

1981

## Commercial Law

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### Recommended Citation

Jacqueline Lussier, *Commercial Law*, 30 Cath. U. L. Rev. 718 (1981).  
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# COMMERCIAL LAW

## I. JUDICIAL DECISIONS<sup>1</sup>

### A. Arbitration

In *Sindler v. Batleman*,<sup>2</sup> the District of Columbia Court of Appeals upheld an arbitrator's award in a dispute arising out of two joint venture agreements. Sindler and Batleman had agreed to act as equal partners in joint ventures and to submit any disputes to arbitration. When the parties subsequently resorted to arbitration, they set out in their submission to the arbitrator the facts and matters to be arbitrated. Sindler argued that the arbitrator exceeded his authority in making his award.

In determining the scope of the arbitrator's authority, the court of appeals applied the "agreement and submission" test instead of the "agreement only" test. The court said that where, as here, a joint venture agreement between two noncommercial co-equal partners contains a broad and general arbitration clause, the parties' submission to the arbitrator as well as the language in the agreement must be examined. The "agreement only" test is appropriately applied only to collective bargaining and commercial situations, because there the parties are presumed to have reduced all arbitrable issues to writing, whereas in *Sindler* the arbitration provisions were clearly only general in nature and the submissions detailed.

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1. Cases not included because not sufficiently developmental of the law are: *Washington Metropolitan Area Transit Auth. v. Mergentime Corp.*, 626 F.2d 959 (D.C. Cir. 1980) (prime contractor may set off cost of insurance that he had to purchase when subcontractor failed to obtain contractually required policy); *Greene v. Gibraltar Mortgage Inv. Corp.*, 488 F. Supp. 177 (D.D.C. 1980) (promissory note and deed of trust held void and unenforceable as fraudulent and unconscionable where lender failed to disclose essential terms of loan, such as true cost and a brokerage fee that was exorbitant); *Marriott Corp. v. Chuck Wagon Bar-B-Que, Inc. (In re Chuck Wagon Bar-B-Que, Inc.)*, 7 B.R. 92 (B.C. D.C. 1980) (West) (landlord granted relief from automatic stay provisions of Bankruptcy Code where tenant's leasehold interest was properly forfeited before filing of bankruptcy petition); *Second and E Sts., N.E., Assocs. v. Aries Enterprises, Ltd. (In re Aries Enterprises, Ltd.)*, 3 B.R. 472 (B.C. D.C. 1980) (West) (District of Columbia tax liens take priority over competing prior perfected security interest); *Management Partnership, Inc. v. Crumlin*, 423 A.2d 939 (D.C. 1980) (apartment manager held not to have apparent authority orally to terminate tenant's liability under a written lease absent proof of agent's authority).

2. 416 A.2d 238 (D.C. 1980).

### B. Damages

In *District Concrete Co. v. Bernstein Concrete Corp.*,<sup>3</sup> the District of Columbia Court of Appeals held that a party breaching a supply contract could not complain about the method chosen to mitigate damages for defective concrete it had furnished if the method chosen was reasonable at the time. Concrete supplied by District Concrete and used in pouring a roof proved defective. Bernstein then chose one of two methods, seemingly comparable in time and cost, to correct the resulting structural inadequacy. Bernstein's method ultimately cost more than twice the original estimate.

The court affirmed as to liability and measure of damages. The court followed a Third Circuit decision<sup>4</sup> that held, where the plaintiff has a choice between two reasonable alternatives of obtaining relief, the person whose wrong created the need cannot complain about the alternative chosen.

### C. Enforcement of Contractual Provisions

In *Conesco Industries v. Conforti & Eisele, Inc., D.C.*,<sup>5</sup> the United States Court of Appeals for the District of Columbia Circuit held a surety company liable on a payment bond because the bond's notice provision did not require notice to be given to the surety as a condition precedent to liability. Under these circumstances, giving notice to both the general contractor and the owner was sufficient. Moreover, because here the general contractor had agreed to indemnify the owner for claims against the owner arising during the construction project, notice to the general contractor constituted constructive notice to the owner. Thus, notice only to the general contractor, and not to the owner, was enough to trigger the surety's liability.

