PERSONAL PROPERTY LAW

LAWS 1909, CHAP. 45.

AN ACT relating to personal property, constituting chapter forty-one of the consolidated laws.

Became a law February 17, 1909, with the approval of the Governor. Passed, three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

CHAPTER 41 OF THE CONSOLIDATED LAWS

PERSONAL PROPERTY LAW

ARTICLE 1

SHORT TITLE

Section 1. Short title. This chapter shall be known as the "Personal Property Law."

ARTICLE 3

AGREEMENTS IN WRITING; WITHOUT CONSIDERATION; FRAUDULENT; FACTORS

§ 30. Definitions. As used in this article, the term "transfer" includes sale, assignment, conveyance, deed and gift, and the term "agreement" includes promise and undertaking.

§ 37. Fraudulent intent a question of fact. The question of the existence of fraudulent intent in cases arising under this article, is a question of fact and not of law.

§ 38. Transfers or charges without consideration. A transfer or charge shall not be adjudged fraudulent as against creditors or purchasers, solely on the ground that it was not founded on a valuable consideration.

§ 39. Successors to rights of creditors and purchasers. A transfer, charge, sale or assignment, or proceeding declared by this article, to be void, as against creditors or purchasers, is equally void as against the heirs, successors, personal representatives or assignees of such creditors or purchasers.

§ 40. Bona fide purchasers. This article does not affect or impair the title of a purchaser or incumbrancer for a valuable consideration, unless it appear that such purchaser or incumbrancer had previous notice of the fraudulent intent of his immediate vendor, or of the fraud rendering void the title of such vendor.

§ 45-a. Salary or earnings of public officer or employee. 1. No assignment of, or power of attorney to collect or other instrument affecting, the whole or any part of his salary or earnings by an officer or employee of the state or of any political subdivision thereof or of any public authority or public corporation, or of any board, body, office or agency supported by public funds, unless approved in writing by the head of the department, authority, court, corporation, board, body, office or agency in which such officer or employee is employed, and unless given either as security for or as a manner or method of the repayment of, money actually advanced to or at the request of such officer or employee by any bank, trust company or credit union doing business in the State of New York, shall in any way operate to prevent the payment of such salary or earnings directly to such officer or employee. In the event of the payment of such salary or earnings directly to such officer or employee, notwithstanding the existence of an assignment of, or power of attorney to collect or other instrument affecting, the whole or part thereof, which was not approved by the head of the department, authority, court, corporation, board, body, office or agency in which such officer or employee is employed, or which was not given in favor of any such bank, trust company or credit union as hereinabove stated, no person shall have any cause of action therefor against the state or such political subdivision thereof or such authority, court, corporation, board, body, office or agency for the recovery of any moneys by virtue of such assignment, power of attorney to collect or other instrument which was not so approved, or which was not given in favor of any such bank, trust company or credit union.

2. Any such assignment, power of attorney or other instrument which may be filed hereafter shall contain the name of the officer or employee, his title or position and the department, authority, court, corporation, board, body, bureau, agency, office and subdivision thereof in which he is employed.

3. The state or any political subdivision thereof or any authority,

court, corporation, board, body, office or agency to which such assignment, power of attorney or other instrument shall be presented for filing, shall be entitled to receive the sum of two dollars. In the event, however, that such assignment, power of attorney or other instrument contains a provision to the effect that the same is ineffective unless subsequent written notice is given to make deductions, the filing fee shall be fifty cents; and the filing fee of any subsequent written notice to make deductions in accordance with the terms of any such assignment, power of attorney or other instrument shall be one dollar and fifty cents. The filing fee of any other notice or paper relating to any such assignment, power of attorney or other instrument shall be one dollar.

ARTICLE 3-A

ASSIGNMENT OF EARNINGS

§ 46. Definitions. In this article unless the context or subject matter otherwise requires:

1. "Assignment" means any assignment of or order for payment of any earnings, whether given outright or as security. "Assignment" shall not include a payroll deduction, nor any part of earnings required by law to be withheld in payment of taxes, nor such sums as may be deducted by the employer for payment to a labor union or to a trust fund for the benefit of employees, pursuant to agreement in writing either with the employee or with a labor union of which the employee is a member.

2. "Payroll deductions" means only such sums as an employee may in writing authorize his employer to pay out on the employee's behalf, where the authorization is revocable, and does not purport to create any enforceable right in any third party.

3. "Earnings" means any salary, wages, commissions, or other compensation for services. "Future earnings" means earnings which become payable by an employer, to the assignor or persons claiming under him, after the execution of the instrument of assignment.

4. "Indebtedness" means any obligation to pay money, whether as principal, guarantor or surety, including such obligations arising out of loans, purchases of real or personal property, services rendered, or any other transaction whatsoever.

5. "Employer" means any person owing earnings to an assignor, whether

such earnings were due when the assignment was executed, or later became due, and whether the employment was existing when an assignment was made, or did not commence until later.

6. "Assignor" means one who executes an assignment.

7. "Assignee" means one to whom any sum is payable under an assignment.

8. "Garnishment" means any levy on execution, attachment, sequestration, proceedings to enforce a judgment or other legal process by which a creditor or other claimant to any portion of an employee's earnings stops payment by an employer to an employee or obtains payment due the creditor. "Garnishment" shall not include an order for installment payments to a judgment creditor.

§ 46-a. No implied repeal. Nothing in this article shall be deemed to limit any other statutory provision. Any express statutory provision, in force at the time this article takes effect, and which is inconsistent with any provision of this article, shall prevail.

§ 46-b. Assignments of future earnings collectible only as prescribed. Assignments of future earnings shall be collectible only as prescribed in sections forty-eight to forty-eight-d, inclusive, of this chapter.

§ 46-c. Formal requisites of assignments of less than one thousand dollars and of assignments securing certain guarantees amounting to fifteen hundred dollars or less. No assignment of future earnings, securing or relating to any indebtedness aggregating less than one thousand dollars, shall be valid for any purpose whatsoever unless:

(a) such assignment shall be contained in a separate written instrument in which all printed matter is in at least eight point type and which shall have written or printed thereon in a size equal to at least ten point bold type the following title: "Assignment of Wages, Salary, Commissions or other Compensation for Services," and shall have written or printed at the bottom thereof just above the place reserved for the signature of the assignor in a size equal to at least ten point bold type the following: "This is an Assignment of Wages, Salary, Commissions or Other Compensation for Services";

(b) such assignment shall, either in its text or in a writing permanently attached thereto, identify specifically and describe fully the transaction to which it relates, said description to include the name and address of the assignee, the identity of the merchandise sold or services rendered or other basis of the indebtedness secured by, or consideration given for the assignment, and the date on and place at which payments are to be made; and on the face or back of the instrument there shall be a summary of sections forty-six-c, forty-six-e, forty-six-f, forty-seven-e, forty-eight, forty-eight-a, forty-eight-b, forty-eight-c and forty-nine of the personal property law;

(c) such assignment, if given as security, is security only for the transaction or series of transactions identified specifically and described therein, or a renewal thereof, and no other valid and legally enforceable assignment exists in connection with the same transaction or series of transactions; provided, however, that nothing in this paragraph shall invalidate an assignment securing a guarantee of the payment of the purchase price of goods, wares or merchandise amounting to fifteen hundred dollars or less sold for a use other than a commercial or business use, notwithstanding the fact that such assignment secures subsequent transactions in addition to that originally secured, where the liability of the guarantor is limited to a period of two years from the date of the assignment, and where the assignment sets forth the maximum amount for which the guarantor shall be liable; provided further that no assignment of future earnings shall be valid with respect to any transaction or series of transactions for the purchase of goods, wares or merchandise for a price of fifteen hundred dollars or less sold for a use other than a commercial or business use, when such assignment is executed by a guarantor or by one of two or more purchasers, unless such goods are purchased for the common use of the assignor and the purchaser or co-purchaser.

§ 46-d. Guarantee of certain purchases secured by assignment of earnings. No guarantee given to the seller to secure the payment of goods, wares or merchandise amounting to fifteen hundred dollars or less sold for any use other than a commercial or business use, the payment of which is secured by an assignment of future earnings, shall be valid unless such instrument of guarantee identifies specifically and describes fully the transaction or series of transactions secured. If the instrument of guarantee is given to secure subsequent transactions in addition to the transaction or series of transactions secured by such assignment, the liability of the guarantor under such instrument of guarantee as to subsequent transactions shall be limited to transactions within a period of two years from the date of its execution, and shall set forth the maximum amount for which the guarantor shall be liable. Each instrument of guarantee shall be executed in duplicate, and one copy shall be given to the guarantor immediately upon its execution.

§ 46-e. Personal execution of assignment by assignor; delivery of copies of papers. No assignment of future earnings shall be valid for any purpose whatever unless such assignment is personally executed by the assignor. A copy thereof and of any papers attached thereto together with a copy or copies of any papers executed by the assignor pertaining to the transaction or series of transactions described in the assignment shall be delivered to the assignor before such assignment is filed with the employer.

§ 46-f. Limit on interest and other charges. Except as provided in article nine of the banking law, no person shall directly or indirectly receive or accept, whether by discount or otherwise, for the use and sale of his personal credit or for making or continuing any advance or loan of money (1) in anticipation of earnings assigned outright, or (2) on the security of an assignment of any earnings assigned as security, a greater sum than at the rate of eighteen per centum per annum on the amount of such loan or advance, either as a bonus, interest or otherwise, or under the guise of a charge for investigating the status of a person applying for such loan or advance, or drawing of papers or other service in connection with such loan or advance, except such charges as are now permitted by section 5-531 of the general obligations law. Any assignment, whether outright or as security, which is made wholly or partly in consideration of or as security for a loan or advance which violates this section, shall be void, and invalid for any purpose whatsoever. Every person, firm, corporation, director, agent, officer or member thereof who shall violate any provision of this section, directly or indirectly, or assent to such violation shall be guilty of a misdemeanor.

§ 47. Public filing of assignment before filing with employer. Except as provided in section forty-nine of this chapter, an assignment of future earnings or a true copy thereof, must be filed with the county clerk as provided for in section forty-seven-a before such assignment or a copy thereof is filed with the assignor's employer.

§ 47-a. Place of filing. An assignment of future earnings or a true copy thereof authenticated by a notary public or commissioner of deeds, together with an itemized statement setting forth the amount then due the assignee and the date and amount of payments theretofore made upon the indebtedness, may be filed in the office of the county clerk of the county in which the assignor resides at the time of the filing thereof, if he resides within the state, and if he resides without the state or his residence is unknown, in the county where the assignor is employed at the time of the filing thereof. If the assignor is employed without the state and his residence is without the state or is unknown, the assignment or authenticated true copy thereof and accompanying statement may be filed in the county where the assignor resided at the time of the execution thereof.

§ 47-b. Filing, entering and indexing. 1. The filing officer shall mark upon the assignment or true copy thereof filed with him the date of its filing and shall file such assignment or true copy thereof in his office for public inspection. He shall keep a separate book in which he shall enter the names of the assignor and assignee, the date of its filing, its filing number and the date of cancellation thereof, or of its vacation by order of the court. Such book shall be indexed alphabetically under the names and changed names, if any, of both assignor and assignee.

2. A county clerk may adopt a new indexing system utilizing electro-mechanical, electronic or any other method he deems suitable for maintaining the indexes.

§ 47-c. Refiling. The filing of assignments shall be valid for a period of two years only. The validity of the filing may in each case be extended for successive additional periods of one year from the date of refiling by filing in the office of the county clerk of the county in which the original assignment or duly authenticated copy thereof was filed a true copy of the original assignment within thirty days next preceding the expiration of each period, with a statement attached signed and verified by or on behalf of the assignee, setting forth that the assignment is in force and stating the amount remaining unpaid. Such copy, with statement attached, shall be filed and entered in the same manner as an assignment or copy thereof filed and entered for the first time, and the filing officer shall be entitled to a like fee as upon the original filing.

§ 47-d. Cancellation of assignment. Upon the payment or satisfaction of the indebtedness, and upon written demand delivered personally or by registered mail by the assignor, the assignee shall execute and acknowledge or prove, and deliver to the assignor a certificate setting forth that the indebtedness has been paid or otherwise satisfied and discharged. Such certificate must recite the date of the assignment, the names of the parties thereto, the amount of the original indebtedness, the filing number, the date of filing thereof, including every assignment of said assignment, if any, specifying in the recital of each assignment the date thereof, the names of the parties thereto, the filing date and the serial number thereof.

If for ten days after such demand the assignee fails to mail or deliver such a statement of satisfaction, he shall forfeit to the assignor five dollars, and be liable for all damages suffered. Upon presentation of such statement of satisfaction the filing officer shall file the same and note the cancellation of the assignment and the date thereof on the margin of the page where the assignment has been entered.

§ 47-e. Vacating of an assignment, by order of a court. 1. An assignment may be vacated by a judgment of a court of record upon a special proceeding brought by the assignor, his employer or any person having an interest therein. Before such judgment shall be granted an order to show cause and the petition upon which it was granted shall be served upon the assignee, specifying the grounds upon which such relief is sought and requiring the assignee to show cause, at a time and place specified therein, why the assignment should not be vacated. If the application is made by a person other than the assignor, a copy of the order to show cause and the petition upon which it was granted shall be served upon the assignor, as the court shall direct. Such order shall be returnable at a special term of a court of record in the county where the assignment is filed, if it has been filed, or, whether or not the assignment has been filed, in the county where the assignor resides or the county where the assignee resides, and shall be returnable at a time not less than eight days from the service thereof unless the court to whom the application is made shall find that a greater or lesser time is appropriate in the circumstances.

The order to show cause and the petition upon which it was granted shall be served upon the assignee either (1) by personal service, or (2) by leaving them at his or its place of business with a person of suitable age and discretion with directions to deliver them to the assignee and mailing a copy by certified mail to the assignee directed to the address specified in the assignment or if none is specified in the assignment to his or its last known address, or (3) as the court may direct. Proof of such service shall be made by affidavit. If the assignee is a co-partnership consisting of two or more partners service on one partner shall constitute service on the co-partnership.

2. Upon presentation of a transcript of a judgment pursuant to this section, vacating an assignment, and upon payment of fees provided therefor, a county clerk in whose office the assignment is filed shall file the transcript of the judgment and shall enter on the margin of the page where the assignment is entered, and against the assignment to which the judgment relates, the words "Vacated by order of the court."

3. This section does not enlarge the territorial limits of the jurisdiction of any court.

4. No assignment purporting upon its face or otherwise shown to have been made in compliance with the direction of the court in an action or proceeding in a family court or in a matrimonial action or proceeding in a court of this state shall be vacated by an order pursuant to this section.

5. In any proceeding under this section the court shall have jurisdiction to consider any and all defenses to the assignment and the debt secured thereby. The court may grant such interim relief as may be appropriate. The burden of proving the assignment and the debt secured thereby shall be on the assignee.

§ 48. Notice to be mailed to assignor prior to filing with employer.

1. No assignment of future earnings shall be filed with the assignor's employer until twenty days shall have elapsed after a written notice shall have been mailed to the assignor by certified mail, return receipt requested, addressed to his last known place of residence stating that unless the amounts in default are paid within twenty days from the date of the mailing, the assignment will be filed with the assignor's employer. If the aforesaid notice is returned undelivered it may be mailed to the assignor by certified mail, return receipt requested, addressed to the assignor at the address where he is employed or, in the alternative, it may be served in the same manner as a summons.

Such written notice shall not be mailed by the assignee until at least twenty-one days shall have elapsed after default by the assignor in a payment due on the indebtedness and such written notice shall contain substantially the following language: "Bring this notice with you when making any payment on account of your indebtedness and have the payment endorsed on this notice."

2. If a payment in any amount is accepted by the assignee after the mailing of said notice and if the fact of such payment is noted in writing by the assignee at the time of the acceptance of the payment, either upon the notice or upon some other paper bearing a reference to said notice, the assignor shall no longer be considered in default for the purpose of permitting an assignment to be filed with the assignor's employer. In the event, however, of any subsequent default, the assignee may file the assignment upon compliance with the provisions of the preceding paragraph of this section as though no prior default had occurred.

3. The written notice required by subdivision one of this section shall be accompanied by copies of the papers required to be delivered by section forty-six-e of this article and by a written notice which shall contain substantially the following language:

"If you believe that you have a defense to the aforesaid wage assignment or the debt secured thereby you are entitled to follow either of the following procedures designed as (a) and (b).

(a) You are entitled to a hearing before a court of record in accordance with the provisions of section forty-seven-e of the personal property law which reads as follows:

(insert provisions of section forty-seven-e of the personal property law)

(b) Within ten days after receipt of the aforesaid notice, you are entitled to mail to the assignee, by certified mail return receipt requested, a written notice containing your name, residence address and substantially the following language:

'I (insert name) residing at (insert address) hereby affirm that I have a bona fide defense to the claim in your notice dated (insert date of notice) and to the wage assignment given as security therefor, based upon the following facts (state the facts constituting the basis of your defense)'"

4. Upon receipt of such notice the assignee shall be precluded from filing such wage assignment with the employer until it obtains an order of a court of record authorizing such filing. The assignee shall be entitled to institute a special proceeding in a court of record to obtain such an order. At least eight days' notice of the application for such order shall be given to the assignor in the manner prescribed in subdivision one of this section and if a hearing is held the assignor shall have all the rights prescribed by section forty-seven-e of this article.

§ 48-a. Manner of collection; percentage of earnings deductible; restriction against multiple deductions. Subject to subdivision two of this section, any assignment of future earnings shall be collectible from the assignor's employer at the time of each payment of such earnings commencing with the first payment thereof made after the expiration of ten days from the date of filing with the employer of a true copy of such assignment, authenticated by a notary public or a commissioner of deeds, together with an itemized statement of the amount then due the assignee, which statement shall set forth the following information (1) the date and amount of each payment theretofore made upon the indebtedness and (2) in case public filing is required, the date upon which such assignment or true copy thereof was filed with the filing officer as described in section forty-seven-a, of this chapter.

2. The following limitations set forth in paragraphs (a), (b) and (c) of this subdivision shall apply to the collection of assignments of future earnings securing or relating to any indebtedness aggregating less than one thousand dollars;

(a) the amount collectible in any month shall not exceed ten per centum of the assignor's future earnings payable in such month;

(b) if at the time of the filing with the employer (1) any other assignment of future earnings is subject to payment, or (2) any garnishment against such earnings or order against the assignor for installment payments to a judgment creditor, is in force, no amount shall be collectible while such other assignment is subject to payment or such garnishment or order is in force;

(c) no portion of future earnings shall be withheld from the assignor or paid to satisfy such assignment in whole or in part while any portion of the indebtedness secured by any valid assignment securing or relating to an indebtedness aggregating less than one thousand dollars, previously filed with the employer in accordance with this section, shall remain unpaid.

3. No portion of future earnings shall be withheld from the assignor or paid to satisfy in whole or in part any subsequent garnishment while any portion of the indebtedness secured by any valid assignment securing or relating to an indebtedness aggregating less than one thousand dollars filed with the employer in accordance with this section shall remain unpaid, but nothing contained herein shall exempt the earnings of a judgment debtor from the application of an order for installment payments to a judgment creditor.

§ 48-b. Amount of exempt earnings. Notwithstanding anything contained in this article, no portion of the assignor's future earnings shall be withheld by reason of any assignment, unless such earnings exceed the sum of eighty-five dollars per week.

§ 48-c. Assignment of future earnings by person unemployed; effect of loss of employment. If the assignor is not employed at the time he makes an assignment of future earnings, but is thereafter employed, his future earnings shall nevertheless become collectible by the assignee as provided in this article upon the filing of the prescribed documents with the employer. No assignment of future earnings shall become invalid by reason of the cessation of employment, or cessation of payment of earnings, but shall continue in effect, and may be applied to the payment of any future earnings from the same or other employment, in accordance with the provisions of this article, so long as the indebtedness secured by the assignment shall remain unpaid in whole or in part. If the assignor is re-employed by the same employer before the expiration of ninety days from the termination of employment, the assignment shall continue to be collectible without further filing of papers. If the employee is re-employed on or after the expiration of such ninety days, the assignment shall again become collectible from the employer as provided in section forty-eight-a only after copies of the assignment and the other documents specified in such section have been filed with the employer following the re-employment.

§ 48-d. Payroll deductions not included. Payroll deductions may be made by the employer notwithstanding any restriction in this article, and shall be deductible in addition to the payments under any wage assignment permitted by this article; provided however that in any case where payroll deductions and a payment due under an assignment will more than equal an installment of earnings due, the assignment shall have priority over any payroll deductions.

§ 49. Certain provisions not applicable to banks, trust companies or credit unions. 1. The provisions of section forty-seven of this article shall not be applicable to any bank, trust company or credit union doing business in the state of New York.

2. The provisions of section forty-eight of this article in so far as they require any delay by an assignee, before filing with the employer, shall not apply to assignments given either as security for or as a manner or method of the repayment of money actually advanced to or at the request of the assignor by any bank, trust company or credit union doing business in the state of New York; provided, however, that every such assignment must have printed on the face thereof the following words: "This assignment is executed as security for, or as a manner or method of the repayment of, money advanced by a bank, trust company or credit union doing business in New York." No assignment, however, received by any bank, trust company or credit union pursuant to any agreement between it and a person who has sold merchandise or furnished services to, or at the request of, the assignor, shall be deemed to have

been given as security for, or as a manner or method of repayment of, money actually advanced to, or at the request of, the assignor within the meaning of this section.

§ 49-a. Statement to be filed by lenders upon assignment. 1. Every person, firm or corporation engaged in or seeking to engage in the business of lending money upon security of an assignment of, or of purchasing upon discount future or accrued earnings, shall file with the clerk of the county in which said person, firm or corporation has its place of business or transacts business a statement under oath containing the name and residence of the individual; or in case of a firm, the names and residences of the partners; or in the case of a corporation, the names and residences of the officers and directors, managers or trustees of such corporation; and the place or places where said business is transacted by such an individual, firm or corporation. It shall be unlawful to engage in the business of lending money in the manner set forth in this section without, prior to engaging in such business, filing a statement as provided in this section.

2. The several county clerks of the state shall keep an alphabetical index of all persons, firms or corporations filing certificates provided for in this section; and for the indexing and filing of such certificates, the fee shall be as provided in the civil practice law and rules. A copy of such certificate, duly certified to by the county clerk in whose office the same was filed, shall be presumptive evidence of the facts contained therein in all courts of the state.

ARTICLE 7-A

Section 250. Exemption of exhibits at international exhibitions.

§ 250. Exemption of exhibits at international exhibitions. No process of attachment, execution, sequestration, replevin, distress or any kind of seizure shall be served or levied upon articles, goods, wares, merchandise or property of any description while the same is enroute to or from, or while on exhibition or deposited by exhibitors at any international exhibition held under the auspices or supervision of the United States, within any city or county of this state, nor shall such property be subject to attachment, seizure, levy or sale, for any cause whatever, in the hands of the authorities of such exhibition or otherwise.

ARTICLE 7-B

LOST AND FOUND PROPERTY

§ 251. Definitions. 1. The term "property" as used in this article means money, instruments payable, drawn or issued to bearer or to cash, goods, chattels and tangible personal property other than (a) "instruments" as defined in subdivision two of this section, (b) animals, (c) wrecks governed by the provisions of the navigation law, (d) logs and other property governed by section three hundred twenty-three of the town law and (e) vehicles governed by the vehicle and traffic law.

2. The term "instrument" as used in this article means a check, draft, promissory note, bond, bill of lading, warehouse receipt, stock certificate or other paper or document, other than those payable, drawn or issued to bearer or to cash and other than money, evidencing, representing or embodying a chose in action or a right with respect to

property or a share, participation or other interest in property or in an enterprise.

3. The term "lost property" as used in this article includes lost or mislaid property. Abandoned property, waifs and treasure trove, and other property which is found, shall be presumed to be lost property and such presumption shall be conclusive unless it is established in an action or proceeding commenced within six months after the date of the finding that the property is not lost property.

4. The term "owner" as used in this article means any person entitled to possession of the lost property as against the finder and against any other person who has made a claim.

5. The term "finder" as used in this article means the person who first takes possession of lost property.

6. "Transportation facility" as used in this article means a railroad car or coach, Pullman car, street surface railroad car, subway car, motor bus, motor coach, taxicab, aircraft or steamship, and any other vehicle or conveyance used for carriage of persons whether or not such use is in the course of a business of transporting persons. "Transportation company" as used in this article means the person carrying on a business of operating a transportation facility. A taxi driver is a "transportation company" with respect to a taxicab which he owns and operates as owner.

§ 252. Found property and found instruments to be deposited with police; penalty for failure to deliver to police; delivery to persons in possession of premises where found. 1. Except as provided in subdivision five of section two hundred fifty-six of this chapter or as otherwise prescribed pursuant to section two hundred fifty of the general municipal law, any person who finds lost property of the value of twenty dollars or more or comes into possession of property of the value of twenty dollars or more with knowledge that it is lost property or found property shall, within ten days after the finding or acquisition of possession thereof, either return it to the owner or report such finding or acquisition of possession and deposit such property in a police station or police headquarters of the city where the finding occurred or possession was acquired, but if the finding occurred or possession was acquired in buildings or on grounds or premises under the control and supervision of the commissioner of general services as described in article two of the public buildings law, then the property may also be deposited in a station of the capital buildings police. If the finding occurred or possession was acquired outside a city, then such property shall be deposited in a station or substation of the state police or in a police station or police headquarters, including a sheriff's office, of the county, town, or village where the finding occurred or possession was acquired. If the finding occurred or possession was acquired in buildings or on grounds or premises constituting a state park, parkway, recreational facility or historic site under the jurisdiction of the commissioner of parks, recreation and historic preservation, then such property may also be deposited in a station of the regional state park police. If the finding occurred or possession was acquired in buildings or on the grounds or premises of the state-operated institutions in the state university of New York, then such property may also be deposited with a security officer or police officer appointed by the state university. Property so deposited shall be retained and disposed of in accordance with procedures set forth in sections two hundred fifty-three through two hundred fifty-seven of this chapter except that the powers and duties in said sections mentioned to be performed by the police shall be performed by security officers or police officers appointed by the state university.

2. Except as provided in subdivision five of section two hundred fifty-six of this chapter or as otherwise prescribed pursuant to section two hundred fifty of the general municipal law, any person who finds an instrument or comes into possession of an instrument with knowledge that it has been found shall, within ten days after the finding or acquisition of possession thereof, either return it to a person entitled thereto or report the finding or acquisition of possession and deposit the instrument in a police station or police headquarters, as provided in subdivision one of this section, as if such instrument were lost

property having a value of ten dollars or more.

3. Except as provided in subdivision four of this section, any person who shall refuse or wilfully neglect to comply with the provisions of subdivision one or subdivision two of this section shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than one hundred dollars or imprisonment not exceeding six months or both.

4. A person shall not be subject to criminal prosecution for failure to report a finding or acquisition of possession of found property or of a found instrument to the police and deposit such property or instrument with the police if, in lieu thereof, he delivers the property or instrument to the person in possession of the premises where the property or instrument was found, provided he had no reason to believe that such person would not comply with subdivision one or subdivision two of this section.

A person who delivers found property or a found instrument to the person in possession of the premises where the property or instrument was found is not liable to the owner or person entitled thereto for such delivery if he had no reason to believe that such person in possession of the premises would not comply with subdivision one or subdivision two of this section.

§ 253. Duties of police. 1. Unless otherwise prescribed in accordance with section two hundred fifty of the general municipal law or section two hundred twenty-five-a of the executive law and unless otherwise provided by law applicable specifically to matters prescribed in this section, the police with whom found property or a found instrument is deposited shall accept and retain custody of the property or instrument, or proceeds of the property in the event of a sale pursuant to subdivision five of this section, and shall give notice of such custody, as provided in this section.

The police with whom found property or a found instrument is deposited as provided in this article shall give to the person depositing it a receipt identifying the transaction of deposit and identifying the property or instrument. Such identification may be by description and recital of the facts of the transaction or by reference numbers, duplicate copies of records, or other method connecting the receipt with the records of the police with respect to the property or instrument and the transaction.

2. Such property or instrument shall be transmitted, together with the report of the person who deposited it with the police, to the police officer or other official designated to hold such property or instrument, who shall make entry in his records of such deposit and the report of the person depositing such property or instrument with the police.

3. If the report of the person who deposited the property or instrument shows that the property or instrument was found in a place other than a public street or highway, the police with whom it is deposited shall give notice of the finding and deposit, including the location of the office to which the property or instrument is transmitted, to the occupant of the premises where the property or instrument was found or to the person in charge of such premises.

The police with whom an instrument is deposited shall give notice of the deposit to each person whose name and address appears upon the instrument or whose name so appears and whose address is known to the police.

4. If at any time the police have reason to believe that a person has an interest in found property or in a found instrument in their possession and reason to know his whereabouts, they shall give notice of the finding and deposit and the location of the office to which the property or instrument is transmitted to such person.

5. (a) Property having salvage value only may be sold by the police in such manner as may be reasonable in the circumstances. Perishable property shall be sold by the police as soon as possible in such manner

as may be reasonable in the circumstances.

(b) Property which requires special care may be kept by the police in public or private facilities which the police deem appropriate for the purpose of preserving it.

(c) Any property may be sold by the police at public auction when the expenses reasonably incurred in dealing with it, including expenses of taking of custody, transportation, storage and appraisal, any special expense incurred in giving notice, and any other special expense attributable to administration of this article with respect to the particular property, amount to more than one-half the amount reasonably estimated as the net sum likely to be realized by sale at public auction.

(d) If property is sold as provided in this subdivision the proceeds remaining after deducting the amount of reasonable expenses of the sale and reasonable expenses of dealing with the property prior to the sale, including any items of expense mentioned in paragraph (c), shall be dealt with as lost property having the value of the property sold.

6. Subject to subdivision three of section two hundred fifty-six of this chapter and to section thirteen hundred ten or other applicable section of the abandoned property law, instruments shall be retained in the custody of the police with whom they were deposited until delivered to the person entitled thereto as provided in section two hundred fifty-five of this chapter.

7. Except as provided in subdivision three of section two hundred fifty-six of this chapter, lost property, and the proceeds of sale pursuant to subdivision five of this section remaining after deduction of expenses as provided in that subdivision, shall be kept in the custody of the police for the following periods, unless sooner delivered to the owner as provided in section two hundred fifty-four:

Property having a value of less than one hundred dollars or proceeds of property having such value, three months; property having a value of one hundred dollars or more but less than five hundred dollars or proceeds of property having such value, six months; property having a value of five hundred dollars or more but less than five thousand dollars or proceeds of property having such value, one year; property having a value of five thousand dollars or more or proceeds of property having such value, three years.

