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CONSUMER REMEDIES UNDER LAYAWAY PLANS

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INTRODUCTION

Layaway plans are a traditional means by which low income consumers purchase goods on "credit." Under such a plan, the consumer makes payments towards the total price in advance, receiving the goods only when they have been paid for in full. Problems arise when the buyer ceases making payments before the transaction has been completed, and the seller then refuses to refund those payments that have been made.

This memo develops a working definition of layaway plans, analyzes their legal construction and effect, and discusses those remedies available to the consumer under traditional contract theory, the Truth in Lending Act (TILA), and state Unfair or Deceptive Acts or Practices (UDAP) statutes.

CONCLUSION

Under traditional contract theory, a layaway plan is essentially an option contract for a specified period of time, supported by a passing of consideration. Should the buyer elect not to exercise his/her option, courts are faced with the problem of assessing the "cost" of that option to the seller in determining the appropriate compensation therefor. That is, to what extent does the layaway agreement force the merchant to forgo a legal right -- in this case, selling the merchandise to another buyer?

One solution is a "sliding scale" approach, whereby the seller's recovery is directly proportional to the "uniqueness" of the goods involved. While the UCC fails to address the problem of compensation to the seller, §2-718 (liquidation of damages) does deal with a situation closely parallel to that presented here. As such, that section's damages formula (§2-718(2)(b)) may serve as a rough measure of the seller's maximum recovery under a layaway agreement.

No general statement can be made as to the applicability of TILA to layaway plans; rather, TILA coverage will depend on how a particular transaction is structured. Regulation Z and the accompanying interpretations have created a two-step process for determining TILA coverage. Under §226.2(s), all layaways which do not involve the payment of a finance charge and are not payable in more than four installments fall outside the scope of the Act; under §226.201, all layaways which impose no contractual obligation on the consumer to pay and entitle him/her to receive a full refund of any amounts paid toward the cash price are also exempt from the requirements of TILA.

A few states -- Idaho, Maryland, Massachusetts, and Ohio -- have responded specifically to the problems presented by layaways through their Unfair or Deceptive Acts or Practices statutes. These statutes and regulations impose on the seller certain disclosure and reporting requirements, perhaps the most important of which is the disclosure of seller's refund policy regarding

payments made prior to buyer's "default"/cancellation. For seller's violation of any such requirements, the buyer may bring an action for damages or rescission. If successful, the buyer may also recover statutory damages and attorney's fees.

In states having no express statutory provisions, consumers must argue that layaway abuses fall within the broad language of the law -- i.e., "unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce." Finally, in cases involving the return of payments made prior to buyer's "default"/cancellation, consumers may be aided by reference to non-layaway case law dealing with the refund of deposits.

DISCUSSION

I. "Layaway" Defined

Under the classic layaway scheme, the seller promises to reserve a particular item for the customer for a specified period of time (say, two weeks), in exchange for a payment which goes towards the total price. Within that period, the customer may make another payment, thereby keeping the offer of sale open for the following two weeks. At any point during this process, the customer may pay the balance due in full and receive the item; alternatively, (s)he may continue to make payments in installments

and receive the item when it is completely paid for. While the period for payment is obviously flexible, a time limit within which the total price must be paid is usually set (say, three months). If the customer either fails to make a payment covering a subsequent two-week period or does not pay the total price within three months of the date of the first payment, the layaway plan comes to an end, and the item will no longer be reserved for the customer. This analysis is in accord with Holland v. Brown, 15 Utah 2d 422, 394 P.2d 77, A.L.R. 3d 449 (1964), the only reported appellate decision discussing the legal construction and effect of layaways. (There the court held that while there was sufficient evidence to support the jury's conclusion that a binding contract rather than a "layaway" plan existed, the jury had not exceeded the bounds of its discretion in awarding plaintiff/seller nominal damages of only $1.00.)

Because a contract for sale does not arise until the final payment is made, the customer never comes under any contractual obligation to buy: i.e., (s)he can cease making payments at any time without being liable for breach. In such a situation, however, a question arises as to the disposition of those payments already made to the seller. The answer depends in large part on the legal construction given to the terms of the layaway plan.

II. Contract Theory

A layaway plan may be analyzed as an offer to enter into a unilateral contract. What distinguishes it from other such offers is that it is made irrevocable for a specified period of time by a passing of consideration. As Calamari & Perillo state:

> "One of the classic ways of rendering an offer irrevocable is by the acceptance of a consideration by the offeror [in the case of layaways, the seller] in exchange for his promise to keep the offer open. Such an offer is frequently called an option contract."
>
> Calamari & Perillo, Contracts §2-27 (2d ed. 1977).

At this point, it is appropriate to speak of layaways and option contracts synonymously:

> "An example of a binding option is a so-called 'layaway' system for the sale of goods under which a customer selects the merchandise which he desires to purchase and pays a deposit on it, whereupon the seller agrees to hold the merchandise for some agreed time during which the customer is to call for it and pay the balance."
>
> 67 Am. Jr. 2d Sales §78 (citing Holland v. Brown, 10 ALR 3d at 453).

