

MODEL
CONSUMER CREDIT ACT
1973

A MODEL FOR CONSUMER PROTECTION
PREPARED BY THE NATIONAL CONSUMER LAW CENTER

NATIONAL CONSUMER LAW CENTER, INC.
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INTRODUCTION

The tremendous growth in the use of consumer credit has had a significant influence on post-war American society. Approximately six billion dollars in consumer credit outstanding at the end of 1945 had grown to almost 150 billion dollars projected for the close of 1972, a growth factor five times that of the gross national product.

In western civilization, credit has traditionally been closely regulated by the law. Yet the staggering rate of growth of consumer credit for the last generation has made it virtually impossible for the law to keep up with the problems inherent in such growth. Of particular significance in the lag between continued expansion of consumer credit and responsible regulation of its excesses is the unavailability of meaningful data to those not directly in the business of extending credit.

At the present time the Federal Reserve Board periodically reports national data on the classifications and amounts of consumer credit outstanding, extended and repaid. Few state agencies have the capability to gather and report this same information for their particular state. And no public agency, state or federal, has the power to gather information on the cost of credit operations, the adequacy of a given rate structure, the nature and extent of collection procedures followed and the nature, adequacy and effect of criteria used in credit extension.

At the same time examination of credit practices by the judicial system, a source of information frequently relied upon to identify problems in need of legislative solutions, has been equally unrevealing. A considerable portion of creditor activity undertaken to resolve disputes with debtors occurs outside of the courts. And that which is taken into the judicial system rarely goes beyond the trial level. Debtors, by virtue of their economic plight lack the resources to sustain the litigation necessary to pursue their rights at the appellate level.

As a result state legislatures, which bear the primary responsibility for regulation of consumer credit under our federal system, have not had access to information relevant to the task of identifying and resolving problems in need of solution.

That there are and have been serious abuses in the extension of consumer credit is evident from the concern articulated by legal assistance lawyers, private consumer groups and state and local public consumer protection agencies, many of which came into existence during the late 1960's. A major response to this concern was the enactment in 1968 by Congress of the Federal Consumer Credit Protection Act (Truth in Lending). At the same time the National Conference of Commissioners on Uniform State Laws promulgated the initial version of the Uniform Consumer Credit Code (UCCC). Consumer dissatisfaction with the UCCC was so widespread, however, that it became immediately apparent that the need for reform at the state level was to remain unfulfilled. In an attempt to fill this void the National Consumer Law Center published in 1970 the National Consumer Act (NCA) as a model bill to which legislatures could look for a standard. Since that time, many of the provisions of the NCA have served as the basis for consumer protection legislation throughout the nation. And, most recently, the substantive credit provisions of the NCA served as the starting point for what was eventually adopted in March, 1972 as the Wisconsin Consumer Act.

These experiences provided the foundation for the new Model Consumer Credit Act which follows. All credit legislation enacted in the last three years, including the Wisconsin modifications to the NCA, has been carefully analyzed for possible application nationwide. In addition, comments on the NCA have been considered in the revision of existing provisions and the addition of new ones to assure that the problems of consumers can be accommodated without severely limiting the legitimate needs of honest creditors. At the same time, we have carefully considered the proposed drafts for the official revision of the UCCC which is presently underway. These drafts show that those participating in the revision proceedings have no appreciation of the necessity of addressing themselves to the urgent problems of consumers and that the final product is likely to be as disappointing as the earlier version.

This new Model Consumer Credit Act is constructed upon three major principles. First, consumer credit is a commodity clothed with the public interest and, as such, should be closely regulated by an active administrative body similar to that which the public expects for insurance and utilities. A consumer credit administrator should have the power not only to conduct periodic inspections but also to promulgate rules effectuating the purposes of regulatory legislation, to require the production of data from creditors relative to the cost experiences and profitability factor of transactions, to require the use of standardized contracts and other documents relative to commonly recurring transactions, and to take creditors to court for violations which affect large numbers of consumers.

Second, adequate private remedies must exist so that consumers affected by illegal practices can obtain effective judicial redress. Even the most efficient of administrative agencies cannot police the day-to-day practices of an industry as large and pervasive in our economy as consumer credit. Consumers aggrieved by illegal practices can and should be their own best advocates. But relief in the form of minimum penalties together with an award for attorney's fees incurred in the prosecution of a case must be available both to encourage consumers to seek legal redress and to discourage creditors from engaging in questionable practices in the first instance.

Finally, practices and remedies undertaken to collect consumer debt must be confined to those which respect the realities of modern economic life. There is no question but that everyone should be expected to pay their legitimate debts. But no remedy or practice should be available which deprives an individual of resources necessary to meet the essential needs of the family.

This model Act endorses these principles and extends them comprehensively over every aspect of consumer credit. It is recommended for enactment in every state. At the very least it should serve as a standard for consumer protection against which the existing law or any new legislative proposal should be measured.

January 1973
Boston, Massachusetts

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

TABLE OF CONTENTS

ARTICLE 1
GENERAL PROVISIONS AND DEFINITIONS

PART 1

SHORT TITLE; CONSTRUCTION; GENERAL PROVISIONS.....1

SECTION

| | | |
|-------|--|---|
| 1.101 | SHORT TITLE..... | 1 |
| 1.102 | PURPOSES; RULES OF CONSTRUCTION..... | 1 |
| 1.103 | SUPPLEMENTARY GENERAL PRONCIPLES OF LAW..... | 3 |
| 1.104 | CONSTRUCTION AGAINST IMPLICIT REPEAL..... | 4 |
| 1.105 | SEVERABILITY..... | 5 |
| 1.106 | WAIVER; AGREEMENT TO FOREGO RIGHTS; SETTLEMENT OF CLAIMS..... | 5 |
| 1.107 | CONSTRUCTION OF RULES OF ADMINISTRATOR..... | 6 |

PART 2

PRINCIPLES OF INTERPRETATION.....8

SECTION

| | | |
|-------|---|----|
| 1.201 | OBLIGATION OF GOOD FAITH; NOTICE; KNOWLEDGE OR REASON TO KNOW..... | 8 |
| 1.202 | ADMISSIBILITY OF PAROL EVIDENCE..... | 10 |

| | | | |
|---|-------|---|----|
| 1 | 1.203 | INTERPRETATION OF LANGUAGE OF AGREEMENTS; | |
| 2 | | ENFORCEABILITY..... | 11 |
| 3 | 1.204 | WEIGHT OF EVIDENCE..... | 12 |
| 4 | 1.205 | ACKNOWLEDGEMENTS OR | |
| 5 | | CERTIFICATES OF PERFORMANCE..... | 12 |
| 6 | 1.206 | REASONABLE TIME TO PERFORM OBLIGATIONS..... | 13 |

PART 3

| | | | |
|---|--|-----------------------------|----|
| 9 | | SCOPE AND JURISDICTION..... | 14 |
|---|--|-----------------------------|----|

SECTION

| | | | |
|----|-------|---|----|
| 11 | 1.301 | APPLICABILITY AND EXCLUSIONS..... | 14 |
| 12 | 1.302 | EFFECT OF ACT ON POWERS OF ORGANIZATIONS..... | 15 |
| 13 | 1.303 | TERRITORIAL APPLICATION..... | 16 |
| 14 | 1.304 | JURISDICTION AND SERVICE OF PROCESS..... | 19 |

PART 4

| | | | |
|----|--|--------------------------|----|
| 18 | | GENERAL DEFINITIONS..... | 22 |
|----|--|--------------------------|----|

SECTION

| | | | |
|----|-------|-------------------------|----|
| 20 | 1.401 | "ACTUARIAL METHOD"..... | 24 |
| 21 | 1.402 | "ADMINISTRATOR"..... | 24 |
| 22 | 1.403 | "AGREEMENT"..... | 24 |
| 23 | 1.404 | "AMOUNT FINANCED"..... | 25 |
| 24 | 1.405 | "BILLING CYCLE"..... | 26 |
| 25 | 1.406 | "BUSINESS DAY"..... | 26 |

| | | | |
|----|-------|---|----|
| 1 | 1.407 | "CASH PRICE"..... | 26 |
| 2 | 1.408 | "COLLATERAL"..... | 27 |
| 3 | 1.409 | "CONSPICUOUS"..... | 27 |
| 4 | 1.410 | "CONSUMER"..... | 28 |
| 5 | 1.411 | "CONSUMER CREDIT SALE"..... | 28 |
| 6 | 1.412 | "CONSUMER CREDIT TRANSACTION"..... | 29 |
| 7 | 1.413 | "CONSUMER LEASE"..... | 29 |
| 8 | 1.414 | "CONSUMER LOAN"..... | 30 |
| 9 | 1.415 | "CONSUMER SALE"..... | 30 |
| 10 | 1.416 | "CONSUMER TRANSACTION"..... | 30 |
| 11 | 1.417 | "COSIGNER"..... | 31 |
| 12 | 1.418 | "CREDIT"..... | 31 |
| 13 | 1.419 | "CREDITOR"..... | 31 |
| 14 | 1.420 | "DEBT COLLECTION"..... | 32 |
| 15 | 1.421 | "EARNINGS"..... | 32 |
| 16 | 1.422 | "FEDERAL CONSUMER CREDIT PROTECTION ACT"..... | 32 |
| 17 | 1.423 | "FINANCE CHARGE"..... | 33 |
| 18 | 1.424 | "GOODS"..... | 34 |
| 19 | 1.425 | "LENDER"..... | 34 |
| 20 | 1.426 | "OFFICIAL FEES"..... | 35 |
| 21 | 1.427 | "OPEN END CREDIT PLAN"..... | 35 |
| 22 | 1.428 | "ORGANIZATION"..... | 36 |
| 23 | 1.429 | "PAYABLE IN INSTALMENTS"..... | 36 |
| 24 | 1.430 | "PERIODIC BILLING STATEMENT"..... | 37 |
| 25 | 1.431 | "PERSON"..... | 37 |
| 26 | 1.432 | "PERSONAL PROPERTY"..... | 38 |

| | | | |
|----|-------|--|----|
| 1 | 1.433 | "PERSON RELATED TO"..... | 38 |
| 2 | 1.434 | "PREPAID FINANCE CHARGE"..... | 39 |
| 3 | 1.435 | "PRESUMED" OR "PRESUMPTION"..... | 39 |
| 4 | 1.436 | "PROPERTY"..... | 39 |
| 5 | 1.437 | "REPRESENTATION"..... | 40 |
| 6 | 1.438 | "REQUIRED DEPOSIT BALANCE"..... | 40 |
| 7 | 1.439 | "SECURITY INTEREST"..... | 41 |
| 8 | 1.440 | "SELLER"..... | 42 |
| 9 | 1.441 | "SERVICES"..... | 42 |
| 10 | 1.442 | "SUPERVISED FINANCIAL ORGANIZATION"..... | 43 |
| 11 | 1.443 | "TRANSACTION"..... | 43 |
| 12 | 1.444 | "TRANSACTION TOTAL"..... | 44 |
| 13 | 1.445 | OTHER DEFINED TERMS..... | 44 |

14
15
16
17
18
19
20
21
22
23
24
25
26

ARTICLE 2
CONSUMER CREDIT TRANSACTIONS

PART 1
GENERAL PROVISIONS.....46

| | | | |
|--|---------|--|----|
| | SECTION | | |
| | 2.101 | AUTHORITY TO EXTEND CREDIT..... | 46 |
| | 2.102 | DISCRIMINATION PROHIBITED..... | 47 |
| | 2.103 | MAXIMUM PERIODS OF REPAYMENT..... | 47 |
| | 2.104 | PRESERVATION OF DATA AND WRITINGS..... | 48 |

| | | | |
|----|---------|---|----|
| 1 | | | |
| 2 | | | |
| 3 | | | |
| 4 | SECTION | | |
| 5 | 2.201 | CHARGES: OBLIGATIONS OF PARTIES..... | 50 |
| 6 | 2.202 | MAXIMUM FINANCE CHARGE: | |
| 7 | | OTHER THAN OPEN END CREDIT..... | 51 |
| 8 | 2.203 | MAXIMUM FINANCE CHARGE: OPEN END CREDIT..... | 54 |
| 9 | 2.204 | ADDITIONAL CHARGES..... | 56 |
| 10 | 2.205 | ADVANCES TO PERFORM AGREEMENTS OF CONSUMER... | 58 |
| 11 | 2.206 | DELINQUENCY CHARGES..... | 60 |
| 12 | 2.207 | DEFERRAL CHARGES..... | 61 |
| 13 | 2.208 | FINANCE CHARGE ON REFINANCING..... | 63 |
| 14 | 2.209 | FINANCE CHARGE ON CONSOLIDATION..... | 64 |
| 15 | 2.210 | RIGHT TO PREPAY..... | 66 |
| 16 | 2.211 | REBATE UPON PREPAYMENT..... | 66 |
| 17 | | | |
| 18 | | | |
| 19 | | | |
| 20 | | | |
| 21 | SECTION | | |
| 22 | 2.301 | GENERAL REQUIREMENTS AND PROVISIONS..... | 69 |
| 23 | 2.302 | NOTICE TO CONSUMER..... | 71 |
| 24 | 2.303 | DISCLOSURE; REQUIREMENTS OF FEDERAL ACT..... | 72 |
| 25 | 2.304 | DISCLOSURE; ADDITIONAL REQUIREMENTS..... | 73 |
| 26 | 2.305 | ESTIMATES OR APPROXIMATIONS..... | 75 |

| | | | |
|---|-------|----------------------------------|----|
| 1 | 2.306 | BILINGUAL DISCLOSURES..... | 76 |
| 2 | 2.307 | PROHIBITION OF BLANK SPACES..... | 77 |
| 3 | 2.308 | VIOLATIONS OF THIS PART..... | 77 |

4
5

PART 4

| | | | |
|---|--|--|----|
| 6 | LIMITATIONS ON AGREEMENTS AND PRACTICES..... | | 78 |
|---|--|--|----|

7
8

SECTION

| | | | |
|----|-------|--|----|
| 9 | 2.401 | USE OF MULTIPLE AGREEMENTS..... | 79 |
| 10 | 2.402 | BALLOON PAYMENTS PROHIBITED..... | 79 |
| 11 | 2.403 | LIMITATION ON DEFAULT CHARGES..... | 81 |
| 12 | 2.404 | ATTORNEY'S FEES..... | 81 |
| 13 | 2.405 | ASSIGNMENTS OF EARNINGS PROHIBITED..... | 81 |
| 14 | 2.406 | LIMITATIONS ON EXECUTORY TRANSACTIONS..... | 82 |
| 15 | 2.407 | RESTRICTION ON LIABILITY | |
| 16 | | IN CONSUMER LEASE..... | 83 |
| 17 | 2.408 | DEFINITIONS: "CREDIT CARD"; "CARDHOLDER"; | |
| 18 | | RESTRICTIONS ON LIABILITY FOR | |
| 19 | | UNAUTHORIZED USE OF CREDIT CARD..... | 83 |
| 20 | 2.409 | POWERS OF ATTORNEY PROHIBITED..... | 84 |
| 21 | 2.410 | MODIFICATION OF TERMS OF AGREEMENT..... | 85 |
| 22 | 2.411 | RESTRICTIONS ON SECURITY INTERESTS..... | 85 |
| 23 | 2.412 | SECURITY INTERESTS: CONSOLIDATIONS; | |
| 24 | | OPEN END CREDIT PLANS..... | 88 |
| 25 | 2.413 | NOTICE OF ASSIGNMENT..... | 90 |
| 26 | 2.414 | VIOLATIONS OF THIS PART..... | 91 |

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

PART 5

UNFAIR OR DECEPTIVE PRACTICES AND WARRANTIES.....92

SECTION

- 2.501 UNFAIR OR DECEPTIVE ACTS OR PRACTICES PROHIBITED.....92
- 2.502 DEFINITIONS: "WARRANTY"; "MERCHANTABLE".....94
- 2.503 DISCLAIMER OF WARRANTIES PROHIBITED.....95
- 2.504 BREACH OF WARRANTY; PRIVACY ABOLISHED.....96

PART 6

PRESERVATION OF CLAIMS, DEFENSES AND EQUITIES OF CONSUMER.....97

SECTION

- 2.601 PRESERVATION OF CLAIMS, DEFENSES AND EQUITIES; DEFINITION: "TRANSFeree".....97
- 2.602 LIABILITY OF TRANSFeree.....98
- 2.603 LIABILITY OF LENDER AND TRANSFeree.....99
- 2.604 COSTS; IMMUNITY; SUBROGATION.....102

PART 7

DIRECT SOLICITATION TRANSACTIONS.....104

SECTION

- 2.701 DEFINITIONS: "DIRECT SOLICITATION TRANSACTION"; "CONCLUSION OF THE DIRECT SOLICITATION".....104

| | | | |
|----|-------|---|-----|
| 1 | 2.702 | EMERGENCY EXCLUDED..... | 105 |
| 2 | 2.703 | REQUIREMENT OF APPROVAL..... | 106 |
| 3 | 2.704 | DISCLOSURE OF RIGHT TO APPROVE..... | 107 |
| 4 | 2.705 | MANNER OF APPROVAL..... | 108 |
| 5 | 2.706 | FORM AND CONTENT OF NOTICE OF APPROVAL..... | 109 |
| 6 | 2.707 | TRANSACTIONS NOT APPROVED: OBLIGATION OF | |
| 7 | | CREDITOR; WAIVER OF RIGHTS..... | 111 |
| 8 | 2.708 | TRANSACTIONS NOT APPROVED: RIGHTS AND | |
| 9 | | OBLIGATIONS OF CONSUMER..... | 112 |
| 10 | 2.709 | DISCLOSURE OF PURPOSE OF TRANSACTION..... | 114 |
| 11 | 2.710 | VIOLATIONS OF THIS PART..... | 114 |

ARTICLE 3

ADMINISTRATION OF CREDIT ACCOUNTS

PART 1

BILLING, RECEIPTS AND PAYMENTS.....115

SECTION

| | | | |
|----|-------|--|-----|
| 20 | 3.101 | RECEIPTS FOR CASH PAYMENT..... | 115 |
| 21 | 3.102 | PERIODIC BILLING STATEMENT..... | 116 |
| 22 | 3.103 | MAILING OF PERIODIC BILLING STATEMENT..... | 117 |
| 23 | 3.104 | PAYMENT CREDITED ON DATE OF RECEIPT..... | 117 |
| 24 | 3.105 | ACCOUNTING BY MERCHANT OF PAYMENT | |
| 25 | | RECEIVED AND CHARGES IMPOSED..... | 118 |

26

| | | | |
|---|-------|--|-----|
| 1 | 3.106 | RETURNS AND OTHER CREDITS IN | |
| 2 | | OPEN END CREDIT PLANS..... | 119 |
| 3 | 3.107 | CREDITING EXCESS PAYMENT..... | 119 |
| 4 | 3.108 | ACKNOWLEDGMENT OF PAYMENT AND | |
| 5 | | SATISFACTION OF SECURITY INTEREST..... | 120 |
| 6 | 3.109 | VIOLATIONS OF THIS PART..... | 120 |

7
8

PART 2

| | | | |
|---|--|--------------------------------|-----|
| 9 | | ERRORS IN CREDIT ACCOUNTS..... | 121 |
|---|--|--------------------------------|-----|

10

SECTION

| | | | |
|----|-------|---|-----|
| 11 | | | |
| 12 | 3.201 | INQUIRIES ABOUT ERRORS..... | 121 |
| 13 | 3.202 | RESPONSE TO CONSUMER INQUIRIES..... | 121 |
| 14 | 3.203 | CORRECTIVE ACTION BY THE CREDITOR..... | 122 |
| 15 | 3.204 | CREDITOR ACTION ON DISPUTED ACCOUNTS..... | 123 |
| 16 | 3.205 | VIOLATIONS OF THIS PART..... | 124 |

17

ARTICLE 4
CREDIT INSURANCE

18
19
20

PART 1

| | | | |
|----|--|---------------------------|-----|
| 21 | | INSURANCE IN GENERAL..... | 126 |
|----|--|---------------------------|-----|

SECTION

| | | | |
|----|-------|--|-----|
| 22 | | | |
| 23 | | | |
| 24 | 4.101 | APPLICABILITY..... | 127 |
| 25 | 4.102 | DEFINITION: "CONSUMER CREDIT INSURANCE"..... | 127 |

26

| | | | |
|----|---------|---|-----|
| 1 | 4.103 | CREDITOR'S PROVISION OF AND | |
| 2 | | CHARGE FOR INSURANCE..... | 128 |
| 3 | 4.104 | CONDITIONS APPLYING TO INSURANCE | |
| 4 | | TO BE PROVIDED BY CREDITOR..... | 129 |
| 5 | 4.105 | MAXIMUM CHARGE FOR INSURANCE..... | 132 |
| 6 | 4.106 | REFUND OR CREDIT REQUIRED; AMOUNT..... | 133 |
| 7 | 4.107 | CHOICE OF INSURER; EXISTING INSURANCE..... | 135 |
| 8 | 4.108 | DEFERRAL, REFINANCING AND CONSOLIDATION | |
| 9 | | AGREEMENTS; DUPLICATE CHARGES; | |
| 10 | | LIMITATION ON AMOUNT..... | 136 |
| 11 | 4.109 | FEE OR COMMISSIONS; INDIRECT BENEFITS..... | 138 |
| 12 | 4.110 | COOPERATION BETWEEN ADMINISTRATOR | |
| 13 | | AND (COMMISSIONER OF INSURANCE)..... | 138 |
| 14 | 4.111 | ADMINISTRATIVE ACTION OF | |
| 15 | | (COMMISSIONER OF INSURANCE)..... | 139 |
| 16 | 4.112 | CLAIMS..... | 139 |
| 17 | 4.113 | VIOLATIONS OF THIS PART..... | 140 |
| 18 | | | |
| 19 | | PART 2 | |
| 20 | | CONSUMER CREDIT INSURANCE..... | 141 |
| 21 | | | |
| 22 | SECTION | | |
| 23 | 4.201 | AGREEMENT TO CHARGES; REQUIREMENTS..... | 141 |
| 24 | 4.202 | TERM OF INSURANCE..... | 142 |
| 25 | 4.203 | AMOUNT OF INSURANCE..... | 144 |
| 26 | 4.204 | FILING AND APPROVAL OF RATES AND FORMS..... | 145 |

1 4.205 REGULATION OF PREMIUMS.....147
 2 4.206 VIOLATIONS OF THIS PART.....150

3
 4

PART 3

5 PROPERTY AND LIABILITY INSURANCE.....151

6

7 SECTION

8 4.301 AGREEMENTS TO CHARGES; REQUIREMENTS.....151
 9 4.302 ADDITIONAL REQUIREMENTS
 10 FOR PROPERTY INSURANCE.....153
 11 4.303 RISK OF LOSS; INSURANCE
 12 ON CREDITOR'S INTEREST ONLY.....154
 13 4.304 CANCELLATION BY CREDITOR.....154
 14 4.305 VIOLATIONS OF THIS PART.....155

15

ARTICLE 5

CREDIT REPORTING

16
 17

PART 1

20 GENERAL PROVISIONS.....156

21 SECTION

22 5.101 APPLICABILITY.....156
 23 5.102 DEFINITIONS: "ACCOUNT";
 24 "ADVERSE INFORMATION".....157
 25 5.103 DEFINITIONS: "CONSUMER REPORT";
 26 "CONSUMER REPORTING AGENCY".....157

| | | | |
|---|-------|---|-----|
| 1 | 5.104 | DEFINITIONS: "FILE"; "MERCHANT"..... | 158 |
| 2 | 5.105 | DISCLOSURE TO CONSUMER OF PROPOSED | |
| 3 | | INVESTIGATION AND CONSUMER REPORT..... | 159 |
| 4 | 5.106 | PROHIBITED INFORMATION; ACCURACY, RELEVANCY | |
| 5 | | AND OBSOLESCENCE OF INFORMATION..... | 159 |
| 6 | 5.107 | PRESERVING CONFIDENTIALITY..... | 161 |
| 7 | 5.108 | ACCESS BY GOVERNMENTAL AGENCIES..... | 161 |
| 8 | 5.109 | OBSOLETE INFORMATION..... | 162 |

9

PART 2

| | | | |
|----|--|----------------------------------|-----|
| 10 | | CONSUMER REPORTING AGENCIES..... | 164 |
|----|--|----------------------------------|-----|

12

SECTION

| | | | |
|----|-------|---|-----|
| 13 | | | |
| 14 | 5.201 | USES FOR WHICH INFORMATION MAY BE PROVIDED... | 164 |
| 15 | 5.202 | ACCESS BY CONSUMER TO FILE..... | 166 |
| 16 | 5.203 | CORRECTION OF INACCURATE, IRRELEVANT | |
| 17 | | AND MISLEADING INFORMATION..... | 168 |
| 18 | 5.204 | DISCLOSURE OF ADVERSE INFORMATION | |
| 19 | | OF PUBLIC RECORD..... | 170 |

20

PART 3

| | | | |
|----|--|----------------|-----|
| 21 | | MERCHANTS..... | 172 |
|----|--|----------------|-----|

23

SECTION

| | | | |
|----|-------|--------------------------------|-----|
| 24 | | | |
| 25 | 5.301 | USE OF REPORTS FROM | |
| 26 | | CONSUMER REPORTING AGENCY..... | 172 |

| | | | |
|----|---------|--|-----|
| 1 | 5.302 | DISCLOSURE TO CONSUMER OF CONSUMER REPORT..... | 173 |
| 2 | 5.303 | REPORT OF INFORMATION TO | |
| 3 | | CONSUMER REPORTING AGENCY..... | 174 |
| 4 | 5.304 | REPORT OF DISPUTED ACCOUNTS | |
| 5 | | TO CONSUMER REPORTING AGENCY..... | 174 |
| 6 | 5.305 | MERCHANT HARASSMENT..... | 175 |
| 7 | | | |
| 8 | | PART 4 | |
| 9 | | REMEDIES..... | 177 |
| 10 | | | |
| 11 | SECTION | | |
| 12 | 5.401 | VIOLATIONS OF THIS ARTICLE..... | 177 |
| 13 | 5.402 | ACTION FOR COMMUNICATION OF FALSE, | |
| 14 | | MISLEADING OR INACCURATE INFORMATION..... | 177 |
| 15 | | | |
| 16 | | ARTICLE 6 | |
| 17 | | DEBT COLLECTION | |
| 18 | | | |
| 19 | | PART 1 | |
| 20 | | GENERAL PROVISIONS..... | 178 |
| 21 | | | |
| 22 | SECTION | | |
| 23 | 6.101 | APPLICABILITY..... | 178 |
| 24 | 6.102 | DEFINITIONS: "CLAIM"; "DEBT COLLECTOR"..... | 178 |
| 25 | | | |
| 26 | | | |

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

PART 2

PROHIBITED PRACTICES.....180

SECTION

6.201 PRACTICE OF LAW BY DEBT COLLECTORS.....180
6.202 THREATS OR COERCION.....181
6.203 HARASSMENT; ABUSE.....183
6.204 UNREASONABLE PUBLICATION.....184
6.205 FALSE, DECEPTIVE OR
MISLEADING REPRESENTATIONS.....185
6.206 UNFAIR OR UNCONSCIONABLE MEANS.....187
6.207 COMMUNICATIONS LAWS AND REGULATIONS.....189

PART 3

DISCLOSURE AND REMEDIES.....190

SECTION

6.301 DISCLOSURE WHEN CLAIM TRANSFERRED.....190
6.302 ACCESS BY CONSUMER TO FILE.....191
6.303 VIOLATIONS OF THIS ARTICLE.....191

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

ARTICLE 7
ENFORCEMENT OF CREDIT OBLIGATIONS

PART 1
GENERAL PROVISIONS.....192

SECTION

7.101 APPLICABILITY.....192

7.102 DEFINITIONS: "DEFAULT".....193

7.103 ACCRUAL OF ACTION; LIMITATIONS.....195

7.104 UNENFORCEABLE RIGHTS OR OBLIGATIONS.....196

7.105 JURISDICTION OF ACTIONS.....196

7.106 PLEADING; PROOF.....197

7.107 ATTACHMENT OR SETOFF
BEFORE JUDGMENT PROHIBITED.....197

7.108 RIGHT TO CURE DEFAULT.....198

7.109 STAY OF ENFORCEMENT OF JUDGMENT.....200

7.110 EXEMPT PROPERTY.....201

7.111 LIABILITY OF COSIGNER.....202

7.112 DOING BUSINESS WITHOUT VALID REGISTRATION....202

PART 2
ENFORCEMENT OF SECURITY INTERESTS.....204

SECTION

7.201 GENERAL PROVISIONS.....204

7.202 NON-JUDICIAL ENFORCEMENT PROHIBITED.....205

| | | | |
|---|-------|--|-----|
| 1 | 7.203 | VOLUNTARY SURRENDER OF COLLATERAL..... | 205 |
| 2 | 7.204 | PROCESS FOR POSSESSION; PLEADINGS..... | 206 |
| 3 | 7.205 | SEIZURE OF COLLATERAL | |
| 4 | | PRIOR TO FINAL JUDGMENT..... | 206 |
| 5 | 7.206 | RECOVERY OF PROPERTY SEIZED | |
| 6 | | PRIOR TO FINAL JUDGMENT..... | 209 |
| 7 | 7.207 | RIGHTS IN COLLATERAL AFTER JUDGMENT..... | 211 |
| 8 | 7.208 | PROHIBITION OF DEFICIENCY; | |
| 9 | | RIGHT TO SURPLUS..... | 211 |

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

ARTICLE 8
CONSUMER REMEDIES AND ACTIONS

PART 1
REMEDIES FOR VIOLATIONS.....213

SECTION

| | | |
|-------|--|-----|
| 8.101 | APPLICABILITY..... | 214 |
| 8.102 | REMEDIES TO BE LIBERALLY ADMINISTERED..... | 214 |
| 8.103 | LIMITATIONS OF ACTIONS..... | 215 |
| 8.104 | UNCONSCIONABILITY..... | 216 |
| 8.105 | REMEDY FOR CERTAIN VIOLATIONS; | |
| | \$100 OR 10 PER CENT OF TRANSACTION TOTAL..... | 220 |
| 8.106 | REMEDY FOR CERTAIN VIOLATIONS; | |
| | \$500 OR 20 PER CENT OF TRANSACTION TOTAL..... | 220 |

| | | | |
|----|-------|--|-----|
| 1 | 8.107 | REMEDY FOR CERTAIN VIOLATIONS; | |
| 2 | | \$1000 OR 30 PER CENT OF TRANSACTION TOTAL.... | 221 |
| 3 | 8.108 | REMEDY FOR CERTAIN VIOLATIONS; | |
| 4 | | VARIABLE RECOVERY..... | 221 |
| 5 | 8.109 | TRANSACTIONS WHICH ARE VOID..... | 222 |
| 6 | 8.110 | EXEMPLARY DAMAGES FOR WILFUL VIOLATIONS..... | 222 |
| 7 | 8.111 | LIABILITY OF CORPORATE OFFICERS, | |
| 8 | | AGENTS AND EMPLOYEES..... | 223 |
| 9 | 8.112 | LIMITATIONS ON LIABILITY OF | |
| 10 | | COMMUNICATIONS MEDIA..... | 224 |
| 11 | 8.113 | LITIGATION EXPENSES AND | |
| 12 | | REASONABLE ATTORNEY'S FEES..... | 225 |

PART 2

| | | | |
|----|---------|------------------------------------|-----|
| 13 | | | |
| 14 | | | |
| 15 | | INJUNCTIONS AND CLASS ACTIONS..... | 227 |
| 16 | | | |
| 17 | SECTION | | |
| 18 | 8.201 | INJUNCTIONS; RESTRAINING ORDERS; | |
| 19 | | TEMPORARY RESTRAINING ORDERS..... | 227 |
| 20 | 8.202 | CLASS ACTIONS..... | 230 |

21
22
23
24
25
26

1
2
3
4
5
6
7
8
9
10
11
12
13
14
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16
17
18
19
20
21
22
23
24
25
26

ARTICLE 9
ADMINISTRATION

PART 1

POWERS AND FUNCTIONS OF ADMINISTRATOR.....238

SECTION

9.101 APPLICABILITY.....239
9.102 DEFINITION: "ADMINISTRATOR".....239
9.103 GENERAL POWERS OF THE ADMINISTRATOR.....239
9.104 INVESTIGATORY POWERS.....242
9.105 ADMINISTRATIVE POWERS WITH RESPECT TO
SUPERVISED FINANCIAL ORGANIZATIONS
AND OTHER PERSONS.....244
9.106 REPRESENTATION OF THE INTERESTS
OF CONSUMERS.....245
9.107 DUTY TO REPORT.....247
9.108 APPLICATION OF PART ON ADMINISTRATIVE
PROCEDURE AND JUDICIAL REVIEW.....250
9.109 ENFORCEMENT ORDERS.....250
9.110 REMEDIES OF CONSUMERS NOT AFFECTED.....253
9.111 VIOLATIONS AND ENFORCEMENT.....253
9.112 FEES AND RECOVERIES.....254

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

PART 2

REGISTRATION AND FEES.....255

SECTION

9.201 REGISTRATION REQUIRED.....255
9.202 REGISTRATION APPLICATION.....256
9.203 FEES.....258
9.204 VALIDATION.....260
9.205 TERM OF VALIDATION.....261
9.206 INVALIDATION OF REGISTRATION.....262
9.207 DOING BUSINESS WITHOUT VALID REGISTRATION;
UNENFORCEABILITY OF CONTRACTS.....263
9.208 DOING BUSINESS WITHOUT VALID
REGISTRATION; LOSS OF LIEN.....264
9.209 DOING BUSINESS WITHOUT
VALID REGISTRATION; PENALTY.....264

PART 3

COUNCIL OF ADVISORS ON CONSUMER AFFAIRS.....266

SECTION

9.301 COUNCIL OF ADVISORS ON CONSUMER AFFAIRS.....266
9.302 FUNCTION OF COUNCIL; CONFLICT OF INTEREST....267
9.303 MEETINGS.....268

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

PART 4

ADMINISTRATIVE PROCEDURE AND JUDICIAL REVIEW.....269

SECTION

9.401 SUPPLEMENT TO PART 1.....270

9.402 DEFINITIONS: "CONTESTED CASE";
"PARTY"; "RULE".....270

9.403 PUBLIC INFORMATION; ADOPTION OF RULES;
AVAILABILITY OF RULES AND ORDERS.....271

9.404 PROCEDURE FOR ADOPTION OF RULES.....274

9.405 FILING AND TAKING EFFECT OF RULES.....276

9.406 PUBLICATION OF RULES.....277

9.407 PETITION FOR ADOPTION OF RULES.....277

9.408 DECLARATORY JUDGMENT ON VALIDITY
OR APPLICABILITY OF RULES.....278

9.409 DECLARATORY RULINGS BY ADMINISTRATOR.....278

9.410 CONTESTED CASES; NOTICE; HEARING; RECORDS....278

9.411 RULES OF EVIDENCE; OFFICIAL NOTICE.....282

9.412 DECISIONS AND ORDERS.....283

9.413 JUDICIAL REVIEW OF CONTESTED CASES.....284

9.414 APPEALS.....287

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

ARTICLE 10

EFFECTIVE DATE AND REPEALER.....288

SECTION

10.101 TIME OF TAKING EFFECT;
PROVISIONS FOR TRANSITION.....288

10.102 SPECIFIC REPEALER AND AMENDMENTS.....289

10.103 GENERAL REPEALER.....290

1 MODEL CONSUMER CREDIT ACT
2 AN ACT

3
4 Relating to consumer credit transactions constitu-
5 ting the [state] Consumer Credit Act; consolidating and
6 revising the law relating to consumer credit transactions
7 including the instalment sale of goods and services,
8 consumer loans and consumer leases; revising the law
9 relating to usury and other charges for consumer credit;
10 consolidating and revising certain aspects of the law
11 relating to unfair or deceptive practices and warranties
12 in consumer credit transactions; regulating practices
13 relating to insurance in consumer credit transactions;
14 regulating credit reporting; regulating the practices of
15 debt collection; providing for administrative regulation
16 of consumer credit transactions and repealing inconsis-
17 tent legislation.

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ARTICLE 1
GENERAL PROVISIONS AND DEFINITIONS

PART 1
SHORT TITLE; CONSTRUCTION; GENERAL PROVISIONS

- SECTION
- 1.101 SHORT TITLE
 - 1.102 PURPOSES; RULES OF CONSTRUCTION
 - 1.103 SUPPLEMENTARY GENERAL PRINCIPLES OF LAW
 - 1.104 CONSTRUCTION AGAINST IMPLICIT REPEAL
 - 1.105 SEVERABILITY
 - 1.106 WAIVER; AGREEMENT TO FOREGO RIGHTS;
SETTLEMENT OF CLAIMS
 - 1.107 CONSTRUCTION OF RULES OF ADMINISTRATOR

SECTION 1.101 SHORT TITLE

This Act shall be known and may be cited as the
[State] Consumer Credit Act.

SECTION 1.102 PURPOSES; RULES OF CONSTRUCTION

(1) This Act shall be liberally construed and
applied to promote its underlying purposes and policies.

