

- - N O T I C E - -

The following identical bills - House Bill No. 453
(by Ferrell and Bowman) and Senate Bill No. 239
(by Croft), introduced this date, relating to con-
sumer transactions, will not be automatically mailed
out because of their length (110 pages). Please
send a specific request if you desire a copy.

April 29, 1971
Legislative Affairs Agency

1 IN THE HOUSE

BY FARRELL AND BOWMAN

2 HOUSE BILL NO. 453

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SEVENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to consumer 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 85. ALASKA CONSUMER ACT.

10 ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.

11 SUBARTICLE 1. SHORT TITLE, CONSTRUCTION, GENERAL PROVISIONS.

12 Sec. 45.85.002. SHORT TITLE. This chapter may be cited as the
13 Alaska Consumer Act.

14 Sec. 45.85.004. PURPOSES; RULES OF CONSTRUCTION. (a) This
15 chapter shall be liberally construed and applied to promote its under-
16 lying purposes and policies.

17 (b) The underlying purposes and policies of this chapter are to

18 (1) simplify, clarify and modernize the law governing
19 consumer sales, retail installment sales, consumer credit, small loans
20 and usury, credit reporting and debt collections;

21 (2) protect consumers against unfair and deceptive practices
22 by sellers, suppliers of consumer credit, debt collectors and credit
23 reporting agencies;

24 (3) permit and encourage the development of fair and
25 economically sound consumer credit practices;

26 (4) conform the regulation of consumer credit transactions
27 to the policies of the Federal Consumer Credit Protection Act.

28 (c) A reference to a requirement imposed by this chapter includes
29 reference to a related rule of the administrator adopted under this

1 chapter.

2 Sec. 45.85.006. APPLICABLE LAW. (a) Unless displaced by the
3 particular provisions of this chapter, the Uniform Commercial Code and
4 the principles of law and equity, including the law relative to capacity
5 to contract, principal and agent, estoppel, fraud, misrepresentation,
6 duress, coercion, mistake, bankruptcy, or other validating or invalidat-
7 ing cause supplement its provisions.

8 (b) Unless terms used in this chapter are defined by particular
9 provisions of this chapter, they shall have the meaning given them
10 in the Uniform Commercial Code, if they are there defined.

11 (c) Unless displaced by the particular provisions of this chapter,
12 parties to a consumer transaction have all of the obligations, duties,
13 rights and remedies provided in the Uniform Commercial Code which
14 apply to the transaction.

15 Sec. 45.85.008. CONSTRUCTION AGAINST IMPLICIT REPEAL. This
16 chapter being a general Act intended as a unified coverage of its sub-
17 ject matter, no part of it shall be considered to be impliedly repealed
18 by subsequent legislation if that construction can reasonably be
19 avoided.

20 Sec. 45.85.010. SEVERABILITY. If any provision of this chapter
21 or its application to any person or circumstances is held invalid, the
22 invalidity does not affect other provisions or applications of this
23 chapter which can be given effect without the invalid provision or
24 application, and to this end the provisions of this chapter are
25 severable.

26 Sec. 45.85.012. SETTLEMENT OF CLAIMS. (a) Except as otherwise
27 provided in this chapter a consumer may not waive or agree to forego
28 rights or benefits under this chapter.

29 (b) A claim by a consumer against a creditor or seller for an

1 excess charge, other violation of this chapter, or civil penalty, or
2 a claim against a consumer for default or breach of a duty imposed by
3 this chapter, if disputed in good faith, may be settled by agreement.

4 (c) A claim, whether or not disputed, against a consumer may be
5 settled for less value than the amount claimed.

6 (d) A settlement in which the consumer waives or agrees to forego
7 rights or benefits under this chapter is invalid if the court as a
8 matter of fact finds the settlement to be unconscionable. The compe-
9 tence of the consumer, any deception or coercion practiced upon him,
10 the nature and extent of the legal advice received by him, and the
11 value of the consideration are relevant to the issue of unconsciona-
12 bility.

13 Sec. 45.85.014. EFFECT OF CHAPTER ON POWERS OR ORGANIZATIONS.

14 (a) This chapter prescribes maximum charges for all creditors extend-
15 ing consumer credit including consumer credit sales, consumer loans
16 and consumer leases and displaces existing limitations on the powers
17 of those creditors based on maximum charges.

18 (b) With respect to sellers of goods or services, lessors of
19 goods, small loan companies, licensed lenders, consumer and sales
20 finance companies, industrial banks and loan companies, and commercial
21 banks and trust companies, this chapter displaces existing limitations
22 on their powers based solely on amount or duration of credit.

23 (c) Except as provided in (a) of this section, this chapter does
24 not displace limitations on powers of credit unions, savings banks,
25 savings and loan associations, or other thrift institutions whether
26 organized for the profit of shareholders or as mutual organizations.

27 (d) Except as provided in (a) and (b) of this section, this
28 chapter does not displace

29 (1) limitations on powers of supervised financial

1 organizations in sec. 22(39) of this chapter with respect to the
2 amount of a loan to a single borrower, the ratio of a loan to the
3 value of collateral, the duration of a loan secured by an interest in
4 land, or other similar restrictions designed to protect deposits, or

5 (2) limitations on powers an organization is authorized to
6 exercise under the laws of this state or the United States.

7 SUBARTICLE 2. SCOPE AND JURISDICTION.

8 Sec. 45.85.016. TERRITORIAL APPLICATION. (a) Except as other-
9 wise provided in this section, this chapter applies to consumer trans-
10 actions made in this state and to modifications including refinancings,
11 consolidations, and deferrals, made in this state, of consumer credit
12 transactions, wherever made.

13 (b) For the purposes of this chapter a consumer transaction or
14 modification of a consumer transaction is made in this state if

15 (1) a writing signed by the consumer and evidencing the
16 obligation is received by the merchant in this state;

17 (2) the merchant negotiates in this state personally or by
18 mail, telephone or otherwise, for a transaction with a consumer outside
19 the state for the purpose of evading or avoiding this chapter.

20 (c) With respect to transactions entered into under an open end
21 credit plan, this chapter applies if the consumer's communication or
22 indication of his intention to establish the plan is received by the
23 creditor in this state. If no communication or indication of intention
24 is given by the consumer before the first transaction this chapter
25 applies if the creditor's communication notifying the consumer of the
26 privilege of using the credit plan is mailed or personally delivered
27 in this state.

28 (d) Secs. 186 - 224 of this chapter apply to actions or other
29 proceedings brought in this state to enforce rights arising from

1 consumer transactions or extortionate extensions of credit, wherever
2 made.

3 (e) If a consumer transaction, or modification of it, is made
4 in another state to a person who is a resident of this state when the
5 transaction or modification is made, the following provisions apply
6 as though the transaction occurred in this state:

7 (1) a creditor or assignee of his rights may not collect
8 charges through actions or other proceedings in excess of those per-
9 mitted by secs. 26 - 124 of this chapter; and

10 (2) a merchant or assignee of his rights may not enforce
11 rights against the consumer with respect to the provisions of agreements
12 which violate the provisions of secs. 72 - 104 and 126 - 146 of this
13 chapter.

14 (f) Except as provided in (d) of this section a consumer trans-
15 action, or modification of it, made in another state to a person who
16 was not a resident of this state when the consumer transaction or
17 modification was made is valid and enforceable in this state according
18 to its terms to the extent that it is valid and enforceable under the
19 laws of the state applicable to the transaction.

20 (g) For the purposes of this chapter, the residence of a consumer
21 is the address given by him as his residence in any writing signed by
22 him in connection with a consumer transaction. The given address is
23 presumed to be unchanged until the merchant knows or has reason to
24 know of a new or different address.

25 (h) Notwithstanding other provisions of this section,

26 (1) except as provided in (d) of this section, this chapter
27 does not apply if the consumer is not a resident of this state at the
28 time of a consumer transaction and the parties then agree that the
29 law of his residence applies; and

1 (2) this chapter applies if the consumer is a resident of
2 this state at the time of a consumer transaction and the parties then
3 agree that the law of this state applies.

4 (i) Except as provided in (h) of this section, the following
5 terms of a writing executed by a consumer are invalid with respect to
6 consumer transactions, or modifications, to which this chapter applies:

7 (1) that the law of another state shall apply;

8 (2) that the consumer consents to the jurisdiction of
9 another state; and

10 (3) that fixes venue.

11 (j) The following provisions of this chapter specify the appli-
12 cable law governing certain cases:

13 (1) applicability of secs. 248 - 272 of this chapter;

14 (2) applicability of secs. 274 - 278 of this chapter.

15 Sec. 45.85.018. EXCLUSIONS. This chapter does not apply to

16 (1) extensions of credit to government or governmental
17 agencies or instrumentalities;

18 (2) extensions of credit to organizations;

19 (3) transactions in which all parties are organizations; or

20 (4) consumer credit transactions in which the amount
21 financed exceeds \$25,000 or other consumer transactions in which the
22 cash price exceeds \$25,000.

23 Sec. 45.85.020. JURISDICTION AND SERVICE OF PROCESS. (a) The
24 superior court may exercise jurisdiction over any merchant with respect
25 to any conduct in this state governed by this chapter or with respect
26 to any claim arising from a transaction subject to this chapter. In
27 addition to any other method provided by rule or by statute, personal
28 jurisdiction over a merchant may be acquired in a civil action or
29 proceeding instituted in the superior court by the service of process

1 in the manner provided by this section.

2 (b) If a merchant is not a resident of this state or is a corpora-
3 tion not authorized to do business in this state and engages in any
4 conduct in this state governed by this chapter, or engages in a trans-
5 action subject to this chapter, he may designate an agent upon whom
6 service of process may be made in this state. The agent shall be a
7 resident of this state or a corporation authorized to do business in
8 this state. The designation shall be in writing and filed with the
9 lieutenant governor. If no designation is made and filed or if process
10 cannot be served in this state upon the designated agent, process may
11 be served upon the lieutenant governor, but service upon him is not
12 effective unless the plaintiff or petitioner immediately mails a copy
13 of the process and pleading by registered or certified mail to the
14 defendant or respondent at his last reasonably ascertainable address.
15 An affidavit of compliance with this section shall be filed with the
16 clerk of the court on or before the return day of the process, if any,
17 or within any further time the court allows.

18 (c) The agent designated under this section or the lieutenant
19 governor in the absence of the designation of an agent constitutes a
20 proper person upon whom service of process may be made for the acqui-
21 sition of personal jurisdiction over directors of the merchant in a
22 cause of action brought under secs. 186 - 246 of this chapter.

23 SUBARTICLE 3. DEFINITIONS.

24 Sec. 45.85.022. GENERAL DEFINITIONS. In addition to definitions
25 appearing in subsequent sections of this chapter, in this chapter

26 (1) "actuarial method" means the method, defined by rules
27 adopted by the administrator, of allocating payments made on a debt
28 between principal or amount financed and loan finance charge or credit
29 service charge under which a payment is applied first to the

1 accumulated loan finance charge or credit service charge and the
2 balance is applied to the unpaid principal or unpaid amount financed;

3 (2) "administrator" means the administrator designated in
4 sec. 252 of this chapter;

5 (3) "agreement" means the bargain of the parties in fact as
6 found in their language or by implication from other circumstances
7 including course of dealing or usage of trade or course of performance;

8 (4) "agricultural purpose" means a purpose related to the
9 production, harvest, exhibition, marketing, transportation, processing,
10 or manufacture of agricultural products by a natural person who
11 cultivates, plants, propagates, or nurtures the agricultural products;
12 "agricultural products" includes agricultural, horticultural, viti-
13 cultural, and dairy products, livestock, wildlife, poultry, bees, forest
14 products, fish and shellfish, and any products of them, including
15 processed and manufactured products, and any and all products raised
16 or produced on farms and any processed or manufactured products of them;

17 (5) "amount financed" in a consumer credit transaction means
18 the total of the following items from which any prepaid finance charge
19 or required deposit balance has been excluded:

20 (A) in a consumer credit sale, the cash price of the
21 real or personal property or services, less the amount of any
22 down payment whether made in cash or in property traded in, or,
23 in the case of a consumer loan, the amount paid to, receivable
24 by or paid or payable for the account of the consumer; and

25 (B) in a consumer credit sale, the amount actually
26 paid to or to be paid by the seller under an agreement with the
27 buyer to discharge a security interest in or a lien on property
28 traded in; and

29 (C) if not included in the cash price or the amount

1 of the loan,

2 (i) any applicable sales, use, excise, or docu-
3 mentary stamp taxes;

4 (ii) amounts actually paid or to be paid, by the
5 creditor for registration, certificate of title, or license
6 fees; and

7 (iii) additional charges permitted by sec. 38 of
8 this chapter;

9 (6) "cash price" of real or personal property or services
10 means the price at which the property or services is offered for sale
11 by the seller to a cash buyer in the ordinary course of business, and
12 may include

13 (A) applicable sales, use, and excise and documentary
14 stamp taxes;

15 (B) the cash price of accessories or related services,
16 such as delivery, installation, servicing, repairs, alterations,
17 and improvements, and

18 (C) amounts actually paid or to be paid by the seller
19 for registration, certificate of title, or license fees;

20 (7) "conspicuous": a term or clause is conspicuous when
21 it is so written that a reasonable person against whom it is to operate
22 ought to have noticed it; whether a term or clause is conspicuous or
23 not is for decision by the court;

24 (8) "consumer" means a person other than an organization
25 who seeks or acquires business equipment for use in his business, or
26 real or personal property, services, money or credit for personal,
27 family, household or agricultural purposes;

28 (9) "consumer credit sale" includes any agreement in the
29 form of a bailment of goods or lease of goods or real property if the

1 bailee or lessee agrees to pay as compensation for use a sum sub-
2 stantially equivalent to or in excess of the aggregate value of the
3 goods or real property involved and it is agreed that the bailee or
4 lessee will become, or for no other or a nominal consideration has
5 the option to become, the owner of the goods or real property upon
6 full compliance with his obligations under the agreement;

7 (10) "consumer credit transaction" means a consumer trans-
8 action between a merchant and a consumer in which real or personal
9 property, services or money is acquired on credit and the consumer's
10 obligation is payable in installments or for which credit a finance
11 charge is or may be imposed, whether the transaction is under an open
12 end credit plan or is a transaction involving other than open end
13 credit; the term includes consumer credit sales, consumer loans,
14 consumer leases and transactions under a seller or lender credit card;

15 (11) "consumer lease" means a lease of real property or
16 goods which a merchant makes to a consumer for a term exceeding four
17 months;

18 (12) "consumer loan" means a loan made by a lender to a
19 consumer which is payable in installments or for which a finance charge
20 is or may be imposed, and includes transactions under a lender credit
21 card;

22 (13) "consumer transaction" means a transaction in which
23 one or more of the parties is a consumer;

24 (14) "credit" means the right granted by a creditor to a
25 debtor to defer payment of debt or to incur debt and defer its payment;

26 (15) "creditor" means a person who regularly engages in
27 consumer credit transactions or in arranging for or procuring consumer
28 credit from third persons;

29 (16) "earnings" means compensation paid or payable to an

1 individual or for his account for personal services rendered or to be
2 rendered by him, whether denominated as wages, salary, commission,
3 bonus, or otherwise, and includes periodic payments under a pension,
4 retirement, or disability program;

5 (17) "finance charge" means the sum of all charges, payable
6 directly or indirectly by the creditor as an incident to or as a condi-
7 tion of the extension of credit, whether paid or payable by the
8 consumer, the creditor, or any other person on behalf of the consumer
9 to the creditor or to a third party, including the following types of
10 charges to the extent they are not permitted additional charges under
11 sec. 38 of this chapter:

12 (A) interest, time price differential, and any amount
13 payable under a discount or other system of additional charges;

14 (B) service, transaction, activity, or carrying charge;

15 (C) loan fee, points, finder's fee, or similar charge;

16 (D) fee for an appraisal, investigation, or credit
17 report;

18 (E) charges or premiums for credit life, accident,
19 health or casualty insurance as provided in the Federal Consumer
20 Credit Protection Act and secs. 148 - 184 of this chapter;

21 (F) charges or premiums for any other guarantee or
22 insurance protecting the creditor against the consumer's default
23 or other credit loss;

24 (G) a charge imposed by a creditor upon another creditor
25 for purchasing or accepting an obligation of a consumer if the
26 consumer is required to pay any part of that charge in cash, as
27 an addition to the obligation, or as a deduction from the proceeds
28 of the obligation;

29 (18) "goods" includes goods not in existence at the time the

1 transaction is entered into and goods which are or are to become
2 fixtures, but excludes money, chattel paper, documents of title, and
3 instruments;

4 (19) "lender" means a merchant regularly engaged in the
5 business of making consumer loans;

6 (20) "lender credit card or similar arrangement" means an
7 arrangement or loan agreement other than a seller credit card, under
8 which a lender gives a debtor the privilege of using a credit card,
9 letter of credit, or other credit confirmation or identification in
10 transactions out of which debt arises

11 (A) by the lender's honoring a draft or similar order
12 for the payment of money drawn or accepted by the debtor;

13 (B) by the lender's payment or agreement to pay the
14 debtor's obligations; or

15 (C) by the lender's purchase from the obligee of the
16 debtor's obligations;

17 (21) "loan" includes

18 (A) the creation of debt by the lender's payment of
19 or agreement to pay money to the consumer or to a third party
20 for the account of the consumer;

21 (B) the creation of debt by a credit to an account
22 with the lender upon which the consumer is entitled to draw
23 immediately;

24 (C) the creation of debt under a lender credit card
25 or similar arrangement;

26 (D) the forbearance of debt arising from a loan;

27 (22) "merchandise certificate" means a writing issued by
28 a seller not redeemable in cash and usable in its face amount in lieu
29 of cash in exchange for goods or services;

1 (23) "merchant" means a person who regularly advertises,
2 distributes, offers, supplies or deals in real or personal property,
3 services, money or credit in a manner which directly or indirectly
4 results in or is intended or designed to result in, lead to or induce
5 a consumer transaction; the term includes but is not limited to a
6 seller, lessor, manufacturer, arranger of credit, and any assignee of
7 or successor to these persons; the term also includes a person who by
8 his occupation holds himself out as having knowledge or skill peculiar
9 to such practices or to whom such knowledge or skill may be attributed
10 by his employment of an agent, broker or other intermediary who holds
11 himself out as having such knowledge or skill;

12 (24) "official fees" means

13 (A) fees and charges prescribed by law which actually
14 are or will be paid to public officials for determining the
15 existence of or for perfecting a security interest related to a
16 consumer credit transaction; or

17 (B) premiums payable for insurance in lieu of perfect-
18 ing a security interest otherwise required by the creditor in
19 connection with the consumer credit transaction, if the premium
20 does not exceed the amount payable to the insurer and the fees
21 and charges described in (A) of this paragraph which would other-
22 wise be payable;

23 (25) "organization" means a corporation, government or
24 governmental subdivision or agency, trust, estate, partnership, coopera-
25 tive, or association;

26 (26) "payable in installments" means that payment is required
27 or permitted by agreement to be made in

28 (A) two or more periodic payments, excluding the down
29 payment in a consumer credit sale, with respect to an obligation

1 arising from a consumer credit transaction for which a finance
2 charge is or may be imposed; or

3 (B) four or more periodic payments, excluding the
4 down payment in consumer credit sales, in any other consumer
5 credit transaction; if any periodic payment other than the down
6 payment under an agreement requiring or permitting two or more
7 periodic payments is more than twice the amount of any other
8 periodic payment, excluding the down payment, the consumer credit
9 transaction is "payable in installments";

10 (27) "person" includes a natural person or an individual,
11 and an organization;

12 (28) "person related to" with respect to an individual means

13 (A) the spouse of the individual;

14 (B) a brother, brother-in-law, sister, sister-in-law
15 of the individual;

16 (C) an ancestor or lineal descendant of the individual
17 or his spouse; and

18 (D) any other relative, by blood or marriage, of the
19 individual or his spouse who shares the same home with the
20 individual;

21 (29) "person related to" with respect to an organization
22 means

23 (A) a person directly or indirectly controlling,
24 controlled by or under common control with the organization;

25 (B) an officer or director of the organization or a
26 person performing similar functions with respect to the organiza-
27 tion or to a person related to the organization;

28 (C) the spouse of a person related to the organization;
29 and

1 (D) a relative by blood or marriage of a person related
2 to the organization who shares the same home with him;

3 (30) "personal property" includes but is not limited to goods;

4 (31) "precomputable" means that both the amount financed and
5 the amount of finance charge can be computed at the time of the
6 consumer credit transaction;

7 (32) "prepaid finance charge" means any finance charge paid
8 separately, in cash or otherwise, directly or indirectly to the
9 creditor or with the creditor's knowledge to another person or withheld
10 by the creditor from the proceeds of the credit extended;

11 (33) "presumed" or "presumption" means that the trier of fact
12 must find the existence of the fact presumed unless and until evidence
13 is introduced which would support a finding of its nonexistence;

14 (34) "required deposit balance" means any deposit balance or
15 any investment which the creditor requires the consumer to make, main-
16 tain, or increase in a specified amount or proportion as a condition
17 to the extension of credit except

18 (A) an escrow account which is a permitted additional
19 charge under sec. 38 of this chapter;

20 (B) a deposit balance which will be wholly applied toward
21 satisfaction of the consumer's obligation in the transaction;

22 (C) a deposit balance or investment which was in
23 existence at least six months before the extension of credit and
24 which is offered by the consumer as security for that extension
25 of credit;

26 (D) a deposit balance or investment which was acquired
27 or established from the proceeds of an extension of credit made
28 for that purpose which the creditor does not require as a condi-
29 tion to the extension of credit which is acquired or established

1 at the written request of the consumer;

2 (35) "sale of services" means furnishing or agreeing to
3 furnish services and includes making arrangements to have services
4 furnished by another;

5 (36) "security interest" means any interest in property
6 which secures payment or performance of an obligation; the terms
7 include, but are not limited to, security interests under the Uniform
8 Commercial Code, real property mortgages, deeds of trust, and other
9 consensual or confessed liens whether or not recorded, mechanic's,
10 materialmen's, artisan's, and other similar liens, vendor's liens in
11 both real and personal property, the interest of a seller in a contract
12 for the sale of real property, any lien on property arising by opera-
13 tion of law, and any interest in a lease when used to secure payment
14 or performance of an obligation;

15 (37) "seller credit card" means an arrangement under which
16 a person gives to a consumer the privilege of using a credit card,
17 letter of credit, merchandise certificate, or other credit confirmation
18 or identification primarily for the purpose of purchasing or leasing
19 goods or services from that person, a person related to that person,
20 or others licensed or franchised to do business under his business or
21 trade name or designation;

22 (38) "services" includes

23 (A) work, labor, and other personal services;

24 (B) privileges with respect to transportation, hotel
25 and restaurant accommodations, education, entertainment, recrea-
26 tion, physical culture, hospital accommodations, funerals, ceme-
27 tery accommodations, and the like; and

28 (C) insurance;

29 (39) "supervised financial organization" means a person

1 (A) organized, chartered, or holding an authorization
2 certificate under the laws of this state or of the United States
3 which authorize the person to make loans and to receive deposits,
4 including a savings, share, certificate or deposit account; and

5 (B) subject to supervision by an official or agency
6 of this state or of the United States;

7 (40) "transaction" means an agreement between two or more
8 persons, whether or not the agreement is a contract enforceable by
9 action, and includes the making of and the performance under that
10 agreement.

