

1 IN THE SENATE

BY THE HOUSE JUDICIARY COMMITTEE

2 HOUSE CS FOR 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 in-  
7 stallment sales of goods and services; to de-  
8 fine 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 re-  
12 fund of the service charge on prepayment of  
13 such contracts; to make violations of this  
14 Act unlawful and to prescribe penalties for  
15 such violations; and providing for an effec-  
16 tive date."

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

18 Section. 1. In this Act, unless the context otherwise re-  
19 quires:

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

HCS for CS for SB #233

-1-

1           (2) "services" means work, labor or services of any  
2 kind when purchased primarily for personal, family or household  
3 use and not for commercial or business use whether or not furnished  
4 in connection with the delivery, installation, servicing, repair  
5 or improvement of goods and includes repairs, alterations or im-  
6 provements upon or in connection with real property, but does not  
7 include the services of professional persons licensed by the  
8 state, nor services for which the price charged is required by law  
9 to be determined or approved by or to be filed, subject to ap-  
10 proval or disapproval, with the United States or any state, or any  
11 department, division, agency, officer or official of either as in  
12 the case of transportation services;

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

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

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

25           (6) "retail installment contract" or "contract" means  
26 a contract, other than a retail charge agreement or an instrument  
27 reflecting a sale made pursuant thereto, entered into or per-  
28 formed in this state for a retail installment transaction; the  
29 term "retail installment contract" may include a chattel mortgage,

1 a conditional sale contract and a contract in the form of a bail-  
2 ment or a lease if the bailee or lessee contracts to pay as  
3 compensation for their use a sum substantially equivalent to or  
4 in excess of the value of the goods sold and if it is agreed that  
5 the bailee or lessee is bound to become, or for no other or  
6 a merely nominal consideration, has the option of becoming the  
7 owner of the goods upon full compliance with the provisions of  
8 the bailment or lease;

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

16 (8) "service charge" however denominated or expressed,  
17 means the amount which is paid or payable for the privilege of  
18 purchasing goods or services to be paid for by the buyer in  
19 installments over a period of time; it does not include the  
20 amount, if any, charged for insurance premiums, delinquency char-  
21 ges, attorney fees, court costs or official fees;

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

1           (10) "official fees" means the amount of the fees pre-  
2 scribed by law for filing, recording or otherwise perfecting, and  
3 releasing or satisfying, a retained title, lien or other security  
4 interest created by a retail installment transaction;

5           (11) "time balance" means the principal balance plus  
6 the service charge;

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

13           (13) "person" means an individual, partnership, joint  
14 venture, corporation, association or any other group, however  
15 organized;

16           (14) "rate" means the percentage which, when multi-  
17 plied times the outstanding balance for each month or other in-  
18 stallment period, yields the amount of the service charge for  
19 such month or period.

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

1 determining the negotiability of said note, unless such provi-  
2 sions are expressly incorporated in said note by reference there-  
3 to. The contract shall be dated, signed by the retail buyer,  
4 and completed as to all essential provisions, except as other-  
5 wise provided in Secs. 6 and 7 hereof.

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  
10 only the cash sale price. Any acknowledgment by the buyer of  
11 delivery of a copy of the contract shall appear directly above  
12 the buyer's signature.

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

20 (1) the cash sale price of each item of goods or  
21 services;

22 (2) the amount of the buyer's down payment, identify-  
23 ing the 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 in-  
26 surance, if a separate identified charge is made therefor,  
27 specifying the type or types of insurance and the terms of  
28 coverage;

29 (5) the aggregate amount of official fees;

1           (6) the principal balance, which is the sum of items  
2 (3), (4), and (5);

3           (7) the amount or rate of the service charge;

4           (8) any other charges;

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

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

22           (b) Additional items may be included to explain the calcu-  
23 lations involved in determining the balance to be paid by the  
24 buyer.

25           Sec. 5. A retail installment contract may be contained in  
26 more than one document, provided that one such document shall be  
27 an original document signed by the retail buyer, stated to be  
28 applicable to purchases of goods or services to be made by the  
29 retail buyer from time to time. In such case such document,

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

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

19       (b) When the contract is received from the retail buyer,  
20 the seller shall prepare a written memorandum containing all of  
21 the information required by Sec. 4 to be included in a retail  
22 installment contract. In lieu of delivering a copy of the con-  
23 tract to the retail buyer as provided in Sec. 3, the seller shall  
24 deliver to the buyer a copy of such memorandum prior to the due  
25 date of the first installment payable under the contract; pro-  
26 vided, that if the catalog or other printed solicitation does  
27 not set forth all of the other terms of sales in addition to the  
28 cash sales prices, such memorandum shall be delivered to the  
29 buyer prior to or at the time of delivery of the goods or

1 services.

