

1 IN THE SENATE

BY JUDICIARY COMMITTEE

2 CS FOR SENATE BILL NO. 233

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SECOND LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to and regulating retail
7 installment sales of goods and services; to
8 define terms used in this act; to prescribe
9 and regulate the form and content of con-
10 tracts and agreements covering such retail
11 installment sales; to require a partial
12 refund of the service charge on prepayment
13 of such contracts; to make violations of
14 this act unlawful and to prescribe penalties
15 for such violations."

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

17 Section 1. In this act, unless the context otherwise
18 requires:

19 (1) "Goods" means all chattels personal when purchased
20 primarily for personal, family or household use and not for com-
21 mercial or business use, but not including money or, except as
22 provided in the next sentence, chose in action. The term includes
23 but is not limited to merchandise certificates or coupons, issued
24 by a retail seller, to be used in their face amount in lieu of
25 cash in exchange for goods or services sold by such a seller and
26 goods which, at the time of sale or subsequently, are to be so
27 affixed to real property as to become a part thereof, whether or
28 not severable therefrom;

29 (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
8 approval 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
15 in the business of selling goods or services to retail buyers;

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

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

1 compensation 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 agree-
8 ment" or "charge agreement" means an instrument entered into or
9 performed in this state prescribing the terms of retail install-
10 ment transactions which may be made thereunder from time to time
11 and 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
17 installments 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
21 seller would have sold or furnished to the buyer, and the buyer
22 would have bought or obtained from the seller, the goods or
23 services which are the subject matter of a retail installment
24 transaction, if the sale had been a sale for cash. The cash sale
25 price may include any taxes and charges for transferring vehicle
26 titles, delivery, installation, servicing, repairs, alterations
27 or improvements;

28 (10) "Official fees" means the amount of the fees pre-
29 scribed by law for filing, recording or otherwise perfecting, and
CS for SB #233, As Amended -3-

1 releasing 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
4 the service charge;

5 (12) "Principal balance" means the cash sale price of
6 the goods or services which are the subject matter of a retail
7 installment 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 contained
19 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
28 determining 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.

4 Sec. 3. The retail seller shall deliver to the retail
5 buyer, or mail to him at his address shown on the retail install-
6 ment contract, a copy of the contract as accepted by the seller.
7 Until the seller does so, the buyer shall be obligated to pay only
8 the cash sale price. Any acknowledgment by the buyer of delivery
9 of a copy of the contract shall appear directly above the buyer's
10 signature.

11 Sec. 4. The retail installment contract shall contain the
12 names of the seller and the buyer, the place of business of the
13 seller, the residence or other address of the buyer as specified
14 by the buyer and a description or identification of the goods
15 sold or to be sold, or services furnished or rendered or to be
16 furnished or rendered. The contract also shall contain the follow-
17 ing items:

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

1 (8) Any other charges;

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

5 (10) A statement that the buyer may at any time pay his
6 total unpaid balance;

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

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

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

1 information required by Sec. 4 and shall constitute the retail
2 installment contract for each purchase. On each succeeding
3 purchase pursuant to such original document, the sales slip,
4 account book or other written statement may at the option of the
5 seller constitute the memorandum required by Sec. 11.

6 Sec. 6. Retail installment contracts negotiated and entered
7 into by mail or telephone without personal solicitation by sales-
8 men or other representatives of the seller and based upon a
9 catalog of the seller, or other printed solicitation of business,
10 if such catalog or other printed solicitation clearly sets forth
11 the cash sale prices and other terms of sales to be made through
12 such medium, may be made as provided in this section. In lieu of
13 delivering a copy of the contract to the retail buyer as provided
14 in Sec. 3, the seller may deliver to the buyer a copy of a memo-
15 randum containing all of the information required by Sec. 4
16 prior to the due date of the first installment payable under the
17 contract.

18 Sec. 7. The seller shall not obtain the signature of the
19 buyer to any contract when it contains blank spaces of items
20 which are essential provisions of the transaction except as
21 provided in Sec. 6; provided, however, if delivery of the goods
22 is not made at the time of the execution of the contract, the
23 identifying numbers or marks of the goods or similar information
24 and the due date of the first installment may be inserted by the
25 seller in the seller's counterpart of the contract after it has
26 been signed by the buyer.