11 Sec. 45.85.024. DEFINITION OF FEDERAL CONSUMER CREDIT PROTECTION
12 ACT. In this chapter "Federal Consumer Credit Protection Act" means
13 the Consumer Credit Protection Act (Public Law 90-321; 82 Stat. 146),
14 as amended, and includes regulations issued under that Act.

15 ARTICLE 2. CONSUMER CREDIT TRANSACTIONS.

16 SUBARTICLE 1. GENERAL PROVISIONS.

17 Sec. 45.85.026. SHORT TITLE. Secs. 26 - 124 of this chapter
18 may be cited as the Alaska Consumer Act - Consumer Credit Transactions.

19 Sec. 45.85.028. SCOPE. Secs. 26 - 124 of this chapter apply
20 to consumer credit.

21 Sec. 45.85.030. DEFINITION OF OPEN END CREDIT PLAN. (a) "Open
22 end credit plan" means an account under a plan under which

23 (1) the creditor may permit the consumer to make purchases
24 or obtain loans, from time to time, directly from the creditor or
25 indirectly by use of a credit card, check, or other device, as the
26 plan may provide;

27 (2) the consumer has the privilege of paying the balance
28 in full or in installments; and

29 (3) a finance charge may be computed by the creditor from

1 time to time on an outstanding unpaid balance.

2 (b) The term does not include negotiated advances under an open
3 end real estate mortgage or a letter of credit.

4 Sec. 45.85.032. DEFINITION OF OTHER THAN OPEN END CREDIT. "Other
5 than open end credit" means consumer credit other than an open end
6 credit plan itself, or consumer credit transactions under an open end
7 credit plan, and includes precomputable transactions.

8 Sec. 45.85.034. DEFINITION OF BUSINESS DAY. "Business day" means
9 any calendar day except Sunday, or the following business holidays:
10 New Year's Day, Washington's Birthday, Memorial Day, Independence Day,
11 Labor Day, Veterans' Day, Thanksgiving, and Christmas.

12 SUBARTICLE 2. MAXIMUM CHARGES.

13 Sec. 45.85.036. FINANCE CHARGE FOR CONSUMER CREDIT TRANSACTIONS.

14 (a) With respect to a consumer credit transaction, the parties may
15 agree, subsequent to full disclosure by the creditor under secs. 56 -
16 70 of this chapter, to the payment by the consumer of a finance charge
17 not in excess of that permitted by this section.

18 (b) The finance charge, calculated according to the actuarial
19 method may not exceed 18 per cent per year on the unpaid balance of
20 the amount financed.

21 (c) In this section

22 (1) the finance charge may be calculated on the assumption
23 that all scheduled payments will be made when due; and

24 (2) the dollar amount of finance charge shall include the
25 prepaid finance charge excluded from the amount financed in accordance
26 with sec. 32 of this chapter; and

27 (3) the effect of prepayment is governed by the provisions
28 on rebate upon prepaying set out in sec. 54 of this chapter.

29 (d) In this section, the term of a consumer credit transaction

1 other than that under an open end credit plan commences with the date
2 the credit is granted or, if goods are delivered, services performed
3 or proceeds of a loan paid 10 days or more after that date, with the
4 date of commencement of delivery or performance. Differences in
5 lengths of months are disregarded and a day may be counted as one-
6 thirtieth of a month.

7 (e) Subject to classifications and differentiations the creditor
8 may reasonably establish, he may make the same finance charge on all
9 amounts financed within a specified range. A finance charge so made
10 does not violate (b) of this section, if

11 (1) when applied to the median amount within each range,
12 it does not exceed the maximum permitted by (b) of this section; and

13 (2) when applied to the lowest amount within each range,
14 it does not produce a rate of finance charge exceeding the rate calcu-
15 lated according to (1) of this subsection by more than eight per cent
16 of the rate calculated according to (1) of this subsection.

17 (f) Notwithstanding (b) of this section, a creditor may contract
18 for and receive a minimum finance charge,

19 (1) with respect to a transaction other than that under an
20 open end credit plan, of not more than \$5 when the amount financed
21 does not exceed \$75, or \$7.50 when the amount financed exceeds \$75, or

22 (2) with respect to transactions under an open end credit
23 plan, if there is an unpaid balance on the date as of which finance
24 charge is applied, not exceeding 50 cents if the billing cycle is
25 monthly or longer, or the pro rata part of 50 cents which bears the
26 same relation to 50 cents as the number of days in the billing cycle
27 bears to 30 if the billing cycle is shorter than monthly.

28 (g) For the purposes of this subsection, a variation of not more
29 than four days from month to month for determining the last day of

1 the billing cycle is permissible. With respect to transactions under
2 an open end credit plan, a finance charge not in excess of that per-
3 mitted by this section may be made in each billing cycle which is a
4 percentage of an amount no greater than

5 (1) the unpaid balance of the account on the last day of
6 the billing cycle calculated after first deducting all payments,
7 credits and refunds to which the consumer is entitled during the
8 billing cycle, or

9 (2) the median amount within a specified range within which
10 the unpaid balance calculated according to (1) of this subsection is
11 included; a charge may be made under this paragraph only if the
12 creditor, subject to classifications and differentiations he may
13 reasonably establish, makes the same charge on all balances within the
14 specified range and if the percentage when applied to the median amount
15 within the range falls within the limitations imposed by (e) of this
16 section.

17 (h) A violation of this section is subject to the provisions of
18 secs. 232 and 234 of this chapter.

19 Sec. 45.85.038. ADDITIONAL CHARGES. (a) In addition to the
20 finance charge permitted by secs. 36 - 54 of this chapter, a creditor
21 may bargain for and receive the following additional charges in connec-
22 tion with a consumer credit transaction:

23 (1) official fees and taxes;

24 (2) charges for insurance as authorized and permitted by
25 secs. 148 - 184 of this chapter;

26 (3) charges in real estate transactions as provided in (b)
27 of this section.

28 (b) With respect to a consumer credit transaction which involves
29 the extension of credit secured by an interest in real property, the

1 creditor may bargain for and receive in addition to the finance charge,
2 the following additional charges

3 (1) if they will be paid to persons not related to the
4 creditor, are reasonable in amount, bona fide and not for the purpose
5 of circumvention or evasion of this part;

6 (2) if the security interest in the real property creates
7 a first lien on the property and the credit extended is for the purpose
8 of acquisition or substantial improvement of the property by the
9 consumer; and

10 (3) if the charges would customarily be borne by the con-
11 sumer if the transaction were for cash instead of credit:

12 (A) fees or premiums for title examination, title
13 insurance or similar purpose;

14 (B) fees for preparation of a deed, settlement state-
15 ment, or other documents;

16 (C) escrows for future payments of taxes and insurance;

17 (D) fees for notarizing deeds and other documents;

18 (E) appraisal fees.

19 (c) In this chapter any charge not authorized by this section
20 is considered part of the finance charge.

21 Sec. 45.85.040. TRANSACTIONS OTHER THAN OPEN END; UNPAID OR LATE
22 INSTALLMENTS. With respect to a consumer credit transaction other than
23 one under an open end credit plan, if the consumer has not made an
24 installment payment on or before the 10th business day after its
25 scheduled due date:

26 (1) the consumer may, at any time before the creditor is
27 entitled to exercise any remedy in accordance with secs. 186 - 246 of
28 this chapter elect to

29 (A) enter into a deferral agreement in accordance with

1 sec. 44 of this chapter, or

2 (B) refinance the unpaid balance in accordance with
3 sec. 46 of this chapter, or

4 (C) consolidate the unpaid balance with the unpaid
5 balance of another transaction in accordance with sec. 48 of this
6 chapter;

7 (2) the creditor shall before the due date of the next
8 scheduled installment mail or deliver to the consumer at his residence
9 a written notice informing the consumer that

10 (A) the installment is past due, and

11 (B) a delinquency charge has been or will be imposed,
12 if that is the case, and the amount of such charge, and

13 (C) the consumer may make an election as provided in
14 (1) of this section and the time and means of making that elec-
15 tion;

16 (3) the creditor may impose a delinquency charge in accor-
17 dance with sec. 42 of this chapter, but may not retain or collect such
18 charge if the consumer makes an election provided in (1) of this
19 section;

20 (4) the creditor may take no action as a result of the
21 unpaid or late installment payment except as provided in this section,
22 but nothing in this section precludes any action permitted by this
23 chapter as a result of a subsequent unpaid or late installment payment.

24 Sec. 45.85.042. DELINQUENCY CHARGES. (a) With respect to a
25 consumer credit transaction other than one under an open end credit
26 plan, the parties may agree to a delinquency charge on any install-
27 ment not paid in full on or before the 10th business day after its
28 scheduled due date in an amount, not exceeding \$3, which is one per
29

1 cent of the unpaid amount of the installment.

2 (b) No delinquency charge may be collected on an installment
3 which is paid in full on or before the 10th business day after its
4 scheduled due date even though an earlier maturing installment or a
5 delinquency charge on an earlier installment may not have been paid
6 in full. For purposes of this subsection payments are applied first
7 to current installments and then to delinquent installments.

8 (c) A delinquency charge under (a) of this section may be
9 collected only once on an installment however long it remains in
10 default. A delinquency charge may not be collected for a late install-
11 ment if, with respect to that installment, a deferral, as set out in
12 sec. 44 of this chapter, refinancing, as set out in sec. 46 of this
13 chapter, or consolidation, as set out in sec. 48 of this chapter,
14 agreement has been concluded by the parties or, the creditor elects
15 to exercise any remedy in accordance with secs. 186 - 246 of this
16 chapter.

17 (d) No security interest shall secure payment of obligations
18 arising from unpaid delinquency charges imposed under this section
19 or deferral charges agreed upon under sec. 44 of this chapter.

20 Sec. 48.85.044. DEFERRAL CHARGES. (a) With respect to a con-
21 sumer credit transaction other than one under an open end credit plan,
22 the parties may agree in writing at any time subsequent to the trans-
23 action to a deferral of all or part of one or more unpaid installments
24 to a charge not exceeding one per cent of each installment or part
25 of it for each month from the date when such installment was due to the
26 date when it is agreed to become payable.

27 (b) In addition to any requirements of form established by the
28 administrator, a deferral agreement shall

29 (1) be in writing and signed by the parties;

1 (2) incorporate by reference the transaction to which the
2 deferral applies;

3 (3) state each installment or part of it in the amount to
4 be deferred, the date or dates originally payable and the date or dates
5 agreed to become payable; and

6 (4) clearly set out the fact of the deferral charge, if any,
7 the dollar amount of the charge for each installment to be deferred and
8 the total dollar amount to be paid by the consumer for the privilege
9 of deferring payment.

10 (c) No term of a writing executed by the consumer shall consti-
11 tute authority for a creditor unilaterally to grant a deferral and
12 make charges under this section.

13 (d) A charge may not be collected for the deferral of an install-
14 ment or any part of it if, with respect to that installment, a refinan-
15 cing, as set out in sec. 46 of this chapter, or consolidation, as set
16 out in sec. 48 of this chapter, agreement is concluded by the parties,
17 a delinquency charge, as set out in sec. 42 of this chapter, has been
18 collected or the creditor elects to exercise any remedy in accordance
19 with secs. 186 - 246 of this chapter.

20 Sec. 45.85.046. FINANCE CHARGE ON REFINANCING. (a) With respect
21 to a consumer credit transaction other than one under an open end
22 credit plan, the creditor may by agreement with the consumer refinance
23 the unpaid balance and may bargain for and receive a finance charge
24 based on the amount financed resulting from the refinancing at a rate
25 not exceeding that stated to the consumer in the original transaction
26 under the provisions on disclosure in secs. 56 - 70 of this chapter.

27 (b) For the purpose of determining the finance charge permitted
28 in refinancing, the amount financed resulting from the refinancing
29 shall constitute the total of the following:

1 (1) the amount which the consumer would have been required
2 to pay upon prepayment under the provisions on rebate upon prepayment,
3 as set out in sec. 54 of this chapter, on the date of refinancing,
4 except that for the purpose of computing this amount no minimum finance
5 charge, as set out in sec. 36(e) of this chapter, shall be allowed; and

6 (2) appropriate additional charges, as set out in sec. 38
7 of this chapter, included for the period of refinancing.

8 Sec. 45.85.048. FINANCE CHARGE ON CONSOLIDATION. (a) If a
9 consumer owes an unpaid balance to a creditor with respect to a con-
10 sumer credit transaction and becomes obligated on another consumer
11 credit transaction with the same creditor, the parties may agree to
12 a consolidation resulting in a single schedule of payments.

13 (b) The consolidated obligation shall comprise the following:

14 (1) a finance charge agreed to by the parties, not in excess
15 of that permitted by the provisions on finance charge for consumer
16 credit transactions, as set out in sec. 36 of this chapter, calculated
17 on the basis of the unpaid balance of the subsequent transaction;

18 (2) the unpaid balance of the subsequent transaction; and

19 (3) the unpaid balance of the prior transaction as of the
20 date of consolidation.

21 Sec. 45.85.050. ADVANCES TO PERFORM AGREEMENTS OF CONSUMER. (a)
22 With respect to a consumer credit transaction the parties may, to the
23 extent permitted by this chapter, agree that the consumer is to per-
24 form certain duties with respect to preserving or insuring collateral
25 provided that those duties are reasonable in relation to the risk of
26 loss of or damage to the collateral. If the consumer fails to so
27 perform the creditor may, if authorized by the agreement, pay for the
28 performance of such duties on behalf of the consumer. The amount paid
29 may be added to the unpaid balance of the consumer's obligation;

1 however, the creditor must have given the consumer written notice of
2 his nonperformance, reasonable opportunity after notice to so perform,
3 and, in the absence of performance, made all expenditures on behalf
4 of the consumer in good faith and in a commercially reasonable manner.

5 (b) Within a reasonable time after advancing any sums under
6 (a) of this section, the creditor shall state to the consumer in writing
7 the amount of the sums advanced, any charges with respect to this
8 amount, and any revised payment schedule and, if the duties of the
9 consumer performed by the creditor pertain to insurance, a brief
10 description of the insurance paid for including the type and amount
11 of coverage.

12 (c) A finance charge may be made for sums advanced under (a)
13 of this section at a rate not exceeding the rate stated to the consumer
14 under the provisions on disclosure in secs. 56 - 70 of this chapter,
15 except that with respect to an open end credit plan the amount of
16 the advance may be added to the unpaid balance of the account and the
17 creditor may make a finance charge not exceeding that permitted by
18 the provisions on finance charge for consumer credit transactions set
19 out in sec. 36 of this chapter.

20 Sec. 45.85.052. RIGHT TO PREPAY. Subject to the provisions on
21 rebate upon prepayment, as set out in sec. 54 of this chapter, the
22 consumer may prepay in full or in any part the unpaid balance of a
23 consumer credit transaction at any time without penalty.

24 Sec. 45.85.054. REBATE UPON PREPAYMENT. (a) Upon prepayment in
25 full or in any part of the unpaid balance of a consumer credit trans-
26 action, an amount not less than the unearned portion of the finance
27 charge calculated according to this section shall be rebated to the
28 consumer. If the total of all rebates, refunds and credits to be paid
29 to the consumer is less than \$1, no payment need be made.

1 (b) The unearned portion of the finance charge is the difference
2 between the total amount of the finance charge and the amount of
3 finance charge earned up to and including the date of payment calcu-
4 lated according to the actuarial method.

5 (c) Except as provided in (d) of this section with respect to
6 unearned insurance premiums, reasonable sums actually paid or payable
7 to third persons not related to the creditor as additional charges
8 permitted under sec. 38 of this chapter need not be rebated to the
9 consumer.

10 (d) If the consumer credit transaction included an amount for
11 insurance premiums the consumer is entitled upon prepayment to a refund
12 from the creditor of the unearned premium as calculated according to
13 the provisions on refund as set out in sec. 162 of this chapter.

14 (e) Upon prepayment in full of the consumer's obligation by the
15 proceeds of consumer credit insurance, as set out in sec. 152 of this
16 chapter, the consumer or his estate is entitled to the same rebate as
17 though the consumer had prepaid the agreement on the date satisfactory
18 proof of loss is furnished to the creditor or the insurance company.

19 (f) If a deferral, as set out in sec. 44 of this chapter, has
20 been agreed to, the unearned portion of the finance charge shall be
21 computed without regard to the deferral. The amount of deferral charge
22 earned at the date of prepayment shall also be calculated. If the
23 deferral charge earned is less than the deferral charge paid, the
24 difference shall be added to the unearned portion of the finance charge.
25 If any part of a deferral charge has been earned but has not been paid,
26 that part shall be subtracted from the unearned portion of the finance
27 charge.

28 (g) This section does not preclude the collection or retention
29 by the creditor of delinquency charges, as set out in sec. 42 of this

1 chapter, for delinquencies or payments due before prepayment.

2 (h) If the creditor brings an action on the obligation and judg-
3 ment is obtained, the consumer is entitled to the same rebate as if
4 payment had been made on the date the action was brought.

