

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

FIRST SPECIAL SESSION

ONE HUNDRED AND SIXTH LEGISLATURE

Legislative Document

No. 2451

H. P. 1908

House of Representatives, January 24, 1974

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

E. LOUISE LINCOLN, Clerk

Presented by Mrs. Clark of Freeport.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-FOUR

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

§ 1.101. Short title

This Act shall be known and may be cited as the "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 Truth in Lending 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.

§ 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.

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

1. Except as otherwise provided in this Act, a consumer may not waive or agree to forego rights or benefits under this Act. Any such waiver or agreement is unenforceable; and no creditor may take any such waiver or agreement to forego rights or benefits under this Act.

2. A claim by a consumer against a creditor for an excess charge, other violation of this Act, or civil penalty, or a claim against a consumer 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 consumer may be settled for less value than the amount claimed.

4. A settlement in which the consumer 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 consumer, 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, subsection 11 of section 1.301 and consumer loans subsection 14 of section 1.301, 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, subsection 38 of section 1.301, with respect to the amount of a loan to a single borrower, the ratio of a loan to the value of collateral, the duration of a loan secured by an interest in land, or other similar restrictions designed to protect deposits; or

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

§ 1.109. Transactions subject to Act by agreement

The parties to a sale, lease or loan, or modification thereof, which is not a consumer credit transaction, may agree in a writing signed by the parties that the transaction is subject to the provisions of this Act applying to consumer credit transactions. If the parties so agree, the transaction is a consumer credit transaction for the purposes of this Act.

PART 2

SCOPE AND JURISDICTION

§ 1.201. Territorial application

1. Except as otherwise provided in this section, this Act applies to consumer credit transactions made in this State. For purposes of this Act, a consumer credit transaction is made in this State if:

A. A signed writing evidencing the obligation or offer of the consumer is received by the creditor in this State; or

B. The creditor induces the consumer who is a resident of this State to enter into the transaction by face-to-face, mail or telephone solicitation in this State.

2. With respect to consumer credit transactions entered into pursuant to open end credit, subsection 26 of section 1.301, this Act applies if the consumer's communication or indication of his intention to establish the arrangement is received by the creditor in this State. If no communication or indication of intention is given by the consumer before the first transaction, this Act applies if the creditor's communication notifying the consumer of the privilege of using the arrangement is mailed or personally delivered in this State.

3. 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.

4. A consumer credit transaction made in another state to a person who is a resident of this State at the time of the transaction is valid and enforceable in this State to the extent that it is valid and enforceable under the laws of the state applicable to the transaction, but the following provisions apply as though the transaction occurred in this State:

A. A creditor may not collect charges through actions or other proceedings in excess of those permitted by the Article on Finance Charges and Related Provisions (Article 2) and by the Article on Insurance (Article 4); and

B. A creditor may not enforce rights against the consumer with respect to the provisions of agreements which violate the provisions on Limitations on Agreements and Practices (Part 3) and Limitations on Consumer's Liability (Part 4) of the Article on Regulation of Agreements and Practices (Article 3).

5. Except as provided in subsection 3, a consumer credit transaction 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.

6. For the purposes of this Act, the residence of a consumer 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.

7. Notwithstanding other provisions of this section

A. Except as provided in subsection 3, this Act does not apply if the consumer is not a resident of this State at the time of a credit transaction and the parties have agreed that the law of his residence applies; and

B. This Act applies if the consumer is a resident of this State at the time of a credit transaction and the parties have agreed that the law of his residence applies.

8. Except as provided in subsection 7, the following agreements by a buyer, lessee, or debtor are invalid with respect to consumer credit transactions to which this Act applies:

A. That the law of another state shall apply;

B. That the consumer consents to the jurisdiction of another state; and

C. That fixes venue.

9. 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 obliged to pay instalments of the premium and the insurance may terminate or be cancelled after nonpayment 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.

§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 debt between the amount financed and the finance charge pursuant to which a payment is applied first to the accumulated finance charge and the balance is applied to the 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. "Amount financed" means the total of the following items:

A. In the case of a sale, 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, and the amount actually paid or to be paid by the seller pursuant to an agreement with the buyer to discharge a security interest in, a lien on, or a debt with respect to, property traded in;

B. In the case of a loan, the net amount paid to, receivable by, or paid or payable for the account of the debtor, plus the amount of any discount excluded from the finance charge, paragraph B of subsection 19 of section 1.301; and

C. In the case of a sale or loan, to the extent that payment is deferred and the amount is not otherwise included and is authorized and disclosed to the customer

(i) amounts actually paid or to be paid by the creditor for registration, certificate of title, or license fees; and

(ii) permitted additional charges, section 2.501.

6. "Billing cycle" means the time interval between periodic billing statement dates.

7. "Cash price" of goods, services, or an interest in land means the price at which they are offered for sale by the seller to cash buyers in the ordinary course of business and may include (a) the cash price of accessories or services related to the sale, such as delivery, installation, alterations, modifications, and improvements, and (b) taxes to the extent imposed on a cash sale of the goods, services, or interest in land. The cash price stated by the seller to the buyer in a disclosure statement is presumed to be the cash price.

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

A. Fees or premiums for title examination or similar purposes;

B. Fees for preparation of a deed 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.

9. "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.

10. "Consumer" means the buyer, lessee or debtor to whom credit is granted in a consumer credit transaction.

11. "Consumer credit sale":

A. Except as provided in paragraph B, a "consumer credit sale" is a sale of goods, services or an interest in land in which

(i) credit is granted either pursuant to a credit card other than a lender credit card or by a seller who regularly engages as a seller in credit transactions of the same kind;

- (ii) the buyer is a person other than an organization;
- (iii) the goods, services or interest in land are purchased primarily for a personal, family, household or agricultural purpose;
- (iv) either the debt is payable in instalments or a finance charge is made; and
- (v) with respect to a sale of goods or services, the amount financed does not exceed \$25,000;

B. A "consumer credit sale" does not include

- (i) a sale in which the seller allows the buyer to purchase goods or services pursuant to a lender credit card; or
- (ii) unless the sale is made subject to this Act by agreement, section 1.109, a sale of an interest in land if the finance charge does not exceed 12% 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.

12. "Consumer credit transaction" means a consumer credit sale, consumer lease or consumer loan or a modification thereof including a refinancing, consolidation or deferral.

13. "Consumer lease":

A. A "consumer lease" is a lease of goods

- (i) 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;
- (ii) in which the amount payable under the lease does not exceed 25,000;
- (iii) which is for a term exceeding 4 months; and
- (iv) which is not made pursuant to a lender credit card.

14. "Consumer loan":

A. Except as provided in paragraph B, a "consumer loan" is a loan made by a person regularly engaged in the business of making loans in which:

- (i) the debtor is a person other than an organization;
- (ii) the debt is incurred primarily for a personal, family, household or agricultural purpose;
- (iii) either the debt is payable in instalments or a finance charge is made; and
- (iv) either the amount financed does not exceed \$25,000 or the debt, other than one incurred primarily for an agricultural purpose, is secured by an interest in land.

B. A "consumer loan" does not include:

(i) a sale or lease in which the seller or lessor allows the buyer or lessee to purchase or lease pursuant to a credit card other than a lender credit card; or

(ii) Unless the loan is made subject to this Act by agreement, section 1.109, a loan secured by an interest in land if the security interest is bona fide and not for the purpose of circumvention or evasion of this Act and the finance charge does not exceed 12% 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 not be paid before the end of the agreed term.

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

16. "Credit card" means an arrangement pursuant to which a card issuer gives a cardholder the privilege of using the card for the purpose of purchasing or leasing goods or services, obtaining loans, or otherwise obtaining credit from the card issuer or other persons.

17. "Creditor" means the person who grants credit in a consumer credit transaction or, except as otherwise provided, an assignee of a creditor's right to payment, but use of the term does not in itself impose on an assignee any obligation of his assignor. In the case of credit granted pursuant to a credit card, the "person who grants credit" is the card issuer and not another person honoring the credit card.

