WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1974

ENROLLED

SENATE BILL NO. 240

(By Mr. Bratcher, Mr. President)

PASSED March 5, 1974

In Effect ninety days from Passage

FILED IN THE OFFICE
OF EDGAR T. WISE, III
SECRETARY OF STATE
THIS DATE 2-13-74
ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 240

(By Mr. Brotherton, Mr. President, original sponsor)

[Passed March 5, 1974; in effect ninety days from passage.]
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; providing for limitations on assignment of earnings; providing for service of notice and process on nonresidents; providing for cancellation of indebtedness on certain contracts for magazines and correspondence courses; specifying restrictions and limitations upon debt collection practices; fixing maximum rates and charges and permitting certain other and additional charges with respect to, 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; relating to warranties and privity of contract; 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 by persons engaged in certain consumer transactions; relating to a consumer advisory council; providing an operative date of the act and providing for transition; providing that certain transactions entered into prior to the operative date shall be governed by any statute, rule of law or law repealed or modified by such 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 providing for the severability of the act's provisions.

Be it enacted by the Legislature of West Virginia:

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article seven-a, chapter forty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that section thirty, article four, chapter thirty-one-a, and sections five and five-a, article six, chapter forty-seven, all of said code, be amended and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

CHAPTER 31A. BANKS AND BANKING.

ARTICLE 4. BANKING INSTITUTIONS AND SERVICES GENERALLY.

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

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

11 Except in cases where it is otherwise specially provided by
law, any banking institution authorized to do, and doing business in this state, may contract for and charge interest for a secured or unsecured loan, repayable in installments at a rate not in excess of: (a) Six percent per annum upon the principal amount of the loan, for the entire period of the loan, and add such charge to the principal amount of the loan; or (b) six percent per annum upon the face amount of the instruments evidencing the obligation to repay the loan, for the entire period of the loan, and deduct such charge in advance but in no case shall the interest on such a discount loan exceed an annual percentage rate of fifteen percent per annum calculated according to the actuarial method: Provided, That upon prepayment in full of a precomputed loan, the bank shall rebate that portion of such charge attributable to the prepaid periodic installment periods. When the total amount is payable in substantially equal consecutive monthly installments, the portion of such charge attributable to any particular monthly installment period shall be that proportion of the charge originally contracted for, as the balance scheduled to be outstanding on the last day of the monthly installment period before deducting the payment, if any, scheduled to be made on that day bears to the sum of all the monthly installment balances under the original schedule of payments. (This method of allocation is the sum of the digits method, commonly referred to as the "Rule of 78.") If prepayment in full of an obligation payable in monthly installments is made on other than an installment due date, the rebate shall be calculated as of the nearest installment due date. For the purpose of determining the installment due date nearest the date of any prepayment in full, any prepayment in full of an obligation payable in monthly installments made on or before the fifteenth day following the installment due date shall be determined to have been made as of such installment due date, and any prepayment in full made on or after the sixteenth day shall be deemed to have been made on the next succeeding installment due date. The commissioner of banking shall prescribe by rule the method or procedure for the allocation of charges and the calculation of rebates consistent with the sum of the digits method where the precomputed loan is payable in unequal or irregular or in other than substan-
tially equal consecutive monthly installments. Any note evidencing any such installment loan may provide that the entire unpaid balance thereof at the option of the holder shall become due and payable upon default in the payment of any stipulated installment without impairing the negotiability of such note if otherwise negotiable.

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

ARTICLE 1. SHORT TITLE, DEFINITIONS AND GENERAL PROVISIONS.


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


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

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

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

(3) "Agricultural purpose" means a purpose related to the production, harvest, exhibition, marketing, transportation, processing or manufacture of agricultural products by a natural person who cultivates, plants, propagates, or nurtures the agricultural products. "Agricultural products" includes agricultural, horticultural, viticultural and dairy products, livestock, wildlife, poultry, bees, forest products, fish and shellfish, and any products thereof, including processed and manufactured products, and any and all products raised or produced on farms and any processed or manufactured products thereof.
(4) "Amount financed" means the total of the following items to the extent that payment is deferred:
(a) The cash price of the goods, services or interest in land, less the amount of any down payment whether made in cash or in property traded in;
(b) The amount actually paid or to be paid by the seller pursuant to an agreement with the buyer to discharge a security interest in or a lien on property traded in; and
(c) If not included in the cash price:
  (i) Any applicable sales, use, privilege, excise or documentary stamp taxes;
  (ii) Amounts actually paid or to be paid by the seller for registration, certificate of title or license fees; and
  (iii) Additional charges permitted by this chapter.

(5) "Average daily balance" in a billing cycle for which a sales finance charge or loan finance charge is made is the sum of the amount unpaid each day during that cycle divided by the number of days in that cycle. The amount unpaid on a day is determined by adding to the balance, if any, unpaid as of the beginning of that day all purchases and other credits made or received as of that day.

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

(7) "Closing costs" with respect to a debt secured by an interest in land include:
(a) Fees or premiums for title examination, title insurance or similar purposes including surveys;
(b) Fees for preparation of a deed, deed of trust, mortgage, settlement statement or other documents;
(c) Escrows for future payments of taxes and insurance;
(d) Official fees and fees for notarizing deeds and other documents;
(e) Appraisal fees; and
(f) Credit reports.

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

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

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

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

(12) (a) Except as provided in paragraph (b), "consumer credit sale" is a sale of goods, services or an interest in land in which:
   (i) Credit is granted either by a seller who regularly engages as a seller in credit transactions of the same kind or pursuant to a seller credit card;
   (ii) The buyer is a person other than an organization;
   (iii) The goods, services or interest in land are purchased primarily for a personal, family, household or agricultural purpose;
   (iv) Either the debt is payable in installments or a sales finance charge is made; and
   (v) With respect to a sale of goods or services, the amount financed does not exceed twenty-five thousand dollars.

(b) "Consumer credit sale" does not include a sale in which the seller allows the buyer to purchase goods or services pursuant to a lender credit card or similar arrangement.

(13) (a) "Consumer lease" means a lease of goods:
   (i) Which a lessor regularly engaged in the business of leasing makes to a person, other than an organization, who takes under the lease primarily for a personal, family, household or agricultural purpose;
   (ii) In which the amount payable under the lease does not exceed twenty-five thousand dollars; and
   (iii) Which is for a term exceeding four months.

(b) "Consumer lease" does not include a lease made pursuant to a lender credit card or similar arrangement.
(14) "Consumer loan" is a loan made by a person regularly engaged in the business of making loans in which:
(a) The debtor is a person other than an organization;
(b) The debt is incurred primarily for a personal, family, household or agricultural purpose;
(c) Either the debt is payable in installments or a loan finance charge is made; and
(d) Either the principal does not exceed twenty-five thousand dollars or the debt is secured by an interest in land.

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

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

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

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

(19) "Home solicitation sale" means a consumer credit sale in excess of twenty-five dollars in which the buyer receives a solicitation of the sale at a place other than the seller's business establishment at a fixed location and the buyer's agreement or offer to purchase is there given to the seller or a person acting for the seller. The term does not include a sale made pursuant to a preexisting open end credit account with the seller in existence for at least three months prior to the transaction, a sale made pursuant to prior negotiations between the parties at the seller's business establishment at a fixed location, a sale of motor vehicles, mobile homes or farm equipment or a sale which may be rescinded under the Federal Truth in Lending Act (being Title I of the Federal Consumer Credit Protec-
t. A sale which would be a home solicitation sale if credit were extended by the seller is a home solicitation sale although the goods or services are paid for in whole or in part by a consumer loan in which the creditor is subject to claims and defenses arising from the sale (§46A-2-103).

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

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

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

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

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

(22) "Loan" includes:

(a) The creation of debt by the lender's payment of or agreement to pay money to the consumer or to a third party for the account of the consumer other than debts created pursuant to a seller credit card;

(b) The creation of debt by a credit to an account with the lender upon which the consumer is entitled to draw immediately;

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

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

(23) (a) "Loan finance charge" means the sum of (i) all charges payable directly or indirectly by the debtor and imposed directly or indirectly by the lender as an incident to the extension of credit, including any of the following types of charges which are applicable: Interest or any amount payable under a point, discount, or other system of charges, however denominated, premium or other charge for any guarantee or insurance protecting the lender against the consumer's default or other credit loss; and (ii)
192 charges incurred for investigating the collateral or credit-
193 worthiness of the consumer or for commissions or broker-
194 age for obtaining the credit, irrespective of the person to
195 whom the charges are paid or payable, unless the lender
196 had no notice of the charges when the loan was made. The
197 term does not include charges as a result of default, addi-
198 tional charges, delinquency charges or deferral charges.
199 (b) If a lender makes a loan to a consumer by purchas-
200 ing or satisfying obligations of the consumer pursuant to a
201 lender credit card or similar arrangement, and the pur-
202 chase or satisfaction is made at less than the face amount
203 of the obligation, the discount is not part of the loan finance
204 charge.
205 (24) “Merchandise certificate” or “gift certificate” means
206 a writing issued by a seller or issuer of a seller credit card,
207 not redeemable in cash and usable in its face amount in
208 lieu of cash in exchange for goods or services.
209 (25) “Official fees” means:
210 (a) Fees and charges prescribed by law which actually
211 are or will be paid to public officials for determining the
212 existence of or for perfecting, releasing, terminating or
213 satisfying a security interest related to a consumer credit
214 sale or consumer loan; or
215 (b) Premiums payable for insurance or fees escrowed
216 in a special account for the purpose of funding self-insur-
217 ance or its equivalent in lieu of perfecting a security inter-
218 est otherwise required by the creditor in connection with
219 the sale, lease or loan, if such premium or fee does not
220 exceed the fees and charges described in paragraph (a)
221 which would otherwise be payable.
222 (26) “Organization” means a corporation, government or
223 governmental subdivision or agency, trust, estate, partner-
224 ship, cooperative or association.
225 (27) “Payable in installments” means that payment is re-
226 quired or permitted by agreement to be made in (a) two or
227 more periodic payments, excluding a down payment, with
228 respect to a debt arising from a consumer credit sale pur-
229 suant to which a sales finance charge is made, (b) four or
230 more periodic payments, excluding a down payment, with
231 respect to a debt arising from a consumer credit sale pur-
232 suant to which no sales finance charge is made, or (c) two
233 or more periodic payments with respect to a debt arising
from a consumer loan. If any periodic payment other than
the down payment under an agreement requiring or per-
mitting two or more periodic payments is more than twice
the amount of any other periodic payment, excluding the
down payment, the consumer credit sale or consumer loan
is "payable in installments".

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

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

(30) “Precomputed loan”. A loan, refinancing or consoli-
dation is “precomputed” if the debt is expressed as a sum
comprising the principal and the amount of the loan fi-
nance charge computed in advance.

(31) “Precomputed sale”. A sale, refinancing or consoli-
dation is “precomputed” if the debt is expressed as a sum
comprising the amount financed and the amount of the
sales finance charge computed in advance.

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

(33) “Principal” of a loan means the total of:
(a) The net amount paid to, receivable by or paid or pay-
able for the account of the debtor;
(b) The amount of any discount excluded from the loan
finance charge; and
(c) To the extent that payment is deferred:
(i) Amounts actually paid or to be paid by the lender for registration, certificate of title, or license fees if not included in (a); and
(ii) Additional charges permitted by this chapter.

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

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

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

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

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

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

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

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

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

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

(a) Organized, chartered or holding an authorization certificate under the laws of this state or of the United States which authorizes the person to make consumer loans; and

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

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

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

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

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

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

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

§46A-1-104. Application.
1 With respect to consumer credit sales or consumer loans
consummated in another state, a creditor shall not collect
in an action brought in this state a sales finance charge or
loan finance charge in excess of that permitted by this
chapter.

§46A-1-105. Exclusions.
1 This chapter does not apply to:
2 (1) Extensions of credit to government or governmental
agencies or instrumentalities;
3 (2) The sale of insurance by an insurer, except as other-
wise provided in this chapter;
4 (3) Transactions under public utility or common carrier
tariffs if a subdivision or agency of this state or of the
United States regulates the charges for the services in-
volved, the charges for delayed payment, and any discount
allowed for early payment; or
5 (4) Licensed pawnbrokers and secondary mortgage len-
ders licensed under the provisions of article seventeen,
chapter thirty-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
credit sale or consumer loan, may agree in writing signed
by the parties that the sale or loan is subject to the pro-
visions of this chapter applying to consumer credit sales
or consumer loans. If the parties so agree, the sale or
loan is subject to this chapter.

