

MAINE STATE LEGISLATURE

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ONE HUNDRED AND FIFTH LEGISLATURE

Legislative Document

No. 1676

H. P. 1140

House of Representatives, March 19, 1971

Referred to Committee on Business Legislation. Sent up for concurrence and 2,000 ordered printed.

BERTHA W. JOHNSON, Clerk

Presented by Mr. Smith of Dover-Foxcroft.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-ONE

AN ACT Creating the Maine Consumer Credit Code.

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

Sec. 1. R. S., T. 9-A, additional. The Revised Statutes are amended by adding a new Title 9-A, to read as follows:

TITLE 9-A

MAINE CONSUMER CREDIT CODE

ARTICLE I

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 Maine 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 installment 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; and
 - (f) To conform the regulation of consumer credit transactions to the policies of the Federal Consumer Credit Protection Act.
- (3) A reference to a requirement imposed by this Act includes reference to a related rule of the Administrator adopted pursuant to this Act.
- (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 dollar 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.

§ 1.103. 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 States 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 per cent or more, except that

(a) The portion of the percentage change in the Index in excess of a multiple of 10 per cent shall be disregarded and the dollar amounts shall change only in multiples of 10 per cent of the amounts appearing in this Act on the date of enactment; and

(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.

(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.

§ 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. Any such waiver or agreement is unenforceable; and no seller, lessor or lender may take any agreement containing any such waiver or agreement.

(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, sections 2,602 and 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), 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), this Act does not displace

(a) Limitations on powers of supervised financial organizations section 1.301, subsection (17), 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, or 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;

(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, and

(d) a sale, lease, loan or modification is made in this State if the seller, lessor, or lender induces the buyer, lessee, or debtor who is a resident of this State to enter into the transaction by face-to-face solicitation 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 section 1.301, subsection (9), 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, or by the Article on Insurance, Article 4; 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) Except as otherwise provided in the Article on Insurance (Article 4), the sale of insurance by an insurer if the insured is not obligated to pay instalments of the premium and the insurance may terminate or be cancelled after non-payment of an instalment of the premiums;

(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) Ceilings on rates and charges or limits on loan maturities of a credit union organized under the laws of this State or of the United States if these ceilings or limits are established by these laws; or

(5) Ceilings on rates and charges of a licensed pawnbroker if these ceilings are established by statute or ordinance.

§ 1.203. Jurisdiction and service of process

(1) The Superior and District Courts 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 rule or by statute, personal jurisdiction over a creditor may be acquired in a civil action or proceeding instituted in the Superior and District Courts 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) 2 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
- "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
- “Loan primarily secured by an interest in land”—Section 3.105
- “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 2.105(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

- (a) Credit is granted by a person who regularly engages as a seller in credit transactions of the same kind,
- (b) The buyer is a person other than an organization,
- (c) The goods, services, or interest in land are purchased primarily for a personal, family, household, or agricultural purpose,
- (d) Either the debt is payable in instalments or a credit service charge is made, and
- (e) 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) A sale in which the seller allows the buyer to purchase goods or services pursuant to a lender credit card or similar arrangement, or
- (b) Except as provided with respect to disclosure, section 2.301, and debtors’ 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"; "pre-computed"

(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 accommodations, funerals, cemetery accommodations, and the like, and (c) insurance.

(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 the 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 is 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) 30% per year on that part of the unpaid balances of the amount financed which is \$300 or less;

(ii) 21% 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 year on that part of the unpaid balances of the amount financed which is more than \$1,000; or

(b) 18% per year on the unpaid balances of the amount financed.

(3) This section does not limit or restrict the manner of computing 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 serv-

ices 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 a $\frac{1}{30}$ th 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% 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.

(8) The credit service charge on a transaction subject to Title 9, chapter 360, may not exceed the rate specified in subsection (2) (6).

§ 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; and

(b) charges for insurance as described in subsection (2).

(2) Subject to the limitations in Article 4, 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 Advertising Notice and Receipts, Part 3, Section 2.301 et seq., reasonable closing costs are 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% of the unpaid amount of the instalment, or

(b) The deferral charge, section 2.204, subsection (1), 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 instalments, and the seller may make and collect a charge not exceeding the rate charged in the original agreement and stated to the buyer pursuant to the provisions on disclosure 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 1/30th 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 charges, 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 charged in the original contract. 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 precomputed, 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, section 2.201, subsection (6), shall be allowed; and

(2) Appropriate additional charges, 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 2 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, or

(b) The unpaid balance of the account on the same day of the billing cycle.

(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, section 2.201, subsection (6), 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, and 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, section 2.201, subsection (4), 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 $1/30$ th 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 charge for each elapsed day as $1/30$ th 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 $1/7$ th 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.

§ 2.211. Maximum combination of rate and duration terms

No contract for a credit sale on which the annual percentage rate disclosed is greater than 18% may provide for a greater rate than 8% per year on the unpaid balances of the principal remaining unpaid at the expiration of 37 months on the original credit sale, including any additional credit sales or amounts borrowed, any deferral, renewal, refinancing, consolidation or extension of the contract made within the 37 months; and thereafter the unpaid principal balance shall not be directly or indirectly renewed or refinanced by the creditor who makes the credit sale, nor shall that creditor grant any additional credit to the debtor until the unpaid balance has been paid in full.

PART 3

ADVERTISING, NOTICE AND RECEIPTS

§ 2.301. 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, 15 U.S.C.A. § 1601 et seq., does not violate subsection (2).

