

shall take effect March 1, 1981. Section 3 of this act shall take effect May 1, 1981. Sections 4, 5, 6, and 7 of this act shall take effect June 30, 1982.

Passed the House April 26, 1981.

Passed the Senate April 25, 1981.

Approved by the Governor May 6, 1981.

Filed in Office of Secretary of State May 6, 1981.

CHAPTER 77

[House Bill No. 160]

RETAIL INSTALLMENT SALES—SERVICE CHARGE

AN ACT Relating to retail installment sales; amending section 1, chapter 236, Laws of 1963 as amended by section 1, chapter 47, Laws of 1972 ex. sess. and RCW 63.14.010; amending section 3, chapter 236, Laws of 1963 as amended by section 2, chapter 234, Laws of 1967 and RCW 63.14.030; amending section 4, chapter 236, Laws of 1963 as last amended by section 2, chapter 47, Laws of 1972 ex. sess. and RCW 63.14.040; amending section 12, chapter 236, Laws of 1963 as last amended by section 3, chapter 47, Laws of 1972 ex. sess. and RCW 63.14.120; amending section 13, chapter 236, Laws of 1963 as last amended by section 3, chapter 2, Laws of 1969 and RCW 63.14.130; adding new sections to chapter 19.52 RCW; adding new sections to chapter 63.14 RCW; creating a new section; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

Section 1. Section 1, chapter 236, Laws of 1963 as amended by section 1, chapter 47, Laws of 1972 ex. sess. and RCW 63.14.010 are each amended to read as follows:

In this chapter, unless the context otherwise requires:

(1) "Goods" means all chattels personal when purchased primarily for personal, family or household use and not for commercial or business use, but not including money or, except as provided in the next sentence, things in action. The term includes but is not limited to merchandise certificates or coupons, issued by a retail seller, to be used in their face amount in lieu of cash in exchange for goods or services sold by such a seller and goods which, at the time of sale or subsequently, are to be so affixed to real property as to become a part thereof, whether or not severable therefrom;

(2) "Services" means work, labor or services of any kind when purchased primarily for personal, family or household use and not for commercial or business use whether or not furnished in connection with the delivery, installation, servicing, repair or improvement of goods and includes repairs, alterations or improvements upon or in connection with real property, but does not include services for which the price charged is required by law to be determined or approved by or to be filed, subject to approval or disapproval, with the United States or any state, or any department, division, agency, officer or official of either as in the case of transportation services;

(3) "Retail buyer" or "buyer" means a person who buys or agrees to buy goods or obtain services or agrees to have services rendered or furnished, from a retail seller;

(4) "Retail seller" or "seller" means a person engaged in the business of selling goods or services to retail buyers;

(5) "Retail installment transaction" means any transaction in which a retail buyer purchases goods or services from a retail seller pursuant to a retail installment contract or a retail charge agreement, as defined in this section, which provides for a service charge, as defined in this section, and under which the buyer agrees to pay the unpaid balance in one or more installments or which provides for no service charge and under which the buyer agrees to pay the unpaid balance in more than four installments;

(6) "Retail installment contract" or "contract" means a contract, other than a retail charge agreement or an instrument reflecting a sale made pursuant thereto, entered into or performed in this state for a retail installment transaction. The term "retail installment contract" may include a chattel mortgage, a conditional sale contract and a contract in the form of a bailment or a lease if the bailee or lessee contracts to pay as compensation for their use a sum substantially equivalent to or in excess of the value of the goods sold and if it is agreed that the bailee or lessee is bound to become, or for no other or a merely nominal consideration, has the option of becoming the owner of the goods upon full compliance with the provisions of the bailment or lease;

(7) "Retail charge agreement," "revolving charge agreement" or "charge agreement" means an agreement entered into or performed in this state prescribing the terms of retail installment transactions which may be made thereunder from time to time and under the terms of which a service charge, as defined in this section, is to be computed in relation to the buyer's unpaid balance from time to time;