1 Except as otherwise provided in this chapter, a con-
sumer may not waive or agree to forgo rights or benefits
under this chapter.
ARTICLE 2. CONSUMER CREDIT PROTECTION.

§46A-2-101. Holders of negotiable instruments subject to claims and defenses.

(1) The following limitations shall be applicable to negotiable instruments, other than a currently dated check, evidencing an obligation arising from a consumer credit sale or consumer lease, other than a sale or lease primarily for an agricultural purpose, made on the date this chapter becomes operative or within a period of one year thereafter;

(a) Notwithstanding any term or agreement to the contrary or the provisions of section three hundred five, article three, chapter forty-six of this code, a holder in due course of any such negotiable instrument shall take and hold such instrument subject to all claims and defenses arising from that specific consumer credit sale or consumer lease which the buyer or lessee has against the seller or lessor but the holder's liability shall not exceed the amount owing to the holder at the time the holder receives notice of the claims or defenses, if such claims and defenses are asserted by the buyer or lessee by written notice given to the holder within a period of one hundred eighty days after the holder has delivered or mailed to the buyer or lessee a written notice of negotiation complying with the requirements of subdivision (b) of this subsection (1).

(b) The notice of negotiation from the holder to the buyer or lessee contemplated in subdivision (a) of this subsection (1) shall be in writing, identify the negotiable instrument, briefly describe the goods or services, state the name and address of the holder, state the initial deferred balance of such negotiable instrument payable by the buyer or lessee and the number, amount and due dates of installments, the amount currently payable by the buyer or lessee, and inform the buyer or lessee in a conspicuous manner that he has one hundred eighty days from a specified date (which date shall be the date the notice was delivered or mailed to the buyer or lessee) within which to notify the holder in writing of any claims and defenses he may have against the seller or lessor
arising from that specific consumer credit sale or consumer lease; and that if written notification of any such claims and defenses is not given to the holder within such one hundred eighty day period, the holder will have the right to enforce the instrument free of any such claims and defenses the buyer or lessee may have against the seller or lessor. Such notice of negotiation, if given by mail, is given when it is mailed to the buyer's or lessee's last-known address by registered or certified mail, return receipt requested.

(c) In order to preserve all of his claims and defenses against a holder under subdivision (a) of this subsection (1), the buyer or lessee must, after receiving the written notice of negotiation provided for in subdivision (b) of this subsection (1), and before the expiration of a period of one hundred eighty days, notify such holder in writing as to any claims and defenses he has against the seller or lessor arising from that specific consumer credit sale or consumer lease. The notice by the buyer or lessee need not take any particular form and shall be sufficient if it indicates the claims and defenses which the buyer or lessee has against the seller or lessor in a manner sufficient to apprise the holder of the nature of such claims and defenses. Such notice, if given by mail, is given when it is mailed to the holder's last-known address by registered or certified mail, return receipt requested. All claims and defenses of the buyer or lessee against the seller or lessor arising out of a consumer credit sale or consumer lease shall be valid against the holder unless the notice of negotiation is given pursuant to this subsection (1).

(d) In a consumer credit sale or consumer lease when goods or services cannot be delivered or completed immediately after the sale or lease or when the rendition of future services constitutes a material part of the sale or lease agreement, the notice of negotiation contemplated in subdivision (a) of this subsection (1) shall not be given to the buyer or lessee until the seller or lessor has furnished a certificate to the buyer or lessee which indicates that delivery of such goods has been made or
such services completed and such certificate has been
duly executed by the buyer or lessee and, in the case of
future services, until the buyer or lessee shall forward
to the holder a written reaffirmation of the completion of
such future services which are the subject of such sale
or lease. Such reaffirmation shall not be made until ex-
ecution by the buyer or lessee of the certificate of com-
pletion. Such reaffirmation shall be forwarded directly
by United States mail to the holder by the buyer or lessee.
If the seller or lessor directly or indirectly obtains such
reaffirmation, it shall be void and have no force or legal
effect. A completion certificate need not take any par-
ticular form, but shall indicate the names and addresses
of the parties to the consumer credit sale or consumer
lease, the goods delivered or the services completed and
the date on which actual delivery was made or actual
performance was completed.

(e) Whenever any such negotiable instrument, and an
instrument, contract or other writing (other than a nego-
tiable instrument) executed in connection with such
negotiable instrument, are negotiated and assigned to the
same person, either the notices contemplated and pro-
vided for in this subsection (1) or the notices contem-
plated and provided for in section one hundred two of
this article need be given, and it shall not be necessary
for notices to be given pursuant to both this subsection
(1) and said section one hundred two.

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

(3) Nothing contained in this section shall be con-
strued as affecting any buyer's or lessee's right or action,
claim or defense which is otherwise provided for in this
code or at common law.

(4) Nothing contained in this section shall be con-
strued in any manner as affecting any negotiation of any
negotiable instrument made prior to the operative date
of this chapter.

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

(6) For the purpose of determining the amount owing to a holder in due course of a negotiable instrument evidencing an obligation of a buyer or lessee arising from a consumer credit sale or consumer lease:

(a) Payments received after the consolidation of two or more consumer credit sales, other than pursuant to a revolving charge account, are deemed to have been first applied to the payment of the sales first made; if the sales consolidated arose from sales made on the same day, payments are deemed to have been first applied to the smaller or smallest sale or sales;

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

(7) A claim or defense which a buyer or lessee may assert against a holder in due course of a negotiable instrument under the provisions of this section may be asserted only as a matter of defense to or setoff against a claim by the holder: Provided, That if a buyer or lessee shall have a claim or defense which could be asserted under the provisions of this section as a matter of defense to or setoff against a claim by the holder in due course of a negotiable instrument were such holder to assert such claim against the buyer or lessee, then such buyer or lessee shall have the right to institute and maintain an action or proceeding seeking to obtain the cancellation in whole or in part of the indebtedness evi-
dened by such negotiable instrument or the release in whole or in part of any lien upon real or personal property securing the payment thereof: Provided, how-

ever, That any claim or defense founded in fraud, lack or failure of consideration or a violation of the provisions of this chapter as specified in section one hundred one, article five of this chapter, may be asserted by a buyer or lessee at any time, subject to the provisions of this code relating to limitation of actions.

(8) Notwithstanding any provisions of this section, a holder shall not be subject to any claim or defense arising from or growing out of personal injury or death resulting therefrom or damage to property.

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

1 (1) The following limitations shall be applicable to instruments, contracts or other writings, other than negotiable instruments, evidencing an obligation arising from a consumer credit sale or consumer lease, other than a sale or lease primarily for an agricultural purpose, made on the date this chapter becomes operative or within a period of one year thereafter:

(a) Notwithstanding any term or agreement to the contrary or the provisions of article two, chapter forty-six of this code or section two hundred six, article nine of said chapter forty-six, an assignee of any such instrument, contract or other writing shall take and hold such instrument, contract or other writing subject to all claims and defenses of the buyer or lessee against the seller or lessor arising from that specific consumer credit sale or consumer lease of goods or services but the assignee's liability shall not exceed the amount owing to the assignee at the time the assignee receives notice of the claims or defenses, if such claims and defenses are asserted by the buyer or lessee by written notice given to the assignee within a period of one hundred eighty days after the assignee has delivered or mailed to the buyer or lessee a written notice of assignment complying with the requirements of subdivision (b) of this subsection (1).
(b) The notice of assignment from the assignee to the buyer or lessee contemplated in subdivision (a) of this subsection (1) shall be in writing, identify the instrument, contract or other writing, briefly describe the goods or services, state the name and address of the assignee, state the initial deferred balance of such instrument, contract or other writing payable by the buyer or lessee and the number, amount and due dates of installments, the amount currently payable by the buyer or lessee, and inform the buyer or lessee in a conspicuous manner that he has one hundred eighty days from a specified date (which date shall be the date the notice was delivered or mailed to the buyer or lessee) within which to notify the assignee in writing of any claims and defenses he may have against the seller or lessor arising from that specific consumer credit sale or consumer lease; and that if written notification of any such claims and defenses is not given to the assignee within such one hundred eighty day period, the assignee will have the right to enforce the instrument, contract or other writing free of any claims and defenses the buyer or lessee may have against the particular seller or lessor. Such notice of assignment, if given by mail, is given when it is mailed to the buyer's or lessee's last-known address by registered or certified mail, return receipt requested.

(c) In order to preserve all of his claims and defenses against an assignee under subdivision (a) of this subsection (1), the buyer or lessee must, after receiving the written notice of assignment provided for in subdivision (b) of this subsection (1), and before the expiration of a period of one hundred eighty days, notify such assignee in writing as to any claims and defenses he has against the seller or lessor arising from that specific consumer credit sale or consumer lease. The notice by the buyer or lessee need not take any particular form and shall be sufficient if it indicates the claims and defenses which the buyer or lessee has against the seller or lessor in a manner sufficient to apprise the assignee of the nature of such claims and defenses. Such notice, if given by mail, is given when it is mailed to the as-
(d) In a consumer credit sale or consumer lease when goods or services cannot be delivered or completed immediately after the sale or lease or when the rendition of future services constitutes a material part of the sale or lease agreement, the notice of assignment contemplated in subdivision (a) of this subsection (1) shall not be given to the buyer or lessee until the seller or lessor has furnished a certificate to the buyer or lessee which indicates that delivery of such goods has been made or such services completed and such certificate has been duly executed by the buyer or lessee and, in the case of future services, until the buyer or lessee shall forward to the assignee a written reaffirmation of the completion of such future services which are the subject of such sale or lease. Such reaffirmation shall not be made until execution by the buyer or lessee of the certificate of completion. Such reaffirmation shall be forwarded directly by United States mail to the assignee by the buyer or lessee. If the seller or lessor directly or indirectly obtains such reaffirmation, it shall be void and have no force or legal effect. A completion certificate need not take any particular form, but shall indicate the names and addresses of the parties to the consumer credit sale or consumer lease, the goods delivered or the services completed and the date on which actual delivery was made or actual performance was completed.

(e) Whenever any such instrument, contract or other writing (other than a negotiable instrument), and a negotiable instrument executed in connection with such other instrument, contract or writing, are assigned and negotiated to the same person, either the notices contemplated and provided for in this subsection (1) or the notices contemplated and provided for in section one hundred one of this article need be given, and it shall not be necessary for notices to be given pursuant
to both this subsection (1) and said section one hundred one.

(2) Notwithstanding any provisions of this section, an assignee shall be subject to any claim or defense based upon lack or failure of consideration.

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

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

(5) The following provisions shall be applicable to instruments, contracts or other writings, other than negotiable instruments, evidencing an obligation arising from a consumer credit sale or consumer lease, other than a sale or lease primarily for an agricultural purpose, made after the expiration of one year after the operative date of this chapter: Notwithstanding any term or agreement to the contrary or the provisions of article two, chapter forty-six of this code or section two hundred six, article nine of said chapter forty-six, an assignee of any such instrument, contract or other writing shall take and hold such instrument, contract or other writing subject to all claims and defenses of the buyer or lessee against the seller or lessor arising from that specific consumer credit sale or consumer lease of goods or services, but the total of all claims and defenses which may be asserted against the assignee under this subsection or subsection (7) of this section shall not exceed the amount owing to the assignee at the time of such assignment, except (i) as to any claim or defense founded in fraud and (ii) for any excess charges and penalties recoverable under section one hundred one, article five of this chapter.

(6) For the purpose of determining the amount owing to an assignee of any such instrument, contract or other writing evidencing an obligation of a buyer or lessee arising from a consumer credit sale or consumer lease:
(a) Payments received after the consolidation of two or more consumer credit sales, other than pursuant to a revolving charge account, are deemed to have been first applied to the payment of the sales first made; if the sales consolidated arose from sales made on the same day, payments are deemed to have been first applied to the smaller or smallest sale or sales;

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

(7) A claim or defense which a buyer or lessee may assert against an assignee of such instrument, contract or other writing under the provisions of this section may be asserted only as a matter of defense to or setoff against a claim by the assignee: Provided, That if a buyer or lessee shall have a claim or defense which could be asserted under the provisions of this section as a matter of defense to or setoff against a claim by the assignee were such assignee to assert such claim against the buyer or lessee, then such buyer or lessee shall have the right to institute and maintain an action or proceeding seeking to obtain the cancellation in whole or in part of the indebtedness evidenced by such instrument, contract or other writing or the release in whole or in part of any lien upon real or personal property securing the payment thereof: Provided however, That any claim or defense founded in fraud, lack or failure of consideration or a violation of the provisions of this chapter as specified in section one hundred one, article five of this chapter, may be asserted by a buyer or lessee at any time, subject to the provisions of this code relating to limitation of actions.