§ 2.302. Notice to buyer

A written agreement which requires or provides for the signature of a buyer, and which either evidences a consumer credit sale of goods or services, other than one pursuant to a revolving charge account, or provides the information the seller is required to give to the buyer before making a consumer credit sale pursuant to a revolving charge account, section 2.310, subsection (1), shall contain a clear, conspicuous, and printed notice to the buyer that he should not sign the agreement before reading it and that he is entitled to a copy of the agreement and to prepay the unpaid balance at any time without penalty. The following notice if clearly and conspicuously printed complies with this section.

“NOTICE TO BUYER: 1. Do not sign this agreement before you read it. 2. You are entitled to a copy of this agreement. 3. You may prepay unpaid balance at any time without penalty.”

§ 2.303. Receipts; statements of account; evidence of payment

(1) The seller or lessor shall give or send to the buyer or lessee, without request, a written receipt for each payment by coin, currency, or money order on an obligation pursuant to a consumer credit sale or a consumer lease.

(2) Upon written request of the buyer or lessee, the person to whom an obligation is owed pursuant to a consumer credit sale, other than a sale pursuant to a revolving charge account, or pursuant to a consumer lease shall provide a written statement of the dates and amounts of payments and the total amount unpaid. The statement shall be provided without charge once during each year of the term of the sale or lease. If additional statements are requested the seller or lessor may charge not in excess of \$1.00 for each additional statement.

(3) Within 30 days after the buyer or lessee has fulfilled all obligations with respect to a consumer credit sale, other than a sale pursuant to a revolving charge account, or with respect to a consumer lease, the person to whom the obligation was owed shall give or send to the buyer or lessee written evidence acknowledging payment in full of all obligations with respect to the sale or lease.

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 one check as evidence of the obligation of the buyer or lessee.

§ 2.404. Assignee subject to defenses

(1) With respect to a consumer credit sale or consumer lease, other than one 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 that

(a) there is an agreement to the contrary, or

(b) the assignee is a holder in due course of a negotiable instrument issued in violation of the provisions on prohibition of certain negotiable instruments, section 2.403.

(2) The assignee's liability under subsection (1) may not exceed the amount owing to the assignee with respect to the sale or lease at the time the assignee has notice of a claim or defense of the buyer or lessee. If debts arising from two or more consumer credit sales, other than pursuant to a revolving charge account, or consumer leases are consolidated, payments received after the consolidation are deemed, for the purpose of determining the amount owing the assignee with respect to a sale or lease, to have been first applied to the payment of debts arising from the sales or leases first made; if the debts consolidated arose from sales or leases made on the same day, payments are deemed to have been first applied to the smallest debt. Payments received upon a revolving charge account are deemed, for the purpose of determining the amount owing the assignee with respect to a sale, to have been first applied 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) An agreement may not provide for greater rights for an assignee than this section permits.

§ 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, no seller may contract for or receive any scheduled payment which is more than twice as large as the average of earlier scheduled payments. Any scheduled payment which is more than twice as large as the average of earlier scheduled payments is void. 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, and the transaction is subject to Title 9, chapter 360, 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 con-

tract 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, section 2.206, subsection (1). 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 at will.

§ 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 if 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. An agreement containing a violation of this section 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

With respect to a consumer sale or consumer lease the agreement may not provide for the payment by the buyer or lessee of attorney's fees. 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

No agreement for a consumer credit sale or consumer lease may contain an authorization for any person to confess judgment on any claim. No seller or lessor may take any agreement containing such an authorization. Any such authorization 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 change involves no significant cost to the buyer; or

(c) 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, or a sale which is subject to the provisions on the debtor's right to rescind certain transactions, section 5.204, or the corresponding provisions of the Federal Consumer Credit Protection Act. A sale which would be a home solicitation sale if credit were extended by the seller is a home solicitation sale although the goods or services are paid for in whole or in part by a consumer loan in which the lender is subject to defenses arising from the sale, section 3.410.

§ 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

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, section 2.504, subsection (4), 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.

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 a 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.

§ 2.504. 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)

"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

“Loan primarily secured by an interest in land” — Section 3.105

“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 with respect to a loan primarily secured by an interest in land, section 3.105, “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) 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: “Loan primarily secured by an interest in land”

Unless the loan is made subject to this Act by agreement, section 3.601, and except as provided with respect to disclosure, section 3.301, and debtors’ remedies, section 5.201, “consumer loan” does not include a “loan primarily secured by 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 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.

§ 3.106. 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, section 3.109, subsection (2), 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 charge 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 arrange-

ment, 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 10% per year on the unpaid balances of the principal.

(2) This section does not limit or restrict the manner of computing 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 1/30th 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 10% per year if the loan finance charge contracted for and received does not exceed a charge in each monthly billing cycle which is 5/6% of an amount no greater than

(i) The average daily balance of the debt, or

(ii) The unpaid balance of the debt on 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 10 per cent per year if the loan finance charge contracted for and received does not exceed a percentage which bears the same relation to 5/6 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, section 3.202, subsection (1), paragraph (c).

(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% 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); and

(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.

(2) Subject to the limitations in Article 4, 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 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 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 Advertising Notice and Receipts, Part 3, reasonable closing costs are 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 per cent of the unpaid amount of the instalment, or

(b) The deferral charge, section 3.204, subsection (1), 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 two 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 adjustments 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 charged in the original agreement and stated to the debtor pursuant to the provisions on disclosure 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 1/30th 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 charged in the original contract. 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 re-

spect 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 coverages. 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, \$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 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, re-financing, 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 $\frac{1}{30}$ th 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 $\frac{1}{30}$ th 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 $\frac{1}{7}$ th 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

ADVERTISING, NOTICE AND RECEIPTS

§ 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).

