WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1973

ENROLLED

SENATE BILL NO. 2070
(Originating in the
(By Committee on the)
Judiciary)

PASSED April 14, 1973
In Effect 90 Days from Passage

FILED IN THE OFFICE
EDGAR F. HEISKELL III
SECRETARY OF STATE
THIS DATE 5/3/73
AN ACT to repeal article seven-a, chapter forty-seven; and to amend and reenact section thirty, article four, chapter thirty-one-a, and sections five and five-a, article six, chapter forty-seven, all of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said code by adding thereto a new chapter, designated chapter forty-six-a, relating to expenses, charges and interest allowed in certain cases; relating to precomputed installment loans; providing a method of calculating a refund or rebate on any such precomputed installment loan; relating to acceleration of any such installment note; providing for the enactment of a consumer credit and protection act to be known as the “West Virginia Consumer Credit and Protection Act”; relating to certain consumer and other credit transactions; consolidating and revising certain aspects of the law relating to consumer and other loans, consumer and other sales of goods, services and interests in land, and consumer leases; prescribing certain maximum charges and penalties and consumer protection provisions respecting transactions covered by the act and displacing other provisions in regard thereto; prescribing the application of the act and providing certain exclusions therefrom; defining certain terms used in the act; exempting certain property from execution or other judicial process and specifying detailed provisions in connection therewith; fixing maximum rates and charges and permitting certain other and ad-
ditional charges and regulating practices with respect to insurance in regard to loans and sales of goods and services covered by the act including without limitation loans and certain sales secured by an interest in land and loans insured or guaranteed by the United States or an agency thereof; establishing a class of lenders designated as "supervised lenders"; providing for the licensing and regulation of supervised lenders; fixing the loan finance charges which supervised lenders may make; providing the maximum amount of loans to which such charges apply; revising the laws relating to usury; limiting certain agreements and practices and limiting and abolishing certain remedies of creditors respecting particular consumer credit transactions; creating a division of consumer protection in the office of the attorney general; providing that the attorney general and commissioner of banking in various respects shall administer the act; requiring all persons other than supervised financial organizations to obtain a license from the commissioner before making certain consumer loans and providing the requirements for such license; providing debtors' remedies and civil and criminal penalties for violation of the act; relating to unfair methods of competition and unfair or deceptive acts or practices; granting to the attorney general and such commissioner certain powers to regulate persons engaging in transactions subject to the act including without limitation the power to adopt regulations, investigate complaints, issue subpoenas, hold hearings, issue orders and seek injunctions and other judicial relief; providing for judicial review; providing that the attorney general may bring a civil action to restrain unconscionable conduct; requiring the giving of certain notice and payment of certain fees by persons engaged in certain consumer transactions; providing an effective date of the act and providing for transition; providing that certain transactions entered into prior to the effective date shall be governed by any statute, rule of law or law repealed or modified by this act, except as otherwise provided; providing a legal rate and a contract rate of interest; providing an interest rate on certain loans repayable in installments; providing for refunds or rebates with respect thereto; and relating to and providing for the creation of a consumer advisory council.
Be it enacted by the Legislature of West Virginia:

That article seven-a, chapter forty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that section thirty, article four, chapter thirty-one-a, and sections five and five-a, article six, chapter forty-seven, all of said code, be amended and reenacted; and that said code be further amended by adding thereto a new chapter, designated chapter forty-six-a, all to read as follows:

CHAPTER 31A. BANKS AND BANKING.

ARTICLE 4. BANKING INSTITUTIONS AND SERVICES GENERALLY.

§31A-4-30. Charges and interest allowed in certain cases; negotiability of installment notes.

1 In addition to the interest rate provided in article six of chapter forty-seven of this code and elsewhere by law, a banking institution may charge and collect a reasonable amount to cover the expenses incurred in procuring reports and information respecting loans and the value of and title to property offered as security therefor, and a charge of three dollars may be made for any loan or forbearance of money or other thing where the interest at the rate of six percent per annum would not amount to that sum and the same shall not be a usurious charge or rate of interest.

2 Except in cases where it is otherwise specially provided by law, any banking institution authorized to do, and doing business in this state, may contract for and charge interest for a secured or unsecured loan, repayable in installments at a rate not in excess of: (a) Six percent per annum upon the principal amount of the loan, for the entire period of the loan, and add such charge to the principal amount of the loan; or (b) six percent per annum upon the face amount of the instrument evidencing the obligation to repay the loan, for the entire period of the loan, and deduct such charge in advance: Provided, That no such add-on or discount loan may be made for the purchase of real property or any interest therein or any improvement thereto if any loan for such purpose would be a consumer loan within the provisions of section one hundred four, article three, chapter forty-six-a of this code:
Provided, however, That no loan shall be made for the purchase of real property or any interest therein or any improvement thereto pursuant to a revolving loan account as provided for in section one hundred six, article three, chapter forty-six-a of this code: And provided further, That if the entire unpaid balance outstanding on the loan is paid on any installment date, prior to maturity, the bank shall make a rebate or refund of such charge in an amount computed according to the sum of the digits method, commonly referred to as the Rule of 78; and any note evidencing any such installment loan may provide that the entire unpaid balance thereof at the option of the holder shall become due and payable upon default in the payment of any stipulated installment without impairing the negotiability of such note, if otherwise negotiable.

CHAPTER 46A. WEST VIRGINIA CONSUMER CREDIT AND PROTECTION ACT.

ARTICLE 1. SHORT TITLE, DEFINITIONS AND GENERAL PROVISIONS.


This chapter shall be known and may be cited as the "West Virginia Consumer Credit and Protection Act."


In addition to definitions appearing in subsequent articles, in this chapter:

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

(2) "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. A "consumer credit agreement" is an agreement where credit is granted.

(3) "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.

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

(a) 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.

(b) The amount actually paid or to be paid by the seller pursuant to an agreement with the buyer to discharge a security interest in or a lien on property traded in, and

(c) If not included in the cash price:
   (i) Any applicable sales, use, privilege, excise or documentary stamp taxes,
   (ii) Amounts actually paid or to be paid by the seller for registration, certificate of title or license fees, and
   (iii) Additional charges permitted by this chapter.

(5) "Average daily balance" in a billing cycle for which a sales finance charge or loan finance charge is made 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.

(6) The "cash price" of goods, services or an interest in land means the price at which the goods, services or interest in land are offered for sale by the seller to cash buyers in the ordinary course of business, and may include (a) applicable sales, use, privilege, and excise and documentary stamp taxes, (b) the cash price of accessories or related services such as delivery, installation, servicing, repairs, alterations and improvements, and (c) amounts actually paid or to be paid by the
seller for registration, certificate of title, or license fees.

(7) “Closing costs” with respect to a debt secured by an interest in land include:

(a) Fees or premiums for title examination, title insurance or similar purposes including surveys;

(b) Fees for preparation of a deed, deed of trust, mortgage, settlement statement or other documents;

(c) Escrows for future payments of taxes and insurance;

(d) Official fees and fees for notarizing deeds and other documents;

(e) Appraisal fees; and

(f) Credit reports.

(8) “Code” means the official code of West Virginia, one thousand nine hundred thirty-one, as amended.

(9) “Commissioner” means the commissioner of banking of West Virginia.

(10) “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.

(11) “Consumer” means a natural person who incurs debt pursuant to a consumer credit sale or a consumer loan.

(12) (a) Except as provided in paragraph (b), “consumer credit sale” is a sale of goods, services or an interest in land in which:

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

(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 installments or a sales finance charge is made, and

(v) With respect to a sale of goods or services, the amount financed does not exceed twenty-five thousand dollars.

(b) “Consumer credit sale” does not include a sale in which the seller allows the buyer to purchase goods or services pursuant to a lender credit card or similar arrangement.
(13) (a) "Consumer lease" means 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, house-
        hold or agricultural purpose,
    (ii) In which the amount payable under the lease does not
        exceed twenty-five thousand dollars, and
    (iii) Which is for a term exceeding four months.
(b) "Consumer lease" does not include a lease made pur-
suant to a lender credit card or similar arrangement.
(14) "Consumer loan" is a loan made by a person regu-
larly engaged in the business of making loans in which:
    (a) The debtor is a person other than an organization;
    (b) The debt is incurred primarily for a personal, family,
        household or agricultural purpose;
    (c) Either the debt is payable in installments or a loan
        finance charge is made; and
    (d) Either the principal does not exceed twenty-five
        thousand dollars or the debt is secured by an interest in
        land.
(15) "Credit" means the privilege granted by a creditor
    to a debtor to defer payment of debt or to incur debt and
    defer its payment.
(16) "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 peri-
    odic payments pursuant to a pension, retirement or dis-
    ability program.
(17) "Federal Consumer Credit Protection Act" means the
    "Consumer Credit Protection Act" (Public Law 90-321; 82
    Stat. 146), as amended, and includes regulations issued pur-
    suant to that act.
(18) "Goods" includes goods not in existence at the time
    the transaction is entered into and gift and merchandise
    certificates, but excludes money, chattel paper, documents
    of title and instruments.
(19) "Home solicitation sale" means a consumer credit sale
    in excess of twenty-five dollars in which the buyer receives a
    solicitation of the sale at a place other than the seller's busi-
ness establishment at a fixed location and the buyer's agree-
ment or offer to purchase is there given to the seller or a
person acting for the seller. The term does not include a sale
made pursuant to a preexisting open end credit account with
the seller in existence for at least three months prior to the
transaction, a sale made pursuant to prior negotiations be-
tween the parties at the seller's business establishment at a
fixed location, a sale of motor vehicles, mobile homes or farm
equipment or a sale which may be rescinded under the Federal
Truth in Lending Act (being Title I of the Federal Consumer
Credit Protection Act). A sale which would be a home solici-
tation 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 credi-
tor is subject to defenses arising from the sale.

(20) 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.

(21) "Lender credit card or similar arrangement" means
an arrangement or loan agreement, other than a seller credit
card, pursuant to which a lender gives a debtor the privilege
of using a credit card, letter of credit, or other credit con-
firmation or identification in transactions out of which debt
arises:

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

(22) "Loan" includes:

(a) The creation of debt by the lender's payment of or
agreement to pay money to the consumer or to a third party
for the account of the consumer other than debts created pur-
suant to a seller credit card;
(b) The creation of debt by a credit to an account with
the lender upon which the consumer is entitled to draw im-
mediately;
(c) The creation of debt pursuant to a lender credit card
or similar arrangement; and
(d) The forbearance of debt arising from a loan.

(23) (a) "Loan finance charge" means the sum of (i) all
charges payable directly or indirectly by the debtor and im-
posed directly or indirectly by the lender as an incident to
the extension of credit, including any of the following types
of charges which are applicable: Interest or any amount pay-
able under a point, discount, or other system of charges,
however denominated, premium or other charge for any
guarantee or insurance protecting the lender against the con-
sumer's default or other credit loss; and (ii) charges incurred
for investigating the collateral or credit-worthiness of the con-
sumer or for commissions or brokerage for obtaining the
credit, irrespective of the person to whom the charges are
paid or payable, unless the lender had not notice of the
charges when the loan was made. The term does not include
charges as a result of default, additional charges, delinquency
charges or deferral charges.

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

(24) "Merchandise certificate" or "gift certificate" means
a writing issued by a seller or issuer of a seller credit card,
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 satis-
fying a security interest related to a consumer credit sale
or consumer loan; or
(b) Premiums payable for insurance or fees escrowed
in a special account for the purpose of funding self-insurance
or its equivalent in lieu of perfecting a security interest
otherwise required by the creditor in connection with the
sale, lease or loan, if such premium or fee does not exceed the
(26) "Organization" means a corporation, government or governmental subdivision or agency, trust, estate, partnership, cooperative or association.

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

(28) "Person" or "party" includes a natural person or an individual, and an organization.

(29) "Person related to" with respect to an individual means (a) the spouse of the individual, (b) a brother, brother-in-law, sister or 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.

(30) "Precomputed loan". A loan, refinancing or consolidation is "precomputed" if the debt is expressed as a sum comprising the principal and the amount of the loan finance charge computed in advance.
(31) "Precomputed sale". A sale, refinancing or consolidation is "precomputed" if the debt is expressed as a sum comprising the amount financed and the amount of the sales 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) "Principal" of a loan means the total of:

   (a) The net amount paid to, receivable by or paid or payable for the account of the debtor,

   (b) The amount of any discount excluded from the loan finance charge, and

   (c) To the extent that payment is deferred,

      (i) Amounts actually paid or to be paid by the lender for registration, certificate of title, or license fees if not included in (a), and

      (ii) Additional charges permitted by this chapter.

(34) "Revolving charge account" means an agreement between a seller and a buyer by which (a) the buyer may purchase goods or services on credit or a seller credit card, (b) the balances of amounts financed and the sales finance and other appropriate charges are debited to an account, (c) a sales finance charge if made is not precomputed but is computed periodically on the balances of the account from time to time, and (d) there is the privilege of paying the balances in installments.

(35) "Revolving loan account" means an arrangement between a lender and a consumer including, but not limited to, a lender credit card or similar arrangement, pursuant to which (a) the lender may permit the consumer to obtain loans from time to time, (b) the unpaid balances of principal and the loan finance and other appropriate charges are debited to an account, (c) a loan finance charge if made is not precomputed but is computed periodically on the outstanding unpaid balances of the principal of the consumer's account from time to time, and (d) there is the privilege of paying the balances in installments.

(36) "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.

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

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

(39) "Sales finance charge" means the sum of (a) all charges payable directly or indirectly by the buyer and imposed directly or indirectly by the seller or issuer of a seller credit card as an incident to the extension of credit, including any of the following types of charges which are applicable: Time price differential, however denominated, including service, carrying or other charge, premium or other charge for any guarantee or insurance protecting the seller against the buyer's default or other credit loss, and (b) charges incurred for investigating the collateral or credit-worthiness of the buyer or for commissions or brokerage for obtaining the credit, irrespective of the person to whom the charges are paid or payable, unless the seller had no notice of the charges when the credit was granted. The term does not include charges as a result of default, additional charges, delinquency charges or deferral charges. If the seller or issuer of a seller credit card purchases or satisfies obligations of the consumer and the purchase or satisfaction is made at less than the face amount of the obligation, the discount is not part of the sales finance charge.

(40) 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.

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

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

(43) "Supervised financial organization" means a person, other than a supervised lender or 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 authorizes the person to make consumer loans; and (b) Subject to supervision and examination with respect to such loans by an official or agency of this state or of the United States.

(44) "Supervised lender" means a person authorized to make or take assignments of supervised loans.