(8) Notwithstanding any provisions of this section, an assignee shall not be subject to any claim or defense arising from or growing out of personal injury or death resulting therefrom or damage to property.
§46A-2-103. Lender subject to claims and defenses arising from sales.

(1) The following limitations shall be applicable to claims and defenses of borrowers, arising from consumer sales, with respect to consumer loans made on the date this chapter becomes operative or within a period of one year thereafter:

(a) A lender, other than the issuer of a lender credit card, who, with respect to a particular transaction, makes a consumer loan for the purpose of enabling a borrower to buy goods or services, other than primarily for an agricultural purpose, is subject to all claims and defenses of the borrower against the seller arising from that specific sale of goods or services if such lender participates in or is connected with the sales transaction, and if such claims and defenses are asserted by the borrower by written notice given to the lender within a period of one hundred eighty days after the lender has delivered or mailed to the borrower a written notice complying with the requirements of subdivision (b) of this subsection (1). Without limiting the generality of the foregoing, a lender is deemed to be connected with such sales transaction if:

(i) The lender and the seller have arranged for a commission or brokerage or referral fee for the extension of credit by the lender;

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

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

(iv) The lender directly supplies the seller with documents used by the borrower to evidence the transaction or the seller directly supplies the lender with documents used by the borrower to evidence the transaction;

(v) The loan is conditioned upon the borrower's purchase of the goods or services from the particular seller, but the lender's payment of proceeds of the loan to the seller does not in itself establish that the loan was so conditioned;
40 (vi) The seller in such sale has specifically recommend-
41 ed such lender by name to the borrower and the lender
42 has made ten or more loans to borrowers within a period
43 of twelve months within which period the loan in question
44 was made, the proceeds of which other ten or more loans
45 were used in consumer credit sales with the seller or a per-
46 son related to the seller, if in connection with such other
47 ten or more loans, the seller also specifically recommended
48 such lender by name to the borrowers involved; or
49
50 (vii) The lender was the issuer of a credit card other
51 than a lender credit card which may be used by the bor-
52 rower in the sale transaction as a result of a prior agree-
53 ment between the issuer and the seller.

54 (b) The notice from the lender to the borrower con-
55 templated in subdivision (a) of this subsection (1) shall
56 be in writing, identify the loan, and inform the borrower
57 in a conspicuous manner that he has one hundred eighty
58 days from a specified date (which date shall be the date
59 the notice was delivered or mailed to the borrower) with-
60 in which to notify the lender in writing of any claims and
61 defenses he may have against the particular seller arising
62 from that specific sale; and that if written notification of
63 any such claims and defenses is not given to the lender
64 within such one hundred eighty day period, the lender
65 will have the right to enforce the note, loan agreement
66 and other instruments evidencing and securing the loan,
67 free of any claims and defenses the borrower may have
68 against the particular seller. Such notice, if given by mail,
69 is given when it is mailed to the bororwer's last-known
70 address by registered or certified mail, return receipt re-
71 quested.

72 (c) In order to preserve all of his claims and defenses
73 against a lender under subdivision (a) of this subsection
74 (1), the borrower must, after receiving the written notice
75 provided for in subdivision (b) of this subsection (1), and
76 before the expiration of a period of one hundred eighty
77 days, notify such lender in writing as to any claims and
78 defenses he has against the particular seller arising from
79 that specific consumer sale. The notice by the borrower
80 need not take any particular form and shall be sufficient if
it indicates the claims and defenses which the borrower has against the seller in a manner sufficient to apprise the lender of the nature of such claims and defenses. Such notice, if given by mail, is given when it is mailed to the lender's last-known address by registered or certified mail, return receipt requested. All claims and defenses of the borrower against the particular seller arising out of such consumer sale shall be valid against the lender unless notice is given pursuant to this subsection (1).

(2) The following provisions shall be applicable to the claims and defenses of borrowers, arising from consumer sales, with respect to consumer loans made after the expiration of one year after the date this chapter becomes operative: A lender, other than the issuer of a lender credit card, who, with respect to a particular transaction, makes a consumer loan for the purpose of enabling a borrower to buy goods or services, other than primarily for an agricultural purpose, is subject to all claims and defenses of the borrower against the seller arising from that specific sale of goods or services if the lender participates in or is connected with the sales transaction as provided in subdivision (a), subsection (1) of this section, without regard to the provisions therein as to notices.

(3) The total of all claims and defenses which a borrower is permitted to assert against a lender under the provisions of this section shall not exceed that portion of the loan used for that sale, except (i) as to any claim or defense founded in fraud and (ii) for any excess charges and penalties recoverable under section one hundred one, article five of this chapter.

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

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

(a) By the lender's honoring a draft or similar order

120 for the payment of money drawn or accepted by the con-
121 sumer,
122 (b) By the lender's payment or agreement to pay the
123 consumer's obligation; or
124 (c) By the lender's purchase from the obligee of the
125 consumer's obligations.
126 (6) A claim or defense which a borrower may assert
127 against a lender under the provisions of this section may be
128 asserted only as a defense to or setoff against a claim by the
129 lender: Provided, That if a borrower shall have a claim or
130 defense which could be asserted under the provisions of
131 this section as a matter of defense to or setoff against a
132 claim by the lender were such lender to assert such claim
133 against the borrower, then the borrower shall have the
134 right to institute and maintain an action or proceeding
135 seeking to obtain the cancellation in whole or in part of
136 the indebtedness evidenced by a negotiable instrument or
137 other instrument or the release in whole or in part of any
138 lien upon real or personal property securing the payment
139 thereof: Provided, however, That any claim or defense
140 founded in fraud, lack or failure of consideration or a
141 violation of the provisions of this chapter as specified
142 in section one hundred one, article five of this chapter,
143 may be asserted by a borrower at any time, subject to the
144 provisions of this code relating to limitation of actions.
145 (7) Nothing contained in this section shall be con-
146 strued in any manner as affecting any loan made prior to
147 the operative date of this chapter.
148 (8) Notwithstanding any provisions of this section, a
149 lender shall not be subject to any claim or defense arising
150 from or growing out of personal injury or death resulting
151 therefrom or damage to property.

§46A-2-104. Notice to cosigners.

1 No person, other than the spouse of a consumer, shall be
2 held liable as surety, cosigner, comaker, endorser or guar-
3 antor or be charged with personal liability for payment in
4 a consumer credit sale or consumer loan unless that per-
5 son, in addition to and before signing any instrument evi-
6 dencing the transaction, signs and receives a separate
7 notice which clearly explains his liability in the event of
8 default by the consumer and also receives a copy of the
disclosure required by the "Federal Consumer Credit Protection Act." Such notice shall be sufficient if it appears under the conspicuous caption "NOTICE" and contains substantially the following language typewritten or printed in at least twelve point bold upper case type: "You are about to sign a __________________________ as ________________under the terms and provisions of which instrument you are liable for the full payment thereof together with the finance charges or interest which may accrue thereon."

§46A-2-105. Balloon payments.

1 (1) With respect to a consumer credit sale or a consumer loan in which the initial total amount payable is less than one thousand five hundred dollars, other than one primarily for an agricultural purpose or one pursuant to a revolving charge account or revolving loan account, if any scheduled payment is more than twice as large as the average of earlier scheduled payments, the consumer has the right to refinance the amount of that payment, hereinafter in this section referred to as a balloon payment, at the time it is due without penalty.

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

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

(4) Notwithstanding the foregoing provisions of this section, the commissioner may, by rules and regulations, if necessary to further protect consumers, otherwise regulate or control agreements to be entered into in a consumer credit sale or consumer loan transaction which provide for a balloon payment or prohibit parties from entering into any agreement in a consumer credit sale or consumer loan transaction which provides for a balloon payment.

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

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

1 (1) With respect to a consumer credit sale, a seller or issuer of a seller credit card may take a security interest in the property sold. In addition, a seller or issuer of a seller credit card may take a security interest in goods upon which services are performed or in which goods sold are installed or to which they are annexed, or in land to which the goods are affixed or which is maintained, repaired or improved as a result of the sale of the goods or services, if in the case of a security interest in land the debt secured is one thousand five hundred dollars or more, or, in the case of a security interest in goods the debt secured is three hundred dollars or more. The seller or issuer of a seller credit card may also take a security interest in any property of the buyer to secure the debt arising from a consumer credit sale primarily for an agricultural purpose. Except as provided with respect to cross-collateral in connection with consolidated debts, a seller or issuer of a seller credit card may not otherwise take a security interest in property of the buyer to secure the debt arising from a consumer credit sale.
(2) With respect to a consumer lease other than a lease primarily for an agricultural purpose, a lessor may not take a security interest in property of the lessee to secure the debt arising from the lease.

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

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


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


(1) If debts arising from two or more consumer credit sales, other than sales primarily for an agricultural purpose or pursuant to a revolving charge account, are secured by cross-collateral and consolidated into one debt payable on a single schedule of payments, and the debt is secured by security interests taken with respect to one or more of the sales, payments received by the seller after the taking of the cross-collateral and the consolidation are deemed, for the purpose of determining the amount of the debt secured by the various security in-
terests, to have been first applied to the payment of the
debs arising from the sales first made. To the extent
debs are paid according to this section, security interests
in items of property terminate as the debts originally in-
curred with respect to each item are paid.
(2) Payments received by the seller upon a revolving
charge account are deemed, for the purpose of determin-
ing the amount of the debt secured by the various se-
curity interests, to have been applied first to the payment
of sales finance charges in the order of their entry to the
account and then to the payment of debts in the order in
which the entries to the account showing the debts were
made.
(3) If the debts consolidated arose from two or more
sales made on the same day, payments received by the
seller are deemed, for the purpose of determining the
amount of the debt secured by the various security in-
terests, to have been applied first to the payment of the
smallest debt.
§46A-2-110. Referral sales or leases.
1 With respect to a consumer credit sale or consumer
lease, the seller or lessor may not give or offer to give a
rebate or discount or otherwise pay or offer to pay value
to the buyer or lessee as an inducement for a sale or
lease in consideration of his giving to the seller or lessor
the names of prospective purchasers or lessees, or other-
wise aiding the seller or lessor in making a sale or lease
to another person, if the earning of the rebate, discount
or other value is contingent upon the occurrence of an
event subsequent to the time the buyer or lessee agrees
to buy or lease. If a buyer or lessee is induced by a viola-
tion of this section to enter into a consumer credit sale or
consumer lease, the agreement is unenforceable by the
seller or lessor and the buyer or lessee, at his option, may
rescind the agreement or retain the goods delivered and
the benefit of any services performed, without any obli-
gation to pay for them.
§46A-2-111. Consumer leases; information to be furnished.
1 With respect to a consumer lease the lessor shall give
to the lessee the following information:
(1) Brief description or identification of the goods;
(2) Amount of any payment required at the inception of the lease;
(3) Amount paid or payable for official fees, registration, title privilege, certificate of title or license fees or taxes;
(4) Amount of other charges not included in the periodic payment and a brief description of the charges;
(5) Brief description of insurance to be provided or paid for by the lessor, including the types and amounts of the coverages;
(6) Number of periodic payments, the amount of each payment, the due date of the first payment, the due dates of subsequent payments or interval between payments, and the total amount payable by the lessee;
(7) Statement of the conditions under which the lessee may terminate the lease prior to the end of the term; and
(8) Statement of the liabilities the lease imposes upon the lessee at the end of the term.

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

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


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

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

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

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

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

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

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


(1) The maximum part of the aggregate disposable earnings of an individual for any workweek which may be subjected to any one or more assignments of earnings for the payment of a debt or debts arising from one or more consumer credit sales or one or more consumer loans, or one or more sales as defined in section one hundred two, article six of this chapter, may not exceed twenty-five percent of his disposable earnings for that week.

(2) As used in this section:
(a) "Disposable earnings" means that part of the earnings of an individual remaining after the deduction from those earnings of amounts required by law to be withheld; and

(b) "Assignment of earnings" includes all forms of assignments, deductions, transfers, or sales of earnings to another, either as payment or as security, and whether stated to be revocable or non-revocable, and includes any deductions authorized under the provisions of section three, article five, chapter twenty-one of this code, except deductions for union or club dues, pension plans, payroll savings plans, charities, stock purchase plans and hospitalization and medical insurance.

(3) Any assignment of earnings and any deduction under said section three, article five, chapter twenty-one of this code shall be revocable by the employee at will at any time, notwithstanding any provision to the contrary.

(4) The priority of multiple assignments of earnings shall be according to the date and time of each such assignment.