2 Sec. 7. The seller shall not obtain the signature of the  
3 buyer to any contract when it contains blank spaces if items  
4 which are essential provisions of the transaction except as pro-  
5 vided in Sec. 6; provided, however, if delivery of the goods is  
6 not made at the time of the execution of the contract, the  
7 identifying numbers or marks of the goods or similar information  
8 and the due date of the first installment may be inserted by the  
9 seller in the seller's counterpart of the contract after it has  
10 been signed by the buyer.

11 Sec. 8. A retail installment contract shall contain a state-  
12 ment that the buyer may at any time pay the total unpaid balance  
13 on the contract. A buyer who prepays in full the unpaid balance  
14 thereof at any time before its final due date shall if the con-  
15 tract is not in default more than two months, receive a refund  
16 credit of the unearned portion of the service charge for such  
17 prepayment. The amount of such refund credit shall be computed  
18 according to the "rule of 78ths," that is, it shall represent at  
19 least as great a proportion of the original service charge over  
20 \$25 in case of a retail installment sale of a motor vehicle, or  
21 \$10 in case of a retail installment sale of goods other than a  
22 motor vehicle, as (1) the sum of the monthly or other periodic un-  
23 paid balances under the schedule of payments in the contract be-  
24 ginning as of the date after such prepayment which is the next  
25 succeeding monthly or other periodic anniversary date of the due  
26 date of the first installment under the contract, or, if the pre-  
27 payment is prior to the due date of the first installment under  
28 the contract, then as of the date after such prepayment which is  
29 the next succeeding monthly or other periodic anniversary date of

1 the date of the contract, bears to (2) the sum of all the monthly  
2 or other periodic unpaid balances under the schedule of install-  
3 ment payments in the contract. Where the amount of refund credit  
4 is less than \$1, no refund credit need be made.

5 Sec. 9. (a) The holder of any retail installment contract  
6 may not collect any delinquency or collection charges, other than  
7 attorney fees, court costs and disbursements, unless the contract  
8 so provides. In such cases, the charges shall be reasonable, and  
9 no attorney fee may be recovered unless the contract is referred  
10 for collection to any attorney not a salaried employee of the  
11 holder.

12 (b) the contract may contain other provisions not inconsist-  
13 ent with the purposes of this Act.

14 Sec. 10. A buyer shall be given a written receipt for any  
15 payment when made in cash. Upon written request of the buyer, the  
16 holder of a retail installment contract shall give or forward to  
17 the buyer a written statement of the dates and amounts of payments  
18 and the total amount unpaid under the contract. Such a statement  
19 shall be given the buyer once without charge; if any additional  
20 statement is requested by the buyer, it shall be supplied by the  
21 holder at a charge not in excess of \$1 for each additional state-  
22 ment so supplied.

23 Sec. 11. (a) If, in a retail installment transaction, a  
24 retail buyer makes any subsequent purchases of goods or services  
25 from a retail seller from whom he has previously purchased goods  
26 or services under one or more retail installment contracts, and  
27 the amounts under such previous contract or contracts have not  
28 been fully paid, the subsequent purchases may, at the seller's  
29 option, be included in and consolidated with one or more of the

1 previous contracts. All the provisions of this Act with respect  
2 to retail installment contracts shall be applicable to such sub-  
3 sequent purchases. In the event of consolidation, the seller  
4 shall furnish to the buyer, prior to the due date of the first in-  
5 stallment of the consolidated contract, the items of information  
6 under Sec. 4 or Sec. 6 and a memorandum setting forth:

7 (1) the outstanding balance of the previous contract  
8 or contracts;

9 (2) the amount of the time balance owed by the buyer  
10 to the seller for the subsequent purchase;

11 (3) the consolidated time balance; and

12 (4) the revised installments applicable to the consoli-  
13 dated time balance.

14 (b) The seller shall deliver to the buyer a copy of such  
15 memorandum prior to the due date of the first installment of such  
16 consolidated contract.

