

Introduced: 3/10/79
Referred: Commerce and
Judiciary

1 IN THE HOUSE

BY BUCHHOLDT, MCKINNON AND
MUNSON

2 HOUSE BILL NO. 370

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 ELEVENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act regulating layaway sales."

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

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

9 CHAPTER 15. ALASKA LAYAWAY SALES ACT.

10 Sec. 45.15.010. LAYAWAY AGREEMENT. A layaway agreement shall be
11 in writing, contain all of the agreements of the parties, and be signed
12 by all of the parties to it.

13 Sec. 45.15.020. CONTENTS OF LAYAWAY AGREEMENT. (a) A layaway
14 agreement must include

15 (1) the full name, place of residence, and mailing address of
16 each party to it;

17 (2) the date when signed by the buyer;

18 (3) a description of the consumer goods sold sufficient to
19 allow them to be readily identified;

20 (4) the cash price of the consumer goods sold;

21 (5) all charges for the delivery, installation, repair or
22 other services to the consumer goods which are not included in the cash
23 price;

24 (6) the sum of the cash price in (4) of this subsection and
25 the charges for services in (5) of this subsection;

26 (7) the amount of the buyer's down payment, together with

27 (A) a statement of the respective amounts credited
28 against the cash price for cash, credits, and the agreed value of
29 any goods traded in; and

1 (B) a description of all goods traded sufficient to
2 identify them;

3 (8) the unpaid balance of the cash price payable by the buyer
4 to the seller, calculated by subtracting (7) of this subsection from (6)
5 of this subsection;

6 (9) the service charge;

7 (10) the total of payments owed by the buyer to the seller,
8 calculated by adding (8) and (9) of this subsection, the number of
9 installment payments required to pay it, and the amount and time of each
10 installment payment;

11 (11) the layaway price, calculated by adding (6) and (9) of
12 this subsection; and

13 (12) a clear and concise statement of all consequences of a
14 default by the buyer.

15 (b) Paragraphs (4) - (12) of this subsection do not apply to a
16 layaway sale subject to the disclosure provisions of the federal Truth
17 In Lending Act (15 U.S.C. 1601 et seq) if the seller complies with the
18 applicable disclosure provisions of the federal Act.

19 Sec. 45.15.030. SELLER'S OBLIGATIONS UNDER LAYAWAY AGREEMENT: (a)
20 At or before the time the buyer signs a layaway agreement, the seller
21 shall give him a copy of the agreement signed by the seller.

22 (b) A seller who is party to a layaway agreement is obligated to
23 hold for the buyer and deliver to the buyer on a date mutually accept-
24 able to both parties, the consumer goods originally selected by the
25 buyer if the buyer has made all payments to the seller in accordance
26 with the layaway agreement.

27 (c) If the buyer cancels the layaway agreement as provided in
28 AS 45.15.070(a), the seller shall

29 (1) refund all payments made under the layaway agreement,

1 except the amount of the service charge; and

2 (2) return, in substantially as good condition as when re-
3 ceived by the seller, any goods or property traded in.

4 (d) If a payment is made on account of a layaway agreement, the
5 seller shall give the buyer on his request, or, if payment is made in
6 cash, without request, a complete written receipt for the payment.

7 (e) If the buyer requests information on the status of his
8 account, the seller, within 10 days after the request is received at the
9 place of business where the layaway sale was made, shall give the buyer
10 a written statement setting out

11 (1) the layaway price;

12 (2) the total amount paid by the buyer to date; and

13 (3) the total amount remaining due to the seller.

14 (f) The seller may not increase the layaway price of the consumer
15 goods sold under a layaway agreement after the execution of a layaway
16 agreement.

17 (g) If, within 10 calendar days after the execution of a layaway
18 agreement, the seller reduces the selling price of an existing item in
19 his stock or inventory which is identical to that being held for the
20 buyer under the agreement, the seller shall credit the buyer for the
21 difference between the original layaway price and the reduced price.

22 Sec. 45.15.040. SERVICE CHARGE. A service charge imposed by a
23 seller under a layaway agreement may not exceed \$1 if the cash price of
24 the consumer goods is \$500 or less or \$5 if the price of consumer goods
25 exceeds \$500.

26 Sec. 45.15.050. DEFAULT UNDER LAYAWAY AGREEMENT. The buyer is in
27 default under a layaway agreement when 15 days have elapsed from the
28 date on which payment is scheduled without a payment being made.

29 Sec. 45.15.060. SELLER'S REMEDIES UNDER LAYAWAY AGREEMENT. (a)

1 If the buyer defaults under AS 45.15.050, the seller may immediately
2 cancel the layaway agreement and may retain as liquidated damages an
3 amount not to exceed 10 per cent of the layaway price or the total
4 amount paid by the buyer to the date of default, whichever is less;
5 however, this subsection does not apply if the buyer defaults under a
6 special order transaction unless the layaway agreement provides other-
7 wise.

8 (b) If the buyer defaults under a special order transaction, the
9 seller may exercise all rights and remedies available, including those
10 rights and remedies provided in the Uniform Commercial Code--Sales
11 (AS 45.05.036 - 45.05.242).

12 Sec. 45.15.070. BUYER'S REMEDIES UNDER LAYAWAY AGREEMENT: (a) A
13 buyer may cancel a layaway agreement within seven calendar days of the
14 date of the execution of the layaway agreement without penalty or obli-
15 gation, except loss of the service charge.

