The Unruh Act: A Legislative History

I. INTRODUCTION

The purpose of this study is to examine the theories, purposes, and ideas behind the Unruh Act[1] in its regulation of retail installment sales of consumer goods and services in California. In such an examination of what is often loosely described as "legislative intent," it will first be necessary to scrutinize the original designs of the Legislature in first adopting the Unruh Act in 1959, namely the correction of specific abusive practices then used among a minority of retail sellers and financing agencies. Second, the original provisions enacted will be examined to see how the Legislature intended to cope with the problems it found in the retail installment sales field. Finally, the major changes which have occurred in the Unruh Act[2] will be studied to determine how the Act has evolved in the past twelve years.

By looking at the original committee reports which proposed the Unruh Act, the original provisions of the Act itself, and how those provisions have changed, it is hoped that the practitioner may achieve a better sense for what the Act is now intended to accomplish. It is never easy to predict the future, especially in the case of legislative enactments such as the Unruh Act which depend upon the political process. On the other hand, it is not quite as difficult to determine the stance of the Act at the present time because one can look back for help into a history of discovery and development.

[1]CAL. CIV. CODE §§ 1801-1812.10 (West Supp. 1971).

[2]Since 1959, there have been 57 bills introduced in the legislature proposing 136 amendments to the Act. Of these proposed amendments, 98 have been adopted changing, adding or repealing sections of the Act. All have been reviewed and analyzed for this study.

II. ADOPTION OF THE UNRUH ACT

A. ABUSES PRIOR TO ADOPTION

Prior to the adoption of the Unruh Act, two legislative committee reports[3] were submitted to the Legislature concerning abusive practices in the field of retail installment sales of consumer goods and services. The first, or Preliminary Report, contained a rough draft of the Act which subsequently underwent considerable alteration after public hearings where held in 1958. The Final Report contained the final committee draft of the Act which was proposed to and adopted with little change by the Legislature. Instrumental in shaping the proposed legislation, the reports identified and discussed the following areas of abusive practice which the Act was intended to correct or regulate: disclosures; blank contracts; finance charges;[4] rebates of finance charges for prepayment; defenses and claims of the buyer; delinquency and collection charges; wage attachments; attorney's fees and court costs; and repossession practices. Each of these areas will be treated separately below.

1. DISCLOSURES

Concerning disclosures,[5] the Committee found that, since there were no legal requirements that full details of the cost and terms of a retail installment transaction be included in installment contracts or other agreements, such disclosures were kept to a minimum with the deferred payment price[6] rarely given.[7] The then usual practice was to state only the amount of each monthly payment and the number of such payments. This left for the buyer the task of determining for

[3]PRELIMINARY REPORT OF SUBCOMMITTEE ON LENDING AND FISCAL AGENCIES, APPENDIX TO THE JOURNAL OF THE ASSEMBLY, Vol. 15, No. 19 (1958) [hereinafter cited as PRELIMINARY REPORT]; FINAL REPORT OF SUBCOMMITTEE ON LENDING AND FISCAL AGENCIES, APPENDIX TO THE JOURNAL OF THE ASSEMBLY, Vol. 15, No. 22 (1959) [hereinafter cited as FINAL REPORT].

[4]All technical terms used in this study will be those which the Act presently uses which are in conformity with the federal Truth in Lending Act (15 U.S.C. 1601 *et seq.*).

[5]Disclosures may be defined as those terms and conditions of the contract which the buyer needs knowledge of in order to properly evaluate the transaction. What those terms and conditions are is a legislative determination. Examples of such are cash price, amount of payments, and number of payments.

[6]The "deferred payment price" is that amount paid by the buyer when he purchases on credit through installment payments. The amount includes the cash price of the goods or services and any amount paid for official fees, insurance, or finance charges. CAL. CIV. CODE § 1802.9 (West Supp. 1971).

[7]PRELIMINARY REPORT, *supra* note 3, at 9.

himself the amount he was actually paying for his purchase above that of the cash price which he had been quoted by the seller.

The Committee discovered through its studies and public hearings that a majority of buyers were primarily concerned with what their monthly payments would be and not so much with what they would actually pay in the long run. Most consumers seemed to be mainly interested in how the payments would fit in with their personal weekly or monthly budget. Apparently, as long as the payments could be managed within their budgets, most buyers did not consider the length of payments, the finance charge rate, and the true cost of their purchase. Many sellers took advantage of the foregoing fact by confining their sales talk to the cash price and the amount of the monthly payments.[8] In light of this discovery, it can be reasoned that the disclosure provisions of the Act[9] were not only intended to compel the seller to state in clear terms what he was charging, but perhaps also to place the buyer in a position of forced awareness of those terms so that he could and would evaluate the agreement he was about to enter.

2. *BLANK CONTRACTS*

A second then existing commercial practice, in some ways connected to the disclosure problem, which the Act sought to prevent was that of sellers inducing the signing of blank contracts and then later filling in terms.[10] The Committee reported that many sellers encouraged buyers by various means of subterfuge[11] to sign blank contracts.[12] In addition, many sellers often discouraged the reading of contracts verbally and by employing the use of legalistic language, fine type, and faint printing in their contracts.[13] Once the seller obtained the buyer's signature to a blank contract, the terms he filled in were usually not those to which the buyer had agreed. The Final Report is filled with instances in which the buyer was told one price by the seller and then learned upon receipt of a payment book from a finance company that the seller filled in a price much higher than the one quoted.

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[8]FINAL REPORT, *supra* note 3, at 15.

[9]CAL. CIV. CODE §§ 1803.3, 1808.3, 1810.2, and 1810.5 (West Supp. 1971).

[10]FINAL REPORT, *supra* note 3, at 9.

[11]*Id.* at 48. An example of such subterfuge given in the Final Report is that of the seller inducing the buyer to sign the contract in blank on the pretense that the terms have to be typed in and the typist is out to lunch.

[12]*Id.*

[13]PRELIMINARY REPORT, *supra* note 3, at 9.

Connected to the problem of blank contracts was the practice of many sellers and financing agencies of never supplying the buyer with a copy of the contract,[14] or if they did, with a copy which was not legible.[15] These practices led to the adoption of provisions in the Act prohibiting the signing of blank contracts, requiring the sending of a legible copy of the contract to the buyer, and requirements concerning physical characteristics of the contract itself, such as type size and certain warnings to the buyer to be printed on the contract.[16]

3. FINANCE CHARGES

Another area of abuse identified by the Committee dealt with the time price differential doctrine. Under this doctrine, the courts have held that a finance charge is not interest and hence, not subject to the usury laws.[17] As a result, prior to the Act finance charges were completely unregulated by law and sellers often charged what the Committee considered exhorbitant rates for a finance charge. As an example, the Committee found that the popular rate of finance charge used by California furniture dealers who sold their contracts to financing agencies amounted to just under 30 percent simple interest per annum.[18] An even more extreme example was that of certain Los Angeles automobile repair companies which charged 81 percent simple interest per annum.[19] The finance charge rate regulation adopted by the Legislature[20] reflected what the Committee thought to be fair to both the buyer on one hand and the seller and finance agency on the other.[21]

4. REBATES OF FINANCE CHARGES FOR PREPAYMENT

The Committee discovered that there was no standard policy in existence among sellers or financing agencies for refunding part of the finance charge upon prepayment of the contract.[22] Some sellers and financing agencies were found not to allow prepayments and simply did not make any portion of the finance charge refundable.[23]

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[14]*Id.* at 16.

[15]FINAL REPORT, *supra* note 3, at 49.

[16]CAL. CIV. CODE §§ 1803.1, 1803.2, 1803.4, and 1803.7 (West Supp. 1971).

[17]FINAL REPORT, *supra* note 3, at 9.

[18]*Id.* at 16.

[19]*Id.*

[20]CAL. CIV. CODE §§ 1805.1 and 1810.4 (West Supp. 1971).

[21]FINAL REPORT, *supra* note 3, at 17-18.

[22]*Id.* at 18.

[23]PRELIMINARY REPORT, *supra* note 3, at 13.

Often when a refund was made, it was substantially less than that to which the buyer was entitled.[24] In response to these practices, the Act invalidated any contract provision disallowing a refund for prepayment and provided a standard formula for calculating the amount of refund.[25]

5. DEFENSES AND CLAIMS OF THE BUYER

A major problem discussed by the Committee was that of defenses and claims of the buyer being cut off by assignment of the installment contract to a financing agency.[26] The problem was compounded by the fact that many sellers assign or sell their contracts the same day they are signed. The Committee's proposed answer to this problem was legislation which preserved, with certain limitations, buyers' claims and defenses after assignment.[27]

From the tone of its report, the Committee must have reached the conclusion, or at least had a very strong suspicion, that there was often collusion between sellers and the financing agencies that bought installment contracts. Evidence was submitted to the Committee which indicated that many financing agencies had arrangements with sellers making installment sales enabling them to evade the usury laws.[28] By these arrangements, many financing agencies supplied retailers with credit forms, checked and approved credit of buyers, and set the finance charge, terms and conditions of installment contracts thereby using the deferred payment price to circumvent the usury laws.[29] It was also found that in certain instances the retail business selling the contracts was partially owned by the finance company buying the contracts.[30] One situation given as an example by the Committee, where collusion was heavily suspected occurred in a case in which the witness had never received what he contracted for, the seller was nowhere to be found, and where the assigned contract contained a clause whereby the buyer acknowledged delivery and acceptance of the goods.[31] Here, the buyer had little recourse but to pay the finance company or fight a suit in which he could not assert his

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[24]*See* note 10 *supra.*

[25]CAL. CIV. CODE § 1806.3 (West Supp. 1971).

