

MAINE STATE LEGISLATURE

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ONE HUNDRED AND FOURTH LEGISLATURE

Legislative Document

No. 1231

H. P. 800

House of Representatives, February 26, 1969

Referred to Committee on Business Legislation. Sent up for concurrence and ordered printed.

BERTHA W. JOHNSON, Clerk

Presented by Mr. Soulas of Bangor.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SIXTY-NINE

AN ACT Creating the Uniform Consumer Credit Code.

Be it enacted by the People of the State of Maine, as follows:

R. S., T. 12-A, additional. The Revised Statutes are amended by adding a new Title 12-A to read as follows:

TITLE 12-A

UNIFORM CONSUMER CREDIT CODE

Article 1—General Provisions and Definitions

PART 1—SHORT TITLE, CONSTRUCTION, GENERAL PROVISIONS

§ 1.101. Short title

This Act shall be known and may be cited as **Uniform Consumer Credit Code**.

§ 1.102. Purposes; rules of construction

1. This Act shall be liberally construed and applied to promote its underlying purposes and policies.

2. The underlying purposes and policies of this Act are:

a. to simplify, clarify and modernize the law governing retail instalment sales, consumer credit, small loans and usury;

b. to provide rate ceilings to assure an adequate supply of credit to consumers;

- c. to further consumer understanding of the terms of credit transactions and to foster competition among suppliers of consumer credit so that consumers may obtain credit at reasonable cost ;
 - d. to protect consumer buyers, lessees, and borrowers against unfair practices by some suppliers of consumer credit, having due regard for the interests of legitimate and scrupulous creditors ;
 - e. to permit and encourage the development of fair and economically sound consumer credit practices ;
 - f. to conform the regulation of consumer credit transactions to the policies of the Federal Consumer Credit Protection Act ; and
 - g. to make uniform the law, including administrative rules, among the various jurisdictions.
3. A reference to a requirement imposed by this Act includes reference to a related rule of the Administrator adopted pursuant to this Act.

§ 1.103. Supplementary general principles of law applicable

Unless displaced by the particular provisions of this Act, the Uniform Commercial Code and the principles of law and equity, including the law relative to capacity to contract, principal and agent, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy, or other validating or invalidating cause supplement its provisions.

§ 1.104. Construction against implicit repeal

This Act being a general act intended as a unified coverage of its subject matter, no part of it shall be deemed to be impliedly repealed by subsequent legislation if such construction can reasonably be avoided.

§ 1.105. Severability

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

§ 1.106. Adjustment of dollar amounts

1. From time to time the dollar amounts in this Act designated as subject to change shall change, as provided in this section, according to and to the extent of changes in the Consumer Price Index for Urban Wage Earners and Clerical Workers: U. S. City Average, All Items, 1957-59 = 100, compiled by the Bureau of Labor Statistics, United State Department of Labor, and hereafter referred to as the index. The index for December, 1967, is the Reference Base Index.

2. The designated dollar amounts shall change on July 1 of each even-numbered year if the percentage of change, calculated to the nearest whole percentage point, between the index at the end of the preceding year and the Reference Base Index is 10% or more, except that

a. the portion of the percentage change in the index in excess of a multiple of 10% shall be disregarded and the dollars amounts shall change only in multiples of 10% of the amounts appearing in this Act on the date of enactment;

b. the dollar amounts shall not change if the amounts required by this section are those currently in effect pursuant to this Act as a result of earlier application of this section; and

c. in no event shall the dollar amounts be reduced below the amounts appearing in this Act on the date of enactment.

3. If the index is revised after December, 1967, the percentage of change pursuant to this section shall be calculated on the basis of the revised index. If the revision of the index changes the Reference Base Index, a revised Reference Base Index shall be determined by multiplying the Reference Base Index then applicable by the ratio of the revised index to the current index, as each was for the first month in which the revised index is available. If the index is superseded, the index referred to in this section is the one represented by the Bureau of Labor Statistics as reflecting most accurately changes in the purchasing power of the dollar for consumers.

4. The administrator shall issue a rule announcing

a. on or before April 30 of each year in which dollar amounts are to change, the changes in dollar amounts required by subsection 2; and

b. promptly after the changes occur, changes in the index required by subsection 3 including, when applicable, the numerical equivalent of the Reference Base Index under a revised Reference Base Index and the designation or title of any index superseding the index.

5. No person violates this Act if with respect to a transaction otherwise complying with this Act he relies on dollar amounts either determined according to subsection 2 or appearing in the last rule of the Administrator announcing the then current dollar amounts.

6. If the percentage of change between the index at the end of the odd-numbered year preceding the effective date of this Act and the Reference Base Index would require change in the designated dollar amounts pursuant to subsection 2, the designated dollars amounts shall change upon the effective date of this Act and, on or before that date, the administrator shall issue a rule announcing the changes required by this subsection. Subsection 5 also applies if the transaction is based on dollar amounts appearing in the Act and the Administrator has issued no rule as required by this subsection.

§ 1.107. Waiver; agreement to forego rights; settlement of claims

1. Except as otherwise provided in this Act, a buyer, lessee, or debtor may not waive or agree to forego rights or benefits under this Act.

2. A claim by a buyer, lessee, or debtor against a creditor for an excess charge, other violation of this Act, or civil penalty, or a claim against a buyer,

lessee, or debtor for default or breach of a duty imposed by this Act, if disputed in good faith, may be settled by agreement.

3. A claim, whether or not disputed, against a buyer, lessee, or debtor may be settled for less value than the amount claimed.

4. A settlement in which the buyer, lessee, or debtor waives or agrees to forego rights or benefits under this Act is invalid if the court as a matter of law finds the settlement to have been unconscionable at the time it was made. The competence of the buyer, lessee, or debtor, any deception or coercion practiced upon him, the nature and extent of the legal advice received by him, and the value of the consideration are relevant to the issue of unconscionability.

§ 1.108. Effect of Act on powers of organizations

1. This Act prescribes maximum charges for all creditors, except lessors and those excluded (section 1.202), extending consumer credit including consumer credit sales (section 2.104), consumer loans (section 3.104), and consumer related sales and loans (section 2.602 and section 3.602), and displaces existing limitations on the powers of those creditors based on maximum charges.

2. With respect to sellers of goods or services, small loan companies, licensed lenders, consumer and sales finance companies, industrial banks and loan companies, and commercial banks and trust companies, this Act displaces existing limitations on their powers based solely on amount or duration of credit.

3. Except as provided in subsection 1 and in the Article on Effective Date and Repealer (Article 9), this Act does not displace limitations on powers of credit unions, savings banks, savings and loan associations, or other thrift institutions whether organized for the profit of shareholders or as mutual organizations.

4. Except as provided in subsections 1 and 2 and in the Article on Effective Date and Repealer (Article 9), this Act does not displace

a. limitations on powers of supervised financial organizations (subsection 17 of section 1.301) with respect to the amount of a loan to a single borrower, the ratio of a loan to the value of collateral, the duration of a loan secured by an interest in land, or other similar restrictions designed to protect deposits, or

b. limitations on powers an organization is authorized to exercise under the laws of this State or the United States.

PART 2—SCOPE AND JURISDICTION

§ 1.201. Territorial application

1. Except as otherwise provided in this section, this Act applies to sales, leases, and loans made in this State and to modifications, including refinancings, consolidations, and deferrals, made in this State, of sales, leases, and loans, wherever made. For purposes of this Act

- a. a sale or modification of a sale agreement is made in this State if the buyer's agreement or offer to purchase or to modify is received by the seller in this State;
 - b. a lease or modification of a lease agreement is made in this State if the lessee's agreement or offer to lease or to modify is received by the lessor in this State; and
 - c. a loan or modification of a loan agreement is made in this State if a writing signed by the debtor and evidencing the debt is received by the lender in this State.
2. With respect to sales made pursuant to a revolving charge account (Section 2.108), this Act applies if the buyer's communication or indication of his intention to establish the account is received by the seller in this State. If no communication or indication of intention is given by the buyer before the first sale, this Act applies if the seller's communication notifying the buyer of the privilege of using the account is mailed or personally delivered in this State.
3. With respect to loans made pursuant to a lender credit card or similar arrangement (subsection 9 of section 1.301), this Act applies if the debtor's communication or indication of his intention to establish the arrangement with the lender is received by the lender in this State. If no communication or indication of intention is given by the debtor before the first loan, this Act applies if the lender's communication notifying the debtor of the privilege of using the arrangement is mailed or personally delivered in this State.
4. The Part on Limitations on Creditors' Remedies (Part 1) of the Article on Remedies and Penalties (Article 5) applies to actions or other proceedings brought in this State to enforce rights arising from consumer credit sales, consumer leases, or consumer loans, or extortionate extensions of credit, wherever made.
5. If a consumer credit sale, consumer lease, or consumer loan, or modification thereof, is made in another state to a person who is a resident of this State when the sale, lease, loan, or modification is made, the following provisions apply as though the transaction occurred in this State:
- a. a seller, lessor, lender, or assignee of his rights, may not collect charges through actions or other proceedings in excess of those permitted by the Article on Credit Sales (Article 2) or by the Article on Loans (Article 3); and
 - b. a seller, lessor, lender, or assignee of his rights, may not enforce rights against the buyer, lessee, or debtor, with respect to the provisions of agreements which violate the provisions on Limitations on Agreements and Practices (Part 4) of the Article on Credit Sales (Article 2) or of the Article on Loans (Article 3).
6. Except as provided in subsection 4, a sale, lease, loan, or modification thereof, made in another state to a person who was not a resident of this State when the sale, lease, loan, or modification was made is valid and enforceable

in this State according to its terms to the extent that it is valid and enforceable under the laws of the state applicable to the transaction.

7. For the purposes of this Act, the residence of a buyer, lessee, or debtor is the address given by him as his residence in any writing signed by him in connection with a credit transaction. Until he notifies the creditor of a new or different address, the given address is presumed to be unchanged.

8. Notwithstanding other provisions of this section

a. except as provided in subsection 4, this Act does not apply if the buyer, lessee, or debtor is not a resident of this State at the time of a credit transaction and the parties then agree that the law of his residence applies; and

b. this Act applies if the buyer, lessee, or debtor is a resident of this State at the time of a credit transaction and the parties then agree that the law of this State applies.

9. Except as provided in subsection 8, the following agreements by a buyer, lessee, or debtor are invalid with respect to consumer credit sales, consumer leases, consumer loans, or modifications thereof, to which this Act applies:

a. that the law of another state shall apply.

b. that the buyer, lessee, or debtor consents to the jurisdiction of another state; and

c. that fixes venue.

10. The following provisions of this Act specify the applicable law governing certain cases:

a. applicability (section 6.102) of the Part on Powers and Functions of Administrator (Part 1) of the Article on Administration (Article 6); and

b. applicability (section 6.201) of the Part on Notification and Fees (Part 2) of the Article on Administration (Article 6).

§ 1.202. Exclusions

This Act does not apply to

1. extensions of credit to government or governmental agencies or instrumentalities;

2. the sale of insurance by an insurer, except as otherwise provided in the Article on Insurance (Article 4);

3. transactions under public utility or common carrier tariffs if a subdivision or agency of this State or of the United States regulates the charges for the services involved, the charges for delayed payment, and any discount allowed for early payment; or

4. the rates and charges and the disclosure of rates and charges of a licensed pawnbroker established in accordance with a statute or ordinance concerning these matters.

§ 1.203. Jurisdiction and service of process

1. The Superior Court of this State may exercise jurisdiction over any creditor with respect to any conduct in this State governed by this Act or with respect to any claim arising from a transaction subject to this Act. In addition to any other method provided by statute, personal jurisdiction over a creditor may be acquired in a civil action or proceeding instituted in the Superior Court by the service of process in the manner provided by this section.

2. If a creditor is not a resident of this State or is a corporation not authorized to do business in this State and engages in any conduct in this State governed by this Act, or engages in a transaction subject to this Act, he may designate an agent upon whom service of process may be made in this State. The agent shall be a resident of this State or a corporation authorized to do business in this State. The designation shall be in a writing and filed with the Secretary of State. If no designation is made and filed or if process cannot be served in this State upon the designated agent, process may be served upon the Secretary of State, but service upon him is not effective unless the plaintiff or petitioner forthwith mails a copy of the process and pleading by registered or certified mail to the defendant or respondent at his last reasonably ascertainable address. An affidavit of compliance with this section shall be filed with the clerk of the court on or before the return day of the process, if any, or within any further time the court allows.

PART 3—DEFINITIONS**§ 1.301. General definitions**

In addition to definitions appearing in subsequent Articles, in this Act

1. "Actuarial method" means the method, defined by rules adopted by the Administrator, of allocating payments made on a debt between principal or amount financed and loan finance charge or credit service charge pursuant to which a payment is applied first to the accumulated loan finance charge or credit service charge and the balance is applied to the unpaid principal or unpaid amount financed.

2. "Administrator" means the administrator designated in the Article (Article 6) on Administration (Section 6.103).

3. "Agreement" means the bargain of the parties in fact as found in their language or by implication from other circumstances including course of dealing or usage of trade or course of performance.

4. "Agricultural purpose" means a purpose related to the production, harvest, exhibition, marketing, transportation, processing, or manufacture of agricultural products by a natural person who cultivates, plants, propagates, or nurtures the agricultural products. "Agricultural products" includes agricultural, horticultural, viticultural, and dairy products, livestock, wildlife, poultry, bees, forest products, fish and shellfish, and any products thereof, including processed and manufactured products, and any and all products raised or produced on farms and any processed or manufactured products thereof.

5. "Closing costs" with respect to a debt secured by an interest in land includes:

- a. fees or premiums for title examination, title insurance, or similar purposes including surveys,
- b. fees for preparation of a deed, settlement statement, or other documents,
- c. escrows for future payments of taxes and insurance,
- d. fees for notarizing deeds and other documents,
- e. appraisal fees, and
- f. credit reports.

6. "Conspicuous": A term or clause is conspicuous when it is so written that a reasonable person against whom it is to operate ought to have noticed it. Whether a term or clause is conspicuous or not is for decision by the court.

7. "Credit" means the right granted by a creditor to a debtor to defer payment of debt or to incur debt and defer its payment.

8. "Earnings" means compensation paid or payable to an individual or for his account for personal services rendered or to be rendered by him, whether denominated as wages, salary, commission, bonus, or otherwise, and includes periodic payments pursuant to a pension, retirement, or disability program.

9. "Lender credit card or similar arrangement" means an arrangement or loan agreement, other than a seller credit card, pursuant to which a lender gives a debtor the privilege of using a credit card, letter of credit, or other credit confirmation or identification in transactions out of which debt arises

- a. by the lender's honoring a draft or similar order for the payment of money drawn or accepted by the debtor;
- b. by the lender's payment or agreement to pay the debtor's obligations; or
- c. by the lender's purchase from the obligee of the debtor's obligations.

10. "Official fees" means

- a. fees and charges prescribed by law which actually are or will be paid to public officials for determining the existence of or for perfecting, releasing, or satisfying a security interest related to a consumer credit sale, consumer lease, or consumer loan; or
- b. premiums payable for insurance in lieu of perfecting a security interest otherwise required by the creditor in connection with the sale, lease, or loan, if the premium does not exceed the fees and charges described in paragraph a, which would otherwise be payable.

11. "Organization" means a corporation, government or governmental subdivision or agency, trust, estate, partnership, cooperative, or association.

12. "Payable in instalments" means that payment is required or permitted by agreement to be made in (a) two or more periodic payments, excluding a down payment, with respect to a debt arising from a consumer credit sale pursuant to which a credit service charge is made, (b) four or more periodic payments, excluding a down payment, with respect to a debt arising from a consumer credit sale pursuant to which no credit service charge is made, or (c) two or more periodic payments with respect to a debt arising from a consumer loan. If any periodic payment other than the down payment under an agreement requiring or permitting two or more periodic payments is more than twice the amount of any other periodic payment, excluding the down payment, the consumer credit sale, consumer lease, or consumer loan is "payable in instalments."

13. "Person" includes a natural person or an individual, and an organization.

14. "Person related to" with respect to an individual means (a) the spouse of the individual, (b) a brother, brother-in-law, sister, sister-in-law of the individual, (c) an ancestor or lineal descendant of the individual or his spouse, and (d) any other relative, by blood or marriage, of the individual or his spouse who shares the same home with the individual. "Person related to" with respect to an organization means (a) a person directly or indirectly controlling, controlled by or under common control with the organization, (b) an officer or director of the organization or a person performing similar functions with respect to the organization or to a person related to the organization, (c) the spouse of a person related to the organization, and (d) a relative by blood or marriage of a person related to the organization who shares the same home with him.

15. "Presumed" or "presumption" means that the trier of fact must find the existence of the fact presumed unless and until evidence is introduced which would support a finding of its non-existence.

16. "Seller credit card" means an arrangement pursuant to which a person gives to a buyer or lessee the privilege of using a credit card, letter of credit, or other credit confirmation or identification primarily for the purpose of purchasing or leasing goods or services from that person, a person related to that person, or others licensed or franchised to do business under his business or trade name or designation.

17. "Supervised financial organization" means a person, other than an insurance company or other organization primarily engaged in an insurance business,

a. organized, chartered, or holding an authorization certificate under the laws of this State or of the United States which authorize the person to make loans and to receive deposits, including a savings, share, certificate or deposit account, and

b. subject to supervision by an official or agency of this State or of the United States.

§ 1.302. Definition: "Federal Consumer Credit Protection Act"

In this Act "Federal Consumer Credit Protection Act" means the Consumer Credit Protection Act (Public Law 90-321; 82 Stat. 146), as amended, and includes regulations issued pursuant to that Act.

§ 1.303. Index of definitions in Act

Definitions in this Act and the sections in which they appear are:

- "Actuarial method"—Section 1.301(1)
- "Administrator"—Section 1.301(2)
- "Administrator"—Section 6.103
- "Agreement"—Section 1.301(3)
- "Agricultural purpose"—Section 1.301(4)
- "Amount financed"—Section 2.111
- "Annual percentage rate" (sale)—Section 2.304
- "Annual percentage rate" (loan)—Section 3.304
- "Business collateral"—Section 3.105
- "Cash price"—Section 2.110
- "Closing costs"—Section 1.301(5)
- "Conspicuous"—Section 1.301(6)
- "Consumer credit insurance"—Section 4.103(1)
- "Consumer credit sale"—Section 2.104
- "Consumer lease"—Section 2.106
- "Consumer loan"—Section 3.104
- "Consumer related loan"—Section 3.602
- "Consumer related sale"—Section 2.602
- "Contested case"—Section 6.402(1)
- "Corresponding nominal annual percentage rate" (sale)—Section 2.304
- "Corresponding nominal annual percentage rate" (loan)—Section 3.304
- "Credit"—Section 1.301(7)
- "Credit Insurance Act"—Section 4.103(2)
- "Credit service charge"—Section 2.109
- "Earnings"—Section 1.301(8)
- "Federal Consumer Credit Protection Act"—Section 1.302
- "Goods"—Section 2.105(1)
- "Home solicitation sale"—Section 2.501
- "Lender"—Section 3.107(1)
- "Lender credit card or similar arrangement"—Section 1.301(9)
- "License"—Section 6.402(2)
- "Licensing"—Section 6.402(3)
- "Loan"—Section 3.106
- "Loan finance charge"—Section 3.109
- "Merchandise certificate"—Section 2.105(2)
- "Official fees"—Section 1.301(10)
- "Organization"—Section 1.301(11)
- "Party"—Section 6.402(4)
- "Payable in instalments"—Section 1.301(12)
- "Person"—Section 1.301(13)
- "Person related to"—Section 1.301(14)

- “Precomputed (loan)”—Section 3.107(2)
- “Precomputed (sale)”—Section 2.105(7)
- “Presumed” or “presumption”—Section 1.301(15)
- “Principal”—Section 3.107(3)
- “Regulated lender”—Section 3.501(2)
- “Regulated loan”—Section 3.501(1)
- “Revolving charge account”—Section 2.108
- “Revolving loan account”—Section 3.108
- “Rule”—Section 6.402(5)
- “Sale of goods”—Section 2.105(4)
- “Sale of an interest in land”—Section 2.105(6)
- “Sale of services”—Section 2.105(5)
- “Seller”—Section 2.107
- “Seller credit card”—Section 1.301(16)
- “Services”—Section 2.105(3)
- “Supervised financial organization”—Section 1.301(17)
- “Supervised lender”—Section 3.501(4)
- “Supervised loan”—Section 3.501(3)

Article 2—Credit Sales

PART 1—GENERAL PROVISIONS

§ 2.101. Short title

This Article shall be known and may be cited as Uniform Consumer Credit Code—Credit Sales.

§ 2.102. Scope

This Article applies to consumer credit sales, including home solicitation sales, and consumer leases; in addition Part 6 applies to consumer related sales.

§ 2.103. Definitions in article

The following definitions apply to this Act and appear in this Article as follows:

“Amount financed”	Section 2.111
“Annual percentage rate”	Section 2.304(2)
“Cash price”	Section 2.110
“Consumer credit sale”	Section 2.104
“Consumer lease”	Section 2.106
“Consumer related sale”	Section 2.602
“Corresponding nominal annual percentage rate”	Section 2.304(3)
“Credit service charge”	Section 2.109
“Goods”	Section 2.105(1)
“Home solicitation sale”	Section 2.501
“Merchandise certificate”	Section 2.105(2)
“Precomputed”	Section 2.105(7)
“Revolving charge account”	Section 2.108
“Sale of goods”	Section 2.105(4)

"Sale of an interest in land"	Section 2.105(6)
"Sale of services"	Section 2.105(5)
"Seller"	Section 2.107
"Services"	Section 2.105(3)

§ 2.104. Definition: "consumer credit sale"

1. Except as provided in subsection 2, "consumer credit sale" is a sale of goods, services, or an interest in land in which

- credit is granted by a person who regularly engages as a seller in credit transactions of the same kind,
- the buyer is a person other than an organization,
- the goods, services, or interest in land are purchased primarily for a personal, family, household, or agricultural purpose,
- either the debt is payable in instalments or a credit service charge is made, and
- with respect to a sale of goods or services, the amount financed does not exceed \$25,000.

2. Unless the sale is made subject to this Act by agreement (section 2.601), "consumer credit sale" does not include

- a sale in which the seller allows the buyer to purchase goods or services pursuant to a lender credit card or similar arrangement, or
- except as provided with respect to disclosure (section 2.301) and debtor's remedies (section 5.201), a sale of an interest in land if the credit service charge does not exceed 10 per cent per year calculated according to the actuarial method on the unpaid balances of the amount financed on the assumption that the debt will be paid according to the agreed terms and will not be paid before the end of the agreed term.

3. The amount of \$25,000 in subsection 1 is subject to change pursuant to the provisions on adjustment of dollar amounts (section 1.106).

§ 2.105. Definitions: "goods"; "merchandise certificate"; "services"; "sale of goods"; "sale of services"; "sale of an interest in land"; "precomputed"

1. "Goods" includes goods not in existence at the time the transaction is entered into and merchandise certificates, but excludes money, chattel paper, documents of title, and instruments.

2. "Merchandise certificate" means a writing issued by a seller not redeemable in cash and usable in its face amount in lieu of cash in exchange for goods or services.