Not finding any District of Columbia law on point, the court permitted more flexibility regarding notice than it had allowed in its only previous decision.<sup>6</sup> In the earlier decision, the court, following Virginia law, required strict and timely compliance with the notice provision of a bond as a condition precedent to the surety's liability.<sup>7</sup> *Conesco* followed Maryland

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3. 418 A.2d 1030 (D.C. 1980).

4. *In re Kellett Aircraft Corp.*, 186 F.2d 197 (3d Cir. 1950). In *Kellett*, the defaulting seller contended that the nonbreaching party's selection of the higher of two replacement bids was inconsistent with its obligation to mitigate damages caused by seller's breach.

5. 627 F.2d 312 (D.C. Cir. 1980).

6. *United States Plywood Corp. v. Continental Cas. Co.*, 157 A.2d 286 (D.C. 1960).

7. *Id.* at 289. The *Plywood* bond's notice provision was substantially identical to *Conesco*'s. The subcontractor, however, had failed to give notice to any party within the required time. This barred the claim. *Id.* at 287-89.

law, under which bond recovery is the preferred result. Thus, where the surety does not expressly require receipt of notice, notice is not a condition precedent for recovery against it.

In *Bay General Industries, Inc. v. Johnson*,<sup>8</sup> the District of Columbia Court of Appeals held that a lessee of equipment, whose position is analogous to that of a purchaser under a conditional sales contract, may sue the seller on the theory of third-party beneficiary contract. Bay General had negotiated with Rodger Johnson to purchase three pieces of equipment, including a punch press. Phillips Machine and Supply Corporation, Inc. agreed to "finance" the \$9,500 purchase for Bay General by purchasing the equipment from Johnson and leasing it to Bay General. Johnson, who agreed to deliver the equipment to Bay General, delivered two pieces but failed to deliver the punch press.

After attempts at replevin failed, the purchaser and lessee sued the sellers for unlawful detainer, fraudulent conversion, and intentional interference with the execution of a replevin writ. The lower court dismissed the lessee's complaint, holding that Bay General's action was barred by its lack of contractual privity with the sellers and by its lack of legal title to the punch press. Reversing, the court of appeals said that Bay General's lack of privity and legal title did not prevent it from proceeding under a third-party beneficiary contract theory. The court followed District of Columbia law allowing a third-party beneficiary to sue to enforce a contract if the contracting parties intended the third party to benefit directly from it. In previous cases, that right was grounded in specific contract language that obligated the party to pay third party claims.<sup>9</sup> *Bay General* extends the third-party right to sue by holding the obligor liable to a third party even in the absence of such language.

#### D. Truth in Lending

In *Frazier v. Center Motors, Inc.*,<sup>10</sup> a case of first impression, the District of Columbia Court of Appeals held that a finance company that obtained an insurance policy for a consumer in connection with a credit transaction, without first notifying him or obtaining his consent, did not properly disclose the premium to the consumer under the Truth in Lending Act<sup>11</sup> and

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8. 418 A.2d 1050 (D.C. 1980).

9. *Western Union Tel. Co. v. Massman Constr. Co.*, 402 A.2d 1275 (D.C. 1979); *Moran v. Audette*, 217 A.2d 653 (D.C. 1966); *Aetna Cas. & Sur. Co. v. Kemp Smith Co.*, 208 A.2d 737 (D.C. 1965).

10. 418 A.2d 1018 (D.C. 1980).

