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STATE OF WEST VIRGINIA

## WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1973

# ENROLLED

SENATE BILL NO. 2070

(Originating in the  
(By ~~MR.~~ Committee on the  
Judiciary)

PASSED April 14, 1973

In Effect 90 Days from Passage

FILED IN THE OFFICE  
EDGAR F. WEISKELL III  
SECRETARY OF STATE  
THIS DATE, 5/3/73

Veto - 2070

**ENROLLED**

**Senate Bill No. 2070**

(Originating in the Committee on the Judiciary)

[Passed April 14, 1973; in effect ninety days from passage.]

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  
2 of chapter forty-seven of this code and elsewhere by law, a  
3 banking institution may charge and collect a reasonable  
4 amount to cover the expenses incurred in procuring reports  
5 and information respecting loans and the value of and title  
6 to property offered as security therefor, and a charge of  
7 three dollars may be made for any loan or forbearance of  
8 money or other thing where the interest at the rate of six  
9 percent per annum would not amount to that sum and the  
10 same shall not be a usurious charge or rate of interest.  
11 Except in cases where it is otherwise specially provided by  
12 law, any banking institution authorized to do, and doing busi-  
13 ness in this state, may contract for and charge interest for  
14 a secured or unsecured loan, repayable in installments at  
15 a rate not in excess of: (a) Six percent per annum upon  
16 the principal amount of the loan, for the entire period of  
17 the loan, and add such charge to the principal amount of  
18 the loan; or (b) six percent per annum upon the face amount  
19 of the instrument evidencing the obligation to repay the loan,  
20 for the entire period of the loan, and deduct such charge in  
21 advance: *Provided*, That no such add-on or discount loan  
22 may be made for the purchase of real property or any interest  
23 therein or any improvement thereto if any loan for such pur-  
24 pose would be a consumer loan within the provisions of section  
25 one hundred four, article three, chapter forty-six-a of this code:

26 *Provided, however,* That no loan shall be made for the pur-  
27 chase of real property or any interest therein or any improve-  
28 ment thereto pursuant to a revolving loan account as provided  
29 for in section one hundred six, article three, chapter forty-six-a  
30 of this code: *And provided further,* That if the entire unpaid  
31 balance outstanding on the loan is paid on any installment  
32 date, prior to maturity, the bank shall make a rebate or refund  
33 of such charge in an amount computed according to the sum  
34 of the digits method, commonly referred to as the Rule of 78;  
35 and any note evidencing any such installment loan may pro-  
36 vide that the entire unpaid balance thereof at the option of the  
37 holder shall become due and payable upon default in the pay-  
38 ment of any stipulated installment without impairing the  
39 negotiability of such note, if otherwise negotiable.

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

**ARTICLE 1. SHORT TITLE, DEFINITIONS AND GENERAL PROVI-  
SIONS.**

**§46A-1-101. Short title.**

1 This chapter shall be known and may be cited as the “West  
2 Virginia Consumer Credit and Protection Act.”

**§46A-1-102. General definitions.**

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

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

10 (2) “Agreement” means the bargain of the parties in fact  
11 as found in their language or by implication from other  
12 circumstances including course of dealing or usage of trade  
13 or course of performance. A “consumer credit agreement”  
14 is an agreement where credit is granted.

15 (3) “Agricultural purpose” means a purpose related to the

16 production, harvest, exhibition, marketing, transportation, pro-  
17 cessing or manufacture of agricultural products by a natural  
18 person who cultivates, plants, propagates or nurtures the  
19 agricultural products. "Agricultural products" includes agri-  
20 cultural, horticultural, viticultural and dairy products, live-  
21 stock, wildlife, poultry, bees, forest products, fish and shell-  
22 fish, and any products thereof, including processed and manu-  
23 factured products, and any and all products raised or pro-  
24 duced on farms and any processed or manufactured pro-  
25 ducts thereof.

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

28 (a) The cash price of the goods, services or interest in  
29 land, less the amount of any down payment whether made  
30 in cash or in property traded in.

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

34 (c) If not included in the cash price:

35 (i) Any applicable sales, use, privilege, excise or documen-  
36 tary stamp taxes,

37 (ii) Amounts actually paid or to be paid by the seller for  
38 registration, certificate of title or license fees, and

39 (iii) Additional charges permitted by this chapter.

40 (5) "Average daily balance" in a billing cycle for which  
41 a sales finance charge or loan finance charge is made is the  
42 sum of the amount unpaid each day during that cycle divided  
43 by the number of days in that cycle. The amount unpaid on  
44 a day is determined by adding to the balance, if any, unpaid  
45 as of the beginning of that day all purchases and other debits  
46 and deducting all payments and other credits made or re-  
47 ceived as of that day.

48 (6) The "cash price" of goods, services or an interest in  
49 land means the price at which the goods, services or interest  
50 in land are offered for sale by the seller to cash buyers in the  
51 ordinary course of business, and may include (a) applicable  
52 sales, use, privilege, and excise and documentary stamp taxes,  
53 (b) the cash price of accessories or related services such as de-  
54 livery, installation, servicing, repairs, alterations and improve-  
55 ments, and (c) amounts actually paid or to be paid by the

56 seller for registration, certificate of title, or license fees.

57 (7) "Closing costs" with respect to a debt secured by an  
58 interest in land include:

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

61 (b) Fees for preparation of a deed, deed of trust, mort-  
62 gage, settlement statement or other documents;

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

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

66 (e) Appraisal fees; and

67 (f) Credit reports.

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

70 (9) "Commissioner" means the commissioner of banking  
71 of West Virginia.

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

76 (11) "Consumer" means a natural person who incurs debt  
77 pursuant to a consumer credit sale or a consumer loan.

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

81 (i) Credit is granted either by a seller who regularly en-  
82 gages as a seller in credit transactions of the same kind or  
83 pursuant to a seller credit card,

84 (ii) The buyer is a person other than an organization,

85 (iii) The goods, services or interest in land are purchased  
86 primarily for a personal, family, household or agricultural  
87 purpose,

88 (iv) Either the debt is payable in installments or a sales  
89 finance charge is made, and

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

92 (b) "Consumer credit sale" does not include a sale in  
93 which the seller allows the buyer to purchase goods or ser-  
94 vices pursuant to a lender credit card or similar arrange-  
95 ment.

96 (13) (a) "Consumer lease" means a lease of goods:

97 (i) Which a lessor regularly engaged in the business of  
98 leasing makes to a person, other than an organization, who  
99 takes under the lease primarily for a personal, family, house-  
100 hold or agricultural purpose,

101 (ii) In which the amount payable under the lease does not  
102 exceed twenty-five thousand dollars, and

103 (iii) Which is for a term exceeding four months.

104 (b) "Consumer lease" does not include a lease made pur-  
105 suant to a lender credit card or similar arrangement.

106 (14) "Consumer loan" is a loan made by a person regu-  
107 larly engaged in the business of making loans in which:

108 (a) The debtor is a person other than an organization;

109 (b) The debt is incurred primarily for a personal, family,  
110 household or agricultural purpose;

111 (c) Either the debt is payable in installments or a loan  
112 finance charge is made; and

113 (d) Either the principal does not exceed twenty-five  
114 thousand dollars or the debt is secured by an interest in  
115 land.

116 (15) "Credit" means the privilege granted by a creditor  
117 to a debtor to defer payment of debt or to incur debt and  
118 defer its payment.

119 (16) "Earnings" means compensation paid or payable to an  
120 individual or for his account for personal services rendered  
121 or to be rendered by him, whether denominated as wages,  
122 salary, commission, bonus or otherwise, and includes peri-  
123 odic payments pursuant to a pension, retirement or dis-  
124 ability program.

125 (17) "Federal Consumer Credit Protection Act" means the  
126 "Consumer Credit Protection Act" (Public Law 90-321; 82  
127 Stat. 146), as amended, and includes regulations issued pur-  
128 suant to that act.

129 (18) "Goods" includes goods not in existence at the time  
130 the transaction is entered into and gift and merchandise  
131 certificates, but excludes money, chattel paper, documents  
132 of title and instruments.

133 (19) "Home solicitation sale" means a consumer credit sale  
134 in excess of twenty-five dollars in which the buyer receives a  
135 solicitation of the sale at a place other than the seller's busi-



136 ness establishment at a fixed location and the buyer's agree-  
137 ment or offer to purchase is there given to the seller or a  
138 person acting for the seller. The term does not include a sale  
139 made pursuant to a preexisting open end credit account with  
140 the seller in existence for at least three months prior to the  
141 transaction, a sale made pursuant to prior negotiations be-  
142 tween the parties at the seller's business establishment at a  
143 fixed location, a sale of motor vehicles, mobile homes or farm  
144 equipment or a sale which may be rescinded under the Federal  
145 Truth in Lending Act (being Title I of the Federal Consumer  
146 Credit Protection Act). A sale which would be a home solici-  
147 tation sale if credit were extended by the seller is a home  
148 solicitation sale although the goods or services are paid for  
149 in whole or in part by a consumer loan in which the credi-  
150 tor is subject to defenses arising from the sale.

151 (20) Except as otherwise provided, "lender" includes an  
152 assignee of the lender's right to payment but use of the term  
153 does not in itself impose on an assignee any obligation of  
154 the lender.

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

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

163 (b) By the lender's payment or agreement to pay the con-  
164 sumer's obligations; or

165 (c) By the lender's purchase from the obligee of the con-  
166 sumer's obligations.

167 (22) "Loan" includes:

168 (a) The creation of debt by the lender's payment of or  
169 agreement to pay money to the consumer or to a third party  
170 for the account of the consumer other than debts created pur-  
171 suant to a seller credit card;

172 (b) The creation of debt by a credit to an account with  
173 the lender upon which the consumer is entitled to draw im-  
174 mediately;

175 (c) The creation of debt pursuant to a lender credit card  
176 or similar arrangement; and

177 (d) The forbearance of debt arising from a loan.

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

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

199 (24) "Merchandise certificate" or "gift certificate" means  
200 a writing issued by a seller or issuer of a seller credit card,  
201 not redeemable in cash and usable in its face amount in  
202 lieu of cash in exchange for goods or services.

203 (25) "Official fees" means:

204 (a) Fees and charges prescribed by law which actually  
205 are or will be paid to public officials for determining the  
206 existence of or for perfecting, releasing, terminating or satis-  
207 fying a security interest related to a consumer credit sale  
208 or consumer loan; or

209 (b) Premiums payable for insurance or fees escrowed  
210 in a special account for the purpose of funding self-insurance  
211 or its equivalent in lieu of perfecting a security interest  
212 otherwise required by the creditor in connection with the  
213 sale, lease or loan, if such premium or fee does not exceed the

214 fees and charges described in paragraph (a) which would  
215 otherwise be payable.

216 (26) "Organization" means a corporation, government or  
217 governmental subdivision or agency, trust, estate, partner-  
218 ship, cooperative or association.

219 (27) "Payable in installments" means that payment is re-  
220 quired or permitted by agreement to be made in (a) two or  
221 more periodic payments, excluding a down payment, with  
222 respect to a debt arising from a consumer credit sale pur-  
223 suant to which a sales finance charge is made, (b) four or more  
224 periodic payments, excluding a down payment, with respect to  
225 a debt arising from a consumer credit sale pursuant to which  
226 no sales finance charge is made, or (c) two or more periodic  
227 payments with respect to a debt arising from a consumer loan.  
228 If any periodic payment other than the down payment under  
229 an agreement requiring or permitting two or more periodic  
230 payments is more than twice the amount of any other periodic  
231 payment, excluding the down payment, the consumer credit  
232 sale or consumer loan is "payable in installments".

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

235 (29) "Person related to" with respect to an individual means  
236 (a) the spouse of the individual, (b) a brother, brother-in-law,  
237 sister or sister-in-law of the individual, (c) an ancestor or lineal  
238 descendant of the individual or his spouse, and (d) any other  
239 relative, by blood or marriage, of the individual or his spouse  
240 who shares the same home with the individual. "Person related  
241 to" with respect to an organization means (a) a person directly  
242 or indirectly controlling, controlled by or under common con-  
243 trol with the organization, (b) an officer or director of the  
244 organization or a person performing similar functions with re-  
245 spect to the organization or to a person related to the organi-  
246 zation, (c) the spouse of a person related to the organization,  
247 and (d) a relative by blood or marriage of a person related to  
248 the organization who shares the same home with him.

249 (30) "Precomputed loan". A loan, refinancing or consoli-  
250 dation is "precomputed" if the debt is expressed as a sum  
251 comprising the principal and the amount of the loan finance  
252 charge computed in advance.

253 (31) "Precomputed sale". A sale, refinancing or consolida-  
254 tion is "precomputed" if the debt is expressed as a sum com-  
255 prising the amount financed and the amount of the sales  
256 finance charge computed in advance.

257 (32) "Presumed" or "presumption" means that the trier  
258 of fact must find the existence of the fact presumed unless  
259 and until evidence is introduced which would support a  
260 finding of its nonexistence.

261 (33) "Principal" of a loan means the total of:

262 (a) The net amount paid to, receivable by or paid or pay-  
263 able for the account of the debtor,

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

266 (c) To the extent that payment is deferred,

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

270 (ii) Additional charges permitted by this chapter.

271 (34) "Revolving charge account" means an agreement be-  
272 tween a seller and a buyer by which (a) the buyer may pur-  
273 chase goods or services on credit or a seller credit card, (b)  
274 the balances of amounts financed and the sales finance and  
275 other appropriate charges are debited to an account, (c) a  
276 sales finance charge if made is not precomputed but is com-  
277 puted periodically on the balances of the account from time  
278 to time, and (d) there is the privilege of paying the balances  
279 in installments.

280 (35) "Revolving loan account" means an arrangement be-  
281 tween a lender and a consumer including, but not limited to,  
282 a lender credit card or similar arrangement, pursuant to which  
283 (a) the lender may permit the consumer to obtain loans from  
284 time to time, (b) the unpaid balances of principal and the loan  
285 finance and other appropriate charges are debited to an ac-  
286 count, (c) a loan finance charge if made is not precomputed  
287 but is computed periodically on the outstanding unpaid bal-  
288 ances of the principal of the consumer's account from time to  
289 time, and (d) there is the privilege of paying the balances in  
290 installments.

291 (36) "Sale of goods" includes any agreement in the form of

292 a bailment or lease of goods if the bailee or lessee agrees to  
293 pay as compensation for use a sum substantially equivalent to  
294 or in excess of the aggregate value of the goods involved and it  
295 is agreed that the bailee or lessee will become, or for no other  
296 or a nominal consideration has the option to become, the own-  
297 er of the goods upon full compliance with his obligations un-  
298 der the agreement.

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

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

306 (39) "Sales finance charge" means the sum of (a) all  
307 charges payable directly or indirectly by the buyer and im-  
308 posed directly or indirectly by the seller or issuer of a seller  
309 credit card as an incident to the extension of credit, including  
310 any of the following types of charges which are applicable:  
311 Time price differential, however denominated, including ser-  
312 vice, carrying or other charge, premium or other charge for any  
313 guarantee or insurance protecting the seller against the buyer's  
314 default or other credit loss, and (b) charges incurred for in-  
315 vestigating the collateral or credit-worthiness of the buyer or  
316 for commissions or brokerage for obtaining the credit, irre-  
317 spective of the person to whom the charges are paid or pay-  
318 able, unless the seller had no notice of the charges when the  
319 credit was granted. The term does not include charges as a  
320 result of default, additional charges, delinquency charges or  
321 deferral charges. If the seller or issuer of a seller credit card  
322 purchases or satisfies obligations of the consumer and the  
323 purchase or satisfaction is made at less than the face amount  
324 of the obligation, the discount is not part of the sales finance  
325 charge.

