

Introduced: 1/26/68
Referred: Commerce

1 IN THE SENATE

BY BLODGETT, WAUGAMAN & BRADSHAW

2 SENATE BILL NO. 258

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 the disclosure of finance charges
7 in connection with the extension of credit."

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 15. DISCLOSURE OF FINANCE CHARGES IN CREDIT TRANSACTIONS.

11 Sec. 45.15.010. DISCLOSURES BY CREDITOR IN OTHER THAN UNDER OPEN-
12 END CREDIT PLAN. A creditor shall furnish, to the person to whom credit
13 is extended in a consumer credit sale other than under an open-end
14 credit plan and upon whom a finance charge is or may be imposed, the
15 following information, to the extent applicable:

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

17 (2) the sum of the amounts credited as down payment, includ-
18 ing any trade-in;

19 (3) the difference between (1) and (2) of this section;

20 (4) all other charges, individually itemized, which are in-
21 cluded in the amount of the credit extended but which are not part of the
22 finance charge;

23 (5) the total amount to be financed which is the sum of (3)
24 and (4) of this section;

25 (6) the amount of the finance charge which may be designated
26 as a time-price differential or as a similar term to the extent appli-
27 cable;

28 (7) the finance charge expressed as an annual percentage
29 rate;

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

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

5 Sec. 45.15.020. METHOD OF DISCLOSURE. Except as otherwise pro-
6 vided, the disclosure required by sec. 10 of this chapter shall be
7 made before the credit is extended. Compliance may be attained by
8 disclosing the required information in the contract or other evidence
9 of indebtedness to be signed by the obligor. When a seller receives a
10 purchase order by mail or telephone without personal solicitation
11 by a representative of the seller and the cash price and deferred
12 payment price and the terms of financing, including the annual percentage
13 rate, are set out in the seller's catalog or other printed material dis-
14 tributed to the public, the disclosure shall be made on or before the
15 date the first payment is due.

16 Sec. 45.15.030. DISCLOSURES BY CREDITOR IN OTHER THAN A CONSUMER
17 CREDIT SALE OR OPEN-END CREDIT PLAN. A creditor making a loan or
18 extending credit, other than in a consumer credit sale or in a transac-
19 tion under an open-end credit plan, shall, to the extent applicable,
20 disclose to the person to whom credit is to be extended, the following
21 information:

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

25 (2) all charges, individually itemized, which are included
26 in the amount of the credit extended but which are not part of the
27 finance charge;

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

- 1 (4) the amount of the finance charge;
2 (5) the finance charge expressed as an annual percentage
3 rate;
4 (6) the number, amount, and due dates or periods of payments
5 scheduled to repay the indebtedness;
6 (7) the default, delinquency, or similar charges payable in
7 the event of late payments.

8 Sec. 45.15.040. METHOD OF DISCLOSURE. Except as otherwise pro-
9 vided, the disclosure required by sec. 30 of this chapter shall be made
10 before the credit is extended. Compliance may be attained by disclosing
11 the required information in the note or other evidence of indebtedness
12 to be signed by the obligor. When a creditor receives a request for an
13 extension of credit by mail or telephone without personal solicitation
14 by a representative of the creditor and the terms of financing, includ-
15 ing the annual percentage rate for representative amounts of credit,
16 are set out in the creditor's printed material distributed to the public,
17 or in the contract of loan or other printed material delivered to the
18 obligor, the disclosure shall be made on or before the date the first
19 payment is due.

20 Sec. 45.15.050. DISCLOSURES BY CREDITOR UNDER OPEN-END CREDIT
21 PLAN. (a) Before opening an account under an open-end credit plan,
22 including an installment open-end credit plan, the creditor shall, to
23 the extent applicable, disclose to the person to whom credit is to be
24 extended the following information:

25 (1) the conditions under which a finance charge may be im-
26 posed, including the time period, if any, within which a credit extended
27 may be repaid without incurring a finance charge;

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

1 (3) the method of determining the amount of the finance
2 charge (including any minimum or fixed amount imposed as a finance
3 charge), the percentage rate per period of the finance charge to be
4 imposed if any, and the equivalent annual percentage rate;

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

7 (b) For each billing cycle at the end of which there is an
8 outstanding balance under the account, the creditor shall disclose,
9 to the extent applicable, the following information:

10 (1) the outstanding balance in the account at the beginning
11 of the billing period;

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

15 (3) the total amount credited to the account during the
16 period;

17 (4) the amount of the finance charge added to the account
18 during the period, itemized to show the amount, if any, due to the
19 application of a percentage rate and the amount, if any, imposed as a
20 minimum or fixed charge;

21 (5) the balance on which the finance charge was computed
22 and a statement of how the balance was determined;

23 (6) the percentage rate, if any, used in computing the
24 finance charge and the equivalent annual percentage rate;

25 (7) the outstanding balance in the account at the end of the
26 period;

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

29 (c) If a creditor adds to this billing under an open-end credit

1 plan one or more installments of other indebtedness from the same
2 obligor, the creditor is not required to disclose under this subsection
3 any information which has been disclosed previously in compliance with
4 sec. 10 - 40 of this chapter.