5 SUBARTICLE 3. DISCLOSURE AND FORM OF WRITINGS.

6 Sec. 45.85.056. GENERAL REQUIREMENTS AND PROVISIONS. (a) The
7 information required by the provisions of secs. 56 - 70 of this chapter
8 to be disclosed by the creditor to the consumer to whom credit is
9 extended or otherwise to be included within the writing evidencing the
10 transaction

11 (1) shall be made clearly and conspicuously;

12 (2) shall be in writing, exact copies of which shall be
13 given to the consumer at the time the transaction is consummated with
14 records of all such information retained by the creditor for a period
15 of one year after the last payment scheduled under the transaction;

16 (3) except as provided in sec. 58 of this chapter and in
17 rules adopted by the administrator, need not be contained in a single
18 writing or made in the order set out in this chapter;

19 (4) may be supplemented by additional information or explana-
20 tions supplied by the creditor so long as the additional information
21 or explanations do not have the effect of circumventing, evading, or
22 unduly complicating the information required by secs. 56 - 70 of this
23 chapter;

24 (5) need be made only to the extent applicable and only as
25 to those items for which the creditor makes a charge to the consumer
26 which is separate from and in addition to the cash price or amount of
27 the credit extended.

28 (b) The creditor shall comply with the provisions of secs. 56 -
29 70 of this chapter requiring information to be disclosed or otherwise

1 included within the writing evidencing the consumer credit transaction
2 before the consumer signs any writing, but may be made on the face of
3 the writing evidencing the transaction.

4 (c) The provisions of secs. 56 - 70 of this chapter requiring
5 information to be disclosed shall apply with respect to all persons who
6 are to sign the writing, including anyone acting as surety, whether
7 as a comaker, endorser, guarantor, or other similar party. Irrespective
8 of his signature, no such person shall be obligated under the trans-
9 action until the creditor establishes compliance with the provisions of
10 secs. 56 - 70 of this chapter.

11 Sec. 45.85.058. SINGLE WRITING: CONTENTS. (a) Every consumer
12 credit transaction shall be evidenced by a single writing and shall be
13 signed by both parties. All terms, printed or written, shall appear
14 on only one side of each page. Printed terms shall be set in eight
15 point standard type.

16 (b) In addition to the disclosures required by secs. 56 - 70 of
17 this chapter, every writing evidencing a consumer credit transaction
18 shall include the date when signed, the name and address of the consumer
19 and the creditor, a description of the subject matter of the trans-
20 action, and a description of the collateral, if any, securing the
21 consumer's obligations.

22 (c) Every writing evidencing a consumer credit transaction shall
23 include immediately above the place for the signatures of the parties,
24 the following notice printed in 12 point bold type:

25 NOTICE TO CONSUMER

- 26 (1) Do not sign this if it contains any blank spaces.
27 (2) You are entitled to an exact copy of all the papers you
28 sign or are shown.
29 (3) You have the right at any time to pay in advance the

1 unpaid balance due under this agreement and to receive a partial refund
2 of the finance charge.

3 Sec. 45.85.060. PROHIBITION OF BLANK WRITINGS. Every writing
4 evidencing a consumer credit transaction shall be completed as to all
5 essential provisions before it is signed by the parties. No creditor
6 may induce, encourage or otherwise permit the consumer to sign a writing
7 containing blank spaces. Blanks inapplicable to a transaction must be
8 filled in a manner which reveals their inapplicability.

9 Sec. 45.85.062. CREDIT OTHER THAN OPEN END: PAYMENTS; DUE DATES;
10 REGULAR SCHEDULE. (a) With respect to a consumer credit transaction
11 other than one under an open end credit plan every writing evidencing
12 the transaction shall specify the maximum number of payments required,
13 the amount of each payment and the exact dates upon which each payment
14 is due.

15 (b) Payments shall be scheduled in the writing to be payable in
16 substantially equal installments at equal period intervals, and

17 (1) over a period of not more than 25 months if the out-
18 standing balance is \$700 or less, or

19 (2) over a period of not more than 37 months if the out-
20 standing balance is more than \$700 but does not exceed \$2,000.

21 (c) Payments shall be payable only in successive, equal monthly,
22 semi-monthly or weekly periods.

23 (d) For the purposes of this section, the amount and number of
24 periodic payments shall be determined on the basis of a finance charge
25 calculated on the assumption that all scheduled payments shall be made
26 when due.

27 (e) To the extent that the schedule of payments is adjusted to
28 the seasonal or intermittent income of the consumer in a separate
29 writing under sec. 74(2) of this chapter the number, amounts, and dates

1 upon which each payment is due shall be set out in the separate writing
2 immediately below the following notice printed in no less than 12 point
3 bold type.

4 **WARNING**

5 The amounts of payments or the dates they are payable under
6 this agreement are not equal. Do not sign this paper unless
7 you are certain that this arrangement meets your needs.

8 **Sec. 45.85.064. RECEIPTS; ACCOUNTING; EVIDENCE OF PAYMENT. (a)**

9 The creditor shall give or forward to the consumer, without request,
10 a written receipt for each payment made in cash.

11 (b) At any time after consummation of the transaction the creditor
12 shall, upon request by the consumer, give or forward to the consumer a
13 written statement specifying the dates and amounts of payments received
14 and the principal unpaid balance remaining at that time.

15 (c) Within 30 days after payment by the consumer of all sums for
16 which he is obligated under the agreement in accordance with this
17 chapter, the creditor shall give or forward to the consumer instruments
18 which acknowledge payment in full and the release or termination of
19 interests which are satisfied by that payment, and of their perfection
20 or recordation.

21 **Sec. 45.85.066. DISCLOSURE: REQUIREMENTS OF FEDERAL ACT. (a)** In
22 accordance with the provisions of secs. 56 - 70 of this chapter the
23 creditor shall disclose to the consumer to whom credit is extended the
24 information required by secs. 56 - 70 of this chapter and by the
25 Federal Consumer Credit Protection Act.

26 (b) Except as provided in sec. 68 of this chapter all information
27 required to be disclosed by the Federal Consumer Credit Protection Act
28 shall be required to be disclosed by secs. 56 - 70 of this chapter.
29 Information which would otherwise be required under the Federal Consumer

1 Credit Protection Act shall be required by secs. 56 - 70 of this
2 chapter, even though the transaction is one of a class of transactions
3 exempted from that Act by provisions of the Act or under regulation
4 of the Board of Governors of the Federal Reserve System.

5 (c) Except as provided in (b) of this section and in sec. 68 of
6 this chapter, the regulations of the Board of Governors of the Federal
7 Reserve System promulgated under the authorization contained in the
8 Federal Consumer Credit Protection Act are valid and binding inter-
9 pretations of the requirements of disclosure incorporated into and
10 made a part of this chapter by this section.

11 (d) Violations of the requirements of the Federal Consumer Credit
12 Protection Act as incorporated into and made a part of this chapter by
13 this section are a violation of this chapter enforceable in the appropri-
14 ate courts of this state in accordance with the measure of recovery
15 provided in sec. 232 of this chapter.

16 Sec. 45.85.068. DISCLOSURE: ADDITIONAL REQUIREMENTS. (a) In
17 addition to the requirements of disclosure of the Federal Consumer
18 Credit Protection Act incorporated into and made a part of this
19 chapter by sec. 64 of this chapter, a creditor shall disclose the
20 following information to the consumer to whom credit is extended in
21 all consumer credit transactions without exception as to the type of
22 transaction or the amount of the finance charge concerned:

23 (1) the total amount of the finance charge in dollars; and
24 (2) the finance charge expressed as an annual percentage
25 rate.

26 (b) For the purpose of secs. 56 - 70 of this chapter the finance
27 charge, whether expressed as the amount in dollars or as an annual
28 percentage rate shall be the finance charge calculated in accordance
29 with the provisions of the Federal Consumer Credit Protection Act.

1 Sec. 45.85.070. ESTIMATES OR APPROXIMATIONS. If at the time
2 disclosures must be made an amount or other item of information
3 required to be disclosed or needed to determine a required disclosure
4 is unknown or not available to the creditor, and a reasonable effort
5 has been made to ascertain it, the creditor may use an estimated
6 amount of approximation of the information. However,

7 (1) the estimate or approximation must be clearly identi-
8 fied as such, be reasonable, and be based on the best information
9 available to the creditor;

10 (2) the estimate or approximation must not be used for
11 the purpose of circumventing or evading the disclosure requirements
12 of secs. 56 - 70 of this chapter;

13 (3) to the extent that the estimate or approximation made
14 pertained to the finance charge expressed either as an amount or as
15 the annual percentage rate, the consumer

16 (A) may not be obligated to make any payment under
17 the transaction until he has been furnished the correct infor-
18 mation by the creditor; and

19 (B) shall be obligated under the transaction to pay
20 the lesser of the actual or the estimated or approximated finance
21 charge.

22 SUBARTICLE 4. LIMITATIONS ON

23 AGREEMENTS AND PRACTICES.

24 Sec. 45.85.072. SCOPE. Secs. 72 - 104 of this chapter apply to
25 consumer credit transactions.

26 Sec. 45.85.074. BALLOON PAYMENTS PROHIBITED. With respect to a
27 consumer credit transaction other than one under an open end credit
28 plan,

29 (1) no creditor may at any time enter into an agreement

1 which contains or anticipates a schedule of payments under which any
2 one payment is not equal or substantially equal to all other payments,
3 excluding any down payment received by the creditor contemporaneously
4 with or before the consummation of the transaction, or under which the
5 intervals between any consecutive payments differ substantially;

6 (2) notwithstanding any provision of this section, if a
7 consumer's livelihood is dependent upon seasonal or intermittent income,
8 the parties may agree in a separate writing that one or more payments
9 or the intervals between one or more payments may be reduced or
10 expanded in accordance with the needs of the consumer if these payments
11 or intervals are expressly related to the consumer's income;

12 (3) if the provisions of (2) of this section apply, the
13 consumer shall have the right at any time, without further cost or
14 obligation, to revise the schedule of payments to conform both as to
15 amounts and intervals to the average of all installments and intervals;

16 (4) a violation of this section is subject to the provisions
17 of secs. 230 and 234 of this chapter.

18 Sec. 45.85.076. ASSIGNMENT OF EARNINGS PROHIBITED. (a) A
19 creditor may not take an assignment of earnings of the consumer for
20 payment or as security for payment of an obligation arising out of a
21 consumer credit transaction or a consumer lease.

22 (b) An assignment of earnings in violation of this section is
23 subject to the provisions of secs. 230 and 234 of this chapter.

24 Sec. 45.85.078. AUTHORIZATION TO CONFESS JUDGMENT PROHIBITED.

25 (a) The creditor may not take or accept from the consumer a warrant
26 or power of attorney or other authorization for the creditor, or other
27 person acting on his behalf, to confess judgment or otherwise act as
28 the agent for the consumer in any respect.

29 (b) An authorization in violation of this section is subject to

1 the provisions of secs. 230 and 234 of this chapter.

2 Sec. 45.85.080. NEGOTIABLE INSTRUMENTS PROHIBITED. (a) No
3 lender, seller or lessor may take or otherwise arrange for the con-
4 sumer to sign an instrument payable "to order or to bearer" as evidence
5 of the credit obligation of the consumer in a consumer credit trans-
6 action or a consumer lease.

7 (b) Any holder of an instrument, contract or other writing
8 evidencing an obligation of the consumer takes it subject to all claims
9 and defenses of the consumer up to and including the amount of the
10 transaction total arising out of the transaction whether or not it is
11 payable "to order or to bearer".

12 (c) Taking or otherwise arranging for the consumer to sign an
13 instrument in violation of this section is subject to the provisions
14 of sec. 232 of this chapter.

15 Sec. 45.85.082. ASSIGNEE SUBJECT TO DEFENSES. Notwithstanding
16 any term or agreement to the contrary, an assignee of the rights of
17 the creditor is subject to all claims and defenses of the consumer
18 arising out of a consumer credit transaction or consumer lease.

19 Sec. 45.85.084. INTERLOCKING LOANS AND SALES. (a) The creditor
20 in consumer loan transactions is subject to all of the claims and
21 defenses of the consumer up to the total amount financed, arising from
22 the consumer sale or lease for which the proceeds of the loan are
23 used, if the creditor participated in or was connected with the consumer
24 sale or lease transaction.

25 (b) Without limiting the scope of (a) of this section, the
26 creditor participates in or is connected with a consumer sale or lease
27 transaction when

28 (1) the creditor is a person related to the seller or
29 lessor;

1 (2) the seller or lessor prepares documents used in connec-
2 tion with the loan;

3 (3) the creditor supplies forms to the seller or lessor used
4 by the consumer in obtaining the loan;

5 (4) the creditor makes 20 or more loans in any calendar
6 year, the proceeds of which are used in transactions with the same
7 seller or lessor, or with a person related to the same seller or
8 lessor;

9 (5) the consumer is referred to the creditor by the seller
10 or lessor;

11 (6) the creditor, directly or indirectly, pays the seller
12 or lessor any consideration whether or not it is in connection with
13 the particular transaction; or

14 (7) the creditor is the issuer of a credit card which may
15 be used by the consumer in the consumer sale or lease as a result of
16 a prior agreement between the issuer and the seller or lessor.

17 Sec. 45.85.086. NOTICE OF ASSIGNMENT. The consumer is authorized
18 to pay the original creditor until the consumer receives notification
19 of assignment of the rights to payment under a consumer credit trans-
20 action and that payment is to be made to the assignee. A notification
21 which does not reasonably identify the rights assigned is ineffective.
22 If requested by the consumer, the assignee must seasonably furnish
23 reasonable proof that the assignment has been made and unless he does
24 so the consumer may pay the original creditor.

25 Sec. 45.85.088. STATEMENTS OF COMPLIANCE OR PERFORMANCE. State-
26 ments in the form of acknowledgements, certificates of performance or
27 otherwise, signed by the consumer, to the effect that there has been
28 compliance with any of the requirements of this chapter or performance
29 by the other party or parties to the transaction create no presumption

1 that the facts recited in the statements are true.

2 Sec. 45.85.090. ATTORNEY FEES. (a) With respect to a consumer
3 credit transaction or consumer lease no term of a writing may provide
4 for the payment by the consumer of attorney fees.

5 (b) A provision in violation of this section is subject to the
6 provisions of sec. 232 of this chapter.

7 Sec. 45.85.092. RESTRICTION ON LIABILITY IN CONSUMER LEASE. The
8 obligation of a consumer upon expiration of a consumer lease may not
9 exceed the average payment allocable to a monthly period under the
10 lease. This limitation does not apply to charges for damages to the
11 leased property occasioned by other than normal use or for other
12 default.

13 Sec. 45.85.094. LIMITATION ON DEFAULT CHARGES. Except for
14 reasonable expenses incurred in disposition of collateral, as set out
15 in sec. 224 of this chapter, no term of a writing evidencing a con-
16 sumer credit transaction may provide for any charges as a result of
17 default by the buyer other than those authorized by this chapter.

18 Sec. 45.85.096. USE OF MULTIPLE AGREEMENTS. (a) No creditor
19 may divide, refinance, consolidate or otherwise permit the consumer
20 or consumers to become obligated with respect to a consumer credit
21 transaction or transactions with the result of obtaining a higher rate
22 of finance charge than would otherwise be permitted under this chapter.

23 (b) Transactions split between a husband and wife which arise
24 out of substantially the same transaction shall be presumed to be in
25 violation of this section.

26 (c) Transactions in violation of this section are subject to the
27 provisions of sec. 234 of this chapter.

28 Sec. 45.85.098. CHANGES IN OPEN END CREDIT TERMS. (a) With
29 respect to an open end credit plan a creditor shall not, without the

1 agreement of the consumer, make a change in the terms of the credit
2 plan which is adverse to the interests of the consumer with respect to
3 any outstanding obligation.

4 (b) No term of a writing executed by the consumer shall consti-
5 tute authorization for a creditor unilaterally to make changes in the
6 terms of the credit plan which are prohibited by this section.

7 Sec. 45.85.100. REFERRAL TRANSACTIONS PROHIBITED. (a) With
8 respect to a consumer credit transaction or consumer lease the creditor
9 may not give or offer to give a rebate or discount or otherwise pay
10 or offer to pay value to the consumer as an inducement for a consumer
11 transaction in consideration of his giving to the creditor the names
12 of prospective consumers, or otherwise aiding the creditor in entering
13 into a transaction with another consumer or, without being limited by
14 any of the foregoing, performing any other act or the occurrence of any
15 other event, if the earning of the rebate, discount, or other value is
16 contingent upon the occurrence of an event subsequent to the time the
17 consumer enters into the agreement.

18 (b) A violation of this section is subject to the provisions of
19 secs. 232 and 234 of this chapter.

20 Sec. 45.85.102. RESTRICTIONS ON SECURITY INTERESTS. (a) With
21 respect to a consumer credit sale a creditor may take a security inter-
22 est in the property sold.

23 (b) With respect to a consumer credit transaction, no security
24 interest other than a purchase money security interest may be taken
25 in household furnishings, appliances and clothing of the consumer and
26 his dependents.

27 (c) With respect to a consumer loan no creditor may secure the
28 obligation

29 (1) with an interest in real property if the amount financed

1 is \$3,000 or less, or

2 (2) with an interest in personal property the fair market
3 value of which exceeds one and one-half times the amount financed.

4 (d) With respect to a consumer lease a creditor may not take a
5 security interest in any property of the consumer to secure the debt
6 arising from the lease.

7 (e) No merchant may take or acquire as a result of a consumer
8 transaction a security interest in goods upon which goods sold are
9 installed, or to which they are annexed, or in real property to which
10 the goods are affixed or which is maintained, repaired or improved as
11 a result of the sale of the goods or services, unless

12 (1) in the case of a security interest in real property, the
13 obligation secured is \$3,000 or more, or

14 (2) in the case of a security interest in goods, the obliga-
15 tion secured is \$500 or more.

16 (f) Except as otherwise provided in sec. 104 of this chapter
17 with respect to consolidation agreements and open end credit plans, no
18 merchant may take or acquire as a result of a consumer transaction
19 a security interest in

20 (1) goods other than those sold, worked upon or in which
21 goods sold are installed unless such goods become annexed to the
22 described property;

23 (2) goods subject to a prior transaction with the creditor
24 or a person related to him;

25 (3) goods acquired or to be acquired in the future.

26 Sec. 45.85.104. SECURITY INTERESTS: CONSOLIDATIONS; OPEN END
27 CREDIT PLANS. (a) The parties may agree in a consolidation agreement,
28 as set out in sec. 48 of this chapter, that the creditor may secure
29 the consolidated obligation by a security interest in the property sold

1 prior thereto if he has an existing security interest in that property
2 as a result of the prior transaction and the obligation remaining on
3 that prior sale is one of those agreed to become consolidated.

4 (b) For the purpose of determining the amount of the consolidated
5 obligation secured by the various security interests, payments received
6 by the creditor after a consolidation agreement are considered to have
7 been first applied to the payment of obligations arising from the
8 transactions first made. To the extent that obligations are paid under
9 this section, security interests in items of property terminate as the
10 obligation originally incurred with respect to each item is paid.

11 (c) Payments received by the creditor upon an open end credit
12 plan are considered, for the purpose of determining the amount of the
13 unpaid balance secured by the various security interests, to have been
14 applied first to the payment of finance charges in the order of their
15 entry to the account, and then to the payment of the respective
16 amounts financed in the order in which the entries to the account were
17 made.

18 (d) If obligations consolidated or financed under an open end
19 credit plan arise from two or more transactions made on the same day,
20 payments received by the creditor are considered, for the purpose of
21 determining the amount of the obligation secured by the various security
22 interests, to have been applied first to the payment of the smallest
23 obligation.

24 SUBARTICLE 5. CONSUMER APPROVAL TRANSACTIONS.

25 Sec. 45.85.106. DEFINITIONS OF INSIDE AND OUTSIDE APPROVAL TRANS-
26 ACTIONS. In this chapter

27 (1) "inside consumer approval transaction" means a consumer
28 transaction initiated by the consumer and consummated at the merchant's
29 place of business in which the dollar amount the customer pays, will

1 pay, has paid or is obligated to pay exceeds \$50;

2 (2) "outside consumer approval transaction" means a con-
3 sumer transaction initiated or consummated personally by a merchant at
4 a place other than the merchant's place of business.

5 Sec. 45.85.108. REQUIREMENT OF AFFIRMATION. (a) Except as
6 provided in (e) of this section, in addition to any right otherwise
7 to revoke an offer, to rescind the transaction or to any remedy for
8 the merchant's breach, a consumer is not obligated under an outside
9 approval transaction until he has affirmed the transaction in accordance
10 with the provisions on manner of affirmation as set out in sec. 110
11 of this chapter.

12 (b) A merchant shall not change the terms of a transaction or
13 avoid the transaction for three business days after giving notice to
14 the consumer in accordance with the provisions on manner of affirmation
15 as set out in sec. 110 of this chapter.

