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1 IN THE HOUSE

2 HOUSE BILL NO. 224

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to regulation of certain credit
7 transactions."

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

9 * Section 1. AS 45 is amended by adding a new chapter to read:

10 CHAPTER 12. REGULATION OF CERTAIN CREDIT TRANSACTIONS.

11 Sec. 45.12.010. APPLICATION OF CHAPTER. Except as otherwise pro-
12 vided in sec. 20 of this chapter, this chapter applies to any credit
13 transaction in which

14 (1) the debt incurred or to be incurred arises from a loan
15 of money or the rewriting or refinancing of a loan or loans;

16 (2) a finance charge is or may be payable;

17 (3) the principal balance of the debt at the inception of
18 the transaction is \$25,000 or less;

19 (4) the creditor is in the business or makes a practice of
20 extending credit; and

21 (5) the debtor is a natural person and not an organization.

22 Sec. 45.12.020. NONAPPLICATION OF CHAPTER. The provisions of
23 this chapter shall not apply to credit transactions with respect to
24 which the debt

25 (1) arises out of a transaction which is subject to the
26 provisions of AS 45.10; or

27 (2) is secured by collateral consisting of accounts receiv-
28 able, business equipment or inventory and the value of the collateral
29 is equal to a substantial part of the amount of the debt secured.

1 **Sec. 45.12.030. INFORMATION TO BE GIVEN TO CREDITOR.** Unless the
2 context otherwise requires, information required to be given to the
3 debtor shall be in writing. In a loan transaction in which there is
4 more than one debtor, the obligation of the creditor to furnish informa-
5 tion to the debtor shall be satisfied if the information is supplied
6 to only one of the debtors. The creditor may give the debtor the in-
7 formation required by this chapter in a sequence other than that stated.
8 If information to be given under sec. 40 of this chapter is not avail-
9 able to the creditor at the time of the consummation of the transaction,
10 the creditor shall give to the debtor

11 (1) prior to or as part of the consummation of the transac-
12 tion, the information that is available and a reasonable estimate of
13 the per cent per annum rate disclosure and either

14 (A) a reasonable estimate of the dollar amount of the
15 finance charge or

16 (B) a simple statement of the method by which the
17 amount of the finance charge will be calculated and a reasonable
18 estimate of the amount of the finance charge produced by that
19 method on typical principal balances; and

20 (2) on or before the due date of the first instalment, all
21 of such information.

22 **Sec. 45.12.040. ITEMS OF INFORMATION.** (a) In a closed end credit
23 transaction in which a loan is made or is to be made, the creditor
24 shall furnish to the debtor prior to or as a part of the consummation
25 of the transaction, a clear statement in writing setting forth, to
26 the extent applicable and in accordance with such additional rules and
27 regulations as may be prescribed by the commissioner, the following
28 information

29 (1) the base amount;

1 (2) the aggregate charge to the debtor for insurance with a
2 description of the type or types of coverage in simple terms;

3 (3) the amount of official fees;

4 (4) the amount of other permitted charges, if any, added
5 to or included in the principal of the debt with an itemization of
6 each;

7 (5) the principal balance owed which is the sum of (1), (2),
8 (3) and (4) of this subsection.

9 (6) the total finance charge;

10 (7) the percentage that the finance charge bears to the
11 principal balance, computed in accordance with the annual finance
12 charge formula or a formula approved by the commissioner upon applica-
13 tion of a creditor;

14 (8) the total loan balance owed by the debtor to the creditor
15 which is the sum of (5) and (6) of this subsection, the number and amount
16 of weekly, monthly or other instalment payments and the time of each
17 payment, in which information the amount and times of instalment pay-
18 ments need not be separately stated if amounts of and time between
19 payments are substantially equal and the amount of the scheduled final
20 instalment payment may be stated as the remaining unpaid balance.

21 (b) The printed material explaining the per cent per annum rate
22 disclosure required to be given to the debtor by the provisions of (7)
23 of this subsection shall be printed in 12 point boldface type.

24 (c) In a closed end credit transaction in which the due date of
25 all or part of one or more instalments is deferred or extended or in
26 which the unpaid instalments are restated or rescheduled to reduce or
27 rearrange the instalment payments, the creditor shall give the debtor
28 the following information at or before the time the extension or de-
29 ferment is made:

- 1 (1) the amount of the deferment or extension charge, if any;
- 2 (2) a description of the additional permitted charges, if
- 3 any, incident thereto and an itemization of such charges; and
- 4 (3) the revised instalment payment dates, if any, and the
- 5 revised amount, if any, of each instalment.

