

WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1974



ENROLLED

SENATE BILL NO. 240

(By Mr. Brotherton, Mr. President)



PASSED March 5, 1974

In Effect minutely days from Passage



240

FILED IN THE OFFICE
OF CARL F. HEISKELL III
SECRETARY OF STATE
THIS DATE 3-13-74

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.]

AN ACT to repeal article seven-a, chapter forty-seven; and to amend and reenact section thirty, article four, chapter thirty-one-a, and sections five and five-a, article six, chapter forty-seven, all of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said code by adding thereto a new chapter, designated chapter forty-six-a, relating to expenses, charges and interest allowed in certain cases; relating to precomputed installment loans; providing a method of calculating a refund or rebate on any such precomputed installment loan; relating to acceleration of any such installment note; providing for the enactment of a consumer credit and protection act to be known as the "West Virginia Consumer Credit and Protection Act"; relating to certain consumer and other credit transactions; consolidating and revising certain aspects of the law relating to consumer and other loans, consumer and other sales of goods, services and interests in land, and consumer leases; relating to claims and defenses against a holder in due course, or an assignee of an instrument, contract or other writing, or a lender in an interlocking loan relationship; prescribing certain maximum charges and penalties and consumer protection provisions respecting transactions covered by

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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
 2 of chapter forty-seven of this code and elsewhere by law,
 3 a banking institution may charge and collect a reasonable
 4 amount to cover the expenses incurred in procuring reports
 5 and information respecting loans and the value of and title
 6 to property offered as security therefor, and a charge of
 7 three dollars may be made for any loan or forbearance of
 8 money or other thing where the interest at the rate of six
 9 percent per annum would not amount to that sum and the
 10 same shall not be a usurious charge or rate of interest.
 11 Except in cases where it is otherwise specially provided by

12 law, any banking institution authorized to do, and doing
13 business in this state, may contract for and charge interest
14 for a secured or unsecured loan, repayable in installments
15 at a rate not in excess of: (a) Six percent per annum upon
16 the principal amount of the loan, for the entire period of
17 the loan, and add such charge to the principal amount of
18 the loan; or (b) six percent per annum upon the face
19 amount of the instruments evidencing the obligation to re-
20 pay the loan, for the entire period of the loan, and deduct
21 such charge in advance but in no case shall the interest on
22 such a discount loan exceed an annual percentage rate of
23 fifteen percent per annum calculated according to the ac-
24 tuarial method: *Provided*, That upon prepayment in full of
25 a precomputed loan, the bank shall rebate that portion of
26 such charge attributable to the prepaid periodic install-
27 ment periods. When the total amount is payable in substan-
28 tially equal consecutive monthly installments, the portion
29 of such charge attributable to any particular monthly in-
30 stallment period shall be that proportion of the charge
31 originally contracted for, as the balance scheduled to be
32 outstanding on the last day of the monthly installment
33 period before deducting the payment, if any, scheduled to
34 be made on that day bears to the sum of all the monthly in-
35 stallment balances under the original schedule of pay-
36 ments. (This method of allocation is the sum of the digits
37 method, commonly referred to as the "Rule of 78.") If pre-
38 payment in full of an obligation payable in monthly in-
39 stallments is made on other than an installment due date,
40 the rebate shall be calculated as of the nearest installment
41 due date. For the purpose of determining the installment
42 due date nearest the date of any prepayment in full, any
43 prepayment in full of an obligation payable in monthly
44 installments made on or before the fifteenth day following
45 the installment due date shall be determined to have been
46 made as of such installment due date, and any prepayment
47 in full made on or after the sixteenth day shall be deemed
48 to have been made on the next succeeding installment
49 due date. The commissioner of banking shall prescribe
50 by rule the method or procedure for the allocation of
51 charges and the calculation of rebates consistent with the
52 sum of the digits method where the precomputed loan is
53 payable in unequal or irregular or in other than substan-

54 tially equal consecutive monthly installments. Any note
55 evidencing any such installment loan may provide that the
56 entire unpaid balance thereof at the option of the holder
57 shall become due and payable upon default in the payment
58 of any stipulated installment without impairing the nego-
59 tiability of such note if otherwise negotiable.

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

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

§46A-1-101. Short title.

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

§46A-1-102. General definitions.

1 In addition to definitions appearing in subsequent arti-
2 cles, in this chapter:

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

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

15 (3) "Agricultural purpose" means a purpose related to
16 the production, harvest, exhibition, marketing, transporta-
17 tion, processing or manufacture of agricultural products by
18 a natural person who cultivates, plants, propagates, or nur-
19 tures the agricultural products. "Agricultural products"
20 includes agricultural, horticultural, viticultural and dairy
21 products, livestock, wildlife, poultry, bees, forest products,
22 fish and shellfish, and any products thereof, including pro-
23 cessed and manufactured products, and any and all prod-
24 ucts raised or produced on farms and any processed or
25 manufactured products thereof.

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

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

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

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

35 (i) Any applicable sales, use, privilege, excise or docu-
36 mentary stamp taxes;

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

39 (iii) Additional charges permitted by this chapter.

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

48 (6) The "cash price" of goods, services or an interest in
49 land means the price at which the goods, services or inter-
50 est in land are offered for sale by the seller to cash buyers
51 in the ordinary course of business, and may include (a) ap-
52 plicable sales, use, privilege, and excise and documentary
53 stamp taxes, (b) the cash price of accessories or related
54 services such as delivery, installation, servicing, repairs, al-
55 terations and improvements, and (c) amounts actually paid
56 or to be paid by the seller for registration, certificate of
57 title, or license fees.

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

60 (a) Fees or premiums for title examination, title insur-
61 ance or similar purposes including surveys;

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

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

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

67 (e) Appraisal fees; and

68 (f) Credit reports.

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

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

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

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

80 (12) (a) Except as provided in paragraph (b), "con-
81 sumer credit sale" is a sale of goods, services or an interest
82 in land in which:

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

86 (ii) The buyer is a person other than an organization;

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

90 (iv) Either the debt is payable in installments or a sales
91 finance charge is made; and

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

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

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

100 (i) Which a lessor regularly engaged in the business of
101 leasing makes to a person, other than an organization, who
102 takes under the lease primarily for a personal, family,
103 household or agricultural purpose;

104 (ii) In which the amount payable under the lease does
105 not exceed twenty-five thousand dollars; and

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

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

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

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

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

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

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

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

122 (16) "Earnings" means compensation paid or payable to
123 an individual or for his account for personal services ren-
124 dered or to be rendered by him, whether denominated as
125 wages, salary, commission, bonus or otherwise, and inc-
126 ludes periodic payments pursuant to a pension, retirement
127 or disability program.

128 (17) "Federal Consumer Credit Protection Act" means
129 the "Consumer Credit Protection Act" (Public Law 90-
130 321; 82 Stat. 146), as amended, and includes regulations
131 issued pursuant to that act.

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

136 (19) "Home solicitation sale" means a consumer credit
137 sale in excess of twenty-five dollars in which the buyer re-
138 ceives a solicitation of the sale at a place other than the
139 seller's business establishment at a fixed location and the
140 buyer's agreement or offer to purchase is there given to
141 the seller or a person acting for the seller. The term does
142 not include a sale made pursuant to a preexisting open
143 end credit account with the seller in existence for at least
144 three months prior to the transaction, a sale made pursuant
145 to prior negotiations between the parties at the seller's
146 business establishment at a fixed location, a sale of motor
147 vehicles, mobile homes or farm equipment or a sale which
148 may be rescinded under the Federal Truth in Lending
149 Act (being Title I of the Federal Consumer Credit Protec-

150 tion Act). A sale which would be a home solicitation sale if
151 credit were extended by the seller is a home solicitation
152 sale although the goods or services are paid for in whole
153 or in part by a consumer loan in which the creditor is
154 subject to claims and defenses arising from the sale
155 (§46A-2-103).

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

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

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

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

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

172 (22) "Loan" includes:

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

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

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

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

183 (23) (a) "Loan finance charge" means the sum of (i) all
184 charges payable directly or indirectly by the debtor and
185 imposed directly or indirectly by the lender as an incident
186 to the extension of credit, including any of the following
187 types of charges which are applicable: Interest or any
188 amount payable under a point, discount, or other system of
189 charges, however denominated, premium or other charge
190 for any guarantee or insurance protecting the lender
191 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 purch-
202 ase 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

234 from a consumer loan. If any periodic payment other than
235 the down payment under an agreement requiring or per-
236 mitting two or more periodic payments is more than twice
237 the amount of any other periodic payment, excluding the
238 down payment, the consumer credit sale or consumer loan
239 is "payable in installments".

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

242 (29) "Person related to" with respect to an individual
243 means (a) the spouse of the individual, (b) a brother,
244 brother-in-law, sister or sister-in-law of the individual, (c)
245 an ancestor or lineal descendant of the individual or his
246 spouse, and (d) any other relative, by blood or marriage, of
247 the individual or his spouse who shares the same home with
248 the individual. "Person related to" with respect to an orga-
249 nization means (a) a person directly or indirectly con-
250 trolling, controlled by or under common control with the
251 organization, (b) an officer or director of the organization
252 or a person performing similar functions with respect to
253 the organization or to a person related to the organization,
254 (c) the spouse of a person related to the organization,
255 and (d) a relative by blood or marriage of a person related
256 to the organization who shares the same home with him.

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

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

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

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

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

272 (b) The amount of any discount excluded from the loan
273 finance charge; and

274 (c) To the extent that payment is deferred:

275 (i) Amounts actually paid or to be paid by the lender for
276 registration, certificate of title, or license fees if not includ-
277 ed in (a); and

278 (ii) Additional charges permitted by this chapter.

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

288 (35) "Revolving loan account" means an arrangement
289 between a lender and a consumer including, but not limi-
290 ted to, a lender credit card or similar arrangement, pursu-
291 ant to which (a) the lender may permit the consumer to
292 obtain loans from time to time, (b) the unpaid balances of
293 principal and the loan finance and other appropriate charg-
294 es are debited to an account, (c) a loan finance charge if
295 made is not precomputed but is computed periodically on
296 the outstanding unpaid balances of the principal of the
297 consumer's account from time to time, and (d) there is the
298 privilege of paying the balances in installments.

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

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

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

314 (39) "Sales finance charge" means the sum of (a) all
315 charges payable directly or indirectly by the buyer and im-

316 posed directly or indirectly by the seller or issuer of a seller
317 credit card as an incident to the extension of credit, includ-
318 ing any of the following types of charges which are appli-
319 cable: Time-price differential, however denominated, in-
320 cluding service, carrying or other charge, premium or
321 other charge for any guarantee or insurance protecting the
322 seller against the buyer's default or other credit loss, and
323 (b) charges incurred for investigating the collateral or
324 credit-worthiness of the buyer or for commissions or bro-
325 kerage for obtaining the credit, irrespective of the person
326 to whom the charges are paid or payable; unless the seller
327 had no notice of the charges when the credit was granted.
328 The term does not include charges as a result of default,
329 additional charges, delinquency charges or deferral charg-
330 es. If the seller or issuer of a seller credit card purchases or
331 satisfies obligations of the consumer and the purchase or
332 satisfaction is made at less than the face amount of the
333 obligation, the discount is not part of the sales finance
334 charge.

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

339 (41) "Seller credit card" means an arrangement pursu-
340 ant to which a person gives to a buyer or lessee the privi-
341 lege of using a credit card, letter of credit, or other credit
342 confirmation or identification primarily for the purpose of
343 purchasing or leasing goods or services from that person,
344 that person and any other person or persons, a person re-
345 lated to that person, or others licensed or franchised or
346 permitted to do business under his business name or trade
347 name or designation or on his behalf.

348 (42) "Services" includes (a) work, labor and other per-
349 sonal services, (b) privileges with respect to transporta-
350 tion, use of vehicles, hotel and restaurant accommodations,
351 education, entertainment, recreation, physical culture,
352 hospital accommodations, funerals, cemetery accommoda-
353 tions, and the like, and (c) insurance.

