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RETAIL INSTALLMENT SALES AND REVOLVING CREDIT ACTS: MISSOURI CONSTITUTION ARTICLE III, SECTION 44

EDMOND R. ANDERSON, JR.*

In 1935, Indiana enacted the first comprehensive Retail Instalment Sales Act,¹ "An act to license and regulate and to promote competition in the business of purchasing contracts arising out of retail instalment sales, to prescribe the form of such contracts, to empower the department of financial institutions to classify retail instalment sales and contracts arising therefrom and to fix and prescribe maximum charges for the extension of credit in retail instalment sales."² Today at least the following 30 states have statutes of this general type: California, Colorado, Connecticut, Florida, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Montana, Nebraska, Nevada, New Jersey, New Mexico, New York, North Dakota, Ohio, Oregon, Pennsylvania, South Dakota, Tennessee, Utah and Wisconsin.³

These statutes can be classified according to their application into four basic types: "all goods"—applicable generally to retail sales of all ordinary tangible personal property, "motor vehicles"—applicable only to retail sales

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1. IND. ANN. STAT. §§ 58-901 to -934 (1951).

2. Ind. Sess. Laws 1935, ch. 231, at 1206; cf. IND. ANN. STAT. § 58-901 (1951).

3. CAL. CIV. CODE §§ 1801-1812.9, 2981-2982.5 (Supp. 1959); COLO. REV. STAT. ANN. §§ 13-16-1 to -10 (1953); CONN. GEN. STAT. REV. §§ 36-254 to -263; FLA. STAT. ANN. §§ 520.01-13, 520.30-42 (Supp. 1959); ILL. REV. STAT. ch. 121½, §§ 223-53 (1959); IND. ANN. STAT. §§ 58-901 to -934 (1951); IOWA CODE ANN. §§ 322.1-26; Kan. Spec. Sess. 1958, ch. 9, §§ 1-15; KY. REV. STAT. §§ 190.010-990 (1959); LA. REV. STAT. §§ 6-951 to -964 (Supp. 1959); ME. REV. STAT. ch. 59, §§ 249-60 (Supp. 1954); MD. ANN. CODE art. 83, §§ 128-53, 154-65 (1957); MASS. GEN. LAWS ANN. ch. 255B, §§ 1-24 (Supp. 1959); MICH. STAT. ANN. §§ 23.628(1)-.628(40) (1957); MINN. STAT. ANN. §§ 168.66-77 (Supp. 1959); MISS. CODE ANN. §§ 8075-01 to -24 (Supp. 1958); MONT. REV. CODES ANN. §§ 74-601 to -612 (Supp. 1959); Neb. Laws 1959, chs. 215, 216, 217, §§ 1-3, ch. 218, §§ 1-13; NEV. REV. STAT. §§ 97.010-060 (1957); N.J. STAT. ANN. §§ 17:16B-1 to -12 (1950); N.M. STAT. ANN. §§ 50-15-1 to -12, 61-8-15 to -17 (Supp. 1959); N.Y. PERS. PROP. LAW §§ 301-12, 401-19 (1959); N.D. LAWS 1959, ch. 350, §§ 1-5, ch. 352, §§ 1-7; OHIO REV. CODE ANN. §§ 1317.01-.99 (Baldwin 1959); ORE. REV. STAT. §§ 83.510-990 (1959); PA. STAT. ANN. tit. 69, §§ 601-37 (Supp. 1958); S.D. Sess. LAWS 1957, ch. 241, §§ 1-16; TENN. CODE ANN. §§ 47-1901 to 1910 (Supp. 1959); UTAH CODE ANN. § 15-1-2a (1953); WIS. STAT. ANN. §§ 218.01(1)-01(8) (1957).

of motor vehicles,⁴ "all goods other than motor vehicles" and "revolving credit."⁵ Connecticut, Illinois, Indiana, Kansas, Maryland, Montana, Nebraska, New Jersey, New Mexico,⁶ North Dakota, Ohio and Utah have "all goods" acts of one kind or another. California, Colorado, Florida, Iowa, Kentucky, Louisiana, Maine, Massachusetts, Michigan, Minnesota, Mississippi, Nevada, New Mexico, New York, Oregon, Pennsylvania, South Dakota and Wisconsin have "motor vehicles" acts. California, Florida, New York and Tennessee have "all goods other than motor vehicles" acts. And, California, Florida, Nebraska, New York, North Dakota, Ohio and Tennessee have "revolving credit" acts, alone or in combination with one of the other acts.

Typical provisions in any of these acts require a disclosure of the credit terms and transactions. There must be a written contract. The buyer is entitled to a copy, and a number of the acts provide stringent requirements as to any acknowledged receipt of the copy. Some of the recently enacted acts contain requirements that certain provisions in installment sales contracts

4. N.Y. PERS. PROP. LAW § 301(1) (1959) defines "motor vehicle" as "any device propelled or drawn by any power other than muscular power, upon or by which any person or property is or may be transported or drawn upon a public highway, road or street." S.D. Sess. Laws 1957, ch. 241, § 1(d) defines "motor vehicles, new and used" to "include automobiles, motor trucks, motorcycles, house trailers, trailer-coaches, cabin trailers, semi-trailers, trailers, road tractors, farm tractors, farm machinery mounted upon, drawn by, or attached to farm tractors, and all vehicles with any power, other than muscular power, except, however, any vehicles which run only on rails."

5. Consolidated Dry Goods Co. v. United States, 180 F. Supp. 878, 879 (D. Mass. 1960):

The Cycle Budget Account Plan is a typical example of what is known in the merchandising field as a revolving credit plan. Under this plan the store by agreement with the customer establishes a credit limit for the customer, generally fixed at six times the monthly payments which it is determined the customer is able to pay. The customer may then purchase merchandise on credit up to this limit. The customer agrees to make the fixed monthly payment each month (together with a service charge of one per cent of the unpaid balance) so long as there remains any unpaid balance on the account. When a customer has made purchases up to the credit limit, no further purchases can be made on the account until the unpaid balance is reduced. Whenever the unpaid balance is less than the credit limit, the customer may make further purchases on credit until the credit limit is reached. If in any month charges are made to the account in excess of the credit limit, the customer at his next monthly payment must pay this excess in addition to the regular monthly payment.

The revolving credit plan seems to have first been used about 1938 and the use of plans of this general type by retail stores has become widespread since World War II

6. N.M. STAT. ANN. §§ 61-8-15 to -17 (Supp. 1959) applies only to sales of personal property secured by "chattel mortgage, conditional sales contract or other instrument retaining title in the former owner"

appear in bold type or 8 point or 10 point type, that all blanks must be filled in by the seller before the buyer signs, that certain statements permitting early payment with a refund or avoidance of the unearned portion of the time sale charge appear in a conspicuous place, etc. The contract must show the cash sale price of the goods purchased, the time sale price, the amount of any official fees or documentary costs, the cost of any insurance taken out by the seller, the amount of the buyer's down payment, if any, the principal balance due, the time charge or time price differential, the number of installment payments to be made, the due date or schedule for payments and the amount of each required payment.

