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LAW OFFICES OF
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April 24, 1975

File

National Consumer Law Center
One Court Street
Boston, Massachusetts 02108

Subject: Retail installment sales interest rates

Gentle-wo-men:

H. D. 397

I am the lobbyist for Alaska Legal Services in our state legislature. A bill has been filed here to reduce the maximum interest rate on retail charge agreements to one per cent per month from one and one-half per cent. A copy is enclosed, along with a copy of the current law.

I'd like to get your opinion of the effect of this legislation on our clients, including your responses to the following points made against such a reduction.

1. It would reduce the availability of credit to low-income consumers, since higher credit risks would be denied credit.
2. It would increase prices for everyone.
3. It would force low-income consumers to borrow from finance companies and pawn brokers which have higher rates and less reputable business practices.

Since this legislature may act soon on the bill, I would appreciate a response from you as soon as possible.

Thank you.

Sincerely,

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Donald E. Clocksin
Deputy Director

DEC:btg
Enclosure
cc: ✓ Rep. Bob Bradley

In the absence of this written objection, the secured party may retain the collateral in satisfaction of the debtor's obligation. (§ 9.505 ch 114 SLA 1962)

Editor's note.—This section is set out above to supply an omission in the original.

Requiring notice of retention is for benefit of debtor. — The requirement of notice to the debtor by a secured party proposing to retain the chattel in satisfaction of the obligation is obviously for the benefit of the debtor. *Moran v. Holman*, Sup. Ct. Op. No. 945 (File No. 1650), 514 P.2d 817 (1973).

Failure to give notice does not prevent showing that collateral retained. — The creditor's failure to give notice of intention to retain the collateral in discharge of the debt does not prevent the debtor from showing that the collateral was in fact retained by the creditor and on the basis of such fact he may claim that he is discharged from further liability. *Moran v. Holman*, Sup. Ct. Op. No. 945 (File No. 1650), 514 P.2d 817 (1973).

The giving of notice protects the creditor from a subsequent claim that he should have sold the collateral. *Moran v. Holman*, Sup. Ct. Op. No. 945 (File No. 1650), 514 P.2d 817 (1973).

Where depreciating collateral held unduly long period of time. — When a secured party retains collateral which depreciates in value, such as a motor vehicle, for an unduly long period of time and uses the vehicle as his own, the debtor may validly claim that his obligation has been satisfied. To rule otherwise would permit overreaching and inequitable abuses by some secured parties. *Moran v. Holman*, Sup. Ct. Op. No. 945 (File No. 1650), 514 P.2d 817 (1973).

Since a motor vehicle such as a truck is a depreciating asset, where the parties are unsophisticated with reference to the myriad and involved provisions of the Uniform Commercial Code, the creditor who has retaken possession of the collateral, i.e., the motor vehicle, should not be permitted to wait an inordinate period, utilizing the vehicle in the meantime, and then elect to sue for the full amount of the debt. *Moran v. Holman*, Sup. Ct. Op. No. 945 (File No. 1650), 514 P.2d 817 (1973).

Sec. 45.05.794. Secured party's liability for failure to comply.

Noncompliance with AS 45.05.788(c).—Where noncompliance with the notice of sale provision of AS 45.05.788(c) has been shown, the burden of proving that the market value of the collateral was received at the sale is upon the secured party. *Weaver v.*

O'Mearn Motor Co., Sup. Ct. Op. No. 535 (File No. 961), 462 P.2d 87 (1969).

Cited in *Stanley v. Foodcrafters, Inc.*, 7 Alas. L.J. No. 3, p. 435 (Sept. 23, 1968); *Blumenstein v. Phillips Ins. Center, Inc.*, Sup. Ct. Op. No. 748 (File No. 1253), 490 P.2d 1213 (1971).

Chapter 10. Alaska Retail Installment Sales Act.

Section

120. Extent of service charge

Sec. 45.10.120. Extent of service charge. (a) The service charge shall include all charges incident to investigating and making the retail installment contract or charge agreement and for the privilege of making the installment payments under the contract or agreement. No other fee, expense, or charge may be taken, received, reserved, or contracted for investigating and making the contract or agreement, or for the privilege of making the payments.

(b) A seller or holder of a retail installment contract may charge, receive and collect a service charge which shall not exceed the following rates multiplied by the number of months, including a fraction of a month in excess of 15 days as one month, elapsing between the date of the contract and the due date of the last installment,

(1) on so much of the unpaid balance as does not exceed \$1,000, five-sixths of one per cent;

(2) if the unpaid balance exceeds \$1,000, on so much of the unpaid balance as exceeds \$1,000, two-thirds of one per cent;

(3) if the total service charge so computed is less than \$12, \$12, but if the due date of the last installment of the contract is eight months or less after its effective date, \$10.

(c) A seller or holder of a retail charge agreement, revolving charge agreement or other retail charge agreement may charge, receive and collect a service charge not to exceed the following rates computed on the outstanding balances from month to month,

(1) on so much of the outstanding balance as does not exceed \$1,000, one and one-half per cent per month;

(2) if the outstanding balance is more than \$1,000, one per cent per month on the excess over \$1,000 of the outstanding balance;

(3) if the service charge so computed is less than \$1 for any month, \$1;

(4) the service charge may be computed on a schedule of fixed amounts if as so computed it is applied to all amounts of outstanding balances equal to the fixed amount minus a differential of not more than \$5 provided that it is also applied to all amounts of outstanding balances equal to the fixed amount plus at least the same differential. (§ 13 ch 141 SLA 1962; am § 1 ch 154 SLA 1966)

Cross reference.—As to revolving credit plans, see AS 06.05.208.

Effect of amendment.—The 1966 amendment designated the former

provisions of this section as subsection (a) and added subsections (b) and (c).

Sec. 45.10.220. Definitions.

Paragraph (12) contemplates that an additional charge may be made when goods are sold on a time pay-

ment basis. *Metcalf v. Bartrand*, 8 Alas. L.J. No. 12, p. 338 (Nov., 1970).

Chapter 30. Standard for Mobile Homes.

Section
10. Mobile home standards
20. [Repealed]
80. Administration

Section
40. Enforcement of compliance
50. Penalty
60. [Repealed]