

FINAL BILL REPORT

SHB 1458

Synopsis as Enacted

C 5 L 93 E1

Brief Description: Regulating retail charge agreements.

By House Committee on Financial Institutions & Insurance
(originally sponsored by Representatives Zellinsky, Mielke,
Dorn, R. Johnson and Fuhrman).

House Committee on Financial Institutions & Insurance
Senate Committee on Labor & Commerce

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 1980s 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: 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.

Votes on Final Passage:

House	97	1	
Senate	41	6	(Senate amended)

First Special Session

House	95	2
Senate	41	4

Effective: May 28, 1993