

Introduced: 1/25/68
Referred: Judiciary and
Commerce

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FRITZ

1 IN THE HOUSE

2 HOUSE BILL NO. 419

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTH LEGISLATURE - SECOND SESSION

5 A BILL

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

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

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

9 CHAPTER 15. REGULATION OF CREDIT TRANSACTIONS.

10 Sec. 45.15.010. DISCLOSURE OF FINANCE CHARGES. A creditor shall
11 furnish to every person to whom credit is extended and upon whom a
12 finance charge is or may be imposed the information required by this
13 chapter, in accordance with regulations prescribed by the department.

14 Sec. 45.15.020. CONSUMER CREDIT SALES. (a) For a consumer credit
15 sale other than a sale under an open-end credit plan, the creditor shall
16 disclose, to the extent applicable, the following information:

17 (1) the cash price of the property or service purchased;

18 (2) the sum of the amounts credited as down payment, including
19 a trade-in;

20 (3) the difference between the amounts in (a) (1) and (2) of
21 this section;

22 (4) all other charges, individually itemized, which are
23 included in the amount of the credit extended but which are not part of
24 the finance charge;

25 (5) the total amount to be financed which is the sum of the
26 amounts disclosed under (a) (3) and (4) of this section;

27 (6) the amount of the finance charge, which may be designated
28 as a time-price differential or as a similar term to the extent
29 applicable;

1 (7) the finance charge expressed as an annual percentage
2 rate, unless the finance charge does not exceed \$10, and in ascertaining
3 the applicability of this paragraph, a creditor may not divide a con-
4 sumer credit sale into two or more sales to avoid the disclosure of an
5 annual percentage rate under this paragraph;

6 (8) the number, amount, and due dates or periods of payments
7 scheduled to repay the indebtedness;

8 (9) the default, delinquency, or similar charges payable in
9 the event of late payments.

10 (b) Except as otherwise provided, the disclosure required by this
11 section shall be made before the credit is extended. Compliance may be
12 attained by disclosing this information in the contract or other evidence
13 of indebtedness to be signed by the obligor. Where a seller receives a
14 purchase order by mail or telephone without personal solicitation by a
15 representative of the seller and the cash price and deferred payment
16 price and the terms of financing, including the annual percentage rate
17 are set out in the seller's catalog or other printed material distri-
18 buted to the public, the disclosure shall be made on or before the date
19 the first payment is due.

20 Sec. 45.15.030. EXTENSION OF CREDIT OTHER THAN CONSUMER CREDIT
21 SALES OR TRANSACTIONS UNDER OPEN-END CREDIT PLAN. (a) A creditor
22 making a loan or otherwise extending credit, other than a consumer
23 credit sale or a transaction under an open-end credit plan, shall dis-
24 close, to the extent applicable, the following information:

25 (1) the amount of credit of which the obligor will have the
26 actual use, or which is or will be paid to him or for his account or
27 to another person on his behalf;

28 (2) all charges, individually itemized, which are included
29 in the amount of the credit extended but which are not part of the

1 finance charge;

2 (3) the total amount to be financed which is the sum of
3 (a) (1) and (2) of this section;

4 (4) the amount of the finance charge;

5 (5) the finance charge expressed as an annual percentage
6 rate, unless the finance charge does not exceed \$10, and in ascertain-
7 ing the applicability of this paragraph, a creditor may not divide a
8 consumer credit sale into two or more sales to avoid the disclosure of
9 an annual percentage rate under this paragraph;

10 (6) the number, amount, and due dates or periods of payment
11 scheduled to repay the indebtedness;

12 (7) the default, delinquency, or similar charges payable in
13 the event of late payments.

14 (b) Except as otherwise provided, the disclosure required by this
15 section shall be made before the credit is extended. Compliance may be
16 attained by disclosing the information in the note or other evidence of
17 indebtedness to be signed by the obligor. Where a creditor receives a
18 request for an extension of credit by mail or telephone without personal
19 solicitation by a representative of the creditor and the terms of
20 financing, including the annual percentage rate for representative
21 amounts of credit, are set out in the creditor's printed material dis-
22 tributed to the public, or in the contract of loan or other printed
23 material delivered to the obligor, the disclosure shall be made on or
24 before the date the first payment is due.