354 (43) "Supervised financial organization" means a person,
355 other than a supervised lender or an insurance company or

356 other organization primarily engaged in an insurance busi-
357 ness:

358 (a) Organized, chartered or holding an authorization cer-
359 tificate under the laws of this state or of the United States
360 which authorizes the person to make consumer loans; and

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

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

366 (45) "Supervised loan" means a consumer loan made by
367 other than a supervised financial organization, including a
368 loan made pursuant to a revolving loan account, where the
369 principal does not exceed one thousand two hundred dol-
370 lars and in which the rate of the loan finance charge ex-
371 ceeds eight percent per year as determined according to
372 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 (1) This chapter prescribes maximum charges for all
2 creditors, except lessors and those excluded, making con-
3 sumer credit sales and consumer loans, and sales and loans
4 made subject to the provisions of this chapter by agree-
5 ment, and except as otherwise provided by this chapter
6 displaces any existing limitations and provisions regulating
7 maximum interest and charges, minimum charges, addi-
8 tional charges, delinquency charges, deferral charges, al-
9 location of charges and methods of computing rebates up-
10 on prepayment, refinancing or consolidation with respect
11 to consumer credit sales and consumer loans, and the deb-
12 tors' remedies and penalties provided by this chapter dis-
13 place all existing provisions relating to remedies, penalties
14 and forfeitures for usury and usurious contracts as to
15 transactions covered by this chapter: *Provided*, That this
16 chapter shall not displace those provisions of subsection
17 (f), section six, article seven, chapter thirty-one of this
18 code relating to additional charges which may be imposed
19 and collected by industrial loan companies.

20 (2) Except as provided in subsection (1) of this section
21 or elsewhere in this chapter, this chapter does not dis-

22 place powers or limitation on powers which supervised
23 financial organizations and supervised lenders are author-
24 ized to exercise under the laws of the United States or
25 other laws of this state in effect after the operative date
26 of this chapter.

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

§46A-1-104. Application.

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

§46A-1-105. Exclusions.

1 This chapter does not apply to:

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

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

6 (3) Transactions under public utility or common carrier
7 tariffs if a subdivision or agency of this state or of the
8 United States regulates the charges for the services in-
9 volved, the charges for delayed payment, and any discount
10 allowed for early payment; or

11 (4) Licensed pawnbrokers and secondary mortgage len-
12 ders licensed under the provisions of article seventeen,
13 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
2 credit sale or consumer loan, may agree in writing signed
3 by the parties that the sale or loan is subject to the pro-
4 visions of this chapter applying to consumer credit sales
5 or consumer loans. If the parties so agree, the sale or
6 loan is subject to this chapter.

§46A-1-107. Waiver.

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

ARTICLE 2. CONSUMER CREDIT PROTECTION.

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

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

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

24 (b) The notice of negotiation from the holder to the
25 buyer or lessee contemplated in subdivision (a) of this
26 subsection (1) shall be in writing, identify the negotiable
27 instrument, briefly describe the goods or services, state
28 the name and address of the holder, state the initial de-
29 ferred balance of such negotiable instrument payable by
30 the buyer or lessee and the number, amount and due
31 dates of installments, the amount currently payable by
32 the buyer or lessee, and inform the buyer or lessee in a
33 conspicuous manner that he has one hundred eighty days
34 from a specified date (which date shall be the date the
35 notice was delivered or mailed to the buyer or lessee)
36 within which to notify the holder in writing of any claims
37 and defenses he may have against the seller or lessor

38 arising from that specific consumer credit sale or con-
39 sumer lease; and that if written notification of any such
40 claims and defenses is not given to the holder within such
41 one hundred eighty day period, the holder will have the
42 right to enforce the instrument free of any such claims
43 and defenses the buyer or lessee may have against the
44 seller or lessor. Such notice of negotiation, if given by
45 mail, is given when it is mailed to the buyer's or lessee's
46 last-known address by registered or certified mail, return
47 receipt requested.

48 (c) In order to preserve all of his claims and defenses
49 against a holder under subdivision (a) of this subsection
50 (1), the buyer or lessee must, after receiving the written
51 notice of negotiation provided for in subdivision (b) of
52 this subsection (1), and before the expiration of a period
53 of one hundred eighty days, notify such holder in writ-
54 ing as to any claims and defenses he has against the
55 seller or lessor arising from that specific consumer credit
56 sale or consumer lease. The notice by the buyer or
57 lessee need not take any particular form and shall be
58 sufficient if it indicates the claims and defenses which
59 the buyer or lessee has against the seller or lessor in a
60 manner sufficient to apprise the holder of the nature of
61 such claims and defenses. Such notice, if given by mail, is
62 given when it is mailed to the holder's last-known ad-
63 dress by registered or certified mail, return receipt re-
64 quested. All claims and defenses of the buyer or lessee
65 against the seller or lessor arising out of a consumer
66 credit sale or consumer lease shall be valid against the
67 holder unless the notice of negotiation is given pursuant
68 to this subsection (1).

69 (d) In a consumer credit sale or consumer lease when
70 goods or services cannot be delivered or completed im-
71 mediately after the sale or lease or when the rendition
72 of future services constitutes a material part of the sale
73 or lease agreement, the notice of negotiation contem-
74 plated in subdivision (a) of this subsection (1) shall not
75 be given to the buyer or lessee until the seller or lessor
76 has furnished a certificate to the buyer or lessee which
77 indicates that delivery of such goods has been made or

78 such services completed and such certificate has been
79 duly executed by the buyer or lessee and, in the case of
80 future services, until the buyer or lessee shall forward
81 to the holder a written reaffirmation of the completion of
82 such future services which are the subject of such sale
83 or lease. Such reaffirmation shall not be made until ex-
84 ecution by the buyer or lessee of the certificate of com-
85 pletion. Such reaffirmation shall be forwarded directly
86 by United States mail to the holder by the buyer or lessee.
87 If the seller or lessor directly or indirectly obtains such
88 reaffirmation, it shall be void and have no force or legal
89 effect. A completion certificate need not take any par-
90 ticular form, but shall indicate the names and addresses
91 of the parties to the consumer credit sale or consumer
92 lease, the goods delivered or the services completed and
93 the date on which actual delivery was made or actual
94 performance was completed.

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

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

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

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

116 (5) With respect to a consumer credit sale or consumer
117 lease made or entered into more than one year after the

118 operative date of this chapter, other than a sale or lease
119 primarily for an agricultural purpose, the seller or lessor
120 may not take a negotiable instrument other than a cur-
121 rently dated check as evidence of the obligation of the
122 buyer or lessee. The holder in due course of a negotiable
123 instrument taken in violation of this subsection shall, not-
124 withstanding the provisions of section three hundred five,
125 article three, chapter forty-six of this code, be subject to
126 all claims and defenses arising from that specific con-
127 sumer credit sale or consumer lease which the buyer or
128 lessee has against the seller or lessor.

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

133 (a) Payments received after the consolidation of two
134 or more consumer credit sales, other than pursuant to a
135 revolving charge account, are deemed to have been first
136 applied to the payment of the sales first made; if the sales
137 consolidated arose from sales made on the same day, pay-
138 ments are deemed to have been first applied to the smaller
139 or smallest sale or sales;

140 (b) Payments received upon a revolving charge ac-
141 count are deemed to have been first applied to the pay-
142 ment of sales finance charges in the order of their entry
143 to the account and then to the payment of debts in the
144 order in which the entries of the debts are made to the
145 account.

146 (7) A claim or defense which a buyer or lessee may
147 assert against a holder in due course of a negotiable
148 instrument under the provisions of this section may be
149 asserted only as a matter of defense to or setoff against
150 a claim by the holder: *Provided*, That if a buyer or lessee
151 shall have a claim or defense which could be asserted
152 under the provisions of this section as a matter of de-
153 fense to or setoff against a claim by the holder in due
154 course of a negotiable instrument were such holder to
155 assert such claim against the buyer or lessee, then such
156 buyer or lessee shall have the right to institute and main-
157 tain an action or proceeding seeking to obtain the can-
158 cellation in whole or in part of the indebtedness evi-

159 denced by such negotiable instrument or the release in
160 whole or in part of any lien upon real or personal
161 property securing the payment thereof: *Provided, how-*
162 *ever,* That any claim or defense founded in fraud, lack or
163 failure of consideration or a violation of the provisions
164 of this chapter as specified in section one hundred one,
165 article five of this chapter, may be asserted by a buyer
166 or lessee at any time, subject to the provisions of this
167 code relating to limitation of actions.

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

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

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

8 (a) Notwithstanding any term or agreement to the
9 contrary or the provisions of article two, chapter forty-
10 six of this code or section two hundred six, article nine
11 of said chapter forty-six, an assignee of any such instru-
12 ment, contract or other writing shall take and hold such
13 instrument, contract or other writing subject to all claims
14 and defenses of the buyer or lessee against the seller or
15 lessor arising from that specific consumer credit sale
16 or consumer lease of goods or services but the assignee's
17 liability shall not exceed the amount owing to the as-
18 signee at the time the assignee receives notice of the
19 claims or defenses, if such claims and defenses are as-
20 serted by the buyer or lessee by written notice given to
21 the assignee within a period of one hundred eighty days
22 after the assignee has delivered or mailed to the buyer
23 or lessee a written notice of assignment complying with
24 the requirements of subdivision (b) of this subsec-
25 tion (1).

26 (b) The notice of assignment from the assignee to
27 the buyer or lessee contemplated in subdivision (a) of
28 this subsection (1) shall be in writing, identify the in-
29 strument, contract or other writing, briefly describe the
30 goods or services, state the name and address of the
31 assignee, state the initial deferred balance of such in-
32 strument, contract or other writing payable by the buyer
33 or lessee and the number, amount and due dates of in-
34 stallments, the amount currently payable by the buyer
35 or lessee, and inform the buyer or lessee in a conspicuous
36 manner that he has one hundred eighty days from a
37 specified date (which date shall be the date the notice
38 was delivered or mailed to the buyer or lessee) within
39 which to notify the assignee in writing of any claims and
40 defenses he may have against the seller or lessor arising
41 from that specific consumer credit sale or consumer lease;
42 and that if written notification of any such claims and
43 defenses is not given to the assignee within such one
44 hundred eighty day period, the assignee will have the
45 right to enforce the instrument, contract or other writing
46 free of any claims and defenses the buyer or lessee may
47 have against the particular seller or lessor. Such
48 notice of assignment, if given by mail, is given when
49 it is mailed to the buyer's or lessee's last-known
50 address by registered or certified mail, return receipt
51 requested.

52 (c) In order to preserve all of his claims and defenses
53 against an assignee under subdivision (a) of this subsec-
54 tion (1), the buyer or lessee must, after receiving the
55 written notice of assignment provided for in subdivision
56 (b) of this subsection (1), and before the expiration of
57 a period of one hundred eighty days, notify such as-
58 signee in writing as to any claims and defenses he has
59 against the seller or lessor arising from that specific
60 consumer credit sale or consumer lease. The notice by
61 the buyer or lessee need not take any particular form
62 and shall be sufficient if it indicates the claims and de-
63 fenses which the buyer or lessee has against the seller or
64 lessor in a manner sufficient to apprise the assignee of the
65 nature of such claims and defenses. Such notice,
66 if given by mail, is given when it is mailed to the as-

67 signee's last-known address by registered or certified mail,
68 return receipt requested. All claims and defenses of the
69 buyer or lessee against the seller or lessor arising out
70 of a consumer credit sale or consumer lease shall
71 be valid against the assignee unless notice of as-
72 signment is given pursuant to this subsection (1).

73 (d) In a consumer credit sale or consumer lease when
74 goods or services cannot be delivered or completed im-
75 mediately after the sale or lease or when the rendition of
76 future services constitutes a material part of the sale
77 or lease agreement, the notice of assignment contem-
78 plated in subdivision (a) of this subsection (1) shall not
79 be given to the buyer or lessee until the seller or lessor
80 has furnished a certificate to the buyer or lessee which
81 indicates that delivery of such goods has been made or
82 such services completed and such certificate has been
83 duly executed by the buyer or lessee and, in the case of
84 future services, until the buyer or lessee shall forward
85 to the assignee a written reaffirmation of the completion
86 of such future services which are the subject of such sale
87 or lease. Such reaffirmation shall not be made until exe-
88 cution by the buyer or lessee of the certificate of com-
89 pletion. Such reaffirmation shall be forwarded directly
90 by United States mail to the assignee by the buyer or
91 lessee. If the seller or lessor directly or indirectly ob-
92 tains such reaffirmation, it shall be void and have no
93 force or legal effect. A completion certificate need not
94 take any particular form, but shall indicate the names
95 and addresses of the parties to the consumer credit sale or
96 consumer lease, the goods delivered or the services com-
97 pleted and the date on which actual delivery was made
98 or actual performance was completed.

99 (e) Whenever any such instrument, contract or other
100 writing (other than a negotiable instrument), and a nego-
101 tiable instrument executed in connection with such other
102 instrument, contract or writing, are assigned and
103 negotiated to the same person, either the notices
104 contemplated and provided for in this subsection (1)
105 or the notices contemplated and provided for in section
106 one hundred one of this article need be given, and it
107 shall not be necessary for notices to be given pursuant

108 to both this subsection (1) and said section one hundred
109 one.

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

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

117 (4) Nothing contained in this section shall be con-
118 strued in any manner as affecting any assignment
119 of any such instrument, contract or other writing, made
120 prior to the operative date of this chapter.