- 1 (2) The underlying purposes and policies of this
2 Act are
- 3 (a) to simplify, clarify and modernize the
4 law governing consumer credit transactions;
5 and
- 6 (b) to protect consumers against unfair,
7 deceptive or unconscionable practices by
8 suppliers of consumer credit, debt
9 collectors and credit reporting agencies;
10 and
- 11 (c) to assure that consumers are provided
12 meaningful disclosure of the essential
13 factors of credit transactions; and
- 14 (d) to permit and encourage the development
15 of fair and economically sound consumer
16 credit practices; and
- 17 (e) to insure due process of law to consumers
18 in consumer credit transactions, enforce-
19 ment of credit obligations and the collec-
20 tion of debt; and
- 21 (f) to provide consumers with adequate and
22 meaningful remedies for the protection of
23 consumer rights; and
- 24 (g) to provide for efficient and effective
25 administration of the laws governing con-
26 sumer credit transactions; and

1.102(2)

1 (h) to unify the laws of this State governing
2 functionally similar consumer credit
3 transactions.

4

5 (3) A reference to a requirement imposed by this
6 Act includes any related rule of the Administrator
7 adopted pursuant to this Act.

8

9 (4) In this Act unless the context otherwise
10 requires

11 (a) words in the singular number include the
12 plural, and in the plural include the
13 singular; and

14 (b) words of the masculine gender include
15 the feminine and the neuter, and when the
16 sense so indicates words of the neuter
17 gender may refer to any gender; and

18 (c) unless the context indicates otherwise,
19 the noun form of a verb has the same
20 meaning as the verb, and a verb has the
21 same meaning as its noun form.

22

23

24 SECTION 1.103 SUPPLEMENTARY GENERAL PRINCIPLES OF LAW

25 (1) Unless displaced by the particular provisions
26 of this Act, parties to a consumer credit transaction

1 have all of the obligations, duties, rights and remedies
2 provided in the [Uniform Commercial Code] and any other
3 law of this State which applies to the transaction. In
4 addition, the principles of law and equity, including
5 the law relative to capacity to contract, principal
6 and agent, estoppel, fraud, misrepresentation, duress,
7 coercion, mistake, bankruptcy or other validating or
8 invalidating cause supplement the provisions of this
9 Act.

10

11 (2) Unless terms used in this Act are defined
12 by particular provisions of this Act, they shall have
13 the meaning, if any, given them in the [Uniform
14 Commercial Code].

15

16

17 SECTION 1.104 CONSTRUCTION AGAINST IMPLICIT REPEAL

18 (1) This Act being a general act intended as a
19 unified coverage of its subject matter, no part of
20 it shall be deemed to be impliedly repealed, or limited
21 in the accomplishment of its purposes, by subsequent
22 legislation if such construction can reasonably be
23 avoided.

24

25 (2) The rights and benefits provided to consumers
26 under this Act are intended to be cumulative rather

1.104(2)

1 than exclusive and those rights and benefits presently
2 enjoyed by consumers under any statute or decision not
3 expressly repealed shall not be deemed to be impliedly
4 repealed or limited by this Act if such construction
5 can reasonably be avoided.

8 SECTION 1.105 SEVERABILITY

9 If any provision of this Act or the application
10 thereof to any person or circumstances is held in-
11 valid, the invalidity does not affect other provi-
12 sions or applications of this Act which can be given
13 effect without the invalid provision or application,
14 and to this end the provisions of this Act are
15 severable.

18 SECTION 1.106 WAIVER; AGREEMENT TO FOREGO RIGHTS; 19 SETTLEMENT OF CLAIMS

20 (1) Rights or benefits conferred on consumers
21 by provisions of this Act may not be waived or other-
22 wise varied, except as provided in this Section. Any
23 waiver or variance of a right or benefit conferred on
24 consumers by provisions of this Act, whether oral or
25 written, other than one authorized by this Section,
26 is void.

1 (2) A claim by a consumer against a creditor
2 arising under this Act or any aspect of which is
3 governed by this Act and a claim against a consumer
4 arising from a consumer credit transaction, if disputed
5 in good faith, may be settled by agreement.

6
7 (3) Notwithstanding subsection (2), a claim
8 against a consumer arising from a consumer credit
9 transaction, whether or not disputed, may be settled
10 by agreement for less value than the amount claimed.

11
12 (4) A settlement in which the consumer waives or
13 agrees to forego rights or benefits under this Act is
14 invalid if the court as a matter of law finds the
15 settlement to be unconscionable. In addition to the
16 factors set forth in Section 8.104, the competence
17 of the consumer, any deception or coercion practiced
18 upon him, the nature and extent of the legal advice
19 received by him and the value of the consideration
20 received are relevant to the issue of unconscionability
21 of a settlement.

22
23
24 SECTION 1.107 CONSTRUCTION OF RULES OF ADMINISTRATOR

25 Any requirement imposed by this Act, whether in
26 the nature of an obligation, duty, right or remedy

1.107

1 includes any requirement imposed by a related rule
2 of the Administrator adopted pursuant to this Act.

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1 PART 2

2 PRINCIPLES OF INTERPRETATION

3
4 SECTION

5 1.201 OBLIGATION OF GOOD FAITH; NOTICE;
6 KNOWLEDGE OR REASON TO KNOW

7 1.202 ADMISSIBILITY OF PAROL EVIDENCE

8 1.203 INTERPRETATION OF LANGUAGE OF AGREEMENTS;
9 ENFORCEABILITY

10 1.204 WEIGHT OF EVIDENCE

11 1.205 ACKNOWLEDGEMENTS OR CERTIFICATES OF PERFORMANCE

12 1.206 REASONABLE TIME TO PERFORM OBLIGATIONS

13
14
15 SECTION 1.201 OBLIGATION OF GOOD FAITH; NOTICE;
16 KNOWLEDGE OR REASON TO KNOW

17 (1) Every agreement or duty within this Act im-
18 poses an obligation of good faith in its negotiation,
19 execution and enforcement.

20
21 (2) "Good faith" means honesty in fact in the con-
22 duct or transaction concerned and, in addition, in the
23 case of the creditor, debt collector, consumer reporting
24 agency or merchant the observance of reasonable stan-
25 dards of fair dealing. The creditor, debt collector,
26 consumer reporting agency or merchant does not act in

1.201(2)

1 good faith if a reasonably prudent person, knowing all
2 the facts and circumstances known to the creditor,
3 debt collector, consumer reporting agency or merchant
4 at the time in question, would not have so acted, or
5 would not have so acted without seeking further infor-
6 mation.

7
8 (3) Without limiting the factors to be considered
9 in determining good faith under this Act, the creditor,
10 debt collector, consumer reporting agency or merchant is
11 not in good faith if

12 (a) he knows or has reason to know of violations
13 of this Act arising out of the transaction;

14 or

15 (b) he knows or has reason to know that he
16 should seek further information and fails
17 to do so; or

18 (c) he has engaged in conduct which is a viola-
19 tion of any provision of this Act.

20
21 (4) Without limiting the scope of the inquiry under
22 this Act regarding notice or knowledge or reason to
23 know, the creditor, debt collector, consumer reporting
24 agency or merchant has notice, knowledge or reason to
25 know what a reasonable inquiry would have revealed if
26

- 1 (a) he learns of a fact, or is put in a posi-
2 tion, which would cause a reasonably
3 prudent person to inquire; or
4 (b) his course of dealing with his transferor,
5 his transferee, the seller or other
6 merchants or customers apprises him of
7 a fact which would cause a reasonably
8 prudent person to inquire; or
9 (c) his own records contain the information or
10 contain information which would cause a
11 reasonably prudent person to inquire; or
12 (d) there are readily available regular
13 sources of information which a reasonably
14 prudent person would utilize.

15

16

17 SECTION 1.202 ADMISSIBILITY OF PAROL EVIDENCE

18 No rule of law on parol or extrinsic evidence nor
19 any term of a writing shall operate to exclude or limit
20 admissibility of evidence of the understanding of the
21 parties as to the agreement or a particular term of the
22 agreement relating to a transaction under this Act.

23

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26

1.203

1 SECTION 1.203 INTERPRETATION OF LANGUAGE OF AGREEMENTS;
2 ENFORCEABILITY

3 (1) In interpreting the language of an agreement or
4 a term of an agreement relating to a transaction under
5 this Act the principles of interpretation of the law of
6 contracts shall apply except as is otherwise specifically
7 provided in this Act.

8
9 (2) Language used by the creditor to induce a
10 transaction, whether used in an advertisement or in the
11 course of negotiation of a transaction and whether ex-
12 pressed orally or in writing, shall be interpreted to
13 have the meaning ordinarily associated with the partic-
14 ular words used in the context of the particular consumer
15 or community of consumers to whom the language was
16 directed.

17
18 (3) The fact that the consumer has signed a writing
19 evidencing an agreement is not in and of itself evidence
20 that he understood the meaning of any language contained
21 therein or consented to the inclusion of it as part of
22 the agreement or that he agreed that the writing be a
23 final expression of the agreement or a term of the agree-
24 ment.

25
26

1 (4) An agreement or a term of an agreement is not
2 enforceable against the consumer if it is established
3 that the consumer did not understand the meaning of the
4 agreement or term or that he did not consent to the
5 inclusion of the term as part of the agreement.
6
7

8 SECTION 1.204 WEIGHT OF EVIDENCE

9 In the event of a conflict between different forms
10 of expression of language as to the existence of an
11 agreement or particular terms of an agreement, lan-
12 guage expressed orally shall be given more weight than
13 language expressed in handwriting or typewriting, and
14 language expressed in handwriting or typewriting shall
15 have more weight than language expressed in printed
16 form.
17
18

19 SECTION 1.205 ACKNOWLEDGEMENTS OR CERTIFICATES OF 20 PERFORMANCE

21 A statement in the form of a certificate of
22 performance or other acknowledgment, whether or not
23 signed by the consumer, to the effect that there has
24 been compliance with any requirement of this Act or
25 performance of any obligation of the creditor pursuant
26

1.205

1 to a transaction governed by this Act creates no pre-
2 sumption against the consumer that the facts or conclu-
3 sions recited in the statement are true.
4
5

6 SECTION 1.206 REASONABLE TIME TO PERFORM OBLIGATIONS

7 Unless otherwise required by a provision of this
8 Act the consumer has a reasonable time after receiving
9 notice to perform an obligation or take action required
10 by this Act or by a term of an agreement relating to a
11 transaction governed by this Act. For the purposes of
12 this Section what is a reasonable time to perform or
13 act depends upon all of the circumstances relevant to
14 the transaction and the particular obligation thereof.
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PART 3
SCOPE AND JURISDICTION

SECTION

- 1.301 APPLICABILITY AND EXCLUSIONS
- 1.302 EFFECT OF ACT ON POWERS OF ORGANIZATIONS
- 1.303 TERRITORIAL APPLICATION
- 1.304 JURISDICTION AND SERVICE OF PROCESS

SECTION 1.301 APPLICABILITY AND EXCLUSIONS

(1) This Act applies to extension or arrangement of credit by creditors to consumers, inducement of consumer credit transactions, unfair, deceptive or unconscionable practices related to consumer credit transactions, warranties in consumer credit transactions, enforcement of consumer credit transactions, reporting of information relating to consumers and collection of consumer debt.

(2) This Act does not apply to

- (a) extensions of credit to government or governmental agencies or instrumentalities, and
- (b) extensions of credit to organizations.

1.302

1 SECTION 1.302 EFFECT OF ACT ON POWERS OF ORGANIZATIONS

2 (1) This Act prescribes maximum charges for all
3 creditors extending or arranging consumer credit includ-
4 ing consumer credit sales, consumer loans and consumer
5 leases and displaces existing limitations on the powers
6 of those creditors based on maximum charges.

7
8 (2) With respect to sellers of goods or services,
9 lessors of goods, small loan companies, licensed
10 lenders, consumer and sales finance companies, indus-
11 trial banks and loan companies, and commercial banks
12 and trust companies, this Act displaces existing limi-
13 tations on their powers based solely on amount or dura-
14 tion of credit in consumer credit transactions.

15
16 (3) Except as provided in subsection (1) [and in
17 the Article on Effective Date and Repealer (Article
18 10)], this Act does not displace limitations on
19 powers of credit unions, savings banks, savings and
20 loan associations or other thrift institutions wheth-
21 er organized for the profit of shareholders or as
22 mutual organizations.

23
24 (4) Except as provided in subsection (1) and sub-
25 section (2) [and in the Article on Effective Date and
26 Repealer (Article 10)], this Act does not displace

1 (a) limitations on powers of supervised fi-
2 nancial organizations with respect to the
3 amount of a loan to a single borrower,
4 the ratio of a loan to the value of col-
5 lateral, the duration of a loan secured
6 by an interest in land, or other similar
7 restrictions designed to protect
8 deposits, or

9 (b) limitations on powers an organization is
10 authorized to exercise under the laws of
11 this State or the United States.
12
13

14 SECTION 1.303 TERRITORIAL APPLICATION

15 (1) This Act applies to consumer credit trans-
16 actions made in this State and to modifications in-
17 cluding refinancings, consolidations and deferrals
18 made in this State, of consumer credit transactions
19 wherever made, and to acts, practices or conduct in
20 this State in the solicitation, negotiation, perfor-
21 mance or enforcement of consumer credit transactions
22 wherever made.
23

24 (2) For the purposes of this Act a consumer credit
25 transaction or a modification of a consumer credit
26 transaction is made in this State if

1.303(2)

1 (a) both the consumer and the creditor are
2 residents of this State at the time the
3 parties agree to the transaction or
4 modification, or

5 (b) notwithstanding the time or place of
6 agreement to the transaction or modifi-
7 cation, the consumer is a resident of this
8 State

9 (i) at the time the creditor solicits
10 the transaction or modification,
11 whether personally, by mail or by
12 telephone, or

13 (ii) at the time the consumer signs the
14 writing evidencing his offer or
15 obligation with respect to the
16 transaction.

17

18 (3) In the case of a consumer credit transaction
19 pursuant to an open end credit plan this Act applies
20 if the consumer resides in this State at the time

21 (a) the consumer forwards or otherwise deliv-
22 ers to the creditor a communication of
23 his intention to establish the open end
24 account, or

25 (b) the creditor forwards or otherwise deliv-
26 ers to the consumer a communication

1 giving notice to the consumer of the
2 right to use the account.
3

4 (4) The Part on Limitations on Agreements and
5 Practices (Part 4 of Article 2), the Part on Preser-
6 vation of Claims, Defenses and Equities of Consumer
7 (Part 6 of Article 2), the Article on Debt Collection
8 (Article 6), the Article on Enforcement of Credit
9 Obligations (Article 7) and the Article on
10 Consumer Remedies and Actions (Article 8) apply to
11 attempts to collect debts and actions and other pro-
12 ceedings brought in this State to enforce rights or
13 obligations arising from consumer credit transactions,
14 wherever made.
15

16 (5) The Article on Consumer Reporting Agencies
17 (Article 5) applies to consumer reporting agencies and
18 to merchants as therein defined who are residents of
19 or maintain a place of business in this State or which
20 engage, with respect to consumers residing in this
21 State, in the business of collecting information for
22 consumer reports or of disseminating consumer reports.
23

24 (6) Except as otherwise provided in subsection
25 (4), a consumer credit transaction made in another
26 state with the consumer who was not a resident of this

1.303(6)

1 State when the transaction was made is valid and
2 enforceable in this State to the extent that it is
3 valid and enforceable under the laws of the State
4 in which it was made.

5
6 (7) For the purposes of this Act, the residence
7 of the consumer is the address given by him as his resi-
8 dence in any writing signed by him in connection with
9 a consumer transaction. The given address is presumed
10 to be unchanged until the creditor knows or has reason
11 to know of a new or different address.

12
13 (8) The following terms of a writing evidencing
14 a consumer credit transaction are void:

15 (a) that the law of another state shall apply
16 to any aspect of the transaction; and

17 (b) that the consumer consents to the juris-
18 diction of another state; and

19 (c) that fixes venue.
20
21

22 SECTION 1.304 JURISDICTION AND SERVICE OF PROCESS

23 (1) The [] Court of this State may exercise
24 jurisdiction over any person other than the consumer
25 with respect to any conduct governed by this Act or
26

1 with respect to any claim arising from a transaction
2 subject to this Act.

3
4 (2) In addition to any other method provided by
5 rule or by statute, personal jurisdiction over the
6 person other than the consumer may be acquired in a
7 civil action or proceeding instituted in the []
8 Court by the service of process in the manner provided
9 by this Section.

10
11 (3) If the person other than the consumer is not
12 a resident of this State or is a corporation not au-
13 thorized to do business in this State and engages in
14 any conduct in this State governed by this Act, or
15 engages in a transaction subject to this Act, he may
16 designate an agent upon whom service of process may be
17 made in this State. The agent shall be a resident of
18 this State or a corporation authorized to do business
19 in this State. The designation shall be in writing and
20 filed with the Secretary of State. If no designation
21 is made and filed or if process cannot be served in
22 this State upon the designated agent, process may be
23 served upon the Secretary of State, but service upon
24 him is not effective unless the plaintiff or petitioner
25 forthwith mails a copy of the process and pleading by
26 registered or certified mail to the defendant or

1.304(3)

1 respondent at his last reasonably ascertainable
2 address. An affidavit of compliance with this Section
3 shall be filed with the clerk of the court on or before
4 the return day of the process, if any, or within any
5 further time the court allows.

6
7 (4) The agent designated under this Section or
8 the Secretary of State, in the absence of the desig-
9 nation of an agent, shall constitute a proper person
10 upon whom service of process may be made for the ac-
11 quisition of personal jurisdiction over directors and
12 other employees or agents of the person other than the
13 consumer, if the directors or other employees or
14 agents are not residents of this State, in a cause of
15 action brought pursuant to this Act.

1 PART 4

2 GENERAL DEFINITIONS

3

4 SECTION

5 1.401 "ACTUARIAL METHOD"

6 1.402 "ADMINISTRATOR"

7 1.403 "AGREEMENT"

8 1.404 "AMOUNT FINANCED"

9 1.405 "BILLING CYCLE"

10 1.406 "BUSINESS DAY"

11 1.407 "CASH PRICE"

12 1.408 "COLLATERAL"

13 1.409 "CONSPICUOUS"

14 1.410 "CONSUMER"

15 1.411 "CONSUMER CREDIT SALE"

16 1.412 "CONSUMER CREDIT TRANSACTION"

17 1.413 "CONSUMER LEASE"

18 1.414 "CONSUMER LOAN"

19 1.415 "CONSUMER SALE"

20 1.416 "CONSUMER TRANSACTION"

21 1.417 "COSIGNER"

22 1.418 "CREDIT"

23 1.419 "CREDITOR"

24 1.420 "DEBT COLLECTION"

25 1.421 "EARNINGS"

26 1.422 "FEDERAL CONSUMER CREDIT PROTECTION ACT"

| | | |
|----|-------|-------------------------------------|
| 1 | 1.423 | "FINANCE CHARGE" |
| 2 | 1.424 | "GOODS" |
| 3 | 1.425 | "LENDER" |
| 4 | 1.426 | "OFFICIAL FEES" |
| 5 | 1.427 | "OPEN END CREDIT PLAN" |
| 6 | 1.428 | "ORGANIZATION" |
| 7 | 1.429 | "PAYABLE IN INSTALMENTS" |
| 8 | 1.430 | "PERIODIC BILLING STATEMENT" |
| 9 | 1.431 | "PERSON" |
| 10 | 1.432 | "PERSONAL PROPERTY" |
| 11 | 1.433 | "PERSON RELATED TO" |
| 12 | 1.434 | "PREPAID FINANCE CHARGE" |
| 13 | 1.435 | "PRESUMED" OR "PRESUMPTION" |
| 14 | 1.436 | "PROPERTY" |
| 15 | 1.437 | "REPRESENTATION" |
| 16 | 1.438 | "REQUIRED DEPOSIT BALANCE" |
| 17 | 1.439 | "SECURITY INTEREST" |
| 18 | 1.440 | "SELLER" |
| 19 | 1.441 | "SERVICES" |
| 20 | 1.442 | "SUPERVISED FINANCIAL ORGANIZATION" |
| 21 | 1.443 | "TRANSACTION" |
| 22 | 1.444 | "TRANSACTION TOTAL" |
| 23 | 1.445 | OTHER DEFINED TERMS |
| 24 | | |
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1 SECTION 1.401 "ACTUARIAL METHOD"

2 "Actuarial method" means the method, defined by
3 rule of the Administrator, of allocating payments made
4 on a credit obligation between the amount financed and
5 the finance charge pursuant to which a payment is
6 applied first to the accumulated finance charge and
7 the balance is applied to the unpaid amount financed.
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10 SECTION 1.402 "ADMINISTRATOR"

11 "Administrator" means the Administrator designated
12 in Section 9.102 of the Article on Administration
13 (Article 9).
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16 SECTION 1.403 "AGREEMENT"

17 "Agreement" means the bargain of the parties in
18 fact as found in their oral or written language or by
19 implication from other circumstances including course of
20 dealing or course of performance or usage of trade. An
21 agreement or any part thereof may not be implied from
22 usage of trade unless it is established that the con-
23 sumer knew of the usage and that it applied in view of
24 all of the circumstances.
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1 SECTION 1.404 "AMOUNT FINANCED"

2 "Amount financed" means the amount of credit of
3 which the consumer will have the actual use, consist-
4 ing of the total of the following items from which any
5 prepaid finance charge or required deposit has been
6 excluded:

7 (a) in any consumer credit transaction, amounts
8 actually paid or to be paid by the creditor
9 which are for additional charges authorized
10 pursuant to Section 2.204 and agreed to by
11 the consumer; and

12 (b) in the case of a consumer credit sale
13 (i) the cash price of the property or
14 services, less the total amount of
15 any down payment whether made in cash
16 or in property traded in, and

17 (ii) the amount actually paid or to be
18 paid by the seller pursuant to an
19 agreement with the consumer to dis-
20 charge a security interest in a lien
21 on or an unpaid obligation with re-
22 spect to property traded in; or

23 (c) in the case of a consumer loan, the net
24 amount paid by or to be paid to the con-
25 sumer or for his account or to another
26 person on his behalf.

1 SECTION 1.405 "BILLING CYCLE"

2 "Billing cycle" means the interval between regular
3 periodic billing statement dates. If the regular
4 periodic billing statement is mailed or delivered to
5 the consumer monthly the intervals between such
6 statements may be considered equal intervals of time
7 unless a billing date varies more than four (4) days
8 from the regular billing date.

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11 SECTION 1.406 "BUSINESS DAY"

12 "Business day" means any calendar day except Sat-
13 urday, Sunday and any holiday established by Federal
14 law and the law of this State.

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17 SECTION 1.407 "CASH PRICE"

18 "Cash price" of property or services means the price
19 at which they are offered for sale by the seller to cash
20 buyers in the ordinary course of business and, if appro-
21 priate, may include

22 (a) applicable sales, use, excise and documen-
23 tary stamp taxes; and

24 (b) the cash price of accessories or related
25 services such as delivery, installation,

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1.407

1 servicing, repairs, alterations and
2 improvements; and
3 (c) amounts actually paid or to be paid by the
4 seller for registration, certificate of
5 title or license fees.

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8 SECTION 1,408 "COLLATERAL"

9 "Collateral" means personal property subject to a
10 security interest arising from the consumer credit
11 transaction.

12

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14 SECTION 1,409 "CONSPICUOUS"

15 (1) A term, a writing or other communication is
16 "conspicuous" only if the behavior of the consumer that
17 is sought will be influenced by the manner in which the
18 information is conveyed.

19

20 (2) A term, a writing or other communication is not
21 conspicuous if it

22 (a) appears on the reverse side of a page
23 signed by the consumer; or

24 (b) is not obvious and prominent and does not
25 sufficiently contrast with and stand out

26

1 from the remainder of the writing or com-
2 munication in which it appears; or

3 (c) is not in meaningful sequence in the con-
4 text in which it appears or is otherwise
5 so arranged or presented that it is obscured
6 or the consumer is confused or misled or
7 has his attention distracted from it.

8
9 (3) Neither the mere presentation of a writing to
10 the consumer nor the mere appearance of the initials or
11 signature of the consumer on a writing create a presump-
12 tion that the writing or anything contained therein is
13 conspicuous, notwithstanding any provision in the writ-
14 ing or of law to the contrary.

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16
17 SECTION 1.410 "CONSUMER"

18 "Consumer" means a natural person who seeks or
19 acquires, or is offered property, services or credit
20 for personal, family or household purposes.

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22
23 SECTION 1.411 "CONSUMER CREDIT SALE"

24 (1) "Consumer credit sale" means a sale of property
25 or services to a consumer in which credit which is pay-
26 able in instalments is granted by a seller who in the

1.411(1)

1 ordinary course of business engages in credit transaction
2 with consumers.

3
4 (2) The term "consumer credit sale" includes any
5 transaction in the form of a bailment or lease of
6 goods if the consumer agrees to pay as compensation
7 for use a sum substantially equivalent to or in excess
8 of the aggregate value of the goods involved and it is
9 agreed that the consumer will become, or for no other or
10 a nominal consideration has the option to become, the
11 owner of the goods upon full compliance with his obli-
12 gations.

13

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15 SECTION 1.412 "CONSUMER CREDIT TRANSACTION"

16 "Consumer credit transaction" means a transaction
17 between a creditor and a consumer in which credit is
18 extended to the consumer. The term includes but is
19 not limited to consumer credit sales, consumer leases
20 and consumer loans.

21

22

23 SECTION 1.413 "CONSUMER LEASE"

24 "Consumer lease" means a lease which is payable in
25 instalments of personal property to a consumer by a lessor

26

1 who in the ordinary course of business leases property to
2 consumers.

3

4

5 SECTION 1.414 "CONSUMER LOAN"

6 "Consumer loan" means a transaction in which credit
7 which is payable in instalments is extended by a creditor
8 in the form of payment of or agreement to pay money to a
9 consumer or for his account or to a third person on his
10 behalf, or in the form of creation of debt by a credit
11 to an account with the creditor upon which the consumer
12 is entitled to draw immediately. The term includes the
13 forbearance of debt arising from a loan.

14

15

16 SECTION 1.415 "CONSUMER SALE"

17 "Consumer sale" means a sale of property or ser-
18 vices to a consumer by a seller.

19

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21 SECTION 1.416 "CONSUMER TRANSACTION"

22 "Consumer transaction" means a transaction between
23 a consumer and a person who in the ordinary course of
24 business sells or provides property, services or credit
25 to consumers. The term includes but is not limited to
26 consumer credit transactions and consumer sales.

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1 SECTION 1.417 "COSIGNER"

2 "Cosigner" means a natural person who signs a writ-
3 ing evidencing a consumer credit transaction and thereby
4 incurs liability together with the principal obligor,
5 whether in the form of a co-maker, endorser, guarantor,
6 surety or other similar capacity.

9 SECTION 1.418 "CREDIT"

10 "Credit" means the right granted by a creditor to
11 defer payment of debt, incur debt and defer its payment,
12 or purchase property or services and defer payment
13 therefor.

16 SECTION 1.419 "CREDITOR"

17 "Creditor" means a person who in the ordinary
18 course of business extends credit to consumers or
19 arranges for the extension of credit by other persons
20 to consumers, or offers to extend or arrange for the
21 extension of such credit. Except as otherwise provided
22 the term includes an assignee or other transferee of the
23 right of the creditor to payment from the consumer,
24 including a person who takes the obligation for the
25 purpose of collection only.

1 SECTION 1.420 "DEBT COLLECTION"

2 "Debt collection" means any direct or indirect
3 or attempted action, conduct or practice in connection
4 with the enforcement of obligations that are owed or
5 due, or are claimed to be owed or due, by a consumer as
6 a result of a consumer transaction. The term includes
7 the solicitation of obligations for collection.

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10 SECTION 1.421 "EARNINGS"

11 "Earnings" means compensation paid or payable to
12 an individual or for his account for personal services
13 rendered or to be rendered, whether denominated as
14 wages, salary, commission, bonus or otherwise and
15 includes periodic payments pursuant to a pension, re-
16 tirement or disability program.

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19 SECTION 1.422 "FEDERAL CONSUMER CREDIT PROTECTION ACT"

20 "Federal Consumer Credit Protection Act" means the
21 Consumer Credit Protection Act (Public Law No. 90-321;
22 82 Stat. 146) as amended, and includes regulations, as
23 amended and adopted pursuant thereto.

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1 SECTION 1.423 "FINANCE CHARGE"

2 (1) "Finance charge" means the sum of all charges,
3 payable directly or indirectly by the consumer as an
4 incident to or as a condition of the extension of
5 credit, whether paid or payable by the consumer, the
6 creditor or any other person on behalf of the consumer
7 to the creditor or to a third party, including any of
8 the following types of charges to the extent they are
9 not additional charges authorized pursuant to Section
10 2.204:

- 11 (a) interest, time price differential or any
12 amount payable under a discount, point or
13 other system of charges; and
- 14 (b) service, transaction, activity or carrying
15 charges; and
- 16 (c) loan fee, points, finder's fee or similar
17 commission or brokerage charges; and
- 18 (d) fees for an appraisal, investigation or
19 credit report; and
- 20 (e) charges or premiums for any guarantee
21 or insurance protecting the creditor
22 against the default of the consumer or
23 other credit loss; and
- 24 (f) any charge imposed by a creditor upon an-
25 other creditor for purchasing or accepting
26 the obligation of the consumer if the

1 consumer is required to pay part of that
2 charge in cash, as an addition to the obli-
3 gation, or as a deduction from the proceeds
4 of the obligation.

5
6 (2) The term does not include delinquency, de-
7 ferral or other charges resulting from failure by the
8 consumer to make payments if authorized by this Act and
9 if imposed for actual unanticipated delinquency, default
10 or other such occurrence.

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13 SECTION 1.424 "GOODS"

14 "Goods" includes goods not in existence at the
15 time the transaction is entered into and goods which
16 are or are to become fixtures, but excludes money,
17 chattel paper, documents of title and other instruments.

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20 SECTION 1.425 "LENDER"

21 "Lender" means a creditor who extends credit in the
22 form of a consumer loan.

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1 SECTION 1.426 "OFFICIAL FEES"

2 "Official fees" means

3 (a) fees and charges prescribed by law which
4 actually are or will be paid to public of-
5 ficials for determining the existence of
6 or for perfecting a security interest re-
7 lated to a consumer credit transaction, or

8 (b) premiums payable for insurance in lieu of
9 perfecting a security interest otherwise
10 required by the creditor in connection with
11 the consumer credit transaction, if the
12 insurer is not a person related to the
13 creditor and the premium does not exceed
14 either the amount payable to the insurer or
15 the fees and charges described in paragraph
16 (a) which would otherwise be payable.

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19 SECTION 1.427 "OPEN END CREDIT PLAN"

20 (1) "Open end credit plan" means an arrangement
21 between the creditor and the consumer under which

22 (a) the creditor may permit the consumer to
23 purchase goods or services or obtain a loan
24 or loans, from time to time, directly from
25 the creditor or from other creditors or
26

- 1 sellers as the arrangement may provide;
2 and
3 (b) the consumer has the privilege of paying
4 the balance either in full or in instalments;
5 and
6 (c) the finance charge, if any, is computed by
7 the creditor from time to time on the out-
8 standing unpaid balance; and
9 (d) the amount financed is not computable at
10 the inception of the plan.

11
12 (2) The term does not include negotiated advances
13 under a consumer credit transaction extended to finance
14 the acquisition of real property and secured by a first
15 lien on the property.

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18 SECTION 1.428 "ORGANIZATION"

19 "Organization" means a corporation, government or
20 governmental subdivision or agency, trust, estate, part-
21 nership, cooperative or association.

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23

24 SECTION 1.429 "PAYABLE IN INSTALMENTS"

25 (1) "Payable in instalments" means with respect to
26 the obligation of the consumer pursuant to a consumer

1.429(1)

1 credit transaction that payment is required or permitted,
2 by agreement, to be made in

3 (a) one (1) or more periodic payments, excluding
4 a down payment, if the obligation includes
5 a finance charge, or

6 (b) four (4) or more periodic payments, exclud-
7 ing a down payment, if the obligation does
8 not include a finance charge.

9
10 (2) The obligation of the consumer with respect to
11 a transaction pursuant to an open end credit plan is
12 "payable in instalments".

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15 SECTION 1.430 "PERIODIC BILLING STATEMENT"

16 "Periodic billing statement" means a writing mailed
17 or delivered by the creditor to the consumer with re-
18 spect to an outstanding balance of the obligation of
19 the consumer pursuant to a consumer credit transaction.

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22 SECTION 1.431 "PERSON"

23 "Person" includes a natural person or an individ-
24 ual, and an organization.

1 SECTION 1.432 "PERSONAL PROPERTY"

2 "Personal property" means any present or future
3 interest in goods, chattels, general intangibles or
4 choses in action, whether such interest is vested or
5 contingent.

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8 SECTION 1.433 "PERSON RELATED TO"

9 (1) "Person related to" with respect to an individ-
10 ual means

- 11 (a) the spouse of the individual; and
12 (b) a brother, brother-in-law, sister, sister-
13 in-law of the individual; and
14 (c) an ancestor or lineal descendant of the
15 individual or his spouse; and
16 (d) any other relative, by blood or marriage,
17 of the individual or his spouse who shares
18 the same home with the individual.

19
20 (2) "Person related to" with respect to an organi-
21 zation means

- 22 (a) a person directly or indirectly control-
23 ling, controlled by or under common control
24 with the organization; and
25 (b) an officer or director of the organization
26 or a person performing similar functions

1,433(2)

- 1 with respect to the organization or to a
2 person related to the organization; and
3 (c) the spouse of a person related to the or-
4 ganization; and
5 (d) a relative by blood or marriage of a per-
6 son related to the organization who shares
7 the same home with him.

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10 SECTION 1.434 "PREPAID FINANCE CHARGE"

11 "Prepaid finance charge" means any finance charge
12 paid by the consumer separately, in cash or otherwise,
13 directly or indirectly to the creditor or with the
14 creditor's knowledge to another person or withheld by
15 the creditor from the proceeds of the credit extended.

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18 SECTION 1.435 "PRESUMED" OR "PRESUMPTION"

19 "Presumed" or "presumption" means that the trier
20 of fact must find the existence of the fact presumed
21 unless and until evidence is introduced which would
22 support a finding of its non-existence.

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24
25 SECTION 1.436 "PROPERTY"

26 "Property" includes both real and personal property.

1 SECTION 1.437 "REPRESENTATION"

2 "Representation" includes any statement, advertise-
3 ment or commercial message, written or oral, about a
4 creditor, property, services or credit, delivered, pre-
5 sented or made available to consumers or prospective
6 consumers in any manner whatsoever

7 (a) in any newspaper, magazine, leaflet, flyer
8 or catalog; or

9 (b) on radio, television, public address sys-
10 tem; or

11 (c) made in person, in direct mail literature
12 or other printed material; or

13 (d) in any interior or exterior sign or dis-
14 play, in any window display, in any point-
15 of-transaction display or literature,
16 recording, price tag or other medium; or

17 (e) in any other system of communication to
18 consumers.

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21 SECTION 1.438 "REQUIRED DEPOSIT BALANCE"

22 "Required deposit balance" means any deposit bal-
23 ance or any investment which the creditor requires the
24 consumer to make, maintain or increase in a specified
25 amount or proportion as a condition to the extension
26 of credit except

1.438

- 1 (a) an escrow account which is a permitted ad-
2 ditional charge under Section 2.204; or
3 (b) a deposit balance which will be wholly ap-
4 plied toward satisfaction of the obligation
5 of the consumer under the transaction; or
6 (c) a deposit balance or investment which was
7 in existence at least three (3) months
8 prior to the extension of credit and which
9 is offered by the consumer as security for
10 that extension of credit; or
11 (d) a deposit balance or other investment whose
12 principal purpose is independent of the
13 extension of credit or the creation of se-
14 curity for its repayment, acquired or es-
15 tablished from the proceeds of an extension
16 of credit made for that purpose upon the
17 written request of the consumer.

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20 SECTION 1.439 "SECURITY INTEREST"

21 "Security interest" means any interest in property
22 which secures payment or performance of an obligation of
23 the consumer. The term includes, but is not limited to,
24 security interests under the Uniform Commercial Code,
25 real property mortgages, deeds of trust and other con-
26 sensual or confessed liens whether or not recorded,

1 mechanic's, materialmen's, artisan's and other similar
2 liens, vendor's liens in both real and personal prop-
3 erty, the interest of a seller in a contract for the
4 sale of real property, any lien on property arising by
5 operation of law and any interest in a lease when used
6 to secure payment or performance of an obligation.

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9 SECTION 1.440 "SELLER"

10 "Seller" means a person who in the ordinary course
11 of business engages in the sale of property or services
12 to consumers.

