

ACT 102

A Bill for an Act Enacting a Retail Installment Sales Act and Repealing the Uniform Conditional Sales Act (Modified), and Amending Chapter 201, Revised Laws of Hawaii 1955, as Amended.

Be it Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 201, Revised Laws of Hawaii 1955, as amended, is hereby repealed, and a new Chapter 201 enacted to read as follows:

“Chapter 201—Retail Installment Sales.

Section 1. **Definitions.** In this chapter, unless the context or subject matter otherwise requires:

‘Goods’ means all chattels personal other than money and things in action, except as herein provided, and includes emblements, growing crops and things which attach to or form a part of land which are agreed to be severed before sale under the retail installment contract and things which at the time of sale or subsequently are to be so affixed to real property as to become a part thereof, whether or not severable therefrom. The term includes merchandise certificates or coupons, issued by a retail seller, to be used in their face amount in lieu of cash in exchange for goods sold by such a seller. The term also includes services as herein defined.

‘Services’ means work, labor or services of any kind whether purchased primarily for personal, family, household, commercial or business use, and whether or not furnished in connection with the delivery, installation, servicing, repair or improvement of goods, and includes repairs, alterations or improvements upon or in connection with real property.

‘Retail buyer’ or ‘buyer’ means any person who buys goods from a retail seller in a retail installment sale and who executes a retail installment contract in connection therewith.

'Retail seller' or 'seller' means any person who sells goods to a retail buyer in a retail installment sale.

'Retail installment sale' or 'sale' means and includes any sale, other than for the purpose of resale, of goods to a retail buyer pursuant to a retail installment contract providing for payment of a time sale price. The cash sale price of the goods and the amount, if any, included for insurance and other benefits, official fees and finance charge shall together constitute the time sale price.

'Retail installment contract' or 'contract' means and includes any agreement, including a conditional sale contract or any other form of instrument, evidencing an obligation to pay the purchase price, or monies advanced in payment of the purchase price, of goods, by payment thereof in two or more installments over a period of time, whether or not such contract contains a title retention provision. This term includes any contract for the bailment or leasing of goods by which the bailee or lessee contracts to pay as compensation a sum substantially equivalent to or in excess of its value and by which it is agreed that the bailee or lessee is bound to become, or has the option of becoming, the owner of the goods upon full compliance with the terms of the contract.

'Cash sale price' means the cash sale price stated in a retail installment contract for which the seller would sell to the buyer, and the buyer would buy from the seller, the goods which are the subject matter of the retail installment contract if the sale were a sale for cash instead of a retail installment sale. The cash sale price may include any taxes, registration, license and other fees and charges for accessories and their installation and for delivering, servicing, repairing or improving the goods.

'Official fees' means the filing or other fees required by law to any governmental agency for the recording, registering or filing of any documents necessary in connection with the transaction; provided, that nothing herein shall be deemed to require the recording, registering or filing of any document, except as provided by law.

'Finance charge' means the amount, however denominated or expressed, which the retail buyer contracts to pay or pays for the privilege of purchasing goods to be paid for in installments under the terms of the retail installment contract; it does not include the amounts, if any, charged for insurance or other benefits, delinquency charges, attorneys' fees, court costs or collection fees and expenses.

'Person' means an individual, partnership, corporation, association or other group however organized.

Section 2. General Requirements of Retail Installment Contracts. Every retail installment contract shall be in writing, shall contain all the agreements of, and shall be signed by, the parties; provided, that such contract may provide for purchases to be made by the buyer from time to time and shall be effective as to such purchases. If the contract provides for purchases to be made from time to time, such contract shall contain the notice required by subsection (b) hereof and the amount or rate of the finance charge applicable to purchases thereunder. The sales slip or other written statement or evidence with respect to each such purchase shall be furnished to the buyer promptly following each purchase and may at the option of the seller set forth the information required by section 3 or section 26.