(45) "Supervised loan" means a consumer loan made by other than a supervised financial organization including a loan made pursuant to a revolving loan account where the principal does not exceed one thousand dollars in which the rate of the loan finance charge exceeds eight percent per year as determined according to the actuarial method.

(46) "Vehicle" is every device in, upon, or by which any person or property is or may be transported or drawn upon a highway, excepting devices moved by human power or used exclusively upon stationary rails or tracks.

§46A-1-103. Effect of chapter on powers of persons making consumer credit sales and consumer loans, and others; consumer protection generally.

(1) This chapter prescribes maximum charges for all creditors, except lessors and those excluded, making consumer
credit sales and consumer loans, and sales and loans made subject to the provisions of this chapter by agreement, and except as otherwise provided by this chapter displaces any existing limitations and provisions regulating maximum interest and charges, minimum charges, additional charges, delinquency charges, deferral charges, allocation of charges and methods of computing rebates upon prepayment with respect to consumer credit sales and consumer loans, and the debtors' remedies and penalties provided by this chapter displace all existing provisions relating to remedies, penalties and forfeitures for usury and usurious contracts as to transactions covered by this chapter: Provided, That this chapter shall not displace those provisions of subsection (f), section six, article seven, chapter thirty-one of this code relating to additional charges which may be imposed and collected by industrial loan companies.

(2) Except as provided in subsection (1) of this section or elsewhere in this chapter, this chapter does not displace powers or limitation on powers which supervised financial organizations and supervised lenders are authorized to exercise under the laws of the United States or other laws of this state in effect after the effective date of this chapter.

(3) This chapter also prescribes in articles six and seven protective measures for consumers in transactions not necessarily involving consumer credit.

§46A-1-104. Application.

With respect to consumer credit sales or consumer loans consummated in another state, a creditor shall not collect a sales finance charge or loan finance charge in excess of that permitted by this chapter.

§46A-1-105. Exclusions.

This chapter does not apply to:

(1) Extensions of credit to government or governmental agencies or instrumentalities;

(2) The sale of insurance by an insurer, except as otherwise provided in this chapter;

(3) Transactions under public utility or common carrier tariffs if a subdivision or agency of this state or of the United
The parties to any sale or loan, other than a consumer credit sale or consumer loan, may agree in writing signed by the parties that the sale or loan is subject to the provisions of this chapter applying to consumer credit sales or consumer loans. If the parties so agree, the sale or loan is subject to this chapter.


Except as otherwise provided in this chapter, a consumer may not waive or agree to forgo rights or benefits under this chapter.

ARTICLE 2. CONSUMER CREDIT PROTECTION.

§46A-2-101. Certain negotiable instruments prohibited and when prohibitions effective; claims and defenses; notes; prior contracts not affected.

(1) On and after the effective date of this chapter and for a period of one year thereafter, the following limitations shall be applicable as to the taking and holding of certain negotiable instruments and assignments of contracts or other writings:

(a) Notwithstanding any term or agreement to the contrary or the provisions of section three hundred five, article three, chapter forty-six of this code, a holder in due course of a negotiable instrument or an assignee of any contract or other writing evidencing an obligation of a consumer arising from a consumer credit sale or consumer lease, shall take and hold such instrument, contract or other writing subject to all claims and defenses relating to such transaction which the consumer has against the seller or lessor not exceeding the amount owing to the holder or assignee at the time of such negotiation or as-
assignment and with respect to which the consumer notifies such
holder or assignee in writing within a period of one hundred
eighty days after the holder or assignee has delivered or mailed
notice of the negotiation or assignment to the consumer.
(b) The notice of negotiation or assignment from the hold-
er or assignee to the consumer shall be in writing, identify
the negotiable instrument, contract or other writing, briefly
describe the goods and services, state the name and address of
the holder or assignee, state the initial deferred balance of such
negotiable instrument, contract or other writing, payable by the
consumer and the number, amount and due dates of install-
ments, the amount currently payable by the consumer, and
contain a conspicuous notice to the consumer that he has one
hundred eighty days from a specified date (which date shall
be the date the holder or assignee mails or delivers the notice
of the negotiation or assignment to the consumer) within
which to notify the holder or assignee in writing of any claim
or defense he may have against the seller or lessor relating to
such transaction.
(c) In order to preserve all his claims or defenses against
a holder or assignee, the consumer must, after receiving the
written notice provided for in subdivision (b) of this subsec-
tion (1), and before the expiration of a period of one hundred
eighty days, notify such holder or assignee in writing as to any
claims or defenses he has against the seller or lessor arising
from that specific consumer credit sale or consumer lease. The
notice by the consumer need not take a particular form and
shall be sufficient if it indicates the claim or defense which
the consumer has against the seller or lessor in a manner suffi-
cient to apprise the holder or assignee of the nature of such
claim or defense. Such notice, if given by mail, is given when
it is sent to the holder or assignee's last known address by
registered mail, return receipt requested. All claims or defenses
of the consumer against the seller arising out of a consumer
credit sale or consumer lease, shall be valid against the holder
or assignee unless the notice of the assignment or negotiation
is given pursuant to this subsection (1).
(d) In a consumer credit sale or consumer lease when
goods or services cannot be delivered or completed immediate-
ly after the sale or lease or when the rendition of future ser-
ices involves a material part of the sale or lease agreement,
the notice provided for in subdivision (b) of this subsection (1) shall not be given to the consumer until the seller or lessor has furnished a certificate to the consumer that evidences completion of such future services and such certificate has been duly executed by the consumer. In addition, the consumer shall forward to the assignee a written reaffirmation of the completion of such future services that are the subject of such sale or lease. Such reaffirmation shall be forwarded directly by United States mail to the assignee by the consumer. If the seller or lessor directly or indirectly obtains such reaffirmation, it shall be void and have no force or legal effect. A completed certificate need not take any particular form, but shall indicate the names and addresses of the parties to the consumer credit sale or consumer lease, the goods delivered or the services completed and the date on which actual delivery was made or actual performance was completed.

(e) Notwithstanding any provisions of this section a holder or assignee shall be subject to any defense based upon lack or failure of consideration.

(f) Nothing contained in this section shall be construed as affecting any consumer's right of action, claim or defense which is otherwise provided for in this code or at common law.

(g) Nothing contained in this section shall be construed in any manner as affecting any assignment or negotiation of any negotiable instrument, contract or other writing, made prior to the effective date of this chapter.

(2) When a negotiable instrument, contract or other writing arising from a consumer credit sale or a consumer lease is entered into more than one year from the effective date of this chapter but less than two years from such effective date, a holder or assignee of such negotiable instrument, contract or other writing shall take such instrument, contract or other writing subject to all claims and defenses which the consumer has against the seller or lessor, not exceeding the amount owing to the holder or assignee at the time of such negotiation or assignment, for a period of one year after the date on which the consumer was notified of the negotiation or assignment by the holder or assignee in the manner provided for in subdivision (b) of subsection (1) of this section. Upon being so notified by the assignee, the consumer may,
within one year after receipt of such notification of negotiation or assignment, notify such holder or assignee, in the manner provided for in subdivision (c) of subsection (1) of this section, as to any claims or defenses he has against the seller arising from that specific transaction. Except as provided in this subsection, all of the provisions of subsection (1) of this section shall apply to transactions contemplated by this subsection.

(3) With respect to a consumer credit sale or consumer lease made or entered into more than two years from the effective date of this chapter, other than a sale or lease primarily for an agricultural purpose, the seller or lessor may not take a negotiable instrument other than a currently dated check as evidence of the obligation of the consumer or lessee. The holder in due course of a negotiable instrument taken in violation of this subsection shall, notwithstanding the provisions of section three hundred five, article three, chapter forty-six of this code, be subject to all claims and defenses which the consumer or lessee has against the seller or lessor arising out of such consumer credit sale or consumer lease.

§46A-2-102. Assignee subject to claims and defenses.

(1) With respect to a consumer credit sale or consumer lease permitted by subsections (1) and (2), section one hundred one of this article, other than a sale or lease primarily for an agricultural purpose, an assignee of the rights of the seller or lessor is subject to all claims and defenses of the consumer or lessee against the seller or lessor arising out of the sale or lease notwithstanding an agreement to the contrary and notwithstanding the provisions of section two hundred six, article nine, chapter forty-six of this code, but the assignee's liability under this section may not exceed the amount owing to the assignee at the time of such assignment. The consumer may institute an action against the assignee and in such action assert all claims and defenses which he could assert against the seller necessary to remove any lien from such consumer's property or cancel and void any contract or other writing so assigned.

(2) For the purpose of determining the amount owing to the assignee at the time of assignment with respect to a sale:

(a) Payments received by the assignee after the consoli-
dation of two or more consumer credit sales, other than pur-
suant to a revolving charge account, are deemed to have
been first applied to the payment of the sales first made; if
the sales consolidated arose from sales made on the same
day, payments are deemed to have been first applied to the
smaller or smallest sale or sales;
(b) Payments received upon a revolving charge account
are deemed to have been first applied to the payment of sales
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 of the debts are made to the account.
§46A-2-103. Lender subject to claims and defenses arising from
sales.
(1) A lender, other than the issuer of a lender credit
card, who, with respect to a particular transaction, makes
a consumer loan for the purpose of enabling a borrower to
buy from a particular seller goods or services, other than
primarily for an agricultural purpose, is subject to all claims
and defenses of the borrower against the seller arising from
that sale of the goods or services when such lender is con-
nected with the transaction in any manner hereinafter pro-
vided. Without limiting the application of this section, a
lender is deemed to be connected with the transaction if:
(i) The lender knows that the seller arranged for a com-
mission or brokerage or referral fee for the extension of credit
by the lender;
(ii) The lender is a person related to the seller unless
the relationship is remote or is not a factor in the transaction;
(iii) The seller guarantees the loan or otherwise assumes
the risk of loss by the lender upon the loan other than a
risk of loss arising solely from seller's failure to perfect a
lien securing the loan;
(iv) The lender directly supplies the seller with the con-
tact document used by the consumer to evidence the loan,
and the seller participated in the preparation of the substan-
tive provisions of such document; or
(v) The loan is conditioned upon the consumer's purchase
of the goods or services from the particular seller, but the
lender's payment of proceeds of the loan to the seller does
not in itself establish that the loan was so conditioned.
(2) A claim or defense which a borrower is permitted to assert against a lender under the provisions of subsection (1) of this section may be asserted against the lender (a) only to the extent of the amount of the loan used for that sale, and (b) as a matter of defense against a claim by the lender on the particular loan transaction involved: Provided, That if such consumer loan is secured by a security interest in any property of the consumer, the consumer may institute an action against the lender and in such action assert all claims and defenses necessary to remove such lien from such consumer's property.

(3) An agreement may not limit or waive the claims or defenses of a borrower under this section.

(4) "Lender credit card" as used in this section means an arrangement or loan agreement, other than a seller credit card, pursuant to which a lender gives a debtor the privilege of using a credit card in transactions, which entitles the user thereof to purchase goods or services from at least one hundred persons not related to the issuer of the lender credit card, out of which debt arises:

(a) By the lender's honoring a draft or similar order for the payment of money drawn or accepted by the consumer;

(b) By the lender's payment or agreement to pay the consumer's obligations; or

(c) By the lender's purchase from the obligee of the consumer's obligations.

§46A-2-104. Cosigner agreements.

No person, other than the spouse of a consumer, shall be held liable as surety, cosigner, comaker, endorser or guarantor or be charged with personal liability for payment in a consumer credit sale or consumer loan unless that person, in addition to signing any instrument by which the liability is assumed or imposed, signs and receives a copy of a separate agreement which clearly explains his liability in the event of default by the consumer and which includes thereon the disclosures required by the "Federal Consumer Credit Protection Act."

§46A-2-105. Balloon payments.

(1) With respect to a consumer credit sale or a consumer
loan in which the initial total amount payable is less than
one thousand five hundred dollars, other than one primarily
for an agricultural purpose or one pursuant to a revolving
charge account or revolving loan account, if any scheduled
payment is more than twice as large as the average of earlier
scheduled payments, the consumer has the right to refinance
the amount of that payment at the time it is due without pen­
alty. The terms of the refinancing shall be no less favorable
to the consumer than the original terms.

(2) With respect to a consumer credit sale or consumer loan
whenever any scheduled payment is at least twice as large as
the smallest of all earlier scheduled payments other than any
down payment, any writing purporting to contain the agree­
ment of the parties shall contain the following language type­
written or printed in ten point bold type: THIS CONTRACT
IS NOT PAYABLE IN INSTALLMENTS OF EQUAL
AMOUNTS: Followed, if there is only one installment which
is at least twice as large as the smallest of all earlier scheduled
payments other than any down payment, by: AN INSTALL­
MENT OF $______________ WILL BE DUE ON __________________
or, if there is more than one such installment, by: LARGER
INSTALLMENTS WILL BE DUE AS FOLLOWS: (The
amount of every such installment and its due date shall be
inserted).

(3) The provisions of this section shall not apply to the
extent that the payment schedule is adjusted to the seasonal or
irregular income of the consumer.

§46A-2-106. Notice of consumer's right to cure default; cure;
acceleration.

After a consumer has been in default on an obligation for
fourteen days for failure to make a scheduled payment or
otherwise perform pursuant to a consumer credit sale or
consumer loan, the creditor may give him notice of such
fact in the manner provided for herein. Actual delivery of
such notice to a consumer or delivery or mailing of same to
the address of the consumer's residence is sufficient for the
purpose of this section. If given by mail, notice is given
when it is deposited in a mailbox properly addressed and
postage prepaid. Notice shall be in writing and shall con­
spicuously state the name, address and telephone number of
the creditor to whom payment or other performance is owed, a brief description of the transaction, the consumer's right to cure such default and the amount of payment and date by which it must be paid in order to cure the default. Except as hereinafter in this section provided, after a default a creditor may not accelerate maturity of the unpaid balance of the obligation, commence any action or demand or take possession of collateral on account of default until fourteen days after notice has been given to the consumer of his right to cure such default. Until such period expires, the consumer shall have the right to cure any default by tendering the amount of all unpaid sums due at the time of the tender, without acceleration, plus any unpaid delinquency or deferral charges and by tendering any other performance necessary to cure such default. Any such cure shall restore a consumer to all his rights under the agreement the same as if there had been no default. A consumer who has been in default three or more times on the same obligation and who has been given notice of such fact three or more times shall not have the right to cure a default under this section and his creditor's right to proceed against him and his collateral shall not be impaired or limited in any way by this section. There shall be no acceleration of the maturity of all or part of any amount owing in a consumer credit sale or consumer loan, except where nonperformance specified in the agreement as constituting default has occurred.