121 (5) The following provisions shall be applicable to
122 instruments, contracts or other writings, other than nego-
123 tiable instruments, evidencing an obligation arising from
124 a consumer credit sale or consumer lease, other than a
125 sale or lease primarily for an agricultural purpose, made
126 after the expiration of one year after the oper-
127 ative date of this chapter: Notwithstanding any term
128 or agreement to the contrary or the provisions of article
129 two, chapter forty-six of this code or section two hundred
130 six, article nine of said chapter forty-six, an assignee of
131 any such instrument, contract or other writing shall
132 take and hold such instrument, contract or other writing
133 subject to all claims and defenses of the buyer or lessee
134 against the seller or lessor arising from that specific con-
135 sumer credit sale or consumer lease of goods or services,
136 but the total of all claims and defenses which may be
137 asserted against the assignee under this subsection or
138 subsection (7) of this section shall not exceed the amount
139 owing to the assignee at the time of such assignment,
140 except (i) as to any claim or defense founded in fraud
141 and (ii) for any excess charges and penalties recover-
142 able under section one hundred one, article five of this
143 chapter.

144 (6) For the purpose of determining the amount owing
145 to an assignee of any such instrument, contract or other
146 writing evidencing an obligation of a buyer or lessee
147 arising from a consumer credit sale or consumer lease:

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

155 (b) Payments received upon a revolving charge ac-
156 count are deemed to have been first applied to the pay-
157 ment of sales finance charges in the order of their entry
158 to the account and then to the payment of debts in the
159 order in which the entries of the debts are made to the
160 account.

161 (7) A claim or defense which a buyer or lessee may
162 assert against an assignee of such instrument, contract
163 or other writing under the provisions of this section may
164 be asserted only as a matter of defense to or setoff against
165 a claim by the assignee: *Provided*, That if a buyer or
166 lessee shall have a claim or defense which could be
167 asserted under the provisions of this section as a matter
168 of defense to or setoff against a claim by the assignee were
169 such assignee to assert such claim against the buyer or les-
170 see, then such buyer or lessee shall have the right to insti-
171 tute and maintain an action or proceeding seeking to obtain
172 the cancellation in whole or in part of the indebtedness
173 evidenced by such instrument, contract or other writing
174 or the release in whole or in part of any lien upon real
175 or personal property securing the payment thereof: *Pro-*
176 *vided however*, That any claim or defense founded in
177 fraud, lack or failure of consideration or a violation of
178 the provisions of this chapter as specified in section one
179 hundred one, article five of this chapter, may be asserted
180 by a buyer or lessee at any time, subject to the provisions
181 of this code relating to limitation of actions.

182 (8) Notwithstanding any provisions of this section, an
183 assignee shall not be subject to any claim or defense aris-
184 ing from or growing out of personal injury or death re-
185 sulting therefrom or damage to property.

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

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

6 (a) A lender, other than the issuer of a lender credit
7 card, who, with respect to a particular transaction, makes
8 a consumer loan for the purpose of enabling a borrower
9 to buy goods or services, other than primarily for an agri-
10 cultural purpose, is subject to all claims and defenses of
11 the borrower against the seller arising from that specific
12 sale of goods or services if such lender participates in or is
13 connected with the sales transaction, and if such claims
14 and defenses are asserted by the borrower by written
15 notice given to the lender within a period of one hundred
16 eighty days after the lender has delivered or mailed to the
17 borrower a written notice complying with the require-
18 ments of subdivision (b) of this subsection (1). Without
19 limiting the generality of the foregoing, a lender is deem-
20 ed to be connected with such sales transaction if:

21 (i) The lender and the seller have arranged for a com-
22 mission or brokerage or referral fee for the extension of
23 credit by the lender;

24 (ii) The lender is a person related to the seller unless
25 the relationship is remote or is not a factor in the trans-
26 action;

27 (iii) The seller guarantees the loan or otherwise as-
28 sumes the risk of loss by the lender upon the loan other
29 than a risk of loss arising solely from the seller's failure to
30 perfect a lien securing the loan;

31 (iv) The lender directly supplies the seller with docu-
32 ments used by the borrower to evidence the transaction
33 or the seller directly supplies the lender with documents
34 used by the borrower to evidence the transaction;

35 (v) The loan is conditioned upon the borrower's pur-
36 chase of the goods or services from the particular seller,
37 but the lender's payment of proceeds of the loan to the
38 seller does not in itself establish that the loan was so con-
39 ditioned;

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 (vii) The lender was the issuer of a credit card other
50 than a lender credit card which may be used by the bor-
51 rower in the sale transaction as a result of a prior agree-
52 ment between the issuer and the seller.

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

71 (c) In order to preserve all of his claims and defenses
72 against a lender under subdivision (a) of this subsection
73 (1), the borrower must, after receiving the written notice
74 provided for in subdivision (b) of this subsection (1), and
75 before the expiration of a period of one hundred eighty
76 days, notify such lender in writing as to any claims and
77 defenses he has against the particular seller arising from
78 that specific consumer sale. The notice by the borrower
79 need not take any particular form and shall be sufficient if

80 it indicates the claims and defenses which the borrower
81 has against the seller in a manner sufficient to apprise the
82 lender of the nature of such claims and defenses. Such
83 notice, if given by mail, is given when it is mailed to the
84 lender's last-known address by registered or certified mail,
85 return receipt requested. All claims and defenses of the
86 borrower against the particular seller arising out of such
87 consumer sale shall be valid against the lender unless
88 notice is given pursuant to this subsection (1).

89 (2) The following provisions shall be applicable to the
90 claims and defenses of borrowers, arising from consumer
91 sales, with respect to consumer loans made after the ex-
92 piration of one year after the date this chapter becomes
93 operative: A lender, other than the issuer of a lender
94 credit card, who, with respect to a particular transaction,
95 makes a consumer loan for the purpose of enabling a bor-
96 rower to buy goods or services, other than primarily for
97 an agricultural purpose, is subject to all claims and de-
98 fenses of the borrower against the seller arising from that
99 specific sale of goods or services if the lender participates
100 in or is connected with the sales transaction as provided
101 in subdivision (a), subsection (1) of this section, without
102 regard to the provisions therein as to notices.

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

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

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

119 (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

9 disclosure required by the "Federal Consumer Credit Pro-
 10 tection Act." Such notice shall be sufficient if it appears
 11 under the conspicuous caption "NOTICE" and contains
 12 substantially the following language typewritten or
 13 printed in at least twelve point bold upper case type:
 14 "You are about to sign a _____ as
 15 _____ under the terms and provisions of
 16 which instrument you are liable for the full payment
 17 thereof together with the finance charges or interest which
 18 may accrue thereon."

§46A-2-105. Balloon payments.

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

12 (2) With respect to a consumer credit sale or consumer
 13 loan whenever any scheduled payment is at least twice
 14 as large as the smallest of all earlier scheduled payments
 15 other than any down payment, any writing purporting
 16 to contain the agreement of the parties shall contain
 17 the following language typewritten or printed in a
 18 conspicuous manner. THIS CONTRACT IS NOT PAY-
 19 ABLE IN INSTALLMENTS OF EQUAL AMOUNTS: Fol-
 20 lowed, if there is only one installment which is at least
 21 twice as large as the smallest of all earlier scheduled
 22 payments other than any down payment, by: AN IN-
 23 STALLMENT OF \$_____ WILL BE DUE ON_____
 24 or, if there is more than one such installment, by: LAR-
 25 GER INSTALLMENTS WILL BE DUE AS FOLLOWS:
 26 (The amount of every such installment and its due date
 27 shall be inserted).

28 (3) The provisions of this section shall not apply to

29 the extent that the payment schedule is adjusted to the
30 seasonal or irregular income of the consumer.

31 (4) Notwithstanding the foregoing provisions of this
32 section, the commissioner may, by rules and regulations,
33 if necessary to further protect consumers, otherwise reg-
34 ulate or control agreements to be entered into in a con-
35 sumer credit sale or consumer loan transaction which
36 provide for a balloon payment or prohibit parties from
37 entering into any agreement in a consumer credit sale
38 or consumer loan transaction which provides for a bal-
39 loon payment.

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

1 After a consumer has been in default on an obligation
2 for five days for failure to make a scheduled payment
3 or otherwise perform pursuant to a consumer credit sale
4 or consumer loan other than with respect to a covenant
5 to provide insurance for or otherwise to protect and pre-
6 serve the property covered by a security interest, the
7 creditor may give him notice of such fact in the manner
8 provided for herein. Actual delivery of such notice to a
9 consumer or delivery or mailing of same to the last-
10 known address of the consumer is sufficient for the pur-
11 pose of this section. If given by mail, notice is given when
12 it is deposited in a mailbox properly addressed and post-
13 age prepaid. Notice shall be in writing and shall con-
14 spicuously state the name, address and telephone num-
15 ber of the creditor to whom payment or other perform-
16 ance is owed, a brief description of the transaction, the
17 consumer's right to cure such default and the amount
18 of payment and other required performance and date by
19 which it must be paid or accomplished in order to cure
20 the default. Except as hereinafter in this section provided,
21 after a default, other than with respect to a covenant to
22 provide insurance for or otherwise to protect and preserve
23 the property covered by a security interest, a creditor
24 may not accelerate maturity of the unpaid balance of the
25 obligation, commence any action or demand or take
26 possession of collateral on account of default until ten
27 days after notice has been given to the consumer of his

28 right to cure such default. Until such period expires, the
29 consumer shall have the right to cure any default by
30 tendering the amount of all unpaid sums due at the time
31 of the tender, without acceleration, plus any unpaid de-
32 linquency or deferral charges and by tendering any other
33 performance necessary to cure such default. Any such
34 cure shall restore a consumer to all his rights under the
35 agreement the same as if there had been no default. A
36 consumer who has been in default three or more times
37 on the same obligation and who has been given notice
38 of such fact three or more times shall not have the right
39 to cure a default under this section even though previous
40 defaults have been cured and his creditor's right to pro-
41 ceed against him and his collateral shall not be impaired
42 or limited in any way by this section. There shall be no
43 acceleration of the maturity of all or part of any amount
44 owing in a consumer credit sale or consumer loan, except
45 where nonperformance specified in the agreement as con-
46 stituting default has occurred.

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

1 (1) With respect to a consumer credit sale, a seller or
2 issuer of a seller credit card may take a security interest
3 in the property sold. In addition, a seller or issuer of
4 a seller credit card may take a security interest in goods
5 upon which services are performed or in which goods
6 sold are installed or to which they are annexed, or in
7 land to which the goods are affixed or which is main-
8 tained, repaired or improved as a result of the sale of the
9 goods or services, if in the case of a security interest in
10 land the debt secured is one thousand five hundred dol-
11 lars or more, or, in the case of a security interest in goods
12 the debt secured is three hundred dollars or more. The
13 seller or issuer of a seller credit card may also take a
14 security interest in any property of the buyer to secure
15 the debt arising from a consumer credit sale primarily
16 for an agricultural purpose. Except as provided with re-
17 spect to cross-collateral in connection with consolidated
18 debts, a seller or issuer of a seller credit card may not
19 otherwise take a security interest in property of the
20 buyer to secure the debt arising from a consumer credit
21 sale.

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

26 (3) A security interest taken in violation of this sec-
27 tion is void.

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

§46A-2-108. Cross-collateral.

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

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

1 (1) If debts arising from two or more consumer credit
2 sales, other than sales primarily for an agricultural pur-
3 pose or pursuant to a revolving charge account, are se-
4 cured by cross-collateral and consolidated into one debt
5 payable on a single schedule of payments, and the debt
6 is secured by security interests taken with respect to one
7 or more of the sales, payments received by the seller
8 after the taking of the cross-collateral and the consolida-
9 tion are deemed, for the purpose of determining the
10 amount of the debt secured by the various security in-

11 terests, to have been first applied to the payment of the
12 debts arising from the sales first made. To the extent
13 debts are paid according to this section, security interests
14 in items of property terminate as the debts originally in-
15 curred with respect to each item are paid.

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

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

§46A-2-110. Referral sales or leases.

1 With respect to a consumer credit sale or consumer
2 lease, the seller or lessor may not give or offer to give a
3 rebate or discount or otherwise pay or offer to pay value
4 to the buyer or lessee as an inducement for a sale or
5 lease in consideration of his giving to the seller or lessor
6 the names of prospective purchasers or lessees, or other-
7 wise aiding the seller or lessor in making a sale or lease
8 to another person, if the earning of the rebate, discount
9 or other value is contingent upon the occurrence of an
10 event subsequent to the time the buyer or lessee agrees
11 to buy or lease. If a buyer or lessee is induced by a viola-
12 tion of this section to enter into a consumer credit sale or
13 consumer lease, the agreement is unenforceable by the
14 seller or lessor and the buyer or lessee, at his option, may
15 rescind the agreement or retain the goods delivered and
16 the benefit of any services performed, without any obli-
17 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
2 to the lessee the following information:

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

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

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

§46A-2-113. Notice of assignment.