The printed portion of the contract shall be in at least eight-point type. The contract shall contain, printed or written in a size equal to at least ten-point bold type, the following:

(a) Both at the top of the contract and directly above the space reserved for the signature of the buyer, the words 'RETAIL INSTALLMENT CONTRACT'; and

(b) The following notice: 'NOTICE TO THE BUYER: 1. Do not sign this contract before you read it or if it contains any blank space. 2. You are entitled to a completely filled in copy of this contract when you sign it. 3. Under the law, you have the following rights, among others: (a) To pay off in advance the full amount due and to obtain a partial refund of the finance charge, if paid in advance; (b) Under certain conditions, to redeem the property if repossessed for a default.'

The contract shall contain the names of the parties and their respective places of business or residence. Either the contract, or the sales slip or other written statement or evidence of the purchase required to be furnished to the buyer under this section, shall contain a description of the goods, including make, model and identification number or marks, if any.

Section 3. Specific Requirements of Retail Installment Contracts. Every contract shall contain the following items:

(a) The cash sale price of the goods which are the subject matter of the retail installment sale;

(b) The amount of the buyer's down payment, itemizing the amounts paid in money and in goods and containing a brief description of the goods if any, traded-in;

(c) The difference between items (a) and (b);

(d) The amounts, if any, charged for insurance and other benefits, specifying the coverages and benefits;

(e) The amount of official fees, as defined in section 1.

(f) The principal balance, which is the sum of items (c), (d) and (e);

(g) The amount of the finance charge; which may be stated as a per cent of the monthly unpaid balance to accrue thereafter, if such finance charge is not capitalized or stated as a dollar amount in any of the documents or payment books connected with the transaction;

(h) The time balance, which is the sum of items (f) and (g), payable in installments by the buyer to the seller, the number of installments required, the amount of each installment expressed in dollars and cents and the due date or period thereof if the finance charge is stated in a dollar amount.

(i) The time sale price if the finance charge is stated in a dollar amount.

Additional items may be included in the contract to explain the calculations involved in determining the stated time balance to be paid by the buyer.

Section 4. Contract Copy to Buyer—Acknowledgment. Upon the execution of the contract, a copy thereof, signed by the parties, shall be immediately delivered to the buyer; provided, that if the contract is signed only by one party, and the signing thereof by the other is postponed, a copy thereof, as signed by such party, shall be immediately delivered to the buyer. Until a copy of the contract signed by the parties is delivered to the buyer, a buyer who has not received delivery of the goods has the right to cancel the contract and to receive immediate refund of all payments made and redelivery of all goods traded-in to the seller on account of or in contemplation of the contract. Any acknowledgment by the buyer of delivery of a

copy of the contract shall be printed or written in a size equal to at least ten-point bold type, and, if contained in the contract, shall also appear directly above the legend required above the buyer's signature by section 2 of the chapter. However, this section shall not apply when the merchandise has been specially ordered or custom made to the specifications of the purchaser and evidence of such order is provided by the seller.

Section 5. Insurance Provisions. The amount, if any, charged for insurance, shall not exceed the premiums chargeable in accordance with rate filings made with the commissioner of insurance for similar insurance. The seller or holder, if dual interest insurance on the goods is included in a retail installment contract, and a separate charge is made therefor shall within 30 days after execution of the retail installment contract send or cause to be sent to the buyer a policy or policies or certificate of insurance, written by an insurance company authorized to do business in this State, clearly setting forth the amount of the premium, the kind or kinds of insurance and the scope of the coverage and all the terms, exceptions, limitations, restrictions and conditions of the contract or contracts of insurance. The buyer of goods under a retail installment contract shall have the privilege of purchasing such insurance from an agent or broker of his own selection, and in an insurance company of his own selection authorized to do business in this State; provided, however, that this provision shall not prevent the exercise by the seller or holder of his, her or its right to approve or disapprove of the insurance company selected by the buyer to underwrite the insurance.

If any such policy or certificate is cancelled, the unearned insurance premium refund received by the holder of the contract shall be credited to the final maturing installments of the retail installment contract except to the extent applied toward payment for similar insurance protecting the interests of the buyer and the holder of the contract or either of them.

