

ACT 285

H. B. 30.

A Bill for an Act Relating to the Retail Installment Sales Act and Amending Chapter 201A of the Revised Laws of Hawaii 1955.

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

SECTION 1. Section 201A-1 of the Revised Laws of Hawaii 1955, as amended, is hereby further amended by adding at the end thereof a new paragraph to read as follows:

“The term ‘house to house sale’ means a sale of goods or services solicited in person and signed by the buyer at a place other than the seller’s business address shown on the contract. It does not include a sale of goods or services incidental to the performance of an existing contract provided the cash sale price of such goods or services does not exceed the cash sale price of

the existing contract and the existing contract was not solicited in person and signed by the buyer at a place other than the seller's place of business."

SECTION 2. Section 201A-2 of the Revised Laws of Hawaii 1955, as amended, is hereby further amended by adding between the third and fourth paragraphs thereof the following paragraph to read as follows:

"If the sale is a house to house sale, the contract shall bear the notice printed or overstamped following the place for the buyer's signature and in a size and style at least equal to the Notice To The Buyer that: 'You are entitled to cancel this contract if Notice of Cancellation is mailed by certified mail, return receipt requested, and postmarked before midnight of the second day following the date of your signature. See Notice of Cancellation accompanying this contract.'"

SECTION 3. Section 201A-5 of the Revised Laws of Hawaii 1955, as amended, is hereby amended by adding between the first and second paragraphs thereof the following paragraphs to read as follows:

"In any retail installment contract for the sale of a motor vehicle where insurance is contracted for in connection with, or as a part of, the installment sale, and the insurance does not include public liability insurance for bodily injury and property damages, the retail installment contract shall contain, immediately following the statement therein concerning insurance, the following notice printed or overstamped prominently in the form herein indicated in 10-point type or larger and in a different color than the print of the contract itself:

'THIS DOES NOT INCLUDE INSURANCE ON YOUR LIABILITY FOR BODILY INJURY OR PROPERTY DAMAGE. IT DOES NOT MEET THE REQUIREMENTS FOR PROOF OF FINANCIAL RESPONSIBILITY UNDER CHAPTER 160, REVISED LAWS OF HAWAII 1955.'

The retail installment seller of a motor vehicle shall furnish a statement of the insurance coverage provided in the retail installment contract, if any, to the buyer and the buyer shall acknowledge the same in writing. The seller shall attach such statement to the retail installment contract."

SECTION 4. Section 201A-7 of the Revised Laws of Hawaii 1955, as amended, is hereby further amended by deleting from the second sentence thereof the words "conclusive proof" and substituting in lieu thereof the words "a rebuttable presumption".

SECTION 5. Section 201A-12 of the Revised Laws of Hawaii 1955, as amended, is hereby further amended by placing a period after the word "State" therein, and by deleting the remainder thereof.

SECTION 6. Section 201A-17(d) is amended to read in total as follows:

"No rights of action or defense arising out of a retail installment sale which the buyer has against the seller shall be cut off by assignment, and

in the event the buyer has a good cause of action or defense against the seller the seller's assignee has recourse against the seller for any losses he, the assignee, may incur as a result thereof."

SECTION 7. Section 201A-28, Revised Laws of Hawaii 1955, as amended, is hereby further amended by deleting the second paragraph of such section and substituting therefor the following:

"A copy of said memorandum shall be furnished to the buyer prior to the due date of the first installment following such purchase."

SECTION 8. A new section is hereby added to chapter 201A of the Revised Laws of Hawaii 1955, as amended, to be appropriately numbered and to read as follows:

"(a) In addition to any other right the buyer may have, the buyer may cancel any house to house sale if notice of cancellation is mailed by certified mail, return receipt requested, to seller at its business address shown on the contract and postmarked before midnight of the second day after the date of signature of such contract by the buyer or the date of receipt of the written notice of buyer's right of cancellation whichever is later.

(b) If the sale is cancelled, the seller (1) may retain or otherwise recover from the buyer a cancellation fee of 5% of the cash sale price, or fifteen dollars (\$15.00) whichever is less, plus the cost of delivery of the goods (if delivery was in fact made) and (2) shall return to the buyer (a) any payments made (less the cancellation fee) and (b) any goods or other property traded in, and (c) any note or other evidence of indebtedness, given by buyer to the seller in connection with the sale.