§ 3.302. Notice to debtor

A written agreement which requires or provides for the signature of a debtor, and which either evidences a consumer loan, other than one primarily secured by an interest in land or pursuant to a revolving loan account, or provides the information the lender is required to give to the debtor before making a consumer loan pursuant to a revolving loan account, section 3.309, subsection (1), shall contain a clear, conspicuous, and printed notice to the debtor that he should not sign the agreement before reading it and that he is entitled to a copy of the agreement and to prepay the unpaid balance at any time without penalty. The following notice if clearly and conspicuously printed complies with this section:

“NOTICE TO DEBTOR: 1. Do not sign this statement before you read it. 2. You are entitled to a copy of this agreement. 3. You may prepay the unpaid balance at any time without penalty.”

§ 3.03. Receipts; statement of account; evidence of payment

(1) The lender shall give or send to the debtor, without request, a written receipt for each payment by coin, currency, or money order on an obligation pursuant to a consumer loan.

(2) Upon written request of the debtor, the person to whom an obligation is owed pursuant to a consumer loan, other than a loan pursuant to a revolving loan account, shall provide a written statement of the dates and amounts of payments and the total amount unpaid. The statement shall be provided without charge once during each year of the term of the loan. If additional statements are requested, the lender may charge not in excess of \$1 for each additional statement.

(3) Within 30 days after the debtor has fulfilled all obligations with respect to a consumer loan, other than a loan pursuant to a revolving loan account, the person to whom the obligation was owed shall give or send to the debtor written evidence acknowledging payment in full of all obligations with respect to the loan.

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, no lender may contract for or receive any scheduled payment which is more than twice as large as the average of earlier scheduled payments. Any scheduled payment which is more than twice as large as the average of earlier scheduled payments is void. 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 employer from authorizing deductions from his earnings if the authorization is revocable at will.

(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

With respect to a consumer loan the agreement may not provide for the payment by the debtor of attorney's fees. 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

No agreement for a consumer loan may contain an authorization for any person to confess judgment on any claim. No lender may take any agreement containing such an authorization. Any such authorization 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 5.202, 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 3 times, with the first notice at least 6 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 change involves no significant cost to the debtor; or

(c) The change applies only to debts incurred after a date specified in a notice of the change given in 2 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. Referral loans

With respect to a consumer loan the lender may not give or offer to give a rebate or discount or otherwise pay or offer to pay value to the debtor as an inducement for a loan in consideration of his giving to the lender the names of prospective borrowers or otherwise aiding the lender in making a loan 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 debtor agrees to borrow. An agreement containing a violation of this section is unenforceable by the lender, and the debtor, at his option, may rescind the agreement or retain the proceeds of the loan without any obligation to repay it.

§ 3.410. Certain lenders subject to defenses arising from sales

(1) With respect to a consumer loan, other than a loan primarily for an agricultural purpose, a lender shall be subject to all claims and defenses of the borrower against the seller arising out of a consumer credit sale of goods or services if the proceeds of the loan are used to pay all or any part of the purchase price and

(a) The lender is a person related to the seller or

(b) The seller receives or will receive a fee, compensation or other consideration for arranging the loan or

(c) The seller has knowledge of the credit terms and participates in the preparation of the contract documents required in connection with the loan or

(d) The lender makes the proceeds of the loan payable to the seller or requires as a condition of making the loan that the proceeds be paid to the seller or

(e) The lender take a purchase money security interest in the goods which are the subject of the sale or

(f) The sale was made pursuant to a lender credit card.

(2) In a consumer loan subject to the provisions of subsection (1), the lender may not take a negotiable instrument as evidence of the obligation of the buyer. 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.

(3) The lender's liability under this section may not exceed the amount owing on the loan at the time the claim or defense is asserted against the lender.

PART 5

REGULATED AND SUPERVISED LOANS

§ 3.501. Definitions: "Supervised loan;" "supervised lender"

(1) "Supervised 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 year calculated on the unpaid balances of the principal according to the actuarial method.

(2) "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.

(a) Every applicant shall also at the time of filing such application, file with the administrator, if he so requires, a bond satisfactory to the administrator in an amount not to exceed \$5,000. The bond shall run to the State for the use of the State and of any person or persons who may have a cause of action against the licensee under the provisions of this Act. The bond shall be conditional that the licensee will faithfully conform to and abide by the provisions of this Act and to all rules and regulations lawfully made by the administrator hereunder and will pay to the State and to any such person or persons any and all amounts of money that may become due or owing to the State or to such person or persons from the licensee under and by virtue of the provisions of this Act during the calendar year for which the bond is given.

(b) As used in this section, the term "financial responsibility" means that the applicant has available for the operation of the licensed business net assets of at least \$25,000 and upon issuance of a license, each licensee shall maintain net assets of at least \$25,000 which are either used or readily available for use in the conduct of the business of each office of the licensee in which supervised loans are made.

(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. 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 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 5 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. The administrator may at any time require additional reports if he deems such action necessary to the proper supervision of licensees.

§ 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 supervised lender. For these purposes he shall have free and reasonable access to the offices, places of business, and records of the lender. If the administrator finds any violation of this Act, he shall so notify all parties to the transactions involved.

(2) If the lender's records are located outside this State, the lender at the administrator's 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 them 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 Superior Court for an order compelling compliance.

§ 3.507. Application of Part on Administrative Procedure and Judicial Review to Part

Except as otherwise provided, the Part on Administrative Procedure and Judicial Review, Part 4 of the Article on Administration (Article 6), 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) 30% per year on that part of the unpaid balances of the principal which is \$300 or less;
- (ii) 21% 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 year on that part of the unpaid balances of the principal which is more than \$1,000; or

(b) 18% per year on the unpaid balances of the principal.