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

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

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

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

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

2 (2) If the seller repossesses or voluntarily accepts surrender of goods which were the subject of the sale and in which he has a security interest and the balance owed for the goods repossessed or surrendered was at the time of such repossession or surrender one thousand dollars or less, the buyer is not personally liable to the seller for the unpaid balance of the debt arising from the sale of the goods, and the seller's duty to dispose of the collateral is governed by the provisions on disposition of collateral (§46-9-505) of the "Uniform Commercial Code."

3 (3) If the seller repossesses or voluntarily accepts a surrender of goods which were not the subject of the sale but in which he has a security interest to secure a debt arising from a sale of goods or services or a combined sale of goods and services and the balance owed on such debt was at the time of such repossession or surrender one thousand dollars or less, the buyer is not personally liable to the seller for the unpaid balance of the debt arising from the sale, and the seller's duty to dispose of the collateral is governed by the provisions on disposition of collateral (§46-9-505) of the "Uniform Commercial Code."

4 (4) If the lender takes possession or voluntarily accepts a surrender of goods in which he has a security interest to secure a debt arising from a consumer loan in which the lender may be subject to claims and defenses arising from sales (§46A-2-103) and the balance owed on the net proceeds of the loan paid to or for the benefit of the borrower was at the time of such repossession or surrender one thousand dollars or less, the borrower is not personally liable to the lender for the unpaid balance of the debt arising from the loan and the lender's duty to dispose of the collateral is governed by the provisions on disposition of collateral (§46-9-505) of the "Uniform Commercial Code."
(5) For the purpose of determining the unpaid balance of consolidated debts or debts pursuant to revolving charge accounts or revolving loan accounts, the allocation of payments to a debt shall be determined in the same manner as provided for determining the amount of debt secured by various security interests (§46A-2-109).

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

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

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

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

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

(1) If the court finds as a matter of fact that it was the understanding of the creditor and the consumer at the time an extension of credit was made that delay in making repayment or failure to make repayment could result in the use of violence or other criminal means to cause harm to the person, reputation or property of any person, the repayment of the extension of credit is unenforceable through civil judicial process against the consumer.

(2) If a court finds as a matter of fact that an extension of credit was made at a rate in excess of that permitted for such transaction by the provisions of this chapter and that the creditor then had a reputation for the use or threat of use of violence or other criminal means to cause harm to the person, reputation or property of any person to collect extensions of credit or to punish the non-repayment thereof, there is prima facie evidence that the extension of credit was unenforceable under subsection (1).
§46A-2-121. Unconscionability; inducement by unconscionable conduct.

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

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

(b) Any term or part of the agreement or transaction to have been unconscionable at the time it was made, the court may refuse to enforce the agreement, or may enforce the remainder of the agreement without the unconscionable term or part, or may so limit the application of any unconscionable term or part as to avoid any unconscionable result.

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

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

§46A-2-122. Definitions.

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

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

(b) “Debt collection” means any action, conduct or practice of soliciting claims for collection or in the collection of claims owed or due or alleged to be owed or due to a creditor by a consumer.
(c) "Debt collector" means any person or organization engaging directly or indirectly in debt collection. The term includes any person or organization who sells or offers to sell forms which are, or are represented to be, a collection system, device or scheme, and are intended or calculated to be used to collect claims.

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

Unless a licensed attorney in this state, no debt collector shall engage in conduct deemed the practice of law. Without limiting the general application of the foregoing, the following conduct is deemed the practice of law:

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

(b) Any communication with consumers in the name of an attorney or upon stationery or other written matter bearing an attorney's name; and

(c) Any demand for or payment of money constituting a share of compensation for services performed or to be performed by an attorney in collecting a claim.

§46A-2-124. Threats or coercion.

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

(a) The use, or express or implicit threat of use, of violence or other criminal means, to cause harm to the person, reputation or property of any person;

(b) The accusation or threat to accuse any person of fraud, any crime, or any conduct which, if true, would tend to disgrace such other person or in any way subject him to ridicule, or any conduct which, if true, would tend to disgrace such other person or in any way subject him to ridicule or contempt of society;

(c) False accusations made to another person, including any credit reporting agency, that a consumer is willfully refusing to pay a just debt, or the threat to so make false accusations;
(d) The threat to sell or assign to another the obligation of the consumer with an attending representation or implication that the result of such sale or assignment would be that the consumer would lose any defense to the claim or would be subjected to harsh, vindictive or abusive collection attempts;

(e) The threat that nonpayment of an alleged claim will result in the:

(1) Arrest of any person; or

(2) Garnishment of any wages of any person or the taking of other action requiring judicial sanction, without informing the consumer that there must be in effect a judicial order permitting such garnishment or such other action before it can be taken; and

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


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

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

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

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

(d) Causing a telephone to ring or engaging any person in telephone conversation repeatedly or continuously, or at unusual times or at times known to be inconvenient, with intent to annoy, abuse, oppress or threaten any person at the called number.
§46A-2-126. Unreasonable publication.

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

2 (a) The communication to any employer or his agent before judgment has been rendered of any information relating to an employee's indebtedness other than through proper legal action, process or proceeding;
3 (b) The disclosure, publication, or communication of information relating to a consumer's indebtedness to any relative or family member of the consumer if such person is not residing with the consumer, except through proper legal action or process or at the express and unsolicited request of the relative or family member;
4 (c) The disclosure, publication, or communication of any information relating to a consumer's indebtedness to any other person other than a credit reporting agency, by publishing or posting any list of consumers, commonly known as "deadbeat lists," except lists to prevent the fraudulent use of credit accounts or credit cards, by advertising for sale any claim to enforce payment thereof, or in any manner other than through proper legal action, process or proceeding; and
5 (d) The use of any form of communication to the consumer, which ordinarily may be seen by any other persons, that displays or conveys any information about the alleged claim other than the name, address and phone number of the debt collector.

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

1 No debt collector shall use any fraudulent, deceptive or misleading representation or means to collect or attempt to collect claims or to obtain information concerning consumers. Without limiting the general application of the foregoing, the following conduct is deemed to violate this section:
(a) The use of any business, company or organization name while engaged in the collection of claims, other than the true name of the debt collector's business, company or organization;

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

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

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

(e) Any false representation or implication of the character, extent or amount of a claim against a consumer, or of its status in any legal proceeding;

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

(g) The use or distribution or sale of any written communication which simulates or is falsely represented to be a document authorized, issued or approved by a court, an official or any other legally constituted or authorized authority, or which creates a false impression about its source, authorization or approval;

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

(i) Any false representation or false impression about the status or true nature of or the services rendered by the debt collector or his business.
§46A-2-128. Unfair or unconscionable means.

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

(a) The seeking or obtaining of any written statement or acknowledgement in any form that specifies that a consumer's obligation is one incurred for necessaries of life where the original obligation was not in fact incurred for such necessaries;

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

(c) The collection or the attempt to collect from the consumer all or any part of the debt collector's fee or charge for services rendered;

(d) The collection of or the attempt to collect any interest or other charge, fee or expense incidental to the principal obligation unless such interest or incidental fee, charge or expense is expressly authorized by the agreement creating the obligation and by statute; and

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

§46A-2-129. Postal violations.

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

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

(1) For the purposes of the provisions in this chapter relating to garnishment:
(a) "Disposable earnings" means that part of the earnings of an individual remaining after the deduction from those earnings of amounts required by law to be withheld; and

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

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

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

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

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

(3) No court may make, execute or enforce an order or process in violation of this section. Any time after a consumer's earnings have been executed upon pursuant to article five-a or article five-b, chapter thirty-eight of this code by a creditor resulting from a consumer credit sale or consumer loan, such consumer may petition any court having jurisdiction of such matter or the circuit court of the county wherein he resides to reduce or temporarily or permanently remove such execution upon his earnings on the grounds that such execution causes or will cause undue hardship to him or his family. When such fact is proved to the satisfaction of such court, it may reduce or temporarily or permanently remove such execution.

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

No employer shall discharge or take any other form of reprisal against an employee for the reason that a creditor of the employee has subjected or attempted to subject un-
paid earnings of the employee to garnishment or like proceed-
ing directed to the employer for the purpose of pay-
ing a judgment arising from a consumer credit sale or con-
sumer loan.

§46A-2-132. Home solicitation; buyer's right to cancel; notice.
1 In addition to any other right to revoke an offer, a buyer shall have the right to cancel a home solicitation sale until midnight of the third business day after the day on which he has signed an agreement or offer to purchase. Cancellation shall become effective when the buyer gives written notice of his intention to cancel to the seller at the address stated in the agreement or offer to purchase. Notice of such cancellation, if given by mail, is given when it is deposited in a mailbox properly addressed and postage prepaid. Such notice of cancellation given by the buyer need not take any particular form and shall be sufficient if it indicates by any form of written expression the intention of the buyer not to be bound by the home solicitation sale. Notwithstanding any above-mentioned provision, a buyer may not cancel a home solicitation sale where he has requested and the seller has provided goods or services without delay because of a bona fide emergency and either the seller has in good faith made a substantial beginning of performance of the agreement before the buyer has given notice of cancellation, or in the case of goods, such goods cannot be returned to the seller in substantially as good condition as when they were received by the buyer.

§46A-2-133. Form of agreement or offer to purchase; statement of buyer's rights.
1 In every home solicitation sale in this state, except where a buyer has requested a seller to provide goods or services without delay because of an emergency, the seller shall present to the buyer a written agreement or offer to purchase which designates as the date of the transaction the day on which the buyer has signed it and which contains a statement of the buyer's rights as hereinafter provided for. No such written agreement or offer to purchase shall be effective until after it has been signed by the buyer and he has written the date of such signature in his
own handwriting. The statement must appear under the conspicuous caption: “BUYER’S RIGHT TO CANCEL” and read as follows: “If this agreement was solicited at a place other than the seller’s business establishment at a fixed location and you decide you do not want these goods or services, you may cancel this agreement by mailing a notice to the seller. The notice must say that you do not want the goods or services and must be mailed before midnight of the third business day after you sign this agreement. The notice must be mailed to: (Name and mailing address of seller).” Until the seller has fully complied with this section, the buyer may cancel the home solicitation sale, by notifying the seller of his intention to cancel in any manner. Any written agreement or offer to purchase which contains the form and content of notice of cancellation required by the federal trade commission and which provides information substantially similar to that required by this section shall be deemed to comply fully with this section.

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

Within ten days after a home solicitation sale has been cancelled or an offer to purchase has been revoked, the seller shall tender to the buyer any payment made by the buyer to him and any note or other evidence of indebtedness taken in the transaction. A provision permitting the seller to keep all or part of any payment, note or other evidence of indebtedness is in violation of this section and unenforceable. If any down payment included goods traded in, the seller shall return the goods in substantially as good a condition as when he received them. If a seller has failed to tender goods as required by this section, the buyer may elect to recover an amount equal to the trade-in allowance on such goods as stated in the agreement. Until a seller has complied with all the obligations imposed by this section, a buyer may keep any goods delivered to him by the seller and he is hereby given a lien on such goods for the purpose of making any recovery to which he is entitled by this section.
§46A-2-135. **Buyer's duty; seller's right; no compensation for certain services.**

1 Within a reasonable time after a home solicitation sale has been cancelled or an offer to purchase has been revoked, the seller may demand and receive any goods delivered by him to the buyer as the result of the home solicitation sale. The buyer shall not be obligated to tender such goods to the seller at any place other than the buyer's residence. If the seller fails to demand possession of goods within such reasonable time, such goods shall become the buyer's property without any obligation to pay for them. For the purposes of this section, twenty days shall be presumed to be a reasonable time. The buyer shall take reasonable care of such goods in his possession before cancellation or revocation and for a reasonable time thereafter, during which time the goods are otherwise at the seller's risk. Where the seller has performed any service pursuant to a home solicitation sale prior to its cancellation or prior to giving the statement required in section one hundred thirty-three of this article, he shall not be 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 personal property to be exempt from execution or other judicial process resulting from consumer credit transactions, except for the purchase money due on such property, in such amounts as follows: Clothing and other wearing apparel of the consumer, his spouse and any dependents of such consumer, not to exceed the fair market value of two hundred dollars; furniture, appliances, furnishings and fixtures regularly used for family purposes in the consumer's residence, to the extent of the fair market value of one thousand dollars; children's books, pictures, toys and other such personal property of children; all medical health equipment used for health purposes by the consumer, his spouse and any dependent of such consumer; tools of trade, including any income-producing property used in the consumer's principal occupation, to the extent of the fair market value of one thousand dollars; and any policy of life or endowment in-
surance which is payable to the spouse or children of the insured consumer or to a trustee for their benefit, except the cash value of any accrued dividends thereon. When a consumer claims personal property as exempt under the provisions of this section, he shall deliver a list containing all the personal property owned or claimed by him and all items of such property he claims as exempt hereunder, with the value of each separate item listed according to his best knowledge, to the officer holding the execution or other such process. Such list shall be sworn to by affidavit. If the value of the property named in such list exceeds the amounts specified in this section, the consumer shall state at the foot thereof what part of such property he claims as exempt. If such value does not exceed the amounts specified in this section, the claim of exemption shall be held to extend to the whole thereof without stating more and, if no appraisement is demanded, the property so claimed shall be set aside as exempt. Where the consumer owning exempt property is absent or incapable of acting or neglects or declines to act hereunder, the claim of exemption may be made, the list delivered and the affidavit made by his spouse with the same effect as if the owner had done so. Upon receipt of such a list, the officer to whom it is given shall immediately exhibit such list to the creditor or his agent or attorney. The rights granted and procedures provided for in article eight, chapter thirty-eight of this code shall apply to any proceeding under this section, except that the provisions of sections one and three of such article shall not apply.

