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Uniform Consumer Credit Code

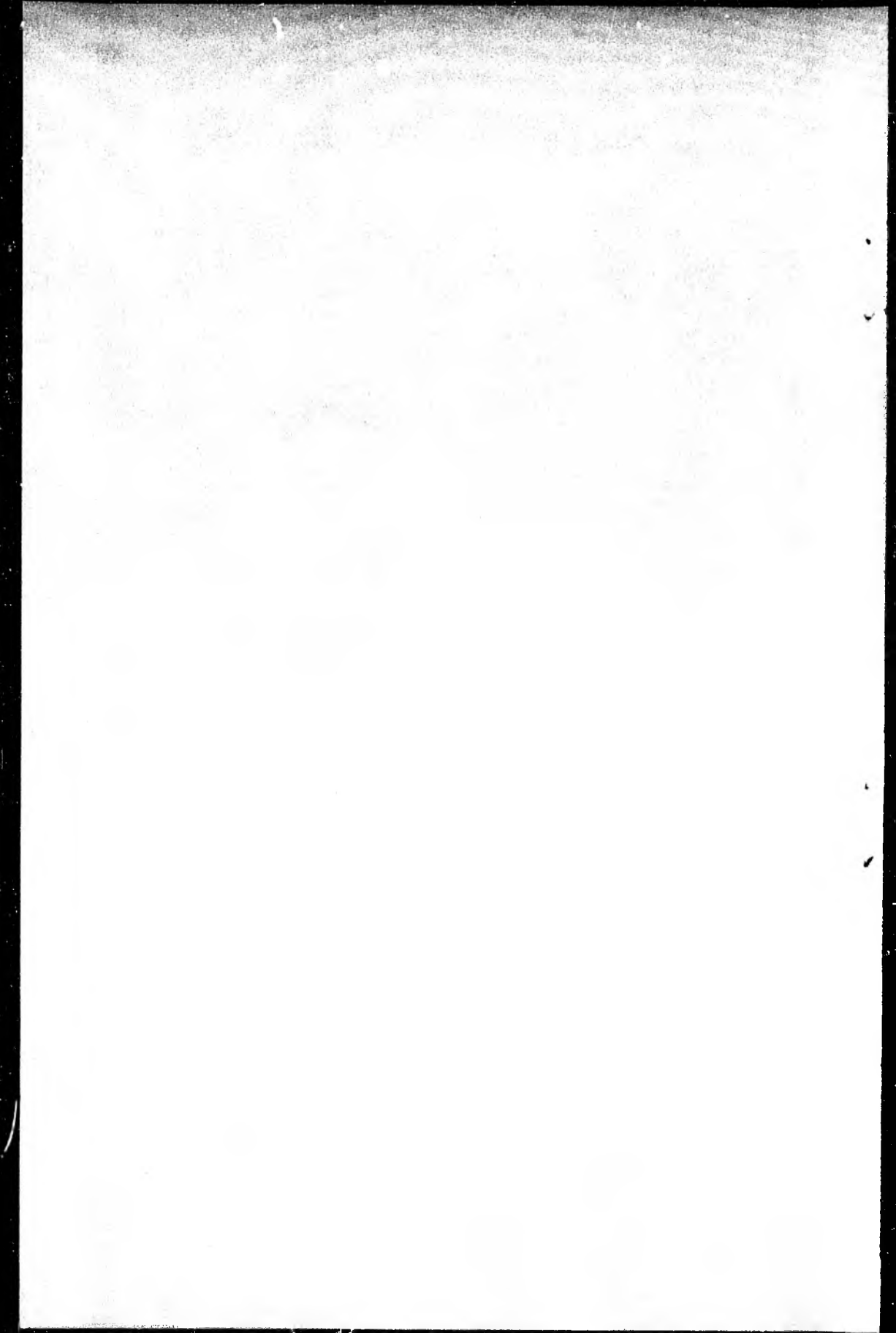
An Act

Relating to certain consumer and other credit transactions and constituting the uniform consumer credit code; consolidating and revising certain aspects of the law relating to consumer and other loans, consumer and other sales of goods, services and interests in land, and consumer leases; revising the law relating to usury; regulating certain practices relating to insurance in consumer credit transactions; providing for administrative regulations of certain consumer credit transactions; making uniform the law with respect thereto; and repealing inconsistent legislation.

COMMENT

The long title of the Code should be adapted to the constitutional and statutory requirements and practices of the enacting State.

The concept of the Code is that "credit transactions" is a single subject of the law, notwithstanding its many facets.



Article 1—General Provisions and Definitions

PART 1—SHORT TITLE, CONSTRUCTION, GENERAL PROVISIONS

[§ 800] [Short Title]

Sec. 1.101. This Act shall be known and may be cited as Uniform Consumer Credit Code.

[§ 801] Purposes; Rules of Construction

Sec. 1.102. (1) This Act shall be liberally construed and applied to promote its underlying purposes and policies.

(2) The underlying purposes and policies of this Act are:

(a) to simplify, clarify and modernize the law governing retail installment sales, consumer credit, small loans and usury;

(b) to provide rate ceilings to assure an adequate supply of credit to consumers;

(c) to further consumer understanding of the terms of credit transactions and to foster competition among suppliers of consumer credit so that consumers may obtain credit at reasonable cost;

(d) to protect consumer buyers, lessees, and borrowers against unfair practices by some suppliers of consumer credit, having due regard for the interests of legitimate and scrupulous creditors;

(e) to permit and encourage the development of fair and economically sound consumer credit practices;

(f) to conform the regulation of consumer credit transactions to the policies of the Federal Consumer Credit Protection Act; and

(g) to make uniform the law including administrative rules among the various jurisdictions.

[§ 802] Supplementary General Principles of Law Applicable

Sec. 1.103. Unless displaced by the particular provisions of this Act, the Uniform Commercial Code and the principles of law and equity, including the law relative to capacity to contract, principal and agent, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy, or other validating or invalidating cause shall supplement its provisions.

[§ 803] Construction Against Implicit Repeal

Sec. 1.104. This Act being a general act intended as a unified coverage of its subject matter, no part of it shall be deemed to be impliedly repealed by subsequent legislation if such construction can reasonably be avoided.

[§ 804] Severability

Sec. 1.105. If any provision of this Act or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of this Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

[§ 805]

Adjustment of Dollar Amounts

Sec. 1.106. (1) From time to time the dollar amounts in this Act designated a. subject to change shall change, as provided in this section, in accordance with and to the extent of changes in the Consumer Price Index for Urban Wage Earners and Clerical Workers: U. S. City Average, All Items, 1957-59 = 100, compiled by the Bureau of Labor Statistics, United States Department of Labor, and hereafter referred to as the Index. The Index for December, 1967, is the Reference Base Index.

(2) The designated dollar amounts shall change on July 1 of each even-numbered year if the percentage of change, calculated to the nearest whole percentage point, between the Index at the end of the preceding year and the Reference Base Index is 10 per cent or more, except that

(a) the portion of the percentage change in the Index in excess of a multiple of 10 per cent shall be disregarded and the dollar amounts shall change only in multiples of 10 per cent of the amounts appearing in this Act on the date of enactment;

(b) the dollar amounts shall not change if the amounts required by this section are those currently in effect pursuant to this Act as a result of earlier application of this section; and

(c) in no event shall the dollar amounts be reduced below the amounts appearing in this Act on the date of enactment.

(3) If the Index is revised after December, 1967, the percentage of change pursuant to this section shall be calculated on the basis of the revised Index. If the revision of the Index changes the Reference Base Index, a revised Reference Base Index shall be determined by multiplying the Reference Base Index then applicable by the ratio of the revised Index to the current Index, as each was for the first month in which the revised Index is available. If the Index is superseded, the Index referred to in this section shall be the one represented by the Bureau of Labor Statistics as reflecting most accurately changes in the purchasing power of the dollar for consumers.

(4) The Administrator shall issue a rule announcing

(a) on or before April 30 of each year in which dollar amounts are to change, the changes in dollar amounts required by subsection (2); and

(b) promptly after the changes occur, changes in the Index required by subsection (3) including, when applicable, the numerical equivalent of the Reference Base Index under a revised Reference Base Index and the designation or title of any index superseding the Index.

(5) No person violates this Act if with respect to a transaction otherwise complying with this Act he relies on dollar amounts either determined in accordance with subsection (2) or appearing in the last rule of the Administrator announcing the then current dollar amounts.

(6) If the percentage of change between the Index at the end of the odd-numbered year preceding the effective date of this Act and the Reference Base Index would require change in the designated dollar amounts pursuant to subsection (2), the designated dollar amounts shall change upon the effective date of this Act and, on or before that date, the Administrator shall issue a rule announcing the changes required by this subsection. Subsection (5) also applies if the transaction is based on dollar amounts appearing in the Act and the Administrator has issued no rule as required by this subsection.

COMMENT

Under this section the dollar amounts designated as subject to change will automatically change on July 1 of each even-numbered year if the change in the Consumer Price Index is great enough. The Act will be enacted in all jurisdictions with the dollar amounts now appearing in it without regard to when enactment occurs. December, 1967, has been selected as the reference base period. Examples of how the section operates follow. Assume in each case that the Index for December, 1967, (the Reference Base Index) is 100. The \$300 figure appearing in Section 2.201(2)(a) will be used as an illustrative dollar amount.

Case 1: The Index for December, 1969, is 107. The change from the Reference Base Index of 100 is an increase of 7%. Since the change is less than 10%, no change in dollar amounts occurs.

Case 2: The Index for December, 1971, is 112. The change from the Reference Base Index of 100 is an increase of 12%. Since this is more than 10%, a change occurs. The portion of the 12% in excess of 10% is disregarded; hence, an increase of 10% is indicated. 10% of \$300 is \$30. The dollar amount is \$330, effective July 1, 1972.

Case 3: The Index for December, 1973, is 118. The change from the Reference Base Index of 100 is an increase of 18%. The portion of 18% in excess of 10% is disregarded; hence, an increase of 10% is indicated. However, the \$300 amount changed to \$330 in 1972 (see Case 2). Since the amount currently in effect (\$330) is still the correct amount under this section, no change occurs.

Case 4: The Index for December, 1975, is 122. The change from the Reference Base Index of 100 is an increase of 22%.

$$\begin{array}{r}
 \text{(old Index)} \qquad 200 - 100 \qquad \text{(old Reference Base Index)} \\
 \hline
 \text{(new Index)} \qquad 104 \quad X \\
 X = 100 \times 104 \\
 \hline
 200 \\
 X = 52 \text{ (revised Reference Base Index)}
 \end{array}$$

A comparison of the revised Index for December, 1983 (108) with the revised Reference Base Index (52) shows that the change from the revised Reference Base Index is an increase of 107.7%.

$$\begin{array}{r}
 108.0 - 52.0 = 1.077 = 107.7\% \\
 \hline
 52.0
 \end{array}$$

Under subsection (2), 107.7% becomes 108%. The portion of 108% in excess of a multiple of 10% (here 100%) is disregarded, and a 100% increase is indicated. The dollar amount is \$600, effective July 1, 1984.

The portion of 22% in excess of a multiple of 10% (here 20%) is disregarded and a 20% increase is indicated. 20% of \$300 is \$60. The dollar amount is \$360, effective July 1, 1976.

Case 5: The Index for December, 1977, is 117. The change from the Reference Base Index of 100 is an increase of 17%. The portion of 17% in excess of 10% is disregarded and a 10% increase is indicated. 10% of \$300 is \$30. The dollar amount is \$330, effective July 1, 1978, a decrease from the \$360 amount in effect since 1976 (see Case 4).

Case 6: State X adopts this Act on July 22, 1980, to become effective on January 1, 1981. The Index for December, 1979, is 135. A comparison of the Reference Base Index (100) with the Index for December, 1979 (135) indicates an increase of the \$300 amount by 30% or \$90, effective January 1, 1981. On July 1, 1982, the dollar amounts again change if subsection (2) requires.

Case 7: In 1983 BLS revises the Index, changing coverage components, and selecting a new base period. If only the coverage or components were changed, the revised Index should be used for subsequent calculations. However, if a new base period is selected (1981-82=100), an equivalent on the scale of the revised Index must be assigned to the Reference Base Index (December, 1967). Assume that the revised Index is first available for July, 1983. For that month the old Index is 200 and the new Index (1981-2=100) has gone up to 104. The revised Reference Base Index (that is, the Index for December, 1967, on the revised scale) may be found by this calculation:

**[¶ 806] Waiver; Agreement to Forego Rights;
Settlement of Claims**

Sec. 1.107. (1) Except as otherwise provided in this Act, a buyer, lessee, or debtor may not waive or agree to forego rights or benefits under this Act.

(2) A claim by a buyer, lessee, or debtor against a creditor for an excess charge, other violation of this Act, or civil penalty, or a claim against a buyer, lessee, or debtor for default or breach of a duty imposed by this Act, if disputed in good faith, may be settled by agreement.

(3) A claim, whether or not disputed, against a buyer, lessee or debtor may be settled for less value than the amount claimed.

(4) A settlement in which the buyer, lessee, or debtor waives or agrees to forego rights or benefits under this Act is invalid if the court as a matter of law finds the settlement to have been unconscionable at the time it was made. The competence of the buyer, lessee, or debtor, any deception or coercion practiced upon him, the nature and extent of the legal advice received by him, and the value of the consideration are relevant to the issue of unconscionability.

[¶ 807] Effect of Act on Powers of Organizations

Sec. 1.108. (1) This Act prescribes maximum charges for all creditors extending consumer credit, except lessors and those excluded (Section 1.202), and displaces existing limitations on the powers of those creditors based on maximum charges.

(2) With respect to sellers of goods or services, small loan companies, licensed lenders, consumer and sales finance companies, industrial banks and loan companies, and commercial banks and trust companies, this Act displaces existing limitations on their powers based solely on amount or duration of credit.

(3) Except as provided in subsection (1) [and in the Article on Effective Date and Repealer (Article 9)], this Act does not displace limitations on powers of credit unions, savings banks, savings and loan associations, or other thrift institutions whether organized for the profit of shareholders or as mutual organizations.

(4) Except as provided in subsections (1) and (2) [and in the Article on Effective Date and Repealer (Article 9)], this Act does not displace

(a) limitations on powers of supervised financial organizations (subsection (16) of Section 1.301) with respect to the amount of a loan to a single borrower, the ratio of a loan to the value of collateral, the duration of a loan secured by an interest in land, or other similar restrictions designed to protect deposits, or

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

COMMENT

The bracketed language in subsections (3) and (4) should be included and the brackets omitted if the enacting State adds to the Article on Effective Date and Re-

pealer (Article 9) provisions displacing limitations on powers of the kinds of organizations enumerated in subsections (3) and (4).

PART 2—SCOPE AND JURISDICTION

[§ 808]

Territorial Application

Sec. 1.201. (1) Except as otherwise provided in this section, this Act applies to sales, leases, and loans made in this State and to modifications, including refinancings, consolidations, and deferrals, made in this State, of sales, leases, and loans, wherever made. For purposes of this Act

(a) a sale or modification of a sale agreement is made in this State if the buyer's agreement or offer to purchase or to modify is received by the seller in this State;

(b) a lease or modification of a lease agreement is made in this State if the lessee's agreement or offer to lease or to modify is received by the lessor in this State; and

(c) a loan or modification of a loan agreement is made in this State if a writing signed by the debtor and evidencing the debt is received by the lender in this State.

(2) With respect to sales made pursuant to a revolving charge account (Section 2.108), this Act applies if the buyer's communication or indication of his intention to establish the account is received by the seller in this State. If no communication or indication of intention is given by the buyer before the first sale, this Act applies if the seller's communication notifying the buyer of the privilege of using the account is mailed or personally delivered in this State.

(3) With respect to loans made pursuant to a lender credit card or similar arrangement (subsection (8) of Section 1.301), this Act applies if the debtor's communication or indication of his intention to establish the arrangement with the lender is received by the lender in this State. If no communication or indication of intention is given by the debtor before the first loan, this Act applies if the lender's communication notifying the debtor of the privilege of using the arrangement is mailed or personally delivered in this State.

(4) The Part on Limitations on Creditors' Remedies (Part 1) of the Article on Remedies and Penalties (Article 5) applies to actions or other proceedings brought in this State to enforce rights arising out of a consumer credit sale, consumer lease, or consumer loan, or modification thereof, wherever made.

(5) If a consumer credit sale, consumer lease, or consumer loan, or modification thereof, is made in another state to a person who is a resident of this State when the sale, lease, loan, or modification is made, the following provisions apply as though the transaction occurred in this State:

(a) a seller, lessor, lender, or assignee of his rights, may not collect charges through actions or other proceedings in excess of those permitted by the Article on Credit Sales (Article 2) or by the Article on Loans (Article 3); and

(b) a seller, lessor, lender, or assignee of his rights, may not enforce rights against the buyer, lessee, or debtor, with respect to the provisions of agreements which violate the provisions on Limitations on Agreements and Practices (Part 4) of the Article on Credit Sales (Article 2) or of the Article on Loans (Article 3).

(6) Except as provided in subsection (4), a sale, lease, loan, or modification thereof, made in another state to a person who was not a resident of this State at the time the sale, lease, loan, or modification was made is valid and

§ 808

enforceable in this State according to its terms to the extent that it is valid and enforceable under the laws of the state applicable to the transaction.

(7) For the purposes of this Act, the residence of a buyer, lessee, or debtor, is the address given by him as his residence in any writing signed by him in connection with a credit transaction. Until he notifies the creditor of a new or different address, his address is presumed to be unchanged.

(8) Notwithstanding other provisions of this section

(a) except as provided in subsection (4), this Act does not apply if the buyer, lessee, or debtor is not a resident of this State at the time of a credit transaction and the parties then agree that the law of his residence applies; and

(b) this Act applies if the buyer, lessee, or debtor is a resident of this State at the time of a credit transaction and the parties then agree that the law of this State applies.

(9) Except as provided in subsection (8), the following agreements by a buyer, lessee, or debtor are invalid with respect to consumer credit sales, consumer leases, consumer loans, or modifications thereof, to which this Act applies:

(a) that the law of another state shall apply;

(b) that the buyer, lessee, or debtor consents to the jurisdiction of another state; and

(c) that fixes venue.

(10) The following provisions of this Act specify the applicable law governing certain cases:

(a) applicability (Section 6.102) of the Part on Powers and Functions of Administrator (Part 1) of the Article on Administration (Article 6); and

(b) applicability (Section 6.201) of the Part on Notification and Fees (Part 2) of the Article on Administration (Article 6).

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Exclusions

Sec. 1.202. This Act does not apply to

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

(2) the sale of insurance by an insurer, except as otherwise provided in the Article on Insurance (Article 4);

(3) transactions under public utility or common carrier tariffs if a subdivision or agency of this State or of the United States regulates the charges for the services involved, the charges for delayed payment, and any discount allowed for early payment; or

(4) the rates and charges and the disclosure of rates and charges of a licensed pawnbroker established in accordance with a statute or ordinance concerning these matters.

COMMENT

The Federal Consumer Credit Protection Act is referred to in the Comments as CCPA. Subsection (1) is derived from CCPA Section 104(1). Subsection (3) is derived from CCPA Section 104(4). Unless excluded by regulations, pawnbrokers will be subject to the CCPA. Rather than attempt to study the pawnbroker business

at this time to determine the appropriateness of applying this Code to pawnbroker transactions, the Committee suggests that

the exclusion of this type of transaction from the Code be continued.

[§ 810] [Jurisdiction and Service of Process]

[Sec. 1.203. (1) The [] court of this State may exercise jurisdiction over any creditor with respect to any conduct in this State governed by this Act or with respect to any claim arising from a transaction subject to this Act. In addition to any other method provided by [rule or by] statute, personal jurisdiction over a creditor may be acquired in a civil action or proceeding instituted in the [] court by the service of process in the manner provided by this section.

(2) If a creditor is not a resident of this State or is a corporation not authorized to do business in this State and engages in any conduct in this State governed by this Act, or engages in a transaction subject to this Act, he may designate an agent upon whom service of process may be made in this State. The agent shall be a resident of this State or a corporation authorized to do business in this State. The designation shall be in a writing and filed with the Secretary of State. If no designation is made and filed or if process cannot be served in this State upon the designated agent, process may be served upon the Secretary of State, but service upon him is not effective unless the plaintiff or petitioner forthwith mails a copy of the process and pleading by registered or certified mail to the defendant or respondent at his last reasonably ascertainable address. An affidavit of compliance with this section shall be filed with the clerk of the court on or before the return day of the process, if any, or within any further time the court allows.]

PART 3—DEFINITIONS

[§ 811] General Definitions

Sec. 1.301. In addition to definitions appearing in subsequent Articles, in this Act

(1) "Administrator" means the Administrator designated in the Article (Article 6) on Administration (Section 6.103).

(2) "Agreement" means the bargain of the parties in fact as found in their language or by implication from other circumstances including course of dealing or usage of trade or course of performance.

(3) "Agricultural purpose" means a purpose related to the production, harvest, exhibition, marketing, transportation, processing, or manufacture of agricultural products by a natural person who cultivates, plants, propagates, or nurtures the agricultural products. "Agricultural products" includes agricultural, horticultural, viticultural, and dairy products, livestock, wildlife, poultry, bees, forest products, fish and shellfish, and any products thereof, including processed and manufactured products, and any and all products raised or produced on farms and any processed or manufactured products thereof.

COMMENT

This definition of "agricultural products" is derived from the Agricultural Marketing Act of 1946, 7 U. S. C. Section 1626.

(4) "Closing costs" with respect to a debt secured by an interest in land includes:

- (a) fees or premiums for title examination, title insurance, or similar purposes including surveys,
- (b) fees for preparation of a deed, settlement statement, or other documents,
- (c) escrows for future payments of taxes and insurance,
- (d) fees for notarizing deeds and other documents,
- (e) appraisal fees, and
- (f) credit reports.

COMMENT

Except for "including surveys" in subsection(4)(a), this definition is derived from CCPA Section 106(e).

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

COMMENT

This definition is derived in part from UCC Section 1-201(10).

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

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

COMMENT

This definition is derived in part from CCPA Section 302(a).

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

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

(b) by the lender's payment or agreement to pay the debtor's obligations; or

(c) by the lender's purchase from the obligee of the debtor's obligations.

(9) "Official fees" means

- (a) fees and charges prescribed by law which actually are or will be paid to public officials for determining the existence of or for perfecting, releasing, or satisfying a security interest related to a consumer credit sale, consumer lease, or consumer loan; or

- (b) premiums payable for insurance in lieu of perfecting a security interest otherwise required by the creditor in connection with the sale,

lease, or loan, if the premium does not exceed the fees and charges described in paragraph (a) which would otherwise be payable.

COMMENT

This subsection is derived from CCPA Section 106(d).

(10) "Organization" means a corporation, government or governmental subdivision or agency, trust, estate, partnership, cooperative, or association.

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

COMMENT

A consumer credit sale in which the buyer has the options of paying the cash price in full in 90 days without a credit service charge or of paying in instalments the amount financed, including a credit service charge, is "payable in instalments".

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

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

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

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

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

(a) organized, chartered, or holding an authorization certificate under the laws of this State or of the United States which authorize the

person to make loans and to receive deposits, including a savings, share, certificate or deposit account, and

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

(17) "United States rule" means the actuarial method of allocating payments made on a debt between principal or amount financed and loan finance charge or credit service charge, pursuant to which a payment is applied first to the accumulated loan finance charge or credit service charge and the balance is applied to the unpaid principal or amount financed.

COMMENT

For a discussion of the operation of the United States rule, see Comment to Section 2.304.

[§ 812] Definition: "Federal Consumer Credit Protection Act"

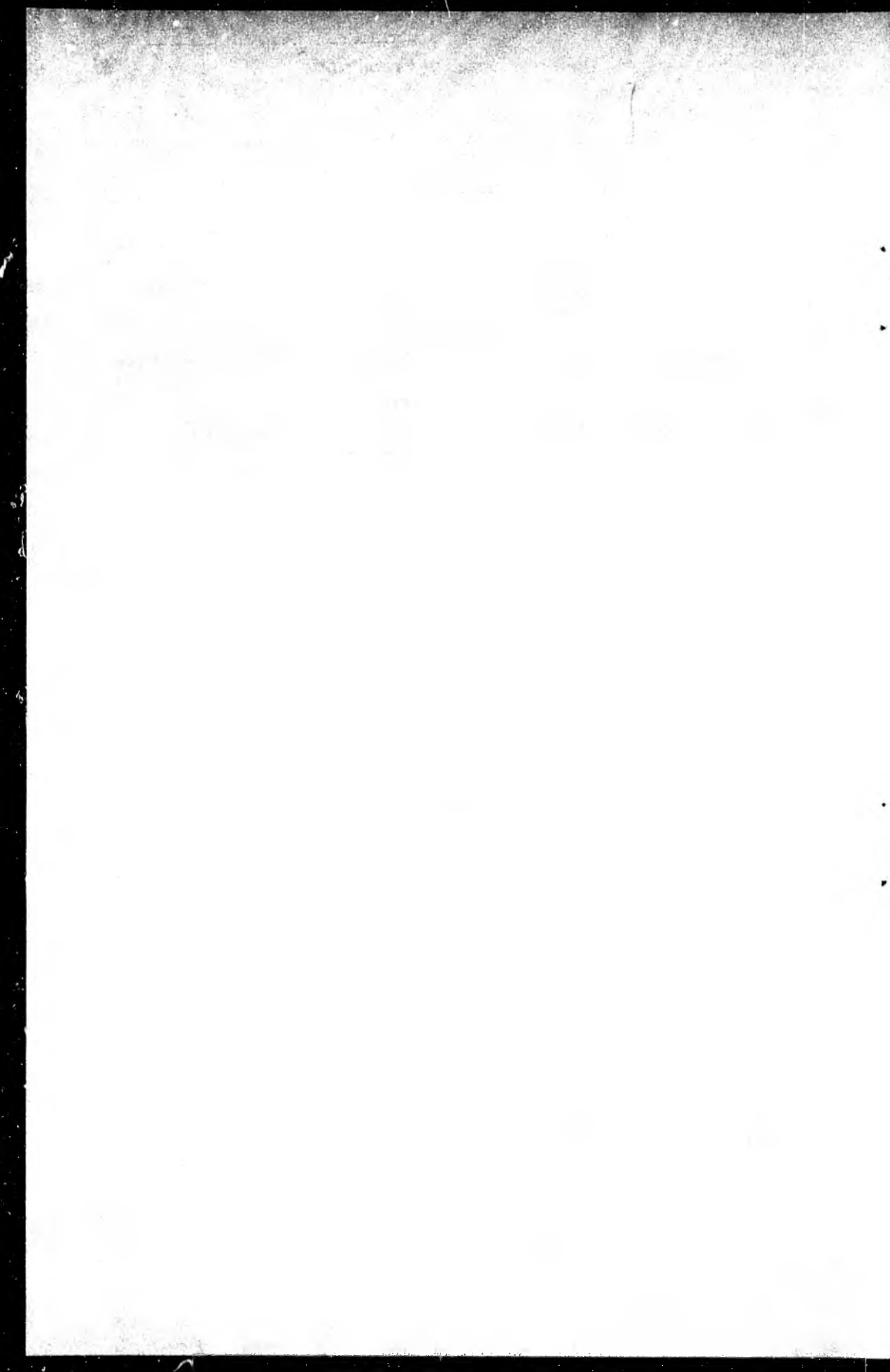
Sec. 1.302. In this Act "Federal Consumer Credit Protection Act" means the Consumer Credit Protection Act (Public Law 90-321; 82 Stat. 146), as amended, and includes regulations issued pursuant to that Act.