326 (40) Except as otherwise provided, "seller" includes an  
327 assignee of the seller's right to payment but use of the term  
328 does not in itself impose on an assignee any obligation of the  
329 seller.

330 (41) "Seller credit card" means an arrangement pursuant

331 to which a person gives to a buyer or lessee the privilege of  
332 using a credit card, letter of credit, or other credit confirma-  
333 tion or identification primarily for the purpose of purchasing  
334 or leasing goods or services from that person, that person and  
335 any other person, a person related to that person, or others  
336 licensed or franchised or permitted to do business under his  
337 business name or trade name or designation or on his behalf.

338 (42) "Services" includes (a) work, labor and other personal  
339 services, (b) privileges with respect to transportation, use of  
340 vehicles, hotel and restaurant accommodations, education, en-  
341 tertainment, recreation, physical culture, hospital accommo-  
342 dations, funerals, cemetery accommodations, and the like,  
343 and (c) insurance.

344 (43) "Supervised financial organization" means a person,  
345 other than a supervised lender or an insurance company or  
346 other organization primarily engaged in an insurance business:

347 (a) Organized, chartered or holding an authorization certi-  
348 ficate under the laws of this state or of the United States  
349 which authorizes the person to make consumer loans; and

350 (b) Subject to supervision and examination with respect  
351 to such loans by an official or agency of this state or of the  
352 United States.

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

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

361 (46) "Vehicle" is every device in, upon, or by which any  
362 person or property is or may be transported or drawn upon a  
363 highway, excepting devices moved by human power or used  
364 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 (1) This chapter prescribes maximum charges for all credi-  
2 tors, except lessors and those excluded, making consumer

3 credit sales and consumer loans, and sales and loans made  
4 subject to the provisions of this chapter by agreement, and  
5 except as otherwise provided by this chapter displaces any  
6 existing limitations and provisions regulating maximum  
7 interest and charges, minimum charges, additional charges,  
8 delinquency charges, deferral charges, allocation of charges  
9 and methods of computing rebates upon prepayment with re-  
10 spect to consumer credit sales and consumer loans, and the  
11 debtors' remedies and penalties provided by this chapter  
12 displace all existing provisions relating to remedies, penalties  
13 and forfeitures for usury and usurious contracts as to trans-  
14 actions covered by this chapter: *Provided*, That this chapter  
15 shall not displace those provisions of subsection (f), section  
16 six, article seven, chapter thirty-one of this code relating to  
17 additional charges which may be imposed and collected by  
18 industrial loan companies.

19 (2) Except as provided in subsection (1) of this section  
20 or elsewhere in this chapter, this chapter does not dis-  
21 place powers or limitation on powers which supervised  
22 financial organizations and supervised lenders are author-  
23 ized to exercise under the laws of the United States or other  
24 laws of this state in effect after the effective date of this  
25 chapter.

26 (3) This chapter also prescribes in articles six and seven  
27 protective measures for consumers in transactions not neces-  
28 sarily involving consumer credit.

#### **§46A-1-104. Application.**

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

#### **§46A-1-105. Exclusions.**

1 This chapter does not apply to:

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

4 (2) The sale of insurance by an insurer, except as other-  
5 wise provided in this chapter;

6 (3) Transactions under public utility or common carrier  
7 tariffs if a subdivision or agency of this state or of the United

8 States regulates the charges for the services involved, the  
9 charges for delayed payment, and any discount allowed for  
10 early payment; or

11 (4) Licensed pawnbrokers and secondary mortgage lenders  
12 licensed under the provisions of article seventeen, chapter thir-  
13 ty-one of this code.

**§46A-1-106. Sales or loans subject to chapter by agreement of parties.**

1 The parties to any sale or loan, other than a consumer  
2 credit sale or consumer loan, may agree in writing signed by  
3 the parties that the sale or loan is subject to the provisions of  
4 this chapter applying to consumer credit sales or consumer  
5 loans. If the parties so agree, the sale or loan is subject to  
6 this chapter.

**§46A-1-107. Waiver.**

1 Except as otherwise provided in this chapter, a consumer  
2 may not waive or agree to forgo rights or benefits under this  
3 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 (1) On and after the effective date of this chapter and for  
2 a period of one year thereafter, the following limitations shall  
3 be applicable as to the taking and holding of certain nego-  
4 tiable instruments and assignments of contracts or other writ-  
5 ings:

6 (a) Notwithstanding any term or agreement to the contrary  
7 or the provisions of section three hundred five, article three,  
8 chapter forty-six of this code, a holder in due course of a ne-  
9 gotiable instrument or an assignee of any contract or other  
10 writing evidencing an obligation of a consumer arising from a  
11 consumer credit sale or consumer lease, shall take and hold  
12 such instrument, contract or other writing subject to all claims  
13 and defenses relating to such transaction which the consumer  
14 has against the seller or lessor not exceeding the amount owing  
15 to the holder or assignee at the time of such negotiation or as-



16 signment and with respect to which the consumer notifies such  
17 holder or assignee in writing within a period of one hundred  
18 eighty days after the holder or assignee has delivered or mailed  
19 notice of the negotiation or assignment to the consumer.

20 (b) The notice of negotiation or assignment from the hold-  
21 er or assignee to the consumer shall be in writing, identify  
22 the negotiable instrument, contract or other writing, briefly  
23 describe the goods and services, state the name and address of  
24 the holder or assignee, state the initial deferred balance of such  
25 negotiable instrument, contract or other writing, payable by the  
26 consumer and the number, amount and due dates of install-  
27 ments, the amount currently payable by the consumer, and  
28 contain a conspicuous notice to the consumer that he has one  
29 hundred eighty days from a specified date (which date shall  
30 be the date the holder or assignee mails or delivers the notice  
31 of the negotiation or assignment to the consumer) within  
32 which to notify the holder or assignee in writing of any claim  
33 or defense he may have against the seller or lessor relating to  
34 such transaction.

35 (c) In order to preserve all his claims or defenses against  
36 a holder or assignee, the consumer must, after receiving the  
37 written notice provided for in subdivision (b) of this subsec-  
38 tion (1), and before the expiration of a period of one hundred  
39 eighty days, notify such holder or assignee in writing as to any  
40 claims or defenses he has against the seller or lessor arising  
41 from that specific consumer credit sale or consumer lease. The  
42 notice by the consumer need not take a particular form and  
43 shall be sufficient if it indicates the claim or defense which  
44 the consumer has against the seller or lessor in a manner suffi-  
45 cient to apprise the holder or assignee of the nature of such  
46 claim or defense. Such notice, if given by mail, is given when  
47 it is sent to the holder or assignee's last known address by  
48 registered mail, return receipt requested. All claims or defenses  
49 of the consumer against the seller arising out of a consumer  
50 credit sale or consumer lease, shall be valid against the holder  
51 or assignee unless the notice of the assignment or negotiation  
52 is given pursuant to this subsection (1).

53 (d) In a consumer credit sale or consumer lease when  
54 goods or services cannot be delivered or completed immediate-  
55 ly after the sale or lease or when the rendition of future ser-  
56 vices involves a material part of the sale or lease agreement,

57 the notice provided for in subdivision (b) of this subsection  
58 (1) shall not be given to the consumer until the seller or  
59 lessor has furnished a certificate to the consumer that evidences  
60 completion of such future services and such certificate has  
61 been duly executed by the consumer. In addition, the con-  
62 sumer shall forward to the assignee a written reaffirmation of  
63 the completion of such future services that are the subject of  
64 such sale or lease. Such reaffirmation shall be forwarded di-  
65 rectly by United States mail to the assignee by the consumer.  
66 If the seller or lessor directly or indirectly obtains such re-  
67 affirmation, it shall be void and have no force or legal effect. A  
68 completed certificate need not take any particular form, but  
69 shall indicate the names and addresses of the parties to the  
70 consumer credit sale or consumer lease, the goods delivered or  
71 the services completed and the date on which actual delivery  
72 was made or actual performance was completed.

73 (e) Notwithstanding any provisions of this section a hold-  
74 er or assignee shall be subject to any defense based upon  
75 lack or failure of consideration.

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

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

84 (2) When a negotiable instrument, contract or other writ-  
85 ing arising from a consumer credit sale or a consumer lease  
86 is entered into more than one year from the effective date  
87 of this chapter but less than two years from such effective  
88 date, a holder or assignee of such negotiable instrument, con-  
89 tract or other writing shall take such instrument, contract or  
90 other writing subject to all claims and defenses which the con-  
91 sumer has against the seller or lessor, not exceeding the  
92 amount owing to the holder or assignee at the time of such  
93 negotiation or assignment, for a period of one year after  
94 the date on which the consumer was notified of the nego-  
95 tiation or assignment by the holder or assignee in the manner  
96 provided for in subdivision (b) of subsection (1) of this section.  
97 Upon being so notified by the assignee, the consumer may,

98 within one year after receipt of such notification of negotia-  
99 tion or assignment, notify such holder or assignee, in the man-  
100 ner provided for in subdivision (c) of subsection (1) of this  
101 section, as to any claims or defenses he has against the seller  
102 arising from that specific transaction. Except as provided  
103 in this subsection, all of the provisions of subsection (1) of  
104 this section shall apply to transactions contemplated by this  
105 subsection.

106 (3) With respect to a consumer credit sale or consumer  
107 lease made or entered into more than two years from the ef-  
108 fective date of this chapter, other than a sale or lease pri-  
109 marily for an agricultural purpose, the seller or lessor may not  
110 take a negotiable instrument other than a currently dated  
111 check as evidence of the obligation of the consumer or lessee.  
112 The holder in due course of a negotiable instrument taken  
113 in violation of this subsection shall, notwithstanding the pro-  
114 visions of section three hundred five, article three, chapter  
115 forty-six of this code, be subject to all claims and defenses  
116 which the consumer or lessee has against the seller or lessor  
117 arising out of such consumer credit sale or consumer lease.

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

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

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

19 (a) Payments received by the assignee after the consoli-

20 dation of two or more consumer credit sales, other than pur-  
21 suant to a revolving charge account, are deemed to have  
22 been first applied to the payment of the sales first made; if  
23 the sales consolidated arose from sales made on the same  
24 day, payments are deemed to have been first applied to the  
25 smaller or smallest sale or sales;

26 (b) Payments received upon a revolving charge account  
27 are deemed to have been first applied to the payment of sales  
28 finance charges in the order of their entry to the account  
29 and then to the payment of debts in the order in which the  
30 entries of the debts are made to the account.

**§46A-2-103. Lender subject to claims and defenses arising from sales.**

1 (1) A lender, other than the issuer of a lender credit  
2 card, who, with respect to a particular transaction, makes  
3 a consumer loan for the purpose of enabling a borrower to  
4 buy from a particular seller goods or services, other than  
5 primarily for an agricultural purpose, is subject to all claims  
6 and defenses of the borrower against the seller arising from  
7 that sale of the goods or services when such lender is con-  
8 nected with the transaction in any manner hereinafter pro-  
9 vided. Without limiting the application of this section, a  
10 lender is deemed to be connected with the transaction if:

11 (i) The lender knows that the seller arranged for a com-  
12 mission or brokerage or referral fee for the extension of credit  
13 by the lender;

14 (ii) The lender is a person related to the seller unless  
15 the relationship is remote or is not a factor in the transaction;

16 (iii) The seller guarantees the loan or otherwise assumes  
17 the risk of loss by the lender upon the loan other than a  
18 risk of loss arising solely from seller's failure to perfect a  
19 lien securing the loan;

20 (iv) The lender directly supplies the seller with the con-  
21 tract document used by the consumer to evidence the loan,  
22 and the seller participated in the preparation of the substan-  
23 tive provisions of such document; or

24 (v) The loan is conditioned upon the consumer's purchase  
25 of the goods or services from the particular seller, but the  
26 lender's payment of proceeds of the loan to the seller does  
27 not in itself establish that the loan was so conditioned.

28 (2) A claim or defense which a borrower is permitted to  
29 assert against a lender under the provisions of subsection  
30 (1) of this section may be asserted against the lender (a)  
31 only to the extent of the amount of the loan used for that  
32 sale, and (b) as a matter of defense against a claim by the  
33 lender on the particular loan transaction involved: *Provided*,  
34 That if such consumer loan is secured by a security interest  
35 in any property of the consumer, the consumer may institute  
36 an action against the lender and in such action assert all  
37 claims and defenses necessary to remove such lien from such  
38 consumer's property.

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

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

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

50 (b) By the lender's payment or agreement to pay the con-  
51 sumer's obligations; or

52 (c) By the lender's purchase from the obligee of the con-  
53 sumer's obligations.

#### **§46A-2-104. Cosigner agreements.**

1 No person, other than the spouse of a consumer, shall be  
2 held liable as surety, cosigner, comaker, endorser or guaran-  
3 tor or be charged with personal liability for payment in a  
4 consumer credit sale or consumer loan unless that person,  
5 in addition to signing any instrument by which the liability  
6 is assumed or imposed, signs and receives a copy of a sep-  
7 arate agreement which clearly explains his liability in the  
8 event of default by the consumer and which includes thereon  
9 the disclosures required by the "Federal Consumer Credit  
10 Protection Act."

#### **§46A-2-105. Balloon payments.**

1 (1) With respect to a consumer credit sale or a consumer

2 loan in which the initial total amount payable is less than  
3 one thousand five hundred dollars, other than one primarily  
4 for an agricultural purpose or one pursuant to a revolving  
5 charge account or revolving loan account, if any scheduled  
6 payment is more than twice as large as the average of earlier  
7 scheduled payments, the consumer has the right to refinance  
8 the amount of that payment at the time it is due without pen-  
9 alty. The terms of the refinancing shall be no less favorable  
10 to the consumer than the original terms.

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

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

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

1 After a consumer has been in default on an obligation for  
2 fourteen days for failure to make a scheduled payment or  
3 otherwise perform pursuant to a consumer credit sale or  
4 consumer loan, the creditor may give him notice of such  
5 fact in the manner provided for herein. Actual delivery of  
6 such notice to a consumer or delivery or mailing of same to  
7 the address of the consumer's residence is sufficient for the  
8 purpose of this section. If given by mail, notice is given  
9 when it is deposited in a mailbox properly addressed and  
10 postage prepaid. Notice shall be in writing and shall con-  
11 spicuously state the name, address and telephone number of

12 the creditor to whom payment or other performance is owed,  
13 a brief description of the transaction, the consumer's right  
14 to cure such default and the amount of payment and date by  
15 which it must be paid in order to cure the default. Except  
16 as hereinafter in this section provided, after a default a  
17 creditor may not accelerate maturity of the unpaid balance  
18 of the obligation, commence any action or demand or take  
19 possession of collateral on account of default until four-  
20 teen days after notice has been given to the consumer of  
21 his right to cure such default. Until such period expires, the  
22 consumer shall have the right to cure any default by ten-  
23 dering the amount of all unpaid sums due at the time of the  
24 tender, without acceleration, plus any unpaid delinquency  
25 or deferral charges and by tendering any other performance  
26 necessary to cure such default. Any such cure shall restore a  
27 a consumer to all his rights under the agreement the same as if  
28 there had been no default. A consumer who has been in  
29 default three or more times on the same obligation and  
30 who has been given notice of such fact three or more  
31 times shall not have the right to cure a default under this  
32 section and his creditor's right to proceed against him and  
33 his collateral shall not be impaired or limited in any way  
34 by this section. There shall be no acceleration of the ma-  
35 turity of all or part of any amount owing in a consumer  
36 credit sale or consumer loan, except where nonperformance  
37 specified in the agreement as constituting default has oc-  
38 curred.