3. "Services" includes (a) work, labor, and other personal services, (b) privileges with respect to transportation, hotel and restaurant accommodations, education, entertainment, recreation, physical culture, hospital accom-

modations, funerals, cemetery accommodations, and the like, and (c) insurance provided by a person other than the insurer.

4. "Sale of goods" includes any agreement in the form of a bailment or lease of goods if the bailee or lessee agrees to pay as compensation for use a sum substantially equivalent to or in excess of the aggregate value of the goods involved and it is agreed that the bailee or lessee will become, or for no other or a nominal consideration has the option to become, the owner of the goods upon full compliance with his obligations under the agreement.

5. "Sale of services" means furnishing or agreeing to furnish services and includes making arrangements to have services furnished by another.

6. "Sale of an interest in land" includes a lease in which the lessee has an option to purchase the interest and all or a substantial part of the rental or other payments previously made by him are applied to the purchase price.

7. A sale, refinancing, or consolidation is "precomputed" if the debt is expressed as a sum comprising the amount financed and the amount of the credit service charge computed in advance.

§ 2.106. Definition: "consumer lease"

1. "Consumer lease" means a lease of goods

a. which a lessor regularly engaged in the business of leasing makes to a person, other than an organization, who takes under the lease primarily for a personal, family, household, or agricultural purpose,

b. in which the amount payable under the lease does not exceed \$25,000, and

c. which is for a term exceeding four months.

2. "Consumer lease" does not include a lease made pursuant to a lender credit card or similar arrangement.

3. The amount of \$25,000 in subsection 1 is subject to change pursuant to the provisions on adjustment of dollar amounts (section 1.106).

§ 2.107. Definition: "seller"

Except as otherwise provided, "seller" includes an assignee of the seller's right to payment but use of the term does not in itself impose on an assignee any obligation of the seller with respect to events occurring before assignment.

§ 2.108. Definition: "revolving charge account"

"Revolving charge account" means an arrangement between a seller and a buyer pursuant to which (1) the seller may permit the buyer to purchase goods or services on credit either from the seller or pursuant to a seller credit card, (2) the unpaid balances of amounts financed arising from purchases and the credit service and other appropriate charges are debited to an account, (3) a credit service charge if made is not precomputed but it computed on the outstanding unpaid balances of the buyer's account from time to time, and (4) the buyer has the privilege of paying the balances in instalments.

§ 2.109. Definition: "credit service charge"

"Credit service charge" means the sum of (1) all charges payable directly or indirectly by the buyer and imposed directly or indirectly by the seller as an incident to the extension of credit, including any of the following types of charges which are applicable: time price differential, service, carrying or other charge, however denominated, premium or other charge for any guarantee or insurance protecting the seller against the buyer's default or other credit loss; and (2) charges incurred for investigating the collateral or credit-worthiness of the buyer or for commissions or brokerage for obtaining the credit, irrespective of the person to whom the charges are paid or payable, unless the seller had no notice of the charges when the credit was granted. The term does not include charges as a result of default, additional charges (section 2.202), delinquency charges (section 2.203), or deferral charges (section 2.204).

§ 2.110. Definition: "cash price"

Except as the administrator may otherwise prescribe by rule, the "cash price" of goods, services, or an interest in land means the price at which the goods, services, or interest in land are offered for sale by the seller to cash buyers in the ordinary course of business, and may include (1) applicable sales, use, and excise and documentary stamp taxes, (2) the cash price of accessories or related services such as delivery, installation, servicing, repairs, alterations, and improvements, and (3) amounts actually paid or to be paid by the seller for registration, certificate of title, or license fees. The cash price stated by the seller to the buyer pursuant to the provisions on disclosure (Part 3) of this Article is presumed to be the cash price.

§ 2.111. Definition: "amount financed"

"Amount financed" means the total of the following items to the extent that payment is deferred:

1. the cash price of the goods, services, or interest in land, less the amount of any down payment whether made in cash or in property traded in,
2. the amount actually paid or to be paid by the seller pursuant to an agreement with the buyer to discharge a security interest in or a lien on property traded in, and
 3. if not included in the cash price
 - a. any applicable sales, use, excise, or documentary stamp taxes,
 - b. amounts actually paid or to be paid by the seller for registration, certificate of title, or license fees, and
 - c. additional charges permitted by this Article (section 2.202).

PART 2—MAXIMUM CHARGES

§ 2.201. Credit service charge for consumer credit sales other than revolving charge accounts

1. With respect to a consumer credit sale, other than a sale pursuant to a revolving charge account, a seller may contract for and receive a credit service charge not exceeding that permitted by this section.

2. The credit service charge, calculated according to the actuarial method, may not exceed the equivalent of the greater of either of the following:

a. the total of

i. 36 per cent per year on that part of the unpaid balances of the amount financed which is \$300 or less;

ii. 21 per cent per year on that part of the unpaid balances of the amount financed which is more than \$300 but does not exceed \$1,000; and

iii. 15 per cent per year on that part of the unpaid balances of the amount financed which is more than \$1,000; or

b. 18 per cent per year on the unpaid balances of the amount financed.

3. This section does not limit or restrict the manner of contracting for the credit service charge, whether by way of add-on, discount, or otherwise, so long as the rate of the credit service charge does not exceed that permitted by this section. If the sale is precomputed,

a. the credit service charge may be calculated on the assumption that all scheduled payments will be made when due, and

b. the effect of prepayment is governed by the provisions on rebate upon prepayment (section 2.210).

4. For the purposes of this section, the term of a sale agreement commences with the date the credit is granted or, if goods are delivered or services performed 10 days or more after that date, with the date of commencement of delivery or performance. Differences in the lengths of months are disregarded and a day may be counted as $\frac{1}{30}$ of a month. Subject to classifications and differentiations the seller may reasonably establish, a part of a month in excess of 15 days may be treated as a full month if periods of 15 days or less are disregarded and that procedure is not consistently used to obtain a greater yield than would otherwise be permitted.

5. Subject to classifications and differentiations the seller may reasonably establish, he may make the same credit service charge on all amounts financed within a specified range. A credit service charge so made does not violate subsection 2 if

a. when applied to the median amount within each range, it does not exceed the maximum permitted by subsection 2, and

b. when applied to the lowest amount within each range, it does not produce a rate of credit service charge exceeding the rate calculated according to paragraph a by more than 8 per cent of the rate calculated according to paragraph a.

6. Notwithstanding subsection 2, the seller may contract for and receive a minimum credit service charge of not more than \$5 when the amount financed does not exceed \$75, or \$7.50 when the amount financed exceeds \$75.

7. The amounts of \$300 and \$1,000 in subsection 2 are subject to change pursuant to the provisions on adjustment of dollar amounts (section 1.106).

§ 2.202. Additional charges

1. In addition to the credit service charge permitted by this Part, a seller may contract for and receive the following additional charges in connection with a consumer credit sale:

a. official fees and taxes;

b. charges for insurance as described in subsection 2; and

c. charges for other benefits, including insurance, conferred on the buyer, if the benefits are of value to him and if the charges are reasonable in relation to the benefits, are of a type which is not for credit, and are excluded as permissible additional charges from the credit service charge by rule adopted by the administrator.

2. An additional charge may be made for insurance written in connection with the sale, other than insurance protecting the seller against the buyer's default or other credit loss,

a. with respect to insurance against loss of or damage to property, or against liability, if the seller furnishes a clear and specific statement in writing to the buyer, setting forth the cost of the insurance if obtained from or through the seller, and stating that the buyer may choose the person through whom the insurance is to be obtained; and

b. with respect to consumer credit insurance providing life, accident or health coverage, if the insurance coverage is not a factor in the approval by the seller of the extension of credit and this fact is clearly disclosed in writing to the buyer, and if, in order to obtain the insurance in connection with the extension of credit, the buyer gives specific affirmative written indication of his desire to do so after written disclosure to him of the cost thereof.

3. For the purposes of the Part on Disclosure and Advertising (Part 3), if the credit service charge with respect to a sale of an interest in land does not exceed 10 per cent per year (paragraph b of subsection 2 of section 2.104), reasonable closing costs even though not within subsection 1 may be treated as additional charges.

§ 2.203. Delinquency charges

1. With respect to a precomputed consumer credit sale, refinancing, or consolidation, the parties may contract for a delinquency charge on any instalment not paid in full within 10 days after its scheduled due date in an amount not exceeding the greater of

- a. an amount, not exceeding \$5, which is 5 per cent of the unpaid amount of the instalment, or
- b. the deferral charge (subsection 1 of section 2.204) that would be permitted to defer the unpaid amount of the instalment for the period that it is delinquent.

2. A delinquency charge under paragraph a of subsection 1 may be collected only once on an instalment however long it remains in default. No delinquency charge may be collected if the instalment has been deferred and a deferral charge (section 2.204) has been paid or incurred. A delinquency charge may be collected at the time it accrues or at any time thereafter.

3. No delinquency charge may be collected on an instalment which is paid in full within 10 days after its scheduled instalment due date even though an earlier maturing instalment or a delinquency charge on an earlier instalment may not have been paid in full. For purposes of this subsection payments are applied first to current instalments and then to delinquent instalments.

4. The amount of \$5 in subsection 1 is subject to change pursuant to the provisions on adjustment of dollar amounts (section 1.106).

§ 2.204. Deferral charges

1. With respect to a precomputed consumer credit sale, refinancing, or consolidation, the parties before or after default may agree in writing to a deferral of all or part of one or more unpaid instalment, and the seller may make and collect a charge not exceeding the rate previously stated to the buyer pursuant to the provisions on disclosure (Part 3) applied to the amount or amounts deferred for the period of deferral calculated without regard to differences in lengths of months, but proportionally for a part of a month, counting each day as 1/30 of a month. A deferral charge may be collected at the time it is assessed or at any time thereafter.

2. The seller, in addition to the deferral charge, may make appropriate additional charge (section 2.202), and the amount of these charges which is not paid in cash may be added to the amount deferred for the purpose of calculating the deferral charge.

3. The parties may agree in writing at the time of a precomputed consumer credit sale, refinancing, or consolidation that if an instalment is not paid within 10 days after its due date, the seller may unilaterally grant a deferral and make charges as provided in this section. No deferral charge may be made for a period after the date that the seller elects to accelerate the maturity of the agreement.

4. A delinquency charge made by the seller on an instalment may not be retained if a deferral charge is made pursuant to this section with respect to the period of delinquency.

§ 2.205. Credit service charge on refinancing

With respect to a consumer credit sale, refinancing, or consolidation, the seller may by agreement with the buyer refinance the unpaid balance and

may contract for and receive a credit service charge based on the amount financed resulting from the refinancing at a rate not exceeding that permitted by the provisions on credit service charge for consumer credit sales (section 2.201). For the purpose of determining the credit service charge permitted, the amount financed resulting from the refinancing comprises the following:

1. if the transaction was not precomputed, the total of the unpaid balance and accrued charges on the date of refinancing, or, if the transaction was pre-computed, the amount which the buyer would have been required to pay upon prepayment pursuant to the provisions on rebate upon prepayment (section 2.210) on the date of refinancing, except that for the purpose of computing this amount no minimum credit service charge (subsection 6 of section 2.201) shall be allowed; and

2. appropriate additional charge (section 2.202), payment of which is deferred.

§ 2.206. Credit service charge on consolidation

If a buyer owes an unpaid balance to a seller with respect to a consumer credit sale, refinancing, or consolidation, and becomes obligated on another consumer credit sale, refinancing, or consolidation with the same seller, the parties may agree to a consolidation resulting in a single schedule of payments pursuant to either of the following subsections:

1. The parties may agree to refinance the unpaid balance with respect to the previous sale pursuant to the provisions on refinancing (section 2.205) and to consolidate the amount financed resulting from the refinancing by adding it to the amount financed with respect to the subsequent sale. The seller may contract for and receive a credit service charge based on the aggregate amount financed resulting from the consolidation at a rate not exceeding that permitted by the provisions on credit service charge for consumer credit sales (section 2.201).

2. The parties may agree to consolidate by adding together the unpaid balances with respect to the two sales.

§ 2.207. Credit service charge for revolving charge accounts

1. With respect to a consumer credit sale made pursuant to a revolving charge account, the parties to the sale may contract for the payment by the buyer of a credit service charge not exceeding that permitted in this section.

2. A charge may be made in each billing cycle which is a percentage of an amount no greater than

- a. the average daily balance of the account,

- b. the unpaid balance of the account on the same day of the billing cycle, or

- c. the median amount within a specified range within which the average daily balance of the account or the unpaid balance of the account on the same day of the billing cycle is included. A charge may be made pursuant to this paragraph only if the seller, subject to classifications and differentia-

tions he may reasonably establish, makes the same charge on all balances within the specified range and if the percentage when applied to the median amount within the range does not produce a charge exceeding the charge resulting from applying that percentage to the lowest amount within the range by more than 8 per cent of the charge on the median amount.

3. If the billing cycle is monthly, the charge may not exceed 2 per cent of that part of the amount pursuant to subsection 2 which is \$500 or less and $1\frac{1}{2}$ per cent on that part of this amount which is more than \$500. If the billing cycle is not monthly, the maximum charge is that percentage which bears the same relation to the applicable monthly percentage as the number of days in the billing cycle bears to 30. For the purposes of this section, a variation of not more than 4 days from month to month is "the same day of the billing cycle."

4. Notwithstanding subsection 3, if there is an unpaid balance on the date as of which the credit service charge is applied, the seller may contract for and receive a charge not exceeding 50¢ if the billing cycle is monthly or longer, or the pro rata part of 50¢ which bears the same relation to 50¢ as the number of days in the billing cycle bears to 30 if the billing cycle is shorter than monthly.

5. The amounts of \$500 in subsection 3 are subject to change pursuant to the provisions on adjustment of dollar amounts (section 1.106).

§ 2.208. Advances to perform covenants of buyer

1. If the agreement with respect to a consumer credit sale, refinancing, or consolidation contains covenants by the buyer to perform certain duties pertaining to insuring or preserving collateral and the seller pursuant to the agreement pays for performance of the duties on behalf of the buyer, the seller may add the amounts paid to the debt. Within a reasonable time after advancing any sums, he shall state to the buyer in writing the amount of the sums advanced, any charges with respect to this amount, and any revised payment schedule and, if the duties of the buyer performed by the seller pertain to insurance, a brief description of the insurance paid for by the seller including the type and amount of coverages. No further information need be given.

2. A credit service charge may be made for sums advanced pursuant to subsection 1 at a rate not exceeding the rate stated to the buyer pursuant to the provisions on disclosure (Part 3) with respect to the sale, refinancing, or consolidation, except that with respect to a revolving charge account the amount of the advance may be added to the unpaid balance of the account and the seller may make a credit service charge not exceeding that permitted by the provisions on credit service charge for revolving charge accounts (section 2.207).

§ 2.209. Right to prepay

Subject to the provisions on rebate upon prepayment (section 2.210), the buyer may prepay in full the unpaid balance of a consumer credit sale, refinancing, or consolidation at any time without penalty.

§ 2.210. Rebate upon prepayment

1. Except as provided in subsection 2, upon prepayment in full of the unpaid balance of a precomputed consumer credit sale, refinancing, or consolidation, an amount not less than the unearned portion of the credit service charge calculated according to this section shall be rebated to the buyer. If the rebate otherwise required is less than \$1, no rebate need be made.

2. Upon prepayment in full of a consumer credit sale, refinancing, or consolidation, other than one pursuant to a revolving charge account, if the credit service charge then earned is less than any permitted minimum credit service charge, (subsection 6 of section 2.201) contracted for, whether or not the sale, refinancing, or consolidation is precomputed, the seller may collect or retain the minimum charge, as if earned, not exceeding the credit service charge contracted for.

3. Except as otherwise provided in this subsection with respect to a sale of an interest in land or a consumer credit sale secured by an interest in land, the unearned portion of the credit service charge is a fraction of the credit service charge of which the numerator is the sum of the periodic balances scheduled to follow the computational period in which prepayment occurs, the denominator is the sum of all periodic balances under either the sale agreement or, if the balance owing resulted from a refinancing (section 2.205) or a consolidation (section 2.206), under the refinancing agreement or consolidation agreement. In the case of a sale of an interest in land or a consumer credit sale secured by an interest in land, reasonable sums actually paid or payable to persons not related to the seller for customary closing costs included in the credit service charge are deducted from the credit service charge before the calculation prescribed by this subsection is made.

4. In this section

a. "periodic balance" means the amount scheduled to be outstanding on the last day of a computational period before deducting the payment, if any, scheduled to be made on that day;

b. "computational period" means one month if one-half or more of the intervals between scheduled payments under the agreement is one month or more, and otherwise means one week;

c. the "interval" to the due date of the first scheduled instalment or the final scheduled payment date is measured from the date of a sale, refinancing, or consolidation, or any later date prescribed for calculating maximum credit service charges (subsection 4 of section 2.201), and includes either the first or last day of the interval;

d. if the interval to the due date of the first scheduled instalment does not exceed one month by more than 15 days when the computational period is one month, or 11 days when the computational period is one week, the interval shall be considered as one computational period.

5. This subsection applies only if the schedule of payments is not regular.

a. If the computational period is one month and

i. If the number of days in the interval to the due date of the first scheduled instalment is less than one month by more than 5 days, or more than one month by more than 5 but not more than 15 days, the unearned credit service charge shall be increased by an adjustment for each day by which the interval is less than one month and, at the option of the seller, may be reduced by an adjustment for each day by which the interval is more than one month; the adjustment for each day shall be $\frac{1}{30}$ of that part of the credit service charge earned in the computational period prior to the due date of the first scheduled instalment assuming that period to be one month; and

ii. if the interval to the final scheduled payment date is a number of computational periods plus an additional number of days less than a full month, the additional number of days shall be considered a computational period only if 16 days or more. This subparagraph applies whether or not subparagraph i applies.

b. Notwithstanding paragraph a, if the computational period is one month, the number of days in the interval to the due date of the first instalment exceeds one month by not more than 15 days, and the schedule of payments is otherwise regular, the seller at his option may exclude the extra days and the charge for the extra days in computing the unearned credit service charge; but if he does so and a rebate is required before the due date of the first scheduled instalment, he shall compute the earned degree for each elapsed day as $\frac{1}{30}$ of the amount the earned charge would have been if the first interval had been one month.

c. If the computational period is one week and

i. if the number of days in the interval to the due date of the first scheduled instalment is less than 5 days, or more than 9 days but not more than 11 days, the unearned credit service charge shall be increased by an adjustment for each day by which the interval is less than 7 days and, at the option of the seller, may be reduced by an adjustment for each day by which the interval is more than 7 days; the adjustment for each day shall be $\frac{1}{7}$ of that part of the credit service charge earned in the computational period prior to the due date of the first scheduled instalment assuming that period to be one week; and

ii. if the interval to the final scheduled payment date is a number of computational periods plus an additional number of days less than a full week, the additional number of days shall be considered a computational period only if 4 days or more. This subparagraph applies whether or not subparagraph i applies.

6. If a deferral (section 2.204) has been agreed to, the unearned portion of the credit service charge shall be computed without regard to the deferral. The amount of deferral charge earned at the date of prepayment shall also be calculated. If the deferral charge earned is less than the deferral charge paid, the difference shall be added to the unearned portion of the credit service charge. If any part of a deferral charge has been earned but has not been paid,

that part shall be subtracted from the unearned portion of the credit service charge or shall be added to the unpaid balance.

7. This section does not preclude the collection or retention by the seller of delinquency charges (section 2.203).

8. If the maturity is accelerated for any reason and judgment is obtained, the buyer is entitled to the same rebate as if payment had been made on the date judgment is entered.

9. Upon prepayment in full of a consumer credit sale by the proceeds of consumer credit insurance (section 4.103), the buyer or his estate is entitled to the same rebate as though the buyer had prepaid the agreement on the date the proceeds of the insurance are paid to the seller, but no later than 10 business days after satisfactory proof of loss is furnished to the seller.

PART 3—DISCLOSURE AND ADVERTISING

§ 2.301. Applicability; information required

1. For purposes of this Part, consumer credit sale includes the sale of an interest in land without regard to the rate of the credit service charge if the sale is otherwise a consumer credit sale (section 2.104).

2. The seller shall disclose to the buyer to whom credit is extended with respect to a consumer credit sale the information required by either

a. this Part, or

b. except with respect to a consumer credit sale of an interest in land or secured by an interest in land, the Federal Consumer Credit Protection Act.

3. For the purposes of paragraph b of subsection 2, information which would otherwise be required pursuant to the Federal Consumer Credit Protection Act is sufficient even though the transaction is one of a class of credit transactions exempted from that Act pursuant to regulation of the Board of Governors of the Federal Reserve System.

4. The lessor shall disclose to the lessee to whom credit is extended with respect to a consumer lease the information required by this Part.

§ 2.302. General disclosure requirements and provisions

1. The disclosure required by this Part

a. shall be made clearly and conspicuously;

b. shall be in writing, a copy of which shall be delivered to the buyer or lessee;

c. may use terminology different from that employed in this Part if it conveys substantially the same meaning;

d. except as the rules adopted by the administrator otherwise prescribe, need not be contained in a single writing or made in the order set forth in this Part;

e. may be supplemented by additional information or explanations supplied by the seller or lessor;

f. need be made only to the extent applicable and only as to those items for which the seller or lessor makes a separate charge to the buyer or lessee;

g. shall be made on the assumption that all scheduled payments will be made when due; and

h. comply with this Part although rendered inaccurate by any act, occurrence, or agreement subsequent to the required disclosure.

2. Except with respect to sales made by telephone or mail (section 2.305),

a. the disclosures required by this Part shall be made before credit is extended, but may be made in the sale, refinancing, or consolidation agreement, lease, or other evidence of indebtedness to be signed by the buyer or lessee if set forth conspicuously therein, and need be made only to one buyer or lessee if there are more than one, and

b. if an evidence of indebtedness is signed by the buyer or lessee, the seller or lessor shall give him a copy when the writing is signed.

3. Except as provided with respect to rescission by a buyer (section 5.204) and civil liability for violations of disclosure provisions (subsection 4 of section 5.203), written acknowledgment of receipt by a buyer or lessee to whom a statement is required to be given pursuant to this Part

a. in an action or proceeding by or against the original seller or lessor, creates a presumption that the statement was given, and

b. in an action or proceeding by or against an assignee without knowledge to the contrary when he acquires the obligation, is conclusive proof of the delivery of the statement and, unless the violation is apparent on the face of the statement, of compliance with this Part.

§ 2.303. Overstatement

The disclosure of an amount or percentage which is greater than the amount or percentage required to be disclosed under this Part does not in itself constitute a violation of this Part if the overstatement is not materially misleading and is not used to avoid meaningful disclosure.

§ 2.304. Calculation of rate to be disclosed

1. Except as otherwise specifically provided, if a seller is required to give to a buyer a statement of the rate of the credit service charge he shall state the rate in terms of an annual percentage rate as defined in subsection 2 or in terms of a corresponding nominal annual percentage rate as defined in subsection 3, whichever is appropriate.

