

CHAPTER 236.

[Sub. S. B. 415.]

RETAIL INSTALLMENT SALES OF GOODS AND SERVICES.

AN ACT relating to and regulating retail installment sales of goods and services; amending section 1, chapter 106, Laws of 1893 as last amended by section 1, chapter 159, Laws of 1961 and RCW 63.12.010; prescribing penalties; and providing an effective date.

Be it enacted by the Legislature of the State of Washington:

SECTION 1. In this act, unless the context otherwise requires:

(1) "Goods" means all chattels personal when purchased primarily for personal, family or household use and not for commercial or business use, but not including money or, except as provided in the next sentence, things in action. The term includes but is not limited to merchandise certificates or coupons, issued by a retail seller, to be used in their face amount in lieu of cash in exchange for goods or services sold by such a seller and goods 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;

(2) "Services" means work, labor or services of any kind when purchased primarily for personal, family or household use and not for commercial or business use 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, but does not include services for which the price charged is required by law to be determined or approved by or to be filed, subject to approval or disapproval, with the United States or any state, or any department, division, agency, officer

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or official of either as in the case of transportation services;

(3) "Retail buyer" or "buyer" means a person who buys or agrees to buy goods or obtain services or agrees to have services rendered or furnished, from a retail seller;

(4) "Retail seller" or "seller" means a person engaged in the business of selling goods or services to retail buyers;

(5) "Retail installment transaction" means any transaction in which a retail buyer purchases goods or services from a retail seller pursuant to a retail installment contract or a retail charge agreement, as defined in this section, which provides for a service charge, as defined in this section, and under which the buyer agrees to pay the unpaid balance in one or more installments;

(6) "Retail installment contract" or "contract" means a contract, other than a retail charge agreement or an instrument reflecting a sale made pursuant thereto, entered into or performed in this state for a retail installment transaction. The term "retail installment contract" may include a chattel mortgage, a conditional sale contract and a contract in the form of a bailment or a lease if the bailee or lessee contracts to pay as compensation for their use a sum substantially equivalent to or in excess of the value of the goods sold and if it is agreed that the bailee or lessee is bound to become, or for no other or a merely nominal consideration, has the option of becoming the owner of the goods upon full compliance with the provisions of the bailment or lease;

(7) "Retail charge agreement," "revolving charge agreement" or "charge agreement" means an agreement entered into or performed in this state prescribing the terms of retail installment transactions which may be made thereunder from time to time

and under the terms of which a service charge, as defined in this section, is to be computed in relation to the buyer's unpaid balance from time to time;

(8) "Service charge" however denominated or expressed, means the amount which is paid or payable for the privilege of purchasing goods or services to be paid for by the buyer in installments over a period of time. It does not include the amount, if any, charged for insurance premiums, delinquency charges, attorneys' fees, court costs or official fees;

(9) "Cash sale price" means the price for which the seller would have sold or furnished to the buyer, and the buyer would have bought or obtained from the seller, the goods or services which are the subject matter of a retail installment transaction, if the sale had been a sale for cash. The cash sale price may include any taxes, registration and license fees, and charges for transferring vehicle titles, delivery, installation, servicing, repairs, alterations or improvements;

(10) "Official fees" means the amount of the fees prescribed by law for filing, recording or otherwise perfecting, and releasing or satisfying, a retained title, lien or other security interest created by a retail installment transaction;

(11) "Time balance" means the principal balance plus the service charge;

(12) "Principal balance" means the cash sale price of the goods or services which are the subject matter of a retail installment contract less the amount of the buyer's down payment in money or goods or both, plus the amounts, if any, included therein, if a separate identified charge is made therefor and stated in the contract, for insurance and official fees;

(13) "Person" means an individual, partnership, joint venture, corporation, association or any other group, however organized;

(14) "Rate" means the percentage which, when multiplied times the outstanding balance for each month or other installment period, yields the amount of the service charge for such month or period.

Retail installment sales of goods and services. Contracts, as single document, size, signatures and date.

Proviso.

SEC. 2. Every retail installment contract shall be contained in a single document which shall contain the entire agreement of the parties including any promissory notes or other evidences of indebtedness between the parties relating to the transaction, except as provided in sections 5, 6 and 11: *Provided*, That where the buyer's obligation to pay the time balance is represented by a promissory note secured by a chattel mortgage, the promissory note may be a separate instrument if the mortgage recites the amount and terms of payment of such note and the promissory note recites that it is secured by a mortgage: *Provided, further*, That in a transaction involving the repair, alteration or improvement upon or in connection with real property, the contract may be secured by a mortgage on the real property contained in a separate document. Home improvement retail sales transactions which are financed or insured by the Federal Housing Administration are not subject to this act.