**§46A-2-107. Security in sales or leases.**

1 (1) With respect to a consumer credit sale, a seller or is-  
2 suer of a seller credit card may take a security interest  
3 in the property sold. In addition, a seller or issuer of  
4 a seller credit card may take a security interest in goods upon  
5 which services are performed or in which goods sold are  
6 installed or to which they are annexed, or in land to which  
7 the goods are affixed or which is maintained, repaired or  
8 improved as a result of the sale of the goods or services,  
9 if in the case of a security interest in land the debt se-  
10 cured is one thousand five hundred dollars or more, or, in  
11 the case of a security interest in goods the debt secured  
12 is three hundred dollars or more. The seller or issuer of

13 a seller credit card may also take a security interest in any  
14 property of the buyer to secure the debt arising from a con-  
15 sumer credit sale primarily for an agricultural purpose. Ex-  
16 cept as provided with respect to cross-collateral in connec-  
17 tion with consolidated debts, a seller or issuer of a seller  
18 credit card may not otherwise take a security interest in  
19 property of the buyer to secure the debt arising from a con-  
20 sumer credit sale.

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

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

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

#### **§46A-2-108. Cross-collateral.**

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

#### **§46A-2-109. Debt secured by cross-collateral.**

1 (1) If debts arising from two or more consumer credit  
2 sales, other than sales primarily for an agricultural purpose



3 or pursuant to a revolving charge account, are secured by  
4 cross-collateral and consolidated into one debt payable on a  
5 single schedule of payments, and the debt is secured by  
6 security interests taken with respect to one or more of the  
7 sales, payments received by the seller after the taking of  
8 the cross-collateral and the consolidation are deemed, for  
9 the purpose of determining the amount of the debt secured by  
10 the various security interests, to have been first applied  
11 to the payment of the debts arising from the sales first made.  
12 To the extent debts are paid according to this section, security  
13 interests in items of property terminate as the debts originally  
14 incurred with respect to each item are paid.

15 (2) Payments received by the seller upon a revolving  
16 charge account are deemed, for the purpose of determining  
17 the amount of the debt secured by the various security  
18 interests, to have been applied first to the payment of  
19 sales finance charges in the order of their entry to the  
20 account and then to the payment of debts in the order in  
21 which the entries to the account showing the debts were  
22 made.

23 (3) If the debts consolidated arose from two or more  
24 sales made on the same day, payments received by the sel-  
25 ler are deemed, for the purpose of determining the amount  
26 of the debt secured by the various security interests, to  
27 have been applied first to the payment of the smallest  
28 debt.

**§46A-2-110. Referral sales or leases.**

1 With respect to a consumer credit sale or consumer lease,  
2 the seller or lessor may not give or offer to give a rebate  
3 or discount or otherwise pay or offer to pay value to the  
4 buyer or lessee as an inducement for a sale or lease in  
5 consideration of his giving to the seller or lessor the names  
6 of prospective purchasers or lessees, or otherwise aiding  
7 the seller or lessor in making a sale or lease to another  
8 person, if the earning of the rebate, discount or other value  
9 is contingent upon the occurrence of an event subsequent  
10 to the time the buyer or lessee agrees to buy or lease.  
11 If a buyer or lessee is induced by a violation of this section

12 to enter into a consumer credit sale or consumer lease, the  
13 agreement is unenforceable by the seller or lessor and the  
14 buyer or lessee, at his option, may rescind the agreement or  
15 retain the goods delivered and the benefit of any services  
16 performed, without any obligation to pay for them.

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

1 With respect to a consumer lease the lessor shall give  
2 to the lessee the following information:  
3 (1) Brief description or identification of the goods;  
4 (2) Amount of any payment required at the inception of  
5 the lease;  
6 (3) Amount paid or payable for official fees, registration,  
7 title privilege, certificate of title or license fees or taxes;  
8 (4) Amount of other charges not included in the periodic  
9 payment and a brief description of the charges;  
10 (5) Brief description of insurance to be provided or paid  
11 for by the lessor, including the types and amounts of the  
12 coverages;  
13 (6) Number of periodic payments, the amount of each  
14 payment, the due date of the first payment, the due dates of  
15 subsequent payments or interval between payments, and the  
16 total amount payable by the lessee;  
17 (7) Statement of the conditions under which the lessee  
18 may terminate the lease prior to the end of the term; and  
19 (8) Statement of the liabilities the lease imposes upon the  
20 lessee at the end of the term.

**§46A-2-112. Restriction on liability in consumer lease.**

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

**§46A-2-113. Notice of assignment.**

1 A consumer is authorized to pay the original creditor until  
2 he receives notification of assignment of rights to payment  
3 pursuant to a consumer credit sale or a consumer loan

4 and that payment is to be made to the assignee. A notification  
5 which does not reasonably identify the rights assigned is  
6 ineffective. If requested by the consumer, the assignee must  
7 seasonably furnish reasonable proof that the assignment has  
8 been made and unless he does so the consumer may pay the  
9 original creditor.

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

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

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

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

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

1 Except for reasonable expenses including costs and fees  
2 authorized by statute, incurred in realizing on a security inter-  
3 est, the agreement with respect to a consumer credit sale or  
4 a consumer loan may not provide for charges as a result  
5 of default by the consumer other than those authorized by  
6 this chapter. A provision in violation of this section is un-  
7 enforceable.

**§46A-2-116. No assignment of earnings.**

1 (1) A creditor may not take an assignment of earnings of  
2 the consumer for payment or as security for payment of a  
3 debt arising out of a consumer credit sale or a consumer  
4 loan, or a sale as defined in section one hundred two, article  
5 six of this chapter, except as provided for in subsection  
6 (3) of this section, and an employee may not, under the  
7 provisions of this section one hundred sixteen or the pro-  
8 visions of section three, article five, chapter twenty-one  
9 of this code, authorize any deduction from his earnings  
10 except for union or club dues, pension plans, payroll savings  
11 plans, charities, stock purchase plans and insurance. Any  
12 assignment or authorization for the deduction of earnings in  
13 violation of this section one hundred sixteen is unenforceable.

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

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

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

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

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

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

5 of this section shall not be construed as in any way impliedly  
6 authorizing garnishment before judgment in any other type  
7 of transaction.

**§46A-2-119. Restrictions on deficiency judgments.**

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

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

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

24 (4) If the lender takes possession or voluntarily accepts  
25 surrender of goods in which he has a security interest to  
26 secure a debt arising from a consumer loan in which the  
27 lender may be subject to claims and defenses arising from  
28 sales (§46A-2-103) and the net proceeds of the loan paid to  
29 or for the benefit of the borrower were one thousand five  
30 hundred dollars or less, the borrower is not personally lia-  
31 ble to the lender for the unpaid balance of the debt arising  
32 from the loan and the lender's duty to dispose of the collat-  
33 eral is governed by the provisions on disposition of collateral  
34 (§46-9-505) of the "Uniform Commercial Code."

35 (5) For the purpose of determining the unpaid balance of  
36 consolidated debts or debts pursuant to revolving charge

37 accounts or revolving loan accounts, the allocation of pay-  
38 ments to a debt shall be determined in the same manner as  
39 provided for determining the amount of debt secured by var-  
40 ious security interests (§46A-2-109).

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

45 (7) If the creditor elects to bring an action against the  
46 consumer for a debt arising from a consumer credit sale  
47 of goods or services or from a consumer loan in which the  
48 lender is subject to claims and defenses arising from sales  
49 (§46A-2-103), when under this section he would not be en-  
50 titled to a deficiency judgment if he took possession of the  
51 collateral, and obtains judgment:

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

53 (b) The collateral is not subject to levy or sale on execu-  
54 tion or similar proceedings pursuant to the judgment.

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

1 (1) If the court finds as a matter of fact that it was the un-  
2 derstanding of the creditor and the consumer at the time an  
3 extension of credit was made that delay in making repayment  
4 or failure to make repayment could result in the use of vio-  
5 lence or other criminal means to cause harm to the person,  
6 reputation or property of any person, the repayment of the  
7 extension of credit is unenforceable through civil judicial pro-  
8 cess against the consumer.

9 (2) If a court finds as a matter of fact that an extension  
10 of credit was made at a rate in excess of that permitted for  
11 such transaction by the provisions of this chapter and that the  
12 creditor then had a reputation for the use or threat of use  
13 of violence or other criminal means to cause harm to the  
14 person, reputation or property of any person to collect ex-  
15 tensions of credit or to punish the non-repayment thereof,  
16 there is prima facie evidence that the extension of credit was  
17 unenforceable under subsection (1).

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

1 (1) With respect to a transaction which is or gives rise to

2 a consumer credit sale or consumer loan, if the court as a mat-  
3 ter of law finds:

4 (a) The agreement or transaction to have been unconscion-  
5 able at the time it was made, or to have been induced by  
6 unconscionable conduct, the court may refuse to enforce the  
7 agreement, or

8 (b) Any term or part of the agreement or transaction to  
9 have been unconscionable at the time it was made, the  
10 court may refuse to enforce the agreement, or may enforce  
11 the remainder of the agreement without the unconscionable  
12 term or part, or may so limit the application of any uncon-  
13 scionable term or part as to avoid any unconscionable result.

14 (2) If it is claimed or appears to the court that the agree-  
15 ment or transaction or any term or part thereof may be un-  
16 conscionable, the parties shall be afforded a reasonable oppor-  
17 tunity to present evidence as to its setting, purpose and ef-  
18 fect to aid the court in making the determination.

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

**§46A-2-122. Definitions.**

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

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

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

12 (c) "Debt collector" means any person or organization en-  
13 gaging directly or indirectly in debt collection. The term in-  
14 cludes any person or organization who sells or offers to sell  
15 forms which are, or are represented to be, a collection system,  
16 device or scheme, and are intended or calculated to be used  
17 to collect claims.

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

1 Unless a licensed attorney in this state, no debt collector

2 shall engage in conduct deemed the practice of law. Without  
3 limiting the general application of the foregoing, the following  
4 conduct is deemed the practice of law:

5 (a) The performance of legal services, furnishing of legal  
6 advice or false representation, direct or by implication, that  
7 any person is an attorney;

8 (b) The solicitation of assignments of claims for the pur-  
9 pose of suit at the instigation of an attorney or otherwise;

10 (c) The institution of judicial proceedings on behalf of  
11 other persons except on an assigned claim;

12 (d) Any communication with debtors in the name of an  
13 attorney or upon stationery or other written matter bearing an  
14 attorney's name; and

15 (e) Any demand for or payment of money constituting a  
16 share of compensation for services performed or to be per-  
17 formed by an attorney in collecting a claim.

**§46A-2-124. Threats or coercion.**

1 No debt collector shall collect or attempt to collect any  
2 money alleged to be due and owing by means of any threat,  
3 coercion or attempt to coerce. Without limiting the general  
4 application of the foregoing, the following conduct is deemed  
5 to violate this section:

6 (a) The use, or express or implicit threat of use, of violence  
7 or other criminal means, to cause harm to the person, reputa-  
8 tion or property of any person;

9 (b) The accusation or threat to accuse any person of fraud,  
10 any crime, or any conduct which, if true, would tend to dis-  
11 grace such other person or in any way subject him to ridicule,  
12 or any conduct which, if true, would tend to disgrace such  
13 other person or in any way subject him to ridicule or con-  
14 tempt of society;

15 (c) False accusations made to another person, including any  
16 credit reporting agency, that a consumer is willfully refusing  
17 to pay a just debt, or the threat to so make false accusations;

18 (d) The threat to sell or assign to another the obligation of  
19 the consumer with an attending representation or implication  
20 that the result of such sale or assignment would be that the  
21 consumer would lose any defense to the claim or would be  
22 subjected to harsh, vindictive or abusive collection attempts;



23 (e) The threat that nonpayment of an alleged claim will  
24 result in the arrest of any person or the seizure, garnishment,  
25 attachment or sale of any property or wages of that person  
26 without informing the debtor that there must be in effect a  
27 court order permitting any such action before it can be taken;  
28 and

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

**§46A-2-125. Oppression and abuse.**

1 No debt collector shall unreasonably oppress or abuse any  
2 person in connection with the collection of or attempt to col-  
3 lect any claim alleged to be due and owing by that person or  
4 another. Without limiting the general application of the fore-  
5 going, the following conduct is deemed to violate this section:

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

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

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

15 (d) Causing a telephone to ring or engaging any person in  
16 telephone conversation repeatedly or continuously, or at un-  
17 usual times or at times known to be inconvenient, with intent  
18 to annoy, abuse, oppress or threaten any person at the called  
19 number.

**§46A-2-126. Unreasonable publication.**

1 No debt collector shall unreasonably publicize information  
2 relating to any alleged indebtedness or debtor. Without limit-  
3 ing the general application of the foregoing, the following con-  
4 duct is deemed to violate this section:

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

8 (b) The disclosure, publication, or communication or infor-

9 mation relating to a consumer's indebtedness to any relative or  
10 family member of the consumer, except through proper legal  
11 action or process or at the express and unsolicited request of  
12 the relative or family member;

13 (c) The disclosure, publication or communication of any  
14 information relating to a consumer's indebtedness to any other  
15 person, by publishing or posting any list of consumers, com-  
16 monly known as "deadbeat lists," by advertising for sale any  
17 claim to enforce payment thereof, or in any other manner  
18 other than through proper legal action, process or proceed-  
19 ing; and

20 (d) The use of any form of communication to the consumer,  
21 which ordinarily may be seen by any other persons, that dis-  
22 plays or conveys any information about the alleged claim oth-  
23 er than the name, address and phone number of the debt col-  
24 lector.

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

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

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

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

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

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

22 (e) Any false representation or implication of the character,

23 extent or amount of a claim against a consumer, or of its  
24 status in any legal proceeding;

25 (f) Any false representation or false implication that any  
26 debt collector is vouched for, bonded by, affiliated with or an  
27 instrumentality, agent or official of this state or any agency  
28 of the federal, state or local government;

29 (g) The use or distribution or sale of any written communi-  
30 cation which simulates or is falsely represented to be a docu-  
31 ment authorized, issued or approved by a court, an official or  
32 any other legally constituted or authorized authority, or which  
33 creates a false impression about its source, authorization or  
34 approval;

35 (h) Any representation that an existing obligation of the  
36 consumer may be increased by the addition of attorney's fees,  
37 investigation fees, service fees or any other fees or charges  
38 when in fact such fees or charges may not legally be added to  
39 the existing obligation; and

40 (i) Any false representation or false impression about the  
41 status or true nature of or the services rendered by the debt  
42 collector or his business.