(8) "Service charge" however denominated or expressed, means the amount which is paid or payable for the privilege of purchasing goods or services to be paid for by the buyer in installments over a period of time. It does not include the amount, if any, charged for insurance premiums, delinquency charges, attorneys' fees, court costs or official fees;

(9) "~~((Cash))~~ Sale price" means the price for which the seller would have sold or furnished to the buyer, and the buyer would have bought or obtained from the seller, the goods or services which are the subject matter of a retail installment transaction(~~(, if the sale had been a sale for cash)~~). The ~~((cash))~~ sale price may include any taxes, registration and license fees, and charges for transferring vehicle titles, delivery, installation, servicing, repairs, alterations or improvements;

(10) "Official fees" means the amount of the fees prescribed by law for filing, recording or otherwise perfecting, and releasing or satisfying, a retained title, lien or other security interest created by a retail installment transaction;

(11) "Time balance" means the principal balance plus the service charge;

(12) "Principal balance" means the ((cash)) sale price of the goods or services which are the subject matter of a retail installment contract less the amount of the buyer's down payment in money or goods or both, plus the amounts, if any, included therein, if a separate identified charge is made therefor and stated in the contract, for insurance and official fees;

(13) "Person" means an individual, partnership, joint venture, corporation, association or any other group, however organized;

(14) "Rate" means the percentage which, when multiplied times the outstanding balance for each month or other installment period, yields the amount of the service charge for such month or period.

Sec. 2. Section 3, chapter 236, Laws of 1963 as amended by section 2, chapter 234, Laws of 1967 and RCW 63.14.030 are each amended to read as follows:

The retail seller shall deliver to the retail buyer, at the time the buyer signs the contract a copy of the contract as signed by the buyer, unless the contract is completed by the buyer in situations covered by RCW 63.14.060, and if the contract is accepted at a later date by the seller the seller shall mail to the buyer at his address shown on the retail installment contract a copy of the contract as accepted by the seller or a copy of the memorandum as required in RCW 63.14.060. Until the seller does so, the buyer shall be obligated to pay only the ((cash)) sale price. Any acknowledgment by the buyer of delivery of a copy of the contract shall be in a size equal to at least ten point bold type and, if contained in the contract, shall appear directly above the buyer's signature.

Sec. 3. Section 4, chapter 236, Laws of 1963 as last amended by section 2, chapter 47, Laws of 1972 ex. sess. and RCW 63.14.040 are each amended to read as follows:

(1) The retail installment contract shall contain the names of the seller and the buyer, the place of business of the seller, the residence or other address of the buyer as specified by the buyer and a description or identification of the goods sold or to be sold, or service furnished or rendered or to be furnished or rendered. The contract also shall contain the following items, which shall be set forth in the sequence appearing below:

- (1) (a) The ((cash)) sale price of each item of goods or services;
- (2) (b) The amount of the buyer's down payment, if any, identifying the amounts paid in money and allowed for goods traded in;
- (3) (c) The difference between items (1)(a) and (2)(b);

(4) (d) The aggregate amount, if any, included for insurance, specifying the type or types of insurance and the terms of coverage;

(5) (e) The aggregate amount of official fees, if any;

(6) (f) The principal balance, which is the sum of items (3)(c), (4)(d) and (5)(e);

(7) (g) The dollar amount or rate of the service charge;

(8) (h) The amount of the time balance owed by the buyer to the seller, which is the sum of items (6)(f) and (7)(g), if (7)(g) is stated in a dollar amount; and

(9) (i) Except as otherwise provided in the next two sentences, the maximum number of installment payments required and the amount of each installment and the due date of each payment necessary to pay such balance. If installment payments other than the final payment are stated as a series of equal scheduled amounts and if the amount of the final installment payment does not substantially exceed the scheduled amount of each preceding installment payment, the maximum number of payments and the amount and due date of each payment need not be separately stated and the amount of the scheduled final installment payment may be stated as the remaining unpaid balance. The due date of the first installment payment may be fixed by a day or date or may be fixed by reference to the date of the contract or to the time of delivery or installation.