[26]FINAL REPORT, *supra* note 3, at 10.

[27]CAL. CIV. CODE § 1804.2 (West Supp. 1971).

[28]FINAL REPORT, *supra* note 3, at 14, 17. The California usury law is found at CAL. CONST. Art. XX, § 22 (West 1954).

[29]FINAL REPORT, *supra* note 3, at 14.

[30]*Id.* at 52, 90-91.

[31]*Id.* at 94.

claims or defenses. It was this type of activity that the Act was designed to prevent.

6. DELINQUENCY AND COLLECTION CHARGES

In dealing with delinquency and collection charges, the Committee found another area of abusive practice in retail installment sales. It concluded that although the theory behind such charges was to encourage prompt payments by the debtor, the practice had become one of a means used by sellers and financing agencies to increase their profits.[32] Often late charges were imposed for trivial defaults such as when a payment was a day or two late.

Another problem related to delinquency charges was the method by which those charges were calculated and charged to the buyer. An example given by the Committee demonstrated that the procedures of one finance company made possible the assessment of a delinquency charge of over 100 percent of the amount of the delinquent payment[33] through the effect of "pyramiding."[34] The Act therefore limited the amount of delinquency charges and set the method of calculation as to eliminate the pyramiding effect.[35]

7. WAGE ATTACHMENTS

The practice of attachment of wages by sellers and financing agencies was found by the Committee to be an area of particular abuse. It was shown in the committee reports that the attachment of wages was more often a weapon of coercion rather than a remedy for the collection of a debt. Many instances of wage attachment led to loss of employment and income for the debtor with the end result that the debt was not paid anyway.[36] It was found that people had their wages attached for debts over which they had no legal responsibility[37] or where they complained of or protested the terms of their con-

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[32]*Id.* at 21.

[33]*Id.* at 54-55.

[34]"Pyramiding" is the practice of assessing a delinquency charge each month a payment is overdue. When the first payment is overdue, a delinquency charge is assessed. A month later, the second payment is due and if not paid a delinquency charge made, but the first payment is also due again, so another delinquency charge is assessed on that payment. Thus, payments and delinquency charges grow on top of one another. If the buyer resumes his payments, the delinquency charges continue to grow on the payments he missed. For good examples, see FINAL REPORT, *supra* note 3, at 55 and *Project: Legislative Regulation of Retail Installment Financing*, 7 U.C.L.A. L. REV. 618 at 698 (1960) [hereinafter cited as U.C.L.A. PROJECT].

[35]CAL. CIV. CODE § 1803.6 (West Supp. 1971).

[36]FINAL REPORT, *supra* note 3, at 22-23.

[37]*Id.* at 75.

tract.[38] Clearly the former instance, as well as the latter, was an abuse of the attachment of wages procedure.

8. ATTORNEY FEES AND COURT COSTS

The Committee revealed a further abuse in the assessment of attorney's fees and court costs by sellers and financing agenices. Most, if not all, retail installment contracts provided that if the seller had to take any legal action in the collection of payments from the buyer, the buyer would be liable under the contract for the attorney as well as court costs incurred by the seller. The actual practice was that many such assessments were for costs never actually incurred or for fees that simply never reached an attorney.[39] Often sellers and financing agencies kept attorneys on a retainer basis so that if court action did not result, the entire charges for fees and costs could be retained by the company.[40] Through the testimony of witnesses at public hearings held by the Committee, it was shown that once legal action was taken against a buyer, in the majority of instances he quickly settled without the need of ever going to court. In this connection, the standard practice of one finance company was to assess the estimated full fees and costs of legal action at its initiation, but not to cancel those charges once a settlement had been reached and a dismissal of the action made.[41] In response to this problem, the Act put limitations on the amount that could be assessed for legal fees and costs.[42]

9. RESPOSSESSION PRACTICES

Finally, the committee reports dealt with abuses in repossession.[43] Often a seller would induce a buyer to voluntarily return goods for which he had defaulted in payments with the promise that this would end the buyer's obligation. But often, many times a year or more later, the contract holder would sue for a deficiency judgment.[44] When an action for a deficiency judgement was filed, many times it was allowed through contract clauses in a forum some distance from

[38] *Id.* at 69.

[39] *Id.* at 10, 22.

[40] *Id.* at 22.

[41] *Id.* at 55-56.

[42] CAL. CIV. CODE § 1811.1 (West Supp. 1971).

[43] Repossession practices would include all seller and finance agency practices concerning the retaking of the goods and their disposition after default by the buyer.

[44] FINAL REPORT, *supra* note 3, at 86. Prior to 1963, a seller or finance agency could sue the buyer for a deficiency judgment which was the amount by which the proceeds from the sale of the repossessed goods fell short of the balance due on the contract in default.

the buyer's residence so that he could not adequately defend himself.[45] This was especially true in the case of members of low income groups who could little afford the cost of a defense, let alone the added travel costs. In addition to the above, the buyer was not always given a right of redemption,[46] given notice of resale or a chance to bid,[47] and there was usually no accounting of the sale proceeds or refund in the case of a surplus.[48] The Act, therefore, sought to prohibit some and regulate other repossession practices found to be abusive.[49]

It should be emphasized here, as it was in the committee reports, that none of the above abusive practices was in predominant use in California, but rather, the majority of abusive or harsh practices were carried on by a small portion of the retail and credit industries.[50] In fact, no questionable practices were disclosed in the Committee's investigation of retailers who retained their installment contracts,[51] such being limited to those who sold their contracts and financing agencies. What follows are the first measures which the Legislature adopted to correct the abuses which were found.

B. SPECIFIC PROVISIONS OF THE ACT

1. DISCLOSURES

The disclosure sections of the Unruh Act[52] can be divided and discussed in three areas: retail installment contracts, add-on sales, and retail installment accounts.[54] The Act requires all retail installment contracts to first recite the names of the buyer and seller, the addresses of the buyer's residence and the seller's place of business, and

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[45]*Id.*

[46]*Id.* at 10. A right of redemption is a statutory time period during which the buyer has the right to redeem the repossessed goods by tendering the amount of indebtedness under the contract and certain repossession charges which are usually limited by statute.

[47]FINAL REPORT, *supra* note 3, at 76.

[48]*Id.* at 85.

[49]CAL. CIV. CODE §§ 1812.2-1812.5 (West Supp. 1971).

[50]FINAL REPORT, *supra* note 3, at 24.

[51]*Id.* at 13.

[52]CAL. CIV. CODE §§ 1803.3, retail installment contracts; 1808.3, add-on sales; and 1810.2 and 1810.5, retail installment accounts (West Supp. 1971).

[53]An add-on sale exists where a new purchase is added to a previously existing contract which usually results in a recomputation of the finance charge and a re-arrangement of the payment schedule.

[54]A retail installment account amounts to little more than a regular "charge account" as that term is ordinarily used. *See* CAL. CIV. CODE § 1802.7 (West Supp. 1971).

a description of the goods which does not have to be specific, but merely sufficient to identify them. The contract then must state the cash sale price[55] of the goods or services, the amount of any down payment, and the difference between the two foregoing amounts. To this amount, any charges for insurance or official fees[56] have to be disclosed and added on which results in the unpaid balance.[57] The finance charge[58] is next added to the unpaid balance which gives the amount the buyer is actually paying for the goods or services. This is called the deferred payment price.[59] The deferred payment price has to be divided into the number of installments required, the amount and due date of each installment, and the period during which the contract is to run.[60]

If the seller requires any type of insurance in connection with the transaction covered by the retail installment contract, the Act provides that it be stated in the contract whether the buyer or seller is to procure such insurance. Further, the premiums cannot exceed the rate established by the insurer for the insurance and, if the insurance is to be obtained by the seller, a notice that it has been obtained or a copy of the policy must be sent to the buyer within 45 days after delivery of the goods or services.[61]

Where the purchase is an add-on sale to an existing retail installment contract, a memorandum of the sale is required by the Act to be delivered to the buyer prior to the due date of the first installment. The memorandum, in regard to the new purchase, has to disclose all the items which require disclosure in a normal retail installment contract as discussed above. In addition, the new unpaid balance has to be stated which is the total of the unpaid balance for the new item purchased and the unpaid balance of the prior contract.

[55]The cash sale price is that price at which the goods or services are available from the seller if the sale were for cash rather than a retail installment sale. The term now used is simply "cash price." *See* CAL. CIV. CODE § 1802.8 (West Supp. 1971).