[§ 813] Index of Definitions in Act

Sec. 1.303. Definitions in this Act and the sections in which they appear are:

- "Administrator"—Section 1.301(1)
- "Administrator"—Section 6.103
- "Agreement"—Section 1.301(2)
- "Agricultural purpose"—Section 1.301(3)
- "Amount financed"—Section 2.111
- "Annual percentage rate" (sale)—Section 2.304
- "Annual percentage rate" (loan)—Section 3.304
- "Business collateral"—Section 3.105
- "Cash price"—Section 2.110
- "Closing costs"—Section 1.301(4)
- "Conspicuous"—Section 1.301(5)
- "Consumer credit insurance"—Section 4.103(1)
- "Consumer credit sale"—Section 2.104
- "Consumer lease"—Section 2.106
- "Consumer loan"—Section 3.104
- "Consumer related loan"—Section 3.602
- "Consumer related sale"—Section 2.602
- "Contested case"—Section 6.402(1)
- "Corresponding nominal annual percentage rate" (sale)—Section 2.304
- "Corresponding nominal annual percentage rate" (loan)—Section 3.304
- "Credit"—Section 1.301(6)
- "Credit Insurance Act"—Section 4.103(2)
- "Credit service charge"—Section 2.109

- "Earnings"—Section 1.301(7)
- "Federal Consumer Credit Protection Act"—Section 1.302
- "Goods"—Section 2.105(1)
- "Home solicitation sale"—Section 2.501
- "Lender"—Section 3.107(1)
- "Lender credit card or similar arrangement"—Section 1.301(8)
- "License"—Section 6.402(2)
- "Licensing"—Section 6.402(3)
- "Loan"—Section 3.106
- "Loan finance charge"—Section 3.109
- "Merchandise certificate"—Section 2.105(2)
- "Official fees"—Section 1.301(9)
- "Organization"—Section 1.301(10)
- "Party"—Section 6.402(4)
- "Payable in instalments"—Section 1.301(11)
- "Person"—Section 1.301(12)
- "Person related to"—Section 1.301(13)
- "Precomputed (loan)"—Section 3.107(2)
- "Precomputed (sale)"—Section 2.105(7)
- "Presumed" or "presumption"—Section 1.301(14)
- "Principal"—Section 3.107(3)
- "Regulated lender"—Section 3.501(2)
- "Regulated loan"—Section 3.501(1)
- "Revolving charge account"—Section 2.108
- "Revolving loan account"—Section 3.108
- "Rule"—Section 6.402(5)
- "Sale of goods"—Section 2.105(4)
- "Sale of an interest in land"—Section 2.105(6)
- "Sale of services"—Section 2.105(5)
- "Seller"—Section 2.107
- "Seller credit card"—Section 1.301(15)
- "Services"—Section 2.105(3)
- "Supervised financial organization"—Section 1.301(16)
- "Supervised lender"—Section 3.501(4)
- "Supervised loan"—Section 3.501(3)
- "United States rule"—Section 1.301(17)



Article 2—Credit Sales

PART 1—GENERAL PROVISIONS

[§ 814] Short Title

Sec. 2.101. This Article shall be known and may be cited as Uniform Consumer Credit Code—Credit Sales.

[§ 815] Scope

Sec. 2.102. This Article applies to consumer credit sales, including home solicitation sales, and consumer leases; in addition Part 6 applies to consumer related sales.

[§ 816] Definitions in Article

Sec. 2.103. The following definitions apply to this Act and appear in this Article as follows:

"Amount financed"	Section 2.111
"Annual percentage rate"	Section 2.304(2)
"Cash price"	Section 2.110
"Consumer credit sale"	Section 2.104
"Consumer lease"	Section 2.106
"Consumer related sale"	Section 2.602
"Corresponding nominal annual percentage rate"	Section 2.304(3)
"Credit service charge"	Section 2.109
"Goods"	Section 2.105(1)
"Home solicitation sale"	Section 2.501
"Merchandise certificate"	Section 2.105(2)
"Precomputed"	Section 2.105(7)
"Revolving charge account"	Section 2.108
"Sale of goods"	Section 2.105(4)
"Sale of an interest in land"	Section 2.105(6)
"Sale of services"	Section 2.105(5)
"Seller"	Section 2.107
"Services"	Section 2.105(3)

[§ 817] Definition: "Consumer Credit Sale"

Sec. 2.104. (1) Except as provided in subsection (2), "consumer credit sale" is a sale of goods, services, or an interest in land in which

- (a) credit is granted by a seller who regularly engages as a seller in credit transactions of the same kind,
- (b) the buyer is a person other than an organization,
- (c) the goods, services, or interest in land are purchased primarily for a personal, family, household, or agricultural purpose,
- (d) either the debt is payable in instalments or a credit service charge is made, and
- (e) with respect to a sale of goods or services, the amount financed does not exceed \$25,000.

(2) Unless the sale is made subject to this Act by agreement (Section 2.601), "consumer credit sale" does not include

(a) a sale in which the seller allows the buyer to purchase goods or services pursuant to a lender credit card or similar arrangement, or

(b) except as provided with respect to disclosure (Section 2.301) and debtors' remedies (Section 5.201), a sale of an interest in land if the credit service charge does not exceed 10 per cent per year calculated according to the United States rule on the unpaid balances of the amount financed on the assumption that the debt will be paid according to the agreed terms and will not be paid before the end of the agreed term.

(3) The amount of \$25,000 in subsection (1) is subject to change pursuant to the provisions on adjustment of dollar amounts (Section 1.106).

COMMENT

Subsection (1)(d) excludes from the Code two familiar credit transactions: (1) services furnished on short-term credit with neither a credit service charge nor instalment payments; professional men usually furnish their services on this basis as do many electricians, plumbers, and the like; and (2) the typical 30-day retail charge account. The credit

clothing merchant or credit jeweler who does not separately state a credit service charge is covered by this section if his contracts are payable in instalments. Subsection (1)(e) excludes sales of goods or services of over \$25,000, but does not do so for sale of real property.

[§ 818] Definitions: "Goods"; "Merchandise Certificate"; "Services"; "Sale of Goods"; "Sale of Services"; "Sale of an Interest in Land"; "Precomputed"

Sec. 2.105. (1) "Goods" includes goods not in existence at the time the transaction is entered into and merchandise certificates, but excludes money, chattel paper, documents of title, and instruments.

(2) "Merchandise certificate" means a writing issued by a seller not redeemable in cash and usable in its face amount in lieu of cash in exchange for goods or services.

(3) "Services" includes (a) work, labor, and other personal services, (b) privileges with respect to transportation, hotel and restaurant accommodations, education, entertainment, recreation, physical culture, hospital accommodations, funerals, cemetery accommodations, and the like, and (c) insurance provided by a person other than the insurer.

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

COMMENT

This subsection is derived from CCPA Section 103(g).

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

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

(7) A sale, refinancing, or consolidation is "precomputed" if the debt is expressed as a sum comprising the amount financed and the amount of the credit service charge computed in advance.

[§ 819] Definition: "Consumer Lease"

Sec. 2.106. (1) "Consumer lease" means a lease of goods

(a) which a lessor regularly engaged in the business of leasing makes to a person, other than an organization, who takes under the lease primarily for a personal, family, household, or agricultural purpose,

(b) in which the amount payable under the lease does not exceed \$25,000, and

(c) which is for a term exceeding four months.

(2) "Consumer lease" does not include a lease made pursuant to a lender credit card or similar arrangement.

(3) The amount of \$25,000 in subsection (1) is subject to change pursuant to the provisions on adjustment of dollar amounts (Section 1.106).

[§ 820] Definition: "Seller"

Sec. 2.107. Except as otherwise provided, "seller" includes an assignee of the seller's right to payment but use of the term does not in itself impose on an assignee any obligation of the seller with respect to events occurring before the assignment.

COMMENT

Compare Section 3.107(1) defining lender to include an assignee. This section is intended to confer on the assignee all the rights of the seller. Unless the assignee

undertakes direct collection of payments or enforcement of rights arising from the sale, he is not subject to penalties under Section 5.202.

[§ 821] Definition: "Revolving Charge Account"

Sec. 2.108. "Revolving charge account" means an arrangement between a seller and a buyer pursuant to which (1) the seller may permit the buyer purchase goods or services on credit either from the seller or pursuant to a seller credit card, (2) the unpaid balances of amounts financed arising from purchases and the credit service and other appropriate charges are debited to an account, (3) a credit service charge if made is not precomputed but is computed on the outstanding unpaid balances of the buyer's account from time to time, and (4) the buyer has the privilege of paying the balances in instalments.

[§ 822] Definition: "Credit Service Charge"

Sec. 2.109. "Credit service charge" means the sum of (1) all charges payable directly or indirectly by the buyer and imposed directly or indirectly by the seller as an incident to the extension of credit, including any of the following types of charges which are applicable: time price differential, service, carrying or other charge, however denominated, premium or other charge for any guarantee or insurance protecting the seller against the buyer's default or other credit loss; and (2) charges incurred for investigating the collateral or credit-worthiness of the buyer or for commissions or brokerage for obtaining the credit, irrespective of the person to whom the charges are paid or payable, unless the seller had no notice of the charges when the credit was granted. The term does not include charges as a result of default, additional charges (Section 2.202), delinquency charges (Section 2.203), or deferral charges (Section 2.204).

COMMENT

The first part of the definition is derived from CCPA Section 106(a), with changes made to relate the definition to sales. The second part broadens the definition to in-

clude charges with respect to commissions and brokerage within the credit service charge whether or not the creditor imposed them so long as he knew of the charges.

[§ 823]

Definition: "Cash Price"

Sec. 2.110. The "cash price" of goods, services, or an interest in land means the price at which the goods, services, or interest in land are offered for sale by the seller to cash buyers in the ordinary course of business, and may include (1) applicable sales, use, and excise and documentary stamp taxes, (2) the cash price of accessories or related services such as delivery, installation, servicing, repair, alterations, and improvements, and (3) amounts actually paid or to be paid by the seller for registration, certificate of title, or license fees. The cash price stated by the seller to the buyer pursuant to the provisions on disclosure (Part 3) of this Article is presumed to be the cash price.

[§ 824]

Definition: "Amount Financed"

Sec. 2.111. "Amount financed" means the total of the following items to the extent that payment is deferred:

(1) the cash price of the goods, services, or interest in land, less the amount of any down payment whether made in cash or in property traded in,

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

(3) if not included in the cash price

(a) any applicable sales, use, or excise and documentary stamp taxes,

(b) amounts actually paid or to be paid by the seller for registration, certificate of title, or license fees, and

(c) additional charges permitted by this Article (Section 2.202).

PART 2—MAXIMUM CHARGES

[§ 825] Credit Service Charge for Consumer Credit Sales
other than Revolving Charge Accounts

Sec. 2.201. (1) With respect to a consumer credit sale, other than a sale pursuant to a revolving charge account, a seller may contract for and receive a credit service charge not exceeding that permitted by this section.

(2) The credit service charge, calculated according to the United States rule, may not exceed the equivalent of the greater of either of the following:

(a) the total of

(i) 36 per cent per year on that part of the unpaid balances of the amount financed which is \$300 or less;

(ii) 21 per cent per year on that part of the unpaid balances of the amount financed which is more than \$300 but does not exceed \$1,000; and

(iii) 15 per cent per year on that part of the unpaid balances of the amount financed which is more than \$1,000; or

(b) 18 per cent per year on the unpaid balances of the amount financed.

(3) This section does not limit or restrict the manner of contracting for the credit service charge, whether by way of add-on, discount, or otherwise, so long as the rate of the credit service charge does not exceed that permitted by this section. If the sale is precomputed,

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

(b) the effect of prepayment is governed by the provisions on rebate upon prepayment (Section 2.210).

(4) For the purposes of this section, the term of a sale agreement commences with the date the credit is granted or, if goods are delivered or services performed 10 days or more after that date, with the date of commencement of delivery or performance. Differences in the lengths of months are disregarded and a day may be counted as 1/30th of a month. Subject to classifications and differentiations the seller may reasonably establish, a part of a month in excess of 15 days may be treated as a full month if periods of 15 days or less are disregarded and that procedure is not consistently used to obtain a greater yield than would otherwise be permitted.

(5) Subject to classifications and differentiations the seller may reasonably establish, he may make the same credit service charge on all amounts financed within a specified range. A credit service charge so made does not violate subsection (2) if

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

(b) when applied to the lowest amount within each range, it does not produce a rate of credit service charge exceeding the rate calculated according to paragraph (a) by more than 8 per cent of the rate calculated according to paragraph (a).

(6) Notwithstanding subsection (2), the seller may contract for and receive a credit service charge of not more than \$5 when the amount financed does not exceed \$75 or not more than \$7.50 when the amount financed exceeds \$75.

(7) The amounts of \$300 and \$1,000 in subsection (2) are subject to change pursuant to the provisions on adjustment of dollar amounts (Section 1.106).

COMMENT

1. *Purpose of rate ceilings provisions.* The purpose of this section and Section 3.508 (Loan Finance Charge for Supervised Loans) is to set ceilings and not to fix rates. Even under present statutes, considerable rate competition exists. The intent of this Act is to provide even more effective competition. Therefore, while this section sets rate ceilings, several other sections are designed to generate sufficient competition to set rates. In addition, other provisions have been omitted by design, because they would have tended to restrict competition. Other provisions related to this section include:

(1) Provisions for disclosure of the credit service charge and loan finance charge both in dollar amounts and as annual percentages (Article 2, Part 3; Article 3, Part 3) are de-

signed to facilitate comparative shopping. This is the most effective means of limiting prices. For most goods and services offered for sale in competitive markets, disclosure of the price has been deemed sufficient to regulate prices.

(2) The absence of special rate ceilings according to the type of credit grantors, type of item financed, or the form of credit extension is by design. Segmentation of the market for credit by differentiated rate ceilings tends to reduce competition and introduce rigidities into the market that benefit a few suppliers at the expense of others and work to the disadvantage of consumers.

(3) Greater freedom of entry to the credit field is fostered by several provisions, as well as by several deliberate omissions. Re-

volving credit may be offered both in connection with credit sales, loans, and supervised loans. No type of credit grantor is limited by this Act in the amount of credit that may be extended. By design the license required to make supervised loans is made readily accessible to those showing financial responsibility, character, and fitness. Provisions for minimum financial assets and for a showing of convenience and advantage have been deliberately omitted, since their inclusion would tend to restrict competition and require establishment of rates, rather than ceilings.

Because of the different cost structures that will be developed as a result of this Act, comparison of these rate ceilings cannot be made to existing rate ceilings. In this respect, the rate ceilings in this section are intimately related to other parts of the Act which provide for limitations on agreements and practices (Article 2, Parts 4 and 5; Article 3, Part 4) and for limitations on creditors' remedies (Article 5, Part 1). Provisions such as holding the assignee subject to defenses (Section 2.404), buyer's right to cancel (2.502), no assignment of earnings (2.410; 3.403), and restrictions on deficiency judgments in consumer credit sales (5.103) will tend to raise operating costs of credit grantors above current levels. Other things being equal, these provisions would require higher rate ceilings than now exist. If they were not provided, the least credit-worthy consumers now in the market would be relegated to the illegal market.

The rate ceiling declines with the amount of credit granted by design. There are substantial fixed costs in granting consumer installment credit. Up to a point the relative amount of fixed costs decline as the amount of credit granted increases. The present rate structure is designed not to restrict the

amount of credit granted in any size category. Consequently, any changes in the rate ceilings provided would require a complete re-evaluation of the gradation in the structure, as well as of the other above-mentioned sections of this Act which are closely related in an economic sense to this rate ceiling.

2. *Explanation of operation of rate ceilings.* This explanation of maximum rates applies equally to credit service charges made under Section 2.201 and to loan finance charges made under Section 3.508.

It should be made clear that the graduated rates permitted are calculated on the periodic declining unpaid balances. The provisions for graduated rates should not be construed as requiring simultaneous liquidation of different portions of the original unpaid balance. Thus, the 21% annual rate permitted on unpaid balances exceeding \$300, but not exceeding \$1,000, does not apply to the initial unpaid balance in that range for the scheduled maturity of the loan, but only to the extent that periodic declining unpaid balances fall within the range from \$300.01 to \$1,000.

The operation of this principle with respect to a \$1,500 principal amount of advance for twelve months is illustrated in Table A below. The table shows the total dollar charge, the monthly payments and the charge earned each month when the rates stated in Sections 2.201 and 3.508 are computed on the unpaid balance as of each scheduled payment date and each payment is applied first to the earned charge and then to principal. It also shows the unpaid balances which result from applying the rates stated in Sections 2.201 and 3.508 and the parts of each unpaid balance to which each rate applies each month. The total dollar charge so computed is \$211.71, but 3¢ is waived rather than increase the final payment.

TABLE A

Amortization Schedule for \$1,500 Paid In Twelve Equal And Consecutive Monthly Installments of Principal And Charge Combined With The Charge Computed At Maximum Graduated Rates Authorized by Sections 2.201 and 3.508—36% Per Year on That Part Of The Unpaid Balances Not Exceeding \$300, Plus 21% Per Year On That Part Of The Unpaid Balances Exceeding \$300 But Not Exceeding \$1,000, Plus 15% Per Year On That Part Of The Unpaid Balances Exceeding \$1,000, Yields \$211.68.

Mo.	Unpaid Principal Balances Outstanding During Month				Application of \$142.64 Monthly Payments	
	@ 36%	@ 21%	@ 15%	Total	Charges	Principal
1	\$300.00	\$700.00	\$500.00	\$1,500.00	\$ 27.50	\$ 115.14
2	300.00	700.00	384.86	1,384.86	26.06	116.58
3	300.00	700.00	268.28	1,268.28	24.60	118.04

Mo.	Unpaid Principal Balances Outstanding During Month				Application of \$142.64 Monthly Payments	
	@ 36%	@ 21%	@ 15%	Total	Charges	Principal
4	300.00	700.00	150.24	1,150.24	23.13	119.51
5	300.00	700.00	30.73	1,030.73	21.63	121.1
6	300.00	609.72	....	909.72	19.67	122.57
7	300.00	486.75	....	786.75	17.52	125.12
8	300.00	361.63	....	661.63	15.33	127.31
9	300.00	234.32	....	534.32	13.10	129.54
10	300.00	104.78	....	404.78	10.83	131.81
11	272.97	....	....	272.97	8.19	134.45
12	138.52	....	....	138.52	4.12*	138.52
TOTALS					\$211.68	\$1,500.00

Note: Interest rates are applied to parts of unpaid principal balances scheduled to be outstanding. For example, the interest on \$1,030.73 is computed as follows:

36% on \$	300.00	=	\$ 9.00
21% on	700.00	=	12.25
15% on	30.73	=	.38
	<u>\$1,030.73</u>		<u>\$21.63</u>

* The charge earned the last month is \$4.15, but 3¢ is waived and applied to principal to make the final payment equal to the others.

For purposes of disclosure under Section 2.304(2) and 3.304(2) the credit grantor must determine the single annual percentage rate which, when applied according to the U. S. rule, earns the same dollar amount of charge that is produced by the graduated

rates. Table B shows that an annual rate of 25.10% applied monthly to the periodic declining unpaid balances produces the same total dollar charge of \$211.68 calculated by application of graduated rates in Table A.

TABLE B

Amortization Schedule for \$1,500 Paid in Twelve Equal And Consecutive Monthly Installments Of Principal and Charge Combined Showing That The Flat Annual Percentage Rate of 25.10% Computed By The U. S. Rule Yields \$211.68.

Mo.	Unpaid Principal Balances	Application of \$142.64 Monthly Payments	
		Charges	Principal
1	\$1,500.00	\$ 31.38	\$ 111.26
2	1,388.74	29.05	113.59
3	1,275.15	26.67	115.97
4	1,159.18	24.25	118.39
5	1,040.79	21.77	120.87
6	919.92	19.24	123.40
7	796.52	16.66	125.98
8	670.54	14.03	128.61
9	541.93	11.34	131.30
10	410.63	8.59	134.05
11	276.58	5.79	136.85
12	139.73	2.91*	139.73
		<u>\$211.68</u>	<u>\$1,500.00</u>

* The charge earned the last month is \$2.92, but 1¢ is waived and applied to principal to make the final payment equal to the others.

The Code is intended to give the creditors the following choices in making their charges under Section 2.201 and Section 3.508:

(1) The contract may be precomputed to include the dollar finance charge for payment according to schedule. In the example shown, the dollar finance charge of \$211.68 would be added to the original unpaid principal, making a total of \$1,711.68 to be repaid in twelve monthly instalments of \$142.64.

A precomputed contract is subject to rebate for prepayment in full and to default and deferment charges in the case of delinquency or deferral. In such cases the creditor has the option (a) to rebate according to Section 2.210 or 3.210 and to make default or deferment charges according to Sections 2.203 and 2.204 or 3.203 and 3.204, or (b) to recompute charges at the flat annual percentage rate which yields the precomputed charge when computed according to the U. S. rule. (In the example shown that rate is 25.10%.) Under this second option, the flat annual percentage rate would be computed on the actual unpaid balances of the original principal amount (excluding pre-computed charge) for the actual time outstanding and the total charge so computed would be in lieu of the precomputed charge and default and deferment charges. In the case of a precomputed loan (but not sale), if two or more instalments are delinquent ten days, the lender may convert to the flat annual percentage rate (or graduated rates) as of the due date of the first delinquent instalment rather than recompute from the beginning. See Section 3.203(4). The conversion is by rebating the precomputed charge as of the due date of the first delinquent instalment. Charges at the flat annual percentage rate on unpaid balances after conversion are in lieu of the rebate and subsequent default and deferment charges.

(2) The agreement may call for the maximum flat annual rate of charge (or lesser annual flat rate) computed on actual unpaid balances for the actual time outstanding. The flat annual percentage is the rate which yields the charge for payment according to schedule when the rate is computed according to the U. S. rule. In the example, the rate is 25.10%. In this case there is no rebate for prepayment in full because the charges are collected only as earned, and there are no separate charges for default or deferment.

(3) The agreement may call for the computation of the graduated rates on parts of the actual unpaid balance for the time actually outstanding when each payment is

made. In this case there is no rebate for prepayment in full because charges are collected only as earned, and there are no separate charges for default or deferment.

(4) In the case of a credit service charge for revolving charge accounts, the charge for each period must be computed on the parts of the unpaid balance from time to time as defined in Section 2.207(2). In the case of a revolving loan account, the charge for each period must be computed on the parts of the unpaid balance from time to time as defined in Section 3.201(4).

3. *Explanation of subsection (5).* With respect to Section 2.201(5), the variation permitted is limited to 8 per cent of the rate of the finance charge and does not permit an 8 percentage point variation. For example, if a credit grantor were to levy an annual add-on finance charge of \$10 per \$100 of initial unpaid balance, under the provisions of this section he could establish the following maximum range for one-year contracts:

Amount Financed	Credit Service Charge
\$92.40-\$107.60	\$10.00

The median amount financed is \$100.00; that is, this amount is \$7.60 from both the upper and lower limits of the specified range. Alternatively, it is just halfway between \$92.40 and \$107.60.

The specified range is limited by the 8 per cent requirement. On one-year contracts the add-on finance charge results in an actuarial rate of 17.972 per cent. Subparagraph (b) specifies that the yield on the lowest amount within the range may not be more than 8 per cent higher than the yield provided on the median amount. Thus the yield on the lowest amount may not exceed 19.410 per cent ($.08 \times 17.972 + 17.972 = 19.410$). It follows that the lower amount must be such that the \$10 credit service charge produces an annual rate not in excess of 19.410 per cent. Interpolation from annuity tables shows that the lower amount must be about \$92.40. Since the median is halfway between the upper and lower limits, the upper amount must be \$107.60. These are close approximations; in actual practice very precise limits can be determined.

To gain the convenience of using a single dollar amount of credit service charge for a specified range of amounts financed the credit grantor must undercharge for amounts financed above the median. Thus the \$10 credit service charge is \$0.76 less than the \$10.76 credit service charge that could have

been received by precise application of an add-on rate of \$10 per \$100 per annum on the initial unpaid balance. These results are summarized below for one-year monthly instalment contracts.

	(B)	(C)	(D)	(E)
Amount financed	Actual finance charge	Accurate finance charge	Dollar finance difference (C) — (B)	Annual percentage
\$107.60	\$10.00	\$10.76	—\$0.76	16.73%
\$100.00	\$10.00	\$10.00	0.00	17.97%
\$ 92.40	\$10.00	\$ 9.24	+\$0.76	19.41%

4. *Explanation of subsection (6).* Subsection (6) of this section permits minimum charges equal to those for which the CCPA requires no annual percentage rate disclosure. The CCPA does not set limits on the amounts of minimum charges, but does require annual percentage rate disclosure when the minimum charges exceed those permitted by subsection (6). Subsection (6) also sets limits on the amounts of minimum charges.

§ 826

Additional Charges

Sec. 2.202. (1) In addition to the credit service charge permitted by this Part, a seller may contract for and receive the following additional charges in connection with a consumer credit sale:

- (a) official fees and taxes;
- (b) charges for insurance as described in subsection (2); and
- (c) charges for other benefits, including insurance, conferred on the buyer, if the benefits are of value to him apart from the granting of the credit the charges are reasonable in relation to the benefits, and the Administrator has by rule determined that the charges are permissible additional charges.

(2) An additional charge may be made for insurance written in connection with the sale, other than insurance protecting the seller against the buyer's default or other credit loss,

(a) with respect to insurance against loss of or damage to property, or against liability, if the seller furnishes a clear and specific statement in writing to the buyer, setting forth the cost of the insurance if obtained from or through the seller, and stating that the buyer may choose the person through which the insurance is to be obtained; and

(b) with respect to consumer credit insurance providing life, accident or health coverage, if the insurance coverage is not a factor in the approval by the seller of the extension of credit and this fact is clearly disclosed in writing to the buyer, and if, in order to obtain the insurance in connection with the extension of credit, the buyer gives specific affirmative written indication of his desire to do so after written disclosure to him of the cost thereof.

(3) For the purposes of the Part on Disclosure and Advertising (Part 3), if the credit service charge with respect to a sale of an interest in land does not exceed 10 per cent per year (paragraph (b) of subsection (2) of Section 2.104), reasonable closing costs even though not within subsection (1) may be treated as additional charges.

COMMENT

Paragraph (c) of subsection (1), above, sets standards to be observed by the Administrator in determining whether charges are permissible additional charges pursuant to paragraph (c). These standards conform to

the legislative history of CCPA Section 106 (d)(4) as indicated in the "Statement of Managers" on page 25 of the Conference Report on the CCPA under the heading "Other Charges." Section 6.104(2) of this

Code directs the Administrator to take into account federal regulations on the subject before adopting his rules.

CCPA Section 106(b) requires that charges or premiums for insurance be included in the "finance charge" for the purposes of disclosing the annual percentage rate or corresponding nominal annual percentage rate unless the insurance meets the tests speci-

fied in paragraph (a) or paragraph (b) of subsection (2). The effect of subsection (2) is to require that charges or premiums for insurance be included in the credit service charge for ceilings purposes as well unless the insurance meets the tests specified in paragraph (a) or paragraph (b) of subsection (2).

[§ 827]

Delinquency Charges

Sec. 2.203. (1) With respect to a precomputed consumer credit sale, refinancing, or consolidation, the parties may contract for a delinquency charge on any instalment not paid in full within 10 days after its scheduled due date in an amount not exceeding the greater of

(a) an amount, not exceeding \$5, which is 5 per cent of the unpaid amount of the instalment, or

(b) the deferral charge (subsection (1) of Section 2.204) that would be permitted to defer the unpaid amount of the instalment for the period that it is delinquent.

