Chapter 7: Credit Transactions and Credit Sales of Goods and Services

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CHAPTER 7
Credit Transactions and Credit Sales of Goods and Services
WILLIAM F. WILLIER

A. INTRODUCTION AND SCOPE OF LEGISLATION

§7.1. Introduction. Chapters 284 and 587 of the Acts of 1966, added Chapters 255D, Retail Installment Sales and Services, and 140A, Regulation of Certain Credit Transaction, to the Massachusetts General Laws and amended Chapters 255B and 255C. They require disclosure of the annual percentage rate of finance charge and an itemization of all charges in virtually every consumer credit transaction and extensively regulate credit sales of goods, services, and home improvements. The percentage disclosure is the first requirement of its kind in the nation. The immediate effect of the legislation is to give creditors, at least temporarily, new worries over the way they conduct their transactions and the forms they use. The effect on borrowers and credit buyers will be delayed until they or counsel advising them become aware of the new protection given them.

In addition to disclosing essential terms and information and giving important rights to a credit buyer, Chapter 255D is also concerned with the amount of finance charge actually assessed for the credit privilege, charges for insurance incident to the credit, the quantity and kinds of collateral securing the buyer's payment and other performance, the methods of enforcement against the collateral and the buyer personally, methods of inducing the buyer to make credit purchases, and administrative regulation of the credit sales industry. The part and section headings of this chapter provide a broad outline of specific approaches to these matters.

§7.2. Scope of the new legislation. The percentage disclosure requirement applies to all credit transactions of $25,000 or less except:

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§7.1. Chapters 284 and 587 became effective on November 1, 1966, and January 1, 1967, respectively.

§7.2. There is no dollar ceiling on credit sales of goods or services in G.L., c. 255B or 255D, but it is doubtful if they ever exceed $25,000. References to chapter henceforth in this article will refer to chapters in the General Laws unless otherwise indicated.
(1) Home mortgages unless the finance charge is determined at the time of the loan rather than by a rate applied periodically to outstanding balances, which is the usual procedure;2

(2) Loans to organizations;3

(3) Business loans secured by security interests in accounts receivable, equipment or inventory substantially equal to the loan.4

Virtually all credit sales of goods and services and improvements to real estate for personal, family, or household purposes are within the scope of new Chapter 255D except motor vehicles, the credit sales of which are regulated by existing Chapter 255B as amended by the new statute.5 Services unrelated to “the delivery, installation, repair or improvement of goods” or real property are not included, thus omitting credit transactions for strictly personal services, such as education and medical treatment. But these are within the purview of Chapter 140A.

The definition of retail installment sale agreement in Section 1 of Chapter 255D excludes installment credit sales transactions with no more than one installment payment, and those payable in three monthly installments or less with no more than one dollar finance charge and no security interest securing payment. If the latter involves any finance charge, it would nonetheless be within the scope of Chapter 140A.

The weakness of many regulatory statutes has been that the small businessman is not protected. This is true of Chapter 255D by its limitation to consumer transaction, but Chapter 140A applies to any small businessman who has not formed any kind of business association (“organization”). Of course, with the ease of incorporation, these unorganized businesses are becoming fewer and fewer.

Chapter 255D also applies to any subsequent transaction involving a retail installment sales agreement, such as extending the time of installment payments, refinancing the outstanding credit or consolidating several agreements into one.

Unless a credit transaction clearly falls within one of the three broad exclusions, it is safe to conclude that it is within the scope of one of the new chapters or one of those amended. It remains simply to determine which one.

B. INFORMATION TO BE DISCLOSED TO BUYER OR BORROWER

§7.3. Computing percentage rate of finance charge. Closed-end transactions. Both acts adopt a statutory formula1 for computing the

2 C. 140A, §1(3). References will be to sections as they appear in the General Laws, unless otherwise indicated.
3 Id. §2(5).
4 Id. §3(3).
5 C. 255D, §1, “goods,” “services.”

§7.3. 1 C. 140A, §1(1); c. 255B, §1; c. 255C, §1(6); c. 255D, §1.
§7.3 CREDIT TRANSACTIONS AND CREDIT SALES

annual percentage rate of finance charge in the so-called "closed-end" transaction, i.e., a specified amount of credit and a precomputed finance charge with payment to be made in installments.  This includes the typical installment loan or sale of durable goods, such as a motor vehicle or a large appliance. The formula is one of several used by accountants to arrive at a "true annual rate" and is as accurate as any. It is probably the easiest of all to use and can readily be reduced to tabular form for use by all businesses. Because no fixed mathematical formula can take into account actual variables in payment periods or amounts of payments in a particular transaction, the "annual finance charge formula" assumes that all installment payments and intervals between them are equal. To the extent that this renders the disclosed rate inaccurate, it will be inaccurate uniformly among all creditors using it. Actually, dollar finance charges have usually been assessed upon these assumptions. For example, a borrower who must pay twelve monthly installments will pay the same dollar finance charge even though the first installment may be due before or later than one full month. Further, a variation or error in the disclosed rate of no more than one percentage point is permissible.

For retail installment sales, use of the formula is mandatory. In credit transactions solely within the scope of Chapter 140A, a creditor may use "a formula approved by the commissioner [of banks] upon application of" the creditor. This gives needed flexibility to transactions for which mathematicians will develop another formula which is more workable or accurate, but presents the danger of lack of uniformity if the resulting rates are substantially different from formula to formula or from creditor to creditor. The purpose of the legislation is to give buyers and borrowers a uniform yardstick by which to measure the costs of credit among ostensibly competing creditors. The formula is as follows:

\[
R = \frac{2PC}{A(N + 1)}
\]

R equals the percentage rate. P equals the number of payment periods in one year exclusive of the down payment (always twelve if monthly payments, four if quarterly payments, and fifty-two if weekly payments). C equals the finance charge. A equals the principal balance to be paid by the buyer. N equals the number of installments.

In an easy example, a principal balance of $100 to which is added a finance charge of $8, the total being payable in 12 monthly installments of $9 each, would yield an annual finance charge rate of 14.77 per cent. The numbers in the formula would be as follows:

2 C. 140A, §1(3).
3 Id. §§(g). This also crept into the rate disclosure provision added to §13 of c. 255C regulating insurance premium finance agreements, all part of Acts of 1966, c. 587.
Again, commercially prepared charts should make actual computation by a creditor using the formula a rare occurrence.

Revolving credit. The formula does not and logically cannot apply to revolving credits whereby the debtor may borrow or buy from time to time with at most an outside limit on the amount of credit he can use. Neither the principal balance nor the finance charge, which is applied periodically to the then outstanding balance, can be determined in advance. Thus, the annual rate to be disclosed is the rate periodically applied to the unpaid balance times the number of such periods in a year. Monthly rates of 1½ per cent and 1 per cent would yield annual rates of 18 per cent and 12 per cent respectively.

This necessarily will less accurately reflect the rate actually being paid over a year than the formula in closed-end transactions. For example, if a buyer makes a revolving credit purchase the day before a monthly rate of 1½ per cent is applied, the rate for the amount of that purchase, assuming no other balance, is not the disclosed rate of 18 per cent, but 547.5 per cent (1½ per cent for one day). On the other hand, if the buyer reduces his balance the day before the rate is applied, he has had the use of the amount paid without charge for at least thirty days. Statistics have shown, however, that over a course of a year the rate actually paid on the average active revolving account is within one percentage point of that disclosed.

Again, as for closed-end transactions, a creditor may have approved by the Commissioner of Banks a formula for computing the rate in non-sales revolving credit transactions in lieu of the statutory method.

Other credit transactions. Chapter 255D does not anticipate other kinds of credit sales transactions, but Chapter 140A provides that, for credit transactions which are neither closed end nor revolving credit, the annual rate may be disclosed as a simple annual interest rate, or at a rate computed according to the finance charge formula or another formula approved by the Commissioner of Banks. This is clearly a case where statutory rigidity would serve no purpose and administrative flexibility is the answer.

§7.4. Disclosure of annual finance charge rate. Advertising. The annual percentage rate of finance charge sanctioned by the respective statutes must be used “in any advertisement, publication, display, broadcast, solicitation or representation” which states a rate.

Existing agreements. For revolving credit transactions other than

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4 C. 140A, §1(14); c. 255D, §1, “revolving credit agreement.”
5 C. 140A, §6(2); c. 255D, §27E.
6 C. 140A, §6(2).
7 Id. §7. An example of a simple annual interest rate would be a loan for $100 for one year, not payable until the end of the year, at a 6 per cent rate applied and added for the entire year with a balance due of $106.

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those for sales of goods, the creditor may send a separate notice to the
debtor stating in 12 point boldface type the annual rate of finance
charge sanctioned by the statute.2 The rate must also be so stated in
all periodic statements of account sent to either buyers or borrowers.3
By omission, the rate need not be disclosed to debtors under existing
closed-end transactions. They will learn of the rate only in subsequent
transactions with the same creditor, if any.

Agreements subsequent to effective dates. The annual finance charge
rate must be disclosed in 12 point boldface type in all closed end and
revolving credit agreements executed subsequent to the effective dates
of the statutes.4 The placement of the disclosure is prescribed for retail
installment sale agreements but not for other credit agreements.5

Statements of account. Customarily, a creditor sends a debtor with
a revolving account a monthly or other periodic statement. This must
contain a statement in 12 point boldface type of an annual rate of
finance charge.6 The statement to which a buyer under a closed-end
retail installment sale agreement is entitled upon request once each
six months need not contain a rate.7

§7.5. Forms of agreement to be used. Chapter 255D prescribes
certain elements of the written forms of agreement which must be
used in credit sales of goods, services and home improvements. All
printed terms except the rate of finance charge must be in at least eight
point type.1 The agreement must be titled in 12 point extra boldface
type "RETAIL INSTALLMENT SALE AGREEMENT — SUBJECT
TO STATE REGULATION." If terms are continued on the reverse
side of a page or on more than one page, the following legends must
appear in 10 point boldface type on the first side of the respective
pages: "The terms of this agreement are contained on both sides of
this page," and "The terms of this agreement are contained on more
than one page."