(3) This section does not limit or restrict the manner of computing 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 1/30th 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% 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 per-

mitted 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

With respect to a supervised loan, in which the annual percentage rate disclosed is greater than 18%, a lender may not contract for an interest in land as security. A security interest taken in violation of this section is void.

§ 3.511. Regular schedule of payments; maximum loan term

(1) Supervised 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 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) No consumer loan on which the annual percentage rate disclosed is greater than 18% may provide for a greater rate than 8% per year on the unpaid balances of the principal remaining unpaid at the expiration of 37 months on the original loan, including any additional amounts borrowed, any deferral, renewal, refinancing, consolidation or extension of the contract made within the 37 months; and thereafter the unpaid principal balance shall not be directly or indirectly renewed or refinanced by the lender who made the loan, nor shall that lender grant any additional loan to the debtor until the unpaid balance has been paid in full.

§ 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.

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 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 the Revised Statutes, Title 24-A.

§ 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.

(3) A creditor may not contract for or receive a separate charge for consumer credit insurance providing accident and health coverage unless there is a waiting period of 30 days or more, a minimum payment of \$40 per month, and a loan duration of at least 18 months.

§ 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 and of itself unconscionable in the absence of other factors.

§ 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 creditor pays or accounts for premiums to the insurer in amounts and at time determined by the agreement between them; or
 - (b) 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 Commissioner of Insurance.

§ 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 through any insurer authorized to transact such insurance within this State.

§ 4.110. Charge for insurance in connection with a refinancing or consolidation

If the debt is discharged due to a refinancing, section 2.205 or section 3.205, or a consolidation, section 2.206 or section 3.206, prior to the originally scheduled due date of the last scheduled payment of the debt, the insurance in force shall be terminated and a refund paid or credited, section 4.108, before the creditor may contract for or receive a separate charge for new insurance.

§ 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) Each provision of the Part on Administrative Procedures 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.

§ 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 Commission 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;

(c) The term of the insurance is reasonable in relation to the terms of credit; and

(d) The credit transaction involves motor vehicle financing as defined in Title 9, chapters 321 to 327.

(2) The term of insurance is reasonable if it is customary and does not extend substantially beyond a scheduled maturity.

§ 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 and the transaction does not involve a home repair contract as defined in Title 9, chapter 360.

§ 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

(1) This section applies to any consumer credit sale of goods or services and to any consumer loan.

(2) If a credit takes possession of or voluntarily accepts surrender of goods in which he has a security interest to secure a debt and the unpaid balance was \$1,000 or less, the debtor is not personally liable to the creditor for the unpaid balance of the debt.

(3) For the purpose of determining the unpaid balance of consolidated debts or debts pursuant to revolving 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.

(4) The debtor may be liable in damages to the creditor if the debtor has wrongfully damaged the collateral or if, after default and demand, the debtor has concealed the collateral from the seller.

(5) If the creditor elects to bring an action against the debtor for a debt arising from a consumer loan or 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 executive or similar proceedings pursuant to the judgment.

(6) The amounts of \$1,000 in subsections (2) and (3) are subject to change pursuant to the provisions on adjustment of dollar amounts, section 1.106.

(7) Upon a default by the debtor, other than one consisting of a failure to make a scheduled payment, a creditor may take possession of the collateral only by judicial process unless the debtor voluntarily surrenders possession to the creditor.

§ 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 obtain an interest in any property of the debtor by attachment, 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 50 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; inducement by unconscionable conduct

(1) With respect to a consumer credit sale, consumer lease, or consumer loan, if the court as a matter of law finds

(a) The agreement to have been unconscionable at the time it was made, or to have been induced by unconscionable conduct, the court may refuse to enforce the agreement, or

(b) Any clause of the agreement to have been unconscionable at the time it was made, the court may refuse to enforce the agreement, or may enforce the remainder of the agreement without the unconscionable clause, or 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 and of itself unconscionable in the absence of other practices and circumstances.

§ 5.109. Default

An agreement of the parties to a consumer credit sale, consumer lease, or consumer loan with respect to default is enforceable only to the extent that

(1) The debtor fails to make a scheduled payment as required by the agreement; or

(2) The prospect of payment, performance, or realization on collateral is significantly impaired; the burden of establishing the prospect of significant impairment is on the creditor.

§ 5.110. Notice of debtor's right to cure

(1) After a debtor has been in default for 10 days for failure to make a scheduled payment, a creditor may give the debtor the notice described in this section. A creditor gives notice to the debtor under this section when he delivers the notice to the debtor or delivers or mails the notice to the address of the debtor's residence, section 1.201, subsection (7).

(2) The notice shall be in writing and shall conspicuously state: the name, address, and telephone number of the creditor to which payment is to be made, a brief description of the credit transaction, the debtor's right to cure the default, and the amount of payment and date by which payment must be made to cure the default. A notice in substantially the following form complies with this section:

"

(name, address, and telephone number of creditor)

.....

(account number, if any)

.....

(brief description of credit transaction)

..... is the **LAST DAY FOR PAYMENT**

(date)

..... is the **AMOUNT NOW DUE**

(amount)

You are late in making your payment(s). If you pay the **AMOUNT NOW DUE** (above) by the **LAST DAY FOR PAYMENT** (above), you may continue with the contract as though you were not late. If you do not pay by this date, we may exercise our rights under the law.

If you are late again in making your payments, we may exercise our rights under the law without sending you another notice like this one. If you have questions, write or telephone the creditor promptly."

§ 5.111. Cure of default

(1) This section applies to consumer credit sales, consumer leases, and consumer loans.

