

17:16C-29

LEGISLATIVE HISTORY CHECKLIST

NJSA 17:16C-29; 17:16C-39.1 (Retail Installment Sales Act--prohibit cross-collateral security interests)

LAWS 1981 CHAPTER 324

Bill No. A1255

Sponsor(s) Baer

Date Introduced Feb. 28, 1980

Committee: Assembly Commerce, Industry and Professions

Senate Labor, Industry and Professions

Amended during passage Yes No

Date of Passage: Assembly Jan. 22, 1981

Senate June 15, 1981

Date of approval Dec. 9, 1981

Following statements are attached if available:

Sponsor statement Yes No

Committee Statement: Assembly Yes No

Senate Yes No

Fiscal Note Yes No

Veto Message Yes No

Message on signing Yes No

Following were printed:

Reports Yes No

Hearings Yes No

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JUL

ASSEMBLY, No. 1255

STATE OF NEW JERSEY

INTRODUCED FEBRUARY 28, 1980

By Assemblyman BAER

Referred to Committee on Commerce, Industry and Professions

AN ACT concerning collateral for retail installment loans and amending and supplementing 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 29 of P. L. 1960, c. 40 (C. 17:16C-29) is amended to
2 read as follows:

3 29. Whenever a payment is made on such a continuing agreement
4 after additional purchases have been added, the payment shall be
5 considered as allocated among each of the separate purchases in-
6 cluded, [in the same proportions which the original cash price of
7 each bears to the total cash price of all goods to which the retail
8 seller has retained title] *in full to the purchase made earliest in*
9 *time, and the retail seller before repossessing or attempting to*
10 *repossess any goods under any such agreement shall actually allo-*
11 *cate in such manner all such payments made to him by the retail*
12 *buyer. When the amount owing on any separate purchase has been*
13 *fully paid, the goods so paid for shall become the absolute property*
14 *of the retail buyer and shall not be subject to repossession for any*
15 *subsequent default on the agreement. The retail buyer under any*
16 *such agreement may at any time prepay the amount due on any of*
17 *the separate purchases and in case of repossession may redeem any*
18 *of such separate purchases by payment of the amount due on such*
19 *purchase alone.*

1 2. (New section) No retail installment contract, retail charge
2 account or separate instrument executed in connection therewith
3 shall contain any provision whereby the retail seller, sales finance
4 company or holder takes a real property mortgage as additional
5 security in connection with a retail sale. Any such provision shall
6 be void and unenforceable.

1 3. This act shall take effective immediately.

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

STATEMENT

Cross-collateral security interests in retail installment sales are unfair to consumers. For example, suppose a consumer buys an item for \$1,000.00 with a 24-month payment period. After making payments for 20 months, the consumer buys another item from this seller for \$1,200.00 with a 24-month payment period. After making payments for 6 more months, the consumer defaults. Although the consumer has more than paid for the \$1,000.00-item, the creditor is able to repossess both items pursuant to his cross-collateral security interest. A consumer thus risks the loss of items which he believes he has already paid for if he defaults in payment of the item most recently purchased.

The "Retail Installment Sales Act of 1960" presently permits retail sellers to retain cross-collateral security interests. Section 1 of this bill amends that act to prohibit such cross-collateral security interests.

Section 2 of the bill prohibits the retention of a real property mortgage pursuant to a retail installment sale and specifically provides that any such mortgage is void and unenforceable. The value of the goods or merchandise purchased should provide sufficient collateral for a retail installment sale.

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17 the separate purchases and in case of repossession may redeem any
18 of such separate purchases by payment of the amount due on such
19 purchase alone.

1 2. (New section) No retail installment contract, retail charge
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The "Retail Installment Sales Act of 1960" presently permits retail sellers to retain cross-collateral security interests. Section 1 of this bill amends that act to prohibit such cross-collateral security interests.

Section 2 of the bill prohibits the retention of a real property mortgage pursuant to a retail installment sale and specifically provides that any such mortgage is void and unenforceable. The value of the goods or merchandise purchased should provide sufficient collateral for a retail installment sale.

A1255(1980)

ASSEMBLY COMMERCE, INDUSTRY AND PROFESSIONS
COMMITTEE

STATEMENT TO

ASSEMBLY, No. 1255

STATE OF NEW JERSEY

DATED: OCTOBER 16, 1980

This bill prohibits cross-collateral security interests and the retention of mortgages on real property in retail installment loans and retail charge accounts. Cross-collateral security interests arise when a consumer makes a number of purchases from a retailer on a retail installment loan. The present law provides that a retailer must pro-rate the payments on the contract among the purchases in proportion or in a ratio as the original cash prices of the various purchases bear to one another. This means that each succeeding purchase is secured not only by the security interest in that property but also by security interests in the previously sold and not paid for purchases. Under such an arrangement the first purchase may not be fully paid for until the contract as a whole has been satisfied. Under these circumstances a consumer risks the loss of items already paid for if he defaults in payment on items most recently purchased. Section 1 of this bill would require the retailer in this case to credit the payments he receives on the retail installment loan to the goods in the order in which the purchases were made so as to release the security interests in the goods in the order in which they were purchased, on a first-in, first-out basis.