[56]Official fees are those fees required by law to be paid to a public officer in order to perfect a lien or other security interest in goods subject to a retail installment contract or account. *See* CAL. CIV. CODE § 1802.14 (West Supp. 1971).

[57]The unpaid balance is the total amount due less the finance charge. *See* CAL. CIV. CODE § 1802.11 (West Supp. 1971).

[58]The finance charge was originally termed the "time price differential" or "service charge." Ch. 201, § 1, [1959] Cal. Stats. 2094.

[59]The deferred payment price was first called the "time sale price." Ch. 201, § 1, [1959] Cal. Stats. 2094.

[60]CAL. CIV. CODE § 1803.3 (West Supp. 1971). This section contains the basic disclosure elements for retail installment contracts, as set out above, and, except for changes in technical terms, has for the most part remained unchanged since the Act's adoption.

[61]CAL. CIV. CODE § 1803.5 (West Supp. 1971). This section has not changed since its adoption.

The finance charge is then recalculated on the new unpaid balance, making credit allowances for any unearned finance charges,[62] which results in the new deferred payment price. The deferred payment price, in turn, again has to be divided into the number of monthly installments, the amount and due date of each installment, and the period for which the contract is in effect.[63]

Retail installment accounts, or revolving accounts, present a balancing of the interests of the buyer against the cost of disclosure to the seller. Purchases on such accounts are ordinarily frequent and for small amounts. Consequently, the cost of disclosure and computation of finance charges is higher than is involved with retail installment contracts or add-on sale situations which usually involve a limited number of sales and a higher purchase price. Another complicating factor is that the finance charge cannot be calculated with precision on the purchase of any one item because the finance charge will vary proportionately with the amount paid each month and the length of time until the purchase is paid for in full.[64] Therefore, the disclosure requirements for retail installment accounts were not made as stringent by the Legislature as those for retail installment contracts and add-on purchases.

Prior to the first transaction arising under the retail installment account the only disclosure to be made to the buyer as required by the Act is the finance charge rate used by the seller. This has to be disclosed in the seller's confirmation sent to the buyer stating that a retail installment account has been established for him.[65] In addition, the seller was required to post a notice in his place of business outlining his finance charge rates.[66] Each monthly statement, though, is required to contain similar disclosures as contained in retail installment contracts and add-on memorandums. First, the unpaid balance due from the beginning of the monthly period has to be stated and the payments made by the buyer along with any other credits to the buyer. Second, the date and amount of each purchase and a brief

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[62]CAL. CIV. CODE § 1808.5 (West Supp. 1971).

[63]The disclosure provisions for add-on sales, contained in CAL. CIV. CODE 1808.2 and 1803.3 (West Supp. 1971), have remained basically unchanged, except for technical terms, since their adoption.

[64]U.C.L.A. PROJECT, *supra* note 34, at 679.

[65]Ch. 201, § 1, [1959] Cal. Stats. 2103. This remains the basic disclosure element prior to the first transaction and is now embodied in CAL. CIV. CODE § 1810.1 (West Supp. 1971). Two important additions are now required, though, concerning the finance charge. First, the conditions under which a finance charge will be assessed and second, the method of calculation used in determining the unpaid balance and finance charge thereon must be stated.

[66]Ch. 201, § 1, [1959] Cal. Stats. 2104 (repealed 1969).

description of each purchase has to be disclosed. Finally, the finance charge and new unpaid balance at the end of the monthly period must be stated.[67] These, then, are the main disclsoure requirements of the Act for retail installment accounts.

2. BLANK CONTRACTS

As noted above,[68] the Committee that proposed the Unruh Act was very concerned with instances in which the buyer was induced to sign blank contracts and where the buyer was never given a copy of the contract. These two practices were considered to be primary areas of abuse which the Act was intended to correct.[69] The Act as adopted by the Legislature included two provisions to deal with these practices. First the seller is prohibited from obtaining the buyer's signature on a contract containing blanks which are to be subsequently filled in.[70] Second, the seller is required to deliver a legible copy of the contract to the buyer and until this is done, the buyer is obligated to pay only the cash price.[71] In addition to these requirements, the Act requires that a specific notice be printed on every retail installment contract which originally read 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 service charge.[72]

3. FINANCE CHARGES

As was stated before, the finance charge rates enacted by the Legislature were what the Committee felt to be fair to both the buyer and seller.[73] Since the time price differential doctrine exempts installment sales from the usury laws,[74] the rate limitations of the Unruh Act can be viewed as the usury law's counterpart in the field

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[67]The main elements of disclosure in regard to retail installment accounts have remained basically the same although now a little more detailed and specific. These are contained in CAL. CIV. CODE § 1810.3 (West Supp. 1971).

[68]*See* notes 10-15 *supra.*

[69]*See* FINAL REPORT, *supra* note 3.

[70]CAL. CIV. CODE § 1803.4 (West Supp. 1971).

[71]CAL. CIV. CODE § 1803.7 (West Supp. 1971).

[72]The stated notice, contained in CAL. CIV. CODE § 1803.2 (West Supp. 1971), has remained, with slight variation, a requirement under the Act. Ch. 201, § 1, [1959] Cal. Stats. 2094.

[73]*See* note 21 *supra.*

[74]*See* note 17 *supra.*

of retail installment sales. As such, though, the rates allowed by the Act are higher than those allowed by the usury law.[75] The rationale for allowing higher rates than those of the usury laws is usually expressed in terms that the service of providing goods and services on credit by the seller is needed by the public and the expense of the seller's operation makes the usury limitation infeasible.[76]

The maximum finance charge rate allowed for retail installment contracts under the Act amounts to the simple interest rate of 18.46 percent.[77] For retail installment accounts, the maximum rate is 18 percent simple interest.[78] The finance charge is required to include all costs for investigation credit, making the contract, and all else incident to the extension of credit.[79] The only charges beyond the cash price which are not included in the finance charge are those for official fees[80] and insurance.[81]

4. REBATES OF FINANCE CHARGES FOR PREPAYMENT

The Act provides an absolute right to prepay the full amount due under either a retail installment contract or account.[82] Further, this right cannot be bargained away, any contract clause waiving this right is invalid under the Act.[83] By this provision, the Act intended to prevent the practice of man sellers and financing agencies which did not permit prepayment.[84] In addition, the Act provides for the repayment of any unearned finance charges according to a standard formula.[85] This formula is often referred to as the "Rule of 78."[86] These rights have continued unchanged since the adoption of the Act.

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[75]CAL. CONST. ART. XX, § 22 (West 1954). Under this constitutional provision, the maximum interest rate is ten percent per annum.

[76]U.C.L.A. PROJECT, *supra* note 34, at 656-657.

[77]CAL. CIV. CODE § 1805.1 (West Supp. 1971).

[78]As will be seen, both these rates have resisted amendment and remain unchanged since adoption. This provision is found at CAL. CIV. CODE § 1810.2 (West Supp. 1971).

[79]CAL. CIV. CODE § 1805.4 (West Supp. 1971).

[80]*See* note 56 *supra.*

[81]CAL. CIV. CODE § 1802.10 (West Supp. 1971). This should be qualified as a limitation on charges incident to the making of the contract. Other charges may arise after the contract has been made. An example of such is a delinquency charge.

[82]CAL. CIV. CODE § 1806.3 (West Supp. 1971).

[83]*Id.*

[84]*See* notes 22-24 *supra.*

[85]*Id.*

[86]*See* 40 OPS. CAL. ATTY. GEN. 190 (1962) which discusses the Rule of 78 under similar statutory provisions in the Rees-Levering Act. Basically the method of

5. DEFENSES AND CLAIMS OF THE BUYER

As was noted above, the Committee was concerned with defenses and claims of the buyer being cut off by an assignment of his contract.[87] The Act provided that no buyer's claim or defense could be cut off by assignment unless the assignee notified the buyer of the assignment and within 15 days received no return notice of such claims or defenses. The notice sent by the assignee had to state the name of the seller and buyer, a description of the goods or services, the unpaid balance, and the number and amounts of remaining installments due.[88] Presumably, this allowed the buyer to check the statement contained in the assignee's notice against his copy of the contract and assert a claim if there was a discrepancy between the two. These provisions applied to all assignees including those who acquired the contract in good faith and for value.[89]

As for the seller, there is little way that he can escape liability on the defenses of the buyer unless he is nowhere to be found as was sometimes the case.[90] The Act provides that no contractual clause will be valid that is an agreement by the buyer not to assert in the future any claims or defenses he might have against the seller.[91] Likewise, a clause agreeing not to assert claims or defenses against an assignee is invalid.[91]

6. DELINQUENCY AND COLLECTION CHARGES

The Unruh Act, after stating that a contract may include a clause for the payment by the buyer of a delinquency charge on each installment in default for more than ten days, provides that such charges shall not exceed five percent of the installment in default or five dollars, whichever is less, with a minimum charge of one dollar allowed. The Act further provides that only one delinquency charge may be assessed against any one installment no matter how long it is in default.[93] By permitting only one delinquency charge per installment,

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allocation is to distribute the greatest portion of the finance charge to the first month and a progressively smaller amount to each succeeding month rather than prorating the finance charge equally over the entire period of the contract.