11. Consumer Credit Protection Act, Title I, 15 U.S.C. §§ 1601-1667e (1976).

Federal Reserve Regulation Z.<sup>12</sup> The premium, therefore, constituted a finance charge and was includable in the calculation of damages for violating the Act.<sup>13</sup>

The court explained that Regulation Z excludes premiums for insurance issued in connection with a credit transaction from the definition of finance charge under the Truth in Lending Act, provided the creditor gives the consumer a "clear, conspicuous, and specific" statement disclosing the cost of insurance if obtained through the creditor and also informs the consumer that he may choose the person through which insurance is obtained.<sup>14</sup> This disclosure must be made before the consummation of the transaction. Franklin's failure, as creditor, to make the required disclosure before the sale was consummated, and a fine print statement setting forth the consumer's insurance rights that was not sufficiently clear and conspicuous, resulted in the court's inclusion of the premium in the finance charge category. The *Frazier* court joined other jurisdictions that have included a broad array of charges in the finance charge category.<sup>15</sup>

#### E. Statute of Frauds

The District of Columbia Court of Appeals held, in *Hackney v. Morelite Construction*,<sup>16</sup> that the owner of real property, by stipulating at trial to facts showing that it orally agreed to grant plaintiffs an option to purchase the property, waived its right to assert the statute of frauds as a defense to an action to enforce the option contract. Before *Hackney*, decisions had employed equitable and promissory estoppel to disallow the defense.<sup>17</sup> *Hackney* is the first District case to employ the third ground of waiver. The court applied a Maryland decision<sup>18</sup> holding that the defendant waived the defense by his in-court admission that he had made the contested promise. Furthermore, section 2-201 of the Uniform Commercial Code<sup>19</sup> expressly provides that an agreement not otherwise satisfying the

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12. 12 C.F.R. §§ 226.1-.15 (1980).

13. Under the Act, the damage award is based on the amount of the finance charge. 15 U.S.C. § 1640(a)(2)(A)(i) (1976).

14. 15 U.S.C. § 1605(a) (1976); 12 C.F.R. § 226.4(a)(6) (1980).

15. See, e.g., *Carney v. Worthmore Furniture, Inc.*, 561 F.2d 1100 (4th Cir. 1977); *Campbell v. Liberty Financial Planning, Inc.*, 422 F. Supp. 1386 (D. Neb. 1976); *Meyers v. Clearview Dodge Sales, Inc.*, 384 F. Supp. 722 (E.D. La. 1974), *modified*, 539 F.2d 511 (5th Cir. 1976), *cert. denied*, 431 U.S. 929 (1977).

16. 418 A.2d 1062 (D.C. 1980).

17. See, e.g., *Ammerman v. City Stores Co.*, 394 F.2d 950 (D.C. Cir. 1968); *Amberger & Wohlfarth, Inc. v. District of Columbia*, 300 A.2d 460 (D.C. 1973); *Easter v. Kass-Berger, Inc.*, 121 A.2d 868 (D.C. 1956); *Kresge v. Crowley*, 47 App. D.C. 13 (1917).

18. *Friedman v. Clark*, 252 Md. 26, 30, 248 A.2d 867, 871 (1969).

19. D.C. CODE § 28:2-201 (1973).

requirements of the statute of frauds is enforceable "if the party against whom enforcement is sought admits in his pleading, testimony or otherwise in court that a contract for sale was made."<sup>20</sup> The court said that no meaningful difference existed between an in-court admission and the trial stipulations Morelite agreed to.

#### F. *Fraudulent Misrepresentation*

In *Rothenberg v. Aero Mayflower Transit Co.*,<sup>21</sup> the United States District Court for the District of Columbia granted summary judgment against a moving company for breach of contract after the company notified the customer in advance of the pick-up date that it could not transport his goods during the agreed time period. But the court refused to grant summary judgment against the moving company for fraudulent misrepresentation for not disclosing the company's policy of overbooking orders.<sup>22</sup> Sometime after Rothenberg contracted with Aero Mayflower to move his household goods, the company notified him that it could not move them during the agreed time. Rothenberg made arrangements with another mover and had his goods delivered three days after the delivery date Aero had contracted for.

The court held that Aero's statements constituted an anticipatory breach of contract. Under District of Columbia law, Rothenberg was entitled to make alternate arrangements. As to Aero's misrepresentations, the court held that Rothenberg had failed to establish their materiality. The company's notice two weeks before the promised pick-up date and three weeks before the anticipated delivery date rendered the misrepresentations immaterial. The customer received notice sufficiently in advance to allow for other arrangements, and his goods were delivered to his new home very near the original delivery date.