Proviso.

The contract shall be dated, signed by the retail buyer and completed as to all essential provisions, except as otherwise provided in sections 6 and 7 hereof. The printed or typed portion of the contract, other than instructions for completion, shall be in a size equal to at least eight point type.

Delivery of contract.

SEC. 3. The retail seller shall deliver to the retail buyer, or mail to him at his address shown on the retail installment contract, a copy of the contract as accepted by the seller. Until the seller does so, the buyer shall be obligated to pay only the cash sale price. Any acknowledgment by the buyer of delivery of a copy of the contract shall be in a size equal

to at least ten point bold type and, if contained in the contract, shall appear directly above the buyer's signature.

SEC. 4. The retail installment contract shall contain the names of the seller and the buyer, the place of business of the seller, the residence or other address of the buyer as specified by the buyer and a description or identification of the goods sold or to be sold, or services furnished or rendered or to be furnished or rendered. The contract also shall contain the following items, which shall be set forth in the sequence appearing below:

Contract
contents.

(1) The cash sale price of each item of goods or services;

(2) The amount of the buyer's down payment, identifying the amounts paid in money and allowed for goods traded in;

(3) The difference between items (1) and (2);

(4) The aggregate amount, if any, included for insurance, specifying the type or types of insurance and the terms of coverage;

(5) The aggregate amount of official fees;

(6) The principal balance, which is the sum of items (3), (4) and (5);

(7) The dollar amount or rate of the service charge;

(8) The amount of the time balance owed by the buyer to the seller, which is the sum of items (6) and (7), if (7) is stated in a dollar amount; and

(9) Except as otherwise provided in the next two sentences, the maximum number of installment payments required and the amount of each installment and the due date of each payment necessary to pay such balance. If installment payments other than the final payment are stated as a series of equal scheduled amounts and if the amount of the final installment payment does not substantially exceed the scheduled amount of each preceding installment

Retail installment sales of goods and services. Contract contents.

payment, the maximum number of payments and the amount and due date of each payment need not be separately stated and the amount of the scheduled final installment payment may be stated as the remaining unpaid balance. The due date of the first installment payment may be fixed by a day or date or may be fixed by reference to the date of the contract or to the time of delivery or installation.

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

Contract as more than one document, when.

SEC. 5. A retail installment contract may be contained in more than one document, provided that one such document shall be an original document signed by the retail buyer, stated to be applicable to purchases of goods or services to be made by the retail buyer from time to time. In such case such document, together with the sales slip, account book or other written statement relating to each purchase, shall set forth all of the information required by section 4 and shall constitute the retail installment contract for each purchase. On each succeeding purchase pursuant to such original document, the sales slip, account book or other written statement may at the option of the seller constitute the memorandum required by section 11.

Contracts negotiated, entered into, by mail.

SEC. 6. Retail installment contracts negotiated and entered into by mail without personal solicitation by salesmen or other representatives of the seller and based upon a catalog of the seller, or other printed solicitation of business, if such catalog or other printed solicitation clearly sets forth the cash sale prices and other terms of sales to be made through such medium, may be made as provided in this section. The provisions of this act with respect to retail installment contracts shall be applicable to such sales, except that the retail installment con-

tract, when completed by the buyer need not contain the items required by section 4.

When the contract is received from the retail buyer, the seller shall prepare a written memorandum containing all of the information required by section 4 to be included in a retail installment contract. In lieu of delivering a copy of the contract to the retail buyer as provided in section 3, the seller shall deliver to the buyer a copy of such memorandum prior to the due date of the first installment payable under the contract: *Provided*, That if the catalog or other printed solicitation does not set forth all of the other terms of sales in addition to the cash sales prices, such memorandum shall be delivered to the buyer prior to or at the time of delivery of the goods or services. Proviso.

SEC. 7. The seller shall not obtain the signature of the buyer to any contract when it contains blank spaces of items which are essential provisions of the transaction except as provided in section 6: *Provided, however*, That if delivery of the goods is not made at the time of the execution of the contract, the identifying numbers or marks of the goods or similar information and the due date of the first installment may be inserted by the seller in the seller's counterpart of the contract after it has been signed by the buyer. Contracts to contain essential items before buyer signs.
Proviso.

