

CHAPTER 234.

[Substitute Senate Bill No. 63.]

RETAIL INSTALLMENT SALES OF GOODS AND SERVICES.

AN ACT relating to and regulating retail installment sales of goods and services; amending section 2, chapter 236, Laws of 1963 and RCW 63.14.020; amending section 3, chapter 236, Laws of 1963 and RCW 63.14.030; amending section 4, chapter 236, Laws of 1963 and RCW 63.14.040; amending section 6, chapter 236, Laws of 1963 and RCW 63.14.060; amending section 8, chapter 236, Laws of 1963 and RCW 63.14.080; amending section 11, chapter 236, Laws of 1963 and RCW 63.14.110; amending section 12, chapter 236, Laws of 1963 and RCW 63.14.120; amending section 13, chapter 236, Laws of 1963 and RCW 63.14.130; amending section 15, chapter 236, Laws of 1963 and RCW 63.14.150; amending section 18, chapter 236, Laws of 1963 and RCW 63.14.180; adding new sections to chapter 236, Laws of 1963 and chapter 63.14 RCW; prescribing penalties; and providing effective dates.

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

RCW 63.14.020 amended.

Section 1. Section 2, chapter 236, Laws of 1963 and RCW 63.14.020 are each amended to read as follows:

Retail installment sales of goods—Retail installment contracts—Requirements.

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 RCW 63.14.050, 63.14.060 and 63.14.110: *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 any such promissory note or other evidence of indebtedness executed by the buyer shall not, when

assigned or negotiated, cut off as to third parties any right of action or defense which the buyer may have against the seller, and each such promissory note or other evidence of indebtedness shall contain a statement to that effect: *And 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 chapter.

The contract shall be dated, signed by the retail buyer and completed as to all essential provisions, except as otherwise provided in RCW 63.14.060 and 63.14.070. 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.

Sec. 2. Section 3, chapter 236, Laws of 1963 and RCW 63.14.030 are each amended to read as follows:

The retail seller shall deliver to the retail buyer, at the time the buyer signs the contract a copy of the contract as signed by the buyer, unless the contract is completed by the buyer in situations covered by section 4 of this 1967 amendatory act, and if the contract is accepted at a later date by the seller the seller shall mail to the buyer at his address shown on the retail installment contract a copy of the contract as accepted by the seller or a copy of the memorandum as required in section 4 of this 1967 amendatory act. 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.

RCW 63.14.030 amended.

Retail installment contract
— Copy to buyer.

RCW 63.14.040
amended.

Retail install-
ment contracts
—Contents.

Sec. 3. Section 4, chapter 236, Laws of 1963 and RCW 63.14.040 are each amended to read as follows:

(1) 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 service 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:

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

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

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

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

(e) The aggregate amount of official fees, if any;

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

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

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

(i) 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 in-

stallment 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.

(2) Every retail installment contract shall contain the following notice in ten point bold face type or larger directly above the space reserved in the contract for the signature of the buyer: "NOTICE TO BUYER:

(a) Do not sign this contract before you read it or if any spaces intended for the agreed terms, except as to unavailable information, are blank.

(b) You are entitled to a copy of this contract at the time you sign it.

(c) You may at any time pay off the full unpaid balance due under this contract, and in so doing you may receive a partial rebate of the service charge.

(d) The service charge does not exceed% (must be filled in) per annum computed monthly and may not lawfully exceed 18% per annum computed monthly.

(e) You may cancel this contract and return any goods received, if it is solicited in person, and you sign it, at a place other than the seller's business address shown on the contract, by sending notice of such cancellation by certified mail return receipt requested to the seller at his address shown on the contract, which notice shall be posted not later than the next business day following your signing this contract: *Provided*, That at the time of

Retail installment contracts
—Contents.

sending notice of cancellation you have not received and accepted a substantial part of the goods or services which the seller is required to furnish under this contract.”

Clause (2) (e) needs to be included in the notice only if the contract is solicited in person by the seller or his representative, and the buyer signs it, at a place other than the seller’s business address shown on the contract.

RCW 63.14.060
amended.

Sec. 4. Section 6, chapter 236, Laws of 1963 and RCW 63.14.060 are each amended to read as follows:

Mail orders
based upon
catalog, etc.

Retail installment contracts negotiated and entered into by mail or telephone without solicitation in person 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 chapter with respect to retail installment contracts shall be applicable to such sales, except that the retail installment contract, when completed by the buyer need not contain the items required by RCW 63.14.040.