§46A-2-137. Service of process on certain nonresidents.

Any nonresident person, except a nonresident corporation authorized to do business in this state pursuant to the provisions of chapter thirty-one of this code, who takes or holds any negotiable instrument, nonnegotiable instrument, or contract or other writing, arising from a consumer credit sale or consumer lease which is subject to the provisions of this article, other than a sale or lease primarily for an agricultural purpose, or who is a lender subject to the provisions of section one hundred three of
this article, shall be conclusively presumed to have ap-
pointed the auditor of the state as his attorney in fact
with authority to accept service of notice and process in
any action or proceeding brought against him arising out
of such consumer credit sale, consumer lease or consumer
loan. A person shall be considered a nonresident here-
under if he is a nonresident at the time such service of
notice and process is sought. No act of such person ap-
pointing the auditor shall be necessary. Immediately
after being served with or accepting any such process or
notice, of which process or notice two copies for each de-
fendant shall be furnished the auditor with the original
notice or process, together with a fee of two dollars, the
auditor shall file in his office a copy of such process or
notice, with a note thereon endorsed of the time of service
or acceptance, as the case may be, and transit one copy of
such process or notice by registered mail, return receipt
requested, to such person at his address, which address
shall be stated in such process or notice: Provided, That
such return receipt shall be signed by such person or an
agent or employee of such person if a corporation, or the
registered mail so sent by said auditor is refused by the
addressee and the registered mail is returned to said
auditor, or to his office, showing thereon the stamp of the
U. S. postal service that delivery thereof has been refused,
and such return receipt or registered mail is appended to
the original process or notice and filed therewith in the
clerk's office of the court from which such process or
notice was issued. But no process or notice shall be served
on the auditor or accepted by him less than ten days be-
fore the return date thereof. The court may order such
continuances as may be reasonable to afford each defen-
dant opportunity to defend the action or proceeding.
The provisions for service of process herein are cum-
ulative and nothing herein contained shall be construed
as a bar to the plaintiff in any action from having process
in such action served in any other mode and manner pro-
vided by law.
§46A-2-138. Buyers right to cancel certain subscriptions and 
other obligations.

1 When a buyer has become indebted on a contract for
2 future deliveries of a correspondence course or on a multi-
3 ple magazine subscription contract, other than for single
4 subscriptions direct with the publisher thereof, the buyer
5 may cancel and terminate such contract at any time by
6 mailing a notice of cancellation by first class United States
7 mail to the person to whom the indebtedness is owed,
8 or his assignee, which notice shall forthwith terminate
9 and cancel any further financial obligation for goods or
10 services not received by the buyer prior to the mailing
11 of such notice of cancellation. In addition thereto, in re-
12 gard to a correspondence course contract, the buyer may
13 cancel and terminate such indebtedness without regard
14 to the amount of goods and services received by mailing
15 such notice and by returning all materials received.

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
5 receive a sales finance charge not exceeding eighteen per-
6 cent per year on that part of the unpaid balances of the
7 amount financed which is fifteen hundred dollars or less
8 and twelve percent per year on that part of the unpaid
9 balances of the amount financed which is in excess of
10 fifteen hundred dollars, calculated according to the ac-
11 tuarial method.

12 (2) This section does not limit or restrict the manner
13 of calculating the sales finance charge, whether by way
14 of add-on, discount, or otherwise, so long as the rate of the
15 sales finance charge does not exceed that permitted by
16 this section. If the sale is precomputed:
17 (a) The sales finance charge may be calculated on
18 the assumption that all scheduled payments will be made
19 when due, and
(b) The effect of prepayment, refinancing or consolidation is governed by the provisions on rebate upon prepayment, refinancing or consolidation, contained in section one hundred eleven of this article.

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

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

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

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

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

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

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

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

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

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

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

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

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

1 (1) With respect to a consumer credit sale made pursuant to a revolving charge account, other than sales of real estate pursuant to section one hundred two of this article, the parties may contract for the payment by the buyer of a sales finance charge not exceeding that permitted in this section.
(2) A sales finance charge may be made in each billing cycle which is a percentage of an amount not exceeding the greatest of:

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

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

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

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

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

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

1 (1) With respect to a consumer loan, other than a con-
2 sumer loan made pursuant to a revolving loan account,
3 (a) a bank, as defined in section two, article one, chapter
4 thirty-one-a of this code, may contract for and receive a
5 loan finance charge not exceeding the charge or interest
6 permitted by the provisions of section thirty, article four,
7 chapter thirty-one-a or by the provisions of section five or
8 section five-a, article six, chapter forty-seven of this code,
9 (b) an industrial loan company, as defined in section one,
10 article seven, chapter thirty-one-b of this code, may contract
11 for and receive a loan finance charge not exceeding the ag-
12 gregate of the interest and charges permitted by subsections
13 (e) and (f) of section six, article seven, chapter thirty-one-
14 of this code or by the provisions of section five, article six,
15 chapter forty-seven of this code, (c) a building and loan
16 association, as defined in section two, article six, chapter
17 thirty-one of this code, may contract for and receive a loan
18 finance charge not exceeding the charge or interest per-
19 mitted by the provisions of section seventeen, article six,
20 chapter thirty-one of this code, or by the provisions of
21 section five, article six, chapter forty-seven of this code, (d)
22 a credit union, as defined in section one, article ten, chap-
23 ter thirty-one of this code, may contract for and receive a
24 loan finance charge not exceeding the charge or interest
25 permitted by the provisions of section sixteen, article ten,
26 chapter thirty-one of this code, or by the provisions of
27 section five, article six, chapter forty-seven of this code,
28 and (e) any other lender, other than a supervised lender,
29 may contract for and receive a loan finance charge not
30 exceeding the charge or interest permitted by the provi-
31 sions of section five or section five-a, article six, chapter
32 forty-seven of this code.
(2) If the loan is precomputed:

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

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

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

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

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

Nothing contained in this chapter or other law of this state shall be taken or construed as limiting the permissible interest rates or loan finance charges upon loans evidenced by notes, bonds or other obligations secured by mortgages or deeds of trust insured or guaranteed by the federal housing commissioner or United States administrator of veterans' affairs or by any other officer, department, agency or instrumentality of the United States or evidenced by notes, bonds, debentures and other obligations and securities issued by, insured by, or guaranteed by the federal housing commissioner, federal national mortgage association, government national mortgage association, small business administration or other federal officer, department, agency or instrumentality.
§46A-3-106. Loan finance charge for revolving loan accounts.

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

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

   (a) The average daily balance of the debt,

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

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

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

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

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

1 With respect to a consumer credit sale or consumer loan, refinancing or consolidation, the seller or lender may by agreement with the consumer refinance the unpaid balance owed to such seller or lender and may contract for and receive the applicable sales finance charge or loan finance charge, as the case may be, based on the amount financed of a sale or principal of a loan resulting from the refinancing at a rate not exceeding that permitted by the provisions on sales finance charge for consumer credit sales or loan finance charge for consumer loans, as the case may be. For the purpose of determining the sales finance charge or loan finance charge permitted, the amount financed or principal resulting from the refinancing comprises the following:

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

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

26 (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 with respect to a consumer credit sale or consumer loan, refinancing or consolidation, and becomes obligated on another consumer credit sale or consumer loan, refinancing or consolidation, with the same creditor, the parties may agree to a consolidation resulting in a single schedule of payments. If the previous consumer credit sale or consumer loan was not precomputed, the parties may agree to add the unpaid amount of the amount financed or principal and accrued charges on the date of consolidation to the amount financed or principal with respect to the subsequent consumer credit sale or consumer loan. If the previous consumer credit sale or consumer loan, refinancing or consolidation, was precomputed, the parties may agree to refinance the unpaid balance pursuant to the provisions on refinancing and to consolidate the amount financed or principal resulting from the refinancing by adding it, together with any accumulated delinquency or deferral charges, to the amount financed or principal, with respect to the subsequent consumer credit sale or consumer loan. In either case the creditor may contract for and receive a finance charge based on the aggregate amount financed or principal resulting from the consolidation, as specified in subsection (2) of this section.

2 (2) If the debts consolidated arise exclusively from consumer credit sales owed to such creditor, the transaction is a consolidation with respect to a consumer credit sale and the amount of the sales finance charge is governed by the provisions on sales finance charges for consumer credit sales other than certain sales of real estate or sales made pursuant to revolving charge accounts (§46A-3-101). If the debts consolidated arise exclusively from consumer loans owed to such creditor, the transaction is a consolidation with respect to a consumer loan and the amount of the loan finance charge is governed by the provisions on loan finance charges for consumer loans. If the debts consolidated include both a debt arising from a consumer credit sale or sales owed to such creditor and a debt arising
from a consumer loan or loans owed to such creditor, then
the creditor may contract for and receive a finance charge
not in excess of that permitted for a consumer credit sale
based on that portion of the consolidation attributable to
such consumer credit sale or sales and may contract for
and receive a finance charge not in excess of that per-
mitted for a consumer loan based on that portion of the
consolidation attributable to a consumer loan or loans.

(3) If a consumer owes an unpaid balance to a creditor
with respect to a consumer credit transaction arising out
of a consumer credit sale, and becomes obligated on an-
other consumer credit transaction arising out of another
consumer credit sale made by the same seller, the parties
may agree to the consolidation resulting in a single sched-
ule of payments either pursuant to subsection (2) or by
adding together the unpaid balances with respect to the
two sales.

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

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

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

(a) Official fees and taxes;

(b) Charges for insurance as described in subsection
(2): Provided, That nothing contained in this section with
respect to insurance shall be construed as in any way
limiting the power and jurisdiction of the insurance com-
missioner of this state in the premises;

(c) Annual charges, payable in advance, for the priv-
ilege of using a lender credit card or similar arrangement
which entitles the user to purchase goods or services from
at least one hundred persons not related to the issuer of
the lender credit card or similar arrangement, under an arrangement pursuant to which the debts resulting from the purchases are payable to the issuer;

(d) Charges for other benefits, including insurance, conferred on the consumer, if the benefits are of value to him and if the charges are reasonable in relation to the benefits, are of a type which is not for credit, and are excluded as permissible additional charges from the sales finance charge or loan finance charge by rule adopted by the commissioner: Provided, however, That as to insurance, the policy as distinguished from a certificate of coverage thereunder must be issued by an individual licensed under the laws of this state to sell such insurance and the determination of whether the charges therefor are reasonable in relation to the benefits shall be determined by the insurance commissioner of this state; and

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

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

(a) The amount, terms and conditions of property insurance shall have a reasonable relation to the existing hazards or risk of loss, damage or destruction and be reasonable in relation to the character and value of the property insured or to be insured; and the term of such insurance shall be reasonable in relation to the terms of credit: And provided further, That nothing shall be deemed to prohibit the consumer from obtaining, at his option, greater coverages for longer periods of time if he so desires;

(b) Life insurance shall be in an initial amount not to
exceed the total amount repayable under the consumer
credit agreement, and where a consumer credit sale or
consumer loan is repayable in installments, such insurance
shall at no time exceed the scheduled or actual amount of
unpaid indebtedness, whichever is greater. Life insurance
authorized by this paragraph shall provide that the bene-
fits shall be paid to the creditor or reduce or extinguish the
unpaid indebtedness: Provided, That if a separate charge
is made for such insurance and the amount of insurance
exceeds the unpaid indebtedness, where not prohibited,
then such excess shall be payable to the estate of the con-
sumer. The initial term of such life insurance in connec-
tion with a consumer credit sale, other than a sale pur-
suant to a revolving charge account, or in connection with
a consumer loan, other than a loan pursuant to a revolv-
ing loan account, shall not exceed the scheduled term of
the consumer credit agreement by more than fifteen days.
The aggregate amount of periodic benefits payable by
credit accident and health insurance in the event of dis-
ability, as defined in the policy, shall not exceed the un-
paid amount of such indebtedness; periodic benefits pay-
able in connection with a consumer credit sale pursuant to
a revolving charge account or of a consumer loan pursuant to
a revolving loan account may be based upon the autho-
rized credit limit;
(c) When the insurance is obtained or provided by or
through a creditor, the creditor may collect from the con-
sumer or include as part of the cash price of a consumer
credit sale or as part of the principal of a consumer loan,
or deduct from the proceeds of any consumer loan the
premium, or in the case of group insurance, the identifi-
able charge. The premium or identifiable charge for such
insurance required or obtained by a credit or may equal,
but shall not exceed the premium rate filed by the in-
surer with the insurance commissioner. In any case when
the creditor collects the entire premium for such insur-
ance in advance, such premium shall be remitted by such
creditor to the insurer or the insurance agent, as specified
by the insurer, within ten days from or after the end of
the month in which such collection was made;
(d) With respect to insurance against loss of or dam-
age to property, or against liability, the creditor shall furnish a clear and specific statement in writing to the debtor, setting forth the cost of the insurance if obtained from or through the creditor, and stating that the debtor may choose the person through whom the insurance is to be obtained; and

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

§46A-3-110. Right to prepay.