These requirements apply as well to refinancing and consolidation
agreements, but not to agreements extending the times of payments or
to revolving credit agreements.2

§7.6. Essential money terms to be disclosed: Credit sales trans­
actions. Retail installment sale agreements. On the front page of every
retail installment sale agreement a seller must list in the statutory

2 C. 140A, §6(2); cf. c. 255D, §27.
3 C. 140A, §6; c. 255D, §27E.
4 C. 140A, §§5(1)(g), (2); 6(2), 7; c. 255D, §9C; c. 255B, §9; c. 255D, §§9C(11),
27E. There was a two-month gap between the effective dates of Chapters 284 and
587, Acts of 1966, the latter of which amended the former by requiring additional
disclosure in revolving credit agreements. Presumably credit sellers complied with
the latter during the interval even though not required to do so.
5 See §7.6 infra.
6 C. 140A, §6(2); c. 255D, §27E.
7 See §7.10 infra.

§7.5. 1 C. 255D, §9A.
2 Id. §§16B, 17C(3), 18A, 27A.
order 13 items to the extent that they apply to a transaction. This is required so that the buyer can see rather quickly what he is paying, and paying for, and the mathematics used in arriving at the figures. The list begins with the cash price of the goods or services described in the agreement—that amount which the buyer would have paid in cash for the goods as they stood on the floor or appeared in sales literature. This is the cornerstone upon which the remaining figures build. To this may be added charges for itemized accessories; delivery; installation; repair or other services upon the goods; and excise or sales taxes not included in the cash price. The sum is called the “cash sale price.”

From that figure is deducted the buyer’s down payment in cash or goods or both, separately allocated in dollar amounts. To this figure—the “unpaid balance” of the cash sale price—the seller may itemize, describe, and add insurance as regulated by Section 26 and official fees actually paid or to be paid. This is the “principal balance” now due by the buyer to the seller against which the charges for that credit—the finance charge—may be computed and to which they may be added. Item (11) is the annual percentage rate of finance charge discussed above. Item (12) is the sum of the principal balance and the finance charge, or the time balance which the buyer now must pay in installments, with a schedule of payments and due dates set out, or the date due of substantially equal installments and pay periods.

Finally, a time sale price (time balance plus down payment) must be shown in dollars so that the buyer can compare the dollar cost of his purchase on credit with the dollar cost of the cash sale price appearing earlier in the list.

The order of the list is prescribed because it is the logical progression of computation and it allows buyers to become accustomed to a uniform system for all retail installment sale agreements.

Extension agreements. An agreement extending the time for payment of more than one installment under a retail installment sale agreement and which adds a charge for the extension must be in writing. The written agreement must incorporate the retail installment sale agreement by reference, the obvious purpose being to retain for the buyer both the benefits of the original transaction and the

§7.6. 1 C. 255D, §9C.
2 Id. §1, “cash sale price.”
3 Ibid., “official fees” are those proscribed by law for filing, recording or otherwise perfecting, releasing or satisfying a security interest in collateral under a retail installment sale agreement “which will actually be paid to public officials.” See §7.11 infra.
4 See §7.12 infra.
5 See §§7.3-7.4 supra.
6 See §§7.9-7.10 infra.
7 Section 9 of Chapter 255B contains a virtually identical itemization for retail installment sale agreements covering motor vehicles.
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other protections of Chapter 255D in the extension agreement. The terms of the extension, the charges and the due dates and amounts of extended installments must be set forth.9

Refinancing agreements. A single retail installment sale agreement, extension agreement, or consolidation agreement may be refinanced, — i.e., the unpaid balance may be stretched over an additional period with a new schedule of installment payments for which the holder may charge an additional finance charge — by an agreement in writing which incorporates the agreement being refinanced and discloses and itemizes essential money terms: unpaid balance being refinanced, re-fund credit,10 amount being refinanced, finance charge,11 additional insurance and official fees, total sum payable, finance charge rate,12 and the times and amounts of installment payments.13 Only one such agreement at a time may be refinanced. If refinancing of several agreements becomes necessary, it will be because the buyer is over his head as a result of purchases. A consolidation agreement is the statutory means of adjusting payments and installments.

Consolidation (add-on) agreements. If an installment sale agreement has added to its money terms the amounts of one or more previous retail installment sale agreements, the consolidated agreement must comply with the disclosure requirements for any retail installment sale agreement.14 In addition, the new agreement must itemize the unpaid time balances of prior agreements, the consolidated time balance, and the number of installments required to pay the time balance with the times and amounts of their payment.

The seller, however, may deliver the agreement with essential disclosures to the buyer before the due date of the first installment in lieu of preparation and delivery at the time of purchase. This is a legislative half-loaf granted in deference to those sellers, especially large department stores, who make use of add-on sales extensively. They are made on the floor by inexperienced salesmen who merely call the credit department for permission and then have the buyer sign a cryptic agreement in the form of a sales slip. Long agreements and computation ostensibly clog the expedition with which these sales are made. Of course, by the time the buyer gets all of the information in the mail, it is too late; at best, he can decide that the credit costs are too high for him to make further purchases from that seller. Ideally, the legislature would have brought buyers in such cases within the cooling-off provisions, allowing them to cancel by 5 p.m. the day following receipt of the complete information and then to return the goods.15 The problem of adding on security interests in goods sold

9 See §7.12 infra.
10 See §7.10 infra.
11 See §7.12 infra.
12 See §§7.3 to 7.4 supra.
13 C. 255D, §17A.
14 Id. §18A.
15 See §7.18 infra.
under prior retail installment sale agreements is discussed below.\(^{16}\)

**Revolving credit sales agreements.** The revolving credit agreement is the initial agreement between the seller and the buyer which allows purchases on credit from time to time, often with a ceiling on the allowable unpaid balance at any one time, and which contains the terms for all such purchases.\(^{17}\) The size of type and page reference requirements are the same as for a retail installment sale agreement, but other than the statement of the finance charge rate in percentage form, the statute requires only that the "terms" be in writing and delivered to the buyer at execution or by mail prior to the due date of the first payment.\(^{18}\) The itemized details of the balance due at the beginning and end of the payment period, finance charge, finance charge rate, payments made, the goods purchased and any other charges need be disclosed only in a statement provided the buyer sometime during each billing period.\(^{19}\) Thus, the buyer never really knows in advance the credit cost of his purchases. On the other hand, the buyer can eliminate all or any part of the finance charges by paying before the next date when the finance charge is assessed.\(^{20}\)

**Telephone and mail sales.** Retail installment sale agreements entered into by mail or telephone need not comply with the requirements that a copy be signed by or delivered to the buyer and that there be no blank spaces if:

1. a salesman did not personally solicit the sale, and
2. the seller's cash and deferred prices and "other terms" have been "clearly set forth" in a printed form "generally available to the public." In such a case, the seller must deliver to the buyer a memorandum with "all of the essential elements of the agreement" before the due date of the first installment.\(^{21}\)

This exception is designed to allow sales to be initiated by the buyer as a result of solicitation by the seller through catalogs, advertisements and the like without penalizing the seller for noncompliance with the disclosure formalities of retail installment sale agreements executed on the seller's premises. The seller is not present with the buyer to see that proper forms are used and filled in correctly and should not be penalized for the buyer's naivete. But the exception is a masterpiece of ambiguity:

1. What "terms" must be clearly set forth in the printed solicitation and in what manner?
2. How clear is "clearly"?
3. Is relief from signing by and delivery of a copy to the buyer also relief from providing order forms complying so far as possible with the statute?
4. Is the "memorandum" delivered to the buyer to be in the form of

\(^{16}\) See §§7.13 to 7.14 *infra*.
\(^{17}\) C. 255D, §§1, 27A.
\(^{18}\) Id. §§27A, 27F.
\(^{19}\) Id. §27D.
\(^{20}\) See §7.12 *infra*.
\(^{21}\) C. 255D, §9F.
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a retail installment sale agreement and are its "essential elements" those items which must be disclosed under Chapter 255D?

This is a case of legislative intent to allow a legitimate means of selling, such as mail orders from a catalog, to continue without undue hindrance while still achieving the goals of disclosure. These goals, however, were not achieved. It allows continuing harassment by telephone salesmen so long as the calls are preceded or followed by printed solicitations. The disclosure required in the printed solicitations is at best described vaguely. In short, the opportunities for evasion of the general purpose of the statute could be many. For this very reason, however, a seller would be ill-advised to depend upon a judicial construction of the statutory language that would favor his playing fast and loose with the less-than-precise language. "Terms" in the printed matter and "essential elements" in the follow-up memorandum may very well be held to require compliance with the disclosure provisions of the statute in all respects except as expressly excused. A seller, to be safe, should make every good faith effort to have his solicitations and memoranda comply. The buyer is afforded some protection in his right to cancel before he receives the memorandum.22

§7.7 Essential terms to be disclosed: Other credit transactions. Motor vehicles. Except for the annual finance charge rate, the new legislation did not change the disclosure requirements of Section 9 of Chapter 255B for installment sales of motor vehicles.

Insurance. Section 13 of Chapter 255C now requires that the written insurance premiums financing agreement set out and itemize the money terms: total premiums, down payment, unpaid balance, charges for credit life insurance, principal balance, finance charge, annual rate of finance charge, the time balance, and the time cost of the transaction.

