HOUSE BILL REPORT

HB 1458

As Reported By House Committee On:
Financial Institutions & Insurance

Title: An act relating to regulating the assignment of retail charge agreements.

Brief Description: Regulating retail charge agreements.

Sponsors: Representatives Zellinsky, Mielke, Dorn, R. Johnson and Fuhrman.

Brief History:
Reported by House Committee on:
Financial Institutions & Insurance, February 22, 1993, DPS.

HOUSE COMMITTEE ON FINANCIAL INSTITUTIONS & INSURANCE

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 15 members: Representatives Zellinsky, Chair; Scott, Vice Chair; Mielke, Ranking Minority Member; Dyer, Assistant Ranking Minority Member; Anderson; Dellwo; Dorn; Grant; R. Johnson; Kessler; Kremen; Lemmon; R. Meyers; Schmidt; and Tate.

Minority Report: Without recommendation. Signed by 1 member: Representative Reams.

Staff: John Conniff (786-7119).

Background: The Retail Installment Sales Act (RISA) governs the financing of retail purchases and until last year, limited the service charge (interest) that could be collected by a retail creditor. RISA generally divides retail installment transactions into closed-end and open-end transactions. Closed-end transactions are one time contracts for the purchase of identified goods with a fixed repayment period such as a contract with an appliance store for the purchase of a television. Open-end transactions permit periodic use of credit with an open-ended repayment period hence, its name. Open-end credit is identified as retail charge agreements under RISA.

RISA also distinguishes between retail cards and lender credit cards. One of the primary differences between a

lender credit card and a retail credit card under RISA, is that lender credit cards may not contain a provision granting the creditor a security interest in the goods financed with the card.

Until last year when the Legislature removed the interest rate limits, RISA had two basic types of interest rate limits - an indexed rate and a fixed rate. Retail and lender (non-bank) cards could not collect more than 18 percent. Financial institution credit cards are exempted from RISA and are governed by the usury statute. Closed-end loans were governed by an indexed rate of 6 percent over an average rate of certain federal treasury bills. As a result, the permitted interest rate for closed-end loans fluctuated throughout the 1980's from a high of nearly 18 percent in 1981 to a low of less than 12 percent in 1992. The low rates for closed-end contracts prompted many retailers to consider the offering of open-end accounts. However, many small retailers did not have the money or ability to offer and service credit cards and therefore, turned to finance companies or other lenders who provided the open-end credit on the retailers behalf. In many instances, retailers provided customers with an application for a revolving credit agreement between the customer and a creditor other than the retailer; e.g., a revolving credit agreement with a finance company.

In November of last year, the state Supreme Court ruled that two kinds of retail installment agreements assigned to the Whirlpool Acceptance Corporation violated RISA because "they [did] not make required disclosures, and they impose[d] a service charge in excess of that permitted by statute." The court held that a "retail installment transaction must involve a retail *seller* and a retail buyer." Whirlpool was not the retail seller and could not enter into a revolving agreement with consumers, nor was an assignment of a revolving agreement by the retailer authorized by RISA. As a consequence, Whirlpool was not entitled to a rate of return permitted for revolving accounts. Moreover, the Whirlpool agreements could not be recharacterized as lender credit card agreements because the agreements contained a security interest.

As a result of the Supreme Court's interpretation of RISA, all consumers in a similar position as the plaintiffs in the Whirlpool case can potentially seek remedies for violation of RISA that would, in part, require finance companies and other creditors to refund any interest charged to such consumers.

Summary of Substitute Bill: The Retail Installment Sales Act (RISA) is amended to authorize the assignment of retail

charge agreements to finance companies and other creditors and to permit the use of a retail credit card with more than one retail seller.

All legal actions seeking remedies or damages under RISA are prohibited for agreements that would be legal under RISA, as amended, unless the action was initiated prior to January 1, 1990. Thus, the plaintiffs in the Zachman v. Whirlpool case would be able to continue their legal action. Any other legal action filed after January 1, 1990 and seeking remedies based upon the Supreme Court's ruling would be barred. In addition, the sole remedy for the unauthorized inclusion of a security interest provision in a lender credit card agreement executed prior to the effective date of the act is the unenforceability of the security interest. Thus, if an assigned revolving credit agreement could be characterized as a lender credit card but for the security interest provision contained in the contract, the lender would not be subject to the penalties provided under RISA unless the contract failed to comply with RISA in other respects.

Substitute Bill Compared to Original Bill: Provisions that would have barred plaintiffs in the Zachman v. Whirlpool case from pursuing remedies are deleted. Only those cases filed after January 1, 1990 are affected by the amendments to RISA permitting the assignment of revolving credit agreements. In addition, the sole remedy for the improper inclusion of security interests in lender credit card agreements executed prior to the effective date of the act is the unenforceability of the security interest.

Fiscal Note: Not requested.

Effective Date of Substitute Bill: The act contains an emergency clause and takes effect immediately.

Testimony For: Small retail establishments have long relied upon third party creditors to provide and service revolving accounts that the small retailer could not provide on their own. Without a change in the law, many retailers will be unable to offer their customers a revolving account. In addition, unless the change is made retroactively, many creditors who took an assignment of revolving agreements could lose substantial sums of money based upon an incorrect and overly technical interpretation of current law. Creditors and retailers have always believed that the Legislature intended to permit an assignment of revolving agreements.

Testimony Against: The Legislature should not interfere in pending litigation. The Legislature sets a bad precedent by

retroactively amending a statute in an attempt to overturn a Supreme Court opinion. The Legislature should not establish itself as the "supreme" Supreme Court and it is unlikely that such action is constitutionally permissible. The state Supreme Court made the correct interpretation of state law and any change to that law should apply prospectively only.

Witnesses: Tom Owens, Whirlpool Corporation (pro); Tom Santrelas, Whirlpool Corporation (pro); Harry Kroening, Newport Appliance (pro); Donald Willey, Willey's Hardware (pro); Ned Lange, attorney (pro); Jan Gee, Washington Retail Association (pro); Robert Parlette, attorney (con); and Scott Kane, Washington State Trial Lawyer Association (con).