Am. Jur. stresses that an option contract has two discrete elements:

> "(1) the offer to sell, which does not become a contract of sale until accepted [under the classic layaway scheme described above, such "acceptance" does not occur until the final payment is made]; (2) the completed contract to leave the offer open for the specified time. These elements are wholly independent . . ."
>
> Id.

As previously noted, the buyer's successive payments towards the cash price do not obligate him/her to carry through with the sale. Rather, they only serve to extend the option period for the following two weeks. Thus, while the buyer has not yet purchased the goods themselves, (s)he has bought time, time in which to decide whether or not to make such purchase. The time involved here clearly has value, for by keeping the offer open, the seller has (at least technically) forgone the legal right of selling the goods to another buyer. It is for this reason that at least some consideration (see 67 Am. Jur. 2d Sales §79) or its equivalent (see UCC §2-205; 17 Am. Jur. 2d Contracts §88) must pass from buyer to seller.

The question remains, however: what portion of the buyer's payments should the seller by allowed to retain should the buyer decide not to complete the purchase? One approach to this problem is a so-called "sliding scale", whereby the seller's recovery is directly tied to the "uniqueness" of the goods involved. That is, for uniform, interchangeable consumer goods, such as televisions, it is something of a legal fiction to argue that a merchant

with an inventory of 500 identical TV sets is: (a) reserving one set in particular for the customer under a layaway plan; and (b) losing the opportunity of selling that set to another potential buyer. Because of the availability of identical goods on a virtually limitless basis, the merchant, in practical terms, has forgone no legal right as a result of entering into the layaway agreement. In such a case, it should be argued that merely having the use of the buyer's money during the option period is sufficient compensation. 77 Am. Jur. 2d Vendor and Purchaser §550 (citing three cases dealing with option contracts for the sale of land: Baston v. Clifford, 68 Ill. 67 (1873); Eno v. Woodworth, 4 N.Y. 249 (1850); Johnson v. Evans, 8 Gill 155 (Md. 1849)).

Towards the middle of the scale are those layaway plans in which the seller incurred costs which (s)he can prove were incidental to keeping the particular offer of sale open (e.g., storage, maintenance, transportation, or security charges).

Finally, at the upper end of the scale there is authority for the proposition that

> "The consideration for the money paid for an option is the right to call for a conveyance during the time limited, and ordinarily, if the option is not exercised during that time, no claim arises against the vendor for the money paid . . ."
>
> 77 Am. Jur. 2d Vendor and Purchaser §47 (discussion of contracts for the sale of real property).

Thus, the seller's recovery should be greatest for layaways covering "unique" types of property, such as land, since layaway agreements of that kind clearly do prevent the merchant from selling the goods to other buyers.

Significantly, the UCC fails to address the problem of compensation to the seller. Section 2-718 deals with the seller's right to retain a portion of the buyer's payments as liquidated damages in situations "where the seller [has] justifiably [withheld] delivery of goods because of the buyer's breach." §2-718(2). Because it only comes into play once a breach of a sales contract has occurred, this section is not applicable to layaways. For as we have seen, since no contract for sale exists between buyer and seller (until the buyer makes the final payment), a buyer's failure to make a subsequent payment under a layaway agreement does not constitute a breach of contract.

Nonetheless, because it deals with an otherwise similar situation, §2-718 may serve as a rough measure of "damages" in this instance. Subsection (2)(b) states that, in the absence of any prior agreement between the parties as to liquidated damages,

> "the buyer is entitled to restitution of any amount by which the sum of his payments exceeds... twenty percent of the value of the total performance for which the buyer is obligated under the contract or $500, whichever is smaller."

Finally, the damages question points up the only significant difference between a layaway plan and an installment sales contract in which the buyer does not receive the goods until after (s)he has paid the full price: while the seller's remedies under a layaway plan are limited to those mentioned above, the seller in an installment sales contract may, in addition to claiming such "incidental damages", sue for his/her "loss of bargain" (i.e., profit margin) under the UCC. §§2-703, 2-708, 2-709. This result follows because an installment sale imposes a contractual obligation on the buyer to pay, and as such, failure to make a subsequent payment constitutes a breach of the contract and exposes the buyer to all of seller's claims of damages resulting therefrom.

III. The Truth in Lending Act

According to both the Board and Staff interpretations, it is clear that no general statement can be made as to the applicability of TILA to layaway plans; rather, TILA coverage will depend on how a particular transaction is structured.

The starting point for a TILA layaway analysis is the finance charge/four installment rule of §226.2(s). As most layaway plans are payable by agreement in more than four installments or involve the payment of a finance charge, this pre-condition to TILA coverage is generally satisfied.