(2) A delinquency charge under paragraph (a) of subsection (1) may be collected only once on an instalment however long it remains in default. No delinquency charge may be collected if the instalment has been deferred and a deferral charge (Section 2.204) has been paid or incurred. A delinquency charge may be collected at the time it accrues or at any time thereafter.

(3) No delinquency charge may be collected on an instalment which is paid in full within 10 days after its scheduled instalment due date even though an earlier maturing instalment or a delinquency charge on an earlier instalment may not have been paid in full. For purposes of this subsection payments are applied first to current instalments and then to delinquent instalments.

(4) The amount of \$5 in subsection (1) is subject to change pursuant to the provisions on adjustment of dollar amounts (Section 1.106).

COMMENT

It should be noted that this section and other sections providing for deferral charges (Section 2.204), credit service charge upon refinancing (2.205), and rebate upon prepayment (2.210) apply only to precomputed sales. When a credit service charge is precomputed, the calculations are based on the assumption that all scheduled payments will be made when due (2.201(3)). If a buyer is late in making a payment on a precomputed sale, the seller would receive no income for the period of the delay unless a separate delinquency charge were permitted. The alternative of not permitting delinquency charges is rejected, because the result would be to enforce a lower effective ceiling on credit service charge rates for delinquent buyers than for buyers who paid promptly. The same line of reasoning that calls for a delinquency charge also supports rebates of appropriate

portions of the credit service charge upon prepayment (2.210). Instead of paying behind schedule, the buyer is paying ahead of schedule. Consequently, he is entitled to a rebate of a portion of the prescheduled credit service charge.

The adjustments to the precomputed credit service charge permitted in these sections are not needed for revolving charge accounts. In general, the credit service charge accumulates in direct relation to the size of the unpaid balance and the period for which it has been outstanding. If the buyer is late in making a payment, the credit service charge continues to accumulate, so that the seller is compensated for his forbearance. Similarly, the buyer may prepay the sale at any time and is obligated to pay only the credit service charge that has accumulated to the date of prepayment.

[§ 828]

Deferral Charges

Sec. 2.204. (1) With respect to a precomputed consumer credit sale, refinancing or consolidation, the parties before or after default may agree in writing to defer payment of all or part of one or more unpaid instalments, and the seller may make and collect a charge not exceeding the rate previously stated to the buyer pursuant to the provisions on disclosure (Part 3) applied to the amount or amounts deferred for the period of deferral calculated without regard to differences in lengths of months, but proportionally for a part of a month, counting each day as 1/30 of a month. A deferral charge may be collected at the time it is assessed or at any time thereafter.

(2) The seller may, in addition to the deferral charge, make appropriate additional charges (Section 2.202), and the amount of these charges which is not paid in cash may be added to the amount deferred for the purpose of calculating the deferral charge.

(3) The parties may agree in writing at the time of a precomputed consumer credit sale, refinancing, or consolidation that if an instalment is not paid within 10 days after its due date, the seller may unilaterally grant a deferral and make charges as provided in this section. No deferral charge may be made for a period after the date that the seller elects to accelerate the maturity of the agreement.

(4) A delinquency charge made by the seller on an instalment may not be retained if a deferral charge is made pursuant to this section with respect to the period of delinquency.

[§ 829]

Credit Service Charge on Refinancing

Sec. 2.205. With respect to a consumer credit sale, refinancing, or consolidation, the seller may by agreement with the buyer refinance the unpaid balance and may contract for and receive a credit service charge based on the amount financed resulting from the refinancing at a rate not exceeding that permitted by the provisions on credit service charge for consumer credit sales (Section 2.201). For the purpose of determining the credit service charge permitted, the amount financed resulting from the refinancing comprises the following:

(1) if the transaction was not precomputed, the total of the unpaid balance and accrued charges on the date of refinancing, or, if the transaction was precomputed, the amount which the buyer would have been required to pay upon prepayment pursuant to the provisions on rate upon prepayment (Section 2.210) on the date of refinancing, except that for the purpose of computing this amount no minimum credit service charge (subsection (6) of Section 2.201) shall be allowed; and

(2) appropriate additional charges (Section 2.202), payment of which is deferred.

[§ 830]

Credit Service Charge on Consolidation

Sec. 2.206. If a buyer owes an unpaid balance to a seller with respect to a consumer credit sale, refinancing, or consolidation, and becomes obligated on another consumer credit sale, refinancing, or consolidation, with the same seller, the parties may agree to a consolidation resulting in a single schedule of payments pursuant to either of the following subsections:

(1) The parties may agree to refinance the unpaid balance with respect to the previous sale pursuant to the provisions on refinancing (Section 2.205)

and to consolidate the amount financed resulting from the refinancing by adding it to the amount financed with respect to the subsequent sale. The seller may contract for and receive a credit service charge based on the aggregate amount financed resulting from the consolidation at a rate not exceeding that permitted by the provisions on credit service charge for consumer credit sales (Section 2.201).

(2) The parties may agree to consolidate by adding together the unpaid balances with respect to the two sales.

COMMENT

Refinancing under Section 2.205 means that the balance owing is treated as though it is prepaid, with the buyer being credited with all refunds; a credit service charge is then calculated on the basis of the balance owing less refunds. Consolidation, which is covered in 2.206, refers to the process of adding together amounts owing with respect to more than one sale. There are two ways of consolidating and both are described in 2.206. Subsection (1) involves

the familiar rewrite; the old balance is refinanced and added to the amount financed under the new sale. The credit service charge is based on the aggregate amounts financed. Under subsection (2) no refinancing is involved. The *balances owing* are simply added together and made payable on one schedule of payments. This usually means that the maturity of the first sale will be extended.

[§ 831] Credit Service Charge for Revolving Charge Accounts

Sec. 2.207. (1) With respect to a consumer credit sale made pursuant to a revolving charge account, the parties to the sale may contract for the payment by the buyer of a credit service charge not exceeding that permitted in this section.

(2) A charge may be made in each billing cycle which is a percentage of an amount no greater than

- (a) the average daily balance of the account,
- (b) the unpaid balance of the account on the same day of the billing cycle, or

(c) the median amount within a specified range within which the average daily balance of the account or the unpaid balance of the account on the same day of the billing cycle is included. A charge may be made pursuant to this paragraph only if the seller, subject to classifications and differentiations he may reasonably establish, makes the same charge on all balances within the specified range and if the percentage when applied to the median amount within the range does not produce a charge exceeding the charge resulting from applying that percentage to the lowest amount within the range by more than 8 per cent of the charge on the median amount.

(3) If the billing cycle is monthly, the charge may not exceed 2 per cent of that part of the amount pursuant to subsection (2) which is \$500 or less and 1½ per cent on that part of this amount which is more than \$500. If the billing cycle is not monthly, the maximum charge is that percentage which bears the same relation to the applicable monthly percentage as the number of days in the billing cycle bears to 30. For the purposes of this section, a variation of not more than 4 days from month to month is "the same day of the billing cycle."

(4) Notwithstanding subsection (3), if there is an unpaid balance on the date as of which the credit service charge is applied, the seller may contract for and receive a charge not exceeding 50¢, if the billing cycle is monthly or longer, or the pro rata part of 50¢ which bears the same relation to 50¢ as the number of days in the billing cycle bears to 30, if the billing cycle is shorter than monthly.

(5) The amounts of \$500 in subsection (3) are subject to change pursuant to the provisions on adjustment of dollar amounts (Section 1.106).

COMMENT

CCPA Section 127(b)(6) requires the disclosure of the finance charge on open end credit plans in terms of an annual percentage rate if "the total finance charge exceeds 50¢ for a monthly or longer billing cycle, or the pro rata part of 50¢ for a billing cycle shorter than monthly." It would for all practical purposes be impossible to express a minimum charge in terms of an

annual percentage rate. Consequently, subsection (4) prescribes as the minimum the amount of the charge for which the CCPA requires no annual percentage rate disclosure. It also prescribes the method of calculating the pro rata part of the permitted minimum charge when the billing cycle is less than one month.

[§ 832] Advances to Perform Covenants of Buyer

Sec. 2.208. (1) If the agreement with respect to a consumer credit sale, refinancing, or consolidation contains covenants by the buyer to perform certain duties pertaining to insuring or preserving collateral and the seller pursuant to the agreement pays for performance of the duties on behalf of the buyer, he may add the amounts paid to the debt. Within a reasonable time after advancing any sums, he shall state to the buyer in writing the amount of the sums advanced, any charges with respect to this amount, and any revised payment schedule and, if the duties of the buyer performed by the seller pertain to insurance, a brief description of the insurance paid for by the seller including the type and amount of coverages. No further information need be given.

(2) A credit service charge may be made for sums advanced pursuant to subsection (1) at a rate not exceeding the rate stated to the buyer pursuant to the provisions on disclosure (Part 3) with respect to the sale, refinancing, or consolidation, except that with respect to a revolving charge account the amount of the advance may be added to the unpaid balance of the account and the seller may make a credit service charge not exceeding that permitted by the provisions on credit service charge for revolving charge accounts (Section 2.207).

[§ 833] Right to Prepay

Sec. 2.209. Subject to the provisions on rebate upon prepayment (Section 2.210), the buyer may prepay in full the unpaid balance of a consumer credit sale, refinancing, or consolidation at any time without penalty.

[§ 834] Rebate Upon Prepayment

Sec. 2.210. (1) Except as provided in subsection (2), upon prepayment in full of the unpaid balance of a precomputed consumer credit sale, refinancing, or consolidation, an amount not less than the unearned portion of the credit service charge calculated according to this section shall be rebated to the buyer. If the rebate otherwise required is less than \$1, no rebate need be made.

(2) Upon prepayment in full of a consumer credit sale, refinancing, or consolidation, other than one pursuant to a revolving charge account, if the credit service charge then earned is less than any permitted minimum credit service charge (subsection (6) of Section 2.201) contracted for, whether or not the sale, refinancing, or consolidation is precomputed, the seller may collect or retain the minimum charge, as if earned, not exceeding the credit service charge contracted for.

(3) Except as otherwise provided in this subsection with respect to a sale of an interest in land or a consumer credit sale secured by an interest in land, the unearned portion of the credit service charge is a fraction of the credit service charge of which the numerator is the sum of the periodic balances scheduled to follow the computational period in which prepayment occurs, and the denominator is the sum of all periodic balances under either the sale agreement or, if the balance owing resulted from a refinancing (Section 2.205) or a consolidation (Section 2.206), under the refinancing agreement or consolidation agreement. In the case of a sale of an interest in land or a consumer credit sale secured by an interest in land, reasonable sums actually paid or payable to persons not related to the seller for customary closing costs included in the credit service charge are deducted from the credit service charge before the calculation prescribed by this subsection is made.

COMMENT

Subsection (3), together with paragraph (a) of subsection (4), states the "Rule of 78" with respect to a sale, refinancing or consolidation payable in equal instalments at equal intervals from the date of the sale, refinancing or consolidation to the final scheduled payment date. In the case of such

a sale, refinancing or consolidation, "computational period" may read as "scheduled payment period", and the provisions relating to irregular payment schedules, viz., paragraphs (b), (c) and (d) of subsection (4) and subsection (5) in its entirety, may be disregarded.

(4) In this section

(a) "periodic balance" means the amount scheduled to be outstanding on the last day of a computational period before deducting the payment, if any, scheduled to be made on that day;

(b) "computational period" means one month if one-half or more of the intervals between scheduled payments under the agreement is one month or more, and otherwise means one week;

(c) the "interval" to the due date of the first scheduled instalment or the final scheduled payment date is measured from the date of a sale, refinancing, or consolidation, or any later date prescribed for calculating maximum credit service charges (subsection (4) of Section 2.201), and includes either the first or last day of the interval;

(d) if the interval to the due date of the first scheduled instalment does not exceed one month by more than 15 days when the computational period is one month, or 11 days when the computational period is one week, the interval shall be considered as one computational period.

(5) This subsection applies only if the schedule of payments is not regular (subsection (6) of Section 2.304).

(a) If the computational period is one month and

(i) if the number of days in the interval to the due date of the first scheduled instalment is less than one month by more than 5 days, or more than one month by more than 5 but not more than

15 days, the unearned credit service charge shall be increased by an adjustment for each day by which the interval is less than one month and, at the option of the seller, may be reduced by an adjustment for each day by which the interval is more than one month; the adjustment for each day shall be 1/30th of that part of the credit service charge earned in the computational period prior to the due date of the first scheduled instalment assuming that period to be one month; and

(ii) if the interval to the final scheduled payment date is a number of computational periods plus an additional number of days less than a full month, the additional number of days shall be considered a computational period only if 16 days or more. This subparagraph applies whether or not subparagraph (i) applies.

(b) Notwithstanding paragraph (a), if the computational period is one month, the number of days in the interval to the due date of the first instalment exceeds one month by not more than 15 days, and the schedule of payments is otherwise regular, the seller may, at his option, exclude the extra days and the charge for the extra days in computing the unearned credit service charge; but if he does so and a rebate is required before the due date of the first scheduled instalment, he shall compute the earned charge for each elapsed day as 1/30th of the amount the earned charge would have been if the first interval had been one month.

(c) If the computational period is one week and

(i) if the number of days in the interval to the due date of the first scheduled instalment is less than 5 days, or more than 9 days but not more than 11 days, the unearned credit service charge shall be increased by an adjustment for each day by which the interval is less than 7 days and, at the option of the seller, may be reduced by an adjustment for each day by which the interval is more than 7 days; the adjustment for each day shall be 1/7th of that part of the credit service charge earned in the computational period prior to the due date of the first scheduled instalment assuming that period to be one week; and

(ii) if the interval to the final scheduled payment date is a number of computational periods plus an additional number of days less than a full week, the additional number of days shall be considered a computational period only if 4 days or more. This subparagraph applies whether or not subparagraph (i) applies.

(6) If a deferral (Section 2.204) has been agreed to, the unearned portion of the credit service charge shall be computed without regard to the deferral. The amount of deferral charge earned at the date of prepayment shall also be calculated. If the deferral charge earned is less than the deferral charge paid, the difference shall be added to the unearned portion of the credit service charge. If any part of a deferral charge has been earned but has not been paid, that part shall be subtracted from the unearned portion of the credit service charge, or shall be added to the unpaid balance.

(7) This section does not preclude the collection or retention by the seller of delinquency charges (Section 2.203).

(8) If the maturity is accelerated for any reason and judgment is obtained, the buyer is entitled to the same rebate as if payment had been made on the date judgment is entered.

(9) Upon prepayment in full of a consumer credit sale by the proceeds of consumer credit insurance (Section 4.103), the buyer or his estate is entitled to the same rebate as though the buyer had prepaid the agreement on the date the proceeds of the insurance are paid to the seller, but no later than 10 business days after satisfactory proof of loss is furnished to the seller.

COMMENT

Subsection (9) applies only in the case of consumer credit insurance as defined in Section 4.103, i.e., insurance over which the creditor has partial control, and resolves a question under prior law. When a consumer credit sale is prepaid in full by proceeds of insurance other than consumer credit insurance, the prior provisions of Section 2.210 apply. Examples of the application of Section 2.210 follow:

Example 1:

Time sale contract executed July 1, 1968, and goods delivered the same day. Payable in 12 equal monthly payments beginning August 1, 1968.

1. Sale price is \$1,000.00, credit service charge is \$71.24, and the monthly payment is \$89.27. Debtor prepays in full on October 1, 1968.

a. The "computational period" is one month (subsection (4)(b)). The "interval to the due date of the first instalment" starts July 1 (subsection (4)(c) and subsection (4) of Section 2.201) and, being one month, constitutes one computational period. No part of subsection (5) is applicable.

The denominator of the fraction called for by subsection (3) is therefore the sum of the 12 scheduled unpaid balances as of the last days of the months of July, 1968, through June, 1969, before deducting the payments scheduled for those days (subsection (4)(a)).

Sum of 12 balances (1,071.24; 981.97; 892.70 . . . 89.27) = 6,963.06.

b. The computational periods in the numerator of the fraction called for by subsection (3) begin with the one starting on October 2, 1968, so the numerator is the sum of the nine scheduled unpaid balances as of the first days of the months of November, 1968, through July, 1969, before deducting the payments scheduled for those days (subsection (4)(a)).

Sum of nine balances (803.43; 714.16; 624.89 . . . 89.27) = 4,017.15.

$$c. \text{ Refund is } \frac{4,017.15}{6,963.06} \times 71.24 = \underline{\underline{\$41.10}}$$

Example 2:

Time sale contract executed July 1, 1968, and goods delivered same day. Payable in

26 equal weekly payments beginning July 8. Sale price is \$400.00, credit service charge is \$31.60, and the weekly payment is \$16.60. Debtor prepays in full on July 29, 1968.

a. The "computational period" is one week (subsection (4)(b)). The "interval to the due date of the first instalment" starts July 1 (subsection (4)(c) and subsection (4) of Section 2.201) and, being one week, constitutes one computational period. No part of subsection (5) is applicable.

The denominator of the fraction called for by subsection (3) therefor is the sum of the 26 scheduled unpaid balances as of July 8, 15, 22, 29 and so on, before deducting the payments scheduled for those days (subsection (4)(a)).

Sum of 26 balances (431.60, 415.00, 398.40, . . . , 16.60) = 5,826.60.

b. The computational periods in the numerator of the fraction called for by subsection (3) begin with the one starting on July 30, so the numerator is the sum of the 22 scheduled unpaid balances beginning August 5, 1968, before deducting the payments scheduled for those days (subsection (4)(a)).

Sum of 22 balances (365.20, 348.60 . . . 16.60) = 4,199.80.

$$c. \text{ Refund is } \frac{4,199.80}{5,826.60} \times 3.160 = \underline{\underline{\$22.78}}$$

Example 3:

Time sale executed June 26, 1968, and goods delivered July 9, 1968. Payable in 12 equal monthly payments beginning August 15. Sale price is \$1,000.00, credit service charge is \$71.24, and the monthly payment is \$89.27. Debtor prepays in full on November 10, 1968.

a. The "computational period" is one month (subsection (4)(b)). The "interval to the due date of the first instalment" starts July 9 (subsection (4)(c) and subsection (4) of Section 2.201) and constitutes one computational period (subsection (4)(d)). Since the interval is 37 days, the seller has the option of reducing the rebate by an adjustment for seven days (subsection (5)(a)(i)). Subsection (5)(a)(ii) does not apply.

The denominator of the fraction called for by subsection (3) therefore is the sum of the 12 scheduled unpaid balances as of the 15th days of the months of August through July *before* deducting the payment scheduled for those days (subsection (4)(a)).

Sum of 12 balances (1,071.24; 981.97; 892.70 . . . 89.27) = 6,963.06.

The adjustment is found by taking 7/30 of the credit service charge earned in the computational period to the first scheduled due date or:

$$\begin{array}{r} 7 \text{ Beginning balance} \\ \hline 30 \times \text{Denominator as determined above} \\ \times \text{Credit Service Charge.} \\ 7 \quad 1,071.24 \\ \hline 30 \times \frac{1,071.24}{6,963.06} \times 71.24 = \$2.56. \end{array}$$

b. The computational periods in the numerator of the fraction called for by subsection (3) begin with the one starting on November 16 (subsection (3)) so the numerator is the sum of the eight scheduled balances as of the 15th of the months of December, 1968, through July, 1969, *before* deducting the payment scheduled for that day.

Sum of eight balances (714.16; 624.89; 535.62 . . . 89.27) = 3,213.72.

$$\begin{array}{r} \text{c. Refund is } \frac{3,213.72}{6,963.06} \times 71.24 = \$32.88. \\ \$32.88 \text{ minus adjustment of } \$2.56 = \underline{\underline{\$30.32.}} \end{array}$$

Example 4:

Time sale executed June 28, 1968, and goods delivered July 3, 1968. Payable in 26 weekly payments beginning July 8. Sale price is \$400.00, credit service charge is \$31.60, and the weekly payment is \$16.60. Debtor prepays in full on July 23, 1968.

a. The "computational period" is one week (subsection (4)(b)). The "interval to the due date of the first instalment" starts June 28 (subsection (4)(c) and subsection (4) of Section 2.201) and constitutes one computational period (subsection (4)(d)). Since the interval is ten days, the seller has the option of reducing the rebate by an adjustment for three days (subsection (5)(b)(i)). Subsection (5)(b)(ii) does not apply.

The denominator of the fraction called for by subsection (3) therefore is the sum of the 26 scheduled unpaid balances as of July 8, 15, 22 and 29 and so on, *before* deducting the payments scheduled for those days (subsection (4)(a)).

Sum of 26 balances (431.60; 415.00; 398.40 . . . 16.60) = 5,826.60.

The adjustment is found by taking 3/7 of the credit service charge earned in the computational period to the first scheduled due date or:

$$\begin{array}{r} 3 \text{ Beginning balance} \\ \hline 7 \text{ Denominator as determined above} \\ \times \text{Credit service charge.} \\ 3 \quad 431.60 \\ \hline 7 \times \frac{431.60}{5,826.60} \times 31.60 = \$1.00. \end{array}$$

b. The computational periods in the numerator of the fraction called for by subsection (7) begin with the one starting July 30, so the numerator is the sum of the 22 scheduled unpaid balances beginning August 5, 1968, *before* deducting the payments scheduled for those days (subsection (1)(a)).

Sum of 22 balances (365.20; 348.60 . . . 16.60) = 4,199.80.

$$\begin{array}{r} \text{c. Refund is } \frac{4,199.80}{5,826.60} \times 31.60 = 22.78. \\ \$22.78 \text{ minus adjustment of } \$1.00 = \underline{\underline{\$21.78.}} \end{array}$$

Example 5:

Time sale executed July 9, 1968, and the goods delivered July 12, 1968. Payments scheduled on November 15, 1968 and November 15, 1969. Sale price is \$1,000.00, credit service charge is \$104.36, and each of the two payments is \$552.18. Debtor prepays on January 10, 1969.

a. The "computational period" is one month (subsection (4)(b)). The "interval to the due date of the first instalment" starts on July 9, 1968 (subsection (4) of Section 2.201) and is more than 45 days, so the special rule of subsection (4)(d) and the adjustment of subsection (5)(a)(i) do not apply. The interval to the final scheduled payment date is 16 months and six days. The additional days, being less than 16, are disregarded (subsection (5)(a)(ii)).

The denominator of the fraction called for by subsection (3) therefore is the sum of the 16 scheduled unpaid balances as of the 8th days of the months of August, 1968, through November, 1969 (subsection (4)(a)).

$$\begin{array}{r} \text{Balance of } \$1,104.36 \text{ for four} \\ \text{computational periods} \quad \quad \quad = \$ 4,417.44 \\ \text{Balance of } \$552.18 \text{ for 12 com-} \\ \text{putational periods} \quad \quad \quad = \quad 6,626.16 \\ \hline \text{Total denominator} \quad \quad \quad \underline{\underline{\$11,043.60}} \end{array}$$

b. The computational periods in the numerator of the fraction called for by subsection (3) begin with the one starting on February 9, 1969, so the numerator is the sum of the nine scheduled unpaid balances as of the 8th days of the months of March through November, 1969.

Balance of \$552.18 for nine computational periods \$4,969.62.

$$\begin{array}{r} \text{c. Refund is } \$ 4,969.62 \\ \hline \phantom{\text{c. Refund is }} \times 104.36 = \$46.96 \\ \hline \phantom{\text{c. Refund is }} = \$11,043.60 \end{array}$$

Example 6:

Same facts as in Example 5, except the debtor did not pay the installment due 11/15/68 in full, but paid \$184.18 (approximately 1/3 of the installment) and was permitted to defer the rest (\$368.00) until March 15 (four months). A deferral charge

of \$17.00 was assessed, so the amount coming due March 15 is \$385.00. Debtor pre-pays in full on 10 January 1969.

a. Compute the rebate of credit service charge as though the extension had not occurred (subsection (6)) and as though the balances had been reduced as *scheduled* (subsection (4)(a)). The computations are the same as in Example 5 and the rebate of credit service charge is \$46.96 as in Example 5.

b. Compute also the rebate of unearned deferral charge. Of the 120 days of the extension period 64 remained at the time of the prepayment so the rebate of deferral charge is:

$$\begin{array}{r} 64 \\ \hline 120 \end{array} \times 17 = \$9.07$$

PART 3—DISCLOSURE AND ADVERTISING

[§ 835] Applicability; Information Required

Sec. 2.301. (1) For purposes of this Part, consumer credit sale includes the sale of an interest in land without regard to the rate of the credit service charge if the sale is otherwise a consumer credit sale (Section 2.104).

(2) The seller shall disclose to the buyer to whom credit is extended with respect to a consumer credit sale the information required by either

(a) this Part, or

(b) except with respect to a consumer credit sale of an interest in land or secured by an interest in land, the Federal Consumer Credit Protection Act.

(3) For the purposes of paragraph (b) of subsection (2), information which would otherwise be required pursuant to the Federal Consumer Credit Protection Act is sufficient even though the transaction is one of a class of credit transactions exempted from that Act pursuant to a determination by the Board of Governors of the Federal Reserve System that the class of transactions is subject under the law of this State to requirements substantially similar to those imposed under that Act.

(4) The lessor shall disclose to the lessee to whom credit is extended with respect to a consumer lease the information required by this Part.

[§ 836] General Disclosure Requirements and Provisions

Sec. 2.302. (1) The disclosure by this Part

(a) shall be made clearly and conspicuously;

(b) shall be in writing, a copy of which shall be delivered to the buyer or lessee, but need not be contained in a single writing nor made in the order set forth in this Part;

(c) may use terminology different from that employed in this Part if it conveys substantially the same meaning;

(d) may be supplemented by additional information or explanations supplied by the seller or lessor;

(e) need be made only to the extent applicable and only as to those items for which the seller or lessor makes a separate charge to the buyer or lessee;

(f) shall be made on the assumption that all scheduled instalments are paid when due; and

(g) comply with this Part although rendered inaccurate by any act, occurrence, or agreement subsequent to the required disclosure.

(2) Except with respect to sales made by telephone or mail (Section 2.305) and consolidations (Section 2.308),

(a) the disclosures required by this Part shall be made before credit is extended, but may be made in the sale, refinancing, or consolidation agreement, lease, or other evidence of indebtedness to be signed by the buyer or lessee if set forth conspicuously therein, and need be made only to one buyer or lessee if there are more than one, and

(b) if an evidence of indebtedness is signed by the buyer or lessee, the seller or lessor shall give him a copy when the writing is signed.

(3) Except as provided with respect to rescission by a buyer (Section 5.204) and civil liability for violations of disclosure provisions (subsection (4) of Section 5.203), written acknowledgment of receipt by a buyer or lessee to whom a statement is required to be given pursuant to this Part

(a) in an action or proceeding by or against the original seller or lessor, creates a presumption that the statement was given, and

(b) in an action or proceeding by or against an assignee without knowledge to the contrary when he acquires the obligation, is conclusive proof of the delivery of the statement and, unless the violation is apparent on the face of the statement, of compliance with this Part.

[§ 837]

Overstatement

Sec. 2.303. The disclosure of an amount or percentage which is greater than the amount or percentage required to be disclosed under this Part does not in itself constitute a violation of this Part if the overstatement is not materially misleading and is not used to avoid meaningful disclosure.

COMMENT

This section is derived from CCPA Sections 103(1) and 107(b).

[§ 838]

Calculation of Rate to Be Disclosed

Sec. 2.304. (1) Except as otherwise specifically provided, if a seller is required to give to a buyer a statement of the rate of the credit service charge he shall state the rate in terms of an annual percentage rate as defined in subsection (2) or in terms of a corresponding nominal annual percentage rate as defined in subsection (3), whichever is appropriate.