Additional items may be included to explain the calculations involved in determining the balance to be paid by the buyer.

(2) Every retail installment contract shall contain the following notice in ten point bold face type or larger directly above the space reserved in the contract for the signature of the buyer: "NOTICE TO BUYER:

(a) Do not sign this contract before you read it or if any spaces intended for the agreed terms, except as to unavailable information, are blank.

(b) You are entitled to a copy of this contract at the time you sign it.

(c) You may at any time pay off the full unpaid balance due under this contract, and in so doing you may receive a partial rebate of the service charge.

(d) The service charge does not exceed . . . . % (must be filled in) per annum computed monthly (~~and may not lawfully exceed twelve percent per annum computed monthly~~).

(e) You may cancel this contract if it is solicited in person, and you sign it, at a place other than the seller's business address shown on the contract, by sending notice of such cancellation by certified mail return receipt requested to the seller at his address shown on the contract which notice shall be posted not later than midnight of the third day (excluding Sundays and holidays) following your signing this contract. If you choose to cancel this contract, you must return or make available to the seller at the place of delivery any merchandise, in its original condition, received by you under this contract."

Clause (2)(e) needs to be included in the notice only if the contract is solicited in person by the seller or his representative, and the buyer signs it, at a place other than the seller's business address shown on the contract.

Sec. 4. Section 12, chapter 236, Laws of 1963 as last amended by section 3, chapter 47, Laws of 1972 ex. sess. and RCW 63.14.120 are each amended to read as follows:

(1) At or prior to the time a retail charge agreement is made the seller shall advise the buyer in writing, on the application form or otherwise, or orally that a service charge will be computed on the outstanding balance for each month (which need not be a calendar month) or other regular period agreed upon, the schedule or rate by which the service charge will be computed, and that the buyer may at any time pay his total unpaid balance: PROVIDED, That if this information is given orally, the seller shall, upon approval of the buyer's credit, deliver to the buyer or mail to him at his address, a memorandum setting forth this information.

(2) The seller or holder of a retail charge agreement shall promptly supply the buyer with a statement as of the end of each monthly period (which need not be a calendar month) or other regular period agreed upon, in which there is any unpaid balance thereunder, which statement shall set forth the following:

(a) The unpaid balance under the retail charge agreement at the beginning and at the end of the period;

(b) Unless otherwise furnished by the seller to the buyer by sales slip, memorandum, or otherwise, a description or identification of the goods or services purchased during the period, the ((cash)) sale price and the date of each purchase;

(c) The payments made by the buyer to the seller and any other credits to the buyer during the period;

(d) The amount, if any, of any service charge for such period; and

(e) A legend to the effect that the buyer may at any time pay his total unpaid balance.

(3) Every retail charge agreement shall contain the following notice in ten point bold face type or larger directly above the space reserved in the charge agreement for the signature of the buyer: NOTICE TO BUYER:

(a) Do not sign this retail charge agreement before you read it or if any spaces intended for the agreed terms are left blank.

(b) You are entitled to a copy of this charge agreement at the time you sign it.

(c) You may at any time pay off the full unpaid balance under this charge agreement.

(d) ~~((The monthly service charge may not lawfully exceed the greater of one percent of the outstanding balance (twelve percent per year computed monthly) or one dollar.~~

(c)) You may cancel any purchases made under this charge agreement if the seller or his representative solicited in person such purchase, and you sign an agreement for such purchase, at a place other than the seller's business address shown on the charge agreement, by sending notice of such cancellation by certified mail return receipt requested to the seller at his address shown on the charge agreement, which notice shall be posted not later than midnight of the third day (excluding Sundays and holidays) following your signing of the purchase agreement. If you choose to cancel this purchase, you must return or make available to seller at the place of delivery any merchandise, in its original condition, received by you under this purchase agreement.

