



H.B. 229*

124th General Assembly
(As Reported by S. Judiciary on Civil Justice)

Reps. Salerno, Willamowski, Latta, Manning, Fessler, Flowers, Collier,
Schmidt, Reidelbach, Barrett, Coates, Rhine, Blasdel, Sulzer

BILL SUMMARY

- ? Repeals the prohibition against any person entering into an agreement with a retail seller regarding the purchase, assignment, or transfer of a retail installment contract in which the retail seller will receive or retain any benefit from or part of any amount collected from a retail buyer as a finance charge or as benefits to the retail buyer, in excess of 2% of the principal balance of the retail installment contract.
- ? Repeals the prohibition against any person paying to the retail seller, and any retail seller receiving or retaining, any part of the amount collected as a finance charge or retail buyer's benefits on any retail installment contract purchased, assigned, or transferred from the retail seller, in excess of 2% of the principal balance of the contract.
- ? Eliminates the provisions related to those prohibitions.

CONTENT AND OPERATION

Retail Installment Sales Law

Existing law

The current Retail Installment Sales Law prohibits the following acts with respect to the purchase, assignment, or transfer of a retail installment contract (R.C. 1317.08, 3rd par.):

* This analysis was prepared before the report of the Senate Judiciary on Civil Justice Committee appeared in the Senate Journal. Note that the list of co-sponsors and the legislative history may be incomplete.

(1) Any person entering into an agreement with any retail seller regarding the purchase, assignment, or transfer of any "retail installment contract" (see **COMMENT**) in which the retail seller will receive or retain, directly or indirectly, any benefit from or part of any amount collected or received, or to be collected or received, from any retail buyer as a finance charge or as the cost of insurance or other benefits to the retail buyer, *in excess of 2% of the principal balance* of the retail installment contract;

(2) Any person directly or indirectly paying to the retail seller, and any retail seller directly or indirectly receiving or retaining, any part of the amount collected, or to be collected, as a finance charge or retail buyer's cost of insurance or other benefits on any retail installment contract purchased, assigned, or transferred from the retail seller, *in excess of 2% of the principal balance* of the retail installment contract.

The penalty for a willful violation of any of those prohibitions is a fine of not more than \$1,000 or imprisonment for not more than one year, or both (R.C. 1317.99--not in the bill).

The above prohibitions do not apply in case of a bona fide sale of a retail installment contract, if, as part of the consideration for that sale and purchase, the retail seller agrees to act, and does act, as agent for the purchaser in making collection of all amounts due on and otherwise completely servicing the retail installment contract, including billing, posting, and maintaining complete records applicable to the contract (R.C. 1317.08, 3rd par.).

Compensation received by the retail seller as commission received by the retail seller from an insurance company as its licensed agent, is *not* a benefit received by the retail seller out of the insurance charge to the retail buyer under the installment contract. Current law provides that any sale, assignment, or transfer of a retail installment contract in violation of the above prohibitions is void. Except as specifically limited by this paragraph, all instruments that are a part of a retail installment contract are freely assignable and transferable. (R.C. 1317.08, 4th par.).

Operation of the bill

The bill repeals all of the above described prohibitions and related provisions in the Retail Installment Sales Law. The effect of this repeal is to eliminate the maximum limit of 2% of the principal balance of a retail installment contract that a retail seller who sells, assigns, or transfers the contract may receive from any amount collected as a finance charge or retail buyer's cost of insurance or other benefits on the retail installment contract.

COMMENT

"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.)

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	04-24-01	p. 319
Reported, H. Civil & Commercial Law	06-13-01	p. 658
Passed House (99-0)	06-20-01	pp. 690-691
Reported, S. Judiciary on Civil Justice	---	---

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