Closed-end credit transactions not specifically treated in other statutes. New Chapter 140A provides for disclosure and itemization of the money terms of a credit transaction in the credit agreement to the extent that information is available at the time.1 Reasonable estimates of the finance charge and annual rate must be given even if exact figures are "unavailable," and accurate information must be given the debtor before the first installment is due.2 Again, the itemization follows the usual and logical computation in an installment credit transaction.

First is the base amount, "the amount of which the debtor will have the actual use, or which will be or is paid to the debtor or to another person on behalf of the debtor or from which additional costs, charges and fees are computed."3 In a personal loan transaction, this would be the amount the debtor actually is borrowing and will receive. If the

22 See §7.17 infra.

§7.7. 1 C. 140A, §5.
2 Id. §4.
3 Id. §1(2).
finance charge is discounted (deducted from) the amount of the loan rather than added to it, the base amount would be the discounted sum. Second, the charge for and a description of insurance, such as credit life.

Third, official fees actually to be paid for protecting or terminating a security interest in collateral.4

Fourth, itemization of any permitted charges to be included in the principal balance. In addition to official fees and insurance, these include charges or expenses "requested, agreed to or approved by the debtor" for taxes, collection delinquency in payments, and customary closing costs,5 or charges "which are of value to the debtor separate and apart from the granting of credit, [which] are reasonable in relation to the benefits to the debtor and [which] constitute a type of charge or actual charges which have been filed with the commissioner [of banks] and as to which the commissioner has failed to notify the creditor in writing of objection within sixty days after the filing."6 This represents a partial victory for the credit industry. Most small loan and retail installment sale statutes require so-called "residual" charges or expenses except for fees, insurance and taxes to be recovered, if at all, as part of the permitted finance charge. Under Chapter 140A, they not only may be added into the principal balance, but the finance charge may be applied to them. Thus, the creditor recovers them specifically and makes a profit on them. This is especially ironic in the case of delinquency charges, which are in the nature of a penalty and, as in new Chapter 255D, are in lieu of additional finance charges.7 The victory is partial since the Commissioner of Banks can put an administrative brake on charges not specifically mentioned in the statute.

Fifth, the principal balance (sum of the first four items).

Sixth, the finance charge.

Seventh, the annual finance charge rate.8

Eighth, total due by the debtor and the dates and amounts of installment payments, itemized if not substantially equal.

These requirements embrace any closed-end transaction, whether an original extension of credit to the debtor or the refinancing or consolidation of one or more prior transactions.

Extension or deferment of installments. The agreement must disclose extension or deferment charges, other permitted charges and the revised dates and amounts of installment payments.9

Revolving credit transactions. The counterpart to a closed-end credit transaction is that without a predetermined base amount and a precomputed finance charge: the debtor incurs debt from time to time,

4 Id. §1(9).
5 These would include brokers' and attorneys' fees, title examination and appraisals, among other costs.
6 Id. §1(12).
7 See §7.10 infra.
8 See §§7.3-7.4 supra.
9 C. 140A, §5(8).
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pays from time to time according to the debt, and is assessed a finance charge periodically on the unpaid balance.¹⁰ Check loans are a currently popular form of this transaction. Obviously, the creditor cannot disclose money terms in advance since he cannot know the extent of the debt the debtor will incur. Thus, the information must be supplied within a reasonable time after the end of the billing cycle for the debtor.¹¹ This is usually a day in the month assigned to that account for billing purposes. It must state:

(1) Balance at the beginning and end of the billing cycle;
(2) Entries during the cycle with a brief description;
(3) Finance charge debited during the cycle;
(4) Amount the debtor must currently pay and the date when delinquency will occur;
(5) Annual finance charge rate.

§7.8. Rights of a buyer: Disclosure in agreement. Retail installment sale agreements. Upon the thesis that rights are of little benefit to those who do not know of them, retail installment sale agreements other than those for motor vehicles¹ must contain in ten point boldface type above the place for the buyer's signature the following:²

NOTICE TO BUYER

(1) Do not sign this agreement if any of the spaces intended for the agreed terms to the extent of then available information are left blank.³
(2) You are entitled to a copy of this agreement at the time you sign it.⁴
(3) You may at any time pay off the full unpaid balance due under this agreement, and in so doing you may receive a partial rebate of the finance and insurance charges.⁵
(4) You may under certain circumstances redeem the property if repossessed because of your default, and you may, under certain conditions, require a resale of the property if repossessed.⁶
(5) The seller has no right to unlawfully enter your premises or commit any breach of the peace to repossess goods purchased under this agreement.⁷
(6) You may cancel this agreement if it has been consummated by a party thereto at a place other than an address of the seller,

¹⁰ Id. §1(14).
¹¹ Id. §6(1).

§7.8. ¹ Somewhat more limited disclosure is required by Section 9 of Chapter 255B.
² C. 255D, §9D.
³ See §7.9 infra.
⁴ See §7.17 infra.
⁵ See §§7.10-7.11 infra.
⁶ See §7.15 infra.
⁷ Ibid.
which may be his main office or branch thereof, provided you notify the seller at his main office or branch by certified mail, return receipt requested, which shall be posted not later than five o'clock postmeridian on the next business day following the signing of this agreement; provided, however, that you have not received or had tendered a substantial part of the goods, services or goods and services which the seller is required to furnish under this agreement.\(^8\)

Items (4), (5), and (6) may be omitted if not applicable to the transaction, i.e., no security interest is taken or the sale is not consummated away from the seller's premises.

*Refinancing agreements.* Refinancing agreements must contain the same items (1) through (5) as required for the original retail installment sale agreement.\(^9\)

*Consolidation agreements.* The agreement, memorandum of sale or subsequent memorandum of the transaction must contain the same "Notice to Buyer" as any retail installment sale agreement.\(^10\)

*Revolving credit sale agreements.* The initial agreement between the seller and buyer must contain the following NOTICE TO BUYER:\(^11\)

1. Do not sign this agreement if any of the spaces intended for the agreed terms are left blank.\(^12\)
2. You are entitled to a copy of this agreement at the time you sign it.
3. You may at any time payoff the full unpaid balance under this agreement.
4. (4), (5), (6) are the same as for retail installment sale agreements, if applicable to the transaction.

C. TERMS OF CREDIT SALES AGREEMENTS AND BUYER'S PERFORMANCE

§7.9. Terms and omissions prohibited. Section 10 of Chapter 255D prohibits the inclusion or omission of certain terms in a retail installment sale agreement,\(^1\) extension agreement,\(^2\) refinancing agreement,\(^3\)

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\(^8\) See §7.18 *infra*.
\(^9\) C. 255D, §17B(3).
\(^10\) Id. §18A. See §7.6 *supra*.
\(^11\) C. 255D, §27B.
\(^12\) See §7.10 *infra*.

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\(^1\) See the less extensive prohibitions for retail installment sales of motor vehicles in Chapter 255B, §20.
\(^2\) Section 16, covering extension agreements, does not expressly subject these agreements to Section 10, but the sole purpose is extension of the time for one or more payments and since the retail installment sale, refinancing or consolidation agreement is incorporated by reference, it is fair to conclude that the prohibitions of Section 10 apply to Section 16 agreements; otherwise, contradiction between the two agreements and between the statute and the agreements would result.
\(^3\) C. 255D, §17B(3).
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consolidation agreement,4 or revolving credit agreement.5 Of course, it is not the terms which are offensive, but the presumably adverse effect action or inaction of the seller or holder under them could cause the buyer, or a surety or guarantor for the buyer, whose agreements are also included under the section.

Blank spaces. The spaces for money terms and their description as required by Section 9 or any other terms to which the parties have agreed may not be left blank to the extent that information is available. The total finance charge and annual finance charge rate must always be given.6 The effect of this provision is twofold:

(1) Only unavailable descriptive information, such as serial numbers of goods ordered, may be inserted later unless the seller is willing to forego or guess at unknown amounts making up the principal balance upon which he computes his finance charge, since the dollar amount of that charge may never be omitted.

(2) While an integration clause to prevent admission and consideration of parol evidence is not expressly prohibited, Section 10, along with other statutory provisions, makes such a clause ineffective. Otherwise, the buyer would not be allowed to prove that terms to which he and the seller had agreed had been "left blank." This is extremely important in those transactions in which the buyer is induced by all sorts of representations and promises to make the purchase, only to find none of them in the tightly printed form agreement.

Confession of judgment. Clauses granting the power to confess judgment or warrants of attorney for action on behalf of the buyer are not allowed. The former would otherwise be unenforceable by existing law7 and the latter has never been a practice in Massachusetts. A power of attorney, to allow repossession or collection as the buyer’s agent, cannot be included in the agreement. Such a provision would mean that the “attorney” or “agent” could do with impunity what otherwise would be tortious or would require legal process, such as entry onto the buyer’s premises without his knowledge, or recovering wages from the buyer’s employer. The Legislature apparently found this legal subterfuge sufficiently in vogue to deal with it specifically.

Equality in payments and payment periods. At one time it was a frequent practice among some sellers to provide for low installment payments to induce the buyer to purchase, but to include as the final payment the exorbitantly large balance. Either the buyer would not be aware of this or, if he were, would think he could accumulate enough funds to make that payment. Obviously, several arrangements of this type would make this impossible for the ordinary buyer. Equally villainous would be prolonged periods between installments,

4 Id. §18A.
5 Id. §27A.
6 See §7.6 supra.
7 C. 231, §13A.
with one or more at the end of the payment period due at a much shorter interval.