A number of the acts require licensing. Usually only those engaged in the business of "sales finance company"⁷ or "financing institution"⁸ need be licensed. Banks, trust companies, investment companies and similar financiers, otherwise licensed, are generally exempt from this required licensing. Criminal penalties are provided for violation of the licensing requirement.⁹

Most of the acts contain provisions as to the handling of insurance, delinquency and collection charges, receipts for payments made, refunds or credit for prepayment, additions to and consolidations of installment sales contracts and repossession of the goods and redemption.

"Revolving credit" acts contain special provisions relating to required

7. Kan. Spec. Sess. 1958, ch. 9, § 2(m) and MONT. REV. CODES ANN. § 74-602(m) (Supp. 1959):

'Sales finance company' means a person engaged, in whole or in part, in the business of purchasing retail installment contracts from one or more sellers The term shall not include a person who makes only isolated purchases of retail installment contracts, which purchases are not being made in the course of repeated and successive purchases of retail installment contracts from the same seller.

8. S.D. Sess. Laws 1957, ch. 241, § 1(g):

'Financing institution' as used herein means a person engaged in the business of creating and holding or purchasing or acquiring retail installment contracts from a retail seller . . . provided, however, that a retail seller . . . who holds retail installment contracts of less than fifty thousand dollars (\$50,000.00) in the aggregate originating from retail installment transactions made by such retail seller . . . shall not be classified as a financing institution

9. N.J. STAT. ANN. § 17:16B-9 (1950) and N.M. STAT. ANN. § 50-15-11 (Supp. 1959) provide for a fine of not more than \$500; MONT. REV. CODES ANN. § 74-611 (Supp. 1959), fine of not more than \$500 or imprisonment for not more than 6 months, or both; MINN. STAT. ANN. § 168.75 (Supp. 1959), fine of not more than \$500 or imprisonment for not more than one year, or both; MICH. STAT. ANN. § 23.628(37) (1957), fine of not more than \$5000 or imprisonment for not more than 3 years, or both; PA. STAT. ANN. tit. 69, § 637 (Supp. 1958), fine of \$500 to \$5000 or imprisonment from 6 months to 3 years, or both.

periodic statements to be furnished the buyer by the seller or holder¹⁰ of the account. These statements, furnished monthly or for whatever regular period agreed upon, must show the unpaid balance at the beginning or end of the period, some identification of the goods sold and the cash prices therefor, payments made by the buyer and any other credits due the buyer, the amount of the credit service charge and its percentage rate equivalent and a legend to the effect that the buyer may at any time pay his total indebtedness.¹¹

Probably the most important provisions in these acts relate to allowable limits or maximum rates for time sale charges.¹² Different maximum rates generally appear for sales of motor vehicles than for other goods, the rates for motor vehicles being established for classes of sales based upon the age of the vehicle, and the rates for other goods being dependent upon the amount of the time sale price or the principal balance due.¹³ The unusual acts

10. TENN. CODE ANN. § 47-1907 (Supp. 1959):

Transfer of contracts.—Any retail seller may assign, pledge, hypothecate, or otherwise transfer a retail installment contract or retail charge agreement to any person, firm or corporation on such terms and conditions and for such price as may be mutually agreed upon. No filing of the assignment, no notice to the buyer, and no requirement that the seller be deprived of dominion over payments upon the contract or agreement, or over the goods, if title thereto or a lien thereon has been retained by the seller, shall be necessary to the validity of such assignment or transfer as against creditors, subsequent purchasers, pledgees, mortgagees or encumbrancers of the seller.

11. CAL. CIV. CODE § 1810.5 (Supp. 1959); Neb. Laws 1959, ch. 217, § 2(2); N.Y. PERS. PROP. LAW § 413(4) (1959); TENN. CODE ANN. § 47-1904 (Supp. 1959).

12. The Colorado, Illinois and New Jersey acts contain no provisions relating to allowable rates.

13. Neb. Laws 1959, ch. 218, § 5:

(1) Notwithstanding the provisions of any other law, the time price differential shall not exceed the following schedule:

(a) As to motor vehicles:

CLASS 1. Any new motor vehicle designated by the manufacturer by a year model not earlier than the year in which the sale is made—eight dollars per one hundred dollars per year.

CLASS 2. Any new motor vehicle not in Class 1 and any used motor vehicle designated by the manufacturer by a year model of the same or not more than two years prior to the year in which the sale is made—ten dollars per one hundred dollars per year.

CLASS 3. Any used motor vehicle not in Class 2 and designated by the manufacturer by a year model not more than four years prior to the year in which the sale is made—thirteen dollars per one hundred dollars per year.

CLASS 4. Any used motor vehicle not in Class 2 or Class 3 and designated by the manufacturer by a year model more than four years prior to the year in which the sale is made—fifteen dollars per one hundred dollars per year.

(b) As to goods other than motor vehicles: (i) On so much of the basic

in Nevada,¹⁴ Ohio¹⁵ and Utah¹⁶ provide a single maximum rate applicable to all sales covered by the act. Separate allowable maximum rates are provided for revolving credit, either a straight per cent per month on the outstanding indebtedness from month to month,¹⁷ a variation thereof determined on a median basis within certain indebtedness ranges,¹⁸ a series of rates dependent upon the amount of the outstanding balance or a similar variation thereof.¹⁹ A flat minimum charge is usually also provided.²⁰ Civil penalties

time price as does not exceed three hundred dollars, twelve dollars per one hundred dollars per year; (ii) if the basic time price exceeds three hundred dollars, but is one thousand dollars or less, ten dollars per one hundred dollars per year on that portion over three hundred dollars; and (iii) if the basic time price exceeds one thousand dollars, eight dollars per one hundred dollars per year on that portion over one thousand dollars.

14. NEV. REV. STAT. § 97.040 (1957).

15. OHIO REV. CODE ANN. § 1317.06 (Baldwin 1959).

16. UTAH CODE ANN. § 15-1-2a(B)3 (1953).

17. Neb. Laws 1959, ch. 217, § 2:

(3) A revolving charge agreement may provide for, and a seller may then charge, receive and collect, a service charge not exceeding a rate of one and one half per cent per month computed on the unpaid balance under the agreement from month to month, which need not be a calendar month, or other regular period. Such service charge shall be computed on not more than the unpaid balance at the beginning of the period for which the statement is rendered.