(2) Except as provided in subsection (3), after a default consisting only of the debtor's failure to make a scheduled payment, a creditor may neither accelerate maturity of the unpaid balance of the obligation nor take possession of collateral because of that default until 20 days after a notice of debtor's right to cure (Section 5.110) is given. Until 20 days after the notice is given, the debtor may cure all defaults consisting of a failure to make the scheduled payment by tendering the amount of all unpaid sums due at the time of the tender, without acceleration, plus any unpaid delinquency or deferral charges. Cure restores the debtor to his rights under the agreement as though the defaults had not occurred.

(3) With respect to defaults on the same obligation after a creditor has once given a notice of debtor's right to cure, Section 5.110, this section gives the debtor no right to cure and imposes no limitation on the creditor's right to proceed against the debtor or the collateral.

§ 5.112. Creditor's right to take possession after default

Upon default by a debtor, unless the debtor voluntarily surrenders possession of the collateral to the creditor, the creditor may take possession without judicial process only if possession can be taken without entry into a dwelling and without the use of force or other breach of the peace.

§ 5.113. Venue

An action by a creditor against a debtor arising from a consumer credit sale, consumer lease, or consumer loan shall be brought (1) in the county of the debtor's residence, Section 1.201, subsection (7); or (2) in the county in which the transaction was made, if the debtor is personally served with process in that county; or (3) where an interest in land secures the debtor's obligation, the action shall be brought in the county in which the land or a part thereof is located. If the county of the debtor's residence has changed, the debtor upon motion may have the action removed to the county of the debtor's current residence. If the residence of the debtor is not within this State, the action may be brought in the county in which the sale, lease, or loan was made. If the initial papers offered for filing in the action on their face show non-compliance with this section, they shall not be accepted by the clerk.

§ 5.114. Complaint; proof

(1) In an action brought by a creditor against a debtor arising from a consumer credit sale, consumer lease, or consumer loan, the complaint shall allege the facts of the debtor's default, the amount to which the creditor is entitled, and an indication of how that amount was determined.

(2) No default judgment shall be entered in the action in favor of the creditor unless the complaint is verified by the creditor or sworn testimony, by affidavit or otherwise, is adduced showing that the creditor is entitled to the relief demanded.

§ 5.115. Stay of enforcement of judgment

At any time after the entry of a judgment in favor of a creditor against a debtor in an action arising from a consumer credit sale, consumer lease, or consumer loan, the court, for cause and upon motion of a party or on its own motion, may stay enforcement of the judgment by order upon just and equitable conditions, and continue, modify, or revoke the order as the interests of justice may require.

§ 5.116. Misrepresentation

A creditor or a person acting for him may not induce a debtor to enter into a consumer credit sale, consumer lease, or consumer loan by misrepresentation of a material fact. A debtor so induced may rescind the sale, lease, or loan, recover actual damages, or both.

§ 5.117. Illegal, fraudulent or unconscionable conduct in attempted collection of debts

(1) In attempting to collect an alleged debt arising from a consumer credit sale, consumer lease, or consumer loan, a person shall not

(a) Use or threaten force or violence;

(b) Threaten criminal prosecution;

(c) Disclose or threaten to disclose information affecting the debtor's reputation for credit worthiness with knowledge or reason to know that the information is false;

(d) Communicate or threaten to communicate with the debtor's employer prior to obtaining final judgment against the debtor, except as permitted by statute;

(e) Disclose or threaten to disclose to a person other than the debtor or his spouse information affecting the debtor's reputation, whether or not for credit worthiness, with knowledge or reason to know that the other person does not have a legitimate business need for the information, but this subsection does not prohibit the disclosure to another person of information permitted to be disclosed to him by statute;

(f) Disclose or threaten to disclose information concerning the existence of a debt known to be disputed by the debtor without disclosing that fact;

(g) Communicate with the debtor or a person related to him by telephone or otherwise in excess of twice a week unless justified by a change in circumstances, other than a failure to make regularly scheduled payments, relating to the debtor or the consumer debt;

(h) Communicate or attempt to communicate with the debtor or a person related to him at times which the creditor knows or has reason to know are inconvenient to the debtor with an intent to oppress, harass, or abuse the debtor;

(i) Use profane, obscene or abusive language in communicating with the debtor or a person related to him which is intended to denigrate the character, morals or habits of the debtor or intended to offend or intimidate the debtor;

(j) Claim, or attempt or threaten to enforce a right that has been barred by statute or a final order of the Supreme Judicial Court or a court of the United States;

(k) Use a communication which simulates legal or judicial process or which gives the appearance of being authorized, issued, or approved by a government, governmental agency, or attorney at law when it is not;

(l) Threaten action against the debtor unless like action is taken in regular course or is intended with respect to the particular debt; or

(m) Engage in conduct in violation of a rule adopted by the administrator after like conduct has been restrained or enjoined by a court in a civil action by the administrator against any person pursuant to the provisions on injunctions against fraudulent or unconscionable agreements or conduct, section 6.III.

(2) A person injured by violation of this section may recover actual damages.

PART 2

DEBTORS' REMEDIES

§ 5.201. Interests in land

For purposes of the provisions of this Part 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 3.105.

§ 5.202. Effect of violations on rights of parties

(1) If a creditor has violated the provisions of this Act applying to authority to make supervised loans, section 3.502, balloon payments, sections 2.405 and 3.402, referral sales or loans, sections 2.411 and 3.409, or home solicitation sales, section 2.503, the credit sale or loan is void and the debtor is not obligated to pay either the principal or credit service or loan finance charges. If he has paid any part of the principal or of the credit service or 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.

