MODEL
CONSUMER CREDIT ACT
1973

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

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INTRODUCTION

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

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

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

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

As a result state legislatures, which bear the primary responsibility for regulation of consumer credit under our federal system, have not had access to information relevant to the task of identifying and resolving problems in need of solution.
That there are and have been serious abuses in the extension of consumer credit is evident from the concern articulated by legal assistance lawyers, private consumer groups and state and local public consumer protection agencies, many of which came into existence during the late 1960's. A major response to this concern was the enactment in 1968 by Congress of the Federal Consumer Credit Protection Act (Truth in Lending). At the same time the National Conference of Commissioners on Uniform State Laws promulgated the initial version of the Uniform Consumer Credit Code (UCCC). Consumer dissatisfaction with the UCCC was so widespread, however, that it became immediately apparent that the need for reform at the state level was to remain unfulfilled. In an attempt to fill this void the National Consumer Law Center published in 1970 the National Consumer Act (NCA) as a model bill to which legislatures could look for a standard. Since that time, many of the provisions of the NCA have served as the basis for consumer protection legislation throughout the nation. And, most recently, the substantive credit provisions of the NCA served as the starting point for what was eventually adopted in March, 1972 as the Wisconsin Consumer Act.

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

This new Model Consumer Credit Act is constructed upon three major principles. First, consumer credit is a commodity clothed with the public interest and, as such, should be closely regulated by an active administrative body similar to that which the public expects for insurance and utilities. A consumer credit administrator should have the power not only to conduct periodic inspections but also to promulgate rules effectuating the purposes of regulatory legislation, to require the production of data from creditors relative to the cost experiences and profitability factor of transactions, to require the use of standardized contracts and other documents relative to commonly recurring transactions, and to take creditors to court for violations which affect large numbers of consumers.
Second, adequate private remedies must exist so that consumers affected by illegal practices can obtain effective judicial redress. Even the most efficient of administrative agencies cannot police the day-to-day practices of an industry as large and pervasive in our economy as consumer credit. Consumers aggrieved by illegal practices can and should be their own best advocates. But relief in the form of minimum penalties together with an award for attorney's fees incurred in the prosecution of a case must be available both to encourage consumers to seek legal redress and to discourage creditors from engaging in questionable practices in the first instance.

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

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

January 1973
Boston, Massachusetts
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MODEL CONSUMER CREDIT ACT

AN ACT

Relating to consumer credit transactions constituting the [state] Consumer Credit Act; consolidating and revising the law relating to consumer credit transactions including the instalment sale of goods and services, consumer loans and consumer leases; revising the law relating to usury and other charges for consumer credit; consolidating and revising certain aspects of the law relating to unfair or deceptive practices and warranties in consumer credit transactions; regulating practices relating to insurance in consumer credit transactions; regulating credit reporting; regulating the practices of debt collection; providing for administrative regulation of consumer credit transactions and repealing inconsistent legislation.
ARTICLE 1
GENERAL PROVISIONS AND DEFINITIONS

PART 1
SHORT TITLE; CONSTRUCTION; GENERAL PROVISIONS

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

1.102 PURPOSES; RULES OF CONSTRUCTION
(1) This Act shall be liberally construed and applied to promote its underlying purposes and policies.
The underlying purposes and policies of this Act are

(a) to simplify, clarify and modernize the law governing consumer credit transactions; and

(b) to protect consumers against unfair, deceptive or unconscionable practices by suppliers of consumer credit, debt collectors and credit reporting agencies; and

(c) to assure that consumers are provided meaningful disclosure of the essential factors of credit transactions; and

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

(e) to insure due process of law to consumers in consumer credit transactions, enforcement of credit obligations and the collection of debt; and

(f) to provide consumers with adequate and meaningful remedies for the protection of consumer rights; and

(g) to provide for efficient and effective administration of the laws governing consumer credit transactions; and
1.102(2)

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

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

(4) In this Act unless the context otherwise
requires

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

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

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

SECTION 1.103 SUPPLEMENTARY GENERAL PRINCIPLES OF LAW

(1) Unless displaced by the particular provisions
of this Act, parties to a consumer credit transaction
have all of the obligations, duties, rights and remedies
provided in the [Uniform Commercial Code] and any other
law of this State which applies to the transaction. In
addition, 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 supplement the provisions of this
Act.

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

SECTION 1.104  CONSTRUCTION AGAINST IMPLICIT REPEAL

(1) 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, or limited
in the accomplishment of its purposes, by subsequent
legislation if such construction can reasonably be
avoided.

(2) The rights and benefits provided to consumers
under this Act are intended to be cumulative rather
than exclusive and those rights and benefits presently
enjoyed by consumers under any statute or decision not
expressly repealed shall not be deemed to be impliedly
repealed or limited by this Act if such construction
can reasonably be avoided.

SECTION 1.105 SEVERABILITY

If any provision of this Act or the application
to any person or circumstances is held in-
valid, the invalidity does not affect other provi-
sions 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.

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

(1) Rights or benefits conferred on consumers
by provisions of this Act may not be waived or other-
wise varied, except as provided in this Section. Any
waiver or variance of a right or benefit conferred on
consumers by provisions of this Act, whether oral or
written, other than one authorized by this Section,
is void.
(2) A claim by a consumer against a creditor arising under this Act or any aspect of which is governed by this Act and a claim against a consumer arising from a consumer credit transaction, if disputed in good faith, may be settled by agreement.

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

(4) A settlement in which the consumer 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 be unconscionable. In addition to the factors set forth in Section 8.104, the competence of the consumer, any deception or coercion practiced upon him, the nature and extent of the legal advice received by him and the value of the consideration received are relevant to the issue of unconscionability of a settlement.

SECTION 1.107 CONSTRUCTION OF RULES OF ADMINISTRATOR

Any requirement imposed by this Act, whether in the nature of an obligation, duty, right or remedy
includes any requirement imposed by a related rule of the Administrator adopted pursuant to this Act.
PART 2

PRINCIPLES OF INTERPRETATION

SECTION

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

1.202 ADMISSIBILITY OF PAROL EVIDENCE

1.203 INTERPRETATION OF LANGUAGE OF AGREEMENTS;
   ENFORCEABILITY

1.204 WEIGHT OF EVIDENCE

1.205 ACKNOWLEDGEMENTS OR CERTIFICATES OF PERFORMANCE

1.206 REASONABLE TIME TO PERFORM OBLIGATIONS

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

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

(2) "Good faith" means honesty in fact in the con-
duct or transaction concerned and, in addition, in the
case of the creditor, debt collector, consumer reporting
agency or merchant the observance of reasonable stan-
dards of fair dealing. The creditor, debt collector,
consumer reporting agency or merchant does not act in
1.201(2)

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

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

(a) he knows or has reason to know of violations
of this Act arising out of the transaction;
or
(b) he knows or has reason to know that he
should seek further information and fails
to do so; or
(c) he has engaged in conduct which is a viola-
tion of any provision of this Act.

(4) Without limiting the scope of the inquiry under
this Act regarding notice or knowledge or reason to
know, the creditor, debt collector, consumer reporting
agency or merchant has notice, knowledge or reason to
know what a reasonable inquiry would have revealed if
(a) he learns of a fact, or is put in a position, which would cause a reasonably prudent person to inquire; or

(b) his course of dealing with his transferor, his transferee, the seller or other merchants or customers apprises him of a fact which would cause a reasonably prudent person to inquire; or

(c) his own records contain the information or contain information which would cause a reasonably prudent person to inquire; or

(d) there are readily available regular sources of information which a reasonably prudent person would utilize.

Section 1.202 Admissibility of Parol Evidence

No rule of law on parol or extrinsic evidence nor any term of a writing shall operate to exclude or limit admissibility of evidence of the understanding of the parties as to the agreement or a particular term of the agreement relating to a transaction under this Act.
SECTION 1.203  INTERPRETATION OF LANGUAGE OF AGREEMENTS; ENFORCEABILITY

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

(2) Language used by the creditor to induce a transaction, whether used in an advertisement or in the course of negotiation of a transaction and whether expressed orally or in writing, shall be interpreted to have the meaning ordinarily associated with the particular words used in the context of the particular consumer or community of consumers to whom the language was directed.

(3) The fact that the consumer has signed a writing evidencing an agreement is not in and of itself evidence that he understood the meaning of any language contained therein or consented to the inclusion of it as part of the agreement or that he agreed that the writing be a final expression of the agreement or a term of the agreement.
(4) An agreement or a term of an agreement is not enforceable against the consumer if it is established that the consumer did not understand the meaning of the agreement or term or that he did not consent to the inclusion of the term as part of the agreement.

SECTION 1.204 WEIGHT OF EVIDENCE

In the event of a conflict between different forms of expression of language as to the existence of an agreement or particular terms of an agreement, language expressed orally shall be given more weight than language expressed in handwriting or typewriting, and language expressed in handwriting or typewriting shall have more weight than language expressed in printed form.

SECTION 1.205 ACKNOWLEDGEMENTS OR CERTIFICATES OF PERFORMANCE

A statement in the form of a certificate of performance or other acknowledgment, whether or not signed by the consumer, to the effect that there has been compliance with any requirement of this Act or performance of any obligation of the creditor pursuant
to a transaction governed by this Act creates no pres-
sumption against the consumer that the facts or conclu-
sions recited in the statement are true.

