

A Bill for an Act Relating to Credit Sales.

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

SECTION 1. Chapter 476, Hawaii Revised Statutes, is amended to read as follows:

**“CHAPTER 476
[RETAIL INSTALLMENT] CREDIT SALES”**

§476-1 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. "Services" also means fees, costs, fines, bails, or other charges assessed, accepted, or collected by court.

"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 a person engaged in the business of selling goods to retail buyers.

"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 moneys 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 the 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.

“Referral sale” means a sale of goods, subject to this chapter, in which part of the inducement offered by the seller is a rebate, discount, commission, or other consideration to be given the buyer when the latter either sells or gives information leading to a sale, by the seller, of the same or related goods.

“Total sale price” means the sum of the cash sale price, official fees, finance charge, the amounts charged for insurance and other benefits, if any, and all other fees and charges related to the sale.]

“Annual percentage rate” means the annual percentage rate of finance charge determined in accordance with the federal Truth in Lending Act.

“Cash price” means the price at which the seller, in the ordinary course of business, offers to sell for cash the goods or services that are the subject of the credit sale. At the seller’s option, the term may include the price of accessories, services related to the sale, service contracts, general excise and other taxes, and taxes and fees for license, title, and registration. The term does not include any finance charge.

“Closed-end credit” means a credit sale that is not “open-end credit”.

“Credit buyer” means any person who buys goods, services, or both, from a credit seller in a credit sale and who executes a credit sale contract in connection therewith.

“Credit sale” or “sale” includes any sale of goods, services, or both, by a credit seller pursuant to a credit sale contract other than:

(1) Any sale for the purpose of resale; or

- (2) Any sale:
- (A) Primarily for a business, commercial, or agricultural purpose; or
 - (B) To other than a natural person, including a sale to government agencies or instrumentalities; or
 - (C) Not secured by real property, or by personal property used or expected to be used as the principal dwelling of the consumer, in which the principal balance, less any prepaid finance charge, exceeds \$25,000 or in which there is an express written commitment to extend credit in excess of \$25,000; unless the credit seller elects that the sale be a credit sale subject to¹ this chapter, such election being conclusively presumed from the compliance of the contract with section 476-3(c) and (d); or
- (3) Any sale involving public utility services provided through pipe, wire, other connected facilities, or radio or similar transmission (including extensions of such facilities), if the charges for service, delayed payment, or any discounts for prompt payment are filed with or regulated by any government unit, except the sale of durable goods or home improvements by a public utility; or
- (4) Any sale in a securities or commodities account in which credit is extended by a broker-dealer registered with the Securities and Exchange Commission or the Commodity Futures Trading Commission.

“Credit sale contract” or “contract” means any agreement, including a conditional sale contract, a retail installment contract or any other form of instrument, evidencing an obligation to pay the price of goods, services, or both, purchased in a credit sale, either (1) by payment thereof over a period of time subject to a finance charge or, (2) pursuant to written agreement, subject to payment in more than four installments not including a downpayment, and in either case whether or not the contract contains a title retention provision. This term includes any contract for the bailment or leasing of goods (unless terminable without penalty at any time by the bailee or lessee) by which the bailee or lessee contracts to pay as compensation a sum substantially equivalent to or in excess of the value of the goods and services involved and by which it is agreed that the bailee or lessee is bound to become, or has the option of becoming, for no additional consideration or for nominal consideration, the owner of the goods upon full compliance with the terms of the contract.

“Credit seller” or “seller” means a person:

- (1) Who regularly sells goods, services, or both, to credit buyers, and
- (2) To whom the obligation is initially payable on the face of the contract.

“Federal Truth in Lending Act” means the federal Truth in Lending Act (15 U.S.C. 1601, et seq.), Regulation Z of the Board of Governors of the Federal Reserve System, and the Official Staff Commentary to Regulation Z prepared by the staff of the Federal Reserve Board, and amendments of the Act, Regulation Z, and such Commentary.

“Finance charge” means the amount, however denominated or expressed, which the credit buyer contracts to pay or pays for the privilege of purchasing goods, services, or both, to be paid for over a period of time under the terms of the credit sale contract. It includes any charge payable, directly or indirectly, by the buyer and imposed, directly or indirectly, by the seller as an incident to or a condition of the buyer’s privilege of paying over a period of time. It does not include any charge of a type payable in a comparable cash transaction. The types of charges included in and excluded from the finance charge shall be the same as provided by the federal Truth in Lending Act.