2. "Annual percentage rate"

a. with respect to a consumer credit sale other than one made pursuant to a revolving charge account, is either

- i. that nominal annual percentage rate which, when applied to the unpaid balances of the amount financed calculated according to the actuarial method, will yield a sum equal to the amount of the credit service charge, or
 - ii. that rate determined by any method prescribed by rule by the administrator as a method which materially simplifies computation while retaining reasonable accuracy as compared with the rate determined pursuant to subparagraph i;
- b. with respect to a consumer credit sale made pursuant to a revolving charge account, is the quotient expressed as a percentage of the total credit service charge for the period to which it relates divided by the amount upon which the credit service charge for that period is based multiplied by the number of these periods in a year.
3. "Corresponding nominal annual percentage rate" is the percentage or percentages used to calculate the credit service charge for one billing cycle or other period pursuant to a revolving charge account multiplied by the number of billing cycles or periods in a year.
4. If a seller is permitted to make the same credit service charge for all amounts financed within a specified range (subsection 5 of section 2.201) or for all balances within a specified range (subsection 2 of section 2.207), he shall state the annual percentage rate or corresponding nominal annual percentage rate, whichever is appropriate, as applied to the median amount of the range within which the actual amount financed or balance is included.
5. A statement of rate complies with this Part if it does not vary from the accurately computed rate by more than the following tolerances:
- a. the annual percentage rate may be rounded to the nearest quarter of 1 percent for consumer credit sales payable in substantially equal instalments when a seller determines the total credit service charge on the basis of a single add-on, discount, periodic, or other rate, and the rate is converted into an annual percentage rate under procedures prescribed by rule by the administrator;
 - b. the administrator may authorize by rule the use of rate tables or charts which may provide for the disclosure of annual percentage rates which vary from the rate determined in accordance with paragraph a by not more than the tolerances the administrator may allow; the administrator may not allow a tolerance greater than 8 per cent of that rate except to simplify compliance where irregular payments are involved; and
 - c. in case a seller determines the annual percentage rate in a manner other than as described in paragraph a or b, the administrator may authorize by rule other reasonable tolerances.

§ 2.305. Sales made by telephone or mail

1. With respect to a consumer credit sale, other than a sale made pursuant to a revolving charge account, if the seller receives a purchase order or offer by mail or telephone without personal solicitation, the seller complies with

this Part if (a) he makes the disclosures at the time and in the manner provided in the general disclosure requirements and provisions (subsection 2 of section 2.302), or (b) the seller's catalog or other printed material distributed to the public sets forth the cash price, the method of determining the deferred payment price, and the terms of financing, including the annual percentage rate, and before the first payment is due on the sale, he gives the information required by this Part including the notice prescribed in subsection 2.

2. The notice shall be in writing and conspicuous and shall provide that if the buyer does not wish to make the purchase on credit, he, within 15 days after receiving the notice, may prepay the obligation as to that purchase for an amount stated or identified in the notice and avoid the payment of any credit service charge as to that purchase. A prepayment under this section is subject to the provisions of this Act on prepayment, except that no credit service charge shall be made if prepayment in full is made within the period specified in the notice. Payment by mail is effective when posted.

§ 2306. Consumer credit sales not pursuant to revolving charge account

1. This section applies to a consumer credit sale not made pursuant to a revolving charge account (section 2.310).

2. The seller shall give to the buyer the following information:

a. brief description or identification of the goods, services, or interest in land;

b. cash price of the goods, services, or interest in land, and any applicable sales, use, excise, transfer, or documentary stamp taxes not included in the cash price; if property and related services are sold as part of one transaction, the price of the property and services may be separately stated or combined;

c. amount of the down payment and a statement of the portion paid in money and the portion paid by an allowance for property traded in; if there is a security interest in the property traded in which the seller agrees to discharge, the seller shall also state the amount which the seller agrees to pay to discharge the security interest and this amount may be deducted from the allowance for property traded in;

d. difference between the amount of cash price (paragraph b) and the amount of down payment (paragraph c);

e. amount paid or payable for registration, certificate of title or license fees, if not included in the cash price, and a description or identification of the fees;

f. amount of official fees and taxes if not included in the cash price and a description or identification of them;

g. brief description of insurance to be provided or paid for by the seller including the type and amount of the coverages, and if a separate charge is made, the amount of the charge;

h. amount of other additional charges (section 2.202), and a brief description or identification of them;

i. amount financed (sum of amounts stated in paragraphs d, e, f, g, and h);

j. except in the case of a sale of a dwelling when the credit service charge does not exceed 10 per cent per year (section 2.104), the amount of the credit service charge and the amount of the unpaid balance (amount financed plus credit service charge);

k. rate of the credit service charge as applied to the amount financed in accordance with the provisions on calculation of rate (section 2.304), except in the case of a credit service charge which does not exceed \$5 when the amount financed does not exceed \$75 or \$7.50 when the amount financed exceeds \$75;

l. number of payments, amount of each payment, due date of first payment, and the due date of subsequent payments or interval between payments;

m. default, delinquency, or similar charges payable in the event of late payments; and

n. description of any security interest held or to be retained or acquired by the seller in connection with the extension of credit, and a clear identification of the property to which the security interest relates.

§ 2.307. Refinancing

If the seller refinances the balance owing with respect to a consumer credit sale, refinancing, or consolidation pursuant to the provisions on refinancing (section 2.205), he shall state to the buyer the following:

1. unpaid balance before refinancing;

2. amount and brief itemization of rebates to which buyer would have been entitled if the debt had been prepaid pursuant to the provisions on rebate upon prepayment (section 2.210) on the date of refinancing, except that for the purpose of computing this amount no minimum credit service charge (subsection 6 of section 2.201) shall be allowed;

3. amount and brief itemization of additional charges in connection with the refinancing and a brief indication of any change in the type or terms of insurance;

4. amount financed resulting from the refinancing;

5. amount of credit service charge;

6. amount of unpaid balance;

7. number of payments, amount of each payment, due date of first payment, and the due date of subsequent payments or interval between payments; and

8. rate of the credit service charge as applied to the amount financed in accordance with the provisions on calculation of rate (section 2.304), except

in the case of a credit service charge which does not exceed \$5 when the amount financed does not exceed \$75 or \$7.50 when the amount financed exceeds \$75.

§ 2.308. Consolidation

1. Except as provided in subsection 2, if the parties agree to consolidate an existing unpaid balance from a previous consumer credit sale, refinancing, or consolidation, with the amount financed from a subsequent consumer credit sale, refinancing, or consolidation, the seller shall state:

- a. with respect to the refinanced unpaid balance, the information required by the provisions on refinancing (subsections 1 through 4 of section 2.307);
- b. with respect to the subsequent sale, the information required by the provisions on consumer credit sales other than revolving charge accounts (paragraphs a through j of subsection 2 of section 2.306);
- c. the aggregate amount financed, the amount of the credit service charge, the amount of the unpaid balance, the number of payments, the amount of each payment, the due date of the first payment, and the due dates of subsequent payments or the interval between payments; and
- d. the rate of the credit service charge as applied to the aggregate amount financed in accordance with the provisions on calculation of rate (section 2.304), except in the case of a credit service charge which does not exceed \$5 when the aggregate amount financed does not exceed \$75 or \$7.50 when the amount financed exceeds \$75.

2. If a consumer credit sale is made pursuant to an agreement providing for the addition of the unpaid balance resulting from a subsequent sale to an existing unpaid balance resulting from a previous sale, and the buyer has approved in writing both the annual percentage rate or rates and the method of computing the credit service charge or charges,

- a. the information required to be given with respect to the subsequent sale (section 2.306) may be given on or before the due date of the first instalment under the consolidated schedule of payments; and
- b. with respect to the consolidation, the seller, on or before the due date of the first instalment under the consolidated schedule of payments, shall state to the buyer the amount of the consolidated unpaid balance, the number of payments, amount of each payment, the due date of the first payment, and the due dates of subsequent payments or the interval between payments.

§ 2.309. Deferral

If the seller makes a deferral pursuant to the provisions on deferral charges (section 2.204), he shall state to the buyer, at the time of or promptly after the deferral:

1. amount deferred;
2. any appropriate additional charges (section 2.202);

3. aggregate amount deferred, which is the sum of the amount in 1 and any unpaid amount included in 2;
4. time to which payment is deferred; and
5. amount and annual percentage rate of the deferral charge and when it is payable.

§ 2.310. Revolving charge accounts

1. Before making a consumer credit sale pursuant to a revolving charge account, the seller shall give to the buyer the following information:

- a. conditions under which a credit service charge may be made, including the time period, if any, within which any credit extended may be repaid without incurring a credit service charge;
- b. method of determining the balance upon which a credit service charge will be computed;
- c. method of determining the amount of the credit service charge, including the periodic percentage or percentages used to calculate the credit service charge and the amount of any minimum credit service charge;
- d. corresponding nominal annual percentage rate (subsection 3 of section 2.304); if more than one corresponding nominal annual percentage rate may be used, the amount of a balance to which each corresponding nominal annual percentage rate applies shall also be stated;
- e. if the seller elects he may also state either
 - i. the average effective annual percentage rate of return received from revolving charge accounts for a representative period of time; or
 - ii. if circumstances are such that the computation of a rate under subparagraph i would not be feasible or practical, or would be misleading or meaningless, a projected rate of return to be received from revolving charge accounts; the administrator shall prescribe rules, consistent with commonly accepted standards for accounting or statistical procedures, to carry out the purposes of this paragraph e;
- f. conditions under which additional charges may be made and the method by which they will be determined; and
- g. conditions under which the seller may retain or acquire a security interest in property to secure the balances resulting from sales made pursuant to the revolving charge account, and a description of the interest or interests which may be retained or acquired.

2. If there is an outstanding balance owing at the end of the billing cycle or if a credit service charge is made with respect to the billing cycle, the seller shall give to the buyer the following information within a reasonable time after the end of the billing cycle:

- a. outstanding balance at the beginning of the billing cycle;

- b. cash price and date of each sale during the billing cycle and, unless previously furnished, a brief description or identification of the goods or services sold;
- c. amount credited to the account during the billing cycle;
- d. amount of credit service charge and additional charges debited during the billing cycle, with an itemization or explanation to show the total amount of credit service charge, if any, due to the application of one or more periodic percentages and the amount, if any, imposed as a minimum charge;
- e. the periodic percentage used to calculate the credit service charge; if more than one periodic percentage is used, each percentage and the amount of the balance to which each applies;
- f. the balance on which the credit service charge is computed and a statement of how the balance is determined; if the balance is determined without first deducting all amounts credited during the period, that fact and the amounts credited shall also be stated;
- g. if the credit service charge for the billing cycle exceeds 50¢ for a monthly or longer billing cycle, or the pro rata part of 50¢ for a billing cycle shorter than monthly, the credit service charge expressed as an annual percentage rate (paragraph b of subsection 2 of Section 2.304); if more than one periodic percentage is used to calculate the credit service charge, the seller, in lieu of stating a single annual percentage rate, may state more than one annual percentage rate and the amount of the balance to which each annual percentage rate applies;
- h. if the credit service charge for the billing cycle does not exceed 50¢ for a monthly or longer billing cycle, or the pro rata part of 50¢ for a billing cycle shorter than monthly, the corresponding nominal annual percentage rate (subsection 3 of section 2.304);
- i. if the seller elects, the average effective annual percentage rate of return or the projected rate as prescribed in paragraph e of subdivision 1;
- j. outstanding balance at the end of the billing cycle; and
- k. date by which or period within which payment must be made to avoid additional credit service charges.

§ 2.311 Consumer leases

With respect to a consumer lease the lessor shall give to the lessee the following information:

1. brief description or identification of the goods;
2. amount of any payment required at the inception of the lease;
3. amount paid or payable for official fees, registration, certificate of title, or license fees or taxes;

4. amount of other charges not included in the periodic payments and a brief description of the charges;
5. brief description of insurance to be provided or paid for by the lessor, including the types and amounts of the coverages;
6. number of periodic payments, the amount of each payment, the due date of the first payment, the due dates of subsequent payments or interval between payments, and the total amount payable by the lessee;
7. statement of the conditions under which the lessee may terminate the lease prior to the end of the term; and
8. statement of the liabilities the lease imposes upon the lessee at the end of the term.

§ 2.312. Content of periodic statements

A creditor who transmits periodic statements in connection with any consumer credit sale not made pursuant to a revolving charge account shall set forth in each statement each of the following items:

1. the annual percentage rate of the credit service charge with respect to each consumer credit sale to which the statement relates;
2. the date by which or the period, if any, within which payment must be made in order to avoid further credit service charges or other charges; and
3. to the extent the administrator may require by rule as appropriate to the terms and conditions under which the consumer credit sale is made, the other items set forth in the provisions on disclosure with respect to revolving charge accounts (subsection 2 of section 2.310).

§ 2.313. Advertising

1. No seller or lessor shall engage in this State in false or misleading advertising concerning the terms or conditions of credit with respect to a consumer credit sale or consumer lease.
2. Without limiting the generality of subsection 1 and without requiring a statement of rate of credit service charge if the credit service charge is not more than \$5 when the amount financed does not exceed \$75, or \$7.50 when the amount financed exceeds \$75, an advertisement with respect to a consumer credit sale made by the posting of a public sign, or by catalog, magazine, newspaper, radio, television, or similar mass media, is misleading if
 - a. it states the rate of credit service charge and the rate is not stated in the form required by the provisions on calculation of rate to be disclosed (section 2.304), or
 - b. it states the dollar amounts of the credit service charge or instalment payments, and does not also state the rate of any credit service charge and the number and amount of the instalment payments.
3. In this section a catalog or other multiple-page advertisement is considered a single advertisement if it clearly and conspicuously displays a credit terms table setting forth the information required by this section.

4. This section imposes no liability on the owner or personnel, as such, of any medium in which an advertisement appears or through which it is disseminated.

5. Advertising which complies with the Federal Consumer Credit Protection Act does not violate subsection 2.

PART 4—LIMITATIONS ON AGREEMENTS AND PRACTICES

§ 2.401. Scope

This Part applies to consumer credit sales and consumer leases.

§ 2.402. Use of multiple agreements

A seller may not use multiple agreements with intent to obtain a higher credit service charge than would otherwise be permitted by this Article or to avoid disclosure of an annual percentage rate pursuant to the provisions on disclosure and advertising (Part 3). The excess amount of credit service charge provided for in agreements in violation of this section is an excess charge for the purposes of the provisions on the effect of violations on rights of parties (section 5.202) and the provisions on civil actions by administrator (section 6.113).

§ 2.403. Certain negotiable instruments prohibited

In a consumer credit sale or consumer lease, other than a sale or lease primarily for an agricultural purpose, the seller or lessor may not take a negotiable instrument other than a check as evidence of the obligation of the buyer or lessee. A holder is not in good faith if he takes a negotiable instrument with notice that it is issued in violation of this section. A holder in due course is not subject to the liabilities set forth in the provisions on the effect of violations on rights of parties (section 5.202) and the provisions on civil actions by Administrator (section 6.113).

§ 2.404. Assignee subject to defenses

Alternative A: With respect to a consumer credit sale or consumer lease, other than a sale or lease primarily for an agricultural purpose, an assignee of the rights of the seller or lessor is subject to all claims and defenses of the buyer or lessee against the seller or lessor arising out of the sale or lease notwithstanding an agreement to the contrary, but the assignee's liability under this section may not exceed the amount owing to the assignee at the time the claim or defense is asserted against the assignee. Rights of the buyer or lessee under this section can only be asserted as a matter of defense to or set-off against a claim by the assignee.

§ 2.405. Balloon payments

With respect to a consumer credit sale, other than one primarily for an agricultural purpose or one pursuant to a revolving charge account, 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. 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.

§ 2.406. Restriction on liability in consumer lease

The obligation of a lessee upon expiration of a consumer lease, other than one primarily for an agricultural purpose, may not exceed twice the average payment allocable to a monthly period under the lease. This limitation does not apply to charges for damages to the leased property or for other default.

§ 2.407. Security in sales or leases

1. With respect to a consumer credit sale, a seller may take a security interest in the property sold. In addition, a seller may take a security interest in goods upon which services are performed or in which goods sold are installed or to which they are annexed, or in land to which the goods are affixed or which is maintained, repaired or improved as a result of the sale of the goods or services, if in the case of a security interest in land the debt secured is \$1,000 or more, or, in the case of a security interest in goods the debt secured is \$300 or more. The seller may also take a security interest in any property of the buyer to secure the debt arising from a consumer credit sale primarily for an agricultural purpose. Except as provided with respect to cross-collateral (section 2.408), a seller may not otherwise take a security interest in property of the buyer to secure the debt arising from a consumer credit sale.

2. With respect to a consumer lease other than a lease primarily for an agricultural purpose, a lessor may not take a security interest in property of the lessee to secure the debt arising from the lease.

3. A security interest taken in violation of this section is void.

4. The amounts of \$1,000 and \$300 in subsection 1 are subject to change pursuant to the provisions on adjustment of dollar amounts (section 1.106).

§ 2.408. Cross-collateral

1. In addition to contracting for a security interest pursuant to the provisions on security in sales or leases (section 2.407), a seller in a consumer credit sale may secure the debt arising from the sale by contracting for a security interest in other property if as a result of a prior sale the seller has an existing security interest in the other property. The seller may also contract for a security interest in the property sold in the subsequent sale as security for the previous debt.

2. If the seller contracts for a security interest in other property pursuant to this section, the rate of credit service charge thereafter on the aggregate unpaid balances so secured may not exceed that permitted if the balances so secured were consolidated pursuant to the provisions on consolidation involving a refinancing (subsection 1 of section 2.206). The seller has a reasonable time after so contracting to make any adjustments required by this section. "Seller" in this section does not include an assignee not related to the original seller.

§ 2.409. Debt secured by cross-collateral

1. If debts arising from two or more consumer credit sales, other than sales primarily for an agricultural purpose or pursuant to a revolving charge account, are secured by cross-collateral (section 2.408) or consolidated into one debt payable on a single schedule of payments, and the debt is secured by security interests taken with respect to one or more of the sales, payments received by the seller after the taking of the cross-collateral or the consolidation are deemed, for the purpose of determining the amount of the debt secured by the various security interests, to have been first applied to the payment of the debts arising from the sales first made. To the extent debts are paid according to this section, security interests in items of property terminate as the debts originally incurred with respect to each item is paid.

2. Payments received by the seller upon a revolving charge account are deemed, for the purpose of determining the amount of the debt secured by the various security interests, to have been applied first to the payment of credit service charges in the order of their entry to the account and then to the payment of debts in the order in which the entries to the account showing the debts were made.

3. If the debts consolidated arose from two or more sales made on the same day, payments received by the seller are deemed, for the purpose of determining the amount of the debt secured by the various security interests, to have been applied first to the payment of the smallest debt.

§ 2.410. No assignment of earnings

A seller or lessor may not take an assignment of earnings of the buyer or lessee for payment or as security for payment of a debt arising out of a consumer credit sale or a consumer lease. An assignment of earnings in violation of this section is unenforceable by the assignee of the earnings and revocable by the buyer or lessee. This section does not prohibit an employee from authorizing deductions from his earnings if the authorization is revocable.

§ 2.411. Referral sales

With respect to a consumer credit sale or consumer lease the seller or lessor may not give or offer to give a rebate or discount or otherwise pay or offer to pay value to the buyer or lessee as an inducement for a sale or lease in consideration of his giving to the seller or lessor the names of prospective purchasers or lessees, or otherwise aiding the seller or lessor in making a sale or lease to another person, if the earning of the rebate, discount or other value is contingent upon the occurrence of an event subsequent to the time the buyer or lessee agrees to buy or lease. If a buyer or lessee is induced by a violation of this section to enter into a consumer credit sale or consumer lease, the agreement is unenforceable by the seller or lessor and the buyer or lessee, at his option, may rescind the agreement or retain the goods delivered and the benefit of any services performed, without any obligation to pay for them.

§ 2.412. Notice of assignment

The buyer or lessee is authorized to pay the original seller or lessor until the buyer or lessee receives notification of assignment of the rights to payment pursuant to a consumer credit sale or consumer lease and that payment is to be made to the assignee. A notification which does not reasonably identify the rights assigned is ineffective. If requested by the buyer or lessee, the assignee must seasonably furnish reasonable proof that the assignment has been made and unless he does so the buyer or lessee may pay the seller or lessor.

§ 2.413. Attorney's fees

Alternative B: With respect to a consumer credit sale or consumer lease the agreement may provide for the payment by the buyer or lessee of reasonable attorney's fees not in excess of 15% of the unpaid debt after default and referral to an attorney not a salaried employee of the seller, or of the lessor or his assignee. A provision in violation of this section is unenforceable.

§ 2.414. Limitation on default charges

Except for reasonable expenses incurred in realizing on a security interest, the agreement with respect to a consumer credit sale may not provide for any charges as a result of default by the buyer other than those authorized by this Act. A provision in violation of this section is unenforceable.

§ 2.415. Authorization to confess judgment prohibited

A buyer or lessee may not authorize any person to confess judgment on a claim arising out of a consumer credit sale or consumer lease. An authorization in violation of this section is void.

§ 2.416. Change in terms of revolving charge accounts

1. If a seller makes a change in the terms of a revolving charge account without complying with this section any additional cost or charge to the buyer resulting from the change is an excess charge and subject to the remedies available to debtors (section 5.202) and to the administrator (section 6.113).

2. A seller may change the terms of a revolving charge account whether or not the change is authorized by prior agreement. Except as provided in subsection 3, the seller shall give to the buyer written notice of any change at least three times, with the first notice at least six months before the effective date of the change.

3. The notice specified in subsection 2 is not required if

a. the buyer after receiving notice of the change agrees in writing to the change;

b. the buyer elects to pay an amount designated on a billing statement (subsection 2 of section 2.310) as including a new charge for a benefit offered to the buyer when the benefit and charge constitute the change in terms and when the billing statement also states the amount payable if the new charge is excluded;

- c. the change involves no significant cost to the buyer ;
 - d. the buyer has previously consented in writing to the kind of change made and notice of the change is given to the buyer in two billing cycles prior to the effective date of the change ; or
 - e. the change applies only to purchases made or obligations incurred after a date specified in a notice of the change given in two billing cycles prior to the effective date of the change.
4. The notice provided for in this section is given to the buyer when mailed to him at the address used by the seller for sending periodic billing statements.

PART 5—HOME SOLICITATION SALES

§ 2.501. Definition: “home solicitation sale”

“Home solicitation sale” means a consumer credit sale of goods, other than farm equipment, or services in which the seller or a person acting for him engages in a personal solicitation of the sale at a residence of the buyer and the buyer’s agreement or offer to purchase is there given to the seller or a person acting for him. It does not include a sale made pursuant to a pre-existing revolving charge account, or a sale made pursuant to prior negotiations between the parties at a business establishment at a fixed location where goods or services are offered or exhibited for sale.