SECTION 1.206 REASONABLE TIME TO PERFORM OBLIGATIONS

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

SCOPE AND JURISDICTION

SECTION

1,301 APPLICABILITY AND EXCLUSIONS

1,302 EFFECT OF ACT ON POWERS OF ORGANIZATIONS

1,303 TERRITORIAL APPLICATION

1,304 JURISDICTION AND SERVICE OF PROCESS

SECTION 1,301 APPLICABILITY AND EXCLUSIONS

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

(2) This Act does not apply to

(a) extensions of credit to government or governmental agencies or instrumentalities, and

(b) extensions of credit to organizations.
1.302

SECTION 1.302 EFFECT OF ACT ON POWERS OF ORGANIZATIONS

(1) This Act prescribes maximum charges for all creditors extending or arranging consumer credit including consumer credit sales, consumer loans and consumer leases and displaces existing limitations on the powers of those creditors based on maximum charges.

(2) With respect to sellers of goods or services, lessors of goods, 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 in consumer credit transactions.

(3) Except as provided in subsection (1) [and in the Article on Effective Date and Repealer (Article 10)], 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 subsection (1) and subsection (2) [and in the Article on Effective Date and Repealer (Article 10)], this Act does not displace
1.302(4)

(a) limitations on powers of supervised fi-
nancial organizations with respect to the
amount of a loan to a single borrower,
the ratio of a loan to the value of col-
lateral, 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.

SECTION 1.303 TERRITORIAL APPLICATION

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

(2) For the purposes of this Act a consumer credit
transaction or a modification of a consumer credit
transaction is made in this State if
1.303(2)

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

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

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

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

(3) In the case of a consumer credit transaction
    pursuant to an open end credit plan this Act applies
    if the consumer resides in this State at the time
    (a) the consumer forwards or otherwise deliv-
        ers to the creditor a communication of
        his intention to establish the open end
        account, or

    (b) the creditor forwards or otherwise deliv-
        ers to the consumer a communication
giving notice to the consumer of the right to use the account.

(4) The Part on Limitations on Agreements and Practices (Part 4 of Article 2), the Part on Preservation of Claims, Defenses and Equities of Consumer (Part 6 of Article 2), the Article on Debt Collection (Article 6), the Article on Enforcement of Credit Obligations (Article 7) and the Article on Consumer Remedies and Actions (Article 8) apply to attempts to collect debts and actions and other proceedings brought in this State to enforce rights or obligations arising from consumer credit transactions, wherever made.

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

(6) Except as otherwise provided in subsection (4), a consumer credit transaction made in another state with the consumer who was not a resident of this
State when the transaction was made is valid and enforceable in this State to the extent that it is valid and enforceable under the laws of the State in which it was made.

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

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

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

(b) that the consumer consents to the jurisdiction of another state; and

(c) that fixes venue.

SECTION 1.304 JURISDICTION AND SERVICE OF PROCESS

(1) The [ ] Court of this State may exercise jurisdiction over any person other than the consumer with respect to any conduct governed by this Act or
with respect to any claim arising from a transaction subject to this Act.

(2) In addition to any other method provided by rule or by statute, personal jurisdiction over the person other than the consumer 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.

(3) If the person other than the consumer 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 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.

(4) The agent designated under this Section or the Secretary of State, in the absence of the designation of an agent, shall constitute a proper person upon whom service of process may be made for the acquisition of personal jurisdiction over directors and other employees or agents of the person other than the consumer, if the directors or other employees or agents are not residents of this State, in a cause of action brought pursuant to this Act.
PART 4
GENERAL DEFINITIONS

Section
1.401 "ACTUARIAL METHOD"
1.402 "ADMINISTRATOR"
1.403 "AGREEMENT"
1.404 "AMOUNT FINANCED"
1.405 "BILLING CYCLE"
1.406 "BUSINESS DAY"
1.407 "CASH PRICE"
1.408 "COLLATERAL"
1.409 "CONSPICUOUS"
1.410 "CONSUMER"
1.411 "CONSUMER CREDIT SALE"
1.412 "CONSUMER CREDIT TRANSACTION"
1.413 "CONSUMER LEASE"
1.414 "CONSUMER LOAN"
1.415 "CONSUMER SALE"
1.416 "CONSUMER TRANSACTION"
1.417 "COSIGNER"
1.418 "CREDIT"
1.419 "CREDITOR"
1.420 "DEBT COLLECTION"
1.421 "EARNINGS"
1.422 "FEDERAL CONSUMER CREDIT PROTECTION ACT"
"FINANCE CHARGE"
"GOODS"
"LENDER"
"OFFICIAL FEES"
"OPEN END CREDIT PLAN"
"ORGANIZATION"
"PAYABLE IN INSTALMENTS"
"PERIODIC BILLING STATEMENT"
"PERSON"
"PERSONAL PROPERTY"
"PERSON RELATED TO"
"PREPAID FINANCE CHARGE"
"PRESUMED" OR "PRESUMPTION"
"PROPERTY"
"REPRESENTATION"
"REQUIRED DEPOSIT BALANCE"
"SECURITY INTEREST"
"SELLER"
"SERVICES"
"SUPERVISED FINANCIAL ORGANIZATION"
"TRANSACTION"
"TRANSACTION TOTAL"
OTHER DEFINED TERMS
SECTION 1.401 "ACTUARIAL METHOD"

"Actuarial method" means the method, defined by rule of the Administrator, of allocating payments made on a credit obligation between the amount financed and the finance charge pursuant to which a payment is applied first to the accumulated finance charge and the balance is applied to the unpaid amount financed.

SECTION 1.402 "ADMINISTRATOR"

"Administrator" means the Administrator designated in Section 9.102 of the Article on Administration (Article 9).

SECTION 1.403 "AGREEMENT"

"Agreement" means the bargain of the parties in fact as found in their oral or written language or by implication from other circumstances including course of dealing or course of performance or usage of trade. An agreement or any part thereof may not be implied from usage of trade unless it is established that the consumer knew of the usage and that it applied in view of all of the circumstances.
1.404

SECTION 1.404 "AMOUNT FINANCED"

"Amount financed" means the amount of credit of which the consumer will have the actual use, consisting of the total of the following items from which any prepaid finance charge or required deposit has been excluded:

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

(b) in the case of a consumer credit sale
   (i) the cash price of the property or services, less the total amount of any down payment whether made in cash or in property traded in, and
   (ii) the amount actually paid or to be paid by the seller pursuant to an agreement with the consumer to discharge a security interest in a lien on or an unpaid obligation with respect to property traded in; or

(c) in the case of a consumer loan, the net amount paid by or to be paid to the consumer or for his account or to another person on his behalf.
SECTION 1.405 "BILLING CYCLE"

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

SECTION 1.406 "BUSINESS DAY"

"Business day" means any calendar day except Saturday, Sunday and any holiday established by Federal law and the law of this State.

SECTION 1.407 "CASH PRICE"

"Cash price" of property or services means the price at which they are offered for sale by the seller to cash buyers in the ordinary course of business and, if appropriate, may include

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

(b) the cash price of accessories or related services such as delivery, installation,
servicing, repairs, alterations and improvements; and
(c) amounts actually paid or to be paid by the seller for registration, certificate of title or license fees.

SECTION 1.408 "COLLATERAL"
"Collateral" means personal property subject to a security interest arising from the consumer credit transaction.

SECTION 1.409 "CONSPICUOUS"
(1) A term, a writing or other communication is "conspicuous" only if the behavior of the consumer that is sought will be influenced by the manner in which the information is conveyed.

(2) A term, a writing or other communication is not conspicuous if it
(a) appears on the reverse side of a page signed by the consumer; or
(b) is not obvious and prominent and does not sufficiently contrast with and stand out
1.409(2)

from the remainder of the writing or communication in which it appears; or

(c) is not in meaningful sequence in the context in which it appears or is otherwise so arranged or presented that it is obscured or the consumer is confused or misled or has his attention distracted from it.

(3) Neither the mere presentation of a writing to the consumer nor the mere appearance of the initials or signature of the consumer on a writing create a presumption that the writing or anything contained therein is conspicuous, notwithstanding any provision in the writing or of law to the contrary.

SECTION 1.410 "CONSUMER"

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

SECTION 1.411 "CONSUMER CREDIT SALE"

(1) "Consumer credit sale" means a sale of property or services to a consumer in which credit which is payable in instalments is granted by a seller who in the
ordinary course of business engages in credit transaction
with consumers.

(2) The term "consumer credit sale" includes any
transaction in the form of a bailment or lease of
goods if the consumer 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 consumer 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 obli-
gations.

SECTION 1.412 "CONSUMER CREDIT TRANSACTION"
"Consumer credit transaction" means a transaction
between a creditor and a consumer in which credit is
extended to the consumer. The term includes but is
not limited to consumer credit sales, consumer leases
and consumer loans.

SECTION 1.413 "CONSUMER LEASE"
"Consumer lease" means a lease which is payable in
instalments of personal property to a consumer by a lessor
who in the ordinary course of business leases property to consumers.

