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IN THE SENATE

BY RULES COMMITTEE  
BY REQUEST OF THE GOVERNOR

SENATE BILL NO. 233

IN THE LEGISLATURE OF THE STATE OF ALASKA

SECOND LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to and regulating retail installment sales of goods and services; to define terms used in this act; to prescribe and regulate the form and content of contracts and agreements covering such retail installment sales; to require a partial refund of the service charge on prepayment of such contracts; to make violations of this act unlawful and to prescribe penalties for such violations."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

Section 1. In this act, 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, chose 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

1 when purchased primarily for personal, family or household use  
2 and not for commercial or business use whether or not furnished  
3 in connection with the delivery, installation, servicing, repair  
4 or improvement of goods and includes repairs, alterations or im-  
5 provements upon or in connection with real property, but does not  
6 include services for which the price charged is required by law  
7 to be determined or approved by or to be filed, subject to ap-  
8 proval or disapproval, with the United States or any state, or  
9 any department, division, agency, officer or official of either  
10 as in the case of transportation services;

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

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

16 (5) "Retail installment transaction" means any transaction  
17 in which a retail buyer purchases goods or services from a retail  
18 seller pursuant to a retail installment contract or a retail  
19 charge agreement, as defined in this section, which provides for  
20 a service charge, as defined in this section, and under which the  
21 buyer agrees to pay the unpaid balance in one or more install-  
22 ments;

23 (6) "Retail installment contract" or "contract" means a  
24 contract, other than a retail charge agreement or an instrument  
25 reflecting a sale made pursuant thereto, entered into or perform-  
26 ed in this state for a retail installment transaction. The term  
27 "retail installment contract" may include a chattel mortgage, a  
28 conditional sale contract and a contract in the form of a bail-  
29 ment or a lease if the bailee or lessee contracts to pay as com-

1        pensation for their use a sum substantially equivalent to or  
2        in excess of the value of the goods sold and if it is agreed  
3        that the bailee or lessee is bound to become, or for no other or  
4        a merely nominal consideration, has the option of becoming the  
5        owner of the goods upon full compliance with the provisions of  
6        the bailment or lease;

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

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

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

28               (10) "Official fees" means the amount of the fees prescribed  
29       by law for filing, recording or otherwise perfecting, and releas-

1 ing or satisfying, a retained title, lien or other security  
2 interest created by a retail installment transaction;

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

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

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

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

18 Sec. 2. Every retail installment contract shall be contain-  
19 ed in a single document which shall contain the entire agreement  
20 of the parties including any promissory notes or other evidences  
21 of indebtedness between the parties relating to the transaction,  
22 except as provided in Secs. 5, 6 and 11: Provided, That where  
23 the buyer's obligation to pay the time balance is represented by  
24 a promissory note secured by a chattel mortgage, any provisions  
25 of said mortgage by which the buyer undertakes to do something  
26 besides the payment of a sum certain in money shall be construed  
27 as if contained in a separate document for the purposes of de-  
28 termining the negotiability of said note, unless such provisions  
29 are expressly incorporated in said note by reference thereto.

1           The contract shall be dated, signed by the retail buyer and  
2 completed as to all essential provisions, except as otherwise  
3 provided in Secs. 6 and 7 hereof. The printed or typed portion  
4 of the contract, other than instructions for completion, shall  
5 be in a size equal to at least eight point type.

6           Sec. 3. The retail seller shall deliver to the retail  
7 buyer, or mail to him at his address shown on the retail install-  
8 ment contract, a copy of the contract as accepted by the seller.  
9 Until the seller does so, the buyer shall be obligated to pay only  
10 the cash sale price. Any acknowledgment by the buyer of delivery  
11 of a copy of the contract shall be in a size equal to at least  
12 ten point bold type and, if contained in the contract, shall  
13 appear directly above the buyer's signature.