18. TENN. CODE ANN. § 47-1904(c) (Supp. 1959):

Time Price Differential. Notwithstanding the provisions of any other law the seller and assignee under a retail charge agreement may charge, receive and collect a time price differential which shall not exceed fifteen cents (15c) per ten dollars (\$10.00) per month, computed from month to month (which need not be a calendar month) or other regular period, on all amounts unpaid from time to time under the agreement. The time price differential under the subsection (c) may be computed for all unpaid balances within a range of not in excess of ten dollars (\$10.00) on the basis of the median amount within such range, if as so computed such time price differential is applied to all unpaid balances within such range. A minimum time price differential not in excess of seventy cents (70c) per month may be charged, received and collected under each such agreement.

19. CAL. CIV. CODE § 1810.4 (Supp. 1959):

Subject to the other provisions of this article the seller or holder of a retail installment account may charge, receive and collect the service charge authorized by this chapter. The service charge shall not exceed the following rates computed on the outstanding balances from month to month:

(a) On so much of the outstanding balance as does not exceed one thousand dollars (\$1,000), 1½ percent per month.

(b) If the outstanding balance is more than one thousand dollars (\$1,000), 1 percent per month on the excess over one thousand dollars (\$1,000) of the outstanding balance.

(c) If the service charge so computed is less than one dollar (\$1) for any month, one dollar (\$1).

(d) The service charge may be computed on a schedule of fixed amounts if as so computed it is applied to all amounts of outstanding

are provided for willful violation of the maximum rate provisions. Typical is the provision in the Kansas "all goods" act which bars "recovery of any finance charge, delinquency or collection charge on the contract."²¹ Atypical is the extreme provision in the Nebraska "all goods" act rendering the contract "void and uncollectible" as to (1) the excessive portion of the time price differential, (2) the first \$1,000 of the authorized time price differential and (3) the first \$4000 of the principal.²²

The acts providing allowable maximum rates usually expressly exclude the application of other laws.²³ The intended reference is to the usury laws; in fact the South Dakota act expressly excludes application of the usury laws to transactions within the scope of that act.²⁴ These acts take on a function like the usury laws in protecting the purchaser in time sale transactions.²⁵ The traditional rule was that a seller could charge for his goods whatever the market would stand, and thus his time sale price lawfully might be a lot higher than his cash price despite mathematical inconsistency with the usury laws.²⁶ A few recent cases have found certain installment sales transactions violative of the usury laws.²⁷ Installment sales acts further insulate time sale transactions from the usury laws. It has been suggested that the Kansas "all goods" act, enacted at a special legislative session in 1958, arose out of the fear of sales financiers as to what the Supreme Court

balances equal to the fixed amount minus a differential of not more than five dollars (\$5), provided that it is also applied to all amounts of outstanding balances equal to the fixed amount plus at least the same differential.

20. Kan. Spec. Sess. 1958, ch. 9, § 8(b): "A minimum finance charge of fifteen dollars (\$15) may be charged on any retail installment transaction . . ." Cf. notes 18 and 19 *supra* as to minimum charges for revolving credit.

21. Kan. Spec. Sess. 1958, ch. 9, § 11(b).

22. Neb. Laws 1959, ch. 218, § 11.

23. See notes 13 and 18 *supra*.

24. S.D. Sess. Laws 1957, ch. 241, § 2.

25. Van Asperen v. Darling Olds, Inc., 93 N.W.2d 690 (Minn. 1958).

26. *In re Oakes*, 267 F.2d 516 (7th Cir. 1959); *Eisenberg v. Greene*, 346 P.2d 60 (Dist. Ct. App. 1959); *Langille v. Central-Penn Nat'l Bank*, 156 A.2d 410 (Del. 1959); *Van Asperen v. Darling Olds, Inc.*, *supra* note 25; *Bryant v. Securities Inv. Co.*, 233 Miss. 740, 102 So. 2d 701 (1958); cf. Willard, *Finance Charges or Time Price Differential in Installment Sales—Usury?*, 24 Mo. L. Rev. 225 (1959).

27. *Thompson v. Commercial Credit Equip. Corp.*, 169 Neb. 377, 99 N.W.2d 761 (1959); *State ex rel. Beck v. Associates Discount Corp.*, 168 Neb. 298, 96 N.W.2d 55 (1959); *Sloan v. Sears, Roebuck & Co.*, 228 Ark. 464, 308 S.W.2d 802 (1957); *Daniel v. First Nat'l Bank*, 227 F.2d 353 (5th Cir. 1955), *rehearing denied*, 228 F.2d 803 (5th Cir. 1956); cf. *National Equip. Rental, Ltd. v. Stanley*, 177 F. Supp. 583 (E.D.N.Y. 1959); Willard, *supra* note 26.

of Kansas might do with a then pending installment sales finance case under the usury laws.²⁸

During the 1959 general session, the Missouri legislature had before it a proposed "all goods other than motor vehicles" act, containing licensing, allowable maximum rates and revolving credit provisions, and a separate proposed "motor vehicles" act.²⁹ Senate Committee Substitute for Senate Bill No. 98, the proposed "all goods other than motor vehicles" act, contained comprehensive provisions relating to the form and contents of retail time contracts, consolidation of such contracts, exceptions relating to catalog and mail order sales, insurance provisions, a schedule of allowable maximum rates for time charges applicable to retail time contracts determined by the amount of the unpaid balance (\$12 per \$100 per year up to \$300, \$10 per \$100 per year between \$300-\$1000 and \$8 per \$100 per year on all over \$1000), separate requirements as to retail charge agreements [revolving credit], a separate schedule of allowable maximum rates for time charges under retail charge agreements also determined by the amount of the unpaid balance (15c per \$10 per month up to \$500 and 7½c per \$10 per month on that over \$500), refunds for prepayment of retail time contracts, agreements as to delinquency and collection costs and criminal and civil penalties for violations with an opportunity for the violator to legally purge himself of the violation within 10 days after being notified thereof. In this form, the bill passed the Senate April 29, 1959 and was reported to the House,³⁰ where, after second reading, it was referred to the House Judiciary Committee on April 30.³¹ On May 27, just four days before the end of the session, it was reported out of Committee with a recommendation of "do pass," in the form of House Committee Substitute for Senate Committee Substitute for Senate Bill No. 98.³² The House Committee Substitute made some reduction in the allowable maximum rates for time charges applicable to retail time contracts (\$9 per \$100 per year up to \$300, \$8 per \$100 per year between \$300-\$1000, and \$7 per \$100 per year on all over \$1000), while leaving the rates applicable to retail charge agreements as they were; added a \$10 minimum charge which may be charged