**SECTION 1.414 "CONSUMER LOAN"**

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

**SECTION 1.415 "CONSUMER SALE"**

"Consumer sale" means a sale of property or services to a consumer by a seller.

**SECTION 1.416 "CONSUMER TRANSACTION"**

"Consumer transaction" means a transaction between a consumer and a person who in the ordinary course of business sells or provides property, services or credit to consumers. The term includes but is not limited to consumer credit transactions and consumer sales.
1.417

**SECTION 1.417  "COSIGNER"**

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

1.418

**SECTION 1.418  "CREDIT"**

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

1.419

**SECTION 1.419  "CREDITOR"**

"Creditor" means a person who in the ordinary course of business extends credit to consumers or arranges for the extension of credit by other persons to consumers, or offers to extend or arrange for the extension of such credit. Except as otherwise provided the term includes an assignee or other transferee of the right of the creditor to payment from the consumer, including a person who takes the obligation for the purpose of collection only.
SECTION 1.420 "DEBT COLLECTION"

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

SECTION 1.421 "EARNINGS"

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

SECTION 1.422 "FEDERAL CONSUMER CREDIT PROTECTION ACT"

"Federal Consumer Credit Protection Act" means the Consumer Credit Protection Act (Public Law No. 90-321; 82 Stat. 146) as amended, and includes regulations, as amended and adopted pursuant thereto.
1.423

SECTION 1.423 "FINANCE CHARGE"

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

(a) interest, time price differential or any amount payable under a discount, point or other system of charges; and

(b) service, transaction, activity or carrying charges; and

(c) loan fee, points, finder's fee or similar commission or brokerage charges; and

(d) fees for an appraisal, investigation or credit report; and

(e) charges or premiums for any guarantee or insurance protecting the creditor against the default of the consumer or other credit loss; and

(f) any charge imposed by a creditor upon another creditor for purchasing or accepting the obligation of the consumer if the
consumer is required to pay part of that charge in cash, as an addition to the obligation, or as a deduction from the proceeds of the obligation.

(2) The term does not include delinquency, deferral or other charges resulting from failure by the consumer to make payments if authorized by this Act and if imposed for actual unanticipated delinquency, default or other such occurrence.

SECTION 1.424 "GOODS"

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

SECTION 1.425 "LENDER"

"Lender" means a creditor who extends credit in the form of a consumer loan.
1.426

SECTION 1.426 “OFFICIAL FEES”

"Official fees" means

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

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

SECTION 1.427 "OPEN END CREDIT PLAN"

(1) "Open end credit plan" means an arrangement
between the creditor and the consumer under which
(a) the creditor may permit the consumer to
purchase goods or services or obtain a loan
or loans, from time to time, directly from
the creditor or from other creditors or
sellers as the arrangement may provide;

and

(b) the consumer has the privilege of paying

the balance either in full or in instalments;

and

(c) the finance charge, if any, is computed by

the creditor from time to time on the out-

standing unpaid balance; and

(d) the amount financed is not computable at

the inception of the plan.

(2) The term does not include negotiated advances

under a consumer credit transaction extended to finance

the acquisition of real property and secured by a first

lien on the property.

SECTION 1.428 "ORGANIZATION"

"Organization" means a corporation, government or

governmental subdivision or agency, trust, estate, part-
nership, cooperative or association.

SECTION 1.429 "PAYABLE IN INSTALMENTS"

(1) "Payable in instalments" means with respect to

the obligation of the consumer pursuant to a consumer
1,429(1)  
credit transaction that payment is required or permitted,  
by agreement, to be made in  
(a) one (1) or more periodic payments, excluding  
a down payment, if the obligation includes  
a finance charge, or  
(b) four (4) or more periodic payments, excluding  
a down payment, if the obligation does  
not include a finance charge.

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

SECTION 1,430 "PERIODIC BILLING STATEMENT"  
"Periodic billing statement" means a writing mailed  
or delivered by the creditor to the consumer with re-  
spect to an outstanding balance of the obligation of  
the consumer pursuant to a consumer credit transaction.

SECTION 1,431 "PERSON"  
"Person" includes a natural person or an individ-  
ual, and an organization.
"Personal property" means any present or future interest in goods, chattels, general intangibles or choses in action, whether such interest is vested or contingent.

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

"Person related to" with respect to an individual means

(a) the spouse of the individual; and

(b) a brother, brother-in-law, sister, sister-in-law of the individual; and

(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; and

(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; and

(c) the spouse of a person related to the or-
ganization; and

(d) a relative by blood or marriage of a per-
son related to the organization who shares
the same home with him.

SECTION 1.434 "PREPAID FINANCE CHARGE"

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

SECTION 1.435 "PRESUMED" OR "PRESUMPTION"

"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.

SECTION 1.436 "PROPERTY"

"Property" includes both real and personal property.
SECTION 1.437 "REPRESENTATION"

"Representation" includes any statement, advertisement or commercial message, written or oral, about a creditor, property, services or credit, delivered, presented or made available to consumers or prospective consumers in any manner whatsoever

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

(b) on radio, television, public address system; or

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

(d) in any interior or exterior sign or display, in any window display, in any point-of-transaction display or literature, recording, price tag or other medium; or

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

SECTION 1.438 "REQUIRED DEPOSIT BALANCE"

"Required deposit balance" means any deposit balance or any investment which the creditor requires the consumer to make, maintain or increase in a specified amount or proportion as a condition to the extension of credit except
(a) an escrow account which is a permitted additional charge under Section 2.204; or
(b) a deposit balance which will be wholly applied toward satisfaction of the obligation of the consumer under the transaction; or
(c) a deposit balance or investment which was in existence at least three (3) months prior to the extension of credit and which is offered by the consumer as security for that extension of credit; or
(d) a deposit balance or other investment whose principal purpose is independent of the extension of credit or the creation of security for its repayment, acquired or established from the proceeds of an extension of credit made for that purpose upon the written request of the consumer.

SECTION 1.439 "SECURITY INTEREST"

"Security interest" means any interest in property which secures payment or performance of an obligation of the consumer. The term includes, but is not limited to, security interests under the Uniform Commercial Code, real property mortgages, deeds of trust and other consensual or confessed liens whether or not recorded,
mechanic's, materialmen's, artisan's and other similar liens, vendor's liens in both real and personal property, the interest of a seller in a contract for the sale of real property, any lien on property arising by operation of law and any interest in a lease when used to secure payment or performance of an obligation.

SECTION 1.440 "SELLER"

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

SECTION 1.441 "SERVICES"

"Services" includes

(a) work, labor and other personal services;

and

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

(c) privileges and contract rights with respect to accommodations or facilities including but in no manner limited to hotels and restaurants, transportation, education,
entertainment, recreation, physical culture, hospital accommodations and the like; and

(d) insurance.

SECTION 1.442 "SUPERVISED FINANCIAL ORGANIZATION"

"Supervised financial organization" means a person

(a) organized, chartered or holding an authority 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 of deposit account, and

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

SECTION 1.443 "TRANSACTION"

"Transaction" means all of the agreements made between two (2) or more persons to carry out an exchange of value, and includes the entire process of soliciting, negotiating, making, performing and enforcing such agreements, whether or not any agreement is enforceable by action.
SECTION 1.444 "TRANSACTION TOTAL"

"Transaction total" means

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

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

SECTION 1.445 OTHER DEFINED TERMS

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

"Account" Section 5.102(1)

"Administrator" Section 9.102

"Adverse information" Section 5.102(2)

"Cardholder" Section 2.408(1)(b)

"Claim" Section 6.102(1)

"Conclusion of the direct solicitation" Section 2.701(2)
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ARTICLE 2
CONSUMER CREDIT TRANSACTIONS

Part 1
GENERAL PROVISIONS

Section
2.101 AUTHORITY TO EXTEND CREDIT
2.102 DISCRIMINATION PROHIBITED
2.103 MAXIMUM PERIODS OF REPAYMENT
2.104 PRESERVATION OF DATA AND WRITINGS

Section 2.101 AUTHORITY TO EXTEND CREDIT

(1) No person shall engage in the business of extending consumer credit or taking assignments of and undertaking collection of payments from or enforcement of rights against consumers until he has registered with the Administrator in accordance with the provisions of the Part on Registration and Fees (Part 2 of Article 9).