14           Sec. 4. The retail installment contract shall contain the  
15 names of the seller and the buyer, the place of business of the  
16 seller, the residence or other address of the buyer as specified  
17 by the buyer and a description or identification of the goods sold  
18 or to be sold, or services furnished or rendered or to be furnish-  
19 ed or rendered. The contract also shall contain the following  
20 items, which shall be set forth in the sequence appearing below:

- 21           (1) The cash sale price of each item of goods or services;
- 22           (2) The amount of the buyer's down payment, identifying the  
23 amounts paid in money and allowed for goods traded in;
- 24           (3) The difference between items (1) and (2);
- 25           (4) The aggregate amount, if any, included for insurance,  
26 if a separate identified charge is made therefor, specifying the  
27 type or types of insurance and the terms of coverage;
- 28           (5) The aggregate amount of official fees;
- 29           (6) The principal balance, which is the sum of items (3),

1 (4) and (5);

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

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

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

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

21 Sec. 5. A retail installment contract may be contained in  
22 more than one document, provided that one such document shall be  
23 an original document signed by the retail buyer, stated to be  
24 applicable to purchases of goods or services to be made by the  
25 retail buyer from time to time. In such case such document,  
26 together with the sales slip, account book or other written  
27 statement relating to each purchase, shall set forth all of the  
28 information required by Sec. 4 and shall constitute the retail  
29 installment contract for each purchase. On each succeeding

1 purchase pursuant to such original document, the sales slip,  
2 account book or other written statement may at the option of  
3 the seller constitute the memorandum required by Sec. 11.

4 Sec. 6. Retail installment contracts negotiated and en-  
5 tered into by mail without personal solicitation by salesmen or  
6 other representatives of the seller and based upon a catalog of  
7 the seller, or other printed solicitation of business, if such  
8 catalog or other printed solicitation clearly sets forth the  
9 cash sale prices and other terms of sales to be made through  
10 such medium, may be made as provided in this section. The pro-  
11 visions of this act with respect to retail installment contracts  
12 shall be applicable to such sales, except that the retail install-  
13 ment contract, when completed by the buyer need not contain the  
14 items required by Sec. 4.

15 When the contract is received from the retail buyer, the  
16 seller shall prepare a written memorandum containing all of  
17 the information required by Sec. 4 to be included in a retail  
18 installment contract. In lieu of delivering a copy of the con-  
19 tract to the retail buyer as provided in Sec. 3, the seller  
20 shall deliver to the buyer a copy of such memorandum prior to  
21 the due date of the first installment payable under the con-  
22 tract: Provided, That if the catalog or other printed sollicita-  
23 tion does not set forth all of the other terms of sales in addi-  
24 tion to the cash sales prices, such memorandum shall be delivered  
25 to the buyer prior to or at the time of delivery of the goods or  
26 services.

27 Sec. 7. The seller shall not obtain the signature of the  
28 buyer to any contract when it contains blank spaces of items  
29 which are essential provisions of the transaction except as

1 provided in Sec. 6; provided, however, if delivery of the goods  
2 is not made at the time of the execution of the contract, the  
3 identifying numbers or marks of the goods or similar information  
4 and the due date of the first installment may be inserted by the  
5 seller in the seller's counterpart of the contract after it has  
6 been signed by the buyer.

7 Sec. 8. Notwithstanding the provisions of any retail in-  
8 stallment contract to the contrary, any buyer may prepay in full  
9 the unpaid time balance thereof at any time before its final due  
10 date and, if he does so, and if the contract is not in default  
11 more than two months, he shall receive a refund credit of the  
12 unearned portion of the service charge for such prepayment. The  
13 amount of such refund credit shall be computed according to the  
14 "rule of 78ths," that is, it shall represent at least as great a  
15 proportion of the original service charge, after deducting there-  
16 from a maximum of twenty-five dollars in case of a retail in-  
17 stallment sale of a motor vehicle, or ten dollars in case of a  
18 retail installment sale of goods other than a motor vehicle, as  
19 (i) the sum of the monthly or other periodic unpaid balances  
20 under the schedule of payments in the contract beginning as of  
21 the date after such prepayment which is the next succeeding  
22 monthly or other periodic anniversary date of the due date of the  
23 first installment under the contract, or, if the prepayment is  
24 prior to the due date of the first installment under the contract,  
25 then as of the date after such prepayment which is the next suc-  
26 ceeding monthly or other periodic anniversary date of the date  
27 of the contract, bears to (ii) the sum of all the monthly or  
28 other periodic unpaid balances under the schedule of installment  
29 payments in the contract. Where the amount of refund credit is

1 less than one dollar, no refund credit need be made.

2 Sec. 9. The holder of any retail installment contract may  
3 not collect any delinquency or collection charges, including any  
4 attorney's fee and court costs and disbursements, unless the  
5 contract so provides. In such cases, the charges shall be reason-  
6 able, and no attorney's fee may be recovered unless the contract  
7 is referred for collection to an attorney not a salaried employee  
8 of the holder.