28. Lind, *Kansas Enacts New Time Sales Law: Caveat Venditor*, 12 PERS. F.L.Q. REP. 97, 99 (1959).

29. Both introduced by Senators Waters and Curtis.

30. SENATE QUICK REFERENCE DOCKET, SENATE BILLS, 1959, SENATE, 70TH GENERAL ASSEMBLY 5.

31. HOUSE QUICK REFERENCE DOCKET, SENATE BILLS, 1959, HOUSE OF REPRESENTATIVES, 70TH GENERAL ASSEMBLY 10.

32. *Ibid.*

on time contracts in any event; made more stringent the civil penalties for violations and eliminated the purging opportunity; and added extensive licensing provisions requiring that all those engaged in the business of "financing institution" be licensed. "Financing institution" was defined as "a person engaged in the business of purchasing or otherwise acquiring retail time contracts or accounts under retail charge agreements from one or more sellers." The bill as so modified apparently was not jammed through during the bedlam of the last four days of the session. An independent, separate Senate Bill No. 99, similarly providing for licensing, had failed to pass the Senate on May 6, 1959.⁸³

The separate "motor vehicles" act, Senate Committee Substitute for Senate Bill No. 97, contained typical provisions, including required licensing of those engaged in the business of a "sales finance company" and allowable maximum rates for the time price differential according to a schedule of four classes of time sales determined by the age of the vehicle (\$7 per \$100 per year on a new vehicle made in the year sold, \$10 per \$100 per year on any vehicle made before but not more than 2 years prior to year sold, \$13 per \$100 per year on any vehicle made before 2 but not more than 4 years prior to year sold, and \$15 per \$100 per year on any vehicle made more than 4 years prior to year sold). The bill passed the Senate April 15, 1959 and was reported to the House.⁸⁴ There after second reading, it was referred to the House Judiciary Committee on April 30 (at the same time as No. 98, the "all goods other than motor vehicles" bill) and apparently died in Committee.⁸⁵

It is interesting to observe that the more complex "all goods other than motor vehicles" bill, No. 98, fared better than the "motor vehicles" bill, No. 97. At least No. 98 was reported out of the House Judiciary Committee with a recommendation of "do pass." Key terms used in the two bills were not the same; for instance No. 98 used the term "time charge" whereas No. 97 used "time price differential," and No. 98 required licensing of those engaged in the business of "financing institution" whereas No. 97 required licensing of those engaged in the business of "sales finance company." But the major difference between the bills was in the determination of allowable

33. SENATE QUICK REFERENCE DOCKET, SENATE BILLS, 1959, SENATE, 70TH GENERAL ASSEMBLY 5.

34. *Ibid.*

35. HOUSE QUICK REFERENCE DOCKET, SENATE BILLS, 1959, HOUSE OF REPRESENTATIVES, 70TH GENERAL ASSEMBLY 10.

maximum rates. No. 97 provided a schedule of four classes of time sales determined by the age of the vehicle. This may have been thought to create undue difficulty under the Missouri constitution.

The Missouri constitution, article III, section 44 provides:

Uniform interest rates.—No law shall be valid fixing rates of interest or return for the loan or use of money, or the service or other charges made or imposed in connection therewith, for any particular group or class engaged in lending money. The rates of interest fixed by law shall be applicable generally and to all lenders without regard to the type or classification of their business.

The key language reads: "*No law shall be valid fixing rates of interest or return for the loan or use of money . . . for any particular group or class engaged in lending money.* The rates of interest fixed by law shall be applicable generally and to all lenders . . ." (Emphasis added.) There must be a law and the forbidden "law" must be a legislative law or statute.³⁶ It must fix rates of interest for a particular group or class engaged in lending money, and be other than applicable generally to all lenders.

Section 44 is the only section in article III under the heading "Limitation on Legislative Power" declaring "No law shall be valid." All the other sections are specifically directed only toward or against future legislative action. They read: "The general assembly shall have no power to grant," "The general assembly shall not pass," "No local or special law shall be passed" and the like.³⁷ Section 44 alone applies to existing laws and is not solely directed toward or against future laws. As will be further developed below, section 44 apparently was aimed at the then existing Small Loan Laws.³⁸

36. Mo. CONST. art. III is entitled "Legislative Department" and Sec. 44 appears under the heading "Limitation on Legislative Power."

37. Section 36 reads: "the general assembly shall have no power to divert" and "All appropriations . . . by successive general assemblies shall be made"; Section 37, "The general assembly shall have no power to contract"; Section 38, "The general assembly shall have no power to grant"; Section 38(b), "The general assembly shall provide" and "Any balance remaining . . . may be appropriated"; Section 39, "The general assembly shall not have power [to do certain things]"; Section 40, "The general assembly shall not pass"; Section 41, "The general assembly shall not indirectly enact"; Section 42, "No local or special law shall be passed"; Section 43, "The general assembly shall never interfere"; Section 45, "the general assembly shall by law divide"; Section 46, "The general assembly shall provide"; Section 47, "the general assembly shall appropriate"; and finally Section 48, "The general assembly may enact." Mo. CONST. art. III, §§ 36-48.

38. §§ 8150-71, RSMo 1939.

The Missouri constitution, article III, section 40 provides: "The general assembly shall not pass any local or special law . . . (26) fixing the rate of interest . . ." This prohibition also appears in the group "Limitation on Legislative Power." It was in the 1875 Missouri constitution.³⁹ Article III, section 44 then must mean something different. Two provisions in the same part of the constitution should not be construed to mean the same thing, particularly when one was added at a later time. A law setting up a preferred business position in a *particular group or class* from among many similarly situated is a special law in Missouri within the meaning of article III, section 40.⁴⁰ This hardly differs from the first sentence of section 44: "No law shall be valid fixing rates of interest . . . for any particular group or class engaged in lending money." The key to the different effect of section 44 must then lie in the second sentence: "The rates of interest fixed by law shall be applicable generally and to all lenders without regard to the type or classification of their business." Thus, as the caption for section 44 indicates, it requires uniform interest rates that are applicable generally to all lenders. Affirmative uniformity of law-fixed interest rates is commanded, nothing more.

The constitutional convention, which drafted the 1945 constitution, apparently devised article III, section 44 with the express intent to invalidate the then existing Small Loan Laws,⁴¹ originally enacted in 1927, and to force greater competition among lenders with resultant lower interest rates.⁴² Section 44 achieved this purpose. In *Household Finance Corp. v. Shaffner*,⁴³ the Supreme Court of Missouri held the Small Loan Laws in conflict with section 44. The vice in those laws was the establishment of a favored group or class of licensed lenders empowered to charge higher rates of interest for certain small loans (maximum \$300). Other lenders, many similarly situated, could not or did not procure licenses under those laws and thus were unable to charge the more favorable higher rates. The absolute tie up between the special license and the power to make small loans at the higher rate of in-

39. Mo. CONST. art. IV, § 53(20) (1875).

40. *Hagerman v. City of St. Louis*, 365 Mo. 403, 283 S.W.2d 623 (1955); *McKaig v. Kansas City*, 363 Mo. 1033, 256 S.W.2d 815 (1953) (en banc); cf. *ABC Liquidators, Inc. v. Kansas City*, 322 S.W.2d 876, 885 (Mo. 1959); *Ross v. City of Kansas City*, 328 S.W.2d 610 (Mo. 1959).