Section 2 of the bill prohibits the retention of a mortgage on real property pursuant to a retail installment loan or retail charge account and provides that any such mortgage which is made is void and unenforceable. This section codifies a New Jersey Supreme Court ruling, *Girard Acceptance Corporation v. Wallace*, 76 N. J. 434, which declared that a real property mortgage could not be taken as additional collateral security with respect to the "Retail Installment Sales Act" and that any such mortgage was void.

SENATE LABOR, INDUSTRY AND PROFESSIONS
COMMITTEE

STATEMENT TO

ASSEMBLY, No. 1255

STATE OF NEW JERSEY

DATED: MARCH 23, 1981

This bill prohibits cross-collateral security interest in retail installment loans. The bill also prohibits the retention of a mortgage on real property as additional security in connection with a retail installment sale.

A retail installment contract is a contract entered into "between a retail seller and a retail buyer evidencing an agreement to pay the retail purchase price of goods or services, which are primarily for personal, family or household purposes, or any part thereof, in two or more installments over a period of time." (N. J. S. A. 17:16C-1 (b)).

Cross-collateral security interests arise when a consumer makes a series of purchases from a retailer on a retail installment loan. The present law (section 1 of the bill) provides that a retailer must prorate the payments on the contract among the purchases in a ratio as the original cash prices of the various purchases bear to the total cash price of all goods purchased but not fully paid for. This means that each succeeding purchase is secured not only by the security interest in that property but also by security interests in the previously sold and not paid for purchases. Under such an arrangement the first purchase may not be fully paid for until the contract as a whole has been satisfied. Under these circumstances a consumer risks the loss of items already paid for if he defaults in payment on items most recently purchased.

Section 1 of the bill requires a retailer to credit the payments he receives on retail installment loans to the goods in the order in which the purchases were made so as to release the security interest in the goods in the order in which they were purchased, in short, on a first-in, first-out basis.

Section 2 of the bill prohibits the retention of a mortgage on real property pursuant to a retail installment sale and provides that any such mortgage which is so made is void and unenforceable. This section places in statute form a Supreme Court decision, *Girard Acceptance Corporation v. Wallace*, 76 N. J. 434, which decided that a "real property mortgage could not be taken as additional collateral security with respect to Retail Installment Sales Act and accordingly the real estate mortgages were declared void and ordered discharged from record."

FROM THE OFFICE OF THE GOVERNOR

FOR IMMEDIATE RELEASE

FOR FURTHER INFORMATION

DECEMBER 9, 1981

DAVID DE MAIO

Governor Brendan Byrne today signed the following bills into law:

A-944, sponsored by Assemblyman John B. Paoletta (R-Bergen), prohibiting landlords from refusing to rent housing because of the landlord's objections to the source of a potential tenant's lawful income.

The bill is intended to protect from housing discrimination welfare recipients, spouses dependent on alimony and child support payments and tenants receiving governmental rental assistance. Current law already prohibits discrimination on the basis of race, religion, and national origin. The bill would not affect a landlord's right to refuse to rent to a tenant on the basis of credit unworthiness.

The bill also amends current law to change penalties against landlords who refuse to rent to families with children under the age of 14 or who use rental leases which become void upon the birth of a child from criminal to civil offenses.

A-1255, sponsored by Assemblyman Byron M. Baer (D-Bergen), providing for two additional consumer protection measures under the Retail Installment Sales Act.

The bill would prohibit retailers from using a consumer's mortgage as a security on that consumer's retail installment purchase. In addition, the bill provides that payments toward multiple items purchased on an installment plan be credited to individual items rather than the entire purchase. The effect would be to pay-off a first item in its entirety, then the second, and so forth, allowing the purchaser to hold each item free and clear of security interest, once he has made payments equal to the item's cost.

S-1081, sponsored by Senator Frank X. Graves, Jr. (D-Passaic), requiring color photographs on all drivers' licenses.

Under the bill, each person receiving an initial license is required to have a photo license; licenses renewed after the end of 1983 are required to have photos; and fees for the photo licenses are increased by \$1.50. Drivers over the age of 60 are exempted from the requirements.

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