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

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

5 (a) The seeking or obtaining of any written statement or  
6 acknowledgement in any form that specifies that a con-  
7 sumer's obligation is one incurred for necessities of life  
8 where the original obligation was not in fact incurred for such  
9 necessities;

10 (b) The seeking or obtaining of any written statement or  
11 acknowledgment in any form containing an affirmation of any  
12 obligation by a consumer who has been declared bankrupt,  
13 without clearly disclosing the nature and consequences of  
14 such affirmation and the fact that the consumer is not legally  
15 obligated to make such affirmation;

16 (c) The collection or the attempt to collect from the con-  
17 sumer all or any part of the debt collector's fee or charge  
18 for services rendered;

19 (d) The collection of or the attempt to collect any interest  
20 or other charge, fee or expense incidental to the principal obli-  
21 gation unless such interest or incidental fee, charge or expense  
22 is expressly authorized by the agreement creating the obligation  
23 and by charges or expenses authorized by statute to the con-  
24 sumer; and

25 (e) Any communication with a consumer whenever it ap-  
26 pears that the consumer is represented by an attorney and  
27 the attorney's name and address are known, or could be easily  
28 ascertained, unless the attorney fails to answer correspon-  
29 dence, return phone calls or discuss the obligation in question  
30 or unless the attorney consents to direct communication.

**§46A-2-129. Postal violations.**

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

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

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

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

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

9 (2) The maximum part of the aggregate disposable earn-  
10 ings of an individual for any workweek which is subjected  
11 to garnishment to enforce payment of a judgment arising from  
12 a consumer credit sale or consumer loan may not exceed  
13 the lesser of

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

16 (b) The amount by which his disposable earnings for that  
17 week exceed thirty times the federal minimum hourly wage  
18 prescribed by section 6(a)(1) of the "Fair Labor Standards  
19 Act of 1938," U.S.C. Title 29, §206(a)(1), in effect at  
20 the time the earnings are payable.

21 (c) In the case of earnings for a pay period other than  
22 a week, the commissioner shall prescribe by rule a multiple

23 of the federal minimum hourly wage equivalent in effect  
24 to that set forth in paragraph (b).

25 (3) No court may make, execute or enforce an order or  
26 process in violation of this section. Any time after a con-  
27 sumer's earnings have been executed upon pursuant to  
28 article five-a or article five-b, chapter thirty-eight of this  
29 code by a creditor resulting from a consumer credit sale or  
30 consumer loan, such consumer may petition any court having  
31 jurisdiction of such matter or the circuit court of the county  
32 wherein he resides to reduce or temporarily or permanently  
33 remove such execution upon his earnings on the grounds  
34 that such execution causes or will cause undue hardship  
35 to him or his family. When such fact is proved to the  
36 satisfaction of such court, it may reduce or temporarily or  
37 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  
2 reprisal against an employee for the reason that a creditor  
3 of the employee has subjected or attempted to subject unpaid  
4 earnings of the employee to garnishment or like proceedings  
5 directed to the employer for the purpose of paying a judgment  
6 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  
2 shall have the right to cancel a home solicitation sale until  
3 midnight of the third business day after the day on which he  
4 has signed an agreement or offer to purchase. Cancellation  
5 shall become effective when the buyer gives written notice of  
6 his intention to cancel to the seller at the address stated in  
7 the agreement or offer to purchase. Notice of such cancellation,  
8 if given by mail, is given when it is deposited in a mailbox  
9 properly addressed and postage prepaid. Such notice of can-  
10 cellation given by the buyer need not take a particular form  
11 and shall be sufficient if it indicates by any form of written  
12 expression the intention of the buyer not to be bound by the  
13 home solicitation sale. Notwithstanding any above-mentioned  
14 provision, a buyer may not cancel a home solicitation sale  
15 where he has requested and the seller has provided goods or

16 services without delay because of a bona fide emergency and  
17 either the seller has in good faith made a substantial beginning  
18 of performance of the agreement before the buyer has given  
19 notice of cancellation, or in the case of goods, such goods can-  
20 not be returned to the seller in substantially as good condition  
21 as when they were received by the buyer.

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

1 In every home solicitation sale in this state, except where  
2 a buyer has requested a seller to provide goods or services  
3 without delay because of an emergency, the seller shall pre-  
4 sent to the buyer a written agreement or offer to purchase  
5 which designates as the date of the transaction the day on  
6 which the buyer has signed it and which contains a statement  
7 of the buyer's rights as hereinafter provided for. No such  
8 written agreement or offer to purchase shall be effective until  
9 after it has been signed by the buyer and he has written the  
10 date of such signature in his own handwriting. The statement  
11 must appear under the conspicuous caption: "BUYER'S  
12 RIGHT TO CANCEL" and read as follows: "If this agree-  
13 ment was solicited at a place other than the seller's business  
14 establishment at a fixed location and you decide you do not  
15 want these goods or services, you may cancel this agreement  
16 by mailing a notice to the seller. The notice must say that you  
17 do not want the goods or services and must be mailed before  
18 midnight of the third business day after you sign this agree-  
19 ment. The notice must be mailed to: *(Name and mailing ad-  
20 dress of seller).*" Until the seller has fully complied with this  
21 section, the buyer may cancel the home solicitation sale, by  
22 notifying the seller of his intention to cancel in any manner.  
23 Any written agreement or offer to purchase which contains the  
24 form and content of notice of cancellation required by the fed-  
25 eral trade commission and which provides information sub-  
26 stantially similar to that required by this section shall be deem-  
27 ed to comply fully with this section.

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

1 Within ten days after a home solicitation sale has been  
2 cancelled or an offer to purchase has been revoked, the seller

3 shall tender to the buyer any payment made by the buyer to  
4 him and any note or other evidence of indebtedness taken in  
5 the transaction. A provision permitting the seller to keep all  
6 or part of any payment, note or other evidence of indebtedness  
7 is in violation of this section and unenforceable. If any down  
8 payment included goods traded in, the seller shall return the  
9 goods in substantially as good a condition as when he received  
10 them. If a seller has failed to tender goods as required by this  
11 section, the buyer may elect to recover an amount equal to  
12 the trade-in allowance on such goods as stated in the agree-  
13 ment. Until a seller has complied with all the obligations im-  
14 posed by this section, a buyer may keep any goods delivered  
15 to him by the seller and he is hereby given a lien on such goods  
16 for the purpose of making any recovery to which he is entitled  
17 by this section.

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

1 Except as provided for in section four of this article, within  
2 a reasonable time after a home solicitation sale has been can-  
3 celled or an offer to purchase has been revoked, a seller may  
4 demand and receive any goods delivered by him to a buyer as  
5 the result of a home solicitation sale. A buyer shall not be obli-  
6 gated to tender such goods to the seller at any place other than  
7 the buyer's residence. If the seller fails to demand possession  
8 of goods within such reasonable time, such goods shall be-  
9 come the buyer's property without any obligation to pay for  
10 them. For the purposes of this section, twenty days shall be  
11 presumed to be a reasonable time. The buyer shall take reason-  
12 able care of such goods in his possession before cancellation  
13 or revocation and for a reasonable time thereafter, during  
14 which time the goods are otherwise at the seller's risk. Where  
15 a seller has performed any service pursuant to a home solici-  
16 tation sale prior to its cancellation or prior to giving the state-  
17 ment required in section three of this article, he shall not be  
18 entitled to any compensation for such performance.

**§46A-2-136. Personal property exemptions.**

1 Any consumer residing in this state may set apart and hold  
2 personal property to be exempt from execution or other judi-

3 cial process resulting from consumer credit transactions, except  
4 for the purchase money due on such property, in such amounts  
5 as follows: Clothing and other wearing apparel of the con-  
6 sumer, his spouse and any dependents of such consumer, not  
7 to exceed the fair market value of two hundred dollars; furni-  
8 ture, appliances, furnishings and fixtures regularly used for  
9 family purposes in the consumer's residence, to the extent of  
10 the fair market value of one thousand dollars; children's books,  
11 pictures, toys and other such personal property of children;  
12 all medical health equipment used for health purposes by the  
13 consumer, his spouse and any dependent of such consumer;  
14 tools of trade, including any income-producing property used in  
15 the consumer's principal occupation, to the extent of the fair  
16 market value of one thousand dollars; and any policy of life  
17 or endowment insurance which is payable to the spouse or  
18 children of the insured consumer or to a trustee for their bene-  
19 fit, except the cash value of any accrued dividends thereon.  
20 When a consumer claims personal property as exempt under  
21 the provisions of this section, he shall deliver a list containing  
22 all the personal property owned or claimed by him and all  
23 items of such property he claims as exempt hereunder, with the  
24 value of each separate item listed according to his best know-  
25 ledge, to the officer holding the execution or other such pro-  
26 cess. Such list shall be sworn to by affidavit. If the value of  
27 the property named in such list exceeds the amounts specified  
28 in this section, the consumer shall state at the foot thereof what  
29 part of such property he claims as exempt. If such value does  
30 not exceed the amounts specified in this section, the claim of  
31 exemption shall be held to extend to the whole thereof without  
32 stating more and, if no appraisement is demanded, the property  
33 so claimed shall be set aside as exempt. Where the consumer  
34 owning exempt property is absent or incapable of acting or  
35 neglects or declines to act hereunder, the claim of exemption  
36 may be made, the list delivered and the affidavit made by  
37 his spouse with the same effect as if the owner had done  
38 so. Upon receipt of such a list, the officer to whom it is  
39 given shall immediately exhibit such list to the creditor or  
40 his agent or attorney. The rights granted and procedures  
41 provided for in article eight, chapter thirty-eight of this code



42 shall apply to any proceeding under this section, except that  
43 the provisions of sections one and three of such article shall  
44 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  
2 a sale of real estate subject to the provisions of section  
3 one hundred two of this article or a sale pursuant to a  
4 revolving charge account, a seller may contract for and re-  
5 ceive a sales finance charge not exceeding the equivalent of  
6 eighteen percent per year on that part of the unpaid balances  
7 of the amount financed which is fifteen hundred dollars or  
8 less and twelve percent per year on that part of the unpaid  
9 balances of the amount financed which is in excess of fifteen  
10 hundred dollars, calculated according to the actuarial method.

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

16 (a) The sales finance charge may be calculated on the as-  
17 sumption that all scheduled payments will be made when  
18 due, and

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

22 (3) For the purposes of this section, the term of a sale  
23 agreement commences on the date the credit is granted or,  
24 if goods are delivered or services performed ten days or more  
25 after that date, with the date of commencement of delivery  
26 or performance. Differences in the lengths of months are  
27 disregarded and a day may be counted as one-thirtieth of a  
28 month. Subject to classifications and differentiations the sell-  
29 er may reasonably establish, a part of a month in excess  
30 of fifteen days may be treated as a full month if periods  
31 of fifteen days or less are disregarded and if that procedure

32 is not consistently used to obtain a greater yield than would  
33 otherwise be permitted.

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

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

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

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

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

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

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

67 (c) A seller may contract for and receive a sales finance  
68 charge not exceeding the equivalent of eighteen percent per  
69 year on the unpaid balance calculated according to the actuarial  
70 method when such sale is made more than two years after the  
71 year of the model year designation of such motor vehicle.

**§46A-3-102. Sales finance charge for certain consumer credit sales of real estate.**

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

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

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

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

6 (2) A sales finance charge may be made in each billing  
7 cycle which is a percentage of an amount not exceeding the  
8 greatest of:

9 (a) The average daily balance of the account, or

10 (b) The balance of the account at the beginning of the  
11 first day of the billing cycle, less all payments on and credits  
12 to such account during such billing cycle and excluding all  
13 charges to such account during such billing cycle, or

14 (c) The median amount within a specified range within  
15 which the average daily balance of the account or the balance  
16 of the account at the beginning of the first day of the bill-  
17 ing cycle, less all payments on and credits to such account  
18 during such billing cycle and excluding all charges to such  
19 account during such billing cycle, is included. A charge may  
20 be made pursuant to this paragraph only if the seller, sub-  
21 ject to classifications and differentiations he may reasonably  
22 establish, makes the same charge on all balances within the

23 specified range and if the percentage when applied to the  
24 median amount within the range does not produce a charge  
25 exceeding the charge resulting from applying that percentage  
26 to the lowest amount within the range by more than eight  
27 percent of the charge on the median amount.

28 (3) If the billing cycle is monthly, the sales finance charge  
29 may not exceed one and one-half percent on the first seven  
30 hundred fifty dollars of unpaid balance and one percent on  
31 the unpaid balance in excess of seven hundred fifty dollars.  
32 If the billing cycle is not monthly, the maximum charge is  
33 that percentage which bears the same relation to the applica-  
34 ble monthly percentage as the number of days in the billing  
35 cycle bears to thirty. A billing cycle is monthly if the billing  
36 statement dates are on the same day each month or do not  
37 vary by more than four days therefrom.

38 (4) Notwithstanding subsection (3), if there is an unpaid  
39 balance on the date as of which the sales finance charge  
40 is applied, the seller may contract for and receive a charge  
41 not exceeding fifty cents if the billing cycle is monthly or  
42 longer, or the pro rata part of fifty cents which bears the  
43 same relation to fifty cents as the number of days in the  
44 billing cycle bears to thirty if the billing cycle is shorter than  
45 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 (1) With respect to a consumer loan, other than a consumer  
2 loan made pursuant to a revolving loan account, (a) a bank,  
3 as defined in section two, article one, chapter thirty-one-a  
4 of this code, may contract for and receive a loan finance  
5 charge equivalent to the charge or interest permitted by the  
6 provisions of section thirty, article four, chapter thirty-one-a  
7 or by the provisions of section five or section five-a, article  
8 six, chapter forty-seven of this code, (b) an industrial loan  
9 company, as defined in section one, article seven, chapter  
10 thirty-one of this code, may contract for and receive a loan  
11 finance charge equivalent to the aggregate of the interest and  
12 charges permitted by subsections (e) and (f) of section six,

13 article seven, chapter thirty-one of this code or by the pro-  
14 visions of section five, article six, chapter forty-seven of this  
15 code, (c) a building and loan association, as defined in section  
16 two, article six, chapter thirty-one of this code, may con-  
17 tract for and receive a loan finance charge equivalent to the  
18 charge or interest permitted by the provisions of section  
19 seventeen, article six, chapter thirty-one of this code, or by  
20 the provisions of section five, article six, chapter forty-seven  
21 of this code, (d) a credit union, as defined in section one,  
22 article ten, chapter thirty-one of this code, may contract for  
23 and receive a loan finance charge equivalent to the charge  
24 or interest permitted by the provisions of section sixteen,  
25 article ten, chapter thirty-one of this code, or by the provi-  
26 sions of section five, article six, chapter forty-seven of this  
27 code, and (e) any other lender, other than a supervised  
28 lender, may contract for and receive a loan finance charge  
29 equivalent to the charge or interest permitted by the pro-  
30 visions of section five or section five-a, article six, chapter  
31 forty-seven of this code.

32 (2) Lenders referred to in subsection (1) of this section  
33 are further authorized to contract for and receive loan finance  
34 charges which do not exceed the actuarial equivalent of the  
35 finance charges permitted by this section. If the loan is pre-  
36 computed:

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

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

43 (3) Notwithstanding subsection (1), the lender may con-  
44 tract for and receive a minimum loan finance charge of not  
45 more than five dollars when the amount loaned does not ex-  
46 ceed seventy-five dollars, or seven dollars and fifty cents  
47 when the amount loaned exceeds seventy-five dollars.