In addition to the above test, Board Interpretation §226.201 states that

> "Many vendors offer layaway plans under which they retain the merchandise for a customer until the cash price is paid in full and the customer has no contractual obligation to make payments and may, at his option, revoke a purchase made under the plan and request and receive prompt refund of any amounts paid toward the cash price of the merchandise.
>
> A purchase under such a layaway plan shall not be considered an extension of credit subject to the provisions of Regulation Z."

This interpretation was arguably a response to the problem that while a layaway plan did not technically constitute an "extension of credit",[1/] it sufficiently resembled "credit" (e.g., finance charges, default charges, security interests, balloon payments, series of payments over time) to warrant closing this loophole, lest merchants disguise their installment sales as layaways in order to avoid the requirements of Regulation Z.

By its wording of §226.201, the Board apparently felt that the buyer did not need the protection of Regulation Z only when (s)he was under no contractual obligation to pay (i.e., could not be sued for default on the sales contract) and could receive a full refund of all amounts paid toward the cash price.

Section 226.201 thus divides all layaway plans into four categories, only the first of which is exempt from the requirements of TILA:

1) no contractual obligation to make payments, full refund of any amounts paid toward the cash price of the merchandise;

2) no contractual obligation, partial or no refund;

3) contractual obligation, full refund;

4) contractual obligation, partial or no refund.

Of the twelve FRB staff letters written on the subject of layaways, four unequivocally state that §226.201 must be read together with the finance charge/four installment requirement of §226.2(s)[2/]. See FRB Staff Letter No. 286, March 13, 1970, [1969-74 Transfer Binder] CCH Cons. Credit Guide ¶30,526; FRB Staff Letter No. 502, July 12, 1971, [1969-74 Transfer Binder] CCH Cons. Credit Guide ¶30,701; FRB Staff Letter No. 922, September 29, 1975, [1974-77 Transfer Binder] CCH Cons. Credit Guide ¶31,261; FRB Staff Letter No. 1218, July 15, 1977, [1974-77 Transfer Binder] CCH Cons. Credit Guide ¶31,657. Further, several recent cases have adopted this analysis in finding layaway plans subject to TILA: e.g., Edmondson v. Bride Beautiful, Clearinghouse No. 24,465, 2 Pov. L. Rep. ¶26,258 (N.D. Ga. 1976); Burton v. Jury-Rowe Co., 5 CCH Cons. Credit Guide ¶98,586, 9 Clearinghouse Rev. 31 (No. 14,758), [1974-76 Transfer Binder] Pov. L. Rep. ¶21,015 (Mich. Dist. Ct. 1975).

Reading §226.201 in conjunction with §226.2(s), then, we can depict the scope of TILA's coverage of layaways by the following table:

	§226.201			
	no contractual obligation, full refund (NC)	no contractual obligation, partial or no refund (C)	contractual obligation, full refund (C)	contractual obligation, partial or no refund (C)
§226.2(s) no finance charge and not payable in more than four installments (NC)	(NC)	(NC)	(NC)	(NC)
finance charge or payable in more than four installments (C)	(NC)	(C)	(C)	(C)

C = covered by the Truth in Lending Act
NC = not covered by the Truth in Lending Act

Determining whether a particular layaway plan is covered by TILA is thus essentially a two-step process:

1) Does the transaction involve the payment of a finance charge, or is it payable by agreement in more than four installments? If "no", then the transaction is not covered by TILA (first row of table). If "yes", then the second question must answered;

2) Is the consumer under no contractual obligation to pay, and can (s)he receive a full refund of all amounts paid toward the cash price? If "yes", then the transaction is not covered by TILA (first column of table). If "no", then the layaway plan does fall within the scope of the Act.

Finally, it should be noted that the dual requirements of §226.201 (no contractual obligation to pay, full refund) are significant in two respects:

1) The interpretation brings under the scope of the Act transactions in which the buyer does not receive a full refund, even though there is no "extension of credit." This approach "rests upon a theory that debt may exist in situations involving no contractual obligation to pay for the goods so long as there is economic compulsion on the buyer to complete his purchase." Warren, W., and Larmore, T., "Truth in Lending: Problems of Coverage," 24 Stan. L. Rev. 793, 799 (1972). A subsequent unofficial staff interpretation, dealing with prearranged funeral agreements, supports this view:

> "the fact that the seller will retain 20 percent of the full purchase price if the customer cancels the agreement introduces an element of economic coercion forcing the latter to continue participation in the plan. Although there may be no legal obligation to continue payments, there certainly is a pecuniary incentive to do so rather than forfeit 20 percent of the price."
>
> FRB Staff Letter No. 119, October 28, 1976, [1974-77 Transfer Binder] CCH Cons. Credit Guide ¶31,469.

Further, several courts have relied on this theory implicitly in finding Reg. Z applicable to certain types of consumer transactions: e.g, Dennis v. Handley, 453 F. Supp. 833 (N.D. Ala. 1978) (pawnbroker held subject to TILA despite the fact that neither the pawn ticket nor the receipt recited a promise to repay); Johnson v. McNamara, Civil Nos. H-78-238, H-78-498 (D. Conn. 4/12/79) (rental agreements in which the lessee had an option to terminate at any time held to be a disguised conditional sales contract and thus subject to the Act: "... a holding that these contracts are not subject to the Truth in Lending Act because they are phrased in terms of a lease rather than in terms of a conditional sale would represent a supreme exaltation of form over substance.")