The statutory solution in Chapter 255D is as follows:

(1) To require that all installments or pay periods included in the agreement be substantially equal; or

(2) To allow the buyer at any time to require that substantially unequal payments or periods, even when agreed to, be averaged to achieve equality; or

(3) To expressly relate, in the agreement, the inequality to the buyer’s uneven seasonal income, such as that of a farmer or teacher.

Compliance with this provision is not required for revolving credit agreements since the amount of installment payments will necessarily fluctuate with the amount of credit used by the buyer between billing periods.

Acceleration and default. The only permitted condition upon which payment by installments can be terminated and the buyer become obligated to pay the entire balance owed is actual default of the buyer. Default triggers the holder’s right to repossess goods in which he has a security interest. Acceleration clauses can create defaults because the buyer is inevitably unable to pay such a large sum at one time. Further, such clauses ensure recovery of deficiency judgments following repossession and sale. Thus, under the statute, subjective grounds for acceleration, such as the insecure feeling of the seller or holder, are prohibited.

However, what constitutes default is nowhere prescribed. This leaves the seller, or his form draftsman, free to include almost any insignificant act or occurrence as a technical default. At the least, the buyer will have in writing some idea of what will cause the seller or holder to feel insecure.

Unlawful repossession. The buyer’s agreement to unlawful entry on his premises or to waive rights for breach of peace by a holder in repossessing the goods is prohibited. In effect, the seller cannot enter the buyer’s premises without the buyer’s permission and, even with permission, cannot repossess using force. While this may restrain the overzealous repossession, it will not prevent the customary artifice. Further, a buyer often does not know of these limitations on the repossession and sale. But a holder who meets resistance would be wise to employ appropriate legal process.

Waiver of buyer’s rights and remedies. The buyer may not waive in the agreement his rights against the seller, holder, or one acting for either. This is rather broad in its import.

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8 See §7.16 infra.
9 The transaction remains within the scope of the Uniform Commercial Code, especially Articles 2 and 9, to the extent Chapter 255D is not inconsistent. Section 1-203 of Chapter 106 requires that parties act in good faith and a court could very well find that acceleration for technical defaults was not in good faith.
10 See §7.8 supra.
11 See §7.15 infra.
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First, those rights would logically include those provided in Chapter 255D itself.12

Second, this would seem to complement Section 12C of Chapter 255, which requires an otherwise negotiable note accompanying a retail installment sale agreement to be labeled “Consumer Note,” which thus proceeds to “destroy” its negotiability. This eliminates the holder in due course who would cut off the buyer’s defenses (rights) vis-à-vis the seller. However, Section 9-206 of the Uniform Commercial Code13 would allow express waiver of those rights in a security agreement. Section 10 of Chapter 255D negatives such a clause in retail installment sale agreements.14

Third, the waiver prohibition retains for the buyer all of his common law rights, such as those arising from fraud, trespass, duress, estoppel, and the like, to say nothing of rights granted by other statutes.

This prohibition does not destroy the effectiveness of the buyer’s written waiver of his rights after the holder has breached them. Section 1-107 of the Uniform Commercial Code allows this even though no consideration is given for the waiver.15

Assignment of wages. Wage assignments as further collateral are not permitted. The seller or holder’s only recourse against the buyer’s employer is trustee process as limited by Section 28 of Chapter 246.

Disclaimer of warranties. Section 10 concludes by prohibiting “[a]ny provision limiting, excluding, modifying or in any manner altering the terms of warranties made in connection with the original sale.” This is designed to prevent a seller from making or creating warranties to induce the sale and then using language of exclusion or limitation in the retail installment sale agreement.16 The statute is not limited to express warranties, and therefore also saves for the buyer the implied warranties of merchantability and fitness for a particular purpose. A seller can easily avoid the impact of the statute by not making or creating warranties he does not wish to fulfill. For example, if asked by a buyer if goods are suitable for a particular purpose, the seller can say “no” or that he does not know and avoid the warranty. Since the warranty of merchantability arises automatically without the volition of either party, the seller should both orally and conspicuously in a memorandum of sale prior to the credit agreement exclude that warranty. Otherwise, it does not seem too much to ask that a seller undertake that his goods are at least merchantable.

This presents two problems for a seller:

12 This is also provided and clearly spelled out in Section 24 of Chapter 255D.
14 Section 25 subjects any holder to the provisions of Chapter 255D with the same result. Thus, third party holders, such as finance companies, cannot insulate themselves from the transaction or the responsibility and conduct of sellers to whom they provide retail installment sale agreement forms or from whom they buy chattel paper.
15 C. 106, §1-107.
16 Id. §§2-316, 2-317.
First, in the give and take between a buyer and a seller in consummating the sale, the buyer may become reluctant or suspicious at the refusal to give affirmative answers concerning the goods, and finally refuse to buy. On the other hand, if the seller does make descriptions, affirmations or promises which are part of the bargain and hence express warranties, is there any reason he should not keep his word?

Second, since there is no requirement that warranties be in writing, the statute necessarily allows parol evidence to prove the warranties. Defaulting buyers may intentionally or by bad recollection attempt to establish non-existent warranties by way of affirmative defense. The danger is not as great as it may seem, since the provisions of the Uniform Commercial Code come into play:

1. The buyer as well as the seller is expected to act in good faith;
2. After the buyer has accepted the goods, he must notify the seller within a reasonable time after he discovers or should have discovered the breach, which precludes most claims made strictly as afterthoughts;
3. The buyer has the burden of establishing the breach.

If sellers wish to avoid some or all of the effect of the statute, they must carefully instruct their sales personnel and, if expedient, reduce the sale terms to writing with appropriate limiting language prior to execution of the sales credit agreement. This would require calling to the buyer's attention any printed written warranty, usually given by the manufacturer, which also often attempts to exclude all other warranties of both the manufacturer and the dealer. The buyer's discovery of these exclusions after he receives the goods and has signed the credit agreement should produce no better result for the seller than their inclusion in the agreement. In short, exclusions and modifications of warranties must be as much a "basis of the bargain" as an express warranty itself.

Two kinds of transactions require special mention in this connection. Add-on sales, which are usually consummated quickly on the sales floor using cryptic sales slips, are each by definition "a separate retail installment sale agreement," even though the information required to be disclosed by Section 9 may be sent to the buyer following the purchase. Thus, any printed disclaimer in the sales slip

17 Id. §2-313.
18 See the parol evidence rule of the Uniform Commercial Code, c. 106, §2-202.
19 Id. §1-203.
20 Id. §2-607(3).
21 Id. §§1-201(8), 2-607(4).
22 See id. §2-313. The warranty-saving provision of Chapter 255D, §10(9), is virtually identical to subsection (3) of Section 9-206 as it appeared in the 1952 official text of the Uniform Commercial Code. This was deleted in the 1957 text in favor of allowing exclusions in the security agreement if they comply with Section 2-316. At least one Pennsylvania court gave the "old" subsection the meaning suggested in the text before Pennsylvania amended its Code to conform with the 1957 text: L & N Sales v. Stuski, 188 Pa. Super. 117, 146 A.2d 154 (1958).
23 C. 255D, §18A.
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would be equally ineffective as to warranties in fact made before the slip is executed. This would not be true of sales under a revolving credit agreement, since the prohibitions of Section 10 apply only to the initial agreement and not to the sales made under it.24 The warranty-saving provision is aimed at credit agreements executed subsequent, not prior, to the actual sales.

§7.10. Terms of payment by the buyer. Chapter 255D imposes certain terms or modifies conflicting terms concerning a buyer's payment.

Schedule and equality of payments. Amounts and times of payments not substantially equal must be scheduled in the agreement, and the buyer has the right to have unequal payments averaged over the period of payment unless they expressly relate to his uneven seasonal income.1 The latter right is not the equivalent of an extension or refinancing agreement and any effort to require the buyer to execute such agreements, with their added finance charges, when they are motivated strictly by the inequality of payments would be a violation of the statute.

Receipts. The buyer may request and receive receipts for cash payments, obviously for evidentiary and the buyer's accounting purposes.2 If there is more than one obligation upon which payment is being made, the receipt must itemize each obligation. This is of special importance in payments on add-on transactions since allocation to more than one purchase may be required.3

Prepayment of entire amount due: Refund of finance charges under retail installment sale agreements. Unlike the traditional common law credit transaction wherein the debtor was not allowed to pay in advance and receive a rebate or save future payment of interest unless so provided in the credit instrument, installment buyers are given that right by statute.4 Acceleration clauses are inoperative to prevent exercise of this right. However, the buyer who prepays does not escape paying a premium for having bought on credit in the first place. The rebate or refund of finance charge is not pro rata, i.e., is not determined by dividing the finance charge by the number of agreed installments and multiplying by the number remaining at the time of prepayment. Instead, the statute embraces the theory that the amount of credit of which the buyer has the use declines with each installment payment and the credit risk declines in the same proportion. Thus, the creditor should earn his finance charge proportional to these declining elements.

Most installment creditors have charts which tell them the amount of rebate according to the number of installments anticipated, com-

24 Id. §27A.

§7.10. 1 See §§7.6, 7.9 supra.
2 C. 255D, §12A.
3 See §7.14 infra.
4 C. 255D, §§13, 17, 18.
puted for the amount of finance charge in agreements of different durations. That number will include the next installment due if prepayment is made on the due date of the prior installment or nearer to the prior installment due date than to the next installment due date.\footnote{Id. §13B. The refund provision of Section 16 of Chapter 255B, for retail installment sales of motor vehicles, was clarified in the same way by Chapter 284 of the Acts of 1966.}

In other words, if monthly installments are due on the first of each month, a buyer who prepays from the first through the fifteenth of a 30-day month will receive refund credit for the next installment; after the fifteenth, he will not.

