(122nd General Assembly)
(Amended Substitute House Bill Number 108)

AN ACT

To amend sections 1317.08 and 2329.66 of the Revised Code to remove a limitation on a person's right to hold the assets in, and the payments from, an individual retirement account or an individual retirement annuity exempt from execution, garnishment, or attachment and to modify the Retail Installment Sales Act with respect to the enforceability of retail installment contracts.

Be it enacted by the General Assembly of the State of Ohio:

SECTION 1. That sections 1317.08 and 2329.66 of the Revised Code be amended to read as follows:

Sec. 1317.08. No retail installment contract ~~which~~ that evidences an indebtedness greater than that allowed ~~by section~~ under sections 1317.06 ~~or~~, 1317.061, 1317.062, and 1317.07 of the Revised Code, and no retail installment contract in connection with which any charge prohibited by sections 1317.01 to 1317.11~~, inclusive,~~ of the Revised Code~~,~~ has been contracted for or received, shall be enforceable with respect to that excess indebtedness or charge against any retail buyer~~,~~ or any other person who as surety, indorser, guarantor, or otherwise is liable on the obligation created by any retail buyer on any retail installment contract, and no security interest created by any such retail installment contract ~~which~~ that is greater than that allowed ~~by~~ under sections 1317.06 ~~and~~, 1317.07, and 1317.071 of the Revised Code ~~or in connection with which any charge is prohibited by sections 1317.01 to 1317.11, inclusive, of the Revised Code, has been contracted for or received~~ shall be enforceable with respect to that excess security interest against any retail buyer or any of the aforementioned persons, in default under the terms of the retail installment contract. In order for a retail buyer, or any of the aforementioned persons liable on ~~his~~ the retail buyer's obligation, to avail ~~himself~~ the retail buyer or other person of this section, ~~he~~ the retail buyer or other person must prove that the retail seller or the holder of the retail installment contract has been notified in writing of the overcharge and has failed within ten days of such notification

to advise the retail buyer of a full credit, or ~~he~~ the retail buyer or other person must prove that the overcharge has been willful. A correction of any overcharge within sixty days of the date of making of the retail installment contract is conclusive proof of lack of willfulness. This section applies to cases in which recovery is sought from the retail seller or holder of the retail installment contract.

If charges greater in amount than those provided for in sections 1317.01 to 1317.11~~, inclusive,~~ of the Revised Code~~,~~ are contracted for or received by the retail seller~~, his~~ or the retail seller's agent, assignee, or successor in interest, the retail buyer~~, his~~ or the retail buyer's assignee~~,~~ or successor in interest may recover the total amount of finance charges paid to the retail seller~~, his~~ or the retail seller's agent, assignee, or successor in interest, ~~from the retail seller or the holder~~ in excess of the ~~retail installment contract~~ interest rate that otherwise would apply under section 1343.01 Of the Revised Code.

No person shall enter into any agreement with any retail 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 ~~him~~ 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 ~~said~~ the retail installment contract, including billing, posting, and maintaining complete records applicable thereto.

Compensation received by the retail seller as commission received by ~~him~~ 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 ~~which~~ that are a part of

a retail installment contract are freely assignable and transferable.

Sec. 2329.66. (A) Every person who is domiciled in this state may hold property exempt from execution, garnishment, attachment, or sale to satisfy a judgment or order, as follows:

(1)(a) In the case of a judgment or order regarding money owed for health care services rendered or health care supplies provided to the person or a dependent of the person, one parcel or item of real or personal property that the person or a dependent of the person uses as a residence. Division (A)(1)(a) of this section does not preclude, affect, or invalidate the creation under this chapter of a judgment lien upon the exempted property but only delays the enforcement of the lien until the property is sold or otherwise transferred by the owner or in accordance with other applicable laws to a person or entity other than the surviving spouse or surviving minor children of the judgment debtor. Every person who is domiciled in this state may hold exempt from a judgment lien created pursuant to division (A)(1)(a) of this section the person's interest, not to exceed five thousand dollars, in the exempted property.

(b) In the case of all other judgments and orders, the person's interest, not to exceed five thousand dollars, in one parcel or item of real or personal property that the person or a dependent of the person uses as a residence.