48 (4) An assignee of a consumer credit sale contract may col-  
49 lect, receive or enforce the sales finance charge provided in  
50 said contract, and any such charge so collected, received or  
51 enforced by an assignee shall not be deemed usurious or in  
52 violation of this chapter or any other provision of this code  
53 if such sales finance charge does not exceed the limits per-

54 mitted to be charged by a seller under the provisions of  
55 this chapter.

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

1 Nothing contained in this chapter or other law of this  
2 state shall be taken or construed as limiting the permissible  
3 interest rates or loan finance charges upon loans evidenced  
4 by notes, bonds or other obligations secured by mortgages or  
5 deeds of trust insured or guaranteed by the federal housing  
6 commissioner or United States administrator of veterans'  
7 affairs or by any other officer, department, agency or in-  
8 strumentality of the United States or evidenced by notes,  
9 bonds, debentures and other obligations and securities issued  
10 by, insured by, or guaranteed by the federal housing commis-  
11 sioner, federal national mortgage association, government  
12 national mortgage association, small business administration  
13 or other federal officer, department, agency or instrumentality.

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

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

6 (2) A loan finance charge may be made in each billing  
7 cycle which is a percentage of an amount not exceeding the  
8 greatest of:

9 (a) The average daily balance of the debt,

10 (b) The balance of the debt at the beginning of the first  
11 day of the billing cycle, less all payments on and credits to  
12 such debt during such billing cycle and excluding all ad-  
13 ditional borrowings during such billing cycle, or

14 (c) The median amount within a specified range within  
15 which the average daily balance of the debt or the balance of  
16 the debt at the beginning of the first day of the billing  
17 cycle, less all payments on and credits to such debt during  
18 such billing cycle and excluding all additional borrowings  
19 during such billing cycle, is included. A charge may be made  
20 pursuant to this paragraph only if the lender, subject to

21 classifications and differentiations he may reasonably estab-  
22 lish, makes the same charge on all balances within the  
23 specified range and if the percentage when applied to the  
24 median amount within the range does not produce a charge  
25 exceeding the charge resulting from applying that percentage  
26 to the lowest amount within the range by more than eight  
27 percent of the charge on the median amount.

28 (3) If the billing cycle is monthly, the loan finance charge  
29 may not exceed one and one-half percent on the first seven  
30 hundred fifty dollars of unpaid principal balance and one  
31 percent on the unpaid principal balance in excess of seven  
32 hundred fifty dollars. If the billing cycle is not monthly,  
33 the maximum charge is that percentage which bears the same  
34 relation to the applicable monthly percentage as the number  
35 of days in the billing cycle bears to thirty. A billing cycle  
36 is monthly if the billing statement dates are on the same  
37 day each month or do not vary by more than four days  
38 therefrom.

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

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

1 With respect to a consumer credit sale or consumer loan,  
2 refinancing or consolidation, the seller or lender may by  
3 agreement with the consumer refinance the unpaid balance  
4 and may contract for and receive the applicable sales fi-  
5 nance charge or loan finance charge, as the case may be,  
6 based on the amount financed of a sale or principal of a  
7 loan resulting from the refinancing at a rate not exceeding  
8 that permitted by the provisions on sales finance charge for

9 consumer credit sales or loan finance charge for consumer  
10 loans, as the case may be. For the purpose of determining  
11 the sales finance charge or loan finance charge permitted,  
12 the amount financed or principal resulting from the refinancing  
13 comprises the following:

14 (1) If the transaction was not precomputed, the total of  
15 the unpaid balance and the accrued charges on the date of  
16 refinancing or, if the transaction was precomputed, the  
17 amount which the consumer would have been required to pay  
18 upon prepayment pursuant to the provisions on rebate upon  
19 prepayment on the date of refinancing except that for the  
20 purpose of computing this amount no minimum sales finance  
21 charge or minimum loan finance charge shall be allowed;

22 (2) Appropriate additional charges, payment of which is  
23 deferred; and

24 (3) Accumulated unpaid delinquency or deferral charges.

**§46A-3-108. Sales finance charges and loan finance charges on consolidation.**

1 (1) If a consumer owes an unpaid balance to a creditor  
2 with respect to a consumer credit sale or consumer loan,  
3 refinancing or consolidation, and becomes obligated on  
4 another consumer credit sale or consumer loan, refinancing  
5 or consolidation, with the same creditor, the parties may  
6 agree to a consolidation resulting in a single schedule of  
7 payments. If the previous consumer credit sale or consumer  
8 loan was not precomputed, the parties may agree to add  
9 the unpaid amount of the amount financed or principal  
10 and accrued charges on the date of consolidation to the  
11 amount financed or principal with respect to the subsequent  
12 consumer credit sale or consumer loan. If the previous con-  
13 sumer credit sale or consumer loan, refinancing or consolida-  
14 tion, was precomputed, the parties may agree to refinance  
15 the unpaid balance pursuant to the provisions on refinancing  
16 and to consolidate the amount financed or principal result-  
17 ing from the refinancing by adding it, together with any  
18 accumulated delinquency or deferral charges, to the amount  
19 financed or principal, with respect to the subsequent con-  
20 sumer credit sale or consumer loan. In either case the  
21 creditor may contract for and receive a sales finance charge  
22 or loan finance charge, as the case may be, based on the



23 aggregate amount financed or principal resulting from the  
24 consolidation at a rate not in excess of the appropriate  
25 provision on sales finance charges or loan finance charges  
26 for a consumer credit sale or consumer loan.

27 (2) If the debts consolidated arise exclusively from  
28 consumer credit sales, the transaction is a consolidation  
29 with respect to a consumer credit sale and the amount of  
30 the sales finance charge is governed by the provisions  
31 on sales finance charges for consumer credit sales other  
32 than certain sales of real estate or sales made pursuant to  
33 revolving charge accounts (§46A-3-101). If the debts  
34 consolidated include a debt arising from a consumer loan  
35 the transaction is a consolidation with respect to a consumer  
36 loan and the amount of the loan finance charge is governed  
37 by the provisions on loan finance charges for consumer  
38 loans contained in section one hundred four of this article.

39 (3) If a consumer owes an unpaid balance to a creditor  
40 with respect to a consumer credit transaction arising out of  
41 a consumer credit sale, and becomes obligated on another  
42 consumer credit transaction arising out of another consumer  
43 credit sale made by the same seller, the parties may agree  
44 to the consolidation resulting in a single schedule of pay-  
45 ments either pursuant to subsection (2) or by adding together  
46 the unpaid balances with respect to the two sales.

47 (4) If a consumer credit sale subject to the provisions  
48 of section one hundred two of this article is consolidated  
49 with any other consumer credit sale or consumer loan, the  
50 sales finance charge or loan finance charge on the aggre-  
51 gate amount financed or principal resulting from the con-  
52 solidation shall be at the lower rate.

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

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

5 (a) Official fees and taxes;

6 (b) Charges for insurance as described in subsection (2);

7 (c) Annual charges, payable in advance, for the privilege  
8 of using a lender credit card or similar arrangement which  
9 entitles the user to purchase goods or services from at

10 least one hundred persons not related to the issuer of the  
11 lender credit card or similar arrangement, under an arrange-  
12 ment pursuant to which the debts resulting from the purchases  
13 are payable to the issuer;

14 (d) Charges for other benefits, including insurance, con-  
15 ferred on the consumer, if the benefits are of value to him  
16 and if the charges are reasonable in relation to the benefits,  
17 are of a type which is not for credit, and are excluded as  
18 permissible additional charges from the sales finance charge  
19 or loan finance charge by rule adopted by the commissioner:  
20 *Provided*, That as to insurance, the same must be sold by  
21 an individual licensed under the laws of this state to sell  
22 such insurance and the determination of whether the charges  
23 therefor are reasonable in relation to the benefits shall  
24 be determined by the insurance commissioner of this state;  
25 and

26 (e) Reasonable closing costs with respect to a debt secured  
27 by an interest in land.

28 (2) A creditor may take, obtain or provide reasonable  
29 insurance on the life and earning capacity of any consumer  
30 obligated on the consumer credit sale or consumer loan,  
31 reasonable insurance on any real or personal property offer-  
32 ed as security subject to the provisions of this subsection,  
33 and vendor's or creditor's single interest insurance with  
34 respect to which the insurer has no right of subrogation.  
35 Only one policy of life insurance and/or one policy of  
36 health and accident insurance and/or one policy of accident  
37 insurance on any one consumer may be in force with respect  
38 to any one contract or agreement at any one time, but  
39 one policy may cover both a consumer and his spouse.

40 (a) The amount, terms and conditions of property in-  
41 surance shall have a reasonable relation to the existing hazards  
42 or risk of loss, damage or destruction and be reasonable  
43 in relation to the character and value of the property  
44 insured or to be insured; and the term of such insurance  
45 shall be reasonable in relation to the terms of credit:  
46 *Provided, however*, That nothing contained in this subdivision  
47 shall be construed as in any way affecting the power and  
48 jurisdiction of the insurance commissioner of this state  
49 in the premises: *And provided further*, That nothing shall  
50 be deemed to prohibit the consumer from obtaining, at

51 his option, greater coverages for longer periods of time if  
52 he so desires;

53 (b) Life insurance shall be in an initial amount not to  
54 exceed the total amount repayable under the consumer  
55 credit agreement, and where a consumer credit sale, other  
56 than pursuant to a revolving charge account, or consumer  
57 loan, other than pursuant to a revolving loan account, is  
58 repayable in installments, such insurance shall at no time  
59 exceed the scheduled or actual amount of unpaid indebted-  
60 ness, whichever is greater. If life insurance is provided  
61 in connection with a revolving charge account or a revolving  
62 loan account, such insurance shall not be in excess of the  
63 authorized credit limit. Life insurance authorized by this  
64 paragraph shall provide that the benefits shall be paid to the  
65 creditor or reduce or extinguish the unpaid indebtedness:  
66 *Provided*, That if a separate charge is made for such in-  
67 surance and the amount of insurance exceeds the unpaid  
68 indebtedness, where not prohibited as aforesaid, then such  
69 excess shall be payable to the estate of the consumer. The  
70 initial term of such life insurance in connection with a  
71 consumer credit sale, other than a sale pursuant to a re-  
72 volving charge account, or in connection with a consumer  
73 loan, other than a loan pursuant to a revolving loan ac-  
74 count, shall not exceed the scheduled term of the consumer  
75 credit agreement by more than fifteen days. The aggregate  
76 amount of periodic benefits payable by credit accident and  
77 health insurance in the event of disability, as defined in  
78 the policy, shall not exceed the unpaid amount of such  
79 indebtedness: *Provided*, That the periodic benefits payable  
80 in connection with a consumer credit sale pursuant to a  
81 revolving charge account or of a consumer loan pursuant  
82 to a revolving loan account may be based upon the authorized  
83 credit limit;

84 (c) Where the insurance is obtained or provided by or  
85 through a creditor, the creditor may collect from the con-  
86 sumer or include as part of the cash price of a consumer  
87 credit sale or as part of the principal of a consumer loan,  
88 or deduct from the proceeds of any consumer loan the  
89 premium, or in the case of group insurance, the identifi-  
90 able charge. The premium or identifiable charge for such  
91 insurance required or obtained by a creditor may equal,

92 but shall not exceed the premium rate filed by the insurer  
93 with the insurance commissioner. In any case where the  
94 creditor collects the entire premium for such insurance  
95 in advance, such premium shall be remitted by such creditor  
96 to the insurer or the insurance agent, as specified by the  
97 insurer, within ten days from or after the end of the month  
98 in which such collection was made;

99 (d) No creditor shall directly or indirectly receive any  
100 gain or advantage from such insurance, whether in the form  
101 of commissions, dividends, retrospective rate credits, com-  
102 pensating balances or special deposits associated with the  
103 issuance of such insurance, or otherwise;

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

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

**§46A-3-110. Right to prepay.**

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

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

1 (1) Where a consumer credit sale or consumer loan is  
2 precomputed all payments on account shall be applied to  
3 installments in the order in which they fall due, except those  
4 applied to delinquency or deferral charges.

5       (2) Upon prepayment in full of a precomputed consumer  
6 sale or consumer loan by cash, a new loan, or otherwise, the  
7 creditor shall rebate to the consumer an amount not less than  
8 the unearned portion of the sales finance charge or loan finance  
9 charge calculated according to the sum of the digits method  
10 (Rule of 78): *Provided*, That upon refinancing of the unpaid  
11 balance, an amount not less than the unearned portion of the  
12 sales finance charge or loan finance charge calculated by pro-  
13 rating the total amount of the sales finance charge or loan  
14 finance charge, as the case may be, over the term of the sale  
15 or loan in equal monthly amounts shall be rebated or other-  
16 wise credited to the consumer: *Provided, however*, That the  
17 creditor may collect or retain the minimum charge within the  
18 limits stated in this chapter if the sales finance charge or loan  
19 finance charge earned at the time of prepayment is less than  
20 any minimum charge authorized by this chapter. No rebate  
21 of less than one dollar need be made. For the purpose of deter-  
22 mining the installment due date nearest the date of any pre-  
23 payment in full, refinancing or consolidation, any prepay-  
24 ment, refinancing or consolidation of an obligation payable in  
25 monthly installments made on or before the fifteenth day fol-  
26 lowing an installment due date shall be deemed to have been  
27 made as of such installment due date, and any prepayment,  
28 refinancing or consolidation made on or after the sixteenth day  
29 shall be deemed to have been made on the next succeeding  
30 installment due date.

31       (3) The commissioner shall prescribe by rule the method  
32 or procedure for the allocation of charges and the calcula-  
33 tion of rebates consistent with the other provisions of this  
34 chapter where the precomputed consumer credit sale or con-  
35 sumer loan is payable in unequal or irregular installments.

36       (4) If the maturity of a precomputed consumer credit sale  
37 or consumer loan is accelerated for any reason and judgment  
38 is obtained, the debtor is entitled to the same rebate as if the  
39 payment had been made on the date judgment is entered, and  
40 such judgment shall bear interest until paid at a rate equiva-  
41 lent to the rate of the sales finance charge or loan finance  
42 charge applicable to the obligation on which such judgment  
43 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  
2 or consumer loan, refinancing or consolidation, the parties  
3 may contract for a delinquency charge on any installment  
4 not paid in full within ten days after its scheduled due  
5 date in an amount not exceeding the greater of:

6 (a) An amount, not exceeding ten dollars, which is five  
7 percent of the unpaid amount of the installment, but in  
8 any even not less than one dollar; or

9 (b) An amount equivalent to the deferral charge (§46A-  
10 3-114) that would be permitted to defer the unpaid amount  
11 of the installment for the period that it is delinquent.

12 (2) A delinquency charge under paragraph (a) of sub-  
13 section (1) may be collected only once on an installment  
14 however long it remains in default. No delinquency charge  
15 may be collected with respect to a deferred installment un-  
16 less the installment is not paid in full within ten days after  
17 its deferred due date. A delinquency charge may be collected at  
18 the time it accrues or at any time thereafter.

19 (3) No delinquency charge may be collected on an install-  
20 ment which is paid in full within ten days after its scheduled  
21 or deferred installment due date. For purposes of this sub-  
22 section, payments shall be applied first to current install-  
23 ments, then to delinquent installments, and then to delin-  
24 quency and other charges.