§ 2.502. Buyer’s right to cancel

1. Except as provided in subsection 5, in addition to any right otherwise to revoke an offer, the buyer has the right to cancel a home solicitation sale until midnight of the third business day after the day on which the buyer signs an agreement or offer to purchase which complies with this Part.
2. Cancellation occurs when the buyer gives written notice of cancellation to the seller at the address stated in the agreement or offer to purchase.
3. Notice of cancellation, if given by mail, is given when it is deposited in a mailbox properly addressed and postage prepaid.
4. Notice of cancellation given by the buyer need not take a particular form and is sufficient if it indicates by any form of written expression the intention of the buyer not to be bound by the home solicitation sale.
5. The buyer may not cancel a home solicitation sale if the buyer requests the seller to provide goods or services without delay because of an emergency, and
 - a. the seller in good faith makes a substantial beginning of performance of the contract before the buyer gives notice of cancellation, and
 - b. in the case of goods, the goods cannot be returned to the seller in substantially as good condition as when received by the buyer.
6. If a home solicitation sale is also subject to the provisions on debtor’s right to rescind certain transactions (section 5.204), the buyer may proceed either under those provisions or under this Part.

§ 2.503. Form of agreement or offer ; statement of buyer's rights

1. In a home solicitation sale, unless the buyer requests the seller to provide goods or services without delay in an emergency, the seller must present to the buyer and obtain his signature to a written agreement or offer to purchase which designates as the date of the transaction the date on which the buyer actually signs and contains a statement of the buyer's rights which complies with subsection 2.

2. The statement must

a. appear under the conspicuous caption: "BUYER'S RIGHT TO CANCEL", and

b. read as follows: "If this agreement was solicited at your residence and you do not want the goods or services, you may cancel this agreement by mailing a notice to the seller. The notice must say that you do not want the goods or services and must be mailed before midnight on the third business day after you sign this agreement. The notice must be mailed to: _____ . If you cancel, the seller may (insert name and mailing address of seller) keep all or part of your cash down payment."

3. Until the seller has complied with this section the buyer may cancel the home solicitation sale by notifying the seller in any manner and by any means of his intention to cancel.

§ 2.504. Restoration of down payment ; retention of cancellation fee

1. Except as provided in this section, within 10 days after a home solicitation sale has been cancelled or an offer to purchase revoked the seller must tender to the buyer any payments made by the buyer and any note or other evidence of indebtedness.

2. If the down payment includes goods traded in, the goods must be tendered in substantially as good condition as when received by the seller. If the seller fails to tender the goods as provided by this section, the buyer may elect to recover an amount equal to the trade-in allowance stated in the agreement.

3. The seller may retain as a cancellation fee 5 per cent of the cash price but not exceeding the amount of the cash down payment. If the seller fails to comply with an obligation imposed by this section, or if the buyer avoids the sale on any ground independent of his right to cancel provided by the provisions on the buyer's right to cancel (subsection 1 of section 2.502) or revokes his offer to purchase, the seller is not entitled to retain a cancellation fee.

4. Until the seller has complied with the obligations imposed by this section the buyer may retain possession of goods delivered to him by the seller and has a lien on the goods in his possession or control for any recovery to which he is entitled.

§ 2.505. Duty of buyer ; no compensation for services prior to cancellation

1. Except as provided by the provisions on retention of goods by the buyer (subsection 4 of section 2.504), within a reasonable time after a home solicitation sale has been cancelled or an offer to purchase revoked, the buyer upon demand must tender to the seller any goods delivered by the seller pursuant to the sale but he is not obligated to tender at any place other than his residence. If the seller fails to demand possession of goods within a reasonable time after cancellation or revocation, the goods become the property of the buyer without obligation to pay for them. For the purpose of this section, 40 days is presumed to be a reasonable time.

2. The buyer has a duty to take reasonable care of the goods in his possession before cancellation or revocation and for a reasonable time thereafter, during which time the goods are otherwise at the seller's risk.

3. If the seller has performed any services pursuant to a home solicitation sale prior to its cancellation, the seller is entitled to no compensation except the cancellation fee provided in this Part.

PART 6—SALES OTHER THAN CONSUMER CREDIT SALES

§ 2.601. Sales subject to Act by agreement of parties

The parties to a sale other than a consumer credit sale may agree in writing signed by the parties that the sale is subject to the provisions of this Act applying to consumer credit sales. If the parties so agree the sale is a consumer credit sale for the purposes of this Act.

§ 2.602. Definition: "Consumer related sale"; rate of credit service charge

1. A "consumer related sale" is a sale of goods, services, or an interest in land which is not subject to the provisions of this Act applying to consumer credit sales and in which the amount financed does not exceed \$25,000 if

- a. the buyer is a person other than an organization, or
- b. the debt is secured primarily by a security interest in a one or two family dwelling occupied by a person related to the debtor.

2. With respect to a consumer related sale not made pursuant to a revolving charge account, the parties may contract for the payment by the buyer of an amount comprising the amount financed and a credit service charge not in excess of 18 per cent per year calculated according to the actuarial method on the unpaid balances of the amount financed.

3. With respect to a consumer related sale made pursuant to a revolving charge account, the parties may contract for the payment of a credit service charge not in excess of that permitted by the provisions on credit service charge for revolving charge accounts (section 2.207).

4. The amount of \$25,000 in subsection 1 is subject to change pursuant to the provisions on adjustment of dollar amounts (section 1.106).

§ 2.603. Applicability of other provisions to consumer related sales

Except for the rate of the credit service charge and the rights to prepay and to rebate upon prepayment, the provisions of Part 2 of this Article apply to a consumer related sale.

§ 2.604. Limitation on default charges in consumer related sales

1. The agreement with respect to a consumer related sale may provide for only the following charges as a result of the buyer's default:

- a. reasonable attorney's fees and reasonable expenses incurred in realizing on a security interest;
- b. deferral charges not in excess of 18% per year of the amount deferred for the period of deferral; and
- c. other charges that could have been made had the sale been a consumer credit sale.

2. A provision in violation of this section is unenforceable.

§ 2.605. Credit service charge for other sales

With respect to a sale other than a consumer credit sale or a consumer related sale, the parties may contract for the payment by the buyer of any credit service charge.

Article 3—Loans

PART 1—GENERAL PROVISIONS

§ 3.101. Short title

This Article shall be known and may be cited as Uniform Consumer Credit Code—Loans.

§ 3.102. Scope

This Article applies to consumer loans, including regulated and supervised loans; in addition Part 6 applies to consumer related loans.

§ 3.103. Definitions in article

The following definitions apply to this Act and appear in this Article as follows:

“Annual percentage rate”	Section 3.304(2)
“Business collateral”	Section 3.105
“Consumer loan”	Section 3.104
“Consumer related loan”	Section 3.602(1)
“Corresponding nominal annual percentage rate”	Section 3.304(3)
“Lender”	Section 3.107(1)
“Loan”	Section 3.106
“Loan finance charge”	Section 3.109
“Precomputed”	Section 3.107(2)
“Principal”	Section 3.107(3)
“Regulated lender”	Section 3.501(2)

“Regulated loan”	Section 3.501(1)
“Revolving loan account”	Section 3.108
“Supervised lender”	Section 3.501(4)
“Supervised loan”	Section 3.501(3)

§ 3.104. Definition: “Consumer loan”

1. Except as provided in subsection 2, “consumer loan” is a loan made by a person regularly engaged in the business of making loans in which

- a. the debtor is a person other than an organization;
- b. the debt is incurred primarily for a personal, family, household, or agricultural purpose;
- c. either the debt is payable in instalments or a loan finance charge is made; and
- d. either the principal does not exceed \$25,000 or the debt is secured by an interest in land.

2. Unless the loan is made subject to this Act by agreement (section 3.601), “consumer loan” does not include a loan which is secured primarily by

- a. business collateral, if at the time the loan is made the value of this collateral is substantial in relation to the amount of the loan, or,
- b. except as provided with respect to disclosure (section 3.301) and debtors’ remedies (section 5.201), an interest in land, if at the time the loan is made the value of this collateral is substantial in relation to the amount of the loan, and the loan finance charge does not exceed 10 per cent per year calculated according to the actuarial method on the unpaid balances of the principal on the assumption that the debt will be paid according to the agreed terms and will not be paid before the end of the agreed term.

3. The amount of \$25,000 in subsection 1 is subject to change pursuant to the provisions on adjustment of dollar amount (section 1.106).

§ 3.105. Definition: “Business collateral”

“Business collateral” means an interest in land used primarily for other than a personal, family, household, or agricultural purpose, or accounts or contract rights other than earnings, business equipment, chattel paper, documents of title, instruments other than investment securities, inventory, or business general intangibles. Business equipment does not include farm equipment.

§ 3.106. Definition: “Loan”

“Loan” includes

1. the creation of debt by the lender’s payment of or agreement to pay money to the debtor or to a third party for the account of the debtor;
2. the creation of debt by a credit to an account with the lender upon which the debtor is entitled to draw immediately;

3. the creation of debt pursuant to a lender credit card or similar arrangement; and
4. the forbearance of debt arising from a loan.

§ 3.107. Definitions: "lender"; "precomputed"; "principal"

1. Except as otherwise provided, "lender" includes an assignee of the lender's right to payment but use of the term does not in itself impose on an assignee any obligation of the lender with respect to events occurring before the assignment.

2. A loan, refinancing, or consolidation is "precomputed" if the debt is expressed as a sum comprising the principal and the amount of the loan finance charge computed in advance.

3. "Principal" of a loan means the total of

- a. the net amount paid to, receivable by, or paid or payable for the account of the debtor,
- b. the amount of any discount excluded from the loan finance charge (subsection 2 of section 3.109), and,
- c. to the extent that payment is deferred,
 - i. amounts actually paid or to be paid by the lender for registration, certificate of title, or license fees if not included in a, and
 - ii. additional charges permitted by this Article (section 3.202).

§ 3.108. Definition: "revolving loan account"

"Revolving loan account" means an arrangement between a lender and a debtor pursuant to which (1) the lender may permit the debtor to obtain loans from time to time, (2) the unpaid balances of principal and the loan finance and other appropriate charges are debited to an account, (3) a loan finance charge if made is not precomputed but is computed on the outstanding unpaid balances of the debtor's account from time to time, and (4) the debtor has the privilege of paying the balances in instalments.

§ 3.109. Definition: "loan finance charge"

1. "Loan finance charge" means the sum of (a) all charges payable directly or indirectly by the debtor and imposed directly or indirectly by the lender as an incident to the extension of credit, including any of the following types of charges which are applicable: interest or any amount payable under a point, discount, or other system of charges, however denominated, premium or other charges for any guarantee or insurance protecting the lender against the debtor's default or other credit loss; and (b) charges incurred for investigating the collateral or credit-worthiness of the debtor or for commissions or brokerage for obtaining the credit, irrespective of the person to whom the charges are paid or payable, unless the lender had no notice of the charges when the loan was made. The term does not include charges as a result of default, additional charges (section 3.202), delinquency charges (section 3.203), or deferral charges (section 3.204).

2. If a lender makes a loan to a debtor by purchasing or satisfying obligations of the debtor pursuant to a lender credit card or similar arrangement, and the purchase or satisfaction is made at less than the face amount of the obligation, the discount is not part of the loan finance charge.

PART 2—MAXIMUM CHARGES

§ 3.201. Loan finance charge for consumer loans other than supervised loans

1. With respect to a consumer loan other than a supervised loan (section 3.501), a lender may contract for and receive a loan finance charge, calculated according to the actuarial method, not exceeding 18 per cent per year on the unpaid balances of the principal.

2. This section does not limit or restrict the manner of contracting for the loan finance charge, whether by way of add-on, discount, or otherwise, so long as the rate of the loan finance charge does not exceed that permitted by this section. If the loan is precomputed,

a. the loan finance charge may be calculated on the assumption that all scheduled payments will be made when due, and

b. the effect of prepayment is governed by the provisions on rebate upon prepayment (section 3.210).

3. For the purposes of this section, the term of a loan commences with the date the loan is made. Differences in the lengths of months are disregarded and a day may be counted as $\frac{1}{30}$ of a month. Subject to classifications and differentiations the lender may reasonably establish, a part of a month in excess of 15 days may be treated as a full month if periods of 15 days or less are disregarded and if that procedure is not consistently used to obtain a greater yield than would otherwise be permitted.

4. With respect to a consumer loan made pursuant to a revolving loan account

a. the loan finance charge shall be deemed not to exceed 18 percent per year if the loan finance charge contracted for and received does not exceed a charge in each monthly billing cycle which is $1\frac{1}{2}$ per cent of an amount no greater than

i. the average daily balance of the debt,

ii. the unpaid balance of the debt on the same day of the billing cycle, or

iii. subject to subsection 5, the median amount within a specified range within which the average daily balance or the unpaid balance of the debt, on the same day of the billing cycle, is included; for the purposes of this subparagraph and subparagraph ii, a variation of not more than 4 days from month to month is "the same day of the billing cycle";

b. if the billing cycle is not monthly, the loan finance charge shall be deemed not to exceed 18 per cent per year if the loan finance charge contracted for and received does not exceed a percentage which bears the same

relation to $1\frac{1}{2}$ per cent as the number of days in the billing cycle bears to 30; and

c. notwithstanding subsection 1, if there is an unpaid balance on the date as of which the loan finance charge is applied, the lender may contract for and receive a charge not exceeding 50¢ if the billing cycle is monthly or longer, or the pro rata part of 50¢ which bears the same relation to 50¢ as the number of days in the billing cycle bears to 30 if the billing cycle is shorter than monthly, but no charge may be made pursuant to this paragraph if the lender has made an annual charge for the same period as permitted by the provisions on additional charges (paragraph c of subsection 1 of section 3.202).

5. Subject to classifications and differentiations the lender may reasonably establish, he may make the same loan finance charge on all amounts financed within a specified range. A loan finance charge so made does not violate subsection 1 if

a. when applied to the median amount within each range, it does not exceed the maximum permitted by subsection 1, and

b. when applied to the lowest amount within each range, it does not produce a rate of loan finance charge exceeding the rate calculated according to paragraph a by more than 8 per cent of the rate calculated according to paragraph a.

§ 3.202. Additional charges

1. In addition to the loan finance charge permitted by this Part, a lender may contract for and receive the following additional charges in connection with a consumer loan:

a. official fees and taxes;

b. charges for insurance as described in subsection 2;

c. annual charges, payable in advance, for the privilege of using a lender credit card or similar arrangement which entitles the user to purchase goods or services from at least 100 persons not related to the issuer of the lender credit card or similar arrangement, under an arrangement pursuant to which the debts resulting from the purchases are payable to the issuer; and

d. charges for other benefits, including insurance, conferred on the debtor, if the benefits are of value to him and if the charges are reasonable in relation to the benefits, are of a type which is not for credit, and are excluded as permissible additional charges from the loan finance charge by rule adopted by the administrator.

2. An additional charge may be made for insurance written in connection with the loan, other than insurance protecting the lender against the debtor's default or other credit loss,

a. with respect to insurance against loss of or damage to property, or against liability, if the lender furnishes a clear and specific statement in writing to the debtor, setting forth the cost of the insurance if obtained

from or through the lender, and stating that the debtor may choose the through whom the insurance is to be obtained; and,

b. with respect to consumer credit insurance providing life, accident, or health coverage, if the insurance coverage is not a factor in the approval by the lender of the extension of credit, and this fact is clearly disclosed in writing to the debtor, and if, in order to obtain the insurance in connection with the extension of credit, the debtor gives specific affirmative written indication of his desire to do so after written disclosure to him of the cost thereof.

3. For the purposes of the Part on Disclosure and Advertising (Part 3), if the loan finance charge with respect to a loan primarily secured by an interest in land does not exceed 10 per cent per year (paragraph b of subsection 2 of section 3.104), reasonable closing costs even though not within subsection 1 may be treated as additional charges.

§ 3.203. Delinquency charges

1. With respect to a precomputed consumer loan, refinancing, or consolidation, the parties may contract for a delinquency charge on any instalment not paid in full within 10 days after its scheduled due date in an amount not exceeding the greater of

a. an amount, not exceeding \$5, which is 5% of the unpaid amount of the instalment, or

b. the deferral charge (subsection 1 of section 3.204) that would be permitted to defer the unpaid amount of the instalment for the period that it is delinquent.

2. A delinquency charge under paragraph a of subsection 1 may be collected only once on an instalment however long it remains in default. No delinquency charge may be collected if the instalment has been deferred and a deferral charge (section 3.204) has been paid or incurred. A delinquency charge may be collected at the time it accrues or at any time thereafter.

3. No delinquency charge may be collected on an instalment which is paid in full within 10 days after its scheduled instalment due date even though an earlier maturing instalment or a delinquency charge on an earlier instalment may not have been paid in full. For purposes of this subsection payments are applied first to current instalments and then to delinquent instalments.

4. If 2 instalments or parts thereof of a precomputed loan are in default for 10 days or more, the lender may elect to convert the loan from a precomputed loan to one in which the loan finance charge is based on unpaid balances. In this event he shall make a rebate pursuant to the provisions on rebate upon prepayment (section 3.210) as of the maturity date of the first delinquent instalment, and thereafter may make a loan finance charge as authorized by the provisions on loan finance charge for consumer loans (section 3.201) or the provisions on loan finance charge for supervised loans (section 3.508), whichever is appropriate. The amount of the rebate shall not be reduced by the amount of any permitted minimum charge (section 3.210). If the lender

proceeds under this subsection, any delinquency or deferral charges made with respect to instalments due at or after the maturity date of the first delinquent instalment shall be rebated, and no further delinquency or deferral charges shall be made.

5. The amount of \$5 in subsection 1 is subject to change pursuant to the provisions on adjustment of dollar amounts (section 1.106)

§ 3.204. Deferral charges

1. With respect to a precomputed consumer loan, refinancing, or consolidation, the parties before or after default may agree in writing to a deferral of all or part of one or more unpaid instalments, and the lender may make and collect a charge not exceeding the rate previously stated to the debtor pursuant to the provisions on disclosure (Part 3) applied to the amount or amounts deferred for the period of deferral calculated without regard to differences in the lengths of months, but proportionally for a part of a month, counting each day as $\frac{1}{30}$ of a month. A deferral charge may be collected at the time it is assessed or at any time thereafter.

2. The lender, in addition to the deferral charge, may make appropriate additional charges (section 3.202), and the amount of these charges which is not paid in cash may be added to the amount deferred for the purpose of calculating the deferral charge.

3. The parties may agree in writing at the time of a precomputed consumer loan, refinancing, or consolidation that if an instalment is not paid within 10 days after its due date, the lender may unilaterally grant a deferral and make charges as provided in this section. No deferral charge may be made for a period after the date that the lender elects to accelerate the maturity of the agreement.

4. A delinquency charge made by the lender on an instalment may not be retained if a deferral charge is made pursuant to this section with respect to the period of delinquency.

§ 3.205. Loan finance charge on refinancing

With respect to a consumer loan, refinancing, or consolidation, the lender may by agreement with the debtor refinance the unpaid balance and may contract for and receive a loan finance charge based on the principal resulting from the refinancing at a rate not exceeding that permitted by the provisions on loan finance charge for consumer loans (section 3.201) or the provisions on loan finance charge for supervised loans (section 3.508), whichever is appropriate. For the purpose of determining the loan finance charge permitted, the principal resulting from the refinancing comprises the following:

1. if the transaction was not precomputed, the total of the unpaid balance and the accrued charges on the date of the refinancing, or, if the transaction was precomputed, the amount which the debtor would have been required to pay upon prepayment pursuant to the provisions on rebate upon prepayment (section 3.210) on the date of refinancing, except that for the purpose of computing this amount no minimum charge (section 3.210) shall be allowed; and

2. appropriate additional charges (section 3.202), payment of which is deferred.

§ 3.206. Loan finance charge on consolidation

1. If a debtor owes an unpaid balance to a lender with respect to a consumer loan, refinancing, or consolidation, and becomes obligated on another consumer loan, refinancing, or consolidation with the same lender, the parties may agree to a consolidation resulting in a single schedule of payments. If the previous consumer loan, refinancing, or consolidation was not precomputed, the parties may agree to add the unpaid amount of principal and accrued charges on the date of consolidation to the principal with respect to the subsequent loan. If the previous consumer loan, refinancing, or consolidation was precomputed, the parties may agree to refinance the unpaid balance pursuant to the provisions on refinancing (section 3.205) and to consolidate the principal resulting from the refinancing by adding it to the principal with respect to the subsequent loan. In either case the lender may contract for and receive a loan finance charge based on the aggregate principal resulting from the consolidation at a rate not in excess of that permitted by the provisions on loan finance charge for consumer loans (section 3.201) or the provisions on loan finance charge for supervised loans (section 3.508), whichever is appropriate.

2. The parties may agree to consolidate the unpaid balance of a consumer loan with the unpaid balance of a consumer credit sale. The parties may agree to refinance the previous unpaid balance pursuant to the provisions on refinancing sales (section 2.205) or the provisions on refinancing loans (section 3.205), whichever is appropriate, and to consolidate the amount financed resulting from the refinancing or the principal resulting from the refinancing by adding it to the amount financed or principal with respect to the subsequent sale or loan. The aggregate amount resulting from the consolidation shall be deemed principal, and the creditor may contract for and receive a loan finance charge based on the principal at a rate not in excess of that permitted by the provisions on loan finance charge for consumer loans (section 3.201) or the provisions on loan finance charge for supervised loans (section 3.508), whichever is appropriate.

§ 3.207. Conversion to revolving loan account

The parties may agree to add to a revolving loan account the unpaid balance of a consumer loan, not made pursuant to a revolving loan account, or a refinancing, or consolidation thereof, or the unpaid balance of a consumer credit sale, refinancing or consolidation. For the purpose of this section

1. the unpaid balance of a consumer loan, refinancing, or consolidation is an amount equal to the principal determined according to the provisions on refinancing (section 3.205); and

2. the unpaid balance of a consumer credit sale, refinancing, or consolidation is an amount equal to the amount financed determined according to the provisions on refinancing (section 2.205).

§ 3.208. Advances to perform covenants of debtor

1. If the agreement with respect to a consumer loan, refinancing, or consolidation contains covenants by the debtor to perform certain duties, pertaining to insuring or preserving collateral and if the lender pursuant to the agreement pays for performance of the duties on behalf of the debtor, the lender may add the amounts paid to the debt. Within a reasonable time after advancing any sums, he shall state to the debtor in writing the amount of the sums advanced, any charges with respect to this amount, and any revised payment schedule and, if the duties of the debtor performed by the lender pertain to insurance, a brief description of the insurance paid for by the lender including the type and amount of coverage. No further information need be given.

2. A loan finance charge may be made for sums advanced pursuant to subsection 1 at a rate not exceeding the rate stated to the debtor pursuant to the provisions on disclosure (Part 3) with respect to the loan, refinancing, or consolidation, except that with respect to a revolving loan account the amount of the advance may be added to the unpaid balance of the debt and the lender may make a loan finance charge not exceeding that permitted by the provisions on loan finance charge for consumer loans (section 3.201) or for supervised loans (section 3.508), whichever is appropriate.

§ 3.209. Right to prepay

Subject to the provisions on rebate upon prepayment (section 3.210), the debtor may prepay in full the unpaid balance of a consumer loan, refinancing, or consolidation at any time without penalty.

§ 3.210. Rebate upon prepayment

1. Except as provided in subsection 2, upon prepayment in full of the unpaid balance of a precomputed consumer loan, refinancing or consolidation, an amount not less than the unearned portion of the loan finance charge calculated according to this section shall be rebated to the debtor. If the rebate otherwise required is less than \$1, no rebate need be made.

