



Aida S. Montano

Bill Analysis
Legislative Service Commission

H.B. 587

123rd General Assembly
(As Referred by H. Rules & Reference)

Reps. Vesper, Terwilleger, Allen, Hollister, Mettler

BILL SUMMARY

- Provides that under the Retail Installment Sales Law a retail seller has 60 days after receipt of notice of an improper overcharge or contract error to refund the overcharge or correct the error in order to prevent a retail buyer from bringing an action under that Law.
- Repeals the provisions in that Law pertaining to proof of willfulness or lack of willfulness of an overcharge.
- Permits a retail seller to apply any recovery by the retail buyer of an overcharge against any outstanding principal balance owed by the retail buyer to the retail seller.
- Specifies a period of limitations of one year from the date of the overcharge or contract error within which to bring an action for its recovery.

CONTENT AND OPERATION

Recovery of overcharge or contract error

Existing law

The Retail Installment Sales (RIS) Law provides that a "retail installment contract" (see **COMMENT 1**) that evidences an indebtedness greater than that allowed under specific provisions of that Law (see **COMMENT 2**) or a retail installment contract in connection with which any charge prohibited by that Law (see **COMMENT 3**) has been contracted for or received *is not enforceable with respect to that excess indebtedness or charge* against any retail buyer, or any other person who as surety, indorser, guarantor, or otherwise is liable on the obligation created by any retail buyer on any retail installment contract. The RIS Law also

provides that a security interest created by any retail installment contract described in the preceding sentence that is greater than that allowed under certain provisions of that Law (see **COMMENT 4**) *is not enforceable with respect to that excess security interest* against any retail buyer or any of the other liable persons mentioned in the preceding sentence, who is in default under the terms of the retail installment contract.

In order for a retail buyer, or any of the above mentioned persons liable on the retail buyer's obligation, to avail the retail buyer or other person, the retail buyer or other person must prove that the retail seller or the holder of the retail installment contract has been notified in writing of the overcharge and *has failed within ten days of that notification to advise the retail buyer of a full credit, or the retail buyer or other person must prove that the overcharge has been willful. A correction of any overcharge within 60 days of the date of the making of the retail installment contract is conclusive proof of lack of willfulness.* (R.C. 1317.08, 1st par.)

Operation of the bill

The bill retains the general provisions pertaining to the unenforceability of retail installment contracts with respect to excess indebtedness, charges, or security interest. However, under the bill, in order for a retail buyer, or any of the other persons liable on the retail buyer's obligation, to avail the retail buyer or other person, the retail buyer or other person must prove that the retail seller or the holder of the retail installment contract has been notified in writing of the overcharge or *contract error* (added by the bill) and *has failed to refund the overcharge or correct the error within 60 days after receipt of that notification* (added by the bill). The bill repeals the provisions requiring the retail buyer or other liable person *to prove that the retail seller or the holder of the installment contract has failed within ten days after the notification to advise the retail buyer of a full credit, or to prove that the overcharge has been willful.* The bill also repeals the provision that *a correction of any overcharge within 60 days of the date of the making of the retail installment contract is conclusive proof of lack of willfulness.* (R.C. 1317.08, 1st par.)

Recovery of overcharge

Existing law

Under the RIS Law, if charges greater in amount than those provided for in that Law are contracted for or received by the retail seller or the retail seller's agent, assignee, or successor in interest, the retail buyer or the retail buyer's assignee or successor in interest may recover the total amount of finance charges paid to the retail seller or the retail seller's agent, assignee, or successor in interest,

in excess of the maximum interest rate that otherwise would be permitted under current law (see **COMMENT 5**) (R.C. 1317.08, 2nd par.).

Operation of the bill

The bill provides that if charges greater in amount than those provided for in the RIS Law are contracted for or received by the retail seller or the retail seller's agent, assignee, or successor in interest, the retail buyer or the retail buyer's assignee or successor in interest may recover the total amount of *an overcharge* (added by the bill) or finance charges paid to the retail seller or the retail seller's agent, assignee, or successor in interest, in excess of the maximum interest rate that otherwise would be permitted under current law (see **COMMENT 5**). The bill also permits the retail seller or the retail seller's agent, assignee, or successor in interest to apply any recovery by the retail buyer against any outstanding principal balance that the retail buyer owes to the retail seller or to the retail seller's agent, assignee, or successor in interest. (R.C. 1317.08, 2nd par.)

