

HOUSE BILL NO. 183

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-EIGHTH LEGISLATURE - FIRST SESSION

BY REPRESENTATIVE LEDOUX

Introduced: 3/22/13

Referred:

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to agreements to cancel a debt for the sale or lease of a motor vehicle,
2 including a motorcycle, recreational vehicle, all-terrain vehicle, snowmobile, camper
3 van, boat, and watercraft, and of certain trailers; exempting certain transactions and
4 persons from insurance requirements; and adding an unlawful act to the Alaska Unfair
5 Trade Practices and Consumer Protection Act."

6 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

7 * **Section 1.** AS 21.03.021 is amended by adding a new subsection to read.

8 (g) This title does not apply to a debt cancellation agreement that is sold or
9 offered for sale under AS 45.45.800 - 45.45.890, but the title does apply to the
10 insurance that is required or allowed for debt cancellation agreements under
11 AS 45.45.840. In this subsection, "debt cancellation agreement" has the meaning given
12 in AS 45.45.890.

13 * **Sec. 2.** AS 21.27.010(h) is amended to read:

1 (h) This chapter does not apply to a person

2 (1) licensed to practice as an attorney at law while the person is acting
3 as an attorney at law; [OR]

4 (2) who sells, solicits, or negotiates a

5 (A) service contract on a motor vehicle subject to registration
6 under AS 28.10.011; or

7 (B) home warranty; in this subparagraph, "home warranty" has
8 the meaning given in AS 21.03.021(e)(2)(D); or

9 **(3) who sells or offers to sell a debt cancellation agreement if the**
10 **sale or offer to sell is subject to AS 45.45.800 - 45.45.890.**

11 * **Sec. 3.** AS 45.10.220(12) is amended to read:

12 (12) "service charge," however denominated or expressed, means the
13 amount that is paid or payable for the privilege of purchasing goods or services to be
14 paid for by the buyer in installments over a period of time; "service charge" does not
15 include the amount charged for insurance premiums, delinquency charges, attorney
16 fees, court costs, or official fees, or for a debt cancellation agreement under
17 AS 45.45.800 - 45.45.890;

18 * **Sec. 4.** AS 45.45 is amended by adding new sections to read:

19 **Article 12A. Motor Vehicle and Trailer Debt Cancellation Agreements.**

20 **Sec. 45.45.800. Debt cancellation agreements.** (a) Unless a creditor complies
21 with AS 45.45.800 - 45.45.890, the creditor may not, in the course of doing business,
22 sell or offer to sell a borrower an agreement in which a borrower agrees with a
23 creditor, for a charge that is separate from the charge for the finance agreement, to
24 cancel all or part of the amount of money that the borrower owes the creditor on a
25 finance agreement when

26 (1) the motor vehicle or trailer that is the subject of the finance
27 agreement experiences a loss where the cost to repair or replace the motor vehicle or
28 trailer exceeds the actual cash value of the motor vehicle or trailer when the loss
29 occurred; or

30 (2) the borrower has reported the theft of the motor vehicle or trailer
31 that is the subject of the finance agreement to the police and the insurer of the motor

1 vehicle or trailer, and the police and insurer have not been able to return the motor
2 vehicle or trailer.

3 (b) A debt cancellation agreement may be contained in the main body of a
4 finance agreement or in an addendum to the finance agreement.

5 **Sec. 45.45.810. Required contents of agreement.** Except for a specified
6 commercial transaction, when a creditor enters into a debt cancellation agreement, the
7 creditor shall include in the debt cancellation agreement in writing and in clear
8 understandable language

9 (1) the names and addresses of the creditor, the borrower, and, if the
10 creditor uses an administrator who is a person other than the creditor, the
11 administrator;

12 (2) the purchase price and all of the requirements, conditions,
13 exclusions, and other terms of the debt cancellation agreement;

14 (3) under what conditions the borrower may terminate the debt
15 cancellation agreement;

16 (4) under what conditions a borrower is entitled to a refund of the
17 purchase price paid by the borrower if the borrower terminates the debt cancellation
18 agreement or if the finance agreement is terminated;

19 (5) the procedures the borrower must follow to terminate the debt
20 cancellation agreement, and a telephone number and address where the borrower may
21 send notice of the termination;

22 (6) the method for calculating a refund of the purchase price paid by
23 the borrower if the borrower terminates the debt cancellation agreement or if the
24 finance agreement is terminated before the finance agreement is scheduled to
25 terminate;

26 (7) that the extension of credit under the finance agreement, the terms
27 of credit under the finance agreement, and the terms of the related motor vehicle or
28 trailer sale or lease are not conditioned on the purchase of the debt cancellation
29 agreement.