Section 6. Delinquency and Collection Charges—Attorney's Fees. The holder of a retail installment contract, including any industrial loan company, may, if the contract so provides, collect a delinquency and collection charge on each installment in default for a period not less than 10 days in an amount not in excess of 5% of each installment or \$5.00, whichever is less. In addition to such delinquency and collection charge, the retail installment contract may provide for the payment of reasonable attorney's fees or collector's fees where such contract is referred for collection to an attorney or licensed collector who is not a salaried employee or officer of the holder of the contract.

Section 7. Blank Spaces in Contract—Assignee Without Knowledge. No retail installment contract shall be enforceable by the seller when it contains blank spaces to be filled in after it has been signed by the buyer; provided that, if delivery of the goods is not made at the time of the execution of the contracts, the identifying numbers or marks or similar information and the date of the first installment may be inserted in the contract after its execution. The buyer's written acknowledgment, conforming to the requirements of section 4 of this chapter, of delivery of a copy of a contract shall be conclusive proof of such delivery and of compliance with this subdivision in any action or proceeding by or against an assignee of the contract without knowledge to the contrary when he purchases the contract.

Section 7a. Catalog Mail Order Sales. Retail installment sales negotiated and entered into by mail without personal solicitation by a salesman or other

representative of the seller, and if seller's cash and deferred payment prices and other terms are clearly set forth in a catalog, or other printed solicitation of business, which is generally available to the public, may be made as hereinafter provided. All of the provisions of this chapter shall apply to such sales except the seller shall not be required to deliver a copy of the contract to the buyer as provided in section 4 of this chapter, and if, when the proposed retail installment sale contract is received by the seller from the buyer, there are blank spaces to be filled in, the seller may insert in the appropriate blank spaces the amounts of money and other terms which are set forth in the seller's catalog which is then in effect; and in lieu of the copy of the contract provided for in section 4 hereof the seller shall, within 15 days from date of shipment of goods, furnish to the buyer a written statement of the items inserted in such blank spaces.

Section 8. Payment Without Notice of Assignment. Unless the buyer has notice of actual assignment of a retail installment contract, payment thereunder made by the buyer to the last known holder of such contract shall be binding upon all subsequent holders or assignees. Such notice may be given by first class mail to the address of the buyer as shown in the contract or to the last known address of the buyer.

Section 9. Statement and Receipt of Payments. Upon written request from the buyer, the holder of a retail installment contract shall give or forward to the buyer a written statement of the dates and amounts of payments and the total amount unpaid under such contract. A buyer shall be given a written receipt for any payment when made in cash.

Section 10. Acceleration of Time Balance. No provisions in a retail installment contract by which, in the absence of the buyer's default, the holder may, arbitrarily and without reasonable cause, accelerate the maturity of any part or all of the time balance shall be enforceable.

Section 11. Confession of Judgment—Power of Attorney—Wage Assignment. No provision in a retail installment contract for confession of judgment, power of attorney therefor, or wage assignment shall be enforceable in this State, prior to a default by the buyer.

Section 12. Unlawful Repossession. No provision in a retail installment contract which authorizes seller or holder of the contract or other person acting on his behalf to enter upon the buyer's premises unlawfully, or to commit any breach of the peace in the repossession of the goods shall be enforceable.

Section 13. Waiver of Illegal Act—Collection. No provision in a retail installment contract by which the buyer waives any right of action against the seller or holder of the contract, or other person acting on his behalf, for any illegal act committed in the collection of payments under the contract or in the repossession of the goods shall be enforceable.

Section 14. Inclusion of Other Security for Time Sale Price. No provision in a retail installment contract for the subsequent inclusion of title to or a lien upon any goods, other than the goods which are the subject matter of the retail installment sale, or accessories therefor or special or auxiliary equipment used in connection therewith, or in substitution, in whole or in part, for any thereof, as security for payment of the time sale price, shall be enforceable.