27 Sec. 8. Notwithstanding the provisions of any retail
28 installment contract to the contrary, any buyer may prepay in full
29 the unpaid time balance thereof at any time before its final due

1 date and, if he does so, and if the contract is not in default
2 more than two months, he shall receive a refund credit of the
3 unearned portion of the service charge for such prepayment. The
4 amount of such refund credit shall be computed according to the
5 "rule of 78ths", that is, it shall represent at least as great a
6 proportion of the original service charge over \$25 in case of a
7 retail installment sale of a motor vehicle, or \$10 in case of a
8 retail installment sale of goods other than a motor vehicle, as
9 (1) the sum of the monthly or other periodic unpaid balances
10 under the schedule of payments in the contract beginning as of
11 the date after such prepayment which is the next succeeding
12 monthly or other periodic anniversary date of the due date of the
13 first installment under the contract, or, if the prepayment is
14 prior to the due date of the first installment under the contract,
15 then as of the date after such prepayment which is the next
16 succeeding monthly or other periodic anniversary date of the date
17 of the contract, bears to (2) the sum of all the monthly or other
18 periodic unpaid balances under the schedule of installment payments
19 in the contract. Where the amount of refund credit is less than
20 \$1, no refund credit need be made.

21 Sec. 9. The holder of any retail installment contract may
22 not collect any delinquency or collection charges, other than
23 attorney's fee, court costs and disbursements, unless the contract
24 so provides. In such cases, the charges shall be reasonable, and
25 no attorney's fee may be recovered unless the contract is referred
26 for collection to any attorney not a salaried employee of the
27 holder.

28 The contract may contain other provisions not inconsistent
29 with the purposes of this act.

1 Sec. 10. A buyer shall be given a written receipt for any
2 payment when made in cash. Upon written request of the buyer, the
3 holder of a retail installment contract shall give or forward to
4 the buyer a written statement of the dates and amounts of payments
5 and the total amount unpaid under the contract. Such a statement
6 shall be given the buyer once without charge; if any additional
7 statement is requested by the buyer, it shall be supplied by the
8 holder at a charge not in excess of \$1 for each additional state-
9 ment so supplied.

10 Sec. 11. a. If, in a retail installment transaction, a
11 retail buyer makes any subsequent purchases of goods or services
12 from a retail seller from whom he has previously purchased goods
13 or services under one or more retail installment contracts, and
14 the amounts under such previous contract or contracts have not
15 been fully paid, the subsequent purchases may, at the seller's
16 option, be included in and consolidated with one or more of the
17 previous contracts. All the provisions of this act with respect
18 to retail installment contracts shall be applicable to such sub-
19 sequent purchases except as hereinafter stated in this subsection.
20 In the event of such consolidation, in lieu of the buyer's execut-
21 ing a retail installment contract respecting each subsequent
22 purchase, it shall be sufficient if the buyer shall acknowledge
23 in writing the receipt of a written memorandum of each subsequent
24 purchase. Unless previously furnished in writing to the buyer by
25 the seller, by sales slip, memoranda or otherwise, such memorandum
26 shall set forth with respect to each subsequent purchase items (1
27 to (9) inclusive of Sec. 4, as well as the amount of the time
28 balance owed by the buyer to the seller for the subsequent purchase,
29 clearly denoting the outstanding balance of the previous contract

1 or contracts, and showing the consolidated time balance of the
2 total contract and the revised installments applicable to the
3 consolidated time balance, if any.

4 The seller shall deliver to the buyer a copy of such
5 memorandum prior to the due date of the first installment of
6 such consolidated contract.

7 b. When such subsequent purchases are made, if the seller
8 has retained title or taken a lien or other security interest in
9 any of the goods purchased under any one of the contracts
10 included in the consolidation:

11 (1) The entire amount of all payments made prior to
12 such subsequent purchases shall be deemed to have been applied
13 on the previous purchases;

14 (2) Where the amount of each installment payment is
15 not increased in connection with such subsequent purchase, the
16 subsequent payments shall be deemed to be allocated first to the
17 previous purchases;

18 (3) Where the amount of each installment payment is
19 increased in connection with such subsequent purchase, an amount
20 equal to the original periodic payment shall be allocated first
21 to the previous purchase, and the amount of such increase may,
22 at the seller's option, be deemed to be allocated to the subsequent
23 purchases;

24 (4) The amount of any down payment on the subsequent
25 purchase shall be allocated in its entirety to such subsequent
26 purchase.