“Goods” include all things which are movable at the time the credit sale is entered into or which will be movable when they thereafter come into existence or which are or will be fixtures (section 490:9-313), but except as provided in this paragraph does not include money, documents, instruments, accounts, chattel paper, general intangibles, or minerals or the like (including oil and gas) before extraction. “Goods” include standing timber which is to be cut and removed under a conveyance or contract for sale, the unborn young animals, growing crops, and merchandise certificates or coupons, issued by a credit seller, to be used in the face amount in lieu of cash in exchange for goods sold by such a seller.

“Open-end credit” means one or more credit sales made by a credit seller under a plan in which:

- (1) The credit seller reasonably contemplates repeated transactions;
- (2) The credit seller may impose a finance charge from time to time on an outstanding unpaid balance; and
- (3) The amount of the price of the goods, services, or both, that the credit buyer may defer from time to time during the term of the plan (up to any limit set by the credit seller) is generally made available to the extent that any outstanding balance is repaid.

“Person” means a natural person or an organization, including a partnership, corporation, association, proprietorship, cooperative, estate trust, government unit, or other group however organized.

“Prepaid finance charge” means any finance charge paid separately in cash or by check before or at the time that a buyer becomes contractually obligated on a credit sale, or withheld from the proceeds of the credit sale at any time, except any finance charge that is stated as a dollar amount and is added on or deducted in advance in the manner described in section 476-28(1)².

“Principal balance” means the sum of the cash price less the amount of the buyer’s down payment, plus any other amounts that are financed by the seller and are not part of the finance charge.

“Services” include:

- (1) Work, labor, and other personal services of any kind whether or not furnished in connection with the delivery, installation, servicing, repair, or improvements of goods, and includes repairs, alterations, or improvements upon or in connection with real property;
- (2) Privileges, with respect to transportation, hotel and restaurant accommodations, education, entertainment, recreation, physical culture, hospital accommodations, funerals, cemetery accommodations, and the like; and
- (3) Fees, costs, fines, bails, or other charges assessed, accepted, or collected by a court of law.

“Total of payments” means the sum of the principal balance and the finance charge.

“Total sale price” means the sum of the cash price, any other amounts that are financed by the seller and are not part of the finance charge, and the finance charge.

[§476-1.5] §476-2 Application when inconsistent with federal provisions or regulations. [With regard to any transaction governed by the Federal Truth in Lending Act, no] No contract, memorandum, or advertisement shall be required by this chapter to contain any disclosure which is inconsistent with the requirements of the [Federal] federal Truth in Lending Act [and with the regulations of the Federal Reserve Board].

[§476-2] §476-3 General requirements of [retail installment] credit sale contracts. (a) Every [retail installment] credit sale contract shall [be]:

- (1) Be in writing[, shall contain];
- (2) Contain, incorporate by reference, or otherwise clearly refer to all the agreements of[,] the parties; provided that if a portion of the agreements are to be filed or recorded with any governmental agency, it may be contained in a separate part; and [shall be]
- (3) Be signed by[,] the parties; provided[,] that if a portion of the agreements is contained in a separate part, the separate part shall be separately signed. If the contract provides for the extension of open-end credit, it shall be deemed to have been signed by the buyer if the buyer has signed an application for the open-end credit plan and, after receipt from the seller of a copy of the contract, has made purchases under the plan. The parties’ signatures shall be made by use of any name, including any trade or assumed name, upon the credit sale contract, or by any word or mark used in lieu of a written signature. [the]

(b) The 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, [the contract shall contain the notice required by the third paragraph hereof and the amount or rate of the finance charge applicable to purchases thereunder. The] 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] shall set forth the [information required by section 476-3 or section 476-29.] amount and date of the transaction and the seller's name or trade name.