18. "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.

19. "Finance charge":

A. "Finance charge" means the sum of:

(i) all charges payable directly or indirectly by the consumer and imposed directly or indirectly by the creditor as an incident to or as a condition of 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; time price differential, service, carrying or other charge, however denominated; premium or other charge for any guarantee or insurance protecting the creditor against the consumer's default or other credit loss; and

(ii) charges incurred for investigating the collateral or credit-worthiness of the consumer or for commissions or brokerage for obtaining the credit, irrespective of the person to whom the charges are paid or payable, unless the creditor had no notice of the charges when the credit was granted.

B. The term does not include

- (i) charges as a result of default, additional charges, section 2.501, delinquency charges, section 2.502, or deferral charges, section 2.503; or
- (ii) the discount, when a creditor purchases or satisfies obligations of a cardholder pursuant to a credit card and the purchase or satisfaction is made at less than the face amount of the obligation.

20. "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.

21. 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.

22. "Lender credit card" means a credit card issued by a supervised lender.

23. "Loan":

A. Except as provided in paragraph B, a "loan" includes:

- (i) 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;
- (ii) the creation of debt either pursuant to a lender credit card or by a cash advance to a debtor pursuant to a credit card other than a lender credit card;
- (iii) the creation of debt by a credit to an account with the lender upon which the debtor is entitled to draw immediately; and
- (iv) the forbearance of debt arising from a loan.

B. A "loan" does not include the payment or agreement to pay money to a third party for the account of a debtor if the debt of the debtor arises from a sale or lease and results from use of either a credit card issued by a person primarily in the business of selling or leasing goods or services or any other credit card which may be used for the purchase of goods or services and which is not a lender credit card.

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

25. "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, terminating or satisfying a security interest related to a consumer credit transaction; or

B. Premiums payable for insurance in lieu of perfecting a security interest otherwise required by the creditor in connection with the transaction,

if the premium does not exceed the fees and charges described in paragraph A which would otherwise be payable.

26. "Open end credit" means an arrangement pursuant to which:

A. A creditor may permit a consumer, from time to time, to purchase or lease on credit from the creditor or pursuant to a credit card, or to obtain loans from the creditor or pursuant to a credit card;

B. The amounts financed and the finance and other appropriate charges are debited to an account;

C. The finance charge, if made, is computed on the account periodically; and

D. The consumer has the privilege of paying in full or in instalments.

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

28. "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 finance charge is made (b) 4 or more periodic payments, excluding a down payment, with respect to a debt arising from a consumer credit sale pursuant to which no finance charge is made, or (c) 2 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 2 or more periodic payments is more than twice the amount of any other periodic payment, excluding the down payment, the consumer credit transaction is "payable in instalments."

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

30. "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.

31. "Precomputed": A finance charge or consumer credit transaction other than a consumer lease is "precomputed" if the debt is expressed as a sum comprising the amount financed and the amount of the finance charge computed in advance.

32. "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 nonexistence.

33. "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.

34. "Sale of an interest in land" includes, but is not limited to, 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.

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

36. "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.

37. "Services" includes (a) work, labor, and other personal services, (b) privileges with respect to transportation, rental of vehicles other than a consumer lease, hotel and restaurant accommodations, education, entertainment, recreation, physical culture, hospital accommodations, funerals, cemetery accommodations, and the like, and (c) insurance.

38. "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 both 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.

39. "Supervised lender" means a person authorized to make or take assignments of supervised loans, either under a license issued by the Administrator (section 2.301), or as a supervised financial organization (Section 1.301, subsection 38).

40. "Supervised loan" means a consumer loan, including a loan made pursuant to open end credit, in which the rate of the finance charge, calculated according to the actuarial method, exceeds $12\frac{1}{4}\%$ per year.

41. "Provisions on disclosure" includes both chapter 372 of Title 9 of the Maine Revised Statutes and the Federal Truth in Lending Act, as applicable.

§ 1.302. Definition: Federal Truth in Lending Act

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

§ 1.303. Other defined terms

Other definitions appearing in this Act and the sections in which they appear are:

"Computational period"	Section 2.510
"Interval"	Section 2.510
"Location"	Section 2.309
"Periodic balance"	Section 2.510

ARTICLE II

FINANCE CHARGES AND RELATED PROVISIONS

PART 1

GENERAL PROVISIONS

§ 2.101. Short title

This Article shall be known and may be cited as the Maine Consumer Credit Code—Finance Charges and Related Provisions.

§ 2.102. Scope

Part 2 of this Article applies to consumer credit sales. Parts 3 and 4 apply to consumer loans, including loans made by supervised lenders. Part 5 applies to other charges and modifications with respect to consumer credit transactions. Part 6 applies to other credit transactions.

PART 2

CONSUMER CREDIT SALES: MAXIMUM FINANCE CHARGES

§ 2.201. Finance charge for consumer credit sales other than open end credit

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

2. The 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 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 calculating the finance charge whether by way of add-on, discount, or otherwise, so long as the rate of the finance charge does not exceed that permitted by this section. If the sale is precomputed,

A. The 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 2.510.

4. For the purposes of this section, the term of a sale agreement commences with the date the credit is granted or, if goods are delivered or services performed 10 days or more after that date, with the date of commencement of performance or with the date of completion of delivery. For purposes of this section, a sale agreement does not commence upon the transfer of merchandise certificates, but commences only upon the date goods are delivered or services performed. For purposes of this section, delivery and performance include delivery or performance by a subcontractor or agent of the seller. 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 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 finance charge on all amounts financed within a specified range. A 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 by subsection 2; and

B. When applied to the lowest amount within each range, it does not produce a rate of finance 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 finance 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 finance charge on a transaction subject to Title 9, chapter 360, may not exceed \$8 per \$100 per year computed on the principal balance, or \$25, whichever is greater.

§ 2.202. Finance charge for consumer credit sales pursuant to open end credit

1. With respect to a consumer credit sale made pursuant to open end credit, a creditor may contract for and receive a finance 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 not exceeding the greater of

A. The average daily balance in the billing cycle for which the charge is made, which is the sum of the amount unpaid each day during that cycle, divided by the number of days in that cycle. The amount unpaid on a day is determined by adding to the balance, if any, unpaid as of the beginning of that day all purchases and other debits and deducting all payments and other credits made or received as of that day;

B. The unpaid balance at the beginning of the first day of the billing cycle after all payments on account, returns and other credits made or given during the first 25 days of the billing cycle, if the billing cycle is monthly, shall have been first deducted; provided that returns and other credits may be deducted only to the extent that the purchase to which the credit or return relates has been reflected in the previous balance. If the billing cycle is not monthly, such deduction shall be made for payments on account, returns and other credits made or given during that part of the billing cycle that bears the same relation to the billing cycle that 25 does to 30.

3. If the billing cycle is monthly, the charge may not exceed $1\frac{1}{2}\%$ of the amount pursuant to subsection 2. 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.

PART 3

CONSUMER LOANS: SUPERVISED LENDERS

§ 2.301. 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 3 months without a license, if he promptly applies for a license and his application has not been denied.

§ 2.302. 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 copartnership 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 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 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.

4. A separate license shall be required for each place of business.

5. A licensee may conduct the business of making supervised loans only at or from any place of business for which he holds a license and not under any other name than that in the license. Loans made pursuant to a lender credit card do not violate this subsection.

§ 2.303. 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 with respect to one or more specific places of business should not be suspended or revoked. The order shall set 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, after having been found, pursuant to Article 6, Part 4, to have been in violation at least once of the same provision of this Act or of the same rule or order; 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.

§ 2.304. 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 6 years after making the final entry relating to the loan, but in the case of a revolving loan account the 6 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. 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.

