

STORAGE NAME: h1573.brc

DATE: March 18, 1997

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
BUSINESS REGULATION AND CONSUMER AFFAIRS
BILL ANALYSIS & ECONOMIC IMPACT STATEMENT**

BILL #: HB 1573 (PCB BRCA 97-03)

RELATING TO: Retail Installment Sales

SPONSOR(S): Committee on Business Regulation and Consumer Affairs and
Representative Ogles

STATUTE(S) AFFECTED: Section 520.35, F.S.

COMPANION BILL(S): SB 800 (s)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) BUSINESS REGULATION AND CONSUMER AFFAIRS YEAS 7 NAYS 0
 - (2)
 - (3)
 - (4)
 - (5)
-

I. SUMMARY:

This bill amends the retail installment sales statute by presuming that a revolving credit agreement is signed or accepted by a consumer once that consumer uses the account.

This bill has no fiscal impact on state or local government. However, the reduction in government regulation could have a positive, though indeterminate, fiscal impact on revolving credit issuers.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Chapter 520, Part II, F.S., addresses the regulation and licensing of retail installment sellers. Such companies are engaged in the business of selling retail goods on credit that is paid through retail installment contracts or revolving accounts. A revolving account allows a purchaser to incur debt that is paid off over time and on which a finance charge is added to the unpaid balance. Section 520.35, F.S., written in 1959, requires every revolving account agreement to be in writing and signed by the consumer. This requirement is burdensome under current marketing practices; i.e., consumers requesting revolving credit agreements by telephone must receive, sign, and return the agreement before the account can be activated. If a consumer uses that account before the seller receives the signed agreement, or the consumer does not return the signed agreement, the seller has little recourse against the debt under current state law.

Section 501.011, F.S., prohibits credit card issuers from mailing credit cards to anyone who has not asked for the card. It further states that no consumer is liable for the unauthorized use of an unsolicited credit card.

The federal Truth-in-Lending Act, 15 U.S.C. ss. 1601, et seq., requires initial disclosure of the finance charge, the balance on which that charge will be assessed, and the elements of the charge. The implementing regulation, 12 CFR 226, requires those disclosures "before the first transaction is made on any open end credit plan." Therefore, the federal law assures full and fair disclosure to consumers. The state law, under s. 520.35, F.S., also requires full disclosure of the finance charges when the agreement is executed and specifies that the federal truth-in-lending disclosures meet the state requirement.

B. EFFECT OF PROPOSED CHANGES:

The bill makes amends s. 520.35, F.S., to provide that a revolving account agreement is presumed to be signed if the consumer, or a person authorized by the consumer, uses the account. This change allows consumers to use their revolving accounts in a more timely manner. It also relieves retail sellers from the constraints of waiting for signed documents before activating agreements and from potential proof problems in judicial proceedings when a signed agreement is lost, but the consumer uses the card, and defaults on the debt.

This bill is not intended to expand, weaken or conflict with any other state or federal law relating to revolving accounts. The issuer may not mail an unsolicited credit card and must adhere to the state requirements regarding financing disclosure and the federal truth-in-lending provisions.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

No.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

It reduces the obligations of private revolving credit agreement sellers.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No.

b. Does the bill require or authorize an increase in any fees?

No.

- c. Does the bill reduce total taxes, both rates and revenues?

No.

- d. Does the bill reduce total fees, both rates and revenues?

No.

- e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

- a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

No.

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

Yes.

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

No.

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

(1) Who evaluates the family's needs?

N/A

(2) Who makes the decisions?

N/A

(3) Are private alternatives permitted?

N/A

(4) Are families required to participate in a program?

N/A

(5) Are families penalized for not participating in a program?

N/A

b. Does the bill directly affect the legal rights and obligations between family members?

No.

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. SECTION-BY-SECTION ANALYSIS:

Section 1. Amends s. 520.35(1), F.S., by providing that a revolving credit agreement is presumed to be signed or accepted by the consumer if it is signed or if the consumer, or an authorized user, uses the account.

Section 2. Provides that the act takes effect upon becoming law.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

4. Total Revenues and Expenditures:

N/A

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

None.

2. Direct Private Sector Benefits:

The bill will relieve revolving credit issuers from some government regulation.

3. Effects on Competition, Private Enterprise and Employment Markets:

Revolving credit sellers could be more competitive with their counterparts in those states currently allowing these transactions. However, that impact is indeterminate.

D. FISCAL COMMENTS:

None.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that counties or municipalities have to raise revenue in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

A similar measure passed the House as a floor amendment in 1996 in CS/ HB 613, but died in the Senate. Compliance with the federal truth-in-lending provisions was specifically mandated in that provision. That mandate was redundant and unnecessary since the federal law clearly takes precedence.

This bill is offered at the request of the Florida Retail Federation that provided a list of 37 states that have enacted similar provisions. The bill is acceptable to Barnett Banks, Sun Trust, NationsBank, AT&T, and American Express.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The bill, as filed, contained a potential conflict with federal and state law in language that appeared to allow the revolving account issuer to activate an account prior to disclosing the finance charges attached to that account. That language was deleted from the bill to make it

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clear that it is not the intent of this bill to expand, weaken, or conflict with any other state or federal law relating to revolving accounts.

VII. SIGNATURES:

COMMITTEE ON BUSINESS REGULATION AND CONSUMER AFFAIRS:

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