6 **Sec. 45.12.050. REVOLVING CREDIT TRANSACTION INVOLVING LOAN. (a)**

7 In any revolving credit transaction in which a loan is made or is to
8 be made, if during a billing cycle debt is incurred, payment is made by
9 the debtor, or liability to pay a finance or other charge is incurred,
10 the creditor shall furnish to the debtor within a reasonable time
11 after the end of the billing cycle and in accordance with such addition-
12 al rules and regulations as may be prescribed by the commissioner, the
13 following information:

- 14 (1) the outstanding balance at the beginning of the billing
- 15 cycle;
- 16 (2) entries during the billing cycle, exclusive of finance
- 17 charge or other charges;
- 18 (3) a brief description of the transactions giving rise to
- 19 accounting entries in a statement or in accompanying sales slips,
- 20 cancelled checks or the like;
- 21 (4) the amount of finance charge and other charges debited
- 22 during the billing cycle;
- 23 (5) the outstanding balance at the end of the billing cycle;
- 24 and
- 25 (6) the amount which must currently be paid by the debtor
- 26 and when the amount must be paid in order to avoid delinquency.

27 (b) In a revolving credit transaction involving a loan of money
28 under this chapter, there shall appear in 12 point boldface type on
29 the agreement and every statement of account a recitation of the simple

1 interest per annum rate that approximates most closely any finance
2 charge rate or rates imposed. The percentage rate shall be computed
3 either by multiplying the periodic rate of charge by the number of pay-
4 ment periods in a year or by a formula approved by the commissioner upon
5 application by a creditor. In the case of any agreement in existence
6 on the effective date of this Act the per cent per annum rate disclosure
7 required as to agreements by this section may be made in a separate
8 notice mailed or delivered to the debtor.

9 Sec. 45.12.060. DISCLOSURE OF THE FINANCE CHARGE. If a credit
10 transaction subject to this chapter is neither a closed end nor a
11 revolving credit transaction, the creditor shall furnish to the debtor
12 prior to or as a part of the consummation of the transaction a dis-
13 closure of the finance charge rate in terms of a simple annual interest
14 rate. If the creditor states or calculates the finance charge by a
15 method other than a simple annual interest rate, the simple annual
16 interest rate shall be computed either in accordance with the annual
17 finance charge formula, or by multiplying the periodic rate of charge
18 by the number of payment periods in a year, or by a formula approved
19 by the commissioner upon application by a creditor.

20 Sec. 45.12.070. STATEMENTS OF CREDITOR. No creditor shall in any
21 advertisement, publication, display, broadcast, solicitation or repre-
22 sentation, make any false, misleading or deceptive statement concerning
23 any finance, delinquency, or extension charge, or rate, or the security
24 interest, collateral, terms, or conditions upon which it will make any
25 credit agreement or finance the same. Any advertisement, publication,
26 display, solicitation or representation containing a statement of a
27 rate or rates of a finance charge, with respect to transactions subject
28 to sec. 60 of this chapter as well as closed end and revolving credits,
29 shall be expressed in terms of a simple annual interest rate. The

1 simple annual interest rate shall be computed (1) in the case of a
2 closed end credit, in accordance with the annual finance charge formula;
3 (2) in the case of a revolving credit, by multiplying the periodic
4 rate of charge by the number of payment periods in a year; or (3) in
5 either case, by a formula approved by the commissioner upon application
6 by a creditor.

7 Sec. 45.12.080. REGULATIONS. The commissioner may prescribe from
8 time to time such rules and regulations as may be necessary or proper
9 in carrying out the provisions of this chapter, and may provide that
10 any violations thereof shall be punished by such fines, not to exceed
11 \$500, as he may determine. In prescribing rules and regulations with
12 respect to any particular type of credit transaction, the commissioner
13 shall consider whether in such transactions compliance with the dis-
14 closure requirements of this chapter is being achieved under any other
15 law.

16 Sec. 45.12.090. FAILURE TO DISCLOSE INFORMATION. (a) The failure
17 of a creditor to disclose the information required by this chapter shall
18 bar his recovery of any finance, delinquency, collection or refinancing
19 charge, but shall not bar his right to recover from the debtor an
20 amount equal to the unpaid principal balance or to realize upon the
21 security and recover from the debtor an amount equal to the unpaid
22 principal balance less the net proceeds of any disposition of such
23 security.

24 (b) The provisions of this section shall not apply to any viola-
25 tion which any creditor shall establish by a preponderance of the
26 evidence to be the result of accident or bona fide error in (1) any
27 mathematical computation, (2) the layout or format, size of type or
28 order of clause contained in any credit agreement or (3) the failure
29 to furnish to the debtor any statement required by this chapter.

1 **Sec. 45.12.100. PENALTY.** Whoever violates any provision of this
2 chapter shall be punished by a fine of not more than \$500, or by im-
3 prisonment for not more than six months, or both.