(2) If a creditor has violated the provisions of this Act applying to waiver clauses, section 1.107, maximum service or loan finance charges, sections 2.201, 2.207, 3.201 and 3.508, delinquency charges, sections 2.203 and 3.203, deferral charges, sections 2.204 and 3.204, refinancing charges, 2.205 and 3.205, consolidation charges, sections 2.206 and 3.206, use of multiple agreements, sections 2.402 and 3.509, certain negotiable instruments, section 2.403, assignee subject to defenses, section 2.404, restrictions on liability in consumer leases, section 2.406, security in sales or leases, section 2.407, cross-collateral, section 2.408, assignments of earnings, sections 2.410 and 3.403, attorneys' fees, sections 2.413 and 3.514, limitations on default charges, sections 2.414 and 3.405, authorizations to confess judgment, sections 2.415 and 3.407, interest in land as security, section 3.510, limitations on the schedule of payments or maximum term, sections 2.211 and 3.511, excess charge for credit insurance, section 4.104, separate charges for property insurance, section 4.301, restrictions on deficiency judgments, section 5.103, garnishment before judgment, section 5.104, or limitations on garnishment, section 5.105, the debtor is entitled to have the contract reformed to conform with this Act, and in addition is entitled to deduct from his total obligation either \$50 or the credit service charge or loan finance charge, whichever is greater.

(3) If a creditor has violated this Act and he or a transferee of his rights to whom the debt is then owing fails to offer the relief provided in subsection (2) within a reasonable time after a demand for such relief by the debtor, the obligation is void and the debtor is not obligated to pay the principal or the loan finance charge or the amount financed or the credit service charge. If the debtor has made any payments, including a down payment, he has a right to recover the payments from the person violating this Act or from a transferee of that person's rights to whom the debt is then owing.

(4) If an employer discharges an employee in violation of the provisions prohibiting discharge, section 5.106, the employee may within one year 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 6 weeks.

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

(6) No action under this section may be brought more than six years after the violations occurred.

(7) The amount of \$50 in subsection (2) is subject to change pursuant to the provisions on adjustment of dollar amounts, section 1.106.

§ 5.203. 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 dis-

losures 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.

§ 5.204. 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.

§ 5.205. Class actions

(1) A debtor claiming a right explicitly granted by this Act to recover money may recover on behalf of himself and numerous debtors similarly situated the amounts, including penalties, to which each debtor originally

commencing the action would be entitled in an action other than a class action and the amounts, exclusive of penalties, to which each other debtor similarly situated would be entitled in an action other than a class action. To facilitate reasonable offers of settlement, at least 30 days prior to commencing an action under this subsection or to amending the complaint in an action under subsection (2) to include the recovery of money, the debtor proposing to commence the action shall notify the proposed defendant in writing of his intention to commence the action or amend the complaint. The notification shall specify with reasonable particularity the class of persons for whom relief will be sought, the acts of the proposed defendant alleged to have violated this Act, and the damages which will be sought.

(2) Whether or not a debtor claims or has a right to recover money under subsection (1) or has an adequate remedy at law, he may obtain on behalf of himself and numerous other debtors similarly situated a declaratory judgment, an injunction, or other appropriate equitable or ancillary relief other than the recovery of money against an act or practice which violates this Act.

(3) In an action in which it is found that a creditor has violated this Act, the court shall award the debtor the costs of the action together with reasonable attorney's fees. Reasonable attorney's fees shall be determined by the value of the time reasonably expended by the attorney, taking into account, among other things, any reasonable offer of settlement by the creditor, and not by the amount of the recovery on behalf of the class. Amounts recovered on behalf of debtors similarly situated who cannot be located with due diligence shall be first applied to the payment of costs and attorney's fees and the balance shall be paid to the administrator.

(4) With the exception of consent judgments entered before any testimony is taken, a final judgment in favor of the administrator under the Article on Administration, Article 6, is admissible as prima facie evidence of the facts on which it is based in subsequent proceedings under this section against the same person, or a person in privity with him.

(5) In actions under this section the court in order to protect the interests of the various parties and to expedite a fair disposition of the proceeding may make appropriate orders:

(a) Limiting the action to particular classes, persons, or issues, including determining whether the action is to be maintained in whole or in part as a class action;

(b) Determining the courses or proceedings or prescribing measures to prevent undue repetition or complication in the presentation of evidence or argument;

(c) Requiring, for the protection of the members of the class or for the fair conduct of the action, that notice be given in the manner the court directs to some or all of the members and the administrator of any step in the action, or of the proposed extent of the judgment, or, of the opportunity of members to signify whether they consider the representation fair

and adequate, or to withdraw from the action by a day certain, or to intervene and present claims or defenses;

(d) Imposing conditions on the representative parties or intervenors including conditions related to reasonable offers of settlement;

(e) Dividing a class into subclasses and treating each subclass as a class;

(f) Approving or disapproving a proposed dismissal, compromise, or settlement.

(6) No cause of action shall be available under this section for violations of the provisions of this Act applying to misrepresentation, section 5.116, or illegal, fraudulent or unconscionable conduct in attempted collection of debts, section 5.117.

PART 3

CRIMINAL PENALTIES

§ 5.301. Violations

(1) Any supervised lender or officer or employee of any supervised lender who willfully violates any of the provisions of this Act shall be punished by a fine of not more than \$500 or by imprisonment for not more than 6 months, or both.

(2) Any other person who shall willfully violate any of the provisions of this Act or shall directly or indirectly counsel, aid or abet such violation shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than \$2,500 for each offense, or by imprisonment for not more than 90 days, or by both.

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 Bank Commissioner.