9 The contract may contain other provisions not inconsistent  
10 with the purposes of this act.

11 Sec. 10. A buyer shall be given a written receipt for any  
12 payment when made in cash. Upon written request of the buyer,  
13 the holder of a retail installment contract shall give or forward  
14 to the buyer a written statement of the dates and amounts of  
15 payments and the total amount unpaid under the contract. Such a  
16 statement shall be given the buyer once without charge; if any  
17 additional statement is requested by the buyer, it shall be sup-  
18 plied by the holder at a charge not in excess of one dollar for  
19 each additional statement so supplied.

20 Sec. 11. (1) If, in a retail installment transaction, a  
21 retail buyer makes any subsequent purchases of goods or services  
22 from a retail seller from whom he has previously purchased goods  
23 or services under one or more retail installment contracts, and  
24 the amounts under such previous contract or contracts have not  
25 been fully paid, the subsequent purchases may, at the seller's  
26 option, be included in and consolidated with one or more of the  
27 previous contracts. All the provisions of this act with respect  
28 to retail installment contracts shall be applicable to such sub-  
29 sequent purchases except as hereinafter stated in this subsection.

1 In the event of such consolidation, in lieu of the buyer's execut-  
2 ing a retail installment contract respecting each subsequent  
3 purchase, as provided in this section, it shall be sufficient if  
4 the seller shall prepare a written memorandum of each such sub-  
5 sequent purchase, in which case the provisions of Secs. 2, 3 and  
6 4 of this act shall not be applicable. Unless previously furnish-  
7 ed in writing to the buyer by the seller, by sales slip, memoranda  
8 or otherwise, such memorandum shall set forth with respect to  
9 each subsequent purchase items (1) to (7) inclusive of Sec. 4,  
10 and (8) the amount of the time balance owed by the buyer to the  
11 seller for the subsequent purchase, (9) the outstanding balance  
12 of the previous contract or contracts, (10) the consolidated  
13 time balance, which is the sum of items (8) and (9); and (11) the  
14 revised installments applicable to the consolidated time balance,  
15 if any, in accordance with Sec. 4.

16 The seller shall deliver to the buyer a copy of such memo-  
17 randum prior to the due date of the first installment of such  
18 consolidated contract.

19 (2) When such subsequent purchases are made, if the seller  
20 has retained title or taken a lien or other security interest in  
21 any of the goods purchased under any one of the contracts in-  
22 cluded in the consolidation:

23 (a) The entire amount of all payments made prior to  
24 such subsequent purchases shall be deemed to have been  
25 applied on the previous purchases;

26 (b) Where the amount of each installment payment is  
27 not increased in connection with such subsequent purchase,  
28 the subsequent payments shall be deemed to be allocated  
29 first to the previous purchases;

1 (c) Where the amount of each installment payment is  
2 increased in connection with such subsequent purchase, an  
3 amount equal to the original periodic payment shall be allo-  
4 cated first to the previous purchase, and the amount of such  
5 increase may, at the seller's option, be deemed to be allo-  
6 cated to the subsequent purchases;

7 (d) The amount of any down payment on the subsequent  
8 purchase shall be allocated in its entirety to such subse-  
9 quent purchase.

10 The provisions of this subsection shall not apply to cases  
11 where such previous and subsequent purchases involve equipment,  
12 parts, or other goods attached or affixed to goods previously  
13 purchased and not fully paid, or to services in connection there-  
14 with rendered by the seller at the buyer's request.

15 Sec. 12. (1) At or prior to the time a retail charge  
16 agreement is made the seller shall advise the buyer in writing,  
17 on the application form or otherwise, or orally that a service  
18 charge will be computed on the outstanding balance for each month  
19 (which need not be a calendar month) or other regular period  
20 agreed upon, the schedule or rate by which the service charge  
21 will be computed, and that the buyer may at any time pay his  
22 total unpaid balance: Provided, That if this information is  
23 given orally, the seller shall, upon approval of the buyer's  
24 credit, deliver to the buyer or mail to him at his address, a  
25 memorandum setting forth this information.