Section 15. Appointment of Agent—Collection or Repossession. No provision in a retail installment contract by which the buyer executes a power of attorney appointing the seller or holder of the contract, or other person acting on his behalf, as the buyer's agent in collection of payments under the contract or in the repossession of the goods shall be enforceable.

Section 16. Preservation of Buyer's Rights—Assignment.

(a) No contract shall contain any provision by which a buyer agrees not to assert against a seller a claim or defense arising out of the sale or agrees not to assert against an assignee such a claim or defense other than as provided in subsection (c).

(b) No contract shall require or entail the execution of any note or series of notes by the buyer which when separately negotiated will cut off as to third parties any right of action or defense which the buyer may have against the seller except as provided in subsection (c).

(c) No right of action or defense arising out of a retail installment sale which the buyer has against the seller and which would be cut off by assignment, shall be cut off by the assignment of the contract to any third party whether or not such party acquires the contract in good faith and for value unless the assignee gives notice of the assignment to the buyer as provided in this section and within 15 days of the mailing of such notice receives no written notice of the facts giving rise to the claim or defense of the buyer. A notice of assignment shall be in writing, addressed to the buyer at the address shown on the contract and shall identify the contract and inform the buyer that he must within 15 days of the date of mailing such notice, notify the assignee in writing of any facts giving rise to a claim or defense which he may have. The notice of assignment shall state the name of the seller and buyer, a description of goods and services, the time balance and the number and amounts of installments.

Section 17. Failure to Comply—Remedy of Buyer. In case of failure of the seller or holder to comply with the provisions of this chapter, the buyer has the right to recover from the seller or holder, as the case may be, an amount equal to the finance charge or 10% of the cash price if no finance charge is specified in the contract or supplementary statement, whichever is the greater, plus reasonable attorneys' fees.

Section 18. Cancellation of Contract. After the payment of all sums for which the buyer is obligated under a retail installment contract, the holder of such contract shall mail to the buyer at his last known address, good and sufficient instruments to indicate payment in full and to release all security in the goods, and cancelled negotiable instruments evidencing said indebtedness.

Section 19. Credit Upon Anticipation of Payments. Notwithstanding the provisions of any retail installment contract to the contrary, any buyer, upon 5 days prior notice to the holder, may satisfy in full at any time before maturity the debt of any retail installment contract and in so satisfying such debt shall receive a refund credit thereon for such anticipation of payments, if the finance charge shall have been paid in advance. The amount of such refund shall represent at least as great a proportion of the total finance charge, less an acquisition cost of \$10, as the sum of the periodical time balances, after the day of prepayment, bears to the sum of all the periodical time balances under the schedule of payments in the contract. When the

amount of the credit for anticipation of payments is less than one dollar, no refund need be made.

Section 20. Penalties. Any person who willfully and knowingly violates any provisions of this chapter is guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not more than \$500.00.

Any person violating any of the provisions of sections 2 to 17, inclusive, or any person willfully and knowingly acquiring a retail installment contract with knowledge of such violation by any person is barred from recovery of any finance charge, delinquency or collection charge or refinancing charge on the retail installment contract involved.

Notwithstanding the provisions of this section, the failure to comply with any provisions of this chapter may be corrected by the seller at any time after the execution of the retail installment contract or in any event not later than 10 days after the seller is notified thereof in writing by the buyer, and, if so corrected, neither the seller nor the holder is subject to any criminal penalty under this or any other section of this chapter.

Section 21. Waiver. Any provision in a retail installment contract waiving any of the requirements of this chapter shall be unenforceable and void.

Section 22. Notice of Intention to Retake—No Redemption. Not more than 40 nor less than 20 days prior to the retaking, the holder of the retail installment contract, if he so desires, may serve upon the buyer personally or by registered or certified mail a notice of intention to retake the goods on account of the buyer's default. The notice shall state the default and the period at the end of which the goods will be retaken, and shall briefly and clearly state what the buyer's rights under this article will be in case they are retaken. If the notice is so served and the buyer does not perform the obligations in which he has made default before the day set for retaking, the holder of the retail installment contract may retake the goods and hold them subject to the provisions of sections 23 and 24 regarding resale, but without any right of redemption. Acceptance of partial payment subsequent to service of notice hereunder, and prior to repossession shall not constitute a waiver of default or of the holder's right to repossess pursuant to such notice.