§ 2.305. 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, in lieu thereof, 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 the Superior Court for an order compelling compliance.

§ 2.306. Application of administrative procedure

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.

§ 2.307. Restrictions on interest in land as security

1. 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.

§ 2.308. Regular schedule of payments; maximum loan term

1. Supervised loans, not made pursuant to open end credit and in which the amount financed is \$1,000 or less, shall be scheduled to be payable in substantially equal instalments at equal periodic intervals except to the extent that the schedule of payments is adjusted to the seasonal or irregular income of the debtor; and

A. Over a period of not more than 37 months if the amount financed is more than \$300; or

B. Over a period of not more than 25 months if the amount financed is \$300 or less.

2. 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 consumer until the unpaid balance has been paid in full.

§ 2.309. 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.

PART 4

CONSUMER LOANS: MAXIMUM FINANCE CHARGES

§ 2.401. Finance charge for consumer loans

1. With respect to a consumer loan other than a supervised loan, including a loan pursuant to open end credit, a lender may contract for and receive a finance charge, calculated according to the actuarial method, not exceeding 12% per year on the unpaid balances of the amount financed.

2. Except as provided with respect to finance charge for loans pursuant to a lender credit card, section 2.402, with respect to a supervised loan, a

supervised lender may contract for and receive a finance charge, calculated according to the actuarial method, not exceeding 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 calculating the finance charge, whether by way of add-on, discount or otherwise, so long as the rate of the finance charge does not exceed that permitted by this section. If the loan is precomputed,

A. The 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 2.510.

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. If the primary purpose of the loan is the financing of premiums on a policy or contract of insurance issued by an insurer authorized in this State to do business of the kind involved and the debt under the loan agreement is owed to a supervised lender, the term of the loan commences on the inception date of the policy or contract of insurance.

§ 2.402. Finance charge for purchases or leases on open end credit pursuant to lender credit card

1. With respect to purchases or leases of goods or services made on open end credit pursuant to a lender credit card, a creditor may contract for and receive a finance charge not in excess of that permitted in this section.

2. A charge may be made in each billing cycle which is a percentage of an amount not exceeding the greatest of:

A. The average daily balance in the billing cycle for which the charge is made, which is the sum of the amount unpaid each day during that cycle, divided by the number of days in that cycle. The amount unpaid on a

day is determined by adding to the balance, if any, unpaid as of the beginning of that day all purchases and other debits and deducting all payments and other credits made or received as of that day;

B. The unpaid balance at the beginning of the first day of the billing cycle.

3. If the billing cycle is monthly, the charge may not exceed $1\frac{1}{2}\%$ of the amount pursuant to subsection 2. 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."

PART 5

CONSUMER CREDIT TRANSACTIONS: OTHER CHARGES AND MODIFICATIONS

§ 2.501. Additional charges

1. In addition to the finance charge permitted by the parts of this Article on maximum finance charges for consumer credit sales and consumer loans, Parts 2 and 4, a creditor may contract for and receive the following additional charges in connection with a consumer credit transaction:

A. Official fees and taxes;

B. Charges for insurance as described in subsection 2;

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

2. An additional charge may be made for insurance written in connection with the transaction, including vendor's single interest insurance with respect to which the insurer has no right of subrogation against the consumer but excluding other insurance protecting the creditor against the consumer's default or other credit loss,

A. With respect to insurance against loss of or damage to property, or against liability, if the creditor furnishes a clear and specific statement in writing to the consumer setting forth the cost of the insurance if obtained from or through the creditor and stating that the consumer 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 creditor of the extension of credit, and this fact is clearly disclosed in writing to the consumer, and if, in order to obtain the insurance in connection with the extension of credit, the consumer gives his specific af-

firmative written indication of his desire to do so after written disclosure to him of the cost thereof.

§ 2.502. Delinquency charges

1. With respect to a precomputed consumer credit transaction, the parties may contract for a delinquency charge on any instalment not paid in full within 15 days after its scheduled or deferred 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 2.503, 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 with respect to a deferred instalment unless the instalment is not paid in full within 15 days after its deferred due date. 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 15 days after its scheduled or deferred 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 consumer loan are in default for 15 days or more, the lender may elect to convert the loan from a precomputed loan to one in which the finance charge is based on unpaid balances. In this event he shall make a rebate pursuant to the provisions on rebate upon prepayment, section 2.510, as of the maturity date of the first delinquent instalment, and thereafter may make a finance charge as authorized by the provisions on loan finance charge for consumer loans, subsection 1 of section 2.401, or the provisions on finance charge for supervised loans, (subsection 2 of section 2.401), whichever is appropriate. The amount of the rebate shall not be reduced by the amount of any permitted minimum charge, section 2.510. If the creditor 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.

§ 2.503. Deferral charges

1. With respect to a precomputed consumer credit transaction, 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 creditor may make and collect a charge not exceeding by $\frac{1}{4}\%$ per year the rate charged in the original

agreement and previously stated to the consumer 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 $\frac{1}{30}$ th of a month. A deferral charge may be collected at the time it is assessed or at any time thereafter.

2. The creditor may, in addition to the deferral charge, make appropriate additional charges, section 2.501, 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 transaction that if an instalment is not paid within 10 days after its due date, the creditor 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 creditor elects to accelerate the maturity of the agreement.

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

§ 2.504. Finance charge on refinancing

Subject to section 2.308, with respect to a consumer credit transaction, the creditor may by agreement with the consumer, refinance the unpaid balance and may contract for and receive a finance charge based on the amount financed resulting from the refinancing at a rate not exceeding by $\frac{1}{4}\%$ per year the rate charged in the original agreement and stated to the consumer pursuant to the provisions on disclosure. For the purpose of determining the finance 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 the accrued charges on the date of the refinancing, or, if the transaction was precomputed, the amount which the consumer would have been required to pay upon prepayment pursuant to the provisions on rebate upon prepayment, section 2.510, on the date of refinancing, except that for the purpose of computing this amount no minimum charge shall be allowed; and

2. Appropriate additional charges, section 2.501, payment of which is deferred.

§ 2.505. Finance charge on consolidation

1. If a consumer owes an unpaid balance to a creditor with respect to a consumer credit transaction and becomes obligated on another consumer credit transaction with the same creditor, the parties may agree to a consolidation resulting in a single schedule of payments. If the previous consumer credit transaction was not precomputed, the parties may agree to add the unpaid amount of the amount financed and accrued charges on the date of consolidation to the amount financed with respect to the subsequent con-

sumer credit transaction. If the previous consumer credit transaction was precomputed, the parties may agree to refinance the unpaid balance pursuant to the provisions on refinancing, section 2.504, and to consolidate the amount financed resulting from the refinancing by adding it to the amount financed with respect to the subsequent consumer credit transaction. In either case the creditor may contract for and receive a finance charge as provided in subsection 2 based on the aggregate amount financed resulting from the consolidation.

2. If the debts consolidated arise exclusively from consumer credit sales, the transaction is a consolidation with respect to a consumer credit sale and the amount of the finance charge is governed by the provisions on finance charge for consumer credit sales other than open end credit, section 2.201. If the debts consolidated include a debt arising from a consumer loan, the transaction is a consolidation with respect to a consumer loan and the amount of the finance charge is governed by the provisions on finance charge for consumer loans, subsections 1 or 2 of section 2.401, as appropriate.

3. If a consumer owes an unpaid balance to a creditor with respect to a consumer credit transaction arising out of a consumer credit sale, and becomes obligated on another consumer credit transaction arising out of another consumer credit sale by the same seller, the parties may agree to a consolidation resulting in a single schedule of payments either pursuant to subsection 1 or by adding together the unpaid balances with respect to the two sales.