8. Three months before the expiration of the period applicable to the property in question, as specified in subdivision seven of this section, if the property has not been delivered to the owner as provided in section two hundred fifty-four, the police shall give notice to the owner, if known, and to any person they have reason to believe has an interest in the property, if the address or a former address of such owner or person is known, and to all persons who have made claim to the property, and to the finder and any person who has filed notice asserting the right of the finder as provided in section two hundred fifty-six. Such notice shall be in writing and shall be served personally or sent by certified mail to the last known address of the person to whom it is sent and shall state, in substance: (a) that if within three months after the date of personal service or mailing of the notice the owner does not claim the property, and if at the end of such three months no action is pending to determine rights to such property, written notice of which action was served upon the police having custody of the property, the property will be delivered to the finder or, if he establish his right, to a person entitled to assert the right of the finder as provided in section two hundred fifty-six; and (b) that if at the expiration of three months and ten days after the date of the personal service or mailing of the notice, the owner has not claimed the property and the finder, or a person entitled to assert the right of the finder as provided in section two hundred fifty-six, has not demanded delivery of it, and no action is pending to determine rights to such property, notice of which was served upon the police having custody of the property, it will be sold at public auction; and (c) in the case of property in the custody of the state police, that the proceeds of the sale will be deposited in the abandoned property fund of the state and in the case of property in the custody of other police that the proceeds will become the property of the city, county, town or village.

§ 254. Disposition of lost property. Except as provided in section two hundred fifty-six of this chapter, lost property deposited with the police, and the money constituting proceeds of lost property sold as provided in subdivision five of section two hundred fifty-three remaining after deduction of expenses as therein provided, shall be disposed of as follows:

1. It shall be delivered to the owner, upon his demand and upon payment of all reasonable expenses incurred in connection therewith, if no written notice of any other claim to the property has been served upon the police having custody, and the time specified in subdivision seven of section two hundred fifty-three of this chapter has not expired or, if such period has expired, no demand has been made by the finder or a person entitled to assert the right of the finder as provided in section two hundred fifty-six of this chapter.

2. If at the end of the period specified in subdivision seven of section two hundred fifty-three of this chapter the owner has not claimed the property, it shall be delivered to the finder, or person entitled to assert the rights of the finder as provided in section two hundred fifty-six of this chapter, upon his demand therefor, and upon payment of all reasonable expenses incurred in connection therewith.

3. If at the end of ten days after expiration of the period specified in subdivision seven of section two hundred fifty-three, the owner has not claimed it, and no demand has been made by the finder or a person entitled to assert the right of the finder as provided in section two hundred fifty-six of this chapter, property consisting of money shall be paid as provided in section two hundred fifty-eight of this chapter and other property shall be sold at public auction and the proceeds shall be paid as provided in such section two hundred fifty-eight. Where the property was deposited with the state police, such sale shall be held in accordance with rules of the comptroller.

§ 255. Disposition of instruments. 1. An instrument deposited with the police shall be delivered to the person entitled thereto upon payment of all reasonable expenses incurred in connection therewith.

2. No instrument deposited with the police shall be destroyed or sold. Except as provided in subdivision three of section two hundred fifty-six, no such instrument shall be returned to the finder, or his employer, or the person who deposited it with the police, or the person upon whose premises it was found.

§ 256. Exceptions. 1. If a finder takes possession of lost property while he is upon premises with respect to which his presence is a crime, the person in possession of the premises where the lost property was found shall have the rights of the finder as provided in section two hundred fifty-four of this chapter, if, before the property is delivered to the finder by the police, he files with the police having custody of the property a written notice asserting his rights.

2. If the finder is an officer or employee of the state or of a public corporation and takes possession of the property in the course of his official duty, the state or public corporation shall be deemed to be the finder for the the purposes of section two hundred fifty-four and section two hundred fifty-seven of this chapter. If, in any other case, the finder is an employee under a duty to deliver the lost property to his employer, the employer shall have the rights of the finder as provided in section two hundred fifty-four if, before the property is delivered to the finder by the police, he shall file with the police having custody of the property a written notice asserting such rights.

3. If either lost property deposited with the police or an instrument deposited with the police was discovered upon the enclosed safe deposit premises of a safe deposit company or safe deposit department of a bank, the police shall return it to the safe deposit company or bank at the expiration of six months from the date of deposit. Upon receipt thereof the safe deposit company or bank shall hold the property or instrument as bailee for the person entitled thereto. If such person has not claimed it at the expiration of fifteen years from the date it was returned by the police and the property or instrument has not been delivered to the state comptroller pursuant to an order of the supreme

court as provided in section thirteen hundred ten of the abandoned property law, the safe deposit company or bank shall pay that portion of such property which consists of money to the comptroller as unclaimed property. The safe deposit company or bank shall sell such property as does not consist of money and shall sell such instrument at a public sale, and the proceeds from such sale, less the expenses of such sale, including the costs of any advertising, shall be paid to the state comptroller as unclaimed property. Any such property or instrument determined to be valueless at such sale shall be delivered to the comptroller as unclaimed property.

4. A person who finds or comes into possession of property or an instrument while he is in or on a transportation facility while it is being operated as such shall be subject to the provisions of this article if he leaves the transportation facility at any place in this state taking with him at the time of such departure property or an instrument found by him in or upon the transportation facility or found property or a found instrument of which he acquired possession while in or upon the transportation facility. In such case the place where he leaves the transportation facility taking the found property or instrument with him shall be deemed for the purposes of this article to be the place where the finding occurred or possession was acquired.

For the purposes of subdivision four of section two hundred fifty-two of this chapter, a transportation facility shall be deemed "premises" and "person in possession of the premises" shall include any person actually operating a transportation facility and any officer, agent or employee of the transportation company actually or apparently authorized to receive delivery of the property or instrument.

For the purposes of subdivision three of section two hundred fifty-three, a transportation facility operated by a transportation company shall be deemed "premises" and the transportation company, or its officer, agent or employee authorized to act with respect to custody of lost and found property, shall be deemed to be the person in charge of such premises.

5. Except as otherwise prescribed pursuant to section two hundred fifty of the general municipal law, if the person who reports the finding or acquisition of possession of found property or an instrument is (a) a transportation company subject to the provisions of an act of congress known as the "interstate commerce act," as amended, or engaged in air transportation pursuant to certificate or permit of the civil aeronautics board issued pursuant to an act of congress known as the "civil aeronautics act of nineteen hundred thirty-eight," as amended, and the property or instrument was found on a transportation facility operated by such transportation company or (b) a safe deposit company or bank and the property or instrument was found on enclosed safe deposit premises of such safe deposit company or of the safe deposit department of such bank, such transportation company, safe deposit company or bank shall not be required to deposit such property or instrument at the time the report is made, but shall within sixty days after it acquired possession of the property or instrument deposit such property or instrument with the police to whom the report was made, unless within such time the property has been returned to the owner or the instrument has been returned to a person entitled thereto. Such transportation company, safe deposit company or bank shall hold such property or instrument subject to inspection at any time by the police to whom the report was made or by the police designated by an agreement pursuant to section two hundred fifty-one of the general municipal law.

A transportation company, safe deposit company or bank retaining possession of property or an instrument pursuant to this subdivision after report of its acquisition of possession thereof shall (a) give notice of its acquisition of possession of the instrument to each person whose name and address appears on the instrument or whose name so appears and whose address is known to it, and (b) if such transportation company, safe deposit company or bank has reason to believe that a person has an interest in the property or instrument and reason to know his whereabouts, shall give notice to him of its possession. But this paragraph does not require that a transportation company give such notice or notices with respect to instruments enclosed in an article of baggage or in a briefcase, purse or like article at the time it acquired possession of such article.

6. If at any time an action or proceeding shall be commenced to determine the right to found property or to an instrument and written notice of such action shall be served upon the police having custody of the property or instrument, the police shall not thereafter deliver the property or instrument to any person except pursuant to court order.

7. This article does not supersede or limit any other statute or rule of law governing custody or disposition of articles in the custody of the police which constitute evidence of the commission of a crime, or which may not lawfully be possessed, or which may not lawfully be possessed without license.

§ 257. Title to lost property. 1. The title to lost property which has been deposited with the police shall vest in the finder, or other person entitled to assert the rights of the finder as provided in section two hundred fifty-six of this chapter, when the property is delivered to him in accordance with section two hundred fifty-four of this chapter and shall vest in the buyer when the property is sold as provided in section two hundred fifty-three or two hundred fifty-four of this chapter.

2. If the finder of lost property under the value of ten dollars has made reasonable effort to find the owner and restore it to him, and has been unable to do so, the title to such property shall vest in the finder at the end of one year after the finding.

§ 258. Proceeds to be paid into fund. Proceeds from the sale of lost property, less lawful deductions, or the money constituting lost property, shall be paid into the treasury of the county, city, town or village in the police department of which the property was deposited unless otherwise provided pursuant to section two hundred fifty of the general municipal law or other applicable statute, or into the abandoned property fund of the state if the property was deposited with the state police, the capital buildings police or the regional state park police or returned to a safe deposit company or bank pursuant to section two hundred fifty-six of this chapter, or into a fund established pursuant to subdivision eight of section three hundred fifty-five of the education law if the property was deposited with a security officer or police officer appointed by the state university.

ARTICLE 8-B

PROCEEDING FOR DISCOVERY OF NAMES AND ADDRESSES OF BONDHOLDERS

§ 285. Definitions. As used in this article:

1. The term "bond" means (a) a bond, note or other obligation of any kind or nature, whether secured or unsecured, which is part of an issue held by more than one person, or (b) a certificate or other instrument which is part of an issue held by more than one person evidencing any interest in any bond, note or other obligation of any kind or nature, whether secured or unsecured.

2. The term "bondholder" means the owner of a bond.

3. The term "obligor" includes the obligor of a bond as defined in clause (a) of paragraph one of this section; the obligor of an obligation, interests in which are evidenced by a bond as defined in clause (b) of paragraph one of this section; and the owner of any property securing any bond or any such obligation.

4. The term "trust indenture" means any agreement, conveyance, transfer, mortgage or other instrument, pursuant to which bonds are issued, or which affect the rights of bondholders.

5. The term "trustee" includes any person to whom any property has

been transferred as security for an issue; any person who is the obligee or holder of an obligation, interests in which are evidenced by a bond as defined in clause (b) of paragraph one of this section; and any person who, under the terms of a trust indenture, is granted rights or remedies which may be exercised for the benefit of bondholders.

6. The term "default" means any non-compliance for thirty days or more by the obligor with any provision of a bond or of a trust indenture, whether or not under the terms of such bond or such trust indenture such non-compliance is regarded as a default, and whether or not any period of grace or other period prescribed in such bond or such trust indenture as a prerequisite for taking any action has expired.

7. The term "qualified bondholder" means any bondholder who (a) has acquired a bond by purchase before the default or the institution of proceedings which is the basis of an application under section two hundred eighty-six and in any event at least one year before the making of such application, unless such bondholder shall have been an original purchaser or (b) who has acquired a bond by gift or inheritance from a bondholder who acquired the same by purchase before the default or the institution of proceedings which is the basis of an application under section two hundred eighty-six and in any event at least six months before the making of such application; provided, however (a) that such bond was not purchased for the purpose of making such an application; (b) that the list of bondholders shall not be for the purpose of communicating with bondholders in the interests of an object other than the particular indenture securing the issue of bonds; and (c) that such petitioner has not within five years sold or offered for sale any list of stockholders of any corporation, or aided or abetted any person in procuring any stock list for any such purpose or sold or offered for sale any list of bondholders of any obligor or aided or abetted any person in procuring such a list for any such purpose.

§ 286. Grounds for proceeding. Whenever there has been a default under a bond or a trust indenture which has not been cured, or whenever proceedings have been instituted under any federal or state law for the modification of a bond or a trust indenture or for a reorganization of the obligor, in connection with which such a modification is contemplated, any qualified bondholder owning such a bond, or owning a bond to which such a trust indenture relates, may apply to the supreme court or the county court, by special proceeding for judgment directing the trustee of the issue and every obligor of the bond, or any of them, to furnish to the applicant a list of the names and addresses of all of the bondholders of the issue so far as they have knowledge or information with respect to such names and addresses, irrespective of how such knowledge or information was acquired.

§ 287. Contents of petition. The petition shall briefly describe the issue, stating the date, maturity and size thereof so far as known to the petitioner; shall set forth the default or proceedings upon which the application is based, and, if based on a default, the fact that such default has not been cured; shall show the purpose for which the application is made; and shall contain an allegation that the list is not intended for sale, and shall further show that such bond was not purchased for the purpose of making such an application; that the list of bondholders shall not be for the purpose of communicating with bondholders in the interests of an object other than the particular indenture securing the issue of bonds; and that such petitioner has not within five years sold or offered for sale any list of stockholders of any corporation, or aided or abetted any person in procuring any stock list for any such purpose or sold or offered for sale any list of bondholders of any obligor or aided or abetted any person in procuring such a list for any such purpose.

§ 288. Judgment. If the court shall be satisfied that the allegations of the petition are true, and that the interests of the bondholders of the issue as a whole will not be adversely affected by the granting of the application, it shall enter judgment directing the trustee, every obligor, any receiver appointed by a court, depositary or committee purporting to act for or on behalf of bondholders, or such of them as may have been duly served, to furnish to the applicant a list of the names and addresses of all bondholders of the issue so far as they respectively have knowledge or information with respect to the same. Such judgment may contain such terms and conditions as the court may deem proper with respect to the time when and place where such lists are to be furnished, and the payment of the expense of furnishing same. Notwithstanding the foregoing provisions of this section, however, if a default was the basis of the application and such default has been cured before the entry of judgment, or if the institution of proceedings was the basis of the application and such proceedings have finally terminated before the entry of judgment, the proceeding may, in the discretion of the court, be dismissed.

ARTICLE 9

MOTOR VEHICLE RETAIL INSTALMENT SALES ACT

§ 301. Definitions. In this article, unless the context or subject matter otherwise requires:

1. "Motor vehicle" or "vehicle" means any device propelled or drawn by any power other than muscular power, upon or by which any person or property is or may be transported or drawn upon a public highway, road or street except that it shall not include a "snowmobile" as defined in subdivision three of section 21.05 of the parks, recreation and historic preservation law. "Motor vehicle" or "vehicle" also means a "mobile home" or a "manufactured home". "Mobile home" or "manufactured home" means a structure, transportable in one or more sections, which in the traveling mode, is eight body feet or more in width or forty body feet or more in length, or when erected on site, is three hundred twenty or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to required utilities, and includes the plumbing, heating, air-conditioning and electrical systems contained therein.

2. "Retail buyer" or "buyer" means a person who buys a motor vehicle from a retail seller and who executes a retail instalment contract in connection therewith.

3. "Retail seller" or "seller" means a person who sells a motor vehicle to a retail buyer under or subject to a retail instalment contract.

4. "Retail instalment sale" or "sale" means a sale, other than for a commercial or business use or for the purpose of resale, of a motor vehicle by a retail seller to a retail buyer for a time sale price payable in two or more instalments, payment of which is secured by a retail instalment contract. The cash sale price of the motor vehicle, the amount, if any, included for insurance, official fees and credit service charge shall together constitute the time sale price.

5. "Retail instalment contract" or "contract" means an agreement, entered into in this state, pursuant to which the title to, the property or a security interest in or a lien upon a motor vehicle, which is the

subject matter of a retail instalment sale, is retained or taken by a retail seller from a retail buyer as security, in whole or in part, for the buyer's obligation. The term includes such an agreement wherever entered into if executed by the buyer in this state and if solicited in person by a salesman or other person acting on his own behalf or that of the seller. The term also includes a contract whereby a security interest in favor of the seller is created or retained and a contract for the bailment or leasing of a motor vehicle by which the bailee or lessee contracts to pay as compensation for its use a sum substantially equivalent to or in excess of its value and by which it is agreed that the bailee or lessee is bound to become, or for no other or for a nominal consideration has the option of becoming, the owner of the motor vehicle upon full compliance with the terms of the contract.

6. "Cash sale price" means the cash sale price stated in a retail instalment contract for which the seller would sell to the buyer, and the buyer would buy from the seller, the motor vehicle which is the subject matter of the retail instalment contract if the sale were a sale for cash instead of a retail instalment sale. The cash sale price may include any taxes, registration, license and other fees and charges for insurance, for accessories and their installation and for delivering, servicing, repairing or improving the motor vehicle and for other services incidental to the agreement. It also may include the unpaid balance of any amount financed under an outstanding motor vehicle loan agreement or motor vehicle retail instalment contract or the unpaid portion of the early termination obligation under an outstanding motor vehicle retail lease agreement.

7. "Official fees" means the filing or other fees required by law to be paid to a public officer to perfect the interest or lien, in or on a motor vehicle, retained or taken by a seller under a retail instalment contract, and to file or record a release, satisfaction or discharge of the contract.

8. "Credit service charge" means that part of the time sale price by which it exceeds the aggregate of the cash sale price and the amount, if any, included in a retail instalment sale for insurance and official

fees.

9. "Financing agency" means a person engaged, in whole or in part, in the business of purchasing retail instalment contracts from one or more retail sellers. The term includes but is not limited to a bank, trust company, savings bank, savings and loan association, private banker or investment company, if so engaged. The term also includes a retail seller engaged, in whole or in part, in the business of holding retail instalment contracts acquired from retail buyers.

10. The "holder" of a retail instalment contract means the retail seller of the motor vehicle under or subject to the contract or, if the contract is purchased by a financing agency or other assignee, the financing agency or other assignee.

11. "Person" means an individual, partnership, corporation, association or other group, however organized.

12. Words in the singular include the plural and vice versa.

§ 302. Requirements as to retail instalment contracts. 1. A retail instalment contract shall be in writing, shall contain all the agreements of the parties and shall be signed by the buyer and the seller.

2. The printed portion of the contract shall be in at least eight point type. The contract shall contain printed or written in a size equal to at least ten-point bold type:

(a) Both at the top of the contract and directly above the space reserved for the signature of the buyer, the words "RETAIL INSTALMENT CONTRACT";

(b) A specific statement that liability insurance coverage for bodily injury and property damage caused to others is not included, if that is the case; and

(c) One of the following notices: "NOTICE TO THE BUYER: 1. Do not sign this contract before you read it or if it contains any blank space. 2.

You are entitled to a completely filled in copy of this contract when you sign it. 3. Under the law, you have the following rights, among others: (a) To pay off in advance the full amount due and to obtain a partial refund of the credit service charge; (b) To redeem the property if repossessed for a default; (c) To require, under certain conditions, a resale of the property if repossessed. 4. According to law you have the privilege of purchasing the insurance on the motor vehicle provided for in this contract from an agent or broker of your own selection," or "NOTICE TO THE BUYER: 1. Do not sign this agreement before you read it or if it contains any blank space. 2. You are entitled to a completely filled in copy of this agreement. 3. Under the law, you have the right to pay off in advance the full amount due and under certain conditions to obtain a partial refund of the credit service charge. 4. According to law you have the privilege of purchasing the insurance on the motor vehicle provided for in this contract from an agent or broker of your own selection", or "NOTICE TO THE BUYER: 1. Do not sign this agreement before you read it or if it contains any blank space. 2. You are entitled to a completely filled in copy of this agreement. 3. Under the law, you have the right to pay off in advance the full amount due. If you do so, you may, depending on the nature of the credit service charge, either: (a) prepay without penalty, or (b) under certain circumstances obtain a rebate of the credit service charge. 4. According to law you have the privilege of purchasing the insurance on the motor vehicle provided for in this contract from an agent or broker of your own selection".

3. The seller shall deliver to the buyer, or mail to him at his address shown on the contract, a copy of the contract signed by the seller. Until the seller does so, a buyer who has not received delivery of the motor vehicle shall have an unconditional right to cancel the contract and to receive immediate refund of all payments made and redelivery of all goods traded-in to the seller on account of or in contemplation of the contract. Any acknowledgment by the buyer of delivery of a copy of the contract shall be printed or written in a size equal to at least ten point bold type and, if contained in the contract, shall also appear directly above the legend required above the buyer's signature by sub-division two (a) of this section.

4. The contract shall contain the names of the seller and the buyer, the place of business of the seller, the residence or place of business of the buyer as specified by the buyer and a description of the motor vehicle including its make, year model, model and identification numbers or marks.

5. The contract shall contain:

(1) All items required to be disclosed by the act of congress entitled "Truth in Lending Act" and the regulations thereunder, as such act and regulations may from time to time be amended;

(2) The amount, if any, included for insurance, specifying and describing the coverages and the amount included for each type of coverage; however, if any insurance policy complies with the standard provisions form for automobile physical damage policy or any other automobile physical damage policy form which is equally or more favorable to the insured and which is filed with the superintendent of financial services, the contract need not contain a description of any type of coverage under such standard automobile physical damage policy form or a specification of the amount included in the contract therefor if it contains a specification of the type or types of coverage and the total amount included in the contract therefor.

6. The amount, if any, included for insurance, shall not exceed the premiums chargeable in accordance with rate filings made with the superintendent of financial services for similar insurance. The seller or financing agency, if insurance on the motor vehicle is included in a retail instalment contract, shall within thirty days after execution of the retail instalment contract send or cause to be sent to the buyer a policy or policies or certificate of insurance, written by an insurance company authorized to do business in this state, clearly setting forth the amount of the premium, the kind or kinds of insurance and the scope of the coverage and all the terms, exceptions, limitations, restrictions and conditions of the contract or contracts of insurance. The buyer of a motor vehicle under a retail instalment contract shall have the privilege of purchasing such insurance from an agent or broker of his own selection and of selecting an insurance company acceptable to the

seller; provided, however, that the inclusion of the insurance premium in the retail instalment contract when the buyer selects the agent, broker or company, shall be optional with the seller and in such case the seller or financing agency shall have no obligation to send, or cause to be sent, to the buyer the policy or certificate of insurance. Nothing contained in this subdivision however shall be deemed to modify, limit or in any way contravene the provisions of section two thousand five hundred two of the insurance law.

If any such policy or certificate of insurance on the motor vehicle is cancelled, the unearned insurance premium refund received by the holder of the contract, or, if the amount included therefor in the contract exceeds the cost to the holder of the contract for such insurance, the unearned portion of the amount so included, together with the unearned portion of the credit service charge applicable thereto, shall be credited to the final maturing instalments of the retail instalment contract except to the extent applied toward payment for similar insurance protecting the interests of the buyer and the holder of the contract or either of them.

The amount, if any, included for group credit life insurance, credit unemployment insurance, or for insurance other than on the motor vehicle shall not exceed the premiums chargeable in accordance with rate filings made with the superintendent of financial services for such insurance by the insurer. If such group credit life or other insurance is cancelled the refund for unearned insurance premiums received or receivable by the holder of the contract, or the excess of the amount included in the contract for group credit life insurance over the premiums paid or payable by the holder of the contract therefor, together with, in either case, the unearned portion of the credit service charge applicable thereto, shall be credited to the final maturing instalments of the retail instalment contract, provided that no such credit need be made if the amount thereof would be less than one dollar.

6-a. If the buyer is obligated under the terms of a retail instalment contract to maintain insurance on the motor vehicle that is the subject of the contract and if subsequent to the execution of the contract the buyer fails to maintain the insurance, the holder may make advances to procure the equivalent limits of insurance for either the interests of the buyer and the holder or of either of them, and any amount so advanced may be the subject of a credit service charge from the date of such advance as though such amount was part of the amount computed as provided in the closing paragraph of subdivision one of section three hundred three of this article. Each amount so advanced shall be secured by the motor vehicle if so provided in the contract and if the holder notifies the buyer in writing of the advance of such amount and of his or her option to repay such amount in any one of the following ways:

(a) Full payment within ten days from the date of giving or mailing the notice;

(b) Full amortization during the term of the insurance or the remaining term of the contract, at the option of the holder;

(c) If offered by the holder, as a final balloon payment payable one month after the last scheduled payment under the contract;

(d) If offered by the holder, full amortization after the term of the contract, to be payable in instalments which do not exceed the average instalment payable under the contract; or

(e) If offered by the holder, any other amortization plan.

If the buyer neither pays in full the amount so advanced nor notifies the holder in writing of his or her choice regarding amortization options before the expiration of ten days from the date of giving or mailing of the notice by the holder, the holder shall amortize the amount so advanced pursuant to paragraph (b) of this subdivision.

7. The holder of a retail instalment contract may, if the contract so provides, collect a delinquency and collection charge on each instalment in default for a period not less than ten days in an amount not in excess of the rate or rates agreed to in the contract. In addition to such delinquency and collection charge, the retail instalment contract may provide for the payment of attorneys' fees not exceeding fifteen percent of the amount due and payable under such contract where such contract is referred to an attorney not a salaried employee of the holder of the contract for collection, plus the court costs.

8. No retail instalment contract shall be signed by any party thereto when it contains blank spaces to be filled in after it has been signed except that, if delivery of the motor vehicle is not made at the time of the execution of the contract, the identifying numbers or marks of the motor vehicle or similar information and the due date of the first instalment may be inserted in the contract after its execution. The buyer's written acknowledgment, conforming to the requirements of subdivision three of this section, of delivery of a copy of a contract shall be conclusive proof of such delivery and of compliance with this subdivision in any action or proceeding by or against an assignee of the contract without knowledge to the contrary when he purchases the contract.

9. (a) No retail instalment contract shall contain any provision by which the buyer agrees not to assert against an assignee a claim or defense arising out of the sale or require or entail the execution of any note or series of notes, which when separately negotiated will cut off as to third parties any right of action or defense which the buyer may have against the seller. The assignee of a retail installment contract or obligation shall be subject to all claims and defenses of the buyer against the seller arising from the sale notwithstanding any agreement to the contrary, but the assignee's liability under this subdivision shall not exceed the amount owing to the assignee at the time the claim or defense is asserted against the assignee.

(b) Limitations on assignee liability referred to in paragraph (a) of this subdivision shall be exclusive of any reasonable costs and attorney's fees the court may award.

10. Notwithstanding any contrary provision of the personal property law, lien law, banking law or other law: (a) a financing agency may purchase a retail instalment contract from a seller on such terms and conditions and for such price as may be mutually agreed upon; and (b) no filing of the assignment, no notice to the buyer of the assignment, and no requirement that the seller be deprived of dominion over payments upon the contract or over the vehicle if repossessed by or returned to the seller, shall be necessary to the validity of a written assignment of a retail instalment contract as against creditors, subsequent

purchasers, pledgees, mortgagees or encumbrancers of the seller.

11. Unless the buyer has notice of actual or intended assignment of a retail instalment contract, payment thereunder made by the buyer to the last known holder of such contract shall be binding upon all subsequent holders or assignees.

12. Upon written request from the buyer, the holder of a retail instalment contract shall give or forward to the buyer a written statement of the dates and amounts of payments and the total amount unpaid under such contract. A buyer shall be given a written receipt for any payment when made in cash.

13. No retail instalment contract shall contain any provision by which:

(a) in the absence of the buyer's default, the holder may, arbitrarily and without reasonable cause, accelerate the maturity of any part or all of the amount owing thereon;

(b) a power of attorney is given to confess judgment in this state, or an assignment of wages is given;

(c) the seller or holder of the contract or other person acting on his behalf is given authority to enter upon the buyer's premises unlawfully, or to commit any breach of the peace in the repossession of the motor vehicle;

(d) the buyer waives any right of action against the seller or holder of the contract, or other person acting on his behalf, for any illegal act committed in the collection of payments under the contract or in the repossession of the motor vehicle;

(e) the buyer executes a power of attorney appointing the seller or holder of the contract, or other person acting on his behalf, as the buyer's agent in collection of payments under the contract or in the repossession of the motor vehicle; provided, however, that this paragraph shall not prohibit the inclusion in a retail instalment contract of a limited power of attorney or other provision authorizing the holder to execute in the name of the buyer any proofs of insurance claims or losses or to endorse the name of the buyer on any insurance settlement draft or check;

(f) the seller is relieved from liability for any legal remedy which the buyer may have had against the seller under the contract, or any separate instrument executed in connection therewith;

(g) the maturity of any part or all of the amount owing thereon is accelerated where, following a default consisting solely of the failure to make timely instalment payments and the subsequent repossession of the motor vehicle, the buyer makes timely tender of an amount which would be sufficient to redeem the vehicle in the absence of such provision;

(h) the buyer waives any right to a trial by jury in any action or proceeding arising out of the contract.

14. Any such prohibited provision shall be void but shall not otherwise affect the validity of the contract.

§ 302A. Total loss notice and waiver of the gap amount. 1. If the retail instalment contract provides that the buyer shall be responsible upon a total loss of the vehicle occasioned by its theft, confiscation or physical damage for the gap amount as defined in paragraph fifty-two of subsection (a) of section one hundred seven of the insurance law, the holder, prior to the execution of the contract, shall by a notice on a separate document conspicuously disclose that fact and the obligations for which the buyer would remain liable in the event of a theft, confiscation or total loss of the vehicle. If the holder is required under subdivision two of this section to offer to waive its contractual right to hold the buyer liable for the gap amount in the event of a total loss of the vehicle occasioned by its theft or physical damage, the notice shall also: (a) state that for a separate charge disclosed in the notice the holder will waive its contractual right to hold the buyer liable for the gap amount in the event of a total loss of the vehicle occasioned by its theft or physical damage; (b) contain a provision informing the buyer that he or she may, as an alternative to purchasing a waiver, be able to purchase insurance covering the gap amount from an insurance company which has been licensed by the superintendent of financial services to write motor vehicle debtor gap insurance in this state; and (c) contain a provision permitting the buyer to indicate whether he or she wants the holder to waive its contractual right to hold the buyer liable for the gap amount in the event of a total loss of the vehicle occasioned by its theft or physical damage. The notice shall be signed by the buyer. The holder shall provide a copy of the signed notice to the buyer and shall maintain a copy in the holder's files for at least the term of the contract. Failure to provide the notice and to obtain the buyer's signature as required by this subdivision shall invalidate any provision of the agreement which otherwise would obligate a buyer to pay to the holder, after a total loss of the motor vehicle occasioned by its theft, confiscation or physical damage, the gap amount. No retail installment contract shall be conditioned upon the buyer's obtaining of motor vehicle debtor gap insurance as set forth in subparagraph (B) of paragraph twenty-six of subsection (a) of section one thousand one hundred thirteen of the insurance law.

2. If the retail instalment contract provides that the buyer shall be responsible upon a total loss of the vehicle occasioned by its theft or physical damage for the gap amount, the holder, prior to the execution of the agreement, shall offer to waive its contractual right to hold the buyer liable for the gap amount in the event of a total loss of the vehicle occasioned by its theft or physical damage, only if motor vehicle creditor gap insurance coverage is available to the holder and such coverage is obtained from a property/casualty insurance company, which has been licensed by the superintendent of financial services of this state to write motor vehicle creditor gap insurance in this state. This offer may be made contingent upon the payment by the buyer of a separate charge that shall not exceed the cost of motor vehicle creditor gap insurance covering the retail instalment contract. Nothing contained in this section shall be construed to authorize a waiver, in connection with a transaction with respect to which motor vehicle creditor gap insurance has not been obtained, of a contractual right to hold the buyer liable for the gap amount in the event of a total loss of the vehicle occasioned by its theft or physical damage.