(1) With respect to a consumer credit sale, a seller or issuer of a seller credit card may take a security interest in the property sold. In addition, a seller or issuer of a seller credit card 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 one thousand five hundred dollars or more, or, in the case of a security interest in goods the debt secured is three hundred dollars or more. The seller or issuer of
a seller credit card may also take a security interest in any
property of the buyer to secure the debt arising from a con-
sumer credit sale primarily for an agricultural purpose. Ex-
cept as provided with respect to cross-collateral in connec-
tion with consolidated debts, a seller or issuer of a seller
credit card may not otherwise take a security interest in
property of the buyer to secure the debt arising from a con-
sumer credit sale.

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

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

(4) "Security interest" as used in this section means a
security interest arising by agreement of the parties and
does not include a lien arising by operation of law. Any
such agreement must contain a description of the security
interest retained and must contain a clear identification of
each particular item of collateral, including if appropriate,
the name of the manufacturer of such item and its make,
model and serial number. If the item is a used or rebuilt sam-
ple or demonstrator, such fact shall also be stated in the se-
curity agreement.


In addition to contracting for a security interest pursuant
to the provisions on security in sales or leases, a seller or
issuer of a seller credit card in a consumer credit sale may
secure the debt arising from the sale by contracting for a se-
curity interest in other property if as a result of a prior sale
the seller or issuer of a seller credit card has an existing
security interest in the other property and such debts are
consolidated. The seller or issuer of a seller credit card
may also contract for a security interest in the property sold
in the subsequent sale as security for the previous debt if
such debts are consolidated.


(1) If debts arising from two or more consumer credit
sales, other than sales primarily for an agricultural purpose
or pursuant to a revolving charge account, are secured by 
cross-collateral and 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 and 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 are paid.

(2) Payments received by the seller upon a revolving 
charge account are deemed, for the purpose of determining 
the amount of the debt secured by the various security 
interests, to have been applied first to the payment of 
sales 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 sel-
ler 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.

§46A-2-110. Referral sales or leases.

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

§46A-2-111. Consumer leases; information to be furnished.

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

1. Brief description or identification of the goods;
2. Amount of any payment required at the inception of the lease;
3. Amount paid or payable for official fees, registration, title privilege, certificate of title or license fees or taxes;
4. Amount of other charges not included in the periodic payment and a brief description of the charges;
5. Brief description of insurance to be provided or paid for by the lessor, including the types and amounts of the coverages;
6. Number of periodic payments, the amount of each payment, the due date of the first payment, the due dates of subsequent payments or interval between payments, and the total amount payable by the lessee;
7. Statement of the conditions under which the lessee may terminate the lease prior to the end of the term; and
8. Statement of the liabilities the lease imposes upon the lessee at the end of the term.

§46A-2-112. 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.


A consumer is authorized to pay the original creditor until he receives notification of assignment of rights to payment pursuant to a consumer credit sale or a consumer loan
and that payment is to be made to the assignee. A notification which does not reasonably identify the rights assigned is ineffective. If requested by the 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.

§46A-2-114. Receipts, statements of account; evidence of payment.

(1) The creditor shall deliver or mail to the consumer, without request, a written receipt for each payment by coin or currency on an obligation pursuant to a consumer credit sale or consumer loan. A periodic statement showing a payment received complies with this subsection.

(2) Upon written request of a consumer, the person to whom an obligation is owed pursuant to a consumer credit sale or consumer loan, other than one pursuant to a revolving charge account or revolving loan account, shall provide a written statement of the dates and amounts of payments made within the past twelve months and the total amount unpaid. The requested statement shall be provided without charge once during each year of the term of the sale or loan. If additional statements are requested the creditor may charge not in excess of three dollars for each additional statement.

(3) After a consumer has fulfilled all obligations with respect to a consumer credit sale or consumer loan, other than one pursuant to a revolving charge account or revolving loan account, the person to whom the obligation was owed shall, upon the request of the consumer, deliver or mail to the consumer written evidence acknowledging payment in full of all obligations with respect to the transaction.

§46A-2-115. Limitation on default charges.

Except for reasonable expenses including costs and fees authorized by statute, incurred in realizing on a security interest, the agreement with respect to a consumer credit sale or a consumer loan may not provide for charges as a result of default by the consumer other than those authorized by this chapter. A provision in violation of this section is unenforceable.

(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 sale or a consumer loan, or a sale as defined in section one hundred two, article six of this chapter, except as provided for in subsection (3) of this section, and an employee may not, under the provisions of this section one hundred sixteen or the provisions of section three, article five, chapter twenty-one of this code, authorize any deduction from his earnings except for union or club dues, pension plans, payroll savings plans, charities, stock purchase plans and insurance. Any assignment or authorization for the deduction of earnings in violation of this section one hundred sixteen is unenforceable.

(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) A creditor may take an assignment of earnings of the consumer in regard to any transaction set forth in subsection (1) of this section: Provided, That such assignment shall not exceed twenty percent of the disposable earnings of such consumer, that such assignment is revocable at will by the consumer, that the amount owing for such sale or loan does not exceed the sum of three hundred dollars, and that no security interest is given or taken in such sale or loan.

§46A-2-117. Authorization to confess judgment prohibited.

A consumer may not authorize any person to confess judgment on a claim arising out of a consumer credit sale or a consumer loan. An authorization in violation of this section is void. The provisions of this section shall not be construed as in any way impliedly authorizing a confession of judgment in any other type of transaction.

§46A-2-118. No garnishment before judgment.

Prior to entry of judgment in an action against the debtor for debt arising from a consumer credit sale or a consumer loan, the creditor may not attach unpaid earnings of the debtor by garnishment or like proceedings. The provisions
of this section shall not be construed as in any way impliedly
authorizing garnishment before judgment in any other type
of transaction.


(1) This section applies to a deficiency on a consumer
credit sale of goods or services and on a consumer loan in
which the lender is subject to claims and defenses arising
from sales (§46A-2-103).

(2) If the seller repossesses or voluntarily accepts sur-
render of goods which were the subject of the sale and in
which he has a security interest and the cash price of the
goods repossessed or surrendered was one thousand five
hundred dollars or less, the buyer is not personally liable
to the seller for the unpaid balance of the debt arising from
the sale of the goods, and the seller's duty to dispose of the
collateral is governed by the provisions on disposition of col-
lateral (§46-9-505) of the “Uniform Commercial Code.”

(3) If the seller repossesses or voluntarily accepts sur-
render of goods which were not the subject of the sale but in
which he has a security interest to secure a debt arising from
a sale of goods or services or a combined sale of goods and
services and the cash price of the sale was one thousand five
hundred dollars or less, the buyer is not personally liable to the
seller for the unpaid balance of the debt arising from the
sale, and the seller's duty to dispose of the collateral is gov-
erned by the provisions on disposition of collateral (§46-9-505)
of the “Uniform Commercial Code.”

(4) If the lender takes possession or voluntarily accepts
surrender of goods in which he has a security interest to
secure a debt arising from a consumer loan in which the
lender may be subject to claims and defenses arising from
sales (§46A-2-103) and the net proceeds of the loan paid to
or for the benefit of the borrower were one thousand five
hundred dollars or less, the borrower is not personally lia-
ble to the lender for the unpaid balance of the debt arising
from the loan and the lender's duty to dispose of the collat-
eral is governed by the provisions on disposition of collateral
(§46-9-505) of the “Uniform Commercial Code.”

(5) For the purpose of determining the unpaid balance of
consolidated debts or debts pursuant to revolving charge
accounts or revolving loan accounts, the allocation of payments to a debt shall be determined in the same manner as provided for determining the amount of debt secured by various security interests (§46A-2-109).

(6) The consumer may be liable in damages to the creditor if the consumer has wrongfully damaged the collateral or if after default and demand, the consumer has wrongfully failed to make the collateral available to the creditor.

(7) If the creditor elects to bring an action against the consumer for a debt arising from a consumer credit sale of goods or services or from a consumer loan in which the lender is subject to claims and defenses arising from sales (§46A-2-103), when under this section he would not be entitled to a deficiency judgment if he took possession of the collateral, and obtains judgment:

(a) He may not take possession of the collateral, and

(b) The collateral is not subject to levy or sale on execution or similar proceedings pursuant to the judgment.

§46A-2-120. Extortionate extensions of credit.

(1) If the court finds as a matter of fact that it was the understanding of the creditor and the consumer at the time an extension of credit was 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 process against the consumer.

(2) If a court finds as a matter of fact that an extension of credit was made at a rate in excess of that permitted for such transaction by the provisions of this chapter 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 non-repayment thereof, there is prima facie evidence that the extension of credit was unenforceable under subsection (1).

§46A-2-121. Unconscionability; inducement by unconscionable conduct.

(1) With respect to a transaction which is or gives rise to
a consumer credit sale or consumer loan, if the court as a matter of law finds:

(a) The agreement or transaction 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 term or part of the agreement or transaction 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 term or part, or may so limit the application of any unconscionable term or part as to avoid any unconscionable result.

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

(3) For the purpose of this section, a charge or practice expressly permitted by this chapter is not unconscionable.

§46A-2-122. Definitions.

For the purposes of this section and sections one hundred twenty-three, one hundred twenty-four, one hundred twenty-five, one hundred twenty-six, one hundred twenty-seven, one hundred twenty-eight, and one hundred twenty-nine of this article, the following terms shall have the following meaning:

(a) "Claim" means any obligation or alleged obligation arising out of or from a consumer transaction.

(b) "Debt collection" means any action, conduct or practice of soliciting claims for collection or in the collection of claims owed or due or alleged to be owed or due to a creditor by a consumer.

(c) "Debt collector" means any person or organization engaging directly or indirectly in debt collection. The term includes any person or organization who sells or offers to sell forms which are, or are represented to be, a collection system, device or scheme, and are intended or calculated to be used to collect claims.

§46A-2-123. Practice of law by debt collectors.

Unless a licensed attorney in this state, no debt collector
shall engage in conduct deemed the practice of law. Without
limiting the general application of the foregoing, the following
conduct is deemed the practice of law:
  (a) The performance of legal services, furnishing of legal
advice or false representation, direct or by implication, that
any person is an attorney;
  (b) The solicitation of assignments of claims for the pur-
pose of suit at the instigation of an attorney or otherwise;
  (c) The institution of judicial proceedings on behalf of
other persons except on an assigned claim;
  (d) Any communication with debtors in the name of an
attorney or upon stationery or other written matter bearing an
attorney’s name; and
  (e) Any demand for or payment of money constituting a
share of compensation for services performed or to be per-
formed by an attorney in collecting a claim.
§46A-2-124. Threats or coercion.
No debt collector shall collect or attempt to collect any
money alleged to be due and owing by means of any threat,
coercion or attempt to coerce. Without limiting the general
application of the foregoing, the following conduct is deemed
to violate this section:
  (a) The use, or express or implicit threat of use, of violence
or other criminal means, to cause harm to the person, reputa-
tion or property of any person;
  (b) The accusation or threat to accuse any person of fraud,
any crime, or any conduct which, if true, would tend to dis-
grace such other person or in any way subject him to ridicule,
or any conduct which, if true, would tend to disgrace such
other person or in any way subject him to ridicule or con-
tempt of society;
  (c) False accusations made to another person, including any
credit reporting agency, that a consumer is willfully refusing
to pay a just debt, or the threat to so make false accusations;
  (d) The threat to sell or assign to another the obligation of
the consumer with an attending representation or implication
that the result of such sale or assignment would be that the
consumer would lose any defense to the claim or would be
subjected to harsh, vindictive or abusive collection attempts;
(e) The threat that nonpayment of an alleged claim will result in the arrest of any person or the seizure, garnishment, attachment or sale of any property or wages of that person without informing the debtor that there must be in effect a court order permitting any such action before it can be taken; and

(f) The threat to take any action prohibited by this act or other law regulating the debt collector's conduct.


No debt collector shall unreasonably oppress or abuse any person in connection with the collection of or attempt to collect any claim alleged to be due and owing by that person or another. Without limiting the general application of the foregoing, the following conduct is deemed to violate this section:

(a) The use of profane or obscene language or language that is intended to unreasonably abuse the hearer or reader;

(b) The placement of telephone calls without disclosure of the caller's identity and with the intent to annoy, harass or threaten any person at the called number;

(c) Causing expense to any person in the form of long distance telephone tolls, telegram fees or other charges incurred by a medium of communication, by concealment of the true purpose of the notice, letter, message or communication; and

(d) Causing a telephone to ring or engaging any person in telephone conversation repeatedly or continuously, or at unusual times or at times known to be inconvenient, with intent to annoy, abuse, oppress or threaten any person at the called number.

§46A-2-126. Unreasonable publication.

No debt collector shall unreasonably publicize information relating to any alleged indebtedness or debtor. Without limiting the general application of the foregoing, the following conduct is deemed to violate this section:

(a) The communication to any employer or his agent any information relating to an employee's indebtedness other than through proper legal action, process or proceeding;

(b) The disclosure, publication, or communication or infor-
motion relating to a consumer's indebtedness to any relative or family member of the consumer, except through proper legal action or process or at the express and unsolicited request of the relative or family member;

(c) The disclosure, publication or communication of any information relating to a consumer's indebtedness to any other person, by publishing or posting any list of consumers, commonly known as "deadbeat lists," by advertising for sale any claim to enforce payment thereof, or in any other manner other than through proper legal action, process or proceeding; and

(d) The use of any form of communication to the consumer, which ordinarily may be seen by any other persons, that displays or conveys any information about the alleged claim other than the name, address and phone number of the debt collector.

§46A-2-127. Fraudulent, deceptive or misleading representations.

No debt collector shall use any fraudulent, deceptive or misleading representation or means to collect or attempt to collect claims or to obtain information concerning consumers. Without limiting the general application of the foregoing, the following conduct is deemed to violate this section:

(a) The use of any business, company or organization name while engaged in the collection of claims, other than the true name of the debt collector's business, company or organization;

(b) The failure to clearly disclose in all communications made to collect or attempt to collect a claim or to obtain or attempt to obtain information about a consumer, that the debt collector is attempting to collect a claim and that any information obtained will be used for that purpose;

(c) Any false representation that the debt collector has in his possession information or something of value for the consumer that is made to solicit or discover information about the consumer;

(d) The failure to clearly disclose the name and full business address of the person to whom the claim has been assigned for collection, or to whom the claim is owed, at the time of making any demand for money;

(e) Any false representation or implication of the character,
extent or amount of a claim against a consumer, or of its status in any legal proceeding;
(f) Any false representation or false implication that any debt collector is vouched for, bonded by, affiliated with or an instrumentality, agent or official of this state or any agency of the federal, state or local government;
(g) The use or distribution or sale of any written communication which simulates or is falsely represented to be a document authorized, issued or approved by a court, an official or any other legally constituted or authorized authority, or which creates a false impression about its source, authorization or approval;
(h) Any representation that an existing obligation of the consumer may be increased by the addition of attorney’s fees, investigation fees, service fees or any other fees or charges when in fact such fees or charges may not legally be added to the existing obligation; and
(i) Any false representation or false impression about the status or true nature of or the services rendered by the debt collector or his business.