#### G. *Enforcement of Mechanic's Lien*

In *Highpoint Townhouses, Inc. v. Rapp*,<sup>23</sup> the District of Columbia Court of Appeals held that a subcontractor who performed plumbing work for a general contractor without a plumber's license had performed it under an illegal contract and so was not entitled to a mechanic's lien. Aware that

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20. D.C. CODE § 28:2-201(3)(b) (1973).

21. 495 F. Supp. 399 (D.D.C. 1980).

22. Rothenberg alleged other misrepresentations by Aero, including (1) the company's statement that it could move his shipment within the time period set in the contract and (2) its failure to disclose that its agents could not determine space availability when the order for service was signed. 495 F. Supp. at 405.

23. 423 A.2d 932 (D.C. 1980).

neither Rapp Contracting Co., the subcontractor, nor any of its employees had a master plumber's license, Columbia Construction Development, Inc., the general contractor, contracted with Federline, a licensed master plumber, to obtain the necessary permit to do plumbing work. Columbia then had Rapp perform the work under Federline's permit. Rapp did so without any supervision by Federline. The District of Columbia Code<sup>24</sup> requires plumbing work to be performed by a licensed master plumber, by an employee of such, or by someone under the immediate personal supervision of the licensed plumber.<sup>25</sup> Rapp violated the licensing requirement because it could not show that it did the work under Federline's immediate personal supervision. This put Rapp's subcontract in violation of the licensing statute, thus rendering it unenforceable under the District's rule that a contract is void if it violates a licensing law designed to protect the public. The rule has been invoked previously to prevent recovery for work performed by unlicensed home improvement contractors,<sup>26</sup> architects,<sup>27</sup> an unlicensed practitioner of "healing art,"<sup>28</sup> and an unlicensed lender.<sup>29</sup>

## II. LEGISLATION

### A. Antitrust

The District of Columbia Antitrust Act of 1980,<sup>30</sup> in order to foster competition in the District, creates statutory sanctions and public and private remedies against unreasonable restraints of trade<sup>31</sup> and monopolistic practices.<sup>32</sup> The Act substantially follows federal antitrust laws,<sup>33</sup> and authorizes the courts to look to federal decisions when construing the District's comparable antitrust statutes.<sup>34</sup>

Under the Act, courts may award declaratory and injunctive relief and

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24. D.C. CODE § 2-1406 (1973).

25. D.C. CODE § 2-1405 (Supp. V 1978).

26. *Truitt v. Miller*, 407 A.2d 1073, 1079 (D.C. 1979); *Miller v. Peoples Contractors, Ltd.*, 257 A.2d 476, 477 (D.C. 1969).

27. *Kirschner v. Klavik*, 186 A.2d 227, 229 (D.C. 1962); *Holiday Homes, Inc. v. Briley*, 122 A.2d 229, 232 (D.C. 1956).

28. *Rubin v. Douglas*, 59 A.2d 690, 691 (D.C. 1948).

29. *Hartman v. Lubar*, 133 F.2d 44, 45 (D.C. Cir. 1942), *cert. denied*, 319 U.S. 767 (1943).

30. D.C. Law No. 3-169, 28 D.C. R. Reg. 1296, 27 D.C. R. Reg. 5368 (1981) (to be codified in D.C. CODE §§ 28-4501 to -4518).

31. D.C. Law No. 3-169, § 2 (to be codified in D.C. CODE § 28-4502).

32. *Id.* (to be codified in D.C. CODE § 28-4503).

33. COMM. ON THE JUDICIARY, COUNCIL OF THE DISTRICT OF COLUMBIA, REPORT ON BILL 3-107, THE DISTRICT OF COLUMBIA ANTITRUST ACT OF 1980, 3d Council, 2d Sess. 4 (Oct. 8, 1980).

34. D.C. Law No. 3-169, § 2 (to be codified in D.C. CODE § 28-4515).

treble damages, as well as litigation costs and attorney's fees.<sup>35</sup> The District of Columbia Corporation Counsel may issue civil investigative demands for documents, for answers to interrogatories, or for testimony from persons having information relevant to possible antitrust violations.<sup>36</sup> The Act includes detailed procedural safeguards to protect the recipient of such a demand.