5 Sec. 45.15.060. EFFECT OF WRITTEN ACKNOWLEDGMENT OF RECEIPT.

6 Written acknowledgment of receipt by a person to whom a statement is
7 required to be given by this chapter shall be conclusive proof of its
8 delivery and, unless the violation is apparent on the face of the state-
9 ment, of compliance with this section in any action or proceeding by or
10 against an assignee of the original creditor without knowledge to the
11 contrary by the assignee when he acquires the obligation. The acknowl-
12 edgment does not affect the rights of the obligor in any action against
13 the original creditor.

14 Sec. 45.15.070. STATEMENT OF DISCLOSURE. If there is more than one
15 obligor, a creditor may furnish a statement of required information to
16 only one of them. Required information need not be given in the
17 sequence or order set out in this section. Additional information or
18 explanations may be included. So long as the statement conveys sub-
19 stantially the same meaning, a creditor may use language or terminology
20 different from that prescribed by this chapter.

21 Sec. 45.15.080. ALLOWABLE VARIANCES IN DISCLOSURES. If informa-
22 tion disclosed in accordance with this section and any regulations
23 prescribed by the department is subsequently rendered inaccurate as
24 the result of a prepayment, late payment, adjustment, or amendment of
25 the credit agreement through mutual consent of the parties or as
26 permitted by law, or as the result of an act or occurrence subsequent
27 to the delivery of the required disclosures, the resulting inaccuracy
28 does not constitute a violation of this section.

29 Sec. 45.15.090. REGULATIONS. The Department of Commerce shall

1 prescribe regulations to carry out this chapter, including provisions

2 (1) describing the methods which may be used in determining
3 annual percentage rates under secs. 10 - 80 of this chapter, including,
4 but not limited to, the use of rules, charts, tables, or devices by
5 creditors to convert to an annual percentage rate an add-on, discount
6 or other method of computing a finance charge;

7 (2) prescribing procedures to ensure that the information
8 required to be disclosed under secs. 10 - 80 of this chapter is set
9 out clearly and conspicuously;

10 (3) prescribing reasonable tolerances of accuracy with
11 respect to disclosing information under secs. 10 - 80 of this chapter.

12 Sec. 45.15.100. LIMITATIONS ON REGULATIONS. In prescribing
13 regulations with respect to reasonable tolerances of accuracy as re-
14 quired by sec. 90(3) of this chapter, the department shall observe the
15 following limitations:

16 (1) The annual percentage rate may be rounded to the nearest
17 quarter of one percent for credit transactions payable in substantially
18 equal installments when a creditor determines the total finance charge
19 on the basis of a single add-on, discount, periodic, or other rate,
20 and the rates are converted into an annual percentage rate under
21 procedures prescribed by the department.

22 (2) The use of rate tables or charts may be authorized in
23 cases where the total finance charge is determined in a manner other
24 than that specified in (1) of this section. The tables or charts may
25 provide for the disclosure of annual percentage rates which vary up to
26 eight percent of the rate as defined by sec. 150(1) and (6) of this
27 chapter. However, a creditor who wilfully and knowingly uses tables
28 or charts in a manner so as to consistently understate the annual
29 percentage rate, as defined by sec. 150(1) and (6) of this chapter

1 is liable for criminal penalties under sec. 130(a) of this chapter.

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

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

8 Sec. 45.15.110. DISCRETION IN PROMULGATING REGULATIONS. A regu-
9 lation prescribed under this chapter may contain classifications and
10 differentiations and may provide for adjustments and exceptions
11 from this chapter or the regulations promulgated under it for any
12 class of transactions, as in the judgment of the department are necessary
13 or proper to effectuate the purposes of this chapter or to facilitate
14 compliance by creditors with this chapter or a regulation issued under
15 it.

16 Sec. 45.15.120. FAILURE TO DISCLOSE INFORMATION. (a) A creditor
17 who, in connection with any credit transaction, knowingly fails to
18 disclose information to a person to whom the information is required
19 to be given, in violation of the chapter or a regulation issued under
20 it, is liable to that person in the amount of \$100, or in an amount
21 equal to twice the finance charge required by the creditor in connection
22 with the transaction, whichever is greater, except that the liability
23 shall not exceed \$1,000 on any credit transaction.

24 (b) In an action brought under this section in which it is shown
25 that the creditor disclosed a percentage rate or amount less than that
26 required to be disclosed by secs. 10 - 80 of this chapter, or regula-
27 tions prescribed by the department (after taking into account permissible
28 tolerances), or failed to disclose other information required, there
29 is a rebuttable presumption that the violation was made knowingly.