§46A-2-128. Unfair or unconscionable means.

No debt collector shall use unfair or unconscionable means to collect or attempt to collect any claim. Without limiting the general application of the foregoing, the following conduct is deemed to violate this section:

(a) The seeking or obtaining of any written statement or acknowledgement in any form that specifies that a consumer’s obligation is one incurred for necessaries of life where the original obligation was not in fact incurred for such necessaries;
(b) The seeking or obtaining of any written statement or acknowledgment in any form containing an affirmation of any obligation by a consumer who has been declared bankrupt, without clearly disclosing the nature and consequences of such affirmation and the fact that the consumer is not legally obligated to make such affirmation;
(c) The collection or the attempt to collect from the consumer all or any part of the debt collector’s fee or charge for services rendered;
(d) The collection of or the attempt to collect any interest or other charge, fee or expense incidental to the principal obligation unless such interest or incidental fee, charge or expense is expressly authorized by the agreement creating the obligation and by charges or expenses authorized by statute to the consumer; and

(e) Any communication with a consumer whenever it appears that the consumer is represented by an attorney and the attorney's name and address are known, or could be easily ascertained, unless the attorney fails to answer correspondence, return phone calls or discuss the obligation in question or unless the attorney consents to direct communication.

§46A-2-129. Postal violations.

No debt collector shall use, distribute, sell or prepare for use any written communication that violates or fails to conform to United States postal laws and regulations.

§46A-2-130. Limitation on garnishment.

(1) For the purposes of the provisions in this chapter relating to garnishment:

(a) "Disposable earnings" means that part of the earnings of an individual remaining after the deduction from those earnings of amounts required by law to be withheld; and

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

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

(a) Twenty percent of his disposable earnings for that week, or

(b) The amount by which his disposable earnings for that week exceed thirty times the federal minimum hourly wage prescribed by section 6(a)(1) of the "Fair Labor Standards Act of 1938," U.S.C. Title 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 commissioner 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. Any time after a con-
sumer's earnings have been executed upon pursuant to
article five-a or article five-b, chapter thirty-eight of this
code by a creditor resulting from a consumer credit sale or
consumer loan, such consumer may petition any court having
jurisdiction of such matter or the circuit court of the county
wherein he resides to reduce or temporarily or permanently
remove such execution upon his earnings on the grounds
that such execution causes or will cause undue hardship
to him or his family. When such fact is proved to the
satisfaction of such court, it may reduce or temporarily or
permanently remove such execution.

§46A-2-131. No discharge or reprisal because of garnishment.

1 No employer shall discharge or take any other form of
reprisal against an employee for the reason that a creditor
of the employee has subjected or attempted to subject unpaid
earnings of the employee to garnishment or like proceedings
directed to the employer for the purpose of paying a judgment
arising from a consumer credit sale or consumer loan.

§46A-2-132. Home solicitation; buyer's right to cancel; notice.

1 In addition to any other right to revoke an offer, a buyer
shall have the right to cancel a home solicitation sale until
midnight of the third business day after the day on which he
has signed an agreement or offer to purchase. Cancellation
shall become effective when the buyer gives written notice of
his intention to cancel to the seller at the address stated in
the agreement or offer to purchase. Notice of such cancellation,
if given by mail, is given when it is deposited in a mailbox
properly addressed and postage prepaid. Such notice of can-
cellation given by the buyer need not take a particular form
and shall be sufficient if it indicates by any form of written
expression the intention of the buyer not to be bound by the
home solicitation sale. Notwithstanding any above-mentioned
provision, a buyer may not cancel a home solicitation sale
where he has requested and the seller has provided goods or
services without delay because of a bona fide emergency and
either the seller has in good faith made a substantial beginning
of performance of the agreement before the buyer has given
notice of cancellation, or in the case of goods, such goods can-
not be returned to the seller in substantially as good condition
as when they were received by the buyer.

§46A-2-133. Form of agreement or offer to purchase; statement of
buyer's rights.

In every home solicitation sale in this state, except where
a buyer has requested a seller to provide goods or services
without delay because of an emergency, the seller shall pre-
sent to the buyer a written agreement or offer to purchase
which designates as the date of the transaction the day on
which the buyer has signed it and which contains a statement
of the buyer's rights as hereinafter provided for. No such
written agreement or offer to purchase shall be effective until
after it has been signed by the buyer and he has written the
date of such signature in his own handwriting. The statement
must appear under the conspicuous caption: “BUYER'S
RIGHT TO CANCEL” and read as follows: “If this agree-
ment was solicited at a place other than the seller's business
establishment at a fixed location and you decide you do not
want these 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 the third business day after you sign this agree-
ment. The notice must be mailed to: (Name and mailing ad-
dress of seller).” Until the seller has fully complied with this
section, the buyer may cancel the home solicitation sale, by
notifying the seller of his intention to cancel in any manner.
Any written agreement or offer to purchase which contains the
form and content of notice of cancellation required by the fed-
eral trade commission and which provides information sub-
stantially similar to that required by this section shall be deem-
ted to comply fully with this section.

§46A-2-134. Restoration of down payment.

Within ten days after a home solicitation sale has been
cancelled or an offer to purchase has been revoked, the seller
shall tender to the buyer any payment made by the buyer to him and any note or other evidence of indebtedness taken in the transaction. A provision permitting the seller to keep all or part of any payment, note or other evidence of indebtedness is in violation of this section and unenforceable. If any down payment included goods traded in, the seller shall return the goods in substantially as good a condition as when he received them. If a seller has failed to tender goods as required by this section, the buyer may elect to recover an amount equal to the trade-in allowance on such goods as stated in the agreement. Until a seller has complied with all the obligations imposed by this section, a buyer may keep any goods delivered to him by the seller and he is hereby given a lien on such goods for the purpose of making any recovery to which he is entitled by this section.

§46A-2-135. Buyer's duty; seller's right; no compensation for certain services.

Except as provided for in section four of this article, within a reasonable time after a home solicitation sale has been cancelled or an offer to purchase has been revoked, a seller may demand and receive any goods delivered by him to a buyer as the result of a home solicitation sale. A buyer shall not be obligated to tender such goods to the seller at any place other than the buyer's residence. If the seller fails to demand possession of goods within such reasonable time, such goods shall become the buyer's property without any obligation to pay for them. For the purposes of this section, twenty days shall be presumed to be a reasonable time. The buyer shall take reasonable care of such 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. Where a seller has performed any service pursuant to a home solicitation sale prior to its cancellation or prior to giving the statement required in section three of this article, he shall not be entitled to any compensation for such performance.


Any consumer residing in this state may set apart and hold personal property to be exempt from execution or other judi-
cial process resulting from consumer credit transactions, except for the purchase money due on such property, in such amounts as follows: Clothing and other wearing apparel of the consumer, his spouse and any dependents of such consumer, not to exceed the fair market value of two hundred dollars; furniture, appliances, furnishings and fixtures regularly used for family purposes in the consumer's residence, to the extent of the fair market value of one thousand dollars; children's books, pictures, toys and other such personal property of children; all medical health equipment used for health purposes by the consumer, his spouse and any dependent of such consumer; tools of trade, including any income-producing property used in the consumer's principal occupation, to the extent of the fair market value of one thousand dollars; and any policy of life or endowment insurance which is payable to the spouse or children of the insured consumer or to a trustee for their benefit, except the cash value of any accrued dividends thereon. When a consumer claims personal property as exempt under the provisions of this section, he shall deliver a list containing all the personal property owned or claimed by him and all items of such property he claims as exempt hereunder, with the value of each separate item listed according to his best knowledge, to the officer holding the execution or other such process. Such list shall be sworn to by affidavit. If the value of the property named in such list exceeds the amounts specified in this section, the consumer shall state at the foot thereof what part of such property he claims as exempt. If such value does not exceed the amounts specified in this section, the claim of exemption shall be held to extend to the whole thereof without stating more and, if no appraisement is demanded, the property so claimed shall be set aside as exempt. Where the consumer owning exempt property is absent or incapable of acting or neglects or declines to act hereunder, the claim of exemption may be made, the list delivered and the affidavit made by his spouse with the same effect as if the owner had done so. Upon receipt of such a list, the officer to whom it is given shall immediately exhibit such list to the creditor or his agent or attorney. The rights granted and procedures provided for in article eight, chapter thirty-eight of this code
shall apply to any proceeding under this section, except that the provisions of sections one and three of such article shall not apply.

ARTICLE 3. FINANCE CHARGES AND RELATED PROVISIONS.

§46A-3-101. Sales finance charge for consumer credit sales other than certain sales of real estate or sales made pursuant to revolving charge accounts.

1 (1) With respect to a consumer credit sale, other than a sale of real estate subject to the provisions of section one hundred two of this article or a sale pursuant to a revolving charge account, a seller may contract for and receive a sales finance charge not exceeding the equivalent of eighteen percent per year on that part of the unpaid balances of the amount financed which is fifteen hundred dollars or less and twelve percent per year on that part of the unpaid balances of the amount financed which is in excess of fifteen hundred dollars, calculated according to the actuarial method.

2 (2) This section does not limit or restrict the manner of calculating the sales finance charge, whether by way of add-on, discount, or otherwise, so long as the rate of the sales finance charge does not exceed that permitted by this section. If the sale is precomputed:

3 (a) The sales finance charge may be calculated on the assumption that all scheduled payments will be made when due, and

4 (b) The effect of prepayment is governed by the provisions on rebate upon prepayment contained in section one hundred eleven of this article.

5 (3) For the purposes of this section, the term of a sale agreement commences on the date the credit is granted or, if goods are delivered or services performed ten days or more after that date, with the date of commencement of delivery or performance. Differences in the lengths of months are disregarded and a day may be counted as one-thirtieth of a month. Subject to classifications and differentiations the seller may reasonably establish, a part of a month in excess of fifteen days may be treated as a full month if periods of fifteen days or less are disregarded and if that procedure
is not consistently used to obtain a greater yield than would otherwise be permitted.

(4) Subject to classifications and differentiations the seller may reasonably establish, he may make the same sales finance charge on all amounts financed within a specified range. A sales finance charge so made does not violate subsection (1) if:

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

(b) When applied to the lowest amount within each range, it does not produce a rate of sales finance charge exceeding the rate calculated according to paragraph (a) by more than eight percent of the rate calculated according to paragraph (a).

(5) Notwithstanding subsection (1), the seller may contract for and receive a minimum sales finance charge of not more than five dollars when the amount financed does not exceed seventy-five dollars, or seven dollars and fifty cents when the amount financed exceeds seventy-five dollars.

(6) Notwithstanding any provision of this section to the contrary, with respect to a consumer credit sale involving a motor vehicle:

(a) A seller may contract for and receive a sales finance charge not exceeding the equivalent of twelve percent per year on the unpaid balance calculated according to the actuarial method when such sale is made less than one year after the year of the model year designation of such motor vehicle or such motor vehicle is purchased new;

(b) A seller may contract for and receive a sales finance charge not exceeding the equivalent of fifteen percent per year on the unpaid balance calculated according to the actuarial method when such sale is made more than one year but less than two years after the year of the model year designation of such motor vehicle; and

(c) A seller may contract for and receive a sales finance charge not exceeding the equivalent of eighteen percent per year on the unpaid balance calculated according to the actuarial method when such sale is made more than two years after the year of the model year designation of such motor vehicle.
§46A-3-102. Sales finance charge for certain consumer credit sales of real estate.

With respect to a consumer credit sale of real estate, other than goods which become fixtures, where title is retained or there is created or retained by agreement a purchase money lien against that real estate, the seller may contract for and receive a sales finance charge not exceeding an amount equivalent to the interest permitted by section five, article six, chapter forty-seven of this code.

In addition to the sales finance charge permitted by this section with respect to such sale, a seller may also contract for and receive additional charges, delinquency charges, and deferral charges and compute rebates upon prepayment as defined and authorized by this chapter.

§46A-3-103. Sales finance charge for revolving charge accounts other than certain sales of real estate.

(1) With respect to a consumer credit sale made pursuant to a revolving charge account, other than sales of real estate pursuant to section one hundred two of this article, the parties may contract for the payment by the buyer of a sales finance charge not exceeding that permitted in this section.

(2) A sales finance 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 of the account, or
(b) The balance of the account at the beginning of the first day of the billing cycle, less all payments on and credits to such account during such billing cycle and excluding all charges to such account during such billing cycle, or
(c) The median amount within a specified range within which the average daily balance of the account or the balance of the account at the beginning of the first day of the billing cycle, less all payments on and credits to such account during such billing cycle and excluding all charges to such account during such billing cycle, is included. A charge may be made pursuant to this paragraph only if the seller, subject to classifications and differentiations he may reasonably establish, makes the same charge on all balances within the
specified range and if the percentage when applied to the median amount within the range does not produce a charge exceeding the charge resulting from applying that percentage to the lowest amount within the range by more than eight percent of the charge on the median amount.

(3) If the billing cycle is monthly, the sales finance charge may not exceed one and one-half percent on the first seven hundred fifty dollars of unpaid balance and one percent on the unpaid balance in excess of seven hundred fifty dollars. 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 thirty. A billing cycle is monthly if the billing statement dates are on the same day each month or do not vary by more than four days therefrom.

(4) Notwithstanding subsection (3), if there is an unpaid balance on the date as of which the sales finance charge is applied, the seller may contract for and receive a charge not exceeding fifty cents if the billing cycle is monthly or longer, or the pro rata part of fifty cents which bears the same relation to fifty cents as the number of days in the billing cycle bears to thirty if the billing cycle is shorter than monthly.

§46A-3-104. Loan finance charge for consumer loans made by supervised financial organizations and certain other lenders other than loans made pursuant to revolving loan accounts.