SEC. 8. Notwithstanding the provisions of any retail installment contract to the contrary, and if the rights of the purchaser have not been terminated or forfeited under the terms of the contract, any buyer may prepay in full the unpaid time balance thereof at any time before its final due date and, if he does so, and if the contract is not in default under any term or condition of the contract more than two months, he shall receive a refund credit of the unearned portion of the service charge for such pre- Refund credit for unearned service charge, when —Computation.

payment. The amount of such refund credit shall be computed according to the "rule of seventy-eighths", that is it shall represent at least as great a proportion of the original service charge, after deducting therefrom a maximum of ten dollars where the cash sale price is one hundred dollars or less, fifteen dollars where the cash sale price is two hundred fifty dollars or less, twenty-five dollars where the cash sale price is five hundred dollars or less, or fifty dollars where the cash sale price is more than five hundred dollars, as the sum of the monthly or lesser periodic time balances beginning one month or lesser period after prepayment is made, bears to the sum of all the monthly or lesser periodic time balances under the schedule of payments in the contract. Where the amount of such refund credit is less than one dollar, no refund need be made.

Retail installment sales of goods and services. Delinquency or collection costs, when.

SEC. 9. The holder of any retail installment contract or retail charge agreement may not collect any delinquency or collection charges, including any attorney's fee and court costs and disbursements, unless the contract or charge agreement so provides. In such cases, the charges shall be reasonable, and no attorney's fee may be recovered unless the contract or charge agreement is referred for collection to an attorney not a salaried employee of the holder.

The contract or charge agreement may contain other provisions not inconsistent with the purposes of this act, including but not limited to provisions relating to refinancing, transfer of the buyer's equity, construction permits and title reports.

Buyer's receipt—Buyer's statement of payments.

SEC. 10. A buyer shall be given a written receipt for any payment when made in cash. Upon written request of 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 the con-

tract. Such a statement shall be given the buyer once without charge; if any additional statement is requested by the buyer, it shall be supplied by the holder at a charge not in excess of one dollar for each additional statement so supplied.

SEC. 11. (1) If, in a retail installment transaction, a retail buyer makes any subsequent purchases of goods or services from a retail seller from whom he has previously purchased goods or services under one or more retail installment contracts, and the amounts under such previous contract or contracts have not been fully paid, the subsequent purchases may, at the seller's option, be included in and consolidated with one or more of the previous contracts. All the provisions of this act with respect to retail installment contracts shall be applicable to such subsequent purchases except as hereinafter stated in this subsection. In the event of such consolidation, in lieu of the buyer's executing a retail installment contract respecting each subsequent purchase, as provided in this section, it shall be sufficient if the seller shall prepare a written memorandum of each such subsequent purchase, in which case the provisions of sections 2, 3 and 4 of this act shall not be applicable. Unless previously furnished in writing to the buyer by the seller, by sales slip, memoranda or otherwise, such memorandum shall set forth with respect to each subsequent purchase items (1) to (7) inclusive of section 4, and in addition, the amount of the time balance owed by the buyer to the seller for the subsequent purchase, the outstanding balance of the previous contract or contracts, the consolidated time balance, and the revised installments applicable to the consolidated time balance, if any, in accordance with section 4.

Consolidation
of subsequent
purchases in
contract—
Procedure.

The seller shall deliver to the buyer a copy of such memorandum prior to the due date of the first installment of such consolidated contract.

Retail installment sales of goods and services. Consolidation of subsequent purchases in contract—Procedure.

(2) When such subsequent purchases are made, if the seller has retained title or taken a lien or other security interest in any of the goods purchased under any one of the contracts included in the consolidation:

(a) The entire amount of all payments made prior to such subsequent purchases shall be deemed to have been applied on the previous purchases;

(b) *Where the amount of each installment payment is not increased in connection with such subsequent purchase, the subsequent payments shall be deemed to be allocated first to the previous purchases;*

(c) *Where the amount of each installment payment is increased in connection with such subsequent purchase, an amount equal to the original periodic payment shall be allocated first to the previous purchase, and the amount of such increase may, at the seller's option, be deemed to be allocated to the subsequent purchases;*

(d) The amount of any down payment on the subsequent purchase shall be allocated in its entirety to such subsequent purchase.

The provisions of this subsection shall not apply to cases where such previous and subsequent purchases involve equipment, parts, or other goods attached or affixed to goods previously purchased and not fully paid, or to services in connection therewith rendered by the seller at the buyer's request.

SEC. 12. (1) At or prior to the time a retail charge agreement is made the seller shall advise the buyer in writing, on the application form or otherwise, or orally that a service charge will be computed on the outstanding balance for each month (which need not be a calendar month) or other regular period agreed upon, the schedule or rate by which the service charge will be computed, and that the buyer may at any time pay his total unpaid balance: *Provided*, That if this information is given orally, the

Vetoed.