(2) A consumer credit transaction in violation of this Section is subject to the penalty provisions of Section 8.106 and Section 8.109. Nothing in this Section shall be construed to limit the authority of the Administrator to recover civil penalties (Section 9.209).
2.102  
SECTION 2.102 DISCRIMINATION PROHIBITED  

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

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

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

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

SECTION 2.103 MAXIMUM PERIODS OF REPAYMENT  

(1) With respect to a consumer credit transaction other than one pursuant to an open end credit plan, no creditor shall enter into an agreement pursuant to which instalments are scheduled to be paid in full over a period of more than
2.103(1)

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

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

SECTION 2.104 PRESERVATION OF DATA AND WRITINGS

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

(2) With respect to a transaction other than one pursuant to an open end credit plan, the creditor shall retain for the period specified in Section 7.103 copies of every writing evidencing the offer or obligation of the consumer, including every offer to purchase or other proposal which the creditor has required or requested the consumer to sign during negotiation.
2.104(3)

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

(4) No creditor shall accept an assignment of a claim or security interest arising from a consumer credit transaction unless the assignment is accompanied by or the assignor agrees to provide to the assignee, data which will enable the assignee to comply with any request made by the consumer under the provisions of this Part.
PART 2

CHARGES AND RELATED TERMS

Section 2.201 CHARGES: OBLIGATIONS OF PARTIES

(1) With respect to a consumer credit transaction the parties may agree, subsequent to disclosure by the creditor pursuant to the Part on Disclosure and Form (Part 3 of this Article), to the payment by the consumer of charges not exceeding those authorized in this Part.
2.201(2)

(2) It is a violation of this Part for the creditor to impose or attempt to collect a charge in excess of that authorized by this Part. Any such violation is subject to the provisions of Section 8.107 and Section 8.109.

SECTION 2.202 MAXIMUM FINANCE CHARGE: OTHER THAN OPEN END CREDIT

(1) With respect to a consumer credit transaction other than one pursuant to an open end credit plan, the finance charge, calculated according to the actuarial method, may not exceed

(a) with respect to consumer credit transactions regulated pursuant to [the relevant section, chapter or act presently regulating small loans], the maximum finance charge[s] authorized by [the relevant section(s)]; or

(b) with respect to consumer credit transactions regulated pursuant to [the relevant section, chapter or act presently regulating motor vehicle instalment loans], the maximum finance charge[s] authorized by [the relevant section(s)]; or
(c) with respect to consumer credit transactions regulated pursuant to [the relevant section, chapter or act presently regulating credit transactions secured by an interest in real property], the maximum finance charge[s] authorized by [the relevant section(s)]; or

(d) with respect to consumer credit transactions regulated pursuant to [the relevant section, chapter or act presently regulating any other existing classification of credit transaction other than one pursuant to an open end credit plan], the maximum finance charge[s] authorized by [the relevant section(s)]; or

(e) with respect to all other consumer credit transactions, the total of [___] per cent per year on that part of the unpaid balance of the amount financed which is [$___] or less, [___] per cent per year on that part of the unpaid balance of the amount financed which is more than [$___] but does not exceed [$___] and [___] per cent per year on that part of the unpaid balance of the amount financed which is more than [$___].
Comment: The Center does not take any position with respect to the adequacy or propriety of maximum rates in any particular state. There is no reliable data to justify either increasing or decreasing existing maximum rates already established in the various states. And there is the experience of over half of a century in many states which mandates that maximum rates for certain consumer loans should not be the same as for consumer credit sales. Consequently, neither the Center nor any other organization can in good conscience recommend an all encompassing schedule of rate maximums applicable to all consumer credit transactions. We recommend, therefore, that legislatures set rates in accordance with known experience with respect to classifications of credit transactions already established. Unless sufficient reliable data is made available with respect to such transactions we recommend the enactment of the existing maximums until such time as the information which the Administrator is required to collect and report to the legislature pursuant to subsections (f) and (g) of Section 9.107 justifies a departure from the present maximum rates.

(2) For the purposes of this Section

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

(b) the dollar amount of the finance charge includes the prepaid finance charge excluded from the amount financed; and

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

(3) For the purposes of this Section, the term of a consumer credit transaction other than one pursuant to an open end credit plan commences with the date the credit is granted, except that if goods are
delivered, services performed or proceeds of a loan are paid five (5) days or more after the date the credit is granted, then the term commences with the date of delivery or performance. Finance charges shall be computed according to the actual number of days that the credit is scheduled to be outstanding or that it remains unpaid. A year is considered to have three hundred and sixty five (365) days and the additional day every fourth (4th) year may be disregarded.

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

SECTION 2.203 MAXIMUM FINANCE CHARGE:
OPEN END CREDIT
(1) With respect to transactions made pursuant to an open end credit plan, a finance charge may be imposed with respect to each billing cycle only if a balance remains owing on the last day of that cycle. For the purposes of calculating the finance charge the balance shall have deducted from it all payments,
refunds and other credits to the account of the consumer made during the cycle. The finance charge may be a percentage of either:

(a) the balance of the account on the last day of the billing cycle, computed pursuant to this subsection, or

(b) the average daily balance of the account, which is the sum of the actual balances in the account of the consumer outstanding each day during the billing cycle after the deduction of all payments, refunds and other credits but excluding all transactions made by the consumer during the cycle, divided by the number of days in the cycle.

(2) If the billing cycle is monthly the finance charge may not exceed [___] per cent of that part of the balance computed pursuant to subsection (1) which is [$___] or less and [___] per cent on that part of the balance which is more than [$___]. If the billing cycle is not monthly, the maximum charge is that percentage which bears the same relation to the applicable monthly percentage as the number of days in the billing cycle bears to thirty (30).
Comment: This Section allows the open end creditor to use either the adjusted or the average daily balance method but excludes transactions made in the particular cycle from being included in the balance if the average daily balance method is used. The purpose of excluding these transactions is the inherent unfairness in averaging the daily balance over the first five (5) or six (6) days of the cycle, a period during which the consumer cannot reduce the average balance as he will not have received his periodic billing statement. In actuality, this period will more likely be twelve (12) to fifteen (15) days.

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

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

Section 2.204 ADDITIONAL CHARGES

(1) In addition to the finance charge permitted by this Part the parties may agree to the payment by the consumer of official fees and taxes and charges for insurance premium authorized by the Article on Credit Insurance (Article 4).
2.204(2)

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

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

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

(c) appraisal fees; and

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

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

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

(b) the charges are bona fide and not imposed for the purpose of circumvention or evasion of this Act; and
(c) the charges are or will be paid to public
officials or other persons not related to
the creditor who are authorized to receive
them and the charges are no greater than
the amount those persons are entitled to
receive.

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

SECTION 2.205 ADVANCES TO PERFORM AGREEMENTS OF
CONSUMER

(1) The parties may agree that the consumer is to
perform certain duties with respect to insuring col-
lateral if those duties are reasonable in relation to
the risk of loss of or damage to the collateral and
the insurance is authorized by the provisions of the
Article on Credit Insurance (Article 4). In the event
of the failure of the consumer to so perform the
creditor may, if agreed to by the consumer, pay the
charge for the insurance on behalf of the consumer.
The amount paid may be added to the unpaid balance
of the obligation of the consumer if the creditor
2.205(1)

(a) has given the consumer written notice of his non-performance, including notice that the consumer will incur additional finance charges if payment is made by the creditor; and

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

(c) in the absence of performance, makes all expenditures on behalf of the consumer in compliance with the provisions of the Article on Credit Insurance (Article 4).

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

(3) A finance charge may be imposed for sums advanced pursuant to subsection (1) at a rate not exceeding that disclosed to the consumer in the original transaction pursuant to the provisions of the Part on Disclosure and Form (Part 3 of this Article).
(1) With respect to a consumer credit trans-
action other than one pursuant to an open end credit
plan, the parties may agree to a delinquency charge
on any instalment not paid in full on or before the
tenth (10th) business day after its scheduled due date.
The change may be no greater than that amount equal to
one (1) per cent of the unpaid amount of the instalment
not exceeding three dollars ($3).

(2) No delinquency charge may be collected on an
instalment which is paid in full on or before the tenth
(10th) business day after its scheduled 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 payment are
applied first to current instalments and then to delin-
quent instalments.

(3) A delinquency charge may be collected only once
on an instalment however long it remains unpaid and no
finance charge may be imposed on it. A delinquency
charge may not be collected for a late instalment if,
with respect to that instalment, a deferral (Section
2.207), refinancing (Section 2.208) or consolidation
(Section 2.209) agreement has been concluded by the
(3) parties or the creditor elects to exercise any remedy pursuant to the provisions of the Article on Enforcement of Credit Obligations (Article 7).

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

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

SECTION 2.207 DEFERRAL CHARGES

(1) With respect to a consumer credit transaction other than one pursuant to an open end credit plan, the parties may agree in writing at any time subsequent to the transaction to a deferral of all or part of one (1) or more unpaid instalments for a charge not exceeding one (1) per cent of each instalment or part thereof for each month from the date
when such instalment was due to the date when it
is agreed to become payable.

(2) A deferral agreement shall
(a) be in writing and signed by the parties;
and
(b) incorporate by reference the transaction
to which the deferral applies; and
(c) state each instalment or part thereof
in the amount to be deferred, the date
or dates originally payable and the
date or dates agreed to become payable;
and
(d) set forth the fact of the deferral
charge, if any, the dollar amount of the
charge for each instalment to be deferred
and the total dollar amount to be paid
by the consumer for the privilege of
deferring payment.

(3) No term of a writing executed by the consumer
shall constitute authority for a creditor unilaterally
to grant a deferral with respect to which a charge is
to be imposed or collected.
(4) A charge may not be collected for the deferral of an instalment or any part thereof if, with respect to that instalment, a refinancing agreement is concluded by the parties, a delinquency charge (Section 2.206) has been imposed or collected or the creditor elects to exercise any remedy pursuant to the provisions of the Article on Enforcement of Credit Obligations (Article 7).