[87]*See* note 26 *supra.*

[88]Ch. 201, § 1, [1959] Cal. Stats. 2098 (repealed 1967).

[89]*Id.*

[90]*See* note 31 *supra.*

[91]CAL. CIV. CODE § 1804.1 (West Supp. 1971). Since adoption, this section has remained unchanged.

[92]*Id.*

[93]CAL. CIV. CODE § 1803.6 (West Supp. 1971). No changes have been made in this section since its adoption.

the Act makes it impossible for sellers or financing agencies to use the pyramiding effect[94] to increase the amount due them. No longer can delinquency charges be assessed more than once against one installment, or in other words, build on top of each other.

7. WAGE ATTACHMENTS

As was seen above, the practices of many sellers and financing agencies concerning wage attachments was an area of substantial abuse.[95] The draft of the Act contained in the Preliminary Report would have completely eliminated wage attachments until after a judgment had been obtained,[96] but the Final Report changed this section making possible such an attachment 60 days after default.[97] The reasoning behind this change was that 60 days was a sufficient time during which the buyer could assert his claims or defenses and it was thought that it was illogical that one class of debtor should be exempted and another not.[98] This latter reason given by the Committee may be criticized as a little illogical in view of the fact that the entire Act singles out a particular class of debtor for preferential treatment and protection.

8. ATTORNEY FEES AND COURT COSTS

In regard to attorney's fees and court costs, and related seller and finance agency practices,[99] the Act limited the amount chargeable for such costs to "reasonable" attorney fees if the contract was referred to an attorney for collection.[100] The Act further provides that the court is to award such costs to the prevailing party in an action.[101] This latter aspect of the Act was meant to encourage attorneys to take buyer cases where the buyer has a good claim on defense.[102]

9. REPOSSESSION PRACTICES

The Act provides fairly comprehensive repossession procedures which must be followed by sellers and financing agencies foreclosing after default. After the buyer's default, the Act specifies that the

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[94]*See* note 34 *supra.*

[95]*See* notes 36-38 *supra.*

[96]PRELIMINARY REPORT, *supra* note 3, at 15, 30.

[97]FINAL REPORT, *supra* note 3, at 41. This was in turn adopted by the Legislature; Ch. 201, § 1, [1959] Cal. Stats. 2106, *adding* CAL. CIV. CODE § 1812.1.

[98]*Id.* at 22-23.

[99]*See* notes 39-41 *supra.*

[100]Ch. 201, § 1, [1959] Cal. Stats. 2105 (repealed 1961).

[101]CAL. CIV. CODE § 1811.1 (West Supp. 1971).

[102]FINAL REPORT, *supra* note 3, at 23.

holder[103] can either repossess the goods or sue for a judgment for the amount due on the contract. If the holder repossesses the goods, he is required to give the buyer notice that he either intends to sell the goods at public sale or to retain the goods in satisfaction of the debt.[104] The buyer is given ten days after receipt of the holder's notice in which he has an absolute right to redeem the goods and where a public sale is contemplated, the redemption right extends to the date of that sale. In order to redeem the buyer has to pay the amount due under the contract and any reasonable good faith expense to the holder in repairing, reconditioning, or preparing the goods for sale. Originally, the buyer also had to pay the seller's repossession expenses for taking, keeping, and storage of the goods. The total redemption amount was required to be given to the buyer upon his request in a statement from the holder.[105]

The Act provides further notice requirements in connection with a public sale of the repossessed goods. At least ten days before the sale, the seller must give the buyer notice of the time and place of the sale.[106] This insures that the buyer will know how long his right of redemption will last and gives him an opportunity to bid for the goods. In addition, the notice had to be published at least once in a newspaper of general circulation in the county in which the sale is to be held.[107]

The disposition of the funds received from a public sale is specified by the Act. The proceeds of the sale are to be applied first to the payment of the expenses of the sale, second, to repossession, storage, and reconditioning expenses and finally, to the satisfaction of the balance due on the contract.[108] If the proceeds of the sale were not enough to cover the amount due under the contract, the holder was originally able to pursue an action to recover the deficiency.[109]

[103]"Holder" is a term used by the Act to designate one who acquires a retail installment contract or account. *See* CAL. CIV. CODE § 1802.13 (West Supp. 1971).

[104]If the buyer had paid 80 percent of the contract price, the Act provided that the holder could only repossess the goods in satisfaction of the debt or sue to recover the balance of the indebtedness without repossession. In such a situation, a deficiency judgment was not available to the holder. Ch. 201, § 1, [1959] Cal. Stats. 2107 (repealed 1963). When deficiency judgments were prohibited in 1963, this provision became unnecessary and was likewise repealed in that year. Ch. 1952, § 2, [1963] Cal. Stats. 4018, *amending* CAL. CIV. CODE § 1812.5.

[105]Ch. 201, § 1, [1959] Cal. Stats. 2106. For the main part, this section has remained unchanged except for provisions dealing with notice, storage expenses, and the buyer obtaining knowledge of the amount due for redemption which will be discussed below. *See* CAL. CIV. CODE § 1812.2 (West Supp. 1971).

[106]CAL. CIV. CODE § 1812.3 (West Supp. 1971).

[107]Ch. 201, § 1, [1959] Cal. Stats. 2106 (repealed 1961).

[108]CAL. CIV. CODE § 1812.4 (West Supp. 1971).

[109]Ch. 201, § 1, [1959] Cal. Stats. 2107 (repealed 1963).

Thus, above are the abuses the Legislature found in the retail credit industry and the initial measures adopted to correct these abuses. In response to criticism, as well as to the discovery of new abusive practices, and the feeling for a need for improvement seen through time, the Legislature has enacted many amendments to the Act of both a technical and substantive nature.[110] Most of which will be discussed in the next section.

III. AMENDMENTS TO THE ACT

A. PRE 1959

The draft of the Unruh Act introduced in the Legislature by the Committee[111] was adopted without any major changes in 1959.[112] Perhaps the only significant change prior to adoption related to the name of the Act. Originally, the Act was to be cited as the Retail Installment Sales Law, but the Legislature amended the title to its present name, the Unruh Act.[113] Assemblyman Unruh was the chairman of the committee which made the investigation leading to the proposal of the Act and this probably accounts for the amended name. Perhaps the reason for the Act's adoption with such little change was attributable to minimal public controversy, the fact that it was new legislation, and that it had been preceded by two years of legislative study culminating in two legislative reports and the Act itself.

B. POST 1959

1. DISCLOSURES

One of the most important aspects of the Unruh Act, as noted earlier, is its disclosure provisions,[114] and many amendments to the Act have focused on these provisions. Many of the changes made in the disclosure provisions have been technical, such as changes in

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[110]*See* note 2 *supra.*

[111]FINAL REPORT, *supra* note 3, at 25-43.

[112]Ch. 201, § 1, [1959] Cal. Stats. 2092, *adding* CAL. CIV. CODE §§ 1801-1812.9.

[113]CAL. CIV. CODE § 1801 (West Supp. 1971).

[114]*See* note 52 *supra.*

the names of terms,[115] in an attempt to have the Unruh Act conform with the federal Truth in Lending Act.[116] One area of particular interest, though, is the development of the disclosure provisions for "balloon payments."

A "balloon payment" is an installment substantially larger than all the other payments provided for by the contract and usually comes as the last installment due. To the seller, the use of such a payment is attractive because it may be used to induce buyers to sign a contract which sets forth lower payments over the initial period of the contract. In addition, if the buyer cannot pay the balloon payment when it becomes due, which may be and often is the case, the seller has the choice of repossessing the goods, suing for the contract price, or forcing the buyer to accept additional charges for refinancing. The only section dealing with this problem in the original version of the Act provided that where a payment under a contract was more than double the average of all preceding payments and the buyer defaulted on that payment, the buyer has an absolute right to obtain a new payment schedule. Under the new schedule, unless agreed to otherwise by the buyer, the payments may not be substantially greater than the average of the preceding payments.[117] The reason given by the committee for this section was to prevent buyers from being dispossessed of their goods in such balloon payment situations.[118] It is interesting to note that the section did not refer to the balloon payment by name.[119]

The Act's handling of the balloon payment situation is still subject to criticism on the ground that the entire provision and, hence, refinancing, may be avoided.[120] The provision of the Act dealing with balloon payments only applies where a payment is double the average of the preceding one. Therefore, by scheduling a payment slightly less than double the average of the others, the seller can avoid the provision and enjoy almost the same advantages he had prior to the Act. Granted, the hardship might not be too great where the payments average five dollars and the balloon payment is nine dollars. On the other hand, though, in dealing with the sale of furniture and major

[115]Ch. 625, §§ 1, 2, and 3, [1969] Cal. Stats. 1264, *amending* CAL. CIV. CODE §§ 1802.8, 1802.9, and 1802.10 (1959). Examples of the technical name changes made in the Act to conform to the federal Truth in Lending Act are: "cash sale price" to "cash price" (1802.8); "Time sale Price" to "deferred payment price" (1802.9); and "time price differential" to "finance charge" (1802.10).