30 **Sec. 45.45.820. Payment of purchase price.** (a) A creditor may require that a
31 borrower pay the purchase price in a single payment or by a monthly or other type of

1 periodic payment.

2 (b) Notwithstanding any other provision of law to the contrary, and except for
3 specified commercial transactions, the debt cancellation agreement shall separately
4 state the purchase price and other cost to the borrower for a debt cancellation
5 agreement entered into under 15 U.S.C. 1601-1667(f) (Truth in Lending Act). The
6 purchase price or other charge is not a finance charge, service charge, or interest.

7 **Sec. 45.45.830. Termination.** (a) Unless the borrower has already received the
8 benefit of the debt cancellation agreement, a borrower may terminate a debt
9 cancellation agreement within the reconsideration period without paying a penalty or
10 another charge. If a borrower terminates a debt cancellation agreement under this
11 subsection, the creditor or administrator shall, except as provided in (e) of this section,
12 refund to the borrower the full purchase price paid by the borrower. To terminate a
13 debt cancellation agreement under this subsection, the borrower shall provide a written
14 request for termination to the creditor or administrator within the reconsideration
15 period and comply with the procedures established in the debt cancellation agreement
16 for termination under this subsection. The reconsideration period may not be less than
17 30 days. In this subsection, "penalty or another charge" does not include the
18 application of a refund to the finance agreement under (e) of this section.

19 (b) Unless the borrower has already received the benefit of the debt
20 cancellation agreement, a borrower may terminate a debt cancellation agreement after
21 the reconsideration period if permitted by the debt cancellation agreement. If a
22 borrower terminates a debt cancellation agreement under this subsection, the creditor
23 or administrator shall, except as provided in (e) of this section, refund to the borrower
24 the amount of the purchase price that was paid by the borrower and that represents
25 payment for the unexpired portion of the debt cancellation agreement. To terminate
26 under this subsection, the creditor shall

27 (1) submit a written request for termination to the creditor or
28 administrator; and

29 (2) follow the procedures established in the debt cancellation
30 agreement for making the request, except as provided in (c) of this section.

31 (c) If the reason for the termination under (b) of this section is the termination

1 of the finance agreement before the date the finance agreement is scheduled to
 2 terminate, the borrower shall provide the written request for termination within 90
 3 days after the termination of the finance agreement.

4 (d) If a debt cancellation agreement is terminated because of a default by the
 5 borrower under the finance agreement or the repossession of the motor vehicle or
 6 trailer that is the subject of the finance agreement, the creditor or administrator is not
 7 required to provide the borrower with a refund otherwise due to the borrower under
 8 this section and may apply the refund as provided in (e) of this section.

9 (e) A creditor or administrator may apply a refund that is due to a borrower
 10 under this section to reduce the amount owed by the borrower under the finance
 11 agreement.

12 (f) In this section,

13 (1) "benefit of the debt cancellation agreement" means the cancellation
 14 under the debt cancellation agreement of all or part of the amount of money that the
 15 borrower owes the creditor on a finance agreement;

16 (2) "reconsideration period" means the period of time allowed by a
 17 debt cancellation agreement for termination of the debt cancellation agreement under
 18 (a) of this section.

19 **Sec. 45.45.840. Insurance of debt cancellation agreement.** (a) A creditor
 20 who is a motor vehicle dealer shall obtain insurance to cover the liability of the motor
 21 vehicle dealer under a debt cancellation agreement.

22 (b) A creditor who is not a motor vehicle dealer may obtain insurance to cover
 23 the liability of the creditor under a debt cancellation agreement.

24 (c) A creditor may obtain the insurance described in this section through an
 25 administrator.

26 (d) An insurance policy issued under this section

27 (1) must state that the insurer shall pay to the creditor the amount of
 28 money that the insured creditor is required by this section to cancel under the debt
 29 cancellation agreement;

30 (2) must cover a person to whom the debt cancellation agreement is
 31 sold, assigned, or otherwise transferred by a creditor; and

1 (3) may not reduce the insurer's responsibility for the debt cancellation
2 agreement obligations that occur before the termination of the insurance, if the creditor
3 has paid the insurer the premium for the insurance.

4 **Sec. 45.45.850. Transfer of debt cancellation agreement.** If a creditor
5 assigns, sells, or otherwise transfers a finance agreement, the debt cancellation
6 agreement that the borrower obtained for the finance agreement remains a part of the
7 finance agreement.