2. Upon prepayment in full of a consumer loan, other than one pursuant to a revolving loan account, a refinancing or consolidation, whether or not precomputed, the lender may collect or retain a minimum charge within the limits stated in this subsection if the loan finance charge earned at the time of prepayment is less than any minimum charge contracted for. The minimum charge may not exceed the amount of loan finance charge contracted for, or \$5 in a transaction which had a principal of \$75 or less, or \$7.50 in a transaction which had a principal of more than \$75.

3. Except as otherwise provided in this subsection with respect to a loan primarily secured by an interest in land, the unearned portion of the loan finance charge is a fraction of the loan finance charge of which the numerator is the sum of the periodic balances scheduled to follow the computational period in which the prepayment occurs, and the denominator is the sum of all periodic balances under either the loan agreement or, if the balance owing

resulted from a refinancing (section 3.205) or a consolidation (section 3.206), under the refinancing agreement or consolidation agreement. In the case of a loan primarily secured by an interest in land, reasonable sums actually paid or payable to persons not related to the lender for customary closing costs included in the loan finance charge are deducted from the loan finance charge before the calculation prescribed by this subsection is made.

4. In this section

a. "periodic balance" means the amount scheduled to be outstanding on the last day of a computational period before deducting the payment, if any, scheduled to be made on that day;

b. "computational period" means one month if one-half or more of the intervals between scheduled payments under the agreement is one month or more, and otherwise means one week;

c. the "interval" to the due date of the first scheduled instalment or the final scheduled payment date is measured from the date of a loan, refinancing, or consolidation, and includes either the first or last day of the interval;

d. if the interval to the due date of the first scheduled instalment does not exceed one month by more than 15 days when the computational period is one month, or 11 days when the computational period is one week, the interval shall be considered as one computational period.

5. This subsection applies only if the schedule of payments is not regular.

a. If the computational period is one month and

i. if the number of days in the interval to the due date of the first scheduled instalment is less than one month by more than 5 days, or more than one month by more than 5 but not more than 15 days, the unearned loan finance charge shall be increased by an adjustment for each day by which the interval is less than one month and, at the option of the lender, may be reduced by an adjustment for each day by which the interval is more than one month; the adjustment for each day shall be $\frac{1}{30}$ of that part of the loan finance charge earned in the computational period prior to the due date of the first scheduled instalment assuming that period to be one month; and

ii. if the interval to the final scheduled payment date is a number of computational periods plus an additional number of days less than a full month, the additional number of days shall be considered a computational period only if 16 days or more. This subparagraph applies whether or not subparagraph i applies.

b. Notwithstanding paragraph a, if the computational period is one month, the number of days in the interval to the due date of the first instalment exceeds one month by not more than 15 days, and the schedule of payments is otherwise regular, the lender at his option may exclude the extra days and the charge for the extra days in computing the unearned loan finance charge; but if he does so and a rebate is required before the due date of

the first scheduled instalment, he shall compute the earned charge for each elapsed day as $\frac{1}{30}$ of the amount the earned charge would have been if the first interval had been one month.

c. If the computational period is one week and

i. if the number of days in the interval to the due date of the first scheduled instalment is less than 5 days, or more than 9 days but not more than 11 days, the unearned loan finance charge shall be increased by an adjustment for each day by which the interval is less than 7 days and, at the option of the lender, may be reduced by an adjustment for each day by which the interval is more than 7 days; the adjustment for each day shall be $\frac{1}{7}$ of that part of the loan finance charge earned in the computational period prior to the due date of the first scheduled instalment assuming that period to be one week; and

ii. if the interval to the final scheduled payment date is a number of computational periods plus an additional number of days less than a full week, the additional number of days shall be considered a computational period only if 4 days or more. This subparagraph applies whether or not subparagraph i applies.

6. If a deferral (section 3.204) has been agreed to, the unearned portion of the loan finance charge shall be computed without regard to the deferral. The amount of deferral charge earned at the date of prepayment shall also be calculated. If the deferral charge earned is less than the deferral charge paid, the difference shall be added to the unearned portion of the loan finance charge. If any part of a deferral charge has been earned but has not been paid, that part shall be subtracted from the unearned portion of the loan finance charge or shall be added to the unpaid balance.

7. This section does not preclude the collection or retention by the lender of delinquency charges (section 3.203).

8. If the maturity is accelerated for any reason and judgment is obtained, the debtor is entitled to the same rebate as if the payment had been made on the date judgment is entered.

9. Upon prepayment in full of a consumer loan by the proceeds of consumer credit insurance (section 4.103), the debtor or his estate is entitled to the same rebate as though the debtor had prepaid the agreement on the date the proceeds of the insurance are paid to the lender, but no later than 10 business days after satisfactory proof of loss is furnished to the lender.

PART 3—DISCLOSURE AND ADVERTISING

§ 3.301. Applicability; information required

1. For purposes of this Part, consumer loan includes a loan secured primarily by an interest in land without regard to the rate of the loan finance charge if the loan is otherwise a consumer loan (section 3.104).

2. The lender shall disclose to the debtor to whom credit is extended with respect to a consumer loan the information required by either

a. this Part, or

b. except with respect to a consumer loan secured primarily by an interest in land, the Federal Consumer Credit Protection Act.

3. For the purposes of paragraph b of subsection 2, information which would otherwise be required pursuant to the Federal Consumer Credit Protection Act is sufficient even though the transaction is one of a class of credit transactions exempted from that Act pursuant to regulation of the Board of Governors of the Federal Reserve System.

§ 3.302. General disclosure requirements and provisions

1. The disclosures required by this Part

a. shall be made clearly and conspicuously;

b. shall be in writing, a copy of which shall be delivered to the debtor;

c. may use terminology different from that employed in this Part if it conveys substantially the same meaning;

d. except as the rules adopted by the administrator otherwise prescribe, need not be contained in a single writing or made in the order set forth in this Part;

e. may be supplemented by additional information or explanations supplied by the lender;

f. need be made only to the extent applicable and only as to those items for which the lender makes a separate charge to the debtor;

g. shall be made on the assumption that all scheduled payments will be made when due; and

h. comply with this Part although rendered inaccurate by any act, occurrence, or agreement subsequent to the required disclosure.

2. Except with respect to loans made by telephone or mail (section 3.305), loans made pursuant to a binding commitment (subsection 3 of section 3.306), and loans made pursuant to a lender credit card (section 3.310),

a. the disclosures required by this Part shall be made before credit is extended, but may be made in the loan, refinancing, or consolidation agreement, or other evidence of indebtedness to be signed by the debtor if set forth conspicuously therein, and need be made only to one debtor if there are more than one, and

b. if an evidence of indebtedness is signed by the debtor, the lender shall give him a copy when the writing is signed.

3. Except as provided with respect to rescission by a debtor (section 5.204) and civil liability for violations of disclosure provisions (subsection 4 of section 5.203), written acknowledgment of receipt by a debtor to whom a statement is required to be given pursuant to this Part

- a. in an action or proceeding by or against the original lender, creates a presumption that the statement was given, and
- b. in an action or proceeding by or against an assignee without knowledge to the contrary when he acquires the obligation, is conclusive proof of the delivery of the statement and, unless the violation is apparent on the face of the statement, of compliance with this Part.

§ 3.303. Overstatement

The disclosure of an amount or percentage which is greater than the amount or percentage required to be disclosed under this Part does not in itself constitute a violation of this Part if the overstatement is not materially misleading and is not used to avoid meaningful disclosure.

§ 3.304. Calculation of rate to be disclosed

1. Except as otherwise specifically provided, if a lender is required to give to a debtor a statement of the rate of the loan finance charge he shall state the rate in terms of an annual percentage rate as defined in subsection 2 or in terms of a corresponding nominal annual percentage rate as defined in subsection 3, whichever is appropriate.

2. "Annual percentage rate"

a. with respect to a consumer loan other than one made pursuant to a revolving loan account, is either

i. that nominal annual percentage rate which, when applied to the unpaid balances of the principal calculated according to the actuarial method, will yield a sum equal to the amount of the loan finance charge, or

ii. that rate determined by any method prescribed by rule by the Administrator as a method which materially simplifies computation while retaining reasonable accuracy as compared with the rate determined pursuant to subparagraph i;

b. with respect to a consumer loan made pursuant to a revolving loan account, is the quotient expressed as a percentage of the total loan finance charge for the period to which it relates divided by the amount upon which the loan finance charge for that period is based, multiplied by the number of these periods in a year.

3. "Corresponding nominal annual percentage rate" is the percentage or percentages used to calculate the loan finance charge for one billing cycle or other period pursuant to a revolving loan account multiplied by the number of billing cycles or periods in a year.

4. If a lender is permitted to make the same loan finance charge for all principal amounts within a specified range (subsection 5 of section 3.201) or for all balances within a specified range (subsection 4 of section 3.201 and subsection 5 of section 3.508), he shall state the annual percentage rate or corresponding nominal annual percentage rate, whichever is appropriate, as

applied to the median amount of the range within which the actual principal amount or balance is included.

5. A statement of rate complies with this Part if it does not vary from the accurately computed rate by more than the following tolerances:

a. the annual percentage rate may be rounded to the nearest quarter of 1 per cent for consumer loans payable in substantially equal instalments when a lender determines the total loan finance charge on the basis of a single add-on, discount, periodic, or other rate, and the rate is converted into an annual percentage rate under procedures prescribed by rule by the administrator;

b. the administrator may authorize by rule the use of rate tables or charts which may provide for the disclosure of annual percentage rates which vary from the rate determined in accordance with paragraph a by not more than the tolerances the administrator may allow; the administrator may not allow a tolerance greater than 8 per cent of that rate except to simplify compliance where irregular payments are involved; and

c. in case a lender determines the annual percentage rate in a manner other than as described in paragraph a or b, the administrator may authorize by rule other reasonable tolerances.

§ 3.305. Loans made by telephone or mail

With respect to a consumer loan, other than a loan made pursuant to a revolving loan account, if the lender receives a request for an extension of credit by mail or telephone without personal solicitation, the lender complies with this Part if the lender's printed material distributed to the public or the loan agreement or other printed material delivered to the debtor sets forth the terms of financing, including the annual percentage rate for representative amounts of credit, and if he gives the information required by this Part on or before the date the first payment is due on the loan.

§ 3.306. Consumer loans not pursuant to revolving loan account

1. This section applies to a consumer loan not made pursuant to a revolving loan account (section 3.309).

2. The lender shall give to the debtor the following information:

a. net amount paid to, receivable by, or paid or payable for the account of the debtor or in the case of a loan resulting from a refinancing, the amount prescribed by the provisions on loan finance charge on refinancing (subsection 1 of section 3.205); if any amount is paid or payable to a third person, a brief itemization, which may be contained in a separate writing or writings, shall also be given;

b. amount paid or payable for registration, certificate of title or license fees, if not included in a, and a description or identification of the fees;

c. amount of official fees and taxes and a description or identification of them;

- d. brief description of insurance to be provided or paid for by the lender including the type and the amount of the coverages, and if a separate charge is made, the amount of the charge;
- e. amount of other additional charges (section 3.202), and a brief description or identification of them;
- f. amount of principal (sum of amounts stated in paragraphs a, b, c, d, and e);
- g. except in the case of a loan secured by a first lien on a dwelling, made to finance the purchase of that dwelling, and in which the loan finance charge does not exceed 10 per cent per year (section 3.104), the amount of the loan finance charge and the amount of the unpaid balance (principal plus loan finance charge);
- h. rate of the loan finance charge as applied to the principal in accordance with the provisions on calculation of rate (section 3.304), except in the case of a loan finance charge which does not exceed \$5 when the principal does not exceed \$75 or \$7.50 when the principal exceeds \$75;
- i. number of payments, amount of each payment, due date of first payment, and the due date of subsequent payments or interval between payments;
- j. default, delinquency, or similar charges payable in the event of late payments; and
- k. description of any security interest held or to be retained or acquired by the lender in connection with the extension of credit, and a clear identification of the property to which the security interest relates.

3. If a lender makes a binding commitment to make a consumer loan by allowing the debtor to draw on the lender and at the time the commitment is made the amount of the loan has not been determined, the lender shall then give to the debtor a statement of the terms under which the loan will be made, including the rate of the loan finance charge calculated in accordance with the provisions on calculation of rate (section 3.304). If the rate of the loan finance charge varies according to the amount of the loan, the lender shall state the minimum and maximum annual percentage rates which would be applicable to the amounts which could be drawn pursuant to the commitment. If additional charges (section 3.202) may be made, the lender shall also state the conditions under which the charges may be made, the amount or method of computing the charges, and a brief description or identification of the charges. Within a reasonable time after the loan is made, and in any event on or before the due date of the first instalment, the lender shall give the information required by this section.

§ 3.307. Consolidation

If the parties to a consumer loan or consumer credit sale agree to a consolidation (section 3.206), the creditor shall give to the debtor the information required with respect to consumer loans not pursuant to a revolving loan

account (section 3.306). To comply with those provisions (paragraph a of subsection 2 of section 3.306), the amount with respect to the previous loan or sale to be consolidated shall be separately stated and shall be added to the net amount paid to, receivable by, or paid or payable for the account of the debtor in connection with the subsequent loan or sale.

§ 3.308. Deferral

If the lender makes a deferral pursuant to the provisions on deferral charges (section 3.204), he shall state to the debtor, at the time of or promptly after the deferral:

1. amount deferred;
2. any appropriate additional charges (section 3.202);
3. aggregate amount deferred, which is the sum of the amount in 1 and any unpaid amount included in 2;
4. time to which payment is deferred; and
5. amount and annual percentage rate of the deferral charge and when it is payable.

§ 3.309. Revolving loan accounts

1. Before making a consumer loan pursuant to a revolving loan account, the lender shall give to the debtor the following information:

- a. conditions under which a loan finance charge may be made, including the time period, if any, within which any credit extended may be repaid without incurring a loan finance charge;
- b. method of determining the balance upon which a loan finance charge will be computed;
- c. method of determining the amount of the loan finance charge, including the periodic percentage or percentages used to calculate the loan finance charge and the amount of any minimum loan finance charge;
- d. corresponding nominal annual percentage rate (subsection 3 of section 3.304); if more than one corresponding nominal annual percentage rate may be used, the amount of a balance to which each corresponding nominal annual percentage rate applies shall also be stated;
- e. if the lender elects he may also state either
 - i. the average effective annual percentage rate of return received from revolving loan accounts for a representative period of time; or
 - ii. if circumstances are such that the computation of a rate under subparagraph i would not be feasible or practical, or would be misleading or meaningless, a projected rate of return to be received from revolving loan accounts; the administrator shall prescribe rules, consistent with commonly accepted standards for accounting or statistical procedures, to carry out the purpose of this paragraph e;

f. conditions under which additional charges may be made and the method by which they will be determined; and

g. conditions under which the lender may retain or acquire a security interest in property to secure the balances resulting from loans made pursuant to the revolving loan account, and a description of the interest or interests which may be retained or acquired.

2. If there is an outstanding balance owing at the end of the billing cycle or if a loan finance charge is made with respect to the billing cycle, the lender shall give to the debtor the following information within a reasonable time after the end of the billing cycle:

a. outstanding balance at the beginning of the billing cycle;

b. brief description or identification of loans made during the billing cycle in a statement or in accompanying cancelled checks, memoranda or the like;

c. amount credited to the account during the billing cycle;

d. amount of loan finance charge and additional charges debited during the billing cycle, with an itemization or explanation to show the total amount of loan finance charge, if any, due to the application of one or more periodic percentages and the amount, if any, imposed as a minimum charge;

e. the periodic percentage used to calculate the loan finance charge; if more than one periodic percentage is used, each percentage and the amount of the balance to which each applies;

f. the balance on which the loan finance charge is computed and a statement of how the balance is determined; if the balance is determined without first deducting all amounts credited during the period, that fact and the amounts credited shall also be stated;

g. if the loan finance charge for the billing cycle exceeds 50¢ for a monthly or longer billing cycle, or the pro rata part of 50¢ for a billing cycle shorter than monthly, the loan finance charge expressed as an annual percentage rate (paragraph b of subsection 2 of section 3.304); if more than one periodic percentage is used to calculate the loan finance charge, the lender, in lieu of stating a single annual percentage rate, may state more than one annual percentage rate and the amount of the balance to which each annual percentage rate applies;

h. if the loan finance charge for the billing cycle does not exceed 50¢ for a monthly or longer billing cycle, or the pro rata part of 50¢ for a billing cycle shorter than monthly, the corresponding nominal annual percentage rate (subsection 3 of section 3.304);

i. if the lender elects, the average effective annual percentage rate of return or the projected rate as prescribed in paragraph e of subsection 1;

j. outstanding balance at the end of the billing cycle; and

k. date by which or period within which payment must be made to avoid additional loan finance charges.

§ 3.310. Loans pursuant to lender credit card or similar arrangement

Before a consumer loan, other than one made pursuant to a revolving loan account, is first made pursuant to a lender credit card or similar arrangement, the lender shall give to the debtor a statement of the annual percentage rate or rates at which loans will be made to the debtor and a brief description or identification of the additional charges that may be made. The lender shall give to the debtor the information required by this Part with respect to consumer loans other than revolving loan accounts (section 3.306) within a reasonable time after a loan is made and in any event before the due date of the first instalment.

§ 3.311. Content of periodic statements

A creditor who transmits periodic statements in connection with any consumer loan not made pursuant to a revolving loan account shall set forth in each statement each of the following items:

1. the annual percentage rate of the loan finance charge with respect to each consumer loan to which the statement relates;
2. the date by which or the period, if any, within which payment must be made in order to avoid further loan finance charges or other charges; and
3. to the extent the administrator may require by rule as appropriate to the terms and conditions under which the consumer loan is made, the other items set forth in the provisions on disclosure with respect to revolving loan accounts (subsection 2 of section 3.309).

§ 3.312. Advertising

1. No lender shall engage in this State in false or misleading advertising concerning the terms or conditions of credit with respect to a consumer loan.
2. Without limiting the generality of subsection 1, and without requiring a statement of rate of loan finance charge if the loan finance charge is not more than \$5 when the principal does not exceed \$75, or \$7.50 when the principal exceeds \$75, an advertisement with respect to a consumer credit loan made by the posting of a public sign, or by catalog, magazine, newspaper, radio, television, or similar mass media, is misleading if
 - a. it states the rate of the loan finance charge and the rate is not stated in the form required by the provisions on calculation of rate to be disclosed (section 3.304), or
 - b. it states the dollar amounts of the loan finance charge or instalment payments, and does not also state the rate of any loan finance charge and the number and amount of the instalment payments.
3. In this section a catalog or other multiple-page advertisement is considered a single advertisement if it clearly and conspicuously displays a credit terms table setting forth the information required by this section.
4. This section imposes no liability on the owner or personnel, as such, of any medium in which an advertisement appears or through which it is disseminated.

5. Advertising which complies with the Federal Consumer Credit Protection Act does not violate subsection 2.

PART 4—LIMITATIONS ON AGREEMENTS AND PRACTICES

§ 3.401. Scope

This Part applies to consumer loans.

§ 3.402. Balloon payments

With respect to a consumer loan, other than one primarily for an agricultural purpose or one pursuant to a revolving loan account, if any scheduled payment is more than twice as large as the average of earlier scheduled payments, the debtor has the right to refinance the amount of that payment at the time it is due without penalty. The terms of the refinancing shall be no less favorable to the debtor than the terms of the original loan. These provisions do not apply to the extent that the payment schedule is adjusted to the seasonal or irregular income of the debtor.

§ 3.403. No assignment of earnings

1. A lender may not take an assignment of earnings of the debtor for payment or as security for payment of a debt arising out of a consumer loan. An assignment of earnings in violation of this section is unenforceable by the assignee of the earnings and revocable by the debtor. This section does not prohibit an employee from authorizing deductions from his earnings if the authorization is revocable.

2. A sale of unpaid earnings made in consideration of the payment of money to or for the account of the seller of the earnings is deemed to be a loan to him secured by an assignment of earnings.

§ 3.404. Attorney's fees

Except as provided by the provisions on limitations on attorney's fees as to certain supervised loans (section 3.514), with respect to a consumer loan the agreement may provide for the payment by the debtor of reasonable attorney's fees not in excess of 15% of the unpaid debt after default and referral to an attorney not a salaried employee of the lender. A provision in violation of this section is unenforceable.

§ 3.405. Limitation on default charges

Except for reasonable expenses incurred in realizing on a security interest, the agreement with respect to a consumer loan may not provide for charges as a result of default by the debtor other than those authorized by this Act. A provision in violation of this section is unenforceable.

§ 3.406. Notice of assignment

The debtor is authorized to pay the original lender until he receives notification of assignment of rights to payment pursuant to a consumer loan and that payment is to be made to the assignee. A notification which does not

reasonably identify the rights assigned is ineffective. If requested by the debtor, the assignee must seasonably furnish reasonable proof that the assignment has been made and unless he does so the debtor may pay the original lender.

§ 3.407. Authorization to confess judgment prohibited

A debtor may not authorize any person to confess judgment on a claim arising out of a consumer loan. An authorization in violation of this section is void.

§ 3.408. Change in terms of revolving loan accounts

1. If a lender makes a change in the terms of a revolving loan account without complying with this section any additional cost or charge to the debtor resulting from the change is an excess charge and subject to the remedies available to debtors (section 5.2c2) and to the administrator (section 6.113).

2. A lender may change the terms of a revolving loan account whether or not the change is authorized by prior agreement. Except as provided in subsection 3, the lender shall give to the debtor written notice of any change at least three times, with the first notice at least six months before the effective date of the change.

3. The notice specified in subsection 2 is not required if

a. the debtor after receiving notice of the change agrees in writing to the change;

b. the debtor elects to pay an amount designated on a billing statement (subsection 2 of section 3.309) as including a new charge for a benefit offered to the debtor when the benefit and charge constitute the change in terms and when the billing statement also states the amount payable if the new charge is excluded;

c. the change involves no significant cost to the debtor;

d. the debtor has previously consented in writing to the kind of change made and notice of the change is given to the debtor in two billing cycles prior to the effective date of the change; or

e. the change applies only to debts incurred after a date specified in a notice of the change given in two billing cycles prior to the effective date of the change.

4. The notice provided for in this section is given to the debtor when mailed to him at the address used by the lender for sending periodic billing statements.

§ 3.409. Use of multiple agreements

A lender may not use multiple agreements with intent to avoid disclosure of an annual percentage rate pursuant to the provisions on disclosure and advertising (Part 3). The excess amount of loan finance charge provided for

in agreements in violation of this section is an excess charge for the purposes of the provisions on the effect of violations on rights of parties (section 5.202) and the provisions on civil action by administrator (section 6.113).

PART 5—REGULATED AND SUPERVISED LOANS

§ 3.501. Definitions: “regulated loan”; “regulated lender”; “supervised loan”; “supervised lender”

1. “Regulated loan” means a consumer loan, including a loan made pursuant to a revolving loan account, in which the rate of the loan finance charge is in excess of 10 per cent per year calculated on the unpaid balances of the principal according to the actuarial method.

2. “Regulated lender” means a person engaged in the business of making regulated loans.

3. “Supervised loan” means a regulated loan in which the rate of the loan finance charge exceeds 18 per cent per year as determined according to the provisions on loan finance charge for consumer loans (section 3.201).