41. See note 38 *supra*.

42. *Gisler, Legal and Historical Background of Missouri Small Loan Problem*, 16 Mo. L. REV. 207, 223-26 (1951).

43. 356 Mo. 808, 203 S.W.2d 734 (1947) (en banc).

terest was crucial. The old Small Loan Laws simply did not effect uniformity of law-fixed interest rates, applicable generally to all lenders.

The present Missouri Consumer Credit Law,⁴⁴ enacted in 1951 over the ashes of the defunct Small Loan Laws, has eliminated the absolute tie up between the special license and the power to make small loans at the favorable higher rate. "Any person, firm, or corporation" may make such loans⁴⁵ so long as certain formalities are complied with to protect the borrower. Only lenders generally engaged in the business of making loans to individuals need be specially licensed.⁴⁶ The law-fixed higher interest rates are uniform and applicable generally to all lenders. The command of article III, section 44 is satisfied.⁴⁷

The opinions in the *Household Finance* case further clarify the meaning of article III, section 44. The court's opinion, per Judge Clark, makes it clear the provision is not itself unconstitutional under the United States Constitution.⁴⁸ More important, the court pointed out that interpretation of article III, section 44 is not dependent upon how it was understood by its constitutional convention framers, but rather how it was understood by the people of Missouri who ratified and adopted it. Quoting the court's opinion: "The only way we can determine what meaning was conveyed to the voters by the provision is to determine what it means to us, giving the words used their ordinary and usual meaning."⁴⁹ The court further pointed out that while article III, section 44 prohibits the fixing of interest rates for any particular group or class, it does not prohibit regulation of different types of lenders or

44. §§ 367.100-.200, 408.100-.220, RSMo 1957 Supp.

45. § 408.100, RSMo 1957 Supp.

46. § 367.110, RSMo 1957 Supp.:

Certificate of registration required, when.—No lender shall engage in the business of making consumer credit loans as herein defined in this state of money, credit, goods or things in action without first having obtained a certificate of registration from the commissioner

§ 367.100, RSMo 1957 Supp.:

Definitions.—As used in sections 367.100 to 367.200: (1) 'Consumer credit loans' shall mean loans for the benefit of or use by an individual or individuals: . . . (3) 'Lender' shall mean any person engaged in the business of making consumer credit loans. A person who makes an occasional consumer credit loan or who occasionally makes loans but is not regularly engaged in the business of making consumer credit loans shall not be considered a lender subject to sections 367.100 to 367.200.

47. Cf. McReynolds, *Legislative Remedies Possible Under the Missouri Constitution of 1945*, 16 Mo. L. Rev. 292, 312-18 (1951).

48. 356 Mo. at 813-14, 203 S.W.2d at 736.

49. *Id.* at 816, 203 S.W.2d at 737.

reasonable classification of different types of loans for interest rate determination.⁵⁰

The danger and seriousness of the potentially sweeping effect of article III, section 44 apparently led Judge Laurence M. Hyde to deliver a published concurring opinion further clarifying the matter. He stated:

In construing Section 44, some consideration must be given to the rest of the Constitution and to general principles of constitutional law. Section 3, Article I, states that the police power of the state remains exclusively in the people; and Section 3, Article XI, provides that 'the exercise of the police power of the state shall never be surrendered.' It is a familiar principle that 'the state constitution is not a grant of power, but only a limitation, as far as the legislature is concerned'; and, therefore, except for the limitations imposed thereby 'the power of a state legislature is unlimited and practically absolute.' . . .

Therefore, in determining the meaning and effect of Section 44, it will be helpful to take into consideration what it does not prohibit as well as what it does. It does not say that no rates of interest shall be fixed for different classes, kinds or sizes of loans. It does not say that rates fixed shall be applicable to all borrowers without regard to the type or classification of loans made to them. It does not say that no law shall be valid regulating the business of making loans. And it does not say that no law shall be valid requiring a license to engage in the business of making loans. . . .

In other words, Section 44 does not abrogate the police power of the state to regulate and license the business of lending money. It only restricts regulation to the extent that it prohibits fixing different interest rates to be charged by different classes of lenders. . . . but all the rest of the field is as open to the Legislature as it was before. It may fix different maximum rates for different classes, kinds and sizes of loans but all lenders may charge the rate fixed for such loans. . . . It may require licenses for all engaging in the business of lending money or for those making certain classes, kinds or sizes of loans, so long as it does not make the classification depend upon the interest rate charged. If the Legislature deems any such

50. *Id.* at 817, 203 S.W.2d at 738:

Section 44 does not prohibit the enactment of laws authorizing the formation and regulation of different types of lenders, such as banks, savings and loan associations, etc. Nor does it prohibit the enactment of laws providing reasonable classification of loans as to amounts, or otherwise, with different permissible rates of interest for different types of loans, but the rates provided for any type of loans must be available to all lenders who make such loans, without regard to the type or classification of their business

regulation and licensing necessary for the protection of the public welfare, Section 44 should not be construed to prevent it.⁵¹

Three judges concurred in this opinion by Judge Hyde.

The question arises whether a retail installment sales or revolving credit act would conflict with article III, section 44. As mentioned above the Missouri Legislature considered such proposed acts in 1959. Senate Committee Substitute for Senate Bill No. 97, a proposed "motor vehicles" act containing required licensing and allowable maximum rates for the time price differential based on a schedule of four classes of time sales determined by the age of the vehicle, did not fare as well in the House Judiciary Committee as No. 98, the more complex, companion "all goods other than motor vehicles" bill with revolving credit act provisions. Surely there are abuses in motor vehicle sales financing at least equal to that in sales of other goods and revolving credit financing. Article III, section 44 may have been the deterrent to No. 97. Certainly required licensing and classification for maximum rate determination are potential sources of difficulty under article III, section 44.

Licensing is not absolutely essential to the effectiveness of a retail installment sales or revolving credit act. The California, Illinois, Nevada, New Mexico, New York, Ohio, Oregon, Tennessee and Utah acts have no licensing provisions.