16 (c) Affirmation occurs when the consumer gives written notice
17 of affirmation to the merchant at the address stated in any writing
18 provided by the merchant.

19 (d) Notice of affirmation, if given by mail, is given when it
20 is received by the merchant to whom it is addressed.

21 (e) Notice of affirmation need not take a particular form and
22 is sufficient if it indicates by any form of written expression the
23 intention of the consumer to affirm the transaction.

24 (f) The consumer need not affirm an outside approval transaction
25 if the consumer requests the services, property, money or credit without
26 delay in the event of an emergency, the nature of which is prescribed
27 by regulation of the administrator.

28 Sec. 45.85.110. MANNER OF AFFIRMATION. (a) In an outside
29 approval transaction, unless the consumer requests the credit without

1 delay in an emergency, the consumer is not obligated under the trans-
2 action until he has affirmed the transaction in writing.

3 (b) The merchant must provide the consumer with a statement of
4 his need to affirm the transaction. The statement must

5 (1) appear under the conspicuous caption "consumer's need
6 to affirm the transaction";

7 (2) read as follows: "If you were first contacted or if
8 this agreement was completed by the merchant at a place other than his
9 place of business and you wish to go through with the transaction, you
10 must tell the merchant by a letter in order to be obligated. The
11 merchant may not change the terms or get out of the transaction for
12 three business days after you receive this notice. The letter must be
13 mailed to: (name and address of merchant)"; and

14 (3) be in the language in which the transaction originally
15 took place.

16 (c) Until the merchant has complied with this action, any
17 affirmation by the consumer is revocable by him.

18 (d) A violation of this section is subject to the provisions of
19 sec. 234 of this chapter.

20 Sec. 45.85.112. TRANSACTIONS NOT AFFIRMED. (a) If a consumer
21 does not affirm an outside approval transaction, the merchant must
22 within 10 days after he knows of the failure of the consumer to affirm,
23 return any money or property he has received from the consumer in
24 connection with the transaction.

25 (b) If the property received from the consumer was traded in, it
26 must be returned in substantially as good condition as when it was
27 received. If the merchant fails to tender the property received, the
28 consumer may elect to recover an amount equal to the greater of the
29 trade-in allowance or fair market value.

1 (c) Upon failure to affirm the consumer must upon demand tender
2 to the merchant any money or property received in connection with the
3 transaction, but only at the consumer's residence. If no demand is
4 made within a reasonable time, the consumer may keep the money or
5 property without obligation.

6 (d) The merchant is not entitled to compensation for any service
7 performed under a transaction that is not affirmed.

8 (e) Until the merchant has complied with the obligations imposed
9 by this section the consumer may retain possession of property or money
10 delivered to him and has a lien on such property or money for any
11 recovery to which he is entitled.

12 (f) A violation of this section is subject to the provisions
13 of sec. 232 of this chapter.

14 Sec. 45.85.114. CANCELLATION OF INSIDE CONSUMER APPROVAL TRANS-
15 ACTIONS. (a) In an inside consumer approval transaction, unless the
16 consumer requests credit, money, property or services without delay
17 in an emergency, the merchant must present to the consumer a written
18 statement of the consumer's right to cancel the transaction.

19 (b) The statement must

20 (1) appear under the conspicuous caption "consumer's right
21 to cancel";

22 (2) read as follows: "If you do not want the credit, money,
23 property, or services, you may cancel this transaction by mailing or
24 otherwise giving written notice to the merchant. The notice must say
25 that you do not want the credit, money, property or services and must
26 be mailed, telegraphed or delivered before midnight of the third
27 business day after you enter into this agreement. This notice must be
28 mailed to: (name and address of merchant). You may use this form to
29 cancel by signing it below and mailing it to the merchant.

1 Date..... 19..... I hereby cancel"; and

2 (3) be in the language in which the transaction originally
3 took place.

4 (c) Until the merchant has complied with this section the consumer
5 may cancel by notifying the merchant in any manner and by any means of
6 his intention to cancel.

7 (d) A violation of this section is subject to the provisions of
8 sec. 230 of this chapter.

9 SUBARTICLE 6. LIABILITY FOR USE OF CREDIT CARDS.

10 Sec. 45.85.116. DEFINITIONS. In this chapter

11 (1) "accepted credit card" means any credit card which the
12 cardholder has requested in writing and has signed or has used, or
13 authorized another to use, for the purpose of obtaining money, property,
14 labor, or services on credit; a renewal credit card shall be considered
15 to be accepted if it is issued within one year after a prior card has
16 been paid for or used; a new credit card issued in substitution for
17 an accepted credit card as a result of a change in the corporate
18 structure or ownership of a card issuer shall be considered to be an
19 accepted credit card;

20 (2) "adequate notice" means a printed notice on any credit
21 card issued to a cardholder, or on each periodic statement setting out
22 the account of a cardholder, which is set out clearly and conspicuously,
23 in accordance with regulations prescribed by the administrator, so that
24 a person against whom it is to operate could reasonably be expected
25 to have noticed it and understood its meaning;

26 (3) "card issuer" means any person who issues a credit card;

27 (4) "cardholder" means any person to whom a credit card is
28 issued or any person who has agreed with the card issuer to pay obliga-
29 tions arising from the issuance of a credit card to another person;

1 (5) "credit card" means any card, plate, coupon book or
2 other like credit device existing for the purpose of obtaining money,
3 property, labor, or services on credit;

4 (6) "unauthorized use" means a use of a credit card by a
5 person other than the cardholder who does not have actual, implied, or
6 apparent authority for such use and from which the cardholder receives
7 no benefit.

8 Sec. 45.85.118. REGULATIONS. The administrator shall prescribe
9 regulations governing the conditions under which card issuers may issue
10 credit cards. These regulations shall prescribe minimum standards to
11 be followed by all card issuers.

12 Sec. 45.85.120. LIABILITY OF HOLDER OF CREDIT CARD. (a) A
13 cardholder shall be liable for the unauthorized use of a credit card
14 only if

15 (1) the liability is not in excess of \$50;
16 (2) the card is an accepted credit card;
17 (3) the card issuer gives adequate notice to the cardholder
18 of the potential liability;

19 (4) the card issuer has provided a method whereby the user
20 of the credit card can be identified as the person authorized to use
21 it;

22 (5) the unauthorized use occurs before the cardholder has
23 notified the card issuer that an unauthorized use of the credit card
24 has occurred or may occur as the result of loss, theft, or otherwise;
25 and

26 (6) the card issuer has taken such action, after being so
27 notified by the cardholder, as is reasonably designed to advise those
28 merchants or others with whom the credit card is likely to be used of
29 the possibility that an unauthorized use of it may occur.

1 (b) For the purposes of this section, a cardholder notifies a
2 card issuer by taking such steps as may be reasonably required in the
3 ordinary course of business to provide the card issuer with the perti-
4 nent information whether or not any particular officer, employee, or
5 agent of the card issuer does in fact receive such information.

6 (c) A cardholder in no event is liable to the card issuer until
7 the credit card is in fact used, whether or not the use is authorized,
8 and then for no more than the credit extended as a result of that use.

9 Sec. 45.85.122. ESTABLISHING AUTHORIZED USE. (a) A card issuer
10 shall have the burden of establishing the liability of the cardholder
11 as provided in sec. 120 of this chapter.

12 (b) Unless the issuer is capable of establishing the cardholder's
13 liability, the card issuer shall give no information concerning the
14 liability of the cardholder to a consumer reporting agency.

15 Sec. 45.85.124. VIOLATION. A violation of secs. 116 - 124 of
16 this chapter is subject to the provisions of sec. 230 of this chapter.

17 ARTICLE 3. SALES PRACTICES.

18 SUBARTICLE 1. GENERAL PROVISIONS.

19 Sec. 45.85.126. SHORT TITLE. Secs. 126 - 146 of this chapter
20 may be cited as the Alaska Consumer Act - Sales Practices.

21 Sec. 45.85.128. SCOPE. Secs. 126 - 146 of this chapter apply to
22 unfair and deceptive sales practices, warranties and advertising.

23 SUBARTICLE 2. UNFAIR AND DECEPTIVE

24 TRADE PRACTICES.

25 Sec. 45.85.130. UNLAWFUL SALES PRACTICES. (a) The following
26 unfair methods of competition and unfair or deceptive acts or practices
27 undertaken by a merchant are hereby declared to be unlawful and pro-
28 hibited:

- 29 (1) passing off goods or services as those of another;

1 (2) causing likelihood of confusion or of misunderstanding
2 as to the source, sponsorship, approval, or certification of goods or
3 services;

4 (3) causing likelihood of confusion or of misunderstanding
5 as to affiliation, connection, or association with, or certification by,
6 another;

7 (4) using deceptive representations or designations of
8 geographic origin in connection with goods or services;

9 (5) representing that goods or services have sponsorship,
10 approval, characteristics, ingredients, uses, benefits, or quantities
11 that they do not have or that a person has a sponsorship, approval,
12 status, affiliation, or connection that he does not have;

13 (6) representing that goods are original or new if they
14 are deteriorated, altered, reconditioned, reclaimed, used, or second-
15 hand;

16 (7) representing that goods or services are of a particular
17 standard, quality, or grade, or that goods are of a particular style
18 or model, if they are of another;

19 (8) disparaging the goods, services, or business of another
20 by false or misleading representation of fact;

21 (9) advertising goods or services with intent not to sell
22 them as advertised;

23 (10) advertising goods or services with intent not to supply
24 reasonably expectable public demand, unless the advertisement discloses
25 a limitation of quantity;

26 (11) making false or misleading statements of fact concerning
27 reasons for, existence of, or amounts of price reductions;

28 (12) representing that the consumer transaction confers or
29 involves rights, remedies or obligations that it does not have or

1 involve or which are prohibited by law;

2 (13) representing that a part, replacement or repair service
3 is needed when it is not;

4 (14) representing that the subject of a consumer transaction
5 has been supplied in accordance with a previous representation when it
6 has not;

7 (15) representing that the consumer will receive a rebate,
8 discount or other economic benefit as an inducement for entering into
9 a consumer transaction if the earning of the benefit is contingent
10 on an event to occur subsequent to the consummation of the transaction;

11 (16) causing likelihood of confusion or of misunderstanding
12 with respect to the authority of a salesman, representative or agent
13 to negotiate the final terms of a transaction with a consumer;

14 (17) engaging in any other conduct which similarly creates
15 a likelihood of confusion or of misunderstanding; or

16 (18) engaging in any act or practice which is unfair or
17 deceptive to the consumer.

18 (b) Without limiting the scope of (a) of this section, an act
19 or practice is a violation of this section if

20 (1) it is oppressive or otherwise unconscionable in any
21 respect; or

22 (2) it fails to comply with existing state consumer protec-
23 tion statutes, the Federal Trade Commission Act, the Federal Consumer
24 Credit Protection Act, or other federal consumer protection statutes.

25 Sec. 45.85.132. RULES AND REGULATIONS. (a) It is the intent
26 of the legislature that in construing sec. 130 of this chapter due
27 consideration and great weight shall be given to the interpretations
28 of the Federal Trade Commission and the federal courts relating to
29 sec. 5(a) (1) of the Federal Trade Commission Act (15 U.S.C., 45(a) (1)).

1 as from time to time amended.

2 (b) The administrator may make rules and regulations interpreting
3 the provisions of sec. 130 of this chapter. These rules and regula-
4 tions shall not be inconsistent with the rules, regulations and decisions
5 of the Federal Trade Commission and the federal courts in interpreting
6 the provisions of sec. 5(a) (1) of the Federal Trade Commission Act
7 (15 U.S.C., 45(a) (1)), as from time to time amended.

8 Sec. 45.85.134. REMEDIES AND PENALTY. In addition to any other
9 remedy provided by law, a consumer who has been induced to participate
10 in a consumer transaction as a result of an act or practice undertaken
11 by a merchant in violation of the provisions on unlawful sales
12 practices, as set out in sec. 130 of this chapter, shall be entitled
13 to a recovery from the merchant in accordance with the provisions of
14 sec. 232 of this chapter.

15 SUBARTICLE 3. WARRANTIES AND ADVERTISING.

16 Sec. 45.85.136. DEFINITIONS OF WARRANTY AND MERCHANTABLE. In
17 this chapter

18 (1) "warranty" means express and implied warranties as
19 defined in AS 45.05.094, 45.05.096, and 45.05.098 and expression or
20 action of the merchant which assures or purports to assure the con-
21 sumer, directly or indirectly, that the goods have described qualities
22 or will perform in a described manner;

23 (2) "merchantable" means, in addition to the qualities
24 prescribed in AS 45.05.094, that the goods conform in all material
25 respects to applicable state and federal statutes and regulations
26 establishing standards of quality and safety of goods, and, in the
27 case of goods with mechanical, electrical or thermal components, are
28 in good working order and will operate properly in normal usage for
29 a reasonable period of time.

1 Sec. 45.85.138. DISCLAIMER OF WARRANTIES AND REMEDIES PROHIBITED.

2 Notwithstanding any other provisions of law, with respect to goods
3 which are the subject of or are intended to become the subject of a
4 consumer transaction, no merchant may

5 (1) exclude, modify or otherwise attempt to limit any
6 warranty, express or implied by law, including the warranties of
7 merchantability and fitness for particular purpose; or

8 (2) exclude, modify or attempt to limit any remedy provided
9 by law, including the measure of damages available, for a breach of
10 warranty, express or implied.

11 Sec. 45.85.140. VIOLATIONS. A violation of the provisions of
12 sec. 138 of this chapter shall be subject to the provisions of sec.
13 232 of this chapter.

14 Sec. 45.85.142. BREACH OF WARRANTY; PRIVITY ABOLISHED. Notwith-
15 standing any provision of law, no action by a consumer for breach of
16 warranty or for negligence with respect to goods subject to a consumer
17 transaction shall fail because of a lack of privity between the
18 consumer and the defendant. An action against any person for breach
19 of warranty or for negligence with respect to goods subject to a
20 consumer transaction shall not of itself constitute a bar to the
21 bringing of an action against another person.

22 Sec. 45.85.144. FALSE, MISLEADING OR DECEPTIVE ADVERTISING. No
23 merchant may advertise, print, display, publish, distribute or broadcast
24 or cause to be advertised, printed, displayed, published, distributed or
25 broadcast, in any manner any statement or representation with regard to
26 the sale of goods or the extension of consumer credit including the
27 rates, terms or conditions for the sale of such goods or the extension
28 of such credit, which is false, misleading, or deceptive, or which omits
29 to state material information that is necessary to make the statements

1 in it not false, misleading or deceptive.

2 Sec. 45.85.146. REMEDIES AND PENALTY. In addition to any other
3 remedy provided by law, a consumer who has been induced to participate
4 in a consumer transaction as a result of advertising in violation
5 of sec. 144 of this chapter shall be entitled to a recovery from the
6 merchant in accordance with the provisions of sec. 230 of this chapter.
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1 ARTICLE 4. INSURANCE.

2 SUBARTICLE 1. INSURANCE IN GENERAL

3 Sec. 45.85.148. SHORT TITLE. Secs. 148 - 184 of this chapter
4 shall be known and may be cited as Alaska Consumer Act - Insurance.

5 Sec. 45.85.150. SCOPE; RELATION TO CREDIT INSURANCE ACT; APPLICA-
6 BILITY TO PARTIES. (a) Except as provided in (b) of this section,
7 secs. 148 - 184 of this chapter apply to insurance provided or to be
8 provided in relation to a consumer credit transaction.

9 (b) The provision on cancellation by a creditor as set out in
10 sec. 184 of this chapter, applies to loans the primary purpose of
11 which is the financing of insurance.

12 Sec. 45.85.152. DEFINITIONS: CONSUMER CREDIT INSURANCE . In
13 secs. 148 - 184 of this chapter "consumer credit insurance" means
14 insurance, other than insurance on property, by which the satisfaction
15 of the consumer's obligation in whole or in part is a benefit pro-
16 vided.

17 Sec. 45.85.153. CREDITOR'S PROVISION OF AND CHARGE FOR INSURANCE:
18 EXCESS AMOUNT OF CHARGE. (a) Except as otherwise provided in secs.
19 148 - 184 of this chapter and subject to the provisions on additional
20 charges as set out in sec. 38 of this chapter, and maximum charges,
21 as set out in sec. 36 of this chapter, the consumer and creditor may
22 agree that the creditor will provide insurance, and the creditor may
23 contract for and receive a charge for insurance separate from and in
24 addition to other charges, unless the creditor requires the insurance
25 in connection with the credit transaction.

26 (b) The parties may agree that the creditor shall provide
27 credit life and health and accident insurance in connection with a
28 consumer credit transaction, but the creditor may not provide any
29 other kind of coverage of credit insurance. A creditor need not make

1 a separate charge for insurance so provided.

2 (c) This chapter does not authorize the issuance of any insurance
3 prohibited under any statute, or rule thereunder, governing the busi-
4 ness of insurance.

5 Sec. 45.85.154. CONDITIONS APPLYING TO INSURANCE TO BE PROVIDED
6 BY CREDITOR. If the parties agree that insurance shall be provided,

7 (1) the creditor must disclose to the consumer, in writing,
8 before any obligation is incurred, full details of the policy, in-
9 cluding the scope and amount of coverage of the policy, the protections
10 it provides as well as its exceptions, if any, and the cost to the
11 creditor of such insurance;

12 (2) the insurance shall be evidenced by an individual
13 policy or certificate of insurance as approved by the Administrator,
14 delivered to the consumer, or mailed to him, within 15 days after the
15 term of the insurance commences under the agreement;

16 (3) the creditor shall promptly notify the consumer of any
17 failure or delay in providing the insurance;

18 (4) a violation of this section is subject to the provisions
19 of sec. 232 of this chapter.

20 Sec. 45.85.156. MAXIMUM CHARGE BY CREDITOR FOR INSURANCE. If a
21 creditor contracts for or receives a separate charge for insurance, the
22 amount charged for the insurance must have a reasonable relation to
23 the debt and may not exceed the premium to be charged by the insurer,
24 conforming to any rate filings required by law and made by the
25 insurer with the director of insurance.

26 Sec. 45.85.158. REFUND OR CREDIT REQUIRED; AMOUNT. (a) Upon
27 prepayment in full of a consumer credit transaction by the proceeds
28 of consumer credit insurance, the consumer or his estate is entitled
29 to a refund of any portion of a separate charge for insurance which by

1 reason of prepayment is retained by the creditor or returned to him
2 by the insurer.

3 (b) Secs. 148 - 184 of this chapter do not require the creditor
4 to grant a refund or credit if all refunds and credits due to the
5 consumer under this chapter amount to less than \$1.

6 (c) Except as provided in (b) of this section, the creditor shall
7 promptly make or cause to be made an appropriate refund or credit to
8 the consumer with respect to any separate charge made to him for in-
9 surance if

10 (1) the insurance is not provided or is provided for a
11 shorter term than that for which the charge to the debtor for insurance
12 was computed; or

13 (2) the insurance terminates before the end of the term
14 for which it was written because of prepayment in full or otherwise.

15 (d) A refund or credit required by (c) of this section is
16 appropriate as to amount if it is computed according to a method
17 prescribed or approved by the director of insurance.

18 (e) If the consumer is entitled to a refund, the creditor must
19 provide written notification to consumer of the fact, amount and
20 reason for any credit given under this section.

21 (f) A violation of this section is subject to the provisions of
22 sec. 230 of this chapter.

23 Sec. 45.85.160. EXISTING INSURANCE; CHOICE OF INSURER.

24 (a) If the creditor requires that credit insurance should be provided,
25 upon notice to the creditor the consumer shall have the option of
26 providing the insurance through an existing policy of insurance owned
27 or controlled by the consumer, or through a policy to be obtained and
28 paid for by the consumer.

29 (b) The creditor shall, at the time of entering into the original

1 contract, disclose to the consumer conspicuously, in writing, his
2 right, if he so desires, to provide the insurance himself.

3 (c) A violation of (b) of this section is subject to the provi-
4 sions of sec. 232 of this chapter.