(c) The printed, handwritten, or typewritten portion of the contract shall be in a size at least equivalent to eight-point type. The contract shall contain, in a size and style equal at least to ten-point bold type if printed, upper case elite type if typewritten and equivalent thereto if handwritten, the words, "[RETAIL INSTALLMENT] CREDIT SALE CONTRACT" both at the top of the contract and directly above the space reserved for the signature of the buyer[, and the words "NOTICE TO THE BUYER" as set forth in the next paragraph].

[The following notice shall appear immediately] (d) Immediately above the words "[RETAIL INSTALLMENT] CREDIT SALE CONTRACT" where they appear directly above the space reserved for the signature of the buyer[:] there shall appear a notice substantially similar to the following: "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.] When you sign this contract, you are entitled to a copy of it that is filled in, in every necessary respect. You should keep 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."] This contract is covered by Hawaii's credit sale law, and you have the rights of a buyer under that law. You also may have rights under other state and federal laws."

(e) The contract shall contain the names or trade names of the parties and their respective places of business or residence[. Either] or their mailing addresses. If the contract does not provide for purchases to be made from time to time, 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 an indication of the types or a description of the goods, [including make, model, and identification number or marks, if any] services, or both.

[§476-3] §476-4 Specific requirements of [retail installment] credit sale contracts. (a) Every credit sale contract which provides for the extension of open-end credit primarily for a personal, family, or household purpose shall disclose the annual percentage rate of the finance charge to be imposed under

the contract, the circumstances under which the finance charge will be imposed, and an explanation of how the finance charge will be determined.

(b) Every credit sale contract which provides for the extension of closed-end credit primarily for a personal, family, or household purpose shall [contain] disclose the following items[:] as applicable:

- (1) The [cash sale price of the goods which are the subject matter of the retail installment sale;] amount financed, which is the principal balance less any prepaid finance charge;
- (2) [The amount of the buyer's downpayment, itemizing the amounts paid in money and in goods and containing a brief description of the goods if any, traded in;] A written itemization of the amount financed, or a statement that the buyer has the right to receive a written itemization of the amount financed, together with space for the buyer to indicate whether it is desired;
- [(3) The difference between items (1) and (2);
- (4) The amounts, if any, charged for insurance and other benefits, specifying the coverages and benefits;
- (5) The amount of official fees, as defined in section 476-1;
- (6) The principal balance, which is the sum of items (3), (4), and (5);]
- [(7) (3) The [amount of the] finance charge[, which may be stated as a percentage 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];
- [(8) (4) The [time balance, which is the sum of items (6) and (7), 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 due date or period thereof if the finance charge is stated in a dollar amount;] total of payments; and
- [(9) (5) The [time] total 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] total of payments to be paid by the buyer.

(c) Every credit sale contract which complies with the disclosure requirements of the federal Truth in Lending Act as of the date upon which the contract is executed shall be deemed to comply with the disclosure provisions of section 476-3.

[§476-3.1] §476-5 Balloon payments. With respect to any sale of goods, services, or both, purchased primarily for a personal, family, or household purpose, which is subject to [the provisions of] this chapter, if any scheduled payment is more than twice as large as the average of earlier scheduled

payments, the buyer has the right to refinance the amount of that payment at the time it is due without penalty. If the principal balance of the original [loan] contract is less than \$10,000, and the finance charge either is stated as a dollar amount and added on or deducted in advance or is computed at a fixed rate, the terms of the refinancing shall be no less favorable to the buyer than the terms of the original sale. These provisions do not apply to the extent that the payment schedule is adjusted to the seasonal or irregular income of the buyer.

§476-6 Deferred payments, interest, etc. Any payment on account of the principal balance of a contract which is due on a particular date may be extended or deferred to a later date by mutual agreement, and, upon the amount of the principal balance payment so extended or deferred, a finance charge not exceeding that permitted by section 476-28 upon an original contract in the amount of the principal balance payment, for the actual period of the extension or deferment, may be charged and may be collected in advance at the commencement of the period of extension or deferment or thereafter; provided that the term and conditions of the extension or deferment, including the amount of the principal balance so extended or deferred, and the period of, and the charge for the extension or deferment, shall be set forth in writing and signed in duplicate by the buyer and the seller or holder of the contract, one copy of the same to be given to the buyer and the other copy to be inserted in or attached to the seller's or holder's counterpart of this contract.