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

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

(1) When a consumer credit sale or consumer loan is precomputed all payments on account shall be applied to installments in the order in which they fall due, except as provided in subsection (3), section one hundred twelve of this article. When the total amount is payable in substantially equal consecutive monthly installments, the portion of the sales finance charge or loan finance charge attributable to any particular monthly installment period shall be that proportion of the sales finance charge or loan finance charge originally contracted for, as the balance scheduled to be outstanding on the last day of the monthly installment period before deducting the payment, if any, scheduled to be made on that day bears to the sum of all the monthly installment balances under the original schedule of payments. (This method of allocation is the
16 sum of the digits method, commonly referred to as the
17 "Rule of 78."

18 (2) Upon prepayment in full of a precomputed con-
19 sumer credit sale or consumer loan by cash, a new loan,
20 refinancing, consolidation or otherwise, the creditor shall
21 rebate to the consumer that portion of the sales finance
22 charge or loan finance charge attributable to the prepaid
23 monthly installment periods: Provided, That upon pre-
24 payment in full of a precomputed consumer credit sale or
25 consumer loan payable in monthly installments, by cash,
26 a new loan, refinancing, consolidation or otherwise, on
27 other than an installment due date, for the purpose of
determining the rebate to which the consumer is entitled,
the rebate shall be calculated as of the nearest installment
due date. For the purpose of determining the installment
due date nearest the date of any prepayment in full, re-
financing or consolidation, any prepayment, refinancing or
consolidation of an obligation payable in monthly install-
ments made on or before the fifteenth day following an
installment due date shall be deemed to have been made
as of such installment due date, and any prepayment,
refinancing or consolidation made on or after the sixteenth
day shall be deemed to have been made on the next suc-
ceeding installment due date. Notwithstanding any other
 provision herein contained, the creditor may collect or
retain the minimum charge within the limits stated in
this chapter if the sales finance charge or loan finance
charge earned at the time of prepayment, refinancing or
consolidation, is less than any minimum charge authorized
by this chapter. No rebate of less than one dollar need
be made.

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

34 (4) If the maturity of a precomputed consumer credit
35 sale or consumer loan is accelerated for any reason and
judgment is obtained, the debtor is entitled to the same rebate as if the payment had been made on the date judgment is entered, and such judgment shall bear interest until paid at the rate of six percent per annum.

§46A-3-112. Delinquency charges on precomputed consumer credit sales or consumer loans.

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

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

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

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

(3) No delinquency charge may be collected on an installment which is paid in full within ten days after its scheduled or deferred installment due date, even though an earlier maturing installment or a delinquency or deferral charge on an earlier installment may not have been paid in full. For purposes of this subsection, payments shall be applied first to current installments, then to delinquent installments, and then to delinquency and other charges.

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

The amount of the rebate shall not be reduced by the
amount of any permitted minimum charge. If the creditor
proceeds under this subsection, any delinquency or deferral
charges made with respect to installments due at or
after the maturity date of the delinquent installments shall
be rebated, and no further delinquency or deferral charges
shall be made.

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

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

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

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

3 (3) No delinquency charge may be collected on an
installment which is paid in full within ten days after
its scheduled due date, even though an earlier maturing
installment or a delinquency or deferral charge on an
earlier installment may not have been paid in full. For
purposes of this subsection, payments shall be applied
first to current installments, then to delinquent installments, and then to delinquency and other charges.

§46A-3-114. Deferral charges.

1 (1) With respect to a precomputed consumer credit sale or consumer loan, refinancing or consolidation, the parties before or after default may agree in writing to a deferral of all or part of one or more unpaid installments, and the seller or lender may make and collect a deferral charge not exceeding the amount of the sales finance charge or loan finance charge attributable to the first of the deferred monthly installment periods multiplied by number of months in the deferral period (the period in which no payment is required or made by reason of a deferral): Provided, That no installment on which a delinquency charge has been collected or partial payment made shall be deferred unless the amount of the delinquency charge or partial payment is first applied to the deferral charge. If prepayment in full occurs during a deferral period, the portion of the deferral charge attributable to the unexpired full months in the deferral period shall be also rebated.

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

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

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

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

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

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

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

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

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

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

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

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

(c) The change involves no significant cost to the consumer;

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

(e) The change applies only to purchases made or obligations incurred after a date specified in a notice of the change given in two billing cycles prior to the effective date of the change.

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

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

ARTICLE 4. SUPERVISED LENDERS.

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

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

§46A-4-102. License to make supervised loans.
1 (1) The commissioner shall receive and act on all appli-
2 cations for licenses to make supervised loans under this
3 chapter. Applications shall be under oath, be filed in the
4 manner prescribed by the commissioner, and contain
5 the information the commissioner requires by rule to
6 make an evaluation of the financial responsibility, experi-
7 ence, character and fitness of the applicant, and the find-
8 ings required of him before he may issue a license. At
9 the time of the filing of the application, the sum of two
10 hundred fifty dollars shall be paid to the commissioner as
11 an investigation fee.
12 (2) No license shall be issued to a supervised finan-
13 cial organization. No license shall be issued to any per-
14 son unless the commissioner, upon investigation, finds
15 that the financial responsibility, experience, character and
16 fitness of the applicant, and of the members thereof (if
17 the applicant is a co-partnership or association) and of
18 the officers and directors thereof (if the applicant is a
19 corporation), are such as to command the confidence
20 of the community and to warrant belief that the busi-
21 ness will be operated honestly, fairly and efficiently,
22 within the purposes of this chapter, and the applicant has
23 available for the operation of the business at the speci-
24 fied location assets of at least two thousand dollars, and
25 that allowing the applicant to engage in business will
26 promote the convenience and advantage of the commu-
27 nity in which the business of the applicant is to be con-
28 ducted.
29 (3) Upon written request, the applicant is entitled to a
30 hearing on the question of his qualifications for a license
31 if (a) the commissioner has notified the applicant in
32 writing that his application has been denied, or (b) the
33 commissioner has not issued a license within sixty days
34 after the application for the license was filed. A request
35 for a hearing may not be made more than fifteen days
after the commissioner has mailed a writing to the applicant notifying him that the application has been denied and stating in substance the commissioner's findings supporting denial of the application.

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

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

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

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

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

(1) The commissioner may issue to a person licensed to make supervised loans an order to show cause why his license should not be revoked or suspended for a period not in excess of six months. The order shall state the place for a hearing and set a time for the hearing that is no less than ten days from the date of the order. After the hearing the commissioner shall revoke or suspend the license if he finds that:
The licensee has repeatedly and willfully violated this chapter or any rule or order lawfully made or issued pursuant to this article; or

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

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

(3) If the commissioner finds that probable cause for revocation of a license exists and that enforcement of this article requires immediate suspension of the license pending investigation, he may, after a hearing upon five days' written notice, enter an order suspending the license for not more than thirty days.

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

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

(6) No revocation, suspension or relinquishment of a license shall impair or affect the obligation of any pre-existing lawful contract between the licensee and any consumer.

(7) The commissioner may reinstate a license, terminate a suspension or grant a new license to a person whose license has been revoked or suspended if no fact or condition then exists which clearly would have justified the commissioner in refusing to grant a license.
§46A-4-104. Records; annual reports.

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

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

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

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

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

(3) For the purposes of this section, the commissioner
may administer oaths or affirmations, and upon his own
motion or upon request of any party, may subpoena wit-
tnesses, compel their attendance, adduce evidence, and re-
quire the production of any matter which is relevant
to the investigation, including the existence, description,
nature, custody, condition and location of any books, docu-
ments or other tangible things and the identity and loca-
tion of persons having knowledge of relevant facts, or
any other matter reasonably calculated to lead to the
discovery of admissible evidence.

(4) Upon failure without lawful excuse to obey a sub-
poena or to give testimony and upon reasonable notice to
all persons affected thereby, the commissioner may apply
to any circuit court of this state for an order compelling
compliance.

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

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

Except as otherwise provided, the provisions of chap-
ter twenty-nine-a of this code apply to and govern all
administrative action taken by the commissioner pursuant
to the provisions of this article.

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

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

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

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

(b) Twenty-four percent per year on that part of the
unpaid balances of the principal which is more than two
hundred dollars but does not exceed six hundred dollars;
and
(c) Eighteen percent per year on that part of the un-
paid balances of the principal which is more than six
hundred dollars.

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

If the loan is precomputed:
(a) The loan finance charge may be calculated on the
assumption that all scheduled payments will be made
when due, and
(b) The effect of prepayment, refinancing or consoli-
dation is governed by the provisions on rebate upon pre-
payment, refinancing or consolidation contained in sec-
tion one hundred eleven, article three of this chapter.

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

(5) Subject to classifications and differentiations the
lender may reasonably establish, he may make the same
loan finance charge on all principal amounts within a
specified range. A loan finance charge so made does not
violate subsection (2) if:
(a) When applied to the median amount within each
range, it does not exceed the maximum permitted by
subsection (2), and
(b) When applied to the lowest amount within each
range, it does not produce a rate of loan finance charge
exceeding the rate calculated according to subdivision (a)
of this subsection (5) by more than eight percent of the
rate calculated according to said subdivision (a).
With respect to a revolving loan account:

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

(i) The average daily balance of the debt,

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

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

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

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

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

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

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

§46A-4-109. Restrictions on interest in land as security; assignment of earnings to supervised lender prohibited; when security interest on household furniture not valid; prohibitions as to renegotiation of loan discharged in bankruptcy.

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

2. (2) Notwithstanding the provisions of section one hundred sixteen, article two of this chapter, no supervised lender shall take any assignment of or order for payment of any earnings to secure any loan made by any supervised lender under this article. An assignment or order taken in violation of this subsection is void.

3. (3) No supervised lender may take a security interest in household furniture then in the possession and use of the borrower, unless the security agreement creating such security interest be in writing, signed in person by the borrower, and if the borrower is married, signed in person by both husband and wife: Provided, That the signature of both husband and wife shall not be required when they have been living separate and apart for a period of at least five months prior to the making of such security agreement. A security interest taken in violation of this subsection is void.

4. (4) A supervised lender may not renegotiate the original loan, or any part thereof, or make a new contract covering the original loan, or any part thereof, with any borrower, who has received a discharge in bankruptcy
25 of the original loan or any balance due thereon at the
26 time of said discharge from any court of the United
27 States of America exercising jurisdiction in insolvency
28 and bankruptcy matters, unless said supervised lender
29 shall pay to and deliver to the borrower the full amount
30 of the loan shown on said note, promise to pay, or security,
31 less any deductions for charges herein specifically autho-
32 rized.

§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,
3 room or place of business in which any other business is
4 solicited or engaged in, or in association or conjunction
5 therewith, except as may be authorized in writing by
6 the commissioner upon his finding that the character of
7 such other business is such that the granting of such
8 authority would not facilitate evasions of this article
9 or of the rules and regulations lawfully made hereunder,
10 except nothing herein shall prohibit the licensee from
11 purchasing installment sales contracts or the sale or pro-
12 vision of insurance authorized by section one hundred
13 nine, article three of this chapter.