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15 SECTION 1.441 "SERVICES"

16 "Services" includes

17 (a) work, labor and other personal services;

18 and

19 (b) the diagnostic work, maintenance, repair
20 or improvement, other than as part of the
21 manufacture or original construction, of
22 property; and

23 (c) privileges and contract rights with respect
24 to accommodations or facilities including
25 but in no manner limited to hotels and
26 restaurants, transportation, education,

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1 entertainment, recreation, physical culture,
2 hospital accommodations and the like; and
3 (d) insurance.

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6 SECTION 1.442 "SUPERVISED FINANCIAL ORGANIZATION"

7 "Supervised financial organization" means a person

8 (a) organized, chartered or holding an auth-
9 orization certificate under the laws of
10 this State or of the United States which
11 authorize the person to make loans and to
12 receive deposits, including a savings,
13 share, certificate of deposit account,
14 and

15 (b) subject to supervision by an official or
16 agency of this State or of the United
17 States.

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19
20 SECTION 1.443 "TRANSACTION"

21 "Transaction" means all of the agreements made
22 between two (2) or more persons to carry out an ex-
23 change of value, and includes the entire process of
24 soliciting, negotiating, making, performing and enforc-
25 ing such agreements, whether or not any agreement is
26 enforceable by action.

1 SECTION 1.444 "TRANSACTION TOTAL"

2 "Transaction total" means

3 (a) in the case of a consumer credit transaction
 4 other than one pursuant to an open end
 5 credit plan the total of the amount financed,
 6 plus any down payment or required deposit
 7 balance and all finance charges, including
 8 any prepaid finance charge, or

9 (b) in the case of a transaction pursuant to an
 10 open end credit plan, the amount financed
 11 pursuant to the plan plus any finance
 12 charges which have or may be imposed with
 13 respect to that amount.

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16 SECTION 1.445 OTHER DEFINED TERMS

17 Other definitions appearing in this Act and the
 18 Sections in which they appear are:

19
 20 "Account" Section 5.102(1)
 21 "Administrator" Section 9.102
 22 "Adverse information" Section 5.102(2)
 23 "Cardholder" Section 2.408(1)(b)
 24 "Claim" Section 6.102(1)
 25 "Conclusion of the
 26 direct solicitation" Section 2.701(2)

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| 1 | "Consumer Credit Insurance" | Section 4.102 |
| 2 | "Consumer report" | Section 5.103(1) |
| 3 | "Consumer reporting agency" | Section 5.103(2) |
| 4 | "Contested case" | Section 9.402(1) |
| 5 | "Credit card" | Section 2.408(1)(a) |
| 6 | | |
| 7 | "Debt collector" | Section 6.102(2) |
| 8 | "Default" | Section 7.102 |
| 9 | "Direct solicitation transaction" | Section 2.701(1) |
| 10 | | |
| 11 | "File" | Section 5.104(1) |
| 12 | "Good faith" | Section 1.201(2) |
| 13 | "Merchant" | Section 5.104(2) |
| 14 | "Merchantable" | Section 2.502(2) |
| 15 | "Notice or knowledge or reason to know" | Section 1.201(4) |
| 16 | "Party" | Section 9.402(2) |
| 17 | "Rule" | Section 9.402(3) |
| 18 | "Transferee" | Section 2.601(2) |
| 19 | "Warranty" | Section 2.502(1) |
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2.102

SECTION 2.102 DISCRIMINATION PROHIBITED

(1) No creditor shall, with respect to a particular consumer or a class of consumers, refuse to enter into a consumer credit transaction or refuse to enter into a consumer credit transaction except at a rate of finance charge or in accordance with terms and conditions more onerous than those regularly extended by that creditor to consumers of similar economic backgrounds because of the

(a) age, color, creed, national origin, political affiliation, race, religion, sex or source of income of the consumer, or

(b) exercise by the consumer of rights pursuant to this Act or other provisions of law.

(2) A violation of this Section is subject to the provisions of Section 8.108.

SECTION 2.103 MAXIMUM PERIODS OF REPAYMENT

(1) With respect to a consumer credit transaction other than one pursuant to an open end credit plan, no creditor shall enter into an agreement pursuant to which instalments are scheduled to be paid in full over a period of more than

1 (a) twenty five (25) months, if the finance
2 charge imposed on the amount financed is in
3 excess of [twenty four (24) per cent], or
4 (b) thirty seven (37) months, if the finance
5 charge imposed on the amount financed is in
6 excess of [eighteen (18) per cent].

7
8 (2) A violation of this Section is subject to the
9 provisions of Section 8.107 and Section 8.109.

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12 SECTION 2.104 PRESERVATION OF DATA AND WRITINGS

13 (1) The creditor shall preserve copies of all
14 writings relating to a consumer credit transaction
15 including all disclosures required by this Act for a
16 period of time not less than that specified for the
17 transaction in the provision on limitation of actions
18 (Section 7.103).

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20

21 (2) With respect to a transaction other than one
22 pursuant to an open end credit plan, the creditor shall
23 retain for the period specified in Section 7.103 copies
24 of every writing evidencing the offer or obligation of
25 the consumer, including every offer to purchase or other
26 proposal which the creditor has required or requested
 the consumer to sign during negotiation.

2.104(3)

1 (3) Upon request during the period for which
2 writings are required to be preserved, the creditor
3 shall provide the consumer with a copy of any of those
4 writings. One copy of each writing shall be provided
5 without charge. Additional copies shall be provided
6 at a reasonable charge.

7
8 (4) No creditor shall accept an assignment of a
9 claim or security interest arising from a consumer
10 credit transaction unless the assignment is accompanied
11 by or the assignor agrees to provide to the assignee,
12 data which will enable the assignee to comply with any
13 request made by the consumer under the provisions of
14 this Part.

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PART 2
CHARGES AND RELATED TERMS

SECTION

- 2.201 CHARGES: OBLIGATIONS OF PARTIES
- 2.202 MAXIMUM FINANCE CHARGE: OTHER THAN OPEN END CREDIT
- 2.203 MAXIMUM FINANCE CHARGE: OPEN END CREDIT
- 2.204 ADDITIONAL CHARGES
- 2.205 ADVANCES TO PERFORM AGREEMENTS OF CONSUMER
- 2.206 DELINQUENCY CHARGES
- 2.207 DEFERRAL CHARGES
- 2.208 FINANCE CHARGE ON REFINANCING
- 2.209 FINANCE CHARGE ON CONSOLIDATION
- 2.210 RIGHT TO PREPAY
- 2.211 REBATE UPON PREPAYMENT

SECTION 2.201 CHARGES: OBLIGATION OF PARTIES

(1) With respect to a consumer credit transaction the parties may agree, subsequent to disclosure by the creditor pursuant to the Part on Disclosure and Form (Part 3 of this Article), to the payment by the consumer of charges not exceeding those authorized in this Part.

2.201(2)

1 (2) It is a violation of this Part for the
2 creditor to impose or attempt to collect a charge in
3 excess of that authorized by this Part. Any such viola-
4 tion is subject to the provisions of Section 8.107 and
5 Section 8.109.
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8 SECTION 2.202 MAXIMUM FINANCE CHARGE: OTHER THAN
9 OPEN END CREDIT

10 (1) With respect to a consumer credit transac-
11 tion other than one pursuant to an open end credit
12 plan, the finance charge, calculated according to the
13 actuarial method, may not exceed

14 (a) with respect to consumer credit transac-
15 tions regulated pursuant to [the relevant
16 section, chapter or act presently regula-
17 ting small loans], the maximum finance
18 charge[s] authorized by [the relevant
19 section(s)]; or

20 (b) with respect to consumer credit transac-
21 tions regulated pursuant to [the relevant
22 section, chapter or act presently regula-
23 ting motor vehicle instalment loans], the
24 maximum finance charge[s] authorized by
25 [the relevant section(s)]; or
26

- 1 (c) with respect to consumer credit transac-
2 tions regulated pursuant to [the relevant
3 section, chapter or act presently regula-
4 ting credit transactions secured by an
5 interest in real property], the maximum
6 finance charge[s] authorized by [the rele-
7 vant section(s)]; or
- 8 (d) with respect to consumer credit transac-
9 tions regulated pursuant to [the relevant
10 section, chapter or act presently regula-
11 ting any other existing classification of
12 credit transaction other than one pursuant
13 to an open end credit plan], the maximum
14 finance charge[s] authorized by [the rele-
15 vant section(s)]; or
- 16 (e) with respect to all other consumer credit
17 transactions, the total of [____] per cent
18 per year on that part of the unpaid
19 balance of the amount financed which is
20 [\$_____] or less, [____] per cent per year
21 on that part of the unpaid balance of the
22 amount financed which is more than [\$_____]
23 but does not exceed [\$_____] and [____] per
24 cent per year on that part of the unpaid
25 balance of the amount financed which is
26 more than [\$_____].

2.202(1)

1 Comment: The Center does not take any position with
2 respect to the adequacy or propriety of maximum rates
3 in any particular state. There is no reliable data
4 to justify either increasing or decreasing existing
5 maximum rates already established in the various
6 states. And there is the experience of over half
7 of a century in many states which mandates that maxi-
8 mum rates for certain consumer loans should not be the
9 same as for consumer credit sales. Consequently,
10 neither the Center nor any other organization can in
11 good conscience recommend an all encompassing schedule
12 of rate maximums applicable to all consumer credit
13 transactions. We recommend, therefore, that legisla-
14 tures set rates in accordance with known experience
15 with respect to classifications of credit transactions
16 already established. Unless sufficient reliable data
17 is made available with respect to such transactions we
18 recommend the enactment of the existing maximums until
19 such time as the information which the Administrator
20 is required to collect and report to the legislature
21 pursuant to subsections (f) and (g) of Section 9.107
22 justifies a departure from the present maximum rates.

23 (2) For the purposes of this Section

24 (a) the finance charge may be calculated on
25 the assumption that all scheduled pay-
26 ments will be made when due; and

(b) the dollar amount of the finance charge
includes the prepaid finance charge ex-
cluded from the amount financed; and

(c) the effect of prepayment is governed
by the provisions of Section 2.211.

23 (3) For the purposes of this Section, the term
24 of a consumer credit transaction other than one pur-
25 suant to an open end credit plan commences with the
26 date the credit is granted, except that if goods are

1 delivered, services performed or proceeds of a loan are
2 paid five (5) days or more after the date the credit is
3 granted, then the term commences with the date of deliv-
4 ery or performance. Finance charges shall be computed
5 according to the actual number of days that the credit
6 is scheduled to be outstanding or that it remains unpaid.
7 A year is considered to have three hundred and sixty
8 five (365) days and the additional day every fourth (4th)
9 year may be disregarded.

10
11 (4) Notwithstanding the provisions of subsection
12 (1), the parties may agree to the payment by the
13 consumer of not more than five dollars (\$5) when the
14 amount financed does not exceed seventy five dollars
15 (\$75), or seven dollars and fifty cents (\$7.50) when
16 the amount financed exceeds seventy five dollars (\$75).

17
18
19 SECTION 2.203 MAXIMUM FINANCE CHARGE:
20 OPEN END CREDIT

21 (1) With respect to transactions made pursuant
22 to an open end credit plan, a finance charge may be
23 imposed with respect to each billing cycle only if a
24 balance remains owing on the last day of that cycle.
25 For the purposes of calculating the finance charge
26 the balance shall have deducted from it all payments,

2.203(1)

1 refunds and other credits to the account of the
2 consumer made during the cycle. The finance charge
3 may be a percentage of either

4 (a) the balance of the account on the last
5 day of the billing cycle, computed pur-
6 suant to this subsection, or

7 (b) the average daily balance of the account,
8 which is the sum of the actual balances
9 in the account of the consumer outstand-
10 ing each day during the billing cycle
11 after the deduction of all payments,
12 refunds and other credits but excluding
13 all transactions made by the consumer
14 during the cycle, divided by the number
15 of days in the cycle.

16
17 (2) If the billing cycle is monthly the finance
18 charge may not exceed [____] per cent of that part of
19 the balance computed pursuant to subsection (1) which
20 is [\$____] or less and [____] per cent on that part of
21 the balance which is more than [\$____]. If the billing
22 cycle is not monthly, the maximum charge is that per-
23 centage which bears the same relation to the applicable
24 monthly percentage as the number of days in the billing
25 cycle bears to thirty (30).

26

1 Comment: This Section allows the open end creditor to
2 use either the adjusted or the average daily balance
3 method but excludes transactions made in the particular
4 cycle from being included in the balance if the average
5 daily balance method is used. The purpose of excluding
6 these transactions is the inherent unfairness in aver-
7 aging the daily balance over the first five (5) or six
8 (6) days of the cycle, a period during which the consumer
9 cannot reduce the average balance as he will not have
10 received his periodic billing statement. In actuality,
11 this period will more likely be twelve (12) to fifteen
12 (15) days.

13 The rate maximums in subsection (2) are left
14 open pursuant to the policy of the Center on questions
15 of rate maximums as expressed in the Comment to
16 Section 2.202(1). This Section provides for a single
17 step down in the rate at a certain dollar level, a
18 common practice for open end credit throughout the
19 nation.

20 (3) Notwithstanding subsection (1) or any term in
21 an agreement to the contrary, no finance charge may be
22 charged to or collected from the consumer unless the
23 creditor mails or otherwise provides the consumer with
24 a periodic billing statement not later than eighteen
25 (18) days prior to the close of the next succeeding
26 billing cycle.

21 SECTION 2.204 ADDITIONAL CHARGES

22 (1) In addition to the finance charge permitted
23 by this Part the parties may agree to the payment by
24 the consumer of official fees and taxes and charges
25 for insurance premium authorized by the Article on
26 Credit Insurance (Article 4).

2,204(2)

1 (2) With respect to a consumer credit transaction
2 secured by an interest in real property, the parties
3 may agree to the payment by the consumer of charges
4 authorized in subsection (1) and the following charges
5 if they relate to the security interest in the real
6 property and would customarily be borne by the consumer
7 if the transaction were for cash:

8 (a) fees or premiums for title examination,
9 title insurance and the like; and

10 (b) fees for preparation of a settlement
11 statement and other documents relating
12 to the security interest; and

13 (c) appraisal fees; and

14 (d) escrows for future payment of taxes and
15 insurance.

16

17 (3) Additional charges authorized by this Section
18 may be charged and collected by the creditor only if

19 (a) the charges are specifically itemized and
20 disclosed to the consumer pursuant to the
21 Part on Disclosure and Form (Part 3 of
22 this Article); and

23 (b) the charges are bona fide and not imposed
24 for the purpose of circumvention or
25 evasion of this Act; and

26

1 (c) the charges are or will be paid to public
2 officials or other persons not related to
3 the creditor who are authorized to receive
4 them and the charges are no greater than
5 the amount those persons are entitled to
6 receive.

7
8 (4) For the purposes of this Act any charge not
9 authorized by or in excess of that authorized by this
10 Section is part of the finance charge.

11

12

13 SECTION 2.205 ADVANCES TO PERFORM AGREEMENTS OF
14 CONSUMER

15 (1) The parties may agree that the consumer is to
16 perform certain duties with respect to insuring col-
17 lateral if those duties are reasonable in relation to
18 the risk of loss of or damage to the collateral and
19 the insurance is authorized by the provisions of the
20 Article on Credit Insurance (Article 4). In the event
21 of the failure of the consumer to so perform the
22 creditor may, if agreed to by the consumer, pay the
23 charge for the insurance on behalf of the consumer.
24 The amount paid may be added to the unpaid balance
25 of the obligation of the consumer if the creditor

26

2.205(1)

1 (a) has given the consumer written notice of
2 his non-performance, including notice that
3 the consumer will incur additional finance
4 charges if payment is made by the credi-
5 tor; and

6 (b) has provided the consumer reasonable
7 opportunity after notice to perform as
8 agreed; and

9 (c) in the absence of performance, makes all
10 expenditures on behalf of the consumer in
11 compliance with the provisions of the Ar-
12 ticle on Credit Insurance (Article 4).

13

14 (2) Within a reasonable time after advancing any
15 sums pursuant to subsection (1), the creditor shall
16 provide the consumer with written notice stating the
17 amount of the sums advanced, the finance charges with
18 respect to that amount and the revised payment sched-
19 ule applicable to the new unpaid balance of the consumer.

20

21 (3) A finance charge may be imposed for sums
22 advanced pursuant to subsection (1) at a rate not
23 exceeding that disclosed to the consumer in the original
24 transaction pursuant to the provisions of the Part on
25 Disclosure and Form (Part 3 of this Article).

26

1 SECTION 2.206 DELINQUENCY CHARGES

2 (1) With respect to a consumer credit trans-
3 action other than one pursuant to an open end credit
4 plan, the parties may agree to a delinquency charge
5 on any instalment not paid in full on or before the
6 tenth (10th) business day after its scheduled due date.
7 The charge may be no greater than that amount equal to
8 one (1) per cent of the unpaid amount of the instalment
9 not exceeding three dollars (\$3).

10
11 (2) No delinquency charge may be collected on an
12 instalment which is paid in full on or before the tenth
13 (10th) business day after its scheduled due date even
14 though an earlier maturing instalment or a delinquency
15 charge on an earlier instalment may not have been paid
16 in full. For purposes of this subsection payment are
17 applied first to current instalments and then to delin-
18 quent instalments.

19
20 (3) A delinquency charge may be collected only once
21 on an instalment however long it remains unpaid and no
22 finance charge may be imposed on it. A delinquency
23 charge may not be collected for a late instalment if,
24 with respect to that instalment, a deferral (Section
25 2.207), refinancing (Section 2.208) or consolidation
26 (Section 2.209) agreement has been concluded by the

2.206(3)

1 parties or the creditor elects to exercise any remedy
2 pursuant to the provisions of the Article on Enforcement
3 of Credit Obligations (Article 7).

4

5 (4) No security interest shall secure payment
6 of obligations arising from unpaid delinquency charges
7 imposed pursuant to this Section.

8

9 (5) If, at any time subsequent to the imposition
10 of a delinquency charge pursuant to this Section, the
11 creditor provides the consumer with written notice with
12 respect to amounts claimed to be due but unpaid, the
13 notice shall state the total of all delinquency charges
14 claimed and the date or dates on which they were
15 imposed.

16

17

18 SECTION 2.207 DEFERRAL CHARGES

19 (1) With respect to a consumer credit transac-
20 tion other than one pursuant to an open end credit
21 plan, the parties may agree in writing at any time
22 subsequent to the transaction to a deferral of all
23 or part of one (1) or more unpaid instalments for a
24 charge not exceeding one (1) per cent of each instal-
25 ment or part thereof for each month from the date

26

1 when such instalment was due to the date when it
2 is agreed to become payable.

3
4 (2) A deferral agreement shall

5 (a) be in writing and signed by the parties;

6 and

7 (b) incorporate by reference the transaction

8 to which the deferral applies; and

9 (c) state each instalment or part thereof

10 in the amount to be deferred, the date

11 or dates originally payable and the

12 date or dates agreed to become payable;

13 and

14 (d) set forth the fact of the deferral

15 charge, if any, the dollar amount of the

16 charge for each instalment to be deferred

17 and the total dollar amount to be paid

18 by the consumer for the privilege of

19 deferring payment.

20
21 (3) No term of a writing executed by the consumer
22 shall constitute authority for a creditor unilaterally
23 to grant a deferral with respect to which a charge is
24 to be imposed or collected.

25

26

2.207(4)

1 (4) A charge may not be collected for the
2 deferral of an instalment or any part thereof if,
3 with respect to that instalment, a refinancing
4 (Section 2.208) or consolidation (Section 2.209)
5 agreement is concluded by the parties, a delinquency
6 charge (Section 2.206) has been imposed or
7 collected or the creditor elects to exercise any
8 remedy pursuant to the provisions of the Article on
9 Enforcement of Credit Obligations (Article 7).

10
11 (5) No security interest shall secure payment
12 of obligations arising from deferral charges imposed
13 pursuant to this Section.

14 15 16 SECTION 2.208 FINANCE CHARGE ON REFINANCING

17 (1) With respect to a consumer credit transac-
18 tion other than one pursuant to an open end credit
19 plan, the parties may agree to refinance the unpaid
20 balance and to the imposition of a finance charge
21 based on the amount financed resulting from the re-
22 financing at a rate not exceeding that disclosed to the
23 consumer in the original transaction pursuant to the
24 provisions of the Part on Disclosure and Form (Part
25 3 of this Article).

1 (2) For the purpose of determining the finance
2 charge permitted in refinancing, the amount financed
3 resulting from the refinancing shall constitute the
4 total of

5 (a) the amount which the consumer would
6 have been required to pay upon prepay-
7 ment (Section 2.211) on the date of re-
8 financing, except that for the purpose
9 of computing this amount no minimum
10 finance charge (subsection (4) of
11 Section 2.202) is permitted, and

12 (b) appropriate additional charges (Section
13 2.204), included for the period of re-
14 financing.

15
16
17 SECTION 2.209 FINANCE CHARGE ON CONSOLIDATION

18 (1) If the consumer owes an unpaid balance with
19 respect to a consumer credit transaction other than
20 one pursuant to an open end credit plan and becomes
21 obligated to the same creditor on another consumer
22 credit transaction other than one pursuant to an
23 open end credit plan, the parties may agree to a
24 consolidation resulting in a single schedule of
25 payments pursuant to either of the methods specified
26 in subsections (2) or (3).

2.209(2)

1 (2) The parties may agree to consolidate by adding
2 the amount of the previous transaction which the consumer
3 would have been required to pay upon prepayment
4 pursuant to the provisions on rebate upon prepayment
5 (Section 2.211) on the date of consolidation and
6 the amount financed with respect to the subsequent
7 transaction. Based on the aggregate amount financed
8 resulting from the consolidation, the parties may
9 agree to payment by the consumer of a finance charge
10 calculated at a rate not exceeding that authorized by
11 the provisions on maximum finance charges. In the
12 event the transactions being consolidated are governed
13 by differing maximum finance charges the maximum
14 applicable to the aggregate amount financed shall not
15 exceed the lesser of the applicable rates of finance
16 charge.

17
18 (3) The parties may agree to consolidate by
19 adding together the unpaid balances at the time of con-
20 solidation with respect to the transactions. A consol-
21 idation accomplished by this method may not result in a
22 rate of finance charge greater than that to which the
23 creditor would have been entitled had no consolidation
24 occurred.

1 SECTION 2.210 RIGHT TO PREPAY

2 Subject to the provisions on rebate upon pre-
3 payment (Section 2.211), the consumer may prepay in
4 full or in any part the unpaid balance of a consumer
5 credit transaction at any time without penalty.

6

7

8 SECTION 2.211 REBATE UPON PREPAYMENT

9 (1) Upon prepayment in full or in any part of
10 the unpaid balance of a consumer credit transaction,
11 if the prepayment is at least as large as the amount
12 of a regularly scheduled instalment, an amount not
13 less than the unearned portion of the finance charge
14 calculated according to this Section shall be rebated
15 or otherwise credited to the consumer. If the total
16 of all rebates, refunds and credits to be paid to the
17 consumer is less than one dollar (\$1), no payment need
18 be made.

19

20 (2) The unearned portion of the finance charge
21 is the difference between the total amount of the
22 finance charge and the amount of finance charge
23 earned up to and including the date of prepayment,
24 calculated pursuant to the actuarial method.

25

26

2.211(3)

1 (3) Except as provided in subsection (4) with
2 respect to unearned insurance premiums, reasonable
3 sums actually paid or payable to third persons not
4 related to the creditor as additional charges
5 authorized pursuant to Section 2.204 need not be
6 rebated to the consumer.

7
8 (4) If the consumer credit transaction included
9 an amount for insurance premiums the consumer is en-
10 titled upon prepayment to a refund from the creditor
11 of the unearned premium calculated pursuant to Section
12 4.106.

13
14 (5) Prepayment of the obligation of the consumer
15 by the proceeds of consumer credit insurance is
16 governed by the provisions of Section 4.106.

17
18 (6) If a deferral (Section 2.207) has been agreed
19 to, the unearned portion of the finance charge shall
20 be computed without regard to the deferral. The amount
21 of deferral charge earned at the date of prepayment
22 shall also be calculated. If the deferral charge
23 earned is less than the deferral charge paid, the
24 difference shall be added to the unearned portion of
25 the finance charge. If any part of a deferral charge
26 has been earned but has not been paid, that part shall

1 be subtracted from the unearned portion of the finance
2 charge.

3

4 (7) This Section does not preclude the collection
5 or retention by the creditor of delinquency charges
6 (Section 2.206) for delinquencies of payments due
7 prior to prepayment.

8

9 (8) If the creditor brings an action on the
10 obligation and judgment is obtained, the consumer
11 is entitled to the same rebate as if payment had
12 been made on the date the action was brought.

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PART 3
DISCLOSURE AND FORM

SECTION

2.301 GENERAL REQUIREMENTS AND PROVISIONS

2.302 NOTICE TO CONSUMER

2.303 DISCLOSURE; REQUIREMENTS OF FEDERAL ACT

2.304 DISCLOSURE; ADDITIONAL REQUIREMENTS

2.305 ESTIMATES OR APPROXIMATIONS

2.306 BILINGUAL DISCLOSURES

2.307 PROHIBITION OF BLANK SPACES

2.308 VIOLATIONS OF THIS PART

SECTION 2.301 GENERAL REQUIREMENTS AND PROVISIONS

(1) The information required by the provisions of this Part to be disclosed by the creditor to the consumer or otherwise to be included within the writing evidencing the transaction

(a) shall be in writing; and

(b) shall be disclosed to the consumer at a time reasonably calculated to enable the consumer to act on the information disclosed, which in any event must be before the consumer signs any writing and before the transaction is consummated; and

1 (c) shall be made all together on either

2 (i) the writing evidencing the obliga-
3 tion and above or adjacent to the
4 place for the signature of the con-
5 sumer, or

6 (ii) if not required by this Part to be
7 on the writing evidencing the
8 obligation, on one side of a separate
9 writing which identifies the trans-
10 action; and

11 (d) shall be made clearly and conspicuously and
12 in a meaningful sequence.

13
14 (2) Every writing evidencing the obligation of the
15 consumer in a consumer credit transaction shall be
16 signed by every party to the transaction. If there is
17 more than one page, each page shall be signed by every
18 party to the transaction. All terms, printed or written,
19 shall appear on only one side of each page. Printed terms
20 shall be printed in at least eight (8) point standard
21 type except as otherwise required by this Act.

22
23 (3) Exact copies of the writing evidencing the trans-
24 action, including all disclosures required by this Part,
25 shall be given to all those who sign the writing, includ-
26 ing cosigners, at the time the disclosures are made.

2.301(4)

1 (4) The information required by this Part may be
2 supplemented by additional information or explanations
3 supplied by the creditor as long as the additional in-
4 formation or explanations do not have the effect of
5 circumventing, evading or unduly complicating the
6 requirements of this Part.

9 SECTION 2.302 NOTICE TO CONSUMER

10 Every writing evidencing the obligation of the con-
11 sumer in a consumer credit transaction shall include
12 immediately above the place for signature of the con-
13 sumer, the following notice printed in at least twelve
14 (12) point bold face type:

15 NOTICE TO CONSUMER

16 (A) DO NOT SIGN THIS AGREEMENT IF IT CONTAINS ANY BLANK
17 SPACES.

18 (B) YOU ARE ENTITLED TO AN EXACT COPY OF ALL PAPERS YOU
19 SIGN OR ARE SHOWN AS SOON AS YOU SIGN THIS AGREEMENT.

20 (C) YOU HAVE THE RIGHT AT ANY TIME TO PAY IN ADVANCE
21 THE UNPAID BALANCE DUE UNDER THIS AGREEMENT WITHOUT
22 PENALTY.

23
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1 SECTION 2.303 DISCLOSURE; REQUIREMENTS OF FEDERAL ACT

2 (1) The creditor shall disclose to the consumer to
3 whom credit is extended or for whom credit is arranged
4 the information required by this Part and by the Federal
5 Consumer Credit Protection Act and shall in all respects
6 comply with the provisions of that Act. In addition to
7 the requirements of the Federal Consumer Credit Protec-
8 tion Act the creditor shall disclose to the consumer in
9 the case of the sale of a dwelling and in the case of a
10 loan, secured by a first lien or equivalent security
11 interest on a dwelling, made to finance the purchase of
12 that dwelling, the sum of all payments scheduled to
13 repay the indebtedness using the term "total of payments"
14 and the total amount of the finance charge.

15
16 (2) Except as provided in subsection (1) and in
17 Section 2.305, the Regulations of the Board of Governors
18 of the Federal Reserve System promulgated pursuant to
19 the authorization contained in the Federal Consumer
20 Credit Protection Act as amended from time to time, if
21 not displaced by rule of the Administrator, are presumed
22 to be valid and binding interpretations of the require-
23 ments of disclosure incorporated into and made a part
24 of this Act by this Section.

25

26

2.303(3)

1 (3) A violation of the requirements of the Federal
2 Consumer Credit Protection Act as incorporated into and
3 made a part of this Act by this Section is a violation
4 of this Part for the purposes of Section 2.308.

7 SECTION 2,304 DISCLOSURE; ADDITIONAL REQUIREMENTS

8 (1) In addition to the requirements of Section
9 2.303, every writing evidencing the obligation of the
10 consumer in a consumer credit transaction shall include

- 11 (a) the date when signed; and
- 12 (b) the name and address of the consumer and
13 the creditor; and
- 14 (c) a description of the subject matter of the
15 transaction, including, in the case of
16 goods, their type and quantity, and, if so
17 identified by the manufacturer or supplier,
18 their make, model and serial number, and if
19 a floor sample or demonstrator or if used,
20 remanufactured or rebuilt, that fact; and
- 21 (d) a description of any collateral which se-
22 cures the obligation of the consumer, the
23 description to comply with the requirements
24 of subsection (2)(a) of Section 2.411; and
- 25 (e) in the case of a consumer credit sale that
26 includes a cash down payment all or part of

1 which is derived from the proceeds of a
2 consumer loan which the seller arranged,
3 participated in or otherwise assisted the
4 consumer in obtaining, the unpaid balance
5 of the loan, the name and address of the
6 lender, the number and amount of instalments
7 necessary to repay the loan and a conspic-
8 uous notice to the consumer that he is
9 obligated to make payments on both the
10 consumer loan and the consumer credit
11 transaction.

12
13 (2) For purposes of this Section the address of
14 the creditor is

15 (a) the address of his principal place of
16 business in this State, or, if none, the
17 address of his principal place of business
18 outside this State, and

19 (b) in addition, if different from the princi-
20 pal place of business, the address and per-
21 son in this State upon whom personal
22 service of process and other legal notices
23 can be made on behalf of the creditor.

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2.305

SECTION 2.305 ESTIMATES OR APPROXIMATIONS

If at the time disclosures must be made an amount or other item of information required to be disclosed or needed to determine a required disclosure is unknown or not available to the creditor, and a reasonable effort has been made to ascertain it, the creditor may use an estimated amount or approximation of the information, if

(a) the estimate or approximation is clearly identified as such, is reasonable and is based on the best information available to the creditor; and

(b) the estimate or approximation is not used for the purpose of circumventing or evading the disclosure requirements of this Part; and

(c) to the extent that the estimate or approximation made pertains to the finance charge expressed either as an amount or as the annual percentage rate, the consumer

(i) shall not be obligated to make any payment under the transaction until he has been provided with the correct information by the creditor, and

(ii) shall be obligated under the transaction to pay the lesser of the

1 actual or the estimated or approxi-
2 mated finance charge.

3

4

5 SECTION 2.306 BILINGUAL DISCLOSURES

6 (1) The disclosures required by this Act and any
7 other law with respect to goods or services which are
8 the subject of a consumer credit transaction shall be
9 given in writing both in English and in a language
10 other than English if

- 11 (a) such other language is the principal
12 language of the consumer to whom the
13 disclosure is required to be made, and
14 (b) the creditor required to give the disclo-
15 sure uses such other language in any
16 advertisement or other solicitation of the
17 consumer, or in any printed writing, for
18 use by the consumer, or in any face-to-
19 face negotiation with the consumer.

20

21 (2) The Administrator may develop and make avail-
22 able standard forms utilizing proper translations of
23 terms which are required to be disclosed in languages
24 other than English pursuant to this Section.

25

26

2.307

1 SECTION 2.307 PROHIBITION OF BLANK SPACES

2 (1) Every writing evidencing the obligation of the
3 consumer in a consumer credit transaction shall be com-
4 pleted as to all essential provisions prior to its
5 signing by the consumer.

6
7 (2) No creditor shall induce, encourage or other-
8 wise permit the consumer to sign any writing containing
9 blank spaces. Blanks inapplicable to a transaction must
10 be completed in a manner which reveals their inappli-
11 cability.

12
13
14 SECTION 2.308 VIOLATIONS OF THIS PART

15 A violation of this Part is subject to the provi-
16 sions of Section 8.105.

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1 PART 4

2 LIMITATIONS ON AGREEMENTS AND PRACTICES

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SECTION

- 2.401 USE OF MULTIPLE AGREEMENTS
- 2.402 BALLOON PAYMENTS PROHIBITED
- 2.403 LIMITATION ON DEFAULT CHARGES
- 2.404 ATTORNEY'S FEES
- 2.405 ASSIGNMENT OF EARNINGS PROHIBITED
- 2.406 LIMITATIONS ON EXECUTORY TRANSACTIONS
- 2.407 RESTRICTION ON LIABILITY IN
CONSUMER LEASE
- 2.408 DEFINITIONS: "CREDIT CARD"; "CARDHOLDER";
RESTRICTIONS ON LIABILITY FOR UNAUTHORIZED
USE OF CREDIT CARD
- 2.409 POWERS OF ATTORNEY PROHIBITED
- 2.410 MODIFICATION OF TERMS OF AGREEMENT
- 2.411 RESTRICTIONS ON SECURITY INTERESTS
- 2.412 SECURITY INTERESTS; CONSOLIDATIONS;
OPEN END CREDIT PLANS
- 2.413 NOTICE OF ASSIGNMENT
- 2.414 VIOLATIONS OF THIS PART

2.401

1 SECTION 2.401 USE OF MULTIPLE AGREEMENTS

2 (1) No creditor shall divide, refinance, consoli-
3 date or otherwise permit the consumer to become obli-
4 gated with respect to a consumer credit transaction or
5 transactions with the result of obtaining a higher rate
6 of finance charge or of circumventing or evading any
7 provision of this Act.

8
9 (2) Separate agreements entered into between a
10 creditor and a husband and wife respectively which arise
11 from substantially the same transaction are in vio-
12 lation of this Section.

13
14 (3) A violation of this Section is subject to the
15 provisions of Section 8.106.

16
17
18 SECTION 2.402 BALLOON PAYMENTS PROHIBITED

19 (1) With respect to a consumer credit transaction
20 other than one pursuant to an open end credit plan, ex-
21 cept as authorized pursuant to subsection (2) no credi-
22 tor shall enter into an agreement which contains or
23 anticipates a schedule of instalments pursuant to which
24 any one payment is not substantially equal to all other
25 instalments, excluding any down payment received by the
26 creditor contemporaneously with or prior to the consum-

1 mation of the transaction, or pursuant to which the
2 intervals between any consecutive instalments differ
3 substantially in time.
4

5 (2) If the livelihood of the consumer is dependent
6 upon seasonal or intermittent income, the parties may
7 agree in a writing separate from that evidencing the
8 transaction that one or more payments or the intervals
9 between one or more instalments may differ from the
10 other payments or intervals scheduled if such instal-
11 ments or intervals are expressly related to the antici-
12 pated income of the consumer. The separate writing
13 shall be signed by the consumer and the creditor and
14 shall indicate the amount and due dates of each sched-
15 uled instalment and the anticipated income and dates of
16 income which gave rise to the scheduling.
17

18 (3) In the event of a violation of subsection (1)
19 or of a transaction pursuant to subsection (2), the con-
20 sumer shall have the right at any time, without further
21 charge or obligation, to revise the schedule of instal-
22 ments to conform both the amounts and the intervals
23 between instalments to the average of all instalments and
24 intervals.
25
26

2.402(4)

1 (4) A violation of this Section is subject to the
2 provisions of Section 8.106.

3 4 5 SECTION 2.403 LIMITATION ON DEFAULT CHARGES

6 Except for reasonable expenses incurred in an action
7 for possession of collateral pursuant to the Part on En-
8 forcement of Security Interests (Part 2 of Article 7) no
9 term of a writing evidencing the obligation of the con-
10 sumer in a consumer credit transaction may provide for
11 any charges as a result of default by the consumer other
12 than those authorized by a provision of this Act.

13 14 15 SECTION 2.404 ATTORNEY'S FEES

16 No term of a writing evidencing the obligation of
17 the consumer in a consumer credit transaction may provide
18 for the payment by the consumer of attorney's fees.

19 20 21 SECTION 2.405 ASSIGNMENT OF EARNINGS PROHIBITED

22 No creditor shall take an assignment of earn-
23 ings of the consumer or of any other person for payment
24 or as security for payment of any obligation arising
25 from a consumer credit transaction.