3. A holder shall not be obligated under subdivision two of this section to offer to waive its contractual right to hold the buyer liable for the gap amount if, during the current calendar year or during the

odd-numbered calendar year immediately preceding the calendar year in which the agreement is entered into, the holder has received motor vehicle creditor gap insurance declination notices or other evidence of unavailability from every insurance company whose name appears on the department of financial services compilation of insurance companies which during that calendar year were authorized to write motor vehicle creditor gap insurance in this state. Evidence of these declinations shall be retained by such a holder of such a holder for a period of six years after the expiration of the calendar year in which they were issued.

4. In order to enable holders or their anticipated assignees to comply with the requirements imposed by subdivision two of this section, the superintendent of financial services shall compile and make available a periodically updated list of those insurance companies which are authorized to write motor vehicle creditor gap insurance coverage in this state.

5. Nothing in this section shall be construed to apply to the holder, under a retail instalment contract under which the buyer is not liable upon a total loss of the vehicle occasioned by its theft, confiscation or physical damage for the gap amount.

§ 303. Credit service charge limitation. 1. A retail seller may contract for in a retail instalment contract and charge, receive and collect the credit service charge authorized by this article at the rate or rates agreed to by the retail seller and the buyer.

The credit service charge authorized by this subdivision shall be computed on an amount equal to the total of the difference between the cash sale price of the motor vehicle and the amount of the buyer's down payment and the amount of official fees, and such charge may be made on the amount included in the contract for insurance as determined under subdivision six of section three hundred two of this chapter.

2. The credit service charge at the rate or rates authorized in

subdivision one shall be computed on the amounts on which they are respectively required to be computed as specified in subdivision one on contracts payable in successive monthly instalments substantially equal in amount extending for a period of one year. On contracts providing for instalments extending for a period less than or greater than one year, the credit service charge shall be computed proportionately.

3. When a retail instalment contract provides for unequal or irregular instalments, the credit service charge shall be at the effective rates provided in subdivision one, having due regard for the schedule of instalments.

4. As an alternative to the credit service charge provided for above, a retail seller may contract for in a retail instalment contract and charge, receive and collect a credit service charge calculated on the unpaid balances of an amount computed as provided in the second paragraph of subdivision one above, for the time outstanding according to a generally accepted actuarial method at rates that may vary from time to time and in accordance with the provisions of the contract. On any contract with a variable rate credit service charge made pursuant to this subdivision the rate shall be determined at regular intervals as set forth in the contract and in accordance with such regulations as the superintendent of financial services shall prescribe but said rate shall not vary more often than once in any three month period and shall be based on a published index that is (a) readily available, (b) independently verifiable, (c) beyond the control of the retail seller and (d) approved by the superintendent.

The superintendent shall adopt regulations with respect to retail installment contracts that provide for a variable rate of credit-service charge, including but not limited to: (a) providing for disclosure to the buyer by the retail seller of the circumstances under which the rate may increase, any limitations on the increase, the effect of an increase and an example of the payment terms that would result from an increase; (b) providing for disclosure to the buyer by the retail seller of a history of the fluctuations of the index over a reasonable period of time; and (c) providing for notice to the buyer by the retail seller prior to any rate increase or change in the terms of payment.

5. The credit service charge shall be inclusive of all charges incident to investigating and making the contract, and for the extension of the credit provided for in the contract and no fee, expense or other charge whatsoever shall be taken, received, reserved or contracted for except as provided in this section, in subdivision seven of section three hundred two and three hundred six and, if expressly provided for in the retail instalment contract the amount of official fees as defined in section three hundred one and the amount, if any, included for insurance pursuant to subdivision five of section three hundred two.

6. Notwithstanding the maximum credit service charge authorized by this article, such maximum credit service charge shall not apply to any retail installment sale insured or guaranteed in whole or in part by the Federal Housing Administration, the Veterans Administration, or any other department or agency of the United States government.

§ 304. Cancellation of contract. After the payment of all sums for which the buyer is obligated under a retail instalment contract, and upon written demand made by the buyer, the holder of such contract shall mail to the buyer at his last known address, good and sufficient instruments to indicate payment in full and to release all security in the motor vehicle.

§ 305. Credit upon anticipation of payments. 1. Notwithstanding the provisions of any retail instalment contract to the contrary, any buyer may pay it in full at any time before the maturity of the final instalment of the time balance thereof and if he does so shall receive and be entitled to receive a refund credit thereon and if the contract included an amount for group credit life insurance, the further refund credit thereon for such anticipation, whether or not the maturity of the time balance of the contract was accelerated by the holder by reason of the buyer's default or otherwise. The amount of any such refund credit shall be the unearned portion of the credit service charge, after first deducting an acquisition cost of fifteen dollars, or, if the contract has been extended, deferred or refinanced, the additional charge therefor, determined according to a generally accepted actuarial method. Where the amount of the credit for anticipation of payment is less than one dollar, no refund need be made.

If the credit service charge imposed on the retail instalment contract is computed pursuant to subdivision four of section three hundred three of this article the contract may, after deduction of the acquisition cost of fifteen dollars, be prepaid in full without penalty.

2. The amount of the further refund credit for group credit life insurance shall be equal to the excess of the amount included in the contract for group credit life insurance over the premiums paid or payable by the holder of the contract for such insurance, if such premiums were paid or payable periodically, or the refund for unearned group credit life insurance premium received or receivable by the holder of the contract, if such premium was paid or payable in a lump sum, provided that no such further refund credit need be made if the amount thereof would be less than one dollar.

3. In the event (i) the maturity of the contract is accelerated due to the default of the buyer or otherwise and judgment is obtained, or (ii) repayment is made pursuant to group credit life insurance, the buyer or his legal representative, as the case may be, shall be entitled to the same refund credits as if the contract had been prepaid in full on the date of acceleration or repayment.

§ 306. Refinancing. 1. The holder of a retail instalment contract may, upon agreement with the buyer, extend the scheduled due date or defer the scheduled payment of all or any part of any instalment or instalments payable thereunder. The agreement for such extension or deferment must be in writing and signed by the parties thereto. The holder may charge and contract for the payment of an extension or deferred charge by the buyer and collect and receive the same, at the rate or rates agreed to by the holder and the buyer on the amount of the instalment or instalments, or part thereof, extended or deferred for the period of extension or deferral. Such period shall not exceed the period from the date when such extended or deferred instalment or instalments, or part thereof, would have been payable in the absence of such extension or deferral, to the date when such instalment or instalments, or part thereof, are made payable under the agreement of extension or deferment; except that a minimum charge of one dollar for the period of extension or deferral may be made in any case where the extension or deferral charge, when computed at such rate or rates, amounts to less than one dollar. Such agreement may also provide for the payment by the buyer of the additional cost to the holder of the contract of premiums for continuing in force, until the end of such period of extension or deferral, any insurance coverages provided for in the contract, subject to the provisions of subdivision six of section three hundred two.

2. The holder of a retail instalment contract may, upon agreement in writing with the buyer, refinance the payment of the unpaid time balance of the contract by providing for a new schedule of instalment payments. The holder may charge and contract for the payment of a refinance charge by the buyer at the rate or rates agreed to by the holder and the buyer and collect and receive the same, but such refinance charge shall be based upon the amount refinanced, plus any additional cost of insurance and of official fees incident to such refinancing and any accrued collection and delinquency charges, after the deduction of a refund credit in an amount equal to that to which the buyer would have been entitled under section three hundred five of this chapter if he had prepaid in full his obligations under the contract but, in computing such refund credit, there shall not be allowed such an amount as will bring the earned credit service charge up to fifteen dollars. Such agreement for refinancing may also provide for the payment by the buyer of the additional cost to the holder of the contract of premiums for continuing in force, until the maturity of the contract as refinanced, any insurance coverages provided for therein, subject to the provisions of subdivision six of section three hundred two. The refinancing agreement shall set forth all items required to be disclosed by the act of congress entitled "Truth in Lending Act" and the regulations thereunder, as such act and regulations may from time to time be

amended.

§ 307. Penalties. 1. Any person who shall wilfully violate any provision of this article shall be guilty of a misdemeanor and upon conviction shall be punished by a fine not exceeding five hundred dollars.

2. A wilful violation of sections three hundred two or three hundred three by any person shall bar his recovery of any credit service charge, delinquency or collection charge or refinancing charge on the retail instalment contract involved.

3. Notwithstanding the provisions of this section any failure to comply with any provision of this article may be corrected within ten days after the holder is notified thereof in writing by the buyer, or, in the absence of such notice, the seller or holder may voluntarily correct any such failure to comply and, if so corrected, neither the seller nor the holder shall be subject to any penalty under subdivision two of this section.

§ 308. Waiver. Any waiver of the provisions of this article by the buyer shall be unenforceable and void.

§ 309. Exceptions. The provisions of section three hundred six and of subdivision ten of section three hundred two shall apply to an instalment sale of a motor vehicle for any use.

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

§ 311. Short title. This article may be cited as "The Motor Vehicle Retail Instalment Sales Act."

§ 312. Refund credit on cancellation of credit related insurance or prepayment of contract. The provisions of this article requiring refunds and refund credits with respect to group credit life insurance, in cases of cancellation of group credit life insurance or of prepayment of a retail instalment contract shall also require refunds and refund credits with respect to credit unemployment insurance, group credit accident, group credit health or group credit accident and health insurance in cases of cancellation of such insurance or prepayment of a retail instalment contract which included such insurance.

§ 313. Guaranties to sellers of liabilities of buyers under retail instalment contracts. No guaranty given to the seller or to the seller and the seller's assignee of the liabilities of a buyer under a retail instalment contract shall be valid unless the guaranty is incorporated in or endorsed on the contract or identifies the contract and specifies the time balance thereof or, if the guaranty relates to one or more future retail instalment contracts, it limits the liability of the guarantor to contracts dated within a period of two years from the date of the guaranty and sets forth the maximum amount for which the guarantor shall be liable. A copy of the guaranty shall be given or mailed to the guarantor upon or immediately after the execution and delivery of the original guaranty by the guarantor.

As used in this section, "retail instalment contract" and "contract" include a retail instalment contract as defined in the retail instalment sales act, constituting article ten of this chapter. This section does not apply to a guaranty made by a seller or a holder of a retail instalment contract.

§ 314. Security interest in other property. No retail instalment contract, or any other agreement executed in connection therewith, shall provide for the creation of a security interest in any personal or real property, other than the motor vehicle which is the subject matter of the retail instalment sale (or accessories therefor or special or auxiliary equipment used in connection therewith), to secure the payment of the time sale price under such contract or any part thereof, provided, however, that the prohibition of this section shall not be applicable to the taking of a mortgage or other security interest upon or in connection with real property to secure the payment of the time sale price of a retail installment sale, if the subject matter of the retail installment sale is a mobile home or trailer which is to be annexed to or situated on such real property. Any such prohibited provision shall be void but shall not otherwise affect the validity of such contract.

§ 315. Claim for deficiency after default and repossession. If a buyer defaults on any instalment of the time sale price and the holder obtains possession of the motor vehicle and disposes of it as provided by section 9--610 of the uniform commercial code, the buyer shall be liable to the holder for any deficiency to the extent provided in that section; provided, however, that in calculating such deficiency there shall be deducted from the amount thereof as prescribed by such section 9--610, an amount equal to that portion of the refund credit to which the buyer would have been entitled under section three hundred five of this chapter if, at the time the holder disposed of the motor vehicle, the buyer had not been in default and had prepaid in full the balance of the time sale price as the amount realized upon the disposition of the motor vehicle bears to the balance of the time sale price.

§ 316. Notice of buyer's redemption rights. The holder of any motor vehicle installment contract who repossesses or accepts a voluntary surrender of a motor vehicle pursuant to the provisions of article nine of the uniform commercial code, or any contract, shall within seventy-two hours of such repossession or surrender, personally deliver or mail to the buyer at his last known address a written notice setting forth the right of such buyer to redeem such motor vehicle, the dollar amount necessary to redeem, and the name, address and telephone number of the holder from which information may be obtained regarding such redemption.

ARTICLE 9-A

MOTOR VEHICLE RETAIL LEASING ACT

§ 330. Short title. This article may be cited as the "Motor Vehicle Retail Leasing Act".

§ 331. Definitions. In this article, unless the context or subject matter otherwise requires:

1. "Motor vehicle" or "vehicle" means any device propelled or drawn by any power other than muscular power, upon or by which any person or property is or may be transported or drawn upon a public highway, road or street. The term does not include a "snowmobile" as defined in subdivision three of section 21.05 of the parks, recreation and historic preservation law or other vehicles not designed primarily for highway transportation, but which may incidentally transport persons or property on a public highway.

2. "Retail lessee" or "lessee" means a natural person who leases a motor vehicle from a retail lessor primarily for personal, family or household use and who executes a retail lease agreement in connection therewith. For purposes of section three hundred thirty-four and subdivisions two and three of section three hundred forty-six of this article, the term also includes a person who makes a payment to a lessor or leaves his vehicle with a lessor pending the execution of a retail lease agreement. Except as provided in sections three hundred forty-eight and three hundred forty-nine of this article, the term does not include a person who leases a motor vehicle primarily for agricultural, business or commercial use or for the purpose of subleasing.

3. "Retail lessor" or "lessor" means a person regularly engaged in the business of leasing or selling motor vehicles who leases a motor vehicle to a retail lessee under or subject to a retail lease agreement.

4. "Retail lease" or "lease" means a transfer from a retail lessor to a retail lessee of the right to possession and use of a motor vehicle in

return for consideration. The term does not include a sale, including a sale on approval or a sale or return, a retail instalment sale as defined in article nine of this chapter or the retention or creation of a security interest in a motor vehicle.

5. "Retail lease agreement" or "agreement" means an agreement, entered into in this state, for the lease of a motor vehicle, and which may include the purchase of goods or services incidental thereto, by a retail lessee for a scheduled term exceeding four months, whether or not the lessee has the option to purchase or otherwise become the owner of the vehicle at the expiration of the agreement. The term includes such an agreement wherever entered into if executed by the lessee in this state and if solicited in person by a person acting on his own behalf or that of the lessor. The term does not include a retail instalment contract or a rental-purchase agreement as defined in articles nine and eleven of this chapter. An agreement that substantially complies with this article does not create a security interest in a motor vehicle as the term "security interest" is defined in paragraph thirty-five of subsection (b) of section 1--201 of the uniform commercial code.

6. "Additional early termination charge" means the initial dollar amount of the early termination charge the portion of which is recoverable by the holder upon early termination in addition to the amounts specified in paragraphs (a) through (e) of subdivision one of section three hundred forty-one of this article. The additional early termination charge may only include amounts which are reasonable in light of the anticipated or actual harm caused by the delinquency, default or early termination, the difficulties of proof of loss and the inconvenience or nonfeasibility of otherwise obtaining an adequate remedy. Any fees or charges included in the additional early termination charge may not also be included in the capitalized cost.

* 7. "Initial early termination charge" means the sum of the adjusted initial lease value and the additional early termination charge, which would be recoverable under the lease agreement if the agreement were to be terminated before any of the periodic rental payments had become due. The term does not include any vehicle disposition fee or any other components of a lessee's early termination liability which could not

have been incurred by the lessee at lease inception.

* NB There are 2 sb 7's

* 7. "Adjusted capitalized cost" means the capitalized cost less any capitalized cost reduction payments made by the lessee at the inception of the lease and any net trade-in allowance granted by the lessor.

* NB There are 2 sb 7's

8. "Anticipated assignee" means the person to whom the lessor anticipates that the agreement will be assigned and to whom the agreement subsequently is assigned by the lessor.

9. "Base rental payment" means that portion of the monthly or other periodic rental payment which is equal to the sum of: (a) the average monthly or other periodic lease charge; and (b) the average monthly or other periodic depreciation. For purposes of this article, the average monthly or other periodic depreciation may include a monthly or other periodic charge for any item that the lessor has included in the capitalized cost.

10. "Conspicuous" means that a term or clause is so written that a reasonable person against whom it is to operate ought to have noticed it. Whether or not a term or clause is conspicuous is a question of law for decision by the court.

11. "Capitalized cost" means the agreed upon amount which serves as the basis for determining the base rental payment and a portion of the early termination liability of the lessee. The capitalized cost may include any taxes, registration, license acquisition, assignment and other fees and charges for insurance, for a waiver of the contractual obligation to pay the gap amount, for accessories and their installation, for delivering, servicing, repairing or improving the motor vehicle and for other services incidental to the agreement. It also may include the unpaid balance of any amount financed under an outstanding motor vehicle loan agreement or motor vehicle retail instalment contract or the unpaid portion of the early termination obligation under an outstanding motor vehicle retail lease agreement. The term does not include any lease charge or any amount included in the

additional early termination charge.

12. "Capitalized cost reduction" means any payments made by cash, check or similar means that are in the nature of downpayments made by the lessee at the inception of the lease for the purpose of reducing the capitalized cost.

13. "Constant yield method" means: (a) in the case of a periodic payment lease, that method of determining the lease charge portion of each base rental payment pursuant to which the lease charge for each computational period is earned in advance by multiplying the constant rate implicit in the lease times the balance subject to lease charge as it declines during the lease term. At any given time during the scheduled term of a periodic payment lease, the balance subject to lease charge is the difference between the adjusted capitalized cost and the sum of: (i) all depreciation amounts accrued during the preceding computational periods; and (ii) the first base rental payment; (b) in the case of a single or advance payment lease, that method of determining the periodic earning of lease charges pursuant to which the lease charge for each computational period is earned in advance by multiplying the constant rate implicit in the lease times the balance subject to lease charge as it increases during the scheduled lease term. At any given time during the scheduled term of a single or advance payment lease, the balance subject to lease charge is determined by subtracting from the estimated residual value the total lease charge scheduled to be earned over the term of the lease and adding to the difference all lease charges accrued during the preceding computational periods; (c) in the case of either type of lease, the periodic lease charge calculations are based on the assumption that the holder will receive the rental payments on their exact due dates and that the lease goes to its full term.

14. "Estimated residual value" means the estimated value of the leased vehicle at the scheduled end of the lease term, used by the lessor in determining the base rental payment, as established by the lessor at the time he enters into a retail lease agreement.

15. "Gap amount" has the meaning ascribed to it in paragraph fifty-two of subsection (a) of section one hundred seven of the insurance law.

16. "Gap insurance" has the meaning ascribed to it in paragraph twenty-six of subsection (a) of section one thousand one hundred thirteen of the insurance law. For purposes of paragraphs (a) and (b) of subdivision six of section three hundred thirty-seven of this article, gap insurance shall not be deemed "liability insurance or insurance on the vehicle".

17. "Group credit insurance" means group credit life insurance, group credit accident insurance, group credit health insurance, group credit accident and health insurance or group credit unemployment insurance.

18. "Holder" means the retail lessor of a motor vehicle under or subject to a retail lease agreement or, if the agreement is purchased by an assignee, the assignee. Unless and until it realizes upon its security interest therein, the term does not include a pledgee of one or more lease agreements to secure a bona fide loan thereon.

19. "Lease charge" means the charge to be paid by the retail lessee for the privilege of making the rental payments as scheduled under a retail lease agreement. The term does not include any amount included in the capitalized cost. The term also does not include any delinquency, default, disposition, early termination, collection, or reinstatement charge and the amount, if any, included in a retail lease agreement for taxes, registration, license acquisition, assignment and other fees and charges for insurance, for accessories and their installation, for delivering, servicing, repairing or improving the motor vehicle and for other services incidental to the agreement, whether or not such amounts are included in the capitalized cost, paid for separately at lease inception by cash, check or similar means or paid for on a monthly or other periodic basis in addition to the base rental payment.

20. "Person" means an individual, partnership, corporation, association or other group, however organized.

21. "Precomputed lease transaction" means a retail lease transaction in which the base rental obligation is a sum comprising the total depreciation estimated to occur during the scheduled term of the lease and the amount of the lease charge computed in advance. A disclosure required by the act of Congress entitled "Consumer Leasing Act of 1976" does not in itself make a lease charge or transaction precomputed.

22. "Realized value" means: (a) the price received by the holder for the leased vehicle at disposition; (b) the highest offer received by the holder for disposition of the leased vehicle; or (c) the fair market value of the vehicle, determined pursuant to subdivision one of section three hundred forty of this article by a mutually acceptable independent appraiser, at the scheduled end of the lease term or, if the lease is terminated prior thereto, at early termination. The realized value of the vehicle may be its value in the customary wholesale market.

23. "Renegotiation" means the satisfaction of an existing retail lease agreement and the replacement of the existing agreement by a new lease agreement undertaken by the same lessor or holder and the same lessee. The term does not include: (a) the substitution of the leased vehicle or the addition or return of a vehicle in a multiple-vehicle lease, if in either case the average payment allocable to a rental period is not increased by more than twenty-five percent; (b) a deferral or extension of one or more periodic payments, or portions of a periodic payment; (c) a reduction in charges in the agreement; (d) an agreement involving a court proceeding; or (e) any other agreement or event which does not constitute a "renegotiation" under the act of Congress entitled "Consumer Leasing Act of 1976" and the regulations thereunder, as such act and regulations may from time to time be amended.

24. Words in the singular include the plural and vice versa.

§ 332. Rebate or discount for information or assistance in lease or sale of motor vehicle. No lessor shall induce or attempt to induce any person to enter into an agreement subject to this article by offering a subsequent rebate, discount, commission or other consideration, on the condition that the lessee provide information or assistance for the purpose of enabling the lessor to either lease or sell a motor vehicle to another person.

§ 333. Pre-lease availability of sample form of agreement. 1. The lessor of a motor vehicle shall make a blank sample copy of its current form of retail lease agreement readily available for examination by prospective lessees by:

(a) Furnishing it upon request prior to the consummation of a retail lease transaction; and

(b) Posting in its place of business a sign stating that a blank sample copy of its form of retail lease agreement is available upon request.

2. An assignee who has prepared a form of retail lease agreement that is used by a lessor shall provide the lessor with blank sample copies of that form of agreement which the lessor may use to comply with the delivery requirement imposed upon it by paragraph (a) of subdivision one of this section. An assignee who does so shall have no liability if the lessor to whom those materials are provided fails to comply with this section.

§ 334. Payment or trade-in pending execution of lease agreement; refund or return upon non-execution. 1. Any payment made by cash, check or similar means to a lessor pending the execution of a retail lease agreement shall be refunded to the lessee in the event the lease agreement is not executed. Any refund required by this subdivision shall be made by the lessor within fifteen business days after the lease application is rejected by the lessor or the prospective assignee.

2. If a lessee is required to make a payment to a lessor by cash, check or similar means pending the execution of a retail lease agreement, the lessor shall notify the lessee in writing that the lessee has the right, if the lease application is not approved, to have any traded-in vehicle returned promptly and receive a prompt refund of any

payments made.

3. If a lessee leaves his motor vehicle with the lessor in lieu of or in addition to a payment by cash, check or similar means, and the lessor and lessee agree that the parties shall enter into a retail lease agreement, the lessor shall not sell or transfer the vehicle traded-in until the lessee and the lessor execute a retail lease agreement. In the event a lease agreement is not executed, the lessor shall promptly return to the lessee the vehicle traded-in.

4. The provisions of this section shall not apply to any fee charged, received or collected by a holder in connection with the assumption of an existing retail lease agreement.

5. The provisions of this section shall not apply to the sale of a motor vehicle by a prospective lessee to a prospective lessor under a separate contract of sale for the price specified in the contract if such contract is executed before the parties have consummated a retail lease agreement, is in writing, is dated as of the date of the sale and is signed by the parties. To be exempt under the provisions of this subdivision, such agreement shall also:

(a) clearly and conspicuously disclose to the seller that the sale price for the vehicle establishes its value for purposes of determining the amount the lessor will credit as a "capitalized cost reduction" under any retail lease agreement subsequently consummated by the parties or as the amount due to the lessee for the vehicle in the event the parties fail to consummate a retail lease agreement;

(b) contain a conspicuous clause that is initialled separately by the prospective lessee whereby such lessee agrees to leave the amount of the purchase price on deposit with the prospective lessor pending the consummation of a retail lease agreement for a currently produced model year vehicle that is to be ordered specially from the manufacturer or for a model year vehicle that is not yet in production as of the date of the sale of the lessee's vehicle; and

(c) stipulate that seventy-five days after the date of the sale, the prospective lessee shall be entitled on demand to payment of the agreed upon price for the vehicle unless within that time the parties have consummated a separate retail lease agreement or have agreed to an earlier payment of the price to the lessee.

§ 335. Total loss notice and waiver of the gap amount. 1. If the retail lease agreement provides that the lessee shall be responsible upon a total loss of the vehicle occasioned by its theft, confiscation or physical damage for the gap amount, the lessor, prior to the execution of the agreement, shall by a notice on a separate document conspicuously disclose that fact and the obligations for which the lessee would remain liable in the event of a theft, confiscation or total loss of the vehicle. If the lessor is required under subdivision two of this section to offer to waive its contractual right to hold the lessee liable for the gap amount in the event of a total loss of the vehicle occasioned by its theft or physical damage, the notice shall also: (a) state that for a separate charge disclosed in the notice the lessor will waive its contractual right to hold the lessee liable for the gap amount in the event of a total loss of the vehicle occasioned by its theft or physical damage; (b) contain a provision informing the lessee that he or she may as an alternative to purchasing a waiver, be able to purchase insurance covering the gap amount from an insurance company which has been licensed by the superintendent of financial services to write motor vehicle lessee gap insurance in this state; and (c) contain a provision permitting the lessee to indicate whether he or she wants the lessor to waive its contractual right to hold the lessee liable for the gap amount in the event of a total loss of the vehicle occasioned by its theft or physical damage. The notice shall be signed by the lessee. The lessor or assignee shall provide a copy of the signed notice to the lessee, and shall maintain a copy in the lessor's or assignee's files for at least the term of the lease. Failure to provide the notice and to obtain the lessee's signature as required by this subdivision shall invalidate any provision of the agreement which otherwise would obligate a lessee to pay to the holder, after a total loss of the motor vehicle occasioned by its theft, confiscation or physical damage the gap amount. No retail lease agreement shall be conditioned upon the lessee's obtaining of motor vehicle lessee gap insurance as set forth in subparagraph (B) of paragraph twenty-six of subsection (a) of section one thousand one hundred thirteen of the insurance law.

2. If the retail lease agreement provides that the lessee shall be responsible upon a total loss of the vehicle occasioned by its theft or physical damage for the gap amount, the lessor, prior to the execution of the agreement, shall offer to waive its contractual right to hold the lessee liable for the gap amount in the event of a total loss of the vehicle occasioned by its theft or physical damage, only if motor vehicle lessor gap insurance coverage is available to the lessor or the anticipated assignee and such coverage is obtained from a property/casualty insurance company, which has been licensed by the superintendent of financial services of this state to write motor vehicle lessor gap insurance in this state. This offer may be made contingent upon the payment by the lessee of a separate charge that shall not exceed the cost of lessor gap insurance covering the retail lease transaction plus an administrative fee not to exceed ten dollars. Nothing contained in this section shall be construed to authorize a waiver, in connection with a transaction with respect to which lessor gap insurance has not been obtained, of a contractual right to hold the lessee liable for the gap amount in the event of a total loss of the vehicle occasioned by its theft or physical damage.

3. A lessor shall not be obligated under subdivision two of this section to offer to waive its contractual right to hold the lessee liable for the gap amount if, during the current calendar year or during the odd-numbered calendar year immediately preceding the calendar year in which the agreement is entered into, the lessor or the anticipated assignee of the lessor has received motor vehicle lessor gap insurance declination notices or other evidence of unavailability from every insurance company whose name appears on the department of financial services compilation of insurance companies which during that calendar year were authorized to write motor vehicle lessor gap insurance in this state. Evidence of these declinations shall be retained by such a lessor or the anticipated assignee of such a lessor for a period of six years after the expiration of the calendar year in which they were issued.

4. In order to enable lessors or their anticipated assignees to comply with the requirements imposed by subdivision two of this section, the superintendent of financial services shall compile and make available a periodically updated list of those insurance companies which are authorized to write motor vehicle lessor gap insurance coverage in this state.

5. Nothing in this section shall be construed to apply to the lessor, or any anticipated assignee of a lessor, under a retail lease agreement under which the lessee is not liable upon a total loss of the vehicle occasioned by its theft, confiscation or physical damage for the gap amount.

§ 336. Business purpose statement. 1. A preprinted or typewritten affirmation or other provision indicating that a vehicle is being leased primarily for agricultural, business or commercial use shall be inadmissible in evidence in any trial, hearing, action or proceeding on behalf of a lessor or holder unless the affirmation or other provision is printed or typewritten in a separate document signed by the lessee that contains: (a) a space which the lessee must complete in order to identify the nature of his or her business; and (b) directly above the space reserved for the signature of the lessee, a conspicuous statement informing the lessee that important consumer protections will not apply if the vehicle is being leased primarily for agricultural, business or commercial use.

2. This section shall not apply if the retail lease agreement contains: (a) a provision permitting the lessee to specify whether the vehicle is being leased primarily for personal, family or household use or primarily for agricultural, business or commercial use; and (b) either in close proximity to the provisions permitted by paragraph (a) of this subdivision or directly above the notice required by paragraph (c) of subdivision two of section three hundred thirty-seven of this article, a notice printed or written in a size equal to at least eight-point bold type that is substantially similar to the following notice: "WARNING: Important consumer protections may not apply if this

agreement indicates that you are leasing the vehicle primarily for agricultural, business or commercial use."

3. The statement by the lessee of the purpose for which the vehicle is being leased shall not be dispositive of the issue of whether the vehicle is being leased primarily for personal, family or household use. In determining whether the vehicle is being leased primarily for personal, family or household use, the court shall consider any other factors relevant to that determination.

§ 337. Requirements as to retail lease agreements. 1. A retail lease agreement shall be in a writing and, except as otherwise provided in subdivision two of section three hundred forty-five of this article, signed contemporaneously by the lessor and the lessee. Except as provided in sections three hundred thirty-five and three hundred thirty-six of this article, a retail lease agreement shall contain in a single document all the agreements of the parties.

2. The printed portion of the agreement shall be printed in at least eight-point type in ink that contrasts with the paper used. The agreement shall contain the following items printed or written in a size equal to at least ten-point bold type:

(a) Both at the top of the agreement and directly above the space reserved for the signature of the lessee, the words "LEASE AGREEMENT", "RETAIL LEASE AGREEMENT" or "MOTOR VEHICLE LEASE AGREEMENT";

(b) A specific statement that physical damage or liability insurance coverage for bodily injury and property damage caused to others is not included, if that is the case; and

(c) Directly above the acknowledgment permitted by subdivision three of this section to appear above the space reserved for the signature of the lessee, a written notice informing the lessee that: (i) the lessee should not sign the agreement before he or she reads it or if it contains any blank space; and (ii) the lessee is entitled to a completely filled in copy of the agreement when he or she signs it. A notice substantially similar to the following notice complies with the requirements of this paragraph: "NOTICE TO THE LESSEE: 1. Do not sign this agreement before you read it or if it contains any blank space. 2. You are entitled to a completely filled in copy of this agreement when you sign it."