[§476-4] §476-7 Contract copy to buyer; acknowledgment. (a) Upon the execution of the contract, a copy thereof, signed by the parties, shall be [immediately] delivered immediately 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 the party, shall be [immediately] delivered immediately to the buyer.

(b) 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. This subsection shall not apply when the merchandise has been specifically ordered or custom made to the specifications of the purchaser and evidence of the order is provided by the seller.

(c) 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] on the same page of the contract and above the [legend required] notice above the buyer's signature and the words "CREDIT SALE CONTRACT" required by section [476-2.] 476-3. [However, this section shall not apply when the merchandise has been specifically ordered or custom made to the specifications of the purchaser and evidence of the order is provided by the seller.]

[§476-6] **§476-8 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] credit sale contract, and a separate charge is made therefor, shall within thirty days after execution of the [retail installment] credit sale 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] credit sale contract may purchase 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[,] that [this provision shall not prevent the exercise by] the seller or holder [of his, her, or its] shall have the right for reasonable cause to [approve or] disapprove of the insurance company selected by the buyer to underwrite the insurance.

In any [retail installment] credit sale 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] on the same page as the [statement] disclosures therein concerning insurance, [the following] a notice [printed or overstamped prominently in the form herein indicated in ten-point type or larger and in a different color than the print of the contract itself:] substantially similar to the following:

“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 287,] HAWAII [REVISED STATUTES] LAW.”

[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.]

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

[§476-7] §476-9 [Delinquency and collection] Late charges; court costs; attorney's fees. The holder of a [retail installment] credit sale contract, including any industrial loan company, may, if the contract so provides, collect a [delinquency and collection] late charge on each installment in default for a period not less than ten days in an amount not in excess of \$50 or³ five per cent of each delinquent installment [or \$5], or portion thereof which remains unpaid on the due date agreed upon in the contract whichever is less[.], and the late charge shall not be assessed more than once for the same delinquent installment. The seller or other holder shall give the buyer written notice of the assessment of the late charges prior to the due date of the next contractual payment. No late charges shall be assessed after the acceleration of the maturity of the contract. In addition to the [delinquency and collection] late charge, the [retail installment] contract may provide for the payment of costs of the action together with reasonable attorney's fees [or collector's fees] where the 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.

[§476-8] §476-10 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.] **(a) When a paper whose contents at the time of signing show that it is intended to become a credit sale contract is signed while still incomplete in any necessary respect it cannot be enforced until completed, but when it is completed in accordance with authority given it is effective as completed. The burden of establishing that any completion is unauthorized is on the party so asserting. If the completion is unauthorized, and it changes the obligations of either the buyer or the seller in any respect, it is a material alteration.**

(b) An alteration by the holder of a contract which is both fraudulent and material discharges the buyer unless the buyer assents or is precluded from asserting the defense. No other alteration discharges the buyer, and the contract may be enforced according to its original tenor, or as to incomplete contracts according to authority given.

(c) The buyer's written acknowledgment, conforming to the requirements of section [476-4] 476-7, of delivery of a copy of a contract shall be a rebuttable presumption of such delivery and of compliance with this [subdivision] section in any action or proceeding by or against an assignee of the contract without knowledge to the contrary when he purchases the contract.

[§476-9] §476-11 Catalog mail order sales. [Retail installment] Credit 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] price 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] in this section. This chapter shall apply to such sales except that the seller shall not be required to deliver a copy of the contract to the buyer as provided in section [476-4,] 476-7, and if, when the proposed [retail installment] credit 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 [476-4, hereof] 476-7, the seller shall, within fifteen days from date of shipment of goods, furnish to the buyer a written statement of the items, inserted in such blank spaces.

[§476-10] **§476-12 Payment without notice of assignment.** Unless the buyer has notice of actual assignment of a [retail installment] credit sale contract, payment thereunder made by the buyer to the last known holder of the contract shall be binding upon all subsequent holders or assignees. The 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.

[§476-11] **§476-13 Statement and receipt of payments.** Upon written request from the buyer, the holder of a [retail installment] credit sale 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 contract. A buyer shall be given a written receipt for any payment when made in cash.

[§476-12] **§476-14 Acceleration of time [balance] payments³.** No provision in a [retail installment] credit sale 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] payments shall be enforceable.