26

1 SECTION 2.406 LIMITATIONS ON EXECUTORY TRANSACTIONS

2 (1) With respect to a consumer credit transaction
3 the subject of which is performance by the creditor
4 delivery of goods, services or goods and services in
5 two (2) or more instalments, whether on demand of the con-
6 sumer or by prearranged scheduled performance,

7 (a) upon a default by the consumer the creditor
8 is entitled to recover only that portion
9 of the transaction total attributable to the
10 obligation of the creditor actually per-
11 formed. The recovery includes any agreed
12 finance charges attributable to that part
13 of the obligation. The creditor may re-
14 cover liquidated damages pursuant to sub-
15 section (2) in lieu of the recovery
16 permitted by this subsection, and

17 (b) no term of a writing evidencing the obli-
18 gation of the consumer shall contain a
19 provision accelerating the obligation
20 of the consumer for any cause, and any
21 such provision is void.

22
23 (2) A term in the agreement of the parties requiring
24 the consumer to pay liquidated damages in the case of
25 his default is not in violation of this Section if the
26

2.406(2)

1 damages provided are not in excess of ten (10) per cent
2 of the amount the creditor is entitled to recover pur-
3 suant to subsection (1)(a).
4

5 (3) A violation of this Section is subject to the
6 provisions of Section 8.107 and Section 8.109.
7
8

9 SECTION 2.407 RESTRICTION ON LIABILITY
10 IN CONSUMER LEASE

11 The obligation of the consumer upon expiration of
12 a consumer lease may not exceed that amount for unpaid
13 periodic instalments disclosed pursuant to the Part on
14 Disclosure and Form (Part 3 of this Article), unpaid
15 charges authorized by this Act and, if agreed to by the
16 parties, charges for damage to the leased property
17 occasioned by other than normal use.
18
19

20 SECTION 2.408 DEFINITIONS: "CREDIT CARD"; "CARDHOLDER";
21 RESTRICTIONS ON LIABILITY FOR UNAUTHORIZED
22 USE OF CREDIT CARD

23 (1) In this Section

24 (a) "credit card" means any card, plate, coupon,
25 merchandise certificate, book or other simi-
26

1 lar credit device existing for the purpose
2 of obtaining goods, services or money or
3 other credit, and

4 (b) "cardholder" means the consumer who has
5 agreed with the creditor to pay obligations
6 arising from the issuance to or the author-
7 ized use of a credit card and any person
8 authorized by the consumer to use the credit
9 card.

10

11 (2) A cardholder incurs no liability from the un-
12 authorized use of a credit card. Unauthorized use occurs
13 when a credit card is used by a person, other than the
14 cardholder, who does not have actual authority for such
15 use and from which use the cardholder receives no
16 benefit.

17

18

19 SECTION 2.409 POWERS OF ATTORNEY PROHIBITED

20 No creditor may take or accept from the consumer a
21 warrant or power of attorney or other authorization for
22 the creditor, or other person acting on his behalf, to
23 confess judgment or otherwise act as the agent for the
24 consumer in the enforcement of any claim or security
25 interest against the consumer.

26

2.410

1 SECTION 2.410 MODIFICATION OF TERMS OF AGREEMENT

2 (1) Unless authorized by a provision of this Act no
3 creditor shall modify the terms of an agreement with a
4 consumer with respect to any outstanding obligation of
5 the consumer, which results in an increase of the rate
6 of the finance or other charge or an increase in the
7 amount of an instalment or periodic payment due, or which
8 otherwise adversely affects the interests of the consumer.
9 A modification agreed to by the parties which applies to
10 obligations incurred by the consumer subsequent to the
11 agreement for modification is not a violation of this
12 Section.

13
14 (2) A violation of this Section is subject to the
15 provisions of Section 8.105 and in addition the consumer
16 has the right to have his outstanding obligation con-
17 form to the terms of the original agreement.

18
19
20 SECTION 2.411 RESTRICTIONS ON SECURITY INTERESTS

21 (1) With respect to a consumer credit transaction
22 the creditor may take a security interest in property
23 of the consumer, except as otherwise provided in this
24 Act.

25
26

1 (2) The following restrictions apply to all
2 consumer credit transactions:

3 (a) a security interest does not attach and
4 is not enforceable against the consumer or
5 the property unless the consumer has signed
6 a security agreement which contains a
7 description of the security interest held
8 or retained by the creditor in connection
9 with the extension of credit, and which
10 contains a clear identification of each
11 particular item or items of collateral,
12 including if applicable the name of the
13 manufacturer, the make, model and serial
14 number, and if a floor sample or demonstra-
15 tor, or if used, remanufactured or rebuilt,
16 that fact; and

17 (b) no creditor shall take or acquire a security
18 interest in personal effects, household
19 furnishings, appliances and clothing of the
20 consumer and his dependants; and

21 (c) no creditor shall take or acquire a security
22 interest in other goods in which secured
23 goods are installed, or to which they are
24 affixed unless the obligation secured is
25 five hundred dollars (\$500) or more; and
26

2.411(2)

1 (d) no creditor shall take or acquire a security
2 interest in real property unless the credit
3 is extended for the purpose of the acquisi-
4 tion of the real property or unless the
5 credit is extended for the purpose of the
6 substantial improvement of the real property
7 and the amount financed is three thousand
8 dollars (\$3000) or more.

9
10 (3) With respect to a consumer credit sale, except
11 as provided in subsection (2)(c)

12 (a) a security interest may be taken or acquired
13 only in goods sold by the creditor to the
14 consumer or worked upon by the creditor, and

15 (b) no creditor may take or acquire a security
16 interest in goods which are acquired or to
17 be acquired in the future by the consumer.

18
19 (4) With respect to a consumer loan no creditor
20 shall secure the obligation

21 (a) with an interest in the tools of the trade
22 of the consumer not exceeding a fair market
23 value of five hundred dollars (\$500) or in
24 personal property the fair market value of
25 which exceeds one and one half times the
26 amount financed, or

1 (b) except as provided in subsection (2)(c),
2 with an interest in after-acquired consumer
3 goods unless the consumer acquires rights
4 in them within ten (10) days after the
5 creditor and consumer consummate the loan
6 transaction.

7
8 (5) With respect to a consumer lease no creditor
9 may take or acquire a security interest in any property
10 of the consumer to secure the obligation arising from
11 the lease.

12
13

14 SECTION 2.412 SECURITY INTERESTS: CONSOLIDATIONS;
15 OPEN END CREDIT PLANS

16 (1) The parties may agree in a consolidation agree-
17 ment (Section 2.209) that the creditor may secure the
18 consolidated obligation by a security interest in goods
19 which were the subject of the prior transaction if he
20 has an existing security interest in those goods as a
21 result of the prior transaction and the obligation
22 remaining on that prior transaction is one of those
23 to be consolidated.

24
25
26

 (2) For the purpose of determining the amount of
the consolidated obligation secured by the various se-

2.412(2)

1 security interests, payments received by the creditor
2 after a consolidation agreement are deemed to have been
3 first applied to the payment of obligations arising
4 from the transactions first made. To the extent that
5 obligations are paid pursuant to this Section, security
6 interests in goods terminate as the obligation origi-
7 nally incurred with respect to each item is paid.

8
9 (3) Payments received by the creditor pursuant to an
10 open end credit plan are deemed, for the purpose of de-
11 termining the amount of the unpaid balance secured by the
12 various security interests, to have been applied first
13 to the payment of finance charges in the order of their
14 entry to the account, and then to the payment of the
15 respective amounts financed in the order in which the
16 entries to the account were made.

17
18 (4) If obligations consolidated or financed pursu-
19 ant to an open end credit plan arise from two (2) or more
20 transactions made on the same day, payments received by
21 the creditor are deemed, for the purpose of determining
22 the amount of the obligation secured by the various
23 security interests, to have been applied first to the
24 payment of the smallest obligation.

25
26

1 SECTION 2.413 NOTICE OF ASSIGNMENT

2 (1) In the event of an assignment of the rights of
3 the creditor to payment pursuant to a consumer credit
4 transaction the consumer is authorized to pay the orig-
5 inal creditor until the consumer receives notification
6 of the assignment and that payment is to be made to the
7 assignee.

8
9 (2) The notice required in subsection (1) shall be
10 in writing and shall disclose to the consumer

11 (a) the name, address and telephone number of

12 (i) each person who has previously been
13 entitled to payment pursuant to the
14 transaction, and

15 (ii) the person to whom future payments are
16 to be made; and

17 (b) a brief statement identifying the trans-
18 action; and

19 (c) the original date and unpaid balance of the
20 transaction; and

21 (d) the number and amount of payments credited
22 against the obligation of the consumer; and

23 (e) the outstanding unpaid balance of the obli-
24 gation including the number and amount of
25 instalments remaining to be paid.

26

2.413(3)

1 (3) A notification which does not reasonably iden-
2 tify the rights assigned is ineffective. If requested
3 by the consumer, the assignee must seasonably furnish
4 reasonable proof that the assignment has been made and
5 unless he does so the consumer may pay the original
6 creditor.

9 SECTION 2.414 VIOLATIONS OF THIS PART

10 Except as otherwise specifically provided, any
11 violation of this Part is subject to the provisions
12 of Section 8.105.

1 PART 5

2 UNFAIR OR DECEPTIVE PRACTICES AND WARRANTIES

3
4 SECTION

5 2.501 UNFAIR OR DECEPTIVE ACTS OR
6 PRACTICES PROHIBITED

7 2.502 DEFINITIONS: "WARRANTY"; "MERCHANTABLE"

8 2.503 DISCLAIMER OF WARRANTIES PROHIBITED

9 2.504 BREACH OF WARRANTY; PRIVACY ABOLISHED

10
11
12 SECTION 2.501 UNFAIR OR DECEPTIVE ACTS OR
13 PRACTICES PROHIBITED

14 (1) No creditor shall engage in an unfair or decep-
15 tive act or practice related to any aspect of a consumer
16 credit transaction. Without limiting the foregoing, an
17 act or practice includes any inducement to enter into a
18 transaction, any arrangement for or extension of credit
19 or any enforcement of or attempt to enforce the trans-
20 action.

21
22 (2) A representation which fails to state any fact
23 or facts material to the credit, goods or services ad-
24 vertised, or which fails to state material information
25 necessary to make the statements or representations
26

2.501(2)

1 therein not false or misleading is an unfair or deceptive
2 act or practice.

3
4 (3) It is the intent of the legislature that in
5 construing subsections (1) and (2), the Administrator
6 and the courts will be guided by the interpretations
7 given by the Federal Trade Commission and the Federal
8 courts to Section (5)(a)(1) of the Federal Trade Com-
9 mission Act, 15 U.S.C. §45(a)(1), as from time to time
10 amended, and rules and regulations promulgated pursuant
11 to Section (5)(a)(1) of the Federal Trade Commission
12 Act as well as any rules promulgated by the Adminis-
13 trator pursuant to Section 9.103.

14
15 (4) A violation of the provisions on advertising of
16 the Federal Consumer Credit Protection Act or of the
17 Federal Trade Commission Act, as interpreted by the Fed-
18 eral Trade Commission and the Federal courts, or of any
19 other state or Federal statute is prima facie evidence
20 that an advertisement violates this Section.

21
22 (5) A violation of this Section is subject to the
23 provisions of Section 8.108 and Section 8.109.

1 SECTION 2.502 DEFINITIONS: "WARRANTY"; "MERCHANTABLE"

2 For the purposes of this Act

3 (1) "Warranty" means

4 (a) express and implied warranties as
5 defined in [Sections 2-313, 2-314
6 and 2-315 of the Uniform Commercial
7 Code], and8 (b) expressions or conduct of a creditor
9 which assure or purport to assure the
10 consumer, directly or indirectly, that
11 goods have particular qualities or
12 will perform in a particular manner.13
14 (2) "Merchantable" means in addition to the quali-
15 ties prescribed in [Section 2-314 of the Uniform
16 Commercial Code] that17 (a) at the minimum, the goods conform in all
18 material respects to applicable State
19 and Federal statutes and regulations es-
20 tablishing standards of quality and
21 safety of goods of that kind, and22 (b) in the case of goods with mechanical,
23 electrical or thermal components, the
24 goods are in good working order and will
25 function in accordance with the reason-
26 able expectations of the consumer during

2.502(2)

1 a period of time reasonable for goods of
2 that kind.

3
4

5 SECTION 2.503 DISCLAIMERS OF WARRANTIES PROHIBITED

6 (1) Notwithstanding any other provision of law,
7 with respect to goods which are the subject of or will
8 become the subject of a consumer credit transaction, no
9 person shall

10 (a) exclude, modify or otherwise attempt
11 to limit any warranty, express or im-
12 plied, including the warranties of
13 merchantability and fitness for a par-
14 ticular purpose, or

15 (b) exclude, modify or attempt to limit
16 any penalty or remedy provided by
17 this Act or other rule or law, in-
18 cluding the measure of damages avail-
19 able, for a breach of warranty,
20 express or implied.

21

22 (2) A violation of this Section is subject to the
23 provisions of Section 8.108.

24
25
26

1 SECTION 2.504 BREACH OF WARRANTY; PRIVACY ABOLISHED

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

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1 (2) For the purpose of this Part, "transferee"
2 includes the holder, assignee and any subsequent trans-
3 feree.

4
5 (3) For the purposes of this Part, and without
6 limiting the factors to be considered in determining
7 good faith pursuant to this Part, the lender or
8 transferee is not in good faith if

9 (a) after acquiring the obligation of the con-
10 sumer he learns of or has reason to know of
11 a claim, defense or equity arising out of
12 the transaction and nonetheless attempts
13 to collect from the consumer on the dis-
14 puted portion of that obligation, or

15 (b) he is a person related to one who has
16 not acted in good faith.

17
18
19 SECTION 2.602 LIABILITY OF TRANSFEREE

20 (1) The transferee of an obligation of the con-
21 sumer arising from a consumer credit transaction is
22 liable to the full extent of all claims, defenses and
23 equities of the consumer which arise from that trans-
24 action, except as otherwise provided in this Section.

2.602(2)

1 (2) If the transferee acquires the obligation of
2 the consumer in good faith, for value, without notice
3 of any claims, defenses or equities, continues to act
4 in good faith after acquiring the obligation and is not
5 a person related to the original creditor, the liabil-
6 ity of the transferee shall not exceed the transaction
7 total of the original transaction.

10 SECTION 2.603 LIABILITY OF LENDER AND TRANSFEREE

11 (1) The lender who extends credit to a consumer in
12 the form of a loan and the transferee of that obliga-
13 tion is liable to the consumer to the full extent of
14 all claims, defenses and equities of the consumer aris-
15 ing out of the consumer transaction in which the pro-
16 ceeds of the loan are used, except as otherwise provided
17 in this Section.

18
19 (2) If the lender extends the loan or the trans-
20 feree acquires the obligation of the consumer in good
21 faith, without notice of any claims, defenses or equities
22 and continues to act in good faith throughout the trans-
23 action, the liability of the lender or transferee shall
24 not exceed the amount of the proceeds of the loan used
25 in the consumer transaction and, in addition, any finance
26

1 or other charges arising out of the loan which are
2 attributable to that amount.

3
4 (3) The lender or transferee of the lender has no
5 liability pursuant to this Section if

6 (a) with respect to the lender who acts in good
7 faith he establishes by a preponderance
8 of the evidence that he did not know and
9 had no reason to know that the proceeds of
10 the loan, or any part of them, would be
11 used in a consumer transaction, or

12 (b) with respect to the transferee who acts in
13 good faith he establishes by a preponder-
14 ance of the evidence that the lender would
15 have qualified for exemption from liability
16 under subsection (3)(a) and that the trans-
17 feree did not know and had no reason to
18 know that the proceeds or any part of the
19 loan were used in a consumer transaction.

20
21 (4) Without limiting the scope of the inquiry pur-
22 suant to subsection (3) regarding the knowledge or rea-
23 son to know of the lender, the lender will be deemed to
24 have knowledge that the proceeds of a loan will be used
25 in a consumer transaction when

26

2.603(4)

- 1 (a) the lender is a person related to the
2 seller; or
- 3 (b) the lender supplies to the seller or the
4 seller prepares documents used to evidence
5 the loan obligation of the consumer; or
- 6 (c) the lender has recourse to the seller for
7 nonpayment of the loan through guaranty,
8 reserve account or otherwise; or
- 9 (d) the lender directly or indirectly pays to
10 the seller any commission, fee or other
11 consideration based upon the assistance or
12 cooperation of the seller in the obtaining
13 of the loan; or
- 14 (e) the lender makes payment of the proceeds of
15 the loan to the seller either individually
16 or jointly with the consumer; or
- 17 (f) the lender conditions the extension of
18 credit upon the purchase of goods or ser-
19 vices from the seller; or
- 20 (g) the lender knew or should have known that
21 the loan was arranged by the seller or a
22 person acting on behalf of the seller; or
- 23 (h) the lender and seller participate in any
24 arrangement, formal or otherwise, in which
25 the seller refers consumers to the lender;
26 or

- 1 (i) the lender permits the reference to his
2 services to be used by the seller in connec-
3 tion with the consumer transactions; or
4 (j) the lender takes a security interest in the
5 property which is the subject of the con-
6 sumer transaction; or
7 (k) the lender otherwise participates in or is
8 connected with the consumer transaction.
9

10 (5) The lender has the right, without penalty, to
11 rescind a loan commitment if the consumer has not irre-
12 vocably obligated himself in reliance upon the commitment
13 and if, after the commitment is made but before the loan
14 is extended, the lender acquires knowledge of facts giv-
15 ing rise to a substantial risk of liability which risk
16 was not known at the time the commitment was initially
17 made and he thereupon promptly gives the consumer notice
18 of the facts and of the election to rescind the contract.
19
20

21 SECTION 2.604 COSTS; IMMUNITY; SUBROGATION

22 (1) Nothing in this Part shall be construed to
23 limit the liability of any person for reasonable attor-
24 ney's fees and litigation expenses pursuant to Section
25 8.113 or for any other liability pursuant to any other
26 provisions of this Act.

2.604(2)

1 (2) No term of an agreement may reduce the liabil-
2 ity provided by this Part or confer greater immunity
3 from claims, defenses or equities than is permitted in
4 this Part.

5

6 (3) The lender or transferee is subrogated to the
7 rights of the consumer for any claims, defenses or
8 equities for which the lender or transferee is held
9 liable.

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1 PART 7

2 DIRECT SOLICITATION TRANSACTIONS

3
4 SECTION

5 2.701 DEFINITIONS: "DIRECT SOLICITATION TRANSACTION";
6 "CONCLUSION OF THE DIRECT SOLICITATION"

7 2.702 EMERGENCY EXCLUDED

8 2.703 REQUIREMENT OF APPROVAL

9 2.704 DISCLOSURE OF RIGHT TO APPROVE

10 2.705 MANNER OF APPROVAL

11 2.706 FORM AND CONTENT OF NOTICE OF APPROVAL

12 2.707 TRANSACTIONS NOT APPROVED: OBLIGATION OF
13 CREDITOR; WAIVER OF RIGHTS

14 2.708 TRANSACTIONS NOT APPROVED: RIGHTS AND
15 OBLIGATIONS OF CONSUMER

16 2.709 DISCLOSURE OF PURPOSE OF TRANSACTION

17 2.710 VIOLATIONS OF THIS PART

18
19
20 SECTION 2.701 DEFINITIONS: "DIRECT SOLICITATION
21 TRANSACTION"; "CONCLUSION OF THE
22 DIRECT SOLICITATION"

23 (1) "Direct solicitation transaction" means a con-
24 sumer credit transaction initiated, negotiated or con-
25 cluded by the creditor, in whole or in part, at the
26 residence of any consumer, or at a place other than the

2.701(1)

1 normal place of business of the creditor or by a credi-
2 tor who has no normal place of business, and includes a
3 transaction initiated by the creditor by mail or tele-
4 phone solicitation if it is negotiated, in whole or in
5 part, at the residence of any consumer or at a place
6 other than the normal place of business of the creditor.

7
8 (2) "Conclusion of the direct solicitation" means
9 the point in time when the creditor has

10 (a) completed any sales presentation to the
11 consumer, and

12 (b) the consumer has signed an agreement evi-
13 dencing the obligation of the parties to
14 the direct solicitation transaction and
15 either the consumer or the creditor has
16 left the site of the signing.

17 18 19 SECTION 2.702 EMERGENCY EXCLUDED

20 The provision of this Part does not apply if the
21 consumer initiates the request for the goods, services
22 or credit without delay because of an existing emergency.

1 SECTION 2.703 REQUIREMENT OF APPROVAL

2 (1) Notwithstanding a signature on an offer to pur-
3 chase goods or services or a writing evidencing the
4 agreement of the consumer to a consumer credit transac-
5 tion, the consumer is not obligated pursuant to the
6 direct solicitation transaction until he has approved
7 the transaction and the creditor has complied with the
8 provisions of this Part and any other applicable provi-
9 sions of this Act.

10

11 (2) A creditor shall not change the terms of the
12 agreement of the direct solicitation transaction signed
13 by the consumer or avoid the transaction before the
14 period for approval of the transaction has expired.

15

16 (3) Approval of the direct solicitation transac-
17 tion occurs when the consumer mails written notice of
18 approval to the creditor pursuant to the provisions of
19 Section 7.705.

20

21 (4) An approval of the transaction by the consumer
22 prior to the conclusion of the direct solicitation is
23 void.

24

25 (5) A creditor shall not perform services or de-
26 liver any goods or extend credit prior to the approval

2.703(5)

1 of the transaction by the consumer if the effect or
2 result of the performance or delivery is evasion or
3 circumvention of the provisions of this Part.
4

5 (6) In the event that the creditor does not receive
6 the notice of right to approve pursuant to this Part
7 within a reasonable period of time from the conclusion
8 of the direct solicitation he may mail one (1) additional
9 notice of right to approve to the consumer unless the
10 additional notice has the effect or the result of eva-
11 sion or circumvention of the provisions of this Part.
12 If there is any other contact between the creditor and
13 the consumer after the conclusion of the direct solici-
14 tation and prior to the approval of the transaction by
15 the consumer, the provisions of this Part apply as if
16 there had been no conclusion of the direct solicitation.
17

18 (7) The burden of proof of compliance with this
19 Part is upon the creditor.
20
21

22 SECTION 2.704 DISCLOSURE OF RIGHT TO APPROVE

23 Prior to the conclusion of the direct solicitation
24 the creditor shall provide the consumer with a statement
25 which explains clearly and simply the right of the con-
26 sumer to approve the transaction before any obligation

1 is created. The statement shall

2 (a) be in a writing separate from that evidenc-
3 ing the obligation of the consumer; and

4 (b) inform the consumer that he will receive
5 in the mail the notice of right to approve
6 the transaction; and

7 (c) inform the consumer what he must do if he
8 either does or does not wish to become
9 obligated on the transaction.

10
11
12 SECTION 2.705 MANNER OF APPROVAL

13 (1) In the direct solicitation transaction the
14 creditor shall mail the notice of right to approve
15 (Section 2.706) to the consumer after the conclusion
16 of the direct solicitation.

17
18 (2) Unless approval of the direct solicitation
19 transaction is given by the consumer within three (3)
20 days of his receipt of the notice of right to approve,
21 the approval is void.

22
23 (3) Approval of the direct solicitation transaction
24 is given by the consumer when the notice of right to
25 approve or a writing pursuant to subsection (4) is
26 mailed to the creditor.

2.705(4)

1 (4) The consumer may approve the direct sollicita-
2 tion transaction in a writing other than that provided
3 by the notice of right to approve if the writing mani-
4 fests the intention of the consumer to approve and is
5 not prepared by the creditor.

8 SECTION 2.706 FORM AND CONTENT OF NOTICE OF APPROVAL

9 (1) The notice required by this Part of the right
10 of the consumer to approve the direct solicitation
11 transaction shall

- 12 (a) be in writing in not less than eight (8)
13 point type on one side of a page; and
14 (b) contain no information not otherwise re-
15 quired by this Section; and
16 (c) clearly identify the creditor, the trans-
17 action, the date of the transaction and the
18 individual who negotiated the transaction;
19 and
20 (d) be accompanied by a copy of the writing
21 bearing the signature of the consumer
22 which evidences the transaction; and
23 (e) bear the conspicuous caption "RIGHT OF THE
24 CONSUMER TO APPROVE"; and
25 (f) in addition to the requirements of subsec-
26 tion (c) read, unless other wording is

2.707

1 SECTION 2.707 TRANSACTIONS NOT APPROVED: OBLIGATION
2 OF CREDITOR; WAIVER OF RIGHTS

3 (1) If the consumer does not approve the direct
4 solicitation transaction, the creditor

5 (a) shall within twenty (20) days from the con-
6 clusion of the direct solicitation, return
7 to the consumer any money received from
8 the consumer pursuant to the transaction;
9 and

10 (b) shall return to the consumer any property
11 received from the consumer pursuant to the
12 transaction within a reasonable period of
13 time which is presumed to be twenty (20)
14 days from the conclusion of the direct
15 solicitation; and

16 (c) waives his rights to any property delivered
17 to the consumer unless within thirty (30)
18 days from the conclusion of the direct
19 solicitation the creditor takes delivery
20 of the property at the residence of the
21 consumer or at another reasonable place or
22 at a reasonable later time designated by
23 the consumer; and

24 (d) waives his rights to any money delivered
25 to the consumer unless within twenty (20)
26 days of the conclusion of the direct

2.707(1)

1 solicitation the creditor, in writing, demands
2 its return and furnishes a self-addressed,
3 postage paid envelope for that purpose.
4

5 (2) A violation of this Section is subject to the
6 provisions of Sections 8.106.
7

8
9 SECTION 2.708 TRANSACTIONS NOT APPROVED: RIGHTS AND
10 OBLIGATIONS OF CONSUMER

11 (1) If the consumer does not approve the direct
12 solicitation transaction

13 (a) the consumer shall, upon written demand by
14 the creditor, return any property received
15 from the creditor pursuant to the transac-
16 tion. The consumer shall deliver the prop-
17 erty to the creditor at the residence of
18 the consumer within thirty (30) days from
19 the conclusion of the direct solicitation
20 or at another reasonable place or a reason-
21 able later time designated by the consumer.
22 If no demand is made within thirty (30)
23 days of the conclusion of the direct
24 solicitation, the consumer may keep the
25 property as a gift, and
26

2.708(1)

1 (b) the consumer shall return any money received
2 pursuant to the transaction upon written
3 demand by the creditor accompanied by a
4 self-addressed, postage paid envelope. If
5 no demand is made within twenty (20) days
6 of the conclusion of the direct sollicita-
7 tion, the consumer may keep the money as a
8 gift.

9

10 (2) If the consumer fulfills the requirements
11 imposed by this Section he is not otherwise obligated
12 for any goods delivered or services performed pursuant
13 to the direct solicitation transaction not approved.

14

15 (3) If the direct solicitation transaction is not
16 approved the consumer is not obligated to pay for or
17 return any property which is affixed to his property by
18 a creditor pursuant to the transaction. The consumer
19 is not obligated to return any money or to pay for or
20 return any property which was delivered prior to approval
21 of the transaction for the purpose of circumventing or
22 evading this Part.

23

24

25

26

1 SECTION 2.709 DISCLOSURE OF PURPOSE OF TRANSACTION

2 (1) The creditor shall not engage or attempt to
3 engage the consumer in a direct solicitation transaction
4 until he openly, completely and conspicuously discloses
5 to the consumer

6 (a) that the purpose of the contact is to
7 effect a sale of specified goods, services
8 or property, and

9 (b) the name of the agent or employee of the
10 creditor making the solicitation and the
11 name of the creditor he represents.

12
13 (2) A violation of this Section is an unfair or
14 deceptive practice pursuant to Section 2.501 and is sub-
15 ject to the provisions of Section 8.108 and Section
16 8.109.

17
18
19 SECTION 2.710 VIOLATIONS OF THIS PART

20 Except as otherwise specifically provided, a viola-
21 tion of this Part is subject to the provisions of Section
22 8.105.

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1 ARTICLE 3
2 ADMINISTRATION OF CREDIT ACCOUNTS
3

4 PART 1
5 BILLING, RECEIPTS AND PAYMENTS
6

7 SECTION

- 8 3.101 RECEIPTS FOR CASH PAYMENT
9 3.102 PERIODIC BILLING STATEMENT
10 3.103 MAILING OF PERIODIC BILLING STATEMENT
11 3.104 PAYMENT CREDITED ON DATE OF RECEIPT
12 3.105 ACCOUNTING BY MERCHANT OF PAYMENT RECEIVED
13 AND CHARGES IMPOSED
14 3.106 RETURNS AND OTHER CREDITS IN OPEN END
15 CREDIT PLANS
16 3.107 CREDITING EXCESS PAYMENT
17 3.108 ACKNOWLEDGMENT OF PAYMENT AND SATISFACTION
18 OF SECURITY INTEREST
19 3.109 VIOLATIONS OF THIS PART
20
21

22 SECTION 3.101 RECEIPTS FOR CASH PAYMENT

23 With respect to a consumer credit transaction,
24 the creditor shall provide the consumer, without request,
25 a written receipt for each payment made by cash, money
26

1 order or any other method of payment which does not it-
2 self provide evidence of payment.

3
4
5 SECTION 3.102 PERIODIC BILLING STATEMENT

6 (1) With respect to an open end credit plan, for
7 each billing cycle on the last day of which there is an
8 unpaid balance in excess of one dollar (\$1) or with re-
9 spect to which a finance charge is imposed, the creditor
10 shall mail or deliver to the consumer

11 (a) the information required by the Part on
12 Disclosure and Form (Part 3 of Article 2);
13 and

14 (b) a brief description sufficient to enable
15 the consumer to identify any transaction
16 not previously billed and to relate it to
17 copies of sales vouchers or similar in-
18 struments previously furnished; and

19 (c) the name and address of the person to
20 whom payment is to be made and any bill-
21 ing inquiries are to be transmitted; and

22 (d) a statement setting forth the rights and
23 duties, all required time periods, pro-
24 vided by the Part on Errors in Credit
25 Accounts (Part 2 of this Article).

26

3.102(2)

1 (2) The requirements of subsection (1) do not
2 apply in the case of an open end credit account with
3 respect to which collection efforts have ceased or an
4 action has been brought.

5
6 (3) If a creditor elects to transmit periodic bill-
7 ing statements with respect to a consumer credit trans-
8 action other than one pursuant to an open end credit
9 plan, the statements shall conform to the requirements
10 of subsection (1).

11
12

13 SECTION 3.103 MAILING OF PERIODIC BILLING STATEMENT

14 With respect to a consumer credit transaction pur-
15 suant to which periodic billing statements are provided
16 or are required to be provided to the consumer pursuant
17 to the provisions of this Act, the creditor shall
18 mail or deliver the statement for each billing cycle
19 not later than eighteen (18) days before the closing
20 date of the next succeeding billing cycle.

21
22

23 SECTION 3.104 PAYMENT CREDITED ON DATE OF RECEIPT

24 Any payment, return or other credit received by
25 a creditor with respect to a consumer credit transaction
26

1 shall be credited to the obligation of the consumer
2 as of the date of receipt of such payment.
3
4

5 SECTION 3.105 ACCOUNTING BY MERCHANT OF PAYMENT
6 RECEIVED AND CHARGES IMPOSED

7 (1) With respect to a consumer credit transaction
8 other than one pursuant to an open end credit plan,
9 upon request of the consumer the creditor shall pro-
10 vide a written statement of the amounts and dates of
11 payments made and the total amount remaining unpaid.
12

13 (2) With respect to an open end credit plan, upon
14 request of the consumer the creditor shall provide a
15 written statement which may consist of copies of the
16 periodic billing statements previously provided, spec-
17 ifying the amount and date of each transaction, each
18 finance charge and each payment, refund or other credit
19 imposed during the previous twelve (12) months, and the
20 total amount remaining unpaid.
21

22 (3) The creditor shall provide the statements de-
23 scribed in this Section without charge once during
24 each year of the duration of the transaction or plan.
25 If additional statements are requested the creditor
26

3.105(3)

1 may impose a charge not in excess of one dollar (\$1)
2 for each additional statement.
3
4

5 SECTION 3.106 RETURNS AND OTHER CREDITS IN 6 OPEN END CREDIT PLANS

7 If the seller of goods or services grants a cred-
8 it with respect to a prior transaction made pursuant
9 to an open end credit plan of which the creditor is a
10 person other than the seller, the seller shall trans-
11 mit to the creditor a statement reflecting that credit
12 on or before the next business day. Upon receipt of
13 the statement the creditor shall credit the account
14 of the consumer with the full amount stated.
15
16

17 SECTION 3.107 CREDITING EXCESS PAYMENT

18 If a payment of the consumer to the creditor ex-
19 ceeds the balance due with respect to an open end
20 credit plan the creditor shall either refund the ex-
21 cess or credit such excess to the account of the con-
22 sumer. If the consumer has a credit balance at the
23 close of any billing cycle, the creditor shall disclose
24 on the periodic billing statement with respect to that
25 cycle that the consumer is entitled upon request to a
26 refund of that balance. A creditor receiving a request

1 for refund of a credit balance shall promptly refund
2 that amount to the consumer.

3
4
5 SECTION 3.108 ACKNOWLEDGMENT OF PAYMENT AND
6 SATISFACTION OF SECURITY INTEREST

7 Within forty-five (45) days after the consumer has
8 fulfilled all obligations with respect to a consumer credit
9 transaction the creditor shall satisfy or otherwise re-
10 lease all security interests securing the transaction
11 and shall furnish the consumer written evidence acknowl-
12 edging payment in full of the obligation and satisfac-
13 tion and other release of the security interest.

14
15
16 SECTION 3.109 VIOLATIONS OF THIS PART

17 Any violation of this Part is subject to the pro-
18 visions of Section 8.105.

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PART 2
ERRORS IN CREDIT ACCOUNTS

SECTION

- 3.201 INQUIRIES ABOUT ERRORS
- 3.202 RESPONSE TO CONSUMER INQUIRIES
- 3.203 CORRECTIVE ACTION BY THE CREDITOR
- 3.204 CREDITOR ACTION ON DISPUTED ACCOUNTS
- 3.205 VIOLATIONS OF THIS PART

SECTION 3.201 INQUIRIES ABOUT ERRORS

With respect to a consumer credit transaction, if the consumer indicates in writing to the creditor his belief that there is an error in the account or otherwise requests clarification the creditor shall acknowledge receipt of the inquiry, shall investigate the matter, and shall take corrective action, if appropriate, in conformance with this Part.

SECTION 3.202 RESPONSE TO CONSUMER INQUIRIES

(1) Within ten (10) business days of receipt of the inquiry of the consumer the creditor shall deliver or mail written acknowledgment of the inquiry to the consumer.

1 (2) Within sixty (60) days of receipt of the
2 inquiry of the consumer the creditor shall respond by
3 taking the appropriate action pursuant to the provi-
4 sions of Section 3.203.

5
6
7 SECTION 3.203 CORRECTIVE ACTION

8 (1) Within sixty (60) days of receipt of the in-
9 quiry of the consumer the creditor shall

10 (a) make appropriate corrections in the account,
11 including the crediting of all finance and
12 other charges attributable to amounts in
13 error, and provide the consumer written
14 notification of such corrections and an
15 explanation of any difference between the
16 alleged error and the correction, or

17 (b) provide the consumer written explanation,
18 after having conducted an investigation of
19 the matter, stating the reason the credi-
20 tor believes the account is correct.

21
22 (2) At any time after the creditor has acted under
23 this Section the consumer may request copies of writings
24 evidencing the obligations giving rise to the inquiry.
25 Such copies shall be provided by the creditor within
26 thirty (30) days of receipt of the request without charge.

3.204

1 SECTION 3.204 CREDITOR ACTION ON DISPUTED ACCOUNTS

2 (1) After receiving the inquiry from the consumer
3 and until the expiration of thirty (30) days after the
4 creditor has complied with the requirements of this
5 Part, the creditor shall not, with respect to the error
6 indicated or clarification requested,

7 (a) directly or indirectly threaten the con-
8 sumer with consequences adverse to his
9 credit standing; or

10 (b) cause or permit the account to be reported
11 as delinquent or late to any person other
12 than the consumer; or

13 (c) take any other action to collect or other-
14 wise enforce the disputed amount of the
15 account. The mailing or delivery of a
16 periodic billing statement is not a viola-
17 tion of this subsection if the statement
18 contains or is accompanied by a notice
19 that the payment of any amount in dispute
20 or questioned is not required at that time.

21
22 (2) If, after the creditor has complied with the
23 requirements of this Part, the creditor receives from
24 the consumer further written notice indicating that
25 the account is still in dispute or questioned, the
26 creditor shall not cause or permit the account to be

1 reported as delinquent or late to a person other than
2 the consumer unless the creditor also

3 (a) notifies the consumer of the name and ad-
4 dress of the person to whom the report
5 was or will be made; and

6 (b) includes in the report a statement that
7 the account is in dispute and a brief de-
8 scription of the contentions of the con-
9 sumer; and

10 (c) promptly reports any subsequent disposi-
11 tion of the disputed account to such per-
12 son.

13
14 (3) Nothing in this Section shall be construed to
15 prohibit any action by a creditor to collect any amount
16 which is not disputed by the consumer.