4. “Supervised lender” means a person authorized to make or take assignments of supervised loans.

§ 3.502. Authority to make supervised loans

Unless a person is a supervised financial organization or has first obtained a license from the administrator authorizing him to make supervised loans, he shall not engage in the business of

1. making supervised loans, or
2. taking assignments of and undertaking direct collection of payments from or enforcement of rights against debtors arising from supervised loans, but he may collect and enforce for three months without a license if he promptly applies for a license and his application has not been denied.

§ 3.503. License to make supervised loans

1. The administrator shall receive and act on all applications for licenses to make supervised loans under this Act. Applications shall be filed in the manner prescribed by the administrator and shall contain the information the administrator requires by rule to make an evaluation of the financial responsibility, character and fitness of the applicant.

2. No license shall be issued unless the administrator, upon investigation, finds that the financial responsibility, character and fitness of the applicant, and of the members thereof (if the applicant is a co-partnership or association) and of the officers and directors thereof (if the applicant is a corporation), are such as to warrant belief that the business will be operated honestly and fairly within the purposes of this Act.

3. Upon written request, the applicant is entitled to a hearing on the question of his qualifications for a license if (a) the administrator has notified the applicant in writing that his application has been denied, or (b) the

administrator has not issued a license within 60 days after the application for the license was filed. A request for a hearing may not be made more than 15 days after the administrator has mailed a writing to the applicant notifying him that the application has been denied and stating in substance the administrator's findings supporting denial of the application.

§ 3.504. Revocation or suspension of license

1. The administrator may issue to a person licensed to make supervised loans an order to show cause why his license should not be revoked or suspended for a period not in excess of 6 months. The order shall state the place for a hearing and set a time for the hearing that is no less than 10 days from the date of the order. After the hearing the administrator shall revoke or suspend the license if he finds that:

- a. the licensee has repeatedly and willfully violated this Act or any rule or order lawfully made pursuant to this Act; or
- b. facts or conditions exist which would clearly have justified the administrator in refusing to grant a license had these facts or conditions been known to exist at the time the application for the license was made.

2. No revocation or suspension of a license is lawful unless prior to institution of proceedings by the administrator notice is given to the licensee of the facts or conduct which warrant the intended action, and the licensee is given an opportunity to show compliance with all lawful requirements for retention of the license.

3. If the administrator finds that probable cause for revocation of a license exists and that enforcement of this Act requires immediate suspension of the license pending investigation, he may, after a hearing upon 5 days' written notice, enter an order suspending the license for not more than 30 days.

4. Whenever the administrator revokes or suspends a license, he shall enter an order to that effect and forthwith notify the licensee of the revocation or suspension. Within five days after the entry of the order he shall deliver to the licensee a copy of the order and the findings supporting the order.

5. Any person holding a license to make supervised loans may relinquish the license by notifying the administrator in writing of its relinquishment, but this relinquishment shall not affect his liability for acts previously committed.

6. No revocation, suspension, or relinquishment of a license shall impair or affect the obligation of any preexisting lawful contract between the licensee and any debtor.

7. The administrator may reinstate a license, terminate a suspension, or grant a new license to a person whose license has been revoked or suspended if no fact or condition then exists which clearly would have justified the administrator in refusing to grant a license.

§ 3.505. Records; annual reports

1. Every licensee shall maintain records in conformity with generally accepted accounting principles and practices in a manner that will enable

the administrator to determine whether the licensee is complying with the provisions of this Act. The record keeping system of a licensee shall be sufficient if he makes the required information reasonably available. The records need not be kept in the place of business where supervised loans are made, if the administrator is given free access to the records wherever located. The records pertaining to any loan need not be preserved for more than two years after making the final entry relating to the loan, but in the case of a revolving loan account the two years is measured from the date of each entry.

2. On or before April 15 each year every licensee shall file with the administrator a composite annual report in the form prescribed by the administrator relating to all supervised loans made by him. The administrator shall consult with comparable officials in other states for the purpose of making the kinds of information required in annual reports uniform among the states. Information contained in annual reports shall be confidential and may be published only in composite form.

§ 3.506. Examinations and investigations

1. The administrator shall examine periodically at intervals he deems appropriate the loans, business, and records of every licensee. In addition, for the purpose of discovering violations of this Act or securing information lawfully required, the administrator or the official or agency to whose supervision the organization is subject (section 6.105) may at any time investigate the loans, business, and records of any regulated lender. For these purposes he shall have free and reasonable access to the offices, places of business, and records of the lender.

2. If the lender's records are located outside this State, the lender at his option shall make them available to the administrator at a convenient location within this State, or pay the reasonable and necessary expenses for the administrator or his representative to examine them at the place where they are maintained. The administrator may designate representatives, including comparable officials of the state in which the records are located, to inspect on his behalf.

3. For the purposes of this section, the administrator may administer oaths or affirmations, and upon his own motion or upon request of any party may subpoena witnesses, compel their attendance, adduce evidence, and require the production of any matter which is relevant to the investigation, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of relevant facts, or any other matter reasonably calculated to lead to the discovery of admissible evidence.

4. Upon failure without lawful excuse to obey a subpoena or to give testimony and upon reasonable notice to all persons affected thereby, the administrator may apply to the Superior Court for an order compelling compliance.

§ 3.507. Application of Administrative Code to Part

Except as otherwise provided, the State Administrative Code applies to and governs all administrative action taken by the administrator pursuant to this Part.

§ 3.508. Loan finance charge for supervised loans

1. With respect to a supervised loan, including a loan pursuant to a revolving loan account, a supervised lender may contract for and receive a loan finance charge not exceeding that permitted by this section.

2. The loan finance charge, calculated according to the actuarial method, may not exceed the equivalent of the greater of either of the following:

a. the total of

i. 36 per cent per year on that part of the unpaid balance of the principal which is \$300 or less;

ii. 21 per cent per year on that part of the unpaid balances of the principal which is more than \$300 but does not exceed \$1,000; and

iii. 15 per cent per year on that part of the unpaid balances of the principal which is more than \$1,000; or

b. 18 per cent per year on the unpaid balances of the principal.

3. This section does not limit or restrict the manner of contracting for the loan finance charge, whether by way of add-on, discount, or otherwise, so long as the rate of the loan finance charge does not exceed that permitted by this section. If the loan is precomputed,

a. the loan finance charge may be calculated on the assumption that all scheduled payments will be made when due, and

b. the effect of prepayment is governed by the provisions on rebate upon prepayment (section 3.210).

4. The term of a loan for the purposes of this section commences on the date the loan is made. Differences in the lengths of months are disregarded and a day may be counted as $\frac{1}{30}$ of a month. Subject to classifications and differentiations the lender may reasonably establish, a part of a month in excess of 15 days may be treated as a full month if periods of 15 days or less are disregarded and that procedure is not consistently used to obtain a greater yield than would otherwise be permitted.

5. Subject to classifications and differentiations the lender may reasonably establish, he may make the same loan finance charge on all principal amounts within a specified range. A loan finance charge so made does not violate subsection 2 if

a. when applied to the median amount within each range, it does not exceed the maximum permitted in subsection 2, and

b. when applied to the lowest amount within each range, it does not produce a rate of loan finance charge exceeding the rate calculated according

to paragraph a by more than 8 per cent of the rate calculated according to paragraph a.

6. The amounts of \$300 and \$1,000 in subsection 2 are subject to change pursuant to the provisions on adjustment of dollar amounts (section 1.106).

§ 3.509. Use of multiple agreements

With respect to a supervised loan, no lender may permit any person, or husband and wife, to become obligated in any way under more than one loan agreement with the lender or with a person related to the lender, with intent to obtain a higher rate of loan finance charge than would otherwise be permitted by the provisions on loan finance charge for supervised loans (section 3.508) or to avoid disclosure of an annual percentage rate pursuant to the provisions on disclosure and advertising (Part 3). The excess amount of loan finance charge provided for in agreements in violation of this section is an excess charge for the purposes of the provisions on effect of violations on rights of parties (section 5.202) and the provisions on civil actions by administrator (section 6.113).

§ 3.510. Restrictions on interest in land as security

1. With respect to a supervised loan in which the principal is \$1,000 or less, a lender may not contract for an interest in land as security. A security interest taken in violation of this section is void.

2. The amount of \$1,000 in subsection 1 is subject to change pursuant to the provisions on adjustment of dollar amounts (section 1.106).

§ 3.511. Regular schedule of payments; maximum loan term

1. Regulated loans, not made pursuant to a revolving loan account and in which the principal is \$1,000 or less, shall be scheduled to be payable in substantially equal instalments at equal periodic intervals except to the extent that the schedule of payments is adjusted to the seasonal or irregular income of the debtor, and

a. over a period of not more than 37 months if the principal is more than \$300, or

b. over a period of not more than 25 months if the principal is \$300 or less.

2. The amounts of \$300 and \$1,000 in subsection 1 are subject to change pursuant to the provisions on adjustment of dollar amounts (section 1.106).

§ 3.512. Conduct of business other than making loans

A licensee may carry on other business at a location where he makes supervised loans unless he carries on other business for the purpose of evasion or violation of this Act.

§ 3.513. Application of other provisions

Except as otherwise provided, all provisions of this Act applying to consumer loans apply to regulated loans.

§ 3.514. Limitation on attorney's fees

1. With respect to a supervised loan in which the principal is \$1,000 or less, the agreement may not provide for the payment by the debtor of attorney's fees. A provision in violation of this section is unenforceable.

2. The amount of \$1,000 in subsection 1 is subject to change pursuant to the provisions on adjustment of dollar amounts (section 1.106).

PART 6—LOANS OTHER THAN CONSUMER LOANS

§ 3.601. Loans subject to Act by agreement of parties

The parties to a loan other than a consumer loan may agree in a writing signed by the parties that the loan is subject to the provisions of this Act applying to consumer loans. If the parties so agree, the loan is a consumer loan for the purposes of this Act.

§ 3.602. Definition: "Consumer related loan"; rate of loan finance charge

1. A "consumer related loan" is a loan which is not subject to the provisions of this Act applying to consumer loans and in which the principal does not exceed \$25,000 if

- a. the debtor is a person other than an organization, or
- b. the debt is secured primarily by a security interest in a one or two family dwelling occupied by a person related to the debtor.

2. With respect to a consumer related loan, including one made pursuant to a revolving loan account, the parties may contract for the payment by the debtor of a loan finance charge not in excess of that permitted by the provisions on loan finance charge for consumer loans other than supervised loans (section 3.201).

3. The amount of \$25,000 in subsection 1 is subject to change pursuant to the provisions on adjustment of dollar amounts (section 1.106).

§ 3.603. Applicability of other provisions to consumer related loans

Except for the rate of the loan finance charge and the rights to prepay and to rebate upon prepayment, the provisions of Part 2 of this Article apply to a consumer related loan.

§ 3.604. Limitation on default charges in consumer related loans

1. The agreement with respect to a consumer related loan may provide for only the following charges as a result of the debtor's default:

- a. reasonable attorney's fees and reasonable expenses incurred in realizing on a security interest;
- b. deferral charges not in excess of 18 per cent per year of the amount deferred for the period of deferral; and
- c. other charges that could have been made had the loan been a consumer loan.

2. A provision in violation of this section is unenforceable.

§ 3.605. Loan finance charge for other loans

With respect to a loan other than a consumer loan or a consumer related loan, the parties may contract for the payment by the debtor of any loan finance charge.

Article 4—Insurance

PART 1—INSURANCE IN GENERAL

§ 4.101. Short title

This Article shall be known and may be cited as Uniform Consumer Credit Code—Insurance.

§ 4.102. Scope; relation to credit insurance Act; applicability to parties

1. Except as provided in subsection 2, this Article applies to insurance provided or to be provided in relation to a consumer credit sale (section 2.104), a consumer lease (section 2.106), or a consumer loan (section 3.104).

2. The provision on cancellation by a creditor (section 4.304) applies to loans the primary purpose of which is the financing of insurance. No other provision of this Article applies to insurance so financed.

3. This Article supplements and does not repeal the Credit Insurance Act. The provisions of this Act concerning administrative controls, liabilities, and penalties do not apply to persons acting as insurers, and the similar provisions of the Credit Insurance Act do not apply to creditors and debtors.

§ 4.103. Definition: “consumer credit insurance”; “Credit Insurance Act”

In this Act

1. “consumer credit insurance” means insurance, other than insurance on property, by which the satisfaction of debt in whole or in part is a benefit provided, but does not include

- a. insurance provided in relation to a credit transaction in which a payment is scheduled more than 10 years after the extension of credit;
- b. insurance issued as an isolated transaction on the part of the insurer not related to an agreement or plan for insuring debtors of the creditor; or
- c. insurance indemnifying the creditor against loss due to the debtor’s default.

2. “Credit Insurance Act” means NAIC Model Act, or any similar statute.

§ 4.104. Creditor’s provision of and charge for insurance;
excess amount of charge

1. Except as otherwise provided in this Article and subject to the provisions on additional charges (section 2.202 and section 3.202) and maximum charges (Part 2 of Article 2 and Article 3), a creditor may agree to provide

insurance, and may contract for and receive a charge for insurance separate from and in addition to other charges. A creditor need not make a separate charge for insurance provided or required by him. This Act does not authorize the issuance of any insurance prohibited under any statute, or rule thereunder, governing the business of insurance.

2. The excess amount of a charge for insurance provided for in agreements in violation of this Article is an excess charge for the purposes of the provisions of the Article on Remedies and Penalties (Article 5) as to effect of violations on rights of parties (section 5.202) and of the provisions of the Article on Administration (Article 6) as to civil actions by the administrator (section 6.113).

§ 4.105. Conditions applying to insurance to be provided by creditor

If a creditor agrees with a debtor to provide insurance

1. the insurance shall be evidenced by an individual policy or certificate of insurance delivered to the debtor, or sent to him at his address as stated by him, within 30 days after the term of the insurance commences under the agreement between the creditor and debtor; or

2. the creditor shall promptly notify the debtor of any failure or delay in providing the insurance.

§ 4.106. Unconscionability

1. In applying the provisions of this Act on unconscionability (sections 5.108 and 6.111) to a separate charge for insurance, consideration shall be given, among other factors, to

a. potential benefits to the debtor including the satisfaction of his obligations;

b. the creditor's need for the protection provided by the insurance; and

c. the relation between the amount and terms of credit granted and the insurance benefits provided.

2. If consumer credit insurance otherwise complies with this Article and other applicable law, neither the amount nor the term of the insurance nor the amount of a charge therefor is in itself unconscionable.

§ 4.107. Maximum charge by creditor for insurance

1. Except as provided in subsection 2, if a creditor contracts for or receives a separate charge for insurance, the amount charged to the debtor for the insurance may not exceed the premium to be charged by the insurer, as computed at the time the charge to the debtor is determined, conforming to any rate filings required by law and made by the insurer with the Insurance Commissioner.

2. A creditor who provides consumer credit insurance in relation to a revolving charge account (section 2.108) or revolving loan account (section

3.108) may calculate the charge to the debtor in each billing cycle by applying the current premium rate to

- a. the average daily unpaid balance of the debt in the cycle;
- b. the unpaid balance of the debt or a median amount within a specified range of unpaid balances of debt on approximately the same day of the cycle. The day of the cycle need not be the day used in calculating the credit service charge (section 2.207) or loan finance charge (section 3.201 and section 3.508), but the specified range shall be the range used for that purpose; or
- c. the unpaid balances of principal calculated according to the actuarial method.

§ 4.108. Refund or credit required; amount

1. Upon prepayment in full of a consumer credit sale or consumer loan by the proceeds of consumer credit insurance, the debtor or his estate is entitled to a refund of any portion of a separate charge for insurance which by reason of prepayment is retained by the creditor or returned to him by the insurer unless the charge was computed from time to time on the basis of the balances of the debtor's account.

2. This Article does not require a creditor to grant a refund or credit to the debtor if all refunds and credits due to the debtor under this Article amount to less than \$1, and except as provided in subsection 1 does not require the creditor to account to the debtor for any portion of a separate charge for insurance because

- a. the insurance is terminated by performance of the insurer's obligation;
- b. the creditor pays or accounts for premiums to the insurer in amounts and at times determined by the agreement between them; or
- c. the creditor receives directly or indirectly under any policy of insurance a gain or advantage not prohibited by law.

3. Except as provided in subsection 2, the creditor shall promptly make or cause to be made an appropriate refund or credit to the debtor with respect to any separate charge made to him for insurance if

- a. the insurance is not provided or is provided for a shorter term than that for which the charge to the debtor for insurance was computed; or
- b. the insurance terminates prior to the end of the term for which it was written because of prepayment in full or otherwise.

4. A refund or credit required by subsection 3 is appropriate as to amount if it is computed according to a method prescribed or approved by the Insurance Commissioner or a formula filed by the insurer with the Insurance Commissioner at least 30 days before the debtor's right to a refund or credit becomes determinable, unless the method or formula is employed after the Insurance Commissioner notifies the insurer that he disapproves it.

§ 4.109. Existing insurance; choice of insurer

If a creditor requires insurance, upon notice to the creditor the debtor shall have the option of providing the required insurance through an existing policy of insurance owned or controlled by the debtor, or through a policy to be obtained and paid for by the debtor, but the creditor may for reasonable cause decline the insurance provided by the debtor.

§ 4.110 Charge for insurance in connection with a deferral, refinancing, or consolidation; duplicate charges

1. A creditor may not contract for or receive a separate charge for insurance in connection with a deferral (section 2.204 or section 3.204), a refinancing (section 2.205 or section 3.205) or a consolidation (section 2.206 or section 3.206), unless

- a. the debtor agrees at or before the time of the deferral, refinancing, or consolidation that the charge may be made;
- b. the debtor is or is to be provided with insurance for an amount or a term, or insurance of a kind, in addition to that to which he would have been entitled had there been no deferral, refinancing, or consolidation;
- c. the debtor receives a refund or credit on account of any unexpired term of existing insurance in the amount that would be required if the insurance were terminated (section 4.108); and
- d. the charge does not exceed the amount permitted by this Article (section 4.107).

2. A creditor may not contract for or receive a separate charge for insurance which duplicates insurance with respect to which the creditor has previously contracted for or received a separate charge.

§ 4.111. Cooperation between administrator and Insurance Commissioner

The administrator and the Insurance Commissioner are authorized and directed to consult and assist one another in maintaining compliance with this Article. They may jointly pursue investigations, prosecute suits, and take other official action, as may seem to them appropriate, if either of them is otherwise empowered to take the action. If the administrator is informed of a violation or suspected violation by an insurer of this Article, or of the insurance laws, rules, and regulations of this State, he shall advise the Insurance Commissioner of the circumstances.

§ 4.112. Administrative action of Insurance Commissioner

1. To the extent that his responsibility under this Article requires, the Insurance Commissioner shall issue rules with respect to insurers, and with respect to refunds (section 4.108), forms, schedules of premium rates and charges (section 4.203), and his approval or disapproval thereof and, in case of violation, may make an order for compliance.

2. The State Administrative Procedure Act. Each provision of the Part on Administrative Procedure and Judicial Review (Part 4) of the Article on

Administration (Article 6) which applies to and governs administrative action taken by the administrator also applies to and governs all administrative action taken by the Insurance Commissioner pursuant to this section.

PART 2—CONSUMER CREDIT INSURANCE

§ 4.201. Term of insurance

1. Consumer credit insurance provided by a creditor may be subject to the furnishing of evidence of insurability satisfactory to the insurer. Whether or not such evidence is required, the term of the insurance shall commence no later than when the debtor becomes obligated to the creditor or when the debtor applies for the insurance, whichever is later, except as follows:

- a. if any required evidence of insurability is not furnished until more than 30 days after the term would otherwise commence, the term may commence on the date when the insurer determines the evidence to be satisfactory; or
- b. if the creditor provides insurance not previously provided covering debts previously created, the term may commence on the effective date of the policy.

2. The originally scheduled term of the insurance shall extend at least until the due date of the last scheduled payment of the debt except as follows:

- a. if the insurance relates to a revolving charge account or revolving loan account, the term need extend only until the payment of the debt under the account and may be sooner terminated after at least 30 days' notice to the debtor; or
- b. if the debtor is advised in writing that the insurance will be written for a specified shorter time, the term need extend only until the end of the specified time.

3. The term of the insurance shall not extend more than 15 days after the originally scheduled due date of the last scheduled payment of the debt unless it is extended without additional cost to the debtor or as an incident to a deferral, refinancing, or consolidation.

§ 4.202. Amount of insurance

1. Except as provided in subsection 2,

- a. in the case of consumer credit insurance providing life coverage, the amount of insurance may not initially exceed the debt and, if the debt is payable in instalments, may not at any time exceed the greater of the scheduled or actual amount of the debt; or
- b. in the case of any other consumer credit insurance, the total amount of periodic benefits payable may not exceed the total of scheduled unpaid instalments of the debt, and the amount of any periodic benefit may not exceed the original amount of debt divided by the number of periodic instalments in which it is payable.

2. If consumer credit insurance is provided in connection with a revolving charge account or revolving loan account, the amounts payable as insurance

benefits may be reasonably commensurate with the amount of debt as it exists from time to time. If consumer credit insurance is provided in connection with a commitment to grant credit in the future, the amounts payable as insurance benefits may be reasonably commensurate with the total from time to time of the amount of debt and the amount of the commitment. If the debt or the commitment is primarily for an agricultural purpose, and there is no regular schedule of payments, the amounts payable as insurance benefits may equal the total of the initial amount of debt and the amount of the commitment.

§ 4.203. Filing and approval of rates and forms

1. A creditor may not use a form or a schedule of premium rates or charges, the filing of which is required by this section, if the Insurance Commissioner has disapproved the form or schedule and has notified the insurer of his disapproval. A creditor may not use a form or schedule unless

- a. the form or schedule has been on file with the Insurance Commissioner for 30 days, or has earlier been approved by him; and
- b. the insurer has complied with this section with respect to the insurance.

2. Except as provided in subsection 3, all policies, certificates of insurance, notices of proposed insurance, applications for insurance, endorsements and riders relating to consumer credit insurance delivered or issued for delivery in this State, and the schedules of premium rates or charges pertaining thereto, shall be filed by the insurer with the Insurance Commissioner. Within 30 days after the filing of any form or schedule, he shall disapprove it if the premium rates or charges are unreasonable in relation to the benefits provided under the form, or if the form contains provisions which are unjust, unfair, inequitable, or deceptive, or encourage misrepresentation of the coverage, or are contrary to any provision of the Insurance Code or of any rule or regulation promulgated thereunder.

3. If a group policy has been delivered in another state, the forms to be filed by the insurer with the Insurance Commissioner are the group certificates and notices of proposed insurance. He shall approve them if

- a. they provide the information that would be required if the group policy were delivered in this State; and
- b. the applicable premium rates or charges do not exceed those established by his rules or regulations.