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

21 (1) the entire amount of all payments made prior to  
22 such subsequent purchases shall be deemed to have been applied on  
23 the previous purchases;

24 (2) where the amount of each installment payment is  
25 not increased in connection with such subsequent purchase, the  
26 subsequent payments shall be deemed to be allocated first to the  
27 previous purchases;

28 (3) where the amount of each installment payment is  
29 increased in connection with such subsequent purchase, an amount

1 equal to the original periodic payment shall be allocated first  
2 to the previous purchase, and the amount of such increase may, at  
3 the seller's option, be deemed to be allocated to the subsequent  
4 purchases;

5 (4) the amount of any down payment on the subsequent  
6 purchase shall be allocated in its entirety to such subsequent  
7 purchase.

8 (d) The provisions of (c) of this section shall not apply to  
9 cases where such previous and subsequent purchases involve equip-  
10 ment, parts, or other goods attached or affixed to goods pre-  
11 viously purchased and not fully paid, or to services in connection  
12 therewith rendered by the seller at the buyer's request.

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

24 (b) The seller or holder of a retail charge agreement shall  
25 promptly supply the buyer with a statement as of the end of each  
26 monthly period (which need not be a calendar month) or other  
27 regular period agreed upon, in which there is any unpaid balance  
28 thereunder, which statement shall include the unpaid balance  
29 under the retail charge agreement and the amount, if any, of any

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service charge for such period.

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

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

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

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

(3) the amount, included for such insurance, shall not exceed the premiums chargeable in accordance with the rate fixed for such insurance by the insurer, except where the amount is less than \$1; and if the insurance is cancelled or terminated for any reason, the refund for unearned insurance premiums received by the seller or his assignee, together with the unearned portion of the service charge applicable thereto, shall be credited to the final maturing installments of the retail installment contract or retail charge agreement, and any balance of the unearned insurance premiums remaining thereafter shall be refunded to the buyer; provided that no cash refund is required where the amount

1 is less than \$1;

2 (4) if the insurance is to be procured by the seller  
3 or holder, he shall, within 45 days after delivery of the goods  
4 or furnishing of the services under the contract, deliver, mail  
5 or cause to be mailed to the buyer, at his address as specified  
6 in the contract, a notice thereof or a copy of the policy or  
7 policies of insurance or a certificate or certificates of the  
8 insurance so procured.

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

13 Sec. 16. No act or agreement of the retail buyer before or  
14 at the time of the making of a retail installment contract, re-  
15 tail charge agreement or purchases thereunder shall constitute a  
16 valid waiver of any of the provisions of this Act or of any reme-  
17 dies granted to the buyer by law.

18 Sec. 17. Any person who shall wilfully and intentionally  
19 violate any provision of this Act shall be guilty of a misdemeanor  
20 and upon conviction thereof shall be punished by a fine of not  
21 more than \$1,000 or by imprisonment for not more than six months,  
22 or both.

23 Sec. 18. Any seller who enters into any contract or agree-  
24 ment which does not comply with the provisions of this Act or  
25 who violates any provision of this Act except as a result of an  
26 accidental or bona fide error shall be barred from the recovery  
27 of any service charge, official fees, or any delinquency or  
28 collection charge under or in connection with the related retail  
29 installment contract or purchases under a retail charge agreement;

1 but the seller or holder may nevertheless recover from the buyer  
2 an amount equal to the cash price of the goods or services and  
3 the cost to the seller or holder of any insurance included in the  
4 transaction.

5 Sec. 19. The attorney general may bring an action in the  
6 name of the state against any person to restrain and prevent any  
7 violation of this Act.

8 Sec. 20. In the enforcement of this Act, the attorney  
9 general may accept an assurance of discontinuance of any act or  
10 practice deemed in violation of this Act, from any person engag-  
11 ing in, or who has engaged in, such act or practice. Any such  
12 assurance shall be in writing and be filed with the subject to  
13 the approval of the superior court of the district in which the  
14 alleged violator resides or has his principal place of business.  
15 Failure to perform the terms of any such assurance shall consti-  
16 tute prima facie proof of a violation of this Act for the purpose  
17 of securing any injunction as provided in Sec. 19 and for the  
18 purpose of Sec. 18 hereof.

19 Sec. 21. Any person who violates any order or injunction  
20 issued pursuant to this Act shall be subject to a fine of not more  
21 than \$1,000, or imprisonment for not more than six months, or both.

22 Sec. 22. The provisions of this Act shall not invalidate or  
23 make unlawful retail installment contracts or retail charge agree-  
24 ments executed prior to the effective date of this Act.

25 Sec. 23. This Act may be cited as the "Alaska Retail In-  
26 stallment Sales Act."

27 Sec. 24. This Act takes effect January 1, 1963.  
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