25 Sec. 45.15.040. OPEN-END CREDIT PLANS. (a) Before opening an
26 account under an open-end credit plan, the creditor shall, to the
27 extent applicable, disclose to the person to whom credit is to be
28 extended the following information:

29 (1) the conditions under which a finance charge may be

1 imposed, including the time period, if any, within which the credit
2 extended may be repaid without incurring a finance charge;

3 (2) the method of determining the balance upon which a
4 finance charge will be imposed;

5 (3) the method of determining the amount of the finance
6 charge including any minimum or fixed amount imposed as a finance
7 charge, the annual percentage rate of the finance charge to be imposed,
8 if any, and, in the case of an installment open-end credit plan, the
9 equivalent annual percentage rate; and

10 (4) the conditions under which any other charges may be
11 imposed, and the method by which they will be determined.

12 (b) For each billing cycle, at the end of which there is an out-
13 standing balance under the account, the creditor shall disclose, to
14 the extent applicable, the following information:

15 (1) the outstanding balance in the account at the beginning
16 of the billing period;

17 (2) the amount and date of each extension of credit during
18 the period and, if a purchase was involved, a brief identification,
19 unless previously furnished, of the goods or services purchased;

20 (3) the total amount credited to the account during the
21 period;

22 (4) the amount of the finance charge added to the account
23 during the period, itemized to show the amount, if any, due to the
24 application of a percentage rate and the amount, if any, imposed as a
25 minimum or fixed charge;

26 (5) the finance charge expressed as an annual percentage
27 rate;

28 (6) the balance on which the finance charge was computed and
29 a statement of how the balance was determined; the balance is determined

1 without first deducting all payments during the period, that fact and
2 the amount of the payments shall also be disclosed;

3 (7) the outstanding balance in the account at the end of
4 the period;

5 (8) the date by which, or the period within which, payment
6 must be made to avoid additional finance charges.

7 (c) If a creditor adds to this billing under an open-end credit
8 plan one or more installments of other indebtedness from the same
9 obligor, the creditor is not required to disclose under this section
10 information which has been disclosed previously in compliance with
11 secs. 20 or 30 of this chapter.

12 Sec. 45.15.050. ACKNOWLEDGMENT OF RECEIPT OF REQUIRED STATEMENT
13 Written acknowledgment of receipt by a person to whom a statement is
14 required to be given under this section shall be conclusive proof of
15 its delivery and, unless the violation is apparent on the face of the
16 statement, of compliance with this section in an action or proceeding
17 by or against an assignee of the original creditor without knowledge
18 to the contrary by the assignee when he acquires the obligation. This
19 acknowledgment does not affect the rights of the obligor in an action
20 against the original creditor.

21 Sec. 45.15.060. METHOD OF DISCLOSURE. If there is more than one
22 obligor, a creditor may furnish a statement of required information
23 to only one of them. Required information need not be given in the
24 sequence or order set out in this section. Additional information or
25 explanations may be included. So long as it conveys substantially the
26 same meaning, a creditor may use language or terminology in a required
27 statement different from that prescribed by this chapter.

28 Sec. 45.15.070. INACCURATE DISCLOSURE. If information disclosed
29 in accordance with this section and regulations prescribed by the

1 department is subsequently rendered inaccurate as the result of a
2 prepayment, late payment, adjustment, or amendment of the credit
3 agreement through mutual consent of the parties or as permitted by law,
4 or as the result of an act or occurrence subsequent to the delivery of
5 the required disclosures, the resulting inaccuracy does not constitute
6 a violation of this chapter.

7 Sec. 45.15.080. ADVERTISEMENT OF CREDIT EXTENSION OTHER THAN
8 OPEN-END CREDIT PLANS. (a) If a creditor, in order to aid, promote,
9 or assist directly or indirectly, a consumer credit sale, loan, or
10 other extension of credit subject to the provisions of this chapter,
11 other than an open-end credit plan, states or represents in the adver-
12 tisement

13 (1) the rate of the finance charge, the advertisement shall
14 state the rate of the finance charge expressed as an annual percentage
15 rate; or

16 (2) the amount of an installment payment or the dollar amount
17 of finance charge, the advertisement shall state:

18 (A) the cash price or the amount of the loan, as
19 applicable;

20 (B) the downpayment, if any;

21 (C) the number, amount, and due dates or period of
22 payments scheduled to repay the indebtedness if the credit were
23 extended;

24 (D) the rate of the finance charge expressed as an
25 annual percentage rate.