(2) "Annual percentage rate"

(a) with respect to a consumer credit sale other than one made pursuant to a revolving charge account, is either

(i) that nominal annual percentage rate which, when applied to the unpaid balances of the amount financed calculated according to the United States rule, will yield a sum equal to the amount of the credit service charge, or

(ii) that rate determined by any method prescribed by the Administrator as a method which materially simplifies computation while retaining reasonable accuracy as compared with the rate determined pursuant to subparagraph (i);

(b) with respect to a consumer credit sale made pursuant to a revolving charge account, is the quotient expressed as a percentage of the total credit service charge for the period to which it relates divided by the amount upon which the credit service charge for that period is based, multiplied by the number of these periods in a year; if the period is one day, the number of periods in a year is deemed to be 360.

(3) "Corresponding nominal annual percentage rate" is the percentage or percentages used to calculate the credit service charge for one billing cycle or other period pursuant to a revolving charge account multiplied by the number of billing cycles or periods in a year; if the period is one day, the number of periods in a year is deemed to be 360.

(4) If a seller is permitted to make the same credit service charge for all amounts financed within a specified range (subsection (5) of Section 2.201) or for all balances within a specified range (subsection (2) of Section 2.207), he shall state the annual percentage rate or corresponding nominal annual percentage rate, whichever is appropriate, as applied to the median amount of the range within which the actual amount financed or balance is included.

(5) If a debt is payable on a schedule of instalment payments which is regular except for one or more of the following irregularities:

(a) the amount of one instalment payment is not substantially equal to the amount of each of the other instalment payments;

(b) the interval between the date the credit is granted and the first instalment payment is not equal to the interval between instalment payments; or

(c) in one or more payment periods no instalment payment is due, not exceeding one-fourth of the payment periods in any year if the length of the term of the agreement is a year or more, or one-fourth of the payment periods if the length of the term of the agreement is less than a year, the seller may, at his option, calculate the rate to be disclosed as if the debt were payable under an agreement having the same amount financed, the same length of term to the nearest full scheduled payment period, and a regular schedule of payments having the same interval between payments as the interval between the majority of instalments as scheduled in the sale agreement.

(6) A schedule of payments is regular if (a) the instalment payments other than the down payment are substantially equal in amount, (b) the interval between instalment payments is one month, or the intervals between instalment payments are equal and less than one month, and (c) the interval between the date the credit is granted and the first instalment payment is equal to the interval between instalment payments.

(7) If the credit service charge does not begin to accrue until after the date the credit is granted, the seller may, at his option, calculate the rate to be disclosed on the basis of the period between the date when the credit service

charge begins to accrue and the date of the final payment under the agreement, and, if he does so, he shall inform the buyer of the date when the credit service charge begins to accrue.

(8) A statement of rate complies with this Part if it does not vary from the accurately computed rate by more than the following tolerances:

(a) the annual percentage rate may be rounded to the nearest quarter of 1 per cent for consumer credit sales payable in substantially equal instalments when a seller determines the total credit service charge on the basis of a single add-on, discount, periodic, or other rate, and the rate is converted into an annual percentage rate under procedures prescribed by the Administrator;

(b) the Administrator may authorize the use of rate tables or charts which may provide for the disclosure of annual percentage rates which vary from the rate determined in accordance with paragraph (a) by not more than the tolerances the Administrator may allow; the Administrator may not allow a tolerance greater than 8 per cent of that rate except to simplify compliance where irregular payments are involved; and

(c) in case a seller determines the annual percentage rate in a manner other than as described in paragraph (a) or (b), the Administrator may authorize other reasonable tolerances.

COMMENT

1. Definition of "annual percentage rate" is derived from CCPA Section 107(a). The definition "corresponding nominal annual percentage rate" is derived from CCPA Section 127(a)(4) and (b)(5). Subsections (5) - (7) are intended to deal with irregular contracts and are subject to approval by the Board. Subsection (8) is derived from CCPA Section 107(c) - (e).

2. The assumption underlying the United States rule is that a periodic payment is applied first to the unpaid credit service charge. If the payment exceeds the unpaid credit service charge, the remainder of the payment is applied to reduce the unpaid

balance of the amount financed. This procedure is based upon *Story v. Livingston*, 38 U. S. 359 (1839).

To illustrate the application of this rule assume that the amount financed on a four-month contract is \$500, and that the credit service charge is \$12.56. Four monthly payments of \$128.14 are contemplated. Thus the amount financed (\$500) plus the credit service charge (\$12.56) equals the original unpaid balance (\$512.56), which is divided into four equal monthly payments, the first payment being one month from date of contract. The application of the United States rule is demonstrated below:

(A)	(B)	(C)	(D)	(E)
Unpaid balance of amount financed	Monthly rate	Application of payment		Total monthly payment (C) + (D)
		Credit service charge	Amount financed	
500.00	x 1%	= 5.00	123.14	128.14
376.86	x 1%	= 3.77	124.37	128.14
252.49	x 1%	= 2.52	125.62	128.14
126.87	x 1%	= 1.27	126.87	128.14
		12.56	+ 500.00	= 512.56

Rate disclosure involves finding that rate which will generate the stated credit service charge when applied to the unpaid balances of the amount financed according to the United States rule. A monthly rate of 1% produces a credit service charge of \$12.56,

the difference between the sum of the monthly payments and the amount financed. The annual percentage rate would be twelve times the monthly rate, or 12%. In mathematical literature this is generally referred to as the nominal annual rate.

Note the application of the U. S. rule. In the first month the first \$5 (1% × \$500) of the monthly payment of \$128.14 is applied to the credit service charge, leaving a balance of \$123.14. This remainder is then

applied to reduce the unpaid balance of the amount financed from \$500 to \$376.86. The same process is repeated in subsequent months.

[§ 839] Sales Made by Telephone or Mail

Sec. 2.305. (1) With respect to a consumer credit sale, other than a sale made pursuant to a revolving charge account, if the seller receives a purchase order or offer by mail or telephone without personal solicitation, the seller complies with this Part if (a) he makes the disclosures at the time and in the manner provided in the general disclosure requirements and provisions (subsection (2) of Section 2.302), or (b) the seller's catalog or other printed material distributed to the public sets forth the cash price, the method of determining the deferred payment price, and the terms of financing, including the annual percentage rate, and before the first payment is due on the sale, he gives the information required by this Part including the notice prescribed in subsection (2).

(2) The notice shall be in writing and conspicuous and shall provide that if the buyer does not wish to make the purchase on credit, he may, within 15 days of receipt of the notice, prepay the obligation as to that purchase for an amount stated or identified in the notice and avoid the payment of any credit service charge as to that purchase. A prepayment under this Section is subject to the provisions of this Act on prepayment, except that no credit service charge shall be made if prepayment in full is made within the period specified in the notice. Payment by mail is effective when posted.

COMMENT

This section is derived in part from CCPA Section 128(c).

[§ 840] Consumer Credit Sales Not Pursuant to Revolving Charge Account

Sec. 2.306. (1) This section applies to a consumer credit sale not made pursuant to a revolving charge account (Section 2.310).

(2) The seller shall give to the buyer the following information:

(a) brief description or identification of the goods, services, or interest in land;

(b) cash price of the goods, services, or interest in land, and any applicable sales, use, excise, transfer, or documentary stamp taxes not included in the cash price; if property and related services are sold as part of one transaction, the price of the property and services may be separately stated or combined;

(c) amount of the down payment and a statement of the portion paid in money and the portion paid by an allowance for property traded in; if there is a security interest in the property traded in which the seller agrees to discharge, the seller shall also state the amount which the seller agrees to pay to discharge the security interest and this amount may be deducted from the allowance for property traded in;

(d) difference between the amount of cash price (paragraph (b)) and the amount of down payment (paragraph (c));

(e) amount paid or payable for registration, certificate of title or license fees, if not included in the cash price, and a description or identification of the fees;

(f) amount of official fees and taxes if not included in the cash price and a description or identification of them;

(g) brief description of insurance to be provided or paid for by the seller including the type and amount of the coverages, and if a separate charge is made, the amount of the charge;

(h) amount of other additional charges (Section 2.202), and a brief description or identification of them;

(i) amount financed (sum of amounts stated in paragraphs (d), (e), (f), (g), and (h));

(j) except in the case of a sale of a dwelling when the credit service charge does not exceed 10 per cent per year (Section 2.104), the amount of the credit service charge and the amount of the unpaid balance (amount financed plus credit service charge);

(k) rate of the credit service charge as applied to the amount financed in accordance with the provisions on calculation of rate (Section 2.304), except in the case of a credit service charge which does not exceed \$5 when the amount financed does not exceed \$75 or \$7.50 when the amount financed exceeds \$75;

(l) number of payments, amount of each payment, due date of first payment, and the due date of subsequent payments or interval between payments;

(m) default, delinquency, or similar charges payable in the event of late payments; and

(n) description of any security interest held or to be retained or acquired by the seller in connection with the extension of credit, and a clear identification of the property to which the security interest relates.

COMMENT

This section is derived in part from CCPA Section 128.

[§ 841]

Refinancing

Sec. 2.307. If the seller refinances the balance owing with respect to a consumer credit sale, refinancing, or consolidation pursuant to the provisions on refinancing (Section 2.205), he shall state to the buyer the following:

(1) unpaid balance before refinancing;

(2) amount and brief itemization of rebates to which buyer would have been entitled if the debt had been prepaid pursuant to the provisions on rebate upon prepayment (Section 2.210) on the date of refinancing, except that for the purpose of computing this amount no minimum credit service charge (subsection (6) of Section 2.201) shall be allowed;

(3) amount and brief itemization of additional charges in connection with the refinancing and a brief indication of any change in the type or terms of insurance;

(4) amount financed resulting from the refinancing;

- (5) amount of credit service charge;
- (6) amount of unpaid balance;
- (7) number of payments, amount of each payment, due date of first payment, and the due date of subsequent payments or interval between payments; and
- (8) rate of the credit service charge as applied to the amount financed in accordance with the provisions on calculation of rate (Section 2.304), except in the case of a credit service charge which does not exceed \$5 when the amount financed does not exceed \$75 or \$7.50 when the amount financed exceeds \$75.

[§ 842]

Consolidation

Sec. 2.308. (1) Except as provided in subsection (2), if the parties agree to consolidate an existing unpaid balance from a previous consumer credit sale, refinancing, or consolidation, with the amount financed from a subsequent consumer credit sale, refinancing, or consolidation, the seller shall state:

(a) with respect to the refinanced unpaid balance, the information required by the provisions on refinancing (subsections (1) through (4) of Section 2.307);

(b) with respect to the subsequent sale, the information required by the provisions on consumer credit sales other than revolving charge accounts (paragraphs (a) through (j) of subsection (2) of Section 2.306);

(c) the aggregate amount financed, the amount of the credit service charge, the amount of the unpaid balance, the number of payments, the amount of each payment, the due date of the first payment, and the due dates of subsequent payments or the interval between payments; and

(d) the rate of the credit service charge as applied to the aggregate amount financed in accordance with the provisions on calculation of rate (Section 2.304), except in the case of a credit service charge which does not exceed \$5 when the aggregate amount financed does not exceed \$75 or \$7.50 when the amount financed exceeds \$75.

(2) If a consumer credit sale is made pursuant to an agreement providing for the addition of the unpaid balance resulting from a subsequent sale to an existing unpaid balance resulting from a previous sale, and the buyer has approved in writing both the annual percentage rate or rates and the method of computing the credit service charge or charges,

(a) the information required to be given with respect to the subsequent sale (Section 2.306) may be given on or before the due date of the first instalment under the consolidated schedule of payments; and

(b) with respect to the consolidation, the seller, on or before the due date of the first instalment under the consolidated schedule of payments, shall state to the buyer the amount of the consolidated unpaid balance, the number of payments, amount of each payment, the due date of the first payment, and the due dates of subsequent payments or the interval between payments.

COMMENT

Subsection (2) is derived from CCPA in that section of the CCPA is covered in Section 128(d) The security problem raised Section 2.409.

[§ 843]

Deferral

Sec. 2.309. If the seller makes a deferral pursuant to the provisions on deferral charges (Section 2.204), he shall state to the buyer, at the time of or promptly after the deferral:

- (1) amount deferred;
- (2) any appropriate additional charges (Section 2.202);
- (3) aggregate amount deferred, which is the sum of the amount in (1) and any unpaid amount included in (2);
- (4) time to which payment is deferred; and
- (5) amount and annual percentage rate of the deferral charge and when it is payable.

[§ 844]

Revolving Charge Accounts

Sec. 2.310. (1) Before making a consumer credit sale pursuant to a revolving charge account, the seller shall give to the buyer the following information:

(a) conditions under which a credit service charge may be made, including the time period, if any, within which any credit extended may be repaid without incurring a credit service charge;

(b) method of determining the balance upon which a credit service charge will be computed;

(c) method of determining the amount of the credit service charge, including the periodic percentage or percentages used to calculate the credit service charge and the amount of any minimum credit service charge;

(d) corresponding nominal annual percentage rate (subsection (3) of Section 2.304); if more than one corresponding nominal annual percentage rate may be used, the amount of a balance to which each corresponding nominal annual percentage rate applies shall also be stated;

(e) if the seller elects he may also state either

(i) the average effective annual percentage rate of return received from revolving charge accounts for a representative period of time; or

(ii) if circumstances are such that the computation of a rate under subparagraph (i) would not be feasible or practical, or would be misleading or meaningless, a projected rate of return to be received from revolving charge accounts; the Administrator shall prescribe rules, consistent with commonly accepted standards for accounting or statistical procedures, to carry out the purposes of this paragraph (e);

(f) conditions under which additional charges may be made and the method by which they will be determined; and

(g) conditions under which the seller may retain or acquire a security interest in property to secure the balances resulting from sales made pursuant to the revolving charge account, and a description of the interest or interests which may be retained or acquired.

(2) If there is an outstanding balance owing at the end of the billing cycle or if a credit service charge is made with respect to the billing cycle, the seller shall give to the buyer the following information within a reasonable time after the end of the billing cycle:

(a) outstanding balance at the beginning of the billing cycle;

(b) cash price and date of each sale during the billing cycle and, unless previously furnished, a brief description or identification of the goods or services sold;

(c) amount credited to the account during the billing cycle;

(d) amount of credit service charge and additional charges debited during the billing cycle, with an itemization or explanation to show the total amount of credit service charge, if any, due to the application of one or more periodic percentages and the amount, if any, imposed as a minimum charge;

(e) the periodic percentage used to calculate the credit service charge; if more than one periodic percentage is used, each percentage and the amount of the balance to which each applies;

(f) the balance on which the credit service charge is computed and a statement of how the balance is determined; if the balance is determined without first deducting all amounts credited during the period, that fact and the amounts credited shall also be stated;

(g) if the credit service charge for the billing cycle exceeds 50¢ for a monthly or longer billing cycle, or the pro rata part of 50¢ for a billing cycle shorter than monthly, the credit service charge expressed as an annual percentage rate (paragraph (b) of subsection (2) of Section 2.304); if more than one periodic percentage is used to calculate the credit service charge, the seller may, in lieu of stating a single annual percentage rate, state more than one annual percentage rate and the amount of the balance to which each annual percentage rate applies;

(h) if the credit service charge for the billing cycle does not exceed 50¢ for a monthly or longer billing cycle, or the pro rata part of 50¢ for a billing cycle shorter than monthly, the corresponding nominal annual percentage rate (subsection (3) of Section 2.304);

(i) if the seller elects, the average effective annual percentage rate of return or the projected rate as prescribed in paragraph (e) of subsection (1);

(j) outstanding balance at the end of the billing cycle; and

(k) date by which or period within which payment must be made to avoid additional credit service charges.

COMMENT

1. This section is derived in part from CCPA Section 127.

2. If the balance on which the charge is calculated is \$750 and the creditor's monthly percentages are 1½% on the first \$500 and

1% on the remainder, he would state the corresponding nominal annual percentage rates as 18% on the first \$500 and 12% on the remaining \$250.

[§ 845]

Consumer Leases

Sec. 2.311. With respect to a consumer lease the lessor shall give to the lessee the following information:

(1) brief description or identification of the goods;

(2) amount of any payment required at the inception of the lease;

(3) amount paid or payable for official fees, registration, certificate of title, or license fees or taxes;

§ 845

- (4) amount of other charges not included in the periodic payments and a brief description of the charges;
- (5) brief description of insurance to be provided or paid for by the lessor, including the types and amounts of the coverages;
- (6) number of periodic payments, the amount of each payment, the due date of the first payment, the due dates of subsequent payments or interval between payments, and the total amount payable by the lessee;
- (7) statement of the conditions under which the lessee may terminate the lease prior to the end of the term; and
- (8) statement of the liabilities the lease imposes upon the lessee at the end of the term.

[§ 846] Content of Periodic Statements

Sec. 2.312. The Administrator may by rule require a creditor who transmits periodic statements in connection with any consumer credit sale, not made pursuant to a revolving charge account, to set forth in each statement each of the following items:

- (1) the annual percentage rate of the credit service charge with respect to each consumer credit sale to which the statement relates;
- (2) the date by which or the period, if any, within which payment must be made in order to avoid further credit service charges or other charges; and
- (3) the other items set forth in the provisions on disclosure with respect to revolving charge accounts (subsection (2) of Section 2.310) appropriate to the terms and conditions under which the consumer credit sale is made.

COMMENT

Since this section, derived from CCPA of consumers, it becomes operative only Section 126, may not be in the best interests upon a ruling by the Administrator.

[§ 847] Advertising

Sec. 2.313. (1) No seller or lessor shall engage in this State in false or misleading advertising concerning the terms or conditions of credit with respect to a consumer credit sale or consumer lease.

(2) Without limiting the generality of subsection (1) and without requiring a statement of rate of credit service charge if the credit service charge is not more than \$5 when the amount financed does not exceed \$75 or more than \$7.50 when the amount financed exceeds \$75, an advertisement with respect to a consumer credit sale made by the posting of a public sign, or by catalog, magazine, newspaper, radio, television, or similar mass media, is misleading if

(a) it states the rate of credit service charge and the rate is not stated in the form required by the provisions on calculation of rate to be disclosed (Section 2.304), or

(b) it states the dollar amounts of the credit service charge or instalment payments, and does not also state the rate of any credit service charge and the number and amount of the instalment payments.

(3) In this section a catalog or other multiple-page advertisement is considered a single advertisement if it clearly and conspicuously displays a credit terms table setting forth the information required by this section.

(4) This section imposes no liability on the owner or personnel, as such, of any medium in which an advertisement appears or through which it is disseminated.

(5) Advertising which complies with the Federal Consumer Credit Protection Act does not violate subsection (2).

PART 4.—LIMITATIONS ON AGREEMENTS AND PRACTICES

[§ 848]

Scope

Sec. 2.401. This Part applies to consumer credit sales and consumer leases.

[§ 849]

Use of Multiple Agreements

Sec. 2.402. A seller may not use multiple agreements with intent to obtain a higher credit service charge than would otherwise be permitted by this Article or to avoid disclosure of an annual percentage rate pursuant to the provisions on disclosure and advertising (Part 3). The excess amount of credit service charge provided for in agreements in violation of this section is an excess charge for the purposes of the provisions on the effect of violations on rights of parties (Section 5.202) and the provisions on civil actions by Administrator (Section 6.113).

[§ 850]

Certain Negotiable Instruments Prohibited

Sec. 2.403. In a consumer credit sale or consumer lease, other than a sale or lease primarily for an agricultural purpose, the seller or lessor may not take a negotiable instrument other than a check as evidence of the obligation of the buyer or lessee. A holder is not in good faith if he takes a negotiable instrument with notice that it is issued in violation of this section. A holder in due course is not subject to the liabilities set forth in the provisions on the effect of violations on rights of parties (Section 5.202) and the provisions on civil actions by Administrator (Section 6.113).

COMMENT

Since the prohibition against negotiable notes in consumer financing will be well known in the financial community after enactment of this Act, professional financiers buying consumer paper will normally not qualify as holders in due course with respect to notes taken by dealers in violation of this section and negotiated to them. However, it

is possible that in rare cases second or third takers may not know of an instrument's consumer origin; in this unusual situation the policy favoring negotiability is upheld in order not to cast a cloud over negotiable instruments generally. A person who takes a negotiable note in violation of this section is subject to Sections 5.202 and 6.113.

[§ 851]

Assignee Subject to Defenses

Sec. 2.404. *Alternative A:* With respect to a consumer credit sale or consumer lease, other than a sale or lease primarily for an agricultural purpose, an assignee of the rights of the seller or lessor is subject to all claims and defenses of the buyer or lessee against the seller or lessor arising out of the sale or lease notwithstanding an agreement to the contrary, but the assignee's liability under this section may not exceed the amount owing to the assignee at the time the claim or defense is asserted against the assignee. Rights of the buyer or lessee under this section can only be asserted as a matter of defense to or set-off against a claim by the assignee.

[§ 852] When Assignee Not Subject to Defenses

Sec. 2.404. *Alternative B:* (1) With respect to a consumer credit sale or consumer lease, other than a sale or lease primarily for an agricultural purpose, an agreement by the buyer or lessee not to assert against an assignee a claim or defense arising out of the sale or lease is enforceable only by an assignee not related to the seller or lessor who acquires the buyer's or lessee's contract in good faith and for value, who gives the buyer or lessee notice of the assignment as provided in this section and who, within 3 months after the mailing of the notice of assignment, receives no written notice of the facts giving rise to the buyer's or lessee's claim or defense. This agreement is enforceable only with respect to claims or defenses which have arisen before the end of the 3-month period after notice was mailed. The notice of assignment shall be in writing and addressed to the buyer or lessee at his address as stated in the contract, identify the contract, describe the goods or services, state the names of the seller or lessor and buyer or lessee, the name and address of the assignee, the amount payable by the buyer or lessee and the number, amounts and due dates of the instalments, and contain a conspicuous notice to the buyer or lessee that he has 3 months within which to notify the assignee in writing of any complaints, claims or defenses he may have against the seller or lessor and that if written notification of the complaints, claims or defenses is not received by the assignee within the 3-month period, the assignee will have the right to enforce the contract free of any claims or defenses the buyer or lessee may have against the seller or lessor which have arisen before the end of the 3-month period after notice was mailed.

(2) An assignee does not acquire a buyer's or lessee's contract in good faith within the meaning of subsection (1) if the assignee has knowledge or, from his course of dealing with the seller or lessor or his records, notice of substantial complaints by other buyers or lessees of the seller's or lessor's failure or refusal to perform his contracts with them and of the seller's or lessor's failure to remedy his defaults within a reasonable time after the assignee notifies him of the complaints.

(3) To the extent that under this section an assignee is subject to claims or defenses of the buyer or lessee against the seller or lessor, the assignee's liability under this section may not exceed the amount owing to the assignee at the time the claim or defense is asserted against the assignee and rights of the buyer or lessee under this section can only be asserted as a matter of defense to or set-off against a claim by the assignee.

[§ 853] Balloon Payments

Sec. 2.405. With respect to a consumer credit sale, other than one primarily for an agricultural purpose or one pursuant to a revolving charge account, if any scheduled payment is more than twice as large as the average of earlier scheduled payments, the buyer has the right to refinance the amount of that payment at the time it is due without penalty. The terms of the refinancing shall be no less favorable to the buyer than the terms of the original sale. These provisions do not apply to the extent that the payment schedule is adjusted to the seasonal or irregular income of the buyer.

[§ 854] Restriction on Liability in Consumer Lease

Sec. 2.406. The obligation of a lessee upon expiration of a consumer lease, other than one primarily for an agricultural purpose, may not exceed twice the average payment allocable to a monthly period under the lease. This

limitation does not apply to charges for damages to the leased property or for other default.

[§ 855]**Security in Sales or Leases**

Sec. 2.407. (1) With respect to a consumer credit sale, a seller may take a security interest in the property sold. In addition, a seller may take a security interest in goods upon which services are performed or in which goods sold are installed or to which they are annexed, or in land to which the goods are affixed or which is maintained, repaired or improved as a result of the sale of the goods or services, if in the case of a security interest in land the debt secured is \$1,000 or more, or, in the case of a security interest in goods the debt secured is \$300 or more. The seller may also take a security interest in any property of the buyer to secure the debt arising from a consumer credit sale primarily for an agricultural purpose. Except as provided with respect to cross-collateral (Section 2.408), a seller may not otherwise take a security interest in property of the buyer to secure the debt arising from a consumer credit sale.

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

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

(4) The amounts of \$1,000 and \$300 in subsection (1) are subject to change pursuant to the provisions on adjustment of dollar amounts (Section 1.106).

[§ 856]**Cross-Collateral**

Sec. 2.408. (1) In addition to contracting for a security interest pursuant to the provisions on security in sales or leases (Section 2.407), a seller in a consumer credit sale may secure the debt arising from the sale by contracting for a security interest in other property if as a result of a prior sale the seller has an existing security interest in the other property. The seller may also contract for a security interest in the property sold in the subsequent sale as security for the previous debt.

(2) If the seller contracts for a security interest in other property pursuant to this section, the rate of credit service charge thereafter on the aggregate unpaid balances so secured may not exceed that permitted if the balances so secured were consolidated pursuant to the provisions on consolidation involving a refinancing (subsection (1) of Section 2.206). The seller has a reasonable time after so contracting to make any adjustments required by this section. "Seller" in this section does not include an assignee not related to the original seller.

[§ 857]**Debt Secured by Cross-Collateral**

Sec. 2.409. (1) If debts arising from two or more consumer credit sales, other than sales primarily for an agricultural purpose or pursuant to a revolving charge account, are secured by cross-collateral (Section 2.408) or consolidated into one debt payable on a single schedule of payments, and the debt is secured by security interests taken with respect to one or more of the sales, payments received by the seller after the taking of the cross-collateral or the consolidation are deemed, for the purpose of determining the amount of the debt secured by the various security interests, to have been first applied to the

payment of the debts arising from the sales first made. To the extent debts are paid according to this section, security interests in items of property terminate as the debts originally incurred with respect to each item is paid.

(2) Payments received by the seller upon a revolving charge account are deemed, for the purpose of determining the amount of the debt secured by the various security interests, to have been applied first to the payment of credit service charges in the order of their entry to the account and then to the payment of debts in the order in which the entries to the account showing the debts were made.

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

COMMENT

Subsection (1) states the first-in-first-out rule for consolidations and subsection (2) applies the same principle to revolving charge accounts. Subsection (3) covers the case in which the buyer purchases a \$750 TV in one department at 9:30 a. m. and a \$150

typewriter in another department at 10:00 a. m. Subsequently the debts are consolidated. This subsection relieves the seller of having to keep records of the exact hour a sale is made. It is derived from Consumer Credit Protection Act Section 128(d).

[§ 858]

No Assignment of Earnings

Sec. 2.410. A seller or lessor may not take an assignment of earnings of the buyer or lessee for payment or as security for payment of a debt arising out of a consumer credit sale or a consumer lease. An assignment of earnings in violation of this section is unenforceable by the assignee of the earnings and revocable by the buyer or lessee. This section does not prohibit an employee from authorizing deductions from his earnings if the authorization is revocable.

[§ 859]

Referral Sales

Sec. 2.411. With respect to a consumer credit sale or consumer lease the seller or lessor may not give or offer to give a rebate or discount or otherwise pay or offer to pay value to the buyer or lessee as an inducement for a sale or lease in consideration of his giving to the seller or lessor the names of prospective purchasers or lessees, or otherwise aiding the seller or lessor in making a sale or lease to another person, if the earning of the rebate, discount or other value is contingent upon the occurrence of an event subsequent to the time the buyer or lessee agrees to buy or lease. If a buyer or lessee is induced by a violation of this section to enter into a consumer credit sale or consumer lease, the agreement is unenforceable by the seller or lessor and the buyer or lessee, at his option, may rescind the agreement or retain the goods delivered and the benefit of any services performed, without any obligation to pay for them.