17
18
19 SECTION 3.205 VIOLATIONS OF THIS PART

20 A creditor who fails to comply with the require-
21 ments of this Part or who takes action in violation of
22 any provisions of this Part

23 (a) shall not collect from the consumer the
24 amount in dispute or question, including
25 any finance or other charge attributable
26 to that amount; and

3,205

1 (b) is subject to the provisions of Section
2 8.106; and

3 (c) if the amount disputed or questioned is in
4 fact in error, is liable to the consumer
5 for three times that amount, but not less
6 than \$100.

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1 ARTICLE 4
2 CREDIT INSURANCE

3
4 PART I
5 INSURANCE IN GENERAL

6
7 SECTION

8 4.101 APPLICABILITY

9 4.102 DEFINITION: "CONSUMER CREDIT INSURANCE"

10 4.103 CREDITOR'S PROVISION OF AND CHARGE FOR
11 INSURANCE

12 4.104 CONDITIONS APPLYING TO INSURANCE TO BE
13 PROVIDED BY CREDITOR

14 4.105 MAXIMUM CHARGE FOR INSURANCE

15 4.106 REFUND OR CREDIT REQUIRED; AMOUNT

16 4.107 REQUIRED INSURANCE; CHOICE OF INSURER

17 4.108 DEFERRAL, REFINANCING AND CONSOLIDATION AGREE-
18 MENTS; DUPLICATE CHARGES; LIMITATION ON AMOUNT

19 4.109 FEES OR COMMISSIONS; INDIRECT BENEFITS

20 4.110 COOPERATION BETWEEN ADMINISTRATOR AND
21 (COMMISSIONER OF INSURANCE)

22 4.111 ADMINISTRATIVE ACTION OF (COMMISSIONER OF
23 INSURANCE)

24 4.112 CLAIMS

25 4.113 VIOLATIONS OF THIS PART

26

4.101

1 SECTION 4.101 APPLICABILITY

2 (1) This Article applies to insurance provided
3 or to be provided in relation to a consumer credit
4 transaction.

5
6 (2) Unless displaced by particular provisions
7 of this Act, this Act supplements and does not repeal
8 the [Credit Insurance Act - the model bill to provide
9 for the Regulation of Credit Life Insurance and Credit
10 Accident and Health Insurance of the National Associa-
11 tion of Insurance Commissioners, or a similar statute.]

12
13
14 SECTION 4.102 DEFINITION: "CONSUMER CREDIT INSURANCE"

15 "Consumer credit insurance" means insurance,
16 other than insurance on property, and including credit
17 life, accident, health and loss of income insurance,
18 by which the satisfaction of debt in whole or in part
19 is a benefit provided, but does not include

20 (a) insurance issued as an isolated trans-
21 action on the part of the insurer not
22 related to an agreement or plan for in-
23 suring consumers of the creditor; or

24 (b) insurance indemnifying the creditor
25 against loss due to the default of
26 the consumer.

1 SECTION 4.103 CREDITOR'S PROVISION OF AND CHARGE FOR
2 INSURANCE

3 (1) Except as otherwise provided in this Article,
4 the creditor and the consumer may agree to the provi-
5 sion of insurance by the creditor with respect to a
6 consumer credit transaction and may agree to the pay-
7 ment by the consumer of a charge for such insurance
8 separate from and in addition to other charges.
9

10 (2) No charge may be imposed on the consumer for
11 consumer credit insurance if the amount financed in
12 the consumer credit transaction is five hundred dol-
13 lars (\$500) or less.
14

15 (3) No charge may be imposed on the consumer for
16 insurance against loss of or damage to property unless
17 the amount financed exclusive of charges for the insur-
18 ance is eight hundred dollars (\$800) or more, and the
19 value of the property insured is eight hundred dollars
20 (\$800) or more.
21

22 (4) No charge may be made to the consumer for
23 any type of loss of income insurance the coverage of
24 which exceeds the earnings of the consumer, not in-
25 cluding welfare payments or periodic payments pursuant
26 to a pension, retirement or disability program.

4.103(5)

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(5) No charge may be made to the consumer for any type of consumer credit insurance that duplicates coverage provided with respect to the consumer credit transaction.

(6) This Article does not authorize the issuance of any insurance prohibited under any statute or rule thereunder governing the business of insurance.

(7) A violation of this Section is subject to the provisions of Section 8.107.

SECTION 4.104 CONDITIONS APPLYING TO INSURANCE TO BE PROVIDED BY CREDITOR

(1) If the parties agree that insurance shall be provided

(a) the creditor shall disclose to the consumer, in a writing separate from that evidencing the transaction, before any obligation is incurred, full details of the policy, including the scope and amount of coverage of the policy, the cost to the consumer, the protections it provides as well as any

1 exceptions or exclusions, and the cost
2 to the creditor of such insurance; and
3 (b) at the time the indebtedness is incurred
4 there shall be delivered to the consumer
5 the individual policy, or a group certi-
6 ficate of insurance or a notice of pro-
7 posed insurance, in addition to a copy
8 of the application for such insurance;
9 and
10 (c) the evidence of insurance provided pur-
11 suant to paragraph (b) shall set forth
12 the name and home office address of the
13 insurer, the name of the consumer,
14 the premium or amount of payment by
15 the consumer, if any, separately for
16 each type of insurance, the amount, term
17 and a brief description of the coverage
18 provided, including all exclusions and
19 exceptions, and the name and address of
20 the person to whom claims shall be made;
21 and
22 (d) within thirty (30) days of the date upon
23 which the indebtedness is incurred, the
24 insurer shall cause the individual policy
25 or group certificate of insurance to be
26 delivered to the consumer if it is not

4.104(1)

1 delivered at the time the indebtedness
2 is incurred; and
3 (e) within ten (10) days from the date the
4 policy or certificate is delivered, the
5 consumer shall be permitted to return
6 the policy, certificate of insurance or
7 the notice of proposed insurance and re-
8 ceive a refund of any premium paid for
9 the insurance if he is not satisfied with
10 the insurance for any reason. Such insur-
11 ance is void and the parties are in the
12 same position as if no certificate, policy
13 or notice of proposed insurance had been
14 issued.

15
16 (2) The creditor shall promptly notify the consumer
17 of any failure or delay in providing the insurance, and
18 until he does so the creditor is liable to the consumer
19 for the amount of such insurance which he has under-
20 taken to provide. If the creditor permits a policy
21 of insurance to lapse contrary to his agreement
22 with the consumer, the creditor is liable to the con-
23 sumer for the amount of such insurance.

24
25
26

1 (3) A creditor who agrees to arrange for, obtain
2 or maintain a policy of insurance owes a fiduciary
3 duty to the consumer with respect to such agreement.
4

5 (4) No consumer credit insurance policy shall be
6 contestable on the grounds of eligibility after sixty
7 (60) days have elapsed from the date of issuance of
8 the policy.
9

10 11 SECTION 4.105 MAXIMUM CHARGE FOR INSURANCE

12 (1) If a creditor contracts for or receives a
13 charge for insurance, the charge imposed for the in-
14 surance shall have a reasonable relation both to the
15 obligation of the consumer in the consumer credit
16 transaction and to the benefits provided by the in-
17 surance.
18

19 (2) Except as provided in subsection (3), the
20 charge imposed for the insurance shall not exceed
21 the premium to be charged by the insurer, as com-
22 puted at the time the charge to the consumer is
23 determined, conforming to any rate filings required
24 by law and made by the insurer with the [Commissioner
25 of Insurance].
26

4.105(3)

1 (3) With respect to an open end credit plan, the
2 charge imposed for the insurance shall not exceed an
3 amount calculated by applying the current premium rate
4 to the balance in the account of the consumer in each
5 billing cycle upon which a finance charge may be im-
6 posed pursuant to the provisions of Section 2.203.

7
8 (4) A violation of this Section is subject to
9 the provisions of Section 8.107.

10 11 12 SECTION 4.106 REFUND OR CREDIT REQUIRED; AMOUNT

13 (1) Except as provided in subsection (2), the
14 creditor shall promptly make or cause to be made an
15 appropriate refund or credit to the consumer with
16 respect to any separate charge made for insurance if

- 17 (a) the insurance is not provided or is
18 provided for a shorter term than that
19 for which the charge to the consumer
20 for insurance was computed, or
21 (b) the insurance terminates prior to the
22 end of the term for which it was written
23 because of prepayment in full or other-
24 wise. For the purposes of this Sec-
25 tion, in the case of accident, health,
26 loss of income or similar insurance,

1 termination occurs on the date of the
2 death of the insured.

3

4 (2) This Article does not require the creditor to
5 grant a refund or credit if all the refunds and credits
6 due to the consumer under this Act amount to less than
7 one dollar (\$1).

8

9 (3) Upon prepayment in full or in part of a con-
10 sumer credit transaction by the proceeds of consumer
11 credit insurance, the consumer or his estate is entitled
12 to a refund of any portion of a separate charge for
13 insurance which by reason of the prepayment is retained
14 by the creditor or returned to him by the insurer. The
15 consumer or his estate is entitled to the same refund
16 as though the consumer had prepaid the agreement on the
17 date of the incident giving rise to the claim of the
18 consumer.

19

20 (4) A refund or credit required by this Section is
21 appropriate as to amount if it is prorated or computed
22 pursuant to a method prescribed or approved by the
23 [Commissioner of Insurance] which is consistent with
24 proration.

25

26

4.106(5)

1 (5) If the creditor receives from an insurer pro-
2 ceeds of an insurance policy for which the consumer has
3 been charged a separate amount and such proceeds exceed
4 the obligation of the consumer, after the deduction of
5 any unearned finance or other charges, the consumer or
6 his estate is entitled to any such excess proceeds.

7
8 (6) If the consumer is entitled to a refund or
9 credit, the creditor must notify the consumer in
10 writing of the amount and reason.

11 12 13 SECTION 4.107 REQUIRED INSURANCE; CHOICE OF INSURER

14 (1) A charge for consumer credit insurance may not
15 be imposed or collected if the insurance is acquired by
16 the creditor. A charge may be made only if prior to the
17 time the parties enter into the consumer credit trans-
18 action

- 19 (a) the creditor clearly and conspicuously dis-
20 closes in writing the fact that the insur-
21 ance is not required and the actual cost of
22 the insurance if it is to be obtained, and
23 (b) the consumer affirmatively indicates his
24 desire to obtain the insurance at the dis-
25 closed cost in a writing separate from that
26 evidencing the transaction.

1 (2) The consumer shall, upon notice to the creditor,
2 have the option of providing a required amount of insur-
3 ance against loss of or damage to property or against
4 liability arising from ownership or use of the property
5 through existing policies of insurance owned or control-
6 led by the consumer, or of providing the required cover-
7 age through any insurer authorized to engage in the
8 business of insurance within this State.

9
10 (3) Prior to the time the parties enter into the
11 transaction, the creditor shall conspicuously disclose
12 in writing to the consumer his right to provide any re-
13 quired insurance himself if he so desires.

14
15 (4) A violation of this Section is subject to the
16 provisions of Section 8.107.

17
18
19 SECTION 4.108 DEFERRAL, REFINANCING AND CONSOLIDATION
20 AGREEMENTS; DUPLICATE CHARGES; LIMITATION
21 ON AMOUNT

22 (1) In addition to the limitations of Section
23 4.103, the creditor may not receive a separate charge
24 for insurance in connection with a deferral (Section
25 2.207), a refinancing (Section 2.208) or a consoli-
26

4.108(1)

1 dation (Section 2.209) of a consumer credit transac-
2 tion unless

- 3 (a) the consumer agrees in writing at the
4 time of deferral, refinancing or con-
5 solidation that a specific charge may
6 be made; and
- 7 (b) the consumer is to be provided with in-
8 surance for an amount or a term, or in-
9 surance of a kind, in addition to that
10 to which he would have been entitled
11 had there been no deferral, refinancing
12 or consolidation; and
- 13 (c) the consumer receives a refund or credit
14 on account of any unexpired term of exist-
15 ing insurance in the amount that would
16 be required if the insurance were termi-
17 nated (Section 4.106); and
- 18 (d) the charge does not exceed the amount
19 permitted by this Article; and
- 20 (e) the total amount of the insurance cover-
21 age on the policy or policies involved
22 in the transactions does not exceed the
23 amount permitted by this Article.

24

25 (2) A creditor may not impose a separate charge
26 for insurance which duplicates insurance with respect

1 to which the creditor has previously contracted for
2 or received a separate charge.

3
4 (3) A violation of this Section is subject to
5 the provisions of Section 8.107.

6
7
8 SECTION 4.109 FEES OR COMMISSIONS; INDIRECT BENEFITS

9 (1) No creditor may receive any fee, commission
10 or benefit, directly or indirectly, for any insurance
11 provided for the consumer nor may any creditor provide
12 or agree to provide any insurance for the consumer
13 under a contract of insurance issued by the creditor
14 or by any person related to the creditor.

15
16 (2) A violation of this Section is subject to
17 the provisions of Sections 8.107 and 8.109.

18
19
20 SECTION 4.110 COOPERATION BETWEEN ADMINISTRATOR
21 AND (COMMISSIONER OF INSURANCE)

22 The Administrator and the [Commissioner of In-
23 surance] are authorized and directed to consult
24 and assist one another in maintaining compliance
25 with this Article. They may separately or jointly
26

4.110

1 pursue investigations, prosecute suits and take other
2 official action, as may seem to them appropriate.

3 4 5 SECTION 4.111 ADMINISTRATIVE ACTION OF (COMMISSIONER 6 OF INSURANCE)

7 (1) To the extent that his responsibility under
8 this Article requires, the [Commissioner of Insurance]
9 shall issue rules with respect to insurers and with
10 respect to refunds (Section 4.106), forms, schedules
11 of premium rates and charges (Section 4.204), and
12 his approval or disapproval thereof and, in case of
13 violation, may make an order for compliance.

14
15 (2) Each provision of the Part on Administrative
16 Procedures and Judicial Review (Part 4) of the Article
17 on Administration (Article 9) which applies to and
18 governs administrative action taken by the Administrator
19 applies to and governs all administrative action taken
20 by the [Commissioner of Insurance] pursuant to this
21 Section.

22 23 24 SECTION 4.112 CLAIMS

25 (1) All claims with respect to insurance provided
26 in relation to a consumer credit transaction shall be

1 promptly reported to the insurer or its designated
2 claim representative, and the insurer shall maintain
3 adequate claim files. All claims shall be settled
4 within a reasonable time and pursuant to the terms of
5 the insurance contract.

6
7 (2) All claims shall be paid either by draft
8 drawn upon the insurer or by check of the insurer
9 to the order of the claimant to whom payment of the
10 claim is due pursuant to the policy provisions, or
11 upon direction of such claimant to one specified.

12
13 (3) No plan or arrangement shall be used where-
14 by any person other than the insurer or its designated
15 claim representative shall be authorized to settle
16 or adjust claims. The creditor shall not be designated
17 as claim representative for the insurer under any
18 circumstances.

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21 SECTION 4.113 VIOLATIONS OF THIS PART

22 Except as otherwise specifically provided any
23 violation of this Part is subject to the provisions
24 of Section 8.105.
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PART 2
CONSUMER CREDIT INSURANCE

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SECTION

4.201 AGREEMENT TO CHARGES; REQUIREMENTS

4.202 TERM OF INSURANCE

4.203 AMOUNT OF INSURANCE

4.204 FILING AND APPROVAL OF RATES AND FORMS

4.205 REGULATION OF PREMIUMS

4.206 VIOLATIONS OF THIS PART

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SECTION 4.201 AGREEMENT TO CHARGES; REQUIREMENTS

The parties may agree to the payment by the consumer of charges for consumer credit insurance written in connection with a consumer credit transaction only if

(a) the insurance is provided by an insurer not related to the creditor, and the insurance and the charges conform with the requirements of this Article [and all other provisions of law governing the insurance]; and

(b) a clear, conspicuous and specific statement in writing is provided by the creditor to the consumer before the

1. consummation of the transaction, stating
2 that the insurance is not a factor in the
3 approval by the creditor of the extension
4 of credit, and setting forth the cost of
5 such insurance, individually itemized, if
6 it is understood that a separate charge
7 for such insurance is or may be imposed on
8 or paid by the consumer; and

9 (c) the consumer desires the insurance cover-
10 age, and gives specific dated and separate-
11 ly signed affirmative written indication
12 of his desire after receiving the disclo-
13 sure required under paragraph (b); and

14 (d) the creditor receives no fee, commission
15 or other benefit of any kind from the in-
16 surer except as a beneficiary of the in-
17 surance.

18
19

20 SECTION 4.202 TERM OF INSURANCE

21 (1) Consumer credit insurance provided by a cred-
22 itor may be subject to the provision of evidence of
23 insurability satisfactory to the insurer. Whether or
24 not such evidence is required, the term of the insur-
25 ance shall commence no later than the date the consumer
26 becomes obligated to the creditor or the date the

4.202(1)

1 consumer applies for the insurance, whichever is later,
2 except

3 (a) if any required evidence of insurability
4 is not provided until more than thirty
5 (30) days after the term would otherwise
6 commence, the term may commence on the date
7 when the insurer determines the evidence to
8 be satisfactory, or

9 (b) if the creditor provides insurance not
10 previously provided covering a prior debt,
11 the term may commence on the effective
12 date of the policy.

13
14 (2) In the event the commencement of the
15 insurance is delayed, the consumer to the extent a
16 charge allocable to the period of time before the
17 insurance became effective has been paid, is entitled
18 to a rebate or credit of such charge pursuant to the
19 provisions of Section 4.106.

20
21 (3) The originally scheduled term of the insur-
22 ance shall extend at least until the due date of the
23 last scheduled payment of the obligation, except

24 (a) if the insurance relates to an open end
25 credit plan, the term need extend only
26 until the payment of the account and may

1 be sooner terminated if at least thirty
2 (30) days notice is given to the consumer,
3 or

4 (b) if the consumer is advised in writing in
5 a clear and conspicuous manner that the
6 insurance will be written for a specified
7 shorter time and affirmatively approves in
8 writing, the term need extend only until
9 the end of the specified time.

10

11 (4) The term of the insurance shall not extend
12 more than ten (10) days after the originally scheduled
13 due date of the last scheduled payment of the debt un-
14 less it is extended without additional cost to the con-
15 sumer or as an incident to a deferral (Section 2.207),
16 refinancing (Section 2.208) or consolidation (Section
17 2.209) agreement.

18

19

20 SECTION 4.203 AMOUNT OF INSURANCE

21 (1) The amount of credit life insurance shall not
22 exceed the initial obligation however the obligation
23 may be repayable, except

24

25

26

 (a) where an obligation is repayable in in-
 stalments, the amount of insurance shall
 not exceed the scheduled or actual amount

4.203(1)

1 of the unpaid obligation, whichever is
2 greater, and
3 (b) if the insurance is provided in connec-
4 tion with an open end credit plan, the
5 amount of insurance shall not exceed the
6 unpaid balance on the last day of each
7 billing cycle.

8
9 (2) The total amount of indemnity payable by acci-
10 dent and health or loss of income insurance shall not
11 exceed the aggregate of the periodic scheduled unpaid
12 instalments of the obligation, and the amount of each
13 periodic indemnity shall not exceed the original oblig-
14 ation divided by the number of periodic instalments
15 in which it is payable. In the case of insurance writ-
16 ten in connection with an open end credit plan the
17 amount of coverage provided by consumer credit insur-
18 ance shall not exceed the unpaid balance on the last
19 day of each billing cycle.

20
21

22 SECTION 4.204 FILING AND APPROVAL OF RATES AND FORMS

23 (1) A creditor may not use a form or a schedule
24 of premium rates or charges, the filing of which is
25 required by this Section, unless the [Commissioner of
26 Insurance] has approved the form or schedule and the

1 insurer has complied with this Section with respect to
2 the insurance.

3
4 (2) Except as provided in subsection (3), all
5 policies, certificates of insurance, notices of pro-
6 posed insurance, applications for insurance, endorse-
7 ments and riders relating to consumer credit insurance
8 delivered or issued for delivery in this State, and
9 the schedules of premium rates or charges pertaining
10 thereto, shall be filed by the insurer with the
11 [Commissioner of Insurance]. Within ninety (90) days
12 after the filing of any form or schedule, the [Commis-
13 sioner of Insurance] shall approve any filing unless
14 the premium rates or charges are unreasonable in rela-
15 tion to the benefits provided under the form, or
16 unless the form contains provisions which are unjust,
17 unfair, inequitable or deceptive, or encourage mis-
18 representations of the coverage, or are confusing or
19 misleading to the consumer or are contrary to any
20 provisions of this Act or of the insurance laws of
21 this State or of any rule promulgated thereunder. If
22 at the expiration of ninety (90) days from the filing
23 of any form or schedule the [Commissioner of Insurance]
24 has taken no action thereon, the insurer may seek from
25 the [] Court an order to the [Commissioner of In-
26 surance] to show cause why he has not acted.

4.204(3)

1 (3) If a group policy has been delivered in an-
2 other state, the forms to be filed by the insurer with
3 the [Commissioner of Insurance] are a true and accurate
4 copy of the group policy, the group certificates and
5 notices of proposed insurance. He shall approve them if

6 (a) they provide the information that would
7 be required if the group policy were de-
8 livered in this State; and

9 (b) the applicable premium rates or charges
10 do not exceed those established by appli-
11 cable rule or by this Act; and

12 (c) they do not contain provisions which are
13 unjust, unfair, inequitable or deceptive,
14 or encourage misrepresentation of the
15 coverages, or are contrary to any provi-
16 sions of this Act or of the insurance laws
17 of this State, or of any rule promulgated
18 thereunder.

21 SECTION 4.205 REGULATION OF PREMIUMS

22 (1) No later than six (6) months following the
23 effective date of this Act, the [Commissioner of In-
24 surance] shall, by rule, limit the maximum premiums
25 which may be charged consumers directly or indirect-
26 ly for consumer credit insurance. The [Commissioner

1 of Insurance] shall ensure that the maximum premiums
2 so established are reasonable in relation to the
3 benefits conferred and that consumers are adequately
4 protected against excessive premium charges.

5
6 (2) During the first six (6) months after the
7 effective date of this Act or until the [Commissioner
8 of Insurance] has promulgated rules pursuant to sub-
9 section (1) the maximum charge for consumer credit
10 insurance shall not exceed forty four cents (\$.44) per
11 hundred dollars (\$100) of coverage per annum.

12
13 (3) Maximum premiums established under this Sec-
14 tion shall be based upon a ratio of losses to pre-
15 miums which is reasonable and which protects consumers
16 against excessive premium charges as determined by
17 the [Commissioner of Insurance]. The benefits pro-
18 vided by any such policy shall be presumed reasonable
19 in relation to the premium charged or to be charged
20 if the ratio of losses incurred to premiums earned
21 is seventy (70) per cent or may reasonably be expected
22 to be seventy (70) per cent. If the ratio of losses
23 incurred to premiums earned is less or can reasonably
24 be expected to be less than seventy (70) per cent, the
25 benefits provided shall be presumed unreasonable in
26 relation to the premium charged. Determination of a

4.205(3)

1 reasonable relation of benefits to premiums shall be
2 made by the [Commissioner of Insurance] for each policy
3 form filed for approval. The [Commissioner of Insur-
4 ance] may limit the use of any such form to those credi-
5 tors or consumers whose experience was the basis for
6 approval and such other creditors or consumers likely
7 to experience similar mortality or morbidity.

8
9 (4) Not later than six (6) months following the
10 effective date of this Act, the [Commissioner of Insur-
11 ance] shall, by rule, promulgate premium rates for con-
12 sumer credit insurance based upon the seventy (70) per
13 cent loss ratio standard as set forth in subsection (3)
14 which rates shall be acceptable without further justi-
15 fication. No charge may be made for consumer credit
16 insurance which exceeds such rates except as provided
17 in this subsection. The [Commissioner of Insurance]
18 shall from time to time raise or lower the acceptable
19 premium charges permitted for such insurance for any
20 particular creditor, class of creditors or classes
21 of transactions whenever the [Commissioner of Insur-
22 ance] determines that the actual loss experience for
23 the particular creditor, class of creditors or class
24 of transactions produces a ratio of losses to pre-
25 miums which differs substantially based on credible
26 data in the most recent two (2) year period from the

1 seventy (70) per cent loss ratio established by
2 subsection (3).

3
4 (5) In order to implement this Section, insurers
5 shall, under rules of the [Commissioner of Insurance],
6 file an annual report with the [Commissioner of In-
7 surance] and the Administrator setting forth data per-
8 taining to actual losses in relation to premiums and
9 charges collected and such other information including
10 the actual incremental administrative expenses experi-
11 enced as may be required by the [Commissioner of Insur-
12 ance] in order to further the purposes of this Act.

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15 SECTION 4.206 VIOLATIONS OF THIS PART

16 Any violation of this Part is subject to the
17 provisions of Section 8.105.

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PART 3
PROPERTY AND LIABILITY INSURANCE

SECTION

- 4.301 AGREEMENTS TO CHARGES; REQUIREMENTS
- 4.302 ADDITIONAL REQUIREMENTS FOR PROPERTY INSURANCE
- 4.303 RISK OF LOSS; INSURANCE ON
CREDITOR'S INTEREST ONLY
- 4.304 CANCELLATION BY CREDITOR
- 4.305 VIOLATIONS OF THIS PART

SECTION 4.301 AGREEMENTS TO CHARGES; REQUIREMENTS

(1) Subject to the provisions of Section 4.302, the parties may agree to the payment by the consumer of charges for insurance, written in connection with a consumer credit transaction, against loss of or damage to property or against liability arising out of the ownership or use of property, only if

- (a) the insurance is furnished by an insurer not related to the creditor, and the insurance and the charges conform with the requirements of this Article [and all other provisions of law governing the insurance];
and

1 (b) a clear, conspicuous and specific state-
2 ment in writing is provided by the cred-
3 itor to the consumer before the consum-
4 mation of the transaction setting forth
5 the cost of such insurance, individually
6 itemized, if it is understood that the
7 insurance will or may be arranged by or
8 obtained through the creditor, and stating
9 that the consumer may choose the person
10 through whom the insurance is to be ob-
11 tained; and

12 (c) the consumer elects to purchase insurance
13 coverage arranged by or obtained through
14 the creditor, and gives specific dated and
15 separately signed affirmative written
16 indication of such election after re-
17 ceiving the disclosures required under
18 paragraph (b); and

19 (d) the creditor receives no fee, commission
20 or other benefit of any kind from the in-
21 surer except as a beneficiary of such in-
22 surance.

23
24 (2) Whenever any creditor provides only for physi-
25 cal damage insurance in connection with the sale and
26 financing of any goods, the creditor must also obtain

4.301(2)

1 a separate written acknowledgment by the consumer that
2 the insurance provided does not include liability in-
3 surance. Such acknowledgement shall be made in the
4 manner and form prescribed by the [Commissioner of
5 Insurance] and a copy thereof shall be provided to
6 the consumer. A violation of this subsection is sub-
7 ject to the provisions of Section 8.107.

8
9
10 SECTION 4.302 ADDITIONAL REQUIREMENTS FOR
11 PROPERTY INSURANCE

12 In addition to the requirements of Section 4.103,
13 a creditor may not contract for or receive a separate
14 charge for insurance against loss of or damage to
15 property unless

16 (a) the insurance covers a substantial risk of
17 loss of or damage to property which is
18 collateral for the consumer credit trans-
19 action; and

20 (b) the amount, terms and conditions of the
21 insurance are reasonable in relation to
22 the character and value of the property
23 insured or to be insured; and

24 (c) the term of the insurance is reasonable
25 in relation to the terms of the credit,
26 which for the purposes of this Part means

1 that the term is customary and does not
2 extend substantially beyond a scheduled
3 maturity.

4
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6 SECTION 4.303 RISK OF LOSS; INSURANCE ON
7 CREDITOR'S INTEREST ONLY

8 If a creditor contracts for or receives a separate
9 charge for insurance against loss of or damage to
10 property, the risk of loss or damage not willfully
11 caused by the consumer is on the consumer only to the
12 extent that the consumer is responsible for any defi-
13 ciency in the effective coverage of the insurance, even
14 though the insurance covers only the interest of the
15 creditor.

16
17
18 SECTION 4.304 CANCELLATION BY CREDITOR

19 (1) A creditor shall not request cancellation of
20 a policy of property or liability insurance except

21 (a) upon the entry of final judgment in favor
22 of the creditor in an action brought pur-
23 suant to Section 7.204, or

24 (b) in accordance with a written agreement be-
25 tween the consumer and the creditor entered
26

4.304(1)

1 into at a time subsequent to the original
2 transaction.

3

4 (2) Following cancellation, the consumer shall be
5 entitled to a rebate or credit (Section 4.106) for any
6 prepaid charges which represent the premium for a period
7 following cancellation.

8

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10 SECTION 4.305 VIOLATIONS OF THIS PART

11 Any violation of this Part is subject to the pro-
12 visions of Section 8.105.

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1 ARTICLE 5
2 CREDIT REPORTING

3
4 PART 1
5 GENERAL PROVISIONS

6
7 SECTION

8 5.101 APPLICABILITY

9 5.102 DEFINITIONS: "ACCOUNT"; "ADVERSE INFORMATION"

10 5.103 DEFINITIONS: "CONSUMER REPORT";

11 "CONSUMER REPORTING AGENCY"

12 5.104 DEFINITIONS: "FILE"; "MERCHANT"

13 5.105 DISCLOSURE TO CONSUMER OF PROPOSED

14 INVESTIGATION AND CONSUMER REPORT

15 5.106 PROHIBITED INFORMATION; ACCURACY, RELEVANCY

16 AND OBSOLESCENCE OF INFORMATION

17 5.107 PRESERVING CONFIDENTIALITY

18 5.108 ACCESS BY GOVERNMENTAL AGENCIES

19 5.109 OBSOLETE INFORMATION

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22 SECTION 5.101 APPLICABILITY

23 This Article applies to credit reporting agencies
24 and to merchants who prepare, provide, purchase or use
25 consumer reports or any information contained in a con-
26 sumer report.

5.102

1 SECTION 5.102 DEFINITIONS: "ACCOUNT";
2 "ADVERSE INFORMATION"

3 (1) "Account" as used in this Article means any
4 actual or alleged debt or other obligation of a con-
5 sumer of whatever nature.

6
7 (2) "Adverse information" as used in this Article
8 means information that is likely to have a negative
9 effect upon the ability of the consumer to obtain or
10 upon his eligibility for, credit and credit insurance.

11
12
13 SECTION 5.103 DEFINITIONS: "CONSUMER REPORT";
14 "CONSUMER REPORTING AGENCY"

15 (1) "Consumer report" as used in this Article means
16 any written, oral or other communication of any infor-
17 mation bearing upon the credit worthiness, credit
18 standing or credit capacity of the consumer which is
19 used or expected to be used or is collected in whole
20 or in part for the purpose of serving as a factor in
21 establishing the eligibility of a consumer for credit and
22 credit insurance. The term does not include a report
23 containing information solely as to transactions between
24 the consumer and the person making the report or any
25 authorization or approval of a specific extension of
26 credit by the issuer of a credit card or by the creditor

1 of an open end credit plan to persons authorized to
2 extend credit to the consumer pursuant to that credit
3 card or that plan.

4
5 (2) "Consumer reporting agency" means any person
6 other than a government instrumentality who regularly
7 engages in whole or in part in the business of provid-
8 ing consumer reports.

9
10
11 SECTION 5.104 DEFINITIONS: "FILE"; "MERCHANT"

12 (1) "File" as used in this Article means informa-
13 tion recorded and retained by a consumer reporting
14 agency or a merchant about a consumer, regardless of
15 how the information is stored.

16
17 (2) "Merchant" as used in this Article means any
18 person other than a government instrumentality who uses
19 a consumer report received from a consumer reporting
20 agency or who provides information to a consumer report-
21 ing agency pursuant to a contract or for a fee or who
22 otherwise regularly provides information to a consumer
23 reporting agency.

5.105

1 SECTION 5.105 DISCLOSURE TO CONSUMER OF PROPOSED
2 INVESTIGATION AND CONSUMER REPORT

3 Neither a consumer reporting agency nor a merchant
4 shall procure or prepare or cause to be procured or pre-
5 pared a consumer report

6 (a) without having disclosed to the consumer
7 the purpose and scope of the proposed
8 investigation and consumer report; and

9 (b) without having obtained the consumer's
10 written permission to undertake the pro-
11 posed investigation and consumer report;
12 and

13 (c) without having notified the consumer of
14 the name and address of the consumer re-
15 porting agency which is to conduct the
16 proposed investigation and consumer re-
17 port; and

18 (d) without having notified the consumer of
19 his rights under Section 5.202 and
20 Section 5.203.

21
22
23 SECTION 5.106 PROHIBITED INFORMATION; ACCURACY,
24 RELEVANCY AND OBSOLESCENCE OF INFORMATION

25 (1) Neither a consumer reporting agency nor a mer-
26 chant shall collect, evaluate, prepare, use or report

1 information which is not reasonably relevant, based
2 upon objective criteria, to the purpose for which it
3 is sought.

4
5 (2) A consumer reporting agency or a merchant who
6 collects, evaluates, prepares, uses or reports infor-
7 mation for purposes other than those specified in
8 subsection (1) of Section 5.103 and subsection (3) of
9 Section 5.201 shall maintain separate files for that
10 information and shall not commingle or disclose that
11 information or any summary thereof with information
12 collected, evaluated, prepared, used or reported for
13 purposes of this Article.

14
15 (3) Neither a consumer reporting agency nor a mer-
16 chant shall collect, evaluate, prepare, use or report
17 information relative to a criminal offense unless there
18 has been a conviction for the offense.

19
20 (4) Neither a consumer reporting agency nor a mer-
21 chant shall collect, evaluate, prepare, use or report
22 information which is obsolete or which it has reason
23 to know is inaccurate or irrelevant.

24
25 (5) A consumer reporting agency and a merchant shall
26 adopt and maintain reasonable procedures designed to

5.106(5)

- 1 (a) verify the accuracy and relevancy of infor-
2 mation in their files; and
3 (b) to exclude inaccurate and irrelevant infor-
4 mation from their files; and
5 (c) to eliminate obsolete information from
6 their files.

7
8

9 SECTION 5.107 PRESERVING CONFIDENTIALITY

10 A consumer reporting agency and a merchant shall
11 maintain procedures designed to preserve the confiden-
12 tiality of information in their files. These procedures
13 shall include limiting access to information to autho-
14 rized employees and maintaining training programs to
15 acquaint employees with the need for preserving confi-
16 dentiality. Whenever a reporting agency or merchant
17 transmits information by any means or medium of communi-
18 cation, it shall take steps to prevent unauthorized
19 access to such information.

20
21

22 SECTION 5.108 ACCESS BY GOVERNMENTAL AGENCIES

23 A consumer reporting agency and a merchant shall
24 not provide information on consumers in their files to
25 a governmental agency for purposes other than those
26 authorized in Section 5.201 unless pursuant to the

1 order of a court having jurisdiction to issue such an
2 order. Identifying information such as names, ad-
3 dresses or places of employment may be provided to such
4 agencies upon written request.

5
6
7 SECTION 5.109 OBSOLETE INFORMATION

8 (1) A consumer reporting agency and a merchant
9 shall maintain procedures designed to discard informa-
10 tion in their files after it has become obsolete or
11 after the expiration of a reasonable period of time.

12
13 (2) The following information shall not be reported
14 to any person after the period indicated and shall be
15 removed from the file of the consumer upon expiration
16 of the period:

17 (a) bankruptcies and all other insolvency pro-
18 ceedings of all types after seven (7) years
19 from the date of the most recent adjudica-
20 tion; and

21 (b) records of accounts placed for collection
22 and records of accounts charged to profit
23 and loss after three (3) years; and

24 (c) suits, judgments and tax liens after seven
25 (7) years from the date of their initial
26 filing; and

5.109(2)

- 1 (d) records of conviction after three (3) years
2 from the date of release from confinement
3 or, if there was no confinement, from the
4 date of conviction or other disposition,
5 but such items shall no longer be reported
6 if at any time it is learned that a full
7 pardon has been granted; and
8 (e) any other adverse information not other-
9 wise specified in this Section after three
10 (3) years.

11
12 (3) Adverse information shall not be reported un-
13 less the information has been received or its accuracy
14 has been verified within six (6) months prior to mak-
15 ing the report.

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PART 2
CONSUMER REPORTING AGENCIES

- SECTION
- 5.201 USES FOR WHICH INFORMATION MAY BE PROVIDED
 - 5.202 ACCESS BY CONSUMER TO FILE
 - 5.203 CORRECTION OF INACCURATE, IRRELEVANT AND MISLEADING INFORMATION
 - 5.204 DISCLOSURE OF ADVERSE INFORMATION OF PUBLIC RECORD

SECTION 5.201 USES FOR WHICH INFORMATION MAY BE PROVIDED

(1) A consumer reporting agency shall maintain procedures designed to limit access to consumer reports to those persons whom it knows or has reason to know intend to use reports solely for legitimate business purposes. A consumer reporting agency shall verify the indentity of a new prospective user and the uses certified by that prospective user before it provides a report to a new prospective user.