[§476-13] **§476-15 Confession of judgment; power of attorney; wage assignment.** No provision in a [retail installment] credit sale contract for confession of judgment, power of attorney therefor, or wage assignment shall be enforceable in this State.

[§476-14] **§476-16 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.]

[§476-15] **§476-16 Waiver of illegal act; collection.** No provision in a [retail installment] credit sale contract by which the buyer waives any of the requirements of this chapter or 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.

[§476-16] §476-17 [Inclusion] Subsequent inclusion of other security [for time sale price]. [No] In a contract for a sale primarily for a personal, family, or household purpose, no provision [in a retail installment contract] for the subsequent inclusion of title to or a subsequent lien upon or a subsequent security interest in any goods, other than the goods which are the subject matter of or original security for the [retail installment] credit sale, or accessories [therefor,] thereto, 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.

[§476-17] §476-18 Appointment of agent; collection or repossession. No provision in a [retail installment] credit sale contract by which the buyer executes a power of attorney appointing the seller or holder of the contract, or other person acting on [his] buyer's behalf, as the buyer's agent in collection of payments under the contract or in the repossession of the goods shall be enforceable.

[§476-18] §476-19 Preservation of buyer's rights; assignment. [(a) Any sale of goods, subject to this chapter, which is a referral sale, is unenforceable and void, whether the inducement was written or oral, except as provided in subsection (d).]

[(b)] (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 (d)].

[(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 (d)].

[(d)] (c) No rights of action or defense arising out of a [retail installment] credit sale which the buyer has against the seller shall be cut off by assignment[, and in the event]; provided that any recovery thereon by the buyer shall not exceed amounts paid and to be paid by the buyer on the contract and may be set-off against such amounts to be paid. If 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.

§476-20 Referral sales. Any sale of goods, services, or both, subject to this chapter, in which part of the inducement offered by the seller is a rebate, discount, commission, or other consideration exceeding forty per cent of the total sale price to be given the buyer when the buyer either sells, or gives information leading to a sale by the seller, of the same or related goods, services, or both, whether the inducement was written or oral, may be canceled by the buyer within fifteen business days after the date the contract is signed by the parties.

Upon cancellation the buyer shall have the right 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.

When the seller or holder has returned all money or property given by the buyer in the transaction, the buyer shall tender the goods to the seller or, where the latter would be impracticable or inequitable or the seller has performed services for the buyer, the buyer shall tender to the seller the reasonable value of the goods or services. At the buyer's option, tender of goods may be made at the location of the goods or at the buyer's residence. Tender of money shall be made at the designated place of business of the seller or holder. If the seller or holder does not take possession of the money or property within twenty calendar days after the buyer's tender, the buyer may keep it without further obligation.

In the alternative, if the buyer does not exercise the right to cancel a referral sale, the buyer shall have with respect thereto the remedies provided in section 476-21.

[§476-19] §476-21 Failure to comply; remedy of buyer[.]; penalty. In case of failure of the seller or holder to comply with [this chapter,] the requirements of sections 476-3, 476-5 to 476-9, 476-11, 476-13, 476-19, 476-20 (if the buyer does not exercise the right to cancel the contract), 476-22 to 476-24, and 476-28 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 ten per cent of the cash price if no finance charge is specified in the contract or supplementary statement, [whichever is the greater, plus reasonable attorney's fees.] and the seller is barred from recovery of any finance charge, late, or collection charge or refinancing charge on the credit sale contract involved.

Notwithstanding 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 credit sale contract, and before the institution of an action under this chapter or the seller is notified thereof in writing by the buyer, and if so corrected, neither the seller nor the holder is subject to any penalty under this or any other section of this chapter.

A seller or assignee may not be held liable in any action brought under this section if the seller or assignee shows by a preponderance of evidence that the failure to comply was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid any such error.

In any successful action under this section the buyer shall be entitled to the costs of the action, together with a reasonable attorney's fee as determined by court.

[§476-20] §476-22 Cancellation of contract. After the payment of all sums for which the buyer is obligated under a [retail installment] credit sale

contract, the holder of the 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,] for the contract, and canceled negotiable instruments, if any, evidencing the indebtedness.