4. Any consolidation under this section involving a supervised loan is subject to section 2.308.

5. This section does not apply to consumer leases.

§ 2.506. Advances to perform covenants of consumer

1. If the agreement with respect to a consumer credit transaction contains covenants by the consumer to perform certain duties pertaining to insuring or preserving collateral and the creditor pursuant to the agreement pays for performance of the duties on behalf of the consumer, he 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 consumer performed by the creditor pertain to insurance, a brief description of the insurance paid for by the creditor including the type and amount of coverages. No further information need be given.

2. A finance charge may be made for sums advanced pursuant to subsection 1 at a rate not exceeding the rate stated to the consumer pursuant to law in a disclosure statement, except that with respect to open end credit the amount of the advance may be added to the unpaid balance of the debt and the creditor may make a finance charge not exceeding that permitted by the appropriate provisions on finance charge for consumer credit sales pursuant to open end credit, section 2.202, or for consumer loans, subsections 1 or 2 of section 2.401, whichever is appropriate.

3. This section does not apply to consumer leases.

§ 2.507. Attorney's fees and collection costs

1. With respect to a consumer credit sale or lease, or a supervised loan, the agreement may not provide for the payment by the consumer of attorney's fees or any other collection cost. A provision in violation of this section is unenforceable.

2. With respect to any other consumer credit transaction, the agreement may provide for the payment by the debtor of reasonable attorney's fees not in excess of 15% of the unpaid debt after default and referral to an attorney not a salaried employee of the creditor, but the agreement may not provide for the payment by the consumer of any other collection costs. A provision in violation of this subsection is unenforceable.

§ 2.508. Conversion to open end credit

The parties may agree to add the unpaid balance of a consumer credit transaction not made pursuant to open end credit to the consumer's open end credit account with the creditor. The unpaid balance so added is an amount equal to the amount financed determined according to the provisions on finance charge on refinancing, section 2.504. This section does not apply to consumer leases.

§ 2.509. Right to prepay

Subject to the provisions on rebate upon prepayment, section 2.510, the consumer may prepay in full the unpaid balance of a consumer credit transaction at any time without penalty.

§ 2.510. Rebate upon prepayment

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

2. Upon prepayment in full, but not upon a refinancing, section 2.504, of a consumer credit transaction, whether or not precomputed, other than one pursuant to open end credit, the creditor may collect or retain a minimum charge of \$5 in a transaction which had an amount financed of \$75 or less, or \$7.50 in a transaction which had an amount financed of more than \$75, if the minimum charge was contracted for and the finance charge earned at the time of prepayment is less than the minimum charge contracted for.

3. Except as otherwise provided in this subsection with respect to a consumer credit sale of an interest in land or a consumer credit transaction secured by an interest in land, the unearned portion of the finance charge is a fraction of the 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 the agreement evidencing the transaction. In the case of a consumer

credit sale of an interest in land or a consumer credit transaction secured by an interest in land, reasonable sums actually paid or payable to persons not related to the creditor for customary closing costs included in the finance charge are deducted from the finance charge before the calculation prescribed by this subsection is made.

4. In this section

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

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

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

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

5. For transactions in which payments are not scheduled to be made in substantially equal instalments at equal periodic intervals, the administrator shall adopt rules consistent with this section providing for the calculation of the unearned portion of the finance charge.

6. If a deferral, section 2.503, has been agreed to, the unearned portion of the 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 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 finance 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 2.502.

8. If the maturity is accelerated for any reason and judgment is obtained, the consumer 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 transaction by proceeds of consumer credit insurance, section 4.103, the consumer or his estate is entitled to the same rebate as though the consumer had prepaid the agreement on the date the proceeds of the insurance are paid to the creditor, but no later than 10 business days after satisfactory proof of loss is furnished to the creditor.

10. This section does not apply to consumer leases.

PART 6
OTHER CREDIT TRANSACTIONS

§ 2.601. Finance charge for other credit transactions

Except where otherwise provided by law with respect to a credit transaction other than a consumer credit transaction, the parties may contract for the payment by the debtor of any finance charge.

ARTICLE III
REGULATION OF AGREEMENTS AND PRACTICES

PART 1
GENERAL PROVISIONS

§ 3.101. Short title

This Article shall be known and may be cited as the Maine Consumer Credit Code—Regulation of Agreements and Practices.

§ 3.102. Scope

Parts 2, 3 and 4 of this Article apply, respectively, to disclosure, limitations on agreements and practices, and limitations on consumer's liability with respect to consumer credit transactions. Part 5 applies to home solicitation sales.

PART 2
DISCLOSURE

§ 3.201. Advertising

1. No creditor shall engage in this State in false or misleading advertising concerning the terms or conditions of credit with respect to a consumer credit transaction.

2. Without limiting the generality of subsection 1 and without requiring a statement of rate of finance charge if the finance 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 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 finance charge and the rate is not stated in the form required by the provisions on disclosure; or

B. It states the dollar amounts of the finance charge or instalment payments, and does not also state the rate of any 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, 15 U.S.C.A. § 1601 et seq., does not violate subsection 2.

§ 3.202. Notice to consumer

A written agreement which requires or provides for the signature of the consumer and which evidences a consumer credit transaction other than one pursuant to open end credit shall contain a clear, conspicuous, and printed notice to the consumer 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 CONSUMER: 1. Do not sign this agreement 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.

§ 3.203. Notice of assignment

The consumer is authorized to pay the original creditor until he receives notification of assignment of rights to payment pursuant to a consumer credit transaction and that payment is to be made to the assignee. A notification which does not clearly and conspicuously identify the rights assigned is ineffective. If requested by the consumer, the assignee must seasonably furnish reasonable proof that the assignment has been made and unless he does so the consumer may pay the original creditor.

§ 3.204. Change in terms of open end credit accounts

1. If a creditor makes a change in the terms of an open end credit account without complying with this section any additional cost or charge to the consumer resulting from the change is an excess charge and subject to the remedies available to consumers, section 5.201, and to the administrator, section 6.113.

2 A creditor may change the terms of an open end credit account whether or not the change is authorized by prior agreement. Except as provided in subsection 3, the lender shall give to the consumer written notice of any change of terms relating to penalties, interest or other charges at least 3 times, with the first notice at least 3 months before the effective date of the change.

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

A. The consumer after receiving notice of the change agrees in writing to the change;

B. The change involves no significant cost to the consumer; 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 consumer when mailed to him at the address used by the creditor for sending periodic billing statements.

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

1. The creditor shall give or send to the consumer, without request, a written receipt for each payment by coin or currency on an obligation pursuant to a consumer credit transaction. A seller shall send, without request, a written receipt for each payment by money order on an obligation pursuant to a consumer credit sale. Sending to the customer a periodic statement showing a payment received by mail complies with this subsection, if it is sent to the debtor within 30 days after receipt of the payment.

2. Upon written request of the consumer, the person to whom an obligation is owed pursuant to a consumer credit transaction, other than one pursuant to open end credit, shall provide a written statement of the dates and amounts of payments made within the past 15 months and the total amount unpaid. The statement shall be provided without charge once during each year of the term of the obligation. If additional statements are requested the creditor may charge not in excess of \$1 for each additional statement.

3. Within 30 days after the consumer has fulfilled all obligations with respect to a consumer credit transaction, other than one pursuant to open end credit, the person to whom the obligation was owed shall give or send to the consumer written evidence acknowledging payment in full of all obligations with respect to the transaction.

PART 3

LIMITATIONS ON AGREEMENTS AND PRACTICES

§ 3.301. 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 3.302, 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.

§ 3.302. Cross-collateral

1. In addition to contracting for a security interest pursuant to the provisions on security in sales or leases, section 3.301, a seller in a consumer credit sale may secure the debt arising from the sale by contracting for a security interest in other property if as a result of a prior sale the seller has an existing security interest in the other property. The seller may also contract for a security interest in the property sold in the subsequent sale as security for the previous debt.

2. If the seller contracts for a security interest in other property pursuant to this section, the rate of credit service charge thereafter on the aggregate unpaid balances so secured may not exceed that permitted if the balances so secured were consolidated pursuant to the provisions on consolidation involving a refinancing, subsection 1 of section 2.505. 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.

