in the business of soliciting the purchase of retail install-  
36 ment contracts, or in the business of aiding the retail seller in sell-  
37 ing, assigning or arranging for the sale or assignment of retail  
38 installment contracts.

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40 upon a highway propelled otherwise than by muscular power, ex-  
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48 and quality may be purchased for cash from the seller by the buyer,  
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51 goods or partly in cash and partly in goods, received by the retail  
52 seller prior to or substantially contemporaneous with either the  
53 execution of the retail installment contract or the delivery of the  
54 goods, whichever occurs later.

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56 to be paid to a public officer to perfect the interest or lien, on the  
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61 price exceeds the aggregate of the cash price and the amount in-  
62 cluded in a retail installment contract, if a separate charge is made  
63 therefor, for insurance and other benefits and official fees.

64 (m) "Holder" means any person, including a retail seller, who is  
65 entitled to the rights of a retail seller under a retail installment  
66 contract.

67 (n) "Banking institution" means any bank or national banking  
68 association authorized to do business in this State.

69 (o) "Commissioner" means the Commissioner of Banking and  
70 Insurance of New Jersey and includes his deputies or any salaried  
71 employee of the Department of Banking and Insurance named or  
72 appointed by the said commissioner to perform any function in the  
73 administration or enforcement of this act.

74 (p) "Payment -period" means the period of time scheduled by a  
75 retail installment contract to elapse between the days upon which  
76 installment payments are scheduled to be made on such contract;  
77 except that, when installment payments are scheduled to be omitted,  
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80 installment payments are scheduled to be made during that portion  
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85 the contract for the payment of the final installment.

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2 relieving the holder, or other assignee, from liability for any civil  
3 remedy sounding in contract which the owner may have against the  
4 retail installment seller under the retail installment contract or  
5 under any separate instrument executed in connection therewith.

1 3. No retail installment contract shall require or entail the ex-  
2 ecution of any note unless such note shall have printed the words  
3 "CONSUMER NOTE" in 10-point bold type or larger on the face  
4 thereof. Such a note with the words "CONSUMER NOTE"  
5 printed thereon shall be subject to the terms and conditions of the  
6 retail installment contract and shall not be a negotiable instrument  
7 within the meaning of chapter 3 (Commercial Paper) N. J. S.  
8 12A:3-101 et seq., or a security interest within the meaning of  
9 chapter 9 (Secured Transactions) N. J. S. 12A:9-101 et seq. of the  
10 Uniform Commercial Code. An assignee of a consumer note shall  
11 be subject to all claims and defenses of the consumer against the  
12 initial creditor arising out the transaction.

1 4. Any person who procures the execution of a note in violation  
2 of this act shall be liable to a penalty of not more than \$500.00 for  
3 each offense.

1 5. In the event that a note is executed in connection with a retail  
2 installment contract in violation of this act, no finance, delinquency,  
3 collection, repossession or refinancing charges may be recovered  
4 in any action or proceeding based on the contract or the consumer  
5 note.

1 6. This act shall take effect 90 days after enactment.

ASSEMBLY COMMITTEE AMENDMENTS TO  
**ASSEMBLY, No. 623**

**STATE OF NEW JERSEY**

ADOPTED MAY 10, 1971

Amend page 3, section 1, lines 69 and 70, delete "and Insurance".

Amend page 3, section 1, line 71, delete "and Insurance".

Amend page 3, section 2, line 3, delete "owner", and insert "retail buyer".

Amend page 3, section 2, line 4, after "retail", and before "seller", delete "installment".

Amend page 3, section 3, line 10, delete "An assignee", and insert "Any subsequent holder".

Amend page 3, section 3, line 11, delete "consumer", and insert "retail buyer".

Amend page 3, section 3, line 12, delete "initial creditor", and insert "retail seller".

Amend page 3, section 3, line 12, after "out", insert "of".

Amend page 3, section 3, line 12, after "transaction", insert "but no such claim or defense may be asserted against such holder in excess of the time sales price under the retail installment contract for any sale, except that, in the case of the sale of a new motor vehicle, as defined in R. S. 39:10-2, no claim or defense may be asserted against such holder in excess of the time balance under the retail installment contract. No claim or defense which the retail buyer may have against the retail seller arising otherwise than out of the retail installment contract or any separate instrument executed in connection therewith shall be asserted against any subsequent holder."

JANUARY 10, 1972

FOR RELEASE:  
IMMEDIATE

Governor William T. Cahill today signed into law Assembly Bill 623 which removes the "holder-in-due-course doctrine" from retail installment sales contracts.

The Governor also signed into law several measures including Assembly Bill 619 which broadens the law providing for real property tax exemptions for veterans having service-connected physical disabilities.

In signing the "holder-in-due-course" bill, the Governor said, "This bill permits the consumer to assert his legitimate defense against holders of installment sales contracts and supplements earlier state legislation in this field." Under existing law, the consumer who signs a note in the course of purchasing goods or services must continue to make payments to the holder of that note even though he has a legitimate complaint against the seller for having received defective goods or goods in the amount or quality represented.

The Governor indicated that because of the far-reaching ramifications of the bill the state will monitor closely its effect on both the consumer and the holder.

The bill which the Governor signed today parallels similar legislation which removes the "holder-in-due-course doctrine" from home repair contracts.

The veterans legislation provides for a complete exemption from property taxes for veterans who have a 100% service-connected disability.

The bill which was signed by the Governor had strong support from veterans organizations throughout the state, particularly the American Legion and the Disabled American Veterans.

In addition, the Governor also signed:

Senate Bill No. 2133 - which increases from 11 to 13 the membership of the insurance Underwriting Association, provides that 1 member shall be appointed from among various domestic mutual and stock insurance companies.