26 (b) This section does not apply to advertisements of residential
27 real estate except to the extent that the department may by regulation
28 require.

29 Sec. 45.15.090. ADVERTISING OF OPEN-END CREDIT PLAN. No creditor,

1 in order to aid, promote, or assist, directly or indirectly, the exten-
2 sion of credit under an open-end credit plan may state or represent in an
3 advertisement the specific terms of that plan unless the advertisement
4 clearly and conspicuously sets out the following information:

5 (1) the conditions under which a finance charge may be imposed,
6 including the time period, if any, within which a credit extended may be
7 repaid without incurring a finance charge;

8 (2) the method of determining the balance upon which a finance
9 charge will be imposed;

10 (3) the method of determining the amount of the finance charge,
11 including the minimum or fixed amount imposed as a finance charge, and
12 the annual percentage rate;

13 (4) the conditions under which any other charges may be
14 imposed, and the method by which they will be determined.

15 Sec. 45.15.100. PROHIBITED ADVERTISING. No creditor may state or
16 represent in an advertisement

17 (1) that a specified periodic credit amount or installment
18 amount can be arranged, unless the creditor usually and customarily
19 arranges credit payments or installments for that period and in that
20 amount; or

21 (2) that a specified down payment is required, unless the
22 creditor usually and customarily arranges down payments in that amount.

23 Sec. 45.15.110. APPLICATION OF ADVERTISEMENT RESTRICTIONS. (a)
24 For the purposes of secs. 80, 90, and 100 of this chapter, a catalog or
25 other multiple-page advertisement shall be considered a single advertise-
26 ment if the catalog or other multiple-page advertisement clearly and con-
27 spicuously displays a credit terms table on which the information required
28 to be stated by secs. 80, 90, and 100 of this chapter is clearly set out.

29 (b) The prohibitions and requirements of secs. 80, 90, 100 of this

1 chapter and (a) of this section apply only to a creditor or his agent
2 who directly or indirectly causes the publication or dissemination of an
3 advertisement and not to the owner, employees, or distributors of the
4 medium in which the advertisement appears or through which it is dis-
5 seminated.

6 Sec. 45.15.120. EXCEPTIONS. The provisions of this chapter do not
7 apply to the following transactions:

8 (1) credit transactions involving extensions of credit for
9 business or commercial purposes, or to governments or governmental
10 agencies or instrumentalities, or to organizations;

11 (2) credit transactions, other than real property transactions,
12 in which the total amount to be financed exceeds \$25,000.

13 Sec. 45.15.130. REGULATIONS. (a) The department of commerce shall
14 prescribe regulations to carry out secs. 10 - 120 of this chapter,
15 including provisions which

16 (1) describe the methods which may be used in determining
17 annual percentage rates under secs. 10 - 120 of this chapter, including,
18 but not limited to, the use of rules, charts, tables, or devices by
19 creditors to convert to an annual percentage rate any add-on, discount, or
20 other method of computing a finance charge;

21 (2) prescribe procedures to insure that the information
22 required to be disclosed under secs. 10 - 120 of this chapter set out
23 clearly and conspicuously;

24 (3) prescribe reasonable tolerances of accuracy with respect
25 to disclosing information under secs. 10 - 120 of this chapter.

26 (b) In prescribing regulations with respect to reasonable toler-
27 ances of accuracy as required by (a)(3), of this section, the department
28 shall observe the following limitations:

29 (1) The annual percentage rate may be rounded to the nearest

1 quarter of one percent for credit transactions payable in substantially
2 equal installments when a creditor determines the total finance charge
3 on the basis of a single add-on, discount, periodic, or other rate and
4 these rates are converted into an annual percentage rate under procedures
5 prescribed by the department.

6 (2) The use of rate tables or charts may be authorized in
7 cases where the total finance charge is determined in a manner other than
8 that specified in (1) of this subsection. These tables or charts may
9 provide for the disclosure of annual percentage rates which vary up to
10 eight percent of the rate as defined by sec. 170(1) of this chapter.
11 However, a creditor who wilfully and knowingly uses these tables or
12 charts in a manner so as to consistently understate the annual percentage
13 rate, as defined by sec. 170(1) of this chapter is liable for criminal
14 penalties under sec. 160 of this chapter.