Unreasonable restraints of trade and monopolistic practices are classified as misdemeanors punishable by a maximum \$50,000 fine or one year's imprisonment or both.<sup>37</sup> The District government can sue for injuries it suffers from antitrust violations. The government may also sue as *parens patriae* on behalf of individual residents.<sup>38</sup> Unlike federal law,<sup>39</sup> the Act permits indirect purchasers to recover damages for overcharges arising from antitrust violations that are proven to have been passed on to them.<sup>40</sup> Finally, certain regulated industries and legitimate monopolies are partially exempt from the Act's coverage.<sup>41</sup>

### B. Consumer Protection

The Cooperative Loan Interest Rate Modification Act of 1980<sup>42</sup> amends section 28-3301 of the District of Columbia Code<sup>43</sup> to subject cooperative housing loans to the same requirements as loans secured by residential mortgages or deeds of trust.<sup>44</sup> Seller take-back loans must also comply with these requirements.<sup>45</sup> Under the Interest Rate Modification Act of 1979, it was unclear whether seller take-back loans were covered. Under

35. *Id.* (to be codified in D.C. CODE §§ 28-4507, -4508).

36. *Id.* (to be codified in D.C. CODE § 28-4505).

37. *Id.* (to be codified in D.C. CODE § 28-4506).

38. *Id.* (to be codified in D.C. CODE § 28-4507).

39. *Illinois Brick Co. v. Illinois*, 431 U.S. 720 (1977).

40. D.C. Law No. 3-169, § 2 (to be codified in D.C. CODE § 28-4509).

41. *Id.* (to be codified in D.C. CODE § 28-4518).

42. D.C. Law No. 3-73, 27 D.C. R. Reg. 2970, 2270 (1980) (to be codified in D.C. CODE § 28-3301).

43. D.C. CODE § 28-3301 (1973), *as amended by* The Interest Rate Modification Act of 1979, D.C. Law No. 3-38 (Nov. 20, 1979) (codified in D.C. CODE § 28-3301 (Supp. VII 1980)).

44. D.C. Law No. 3-73, § 2(a).

45. COMM. ON FINANCE AND REVENUE, COUNCIL OF THE DISTRICT OF COLUMBIA, REPORT ON BILL 3-223, COOPERATIVE LOAN INTEREST RATE MODIFICATION ACT OF 1979, 3d Council, 2d Sess. 2 (Jan. 29, 1980). Section 28-3301's requirements, which the amendment imposes on co-op loans and seller-assisted loans are as follows: (1) the loan must be in writing and the interest rate may not exceed 15%; (2) the loan must have been contracted for after October 5, 1979, with no earlier written commitment for the loan at a lower interest rate; (3) the loan may be prepaid without penalty after three years; and (4) where the borrower has made a down payment of 20% or more, the lender cannot require advance payments of real property taxes or casualty insurance premiums and the borrower must be

the 1979 Act, only loans secured by mortgages or deeds of trust on residential real property were subject to the requirements.<sup>46</sup> Cooperative loans, not secured by an interest in real property, were exempt from the 1979 amendment.

The Motor Vehicle Finance Charge Amendments Act of 1980<sup>47</sup> raises the allowable finance charges for retail installment sales financing for motor vehicles. The lender may charge the larger of either \$25 or charges based on annual percentage rates for four categories of new and used vehicles. The annual percentage rates range from a low of 21.5% for new vehicles to 28.33% for vehicles more than four years old.<sup>48</sup>

Prior to this amendment, the allowable finance charges were expressed in dollars per \$100 per year. The rates ranged from \$8 per \$100 for new vehicles (14.46% equivalent percentage rate) to \$16 per \$100 for vehicles more than four years old (28.33%).<sup>49</sup> The new rates are intended to reflect current market rates in order to enable automobile dealers to obtain financing for their installment sales. Under the former limits, dealers were unable to obtain funds from financing institutions even though dealers had customers willing to buy. The lending institutions had to borrow at rates near or above the allowable finance charge rates in order to make such loans to dealers. They could not make a profit on such loans and thus the source of such loans for dealers dried up.<sup>50</sup>