2) By using the phrase "any amounts paid toward the cash price of the merchandise" rather than "all monies paid to the vendor" (in a similar context, see official comment 2, UCC §2-

718), the Board created a major loophole to §226.201 which subsequent staff interpretations have failed to close. Under §226.201, a layaway plan involving a $100 item, which provides that the seller will retain 20% of the cash price in the event the buyer fails to complete the transaction, is subject to the Act. See FRB Staff Letter (unnumbered), September 25, 1972, [1969-74 Transfer Binder] CCH Cons. Credit Guide ¶30,884; FRB Staff Letter No. 1119, October 22, 1976 [1974-77 Transfer Binder] CCH Cons. Credit Guide ¶31,469. However, by a slight change in form the seller can achieve the same financial result yet avoid the requirements of Reg. Z: if the price is lowered to $80 but the buyer now required to put down a $20 non-refundable "layaway fee"/ "service charge", which is not payable toward the cash price, then the transaction falls outside the scope of TILA. See FRB Staff Letter No. 159, October 17, 1969 [1969-74 Transfer Binder] CCH Cons. Credit Guide ¶30,186; FRB Staff Letter No. 501, July 12, 1971 [1969-74 Transfer Binder] CCH Cons. Credit Guide ¶30,700; FRB Staff Letter No. 1159, February 17, 1977 [1974-77 Transfer Binder] CCH Cons. Credit Guide ¶31,541.

IV. State UDAP Statutes

A third way of dealing with layaway plans is by means of state Unfair or Deceptive Acts or Practices (UDAP) statutes. A few states -- Idaho, Maryland, Massachusetts, and Ohio -- have

responded specifically to the problems presented by layaways.[3/] The key provisions of those statutes and regulations can be summarized as follows (states that have passed such provisions are listed in parentheses following):

1) Disclosures. While the law varies from state to state, the seller must in general include in the layaway agreement such information as: a description of the goods; identification of the parties; the cash price; any miscellaneous charges; the amount of the down payment; the time during which the offer will be held open for the buyer; and finally, the seller's refund policy regarding payments made prior to buyer's "default"/cancellation. (Idaho, Maryland, Massachusetts, Ohio).

2) Receipts. Every time the buyer makes a payment, the seller must give him/her a written receipt showing the amount of that payment and the date thereof. (Idaho, Maryland, Massachusetts, Ohio).

3) Itemized statement. Upon request by the buyer, the seller must give him/her an itemized statement showing the amount paid to date and the amount still owing. (Idaho, Maryland, Massachusetts).

4) Holding the goods. The seller must hold for the buyer either the specific goods chosen by the buyer or an exact duplicate thereof. (Idaho,[4/] Maryland, Massachusetts, Ohio).

5) Contractual obligations.[5/] The seller may not increase the price of the goods laid away after the original agreement has been made; after all payments have been made, the seller must deliver to the buyer the consumer goods or goods identical to those originally selected (Idaho, Maryland, Massachusetts).

6) Limitation on seller's "damages" following buyer's "default". If the buyer cancels the layaway agreement within seven days of the date of its execution, (s)he shall receive a full refund of all payments made and/or property traded in. If the buyer cancels/"defaults" eight or more days after the date of the execution of the agreement, the seller may retain as "liquidated damages" ten percent of the layaway price or the total amount paid by the buyer to the date of cancellation/"default", whichever is less. (Maryland).

7) Private Right of Action. For seller's violation of any of the above provisions, buyer may bring an action for damages or rescission. (Idaho,[6/] Maryland, Massachusetts,[6/] Ohio).

8) Suit by Attorney General. For seller's violation of any of the above provisions, the state Attorney General is also

authorized to bring suit. (Idaho, Maryland, Massachusetts, Ohio).

9) Statutory damages, attorney's fees. In a successful action by buyer, seller is liable for statutory damages and attorney's fees (Idaho, Maryland, Massachusetts, Ohio).[7/]

10) "Bona fide error" defense. Seller will not be held liable for statutory damages or attorney's fees if (s)he can demonstrate that the violation was nonwillful. (Maryland).