Moreover, required licensing alone is not contrary to article III, section 44. Both opinions in the *Household Finance* case recognized that. In fact, Judge Hyde stated clearly that section 44 shall not be construed to prevent licensing if the legislature thought it necessary.⁵² There is no reason why required licensing alone should be construed to conflict with article III, section 44. Required licensing does not prevent uniformity of law-fixed interest rates, applicable generally to all lenders. And even if required licensing may be provided in connection with allowable maximum rates, the *Household Finance* case makes it clear that this would not conflict with section 44 unless there were an absolute tie up between the special license and the power to charge the favorable maximum rate. The usual licensing provisions in retail installment sales and revolving credit acts require licensing only for those regularly engaged in the business of "sales finance compa-

51. *Id.* at 818-19, 203 S.W.2d at 739-40.

52. See the last two sentences of the quote from Judge Hyde's opinion, quoted in text accompanying note 51 *supra*.

ny"⁵³ or "financing institution,"⁵⁴ not for all who make installment sales or sell under revolving credit plans.

Certain provisions relating to allowable maximum rates may pose a greater problem under article III, section 44. The Nebraska "all goods" act typically provides different allowable maximum rates for sales of motor vehicles than for sales of other goods, and a schedule of rates for motor vehicle sales for four classes based upon the age of the vehicle.⁵⁵ The Honorable Clarence S. Beck, Attorney General of Nebraska, rendered an opinion March 11, 1959⁵⁶ in which he concluded that this kind of classification for allowable maximum rate determination was arbitrary and thus repugnant to the Nebraska constitution, article III, section 18 which prohibits the legislature from enacting special laws "regulating the interest on money." Mr. Beck believed that when the legislature undertook to regulate a time sale it transformed a common law sales transaction into a matter of statutory regulation dealing with interest on money. Differentiating sales of motor vehicles from other goods for the determination of allowable maximum rates was thought unreasonable: Automobiles and certain accessories for them could be financed at a different allowable maximum rate, and the television sales financing business had become as much of a social problem as the motor vehicle sales financing business. Finally the classification of motor vehicle sales based upon the age of the vehicle was believed to have no reasonable basis, since age alone has no bearing on the financing risk involved, and the poorer the buyer, the older the automobile he must buy, and the greater the time finance charge he must pay. In these particulars the Nebraska act became a "special law" in that it did not operate alike upon all sellers or even all buyers.

It does not seem likely that Missouri's article III, section 40(26), the no special law-fixing the rate of interest prohibition, would be so applied.⁵⁷ The old Small Loan Laws were never invalidated under that prohibition so a retail installment sales or revolving credit act would hardly be. Moreover, Attorney General Beck's opinion is based upon the premise that when the legislature undertakes to regulate the common law time sale transaction, this becomes in effect statutory regulation dealing with interest on money. By

53. See note 7 *supra*.

54. See note 8 *supra*.

55. See note 13 *supra*.

56. OPS. ATT'Y GEN. OF NEB., Number 43-59 (March 11, 1959).

57. *Ross v. City of Kansas City*, 328 S.W.2d 610 (Mo. 1959).

virtue of the statutory regulation, what was time price differential becomes interest on money. This is an over-simplification; either the transaction involves interest on money or it does not, depending upon the basic operative facts. The legislature cannot change it, at least without specifically saying so.

Even if the time sale charge be deemed interest on money, a classification of sales of goods for allowable maximum rate determination, differentiating motor vehicle sales from sales of other goods and motor vehicle sales by classes based upon the age of the vehicle, would not necessarily conflict with Missouri's article III, section 44. The opinions in the *Household Finance* case make it clear that "reasonable classification of loans as to amounts, or otherwise, with different permissible rates of interest for different types of loans" is permitted.⁵⁸ The legislature "may fix different maximum rates for different classes, kinds and sizes of loans."⁵⁹ So long as the allowable maximum rates provided are available to all lenders, there is no conflict with the policy of uniformity of law-fixed interest rates, applicable generally to all lenders, required by article III, section 44. Installment sales act maximum rates are based upon a classification of sales. There is no classification of sellers or financiers as such. Certainly if loans may be classified for interest rate determination under article III, section 44, so may sales of goods.

Furthermore, if there is any danger in classifying sales of goods to determine allowable time sale charges, under article III, section 44, a retail installment sales act need not do so. The allowable maximum rate may be made the same for all sales of goods. The California and Nevada "motor vehicles" acts⁶⁰ and the Ohio⁶¹ and Utah⁶² "all goods" acts do just that. The

58. See note 50 *supra*.

59. See the last paragraph of the quote from Judge Hyde's opinion, quoted in text accompanying note 51 *supra*.

60. CAL. CIV. CODE § 2982(c) (Supp. 1959); NEV. REV. STAT. § 97.040 (1957): "The amount of the time price differential . . . shall not exceed 1 percent of the unpaid balance multiplied by the number of months, including any excess fraction thereof as 1 month, elapsing between the date of such contract and the due date of the last installment, or \$25, whichever is greater . . ."

61. OHIO REV. CODE ANN. § 1317.06 (Baldwin 1959):

(A) A retail seller at the time of making any retail installment sale may charge and contract for the payment of a finance charge by the retail buyer and collect and receive the same, which shall not exceed the rates as follows:

(1) A base finance charge at the rate of eight dollars per one hundred dollars per year on the principal balance . . . On retail installment contracts providing for principal balance less than, nor not in multiples of one hundred dollars or for installment payments extending for a period less than or greater than one year, said finance charge shall be computed proportionately.

Indiana "all goods" act vests power in the State Department of Financial Institutions to fix by general order fair maximum finance charges.⁶³ Certainly a statutory classification of sales is not essential for the determination of allowable maximum rates for time sale charges.

There are those who feel that a revolving credit act providing allowable maximum rates poses a serious problem under article III, section 44. Certain people in the consumer credit business believe that a revolving credit monthly charge is in reality interest on a loan. The buyer might just as well have borrowed his credit limit⁶⁴ from the seller or holder of the account,⁶⁵ spent the money on consumer goods, and repaid the "debt" with interest. The revolving credit transaction is said to differ from the typical installment sale in that (1) there are a group or series of unsecured sales such that the obligation to pay is not identifiable with any particular goods sold, (2) the monthly charge is a set per cent on the unpaid balance then due, and (3) the credit is extended generally rather than for a specific period of time. All this is said to indicate that the revolving credit financing plan is in reality a lending transaction. Since a revolving credit act providing an allowable maximum monthly charge would then fix a rate of interest for a *particular group or class engaged in lending money*, it is suggested this would be in conflict with article III, section 44.