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

SECTION 2.208 FINANCE CHARGE ON REFINANCING

(1) With respect to a consumer credit transaction other than one pursuant to an open end credit plan, the parties may agree to refinance the unpaid balance and to the imposition of a finance charge based on the amount financed resulting from the refinancing at a rate not exceeding that disclosed to the consumer in the original transaction pursuant to the provisions of the Part on Disclosure and Form (Part 3 of this Article).
(2) For the purpose of determining the finance charge permitted in refinancing, the amount financed resulting from the refinancing shall constitute the total of

(a) the amount which the consumer would have been required to pay upon prepayment (Section 2.211) on the date of refinancing, except that for the purpose of computing this amount no minimum finance charge (subsection (4) of Section 2.202) is permitted, and

(b) appropriate additional charges (Section 2.204), included for the period of refinancing.

SECTION 2.209 FINANCE CHARGE ON CONSOLIDATION

(1) If the consumer owes an unpaid balance with respect to a consumer credit transaction other than one pursuant to an open end credit plan and becomes obligated to the same creditor on another consumer credit transaction other than one pursuant to an open end credit plan, the parties may agree to a consolidation resulting in a single schedule of payments pursuant to either of the methods specified in subsections (2) or (3).
(2) The parties may agree to consolidate by adding the amount of the previous transaction which the consumer would have been required to pay upon prepayment pursuant to the provisions on rebate upon prepayment (Section 2.211) on the date of consolidation and the amount financed with respect to the subsequent transaction. Based on the aggregate amount financed resulting from the consolidation, the parties may agree to payment by the consumer of a finance charge calculated at a rate not exceeding that authorized by the provisions on maximum finance charges. In the event the transactions being consolidated are governed by differing maximum finance charges the maximum applicable to the aggregate amount financed shall not exceed the lesser of the applicable rates of finance charge.

(3) The parties may agree to consolidate by adding together the unpaid balances at the time of consolidation with respect to the transactions. A consolidation accomplished by this method may not result in a rate of finance charge greater than that to which the creditor would have been entitled had no consolidation occurred.
SECTION 2.210 RIGHT TO PREPAY

Subject to the provisions on rebate upon prepayment (Section 2.211), the consumer may prepay in full or in any part the unpaid balance of a consumer credit transaction at any time without penalty.

SECTION 2.211 REBATE UPON PREPAYMENT

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

(2) The unearned portion of the finance charge is the difference between the total amount of the finance charge and the amount of finance charge earned up to and including the date of prepayment, calculated pursuant to the actuarial method.
2.211(3)

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

(4) If the consumer credit transaction included an amount for insurance premiums the consumer is entitled upon prepayment to a refund from the creditor of the unearned premium calculated pursuant to Section 4.106.

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

(6) If a deferral (Section 2.207) has been agreed to, the unearned portion of the 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 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 finance charge.

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

(8) If the creditor brings an action on the obligation and judgment is obtained, the consumer is entitled to the same rebate as if payment had been made on the date the action was brought.
SECTION 2.301  GENERAL REQUIREMENTS AND PROVISIONS

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

(a) shall be in writing; and

(b) shall be disclosed to the consumer at a time reasonably calculated to enable the consumer to act on the information disclosed, which in any event must be before the consumer signs any writing and before the transaction is consummated; and
(2) Every writing evidencing the obligation of the consumer in a consumer credit transaction shall be signed by every party to the transaction. If there is more than one page, each page shall be signed by every party to the transaction. All terms, printed or written, shall appear on only one side of each page. Printed terms shall be printed in at least eight (8) point standard type except as otherwise required by this Act.

(3) Exact copies of the writing evidencing the transaction, including all disclosures required by this Part, shall be given to all those who sign the writing, including cosigners, at the time the disclosures are made.
2.301(4)

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

SECTION 2.302 NOTICE TO CONSUMER

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

NOTICE TO CONSUMER

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

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

(C) YOU HAVE THE RIGHT AT ANY TIME TO PAY IN ADVANCE THE UNPAID BALANCE DUE UNDER THIS AGREEMENT WITHOUT PENALTY.
SECTION 2.303 DISCLOSURE; REQUIREMENTS OF FEDERAL ACT

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

(2) Except as provided in subsection (1) and in Section 2.305, the Regulations of the Board of Governors of the Federal Reserve System promulgated pursuant to the authorization contained in the Federal Consumer Credit Protection Act as amended from time to time, if not displaced by rule of the Administrator, are presumed to be valid and binding interpretations of the requirements of disclosure incorporated into and made a part of this Act by this Section.
2.303(3)

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

SECTION 2.304 DISCLOSURE; ADDITIONAL REQUIREMENTS

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

(a) the date when signed; and

(b) the name and address of the consumer and the creditor; and

(c) a description of the subject matter of the transaction, including, in the case of goods, their type and quantity, and, if so identified by the manufacturer or supplier, their make, model and serial number, and if a floor sample or demonstrator or if used, remanufactured or rebuilt, that fact; and

(d) a description of any collateral which secures the obligation of the consumer, the description to comply with the requirements of subsection (2)(a) of Section 2.411; and

(e) in the case of a consumer credit sale that includes a cash down payment all or part of
which is derived from the proceeds of a consumer loan which the seller arranged, participated in or otherwise assisted the consumer in obtaining, the unpaid balance of the loan, the name and address of the lender, the number and amount of instalments necessary to repay the loan and a conspicuous notice to the consumer that he is obligated to make payments on both the consumer loan and the consumer credit transaction.

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

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

(b) in addition, if different from the principal place of business, the address and person in this State upon whom personal service of process and other legal notices can be made on behalf of the creditor.
2.305

SECTION 2.305 ESTIMATES OR APPROXIMATIONS

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

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

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

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

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

(ii) shall be obligated under the transaction to pay the lesser of the
actual or the estimated or approximated finance charge.

SECTION 2.306 BILINGUAL DISCLOSURES

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

(a) such other language is the principal language of the consumer to whom the disclosure is required to be made, and

(b) the creditor required to give the disclosure uses such other language in any advertisement or other solicitation of the consumer, or in any printed writing, for use by the consumer, or in any face-to-face negotiation with the consumer.

(2) The Administrator may develop and make available standard forms utilizing proper translations of terms which are required to be disclosed in languages other than English pursuant to this Section.
SECTION 2.307  PROHIBITION OF BLANK SPACES

(1) Every writing evidencing the obligation of the consumer in a consumer credit transaction shall be completed as to all essential provisions prior to its signing by the consumer.

(2) No creditor shall induce, encourage or otherwise permit the consumer to sign any writing containing blank spaces. Blanks inapplicable to a transaction must be completed in a manner which reveals their inapplicability.

SECTION 2.308  VIOLATIONS OF THIS PART

A violation of this Part is subject to the provisions of Section 8.105.
PART 4
LIMITATIONS ON AGREEMENTS AND PRACTICES

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

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2.401

SECTION 2.401 USE OF MULTIPLE AGREEMENTS

(1) No creditor shall divide, refinance, consolidate or otherwise permit the consumer to become obligated with respect to a consumer credit transaction or transactions with the result of obtaining a higher rate of finance charge or of circumventing or evading any provision of this Act.

(2) Separate agreements entered into between a creditor and a husband and wife respectively which arise from substantially the same transaction are in violation of this Section.

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

SECTION 2.402 BALLOON PAYMENTS PROHIBITED

(1) With respect to a consumer credit transaction other than one pursuant to an open end credit plan, except as authorized pursuant to subsection (2) no creditor shall enter into an agreement which contains or anticipates a schedule of instalments pursuant to which any one payment is not substantially equal to all other instalments, excluding any down payment received by the creditor contemporaneously with or prior to the consum-
mation of the transaction, or pursuant to which the
intervals between any consecutive instalments differ
substantially in time.

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

(3) In the event of a violation of subsection (1)
or of a transaction pursuant to subsection (2), the con-
sumer shall have the right at any time, without further
charge or obligation, to revise the schedule of instal-
ments to conform both the amounts and the intervals
between instalments to the average of all instalments and
intervals.
2.402(4)

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

SECTION 2.403 LIMITATION ON DEFAULT CHARGES

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

SECTION 2.404 ATTORNEY’S FEES

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

SECTION 2.405 ASSIGNMENT OF EARNINGS PROHIBITED

No creditor shall take an assignment of earnings of the consumer or of any other person for payment or as security for payment of any obligation arising from a consumer credit transaction.
SECTION 2.406 LIMITATIONS ON EXECUTORY TRANSACTIONS

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

(a) upon a default by the consumer the creditor is entitled to recover only that portion of the transaction total attributable to the obligation of the creditor actually performed. The recovery includes any agreed finance charges attributable to that part of the obligation. The creditor may recover liquidated damages pursuant to subsection (2) in lieu of the recovery permitted by this subsection, and

(b) no term of a writing evidencing the obligation of the consumer shall contain a provision accelerating the obligation of the consumer for any cause, and any such provision is void.