3. The lessor shall deliver to the lessee, or mail to him or her at his or her address shown on the agreement, a copy of the agreement signed by the lessor. Until the lessor does so, a lessee who has not received delivery of the motor vehicle shall have an unconditional right to cancel the agreement and to receive an immediate refund of all payments made and redelivery of all goods traded-in to the lessor on account of or in contemplation of the agreement. Any acknowledgment by the lessee of delivery of a copy of the agreement shall be printed or written in a size equal to at least eight-point bold type and, if contained in the agreement, shall appear directly above the legend required by paragraph (a) of subdivision two of this section to appear directly above the space reserved for the signature of the lessee.

4. The agreement shall contain the names of the lessor and the lessee, the place of business of the lessor, the residence or place of business of the lessee as specified by the lessee and a description of the motor vehicle including its make, year model, model and identification number or marks.

5. The agreement shall contain:

(a) All items required to be disclosed by the act of Congress entitled "Consumer Leasing Act of 1976" and the regulations thereunder, as such act and regulations may from time to time be amended; provided, however, that the disclosures required by the "Consumer Leasing Act of 1976" shall be made in all leasing transactions covered by this article regardless of the exemption in the "Consumer Leasing Act of 1976" for lease transactions in which the total contractual obligation exceeds twenty-five thousand dollars;

(b) The capitalized cost, using the term "capitalized cost" and a descriptive explanation such as "the sum of the adjusted capitalized cost and any capitalized cost reduction. The capitalized cost and the amount of the rental payment may be negotiable";

(c) The adjusted capitalized cost of the vehicle, using the term "adjusted capitalized cost", a descriptive explanation such as "the amount which is capitalized in connection with the lease and is used in determining the amount of your periodic payment" and immediately thereafter one of the following additional explanatory statements:

(i) In the case of an agreement which provides for an "additional early termination charge" and whose early termination provisions expressly refer to the "adjusted capitalized cost," a statement that "this amount plus the additional early termination charge will be used in determining your early termination liability";

(ii) In the case of an agreement which provides for an "additional early termination charge" and whose early termination provisions do not expressly refer to the "adjusted capitalized cost," a statement that "this amount plus the additional early termination charge will be used in determining the legal limit on your early termination liability";

(iii) In the case of an agreement which does not provide for an "additional early termination charge" and whose early termination provisions expressly refer to the "adjusted capitalized cost," a statement that "this amount will be used in determining your early termination liability"; or

(iv) In the case of an agreement which does not provide for an "additional early termination charge" and whose early termination provisions do not expressly refer to the "adjusted capitalized cost," a statement that "this amount will be used in determining the legal limit on your early termination liability";

(d) The amount, if any, included for insurance and other benefits, specifying and describing the coverages and the amount included for each type of coverage;

(e) In close proximity to the adjusted capitalized cost disclosure required by paragraph (c) of this subdivision and only as applicable, any additional early termination charge provided for under the agreement, using the term "additional early termination charge", and one of the following descriptive explanations:

(i) In the case of an agreement whose early termination provisions expressly refer to the "adjusted additional early termination charge," a descriptive explanation such as "an additional amount the unamortized portion of which will be used in determining your early termination liability"; or

(ii) In the case of an agreement whose provisions do not expressly refer to the "additional early termination charge," a descriptive explanation such as "an additional amount the unamortized portion of which will be used in determining the legal limit on your early termination liability"; and immediately after the descriptive explanation additional explanatory statements that "this amount represents the total costs and damages, in addition to the adjusted capitalized cost, which we would incur if this agreement were to be terminated before you had made any rental payments."

(f) In close proximity to the "adjusted capitalized cost" and "additional early termination charge" disclosures required by paragraphs (c) and (e) of this subdivision, one of the following statements:

(i) In the case of an agreement which provides for an "additional early termination charge" and whose early termination provisions do not expressly refer to either the "adjusted capitalized cost" or the "additional early termination charge," a statement that "although they are not referred to in the early termination provisions of this lease, the 'adjusted capitalized cost' and the 'additional early termination charge' may be used to compare the early termination provisions of competing lessors";

(ii) In the case of an agreement which provides for an "additional early termination charge" and whose early termination provisions do not expressly refer to the "additional early termination charge," a statement that "although the 'additional early termination charge' is not referred to in the early termination provisions of this lease, the 'additional early termination charge' and the 'adjusted capitalized cost' may be used to compare the early termination provisions of competing lessors";

(iii) In the case of an agreement which provides for an "additional early termination charge" and whose early termination provisions do not expressly refer to the "adjusted capitalized cost," a statement that "although the 'adjusted capitalized cost' is not referred to in the early termination provisions of this lease, the 'adjusted capitalized cost' and the 'additional early termination charge' may be used to compare the early termination provisions of competing lessors";

(iv) In the case of an agreement which provides for an "additional early termination charge" and whose early termination provisions expressly refer to both the "adjusted capitalized cost," and the "additional early termination charge," a statement that "the 'adjusted capitalized cost' and the 'additional early termination charge' may be used to compare the early termination provisions of competing lessors";

(v) In the case of an agreement which does not provide for any "additional early termination charge" and whose early termination provisions do not expressly refer to the "adjusted capitalized cost," a statement that "although the 'adjusted capitalized cost' is not referred to in the early termination provisions of this lease, the 'adjusted capitalized cost' may be used to compare the early termination provisions of competing lessors"; or

(vi) In the case of an agreement which does not provide for any "additional early termination charge" and whose early termination provisions expressly refer to the "adjusted capitalized cost," a statement that "the 'adjusted capitalized cost' may be used to compare the early termination provisions of competing lessors."

(g) A statement in at least eight-point bold type informing the lessee that he or she has the right to terminate the agreement voluntarily at any time after the first fifty percent of the total number of months constituting the full scheduled lease term, or earlier if the agreement so provides, if he or she is in full compliance with the terms of the agreement and satisfies his or her early termination obligation;

(h) A statement in at least eight-point bold type to the effect that "early termination may require you to pay a substantial charge";

(i) A statement in at least eight-point bold type stating that the lessee shall not be liable for an early termination fee if he or she has deceased before the end of the lease;

(j) A provision permitting a lessee whose default consists solely of the failure to make timely rental payments to cure his or her default and reinstate the agreement, without losing any rights or options previously acquired under the agreement, by paying all past due rental and delinquency charges and, if the agreement so provides, a reinstatement fee not to exceed ten dollars and the actual and reasonable costs of repossession, storage, pickup and redelivery within twenty-five days after the lessee is sent written notice of his or her reinstatement rights. The reinstatement right granted pursuant to this paragraph may be restricted to a lessee who has not previously been afforded the opportunity to reinstate the agreement. For purposes of this paragraph, a rental charge is past due if it is not paid by its scheduled due date or within any grace period specified in the agreement;

(k) The estimated residual value of the vehicle, using the term "estimated residual value";

* (l) In the case of an agreement which does not obligate the lessee upon a total loss of the vehicle occasioned by its theft or physical damage for any of the items specified in paragraphs (e) and (f) of subdivision one of section three hundred forty-one of this article, a conspicuous notice that the lessee has no such obligation.

* NB There are 2 par (l)'s

* (l) The liability of the lessee in the case of a total loss of the vehicle or the vehicle is rendered inoperable. Disclosure of liability pursuant to this paragraph shall include the financial liability of the lessee and the lessor's rules, policies and procedures in the event the car is declared a total loss or rendered inoperable during the term of the lease.

* NB There are 2 par (l)'s

Nothing in this subdivision prevents a holder from attempting to repossess a vehicle, accepting its voluntary surrender or selling it during the reinstatement period, but such a repossession, voluntary surrender, or sale shall not affect the reinstatement right of the lessee. Upon reinstatement, the holder shall provide the lessee with the same vehicle leased by the lessee prior to reinstatement or, if that vehicle is not available, a substitute vehicle of comparable worth, quality and condition.

6. (a) (i) The amount, if any, included for liability insurance or insurance on the vehicle, shall not exceed the premiums charged by the insurance company for such insurance. The holder, if the cost of liability insurance or insurance on the motor vehicle is included in a retail lease agreement and the policy or policies are delivered to the holder, shall within thirty days after execution of the retail lease agreement, send or cause to be sent to the lessee a copy of the policy or policies of insurance, issued by an insurance company authorized to

do that kind of insurance business in this state, clearly setting forth the amount of the premium, the kind or kinds of insurance and the scope of the coverage and all the terms, exceptions, limitations, restrictions and conditions of the contract or contracts of insurance.

(ii) The lessee of a motor vehicle under a retail lease agreement shall have the privilege of purchasing such insurance from an agent or broker of his or her own selection and of selecting an insurance company acceptable to the lessor; provided, however, that the inclusion of the insurance premium in the retail lease agreement when the lessee selects the agent, broker or company, shall be optional with the lessor and in such case the lessor or assignee shall have no obligation to send, or cause to be sent, to the lessee a copy of the policy of insurance.

(b) If any such policy of liability insurance or insurance on the motor vehicle is cancelled, the unearned insurance premium refund received or receivable by the holder of the agreement or, if the amount included therefor in the agreement exceeds the cost to the holder of the agreement for such insurance, the unearned portion of the amount so included, shall be either: (i) refunded to the lessee within ten business days after it is received by the holder; or (ii) credited, together with the unearned portion of the lease charge applicable thereto, to the final maturing rental payments or, at the option of the holder, to the end of term obligations under the retail lease agreement except to the extent applied toward payment for similar insurance protecting the interests of the lessee and the holder of the agreement or either of them, provided that no such credit or refund need be made if the amount thereof would be less than one dollar.

(c) The amount, if any, included for group credit insurance or for insurance other than gap insurance, liability insurance or insurance on the motor vehicle shall not exceed the premiums charged by the insurance company for such insurance. If such group credit or other insurance is cancelled the refund for unearned insurance premiums received or receivable by the holder of the agreement, or the excess of the amount included in the agreement for group credit or other insurance over the premiums paid or payable by the holder of the agreement therefor shall be either: (i) refunded to the lessee within ten business days after it is received by the holder; or (ii) credited, together with, in either case, the unearned portion of the lease charge applicable thereto, to the final maturing rental payments or, at the option of the holder, to the end of term obligations under the retail lease agreement, provided that no such credit or refund need be made if the amount thereof would be less than one dollar.

(d) The amount of any separate charge included for a waiver by the lessor of its contractual right to hold the lessee liable for the gap amount shall not exceed the cost of lessor gap insurance covering the retail lease transaction.

7. (a) If the lessee is obligated in connection with the lease to maintain liability insurance or insurance on the motor vehicle that is the subject of the agreement and if subsequent to the execution of the agreement the lessee fails to maintain the required insurance, the holder may make advances to procure the equivalent limits of insurance for either the interests of the lessee and the holder or the interest of either of them, and any amount so advanced may be the subject of a lease charge as though such amount was part of the initial lease value.

(b) If under subdivision two of section three hundred thirty-five of this article, the lessor waives its contractual right to hold the lessee liable for the gap amount, and lessor gap insurance coverage which the lessor or holder purchased in connection with the transaction subsequently is terminated prior to the filing of a claim due to the insolvency of the insurance company, notwithstanding the provisions of paragraph three of subsection (b) of section one thousand one hundred one of the insurance law the holder may make an advance to procure equivalent limits of lessor gap insurance covering the transaction and any amount so advanced may be the subject of a lease charge as though such amount was part of the capitalized cost.

(c) Each amount so advanced shall be subject to the default provisions of the lease agreement if so provided in the agreement and if the holder notifies the lessee in writing of the advance of such amount and of his or her option to repay such amount in any one of the following ways:

(i) Full payment within ten days from the date of giving or mailing the notice;

(ii) Full amortization during the term of the insurance or the remaining term of the agreement, at the option of the holder;

(iii) If offered by the holder, as a final balloon payment payable one month after the last scheduled payment under the agreement;

(iv) If offered by the holder, full amortization after the term of the agreement, to be made in periodic payments which do not exceed the average periodic payment under the agreement; or

(v) If offered by the holder, any other amortization plan.

If the lessee neither pays in full the amount so advanced nor notifies the holder in writing of his or her choice regarding the amortization options before the expiration of ten days from the date of giving or mailing the notice by the holder, the holder shall amortize the amount so advanced pursuant to subparagraph (ii) of paragraph (c) of this subdivision.

8. (a) The holder of a retail lease agreement may, if the agreement so provides, collect a delinquency and collection charge on each rental payment in default for a period not less than ten days in an amount not in excess of the amount or amounts agreed to in the agreement. In addition to a delinquency and collection charge, the retail lease agreement may provide for the payment of reasonable attorneys' fees not exceeding fifteen percent of the amount due and payable under the agreement where the agreement is referred to an attorney not a salaried employee of the holder of the agreement for collection, plus the court costs.

(b) The holder may not assess or collect a delinquency and collection charge under paragraph (a) of this subdivision on a rental payment, which payment is otherwise a full payment for the applicable period and is paid within ten days after its scheduled or deferred due date, when the only delinquency is attributable to delinquency and collection charges assessed on an earlier rental payment or payments.

9. No retail lease agreement shall be signed by any party thereto when it contains blank spaces to be filled in after it has been signed except that, if delivery of the motor vehicle is not made at the time of the execution of the agreement, the identifying numbers or marks of the motor vehicle or similar information and the due date of the first payment may be inserted in the agreement after its execution. The lessee's written acknowledgment, conforming to the requirements of

subdivision three of this section, of delivery of a copy of the agreement shall be conclusive proof of such delivery and of compliance with this subdivision in any action or proceeding by or against an assignee of the agreement without knowledge to the contrary when he or she purchases the agreement.

10. No retail lease agreement shall contain any provision by which the lessee agrees not to assert against a holder a claim or defense or require or entail the execution of any note or series of notes which, when separately negotiated, will cut off as to third parties any right of action or defense which the lessee may have against the lessor. The holder of a retail lease agreement shall be subject to all claims and defenses of the lessee against the lessor arising from the lease notwithstanding any agreement to the contrary, but the holder's liability under this subdivision shall not exceed the amount owing to the holder at the time the claim or defense is asserted against the holder. The holder shall have recourse against the lessor to the extent of any liability incurred by the holder pursuant to this subdivision regardless of whether the assignment of the agreement was with or without recourse.

11. Notwithstanding any contrary provision of this chapter, the lien law, banking law or other law: (a) a person may purchase a retail lease agreement from a lessor on such terms and conditions and for such price as may be mutually agreed upon; and (b) no filing of the assignment, no notice to the lessee of the assignment, and no requirement that the lessor be deprived of dominion over payments upon the agreement or over the vehicle if repossessed by or returned to the lessor, shall be necessary to the validity of a written assignment of a retail lease agreement as against creditors, subsequent purchasers, pledgees, mortgagees or encumbrancers of the lessor.

12. Unless the lessee has notice of actual or intended assignment of a retail lease agreement, payment thereunder made by the lessee to the last known holder of such agreement shall be binding upon all subsequent holders or assignees. A notification which does not reasonably identify the rights assigned is ineffective. If requested by the lessee, the

assignee shall furnish reasonable proof that the assignment has been made and unless he or she does so the lessee may pay the original lessor.

13. (a) Upon written request from the lessee, the holder of a retail lease agreement shall give or forward to the lessee a written statement of the dates and amounts of the rental payments that have been made under the agreement and the total amount of the remaining rental payments. A lessee shall be given a written receipt for any payment when made in cash.

(b) Upon written request from a lessee who is then entitled to terminate the agreement early, the holder of a retail lease agreement shall give or forward to the lessee a written statement of his or her gross early termination liability under the agreement.

14. No retail lease agreement shall contain any provision applicable to a natural person who leases a vehicle primarily for personal, family or household use by which:

(a) in the absence of the lessee's default, the holder may, arbitrarily and without reasonable cause, accelerate the maturity of any part or all of the amount owing thereon;

(b) a power of attorney is given to confess judgment, or an assignment of wages is given;

(c) the lessor or holder of the agreement or other person acting on his or her behalf is given authority to enter upon the lessee's premises unlawfully, or to commit any breach of the peace in the repossession of the motor vehicle;

(d) the lessee waives any right of action against the lessor or holder of the agreement, or other person acting on his or her behalf, for any illegal act committed in the collection of payments under the agreement or in the repossession of the motor vehicle;

(e) the lessee executes a power of attorney appointing the lessor or holder of the agreement, or other person acting on his or her behalf, as the lessee's agent in collection of payments under the agreement or in the repossession of the motor vehicle; provided, however, that this paragraph shall not prohibit the inclusion in a retail lease agreement of a limited power of attorney or other provision authorizing the holder to execute in the name of the lessee any proofs of insurance claims or losses or to endorse the name of the lessee on any insurance settlement draft or check;

(f) the lessor is relieved from liability for any legal remedy which the lessee may have had against the lessor under the agreement, or any separate instrument executed in connection therewith;

(g) the maturity of any part or all of the amount owing thereon is accelerated where, following a default consisting solely of the failure to make timely rental payments, a lessee who has the right to reinstate the agreement makes timely tender of an amount which would be sufficient to reinstate the agreement under paragraph (i) of subdivision five of this section;

(h) the lessee waives any right to a trial by jury in any action or proceeding arising out of the agreement;

(i) a lessee who is not in default of his or her obligations under the agreement would be prohibited from terminating the agreement at any time after the expiration of the first fifty percent of the total number of months of the lease term. The exercise of this right to terminate early voluntarily is contingent upon the lessee discharging fully his or her liability under the early termination provisions of the agreement; or

(j) the lessee would be charged a turn-in fee at the expiration of the term which constitutes solely an additional fee for administrative, handling or clerical charges.

15. Any such prohibited provision shall be void but shall not otherwise affect the validity of the agreement.

16. Where necessary to ensure consistency with the pronoun usage in the underlying agreement, any language required by this article to be used in connection with a required disclosure may be modified to refer to the lessee in the first person and the holder in the second person.

§ 338. Security interest prohibited. 1. No retail lease agreement, or any other agreement executed by the lessee in connection therewith, shall provide for the creation of a security interest in any personal or real property of the lessee to secure the payment of the debt arising from the lease. This prohibition shall not apply to: (a) the taking of a security deposit, advance payment of rent or other prepayment by cash, check or similar means; (b) the retention or exercise by a banking organization of a right of set off; or (c) the retention of a security interest in the proceeds, cancellation refunds or other rights of the lessee under any insurance, repair or service contract whose cost is included in the total monthly lease payment.

2. A security interest taken in violation of this section shall be void but shall not otherwise affect the validity of a retail lease agreement.

§ 339. Notice of lessee's reinstatement rights. After a lessee has been in default for ten days solely by reason of his or her failure to make timely rental payments, the holder of any retail lease agreement shall mail or personally deliver to the lessee at his or her last known address a written notice conspicuously setting forth the right of the lessee to reinstate the agreement, the dollar amount necessary to reinstate the agreement and the name, address and telephone number of the holder from which information may be obtained regarding such reinstatement. No notice of reinstatement need be given if:

1. The holder does not declare the lessee to be in default under the agreement because of his or her failure to make timely rental payments; or

2. The lessee previously was afforded the opportunity to reinstate the agreement.

§ 340. Establishment of realized value at lease termination when purchase option not exercised; notice of intention to sell motor vehicle. 1. If an agreement is terminated early and there is no option to purchase the vehicle or the lessee does not exercise any option he or she may have to purchase the vehicle, or if the lessee's liability at the scheduled end of the lease term is based upon the estimated residual value of the vehicle and the lessee does not exercise any option he or she may have to purchase the vehicle, the holder shall act in a commercially reasonable manner when disposing of the vehicle or obtaining cash bids for the purpose of establishing the realized value of the vehicle, which may be its value in the customary wholesale market. A lessee whose agreement is terminated early without the exercise of a purchase option or whose liability at the scheduled end of the lease term is based upon the estimated residual value of the vehicle may obtain, at his or her expense, a professional appraisal by an independent third party agreed to by the lessee and the holder of the wholesale value which could be realized at sale of the leased vehicle. If a professional appraisal is obtained by such a lessee, the appraised value shall be final and binding upon the parties and shall be used as the realized value in determining the liability of the lessee at early termination or at the scheduled end of the lease term.

2. If an agreement is terminated early and there is no option to purchase the vehicle or the lessee does not exercise any option he or she may have to purchase the vehicle, or if the lessee's liability at the scheduled end of the lease term is based upon the estimated residual value of the vehicle and the lessee does not exercise any option he or she may have to purchase the vehicle, the holder shall give the lessee at least ten days written notice of its intention to sell the motor vehicle. A notice of intention to sell the vehicle need not be given if the holder and lessee have agreed in writing to the amount of the lessee's liability under the retail lease agreement after the lessee returns the vehicle to the holder or the lessee has fully satisfied his or her obligations under the agreement. A holder gives notice to the lessee under this subdivision when he or she delivers the notice to the lessee or mails the notice to him or her at his or her last known address.

3. The notice of intention to sell the vehicle shall set forth separately any charges or sums due under the agreement and shall clearly and conspicuously state that the lessee will be liable for the difference between the estimated residual value of the vehicle and its realized value, if such liability exists. The notice also shall state

that the lessee has the right to submit a cash bid for the purchase of the vehicle.

§ 341. Restriction on early termination liability. 1. If an agreement is terminated early and there is no option to purchase the vehicle or the lessee does not exercise any option he or she may have to purchase the vehicle, the early termination obligation of the lessee may not exceed an amount equal to the sum of:

(a) any unpaid rental payments that accrued through the date of early termination;

(b) any other unpaid charges, other than excess mileage charges, arising from the failure of the lessee to fulfill his or her obligations under the agreement;

(c) any official fees and taxes imposed in connection with lease termination;

(d) a reasonable disposition fee or, in lieu thereof, the reasonable costs of retaking, storing, preparing for sale and selling the vehicle;

(e) the difference, if any, between: (i) the adjusted capitalized cost, and (ii) the sum of all depreciation amounts accrued through the date of early termination, calculated in accordance with the constant yield method or any other generally accepted actuarial method, and the realized value of the vehicle; and

(f) an additional early termination charge which is reasonable in light of the anticipated or actual harm caused by the default or early termination, the difficulties of proof of loss and the inconvenience or nonfeasibility of otherwise obtaining an adequate remedy.

As an alternative to the constant yield and other generally accepted actuarial methods of determining the depreciation amounts accrued through the date of early termination of a precomputed lease transaction, those amounts may be determined under paragraph (e) of this subdivision by using a retail lease agreement under which the lease charge is calculated on the adjusted capitalized cost for the time outstanding according to a generally accepted actuarial method.

2. This section does not limit or restrict the manner of calculating

the early termination liability of a lessee, whether by way of unamortized capitalized cost, discounted present value of remaining rental payments, multiples of monthly payments or otherwise, so long as the early termination liability of the lessee does not exceed that permitted by this section.

3. Any refundable security deposit or advance rental payment held by the holder may be retained by the holder and shall be credited against the early termination obligation of the lessee.

4. There shall be no early termination liability to the lessee if he or she has deceased before the end of such lease.

§ 342. Restriction on the reporting of early terminations. The holder of a retail lease agreement shall not report the voluntary early termination of the agreement to a consumer reporting agency or any other person as a derogatory item of information unless the lessee fails to satisfy his or her early termination obligations.

§ 343. Assessment of excess wear and damage to the vehicle. 1. (a) Upon the scheduled termination of a retail lease agreement, the holder shall not charge, receive or collect a charge for excess wear and damage to the vehicle which exceeds: (i) the actual cost of repairs, reduced by all discounts, paid by the holder; or (ii) a true itemized estimate of the cost of such repairs by an appraiser licensed pursuant to section three hundred ninety-eight-d of the vehicle and traffic law selected by the holder, of the cost of such repairs.

(b) Upon early termination of a retail lease agreement, the holder shall not charge, receive or collect a charge for excess wear and damage to the vehicle which exceeds the actual costs of repairs, reduced by all discounts, paid by the holder.

2. In order for a holder to impose a charge for excess wear and damage to a vehicle subject to a retail lease agreement, such agreement shall contain a clause describing the excess wear and damage to the vehicle

for which the lessee may be liable. Such holder shall, not more than forty days nor less than twenty days prior to the scheduled termination date, or, not more than ten business days after the date of an early termination of a lease agreement, mail or deliver to the lessee a notice advising the lessee of the following rights and obligations of the parties, herein granted and imposed:

(a) Such notice shall include the following statement, as set forth herein, at the beginning of the notice in at least ten-point bold type:

"YOUR LEASE AGREEMENT ALLOWS (HOLDER) TO ASSESS A CHARGE FOR EXCESS WEAR AND DAMAGE TO THE VEHICLE. YOU SHOULD OBTAIN YOUR OWN EVIDENCE OF THE CURRENT CONDITION OF THE VEHICLE NOT MORE THAN TWENTY (20) DAYS PRIOR TO THE SCHEDULED TERMINATION OF YOUR LEASE. YOU ALSO WILL HAVE THE RIGHT TO SUBMIT DISPUTES TO THE ALTERNATE ARBITRATION MECHANISM ESTABLISHED UNDER REGULATIONS PROMULGATED BY THE NEW YORK STATE ATTORNEY GENERAL."

(b) In the case of a scheduled termination, of the lessee's right to turn the vehicle in with a copy of an itemized appraisal of excess wear and damage to the vehicle prepared by an appraiser licensed under section three hundred ninety-eight-d of the vehicle and traffic law, selected by the lessee and conducted not more than twenty days prior to the scheduled termination date;

(c) Of the right of the holder to, within thirty days after the date on which the vehicle comes into the actual physical possession of the holder, obtain a written itemized appraisal of excessive wear and damage to the vehicle prepared by an appraiser licensed under section three hundred ninety-eight-d of the vehicle and traffic law selected by the holder;

(d) That if the lessee had not previously obtained and submitted to the holder a written itemized appraisal on the lessee's own behalf in accordance with paragraph (b) of this subdivision, the lessee will have the greater of ten business days after the lessee has received or fourteen business days to do so after the holder has sent, in conformance with subdivision three of this section, an itemized bill for excess wear and damage and a copy of the itemized appraisal prepared on behalf of the holder, unless the lessee does not dispute any of the items contained therein. In the case where the holder bases the charge for excess wear and damage on the actual cost of repairs, the notice shall also inform the lessee that should the lessee fail to obtain an itemized written appraisal, he or she is entitled to dispute only whether any items claimed exist and/or are excess wear and damage to the vehicle, but not the actual cost of making the repairs;

(e) That if the lessee disputes that any of the items claimed for excess wear and damage to the vehicle exist or are excessive in nature, the lessee may submit the dispute within sixty days of the date on which the vehicle comes into the actual physical possession of the holder to the holder's informal dispute settlement procedure, if any, or, upon the payment of the prescribed filing fee which is refundable if the arbitrator finds in the lessee's favor, to an alternative arbitration mechanism established under regulations promulgated by the attorney general of the state of New York;

(f) That if there exists a discrepancy between the itemized appraisals obtained by the holder and the lessee, if any, the holder shall submit the dispute within sixty days of the date on which the vehicle comes into the actual physical possession of the holder to the holder's informal dispute settlement procedure, if any, unless the lessee exercises the option granted by paragraph (b) of subdivision five of this section; provided, however, that in the event the holder has complied with the provisions of this subdivision, a lessee who has failed to obtain an itemized appraisal of the excessive wear and damage to the vehicle in accordance with either paragraph (b) or (c) of this subdivision may dispute only the existence of any item or whether the wear is excessive in nature, but may not dispute the actual cost of repairs.

3. (a) Itemized bill. (i) In the event that the holder wishes to impose a charge for excess wear and damage to the vehicle, the holder shall send by registered mail or hand-deliver to the lessee a bill containing an itemized list of the estimated or actual cost of repairing or replacing each item as to which an excess wear and damage charge is claimed and specifying the address to which any response must be mailed. The bill shall be mailed or hand-delivered to the lessee within thirty days after the date on which the vehicle comes into the actual

possession of the holder.

(ii) The itemized bill shall include the following statements printed in at least ten-point type: "You are being asked to pay an amount claimed for excess wear and damage to the vehicle. If you wish to contest this amount, you must obtain an itemized appraisal from an appraiser licensed by the New York State Department of Motor Vehicles, and mail or deliver a copy of such appraisal to (NAME AND ADDRESS OF HOLDER) within the greater of fourteen business days after (NAME OF HOLDER) has sent, or ten business days of receipt of this bill and (NAME OF HOLDER'S) itemized appraisal. If you fail to do so, you will forfeit your right to contest in arbitration any actual repair costs incurred by the (HOLDER) for excess wear and damage; however, you do not forfeit your right to contest the existence of any item or whether the wear is excessive in nature."

(iii) The itemized bill shall also notify lessees of their material rights and obligations for dispute resolution in arbitration.

(b) Itemized appraisal. (i) A holder who imposes a charge for excess wear and damage to the vehicle shall send by registered mail or hand-deliver, within thirty days after the date on which the vehicle comes into actual physical possession of the holder, a written itemized appraisal prepared by an appraiser licensed under section three hundred ninety-eight-d of the vehicle and traffic law. The appraisal shall be dated, signed by the holder or its agent, and identify by type each item of excess wear and damage.

(ii) The following notice shall be included at the beginning of the itemized appraisal prepared on behalf of the holder and furnished to the lessee,

> "ALL ITEMS OF DAMAGE FOR WHICH A CHARGE FOR EXCESSIVE WEAR OR DAMAGE WILL BE CLAIMED BY THE HOLDER MUST BE NOTED IN THIS APPRAISAL. IF YOU DISPUTE THE EXISTENCE OR NATURE OF ANY ITEM OF DAMAGE IDENTIFIED IN THIS NOTICE, YOU MAY SUBMIT THE DISPUTE TO THE ALTERNATE ARBITRATION MECHANISM ESTABLISHED UNDER REGULATIONS PROMULGATED BY THE NEW YORK STATE ATTORNEY GENERAL."

4. (a) The itemized bill and appraisal required by subdivision three

of this section may be combined into a single document. Mere acknowledgement by the lessee of receipt of an itemized bill, an appraisal, or a combination of the two shall not operate as an admission of the existence, nature or amount of any of the items therein.

(b) (i) The holder shall grant the lessee access to the vehicle at a reasonable time and place in order for the lessee to obtain an itemized appraisal on the lessee's own behalf. The holder shall not be required, however, to deliver the vehicle to, or produce the vehicle at, a destination designated by the lessee for such purpose.

(ii) A holder may not fail to provide, either intentionally or by actions or omissions, reasonable access to the vehicle by the licensed appraiser chosen by the lessee within the period during which a lessee must obtain and submit an appraisal. If the holder fails to so provide reasonable access to the vehicle, the holder shall be deemed to have forfeited its contractual right to charge, receive or collect any charge for excessive wear and damage to the vehicle from the lessee.

(c) A lessor or holder of a retail lease agreement shall not report an unsatisfied claim for excess wear and damage to a credit reporting agency as a derogatory item of information until: (i) the expiration of the time granted under article seventy-five of the civil practice law and rules for the filing of a petition to vacate or modify an arbitrator's award; (ii) the issue has been a subject of a final judgment; or (iii) where the holder and the lessee execute a settlement, thirty days after the date a payment is due under the settlement if no payment has been made.