To improve consumer protection, the amendment adopts the definition of "finance charge" from the federal Truth in Lending Act.<sup>51</sup> Regulation Z, promulgated under the Truth in Lending Act,<sup>52</sup> defines "finance charge" as "the sum of all charges, payable directly or indirectly by the customer, and imposed directly or indirectly by the creditor as an incident to or as a condition of the extension of credit."<sup>53</sup>

The Rental Housing Locator Consumer Protection Act of 1979<sup>54</sup> regu-

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informed in writing of his right to pay the taxes and premiums directly. D.C. Law No. 3-73, § 2(a).

46. D.C. CODE § 28-3301(b) (Supp. VII 1980).

47. D.C. Law No. 3-135, 28 D.C. R. Reg. 1171, 27 D.C. R. Reg. 4526 (1981) (to be codified in D.C. CODE §§ 40-901, -902; 5AA D.C. R. Reg. §§ 1.2(3) and 307).

48. *Id.* § 2.

49. D.C. CODE § 40-902 (1973).

50. COMM. ON FINANCE AND REVENUE, COUNCIL OF THE DISTRICT OF COLUMBIA, REPORT ON BILL 3-331, MOTOR VEHICLE FINANCE CHARGE AMENDMENTS ACT OF 1980, 3d Council, 2d Sess. 2-3 (July 23, 1980).

51. D.C. Law No. 3-135, § 3.

52. Consumer Credit Protection Act, Title I, 15 U.S.C. §§ 1601-1667e (1976).

53. 12 C.F.R. § 226.4(a) (1980).

54. D.C. Law No. 3-71, 27 D.C. Reg. 2968, 1891 (1980) (to be codified in D.C. CODE § 28-3819).

lates the rental housing locator business. For a fee, rental housing locator agencies provide listings of available rental units to customers. The Act requires rental housing locators to register with the District of Columbia Office of Consumer Protection. A rental housing locator agency may only list rental units that have been publicly advertised and offered for rent by the unit's owner or manager, or units that the owner or manager gives the agency permission to list. The agency must update every twenty-four hours all information on rental units it advertises and every forty-eight hours all information on rental units it does not advertise.<sup>55</sup>

Contracts between the locator and customer must be in writing and state the service offered by the locator, the duration of the contract, and the refund policy imposed by the Act. The contract must also inform the customer that complaints may be filed with the Office of Consumer Protection. The agency must refund customer fees if the information it provides is inaccurate, if it fails to provide the correct address or telephone number of any unit it advertises, or if it fails to provide a customer with listings as called for in the contract.<sup>56</sup>

The comprehensive District of Columbia Pharmacist and Pharmacy Regulation Act of 1980<sup>57</sup> repeals the District's 1906 pharmacist licensure law,<sup>58</sup> which only regulated the pharmacy practice. The 1980 Act prohibits anyone from practicing pharmacy who is not either a licensed pharmacist or a registered pharmacy intern,<sup>59</sup> and the intern can practice only under the direct supervision of a licensed pharmacist.<sup>60</sup> All pharmacies in the District must be licensed under the Act.<sup>61</sup> The former law did not require the licensing of pharmacies or pharmacy interns.

In addition, the Act regulates the operation of pharmacies, including the conduct of pharmacy personnel, the storage of drugs, prescription labeling, record keeping, and it provides for inspections.<sup>62</sup> The Mayor must set up a continuing education program to help meet the requirements of these regulations. Pharmacy operation was not addressed by the 1906 law. The Act establishes a Board of Pharmacy,<sup>63</sup> comprised of two lay persons who serve as consumer representatives and others who are licensed pharmacists

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55. *Id.* § 2.

56. *Id.*

57. D.C. Law No. 3-98, 27 D.C. R. Reg. 4267, 3528 (1980) (to be codified in D.C. CODE §§ 2-601 to -623).

58. D.C. CODE §§ 2-601 to -617 (1973).

59. D.C. Law No. 3-98, § 4(a).

60. *Id.* § 4(b).