(2) No consumer reporting agency shall provide a report to a prospective user if it knows or has reason

5,201(2)

1 to know that the report will be used for other than
2 legitimate business purposes.

3

4 (3) For purposes of this Article, the legitimate
5 business purposes are

6 (a) use in connection with an extension of
7 credit to a consumer, or in connection
8 with a review or collection of the account
9 of the consumer; or

10 (b) use in connection with the consummation of
11 a transaction pursuant to which a consumer
12 will make payment for property or services;
13 or

14 (c) use in connection with the consummation of
15 a contract of credit insurance involving
16 a consumer; or

17 (d) use by an attorney in a legal matter if the
18 consumer is a client of the attorney and
19 has agreed in writing to the provisions of
20 the report.

21

22 (4) For purposes of this Article, the legitimate
23 business purposes specified in subsection (3) do not
24 include

25 (a) use for market research or marketing
26 purposes, or

1 (b) use by a private detective or private
2 detective agency in investigations con-
3 ducted by the detective or dectective
4 agency.

5
6 (5) Notwithstanding any other provision of this
7 Part, a consumer reporting agency may furnish a
8 consumer report in conformance with the order of a
9 court having jurisdiction to issue such an order.

10
11
12 SECTION 5.202 ACCESS BY CONSUMER TO FILE

13 (1) Every consumer reporting agency shall, upon
14 request and proper identification of a consumer,
15 clearly and accurately disclose to the consumer

16 (a) all information in his file concerning
17 the consumer; and

18 (b) the sources of all information in the
19 file; and

20 (c) the recipients of any consumer report
21 concerning the consumer which it has
22 provided for any purpose within the two

23 (2) year period preceding the request.

24
25 (2) The requirements of subsection (1) respecting
26 the disclosure of sources of information and the

5.202(2)

1 recipients of consumer reports do not apply to
2 information received or consumer reports provided
3 prior to the effective date of this Act except to the
4 extent that material involved is contained in the files
5 of the consumer reporting agency on that date.

6
7 (3) A consumer reporting agency shall make the
8 disclosures to the consumer required under subsection (1)

9 (a) during normal business hours and on
10 reasonable notice; and

11 (b) in person if the consumer appears in
12 person and provides proper identification;
13 or

14 (c) by telephone if the individual has made a
15 written request, with proper identification,
16 for telephone disclosure and the toll
17 charge, if any, for the telephone call
18 is prepaid by or charged directly to the
19 consumer; or

20 (d) by providing trained personnel to explain
21 to the consumer any information provided
22 to him pursuant to subsection (1).

23
24 (4) The consumer may be accompanied by one (1)
25 other person of his choice.
26

5.203(2)

1 the status of that information and promptly notify the
2 consumer of the result of its investigation and of
3 his rights under subsection (4).

4

5 (3) If, after conducting the investigation
6 required in subsection (2), the consumer reporting
7 agency finds that the item is in error or that it is
8 unable to verify the item, it shall

9 (a) promptly expunge the item and otherwise
10 correct the file; and

11 (b) refrain from reporting the item in
12 subsequent consumer reports; and

13 (c) promptly notify all persons who have
14 received the item during the previous
15 two (2) years of the error and the cor-
16 rected information.

17

18 (4) If, after conducting the investigation
19 required in subsection (2), the consumer reporting
20 agency is unable to resolve any difference still
21 remaining between the allegations made by its sources
22 and the consumer, it shall

23 (a) promptly indicate in the file that the
24 item is disputed; and

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26

- 1 (b) permit the consumer to file a statement
2 containing his view of the disputed
3 item; and
- 4 (c) promptly forward a copy of the statement
5 of the consumer to all persons who have
6 received the disputed item during the
7 previous two (2) years; and
- 8 (d) include the statement of the consumer in
9 all subsequent consumer reports; and
- 10 (e) indicate in all subsequent consumer
11 reports that the item is disputed.
- 12
13

14 SECTION 5.204 DISCLOSURE OF ADVERSE INFORMATION OF
15 PUBLIC RECORD

16 (1) A consumer reporting agency which compiles and
17 reports items of adverse information on consumers
18 when such items are matters of public record shall

- 19 (a) give written notice to the consumer
20 that the information has been obtained
21 and is being reported and of the name and
22 address of the depository of the public
23 record; and
- 24 (b) given written notice to the consumer of
25 his rights under Section 5.202 and
26 Section 5.203; and

5.204(1)

1 (c) maintain strict procedures designed to
2 insure that whenever the information is
3 reported it is complete and current.
4

5 (2) For purposes of this Section, items of public
6 record concerning convictions, suits, tax liens, out-
7 standing judgments and related matters shall be con-
8 sidered current if the public record status of the item
9 at the time of the report is reported.
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1 PART 3
2 MERCHANTS

3
4 SECTION

5 5.301 USE OF REPORTS FROM CONSUMER REPORTING
6 AGENCY

7 5.302 DISCLOSURE TO CONSUMER OF CONSUMER
8 REPORT

9 5.303 REPORT OF INFORMATION TO CONSUMER
10 REPORTING AGENCY

11 5.304 REPORT OF DISPUTED ACCOUNT TO CONSUMER
12 REPORTING AGENCY

13 5.305 MERCHANT HARASSMENT
14

15
16 SECTION 5.301 USE OF REPORTS FROM CONSUMER REPORTING
17 AGENCY

18 (1) No merchant shall obtain information from a
19 consumer reporting agency by false or misleading
20 means.
21

22 (2) No merchant shall use a consumer report or
23 disclose information therein except for a legitimate
24 business purpose.
25

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5.302

1 SECTION 5.302 DISCLOSURE TO CONSUMER OF CONSUMER
2 REPORT

3 With respect to a particular consumer, any
4 merchant who because of any information contained in a
5 consumer report

6 (a) refuses in whole or in part to enter into
7 a consumer credit transaction; or

8 (b) refuses in whole or in part to enter into
9 a consumer credit transaction except at a
10 rate of finance charge or in accordance
11 with terms and conditions more onerous
12 than those regularly extended by that
13 merchant to consumers of similar economic
14 backgrounds; or

15 (c) increases in whole or in part any charge
16 or imposes any new, additional or modified
17 terms or conditions more onerous than
18 those regularly extended by that merchant
19 to consumers of similar economic background

20 shall promptly give written notice to the consumer of
21 the action taken and of the fact that the action was
22 due in whole or in part to a consumer report. The
23 notice shall include the name and address of the con-
24 sumer reporting agency which provided the report and a
25 statement of the rights of the consumer pursuant to
26 Section 5.202 and Section 5.203.

1 SECTION 5.303 REPORT OF INFORMATION TO CONSUMER
2 REPORTING AGENCY

3 (1) If a merchant has provided information to a
4 consumer reporting agency that an account is past due or
5 that action has been taken to collect an account, and
6 the account is thereafter settled by payment, deferral,
7 refinancing, arrangement pursuant to the Federal Bank-
8 ruptcy Act, 11 U.S.C. Sections 701 et seq., other dis-
9 position of the account or a determination in an action
10 or other proceeding that the account is not owing in
11 whole or part, the merchant shall promptly notify the
12 consumer reporting agency of such disposition.

13
14 (2) Whenever adverse information has been reported
15 by a merchant to a consumer reporting agency, the
16 merchant shall promptly report to that agency any
17 subsequent action which relates to that information.

18
19
20 SECTION 5.304 REPORT OF DISPUTED ACCOUNT TO CONSUMER
21 REPORTING AGENCY

22 (1) After receiving notice that an account is
23 disputed by the consumer, a merchant shall not report
24 to a consumer reporting agency that the account is
25 delinquent

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5.304(1)

- 1 (a) without reporting to the consumer
2 reporting agency that the account is
3 disputed and providing a brief descrip-
4 tion of the respective allegations of
5 the parties, and
6 (b) without providing the consumer with a
7 copy of the information reported pursuant
8 to subsection (1)(a), the name and address
9 of the consumer reporting agency and a
10 statement of the rights of the consumer
11 pursuant to Section 5.202 and Section 5.203.

12
13 (2) If a merchant has reported an account as
14 delinquent and subsequently receives notice that the
15 account is disputed, he shall promptly comply with the
16 requirements of subsection (1).

17
18 (3) For purposes of this Section, an account is
19 disputed when the consumer or his attorney has given
20 notice to a merchant that the consumer contests the
21 allegations of the merchant concerning rights, obliga-
22 tions or liabilities of the parties.

23
24

25 SECTION 5.305 MERCHANT HARASSMENT

26 No merchant shall threaten any consumer with

1 consequences adverse to his credit standing by reason of
2 a report to be made by the merchant to a consumer report-
3 ing agency. Nothing in this Section shall prohibit a mer-
4 chant from reporting information to a credit reporting
5 agency in conformance with this Article.

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1 ARTICLE 6
2 DEBT COLLECTION

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4 PART 1
5 GENERAL PROVISIONS

6
7 SECTION

8 6.101 APPLICABILITY

9 6.102 DEFINITIONS: "CLAIM"; "DEBT COLLECTOR"

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11
12 SECTION 6.101 APPLICABILITY

13 This Article applies to conduct and practices in
14 connection with the collection or enforcement of claims
15 and security interests arising from consumer credit
16 transactions.

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18
19 SECTION 6.102 DEFINITIONS: "CLAIM"; "DEBT COLLECTOR"

20 (1) "Claim" as used in this Article means any ob-
21 ligation, judgment or security interest, or alleged
22 obligation or security interest, arising from a consu-
23 mer transaction.

24
25 (2) "Debt collector" as used in this Article means
26 any person engaging or aiding directly or indirectly in

6.102(2)

1 enforcing claims, and includes creditors and their agents
2 when they are so acting.

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PART 2
PROHIBITED PRACTICES

SECTION

6.201 PRACTICE OF LAW BY DEBT COLLECTORS

6.202 THREATS OR COERCION

6.203 HARASSMENT; ABUSE

6.204 UNREASONABLE PUBLICATION

6.205 FALSE, DECEPTIVE OR MISLEADING
REPRESENTATIONS

6.206 UNFAIR OR UNCONSCIONABLE MEANS

6.207 COMMUNICATIONS LAWS AND REGULATIONS

SECTION 6.201 PRACTICE OF LAW BY DEBT COLLECTORS

The practice of law by any debt collector, not a licensed attorney, in the collection or enforcement of any claim is prohibited. Without limiting the general application of the foregoing, the following conduct is a violation of this Section:

- (a) performance of legal services, provision of legal advice or making of a false representation or false implication that any person is an attorney; or

6.201

- 1 (b) solicitation of assignments of claims
2 for the purpose of suit or at the insti-
3 gation of an attorney; or
4 (c) institution of judicial proceedings on
5 behalf of another person; or
6 (d) any communication with a consumer in the
7 name of an attorney or upon stationery or
8 other written matter bearing an attorney's
9 name; or
10 (e) any demand for or payment of money consti-
11 tuting a share of compensation for
12 services performed or to be performed by
13 an attorney in collection of a claim.

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15

16 SECTION 6.202 THREATS OR COERCION

17 No debt collector shall enforce or attempt to
18 enforce any claim by means of any threat, coercion or
19 attempt to coerce. Without limiting the general ap-
20 plication of the foregoing, the following conduct is a
21 violation of this Section:

- 22 (a) use, or expressed or implicit threat
23 of use, of violence or other criminal
24 means, to cause harm to a person, repu-
25 tation or property; or

26

- 1 (b) accusation or threat to accuse any
2 person of fraud, crime or conduct which,
3 if true, would tend to disgrace a person
4 or in any way subject him to ridicule
5 or the contempt of society; or
- 6 (c) false accusations or threat to make
7 accusations that a consumer is willfully
8 refusing to pay a just claim; or
- 9 (d) threat to sell or assign to another a
10 claim with an attending representation
11 or implication that the result of such a
12 sale or assignment would be that the con-
13 sumer would lose any defense to the claim
14 or would be subjected to harsh, vindic-
15 tive or abusive collection attempts; or
- 16 (e) threat that non-payment of a claim will
17 result in the arrest of any person or
18 the seizure, garnishment, attachment or
19 sale of any property or wages of any
20 person without a court order permitting
21 such action; or
- 22 (f) threat to take any action prohibited by
23 this Act or any other law regulating the
24 conduct of debt collectors, including but
25 not limited to Title II - Extortionate
26 Credit Transactions of the Federal Consumer

1 Credit Protection Act.

2

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4 SECTION 6.203 HARASSMENT; ABUSE

5 No debt collector shall engage in conduct the
6 natural consequence of which is to oppress, harass
7 or abuse any consumer. Without limiting the general
8 application of the foregoing, the following conduct is
9 a violation of this Section:

- 10 (a) use of profane or obscene language or
11 language the natural consequence of which
12 is to abuse the hearer or reader; or
13 (b) placement of telephone calls without a
14 meaningful disclosure of the identity of
15 the caller; or
16 (c) causing expense to any person in the form
17 of long distance telephone tolls, telegram
18 fees or other charges incurred through the
19 use of a medium of communication, by con-
20 cealment of the true purpose of the notice,
21 letter, message or communication; or
22 (d) causing a telephone to ring or engaging any
23 person in telephone conversation repeatedly
24 or continuously, or at unusual times or at
25 times known to be inconvenient.

26

1 SECTION 6.204 UNREASONABLE PUBLICATION

2 No debt collector shall unreasonably publicize
3 or communicate information relative to any claim or
4 consumer. Without limiting the general application of
5 the foregoing, the following conduct is a violation of
6 this Section:

7 (a) communication of information relating to
8 a claim to an employer of the consumer or
9 to any agent of an employer of the con-
10 sumer; or

11 (b) disclosure, publication or communication
12 of information relating to a claim to
13 any relative or family member of the
14 consumer, except through proper legal
15 action or process or at the express and
16 unsolicited request of the relative or
17 family member; or

18 (c) disclosure, publication or communication
19 to a third person of any information re-
20 lating to a claim other than through proper
21 legal action, process or proceeding; or

22 (d) use of any form of communication to
23 the consumer which ordinarily may be seen
24 by other persons, that displays or conveys
25 any information about the consumer other
26

1 than the name, address and phone number of
2 the debt collector.

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5 SECTION 6.205 FALSE, DECEPTIVE OR MISLEADING
6 REPRESENTATIONS

7 No debt collector shall use any false, deceptive
8 or misleading representation or means to enforce or
9 attempt to enforce claims or to obtain information
10 concerning consumers. Without limiting the general
11 application of the foregoing, the following conduct is
12 a violation of this Section:

- 13 (a) use of any name, while engaging in
14 debt collection, other than the true
15 name of the debt collector; or
16 (b) failure to clearly disclose in all
17 communications made to enforce or attempt
18 to enforce a claim or to obtain or attempt
19 to obtain information about a consumer,
20 that the debt collector is attempting to
21 enforce a claim, and that any information
22 obtained will be used for that purpose; or
23 (c) any false representation or false impli-
24 cation that the debt collector has in his
25 possession information or something of
26 value for the consumer; or

- 1 (d) failure to clearly disclose the name and
2 full business address of the person to whom
3 the claim has been assigned for collection,
4 or to whom the claim is owed, at the time
5 of making any demand for money; or
- 6 (e) any false representation or false impli-
7 cation of the character, extent or amount
8 of a claim against a consumer or of its
9 status in any legal proceedings; or
- 10 (f) any false representation or false impli-
11 cation that any debt collector is vouched
12 for, bonded by, affiliated with or an in-
13 strumentality, agent or official of this
14 State or any other state or the Federal
15 government or any local government; or
- 16 (g) use or distribution or sale of any
17 written communication which simulates or
18 is falsely represented to be a document
19 authorized, issued or approved by a court,
20 an official or any other governmental or
21 public authority, or which creates a false
22 impression about its source, authorization
23 or approval; or
- 24 (h) any representation that a failure of the
25 consumer to satisfy a claim may cause the
26 amount of the claim to be increased by the

1 addition of an attorney's fee, an investi-
2 gation fee, a service fee or any other fee
3 or charge when such fee or charge is not
4 authorized by this Act; or

5 (i) any false representation or false impli-
6 cation about the status or true nature of
7 or the services rendered by the debt col-
8 lector or his business; or

9 (j) any false representation or false impli-
10 cation that a claim may be enforced with-
11 out resort to legal process; or

12 (k) any false representation or false impli-
13 cation that a claim may be enforced by
14 legal process without prior notice and
15 hearing for the consumer.

16
17

18 SECTION 6.206 UNFAIR OR UNCONSCIONABLE MEANS

19 No debt collector shall use unfair or unconscion-
20 able means to enforce or attempt to enforce any claim.
21 Without limiting the general application of the fore-
22 going, the following conduct is a violation of this
23 Section:

24 (a) seeking or obtaining any written statement,
25 waiver or acknowledgment in any form that
26 purports to affirm a debt discharged in

- 1 bankruptcy, acknowledge a debt barred by
2 a statute of limitations, waive or diminish
3 an exemption from attachment, seizure, levy
4 or execution or waive or diminish any
5 legal benefit to the consumer; or
- 6 (b) increasing any liability of the consumer
7 unless expressly allowed by law and made
8 intelligently, knowingly and voluntarily
9 by the consumer after a complete and con-
10 spicuous disclosure by the debt collec-
11 tor; or
- 12 (c) seeking or obtaining a statement in any
13 form acknowledging the receipt of a notice
14 or disclosure or due performance of an obli-
15 gation of a merchant or of any other fact,
16 if the debt collector knows or has reason
17 to know that the statement is false, decep-
18 tive or misleading; or
- 19 (d) collecting or attempting to collect from
20 the consumer all or any part of the fee
21 or charge for services rendered by the
22 debt collector; or
- 23 (e) collecting or attempting to collect any
24 finance or other charge, fee or expense
25 incidental to the principal obligation un-
26

6.206

1 less the charge, fee or expense is autho-
2 rized by this Act; or

3 (f) any communication with a consumer where it
4 appears that the consumer is or may be rep-
5 resented by an attorney and the name and
6 address of the attorney are known or are
7 readily available.

8
9

10 SECTION 6.207 COMMUNICATIONS LAWS AND REGULATIONS

11 No debt collector shall use, distribute, sell or
12 prepare for use any communication that violates or
13 fails to conform to any laws and regulations, Federal
14 or State, governing the use of any means or medium of
15 communication.

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PART 3
DISCLOSURE AND REMEDIES

- SECTION
- 6.301 DISCLOSURE WHEN CLAIM TRANSFERRED
- 6.302 ACCESS BY CONSUMER TO FILE
- 6.303 VIOLATIONS OF THIS ARTICLE

SECTION 6.301 DISCLOSURE WHEN CLAIM TRANSFERRED

Every debt collector who has received a claim for collection shall, prior to any attempt to enforce or enforcement of the claim, provide the consumer

- (a) a brief description in writing of the nature of the legal relationship between the debt collector and the previous creditor, such as assignee with full recourse, assignee without recourse, holder, agent, debt collector on contingent fee basis or other relevant status, or
- (b) the disclosures required pursuant to Section 2.413 and with any other disclosures required by law.

6.302

1 SECTION 6.302 ACCESS OF CONSUMER TO FILE

2 The debt collector, upon request and proper iden-
3 tification of the consumer, shall

4 (a) allow the consumer to inspect all papers
5 or copies in its possession which bear the
6 signature of the consumer; and

7 (b) allow the consumer to inspect all ledgers
8 or similar accountings regarding the claim
9 which are in the possession of the debt
10 collector; and

11 (c) clearly and accurately disclose to the
12 consumer the nature, substance and sources
13 of all information in its possession re-
14 garding the claim.

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16
17 SECTION 6.303 VIOLATIONS OF THIS ARTICLE

18 Any violation of this Article is subject to the
19 provisions of Section 8.108.

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ARTICLE 7
ENFORCEMENT OF CREDIT OBLIGATIONS

PART 1
GENERAL PROVISIONS

SECTION

- 7.101 APPLICABILITY
- 7.102 DEFINITION: "DEFAULT"
- 7.103 ACCRUAL OF ACTION; LIMITATIONS
- 7.104 UNENFORCEABLE RIGHTS OR OBLIGATIONS
- 7.105 JURISDICTION OF ACTIONS
- 7.106 PLEADING; PROOF
- 7.107 ATTACHMENT OR SETOFF BEFORE JUDGMENT
PROHIBITED
- 7.108 RIGHT TO CURE DEFAULT
- 7.109 STAY OF ENFORCEMENT OF JUDGMENT
- 7.110 EXEMPT PROPERTY
- 7.111 LIABILITY OF COSIGNER
- 7.112 DOING BUSINESS WITHOUT VALID REGISTRATION

SECTION 7.101 APPLICABILITY

This Article applies to actions and other proceedings brought by the creditor to enforce rights claimed to arise from a consumer credit transaction. It does

7.101

1 not apply to foreclosure and similar proceedings brought
2 to enforce security interests in real property.

3

4

5 SECTION 7.102 DEFINITION: "DEFAULT"

6 (1) "Default" with respect to a consumer credit
7 transaction other than one pursuant to an open end
8 credit plan means that the consumer, without justifica-
9 tion pursuant to any provision of law, has remaining
10 unpaid

11 (a) if the transaction is scheduled to be paid
12 in full in six (6) or fewer instalments,
13 any two (2) or more delinquent instalments
14 the total amount of which is equal to more
15 than fifteen (15) per cent of the transac-
16 tion total, or any remaining balance with-
17 in two (2) months after the due date of
18 the final instalment, or

19 (b) if the transaction is scheduled to be paid
20 in full in more than six (6) instalments,
21 any delinquent instalment or instalments
22 the total amount of which is equal to more
23 than fifteen (15) per cent of the transac-
24 tion total, or any remaining balance within
25 three (3) months after the due date of the
26 final instalment.

1 (2) "Default" with respect to an open end credit
2 plan means that the consumer, without justification
3 pursuant to any provision of law, has remaining unpaid

4 (a) three (3) or more successive periodic pay-
5 ments which are required by the terms of
6 the plan to be paid as a minimum of the new
7 balance stated in the periodic billing
8 statement, or

9 (b) any four (4) or more periodic payments
10 which are required by the terms of the
11 plan to be paid as a minimum of the new
12 balance stated in the periodic billing
13 statement, within a twelve (12) month
14 period.

15
16 (3) With respect to a consumer credit transaction,
17 the creditor may bring an action for any amount currently
18 due from the consumer notwithstanding the absence of a
19 default if the creditor has not accepted an offer by the
20 consumer to voluntarily surrender the collateral (Section
21 7.203) or has not elected to enforce his security inter-
22 est by action (Section 7.204). Nothing in this subsec-
23 tion shall be construed to permit acceleration of all or
24 any part of the obligation of the consumer arising from
25 a consumer credit transaction.

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7.103

1 SECTION 7.103 ACCRUAL OF ACTION; LIMITATIONS

2 (1) Except as provided in subsection (3) of Section
3 7.102, no cause of action shall accrue in favor of the
4 creditor with respect to a consumer credit transaction
5 except by reason of the default of the consumer. Upon
6 the default of the consumer the creditor shall be en-
7 titled to recover in an action the amount which the
8 consumer would have been entitled to pay, on the date
9 the action was brought, upon prepayment in full of the
10 total obligation pursuant to Section 2.211. As of the
11 date an action is brought no further finance or other
12 charge shall apply to the unpaid balance of the obliga-
13 tion unless the consumer subsequently exercises his
14 right to cure the default pursuant to Section 7.108.

15
16 (2) An action by the creditor with respect to the
17 obligation of the consumer pursuant to a consumer
18 credit transaction may be brought in [any court of
19 competent jurisdiction] before the expiration of two
20 (2) years from the default of the consumer.

21
22 (3) A cause of action arising from a consumer
23 credit transaction which creates a security interest in
24 personal property shall be subject to the limitations
25 provided in the Part on Enforcement of Security
26 Interests (Part 2 of this Article), whether or not the

1 creditor is seeking or has sought to realize upon the
2 security interest.

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4
5 SECTION 7.104 UNENFORCEABLE RIGHTS OR OBLIGATIONS

6 There is no right or obligation enforceable by
7 action against the consumer arising from any term of an
8 agreement, charge, process, act, practice or other con-
9 duct which is in violation of this Act.

10
11
12 SECTION 7.105 JURISDICTION OF ACTIONS

13 An action by the creditor arising from a consumer
14 credit transaction may be brought only in the county in
15 which the consumer resides at the commencement of the
16 action, or, if the obligation is secured by an interest
17 in real property, in the county in which the real property
18 is located. If the papers offered for filing in the
19 action do not comply with this Section, they shall
20 not be accepted by the [clerk] of the court. Any order
21 or other process issued by the Court in an action
22 brought in violation of this Section is void.

7.106

1 SECTION 7.106 PLEADING; PROOF

2 (1) In an action brought by the creditor arising
3 from a consumer credit transaction, the complaint
4 shall set forth specifically the facts constituting
5 the default of the consumer, the amount which the
6 creditor is claiming and the computations by which
7 that amount was determined and the amount, itemized,
8 which the consumer is required to pay to cure the de-
9 fault (Section 7.108), and shall be accompanied by an
10 accurate copy of the writing evidencing the transaction.

11
12 (2) No default judgment shall be entered in the
13 action in favor of the creditor unless specific compe-
14 tent evidence shown by testimony within the personal
15 knowledge of an affiant or witness is adduced showing
16 that the creditor is entitled to the relief sought in
17 the action.

18
19
20 SECTION 7.107 ATTACHMENT OR SETOFF BEFORE JUDGMENT
21 PROHIBITED

22 (1) Except as provided in Section 7.205, prior to
23 entry of final judgment in an action against a consumer
24 arising from a consumer credit transaction, the creditor
25 may not

26

1 (a) attach any property, including unpaid
2 earnings, of the consumer, whether by
3 attachment, garnishment or any other
4 process, or

5 (b) set off or otherwise deny the consumer
6 access to funds or other property of the
7 consumer on deposit with the creditor
8 unless possession of or control over the
9 funds or property has been specifically
10 granted the creditor as security for the
11 obligation.

12
13 (2) An order, process or other action in violation
14 of this Section is void.

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16
17 SECTION 7.108 RIGHT TO CURE DEFAULT

18 (1) In any action brought by a creditor based on
19 the default of the consumer, the complaint shall
20 include or be accompanied by a notice informing the
21 consumer of his right to cure his default pursuant to
22 the provisions of this Section.

23
24 (2) At any time before the issuance of a final
25 judgment the consumer may cure his default by tendering
26 to the creditor the amount of his current obligation

7.108(2)

1 and, at the option of the creditor, any court costs
2 incurred by the creditor and a performance deposit not
3 in excess of the amount of one instalment or periodic
4 payment.

5
6 (3) For the purposes of this Part the current
7 obligation of the consumer is the aggregate of all
8 payments scheduled to be due at the time of the
9 tender, plus any unpaid delinquency or deferral charges.
10 Nothing in this subsection shall be construed to permit
11 acceleration of all or any part of the obligation of
12 the consumer arising from a consumer credit transaction.

13
14 (4) Any performance deposit may be held by the
15 creditor against the remaining obligation of the
16 consumer. Upon regular performance by the consumer
17 throughout the duration of the obligation the deposit
18 shall be credited to the account of the consumer at the
19 time it becomes equal to the remaining balance. In the
20 event of a subsequent default, prepayment or any other
21 occurrence which requires the computation pursuant to
22 this Act of the outstanding obligation of the consumer,
23 the deposit shall be credited to the amount paid for
24 the purposes of the computation.

25
26

1 (5) Once the consumer has cured his default
2 pursuant to this Section the action of the creditor
3 shall be dismissed and the consumer shall be restored
4 to all of his rights and obligations pursuant to the
5 transaction as though the default had not occurred.
6
7

8 SECTION 7.109 STAY OF ENFORCEMENT OF JUDGMENT

9 (1) A stay of enforcement of a judgment against
10 a consumer in an action arising from a consumer credit
11 transaction may be ordered by the court on condition
12 that the consumer pay to the creditor such amounts
13 at such times as the court finds within the financial
14 ability of the consumer consistent with his other
15 obligations.
16

17 (2) The court may make an order pursuant to sub-
18 section (1) for good cause on its own motion, or on the
19 application of either party upon reasonable notice to
20 the other party, at the time of the making of the judg-
21 ment or at any time thereafter, and may modify or revoke
22 the order for good cause on its own motion or on the
23 application of either party upon reasonable advance
24 notice to the other party at any time thereafter.
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7.110

1 SECTION 7.110 EXEMPT PROPERTY

2 (1) Except as the creditor enforces a valid
3 security interest the following property of the consumer
4 is exempt from levy, execution, sale and other similar
5 process in satisfaction of a judgment for an obligation
6 arising from a consumer credit transaction:

7 (a) unpaid earnings; and

8 (b) personal effects, household furnishings,
9 appliances and clothing of the consumer
10 and his dependents; and

11 (c) real property used as the principal resi-
12 dence of the consumer or his dependents;
13 and

14 (d) tools of the trade and other property
15 necessary for the consumer to earn an
16 income or provide sustenance for himself
17 and his dependents; and

18 (e) other property necessary for the mainten-
19 ance of a moderate standard of living for
20 the consumer and his dependents.

21
22 (2) Nothing in this Section shall be construed
23 to displace other provisions of law which afford
24 additional or greater protection to the property of
25 the consumer.
26

1 (3) An order or process in violation of this Section
2 is void.

3
4
5 SECTION 7.111 LIABILITY OF COSIGNER

6 (1) To recover in an action against a cosigner
7 with respect to an obligation arising from a consumer
8 credit transaction, the creditor must plead and prove,
9 in addition to any other requirements of this Part,
10 that the creditor materially relied on the assumption
11 of the obligation by the cosigner as a condition for
12 the extension of the credit and that the cosigner
13 agreed to be bound by the terms of the agreement.

14
15 (2) In addition to defenses arising from the re-
16 quirements of subsection (1) and any other provision
17 of law, a cosigner is entitled to assert against the
18 creditor all defenses and claims arising out of the
19 transaction which are available to the principal
20 obligor.

21
22
23 SECTION 7.112 DOING BUSINESS WITHOUT VALID REGISTRATION

24 No person who engages in the business of extending
25 or arranging credit or who engages in the business of
26 taking assignments of and undertaking direct collection

7.112

1 of payments from or enforcement of rights against
2 consumers arising from consumer credit transactions, or
3 who engages in the business of debt collection shall
4 have the benefit of any provision of this Article with
5 respect to the enforcement of the obligations pursuant
6 to the transaction unless he had a valid registration
7 pursuant to the Part on Registration and Fees (Part 2 of
8 Article 9) at the time of the extension of credit or
9 taking of the assignment or the account for collection.

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1 PART 2

2 ENFORCEMENT OF SECURITY INTERESTS

3
4 SECTION

5 7.201 GENERAL PROVISIONS

6 7.202 NON-JUDICIAL ENFORCEMENT PROHIBITED

7 7.203 VOLUNTARY SURRENDER OF COLLATERAL

8 7.204 PROCESS FOR POSSESSION; PLEADINGS

9 7.205 SEIZURE OF COLLATERAL PRIOR TO FINAL JUDGMENT

10 7.206 RECOVERY OF PROPERTY SEIZED PRIOR TO

11 FINAL JUDGMENT

12 7.207 RIGHTS IN COLLATERAL AFTER JUDGMENT

13 7.208 PROHIBITION OF DEFICIENCY; RIGHT TO SURPLUS

14
15
16 SECTION 7.201 GENERAL PROVISIONS

17 (1) Subject to the provisions on security interests
18 (Section 2.411 and Section 2.412) the creditor may acquire
19 a security interest in goods to secure the obligation of
20 the consumer arising from a consumer credit transaction.

21
22 (2) Upon the default (Section 7.102) of the con-
23 sumer the secured creditor has only those rights and
24 remedies provided in this Article. Subject to the
25 limitations contained in this Part, the creditor may
26 waive his security interest and pursue his claim to

7.201(2)

1 judgment as one unsecured. If the creditor elects to
2 waive his security interest, the collateral may not
3 thereafter be retaken and is not subject to levy or
4 sale on execution or similar proceedings pursuant to
5 any judgment.

6
7 (3) Each requirement of this Part is a condition
8 precedent for a proper taking of collateral.

10 SECTION 7.202 NON-JUDICIAL ENFORCEMENT PROHIBITED

11 No person shall take possession of collateral by
12 other than legal process pursuant to this Part, not-
13 withstanding any provision of law or term of a writing.

16 SECTION 7.203 VOLUNTARY SURRENDER OF COLLATERAL

17 (1) The consumer may at any time offer to
18 voluntarily surrender all of his rights and interests
19 in the collateral to the creditor. If the creditor
20 elects to accept the surrender, he may not thereafter
21 pursue any claim for judgment on the obligation.

22
23
24 (2) If the consumer voluntarily surrenders the
25 collateral to the creditor and the creditor accepts the
26

1 surrender, the disposition of the collateral is subject
2 to the provisions of Section 7.207 and Section 7.208.

3

4

5 SECTION 7.204 PROCESS FOR POSSESSION; PLEADINGS

6 (1) In an action brought to enforce a security
7 interest in collateral no process shall issue to take
8 possession of the property until final judgment has been
9 rendered in favor of the creditor except as otherwise
10 provided in Section 7.205.

11

12 (2) In an action brought to enforce a security
13 interest in collateral the complaint shall comply with
14 the requirements of Section 7.106.

15

16

17 SECTION 7.205 SEIZURE OF COLLATERAL PRIOR TO FINAL 18 JUDGMENT

19 (1) No process shall issue with regard to the
20 collateral prior to final judgment, except as provided
21 in this Section.

22

23 (2) In order for process to issue with regard to
24 the collateral prior to final judgment, the creditor
25 must move simultaneously with or after the filing of the
26 complaint for the court to issue such process. The mo-

7.205(2)

1 tion shall be supported by sworn affidavits showing the
2 fair market value of the collateral and

3 (a) that the issuance of process is necessary
4 to obtain jurisdiction over the collateral
5 because the consumer is absent from the
6 jurisdiction and there is no alternative
7 means of obtaining jurisdiction over the
8 the consumer, or

9 (b) that the issuance of process is necessary
10 because the consumer is about to remove
11 any or all of the collateral from the state
12 with the intent to defraud the creditor.

13
14 (3) If it appears to the court that any of the
15 affidavits made pursuant to this Section are presented
16 in bad faith, the court shall order the creditor to
17 pay the consumer the reasonable expenses caused by the
18 filing of the affidavit, including reasonable attorney's
19 fees, and any offending affiant, party or attorney, may
20 be found guilty of contempt for filing the affidavit.

21
22 (4) No process shall issue pursuant to this
23 Section unless the creditor posts a bond with suffi-
24 cient sureties in an amount not less than one hundred
25 dollars (\$100) and at least double the value of the
26 property as stated in the affidavit.

1 (5) Upon examination of the complaint and affida-
2 vits and by reason of specific competent evidence shown
3 by testimony within the personal knowledge of an affiant
4 or witness setting forth the facts upon which the credi-
5 tor is relying, the court may issue process with regard
6 to the collateral if it appears more probable than not
7 that

8 (a) the creditor has a valid security interest
9 in the collateral; and

10 (b) the consumer is in default on the obliga-
11 tion; and

12 (c) the relevant factors set out in subsection (2)
13 are present; and

14 (d) providing the consumer with notice and an
15 opportunity to be heard will greatly
16 endanger the ability of the creditor to
17 recover the collateral.

18
19 (6) The collateral shall not be delivered to the
20 creditor until ordered by the court pursuant to the
21 provisions of Section 7.206.

22
23 (7) Any settlement between the parties subsequent
24 to the issuance of process pursuant to this Section
25 must be approved by the court before it is effective.
26

7.206

1 SECTION 7.206 RECOVERY OF PROPERTY SEIZED PRIOR
2 TO FINAL JUDGMENT

3 (1) Upon issuance of process pursuant to the pro-
4 visions of Section 7.205, the court shall provide the
5 consumer with the best notice possible including notice
6 sent by registered or certified mail to his last reason-
7 ably ascertainable address. The notice shall contain a
8 description of the property seized, the name of the
9 creditor who moved for its seizure and the facts alleged
10 by the creditor to necessitate its seizure, and shall
11 inform the consumer of his right,

12 (a) if the process issued pursuant to the pro-
13 visions of subsection (2)(a) of Section
14 7.205, to file a general appearance at any
15 time prior to a hearing on the merits in
16 order to effect the immediate return of
17 the property to him, or

18 (b) if the process issued pursuant to the pro-
19 visions of subsection (2)(b) of Section
20 7.205, to demand a hearing to contest the
21 allegations of the creditor and to have the
22 property immediately returned to him if the
23 court so orders at the hearing.

24
25 (2) If the property of the consumer was seized pur-
26 suant to the provisions of subsection (2)(a) of Section

1 7.205 and the consumer files a general appearance prior
2 to the trial on the merits, the court shall order the
3 collateral returned immediately to the consumer. If the
4 consumer does not file a general appearance prior to the
5 trial on the merits and the creditor prevails at the
6 trial, the court may order the property delivered to the
7 creditor.