5. (a) Arbitration and enforcement. If a holder has established or participates in an informal dispute settlement procedure which is consistent in all respects with the provisions of part seven hundred three of title sixteen of the code of federal regulations, any dispute, disparity or conflict between any appraisal report prepared by an appraiser licensed by the state department of motor vehicles on behalf of the holder and one prepared on behalf of the lessee shall be decided by such informal dispute settlement procedure. Holders utilizing informal dispute settlement procedures pursuant to this subdivision shall insure that the arbitrators participating in such informal dispute settlement procedures are familiar with the provisions of this section.

(b) Upon the payment of a prescribed filing fee, a consumer shall have the option of submitting any dispute arising under this section to an alternate arbitration mechanism established pursuant to regulations to be promulgated hereunder by the attorney general. Upon application of the consumer and payment of the filing fee, the holder shall submit to such alternate arbitration. Such alternate arbitration shall be conducted by a professional arbitrator or arbitration firm appointed by and under regulations established by the attorney general. Such alternate arbitration mechanism shall ensure the personal objectivity of its arbitrators and the right of each party to present its case, to be in attendance during any presentation made by the other party and to rebut or refute such presentation. In all other respects, such alternate arbitration mechanism shall be governed by article seventy-five of the civil practice law and rules. Holder or lessee shall have thirty days from the date of mailing of a copy of the arbitrator's decision to such holder or lessee to comply with the terms of such decision.

(c) In no event shall any person who has participated in an informal dispute settlement procedure be precluded from seeking the rights or remedies available to such person under applicable law.

(d) Nothing in this section shall be deemed to prohibit: (i) the holder and the lessee from agreeing upon termination of the agreement to the payment by the lessee, in satisfaction of his or her obligation under the provisions of the agreement, of an amount which the lessor and the lessee agree is a reasonable figure to compensate for damage to the vehicle; (ii) the holder from retaining any portion of a security deposit in satisfaction of amounts owed to the holder that are not attributable to excess wear and tear; or (iii) to restrict or otherwise regulate the assessment of charges for excess mileage.

§ 344. Cancellation of agreement. After the payment of all sums for which the lessee is obligated under a retail lease agreement, and upon written demand made by the lessee, the holder of such agreement shall mail to the lessee at his or her last known address good and sufficient documentation to indicate payment in full. This documentation shall not operate to release the lessee from liability for events discovered by the holder subsequent to the mailing of such documentation.

§ 345. Renegotiations and extensions. 1. A renegotiation is a new lease which is subject to the disclosure requirements of section three hundred thirty-seven of this article.

2. The disclosure requirements of section three hundred thirty-seven of this article are not applicable to any extension of a retail lease agreement. An extension of a retail lease agreement need not be signed contemporaneously by the holder and the lessee if the extension is transacted by mail, is for a period of twenty-four months or less and is first signed by the holder prior to signature by the lessee.

§ 346. Penalties. 1. A lessee who has suffered a loss due to a violation of any provision of this article by a lessor or holder is entitled to recover his or her actual damages from the lessor or holder.

2. Any lessor who fails to refund any payment made pending the execution of a retail lease agreement within the time required by subdivision one of section three hundred thirty-four of this article shall be liable to the lessee for twice the amount of the payment not refunded within the time required.

3. Any lessor who fails to return a vehicle which the lessee left with the lessor pending the execution of a retail lease agreement, or who sells or transfers such a vehicle contrary to the provisions of subdivision three of section three hundred thirty-four of this article, shall be liable to the lessee for the value of the vehicle traded-in and all costs and expenses incurred by the lessee because of the loss of the vehicle.

4. In an action in which it is determined that a lessor or holder has violated this article, the court shall award to the lessee a civil penalty of one hundred dollars.

5. (a) In an action in which it is determined that a lessor or holder

has violated this article, the court also shall award to the lessee the costs of the action and to his or her attorneys their reasonable fees. In determining the award of attorney's fees, the amount of the recovery on the behalf of the lessee is not controlling.

(b) In an action for the recovery of an amount claimed for excess wear and tear, the court shall award to the lessee the costs of the action and to his or her attorneys their reasonable fees if the holder is awarded an amount less than an amount that the lessee offered, in writing and prior to the institution of the action, to pay in satisfaction of the contested portion of the amount claimed for excess wear and tear.

6. A violation of subdivision fourteen of section three hundred thirty-seven of this article is a deceptive trade practice under section three hundred forty-nine of the general business law.

7. Whenever there shall be a violation of this article an application may be made by the attorney general in the name of the people of the state of New York to a court or justice having jurisdiction by a special proceeding to issue an injunction, and upon notice to the defendant of not less than five days, to enjoin and restrain the continuance of such violations; and if it shall appear to the satisfaction of the court or justice that the defendant has, in fact, violated this section, an injunction may be issued by the court or justice, enjoining and restraining any further violations, without requiring proof that any person has, in fact, been injured or damaged thereby. In any such proceeding, the court may make allowances to the attorney general as provided in paragraph six of subdivision (a) of section eighty-three hundred three of the civil practice law and rules, and direct restitution. Whenever the court shall determine in any such proceeding that a violation of this section has occurred, the court may impose a civil penalty of not more than five hundred dollars for each violation. In connection with any such proposed application the attorney general is authorized to take proof and make a determination of the relevant facts and to issue subpoenas in accordance with the civil practice law and rules.

8. (a) Notwithstanding the provisions of this section, and except as provided in subdivisions two and three of this section, any failure to comply with the substantive provisions of this article may be corrected within sixty days after the holder is notified thereof in writing by the lessee or, in the absence of such notice, the lessor or holder may voluntarily correct any such failure to comply and, if so corrected, neither the lessor nor the holder shall be liable to a lessee for any penalty under this section. Within sixty days after discovering a violation of the disclosure provisions of this article, and prior to the institution of an action under this section or the receipt of written notice of the violation from the lessee, the lessor or holder may correct the disclosure violation and, if so corrected, neither the lessor nor the holder shall be subject to any penalty under this section.

(b) Nothing in this subdivision shall be construed so as to nullify or impair the right of the attorney general to proceed, under subdivision seven of this section or subdivision twelve of section sixty-three of the executive law, against a lessor or holder who has violated this article.

9. A lessor or holder may not be held liable in an action brought under this article for a violation of this article that was unintentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid any such error. Examples of a bona fide error include, but are not limited to, clerical, calculation, computer malfunction and programming, and printing errors, except that an error of legal judgment with respect to a person's obligations under this article is not a bona fide error.

10. An action shall not be brought under this article more than four years after the occurrence of the act, method or practice which is the subject of the action or more than one year after the last payment in a transaction involving the method, act or practice which is the subject of the action, whichever is later.

§ 347. Liability of assignees. Except where the assignment is involuntary or as otherwise specifically provided in this article, any civil action for a violation of this article which may be brought against a lessor may be maintained against any subsequent assignee of the lessor only if the violation for which the action or proceeding is brought is apparent on the face of the lease application or the retail lease agreement. For purposes of this section, a violation is apparent on the face of these documents if:

1. The agreement contains a disclosure which can be determined to be incomplete or inaccurate from the face of the agreement or other documents assigned; or

2. The agreement or application either contains a prohibited provision or does not contain the notices, legend or items required by this article.

§ 348. Transactions subject to article by agreement. Parties to a motor vehicle lease agreement that is not a retail lease agreement, as defined in subdivision five of section three hundred thirty-one of this article, because the vehicle is not being leased by a natural person primarily for personal, family or household use may agree in a writing signed by them that the agreement is subject to this article. If the parties so agree, the agreement is a retail lease agreement for the purposes of this article.

§ 349. Applicability of certain provisions hereof to retail lease of a motor vehicle for any use. The provisions of subdivision one of section three hundred thirty-five, section three hundred thirty-six and subdivision eleven of section three hundred thirty-seven of this article shall apply to a retail lease of a single motor vehicle for any use.

§ 350. Waiver void. Any waiver of the provisions of this article by the lessee shall be unenforceable and void.

§ 351. Supplementary general principles of law applicable. Unless displaced by the particular provisions of this article, other statutes of this state applicable to personal property leases and the principles of law and equity, including the law relative to capacity to contract, principal and agent, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy, or other validating or invalidating cause supplement its provisions. In the event of an inconsistency between another statute of this state applicable to personal property leases and this article, the provisions of this article shall control.

§ 352. Construction against implicit repeal. This article being a general act intended as a unified coverage of its subject matter, no part of it shall be construed to be impliedly repealed by subsequent legislation if that construction can reasonably be avoided.

§ 353. Severability. If any provision of this article or the application thereof to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of this article which can be given effect without the invalid provision or application, and to this end the provisions of this article are severable.

ARTICLE 10

RETAIL INSTALMENT SALES ACT

§ 401. Definitions. In this article, unless the context or subject matter otherwise requires:

1. "Goods" means all chattels personal, other than things in action or money, sold for other than a commercial or business use or for purpose of resale. The term includes goods which, at the time of the sale or subsequently, are to be so affixed to realty as to become a part thereof whether or not severable therefrom, but does not include a motor vehicle as defined in article nine or nine-A of this chapter, nor any goods sold or leased with such a vehicle if they are sold under a retail instalment contract governed by article nine of this chapter or leased under a retail lease agreement governed by article nine-A of this chapter.

In the case of a retail instalment credit agreement, the term also includes all chattels personal, other than things in action or money, sold for a commercial or business use.

2. "Services" means: (a) In the case of a retail instalment contract, work, labor and services furnished, or agreed to be furnished, for other than a commercial or business use, in the delivery, installation, servicing, repair or improvement of goods or repairs, alterations or improvements upon or in connection with real property, except that such services shall not mean or include any services sold in connection with the sale or lease of a motor vehicle which is evidenced by a retail instalment contract governed by article nine of this chapter or a retail lease agreement governed by article nine-A of this chapter;

(b) In the case of a retail instalment obligation, services of any kind furnished or rendered or agreed to be furnished or rendered, for other than a commercial or business use, except that such services shall not mean nor include (1) services for which the tariffs or the rates, charges, cost or expense is required by law to be filed with or determined or approved by the state or federal government or any official department, division, commission or agency of the state of New York or of the United States, or (2) services by an institution of the university of the state of New York, an elementary school which provides the education required by the state of New York, a nursery school or a kindergarten; and

(c) In the case of a retail instalment credit agreement, services of any kind rendered or furnished or agreed to be rendered or furnished by a retail seller; and, in the case of a retail instalment credit agreement entered into under paragraph (b) of subdivision eleven of section four hundred thirteen of this chapter, a contract or contracts of insurance issued to a retail buyer.

3. "Retail seller" or "seller" means a person who sells goods or furnishes or renders or agrees to furnish or render services to a retail buyer. The term includes the lessor under a lease of a department in a shop, store or other establishment if the lessor is liable to customers in respect to goods sold or services furnished or rendered by the leased department and the other operations thereof.

4. "Retail buyer" or "buyer" means a person who buys goods or obtains services from a retail seller. When used in subdivision eleven of section four hundred thirteen of this chapter, the term also means any person who is liable for the payment of a fine, tax, civil penalty, rent, rate, fee, charge, revenue, financial obligation or other amount, including a penalty, special assessment or interest, to a municipal corporation or the New York city water board, and any person who is liable for the payment of any fee, rate, rent or other charge of the White Plains parking authority.

5. "Retail instalment sale" or "sale" means a sale of goods, or the furnishing or rendering of services, or an agreement to furnish or render services, by a retail seller to a retail buyer for a time sale price payable in instalments.

6. "Retail instalment contract" or "contract" means an agreement entered into in this state, pursuant to which the title to, the property or a security interest in or a lien upon goods, which are the subject matter of a retail instalment sale, is retained or taken by a retail seller from a retail buyer as security, in whole or in part, for the buyer's obligation. The term includes such an agreement wherever entered into if executed by the buyer in this state and if solicited in person by a salesman or other person acting on his own behalf or that of the seller. The term also includes a contract whereby a security interest in favor of the seller is created or retained and a contract for the bailment or leasing of goods by which the bailee or lessee contracts to pay as compensation for their use a sum substantially equivalent to or in excess of their value and by which it is agreed that the bailee or lessee is bound to become, or has the option of becoming, the owner of the goods upon full compliance with the terms of the contract. The term does not include a contract 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".

7. "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 includes such an agreement wherever entered into if executed by the buyer in this state and if solicited in person by a salesman or other person acting on his own behalf or that of the seller. The term does not include (a) a retail instalment contract, (b) a retail instalment credit agreement, or (c) an obligation which is intended to be and is ultimately insured or guaranteed until title three of the act of Congress entitled "Servicemen's Readjustment Act of 1944".

8. "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 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, or merchandise certificates to be used solely in exchange for goods and services with a cash sale price in the face amount of such certificates and not redeemable in cash, whenever purchased or obtained, which provides for a service charge and under which instalment payments apply to his 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 person by a salesman or other person acting on his own behalf or that of the seller. The term also includes a retail instalment credit agreement entered into by a financing agency with a retail buyer as provided in subdivision eleven of section four hundred thirteen of this article.

8-a. "Retail instalment note" or "note" means a promissory note required by the provision of a retail instalment obligation and conforming to the requirements of subdivision two of section four hundred three of this article.

9. "Cash sale price" means the cash sale price stated in a retail instalment contract or obligation for which the seller would sell or furnish to the buyer and the buyer would buy or obtain from the seller the goods or services which are the subject matter of a retail instalment contract or obligation if the sale were a sale for cash instead of a retail instalment sale. The cash sale price may include any

taxes and cash sale prices for accessories and services, if any, included in a retail instalment sale.

10. "Time sale price" means the total of the cash sale price of the goods or services and the amounts, if any, included for insurance, official fees and credit service charge.

11. "Credit service charge" means that part of the entire amount agreed to be paid for the goods or services which exceeds the aggregate of the cash sale price thereof and the amounts, if any, included in a retail instalment sale for insurance and official fees.

12. "Service charge" means all charges incident to investigating and making a retail instalment credit agreement and for the extension of credit thereunder.

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

14. "Time balance" means the total of the principal balance and the amount of the credit service charge, if any.

15. "Holder" means the retail seller who acquires a retail instalment contract, obligation or credit agreement, or note, executed, incurred or entered into by a retail buyer, or if the contract, obligation, credit agreement or note is purchased by a financing agency or other assignee or endorsee, the financing agency or other assignee or endorsee.

16. "Official fees" means the fees or taxes required by law and actually to be paid to the appropriate public officer to perfect the lien or other security interest, on or in goods, retained or taken by a seller under a retail instalment contract or to record a mortgage on real property taken by a seller or holder to secure a retail instalment contract or obligation or note.

17. "Person" means an individual, partnership, corporation, association or other group, however organized.

18. "Financing agency" means a person engaged in this state, in whole or in part, in the business of purchasing retail instalment contracts, obligations or credit agreements or indebtedness of buyers under credit agreements from one or more retail sellers or entering into credit agreements with retail buyers as provided in subdivision eleven of section four hundred thirteen of this article but shall not include a retail seller. The term includes but is not limited to a bank, trust company, savings bank, savings and loan association, private banker or investment company, if so engaged, but shall not include a retail seller.

19. Words in the singular include the plural and vice versa.

20. "Boat" shall mean any vessel or craft designed to transport persons or cargo on the water surface.

21. "New York city water board" means the public benefit corporation established pursuant to section one thousand forty-six of the public authorities law.

22. "Municipal corporation" means a local government, as that term is defined in section ten of the general municipal law.

23. "White Plains parking authority" means the corporation created by section one thousand four hundred twenty-seven of the public authorities law.

§ 402. Provisions of retail instalment contracts and obligations. 1. A retail instalment contract or obligation shall be dated and in writing; the printed portion thereof shall be in at least eight point type.

2. A contract or obligation shall contain the entire agreement of the

parties with respect to the goods and services, including any promise, whether made in writing or orally, by the seller, made as an inducement to the buyer to become a party to the contract or which is part of the contract or which is made incidental to negotiations between the seller and the buyer with respect to the sale of the goods or services that are the subject of the contract, that the seller will compensate the buyer for referring customers or prospective customers to the seller for goods or services which the seller has for sale or for referring the seller to such customers or prospective customers. In any case in which, pursuant to the preceding provisions, the contract contains a promise to compensate the buyer for referring customers or prospective customers to the seller or the seller to such customers, the contract must contain a provision to the effect that the amount otherwise owing under the contract at any time is reduced by the amount of compensation owing pursuant to such promise, and:

(a) Both at the top of the contract or obligation and directly above the space reserved for the signature of the buyer, the words RETAIL INSTALMENT CONTRACT or RETAIL INSTALMENT OBLIGATION, as the case may be, in at least ten point bold type; and

(b) Either a notice in at least eight point bold type reading as follows: NOTICE TO THE BUYER: 1. Do not sign this agreement before you read it or if it contains any blank space. 2. You are entitled to a completely filled in copy of this agreement. 3. Under the law, you have the right to pay off in advance the full amount due and under certain conditions to obtain a partial refund of the credit service charge or a notice in at least eight point bold type reading as follows: NOTICE TO THE BUYER: 1. Do not sign this agreement before you read it or if it contains any blank space. 2. You are entitled to a completely filled in copy of this agreement. 3. Under the law, you have the right to pay off in advance the full amount due. If you do so, you may, depending on the nature of the credit service charge, either: (a) prepay without penalty, or (b) under certain circumstances obtain a rebate of the credit service charge.

3. A contract or obligation shall:

(a) Contain the names of the seller and the buyer, the place of business of the seller, the residence or place of business of the buyer as specified by the buyer and an adequate description of the services and goods (including the make and model, if any, in the case of goods customarily sold by make and model); and

(b) Set forth the following items:

(1) All items required to be disclosed by the act of congress entitled "Truth in Lending Act" and the regulations thereunder, as such act and regulations may from time to time be amended;

(2) If any instalment substantially exceeds in amount any prior instalment other than the down-payment, contain the following legend printed in ten point bold type or typewritten: THIS CONTRACT IS NOT PAYABLE IN INSTALMENTS OF EQUAL AMOUNTS: followed, if there be but one larger instalment, by: AN INSTALMENT OF $..........WILL BE DUE ON ....or, if there be more than one larger instalment, by: LARGER INSTALMENTS WILL BE DUE AS FOLLOWS.........(insert the amount or amounts of every larger instalment and its due date.) In the case of a retail instalment obligation, OBLIGATION shall be substituted for CONTRACT in the required legend. If the credit service charge with respect to the contract or obligation is calculated pursuant to subdivision four of section four hundred four of this article, the disclosure provided for in this subparagraph may be omitted.

4. No contract or obligation shall be signed by the buyer when it contains blank spaces to be filled in after it has been signed; however, if delivery of the goods is not made at the time of the execution of the contract or obligation and it so provides, the identifying numbers or marks of the goods and the due date of the first instalment may be left blank and later inserted by the seller in the seller's counterpart of the contract or obligation after it has been signed by the buyer.

5. If the cost of any credit unemployment, group credit life or other insurance is included in the contract or obligation and a separate charge is made to the buyer for such insurance:

(a) The contract or obligation shall state whether the insurance is to be procured by the buyer or the seller;

(b) The amount, if any, so included for such insurance, shall not exceed the premiums chargeable in accordance with rate filings made with the superintendent of financial services for such insurance by the insurer; and, if such group credit life or other insurance is cancelled, the refund for unearned insurance premiums received or receivable by the holder of the contract, or the excess of the amount included in the contract for group credit life insurance over the premiums paid or payable by the holder of the contract therefor, together with, in either case, the unearned portion of the credit service charge applicable thereto, shall be credited to the final maturing instalments of the retail instalment contract, provided that no such credit need be made if the amount thereof would be less than one dollar; and

(c) If the insurance is to be procured by the seller or holder, he shall, within thirty days after delivery of the goods or furnishing of the services under the contract or obligation, deliver, mail or cause to be mailed to the buyer, at his address as specified in the contract or obligation, a notice thereof or a copy of the policy or policies of insurance or a certificate or certificates of the insurance so procured.

6. A contract or obligation may provide for the payment by the buyer of a delinquency and collection charge on each instalment in default for a period of not less than ten days in an amount not in excess of the rate provided for in the contract or obligation on such instalment provided that only one such delinquency and collection charge may be collected on any such instalment regardless of the period during which it remains in default.

6-a. A provision in a contract or obligation which provides for the payment of attorney's fees or the costs of attorney's services incurred in a legal action or proceeding for collection shall be null and void.

6-b. A provision in a contract or obligation which provides for waiver of the right to impose any counterclaim or offset arising out of a breach of that contract or obligation by the seller shall be void and unenforceable.

7. All of the terms of an obligation need not be contained in a single document but if they are not then there shall be an original document executed by the parties containing provisions making it applicable to purchases of goods or services, which may not exceed a cash sale price

of one hundred seventy-five dollars on each purchase, to be made by the buyer from time to time from a retail seller, which document, together with other written statements relating to the sale of such goods or services shall constitute a retail instalment obligation and shall contain the entire agreement of the parties. In such cases, the original document shall contain those items required to be disclosed by the act of congress entitled "Truth in Lending Act" and the regulations thereunder, as such act and regulations may from time to time be amended and shall further contain:

(i) a legend as provided in paragraph (a) of subdivision two hereof,

(ii) a notice to the buyer as provided in paragraph (b) of subdivision two hereof,

(iii) the names of the seller and the buyer,

(iv) the place of business of the seller and the residence or place of business of the buyer as specified by the buyer,

(v) the number of instalment payments, and

(vi) the amount or rate of the credit service charge applicable to purchases thereunder.

At the time of each purchase under such document, the seller shall give the buyer statements which shall contain at the top thereof a legend in at least eight-point bold type: PART OF A RETAIL INSTALMENT OBLIGATION and an adequate description of the goods, accessories and services sold or furnished (including the make and model, if any, in the case of goods customarily sold by make and model) and shall further contain those items required to be disclosed by the act of congress entitled "Truth in Lending Act" and the regulations thereunder, as such act and regulations may from time to time be amended. If the seller does not deliver to the buyer at the time of each purchase under such original document a statement in compliance with the act of congress entitled "Truth in Lending Act" and the regulations thereunder, as such act and regulations may from time to time be amended, the seller shall promptly thereafter, and in any event within ten days from the date of such purchase, deliver, mail or cause to be mailed to the buyer at his address shown on the seller's records, such statement. Unless the seller does so, the buyer shall have an unconditional right to cancel such purchase and to receive an immediate refund of any payments made and re-delivery of all goods traded in to the seller on account of or in contemplation of such purchase; upon the written request of the buyer the seller shall prove the accuracy of the calculations in such statement.

Such statement with respect to the first such purchase shall, combined with the original document, constitute the obligation for such purchase; and, on each succeeding purchase pursuant to such original document, the obligation therefor as represented by such original document and such statement shall constitute a subsequent obligation under section four hundred ten.

§ 402A. Merchandise certificates and obligations therefor. 1. A retail seller may issue merchandise certificates to a retail buyer, to be paid for in instalments and to be used solely in exchange for goods and services with a cash sale price in the face amount of such certificates and not redeemable in cash, pursuant to a document executed by the parties as hereinafter provided, which document, notwithstanding the definition of obligations contained in subdivision seven of section four hundred one, shall constitute a retail instalment obligation for the purpose of this article, shall contain the entire agreement of the parties, and shall be subject to all of the provisions of sections four hundred three to four hundred twelve, inclusive, except the provisions of the second sentence of section four hundred five.

2. On each issue of merchandise certificates, the document evidencing the obligation therefor shall set forth a legend as provided in paragraph (a) of subdivision two of section four hundred two, a notice to the buyer as provided in paragraph (b) of subdivision two of section four hundred two, the names of the seller and the buyer, the residence or place of business of the buyer as specified by the buyer, the face amount of the merchandise certificates issued, and all items required to be disclosed by the act of congress entitled "Truth in Lending Act" and the regulations thereunder, as such act and regulations may from time to time be amended.

3. A seller may, in such a document, contract for and, if so contracted for charge, receive and collect a credit service charge at rates not exceeding those provided under section four hundred four of this article. Such credit service charge shall be computed on the face amount of merchandise certificates issued to the buyer, less down-payment, if any.

4. The buyer shall have the right to return to the seller at any time all merchandise certificates which have not been exchanged for goods and services, and the seller shall thereupon credit the buyer with the full face amount of such unused merchandise certificates returned and the amount of the pro rata credit service charge thereon, which shall be computed as of the date of issuance of the merchandise certificates so returned. Where the amount of the refund of such credit charge is less than one dollar no refund need be made.

5. (a) Merchandise certificates issued under this section or the cover of the booklet in which they are bound, shall bear:

(i) A legend in at least eight-point bold type stating that the buyer may return unused merchandise certificates so purchased at any time and that the seller will give the buyer credit for the full face amount of any certificates so returned and credit for the pro rata credit service charge if the same is one dollar or more;

(ii) A legend in at least eight point bold type reading substantially as follows: If you wish to purchase, with merchandise certificates a single item of goods or services of greater value than the merchandise certificates you now hold, you may save credit service charge by returning your unused merchandise certificates for credit and purchasing new certificates; and

(iii) In the event the statements required by subparagraphs (i) and (ii) hereof are set forth on the cover of a booklet in which the merchandise certificates are bound, each certificate shall bear a notice, "NOT GOOD IF DETACHED".

(b) If a retail seller issues merchandise gift certificates to a retail buyer to be paid for in instalments (1) in good faith, and (2) in reliance upon a retail buyers statement that the buyer intends to transfer it to another as a gift, then such certificate need not set forth the legends required by subparagraphs (i) and (ii) above; provided the certificate shall bear the legend "GIFT CERTIFICATE" and the seller shall give the buyer at the time of issuance of such certificate a statement, or facsimile of such certificate, which shall identify such certificate, and shall contain the legend required by subparagraphs (i) and (ii) above.

6. Notwithstanding the provisions of subdivision three of section four hundred three of this article, the buyer shall have the right to return to the holder of a retail instalment obligation executed on or after October first, nineteen hundred sixty-two, for merchandise certificates, at any time all merchandise certificates which have not been exchanged for goods and services, and the holder shall thereupon credit to the obligation to the extent of the amount owing by the buyer thereon the full face amount of such unused merchandise certificates returned and the amount of the pro rata credit service charge thereon, which shall be computed as of the date of issuance of the merchandise certificates so returned. Where the amount of the refund of such credit service charge is less than one dollar no refund need be made.

§ 402B. Total loss notice and waiver of the gap amount. 1. If the retail instalment contract provides that the buyer shall be responsible upon a total loss of the goods occasioned by theft, confiscation or physical damage for the gap amount as defined in paragraph fifty-two of subsection (a) of section one hundred seven of the insurance law, the holder, prior to the execution of the contract, shall by a notice on a separate document conspicuously disclose that fact and the obligations for which the buyer would remain liable in the event of a theft, confiscation or total loss of the goods. If the holder is required under subdivision two of this section to offer to waive its contractual right to hold the buyer liable for the gap amount in the event of a total loss of the goods occasioned by theft or physical damage, the notice shall also: (a) state that for a separate charge disclosed in the notice the holder will waive its contractual right to hold the buyer liable for the gap amount in the event of a total loss of the goods occasioned by theft or physical damage; (b) contain a provision informing the buyer that he or she may, as an alternative to purchasing a waiver, be able to purchase insurance covering the gap amount from an insurance company which has been licensed by the superintendent of financial services to write non-motor vehicle debtor gap insurance in this state; and (c) contain a provision permitting the buyer to indicate whether he or she wants the holder to waive its contractual right to hold the buyer liable for the gap amount in the event of a total loss of the goods occasioned by theft or physical damage. The notice shall be signed by the buyer. The holder shall provide a copy of the signed notice to the buyer and shall maintain a copy in the holder's files for at least the term of the contract. Failure to provide the notice and to obtain the buyer's signature as required by this subdivision shall invalidate any provision of the agreement which otherwise would obligate a buyer to pay to the holder, after a total loss of the goods occasioned by theft, confiscation or physical damage, the gap amount. No retail instalment contract shall be conditioned upon the buyer's obtaining of non-motor vehicle debtor gap insurance as set forth in subparagraph (D) of paragraph twenty-six of subsection (a) of section one thousand one hundred thirteen of the insurance law.

2. If the retail instalment contract provides that the buyer shall be responsible upon a total loss of the goods occasioned by theft or physical damage for the gap amount, the holder, prior to the execution of the contract, shall offer to waive its contractual right to hold the buyer liable for the gap amount in the event of a total loss of the goods occasioned by theft or physical damage, only if non-motor vehicle creditor gap insurance coverage is available to the holder and such coverage is obtained from a property/casualty insurance company, which has been licensed by the superintendent of financial services of this state to write non-motor vehicle creditor gap insurance in this state. This offer may be made contingent upon the payment by the buyer of a separate charge that shall not exceed the cost of non-motor vehicle creditor gap insurance covering the retail instalment contract. Nothing contained in this section shall be construed to authorize a waiver, in connection with a transaction with respect to which non-motor vehicle creditor gap insurance has not been obtained, of a contractual right to hold the buyer liable for the gap amount in the event of a total loss of

the goods occasioned by theft or physical damage.

3. A holder shall not be obligated under subdivision two of this section to offer to waive its contractual right to hold the buyer liable for the gap amount if, during the current calendar year or during the odd-numbered calendar year immediately preceding the calendar year in which the agreement is entered into, the holder has received non-motor vehicle creditor gap insurance declination notices or other evidence of unavailability from every insurance company whose name appears on the department of financial services compilation of insurance companies which during that calendar year were authorized to write non-motor vehicle creditor gap insurance in this state. Evidence of these declinations shall be retained by such a holder for a period of six years after the expiration of the calendar year in which they were issued.

4. In order to enable holders to comply with the requirements imposed by subdivision two of this section, the superintendent of financial services shall compile and make available a periodically updated list of those insurance companies which are authorized to write non-motor vehicle creditor gap insurance coverage in this state.

5. Nothing in this section shall be construed to apply to the holder under a retail instalment contract under which the buyer is not liable upon a total loss of the goods occasioned by theft, confiscation or physical damage for the gap amount.

§ 403. Restrictions on retail instalment contracts and obligations.
1. No contract or obligation shall require or entail the execution of any note or series of notes by the buyer, which when separately negotiated, will cut off as to third parties any right of action or defense which the buyer may have against the seller.

2. No contract or obligation shall contain any provision by which:
(a) The buyer agrees not to assert against an assignee a claim or defense arising out of the sale, but it may contain such a provision as

to an assignee who acquires the contract or obligation on the sale of a boat, where the principal balance at the time of sale exceeds five thousand dollars, and to whom the buyer has not mailed written notice of the facts giving rise to the claim or defense within ten days after such assignee mails to the buyer, at his address shown on the contract or obligation, notice of the assignment, indicating or containing in the notice or in an enclosure with the notice: the name and address of the assignee, the names of the seller and the buyer and a description of the boat which is the subject matter of the contract or obligation (including the make and model), the time balance of the contract, the number and amount of installments in which the time balance is payable and the due date or period thereof, together with the following legend printed or typewritten in a size equal to at least eight point bold type:

NOTICE:

1. IF THE WITHIN STATEMENT OF YOUR TRANSACTION WITH THE SELLER IS NOT CORRECT IN EVERY RESPECT, OR

2. IF THE BOAT DESCRIBED IN OR IN AN ENCLOSURE WITH THIS NOTICE HAS NOT BEEN DELIVERED TO YOU BY THE SELLER OR IS NOT NOW IN YOUR POSSESSION, OR

3. IF THE SELLER HAS NOT FULLY PERFORMED ALL OF HIS AGREEMENTS WITH YOU: YOU MUST NOTIFY THE ASSIGNEES IN WRITING AT THE ADDRESS INDICATED IN OR IN AN ENCLOSURE WITH THIS NOTICE WITHIN TEN DAYS FROM THE DATE OF THE MAILING OF THIS NOTICE, OTHERWISE, YOU WILL LOSE YOUR RIGHT TO ASSERT AGAINST THE ASSIGNEE ANY RIGHT OF ACTION OR DEFENSE ARISING OUT OF THE SALE WHICH YOU MIGHT OTHERWISE HAVE AGAINST THE SELLER.