[116]15 U.S.C. 1601 *et seq.*

[117]Ch. 201, § 1, [1959] Cal. Stats. 2101.

[118]FINAL REPORT, *supra* note 3, at 36 n. 16.

[119]*See* note 117 *supra.*

[120]U.C.L.A. PROJECT, *supra* note 34, at 689-691.

appliances, if the average payment is 75 dollars, a balloon payment of 145 dollars in the case of many people could be enough of a hardship to put them in default. The only change that the Legislature has made in this area is to require the seller to disclose and specifically identify all payments which are more than double the preceding average as "balloon payments," perhaps thus hoping the buyer will recognize the pitfall and protect himself.[121] On two occasions the Legislature has rejected an attempt to regulate balloon payments by prohibiting, with certain exceptions, any single installment payment from exceeding the average of all such payments by ten percent.[122]

Although the Act may be criticized for the way in which it handles balloon payments, the amendments to the Act concerning those payments are in keeping with the underlying policy of disclosure. The idea of disclosure is to make the buyer aware of the true terms of the contract offered him. Practically all people have heard the words "balloon payment," the term is in common usage, and understand its import. The Legislature, by specifically requiring those words to be used in identifying such a payment, has given the consumer a better chance to examine and know the terms of the offered contract. The Legislature, therefore, arguably, has furthered the disclosure policy of the Act.

The disclosure provisions relating to add-on sales[123] has continued to be a source of criticism.[124] One of the main objectives of disclosure provisions is to allow the buyer the opportunity to see the true character of a transaction before he enters into it.[125] If this is one of the main rationales of disclosure, the Act fails in the area of disclosures connected with add-on sales. The provisions of the Act dealing with add-on purchases do not require the buyer to sign or see anything prior to the time of the additional purchase. The new terms and charges do not have to be disclosed under the Act until after the purchase is made. In such a situation, disclosure is the equivalent of no disclosure at all.

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[121]Ch. 625, §§ 6 and 8, [1969] Cal. Stats. 1264, *amending* CAL. CIV. CODE §§ 1803.3 and 1807.3; Ch. 546, § 23, [1970] Cal. Stats. 1040, *amending* CAL. CIV. CODE § 1807.2.

[122]CAL. A. B. 2021, § 1, 1969 Reg. Sess.; CAL. A.B. 244, § 1, 1970 Reg. Sess. Both proposed bills were identical. The exception to the ten percent rule was that in the case of a buyer's income being seasonal or irregular, the amendment would not prohibit any adjustment in the payment schedule at the option of the buyer.

[123]*See* note 63 *supra.*

[124]U.C.L.A. PROJECT, *supra* note 34, at 678. The Act today remains the same on this point and thus, is still open to the same criticism.

[125]*Id.* at 674.

2. *BLANK CONTRACTS*

In connection with the contract delivery requirement of the Act,[126] the provision provides for the acknowledgment of such delivery by the buyer.[127] In respect to the acknowledgment procedure, a major defect appeared in the Act after its adoption.[128] This defect, as will be seen below, actually placed the seller who induced the signing of blank contracts and did not deliver contracts in a better position to do so, and escape any possible sanctions, than he had been prior to the Act.

The original contract delivery section[129] provided that if written acknowledgment of delivery of the contract was obtained from the buyer, the acknowledgment would operate as a conclusive presumption in any action by or against an assignee who purchased the contract without knowledge to the contrary that the contract had not contained any blank spaces when signed. The possibility for abuse and deception was provided by the Act in allowing the contract itself to contain the buyer's delivery acknowledgment.[130] By placing the acknowledgment in the contract, the seller could induce the buyer to sign the contract in blank, and then fill in the contract and assign it. The conclusive presumption that the Act was complied with was raised when the contract was signed, thereby precluding the buyer from alleging that the contract was signed in blank, most importantly, or that he did not receive a copy of the contract.

In 1961, the Legislature corrected the above discussed defect by changing the presumption raised by acknowledgment from conclusive to rebuttable.[131] Thus, the buyer may no longer be precluded from raising a blank contract allegation by signing a contract containing an acknowledgment of delivery clause. The assignee, though, may still receive the benefits of a conclusive presumption if he himself sends the buyer a copy of the contract or a notice reciting the essential terms of the contract asking the buyer to contact him within 30 days if he has not received a contract copy and no notice is received.[132] But, this still gives the buyer an opportunity to protest and prevent a conclusive presumption from arising.

Since a further 1969 amendment, a copy of the contract and all forms which require the buyer's signature must be delivered to the

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[126]*See* note 71 *supra.*

[127]*Id.*

[128]U.C.L.A. PROJECT, *supra* note 34, at 672-673; *Notes: Installment Sales,* 12 HASTINGS L.J. 312 (1960) at 314 [hereinafter cited as HASTINGS].

[129]Ch. 201, § 1, [1959] Cal. Stats. 296.

[130]*Id.*

[131]Ch. 1214, § 3, [1961] Cal. Stats. 2948, *amending* CAL. CIV. CODE § 1803.7.

[132]*Id.*

buyer at the time they are signed.[133] Prior to this, there was no time during or at which the seller had to give a copy of the contract to the buyer. The sanction was that until the contract was delivered, the buyer was only obligated to pay the cash price.[134] Now, the time for delivery is specified by the Act and the Act has retained the provision that if the contract is not delivered, the buyer is only obligated to the cash price until such delivery.

3. FINANCE CHARGES

In regard to finance charges in retail installment contracts, there have been no significant legislative changes, at least with a lasting effect. As adopted, the Act provided that the cost of insurance in connection with a retail installment sale was not to be included as part of the finance charge.[135] In 1969, though, the Act was amended to state that the cost of insurance which was required by the seller was to be included in the finance charge.[136] This had the effect, in such cases where the provision was applicable, of cutting down the actual finance charge the seller was allowed to make. Subsequently, in 1970, the section was again amended returning it to its original form and all insurance charges are once again excluded from the finance charge.[137]

Of further interest in connection with finance charges is the Legislature's rejection in 1969 of an amendment which would have increased the permissible finance charge rate on retail installment contracts for balances exceeding 1,000 dollars from five-sixths of one percent to a full one percent.[138] Thus, the authorized finance charge rates of the Act have remained unchanged since their adoption.

4. DEFENSES AND CLAIMS OF THE BUYER

One area which seems to have caused trouble for the Legislature is that dealing with contract assignments which cut off buyer claims and defenses. The original section of the Act dealing with this area, reviewed above,[139] provided that no right of action or defense would be cut off by assignment to an assignee whether or not for good faith or value unless the assignee notified the buyer of the assignment and within 15 days did not receive a return written notice of such a claim

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[133]Ch. 353, § 1, [1969] Cal. Stats. 730, *amending* CAL. CIV. CODE 1803.7.

[134]*See* note 129 *supra.*

[135]Ch. 201, § 1, [1959] Cal. Stats. 2094.

[136]Ch. 625, § 3, [1969] Cal. Stats. 1264, *amending* CAL. CIV. CODE § 1802.10.

[137]Ch. 546, § 7, [1970] Cal. Stats. 1040, *amending* CAL. CIV. CODE § 1802.10.

[138]CAL. A.B. 1850, § 1, 1969 Reg. Sess.

[139]*See* note 88 *supra.*

or defense.[140] This provision was subject to criticism on the ground that most sellers sell their contracts to financing agencies the same day they are made so that the buyer must become aware of a violation of his rights during a very short time after he has incurred the obligation. It was felt that most violations would not come to light until long after the 15 days had passed so as to become lost to the buyer.[141]

The first change in the assignment provision actually made no substantive change at all, but merely provided that a specific warning had to be printed on the assignee's notice of assignment sent to the buyer. The warning merely emphasized the 15 day period in which the buyer had to complain in language provided by the amendment.[142] By requiring a specific warning, it prevented the warning from being buried in a legalistic document.[143] In addition, it was perhaps hoped that the buyer would become more aware of the possible effects of an assignment and thus, examine closely his transaction. To be sure, though, such an awareness or action on the buyer's part would not necessarily follow from the warning.

Once again, in 1963, the assignment section was amended, only this time to clarify confusion which had arisen. First, there was confusion as to whether the assignment section could cut off the buyer's rights under California Civil Code § 1812.7[144] The amendment clearly expressed the intent that it did not.[145] In addition, a statement was added to the section that its effect was not intended to modify or alter the buyer's rights under either sections 1459 of the California Civil Code or 368 of the California Code of Civil Procedure.[146] These sections provide that an assignment of a non-negotiable contract does not cut off any rights, equities, or defenses of the obligor. Therefore, since the Act's assignment section only applies to rights and defenses which would be cut off by assignment, it only applies to negotiable instruments executed in connection with the sale and not to the contract itself. The application therefore could lead to a situation which

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[140]*Id.*

[141]HASTINGS, *supra* note 128, at 314.