§ 3.303. 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 open end credit, are secured by cross-collateral, section 3.202, 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 an open end credit 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 finance 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.

§ 3.304. Use of multiple agreements

1. A creditor may not use multiple agreements with intent to obtain a higher finance charge than would otherwise be permitted by the provisions of the Article on Finance Charges and Related Provisions, Article II.

2. With respect to a supervised loan, a lender uses multiple agreements if, with intent to obtain a higher finance charge than would otherwise be permitted, he allows 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.

3. The intent necessary, under subsections 1 and 2, shall be rebuttably presumed in any transaction in which a creditor who is required to disclose an annual percentage rate which is greater than 18% per year in a significant portion of its consumer credit transactions uses multiple agreements with the result of obtaining a higher credit service charge than would otherwise be permitted by this Article.

4. The excess amount of finance charge provided for in this section is an excess charge for the purposes of the provisions on rights of parties, section 5.201, and the provisions on civil actions by administrator, section 6.113.

§ 3.305. No assignment of earnings

1. A creditor may not take an assignment of earnings of the consumer for payment or as security for payment of a debt arising out of a consumer credit transaction. An assignment of earnings in violation of this section is unenforceable by the assignee of the earnings and revocable by the consumer. This section does not prohibit an employee 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.

§ 3.306. Authorization to confess judgment prohibited

No agreement for a consumer credit transaction may contain an authorization for any person to confess judgment on any claim. No seller or lessor may take such an authorization. Any such authorization is void.

§ 3.307. Certain negotiable instruments prohibited

With respect to a consumer credit sale or consumer lease, other than a sale or lease primarily for an agricultural purpose, the creditor may not take a negotiable instrument, other than a currently dated check or a draft payable within 7 days of such sale or lease.

§ 3.308. Balloon payments prohibited

With respect to a consumer credit transaction other than one primarily for an agricultural purpose or one pursuant to open end credit:

1. No creditor shall at any time contract for or receive payments pursuant to a schedule of payments under which any one payment is not substantially equal to all other payments, excluding any down payment received by the creditor prior to or within 7 days of the consummation of a consumer credit sale, or under which the intervals between any consecutive payments differ substantially.

2. Notwithstanding any provision of this section, where a consumer's livelihood is dependent upon seasonal or intermittent income, the parties may agree in a separate writing that one or more payments or the intervals between one or more payments may be reduced or expanded in accordance with the needs of the consumer if such payments or intervals are expressly related to the consumer's expected income.

3. With respect to any transaction in violation of subsection 1, the buyer shall have the right at any time, without further cost or obligation, to revise the schedule of payments to conform both as to amounts and intervals to the average of all instalments and intervals.

§ 3.309. Referral sales

With respect to a consumer credit sale or consumer lease the seller or lessor may not give or offer to give a rebate or discount or otherwise pay or offer to pay value to the buyer or lessee as an inducement for a sale or lease in consideration of his giving to the seller or lessor the names of prospective purchasers or lessees, or otherwise aiding the seller or lessor in making a sale or lease to another person, if the earning of the rebate, discount or other value is contingent upon the occurrence of an event subsequent to the time the buyer or lessee agrees to buy or lease. 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.

PART 4

LIMITATIONS ON CONSUMER'S LIABILITY

§ 3.401. 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.

§ 3.402. Limitation on default charges

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

§ 3.403. 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 3.307.

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 2 or more consumer credit sales, other than pursuant to open end credit, 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.

4. For the purposes of this section, assignee includes the issuer of a credit card, other than a lender credit card, when such card is used in a consumer sale or lease made with a person other than the issuer.

§ 3.404. Interlocking loans

1. A lender who makes a consumer loan for the purpose of enabling a consumer to buy from a seller goods or services, other than primarily for an agricultural purpose, is subject to all claims and defenses of the consumer against the seller arising from the sale of the goods and services if:

A. The sale is for an amount financed in excess of \$50 and is made in this State by a seller who allows the consumer to purchase the goods or services pursuant to a lender credit card or similar arrangement involving third parties and the residence of the consumer is in this State and the consumer has made a good faith effort to communicate to the seller the existence of the dispute;

B. The lender was a person having a legal relationship with the seller and the relationship was not remote or was a factor in making the sale or loan;

C. The seller guaranteed the loan or otherwise assumed the risk of loss by the lender upon the loan; or

D. The lender directly supplied the seller with a form used by the debtor to evidence or secure the loan.

2. The lender's liability under this section may not exceed the amount owing to the lender with respect to the sale at the time the lender has notice of a claim or defense of the buyer against the seller. If 2 or more consumer loans, other than pursuant to a revolving loan account, are consolidated, payments received after the consolidation are deemed, for the purpose of determining the amount owing the lender with respect to the sale, to have been first applied to the payment of the loans first made; if the loans consolidated arose from sales made on the same day, payments are deemed to have been first applied to the smallest loan. Payments received upon open end credit are deemed, for the purpose of determining the amount owing the lender with respect to the sale, to have been first applied to the payment of finance charges in the order of their entry to the account and then to the payment of loans in the order in which the entries to the account showing the loans were made.

PART 5

HOME SOLICITATION SALES

§ 3.501. 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 includes a sale in which the seller allows the buyer to purchase goods or services pursuant to a lender credit card. It does not include a sale made pursuant to a preexisting open-end credit account, 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 consumer's right to rescind certain transactions of the Federal Truth in Lending 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 3.404.

§ 3.502. Buyer's right to cancel

1. 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.

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

1. In a home solicitation sale, the seller must present to the buyer and obtain his signature to a written agreement or offer to purchase which designates as the date of the transaction the date on which the buyer actually signs, contains a statement of the buyer's rights which complies with subsection 2, and the terms of the sale. A completely executed copy of the agreement shall be furnished by the seller to the buyer immediately after the buyer signs the agreement.

2. The statement must

A. Appear under the conspicuous caption: "BUYER'S RIGHT TO CANCEL;" and

B. Read as follows: "If this agreement was solicited at your residence and you do not want the goods or services, you may cancel this agreement by mailing a notice to the seller. The notice must say that you do not want the goods or services and must be mailed before midnight of stated date when cancellation right lapses. The notice must be mailed to:

_____. If you cancel

(Insert name and mailing address of seller)

by this date, the seller may not keep any of your cash down payment."

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

§ 3.504. Restoration of down payment; no retention of cancellation fee

1. Within 20 days after a home solicitation sale has been cancelled or an offer to purchase revoked, the seller must tender to the buyer any payments made by the buyer and any note or other evidence of indebtedness. A provision permitting the seller to keep all or any part of any payment, note or evidence of indebtedness is in violation of this section and unenforceable.

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

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

4. The seller is not entitled to retain any cancellation fee.

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

1. Except as provided by the provisions on retention of goods by the buyer, subsection 3 of section 3.504, within a reasonable time after a home solicitation sale has been cancelled or an offer to purchase revoked, the

buyer upon demand must tender to the seller any goods delivered by the seller pursuant to the sale but he is not obligated to tender at any place other than his residence. If the seller fails to demand possession of goods within a reasonable time after cancellation or revocation, the goods become the property of the buyer without obligation to pay for them. For the purpose of this section, 40 days is presumed to be a reasonable time.

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

3. If the seller has performed any services pursuant to a home solicitation sale prior to its cancellation, the seller is entitled to no compensation.

§ 3.506. Limitation

This Part shall not apply to any transaction covered by Title 9, section 3917, 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.

§ 3.507. Violation as unfair trade practice

Any violation of this Part shall constitute a violation of Title 5, chapter 10, Unfair Trade Practices Act.

ARTICLE IV

INSURANCE

PART 1

INSURANCE IN GENERAL

§ 4.101. Short title

This Article shall be known and may be cited as the Maine 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 transaction.