Period of limitations

Existing law

The above described provisions of the RIS Law pertaining to unenforceable retail installment contracts apply to cases in which recovery is sought *from* the retail seller or the holder of the retail installment contract (R.C. 1317.08, 1st par.). The RIS Law does *not* specify any period of limitations for an action in which recovery is sought with respect to prohibited charges or charges in excess of the statutory limits. However, the Limitations of Actions Law provides that an action upon a statute for a penalty or forfeiture must be commenced within one year after the cause of action accrues (R.C. 2305.11(A)(1)--not in the bill).

Operation of the bill

The bill provides that its provisions pertaining to unenforceable retail installment contracts apply to cases in which recovery is sought *from or by* (added by the bill) the retail seller or the holder of the retail installment contract. The bill specifies that such actions must be brought not later than one year after the date of the overcharge or contract error under the terms of the retail installment contract. (R.C. 1317.08, 1st par.)

COMMENT

1. "Retail installment contract" means any written instrument that is executed in connection with any retail installment sale that is required to be evidenced by an instrument in writing under R.C. 1317.02 or is authorized to be

evidenced by a promissory note and security agreement under R.C. 1317.03, and includes all of the instruments executed in connection with any retail installment sale. "Retail installment sale" includes every retail installment contract to sell specific goods, every consumer transaction in which the cash price may be paid in installments over a period of time, and every retail sale of specific goods to any person in which the cash price may be paid in installments over a period of time but does not include a lease-purchase agreement or a layaway arrangement. (R.C. 1317.01(A) and (L)--not in the bill.)

2. These provisions are as follows:

(1) A *finance charge* that a retail seller may charge and contract for its payment by the retail buyer cannot exceed the greater of the following:

(a) A base finance charge at the rate of eight dollars per \$100 per year on the principal balance of the retail installment contract. On retail installment contracts providing for principal balances less than, or not in multiples of \$100, or for installment payments extending for a period less than or greater than one year, the finance charge is computed proportionately. *In addition* to the base finance charge, the retail seller may charge a service charge of fifty cents per month for the first \$50-unit or fraction thereof, and an additional service charge of 25 cents per month for each of the next five \$50-units or fraction thereof, of the principal balance for each month of the term of the installment contract. This paragraph applies only to retail installment contracts with a principal balance of \$700 or less.

(b) A pre-computed base finance charge not in excess of the amount obtained by applying the rate of one and one-half per cent per month to the unpaid portion of the unpaid principal balance determined to be outstanding from time to time according to the terms and schedule of payments of the retail installment contract.

The base finance charge and service charges may be computed on a basis of a full month for any fractional period in excess of ten days. For a fractional period of a month not in excess of ten days, a base finance charge or service charge is not permitted. The RIS Law does not apply to any sale in which the base finance and service charge does not exceed the sum of \$15. (R.C. 1317.06(A)--not in the bill.)

(2) Every retail seller, at the time of making any retail installment sale, may contract for the payment by the retail buyer of lawful *delinquent charges* as follows:

(a) Charges cannot be made for delinquent payments less than ten days late.

(b) Five cents for each dollar for a delinquent payment that is more than ten days late may be charged, but a delinquent charge for any one installment cannot exceed three dollars.

The RIS Law expressly authorizes a provision for the payment of *interest* on any installment not paid in full on or before its scheduled due date at a rate not to exceed one and one-half per cent interest per month and provides that this is *not* a delinquent charge. (R.C. 1317.06(B)--not in the bill.)

(3) As an alternative to the finance charges or interest permitted as described above in paragraphs (1) and (2), and to the finance charges permitted by law in revolving budget agreements, a retail seller or holder may contract for and receive finance charges or interest at any rate or rates agreed upon or consented to by the parties to the retail installment contract or revolving budget agreement, but *not exceeding* an annual percentage rate of 25% (R.C. 1317.061--not in the bill).