(b) In the absence of the buyer's default, the holder may, arbitrarily and without reasonable cause, accelerate the maturity of any part or all of the amount owing thereunder.

(c) A power-of-attorney is given to confess judgment in this state, or an assignment of wages is given.

(d) The seller or holder of the contract or obligation or other person acting on his behalf is given authority to enter upon the buyer's premises unlawfully or to commit any breach of the peace in the repossession of goods.

(e) The buyer waives any right of action against the seller or holder of the contract or obligation, or other person acting on his behalf, for any illegal act committed in the collection of payments under the contract or obligation or in the repossession of goods.

(f) The buyer executes a power-of-attorney appointing the seller or holder of the contract or obligation, or other person acting on his behalf, as the buyer's agent in collection of payments under the contract or obligation or in the repossession of goods; provided, however, that this paragraph shall not prohibit the inclusion in a contract or obligation of a limited power of attorney or other provision authorizing the holder to execute in the name of the buyer any proofs of insurance claims or losses or to endorse the name of the buyer on any insurance settlement draft or check.

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

(h) The buyer waives any right to a trial by jury in any action or proceeding arising out of the contract or obligation.

Any such prohibited provision shall be void but shall not otherwise affect the validity of the contract or obligation.

3. No retail instalment contract shall contain any provision by which the maturity of any part or all of the amount owing thereon is accelerated where, following a default consisting solely of the failure to make timely instalment payments and the subsequent repossession of the goods, the buyer makes timely tender of an amount which would be sufficient to redeem the goods in the absence of such provision.

4. Except as provided in paragraph (a) of subdivision two of this section, the assignee of a retail installment contract or obligation shall be subject to all claims and defenses of the buyer against the seller arising from the sale notwithstanding any agreement to the contrary, but the assignee's liability under this subdivision shall not

exceed the amount owing to the assignee at the time the claim or defense is asserted against the assignee.

§ 404. Credit service charge limitation. 1. A seller may, in a retail instalment contract or obligation, contract for and, if so contracted for, the holder thereof may charge, receive and collect a credit service charge computed on the principal balance of the contract or obligation from the date thereof to and including the date when the final instalment is payable, at the rate or rates agreed to by the buyer.

2. Except as provided in subdivision three of this section, such credit service charge shall be computed on the principal balance on contracts or obligations payable in successive monthly instalments substantially equal in amount for a period of one year. On contracts or obligations providing for instalments extending for a period less than or greater than one year, the credit service charge shall be computed proportionately.

3. When a retail instalment contract or obligation provides for unequal or irregular instalments, the credit service charge shall be at the effective rate provided for in subdivision one of this section, having due regard for the schedule of instalments.

4. As an alternative to the credit service charge provided for above, a seller may, in a retail instalment contract or obligation, contract for and, if so contracted for, the holder may charge, receive and collect a credit service charge calculated on the unpaid principal balances of the contract for the time each is outstanding, according to a generally accepted actuarial method at rates that may vary from time to time and in accordance with the provisions of the contract or obligation. On any contract or obligation with a variable rate credit service charge made pursuant to this subdivision, each rate shall be determined at regular intervals as set forth in the contract or obligation and in accordance with such regulations as the superintendent of financial services shall prescribe but said rate shall not vary more often than once in any three month period and shall be based on a

published index that is (a) readily available, (b) independently verifiable, (c) beyond the control of the holder, and (d) approved by the superintendent.

The superintendent of financial services shall adopt regulations with respect to retail installment contracts or obligations that provide for a variable rate of credit service charge, including but not limited to: (a) providing for disclosure to the buyer by the holder of the circumstances under which the rate may increase, any limitations on the increase, the effect of an increase and an example of the payment terms that would result from an increase; (b) providing for disclosure to the buyer by the holder of a history of the fluctuations of the index over a reasonable period of time; and (c) providing for notice to the buyer from the holder prior to any rate increase or change in the terms of payment.

5. The credit service charge shall be inclusive of all charges incident to investigating and making the contract or obligation, and for the extension of the credit provided for in the contract or obligation, and no fee, expense or other charge whatsoever shall be taken, received, reserved or contracted for except as otherwise provided in this article.

§ 405. Delivery of copy of contract or obligation; buyer's acknowledgment. The seller shall deliver to the buyer, or mail to him at his address shown on the contract or obligation, an executed copy thereof. Until the seller does so, a buyer who has not received the goods or services shall have an unconditional right to cancel the contract or obligation and to receive immediate refund of all payments made and redelivery of all goods traded-in to the seller on account of or in contemplation of the contract or obligation. Any acknowledgment by the buyer of delivery of a copy of the contract or obligation shall be printed or written in a size equal to at least ten point bold type and, if contained in the contract or obligation, shall also appear directly above the space reserved for the buyer's signature. The buyer's written acknowledgment, conforming to the requirements of this section, of delivery of a copy of a contract or obligation shall be presumptive evidence of such delivery and of compliance with this section and subdivision four of section four hundred two in any action or proceeding by or against an assignee of the contract or obligation without knowledge to the contrary when he purchases the contract or obligation.

§ 406. Notice of assignment; payments. Unless the buyer has notice of actual or intended assignment of a contract, obligation, or credit agreement payment thereunder made by the buyer to the last known holder of such contract, obligation or credit agreement shall be binding upon all subsequent holders or assignees.

§ 407. Statements of account; receipts. At any time after its execution, but not later than one year after the last payment thereunder, the holder of a contract or obligation shall, upon written request of the buyer, give or forward to the buyer a written statement of the dates and amounts of payments and the total amount, if any, unpaid thereunder. Such a statement shall be supplied by the holder once each year without charge; if any additional statement is requested by the buyer, the holder shall supply such statement to the buyer at a charge not exceeding one dollar for each additional statement supplied to the buyer. A buyer shall be given a receipt for any payment when made in cash.

§ 408. Credit upon anticipation of payments. 1. Notwithstanding the provisions of any contract or obligation to the contrary, any buyer may pay it in full at any time before the maturity of the final instalment of the time balance thereof and if he does so shall receive and be entitled to receive a refund credit thereon and if the contract or obligation included an amount for group credit life insurance a further refund credit thereon for such anticipation, whether or not the maturity of the time balance of the contract was accelerated by the holder by reason of the buyer's default.

2. The amount of any such refund credit shall be determined according

to a generally acceptable actuarial method.

If the credit service charge imposed on the retail instalment contract or obligation is computed pursuant to subdivision four of section four hundred four of this article, the contract or obligation may be prepaid in full without penalty.

3. Where the amount of the credit for anticipation of payment is less than one dollar no refund need be made. Where the earned credit service charge amounts to less, there may be retained an amount equal to the minimum credit service charge applicable.

4. The amount of the further refund credit for group credit life insurance shall be equal to the excess of the amount included in the contract for group credit life insurance over the premiums paid or payable by the holder of the contract for such insurance, if such premiums were paid or payable periodically, or the refund for unearned group credit life insurance premium paid or payable in a lump sum, provided that no such further refund credit need be made if the amount thereof would be less than one dollar.

5. In the event (i) the maturity of a contract or obligation is accelerated due to the default of the buyer or otherwise and judgment is obtained, or (ii) repayment is made pursuant to group credit life insurance, the buyer or his legal representative, as the case may be, shall be entitled to the same refund credits as if the contract had been prepaid in full on the date of acceleration or repayment.

§ 409. Refinancing. 1. The holder of a retail instalment contract or obligation or note may, upon agreement with the buyer, extend the scheduled due date or defer the scheduled payment of all or of any part of any instalment or instalments payable thereunder. The agreement for such extension or deferment must be in writing and signed by the parties thereto. The holder may charge and contract for the payment of an extension or deferral charge by the buyer and collect and receive the same, at the rate or rates agreed to by holder and the buyer on the amount of the instalment or instalments, or part thereof, extended or deferred for the period of extension or deferral. Such period shall not exceed the period from the date when such extended or deferred instalment or instalments, or part thereof, would have been payable in the absence of such extension or deferral, to the date when such instalment or instalments, or part thereof, are made payable under the agreement of extension or deferment; except that a minimum charge of one dollar for the period of extension or deferral may be made in any case where the extension or deferral charge, when computed at such rate, amounts to less than one dollar. Such agreement may also provide for the payment by the buyer of the additional cost to the holder of the contract or obligation or note of premiums for continuing in force, until the end of such period of extension or deferral, any insurance coverages provided for in the contract or obligation, subject to the provisions of subdivision five of section four hundred two.

2. The holder of a retail instalment contract or obligation or note may, upon agreement in writing with the buyer, refinance the payment of the unpaid time balance of the contract or obligation or note by providing for a new schedule of instalment payments. The holder may charge and contract for the payment of a refinance charge by the buyer and collect and receive the same, but such refinance charge (1) shall be based upon the amount refinanced, plus any additional cost of insurance and of official fees incident to such refinancing, after the deduction of a refund credit in an amount equal to that to which the buyer would have been entitled under section four hundred eight if he had prepaid in full his obligations under the contract or obligation or note, but in computing such refund credit there shall not be allowed the minimum earned credit service charge as authorized by such section, and (2) may not exceed the rate of credit service charge provided under section four hundred four of this chapter. Such agreement for refinancing may also provide for the payment by the buyer of the additional cost to the holder of the contract or obligation or note of premiums for continuing in force, until the maturity of the contract or obligation or note as refinanced, any insurance coverages provided for therein, subject to the provisions of subdivision five of section four hundred two of this chapter. The refinancing agreement shall set forth all items required to

be disclosed by the act of congress entitled "Truth in Lending Act" and the regulations thereunder, as such act and regulations may from time to time be amended.

§ 410. Add-ons to and consolidations of retail instalment contracts and obligations. 1. A retail instalment contract or obligation which otherwise conforms to the requirements of this article may contain the promise or agreement of the buyer to pay in substantially equal periodic instalments the consolidated total of the principal balance thereof and the unpaid time balance or balances owing by the buyer under one or more previous contracts or obligations, together with a credit service charge; if it does so:

(a) The contract or obligation shall set forth all items required to be disclosed by the act of congress entitled "Truth in Lending Act" and the regulations thereunder, as such act and regulations may from time to time be amended.

(b) Subject to the provisions of section four hundred four and to the provisions of paragraph (c) of this subdivision, the credit service charge to be included in such consolidated total may equal but shall not exceed the larger of the amounts determined by applying the credit service charge at the rate or rates agreed to by the buyer:

(1) to the total of the principal balance of the subsequent contract or obligation and the principal balance of any previous contract or obligation included in the consolidated total determined by deducting from the then unpaid time balance thereof any then unearned credit service charge in an amount not less than the refund credit for anticipation provided for in section four hundred eight (computed, however, without the allowance of any minimum earned credit service charge), for the period from the date thereof to and including the date when the final instalment of such consolidated total is payable; or

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

unpaid on such previous contract or obligation from the date when the final instalment thereof was payable to the date when the final instalment of such consolidated total is payable.

(c) A consolidation of a retail instalment contract or obligation entered into after the effective date of this paragraph with a retail instalment contract or obligation entered into prior to the effective date of this paragraph shall be governed by the limitations on maximum credit service charges contained in subdivision one of this section and section four hundred four as they were in effect immediately prior to the effective date of this paragraph.

2. Where a buyer makes any subsequent purchase of goods under a contract from a seller from whom he had previously purchased goods under one or more contracts and the amounts due under such previous contract or contracts have not been fully paid, and where the total of the time balance of the subsequent contract and the unpaid time balances owing by the buyer under the previous contracts does not exceed three thousand dollars, such contract, if it otherwise conforms to the requirements of this article, may provide that the goods purchased under the previous contract or contracts shall be security for the goods purchased under the subsequent contract but only until such time as (a) the purchase price under the previous contract or contracts is fully paid, or (b) twenty per centum of the time sale price of the goods purchased under the subsequent contract has been paid, whichever event first occurs.

3. When such subsequent purchase is made, the entire amount of all payments made previous thereto shall be deemed to have been applied toward the payment of the previous purchase or purchases. Each payment thereafter received shall be deemed to be allocated to all of the various purchases in the same proportion or ratio as the original cash sale prices of the various purchases bear to one another; where the amount of each instalment payment is increased in connection with the subsequent purchase, the subsequent payments (at the seller's election) may be deemed to be allocated as follows: an amount equal to the original rate, to the previous purchase, and an amount equal to the increase, to the subsequent purchase. However the amount of any initial or down-payment on the subsequent purchase shall be deemed to be

allocated in its entirety to such purchase. The provisions of subdivisions two and three of this section shall not apply to cases involving equipment, parts or other merchandise attached or affixed to goods previously purchased or repairs or services rendered by the seller in connection therewith at the buyer's request.

§ 411. Terms of purchase by financing agency. Notwithstanding any contrary provision of the personal property law, lien law, banking law or other law:

1. A financing agency may purchase a retail instalment contract, obligation or credit agreement, or indebtedness of a buyer to be paid under a credit agreement, from a seller on such terms and conditions and for such price as may be mutually agreed upon; and

2. No filing of the assignment, no filing of any financing statement, no notice to the buyer of the assignment, and no requirement that the seller be deprived of dominion over payments upon the contract, obligation or credit agreement or over the goods if repossessed by or returned to the seller, shall be necessary to the validity of a written assignment of a contract, obligation or credit agreement, or indebtedness to be paid under a credit agreement, as against creditors, subsequent purchasers, pledgees, mortgagees or encumbrancers of the seller.

§ 412. Cancellation. After the payment of all sums for which the buyer is obligated under a contract or obligation, and upon written demand made by the buyer, the holder shall deliver, or mail to the buyer at his last known address, such one or more good and sufficient instruments as may be necessary to acknowledge payment in full and to release all security in the goods. This section does not repeal section seventy-two of this chapter or section two hundred thirty-eight of the lien law.

§ 412-a. Cancellation of contracts for future consumer services. 1.

Contract for future consumer services. As referred to in this section, the term "contract for future consumer services" shall mean any contract entered into for consumer services to be performed in the future on a lesson-by-lesson or class-by-class basis and offered, sold or provided by correspondence schools which for the purposes of this section shall mean any plan or method used by any person or persons, firm, corporation or other organization for giving instruction in any form or manner by correspondence under contract.

2. No person, including any business entity, may contract to receive, or demand, in the event of cancellation of a contract for future services, more than the total of:

(a) five percent of the cash price, but not to exceed fifty dollars, and

(b) a pro rata portion of the total price, representing the proportion of services used or completed.

In addition, the seller may receive or demand the cost of any ancillary goods which the buyer has consumed or wishes to retain after cancellation of the contract. In no instance shall the seller collect more than the full contract price from the buyer.

3. Within ten days after a contract for future consumer services has been cancelled, the seller shall tender to the buyer any payments made in excess of the amounts permitted to be retained pursuant to subdivision two of this section.

4. Cancellation. Cancellation shall occur:

(a) when the buyer mails to the seller notice of his intent to cancel, or

(b) where the seller has actual notice of the buyer's intention to cancel, or

(c) where the buyer fails to attend consecutive scheduled classes or lessons constituting at least twenty-five percent of the total lessons or time contracted for, without informing the seller in writing that he intends to remain enrolled.

5. The contract forms used by the seller shall conspicuously disclose the seller's cancellation provisions in compliance with subdivisions two, three, and four of this section and shall contain the following notice in ten point bold face type:

If you cancel this contract (the seller) may keep only five percent of the cash price, but not to exceed fifty dollars, and a portion of the contract price based upon the lessons or services you have used. You may notify the seller of your intent to cancel by mail, addressed to (the seller) at (seller's address).

6. Nothing in this section shall be construed so as to nullify or impair any right or rights which a buyer may have against a seller at common law, by statute, or otherwise.

§ 413. Retail instalment credit agreements. 1. (a) A retail instalment credit agreement shall be dated and in writing and the printed portion thereof shall be in at least eight point type. No retail instalment credit agreement shall be signed by the buyer when it contains blank spaces to be filled in after it has been signed by the buyer. The seller, before he shall be able to avail himself of the rates authorized by subdivision three of this section, shall deliver to the buyer a copy of the credit agreement executed by the seller.

(b) Provided that the retail installment credit agreement complies in all other respects with the provisions of this section, a single credit agreement may provide for a retail seller to acquire indebtedness of a retail buyer under a sales slip or memorandum evidencing a purchase. Where a retail seller enters into a credit agreement with a retail buyer the credit agreement may consist of an agreement complying in all other respects with the provisions of this section, but executed only by the retail seller, together with a credit card issued by it to the retail buyer. The credit agreement, however, must then provide that it shall not become effective unless and until the retail buyer or a person authorized by him signs a sales slip or memorandum evidencing a purchase or lease of property or services by use of the credit card and that prior thereto the retail buyer shall not be responsible for any purchase or lease of property or services by use of the credit card after its loss or theft.

2. Every retail instalment credit agreement shall contain:

(a) The entire agreement of the buyer with respect to the subject matter of the credit agreement;

(b) The names of the seller and of the buyer, the place of business of the seller and the residence or place of business of the buyer as specified by the buyer;

(c) Both at the top thereof and directly above the space reserved for the signature of the buyer, the words RETAIL INSTALMENT CREDIT AGREEMENT in at least ten point bold type;

(d) A provision in at least eight point bold type to the effect that the buyer may at any time pay his total indebtedness; and

(e) A notice in at least eight point bold type reading as follows: NOTICE TO THE BUYER: 1. Do not sign this credit agreement before you read it or if it contains any blank space. 2. You are entitled to a completely filled in copy of this credit agreement.

3. (a) A seller may, in a retail instalment credit agreement, contract for and, if so contracted for, the seller or holder thereof may charge, receive and collect the service charge authorized by this article, which service charge shall not exceed the rate or rates agreed upon by the seller and the buyer, including, in accordance with the provisions of the credit agreement, rates that may vary, from time to time computed, for the purposes of this section, on the outstanding indebtedness from month to month, or if the service charge so computed is less than seventy cents for any month, seventy cents. If the credit agreement provides for a variable rate of service charge, such rate shall be determined at regular intervals as set forth in the credit agreement and in accordance with such regulations as the superintendent of financial services shall prescribe but said rate shall not vary more often than once in any three month period and shall be based on a published index that is (a) readily available, (b) independently verifiable, (c) beyond the control of the seller and (d) approved by the superintendent, (e) such charges in credit agreements shall be based on the index values, or the index numbers plus or minus additional percentage points provided,

however, that variations in the charge must correspond directly to the movements of the index values plus or minus additional percentage points only. Once such charge is established no lending institution may add any factors to increase the charge other than variations in the established index without the prior approval of the superintendent of financial services.

The superintendent of financial services shall adopt regulations with respect to credit agreements that provide for a variable rate of service charge, including but not limited to: (a) providing for disclosure to the buyer by the seller of the circumstances under which the rate may increase, any limitations on the increase, the effect of an increase and an example of the payment terms that would result from an increase; (b) providing for disclosure to the buyer by the seller of a history of the fluctuations of the index over a reasonable period of time; and (c) providing for notice to the buyer by the seller prior to any rate increase or change in the terms of payment. The regulations shall allow a seller, holder or financing agency after choosing an approved index to choose a spread and a minimum and maximum rate of service charge at its discretion. A retail instalment credit agreement, whether it provides for a fixed or variable service charge, may provide for an introductory rate of service charge at either a fixed or variable rate, provided that the terms of such introductory rate, including, if applicable, the date on which the introductory rate shall terminate, are disclosed to the buyer. Such disclosure shall be contained on an application form or pre-approved written solicitation as specified pursuant to subdivisions one and one-a of section five hundred twenty of the general business law. A change in the service charge rate upon expiration of an introductory rate shall not be considered a variable rate or a change in terms. The service charge rate in effect after expiration of an introductory rate may apply to all amounts due under the credit agreement regardless of when incurred, and disclosure of the same shall be provided to the buyer in the written agreement.

(b) If the credit agreement so provides, the service charge may be computed on a schedule of fixed amounts if as so computed it is applied to all amounts of outstanding balances equal to the fixed amount minus a differential of not more than five dollars, provided that it is also applied to all amounts of outstanding balances equal to the fixed amount plus at least the same differential.

(c) (i) For the purposes of this subdivision the term "outstanding indebtedness from month to month" shall mean, at the election of the seller, holder or financing agency either:

(a) the amount unpaid at the beginning of the monthly billing period, including unpaid service charges, less all payments received and credits issued during the billing period, except for credits attributable to amounts not included in the previous balance; or

(b) an amount not to exceed the amount calculated by adding the amounts unpaid for each day of the monthly billing period, including unpaid service charges, after reflecting that day's purchases made, payments received, credits issued and other adjustments, and dividing such sum by the number of days in the billing period.

(ii) A credit agreement may not provide for the imposition of a service charge for any monthly billing period in which there is no previous balance or during which the sum of the payments received and other credits issued which are attributable to amounts included in the previous balance is equal to or exceeds the amount of such previous balance unless the same seller also offers a credit agreement which provides that no service charge will be imposed for any monthly billing period in which there is no previous balance or during which the sum of the payments received and other credits issued which are attributable to amounts included in the previous balance is equal to or exceeds the amount of such previous balance.

(iii) The term "billing period" as used in this subdivision shall mean the time interval between periodic statement dates, pursuant to subdivision four of this section. A billing period shall be considered to be a "month" or "monthly" if the last day of each billing period is on the same day of each month or does not vary by more than four days therefrom.

(d) Where a retail instalment credit agreement provides that the buyer has the option of avoiding the imposition of an additional service charge by paying the outstanding indebtedness or any portion thereof within a specified period of time, the additional service charge may not be imposed unless the monthly statement showing such outstanding indebtedness or portion thereof is mailed at least fifteen days prior to the date by which payment must be received to avoid that service charge. A seller or holder shall not be prohibited from imposing a service charge, or required to refund a service charge, if failure to comply with the provisions of this paragraph resulted from circumstances beyond the control of the seller or holder, notwithstanding reasonable procedures to insure compliance with this paragraph.

(e) No change in the terms of a retail instalment credit agreement shall take effect unless at least 30 days prior to the effective date of such change, a written notice has been mailed or delivered to the buyer that clearly and conspicuously describes such change and the indebtedness to which it applies, and if the change has the effect of increasing the rate of service charge, either (a) the notice states that the incurrence by the buyer or another person authorized by him of any further indebtedness under the plan to which the agreement relates on or after the effective date of such change specified in the notice shall constitute acceptance of such change, and either the buyer agrees in writing to such change or the buyer or another person authorized by him incurs such further indebtedness on or after the effective date of the change stated in the notice, or (b) the notice advises the buyer that he has thirty days from the earlier of the mailing or delivery of the notice to advise the seller under or holder of a retail installment credit agreement in writing that he does not accept such change, provided that such notice contains an address to which the buyer may send notice of his election not to accept the change and also provided that the notice specifies that the change will take effect absent receipt of the buyer's written objection to the change. Any buyer who has received a notice pursuant to clause (a) who does not agree in writing to the change and no further indebtedness is incurred under the plan to which the agreement relates, and any buyer who gives a timely notice, pursuant to clause (b), electing not to accept the change shall be permitted to pay his outstanding indebtedness in accordance with the terms of the retail installment credit agreement but the seller or holder may terminate the amount of credit available to the buyer and may require the buyer to return all credit cards issued in connection with a retail installment credit agreement. If such a buyer subsequently uses a credit card to obtain credit under a retail installment credit agreement, such use shall constitute acceptance of the change of terms and shall be deemed to have been accepted and shall become effective as to the buyer as of the date such change would have become effective but for the giving of notice by the buyer. If notice is given pursuant to clause (b) and the buyer does not timely object in writing to the change, such change shall become effective without action on the part of the buyer; provided that in no event shall any such change take effect with respect to (i) that portion of the outstanding indebtedness from month to month which represents indebtedness outstanding prior to January 1, 1981, and (ii) that portion of the outstanding indebtedness from month to month which represents indebtedness incurred, under or pursuant to an agreement in effect on December 1, 1980, between January 1, 1981, and the effective date of such change specified in the first notice mailed or delivered pursuant to clause (a). Indebtedness outstanding prior to January 1, 1981 for purpose of clause (i) above and indebtedness outstanding prior to the effective date of a change for purposes of clause (ii) above shall be determined on the basis of crediting payments and other credits first to that portion of any such indebtedness representing any service charges and then to that portion of such indebtedness representing purchases and other debits in the order in which made. An amendment to a credit agreement deleting a provision that the rate of service charge may vary from time to time may not become effective within one year from the later of the effective date of the credit agreement or the effective date of an amendment to the credit agreement adding a variable rate provision. For purposes of this paragraph, an adjustment in the rate of the service charge as a consequence of the movement in the selected index shall not constitute a change in the terms of that agreement. A reduction in the grace period for the assessment of a fee on any installment not paid when due, shall be considered an amendment to an agreement as set forth in this paragraph. The provisions of this paragraph shall not apply in the case of an agreement which expressly prohibits changing of terms or which provides limitations on changing of terms which are more restrictive than the requirements of this paragraph.

Any service charge, whether assessed by a fixed or variable rate, may be reduced on such terms as the seller may determine, provided that the terms of such reduction, including, if applicable, the date on which the reduction will terminate, are disclosed to the buyer on the written notice announcing the reduction, prior to the effective date of the reduction. A new method of determining a service charge is a reduction in the service charge if the charge determined under the new method never exceeds the charge under the original method. The original service charge or original method of determining the service charge may be applied after the reduction ends to the entire outstanding indebtedness, including any indebtedness incurred when the reduced service charge applied, and disclosure of the same shall be provided to the buyer in the written notice announcing the reduction. A reduction to a service charge, including the resumption of the original service charge or the original method of determining the service charge, shall not be considered a change in terms for purposes of this paragraph.

3-a. No retail instalment credit agreement or guarantee of a retail instalment credit agreement shall provide for a security interest in any investment property, as defined in paragraph forty-nine of subsection (a) of section 9--102 of the uniform commercial code, that is pledged as collateral, unless (a) the contract either specifically identifies the investment property as collateral or (b) the secured party is a securities intermediary, as defined in paragraph fourteen of subsection (a) of section 8-102 of the uniform commercial code, or commodity intermediary, as defined in paragraph seventeen of subsection (a) of section 9--102 of the uniform commercial code, with respect to the investment property. The identification of an account shall include the name of the holder, account number, and name of the entity holding the investment property. In the event that a retail instalment credit agreement or guarantee does not comply with this section, the security interest in the investment property is void.

4. The seller or holder under a retail instalment credit agreement shall promptly provide the buyer under the agreement with a statement as of the end of each monthly period (which need not be a calendar month) containing

(a) The items required to be set forth pursuant to the act of congress entitled "Truth in Lending Act" and the regulations thereunder, as such act and regulations may from time to time be amended; and

(b) A legend to the effect that the buyer may at any time pay his total indebtedness.

5. (a) The fees and charges authorized by this subdivision and subdivision three of this section shall be inclusive of all charges incident to investigating and making the retail instalment credit agreement and for the extension of credit thereunder. No fee, expense, delinquency, collection or other charge whatsoever shall be taken, received, reserved or contracted for by the seller under or holder of a retail instalment credit agreement except as provided in this section. A retail instalment credit agreement may provide for the payment of attorney's fees not exceeding twenty per centum of the amount due and payable under the credit agreement if it is referred to an attorney not a salaried employee of the seller or holder for collection.

(b) In addition to the service charge on outstanding indebtedness permitted under subdivision three of this section, the seller or holder may charge, receive and collect any one or more of the fees and charges described in this paragraph, provided that any such fee or charge is provided for in the retail instalment credit agreement. When credit cards are issued in connection with a retail instalment credit agreement, the retail instalment credit agreement may provide for an annual fee for membership in the credit card plan. If a buyer has requested the issuance of a credit card, the fee for the first year may be charged by the seller or holder at any time. The seller or holder shall in each subsequent year in which an annual fee is payable, send the buyer in or with the statement for the monthly billing period before that in which the fee is to be billed, a notice that the annual fee will be billed in the next monthly statement. A buyer who is not delinquent or otherwise in breach of any term of the agreement with the seller or holder shall have the right during the first six months after the annual fee is billed to notify the seller or holder in writing, at its address on the credit agreement, to terminate the buyer's account and request a refund of the unused portion of the annual fee previously paid. Upon receipt of the termination notice and refund request from such buyer, the seller or holder shall refund to the buyer the unused pro-rata share of any annual fee previously paid as of the first billing statement date after receipt of the termination notice. The retail installment credit agreement may provide for the assessment of a fee for any installment which is not paid on or before the date on which it is due. A seller or holder that imposes a fee for late payments without allowing a grace period of at least ten days must credit any cash payment made by a buyer to an authorized representative of the seller or holder at all stores, or to a teller at a branch where deposits are accepted, as of the date of the receipt of the payment. The retail installment credit agreement may, in addition, provide for an overlimit charge. The overlimit charge may be imposed whenever the specified credit limit is exceeded but not more than once in a monthly billing cycle. If the overlimit charge is imposed, the credit limit must be disclosed on the monthly billing statement. The retail installment credit agreement also may provide for: (i) a returned payment charge, in the amount set forth in section 5-328 of the general obligations law, for any check or other method of payment that is returned unpaid, excluding payment made by automated teller machine or other electronic media; (ii) a charge for replacement of lost or stolen credit cards, which charge shall be applied only where a buyer has suffered a lost or stolen credit card after two replacements thereof; (iii) a charge for additional credit cards for the buyer's account; and (iv) a charge for copies of sales slips, monthly statements and other documents when such copies are not required by federal or state law governing billing error disputes.

Sections 190.40 and 190.42 of the penal law shall not apply to fees and charges set forth in this subdivision. For purposes of 12 U.S.C. §§ 85, 1831 d, 1463(g) and 1785 (g), the fees and charges permitted under this subdivision are interest under New York law, and all terms, conditions, and other provisions of a retail instalment credit agreement, including without limitation, fees and charges, provisions relating to the method of determining the outstanding indebtedness on which a service charge is imposed and circumstances in which a service charge may be avoided, are material to the determination of the interest rate under New York law.

6. If the cost of any insurance is to be separately charged to the buyer, the retail instalment credit agreement shall state whether the insurance is to be procured by the buyer or the seller or holder. If the

insurance is to be procured by the seller or holder, the seller or holder shall comply with the provisions of subdivision five of section four hundred two.