61. *Id.* §§ 4(d), 9.

62. *Id.* §§ 10, 12, 14-17.

63. *Id.* § 5.

with six years of experience.<sup>64</sup> The Board will serve in an advisory capacity to guide the administration of the new law.<sup>65</sup> The Board's analogue under the former law had primary responsibility for administering the 1906 Act.<sup>66</sup>

The Security Alarm Systems Regulations Act of 1980 regulates the sale, installation, use, and maintenance of security alarm systems.<sup>67</sup> The Act's purpose is to reduce the number of false alarms reported to police.<sup>68</sup> User negligence and equipment malfunction account for most false alarms.<sup>69</sup> In order to reduce these problems, the Act sets standards of operation and conduct for security alarm dealers, agents, and users,<sup>70</sup> as well as standards for security alarm systems.<sup>71</sup>

Another legislative development should discourage dishonest taxicab riders who could wind up in jail or pay a hefty fine if they try to get out of paying their fare. The Taxicab Fare Payment Act of 1980 imposes a fine of up to \$300 or imprisonment up to ten days for such behavior.<sup>72</sup>

### C. Uniform Commercial Code—Bulk Transfers

Under the Uniform Commercial Code—Bulk Transfers Amendment Act of 1979,<sup>73</sup> additional types of businesses are covered by the requirement that creditors be given ten days advance notice of a bulk sale.<sup>74</sup> Establishments such as restaurants, taverns, cafes, cocktail lounges, and bakeries, where food or drink is furnished for consideration, must now comply with the notice requirements.<sup>75</sup> Originally, only businesses principally involved in the sale of merchandise from inventory had to comply; thus, District creditors in the service industry, particularly restaurant credi-

64. *Id.*

65. *Id.*

66. However, the Board's function was transferred to the Department of Economic Development in 1969. D.C. CODE §§ 2-607, -608 (1973).

67. D.C. Law No. 3-107, 27 D.C. R. Reg. 4389, 3760 (1980) (to be codified in D.C. CODE § 1-226).

68. COMM. ON THE JUDICIARY, COUNCIL OF THE DISTRICT OF COLUMBIA, REPORT ON BILL 3-67, SECURITY ALARM SYSTEMS ACT OF 1980, 3d Council, 2d Sess. 1-2 (May 28, 1980).

69. *Id.* at 3.

70. D.C. Law No. 3-107, §§ 6-8.

71. *Id.* § 9.

72. D.C. Law No. 3-117, 28 D.C. R. Reg. 963, 27 D.C. R. Reg. 5636 (1981) (to be codified in D.C. CODE § 43-914 (104)).

73. D.C. Law No. 3-49, 27 D.C. R. Reg. 657, 26 D.C. R. Reg. 2731 (1980) (to be codified in D.C. CODE § 28:6-102(3)).

74. D.C. Law No. 3-49 (amends D.C. CODE §§ 28:6-101 to :6-111 (1973)).

75. D.C. Law No. 3-49, § 2.

tors, suffered a high risk of loss.<sup>76</sup> The amendment protects creditors from these additional bulk sales risks.

#### D. Securities Act

The District of Columbia City Council amended the District of Columbia Securities Act<sup>77</sup> to authorize the Public Service Commission, which administers the Act, to establish, through rule making, fees for broker-dealers' and agents' licenses and for other services the Commission furnishes.<sup>78</sup> The Commission may also exempt from the statutory net capital requirement any broker-dealer who, because of the nature of its business, its financial position, and its safeguards for the protection of customers' funds and securities, satisfies the Commission that it need not be subject to the capital requirement.<sup>79</sup> The amendment authorizes the Commission to impose a civil penalty up to \$5,000 for violations.<sup>80</sup> The civil penalty, when combined with the Commission's power to revoke or suspend a violator's license,<sup>81</sup> affords the Commission greater flexibility in fashioning appropriate penalties.