Research has revealed only one layaway case arising under any of the above statutory provisions to date. In Riley v. Enterprise Furniture Co., Clearinghouse No. 23,401 (Ohio Sylvania Mun. Ct. 1977), plaintiffs entered into two contracts for the purchase of furniture. They made deposits of $52 and $100 on the contracts, and applied to defendant's store for financing of the remainder of the purchase price. The applications were subsequently disapproved, and defendant refused to return the deposits upon plaintiffs' request. Defendant failed to disclose its deposit refund policy on the sales contracts. The court held that defendant had violated CO cp-3-01.07(A)2.e. (now O.A.C. 1301:3-3-07(B)(5)) for failing to make written disclosure to the plaintiffs of "whether the deposit is refundable and under what conditions," and that plaintiffs were "entitled to the return of their deposit

money, there having been no agreement to the contrary between the plaintiffs and the defendant." But see Furniture Barn, Inc. v. Leal, 560 S.W.2d 533, Pov. L. Rep. ¶12,657 (Tex. Ct. Civ. App. 1978), in which seller wrote to buyers, stating that if their "default" was not cured within four days, "all monies deposited shall be forfeited." Appellees pleaded that the "letter was a false and misleading statement by appellant in representing that the agreement conferred upon appellant or involved rights, remedies, or obligations which appellant did not have. Tex. Bus. & Comm. Code Ann. art. 17.46(b)(12)." 560 S.W.2d at 534. The court found that "there was no discussion between the parties at the time of the agreement as to any 'charges or costs' which appellant was entitled to subtract from appellees' payments." Id. at 535. But it then proceeded to shift the burden of proof to the consumer, holding that:

> "Appellees' proof that the parties did not discuss appellant's entitlement to subtract 'charges or costs' from appellees' payments, is not proof of what the agreement did provide in case of appellees' default. In the absence of proof of what the agreement provided in case of default, it cannot be said that [seller's] letter was 'false or misleading' with respect to the rights and remedies provided by the agreement."
>
> Id.

In the absence of any express statutory provision dealing with layaways, consumers must look to the broad language of the law for authority. The Washington UDAP statute is typical:

> "Unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful."
>
> RCW 19.86.020.

When the above provision is coupled with the legislative direction that "in order to protect the public and foster fair and honest competition . . . this act shall be liberally construed that its beneficial purpose may be served," RCW 19.86.920, the consumer can argue that the law was intended to proscribe, inter alia, the kinds of activities specifically addressed by the Idaho, Maryland, Massachusetts, and Ohio regulations. In State ex rel Turner v. Limbrecht, 246 N.W.2d 330 (Iowa 1976), for example, sellers misrepresented that they would set aside funds to buy cemetary merchandise and funeral services at the time of the buyer's deaths (compare with the above statutory provisions relating to "holding the goods"). The court, applying the statute retrospectively, affirmed the judgment of the trial court that such deceptive practice violated the Consumer Frauds Act, I.C.A. §713.24 (now §714.16).

Finally, where the issue involves the return of payments made on a layaway plan prior to buyer's "default"/cancellation,

consumers may be able to analogize to non-layaway cases dealing with the refund of deposits. In State v. Ralph Williams' North West Chrysler Plymouth, Inc., 82 Wash. 2d 265, 510 P.2d 233 (1973), the court reinstated a complaint by the Attorney General against an automobile dealer for, inter alia, refusing to return money and property in the event the sale was not completed, in violation of the state's Consumer Protection Act, RCW 19.86.010 et seq. And in Commonwealth v. Flick, Clearinghouse No. 26,032 (Pa. Commw. Ct. 1978), the operator of a business involving the door-to-door sale of photo album plans was ordered incarcerated for failure to pay $34,000 in civil penalties, flowing from his violation of two consent agreements entered into pursuant to the Unfair Practices and Consumer Protection Act, 73 P.S. §201-1 et seq. Defendant's violations of the consent decrees included: the failure to give consumers notice of their right to cancel purchase agreements; telling purchases they had no right to cancel; and refusing to return down payments.

FOOTNOTES

1/ Under a close reading of the statute, all layaway plans would, by definition, fall outside the scope of TILA. Reg. Z applies only when there has been an "extension of consumer credit". §226.2(s). "Credit" is defined in part as

> "the right granted by a creditor to a customer to ... purchase property ... and defer repayment therefor."
>
> §226.2(q).

Clearly, the seller under a layaway plan grants the buyer the "right" (i.e., option) to "purchase property." However, the buyer is not allowed to defer payment, for there is no "purchase" (i.e., no sales contract) until the final payment is made. At that point, there is nothing more than an exchange of the goods for their full price, and as such, there can be no extension of credit. As one authority notes:

> "the seller has not extended credit because he has not given the buyer the right to defer payment of the debt: the price will be fully paid upon the delivery of possession [i.e., "purchase"]."
>
> Warren, W., and Larmore, T., "Truth in Lending: Problems of Coverage," 24 Stan L. Rev. 793, 799 (1972).

2/ However, the remaining eight letters make no mention of reading §226.201 in conjunction with the definitional requirement of §226.2. As such, it is at least arguable that the Board Interpretation was intended to stand independent of Reg. Z, thus including an entire class of transactions that would otherwise have fallen outside the scope of TILA.

3/ These statutes are set out in full in Appendix A. See also Louisiana Attorney General's Opinion No. 79-127 (2/19/79).