Service charges, requisites for.

Proviso.

seller shall, upon approval of the buyer's credit, deliver to the buyer or mail to him at his address, a memorandum setting forth this information.

(2) The seller or holder of a retail charge agreement shall promptly supply the buyer with a statement as of the end of each monthly period (which need not be a calendar month) or other regular period agreed upon, in which there is any unpaid balance thereunder, which statement shall set forth the following:

(a) The unpaid balance under the retail charge agreement at the beginning and at the end of the period;

(b) Unless otherwise furnished by the seller to the buyer by sales slip, memorandum, or otherwise, a description or identification of the goods or services purchased during the period, the cash sale price and the date of each purchase;

(c) The payments made by the buyer to the seller and any other credits to the buyer during the period;

(d) The amount, if any, of any service charge for such period; and

(e) A legend to the effect that the buyer may at any time pay his total unpaid balance.

SEC. 13. The service charge shall be inclusive of all charges incident to investigating and making the retail installment contract or charge agreement and for the privilege of making the installment payments thereunder and no other fee, expense or charge whatsoever shall be taken, received, reserved or contracted therefor.

Service charge
inclusive.

SEC. 14. If the cost of any insurance is included in the retail installment contract or retail charge agreement:

Insurance as
part of
contract—
Procedure.

(1) The contract or agreement shall state the nature, purpose, term, and amount of such insurance, and in connection with the sale of a motor

Retail installment sales of goods and services. Insurance as part of contract—Procedure.

vehicle, the contract shall state that the insurance coverage ordered under the terms of this contract does not include “bodily injury liability,” “public liability,” and “property damage liability” coverage, where such coverage is in fact not included;

(2) The contract or agreement shall state whether the insurance is to be procured by the buyer or the seller;

(3) The amount, included for such insurance, shall not exceed the premiums chargeable in accordance with the rate fixed for such insurance by the insurer, except where the amount is less than one dollar;

(4) If the insurance is to be procured by the seller or holder, he shall, within forty-five days after delivery of the goods or furnishing of the services under the contract, deliver, mail or cause to be mailed to the buyer, at his address as specified in the contract, a notice thereof or a copy of the policy or policies of insurance or a certificate or certificates of the insurance so procured.

Buyer's agreement not to assert claim or defense void.

SEC. 15. No provision of a retail installment contract or retail charge agreement shall be valid by which the buyer agrees not to assert against the seller or against an assignee a claim or defense arising out of the sale.

Buyer cannot waive rights under law.

SEC. 16. No act or agreement of the retail buyer before or at the time of the making of a retail installment contract, retail charge agreement or purchases thereunder shall constitute a valid waiver of any of the provisions of this act or of any remedies granted to the buyer by law.

Violations—Penalty.

SEC. 17. Any person who shall wilfully and intentionally violate any provision of this act shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than one thousand dollars or by imprisonment for not more

than six months, or both. Violation of any order or injunction issued pursuant to this act shall constitute prima facie proof of a violation of this section.

SEC. 18. Any seller who enters into any contract or agreement which does not comply with the provisions of this act or who violates any provision of this act except as a result of an accidental or bona fide error shall be barred from the recovery of any service charge, official fees, or any delinquency or collection charge under or in connection with the related retail installment contract or purchases under a retail charge agreement; but the seller may nevertheless recover from the buyer an amount equal to the cash price of the goods or services and the cost to the seller of any insurance included in the transaction.

Violation as bar to recovery by seller of certain fees.

SEC. 19. The attorney general or the prosecuting attorney may bring an action in the name of the state against any person to restrain and prevent any violation of this act.

Enforcing officers.

SEC. 20. In the enforcement of this act, the attorney general may accept an assurance of discontinuance of any act or practice deemed in violation of this act, from any person engaging in, or who has engaged in, such act or practice. Any such assurance shall be in writing and be filed with and subject to the approval of the superior court of the county in which the alleged violator resides or has his principal place of business, or in Thurston county. Failure to perform the terms of any such assurance shall constitute prima facie proof of a violation of this act for the purpose of securing any injunction as provided in section 19 and for the purpose of section 18 hereof: *Provided*, That after commencement of any action by a prosecuting attorney, as provided herein, the attorney general may not accept an assur-

Assurance of discontinuance—Effect on failure to perform.

Proviso.

ance of discontinuance without the consent of the prosecuting attorney.

Retail installment sales of goods and services. Civil penalty upon violation of order or injunction.