[§ 860]

Notice of Assignment

Sec. 2.412. The buyer or lessee is authorized to pay the original seller or lessor until the buyer or lessee receives notification of assignment of the rights to payment pursuant to a consumer credit sale or consumer lease and that payment is to be made to the assignee. A notification which does not reasonably identify the rights assigned is ineffective. If requested by the buyer or

lessee, the assignee must seasonably furnish reasonable proof that the assignment has been made and unless he does so the buyer or lessee may pay the seller or lessor.

COMMENT

This section is derived from UCC Section 9-318(3).

§ 861 Attorney's Fees

Alternative A:

Sec. 2.413. With respect to a consumer sale or consumer lease the agreement may not provide for the payment by the buyer or lessee of attorney's fees. A provision in violation of this section is unenforceable.

§ 862 Attorney's Fees

Alternative B:

Sec. 2.413. With respect to a consumer credit sale or consumer lease the agreement may provide for the payment by the buyer or lessee of reasonable attorney's fees not in excess of 15 per cent of the unpaid debt after default and referral to an attorney not a salaried employee of the seller, or of the lessor or his assignee. A provision in violation of this section is unenforceable.

§ 863 Limitation on Default Charges

Sec. 2.414. Except for reasonable expenses incurred in realizing on a security interest, the agreement with respect to a consumer credit sale may not provide for any charges as a result of default by the buyer other than those authorized by this Act. A provision in violation of this section is unenforceable.

§ 864 Authorization to Confess Judgment Prohibited

Sec. 2.415. A buyer or lessee may not authorize any person to confess judgment on a claim arising out of a consumer credit sale or consumer lease. An authorization in violation of this section is void.

§ 865 Change in Terms of Revolving Charge Accounts

Sec. 2.416. (1) If a seller makes a change in the terms of a revolving charge account without complying with this section any additional cost or charge to the buyer resulting from the change is an excess charge and subject to the remedies available to debtors (Section 5.202) and to the Administrator (Section 6.113).

(2) A seller may change the terms of a revolving charge account whether or not the change is authorized by prior agreement. Except as provided in subsection (3), the seller shall give to the buyer written notice of any change at least three times, with the first notice at least six months before the effective date of the change.

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

(a) the buyer after receiving notice of the change agrees in writing to the change;

(b) the buyer elects to pay an amount designated on a billing statement (subsection (2) of Section 2.310) as including a new charge for a

benefit offered to the buyer when the benefit and charge constitute the change in terms and when the billing statement also states the amount payable if the new charge is excluded;

(c) the change involves no significant cost to the buyer;

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

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

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

PART 5—HOME SOLICITATION SALES

[§ 866] Definition: "Home Solicitation Sale"

Sec. 2.501. "Home solicitation sale" means a consumer credit sale of goods, other than farm equipment, or services in which the seller or a person acting for him engages in a personal solicitation of the sale at a residence of the buyer and the buyer's agreement or offer to purchase is there given to the seller or a person acting for him. It does not include a sale made pursuant to a preexisting revolving charge account, or a sale made pursuant to prior negotiations between the parties at a business establishment at a fixed location where goods or services are offered or exhibited for sale.

[§ 867] Buyer's Right to Cancel

Sec. 2.502. (1) Except as provided in subsection (5), in addition to any right otherwise to revoke an offer, the buyer has the right to cancel a home solicitation sale until midnight of the third business day after the day on which the buyer signs an agreement or offer to purchase which complies with this Part.

(2) Cancellation occurs when the buyer gives written notice of cancellation to the seller at the address stated in the agreement or offer to purchase.

(3) Notice of cancellation, if given by mail, is given when it is deposited in a mailbox properly addressed and postage prepaid.

(4) Notice of cancellation given by the buyer need not take a particular form and is sufficient if it indicates by any form of written expression the intention of the buyer not to be bound by the home solicitation sale.

(5) The buyer may not cancel a home solicitation sale if the buyer requests the seller to provide goods or services without delay because of an emergency, and

(a) the seller in good faith makes a substantial beginning of performance of the contract before the buyer gives notice of cancellation, and

(b) in the case of goods, the goods cannot be returned to the seller in substantially as good condition as when received by the buyer.

(6) If a home solicitation sale is also subject to the provisions on debtors' right to rescind certain transactions (Section 5.204), the buyer may proceed either under those provisions or under this Part.

[§ 868] Form of Agreement or Offer; Statement of Buyer's Rights

Sec. 2.503. (1) In a home solicitation sale, unless the buyer requests the seller to provide goods or services without delay in an emergency, the seller must present to the buyer and obtain his signature to a written agreement or offer to purchase which designates as the date of the transaction the date on which the buyer actually signs and contains a statement of the buyer's rights which complies with subsection (2).

(2) The statement must

(a) appear under the conspicuous caption: "BUYER'S RIGHT TO CANCEL", and

(b) read as follows: "If this agreement was solicited at your residence and you do not want the goods or services, you may cancel this agreement by mailing a notice to the seller. The notice must say that you do not want the goods or services and must be mailed before midnight on the third business day after you sign this agreement. The notice must be mailed to: _____ . If you cancel,

(insert name and mailing address of seller)

the seller may keep all or part of your cash down payment."

(3) Until the seller has complied with this section the buyer may cancel the home solicitation sale by notifying the seller in any manner and by any means of his intention to cancel.

[§ 869] Restoration of Down Payment; Retention of Cancellation Fee

Sec. 2.504. (1) Except as provided in this section, within 10 days after a home solicitation sale has been cancelled or an offer to purchase revoked the seller must tender to the buyer any payments made by the buyer and any note or other evidence of indebtedness.

(2) If the down payment includes goods traded in, the goods must be tendered in substantially as good condition as when received by the seller. If the seller fails to tender the goods as provided by this section, the buyer may elect to recover an amount equal to the trade-in allowance stated in the agreement.

(3) The seller may retain as a cancellation fee 5 per cent of the cash price but not exceeding the amount of the cash down payment. If the seller fails to comply with an obligation imposed by this section, or if the buyer avoids the sale on any ground independent of his right to cancel provided by the provisions on the buyer's right to cancel (subsection (1) of Section 2.502) or revokes his offer to purchase, the seller is not entitled to retain a cancellation fee.

(4) Until the seller has complied with the obligations imposed by this section the buyer may retain possession of goods delivered to him by the seller and has a lien on the goods in his possession or control for any recovery to which he is entitled.

[§ 870] Duty of Buyer; No Compensation for Services Prior to Cancellation

Sec. 2.505. (1) Except as provided by the provisions on retention of goods by the buyer (subsection (4) of Section 2.504), within a reasonable time after a home solicitation sale has been cancelled or an offer to purchase

revoked, the buyer upon demand must tender to the seller any goods delivered by the seller pursuant to the sale but he is not obligated to tender at any place other than his residence. If the seller fails to demand possession of goods within a reasonable time after cancellation or revocation, the goods become the property of the buyer without obligation to pay for them. For the purpose of this section, 40 days is presumed to be a reasonable time.

(2) The buyer has a duty to take reasonable care of the goods in his possession both before cancellation or revocation and for a reasonable time thereafter, during which time the goods are otherwise at the seller's risk.

(3) If the seller has performed any services pursuant to a home solicitation sale prior to its cancellation, the seller is entitled to no compensation except the cancellation fee provided in this Part.

PART 6—SALES OTHER THAN CONSUMER CREDIT SALES

¶ 871 Sales Subject to Act by Agreement of Parties

Sec. 2.601. The parties to a sale other than a consumer credit sale may agree in a writing signed by the parties that the sale is subject to the provisions of this Act applying to consumer credit sales. If the parties so agree the sale is a consumer credit sale for the purposes of this Act.

¶ 872 Definition: "Consumer Related Sale"; Rate of Credit Service Charge

Sec. 2.602. (1) A "consumer related sale" is a sale of goods, services, or an interest in land which is not subject to the provisions of this Act applying to consumer credit sales and in which the amount financed does not exceed \$25,000 if

(a) the buyer is a person other than an organization; or

(b) the debt is secured primarily by a security interest in a one or two family dwelling occupied by a person related to the debtor.

(2) With respect to a consumer related sale not made pursuant to a revolving charge account, the parties may contract for the payment by the buyer of an amount comprising the amount financed and a credit service charge not in excess of 18 per cent per year calculated according to the United States rule on the unpaid balances of the amount financed.

(3) With respect to a consumer related sale made pursuant to a revolving charge account, the parties may contract for the payment of a credit service charge not in excess of that permitted by the provisions on credit service charge for revolving charge accounts (Section 2.207).

(4) The amount of \$25,000 in subsection (1) is subject to change pursuant to the provisions on adjustment of dollar amounts (Section 1.106).

COMMENT

This section imposes a rate ceiling on certain sales not subject to the rate ceilings for consumer credit sales. The principal cases covered are (1) credit sales by a seller not regularly engaged in similar credit transactions, (2) credit sales to persons for a business purpose, and (3) sales of one or

two family dwellings to an organization where the dwelling is occupied by an individual related to the organization. The ceiling does not apply if the amount financed exceeds \$25,000 or, except in the dwelling case, if the debtor is an organization.

**[§ 873] Applicability of Other Provisions to Consumer
 Related Sales**

Sec. 2.603. Except for the rate of the credit service charge and the rights to prepay and to rebate upon prepayment, the provisions of Part 2 of this Article apply to a consumer related sale.

**[§ 874] Limitation on Default Charges in
 Consumer Related Sales**

Sec. 2.604. (1) The agreement with respect to a consumer related sale may provide for only the following charges as a result of the buyer's default:

(a) reasonable attorney's fees and reasonable expenses incurred in realizing on a security interest;

(b) deferral charges not in excess of 18 per cent per year of the amount deferred for the period of deferral; and

(c) other charges that could have been made had the sale been a consumer credit sale.

(2) A provision in violation of this section is unenforceable.

[§ 875] Credit Service Charge for Other Sales

Sec. 2.605. With respect to a sale other than a consumer credit sale or a consumer related sale, the parties may contract for the payment by the buyer of any credit service charge.

COMMENT

See Section 5.107—Extortionate Extensions of Credit.

Article 3—Loans

PART 1—GENERAL PROVISIONS

[§ 876]

Short Title

Sec. 3.101. This Article shall be known and may be cited as Uniform Consumer Credit Code—Loans.

[§ 877]

Scope

Sec. 3.102. This Article applies to consumer loans, including regulated and supervised loans; in addition Part 6 applies to consumer related loans.

[§ 878]

Definitions in Article

Sec. 3.103. The following definitions apply to this Act and appear in this Article as follows:

“Annual percentage rate”	Section 3.304(2)
“Business collateral”	Section 3.105
“Consumer loan”	Section 3.104
“Consumer related loan”	Section 3.602(1)
“Corresponding nominal annual percentage rate”	Section 3.304(3)
“Lender”	Section 3.107(1)
“Loan”	Section 3.106
“Loan finance charge”	Section 3.109
“Precomputed”	Section 3.107(2)
“Principal”	Section 3.107(3)
“Regulated lender”	Section 3.501(2)
“Regulated loan”	Section 3.501(1)
“Revolving loan account”	Section 3.108
“Supervised lender”	Section 3.501(4)
“Supervised loan”	Section 3.501(3)

[§ 879]

Definition: “Consumer Loan”

Sec. 3.104. (1) Except as provided in subsection (2), “consumer loan” is a loan made by a person regularly engaged in the business of making loans in which

- (a) the debtor is a person other than an organization;
- (b) the debt is incurred primarily for a personal, family, household, or agricultural purpose;
- (c) either the debt is payable in instalments or a loan finance charge is made; and
- (d) either the principal does not exceed \$25,000 or the debt is secured by an interest in land.

(2) Unless the loan is made subject to this Act by agreement (Section 3.601), “consumer loan” does not include a loan which is secured primarily by

§ 879

(a) business collateral, if at the time the loan is made the value of this collateral is substantial in relation to the amount of the loan, or,

(b) except as provided with respect to disclosure (Section 3.301) and debtors' remedies (Section 5.201), an interest in land, if at the time the loan is made the value of this collateral is substantial in relation to the amount of the loan, and the loan finance charge does not exceed 10 per cent per year calculated according to the United States rule on the unpaid balances of the principal on the assumption that the debt will be paid according to the agreed terms and will not be paid before the end of the agreed term.

(3) The amount of \$25,000 in subsection (1) is subject to change pursuant to the provisions on adjustment of dollar amount (Section 1.106).

COMMENT

The purpose of subsection (2)(b) is to exclude the ordinary home mortgage from all provisions of this Act except the rate provisions; however, the Act is intended to include as a consumer loan the high rate loans which are characteristic of the

second mortgage small loan business. Because the ordinary home mortgage invariably has a loan finance charge below 10 per cent, the exclusion has been based on the amount of the loan finance charge.

§ 880 Definition: "Business Collateral"

Sec. 3.105. "Business collateral" means an interest in land used primarily for other than a personal, family, household, or agricultural purpose, or accounts or contract rights other than earnings, business equipment, chattel paper, documents of title, instruments, inventory, or business general intangibles. Business equipment does not include farm equipment.

§ 881 Definition: "Loan"

Sec. 3.106. "Loan" includes

(1) the creation of debt by the lender's payment of or agreement to pay money to the debtor or to a third party for the account of the debtor;

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

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

(4) the forbearance of debt arising from a loan.

§ 882 Definitions: "Lender"; "Precomputed"; "Principal"

Sec. 3.107. (1) Except as otherwise provided, "lender" includes an assignee of the lender's right to payment but use of the term does not in itself impose on an assignee any obligation of the lender with respect to events occurring before the assignment.

(2) A loan, refinancing, or consolidation is "precomputed" if the debt is expressed as a sum comprising the principal and the amount of the loan finance charge computed in advance.

(3) "Principal" of a loan means the total of

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

(b) the amount of any discount excluded from the loan finance charge (subsection (2) of Section 3.109), and,

(c) to the extent that payment is deferred,

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

(ii) additional charges permitted by this Article (Section 3.202).

[¶ 883] Definition: "Revolving Loan Account"

Sec. 3.108. "Revolving loan account" means an arrangement between a lender and a debtor pursuant to which (1) the lender may permit the debtor to obtain loans from time to time, (2) the unpaid balances of principal and the loan finance and other appropriate charges are debited to an account, (3) a loan finance charge if made is not precomputed but is computed on the outstanding unpaid balances of the debtor's account from time to time, and (4) the debtor has the privilege of paying the balances in instalments.

COMMENT

The usual use of the revolving loan account with lender credit cards or check count in consumer transactions is in consumer credit plans.

[¶ 884] Definition: "Loan Finance Charge"

Sec. 3.109. (1) "Loan finance charge" means the sum of (a) all charges payable directly or indirectly by the debtor and imposed directly or indirectly by the lender as an incident to the extension of credit, including any of the following types of charges which are applicable: interest or any amount payable under a point, discount, or other system of charges, however denominated, premium or other charge for any guarantee or insurance protecting the lender against the debtor's default or other credit loss; and (b) charges incurred for investigating the collateral or credit-worthiness of the debtor or for commissions or brokerage for obtaining the credit, irrespective of the person to whom the charges are paid or payable unless the lender had no notice of the charges when the loan was made. The term does not include charges as a result of default, additional charges (Section 3.202), delinquency charges (Section 3.203), or deferral charges (Section 3.204).

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

PART 2—MAXIMUM CHARGES

[¶ 885] Loan Finance Charge for Consumer Loans other than Supervised Loans

Sec. 3.201. (1) With respect to a consumer loan other than a supervised loan (Section 3.501), a lender may contract for and receive a loan finance charge, calculated according to the United States rule, not exceeding 18 per cent per year on the unpaid balances of the principal.

(2) This section does not limit or restrict the manner of contracting for the loan finance charge, whether by way of add-on, discount, or otherwise,

so long as the rate of the loan finance charge does not exceed that permitted by this section. If the loan is precomputed,

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

(b) the effect of prepayment is governed by the provisions on rebate upon prepayment (Section 3.210).

(3) For the purposes of this section, the term of a loan commences with the date the loan is made. Differences in the lengths of months are disregarded and a day may be counted as $1/30$ th of a month. Subject to classifications and differentiations the lender may reasonably establish, a part of a month in excess of 15 days may be treated as a full month if periods of 15 days or less are disregarded and if that procedure is not consistently used to obtain a greater yield than would otherwise be permitted.

(4) With respect to a consumer loan made pursuant to a revolving loan account

(a) the loan finance charge shall be deemed not to exceed 18 per cent per year if the loan finance charge contracted for and received does not exceed a charge in each monthly billing cycle which is $1\frac{1}{2}$ per cent of an amount no greater than

(i) the average daily balance of the debt,

(ii) the unpaid balance of the debt on the same day of the billing cycle, or

(iii) the median amount within a specified range within which the average daily balance or the unpaid balance of the debt, on the same day of the billing cycle, is included; a charge may be made pursuant to this subparagraph only if the lender, subject to the classifications and differentiations he may reasonably establish, makes the same charge on all balances within a specified range and if the percentage when applied to the median amount within the range does not produce a charge exceeding the charge resulting from applying that percentage to the lowest amount within the range by more than 8 per cent of the charge on the median amount; for the purposes of this subparagraph and subparagraph (ii), a variation of not more than 4 days from month to month is "the same day of the billing cycle";

(b) if the billing cycle is not monthly, the loan finance charge shall be deemed not to exceed 18 per cent per year if the loan finance charge contracted for and received does not exceed a percentage which bears the same relation to $1\frac{1}{2}$ per cent as the number of days in the billing cycle bears to 30; and

(c) notwithstanding subsection (1), if there is an unpaid balance on the date as of which the loan finance charge is applied, a charge not exceeding 50¢ may be made if the billing cycle is monthly or longer, or the pro rata part of 50¢ which bears the same relation to 50¢ as the number of days in the billing cycle bears to 30, if the billing cycle is shorter than monthly, but no charge may be made pursuant to this paragraph if the lender has made an annual charge for the same period as permitted by the provisions on additional charges (paragraph (c) of subsection (1) of Section 3.202) .

[¶ 886]

Additional Charges

Sec. 3.202. (1) In addition to the loan finance charge permitted by this Part, a lender may contract for and receive the following additional charges in connection with a consumer loan:

(a) official fees and taxes;

(b) charges for insurance as described in subsection (2);

(c) annual charges, payable in advance, for the privilege of using a lender credit card or similar arrangement which entitles the user to purchase goods or services from at least 100 persons not related to the issuer of the lender credit card or similar arrangement, under an arrangement pursuant to which the debts resulting from the purchases are payable to the issuer; and

(d) charges for other benefits, including insurance, conferred on the debtor, if the benefits are of value to him apart from the granting of the credit, the charges are reasonable in relation to the benefits, and the Administrator has by rule determined that the charges are permissible additional charges.

(2) An additional charge may be made for insurance written in connection with the loan, other than insurance protecting the lender against the debtor's default or other credit loss,

(a) with respect to insurance against loss of or damage to property, or against liability, if the lender furnishes a clear and specific statement in writing to the debtor, setting forth the cost of the insurance if obtained from or through the lender, and stating that the debtor may choose the person through which the insurance is to be obtained; and,

(b) with respect to consumer credit insurance providing life, accident, or health coverage, if the insurance coverage is not a factor in the approval by the lender of the extension of credit, and this fact is clearly disclosed in writing to the debtor, and if in order to obtain the insurance in connection with the extension of credit, the debtor gives specific affirmative written indication of his desire to do so after written disclosure to him of the cost thereof.

(3) For the purposes of the Part on Disclosure and Advertising (Part 3), if the loan finance charge with respect to a loan primarily secured by an interest in land does not exceed 10 per cent per year (paragraph (b) of subsection (2) of Section 3.104), reasonable closing costs even though not within subsection (1) may be treated as additional charges.

COMMENT

See Comment to Section 2.202.

[¶ 887]

Delinquency Charges

Sec. 3.203. (1) With respect to a precomputed consumer loan, refinancing, or consolidation, the parties may contract for a delinquency charge on any instalment not paid in full within 10 days after its scheduled due date in an amount not exceeding the greater of

(a) an amount, not exceeding \$5, which is 5 per cent of the unpaid amount of the instalment, or

(b) the deferral charge (subsection (1) of Section 3.204) that would be permitted to defer the unpaid amount of the instalment for the period that it is delinquent.

(2) A delinquency charge under paragraph (a) of subsection (1) may be collected only once on an instalment however long it remains in default. No delinquency charge may be collected if the instalment has been deferred and a deferral charge (Section 3.204) has been paid or incurred. A delinquency charge may be collected at the time it accrues or at any time thereafter.

(3) No delinquency charge may be collected on an instalment which is paid in full within 10 days after its scheduled instalment due date even though an earlier maturing instalment or a delinquency charge on an earlier instalment may not have been paid in full. For purposes of this subsection payments are applied first to current instalments and then to delinquent instalments.

(4) If two instalments or parts thereof of a precomputed loan are in default for 10 days or more, the lender may elect to convert the loan from a precomputed loan to one in which the loan finance charge is based on unpaid balances. In this event he shall make a rebate pursuant to the provisions on rebate upon prepayment (Section 3.210) as of the maturity date of the first delinquent instalment, and thereafter may make a loan finance charge as authorized by the provisions on loan finance charge for consumer loans (Section 3.201) or the provisions on loan finance charge for supervised loans (Section 3.508), whichever is appropriate. The amount of the rebate shall not be reduced by the amount of any permitted minimum charge (Section 3.210). If the lender proceeds under this subsection, any delinquency or deferral charges made with respect to instalments due at or after the maturity date of the first delinquent instalment shall be rebated, and no further delinquency or deferral charges shall be made.

(5) The amount of \$5 in subsection (1) is subject to change pursuant to the provisions on adjustment of dollar amounts (Section 1.106).

COMMENT

See Comment to Section 2.203.

§ 888

Deferral Charges

Sec. 3.204. (1) With respect to a precomputed consumer loan, refinancing, or consolidation, the parties before or after default may agree in writing to a deferral of all or part of one or more unpaid instalments, and the lender may make and collect a charge not exceeding the rate previously stated to the debtor pursuant to the provisions on disclosure (Part 3) applied to the amount or amounts deferred for the period of deferral calculated without regard to difference in the lengths of months, but proportionally for a part of a month, counting each day as 1/30 of a month. A deferral charge may be collected at the time it is assessed or at any time thereafter.

(2) The lender may, in addition to the deferral charge, make appropriate additional charges (Section 3.202), and the amount of these charges which is not paid in cash may be added to the amount deferred for the purpose of calculating the deferral charge.

(3) The parties may agree in writing at the time of a precomputed consumer loan, refinancing, or consolidation that if an instalment is not paid within 10 days after its due date, the lender may unilaterally grant a deferral and

make charges as provided in this section. No deferral charge may be made for a period after the date that the lender elects to accelerate the maturity of the agreement.

(4) A delinquency charge made by the lender on an instalment may not be retained if a deferral charge is made pursuant to this section with respect to the period of delinquency.

[§ 889] Loan Finance Charge on Refinancing

Sec. 3.205. With respect to a consumer loan, refinancing, or consolidation, the lender may by agreement with the debtor refinance the unpaid balance and may contract for and receive a loan finance charge based on the principal resulting from the refinancing at a rate not exceeding that permitted by the provisions on loan finance charge for consumer loans (Section 3.201) or the provisions on loan finance charge for supervised loans (Section 3.508), whichever is appropriate. For the purpose of determining the loan finance charge permitted, the principal resulting from the refinancing comprises the following:

(1) if the transaction was not precomputed, the total of the unpaid balance and the accrued charges on the date of the refinancing, or, if the transaction was precomputed, the amount which the debtor would have been required to pay upon prepayment pursuant to the provisions on rebate upon prepayment (Section 3.210) on the date of refinancing, except that for the purpose of computing this amount no minimum charge (Section 3.210) shall be allowed; and

(2) appropriate additional charges (Section 3.202), payment of which is deferred.

[§ 890] Loan Finance Charge on Consolidation

Sec. 3.206. (1) If a debtor owes an unpaid balance to a lender with respect to a consumer loan, refinancing, or consolidation, and becomes obligated on another consumer loan, refinancing, or consolidation with the same lender, the parties may agree to a consolidation resulting in a single schedule of payments. If the previous consumer loan, refinancing, or consolidation was not precomputed, the parties may agree to add the unpaid amount of principal and accrued charges on the date of consolidation to the principal with respect to the subsequent loan. If the previous consumer loan, refinancing, or consolidation was precomputed, the parties may agree to refinance the unpaid balance pursuant to the provisions on refinancing (Section 3.205) and to consolidate the principal resulting from the refinancing by adding it to the principal with respect to the subsequent loan. In either case the lender may contract for and receive a loan finance charge based on the aggregate principal resulting from the consolidation at a rate not in excess of that permitted by the provisions on loan finance charge for consumer loans (Section 3.201) or the provisions on loan finance charge for supervised loans (Section 3.508), whichever is appropriate.

(2) The parties may agree to consolidate the unpaid balance of a consumer loan with the unpaid balance of a consumer credit sale. The parties may agree to refinance the previous unpaid balance pursuant to the provisions on refinancing sales (Section 2.205) or the provisions on refinancing loans (Section 3.205), whichever is appropriate, and to consolidate the amount

financed resulting from the refinancing or the principal resulting from the refinancing by adding it to the amount financed or principal with respect to the subsequent sale or loan. The aggregate amount resulting from the consolidation shall be deemed principal, and the creditor may contract for and receive a loan finance charge based on the principal at a rate not in excess of that permitted by the provisions on loan finance charge for consumer loans (Section 3.201) or the provisions on loan finance charge for supervised loans (Section 3.508), whichever is appropriate.

[§ 891] Conversion to Revolving Loan Account

Sec. 3.207. The parties may agree to add to a revolving loan account the unpaid balance of a consumer loan, not made pursuant to a revolving loan account, or a refinancing, or consolidation thereof, or the unpaid balance of a consumer credit sale, refinancing or consolidation. For the purpose of this section

(1) the unpaid balance of a consumer loan, refinancing, or consolidation is an amount equal to the principal determined according to the provisions on refinancing (Section 3.205); and

(2) the unpaid balance of a consumer credit sale, refinancing, or consolidation is an amount equal to the amount financed determined according to the provisions on refinancing (Section 2.205).

[§ 892] Advances to Perform Covenants of Debtor

Sec. 3.208. (1) If the agreement with respect to a consumer loan, refinancing, or consolidation contains covenants by the debtor to perform certain duties pertaining to insuring or preserving collateral and if the lender pursuant to the agreement pays for performance of the duties on behalf of the debtor he may add the amounts paid to the debt. Within a reasonable time after advancing any sums, he shall state to the debtor in writing the amount of the sums advanced, any charges with respect to this amount, and any revised payment schedule, and, if the duties of the debtor performed by the lender pertain to insurance, a brief description of the insurance paid for by the lender including the type and amount of coverages. No further information need be given.

(2) A loan finance charge may be made for sums advanced pursuant to subsection (1) at a rate not exceeding the rate stated to the debtor pursuant to the provisions on disclosure (Part 3) with respect to the loan, refinancing, or consolidation, except that with respect to a revolving loan account the amount of the advance may be added to the unpaid balance of the debt and the lender may make a loan finance charge not exceeding that permitted by the provisions on loan finance charge for consumer loans (Section 3.201) or for supervised loans (Section 3.508), whichever is appropriate.

[§ 893] Right to Prepay

Sec. 3.209. Subject to the provisions on rebate upon prepayment (Section 3.210), the debtor may prepay in full the unpaid balance of a consumer loan, refinancing, or consolidation at any time without penalty.

