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COMMERCE AND TRADE Selling and Other Trade Practices: Provide Conditions Under Which a Revolving Credit Account Shall be Presumed to be Signed or Accepted by a Buyer

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COMMERCE AND TRADE

Selling and Other Trade Practices: Provide Conditions Under Which a Revolving Credit Account Shall be Presumed to be Signed or Accepted by a Buyer

CODE SECTION:	O.C.G.A. § 10-1-4 (amended)
BILL NUMBER:	HB 431
ACT NUMBER:	431
GEORGIA LAWS:	1997 Ga. Laws 1403
SUMMARY:	The Act provides that in a court action brought under the Retail Installment and Home Solicitation Sales Act, in which a seller brings a claim against a buyer whose account is in default, the seller will no longer have to produce an original copy of the credit agreement. The Act provides conditions that, once met, provide presumptive proof that the account has been accepted or signed by the buyer. The Act also provides conditions under which a revolving account becomes effective.
EFFECTIVE DATE:	July 1, 1997

History

In 1967, the Georgia General Assembly created the Retail Installment and Home Solicitation Sales Act (RIHSSA), establishing rules that govern sellers and holders of installment contracts.[1] RIHSSA contains specific criminal and civil penalties for violation of the Act.[2] The law provides that proof of an installment account is presumed if the buyer acknowledges: (1) that he has been delivered a copy of the credit agreement; (2) he signed the agreement; and (3) when he signed the agreement, it contained no blank spaces.[3] Absent this admission,

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1. *See* 1967 Ga. Laws 659, § 1 (formerly found at O.C.G.A. §§ 10-1-1 to -16 (1994)). A "seller" is defined as "a person regularly engaged in, and whose business consists to a substantial extent of, selling goods or services to a retail buyer." 1978 Ga. Laws 1455 (codified at O.C.G.A. § 10-1-2(a)(11) (1994)). A "holder" is "the retail seller of the goods or services under[ ] [a] contract or, if the contract is purchased by a sales finance company or other assignee, the sales finance company or other assignee at the time of determination." 1967 Ga. Laws 659, § 2, at 662 (codified at O.C.G.A. § 10-1-2(a)(3) (1994)); *see also Legislative Review*, 13 GA. ST. U. L. REV. 37 (1996).

2. *See* 1967 Ga. Laws 659, § 10, at 672-73 (formerly found at O.C.G.A. § 10-1-15 (1994)); *see also Legislative Review, supra* note 1.

3. *See* 1967 Ga. Laws 659, § 3, at 665-66 (codified at O.C.G.A. § 10-1-4 (1994)).

under Georgia's best evidence rule, a seller is required to produce an original copy of the installment contract to prove that he is entitled to collect the sums of money he seeks from a buyer in default.[4]

Georgia retailers made the General Assembly aware that they were having difficulties in certain cases producing the original copy of these documents.[5] Some Georgia companies providing credit to consumers had literally hundreds of thousands of credit applications in their warehouses.[6] In many cases, questions as to the validity of contracts over twenty years old were raised, and the claims of the creditors were dismissed because the original contract could not be produced from these vast warehouses.[7] Meanwhile, Georgia was only one of a few remaining states to require the production of the original document by merchants who provide their own financing,[8] as opposed to credit card companies who simply had to produce a sales slip to prove to a court that they were entitled to a buyer's debt.[9]

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Presumptive Activity

The Act includes provisions under which a "revolving credit account" is deemed to be signed and accepted by the buyer.[10] A revolving credit account is a "credit arrangement which permits a buyer to purchase goods or secure loans on a continuing basis if the outstanding balance of the account does not exceed a certain limit."[11] Loans are repaid and new loans are granted in a cycle. Under the Act, a presumption of acceptance of a revolving account exists in three situations: (1) when the buyer actually signs and accepts a revolving account that he or she has requested;[12] (2) when the buyer actually uses the revolving

4. A party must produce an original document or satisfy the court that the original is inaccessible, despite the party's due diligence to obtain it, unless other exceptions apply. *See* O.C.G.A. §§ 24-5-2 to -3, -21 to -24 (1995).

5. *See* Telephone Interview with Rep. Roger Byrd, House District No. 170 (May 17, 1997) [hereinafter Byrd Interview]. Representative Byrd was the author of HB 431 and he presented it to the Georgia General Assembly. *See id.*

6. *See* Telephone Interview with Steve McWilliams, President, Georgia Retail Association (Apr. 17, 1997) [hereinafter McWilliams Interview]. Mr. McWilliams is a lobbyist who worked extensively on HB 431 and was credited by the bill's sponsor, Representative Byrd as being a major proponent of the changes in the law. *See* Byrd Interview, *supra* note 5.

7. *See* McWilliams Interview, *supra* note 6.

8. *See* Byrd Interview, *supra* note 5.

9. *See* McWilliams Interview, *supra* note 6.

10. *See* O.C.G.A. § 10-1-4(a) (Supp. 1997).

11. BLACK'S LAW DICTIONARY 1322 (6th ed. 1990).

12. *See* O.C.G.A. § 10-1-4(a) (Supp. 1997).

account;[13] or (3) when an agent or a person authorized by the buyer uses the account.[14] Thus, an account is deemed valid and active by virtue of its being used, similar to how credit card accounts and gas card accounts are treated by the state.[15] The effect is to bring the revolving credit industry "into the 20th century"[16] as Georgia joins forty-two other states with similar laws.[17] It is important to note that the Act, as amended, was passed unanimously by the General Assembly.[18] The original bill contained a provision that would have subjected credit applications to RIHSSA.[19] This provision, however, would have cost retailers thousands of dollars because they would have to produce special credit applications exclusively for use in Georgia.[20] Therefore, the General Assembly struck this provision from the bill.[21]

Safeguards to the Consumer

In an effort to protect the consumer, the General Assembly added provisions to RIHSSA under which a revolving account actually becomes effective. In order for a revolving account to be valid, a credit lender must provide the consumer with all disclosures required under the federal Truth in Lending Act;[22] the seller must actually extend credit to the buyer on the account; and the buyer or his agent must make a purchase on the account.[23]

Other safeguards were left in place. For example, laws that would protect the buyer from credit card fraud were not altered.[24] In addition, the buyer still has a right to request that the original application form be produced to prove that the account is valid and if such an application is requested, the account is not presumed valid merely because it was used.[25] Finally, the law only applies to accounts that are in default. According to Steve McWilliams, ninety-eight percent of all consumers pay their debts,[26] and their accounts are not in

13. *See id.*
14. *See id.*
15. *See* McWilliams Interview, *supra* note 6.
16. *Id.*
17. *See id.* Florida and Texas have similar laws pending in their legislatures. *Id.*
18. *See* Final Composite Status Sheet, Mar. 28, 1997.
19. *See* HB 431, as introduced, 1997 Ga. Gen. Assem.
20. *See* McWilliams Interview, *supra* note 6.
21. *See* HB 431 (HCS), 1997 Ga. Gen. Assem.
22. 15 U.S.C § 1601 (1976).
23. *See* O.C.G.A. § 10-1-4(a) (Supp. 1997).
24. *See* McWilliams Interview, *supra* note 6.
25. *See* Byrd Interview, *supra* note 5.
26. McWilliams Interview, *supra* note 6.

default. Thus, the vast majority of consumers will not be impacted by this change in Georgia law.

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