(2) A term in the agreement of the parties requiring the consumer to pay liquidated damages in the case of his default is not in violation of this Section if the
2.406(2)
damages provided are not in excess of ten (10) per cent
of the amount the creditor is entitled to recover pur-
suant to subsection (1)(a).

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

SECTION 2.407 RESTRICTION ON LIABILITY
IN CONSUMER LEASE
The obligation of the consumer upon expiration of
a consumer lease may not exceed that amount for unpaid
periodic instalments disclosed pursuant to the Part on
Disclosure and Form (Part 3 of this Article), unpaid
charges authorized by this Act and, if agreed to by the
parties, charges for damage to the leased property
occasioned by other than normal use.

SECTION 2.408 DEFINITIONS: "CREDIT CARD"; "CARDHOLDER";
RESTRICTIONS ON LIABILITY FOR UNAUTHORIZED
USE OF CREDIT CARD
(1) In this Section
(a) "credit card" means any card, plate, coupon,
merchandise certificate, book or other simi-
lar credit device existing for the purpose
of obtaining goods, services or money or
other credit, and

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

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

SECTION 2.409 POWERS OF ATTORNEY PROHIBITED

No creditor may take or accept from the consumer a
warrant or power of attorney or other authorization for
the creditor, or other person acting on his behalf, to
confess judgment or otherwise act as the agent for the
consumer in the enforcement of any claim or security
interest against the consumer.
SECTION 2.410 MODIFICATION OF TERMS OF AGREEMENT

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

(2) A violation of this Section is subject to the provisions of Section 8.105 and in addition the consumer has the right to have his outstanding obligation conform to the terms of the original agreement.

SECTION 2.411 RESTRICTIONS ON SECURITY INTERESTS

(1) With respect to a consumer credit transaction the creditor may take a security interest in property of the consumer, except as otherwise provided in this Act.
(2) The following restrictions apply to all consumer credit transactions:

(a) a security interest does not attach and is not enforceable against the consumer or the property unless the consumer has signed a security agreement which contains a description of the security interest held or retained by the creditor in connection with the extension of credit, and which contains a clear identification of each particular item or items of collateral, including if applicable the name of the manufacturer, the make, model and serial number, and if a floor sample or demonstrator, or if used, remanufactured or rebuilt, that fact; and

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

(c) no creditor shall take or acquire a security interest in other goods in which secured goods are installed, or to which they are affixed unless the obligation secured is five hundred dollars ($500) or more; and
2.411(2)

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

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

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

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

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

(a) with an interest in the tools of the trade
of the consumer not exceeding a fair market
close value of five hundred dollars ($500) or in
personal property the fair market value of
which exceeds one and one half times the
amount financed, or
(b) except as provided in subsection (2)(c),

with an interest in after-acquired consumer
goods unless the consumer acquires rights
in them within ten (10) days after the
creditor and consumer consummate the loan
transaction.

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

SECTION 2.412 SECURITY INTERESTS: CONSOLIDATIONS;
OPEN END CREDIT PLANS

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

(2) For the purpose of determining the amount of
the consolidated obligation secured by the various se-
2.412(2)

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

(3) Payments received by the creditor pursuant to an open end credit plan are deemed, for the purpose of determining the amount of the unpaid balance secured by the various security interests, to have been applied first to the payment of finance charges in the order of their entry to the account, and then to the payment of the respective amounts financed in the order in which the entries to the account were made.

(4) If obligations consolidated or financed pursuant to an open end credit plan arise from two (2) or more transactions made on the same day, payments received by the creditor are deemed, for the purpose of determining the amount of the obligation secured by the various security interests, to have been applied first to the payment of the smallest obligation.
SECTION 2.413 NOTICE OF ASSIGNMENT

(1) In the event of an assignment of the rights of the creditor to payment pursuant to a consumer credit transaction the consumer is authorized to pay the original creditor until the consumer receives notification of the assignment and that payment is to be made to the assignee.

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

(a) the name, address and telephone number of

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

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

(b) a brief statement identifying the transaction; and

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

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

(e) the outstanding unpaid balance of the obligation including the number and amount of instalments remaining to be paid.
2.413(3)

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

SECTION 2.414 VIOLATIONS OF THIS PART

Except as otherwise specifically provided, any violation of this Part is subject to the provisions of Section 8.105.
PART 5
UNFAIR OR DECEPTIVE PRACTICES AND WARRANTIES

SECTION
2.501 UNFAIR OR DECEPTIVE ACTS OR PRACTICES PROHIBITED

2.502 DEFINITIONS: "WARRANTY"; "MERCHANTABLE"

2.503 DISCLAIMER OF WARRANTIES PROHIBITED

2.504 BREACH OF WARRANTY; PRIVITY ABOLISHED

SECTION 2.501 UNFAIR OR DECEPTIVE ACTS OR PRACTICES PROHIBITED

(1) No creditor shall engage in an unfair or deceptive act or practice related to any aspect of a consumer credit transaction. Without limiting the foregoing, an act or practice includes any inducement to enter into a transaction, any arrangement for or extension of credit or any enforcement of or attempt to enforce the transaction.

(2) A representation which fails to state any fact or facts material to the credit, goods or services advertised, or which fails to state material information necessary to make the statements or representations
2.501(2)

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

(3) It is the intent of the legislature that in construing subsections (1) and (2), the Administrator and the courts will be guided by the interpretations given by the Federal Trade Commission and the Federal courts to Section (5)(a)(l) of the Federal Trade Commission Act, 15 U.S.C. §45(a)(1), as from time to time amended, and rules and regulations promulgated pursuant to Section (5)(a)(1) of the Federal Trade Commission Act as well as any rules promulgated by the Administrator pursuant to Section 9.103.

(4) A violation of the provisions on advertising of the Federal Consumer Credit Protection Act or of the Federal Trade Commission Act, as interpreted by the Federal Trade Commission and the Federal courts, or of any other state or Federal statute is prima facie evidence that an advertisement violates this Section.

(5) A violation of this Section is subject to the provisions of Section 8.108 and Section 8.109.
2.502

**SECTION 2.502  DEFINITIONS: "WARRANTY"; "MERCHANTABILITY"**

For the purposes of this Act

(1) "Warranty" means

(a) express and implied warranties as defined in [Sections 2-313, 2-314 and 2-315 of the Uniform Commercial Code], and

(b) expressions or conduct of a creditor which assure or purport to assure the consumer, directly or indirectly, that goods have particular qualities or will perform in a particular manner.

(2) "Merchantable" means in addition to the qualities prescribed in [Section 2-314 of the Uniform Commercial Code] that

(a) at the minimum, the goods conform in all material respects to applicable State and Federal statutes and regulations establishing standards of quality and safety of goods of that kind, and

(b) in the case of goods with mechanical, electrical or thermal components, the goods are in good working order and will function in accordance with the reasonable expectations of the consumer during
a period of time reasonable for goods of that kind.

SECTION 2.503  DISCLAIMERS OF WARRANTIES PROHIBITED

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

(a) exclude, modify or otherwise attempt
to limit any warranty, express or implied, including the warranties of merchantability and fitness for a particular purpose, or

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

(2) A violation of this Section is subject to the provisions of Section 8.108.
SECTION 2.504  BREACH OF WARRANTY; PRIVITY ABOLISHED

Notwithstanding any provision of law or of an agreement, no action by a consumer for breach of warranty or for negligence with respect to goods subject to a consumer credit transaction shall fail because of a lack of privity between the consumer and the party against whom the claim is made. An action against a person for breach of warranty or for negligence with respect to goods subject to a consumer credit transaction shall not of itself constitute a bar to the bringing of an action against another person.
PART 6
PRESERVATION OF CLAIMS, DEFENSES AND
EQUITIES OF CONSUMER

Section
2,601 PRESERVATION OF CLAIMS, DEFENSES AND EQUITIES;
DEFINITION: "TRANSFEREE"
2,602 LIABILITY OF TRANSFEREE
2,603 LIABILITY OF LENDER AND TRANSFEREE
2,604 COSTS; IMMUNITY; SUBROGATION

Section 2,601 PRESERVATION OF CLAIMS, DEFENSES AND
EQUITIES; DEFINITION: "TRANSFEREE"

(1) Notwithstanding any statute or agreement to
the contrary or the creation of holder in due course
or other special status by operation of law, the claims,
defenses and equities of the consumer which arise from
a consumer credit transaction or from a consumer trans-
action in which the proceeds of the loan are used, may
be asserted against the seller, the lender, the trans-
ferees of the obligation of the consumer and any lender
who agrees to pay the proceeds of the loan to satisfy
the obligation of the consumer which arises from those
transactions, except as otherwise provided in this Part.
(2) For the purpose of this Part, "transferee" includes the holder, assignee and any subsequent transferee.

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

(a) after acquiring the obligation of the consumer he learns of or has reason to know of a claim, defense or equity arising out of the transaction and nonetheless attempts to collect from the consumer on the disputed portion of that obligation, or

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

SECTION 2.602 LIABILITY OF TRANSFEREE

(1) The transferee of an obligation of the consumer arising from a consumer credit transaction is liable to the full extent of all claims, defenses and equities of the consumer which arise from that transaction, except as otherwise provided in this Section.
(2) If the transferee acquires the obligation of the consumer in good faith, for value, without notice of any claims, defenses or equities, continues to act in good faith after acquiring the obligation and is not a person related to the original creditor, the liability of the transferee shall not exceed the transaction total of the original transaction.