§46A-4-111. Maximum interest when loan is in excess of one
1 thousand two hundred dollars.
2 No licensee shall directly or indirectly charge, contract
3 for, or receive any interest, discount or consideration
4 greater than six percent per annum upon the loan, use or
5 forbearance of money, goods or things in action, or upon
6 the loan, use or sale of credit, when the amount or value
7 thereof is more than one thousand two hundred dollars.
8 The foregoing prohibition shall also apply to any licensee
9 who permits any person, as borrower or as endorser,
10 guarantor, or surety for any borrower, or otherwise, to
11 owe directly or contingently, or both, to the licensee at
12 any time the sum of more than one thousand two hundred
13 dollars for principal.

§46A-4-112. Code references to small loans and small loan
1 companies; authority of the commissioner.
2 All references in other chapters of this code to small
3 loans, small loan lenders, small loan licensees and to
article seven-a, chapter forty-seven of this code, shall, after the operative date of this chapter, and despite the repeal of said statute, be read, construed and understood to mean and to have reference, respectively, to supervised loans, supervised lenders, supervised lender licensees, and to this article four.

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

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

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

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

ARTICLE 5. CIVIL LIABILITY AND CRIMINAL PENALTIES.


(1) If a creditor has violated the provisions of this chapter applying to collection of excess charges (§46A-1-104), security in sales and leases (§46A-2-107), disclosure with respect to consumer leases (§46A-2-111), receipts, statements of account and evidences of payment (§46A-2-114), limitations on default charges (§46A-2-115), assignment of earnings (§46A-2-116), authorizations to confess judgment (§46A-2-117), illegal, fraudulent or unconscionable conduct (§46A-2-121), any prohibited debt Collection practice (§§46A-2-123 through 129), or restrictions on interest in land as security, assignment of earnings to supervised lender, security agreement on household furniture for benefit of supervised lender, and renegotiation by supervised lender of loan discharged in bank-
ruptcy (§46A-4-109), the consumer has a cause of action
to recover actual damages and in addition a right in an
action to recover from the person violating this chapter
a penalty in an amount determined by the court not less
than one hundred dollars nor more than one thousand
dollars. With respect to violations arising from consumer
credit sales or consumer loans made pursuant to revolving
charge accounts or revolving loan accounts, or from sales
as defined in article six of this chapter, no action pursuant
to this subsection may be brought more than four years
after the violations occurred. With respect to violations
arising from other consumer credit sales or consumer
loans, no action pursuant to this subsection may be
brought more than one year after the due date of the
last scheduled payment of the agreement.

(2) If a creditor has violated the provisions of this
chapter respecting authority to make supervised loans
(§46A-4-101), the loan is void and the consumer is not
obligated to pay either the principal or the loan finance
charge. If he has paid any part of the principal or of the
finance charge, he has a right to recover in an action the
payment from the person violating this chapter or from
an assignee of that person's rights who undertakes direct
collection of payments or enforcement of rights arising
from the debt. With respect to violations arising from
supervised loans made pursuant to revolving loan ac-
counts, no action pursuant to this subsection may be
brought more than four years after the violation occurred.
With respect to violations arising from other supervised
loans, no action pursuant to this subsection may be
brought more than one year after the due date of the
last scheduled payment of the agreement pursuant to
which the charge was paid.

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

(4) If a creditor has contracted for or received a charge in excess of that allowed by this chapter, the consumer may, in addition to recovering such excess charge, also recover from the creditor or the person liable in an action a penalty in an amount determined by the court not less than one hundred dollars nor more than one thousand dollars. With respect to excess charges arising from consumer credit sales or consumer loans made pursuant to revolving charge accounts or revolving loan accounts, no action pursuant to this subsection may be brought more than four years after the time the excess charge was made. With respect to excess charges arising from other consumer credit sales or consumer loans no action pursuant to this subsection may be brought more than one year after the due date of the last scheduled payment of the agreement pursuant to which the charge was made.

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

(6) If an employer discharges an employee in violation of the provisions prohibiting discharge (§46A-2-131), the employee may within ninety days bring a civil action for recovery of wages lost as a result of the violation and for an order requiring the reinstatement of the employee. Damages recoverable shall not exceed lost wages for six weeks.

(7) A creditor has no liability for a penalty under subsection (1) or subsection (4) if within fifteen days after discovering an error, and prior to the institution of an action under this section or the receipt of written notice of the error, the creditor notifies the person concerned of the error and corrects the error. If the violation consists of a prohibited agreement, giving the consumer a corrected copy of the writing containing the error is sufficient notification and correction. If the vio-
lation consists of an excess charge, correction shall be
made by an adjustment or refund.
(8) If the creditor establishes by a preponderance of
evidence that a violation is unintentional or the result
of a bona fide error of fact notwithstanding the mainte-
nance of procedures reasonably adapted to avoid any such
violation or error, no liability is imposed under subsections
(1), (2) and (4), and the validity of the transaction is not
affected.
1 Rights granted by this chapter may be asserted as a
defense, set-off or counterclaim to an action against a
consumer without regard to any limitation of actions.
§46A-5-103. Willful violations.
1 (1) A supervised lender who willfully makes charges
in excess of those permitted by the provisions of article
four of this chapter, pertaining to supervised lenders,
shall be guilty of a misdemeanor and upon conviction
shall be fined not more than five thousand dollars, or
imprisoned not more than one year, or both fined and
imprisoned.
(2) A person who willfully engages in the business
of making supervised loans without a license in violation
of the provisions of article four of this chapter applying
to authority to make supervised loans shall be guilty
of a misdemeanor and upon conviction shall be fined
not more than five thousand dollars, or impris-
oned not more than one year, or both fined and
imprisoned.
(3) A person who willfully engages in the business of
making consumer credit sales or consumer loans, or of
taking assignments of rights against consumers arising
therefrom and undertakes direct collection of payments
or enforcement of these rights, without complying with
the provisions of section one hundred fifteen, article
seven of this chapter, concerning notification, shall be
guilty of a misdemeanor and upon conviction shall be
fined not more than one hundred dollars.
(4) Any person who willfully violates any of the provisions of sections one hundred twenty-three through one hundred twenty-eight, inclusive, article two of this chapter, by committing any of the specifically described and enumerated acts contained therein, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than one thousand dollars, or imprisoned in the county jail not more than one year, or both fined and imprisoned.

ARTICLE 6. GENERAL CONSUMER PROTECTION.

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

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

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

§46A-6-102. Definitions.

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

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

(b) “Merchantable” means, in addition to the qualities prescribed in section three hundred fourteen, article two, chapter forty-six of this code, that the goods conform in all material respects to applicable state and federal statutes and regulations establishing standards of quality and safety of goods and, in the case of goods with mechanical, electrical or thermal components, that the goods are in good working order and will operate properly in normal usage for a reasonable period of time.

c) “Sale” includes any sale, offer for sale or attempt to sell any goods for cash or credit or any services or offer for services for cash or credit.

d) “Trade” or “commerce” means the advertising, offering for sale, sale or distribution of any goods or services and shall include any trade or commerce, directly or indirectly, affecting the people of this state.

e) “Unfair methods of competition and unfair or deceptive acts or practices” means and includes, but is not limited to, any one or more of the following:

1) Passing off goods or services as those of another;
2) Causing likelihood of confusion or of misunderstanding as to the source, sponsorship, approval or certification of goods or services;
3) Causing likelihood of confusion or of misunderstanding as to affiliation, connection or association with, or certification by, another;
4) Using deceptive representations or designations of geographic origin in connection with goods or services;
5) Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits or quantities that they do not have, or that a person has
a sponsorship, approval, status, affiliation or connection
that he does not have;

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

(7) Representing that goods or services are of a par-
ticular standard, quality or grade, or that goods are of a
particular style or model, if they are of another;

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

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

(10) Advertising goods or services with intent not to
supply reasonably expectable public demand, unless the
advertisement discloses a limitation of quantity;

(11) Making false or misleading statements of fact
concerning the reasons for, existence of or amounts of
price reductions;

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

(13) The act, use or employment by any person of
any deception, fraud, false pretense, false promise or
misrepresentation, or the concealment, suppression or
omission of any material fact with intent that others
rely upon such concealment, suppression or omission, in
connection with the sale or advertisement of any goods
or services, whether or not any person has in fact been
misled, deceived or damaged thereby; or

(14) Advertising, printing, displaying, publishing, dis-
tributing or broadcasting, or causing to be advertised,
printed, displayed, published, distributed or broadcast in
any manner, any statement or representation with regard
to the sale of goods or the extension of consumer credit
including the rates, terms or conditions for the sale of such
goods or the extension of such credit, which is false, mis-
leading, or deceptive, or which omits to state material in-
formation which is necessary to make the statements
therein not false, misleading or deceptive.

(f) "Warranty" means express and implied warranties
described and defined in sections three hundred thirteen,
three hundred fourteen and three hundred fifteen, article
two, chapter forty-six of this code and expressions or
actions of a merchant which assure the consumer that the
goods have described qualities or will perform in a des-
cribed manner.
§46A-6-103. Rules and regulations.
1 The attorney general of the state of West Virginia
2 may make rules and regulations interpreting and defining
3 the provisions of section one hundred two of this article.
4 Such rules and regulations shall conform as nearly as
5 practicable with the rules, regulations and decisions of the
6 federal trade commission and the federal courts in in-
7 terpreting the provisions of the "Federal Trade Com-
8 mission Act," as from time to time 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,
3 periodical or radio or television station in the publication
4 or dissemination of an advertisement, when the owner,
5 agent or employee did not have knowledge of the false,
6 misleading or deceptive character of the advertisement,
7 did not prepare the advertisement and did not have a
direct financial interest in the sale or distribution of the
8 advertised goods or services.
§46A-6-106. Actions by consumers.
1 (1) Any person who purchases or leases goods or
2 services and thereby suffers any ascertainable loss of
3 money or property, real or personal, as a result of the use
4 or employment by another person of a method, act or
5 practice prohibited or declared to be unlawful by the
6 provisions of this article, may bring an action in the
7 circuit court of the county in which the seller or lessor
8 resides or has his principal place of business or is doing
9 business, or as provided for in sections one and two,
10 article one, chapter fifty-six of this code, to recover
actual damages or two hundred dollars, whichever is greater. The court may, in its discretion, provide such equitable relief as it deems necessary or proper.

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

§46A-6-107. Disclaimer of warranties and remedies prohibited.

Notwithstanding any other provision of law to the contrary with respect to goods which are the subject of or are intended to become the subject of a consumer transaction, no merchant shall:

(1) Exclude, modify or otherwise attempt to limit any warranty, express or implied, including the warranties of merchantability and fitness for a particular purpose; or
(2) Exclude, modify or attempt to limit any remedy provided by law, including the measure of damages available, for a breach of warranty, express or implied.

Any such exclusion, modification or attempted limitation shall be void.

§46A-6-108. Breach of warranty; privity abolished.

Notwithstanding any other provision of law to the contrary, no action by a consumer for breach of warranty or for negligence with respect to goods subject to a consumer transaction shall fail because of a lack of privity between the consumer and the party against whom the claim is made. An action against any person for breach of warranty or for negligence with respect to goods subject to a consumer transaction shall not of itself constitute a bar to the bringing of an action against another person.

ARTICLE 7. ADMINISTRATION.

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

There is hereby created, under the authority of the attorney general of the state of West Virginia, a division
3 of consumer 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, the attorney general within the limitations provided by law may:
2 (a) Receive and act on complaints, take action designed to obtain voluntary compliance with this chapter or commence proceedings on his own initiative;
3 (b) Counsel persons and groups on their rights and duties under this chapter;
4 (c) Establish programs for the education of consumers with respect to credit practices and problems;
5 (d) Make studies appropriate to effectuate the purposes and policies of this chapter and make the results available to the public;
6 (e) Adopt, amend and repeal such reasonable rules and regulations, in accordance with the provisions of chapter twenty-nine-a of this code, as are necessary and proper to effectuate the purposes of this chapter and to prevent circumvention or evasion thereof; and
7 (f) Delegate his powers and duties under this chapter to qualified personnel in his office, who shall act under the direction and supervision of the attorney general and for whose acts he shall be responsible.
8 (2) Except for refund of an excess charge, no liability is imposed under this chapter for an act done or omitted in conformity with a rule of the attorney general or commissioner, notwithstanding that after the act or omission the rule may be amended or repealed or be determined by judicial or other authority to be invalid for any reason. Any form or procedure which has been submitted to the commissioner and the attorney general in writing and approved in writing by them shall not be deemed a violation of the penalty provisions of this chapter notwithstanding that such approval may be subsequently amended or rescinded or be determined by judicial or other authority to be invalid for any reason.
(3) On or before December first of each year, the attorney general and commissioner shall jointly or separately submit a report or reports to the governor and to the Legislature on the operation of their offices, on the use of consumer credit and on consumer protection problems in the state, and on the problems of persons of small means obtaining credit from persons regularly engaged in extending sales or loan credit. For the purpose of making such report or reports, the attorney general and commissioner are authorized to conduct research and make appropriate studies. The report or reports shall include a description of the examination and investigation procedures and policies of their offices, a statement of policies followed in deciding whether to investigate or examine the offices of credit suppliers subject to this chapter, a statement of the number and percentages of offices which are periodically investigated or examined, a statement of the types of consumer credits and consumer protection problems of both creditors and consumers which have come to their attention through their examinations and investigations and the disposition of them under existing law, and a general statement of the activities of their offices and of others to promote the purposes of this chapter.