8 **Sec. 45.45.860. Purchase as condition.** A creditor may not make the purchase
9 of a debt cancellation agreement a condition for the extension of credit, the terms of
10 credit under the finance agreement, or the terms of the related motor vehicle or trailer
11 sale or lease.

12 **Sec. 45.45.870. Fiduciary relationship.** A creditor or administrator who,
13 under a debt cancellation agreement, receives or holds money that belongs to an
14 insurer, creditor, or administrator receives and holds the money as a fiduciary.

15 **Sec. 45.45.880. Remedies.** Except for specified commercial transactions, if a
16 person violates this chapter,

17 (1) the person is liable to the state for a civil penalty not to exceed
18 \$500 for each violation or \$10,000 in the aggregate for all violations that involve the
19 same or a similar course of conduct, action, or practice;

20 (2) the violation is an unlawful trade practice under AS 45.50.471 -
21 45.50.561, and, in addition to the civil penalty under (1) of this section, the remedies
22 under AS 45.50.471 - 45.50.561 are available for the violation, except for the civil
23 penalty under AS 45.50.551(b).

24 **Sec. 45.45.885. Exemptions.** AS 45.45.800 - 45.45.890 do not apply to a

25 (1) a national bank, federal credit union, or other financial institution
26 established under the laws of the federal government of the United States; or

27 (2) debt cancellation agreement that complies with the federal
28 requirements established by federal law for the debt cancellation contracts or debt
29 suspension contracts of national banks or federal credit unions.

30 **Sec. 45.45.890. Definitions.** In AS 45.45.800 - 45.45.890, unless otherwise
31 indicated by the context,

1 (1) "administrator" means a person, other than an insurer or creditor,
2 that performs an administrative or operational function for a debt cancellation
3 agreement;

4 (2) "borrower" means an individual who is buying or leasing a motor
5 vehicle or trailer from a creditor under a finance agreement;

6 (3) "creditor" means

7 (A) a lender, lessor, motor vehicle dealer, or retail installment
8 seller; or

9 (B) a person to whom a lender, lessor, dealer, or retail
10 installment seller assigns a debt cancellation agreement or a finance
11 agreement;

12 (4) "debt cancellation agreement" means the agreement described in
13 AS 45.45.800(a);

14 (5) "finance agreement" means a loan, lease, or retail installment sales
15 contract for a motor vehicle or trailer;

16 (6) "insurance" has the meaning given under AS 21.97.900;

17 (7) "insurer" has the meaning given to "authorized insurer" under
18 AS 21.97.900;

19 (8) "lender" means a person who lends money for the purchase of a
20 motor vehicle or trailer other than by using a retail installment contract;

21 (9) "lessor" means a person who leases a motor vehicle or trailer;

22 (10) "motor vehicle" means a self-propelled vehicle, including an
23 automobile, truck, motorcycle, recreational vehicle, all-terrain vehicle, snowmobile,
24 camper van, boat, and personal watercraft; in this paragraph, "personal watercraft"
25 means a watercraft that is less than 16 feet in length, that is powered by a jet pump and
26 not by a propeller, and that is designed to be operated by standing, kneeling, or sitting
27 on the watercraft rather than by standing, kneeling, or sitting inside the watercraft;

28 (11) "motor vehicle dealer" means a person, other than a manufacturer,
29 who sells a motor vehicle or trailer;

30 (12) "purchase price" means the price charged by a creditor to buy a
31 debt cancellation agreement;

1 (13) "retail installment contract" means a transaction in which a person
2 sells a motor vehicle or trailer under a contract, except a retail charge agreement, in
3 which the buyer agrees to pay the unpaid balance in one or more installments; in this
4 paragraph, "retail charge agreement" has the meaning given in AS 45.10.220;

5 (14) "retail installment seller" means a person who sells a motor
6 vehicle by using a retail installment contract;

7 (15) "specified commercial transaction" means a debt cancellation
8 agreement that is offered or sold in connection with a lease or a retail installment sale
9 of a motor vehicle or trailer that is not for a borrower's personal, family, or household
10 use;

11 (16) "trailer" means a trailer for a motorcycle, boat, camper, or
12 personal watercraft.

13 * **Sec. 5.** AS 45.50.471(b) is amended by adding a new paragraph to read:

14 (58) violating AS 45.45.800 - 45.45.890 (motor vehicle and trailer debt
15 cancellation agreements).