When the contract is received from the retail buyer, the seller shall prepare a written memorandum containing all of the information required by RCW 63.14.040 to be included in a retail installment contract. In lieu of delivering a copy of the contract to the retail buyer as provided in RCW 63.14.030, 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.

Sec. 5. Section 8, chapter 236, Laws of 1963 and RCW 63.14.080 are each amended to read as follows:

RCW 63.14.080
amended.

For the purpose of this section "periodic time balance" means the unpaid portion of the time balance as of the last day of each month, or other uniform time interval established by the regular consecutive payment period scheduled in a retail installment contract.

Repayment—
Refund.

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 portion of the time balance thereof at any time before its final due date and, if he does so, he shall receive a refund credit of the unearned portion of the service charge for such prepayment. 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 portion of the original service charge, as the sum of the periodic time balances not yet due bears to the sum of all the periodic time balances under the schedule of payments in the contract: *Provided*, That where the earned service charge (total service charge minus refund credit) thus computed is less than the following minimum service charge: fifteen dollars where the principal balance is not in excess of two hundred and fifty dollars, twenty-five dollars where the principal balance exceeds two hundred and fifty dollars but is not in excess of five hundred dollars, thirty-seven dollars and fifty cents where the principal balance exceeds five hundred dollars but is not in excess of one thousand dollars, and fifty dollars where the principal balance exceeds one thousand dollars; then such minimum service charge shall be deemed to be the earned service charge: *And provided further*, That where the

amount of such refund credit is less than one dollar, no refund credit need be made.

RCW 63.14.110
amended.

Sec. 6. Section 11, chapter 236, Laws of 1963 and RCW 63.14.110 are each amended to read as follows:

Retail install-
ment contracts
—Consolida-
tion of subse-
quent pur-
chases.

(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 chapter 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 RCW 63.14.020, 63.14.030 and 63.14.040 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 (a) to (g) inclusive of RCW 63.14.040 (1), and in addition, if the service charge is stated as a dollar amount, 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 RCW 63.14.040. If the service charge is not stated in a dollar amount, in addition to the items (a) to (g) inclusive of RCW 63.14.040 (1), the mem-

orandum shall set forth the outstanding balance of the previous contract or contracts, the consolidated outstanding balance and the revised installments applicable to the consolidated outstanding balance, in accordance with RCW 63.14.040.

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.

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

(c) Each payment received after the subsequent purchase shall be deemed to be allocated to all of the various time balances in the same proportion or ratio as the original cash sale prices of the various retail installment transactions bear to one another: *Provided*, That the seller may elect, where the amount of each installment payment is increased in connection with the subsequent purchase, to allocate only the increased amount to the time balance of the subsequent retail installment transaction, and to allocate the amount of each installment payment prior to the increase to the time balance(s) existing at the time of the 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.

RCW 63.14.120 amended.

Retail charge agreements—
Information to be furnished by seller.

Sec. 7. Section 12, chapter 236, Laws of 1963 and RCW 63.14.120 are each amended to read as follows:

(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 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.

(3) Every retail charge agreement shall contain the following notice in ten point bold face type or larger directly above the space reserved in the charge agreement for the signature of the buyer:
NOTICE TO BUYER:

(a) Do not sign this retail charge agreement before you read it or if any spaces intended for the agreed terms are left blank.

(b) You are entitled to a copy of this charge agreement at the time you sign it.

(c) You may at any time pay off the full unpaid balance under this charge agreement.

(d) The monthly service charge may not lawfully exceed the greater of 1½% of the outstanding balance (18% per year computed monthly) or one dollar.

(e) You may cancel any purchases made under this charge agreement and return the goods so purchased, if the seller or his representative solicited in person such purchase, and you sign an agreement for such purchase, at a place other than the seller's business address shown on the charge agreement, by sending notice of such cancellation by certified mail return receipt requested to the seller at his address shown on the charge agreement, which notice shall be posted not later than the next business day following your signing of the purchase agreement: *Provided*, That at the time of sending notice of rescission you have not received and accepted a substantial part of the goods or services which you agreed to purchase.

Sec. 8. Section 13, chapter 236, Laws of 1963 and RCW 63.14.130 are each amended to read as follows:

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

RCW 63.14.130
amended.

Retail installment contracts and retail charge agreements—Service charge.

Retail installment contracts and retail charge agreements—Service charge.

charge whatsoever shall be taken, received, reserved or contracted from the buyer.