[142]Ch. 1214, § 5, [1961] Cal. Stats. 2948.

[143]Conceivably, prior to this amendment, it would have been easy for an assignee to de-emphasize the fact that the buyer only had 15 days in which to notify the assignee of a claim or defense or else lose them. This would have and probably was done by placing the required notice in a paragraph on a long legalistic appearing document.

[144]STATEMENT OF THE GOVERNOR ON A CONSUMER POLICY FOR CALIFORNIA, April 4, 1963, at 8.

[145]Ch. 1602, § 1, [1963] Cal. Stats. 3180.

[146]*Id.*

has been described as a "standoff" between the assignee and buyer who has a claim or defense but who did not raise them until after the 15 day period had gone by. The standoff occurs where the assignee has a contract to which personal defenses are good and a negotiable instrument to which they are not in which case a suit on the instrument would bring a counterclaim on the contract for rescission.[147]

The assignment section of the Act as described above was repealed in its entirety in 1967, and inserted in its place was an entirely new provision.[148] The new section provides in essence, with certain limitations, that no buyer's claims or defenses can be cut off by assignment. The limitations are twofold. First, the claims or denses can only be asserted as a defense in an action initiated by the assignee. Second, the assignee's liability is limited to the amount owed under the contract at the time the defense is asserted.[149] This appears to be a perhaps sound balance between the buyer's and assignee's interests, at least in light of the original version of the bill which proposed the new section. It provided that the buyer's rights could be asserted either as a claim or defense and fixed the assignee's liability at the amount owed under the contract at the time it was received by assignment.[150] The provision for the assertion of a claim against an assignee was once again rejected by the Legislature in 1970.[151]

The assignment provisions of the Act as they are now stated may have the added positive effect of causing finance agencies to be more careful in selecting the sellers with whom they deal. If this is the case, the seller who is tempted to abuse his power in his relationship with the consumer may decide that it is not worth it to do so if he would not thereafter be able to sell his contracts to the finance agency who has had to withstand a counterclaim because of the seller's activities.

5. WAGE ATTACHMENTS

After several attempts in the Legislature, one leading to a Governor's veto, the Act has now been amended, along with overall California law in the area, to prohibit the attachment of wages until after judgment as was originally provided in the Preliminary Report.[152]

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[147]*Selected 1963 Legislation,* JOURNAL OF THE STATE BAR OF CALIFORNIA, Vol. 38, No. 5 (1963), at 651-652.

[148]Ch. 1294, § 1, [1967] Cal. Stats. 3098, *repealing* CAL. CIV. CODE § 1804.2 and *adding* CAL. CIV. CODE § 1804.2.

[149]CAL. CIV. CODE § 1804.2 (West Supp. 1971).

[150]*Id. See* first draft of CAL. A.B. 1676, § 1, 1967 Reg. Sess. proposing this change.

[151]CAL. S.B. 1138, § 1, 1970 Reg. Sess.

[152]Ch. 1523, § 1, [1970] Cal. Stats. 3058, *repealing* CAL. CIV. CODE § 1812.1. Prior to this, bills proposing such a prohibition had been defeated by the Legislature in

6. ATTORNEY FEES AND COURT COSTS

Prior to 1961, the Act provided that reasonable attorney fees were to be awarded by the court to the prevailing party in an action arising under the Act. In addition, the Act in the same section further provided that an installment contract could contain a clause for the payment of reasonable attorney fees if the contract was referred to an attorney for collection.[153] This latter provision was criticized as confusing and unnecessary in light of the first provision mentioned above.[154] Thus, in 1961, the Legislature deleted it from the section.[155] It may be argued from the Final Report though, that the provision was not unnecessary in that the Committee had a definite purpose in mind, namely to allow the collection of attorney's fees where the services of an attorney were needed to enforce the contract, but where that enforcement did not, or for that matter did not need to, lead to court action.[156] An amendment which would have restored the affect of this provision to the Act was subsequently defeated in 1968.[157]

7. REPOSSESSION PRACTICES

In the area of default and repossession, probably the most important change to occur in the Act since its adoption concerns deficiency judgments. The Act as adopted in 1959 allowed deficiency judgments where the resale of repossessed goods did not bring a price sufficient enough to cover the amount owed under the contract.[158] In 1963, the Legislature amended the Act so as to prohibit all deficiency judgments in transactions covered by the Act.[159]

1969 and one had been passed in 1968 but vetoed. CAL. A.B. 1813, § 1 and CAL. A.B. 1715, § 1, 1969 Reg. Sess.; CAL. A.B. 1208, § 1, 1968 Reg. Sess.

[153]*See* note 100 *supra.*

[154]U.C.L.A. PROJECT, *supra* note 34, at 639, recommended elimination of this provision.

[155]Ch. 1214, § 6, [1961] Cal. Stats. 2948, *amending* CAL. CIV. CODE § 1811.1.

[156]FINAL REPORT, *supra* note 3, at 23.

[157]CAL. S.B. 521, § 1, 1968 Reg. Sess. This proposal would have required every retail installment contract to contain a statement to the effect that the party against whom the contract is enforced agrees to pay expenses, including reasonable attorney's fees, incurred in such enforcement. "Enforced" may be taken to mean through actual court action or legal procedures falling short of pursuing an actual suit such as filing and withdrawing which requires the services of an attorney.

[158]*See* note 109 *supra.*

[159]Ch. 1952, § 2, [1963] Cal. Stats. 4017, *amending* CAL. CIV. CODE § 1812.5. It is interesting to note that under the Rees-Levering Act, covering the sale of automobiles, and which might be called the sister act of the Unruh Act, deficiency judgments are still allowed. There is growing support, though, for its abolishment in that area as was done in the Unruh Act.

Perhaps equal in importance to the elimination of deficiency judgments is that after 1961 a seller could no longer accelerate payments with the effect of throwing the buyer into default.[160] Prior to 1961, the seller could accelerate payments on "reasonable cause"[161] which permitted such acceleration where the seller felt "insecure." The allowance of the "insecurity clauses," as they were known, was criticized on the ground that they could be used as an excuse to reach collateral of a greater value than the obligation, as a means of forcing the buyer into default so that the seller could collect extra refinancing charges, or as a method of forcing the buyer to give up rights under the contract.[162] Acceleration is now only allowed after default which is intended to eliminate these potential abusive practices. In addition, it has been held that when payments are accelerated under an acceleration clause that it is unconscionable not to remit the unearned portion of the finance charge.[163]

It may be wondered, though, if the Legislature has really curbed the abusive practices connected with insecurity and acceleration clauses. It is true that a seller or finance agency cannot use an insecurity clause to accelerate payments and thereby incidently cause default. On the other hand, there is nothing to prevent defining a default in the same terms as would be used in an insecurity clause and thereby reaching the same result. Thus, when the seller or finance agency felt insecure, by definition there would be a default which would allow the acceleration of payments. This readily points out another fault in the Act. The Act does not define "default" in any manner within its provisions.

The Act provides, as discussed earlier,[164] that upon repossession, the seller has the option or election to either retain the goods in satisfaction of the balance due on the contract or to sell the goods at public sale in which case, until 1963, he could receive a deficiency judgment. The seller was required to give notice of this election to the buyer after which the buyer had ten days in which to exercise redemption rights.[165] A defect appeared in the Act as adopted by the Legislature in that no time limit was specified during which the

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[160]Ch. 1214, § 4, [1961] Cal. Stats. 2948, *amending* CAL. CIV. CODE § 1804.1.

[161]Ch. 201, § 1, [1959] Cal. Stats. 2097.

[162]U.C.L.A. PROJECT, *supra* note 34, at 701.

[163]Mann v. Earls, 226 Cal. App. 2d 155, 37 Cal. Rptr. 877 (1964). Here an appellate court stated that it would not enforce any acceleration clause in a case in which an unearned finance charge had not first been subtracted from the amount due after acceleration.

[164]*See* notes 103-109 *supra.*

[165]*See* note 105 *supra.*

seller had to give his notice of election. The effect was to allow the seller an indefinite time to make up his mind and during which the buyer's right of redemption was suspended by the Act's wording. In 1961, this defect was corrected by requiring the seller's notice to be sent within ten days after repossession.[166]

Another defect which appeared in the original Act was that when the seller's notice was sent it did not have to include the amount the buyer had to pay in order to redeem the goods.[167] This was also corrected in 1961 so as to require the inclusion of this amount.[168] The redemption amount included the amount owed under the contract plus charges for taking, storing, and reasonable good faith expenses in repairing or reconditioning the goods for resale. The taking and storing charges were subject to abuse[169] so that they are now disallowed from the redemption amount the buyer must tender the seller.[170]

The amendments dealing with notice of the seller's intention and the amount due have had the effect of making the buyer's right of redemption effective. One of the underlying policies of the Act has been the protection of the buyer's rights and the provision of an effective means for their exercise.[171] Prior to the above described amendments, the right of redemption was suspended until the seller decided to give notice of what he intended to do with the goods. In addition, since the amount due did not have to be stated in the notice, it was hard for the buyer to know what amount he had to tender in order to redeem the goods. The factors which made this amount uncertain were charges assessed after repossession for taking, storage, and reconditioning expenses. This prevented the effective exercise of the redemption right. These defects, though, were recognized by the Legislature and corrected assuring the effectiveness of the buyer's right of redemption.