Mathematically, the creditor would then add the total number of installments under the agreement, digit by digit, to arrive at the sum of the digits. (For 12 installments, the sum of 78 results from adding $1 + 2 + 3$, etc. through 12.) He would then add the digits of the number of installments being anticipated. (If 6, the sum is $1 + 2 + 3$ through 6, or 21.) The latter figure becomes the numerator for the prior figure and the total finance charge is multiplied by the fraction. Thus, if prepayment occurs in the first half of the sixth month of a 12-month agreement and the total finance charge is $100, the buyer will get a refund credit of $26.92 \left(\frac{21}{8} \times \$100\right)$. While he pays in less than half of the time of the originally scheduled credit period, he receives only 26.9 per cent of the finance charge in refund.

Refunds of under one dollar do not have to be given and the holder is entitled to the minimum finance charge if his earned finance charge after refund is less than one dollar.\footnote{C. 255D, §13C. This is somewhat anomalous. If, after refund, the earned finance charge is $1.00, the creditor gets $1.00; if it is 99¢, he can deduct from the refund enough to give him $5 on agreements running eight months or less, or $8 on those running more than eight months. See §7.12 infra.}

Section 16, which deals with extension agreements, makes no provision for refund of the additional charge for extension upon later prepayment. Since the extension agreement must incorporate the retail installment sale agreement by reference, the refund provisions automatically apply to the initial finance charge. Logically no charge can be made for extension of installments which, by prepayment, are no longer extended. For refinancing agreements, the finance charge is applied to the balance due after deducting the refund credit under Section 13, and prepayment requires refund credit under Section 13 of the refinancing charge.\footnote{C. 255D, §17B(1), (3).} Refund credit may be given for each agreement as another is added on and the finance charge is then assessed on the balance, or may be so given only upon prepayment of the add-on agreement.\footnote{Id. §18A.} The second method will no doubt become fashionable since the refund credit is per agreement, rather than on the total, which allows the credit seller more permissible finance charge under the graduated ceilings.\footnote{See §7.12 infra.}
§7.11 CREDIT TRANSACTIONS AND CREDIT SALES

Delinquency charges. Because it is a statutory condition to its collection, all retail installment sale agreements will no doubt contain a clause allowing a delinquency charge for installments overdue beyond 15 days following their due dates. The charge is the lesser of 5 per cent of the installment or $5. But if the parties enter into an extension agreement, the creditor cannot have both the extension charge of 1 per cent per month of extension and the delinquency charge. Thus, if 1 per cent of a buyer’s installment payment exceeds $5, he is better off paying the delinquency charge, which is assessable only once. The reverse is true from the standpoint of the holder.

§7.11. Insurance protecting collateral or payment. It is debatable whether the buyer or holder benefits most from credit life insurance which will pay the amounts due upon death of the buyer or from property insurance which protects against loss or damage to the collateral. In any event, the potential for abuse — excessive premiums, kickbacks from insurers to sellers, sellers as insurance agents — inspired the legislature to regulate insurance in Section 26 of Chapter 255D.

Property insurance. A buyer under either a retail installment or revolving credit sale agreement may procure his own insurance from his own agent or broker, but if so, the seller need not “finance” its cost as part of the agreement.

If the seller procures the insurance:

(1) He can charge the buyer only the premiums actually payable to the insurer;

(2) He must, within 30 days after the agreement, send or have sent a copy of any dual interest policy, which must be written by a Massachusetts authorized insurer, to the buyer.

Additional premiums resulting from extension or refinancing may be charged to the buyer. If the buyer prepays, he is entitled to any refund of premiums made by the insurer.

Credit life insurance. Credit life insurance included in the agreement must always cover “the unextinguished debt including unearned finance charges” and be issued under Section 133(c) of Chapter 175, which governs life insurance.

On the matter of premiums chargeable, however, the statute departs from the rule of actual costs, which are used for property insurance and official fees. Irrespective of his costs, which may be more or less, a seller may add 50¢ per $100 of insurance per annum to the sum of the installments. Further, if the buyer prepays, he is entitled to a refund of premiums computed in the same manner as refund of finance charge, whether that amount is more or less than the seller will

10 C. 255D, §20.
11 Id. §16B(4).

§7.11. 1 C. 255D, §§16B(5), 17B(2).
2 Id. §26C.
actually receive from the insurer upon cancellation. This is obviously a compromise approach designed to induce a seller to shop for rates less than those allowed, thus having a profit for himself, and to avoid complexities in making refunds on prepayment. The fifty-cent rate is assumed to be the maximum any insurer should ever exact for credit life insurance.

Because death of the buyer is a kind of involuntary acceleration, the seller must refund to the buyer's estate the unearned finance charges received from the insurer. Presumably, these are pro rata finance charges rather than those payable upon prepayment, since the latter have no reference to whether the charges are "earned" or "unearned," and the statute makes reference to Section 13 or the sum-of-digits method whenever it is to apply. The sum-of-digits method is adopted in the statute only in deference to industry custom and therefore should be usable only when specifically permitted.

Other insurance. Chapter 255D does not regulate other kinds of insurance in retail installment or revolving credit sales agreements. Thus, a seller may include, as a separate charge, health and accident insurance against the risk of the buyer's disability, and insurance against the risk of a superior interest in the collateral being acquired by a third party, in lieu of other protection of the security interest, such as filing a financing statement under the Uniform Commercial Code.

§7.12. Limitations on finance charges. Retail installment and revolving credit sale rates. For the first time in Massachusetts the Legislature has imposed ceilings on the finance charges in retail installment and revolving credit sales of consumer goods, services, and home improvements. Ceilings for retail installment sale agreements are add-on rates graduated according to principal balance: $10 per $100 on the first $500 and $8 per $100 on all over $500. Under the annual finance charge formula, these rates would be 18.4 per cent and 14.77 per cent respectively. If, at those rates, the finance charge would be less, the seller is allowed a minimum of $8 if the last installment will be more than eight months from the date of the agreement, and $5 if eight months or less. This could appreciably increase the annual finance charge percentage rate disclosed in the agreement.

The finance charge in revolving credit accounts is customarily applied monthly. The maximum monthly rates are 1½ per cent on the

§7.12. 1 Ceilings for installment sales of motor vehicles were imposed in 1958 by Section 14 of Chapter 255B. The charges in add-on terms are according to vehicle age: (a) new vehicle purchased in manufacturer's model year, $8 per $100; (b) new and used vehicles of manufacturer's model years within two years of purchase year, $10 per $100; and (c) all others, $12 per $100.

2 C. 255D, §11B.
first $500 of unpaid balance and 1 per cent on all over $500, with a permissible minimum charge of 70¢ so long as there is any unpaid balance. Finance charges may be charged in increments of $10 or less, with the rate applied to the median amount and charged against all unpaid balances within the range. For example, a finance charge on any unpaid balance within a range of $51 to $60.99 at 1 1/2 per cent would be 84¢, the finance charge on $55.99. The same charge may be assessed against any balance from $51 through $60.99. Thus, the actual monthly percentage rate will be greater than 1 1/2 per cent on balances under $55.99 and less on balances over that amount. The rate or charge must be applied at a point in time to the actual balance then existing; the average of unpaid balances during a period may not be the basis for the finance charge.

Rates for extension agreements. If the holder and buyer enter into an agreement extending the due dates under any installment agreement, with the installments remaining the same, the holder may collect an extension charge which may not exceed 1 per cent of an extended installment for each month of extension. For example, if a buyer encounters financial difficulty and wishes to defer all installments of, say, $50 each for two months, he can be charged an extra one dollar per installment for the privilege. The holder may not also collect a delinquency charge on installments already overdue, and which are included in the extension agreement, beyond the 15-day grace period. Nothing requires the holder, however, to include delinquent installments in the extension agreement.

Rates for refinancing and consolidation (add-on) agreements. While the rate ceilings are the same for refinancing and add-on agreements as for retail installment sale agreements, the sum to which they are applied gives the holder an advantage. For refinancing agreements, they are applied to a new principal balance which includes the prior unpaid balance, less finance charge refund credit plus additional charges incident to refinancing. Because the refund credit is not pro rata, the rates for refinancing are actually applied in part to the finance charge under the prior agreement, something like a tax on a tax. An extension agreement extending the due dates of all installments for nine months would actually cost the buyer less at maximum extension charges.

