S T A T E O F N E W Y O R K

2932

2013-2014 Regular Sessions

I N S E N A T E

January 25, 2013

Introduced by Sen. FARLEY -- read twice and ordered printed, and when printed to be committed to the Committee on Banks

AN ACT to amend the banking law, in relation to retail instalment contracts and transmitters of money

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Subdivisions 6-a, 6-b and 7 of section 491 of the banking law, subdivision 6-a as amended by chapter 289 of the laws of 1962, subdivision 6-b as added by chapter 358 of the laws of 1958 and subdivision 7 as amended by chapter 837 of the laws of 1966, are amended to read as follows:

6-a. "Retail instalment obligation" or "obligation" means an agreement, entered into in this state, pursuant to which the buyer promises to pay, in instalments, the time sale price or prices of goods and/or services, or any part thereof. The term does not include [(a)] a retail instalment contract[, (b)] OR a retail instalment credit agreement [or (c) an obligation which is intended to be and is ultimately insured or guaranteed under title three of the act of Congress entitled "Servicemen's Readjustment Act of 1944"]. THE TERM INCLUDES SUCH AN AGREEMENT WHEREVER ENTERED INTO IF EXECUTED BY THE BUYER IN THIS STATE AND IF SOLICITED IN PERSON BY A SALESPERSON OR OTHER PERSON ACTING ON HIS OR HER OWN BEHALF OR THAT OF THE SELLER.

6-b. "Retail instalment credit agreement" or "credit agreement" means an agreement entered into in this state, pursuant to which the buyer promises to pay, in instalments, his OR HER outstanding indebtedness from time to time to a retail seller, not evidenced by a retail instalment contract or obligation, for one or more items of goods or services, whenever purchased or obtained, which provides for a service charge and under which instalment payments apply to his OR HER outstanding indebtedness from time to time. THE TERM INCLUDES SUCH AN AGREEMENT WHEREVER ENTERED INTO IF EXECUTED BY THE BUYER IN THIS STATE AND IF SOLICITED IN

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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PERSON BY A SALESPERSON OR OTHER PERSON ACTING ON HIS OR HER OWN BEHALF OR THAT OF THE SELLER.

7. "Sales finance company" means a person engaged, in whole or in part, directly or indirectly, in the business of purchasing or otherwise acquiring retail instalment contracts, obligations or credit agreements made by and between other parties, or any interest therein. The term includes a retail seller of motor vehicles engaged, in whole or in part, in the business of holding retail instalment contracts acquired from retail buyers, [which have] IF THE NUMBER OF RETAIL INSTALMENT CONTRACTS ACQUIRED IN ANY ONE YEAR EXCEEDS FIVE SUCH CONTRACTS, OR IF THE aggregate unpaid time balances [of twenty-five] ON SUCH CONTRACTS EXCEED ONE HUNDRED thousand dollars or more at any one time, exclusive of contracts repurchased from a sales finance company or financing agency, under an agreement to repurchase in case of default entered into as an incident to the bona fide sale thereof to a sales finance company or financing agency. The term does not include the pledgee of an aggregate number of contracts to secure a bona fide loan thereon, OR A SECONDARY HOLDER OF SUCH CONTRACTS. The term includes a person engaged, in whole or in part, directly or indirectly, in the business of entering into retail instalment credit agreements with retail buyers pursuant to subdivision eleven of section four hundred thirteen of the personal property law. FOR PURPOSES OF THIS ARTICLE, THE TERM "SECONDARY HOLDER" MEANS A PERSON THAT (I) PURCHASES OR OTHERWISE ACQUIRES A SALES FINANCE CONTRACT, OR AN INTEREST THEREIN, THAT WAS ORIGINATED BY A PERSON LICENSED OR EXEMPT FROM LICENSING UNDER THIS ARTICLE AND THAT IS SERVICED BY A PERSON LICENSED OR EXEMPT FROM LICENSING UNDER THIS ARTICLE, AND (II) HAS NO CONTACT WITH THE OBLIGOR UNDER SUCH CONTRACT.

S 2. Subdivision 1 of section 641 of the banking law, as amended by chapter 677 of the laws of 2004, is amended to read as follows:

1. No person shall engage IN THIS STATE in the business of selling or issuing checks, or engage in the business of receiving money for transmission or transmitting the same, without a license therefor obtained from the superintendent as provided in this article, nor shall any person engage in such business as an agent, except as an agent of a licensee or as agent of a payee; provided, however, that nothing in this article shall apply to a bank, trust company, private banker, foreign banking corporation licensed pursuant to article two of this chapter or foreign banking company authorized to operate pursuant to the International Banking Act of 1978 (12 USC 3101 et seq.), as amended, savings bank, savings and loan association, an investment company, a national banking association, federal reserve bank, corporation organized under the provisions of section twenty-five-a of an act of congress entitled the "Federal Reserve Act", federal savings bank, federal savings and loan association or state or federal credit union OR OUT-OF-STATE STATE BANK. A PERSON ENGAGES IN THIS STATE IN THE BUSINESS OF SELLING OR ISSUING CHECKS OR RECEIVING MONEY FOR TRANSMISSION OR TRANSMITTING THE SAME IF SUCH PERSON INDUCES ANOTHER PERSON WHO IS A RESIDENT OF, OR LOCATED IN, THIS STATE TO ENTER INTO A TRANSACTION BY SOLICITATION IN OR INTO THIS STATE BY ANY MEANS, INCLUDING BUT NOT LIMITED TO, MAIL, ELECTRONIC MAIL, TELEPHONE, RADIO, TELEVISION, THE INTERNET OR ANY OTHER ELECTRONIC MEANS.

S 3. This act shall take effect immediately.