7. No retail instalment credit agreement shall require or entail the execution of any note or series of notes by the buyer which when separately negotiated will cut off as to third parties any right of action or defense which the buyer may have against the seller.

8. The provisions of subdivisions four and five of section four hundred two A and of sections four hundred six and four hundred twelve hereof shall be applicable to retail instalment credit agreements. The words "credit service charge" in subdivisions four and five of section four hundred two A shall read "service charge" for the purposes of this section.

9. The service charge allowed in subdivision three of this section shall be allowed to a seller or holder under this section only:

(a) If the seller enters into an agreement subject to the provisions of this article with any buyer on or after October first, nineteen hundred fifty-seven; or

(b) In the case of any buyer who had entered into an agreement with a seller prior to October first, nineteen hundred fifty-seven, if the seller or holder delivers or mails to the buyer a copy of a retail instalment credit agreement in conformity with this section duly executed on behalf of the seller and the seller or holder thereafter complies with all the other provisions of this section.

Nothing in this subdivision contained shall be construed to affect the validity or invalidity of any agreement or alleged agreement made prior to October first, nineteen hundred fifty-seven.

10. No retail instalment credit agreement shall contain any provision by which:

(a) In the absence of the buyer's default, the holder may, arbitrarily and without reasonable cause, accelerate the maturity of any part or all of the amount owing thereunder;

(b) A power-of-attorney is given to confess judgment in this state, or an assignment of wages is given;

(c) The buyer waives any right of action against the seller or holder of the agreement, or other person acting on his behalf, for any illegal act committed in the collection of payments under the agreement;

(d) The buyer executes a power-of-attorney appointing the seller or holder of the agreement, or other person acting on his behalf, as the buyer's agent in collecting payments under the agreement;

(e) The buyer relieves the seller from liability for any legal remedy which the buyer may have against the seller under the agreement or otherwise;

(f) The buyer waives any right to a trial by jury in any action or proceeding arising out of the agreement.

(g) The buyer consents to receive any goods or services on a regular or irregular basis. Any such consent to receive goods or services must be separately agreed to by the buyer in a writing other than the retail instalment credit agreement.

Any such prohibited provision shall be void but shall not otherwise affect the validity of the contract.

11. (a) Provided that the retail instalment credit agreement complies in all other respects with the provisions of this section, a financing agency may enter into a credit agreement with a retail buyer for its own account or on behalf of one or more retail sellers or municipal corporations, or the New York city water board, which need not be named in the agreement, pursuant to which the financing agency may, with the buyer's consent, purchase or acquire from one or more retail sellers or municipal corporations, or the New York city water board, which need not be named in the credit agreement, indebtedness of the buyer under a sales slip or memorandum evidencing a purchase or fine, civil penalty, rent, rate, tax, fee, charge, revenue, financial obligation, or other amount, including a penalty, special assessment or interest, to be paid in accordance with the agreement. Such a credit agreement shall contain the name and place of business of the financing agency in lieu of those of a retail seller, municipal corporation or the New York city water board, and may not contain any provision for a security interest in real

or personal property or fixtures of the buyer to secure payment or performance of the buyer's obligation under the credit agreement other than a security interest in a specifically identified interest-bearing deposit account of the buyer with such financing agency. A financing agency may in such a credit agreement contract for, and if it has so contracted and delivered to the buyer a copy of the credit agreement executed by it, may charge, receive and collect the service charge authorized by this section. Each sales slip or memorandum evidencing a purchase or fine, civil penalty, rent, rate, tax, fee, charge, revenue, financial obligation, or other amount, including a penalty, special assessment or interest due to a municipal corporation or the New York city water board from the buyer to be paid in accordance with such a credit agreement shall refer to the credit agreement between the buyer and the financing agency by account number or otherwise and contain the names of the retail buyer and the retail seller, municipal corporation or the New York city water board.

A financing agency which purchases from more than one seller or municipal corporation or which purchases from the New York city water board indebtedness of a retail buyer to be paid in accordance with such a retail instalment credit agreement entered into by the financing agency with the buyer as provided in this subdivision may charge, receive and collect the service charge authorized by subdivision three of this section only if the service charge so authorized is computed on the buyer's total outstanding indebtedness to the financing agency from month to month to be paid in accordance with such a retail instalment credit agreement.

(b) A financing agency may enter into a credit agreement with a retail buyer for its own account or on behalf of one or more authorized insurers or insurance agents or insurance brokers, who need not be named in the agreement, pursuant to which the financing agency may, with the buyer's consent, purchase or acquire from one or more authorized insurers or insurance agents or brokers, who need not be named in the agreement, the buyer's indebtedness under a sales slip or memorandum evidencing a purchase of insurance under an insurance contract or contracts, provided that (i) such credit agreement complies with the requirements of paragraph (a) of this subdivision, and (ii) such credit agreement does not permit cancellation of the insurance contract or contracts as a result of default under the credit agreement by the buyer. For purposes of this paragraph, the terms "authorized insurer", "insurance contract", "insurance agent", and "insurance broker" shall be as defined in or have the meanings assigned to them by section one hundred seven of the insurance law.

(c) A single credit agreement entered into pursuant to either paragraph (a) or paragraph (b) of this subdivision may provide for the financing agency to acquire indebtedness of a retail buyer under a sales slip or memorandum evidencing a purchase or, if applicable, a fine, civil penalty, rate, rent, tax, fee, charge, revenue, financial obligation or other amount, including a penalty, special assessment, or interest, pursuant to the other of said paragraphs. Where a financing agency enters into a credit agreement with a retail buyer for its own account, the credit agreement may consist of an agreement complying in all other respects with the provisions of this section, but executed only by the financing agency, together with a credit card issued by it to the retail buyer. The credit agreement, however, must then provide that it shall not become effective unless and until the retail buyer or a person authorized by him signs a sales slip or memorandum evidencing purchase or lease of property or services or the payment of a fine, civil penalty, rent, rate, tax, fee, charge, revenue, financial obligation or other amount, including a penalty, special assessment or interest, to a municipal corporation or the New York city water board by use of the credit card and that prior thereto the retail buyer shall not be responsible for any purchase or lease of property or services or the payment of a fine, civil penalty, rate, rent, tax, fee, charge, financial obligation, or other amount, including a penalty, special assessment or interest, by use of the credit card after its loss or theft.

(d) A credit agreement entered into pursuant to paragraph (a) or (b) of this subdivision shall contain or be accompanied by a statement making the disclosures required by the act of congress entitled "Truth in Lending Act" and the regulations thereunder, as such act and regulations may from time to time be amended.

(e) A financing agency enters into a credit agreement provided for in this subdivision in this state, for purposes of this article, if the financing agency delivers or mails in this state to the buyer a copy of the agreement executed by the financing agency, provided, however, that in order to reduce the potential for theft or fraud, a financing agency may mail the credit agreement from outside the state if the credit agreement is prepared and sealed in the state before mailing and prior to being transported to a location outside of the state for actual mailing.

(f) For the purpose of this subdivision, the term "municipal corporation", as defined in subdivision twenty-two of section four hundred one of this chapter, shall include the White Plains parking authority, and the term "purchase" shall include any fee, rate, rent or other charge of such authority.

12. (a) Except as provided in paragraphs (b) and (c) of this subdivision, no retail instalment credit agreement, or any agreement executed in connection therewith, may provide for the creation of a security interest in any personal or real property (including any goods sold under such agreement) to secure payment of the buyer's outstanding indebtedness under such retail instalment credit agreement. Any such prohibited provision shall be void but shall not otherwise affect the validity of such retail instalment credit agreement.

(b) A financing agency may require a pledge to such financing agency of a specifically identified interest-bearing deposit account of the buyer maintained at such financing agency as collateral security for a loan made by such financing agency under the authority of this subdivision and provided further that any such financing agency which requires such a pledge shall be subject to the provisions of section five hundred twenty-b of the general business law.

(c) Except for motor vehicles as defined in article nine of this chapter, or goods which the seller knows or reasonably should know are or are likely to be so affixed to a motor vehicle or to realty as to become a part thereof, a retail seller, or financing agency which enters into a retail installment credit agreement with a retail buyer on behalf of a retail seller named in the agreement, may take or retain a purchase money security interest, as that term is defined in section 9--103 of the uniform commercial code, in any item of merchandise purchased at a price of not less than two hundred dollars pursuant to a retail installment credit agreement until the purchase price of such merchandise is fully paid, but in no event shall any purchase money security interest created hereunder be valid or enforceable for a period greater than five years from the date a purchase is posted to any account which may be used to purchase an item of merchandise at a price less than two hundred dollars. In the event such a purchase money security interest is taken or retained by a retail seller or financing agency, payments shall be applied to the purchase in the order such purchases are posted to the account after such payments are first applied to any finance, late, or other charges imposed by the retail seller or financing agency. Notwithstanding the provisions of section 9--609 of the uniform commercial code, repossession of merchandise subject to a purchase money security interest permitted under this subdivision shall be prohibited unless and until payment on the account shall be in default for a period of at least thirty days and thereafter a notice of default be mailed to the buyer providing an additional thirty days time in which to cure the default on the account. In the event of repossession without judicial process, a substantially contemporaneous writing signed by the buyer indicating the buyer's agreement to such repossession shall be required.

13. (a) Subject to the limitation contained in paragraph (b) of this subdivision, the holder of a retail instalment credit agreement (including for purposes of this subdivision a financing agency which enters into a credit agreement with a retail buyer as provided in subdivision eleven of this section) shall be subject to all claims (other than tort claims) and defenses arising out of the buyer's purchase of goods and services to be paid in accordance with the credit agreement if (1) the buyer has made a good faith attempt to obtain satisfactory resolution of a disagreement or problem relative to the sale from the seller; (2) the amount of the initial transaction exceeds fifty dollars; and (3) the place where the initial transaction occurred was in the same state as the mailing address previously provided by the buyer or was within one hundred miles from such address, except that the limitations set forth in subparagraphs (2) and (3) of this paragraph with respect to a buyer's right to assert claims and defenses against the holder shall not be applicable to any transaction in which the

seller (A) is the same person as the holder; (B) is controlled by the holder; (C) is under direct or indirect common control with the holder; (D) is a franchised dealer of the holder's products or services; or (E) has obtained the order for such sale through a mail solicitation made by or participated in by the holder in which the buyer is solicited to enter into such transactions by using the credit agreement with the holder.

(b) The amount of claims or defenses asserted by the buyer may not exceed the amount of indebtedness owing to the holder with respect to such transaction at the time the buyer first notifies the holder or seller of such claim or defense. For the purpose of determining the amount of indebtedness owing to the holder in the preceding sentence, payments and credits to the buyer's account are deemed to have been applied, in the order indicated, to the payment of (1) service charges in order of their entry to the account; and (2) debits to the account other than those set forth above, in the order in which each debit entry to the account was made.

14. (a) A seller of goods pursuant to the terms of this article shall adopt and apply procedures to reasonably avoid debiting the buyer's account with respect to any transaction, or to reasonably avoid selling or assigning to a financing agency a sales slip or memorandum evidencing a purchase of goods, prior to the date the goods subject to the transaction are delivered to the buyer or the buyer's designee. A seller of goods may debit the buyer's account, or sell or assign to a financing agency a sales slip or memorandum evidencing a purchase of goods, on or after the date of sale where:

(i) the goods subject to the transaction are shipped within ten days of the date of sale and the seller has reason to believe that delivery will be effected not later than fourteen days from the date of sale; or

(ii) the goods subject to the transaction are one of a kind or are to be specifically manufactured for the buyer and are not suitable for sale to others in the ordinary course of the seller's business; or

(iii) the buyer requested delayed delivery of goods that will be available for delivery not later than fourteen days from the date of sale; or

(iv) the buyer and seller have agreed that delivery of the goods will occur at regular intervals or in instalments.

(b) For the purposes of this subdivision, a seller may debit the buyer's account, or sell or assign to a financing agency a sales slip or memorandum evidencing a purchase of goods, on or after the date of shipment where, in the ordinary course of business, delivery is to be effected no later than ten days after the date of shipment.

(c) It shall not be a violation of this subdivision if the seller ships or makes the goods available for delivery as agreed and delivery is delayed due to failure of the buyer to accept said delivery.

(d) The provisions of this subdivision shall not apply to mail order merchandise as regulated by section three hundred ninety-six-m of the general business law.

§ 414. Penalties. 1. Any person who shall wilfully violate any provision of this article shall be guilty of a misdemeanor and upon conviction shall be punished by a fine not exceeding five hundred dollars.

2. In case of failure by any person to comply with the provisions of this article, the buyer shall have the right to recover from such person an amount equal to the credit service charge or service charge imposed and the amount of any delinquency, collection, extension, deferral or refinance charge imposed.

3. Notwithstanding the provisions of this section, any failure to comply with any provision of this article may be corrected within ten days after the holder is notified thereof in writing by the buyer and, if so corrected, neither the seller nor the holder shall be subject to any penalty under this section.

4. Subdivision three of this section shall not apply to any person who wilfully violates any provision of this article in connection with the imposition, computation or disclosures of or relating to a credit service charge on a consolidated total of two or more contracts or obligations under the provisions of section four hundred ten, and the buyer may recover from such person an amount equal to the credit service

charges and any delinquency, collection, extension, deferral or refinance charges imposed, contracted for or received on all contracts and obligations included in the consolidated total and the seller shall be barred from the recovery of any such charges.

5. Subdivisions one and three of this section shall not apply to any person who violates subdivision two-a of section four hundred three of this article.

§ 415. Exceptions. 1. The provisions of sections four hundred nine and four hundred eleven of this article shall apply to an instalment sale of goods or services for any use.

2. The provisions of section four hundred eight of this article shall apply to an installment sale of equipment used for production of a farm product, as defined in section two of the agriculture and markets law.

§ 416. Waiver. Any waiver by the buyer of the provisions of this article shall be unenforceable and void.

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

§ 418. Short title. This article may be cited as the "Retail Instalment Sales Act."

§ 419. Refund credit on cancellation of credit related insurance or prepayment of contract. The provisions of this article requiring refunds and refund credits with respect to group credit life insurance in cases of cancellation of group credit life insurance or of prepayment of a retail instalment contract or obligation shall also require refunds and refund credits with respect to credit unemployment insurance, group credit accident, group credit health or group credit accident and health insurance in cases of cancellation of such insurance or of prepayment of a retail instalment contract or obligation which included such insurance.

§ 420. Guaranties to sellers of liabilities of buyers under retail instalment contracts. (a) No guaranty given to the seller or to the seller and the seller's assignee of the liabilities of a buyer under a retail instalment contract shall be valid unless the guaranty is incorporated in or endorsed on the contract or identifies the contract and specifies the time balance thereof. A copy of the guaranty and the contract to which it relates shall be given or mailed to the guarantor upon or immediately after the execution and delivery of the guaranty by the guarantor. As used in this section, "retail instalment contract" and "contract" include a retail instalment obligation and a retail instalment contract as defined in the motor vehicle retail instalment sales act, constituting article nine of this chapter. This section does not apply to a guaranty made by a seller or a holder of a retail instalment contract.

(b) No guaranty given to the seller or to the seller and the seller's assignee of the liabilities of a buyer under a retail instalment contract shall relate to any future retail instalment contracts.

§ 421. Security interest in other property. Except as provided in section four hundred ten of this chapter, no retail instalment contract or obligation, or any other agreement executed in connection therewith, may provide for the creation of a security interest in any real or personal property, other than the goods which are the subject matter of the retail instalment sale, to secure the payment of the time sale price under such contract or obligation or any part thereof; provided, however, that the prohibition of this section shall not be applicable to the taking of a mortgage upon real property to secure the payment of the time sale price of a retail instalment obligation, if the transaction which gave rise to such obligation was the furnishing of goods or services for repairs, alterations or improvements upon, or in connection with buildings upon, such real property. Any such prohibited provision shall be void but shall not otherwise affect the validity of the contract or obligation.

§ 422. Claim for deficiency after default and repossession. If a buyer defaults on any instalment of the time sale price under a retail instalment contract, and the holder obtains possession of the goods which are the subject matter of such contract and disposes of such goods as provided by section 9--610 of the uniform commercial code, the buyer shall be liable to the holder for any deficiency to the extent provided in that section; provided, however, that in calculating such deficiency there shall be deducted from the amount thereof as prescribed by such section 9--610, an amount equal to that portion of the refund credit to which the buyer would have been entitled under section four hundred eight of this chapter if, at the time the holder disposed of such goods, the buyer had not been in default and had prepaid in full the balance of the time sale price as the amount realized upon the disposition of the goods bears to the balance of the time sale price.

ARTICLE 10-A
DOOR-TO-DOOR SALES PROTECTION ACT

§ 425. Short title; purpose. This act may be cited as the door-to-door sales protection act. The purpose of this act is to afford consumers a "cooling-off" period to cancel contracts which are entered into as a result of high pressure door-to-door sales tactics.

§ 426. Definitions. In this article:

1. "Door-to-door sale" shall mean a sale, lease or rental of consumer goods or services in which the seller or his representative personally solicits the sale, including those in response to or following an invitation by the buyer, and the buyer's agreement or offer to purchase is made at a place other than the place of business of the seller. The term "door-to-door sale" does not include a transaction:

(a) made pursuant to prior negotiations in the course of a visit by the buyer to a retail business establishment having a fixed permanent location where the goods are exhibited or the services are offered for sale on a continuing basis; or

(b) in which the buyer has initiated the contact and the goods or services are needed to meet a bona fide immediate personal emergency of the buyer, and the buyer furnishes the seller with a separate dated and signed personal statement in the buyer's handwriting describing the situation requiring immediate remedy and expressly acknowledging and waiving the right to cancel the sale within three business days; or

(c) conducted and consummated entirely by mail or telephone; and without any other contact between the buyer and the seller or its representative, other than at the place of business of the seller, prior to delivery of the goods or performance of the services; or

(d) in which the buyer has initiated the contact and specifically requested the seller to visit his home for the purpose of repairing or performing maintenance upon the buyer's personal property. If in the course of such a visit, the seller sells the buyer the right to receive additional services or goods other than replacement parts necessarily used in performing the maintenance or in making the repairs, the sale of those additional goods or services would not fall within this exclusion; or

(e) pertaining to the sale or rental of real property, to the sale of insurance or to the sale of securities or commodities by a broker-dealer registered with the securities and exchange commission; or

(f) where the purchase price whether under single or multiple contracts, does not exceed twenty-five dollars and the products, goods, or merchandise purchased is capable of delivery at one time.

2. "Consumer goods or services" shall mean goods or services purchased, leased, or rented primarily for personal, family or household purposes, including courses of instruction or training regardless of the purpose for which they are taken.

3. "Seller" shall mean any person, partnership, corporation or association engaged in the the door-to-door sale of consumer goods or services.

4. "Place of business" shall mean the main or permanent branch office or local address of the seller.

5. "Purchase price" shall mean the total price paid or to be paid for the consumer goods or services, including all interest and service charges.

6. "Business day" shall mean any calendar day except Sunday, or the following business holidays: New Year's Day, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans' Day, Thanksgiving Day, and Christmas Day.

7. (a) "Personal emergency response service" shall mean (i) the provision and maintenance of electronic communication equipment in the home of an individual which signals a monitoring agency for help when activated by the individual, or after a period of time if a timer mechanism has not been reset; (ii) the continuous monitoring of such signals by a trained operator and, in case of receipt of such signal, the immediate notification of such emergency response organizations or persons, if necessary, as the individual has previously specified.

(b) With respect to a "personal emergency response service" as defined in paragraph (a) of this subdivision, the provisions of this article shall apply to the purchase by a consumer of provision for such service, whether or not such purchase is made in a "door-to-door sale" as defined in subdivision one of this section, except where applying any of the provisions of this article conflicts with any provision of section three hundred ninety-one-l of the general business law, in which case the provisions of section three hundred ninety-one-l of the general business law shall prevail. For this purpose, the transactional exclusions from the definition of "door-to-door sale" contained in paragraphs (a) through (f) of subdivision one of this section shall not apply to the sale or purchase of a personal emergency response service as defined herein, and the term "door-to-door sale" wherever used in this article shall be deemed to also mean any sale, lease or rental of a personal emergency response service to or by a consumer.

§ 427. Buyer's or other obligor's right to cancel. 1. In addition to any right otherwise to revoke an offer, the buyer or other person obligated for any part of the purchase price may cancel a door-to-door sale until midnight of the third business day, or until midnight of the seventh business day in the case of a door-to-door sale of a personal emergency response service, after the day on which the buyer has signed an agreement or offer to purchase relating to such sale.

2. Cancellation occurs when written notice of cancellation is given to the seller.

3. Notice of cancellation, if given by mail, shall be deemed given when deposited in a mailbox properly addressed and postage prepaid.

4. Notice of cancellation need not take the form prescribed and shall be sufficient if it indicates the intention of the buyer not to be bound.

§ 428. Form of notice; statement of buyer's rights. 1. In a door-to-door sale, the seller shall furnish to the buyer

(a) a fully completed receipt or copy of any contract pertaining to such sale at the time of its execution, which is in the same language, e.g. Spanish, as that principally used in the oral sales presentation and which shows the date of the transaction and contains the name and address of the seller, and in immediate proximity to the space reserved in the contract for the signature of the buyer or on the front page of the receipt if a contract is not used and in not less than ten-point bold face type, a statement in substantially the following form:

"YOU, THE BUYER, MAY CANCEL THIS TRANSACTION AT ANY TIME PRIOR TO MIDNIGHT OF THE THIRD BUSINESS DAY AFTER THE DATE OF THIS TRANSACTION. SEE THE ATTACHED NOTICE OF CANCELLATION FORM FOR AN EXPLANATION OF THIS RIGHT."

(b) at the time the buyer signs the door-to-door sales contract or otherwise agrees to buy consumer goods or services from the seller, a completed form in duplicate, captioned "NOTICE OF CANCELLATION", which shall be attached to the contract or receipt and easily detachable, and which shall contain in not less than ten-point bold face type the following information and statements in the same language, e.g. Spanish, as that used in the contract:

NOTICE OF CANCELLATION

(enter date of transaction)

____

(Date)

YOU MAY CANCEL THIS TRANSACTION, WITHOUT ANY PENALTY OR OBLIGATION, WITHIN THREE BUSINESS DAYS FROM THE ABOVE DATE.

IF YOU CANCEL, ANY PROPERTY TRADED IN, ANY PAYMENTS MADE BY YOU UNDER THE CONTRACT OR SALE, AND ANY NEGOTIABLE INSTRUMENT EXECUTED BY YOU WILL BE RETURNED WITHIN 10 BUSINESS DAYS FOLLOWING RECEIPT BY THE SELLER OF YOUR CANCELLATION NOTICE, AND ANY SECURITY INTEREST ARISING OUT OF THE TRANSACTION WILL BE CANCELLED.

IF YOU CANCEL, YOU MUST MAKE AVAILABLE TO THE SELLER AT YOUR RESIDENCE, IN SUBSTANTIALLY AS GOOD CONDITION AS WHEN RECEIVED, ANY GOODS DELIVERED TO YOU UNDER THIS CONTRACT OR SALE; OR YOU MAY IF YOU WISH, COMPLY WITH THE INSTRUCTIONS OF THE SELLER REGARDING THE RETURN SHIPMENT OF THE GOODS AT THE SELLER'S EXPENSE AND RISK.

IF YOU DO MAKE THE GOODS AVAILABLE TO THE SELLER AND THE SELLER DOES NOT PICK THEM UP WITHIN TWENTY DAYS OF THE DATE OF YOUR NOTICE OF CANCELLATION, YOU MAY RETAIN OR DISPOSE OF THE GOODS WITHOUT ANY FURTHER OBLIGATION. IF YOU FAIL TO MAKE THE GOODS AVAILABLE TO THE SELLER, OR IF

YOU AGREE TO RETURN THE GOODS TO THE SELLER AND FAIL TO DO SO, THEN YOU REMAIN LIABLE FOR PERFORMANCE OF ALL OBLIGATIONS UNDER THE CONTRACT.
TO CANCEL THIS TRANSACTION, MAIL OR DELIVER A SIGNED AND DATED COPY OF THIS CANCELLATION NOTICE OR ANY OTHER WRITTEN NOTICE, OR SEND A TELEGRAM, TO
(Name of Seller), AT Address of Seller

____________________ ____________________________________

(Place of Business) NOT LATER THAN MIDNIGHT OF

____

____

(Date)

I HEREBY CANCEL THIS TRANSACTION.

____

(Date)

____

(Buyer's Signature)

and the seller shall complete both copies by entering the name of the seller, the address of the seller's place of business, the date of the transaction, and the date, not earlier than the third business day following the date of the transaction, by which the buyer may give notice of cancellation.

2. In a door-to-door sale, the seller shall inform each buyer orally, at the time he signs the contract or purchases the goods or services, of his right to cancel. Until the seller has complied with this section, the buyer or any other person obligated for any part of the purchase price may cancel the door-to-door sale by notifying the seller in any manner and by any means of his intention to cancel. The period prescribed by subdivision one of section four hundred twenty-seven shall begin to run from the time the seller complies with this section.

3. A door-to-door sales contract or receipt shall not include any

confession of judgment or any waiver of any of the rights to which the buyer is entitled under this article including specifically his right to cancel the sale in accordance with the provisions of this article.

4. A door-to-door sales contract or receipt shall disclose conspicuously the seller's refund policy as to all goods, wares or merchandise subject to the door-to-door sales agreement. If the seller fails to disclose conspicuously the applicable refund policy, then the seller shall be liable to the buyer for a cash refund of the total price or a credit of the total price, at the buyer's option, provided that within twenty days from the date of delivery of the purchased item or items, the buyer makes a demand therefor and provided that the merchandise is in substantially as good condition as when received by the buyer. In no event shall this subdivision be deemed to supercede a refund policy of a seller which allows return of merchandise more than twenty days after the date of delivery of the purchased item or items. The amount paid by the buyer to the seller shall be refunded or credited, as the case may be, within ten business days from the date of return of the seller's merchandise in substantially as good condition as when received by the buyer.

5. This section does not relieve any person, firm, corporation or association subject to the provisions of this section from complying with any other applicable law, ordinance, rule or regulation relating to refund policies which affords the buyer greater protection than do the provisions of this section.

§ 429. Restoration of down payment. 1. Within ten days after a door-to-door sale has been cancelled or an offer to purchase revoked, the seller shall tender to the buyer all payments made by the buyer and any note or other evidence of indebtedness.

2. If the down payment includes goods traded in, the goods shall be tendered in substantially as good condition as when received by the seller. If the seller fails to tender the goods as provided by this section, the buyer may elect to recover an amount equal to the trade-in

allowance stated in the agreement.

3. If the seller refuses within the period prescribed by subdivision one to return all payments made by the buyer, he shall be liable to the buyer for the said payments and if the buyer is successful in his action therefor or appeal thereon, the court shall award him one hundred dollars plus reasonable attorney's fees and costs, in addition to such payments.

4. Until the seller has complied with this section, the buyer may retain possession of goods delivered to him by the seller and shall have a lien on the goods in his possession or control for any recovery to which he may be entitled.

§ 430. Duty of buyer. 1. Except as provided by subdivision four of section four hundred twenty-nine, within a reasonable time after a door-to-door sale has been cancelled or an offer to purchase revoked, the buyer upon demand shall tender to the seller any goods delivered by the seller pursuant to the sale but need not tender at any place other than his residence. If the seller fails to demand possession of such goods within a reasonable time after cancellation or revocation, the goods shall become the property of the buyer without obligation to pay for them. For the purpose of this section, twenty days shall be presumed to be a reasonable time.

2. The buyer shall take reasonable care of the goods in his possession both before cancellation or revocation and for a reasonable time thereafter, during which time the goods are otherwise at the seller's risk.

3. If the seller has performed any services pursuant to a door-to-door sale prior to its cancellation, the seller shall not be entitled to compensation therefor.

§ 431. Restriction on assignment of obligation. 1. A seller shall not negotiate, transfer, sell or assign any note or other evidence of indebtedness to a finance company or other third party prior to midnight of the fifth business day, or in the case of a contract for door-to-door sale of a personal emergency response service, prior to midnight of the ninth business day, following the day the contract was signed or the goods or services were purchased.

2. The assignee of any note or evidence of indebtedness shall be subject to all claims and defenses of the buyer against the seller arising from the sale notwithstanding any agreement to the contrary, but the assignee's liability under this subdivision shall not exceed the amount owing to the assignee at the time the claim or defense is asserted against the assignee. Rights of the buyer under this section can be asserted affirmatively against or as a matter of defense to or set-off against a claim by the assignee.

ARTICLE 10-B

TELEPHONE SALES PROTECTION ACT

§ 440. Short title; purpose. This article may be cited as the "telephone sales protection act". The purpose of this article is to afford consumers a "cooling-off" period to cancel a sale which is made as a result of high pressure telephone sales tactics.

§ 441. Definitions. 1. (a) "Telephone sales business" shall mean a business which is primarily engaged in the solicitation of orders by telephone for:

(1) merchandise or services connected with merchandise to be shipped to the customer through the mail or by other carrier, upon receipt of an order in a communication initiated by the seller with charge account authorization remitted by telephone and the merchandise by its nature is ready for use or consumption when advertised or offered for sale and can be held in stock;

(2) vacation club membership, vacation packages or other travel services.

(b) The term "telephone sales business" does not include a transaction:

(1) where the purchase price whether under single or multiple contracts, does not exceed twenty-five dollars and the products, goods or merchandise purchased are capable of delivery at one time; or

(2) pertaining to the sale or rental of real property, to the sale of insurance or to the sale of securities or commodities by a broker-dealer registered with the securities and exchange commission or with the department of law; or

(3) pertaining to the solicitation of sales by a catalog seller who periodically issues and delivers catalogs to potential purchasers by mail or by other means; provided, however, that this exception shall only apply if the catalog includes a written description or illustration and the sales price of each item of merchandise offered for sale, includes at least twenty-four full pages of written material or illustrations, is distributed in more than one state, and has an annual circulation of not less than two hundred fifty thousand customers; or

(4) pertaining to a renewal or continuation of an existing or prior contractual relationship or prior purchasing relationship between a buyer and a seller; or

(5) pertaining to the sale of a vacation or travel service which is offered by a:

(i) person, firm, corporation, partnership or association that is an officially appointed agent of a common carrier and meets applicable standards no less than those required for authorized agents of the airline reporting corporation; or

(ii) person, firm, corporation, partnership or association that is a registered member in good standing of the cruise lines international association and who solely solicits and/or sells travel services and products as an officially appointed agent of one or more ocean carriers in the sale of the ocean carrier's travel services pursuant to the agency appointment.

(6) Pertaining to a sale in which the seller at a minimum has a policy of:

(i) accepting returns or canceling services, for a period of not less than seven days after the date of delivery to the customer and providing a cash refund for a cash purchase or issuing a credit for a credit purchase, which credit is applied to the account on which the purchase was debited, in connection with the return of its unused and undamaged merchandise or canceled services;

(ii) disclosing such seller's return and refund policy to the buyer, orally by telephone or in writing with advertising, promotional material, or with delivery of the products or service; and

(iii) restoring such payment or issuing such credit, as required under clause (i) of this subparagraph, within thirty days after the date on which the seller receives returned merchandise or notice of cancellation of services. A seller who discloses, in writing, that a sale is made or provided "satisfaction guaranteed", with "free inspection", "no risk guarantee", or similar words or phrases shall be deemed to meet the requirements of the review and return for refund policy set forth in this subparagraph.