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

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

1 (1) The creditor shall deliver or mail to the consumer,
2 without request, a written receipt for each payment by

3 coin or currency on an obligation pursuant to a consumer
4 credit sale or consumer loan. A periodic statement show-
5 ing a payment received complies with this subsection.

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

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

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

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

§46A-2-116. Assignment of earnings.

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

9 (2) As used in this section:

10 (a) "Disposable earnings" means that part of the earn-
11 ings of an individual remaining after the deduction from
12 those earnings of amounts required by law to be with-
13 held; and

14 (b) "Assignment of earnings" includes all forms of
15 assignments, deductions, transfers, or sales of earnings
16 to another, either as payment or as security, and whether
17 stated to be revocable or non-revocable, and includes any
18 deductions authorized under the provisions of section
19 three, article five, chapter twenty-one of this code, except
20 deductions for union or club dues, pension plans, pay-
21 roll savings plans, charities, stock purchase plans and hos-
22 pitalization and medical insurance.

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

27 (4) The priority of multiple assignments of earnings
28 shall be according to the date and time of each such as-
29 signment.

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

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

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

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

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

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

5 (2) If the seller repossesses or voluntarily accepts sur-
6 render of goods which were the subject of the sale and in
7 which he has a security interest and the balance owed for
8 the goods repossessed or surrendered was at the time of
9 such repossession or surrender one thousand dollars or
10 less, the buyer is not personally liable to the seller for
11 the unpaid balance of the debt arising from the sale of the
12 goods, and the seller's duty to dispose of the collateral is
13 governed by the provisions on disposition of collateral
14 (§46-9-505) of the "Uniform Commercial Code."

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

26 (4) If the lender takes possession or voluntarily ac-
27 cepts a surrender of goods in which he has a security in-
28 terest to secure a debt arising from a consumer loan in
29 which the lender may be subject to claims and defenses
30 arising from sales (§46A-2-103) and the balance owed on
31 the net proceeds of the loan paid to or for the benefit of
32 the borrower was at the time of such repossession or sur-
33 render one thousand dollars or less, the borrower is not
34 personally liable to the lender for the unpaid balance of
35 the debt arising from the loan and the lender's duty to
36 dispose of the collateral is governed by the provisions on
37 disposition of collateral (§46-9-505) of the "Uniform Com-
38 mercial Code."

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

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

50 (7) If the creditor elects to bring an action against the
51 consumer for a debt arising from a consumer credit sale
52 of goods or services or from a consumer loan in which the
53 lender is subject to claims and defenses arising from sales
54 (§46A-2-103), when under this section he would not be en-
55 titled to a deficiency judgment if he took possession of the
56 collateral, and obtains judgment:

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

58 (b) The collateral is not subject to levy or sale on exe-
59 cution or similar proceedings pursuant to the judgment.

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

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

9 (2) If a court finds as a matter of fact that an exten-
10 sion of credit was made at a rate in excess of that per-
11 mitted for such transaction by the provisions of this chap-
12 ter and that the creditor then had a reputation for the use
13 or threat of use of violence or other criminal means to
14 cause harm to the person, reputation or property of any
15 person to collect extensions of credit or to punish the non-
16 repayment thereof, there is prima facie evidence that the
17 extension of credit was unenforceable under subsection
18 (1).

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

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

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

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

15 (2) If it is claimed or appears to the court that the
16 agreement or transaction or any term or part thereof may
17 be unconscionable, the parties shall be afforded a reason-
18 able opportunity to present evidence as to its setting, pur-
19 pose and effect to aid the court in making the determina-
20 tion.

21 (3) For the purpose of this section, a charge or prac-
22 tice expressly permitted by this chapter is not unconscion-
23 able.

§46A-2-122. Definitions.

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

7 (a) "Claim" means any obligation or alleged obliga-
8 tion arising out of or from a consumer transaction.

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

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

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

1 Unless a licensed attorney in this state, no debt collector
2 shall engage in conduct deemed the practice of law. With-
3 out limiting the general application of the foregoing, the
4 following conduct is deemed the practice of law:

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

8 (b) Any communication with consumers in the name
9 of an attorney or upon stationery or other written mat-
10 ter bearing an attorney's name; and

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

§46A-2-124. Threats or coercion.

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

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

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

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

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

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

27 (1) Arrest of any person; or

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

33 (f) The threat to take any action prohibited by this
 34 chapter or other law regulating the debt collector's con-
 35 duct.

§46A-2-125. Oppression and abuse.

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

7 (a) The use of profane or obscene language or lan-
 8 guage that is intended to unreasonably abuse the hearer
 9 or reader;

10 (b) The placement of telephone calls without dis-
 11 closure of the caller's identity and with the intent to
 12 annoy, harass or threaten any person at the called num-
 13 ber;

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

18 (d) Causing a telephone to ring or engaging any per-
 19 son in telephone conversation repeatedly or continuously,
 20 or at unusual times or at times known to be inconvenient,
 21 with intent to annoy, abuse, oppress or threaten any per-
 22 son at the called number.

§46A-2-126. Unreasonable publication.

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

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

9 (b) The disclosure, publication, or communication of
10 information relating to a consumer's indebtedness to any
11 relative or family member of the consumer if such per-
12 son is not residing with the consumer, except through
13 proper legal action or process or at the express and un-
14 solicited request of the relative or family member;

15 (c) The disclosure, publication, or communication of
16 any information relating to a consumer's indebtedness to
17 any other person other than a credit reporting agency, by
18 publishing or posting any list of consumers, commonly
19 known as "deadbeat lists," except lists to prevent the frau-
20 dulent use of credit accounts or credit cards, by advertising
21 for sale any claim to enforce payment thereof, or in any
22 manner other than through proper legal action, process
23 or proceeding; and

24 (d) The use of any form of communication to the con-
25 sumer, which ordinarily may be seen by any other per-
26 sons, that displays or conveys any information about the
27 alleged claim other than the name, address and phone
28 number of the debt collector.

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

1 No debt collector shall use any fraudulent, deceptive
2 or misleading representation or means to collect or at-
3 tempt to collect claims or to obtain information con-
4 cerning consumers. Without limiting the general appli-
5 cation of the foregoing, the following conduct is deemed
6 to violate this section:

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

11 (b) The failure to clearly disclose in all communica-
12 tions made to collect or attempt to collect a claim or to
13 obtain or attempt to obtain information about a con-
14 sumer, that the debt collector is attempting to collect a
15 claim and that any information obtained will be used
16 for that purpose;

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

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

25 (e) Any false representation or implication of the
26 character, extent or amount of a claim against a con-
27 sumer, or of its status in any legal proceeding;

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

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

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

43 (i) Any false representation or false impression about
44 the status or true nature of or the services rendered by
45 the debt collector or his business.

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

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

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

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

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

20 (d) The collection of or the attempt to collect any
21 interest or other charge, fee or expense incidental to the
22 principal obligation unless such interest or incidental fee,
23 charge or expense is expressly authorized by the agree-
24 ment creating the obligation and by statute; and

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

§46A-2-129. Postal violations.

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

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

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

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

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

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

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

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

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

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

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

1 No employer shall discharge or take any other form of
2 reprisal against an employee for the reason that a creditor
3 of the employee has subjected or attempted to subject un-

4 paid earnings of the employee to garnishment or like pro-
5 ceedings directed to the employer for the purpose of pay-
6 ing a judgment arising from a consumer credit sale or con-
7 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
2 shall have the right to cancel a home solicitation sale until
3 midnight of the third business day after the day on which
4 he has signed an agreement or offer to purchase. Cancellat-
5 tion shall become effective when the buyer gives written
6 notice of his intention to cancel to the seller at the address
7 stated in the agreement or offer to purchase. Notice of
8 such cancellation, if given by mail, is given when it is de-
9 posited in a mailbox properly addressed and postage pre-
10 paid. Such notice of cancellation given by the buyer need
11 not take any particular form and shall be sufficient if it
12 indicates by any form of written expression the intention
13 of the buyer not to be bound by the home solicitation sale.
14 Notwithstanding any above-mentioned provision, a buyer
15 may not cancel a home solicitation sale where he has re-
16 quested and the seller has provided goods or services with-
17 out delay because of a bona fide emergency and either
18 the seller has in good faith made a substantial beginning
19 of performance of the agreement before the buyer has
20 given notice of cancellation, or in the case of goods, such
21 goods cannot be returned to the seller in substantially as
22 good condition as when they were received by the buyer.

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

1 In every home solicitation sale in this state, except
2 where a buyer has requested a seller to provide goods or
3 services without delay because of an emergency, the seller
4 shall present to the buyer a written agreement or offer to
5 purchase which designates as the date of the transaction
6 the day on which the buyer has signed it and which con-
7 tains a statement of the buyer's rights as hereinafter pro-
8 vided for. No such written agreement or offer to purchase
9 shall be effective until after it has been signed by the buy-
10 er and he has written the date of such signature in his

11 own handwriting. The statement must appear under the
12 conspicuous caption: "BUYER'S RIGHT TO CANCEL"
13 and read as follows: "If this agreement was solicited at a
14 place other than the seller's business establishment at a
15 fixed location and you decide you do not want these goods
16 or services, you may cancel this agreement by mailing a
17 notice to the seller. The notice must say that you do not
18 want the goods or services and must be mailed before
19 midnight of the third business day after you sign this
20 agreement. The notice must be mailed to: (*Name and*
21 *mailing address of seller*)." Until the seller has fully com-
22 plied with this section, the buyer may cancel the home
23 solicitation sale, by notifying the seller of his intention to
24 cancel in any manner. Any written agreement or offer to
25 purchase which contains the form and content of notice
26 of cancellation required by the federal trade commission
27 and which provides information substantially similar to
28 that required by this section shall be deemed to comply
29 fully with this section.

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

1 Within ten days after a home solicitation sale has been
2 cancelled or an offer to purchase has been revoked, the
3 seller shall tender to the buyer any payment made by
4 the buyer to him and any note or other evidence of in-
5 debtedness taken in the transaction. A provision permit-
6 ting the seller to keep all or part of any payment, note
7 or other evidence of indebtedness is in violation of this
8 section and unenforceable. If any down payment included
9 goods traded in, the seller shall return the goods in sub-
10 stantially as good a condition as when he received them.
11 If a seller has failed to tender goods as required by this
12 section, the buyer may elect to recover an amount equal to
13 the trade-in allowance on such goods as stated in the
14 agreement. Until a seller has complied with all the ob-
15 ligations imposed by this section, a buyer may keep any
16 goods delivered to him by the seller and he is hereby
17 given a lien on such goods for the purpose of making
18 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
2 has been cancelled or an offer to purchase has been re-
3 voked, the seller may demand and receive any goods de-
4 livered by him to the buyer as the result of the home
5 solicitation sale. The buyer shall not be obligated to ten-
6 der such goods to the seller at any place other than the
7 buyer's residence. If the seller fails to demand possession
8 of goods within such reasonable time, such goods shall be-
9 come the buyer's property without any obligation to pay
10 for them. For the purposes of this section, twenty days
11 shall be presumed to be a reasonable time. The buyer
12 shall take reasonable care of such goods in his possession
13 before cancellation or revocation and for a reasonable
14 time thereafter, during which time the goods are other-
15 wise at the seller's risk. Where the seller has performed
16 any service pursuant to a home solicitation sale prior to
17 its cancellation or prior to giving the statement required
18 in section one hundred thirty-three of this article, he shall
19 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
2 hold personal property to be exempt from execution or
3 other judicial process resulting from consumer credit
4 transactions, except for the purchase money due on such
5 property, in such amounts as follows: Clothing and other
6 wearing apparel of the consumer, his spouse and any
7 dependents of such consumer, not to exceed the fair mar-
8 ket value of two hundred dollars; furniture, appliances,
9 furnishings and fixtures regularly used for family pur-
10 poses in the consumer's residence, to the extent of the
11 fair market value of one thousand dollars; children's
12 books, pictures, toys and other such personal property of
13 children; all medical health equipment used for health
14 purposes by the consumer, his spouse and any dependent
15 of such consumer; tools of trade, including any income-
16 producing property used in the consumer's principal oc-
17 cupation, to the extent of the fair market value of one
18 thousand dollars; and any policy of life or endowment in-

19 surance which is payable to the spouse or children of the
 20 insured consumer or to a trustee for their benefit, ex-
 21 cept the cash value of any accrued dividends thereon.
 22 When a consumer claims personal property as exempt
 23 under the provisions of this section, he shall deliver a list
 24 containing all the personal property owned or claimed by
 25 by him and all items of such property he claims as exempt
 26 hereunder, with the value of each separate item listed
 27 according to his best knowledge, to the officer holding
 28 the execution or other such process. Such list shall be
 29 sworn to by affidavit. If the value of the property named
 30 in such list exceeds the amounts specified in this section,
 31 the consumer shall state at the foot thereof what part
 32 of such property he claims as exempt. If such value does
 33 not exceed the amounts specified in this section, the claim
 34 of exemption shall be held to extend to the whole thereof
 35 without stating more and, if no appraisal is demanded,
 36 the property so claimed shall be set aside as exempt.
 37. Where the consumer owning exempt property is absent
 38 or incapable of acting or neglects or declines to act here-
 39 under, the claim of exemption may be made, the list de-
 40 livered and the affidavit made by his spouse with the
 41 same effect as if the owner had done so. Upon receipt of
 42 such a list, the officer to whom it is given shall immedi-
 43 ately exhibit such list to the creditor or his agent or at-
 44 torney. The rights granted and procedures provided for in
 45 article eight, chapter thirty-eight of this code shall apply
 46 to any proceeding under this section, except that the pro-
 47 visions of sections one and three of such article shall not
 48 apply.