5 Sec. 45.85.162. DEFERRAL, REFINANCING AND CONSOLIDATION AGREE-
6 MENTS; DUPLICATE CHARGES; OPEN END CREDIT PLANS. (a) The creditor
7 may not receive a separate charge for insurance in connection with a
8 deferral, as set out in sec. 44 of this chapter, a refinancing, as set
9 out in sec. 46 of this chapter, or a consolidation as set out in
10 sec. 48 of this chapter unless

11 (1) the consumer agrees in writing at the time of the
12 deferral, refinancing, or consolidation that a specific charge may be
13 made;

14 (2) the consumer is to be provided with insurance for an
15 amount or a term, or insurance of a kind, in addition to that to which
16 he would have been entitled had there been no deferral, refinancing,
17 or consolidation;

18 (3) the consumer receives a refund or credit on account
19 of any unexpired term of existing insurance in the amount that would
20 be required if the insurance were terminated, as set out in sec. 162
21 of this chapter; and

22 (4) the charge does not exceed the amount permitted by
23 sec. 160 of this chapter.

24 (b) A creditor may not receive a separate charge for insurance
25 which duplicates insurance with respect to which the creditor has
26 previously contracted for or received a separate charge.

27 (c) A creditor may not contract for or receive a separate charge
28 for insurance with respect to an open end credit plan.

29 (d) A violation of this section is subject to the provisions of

1 sec. 230 of this chapter.

2 Sec. 45.85.164. FEES OR COMMISSIONS. (a) No creditor may receive
3 any fee, commission, or benefit, directly or indirectly for any insur-
4 ance provided for the consumer nor may any creditor provide or agree to
5 provide any insurance for the consumer under a contract of insurance is-
6 sued by the creditor or by any insurance carrier related to the creditor.

7 (b) A violation of this section is subject to the provisions of
8 sec. 232 of this chapter.

9 Sec. 45.85.166. COOPERATION BETWEEN ADMINISTRATOR AND DIRECTOR OF
10 INSURANCE. The administrator and the director of insurance are author-
11 ized and directed to consult and assist one another in maintaining com-
12 pliance with secs. 148 - 184 of this chapter. They may separately or
13 jointly pursue investigation, prosecute suits, and take other official
14 action, as may seem to them appropriate. If the administrator is in-
15 formed of a violation or suspected violation by an insurer of secs. 148 -
16 184 of this chapter, or of the insurance laws, rules, and regulations of
17 this state, he shall advise the director of insurance of the circumstances.

18 Sec. 45.85.168. ADMINISTRATIVE ACTION OF DIRECTOR OF INSURANCE.

19 (a) To the extent that his responsibility under secs. 148 - 184 of
20 this chapter requires, the director of insurance shall issue rules
21 with respect to insurers and with respect to refunds as set out in
22 sec. 162 of this chapter, forms, schedules of premium rates and
23 charges as set out in sec. 174 of this chapter, and his approval or
24 disapproval and, in case of violation, may make an order for compliance.

25 (b) The Administrative Procedure Act (AS 44.62) applies to and
26 governs all administrative action taken by the director of insurance
27 under this section.

28 SUBARTICLE 2. CONSUMER CREDIT INSURANCE.

29 Sec. 45.85.170. TERM OF INSURANCE. (a) Consumer credit insurance

1 provided by a creditor may be subject to the furnishing of evidence
2 of insurability satisfactory to the insurer. Whether or not this
3 evidence is required, the term of the insurance shall commence no
4 later than when the consumer becomes obligated to the creditor
5 or when the consumer applies for the insurance, whichever is later,
6 except that (1) if any required evidence of insurability is not
7 furnished until more than 30 days after the term would otherwise
8 commence, the term may commence on the date when the insurer deter-
9 mines the evidence to be satisfactory; or (2) if the creditor pro-
10 vides insurance not previously provided covering debts previously
11 created, the term may commence on the effective date of the policy.

12 (b) If the commencement of the insurance is delayed, the consumer,
13 to the extent he has paid a premium charge for any period of time before
14 the insurance became effective, is entitled to a rebate or credit
15 according to sec. 162 of this chapter.

16 (c) The originally scheduled term of the insurance shall extend at
17 least until the due date of the last scheduled payment of the obligation
18 except, if the consumer is advised in writing and signs such writing
19 that the insurance will be written for a specified shorter time or
20 otherwise separately agrees to the shorter term, the term need extend
21 only until the end of the specified time.

22 (d) The term of the insurance may not extend more than 10 business
23 days after the originally scheduled due date of the last scheduled pay-
24 ment of the debt unless it is extended without additional cost to the
25 consumer or as an incident to a deferral, refinancing, or consolidation
26 agreement.

27 Sec. 45.85.172. AMOUNT OF INSURANCE. (a) If the consumer credit
28 insurance provides life coverage, the amount of insurance shall equal
29 but not exceed the greater of the scheduled or actual amount of the

1 debt at any time during the period the obligation is outstanding.

2 (b) If the consumer credit insurance provides disability coverage,
3 the amount of the insurance shall equal the total of all installments of
4 interest and principal which come due during the pendency of the disa-
5 bility.

6 Sec. 45.85.174. FILING AND APPROVAL OF RATES AND FORMS. (a) A
7 creditor may not use a form or a schedule of premium rates or charges,
8 the filing of which is required by this section, if the director of in-
9 surance has disapproved the form or schedule and has notified the insur-
10 er of his disapproval. A creditor may not use a form or schedule unless

11 (1) the form or schedule has been on file with the director
12 of insurance for 30 days, or has earlier been approved by him; and

13 (2) the insurer has complied with this section with respect
14 to the insurance.

15 (b) Except as provided in (c) of this section, all policies, certi-
16 ficates of insurance, notices of proposed insurance, applications for
17 insurance, endorsements and riders relating to consumer credit insurance
18 delivered or issued for delivery in this state, and the schedules of
19 premium rates or charges pertaining thereto, shall be filed by the in-
20 surer, including a creditor who acts as a self-insurer, with the director
21 of insurance. Within 30 days after the filing of any form or schedule,
22 he shall disapprove it if the premium rates or charges are unreasonable
23 in relation to the benefits provided under the form, or if the form con-
24 tains provisions which are unjust, unfair, inequitable, or deceptive,
25 or encourage misrepresentation of the coverage, or are contrary to any
26 provision of AS 21 or of any rule or regulation promulgated thereunder.

27 (c) If a group policy has been delivered in another state, the forms
28 to be filed by the insurer with the director of insurance are the group
29 certificates and notices of proposed insurance. He shall approve them if

1 (1) they provide the information that would be required if
2 the group policy were delivered in this state; and

3 (2) the applicable premium rates or charges do not exceed
4 those established by his rules or regulations or by this chapter.

5 Sec. 45.85.176. REGULATION OF MAXIMUM PREMIUMS. (a) Not later
6 than one year following the date of enactment of this chapter, the direc-
7 tor of insurance shall, by regulation, limit the maximum premiums which
8 may be charged consumers directly or indirectly for life, health, and
9 accident insurance, and such other lines of insurance, when such insur-
10 ance is provided or arranged for by a creditor under a consumer credit
11 transaction. In prescribing such regulations, the director of insurance
12 shall ensure that the maximum premiums so established are reasonable
13 in relation to the benefits conferred and that consumers are adequately
14 protected against excessive premium charges.

15 (b) During the first year after enactment of this chapter or until
16 the director of insurance has promulgated regulations under (a) of this
17 section, the maximum charge for credit life or credit accident and health
18 insurance shall not exceed \$.25 a hundred dollars of coverage a year.

19 (c) Maximum premiums established under this section shall be based
20 upon a ratio of losses to premiums which is reasonable and which protects
21 consumers against excessive premium charges as determined by the director
22 of insurance. However, it is presumptive evidence that a rate for credit
23 life or credit accident and health insurance producing a loss ratio of
24 under 65 per cent should be considered to be excessive and unreasonable.
25 In determining this ratio, the director of insurance shall consider

26 (1) the ratio of losses to premiums experienced by other
27 lines of insurance marketed on a group basis;

28 (2) the ratio of losses to premiums experienced by creditors
29 who provided life, health, and accident insurance under consumer credit

1 transactions in which the cost of such insurance is included in the
2 finance charge paid by the consumer and is not a separate charge paid
3 by the consumer, and

4 (3) the actual losses and expenses experienced by insurance
5 companies and the actual incremental administrative expenses experi-
6 enced by creditors in the sale of such insurance.

7 (d) The director of insurance may prescribe such maximum premiums
8 for particular creditors, classes of creditors, or transactions based
9 upon the loss ratio determined under (c) of this section and actual
10 loss experience.

11 (e) The director of insurance shall from time to time raise or
12 lower the maximum premium charges permitted for such insurance for any
13 particular class of creditor or class of transactions whenever the
14 director of insurance determines that the actual loss experience for
15 the particular creditor, class of creditor, or class of transactions
16 produces a ratio of losses to premiums which differs substantially
17 and systematically based on credible data from the loss ratio estab-
18 lished by the director of insurance under (c) of this section.

19 (f) In order to implement this section, insurers shall, under
20 regulations of the director of insurance, file an annual report
21 setting out data pertaining to actual losses in relation to premiums
22 and such other information as may be required by the director of
23 insurance to further the purposes of this chapter. Such information
24 shall be made available to the general public upon request.

25 SUBARTICLE 3. PROPERTY AND LIABILITY INSURANCE.

26 Sec. 45.85.178. PROPERTY INSURANCE. (a) A creditor may not
27 receive a separate charge for insurance against loss of or damage to
28 property unless

29 (1) the insurance covers a risk of loss of or damage

1 resulting from fire, theft, or collision as applicable to property or
2 any other substantial risk which the creditor has the burden of
3 establishing;

4 (2) the amount, terms, and conditions of the insurance are
5 reasonable in relation to the character and value, including any
6 change in the character and value over the term of the credit, of the
7 property insured or to be insured; and

8 (3) the term of the insurance is reasonable in relation to
9 the terms of credit, but in no event extends beyond the due date of
10 the last scheduled prepayment.

11 (b) A creditor may not receive a separate charge for insurance
12 against loss of or damage to property unless the amount financed for
13 any single transaction, exclusive of charges for the insurance, is
14 \$300 or more, and the cash price of the property is \$300 or more.

15 Sec. 45.85.180. INSURANCE ON CREDITOR'S INTEREST ONLY. If a
16 creditor receives a separate charge for insurance against loss of or
17 damage to property, the risk of loss or damage not wilfully caused
18 by the consumer is on the consumer only where he is responsible for a
19 deficiency in the effective coverage of the insurance and then only
20 to the extent of that deficiency.

21 Sec. 45.85.182. LIABILITY INSURANCE. A creditor may not receive
22 a separate charge for insurance against liability.

23 Sec. 45.85.184. CANCELLATION BY CREDITOR. (a) A creditor shall
24 not request cancellation of a policy of property or liability insurance
25 except after the consumer's default, as set out in sec. 192 of this
26 chapter, or in accordance with a written agreement by the consumer, at
27 any time other than when the original transaction is entered into. In
28 either case the cancellation does not take effect until written notice
29 is delivered to the consumer or mailed to him. The notice shall state

1 that the policy may be cancelled on a date not less than 60 days after
2 the notice is delivered, or, if the notice is mailed, not less than
3 63 days after it is mailed.

4 (b) Following cancellation, the consumer shall be entitled to a
5 rebate or credit for any prepaid charges which represent the premium
6 for a period following cancellation. The rebate or credit shall be
7 governed by sec. 162 of this chapter.

8 ARTICLE 5. REMEDIES AND PENALTIES.

9 SUBARTICLE 1. LIMITATIONS ON CREDITORS' REMEDIES.

10 Sec. 45.85.186. SHORT TITLE. Secs. 186 - 246 of this chapter may
11 be cited as the Alaska Consumer Act - Remedies and Penalties.

12 Sec. 45.85.188. SCOPE. Secs. 186 - 200 of this chapter apply
13 to actions or other proceedings brought by a creditor to enforce
14 rights arising from consumer credit transactions and to extortionate
15 extensions of credit as set out in sec. 200 of this chapter.

16 Sec. 45.85.190. DEFAULT; ACCRUAL OF CAUSE OF ACTION. (a)
17 "Default" with respect to a consumer credit transaction means the
18 failure without justification under any provision of law of the con-
19 sumer to pay

20 (1) three successive installments within the period of time
21 allowable by this chapter;

22 (2) any remaining balance within three months after the due
23 date of the final installment; or

24 (3) an amount resulting from the total of unpaid delinquent
25 installments constituting 30 per cent of the amount financed.

26 (b) Upon the default of the consumer with respect to a consumer
27 credit transaction, the creditor shall be entitled to recover the
28 amount which the consumer would have been entitled to pay, on the date
29 the action was brought, upon prepayment under the provision on rebate

1 upon prepayment as set out in sec. 54 of this chapter. No action
2 may accrue in favor of the creditor with respect to the obligation of
3 the consumer except by reason of his default as defined in (a) of this
4 section.

5 (c) An action arising from a consumer credit transaction which
6 creates a security interest in personal property shall be subject to
7 the rights and limitations provided in secs. 202 - 226 of this chapter,
8 whether or not the creditor is seeking or has sought to realize upon
9 the security interest.

10 Sec. 48.85.192. VENUE; PLEADING; STAY OF ENFORCEMENT. (a) An action
11 brought by the creditor arising from a consumer credit transaction shall
12 be commenced in the judicial district in which the transaction was
13 entered into, in the judicial district in which the consumer resided at
14 the time the transaction was entered into, in the judicial district in
15 which the consumer resides at the commencement of the action, or, when
16 the transaction is secured by an interest in real property, in the
17 judicial district in which the real property is located.

18 (b) In an action brought by the creditor arising from consumer
19 credit transaction the complaint shall set out specifically the
20 circumstances constituting the default of the consumer and the figures
21 necessary for computation of damages and shall be accompanied by an
22 accurate copy of the writing evidencing the transaction. A judgment
23 entered upon a complaint which fails to comply with this section is
24 void.

25 (c) A stay of enforcement of a judgment entered against the
26 consumer may be ordered by the court on condition that the consumer
27 pay to the creditor the amounts at the times the court considers in
28 the mutual best interests of the parties. The court may make such
29 order or may subsequently modify or revoke it for good cause on its

1 own motion, or on the application of any party upon reasonable notice
2 to the other parties either at the time of the making of the judgment
3 or at any time thereafter.

4 Sec. 45.85.194. ATTACHMENT BEFORE JUDGMENT PROHIBITED. (a)
5 Before entry of judgment in an action against the consumer arising
6 from a consumer credit transaction, the creditor may not attach any
7 property, including unpaid earnings, of the consumer by attachment,
8 garnishment, or like proceedings.

9 (b) An order or process in violation of this section is void.

10 Sec. 45.85.196. EXEMPT PROPERTY. (a) The following property
11 of the consumer is exempt from levy, execution, sale, and other similar
12 process in satisfaction of a judgment for an obligation arising from
13 a consumer credit transaction:

14 (1) unpaid earnings;

15 (2) household furnishings, appliances and clothing of the
16 consumer and his dependents;

17 (3) real property used as the principal residence of the
18 consumer or his dependents;

19 (4) other property necessary for the maintenance of a
20 moderate standard of living for the consumer and his dependents.

21 (b) Nothing in this section shall be construed to displace
22 other provisions of law which afford additional or greater protection
23 to the consumer.

24 (c) An order or process in violation of this section is void.

25 Sec. 45.85.198. UNCONSCIONABILITY. (a) If it is found as a
26 matter of fact that a consumer credit transaction, any aspect of the
27 transaction, any conduct directed against the consumer by a party to
28 the transaction, or any result of the transaction is unconscionable,
29 the court shall, in addition to the penalty authorized in (d) of this

1 section, either refuse to enforce the transaction against the consumer
2 or so limit the application of any unconscionable aspect or conduct
3 to avoid any unconscionable result.

4 (b) Specific practices forbidden by the administrator in regu-
5 lations promulgated under sec. 264 of this chapter shall be presumed
6 to be unconscionable.

7 (c) Without limiting the scope of (a) of this section, the trier
8 of fact shall be entitled to consider, among other things, the follow-
9 ing as pertinent to the issue of unconscionability:

10 (1) the degree to which the practice unfairly takes ad-
11 vantage of the lack of knowledge, ability, experience, or capacity of
12 consumers;

13 (2) knowledge by those engaging in the practice of the
14 inability of consumers to receive benefits properly anticipated from
15 the goods or services involved;

16 (3) gross disparity between the price of goods or services
17 and their value as measured by the price at which similar goods or
18 services are readily obtainable by other consumers, or by other tests
19 of true value;

20 (4) the fact that the practice may enable merchants to take
21 advantage of the inability of consumers reasonably to protect their
22 interests by reason of physical or mental infirmities, illiteracy
23 or inability to understand the language of the agreement, ignorance
24 or lack of education or similar factors;

25 (5) the degree to which terms of the transaction require
26 consumers to waive legal rights;

27 (6) the degree to which terms of the transaction require
28 consumers to jeopardize money or property beyond the money or property
29 immediately at issue in the transaction;

1 (7) the degree to which the natural effect of the practice
2 is to cause or aid in causing consumers to misunderstand the true
3 nature of the transaction or their rights and duties thereunder;

4 (8) the extent or degree to which the writing purporting
5 to evidence the obligation of the consumer in the transaction contains
6 terms or provisions or authorizes practices prohibited by law; and

7 (9) definitions of unconscionability in statutes, regula-
8 tions, rulings and decisions of legislative, administrative or
9 judicial bodies in this state or elsewhere.

10 (d) In addition to the protections afforded in (a) of this sec-
11 tion, the consumer shall be entitled upon a finding of unconscionability
12 to recover from the creditor or the person responsible for the un-
13 conscionable conduct a penalty in accordance with the provisions of
14 sec. 232 of this chapter.

15 Sec. 45.85.200. EXTORTIONATE EXTENSIONS OF CREDIT. (a) If it is
16 the understanding of the creditor and the consumer during any time
17 that an extension of credit is outstanding, that delay in making re-
18 payment could result in the use of violence or other illegal means to
19 cause harm to the person, reputation, or property of any person, the
20 extension of credit shall be unenforceable in accordance with the
21 provisions of sec. 234 of this chapter and the consumer shall have
22 the additional recovery triple the penalty provided in sec. 232 of
23 this chapter.

24 (b) If it is shown that an extension of credit was made at an
25 annual rate exceeding that permitted by the provisions on maximum
26 charges as set out in sec. 36 of this chapter and that the creditor
27 had a reputation for the use or threat of use of violence or other
28 illegal means to cause harm to the person, reputation, or property
29 of any person to collect extensions of credit or to punish the nonre-

1 payment thereof, it shall be presumed that the extension of credit
2 was a violation of (a) of this section.

3 SUBARTICLE 2. ENFORCEMENT OF SECURITY INTERESTS IN COLLATERAL.

4 Sec. 45.85.202. SCOPE. Secs. 202 - 226 of this chapter apply
5 to actions brought to enforce security interests in goods which arise
6 from a consumer credit transaction.

7 Sec. 45.85.204. DEFINITION: COLLATERAL. In this chapter
8 "collateral" means goods subject to a security interest arising from
9 a consumer credit transaction.

10 Sec. 45.85.206. ENFORCEMENT OF SECURITY INTERESTS; REMEDIES.

11 (a) Subject to the provisions on security interests, as set out in
12 secs. 102 and 104 of this chapter, the creditor may acquire a security
13 interest in goods to secure the obligations of the consumer arising
14 from a consumer credit transaction.

15 (b) Upon the default, as set out in sec. 190 of this chapter, of
16 the consumer the creditor shall have only those rights and remedies
17 provided in secs. 186 - 246 of this chapter. Subject to the limita-
18 tions contained in secs. 202 - 226 of this chapter, the creditor may
19 waive his security interest and pursue his claim to judgment as
20 unsecured or foreclose or otherwise enforce the security interest by
21 any available judicial procedure.

22 (c) Each requirement of secs. 202 - 226 of this chapter is a
23 condition precedent for a proper taking of collateral.

24 Sec. 45.85.208. NONJUDICIAL ENFORCEMENT PROHIBITED. Notwith-
25 standing any other provision of law no term of a writing shall consti-
26 tute authorization for a creditor to take possession of collateral
27 by other than legal process in accordance with secs. 202 - 226 of this
28 chapter.

29 Sec. 45.85.210. VOLUNTARY SURRENDER OF COLLATERAL. Notwithstanding

1 a waiver by the creditor of the security interest in collateral under
2 sec. 206(b) of this chapter or any other provision of law the consumer
3 shall have the right at any time to voluntarily surrender all of his
4 rights and interests in the collateral to the creditor. For the pur-
5 poses of secs. 186 - 246 of this chapter a voluntary tender by the
6 consumer to the creditor of the collateral shall be the equivalent
7 of the enforcement of the security interest by the creditor.