Sec. 5. Section 13, chapter 236, Laws of 1963 as last amended by section 3, chapter 2, Laws of 1969 and RCW 63.14.130 are each amended to read as follows:

The service charge shall be inclusive of all charges incident to investigating and making the retail installment contract or charge agreement and for the privilege of making the installment payments thereunder and no other fee, expense or charge whatsoever shall be taken, received, reserved or contracted therefor from the buyer.

(1) The service charge, in a retail installment contract, shall not exceed the highest of the following:

(a) ~~((One percent per month on the outstanding unpaid balances; or))~~ A rate on outstanding unpaid balances which exceeds six percentage points above the average, rounded to the nearest one-quarter of one percent, of the equivalent coupon issue yields (as published by the Federal Reserve Bank of San Francisco) of the bill rates for twenty-six week treasury bills for the last market auctions conducted during February, May, August, and November of the year prior to the year in which the retail installment contract is executed; or

(b) Ten dollars.

(2) The service charge in a retail charge agreement, revolving charge agreement or charge agreement, shall not exceed one and one-half percent per month on the outstanding unpaid balances. If the service charge so computed is less than one dollar for any month, then one dollar may be charged.

(3) A service charge may be computed on the median amount within a range which does not exceed ten dollars and which is a part of a published schedule of consecutive ranges applied to an outstanding balance, provided the median amount is used in computing the service charge for all balances within such range.

~~((4) The service charge in a retail installment contract or charge agreement shall not exceed the rate of twelve percent per annum, computed monthly. A service charge computed by one of the foregoing methods, or~~

~~within the permitted minimum charges, shall be deemed not to be in excess of twelve percent per annum computed monthly:))~~

***\*NEW SECTION. Sec. 6. This chapter shall not apply to a retail installment transaction, as defined by RCW 63.14.010, whether it be construed to be a loan or forbearance of any money, goods, or things in action.***

*\*Sec. 6. was vetoed, see message at end of chapter.*

**NEW SECTION.** Sec. 7. A sales contract for goods or services providing for the deferred payment of the purchase price shall not be subject to this chapter, regardless of who seeks to enforce the contract, notwithstanding the existence or occurrence of any one or more of the following events:

(1) That the seller may have arranged to sell, pledge, indorse, negotiate, assign, or transfer the obligations thereof to any person, including a financing organization, prior to or subsequent to or concurrently with the making of the sales transaction;

(2) That the amount of the finance charge, however denominated, is determined by reference to charts, computations or information supplied by such person;

(3) That the form or forms of instruments used to evidence the sales transaction have been supplied or prepared by such person;

(4) That the credit standing of the purchaser is or may have been evaluated by such person;

(5) That the sales transaction and the execution of any instrument evidencing the same is negotiated in the presence or with the assistance of a representative of such person;

(6) That the instrument or instruments used to evidence the sales transaction are pledged, indorsed, negotiated, assigned, or transferred by the seller to such person;

(7) That there is an underlying agreement between the seller and such person concerning the pledging, indorsing, negotiation, assigning, or transferring of sales contracts; or

(8) That the financing organization or its affiliates also provide franchising, financing, or other services to the seller-assignor.

**NEW SECTION.** Sec. 8. (1) Nothing contained in this chapter shall be deemed to limit any charge made by an assignee of a retail installment contract or charge agreement to the seller-assignor upon the sale, transfer, assignment, or discount of the contract or agreement, notwithstanding retention by the assignee of recourse rights and notwithstanding duties retained by the assignee to service delinquencies, perform service or warranty agreements regarding the property which is the subject matter of the assigned or discounted contracts or charge agreements, or to do or perform any other duty with respect to the account or contract assigned or the subject matter of such account or contract.

(2) No agreement between a credit card issuing bank and retailer shall prohibit the retailer from granting general discounts for the payment of cash, not in excess of the percentage allowed by Regulation Z, the Federal Truth in Lending Act.