8. VENUE REQUIREMENTS

One of the most important additions to the Act since its adoption are the venue provisions.[172] The Final Report recognized abuses of

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[166]Ch. 1214, § 7, [1961] Cal. Stats. 2948, *amending* CAL. CIV. CODE § 1812.2.

[167]*See* note 105 *supra.*

[168]*See* note 166 *supra.*

[169]U.C.L.A. PROJECT, *supra* note 34, at 730-731.

[170]Ch. 1952, § 1, [1963] Cal. Stats. 4017, *amending* CAL. CIV. CODE § 1812.2.

[171]An example of this policy, besides that described here, is the original adoption and development of the section dealing with the preservation of buyers' claims and defenses after contract assignment.

[172]CAL. CIV. CODE § 1812.10 (West Supp. 1971).

venue such as contract clauses providing where the contract was to be preformed or for suit in the county of the seller's residence which often enabled the seller to sue in a distant place. The result was that many buyers had a difficult task in defending themselves and often simply did not.[173] In this respect, it is odd that no venue provisions were submitted in the Final Report to the Legislature.

The first venue section was added to the Act in 1965. The first provisions required that an action on a contract under the Act had to be commenced in either the county where the buyer signed the contract, the county where the buyer resided when the contract was signed, the county where the buyer resided at the commencement of the action, or in the county where the goods purchased had been affixed to real property so as to become a part of the real property.[174] No contract clause could provide any other county not specified in the Act.[175] The theme and purpose of this section and the amendments to it since has been simply to keep the action near the buyer so that he may have the opportunity to adequately defend himself. Since the venue section was first adopted, it has subsequently been amended to identify the proper court in the county for the action.[176] In addition, now the action not only must be commenced in one of the above counties, but actually tried in one of them so as to preclude a transfer to a distant county.[177] It would appear that a judgment rendered in any county but one allowed and specified by the Act would be void.[178]

The venue provisions can also be viewed in the light of the Act's underlying policy of protecting the rights of the buyer. In this case, it is the right to be heard in court to advocate his rights against those of the seller or finance agency. The venue section of the Act insures that the action will be tried at a location convenient to the buyer, who often would be discouraged from presenting his case if he had to travel a distance to do so, so that there will be an adequate opportunity for the buyer to be heard.

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[173]FINAL REPORT, *supra* note 3, at 86.

[174]Ch. 792, § 1, [1965] Cal. Stats. 2382.

[175]Ch. 776, § 1, [1965] Cal. Stats. 2361. Such a contract clause would be void, but the contract still would be enforceable under CAL. CIV. CODE § 1804.4 (West Supp. 1971).

[176]Ch. 743, § 1, [1968] Cal. Stats. 1446, *amending* CAL. CIV. CODE § 1812.10.

[177]Ch. 186, § 1, [1969] Cal. Stats. 466, *amending* CAL. CIV. CODE § 1812.10.

[178]51 OPS. CAL. ATTY. GEN. 179-183. The opinion stated that CAL. CIV. CODE § 1812.10 creates a mandatory requirement for the commencement of actions arising on contracts covered by provisions of the Act and that the requirement is jurisdictional so that a judgment rendered is void if the requirements of the section are not met. Although this opinion was given prior to the 1969 amendment (*see* note 177 *supra*), it would be logical that the same reasoning would be applicable now to the trial of an action under the provisions of the Act.

9. REFERRAL SALES

One abusive practice that the Act, as passed in 1959, did not regulate was that in connection with referral sales. In fact, there is no mention of the referral sale in either the Preliminary or Final Report. Simply stated, a referral sale exists where the seller agrees to pay the buyer a fee for either references to other potential customers or for references which lead to actual sales. Referral sale agreements were used to induce buyers into installment contracts who could not afford it or who could not obtain credit through other means by leading the buyer to believe that the payments or a portion thereof would be paid for the referral fees. The practice was to provide two separate contracts, the retail installment contract for the purchase of the goods and a contract for the payment of referral fees to the buyer. The seller would sell the installment contract to a finance company and then disappear. The buyer was prevented from raising the referral sale issue in an action by or against the finance company by the parol evidence rule.[179]

The first step in curbing the abusive practices connected with referral sales occurred in 1961 when the Legislature added to the Act the requirement that all referral sale agreements have to be contained in the retail installment contract.[180]This prevents the practice cited above of using two contracts and assigning one,[181] but it did not prevent the use of the referral sale scheme as a means of inducing the buyer to enter into a contract. Seven years later, in 1968, the Legislature strengthened the provisions concerning referral sales almost to the point of prohibiting such agreements altogether.[182]

After 1968, sellers were prohibited from offering referal sale agreements in which the referal payment or rebate was contingent on a future event such as a future sale or future contract with referral persons.[183] Thus, the only way a referral agreement can now be set up is for the seller to give consideration for the buyer's references as soon as the buyer gives them to him. Further, it would appear that the referral transaction must take place prior to or at the signing of the contract because the buyer giving the referral names in the

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[179]*Selected 1960-1961 California Legislation,* JOURNAL OF THE STATE BAR OF CALIFORNIA, Vol. 36, No. 5 (1961), at 680.

[180]Ch. 1214, § 2, [1961] Cal. Stats. 2948, *amending* CAL. CIV. CODE § 1803.2.

[181]After this addition, if the seller did not abide by the referral sale agreement, ultimately the assignee would have to since provision is made under CAL. CIV. CODE § 1804.2 for the preservation of buyer claims and defenses as this would probably turn out to be.

[182]Ch. 452, § 1, [1968] Cal. Stats. 1074, *amending* CAL. CIV. CODE § 1803.2.

[183]*Id.*

future is itself a contingent event and thus, would be prohibited by the Act.

It is interesting to note that in both 1963 and 1965 the Legislature rejected amendments to the Act which would have prohibited referral sales completely.[184] This appears as a recognition on the part of the Legislature that such arrangements can help the buyer finance a credit purchase. But on the other hand, in light of the 1968 amendment,[185] it is doubtful that the referral sale is now used much by sellers. As was seen above, the main attraction to the seller of the referral sale agreement was its persuasive value in inducing the buyer into a contract and the ability to word the agreement so that the seller would actually not have to do and pay anything. While the persuasive value is probably still present, the attraction of evasion of the agreement is not. Thus, the real value to the seller of the referral sale agreement is gone, and probably with it, the referral sale itself.

10. PENALTIES

In regard to penalties imposed by the Act, the section dealing with the correction of Act violations[186] caused the most confusion after the Act's adoption. The section was worded in such a manner that it made all violations, willful and nonwillful, correctable so that all penalties could be avoided except in one instance, a willful violation in connection with an add-on sale.[187] A further criticism was that in reality there was no time limit during which the holder had to make a correction. The section required that the correction had to be made within ten days after the holder "notices" a violation or is notified of one by the buyer, but it was almost impossible to prove that a holder had "noticed" a violation.[188] Thus, the seller was able to violate the Act and in most cases never suffer a penalty because when a violation was discovered, no matter when, he could correct it.

The Legislature corrected the above situation in 1961. The section was amended to prohibit the correction of any willful violation of the Act. All nonwillful violation corrections now have to be made within 30 days of the execution of the contract by sending a corrected copy of the contract to the buyer. In addition, the seller must receive the consent of the buyer to any correction which would increase the

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[184]CAL. A.B. 2866, § 1, 1963 Reg. Sess.; CAL. A.B. 1961, § 1, 1965 Reg. Sess.

[185]*See* note 82 *supra.*

[186]CAL. CIV. CODE § 1812.8 (West Supp. 1971).

[187]CAL. CIV. CODE § 1812.9 (West Supp. 1971). The Act specifically provides that a willful violation in connection with an add-on sale cannot be corrected.