4/ "unless a clear and conspicuous disclosure to the contrary is made to the buyer." Idaho Reg. 15.1.2.

5/ This provision is so termed because it sets forth duties which are otherwise covered by traditional contract law.

FOOTNOTES (continued)

6/ In Idaho and Massachusetts, buyer can only bring suit for damages.

7/ In Ohio, buyer may not recover attorney's fees.

APPENDIX A

IDAHO

Regulation 15--Layaway plans

15.1 General Rule: It shall be deemed to be an unfair and deceptive act or practice for a seller, in conjunction with a lay-away transaction, to:

15.1.1 Misrepresent in any way, the seller's policy with reference to a lay-away plan;

15.1.2 Fail to actually lay aside the specific goods chosen by the buyer or exact duplicates, unless a clear and conspicuous disclosure to the contrary is made to the buyer;

15.1.3 Fail to clearly and conspicuously disclose to the buyer that the specified goods or exact duplicates will be set aside only for a certain period of time, if such is the case;

15.1.4 Deliver to the buyer after payments are completed, goods which are not identical or exact duplicates to those specified, unless knowing, mutual consent has been obtained;

15.1.5 Increase the price of the goods laid away after the original agreement has been made;

15.1.6 Fail to deliver to the buyer, upon request, at any time payment is made, a receipt showing the amount of that payment and the date thereof, and, upon request, an itemized statement showing the amount previously paid and the amount still owing.

15.2 Refunds of Lay-away Payments: It shall be deemed to be an unfair and deceptive act or practice for a seller to fail to clearly and conspicuously disclose, or misrepresent in any manner, the seller's policy with reference to the buyer's possible default or cancellation; and particularly fail to disclose the seller's policy with respect to refund of payments already made under such circumstances. If there is a penalty, charge or forfeiture for cancellation or default, written disclosure must be clearly and conspicuously furnished on the initial lay-away receipt or on a separate sheet of paper delivered at the time of the initial transaction, or written disclosure must be clearly and conspicuously posted at the lay-away desk.

Subtitle 11. Layaway Sales.

§ 14-1101. Definitions.

(a) *In general.* — In this subtitle the following words have the meanings indicated.

(b) *Buyer.* — (1) "Buyer" means a person who buys consumer goods under a layaway agreement, even though he has entered into one or more renewal, extension, or refund agreements.

(2) "Buyer" includes a prospective buyer.

(c) *Cash price.* — "Cash price" means the minimum price for which consumer goods subject to a layaway agreement, or other consumer goods of like kind and quality, may be purchased for cash from the seller by the buyer.

(d) *C.O.D. transaction.* — "C.O.D. transaction" means an agreement by which the seller requires the buyer to pay the full cash price of the consumer goods upon delivery or tender of delivery by the seller, less any down payment made by the buyer. A C.O.D. transaction does not include an agreement by which the seller requires the buyer to pay interim payments before delivery or tender of delivery of the consumer goods by the seller.

(e) *Consumer goods.* — "Consumer goods" means goods bought for use primarily for personal, family, or household purposes, as distinguished from industrial, commercial, or agricultural purposes.

(f) *Down payment.* — "Down payment" means all amounts paid in cash, credits, or the agreed value of goods, by or for a buyer and to or for the benefit of the seller at or before execution of a layway agreement or C.O.D. transaction.

(g) *Layaway agreement.* — (1) "Layaway agreement" means a contract for the retail sale of consumer goods, negotiated or entered into in the State, under which:

(i) Part or all of the layaway price is payable in one or more payments subsequent to the making of the layaway agreement;

(ii) The consumer goods are specific existing consumer goods identified from the seller's stock or inventory at the time of the making of the layaway agreement; and

(iii) The seller retains possession of the consumer goods and bears the risk of their loss or damage until the layaway price is paid in full.

(2) "Layaway agreement" includes a "special order transaction," as defined in this section.

(3) "Layaway agreement" does not include a bona fide C.O.D. transaction.

(4) "Layaway agreement" does not include any form of layaway agreement where the buyer can default without any penalty, other than a maximum service charge of $1.

(h) *Layaway price.* — "Layaway price" means the cash price of consumer goods together with an optional service charge, not to exceed $1 if the price of the consumer goods is $500 or less or $5 if the price of the consumer goods exceeds $500.

(i) *Retail sale.* — "Retail sale" means the sale of consumer goods for use or consumption by the buyer or for the benefit or satisfaction which the buyer may derive from the use or consumption of the consumer goods by another, but not for resale by the buyer.

(j) *Seller.* — "Seller" means a person who sells or agrees to sell consumer goods under a layaway agreement.

(k) *Special order transaction.* — "Special order transaction" means a contract for the retail sale of consumer goods, negotiated or entered into in the State, under which either:

(1) Consumer goods:

(i) Are ordered by the buyer to the buyer's unique specifications;

(ii) Are not carried by the seller, either in the seller's showroom or warehouse;

(iii) Are ordered from a manufacturer or supplier; and

(iv) Are not resalable by the seller at the sale price negotiated with the buyer; or

(2) Consumer goods which have been altered at the request of the buyer so that the goods are no longer salable to the general public. (1978, ch. 673, § 3.)