[§ 894] Rebate upon Prepayment

Sec. 3.210. (1) Except as provided in subsection (2), upon prepayment in full of the unpaid balance of a precomputed consumer loan, refinancing, or

consolidation, an amount not less than the unearned portion of the loan finance charge calculated according to this section shall be rebated to the debtor. If the rebate otherwise required is less than \$1, no rebate need be made.

(2) Upon prepayment in full of a consumer loan, other than one pursuant to a revolving loan account, a refinancing or consolidation, whether or not precomputed, the lender may collect or retain a minimum charge within the limits stated in this subsection if the loan finance charge earned at the time of prepayment is less than any minimum charge contracted for. The minimum charge may not exceed the amount of loan finance charge contracted for, or \$5 in a transaction which had a principal of \$75 or less, or \$7.50 in a transaction which had a principal of more than \$75.

(3) Except as otherwise provided in this subsection with respect to a loan primarily secured by an interest in land, the unearned portion of the loan finance charge is a fraction of the loan finance charge of which the numerator is the sum of the periodic balances scheduled to follow the computational period in which prepayment occurs, and the denominator is the sum of all periodic balances under either the loan agreement or, if the balance owing resulted from a refinancing (Section 3.205) or a consolidation (Section 3.206), under the refinancing agreement or consolidation agreement. In the case of a loan primarily secured by an interest in land, reasonable sums actually paid or payable to persons not related to the lender for customary closing costs included in the loan finance charge are deducted from the loan finance charge before the calculation prescribed by this subsection is made.

COMMENT

Subsection (3), together with paragraph (a) of subsection (4), states the "Rule of 78" with respect to a loan, refinancing or consolidation payable in equal instalments at equal intervals from the date of the loan, refinancing or consolidation to the final scheduled payment date. In the case of such

a loan, refinancing or consolidation, "computational period" may be read as "scheduled payment period", and the provisions relating to irregular payment schedules, viz., paragraphs (b), (c) and (d) of subsection (4) and subsection (5), in its entirety, may be disregarded.

(4) In this section

(a) "periodic balance" means the amount scheduled to be outstanding on the last day of a computational period before deducting the payment, if any, scheduled to be made on that day;

(b) "computational period" means one month if one-half or more of the intervals between scheduled payments under the agreement is one month or more, and otherwise means one week;

(c) the "interval" to the due date of the first scheduled instalment or the final scheduled payment date is measured from the date of a loan, refinancing, or consolidation, and includes either the first or last day of the interval;

(d) if the interval to the due date of the first scheduled instalment does not exceed one month by more than 15 days when the computational period is one month, or 11 days when the computational period is one week, the interval shall be considered as one computational period.

(5) This subsection applies only if the schedule of payments is not regular (subsection (6) of Section 3.304).

(a) If the computational period is one month and

(i) if the number of days in the interval to the due date of the first scheduled instalment is less than one month by more than 5 days, or more than one month by more than 5 but not more than 15 days, the unearned loan finance charge shall be increased by an adjustment for each day by which the interval is less than one month and, at the option of the lender, may be reduced by an adjustment for each day by which the interval is more than one month; the adjustment for each day shall be $1/30$ th of that part of the loan finance charge earned in the computational period prior to the due date of the first scheduled instalment assuming that period to be one month; and

(ii) if the interval to the final scheduled payment date is a number of computational periods plus an additional number of days less than a full month, the additional number of days shall be considered a computational period only if 16 days or more. This subparagraph applies whether or not subparagraph (i) applies.

(b) Notwithstanding paragraph (a), if the computational period is one month, the number of days in the interval to the due date of the first instalment exceeds one month by not more than 15 days, and the schedule of payments is otherwise regular, the lender may, at his option, exclude the extra days and the charge for the extra days in computing the unearned loan finance charge; but if he does so and a rebate is required before the due date of the first scheduled instalment, he shall compute the earned charge for each elapsed day as $1/30$ th of the amount the earned charge would have been if the first interval had been one month.

(c) If the computational period is one week and

(i) if the number of days in the interval to the due date of the first scheduled instalment is less than 5 days, or more than 9 days but not more than 11 days, the unearned loan finance charge shall be increased by an adjustment for each day by which the interval is less than 7 days and, at the option of the lender, may be reduced by an adjustment for each day by which the interval is more than 7 days; the adjustment for each day shall be $1/7$ th of that part of the loan finance charge earned in the computational period prior to the due date of the first scheduled instalment assuming that period to be one week; and

(ii) if the interval to the final scheduled payment date is a number of computational periods plus an additional number of days less than a full week, the additional number of days shall be considered a computational period only if 4 days or more. This subparagraph applies whether or not subparagraph (i) applies.

(6) If a deferral (Section 3.204) has been agreed to, the unearned portion of the loan finance charge shall be computed without regard to the deferral. The amount of deferral charge earned at the date of prepayment shall also be calculated. If the deferral charge earned is less than the deferral charge paid, the difference shall be added to the unearned portion of the loan finance charge. If any part of a deferral charge has been earned but has not been paid, that part shall be subtracted from the unearned portion of the loan finance charge, or shall be added to the unpaid balance.

(7) This section does not preclude the collection or retention by the lender of delinquency charges (Section 3.203).

(8) If the maturity is accelerated for any reason and judgment is obtained, the debtor is entitled to the same rebate as if the payment had been made on the date judgment is entered.

(9) Upon prepayment in full of a consumer loan by the proceeds of consumer credit insurance (Section 4.103), the debtor or his estate is entitled to the same rebate as though the debtor had prepaid the agreement on the date the proceeds of the insurance are paid to the lender, but no later than 10 business days after satisfactory proof of loss is furnished to the lender.

COMMENT

For examples of the application of this section, see Comment to Section 2.210.

PART 3—DISCLOSURE AND ADVERTISING

[§ 895] Applicability; Information Required

Sec. 3.301. (1) For purposes of this Part, consumer loan includes a loan secured primarily by an interest in land without regard to the rate of the loan finance charge if the loan is otherwise a consumer loan (Section 3.104).

(2) The lender shall disclose to the debtor to whom credit is extended with respect to a consumer loan the information required by either

(a) this Part, or

(b) except with respect to a loan secured primarily by an interest in land, the Federal Consumer Credit Protection Act.

(3) For the purposes of paragraph (b) of subsection (2), information which would otherwise be required pursuant to the Federal Consumer Credit Protection Act is sufficient even though the transaction is one of a class of credit transactions exempted from that Act pursuant to a determination by the Board of Governors of the Federal Reserve System that the class of transactions is subject under the law of this State to requirements substantially similar to those imposed under that Act.

[§ 896] General Disclosure Requirements and Provisions

Sec. 3.302. (1) The disclosures required by this Part

(a) shall be made clearly and conspicuously;

(b) shall be in writing, a copy of which shall be delivered to the debtor, but need not be contained in a single writing nor made in the order set forth in this Part;

(c) may use terminology different from that employed in this Part if it conveys substantially the same meaning;

(d) may be supplemented by additional information or explanations supplied by the lender;

(e) need be made only to the extent applicable and only as to those items for which the lender makes a separate charge to the debtor;

(f) shall be made on the assumption that all scheduled instalments are paid when due; and

(g) comply with this Part although rendered inaccurate by any act, occurrence, or agreement subsequent to the required disclosure.

(2) Except with respect to loans made by telephone or mail (Section 3.305), loans made pursuant to a binding commitment (subsection (3) of Section 3.306), and loans made pursuant to a lender credit card (Section 3.310),

(a) the disclosures required by this Part shall be made before credit is extended, but may be made in the loan, refinancing, or consolidation agreement, or other evidence of indebtedness to be signed by the debtor if set forth conspicuously therein, and need be made only to one debtor if there are more than one, and

(b) if an evidence of indebtedness is signed by the debtor, the lender shall give him a copy when the writing is signed.

(3) Except as provided with respect to rescission by a debtor (Section 5.204) and civil liability for violations of disclosure provisions (subsection (4) of Section 5.203), written acknowledgment of receipt by a debtor to whom a statement is required to be given pursuant to this Part

(a) in an action or proceeding by or against the original lender, creates a presumption that the statement was given, and

(b) in an action or proceeding by or against an assignee without knowledge to the contrary when he acquires the obligation, is conclusive proof of the delivery of the statement and, unless the violation is apparent on the face of the statement, of compliance with this Part.

[§ 897]

Overstatement

Sec. 3.303. The disclosure of an amount or percentage which is greater than the amount or percentage required to be disclosed under this Part does not in itself constitute a violation of this Part if the overstatement is not materially misleading and is not used to avoid meaningful disclosure.

[§ 898]

Calculation of Rate to Be Disclosed

Sec. 3.304. (1) Except as otherwise specifically provided, if a lender is required to give to a debtor a statement of the rate of the loan finance charge he shall state the rate in terms of an annual percentage rate as defined in subsection (2) or in terms of a corresponding nominal annual percentage rate as defined in subsection (3), whichever is appropriate.

(2) "Annual percentage rate"

(a) with respect to a consumer loan other than one made pursuant to a revolving loan account, is either

(i) that nominal annual percentage rate which, when applied to the unpaid balances of the principal calculated according to the United States rule, will yield a sum equal to the amount of the loan finance charge, or

(ii) that rate determined by any method prescribed by the Administrator as a method which materially simplifies computation while retaining reasonable accuracy as compared with the rate determined pursuant to subparagraph (i);

(b) with respect to a consumer loan made pursuant to a revolving loan account, is the quotient expressed as a percentage of the total loan finance charge for the period to which it relates divided by the amount upon which the loan finance charge for that period is based, multiplied by the number of these periods in a year; if the period is one day, the number of periods in a year is deemed to be 360.

(3) "Corresponding nominal annual percentage rate" is the percentage or percentages used to calculate the loan finance charge for one billing cycle or other period pursuant to a revolving loan account multiplied by the number of billing cycles or periods in a year; if the period is one day, the number of periods in a year is deemed to be 360.

(4) If a lender is permitted to make the same loan finance charge for all principal amounts within a specified range (subsection (4) of Section 3.201) or for all balances within a specified range (subsection (5) of Section 3.508), he shall state the annual percentage rate or corresponding nominal annual percentage rate, whichever is appropriate, as applied to the median amount of the range within which the actual principal amount or balance is included.

(5) If a debt is payable on a schedule of instalment payments which is regular except for one or more of the following irregularities:

(a) the amount of one instalment payment is not substantially equal to the amount of each of the other instalment payments;

(b) the interval between the date the credit is granted and the first instalment payment is not equal to the interval between instalment payments; or

(c) in one or more payment periods no instalment payment is due, not exceeding one-fourth of the payment periods in any year if the length of the term of the agreement is a year or more, or one-fourth of the payment periods if the length of the term of the agreement is less than a year,

the lender may, at his option, calculate the rate to be disclosed as if the debt were payable under an agreement having the same principal, the same length of term to the nearest scheduled payment period, and a regular schedule of payments having the same interval between payments as the interval between the majority of instalments as scheduled in the loan agreement.

(6) A schedule of payments is regular if (a) the instalment payments are substantially equal in amount, (b) the interval between instalment payments is one month, or the intervals between instalment payments are equal and less than one month, and (c) the interval between the date the credit is granted and the first instalment payment is equal to the interval between instalment payments.

(7) A statement of rate complies with this Part if it does not vary from the accurately computed rate by more than the following tolerances:

(a) the annual percentage rate may be rounded to the nearest quarter of 1 per cent for consumer loans payable in substantially equal instalments when a lender determines the total loan finance charge on the basis of a single add-on, discount, periodic, or other rate, and the rate is converted into an annual percentage rate under procedures prescribed by the Administrator;

(b) the Administrator may authorize the use of rate tables or charts which may provide for the disclosure of annual percentage rates which vary from the rate determined in accordance with paragraph (a) by not more than the tolerances the Administrator may allow; the Administrator may not allow a tolerance greater than 8 per cent of that rate except to simplify compliance where irregular payments are involved; and

(c) in case a lender determines the annual percentage rate in a manner other than as described in paragraph (a) or (b), the Administrator may authorize other reasonable tolerances.

COMMENT

See Comment to Section 2.304.

[§ 899] Loans Made by Telephone or Mail

Sec. 3.305. With respect to a consumer loan, other than a loan made pursuant to a revolving loan account, if the lender receives a request for an extension of credit by mail or telephone without personal solicitation, the lender complies with this Part if the lender's printed material distributed to the public or the loan agreement or other printed material delivered to the debtor sets forth the terms of financing, including the annual percentage rate for representative amounts of credit, and if he gives the information required by this Part on or before the date the first payment is due on the loan.

[§ 900] Consumer Loans Not Pursuant to Revolving Loan Account

Sec. 3.306. (1) This section applies to a consumer loan not made pursuant to a revolving loan account (Section 3.309).

(2) The lender shall give to the debtor the following information:

(a) net amount paid to, receivable by, or paid or payable for the account of the debtor or in the case of a loan resulting from a refinancing, the amount prescribed by the provisions on loan finance charge on refinancing (subsection (1) of Section 3.205); if any amount is paid or payable to a third person, a brief itemization, which may be contained in a separate writing or writings, shall also be given;

(b) amount paid or payable for registration, certificate of title or license fees, if not included in (a), and a description or identification of the fees;

(c) amount of official fees and taxes and a description or identification of them;

(d) brief description of insurance to be provided or paid for by the lender including the type and the amount of the coverages, and if a separate charge is made, the amount of the charge;

(e) amount of other additional charges (Section 3.202), and a brief description or identification of them;

(f) amount of principal (sum of amounts stated in paragraphs (a), (b), (c), (d), and (e));

(g) except in the case of a loan secured by a first lien on a dwelling, made to finance the purchase of that dwelling, and in which the loan finance charge does not exceed 10 per cent per year (Section 3.104), the

amount of the loan finance charge and the amount of the unpaid balance (principal plus loan finance charge);

(h) rate of the loan finance charge as applied to the principal in accordance with the provisions on calculation of rate (Section 3.304), except in the case of a loan finance charge which does not exceed \$5 when the principal does not exceed \$75 or \$7.50 when the principal exceeds \$75;

(i) number of payments, amount of each payment, due date of first payment, and the due date of subsequent payments or interval between payments;

(j) default, delinquency, or similar charges payable in the event of late payments; and

(k) description of any security interest held or to be retained or acquired by the lender in connection with the extension of credit, and a clear identification of the property to which the security interest relates.

(3) If a lender makes a binding commitment to make a consumer loan by allowing the debtor to draw on the lender and at the time the commitment is made the amount of the loan has not been determined, the lender shall then give to the debtor a statement of the terms under which the loan will be made, including the rate of the loan finance charge calculated in accordance with the provisions on calculation of rate (Section 3.304). If the rate of the loan finance charge varies according to the amount of the loan, the lender shall state the minimum and maximum annual percentage rates which would be applicable to the amounts which could be drawn pursuant to the commitment. If additional charges (Section 3.202) may be made, the lender shall also state the conditions under which the charges may be made, the amount or method of computing the charges, and a brief description or identification of the charges. Within a reasonable time after the loan is made, and in any event on or before the due date of the first instalment, the lender shall give the information required by this section.

[§ 901]

Consolidation

Sec. 3.307. If the parties to a consumer loan or consumer credit sale agree to a consolidation (Section 3.206), the creditor shall give to the debtor the information required with respect to consumer loans not pursuant to a revolving loan account (Section 3.306). To comply with those provisions (paragraph (a) of subsection (2) of Section 3.306), the amount with respect to the previous loan or sale to be consolidated shall be separately stated and shall be added to the net amount paid to, receivable by, or paid or payable for the account of the debtor in connection with the subsequent loan or sale.

[§ 902]

Deferral

Sec. 3.308. If the lender makes a deferral pursuant to the provisions on deferral charges (Section 3.204), he shall state to the debtor, at the time of or promptly after the deferral:

(1) amount deferred;

(2) any appropriate additional charges (Section 3.202);

(3) aggregate amount deferred, which is the sum of the amount in (1) and any unpaid amount included in (2);

- (4) time to which payment is deferred; and
- (5) amount and annual percentage rate of the deferral charge and when it is payable.

[§ 903]

Revolving Loan Accounts

Sec. 3.309. (1) Before making a consumer loan pursuant to a revolving loan account, the lender shall give to the debtor the following information:

(a) conditions under which a loan finance charge may be made, including the time period, if any, within which any credit extended may be repaid without incurring a loan finance charge;

(b) method of determining the balance upon which a loan finance charge will be computed;

(c) method of determining the amount of the loan finance charge, including the periodic percentage or percentages used to calculate the loan finance charge and the amount of any minimum loan finance charge;

(d) corresponding nominal annual percentage rate (subsection (3) of Section 3.304); if more than one corresponding nominal annual percentage rate may be used, the amount of a balance to which each corresponding nominal annual percentage rate applies shall also be stated;

(e) if the lender elects he may also state either

(i) the average effective annual percentage rate of return received from revolving loan accounts for a representative period of time; or

(ii) if circumstances are such that the computation of a rate under subparagraph (i) would not be feasible or practical, or would be misleading or meaningless, a projected rate of return to be received from revolving loan accounts; the Administrator shall prescribe rules, consistent with commonly accepted standards for accounting or statistical procedures, to carry out the purposes of this paragraph (e);

(f) conditions under which additional charges may be made and the method by which they will be determined; and

(g) conditions under which the lender may retain or acquire a security interest in property to secure the balances resulting from loans made pursuant to the revolving loan account, and a description of the interest or interests which may be retained or acquired.

(2) If there is an outstanding balance owing at the end of the billing cycle or if a loan finance charge is made with respect to the billing cycle, the lender shall give to the debtor the following information within a reasonable time after the end of the billing cycle:

(a) outstanding balance at the beginning of the billing cycle;

(b) brief description or identification of loans made during the billing cycle in a statement or in accompanying cancelled checks, memoranda or the like;

(c) amount credited to the account during the billing cycle;

(d) amount of loan finance charge and additional charges debited during the billing cycle, with an itemization or explanation to show the total amount of loan finance charge, if any, due to the application of one or more periodic percentages and the amount, if any, imposed as a minimum charge;

(e) the periodic percentage used to calculate the loan finance charge; if more than one periodic percentage is used, each percentage and the amount of the balance to which each applies;

(f) the balance on which the loan finance charge is computed and a statement of how the balance is determined; if the balance is determined without first deducting all amounts credited during the period, that fact and the amounts credited shall also be stated;

(g) if the loan finance charge for the billing cycle exceeds 50¢ for a monthly or longer billing cycle, or the pro rata part of 50¢ for a billing cycle shorter than monthly, the loan finance charge expressed as an annual percentage rate (paragraph (b) of subsection (2) of Section 3.304); if more than one periodic percentage is used to calculate the loan finance charge, the lender may, in lieu of stating a single annual percentage rate, state more than one annual percentage rate and the amount of the balance to which each annual percentage rate applies;

(h) if the loan finance charge for the billing cycle does not exceed 50¢ for a monthly or longer billing cycle, or the pro rata part of 50¢ for a billing cycle shorter than monthly, the corresponding nominal annual percentage rate (subsection (3) of Section 3.304);

(i) if the lender elects, the average effective annual percentage rate of return or the projected rate as prescribed in paragraph (c) of subsection (1);

(j) outstanding balance at the end of the billing cycle; and

(k) date by which or period within which payment must be made to avoid additional loan finance charges.

COMMENT

See Comment to Section 2.310.

[§ 904] Loan Pursuant to Lender Credit Card or Similar Arrangement

Sec. 3.310. Before a consumer loan, other than one made pursuant to a revolving loan account, is first made pursuant to a lender credit card or similar arrangement, the lender shall give to the debtor a statement of the annual percentage rate or rates at which loans will be made to the debtor and a brief description or identification of the additional charges that may be made. The lender shall give to the debtor the information required by this Part with respect to consumer loans other than revolving loan accounts (Section 3.306) within a reasonable time after a loan is made and in any event before the due date of the first instalment.

[§ 905] Content of Periodic Statements

Sec. 3.311. The Administrator may by rule require a creditor who transmits periodic statements in connection with any consumer loan not made pursuant to a revolving loan account to set forth in each statement each of the following items:

(1) the annual percentage rate of the loan finance charge with respect to each consumer loan to which the statement relates;

(2) the date by which or the period, if any, within which payment must be made in order to avoid further loan finance charges or other charges; and

(3) the other items set forth in the provisions on disclosure with respect to revolving loan accounts (subsection (2) of Section 3.309) appropriate to the terms and conditions under which the consumer loan is made.

COMMENT

See Comment to Section 2.312.

[§ 906]

Advertising

Sec. 3.312. (1) No lender shall engage in this State in false or misleading advertising concerning the terms or conditions of credit with respect to a consumer loan.

(2) Without limiting the generality of subsection (1), and without requiring a statement of rate of loan finance charge if the loan finance charge is not more than \$5 when the principal does not exceed \$75 or more than \$7.50 when the principal exceeds \$75, and advertisement with respect to a consumer credit loan made by the posting of a public sign, or by catalog, magazine, newspaper, radio, television, or similar mass media, is misleading if

(a) it states the rate of the loan finance charge and the rate is not stated in the form required by the provisions on calculation of rate (Section 3.304) or

(b) it states the dollar amounts of the loan finance charge or instalment payments, and does not also state the rate of any loan finance charge and the number and amount of the instalment payments.

(3) In this section a catalog or other multiple-page advertisement is considered a single advertisement if it clearly and conspicuously displays a credit terms table setting forth the information required by this section.

(4) This section imposes no liability on the owner or personnel, as such, of any medium in which an advertisement appears or through which it is disseminated.

(5) Advertising which complies with the Federal Consumer Credit Protection Act does not violate subsection (2).

PART 4.—LIMITATIONS ON AGREEMENTS AND PRACTICES

[§ 907]

Scope

Sec. 3.401. This Part applies to consumer loans.

[§ 908]

Balloon Payments

Sec. 3.402. With respect to a consumer loan, other than one primarily for an agricultural purpose or one pursuant to a revolving loan account, if any scheduled payment is more than twice as large as the average of earlier scheduled payments, the debtor has the right to refinance the amount of that payment at the time it is due without penalty. The terms of the refinancing shall be no less favorable to the debtor than the terms of the original loan. These provisions do not apply to the extent that the payment schedule is adjusted to the seasonal or irregular income of the debtor.

§ 906

[§ 909] No Assignment of Earnings

Sec. 3.403. (1) A lender may not take an assignment of earnings of the debtor for payment or as security for payment of a debt arising out of a consumer loan. An assignment of earnings in violation of this section is unenforceable by the assignee of the earnings and revocable by the debtor. This section does not prohibit an employee from authorizing deductions from his earnings if the authorization is revocable.

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

[§ 910] Attorney's Fees*Alternative A:*

Sec. 3.404. With respect to a consumer loan the agreement may not provide for the payment by the debtor of attorney's fees. A provision in violation of this section is unenforceable.

[§ 911] Attorney's Fees*Alternative B:*

Sec. 3.404. Except as provided by the limitations on attorney's fees in certain supervised loans (Section 3.511), with respect to a consumer loan the agreement may provide for the payment by the debtor of reasonable attorney's fees not in excess of 15 per cent of the unpaid debt after default and referral to an attorney not a salaried employee of the lender. A provision in violation of this section is unenforceable.

[§ 912] Limitation on Default Charges

Sec. 3.405. Except for reasonable expenses incurred in realizing on a security interest, the agreement with respect to a consumer loan may not provide for charges as a result of default by the debtor other than those authorized by this Act. A provision in violation of this section is unenforceable.

[§ 913] Notice of Assignment

Sec. 3.406. The debtor is authorized to pay the original lender until he receives notification of assignment of rights to payment pursuant to a consumer loan and that payment is to be made to the assignee. A notification which does not reasonably identify the rights assigned is ineffective. If requested by the debtor, the assignee must seasonably furnish reasonable proof that the assignment has been made and unless he does so the debtor may pay the original lender.

COMMENT

This section is derived from UCC Section 9-318(3).

[§ 914] Authorization to Confess Judgment Prohibited

Sec. 3.407. A debtor may not authorize any person to confess judgment on a claim arising out of a consumer loan. An authorization in violation of this section is void.

[§ 915] Change in Terms of Revolving Loan Accounts

Sec. 3.408. (1) If a lender makes a change in the terms of a revolving loan account without complying with this section any additional cost or charge to the debtor resulting from the change is an excess charge and subject to the remedies available to debtors (Section 5.202) and to the Administrator (Section 6.113).

(2) A lender may change the terms of a revolving loan account whether or not the change is authorized by prior agreement. Except as provided in subsection (3), the lender shall give to the debtor written notice of any change at least three times, with the first notice at least six months before the effective date of the change.

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

(a) the debtor after receiving notice of the change agrees in writing to the change;

(b) the debtor elects to pay an amount designated on a billing statement (subsection (2) of Section 3.309) as including a new charge for a benefit offered to the debtor when the benefit and charge constitute the change in terms and when the billing statement also states the amount payable if the new charge is excluded;

(c) the change involves no significant cost to the debtor;

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

(e) the change applies only to debts incurred after a date specified in a notice of the change given in two billing cycles prior to the effective date of the change.

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

PART 5.—REGULATED AND SUPERVISED LOANS**[§ 916] Definitions: "Regulated Loan"; "Regulated Lender"; "Supervised Loan"; "Supervised Lender"**

Sec. 3.501. (1) "Regulated loan" means a consumer loan, including a loan made pursuant to a revolving loan account, in which the rate of the loan finance charge is in excess of 10 per cent per year calculated on the unpaid balances of the principal according to the United States rule.

(2) "Regulated lender" means a person engaged in the business of making regulated loans.

(3) "Supervised loan" means a regulated loan in which the rate of the loan finance charge exceeds 18 per cent per year as determined according to the provisions on loan finance charge for consumer loans (Section 3.201).

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

[§ 917] Authority to Make Supervised Loans

Sec. 3.502. Unless a person is a supervised financial organization or has first obtained a license from the Administrator authorizing him to make supervised loans, he shall not engage in the business of

- (1) making supervised loans, or
- (2) taking assignments of and undertaking direct collection of payments from or enforcement of rights against debtors arising from supervised loans, but he may collect and enforce for three months without a license if he promptly applies for a license and his application has not been denied.

COMMENT

Unlike some statutes, this section contemplates that a supervised lender needs to obtain only one license to operate one or more offices in a State. While the single license permits the supervised lender to locate offices wherever he deems them to be economically justified, he must annually notify the Administrator of the location of each office (Section 6.202). Although license fees have been viewed as a source of income for the regulatory agency, licensing of supervised lenders is not to be regarded as a source of income. Instead, income for the operations of the Administrator is to be derived from general appropriations. Annual fees are required of all persons required to file notification (Section 6.203).

Moreover, this Section does not contemplate the annual renewal of licenses; such a

requirement would merely increase the administrative burdens of the Administrator and the licensee.

In this Section "person" implies no limitation on the residence of the applicant. He need not be a resident of the State in which he seeks to be licensed as a supervised lender. Even though he is not physically within the State, the licensee is bound by the laws of the State in which he makes supervised loans.

If an unlicensed assignee not in the business of making collections or enforcing rights under the paper assigned to him finds that he must undertake collection or enforcement, subsection (2) gives him a 3-month grace period during which he can operate before he obtains a license.

[§ 918] License to Make Supervised Loans

Sec. 3.503. (1) The Administrator shall receive and act on all applications for licenses to make supervised loans under this Act. Applications shall be filed in the manner prescribed by the Administrator and shall contain such information as the Administrator may require to make an evaluation of the financial responsibility, character and fitness of the applicant.