(4) As an alternative to the delinquent charges permitted as described above in paragraph (2) or permitted by law in revolving budget agreements (under which finance charges are computed in relation to the buyer's unpaid balance from time to time), a retail seller or holder may contract for and receive delinquent charges in any amount agreed upon or consented to by the parties to the retail installment contract or revolving budget agreement. Each retail installment contract and revolving budget agreement permitting delinquent charges as described in the preceding sentence must contain a statement that clearly and concisely informs the consumer of the amount of the delinquent charges and the conditions under which the delinquent charges will be charged. (R.C. 1317.062(A)--not in the bill).

(5) A retail seller or holder may contract with a retail buyer for and receive check collection charges for each check or other negotiable instrument that is issued as payment on the retail installment contract or revolving budget agreement and that is returned or dishonored for any reason (R.C. 1317.062(B)--not in the bill).

(6) Any charges that are contracted for and received by a retail seller or holder as permitted above under paragraphs (4) and (5) must *not* be included in the computation of the annual percentage rate or rates of interest or finance charges for purposes of determining whether the maximum annual percentage rate or maximum rate or rates of interest or finance charges authorized as described above in paragraphs (1), (2), and (3) and authorized by law for revolving budget agreements have been exceeded (R.C. 1317.062(C)).

(7) A retail installment contract that is executed in connection with any retail installment sale must evidence any indebtedness in excess of the time

balance fixed in the written instrument evidencing the retail installment sale, but it may evidence in addition any agreements of the parties for the payment of delinquent charges as described above in paragraph (2), taxes, and any lawful fee actually paid out, or to be paid out, by the retail seller to any public officer for filing, recording, or releasing any instrument securing the payment of the obligation owed on any retail installment contract. A retail seller is prohibited from directly or indirectly charging, contracting for, or receiving from any retail buyer, any other amount for examination, service, brokerage, commission, expense, fee, or other thing of value. A documentary service charge customarily and presently being paid on May 9, 1949, in a particular business and area may be charged if the charge does not exceed \$50 per sale. (R.C. 1317.07--not in the bill.)

(8) A retail seller is prohibited from using multiple agreements with respect to a single item or related items purchased at the same time, with intent to obtain a higher charge than would otherwise be permitted by the RIS Law or to avoid disclosure of an annual percentage rate. A retail seller also is prohibited, by use of such multiple agreements, from making any charge greater than that which would be permitted by the RIS Law had a single agreement been used. (R.C. 1317.07--not in the bill.)

3. See **COMMENT 2** and specifically paragraphs (2) and (7).

4. These provisions are the same provisions described above in paragraphs (1), (2), (7), and (8) in **COMMENT 2**, and the following provisions insofar as relevant.

A seller may take a security interest in the property sold. A seller may secure the debt arising from the sale by contracting for a security interest in other property if, as a result of a prior sale, the seller has an *existing* security interest in the other property, and may contract for a security interest in the property sold in the subsequent sale as security for the previous debt. If debts arising from two or more sales are thus secured or are consolidated into one debt payable on a single schedule of payments, and the debt is secured by security interests taken with respect to one or more of the sales, payments received by the seller after the taking of security interests in the other property or the consolidation are deemed, for the purpose of determining the amount of the debt secured by the various security interests, to have been first applied to the payment of the debts arising from the sales first made. To the extent debts are paid according to this provision, security interests in items of property terminate as the debt originally incurred with respect to each item is paid. If the debts consolidated arose from two or more sales made on the same day, payments received by the seller are deemed, for the purpose of determining the amount of the debt secured by the various security interests, to

have been applied first to the payment of the smallest debt. (R.C. 1317.071--not in the bill.)

5. R.C. 1343.01(A) (not in the bill) provides that, with certain exceptions, the parties to a bond, bill, promissory note, or other instrument of writing for the forbearance or payment of money at any future time, may stipulate for the payment of interest upon the amount of money at any rate not exceeding 8% per annum payable annually. One of the exceptions is that any party may agree to pay a rate of interest in excess of that maximum rate if the original amount of the principal indebtedness stipulated in the bond, bill, promissory note, or other instrument of writing exceeds \$100,000 (R.C. 1343.01(B)(1)).

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	02-24-00	p. 1632
Referred by H. Rules & Reference	03-15-00	p. 1654

H0587REF.123/bc