8
9 (3) If the property of the consumer was seized
10 pursuant to the provisions of subsection (2)(b) of
11 Section 7.205 the consumer may obtain a hearing to
12 contest the allegations of the creditor at any time
13 before the trial on the merits by filing a demand for
14 the hearing with the court. Upon filing, the court shall
15 schedule a hearing on the date requested by the consumer,
16 or as soon thereafter as is practicable, and shall notify
17 the creditor of that date. If the consumer does not file
18 a demand for a hearing and the creditor prevails at the
19 trial on the merits, the court may order the property
20 delivered to the creditor.

21
22 (4) At the hearing pursuant to subsection (3) the
23 court shall order the collateral returned immediately to
24 the consumer if the creditor is unable to show by a pre-
25 ponderance of the evidence that the danger still exists
26 of the consumer removing the collateral with the intent

7.206(4)

1 to defraud the creditor if it is returned immediately to
2 the consumer. If the creditor prevails at the trial on
3 the merits, the court may order the property delivered to
4 the creditor.

5
6
7 SECTION 7.207 RIGHTS IN COLLATERAL AFTER JUDGMENT

8 Subject to the provisions of Section 7.208 the credi-
9 tor shall take all rights and interests in the collateral
10 upon final judgment entered in his favor or upon accep-
11 tance of a voluntary surrender of the collateral.

12
13
14 SECTION 7.208 PROHIBITION OF DEFICIENCY;
15 RIGHT TO SURPLUS

16 (1) If the creditor takes possession of collateral
17 pursuant to an action authorized by this Part, or by the
18 acceptance of the voluntary surrender of the collateral
19 by the consumer, the consumer is not personally liable
20 to the creditor for any unpaid balance of the obligation.

21
22 (2) If the consumer has paid at least fifty (50)
23 per cent of the amount financed in the transaction, the
24 creditor shall sell the collateral at a public sale within
25 ninety (90) days after he takes possession of the collat-
26 eral. The proceeds of the sale shall be applied pursuant

1 to the requirements of [Section 9-504(1) of the Uniform
2 Commercial Code] with the exception that attorney's fees
3 and legal expenses incurred by the creditor shall not be
4 included as expenses of the creditor.

5
6 (3) Promptly after completion of distribution of
7 the proceeds but prior to the expiration of ninety (90)
8 days after the sale if the distribution is not then com-
9 plete the creditor shall provide the consumer with a
10 written accounting of the sale which shall include a
11 statement of all receipts and disbursements included in
12 the account and the name and address of the buyer and
13 the relation, if any, of the buyer to the creditor.

14
15 (4) The consumer is not liable for any deficiency,
16 but is entitled to any surplus which remains after dis-
17 tributing the proceeds. In a proceeding for a surplus,
18 it is presumed that the collateral was in average con-
19 dition at the time of surrender and that it was sold
20 for its fair market value. The fair market value of
21 the collateral is a question for the trier of fact.
22 Periodically published trade estimates of the retail
23 value of goods are presumed, to the extent they are
24 recognized in the particular trade or business, to be
25 the fair market value of the collateral.

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ARTICLE 8
CONSUMER REMEDIES AND ACTIONS

PART 1
REMEDIES FOR VIOLATIONS

SECTION

- 8.101 APPLICABILITY
- 8.102 REMEDIES TO BE LIBERALLY ADMINISTERED
- 8.103 LIMITATIONS OF ACTIONS
- 8.104 UNCONSCIONABILITY
- 8.105 REMEDY FOR CERTAIN VIOLATIONS; \$100 OR
10 PER CENT OF TRANSACTION TOTAL
- 8.106 REMEDY FOR CERTAIN VIOLATIONS; \$500 OR
20 PER CENT OF TRANSACTION TOTAL
- 8.107 REMEDY FOR CERTAIN VIOLATIONS; \$1000 OR
30 PER CENT OF TRANSACTION TOTAL
- 8.108 REMEDY FOR CERTAIN VIOLATIONS; VARIABLE
RECOVERY
- 8.109 TRANSACTIONS WHICH ARE VOID
- 8.110 EXEMPLARY DAMAGES FOR WILFUL VIOLATIONS
- 8.111 LIABILITY OF CORPORATE OFFICERS, AGENTS
AND EMPLOYEES
- 8.112 LIMITATIONS ON LIABILITY OF COMMUNICATIONS MEDIA
- 8.113 LITIGATION EXPENSES AND REASONABLE ATTORNEY'S
FEES

1 SECTION 8.101 APPLICABILITY

2 This Article applies to the rights and remedies
3 of the consumer arising from the provisions of this
4 Act and consumer credit transactions under this Act.
5 Nothing in this Act shall preclude the consumer from pur-
6 suing other rights and remedies with respect to a con-
7 sumer credit transaction, whether established by decision
8 or other law, in addition to those provided in this
9 Article.

10
11
12 SECTION 8.102 REMEDIES TO BE LIBERALLY ADMINISTERED

13 (1) The remedies provided by this Article shall
14 be liberally administered to the end that the con-
15 sumer as the aggrieved party shall be put in at least
16 as good a position as if the creditor had fully com-
17 plied with this Act. In addition to any specific remedy
18 provided by this Article, the consumer is always entitled
19 to recover actual damages, including incidental, conse-
20 quential and special damages, notwithstanding any agree-
21 ment to the contrary. Actual damages always include
22 damages for emotional distress or mental anguish suf-
23 fered, without regard to whether there is accompanying
24 physical injury. Exemplary damages may be recovered
25 pursuant to the provisions of Section 8.110.
26

8.102(2)

1 (2) Any right or obligation declared by this Act
2 is enforceable by action unless the provision de-
3 claring it specifies a different and limited effect.
4
5

6 SECTION 8.103 LIMITATIONS OF ACTIONS

7 (1) An action brought by a consumer pursuant to
8 a provision of this Article may be brought in [any
9 court of competent jurisdiction] before the expiration
10 of four (4) years from the date of the discovery by the
11 consumer of a violation of this Act, or in the case of
12 an action based on an obligation of the creditor pursuant
13 to a consumer credit transaction, before the expiration
14 of six (6) years from the conduct or occurrence giving
15 rise to the action.
16

17 (2) Any recovery to which the consumer is enti-
18 tled pursuant to a provision of this Article may be
19 recovered whether or not the obligation of the con-
20 sumer is enforceable by action and may be set off
21 against the obligation of the consumer under the
22 transaction and may be raised as a defense or counter-
23 claim to any action without regard to the limitations
24 prescribed in subsection (1).
25
26

1 SECTION 8.104 UNCONSCIONABILITY

2 (1) If the court finds, as a matter of law, with re-
3 spect to a consumer credit transaction that the agreement,
4 any term or aspect of the agreement or any aspect or re-
5 sult of the transaction is unconscionable, or that the
6 agreement or transaction was induced or enforced by un-
7 conscionable conduct, it may refuse to enforce the agree-
8 ment or term, or it may enforce the remainder of the
9 agreement without the unconscionable term, or it may so
10 limit the application of any unconscionable aspect of the
11 agreement or transaction as to avoid an unconscionable
12 result.

13
14 (2) Without limiting the scope of subsection (1)
15 the court may consider as pertinent to the issue of
16 unconscionability

17 (a) that the creditor knew or had reason to
18 know of the inability of the consumer to
19 adequately protect his interests because
20 of physical or mental infirmities, igno-
21 rance, illiteracy, lack of education, lack
22 of experience or sophistication or inabil-
23 ity to understand the language in which the
24 agreement was written or the negotiations
25 occurred and that he took advantage of these
26 or similar factors; or

8.104(2)

- 1 (b) that at the time the agreement was made the
2 creditor knew or had reason to know of the
3 inability of the consumer to receive sub-
4 stantial benefits, or benefits reasonably
5 anticipated from the subject matter of the
6 transaction; or
- 7 (c) that the creditor knew or had reason to
8 know at the time the agreement was made
9 that there was no reasonable probability
10 of payment in full of the obligation by
11 the consumer; or
- 12 (d) that the natural effect of the term, act or
13 practice in question is to cause consumers
14 to misunderstand the true nature of the
15 transaction or their rights and duties; or
- 16 (e) that the terms of the transaction require
17 the consumer to encumber property or other
18 value beyond what is the immediate subject
19 of the transaction: or
- 20 (f) that there existed, without economic justi-
21 fication, a gross disparity between the
22 price of the goods or services which were
23 the subject of the transaction and their
24 value measured by the price at which similar
25 goods or services were readily obtainable by
26

1 other consumers in this State, or by other
2 tests of true value; or

3 (g) that the creditor contracted for or
4 received, separate charges for insurance
5 or other benefits not directly related
6 to the transaction, with the effect of
7 making the transaction, considered as
8 a whole, unconscionable; or

9 (h) that the terms of the agreement include
10 the waiver of any consumer rights
11 provided by this Act; or

12 (i) that the writing purporting to evidence
13 the obligation of the consumer contains
14 terms or authorizes practices prohibited
15 by law or public policy; or

16 (j) definitions or interpretations of uncon-
17 scionability in statutes, regulations,
18 rulings and decisions of legislative,
19 administrative or judicial bodies in this
20 State or elsewhere.

21

22 (3) With respect to violations of rules promulgated
23 by the Administrator pursuant to Section 9.103

24 (a) proof of the use of any term of an agreement
25 or of the commission of any act, practice or
26 conduct specifically prohibited as uncon-

8.104(2)

1 scionable by a rule of the Administrator is
2 conclusive evidence that such act, practice
3 or conduct is unconscionable, and

4 (b) upon proof of the use of any terms of an
5 agreement or of the commission of any act,
6 practices or conduct specifically prohibited
7 by a rule of the Administrator, other than
8 one relating to unconscionability, the
9 person who has used the term or has
10 committed the act, practice or conduct
11 has the burden of establishing that it is
12 not unconscionable in the circumstances of
13 the particular case.

14
15 (4) If it is claimed or appears to the court that
16 the agreement, or any term or aspect of the agreement
17 or any aspect or result of the transaction is or may be
18 unconscionable or was or may have been induced or en-
19 forced by unconscionable conduct, the parties shall be
20 afforded a reasonable opportunity to present evidence
21 as to its setting, purpose and effect to aid in making
22 the determination.

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26

1 SECTION 8.105 REMEDY FOR CERTAIN VIOLATIONS; \$100 OR
2 10 PER CENT OF TRANSACTION TOTAL

3 For a violation which is subject to the provisions
4 of this Section, the consumer shall recover from the
5 person violating this Act an amount equal to

6 (a) ten (10) per cent of the transaction total
7 or one hundred dollars (\$100), whichever
8 is greater, and

9 (b) the actual damages, including any inciden-
10 tal, consequential and special damages,
11 sustained by the consumer as a result of
12 the violation.

13
14
15 SECTION 8.106 REMEDY FOR CERTAIN VIOLATIONS; \$500 OR
16 20 PER CENT OF TRANSACTION TOTAL

17 For a violation which is subject to the provisions
18 of this Section, the consumer shall recover from the
19 person violating this Act an amount equal to

20 (a) twenty (20) per cent of the transaction
21 total or five hundred dollars (\$500),
22 whichever is greater, and

23 (b) the actual damages, including any inciden-
24 tal, consequential and special damages,
25 sustained by the consumer as a result of
26 the violation.

8.107

1 SECTION 8.107 REMEDY FOR CERTAIN VIOLATIONS; \$1000 OR
2 30 PER CENT OF TRANSACTION TOTAL

3 For a violation which is subject to the provisions
4 of this Section, the consumer shall recover from the
5 person violating this Act an amount equal to

6 (a) thirty (30) per cent of the transaction
7 total or one thousand dollars (\$1000),
8 whichever is greater, and

9 (b) the actual damages, including any inciden-
10 tal, consequential and special damages,
11 sustained by the consumer as a result of
12 the violation.

13
14
15 SECTION 8.108 REMEDY FOR CERTAIN VIOLATIONS; VARIABLE
16 RECOVERY

17 For a violation which is subject to the provisions
18 of this Section, the consumer shall recover from the
19 person violating this Act an amount equal to

20 (a) not less than one hundred dollars (\$100)
21 nor more than twenty five hundred dollars
22 (\$2500), determined by the court, and

23 (b) the actual damages, including any inciden-
24 tal, consequential and special damages,
25 sustained by the consumer as a result of
26 the violation.

1 SECTION 8.109 TRANSACTIONS WHICH ARE VOID

2 For a violation which is subject to the provisions
3 of this Section, the consumer is entitled to retain the
4 goods, services, money or other credit received pursuant
5 to the transaction which gave rise to the violation with-
6 out obligation to pay any part of the transaction total.
7 In addition, the consumer is entitled to recover from
8 the person violating this Act any sums paid or any prop-
9 erty transferred pursuant to the transaction. If any
10 property is not recoverable or is not recoverable in
11 substantially the condition in which it was at the time
12 the consumer transferred it, the consumer is entitled
13 to recover in lieu thereof the agreed value or the re-
14 tail fair market value of the property, whichever is
15 greater.

16

17

18 SECTION 8.110 EXEMPLARY DAMAGES FOR WILFUL VIOLATIONS

19 (1) In addition to any other remedy provided by
20 this Article, the consumer may recover exemplary damages
21 from a person who has committed a wilful and knowing
22 violation of this Act.

23

24 (2) In an action in which exemplary damages are
25 sought to be recovered, evidence with respect to the
26 existence of similar conduct in transactions between

8.110(2)

1 the creditor and other consumers is admissible for the
2 purposes of proving that a violation was wilful or of
3 proving the degree of the wilfulness of the violation.
4
5

6 SECTION 8.111 LIABILITY OF CORPORATE OFFICERS,
7 AGENTS AND EMPLOYEES

8 (1) With respect to a violation of a provision
9 of this Act by a person who is a corporation, an
10 officer, agent or employee of the corporation is
11 personally liable to the consumer for amounts which
12 the consumer is entitled to recover from the corpora-
13 tion under this Article if:

14 (a) the consumer recovers judgment against
15 the corporation and execution is returned
16 unsatisfied, and

17 (b) the officer, agent or employee either

18 (i) had knowledge of the facts constituting
19 a violation of this Act, had reason to
20 know that a violation was being commit-
21 ted and had the authority to prevent a
22 violation from occurring, or

23 (ii) wilfully participated in a violation of
24 this Act with reason to know that a vio-
25 lation was being committed.
26

1 (2) Nothing in this Section shall preclude joint
2 liability, with the person violating this Act, of an
3 officer, agent or employee who wilfully participated in
4 a violation of this Act.

5
6 (3) An action pursuant to subsection (1) may be
7 commenced within four (4) years from the date execution
8 against the corporation is returned unsatisfied.

9
10
11 SECTION 8.112 LIMITATIONS ON LIABILITY
12 OF COMMUNICATIONS MEDIA

13 (1) No person shall be liable for the printing
14 or dissemination of any advertisement or information
15 which violates a provision of this Act if such person
16 is acting solely as owner or employee of the medium
17 through which such advertisement or information was
18 printed or disseminated.

19
20 (2) The provisions of subsection (1) are not appli-
21 cable in the case of any person who knew or should have
22 known that the advertisement or information printed or
23 disseminated violated any of the provisions of this Act.

8.113

1 SECTION 8.113 LITIGATION EXPENSES AND
2 REASONABLE ATTORNEY'S FEES

3 (1) If the consumer recovers judgment in an action
4 pursuant to this Article, on his own behalf or on be-
5 half of a class of consumers pursuant to Section 8.202,
6 whether as an original claim, set-off or counterclaim,
7 the person against whom judgment is rendered is liable to
8 the consumer in the aggregate amount of the costs and
9 expenses reasonably incurred on behalf of the consumer in
10 connection with such action or proceeding, together with
11 a reasonable attorney's fee for services furnished in
12 connection with such action or proceeding.

13
14 (2) In determining the reasonableness of the
15 award of attorney's fees pursuant to subsection (1),
16 the court shall consider, where relevant

17 (a) the time required to prosecute or defend
18 the action or proceeding; and

19 (b) the novelty and difficulty of the issues
20 involved and the skill requisite to prop-
21 erly conduct the cause; and

22 (c) the customary fees in the State for similar
23 services; and

24 (d) whether the employment of the attorney in
25 the particular case will preclude his ap-
26 pearance for others; and

- 1 (e) the contingency or certainty of the com-
2 pensation; and
- 3 (f) the character of the employment, whether
4 casual or for an established and constant
5 client; and
- 6 (g) the extent to which the attorney has rea-
7 sonably incurred costs and expenses in
8 connection with the proceedings; and
- 9 (h) the benefits to the client or the ad-
10 vantages to the public resulting from the
11 services.

12

13 (3) If the consumer is represented by an attorney
14 employed by a non-profit organization, the organization
15 is entitled to the same amounts to which a private at-
16 torney would be entitled for the expenses and costs
17 sustained and the services provided.

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PART 2
INJUNCTIONS AND CLASS ACTIONS

SECTION
8.201 INJUNCTIONS; RESTRAINING ORDERS; TEMPORARY
RESTRAINING ORDERS
8.202 CLASS ACTIONS

SECTION 8.201 INJUNCTIONS; RESTRAINING ORDERS;
TEMPORARY RESTRAINING ORDERS

(1) Whether or not there is a claim or a right to recover money or damages or there is an adequate remedy at law and irrespective of whether there is irreparable injury or any individualized harm, the consumer, the Administrator or the Attorney General may bring a civil action in the [] Court to restrain a person from violating this Act or any rule promulgated pursuant thereto.

(2) The plaintiff in an action under this Section may apply to the court for appropriate temporary relief against a respondent pending final determination of the action. If the court finds after a hearing held upon notice to the respondent that there is reasonable cause to believe that the respondent is engaging, or is

1 threatening to engage or is likely to engage in conduct
2 sought to be restrained, it may grant a restraining
3 order or preliminary injunction or any other temporary
4 relief it deems appropriate, and may continue, modify
5 or revoke the order at any time as the interests of
6 justice may require. The court may require that a bond
7 or other security in an amount the court deems appro-
8 priate be given for the payment of damages and costs
9 suffered by parties wrongfully restrained before a
10 restraining order or preliminary injunction shall issue,
11 except that no security shall be required where, as a
12 practical matter, the requirement of security would
13 operate as a bar to otherwise appropriate relief.

14
15 (3) (a) A temporary restraining order or other
16 appropriate temporary relief may be
17 granted without written or oral notice to
18 the adverse party or his attorney if

19 (i) it reasonably appears from specific
20 facts shown by affidavit or by veri-
21 fied complaint that the respondent
22 is engaging, is threatening to
23 engage or is likely to engage, in
24 conduct which is violative of this
25 Act; and
26

8.201(3)

1 (ii) the circumstances, including but not
2 limited to potential harm, indicate
3 that delay would not be in the
4 public interest; and

5 (iii) the attorney of the applicant has
6 certified to the court in writing
7 the efforts which have been made to
8 give notice to the adverse party or
9 his attorney and the court concludes
10 that a good faith effort to effect
11 notice has been made.

12 (b) Every temporary order granted without
13 notice shall be endorsed with the date and
14 hour of issuance, shall be filed with the
15 office of the clerk and entered of record,
16 and shall expire by its terms within a
17 period of time from its entry, not to
18 exceed ten (10) days. An order may be re-
19 newed in the same manner as issuance of an
20 original order and shall be subject to the
21 same limitations. The court shall set
22 matters in which temporary orders have
23 been granted for preliminary hearing at
24 the earliest possible time.

25 (c) no temporary restraining order shall issue
26 without notice unless a bond or other

1 security in an amount the court deems
2 appropriate is given for the payment of
3 damages and costs suffered by parties
4 wrongfully restrained, except that no
5 security shall be required where, as a
6 practical matter, the requirement of
7 security would operate as a bar to other-
8 wise appropriate relief.

9
10
11 SECTION 8.202 CLASS ACTIONS

12 (1) An action may be brought by a consumer on his
13 own behalf as well as on behalf of the members of a
14 class of consumers, similarly situated, to recover
15 money or damages and for any other relief to which a
16 member of the class would be entitled in an action
17 brought on his own behalf under the provisions of this
18 Act.

19
20 (2) Notwithstanding subsection (1), if the amount
21 assessed against a person who has violated this Act,
22 exclusive of actual and exemplary damages, is less than
23 five hundred dollars (\$500) for each member of the
24 class, that amount may not be recovered in a class
25 action except on behalf of those members of the class
26 who are named parties or have otherwise appeared in the

8.202(2)

1 action personally or through an attorney prior to a
2 compromise, settlement or judgment. Nothing in this
3 subsection shall be construed to prevent the recovery
4 of actual and exemplary damages on behalf of all
5 members of the class.

6
7 (3) Whether or not there is a claim or a right
8 to recover money or damages under subsection (1) or
9 there is an adequate remedy at law, and irrespective
10 of whether there is any irreparable injury or any
11 individualized harm, an action may be brought on behalf
12 of the members of a class of consumers, similarly
13 situated, for a declaratory judgment, an injunction or
14 other appropriate equitable or ancillary relief to which
15 a member of the class would be entitled in an action
16 brought on his own behalf under the provisions of this
17 Act.

18
19 (4) The Administrator or the Attorney General
20 may intervene in the action or join as a party or
21 may bring an action under this Section if the court
22 finds that he will fairly and adequately protect
23 the interests of the class. The appearance of the
24 Administrator or the Attorney General in an action
25 under this Section shall not preclude any person
26

1 otherwise entitled to participate in the action
2 from so doing.

3

4 (5) The court shall consider only the following
5 questions in determining whether an action may be
6 maintained as a class action:

7 (a) without regard to the size of the class,
8 will the representative party or parties
9 fairly and adequately represent the class,
10 and

11 (b) without regard to the size of the class,
12 is there a question of law or fact
13 common to the class.

14 If the finding in both instances is affirmative, the
15 court shall allow the action to be maintained on behalf
16 of the members of the class.

17

18 (6) As soon as practicable after the commencement
19 of a class action brought pursuant to this Section and
20 prior to a prosecution of the case on the merits, the
21 court shall hold a hearing to determine whether it shall
22 be maintained as a class action. The court shall make a
23 written finding on the issues of fairness and adequacy
24 of representation and of common question of law or
25 fact. An interlocutory appeal may be taken from this
26 finding.

8.202(7)

1 (7) In actions under this Section, the court in
2 order to protect the interest of the various parties
3 and to expedite a fair disposition of the proceeding
4 may make appropriate orders

5 (a) limiting the action to particular classes,
6 persons or issues; or

7 (b) dividing a class into subclasses and
8 treating each subclass as a class; or

9 (c) determining the course of proceedings or
10 prescribing measures to prevent undue
11 repetition or complication in the presen-
12 tation of evidence or argument; or

13 (d) requiring that notice be given in the
14 manner the court directs to some or all of
15 the members and to the Administrator of
16 any step in the action, including the
17 terms of a proposed compromise or settle-
18 ment and the extent of the judgment; or

19 (e) requiring that some or all of the members
20 have an opportunity to signify whether
21 they consider the representation fair and
22 adequate, or to withdraw from the action
23 by a day certain or to intervene and
24 present claims or defenses; or

25 (f) requiring that some or all of the members
26 have an opportunity to express their

- 1 sentiment regarding any proposed step in
2 the action, including the terms of a
3 proposed compromise or settlement and the
4 proposed extent of the judgment; or
5 (g) directing any party to provide the Adminis-
6 trator with whatever information is needed
7 to assist the Administrator in carrying out
8 an order of the court; or
9 (h) approving or disapproving a proposed
10 dismissal, compromise or settlement.
11
12 (8) (a) If the action is to be permitted as
13 a class action, the court shall direct
14 the Administrator to serve upon the
15 class the best possible notice of the
16 action, including individual notice
17 to all members who can be identified
18 through reasonable effort, which states
19 that
20 (i) the court will exclude him from
21 the class if he so requests by a
22 specified date; and
23 (ii) the judgment, whether favorable
24 or not, will include all members
25 who do not request exclusion; and
26

8.202(8)

1 (iii) any member who does not request
2 exclusion, may if he desires,
3 enter an appearance through counsel.

4 (b) notwithstanding subsection (a), any member
5 of the class to whom individual notice has
6 not been sent or who has not had actual
7 notice of the action shall not be bound by
8 the judgment or any compromise or settlement
9 approved by the court unless by petition to
10 the court he elects to be so bound.

11

12 (9) A class action shall not be voluntarily dismissed,
13 settled or compromised without the prior approval of
14 the court on motion following notice to all members of
15 the class as required in subsection (8)(a). The terms
16 of the proposed compromise or settlement shall be set
17 forth in the notice, and such notice shall state that
18 any member of the class who does not submit to the
19 court by a stated date his agreement to be bound by the
20 terms of the proposal will be excluded from the class.
21 The court shall apportion all costs of notice between
22 the Administrator and the defendant in such manner as
23 it deems just.

24

25

26

1 (10) The judgment in a class action shall describe
2 those to whom the notice was directed and who have not
3 been excluded and those the court finds to be members
4 of the class. The best possible notice of the judgment
5 shall be given in the manner the court directs to each
6 person who received the original notice and has not
7 been excluded. If the judgment is for the plaintiff
8 the court shall direct the defendant to reimburse the
9 Administrator for all costs of notice.

10
11 (11) If the court grants relief against a defendant
12 in an action under this Section, the defendant is
13 liable for the aggregate amount of court costs and
14 litigation expenses determined by the court to have
15 been reasonably incurred by or on behalf of the
16 representative party or parties, together with a
17 reasonable attorney's fee (Section 8.113) for services
18 furnished in connection with the action or proceeding.
19 A non-profit organization or agency of the government
20 which represents consumers or the people of this State
21 in an action under this Section is entitled to the
22 same amounts to which a private attorney would be
23 entitled for the expenses and costs sustained and
24 services provided.

25
26

8.202(12)

1 (12) During the pendency and until the final
2 determination of an action under this Section, the
3 running of any period of limitation applicable to a
4 claim within the purview of the relief requested
5 or granted in such action is tolled.
6

7 (13) A final judgment is admissible as evidence
8 of the facts on which it is based in any subsequent
9 action or proceeding.
10

11 (14) The Administrator, whether or not a party
12 to the action, shall bear the costs of notice to
13 the members of the class and may recover such costs
14 from the defendant as provided in this Section, and
15 is entitled to notice and an opportunity to be heard
16 on any issue of notice or apportionment of cost.
17
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1 ARTICLE 9
2 ADMINISTRATION

3
4 PART 1
5 POWERS AND FUNCTIONS OF ADMINISTRATOR

6
7 SECTION

8 9.101 APPLICABILITY

9 9.102 DEFINITION: "ADMINISTRATOR"

10 9.103 GENERAL POWERS OF THE ADMINISTRATOR

11 9.104 INVESTIGATORY POWERS

12 9.105 ADMINISTRATIVE POWERS WITH RESPECT TO SUPER-
13 VISED FINANCIAL ORGANIZATIONS AND OTHER
14 PERSONS

15 9.106 REPRESENTATION OF THE INTERESTS OF CONSUMERS

16 9.107 DUTY TO REPORT

17 9.108 APPLICATION OF PART ON ADMINISTRATIVE
18 PROCEDURE AND JUDICIAL REVIEW

19 9.109 ENFORCEMENT ORDERS

20 9.110 REMEDIES OF CONSUMERS NOT AFFECTED

21 9.111 VIOLATIONS AND ENFORCEMENT

22 9.112 FEES AND RECOVERIES

23

24

25

26

9.101

1 SECTION 9.101 APPLICABILITY

2 This Article applies to any person whose conduct or
3 activities are subject to any of the provisions of this
4 Act.

5
6
7 SECTION 9.102 DEFINITION: "ADMINISTRATOR"

8 Administrator means [].

9
10 Comment: Effective and energetic administration is vital
11 to the Act. Since each state has a different structure in
12 its executive branch, the Act does not specifically identify
13 the Administrator. The draftsmen recommend that
14 where possible the administering agency be a new office,
15 directly responsible to the Governor, with no duties other
16 than administration of this Act and other consumer protection
17 legislation. We discourage extending the responsibilities of
18 banking, insurance and other existing departments to include
19 administration of this Act because these departments are already
20 overburdened.

21
22
23 SECTION 9.103 GENERAL POWERS OF ADMINISTRATOR

24 (1) The Administrator shall adopt, amend and repeal
25 rules necessary to interpret and to carry out the purposes
26 and policies of this Act, to prevent circumvention of and to
facilitate compliance with any provision of this Act. The rules may

- (a) contain classifications, differentiations, interpretations, adjustments or exceptions

9.103(1)

1 and other provisions deemed necessary by
2 the Administrator; and

3 (b) prescribe the form and content of notices,
4 disclosures, writings, agreements and
5 such other documents as are required by
6 provisions of this Act or rules promulgated
7 by the Administrator.

8
9 (2) In addition to any other powers conferred by
10 this Act, the Administrator shall

11 (a) receive and act on complaints in whatever
12 manner he deems necessary to obtain compli-
13 ance with this Act; and

14 (b) commence actions on his own initiative to
15 obtain compliance with this Act; and

16 (c) counsel persons and groups on their rights
17 and duties under this Act; and

18 (d) establish programs for the education of con-
19 sumers with respect to consumer practices
20 and problems; and

21 (e) make studies appropriate to effectuate the
22 purposes and policies of this Act and make
23 the results available to the public; and

24 (f) survey and test the effectiveness of forms,
25 notices, disclosures and other writings
26 relevant to the enforcement of this Act; and

9.103(2)

- 1 (g) hold such public or private hearings as he
2 deems necessary or proper to effectuate the
3 purposes and policies of this Act; and
- 4 (h) subpoena witnesses, compel their attendance,
5 adduce evidence and require the production
6 of such relevant matter as he deems neces-
7 sary or proper to effectuate the purposes
8 and policies of this Act; and
- 9 (i) adopt as a rule a description of the organ-
10 ization of his office, stating the general
11 course and method of the operations of his
12 office and the methods whereby the public
13 may obtain information or make submissions
14 or requests; and
- 15 (j) adopt rules of practice setting forth the
16 nature and requirements of all formal and
17 informal procedures available, including a
18 description of all forms and instructions
19 used by the Administrator or his office; and
- 20 (k) maintain such offices as he deems necessary
21 within this State; and
- 22 (l) appoint such attorneys, hearing examiners,
23 clerks and other employees and agents as
24 in the judgment of the Administrator are
25 reasonably necessary to perform his func-
26 tions under this Act; fix their compensa-

1 tion; and authorize such attorneys to appear
2 for and represent the Administrator in court.

3

4 (3) Upon failure without lawful excuse to obey a
5 subpoena or order issued pursuant to subsection (2)(h)
6 or to give testimony and upon reasonable notice to all
7 persons affected thereby, the Administrator may apply to
8 the [] Court for an order compelling compliance.

9

10

11 SECTION 9.104 INVESTIGATORY POWERS

12 (1) In addition to any other powers conferred by
13 this Act, the Administrator shall

14 (a) conduct whatever investigations are neces-
15 sary to perform his duties under this Act;
16 and

17 (b) conduct random examinations of persons and
18 conduct subject to this Act; and

19 (c) conduct an investigation, within a reason-
20 able time, upon receipt of a written com-
21 plaint signed by ten (10) or more consumers.

22

23 (2) In addition to any other powers conferred by
24 this Act, the Administrator may, in the course of an
25 investigation

26

9.104(2)

- 1 (a) administer oaths and affirmations; and
2 (b) subpoena witnesses, compel their attendance,
3 adduce evidence and require the production
4 of any matter relevant to the investigation,
5 including the existence, description, na-
6 ture, custody, condition and location of
7 any books, documents, records and other
8 tangible things; and
9 (c) obtain access for purposes of examination
10 to such books, records and other documents
11 as are relevant to the investigation; and
12 (d) compel the disclosure of the identity and
13 location of persons having knowledge of
14 relevant facts; and
15 (e) compel the disclosure of any other matter
16 reasonably calculated to lead to the dis-
17 covery of relevant evidence; and
18 (f) recover the cost of making any investiga-
19 tion resulting in an action in which the
20 Administrator prevails.

21
22 (3) If the records of a person being investigated
23 are located outside this State, the person at his option
24 shall either make them available to the Administrator at
25 a convenient location within this State or pay the ex-
26 penses reasonably and necessarily incurred by the

1 Administrator or his representative to examine them at the
2 place where they are maintained. The Administrator may
3 designate representatives, including comparable officials
4 of the State in which the records are located, to inspect
5 them on his behalf.

6

7 (4) The Administrator may by rule require that cer-
8 tain records be kept within this State and that he be
9 notified of their location.

10

11 (5) Upon failure without lawful excuse to obey a
12 subpoena or order issued pursuant to subsection (2) or
13 to give testimony and upon reasonable notice to all per-
14 sons affected thereby, the Administrator may apply to
15 [] Court for an order compelling compliance.

16

17

18 SECTION 9.105 ADMINISTRATIVE POWERS WITH RESPECT TO
19 SUPERVISED FINANCIAL ORGANIZATIONS AND
20 OTHER PERSONS

21 (1) All powers and duties of the Administrator un-
22 der this Act shall be exercised by him with respect to
23 a supervised financial organization, as well as with
24 respect to all other persons subject to this Act.

25

26

9.105(2)

1 (2) If the Administrator receives a complaint or
2 other information concerning non-compliance with this
3 Act by a supervised financial organization, he shall
4 inform the official or agency having supervisory au-
5 thority over the organization concerned. The Adminis-
6 trator may request information about supervised finan-
7 cial organizations from the officials or agencies super-
8 vising them.

9
10 (3) The Administrator and any official or agency
11 of this State having supervisory authority over a
12 supervised financial organization are authorized and di-
13 rected to consult and assist one another in obtaining
14 compliance with this Act. They may jointly pursue inves-
15 tigation, prosecute suits and take other official action,
16 as they deem appropriate, if either of them is empowered
17 to take the action under this or other law.

18
19 (4) Nothing contained in this Section shall pre-
20 clude the Administrator from exercising all of the
21 powers and duties conferred on him by this Act.

22
23
24 SECTION 9.106 REPRESENTATION OF THE INTERESTS OF CONSUMERS

25 (1) For the purpose of representing the interests
26 of consumers and if in the judgment of the Administrator

1 the interests or activities of consumers may be sub-
2 stantially affected, the Administrator may

3 (a) as of right intervene as a party or other-
4 wise participate in any State administra-
5 tive proceeding or activity; and

6 (b) intervene as a party or as amicus curiae
7 in any judicial proceeding in the courts
8 of this State; and

9 (c) appear before Federal agencies, commissions
10 or legislative bodies for purposes of pre-
11 senting testimony; and

12 (d) to the extent permissible by law, partici-
13 pate in any Federal administrative proceed-
14 ing or activity; and

15 (e) join as a party or appear as amicus curiae
16 in any Federal court proceeding to the
17 extent permissible by law.

18
19 (2) The Administrator may seek judicial review of
20 any State agency action which is subject to judicial re-
21 view and which in his judgment substantially affects the
22 interests of consumers.

23
24 (3) Upon receipt of a written petition signed by
25 twenty five (25) or more consumers or by an association
26 or organization representing at least twenty five (25)

9.106(3)

1 consumers requesting representation pursuant to this
2 Section, the Administrator shall within a reasonable
3 time take action pursuant to this Section to represent
4 an interest of consumers or shall state in writing the
5 reasons for denial of the petition. Denial of a peti-
6 tion under this subsection may be appealed to the []
7 Court.

8
9
10 SECTION 9.107 DUTY TO REPORT

11 (1) The Administrator shall report annually [on or
12 before January 1] to the [Governor and/or Legislature]
13 on the operation of his office, on practices in consumer
14 transactions, on the use of consumer credit in the State,
15 on problems attending the collection of debts, on the
16 problems of persons of limited means in consumer trans-
17 actions and on the operation of this Act. For the pur-
18 pose of making the report, the Administrator is author-
19 ized to conduct research, hold hearings and make appro-
20 priate studies. The report shall include

21 (a) a description of the examination and inves-
22 tigation procedures and policies of his
23 office; and

24 (b) a statement of policies followed in decid-
25 ing whether to investigate or examine per-
26 sons subject to this Act; and

- 1 (c) a statement of policies followed in decid-
2 ing whether to bring actions authorized
3 under this Act; and
- 4 (d) a statement of the number and percentages
5 of classes of persons registered pursuant
6 to this Act who are periodically investi-
7 gated or examined; and
- 8 (e) a statement of the types of consumer prob-
9 lems which have come to his attention and
10 the disposition of them under existing law,
11 and recommendations if any, for legislation
12 to deal with those problems; and
- 13 (f) a complete survey of the availability and
14 costs of various types of credit available
15 in the State to the consumer and the cost
16 to the creditor of each type of credit,
17 with a comparison of each with the prevail-
18 ing rates of charges for credit, both the
19 maximums permitted by law and the amounts
20 actually charged if below the maximums; and
- 21 (g) a statement reviewing creditor profits from
22 credit operations; and
- 23 (h) a statement of sales and advertising prac-
24 tices tending to promote debt in such a way
25 as to jeopardize the financial security of
26 consumers; and

9.107(1)

- 1 (i) a list of all challenges to any action of
2 the Administrator in a judicial proceeding
3 and a brief description of the facts in
4 each case; and
- 5 (j) a list of all persons against whom com-
6 plaints have been filed or investigations
7 commenced along with a brief description
8 of the facts of each case and the action
9 taken in each case, if that case has not
10 been resolved within six months from the
11 filing of the complaint or the commencement
12 of the investigation, whichever is earlier;
13 and
- 14 (k) such recommendations for modifications or
15 additions to this Act as in the experience
16 and judgment of the Administrator are nec-
17 essary; and
- 18 (l) such other statements or recommendations as
19 are necessary or proper to achieve the pur-
20 poses or policies of this Section or to
21 effectuate the purposes or policies of this
22 Act.

