

# HOUSE . . . . No. 1094

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By Mr. Olson of Ashland, petition of Charles W. Olson for licensing by the Commissioner of Banks of companies engaged in buying or discounting retail instalment contracts and relative to providing standardized forms for such contracts. Legal Affairs.

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## The Commonwealth of Massachusetts

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In the Year One Thousand Nine Hundred and Thirty-Nine.

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AN ACT REQUIRING THE LICENSING OF COMPANIES ENGAGED IN THE BUSINESS OF BUYING OR DISCOUNTING RETAIL INSTALMENT CONTRACTS AND PROVIDING STANDARDIZED FORMS FOR SUCH CONTRACTS.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1 SECTION 1. Chapter one hundred and forty of  
2 the General Laws is hereby amended by inserting  
3 after section one hundred and fourteen, as appearing  
4 in the Tercentenary Edition, under the caption  
5 RETAIL SALES FINANCE COMPANIES, the following  
6 twelve new sections:

7 *Section 114A.* In this and the following eleven  
8 sections, unless the context otherwise requires, the  
9 following words and phrases shall have the following  
10 meanings:

11 "Commissioner", the commissioner of banks.

12 "Goods", tangible personal property.

13 “Retail sales finance company”, any corporation,  
14 partnership, association, trust or individual engag-  
15 ing in the business, in whole or in part, of buying or  
16 discounting, directly or indirectly, retail instalment  
17 contracts made in this commonwealth by dealers,  
18 merchants and other instalment sellers with inhabit-  
19 ants of this commonwealth, or notes arising from  
20 such contracts; and for the purposes hereof any such  
21 company which has engaged in two or more such  
22 transactions within the last calendar year shall be  
23 considered to be engaged in the business as aforesaid.

24 “Retail instalment contract” or “instalment con-  
25 tract”, every contract whereby a person becomes  
26 obligated to pay a sum of money on any time pay-  
27 ment, instalment or budget plan in consideration of  
28 (1) goods sold at retail and delivered before the  
29 completion of the stipulated payments, to which  
30 title is to pass or may pass to the purchaser or his  
31 assigns at or before the time of completion of such  
32 payments; or (2) services rendered before the time  
33 of completion of the stipulated payments; provided,  
34 that buying or discounting, directly or indirectly,  
35 retail instalment contracts shall also include any  
36 transaction whereby a retail sales finance company  
37 loans money which any person becomes obligated  
38 to repay on any time payment, budget or instalment  
39 plan where such money is to be applied to payment  
40 of the price of goods sold by any dealer, merchant or  
41 instalment seller in this commonwealth, and where  
42 such retail sales finance company obtains an interest  
43 in the goods sold as security for fulfilment of the  
44 contract.

45 “Sell at retail”, to sell to a purchaser for the  
46 latter’s personal use or consumption and not for  
47 resale.

48 "Services", medical, dental, hospital, funeral,  
49 automobile repair, transportation and other services.  
50 "Time payment, instalment or budget plan", any  
51 arrangement whereby stipulated periodic payments  
52 are to be made to be applied on an amount due or  
53 payable for goods sold at retail and delivered or  
54 services rendered.

55 *Section 114B.* No corporation, partnership, asso-  
56 ciation, trust or individual shall engage in business  
57 as a retail sales finance company without first ob-  
58 taining from the commissioner a license to carry on  
59 the said business at the place in the town where the  
60 business is to be transacted. Violation of this section  
61 shall be punished by a fine of not more than five  
62 hundred dollars or by imprisonment for not more  
63 than two months, or both. Any retail instalment  
64 contract bought or discounted, directly or indirectly,  
65 by a retail sales finance company, including any  
66 notes arising therefrom, shall be void, unless such  
67 company is licensed as aforesaid.

68 *Section 114C.* The commissioner shall from time  
69 to time establish regulations respecting the granting  
70 of licenses and the business to be carried on by the  
71 licensees. He shall, either personally or by such  
72 assistants as he may designate, at least once a year  
73 and oftener if he deems it necessary, investigate the  
74 affairs of such licensees, and for that purpose shall  
75 have free access to the vaults, books and papers  
76 thereof, and shall ascertain the condition of the busi-  
77 ness and whether it has been transacted in compli-  
78 ance with law and the regulations made hereunder.  
79 The commissioner may cause an examination of said  
80 books and business to be made by an accountant  
81 whom he may select, and the cost of any such

82 examination shall be paid by the person whose books  
83 are so examined.

84 *Section 114D.* Each retail sales finance company  
85 shall annually on or before February first make a  
86 return to the commissioner in the form of a trial bal-  
87 ance of its books at the close of business on Decem-  
88 ber thirty-first preceding, and shall specify the dif-  
89 ferent kinds of liabilities and the different kinds of  
90 assets, with such other information as may be called  
91 for by the commissioner in accordance with a blank  
92 form to be furnished by him. The commissioner  
93 shall make an annual report to the general court and  
94 shall forward therewith a copy of such returns or so  
95 much thereof as he may deem necessary.

96 *Section 114E.* The commissioner may summon  
97 said licensees, or any of their agents or employees,  
98 and such other persons as he deems necessary, and  
99 examine them relative to their transactions and to  
100 the condition of their business, and for that purpose  
101 may administer oaths. Whoever, without justifiable  
102 cause, refuses to appear and testify when so required,  
103 or obstructs the commissioner or his representatives  
104 in the performance of their duties, shall be punished  
105 by a fine of not more than five hundred dollars or by  
106 imprisonment for not more than six months, or both.

