

Introduced: 1/31/69
Referred: Commerce and
Judiciary

1 IN THE HOUSE

BY FINK

2 HOUSE BILL NO. 55

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTH LEGISLATURE - FIRST 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
15 credit sale other than a sale under an open-end credit plan, the
16 creditor shall disclose, to the extent applicable, the following infor-
17 mation:

- 18 (1) the cash price of the property or service purchased;
19 (2) the sum of the amounts credited as down payment,
20 including a trade-in;
21 (3) the difference between the amounts in (a) (1) and (2) of
22 this section;
23 (4) all other charges, individually itemized, which are
24 included in the amount of the credit extended but which are not part of
25 the finance charge;
26 (5) the total amount to be financed which is the sum of the
27 amounts disclosed under (a) (3) and (4) of this section;
28 (6) the amount of the finance charge, which may be
29 designated as a time-price differential or as a similar term to the

1 extent applicable;

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

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

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

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

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

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

29 (2) all charges, individually itemized, which are included

1 in the amount of the credit extended but which are not part of the
2 finance charge;

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

5 (4) the amount of the finance charge;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

29 (6) the balance on which the finance charge was computed and

1 a statement of how the balance was determined; the balance is determined
2 without first deducting all payments during the period, that fact and
3 the amount of the payments shall also be disclosed;

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

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

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

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

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

29 Sec. 45.15.070. INACCURATE DISCLOSURE. If information disclosed

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

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

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

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

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

21 (B) the downpayment, if any;

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

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

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

1 Sec. 45.15.090. ADVERTISING OF OPEN-END CREDIT PLAN. No creditor
2 in order to aid, promote, or assist, directly or indirectly, the exten-
3 sion of credit under an open-end credit plan may state or represent in
4 an advertisement the specific terms of that plan unless the advertise-
5 ment clearly and conspicuously sets out the following information:

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

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

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

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

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

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

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

24 Sec. 45.15.110. APPLICATION OF ADVERTISEMENT RESTRICTIONS. (a)
25 For the purposes of secs. 80, 90, and 100 of this chapter, a catalog or
26 other multiple-page advertisement shall be considered a single adver-
27 tisement if the catalog or other multiple-page advertisement clearly
28 and conspicuously displays a credit terms table on which the informa-
29 tion required to be stated by secs. 80, 90, and 100 of this chapter

1 is clearly set out.

2 (b) The prohibitions and requirements of secs. 80, 90, 100 of
3 this chapter and (a) of this section apply only to a creditor or his
4 agent who directly or indirectly causes the publication or dissemination
5 of an advertisement and not to the owner, employees, or distributors of
6 the medium in which the advertisement appears or through which it is
7 disseminated.

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

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

13 (2) credit transactions, other than real property trans-
14 actions, in which the total amount to be financed exceeds \$25,000.

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

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

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

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

28 (b) In prescribing regulations with respect to reasonable toler-
29 ances of accuracy as required by (a)(3), of this section, the

1 department shall observe the following limitations:

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

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

17 (3) In the case of creditors determining the annual per-
18 centage rate in a manner other than as described in (1) or (2) of this
19 subsection, the department may authorize other reasonable tolerances.

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

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

1 issued under it.

2 Sec. 45.15.150. FAILURE TO DISCLOSE INFORMATION. (a) A creditor
3 who, in connection with a credit transaction, knowingly fails, in
4 violation of secs. 10 - 70, 110 and 120 of this chapter or a regulation
5 issued under those sections, to disclose information to a person to
6 whom the information is required to be given is liable to that person in
7 the amount of \$100, or in an amount equal to twice the finance charge
8 required by the creditor in connection with the transaction, whichever
9 is greater, except that liability may not exceed \$1,000 on any credit
10 transaction.

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

27 (c) An action under this section may be brought in the superior
28 court within one year from the date of the occurrence of the violation.
29 In an action in which a person is entitled to recover a penalty as pre-

1 scribed in (a) of this section, the defendant is also liable for
2 reasonable attorney fees and court costs as determined by the court.

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

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

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

20 Sec. 45.15.170. DEFINITIONS. In this chapter, unless the context
21 otherwise requires;

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

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

1 (B) For the purposes of sec. 40 of this chapter, the
2 term "equivalent annual percentage rate" means the rate or rates
3 computed by multiplying the rate or rates used to compute the
4 finance charge for any period by the number of periods in a year;

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

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

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

28 (4) "creditor" means an individual, or a partnership,
29 corporation, association, cooperative, or other entity, including any

1 government or political subdivision or agency or instrumentality of a
2 government or political subdivision, if the individual or entity
3 regularly engages in credit transactions, whether in connection with
4 the sale of goods and services or otherwise, and extends credit for
5 which the payment of a finance charge is required;

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

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

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

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

24 (11) taxes; and

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

29 (1) title examination, title insurance, or

1 corresponding procedures;

2 (ii) preparation of the deed, settlement statement,
3 or other documents;

4 (iii) escrows for future payments of taxes and
5 insurance;

6 (iv) notarizing the deed and other documents;

7 (v) appraisal fees; or

8 (vi) credit reports;

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

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

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

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

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

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

27 Sec. 45.15.180. SHORT TITLE. This Act may be cited as the Truth
28 in Lending Act.
29