15 (3) In the case of creditors determining the annual percentage
16 rate in a manner other than as described in (1) or (2) of this subsection,
17 the department may authorize other reasonable tolerances.

18 (4) In order to simplify compliance where irregular payments
19 are involved, the department may authorize tolerances greater than those
20 specified in (b) (2) of this section.

21 **Sec. 45.15.140. DISCRETION OF DEPARTMENT IN PROMULGATING REGULA-**
22 **TIONS.** A regulation prescribed under this section and sec. 130 of this
23 chapter may contain classifications and differentiations and may provide
24 for adjustments and exceptions for a class of transactions as in the
25 judgment of the department are necessary or proper to effectuate the
26 purposes of this chapter or to prevent circumvention or evasion of, or to
27 facilitate compliance by creditors with, this chapter or a regulation
28 issued under it.

29 **Sec. 45.15.150. FAILURE TO DISCLOSE INFORMATION. (a) A creditor**

1 who, in connection with a credit transaction, knowingly fails, in viola-
2 tion of secs. 10 - 70, 110 and 120 of this chapter or a regulation
3 issued under those sections, to disclose information to a person to whom
4 the information is required to be given is liable to that person in the
5 amount of \$100, or in an amount equal to twice the finance charge
6 required by the creditor in connection with the transaction, whichever
7 is greater, except that liability may not exceed \$1,000 on any credit
8 transaction.

9 (b) In an action brought under this section in which it is shown
10 that the creditor disclosed a percentage rate or amount less than that
11 required to be disclosed by secs. 10 - 70, 110 and 120 of this chapter or
12 regulations prescribed by the department, after taking into account per-
13 missible tolerances, or failed to disclose other required information,
14 there shall be a rebuttable presumption that the violation was made
15 knowingly. The presumption is rebutted if the creditor shows by a pre-
16 ponderance of evidence that the violation was not intentional and resul-
17 ted from a bona fide error, notwithstanding the maintenance of procedure
18 reasonably adapted to avoid the error. A creditor has no liability unde-
19 this section if within 15 days after discovering the error, and before
20 the institution of an action or the receipt of written notice of the
21 error, the creditor notifies the person concerned of the error and makes
22 whatever adjustments in the appropriate account as are necessary to
23 insure that the person will not be required to pay a finance charge in
24 excess of the amount of percentage rate disclosed.

25 (c) An action under this section may be brought in the superior
26 court within one year from the date of the occurrence of the violation.
27 In an action in which a person is entitled to recover a penalty as pre-
28 scribed in (a) of this section, the defendant is also liable for reason-
29 able attorney fees and court costs as determined by the court.

1 Sec. 45.15.160. PENALTY. (a) A person who knowingly and wil-
2 fully gives false or inaccurate information or fails to provide informa-
3 tion required to be disclosed under this chapter or a regulation issued
4 under it, or who otherwise knowingly and wilfully violates a provision of
5 this chapter or a regulation issued under it, is punishable by a fine of
6 not more than \$500, or by imprisonment for not more than one year, or by
7 both.

8 (b) No punishment or penalty provided for a violation of this
9 chapter or a regulation issued under it applies to the state, or an
10 agency or a political subdivision of the state, or to any other state,
11 or agency or political subdivision of the state, or to any other state,
12 agency or political subdivision of that state.

13 (c) No person is subject to punishment or penalty under this
14 chapter solely as the result of the disclosure of a finance charge or
15 percentage which is greater than the amount of the charge or percentage
16 required to be disclosed by that person under this chapter, or under
17 regulations prescribed by the department.