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

1 Any nonresident person, except a nonresident corpora-
 2 tion authorized to do business in this state pursuant to the
 3 provisions of chapter thirty-one of this code, who takes or
 4 holds any negotiable instrument, nonnegotiable instru-
 5 ment, or contract or other writing, arising from a con-
 6 sumer credit sale or consumer lease which is subject to
 7 the provisions of this article, other than a sale or lease
 8 primarily for an agricultural purpose, or who is a lender
 9 subject to the provisions of section one hundred three of

10 this article, shall be conclusively presumed to have ap-
11 pointed the auditor of the state as his attorney in fact
12 with authority to accept service of notice and process in
13 any action or proceeding brought against him arising out
14 of such consumer credit sale, consumer lease or consumer
15 loan. A person shall be considered a nonresident here-
16 under if he is a nonresident at the time such service of
17 notice and process is sought. No act of such person ap-
18 pointing the auditor shall be necessary. Immediately
19 after being served with or accepting any such process or
20 notice, of which process or notice two copies for each de-
21 fendant shall be furnished the auditor with the original
22 notice or process, together with a fee of two dollars, the
23 auditor shall file in his office a copy of such process or
24 notice, with a note thereon endorsed of the time of service
25 or acceptance, as the case may be, and transmit one copy of
26 such process or notice by registered mail, return receipt
27 requested, to such person at his address, which address
28 shall be stated in such process or notice: *Provided*, That
29 such return receipt shall be signed by such person or an
30 agent or employee of such person if a corporation, or the
31 registered mail so sent by said auditor is refused by the
32 addressee and the registered mail is returned to said
33 auditor, or to his office, showing thereon the stamp of the
34 U. S. postal service that delivery thereof has been refused,
35 and such return receipt or registered mail is appended to
36 the original process or notice and filed therewith in the
37 clerk's office of the court from which such process or
38 notice was issued. But no process or notice shall be served
39 on the auditor or accepted by him less than ten days be-
40 fore the return date thereof. The court may order such
41 continuances as may be reasonable to afford each defen-
42 dant opportunity to defend the action or proceeding.

43 The provisions for service of process herein are cum-
44 ulative and nothing herein contained shall be construed
45 as a bar to the plaintiff in any action from having process
46 in such action served in any other mode and manner pro-
47 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 tual 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

20 (b) The effect of prepayment, refinancing or consoli-
21 dation is governed by the provisions on rebate upon pre-
22 payment, refinancing or consolidation, contained in sec-
23 tion one hundred eleven of this article.

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

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

41 (a) When applied to the median amount within each
42 range, it does not exceed the maximum permitted by sub-
43 section (1), and

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

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

55 (6) Notwithstanding any provision of this section to
56 the contrary, with respect to a consumer credit sale in-
57 volving a motor vehicle:

58 (a) A seller may contract for and receive a sales
59 finance charge not exceeding twelve percent per year

60 on the unpaid balance calculated according to the actuar-
 61 ial method when such sale is made less than one year after
 62 the year of the model year designation of such motor ve-
 63 hicle or such motor vehicle is purchased new;

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

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

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

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

8 In addition to the sales finance charge permitted by this
 9 section with respect to such sale, a seller may also contract
 10 for and receive additional charges, delinquency charges,
 11 and deferral charges and compute rebates upon prepay-
 12 ment, refinancing or consolidation as defined and author-
 13 ized 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 pur-
 2 suant to a revolving charge account, other than sales of
 3 real estate pursuant to section one hundred two of this
 4 article, the parties may contract for the payment by the
 5 buyer of a sales finance charge not exceeding that per-
 6 mitted in this section.

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

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

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

16 (c) The median amount within a specified range with-
17 in which the average daily balance of the account or the
18 balance of the account at the beginning of the first day of
19 the billing cycle, less all payments on and credits to such
20 account during such billing cycle and excluding all
21 charges to such account during such billing cycle, is in-
22 cluded. A charge may be made pursuant to this paragraph
23 only if the seller, subject to classifications and differen-
24 tiations he may reasonably establish, makes the same
25 charge on all balances within the specified range and if
26 the percentage when applied to the median amount with-
27 in the range does not produce a charge exceeding the
28 charge resulting from applying that percentage to the
29 lowest amount within the range by more than eight per-
30 cent of the charge on the median amount.

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

42 (4) Notwithstanding subsection (3), if there is an un-
43 paid balance on the date as of which the sales finance
44 charge is applied, the seller may contract for and receive
45 a charge not exceeding fifty cents if the billing cycle is
46 monthly or longer, or the pro rata part of fifty cents which
47 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 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.

33 (2) If the loan is precomputed:

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

37 (b) The effect of prepayment, refinancing or consolida-
38 tion is governed by the provisions on rebate upon prepay-
39 ment, refinancing or consolidation contained in section one
40 hundred eleven of this article.

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

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

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

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

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

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

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

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

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

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

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

39 (4) Notwithstanding subsection (3), if there is an un-
40 paid balance on the date as of which the loan finance

41 charge is applied the lender may contract for and receive a
42 charge not exceeding fifty cents if the billing cycle is
43 monthly or longer, or the pro rata part of fifty cents which
44 bears the same relation to fifty cents as the number of days
45 in the billing cycle bears to thirty if the billing cycle is
46 shorter than monthly, but no charge may be made pursu-
47 ant to this paragraph if the lender has made an annual
48 charge for the same period as permitted by the provisions
49 on additional charges.

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

1 With respect to a consumer credit sale or con-
2 sumer loan, refinancing or consolidation, the seller or
3 lender may by agreement with the consumer refinance
4 the unpaid balance owed to such sellor or lender
5 and may contract for and receive the applicable sales fi-
6 nance charge or loan finance charge, as the case may be,
7 based on the amount financed of a sale or principal of a
8 loan resulting from the refinancing at a rate not exceeding
9 that permitted by the provisions on sales finance charge
10 for consumer credit sales or loan finance charge for con-
11 sumer loans, as the case may be. For the purpose of deter-
12 mining the sales finance charge or loan finance charge per-
13 mitted, the amount financed or principal resulting from
14 the refinancing comprises the following:

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

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

26 (3) Accumulated unpaid delinquency or deferral
27 charges.

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

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

25 (2) If the debts consolidated arise exclusively from
26 consumer credit sales owed to such creditor, the transac-
27 tion is a consolidation with respect to a consumer credit
28 sale and the amount of the sales finance charge is governed
29 by the provisions on sales finance charges for consumer
30 credit sales other than certain sales of real estate or sales
31 made pursuant to revolving charge accounts (§46A-3-101).
32 If the debts consolidated arise exclusively from consumer
33 loans owed to such creditor, the transaction is a consoli-
34 dation with respect to a consumer loan and the amount of
35 the loan finance charge is governed by the provisions on
36 loan finance charges for consumer loans. If the debts con-
37 solidated include both a debt arising from a consumer
38 credit sale or sales owed to such creditor and a debt arising

39 from a consumer loan or loans owed to such creditor, then
40 the creditor may contract for and receive a finance charge
41 not in excess of that permitted for a consumer credit sale
42 based on that portion of the consolidation attributable to
43 such consumer credit sale or sales and may contract for
44 and receive a finance charge not in excess of that per-
45 mitted for a consumer loan based on that portion of the
46 consolidation attributable to a consumer loan or loans.

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

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

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

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

6 (a) Official fees and taxes;

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

12 (c) Annual charges, payable in advance, for the priv-
13 ilege of using a lender credit card or similar arrangement
14 which entitles the user to purchase goods or services from
15 at least one hundred persons not related to the issuer of

16 the lender credit card or similar arrangement, under an
17 arrangement pursuant to which the debts resulting from
18 the purchases are payable to the issuer;

19 (d) Charges for other benefits, including insurance,
20 conferred on the consumer, if the benefits are of value to
21 him and if the charges are reasonable in relation to the
22 benefits, are of a type which is not for credit, and are
23 excluded as permissible additional charges from the sales
24 finance charge or loan finance charge by rule adopted by
25 the commissioner: *Provided, however,* That as to insur-
26 ance, the policy as distinguished from a certificate of cov-
27 erage thereunder must be issued by an individual licensed
28 under the laws of this state to sell such insurance and the
29 determination of whether the charges therefor are reason-
30 able in relation to the benefits shall be determined by the
31 insurance commissioner of this state; and

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

34 (2) A creditor may take, obtain or provide reasonable
35 insurance on the life and earning capacity of any con-
36 sumer obligated on the consumer credit sale or consumer
37 loan, reasonable insurance on any real or personal prop-
38 erty offered as security subject to the provisions of this
39 subsection, and vendor's or creditor's single interest in-
40 surance with respect to which the insurer has no right of
41 subrogation. Only one policy of life insurance and/or one
42 policy of health and accident insurance and/or one policy
43 of accident insurance on any one consumer may be in force
44 with respect to any one contract or agreement at any one
45 time, but one policy may cover both a consumer and his
46 spouse.

47 (a) The amount, terms and conditions of property in-
48 surance shall have a reasonable relation to the existing
49 hazards or risk of loss, damage or destruction and be rea-
50 sonable in relation to the character and value of the prop-
51 erty insured or to be insured; and the term of such insur-
52 ance shall be reasonable in relation to the terms of credit:
53 *And provided further,* That nothing shall be deemed to
54 prohibit the consumer from obtaining, at his option, great-
55 er coverages for longer periods of time if he so desires;

56 (b) Life insurance shall be in an initial amount not to

57 exceed the total amount repayable under the consumer
58 credit agreement, and where a consumer credit sale or
59 consumer loan is repayable in installments, such insurance
60 shall at no time exceed the scheduled or actual amount of
61 unpaid indebtedness, whichever is greater. Life insurance
62 authorized by this paragraph shall provide that the bene-
63 fits shall be paid to the creditor or reduce or extinguish the
64 unpaid indebtedness: *Provided*, That if a separate charge
65 is made for such insurance and the amount of insurance
66 exceeds the unpaid indebtedness, where not prohibited,
67 then such excess shall be payable to the estate of the con-
68 sumer. The initial term of such life insurance in connec-
69 tion with a consumer credit sale, other than a sale pur-
70 suant to a revolving charge account, or in connection with
71 a consumer loan, other than a loan pursuant to a revolv-
72 ing loan account, shall not exceed the scheduled term of
73 the consumer credit agreement by more than fifteen days.
74 The aggregate amount of periodic benefits payable by
75 credit accident and health insurance in the event of dis-
76 ability, as defined in the policy, shall not exceed the un-
77 paid amount of such indebtedness; periodic benefits pay-
78 able in connection with a consumer credit sale pursuant to
79 a revolving charge account or of a consumer loan pursuant
80 to a revolving loan account may be based upon the autho-
81 rized credit limit;

82 (c) When the insurance is obtained or provided by or
83 through a creditor, the creditor may collect from the con-
84 sumer or include as part of the cash price of a consumer
85 credit sale or as part of the principal of a consumer loan,
86 or deduct from the proceeds of any consumer loan the
87 premium, or in the case of group insurance, the identifi-
88 able charge. The premium or identifiable charge for such
89 insurance required or obtained by a credit or may equal,
90 but shall not exceed the premium rate filed by the in-
91 surer with the insurance commissioner. In any case when
92 the creditor collects the entire premium for such insur-
93 ance in advance, such premium shall be remitted by such
94 creditor to the insurer or the insurance agent, as specified
95 by the insurer, within ten days from or after the end of
96 the month in which such collection was made;

97 (d) With respect to insurance against loss of or dam-

98 age to property, or against liability, the creditor shall fur-
 99 nish a clear and specific statement in writing to the debtor,
 100 setting forth the cost of the insurance if obtained from or
 101 through the creditor, and stating that the debtor may
 102 choose the person through whom the insurance is to be
 103 obtained; and

104 (e) With respect to consumer credit insurance pro-
 105 viding life, accident or health coverage, no creditor shall
 106 require a consumer to purchase such insurance or to pur-
 107 chase such insurance from such creditor or any particular
 108 agent, broker or insurance company as a condition pre-
 109 cedent to extending credit to or on behalf of such con-
 110 sumer.