27 c. The provisions of b. of this section shall not apply to
28 cases where such previous and subsequent purchases involve equip-
29 ment, parts, or other goods attached or affixed to goods previ-

1 ously purchased and not fully paid, or to services in connection
2 therewith rendered by the seller at the buyer's request.

3 Sec. 12. a. At or prior to the time a retail charge agree-
4 ment is made the seller shall advise the buyer in writing, on
5 the application form or otherwise, or orally that a service charge
6 will be computed on the outstanding balance for each month (which
7 need not be a calendar month) or other regular period agreed upon,
8 the schedule or rate by which the service charge will be computed,
9 and that the buyer may at any time pay his total unpaid balance:
10 Provided, that if this information is given orally, the seller
11 shall, upon approval of the buyer's credit, deliver to the buyer
12 or mail to him at his address, a memorandum setting forth this
13 information.

14 b. The seller or holder of a retail charge agreement shall
15 promptly supply the buyer with a statement as of the end of each
16 monthly period (which need not be a calendar month) or other
17 regular period agreed upon, in which there is any unpaid balance
18 thereunder, which statement shall include the unpaid balance
19 under the retail charge agreement and the amount, if any, of any
20 service charge for such period.

21 Sec. 13. The service charge shall be inclusive of all
22 charges incident to investigating and making the retail install-
23 ment contract or charge agreement and for the privilege of making
24 the installment payments thereunder and no other fee, expense or
25 charge whatsoever shall be taken, received, reserved or contracted
26 therefor.

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

1 (1) The contract or agreement shall state the nature,
2 purpose and amount of such insurance, and in connection with the
3 sale of a motor vehicle, the contract shall state that the
4 insurance coverage ordered under the terms of this contract does
5 or does not include "bodily injury liability", "public liability",
6 and "property damage liability" coverage, as applicable;

7 (2) The contract or agreement shall state whether the
8 insurance is to be procured by the buyer or the seller;

9 (3) The amount, included for such insurance, shall not
10 exceed the premiums chargeable in accordance with the rate fixed
11 for such insurance by the insurer, except where the amount is
12 less than \$1;

13 (4) If the insurance is to be procured by the seller
14 or holder, he shall, within 45 days after delivery of the goods
15 or furnishing of the services under the contract, deliver, mail
16 or cause to be mailed to the buyer, at his address as specified
17 in the contract, a notice thereof or a copy of the policy or
18 policies of insurance or a certificate or certificates of the
19 insurance so procured.

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

24 Sec. 16. No act or agreement of the retail buyer before or
25 at the time of the making of a retail installment contract,
26 retail charge agreement or purchases thereunder shall constitute
27 a valid waiver of any of the provisions of this act or of any
28 remedies granted to the buyer by law.

29 Sec. 17. Any person who shall wilfully and intentionally
CS for SB #233, As Amended -12-

1 violate any provision of this act shall be guilty of a misdemeanor
2 and upon conviction thereof shall be punished by a fine of not
3 more than \$1000 or by imprisonment for not more than six months,
4 or both.

5 Sec. 18. Any seller who enters into any contract or agree-
6 ment which does not comply with the provisions of this act or
7 who violates any provision of this act except as a result of an
8 accidental or bona fide error shall be barred from the recovery
9 of any service charge, official fees, or any delinquency or
10 collection charge under or in connection with the related detail
11 installment contract or purchases under a retail charge agreement;
12 but the seller or holder may nevertheless recover from the
13 buyer an amount equal to the cash price of the goods or services
14 and the cost to the seller or holder of any insurance included
15 in the transaction.

16 Sec. 19. The attorney general may bring an action in the
17 name of the state against any person to restrain and prevent any
18 violation of this act.

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

1 Sec. 21. Any person who violates any order or injunction
2 issued pursuant to this act shall be subject to a fine of not
3 more than \$1000 or imprisonment for not more than six months,
4 or both.

5 Sec. 22. Where the provisions of this Act are in conflict
6 with any provision of the Uniform Commercial Code or the Uniform
7 Conditional Sales Act, such uniform acts shall control.

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

11 Passed by the Senate March 5, 1962

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President of the Senate

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ATTEST:

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Secretary of the Senate

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Passed by the House _____, 1962

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Speaker of the House

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ATTEST:

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Chief Clerk of the House

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