[§476-21] **§476-23 Credit upon anticipation of payments.** Notwithstanding [the] any provisions of [any retail installment] a credit sale contract to the contrary, [any] a buyer, upon five days' prior notice to the holder, may satisfy in full at any time before maturity the debt of [any retail installment] the contract and in so satisfying the debt shall receive a refund credit thereon for such anticipation of payments, if the finance charge has been paid in advance. The amount of the 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 \$1, no refund need be made.

[§476-22 **Penalties.** Any person who wilfully and knowingly violates any provision of this chapter is guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not more than \$500.

Any person violating any of the provisions of sections 476-2 to 476-19, or any person wilfully 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 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 ten 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.]

[§476-23 **Waiver.** Any provision in a retail installment contract waiving any of the requirements of this chapter shall be unenforceable and void.]

[§476-29] **§476-24 Additions to and consolidations of [retail installment] credit sale contracts.** Where a buyer makes any subsequent purchases of goods from a seller from whom [he] the buyer has previously purchased goods under one or more [retail installment] credit sale contracts[,] which provide for the extension of closed-end credit, and the amounts under the contract or contracts have not been fully paid, the previous purchases may be included in and consolidated with one or more of the subsequent contract or contracts, or the subsequent purchases may be included in and consolidated with one or more of the prior contract or contracts[. A] in which case a memorandum of such additional purchases shall be prepared by the seller[,] and inserted in or attached

to the seller's counterpart of the contract [and]. The memorandum shall set forth:

- (1) A description of the additional goods so purchased;
- (2) The consolidated total indebtedness of the buyer;
- (3) The finance charge [stated either as (A) additional amount on the subsequent purchases, (B) the total amount on the consolidated contract, or (C) a percentage of the monthly outstanding balance;] which shall include any unearned portion of the old finance charge that is not credited to the prior contract or contracts;
- (4) The annual percentage rate; and
- [(4)] (5) The revised installment payments.

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

Every memorandum which complies with the disclosure requirements of the federal Truth in Lending Act as of the date upon which the contract is executed shall be deemed to comply with the disclosure provisions of section 476-24.

When such subsequent purchase is made, the entire amount of all payments made previous to the subsequent purchase shall be applied toward the payment of the previous purchase or purchases and each payment thereafter received shall be first applied to the payment of purchases first made. To the extent purchases are paid for according to this section, security interests in the goods which are the subject matter of the retail installment sale shall terminate as the payment with respect to each purchase is made.

[Payments] Unless otherwise expressly stated in the contract, payments received by the seller upon a revolving charge account shall be applied first to the payment of finance charges, then to late charges, costs of action, and attorney's fees in the order of their entry to the account, and then to the payment of purchases in the order in which the entries to the account showing the purchases were made.

[If the contracts consolidated arose from two or more purchases made on the same day, payments received by the seller shall be applied first to the payment of the purchase totaling the smallest amount.

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.]

[§476-30] §476-25 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] buyer's interest in [them] the goods; but prior to full compliance by the buyer with the terms of the contract [by the buyer], [no such] the buyer shall not

remove the goods from the island except for temporary use for a period of not more than thirty days unless the buyer not less than ten days before the removal gives 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 the intended removal; [nor] and prior to [the performance of the condition] full compliance by the buyer with the terms of the contract the buyer shall not [the buyer] sell, mortgage, or otherwise dispose of [his] buyer's interest in the goods, unless [he or] the person to whom [he] the buyer is about to sell, mortgage, or otherwise transfer the goods notifies the seller in writing, either personally or by registered or certified mail, of the name and address of the person to whom [his] buyer's interest in the goods is about to be sold, mortgaged, or otherwise transferred.

[§476-31] §476-26 Removal; member of armed forces. Notwithstanding the provisions of section [476-30,] 476-25, a member of the armed forces of the United States on active duty who is a buyer of a motor vehicle under a contract [may], without the consent of the seller, may remove the motor vehicle from the island in which the motor vehicle was first kept for use by the buyer after sale if the buyer was a member of the armed forces of the United States on active duty at the time of execution of the contract and if such buyer has been reassigned to a different county, state, or country by competent government orders, unless the seller and buyer execute an agreement, separate and apart from the contract in respect of which it applies, stating that the motor vehicle may not be removed or stating the terms and conditions under which it may be removed.