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 consumers of the creditor; or
- C. Insurance indemnifying the creditor against loss due to the consumer'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 2.501, and maximum finance charges, Parts 2 and 4 of Article II, 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 V, as to effect of violations on rights of parties, section 5.201, and of the provisions of the Article on Administration, Article VI, as to civil actions by the administrator, section 6.113.

3. In any consumer credit sale or any supervised loan, 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 consumer, 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 consumer; or

2. The creditor shall promptly notify the consumer 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 consumer 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 practices and circumstances.

§ 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 consumer for the insurance may not exceed the premium to be charged by the insurer, as computed at the time the charge to the consumer is determined, conforming to any rate filings required by law and made by the insurer with the Superintendent of Insurance.

2. A creditor who provides consumer credit insurance in relation to open end credit may calculate the charge to the consumer in each billing cycle by applying the current premium rate to the unpaid balance of debt in the same manner as is permitted with respect to finance charges by the provisions on finance charges for consumer credit sales pursuant to open end credit, section 2.202.

§ 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 consumer 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 consumer's account.

2. This Article does not require a creditor to grant a refund or credit to the consumer if all refunds and credits due to him under this Article amount to less than \$1, and except as provided in subsection 1 does not require the creditor to account to the consumer 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 times 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 consumer 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 consumer 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 Superintendent of Insurance.

§ 4.109. Existing insurance; choice of insurer

If a creditor requires insurance, upon notice to the creditor, the consumer shall have the option of providing the required insurance through an existing policy of insurance owned or controlled by the consumer, or through a policy to be obtained and paid for by the consumer, 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 refinanced, section 2.504, or consolidated, section 2.505, prior to the originally scheduled due date of the last scheduled payment of the debt, the insurance in force shall be terminated and a pro rata 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 Superintendent of Insurance

The administrator and the Superintendent of Insurance 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 Superintendent of Insurance of the circumstances.

§ 4.112. Administrative action of Superintendent of Insurance

1. To the extent that his responsibility under this Article requires, the Superintendent of Insurance 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 VI, which applies to and governs administrative action taken by the administrator also applies

to and governs all administrative action taken by the Superintendent of Insurance 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 consumer becomes obligated to the creditor or when the consumer 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 an open end credit 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 consumer; or

B. If the consumer 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 consumer or as an incident to a deferred, refinancing or consolidation.

§ 4.202. Amount of insurance

1. Except as provided in subsection 2,

A. In the case of consumer credit insurance providing life coverage, the amount of insurance may not initially exceed the debt and, if the debt is payable in instalments, may not at any time exceed the greater of the scheduled or actual amount of the debt; or

B. In the case of any other consumer credit insurance, the total amount of periodic benefits payable may not exceed the total of scheduled unpaid instalments of the debt, and the amount of any periodic benefit may not exceed the original amount of debt divided by the number of periodic instalments in which it is payable.

2. If consumer credit insurance is provided in connection with an open end credit 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 Superintendent of Insurance 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 Superintendent of Insurance 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 Superintendent of Insurance. 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 Superintendent of Insurance 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

A creditor may not contract for or receive a separate charge for insurance against loss of or damage to property unless the credit transaction involves motor vehicle financing as defined in Title 9, chapters 321 to 327, and 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 term of credit.

2. The term of the insurance is reasonable if it is customary and does not 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 consumer is on the consumer 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 consumer's default or in accordance with a written authorization by the consumer, and in either case the cancellation does not take effect until written notice is delivered to the consumer 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 V

REMEDIES AND PENALTIES

PART 1

LIMITATIONS ON CREDITORS' REMEDIES

§ 5.101. Short title

This Article shall be known and may be cited as the Maine Consumer Credit Code—Remedies and Penalties.

§ 5.102. Scope

This Part applies to actions or other proceedings to enforce rights arising from consumer credit transactions; 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 supervised loan.

2. If a creditor takes possession of or voluntarily accepts surrender of goods in which he has a security interest to secure a debt and the amount financed is \$1,000 or less, the consumer and any sureties are 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 open end credit, 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 3.303.

4. The consumer may be liable in damages to the creditor if the consumer has willfully or intentionally damaged the collateral or if, after default and demand, the consumer has concealed the collateral from the creditor.

5. If the creditor elects to bring an action against the consumer 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.

§ 5.104. No garnishment before judgment

Prior to entry of judgment in an action against the consumer for debt arising from a consumer credit transaction, 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 an installment payment order under Title 14, chapter 502.

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 transaction may not exceed

A. 25% of his disposable earnings for that week; or

B. The amount by which his disposable earnings for that week exceed 40 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 transaction.

§ 5.107. Extortionate extensions of credit

1. If it is the understanding of the creditor and the consumer 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 consumer.

2. If it is shown that an extension of credit was made at an annual rate exceeding 33% 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 transaction, 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 reason-

able 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 change 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 transaction with respect to default on the part of the consumer is enforceable only to the extent that:

1. The consumer fails to make a payment as required by agreement; or
2. The prospect of payment, performance or realization of collateral is significantly impaired. The burden of establishing the prospect of significant impairment is on the creditor.
3. The following without limitation shall constitute a significant impairment of collateral:
 - A. Death, insolvency, assignment for the benefit of creditors, the commencement of any proceeding under any bankruptcy or insolvency laws by or against debtors;
 - B. Loss, theft, substantial damage to or destruction of the collateral not covered by insurance;
 - C. Sale or prior encumbrance of the collateral; and
 - D. Failure to renew insurance on the collateral; or termination of insurance on the collateral when substitute insurance is not obtained before the insurance coverage terminates.

§ 5.110. Notice of consumer's right to cure

1. After a consumer has been in default for 10 days for failure to make a required payment, a creditor may give the consumer the notice described in this section. A creditor gives notice to the consumer under this section when he delivers the notice to the consumer or delivers or mails the notice to the address of the consumer's residence, subsection 6 of section 1.201.

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 consumer's right to cure the default, and the amount of payment and date by which payment must be made to cure the default. The notice shall also state that failure to pay by the last date for payment will permit the creditor to take the goods away from the consumer or to take other legal action.

§ 5.111. Cure of default

1. This section applies to consumer credit transactions.
2. Except as provided in subsection 3, after a default consisting only of the consumer's failure to make a required 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 the consumer's right to cure, section 5.110, is given. Until 20 days after the notice is given, the consumer may cure all defaults consisting of a failure to make the required 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 consumer 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 consumer's right to cure, section 5.110, this section gives the consumer no right to cure and imposes no limitation on the creditor's right to proceed against the consumer or the collateral.

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

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

§ 5.113. Venue

An action against a consumer arising from a consumer credit transaction shall be brought in any county or division of the consumer's residence, section 1.201, subsection 6, in the county or division in which the transaction was made or where an interest in land secures the consumer's obligation, the action may be brought in the county or division in which the land or a part thereof is located. The consumer may have the action removed to the county or division of the consumer's current residence upon motion accompanied by an allegation of a claim or defense to the action. If the residence of the consumer is not within this State, the action may be brought in the county or division in which the sale, lease or loan was made.

§ 5.114. Stay of enforcement of judgment

At any time after the entry of a judgment in favor of a creditor against a consumer in an action arising from a consumer credit transaction, 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.

§ 5.115. Misrepresentation

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

§ 5.116. 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 more than twice or threaten to communicate more than twice to the debtor's employer information concerning the existence of a debt before or after 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. 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;

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

I. Engage in conduct in violation of a rule adopted and published by the administrator after like conduct has been restrained or enjoined by a final order of a court in a civil action by the administrator against any person pursuant to the provisions or injunctions against fraudulent or unconscionable agreements or conduct, section 6.111.