(2) The person's interest, not to exceed one thousand dollars, in one motor vehicle;

(3) The person's interest, not to exceed two hundred dollars in any particular item, in wearing apparel, beds, and bedding, and the person's interest, not to exceed three hundred dollars in each item, in one cooking unit and one refrigerator or other food preservation unit;

(4)(a) The person's interest, not to exceed four hundred dollars, in cash on hand, money due and payable, money to become due within ninety days, tax refunds, and money on deposit with a bank, savings and loan association, credit union, public utility, landlord, or other person. Division (A)(4)(a) of this section applies only in bankruptcy proceedings. This exemption may include the portion of personal earnings that is not exempt under division (A)(13) of this section.

(b) Subject to division (A)(4)(d) of this section, the person's interest, not to exceed two hundred dollars in any particular item, in household furnishings, household goods, appliances, books, animals, crops, musical instruments, firearms, and hunting and fishing equipment, that are held primarily for the personal, family, or household use of the person.

(c) Subject to division (A)(4)(d) of this section, the person's interest in one or more items of jewelry, not to exceed four hundred dollars in one item

of jewelry and not to exceed two hundred dollars in every other item of jewelry.

(d) Divisions (A)(4)(b) and (c) of this section do not include items of personal property listed in division (A)(3) of this section.

If the person does not claim an exemption under division (A)(1) of this section, the total exemption claimed under division (A)(4)(b) of this section shall be added to the total exemption claimed under division (A)(4)(c) of this section, and the total shall not exceed two thousand dollars. If the person claims an exemption under division (A)(1) of this section, the total exemption claimed under division (A)(4)(b) of this section shall be added to the total exemption claimed under division (A)(4)(c) of this section, and the total shall not exceed one thousand five hundred dollars.

(5) The person's interest, not to exceed an aggregate of seven hundred fifty dollars, in all implements, professional books, or tools of the person's profession, trade, or business, including agriculture;

(6)(a) The person's interest in a beneficiary fund set apart, appropriated, or paid by a benevolent association or society, as exempted by section 2329.63 of the Revised Code;

(b) The person's interest in contracts of life or endowment insurance or annuities, as exempted by section 3911.10 of the Revised Code;

(c) The person's interest in a policy of group insurance or the proceeds of a policy of group insurance, as exempted by section 3917.05 of the Revised Code;

(d) The person's interest in money, benefits, charity, relief, or aid to be paid, provided, or rendered by a fraternal benefit society, as exempted by section 3921.18 of the Revised Code;

(e) The person's interest in the portion of benefits under policies of sickness and accident insurance and in lump-sum payments for dismemberment and other losses insured under those policies, as exempted by section 3923.19 of the Revised Code.

(7) The person's professionally prescribed or medically necessary health aids;

(8) The person's interest in a burial lot, including, but not limited to, exemptions under section 517.09 or 1721.07 of the Revised Code;

(9) The person's interest in the following:

(a) Moneys paid or payable for living maintenance or rights, as exempted by section 3304.19 of the Revised Code;

(b) Workers' compensation, as exempted by section 4123.67 of the Revised Code;

(c) Unemployment compensation benefits, as exempted by section

4141.32 of the Revised Code;

(d) Cash assistance payments under the Ohio works first program, as exempted by section 5107.75 of the Revised Code;

(e) Disability assistance payments, as exempted by section 5115.07 of the Revised Code.

(10)(a) Except in cases in which the person was convicted of or pleaded guilty to a violation of section 2921.41 of the Revised Code and in which an order for the withholding of restitution from payments was issued under division (C)(2)(b) of that section or in cases in which an order for withholding was issued under section 2907.15 of the Revised Code, and only to the extent provided in the order, and except as provided in sections ~~2929.181,~~ 3105.171, 3105.63, 3111.23, and 3113.21 of the Revised Code, the person's right to a pension, benefit, annuity, retirement allowance, or accumulated contributions, the person's right to a participant account in any deferred compensation program offered by the Ohio public employees deferred compensation board, a government unit, or a municipal corporation, or the person's other accrued or accruing rights, as exempted by section 145.56, 145.75, 146.13, 742.47, 3307.71, 3309.66, or 5505.22 of the Revised Code, and the person's right to benefits from the firemen and policemen's death benefit fund;

(b) Except as provided in sections 3111.23 and 3113.21 of the Revised Code, the person's right to receive a payment under any pension, annuity, or similar plan or contract, not including a payment from a stock bonus or profit-sharing plan or a payment included in division (A)(6)(b) or (10)(a) of this section, on account of illness, disability, death, age, or length of service, to the extent reasonably necessary for the support of the person and any of the person's dependents, except if all the following apply:

(i) The plan or contract was established by or under the auspices of an insider that employed the person at the time the person's rights under the plan or contract arose.