16 (b) At any time before delivery or tender of delivery of the
17 consumer goods, or before default by the buyer, the layaway agreement
18 may be cancelled by the buyer. However, if the buyer cancels after the
19 seven-day period provided in (a) of this section, the seller may retain
20 from the refund due the buyer, liquidated damages in an amount which is
21 the lesser of 10 per cent of the layaway price or the total amount paid
22 by the buyer to the date of cancellation.

23 (c) If the seller fails to comply with AS 45.15.010, 45.15.020, or
24 45.15.030, the buyer, before delivery by the seller and acceptance by
25 the buyer of consumer goods purchased under a layaway agreement, may
26 cancel the layaway agreement and receive from the seller a refund of all
27 payments made under the layaway agreement and the return of any goods or
28 property traded in.

29 (d) A seller who makes a layaway sale in violation of this chapter

1 is liable to the buyer for a penalty amount equal to three times the
2 amount paid by the buyer under the layaway agreement, plus reasonable
3 attorney fees. A seller who demonstrates that a violation was not
4 willful is not liable for the penalty or attorney fees. The penalty
5 provided in this subsection is in addition to that provided in (c) of
6 this section.

7 Sec. 45.15.080. ACTION BY ATTORNEY GENERAL. The attorney general
8 may bring an action in the name of the state against a person to re-
9 strain and prevent a violation of this chapter.

10 Sec. 45.15.090. DEFINITIONS. In this chapter,

11 (1) "buyer" means a person buying consumer goods under a
12 layaway agreement, including renewal, extension, or refund agreements;
13 "buyer" includes a prospective buyer;

14 (2) "cash price" means the minimum price for which the con-
15 sumer goods that are the subject of a layaway agreement could be pur-
16 chased for cash from the seller by the buyer;

17 (3) "c.o.d. transaction" means an agreement under which the
18 buyer is required to pay the seller the full cash price of the consumer
19 goods upon delivery or tender of delivery by the seller, less any down
20 payment made by the buyer; a c.o.d. transaction does not include an
21 agreement under which the buyer is required to pay the seller interim
22 payments before delivery or tender of delivery of the consumer goods by
23 the seller;

24 (4) "consumer goods" means goods bought for use primarily for
25 personal, family, or household purposes, as distinguished from indus-
26 trial, commercial, or agricultural purposes;

27 (5) "down payment" means amounts paid in cash, credits, or
28 the agreed value of goods, by or for a buyer and to or for the seller at
29 or before execution of a layaway agreement or c.o.d. transaction;

1 (6) "layaway agreement" means a contract for the retail sale
2 of consumer goods, entered into in the state, under which

3 (A) part or all of the layaway price is payable in one
4 or more payments after the making of the layaway agreement

5 (B) the consumer goods are specific existing consumer
6 goods identified from the seller's stock or inventory at the time
7 of the making of the layaway agreement; and

8 (C) the seller retains possession of the consumer goods
9 and bears the risk of their loss or damage until the layaway price
10 is paid in full; a layaway agreement includes a "special order
11 transaction," as defined in (10) of this section and does not
12 include a bona fide c.o.d. transaction or a contract for the retail
13 sale of consumer goods where the buyer can default without penalty,
14 other than a service charge of \$1 or less;

15 (7) "layaway price" means the cash price of the consumer
16 goods together with the optional service charge;

17 (8) "retail sale" means the sale of consumer goods for use or
18 consumption by the buyer or another, but not for resale by the buyer;

19 (9) "seller" means a person who sells or agrees to sell
20 consumer goods under a layaway agreement;

21 (10) "special order transaction" means a contract for the
22 retail sale of consumer goods, entered into in the state, under which
23 either

24 (A) consumer goods not carried by the seller and ordered
25 by the buyer to the buyer's unique specifications are ordered by
26 the seller from a manufacturer or supplier and are not resalable by
27 the seller at the sale price negotiated by the buyer; or

28 (B) consumer goods have been altered at the request of
29 the buyer so that the consumer goods are no longer salable to the

1 general public.

2 Sec. 45.15.100. SHORT TITLE. This Act may be cited as the Alaska
3 Layaway Sales Act.

4 * Sec. 2. AS 45.10.220(9) is amended to read:

5 (9) "retail installment contract" or "contract" means a
6 contract, other than a retail charge agreement or an instrument reflect-
7 ing a sale price made under a retail charge agreement, entered into or
8 performed in the state for a retail installment transaction; "retail in-
9 stallment contract" does not include a "layaway agreement" as defined in
10 AS 45.15.080(6); "retail installment contract" includes

11 (A) a chattel mortgage,

12 (B) a conditional sale contract, and

13 (C) a contract in the form of a bailment or a lease if
14 the bailee or lessee contracts to pay a sum substantially equiva-
15 lent to or in excess of the value of the goods sold as compensation
16 for their use and if it is agreed that the bailee or lessee is
17 bound to become, or for no other or merely nominal consideration,
18 has the option of becoming the owner of the goods upon full compli-
19 ance with the provisions of the bailment or lease;

20 * Sec. 3. AS 45.50.471 is amended by adding a new paragraph to read:

21 (26) failing to comply with the terms of the Alaska Layaway
22 Sales Act (AS 45.15).

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