PART 2

CONSUMERS' REMEDIES

§ 5.201. Effect of violations on rights of parties

1. If a creditor has violated the provisions of this Act applying to collection of excess charges or enforcement of rights, subsection 5 of section 1.201, waiver clauses, section 1.107, use of multiple agreements, section 3.304, cer-

tain negotiable instruments, section 3.307, assignee subject to defenses, sections 3.403 and 3.404, restrictions on liability in consumer leases, section 3.401, balloon payment, section 3.308, security in sales or leases, section 3.301, cross-collateral, sections 3.302 and 3.303, assignments of earnings, section 3.305, attorney's fees, section 2.507, limitations on default charges, section 3.402, authorizations to confess judgment, section 3.306, restrictions on interests in land as security, section 2.307, limitations on the schedule of payments or loan term for regulated loans, section 2.308, for credit insurance, section 4.104, separate charges for excess charge 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, misrepresentation, section 5.115, illegal, fraudulent or unconscionable conduct in an attempted collection of debts, section 5.116, any aggrieved consumer has a right to recover actual damages from a person violating this Act, or in lieu thereof any consumer named as a plaintiff in the complaint as originally filed has a right to recover from a person violating this Act an amount determined by the court not less than \$250 nor more than \$1,000. With respect to violations from open-end credit, no action pursuant to this subsection may be brought more than 6 years after the violations occurred. With respect to violations arising from other consumer credit transactions, no action pursuant to this subsection may be brought more than 6 years after the due date of the last scheduled payment of the agreement.

2. If a creditor has violated the provisions of this Act applying to authority to make supervised loans, section 2.301, the loan is void and the debtor is not obligated to pay either the principal or loan finance charge. If he has paid any part of the principal or of the loan finance charge, he has a right to recover the payment from the person violating this Act or from an assignee of that person's rights who undertakes direct collection of payments or enforcement of rights arising from the debt. With respect to violations arising from loans made pursuant to open end credit, no action pursuant to this subsection may be brought more than 2 years after the violation occurred. With respect to violations arising from other loans, no action pursuant to this subsection may be brought more than one year after the due date of the last scheduled payment of the agreement pursuant to which the charge was paid.

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

4. If a creditor has contracted for or received a charge in excess of that allowed by this Act, or if a debtor is entitled to a refund and a person liable to the debtor refuses to make a refund within a reasonable time after de-

mand, the debtor may recover from the creditor or the person liable an amount determined by the court not less than \$250 or more than \$1,000. With respect to excess charges arising from open end credit, no action pursuant to this subsection may be brought more than 2 years after the time the excess charge was made. With respect to excess charges arising from other consumer credit transactions, no action pursuant to this subsection may be brought more than one year after the due date of the last scheduled payment of the agreement pursuant to which the charge was made.

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

6. If an employer discharges an employee in violation of the provisions prohibiting discharge, section 5.106, the employee may within 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.

7. A creditor has no liability under subsection 1 or subsection 4 if within 15 days after discovering an error, and prior to the institution of an action under this section or the receipt of written notice of the error, the creditor notifies the person concerned of the error and corrects the error. If the violation consists of a prohibited agreement, giving the debtor a corrected copy of the writing containing the error is sufficient notification and correction. If the violation consists of an excess charge, correction shall be made by an adjustment or refund.

8. If the creditor establishes by a preponderance of evidence that a violation is unintentional or the result of a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid any such violation or error, no liability is imposed under subsections 1, 2 and 3, the validity of the transaction is not affected, and no liability is imposed under subsection 4 except for refusal to make a refund.

9. 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 and not by the amount of the recovery on behalf of the debtor.

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

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

PART 3

CRIMINAL PENALTIES

§ 5.301. Violations

Any creditor, any officer or employee of a creditor, or any other person who wilfully and knowingly violates any of the provisions of this Act, or

directly or indirectly counsels, aids or abets such violation, shall be punished by a fine of not more than \$2,500 for each offense, or by imprisonment for not more than 6 months, or by both.

ARTICLE VI

ADMINISTRATION

PART I

POWERS AND FUNCTIONS OF ADMINISTRATOR

§ 6.101. Short title

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

§ 6.102. Applicability

This Part applies to persons who in this State

1. Make or solicit consumer credit transactions; or
2. Directly collect payments from or enforce rights against consumers arising from consumer credit transactions, wherever they are made.

§ 6.103. Administration

There is created and established the Bureau of Consumer Protection within the Department of Business Regulation. The Superintendent of Consumer Protection is the head of the Bureau of Consumer Protection. As used in this Act, "administrator" means the Superintendent of the Bureau of Consumer Protection. He shall be appointed by the Commissioner of the Department of Business Regulation with the advice and consent of the Governor and Council, and shall report directly to the Commissioner of the Department of Business Regulation. He shall be appointed for a term of 4 years, or for a lesser term, if the Governor's term of office is for a lesser time at the time the appointment is made or until his successor is appointed and qualified and may be removed from office by the Governor and Council for cause. No person shall be eligible for said office unless he shall have been a resident of the State of Maine for at least 2 years. During his term of office the administrator shall engage in no other business or profession.

§ 6.104. Powers of administrator; reliance on rules; duty to report

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

- A. Receive and act on complaints, take action designed to obtain voluntary compliance with this Act, or refer cases to the Attorney General who shall appear for and represent the administrator in court;
- B. Counsel persons and groups on their rights and duties under this Act;
- C. Establish programs for the education of consumers with respect to credit practices and problems;

D. Make studies appropriate to effectuate the purposes and policies of this Act and make the results available to the public;

E. Adopt, amend, and repeal rules to carry out the specific provisions of this Act;

F. Maintain offices within this State;

G. With the approval of the Commissioner of the Department of Business Regulation, appoint any necessary hearing examiners, clerks and other employees and agents and fix their compensation, subject to the Personnel Law; and

H. Maintain a public file of all enforcement proceedings instituted and of their disposition, including all assurances of voluntary compliance accepted and their terms and the pleadings and briefs in all actions in which the Administrator is a party.

2. To keep the administrator's rules in harmony with the rules of administrators in jurisdictions which enact the Uniform Consumer Credit Code, the administrator, so far as is consistent with the purposes, policies and provisions of this Act, may before adopting, amending, and repealing rules, advise and consult with administrators in other jurisdictions which enact the Uniform Consumer Credit Code.

3. 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.

4. The administrator shall report annually on or before January 1st to the Commissioner of the Department of Business Regulation on the operation of his office, on the use of consumer credit in this 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 consumers which have come to his attention through his examinations and investigations and the disposing of them under existing law, and a general statement of the activities of his office and of others to promote the purposes of this Act.

§ 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 2.305 and 6.106, and 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 noncompliance 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, once every 3 months, make an investigation of any person he believes has engaged in conduct governed by this Act. If the administrator has reasonable cause to believe that any person has violated this Act, he may also make an investigation. During any investigation, 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. 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. If any individual without lawful excuse fails to obey a subpoena or to give testimony when directed to do so by the administrator or deports himself in a disrespectful or disorderly manner during an investigation, or obstructs the proceedings by any means, whether or not in the presence of the administrator, such individual is guilty of contempt. The administrator, through the Attorney General, may file a complaint in the Superior Court setting forth the facts constituting the contempt and requesting an order returnable in not less than 2 nor more than 5 days, directing the alleged contemner to show cause before the Court, why he should not be punished for

contempt. If the court determines that the respondent has committed any alleged contempt, the court shall punish the offender as if the contempt has occurred in an action arising in or pending in such court.

4. No person shall be excused from attending and testifying or from producing any matter in compliance with this section on the ground or for the reason that the testimony or other information, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture. But no testimony or matter obtained under the authority of this section, or any information directly or indirectly derived from such testimony or matter, may be used against a natural person who has testified or produced information under oath in compliance with this section in any criminal case, except a prosecution for perjury, giving a false statement or otherwise failing to comply with a subpoena or direction to him under this section.