§46A-3-110. Right to prepay.

1 Except for a consumer credit sale subject to the provis-
 2 ions of section one hundred two of this article or a non-
 3 precomputed consumer loan secured by an interest in land
 4 and subject to the provisions on rebate upon prepayment,
 5 the consumer may prepay in full the unpaid balance of a
 6 consumer credit sale or a consumer loan, refinancing or
 7 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 (1) When a consumer credit sale or consumer loan is
 2 precomputed all payments on account shall be applied to
 3 installments in the order in which they fall due, except as
 4 provided in subsection (3), section one hundred twelve of
 5 this article. When the total amount is payable in sub-
 6 stantially equal consecutive monthly installments, the
 7 portion of the sales finance charge or loan finance charge
 8 attributable to any particular monthly installment period
 9 shall be that proportion of the sales finance charge or loan
 10 finance charge originally contracted for, as the balance
 11 scheduled to be outstanding on the last day of the monthly
 12 installment period before deducting the payment, if any,
 13 scheduled to be made on that day bears to the sum of all
 14 the monthly installment balances under the original
 15 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
28 determining the rebate to which the consumer is entitled,
29 the rebate shall be calculated as of the nearest installment
30 due date. For the purpose of determining the installment
31 due date nearest the date of any prepayment in full, re-
32 financing or consolidation, any prepayment, refinancing or
33 consolidation of an obligation payable in monthly install-
34 ments made on or before the fifteenth day following an
35 installment due date shall be deemed to have been made
36 as of such installment due date, and any prepayment,
37 refinancing or consolidation made on or after the sixteenth
38 day shall be deemed to have been made on the next suc-
39 ceeding installment due date. Notwithstanding any other
40 provision herein contained, the creditor may collect or
41 retain the minimum charge within the limits stated in
42 this chapter if the sales finance charge or loan finance
43 charge earned at the time of prepayment, refinancing or
44 consolidation, is less than any minimum charge authorized
45 by this chapter. No rebate of less than one dollar need
46 be made.

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

54 (4) If the maturity of a precomputed consumer credit
55 sale or consumer loan is accelerated for any reason and

56 judgment is obtained, the debtor is entitled to the same
57 rebate as if the payment had been made on the date
58 judgment is entered, and such judgment shall bear in-
59 terest until paid at the rate of six percent per annum.

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

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

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

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

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

19 (3) No delinquency charge may be collected on an in-
20 stallment which is paid in full within ten days after its
21 scheduled or deferred installment due date, even though an
22 earlier maturing installment or a delinquency or deferral
23 charge on an earlier installment may not have been paid in
24 full. For purposes of this subsection, payments shall be ap-
25 plied first to current installments, then to delinquent in-
26 stallments, and then to delinquency and other charges.

27 (4) If two installments or parts thereof of a precomputed
28 consumer credit sale or consumer loan are in default for
29 ten days or more, the creditor may elect to convert such
30 sale or loan from a precomputed sale or loan to one in
31 which the sales finance charge or loan finance charge is
32 based on unpaid balances. In such event the creditor shall
33 make a rebate pursuant to the provisions on rebate upon
34 prepayment, refinancing or consolidation as of the matur-

35 ity date of any installment then delinquent, and thereafter
36 may make a sales finance charge or loan finance charge as
37 authorized by the appropriate provisions on sales finance
38 charges or loan finance charges for consumer credit sales
39 or consumer loans.

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

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

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

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

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

15 (3) No delinquency charge may be collected on an
16 installment which is paid in full within ten days after
17 its scheduled due date, even though an earlier maturing
18 installment or a delinquency or deferral charge on an
19 earlier installment may not have been paid in full. For
20 purposes of this subsection, payments shall be applied

21 first to current installments, then to delinquent install-
22 ments, and then to delinquency and other charges.

§46A-3-114. Deferral charges.

1 (1) With respect to a precomputed consumer credit
2 sale or consumer loan, refinancing or consolidation, the
3 parties before or after default may agree in writing to a
4 deferral of all or part of one or more unpaid install-
5 ments, and the seller or lender may make and collect a
6 deferral charge not exceeding the amount of the sales
7 finance charge or loan finance charge attributable to the
8 first of the deferred monthly installment periods multi-
9 plied by number of months in the deferral period (the
10 period in which no payment is required or made by reason
11 of a deferral): *Provided*, That no installment on which a
12 delinquency charge has been collected or partial payment
13 made shall be deferred unless the amount of the delin-
14 quency charge or partial payment is first applied to the de-
15 ferral charge. If prepayment in full occurs during a defer-
16 ral period, the portion of the deferral charge attributable to
17 the unexpired full months in the deferral period shall be
18 also rebated.

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

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

33 (4) The commissioner shall prescribe by rule the
34 method or procedure for the calculation of deferral charges
35 consistent with the other provisions of this chapter where

36 the precomputed consumer credit sale or consumer loan is
37 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
2 sale or a consumer loan, refinancing or consolidation con-
3 tains covenants by the consumer to perform certain duties
4 pertaining to insuring or preserving collateral or pay-
5 ment of taxes, fees or assessments and if the creditor
6 pursuant to the agreement pays for performance of such
7 duties on behalf of the consumer, the creditor may add
8 the amounts so paid to the debt. Within a reasonable
9 time after advancing any sums, he shall state to the con-
10 sumer in writing the amount of the sums advanced, any
11 charges with respect to this amount, any revised pay-
12 ment scheduled, and, if the duties of the consumer per-
13 formed by the creditor pertain to insurance, a brief de-
14 scription of the insurance paid for by the creditor includ-
15 ing the type and amount of coverages. No further infor-
16 mation need be given.

17 (2) A sales finance charge or a loan finance charge
18 may be made for sums advanced pursuant to subsection
19 (1) at a rate not exceeding the rate stated to the con-
20 sumer pursuant to the provisions of the "Federal Con-
21 sumer Credit Protection Act" with respect to the sale
22 or loan, refinancing or consolidation. With respect to a
23 revolving charge account or revolving loan account the
24 amount of the advance may be added to the unpaid
25 balance of the debt and the creditor may make a sales
26 finance charge or loan finance charge not exceeding that
27 permitted by the appropriate provisions on sales finance
28 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 re-
2 volving charge account or revolving loan account without
3 complying with this section, any additional cost or charge
4 to the consumer resulting from the change is an excess
5 charge and subject to the remedies provided in this chap-
6 ter.

7 (2) A creditor may change the terms of a revolving

8 charge account or revolving loan account whether or not
9 the change is authorized by prior agreement. Except as
10 provided in subsection (3), the creditor shall give to the
11 consumer written notice of such change not less than
12 fifteen days prior to the effective date of such change.

13 (3) The notice specified in subsection (2) is not re-
14 quired if:

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

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

23 (c) The change involves no significant cost to the con-
24 sumer;

25 (d) The consumer has previously consented in writ-
26 ing to the kind of change made and notice of the change
27 is given to the consumer in two billing cycles prior to the
28 effective date of the change; or

29 (e) The change applies only to purchases made or obli-
30 gations incurred after a date specified in a notice of the
31 change given in two billing cycles prior to the effective
32 date of the change.

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

36 (5) Under no circumstances may a change under the
37 provisions of this section be made so as to (a) increase
38 a sales finance charge or loan finance charge above that
39 permitted by the appropriate provisions on sales finance
40 charges or loan finance charges; or (b) apply a higher
41 sales finance charge or loan finance charge to the account
42 balance or debt balance unpaid as of the date the change
43 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
2 commissioner authorizing him to make supervised loans,
3 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

36 after the commissioner has mailed a writing to the appli-
 37 cant notifying him that the application has been denied
 38 and stating in substance the commissioner's findings sup-
 39 porting denial of the application.

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

47 (5) Upon giving the commissioner at least fifteen days'
 48 prior written notice, a licensee may (a) change the loca-
 49 tion of any place of business located within a municipality
 50 to any other location within that same municipality, or
 51 (b) change the location of any place of business located
 52 outside of a municipality to a location no more than five
 53 miles from the originally licensed location, but in no
 54 case may a licensee move any place of business located
 55 outside a municipality to a location within a municipality.
 56 A licensee may not move the location of any place of
 57 business located within a municipality to any other loca-
 58 tion outside of that municipality.

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

65 (7) A license issued under the provisions of this sec-
 66 tion shall not be transferable or assignable.

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

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

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

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

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

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

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

34 (5) Any person holding a license to make supervised
35 loans may relinquish the license by notifying the com-
36 missioner in writing of its relinquishment, but this re-
37 linquishment shall not affect his liability for acts prev-
38 iously committed.

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

43 (7) The commissioner may reinstate a license, termi-
44 nate a suspension or grant a new license to a person whose
45 license has been revoked or suspended if no fact or condi-
46 tion then exists which clearly would have justified the
47 commissioner in refusing to grant a license.

§46A-4-104. Records; annual reports.

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

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

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

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

10 (2) If the lender's records are located outside this
11 state, the lender at his option shall make them available
12 to the commissioner at a convenient location within this
13 state, or pay the reasonable and necessary expenses for
14 the commissioner or his representative to examine them

15 at the place where they are maintained. The commis-
16 sioner may designate representatives, including com-
17 parable officials of the state in which the records are
18 located, to inspect them on his behalf.

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

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

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

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

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

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

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

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

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

10 (b) Twenty-four percent per year on that part of the
11 unpaid balances of the principal which is more than two

12 hundred dollars but does not exceed six hundred dollars;
13 and

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

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

22 If the loan is precomputed:

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

26 (b) The effect of prepayment, refinancing or consoli-
27 dation is governed by the provisions on rebate upon pre-
28 payment, refinancing or consolidation contained in sec-
29 tion one hundred eleven, article three of this chapter.

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

40 (5) Subject to classifications and differentiations the
41 lender may reasonably establish, he may make the same
42 loan finance charge on all principal amounts within a
43 specified range. A loan finance charge so made does not
44 violate subsection (2) if:

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

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

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

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

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

59 (ii) The balance of the debt at the beginning of the
60 first day of the billing cycle, less all payments on and
61 credits to such debt during such billing cycle and exclud-
62 ing all additional borrowings during such billing cycle,
63 or

64 (iii) Subject to subsection (5), the median amount
65 within a specified range within which the average daily
66 balance of the debt or the balance of the debt at the be-
67 ginning of the first day of the billing cycle, less all pay-
68 ments on and credits to such debt during such billing
69 cycle and excluding all additional borrowings during such
70 billing cycle, is included. For the purpose of this sub-
71 division (a) a billing cycle is monthly if the billing state-
72 ment dates are on the same day each month or do not
73 vary by more than four days therefrom.

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

79 (c) Notwithstanding subdivisions (a) and (b) of this
80 subsection (6), if there is an unpaid balance on the date
81 as of which the loan finance charge is applied, the licensee
82 may contract for and receive a charge not exceeding fifty
83 cents if the billing cycle is monthly or longer, or the pro
84 rata part of fifty cents which bears the same relation to
85 fifty cents as the number of days in the billing cycle bears
86 to thirty if the billing cycle is shorter than monthly, but
87 no charge may be made pursuant to this subdivision (c) if
88 the lender has made an annual charge for the same period
89 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 agree-
2 ments with intent to obtain a higher loan finance charge

3 than would otherwise be permitted by the provisions of
 4 this article. A supervised lender uses multiple loan agree-
 5 ments if, with intent to obtain a higher loan finance charge
 6 than would otherwise be permitted, he allows any per-
 7 son, or husband and wife, to become obligated in any
 8 way under more than one loan agreement with the super-
 9 vised lender for a supervised loan under this article.

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

**§46A-4-109. Restrictions on interest in land as security; as-
 signment of earnings to supervised lender pro-
 hibited; when security interest on household
 furniture not valid; prohibitions as to renegotia-
 tion of loan discharged in bankruptcy.**

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

4 (2) Notwithstanding the provisions of section one hun-
 5 dred sixteen, article two of this chapter, no supervised
 6 lender shall take any assignment of or order for payment
 7 of any earnings to secure any loan made by any super-
 8 vised lender under this article. An assignment or order
 9 taken in violation of this subsection is void.

