

which the buyer may have against the seller shall be executed as evidence of the obligation of the buyer in connection with a retail installment transaction. Any such instrument issued in violation of this section is void and may be enforced by any subsequent holder.

Well, that refers to one type of an instrument which cuts off the right of defense against the buyer. That does not refer to all instruments.

MR. WILLIER. I submit, under article III of the Uniform Commercial Code, from which this language was taken, you have really said that to use a negotiable instrument is prohibited, and if it is, in fact, used, it is void and unenforceable.

That is a definition of "negotiable instrument."

Senator TYDINGS. Well, this particular type of instrument does not stop. A negotiable instrument is a negotiable instrument; is it not?

MR. WILLIER. I am afraid I have to disagree. I do not want to get into the overly technical matters here, but what you have done is roughly what we have done in Massachusetts only in a little different way. We have prohibited the use of negotiable instruments.

Senator TYDINGS. Well, perhaps my definition is a little too broad. When you say "negotiable instrument," you are referring to the strict definition in the commercial code which refers only to an instrument which is protective—which protects a buyer with a holder-in-due-course doctrine?

MR. WILLIER. Yes. No, do not get me wrong. I am not criticizing your statute; I am just simply suggesting what the construction of it, as I see it, would be.

Senator TYDINGS. I see. I was using the term "negotiable instrument" perhaps in the broader sense and not in the strict legal sense. I was thinking basically in terms of a promissory note.

MR. WILLIER. Well, there are three kinds: drafts, notes, and certificates of deposit, and this would deal usually with the notes which use the credit instrument.

Senator TYDINGS. The question I am asking is whether this section would slow down or stop the use of notes or some other types of instruments which require and enable the seller to sell more than he ordinarily would by selling the notes to a financial institution?

MR. WILLIER. No; as a practical matter, I do not think so. As I say, we have done the same thing in a little different way, and it has not, in any sense, in Massachusetts, hindered the commercial flow of business, from all we can gather. It is a little different way we approach it, but the result is the same.

Now, what you revert to is the common law of assignments in terms of legal principles. In other words, article III of the Uniform Commercial Code becomes irrelevant and you simply have common law of assignments. Unfortunately, there is no statutory body of law dealing with this.

Senator TYDINGS. It would have to be developed?

MR. WILLIER. Yes; it would have to be developed. If cases start arising, there could be problems, I suppose.

Senator TYDINGS. Right. Excuse me, but I was unclear on that, and I appreciate your illumination. I have trouble with negotiable instruments.