PART 3—PROPERTY AND LIABILITY INSURANCE

§ 4.301. Property insurance

1. A creditor may not contract for or receive a separate charge for insurance against loss of or damage to property unless

- a. the insurance covers a substantial risk of loss of or damage to property related to the credit transaction;

- b. the amount, terms, and conditions of the insurance are reasonable in relation to the character and value of the property insured or to be insured; and
- c. the term of the insurance is reasonable in relation to the terms of credit.
2. The term of the insurance is reasonable if it is customary and does not extend substantially beyond a scheduled maturity.
3. A creditor may not contract for or receive a separate charge for insurance against loss of or damage to property unless the amount financed or principal exclusive of charges for the insurance is \$300 or more, and the value of the property is \$300 or more.
4. The amounts of \$300 in subsection 3 are subject to change pursuant to the provisions on adjustment of dollar amounts (section 1.106).

§ 4.302. Insurance on creditor's interest only

If a creditor contracts for or receives a separate charge for insurance against loss of or damage to property, the risk of loss or damage not willfully caused by the debtor is on the debtor only to the extent of any deficiency in the effective coverage of the insurance, even though the insurance covers only the interest of the creditor.

§ 4.303. Liability insurance

A creditor may not contract for or receive a separate charge for insurance against liability unless the insurance covers a substantial risk of liability arising out of the ownership or use of property related to the credit transaction.

§ 4.304. Cancellation by creditor

A creditor shall not request cancellation of a policy of property or liability insurance except after the debtor's default or in accordance with a written authorization by the debtor, and in either case the cancellation does not take effect until written notice is delivered to the debtor or mailed to him at his address as stated by him. The notice shall state that the policy may be cancelled on a date not less than 10 days after the notice is delivered, or, if the notice is mailed, not less than 13 days after it is mailed.

Article 5—Remedies and Penalties

PART 1—LIMITATIONS ON CREDITORS' REMEDIES

§ 5.101. Short title

This Article shall be known and may be cited as Uniform Consumer Credit Code—Remedies and Penalties

§ 5.102. Scope

This Part applies to actions or other proceedings to enforce rights arising from consumer credit sales, consumer leases, and consumer loans; and, in addition, to extortionate extensions of credit (section 5.107).

§ 5.103. Restrictions on deficiency judgments in consumer credit sales

1. This section applies to a consumer credit sale of goods or services.
2. If the seller repossesses or voluntarily accepts surrender of goods which were the subject of the sale and in which he has a security interest and the cash price of the goods repossessed or surrendered was \$1,000 or less, the buyer is not personally liable to the seller for the unpaid balance of the debt arising from the sale of the goods, and the seller is not obligated to resell the collateral.
3. If the seller repossesses or voluntarily accepts surrender of goods which were not the subject of the sale but in which he has a security interest to secure a debt arising from a sale of goods or services or a combined sale of goods and services and the cash price of the sale was \$1,000 or less, the buyer is not personally liable to the seller for the unpaid balance of the debt arising from the sale.
4. For the purpose of determining the unpaid balance of consolidated debts or debts pursuant to revolving charge accounts, the allocation of payments to a debt shall be determined in the same manner as provided for determining the amount of debt secured by various security interests (section 2.409).
5. The buyer may be liable in damages to the seller if the buyer has wrongfully damaged the collateral or if, after default and demand, the buyer has wrongfully failed to make the collateral available to the seller.
6. If the seller elects to bring an action against the buyer for a debt arising from a consumer credit sale of goods or services, when under this section he would not be entitled to a deficiency judgment if he repossessed the collateral, and obtains judgment
 - a. he may not repossess the collateral, and
 - b. the collateral is not subject to levy or sale on execution or similar proceedings pursuant to the judgment.
7. The amounts of \$1,000 in subsection 2 and 3 are subject to change pursuant to the provisions on adjustment of dollar amounts (section 1.106)

§ 5.104. No garnishment before judgment

Prior to entry of judgment in an action against the debtor for debt arising from a consumer credit sale, a consumer lease, or a consumer loan, the creditor may not attach unpaid earnings of the debtor by garnishment or like proceedings.

§ 5.105. Limitation on garnishment

1. For the purposes of this Part
 - a. "disposable earnings" means that part of the earnings of an individual remaining after the deduction from those earnings of amounts required by law to be withheld; and

b. "garnishment" means any legal or equitable procedure through which the earnings of an individual are required to be withheld for payment of a debt.

2. The maximum part of the aggregate disposable earnings of an individual for any workweek which is subjected to garnishment to enforce payment of a judgment arising from a consumer credit sale, consumer lease, or consumer loan may not exceed the lesser of

a. 25 per cent of his disposable earnings for that week, or

b. the amount by which his disposable earnings for that week exceed forty times the Federal minimum hourly wage prescribed by Section 6 (a)(1) of the Fair Labor Standards Act of 1938, U. S. C. tit. 29, § 206(a)(1), in effect at the time the earnings are payable.

c. In the case of earnings for a pay period other than a week, the administrator shall prescribe by rule a multiple of the Federal minimum hourly wage equivalent in effect to that set forth in paragraph b.

3. No court may make, execute, or enforce an order or process in violation of this section.

§ 5.106. No discharge from employment for garnishment

No employer shall discharge an employee for the reason that a creditor of the employee has subjected or attempted to subject unpaid earnings of the employee to garnishment or like proceedings directed to the employer for the purpose of paying a judgment arising from a consumer credit sale, consumer lease, or consumer loan.

§ 5.107. Extortionate extensions of credit

1. If it is the understanding of the creditor and the debtor at the time an extension of credit is made that delay in making repayment or failure to make repayment could result in the use of violence or other criminal means to cause harm to the person, reputation, or property of any person, the repayment of the extension of credit is unenforceable through civil judicial processes against the debtor.

2. If it is shown that an extension of credit was made at an annual rate exceeding 45% calculated according to the actuarial method and that the creditor then had a reputation for the use or threat of use of violence or other criminal means to cause harm to the person, reputation, or property of any person to collect extensions of credit or to punish the nonrepayment thereof, there is prima facie evidence that the extension of credit was unenforceable under subsection (1).

§ 5.108. Unconscionability

1. With respect to a consumer credit sale, consumer lease, or consumer loan, if the court as a matter of law finds the agreement or any clause of the agreement to have been unconscionable at the time it was made the court may refuse to enforce the agreement, or it may enforce the remainder of the

agreement without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result.

2. If it is claimed or appears to the court that the agreement or any clause thereof may be unconscionable the parties shall be afforded a reasonable opportunity to present evidence as to its setting, purpose, and effect to aid the court in making the determination.

3. For the purpose of this section, a charge or practice expressly permitted by this Act is not in itself unconscionable.

PART 2—DEBTOR'S REMEDIES

§ 5.201. Interest in land

For purposes of the provisions of this Part on civil liability for violation of disclosure provisions (section 5.203) and on debtor's right to rescind certain transactions (section 5.204)

1. consumer credit sale includes a sale of an interest in land without regard to the rate of the credit service charge if the sale is otherwise a consumer credit sale (section 2.104); and

2. consumer loan includes a loan primarily secured by an interest in land without regard to the rate of the loan finance charge if the loan is otherwise a consumer loan (section 3.104).

§ 5.202. Effect of violations on rights of parties

1. If a creditor has violated the provisions of this Act applying to certain negotiable instruments (section 2.403), or limitations on the schedule of payments or loan term for regulated loans (section 3.512), the debtor is not obligated to pay the credit service charge or loan finance charge, and has a right to recover from the person violating this Act or from an assignee of that person's rights who undertakes direct collection of payments or enforcement of rights arising from the debt a penalty in an amount determined by the court not in excess of three times the amount of the credit service charge or loan finance charge. No action pursuant to this subsection may be brought more than one year after the due date of the last scheduled payment of the agreement with respect to which the violation occurred.

2. If a creditor has violated the provisions of this Act applying to authority to make supervised loans (section 3.502), the loan is void and the debtor is not obligated to pay either the principal or loan finance charge. If he has paid any part of the principal or of the loan finance charge, he has a right to recover the payment from the person violating this Act or from an assignee of that person's rights who undertakes direct collection of payments or enforcement of rights arising from the debt. With respect to violations arising from loans made pursuant to revolving loan accounts, no action pursuant to this subsection may be brought more than two years after the violation occurred. With respect to violations arising from other loans, no action pursuant to this subsection may be brought more than one year after the due date of the last scheduled payment of the agreement pursuant to which the charge was paid.

3. A debtor is not obligated to pay a charge in excess of that allowed by this Act, and if he has paid an excess charge he has a right to a refund. A refund may be made by reducing the debtor's obligation by the amount of the excess charge. If the debtor has paid an amount in excess of the lawful obligation under the agreement, the debtor may recover the excess amount from the person who made the excess charge or from an assignee of that person's rights who undertakes direct collection of payments from or enforcement of rights against debtors arising from the debt.

4. If a debtor is entitled to a refund and a person liable to the debtor refuses to make a refund within a reasonable time after demand, the debtor may recover from that person a penalty in an amount determined by a court not exceeding the greater of either the amount of the credit service or loan finance charge or ten times the amount of the excess charge. If the creditor has made an excess charge in deliberate violation of or in reckless disregard for this Act, the penalty may be recovered even though the creditor has refunded the excess charge. No penalty pursuant to this subsection may be recovered if a court has ordered a similar penalty assessed against the same person in a civil action by the administrator (section 6.113). With respect to excess charges arising from sales made pursuant to revolving charge accounts or from loans made pursuant to revolving loan accounts, no action pursuant to this subsection may be brought more than two years after the time the excess charge was made. With respect to excess charges arising from other consumer credit sales or consumer loans, no action pursuant to this subsection may be brought more than one year after the due date of the last scheduled payment of the agreement pursuant to which the charge was made.

5. Except as otherwise provided, no violation of this Act impairs rights on a debt.

6. If an employer discharges an employee in violation of the provisions prohibiting discharge (section 5.106), the employee may within 30 days bring a civil action for recovery of wages lost as a result of the violation and for an order requiring the reinstatement of the employee. Damages recoverable shall not exceed lost wages for six weeks.

7. If the creditor establishes by a preponderance of evidence that a violation is unintentional or the result of a bona fide error, no liability is imposed under subsections 1, 2, and 4 and the validity of the transaction is not affected.

8. In any case in which it is found that a creditor has violated this Act, the court may award reasonable attorney's fees incurred by the debtor.

§ 5.203. Civil liability for violation of disclosure provisions

1. Except as otherwise provided in this section, a creditor who, in violation of the provisions on disclosure (Part 3), other than the provisions on advertising (sections 2.313 and 3.312), of the Article on Credit Sales (Article 2) and the Article on Loans (Article 3), fails to disclose information to a person entitled to the information under this Act is liable to that person in an amount equal to the sum of

a. twice the amount of the credit service or loan finance charge in connection with the transaction, but the liability pursuant to this paragraph shall be not less than \$100 or more than \$1,000; and

b. in the case of a successful action to enforce the liability under paragraph a, the cost of the action together with reasonable attorney's fees as determined by the court.

2. A creditor has no liability under this section if within 15 days after discovering an error, and prior to the institution of an action under this section or the receipt of written notice of the error, the creditor notifies the person concerned of the error and makes whatever adjustments in the appropriate account are necessary to assure that the person will not be required to pay a credit service charge or loan finance charge in excess of the amount or percentage rate actually disclosed.

3. A creditor may not be held liable in any action brought under this section for a violation of this Act if the creditor shows by a preponderance of evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid the error.

4. Any action which may be brought under this section against the original creditor in any credit transaction involving a security interest in land may be maintained against any subsequent assignee of the original creditor where the assignee, its subsidiaries, or affiliates were in a continuing business relationship with the original creditor either at the time the credit was extended or at the time of the assignment, unless the assignment was involuntary, or the assignee shows by a preponderance of evidence that it did not have reasonable grounds to believe that the original creditor was engaged in violations of this Act and that it maintains procedures reasonably adapted to apprise it of the existence of the violations.

5. No action pursuant to this section may be brought more than one year after the date of the occurrence of the violation.

§ 5.204. Debtor's right to rescind certain transactions

1. Except as otherwise provided in this section, in the case of a consumer credit sale or consumer loan with respect to which a security interest is retained or acquired in an interest in land which is used or expected to be used as the residence of the person to whom credit is extended, the debtor shall have the right to rescind the transaction until midnight of the third business day following the consummation of the transaction or the delivery of the disclosures required under this section and all other material disclosures required by this Act, whichever is later, by notifying the creditor, in accordance with rules of the administrator, of his intention to do so. The creditor shall clearly and conspicuously disclose, in accordance with rules of the administrator, to the debtor in a transaction subject to this section the rights of the debtor under this section. The creditor shall also provide, in accordance with rules of the administrator, an adequate opportunity to the obligor to exercise his right to rescind any transaction subject to this section.

2. When a debtor exercises his right to rescind under subsection 1, he is not liable for any credit service charge, loan finance charge, or other charge, and any security interest given by the debtor becomes void upon the rescission. Within 10 days after receipt of a notice of rescission, the creditor shall return to the debtor the money or property given as earnest money, down payment, or otherwise, and shall take any action necessary or appropriate to reflect the termination of any security interest created under the transaction. If the creditor has delivered property to the debtor, the debtor may retain possession of it. Upon the performance of the creditor's obligations under this section, the debtor shall tender the property to the creditor, except that if return of the property in kind would be impractical or inequitable, the debtor shall tender its reasonable value. Tender shall be made at the location of the property or at the residence of the debtor, at the option of the debtor. If the creditor does not take possession of the property within 10 days after tender by the debtor, ownership of the property vests in the debtor without obligation on his part to pay for it.

3. Notwithstanding any rule of evidence, written acknowledgment of receipt of any disclosure required under this Act by a person to whom a statement is required to be given pursuant to this section does no more than create a rebuttable presumption of delivery thereof.

4. The administrator, if he finds that the action is necessary in order to permit homeowners to meet bona fide personal financial emergencies, may prescribe rules authorizing the modification or waiver of any rights created under this section to the extent and under the circumstances set forth in those rules.

5. This section does not apply to the creation or retention of a first lien against a dwelling to finance the acquisition of that dwelling.

§ 5.205. Refunds and penalties as set-off to obligation

Refunds or penalties to which the debtor is entitled pursuant to this Part may be set off against the debtor's obligation, and may be raised as a defense to a suit on the obligation without regard to the time limitations prescribed by this Part.

PART 3—CRIMINAL PENALTIES

§ 5.301. Willful violations

1. A supervised lender who willfully makes charges in excess of those permitted by the provisions of the Article on Loans (Article 3) applying to supervised loans (Part 5) is guilty of a misdemeanor and upon conviction may be punished by a fine of not more than \$500, or by imprisonment for not more than one year, or by both.

2. A person, other than a supervised financial organization, who willfully engages in the business of making supervised loans without a license in violation of the provisions of this Act applying to authority to make supervised loans (section 3.502) is guilty of a misdemeanor and upon conviction may be punished by a fine of not more than \$500 or by imprisonment for not more than one year, or by both.

3. A person who willfully engages in the business of making consumer credit sales, consumer leases, or consumer loans, or of taking assignments of rights against debtors arising therefrom and undertakes direct collection of payments or enforcement of these rights, without complying with the provisions of this Act concerning notification (section 6.202) or payment of fees (section 6.203), is guilty of a misdemeanor and upon conviction may be sentenced to pay a fine not exceeding \$100.

§ 5.302. Disclosure violations

A person is guilty of a misdemeanor and upon conviction may be sentenced to pay a fine not exceeding \$5,000, or to imprisonment not exceeding one year, or both, if he willfully and knowingly

1. gives false or inaccurate information or fails to provide information which he is required to disclose under the provisions of this Act on disclosure and advertising (Part 3) of the Article on Credit Sales (Article 2) or of the Article on Loans (Article 3), or of any related rule of the Administrator adopted pursuant to this Act,

2. uses any rate table or chart, the use of which is authorized by rule of the administrator adopted pursuant to the provisions on calculation of rate to be disclosed (section 2.304 and section 3.304), in a manner which consistently understates the annual percentage rate determined according to those provisions; or

3. otherwise fails to comply with any requirement of the provisions of this Act on disclosure and advertising (Part 3) of the Article on Credit Sales (Article 2) or of the Article on Loans (Article 3), or of any related rule of the administrator adopted pursuant to this Act.

Article 6—Administration

PART 1—POWERS AND FUNCTIONS OF ADMINISTRATOR

§ 6.101. Short title

This Article shall be known and may be cited as Uniform Consumer Credit Code—Administration.

§ 6.102. Applicability

This Part applies to persons who in this State

1. make or solicit consumer credit sales, consumer leases, consumer loans, consumer related sales (section 2.602) and consumer related loans (section 3.602); or

2. directly collect payments from or enforce rights against debtors arising from sales, leases, or loans specified in subsection 1, wherever they are made.

§ 6.103. Administrator

“Administrator” means the Attorney General.

§ 6.104. Powers of administrator ; harmony with federal regulations ; reliance on rules ; duty to report

1. In addition to other powers granted by this Act, the administrator within the limitations provided by law may

- a. receive and act on complaints, take action designed to obtain voluntary compliance with this Act, or commence proceedings on his own initiative ;
- b. counsel persons and groups on their rights and duties under this Act ;
- c. establish programs for the education of consumers with respect to credit practices and problems ;
- d. make studies appropriate to effectuate the purposes and policies of this Act and make the results available to the public ;
- e. adopt, amend, and repeal substantive rules when specifically authorized by this Act, and adopt, amend and repeal procedural rules to carry out the provisions of this Act ;
- f. maintain offices within this State ; and
- g. appoint any necessary attorneys, hearing examiners, clerks, and other employees and agents and fix their compensation, and authorize attorneys appointed under this section to appear for and represent the administrator in court.

2. The administrator shall adopt rules not inconsistent with the Federal Consumer Credit Protection Act to assure a meaningful disclosure of credit terms so that a prospective debtor will be able to compare more readily the various credit terms available to him and to avoid the uninformed use of credit. These rules may contain classifications, differentiations, or other provisions, and may provide for adjustments and exceptions for any class of transactions subject to this Act which in the judgment of the administrator are necessary or proper to effectuate the purposes or to prevent circumvention or evasion of, or to facilitate compliance with, the provisions of this Act relating to disclosure of credit terms.

3. To keep the administrator's rules in harmony with the Federal Consumer Credit Protection Act and the regulations prescribed from time to time pursuant to that Act by the Board of Governors of the Federal Reserve System and with the rules of administrators in other jurisdictions which enact the Uniform Consumer Credit Code, the administrator, so far as is consistent with the purposes, policies and provisions of this Act, shall

- a. before adopting, amending, and repealing rules, advise and consult with administrators in other jurisdictions which enact the Uniform Consumer Credit Code ; and
- b. in adopting, amending, and repealing rules, take into consideration :
 - i. the regulations so prescribed by the Board of Governors of the Federal Reserve System ; and

ii. the rules of administrators in other jurisdictions which enact the Uniform Consumer Credit Code.

4. Except for refund of an excess charge, no liability is imposed under this Act for an act done or omitted in conformity with a rule of the administrator notwithstanding that after the act or omission the rule may be amended or repealed or be determined by judicial or other authority to be invalid for any reason.

5. The administrator shall report annually on or before January 1 to the Governor and Legislature on the operation of his office, on the use of consumer credit in the State, and on the problems of persons of small means obtaining credit from persons regularly engaged in extending sales or loan credit. For the purpose of making the report, the administrator is authorized to conduct research and make appropriate studies. The report shall include a description of the examination and investigation procedures and policies of his office, a statement of policies followed in deciding whether to investigate or examine the offices of credit suppliers subject to this Act, a statement of the number and percentages of offices which are periodically investigated or examined, a statement of the types of consumer credit problems of both creditors and debtors which have come to his attention through his examinations and investigations and the disposition of them under existing law, a statement of the extent to which the rules of the administrator pursuant to this Act are not in harmony with the regulations prescribed by the Board of Governors of the Federal Reserve System pursuant to the Federal Consumer Credit Protection Act or the rules of administrators in other jurisdictions which enact the Uniform Consumer Credit Code and the reasons for such variations, and a general statement of the activities of his office and of others to promote the purposes of this Act. The report shall not identify the creditors against whom action is taken by the administrator.

§ 6.105. Administrative powers with respect to supervised financial organizations

1. With respect to supervised financial organizations, the powers of examination and investigation (sections 3.506 and 6.106) and administrative enforcement (section 6.108) shall be exercised by the official or agency to whose supervision the organization is subject. All other powers of the administrator under this Act may be exercised by him with respect to a supervised financial organization.

2. If the administrator receives a complaint or other information concerning non-compliance with this Act by a supervised financial organization, he shall inform the official or agency having supervisory authority over the organization concerned. The administrator may request information about supervised financial organizations from the officials or agencies supervising them.

3. The administrator and any official or agency of this State having supervisory authority over a supervised financial organization are authorized and directed to consult and assist one another in maintaining compliance with this Act. They may jointly pursue investigations, prosecute suits, and take

other official action, as they deem appropriate, if either of them otherwise is empowered to take the action.

§ 6.106. Investigatory powers

1. If the administrator has probable cause to believe that a person has engaged in an act which is subject to action by the administrator, he may make an investigation to determine if the act has been committed, and, to the extent necessary for this purpose, may administer oaths or affirmations, and, upon his own motion or upon request of any party, may subpoena witnesses, compel their attendance, adduce evidence, and require the production of any matter which is relevant to the investigation, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of relevant facts, or any other matter reasonably calculated to lead to the discovery of admissible evidence.

2. If the person's records are located outside this State, the person at his option shall either make them available to the administrator at a convenient location within this State or pay the reasonable and necessary expenses for the administrator or his representative to examine them at the place where they are maintained. The administrator may designate representatives, including comparable officials of the state in which the records are located, to inspect them on his behalf.

3. Upon failure without lawful excuse to obey a subpoena or to give testimony and upon reasonable notice to all persons affected thereby, the administrator may apply to the Superior Court for an order compelling compliance.

4. The administrator shall not make public the name or identity of a person whose acts or conduct he investigates pursuant to this section or the facts disclosed in the investigation, but this subsection does not apply to disclosures in actions or enforcement proceedings pursuant to this Act.

§ 6.107. Application of Administrative Procedure Act

Part on Administrative Procedure and Judicial Review

Except as otherwise provided, the State administrative procedure act [Part on Administrative Procedure and Judicial Review (Part 4) of this Article] applies to and governs all administrative action taken by the administrator pursuant to this Article or the Part on Regulated and Supervised Loans (Part 5) of the Article on Loans (Article 3).

§ 6.108. Administrative enforcement orders

1. After notice and hearing the administrator may order a creditor or a person acting in his behalf to cease and desist from engaging in violations of this Act. A respondent aggrieved by an order of the administrator may obtain judicial review of the order and the administrator may obtain an order of the court for enforcement of its order in the Superior Court. The proceeding for review or enforcement is initiated by filing a petition in the court. Copies of the petition shall be served upon all parties of record.

2. Within 30 days after notice of the petition for review upon the administrator, or within any further time the court may allow, the administrator shall transmit to the court the original or a certified copy of the entire record upon which the order is based, including any transcript of testimony, which need not be printed. By stipulation of all parties to the review proceeding, the record may be shortened. After hearing, the court may (a) reverse or modify the order of the findings of fact of the administrator are clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record, (b) grant any temporary relief or restraining order it deems just, and (c) enter an order enforcing, modifying, and enforcing as modified, or setting aside in whole or in part the order of the administrator, or remanding the case to the administrator for further proceedings.