§ 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 shall

(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 ; and

(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 authorized 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 supersede any provisions of this Act which are inconsistent with the Federal Consumer Credit Protection Act, 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 biennially 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, all powers of the administrator under this Act may be exercised by him. The powers of examination and investigation, section 3.506 and 6.106, and the administrative enforcement, section 6.108, may also be exercised by the official or agency to whose supervision the organization is subject.

(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 obtain 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) The administrator may at any time make an investigation of any person he believes has engaged in conduct covered by this Act and 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. If the administrator should find a violation of this Act, he shall so notify all parties to the transactions involved.

(2) If the person's records are located outside this State, the person at the administrator's 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 part on administrative procedure and judicial review

Except as otherwise provided, an 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, may be taken under the Part on Administrative Procedure and Judicial Review, Part 4, of this Article, notwithstanding Title 9, section 7.

§ 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 or any lawful regulation issued by the administrator. Notice and

hearing need not be provided, when, in the opinion of the administrator, immediate action is required to protect the public interest, and

- (a) The creditor has not complied with section 6.202; or
- (b) The creditor does not maintain a permanent place of business in this State.

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. The filing of a petition shall not per se stay the enforcement of an order, but the court may order a stay on such terms as it deems proper.

(2) Within 30 days after service 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 if the findings of fact of the administrator are clearly erroneous in view of the 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, directing the administrator to take action unlawfully withheld, 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 and 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 Supreme Judicial 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. The decree of the Superior Court may also provide any relief available in an action brought under section 6.110.

(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.III.

§ 6.I09. Assurance of discontinuance

If it is claimed that a person has engaged in conduct which could be subject to an order by the administrator, section 6.I08, or by a court, sections 6.I10 to 6.I12, the administrator may accept an assurance in writing that the person will not engage in the same or in similar conduct in the future. Such an assurance may include any, or any combination, of the following: stipulations for the voluntary payment by the creditor of the costs of investigation or of an amount to be held in escrow as restitution to debtors aggrieved by past or future conduct of the creditor or to cover costs of future investigation, or admissions of past specific acts by the creditor or that such acts violated this Act or other statutes. A violation of an assurance of discontinuance shall be a violation of this Act.

§ 6.I10. Injunctions against violations of act

The administrator shall bring a civil action to restrain any person from violating this Act.

In such an action the court may make such orders or judgments as may be necessary to prevent the use or employment by a person of any practices prohibited by this Act, to reform contracts to conform to this Act or to rescind contracts in which a violation has tended to induce the debtor to contract with the creditor, even though the debtors are not parties to the action. In such an action the administrator may also recover his reasonable costs of investigation and reasonable attorneys' fees incurred in bringing the action. An action under this section and an action under section 6.I13 (1) may be brought jointly using a single complaint.

§ 6.I11. 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 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 and of itself unconscionable in the absence of other practices or circumstances.

§ 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 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 any violation listed in section 5.202. An action may relate to transactions with more than one debtor. If it is found that the creditor has

made a violation so listed, the court shall order the respondent to grant to the debtor or debtors the remedies established in section 5.202, subsection (1) or (2), whichever is appropriate. 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.

(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 repeated violations or a willful violation of this Act, it may assess a civil penalty of no more than \$5,000.

§ 6.114. Debtor's 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.

§ 6.115. 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 creditors 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: "contested case"; "license"; "licensing"; "party"; "rule"

In this Part

(1) "Contested case" means a proceeding, including but not restricted to one pursuant to the provisions on administrative enforcement orders, section 6.108, subsection (1), 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 amendment 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; or

(b) intra-office memoranda.

(6) "Interested person" includes, but is not limited to,

(a) any person who is or may be aggrieved by action which has been or may be taken by the administrator in the proceeding concerned; or

(b) any group of 25 residents of this State.

§ 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) make 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 or any party 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 those daily newspapers designated by the administrator.

(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 or declaratory ruling 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 as a creditor, debtor, or potential debtor. 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 for 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 rules adopted under section 6.404.

§ 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.

(8) Any interested person may, upon proper motion, intervene as a party in a contested case at any stage of the proceedings before final judgment.

§ 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 notice, 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 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 Superior Court under this Part by appeal to the Supreme Judicial Court. The appeal shall be taken as in other civil cases.

Sec. 2. Repealing clause. The following sections of Title 9 of the Revised Statutes are repealed: section 3, subsection 2, paragraph E; section 229, as enacted by chapter 421 of the public laws of 1967; section 2345, subsection 3; sections 3001 to 3005, as amended; sections 3041 to 3043, as amended; sections 3081 to 3086, as amended; sections 3121 and 3122, as amended; sections 3161 and 3162; sections 3481 to 3484, as amended; section 3523, subsection 2, as repealed and replaced by section 2 of chapter 395 of the public laws of 1967; sections 3729 and 3730, as enacted by section 1 of chapter 501 of the public laws of 1965 and as amended; sections 3732 to 3734, as enacted by section 1 of chapter 501 of the public laws of 1965 and as amended; and section 3737, as enacted by section 1 of chapter 501 of the public laws of 1965.