(ii) The payment is on account of age or length of service.

(iii) The plan or contract is not qualified under the "Internal Revenue Code of 1986," 100 Stat. 2085, 26 U.S.C. 1, as amended.

(c) Except for any portion of the assets that were deposited for the purpose of evading the payment of any debt and except as provided in sections 3111.23 and 3113.21 of the Revised Code, the person's right in the assets held in, or to receive any payment under, any individual retirement account, individual retirement annuity, ~~or Keogh or "H.R. 10" plan~~ "Roth IRA," or education individual retirement account that provides benefits by reason of illness, disability, death, or age, to the extent ~~reasonably necessary~~

~~for the support of the person and any of the person's dependents~~ that the assets, payments, or benefits described in division (A)(10)(c) of this section are attributable to any of the following:

(i) Contributions of the person that were less than or equal to the applicable limits on deductible contributions to an individual retirement account or individual retirement annuity in the year that the contributions were made, whether or not the person was eligible to deduct the contributions on the person's federal tax return for the year in which the contributions were made;

(ii) Contributions of the person that were less than or equal to the applicable limits on contributions to a Roth IRA or education individual retirement account in the year that the contributions were made;

(iii) Contributions of the person that are within the applicable limits on rollover contributions under subsections 219, 402(c), 403(a)(4), 403(b)(8), 408(b), 408(d)(3), 408A(c)(3)(B), 408A(d)(3), and 530(d)(5) of the "Internal Revenue Code of 1986," 100 Stat. 2085, 26 U.S.C.A. 1, as amended.

(d) EXCEPT FOR ANY PORTION OF THE ASSETS THAT WERE DEPOSITED FOR THE PURPOSE OF EVADING THE PAYMENT OF ANY DEBT AND EXCEPT AS PROVIDED IN SECTIONS 3111.23 AND 3113.21 OF THE REVISED CODE, THE PERSON'S RIGHT IN THE ASSETS HELD IN, OR TO RECEIVE ANY PAYMENT UNDER, ANY KEOGH OR "H.R. 10" PLAN THAT PROVIDES BENEFITS BY REASON OF ILLNESS, DISABILITY, DEATH, OR AGE, TO THE EXTENT REASONABLY NECESSARY FOR THE SUPPORT OF THE PERSON AND ANY OF THE PERSON'S DEPENDENTS.

(11) The person's right to receive spousal support, child support, an allowance, or other maintenance to the extent reasonably necessary for the support of the person and any of the person's dependents;

(12) The person's right to receive, or moneys received during the preceding twelve calendar months from, any of the following:

(a) An award of reparations under sections 2743.51 to 2743.72 of the Revised Code, to the extent exempted by division (D) of section 2743.66 of the Revised Code;

(b) A payment on account of the wrongful death of an individual of whom the person was a dependent on the date of the individual's death, to the extent reasonably necessary for the support of the person and any of the person's dependents;

(c) Except in cases in which the person who receives the payment is an inmate, as defined in section 2969.21 of the Revised Code, and in which the payment resulted from a civil action or appeal against a government entity

or employee, as defined in section 2969.21 of the Revised Code, a payment, not to exceed five thousand dollars, on account of personal bodily injury, not including pain and suffering or compensation for actual pecuniary loss, of the person or an individual for whom the person is a dependent;

(d) A payment in compensation for loss of future earnings of the person or an individual of whom the person is or was a dependent, to the extent reasonably necessary for the support of the debtor and any of the debtor's dependents.

(13) Except as provided in sections 3111.23 and 3113.21 of the Revised Code, personal earnings of the person owed to the person for services rendered within thirty days before the issuing of an attachment or other process, the rendition of a judgment, or the making of an order, under which the attempt may be made to subject those earnings to the payment of a debt, damage, fine, or amercement, in an amount equal to the greater of the following amounts:

(a) If paid weekly, thirty times the current federal minimum hourly wage; if paid biweekly, sixty times the current federal minimum hourly wage; if paid semimonthly, sixty-five times the current federal minimum hourly wage; or if paid monthly, one hundred thirty times the current federal minimum hourly wage that is in effect at the time the earnings are payable, as prescribed by the "Fair Labor Standards Act of 1938," 52 Stat. 1060, 29 U.S.C. 206(a)(1), as amended;

(b) Seventy-five per cent of the disposable earnings owed to the person.