(c) Upon cancellation of the contract the buyer, upon demand shall make available to the seller at the place of delivery any goods delivered to the buyer in the condition in which such goods were at the time of receipt by the buyer unless the seller by its act has made it impractical for the buyer to comply.

(d) If the seller has performed any services pursuant to a contract prior to its cancellation, the seller is not entitled to any compensation except the cancellation fee provided in this section. If the seller's services result in the alteration of property of the buyer, the seller shall restore the property to substantially as good condition as it was prior to the time the services were rendered.

(e) The seller shall give to the buyer at the time the buyer signs the house to house sale contract a form to be used by the buyer if he elects to cancel the contract. The form shall contain (1) the name and address of the seller to which the notice is to be mailed, (2) the date the buyer signed the contract, and (3) statement of the buyer's rights under this section. The form may be separate or may be attached to the contract, if readily detachable, and shall be in a type size no smaller than that generally used in the body of the contract.

(f) A form substantially as follows is sufficient to comply with this section.

NOTICE OF CANCELLATION

To (Insert name and address of seller)
I hereby cancel the retail installment contract signed by me on
.....(Insert the date buyer signed agreement), whereby I
agreed to purchase the following goods or services
..... (Concise description of goods or services)
Date.....
Signature of buyer.....

STATEMENT OF BUYER'S RIGHTS

You may cancel the contract referred to above by completing the notice
of cancellation and mailing it by certified mail, return receipt requested, to
the seller at the address shown on the contract and postmarked before mid-
night of the second day after the date you sign the contract or the date on
which you received this notice whichever is later in time. If you cancel the
contract, the seller is entitled to retain out of the down payment, or otherwise
recover a cancellation fee of 5% of the cash price of the sale but in no event
may the seller retain or recover more than \$15.00 plus the cost of delivery
of the merchandise, if delivery is made.

In the event you cancel the seller must return to you (1) any payments
made (less the cancellation fee) and (2) any goods or other property
traded in and (3) any note or other evidence of indebtedness, given by you
to the seller in connection with the sale. After cancellation the seller is en-
titled to receive back from you, at your address, any goods delivered by him
to you providing it has returned any payments or property received from
you as provided above.

(g) If the seller shall fail to place the legend required by section
201A-2 on the contract or to provide the buyer with the Notice of Can-
cellation and Statement of Buyer's Rights required by this section, the con-
tract shall be unenforceable by the seller."

SECTION 9. A new section is hereby added to chapter 201A, Re-
vised Laws of Hawaii 1955, as amended, to be appropriately numbered by
the revisor of statutes, and to read as follows:

"Section 201A-..... Negotiability of notes; consumer goods on
credit. If any contract for sale of consumer goods on credit entered into
in this State between a retail seller and a retail buyer requires or involves
the execution of a promisory note, whether such note be made payable in
one lump sum or installment, such note shall be printed or written on the
face thereof the words "consumer note" and such a note with the words "con-
sumer note" printed or written thereon shall not be a negotiable instrument
within the meaning of the Uniform Commercial Code—Commercial Paper.
For the purposes of this section "consumer goods" means tangible personal
property used or bought for use primarily for personal, family or household
purposes.

Whoever obtains a note in violation of this section shall be punished by a fine of not less than one hundred nor more than five hundred dollars.

If a note is obtained in violation of this section, no finance, delinquency, collection, repossession or refinancing charges may be recovered in any action or proceeding based on such contract for sale.

The provisions of this section shall not apply to any notes executed in connection with any financing which is insured under Federal Housing Administration regulations.”

SECTION 10. A new section is hereby added to chapter 201A, Revised Laws of Hawaii 1955, as amended, to be appropriately numbered by the revisor of statutes, and to read as follows:

“Section 201A-..... Attorney general or prosecutor to enforce Act. 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 the Act.”

SECTION 11. This Act shall take effect on January 1, 1968.

(Approved June 8, 1967.)