1 This presumption may be rebutted if the creditor shows by a pre-
2 ponderance of evidence that the violation was not intentional and
3 resulted from a bona fide error notwithstanding the maintenance of
4 procedures reasonably adapted to avoid error, provided that a creditor
5 has no liability under this section if within 15 days after discovering
6 the error, and before the institution of an action under this section
7 or the receipt of written notice of the error, the creditor notifies
8 the person concerned of the error and makes whatever adjustments in
9 the appropriate account as are necessary to ensure that the person
10 will not be required to pay a finance charge in excess of the amount
11 or percentage rate disclosed.

12 (c) An action under this section shall be brought in superior
13 court within one year from the date of the occurrence of the violation.
14 In an action in which a person is entitled to recover a penalty as
15 prescribed in (a) of this section, the defendant is also liable for
16 reasonable attorney fees and court costs as determined by the court.

17 Sec. 45.15.130. PENALTY. (a) A person who wilfully and inten-
18 tionally violates a provision of this chapter or a regulation issued
19 under it is guilty of a misdemeanor and, upon conviction is punish-
20 able by a fine of not more than \$1,000, or by imprisonment for not
21 more than one year, or by both.

22 (b) No person is subject to punishment or penalty under this
23 chapter solely as the result of the disclosure of a finance charge or
24 percentage which is greater than the amount of the charge or per-
25 centage required to be disclosed by the person under secs. 10 - 80 of
26 this chapter, or regulations prescribed by the department.

27 Sec. 45.15.140. EXCEPTIONS. The provisions of this chapter
28 do not apply to the following transactions:

29 (1) credit transactions involving extensions of credit for

1 business or commercial purposes, or to governments or governmental
2 agencies or instrumentalities, or to organizations; or

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

5 Sec. 45.15.150. DEFINITIONS. In this chapter, unless the context
6 otherwise requires

7 (1) (A) "annual percentage rate" means, for the purposes of
8 secs. 10 - 40 of this chapter, the nominal annual rate determined by
9 the actuarial method (United States rule); for purposes of this calcula-
10 tion it may be assumed that

11 (i) the total time for repayment of the total
12 amount to be financed is the time from the date of the
13 transaction to the date of the final scheduled payment;

14 (ii) all payments are equal if every scheduled
15 payment in the series of payments is equal except one which
16 may not be more than double any other scheduled payment in
17 the series;

18 (iii) all payments are scheduled at equal intervals,
19 if all payments are so scheduled except the first payment which
20 may be scheduled to be paid before, on, or after one period
21 from the date of the transaction; a period of time equal to
22 one-half or more of a payment period may be considered one
23 full period;

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

29 (C) when a creditor imposes the same finance charge for

1 all balances within a specified range, the annual percentage rate
2 or equivalent annual percentage rate shall be computed on the
3 median balance within the range for the purposes of secs. 10 - 50
4 of this chapter;

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

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

23 (4) "creditor" means an individual, or a partnership, corpora-
24 tion, association, cooperative, or other entity, including the state or
25 an agency or instrumentality of the state, or any other government or
26 political subdivision or agency or instrumentality, if the individual
27 or entity regularly engages in credit transactions, whether in connec-
28 tion with the sale of goods and services or otherwise, and extends
29 credit for which the payment of a finance charge is required;

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(5) "department" means Department of Commerce;

(6) "equivalent annual percentage rate" means the rate or rates computed by multiplying the rate or rates used to compute the finance charge for any period by the number of periods in a year;

(7) "finance charge" means the sum of all the charges imposed directly or indirectly by a creditor, and payable directly or indirectly by an obligor, as an incident to the extension of credit, including loan fees, service and carrying charges, discounts, interest, time price differentials, investigators' fees, costs of any guarantee or insurance protecting the creditor against the obligor's default or other credit loss, and any amount payable under a point, discount, or other system of additional charges; the term does not include

(A) if itemized and disclosed under secs. 10 - 80 of this chapter, amounts collected by a creditor, or included in the credit, for fees and charges prescribed by law which actually are or will be paid to public officials for determining the existence of or for perfecting or releasing or satisfying any security related to a credit transaction, taxes, charges or premiums for insurance against loss of or damage to property related to a credit transaction or against liability arising out of the ownership or use of such property, and charges or premiums for credit life and accident and health insurance;

(B) where credit is secured in whole or in part by an interest in real property, itemized and disclosed costs referred to in (A) of this paragraph but does include the costs of title examination, title insurance, or corresponding procedures, preparation of the deed, settlement statement, or other documents, escrows for future payments of taxes and insurance, notarizing the deed and other documents, appraisal fees, and credit reports;

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(8) "first mortgage" means those classes of first liens which are commonly given to secure advances on, or the unpaid purchase price of, real estate;

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

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

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

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

(10) "open-end credit plan" means a plan prescribing the terms of credit transactions which may be made under it from time to time and under the terms of which a finance charge may be computed from time to time on the outstanding unpaid balance;

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

Sec. 45.15.160. SHORT TITLE. This chapter may be cited as the Truth in Lending Act.