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3 Id. §27C(1).
4 Id. §27C(2).
5 Id. §27C(3).
6 Id. §27C(4).
7 See §7.10 supra.
8 C. 255D, §17B.
9 For example, an initial agreement with an unpaid balance of $480 at 10 per cent payable in 12 monthly installments would have a time balance of $528, or $44 per month. If refinanced in the sixth month, a buyer would be credited with about $13 (26.9 per cent of the $48 finance charge), leaving a principal balance of $251 ($264 less $13). The new finance charge for another 12 months at 10 per cent would be $25, with a time balance, exclusive of other charges, of $276. Extending
The only factual distinction between a refinancing agreement and the usual add-on transaction is that the latter involves another installment purchase. The unpaid balance on the prior agreement or agreements is consolidated with the time balance of the new retail installment sale agreement, installment payments are increased, and the time for their payment is extended for another prolonged period. Finance charges, with maximum rates as for any retail installment sale agreement, may be assessed:

(1) at the time of each agreement for the agreed period and principal balance of that agreement; or

(2) by treating each prior agreement as being prepaid at the time of consolidation, giving refund credit of the finance charge for each agreement, and adding the balances, to the total of which the finance charge is then applied for the period of the installments.10

The latter method yields a greater finance charge, since the former actually extends the time of payment and possibly reduces installment payments of prior agreements without any additional charge. Because the act allows the itemization of money terms to be sent to the buyer any time before the first installment is due, the credit department of the seller will have ample time to make the additional computation of the second method.11

Inclusiveness of the finance charge. The only “permitted” charges under Chapter 255D, in addition to the finance charge, are for (1) taxes, (2) accessories, (3) delivery, installation, or services upon the goods being sold, (4) official fees, and (5) insurance.12 Otherwise, the finance charge includes all other fees, expenses, and other charges incident to the credit nature of the transaction.13 Thus, the seller must recover from the finance charge any expenses for credit and collateral investigation, brokers' commissions, and interest.14 A broad catchall of other “permitted charges” as in Chapter 140A is not sanctioned for credit sales of goods and services in Chapter 255D.15

D. LIMITATIONS ON COLLATERAL AND ENFORCEMENT OF SECURITY INTERESTS

§7.13. Collateral limited to goods sold. The only collateral permitted under a retail installment sale agreement are the goods sold or other goods affixed to the goods sold (accessions.)1 Unless prior agree-

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10 C. 255D, §18A.
11 See §7.6 supra.
12 C. 255D, §§1 (“cash sale price,” “finance charge”), 9C(2), (3), (7).
13 Id. §11A.
14 These are expressly included in the definition of “finance charge” in §1(8), c. 140A.
15 See §7.7 supra.

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ments are consolidated as provided by statute, even prior goods sold as to which balances are outstanding may not be collateral under subsequent agreements. Provision for after-acquired collateral is prohibited altogether.

The same rules apply to collateral under revolving credit agreements, but there are no rules requiring allocation of payments to prior purchases as there are for consolidation agreements. Presumably, since the limitations are absolute, all payments must be allocated to purchases first in time until their cost is paid. Any other system would of necessity mean that prior purchases would continue to be collateral for subsequent ones, which violates the statute.

§7.14. Release of collateral after payment. After final payment of all sums due, the holder of any security interest must deliver "sufficient instruments" to the buyer releasing the collateral if the security interest has been perfected by filing or public recording, or if the buyer requests. This is important if the buyer wishes subsequently to sell the goods or again use them as collateral.

In a consolidation agreement a seller not only may combine unpaid balances of prior agreements but also may include goods of the prior agreements as collateral for payment under the consolidation agreement. Were no restrictions placed on this arrangement, myriad goods would be subject to repossession so long as the buyer had an unpaid balance and such collateral would grow as the buyer made subsequent add-on purchases.

The statutory solution is for entire installment payments under a consolidation agreement to be allocated to the time sale price balance of each purchase in order of the date of purchase, and for security interests to terminate as each such balance is paid. The only exception is for "equipment or parts, other goods or services which are attached to or affixed to goods covered under the consolidated (sic) agreement." In that case, the date for allocation is the most recent agreement, usually that when the accessions were purchased. For example, if a buyer purchased a washing machine, a television set, a refrigerator, and finally, under an agreement consolidating the prior agreements, a new motor for the washing machine, the balance on the washing machine would be added to that for the motor so that the television

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2 See §7.14 infra.
3 This is not a radical change. Section 9-204, c. 106 (UCC), limits after-acquired consumer goods to those acquired by the debtor within ten days of the agreement.
4 C. 255D, §27A.
5 See §7.14 infra.

§7.14. 1 C. 255D, §28. A "sufficient instrument" is a termination statement signed by the holder of record under §9-404, c. 106. The new legislation removes the requirement of the UCC that the buyer demand the statement.

Purchase money security interests in consumer goods are perfected without filing and hence protected against nearly all third parties except another consumer buying from the buyer, against whom filing is required for protection. C. 106, §§9-302(1)(d), 9-307(2).

2 C. 255D, §18B.
balance would be paid off first, the refrigerator second, and lastly, the washer and motor.

§7.15. Repossession and disposition of collateral. The occasions for and methods of repossession are now more carefully prescribed and proscribed than in the Uniform Commercial Code for all credit sales of consumer goods, including motor vehicles. Sellers or holders who are less cautious in choosing credit buyers and who rely upon the collateral and high finance charges to compensate for the risk will be those most affected by the new procedures.

Default. If the seller has retained a security interest, repossession is permitted only when the buyer is actually in default under a credit sale agreement. This eliminates the holder's subjective feelings of insecurity as a ground for repossession, but does not prevent inclusion in the agreement of a long list of events which technically constitute default. A court may read the limitation strictly or impose a materiality test upon the agreement to avoid unfairness and to promote the intent of the legislation. Obviously, the usual default of concern to the holder is nonpayment.

The statute does not expressly equate “delinquency” in payment and “default” in payment. Literally, the former has to do with the time at which a “penalty” charge may be assessed to the buyer, and the latter with his payment obligations under the agreement. However, if the Legislature did not consider a delay in payment for up to fifteen days beyond the due date sufficiently evil to allow a delinquency charge, it is doubtful that such delay could trigger the more drastic remedy of repossession.

Repossession. If a holder intends to repossess collateral, he may proceed in one of two ways:

(1) By delivering or by sending by certified or registered mail to the buyer at least fourteen days in advance of repossession a notice of what constitutes the default, the time after which the holder intends to repossess the goods, and the buyer's rights if the goods are repossessed; or

(2) By repossessing without giving advance notice, with the subsequent loss of the right to recover from the buyer expenses of repossession, of holding and preparing the goods for sale, of disposing of the collateral, and of attorney fees.

Thus, the holder must initially determine if the loss of these expenses will be less than the risk of losing the collateral entirely to an absconding buyer warned in advance. The forfeiture of the expenses is meant to encourage giving advance notice in the usual case. Its success will depend upon the extent to which a seller actually incurs these expenses in his customary repossession procedures.

§7.15. 1 C. 255D, §21A. Default is the only ground for repossession under Uniform Commercial Code (§9-503), but acceleration at will is allowed (§1-208) which, in turn, inevitably creates a default.

2 See §7.9 supra.

3 C. 255D, §§21A, 21C, 22C.
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Redemption. Whichever procedure the holder follows in repossessing, after repossession he must then:

(1) Within five days deliver or send by registered or certified mail a notice to the buyer stating that the described goods have been repossessed, that the buyer has the right to redeem by paying a designated amount, that the buyer has the right to require a resale, if that is the case, and that, upon resale, the buyer will be liable for any deficiency and, finally, that the buyer may pay or give notice at the designated address; and

(2) Retain the goods for 15 days after the notice is delivered or sent during which time the buyer may redeem.

These provisions must be read in connection with those of the Uniform Commercial Code, which does not require notice to a debtor concerning his right to redeem or retention of the collateral for any period of time. Under the Code the secured party may, in lieu of disposing of the goods, retain them in satisfaction of the debt unless:

(1) After a written proposal to the debtor to that effect the debtor within 30 days objects to retention and demands disposition; or

(2) The debtor has paid 60 per cent of the cash price of the goods and has not in writing after default waived his right to have the collateral disposed of, in which case the disposition must be within ninety days following repossession if the secured party is to avoid liability to the debtor for conversion.

If either of these apply, the new statute would seem to require that the holder must so inform the buyer in the notice following repossession as part of "the buyer's rights as to a resale."

The buyer has a minimum of 15 days in which to redeem the goods, and may redeem them thereafter until the holder has disposed of them or entered into a contract for their disposition. To redeem, the buyer must tender (1) the full amount due under the agreement, (2) performance of any other promise the breach of which caused repossession, and (3) only if advance notice of repossession was given, reasonable expenses for repossession, holding the goods, preparing them for disposition, and attorney's fees. The "full amount due" will almost inevitably be the entire unpaid balance by virtue of an acceleration clause. Thus, unless repossession occurs by default late in the contract and the goods are still of considerable monetary or personal value to the buyer, he will seldom be willing or able to redeem. If the holder proceeds to dispose of the goods, the time balance to which proceeds are applied or for which a deficiency judgment is sought must be reduced by a refund credit for finance charges and insurance pre-
miums computed under Section 13. The refund credit is not expressly required by Section 22 dealing with redemption. However, the cross references to Section 21 for amounts recoverable with and without notice of repossession clearly indicate an intention that the "full amount due under the agreement" must be the time balance reduced by the refund credit. Otherwise, the buyer would actually be penalized for redeeming rather than allowing disposition, hardly the purpose of the statute.

Should the holder, having sent the notice before repossession, be in a position to exact expenses for taking and holding the goods and for attorney fees, those expenses must be reasonable. This at once can present a fact question and will no doubt present one if the holder is arbitrary. Since the test is the same under the Uniform Commercial Code, its rules would probably apply. The parties are free to agree to standards of reasonableness in their agreement, but those standards are subject to scrutiny for "manifest unreasonableness." Further, the holder cannot avoid the Code's obligation of good faith and sanction against unconscionable clauses.

Disposition of collateral and application of proceeds. Every aspect of disposition of the collateral, failing the buyer's redemption, must be conducted in a commercially reasonable manner. One of the few criteria spelled out in the Code is that reasonable notification must be sent to the buyer of the time and place of a public sale or of "the time after which any private sale or other intended disposition" will take place. Rather than a possible third notice to the buyer, a holder could well combine this notification with the Chapter 255D notice following repossession. The following would suffice for both purposes:

NOTICE IS HEREBY GIVEN: That (the holder) has taken possession of (describe goods) by reason of your default in (list default) under your (retail installment sale) (revolving credit) agreement with (name of seller).

The goods described will be held for fifteen days following the (delivery) (sending) of this notice during which time you may redeem the goods by (list payment and amount or other performance required) and may give any notice to the party at the address given below.