SEC. 21. Any person who violates any order or injunction issued pursuant to this act shall forfeit and pay a civil penalty of not more than one thousand dollars. For the purpose of this section the superior court issuing any injunction shall retain jurisdiction, and the cause shall be continued, and in such cases the attorney general acting in the name of the state may petition for the recovery of civil penalties.

RCW 63.12.010 amended.

SEC. 22. Section 1, chapter 106, Laws of 1893 as last amended by section 1, chapter 159, Laws of 1961, and RCW 63.12.010 are each amended to read as follows:

Conditional sales contract absolute unless contract filed—Exceptions.

All conditional sales of personal property, or leases thereof, containing a conditional right to purchase, where the property is placed in the possession of the vendee, shall be absolute as to all bona fide purchasers, pledgees, mortgagees, encumbrancers and subsequent creditors, whether or not such creditors have or claim a lien upon such property, unless within twenty days after the taking of possession by the vendee, a memorandum of such sale, stating its terms and conditions, signed by the vendor and vendee, and if applicable conforming to the credit disclosure act of 1963, shall be filed in the auditor's office of the county, wherein, at the date of the vendee's taking possession of the property, the vendee resides. Every such contract for the conditional sale or lease of any personal property, except machinery, apparatus or equipment to be used for manufacturing or industrial purposes, attached or to be attached to a building, whether a fixture at common law or not, shall be absolute as to all subsequent bona fide purchasers or encumbrancers of such building and the land on which it stands, unless such contract or lease shall also contain a sufficient legal description

of the real estate which said building occupies, and shall be filed and recorded as provided in RCW 63.12.020: *Provided, however,* That nothing in this section contained shall be construed to require such filing or recording of any conditional sale of personal property or lease thereof containing a conditional right to purchase, wherein the total designated unpaid purchase price does not exceed the sum of two hundred and fifty dollars and such contracts or leases shall be valid as to all bona fide purchasers, pledgees, mortgagees, encumbrancers and subsequent creditors: *Provided, further,* That in computing said "total designated unpaid purchase price" there shall be added to said purchase price designated in any such contract the designated unpaid purchase price set forth in any other contract of conditional sale executed between the same vendor and vendee as a part of the same transaction and if the total of all exceeds said sum of two hundred and fifty dollars each of said contracts of conditional sale shall be absolute as hereinabove provided unless filed or filed and recorded as hereinabove provided.

Proviso.

Proviso.

SEC. 23. If any provision of this act is declared unconstitutional, or the applicability thereof to any person or circumstances is held invalid, the constitutionality of the remainder of the act and the applicability thereof to other persons and circumstances shall not be affected thereby.

Severability.

SEC. 24. The provisions of this act shall not invalidate or make unlawful retail installment contracts or retail charge agreements executed prior to the effective date hereof.

Prior contracts, agreements, unaffected.

SEC. 25. This act shall take effect October 1, 1963.

Passed the Senate March 6, 1963.

Passed the House March 10, 1963.

Approved by the Governor March 26, 1963, with

the exception of Subsection (b), and Subsection (c) of Section 11 which were vetoed.

Veto message,
excerpt.

NOTE: Governor's explanation of partial veto is as follows:

"This bill is approved with the exception of the items designated Subsections (b) and (c), page nine, of Section 11, Subsection 2.

"Substitute Senate Bill No. 415 deals in a comprehensive manner with the subject of retail installment contracts and sales. It is a consumer protection bill in a manner similar to a bill which I caused to be introduced by executive request during the 1961 legislative session. It allows the consumer to know exactly the terms of his contract and the service charges he pays thereon.

"Section 11 (2), Subsections (b) and (c) read as follows:

"(b) Where the amount of each installment payment is not increased in connection with such subsequent purchase, the subsequent payments shall be deemed to be allocated first to the previous purchases;

"(c) Where the amount of each installment payment is increased in connection with such subsequent purchase, an amount equal to the original periodic payment shall be allocated first to the previous purchase, and the amount of such increase may, at the seller's option, be deemed to be allocated to the subsequent purchases;"

"I have received a great deal of correspondence from retail merchants and finance companies handling their contracts, opposing these sections on the grounds that the enactment of these two sections would unduly hamper and curtail 'add on' credit sales, thereby depriving the customers of necessary items of purchase. Such curtailment of purchases would necessarily have a depressing effect upon the economy of the state.

"I have come to the conclusion that the objections which have been raised to these two subsections are meritorious and I, therefore, veto these two subsections of Section 11 (2) of Substitute Senate Bill No. 415. The remainder of the bill is approved."

ALBERT D. ROSELLINI,
Governor.