Formerly, the Securities Act set specific fees for initial and renewal licenses. The Public Service Commission has said that under its new rulemaking authority current fees will more than double, and that it will impose fees where none have been imposed before—*e.g.*, in the areas of agent license transfer, securities examination, and fingerprinting.<sup>82</sup>

#### E. Government/Minority Contracting

The Minority Contracting Act of 1976<sup>83</sup> was amended in 1980 to extend the life of the Minority Business Opportunity Commission and to change

76. COMM. ON PUBLIC SERVICES AND CONSUMER AFFAIRS, COUNCIL OF THE DISTRICT OF COLUMBIA, REPORT ON BILL 3-104, UNIFORM COMMERCIAL CODE BULK TRANSFERS AMENDMENT ACT OF 1979, 3d Council, 1st Sess. 2 (Sept. 18, 1979).

77. D.C. CODE §§ 2-2401 to -2418 (1973). The amendments are contained in The Securities Act Amendments, Personnel Act Clarification, and Voluntary Retirement Act of 1980, D.C. Law No. 3-133, 28 D.C. R. Reg. 1169, 27 D.C. R. Reg. 4417 (1981) (to be codified in D.C. CODE §§ 2-2404, -2413).

78. D.C. Law No. 3-133, §§ 2(b), (e).

79. *Id.* § 2(d).

80. *Id.* § 2(f).

81. D.C. CODE § 2-2409 (1973).

82. COMM. ON PUBLIC SERVICES AND CONSUMER AFFAIRS, COUNCIL OF THE DISTRICT OF COLUMBIA, REPORT ON BILL 3-273, SECURITIES ACT AMENDMENTS OF 1980, 3d Council, 2d Sess. Exhibit I (July 8, 1980).

83. D.C. CODE §§ 1-851 to -861 (Supp. V 1978).

the Commission's appointment and compensation provisions.<sup>84</sup> The amendment also redefined certain terms. The original Act called for termination of the Minority Business Opportunity Commission in 1980.<sup>85</sup> The life of the Commission now has been extended indefinitely.<sup>86</sup> The original Commission consisted of seven members who would serve for the life of the Commission. The amendment calls for staggered two-year terms for the seven members.<sup>87</sup> Members must be District of Columbia residents knowledgeable about the minority business community.<sup>88</sup>

The amendment clarifies the definitions of the terms "minority," "minority business enterprise," and "local business enterprise."<sup>89</sup> The amendment defines "minority" as Black Americans, Native Americans, and Hispanic Americans who, as members of such groups, are deemed economically and socially disadvantaged due to historic patterns of discrimination. The original definition specified that the term "minority" meant Blacks, Hispanics, American Indians, Orientals, and Eskimos.<sup>90</sup>

The Minority Contracting Act of 1976 directed the Minority Business Opportunity Commission to establish programs to assist local minority contractors in obtaining government contracts. The amendment expands the requirements for these programs.<sup>91</sup> Only certified minority business enterprises may participate in a sheltered market program. The original Act defined a "sheltered market" as the designation of contracts or subcontracts for limited competition from minority business enterprises on either a negotiated or competitive bid process.<sup>92</sup> The amendment also provides that the programs require the prime contractor to perform at least 50 percent of the contracting effort with its own organization and resources. If the work is subcontracted, 50 percent of the subcontracting must be with minority business enterprises. The Commission is also authorized to recommend that District of Columbia government agencies subdivide their contracts to achieve greater minority participation.<sup>93</sup>

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84. D.C. Law No. 3-91, 27 D.C. R. Reg. 4169, 3280 (1980) (to be codified in D.C. CODE §§ 1-852 to -859).

85. D.C. CODE § 1-853 (Supp. V 1978).

86. D.C. Law No. 3-91, § 3(a).

87. *Id.* § 3(b).

88. *Id.*

89. *Id.* § 2.

90. D.C. CODE § 1-852(a) (Supp. V 1978).

91. D.C. Law No. 3-91, § 5(c).

92. D.C. CODE § 1-852(g) (Supp. V 1978).

93. D.C. Law No. 3-91, § 5(g).