If you do not redeem, the goods will be sold at a (public) (pri-
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vate) sale to be held (on) (after) (date after fifteen days) at (re-
quired for public sale), and you will be liable for any deficiency.

(Party in possession who will sell goods)

(address) 15

If the buyer was given notice of intent to repossess, proceeds from
the disposition may be applied in the following order:

(1) Reasonable expenses of preparing the goods for disposition and
to third persons for their disposition;

(2) Reasonable expenses for repossessing and holding the goods, and
for attorney fees;

(3) The unpaid balance, delinquency and extension charges, less the
refund credit for finance charge and insurance premiums; 16

(4) Surplus to the debtor without his request.

The expenses of the first two items are not recoverable if notice
before repossession was not given. 17

§7.16. Recovery of deficiency and civil penalties recoverable by the
buyer. The holder may recover from the buyer any deficiency re-
mainning after disposition and application of the proceeds. 1 A condition
precedent to recovery is the filing on the return day of the suit of
an affidavit which states the price obtained and the time and place of
sale, and is signed by the purchaser or the holder. 2 The statute also
requires the court to scrutinize the amount sought, to ascertain that
the holder has deducted the refund credit for finance charges and
insurance premiums for installments otherwise due after repossession,
since no deficiency may be entered for those amounts. 3 The reasoning
is that once the holder has repossessed and sought a deficiency, the
credit for which the finance charge is allowable has terminated.

To insure that statutory enforcement procedures are followed, the
buyer has the following civil remedies:

(1) If the holder fails to give notice following repossession, the buyer
may recover half the fair market value of the collateral and in addition
may bring suit in conversion which, as a general rule, would allow
recovery of the full value of the collateral;

(2) If the holder fails to dispose of the goods in a commercially
reasonably manner or to apply the proceeds as required by statute, the
buyer is entitled to a penalty of $500. 4

15 This notice, without the requirements of Chapter 255D, was approved as
complying with the UCC in Hudspeth Motors, Inc. v. Wilkinson, 382 S.W.2d 191
16 See §§7.10-7.11 supra.
17 C. 255D, §21C. C. 106, §9-504(1), does not give any priority to the expenses
of the first two items.

§7.16. 1 C. 106, §9-504(2).
2 C. 255D, §21D(2).
3 Id. §21D(1).
4 Id. §21E. These penalties would seem to supersede those of §9-507(1), c. 106,
by virtue of §9-201, although they could be found to be consistent and cumulative.
Section 21 was omitted from the list of sections in Section 29, the violation of which will not deprive the holder of his right to recover the unpaid principal balance. However, since the first remedy is couched in terms of the collateral and the second is strictly a penalty, it would seem that the sums recoverable should be offset against the holder’s claim of a deficiency. This can be compared to the buyer’s remedies for violation of other provisions discussed below.

E. NEW CANCELLATION RIGHTS FOR BUYERS

§7.17. Cancellation before copy of agreement received. In two situations in which prescribed information need not be disclosed to the buyer until after the sale is consummated — orders initiated by the buyer himself from the seller’s printed literature and add-on sales — the buyer has the right to cancel without penalty at any time before that information is delivered or mailed to him. The seller is obligated to send that information before the first or next installment payment is due. This is an anomalous situation, since a primary reason for wishing to cancel may be the information disclosed, but by then it is too late. Thus, the only rewarding effect will be to induce prompt sending by the seller and thereby to restrain the buyer from future transactions if he finds the terms too stringent.

Subsection B of Section 14, requiring that the buyer cancel by certified mail by 5 p.m. the next business day following execution of the agreement, cannot logically apply to cancellation before receipt of a copy even though the provision speaks of “notice of cancellation under this section.” As a result, the buyer is free to use his own method of cancellation. Significantly, the buyer is nowhere told of his right to cancel, as he is in home sales transactions.

§7.18. Cancellation: Sales made in the home. To curb high pressure tactics of door-to-door salesmen, the Legislature has introduced the concept of a “cooling off” period in which the buyer, absent the pressure, can consult, reflect and change his or her mind without penalty. Unfortunately, the change of mind, or cancellation, must follow such

If so, the holder would in addition be penalized the entire finance charge plus 10 per cent of the original principal balance.


6 See §7.22 infra.

§7.17. 1 C. 255D, §§9F, 14A(1), 18A. An executed copy of the usual retail installment sale agreement must also be delivered or mailed to the buyer, with any acknowledgment of receipt printed in 10 point boldface type and, if on the agreement, immediately above the place for the buyer’s signature. Such acknowledgment creates a presumption of receipt. Failure to deliver or mail a copy subjects the holder to the penalties of Section 29. See §7.22 infra.

2 Emphasis supplied. See §7.18 infra.

3 C. 255D, §§14C, 14D. See §§7.8 supra, 7.18 infra.
§7.19 CREDIT TRANSACTIONS AND CREDIT SALES

formalities that the right is greatly diluted: the buyer must mail written notice by certified mail with a return receipt by 5 p.m. of the next business day following execution of the agreement to the seller's address shown in the agreement.\textsuperscript{1} This is a procedure with which many people are unfamiliar and, even if they know the procedure, requires a special trip to the post office.

The buyer, however, must be told of this right in boldface type in the agreement which he signs, although the legal (statutory) language required to be used is not a model of clarity or simplicity.\textsuperscript{2}

The "cooling off" period applies not only to sales made in the buyer's home, but also to any sale consummated at any place other than the address of the seller's main or branch office. This includes sales in the seller's home, in another buyer's or friend's home, or on the street, but not sales made by the buyer's initiation from the seller's printed literature without personal solicitation by a salesman.\textsuperscript{3}

The buyer has no right to cancel after he has received or been tendered a "substantial part of the goods, services, or goods and services which the seller is required to furnish." This may very well encourage sellers to make on-the-spot or very fast deliveries to avoid possible cancellation, especially when the subject matter is a limited quantity of easily transportable goods. On the other hand, delivery of materials for a home improvement, such as siding, storm windows, dormers, and the like, would probably not constitute a substantial part of both goods and services as required. This language was carefully chosen to meet known abuses in the home improvement industry. Furthermore, Section 9A renders virtually meaningless a writing signed by the buyer that the home improvement "has been satisfactorily completed," since such a writing is not valid unless the work is in fact completed. This means the buyer may establish a lack of satisfactory completion in spite of what he signs.

If a buyer properly cancels, he must, so far as possible, return or hold for the seller any goods received and the seller must within ten days return goods traded in or the amount of money received as down payment.

F. Regulation Under and Enforcement of the Statutes

§7.19. Licensing sales finance companies. Sales finance companies. Sales finance companies are banks or anyone in the business of pur-

\textsuperscript{1} C. 255D, §§14A(2), 14B.
\textsuperscript{2} Id. §§9D(6), 27B(6). By inadvertence, the notice to the buyer required in revolving account agreements omits reference to written notice by certified mail, obviously reflecting an earlier draft of the statute which did not include the formalities. Section 14, creating the right and requiring the formalities, probably negatives any benefit to the buyer from this omission. Thus, the notice in the agreement should conform with Section 14 rather than Section 27B(6). See §7.8 supra.
\textsuperscript{3} C. 255D, §9F. See §7.7 supra.
chasing retail installment sale agreements or revolving credit agreements from sellers, other than the sellers themselves. They do not include financing agencies taking such agreements solely as collateral for bona fide loans to the sellers.\(^1\) In terms apart from licensing and administration, they are "holders" of the agreements and as such are subject to the provisions of Chapter 255D without the benefit of "cut-off" rights against the buyer, as by having the rights of a holder in due course or rights of a good faith assignee against whom rights against the seller have been waived.\(^2\) Stating the obvious, the statute allows sellers and sales finance companies to agree as they wish in the sale of the agreements.\(^3\)

Issuing licenses. Sales finance companies other than banks must obtain by written application a non-transferable, annually renewable, license from the Commissioner of Banks for not less than $100 for each place of business in each city or town where business is transacted.\(^4\) The criteria for granting licenses are to be established by rules and regulations of the Commissioner on the basis of the "financial responsibility, character, reputation, integrity and general fitness" of the applicant, owners, partners, officers, or directors which will command the confidence of the public and will warrant the belief that the business "will be operated lawfully, honestly, fairly and efficiently."\(^5\)

If the Commissioner refuses an applicant a license, he must so notify the applicant and within 20 days enter in his records his written de-

\(\text{§7.19.}\) 1 C. 255D, §1.

2 Id. §§1 ("holder"), 24, 25. Most sections of Chapter 255, which contained more limited regulatory provisions, were repealed by Section 4 of Chapter 284, Acts of 1966, but Section 12C, requiring that notes accompanying consumer credit sales be labeled "Consumer Note," which thereby eliminates their negotiability, was retained. Sections 3-302, 3-305 and 9-206(1), c. 106 (U.C.C.), would otherwise allow an assignee-holder to cut off the buyer's defenses under or apart from Chapter 255D.

3 C. 255D, §12B. The new statute omits the declaration of validity of such assignments against an array of third parties who might acquire conflicting interests in the chattel paper, without any public filing, recording or dominion over the proceeds, as is included in the similar provisions of §18 of c. 255B (motor vehicles) and of §12 of c. 255C (insurance premium financing). The former section was no doubt taken from New York's motor vehicle sales finance act and blindly carried over to Chapter 255C, even though the New York provision was designed to remove the impact of Benedict v. Ratner, 268 U.S. 353, 45 Sup. Ct. 566, 69 L. Ed. 991 (1925), before the Uniform Commercial Code was adopted in New York, and such provision as to filing is in direct conflict with the perfection requirements of the U.C.C., c. 106, §9-302. This is a good example of legislative "borrowing" without adequate concern with state differences and other existing statutes.