Sec. 3. R. S., T. 9, § 2345, sub-§ 1, amended. Subsection 1 of section 2345 of Title 9 of the Revised Statutes, as amended by section 8 of chapter 140 of the public laws of 1967, is further amended to read as follows:

1. **To borrow and lend money.** To borrow money, to lend money and discount notes and bills of exchange, including trade acceptances ~~and to deduct interest thereon in advance at a rate no greater than 12% annually;~~

Sec. 4. R. S., T. 9, § 3203, amended. The 4th and 5th sentences of section 3203 of Title 9 of the Revised Statutes, as enacted by chapter 250 of the public laws of 1965 and as amended by section 2 of chapter 476 of the public laws of 1965, are further amended to read as follows:

Within 30 days after the first publication of said notice, the subscribers to said agreement shall apply to said commissioner for a certificate ~~that public convenience and advantage of the community in which the business is to be conducted would be promoted by the establishment of such loan company~~ **of fitness and character.** The commissioner shall issue such a certificate if, after investigation, he shall find that the financial responsibility, experience, character and general fitness of the subscribers are such as to command the confidence of the community and warrant the belief that the business will be operated honestly, fairly and efficiently within the purposes of this chapter ~~and, for small loan companies, chapters 281 to 289 and that public convenience and advantage of the community in which the business is to be conducted will be promoted by the organization of such loan company.~~

Sec. 5. R. S., T. 9, § 3442, sub-§ 1, ¶ B, amended. Paragraph B of subsection 1 of section 3442 of Title 9 of the Revised Statutes is amended to read as follows:

B. Willful failure to comply with any provision of ~~chapters 321 to 327, relating to retail installment contracts~~ **Title 9-A, the Maine Consumer Credit Code;**

Sec. 6. R. S., T. 9, § 3521, amended. Section 3521 of Title 9 of the Revised Statutes, as repealed and replaced by section 1 of chapter 395 of the public laws of 1967, is amended to read as follows:

§ 3521. Complaints and investigations

The commissioner shall have power to make such investigations as he shall deem necessary, and may examine the books, accounts, records and files of a retailer seller or the holder of a retail installment contract. Any retail buyer having reason to believe there is a violation of ~~section 3481 or 3482~~ **Title 9-A, the Maine Consumer Credit Code,** as relating to his retail installment contract may file a written complaint with the commissioner.

If after notice and hearing, the commissioner should find a violation of ~~section 3481 or 3482~~ **Title 9-A,** he shall notify the retail seller, retail buyer and holder of the retail installment contract of his findings.

Sec. 7. R. S., T. 9, § 3745, sub-§ 2, amended. Subsection 2 of section 3745 of Title 9 of the Revised Statutes, as enacted by section 1 of chapter 501 of the public laws of 1965, is amended to read as follows:

2. Violation of law. Knowingly or without the exercise of due care failed to comply with or violated any provisions of this chapter **or of Title 9-A, the Maine Consumer Credit Code;**

Sec. 8. R. S., T. 9, § 3753, amended. The 2nd paragraph of section 3753 of Title 9 of the Revised Statutes, as enacted by section 1 of chapter 501 of the public laws of 1965, is repealed as follows:

~~Any person who violates section 3738 shall be guilty of a misdemeanor and shall be punished by a fine of not less than \$100 nor more than \$500 for each offense.~~

Sec. 9. R. S., T. 11, § 2-313, sub-§ (1), ¶ (b), amended. Paragraph (b) of subsection (1) of section 2-313 of Title 11 of the Revised Statutes is amended by adding at the end a new sentence to read as follows:

In the case of consumer goods sold by a merchant with respect to such goods, the description affirms that the goods are fit for the ordinary purposes for which such goods are used.

Sec. 10. R. S., T. 11, § 9-203, sub-§ (2), amended. Subsection (2) of section 9-203 of Title 11 of the Revised Statutes is amended to read as follows:

(2) A transaction, although subject to this Article, is also subject to the applicable provisions of ~~Title 9, chapters 281 to 289 and chapters 321 to 327,~~ and Title 9-A, or to Title 30, section 3051 and sections 3151 to 3155 and in the case of conflict between the provisions of this Article and any such statute the provisions of such statute control. Failure to comply with any applicable statute has only the effect which is specified therein.

Sec. 11. R. S., T. 24-A, § 2861, sub-§ 1, amended. Subsection 1 of section 2861 of Title 24-A of the Revised Statutes, as enacted by section 1 of chapter 132 of the public laws of 1969, is amended to read as follows:

1. ~~The~~ Except as provided in Title 9-A, section 4.104, the premium of cost of such insurance when issued through any creditor shall not be deemed interest, or charges, or consideration, or an amount in excess of permitted charges in connection with the loan or other credit transaction, and any benefit or return or other gain or advantage to the creditor arising out of the sale or provision of such insurance shall not be deemed a violation of any other law, general or special, of the State of Maine.

Sec. 12. R. S., T. 32, § 4668, amended. Section 4668 of Title 32 of the Revised Statutes, as enacted by chapter 395 of the public laws of 1969 and amended by chapter 530 of the public laws of 1969, is further amended to read as follows:

§ 4668. Limitation

This subchapter shall not apply to sales where the gross sales price, including any interest or carrying charges, is less than \$25, nor to any transaction covered by Title 9-A, sections 2.501 to 2.505, nor shall it apply to any sale, by any dealer or agent or salesman of a registered dealer, registered pursuant to ~~Title 32~~ chapter 13, of stocks, bonds, debentures or securities representing stocks, bonds or debentures registered pursuant to ~~Title 32~~ chapter 13 or expressly exempt from registration thereof.

Sec. 13. Continuation of licensing. All persons licensed or otherwise authorized under Title 9, chapters 281 to 289 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.

Sec. 14. Time of taking effect; provisions for transition. Except as otherwise provided in this section, this Act shall take effect on January 1, 1972.

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, the Part on Regulated and Supervised Loans of the Article on Loans, and the Article on Administration take effect immediately.

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:

1. Refinancings, consolidations and deferrals made after this Act takes effect of sales, leases and loans whenever made;
2. Sales or loans made after this Act takes effect pursuant to revolving charge accounts and revolving loan accounts entered into, arranged or contracted for before this Act takes effect; and
3. All credit transactions made before this Act takes effect insofar as the article on remedies and penalties limits the remedies of creditors.

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