8 Sec. 45.85.212. PROCESS FOR POSSESSION: PLEADINGS. (a) In an
9 action brought to enforce a security interest in collateral no process
10 shall issue to take possession of the goods until the expiration of
11 15 days from the service of the complaint on the consumer or until
12 the issue of the consumer's default has been resolved in favor of the
13 creditor after a hearing under sec. 216 of this chapter.

14 (b) In an action brought to enforce a security interest in
15 collateral the complaint shall be accompanied by an accurate copy of
16 the writing evidencing the transaction and shall set out specifically:

17 (1) the circumstances constituting the default of the
18 consumer;

19 (2) the amount by itemization that the consumer is required
20 to pay to cure his default under sec. 214 of this chapter;

21 (3) the amount by itemization which the consumer will be
22 required to pay to redeem the collateral, as set out in sec. 218 of
23 this chapter, if his default is not cured; and

24 (4) if the unpaid balance of the obligation is such that
25 it may give rise to a claim for a deficiency, as set out in sec. 222
26 of this chapter, the damages claimed by the creditor, as set out in
27 sec. 226 of this chapter, if the default is not cured or the
28 collateral is not redeemed.

29 Sec. 45.85.214. CONSUMER'S RIGHT TO CURE DEFAULT. (a) The

1 consumer may cure his default by tendering fulfillment of his current
2 obligation to the creditor at any time before the expiration of the 15
3 days from service of the complaint or, in any event, at any time before
4 process issues for the taking of the collateral.

5 (b) For the purposes of secs. 202 - 226 of this chapter the
6 current obligation of the consumer means the aggregate of all in-
7 stallments scheduled to be due at the time of the tender, plus any
8 unpaid delinquency or deferred charges.

9 (c) Once the consumer has cured his default under this section
10 the complaint of the creditor shall be dismissed.

11 Sec. 45.85.216. HEARING ON ISSUE OF DEFAULT. (a) Before process
12 shall issue with regard to the collateral, the consumer shall be
13 entitled to an expedited hearing on the issue of his default or any
14 other matter which questions the validity of the creditor's claims.
15 This shall be set out in the summons or other process accompanying
16 the complaint. If he desires a hearing the consumer shall, with
17 reasonable notice to the creditor and other parties to the action,
18 file his demand for a hearing within five days of the service of the
19 complaint. Upon the filing of the consumer's demand the hearing shall
20 be scheduled by the court as soon as possible.

21 (b) If it appears at the hearing that there is substantial
22 question as to the default of the consumer or the validity of the
23 creditor's claim no process shall issue with regard to the collateral
24 until the matter is resolved at a final hearing. If no substantial
25 question is raised the creditor shall be entitled to have process
26 issue immediately, providing a period of 15 days has elapsed
27 since the service of the complaint.

28 Sec. 45.85.218. CONSUMER'S RIGHT TO REDEEM. (a) For a period
29 of 30 days following the issue of process with regard to the collateral

1 the consumer shall be entitled to redeem the goods by tendering the
2 amount constituting his current obligation, as set out in sec. 214 of
3 this chapter, together with the court costs incurred by the creditor,
4 and a performance deposit, not to exceed the total of three install-
5 ments, equivalent to one-third of the total obligation remaining with
6 respect to the consumer credit transaction.

7 (b) Upon payment by the consumer of the amount necessary for
8 redemption the process under which the collateral has been held shall
9 be dissolved, the action dismissed and the goods shall be returned.

10 (c) The performance deposit shall be held by the creditor
11 against the remaining obligation of the consumer. Upon regular per-
12 formance by the consumer throughout the duration of the obligation the
13 deposit shall be credited to the consumer's account at the time it
14 becomes equal to the remaining balance. In the event of a subsequent
15 default, prepayment, or any other occurrence which requires the computa-
16 tion under this chapter of the outstanding obligation of the consumer,
17 the deposit shall be credited to the amount paid for the purposes of
18 the computation.

19 Sec. 45.85.220. DISPOSITION OF COLLATERAL AFTER REDEMPTION PERIOD.
20 In the absence of the consumer's payment of an amount necessary to
21 redeem the collateral within the period provided in sec. 216 of this
22 chapter the creditor shall take all rights and interests in the collat-
23 eral.

24 Sec. 45.85.222. RESTRICTIONS ON DEFICIENCY CLAIMS. (a) If the
25 creditor takes possession of property which was collateral under a
26 consumer credit transaction, the consumer shall not be personally liable
27 to the creditor for any unpaid balance of the obligation unless the
28 unpaid balance was \$2,000 or more at the time of the default.

29 (b) For the purposes of sec. 202 - 226 of this chapter, the unpaid

1 balance of the obligation is that amount which the consumer would
2 have been required to pay upon prepayment under the provisions on
3 rebate upon prepayment as set out in sec. 54 of this chapter. For the
4 purpose of determining the unpaid balance of consolidated debts or
5 debts under open and credit plans, the allocation of payments to a
6 debt shall be determined in the same manner as provided for determining
7 the amount of the obligation secured by various security interests
8 under sec. 104 of this chapter.

9 Sec. 45.85.224. COMPUTATION OF DEFICIENCY. (a) If the unpaid
10 balance of the consumer's obligation at the time of default was \$2,000
11 or more the creditor shall be entitled to recover from the consumer
12 the deficiency, if any, resulting from deducting the fair market value
13 of the collateral from the unpaid balance due, provided he has complied
14 with all provisions of secs. 202 - 226 of this chapter.

15 (b) In a proceeding for a deficiency the fair market value of
16 the collateral shall be a question for the trier of fact. Periodically
17 published trade estimates of goods shall, to the extent they are recog-
18 nized in the retail value of particular trade or business, be presumed
19 to be the fair market value of the collateral.

20 SUBARTICLE 3. CONSUMER'S REMEDIES.

21 Sec. 45.85.226. REMEDIES TO BE LIBERALLY ADMINISTERED: TRANSA-
22 CTION TOTAL DEFINED. (a) The remedies provided by secs. 228 - 242 of
23 this chapter shall be liberally administered to the end that the
24 consumer as the aggrieved party shall be put in at least as good a
25 position as if the creditor had fully complied with this chapter.
26 Except as is otherwise specifically provided consequential and special
27 damages may be had in lieu of the specific penalties allowed, and in
28 addition punitive damages may be had as indicated.

29 (b) Any right or obligation declared by this chapter is enforceable

1 by action unless the provision declaring it specifies a different and
2 limited effect.

3 (c) "Transaction total" means

4 (1) in the case of transactions under open end credit
5 plans, the total of the following calculated as if the amount or
6 amounts financed were paid over the maximum period of the plan or, if
7 there is no such period, over 12 months beginning with the next billing
8 cycle or cycles following the transaction

9 (A) the amount financed, plus any down payment or
10 required deposit balance, and

11 (B) the total finance charge, including any prepaid
12 finance charge;

13 (2) in the case of other than open end transactions, the
14 total of the following:

15 (A) the amount financed, plus any down payment or
16 required deposit balance, and

17 (B) the amount of all precomputed or precomputable
18 finance charge, including any prepaid finance charge.

19 Sec. 45.85.228. PENALTY FOR CERTAIN VIOLATIONS. (a) A consumer
20 may recover from the person violating this chapter the damages the
21 law otherwise allows, 10 per cent of the transaction total, if applic-
22 able, or \$100, whichever is greater, for violations to which this
23 section applies.

24 (b) This section also applies to all violations as to which no
25 other remedy is specifically provided.

26 Sec. 45.85.230. PENALTY FOR CERTAIN VIOLATIONS. A consumer
27 may recover from the person violating this chapter the damages which
28 the law otherwise allows, 20 per cent of the transaction total, if
29 applicable, or \$200, whichever is greater, for violations to which

1 this section applies.

2 Sec. 45.85.232. REMEDY FOR CERTAIN VIOLATIONS. A consumer may
3 recover from the person violating this chapter actual and punitive
4 damages, 30 per cent of the transaction total, if applicable, or
5 \$300, whichever is greater, for violations to which this section
6 applies.

7 Sec. 45.85.234. TRANSACTIONS WHICH ARE VOID. The consumer
8 shall be entitled to retain the goods, services or money received
9 under the transaction without obligation to pay any part of the
10 transaction total for violations to which this section applies. In
11 addition, he shall be entitled to recover any sums paid to the creditor
12 or merchant under the transaction.

13 Sec. 45.85.236. TERMS AND ACTION WHICH ARE VOID. Any charge,
14 practice, term, clause, provision, security interest or other action
15 or conduct in violation of the provisions of this chapter shall confer
16 no rights or obligations enforceable by action.

17 Sec. 45.85.238. CONSUMER ATTORNEY FEES: TIME LIMITATIONS. (a)
18 In any action to enforce a consumer's remedy under secs. 228 - 242 of
19 this chapter, or to enforce any other consumer's right with respect to
20 any transaction subject to this chapter, whether as an original claim,
21 set-off or counterclaim, a consumer who prevails shall be awarded a
22 reasonable attorney fee incurred. Fees shall be measured by the amount
23 of time reasonably expended by the consumer's attorney and not by the
24 amount of the recovery. If the consumer is represented by a nonprofit
25 organization in such a case, the organization shall be awarded a service
26 fee in lieu of attorney fees, equal to the amount of fees which a
27 private attorney would be awarded for the same work.

28 (b) Any action brought by a consumer to enforce rights under
29 this chapter may be commenced within one year after the due date of the

1 last scheduled payment of the transaction in question or four years
2 after consummation of the agreement, whichever is later. Rights under
3 this chapter may be asserted as a defense, set-off or counter-claim
4 to an action against the consumer without regard to this time limita-
5 tion.

6 Sec. 45.85.240. CLASS ACTIONS. (a) Any person may bring a civil
7 action on behalf of himself and all other persons of the state similarly
8 situated to restrain a person from violating this chapter or from
9 engaging in a course of fraudulent or unconscionable conduct and for
10 other appropriate relief including damages and penalties provided in
11 this chapter.

12 (b) At the time of filing the class action the plaintiff shall
13 notify the administrator of the action, and the administrator shall
14 be permitted to join as party plaintiff in accordance with the provi-
15 sions of sec. 268 of this chapter.

16 (c) The proceeding of the class action shall be governed by the
17 standards set out in sec. 268 of this chapter whether or not the ad-
18 ministrator joins the action.

19 (d) The plaintiff may apply for temporary relief, and if the
20 court finds after hearing held upon notice to the defendant that
21 there is reasonable cause to believe that the defendant is engaging
22 in or is likely to engage in conduct sought to be restrained, it may
23 grant any temporary relief or restraining order it considers appropri-
24 ate.

25 Sec. 45.85.242. LIABILITY OF CORPORATE OFFICERS. Damages or
26 penalties awarded to a consumer for a violation of this chapter which
27 cannot be collected from a corporation by reason of its insolvency
28 may be assessed against the principal officers of the defendant corpora-
29 tion.

1 (3) establish programs for the education of consumers with
2 respect to consumer practices and problems;

3 (4) make studies appropriate to effectuate the purposes
4 and policies of this chapter and make the results available to the
5 public;

6 (5) hold public or private hearings he considers necessary
7 or proper to effectuate the purposes and policies of this chapter.

8 (6) subpoena witnesses, compel their attendance, adduce
9 evidence and require the production of relevant matter he considers
10 necessary or proper to effectuate the purposes and policies of this
11 chapter;

12 (7) adopt, amend, and repeal rules and regulations to carry
13 out the purposes and policies of this chapter, to prevent circumvention
14 or evasion of it, or to facilitate compliance with it; these rules
15 and regulations may contain classifications, differentiations or other
16 provisions and may provide for adjustments or exceptions which in the
17 judgment of the administrator are necessary or proper to effectuate the
18 purposes of this chapter;

19 (8) maintain offices he considers necessary in this state;
20 and

21 (9) appoint attorneys, hearing examiners, clerks, and other
22 employees and agents who, in the judgment of the administrator, are
23 reasonably necessary to perform his functions under this chapter and
24 fix their compensation, and authorize attorneys appointed under this
25 section to appear for and represent the administrator in court.

26 (b) The administrator shall report annually to the legislature
27 on the operation of his office, on practices in consumer transaction,
28 on the use of consumer credit in the state, on problems attending the
29 collection of debts, on reporting agencies, on the problems of persons

1 of limited means in consumer transactions, and on the operation of this
2 chapter. For the purpose of making the report, the administrator is
3 authorized to conduct research and make appropriate studies. The
4 report shall include:

5 (1) a description of the examination and investigation
6 procedures and policies of his office;

7 (2) a statement of policies followed in deciding whether
8 to investigate or examine the offices of persons subject to this
9 chapter;

10 (3) a statement of policies followed in deciding whether
11 to bring any action authorized under this chapter;

12 (4) a statement of the number and percentages of classes
13 of merchants registered under this chapter which are periodically
14 investigated or examined;

15 (5) a statement of the types of consumer problems of both
16 consumers and merchants which have come to his attention and the
17 disposition of them under existing law;

18 (6) a complete survey of the costs of various types of
19 credit available in the state to the consumer and the cost to the
20 creditor of each such type of credit, with a comparison of each to
21 the prevailing rates of charges for credit, both the maximums permitted
22 by law and the amounts actually charged if below the maximums;

23 (7) a statement reviewing creditor profits from credit
24 operations;

25 (8) a statement of sales and advertising practices tending
26 to promote debt in such a way as to jeopardize the financial security
27 of consumers;

28 (9) a list of all persons who have challenged any action of
29 the administrator in a public hearing or in a judicial proceeding and

1 a brief description of the facts in each case;

2 (10) a list of all persons against whom complaints have
3 been filed or investigations commenced along with a brief description
4 of the facts of each case and the action taken in each, if such case
5 has not been resolved within three months from the filing of the
6 complaint or the commencement of the investigation, whichever is
7 earlier.

8 (11) recommendations for modifications or additions to this
9 chapter which in the experience and judgment of the administrator are
10 necessary; and

11 (12) other statements which are necessary or proper to
12 achieve the purposes or policies of this section or to effectuate the
13 purposes or policies of this chapter.

14 (c) Within 10 days following its submission to the legislature,
15 the administrator shall publish and make available to the communications
16 media and other interested parties sufficient copies of his report.

17 Sec. 45.85.256. ADMINISTRATIVE POWERS WITH RESPECT TO SUPERVISED
18 FINANCIAL ORGANIZATIONS. (a) All powers and duties of the adminis-
19 trator under this chapter shall be exercised by him with respect to
20 a supervised financial organization.

21 (b) If the administrator receives a complaint or other informa-
22 tion concerning noncompliance with this chapter by a supervised financial
23 organization, he shall inform the official or agency having supervisory
24 authority over the organization concerned. The administrator may
25 request information about supervised financial organizations from the
26 officials or agencies supervising them.

27 (c) The administrator and any official or agency of this state
28 having supervisory authority over a supervised financial organization
29 are authorized and directed to consult and assist one another in

1 maintaining compliance with this chapter. They may jointly pursue
2 investigations, prosecute suits, and take other official action, as
3 they consider appropriate, if either of them otherwise is empowered
4 to take the action.

5 Sec. 45.85.258. INVESTIGATORY POWERS. (a) If the administrator
6 has reason to believe that a person has engaged in an act which is
7 subject to action by the administrator, he may make an investigation
8 to determine if the act has been committed and, to the extent neces-
9 sary for this purpose, may administer oaths or affirmations, and, upon
10 his own motion or upon request of any party, may subpoena witnesses,
11 compel their attendance, adduce evidence, and require the production
12 of any matter which is relevant to the investigation, including the
13 existence, description, nature, custody, condition, and location of
14 any books, documents, or other tangible things, and the identity
15 and location of persons having knowledge of relevant facts, or any
16 other matter reasonably calculated to lead to the discovery of admis-
17 sible evidence, and he shall have the right of access to and of ex-
18 amination of such books, documents or other tangible things. In any
19 civil action brought by the administrator following such an investiga-
20 tion, the administrator may recover his costs of making the investiga-
21 tion if he prevails in the action.

22 (b) If 10 or more consumers file a signed complaint with the
23 administrator alleging that a person has engaged in an act which is
24 subject to action by the administrator, he shall immediately commence
25 an investigation under (a) of this section.

26 (c) If the person's records are located outside this state, the
27 person at his option shall either make them available to the adminis-
28 trator at a convenient location in this state or pay the reasonable
29 and necessary expenses for the administrator or his representative to

1 examine them at the place where they are maintained. The administrator
2 may designate representatives, including comparable officials of the
3 state in which the records are located, to inspect them on his behalf.

4 (d) The administrator may by regulation require that certain
5 records be kept in this state and that he be notified of their loca-
6 tion.

7 (e) Upon failure without lawful excuse to obey a subpoena or to
8 give testimony and upon reasonable notice to all persons affected
9 thereby, the administrator may apply to superior court for an order
10 compelling compliance.

11 Sec. 45.85.260. APPLICATION OF ADMINISTRATIVE PROCEDURE ACT.
12 Except as otherwise provided, the Administrative Procedure Act (AS 44.62)
13 applies to and governs all administrative action taken by the adminis-
14 trator under this chapter.

15 Sec. 45.85.262. ADMINISTRATIVE ENFORCEMENT ORDERS. (a) After
16 notice the administrator may order a person subject to this chapter or
17 a person acting in his behalf to cease and desist from engaging in
18 violations of this chapter or from engaging in unfair, deceptive,
19 fraudulent or unconscionable conduct. If, after the order is made,
20 a written request for a hearing is filed and no hearing is held within
21 30 days thereafter, the order is rescinded. A respondent aggrieved
22 by an order of the administrator may obtain judicial review of the
23 order and the administrator may obtain an order of the court for
24 enforcement of its order in the superior court. The proceeding for
25 review or enforcement is initiated by filing a petition in the court.
26 Copies of the petition shall be served upon all parties of record.

27 (b) Within 30 days after service of the petition for review
28 upon the administrator, or within any further time the court may allow,
29 the administrator shall transmit to the court the original or a

1 certified copy of the entire record upon which the order is based,
2 including any transcript of testimony, which need not be printed.
3 By stipulation of all parties to the review proceeding, the record may
4 be shortened. After hearing, the court may

5 (1) reverse or modify the order if the findings of fact of
6 the administrator are clearly erroneous in view of the evidence on
7 the whole record;

8 (2) grant any temporary relief or restraining order it
9 considers just; and

10 (3) enter an order enforcing, modifying, and enforcing as
11 modified, or setting aside in whole or in part the order of the ad-
12 ministrator, or remanding the case to the administrator for further
13 proceedings.

14 (c) An objection not urged at the hearing shall not be considered
15 by the court unless the failure to urge the objection is excused for
16 good cause shown. A party may move the court to remand the case to
17 the administrator in the interest of justice for the purpose of adducing
18 additional specified and material evidence and seeking findings thereon
19 upon good cause shown for the failure to adduce this evidence before
20 the administrator.

21 (d) The jurisdiction of the court shall be exclusive and its
22 final judgment or decree shall be subject to review by the superior
23 court in the same manner and form and with the same effect as in
24 appeals from a final judgment or decree in a special proceeding. The
25 administrator's copy of the testimony shall be available at reasonable
26 times to all parties for examination without cost.

27 (e) A proceeding for review under this section must be initiated
28 within 30 days after a copy of the order of the administrator is re-
29 ceived. If no proceeding is so initiated, the order is a lawfully made

1 final order.

2 Sec. 45.85.264. UNCONSCIONABLE CONDUCT. The administrator shall
3 promulgate regulations declaring specific practices in consumer
4 transactions or collection of debts arising therefrom to be unconscion-
5 able and prohibiting their use. In promulgating these regulations,
6 the administrator shall consider, among other things,

7 (1) the degree to which the practice unfairly takes advantage
8 of the lack of knowledge, ability, experience, or capacity of consumers;

9 (2) knowledge by those engaging in the practice of the
10 inability of consumers to receive benefits properly anticipated from
11 the goods or services involved;

12 (3) gross disparity between the price of goods or services
13 and their value as measured by the price at which similar goods or
14 services are readily obtainable by other consumers, or by other tests
15 of true value;

16 (4) the fact that the practice may enable merchants to take
17 advantage of the inability of consumers reasonably to protect their
18 interests by reason of physical or mental infirmities, illiteracy
19 or inability to understand the language of the agreement, ignorance
20 or lack of education or similar factors;

21 (5) the degree to which terms of the transaction require
22 consumers to waive legal rights;

23 (6) the degree to which terms of the transaction require
24 consumers to jeopardize money or property beyond the money or property
25 immediately at issue in the transaction;

26 (7) the degree to which the natural effect of the practice
27 is to cause or aid in causing consumers to misunderstand the true
28 nature of the transaction or their rights and duties under it;

29 (8) the extent or degree to which the writing purporting to

1 evidence the obligation of the consumer in the transaction contains
2 terms or provisions or authorizes practices prohibited by law; and

3 (9) definitions of unconscionability in statutes, regula-
4 tions, rulings and decisions of legislative, administrative or judicial
5 bodies in this state or elsewhere.