SECTION 2.603 LIABILITY OF LENDER AND TRANSFEREE

(1) The lender who extends credit to a consumer in the form of a loan and the transferee of that obligation is liable to the consumer to the full extent of all claims, defenses and equities of the consumer arising out of the consumer transaction in which the proceeds of the loan are used, except as otherwise provided in this Section.

(2) If the lender extends the loan or the transferee acquires the obligation of the consumer in good faith, without notice of any claims, defenses or equities and continues to act in good faith throughout the transaction, the liability of the lender or transferee shall not exceed the amount of the proceeds of the loan used in the consumer transaction and, in addition, any finance
or other charges arising out of the loan which are attributable to that amount.

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

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

(b) with respect to the transferee who acts in good faith he establishes by a preponderance of the evidence that the lender would have qualified for exemption from liability under subsection (3)(a) and that the transferee did not know and had no reason to know that the proceeds or any part of the loan were used in a consumer transaction.

(4) Without limiting the scope of the inquiry pursuant to subsection (3) regarding the knowledge or reason to know of the lender, the lender will be deemed to have knowledge that the proceeds of a loan will be used in a consumer transaction when
(a) the lender is a person related to the seller; or

(b) the lender supplies to the seller or the seller prepares documents used to evidence the loan obligation of the consumer; or

(c) the lender has recourse to the seller for nonpayment of the loan through guaranty, reserve account or otherwise; or

(d) the lender directly or indirectly pays to the seller any commission, fee or other consideration based upon the assistance or cooperation of the seller in the obtaining of the loan; or

(e) the lender makes payment of the proceeds of the loan to the seller either individually or jointly with the consumer; or

(f) the lender conditions the extension of credit upon the purchase of goods or services from the seller; or

(g) the lender knew or should have known that the loan was arranged by the seller or a person acting on behalf of the seller; or

(h) the lender and seller participate in any arrangement, formal or otherwise, in which the seller refers consumers to the lender; or
(i) the lender permits the reference to his services to be used by the seller in connection with the consumer transactions; or

(j) the lender takes a security interest in the property which is the subject of the consumer transaction; or

(k) the lender otherwise participates in or is connected with the consumer transaction.

(5) The lender has the right, without penalty, to rescind a loan commitment if the consumer has not irrevocably obligated himself in reliance upon the commitment and if, after the commitment is made but before the loan is extended, the lender acquires knowledge of facts giving rise to a substantial risk of liability which risk was not known at the time the commitment was initially made and he thereupon promptly gives the consumer notice of the facts and of the election to rescind the contract.

SECTION 2.604 COSTS; IMMUNITY; SUBROGATION

(1) Nothing in this Part shall be construed to limit the liability of any person for reasonable attorney's fees and litigation expenses pursuant to Section 8.113 or for any other liability pursuant to any other provisions of this Act.
2.604(2)

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

(3) The lender or transferee is subrogated to the rights of the consumer for any claims, defenses or equities for which the lender or transferee is held liable.
PART 7
DIRECT SOLICITATION TRANSACTIONS

Section 2.701
DEFINITIONS: "DIRECT SOLICITATION TRANSACTION";
"CONCLUSION OF THE DIRECT SOLICITATION"

2.702
EMERGENCY EXCLUDED

2.703
REQUIREMENT OF APPROVAL

2.704
DISCLOSURE OF RIGHT TO APPROVE

2.705
MANNER OF APPROVAL

2.706
FORM AND CONTENT OF NOTICE OF APPROVAL

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

2.708
TRANSACTIONS NOT APPROVED: RIGHTS AND
OBLIGATIONS OF CONSUMER

2.709
DISCLOSURE OF PURPOSE OF TRANSACTION

2.710
VIOLATIONS OF THIS PART

Section 2.701
DEFINITIONS: "DIRECT SOLICITATION
TRANSACTION"; "CONCLUSION OF THE
DIRECT SOLICITATION"

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

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2.701(1)

normal place of business of the creditor or by a creditor who has no normal place of business, and includes a transaction initiated by the creditor by mail or telephone solicitation if it is negotiated, in whole or in part, at the residence of any consumer or at a place other than the normal place of business of the creditor.

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

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

(b) the consumer has signed an agreement evidencing the obligation of the parties to the direct solicitation transaction and either the consumer or the creditor has left the site of the signing.

SECTION 2.702  EMERGENCY EXCLUDED

The provision of this part does not apply if the consumer initiates the request for the goods, services or credit without delay because of an existing emergency.
SECTION 2.703 REQUIREMENT OF APPROVAL

(1) Notwithstanding a signature on an offer to purchase goods or services or a writing evidencing the agreement of the consumer to a consumer credit transaction, the consumer is not obligated pursuant to the direct solicitation transaction until he has approved the transaction and the creditor has complied with the provisions of this Part and any other applicable provisions of this Act.

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

(3) Approval of the direct solicitation transaction occurs when the consumer mails written notice of approval to the creditor pursuant to the provisions of Section 7.705.

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

(5) A creditor shall not perform services or deliver any goods or extend credit prior to the approval
of the transaction by the consumer if the effect or
result of the performance or delivery is evasion or
circumvention of the provisions of this Part.

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

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

SECTION 2.704  DISCLOSURE OF RIGHT TO APPROVE

Prior to the conclusion of the direct solicitation
the creditor shall provide the consumer with a statement
which explains clearly and simply the right of the con-
sumer to approve the transaction before any obligation
is created. The statement shall

(a) be in a writing separate from that evidencing the obligation of the consumer; and

(b) inform the consumer that he will receive

in the mail the notice of right to approve

the transaction; and

(c) inform the consumer what he must do if he

either does or does not wish to become

obligated on the transaction.

SECTION 2.705 MANNER OF APPROVAL

(1) In the direct solicitation transaction the creditor shall mail the notice of right to approve

(Section 2.706) to the consumer after the conclusion of the direct solicitation.

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

(3) Approval of the direct solicitation transaction is given by the consumer when the notice of right to approve or a writing pursuant to subsection (4) is mailed to the creditor.
(4) The consumer may approve the direct solicitation transaction in a writing other than that provided by the notice of right to approve if the writing manifests the intention of the consumer to approve and is not prepared by the creditor.

SECTION 2.706 FORM AND CONTENT OF NOTICE OF APPROVAL

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

(a) be in writing in not less than eight (8) point type on one side of a page; and

(b) contain no information not otherwise required by this Section; and

(c) clearly identify the creditor, the transaction, the date of the transaction and the individual who negotiated the transaction; and

(d) be accompanied by a copy of the writing bearing the signature of the consumer which evidences the transaction; and

(e) bear the conspicuous caption "RIGHT OF THE CONSUMER TO APPROVE"; and

(f) in addition to the requirements of subsection (c) read, unless other wording is
approved by rule of the Administrator, as
follows:

You have the right to approve this trans-
action by mailing this notice or a signed
writing clearly showing your intent to
approve to [name and address] within three
(3) days. If you want to go through with
it, you must sign and mail this notice within
three (3) days of your receiving it in
the mail. If you mail your approval you
have a legal obligation in the transaction.
If you do not mail your approval, you have
no legal obligation and are entitled to
receive a prompt return of any money or
trade-in already paid, but you must return
anything you received from [name of the
creditor] if he asks for it.

I approve this transaction.

Date

Signature of Consumer

(2) A violation of this Section is subject to the
provisions of Section 8.106 and Section 8.109.
2.707

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

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

(a) shall within twenty (20) days from the con-
cclusion of the direct solicitation, return
to the consumer any money received from
the consumer pursuant to the transaction;
and

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

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

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

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

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

SECTION 2.708 TRANSACTIONS NOT APPROVED: RIGHTS AND
OBLIGATIONS OF CONSUMER

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

(a) the consumer shall, upon written demand by
the creditor, return any property received
from the creditor pursuant to the transac-
tion. The consumer shall deliver the prop-
erty to the creditor at the residence of
the consumer within thirty (30) days from
the conclusion of the direct solicitation
or at another reasonable place or a reason-
able later time designated by the consumer.
If no demand is made within thirty (30)
days of the conclusion of the direct
solicitation, the consumer may keep the
property as a gift, and
(b) the consumer shall return any money received pursuant to the transaction upon written demand by the creditor accompanied by a self-addressed, postage paid envelope. If no demand is made within twenty (20) days of the conclusion of the direct solicitation, the consumer may keep the money as a gift.

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

(3) If the direct solicitation transaction is not approved the consumer is not obligated to pay for or return any property which is affixed to his property by a creditor pursuant to the transaction. The consumer is not obligated to return any money or to pay for or return any property which was delivered prior to approval of the transaction for the purpose of circumventing or evading this Part.
SECTION 2.709 DISCLOSURE OF PURPOSE OF TRANSACTION

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

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

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

(2) A violation of this Section is an unfair or deceptive practice pursuant to Section 2.501 and is subject to the provisions of Section 8.108 and Section 8.109.