Section 22a. Redemption. If the holder does not give the notice of intention to retake described in section 22, he shall retain the goods for 10 days after the retaking, during which period the buyer, upon payment or tender of the amount owing under the contract, together with any expenses of taking, keeping and storage, may redeem the goods and become entitled to retake possession of them; provided, however, that the holder shall not be entitled to the expense of taking, keeping and storage, unless, at least 5 days before the taking, the holder has mailed to the last-known address of the buyer as shown by the holder's records, a notice stating the buyer's default. Upon written demand delivered personally or by registered or certified mail by the buyer, the holder shall furnish to the buyer a written statement of the sum due under the contract and the expense of taking, keeping and storage. For failure to furnish such statement within a reasonable time after demand, the holder shall forfeit to the buyer \$10 and also be liable to him for all damages suffered because of such failure. If the goods are perishable so that retention for 10 days as herein prescribed would result in their destruction or substantial injury, the provisions of this section shall not apply, and the holder may resell the goods immediately upon their retaking.

Section 23. Right of Resale. If the holder retakes the goods pursuant to section 22 or if the buyer fails to exercise his right of redemption pursuant to section 22(a), the holder may retain the goods or at his election resell the goods at public or private sale; provided, that if the buyer has paid at least 50% of the purchase price at the time of the retaking, and if the buyer delivers to the seller within 10 days after the retaking a written notice demanding the resale, the seller shall sell said property so retaken at public or private sale. Such sale shall be held within a reasonable time after such retaking, may be made without demand for performance, with or without notice to the buyer, with or without having such property at the place of sale, and upon such terms and in such manner as the seller may determine, subject, however, to the requirements and conditions of this section. The seller shall make reasonable efforts to secure a fair price for the goods upon such resale and shall make and preserve for one year a written record of such efforts, and of the resale. The seller may purchase at any such resale. If the holder does not resell the goods within a reasonable time after retaking, he shall be deemed to have elected to retain the goods and release the buyer from any further obligations under the contract.

Section 24. Proceeds of Resale. The proceeds of a resale shall be applied (1) to the payment of the expenses thereof, (2) to the payment of any expenses of retaking, keeping and storing the goods, including reasonable attorneys' fees, to which the holder may be entitled, (3) to the satisfaction of the balance due under the contract. Any sum remaining after the satisfaction of such claims shall be paid to the buyer.

Section 25. Deficiency on Resale. If the proceeds of the resale are not sufficient to defray the expenses thereof, and also the expenses of retaking, keeping and storing the goods to which the holder may be entitled and the balance due upon the purchase price, the holder may recover the deficiency from the buyer, or from any one who has succeeded to the obligations of the buyer. The buyer may have the reasonableness of the expense of retaking, keeping and storing the goods and the reasonable value of the goods at the time of resale determined in any action or proceeding brought by the holder to recover the deficiency, the resale price being prima facie but not conclusive evidence of such reasonable value. The reasonable value as determined, or the resale price, whichever shall be higher, shall be credited to the buyer on account of his indebtedness.

If the buyer has paid an amount equal to 80% or more of the total time sale price at the time of his default under the contract, and if the buyer, at the request of the holder without legal proceedings, surrenders the goods to the holder in ordinary condition and free from malicious damage, the holder must, within a period of 5 days from the date of receipt of the goods at his place of business, elect either (a) to retain the goods and release the buyer from further obligation under the contract, or (b) to return the goods to the buyer at the holder's expense and be limited to an action to recover the balance of the indebtedness.