6 Sec. 45.85.266. TEMPORARY RELIEF; INJUNCTIONS. (a) The adminis-
7 trator or any consumer may bring a civil action to restrain a person
8 from violating this chapter or the rules and regulations promulgated
9 under it, or to restrain a merchant or a person acting on behalf of a
10 merchant from engaging in unfair, deceptive, fraudulent, or uncon-
11 scionable conduct.

12 (b) The administrator or consumer may seek a temporary restrain-
13 ing order without written or oral notice to the adverse party or his
14 attorney. If the court finds that there is reasonable cause to believe
15 that the respondent is engaged in the conduct sought to be restrained,
16 it may grant a temporary restraining order or any temporary relief
17 it considers appropriate. A temporary restraining order granted
18 without notice shall expire by its terms within a stated time after
19 entry, not to exceed 30 days, as the court fixes, unless within this
20 time it is extended by the court, or unless the party against whom
21 the order is directed consents that it may be extended for a longer
22 period. When a temporary restraining order is granted without notice,
23 the motion for a preliminary injunction shall be set down for a hearing
24 at the earliest possible time. On five days notice to the party
25 who obtained the temporary restraining order without notice, the adverse
26 party may appear and move its dissolution or modification, and in this
27 event the court shall proceed to hear and determine the motion as
28 expeditiously as the ends of justice require.

29 Sec. 45.85.268. CLASS ACTIONS. (a) Either the administrator,

1 or any consumer affected by a violation of this chapter or of the
2 rules and regulations promulgated under it, or by an unfair, deceptive,
3 fraudulent, or unconscionable practice may sue, on behalf of all
4 persons similarly situated, regardless of the amount in controversy,
5 for the relief to which these persons would be entitled under the
6 provisions of this chapter. A private party filing such an action
7 must give prompt notice of it to the administrator, who shall be
8 permitted, upon application within 30 days, to join as a party plain-
9 tiff. For purposes of apportionment of cost, the administrator need
10 not be a party to the action.

11 (b) The court shall permit the suit to be maintained on behalf
12 of all members of the represented class if

13 (1) the class is so numerous that joinder of all members
14 is impracticable;

15 (2) the questions of law and fact common to the class are
16 substantially similar and predominate over the questions affecting
17 individual members;

18 (3) the claims or defenses of the representative plaintiffs
19 are typical of the claims or defenses of the class;

20 (4) if the administrator is not a party plaintiff, the
21 representative parties will fairly and adequately protect the interests
22 of the class.

23 (c) As soon as practicable after the commencement of a class
24 action brought under this section, the court shall hold a preliminary
25 hearing to determine whether it is to be so maintained. An order
26 following this hearing may be conditional, and may be altered or
27 amended before the decision on the merits.

28 (d) If the action is to be permitted as a class action, the
29 court shall direct the defendant to serve upon each member of the class

1 the best possible notice of the action, including individual notice
2 to all members who can be identified through reasonable effort, which
3 states that

4 (1) the court will exclude him from the class if he so
5 requests by a specified date;

6 (2) the judgment, whether favorable or not, will include
7 all members who do not request exclusion;

8 (3) any member who does not request exclusion, may, if he
9 desires, enter an appearance through counsel.

10 (e) When appropriate

11 (1) an action may be brought or maintained as a class
12 action with respect to particular issues, or

13 (2) a class may be divided into subclasses and each sub-
14 class treated as a class, and the provisions of this section shall
15 then be construed and applied accordingly.

16 (f) A class action shall not be dismissed, settled, or compro-
17 mised without the approval of the court and the best possible action
18 of the proposed dismissal, settlement, or compromise shall be given
19 to all members of the class in such manner as the court directs,
20 and the court shall apportion all costs of notice between the adminis-
21 trator and the defendant in the manner as it considers equitable and
22 appropriate.

23 (g) The judgment in a class action shall describe those to whom
24 the notice was directed and who have not requested exclusion, and those
25 the court finds to be members of the class; the best possible notice
26 of the judgment shall be given in such manner as the court directs
27 to each person who received the original notice and has not requested
28 exclusion; if the judgment is for the plaintiff the court shall direct
29 the defendant to reimburse the administrator for all costs of notice.

1 (h) A plaintiff who prevails in a class action under this
2 chapter shall be awarded a reasonable counsel fee, to be specified
3 in the judgment, which shall equal 10 per cent of the gross judgment
4 unless the court finds a different amount to be more equitable. A
5 legal aid society or legal services program which represents a class
6 shall be awarded a service fee in lieu of counsel fees, equal in
7 amount to the counsel fee as measured by this subsection.

8 (i) The administrator, whether or not a party to an action,
9 shall bear the costs of notice except that he may recover these costs
10 from the defendant as provided in (f) and (g) of this section.

11 Sec. 45.85.270. VENUE. The administrator or consumer may bring
12 actions or proceedings in a court in a judicial district in which an
13 act on which the action or proceeding is based occurred or in a
14 judicial district in which the defendant resides or transacts business;
15 the choice of venue shall be that most convenient to the complaining
16 party or parties.

17 Sec. 45.85.272. DEBTORS' REMEDIES NOT AFFECTED. The grant of
18 powers to the administrator in secs. 248 - 288 of this chapter does
19 not affect remedies available to consumers under this chapter or under
20 other principles of law or equity.

21 SUBARTICLE 2. NOTIFICATION AND FEES.

22 Sec. 45.85.274. NOTIFICATION. (a) Persons subject to secs.
23 248 - 288 of this chapter shall file notification with the administrator
24 within 30 days after commencing business in this state, and thereafter,
25 on or before January 31 of each year. The notification shall state

- 26 (1) name of the person;
27 (2) name in which business is transacted if different
28 from (1) of this subsection;
29 (3) if a partnership, the name and address of each partner;

1 (4) if a corporation, the name and address of each officer,
2 director, and each stockholder holding five per cent or more of the
3 voting stock;

4 (5) if an association other than in (3) or (4) of this sub-
5 section, the names and addresses of those persons the administrator by
6 regulation prescribes;

7 (6) address of principal office, which may be outside this
8 state;

9 (7) address of all offices or retail stores, if any, in
10 this state;

11 (8) if consumer transactions or other business subject to
12 secs. 248 - 288 of this chapter are made otherwise than at an office
13 or retail store in this state, a brief description of the manner in
14 which they are made;

15 (9) address of designated agent upon whom service of pro-
16 cess may be made in this state as set out in sec. 20 of this chapter;
17 and

18 (10) such other information as the administrator may from
19 time to time require to effectuate the purposes and policies of this
20 chapter.

21 (b) The administrator shall adopt regulations governing the
22 filing of changes, additions, or modifications of the notification
23 required by this section, and shall adopt regulations pertaining to
24 form, verification and similar matters pertaining to the notification.

25 (c) The administrator shall adopt rules and regulations governing
26 the posting on business premises of information to the consumer
27 necessary or proper for purposes of service of process.

28 Sec. 45.85.274. DEBT COLLECTION: NOTIFICATION. (a) A person
29 having an office or place of business in this state and who engages

1 in the business of debt collection, within the meaning of secs. 290 -
2 318 of this chapter, is subject to this section.

3 (b) Persons subject to this section shall file notification
4 with the administrator within 30 days after commencing business in
5 this state, and, thereafter, on or before, January 31 of each year.

6 (c) A person subject to both the preceding sections and this
7 section may include the information required to be disclosed in a
8 single notification, but shall otherwise be subject to the requirements
9 of this section.

10 (d) The notification shall be verified and shall contain:

11 (1) the name of the person;

12 (2) name in which business is transacted if different from
13 (1) of this subsection;

14 (3) if a partnership, the name and address of each partner;

15 (4) if a corporation, the name and address of each officer,
16 director, and each stockholder holding five per cent or more of the
17 voting stock;

18 (5) if an association other than (3) or (4) of this subsection,
19 the names and addresses of such persons as the administrator by regula-
20 tion prescribes;

21 (6) address of principal office, which may be outside this
22 state;

23 (7) address of all offices or places of business at or from
24 which debt collection occurs;

25 (8) address of designated agent upon whom service of process
26 may be made in this state under sec. 20 of this chapter;

27 (9) the name and residence address of the person in actual
28 and personal charge of the business and personnel of each office or
29 place of business;

1 (10) the full name, residence address, residence telephone
2 number, and social security number of each employee or agent engaged
3 in debt collection;

4 (11) such other information as the administrator may from
5 time to time require to effectuate the purposes and policies of this
6 chapter.

7 (e) Information under (d)(9) and (10) of this section shall not
8 be required for employees who are engaged exclusively in stenographic,
9 typing, filing or other clerical activities.

10 (f) The administrator shall be notified in writing within 15
11 days of any changes, additions, or modifications relative to informa-
12 tion required by (d)(8), (9) or (10) of this section. The adminis-
13 trator shall adopt regulations governing the filing of changes, addi-
14 tions, or modifications of the information otherwise required by (d) of
15 this section.

16 (g) The following persons are not subject to this section unless
17 they employ or otherwise contract for the services of any person for
18 the purpose of engaging in the business of debt collection:

19 (1) attorneys authorized to practice law in this state;

20 (2) legally licensed real estate brokers;

21 (3) any legally licensed insurance company subject to the
22 supervision of the Department of Commerce of this state;

23 (4) any supervised financial organization.

24 Sec. 45.85.278. FEES. (a) A person required to file notifica-
25 tion shall on or before January 31 of each year pay to the administra-
26 tor an annual fee of \$10 for that year.

27 (b) Persons required to file notification who are sellers,
28 lessors, or lenders shall pay an additional fee at the time and in the
29 manner stated in (a) of this section of \$10 for each \$100,000, or part

1 thereof, in excess of \$100,000, of the original unpaid balances arising
2 from consumer credit sales, consumer leases, and consumer loans made
3 in this state within the preceding calendar year and held either by
4 the seller, lessor, or lender for more than 30 days after the inception
5 of the sale, lease, or loan giving rise to the obligations, or by an
6 assignee who has not filed notification. A refinancing of a sale,
7 lease, or loan resulting in an increase in the amount of an obligation
8 is considered a new sale, lease or loan to the extent of the amount of
9 the increase.

10 (c) Persons required to file notification who are assignees
11 shall pay an additional fee at the time and in the manner stated in
12 (a) of this section of \$10 for each \$100,000, or part thereof, of the
13 unpaid balances at the time of obligations arising from consumer credit
14 sales, consumer leases, and consumer loans made in this state taken by
15 assignment during the preceding calendar year, but an assignee need
16 not pay a fee with respect to an obligation on which the assignor or other
17 person has already paid a fee.

18 (d) Persons required to file notification who are engaged in
19 the business of debt collection or the business of reporting agencies
20 shall pay an additional fee at the time and in the manner stated in
21 (a) of this section of \$10 for each \$100,000, or part thereof, in
22 excess of \$100,000, of their gross volume from such business, but
23 the fee shall be reduced by an amount equal to that paid as a fee
24 under (c) of this section by the reporting agency or person in the
25 business of collection of debts.

26 (e) A person required to file notification shall submit such
27 financial and other data as the administrator may require which will
28 support the computation of the amount of the fee.

29 (f) The administrator shall bring an action in the superior court

1 to recover any fees that he determines are due and owing under this
2 section.

3 SUBARTICLE 3. COUNCIL OF ADVISORS ON CONSUMER AFFAIRS.

4 Sec. 45.85.280. COUNCIL OF ADVISORS ON CONSUMER AFFAIRS. (a)
5 There is created the Council of Advisors on Consumer Affairs consisting
6 of 25 members, who shall be appointed by the governor. In appointing
7 members of the council, the governor shall seek to achieve a fair
8 representation from the various segments of the consumer industry and
9 the public, but the representatives of the public shall never be less
10 than a majority. One of the advisors representing the public shall
11 be designated by the governor as chairman. The chairman shall serve
12 for two years and is eligible for reappointment as chairman.

13 (b) The term of office of each member of the council is four
14 years. Of those members first appointed, six shall be appointed for
15 a term of one year, six for a term of two years, six for a term of
16 three years, and seven for a term of four years. A member chosen to
17 fill a vacancy arising otherwise than by expiration of term shall be
18 appointed for the unexpired term of the member whom he is to succeed.
19 A member of the council is eligible for reappointment.

20 (c) Members of the council shall serve without compensation
21 but are entitled to per diem and travel expenses as provided by law.

22 Sec. 45.85.282. FUNCTION OF COUNCIL; CONFLICT OF INTEREST. The
23 council shall advise and consult with the administrator concerning
24 the exercise of his powers under this chapter and shall make recommen-
25 dations to him. Members of the council may assist the administrator
26 in obtaining compliance with this chapter. Since it is an objective
27 of secs. 280 - 284 of this chapter to obtain competent representatives
28 of industry and the public to serve on the council and to assist and
29

1 cooperate with the administrator in achieving the objectives of this
2 chapter, service on the council does not in itself constitute a con-
3 flict of interest regardless of the occupations or associations of the
4 members.

5 Sec. 45.85.284. MEETINGS. The council and the administrator
6 shall meet together at a time and place designated by the chairman
7 at least twice each year. The council shall hold additional meetings
8 with the administrator when called by the chairman or when requested
9 by the administrator or by at least five members of the council.

10 SUBARTICLE 4. VIOLATIONS AND ENFORCEMENT.

11 Sec. 45.85.286. VIOLATIONS AND ENFORCEMENT. (a) The administra-
12 tor shall recover by rule and order from a person who violates any
13 provision of secs. 248 - 288 of this chapter or any rule or regulation
14 made under authority granted in this chapter a sum equal to the value
15 that accrued to that person as a consequence of each violation.

16 (b) In addition to the amount to which he is entitled under
17 (a) of this section the administrator may recover in a civil action
18 from a person who violates any provision of secs. 248 - 288 of this
19 chapter or any rule or regulation made under authority granted in this
20 chapter a civil penalty of not less than \$100 and not more than \$1,000
21 for each violation.

22 (c) In addition to the amount to which he shall be entitled
23 under (a) and (b) of this section the administrator may recover in a
24 civil action from a person who knowingly or wilfully violates any
25 provision of secs. 248 - 288 of this chapter or any rule or regulation
26 made under authority granted in this chapter a civil penalty of not
27 less than \$1,000 and not more than \$10,000 for each violation.

28 Sec. 45.85.288. FEES AND RECOVERIES. (a) Any sums of money
29 recovered by the administrator under secs. 286 - 288 of this chapter,

1 or obtained or recovered by the administrator under this chapter shall
2 be retained by the administrator unless a different disposition is
3 expressly provided for by this chapter.

4 (b) Any sums of money retained by the administrator under (a) of
5 this section shall be used by him in the administration of this chapter.

6 ARTICLE 7. DEBT COLLECTION.

7 SUBARTICLE 1. GENERAL PROVISIONS.

8 Sec. 45.85.290. SHORT TITLE. Secs. 290 - 318 of this chapter
9 may be cited as the Alaska Consumer Act - Debt Collection.

10 Sec. 45.85.292. SCOPE. Secs. 290 - 318 of this chapter applies
11 to conduct and practices in the collection of obligations arising
12 from consumer transactions.

13 Sec. 45.85.294. DEFINITIONS: CLAIM; DEBT COLLECTION; DEBT COLLEC-
14 TOR. In this chapter

15 (1) "claim" means an obligation or alleged obligation
16 out of a consumer transaction;

17 (2) "debt collection" means an action, conduct or practice
18 of soliciting claims for collection or in the collection of claims
19 owed or due or alleged to be owed or due a merchant by a consumer;

20 (3) "debt collector" means a person engaging, directly or
21 indirectly, in debt collection, and includes a person who sells, or
22 offers to sell, forms represented to be a collection system, device,
23 or scheme, intended or calculated to be used to collect claims.

24 SUBARTICLE 2. PROHIBITED PRACTICES.

25 Sec. 45.85.276. PRACTICE OF LAW BY DEBT COLLECTORS. Unless a
26 licensed attorney in this state, no debt collector may engage in
27 conduct considered the practice of law. Without limiting the general
28 application of the foregoing, the following conduct is considered the
29 practice of law:

1 (1) the performance of legal services, furnishing of legal
2 advice, or false representation, direct or by implication, that any
3 person is an attorney;

4 (2) the solicitation of assignments of claims for the
5 purpose of suit or at the instigation of an attorney;

6 (3) the institution of judicial proceedings on behalf of
7 other persons except on an assigned claim;

8 (4) any communication with debtors in the name of an
9 attorney or upon stationery or other written matter bearing an attorney's
10 name;

11 (5) any demand for or payment of money constituting a share
12 of compensation for services performed or to be performed by an attorney
13 in collecting a claim.

14 Sec. 45.85.298. THREATS OR COERCION. No debt collector may
15 collect or attempt to collect money alleged to be due and owing by
16 means of threat, coercion, or attempt to coerce, including but not
17 limited to

18 (1) the use, or express or implicit threat of use, of
19 violence or other criminal means, to cause harm to the person, reputa-
20 tion, or property of any person;

21 (2) the accusation or threat to accuse any person of fraud
22 or any other crime, or conduct which, if true, would tend to disgrace
23 that other person, or in any way subject him to the ridicule or conduct
24 which, if true, would tend to disgrace that other person, or in any
25 way subject him to the ridicule or contempt of society;

26 (3) false accusations made to another person, including
27 any credit reporting agency, or the threat to so falsely accuse, that
28 a consumer is wilfully refusing to pay a just debt;

29 (4) the threat to sell or assign to another the obligation

1 of the consumer with an attending representation or implication that
2 the result of such sale or assignment would be that the consumer would
3 lose any defense to the claim or would be subjected to harsh, vindic-
4 tive, or abusive collection attempts;

5 (5) the threat that nonpayment of an alleged claim will
6 result in the arrest of any person or the seizure, garnishment,
7 attachment or sale or any property or wages of that person without
8 there being in effect a court order permitting that action; or

9 (6) the threat to take any action prohibited by this chapter
10 or other law relating to the debt collector's conduct on the rights
11 and liabilities of all parties.

12 Sec. 45.85.300. HARASSMENT; ABUSE. No debt collector may un-
13 reasonably oppress, harass, or abuse a person in connection with the
14 collection of or attempt to collect a claim alleged to be due and
15 owing by that person or another. Without limiting the general appli-
16 cation of the foregoing, the following conduct is considered to violate
17 this section:

18 (1) the use of profane or obscene language or language that
19 is intended to unreasonably abuse the hearer or reader;

20 (2) the placement of telephone calls without disclosure
21 of the caller's identity and with the intent to annoy, harass, or
22 threaten any person at the called number;

23 (3) causing expense to a person in the form of long distance
24 telephone tolls, telegram fees, or other charge incurred by a medium
25 of communication, by concealment of the true purpose of the notice,
26 letter, message, or communication; or

27 (4) causing a telephone to ring or engage a person in
28 telephone conversation repeatedly or continuously, or at unusual times
29 or at times known to be inconvenient, with intent to annoy, harass, or

1 threaten a person at the called number.

2 Sec. 45.85.302. UNREASONABLE PUBLICATION. No debt collector
3 may unreasonably publicize information relating to an alleged indebted-
4 ness or debtor. Without limiting the general application of the fore-
5 going, the following conduct is considered to violate this section:

6 (1) the communication of information relating to a con-
7 sumer's indebtedness to an employer or his agent;

8 (2) the disclosure, publication, or communication of informa-
9 tion relating to consumer's indebtedness to a relative or family
10 member of the consumer, except through proper legal action or process
11 or at the express and unsolicited request of the relative or family
12 member;

13 (3) the disclosure, publication, or communication of informa-
14 tion relating to a consumer's indebtedness to any other person, by
15 publishing or posting a list of consumers, commonly known as "deadbeat
16 lists", by advertising for sale a claim to enforce payment thereof,
17 or in any other manner other than through proper legal action, process
18 or proceeding; or

19 (4) the use of any form of communication to the consumer,
20 which ordinarily may be seen by any other person, that displays or
21 conveys information about the alleged claim other than the name,
22 address, and phone number of the debt collector.