(1) With respect to a consumer loan, other than a consumer loan made pursuant to a revolving loan account, (a) a bank, as defined in section two, article one, chapter thirty-one-a of this code, may contract for and receive a loan finance charge equivalent to the charge or interest permitted by the provisions of section thirty, article four, chapter thirty-one-a or by the provisions of section five or section five-a, article six, chapter forty-seven of this code, (b) an industrial loan company, as defined in section one, article seven, chapter thirty-one of this code, may contract for and receive a loan finance charge equivalent to the aggregate of the interest and charges permitted by subsections (e) and (f) of section six,
article seven, chapter thirty-one of this code or by the provisions of section five, article six, chapter forty-seven of this code, (c) a building and loan association, as defined in section two, article six, chapter thirty-one of this code, may contract for and receive a loan finance charge equivalent to the charge or interest permitted by the provisions of section seventeen, article six, chapter thirty-one of this code, or by the provisions of section five, article six, chapter forty-seven of this code, (d) a credit union, as defined in section one, article ten, chapter thirty-one of this code, may contract for and receive a loan finance charge equivalent to the charge or interest permitted by the provisions of section sixteen, article ten, chapter thirty-one of this code, or by the provisions of section five, article sixty-seven of this code, and (e) any other lender, other than a supervised lender, may contract for and receive a loan finance charge equivalent to the charge or interest permitted by the provisions of section five or section five-a, article six, chapter forty-seven of this code.

(2) Lenders referred to in subsection (1) of this section are further authorized to contract for and receive loan finance charges which do not exceed the actuarial equivalent of the finance charges permitted by this section. If the loan is precomputed:

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

(b) The effect of prepayment is governed by the provisions on rebate upon prepayment contained in section one hundred eleven of this article.

(3) Notwithstanding subsection (1), the lender may contract for and receive a minimum loan finance charge of not more than five dollars when the amount loaned does not exceed seventy-five dollars, or seven dollars and fifty cents when the amount loaned exceeds seventy-five dollars.

(4) An assignee of a consumer credit sale contract may collect, receive or enforce the sales finance charge provided in said contract, and any such charge so collected, received or enforced by an assignee shall not be deemed usurious or in violation of this chapter or any other provision of this code if such sales finance charge does not exceed the limits per-
mitted to be charged by a seller under the provisions of this chapter.

§46A-3-105. Interest rate on loans guaranteed or insured by United States or agency thereof.

Nothing contained in this chapter or other law of this state shall be taken or construed as limiting the permissible interest rates or loan finance charges upon loans evidenced by notes, bonds or other obligations secured by mortgages or deeds of trust insured or guaranteed by the federal housing commissioner or United States administrator of veterans' affairs or by any other officer, department, agency or instrumentality of the United States or evidenced by notes, bonds, debentures and other obligations and securities issued by, insured by, or guaranteed by the federal housing commissioner, federal national mortgage association, government national mortgage association, small business administration or other federal officer, department, agency or instrumentality.

§46A-3-106. Loan finance charge for revolving loan accounts.

(1) With respect to a consumer loan made pursuant to a revolving loan account, a supervised financial organization permitted to establish revolving loan accounts may contract for and receive a loan finance charge not exceeding that permitted in this section.

(2) A loan finance 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 of the debt,

(b) The balance of the debt at the beginning of the first day of the billing cycle, less all payments on and credits to such debt during such billing cycle and excluding all additional borrowings during such billing cycle, or

(c) The median amount within a specified range within which the average daily balance of the debt or the balance of the debt at the beginning of the first day of the billing cycle, less all payments on and credits to such debt during such billing cycle and excluding all additional borrowings during such billing cycle, is included. A charge may be made pursuant to this paragraph only if the lender, subject to
classifications and differentiations he may reasonably estab-
lish, makes the same charge on all balances within the
specified range and if the percentage when applied to the
median amount within the range does not produce a charge
exceeding the charge resulting from applying that percentage
to the lowest amount within the range by more than eight
percent of the charge on the median amount.

(3) If the billing cycle is monthly, the loan finance charge
may not exceed one and one-half percent on the first seven
hundred fifty dollars of unpaid principal balance and one
percent on the unpaid principal balance in excess of seven
hundred fifty dollars. 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 thirty. A billing cycle
is monthly if the billing statement dates are on the same
day each month or do not vary by more than four days
therefrom.

(4) Notwithstanding subsection (3), if there is an unpaid
balance on the date as of which the loan finance charge
is applied the lender may contract for and receive a charge
not exceeding fifty cents if the billing cycle is monthly
or longer, or the pro rata part of fifty cents which bears
the same relation to fifty cents as the number of days in the
billing cycle bears to thirty if the billing cycle is shorter
than monthly, but no charge may be made pursuant to this
paragraph if the lender has made an annual charge for the
same period as permitted by the provisions on additional
charges.

§46A-3-107. Sales finance charges and loan finance charges on
refinancing.

With respect to a consumer credit sale or consumer loan,
refinancing or consolidation, the seller or lender may by
agreement with the consumer refinance the unpaid balance
and may contract for and receive the applicable sales fi-
nance charge or loan finance charge, as the case may be,
based on the amount financed of a sale or principal of a
loan resulting from the refinancing at a rate not exceeding
that permitted by the provisions on sales finance charge for
consumer credit sales or loan finance charge for consumer
loans, as the case may be. For the purpose of determining
the sales finance charge or loan finance charge permitted,
the amount financed or principal resulting from the refinancing
comprises the following:
(1) If the transaction was not precomputed, the total of
the unpaid balance and the accrued charges on the date of
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 on the date of refinancing except that for the
purpose of computing this amount no minimum sales finance
charge or minimum loan finance charge shall be allowed;
(2) Appropriate additional charges, payment of which is
defered; and
(3) Accumulated unpaid delinquency or deferral charges.

§46A-3-108. Sales finance charges and loan finance charges on
consolidation.
(1) If a consumer owes an unpaid balance to a creditor
with respect to a consumer credit sale or consumer loan,
refinancing or consolidation, and becomes obligated on
another consumer credit sale or consumer loan, refinancing
or consolidation, with the same creditor, the parties may
agree to a consolidation resulting in a single schedule of
payments. If the previous consumer credit sale or consumer
loan was not precomputed, the parties may agree to add
the unpaid amount of the amount financed or principal
and accrued charges on the date of consolidation to the
amount financed or principal with respect to the subsequent
consumer credit sale or consumer loan. If the previous con-
sumer credit sale or consumer loan, refinancing or consolida-
tion, was precomputed, the parties may agree to refinance
the unpaid balance pursuant to the provisions on refinancing
and to consolidate the amount financed or principal result-
ing from the refinancing by adding it, together with any
accumulated delinquency or deferral charges, to the amount
financed or principal, with respect to the subsequent con-
sumer credit sale or consumer loan. In either case the
creditor may contract for and receive a sales finance charge
or loan finance charge, as the case may be, based on the
aggregate amount financed or principal resulting from the consolidation at a rate not in excess of the appropriate provision on sales finance charges or loan finance charges for a consumer credit sale or consumer loan.

(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 sales finance charge is governed by the provisions on sales finance charges for consumer credit sales other than certain sales of real estate or sales made pursuant to revolving charge accounts (§46A-3-101). 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 loan finance charge is governed by the provisions on loan finance charges for consumer loans contained in section one hundred four of this article.

(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 made by the same seller, the parties may agree to the consolidation resulting in a single schedule of payments either pursuant to subsection (2) or by adding together the unpaid balances with respect to the two sales.

(4) If a consumer credit sale subject to the provisions of section one hundred two of this article is consolidated with any other consumer credit sale or consumer loan, the sales finance charge or loan finance charge on the aggregate amount financed or principal resulting from the consolidation shall be at the lower rate.

§46A-3-109. Additional charges; insurance.

(1) In addition to the sales finance charge or loan finance charge permitted by this chapter, a creditor may contract for and receive the following additional charges in connection with a consumer credit sale or a consumer loan:

(a) Official fees and taxes;
(b) Charges for insurance as described in subsection (2);
(c) Annual charges, payable in advance, for the privilege of using a lender credit card or similar arrangement which entitles the user to purchase goods or services from at
least one hundred persons not related to the issuer of the
lender credit card or similar arrangement, under an arrange-
ment pursuant to which the debts resulting from the purchases
are payable to the issuer;
(d) Charges for other benefits, including insurance, con-
ferred on the consumer, if the benefits are of value to him
and if the charges are reasonable in relation to the benefits,
are of a type which is not for credit, and are excluded as
permissible additional charges from the sales finance charge
or loan finance charge by rule adopted by the commissioner:
Provided, That as to insurance, the same must be sold by
an individual licensed under the laws of this state to sell
such insurance and the determination of whether the charges
therefor are reasonable in relation to the benefits shall
be determined by the insurance commissioner of this state;
and
(e) Reasonable closing costs with respect to a debt secured
by an interest in land.
(2) A creditor may take, obtain or provide reasonable
insurance on the life and earning capacity of any consumer
obligated on the consumer credit sale or consumer loan,
reasonable insurance on any real or personal property offer-
ed as security subject to the provisions of this subsection,
and vendor's or creditor's single interest insurance with
respect to which the insurer has no right of subrogation.
Only one policy of life insurance and/or one policy of
health and accident insurance and/or one policy of accident
insurance on any one consumer may be in force with respect
to any one contract or agreement at any one time, but
one policy may cover both a consumer and his spouse.
(a) The amount, terms and conditions of property in-
surance shall have a reasonable relation to the existing hazards
or risk of loss, damage or destruction and be reasonable
in relation to the character and value of the property
insured or to be insured; and the term of such insurance
shall be reasonable in relation to the terms of credit:
Provided, however, That nothing contained in this subdivision
shall be construed as in any way affecting the power and
jurisdiction of the insurance commissioner of this state
in the premises: And provided further, That nothing shall
be deemed to prohibit the consumer from obtaining, at
his option, greater coverages for longer periods of time if he so desires; (b) Life insurance shall be in an initial amount not to exceed the total amount repayable under the consumer credit agreement, and where a consumer credit sale, other than pursuant to a revolving charge account, or consumer loan, other than pursuant to a revolving loan account, is repayable in installments, such insurance shall at no time exceed the scheduled or actual amount of unpaid indebtedness, whichever is greater. If life insurance is provided in connection with a revolving charge account or a revolving loan account, such insurance shall not be in excess of the authorized credit limit. Life insurance authorized by this paragraph shall provide that the benefits shall be paid to the creditor or reduce or extinguish the unpaid indebtedness: Provided, That if a separate charge is made for such insurance and the amount of insurance exceeds the unpaid indebtedness, where not prohibited as aforesaid, then such excess shall be payable to the estate of the consumer. The initial term of such life insurance in connection with a consumer credit sale, other than a sale pursuant to a revolving charge account, or in connection with a consumer loan, other than a loan pursuant to a revolving loan account, shall not exceed the scheduled term of the consumer credit agreement by more than fifteen days. The aggregate amount of periodic benefits payable by credit accident and health insurance in the event of disability, as defined in the policy, shall not exceed the unpaid amount of such indebtedness: Provided, That the periodic benefits payable in connection with a consumer credit sale pursuant to a revolving charge account or of a consumer loan pursuant to a revolving loan account may be based upon the authorized credit limit; (c) Where the insurance is obtained or provided by or through a creditor, the creditor may collect from the consumer or include as part of the cash price of a consumer credit sale or as part of the principal of a consumer loan, or deduct from the proceeds of any consumer loan the premium, or in the case of group insurance, the identifiable charge. The premium or identifiable charge for such insurance required or obtained by a creditor may equal,
but shall not exceed the premium rate filed by the insurer with the insurance commissioner. In any case where the creditor collects the entire premium for such insurance in advance, such premium shall be remitted by such creditor to the insurer or the insurance agent, as specified by the insurer, within ten days from or after the end of the month in which such collection was made;

(d) No creditor shall directly or indirectly receive any gain or advantage from such insurance, whether in the form of commissions, dividends, retrospective rate credits, compensating balances or special deposits associated with the issuance of such insurance, or otherwise;

(e) With respect to insurance against loss of or damage to property, or against liability, the creditor shall furnish a clear and specific statement in writing to the debtor, setting forth the cost of the insurance if obtained from or through the creditor, and stating that the debtor may choose the person through whom the insurance is to be obtained; and

(f) With respect to consumer credit insurance providing life, accident or health coverage, no creditor shall require a consumer to purchase such insurance or to purchase such insurance from such creditor or any particular agent, broker or insurance company as a condition precedent to extending credit to or on behalf of such consumer.

§46A-3-110. Right to prepay.

Except for a consumer credit sale subject to the provisions of section one hundred two of this article or a non-precomputed consumer loan secured by an interest in land and subject to the provisions on rebate upon prepayment, the consumer may prepay in full the unpaid balance of a consumer credit sale or a consumer loan, refinancing or consolidation at any time without penalty.

§46A-3-111. Application of payments on account; rebate upon prepayment; judgments and interest on judgments.

(1) Where a consumer credit sale or consumer loan is precomputed all payments on account shall be applied to installments in the order in which they fall due, except those applied to delinquency or deferral charges.
(2) Upon prepayment in full of a precomputed consumer sale or consumer loan by cash, a new loan, or otherwise, the creditor shall rebate to the consumer an amount not less than the unearned portion of the sales finance charge or loan finance charge calculated according to the sum of the digits method (Rule of 78): Provided, That upon refinancing of the unpaid balance, an amount not less than the unearned portion of the sales finance charge or loan finance charge calculated by prorating the total amount of the sales finance charge or loan finance charge, as the case may be, over the term of the sale or loan in equal monthly amounts shall be rebated or otherwise credited to the consumer: Provided, however, That the creditor may collect or retain the minimum charge within the limits stated in this chapter if the sales finance charge or loan finance charge earned at the time of prepayment is less than any minimum charge authorized by this chapter. No rebate of less than one dollar need be made. For the purpose of determining the installment due date nearest the date of any prepayment in full, refinancing or consolidation, any prepayment, refinancing or consolidation of an obligation payable in monthly installments made on or before the fifteenth day following an installment due date shall be deemed to have been made as of such installment due date, and any prepayment, refinancing or consolidation made on or after the sixteenth day shall be deemed to have been made on the next succeeding installment due date.

(3) The commissioner shall prescribe by rule the method or procedure for the allocation of charges and the calculation of rebates consistent with the other provisions of this chapter where the precomputed consumer credit sale or consumer loan is payable in unequal or irregular installments.

(4) If the maturity of a precomputed consumer credit sale or consumer loan is accelerated for any reason and judgment is obtained, the debtor is entitled to the same rebate as if the payment had been made on the date judgment is entered, and such judgment shall bear interest until paid at a rate equivalent to the rate of the sales finance charge or loan finance charge applicable to the obligation on which such judgment is obtained.
§46A-3-112. Delinquency charges on precomputed consumer credit sales or consumer loans.

1 (1) With respect to a precomputed consumer credit sale or consumer loan, refinancing or consolidation, the parties may contract for a delinquency charge on any installment not paid in full within ten days after its scheduled due date in an amount not exceeding the greater of:
   (a) An amount, not exceeding ten dollars, which is five percent of the unpaid amount of the installment, but in any even not less than one dollar; or
   (b) An amount equivalent to the deferral charge (§46A-3-114) that would be permitted to defer the unpaid amount of the installment for the period that it is delinquent.