2. "Telephone sale" shall mean any of the transactions referred to in subdivision one of this section and shall include transactions initiated by a consumer as a result of a mail solicitation inviting such telephone call.

3. "Merchandise" shall mean tangible chattels bought for personal, family or household purposes.

4. "Shipment" shall mean the act whereby the seller physically places the merchandise into the possession of the United States postal service or other carrier.

5. "Accepts orders" shall mean receipt of an order with charge account authorization and debiting the buyer's account.

6. "Purchase price" shall mean the total price paid or to be paid for the merchandise, including all interest and service charges.

7. "Business day" shall mean any calendar day except Sunday, or the following business holidays: New Year's Day, Martin Luther King Day, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, and Christmas Day.

§ 442. Buyer's or other obligor's right to cancel. 1. In addition to any other right otherwise to revoke an offer, the buyer or other person obligated for any part of the purchase price may cancel the telephone sale until midnight of the third business day after the day on which the buyer has received written notice from the seller notifying the buyer of his right to cancel the telephone sale.

2. Cancellation occurs when written notice of cancellation is given to the seller.

3. Notice of cancellation shall be deemed given when deposited in a mailbox properly addressed and postage prepaid.

4. Notice of cancellation shall be deemed received on midnight of the fifth day after it is deemed given.

5. Notice of cancellation need not take the form prescribed and shall be sufficient if it indicates the intention of the buyer not to be bound.

§ 443. Form of notice; statement of buyer's rights. 1. In a telephone sale, the seller shall furnish to the buyer, in the same language as that principally used in the sales presentation, a written notice, which shall contain in not less than ten-point boldface type, a statement in substantially the following form:

"You, the buyer, may cancel this transaction without any penalty or obligation at any time prior to midnight of the third business day after receipt of this notice. If you cancel, any payments made by you under the sale will be credited to your charge account within ten business days following receipt by the seller of your written notice of cancellation and any security interest arising out of the transaction will be cancelled.

If you cancel, you must make available to the seller at your residence, in substantially as good condition as when received, any goods delivered to you under this contract of sale; or you may, if you wish, comply with the instruction of the seller regarding the return shipment of the goods at the seller's expense and risk.

If you do make the goods available to the seller and the seller does not pick them up within twenty days of the date of your notice of cancellation, you may retain or dispose of the goods without any further obligation. If you fail to make the goods available to the seller, or if you agree to return the goods to the seller and fail to do so, then you remain liable for performance of all obligations under the contract.

To cancel this transaction, mail or deliver a written notice of cancellation, or send a telegram to (name of seller) at the following address (address of seller)".

2. Until the seller has informed the buyer of his right to cancel and has complied with the provisions of this article, the buyer or any other person obligated for any part of the purchase price may cancel the telephone sale by notifying the seller in any manner and by any means of his intention to cancel. The period prescribed by subdivision one of this section shall begin to run from the time the seller complies with the provisions of this article.

3. Pursuant to subdivision one of this section, the seller is required to furnish the buyer with the seller's name, and the name of the person to whom any notice of cancellation is to be given if different from the

seller's name, the legal name of the company for whom the seller is soliciting, the seller's street address and the seller's phone number. The seller is additionally required to furnish the buyer with the date of the telephone sale and a description of the telephone sale.

§ 444. Restoration of down payment. 1. Within thirty days after a telephone sale has been cancelled, the seller shall recredit the buyer's charge account.

2. If the down payment includes goods traded in, the goods shall be tendered in substantially as good condition as when received by the seller. If the seller fails to tender the goods as provided by this section, the buyer may elect to recover an amount equal to the trade-in allowance stated in the agreement.

3. If the seller refuses within the period prescribed by subdivision one of this section to return all payments made by the buyer, he shall be liable to the buyer for the said payments and if the buyer is successful in his action therefor or appeal thereon, the court shall award him one hundred dollars and may award reasonable attorney's fees and costs, in addition to such payments. In addition to such an action, such payments and the one hundred dollar amount may be recovered from any telemarketer maintaining a bond pursuant to subdivision four of section three hundred ninety-nine-pp of the general business law, or the surety or bank, trust company, savings bank or savings and loan association in an action on the bond. Nothing in the preceding sentence shall authorize the awarding of attorney's fees and costs against the surety, bank, trust company or savings and loan association.

4. Until the seller has complied with this section, the buyer may retain possession of goods delivered to him by the seller and shall have a lien on the goods in his possession or control for any recovery to which he may be entitled.

§ 445. Duty of buyer. 1. Except as provided in subdivision four of section four hundred forty-four of this article, within a reasonable time after a telephone sale has been cancelled and the buyer has received written notice from the seller that the buyer's charge account has been recredited, the buyer upon demand shall tender to the seller any goods delivered by the seller pursuant to the sale but need not tender at any place other than his residence. If the seller fails to demand possession of such goods within a reasonable time after cancellation or revocation, the goods shall become the property of the buyer without obligation to pay for them. For the purpose of this section, twenty days shall be presumed to be a reasonable time.

2. The buyer shall take reasonable care of the goods in his possession both before cancellation and for a reasonable time thereafter, during which time the goods are otherwise at the seller's risk.

3. If the seller has performed any services pursuant to a telephone sale prior to its cancellation, the seller shall not be entitled to compensation therefor.

§ 446. Restriction on assignment of obligation. 1. A seller shall not negotiate, transfer, sell or assign any note or other evidence of indebtedness to a finance company or other third party prior to midnight of the fifth business day following the day the seller sent written notice to the buyer informing the buyer of his right to cancel.

2. The assignee of any note or evidence of indebtedness shall be subject to all claims and defenses of the buyer against the seller arising from the sale notwithstanding any agreement to the contrary, but the assignee's liability under this subdivision shall not exceed the amount owing to the assignee at the time the claim or defense is asserted against the assignee. Rights of the buyer under this section can be asserted affirmatively against a claim by the assignee.

§ 447. Enforcement; penalties. Whenever there shall be a violation of this article, an application may be made by the attorney general in the name of the people of the state of New York to a court or justice having jurisdiction by a special proceeding to issue an injunction, and upon notice to the defendant of not less than five days, to enjoin and restrain the continuance of such violations; and if it shall appear to the satisfaction of the court or justice that the defendant has, in fact, violated this article, an injunction may be issued by such court or justice, enjoining and restraining any further violation, without requiring proof that any person has, in fact, been injured or damaged thereby. In any such proceeding, the court may make allowances to the attorney general as provided in paragraph six of subdivision (a) of section eighty-three hundred three of the civil practice law and rules, and direct restitution. Whenever the court shall determine that a violation of this article has occurred, the court may impose a civil penalty of not more than five hundred dollars for each violation. In connection with any such proposed application, the attorney general is authorized to take proof and make a determination of the relevant facts and to issue subpoenas in accordance with the civil practice law and rules.

§ 448. Separability. If any provision of this article or the application of such provision in certain circumstances shall be held invalid, the validity of the remainder of this article and its applicability to other circumstances shall not be affected.

ARTICLE 11

RENTAL PURCHASE AGREEMENTS

§ 500. Definitions. For the purposes of this article:

1. "Advertisement" means a commercial message in any medium that directly or indirectly promotes or assists a rental-purchase agreement.

2. "Cash price" means the price of the merchandise described in the rental-purchase agreement that the consumer may pay in cash to the merchant at the inception of the rental-purchase agreement to acquire ownership of such merchandise.

3. "Consumer" means an individual who leases personal property under a rental-purchase agreement.

4. "Merchandise" means the personal property that is the subject of a rental-purchase agreement.

5. "Merchant" means a person who, in the ordinary course of business, regularly leases, offers to lease, or acts as an agent for the leasing of merchandise under a rental-purchase agreement.

6. "Rental-purchase agreement" means an agreement for the use of merchandise by a consumer for primarily personal, family, or household purposes, for an initial period of four months or less, that is renewable with each payment after the initial period and that permits the consumer to become the owner of the property. An agreement that complies with this article is not a retail installment sales contract, agreement, or obligation as defined in this chapter nor a security interest as defined in paragraph thirty-five of subsection (b) of section 1--201 of the uniform commercial code.

7. "Cost of rental" means the difference between the total of payments necessary to acquire ownership under the rental-purchase agreement and

the cash price of the rental merchandise that is subject to the rental-purchase agreement.

8. "Fee" means any payment, charge, fee, cost, or expense, however denominated, other than a rental payment.

9. "Appliance" means and includes any refrigerator, freezer, range including any cook top or oven, microwave oven, washer, dryer, dishwasher, or room air conditioner or air purifier or other machine for routine household tasks.

10. "Electronic set" means and includes any television, radio, camera, video game, computer system or any type of device for the recording, storage, copying, printing, transmission, display, or playback of any sound or image.

11. "Merchant's cost" means the documented actual cost, including actual freight charges, of the rental merchandise to the merchant from a wholesaler, distributor, supplier, or manufacturer and net of any discounts, rebates, and incentives that are vested and calculable as to a specific item of merchandise at the time the merchant accepts delivery of the merchandise.

12. "Total of payments" means the total amount of periodic payments necessary to acquire ownership of the merchandise that is the subject of the rental-purchase agreement if the consumer makes all regularly scheduled payments.

13. "Periodic payment" means a payment to be made by a consumer for the right of the possession and use of merchandise for a specific rental period, but does not include taxes imposed on such payment.

§ 501. Form. 1. A rental-purchase agreement must be written in plain English and in any other language used by the merchant in an advertisement related to the rental-purchase agreement. Numerical amounts must be stated in figures.

2. Disclosures required by this section must be printed or typed in each rental-purchase agreement in a size equal to at least ten-point bold-faced type.

3. A rental-purchase agreement may not contain a provision:

(a) requiring a confession of judgment;

(b) authorizing a merchant or an agent of the merchant to commit a breach of the peace in the repossession of merchandise;

(c) waiving a defense, counterclaim, or right the consumer may have against the merchant or an agent of the merchant;

(d) requiring the purchase of insurance from the merchant to cover the merchandise;

(e) requiring the payment of a late charge or reinstatement fee unless a periodic payment is delinquent for more than three days for agreements that are renewed on week by week terms and seven days for agreements that are renewed on month by month terms, and the charge or fee is in an amount not more than the greater of ten percent of the delinquent amount or three dollars for agreements that are renewed on week by week terms and not more than the greater of ten percent of the delinquent amount or five dollars for agreements that are renewed on month by month terms. In the event that multiple items are leased to a consumer pursuant to more than one rental-purchase agreement, any late fee imposed pursuant to this section shall not exceed ten percent of the total of the periodic payments that are delinquent.

(f) requiring a payment in addition to regular periodic payments in order to acquire ownership of the merchandise or requiring periodic payments totalling more than the cost to acquire ownership, as provided in section five hundred three of this article.

4. Only one late charge or reinstatement fee may be assessed for a delinquent periodic payment regardless of the period during which it remains in default. No merchant shall assess a late charge for a periodic payment made in full on its due date or within three days for agreements that are renewed on week by week terms or seven days for agreements that are renewed on month by month terms when the only delinquency is attributable to late fees assessed on earlier periodic

payments. With respect to payments accepted by mail or by store deposit box, no merchant shall assess a late fee for payments which are post-marked or received before the expiration of the applicable delinquency periods.

5. A rental-purchase agreement must provide that:

(a) a charge in addition to periodic payments, if any, must be reasonably related to the cost of a service performed;

(b) a consumer who fails to make a timely payment may reinstate an agreement without losing rights or options previously acquired and without incurring any charges, other than rental charges for the time he possessed the property, except for those charges provided for in paragraph (e) of subdivision three of this section by making the required payment before the later of seven days or half the number of days in a regular payment period after the due date of the payment;

(c) if the merchandise is returned or voluntarily surrendered by the consumer, other than through judicial process, during the applicable reinstatement period set forth in paragraph (b) of this subdivision, the consumer's right to reinstate the agreement as set forth in paragraph (b) of this subdivision shall be extended for a period of not less than one year after the date of the return of the merchandise.

6. This section does not prevent a merchant from attempting to repossess merchandise during the reinstatement period provided in paragraph (b) of subdivision five of this section. The consumer's right to reinstate an agreement does not expire because of such a repossession. If the consumer is entitled to reinstatement after repossession, then, within fifteen days of the repossession, the merchant shall provide written notice to the consumer of the consumer's right to reinstate the agreement pursuant to paragraph (c) of subdivision five of this section. On reinstatement, the merchant shall provide the consumer with the same merchandise or substitute merchandise of comparable quality and condition. If substitute merchandise is provided, the merchant shall provide the consumer with the disclosures required in subdivision seven of this section.

7. (a) Every rental-purchase agreement shall be contained in a single

document which shall set forth all of the agreements of the merchant and the consumer with respect to the rights and obligations of each party. Every rental-purchase agreement shall clearly and conspicuously disclose all of the following:

(1) the names of the merchant and the consumer, the merchant's business address and telephone number, the consumer's address, the date on which the agreement is executed, and a description of the merchandise sufficient to identify it;

(2) whether the merchandise subject to the rental-purchase agreement is new or used, provided, however that it shall not be a violation of this section to indicate that the merchandise is used if it is actually new;

(3) the minimum period for which the consumer is obligated under the rental-purchase agreement; the duration of the rental-purchase agreement if all regularly scheduled periodic payments are made, designated as the "rental period"; and the amount of each periodic payment;

(4) the total of payments and the total number of periodic payments necessary to acquire ownership of the merchandise if the renter makes all regularly scheduled periodic payments;

(5) the cash price of the merchandise subject to the rental purchase agreement;

(6) the cost of rental;

(7) the amount and purpose of any other payment or fee in addition to those specified pursuant to subparagraphs three and four of this paragraph, including any late payment fee;

(8) a statement that the total number and dollar amount of payments necessary to acquire ownership of the rental merchandise disclosed under subparagraph four of this paragraph does not include other fees, such as late payment fees, and that the consumer should read the rental-purchase agreement for an explanation of any applicable additional fees;

(9) whether the consumer is liable for loss or damage to the merchandise and, if so, the maximum amount for which the consumer may be liable, which in the case of loss shall in no event be greater than the price the consumer would have paid to exercise an early purchase option pursuant to this article. In the case of damage to the merchandise, other than normal wear and tear the consumer shall be liable for the lesser of the price the consumer would have paid to exercise an early

purchase option pursuant to this article or the cost of the repair as determined by the merchant;

(10) that the consumer does not acquire ownership rights unless the consumer has complied with the ownership terms of the agreement;

(11) the following notice:

NOTICE

You are renting this merchandise. You will not own it until you make all of the regularly scheduled payments or you use the early purchase option.

You do not have the right to keep the merchandise if you do not make required payments or do not use the early purchase option. If you miss a payment, the merchant can repossess the merchandise, but, you may have the right to the return of the same or similar merchandise.

See the contract for an explanation of your rights.

(12) a statement of the consumer's right to acquire ownership as provided in section five hundred four of this article, including substantially the following statement: "The attached chart shows the amount required to exercise your early purchase option after each renewal payment, assuming you make each periodic payment on time." The rental-purchase agreement shall be accompanied by a chart showing the amount required to exercise the consumer's early purchase option after each periodic payment if payments are made as scheduled;

(13) a description of the consumer's reinstatement rights as provided in subdivision five of this section;

(14) a description of the consumer's right to lower periodic payment amounts as provided in section five hundred four-a of this article.

(15) if warranty coverage is transferable to a consumer who acquires ownership of the merchandise, a statement that the unexpired portion of all warranties provided by the manufacturer, distributor, or seller of the merchandise that is the subject of the rental-purchase agreement will be transferred by the merchant to the consumer at the time the consumer acquires ownership of the merchandise from the merchant; and

(16) a description of the merchant's obligation to maintain the rental merchandise and to repair or replace rental merchandise that is not

operating properly, as provided in section five hundred four-b of this article.

(b) (1) The disclosures required by subparagraphs three, four, five, and six of paragraph (a) of this subdivision shall be printed in at least ten-point boldfaced type or capital letters if typed and shall be grouped together in a box formed by a heavy line in the following form:

TOTAL OF PAYMENTS	COST OF RENTAL	CASH PRICE	
$ You must pay this amount to own the merchandise if you make all the regular payments. You can buy the merchandise for less under the early purchase option.	$ Amount over cash price you will pay if you make all regular payments.	$ Merchandise available at this price for cash from the merchant. See about your early purchase option rights.	
	AMOUNT OF EACH PAYMENT	NUMBER OF PAYMENTS	RENTAL PERIOD
	$ per _______________ (insert period)		

(2) The box described in subparagraph one of this paragraph shall appear immediately above the space reserved for the consumer's signature.

(c) The disclosures required by subparagraphs three, four, five, and six of paragraph (a) of this subdivision shall be grouped together in a box formed by a heavy line in the form prescribed in paragraph (b) of this subdivision and shall be clearly and conspicuously placed on a tag or sticker affixed to the merchandise available for rental-purchase. If the merchandise available for rental-purchase is not displayed at the merchant's place of business but appears in a photograph or catalog shown to consumers, a tag or sticker shall be affixed to the photograph of the merchandise or catalog shown to consumers or shall be given to consumers. The disclosure required by subparagraph two of paragraph (a) of this subdivision also shall be clearly and conspicuously placed on the tag or sticker. The provisions of this paragraph shall not apply to photographic depictions of merchandise that comply with the provisions of section five hundred five of this article.

(d) All disclosures required by this subdivision shall be printed or typed in a color or shade that clearly contrasts with the background.

8. (a) (1) Subject to federal law and regulation, no rental-purchase agreement shall contain a mandatory arbitration clause. Nothing contained herein shall be construed to prohibit a merchant from incorporating a provision within such contract that such merchant agrees that the decision of the arbitrator or panel of arbitrators shall be final in its application to such merchant and not subject to court review.

(2) The provisions of a mandatory arbitration clause shall be null and void but shall not constitute a violation of this article. The inclusion of such clause in a rental-purchase agreement shall not serve to impair the enforceability of any other provision of such contract.

(b) For the purposes of this subdivision the following terms shall have the following meaning:

(1) "mandatory arbitration clause" shall mean a term or provision contained in a rental-purchase agreement which requires the consumer to submit any controversy thereafter arising under such agreement to arbitration prior to the commencement of any legal action to enforce the provisions of such agreement and which also further provides language to the effect that the decision of the arbitrator or panel of arbitrators in its application to the consumer shall be final and not subject to court review.

(2) The term "arbitration" shall mean the use of a decision making forum conducted by an arbitrator or panel of arbitrators within the meaning and subject to the provisions of article seventy-five of the civil practice law and rules.

§ 502. Availability. Every rental purchase agreement shall indicate that a consumer at his or her request shall be permitted to review a completed rental-purchase agreement for up to forty-eight hours prior to signing. A copy of the fully completed rental-purchase agreement and all other documents which the merchant requests the consumer to sign shall be given to the consumer at the time they are signed. The rental-purchase agreement shall not be enforceable against the consumer until the consumer has received a signed copy. In addition to any other right of cancellation, a consumer has the right to cancel a rental-purchase agreement, without penalty or obligation if the consumer has not taken possession of the property.

§ 503. Total cost. 1. A merchant shall maintain records that establish the merchant's cost for each item of merchandise that is the subject of the rental-purchase agreement. A copy of each rental-purchase agreement and of the records required by this subdivision shall be maintained for at least two years following the termination of the agreement.

2. The maximum cash price for the merchant's first rental of the merchandise that is the subject of the rental-purchase agreement may not exceed 1.75 times the merchant's cost for appliances, 1.75 times the merchant's cost for electronic sets having merchant cost less than one hundred fifty dollars, 2.0 times the merchant's costs for electronic sets having merchant cost greater than or equal to one hundred fifty dollars, 2.15 times the merchant's cost for furniture, 2.0 times the merchant's cost for automotive accessories, jewelry, and musical instruments, and 1.75 times the merchant's cost for all other items.

3. The maximum total of payments may not exceed 2.25 times the maximum cash price that could have been charged for the first rental of the

merchandise under subdivision two of this section.

4. The maximum total of payments for the merchant's second and subsequent rental of the merchandise that is the subject of the rental-purchase agreement may not exceed the maximum total of payments permitted under the terming matrix contained in subdivision five of this section.

5. (a) The terming matrix provided for in paragraph (b) of this subdivision shall be used to lower the number of periodic payments, which shall result in a lower total of payments and a lower maximum cash price for the used merchandise based on its age and condition, or, in the event that the merchant chooses to maintain the number of periodic payments of the original term when new, the merchant shall lower the total of payments and maximum cash price on a pro-rata basis. The merchant shall keep in electronic or hard copy form, the matrix used, together with a record of the number of periodic payments provided in the first agreement for the item when it was offered as new, as well as a record of the item's condition as determined by the merchant pursuant to such matrix each time it is priced as used. This requirement shall be satisfied by a record of the number of periodic payments and cash price from each rental-purchase agreement under which merchandise was rented. These records shall be maintained as long as the item is owned by the merchant. No merchant shall price used goods in excess of the prices dictated by the matrix.

(b) The attorney general shall make available in printed form to merchants and publish on the website of the department of law a terming matrix in chart form to be used by merchants as required pursuant to paragraph (a) of this subdivision. The chart shall have as its title "Terming Matrix for Used Merchandise". The matrix chart shall conform to the example set forth in this paragraph and shall consist of five rows and five columns and shall be printed in at least ten point type.

TERMING MATRIX FOR USED MERCHANDISE

Original Term in Weeks	34 weeks	35 - 38 weeks	39 - 90 weeks	91 weeks or more

when New	or less			
EXCELLENT CONDITION	subtract a minimum of 1 week from original term	subtract a minimum of 2 weeks from original term	subtract a minimum of 3 weeks from original term	subtract a minimum of 4 weeks from original term
GOOD CONDITION	subtract a minimum of 3 weeks from original term	subtract a minimum of 5 weeks from original term	subtract a minimum of 7 weeks from original term	subtract a minimum of 9 weeks from original term
FAIR CONDITION	subtract a minimum of 4 weeks from original term	subtract a minimum of 7 weeks from original term	subtract a minimum of 10 weeks from original term	subtract a minimum of 13 weeks from original term
POOR CONDITION	subtract a minimum of 6 weeks from original term or cash sale	subtract a minimum of 10 weeks from original term or cash sale	subtract a minimum of 15 weeks from original term or cash sale	subtract a minimum of 20 weeks from original term or cash sale

(c) Immediately below the terming matrix, the following language shall be printed in ten point type.

New = Full Term

Excellent = In great shape. Refurbished to look like new.

Good = In good working order. Refurbished, but imperfections still exist.

Fair = Completely operational, but refurbishment has not concealed obvious wear and tear.

Poor = Ripped, faded, cracked or broken and refurbishment did not change it.

6. The maximum cash price for merchandise on its second or subsequent rental may not exceed the maximum total of payments for that merchandise as permitted under subdivision five of this section divided by 2.25.

7. Upon the written request of the attorney general a merchant shall provide copies of the records described in this section.

8. If a merchant intentionally discloses a cash price or a total of payments that exceeds the amount permitted by this section, the rental-purchase agreement is void, the consumer shall retain the merchandise without any obligation, and the merchant shall refund to the consumer all amounts paid.

§ 504. Early purchase option. 1. The consumer has the right to acquire ownership of the merchandise at any time by tendering to the merchant all past due payments and fees and an amount equal to the cash price stated in the rental-purchase agreement multiplied by a fraction that has as its numerator the number of periodic payments remaining under the agreement and that has as its denominator the total number of periodic payments. A consumer must affirmatively elect to exercise an early purchase option. In no event shall the consumer's early purchase option be less than the amount of one periodic payment.

2. In a clear and conspicuous manner on the consumer's receipt for every periodic payment, the merchant shall, in connection with a consumer's rights under this section, provide the consumer with a written statement of:
(a) the total amount the consumer would have to pay to acquire ownership of the rental merchandise if the consumer makes all regularly scheduled payments remaining under the rental-purchase agreement; and
(b) the total amount the consumer would have to pay to acquire ownership of that merchandise pursuant to subdivision one of this section.

§ 504-a. Interruption or reduction of income in certain instances. 1. If any consumer who has signed a rental-purchase agreement experiences an interruption or reduction of twenty-five percent or more of income due to involuntary job loss, involuntary reduced employment, illness, pregnancy or disability after one-half or more of the total amount of the rental payments necessary to acquire ownership under the agreement has been paid, and such consumer provides to the merchant some evidence of the amount and cause of the interruption or reduction of income, the merchant shall reduce the amount of each rental payment by (a) the percentage of the reduction in the consumer's income or (b) fifty percent, whichever is less, for the period during which the consumer's income is interrupted or reduced.

2. If payments are reduced, the total dollar amount of payments necessary to acquire ownership shall not be increased, provided, however, that the number of payments necessary to acquire ownership may be increased accordingly and the rights and duties of the merchant and the consumer shall not otherwise be affected.

3. When the consumer's income is restored, the merchant may increase the amount of rental payments, but in no event shall rental payments exceed the originally disclosed amount of rental payments.

§ 504-b. Maintenance of merchandise. 1. The merchant shall maintain the property subject to the rental-purchase agreement in good working order while the agreement is in effect without charging any fee to the consumer in addition to the regularly scheduled rental payments set forth in the rental-purchase agreement.

2. By the end of the second business day following the day on which the merchant received notice from the consumer that the property is not operating properly, the merchant shall repair or replace the property without any fee to the consumer in addition to the regularly scheduled rental payments set forth in the rental-purchase agreement.

3. If a repair or replacement cannot be immediately effected, the merchant shall temporarily substitute property of comparable quality and condition while repairs are being effected. If repairs cannot be completed to the reasonable satisfaction of the consumer within thirty days after the merchant receives notice from the consumer or within a

longer period voluntarily agreed to by the consumer, the merchant shall permanently replace the property.

4. All replacement property shall be the same brand, if available, and comparable in quality, age, condition, and warranty coverage to the replaced property. If the same brand is not available, the brand of the replacement property shall be agreeable to the consumer, provided, however that any request by the consumer shall not be unreasonable.

5. All of the consumer's and merchant's rights and obligations under the rental-purchase agreement and this title that applied to the property originally subject to the rental-purchase agreement shall apply to any replacement property.

6. The consumer shall not be charged, or held liable for, any pro rata portion of a periodic payment for any period of time greater than one full day and each full day thereafter during which the property that is the subject of the rental-purchase agreement or any property substituted for it pursuant to this section is not in good working order.

7. This section shall not apply to repairs or damage for which the consumer is liable under the rental-purchase agreement as permitted by this article.

8. A merchant shall not deliver to a consumer any property which the merchant knows or has reason to know is defective.

§ 505. Advertisement. 1. An advertisement for a rental-purchase agreement that refers to or states the amount of a payment or the right to acquire ownership of any one particular item under the agreement shall clearly and conspicuously state:

(a) that the transaction advertised is a rental-purchase agreement;

(b) the total number of payments and the total amount to be paid to acquire ownership, which amount shall be explicitly labeled "total cost";

(c) the circumstances under which the consumer can acquire ownership rights; and

(d) whether the advertised terms are for new or used merchandise.

2. An advertisement for personal property available through rental-purchase agreements that refers to more than one appliance or particular item and includes information on periodic payment amounts shall include a representative item available at that amount and shall conspicuously state:

(a) that the merchandise offered may be new or used;

(b) that transaction advertised is a rental-purchase agreement; and

(c) that the consumer does not acquire ownership rights unless the consumer complies with the ownership terms of the agreement.

3. Every item displayed or offered under a rental-purchase agreement shall have clearly and conspicuously indicated in arabic numerals, so as to be readable and understandable by visual inspection, each of the following affixed to the item:

(a) the cash price of the merchandise;

(b) the amount of the periodic payment and the total number of periodic payments required for ownership; and

(c) the total amount that must be paid to acquire ownership of merchandise, which amount shall be explicitly labeled total cost.

§ 506. Exempted transactions. This article does not apply to:

1. Agreements for the rental of merchandise in which the person who rents the merchandise has no legal right to become the owner of the property at the end of the rental period;

2. A lease of a safe deposit box; and

3. Retail installment sales agreements, contracts, or obligations.

§ 507. Enforcement. 1. A consumer who has suffered a loss due to a violation of this article by a merchant is entitled to recover from the merchant actual damages, reasonable attorney's fees and court costs.

2. Whenever a court finds that a consumer has been injured because a merchant acted in bad faith in its performance under this article, the merchant shall be subject to a penalty of not less than one hundred dollars nor more than one thousand dollars as determined by the court.

3. A violation of this article is a deceptive trade practice under section three hundred forty-nine of the general business law.

4. Whenever there shall be a violation of this article an application may be made by the attorney general in the name of the people of the state of New York to a court or justice having jurisdiction to issue an injunction, and upon notice to the defendant of not less than five days, to enjoin and restrain the continuance of such violations; and if it shall appear to the satisfaction of the court or justice, that the defendant has, in fact, violated this section an injunction may be issued by such court or justice enjoining and restraining any further violation, without requiring proof that any person has, in fact, been injured or damaged thereby. In any such proceeding, the court may make allowances to the attorney general as provided in paragraph six of subdivision (a) of section eighty-three hundred three of the civil practice law and rules, and direct restitution. Whenever the court shall determine that a violation of this article has occurred, the court may impose a civil penalty of not more than five hundred dollars for each violation. In connection with any such proposed application the attorney general is authorized to take proof and make a determination of the relevant facts and to issue subpoenas in accordance with the civil practice law and rules.

5. Nothing in this article shall be construed so as to nullify or impair any right or rights which a consumer may have against a merchant at common law, by statute, or otherwise.

6. A merchant or assignee may not be held liable in an action brought under this article for a violation of this article that was unintentional and resulted from a bona fide or clerical error

notwithstanding the maintenance of procedures reasonably adopted to avoid any such error.

7. An action shall not be brought under this article more than four years after the occurrence of the act, method or practice which is the subject of the action or more than one year after the last payment in a transaction involving the method, act or practice which is the subject of the action, whichever is later.

§ 508. Administration by the attorney general. The attorney general may make rules and regulations necessary for the administration of this article; provided, however, that such rules and regulations shall not attempt to regulate or characterize rental-purchase agreements as a security interest, credit sale, retail installment sale, conditional sale or any other form of consumer credit that imputes to a rental-purchase agreement the creation of a debt or extension of credit, nor shall such rules and regulations require the disclosure of a percentage rate calculation, including a time-price differential, an annual percentage rate, or an effective annual percentage rate.

ARTICLE 12
LAWS REPEALED; WHEN TO TAKE EFFECT

§ 550. Laws repealed. Of the laws enumerated in the schedule hereto annexed, that portion specified in the last column is hereby repealed.

§ 551. When to take effect. This chapter shall take effect immediately.