

Legal Assistance Resource Center

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H.B. 5332 -- Late charges under the Retail Installment Sales Financing Act (RISFA)

Banks Committee Public Hearing -- February 28, 2008
Testimony of Raphael L. Podolsky

Recommended Committee action: REJECTION OF THE BILL

The Retail Installment Sales Financing Act (RISFA) regulates the financing of consumer goods in which the creditor takes a security interest in the property, i.e., in which the creditor can repossess the goods if the bill is not paid. Contracts for the purchase of cars are probably the most common RISFA contract, but many other consumer goods (e.g., furniture, electronics) are bought under such contracts. Among many other provisions, the statute sets maximum late charge fees at the lesser of \$10 or 5% of the late payment.

H.B. 5332 would exempt Connecticut banks, Connecticut credit unions, and federal credit unions from this consumer protective provision if they comply with federal requirements for banks. It is not clear, however, that there are any such federal requirements; and it therefore appears that the bill would allow them to charge unlimited late payments. In addition, there is no reason why Connecticut should allow higher fees merely because the federal government may permit higher or unlimited fees for institutions that it regulates. There is simply no reason to make this change. Connecticut lenders are not affected by federal preemption. Even if they were, federal preemption applies automatically and does not require states to change their statutes. Moreover, the doctrine of federal preemption has expanded greatly in recent years (in our opinion, well beyond what federal law authorizes), and it could well contract in the future. There is no benefit to the state in repealing its protective statutes.

I have also heard it said in other contexts that Connecticut banks should have a level playing field with federal banks and be able to charge whatever they can charge. When federal institutions are essentially unregulated, this kind of reverse equality takes away state consumer protections based on the argument that, if some consumers are not protected, then no consumers should be protected. To the contrary, we should stand by our protections and let them be incentives to federally-chartered entities to match them.

In any case, there is no need to adopt this bill, and it should be rejected.