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

1 balance thereunder, which statement shall set forth the following:

2 (a) The unpaid balance under the retail charge agree-  
3 ment at the beginning and at the end of the period;

4 (b) Unless otherwise furnished by the seller to the  
5 buyer by sales slip, memorandum, or otherwise, a description  
6 or identification of the goods or services purchased during  
7 the period, the cash sale price and the date of each pur-  
8 chase;

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

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

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

15 Sec. 13. The service charge shall be inclusive of all  
16 charges incident to investigating and making the retail install-  
17 ment contract or charge agreement and for the privilege of making  
18 the installment payments thereunder and no other fee, expense or  
19 charge whatsoever shall be taken, received, reserved or contracted  
20 therefor.

21 Sec. 14. If the cost of any insurance is included in the  
22 retail installment contract or retail charge agreement and a  
23 separate charge is made to the buyer for such insurance:

24 (1) The contract or agreement shall state the nature, pur-  
25 pose and amount of such insurance, and in connection with the  
26 sale of a motor vehicle, the contract shall state that the in-  
27 surance coverage ordered under the terms of this contract does  
28 not include "bodily injury liability," "public liability," and  
29 "property damage liability" coverage, where such coverage is in

1 fact not included;

2 (2) The contract or agreement shall state whether the in-  
3 surance is to be procured by the buyer or the seller;

4 (3) The amount, included for such insurance, shall not  
5 exceed the premiums chargeable in accordance with the rate fixed  
6 for such insurance by the insurer, except where the amount is  
7 less than one dollar;

8 (4) If the insurance is to be procured by the seller or  
9 holder, he shall, within forty-five days after delivery of the  
10 goods or furnishing of the services under the contract, deliver,  
11 mail or cause to be mailed to the buyer, at his address as speci-  
12 fied in the contract, a notice thereof or a copy of the policy  
13 or policies of insurance or a certificate or certificates of the  
14 insurance so procured.

15 Sec. 15. No provision of a retail installment contract or  
16 retail charge agreement shall be valid by which the buyer agrees  
17 not to assert against the seller or against an assignee a claim  
18 or defense arising out of the sale.

19 Sec. 16. No act or agreement of the retail buyer before or  
20 at the time of the making of a retail installment contract, re-  
21 tail charge agreement or purchases thereunder shall constitute a  
22 valid waiver of any of the provisions of this act or of any reme-  
23 dies granted to the buyer by law.

24 Sec. 17. Any person who shall wilfully and intentionally  
25 violate any provision of this act shall be guilty of a misdemeanor  
26 and upon conviction thereof shall be punished by a fine of not  
27 more than one thousand dollars or by imprisonment for not more  
28 than six months, or both.

29 Sec. 18. Any seller who enters into any contract or agree-

1 ment which does not comply with the provisions of this act or  
2 who violates any provision of this act except as a result of an  
3 accidental or bona fide error shall be barred from the recovery  
4 of any service charge, official fees, or any delinquency or  
5 collection charge under or in connection with the related retail  
6 installment contract or purchases under a retail charge agree-  
7 ment; but the seller or holder may nevertheless recover from the  
8 buyer an amount equal to the cash price of the goods or services  
9 and the cost to the seller or holder of any insurance included  
10 in the transaction.

11 Sec. 19. The Attorney General may bring an action in the  
12 name of the state against any person to restrain and prevent any  
13 violation of this act.

14 Sec. 20. In the enforcement of this act, the Attorney  
15 General may accept an assurance of discontinuance of any act or  
16 practice deemed in violation of this act, from any person engaging  
17 in, or who has engaged in, such act or practice. Any such as-  
18 surance shall be in writing and be filed with and subject to the  
19 approval of the superior court of the district in which the  
20 alleged violator resides or has his principal place of business.  
21 Failure to perform the terms of any such assurance shall consti-  
22 tute prima facie proof of a violation of this act for the purpose  
23 of securing any injunction as provided in Sec. 19 and for the  
24 purpose of Sec. 18 hereof.

25 Sec. 21. Any person who violates any order or injunction  
26 issued pursuant to this act shall be subject to a fine of not  
27 more than one thousand dollars or imprisonment for not more than  
28 six months, or both.

29 Sec. 22. If any provision of this act is declared un-

1 constitutional, or the applicability thereof to any person or  
2 circumstance is held invalid, the constitutionality of the  
3 remainder of the act and the applicability thereof to other  
4 persons and circumstances shall not be affected thereby.

5           Sec. 23. The provisions of this act shall not invalidate  
6 or make unlawful retail installment contracts or retail charge  
7 agreements executed prior to the effective date hereof.

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