§46A-7-103. Division of administrative powers; investigation and administration.

1 (1) With respect to supervised financial organizations, the powers of examination and investigation and administrative enforcement shall be exercised by the official or agency to whose supervision the organization is subject. All other powers of the attorney general under this chapter may be exercised by him with respect to a supervised financial organization. Notwithstanding the first sentence of this subsection and notwithstanding subsection (3) of this section, the attorney general may pursue any investigation, prosecute any suit and take any other proper action relating to the enforcement of any consumer protection provision in this chapter.

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

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

§46A-7-104. Investigatory powers.

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

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

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

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

§46A-7-105. Application of administrative procedures act.
Except as otherwise provided, the provisions of chapter
twenty-nine-a of this code apply to and govern all ad-
ministrative action taken by the attorney general pur-
suant to this chapter.

§46A-7-106. Administrative enforcement orders; judicial re-
view.
(1) After notice and hearing the attorney general may
order a creditor or other person to cease and desist from
engaging in violations of this chapter.

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

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

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

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

(6) If no proceeding for judicial review is initiated,
the attorney general may obtain an order of a circuit
court for enforcement of his order upon a showing that
the order was issued in compliance with this section, that
no proceeding for review was initiated within thirty days
after a copy of the order was received and that the re-
spondent is subject to the jurisdiction of the court. If
no proceeding for judicial review is initiated, the pro-
ceeding for enforcement of any order of the attorney
general shall be initiated by the filing of a petition in
the court. Copies of the petition shall be served upon
all parties of record.

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


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

§46A-7-108. Injunctions against violations of chapter.
1 The attorney general may bring a civil action to restrain a person from violating this chapter and for other appropriate relief.

§46A-7-109. Injunctions against unconscionable agreements and fraudulent or unconscionable conduct.
1 (1) The attorney general may bring a civil action to restrain a creditor or a person acting in his behalf from engaging in a course of:
2 (a) Making or enforcing unconscionable terms or provisions of consumer credit sales or consumer loans;
3 (b) Fraudulent or unconscionable conduct in inducing consumers to enter into consumer credit sales or consumer loans; or
4 (c) Fraudulent or unconscionable conduct in the collection of debts arising from consumer credit sales or consumer loans.
5 (2) In an action brought pursuant to this section the court may grant relief only if it finds:
6 (a) That the respondent has made unconscionable agreements or has engaged or is likely to engage in a course of fraudulent or unconscionable conduct;
7 (b) That the agreements or conduct of the respondent have caused or are likely to cause injury to consumers; and
8 (c) That the respondent has been able to cause or will be able to cause the injury primarily because the transactions involved are credit transactions.
9 (3) In applying this section, consideration shall be given to each of the following factors, among others:
10 (a) Belief by the creditor at the time consumer credit
sales or consumer loans are made that there was no
reasonable probability of payment in full of the obliga-
tion by the debtor;
(b) In the case of consumer credit sales, knowledge
by the seller at the time of the sale of the inability of
the buyer to receive substantial benefits from the prop-
erty or services sold;
(c) In the case of consumer credit sales, gross dis-
parity between the price of the property or services sold
and the value of the property or services measured by
the price at which similar property or services are readily
obtainable in credit transactions by like buyers;
(d) The fact that the creditor contracted for or re-
ceived separate charges for insurance with respect to
consumer credit sales or consumer loans with the effect
of making the sales or loans, considered as a whole, un-
conscionable; and
(e) The fact that the respondent has knowingly taken
advantage of the inability of the debtor reasonably to
protect his interests by reason of physical or mental in-
firmities, ignorance, illiteracy or inability to understand
the language of the agreement, or similar factors.
(4) In an action brought pursuant to this chapter, a
charge or practice expressly permitted by this chapter is
not unconscionable.

§46A-7-110. Temporary relief.

With respect to an action brought to enjoin violations
of this chapter or unconscionable agreements or frau-
dulent or unconscionable conduct, the attorney general
may apply to the court for appropriate temporary relief
against a respondent, pending final determination of the
proceedings. If the court finds after a hearing held upon
notice to the respondent that there is reasonable cause
to believe that the respondent is engaging in or is likely to
engage in conduct sought to be restrained, it may grant
any temporary relief or restraining order it deems ap-
propriate.
§46A-7-111. Civil actions by attorney general.

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

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

§46A-7-112. Jury trial.

1. In an action brought by the attorney general under this chapter, he has no right to trial by jury.

§46A-7-113. Consumer's remedies not affected.

1. The grant of powers to the attorney general in this chapter does not affect remedies available to consumers under this chapter or under other principles of law or equity.

§46A-7-114. Venue.

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

§46A-7-115. Notification.

1. (1) Every person engaged in this state in making consumer credit sales or consumer loans and every person having an office or place of business in this state who takes assignments of and undertakes direct collection of payments from or enforcement of rights against debtors arising from such sales or loans shall file notification with the state tax department within thirty days after commencing business in this state, and, thereafter, on or before January thirty-first of each year. A notification shall be deemed to be in compliance with this section if the information hereinafter required is given in an application for a business registration certificate provided for in section four, article twelve, chapter eleven of this code. The state tax commissioner shall make any information required by this
section available to the attorney general or commissioner upon request. The notification shall state:

(a) Name of the person,
(b) Name in which business is transacted if different from (a);
(c) Address of principal office, which may be outside this state;
(d) Address of all offices or retail stores, if any, in this state at which consumer credit sales or consumer loans are made, or in the case of a person taking assignments of obligations, the offices or places of business within this state at which business is transacted;
(e) If consumer credit sales or consumer loans are made otherwise than at a retail store or office in this state, a brief description of the manner in which they are made;
(f) Address of designated agent upon whom service of process may be made in this state; and
(g) Whether supervised loans are made.

2) If information in a notification becomes inaccurate after filing, accurate information must be filed within thirty days.

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

§46A-7-116. Consumer affairs advisory council created; members appointed by governor; qualifications of members; term; organization and meetings of council; duties of council; quorum; filling vacancies; payment of expenses.

A consumer affairs advisory council is hereby created. The council shall be composed of nine members who shall be appointed by the governor within thirty days of the date this section becomes operative, which such appointments shall be subject to confirmation by the Senate. The members of the council shall be citizens and residents of this state, who by reason of their training, education or experience are qualified to carry out the functions of the council under this section. Five members shall be repre-
sentatives of the general public and the other four mem-
bers shall be representatives of consumer financing and
retailing business in this state.

The first term of office for three of the representatives
of the general public, who shall be designated by the
governor, shall run through the thirtieth day of
June, one thousand nine hundred seventy-six. The first
term of office for the other two representatives of the
general public shall run through the thirtieth day of June,
one thousand nine hundred seventy-seven. The first term
of office for two of the representatives of consumer financ-
ing and retailing business in this state, who shall be desig-
nated by the governor, shall run through the thirtieth day
of June, one thousand nine hundred seventy-six. The first
term of office for the other two representatives of con-
sumer financing and retailing business in this state shall
run through the thirtieth day of June, one thousand nine
hundred seventy-seven. Thereafter, terms of members
shall be four years.

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

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

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

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

ARTICLE 8. OPERATIVE DATE AND PROVISIONS FOR TRANSITION.

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

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

(2) Notwithstanding the provisions of subsection (1) of this section, in order to allow sufficient time to prepare for the implementation and operation of this chapter and to act on applications for licenses to make supervised loans under this chapter prior to the operative date of such chapter, the provisions of article four of this chapter, relating to supervised lenders, and the provisions of article seven of this chapter, relating to administration, shall, to the extent necessary, become operative for such purposes at 12:01 A.M. on July first, one thousand nine hundred seventy-four.

(3) Transactions entered into before this chapter becomes operative and the rights, duties and interests flowing from them thereafter may be terminated, completed, consummated or enforced as required or permitted by any statute, rule of law or other law amended, repealed or modified by this chapter as though the repeal, amendment or modification had not occurred, but this chapter applies to:
23 (a) Refinancings and consolidations made after this chapter becomes operative of consumer credit sales, consumer leases and consumer loans whenever made;
26 (b) Consumer credit sales or consumer loans made after this chapter becomes operative pursuant to revolving charge accounts or revolving loan accounts entered into, arranged or contracted for before this chapter becomes operative; and
31 (c) All consumer credit transactions made before this chapter becomes operative insofar as this chapter limits the remedies of creditors.

§46A-8-102. Severability.
1 If, for any reason, any article, section, sentence, clause, phrase or provision of this chapter or the application thereof to any person or circumstance is held unconstitutional or invalid, such unconstitutionality or invalidity shall not affect other articles, sections, sentences, clauses, phrases or provisions or their application to any other person or circumstance, and to this end each and every article, section, sentence, clause, phrase or provision of this chapter is hereby declared to be severable.

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 by law, legal interest shall continue to be at the rate of six dollars upon one hundred dollars for a year, and proportionately for a greater or less sum, or for a longer or shorter time, and no person upon any contract other than a contract in writing shall take for the loan or forbearance of money, or other thing, above the value of such rate: Provided, That a charge of one dollar may be made for any loan or forbearance of money or other thing, where the interest at the rate aforesaid would not amount to that sum, and the same shall not be a usurious charge or rate of interest.
Parties may contract in writing for the payment of interest for the loan or forbearance of money at a rate not to exceed eight dollars upon one hundred dollars for a year, and proportionately for a greater or less sum or for a longer or shorter time, including points expressed as a percentage of the loan divided by the number of years of the loan contract. For the purpose of this section the term points is defined as the amount of money, or other consideration, received by the lender, from whatever source, as a consideration for making the loan and not otherwise expressly permitted by statute.

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

Except in cases where it is otherwise specially provided by law, parties may contract for and charge interest for a secured or unsecured loan, repayable in installments at a rate not in excess of: (a) Six percent per annum upon the principal amount of the loan, for the entire period of the loan, and add such charge to the principal amount of the loan; or (b) six percent per annum upon the face amount of the instruments evidencing the obligation to repay the loan, for the entire period of the loan and deduct such charge in advance but in no case shall the interest on such a discount loan exceed an annual percentage rate of fifteen percent per annum calculated according to the actuarial method: Provided, That upon prepayment in full of a precomputed loan, the lender shall rebate that portion of such charge attributable to the prepaid periodic installment periods. When the total amount is payable in substantially equal consecutive monthly installments, the portion of such charge attributable to any particular monthly installment period shall be that proportion of the charge originally contracted for, as the balance scheduled to be outstanding on the last day of the monthly installment period before deducting the payment, if any, scheduled to be made on that day bears to the sum of all the monthly installment balances under the original schedule of payments. (This method of allocation is the sum of the digits method, commonly referred to as the "Rule of 78".) If prepayment in full of an obligation payable in monthly installments
is made on other than an installment due date, the rebate
shall be calculated as of the nearest installment due date.
For the purpose of determining the installment due date
nearest the date of any prepayment in full, any prepay-
ment in full of an obligation payable in monthly install-
ments made on or before the fifteenth day following an
installment due date shall be determined to have been
made as of such installment date, and any prepayment in
full made on or after the sixteenth day shall be deemed
to have been made on the next succeeding installment
due date. The commissioner of banking shall prescribe
by rule the method or procedure for the allocation of
charges and the calculation of rebates consistent with
the sum of the digits method where the precomputed loan
is payable in unequal or irregular or in other than sub-
stantially equal consecutive monthly installments. Any
note evidencing any such installment loan may provide
that the entire unpaid balance thereof at the option of
the holder shall become due and payable upon default
in the payment of any stipulated installment without
impairing the negotiability of such note if otherwise
negotiable. Nothing herein contained shall affect or re-
strict the right of parties under section five of this article
to contract in writing for the payment of interest for the
loan or forbearance of money at a rate not to exceed eight
dollars upon one hundred dollars a year, and propor-
tionately for a greater or less sum, or for a longer or
shorter time, including points expressed as a percentage
of the loan divided by the number of years of the loan
contract.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within approved this the 17th day of Shank, 1974.

Governor