[This section shall apply only to documents executed after June 5, 1967.]

[§476-32] §476-27 Fraudulent injury, concealment, removal, or sale; penalty. When, in violation of the terms of the contract [by the buyer,] the buyer, maliciously or with intent to defraud, injures, destroys, or conceals the goods, or, without the consent of the seller, maliciously or with intent to defraud, removes [them] the goods from the island in which [they] the goods were first kept for use by the buyer after the sale, or to which with the consent of the seller [they] the goods have been removed, or [shall sell, mortgage,] sells, mortgages, or otherwise [dispose] disposes of the goods under claim of full ownership, [he] the buyer shall be fined not more than \$500 or imprisoned not more than one year, or both.

[§476-33] §476-28 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] credit sale contract except as is provided by this section.

[The]

- (1) If the finance charge is stated as a dollar amount and is added on or deducted in advance, and the buyer promises to pay a fixed total of payments, the finance charge shall not exceed the amount of

interest or discount which could lawfully be added on or deducted in advance by an industrial loan company under chapter 408 on a loan to run for the same period as the [retail installment] credit sale contract, where the actual cash received by the borrower [after the deduction of interest in advance] would be equal in amount to the [time] principal balance of the [retail installment] credit sale contract, provided that a minimum finance charge of not more than \$10 shall be allowable in a [retail installment] credit sale when the finance charge is stated in a dollar amount. Upon maturity of a contract, the rate of finance charge on the unpaid principal balance of the contract shall be eighteen per cent a year, unless a lesser rate for after maturity finance charge is specified in the contract.

- (2) As an alternative to the finance charge authorized by paragraph (1), a seller may contract for and receive a finance charge at a rate not exceeding twenty-four per cent a year on the principal balance remaining unpaid from time to time under the contract, whether or not the rate of the finance charge under the contract is fixed or variable. Upon maturity of a contract, the rate of finance charge on the unpaid principal balance of the contract may be twelve per cent a year, the original contract rate of finance charge or, in the case of any extension or deferral, the rate of finance charge permitted by this chapter on the amount extended or deferred, whichever is greatest.

[§476-34 Security interest in seller governed by Uniform Commercial Code. Every provision in a retail installment contract reserving a security interest in the seller after possession of the goods is delivered to the buyer shall be governed by the Uniform Commercial Code, chapter 490, except as in this chapter otherwise provided.]

[§476-35] §476-29 Advertising in connection with [retail installment] credit sales. (a) Any person who advertises by television, radio, telephone, newspaper, magazine, other printed material, or in any other way, for the credit sale of goods or services primarily for personal, family, or household purposes under an open-end credit plan and who in such advertising recites any of the terms required by section 476-4(a) to be disclosed in the same advertisement shall recite:

- (1) Any minimum, fixed, transaction, activity, or similar charge that could be imposed;
- (2) The annual percentage rate, and if the plan provides for a variable periodic rate, that fact; and
- (3) Any membership or participation fee that will be imposed.

(b) Any person who advertises by television, radio, telephone, newspaper, magazine, other printed material, or in any other way, for the [retail installment]

credit sale of goods or services[,] primarily for personal, family, or household purposes, under a contract providing for the extension of closed-end credit, and who in such advertising recites [the down payment or] amount or percentage of any down payment, the number of payments, the period of payment, the amount of [installment payments] any payment, or [both] the amount of any finance charge, shall in the same advertisement recite [the total sale price, the period of time over which the installment payments are to be made, and the total amount of goods or services to which the total sale price relates.];

- (1) The amount or percentage of the down payment;
- (2) The terms of repayment; and
- (3) The annual percentage rate, if the rate may be increased after the buyer becomes contractually obligated on the contract.

(c) Every advertisement which complies with the requirements of the federal Truth in Lending Act as of the date upon which the advertisement is published shall be deemed to comply with the disclosure provisions of this section.

(d) This section shall not apply to catalog offers to sell which conform to the requirements of section [476-9.] 476-11.

[§476-36 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 promissory note, whether the note is made payable in one lump sum or installment, the note shall be printed or written on the face thereof the words "consumer note" and such a note with the words "consumer note" printed or written thereon shall not be a negotiable instrument within the meaning of the Uniform Commercial Code, chapter 490, Article 3. 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 \$100 nor more than \$500.