23

24 (2) Within ten (10) days following its submission
25 to the [Governor and/or Legislature], the Administrator
26 shall publish and make available to the communications

1 media and other interested parties, copies of his report,
2 and may impose a charge for the report not to exceed the
3 cost of publication.
4
5

6 SECTION 9.108 APPLICATION OF PART ON ADMINISTRATIVE
7 PROCEDURE AND JUDICIAL REVIEW

8 Except as otherwise provided, the Part on Adminis-
9 trative Procedure and Judicial Review (Part 4 of this
10 Article) applies to and governs all administrative action
11 taken by the Administrator pursuant to this Act.
12
13

14 SECTION 9.109 ENFORCEMENT ORDERS

15 (1) After notice, the Administrator may order a
16 person subject to this Act or a person acting in his
17 behalf to cease and desist from violating this Act.
18 The order becomes final within ninety (90) days of is-
19 sue unless a person adversely affected or aggrieved by
20 the order files a written request to the Administrator
21 for a hearing. If the request for a hearing is not
22 acted upon within thirty (30) days of the filing of
23 such request, the order in question is rescinded.
24 Within thirty (30) days of the close of any hearing to
25 review an order, the Administrator must either reissue,
26

9,109(1)

1 modify, rescind or postpone the effective date of the
2 order or such order is rescinded.

3
4 (2) A respondent aggrieved by an order of the Ad-
5 ministrator may obtain judicial review of the order and
6 the Administrator may obtain an order of the []
7 Court for enforcement of its order. Review of an action
8 by the Administrator may be sought only after the
9 exhaustion of all administrative remedies, filing of
10 a petition for review within thirty (30) days of the
11 final action of the Administrator and upon service of
12 such petition on all parties of record.

13
14 (3) Within thirty (30) days of service on the Ad-
15 ministrator of a petition for review, or within such
16 additional time as the court may allow, the Administra-
17 tor shall transmit to the court the original or a certi-
18 fied copy of the record upon which the order is based.
19 The record may be reproduced in any manner which pro-
20 duces a readable copy. The copy of the record of the
21 Administrator, including all testimony, shall be avail-
22 able at reasonable times for examination by all parties
23 without cost. By stipulation of all parties to the
24 review, the record may be abbreviated.

1 (4) The court, after hearing, may
2 (a) grant any temporary relief or restraining
3 order it deems just, consistent with the
4 purposes and policies of this Act; or
5 (b) remand the matter to the Administrator for
6 further proceedings; or
7 (c) enter an order enforcing the order of the
8 Administrator; or
9 (d) upon finding that the Administrator was
10 clearly in error in view of the record as
11 a whole, enter an order modifying or
12 rescinding the order of the Administrator.

13
14 (5) Parties to the review may not raise objections
15 or arguments not presented to the Administrator for his
16 consideration in the proceedings prior to review unless
17 the failure to present the objection or argument is
18 excused for good cause shown.

19
20 (6) The court, may, when in its opinion the inter-
21 est of justice will be served, remand the action to the
22 Administrator for further proceedings to adduce speci-
23 fic evidence or to make specific findings.

24
25 (7) The jurisdiction of the [] Court shall be
26 exclusive and its final judgment shall be subject to

9.109(7)

1 review by the [] Court in the same manner and form
2 and with the same effect as appeals from any other ad-
3 ministrative order.
4
5

6 SECTION 9.110 REMEDIES OF CONSUMERS NOT AFFECTED

7 The grant of powers to the Administrator in this
8 Article does not affect remedies available to consumers
9 under this Act or under other principles of law or
10 equity.
11
12

13 SECTION 9.111 VIOLATIONS AND ENFORCEMENT

14 (1) In actions or proceedings by the Administrator
15 to enforce this Act or to enjoin violations thereof,
16 the Administrator may, in addition to other relief,
17 recover an amount equal to the value that accrued to
18 the defendant as a consequence of the violation of this
19 Act. But nothing in this Section shall be construed as
20 exposing persons to double liability or penalties under
21 this Act.
22

23 (2) Amounts recovered pursuant to subsection (1)
24 shall be retained by the Administrator for the benefit
25 of the consumers who were the victims of the violations
26 in connection with which the recovery was made. The

1 Administrator shall give the best notice possible to
2 the consumer beneficiaries of the fund and promptly
3 process claims of those consumers against the fund. If
4 funds remain unclaimed for a period of [] years,
5 they shall be transferred to the Administrator for use
6 in the Administration of this Act.

7
8 (3) In addition to such other amounts as the Admin-
9 istrator may be entitled to recover, he may recover in
10 a civil suit from a person who willfully violates any
11 provision of this Act not less than [one thousand dol-
12 lars (\$1000)] and not more than [ten thousand dollars
13 (\$10,000)] for each violation.

14 15 16 SECTION 9.112 FEES AND RECOVERIES

17 (1) Any sums of money obtained or recovered by the
18 Administrator pursuant to this Act shall be retained by
19 the Administrator unless a different disposition is
20 expressly provided for by this Act.

21
22 (2) Any sums of money retained by the Administrator
23 pursuant to subsection (1) shall be used by him in the
24 administration of this Act.

1
2 PART 2
3 REGISTRATION AND FEES

4 SECTION

5 9.201 REGISTRATION REQUIRED

6 9.202 REGISTRATION APPLICATION

7 9.203 FEES

8 9.204 VALIDATION

9 9.205 TERM OF VALIDATION

10 9.206 INVALIDATION OF REGISTRATION

11 9.207 DOING BUSINESS WITHOUT VALID REGISTRATION;
12 UNENFORCEABILITY OF CONTRACTS

13 9.208 DOING BUSINESS WITHOUT VALID REGISTRATION;
14 LOSS OF LIEN

15 9.209 DOING BUSINESS WITHOUT VALID REGISTRATION;
16 PENALTY

17
18
19 9.201 REGISTRATION REQUIRED

20 (1) On or after [date], it shall be unlawful for
21 any person to engage in the business of extending or
22 arranging the credit in connection with a consumer credit
23 transaction unless such person has a valid registration
24 pursuant to the requirements of this Part.

25
26 (2) On or after [date], it shall be unlawful for

1 any person to engage in the business of taking assignments
2 of and undertaking direct collection of payments from
3 or enforcement of rights against consumers arising
4 from consumer credit transactions unless such person
5 has a valid registration pursuant to the requirements
6 of this Part.

7
8 (3) On or after [date], it shall be unlawful for
9 any person to engage in the business of debt collection
10 or in the business of consumer reporting agency unless
11 such person has a valid registration pursuant to the
12 requirements of this Part.

13 14 15 SECTION 9.202 REGISTRATION APPLICATION

16 (1) Every person required to register pursuant to
17 Section 9.201 shall file with the Administrator within
18 thirty (30) days after the effective date of this Act
19 or within thirty (30) days after commencing business in
20 this State, and thereafter, on or before [January 31] of
21 each year, the following information on an application
22 form that the Administrator may prescribe:

23 (a) name of the person; and

24 (b) name in which business is transacted if
25 different from subsection (1)(a); and
26

9.202(1)

- 1 (c) if a partnership, the name and address of
2 each partner; and
- 3 (d) if a corporation, the name and address
4 of each officer, director and each stock-
5 holder holding five (5) per cent or more of
6 the voting stock; and
- 7 (e) if an association other than in subsection
8 (1)(c) or subsection (1)(d), the name
9 and address of such persons as the
10 Administrator shall by rule prescribe; and
- 11 (f) address of principal office, which may be
12 outside this State; and
- 13 (g) address of all offices and places of
14 business, if any, in this State; and
- 15 (h) if consumer credit transactions or other
16 business subject to this Part is conducted
17 other than at an office or permanent place
18 of business in this State, a brief descrip-
19 tion of the manner in which they are made
20 or business conducted; and
- 21 (i) address of designated agent upon whom
22 service of process may be made in this
23 State; and
- 24 (j) the name and residence address of the person
25 in actual and personal charge of the
26

1 business and personnel of each office or
2 place of business; and
3 (k) the full name, residence address, residence
4 telephone number and social security
5 number of each employee or agent engaged
6 in debt collection, if any; and
7 (l) such other information as the Administrator
8 may from time to time require to
9 effectuate the purposes and policies of
10 this Act.

11
12 (2) The Administrator shall be notified in writing
13 within fifteen (15) days of any changes, additions or
14 modifications relative to information required by this
15 Section.

16
17

18 SECTION 9.203 FEES

19 (1) A person required to register shall on or
20 before [January 31] of each year pay to the [Administra-
21 tor] an annual fee of [ten dollars (\$10)] for that year.

22

23 (2) Persons required to register who are in the
24 business of extending or arranging credit in
25 connection with a consumer credit transaction shall
26 pay an additional fee at the time and in the manner

9.203(2)

1 stated in subsection (1) of [ten dollars (\$10)] for
2 each one hundred thousand dollars (\$100,000), or part
3 thereof, in excess of one hundred thousand dollars
4 (\$100,000), of the original unpaid balances arising
5 from consumer credit transactions made in this State
6 within the preceding calendar year. A refinancing of a
7 consumer credit transaction resulting in an increase in
8 the amount of an obligation is considered a new trans-
9 action to the extent of the amount of the increase.

10
11 (3) Persons required to register who are assignees
12 shall pay an additional fee at the time and in the
13 manner stated in subsection (1) of [ten dollars (\$10)]
14 for each one hundred thousand dollars (\$100,000), or
15 part thereof, of the unpaid balances at the time of the
16 assignment of obligations arising from consumer credit
17 transactions made in this State and taken by assignment
18 during the preceding calendar year.

19
20 (4) Persons required to register who are engaged
21 in the business of debt collection, or are consumer
22 reporting agencies shall pay an additional fee at the
23 time and in the manner stated in subsection (1) of [ten
24 dollars (\$10)] for each one hundred thousand dollars
25 (\$100,000), or part thereof, in excess of one hundred
26

1 thousand dollars (\$100,000), of their gross volume from
2 such business.

3

4 (5) A person required to register shall submit
5 such financial and other data as the Administrator
6 may reasonably require which will support the computa-
7 tion of the amount of the fee.

8

9 (6) The Administrator shall bring an action
10 in the [] Court to recover any fees that he
11 determines are due and owing under this Section.

12

13

14 SECTION 9.204 VALIDATION

15 (1) Upon receipt of the registration application,
16 properly completed, and receipt of the required fee,
17 the Administrator shall validate the registration and
18 send proof of such validation to the registrant,
19 provided, however, that the Administrator shall not
20 validate the application of any person whose
21 registration has previously been invalidated or who
22 has previously been refused validation or who
23 the Administrator finds has previously violated this
24 Act unless such person shall have complied with this
25 Part and with any reasonable conditions which the

26

9.204(1)

1 Administrator may establish to insure future compliance
2 with this Act by such person.

3
4 (2) For the purposes of this Section, the term
5 "person" includes

6 (a) in the case of a corporation, each officer,
7 director and each stockholder holding five
8 (5) per cent or more of the voting stock;
9 and

10 (b) in the case of a partnership, each
11 partner; and

12 (c) in the case of an association, each
13 officer.

14
15 (3) A registration is effective on the date of
16 validation by the Administrator.

19 SECTION 9.205 TERM OF VALIDATION

20 (1) A registration which is not renewed ceases to
21 be valid on [January 31] of each year.

22
23 (2) A registration ceases to be valid when any
24 information in the registration form deemed material
25 by rule of the Administrator is no longer current,
26 unless within fifteen (15) days the registrant files

1 with the Administrator, in the manner prescribed by
2 him, the information necessary to make the registration
3 current.

4
5 (3) A registration ceases to be valid on the date
6 and for the period of time stipulated in an order of the
7 Administrator pursuant to Section 9.206.

8
9 (4) A registration that has ceased to be valid
10 for any reason may be renewed or reinstated only upon
11 the submission of a new application for registration
12 pursuant to Section 9.202, the payment of the fee
13 required by Section 9.203, the fulfilment of any
14 conditions authorized by Section 9.204 and the
15 expiration of any time period specified pursuant to
16 Section 9.206.

17
18

19 SECTION 9.206 INVALIDATION OF REGISTRATION

20 (1) The Administrator by order may invalidate for
21 any stated period, but not to exceed five (5) years, the
22 registration of any person who the Administrator finds,
23 after notice and hearing, has directed, authorized,
24 allowed, engaged in or carried on a course of conduct
25 which shows a disregard for the purposes and policies
26 of this Act.

9.206(2)

1 (2) In any hearing purusant to subsection (1), it
2 is no defense that an employee or agent of the
3 registrant acted contrary to the instructions or
4 policies of the registrant or that the registrant did
5 not personally participate. A registrant is strictly
6 accountable for the conduct of his employees and agents.

7
8 (3) The expiration of a valid registration shall
9 not deprive the Administrator of jurisdiction to proceed
10 with any investigation or proceeding against a regis-
11 trant or to render a decision invalidating a registra-
12 tion.

13 14 15 SECTION 9.207 DOING BUSINESS WITHOUT VALID REGISTRA- 16 TION; UNENFORCEABILITY OF CONTRACTS

17 No person who engages in the business of extending
18 or arranging credit in connection with a consumer credit
19 transaction, or who engages in the business of taking
20 assignments of and undertaking direct collection of
21 payments from or enforcement of rights against consumers
22 arising from consumer credit transactions, or who engages
23 in the business of debt collection or who engages in the
24 business of a credit reporting agency shall have the
25 right to enforce any contract or agreement arising
26 from the conduct of such business unless he had a valid

1 registration at the time of entering into such contract
2 or agreement. An assignee or transferee shall have no
3 greater right of enforcement.
4
5

6 SECTION 9.208 DOING BUSINESS WITHOUT VALID REGISTRA-
7 TION; LOSS OF LIEN

8 No person who engages in the business of extending
9 or arranging credit in connection with a consumer credit
10 transaction, or who engages in the business of taking
11 assignments of and undertaking direct collection of pay-
12 ments from or enforcement of rights against consumers
13 arising from consumer credit transactions, or who
14 engages in the business of debt collection or who
15 engages in the business of a credit reporting agency
16 shall have the benefit of any lien arising by operation
17 of law from the conduct of such business unless he had
18 a valid registration at the time of acquiring such lien.
19
20

21 SECTION 9.209 DOING BUSINESS WITHOUT VALID REGISTRATION;
22 PENALTY

23 The Administrator may recover in a civil action from
24 a person who without a valid registration engages in the
25 business of extending or arranging the credit in con-
26 nection with a consumer credit transaction, or who

9.209

1 engages in the business of taking assignments of and
2 undertaking direct collection of payments from and en-
3 forcement of rights against consumers arising from
4 consumer credit transactions, or who engages in the
5 business of debt collection on who engages in the
6 business of a credit reporting agency, a civil penalty
7 of one thousand dollars (\$1000) for each day that the
8 business has been conducted without a valid registra-
9 tion.

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1 PART 3

2 COUNCIL OF ADVISORS ON CONSUMER AFFAIRS

3
4 SECTION

5 9.301 COUNCIL OF ADVISORS ON CONSUMER AFFAIRS

6 9.302 FUNCTION OF COUNCIL; CONFLICT OF INTEREST

7 9.303 MEETINGS

8
9
10 SECTION 9.301 COUNCIL OF ADVISORS ON CONSUMER AFFAIRS

11 (1) There is hereby created the Council of Advisors
12 on Consumer Affairs consisting of twenty five (25) members,
13 who shall be appointed by the Governor. In appointing
14 members of the Council, the Governor shall seek to
15 achieve a fair representation from the various segments
16 of the consumer industry and the public, but the repre-
17 sentatives of the public shall never be less than a
18 majority. One of the Advisors representing the public
19 shall be designated by the Governor as Chairman. The
20 Chairman shall serve for [one (1) year - two (2) years]
21 and is eligible for reappointment as Chairman.

22
23 (2) The term of office of each member of the Coun-
24 cil is [four (4)] years. Of those members first ap-
25 pointed, [six (6)] shall be appointed for a term of [one
26 (1)] year, [six (6)] for a term of [two (2)] years, [six

9.301(2)

1 (6)] for a term of [three (3)] years and [seven (7)] for
2 a term of [four (4)] years. A member chosen to fill a
3 vacancy arising otherwise than by expiration of term
4 shall be appointed for the unexpired term of the member
5 whom he is to succeed. A member of the Council is
6 eligible for reappointment.

7
8 (3) Members of the Council shall serve without
9 compensation but are entitled to reimbursement of ex-
10 penses incurred in the performance of their duties.

11
12
13 SECTION 9.302 FUNCTION OF COUNCIL; CONFLICT OF INTEREST

14 (1) The Council shall advise and consult with the
15 Administrator concerning the exercise of his duties un-
16 der this Act and shall make recommendations to him re-
17 garding the exercise of his powers.

18
19 (2) Members of the Council may assist the Adminis-
20 trator in the manner the Administrator sees fit in ob-
21 taining compliance with this Act. Since it is the ob-
22 jective of this Part to obtain competent representatives
23 of industry and the public to serve on the Council and
24 to assist the Administrator in achieving the objectives
25 of this Act, service on the Council shall not, in and
26

1 of itself, constitute a conflict of interest regardless
2 of the occupations or associations of the members.
3
4

5 SECTION 9.303 MEETINGS

6 (1) The Council and the Administrator shall meet
7 together at a time and place designated by the Chairman
8 at least twice each year. The Council shall hold addi-
9 tional meetings with the Administrator when called by
10 the Chairman or when requested by the Administrator or
11 by at least five (5) members of the Council.
12

13 (2) A quorum for enactment of any business shall
14 consist of a simple majority of the members present,
15 provided that a majority of the members present repre-
16 sent the public.
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1 PART 4

2 ADMINISTRATIVE PROCEDURE AND JUDICIAL REVIEW

3
4 SECTION

5 9.401 SUPPLEMENT TO PART 1

6 9.402 DEFINITIONS: "CONTESTED CASE"; "PARTY";
7 "RULE"

8 9.403 PUBLIC INFORMATION; ADOPTION OF RULES;
9 AVAILABILITY OF RULES AND ORDERS

10 9.404 PROCEDURE FOR ADOPTION OF RULES

11 9.405 FILING AND TAKING EFFECT OF RULES

12 9.406 PUBLICATION OF RULES

13 9.407 PETITION FOR ADOPTION OF RULES

14 9.408 DECLARATORY JUDGMENT ON VALIDITY OR
15 APPLICABILITY OF RULES

16 9.409 DECLARATORY RULINGS BY ADMINISTRATOR

17 9.410 CONTESTED CASES; NOTICE; HEARING; RECORDS

18 9.411 RULES OF EVIDENCE; OFFICIAL NOTICE

19 9.412 DECISIONS AND ORDERS

20 9.413 JUDICIAL REVIEW OF CONTESTED CASES

21 9.414 APPEALS
22
23
24
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26

1 SECTION 9.401 SUPPLEMENT TO PART 1

2 This Part supplements the provisions of the Part
3 on Powers and Functions of Administrator (Part 1 of this
4 Article).

5

6

7 SECTION 9.402 DEFINITIONS: "CONTESTED CASE";
8 "PARTY"; "RULE"

9 For the purposes of this Part

10 (1) "contested case" means a proceeding, including
11 but not limited to one pursuant to the provisions of
12 subsection (1) of Section 9.109, in which the legal
13 rights, duties or privileges of a party are required by
14 law to be determined by the Administrator after the
15 opportunity for hearing.

16

17 (2) "party" means the Administrator and each person
18 named or admitted as a party, any person seeking as of
19 right to be admitted, and any person who is aggrieved
20 by action taken and seeks to be admitted as a party.

21

22 (3) "rule" means the whole or any part of a state-
23 ment of the Administrator of general or particular ap-
24 plicability and future effect which implements, inter-
25 prets or prescribes law or policy and statements describ-
26 ing the organization, procedure or practice requirements

9.402(3)

1 of the Administrator's office. The term includes
2 the amendment or repeal of a prior rule but does not
3 include statements concerning only the internal manage-
4 ment of the Administrator's office and not affecting
5 the rights of the public nor does it include intraoffice
6 memoranda.

7
8
9 SECTION 9.403 PUBLIC INFORMATION; AVAILABILITY OF RULES;
10 ADOPTION OF RULES AND ORDERS

11 (1) The Administrator shall cause to be published
12 for distribution to the public without cost

13 (a) descriptions of the organization of his
14 office and the established places at which,
15 the employees from whom, and the methods
16 whereby, the public may obtain information,
17 make submittals or requests and obtain
18 decisions; and

19 (b) statements of general course and method by
20 which the functions of the Administrator
21 are carried out including the nature and
22 requirements of all formal and informal
23 procedures available; and

24 (c) rules of procedure, descriptions of forms
25 available or the place at which the forms
26 may be obtained, and instructions as to

- 1 the scope and content of all papers, re-
2 ports or examinations; and
- 3 (d) substantive rules of general applicability
4 adopted as authorized by law and statements
5 of general policy or interpretations of
6 general applicability formulated and
7 adopted by the Administrator; and
- 8 (e) each amendment, revision or repeal of the
9 foregoing; and
- 10 (f) a pamphlet containing all of the foregoing
11 written in simplified, non-legal and non-
12 technical language capable of being under-
13 stood by one with no more than average edu-
14 cation of the citizenry of the state.
- 15
- 16 (2) The Administrator shall make available for
17 public inspection and copying at his office
- 18 (a) the record and findings of all investiga-
19 tions and hearings; and
- 20 (b) all rules, orders, decisions, opinions and
21 all other written statements of policy or
22 interpretations formulated, adopted or
23 used by the Administrator in the discharge
24 of his functions; and
- 25 (c) any other information, facts or data re-
26 ceived or compiled by the Administrator.

9.403(3)

1 (3) The provisions of subsection (2) do not apply
2 to

3 (a) matters that are related solely to the
4 internal personnel rules and practices of
5 the office of the Administrator, or

6 (b) files of investigations which are not com-
7 pleted, provided that any investigation
8 file which has been open for more than
9 six (6) months shall be open to public
10 inspection unless the Administrator can
11 show good cause why disclosure should be
12 withheld.

13
14 (4) No rule, order or decision of the Administra-
15 tor is valid or effective against any person or party,
16 nor may it be invoked by the Administrator for any pur-
17 pose, until it has been made available for public in-
18 spection as required by subsection (1) and subsection
19 (2) and filed with the [Secretary of State] as required
20 by Section 9.405. This provision is not applicable in
21 favor of any person or party who has actual knowledge
22 thereof.

23
24
25
26

1 SECTION 9.404 PROCEDURE FOR ADOPTION OF RULES

2 (1) Prior to adoption, amendment or repeal of any
3 rule, the Administrator shall

4 (a) give notice at least twenty (20) days
5 before intended action including

6 (i) a statement of the time, place and
7 nature of public rule making pro-
8 ceedings; and

9 (ii) reference to the legal authority un-
10 der which the rule is proposed; and

11 (iii) either the terms or substance of
12 the proposed rule or a description
13 of the subjects and issues involved;
14 and

15 (b) afford all interested persons an opportun-
16 ity to participate in the rule making
17 through

18 (i) submission of written data, views
19 or arguments, and

20 (ii) presentation of oral argument where
21 deemed appropriate by the Adminis-
22 trator or where twenty five (25) or
23 more persons or an association repre-
24 senting at least twenty five (25)
25 persons requests such opportunity.
26

1 during that time the Administrator commences proceedings
2 pursuant to subsection (1) for permanent adoption, amend-
3 ment or repeal of the rule.

4
5 (5) No rule is valid unless adopted in substantial
6 compliance with this Section and Section 9.405. A
7 proceeding to contest any rule on the ground of non-com-
8 pliance with the procedural requirements of this Section
9 and Section 9.405 must be commenced within two (2) years
10 from the effective date of the rule.

11 12 13 SECTION 9.405 FILING AND TAKING EFFECT OF RULES

14 (1) The Administrator shall file in the office of
15 the [Secretary of State] a certified copy of each rule
16 adopted by him. The [Secretary of State] shall keep a
17 permanent register of the rules open to public inspec-
18 tion.

19
20 (2) Each rule hereafter adopted is effective twenty
21 (20) days after filing, or on any later date specified
22 in the rule, except that emergency rules shall be effec-
23 tive immediately upon filing.

9.406

1 SECTION 9.406 PUBLICATION OF RULES

2 (1) The [Secretary of State] shall compile, index
3 and publish all effective rules adopted by the Adminis-
4 trator. Compilations shall be supplemented or revised
5 as often as necessary.

6
7 (2) Compilations shall be made available upon re-
8 quest to [agencies and officials of this State] free of
9 charge and to other persons at prices fixed by the
10 [Secretary of State] to cover mailing and publication
11 costs.

12
13
14 SECTION 9.407 PETITION FOR ADOPTION OF RULES

15 (1) Any person may petition the Administrator re-
16 questing the promulgation, amendment or repeal of a
17 rule. Within thirty (30) days after submission of a
18 petition, the Administrator either shall deny the peti-
19 tion in writing stating his reasons for the denial or
20 shall initiate rule-making proceedings pursuant to Sec-
21 tion 9.404.

22
23 (2) The denial of a petition under subsection (1)
24 may be appealed to the [] Court.

25
26

1 SECTION 9.408 DECLARATORY JUDGMENT ON VALIDITY OR
2 APPLICABILITY OF RULES

3 A person who has exhausted all administrative reme-
4 dies and who is aggrieved by an order may test the va-
5 lidity or applicability of a rule in an action for
6 declaratory judgment in the [] Court if it is
7 alleged that the rule, or its threatened application,
8 interferes with or impairs, or threatens to interfere
9 with or impair the legal rights or privileges of that
10 person. The Administrator shall be made a party to the
11 action.

12
13

14 SECTION 9.409 DECLARATORY RULINGS BY ADMINISTRATOR

15 The Administrator shall provide by rule for the
16 filing and prompt disposition of petitions for declara-
17 tory rulings by the Administrator as to the applicability
18 of any statutory provision or of any rule of the Adminis-
19 trator. Rulings disposing of petitions have the same
20 status as decisions or orders in contested cases.

21
22

23 SECTION 9.410 CONTESTED CASES; NOTICE; HEARING; RECORDS

24 (1) In a contested case, all parties shall be af-
25 farded, after reasonable notice, an opportunity to be
26 heard.

9.410(2)

1 (2) The notice pursuant to subsection (1) shall
2 include

3 (a) a statement of the time, place and nature
4 of the hearing; and

5 (b) a statement of the legal authority and ju-
6 risdiction pursuant to which the hearing is
7 to be held; and

8 (c) reference to the particular provisions of
9 the statutes and rules involved; and

10 (d) a concise statement of the matters asserted.

11 If the Administrator or other party is unable to
12 state the matters in detail at the time the notice is
13 served, the initial notice may be limited to a state-
14 ment of the issues involved. Thereafter, upon applica-
15 tion, a more definite and detailed statement shall be
16 provided.

17
18 (3) All parties and, so far as the orderly and ex-
19 peditious conduct of the hearing permits, all other
20 interested persons shall be given the opportunity to
21 respond and present evidence and argument on all issues
22 involved.

23
24 (4) The Administrator upon his own initiative or
25 at the request of any party may subpoena witnesses, com-
26 pel their attendance, adduce evidence and require the

1 production of any matter which is relevant to any hear-
2 ing conducted pursuant to this Section.

3
4 (5) At any hearing pursuant to this Section

5 (a) any person compelled to appear in person
6 is entitled to be accompanied, represented
7 and advised by counsel or other qualified
8 representative, and

9 (b) any party is entitled to appear in person
10 or by or with counsel or other qualified
11 representative.

12
13 (6) Unless precluded by law, informal disposition
14 may be made of any contested case by stipulation, agreed
15 settlement, consent order or default.

16
17 (7) The record in a contested case shall include

18 (a) all pleadings, motions, intermediate rul-
19 ings; and

20 (b) evidence received or considered; and

21 (c) a statement of matters officially noticed;
22 and

23 (d) questions and offers of proof, objections
24 and rulings thereon; and

25 (e) proposed findings and exceptions; and
26

9.410(7)

- 1 (f) any decision, opinion or report by the of-
2 ficer presiding at the hearing; and
3 (g) all staff memoranda or data submitted to the
4 hearing officer or members of the office of
5 the Administrator in connection with their
6 consideration of the case; and
7 (h) a complete statement of any informal dispo-
8 sition under subsection (6).

9
10 (8) Oral proceedings or any part thereof, shall be
11 recorded at the request of the Administrator or any
12 party. Recording within the meaning of this subsection
13 means the use of any device or procedure, including
14 stenographer or tape recorder, which is reasonably cal-
15 culated to produce an accurate verbatim record of the
16 proceeding. The party requesting the recording or
17 transcription shall bear the expense thereof, unless
18 such party has established indigency, in which case he
19 shall be entitled to a free copy of such transcription.

20
21 (9) Findings of fact shall be based exclusively on
22 the evidence and on matters officially noticed.
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24
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26

1 SECTION 9.411 RULES OF EVIDENCE; OFFICIAL NOTICE

2 In contested cases

3 (1) Irrelevant, immaterial or unduly repetitious
4 evidence shall be excluded. Evidence not admissible
5 under judicial standards may be admitted (except where
6 precluded by statute) if it is of a type commonly relied
7 upon by reasonably prudent persons in the conduct
8 of their affairs. The Administrator shall give effect
9 to the rules of privilege recognized by law. Objections
10 to evidentiary offers may be made and shall be noted in
11 the record.

12
13 (2) Subject to these requirements, when a hearing
14 will be expedited and the interests of the parties
15 will not be prejudiced substantially, any part of the
16 evidence may be received in written form. Documentary
17 evidence may be received in the form of copies or ex-
18 cerpts, if the original is not readily available. Upon
19 request, parties shall be given an opportunity to com-
20 pare the copy with the original.

21
22 (3) A party may conduct cross-examination required
23 for a full and true disclosure of the facts.

24
25 (4) Notice may be taken of judicially cognizable
26 facts. In addition, notice may be taken of generally

9.411(4)

1 recognized technical or scientific facts within the
2 specialized knowledge of the Administrator. Parties
3 shall be notified either before or during the hearing,
4 or by reference in preliminary reports or otherwise, of
5 the material noticed, including any staff memoranda or
6 data, and the parties shall be afforded an opportunity
7 to contest the material so noticed. The experience,
8 technical competence and specialized knowledge of the
9 Administrator may be utilized in the evaluation of the
10 evidence.

11
12
13 SECTION 9.412 DECISIONS AND ORDERS

14 A final decision or an order adverse to a party in
15 a contested case shall be in writing or stated in the
16 record. A final decision shall include findings of fact
17 and conclusions of law, separately stated. Findings of
18 fact, if set forth in statutory language, shall be
19 accompanied by a concise and explicit statement of the
20 underlying facts supporting the findings. If, in accor-
21 dance with rules of the Administrator, a party has sub-
22 mitted proposed findings of fact, the decision shall
23 include a ruling upon each proposed finding. Parties
24 shall be notified either personally or by mail of any
25 decision or order. Upon request a copy of the decision
26

1 or order shall be delivered or mailed forthwith to each
2 party and to his attorney of record.

3

4

5 SECTION 9.413 JUDICIAL REVIEW OF CONTESTED CASES

6 (1) A person who has exhausted all administrative
7 remedies available before the Administrator and who is
8 aggrieved by a final decision in a contested case is
9 entitled to judicial review under this Part. This Sec-
10 tion does not limit utilization of review, redress, re-
11 lief or trial de novo provided by law. A preliminary,
12 procedural or intermediate action or ruling of the
13 Administrator is immediately reviewable if review of the
14 final decision of the Administrator would not provide an
15 adequate remedy.

16

17 (2) Proceedings for review are instituted by filing
18 a petition in the [] Court within [thirty (30)] days
19 after notice of the final decision of the Administrator
20 is mailed or, if a rehearing is requested, within
21 [thirty (30)] days after the decision thereon. Copies
22 of the petition shall be served upon the Administrator
23 and all parties of record.

24

25 (3) The filing of the petition does not itself stay
26 enforcement of the decision of the Administrator. The

9.413(3)

1 Administrator may grant, or the reviewing court may or-
2 der, a stay upon appropriate terms.

3

4 (4) This Section is subject to the provisions of
5 Section 9.108.

6

7 (5) Within [thirty (30)] days after the service of
8 the petition, or within any further time allowed by the
9 court, the Administrator shall transmit to the reviewing
10 court the original or a certified copy of the entire
11 record of the proceeding under review. By stipulation
12 of all parties to the review proceedings, the record may
13 be abbreviated. A party unreasonably refusing to stipu-
14 late to limit the record may be taxed by the court for
15 the additional costs. The court may require or permit
16 subsequent corrections or additions to the record.

17

18 (6) If, before the date set for hearing, applica-
19 tion is made to the court for leave to present addi-
20 tional evidence, and it is shown to the satisfaction of
21 the court that the additional evidence is material and
22 that there were good reasons for failure to present it
23 in the proceeding before the Administrator, the court
24 may order that the additional evidence be taken before
25 the Administrator, upon conditions determined by the
26 court. The Administrator may modify his findings and

1 decision by reason of the additional evidence and shall
2 file that evidence and any modifications, new findings
3 or decisions with the reviewing court.
4

5 (7) The review shall be conducted by the court
6 without a jury and shall be confined to the record. In
7 cases of alleged irregularities in procedure before the
8 Administrator, not shown in the record, proof thereon
9 may be taken in court. The court, upon request, shall
10 hear oral argument and receive written briefs.
11

12 (8) The court shall not substitute its judgment for
13 that of the Administrator as to the weight of the evi-
14 dence on questions of fact. The court may affirm the
15 decision of the Administrator or remand the case for
16 further proceedings. The court may reverse or modify
17 the decision if substantial rights of the appellant have
18 been prejudiced because the administrative findings,
19 inferences, conclusions or decisions are

20 (a) in violation of constitutional or statutory
21 provisions; or

22 (b) in excess of the statutory authority of the
23 Administrator; or

24 (c) made upon unlawful procedure; or

25 (d) affected by other error of law; or
26

9.413(8)

1 (e) clearly erroneous in view of the evidence
2 on the whole record; or

3 (f) arbitrary or capricious or characterized by
4 abuse of discretion or clearly unwarranted
5 exercise of discretion.
6

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8

9 SECTION 9.414 APPEALS

10 An aggrieved party may obtain a review of any final
11 judgment of the [] Court under this Part by appeal
12 to the [] Court. The appeal shall be taken as in
13 other civil cases.
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ARTICLE 10
EFFECTIVE DATE AND REPEALER

- SECTION
- 10.101 TIME OF TAKING EFFECT;
PROVISIONS FOR TRANSITION
- 10.102 SPECIFIC REPEALER AND AMENDMENTS
- 10.103 GENERAL REPEALER

SECTION 10.101 TIME OF TAKING EFFECT;
PROVISIONS FOR TRANSITION

(1) Except as otherwise provided in this Section, this Act takes effect at 12:01 a.m. on []. It applies to transactions entered into and events occurring after that date, including but not limited to

- (a) consumer credit transactions whenever made which are refinanced, consolidated or deferred after this Act takes effect, and
- (b) transactions pursuant to open end credit plans entered into, arranged or agreed to before this Act takes effect.

(2) The Part on Preservation of Claims, Defenses and Equities of Consumer of the Article on Consumer Credit Transactions (Part 6 of Article 2) and the Article on Ad-

10.101(2)

1 ministration of Credit Accounts (Article 3) apply to all
2 consumer credit transactions made before this Act takes
3 effect and the Article on Debt Collection (Article 6) and
4 the Article on Enforcement of Credit Obligations
5 (Article 7) apply to all consumer credit transactions
6 made before this Act takes effect insofar as they regulate
7 activities and limit the remedies of creditors and debt
8 collectors.

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10 (3) To the extent appropriate to permit the Adminis-
11 trator to prepare for operation of this Act when it takes
12 effect, the Article on Administration (Article 9) takes
13 effect [insert either "immediately" or the earliest
14 time possible under the constitutional or statutory re-
15 quirements of the enacting State].

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18 SECTION 10.102 SPECIFIC REPEALER AND AMENDMENTS

19 (1) The following acts and parts of acts are
20 repealed:

- 21 (a) []
22 (b) []
23 (c) [and so on].

24
25 (2) The following acts and parts of acts are amended:

- 26 (a) []

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(b) []
(c) [and so on].

SECTION 10.103 GENERAL REPEALER

Except as provided in the preceding Section, all acts, parts and sections of acts inconsistent with this Act are hereby repealed.