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

37 The amount of the rebate shall not be reduced by the

38 amount of any permitted minimum charge. If the creditor  
39 proceeds under this subsection, any delinquency or deferral  
40 charges made with respect to installments due at or after  
41 the maturity date of the delinquent installments shall be  
42 rebated, and no further delinquency or deferral charges shall  
43 be made.

44 (5) The commissioner shall prescribe by rule the method  
45 or procedure for the calculation of delinquency charges con-  
46 sistent with the other provisions of this chapter where the  
47 precomputed consumer credit sale or consumer loan is pay-  
48 able in unequal or irregular installments.

**§46A-3-113. Delinquency charges on non-precomputed consumer credit sales or consumer loans repayable in installments.**

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

8 (2) A delinquency charge under subsection (1) may be  
9 collected only once on an installment however long it remains  
10 in default. A delinquency charge may be collected at the  
11 time it accrues or at any time thereafter.

12 (3) No delinquency charge may be collected on an install-  
13 ment which is paid in full within ten days after its scheduled  
14 due date. For purposes of this subsection, payments shall  
15 be applied first to current installments, then to delinquent  
16 installments, and then to delinquency and other charges.

**§46A-3-114. Deferral charges.**

1 (1) With respect to a precomputed consumer credit sale  
2 or consumer loan, refinancing or consolidation, the parties  
3 before or after default may agree in writing to a deferral  
4 of all or part of one or more unpaid installments, and  
5 the seller or lender may make and collect a deferral charge  
6 which shall be in an amount equivalent to the loan finance  
7 charge or sales finance charge attributable to the first

8 of the deferred monthly installment periods multiplied by  
9 number of months in the deferral period (the period in  
10 which no payment is required or made by reason of a  
11 deferral): *Provided*, That no installment on which a delin-  
12 quency charge has been collected or partial payment made  
13 shall be deferred unless the amount of the delinquency  
14 charge or partial payment is first applied to the deferral  
15 charge. If prepayment in full occurs during a deferral period,  
16 the portion of the deferral charge attributable to the unex-  
17 pired full months in the deferral period shall be also rebated.

18 (2) The seller or lender, in addition to the deferral  
19 charge, may make appropriate additional charges, and the  
20 amount of these charges which is not paid in cash may be  
21 added to the amount deferred for the purpose of calculating  
22 the deferral charge.

23 (3) The parties may agree in writing at the time of a  
24 precomputed consumer credit sale or consumer loan, re-  
25 financing or consolidation that if an installment is not paid  
26 within ten days after its due date as originally scheduled  
27 or as deferred, the seller or lender may unilaterally grant  
28 a deferral and make charges as provided in this section.  
29 No deferral charge may be made for a period after the date  
30 on which the seller or lender elects to accelerate the maturity  
31 of the agreement.

32 (4) The commissioner shall prescribe by rule the method  
33 or procedure for the calculation of deferral charges con-  
34 sistent with the other provisions of this chapter where the  
35 precomputed consumer credit sale or consumer loan is payable  
36 in unequal or irregular installments.

**§46A-3-115. Advances to perform covenants of consumer.**

1 (1) If the agreement with respect to a consumer credit  
2 sale or a consumer loan, refinancing or consolidation contains  
3 covenants by the consumer to perform certain duties per-  
4 taining to insuring or preserving collateral or payment of  
5 taxes, fees or assessments and if the creditor pursuant to the  
6 agreement pays for performance of such duties on behalf of  
7 the consumer, the creditor may add the amounts so paid to  
8 the debt. Within a reasonable time after advancing any sums,  
9 he shall state to the consumer in writing the amount of the  
10 sums advanced, any charges with respect to this amount,



11 any revised payment scheduled, and, if the duties of the  
12 consumer performed by the creditor pertain to insurance,  
13 a brief description of the insurance paid for by the creditor  
14 including the type and amount of coverages. No further  
15 information need be given.

16 (2) A sale finance charge or a loan finance charge  
17 may be made for sums advanced pursuant to subsection (1)  
18 at a rate not exceeding the rate stated to the consumer  
19 pursuant to the provisions of the "Federal Consumer Credit  
20 Protection Act" with respect to the sale or loan, refinancing  
21 or consolidation. With respect to a revolving charge account  
22 or revolving loan account the amount of the advance may  
23 be added to the unpaid balance of the debt and the creditor  
24 may make a sales finance charge or loan finance charge  
25 not exceeding that permitted by the appropriate provisions  
26 on sales finance charges or loan finance charges.

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

1 (1) If a creditor makes a change in the terms of a revolving  
2 charge account or revolving loan account without complying  
3 with this section, any additional cost or charge to the con-  
4 sumer resulting from the change is an excess charge and  
5 subject to the remedies provided in this chapter.

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

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

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

16 (b) The consumer elects to pay an amount designated on  
17 a billing statement as including a new charge for a bene-  
18 fit offered to the debtor when the benefit and charge con-  
19 stitute the change in terms and when the billing statement  
20 also states the amount payable if the new charge is excluded;

21 (c) The change involves no significant cost to the con-  
22 sumer;

23 (d) The consumer has previously consented in writing to  
24 the kind of change made and notice of the change is given  
25 to the consumer in two billing cycles prior to the effective  
26 date of the change; or

27 (e) The change applies only to purchases made or obliga-  
28 tions incurred after a date specified in a notice of the change  
29 given in two billing cycles prior to the effective date of the  
30 change.

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

34 (5) Under no circumstances may a change under the pro-  
35 visions of this section be made so as to (a) increase a sales  
36 finance charge or loan finance charge above that permitted by  
37 the appropriate provisions on sales finance charges or loan  
38 finance charges; or (b) apply a higher sales finance charge or  
39 loan finance charge to the account balance or debt balance  
40 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 com-  
2 missioner authorizing him to make supervised loans, he shall  
3 not engage in the business of:

4 (1) Making supervised loans, or

5 (2) Taking assignments of and undertaking direct collec-  
6 tion of payments from or enforcement of rights against con-  
7 sumers arising from supervised loans.

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

1 (1) The commissioner shall receive and act on all applica-  
2 tions for licenses to make supervised loans under this chapter.  
3 Applications shall be under oath, be filed in the manner  
4 prescribed by the commissioner, contain the information the  
5 commissioner requires by rule to make an evaluation of the  
6 financial responsibility, experience, character and fitness of  
7 the applicant, and the findings required of him before he may

8 issue a license. At the time of the filing of the application,  
9 the sum of two hundred fifty dollars shall be paid to the  
10 commissioner as an investigation fee.

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

26 (3) Upon written request, the applicant is entitled to a  
27 hearing on the question of his qualifications for a license if  
28 (a) the commissioner has notified the applicant in writing  
29 that his applicant has been denied, or (b) the commissioner  
30 has not issued a license within sixty days after the applica-  
31 tion for the license was filed. A request for a hearing may not  
32 be made more than fifteen days after the commissioner has  
33 mailed a writing to the applicant notifying him that the ap-  
34 plication has been denied and stating in substance the com-  
35 missioner's findings supporting denial of the application.

36 (4) Not more than one place of business shall be main-  
37 tained under the same license, but the commissioner may  
38 issue more than one license to the same licensee upon com-  
39 pliance with all the provisions of this article governing an  
40 original issuance of a license, for each such new license. Each  
41 license shall remain in full force and effect until surrendered,  
42 suspended or revoked.

43 (5) Upon giving the commissioner at least fifteen days'  
44 prior written notice, a licensee may (a) change the location  
45 of any place of business located within a municipality to any  
46 other location within that same municipality, or (b) change  
47 the location of any place of business located outside of a  
48 municipality to a location no more than five miles from the

49 originally licensed location, but in no case may a licensee  
50 move any place of business located outside a municipality  
51 to a location within a municipality. A licensee may not move  
52 the location of any place of business located within a municipality to any other location outside of that municipality.

54 (6) A licensee may conduct the business of making supervised loans only at or from a place of business for which he  
55 holds a license and not under any other name than that stated  
56 in the license. A sale or lease in which credit is granted  
57 pursuant to a lender credit card does not violate this subsection.  
58  
59

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

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

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

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

12 (b) Facts or conditions exist which would clearly have  
13 justified the commissioner in refusing to grant a license had  
14 these facts or conditions been known to exist at the time the  
15 application for the license was made.

16 (2) No revocation or suspension of a license is lawful unless prior to institution of proceedings by the commissioner  
17 notice is given to the licensee of the facts or conduct which  
18 warrant the intended action, and the licensee is given an  
19 opportunity to show compliance with all lawful requirements  
20 for retention of the license.  
21

22 (3) If the commissioner finds that probable cause for  
23 revocation of a license exists and that enforcement of this  
24 article requires immediate suspension of the license pending  
25 investigation, he may, after a hearing upon five days' written

26 notice, enter an order suspending the license for not more  
27 than thirty days.

28 (4) Whenever the commissioner revokes or suspends a  
29 license, he shall enter an order to that effect and forthwith  
30 notify the licensee of the revocation or suspension. Within  
31 five days after the entry of the order he shall mail by reg-  
32 istered or certified mail or deliver to the licensee a copy  
33 of the order and the findings supporting the order.

34 (5) Any person holding a license to **make** supervised loans  
35 may relinquish the license by notifying the commissioner  
36 in writing of its relinquishment, but this relinquishment shall  
37 not affect his liability for acts previously committed.

38 (6) No revocation, suspension or relinquishment of a license  
39 shall impair or affect the obligation of any preexisting law-  
40 ful contract between the licensee and any consumer.

41 (7) The commissioner may reinstate a license, terminate  
42 a suspension or grant a new license to a person whose license  
43 has been revoked or suspended if no fact or condition then  
44 exists which clearly would have justified the commissioner in  
45 refusing to grant a license.

**§46A-4-104. Records; annual reports.**

1 (1) Every licensee shall maintain records in conformity  
2 with generally accepted accounting principles and practices in  
3 a manner which will enable the commissioner to determine  
4 whether the licensee is complying with the provisions of this  
5 article. The record keeping system of a licensee shall be  
6 sufficient if he makes the required information reasonably  
7 available. The records need not be kept in the place of bus-  
8 iness where supervised loans are made, if the commissioner  
9 is given free access to the records wherever located. The  
10 records pertaining to any loan need not be preserved for more  
11 than two years after making the final entry relating to the  
12 loan, but in the case of a revolving loan account such two-  
13 year period is measured from the date of each entry.

14 (2) On or before the fifteenth day of April each year every  
15 licensee shall file with the commissioner a composite annual  
16 report in the form prescribed by the commissioner relating to  
17 all supervised loans made by him. The commissioner shall  
18 consult with comparable officials in other states for the

19 purpose of making the kinds of information required in an-  
20 nual reports uniform among the states. Information contained  
21 in annual reports shall be confidential and may be published  
22 only in composite form.

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

1 (1) The commissioner shall examine annually the loans,  
2 business and records of every licensee. In addition, for the  
3 purpose of discovering violations of this article or securing  
4 information lawfully required, the attorney general or the  
5 commissioner may at any time investigate the loans, business  
6 and records of any supervised lender. For these purposes he  
7 shall have free and reasonable access to the offices, places  
8 of business and records of the lender.

9 (2) If the lender's records are located outside this state,  
10 the lender at his option shall make them available to the  
11 commissioner at a convenient location within this state, or  
12 pay the reasonable and necessary expenses for the commis-  
13 sioner or his representative to examine them at the place  
14 where they are maintained. The commissioner may designate  
15 representatives, including comparable officials of the state in  
16 which the records are located, to inspect them on his behalf.

17 (3) For the purposes of this section, the commissioner  
18 may administer oaths or affirmations, and upon his own  
19 motion or upon request of any party, may subpoena witnesses,  
20 compel their attendance, adduce evidence, and require the  
21 production of any matter which is relevant to the investiga-  
22 tion, including the existence, description, nature, custody,  
23 condition and location of any books, documents or other  
24 tangible things and the identity and location of persons  
25 having knowledge of relevant facts, or any other matter  
26 reasonably calculated to lead to the discovery of admissible  
27 evidence.

28 (4) Upon failure without lawful excuse to obey a subpoena  
29 or to give testimony and upon reasonable notice to all per-  
30 sons affected thereby, the commissioner may apply to any  
31 circuit court of this state for an order compelling com-  
32 pliance.

33 (5) Every licensee shall pay to the commissioner the actual  
34 costs of each examination as provided for in this section.

**§46A-4-106. Application of administrative procedures act.**

1 Except as otherwise provided, the provisions of chapter  
2 twenty-nine-a of this code apply to and govern all administra-  
3 tive action taken by the commissioner pursuant to the provi-  
4 sions in this article respecting supervised loans.

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

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

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

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

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

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

17 (3) This section does not limit or restrict the manner of  
18 calculating the loan finance charge, whether by way of add-  
19 on, discount, or otherwise, so long as the rate of the loan  
20 finance charge does not exceed that permitted by this section.  
21 If the loan is precomputed:

22 (a) The loan finance charge may be calculated on the as-  
23 sumption that all scheduled payments will be made when due,  
24 and

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

28 (4) For the purposes of this section, the term of a loan  
29 commences on the date the loan is made. Differences in the  
30 lengths of months are disregarded and a day may be counted  
31 as one-thirtieth of a month. Subject to classifications and  
32 differentiations the licensee may reasonably establish, a part

33 of a month in excess of fifteen days may be treated as a full  
34 month if periods of fifteen days or less are disregarded and  
35 if that procedure is not consistently used to obtain a greater  
36 yield than would otherwise be permitted.

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

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

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

50 (6) With respect to a revolving loan account:

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

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

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

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

69 (b) If the billing cycle is not monthly, the maximum loan  
70 finance charge which may be made by a supervised lender  
71 is that percentage which bears the same relation to an applic-



72 able monthly percentage as the number of days in the bill-  
73 ing cycle bears to thirty.

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

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

1 A supervised lender may not use multiple loan agreements  
2 with intent to obtain a higher loan finance charge than would  
3 otherwise be permitted by the provisions of this article. A  
4 supervised lender uses multiple loan agreements if, with intent  
5 to obtain a higher loan finance charge than would other-  
6 wise be permitted, he allows any person, or husband and  
7 wife, to become obligated in any way under more than one  
8 loan agreement with the supervised lender for a supervised  
9 loan under this article.

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

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

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

4 A supervised lender may not renegotiate the original loan,  
5 or any part thereof, or make a new contract covering the  
6 original loan, or any part thereof, with any borrower, who  
7 has received a discharge in bankruptcy of the original loan  
8 or any balance due thereon at the time of said discharge

9 from any court of the United States of America exercising  
10 jurisdiction in insolvency and bankruptcy matters, unless said  
11 supervised lender shall pay to and deliver to the borrower  
12 the full amount of the loan shown on said note, promise to  
13 pay, or security, less any deductions for charges herein  
14 specifically authorized.

**§46A-4-110. Conduct of business other than making loans.**

1 No licensee shall conduct the business of making loans  
2 under the provisions of this article within any office, room  
3 or place of business in which any other business is solicited  
4 or engaged in, or in association or conjunction therewith,  
5 except as may be authorized in writing by the commissioner  
6 upon his finding that the character of such other business  
7 is such that the granting of such authority would not facilitate  
8 evasions of this article or of the rules and regulations law-  
9 fully made hereunder, except nothing herein shall prohibit  
10 the licensee from purchasing installment sales contracts or the  
11 sale or provision of insurance authorized by section one hun-  
12 dred nine, article three of this chapter.