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

21 (4) A supervised lender may not renegotiate the origi-
 22 nal loan, or any part thereof, or make a new contract
 23 covering the original loan, or any part thereof, with any
 24 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 thousand two hundred dollars.

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

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

1 All references in other chapters of this code to small
2 loans, small loan lenders, small loan licensees and to

3 article seven-a, chapter forty-seven of this code, shall,
 4 after the operative date of this chapter, and despite the
 5 repeal of said statute, be read, construed and understood
 6 to mean and to have reference, respectively, to super-
 7 vised loans, supervised lenders, supervised lender li-
 8 censees, and to this article four.

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

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

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

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

ARTICLE 5. CIVIL LIABILITY AND CRIMINAL PENALTIES.

**§46A-5-101. Effect of violations on rights of parties; limita-
 tion of actions.**

1 (1) If a creditor has violated the provisions of this
 2 chapter applying to collection of excess charges (§46A-
 3 1-104), security in sales and leases (§46A-2-107), disclo-
 4 sure with respect to consumer leases (§46A-2-111), re-
 5 cepts, statements of account and evidences of payment
 6 (§46A-2-114), limitations on default charges (§46A-2-
 7 115), assignment of earnings (§46A-2-116), authorizations
 8 to confess judgment (§46A-2-117), illegal, fraudulent or
 9 unconscionable conduct (§46A-2-121), any prohibited debt
 10 Collection practice (§§46A-2-123 through 129), or restric-
 11 tions on interest in land as security, assignment of earn-
 12 ings to supervised lender, security agreement on house-
 13 hold furniture for benefit of supervised lender, and rene-
 14 gotiation by supervised lender of loan discharged in bank-

15 ruptcy (§46A-4-109), the consumer has a cause of action
16 to recover actual damages and in addition a right in an
17 action to recover from the person violating this chapter
18 a penalty in an amount determined by the court not less
19 than one hundred dollars nor more than one thousand
20 dollars. With respect to violations arising from consumer
21 credit sales or consumer loans made pursuant to revolving
22 charge accounts or revolving loan accounts, or from sales
23 as defined in article six of this chapter, no action pursuant
24 to this subsection may be brought more than four years
25 after the violations occurred. With respect to violations
26 arising from other consumer credit sales or consumer
27 loans, no action pursuant to this subsection may be
28 brought more than one year after the due date of the
29 last scheduled payment of the agreement.

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

48 (3) A consumer is not obligated to pay a charge in
49 excess of that allowed by this chapter, and if he has paid
50 an excess charge he has a right to a refund. A refund
51 may be made by reducing the consumer's obligation by
52 the amount of the excess charge. If the consumer has
53 paid an amount in excess of the lawful obligation under
54 the agreement, the consumer may recover in an action

55 the excess amount from the person who made the excess
56 charge or from an assignee of that person's rights who
57 undertakes direct collection of payments from or en-
58 forcement of rights against the consumer arising
59 from the debt.

60 (4) If a creditor has contracted for or received a
61 charge in excess of that allowed by this chapter, the con-
62 sumer may, in addition to recovering such excess charge,
63 also recover from the creditor or the person liable in an
64 action a penalty in an amount determined by the court
65 not less than one hundred dollars nor more than one
66 thousand dollars. With respect to excess charges arising
67 from consumer credit sales or consumer loans made pur-
68 suant to revolving charge accounts or revolving loan
69 accounts, no action pursuant to this subsection may be
70 brought more than four years after the time the excess
71 charge was made. With respect to excess charges arising
72 from other consumer credit sales or consumer loans no
73 action pursuant to this subsection may be brought more
74 than one year after the due date of the last scheduled
75 payment of the agreement pursuant to which the charge
76 was made.

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

79 (6) If an employer discharges an employee in vio-
80 lation of the provisions prohibiting discharge (§46A-2-
81 131), the employee may within ninety days bring a civil
82 action for recovery of wages lost as a result of the viola-
83 tion and for an order requiring the reinstatement of the
84 employee. Damages recoverable shall not exceed lost
85 wages for six weeks.

86 (7) A creditor has no liability for a penalty under
87 subsection (1) or subsection (4) if within fifteen days
88 after discovering an error, and prior to the institution
89 of an action under this section or the receipt of written
90 notice of the error, the creditor notifies the person con-
91 cerned of the error and corrects the error. If the viola-
92 tion consists of a prohibited agreement, giving the con-
93 sumer a corrected copy of the writing containing the
94 error is sufficient notification and correction. If the vio-

95 lation consists of an excess charge, correction shall be
96 made by an adjustment or refund.

97 (8) If the creditor establishes by a preponderance of
98 evidence that a violation is unintentional or the result
99 of a bona fide error of fact notwithstanding the mainte-
100 nance of procedures reasonably adapted to avoid any such
101 violation or error, no liability is imposed under subsections
102 (1), (2) and (4), and the validity of the transaction is not
103 affected.

§46A-5-102. Assertion of rights.

1 Rights granted by this chapter may be asserted as a
2 defense, set-off or counterclaim to an action against a
3 consumer without regard to any limitation of actions.

§46A-5-103. Willful violations.

1 (1) A supervised lender who willfully makes charges
2 in excess of those permitted by the provisions of article
3 four of this chapter, pertaining to supervised lenders,
4 shall be guilty of a misdemeanor and upon conviction
5 shall be fined not more than five thousand dollars, or
6 imprisoned not more than one year, or both fined and
7 imprisoned.

8 (2) A person who willfully engages in the business
9 of making supervised loans without a license in violation
10 of the provisions of article four of this chapter applying
11 to authority to make supervised loans shall be guilty
12 of a misdemeanor and upon conviction shall be fined
13 not more than five thousand dollars, or impris-
14 oned not more than one year, or both fined and
15 imprisoned.

16 (3) A person who willfully engages in the business of
17 making consumer credit sales or consumer loans, or of
18 taking assignments of rights against consumers arising
19 therefrom and undertakes direct collection of payments
20 or enforcement of these rights, without complying with
21 the provisions of section one hundred fifteen, article
22 seven of this chapter, concerning notification, shall be
23 guilty of a misdemeanor and upon conviction shall be
24 fined not more than one hundred dollars.

25 (4) Any person who willfully violates any of the
 26 provisions of sections one hundred twenty-three through
 27 one hundred twenty-eight, inclusive, article two of this
 28 chapter, by committing any of the specifically described
 29 and enumerated acts contained therein, shall be guilty
 30 of a misdemeanor, and, upon conviction thereof, shall
 31 be fined not more than one thousand dollars, or impris-
 32 oned in the county jail not more than one year, or both
 33 fined and imprisoned.

ARTICLE 6. GENERAL CONSUMER PROTECTION.

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

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

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

§46A-6-102. Definitions.

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

6 (a) "Advertisement" means the publication, dissemi-
 7 nation or circulation of any matter, oral or written, in-

8 cluding labeling, which tends to induce, directly or indi-
9 rectly, any person to enter into any obligation, sign any
10 contract, or acquire any title or interest in any goods or
11 services and includes every word devise to disguise any
12 form of business solicitation by using such terms as "re-
13 newal," "invoice," "bill," "statement" or "reminder," to
14 create an impression of existing obligation when there
15 is none, or other language to mislead any person in re-
16 lation to any sought-after commercial transaction.

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

26 (c) "Sale" includes any sale, offer for sale or attempt
27 to sell any goods for cash or credit or any services or
28 offer for services for cash or credit.

29 (d) "Trade" or "commerce" means the advertising,
30 offering for sale, sale or distribution of any goods or
31 services and shall include any trade or commerce, directly
32 or indirectly, affecting the people of this state.

33 (e) "Unfair methods of competition and unfair or
34 deceptive acts or practices" means and includes, but is not
35 limited to, any one or more of the following:

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

37 (2) Causing liklihood of confusion or of misunder-
38 standing as to the source, sponsorship, approval or certi-
39 fication of goods or services;

40 (3) Causing liklihood of confusion or of misunder-
41 standing as to affiliation, connection or association with,
42 or certification by, another;

43 (4) Using deceptive representations or designations
44 of geographic origin in connection with goods or services;

45 (5) Representing that goods or services have sponsor-
46 ship, approval, characteristics, ingredients, uses, benefits
47 or quantities that they do not have, or that a person has

48 a sponsorship, approval, status, affiliation or connection
49 that he does not have;

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

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

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

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

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

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

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

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

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

86 (f) "Warranty" means express and implied warranties
87 described and defined in sections three hundred thirteen,

88 three hundred fourteen and three hundred fifteen, article
89 two, chapter forty-six of this code and expressions or
90 actions of a merchant which assure the consumer that the
91 goods have described qualities or will perform in a des-
92 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
8 direct financial interest in the sale or distribution of the
9 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

11 actual damages or two hundred dollars, whichever is
 12 greater. The court may, in its discretion, provide such
 13 equitable relief as it deems necessary or proper.

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

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

1 Notwithstanding any other provision of law to the con-
 2 trary with respect to goods which are the subject of or
 3 are intended to become the subject of a consumer trans-
 4 action, no merchant shall:

5 (1) Exclude, modify or otherwise attempt to limit any
 6 warranty, express or implied, including the warranties of
 7 merchantability and fitness for a particular purpose; or

8 (2) Exclude, modify or attempt to limit any remedy
 9 provided by law, including the measure of damages avail-
 10 able, for a breach of warranty, express or implied.

11 Any such exclusion, modification or attempted limita-
 12 tion shall be void.

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

1 Notwithstanding any other provision of law to the con-
 2 trary, no action by a consumer for breach of warranty or
 3 for negligence with respect to goods subject to a consumer
 4 transaction shall fail because of a lack of privity between
 5 the consumer and the party against whom the claim is
 6 made. An action against any person for breach of war-
 7 ranty or for negligence with respect to goods subject to a
 8 consumer transaction shall not of itself constitute a bar
 9 to the bringing of an action against another person.

ARTICLE 7. ADMINISTRATION.

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

1 There is hereby created, under the authority of the
 2 attorney general of the state of West Virginia, a division

3 of consumer protection for the purposes set forth in this
4 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 chap-
2 ter, the attorney general within the limitations provided
3 by law may:

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

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

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

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

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

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

23 (2) Except for refund of an excess charge, no liability
24 is imposed under this chapter for an act done or omitted
25 in conformity with a rule of the attorney general or com-
26 missioner, notwithstanding that after the act or omission
27 the rule may be amended or repealed or be determined by
28 judicial or other authority to be invalid for any reason.
29 Any form or procedure which has been submitted to the
30 commissioner and the attorney general in writing and
31 approved in writing by them shall not be deemed a viola-
32 tion of the penalty provisions of this chapter notwith-
33 standing that such approval may be subsequently amended
34 or rescinded or be determined by judicial or other author-
35 ity to be invalid for any reason.

36 (3) On or before December first of each year, the attor-
 37 ney general and commissioner shall jointly or separately
 38 submit a report or reports to the governor and to the
 39 Legislature on the operation of their offices, on the use
 40 of consumer credit and on consumer protection prob-
 41 lems in the state, and on the problems of persons of small
 42 means obtaining credit from persons regularly engaged
 43 in extending sales or loan credit. For the purpose of mak-
 44 ing such report or reports, the attorney general and com-
 45 missioner are authorized to conduct research and make
 46 appropriate studies. The report or reports shall include
 47 a description of the examination and investigation pro-
 48 cedures and policies of their offices, a statement of poli-
 49 cies followed in deciding whether to investigate or exam-
 50 ine the offices of credit suppliers subject to this chapter,
 51 a statement of the number and percentages of offices
 52 which are periodically investigated or examined, a state-
 53 ment of the types of consumer credits and consumer pro-
 54 tection problems of both creditors and consumers which
 55 have come to their attention through their examinations
 56 and investigations and the disposition of them under exist-
 57 ing law, and a general statement of the activities of their
 58 offices and of others to promote the purposes of this chap-
 59 ter.

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

1 (1) With respect to supervised financial organizations,
 2 the powers of examination and investigation and adminis-
 3 trative enforcement shall be exercised by the official or
 4 agency to whose supervision the organization is subject.
 5 All other powers of the attorney general under this chap-
 6 ter may be exercised by him with respect to a supervised
 7 financial organization. Notwithstanding the first sentence
 8 of this subsection and notwithstanding subsection (3)
 9 of this section, the attorney general may pursue any
 10 investigation, prosecute any suit and take any other pro-
 11 per action relating to the enforcement of any consumer
 12 protection provision in this chapter.

13 (2) If the attorney general receives a complaint or
 14 other information concerning noncompliance with this
 15 chapter by a supervised financial organization, he shall

16 inform the official or agency having supervisory authority
17 over the organization concerned. The attorney general
18 may request information about supervised financial organ-
19 izations from the officials or agencies supervising them.