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.

This section shall not apply to any notes executed in connection with any financing which is insured under Federal Housing Administration regulations.]

§476-30 Territorial application. (a) Except as otherwise provided in this section, this chapter applies to a credit sale entered into in this State. For the purposes of this chapter a credit sale is entered into in this State if:

- (1) The contract does not provide for purchases to be made from time to time, and either a signed writing evidencing the obligation or offer of the buyer is received by the seller in this State, or the seller

induces the buyer who is a resident of this State to enter into the transaction by face-to-face solicitation in this State; or

- (2) The contract does provide for purchases to be made from time to time, and either the buyer's communication or indication of intention to enter into the contract is received by the seller in this State or, if no communication or indication of intention is given by the buyer before the first transaction, the seller's communication notifying the buyer of the privilege of making purchases is mailed in this State.

(b) A credit sale to which this chapter does not apply entered into with a buyer who is a resident of this State at the time of the credit sale is valid and enforceable in this State to the extent that it is valid and enforceable under the laws of another jurisdiction, but:

- (1) A seller may not collect through actions or other proceedings in this State a finance charge exceeding the total amount permitted if section 476-28 were applicable; and
- (2) A creditor may not enforce rights against the consumer in this State with respect to the provisions of agreements that violate section 476-5, 476-9, or 476-14 to 476-19.

(c) Except as provided in subsection (b), a credit sale entered into in another jurisdiction is valid and enforceable in this State according to its terms either to the extent that it is valid and enforceable under the laws of the other jurisdiction or to the extent that it is valid and enforceable under the laws of this State if the contract provides that it shall be governed by the laws of this State.

(d) For the purposes of this chapter, the residence of a buyer is the address given by the buyer as the buyer's residence in the contract signed by the buyer until the buyer notifies the seller of a different address as the buyer's residence, and is then the different address.

(e) Notwithstanding other provisions of this section:

- (1) This chapter does not apply if the buyer is not a resident of this State at the time of a credit sale and the buyer and seller have agreed that the law of the buyer's residence applies; and
- (2) This chapter applies if the buyer is a resident of this State at the time of a credit sale and the parties have agreed that the law of the buyer's residence applies.

(f) Each of the following agreements or provisions of an agreement by a buyer who is a resident of this State at the time of a credit sale is invalid with respect to the transaction:

- (1) That the law of another jurisdiction apply;
- (2) That the buyer consent to be subject to the process of another jurisdiction;
- (3) That the buyer appoints an agent to receive service of process;

(4) That fixes venue; and

(5) That the buyer consents to the jurisdiction of a court that does not otherwise have jurisdiction.

[§476-37] **§476-31 Attorney general, director of consumer protection, or prosecutor to enforce chapter.** The attorney general, the director of the office of consumer protection, 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 chapter.

[§476-38] **§476-32 Short title.** This chapter may be cited as “The [Retail Installment] Credit Sales Act.”

SECTION 2. If any provision of this Act, or the application thereof to any person or circumstance, is held to be invalid, the invalidity does not affect any other provisions or applications of this Act which can be given effect without the invalid provision or application, and to that end the provisions of this Act are severable.

SECTION 3. Statutory material to be repealed is bracketed. New material is underscored.

SECTION 4. This Act, upon its approval, shall take effect on July 1, 1985. Any seller, however, may with respect to any or all credit sales by such seller comply with the amendments made by this Act prior to such effective date. Any seller who elects to comply with such amendments and any assignee of such a seller shall enjoy [their] the⁴ respective rights and privileges and be subject to [their] the⁴ respective duties and obligations under this Act, including without limitation section 476-21, Hawaii Revised Statutes, as amended by section 1 of this Act. Any seller who on July 1, 1985, has on hand an existing supply of printed forms that complies with the requirements of chapter 476, Hawaii Revised Statutes, before the amendments made by this Act take effect may utilize that existing supply until it is exhausted but in no event later than July 1, 1986.

(Approved May 1, 1984.)

Notes

1. The word “to” added by revisor.
2. “476-27(1)” in original.
3. Underscoring missing.
4. So in original.