3. An objection not urged at the hearing shall not be considered by the court unless the failure to urge the objection is excused for good cause shown. A party may move the court to remand the case to the administrator in the interest of justice for the purpose of adducing additional specified material evidence and seeking findings thereon upon good cause shown for the failure to adduce this evidence before the administrator.

4. The jurisdiction of the court shall be exclusive and its final judgment or decree shall be subject to review by the Superior Court in the same manner and form and with the same effect as in appeals from a final judgment or decree in a special proceeding. The administrator's copy of the testimony shall be available at reasonable times to all parties for examination without cost.

5. A proceeding for review under this section must be initiated within 30 days after a copy of the order of the administrator is received. If no proceeding is so initiated, the administrator may obtain a decree of the Superior Court for enforcement of its order upon a showing that the order was issued in compliance with this section, that no proceeding for review was initiated within 30 days after copy of the order was received, and that the respondent is subject to the jurisdiction of the court.

6. With respect to unconscionable agreements or fraudulent or unconscionable conduct by the respondent, the administrator may not issue an order pursuant to this section but may bring a civil action for an injunction (section 6.111).

§ 6.109. Assurance of discontinuance

If it is claimed that a person has engaged in conduct subject to an order by the administrator (section 6.108) or by a court (sections 6.110 through 6.112), the administrator may accept an assurance in writing that the person will not engage in the conduct in the future. If a person giving an assurance of discontinuance fails to comply with its terms, the assurance is evidence that prior to the assurance he engaged in the conduct described in the assurance.

§ 6.110. Injunctions against violations of Act

The administrator may bring a civil action to restrain a person from violating this Act and for other appropriate relief.

§ 6.III. Injunctions against unconscionable agreements and fraudulent or unconscionable conduct

1. The administrator may bring a civil action to restrain a creditor or a person acting in his behalf from engaging in a course of

- a. making or enforcing unconscionable terms or provisions of consumer credit sales, consumer leases, or consumer loans;
- b. fraudulent or unconscionable conduct in inducing debtors to enter into consumer credit sales, consumer leases, or consumer loans; or
- c. fraudulent or unconscionable conduct in the collection of debts arising from consumer credit sales, consumer leases, or consumer loans.

2. In an action brought pursuant to this section the court may grant relief only if it finds

- a. that the respondent has made unconscionable agreements or has engaged or is likely to engage in a course of fraudulent or unconscionable conduct;
- b. that the agreements or conduct of the respondent has caused or is likely to cause injury to consumers; and
- c. that the respondent has been able to cause or will be able to cause the injury primarily because the transactions involved are credit transactions.

3. In applying this section, consideration shall be given to each of the following factors, among others:

- a. belief by the creditor at the time consumer credit sales, consumer leases, or consumer loans are made that there was no reasonable probability of payment in full of the obligation by the debtor;
- b. in the case of consumer credit sales or consumer leases, knowledge by the seller or lessor at the time of the sale or lease of the inability of the buyer or lessee to receive substantial benefits from the property or services sold or leased;
- (c) in the case of consumer credit sales or consumer leases, gross disparity between the price of the property or services sold or leased and the value of the property or services measured by the price at which similar property or services are readily obtainable in credit transactions by like buyers or lessees;
- d. the fact that the creditor contracted for or received separate charges for insurance with respect to consumer credit sales or consumer loans with the effect of making the sales or loans, considered as a whole, unconscionable; and
- e. the fact that the respondent has knowingly taken advantage of the inability of the debtor reasonably to protect his interests by reason of

physical or mental infirmities, ignorance, illiteracy or inability to understand the language of the agreement, or similar factors.

4. In an action brought pursuant to this section, a charge or practice expressly permitted by this Act is not in itself unconscionable.

§ 6.112. Temporary relief

With respect to an action brought to enjoin violations of the Act (section 6.110) or unconscionable agreements or fraudulent or unconscionable conduct (section 6.111), the administrator may apply to the court for appropriate temporary relief against a respondent, pending final determination of proceedings. If the court finds after a hearing held upon notice to the respondent that there is reasonable cause to believe that the respondent is engaging in or is likely to engage in conduct sought to be restrained, it may grant any temporary relief or restraining order it deems appropriate.

§ 6.113. Civil actions by administrator

1. After demand, the administrator may bring a civil action against a creditor for making or collecting charges in excess of those permitted by this Act. An action may relate to transactions with more than one debtor. If it is found that an excess charge has been made, the court shall order the respondent to refund to the debtor or debtors the amount of the excess charge. If a creditor has made an excess charge in deliberate violation of or in reckless disregard for this Act, or if a creditor has refused to refund an excess charge within a reasonable time after demand by the debtor or the administrator, the court may also order the respondent to pay to the debtor or debtors a civil penalty in an amount determined by the court not in excess of the greater of either the amount of the credit service or loan finance charge or ten times the amount of the excess charge. Refunds and penalties to which the debtor is entitled pursuant to this subsection may be set off against the debtor's obligation. If a debtor brings an action against a creditor to recover an excess charge or civil penalty, an action by the administrator to recover for the same excess charge or civil penalty shall be stayed while the debtor's action is pending and shall be dismissed if the debtor's action is dismissed with prejudice or results in a final judgment granting or denying the debtor's claim. With respect to excess charges arising from sales made pursuant to revolving charge accounts or from loans made pursuant to revolving loan accounts, no action pursuant to this subsection may be brought more than two year after the time the excess charge was made. With respect to excess charges arising from other consumer credit sales or consumer loans, no action pursuant to this subsection may be brought more than one year after the due date of the last scheduled payment of the agreement pursuant to which the charge was made. If the creditor establishes by a preponderance of evidence that a violation is unintentional or the result of a bona fide error, no liability to pay a penalty shall be imposed under this subsection.

2. The administrator may bring a civil action against a creditor or a person acting in his behalf to recover a civil penalty for willfully violating this Act, and if the court finds that the defendant has engaged in a course of repeated and willful violations of this Act, it may assess a civil penalty of no more

than \$5,000. No civil penalty pursuant to this subsection may be imposed for violations of this Act occurring more than two years before the action is brought or for making unconscionable agreements or engaging in a course of fraudulent or unconscionable conduct.

§ 6.114. Jury trial

In an action brought by the administrator under this Act, he has no right to trial by jury.

§ 6.115. Debtors' remedies not affected

The grant of powers to the administrator in this Article does not affect remedies available to debtors under this Act or under other principles of law or equity.

§ 6.116. Venue

The administrator may bring actions or proceedings in a court in a county in which an act on which the action or proceeding is based occurred or in a county in which respondent resides or transacts business.

PART 2—NOTIFICATION AND FEES

§ 6.201. Applicability

This Part applies to a person engaged in this State in making consumer credit sales, consumer leases, or consumer loans and to a person having an office or place of business in this State who takes assignments of and undertakes direct collection of payments from or enforcement of rights against debtors arising from these sales, leases, or loans.

§ 6.202. Notification

1. Persons subject to this Part shall file notification with the administrator within 30 days after commencing business in this State, and, thereafter, on or before January 31 of each year. The notification shall state:

- a. name of the person;
- b. name in which business is transacted if different from a;
- c. address of principal office, which may be outside this State;
- d. address of all offices or retail stores, if any, in this State at which consumer credit sales, consumer leases, or consumer loans are made, or in the case of a person taking assignments of obligations, the offices or places of business within this State at which business is transacted;
- e. if consumer credit sales, consumer leases, or consumer loans are made otherwise than at an office or retail store in this State a brief description of the manner in which they are made;
- f. address of designated agent upon whom service of process may be made in this State (section 1.203); and
- g. whether regulated or supervised loans or both are made.

2. If information in a notification becomes inaccurate after filing, no further notification is required until the following January 31.

§ 6.203. Fees

1. A person required to file notification shall on or before January 31 of each year pay to the administrator an annual fee of \$10 for that year.

2. Persons required to file notification who are sellers, lessors, or lenders shall pay an additional fee at the time and in the manner stated in subsection 1 of \$10 for each \$100,000, or part thereof, in excess of \$100,000, of the original unpaid balances arising from consumer credit sales, consumer leases, and consumer loans made in this State within the preceding calendar year and held either by the seller, lessor, or lender for more than 30 days after the inception of the sale, lease, or loan giving rise to the obligations, or by an assignee who has not filed notification. A refinancing of a sale, lease, or loan resulting in an increase in the amount of an obligation is considered a new sale, lease, or loan to the extent of the amount of the increase.

3. Persons required to file notification who are assignees shall pay an additional fee at the time and in the manner stated in subsection 1 of \$10 for each \$100,000, or part thereof, of the unpaid balances at the time of the assignment of obligations arising from consumer credit sales, consumer leases, and consumer loans made in this State taken by assignment during the preceding calendar year, but an assignee need not pay a fee with respect to an obligation on which the assignor or other person has already paid a fee.

PART 3—COUNCIL OF ADVISORS ON CONSUMER CREDIT

§ 6.301. Council of advisors on consumer credit

1. There is hereby created the Council of Advisors on Consumer Credit consisting of 16 members, who shall be appointed by the Governor. One of the advisors shall be designated by the Governor as chairman. In appointing members of the council, the Governor shall seek to achieve a fair representation from the various segments of the consumer credit industry and the public.

2. The term of office of each member of the council is 4 years. Of those members first appointed, 4 shall be appointed for a term of one year, 4 for a term of 2 years, 4 for a term of 3 years, and 4 for a term of 4 years. A member chosen to fill a vacancy arising otherwise than by expiration of term shall be appointed for the unexpired term of the member whom he is to succeed. A member of the council is eligible for reappointment.

3. Members of the council shall serve without compensation but are entitled to reimbursement of expenses incurred in the performance of their duties.

§ 6.302. Function of council; conflict of interest

The council shall advise and consult with the administrator concerning the exercise of his powers under this Act and may make recommendations to him. Members of the council may assist the administrator in obtaining compliance with this Act. Since it is an objective of this Part to obtain competent representatives of creditor and the public to serve on the council and to assist and

cooperate with the administrator in achieving the objectives of this Act, service on the council shall not in itself constitute a conflict of interest regardless of the occupations or associations of the members.

§ 6.303. Meetings

The council and the administrator shall meet together at a time and place designated by the chairman at least twice each year. The council may hold additional meetings when called by the chairman.

PART 4—ADMINISTRATIVE PROCEDURE AND JUDICIAL REVIEW

§ 6.401. Applicability and scope

This Part applies to the administrator, prescribes the procedures to be observed by him in exercising his powers under this Act, and supplements the provisions of the Part on Powers and Functions of Administrator (Part 1) of this Article and of the Part on Regulated and Supervised Loans (Part 5) of the Article on Loans (Article 3).

§ 6.402. Definitions in Part

In this Part

1. "Contested case" means a proceeding, including but not restricted to one pursuant to the provisions on administrative enforcement orders (subsection 1 of section 6.108) and licensing, in which the legal rights, duties, or privileges of a party are required by law to be determined by the administrator after an opportunity for hearing.

2. "License" means a license authorizing a person to make supervised loans pursuant to the provisions on authority to make supervised loans (section 3.502).

3. "Licensing" includes the administrator's process respecting the grant, denial, revocation, suspension, annulment, withdrawal, or annulment of a license.

4. "Party" means the administrator and each person named or admitted as a party, or who is aggrieved by action taken and seeks to be admitted as a party.

(5) "Rule" means each rule specifically authorized by this Act that applies generally and implements, interprets or prescribes law or policy, or each statement by the administrator that applies generally and describes the administrator's procedure or practice requirements or the organization of his office. The term includes the amendment or repeal of a prior rule but does not include

- a. statements concerning only the internal management of the administrator's office and not affecting private rights or procedures available to the public;

- b. declaratory rulings issued pursuant to the provisions on declaratory rulings by administrator (section 6.409); or

c. intra-office memoranda.

§ 6.403. Public information; adoption of rules;
availability of rules and orders

1. In addition to other rule-making requirements imposed by law, the administrator shall:

a. adopt as a rule a description of the organization of his office, stating the general course and method of the operations of his office and the methods whereby the public may obtain information or make submissions or requests;

b. adopt rules of practice setting forth the nature and requirements of all formal and informal procedures available, including a description of all forms and instructions used by the administrator or his office;

c. makes available for public inspection all rules and all other written statements of policy or interpretations formulated, adopted, or used by the administrator in the discharge of his functions;

d. make available for public inspection all final orders, decisions, and opinions.

2. No rule, order, or decision of the administrator is valid or effective against any person or party, nor may it be invoked by the administrator for any purpose, until it has been made available for public inspection as herein required. This provision is not applicable in favor of any person or party who has actual knowledge thereof.

§ 6.404. Procedure for adoption of rules

1. Prior to the adoption, amendment, or repeal of any rule, the administrator shall

a. give at least 20 days' notice of his intended action. The notice shall include a statement of either the terms or substance of the intended action or a description of the subjects and issues involved, and the time when, the place where, and the manner in which interested persons may present their views thereon. The notice shall be mailed to all persons who have made timely request of the administrator for advance notice of his rule-making proceedings and shall be published in the State paper.

b. afford all interested persons reasonable opportunity to submit data, views, or arguments, orally or in writing. In case of substantive rules, opportunity for oral hearing must be granted if requested by 25 persons, by a governmental subdivision or agency, or by an association having not less than 25 members. The administrator shall consider fully all written and oral submissions respecting the proposed rule. Upon adoption of a rule the administrator, if requested to do so by an interested person either prior to adoption or within 30 days thereafter, shall issue a concise statement of the principal reasons for and against its adoption, incorporating therein his reasons for overruling the considerations urged against its adoption.

2. No rule is valid unless adopted in substantial compliance with this section. A proceeding to contest any rule on the ground of non-compliance with the procedural requirements of this section must be commenced within 2 years from the effective date of the rule.

§ 6.405. Filing and taking effect of rules

1. The administrator shall file in the office of the Secretary of State a certified copy of each rule adopted by him. The Secretary of State shall keep a permanent register of the rules open to public inspection.

2. Each rule hereafter adopted is effective 20 days after filing, except that, if a later date is specified in the rule, the later date is the effective date.

§ 6.406. Publication of rules

1. The Secretary of State shall compile, index, and publish all effective rules adopted by the administrator. Compilations shall be supplemented or revised as often as necessary.

2. Compilations shall be made available upon request to agencies and officials of this State free of charge and to other persons at prices fixed by the Secretary of State to cover mailing and publication costs.

§ 6.407. Petition for adoption of rules

An interested person may petition the administrator requesting the promulgation, amendment, or repeal of a rule. The administrator shall prescribe by rule the form for petitions and the procedure for their submission, consideration, and disposition. Within 30 days after submission of a petition, the administrator either shall deny the petition in writing (stating his reasons for the denials) or shall initiate rule-making proceedings in accordance with the provisions on procedure for adoption of rules (section 6.404).

§ 6.408. Declaratory judgment on validity or applicability of rules

The validity or applicability of a rule may be determined in an action for declaratory judgment in the Superior Court, if it is alleged that the rule, or its threatened application, interferes with or impairs, or threatens to interfere with or impair, the legal rights or privileges of the plaintiff. The administrator shall be made a party to the action. A declaratory judgment may be rendered whether or not the plaintiff has requested the administrator to pass upon the validity or applicability of the rule in question.

§ 6.409. Declaratory rulings by administrator

The administrator shall provide by rule for the filing and prompt disposition of petitions or declaratory rulings as to the applicability of any statutory provision or of any rule of the administrator. Rulings disposing of petitions have the same status as decisions or orders in contested cases.

§ 6.410. Contested cases; notice; hearing; records

1. In a contested case, all parties shall be afforded an opportunity for hearing after reasonable notice.

2. The notice shall include :

- a. a statement of the time, place, and nature of the hearing ;
- b. a statement of the legal authority and jurisdiction under which the hearing is to be held ;
- c. a reference to the particular provisions of the statutes and rules involved ;
- d. a short and plain statement of the matters asserted. If the administrator or other party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter upon application a more definite and detailed statement shall be furnished.

3. Opportunity shall be afforded all parties to respond and present evidence and argument on all issues involved.

4. Unless precluded by law, informal disposition may be made of any contested case by stipulation, agreed settlement, consent order, or default.

5. The record in a contested case shall include :

- a. all pleadings, motions, intermediate rulings ;
- b. evidence received or considered ;
- c. a statement of matters officially noticed ;
- d. questions and offers of proof, objections, and rulings thereon ;
- e. proposed findings and exceptions ;
- f. any decision, opinion, or report by the officer presiding at the hearing ;
- g. all staff memoranda or data submitted to the hearing officer or members of the office of the administrator in connection with their consideration of the case.

6. Oral proceedings or any part thereof shall be transcribed on request of any party, but at his expense.

7. Findings of fact shall be based exclusively on the evidence and on matters officially noticed.

§ 6.411. Rules of evidence ; official notice

In contested cases :

1. irrelevant, immaterial, or unduly repetitious evidence shall be excluded. The rules of evidence as applied in nonjury civil cases in the Superior Court of this State shall be followed. When necessary to ascertain facts not reasonably susceptible of proof under those rules, evidence not admissible thereunder may be admitted (except where precluded by statute) if it is of a type commonly relied upon by reasonably prudent men in the conduct of their affairs. The administrator shall give effect to the rules of privilege recognized by law. Objections to evidentiary offers may be made and shall be noted in the record.

Subject to these requirements, when a hearing will be expedited and the interests of the parties will not be prejudiced substantially, any part of the evidence may be received in written form;

2. documentary evidence may be received in the form of copies or excerpts if the original is not readily available. Upon request, parties shall be given an opportunity to compare the copy with the original;

3. a party may conduct cross-examinations required for a full and true disclosure of the facts;

4. notice may be taken of judicially cognizable facts. In addition, notice may be taken of generally recognized technical or scientific facts within the administrator's specialized knowledge. Parties shall be notified either before or during the hearing, or by reference in preliminary reports or otherwise, of the material noticed, including any staff memoranda or data, and they shall be afforded an opportunity to contest the material so noticed. The administrator's experience, technical competence, and specialized knowledge may be utilized in the evaluation of the evidence.

§ 6.412. Decisions and orders

A final decision or order adverse to a party in a contested case shall be in writing or stated in the record. A final decision shall include findings of fact and conclusions of law, separately stated. Findings of fact if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings. If, in accordance with the rules of the administrator, a party submitted proposed findings of fact, the decision shall include a ruling upon each proposed finding. Parties shall be notified either personally or by mail of any decision or order. Upon request a copy of the decision or order shall be delivered or mailed forthwith to each party and to his attorney of record.

§ 6.413. Licenses

1. When the grant or denial of a license is required to be preceded by notice and opportunity for hearing, the provisions of this Part concerning contested cases apply.

2. No revocation, suspension, annulment, or withdrawal of a license is lawful unless, prior to the institution of proceedings by the administrator, he gave notice by mail to the licensee of facts or conduct which warrant the intended action, and the licensee was given an opportunity to show compliance with all lawful requirements for the retention of the license.

§ 6.414 Judicial review of contested cases

1. A person who has exhausted all administrative remedies available before the administrator and who is aggrieved by a final decision in a contested case is entitled to judicial review under this Part. This section does not limit utilization of or the scope of judicial review available under other means of review, redress, relief, or trial de novo provided by law. A preliminary, procedural, or intermediate action or ruling of the administrator is immediately

reviewable if review of the final decision of the administrator would not provide an adequate remedy.

2. Proceedings for review are instituted by filing a petition in the Superior Court within 30 days after mailing notice of the final decision of the administrator or, if a rehearing is requested, within 30 days after the decision thereon. Copies of the petition shall be served upon the administrator and all parties of record.

3. The filing of the petition does not itself stay enforcement of the decision of the administrator. The administrator may grant, or the reviewing court may order, a stay upon appropriate terms.

4. Within 30 days after the service of the petition, or within further time allowed by the court, the administrator shall transmit to the reviewing court the original or a certified copy of the entire record of the proceeding under review. By stipulation of all parties to the review proceedings, the record may be shortened. A party unreasonably refusing to stipulate to limit the record may be taxed by the court for the additional costs. The court may require or permit subsequent corrections or additions to the record.

5. If, before the date set for hearing, application is made to the court for leave to present additional evidence, and it is shown to the satisfaction of the court that the additional evidence is material and that there were good reasons for failure to present it in the proceeding before the administrator, the court may order that the additional evidence be taken before the administrator upon conditions determined by the court. The administrator may modify his findings and decision by reason of the additional evidence and shall file that evidence and any modifications, new findings, or decisions with the reviewing court.

6. The review shall be conducted by the court without a jury and shall be confined to the record. In cases of alleged irregularities in procedure before the administrator, not shown in the record, proof thereon may be taken in the court. The court, upon request, shall hear oral argument and receive written briefs.

7. The court shall not substitute its judgment for that of the administrator as to the weight of the evidence on questions of fact. The court may affirm the decision of the administrator or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

- a. in violation of constitutional or statutory provisions;
- b. in excess of the statutory authority of the administrator;
- c. made upon unlawful procedure;
- d. affected by other error of law;
- e. clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or

f. arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

§ 6.415. Appeals

An aggrieved party may obtain a review of any final judgment of the [...] court] under this Part by appeal to the Superior Court. The appeal shall be taken as in other civil cases.

Article 7—Effective Date and Repealer

§ 7.101. Time of taking effect; provisions for transition

1. Except as otherwise provided in this section, this Act takes effect 90 days after the adjournment of the Legislature.

2. To the extent appropriate to permit the administrator to prepare for operation of this Act when it takes effect and to act on applications for licenses to make supervised loans under this Act (subsection 1 of section 3.503), the Part on Regulated and Supervised Loans (Part 5) of the Article on Loans (Article 3) and the Article on Administration (Article 6) takes effect January 1, 1970.

3. Transactions entered into before this Act takes effect and the rights, duties, and interests flowing from them thereafter may be terminated, completed, consummated, or enforced as required or permitted by any statute, rule of law, or other law amended, repealed, or modified by this Act as though the repeal, amendment, or modification had not occurred, but this Act applies to

- a. refinancings, consolidations, and deferrals, made after this Act takes effect of sales, leases, and loans whenever made;
- b. sales or loans made after this Act takes effect pursuant to revolving charge accounts (section 2.108) and revolving loan accounts (section 3.108) entered into, arranged, or contracted for before this Act takes effect; and
- c. all credit transactions made before this Act takes effect insofar as the article on remedies and penalties (Article 5) limits the remedies of creditors.

4. With respect to revolving charge accounts (section 2.108) and revolving loan accounts (section 3.108) entered into, arranged, or contracted for before this Act takes effect, disclosure pursuant to the provisions on disclosure (section 2.310 and section 3.309), shall be made not later than 30 days after this Act takes effect.

§ 7.102. Continuation of Licensing

All persons licensed or otherwise authorized under the provisions of [list statutes] on the effective date of this Act are licensed to make supervised loans under this Act pursuant to the Part on Regulated and Supervised Loans (Part 5) of the Article on Loans (Article 3), and all provisions of that Part apply to the persons so previously licensed or authorized. The Administrator may, but is not required to, deliver evidence of licensing to the persons so previously licensed or authorized.