Editor's note. — Former §§ 14-1101 to 14-1108 and the former subtitle "Subtitle 11. Miscellaneous Provisions" were renumbered by § 2, ch. 673, Acts 1978, to be §§ 14-1301 to 14-1308, respectively, and to be "Subtitle 13. Miscellaneous Provisions."

Section 4 of ch. 673 provides that the act shall take effect July 1, 1978.

§ 14-1102. Layaway agreement to be in writing and signed.

A layaway agreement shall be in writing and contain all of the agreements of the parties and shall be signed by all of the parties to it. (1978, ch. 673, § 3.)

§ 14-1103. Contents of agreement.

(a) A layaway agreement shall include:

(1) The full name, place of residence, and post office address of each party to it;

(2) The date when signed by the buyer;

(3) A clear description of the consumer goods sold sufficient to identify them readily;

(4) The cash price of the consumer goods sold;

(5) All charges for delivery, installation, or repair of or other services to the consumer goods which, separate from the cash price, are included in the layaway agreement;

(6) The sum of the cash price in paragraph (4) and the charges for services in paragraph (5);

(7) The amount of the buyer's down payment, together with:

(i) A statement of the respective amounts credited for cash, credits, and the agreed value of any goods traded in; and

(ii) A description of all goods traded sufficient to identify them;

(8) The unpaid balance of the cash price payable by the buyer to the seller, which is paragraph (6) less paragraph (7);

(9) The service charge;

(10) The total of payments owed by the buyer to the seller, which is the sum of paragraphs (8) and (9), the number of installment payments required to pay it, and the amount and time of each payment;

(11) The layaway price, which is the sum of paragraphs (6) and (9); and

(12) A clear and concise statement of all consequences of buyer's default.

(b) Paragraphs (4) through (12) of this section do not apply to any layaway sale subject to the disclosure provisions of the federal Truth in Lending Act if the seller complies with the applicable disclosure provisions of the federal act and its regulation. (1978, ch. 673, § 3; 1979, ch. 65.)

Effect of amendment. — The 1979 amendment, effective July 1, 1979, substituted "paragraphs (6) and (9)" for "paragraphs (6) and (7)" in paragraph (11) of subsection (a).

§ 14-1104. Duties of seller.

(a) *Signed copy of agreement to buyer.* — At or before the time the buyer signs a layaway agreement, the seller shall give him an exact copy signed by the seller.

(b) *Consumer goods to be held for buyer.* — Upon execution of a layaway agreement, the seller shall hold for the buyer or agree to deliver to the buyer on a date mutually acceptable to both parties, the consumer goods or consumer goods that are identical to those originally selected by the buyer, as long as the buyer complies with all of the terms of the layaway agreement.

(c) *Cancellation of agreement.* — (1) The seller shall permit the buyer to cancel a layaway agreement, without any penalty or obligation, within 7 calendar days from the date of the layaway agreement.

(2) If the buyer cancels the layaway agreement as provided in paragraph (1) of this subsection, the seller shall:

(i) Refund all payments made under the layaway agreement; and

(ii) Return, in substantially as good condition as when received by the seller, any goods or property traded in.

(d) *Receipt; statement of account.* — (1) If a payment is made on account of a layaway agreement, the seller shall give the buyer on his request, or, if payment is made in cash, without request, a complete written receipt for the payment; and

(2) If the buyer requests information on the status of his account, the seller, within 10 days after the request at the place of business where the layaway sale was made, shall give the buyer a written statement setting forth:

(i) The layaway price;

(ii) The total amount paid by the buyer to date; and

(iii) The total amount remaining due to the seller.

(e) *Delivery of goods.* — After the buyer has made all payments to the seller in accordance with the layaway agreement, the seller shall deliver to the buyer the consumer goods or consumer goods that are identical to those originally selected by the buyer. (1978, ch. 673, § 3.)

§ 14-1105. Increasing or reducing price.

(a) The seller may not increase the layaway price of the consumer goods sold under a layaway agreement.

(b) If, within 10 calendar days after the execution of a layaway agreement, the seller reduces the selling price of existing items in his stock or inventory identical to those being held for a buyer, the seller shall credit the buyer for the difference between the original layaway price and the reduced price. (1978, ch. 673, § 3.)

§ 14-1106. Default by buyer; cancellation of agreement before default.

(a) *When buyer is in default.* — The buyer is in default under a layaway agreement whenever 15 days has lapsed from the scheduled date on which the buyer failed to make a required payment.

(b) *Remedies of seller upon default.* — If the buyer defaults under paragraph (a) of this section, the seller may immediately cancel the layaway agreement and recover from the buyer liquidated damages under paragraph (c) of this section or 14-1107, as applicable.