(2) No license shall be issued unless the Administrator, upon investigation, finds that the financial responsibility, character and fitness of the applicant, and of the members thereof (if the applicant is a co-partnership or association) and of the officers and directors thereof (if the applicant is a corporation), are such as to warrant belief that the business will be operated honestly and fairly within the purposes of this Act.

(3) Upon written request, the applicant is entitled to a hearing on the question of his qualifications for a license if (a) the Administrator has notified the applicant in writing that his application has been denied, or (b) the Administrator has not issued a license within 60 days after the application for the license was filed. A request for a hearing may not be made more than 15 days after the Administrator has mailed a writing to the applicant notifying him that the application has been denied and stating in substance the Administrator's findings supporting denial of the application.

COMMENT

This section is intimately related to disclosure (Part 3 of Article 2 and Part 3 of Article 3) and to maximum charges (Part 2 of Article 2 and Part 2 of Article 3). The purpose is to facilitate entry into the cash loan field so that the resultant rate competition fostered by disclosure will generally force rates below the permitted maximum charges. Competition is further encouraged by the absence of any licensing requirements in credit sales (Article 2).

A secondary purpose is to reduce the likelihood of establishing localized monopolies in the granting of cash credit. Such monopolies tend to push rates charged to the maximum permitted levels and to establish conditions under which some share of the anticipated

monopoly profits are devoted to direct or indirect pressures to obtain the license.

Since this section does not apply to supervised financial organizations, the safety of depositors' funds is not directly endangered by the competition fostered by the freedom of entry. To the extent, if any, that the increased competition causes the development of undesirable credit practices, these are directly controlled by powers to revoke or suspend a license (Section 3.504), prohibition on multiple agreements (Section 3.509), restrictions on real property security (Section 3.510), and by the provisions on remedies and penalties provided (Article 5) and the powers and functions of the Administrator (Article 6).

[§ 919]

Revocation or Suspension of License

Sec. 3.504. (1) The Administrator may issue to a person licensed to make supervised loans an order to show cause why his license should not be revoked or suspended for a period not in excess of 6 months. The order shall state the place for a hearing and set a time for the hearing that is no less than 10 days from the date of the order. After the hearing the Administrator shall revoke or suspend the license if he finds that:

(a) the licensee has repeatedly and willfully violated this Act or any rule or order lawfully made pursuant to this Act; or

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

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

(3) If the Administrator finds that probable cause for revocation of a license exists and that enforcement of this Act requires immediate suspension of the license pending investigation, he may, after a hearing upon 5 days' written notice, enter an order suspending the license for not more than 30 days.

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

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

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

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

[§ 920]

Records; Annual Reports

Sec. 3.505. (1) Every licensee shall maintain records in conformity with generally accepted accounting principles and practices in a manner that will enable the Administrator to determine whether the licensee is complying with the provisions of this Act. The record keeping system of a licensee shall be sufficient if he makes the required information reasonably available. The records need not be kept in the place of business where supervised loans are made, if the Administrator is given free access to the records wherever located. The records pertaining to any loan need not be preserved for more than two years after making the final entry relating to the loan, but in the case of a revolving loan account the two years is measured from the date of each entry.

(2) On or before April 15 each year every licensee shall file with the Administrator a composite annual report in the form prescribed by the Administrator relating to all supervised loans made by him. The Administrator shall consult with comparable officials in other states for the purpose of making the kinds of information required in annual reports uniform among the states. Information contained in annual reports shall be confidential and may be published only in composite form.

[§ 921]

Examinations and Investigations

Sec. 3.506. (1) The Administrator shall periodically examine at such intervals as he deems appropriate the loans, business, and records of every licensee. In addition, for the purpose of discovering violations of this Act or securing information lawfully required, the Administrator or the official or agency to whose supervision the organization is subject (Section 6.105) may at any time investigate the loans, business, and records of any regulated lender. For these purposes he shall have free and reasonable access to the offices, places of business, and records of the lender.

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

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

(4) Upon failure without lawful excuse to obey a subpoena or to give testimony and upon reasonable notice to all persons affected thereby, the Administrator may apply to [] court for an order compelling compliance.

**[§ 922] Application of [Administrative Procedure Act]
[Part on Administrative Procedure and
Judicial Review] to Part**

Sec. 3.507. Except as otherwise provided, the [State administrative procedure act] [Part on Administrative Procedure and Judicial Review (Part 4 of the Article on Administration (Article 6))] applies to and governs all administrative action taken by the Administrator pursuant to this Part.

[§ 923] Loan Finance Charge for Supervised Loans

Sec. 3.508. (1) With respect to a supervised loan, including a loan pursuant to a revolving loan account, a supervised lender may contract for and receive a loan finance charge not exceeding that permitted by this section.

(2) The loan finance charge, calculated according to the United States rule, may not exceed the equivalent of the greater of either of the following:

(a) the total of

(i) 36 per cent per year on that part of the unpaid balances of the principal which is \$300 or less;

(ii) 21 per cent per year on that part of the unpaid balances of the principal which is more than \$300 but does not exceed \$1,000; and

(iii) 15 per cent per year on that part of the unpaid balances of the principal which is more than \$1,000; or

(b) 18 per cent per year on the unpaid balances of the principal.

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

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

(b) the effect of prepayment is governed by the provisions on rebate upon prepayment (Section 3.210).

(4) The term of a loan for the purposes of this section commences on the date the loan is made. Differences in the lengths of months are disregarded and a day may be counted as 1/30th of a month. Subject to classifications and differentiations the lender may reasonably establish, a part of a month in excess of 15 days may be treated as a full month if periods of 15 days or less are disregarded and if that procedure is not consistently used to obtain a greater yield than would otherwise be permitted.

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

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

(b) when applied to the lowest amount within each range, it does not produce a rate of loan finance charge exceeding the rate calculated according to paragraph (a) by more than 8 per cent of the rate calculated according to paragraph (a).

(6) The amounts of \$300 and \$1,000 in subsection (2) are subject to change pursuant to the provisions on adjustment of dollar amounts (Section 1.106).

COMMENT

See Comment to Section 2.201. Since there is no basic economic difference between loans pursuant to a revolving loan account and pre-computed instalments loans, which may be, and often are, refinanced or deferred, the same rate ceiling is provided for all supervised loans. Lenders are not required to use a graduated rate, but may find it more economical to use a flat monthly rate of charge, provided that it does not exceed the

rate ceiling specified. Lenders offering revolving loan accounts may not levy delinquency charges (3.203), and deferral charges (3.204), or a loan finance charge on refinancing (3.205). At the same time a debtor is not entitled to rebates upon prepayment (3.210), since at the time of his prepayment there will be no prepaid, but unearned, finance charges on his revolving loan account.

[§ 924]

Use of Multiple Agreements

Sec. 3.509. With respect to a supervised loan, no lender may permit any person, or husband and wife, to become obligated in any way under more than one loan agreement with the lender or with a person related to the lender, with intent to obtain a higher rate of loan finance charge than would otherwise be permitted by the provisions on loan finance charge for supervised loans (Section 3.508) or to avoid disclosure of an annual percentage rate pursuant to the provisions on disclosure and advertising (Part 3). The excess amount of loan finance charge provided for in agreements in violation of this section are excess charges for the purposes of the provisions on effect of violations on rights of parties (Section 5.202) and the provisions on civil actions by Administrator (Section 6.113).

[§ 925]

Restrictions on Interest in Land as Security

Sec. 3.510. (1) With respect to a supervised loan in which the principal is \$1,000 or less, a lender may not contract for an interest in land as security. A security interest taken in violation of this section is void.

(2) The amount of \$1,000 in subsection (1) is subject to change pursuant to the provisions on adjustment of dollar amounts (Section 1.106).

[§ 926]

[Limitation on Attorney's Fees]

[Sec. 3.511. (1) With respect to a supervised loan in which the principal is \$1,000 or less, the agreement may not provide for the payment by the debtor of attorney's fees. A provision in violation of this section is unenforceable.

(2) The amount of \$1,000 in subsection (1) is subject to change pursuant to the provisions on adjustment of dollar amounts (Section 1.106).]

COMMENT

If Alternative A of Section 3.404 is enacted, Section 3.511 should be omitted.

[§ 927] Regular Schedule of Payments; Maximum Loan Term

Sec. 3.512. (1) Regulated loans payable in instalments, other than loans pursuant to a revolving loan account, in which the principal is \$1,000 or less shall be repayable in substantially equal instalments which shall be payable at equal periodic intervals except to the extent that the schedule of payments is adjusted to the seasonal or irregular income of the debtor. Regulated loans payable in instalments, other than loans pursuant to a revolving loan account, in which the principal is \$300 or less shall be scheduled to be payable over a period of not more than 25 months, and regulated loans in which the principal is more than \$300 but does not exceed \$1,000 shall be scheduled to be payable over a period of not more than 37 months.

(2) The amounts of \$300 and \$1,000 in subsection (1) are subject to change pursuant to the provisions on adjustment of dollar amounts (Section 1.106).

[§ 928] Conduct of Business Other than Making Loans

Sec. 3.513. A licensee may carry on other business at a location where he makes supervised loans unless he carries on other business for the purpose of evasion or violation of this Act.

COMMENT

A seller who makes loans must comply with Article 3 with respect to his loan operations.

[§ 929] Application of Other Provisions

Sec. 3.514. Except as otherwise provided, all provisions of this Act applying to consumer loans apply to regulated loans.

PART 6—LOANS OTHER THAN CONSUMER LOANS**[§ 930] Loans Subject to Act by Agreement of Parties**

Sec. 3.601. The parties to a loan other than a consumer loan may agree in a writing signed by the parties that the loan is subject to the provisions of this Act applying to consumer loans. If the parties so agree, the loan is a consumer loan for the purposes of this Act.

[§ 931] Definition: "Consumer Related Loan"; Rate of Loan Finance Charge

Sec. 3.602. (1) A "consumer related loan" is a loan which is not subject to the provisions of this Act applying to consumer loans and in which the principal does not exceed \$25,000, if

- (a) the debtor is a person other than an organization, or
- (b) the debt is secured primarily by a security interest in a one or two family dwelling occupied by a person related to the debtor.

(2) With respect to a consumer related loan, including one made pursuant to a revolving loan account, the parties may contract for the payment

of a loan finance charge not in excess of that permitted by the provisions on loan finance charge for consumer loans other than supervised loans (Section 3.201).

(3) The amount of \$25,000 in subsection (1) is subject to change pursuant to the provisions on adjustment of dollar amounts (Section 1.106).

COMMENT

See Comment to Section 2.602.

**[§ 932] Applicability of Other Provisions to Consumer
 Related Loans**

Sec. 3.603. Except for the rate of the loan finance charge and the rights to prepay and to rebate upon prepayment, the provisions of Part 2 of this Article apply to a consumer related loan.

**[§ 933] Limitation on Default Charges in Consumer
 Related Loans**

Sec. 3.604. (1) The agreement with respect to a consumer related loan may provide for only the following charges as a result of the debtor's default:

(a) reasonable attorney's fees and reasonable expenses incurred in realizing on a security interest;

(b) deferral charges not in excess of 18 per cent per year of the amount deferred for the period of deferral; and

(c) other charges that could have been made had the loan been a consumer loan.

(2) A provision in violation of this section is unenforceable.

[§ 934] Loan Finance Charge for Other Loans

Sec. 3.605. With respect to a loan other than a consumer loan or a consumer related loan, the parties may contract for the payment by the debtor of any loan finance charge.

COMMENT

See Section 5.107—Extortionate Extensions of Credit.

COMMENT

If the enacting State has not already enacted the NAIC Model Act for the regulation of credit life insurance and credit accident and health insurance, or similar legislation, material in brackets should be omitted.

**[¶ 938] Creditor's Provision of and Charge for Insurance;
Excess Amount of Charge**

Sec. 4.104. (1) Except as otherwise provided in this Article and subject to the provisions on additional charges (Section 2.202 and Section 3.202) and maximum charges (Part 2 of Article 2 and Article 3), a creditor may agree to provide insurance, and may contract for and receive a charge for insurance separate from and in addition to other charges. A creditor need not make a separate charge for insurance provided or required by him. This Act does not authorize the issuance of any insurance prohibited under any statute, or rule thereunder, governing the business of insurance.

(2) The excess amount of a charge for insurance provided for in agreements in violation of this Article is an excess charge for the purposes of the provisions of the Article on Remedies and Penalties (Article 5) as to effect of violations on rights of parties (Section 5.202) and of the provisions of the Article on Administration (Article 6) as to civil actions by the Administrator (Section 6.113).

COMMENT

Consideration has been given to the desirability of defining a "separate charge" for consumer credit insurance when the seller or lender establishes different rates of charge for sale or loan transactions predicated on whether or not consumer credit insurance is provided. The question has recently been raised by supervisory authorities in New York, where the creditors affected resolved the problem by increasing the rate of charge on transactions as to which consumer credit insurance was previously not provided to the higher rate of charge which had previously applied only to transactions as to which consumer credit insurance was provided.

It has been concluded that:

1. A definition of "separate charge" for insurance in the light of variations in credit

service or loan finance charge rates depending on whether or not consumer credit insurance is provided would be futile.

2. The required disclosure of credit service charge or loan finance charge in terms of an annual percentage rate coupled with permission for exclusion from the credit service or loan finance charge and separate dollar disclosure of the charge for consumer credit insurance will encourage creditors to reduce to a minimum the disclosed rate of credit service or loan finance charge and to disclose the charge for consumer credit insurance as a separate charge not included in the credit service or loan finance charge.

**[¶ 939] Conditions Applying to Insurance to Be
Provided by Creditor**

Sec. 4.105. If a creditor agrees with a debtor to provide insurance

(1) the insurance shall be evidenced by an individual policy or certificate of insurance delivered to the debtor, or sent to him at his address as stated by him, within 30 days after the term of the insurance commences under the agreement between the creditor and debtor; or

(2) the creditor shall promptly notify the debtor of any failure or delay in providing the insurance.

[§ 940]

Unconscionability

Sec. 4.106. (1) In applying the provisions of the Act on unconscionability (Sections 5.108 and 6.111) to a separate charge for insurance, consideration shall be given, among other factors, to

- (a) potential benefits to the debtor including the satisfaction of his obligations;
- (b) the creditor's need for the protection provided by the insurance;
- and
- (c) the relation between the amount and terms of credit granted and the insurance benefits provided.

(2) If consumer credit insurance otherwise complies with this Article and other applicable law, neither the amount nor the term of the insurance nor the amount of a charge therefor is in itself unconscionable.

[§ 941]

Maximum Charge by Creditor for Insurance

Sec. 4.107. (1) Except as provided in subsection (2), if a creditor contracts for or receives a separate charge for insurance, the amount charged to the debtor for the insurance may not exceed the premium to be charged by the insurer, as computed at the time the charge to the debtor is determined, conforming to any rate filings required by law and made by the insurer with the [Commissioner] of Insurance.

(2) A creditor who provides consumer credit insurance in relation to a revolving charge account (Section 2.108) or revolving loan account (Section 3.108) may calculate the charge to the debtor in each billing cycle by applying the current premium rate to

- (a) the average daily unpaid balance of the debt in the cycle;
- (b) the unpaid balance of the debt or a median amount within a specified range of unpaid balances of debt on approximately the same day of the cycle. The day of the cycle need not be the day used in calculating the credit service charge (Section 2.207) or loan finance charge (Section 3.201 and Section 3.508), but the specified range shall be the range used for that purpose; or
- (c) the unpaid balances of principal calculated according to the United States rule.

[§ 942]

Refund or Credit Required; Amount

Sec. 4.108. (1) Upon prepayment in full of a consumer credit sale or consumer loan by the proceeds of consumer credit insurance, the debtor or his estate is entitled to a refund of any portion of a separate charge for insurance which by reason of prepayment is retained by the creditor or returned to him by the insurer unless the charge was computed from time to time on the basis of the balances of the debtor's account.

(2) This Article does not require a creditor to grant a refund or credit to the debtor if all refunds and credits due to the debtor under this Article amount is less than \$1, and except as provided in subsection (1) does not require the creditor to account to the debtor for any portion of a separate charge for insurance because

§ 940

(a) the insurance is terminated by performance of the insurer's obligation;

(b) the creditor pays or accounts for premiums to the insurer in amounts and at times determined by the agreement between them; or

(c) the creditor receives directly or indirectly under any policy of insurance a gain or advantage not prohibited by law.

(3) Except as provided in subsection (2), the creditor shall promptly make or cause to be made an appropriate refund or credit to the debtor with respect to any separate charge made to him for insurance if

(a) the insurance is not provided or is provided for a shorter term than that for which the charge to the debtor for insurance was computed; or

(b) the insurance terminates prior to the end of the term for which it was written because of prepayment in full or otherwise.

(4) A refund or credit required by subsection (3) is appropriate as to amount if it is computed according to a method prescribed or approved by the [Commissioner] of Insurance or a formula filed by the insurer with the [Commissioner] of Insurance at least 30 days before the debtor's right to a refund or credit becomes determinable, unless the method or formula is employed after the [Commissioner] of Insurance notifies the insurer that he disapproves it.

COMMENT

Subsection (2)(c) of Section 4.108 permits a creditor to derive from consumer credit insurance gains and advantages such as dividends and refunds resulting from favorable mortality or morbidity experience with respect to insured debtors.

The provisions of Article 4 relating to consumer credit insurance are indicated on the Special Committee's conclusions that:

1. Although the gains and advantages may be large to the creditor, they are relatively insignificant to each insured debtor

and the calculating, clerical and mailing costs of returning them to insured debtors would be unreasonably disproportionate to the amounts involved.

2. The requirements of Article 4 that premiums for consumer credit insurance be reasonable in relation to benefits, if properly enforced by the State insurance commissioner or superintendent, will preclude the possibility of the use of consumer credit insurance as a device by creditors for concealing hidden charges from debtors.

[§ 943] Existing Insurance; Choice of Insurer

Sec. 4.109. If a creditor requires insurance, upon notice to the creditor the debtor shall have the option of providing the required insurance through an existing policy of insurance owned or controlled by the debtor, or through a policy to be obtained and paid for by the debtor, but the creditor may for reasonable cause decline the insurance provided by the debtor.

[§ 944] Charge for Insurance in Connection with a Deferral, Refinancing, or Consolidation; Duplicate Charges

Sec. 4.110. (1) A creditor may not contract for or receive a separate charge for insurance in connection with a deferral (Section 2.204 or Section 3.204), a refinancing (Section 2.205 or Section 3.205), or a consolidation (Section 2.206 or Section 3.206), unless

(a) the debtor agrees at or before the time of the deferral, refinancing, or consolidation that the charge may be made;

(b) the debtor is or is to be provided with insurance for an amount or a term, or insurance of a kind, in addition to that to which he would have been entitled had there been no deferral, refinancing, or consolidation;

(c) the debtor receives a refund or credit on account of any unexpired term of existing insurance in the amount that would be required if the insurance were terminated (Section 4.108); and

(d) the charge does not exceed the amount permitted by this Article (Section 4.107).

(2) A creditor may not contract for or receive a separate charge for insurance which duplicates insurance with respect to which the creditor has previously contracted for or received a separate charge.

**[§ 945] Cooperation Between Administrator and
[Commissioner] of Insurance**

Sec. 4.111. The Administrator and the [Commissioner] of Insurance are authorized and directed to consult and assist one another in maintaining compliance with this Article. They may jointly pursue investigations, prosecute suits, and take other official action, as may seem to them appropriate, if either of them is otherwise empowered to take the action. If the Administrator is informed of a violation or suspected violation by an insurer of this Article, or of the insurance laws, rules, and regulations of this State, he shall advise the [Commissioner] of Insurance of the circumstances.

**[§ 946] [Administrative Action of [Commissioner]
of Insurance]**

[Sec. 4.112. (1) To the extent that his responsibility under this Article requires, the [Commissioner] of Insurance shall issue rules with respect to insurers, and with respect to refunds (Section 4.108), forms, schedules of premium rates and charges (Section 4.203), and his approval or disapproval thereof and, in case of violation, may make an order for compliance.

(2) [The State administrative procedure act] [Each provision of the Part on Administrative Procedures and Judicial Review (Part 4) of the Article on Administration (Article 6) which applies to and governs administrative action taken by the Administrator also] applies to and governs all administrative action taken by the [Commissioner] of Insurance pursuant to this section.]

COMMENT

This section may be omitted in an enacting State in which the NAIC Model Act or any similar statute and adequate statutes applying to and governing administrative action taken by the [Commissioner] of Insurance are in force.

PART 2—CONSUMER CREDIT INSURANCE

[§ 947] Term of Insurance

Sec. 4.201. (1) Consumer credit insurance provided by a creditor may be subject to the furnishing of evidence of insurability satisfactory to the insurer. Whether or not such evidence is required, the term of the insurance shall commence

no later than when the debtor becomes obligated to the creditor or when the debtor applies for the insurance, whichever is later, except as follows:

(a) if any required evidence of insurability is not furnished until more than 30 days after the term would otherwise commence, the term may commence on the date when the insurer determines the evidence to be satisfactory; or

(b) if the creditor provides insurance not previously provided covering debts previously created, the term may commence on the effective date of the policy.

(2) The originally scheduled term of the insurance shall extend at least until the due date of the last scheduled payment of the debt except as follows:

(a) if the insurance relates to a revolving charge account or revolving loan account, the term need extend only until the payment of the debt under the account and may be sooner terminated after at least 30 days' notice to the debtor; or

(b) if the debtor is advised in writing that the insurance will be written for a specified shorter time, the term need extend only until the end of the specified time.

(3) The term of the insurance shall not extend more than 15 days after the originally scheduled due date of the last scheduled payment of the debt unless it is extended without additional cost to the debtor or as an incident to a deferral, refinancing, or consolidation.

[§ 948]

Amount of Insurance

Sec. 4.202. (1) Except as provided in subsection (2),

(a) in the case of consumer credit insurance providing life coverage, the amount of insurance may not initially exceed the debt and, if the debt is payable in instalments, may not at any time exceed the greater of the scheduled or actual amount of the debt; or

(b) in the case of any other consumer credit insurance, the total amount of periodic benefits payable may not exceed the total of scheduled unpaid instalments of the debt, and the amount of any periodic benefit may not exceed the original amount of debt divided by the number of periodic instalments in which it is payable.

(2) If consumer credit insurance is provided in connection with a revolving charge account or revolving loan account, the amounts payable as insurance benefits may be reasonably commensurate with the amount of debt as it exists from time to time. If consumer credit insurance is provided in connection with a commitment to grant credit in the future, the amounts payable as insurance benefits may be reasonably commensurate with the total from time to time of the amount of debt and the amount of the commitment. If the debt or the commitment is primarily for an agricultural purpose, and there is no regular schedule of payments, the amounts payable as insurance benefits may equal the total of the initial amount of debt and the amount of the commitment.

[§ 949]

Filing and Approval of Rates and Forms

Sec. 4.203. (1) A creditor may not use a form, or a schedule of premium rates or charges, the filing of which is required by this section, if the [Com-

missioner] of Insurance has disapproved the form or schedule and has notified the insurer of his disapproval. A creditor may not use a form or schedule unless

(a) the form or schedule has been on file with the [Commissioner] of Insurance for 30 days, or has earlier been approved by him; and

(b) the insurer has complied with this section with respect to the insurance.

(2) Except as provided in subsection (3), all policies, certificates of insurance, notices of proposed insurance, applications for insurance, endorsements and riders relating to consumer credit insurance delivered or issued for delivery in this State, and the schedules of premium rates or charges pertaining thereto, shall be filed by the insurer with the [Commissioner] of Insurance. He shall, within 30 days after the filing of any form or schedule, disapprove it if the premium rates or charges are unreasonable in relation to the benefits provided under the form, or if the form contains provisions which are unjust, unfair, inequitable, or deceptive or encourage misrepresentation of the coverage or are contrary to any provision of the [Insurance Code] or of any rule or regulation promulgated hereunder.

(3) If a group policy has been delivered in another state, the forms to be filed by the insurer with the [Commissioner] of Insurance are the group certificates and notices of proposed insurance. He shall approve them if

(a) they provide the information that would be required if the group policy were delivered in this State; and

(b) the applicable premium rates or charges do not exceed those established by his rules or regulations.

COMMENT

Subsection (2) follows the formulation of New York Insurance Law Section 154.7, which has been upheld by the New York Court of Appeals as directing the New York Superintendent of Insurance not to approve premium rates for consumer credit insurance if they are "unreasonable in relation to the benefits provided" under the related form of policy or certificate. Some doubt

has been expressed as to whether the Commissioner of Insurance has the same power under the provisions of paragraph B of Section 7 of the NAIC Model Act, which require the Commissioner to "disapprove any . . . form if the benefits provided therein are not reasonable in relation to the premium charge."

PART 3—PROPERTY AND LIABILITY INSURANCE

[§ 950]

Property Insurance

Sec. 4.301. (1) A creditor may not contract for or receive a separate charge for insurance against loss of or damage to property unless

(a) the insurance covers a substantial risk of loss of or damage to property related to the credit transaction;

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

(c) the term of the insurance is reasonable in relation to the terms of credit.

(2) The term of the insurance is reasonable if it is customary and does not extend substantially beyond a scheduled maturity.

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(3) A creditor may not contract for or receive a separate charge for insurance against loss of or damage to property unless the amount financed or principal exclusive of charges for the insurance is \$300 or more, and the value of the property is \$300 or more.

(4) The amounts of \$300 in subsection (3) are subject to change pursuant to the provisions on adjustment of dollar amounts (Section 1.106).

[§ 951] Insurance on Creditor's Interest Only

Sec. 4.302. If a creditor contracts for or receives a separate charge for insurance against loss of or damage to property, the risk of loss or damage not willfully caused by the debtor is on the debtor only to the extent of any deficiency in the effective coverage of the insurance, even though the insurance covers only the interest of the creditor.

COMMENT

The allocation of loss under this section is not to be upset by subrogation.

[§ 952] Liability Insurance

Sec. 4.303. A creditor may not contract for or receive a separate charge for insurance against liability unless the insurance covers a substantial risk of liability arising out of the ownership or use of property related to the credit transaction.

[§ 953] Cancellation by Creditor

Sec. 4.304. A creditor shall not request cancellation of a policy of property or liability insurance except after the debtor's default or in accordance with a written authorization by the debtor, and in either case the cancellation does not take effect until written notice is delivered to the debtor or mailed to him at his address as stated by him. The notice shall state that the policy may be cancelled on a date not less than 10 days after the notice is delivered, or, if the notice is mailed, not less than 13 days after it is mailed.

Article 5—Remedies and Penalties

PART 1—LIMITATIONS ON CREDITORS' REMEDIES

[§ 954] Short Title

Sec. 5.101. This Article shall be known and may be cited as Uniform Consumer Credit Code—Remedies and Penalties.

[§ 955] Scope

Sec. 5.102. This Part applies to actions or other proceedings to enforce rights arising from consumer credit sales, consumer leases and consumer loans; and, in addition, to extortionate extensions of credit (Section 5.107).

COMMENT

Section 1.201 states the territorial applicability of this Act. Sections 2.601 and 3.601 provide for the applicability of this Act by written agreement.

[§ 956] Restrictions on Deficiency Judgments in Consumer Credit Sales

Sec. 5.103. (1) This section applies to a consumer credit sale of goods or services.

(2) If the seller repossesses or voluntarily accepts surrender of goods which were the subject of the sale and in which he has a security interest and the cash price of the goods repossessed or surrendered was \$1000 or less, the buyer is not personally liable to the seller for the unpaid balance of the debt arising from the sale of the goods, and the seller is not obligated to resell the collateral.

(3) If the seller repossesses or voluntarily accepts surrender of goods which were not the subject of the sale but in which he has a security interest to secure a debt arising from a sale of goods or services or a combined sale of goods and services and the cash price of the sale was \$1000 or less, the buyer is not personally liable to the seller for the unpaid balance of the debt arising from the sale.