2 (2) A delinquency charge under paragraph (a) of subsection (1) may be collected only once on an installment however long it remains in default. No delinquency charge may be collected with respect to a deferred installment unless the installment is not paid in full within ten days after its deferred due date. A delinquency charge may be collected at the time it accrues or at any time thereafter.

3 (3) No delinquency charge may be collected on an installment which is paid in full within ten days after its scheduled or deferred installment due date. For purposes of this subsection, payments shall be applied first to current installments, then to delinquent installments, and then to delinquency and other charges.

4 (4) If two installments or parts thereof of a precomputed consumer credit sale or consumer loan are in default for ten days or more, the creditor may elect to convert such sale or loan from a precomputed sale or loan to one in which the sales finance charge or loan finance charge is based on unpaid balances. In such event the creditor shall make a rebate pursuant to the provisions on rebate upon prepayment as of the maturity date of any installment then delinquent, and thereafter may make a sales finance charge or loan finance charge as authorized by the appropriate provisions on sales finance charges or loan finance charges for consumer credit sales or consumer loans.

The amount of the rebate shall not be reduced by the
§46A-3-113. Delinquency charges on non-precomputed consumer credit sales or consumer loans repayable in installments.

(1) With respect to a non-precomputed credit sale or consumer loan, refinancing or consolidation, repayable in installments, parties may contract for a delinquency charge on any installment not paid in full within ten days after its scheduled due date in an amount, not exceeding ten dollars, which is five percent of the unpaid amount of the installment, but in any event not less than one dollar.

(2) A delinquency charge under subsection (1) may be collected only once on an installment however long it remains in default. 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 installment which is paid in full within ten days after its scheduled due date. For purposes of this subsection, payments shall be applied first to current installments, then to delinquent installments, and then to delinquency and other charges.

§46A-3-114. Deferral charges.

(1) With respect to a precomputed consumer credit sale or consumer loan, refinancing or consolidation, the parties before or after default may agree in writing to a deferral of all or part of one or more unpaid installments, and the seller or lender may make and collect a deferral charge which shall be in an amount equivalent to the loan finance charge or sales finance charge attributable to the first
of the deferred monthly installment periods multiplied by
number of months in the deferral period (the period in
which no payment is required or made by reason of a
deferral): Provided, That no installment on which a delin-
quency charge has been collected or partial payment made
shall be deferred unless the amount of the delinquency
charge or partial payment is first applied to the deferral
charge. If prepayment in full occurs during a deferral period,
the portion of the deferral charge attributable to the unex-
pired full months in the deferral period shall be also rebated.
(2) The seller or lender, in addition to the deferral
charge, may make appropriate additional charges, and the
amount of these charges which is not paid in cash may be
added to the amount deferred for the purpose of calculating
the deferral charge.
(3) The parties may agree in writing at the time of a
precomputed consumer credit sale or consumer loan, re-
financing or consolidation that if an installment is not paid
within ten days after its due date as originally scheduled
or as deferred, the seller or lender may unilaterally grant
a deferral and make charges as provided in this section.
No deferral charge may be made for a period after the date
on which the seller or lender elects to accelerate the maturity
of the agreement.
(4) The commissioner shall prescribe by rule the method
or procedure for the calculation of deferral charges cons-
istent with the other provisions of this chapter where the
precomputed consumer credit sale or consumer loan is payable
in unequal or irregular installments.
§46A-3-115. Advances to perform covenants of consumer.
(1) If the agreement with respect to a consumer credit
sale or a consumer loan, refinancing or consolidation contains
covenants by the consumer to perform certain duties per-
training to insuring or preserving collateral or payment of
taxes, fees or assessments and if the creditor pursuant to the
agreement pays for performance of such duties on behalf of
the consumer, the creditor may add the amounts so paid to
the debt. Within a reasonable time after advancing any sums,
he shall state to the consumer in writing the amount of the
sums advanced, any charges with respect to this amount,
any revised payment scheduled, 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 sale finance charge or a loan 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 the provisions of the “Federal Consumer Credit Protection Act” with respect to the sale or loan, refinancing or consolidation. With respect to a revolving charge account or revolving loan account the amount of the advance may be added to the unpaid balance of the debt and the creditor may make a sales finance charge or loan finance charge not exceeding that permitted by the appropriate provisions on sales finance charges or loan finance charges.

§46A-3-116. Change in terms of revolving charge accounts or revolving loan accounts.

(1) If a creditor makes a change in the terms of a revolving charge account or revolving loan 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 provided in this chapter.

(2) A creditor may change the terms of a revolving charge account or revolving loan account whether or not the change is authorized by prior agreement. Except as provided in subsection (3), the creditor shall give to the consumer written notice of such change not less than fifteen days prior to the effective date of such change.

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

(a) The consumer after otherwise receiving notice of the change agrees in writing to the change;

(b) The consumer elects to pay an amount designated on a billing statement as including a new charge for a benefit offered to the debtor when the benefit and charge constitute the change in terms and when the billing statement also states the amount payable if the new charge is excluded;
57 (c) The change involves no significant cost to the consumer;
(d) The consumer has previously consented in writing to the kind of change made and notice of the change is given to the consumer in two billing cycles prior to the effective date of the change; or
(e) The change applies only to purchases made or obligations incurred after a date specified in a notice of the change given in two billing cycles prior to the effective date of the change.

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

(5) Under no circumstances may a change under the provisions of this section be made so as to (a) increase a sales finance charge or loan finance charge above that permitted by the appropriate provisions on sales finance charges or loan finance charges; or (b) apply a higher sales finance charge or loan finance charge to the account balance or debt balance unpaid as of the date the change becomes effective.

ARTICLE 4. SUPERVISED LENDERS.
§46A-4-101. Authority to make supervised loans.

1 Unless a person has first obtained a license from the commissioner authorizing him to make supervised loans, he shall not engage in the business of:
2 (1) Making supervised loans, or
3 (2) Taking assignments of and undertaking direct collection of payments from or enforcement of rights against consumers arising from supervised loans.

§46A-4-102. License to make supervised loans.

1 (1) The commissioner shall receive and act on all applications for licenses to make supervised loans under this chapter. Applications shall be under oath, be filed in the manner prescribed by the commissioner, contain the information the commissioner requires by rule to make an evaluation of the financial responsibility, experience, character and fitness of the applicant, and the findings required of him before he may
issue a license. At the time of the filing of the application, the sum of two hundred fifty dollars shall be paid to the commissioner as an investigation fee.

(2) No license shall be issued to a supervised financial organization. No license shall be issued to any person unless the commissioner, upon investigation, finds that the financial responsibility, experience, character and fitness of the applicant, and of the members thereof (if the applicant is a co-partnership or association) and of the officers and directors thereof (if the applicant is a corporation), are such as to command the confidence of the community and to warrant belief that the business will be operated honestly, fairly and efficiently, within the purposes of this chapter, and the applicant has available for the operation of the business at the specified location assets of at least two thousand dollars, and that allowing the applicant to engage in business will promote the convenience and advantage of the community in which the business of the applicant is to be conducted.

(3) Upon written request, the applicant is entitled to a hearing on the question of his qualifications for a license if (a) the commissioner has notified the applicant in writing that his application has been denied, or (b) the commissioner has not issued a license within sixty days after the application for the license was filed. A request for a hearing may not be made more than fifteen days after the commissioner has mailed a writing to the applicant notifying him that the application has been denied and stating in substance the commissioner's findings supporting denial of the application.

(4) Not more than one place of business shall be maintained under the same license, but the commissioner may issue more than one license to the same licensee upon compliance with all the provisions of this article governing an original issuance of a license, for each such new license. Each license shall remain in full force and effect until surrendered, suspended or revoked.

(5) Upon giving the commissioner at least fifteen days' prior written notice, a licensee may (a) change the location of any place of business located within a municipality to any other location within that same municipality, or (b) change the location of any place of business located outside of a municipality to a location no more than five miles from the
originally licensed location, but in no case may a licensee
move any place of business located outside a municipality
to a location within a municipality. A licensee may not move
the location of any place of business located within a munici-
pality to any other location outside of that municipality.

(6) A licensee may conduct the business of making super-
vised loans only at or from a place of business for which he
holds a license and not under any other name than that stated
in the license. A sale or lease in which credit is granted
pursuant to a lender credit card does not violate this sub-
section.

(7) A license issued under the provisions of this section
shall not be transferable or assignable.

§46A-4-103. Revocation or suspension of license.

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

(a) The licensee has repeatedly and willfully violated this
chapter or any rule or order lawfully made or issued pursuant
to this article; or

(b) Facts or conditions exist which would clearly have
justified the commissioner 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 un-
less prior to institution of proceedings by the commissioner
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 commissioner finds that probable cause for
revocation of a license exists and that enforcement of this
article requires immediate suspension of the license pending
investigation, he may, after a hearing upon five days’ written
notice, enter an order suspending the license for not more than thirty days.

(4) Whenever the commissioner revokes or suspends a license, he shall enter an order to that effect and forthwith notify the licensee of the revocation or suspension. Within five days after the entry of the order he shall mail by registered or certified mail or 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 commissioner 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 consumer.

(7) The commissioner 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 commissioner in refusing to grant a license.

§46A-4-104. Records; annual reports.

(1) Every licensee shall maintain records in conformity with generally accepted accounting principles and practices in a manner which will enable the commissioner to determine whether the licensee is complying with the provisions of this article. 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 commissioner is given free access to the records wherever located. The records pertaining to any loan need not be preserved for more than two years after making the final entry relating to the loan, but in the case of a revolving loan account such two-year period is measured from the date of each entry.

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

§46A-4-105. Examinations and investigations.

(1) The commissioner shall examine annually the loans, business and records of every licensee. In addition, for the purpose of discovering violations of this article or securing information lawfully required, the attorney general or the commissioner 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.

(2) If the lender's records are located outside this state, the lender at his option shall make them available to the commissioner at a convenient location within this state, or pay the reasonable and necessary expenses for the commissioner or his representative to examine them at the place where they are maintained. The commissioner 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 commissioner 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 commissioner may apply to any circuit court of this state for an order compelling compliance.

(5) Every licensee shall pay to the commissioner the actual costs of each examination as provided for in this section.
§46A-4-106. Application of administrative procedures act.

Except as otherwise provided, the provisions of chapter twenty-nine-a of this code apply to and govern all administrative action taken by the commissioner pursuant to the provisions in this article respecting supervised loans.

§46A-4-107. Loan finance charge for supervised lenders.

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

(2) The loan finance charge, calculated according to the actuarial method, may not exceed the equivalent of the total of:

(a) Thirty-six percent per year on that part of the unpaid balances of the principal which is three hundred dollars or less;

(b) Twenty-four percent per year on that part of the unpaid balances of the principal which is more than three hundred dollars but does not exceed eight hundred dollars; and

(c) Eighteen percent per year on that part of the unpaid balances of the principal which is more than eight hundred dollars.

(3) This section does not limit or restrict the manner of calculating the loan finance charge, whether by way of addition, discount, or otherwise, so long as the rate of the loan finance charge does not exceed that permitted by this section.

If the loan is precomputed:

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

(b) The effect of prepayment is governed by the provision on rebate upon prepayment contained in section one hundred eleven, article three of this chapter.

(4) For the purposes of this section, the term of a loan commences on the date the loan is made. Differences in the lengths of months are disregarded and a day may be counted as one-thirtieth of a month. Subject to classifications and differentiations the licensee may reasonably establish, a part
of a month in excess of fifteen days may be treated as a full
month if periods of fifteen days or less are disregarded and
if that procedure is not consistently used to obtain a greater
yield than would otherwise be permitted.

(5) Subject to classifications and differentiations the lender
may reasonably establish, he may make the same loan fi-
nance charge on all principal amounts within a specified
range. A loan finance charge so made does not violate sub-
section (2) if:

(a) When applied to the median amount within each range,
it does not exceed the maximum permitted by subsection (2),

(b) When applied to the lowest amount within each range,
it does not produce a rate of loan finance charge exceeding
the rate calculated according to subdivision (a) of this sub-
section (5) by more than eight percent of the rate calculated
according to said subdivision (a).

(6) With respect to a revolving loan account:

(a) A charge may be made by a supervised lender in each
monthly billing cycle which is one twelfth of the maximum
annual rates permitted by this section computed on an amount
not exceeding the greatest of:

(i) The average daily balance of the debt,

(ii) The balance of the debt at the beginning of the first
day of the billing cycle, less all payments on and credits to
such debt during such billing cycle and excluding all addi-
tional borrowings during such billing cycle, or

(iii) Subject to subsection (5), the median amount within
a specified range within which the average daily balance of
the debt or the balance of the debt at the beginning of the
first day of the billing cycle, less all payments on and credits
to such debt during such billing cycle and excluding all addi-
tional borrowings during such billing cycle, is included.
For the purpose of this subdivision (a) a billing cycle is
monthly if the billing statement dates are on the same day
each month or do not vary by more than four days therefrom.

(b) If the billing cycle is not monthly, the maximum loan
finance charge which may be made by a supervised lender
is that percentage which bears the same relation to an applic-
able monthly percentage as the number of days in the billing cycle bears to thirty.

(c) Notwithstanding subdivisions (a) and (b) of this subsection (6), if there is an unpaid balance on the date as of which the loan finance charge is applied, the licensee may contract for and receive a charge not exceeding fifty cents if the billing cycle is monthly or longer, or the pro rata part of fifty cents which bears the same relation to fifty cents as the number of days in the billing cycle bears to thirty if the billing cycle is shorter than monthly, but no charge may be made pursuant to this subdivision (c) if the lender has made an annual charge for the same period as permitted by the provisions on additional charges.

§46A-4-108. Use of multiple loan agreements.

1 A supervised lender may not use multiple loan agreements with intent to obtain a higher loan finance charge than would otherwise be permitted by the provisions of this article. A supervised lender uses multiple loan agreements if, with intent to obtain a higher loan 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 supervised lender for a supervised loan under this article.

The excess amount of the loan finance charge provided for in agreements in violation of this section is an excess charge for the purposes of the provisions on effect of violations on rights of parties.

§46A-4-109. Restrictions on interest in land as security; prohibitions as to renegotiation of loans discharged in bankruptcy.

1 A supervised lender may not contract for an interest in land as security. A security interest taken in violation of this section is void.