18 Sec. 45.15.170. DEFINITIONS. In this chapter, unless the context
19 otherwise requires;

20 (1) "annual percentage rate" means, for the purposes of
21 secs. 20, 30, and 40 of this chapter, the nominal annual rate determined
22 by the actuarial method (United States rule);

23 (A) The department may prescribe methods other than the
24 actuarial method, if the department determines that the use of
25 other methods will materially simplify computation while retaining
26 reasonable accuracy as compared with the rate determined under the
27 actuarial method;

28 (B) For the purposes of sec. 40 of this chapter, the
29 term "equivalent annual percentage rate" means the rate or rates

1 computed by multiplying the rate or rates used to compute the
2 finance charge for any period by the number of periods in a year;

3 (C) Where a creditor imposes the same finance charge
4 for all balances within a specified range, the annual percentage
5 rate or equivalent annual percentage rate shall be computed on the
6 median balance within the range for the purposes of secs. 20, 30,
7 and 40 of this chapter;

8 (2) "consumer credit sale" means a transaction in which
9 credit is granted by a seller in connection with the sale of goods or
10 services, if the seller regularly engages in credit transactions as a
11 seller, and the goods or services are purchased primarily for a personal,
12 family, household, or agricultural purpose. The term does not include a
13 contract in the form of a bailment or lease unless the obligor contracts
14 to pay as compensation for use a sum substantially equivalent to or in
15 excess of the value of the goods or services involved, and unless it is
16 agreed that the obligor is bound to become, or for no other or a merely
17 nominal consideration has the option of becoming, the owner of the goods
18 upon full compliance with the provisions of the contract;

19 (3) "credit" means the right granted by a creditor to a
20 person other than an organization to defer payment of debt or to incur
21 debt and defer its payment, where the debt is contracted by the obligor
22 primarily for personal, family, household, or agricultural purposes.
23 The term does not include a contract in the form of a bailment or lease
24 except to the extent specifically included within the term "consumer
25 credit sale";

26 (4) "creditor: means an individual, or a partnership, cor-
27 poration, association, cooperative, or other entity, including any
28 government or political subdivision or agency or instrumentality of a
29 government or political subdivision, if the individual or entity

1 regularly engages in credit transactions, whether in connection with
2 the sale of goods and services or otherwise, and extends credit for
3 which the payment of a finance charge is required;

4 (5) "department" means the department of commerce;

5 (6) "finance charge" means the sum of all the mandatory
6 charges imposed directly or indirectly by a creditor, and payable
7 directly or indirectly by an obligor, as an incident to the extension
8 of credit, including loan fees, service and carrying charges, discounts
9 interest, time price differentials, investigator fees, costs of any
10 guarantee or insurance protecting the creditor against the obligor's
11 default or other credit loss, and any amount payable under a point,
12 discount, or other system of additional charges, except that

13 (A) if itemized and disclosed under secs. 10 - 120 of
14 this chapter, the term "finance charge" does not include amounts
15 collected by a creditor, or included in the credit, for

16 (1) fees and charges prescribed by law which
17 actually are or will be paid to public officials for deter-
18 mining the existence of or for perfecting or releasing or
19 satisfying any security related to a credit transaction, or
20 the premium, not in excess of those fees and charges, payable
21 for insurance in lieu of perfecting the security; or

22 (11) taxes; and

23 (B) where credit is secured in whole or in part by an
24 interest in real property, the term does not include, in addition
25 to the itemized and disclosed costs referred to in (6)(A)(1) and
26 (11) of this section;

27 (1) title examination, title insurance, or
28 corresponding procedures;

29 (11) preparation of the deed, settlement statement

1 or other documents;

2 (iii) escrows for future payments of taxes and
3 insurance;

4 (iv) notarizing the deed and other documents;

5 (v) appraisal fees; or

6 (vi) credit reports;

7 (7) "installment open-end credit plan" means an open-end
8 credit plan which has one or more of the following characteristics:

9 (A) creates a security interest in, or provides for
10 a lien on, or retention of title to, property, whether real or
11 personal, tangible or intangible;

12 (B) provides for a repayment schedule under which less
13 than 60 percent of the unpaid balance at any time outstanding
14 under the plan is required to be paid within 12 months; or

15 (C) provides that amounts in excess of required pay-
16 ments under the repayment schedule are applied to future payments
17 in the order of their respective due dates;

18 (8) "open-end credit plan" means a plan prescribing the
19 terms of credit transactions which may be made from time to time and
20 under the terms of which a finance charge may be computed on the out-
21 standing unpaid balance from time to time;

22 (9) "organization" means a corporation, government or
23 governmental subdivision or agency, business or other trust, estate,
24 partnership, or association.

25 Sec. 45.15.180. SHORT TITLE. This Act may be cited as the Truth
26 in Lending Act.
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