Section 26. Additions to and Consolidations of Retail Installment Contracts. Where a buyer makes any subsequent purchases of goods from a seller from whom he has previously purchased goods under one or more retail installment contracts, and the amounts under such contract or contracts have not been fully paid, the subsequent purchases may be included in and consolidated with one or more of the prior contract or contracts. A

memorandum of such additional purchases shall be prepared by the seller, inserted in or attached to the seller's counterpart of the contract and shall set forth :

- (a) A description of the additional goods so purchased ;
- (b) The consolidated total indebtedness of the buyer ;
- (c) The finance charge stated either as (1) the additional amount on the subsequent purchase, (2) the total amount on the consolidated contract, or (3) a per cent of the monthly outstanding balance ;
- (d) The revised installment payments.

A copy of said memorandum shall be furnished to the buyer under the same terms and conditions as are set forth in section 4 of this chapter.

When such subsequent purchase is made, the entire amount of all payments made previous to the subsequent purchase is to be applied toward the payment of the previous purchase or purchases and each payment thereafter received is to be allocated to all of the various purchases in the same proportion or ratio as the original cash prices of the various purchases bear to one another. Where the amount of each installment payment is increased in connection with the additional purchase, the subsequent payments, at the seller's election is to be allocated as follows: an amount equal to the increase, to the subsequent purchase. However, the amount of any initial or down payment on the subsequent purchase is to be allocated in its entirety to such purchase. The provisions of this section shall not apply in cases involving equipment, parts or other merchandise attached or affixed to goods previously purchased or repairs or services rendered by the seller in connection therewith at the buyer's request.

Section 27. Prohibition of Removal or Sale Without Notice. Unless the contract otherwise provides, the buyer may, without the consent of the seller, remove the goods from the island in which the goods are first kept for use by the buyer after the sale and sell, mortgage, or otherwise dispose of his interest in them; but prior to full compliance with the terms of the contract by the buyer, no such buyer shall remove the goods from such island except for temporary use for a period of not more than 30 days unless the buyer not less than 10 days before such removal shall give the seller written notice, either personally or by registered or certified mail, of the place to which the goods are to be removed and the approximate time of such intended removal; nor prior to the performance of the condition shall the buyer sell, mortgage, or otherwise dispose of his interest in the goods, unless he or the person to whom he is about to sell, mortgage, or otherwise transfer the same shall notify the seller in writing, either personally or by registered or certified mail, of the name and address of the person to whom his interest in the goods is about to be sold, mortgaged or otherwise transferred.

Section 28. Fraudulent Injury, Concealment, Removal or Sale; Penalty. When, in violation of the terms of the contract by the buyer, the buyer, maliciously or with the intent to defraud, shall injure, destroy or conceal the goods, or, without the consent of the seller, maliciously or with intent to defraud, removes them from the island in which they were first kept for use by the buyer after the sale, or to which with the consent of the seller they have been removed, or shall sell, mortgage, or otherwise dispose of such goods under claim of full ownership, he shall be fined not more than \$500 or imprisoned not more than one year, or both.

Section 29. **Regulation of Finance Charges.** It shall be unlawful directly or indirectly to charge, contract for, collect or receive any finance charge, on a retail installment contract except as is provided by this section.

Such finance charge shall not exceed the amount of interest which could lawfully be deducted in advance by an industrial loan company under the provisions of chapter 194 on a loan to run for the same period as the retail installment contract, where the actual cash received by the borrower after such deduction of interest in advance would be equal in amount to the time balance of the retail installment contract, provided that a minimum finance charge of not more than \$10 shall be allowable in a retail installment sale of less than \$100 when such finance charge is stated in a dollar amount.

Section 30. **Retail Installment Contract Valid Except as Otherwise Provided.** Every provision in a retail installment contract reserving property in the seller after possession of the goods is delivered to the buyer shall be valid as to all persons, except as in this chapter otherwise provided.

Section 31. **Severability.** If any provision of this chapter or the application thereof to any person or circumstances is held unconstitutional, the remainder of this chapter and the application of such provision to other persons or circumstances shall not be affected thereby.

Section 32. **Short Title.** This chapter may be cited as "The Retail Installment Sales Act."

SECTION 2. This Act shall take effect January 1, 1962 and shall not apply to retail installment contracts made prior to that date.

(Approved May 23, 1961.) H.B. 1236.