§ 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 supervised lenders, Part 2, of the Article on Finance Charges, Article II, 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 any person 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, through the Attorney General, 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, through the Attorney General, may obtain a decree of the Superior Court for enforcement of its order upon 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, through the Attorney General, may bring a civil action for an injunction, section 6.111.

§ 6.109. Assurance of discontinuance

If it is claimed that a person has engaged in conduct which could be subject to an order by the administrator, section 6.108, or by a court, sections 6.110 to 6.112, 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.

§ 6.110. Injunctions against violations of act

The administrator, through the Attorney General, 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 court may, in its discretion, award the administrator his reasonable costs of investigation and reasonable attorneys' fees incurred in bringing the action. An action under this section and an action under section 6.113 1 may be brought jointly using a single complaint.

§ 6.111. Injunctions against unconscionable agreements and fraudulent or unconscionable conduct

1. The administrator, through the Attorney General, 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 transactions;
- B. Fraudulent or unconscionable conduct in inducing consumers to enter into consumer credit transactions; or
- C. Fraudulent or unconscionable conduct in the collection of debts arising from consumer credit transactions.

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 transactions are entered into that there was no reasonable probability of payment in full of the obligation by the consumer;
- B. In the case of consumer credit sales or consumer leases, knowledge by the seller or lessor at the time of the sale or lease of the inability of the buyer or lessee to receive substantial benefits from the property or services sold or leased;
- C. In the case of consumer credit sales or consumer leases, gross disparity between the price of the property or services sold or leased and the

value of the property or services measured by the price at which similar property or services are readily obtainable in credit transactions by like buyers or lessees;

D. The fact that the creditor contracted for or received separate charges for insurance with respect to consumer credit sales or consumer loans with the effect of making the sales or loans, considered as a whole, unconscionable; and

E. The fact that the respondent has knowingly taken advantage of the inability of the consumer 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, through the Attorney General, 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, through the Attorney General, may bring a civil action against a creditor for any violation listed in section 5.201. An action may relate to transactions with more than one consumer. If it is found that the creditor has made a violation so listed, the court shall order respondent to grant to each consumer affected the option to recover all excess charges, to have the contract reformed to conform to this Act or to rescind the contract. The court shall order amounts recovered or recoverable under this subsection paid to each consumer or set off against his obligation. A consumer's action takes precedence over a prior or subsequent action by the administrator with respect to the claim of that consumer. When an action takes precedence over another action under this subsection, to the extent appropriate, the other action may be stayed while the precedent action is pending and may be dismissed if the precedent action is dismissed with prejudice or results in a final judgment granting or denying the claim asserted in the precedent action. A consumer whose action is dismissed or results in a final judgment denying the claim may not participate in any subsequent recovery on the claim by the administrator.

2. The administrator, through the Attorney General, 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 or violating an assurance of discontinuance, and if the court finds that the defendant has engaged in repeated

violations, a willful violation of this Act or a violation of an assurance of discontinuance, it may assess a civil penalty of not more than \$5,000.

If the creditor establishes by a preponderance of evidence that repeated violations were the result of a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid any such violation or error, no liability is imposed under this subsection.

No civil penalty pursuant to this subsection may be imposed for violations of this Act occurring more than 6 years before the action is brought.

§ 6.114. Consumer's remedies not affected

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

§ 6.115. Venue

The administrator, through the Attorney General, may bring actions or proceedings in a court in a county or division in which an act on which the action or proceeding is based occurred or in a county or division 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 entering into consumer credit transactions 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 transactions.

§ 6.202. Notification

1. Persons subject to this Part shall file notification with the administrator before commencing business in this State, and, thereafter, on or before January 31st 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 transactions are entered into, 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 transactions are entered into otherwise than at an office or retail store in this State, a brief description of the manner in which they are entered into;

F. Address of designated agent upon whom service of process may be made in this State, section 1.203; and

G. Whether supervised loans are made.

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

§ 6.203. Fees

1. A person required to file notification shall at the time he files such notification 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 transactions entered into 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 transactions entered into 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.

4. The expenses of the administrator necessarily incurred in the examination of persons required to file notification shall be chargeable to such person. Every such person shall be assessed for the actual expenses, including travel expenses, incurred by the administrator in connection with any examination or investigation, whether regular or special, such assessments to include the proportionate part of the salaries and expenses of examiners while engaged in such examinations. Such assessment shall be made by the administrator as soon as feasible after the close of such examination or investigation and notice thereof shall forthwith be sent to such person. All assessments so made shall be paid to the administrator by such person within 30 days following such notice.

5. The aggregate of fees provided for by this section is appropriated for the use of the administrator. Any balance of said funds shall not lapse but shall be carried forward to be expended for the same purposes in the following fiscal year.

PART 3

COUNCIL OF ADVISORS ON CONSUMER CREDIT

§ 6.301. Council of advisors on consumer credit

1. There is created the Council of Advisors on Consumer Credit consisting of 12 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, 3 shall be appointed for a term of one year, 3 for a term of 2 years, 3 for a term of 3 years and 3 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 Supervised Lenders, Part 3, of the Article on Finance Charges and Related Provisions, Article II.

§ 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, subsection 1 of section 6.108, and licensing, in which the legal rights, duties or privileges of a party are required by law to be determined by the administrator after an opportunity for hearing.

2. "License" means a license authorizing a person to make supervised loans pursuant to the provisions on authority to make supervised loans, section 2.301.

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 published in this State and 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.

§ 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, consumer or potential consumer. The administrator shall be made a party to the action. A declaratory judgment may be rendered whether or not the plaintiff has requested the administrator to pass upon the validity or applicability of the rule in question.

§ 6.409. Declaratory rulings by administrator

The administrator shall provide by rule for the filing and prompt disposition of petitions or declaratory rulings as to the applicability of any statutory provision or of any rule of the administrator. Rulings disposing of petitions have the same status as 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 noticed, including any staff memoranda or data, and they shall be afforded an opportunity to contest the material so noticed. The administrator's experience, technical competence, and specialized knowledge may be utilized in the evaluation of the evidence.

§ 6.412. Decisions and orders

A final decision or order adverse to a party in a contested case shall be in writing or stated in the record. A final decision shall include findings of fact and conclusions of law, separately stated. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings. If, in accordance with 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, sub-

section 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; section 3737, as enacted by section 1 of chapter 501 of the public laws of 1965; sections 3981 to 3993, as enacted by chapter 615 of the public laws of 1973; and sections 4001 to 4021, as enacted by section 2 of chapter 490 of the public laws of 1973.

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, section 3519~~ Title 9-A, sections 3.501 to 3.507, nor shall it apply to any sale, by any dealer or agent or salesman of a registered dealer, registered pursuant to ~~Title 30~~ chapter 13, of stocks, bonds, debentures or securities representing stocks, bonds or debentures registered pursuant to ~~Title 30~~ 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 Supervised Lenders, Part 3, of the Article on Finance Charges, Article II, 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, 1975.

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 Supervised Lenders, Part 3, of the Article on Finance Charges, Article II, 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. Refinancing, 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 open end credit 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 open end credit 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.

Sec. 15. Transfer of funds during transition. The Commissioner of the Department of Business Regulation shall have the authority, with the consent of the State Controller, to allow funds to be transferred from Appropriation Number 1120, Activity Number 1030—Personal and Consumer Finance, to the administrator to provide for the expenditures of the administrator's office before fees are received under Title 9-A, Article VI, Part 2.

STATEMENT OF FACT

This bill provides in one statute legislation which (1) treats all creditors of consumers equally, (2) preserves the present and adds new consumer protections, and (3) states rate ceilings and other regulations of creditors in a clear and consistent manner. The present Maine laws relating to consumer credit are ambiguous, are not integrated, do not regulate some creditors, and regulate creditors differently for no apparent reason.

The bill provides a self-financing administrative office, the Bureau of Consumer Protection within the Department of Business Regulation, whose sole responsibility would be to protect consumers from consumer credit abuses, and gives him the powers needed to perform that job.