(1) The service charge, in a retail installment contract, shall not exceed the highest of the following:

(a) Five-sixths of one percent of the principal balance multiplied by the number of months, including any fraction of a month in excess of fifteen days as one month, elapsing between the date of such contract and the due date of the last installment; or

(b) Ten dollars per annum per one hundred dollars of the principal balance; or

(c) One and one-half percent per month on the outstanding unpaid balances; or

(d) Fifteen dollars.

(2) The service charge in a retail charge agreement, revolving charge agreement or charge agreement, shall not exceed one and one-half percent per month on the outstanding unpaid balances. If the service charge so computed is less than one dollar for any month, then one dollar may be charged.

(3) A service charge may be computed on the median amount within a range which does not exceed ten dollars and which is a part of a published schedule of consecutive ranges applied to an outstanding balance, provided the median amount is used in computing the service charge for all balances within such range.

(4) The service charge in a retail installment contract or charge agreement shall not exceed the rate of eighteen percent per annum, computed monthly. A service charge computed by one of the foregoing methods, or within the permitted minimum charges, shall be deemed not to be in excess of eighteen percent per annum computed monthly.

Sec. 9. Section 15, chapter 236, Laws of 1963 and RCW 63.14.150 are each amended to read as follows:

RCW 63.14.150 amended.

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, or by which the buyer agrees to submit to suit in a county other than the county where the buyer signed the contract or where the buyer resides or has his principal place of business.

Prohibited provisions.

Sec. 10. Section 18, chapter 236, Laws of 1963 and RCW 63.14.180 are each amended to read as follows:

RCW 63.14.180 amended.

Any person who enters into a retail installment contract or charge agreement which does not comply with the provisions of this chapter or who violates any provision of this chapter 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 such person may nevertheless recover from the buyer an amount equal to the cash price of the goods or services and the cost to such person of any insurance included in the transaction: *Provided*, That if the service charge is in excess of that allowed by section 8 of this 1967 amendatory act, except as the result of an accidental or bona fide error, the buyer shall be entitled to an amount equal to the total of (1) twice the amount of the service charge paid, and (2) the amount of the service charge contracted for and not paid, plus (3) costs and reasonable attorneys' fees. The reduction in the cash price by the application of the above sentence shall be applied to diminish pro rata each future installment of principal amount payable under the terms of the contract or agreement.

Noncompliance—Effect—Remedy of buyer—Extent of recovery.

New section.

Sec. 11. There is added to chapter 236, Laws of 1963 and to chapter 63.14 RCW a new section to read as follows:

Declaratory judgment actions to establish excessive service charge.

The seller, holder, or buyer may bring an action for declaratory judgment to establish whether service charges contracted for or received in connection with a retail installment transaction are in excess of those allowed by this 1967 amendatory act. Such an action shall be brought against the current holder or against the buyer or his successor in interest or, if the entire principal balance has been fully paid, by the buyer or his successor in interest against the holder to whom the final payment was made. No such action shall be commenced after six months following the date the final payment becomes due, whether by acceleration or otherwise, nor after six months following the date the principal balance is fully paid, whichever first occurs. If the buyer commences such an action and fails to establish that the service charge is in excess of that allowed by section 8 of this 1967 amendatory act, and if the court finds the action was frivolously commenced, the defendant or defendants may, in the court's discretion, recover reasonable attorney's fees and costs from the buyer.

New section.

Sec. 12. There is added to chapter 236, Laws of 1963 and to chapter 63.14 RCW a new section to read as follows:

Cancellation of transaction by buyer—Procedure.

(1) In addition to any other rights he may have, the buyer shall have the right to cancel a retail installment transaction for other than the seller's breach:

(a) If the buyer has not received and accepted a substantial part of the goods or services which the seller is required to furnish under the contract or charge agreement; and

(b) If the retail installment transaction was entered into by the buyer and solicited in person by

the seller or his representative at a place other than the seller's address, which may be his main or branch office, shown on the contract; and

(c) If the buyer returns goods received or holds them at the seller's disposal as provided in clause (b) of subsection (2) of this section.

(d) By sending notice of such cancellation to the seller at his place of business as set forth in the contract or charge agreement by certified mail, return receipt requested, which shall be posted not later than the next business day following the date the buyer signs the contract or charge agreement.

(2) In the event of cancellation pursuant to this section:

(a) The seller shall, without request, refund to the buyer within ten days after such cancellation at least ninety percent of all deposits, including any down payment, made under the contract or charge agreement and shall return all goods traded in to the seller on account or in contemplation of the contract less any reasonable costs actually incurred in making ready for sale the goods so traded in;

(b) The seller shall be entitled to reclaim and the buyer shall return or hold at the seller's disposal any goods received by the buyer under the contract or charge agreement;

(c) The buyer shall incur no additional liability for such cancellation.