107 *Section 114F.* Licenses granted by the commis-  
108 sioner shall be for the period of one year from Jan-  
109 uary first. Each license shall plainly state the name  
110 of the licensee and the city or town, with the name  
111 of the street, and the number, if any, of the place  
112 where the business is to be carried on, and shall be  
113 posted conspicuously in the licensed place of busi-  
114 ness. The fee for each license shall be one hundred  
115 dollars. If the licensee desires to carry on business at

116 more than one place he shall procure a license for  
117 each place where the business is to be conducted.

118 *Section 114G.* Such a license shall not be granted  
119 until the applicant has filed with the commissioner  
120 a statement on oath, which in the case of a corpora-  
121 tion, association or trust may be made by the presi-  
122 dent or agent thereof in charge of the business,  
123 stating the place in the town where the business is  
124 to be carried on, the name and the private and busi-  
125 ness addresses of the applicant, and in the case of a  
126 corporation the state under the laws of which it is  
127 organized, and the name and private address of the  
128 clerk or secretary and of the agent or other officer  
129 having charge of its proposed business. If any  
130 change occurs in the name or address of the licensee  
131 or of the clerk, secretary or agent aforesaid, of any  
132 licensed corporation, or in the place where the li-  
133 censed business is carried on or in the membership  
134 of any partnership holding such a license, a true and  
135 full statement of such change, sworn to in the man-  
136 ner required by this section in the case of the original  
137 statement, shall forthwith be filed with the commis-  
138 sioner, who may after a hearing revoke the license.  
139 Any such license may, after a hearing, be suspended  
140 or revoked by the commissioner for any violation of  
141 sections one hundred and fourteen A to one hundred  
142 and fourteen L, inclusive, or any regulation made  
143 thereunder, or for any proper cause.

144 *Section 114H.* No retail sales finance company  
145 shall buy or discount, directly or indirectly, any  
146 retail instalment contract, or any note arising there-  
147 from, unless such contract shall be signed by both  
148 parties thereto and shall state:

149 (1) The cash price of the goods delivered or  
150 services furnished;

151 (2) The principal debt, namely, the original bal-  
152 ance financed, exclusive of the down payment, if any;

153 (3) The amount of each periodic payment upon  
154 the principal debt, and the number of such payments;

155 (4) The total amount of the interest, service or  
156 credit charge, if any, specified in such detail as the  
157 commissioner may by regulation prescribe;

158 (5) The rate of interest, service or credit charge,  
159 if any, stated as a per centum per annum calculated  
160 in accordance with such method or methods as the  
161 commissioner may by regulation prescribe; and

162 (6) Any such other items as the commissioner  
163 may by regulation prescribe.

164 For the purposes of this section, the interest,  
165 service or credit charge shall include all charges over  
166 and above the principal debt which may be collected  
167 from the party promising to make payments, while  
168 he is not in default upon any of the conditions of the  
169 contract; provided, that where a retail sales finance  
170 company places, or agrees to place, insurance which  
171 protects the interest of the party promising to make  
172 payments under the contract, a charge for such in-  
173 surance, in lieu of being included in the interest,  
174 service or credit charge, shall, if the commissioner  
175 by regulation so prescribes, be separately stated in  
176 dollars and cents. If no interest, service or credit  
177 charge is made by the company in excess of the  
178 cash price of goods delivered or service furnished  
179 under an instalment contract, the contract shall state  
180 that the interest, service or credit charge is included  
181 in the cash price.

182 No retail sales finance company shall buy or dis-  
183 count, directly or indirectly, any retail instalment  
184 contract, or any note arising therefrom, unless such

185 contract shall also state the conditions upon which  
186 charges, if any, in addition to those hereinbefore  
187 referred to may be imposed for delivery, delinquency,  
188 repossession, refinancing, legal expenses or for other  
189 cause, the amount of such charges and the condi-  
190 tions, if any, upon which repossession of goods  
191 delivered may be made.

192 *Section 114I.* Within ten days after the purchase  
193 or discount, directly or indirectly, of any such con-  
194 tract or note by a retail sales finance company, said  
195 company shall furnish to the party promising to  
196 make payments thereunder a copy of such contract,  
197 and also, in case such contract makes provision for  
198 insurance protecting the interests of the party  
199 promising to make payments as aforesaid in the  
200 property described in the contract, a copy of the  
201 policy of insurance or a certificate stating the com-  
202 pany making the insurance, the amount and kind of  
203 insurance and the premium paid therefor.

204 *Section 114J.* When a payment is made as re-  
205 quired under the terms of a retail instalment contract  
206 bought or discounted, directly or indirectly, by a  
207 retail sales finance company, such company shall  
208 cause such payment to be entered on the contract or  
209 on a receipt given to the party making the payment,  
210 which receipt shall state the amount of the payment  
211 then made, the total amount thereafter remaining  
212 due on the contract, and such other items as the  
213 commissioner may by regulation prescribe, and shall  
214 identify the contract to which such payment is  
215 applied.

216 *Section 114K.* Failure by a retail sales finance  
217 company to comply with substantial accuracy with  
218 any requirement of sections one hundred and fourteen

219 H to one hundred and fourteen J, inclusive, with  
220 respect to any retail instalment contract purchased  
221 or discounted by it, directly or indirectly, shall render  
222 the contract in all its parts unenforceable; provided,  
223 that the company or any person entitled to assert its  
224 rights shall be entitled to recover the amount of the  
225 reasonable cash value at the time of the contract of  
226 the goods delivered or services rendered minus the  
227 sum of all amounts or charges of whatever character  
228 paid under such contract.

229 *Section 114L.* Nothing in sections one hundred  
230 and fourteen A to one hundred and fourteen K, in-  
231 clusive, shall be construed to relieve any corpora-  
232 tion, association, trust, partnership or individual  
233 from the requirements of any other provision of law.

1 SECTION 2. This act shall become operative on  
2 January first, nineteen hundred and forty.