4 A supervised lender may not renegotiate the original loan, or any part thereof, or make a new contract covering the original loan, or any part thereof, with any borrower, who has received a discharge in bankruptcy of the original loan or any balance due thereon at the time of said discharge
§46A-4-110. **Conduct of business other than making loans.**

No licensee shall conduct the business of making loans under the provisions of this article within any office, room or place of business in which any other business is solicited or engaged in, or in association or conjunction therewith, except as may be authorized in writing by the commissioner upon his finding that the character of such other business is such that the granting of such authority would not facilitate evasions of this article or of the rules and regulations lawfully made hereunder, except nothing herein shall prohibit the licensee from purchasing installment sales contracts or the sale or provision of insurance authorized by section one hundred nine, article three of this chapter.

§46A-4-111. **Maximum interest when loan is in excess of one thousand dollars.**

No licensee shall directly or indirectly charge, contract for, or receive any interest, discount or consideration greater than six percent per annum upon the loan, use or forbearance of money, goods or things in action, or upon the loan, use or sale of credit, of the amount or value of more than one thousand dollars. The foregoing prohibition shall also apply to any licensee who permits any person, as borrower or as endorser, guarantor, or surety for any borrower, or otherwise, to owe directly or contingently, or both, to the licensee at any time the sum of more than one thousand dollars for principal.

§46A-4-112. **Code references to small loans and small loan companies; authority of the commissioner.**

All references in other chapters of this code to small loans, small loan lenders, small loan licensees and to article seven-a, chapter forty-seven of this code, shall, after the effective date of this chapter, and despite the repeal of...
said statute, be read, construed and understood to mean and to have reference, respectively, to supervised loans, supervised lenders, supervised lender licensees, and to this article four.

All authority vested by this chapter in the commissioner shall be deemed to be in addition to, and not in limitation of, the authority vested in the commissioner of banking by provisions contained in other chapters of this code.

§46A-4-113. Continuation of licensing.

All persons licensed under the provisions of article seven-a, chapter forty-seven of this code, on the effective date of this chapter, are licensed to make supervised loans under the provisions of this article four, and all provisions of this article shall after the effective date of this chapter apply to the persons so previously licensed, including without limitation the provisions governing notification (§46A-7-115) and payment of fees (§46A-7-116) contained in article seven of this chapter.

The commissioner may, but is not required to, deliver evidence of licensing to the persons so previously licensed.

ARTICLE 5. CIVIL LIABILITY AND CRIMINAL PENALTIES.


(1) If a creditor has violated the provisions of this chapter applying to collection of excess charges (§46A-1-104), restrictions on interests in land as security (§46A-4-109), disclosure with respect to consumer leases (§46A-2-111), receipts, statements of account and evidences of payment (§46A-2-114), security in sales and leases (§46A-2-107), assignments of earnings (§46A-2-116), authorizations to confess judgment (§46A-2-117), or limitations on default charges (§46A-2-115), illegal, fraudulent or unconscionable conduct (§46A-2-121) or any prohibited debt collection practice (§46A-2-122 through 129), the consumer has a cause of action to recover actual damages and in addition a right in an action to recover from the person violating this chapter a penalty in an amount determined by the court not less than one hundred dollars nor more than one thousand dollars. With respect to violations arising from consumer credit sales, sales as defined
in article six of this chapter, or consumer loans made pursuant to revolving charge accounts or revolving loan accounts, no action pursuant to this subsection may be brought more than one year after the violations occurred. With respect to violations arising from other consumer credit sales or consumer loans, no action pursuant to this subsection may be brought more than one year after the due date of the last scheduled payment of the agreement.

(2) If a creditor has violated the provisions of this chapter respecting authority to make supervised loans (§46A-4-101), the loan is void and the consumer is not obligated to pay either the principal or the loan finance charge. If he has paid any part of the principal or of the finance charge, he has a right to recover in an action the payment from the person violating this chapter 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 supervised loans made pursuant to revolving loan accounts, no action pursuant to this subsection may be brought more than one year after the violation occurred. With respect to violations arising from other supervised 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 consumer is not obligated to pay a charge in excess of that allowed by this chapter, and if he has paid an excess charge he has a right to a refund. A refund may be made by reducing the consumer's obligation by the amount of the excess charge. If the consumer has paid an amount in excess of the lawful obligation under the agreement, the consumer may recover in an action 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 consumers arising from the debt.

(4) If a creditor has contracted for or received a charge in excess of that allowed by this chapter, or if a consumer is entitled to a refund and a person liable to the consumer refuses to make a refund within a reasonable
time after demand, the consumer may recover from the
creditor or the person liable in an action a penalty in an
amount determined by the court not less than one hundred
dollars nor more than one thousand dollars. With respect
to excess charges arising from consumer credit sales or
consumer loans made pursuant to revolving charge accounts
or revolving loan accounts, no action pursuant to this sub-
section may be brought more than one year after the time
the excess charge was made. With respect to excess charges
arising from other consumer credit sales or consumer loans
no action pursuant to this subsection may be brought
more than one year after the due date of the last scheduled
payment of the agreement pursuant to which the charge
was made.
(5) Except as otherwise provided, a violation of this
chapter does not impair rights on a debt.
(6) If an employer discharges an employee in violation
of the provisions prohibiting discharge (§46A-2-124), the
employee may within ninety days bring a civil action for
recovery of wages lost as a result of the violation and for
an order requiring the reinstatement of the employee.
Damages recoverable shall not exceed lost wages for six
weeks.
(7) A creditor has no liability for a penalty under
subsection (1) or subsection (4) if within fifteen 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 consumer 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 of law or fact notwithstanding the main-
tenance of procedures reasonably adapted to avoid any such
violation or error, no liability is imposed under subsections
(1), (2) and (4), and the validity of the transaction is not
affected.
§46A-5-102. Refunds and penalties as set off to obligation.

Refunds or penalties to which the consumer is entitled pursuant to section one hundred one of this article may be set off against the consumer's obligation, and may be raised as a defense to an action on the obligation without regard to the time limitations prescribed by section one hundred one of this article.

§46A-5-103. Willful violations.

(1) A supervised lender who willfully makes charges in excess of those permitted by the provisions of article four of this chapter, pertaining to supervised lenders, is guilty of a misdemeanor and upon conviction may be sentenced to pay a fine not exceeding five thousand dollars, or to imprisonment not exceeding one year, or both.

(2) A person who willfully engages in the business of making supervised loans without a license in violation of the provisions of article four of this chapter applying to authority to make supervised loans is guilty of a misdemeanor and upon conviction may be sentenced to pay a fine not exceeding five thousand dollars, or to imprisonment not exceeding one year, or both.

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

(4) Any person who intentionally engages in a violation of sections one hundred twenty-two through one hundred twenty-nine, article two of this chapter, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than one thousand dollars, or imprisoned in the county jail not more than one year, or both fined or imprisoned.

§46A-6-101. Legislative declarations; statutory construction.

(1) The Legislature hereby declares that the purpose of this article is to complement the body of federal law govern-
ing unfair competition and unfair, deceptive and fraudulent acts or practices in order to protect the public and foster fair and honest competition. It is the intent of the Legislature that, in construing this article, the courts be guided by the interpretation given by the federal courts to the various federal statutes dealing with the same or similar matters. To this end, this article shall be liberally construed so that its beneficial purposes may be served.

(2) It is, however, the further intent of the Legislature that this article shall not be construed to prohibit acts or practices which are reasonable in relation to the development and preservation of business or which are not injurious to the public interest, nor shall this article be construed to repeal by implication the provisions of articles eleven, eleven-a and eleven-b, chapter forty-seven of this code.

§46A-6-102. Definitions.

When used in this article the following words, terms and phrases, and any variations thereof required by the context, shall have the meaning ascribed to them in this article, except where the context indicates a different meaning:

(a) "Advertisement" means the publication, dissemination or circulation of any matter, oral or written, including labeling, which tends to induce, directly or indirectly, any person to enter into any obligation, sign any contract, or acquire any title or interest in any goods or services and includes every word device to disguise any form of business solicitation by using such terms as "renewal," "invoice," "bill," "statement" or "reminder," to create an impression of existing obligation when there is none, or other language to mislead any person in relation to any sought-after commercial transaction.

(b) "Sale" includes any sale, offer for sale or attempt to sell any goods for cash or credit or any services or offer for services for cash or credit.

(c) "Trade" or "commerce" means the advertising, offering for sale, sale or distribution of any goods or services and shall include any trade or commerce, directly or indirectly, affecting the people of this state.
(d) "Unfair methods of competition and unfair or deceptive acts or practices" means and includes, but is not limited to, any one or more of the following:

1. Passing off goods or services as those of another;
2. Causing likelihood of confusion or of misunderstanding as to the source, sponsorship, approval or certification of goods or services;
3. Causing likelihood of confusion or of misunderstanding as to affiliation, connection or association with, or certification by, another;
4. Using deceptive representations or designations of geographic origin in connection with goods or services;
5. Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits or quantities that they do not have, or that a person has a sponsorship, approval, status, affiliation or connection that he does not have;
6. Representing that goods are original or new if they are deteriorated, altered, reconditioned, reclaimed, used or secondhand;
7. Representing that goods or services are of a particular standard, quality or grade, or that goods are of a particular style or model, if they are of another;
8. Disparaging the goods, services or business of another by false or misleading representation of fact;
9. Advertising goods or services with intent not to sell them as advertised;
10. Advertising goods or services with intent not to supply reasonably expectable public demand, unless the advertisement discloses a limitation of quantity;
11. Making false or misleading statements of fact concerning the reasons for, existence of or amounts of price reductions;
12. Engaging in any other conduct which similarly creates a likelihood of confusion or of misunderstanding; or
13. The act, use or employment by any person of any deception, fraud, false pretense, false promise or misrepresentation, or the concealment, suppression or omission of any material fact with intent that others rely upon such con-
§46A-6-103. Rules and regulations.

1 The attorney general of the state of West Virginia may make rules and regulations interpreting the provisions of section one hundred two of this article. Such rules and regulations shall conform as nearly as practicable with the rules, regulations and decisions of the federal trade commission and the federal courts in interpreting the provisions of the “Federal Trade Commission Act,” as from time to time amended.

§46A-6-104. Unlawful acts or practices.

1 Unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful.

§46A-6-105. Exempted transactions.

1 Nothing in this article shall apply to acts done by the publisher, owner, agent or employee of a newspaper, periodical or radio or television station in the publication or dissemination of an advertisement, when the owner, agent or employee did not have knowledge of the false, misleading or deceptive character of the advertisement, did not prepare the advertisement and did not have a direct financial interest in the sale or distribution of the advertised goods or services.

§46A-6-106. Actions by consumers.

1 (1) Any person who purchases or leases goods or services and thereby suffers any ascertainable loss of money or property, real or personal, as a result of the use or employment by another person of a method, act or practice prohibited or declared to be unlawful by the provisions of this article, may bring an action in the circuit court of the county in which the seller or lessor resides or has his principal place of business or is doing business, to recover actual damages or two hundred dollars, whichever is greater. The court may, in its discretion, provide such equitable relief as it deems necessary or proper.
(2) Any permanent injunction, judgment or order of the
court under section one hundred eight, article seven of this
chapter for a violation of section one hundred four of this
article shall be prima facie evidence in an action brought
under this section one hundred six that the respondent used
or employed a method, act or practice declared unlawful by
said section one hundred four of this article.

ARTICLE 7. ADMINISTRATION.

§46A-7-101. Division of consumer protection created; purpose.

There is hereby created, under the authority of the attorney
general of the state of West Virginia, a division of con-
sumer protection for the purposes set forth in this article.

§46A-7-102. Power of attorney general; reliance on rules of com-
missioner; duty to report.

(1) In addition to other powers granted by this chapter,
the attorney general within the limitations provided by law
may:
(a) Receive and act on complaints, take action designed to
obtain voluntary compliance with this chapter or commence
proceedings on his own initiative;
(b) Counsel persons and groups on their rights and duties
under this chapter;
(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 chapter and make the results available
to the public;
(e) Adopt, amend and repeal such reasonable rules and
regulations, in accordance with the provisions of chapter
twenty-nine-a of this code, as are necessary and proper to
effectuate the purposes of this chapter and to prevent circum-
vention or evasion thereof; and
(f) Delegate his powers and duties under this chapter
to qualified personnel in his office, who shall act under the
direction and supervision of the attorney general and for
whose acts he shall be responsible.
(2) Except for refund of an excess charge, no liability
is imposed under this chapter for an act done or omitted
in conformity with a rule of the commissioner, 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.

(3) The attorney general and commissioner shall annually on or before December first, submit a joint report to the governor and to the Legislature on the operation of their offices, on the use of consumer credit and on consumer protection problems in the state, and on the problems of persons of small means obtaining credit from persons regularly engaged in extending sales or loan credit. For the purpose of making the report, the attorney general and commissioner are authorized to conduct research and make appropriate studies. The report shall include a description of the examination and investigation procedures and policies of their offices, a statement of policies followed in deciding whether to investigate or examine the offices of credit suppliers subject to this chapter, a statement of the number and percentages of offices which are periodically investigated or examined, a statement of the types of consumer credit and consumer protection problems of both creditors and consumers which have come to their attention through their examinations and investigations and the disposition of them under existing law, and a general statement of the activities of their offices and of others to promote the purposes of this chapter. The report shall not identify the persons against whom action is taken by the attorney general or commissioner.

§46A-7-103. Administrative powers with respect to supervised financial organizations.

(1) With respect to supervised financial organizations, the powers of examination and investigation and administrative enforcement shall be exercised by the official or agency to whose supervision the organization is subject. All other powers of the attorney general under this chapter may be exercised by him with respect to a supervised financial organization.

(2) If the attorney general receives a complaint or other information concerning noncompliance with this chapter by
a supervised financial organization, he shall inform the
official or agency having supervisory authority over the organi-
ization concerned. The attorney general may request in-
formation about supervised financial organizations from the
officials or agencies supervising them.

(3) The attorney general 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
chapter. They may jointly pursue investigations, prosecute
actions, and take other official action, as they deem appropri-
ate, if either of them otherwise is empowered to take the
action.

§46A-7-104. Investigatory powers.

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

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

(3) Upon failure of a person without lawful excuse to
obey a subpoena or to give testimony and upon reasonable
notice to all persons affected thereby, the attorney general may apply to the circuit court of the county in which the hearing is to be held for an order compelling compliance.

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

§46A-7-105. Application of administrative procedures act.

Except as otherwise provided, the provisions of chapter twenty-nine-a of this code apply to and govern all administrative action taken by the attorney general pursuant to this chapter.

§46A-7-106. Administrative enforcement orders; judicial review.

(1) After notice and hearing the attorney general may order a creditor or other person to cease and desist from engaging in violations of this chapter.