Sec. 13. There is added to chapter 236, Laws of 1963 and to chapter 63.14 RCW a new section to read as follows:

The holder of a retail installment contract may, upon agreement with the buyer, extend the scheduled due date or defer a scheduled payment of all or of any part of any installment or installments payable thereunder. No charge shall be made for any such extension or deferment unless a written acknowledgment of such extension or deferment is

New section.

Retail installment contracts—Extension or deferment of payments—Agreements, charges.

Retail installment contracts—
—Extension or deferral of payments—
Agreements—
charges.

sent or delivered to the buyer. The holder may charge and contract for the payment of an extension or deferral charge by the buyer and collect and receive the same, but such charge may not exceed those permitted by section 8 (a), (b), or (c) of this 1967 amendatory act on the amount of the installment or installments, or part thereof, extended or deferred for the period of extension or deferral. Such period shall not exceed the period from the date when such extended or deferred installment or installments, or part thereof, would have been payable in the absence of such extension or deferral, to the date when such installment or installments, or part thereof, are made payable under the agreement of extension or deferral; except that a minimum charge of one dollar for the period of extension or deferral may be made in any case where the extension or deferral charge, when computed at such rate, amounts to less than one dollar. Such agreement may also provide for the payment by the buyer of the additional cost to the holder of the contract of premiums for continuing in force, until the end of such period of extension or deferral, any insurance coverages provided for in the contract, subject to the provisions of RCW 63.14.140.

New section.

Sec. 14. There is added to chapter 236, Laws of 1963 and to chapter 63.14 RCW a new section to read as follows:

Refinancing agreement—
Costs—
Contents.

The holder of a retail installment contract or contracts may, upon agreement in writing with the buyer, refinance the payment of the unpaid time balance or balances of the contract or contracts by providing for a new schedule of installment payments.

The holder may charge and contract for the payment of a refinance charge by the buyer and collect and receive the same but such refinance charge (1) shall be based upon the amount refinanced, plus any

additional cost of insurance and of official fees incident to such refinancing, after the deduction of a refund credit in an amount equal to that to which the buyer would have been entitled under section 5 of this 1967 amendatory act if he had prepaid in full his obligations under the contract or contracts, but in computing such refund credit there shall not be allowed the minimum earned service charge as authorized by clause (d) of subsection (1) of such section, and (2) may not exceed the rate of service charge provided under section 8 of this 1967 amendatory act. Such agreement for refinancing may also provide for the payment by the buyer of the additional cost to the holder of the contract or contracts of premiums for continuing in force, until the maturity of the contract or contracts as refinanced, any insurance coverages provided for therein, subject to the provisions of RCW 63.14.140.

The refinancing agreement shall set forth the amount of the unpaid time balance or balances to be refinanced, the amount of any refund credit, the amount to be refinanced after the deduction of the refund credit, the amount or rate of the service charge under the refinancing agreement, any additional cost of insurance and of official fees to the buyer, the new unpaid time balance, if the service charge is stated as a dollar amount, and the new schedule of installment payments. Where there is a consolidation of two or more contracts then the provisions of section 6 of this 1967 amendatory act shall apply.

Sec. 15. There is added to chapter 236, Laws of 1963 and to chapter 63.14 RCW a new section to read as follows:

New section.

In the event a contract provides for the payment of any installment which is more than double the amount of the average of the preceding installments the buyer, upon default of this installment, shall be

New payment
schedule—
When au-
thorized.

given an absolute right to obtain a new payment schedule. Unless agreed to by the buyer, the periodic payments under the new schedule shall not be substantially greater than the average of the preceding installments. This section shall not apply if the payment schedule is adjusted to the seasonal or irregular income of the buyer or to accommodate the nature of the buyer's employment.

Severability.

Sec. 16. If any provision of this chapter 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.

Effective date
—Effect on
contracts
entered into
prior to effective date.

Sec. 17. This 1967 amendatory act shall take effect on January 1, 1968. Nothing in this 1967 amendatory act shall be construed to affect the validity of any agreement or contractual relationship entered into prior to such date, except that the rate of any service charge computed periodically on the outstanding balance in excess of that allowed by this 1967 amendatory act shall be reduced to a permissible rate on or before January 1, 1968.

Passed the Senate March 8, 1967.

Passed the House March 8, 1967.

Approved by the Governor March 21, 1967.