The difficulty with that line of reasoning is that even if the revolving credit monthly charge be interest and the seller be a "lender," there is nonetheless no conflict with the policy of uniformity of law-fixed rates of interest, applicable generally to all lenders, required by article III, section 44. Any lender who wishes to charge the allowed maximum revolving credit monthly charge may do so if he is in a business where revolving credit financing is feasible. The fact that a corner shoe shine boy cannot impose that charge does not conflict with the uniformity required by article III, section 44. Judge Hyde in the *Household Finance* case stated: "It [art. III, sec. 44]

(2) In addition to the base finance charge, the retail seller may charge and contract for a service charge of fifty cents per month for the first fifty dollar unit or fraction thereof, of the principal balance for each month of the term of the installment contract; and an additional service charge of twenty-five cents per month for each of the next five fifty dollar units or fraction thereof, of the principal balance for each month of the term of the installment contract.

62. UTAH CODE ANN. § 15-1-2a(B)3 (1953).

63. IND. ANN. STAT. § 58-926 (1951).

64. See note 5 *supra*.

65. See note 10 *supra*.

does not say that no rates of interest shall be fixed for different classes, kinds or sizes of loans. It does not say that rates fixed shall be applicable to all borrowers without regard to the type or classification of loans made to them.”⁶⁶ Certainly if loans may be classified, so may sales of goods. One permissible class of sales of goods could reasonably be sales under revolving credit plan financing. A special allowable maximum rate can be set for that class of sales.

In addition, it is not at all clear that revolving credit financing is in reality a lending transaction. It is not even clear that revolving credit financing is to be distinguished from the typical retail installment sale, certainly at least as regards article III, section 44. For federal income tax purposes, a Massachusetts retailer’s revolving credit financing was held to be an “installment plan” within the meaning of the Internal Revenue Code for the purpose of reporting income.⁶⁷ The Commissioner of Internal Revenue has declared that credit service charges under revolving credit agreement sales as well as typical installment sales may be excluded from the total taxable retail price for retailer’s excise tax purposes, when the charges are based bona fide upon the unpaid balance of the selling price due and the length of time required for its payment, so long as the amounts of such charges are shown as separate items on the sales slips, statements or invoices, and despite the fact that the service charges may exceed the legal rate of interest.⁶⁸ For these tax purposes, at least, revolving credit financing is equated to typical installment sales financing. And to reason that a seller who engages in revolving credit financing is really a “lender” goes too far. He does not intend to be a lender and the buyer of the consumer goods does

66. See the middle paragraph of the quote from Judge Hyde’s opinion, quoted in text accompanying note 51 *supra*.

67. Consolidated Dry Goods Co. v. United States, 180 F. Supp. 878, 882 (D. Mass 1960):

Plaintiff’s plan . . . may have dropped some of the features which had commonly been found in earlier installment plans, such as retention of a security interest or the attribution of each payment to the purchase price of one specific item sold, because such features were impracticable in a plan designed to cover not a single large sale but a series of transactions involving numerous smaller items. But it has retained the essential feature of an arrangement for the payment by the purchaser for the merchandise sold to him in a series of periodic payments of an agreed part or installment of the debt due. Hence it falls fairly within the meaning of the words ‘installment plan’ as used in the applicable statutes.

68. Rev. Rul. 57-437, 1957-2 CUM. BULL. 717; *cf.* 12 PERS. F.L.Q. REP. 24 (1957).

not intend to be a borrower. Both feel that the transaction is simply a modern sales device.

Neither typical required licensing, provisions establishing allowable maximum time sale charges nor allowable monthly charge provisions in revolving credit acts would conflict with article III, section 44. But if there were any doubt, the words in the constitutional provision must be given their ordinary and usual meaning⁶⁹ so as to preclude the conflict. Ordinary people in Missouri ratified and adopted the constitution of 1945, including article III, section 44. The key words used therein are "interest," "loan," "lending," "lenders." It is unreasonable to suppose that ordinary people in Missouri would believe that installment sales and revolving credit sales plans fit these key words. Missouri courts apparently still recognize the traditional doctrine that time sale charges are not "interest" for the purpose of the usury laws.⁷⁰ Presumably, ordinary people in Missouri would not believe the exact opposite.

Moreover, it is a familiar rule of statutory construction that when one construction of a statute will make it unconstitutional and another construction will make it constitutional, the latter will be made if it is reasonable.⁷¹ Retail installment sales and revolving credit acts could certainly reasonably be construed as not involving "interest," "loan," "lending" or "lenders." The term "interest," for instance, hardly fits. "Webster's Unabridged Dictionary defines the word 'interest' as follows: 'A rate per cent of money paid for the use of money or the forbearance of demanding payment of a debt.'"⁷² "The theory of interest in any case is compensation for the use of or loss of the use of money to the person entitled to it."⁷³ Under these definitions the seller must be entitled to full payment from the buyer at the time of the sale in order to forbear "demanding payment of a debt," or be entitled to the money so as to be due compensation for its loss of use. The seller cannot sell his goods on a deferred payment contract basis; he must sell them for "cash," which, since not paid, raises the immediate total debt due from the buyer to the seller. The buyer and seller are precluded from

69. See note 49 *supra*.

70. Willard, *Finance Charges or Time Price Differential in Installment Sales—Usury?*, 24 Mo. L. REV. 225, 229-31 (1959); cf. note 26 *supra*.

71. *City of Joplin v. Industrial Comm'n*, 329 S.W.2d 687, 692 (Mo. 1959) (en banc).

72. *Lewis v. Dark Tobacco Growers' Co-op. Ass'n*, 247 Ky. 301, 304, 57 S.W.2d 8, 10 (1933).

73. *Laughlin v. Boatmen's Nat'l Bank*, 354 Mo. 467, 476, 189 S.W.2d 974, 979 (1945).

contracting for anything but an immediate total debtor-creditor relationship. The seller can only sell on that basis. Certainly this is not the ordinary person's understanding of installment sale transactions. It is an unreasonable construction which twists typical installment sale or revolving credit financing transactions into immediate total debtor-creditor relationships so that "interest" is due from the buyer.

In *Deputy v. Du Pont*,⁷⁴ the Supreme Court of the United States held that certain payments made to lenders of stock by the taxpayer-borrower stockholder, in amount equal to the dividends on the borrowed shares plus a sum equal to the lender's income tax on such payments, were not deductible under the Revenue Act of 1928, ch. 852, § 23(b).⁷⁵ The Court, per Mr. Justice Douglas, stated:

There remains respondent's contention that these payments are deductible under § 23(b) as 'interest paid or accrued . . . on indebtedness.' Clearly respondent owed an obligation But although an indebtedness is an obligation, an obligation is not necessarily an 'indebtedness' within the meaning of § 23(b). Nor are all carrying charges 'interest.' In *Old Colony R. Co. v. Commissioner*, 284 U.S. 552, this Court had before it the meaning of the word 'interest' as used in the comparable provision of the 1921 Act It said, p. 560, ' . . . as respects "interest," the usual import of the term is the amount which one has contracted to pay for the use of borrowed money.' It there rejected the contention . . . that 'Congress used the word having in mind any concept other than the usual, ordinary and everyday meaning of the term.' p. 561. It refused to assume that the Congress used the term with reference to 'some esoteric concept derived from subtle and theoretic analysis.' p. 561.