[188]U.C.L.A. PROJECT, *supra* note 34, at 758-768.

amount owed under the contract.[189]

It has been argued that it is the legislative intent of the Act to provide that a violation of the Act generally, except in the case where a prohibited clause is inserted in the contract in which case it is void, results in an option to the buyer of either rescinding the contract or retaining the goods and remain liable for the cash price.[190] Whereas this rescission theory may have had some validity prior to 1963, it has doubtful validity now as an expression of legislative intent. In 1963, the Legislature defeated a bill which, in the case of willful violations, would have given the buyer the power to rescind the contract as against a seller who committed the violation or a holder who acquired the contract with such knowledge or should have known of the violation in the exercise of ordinary care.[191]

11. THE COVERAGE OF THE UNRUH ACT

In regard to the general coverage of the Unruh Act, the trend has been to expand that coverage. This expansion has not been into other fields, but, rather, to fill or occupy in a more complete manner the area of retail installment sales of consumer goods and services. The first stage of this expansion occurred in 1961 with the broadening of the definition of a "retail installment contract."[192] As first adopted, the Act was limited by this definition to transactions where a finance charge was added to the cash price or where the goods were simply available at a lower price if cash was paid.[193] After the 1961 amend-

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[189]Ch. 1214, § 9, [1961] Cal. Stats. 2948, *amending* CAL. CIV. CODE § 1812.8. The first draft of the bill (CAL. A.B. 2319, § 9, 1961 Reg. Sess.) proposing this amendment was much stronger than the version ultimately adopted. It proposed the repeal of CAL. CIV. CODE § 1812.8 altogether. The first amended draft, repeal having failed, proposed the requirement that any correction had to be concurred with in writing by the buyer in order for it to be effective and had to be done within 15 days of the execution of the original contract. This also failed to pass. The second amended draft is the version which was finally adopted. It is probably wise that the first two versions did not pass because of its potential harsh effect on the seller who makes an innocent mistake. In the first draft's case, no correction would be possible for a violation, innocent, or otherwise, since the section would have been repealed. This would have made CAL. CIV. CODE § 1812.7 applicable which would in effect bar the seller from receiving anything but the cash price from the transaction. In the case of the first amended draft, the buyer, by refusing to concur in the correction of an innocent violation, would get the goods for the cash price, avoiding the contract, once again bring into effect CAL. CIV. CODE § 1812.7. The amendment adopted, while limiting the seller's correction power, eliminates the above potential harsh effects.

[190]U.C.L.A. PROJECT, *supra* note 34, at 761.

[191]CAL. A.B. 2861, § 1, 1963 Reg. Sess.

[192]Ch. 1214, § 1, [1961] Cal. Stats. 2948, *amending* CAL. CIV. CODE § 1802.6.

[193]Ch. 201, § 1, [1959] Cal. Stats. 2093.

ment, the definition, and hence the coverage of the Act, was expanded to include transactions where the buyer would have received additional or higher quality goods or services had he paid cash instead of purchasing by installment payments.[194] Subsequently, in 1969, the definition was again broadened by amendment so as to include any transaction which provided for four or more installments.[195] In determining that there are four installments, it appears that a down payment may not be counted as one of the necessary four installments.[196] Prior to the 1969 amendment, the Act possibly could have been avoided by a seller who theoretically imposed no actual finance charge, but who raised all his prices and maintained them at a higher level. This situation was most likely to arise in the setting where a seller did all or a majority of his business by extending credit.

The Act in its original form totally excluded from its protection transactions which involved less than 50 dollars and which were unsecured.[197] The justification and necessity given for this exclusion by the Committee was immediately criticized.[198] In response to this criticism and on the Governor's recommendation,[199] the section authorizing this exclusion was repealed in 1963 thereby bringing such transactions under the coverage of the Act.[200]

The reluctance to extend the Act into to other fields beyond retail installment sales of consumer goods and services is typified by the re-

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[194]*See* note 192 *supra.*

[195]Ch. 1192, § 1, [1969] Cal. Stats. 2322, *amending* CAL. CIV. CODE § 1802.6. As introduced into the Legislature, the bill (CAL. S.B. 1288, § 1, 1969 Reg. Sess.) proposing this amendment was much stronger than that ultimately adopted. As originally introduced, it would have classified any contract providing for installments, irrespective of the number of those installments, as a "retail installment contract" and hence, governed by the Act's provisions. The bill was subsequently amended to the "four or more installments" form which was ultimately adopted and incorporated into CAL. CIV. CODE § 1802.6.

[196]53 OPS. CAL. ATTY. GEN. 160-163.

[197]Ch. 201, § 1, [1959] Cal. Stats. 2092 (repealed 1963).

[198]U.C.L.A. PROJECT, *supra* note 34, at 630. Apparently the justification for the limitation was to allow the continued practice of quantity sellers, who could not afford to install a revolving credit system, of adding the finance charge to the cash price on each sales receipt the customer receives. This amount was then entered manually in a ledger and the customer's passbook. All this could be done without having to conform to the add-on provisions of the Act or entering into a separate contract for each transaction. The finance charge rate regulation, though, continued to apply to those transactions. This justification was doubted, especially in the light that the provisions of the Act concerning disclosure, prepayment, assignment, etc., did not apply. These provisions were meant to protect buyers, but this limitation excluded a large sector of buyers from the protection.

[199]*See* note 144 *supra.*

[200]Ch. 1603, § 2, [1963] Cal. Stats. 3181, *repealing* CAL. CIV. CODE § 1801.3.

fusal of the Legislature to enlarge the coverage of the Act to include the field of real property transactions. In 1961, a bill which would have added contracts for the sale of real property to the Act was defeated.[201] Subsequently in 1969, the Act was specifically amended to exclude all transactions involving real property except for residential remodeling contracts.[202] This amendment was intended to specifically abrogate a contrary rule expressed in *Morgan v. Reasor Corp.*[203] which held the Act applicable to a contract for the construction of residential housing.[204] Prior to the 1969 amendment there was some confusion as to the applicability of the Act to such transactions and opinion that the Act did so apply.[205]

IV. CONCLUSION

The purpose of the Unruh Act, in light of the above discussion, can be summarized in two words: *knowledge* and *protection.* The word *knowledge* means knowledge of the buyer as to the true terms and conditions of the contract he is offered by the seller. The disclosure provisions of the Act are directed at providing such knowledge. While the Act cannot guarantee that the buyer will obtain this knowledge with which to evaluate the transaction, the Act will insure that the buyer will have the opportunity to do so. The word *protection* means that the traditional weaker bargaining position of the buyer will be protected. All of the provisions of the Act are intended to accomplish this purpose, from disclosure to repossession regulation, each is aimed at protecting the buyer. An example of this protection of a weaker bargaining position is found in the hostility of the Act to the allowance of unwarranted profits for sellers and finance agencies. Thus, finance charges, delinquency charges, and attorney fees have been regulated while repossession charges for taking and storage have been eliminated.

If there is any trend to the development of the Unruh Act evidenced by its past, that trend is a general tightening of its provisions and expansion of the protection afforded consumers by those provisions. One cannot look at the past twelve years of development and conclude that the Act has been weakened or "watered down" from the con-

[201]CAL. A.B. 2179, § 1, 1961 Reg. Sess.

[202]Ch. 554, § 1, [1969] Cal. Stats. 1180, *adding* CAL. CIV. CODE § 1801.4.

[203]69 CAL. 2d 881, 73 Cal. Rptr. 3 (1968).

[204]Ch. 554, § 2, [1969] Cal. Stats. 1180, *adding* CAL. CIV. CODE § 1801.4.

[205]40 OPS. CAL. ATTY. GEN. 232-237.

sumer's viewpoint. It is true that one can say that the Legislature has not gone far enough in some areas and that certain proposals have been weakened or compromised before incorporation into the Act, but the Act in general has not been weakened.

Where there have been potential or actual areas of abuse in the retail or credit industries discovered, the general trend has been to enter that area and regulate it. It is this which created a need for and called the Act into existence. In areas where the original Act was defective so as to permit continued abuses through evasion of the Act, the Legislature has usually moved to make corrections so as to prevent at least the instances of major abuse through evasion. An example is the broadening of the definition of a "retail installment contract" and hence, the Act's general applicability as well. Another example is the quick correction of the abusive use of the original provisions dealing with blank contracts and delivery of the contract. Probably defects may still be found in the Act, but they could not be said to be major and glaring.

The Act has moved into areas of newly discovered abuses, at least new in terms of the fact that no particular importance was given to them in the legislative committee reports preceding the Act's adoption. One example, although probably well recognized before the Act's existence, is that of the "balloon payment." There was a slight inference to this abusive practice in the original version of the Act, but as now amended, the law insures that the buyer will at least be aware of this pitfall. Two other areas of abuses now recognized in the Act and corrective measures taken include referral sales and venue abuses. In regard to referral sales and balloon payments, it may be argued that these are two areas in which the Legislature has not gone far enough in that they should be eliminated completely. But then on the other hand, it cannot be said that the Legislature has ignored these areas either.

Perhaps one of the major trends of the Act's development has been to strengthen the position of the buyer against a seller or financing agency in any litigation arising out of a transaction covered by the Act. A seller or financing agency has traditionally had better resources in this field than has had the buyer. The Act has attempted to equalize the situation somewhat. First, by providing for the award of attorney fees to the prevailing party, the intent of the Act has been to try to assure adequate legal representation where the buyer has a claim or defense of merit. Second, through venue provisions, the litigation will be close to home so that appearance and defense can be made. Last, the Act has preserved the claims and defenses of the buyer after assignment in a manner so that at least some use may be

received from them in a buyer defense.

As a final word, if the main object of the Unruh Act is to achieve fair and honest dealings in the retail installment sales field, the Act probably has come close to what it attempted to do. But there are always those who could try to take advantage of the law and others. It will be interesting to see how the Unruh Act faces and handles new challenges as they arise.

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