(14) The person's right in specific partnership property, as exempted by division (B)(3) of section 1775.24 of the Revised Code;

(15) A seal and official register of a notary public, as exempted by section 147.04 of the Revised Code;

(16) The person's interest in a tuition credit or a payment under section 3334.09 of the Revised Code pursuant to a tuition credit contract, as exempted by section 3334.15 of the Revised Code;

(17) Any other property that is specifically exempted from execution, attachment, garnishment, or sale by federal statutes other than the "Bankruptcy Reform Act of 1978," 92 Stat. 2549, 11 U.S.C.A. 101, as amended;

(18) The person's interest, not to exceed four hundred dollars, in any property, except that division (A)(18) of this section applies only in bankruptcy proceedings.

(B) As used in this section:

(1) "Disposable earnings" means net earnings after the garnishee has made deductions required by law, excluding the deductions ordered

pursuant to section 3111.23 or 3113.21 of the Revised Code.

(2) "Insider" means:

(a) If the person who claims an exemption is an individual, a relative of the individual, a relative of a general partner of the individual, a partnership in which the individual is a general partner, a general partner of the individual, or a corporation of which the individual is a director, officer, or in control;

(b) If the person who claims an exemption is a corporation, a director or officer of the corporation; a person in control of the corporation; a partnership in which the corporation is a general partner; a general partner of the corporation; or a relative of a general partner, director, officer, or person in control of the corporation;

(c) If the person who claims an exemption is a partnership, a general partner in the partnership; a general partner of the partnership; a person in control of the partnership; a partnership in which the partnership is a general partner; or a relative in, a general partner of, or a person in control of the partnership;

(d) An entity or person to which or whom any of the following applies:

(i) The entity directly or indirectly owns, controls, or holds with power to vote, twenty per cent or more of the outstanding voting securities of the person who claims an exemption, unless the entity holds the securities in a fiduciary or agency capacity without sole discretionary power to vote the securities or holds the securities solely to secure to debt and the entity has not in fact exercised the power to vote.

(ii) The entity is a corporation, twenty per cent or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote, by the person who claims an exemption or by an entity to which division (B)(2)(d)(i) of this section applies.

(iii) A person whose business is operated under a lease or operating agreement by the person who claims an exemption, or a person substantially all of whose business is operated under an operating agreement with the person who claims an exemption.

(iv) The entity operates the business or all or substantially all of the property of the person who claims an exemption under a lease or operating agreement.

(e) An insider, as otherwise defined in this section, of a person or entity to which division (B)(2)(d)(i), (ii), (iii), or (iv) of this section applies, as if the person or entity were a person who claims an exemption;

(f) A managing agent of the person who claims an exemption.

(3) "Participant account" has the same meaning as in section 145.71 of

the Revised Code.

(4) "Government unit" has the same meaning as in section 145.74 of the Revised Code.

(C) For purposes of this section, "interest" shall be determined as follows:

(1) In bankruptcy proceedings, as of the date a petition is filed with the bankruptcy court commencing a case under Title 11 of the United States Code;

(2) In all cases other than bankruptcy proceedings, as of the date of an appraisal, if necessary under section 2329.68 of the Revised Code, or the issuance of a writ of execution.

An interest, as determined under division (C)(1) or (2) of this section, shall not include the amount of any lien otherwise valid pursuant to section 2329.661 of the Revised Code.

SECTION 2. That existing sections 1317.08 and 2329.66 of the Revised Code are hereby repealed.

SECTION 3. (A) Section 1317.08 of the Revised Code, as amended by this act, applies to and governs any action based upon a claim against a retail seller or holder that is pending in any court on the effective date of this section, and to all claims or actions filed on or after that date, notwithstanding any provision of Ohio law that was effective prior to that date.

(B) It is the intent of the General Assembly that the amendment of section 1317.08 of the Revised Code by this act is remedial in nature and not substantive.

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Speaker _____ of the House of Representatives.

_____

President _____ of the Senate.

Passed _____, 20____

Approved _____, 20____

_____

Governor.

The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

_____

Director, Legislative Service Commission.

Filed in the office of the Secretary of State at Columbus, Ohio, on the ____ day of _____, A. D. 20____.

_____

Secretary of State.

File No. _____ Effective Date _____