NEW SECTION. Sec. 9. There is added to chapter 63.14 RCW a new section to read as follows:

Any retail installment contract or retail charge agreement which complies with the disclosure requirements of Title I of the federal consumer protection act (82 Stat. 146, 15 U.S.C. 1601) which is also known as the truth in lending act, as of the date upon which said retail installment contract or revolving charge agreement is executed, shall be deemed to comply with the disclosure provisions of chapter 63.14 RCW.

NEW SECTION. Sec. 10. There is added to chapter 63.14 RCW a new section to read as follows:

A lender credit card is a card or device issued under an arrangement pursuant to which the issuer gives to a card holder residing in this state the privilege of obtaining credit from the issuer or other persons in purchasing or leasing property or services, obtaining loans, or otherwise, and the issuer of which is not principally engaged in the business of selling goods.

A lender credit card agreement and credit extended pursuant to it is not subject to the provisions of this chapter but shall be subject to the provisions of chapter 19.52 RCW.

NEW SECTION. Sec. 11. Sections 6 through 8 of this act are each added to chapter 19.52 RCW.

NEW SECTION. Sec. 12. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. Sec. 13. This act applies only to loans, forbearances, or transactions which are entered into after the effective date of this act or to existing loans, forbearances, contracts, or agreements which were not primarily for personal, family, or household use in which there is an addition to the principal amount of the credit outstanding after the effective date of this act.

NEW SECTION. Sec. 14. This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect immediately.

Passed the House April 25, 1981.

Passed the Senate April 17, 1981.

Approved by the Governor May 8, 1981, with the exception of Section 6 which is vetoed.

Filed in Office of Secretary of State May 8, 1981.

Note: Governor's explanation of partial veto is as follows:

"I am returning herewith without my approval as to one section House Bill No. 160 entitled:

"AN ACT Relating to retail installment sales."

Section 6 of this bill duplicates the substance of a section contained in House Bill 137, but uses slightly different wording. I have determined to veto this section in order to avoid difficulties in codification and future interpretation of the section.

With the exception of Section 6 which I have vetoed, House Bill No. 160 is approved."

## CHAPTER 78

[House Bill No. 137]

### INTEREST—LEGAL RATE—USURY DEFENSE

AN ACT Relating to usury; amending section 2, chapter 80, Laws of 1899 as amended by section 4, chapter 23, Laws of 1967 ex. sess. and RCW 19.52.020; amending section 1, chapter 142, Laws of 1969 ex. sess. as last amended by section 1, chapter 180, Laws of 1975 1st ex. sess. and RCW 19.52.080; adding new sections to chapter 19.52 RCW; adding a new section to chapter 63.14 RCW; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

Section 1. Section 2, chapter 80, Laws of 1899 as amended by section 4, chapter 23, Laws of 1967 ex. sess. and RCW 19.52.020 are each amended to read as follows:

Any rate of interest not exceeding the higher of twelve percent per annum or four percentage points above the equivalent coupon issue yield (as published by the Federal Reserve Bank of San Francisco) of the average bill rate for twenty-six week treasury bills as determined at the first bill market auction conducted during the preceding calendar month, agreed to in writing by the parties to the contract, shall be legal, and no person shall directly or indirectly take or receive in money, goods, or things in action, or in any other way, any greater interest (~~(sum or value)~~) for the loan or forbearance of any money, goods, or things in action (~~(than twelve percent per annum)~~): PROVIDED, That in any loan of money in which the funds advanced do not exceed the sum of five hundred dollars, a setup charge may be charged and collected by the lender, and such setup charge shall not be considered interest hereunder: PROVIDED FURTHER, That such setup charge does not exceed four percent of the amount of funds advanced, or fifteen dollars, whichever is the lesser, except that on loans of under one hundred dollars a minimum not exceeding four dollars may be so charged.

Any loan made pursuant to a commitment to lend at an interest rate permitted at the time the commitment is made shall not be usurious. Credit extended pursuant to an open-end credit agreement upon which interest is computed on the basis of a balance or balances outstanding during a billing cycle shall not be usurious if the rate at which interest is charged is not usurious on any day during the billing cycle.