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

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

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

1 All references in other chapters of this code to small  
2 loans, small loan lenders, small loan licensees and to article  
3 seven-a, chapter forty-seven of this code, shall, after the  
4 effective date of this chapter, and despite the repeal of

5 said statute, be read, construed and understood to mean  
6 and to have reference, respectively, to supervised loans,  
7 supervised lenders, supervised lender licensees, and to this  
8 article four.

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

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

1 All persons licensed under the provisions of article seven-a,  
2 chapter forty-seven of this code, on the effective date of this  
3 chapter, are licensed to make supervised loans under the pro-  
4 visions of this article four, and all provisions of this article  
5 shall after the effective date of this chapter apply to the  
6 persons so previously licensed, including without limitation  
7 the provisions governing notification (§46A-7-115) and pay-  
8 ment of fees (§46A-7-116) contained in article seven of this  
9 chapter.

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

#### **ARTICLE 5. CIVIL LIABILITY AND CRIMINAL PENALTIES.**

##### **§46A-5-101. Effect of violations on rights of parties.**

1 (1) If a creditor has violated the provisions of this chapter  
2 applying to collection of excess charges (§46A-1-104), re-  
3 strictions on interests in land as security (§46A-4-109),  
4 disclosure with respect to consumer leases (§46A-2-111),  
5 receipts, statements of account and evidences of payment  
6 (§46A-2-114), security in sales and leases (§46A-2-107),  
7 assignments of earnings (§46A-2-116), authorizations to con-  
8 fess judgment (§46A-2-117), or limitations on default charges  
9 (§46A-2-115), illegal, fraudulent or unconscionable conduct  
10 (§46A-2-121) or any prohibited debt collection practice  
11 (§46A-2-122 through 129), the consumer has a cause of action  
12 to recover actual damages and in addition a right in an action  
13 to recover from the person violating this chapter a penalty in  
14 an amount determined by the court not less than one hundred  
15 dollars nor more than one thousand dollars. With respect to  
16 violations arising from consumer credit sales, sales as defined

17 in article six of this chapter, or consumer loans made pursuant  
18 to revolving charge accounts or revolving loan accounts, no  
19 action pursuant to this subsection may be brought more than  
20 one year after the violations occurred. With respect to  
21 violations arising from other consumer credit sales or con-  
22 sumer loans, no action pursuant to this subsection may be  
23 brought more than one year after the due date of the last  
24 scheduled payment of the agreement.

25 (2) If a creditor has violated the provisions of this  
26 chapter respecting authority to make supervised loans  
27 (§46A-4-101), the loan is void and the consumer is not  
28 obligated to pay either the principal or the loan finance  
29 charge. If he has paid any part of the principal or of the  
30 finance charge, he has a right to recover in an action the  
31 payment from the person violating this chapter or from an  
32 assignee of that person's rights who undertakes direct col-  
33 lection of payments or enforcement of rights arising from  
34 the debt. With respect to violations arising from super-  
35 vised loans made pursuant to revolving loan accounts, no  
36 action pursuant to this subsection may be brought more  
37 than one year after the violation occurred. With respect to  
38 violations arising from other supervised loans, no action  
39 pursuant to this subsection may be brought more than one  
40 year after the due date of the last scheduled payment of  
41 the agreement pursuant to which the charge was paid.

42 (3) A consumer is not obligated to pay a charge in excess  
43 of that allowed by this chapter, and if he has paid an  
44 excess charge he has a right to a refund. A refund may  
45 be made by reducing the consumer's obligation by the  
46 amount of the excess charge. If the consumer has paid  
47 an amount in excess of the lawful obligation under the  
48 agreement, the consumer may recover in an action the excess  
49 amount from the person who made the excess charge or  
50 from an assignee of that person's rights who undertakes direct  
51 collection of payments from or enforcement of rights against  
52 consumers arising from the debt.

53 (4) If a creditor has contracted for or received a charge  
54 in excess of that allowed by this chapter, or if a con-  
55 sumer is entitled to a refund and a person liable to the  
56 consumer refuses to make a refund within a reasonable

57 time after demand, the consumer may recover from the  
58 creditor or the person liable in an action a penalty in an  
59 amount determined by the court not less than one hundred  
60 dollars nor more than one thousand dollars. With respect  
61 to excess charges arising from consumer credit sales or  
62 consumer loans made pursuant to revolving charge accounts  
63 or revolving loan accounts, no action pursuant to this sub-  
64 section may be brought more than one year after the time  
65 the excess charge was made. With respect to excess charges  
66 arising from other consumer credit sales or consumer loans  
67 no action pursuant to this subsection may be brought  
68 more than one year after the due date of the last scheduled  
69 payment of the agreement pursuant to which the charge  
70 was made.

71 (5) Except as otherwise provided, a violation of this  
72 chapter does not impair rights on a debt.

73 (6) If an employer discharges an employee in violation  
74 of the provisions prohibiting discharge (§46A-2-124), the  
75 employee may within ninety days bring a civil action for  
76 recovery of wages lost as a result of the violation and for  
77 an order requiring the reinstatement of the employee.  
78 Damages recoverable shall not exceed lost wages for six  
79 weeks.

80 (7) A creditor has no liability for a penalty under  
81 subsection (1) or subsection (4) if within fifteen days  
82 after discovering an error, and prior to the institution of an  
83 action under this section or the receipt of written notice  
84 of the error, the creditor notifies the person concerned of the  
85 error and corrects the error. If the violation consists of a  
86 prohibited agreement, giving the consumer a corrected copy  
87 of the writing containing the error is sufficient notification  
88 and correction. If the violation consists of an excess charge,  
89 correction shall be made by an adjustment or refund.

90 (8) If the creditor establishes by a preponderance of  
91 evidence that a violation is unintentional or the result of a  
92 bona fide error of law or fact notwithstanding the main-  
93 tenance of procedures reasonably adapted to avoid any such  
94 violation or error, no liability is imposed under subsections  
95 (1), (2) and (4), and the validity of the transaction is not  
96 affected.

**§46A-5-102. Refunds and penalties as set off to obligation.**

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

**§46A-5-103. Willful violations.**

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

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

14 (3) A person who willfully engages in the business of  
15 making consumer credit sales or consumer loans, or of  
16 taking assignments of rights against debtors arising there-  
17 from and undertakes direct collection of payments or enforce-  
18 ment of these rights, without complying with the provisions of  
19 this chapter concerning notification and payment of fees, is  
20 guilty of a misdemeanor and upon conviction may be sentenced  
21 to pay a fine not exceeding one hundred dollars.

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

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

1 (1) The Legislature hereby declares that the purpose of  
2 this article is to complement the body of federal law govern-

3 ing unfair competition and unfair, deceptive and fraudulent  
4 acts or practices in order to protect the public and foster  
5 fair and honest competition. It is the intent of the Legislature  
6 that, in construing this article, the courts be guided by the  
7 interpretation given by the federal courts to the various  
8 federal statutes dealing with the same or similar matters. To  
9 this end, this article shall be liberally construed so that  
10 its beneficial purposes may be served.

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

#### **§46A-6-102. Definitions.**

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

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

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

19 (c) "Trade" or "commerce" means the advertising, offering  
20 for sale, sale or distribution of any goods or services and  
21 shall include any trade or commerce, directly or indirectly,  
22 affecting the people of this state.

23 (d) "Unfair methods of competition and unfair or deceptive  
24 acts or practices" means and includes, but is not limited  
25 to, any one or more of the following:

26 (1) Passing off goods or services as those of another;

27 (2) Causing likelihood of confusion or of misunderstand-  
28 ing as to the source, sponsorship, approval or certification  
29 of goods or services;

30 (3) Causing likelihood of confusion or of misunderstand-  
31 ing as to affiliation, connection or association with, or certifi-  
32 cation by, another;

33 (4) Using deceptive representations or designations of geo-  
34 graphic origin in connection with goods or services;

35 (5) Representing that goods or services have sponsorship,  
36 approval, characteristics, ingredients, uses, benefits or quan-  
37 tities that they do not have, or that a person has a sponsorship,  
38 approval, status, affiliation or connection that he does not  
39 have;

40 (6) Representing that goods are original or new if they  
41 are deteriorated, altered, reconditioned, reclaimed, used or  
42 secondhand;

43 (7) Representing that goods or services are of a particu-  
44 lar standard, quality or grade, or that goods are of a particular  
45 style or model, if they are of another;

46 (8) Disparaging the goods, services or business of another  
47 by false or misleading representation of fact;

48 (9) Advertising goods or services with intent not to sell  
49 them as advertised;

50 (10) Advertising goods or services with intent not to supply  
51 reasonably expectable public demand, unless the advertise-  
52 ment discloses a limitation of quantity;

53 (11) Making false or misleading statements of fact con-  
54 cerning the reasons for, existence of or amounts of price  
55 reductions;

56 (12) Engaging in any other conduct which similarly creates  
57 a likelihood of confusion or of misunderstanding; or

58 (13) The act, use or employment by any person of any  
59 deception, fraud, false pretense, false promise or misrepre-  
60 sentation, or the concealment, suppression or omission of  
61 any material fact with intent that others rely upon such con-



62 cealment, suppression or omission, in connection with the sale  
63 or advertisement of any goods or services, whether or not any  
64 person has in fact been misled, deceived or damaged thereby.

**§46A-6-103. Rules and regulations.**

1 The attorney general of the state of West Virginia may  
2 make rules and regulations interpreting the provisions of  
3 section one hundred two of this article. Such rules and  
4 regulations shall conform as nearly as practicable with the  
5 rules, regulations and decisions of the federal trade commis-  
6 sion and the federal courts in interpreting the provisions of  
7 the "Federal Trade Commission Act," as from time to time  
8 amended.

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

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

**§46A-6-105. Exempted transactions.**

1 Nothing in this article shall apply to acts done by the  
2 publisher, owner, agent or employee of a newspaper, periodi-  
3 cal or radio or television station in the publication or dis-  
4 semination of an advertisement, when the owner, agent or  
5 employee did not have knowledge of the false, misleading  
6 or deceptive character of the advertisement, did not prepare  
7 the advertisement and did not have a direct financial interest  
8 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  
2 and thereby suffers any ascertainable loss of money or  
3 property, real or personal, as a result of the use or employ-  
4 ment by another person of a method, act or practice  
5 prohibited or declared to be unlawful by the provisions of  
6 this article, may bring an action in the circuit court of the  
7 county in which the seller or lessor resides or has his principal  
8 place of business or is doing business, to recover actual  
9 damages or two hundred dollars, whichever is greater. The  
10 court may, in its discretion, provide such equitable relief as  
11 it deems necessary or proper.

12 (2) Any permanent injunction, judgment or order of the  
13 court under section one hundred eight, article seven of this  
14 chapter for a violation of section one hundred four of this  
15 article shall be prima facie evidence in an action brought  
16 under this section one hundred six that the respondent used  
17 or employed a method, act or practice declared unlawful by  
18 said section one hundred four of this article.

**ARTICLE 7. ADMINISTRATION.**

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

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

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

1 (1) In addition to other powers granted by this chapter,  
2 the attorney general within the limitations provided by law  
3 may:

4 (a) Receive and act on complaints, take action designed to  
5 obtain voluntary compliance with this chapter or commence  
6 proceedings on his own initiative;

7 (b) Counsel persons and groups on their rights and duties  
8 under this chapter;

9 (c) Establish programs for the education of consumers  
10 with respect to credit practices and problems;

11 (d) Make studies appropriate to effectuate the purposes  
12 and policies of this chapter and make the results available  
13 to the public;

14 (e) Adopt, amend and repeal such reasonable rules and  
15 regulations, in accordance with the provisions of chapter  
16 twenty-nine-a of this code, as are necessary and proper to  
17 effectuate the purposes of this chapter and to prevent circum-  
18 vention or evasion thereof; and

19 (f) Delegate his powers and duties under this chapter  
20 to qualified personnel in his office, who shall act under the  
21 direction and supervision of the attorney general and for  
22 whose acts he shall be responsible.

23 (2) Except for refund of an excess charge, no liability  
24 is imposed under this chapter for an act done or omitted

25 in conformity with a rule of the commissioner, notwith-  
26 standing that after the act or omission the rule may be  
27 amended or repealed or be determined by judicial or other  
28 authority to be invalid for any reason.

29 (3) The attorney general and commissioner shall annual-  
30 ly on or before December first, submit a joint report to the  
31 governor and to the Legislature on the operation of their  
32 offices, on the use of consumer credit and on consumer  
33 protection problems in the state, and on the problems of  
34 persons of small means obtaining credit from persons  
35 regularly engaged in extending sales or loan credit. For  
36 the purpose of making the report, the attorney general and  
37 commissioner are authorized to conduct research and make  
38 appropriate studies. The report shall include a description  
39 of the examination and investigation procedures and  
40 policies of their offices, a statement of policies followed in  
41 deciding whether to investigate or examine the offices of  
42 credit suppliers subject to this chapter, a statement of the  
43 number and percentages of offices which are periodically  
44 investigated or examined, a statement of the types of  
45 consumer credit and consumer protection problems of both  
46 creditors and consumers which have come to their attention  
47 through their examinations and investigations and the dis-  
48 position of them under existing law, and a general statement  
49 of the activities of their offices and of others to promote  
50 the purposes of this chapter. The report shall not identify  
51 the persons against whom action is taken by the attorney  
52 general or commissioner.

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

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

8 (2) If the attorney general receives a complaint or other  
9 information concerning noncompliance with this chapter by

10 a supervised financial organization, he shall inform the  
11 official or agency having supervisory authority over the organi-  
12 zation concerned. The attorney general may request in-  
13 formation about supervised financial organizations from the  
14 officials or agencies supervising them.

15 (3) The attorney general and any official or agency of  
16 this state having supervisory authority over a supervised  
17 financial organization are authorized and directed to consult  
18 and assist one another in maintaining compliance with this  
19 chapter. They may jointly pursue investigations, prosecute  
20 actions, and take other official action, as they deem appropri-  
21 ate, if either of them otherwise is empowered to take the  
22 action.

**§46A-7-104. Investigatory powers.**

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

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

25 (3) Upon failure of a person without lawful excuse to  
26 obey a subpoena or to give testimony and upon reasonable

27 notice to all persons affected thereby, the attorney general  
28 may apply to the circuit court of the county in which the  
29 hearing is to be held for an order compelling compliance.

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

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

1 Except as otherwise provided, the provisions of chapter  
2 twenty-nine-a of this code apply to and govern all administra-  
3 tive action taken by the attorney general pursuant to this  
4 chapter.

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

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

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

12 (3) Within thirty days after service of the petition for  
13 review upon the attorney general, or within any further time  
14 the court may allow, the attorney general shall transmit to the  
15 court the original or a certified copy of the entire record upon  
16 which the order is based, including any transcript of testi-  
17 mony, which need not be printed. By stipulation of all par-  
18 ties to the review proceeding, the record may be shortened.  
19 After hearing, the court may (a) reverse or modify the order if  
20 the findings of fact of the attorney general are clearly erro-  
21 neous in view of the reliable, probative and substantial evi-  
22 dence on the whole record, (b) grant any temporary relief or  
23 restraining order it deems just, or (c) enter an order affirming,  
24 enforcing, modifying and enforcing as modified, or setting

25 aside in whole or in part, the order of the attorney general, or  
26 remanding the case to the attorney general for further pro-  
27 ceedings.

