**SENATE BILL REPORT**

**SHB 1458**

**AS REPORTED BY COMMITTEE ON LABOR & COMMERCE, MARCH 26, 1993**

**Brief Description:** Regulating retail charge agreements.

**SPONSORS:** 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**

**Majority Report:** Do pass as amended.
Signed by Senators Moore, Chairman; Prentice, Vice Chairman; Amondson, Barr, Fraser, McAuliffe, Newhouse, Prince, Sutherland, and Vognild.

**Staff:** Blaine Gibson (786-7457)

**Hearing Dates:** March 19, 1993; March 26, 1993

**BACKGROUND:**

Under the Retail Installment Sales Act many financing mechanisms are available to consumers. They have different allowable contents regarding security agreements and other provisions. Until last year different service charges, more commonly referred to as interest rates, applied to different types of financing. Last year those service charges were deregulated.

Under a retail installment contract, the lender may have a security interest. It is "closed ended" meaning it applies to a single transaction. The service charge was limited to the 26 week Treasury bill plus 6 percent.

A lender credit card does not allow a security interest. It is "open ended", meaning it applies to multiple transactions within the credit limit, and interest is charged on the outstanding balance. A service charge of 18 percent was permitted.

A revolving charge agreement is also "open ended," and operates more like a line of credit. A customer may make numerous purchases under it, and is charged interest on the outstanding balance. The lender may have a security interest. A service charge of up to 18 percent was allowable. The definition of a revolving charge agreement does not specify that it must be between a retail buyer and a retail seller. Statute does not specifically prohibit assignment of a revolving charge agreement to another party. The absence of

these provisions led many to believe revolving charge agreements could be assigned.

The lower rate for retail installment contracts prompted many retailers to offer "open-ended" accounts. Since small retailers do not have the resources to offer their own credit cards, they turned to finance companies to offer revolving charge agreements on their behalf. This procedure usually involves the assignment of the charge agreement to the finance company.

In Zachman v. Whirlpool Acceptance Corp., the Washington Supreme Court held that a revolving charge account could not be assigned, and must be between a retail buyer and a retail seller. Since then, lawsuits have been filed against other companies that had similar financing arrangements.

**SUMMARY:**

The Retail Installment Sales Act is amended to specifically authorize the assignment of retail charge agreements to finance companies and other creditors. The legislation is applied prospectively. It is also applied retroactively, but only to legal actions initiated on or after January 1 1990.

This provision is limited to claims involving the assignment of retail charge agreements. It would not affect claims based on other potential violations of the Retail Installment Sales Act.

Additionally, if a security interest is included in a lender credit card agreement entered into before the effective date of the act, the exclusive remedy is the unenforcability of the security interest.

**SUMMARY OF PROPOSED SENATE AMENDMENT:**

In addition to applying prospectively, the legislation applies retroactively to all legal actions regardless of when commenced.

**Appropriation:** none

**Revenue:** none

**Fiscal Note:** none requested

**TESTIMONY FOR:**

Statute does not prohibit assignment of a revolving charge agreement, nor does it require that the agreement must be between a retail buyer and a retail seller. The Legislature intended for revolving charge agreements to be assignable, and the finance industry assumed they were. The Supreme Court made a mistake, and it is appropriate for the Legislature to correct it retroactively. The bill is necessary so that third party financing arrangements are available to consumers.

**TESTIMONY AGAINST:**

The Supreme Court correctly interpreted the statute. The Legislature should not retroactively undo a Supreme Court decision. Present law under the Zachman case affords consumers good protection that must be maintained. Other financing mechanisms are available to consumers. However, if the bill is passed, it should be made prospective only.

**TESTIFIED:** Edward Lang, Jan Gee, Washington Retail Association (pro); Lew McMurran, Household International (pro); Susie Tracy, Jerry Gordon, Beneficial Finance (pro); Tom Owens, Bill Kinsel, Whirlpool Financial Corporation (pro); Bob Parlette (con); Scott Kane (con)