(2) A respondent aggrieved by an order of the attorney general may obtain judicial review of the order in accordance with the provisions of chapter twenty-nine-a of this code, except as herein otherwise provided. The proceeding for review must be initiated by the filing of a petition in the court within thirty days after a copy of the order of the attorney general is received. Copies of the petition shall be served upon all parties of record.

(3) Within thirty days after service of the petition for review upon the attorney general, or within any further time the court may allow, the attorney general 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 attorney general are clearly erroneous in view of the reliable, probative and substantial evidence on the whole record, (b) grant any temporary relief or restraining order it deems just, or (c) enter an order affirming, enforcing, modifying and enforcing as modified, or setting
aside in whole or in part, the order of the attorney general, or
remanding the case to the attorney general for further pro-
ceedings.
(4) An objection not urged at the administrative 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 attorney
general 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 attorney general.
(5) The judgment of the circuit court shall be final unless
reversed, vacated or modified on appeal to the supreme court
of appeals of this state in accordance with the provisions of
section one, article six, chapter twenty-nine-a of this code. The
attorney general's copy of the testimony shall be available at
reasonable times to all parties for examination without cost.
(6) If no proceeding for judicial review is initiated, the
attorney general may obtain an order of a circuit court for
enforcement of his order upon a showing that the order was
issued in compliance with this section, that no proceeding for
review was initiated within thirty days after a copy of the
order was received and that the respondent is subject to the
jurisdiction of the court. If no proceeding for judicial review
is initiated, the proceeding for enforcement of any order of
the attorney general shall be initiated by the filing of a petition
in the court. Copies of the petition shall be served upon all
parties of record.
(7) With respect to unconscionable agreements or fraudu-
 lent or unconscionable conduct by the respondent, the attor-
ney general may not issue an order pursuant to this section
but may bring a civil action for an injunction.


If it is claimed that a person has engaged in conduct which
could be subject to an order by the attorney general or
by a court, the attorney general may accept an assurance in
writing that the person will not engage in the conduct in the
future. Such assurance of voluntary compliance shall not be
considered an admission of violation for any purpose, except that if a person giving such assurance fails to comply with its terms, the assurance is prima facie evidence that prior to such assurance he engaged in the conduct described in such assurance.

§46A-7-108. Injunctions against violations of chapter.

The attorney general may bring a civil action to restrain a person from violating this chapter and for other appropriate relief.

§46A-7-109. Injunctions against unconscionable agreements and fraudulent or unconscionable conduct.

(1) 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 sales or consumer loans;

(b) Fraudulent or unconscionable conduct in inducing consumers to enter into consumer credit sales or consumer loans; or

(c) Fraudulent or unconscionable conduct in the collection of debts arising from consumer credit sales or consumer loans.

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

(a) That the respondent has made unconscionable agreements or has engaged or is likely to engage in a course of fraudulent or unconscionable conduct;

(b) That the agreements or conduct of the respondent has caused or is likely to cause injury to consumers; and

(c) That the respondent has been able to cause or will be able to cause the injury primarily because the transactions involved are credit transactions.

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

(a) Belief by the creditor at the time consumer credit sales or consumer loans are made that there was no reasonable probability of payment in full of the obligation by the debtor;

(b) In the case of consumer credit sales, knowledge by
the seller at the time of the sale of the inability of the buyer to receive substantial benefits from the property or services sold;

(c) In the case of consumer credit sales, gross disparity between the price of the property or services sold 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;

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

(e) The fact that the respondent has knowingly taken advantage of the inability of the debtor reasonably to protect his interests by reason of physical or mental infirmities, ignorance, illiteracy or inability to understand the language of the agreement, or similar factors.

(4) In an action brought pursuant to this chapter, a charge or practice expressly permitted by this chapter is not unconscionable.

§46A-7-110. Temporary relief.

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

§46A-7-111. Civil actions by attorney general.

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

(2) The attorney general may bring a civil action against 
a creditor or other person to recover a civil penalty for 
willfully violating this chapter, and if the court finds that 
the defendant has engaged in a course of repeated and 
willful violations of this chapter, it may assess a civil 
penalty of no more than five thousand dollars. No civil 
penalty pursuant to this subsection may be imposed for 
violations of this chapter occurring more than one year 
before the action is brought.

§46A-7-112. Jury trial.

In an action brought by the attorney general under this 
chapter, he has no right to trial by jury.
§46A-7-113. Consumer's remedies not affected.
1 The grant of powers to the attorney general in this chapter
does not affect remedies available to consumers under this
chapter or under other principles of law or equity.

§46A-7-114. Venue.
1 The attorney general may bring actions or proceedings under
this chapter in the circuit court of any county in which an
act on which the action or proceeding is based occurred, or
in any county in which respondent or defendant resides or
transacts business.

§46A-7-115. Notification.
1 (1) Every person engaged in this state in making consumer
credit sales or consumer loans and every person having an
office or place of business in this state who takes assignments
of and undertakes direct collection of payments from or en-
forcement of rights against debtors arising from such sales or
loans shall file notification with the attorney general within
thirty days after commencing business in this state, and, there-
after, on or before January thirty-first of each year. The noti-
fication shall state:
(a) Name of the person;
(b) Name in which business is transacted if different from
(a);
(c) Address of principal office, which may be outside this
state;
(d) Address of all offices or retail stores, if any, in this state
at which consumer credit sales or consumer loans are made,
or in the case of a person taking assignments of obligations,
the offices or places of business within this state at which
business is transacted;
(e) If consumer credit sales or consumer loans are made
otherwise than at a retail store or office in this state, a brief
description of the manner in which they are made;
(f) Address of designated agent upon whom service of pro-
cess may be made in this state; and
(g) Whether supervised loans are made.
(2) If information in a notification becomes inaccurate after
filing, accurate information must be filed within thirty days.

(3) The provisions of this section are not applicable to a seller whose credit sales consist entirely of sales made pursuant to a seller's credit card so long as the issuer of the card has fully complied with the provisions of this section.

§46A-7-116. Fees.

(1) A person required to file notification shall on or before July thirty-first of each year pay to the attorney general an annual fee of ten dollars for each place of business for each fiscal year, beginning July first, one thousand nine hundred seventy-four.

(2) Persons required to file notification who are sellers or lenders shall pay an additional fee at the time and in the manner stated in subsection (1) of ten dollars for each one hundred thousand dollars or part thereof, in excess of one hundred thousand dollars, of the original unpaid balances arising from consumer credit sales contracts and consumer loan contracts made in this state within the preceding twelve months' period ending on June thirtieth and held either (a) by the seller or lender for more than thirty days after the inception of the sale or loan giving rise to the obligations, or (b) by an assignee who has not filed notification and paid the additional fee or is not required to and does not pay such fee. A refinancing of a sale or loan resulting in an increase in the amount of an obligation is considered a new sale 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 ten dollars for each one hundred thousand dollars, or part thereof, of the unpaid balances at the time of the assignment of obligations arising from consumer credit sales and consumer loans made in this state taken by assignment during the preceding twelve months' period ending on June thirtieth 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) Every person who, on the effective date of this chapter, (a) is engaging in this state in making consumer credit sales and consumer loans, or (b) has an office or place of business in this state and takes assignments of
and undertakes direct collection of payments from or enforce-
ment of rights against debtors arising from such sales or
loans, shall within thirty days after such effective date
file the notification required by section one hundred fifteen
of this article and pay seventy-five percent of the fee which
would have been payable had this chapter been in effect on
July first, one thousand nine hundred seventy-three.

(5) Supervised financial organizations and supervised
lenders shall be entitled to a credit against the fees to be
paid by them pursuant to this section for any other fees,
including, without limitation, examination fees, paid by them
to the state or any department, agency or instrumentality
thereof during the preceding twelve months’ period ending
June thirtieth.

(6) All fees paid to the attorney general under the pro-
visions of this section shall be deposited in the state treasury
to the credit of the general revenue fund.

§46A-7-117. Consumer affairs advisory council created; members
appointed by attorney general; qualifications of
members; term; organization and meetings of coun-
cil; duties of council; quorum; filling vacancies;
payment of expenses.

A consumer affairs advisory council is hereby created.
The council shall be composed of nine members who shall
be appointed by the attorney general. The members of
the council shall be citizens and residents of this state, who
by reason of their training, education or experience are
qualified to carry out the functions of the council under this
section. Five members shall be representatives of the general
public and the other four members shall be representatives
of consumer financing and retailing business in this state.
The first term of office for three of the representatives of
the general public, who shall be designated by the director,
shall run through the thirtieth day of June, one thousand nine
hundred seventy-five. The first term of office for the other
two representatives of the general public shall run through
the thirtieth day of June, one thousand nine hundred seventy-
six. The first term of office for two of the representatives
of consumer financing and retailing business in this state,
who shall be designated by the director, shall run through
the thirtieth day of June, one thousand nine hundred seventy-
five. The first term of office for the other two representatives
of consumer financing and retailing business in this state
shall run through the thirtieth day of June, one thousand
nine hundred seventy-six. Thereafter, terms of members shall
be four years.

At its first meeting, the council shall elect a chairman from
among its members, who shall preside over its meetings until
the second Monday in July of the next year. Thereafter, the
council shall elect a chairman on the second Monday in
July of each year.

All members shall be eligible for reappointment by the
attorney general. A member shall, unless sooner removed,
continue to serve until his term expires and his successor has
been appointed and has qualified. A vacancy caused by the
death, resignation or removal of a member prior to the
expiration of his term shall be filled only for the remainder of
such term.

It shall be the duty of the council to advise and consult
with the attorney general concerning the exercise of his powers,
duties and responsibilities under this article, the problems and
practices in consumer transactions, any abuses in the use
of consumer credit in this state, the problems relating to the
collection of debts, the problems and practices of credit
reporting agencies and the problems of persons of limited
means in consumer transactions and to make recommendations
on the need for consumer protection legislation and programs
in this state.

For the purpose of carrying out its duty, five members of
the council shall constitute a quorum so long as at least one
of such members is a representative of consumer financing
and retailing business in this state. The council and the
attorney general shall meet together at a time and place
designated by the chairman at least two times each year.
Additional meetings may be held when called by the chair-
man or when requested by five members of the council or by
the attorney general. Members shall be entitled to reasonable
and necessary expenses actually incurred while engaged in the
performance of their duties under this section.
ARTICLE 8. EFFECTIVE DATE AND PROVISIONS FOR TRANSITION.

§46A-8-101. Time of taking effect; provisions for transition; enforceability of prior transactions.

(1) Except as otherwise provided in this section, this chapter shall become operative at 12:01 A.M., eastern daylight time, on October first, one thousand nine hundred seventy-three.

(2) In order to allow sufficient time to prepare for the implementation and operation of this chapter and to act on applications for licenses to make supervised loans under this chapter prior to the effective date, the provisions of article four of this chapter, relating to supervised lenders, and the provisions of article seven of this chapter, relating to administration, shall, to the extent necessary, become operative for such purposes at 12:01 A.M., eastern daylight time, on August first, one thousand nine hundred seventy-three.

(3) Transactions entered into before this chapter 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 chapter as though the repeal, amendment or modification had not occurred, but this chapter applies to:

(a) Refinancings and consolidations made after this chapter takes effect of consumer credit sales, consumer leases and consumer loans whenever made;

(b) Consumer credit sales or consumer loans made after this chapter takes effect pursuant to revolving charge accounts or revolving loan accounts entered into, arranged or contracted for before this chapter takes effect; and

(c) All consumer credit transactions made before this chapter takes effect insofar as this chapter limits the remedies of creditors.

CHAPTER 47. REGULATION OF TRADE.

ARTICLE 6. MONEY AND INTEREST.

§47-6-5. Legal rate of interest; agreements in writing fixing rate of interest.

Except in cases where it is otherwise specially provided by law, legal interest shall continue to be at the rate of
six dollars upon one hundred dollars for a year, and proportionately for a greater or less sum, or for a longer or shorter time, and no person upon any contract other than a contract in writing shall take for the loan or forbearance of money, or other thing, above the value of such rate:
Provided, That a charge of one dollar may be made for any loan or forbearance of money or other thing, where the interest at the rate aforesaid would not amount to that sum, and the same shall not be a usurious charge or rate of interest.

Parties may contract in writing for the payment of interest for the loan or forbearance of money at a rate not to exceed eight dollars upon one hundred dollars for a year, and proportionately for a greater or less sum or for a longer or shorter time, including points expressed as a percentage of the loan divided by the number of years of the loan contract. For the purpose of this section the term points is defined as the amount of money, or other consideration, received by the lender, from whatever source, as a consideration for making the loan and not otherwise expressly permitted by statute.

§47-6-5a. Interest charges on loans repayable in installments.

Except in cases where it is otherwise specially provided by law, parties may contract for and charge interest for a secured or unsecured loan, repayable in installments at a rate not in excess of: (a) Six percent per annum upon the principal amount of the loan, for the entire period of the loan, and add such charge to the principal amount of the loan; or (b) six percent per annum upon the face amount of the instrument evidencing the obligation to repay the loan, for the entire period of the loan and deduct such charge in advance: Provided, That no such add-on or discount loan may be made for the purchase of real property or any interest therein or any improvement thereto if any loan for such purpose would be a consumer loan within the provisions of section one hundred four, article three, chapter forty-six-a of this code: Provided, however, That no loan shall be made for the purchase of real property or any interest therein or any improvement thereto pursuant to a revolving loan account as provided for in section one hundred six, article three,
chapter forty-six-a of this code: And provided further, That if the entire unpaid balance outstanding on the loan is paid on any installment date, prior to maturity, the bank shall make a rebate or refund of such charge in an amount computed according to the sum of the digits method, commonly referred to as the Rule of 78; and any note evidencing any such installment loan may provide that the entire unpaid balance thereof at the option of the holder shall become due and payable upon default in the payment of any stipulated installment without impairing the negotiability of such note, if otherwise negotiable: And provided further, That nothing herein contained shall affect or restrict the right of parties under section five of this article to contract in writing for the payment of interest for the loan or forbearance of money at a rate not to exceed eight dollars upon one hundred dollars a year, and proportionately for a greater or less sum, or for a longer or shorter time, including points expressed as a percentage of the loan divided by the number of years of the loan contract.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

N. Darrel Dartly
Chairman Senate Committee

Clarence G. Christian, Jr.
Chairman House Committee

Originated in the Senate.

Takes effect ninety days from passage.

Howard C. Johnson
Clerk of the Senate

C A Blankenship
Clerk of the House of Delegates

W. T. Bratton, Jr.
President of the Senate

Lewis F. P. Mann
Speaker House of Delegates

The within disappeared this the 1st day of May, 1973.

Aubrey P. Thayer
Governor
PRESENTED TO THE GOVERNOR

Date 5/1/13
Time 1:40 p.m.