(4) For the purpose of determining the unpaid balance of consolidated debts or debts pursuant to revolving charge accounts, the allocation of payments to a debt shall be determined in the same manner as provided for determining the amount of debt secured by various security interests (Section 2.409).

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

(6) If the seller elects to bring an action against the buyer for a debt arising from a consumer credit sale of goods or services, when under this section he would not be entitled to a deficiency judgment if he repossessed the collateral, and obtains judgment

(a) he may not repossess the collateral, and

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

(7) The amounts of \$1000 in subsection (2) and (3) are subject to change pursuant to the provisions on adjustment of dollar amounts (Section 1.106).

[§ 957] No Garnishment Before Judgment

Sec. 5.104. Prior to entry of judgment in an action against the debtor for debt arising from a consumer credit sale, a consumer lease, or a consumer loan, the creditor may not attach unpaid earnings of the debtor by garnishment or like proceedings.

[§ 958] Limitation on Garnishment

Sec. 5.105. (1) For the purposes of this Part

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

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

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

(a) 25 per cent of his disposable earnings for that week, or

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

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

(3) No court may make, execute, or enforce an order or process in violation of this section.

COMMENT

This section is derived from CCPA Sections 302 and 303. The exemption has been increased from thirty times the minimum hourly wage to forty in the belief that the higher figure was justified in consumer transactions.

[§ 959] No Discharge From Employment for Garnishment

Sec. 5.106. No employer shall discharge an employee for the reason that a creditor of the employee has subjected or attempted to subject unpaid earnings of the employee to garnishment or like proceedings directed to the employer for the purpose of paying a judgment arising from a consumer credit sale, consumer lease, or consumer loan.

COMMENT

The penalty for violation of this section is found in Section 5.202(6).

This Section is derived from CCPA § 304. However, it prohibits an employer from discharging an employee by reason of any garnishment (whether one or more) under a judgment arising from a consumer credit sale, consumer lease, or consumer loan.

[§ 760] Extortionate Extensions of Credit

Sec. 5.107. (1) If it is the understanding of the creditor and the debtor at the time an extension of credit is made that delay in making repayment or failure to make repayment could result in the use of violence or other criminal means to cause harm to the person, reputation, or property of any person, the repayment of the extension of credit is unenforceable through civil judicial processes against the debtor.

(2) If it is shown that an extension of credit was made at an annual rate exceeding 45 per cent calculated according to the United States rule and that the creditor then had a reputation for the use or threat of use of violence or other criminal means to cause harm to the person, reputation, or property of any person to collect extensions of credit or to punish the nonrepayment thereof, there is prima facie evidence that the extension of credit was unenforceable under subsection (1).

COMMENT

This section is derived from CCPA Section 892.

[§ 961] Unconscionability

Sec. 5.108. (1) With respect to a consumer credit sale, consumer lease, or consumer loan, if the court as a matter of law finds the agreement or any clause of the agreement to have been unconscionable at the time it was made the court may refuse to enforce the agreement, or it may enforce the remainder of the agreement without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result.

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

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

COMMENT

Subsections (1) and (2) are derived from UCC Section 2-302.

PART 2—DEBTORS' REMEDIES

[§ 962] Interests in Land

Sec. 5.201. For purposes of the provisions of this Part on civil liability for violation of disclosure provisions (Section 5.203) and on debtor's right to rescind certain transactions (Section 5.204)

(1) consumer credit sale includes a sale of an interest in land without regard to the rate of the credit service charge if the sale is otherwise a consumer credit sale (Section 2.104); and

(2) consumer loan includes a loan primarily secured by an interest in land without regard to the rate of the loan finance charge if the loan is otherwise a consumer loan (Section 3.104).

COMMENT

Sections 5.203 and 5.204 apply to transactions secured by interests in land even though the credit service charge or loan finance charge does not exceed 10%.

[§ 963] Effect of Violations on Rights of Parties

Sec. 5.202. (1) If a creditor has violated the provisions of this Act applying to certain negotiable instruments (Section 2.403), or limitations on the schedule of payments or loan term for regulated loans (Section 3.512), the debtor is not obligated to pay the credit service charge or loan finance charge, and has a right to recover from the person violating this Act or from an assignee of that person's rights who undertakes direct collection of payments or enforcement of rights arising from the debt a penalty in an amount determined by the court not in excess of three times the amount of the credit service charge or loan finance charge. No action pursuant to this subsection may be brought more than one year after the due date of the last scheduled payment of the agreement with respect to which the violation occurred.

(2) If a creditor has violated the provisions of this Act applying to authority to make supervised loans (Section 3.502), the loan is void and the debtor is not obligated to pay either the principal or loan finance charge. If he has paid any part of the principal or of the loan finance charge, he has a right to recover the payment from the person violating this Act or from an assignee of that person's rights who undertakes direct collection of payments or enforcement of rights arising from the debt. With respect to violations arising from loans made pursuant to revolving loan accounts, no action pursuant to this subsection may be brought more than two years after the violation occurred. With respect to violations arising from other loans, no action pursuant to this subsection may be brought more than one year after the due date of the last scheduled payment of the agreement pursuant to which the charge was paid.

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

(4) If a debtor is entitled to a refund and a person liable to the debtor refuses to make a refund within a reasonable time after demand, the debtor may recover from that person a penalty in an amount determined by a court not exceeding the greater of either the amount of the credit service or loan finance charge or ten times the amount of the excess charge. If the creditor has made an excess charge in deliberate violation of or in reckless disregard for this Act, the penalty may be recovered even though the creditor has refunded the excess charge. No penalty pursuant to this subsection may be recovered if a court has ordered a similar penalty assessed against the same person in a civil action by the Administrator (Section 6.113). With respect to excess charges arising from sales made pursuant to revolving charge accounts or from loans made pursuant to revolving loan accounts, no action pursuant to this subsection may be brought more than two years after the time the

excess charge was made. With respect to excess charges arising from other consumer credit sales or consumer loans, no action pursuant to this subsection may be brought more than one year after the due date of the last scheduled payment of the agreement pursuant to which the charge was made.

(5) Except as otherwise provided, no violation of this Act impairs rights on a debt.

(6) If an employer discharges an employee in violation of the provisions prohibiting discharge (Section 5.106), the employee may within [] days bring a civil action for recovery of wages lost as a result of the violation and for an order requiring the reinstatement of the employee. Damages recoverable shall not exceed lost wages for six weeks.

(7) If the creditor establishes by a preponderance of evidence that a violation is unintentional or the result of a bona fide error no liability is imposed under subsections (1), (2), and (4) and the validity of the transaction is not affected.

(8) In any case in which it is found that a creditor has violated this Act, the court may award reasonable attorney's fees incurred by the debtor.

[§ 964] Civil Liability for Violation of Disclosure Provisions

Sec. 5.203. (1) Except as otherwise provided in this section, a creditor who, in violation of the provisions on disclosure (Part 3), other than the provisions on advertising (Sections 2.313 and 3.312), of the Article on Credit Sales (Article 2) and the Article on Loans (Article 3), fails to disclose information to a person entitled to the information under this Act is liable to that person in an amount equal to the sum of

(a) twice the amount of the credit service or loan finance charge in connection with the transaction, but the liability pursuant to this paragraph shall be not less than \$100 nor more than \$1000; and

(b) in the case of a successful action to enforce the liability under paragraph (a), the costs of the action together with reasonable attorney's fees as determined by the court.

(2) A creditor has no liability under this section if within 15 days after discovering an error, and prior to the institution of an action under this section or the receipt of written notice of the error, the creditor notifies the person concerned of the error and makes whatever adjustments in the appropriate account are necessary to insure that the person will not be required to pay a credit service charge or loan finance charge in excess of the amount or percentage rate actually disclosed.

(3) A creditor may not be held liable in any action brought under this section for a violation of this Act if the creditor shows by a preponderance of evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid the error.

(4) Any action which may be brought under this section against the original creditor in any credit transaction involving a security interest in land may be maintained against any subsequent assignee of the original creditor where the assignee, its subsidiaries, or affiliates were in a continuing business relationship with the original creditor either at the time the credit

was extended or at the time of the assignment, unless the assignment was involuntary, or the assignee shows by a preponderance of evidence that it did not have reasonable grounds to believe that the original creditor was engaged in violations of this Act and that it maintained procedures reasonably adapted to apprise it of the existence of the violations.

(5) No action pursuant to this section may be brought more than one year after the date of the occurrence of the violation.

COMMENT

This section is derived from Section 130 of the CCPA.

§ 965 Debtor's Right to Rescind Certain Transactions

Sec. 5.204. (1) Except as otherwise provided in this section, in the case of a consumer credit sale or consumer loan with respect to which a security interest is retained or acquired in an interest in land which is used or expected to be used as the residence of the person to whom credit is extended, the debtor shall have the right to rescind the transaction until midnight of the third business day following the consummation of the transaction or the delivery of the disclosures required under this section and all other material disclosures required by this Act, whichever is later, by notifying the creditor, in accordance with rules of the Administrator, of his intention to do so. The creditor shall clearly and conspicuously disclose, in accordance with rules of the Administrator, to the debtor in a transaction subject to this section the rights of the debtor under this section. The creditor shall also provide, in accordance with rules of the Administrator, an adequate opportunity to the obligor to exercise his right to rescind any transaction subject to this section.

(2) When a debtor exercises his right to rescind under subsection (1), he is not liable for any credit service charge, loan finance charge, or other charge, and any security interest given by the debtor becomes void upon the rescission. Within 10 days after receipt of a notice of rescission, the creditor shall return to the debtor the money or property given as earnest money, down payment, or otherwise, and shall take any action necessary or appropriate to reflect the termination of any security interest created under the transaction. If the creditor has delivered property to the debtor, the debtor may retain possession of it. Upon the performance of the creditor's obligations under this section, the debtor shall tender the property to the creditor, except that if return of the property in kind would be impractical or inequitable, the debtor shall tender its reasonable value. Tender shall be made at the location of the property or at the residence of the debtor, at the option of the debtor. If the creditor does not take possession of the property within 10 days after tender by the debtor, ownership of the property vests in the debtor without obligation on his part to pay for it.

(3) Notwithstanding any rule of evidence, written acknowledgment of receipt of any disclosure required under this Act by a person to whom a statement is required to be given pursuant to this section does no more than create a rebuttable presumption of delivery thereof.

(4) The Administrator may, if he finds that the action is necessary in order to permit homeowners to meet bona fide personal financial emergencies, prescribe rules authorizing the modification or waiver of any rights created under this section to the extent and under the circumstances set forth in those rules.

(5) This section does not apply to the creation or retention of a first lien against a dwelling to finance the acquisition of that dwelling.

COMMENT

This section is derived from CCPA Section 125.

[§ 966] Refunds and Penalties as Set-Off to Obligation

Sec. 5.205. Refunds or penalties to which the debtor is entitled pursuant to this Part may be set off against the debtor's obligation, and may be raised as a defense to a suit on the obligation without regard to the time limitations prescribed by this Part.

PART 3—CRIMINAL PENALTIES

[§ 967] Willful Violations

Sec. 5.301. (1) A supervised lender who willfully makes charges in excess of those permitted by the provisions of the Article on Loans (Article 3) applying to supervised loans (Part 5) is guilty of a misdemeanor and upon conviction may be [sentenced to pay a fine not exceeding \$[], or to imprisonment not exceeding one year, or both].

(2) A person, other than a supervised financial organization, who willfully engages in the business of making supervised loans without a license in violation of the provisions of this Act applying to authority to make supervised loans (Section 3.502) is guilty of a misdemeanor and upon conviction may be [sentenced to pay a fine not exceeding \$[], or to imprisonment not exceeding one year, or both].

(3) A person who willfully engages in the business of making consumer credit sales, consumer leases, or consumer loans, or of taking assignments of rights against debtors arising therefrom and undertakes direct collection of payments or enforcement of these rights, without complying with the provisions of this Act concerning notification (Section 6.202) or payment of fees (Section 6.203), is guilty of a misdemeanor and upon conviction may be [sentenced to pay a fine not exceeding \$100].

[§ 968] Disclosure Violations

Sec. 5.302. A person who knowingly and willfully violates the provisions on disclosure (Part 3) of the Article on Credit Sales (Article 2) or of the Article on Loans (Article 3) is guilty of a [misdemeanor] and upon conviction may be sentenced to pay a fine not exceeding \$5000, or to imprisonment not exceeding one year, or both.

Article 6—Administration

PART 1—POWERS AND FUNCTIONS OF ADMINISTRATOR

[§ 969]

Short Title

Sec. 6.101. This Article shall be known and may be cited as Uniform Consumer Credit Code—Administration.

[§ 970]

Applicability

Sec. 6.102. This Part applies to persons who in this State

(1) make or solicit consumer credit sales, consumer leases, consumer loans, consumer related sales (Section 2.602) and consumer related loans (Section 3.602); or

(2) directly collect payments from or enforce rights against debtors arising from sales, leases, or loans specified in subsection (1), wherever they are made.

[§ 971]

Administrator

Sec. 6.103. "Administrator" means [].

COMMENT

In order to obtain the administration that is so vital to the effectiveness of the Uniform Consumer Credit Code, the National Conference recommends centralizing all powers of administration in a single official or agency. In recognition of the fact that in some States a single official or agency either is not constitutionally possible or may not be politically feasible, the Act does not attempt to identify the Administrator. The Administrator may be a single State official or department, two or more State officials or departments, or a Commission. For example in a State in which a single official (*e.g.*, Superintendent or Commissioner of Banks, Banking or Financial Institutions) or a single department (*e.g.*, Banking Department, Commerce Department or Depart-

ment of Financial Institutions) presently supervises both banks and other financial institutions such as consumer finance companies and sales finance companies, it may be desirable to designate that official or department as the single Administrator. If two or more State officials or departments are to share the powers of the Administrator, the National Conference recommends that a Commission including those officials or departments be designated as Administrator, and that, unless a statutory division of areas of power and authority is provided for, the Commission be given power to prescribe the areas in which the officials or departments who are members of the Commission shall exercise the power and authority of the Administrator.

[§ 972] **Powers of Administrator; Harmony with Federal Regulations; Reliance on Rules; Duty to Report**

Sec. 6.104. (1) In addition to other powers granted by this Act, the Administrator may within the limitations provided by law

(a) receive and act on complaints, take action designed to obtain voluntary compliance with this Act, or commence proceedings on his own initiative;

(b) counsel persons and groups on their rights and duties under this Act;

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

(d) make studies appropriate to effectuate the purposes and policies of this Act and make the results available to the public; [and]

(e) adopt, amend, and repeal substantive rules when specifically authorized by this Act, and adopt, amend, and repeal procedural rules to carry out the provisions of this Act [;

(f) maintain offices within this State; and]

[(g) appoint any necessary attorneys, hearing examiners, clerks, and other employees and agents and fix their compensation, and authorize attorneys appointed under this section to appear for and represent the Administrator in court].

(2) To keep the Administrator's rules in harmony with the Federal Consumer Credit Protection Act and the regulations prescribed from time to time pursuant to that Act by the Board of Governors of the Federal Reserve System and with the rules of administrators in other jurisdictions which enact the Uniform Consumer Credit Code, the Administrator, so far as is consistent with the purposes, policies and provisions of this Act, shall

(a) before adopting, amending, and repealing rules, advise and consult with administrators in other jurisdictions which enact the Uniform Consumer Credit Code; and

(b) in adopting, amending, and repealing rules, take into consideration:

(i) the regulations so prescribed by the Board of Governors of the Federal Reserve System; and

(ii) the rules of administrators in other jurisdictions which enact the Uniform Consumer Credit Code.

(3) Except for refund of an excess charge, no liability is imposed under this Act for an act done or omitted in conformity with a rule of the Administrator notwithstanding that after the act or omission the rule may be amended or repealed or be determined by judicial or other authority to be invalid for any reason.

(4) The Administrator shall report [annually on or before January 1] to the [Governor and Legislature] on the operation of his office, on the use of consumer credit in the State, and on the problems of persons of small means obtaining credit from persons regularly engaged in extending sales or loan credit. For the purpose of making the report, the Administrator is authorized to conduct research and make appropriate studies. The report shall include a description of the examination and investigation procedures and policies of his office, a statement of policies followed in deciding whether to investigate or examine the offices of credit suppliers subject to this Act, a statement of the number and percentages of offices which are periodically investigated or examined, a statement of the types of consumer credit problems of both creditors and debtors which have come to his attention through his examinations and investigations and the disposition of them under existing law, a statement of the extent to which the rules of the Administrator pursuant to this Act are not in harmony with the regulations prescribed by the Board of Governors of the Federal Reserve System pursuant to the Federal Consumer Credit Protection Act or the rules of administrators in other jurisdictions which enact the Uniform Consumer Credit Code and the reasons for such variations, and a general

statement of the activities of his office and of others to promote the purposes of this Act. The report shall not identify the creditors against whom action is taken by the Administrator.

COMMENT

The direction to the Administrator in subsection (2) to keep his rules in harmony with the federal regulations issued pursuant to the CCPA and with the rules of adminis-

trators in other jurisdictions which enact the Uniform Consumer Credit Code is derived from the Uniform Narcotic Drug Act Section 1(14)(Alt.).

[§ 973] Administrative Powers with Respect to Supervised Financial Organizations

Sec. 6.105. (1) With respect to supervised financial organizations, the powers of examination and investigation (Sections 3.506 and 6.106) and administrative enforcement (Section 6.108) shall be exercised by the official or agency to whose supervision the organization is subject. All other powers of the Administrator under this Act may be exercised by him with respect to a supervised financial organization.

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

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

[§ 974] Investigatory Powers

Sec. 6.106. (1) If the Administrator has probable cause to believe that a person has engaged in an act which is subject to action by the Administrator, he may make an investigation to determine whether the act has been committed, and, to the extent necessary for this purpose, may administer oaths or affirmations, and upon his own motion or upon request of any party may subpoena witnesses, compel their attendance, advance evidence, and require the production of any matter which is relevant to the investigation, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of relevant facts, or any other matter reasonably calculated to lead to the discovery of admissible evidence.

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

(3) Upon failure without lawful excuse to obey a subpoena or to give testimony and upon reasonable notice to all persons affected thereby, the Administrator may apply to [] court for an order compelling compliance.

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

COMMENT

Administrator under this section includes the official or agency referred to in Section 6.105(1).

A course of conduct is an act subject to action by the Administrator under subsection (1).

[§ 975] Application of [Administrative Procedure Act] [Part on Administrative Procedure and Judicial Review]

Sec. 6.107. Except as otherwise provided, the [State administrative procedure act] [Part on Administrative Procedure and Judicial Review (Part 4) of this Article] applies to and governs all administrative action taken by the Administrator pursuant to this Article or the Part on Regulated and Supervised Loans (Part 5) of the Article on Loans (Article 3).

COMMENT

This section subjects actions of the Administrator to the State administrative procedure act, regarding, *inter alia*, adoption of rules, notice and hearing, contested cases, and judicial review. If the State does not

have an adequate administrative procedure act providing equivalent procedural and judicial review protections, Part 4 of this Article should be enacted; otherwise, it may be omitted.

[§ 976] Administrative Enforcement Orders

Sec. 6.108. (1) After notice and hearing the Administrator may order a creditor or a person acting in his behalf to cease and desist from engaging in violations of this Act. A respondent aggrieved by an order of the Administrator may obtain judicial review of the order and the Administrator may obtain an order of the court for enforcement of its order in the [] court. The proceeding for review or enforcement is initiated by filing a petition in the court. Copies of the petition shall be served upon all parties of record.

(2) Within 30 days after service of the petition for review upon the Administrator, or within any further time the court may allow, the Administrator shall transmit to the court the original or a certified copy of the entire record upon which the order is based, including any transcript of testimony, which need not be printed. By stipulation of all parties to the review proceeding, the record may be shortened. After hearing, the court may (a) reverse or modify the order if the findings of fact of the Administrator are clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record, (b) grant any temporary relief or restraining order it deems just, and (c) enter an order enforcing, modifying, and enforcing as modified, or setting aside in whole or in part the order of the Administrator, or remanding the case to the Administrator for further proceedings.

(3) An objection not urged at the hearing shall not be considered by the court unless the failure to urge the objection is excused for good cause shown.

A party may move the court to remand the case to the Administrator in the interest of justice for the purpose of adducing additional specified and material evidence and seeking findings thereon upon good cause shown for the failure to adduce this evidence before the Administrator.

(4) The jurisdiction of the court shall be exclusive and its final judgment or decree shall be subject to review by the [] court in the same manner and form and with the same effect as in appeals from a final judgment or decree in a [special proceeding]. The Administrator's copy of the testimony shall be available at reasonable times to all parties for examination without cost.

(5) A proceeding for review under this section must be initiated within 30 days after a copy of the order of the Administrator is received. If no proceeding is so initiated, the Administrator may obtain a decree of the [] court for enforcement of its order upon a showing that the order was issued in compliance with this section, that no proceeding for review was initiated within 30 days after copy of the order was received, and that the respondent is subject to the jurisdiction of the court.

(6) With respect to unconscionable agreements or fraudulent or unconscionable conduct by the respondent, the Administrator may not issue an order pursuant to this section but may bring a civil action for an injunction (Section 6.111).

COMMENT

If the respondent does not seek review of the Administrator's cease and desist order, this section makes that order final and allows the Administrator to obtain enforcement of it without having to support its findings with substantial evidence.

[§ 977]

Assurance of Discontinuance

Sec. 6.109. If it is claimed that a person has engaged in conduct subject to an order by the Administrator (Section 6.108) or by a court (Sections 6.110 through 6.112), the Administrator may accept an assurance in writing that the person will not engage in the conduct in the future. If a person giving an assurance of discontinuance fails to comply with its terms, the assurance is evidence that prior to the assurance he engaged in the conduct described in the assurance.

[§ 978]

Injunctions Against Violations of Act

Sec. 6.110. The Administrator may bring a civil action to restrain a person from violating this Act and for other appropriate relief.

[§ 979]

Injunctions Against Unconscionable Agreements and Fraudulent or Unconscionable Conduct

Sec. 6.111. (1) The Administrator may bring a civil action to restrain a creditor or a person acting in his behalf from engaging in a course of

(a) making or enforcing unconscionable terms or provisions of consumer credit sales, consumer leases, or consumer loans;

(b) fraudulent or unconscionable conduct in inducing debtors to enter into consumer credit sales, consumer leases, or consumer loans; or

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

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

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

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

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

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

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

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

(c) in the case of consumer credit sales or consumer leases, gross disparity between the price of the property or services sold or leased and the value of the property or services measured by the price at which similar property or services are readily obtainable in credit transactions by like buyers or lessees;

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

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

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

COMMENT

One purpose of this section is to afford the Administrator a means of dealing with new patterns of fraudulent or unconscionable conduct unforeseen and, perhaps, unforeseeable at the writing of this Act. Another is to give him a more flexible remedy for halting reprehensible creditor practices that have been specifically and somewhat rigidly treated in previous consumer credit legislation. For instance, this Act has no specific prohibition against the creditor's allowing

the debtor to sign a credit agreement containing blanks. In some situations there may be legitimate reasons for a contract to contain blanks at the time of signing. However, if the creditor deliberately leaves blanks to be filled in after the debtor's signature and without his consent, the Administrator may seek to restrain the practice as fraudulent or unconscionable conduct under this section.

[§ 980]

Temporary Relief

Sec. 6.112. With respect to an action brought to enjoin violations of the Act (Section 6.110) or unconscionable agreements or fraudulent or uncon-

scionable conduct (Section 6.111), the Administrator may apply to the court for appropriate temporary relief against a respondent, pending final determination of proceedings. If the court finds after a hearing held upon notice to the respondent that there is reasonable cause to believe that the respondent is engaging in or is likely to engage in conduct sought to be restrained, it may grant any temporary relief or restraining order it deems appropriate.

[§ 981]**Civil Actions by Administrator**

Sec. 6.113. (1) After demand, the Administrator may bring a civil action against a creditor for making or collecting charges in excess of those permitted by this Act. An action may relate to transactions with more than one debtor. If it is found that an excess charge has been made, the court shall order the respondent to refund to the debtor or debtors the amount of the excess charge. If a creditor has made an excess charge in deliberate violation of or in reckless disregard for this Act, or if a creditor has refused to refund an excess charge within a reasonable time after demand by the debtor or the Administrator, the court may also order the respondent to pay to the debtor or debtors a civil penalty in an amount determined by the court not in excess of the greater of either the amount of the credit service or loan finance charge or ten times the amount of the excess charge. Refunds and penalties to which the debtor is entitled pursuant to this subsection may be set off against the debtor's obligation. If a debtor brings an action against a creditor to recover an excess charge or civil penalty, an action by the Administrator to recover for the same excess charge or civil penalty shall be stayed while the debtor's action is pending and shall be dismissed if the debtor's action is dismissed with prejudice or results in a final judgment granting or denying the debtor's claim. With respect to excess charges arising from sales made pursuant to revolving charge accounts or from loans made pursuant to revolving loan accounts, no action pursuant to this subsection may be brought more than two years after the time the excess charge was made. With respect to excess charges arising from other consumer credit sales or consumer loans, no action pursuant to this subsection may be brought more than one year after the due date of the last scheduled payment of the agreement pursuant to which the charge was made. If the creditor establishes by a preponderance of evidence that a violation is unintentional or the result of a bona fide error, no liability to pay a penalty shall be imposed under this subsection.

(2) The Administrator may bring a civil action against a creditor or a person acting in his behalf to recover a civil penalty for willfully violating this Act, and if the court finds that the defendant has engaged in a course of repeated and willful violations of this Act, it may assess a civil penalty of no more than \$5,000. No civil penalty pursuant to this subsection may be imposed for violations of this Act occurring more than two years before the action is brought or for making unconscionable agreements or engaging in a course of fraudulent or unconscionable conduct.

[§ 982]**Jury Trial**

Sec. 6.114. In an action brought by the Administrator under this Act, he has no right to trial by jury.

[§ 983] Debtors' Remedies Not Affected

Sec. 6.115. The grant of powers to the Administrator in this Article does not affect remedies available to debtors under this Act or under other principles of law or equity.

[§ 984] [Venue]

[Sec. 6.116. The Administrator may bring actions or proceedings in a court in a county in which an act on which the action or proceeding is based occurred or in a county in which respondent resides or transacts business.]

COMMENT

This section is bracketed because it may be unnecessary in some States because of adequate venue rules in those states.

PART 2—NOTIFICATION AND FEES**[§ 985] Applicability**

Sec. 6.201. This Part applies to a person making in this State consumer credit sales, consumer leases, or consumer loans and to a person having an office or place of business in this State who takes assignments of and undertakes direct collection of payments from or enforcement of rights against debtors arising from these sales, leases, or loans.

[§ 986] Notification

Sec. 6.202. (1) Persons subject to this Part shall file notification with the Administrator within 30 days after commencing business in this State, and, thereafter, on or before January 31 of each year. The notification shall state:

- (a) name of the person;
- (b) name in which business is transacted if different from (1);
- (c) address of principal office, which may be outside this State;
- (d) address of all offices or retail stores, if any, in this State at which consumer credit sales, consumer leases, or consumer loans are made, or in the case of a person taking assignments of obligations, the offices or places of business within this State at which business is transacted;
- (e) if consumer credit sales, consumer leases, or consumer loans are made otherwise than at an office or retail store in this State, a brief description of the manner in which they are made;
- (f) address of designated agent upon whom service of process may be made in this State (Section 1.203); and
- (g) whether regulated or supervised loans or both are made.

(2) If information in a notification becomes inaccurate after filing, no further notification is required until the following January 31.

§ 983