4 Regulations promulgated by the Commissioner at a public hearing held August 31, 1966, established the fee of $200.

5 C. 255D, §§2, 3. Regulations of August 31, 1966, require that partners and officers of the applicant submit with the application an outline of "present and previous business connections." Changes in the person in charge of an office or in his residence must be reported to the Commissioner "forthwith."

Sales finance companies, which include sellers, taking retail installment sale agreements for motor vehicles are required to be licensed by Section 2 of Chapter 255B.
Decision with reasons, after which a written notice by registered mail must be sent to the applicant. The applicant in turn may appeal in equity to the Superior Court within 30 days for affirmance or an order to issue the license. The court must review the facts found by the Commissioner to determine if, under his regulations and the statutory criteria, the decision was justified.

Suspension or revocation of licenses. The no doubt normal reluctance or ignorance of a buyer to enforce his own remedies against a holder who violates the statute leaves it to the Commissioner to redress wrongs through his licensing power. He cannot act on behalf of a particular buyer. Thus, he may suspend or revoke licenses of sales finance companies that defraud buyers or that fraudulently misrepresent, circumvent or conceal any material information that they are required to disclose, or otherwise fail to comply with Chapter 255D. This, of course, requires that the Commissioner learn of the licensee's conduct from the buyer, but there is no provision for a department of consumer complaints or for publicizing this power.

In addition, misstatement of facts in the application or their later occurrence, which would be grounds for denying a license, will also, when discovered, be grounds for suspension or revocation of the license. It makes no difference who of the licensee's agents (partner, director, officer, trustee, employee) acts or fails to act under this section, but in the case of an employee as agent, the licensee must have actual knowledge and thereafter retain the benefits of the violation. In short, a licensee may reform transactions misconducted by employees and thereby avoid loss of license. This would not mean avoidance of other liabilities, nor does it invalidate proper agreements entered into prior to suspension or revocation.

Safeguards against administrative witch hunts and vendettas are provided in Section 8. Suspension or revocation may be ordered only after a hearing conducted by the Commissioner or his assistants not less than ten days after written notice is sent by registered mail to the licensee containing the grounds of complaint. The written order of record following the hearing, also containing the grounds, is ineffective for 30 days during which the licensee may appeal to the Superior Court sitting in equity. Again, the grounds stated by the Commissioner must be statutory and must be supported by facts which establish one or more of those grounds.

§ 7.20. Rules, regulations and investigation by the Commissioner. Rules and regulations. The Commissioner of Banks is empowered to make rules and regulations:

6 C. 255D, § 5.
7 Id. § 7.
8 See § 7.16 supra, §§ 7.21-7.22 infra.
9 C. 255D, § 8. No doubt the Commissioner and a court would take into account certain bona fide errors or mistakes which can relieve a holder of civil liability to the buyer. See § 7.21 infra.
(1) which refine the statutory criteria and set the fees for applicants for sales finance company licenses under Chapter 255D;¹
(2) which prescribe the manner for complying with Chapter 255D, including the disclosure of the annual finance charge rate;²
(3) which prescribe the means for disclosing essential terms and the annual finance charge rate in non-sales credit transactions within Chapter 140A;³
(4) which are "necessary or proper" for carrying out the provisions of Chapter 140A, including whether the disclosure required by that chapter is being achieved by any other law.⁴

Also, the Commissioner may approve methods of computing finance charge rates submitted by creditors other than those methods set out in Chapter 140A, and for other than closed-end and revolving account transactions specifically dealt with by statute.⁵ He may allow by silence or object in writing to "permitted charges" proposed by a creditor to be included in a non-sales credit transaction as an item going to make up the principal balance.⁶

Investigatory powers. Probably the greatest administrative weapon in Chapter 255D is the Commissioner's investigatory power. He may "in the public interest" investigate the affairs and on a reasonable number of occasions examine the premises, vaults, books and records of a licensee, using an accountant of his selection, all at the expense of the licensee. The purpose is to determine if the licensee is complying with the provisions of the chapter. This includes not only the criteria for licensing, but also the conduct of particular transactions. It is mainly the latter which is the reason a licensee must keep within the Commonwealth records of all transactions for two years following the final entry under a retail installment sale agreement, revolving account, or a sale made pursuant to either (even though an out-of-state company has its central bookkeeping elsewhere). Since extension, refinancing and add-on agreements are or must refer to retail installment sale agreements, "final entries" under these rather than the original agreements would start the two-year period.⁷

The investigatory power of the Commissioner extends to non-licensees whom he has reason to believe are violating the chapter, and they may be compelled to produce relevant books, records, accounts and documents.⁸ Of course, unless the Commissioner can actually

¹ C. 255D, §§. Regulations are promulgated after public hearing pursuant to c. 30A, the State Administrative Procedure Act.
² C. 255D, §§1.
³ C. 140A, §§5(1), 6(1).
⁴ Id. §§.
⁵ Id. §§5(2) (g), 6(2), 7, 8.
⁶ Id. §§1(12).
⁷ C. 255D, §§. Regulations of August 31, 1966, require annual reports of each licensee on or before April 1, require an annual audit by an accountant approved by the Commissioner (which may be combined with the annual report), and prescribe the precise information to be carried in the ledgers for each transaction.
⁸ C. 255D, §§.
support his "reason to believe," there may be a constitutional question concerning the exercise of his power. There is less of a question with licensees, since they do business as a privilege granted by the state and that privilege is subject to scrutiny and even denial.

Perhaps also subject to constitutional limitations is the mandate to state and local police to enforce the chapter and the Commissioner's rules and regulations at the direction of the Commissioner.9

§7.21. Civil penalties and remedies: Buyers and other debtors. Penalties recoverable by buyers for a holder's non-compliance with procedures to enforce security interests are specifically granted by the statute.1 A creditor will lose his right to recover any finance, delinquency or collection charge, and logically must refund that already paid, if he fails to comply with or violates any of the following:

(1) the disclosure requirements of Chapter 140A;2
(2) the form, disclosure, and notice to the buyer requirements for agreements under Sections 9 and 27 of Chapter 255D;3
(3) the prohibition against certain terms in the agreement by the provisions of Section 10 of Chapter 255D;4
(4) the finance charge ceilings of Sections 11 and 27 of Chapter 255D;5
(5) the allowance of refund credit upon prepayment as provided in Section 13 of Chapter 255D;6
(6) the limitations on collateral securing the obligations, imposed by Section 15 of Chapter 255D;7
(7) the form, disclosure, and charges prescribed for extension, refinancing, and add-on agreements by Sections 16, 17, and 18 of Chapter 255D;8
(8) the limitations on and refunds for insurance under Section 26 of Chapter 255D.9

No doubt the debtor will not know of the penalties until he has a complaint or is in trouble with the creditor and seeks legal advice. His recovery may be by affirmative defense or direct action and, if a creditor is not to gamble on the debtor's lack of discovery, conceivably may be after the transaction is closed.

Creditors will not be liable for the penalty if they, bearing the burden of proof, can establish that a violation results from accident

9 Ibid.

§7.21. 1 See §7.16 infra.
2 See §§7.3-7.4, 7.6 supra.
3 Ibid.
4 See §7.7 supra.
5 See §7.12 supra.
6 See §7.10 supra.
7 See §7.13 supra.
8 See §§7.3-7.4, 7.6, 7.8, 7.10 supra.
9 C. 140A, §10; c. 255D, §29A. See §7.11 supra. The civil penalties in credit sales of motor vehicles and the financing of insurance premiums are found in c. 255B, §22, and c. 255C, §9, respectively.
or bona fide error in a mathematical computation, in the form, size of

type, or order of the terms of the agreement or in failure to supply the
dertor with any required monthly or semi-annual statement of ac-
tount.\textsuperscript{10} There is no statutory excuse for violation of or noncompliance
with the other provisions of Chapters 140A or 255D.

Finally, a buyer may by petition in equity have an agreement with
a licensee which violates Chapter 255D declared entirely void.\textsuperscript{11} The
grounds are not stated, but seemingly more than technical violation
would be required for this remedy. A violation which materially vi-o-
lates the thrust of the statute, such as greatly excessive finance charges,
may warrant avoidance.\textsuperscript{12}

\textsection{7.22. Criminal penalties.} The Commissioner of Banks may estab-
lish fines not exceeding \$500 for violation of his rules and regulations,
and a creditor violating the provisions of either Chapter 140A or 255D
is subject to the same maximum fine or up to six months imprisonment
or both.\textsuperscript{1} This presents at least three difficult problems which only
time and experience can solve:

  (1) Can a debtor by complaint initiate prosecution? If so, the threat
      is a formidable weapon for bringing creditors to terms for their viola-
tions, but presumes that debtors will be aware of this right.

  (2) Absent complaining debtors, what sort of evidence gathered by
      the Commissioner or by prosecutors will inspire prosecution of giants
      in the credit industry?

  (3) Since intent is not an element of the crime, will courts be
      reluctant to find guilt for technical violations and judicially legislate
      "excuses" similar to those for the civil penalties?

\textsuperscript{10} C. 140A, §10; c. 255D, §29B.
\textsuperscript{11} C. 255D, §29C.
\textsuperscript{12} Section 2-302, c. 106 (UCC), allows a court to strike specific provisions of
sales agreements which it finds unconscionable.

\textsection{7.22.} 1 C. 140A, §§9, 11; c. 255D, §§30, 31. Criminal penalties for credit sales
of motor vehicles are provided in §21, c. 255B, and for insurance premium financ-
ing in §9, c. 255C.