4 **Sec. 45.12.110. DEFINITIONS.** In this chapter, unless the context
5 otherwise requires

6 (1) "annual finance charge formula" means the method for
7 converting a dollar finance charge into a percentage rate. The formula
8 assumes that

9 (A) all scheduled instalments of a credit transaction
10 are equal, payable at equal intervals, and fall on due dates which
11 are the same day of each month or other payment period as that on
12 which the agreement is entered into and

13 (B) the debtor makes all payments at the times and in
14 the amounts scheduled; based upon these assumptions, the "annual
15 finance charge formula" is

$$16 \qquad \qquad \qquad 2 \text{ PC}$$
$$17 \qquad R = \frac{\qquad \qquad \qquad}{\qquad \qquad \qquad}$$
$$18 \qquad \qquad \qquad A (N + 1)$$

19 R equals the percentage rate; P equals the number of payment
20 periods in one year (always 12 if monthly payments, four if
21 quarterly payments, and 52 if weekly payments); C equals the
22 finance charge; A equals the principal balance to be paid by the
23 debtor; N equals the number of instalments; except as otherwise
24 provided, a variance tolerance of one per cent per annum in the
25 percentage rate is authorized in computations under this formula;

26 (2) "base amount" means the amount in a credit transaction
27 in dollars of which the debtor will have the actual use, or which will
28 be or is paid to the debtor, or to another person on behalf of the
29 debtor or from which additional costs, charges and fees are computed;

1 (3) "closed end credit" means a credit for a specified amount
2 which

3 (A) constitutes a combination of the base amount, per-
4 mitted charges which are charged to the debtor and the precomputed
5 finance charge;

6 (B) is payable in instalments; and

7 (C) the term does not include home mortgage or other
8 credits in which the finance charge is not precomputed and stated
9 as a dollar amount but is determined by the periodic application
10 of a rate of finance charge to outstanding balances of the credit;

11 (4) "commissioner" means the commissioner of commerce;

12 (5) "credit transaction" means an extension of credit or a
13 loan evidenced by an agreement, promissory note or other instrument,
14 whether secured or not, under the terms of which a debtor undertakes
15 or agrees to pay the debt at a stated time or over a period of time and
16 for which the debtor pays or agrees to pay a finance, carrying or other
17 charge;

18 (6) "creditor" means the person who extends credit in a credit
19 transaction either as principal or as agent and who requires, as an
20 incident to the extension of credit, the payment of a finance charge;

21 (7) "debtor" means a person to whom or on behalf of whom
22 credit is primarily granted or who is primarily obligated to pay debt;

23 (8) "finance charge" means a charge made by a creditor,
24 other than permitted charges, paid or payable directly or indirectly
25 by the debtor to or for the account of the creditor and incurred solely
26 because the transaction is a credit transaction and includes

27 (A) all charges which are not permitted charges and
28 which are designed primarily to increase the gross yield to a
29 creditor in a credit transaction;

1 (B) charges for investigating the credit or collateral
2 and for commissions or brokerage for obtaining the credit paid or
3 payable by the debtor irrespective of the person to whom they are
4 paid or payable; and

5 (C) charges for the cost of a credit transaction includ-
6 ing interest, discount, add-on or however such charges may be
7 designated;

8 (9) "official fees" means the fees and charges prescribed
9 by law for registering or for filing, recording, or otherwise perfect-
10 ing or releasing or satisfying a security interest in property related
11 to a credit transaction which will actually be paid to public officials;

12 (10) "organisation" means a corporation, business trust,
13 estate, trust, partnership or association or any other legal entity but
14 not a natural person;

15 (11) "per cent per annum rate disclosure" means the dis-
16 closure required or made under sec. 40(a)(7) of this chapter, and under
17 other provisions of this chapter;

18 (12) "permitted charges" means charges for services, expenses
19 or the like related to a credit transaction, not in excess of amounts
20 permitted by applicable law, if any, which are requested, agreed to or
21 approved by the debtor

22 (A) for official fees or taxes;

23 (B) for insurance;

24 (C) for delinquency or collection or which otherwise
25 arise by reason of action or default of the debtor;

26 (D) in home mortgage credits, customary brokers' fees
27 and reasonable charges incurred for appraisal of the property,
28 examination of title and the marketability of security, drafting
29 of security instruments or documents and other customary closing

costs; or

(E) which are of value to the debtor separate and apart from the granting of credit, are reasonable in relation to benefits to the debtor and constitute a type of charge or actual charges which have been filed with the commissioner and as to which the commissioner has failed to notify the creditor in writing of objection within 60 days after the filing; if paid, incurred, or financed by the creditor and not otherwise charged to or paid by the debtor, permitted charges may be added to or included in the principal of the debt;

(13) "principal balance" means the sum of the base amount and permitted charges, if any, charged to the debtor;

(14) "revolving credit" means credit granted pursuant to, an agreement related to a loan of money in which the debtor incurs from time to time debt which may be payable in instalments and in which the debts are debited to a running account;

(15) "total loan balance" means the sum of the base amount, permitted charges charged to the debtor, if any, and the finance charge.

Sec. 45.12.120. **SHORT TITLE.** This Act may be cited as the Truth in Lending Act.