28 (4) An objection not urged at the administrative hearing  
29 shall not be considered by the court unless the failure to  
30 urge the objection is excused for good cause shown. A  
31 party may move the court to remand the case to the attorney  
32 general in the interest of justice for the purpose of adducing  
33 additional specified and material evidence and seeking findings  
34 thereon upon good cause shown for the failure to adduce this  
35 evidence before the attorney general.

36 (5) The judgment of the circuit court shall be final unless  
37 reversed, vacated or modified on appeal to the supreme court  
38 of appeals of this state in accordance with the provisions of  
39 section one, article six, chapter twenty-nine-a of this code. The  
40 attorney general's copy of the testimony shall be available at  
41 reasonable times to all parties for examination without cost.

42 (6) If no proceeding for judicial review is initiated, the  
43 attorney general may obtain an order of a circuit court for  
44 enforcement of his order upon a showing that the order was  
45 issued in compliance with this section, that no proceeding for  
46 review was initiated within thirty days after a copy of the  
47 order was received and that the respondent is subject to the  
48 jurisdiction of the court. If no proceeding for judicial review  
49 is initiated, the proceeding for enforcement of any order of  
50 the attorney general shall be initiated by the filing of a petition  
51 in the court. Copies of the petition shall be served upon all  
52 parties of record.

53 (7) With respect to unconscionable agreements or fraudu-  
54 lent or unconscionable conduct by the respondent, the attor-  
55 ney general may not issue an order pursuant to this section  
56 but may bring a civil action for an injunction.

**§46A-7-107. Assurance of discontinuance.**

1 If it is claimed that a person has engaged in conduct which  
2 could be subject to an order by the attorney general or  
3 by a court, the attorney general may accept an assurance in  
4 writing that the person will not engage in the conduct in the  
5 future. Such assurance of voluntary compliance shall not be

6 considered an admission of violation for any purpose, except  
7 that if a person giving such assurance fails to comply with its  
8 terms, the assurance is prima facie evidence that prior to such  
9 assurance he engaged in the conduct described in such  
10 assurance.

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

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

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

1 (1) The attorney general may bring a civil action to re-  
2 strain a creditor or a person acting in his behalf from  
3 engaging in a course of:

4 (a) Making or enforcing unconscionable terms or provi-  
5 sions of consumer credit sales or consumer loans;

6 (b) Fraudulent or unconscionable conduct in inducing con-  
7 sumers to enter into consumer credit sales or consumer  
8 loans; or

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

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

14 (a) That the respondent has made unconscionable agree-  
15 ments or has engaged or is likely to engage in a course of  
16 fraudulent or unconscionable conduct;

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

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

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

24 (a) Belief by the creditor at the time consumer credit  
25 sales or consumer loans are made that there was no reason-  
26 able probability of payment in full of the obligation by the  
27 debtor;

28 (b) In the case of consumer credit sales, knowledge by

29 the seller at the time of the sale of the inability of the  
30 buyer to receive substantial benefits from the property or  
31 services sold;

32 (c) In the case of consumer credit sales, gross disparity  
33 between the price of the property or services sold and the  
34 value of the property or services measured by the price at  
35 which similar property or services are readily obtainable in  
36 credit transactions by like buyers;

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

41 (e) The fact that the respondent has knowingly taken  
42 advantage of the inability of the debtor reasonably to pro-  
43 tect his interests by reason of physical or mental infirmities,  
44 ignorance, illiteracy or inability to understand the language  
45 of the agreement, or similar factors.

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

**§46A-7-110. Temporary relief.**

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

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

1 (1) After demand, the attorney general may bring a civil  
2 action against a creditor for making or collecting charges in  
3 excess of those permitted by this chapter. If it is found  
4 that an excess charge has been made, the court shall order  
5 the respondent to refund to the consumer the amount of the  
6 excess charge. If a creditor has made an excess charge in a  
7 deliberate violation of or in reckless disregard for this



8 chapter, or if a creditor has refused to refund an excess  
9 charge within a reasonable time after demand by the consumer  
10 or the attorney general, the court may also order the  
11 respondent to pay to the consumer a civil penalty in an amount  
12 determined by the court not in excess of the greater of  
13 either the amount of the sales finance charge or loan finance  
14 charge or ten times the amount of the excess charge. Refunds  
15 and penalties to which the consumer is entitled pursuant to  
16 this subsection may be set off against the consumer's obliga-  
17 tion. If a consumer brings an action against a creditor to  
18 recover an excess charge or civil penalty, an action by the  
19 attorney general to recover for the same excess charge shall  
20 be stayed while the consumer's action is pending and shall be  
21 dismissed if the consumer's action is dismissed with pre-  
22 judice or results in a final judgment granting or denying  
23 the consumer's claim. With respect to excess charges arising  
24 from sales made pursuant to revolving charge accounts  
25 or from loans made pursuant to revolving loan accounts,  
26 no action pursuant to this subsection may be brought more  
27 than one year after the time the excess charge was made.  
28 With respect to excess charges arising from other consumer  
29 credit sales or consumer loans, no action pursuant to this  
30 subsection may be brought more than one year after the due  
31 date of the last scheduled payment of the agreement pursuant  
32 to which the charge was made. If the creditor establishes  
33 by a preponderance of evidence that a violation is uninten-  
34 tional or the result of a bona fide error, no liability to  
35 pay a penalty shall be imposed under this subsection.

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

**§46A-7-112. Jury trial.**

1 In an action brought by the attorney general under this  
2 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  
2 does not affect remedies available to consumers under this  
3 chapter or under other principles of law or equity.

**§46A-7-114. Venue.**

1 The attorney general may bring actions or proceedings under  
2 this chapter in the circuit court of any county in which an  
3 act on which the action or proceeding is based occurred, or  
4 in any county in which respondent or defendant resides or  
5 transacts business.

**§46A-7-115. Notification.**

1 (1) Every person engaged in this state in making consumer  
2 credit sales or consumer loans and every person having an  
3 office or place of business in this state who takes assignments  
4 of and undertakes direct collection of payments from or en-  
5 forcement of rights against debtors arising from such sales or  
6 loans shall file notification with the attorney general within  
7 thirty days after commencing business in this state, and, there-  
8 after, on or before January thirty-first of each year. The noti-  
9 fication shall state:

10 (a) Name of the person;

11 (b) Name in which business is transacted if different from  
12 (a);

13 (c) Address of principal office, which may be outside this  
14 state;

15 (d) Address of all offices or retail stores, if any, in this state  
16 at which consumer credit sales or consumer loans are made,  
17 or in the case of a person taking assignments of obligations,  
18 the offices or places of business within this state at which  
19 business is transacted;

20 (e) If consumer credit sales or consumer loans are made  
21 otherwise than at a retail store or office in this state, a brief  
22 description of the manner in which they are made;

23 (f) Address of designated agent upon whom service of pro-  
24 cess may be made in this state; and

25 (g) Whether supervised loans are made.

26 (2) If information in a notification becomes inaccurate after

27 filing, accurate information must be filed within thirty days.

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

**§46A-7-116. Fees.**

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

6 (2) Persons required to file notification who are sellers  
7 or lenders shall pay an additional fee at the time and in the  
8 manner stated in subsection (1) of ten dollars for each one  
9 hundred thousand dollars or part thereof, in excess of one  
10 hundred thousand dollars, of the original unpaid balances  
11 arising from consumer credit sales contracts and consumer  
12 loan contracts made in this state within the preceding twelve  
13 months' period ending on June thirtieth and held either (a)  
14 by the seller or lender for more than thirty days after the  
15 inception of the sale or loan giving rise to the obligations,  
16 or (b) by an assignee who has not filed notification and  
17 paid the additional fee or is not required to and does not  
18 pay such fee. A refinancing of a sale or loan resulting in  
19 an increase in the amount of an obligation is considered a  
20 new sale or loan to the extent of the amount of the increase.

21 (3) Persons required to file notification who are assignees  
22 shall pay an additional fee at the time and in the manner  
23 stated in subsection (1) of ten dollars for each one hundred  
24 thousand dollars, or part thereof, of the unpaid balances  
25 at the time of the assignment of obligations arising from  
26 consumer credit sales and consumer loans made in this  
27 state taken by assignment during the preceding twelve months'  
28 period ending on June thirtieth but an assignee need not  
29 pay a fee with respect to an obligation on which the assignor  
30 or other person has already paid a fee.

31 (4) Every person who, on the effective date of this  
32 chapter, (a) is engaging in this state in making consumer  
33 credit sales and consumer loans, or (b) has an office or  
34 place of business in this state and takes assignments of

35 and undertakes direct collection of payments from or enforce-  
36 ment of rights against debtors arising from such sales or  
37 loans, shall within thirty days after such effective date  
38 file the notification required by section one hundred fifteen  
39 of this article and pay seventy-five percent of the fee which  
40 would have been payable had this chapter been in effect on  
41 July first, one thousand nine hundred seventy-three.

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

49 (6) All fees paid to the attorney general under the pro-  
50 visions of this section shall be deposited in the state treasury  
51 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.**

1 A consumer affairs advisory council is hereby created.  
2 The council shall be composed of nine members who shall  
3 be appointed by the attorney general. The members of  
4 the council shall be citizens and residents of this state, who  
5 by reason of their training, education or experience are  
6 qualified to carry out the functions of the council under this  
7 section. Five members shall be representatives of the general  
8 public and the other four members shall be representatives  
9 of consumer financing and retailing business in this state.

10 The first term of office for three of the representatives of  
11 the general public, who shall be designated by the director,  
12 shall run through the thirtieth day of June, one thousand nine  
13 hundred seventy-five. The first term of office for the other  
14 two representatives of the general public shall run through  
15 the thirtieth day of June, one thousand nine hundred seventy-  
16 six. The first term of office for two of the representatives  
17 of consumer financing and retailing business in this state,

18 who shall be designated by the director, shall run through  
19 the thirtieth day of June, one thousand nine hundred seventy-  
20 five. The first term of office for the other two representatives  
21 of consumer financing and retailing business in this state  
22 shall run through the thirtieth day of June, one thousand  
23 nine hundred seventy-six. Thereafter, terms of members shall  
24 be four years.

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

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

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

47 For the purpose of carrying out its duty, five members of  
48 the council shall constitute a quorum so long as at least one  
49 of such members is a representative of consumer financing  
50 and retailing business in this state. The council and the  
51 attorney general shall meet together at a time and place  
52 designated by the chairman at least two times each year.  
53 Additional meetings may be held when called by the chair-  
54 man or when requested by five members of the council or by  
55 the attorney general. Members shall be entitled to reasonable  
56 and necessary expenses actually incurred while engaged in the  
57 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 (1) Except as otherwise provided in this section, this chapter  
2 shall become operative at 12:01 A.M., eastern daylight time, on  
3 October first, one thousand nine hundred seventy-three.

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

13 (3) Transactions entered into before this chapter takes  
14 effect and the rights, duties and interests flowing from them  
15 thereafter may be terminated, completed, consummated or  
16 enforced as required or permitted by any statute, rule of  
17 law or other law amended, repealed or modified by this  
18 chapter as though the repeal, amendment or modification  
19 had not occurred, but this chapter applies to:

20 (a) Refinancings and consolidations made after this chap-  
21 ter takes effect of consumer credit sales, consumer leases and  
22 consumer loans whenever made;

23 (b) Consumer credit sales or consumer loans made after  
24 this chapter takes effect pursuant to revolving charge accounts  
25 or revolving loan accounts entered into, arranged or contract-  
26 ed for before this chapter takes effect; and

27 (c) All consumer credit transactions made before this  
28 chapter takes effect insofar as this chapter limits the remedies  
29 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.**

1 Except in cases where it is otherwise specially provided  
2 by law, legal interest shall continue to be at the rate of

3 six dollars upon one hundred dollars for a year, and propor-  
4 tionately for a greater or less sum, or for a longer or  
5 shorter time, and no person upon any contract other than a  
6 contract in writing shall take for the loan or forbearance  
7 of money, or other thing, above the value of such rate:  
8 *Provided*, That a charge of one dollar may be made for any  
9 loan or forbearance of money or other thing, where the  
10 interest at the rate aforesaid would not amount to that  
11 sum, and the same shall not be a usurious charge or rate  
12 of interest.

13 Parties may contract in writing for the payment of interest  
14 for the loan or forbearance of money at a rate not to exceed  
15 eight dollars upon one hundred dollars for a year, and pro-  
16 portionately for a greater or less sum or for a longer or short-  
17 er time, including points expressed as a percentage of the loan  
18 divided by the number of years of the loan contract. For the  
19 purpose of this section the term points is defined as the  
20 amount of money, or other consideration, received by the  
21 lender, from whatever source, as a consideration for making  
22 the loan and not otherwise expressly permitted by statute.

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

1 Except in cases where it is otherwise specially provided  
2 by law, parties may contract for and charge interest for a  
3 secured or unsecured loan, repayable in installments at a  
4 rate not in excess of: (a) Six percent per annum upon the  
5 principal amount of the loan, for the entire period of the  
6 loan, and add such charge to the principal amount of the  
7 loan; or (b) six percent per annum upon the face amount of  
8 the instrument evidencing the obligation to repay the loan,  
9 for the entire period of the loan and deduct such charge in  
10 advance: *Provided*, That no such add-on or discount loan may  
11 be made for the purchase of real property or any interest  
12 therein or any improvement thereto if any loan for such  
13 purpose would be a consumer loan within the provisions of  
14 section one hundred four, article three, chapter forty-six-a of  
15 this code: *Provided, however*, That no loan shall be made for  
16 the purchase of real property or any interest therein or any  
17 improvement thereto pursuant to a revolving loan account  
18 as provided for in section one hundred six, article three,

19 chapter forty-six-a of this code: *And provided further*, That if  
20 the entire unpaid balance outstanding on the loan is paid on  
21 any installment date, prior to maturity, the bank shall make a  
22 rebate or refund of such charge in an amount computed  
23 according to the sum of the digits method, commonly referred  
24 to as the Rule of 78; and any note evidencing any such  
25 installment loan may provide that the entire unpaid balance  
26 thereof at the option of the holder shall become due and  
27 payable upon default in the payment of any stipulated install-  
28 ment without impairing the negotiability of such note, if  
29 otherwise negotiable: *And provided further*, That nothing  
30 herein contained shall affect or restrict the right of parties  
31 under section five of this article to contract in writing for the  
32 payment of interest for the loan or forbearance of money at  
33 a rate not to exceed eight dollars upon one hundred dollars  
34 a year, and proportionately for a greater or less sum, or for  
35 a longer or shorter time, including points expressed as a per-  
36 centage of the loan divided by the number of years of the  
37 loan contract.



The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

W. Darrel Darby  
Chairman Senate Committee

Clarence C. Christian Jr.  
Chairman House Committee

Originated in the Senate.

Takes effect ninety days from passage.

Howard Johnson  
Clerk of the Senate

C. A. Blankenship  
Clerk of the House of Delegates

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

Lewis K. M. B. B. B.  
Speaker House of Delegates

The within disapproved this the 1<sup>st</sup>  
May  
day of \_\_\_\_\_, 1973.

Arch A. Moore Jr.  
Governor

PRESENTED TO THE  
GOVERNOR

Date 5/1/73

Time 1:40 P.M.