23 Sec. 45.85.304. FRAUDULENT, DECEPTIVE OR MISLEADING REPRESENTA-
24 TIONS. No debt collector may use any fraudulent, deceptive, or mis-
25 leading representation or means to collect or attempt to collect
26 claims or to obtain information concerning consumers, including but
27 not limited to the following:

28 (1) the use of a name while engaged in the collection of
29 claims other than the debt collector's true name;

1 (2) the failure to clearly disclose in all communications
2 made to collect or attempt to collect a claim or to obtain or attempt
3 to obtain information about a consumer that the debt collector is
4 attempting to collect a claim and that information obtained will be
5 used for that purpose;

6 (3) a false representation that the debt collector has
7 information in his possession or something of value for the consumer
8 made to solicit or discover information about the consumer;

9 (4) the failure to clearly disclose the name and full
10 business address of the person to whom the claim has been assigned or
11 is owed at the time of making a demand for money;

12 (5) a false representation or impression of the character,
13 extent or amount of a claim against a consumer, or of its status in
14 any legal proceeding;

15 (6) a false representation or false impression that a debt
16 collector is vouched for, bonded by, affiliated with, or an instru-
17 mentality, agent or official of this state or an agency of federal,
18 state, or local government;

19 (7) the use or distribution or sale of a written communi-
20 cation which simulates or is falsely represented to be a document
21 authorized, issued or approved by a court, an official, or any other
22 legally constituted or authorized authority, or which creates a false
23 impression about its source, authorization, or approval;

24 (8) any representation that an existing obligation of the
25 consumer may be increased by the addition of attorney fees, investiga-
26 tion fees, service fees, or any other fees or charges when in fact
27 these fees or charges may not legally be added to the existing obliga-
28 tion; or

29 (9) a false representation or false impression about the

1 status or true nature of or the services rendered by the debt collector
2 or his business.

3 Sec. 45.85.306. UNFAIR OR UNCONSCIONABLE MEANS. No debt collector
4 may use unfair or unconscionable means to collect or attempt to collect
5 any claim, including but not limited to the following:

6 (1) the seeking or obtaining of a written statement or
7 acknowledgement in any form that specifies that a consumer's obligation
8 is one incurred for necessities of life where the original obligation
9 was not in fact incurred for these necessities;

10 (2) the seeking or obtaining of a written statement or
11 acknowledgement in any form containing an affirmation of an obligation
12 by a consumer who has been declared bankrupt, without clearly dis-
13 closing the nature and consequences of the affirmation and the fact
14 that the consumer is not legally obligated to make the affirmation
15 and the fact that the consumer is not legally obligated to make the
16 affirmation;

17 (3) the collection of or the attempt to collect from the
18 consumer any part or all of the debt collector's fee or charge for
19 services rendered;

20 (4) the collection of or the attempt to collect any
21 interest or other charge, fee, or expense incidental to the principal
22 obligation unless that interest or incidental fee, charge, or expense
23 is expressly authorized by the agreement creating the obligation and
24 legally chargeable to the consumer; or

25 (5) a communication with a consumer whenever it appears
26 that the consumer is represented by an attorney and the attorney's
27 name and address are known.

28 Sec. 45.85.308. POSTAL VIOLATIONS. No debt collector may use or
29 distribute, sell, or prepare for use, a written communication that

1 violates or fails to conform to United States postal laws and regula-
2 tions.

3 Sec. 45.85.310. CERTAIN ASSIGNMENTS. No debt collector may take
4 or accept for assignment any of the following:

5 (1) an assignment contemplating the filing of attachment
6 or garnishment of the consumer's property on a claim arising out of
7 an obligation made and to be performed outside this state;

8 (2) an assignment of a claim for attorney fees which have
9 not been lawfully provided for in the writing evidencing the obliga-
10 tion; or

11 (3) an assignment for collection of a claim upon which suit
12 has been filed or judgment obtained, without the debt collector first
13 making a reasonable effort to contact the attorney representing the
14 consumer.

15 Sec. 45.85.312. RULES AND REGULATIONS. The administrator may
16 establish rules and regulations providing further definitions and
17 prescribing other conduct considered in violation of secs. 296 - 312
18 of this chapter.

19 SUBARTICLE 3. REMEDIES.

20 Sec. 45.85.314. DEFENSE TO CLAIM. Proof that a debt collector
21 has violated any provision of secs. 296 - 312 of this chapter consti-
22 tutes a complete defense to legal action undertaken by any person to
23 enforce the claim that was being collected at the time the violation
24 or violations occurred, or to any action taken to enforce a judgment
25 on such claim properly obtained before the occurrence of the violation
26 or violations.

27 Sec. 45.85.316. COMPENSATORY DAMAGES. In addition to the remedy
28 provided in the provisions on defenses to a claim a debt collector
29 shall be liable to any person affected by a violation of secs. 296 -

1 312 of this chapter for all damages proximately caused by the viola-
2 tion, including but not limited to damages for emotional distress or
3 mental anguish suffered without accompanying physical injury.

4 Sec. 45.85.318. PUNITIVE DAMAGES. Punitive damages shall be
5 awarded any person affected by a violation of secs. 296 - 312 of this
6 chapter, when and in an amount considered appropriate by the court
7 and trier of fact.

8 ARTICLE 8. CREDIT REPORTING AGENCIES.

9 SUBARTICLE 1. GENERAL PROVISIONS.

10 Sec. 45.85.320. SHORT TITLE. Secs. 320 - 352 of this chapter
11 may be cited as Alaska Consumer Act - Credit Reporting Agencies.

12 Sec. 45.85.322. SCOPE. Secs. 320 - 352 of this chapter apply
13 to credit reporting agencies who prepare or supply investigative
14 consumer reports.

15 Sec. 45.85.324. DEFINITIONS OF CONSUMER REPORT, INVESTIGATING
16 CONSUMER REPORT, REPORTING AGENCY, FILE. In this chapter

17 (1) "consumer report" means a written, oral, or other
18 communication of any information bearing on a consumer's credit worthi-
19 ness, credit standing, credit capacity, character, general reputation,
20 personal characteristics, or mode of living and which is used or
21 expected to be used as a factor in establishing a consumer's eligi-
22 bility for

23 (A) credit or insurance; or

24 (B) employment, but that term does not include any
25 report containing information solely as to transactions between
26 such consumer and the person making such report;

27 (2) "file" when used in connection with information about
28 a consumer includes all of the information on him obtained by a
29 reporting agency regardless of how the information is stored;

1 (3) "investigative consumer report" means a consumer report
2 or portion of it in which information on a consumer's character,
3 general reputation, personal characteristics, or mode of living is
4 obtained through personal interviews with neighbors, friends, or
5 associates of the consumer reported on or with others with whom he
6 is acquainted or who have direct knowledge of his behavior;

7 (4) "reporting agency" means a person who regularly engages
8 in whole or in part in the business of furnishing consumer reports.

9 SUBARTICLE 2. DISCLOSURE AND LIMITATION

10 ON USE OF INFORMATION.

11 Sec. 45.85.326. DISCLOSURE BY USERS OF CONSUMER REPORTS. (a)

12 No person may procure or cause to be prepared an investigative con-
13 sumer report on a consumer unless the details and scope of the investi-
14 gation are disclosed in advance to him and his written permission is
15 obtained. When the information contained in this report is transmitted
16 on a standardized form, a blank copy of such form shall be furnished
17 the consumer at the time the details and scope of the investigation
18 are disclosed.

19 (b) A person who denies credit, insurance, or employment to a
20 consumer or who increases his charge for credit or insurance either
21 wholly or partly because of the information contained in a consumer
22 report received from a reporting agency shall promptly notify that
23 consumer in writing of the action taken and that the action was due
24 in whole or in part to a consumer report. The notification shall also
25 include the name and address of the reporting agency furnishing the
26 report.

27 (c) A creditor who denies consumer credit to a consumer or who
28 increases his charge for credit either wholly or partly because of
29 information obtained from a person other than a reporting agency

1 bearing upon the consumer's credit worthiness, credit standing, credit
2 capacity, character, general reputation, personal characteristics,
3 or mode of living shall promptly disclose in writing the nature of
4 this information to the consumer.

5 Sec. 45.85.328. ACCESS TO FILES. (a) A reporting agency shall
6 permit a consumer to examine the information in his file and, except
7 as provided in (c) of this section, the sources of the material, and
8 shall provide trained personnel during normal business hours and on
9 reasonable notice to explain the information. Such information shall
10 include the names and addresses of all persons to whom a consumer
11 report has been furnished on the individual for the preceding five
12 years or since the effective date of this chapter, whichever period
13 is the shortest. Before making such disclosure, the reporting agency
14 shall require the consumer to furnish full identification. The consumer
15 shall be permitted to be accompanied by no more than two other persons
16 of his choosing, to read his file, and to make copies or take notes
17 if he so requests. The reporting agency may make no charge for such
18 disclosure.

19 (b) No reporting agency may require a consumer to grant immunity
20 from legal action to the reporting agency or its sources of information
21 as a condition for obtaining access to his file.

22 (c) In making the disclosures required under (a) of this section,
23 a reporting agency must disclose its sources of information when that
24 information was acquired in connection with the preparation of an
25 investigative consumer report only if the consumer disputes any
26 allegations made by the unidentified sources but is unable to refute
27 the allegations with evidence sufficient to convince the reporting
28 agency to expunge the allegations from the individual's file and
29 notify all previous recipients of the deletion, and if the consumer

1 requests that the sources be identified so that he may better counter
2 the allegations.

3 Sec. 45.85.330. CORRECTION OF INACCURATE INFORMATION. (a) A
4 reporting agency shall afford consumers a reasonable opportunity to
5 correct any inaccurate or misleading information in the file. When-
6 ever a consumer disputes the accuracy of any item of information in
7 his file, the reporting agency shall promptly investigate the matter
8 and if it finds that the item is in error or if it is unable to
9 verify the item's validity, the reporting agency shall, without charge
10 to the consumer,

11 (1) promptly expunge the item from the file;

12 (2) refrain from reporting the item on future reports; and

13 (3) promptly notify all prior recipients of the item that
14 had been reported in error and is being expunged from the consumer's
15 record.

16 (b) If a consumer disputes an item of information obtained by
17 a reporting agency and if, after checking its sources and making a
18 reasonable effort to ascertain the facts, the reporting agency is
19 unable to resolve any differences still remaining between the alle-
20 gations made by its sources and the consumer, the reporting agency
21 shall, without charge to the individual,

22 (1) plainly mark the item as disputed on all subsequent
23 reports;

24 (2) permit the consumer to file a statement containing
25 his version of the dispute;

26 (3) send a copy of the statement to all previous recipients
27 of the disputed item if the consumer so requests; and

28 (4) include the statement in all subsequent reports.

29 (c) If a consumer contends that a specific item of information

1 obtained by a reporting agency is misleading because of the omission
2 of certain relevant facts and if the reporting agency is unwilling
3 to expunge the item from the file and refrain from including it on
4 subsequent reports, the reporting agency shall, without charge to the
5 consumer,

6 (1) clearly mark the item as disputed;

7 (2) permit the consumer to file a statement containing
8 the additional facts;

9 (3) send a copy of the statement to all previous recipients
10 of the item in question if the consumer so requests; and

11 (4) include the statement in all subsequent reports.

12 Sec. 45.85.332. PUBLIC RECORD INFORMATION. (a) A reporting
13 agency which compiles and reports items of information on consumers
14 when the items are matters of public record and are likely to have an
15 adverse effect upon an individual's ability to obtain credit, insurance
16 or employment shall

17 (1) notify in writing the consumer on whom the adverse
18 public record information has been obtained that the information is
19 being reported to a client of the reporting agency together with the
20 name and address of the client at the time the information is reported;
21 and

22 (2) maintain strict procedures designed to insure that when this
23 information is reported it is complete and up to date.

24 (b) In this section, items of public record relating to arrests,
25 indictments, convictions, suits, tax liens, and outstanding judgments
26 shall not be considered up to date unless the current disposition of
27 the item at the time of the report is reported.

28 Sec. 45.85.334. KEEPING INFORMATION CURRENT. (a) A reporting
29 agency shall maintain reasonable procedures designed to keep its

1 information current and up to date.

2 (b) With respect to information to the effect that a consumer's
3 account is past due or that an attempt to collect the account has been
4 made

5 (1) no merchant may report such information to a reporting
6 agency without promptly reporting the disposition of such account;

7 (2) upon the receipt of such information the reporting
8 agency shall immediately notify the merchant reporting the information
9 of his duty to promptly report the disposition of the account;

10 (3) no reporting agency shall report such information to
11 persons other than the consumer until the subsequent information as to
12 the disposition of the account has been received.

13 Sec. 45.85.336. DISCARDING OBSOLETE INFORMATION. (a) A reporting
14 agency shall maintain procedures designed to discard information in
15 its files after it has become obsolete or after the expiration of a
16 reasonable period of time. For the purposes of this section the
17 following information shall not be reported after the period so indi-
18 cated and shall be removed from the file as soon as practical after the
19 expiration of such period:

20 (1) bankruptcies of all types shall not be reported for
21 longer than seven years from the date of adjudication of the most
22 recent bankruptcy;

23 (2) records of accounts placed for collection and records
24 of accounts charged to profit and loss shall not be reported for
25 longer than three years;

26 (3) suits, judgments, and tax liens shall not be reported
27 for longer than seven years from date of entry;

28 (4) records of arrest, indictment, or conviction of crimes
29 shall not be reported for longer than three years from the date of

1 release or parole if the offense is a misdemeanor and seven years if
2 the offense is a felony; such items shall no longer be reported if
3 at any time it is learned that in the case of a conviction a full
4 pardon has been granted, or in the case of an arrest or indictment
5 a conviction did not result;

6 (5) derogatory information obtained under an investigative
7 consumer report shall not be included on subsequent reports unless
8 the information has been reverified;

9 (6) any other adverse data not otherwise specified in this
10 section shall not be reported for longer than three years.

11 (b) A reporting agency shall delete as soon as practical any
12 items of derogatory information from an individual's file whenever it
13 is ascertained that the source of the information can no longer verify
14 the item in question.

15 Sec. 45.85.338. PRESERVING CONFIDENTIALITY. A reporting agency
16 shall maintain procedures designed to preserve the confidentiality
17 of information in its files. Such procedures shall include limiting
18 access to information only to authorized employees and maintaining
19 training programs to acquaint employees with the need for preserving
20 confidentiality. When a reporting agency transmits information by
21 telegraphic, telephonic, radio, or similar means, it shall take steps
22 to prevent unauthorized access to such communications.

23 Sec. 45.85.340. USES OF INFORMATION. (a) A reporting agency
24 shall maintain procedures designed to limit the furnishing of credit
25 reports to those with a legitimate business need for the information.
26 Such procedures shall require that prospective users of the information
27 identify themselves, certify the purposes for which the information
28 is sought, and certify that the information will be used for no other
29 purpose. A reporting agency shall make a reasonable effort to verify

1 the identity of a new prospective user and the uses certified by such
2 prospective user before furnishing such user a report.

3 (b) No reporting agency may furnish a report to a prospective
4 user, if it has reasonable grounds for believing that the report will
5 not be used for a legitimate business need.

6 (c) In this section, legitimate business need includes the
7 following:

- 8 (1) determining a consumer's eligibility for credit;
- 9 (2) determining a consumer's eligibility for insurance;
- 10 (3) determining a consumer's eligibility for employment,
11 promotion, reassignment, or retention;
- 12 (4) determining a consumer's eligibility for a license or
13 other benefit granted by a governmental instrumentality required by
14 law to consider an applicant's financial responsibility or status.

15 (d) In this section, legitimate business need does not include
16 the following:

- 17 (1) furnishing information for market research or marketing
18 purposes;
- 19 (2) furnishing information to a private detective or a
20 private detective agency for use in investigations conducted or to be
21 conducted by the detective agency;
- 22 (3) furnishing information to an attorney for use in a
23 legal matter unless the consumer on whom the information is furnished
24 is a client of the attorney and agrees in writing to the furnishing
25 of such report.

26 Sec. 45,85.342. ACCESS BY GOVERNMENTAL AGENCIES. A reporting
27 agency shall not furnish information on individuals in its files to
28 a governmental agency for purposes other than those authorized in the
29 provisions on uses of information in sec. 338 of this chapter unless

1 under legal process, except that identifying information such as names,
2 addresses, former addresses, places of employment, or former places
3 of employment may be supplied to a governmental agency.

4 Sec. 45.85.344. RESTRICTIONS ON INVESTIGATIVE REPORTS. When a
5 reporting agency prepares an investigative consumer report for the
6 purpose of establishing eligibility for credit or insurance, no in-
7 formation on such report may be included in a subsequent report
8 furnished for determining the consumer's eligibility for employment,
9 promotion, reassignment, or retention unless it has been reverified
10 in the process of making such subsequent report.

11 Sec. 45.85.346. RELEVANCE OF INFORMATION. No reporting agency
12 may report information which is not reasonably relevant, based on
13 objective criteria, to the purpose for which it is sought or which
14 constitutes an undue infringement of the individual's right to privacy.

15 SUBARTICLE 3. REMEDIES AND PENALTIES.

16 Sec. 45.85.348. CIVIL PENALTIES. (a) A reporting agency or
17 user of information which fails to comply with a requirement imposed
18 under secs. 320 - 352 of this chapter with respect to a consumer is
19 liable to the consumer in an amount equal to the sum of

20 (1) actual damages sustained as a result of the failure,
21 or \$100, whichever is greater; and

22 (2) in the case of a successful action to enforce liability
23 under this section, the costs of the action together with reasonable
24 attorney fees as determined by the court.

25 (b) A reporting agency or user of information which wilfully
26 fails to comply with a requirement imposed under this chapter with
27 respect to any individual is liable to that individual in an amount
28 equal to the sum of

29 (1) actual damages sustained as a result of the failure,

1 or \$250, whichever is greater;

2 (2) such amount of punitive damages as the trier of fact
3 may allow; and

4 (3) in the case of a successful action to enforce liability
5 under this section, the costs of the action together with reasonable
6 attorney fees as determined by the court.

7 (c) A person who obtains information on a consumer from a
8 reporting agency under false pretenses is liable to the consumer in an
9 amount equal to the sum of

10 (1) actual damages sustained as a result of the failure,
11 or \$250, whichever is greater;

12 (2) such amount of punitive damages as the trier of fact
13 may allow; and

14 (3) in the case of a successful action to enforce liability
15 under this section, the costs of the action together with reasonable
16 attorney fees as determined by the court.

17 (d) An action under this section may be brought within five
18 years from the date of the occurrence of the violation or two years
19 after its discovery whichever is later.

20 Sec. 45.85.350. CRIMINAL PENALTIES. (a) A person who knowingly
21 and wilfully obtains or in any way uses information on a consumer
22 from a reporting agency under false pretenses is punishable by a fine
23 of not more than \$5,000 or by imprisonment by not more than one year,
24 or by both.

25 (b) An officer or employee of a reporting agency who knowingly
26 and wilfully provides information on an individual from the agency's
27 files to a person not authorized to receive that information is punish-
28 able by a fine of not more than \$5,000 or by imprisonment for not more
29 than one year, or by both.

1 Sec. 45.85.352. DEFAMATION ACTIONS. Notwithstanding any other
2 provision of law, a consumer who brings an action against a reporting
3 agency or its informants for communicating defamatory information
4 shall have a claim against that reporting agency or its informants
5 notwithstanding any defense based on qualified privilege if the consumer
6 can show the reporting agency or its informants failed to exercise
7 ordinary standards of due care.

8 * Sec. 2. Transactions entered into before this Act takes effect and
9 the rights, duties, and interests flowing from them thereafter may be
10 terminated, completed, consummated, or enforced as required or permitted
11 by any statute, rule of law, or other law amended, repealed, or modified
12 by this Act as though the repeal, amendment, or modification had not occur-
13 red. This Act applies to transactions entered into and events occurring
14 after that date, including, but not limited to

15 (1) refinancing, consolidation, and deferral agreements made
16 after this Act takes effect of consumer transactions whenever made; and

17 (2) open-end credit plans entered into, arranged or contracted
18 for before this Act takes effect.

19 * Sec. 3. AS 45.50.471 - 45.50.561 are repealed.

20 * Sec. 4. All Acts and parts of Acts inconsistent with this Act are
21 hereby repealed.