

As Reported by the Senate Judiciary--Civil Justice Committee

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**REPRESENTATIVES Salerno, Willamowski, Latta, Manning, Fessler, Flowers,
Collier, Schmidt, Reidelbach, Barrett, Coates, Rhine, Blasdel, Sulzer**

A B I L L

To amend section 1317.08 of the Revised Code to 1
eliminate, in the purchase, assignment, or transfer 2
of a retail installment contract the prohibition 3
against a retail seller, receiving in excess of 2% 4
of the principal balance on that contract, and to 5
eliminate related provisions. 6

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That section 1317.08 of the Revised Code be 7
amended to read as follows: 8

Sec. 1317.08. (A)(1) No retail installment contract that 9
evidences an indebtedness greater than that allowed under sections 10
1317.06, 1317.061, 1317.062, and 1317.07 of the Revised Code, and 11
no retail installment contract in connection with which any charge 12
prohibited by sections 1317.01 to 1317.11 of the Revised Code has 13
been contracted for or received, shall be enforceable with respect 14
to that excess indebtedness or charge against any retail buyer or 15
any other person who as surety, indorser, guarantor, or otherwise 16
is liable on the obligation created by any retail buyer on any 17
retail installment contract, ~~and no~~. 18

(2) No security interest created by any ~~such~~ retail 19

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installment contract described in division (A)(1) of this section 20
that is greater than that allowed under sections 1317.06, 1317.07, 21
and 1317.071 of the Revised Code shall be enforceable with respect 22
to that excess security interest against any retail buyer or any 23
of the ~~aforementioned~~ persons described in division (A)(1) of this 24
section, in default under the terms of the retail installment 25
contract. ~~It~~ 26

(B) In order for a retail buyer, or any of the ~~aforementioned~~ 27
persons described in division (A)(1) of this section that is 28
liable on the retail buyer's obligation, to avail the retail buyer 29
or other person of this section, the retail buyer or other person 30
must prove that the retail seller or the holder of the retail 31
installment contract has been notified in writing of the 32
overcharge and has failed within ten days of such notification to 33
advise the retail buyer of a full credit, or the retail buyer or 34
other person must prove that the overcharge has been willful. A 35
correction of any overcharge within sixty days of the date of 36
making of the retail installment contract is conclusive proof of 37
lack of willfulness. ~~This~~ 38

(C) ~~This~~ section applies to cases in which recovery is sought 39
from the retail seller or holder of the retail installment 40
contract. 41

(D) If charges greater in amount than those provided for in 42
sections 1317.01 to 1317.11 of the Revised Code are contracted for 43
or received by the retail seller or the retail seller's agent, 44
assignee, or successor in interest, the retail buyer or the retail 45
buyer's assignee or successor in interest may recover the total 46
amount of finance charges paid to the retail seller or the retail 47
seller's agent, assignee, or successor in interest, in excess of 48
the interest rate that otherwise would apply under section 1343.01 49
of the Revised Code. 50

~~No person shall enter into any agreement with any retail~~ 51

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~~seller regarding the purchase, assignment, or transfer of any retail installment contract whereby the retail seller shall 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 two per cent of the principal balance of the retail installment contract. No person shall, directly or indirectly, pay to the retail seller, and no retail seller shall, directly or indirectly, receive or retain 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 two per cent of the principal balance of the retail installment contract, provided this paragraph does not apply in case of a bona fide sale of a retail installment contract, if, as part of the consideration for such 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 thereto.~~

~~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. Any sale, assignment, or transfer of a retail installment contract in violation of this section 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.~~

Section 2. That existing section 1317.08 of the Revised Code is hereby repealed.