20 (3) The attorney general and any official or agency
21 of this state having supervisory authority over a super-
22 vised financial organizations are authorized and directed
23 to consult and assist one another in maintaining compli-
24 ance with this chapter. They may jointly pursue investi-
25 gations, prosecute actions, and take other official actions,
26 as they deem appropriate, if either of them otherwise is
27 empowered to take the action.

§46A-7-104. Investigatory powers.

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

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

26 (3) Upon failure of a person without lawful excuse to
27 obey a subpoena or to give testimony and upon reasonable
28 notice to all persons affected thereby, the attorney general

29 may apply to the circuit court of the county in which the
30 hearing is to be held for an order compelling compliance.

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

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

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

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

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

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

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

25 order affirming, enforcing, modifying and enforcing as
26 modified, or setting aside in whole or in part, the order
27 of the attorney general, or remanding the case to the
28 attorney general for further proceedings.

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

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

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

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

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

1 If it is claimed that a person has engaged in conduct
2 which could be subject to an order by the attorney general
3 or by a court, the attorney general may accept an assur-

4 ance in writing that the person will not engage in the
5 conduct in the future. Such assurance of voluntary com-
6 pliance shall not be considered an admission of violation
7 for any purpose, except that if a person giving such
8 assurance fails to comply with its terms, the assurance
9 is prima facie evidence that prior to such assurance he
10 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
2 a person from violating this chapter and for other appro-
3 priate relief.

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

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

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

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

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

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

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

17 (b) That the agreements or conduct of the respon-
18 dent have caused or are likely to cause injury to con-
19 sumers; and

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

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

25 (a) Belief by the creditor at the time consumer credit

26 sales or consumer loans are made that there was no
27 reasonable probability of payment in full of the obliga-
28 tion by the debtor;

29 (b) In the case of consumer credit sales, knowledge
30 by the seller at the time of the sale of the inability of
31 the buyer to receive substantial benefits from the prop-
32 erty or services sold;

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

38 (d) The fact that the creditor contracted for or re-
39 ceived separate charges for insurance with respect to
40 consumer credit sales or consumer loans with the effect
41 of making the sales or loans, considered as a whole, un-
42 conscionable; and

43 (e) The fact that the respondent has knowingly taken
44 advantage of the inability of the debtor reasonably to
45 protect his interests by reason of physical or mental in-
46 firmities, ignorance, illiteracy or inability to understand
47 the language of the agreement, or similar factors.

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

§46A-7-110. Temporary relief.

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

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

1 (1) After demand, the attorney general may bring a
2 civil action against a creditor for making or collecting
3 charges in excess of those permitted by this chapter. If
4 it is found that an excess charge has been made, the court
5 shall order the respondent to refund to the consumer the
6 amount of the excess charge. If a creditor has made an
7 excess charge in a deliberate violation of or in reckless
8 disregard for this chapter, or if a creditor has refused
9 to refund an excess charge within a reasonable time after
10 demand by the consumer or the attorney general, the
11 court may also order the respondent to pay to the con-
12 sumer a civil penalty in an amount determined by the
13 court not in excess of the greater of either the amount
14 of the sales finance charge or loan finance charge or ten
15 times the amount of the excess charge. Refunds and
16 penalties to which the consumer is entitled pursuant to
17 this subsection may be set off against the consumer's
18 obligation. If a consumer brings an action against a cred-
19 itor to recover an excess charge or civil penalty, an action
20 by the attorney general to recover for the same excess
21 charge shall be stayed while the consumer's action is
22 pending and shall be dismissed if the consumer's action
23 is dismissed with prejudice or results in a final judgment
24 granting or denying the consumer's claim. With respect
25 to excess charges arising from consumer credit sales made
26 pursuant to revolving charge accounts or from consumer
27 loans made pursuant to revolving loan accounts, no action
28 pursuant to this subsection may be brought more than four
29 years after the time the excess charge was made. With
30 respect to excess charges arising from other consumer cre-
31 dit sales or consumer loans, no action pursuant to this sub-
32 section may be brought more than one year after the due
33 date of the last scheduled payment of the agreement pur-
34 suant to which the charge was made. If the creditor estab-
35 lishes by a preponderance of evidence that a violation is
36 unintentional or the result of a bona fide error, no liability
37 to pay a penalty shall be imposed under this subsection.

38 (2) The attorney general may bring a civil action
39 against a creditor or other person to recover a civil pen-

40 alty for willfully violating this chapter, and if the court
41 finds that the defendant has engaged in a course of re-
42 peated and willful violations of this chapter, it may assess
43 a civil penalty of no more than five thousand dollars. No
44 civil penalty pursuant to this subsection may be imposed
45 for violations of this chapter occurring more than one
46 four years before the action is brought.

§46A-7-112. Jury trial.

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

§46A-7-114. Venue.

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

§46A-7-115. Notification.

1 (1) Every person engaged in this state in making con-
2 sumer credit sales or consumer loans and every person
3 having an office or place of business in this state who takes
4 assignments of and undertakes direct collection of pay-
5 ments from or enforcement of rights against debtors aris-
6 ing from such sales or loans shall file notification with the
7 state tax department within thirty days after commencing
8 business in this state, and, thereafter, on or before January
9 thirty-first of each year. A notification shall be deemed to
10 be in compliance with this section if the information here-
11 inafter required is given in an application for a business
12 registration certificate provided for in section four, arti-
13 cle twelve, chapter eleven of this code. The state tax
14 commissioner shall make any information required by this

15 section available to the attorney general or commissioner
16 upon request. The notification shall state:

17 (a) Name of the person,

18 (b) Name in which business is transacted if different
19 from (a);

20 (c) Address of principal office, which may be outside
21 this state;

22 (d) Address of all offices or retail stores, if any, in this
23 state at which consumer credit sales or consumer loans
24 are made, or in the case of a person taking assignments
25 of obligations, the offices or places of business within
26 this state at which business is transacted;

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

30 (f) Address of designated agent upon whom service
31 of process may be made in this state; and

32 (g) Whether supervised loans are made.

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

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

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

1 A consumer affairs advisory council is hereby created.
2 The council shall be composed of nine members who shall
3 be appointed by the governor within thirty days of the
4 date this section becomes operative, which such appoint-
5 ments shall be subject to confirmation by the Senate. The
6 members of the council shall be citizens and residents of
7 this state, who by reason of their training, education or
8 experience are qualified to carry out the functions of the
9 council under this section. Five members shall be repre-

10 sentatives of the general public and the other four mem-
11 bers shall be representatives of consumer financing and
12 retailing business in this state.

13 The first term of office for three of the representatives
14 of the general public, who shall be designated by the
15 governor, shall run through the thirtieth day of
16 June, one thousand nine hundred seventy-six. The first
17 term of office for the other two representatives of the
18 general public shall run through the thirtieth day of June,
19 one thousand nine hundred seventy-seven. The first term
20 of office for two of the representatives of consumer financ-
21 ing and retailing business in this state, who shall be desig-
22 nated by the governor, shall run through the thirtieth day
23 of June, one thousand nine hundred seventy-six. The first
24 term of office for the other two representatives of con-
25 sumer financing and retailing business in this state shall
26 run through the thirtieth day of June, one thousand nine
27 hundred seventy-seven. Thereafter, terms of members
28 shall be four years.

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

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

41 It shall be the duty of the council to advise and consult
42 with the attorney general concerning the exercise of his
43 powers, duties and responsibilities under this article, the
44 problems and practices in consumer transaction, any
45 abuses in the use of consumer credit in this state, the
46 problems relating to the collection of debts, the problems
47 and practices of credit reporting agencies and the prob-
48 lems of persons of limited means in consumer trans-
49 actions and to make recommendations on the need for ad-

50 ditional consumer protection legislation and programs
51 in this state.

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

**ARTICLE 8. OPERATIVE DATE AND PROVISIONS FOR TRANSI-
TION.**

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

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

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

15 (3) Transactions entered into before this chapter be-
16 comes operative and the rights, duties and interests flow-
17 ing from them thereafter may be terminated, completed,
18 consummated or enforced as required or permitted by
19 any statute, rule of law or other law amended, repealed
20 or modified by this chapter as though the repeal, amend-
21 ment or modification had not occurred, but this chapter
22 applies to:

23 (a) Refinancings and consolidations made after this
24 chapter becomes operative of consumer credit sales, con-
25 sumer leases and consumer loans whenever made;

26 (b) Consumer credit sales or consumer loans made
27 after this chapter becomes operative pursuant to revol-
28 ving charge accounts or revolving loan accounts entered
29 into, arranged or contracted for before this chapter be-
30 comes operative; and

31 (c) All consumer credit transactions made before this
32 chapter becomes operative insofar as this chapter limits
33 the remedies of creditors.

§46A-8-102. Severability.

1 If, for any reason, any article, section, sentence, clause,
2 phrase or provision of this chapter or the application there-
3 of to any person or circumstance is held unconstitutional
4 or invalid, such unconstitutionality or invalidity shall not
5 affect other articles, sections, sentences, clauses, phrases
6 or provisions or their application to any other person or
7 circumstance, and to this end each and every article, sec-
8 tion, sentence, clause, phrase or provision of this chapter
9 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
2 by law, legal interest shall continue to be at the rate of
3 six dollars upon one hundred dollars for a year, and pro-
4 portionately for a greater or less sum, or for a longer
5 or shorter time, and no person upon any contract other
6 than a contract in writing shall take for the loan or for-
7 bearance of money, or other thing, above the value of
8 such rate: *Provided*, That a charge of one dollar may be
9 made for any loan or forbearance of money or other
10 thing, where the interest at the rate aforesaid would not
11 amount to that sum, and the same shall not be a usurious
12 charge or rate of interest.

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

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

1 Except in cases where it is otherwise specially pro-
2 vided by law, parties may contract for and charge interest
3 for a secured or unsecured loan, repayable in install-
4 ments at a rate not in excess of: (a) Six percent per
5 annum upon the principal amount of the loan, for the
6 entire period of the loan, and add such charge to the
7 principal amount of the loan; or (b) six percent per an-
8 num upon the face amount of the instruments evidencing
9 the obligation to repay the loan, for the entire period
10 of the loan and deduct such charge in advance but in
11 no case shall the interest on such a discount loan exceed
12 an annual percentage rate of fifteen percent per annum
13 calculated according to the actuarial method: *Provided*,
14 That upon prepayment in full of a precomputed loan,
15 the lender shall rebate that portion of such charge at-
16 tributable to the prepaid periodic installment periods.
17 When the total amount is payable in substantially equal
18 consecutive monthly installments, the portion of such
19 charge attributable to any particular monthly installment
20 period shall be that proportion of the charge originally
21 contracted for, as the balance scheduled to be outstanding
22 on the last day of the monthly installment period before
23 deducting the payment, if any, scheduled to be made on
24 that day bears to the sum of all the monthly installment
25 balances under the original schedule of payments. (This
26 method of allocation is the sum of the digits method,
27 commonly referred to as the "Rule of 78".) If prepayment
28 in full of an obligation payable in monthly installments

29 . is made on other than an installment due date, the rebate
30 shall be calculated as of the nearest installment due date.
31 For the purpose of determining the installment due date
32 nearest the date of any prepayment in full, any prepay-
33 ment in full of an obligation payable in monthly install-
34 ments made on or before the fifteenth day following an
35 installment due date shall be determined to have been
36 made as of such installment date, and any prepayment in
37 full made on or after the sixteenth day shall be deemed
38 to have been made on the next succeeding installment
39 due date. The commissioner of banking shall prescribe
40 by rule the method or procedure for the allocation of
41 charges and the calculation of rebates consistent with
42 the sum of the digits method where the precomputed loan
43 is payable in unequal or irregular or in other than sub-
44 stantially equal consecutive monthly installments. Any
45 note evidencing any such installment loan may provide
46 that the entire unpaid balance thereof at the option of
47 the holder shall become due and payable upon default
48 in the payment of any stipulated installment without
49 impairing the negotiability of such note if otherwise
50 negotiable. Nothing herein contained shall affect or re-
51 strict the right of parties under section five of this article
52 to contract in writing for the payment of interest for the
53 loan or forbearance of money at a rate not to exceed eight
54 dollars upon one hundred dollars a year, and propor-
55 tionately for a greater or less sum, or for a longer or
56 shorter time, including points expressed as a percentage
57 of the loan divided by the number of years of the loan
58 contract.

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

H. Darrell Darby
Chairman Senate Committee

James C. Thurston
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Howard W. Barron
Clerk of the Senate

C. A. Blankenship
Clerk of the House of Delegates

H. G. Brotherton
President of the Senate

Lewis T. R. Starnes
Speaker House of Delegates

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

Arthur A. Starnes Jr.
Governor