We likewise refuse to make that assumption here. It is not enough, as urged by respondent, that 'interest' or 'indebtedness' in their original classical context may have permitted this broader meaning. . . .⁷⁶

Following *Deputy v. Du Pont*, *F. A. Gillespie & Sons Co. v. Commissioner*⁷⁷ held that, where two individual Gillespies by contract transferred properties to the taxpayer in return for annuities annually for life, the taxpayer could

74. 308 U.S. 488 (1940).

75. 45 Stat. 791 (1928).

76. 308 U.S. at 497-98.

77. 154 F.2d 913 (10th Cir. 1946).

not deduct a portion of the annuity payments, equal to 3% of what it would have cost to purchase such annuities, as "interest." No part of the annuity payments was interest in the ordinary meaning of that term. All of the annuity payments were part of the consideration paid for the properties conveyed.

True these two cases involve interpretation of the word "interest" for purposes of the income tax laws. But the courts talk about the word "interest" in its ordinary meaning. So used "interest" means something narrower than any and all costs or carrying charges arising from some "obligation." The ordinary meaning of "interest" would similarly not include time sale charges under retail installment sales and revolving credit contract obligations. Although the recently introduced Douglas Bill⁷⁸ purports to lump together all kinds of credit charges and to require that they be stated "in terms of simple annual interest," the ordinary meaning of the word "interest" has not so changed to encompass generally the contract concept of "time sale charge." Only "some esoteric concept [of interest] derived from subtle and theoretic analysis" could do that. Certainly the word "interest" in article III, section 44 could not be so broadly construed to invalidate a retail installment sales or revolving credit act.

No other state has a constitutional provision quite like article III, section 44. A number of other states with constitutional provisions like Missouri's article III, section 40(26), prohibiting special laws fixing or regulating interest on money, have some kind of retail installment sales act: California, Colorado, Illinois, Indiana, Kentucky, Louisiana, Minnesota, Mississippi, Montana, Nebraska [although Attorney General Beck questions its validity under this constitutional prohibition as mentioned above], New Mexico, North Dakota, Oregon, Pennsylvania and Utah.⁷⁹ A number of the acts in these states contain required licensing provisions (Colorado, Indiana, Kentucky, Louisiana, Minnesota, Mississippi, Montana, New Mexico and Pennsylvania) and classifications of sales of goods for allowable rate determination (Kentucky, Louisiana, Minnesota, Mississippi, Montana, Nebraska, New Mexico, North Dakota, Oregon and Pennsylvania).

78. S. REP. NO. 2755, 86th Cong., 2d Sess. (1960), introduced by Senator Douglas and others.

79. CAL. CONST. art. IV, § 25; COLO. CONST. art. V, § 25; ILL. CONST. art. IV, § 22; IND. CONST. art. IV, § 22; KY. CONST. § 59; LA. CONST. art. IV, § 4; MINN. CONST. art. IV, § 33; MISS. CONST. art. IV, § 90; MONT. CONST. art. V, § 26; NEB. CONST. art. III, § 18; N.M. CONST. art. IV, § 24; N.D. CONST. art. II, § 69; ORE. CONST. art. IV, § 23; PA. CONST. art. III, § 7; UTAH CONST. art. VI, § 26.

One state, Tennessee, has a constitutional provision somewhat similar to Missouri's article III, section 44. Article XI, section 7 of the Tennessee constitution provides:

The Legislature shall fix the rate of interest, and the rate so established shall be equal and uniform throughout the State; but the Legislature may provide for a conventional rate of interest, not to exceed ten per centum per annum.

This provision has been interpreted to mean that the legislature should provide by a general law, operative alike upon all, and throughout the entire state, for a uniform and equal rate of interest.⁸⁰ This has virtually the same meaning as the policy of uniformity of law-fixed rates of interest, applicable generally to all lenders, required by Missouri's article III, section 44. The Tennessee constitutional provision is not violated by a small loan act which fixes a uniform interest rate and a maximum allowable expense fee, such fee being determinable by agreement between the parties within the maximum, unless unreasonably high.⁸¹

In this state of the law, Tennessee has an "all goods other than motor vehicles" act with revolving credit act provisions.⁸² The Tennessee lawmakers apparently believe their act is not in conflict with the constitutional provision similar in effect to Missouri's. It may be significant however that the Tennessee act contains no licensing provisions and no classification of sales for allowable rate determination. However, the allowable time price differential for revolving credit is 15 cents per \$10.00 per month, computed from month to month, despite the constitutional limitation of "a conventional rate of interest, not to exceed ten per centum per annum." The Tennessee lawmakers apparently believe the revolving credit time price differential is something other than "interest."

In conclusion, without intending to express any opinion as to the wisdom or need for such acts in Missouri, reasonably drafted retail installment sales and revolving credit acts would not conflict with article III, section 44. Of course, some care must be taken in drafting licensing and maximum allowable rate provisions. An absolute tie up between the special

80. *Caldwell & Co. v. Lea*, 152 Tenn. 48, 272 S.W. 715 (1925); *McKinney v. Memphis Overton Hotel Co.*, 59 Tenn. 104 (1873).

81. *Koen v. State*, 162 Tenn. 573, 39 S.W.2d 283 (1931); *Pugh v. Hermitage Loan Co.*, 167 Tenn. 389, 70 S.W.2d 22 (1934); *Family Loan Co. v. Hickerson*, 168 Tenn. 36, 73 S.W.2d 694 (1934).

82. TENN. CODE ANN. §§ 47-1901 to -1910 (Supp. 1959).

license and the power to charge the higher rates must be avoided. Beyond that limitation, article III, section 44 would have little force and effect as to these kinds of acts. A uniform rate would of course be the safest, but even a classification of sales scheme like any of those used in the acts considered herein would not conflict with the policy of uniformity of law-fixed interest rates, applicable generally to all lenders, required by article III, section 44. A legislative declaration explaining reasons for the classification would further protect its validity.⁸³ Article III, section 44 is an unusual provision, a kind of worrisome thing, but it does not mean much in the final analysis. As Judge Hyde pointed out in the *Household Finance* case, it does not abrogate the police power of the State of Missouri.⁸⁴

83. Attorney General Beck of Nebraska could find no reason for the classifications made in the Nebraska "all goods" act.

84. See the first and last paragraphs of the quote from Judge Hyde's opinion, quoted in text accompanying note 51 *supra*.