(c) *Liquidated damages upon default.* — If the buyer defaults under a layaway agreement 8 or more calendar days after the date of its execution, the seller may retain as liquidated damages an amount not to exceed 10 percent of the layaway price or the total amount paid by the buyer to the date of default, whichever is less.

(d) *Same—Default under special order transaction.* — Unless otherwise provided in the layaway agreement, paragraph (c) of this section does not apply if the buyer defaults under a special order transaction.

(e) *Cancellation before delivery or default.* — Except as provided in § 14-1104 (c), at any time before delivery or tender of delivery, and before default by the buyer, the layaway agreement may be cancelled by the buyer. However, the seller may retain from the refund due the buyer liquidated damages in an amount which is the lesser of 10 percent of the layaway price or the total amount paid by the buyer to the date of cancellation. (1978, ch. 673, § 3.)

§ 14-1107. Rights and remedies of seller upon default under special order transaction.

If the buyer defaults under a special order transaction, the seller may exercise all rights and remedies available at either law or equity, including those rights and remedies as provided in the Uniform Commercial Code, Title 2 "Sales," Subtitle 7 "Remedies," of the Commercial Law Article. (1978, ch. 673, § 3.)

§ 14-1108. Retail Installment Sales Act inapplicable.

The Retail Installment Sales Act, Title 12, Subtitle 6, Commercial Law Article, does not apply to any sale of consumer goods regulated by this subtitle. (1978, ch. 673, § 3.)

Cross reference. — See Editor's note to § 14-1101 of this article.

§ 14-1109. Noncompliance or violations by seller.

(a) *Remedies of buyer.* — If the seller fails to comply with §§ 14-1102, 14-1103, or 14-1104, the buyer, before delivery by the seller and acceptance by the buyer of consumer goods purchased under a layaway agreement, may cancel the layaway agreement and receive from the seller a refund of all payments made under the layaway agreement and the return of any goods or property traded in.

(b) *Penalty.* — Any seller who makes a layaway sale in violation of this subtitle is liable to the buyer for a penalty amount equal to three times the amount paid by the buyer under the layaway agreement, plus reasonable attorney's fees. Any seller who demonstrates that a violation was nonwillful is not liable for the penalty or attorney's fees. The penalty provided in this subsection is in addition to that provided in subsection (a) of this section.

(c) *Proceeding under Title 13.* — If the Division of Consumer Protection, Office of the Attorney General has reason to believe that any seller has violated any provision of this subtitle, the Division may institute a proceeding under Title 13 of this article. (1978, ch. 673, § 3.)

§ 14-1110. Short title.

This subtitle may be cited as the Maryland Layaway Sales Act. (1978, ch. 673, § 3.)

Cross reference. — See Editor's note to § 14-1101 of this article.

MASSACHUSETTS

3.12: Lay Away Plans

It is unfair and deceptive acts or practice:

(1) To fail to disclose or to misrepresent in any way the store's policy with reference to a "lay away" plan;

(2) To represent to a buyer who is purchasing on a "lay away" plan that the specific goods chosen by the buyer or an exact duplicate of such goods are being laid away for that buyer when such is not a fact;

(3) To fail to disclose to the buyer that the specified goods or their exact duplicate will only be set aside for a certain period of time;

(4) To deliver to the buyer after payments (pursuant to the lay away plan) are completed, goods which are not identical or exact substitutes to those specified, unless prior approval in writing has been received from the buyer;

(5) To increase the price of the goods specified either by way of increasing the payments or substituting goods which are of a lower quantity of price;

(6) To fail to deliver to the buyer, on any date payment is made, a receipt showing the amount of that payment and the date thereof, and, upon request, the balance of payments made up to that date;

(7) To fail to disclose or misrepresent in any way the store's policy with reference to cancellations and repayment or non-repayment of payments already made, and in case payments are not refunded, to fail to disclose that fact in writing.

1301:3-3-07 Deposits

It shall be a deceptive act or practice in connection with a consumer transaction for a supplier to accept a deposit unless the following conditions are met:

(A) The deposit obligates the supplier to refrain for a specified period of time from offering for sale to any other person the goods in relation to which the deposit has been made by the consumer if such goods are unique; provided that a supplier may continue to sell or offer to sell goods on which a deposit has been made if he has available sufficient goods to satisy all consumers who have made deposits;

(B) All deposits accepted by a supplier must be evidenced by dated receipts stating the following information:

(1) Description of the goods, (including model, model year, when appropriate, make, and color);

(2) The cash selling price;

(3) Allowance on the goods to be traded in, if any;

(4) Time during which the option is binding;

(5) Whether the deposit is refundable and under what conditions; and

(6) Any additional costs such as delivery charges.

(C) For the purposes of this rule "deposit" means any amount of money tendered or obligation to pay money incurred by a consumer as a deposit, refundable or non-refundable option, or as partial payment for goods or services.

HISTORY: Eff. 6-5-73
Former COcp-3-01.07
Authority: Section 1345.05 of the Revised Code

END