SECTION 2.710 VIOLATIONS OF THIS PART

Except as otherwise specifically provided, a violation of this Part is subject to the provisions of Section 8.105.
ARTICLE 3
ADMINISTRATION OF CREDIT ACCOUNTS

Part 1
BILLING, RECEIPTS AND PAYMENTS

Section

3.101 RECEIPTS FOR CASH PAYMENT
3.102 PERIODIC BILLING STATEMENT
3.103 MAILING OF PERIODIC BILLING STATEMENT
3.104 PAYMENT CREDITED ON DATE OF RECEIPT
3.105 ACCOUNTING BY MERCHANT OF PAYMENT RECEIVED AND CHARGES IMPOSED
3.106 RETURNS AND OTHER CREDITS IN OPEN END CREDIT PLANS
3.107 CREDITING EXCESS PAYMENT
3.108 ACKNOWLEDGMENT OF PAYMENT AND SATISFACTION OF SECURITY INTEREST
3.109 VIOLATIONS OF THIS PART

Section 3.101 RECEIPTS FOR CASH PAYMENT

With respect to a consumer credit transaction, the creditor shall provide the consumer, without request, a written receipt for each payment made by cash, money
order or any other method of payment which does not itself provide evidence of payment.

SECTION 3.102 PERIODIC BILLING STATEMENT

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

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

(b) a brief description sufficient to enable the consumer to identify any transaction not previously billed and to relate it to copies of sales vouchers or similar instruments previously furnished; and

(c) the name and address of the person to whom payment is to be made and any billing inquiries are to be transmitted; and

(d) a statement setting forth the rights and duties, all required time periods, provided by the Part on Errors in Credit Accounts (Part 2 of this Article).
3.102(2)

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

(3) If a creditor elects to transmit periodic billing statements with respect to a consumer credit transaction other than one pursuant to an open end credit plan, the statements shall conform to the requirements of subsection (1).

SECTION 3.103 MAILING OF PERIODIC BILLING STATEMENT

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

SECTION 3.104 PAYMENT CREDITED ON DATE OF RECEIPT

Any payment, return or other credit received by a creditor with respect to a consumer credit transaction
shall be credited to the obligation of the consumer as of the date of receipt of such payment.

SECTION 3.105 ACCOUNTING BY MERCHANT OF PAYMENT RECEIVED AND CHARGES IMPOSED

(1) With respect to a consumer credit transaction other than one pursuant to an open end credit plan, upon request of the consumer the creditor shall provide a written statement of the amounts and dates of payments made and the total amount remaining unpaid.

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

(3) The creditor shall provide the statements described in this Section without charge once during each year of the duration of the transaction or plan. If additional statements are requested the creditor
3.105(3)
may impose a charge not in excess of one dollar ($1)
for each additional statement.

SECTION 3.106  RETURNS AND OTHER CREDITS IN
OPEN END CREDIT PLANS

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

SECTION 3.107  CREDITING EXCESS PAYMENT

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

SECTION 3.108 ACKNOWLEDGMENT OF PAYMENT AND SATISFACTION OF SECURITY INTEREST

Within forty-five (45) days after the consumer has fulfilled all obligations with respect to a consumer credit transaction the creditor shall satisfy or otherwise release all security interests securing the transaction and shall furnish the consumer written evidence acknowledging payment in full of the obligation and satisfaction and other release of the security interest.

SECTION 3.109 VIOLATIONS OF THIS PART

Any violation of this Part is subject to the provisions of Section 8.105.
PART 2
ERRORS IN CREDIT ACCOUNTS

Section

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

Section 3.201 INQUIRIES ABOUT ERRORS

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

Section 3.202 RESPONSE TO CONSUMER INQUIRIES

(1) Within ten (10) business days of receipt of the inquiry of the consumer the creditor shall deliver or mail written acknowledgment of the inquiry to the consumer.
Within sixty (60) days of receipt of the inquiry of the consumer the creditor shall respond by taking the appropriate action pursuant to the provisions of Section 3.203.

SECTION 3.203 CORRECTIVE ACTION

(1) Within sixty (60) days of receipt of the inquiry of the consumer the creditor shall

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

(b) provide the consumer written explanation, after having conducted an investigation of the matter, stating the reason the creditor believes the account is correct.

(2) At any time after the creditor has acted under this Section the consumer may request copies of writings evidencing the obligations giving rise to the inquiry. Such copies shall be provided by the creditor within thirty (30) days of receipt of the request without charge.
3.204

SECTION 3.204 CREDITOR ACTION ON DISPUTED ACCOUNTS

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

(a) directly or indirectly threaten the consumer with consequences adverse to his credit standing; or

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

(c) take any other action to collect or otherwise enforce the disputed amount of the account. The mailing or delivery of a periodic billing statement is not a violation of this subsection if the statement contains or is accompanied by a notice that the payment of any amount in dispute or questioned is not required at that time.

(2) If, after the creditor has complied with the requirements of this Part, the creditor receives from the consumer further written notice indicating that the account is still in dispute or questioned, the creditor shall not cause or permit the account to be
reported as delinquent or late to a person other than the consumer unless the creditor also

(a) notifies the consumer of the name and address of the person to whom the report was or will be made; and

(b) includes in the report a statement that the account is in dispute and a brief description of the contentions of the consumer; and

(c) promptly reports any subsequent disposition of the disputed account to such person.

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

SECTION 3.205 VIOLATIONS OF THIS PART

A creditor who fails to comply with the requirements of this Part or who takes action in violation of any provisions of this Part

(a) shall not collect from the consumer the amount in dispute or question, including any finance or other charge attributable to that amount; and
(b) is subject to the provisions of Section 8.106; and

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

Part 1
INSURANCE IN GENERAL

Section
4.101 APPLICABILITY
4.102 DEFINITION: "CONSUMER CREDIT INSURANCE"
4.103 CREDITOR'S PROVISION OF AND CHARGE FOR INSURANCE
4.104 CONDITIONS APPLYING TO INSURANCE TO BE PROVIDED BY CREDITOR
4.105 MAXIMUM CHARGE FOR INSURANCE
4.106 REFUND OR CREDIT REQUIRED; AMOUNT
4.107 REQUIRED INSURANCE; CHOICE OF INSURER
4.108 DEFERRAL, REFINANCING AND CONSOLIDATION AGREEMENTS; DUPLICATE CHARGES; LIMITATION ON AMOUNT
4.109 FEES OR COMMISSIONS; INDIRECT BENEFITS
4.110 COOPERATION BETWEEN ADMINISTRATOR AND (COMMISSIONER OF INSURANCE)
4.111 ADMINISTRATIVE ACTION OF (COMMISSIONER OF INSURANCE)
4.112 CLAIMS
4.113 VIOLATIONS OF THIS PART
4.101

SECTION 4.101 APPLICABILITY

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

(2) Unless displaced by particular provisions of this Act, this Act supplements and does not repeal the [Credit Insurance Act - the model bill to provide for the Regulation of Credit Life Insurance and Credit Accident and Health Insurance of the National Association of Insurance Commissioners, or a similar statute.]

SECTION 4.102 DEFINITION: "CONSUMER CREDIT INSURANCE"

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

(a) insurance issued as an isolated transaction on the part of the insurer not related to an agreement or plan for insuring consumers of the creditor; or

(b) insurance indemnifying the creditor against loss due to the default of the consumer.
Section 4.103  Creditor's Provision Of And Charge For Insurance

(1) Except as otherwise provided in this Article, the creditor and the consumer may agree to the provision of insurance by the creditor with respect to a consumer credit transaction and may agree to the payment by the consumer of a charge for such insurance separate from and in addition to other charges.

(2) No charge may be imposed on the consumer for consumer credit insurance if the amount financed in the consumer credit transaction is five hundred dollars ($500) or less.

(3) No charge may be imposed on the consumer for insurance against loss of or damage to property unless the amount financed exclusive of charges for the insurance is eight hundred dollars ($800) or more, and the value of the property insured is eight hundred dollars ($800) or more.

(4) No charge may be made to the consumer for any type of loss of income insurance the coverage of which exceeds the earnings of the consumer, not including welfare payments or periodic payments pursuant to a pension, retirement or disability program.
4.103(5)

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

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

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

SECTION 4.104 CONDITIONS APPLYING TO INSURANCE TO BE PROVIDED BY CREDITOR

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

(a) the creditor shall disclose to the consumer, in a writing separate from that evidencing the transaction, before any obligation is incurred, full details of the policy, including the scope and amount of coverage of the policy, the cost to the consumer, the protections it provides as well as any
exceptions or exclusions, and the cost
to the creditor of such insurance; and
(b) at the time the indebtedness is incurred
there shall be delivered to the consumer
the individual policy, or a group certi-
ficate of insurance or a notice of pro-
posed insurance, in addition to a copy
of the application for such insurance;
and
(c) the evidence of insurance provided pur-
suant to paragraph (b) shall set forth
the name and home office address of the
insurer, the name of the consumer,
the premium or amount of payment by
the consumer, if any, separately for
each type of insurance, the amount, term
and a brief description of the coverage
provided, including all exclusions and
exceptions, and the name and address of
the person to whom claims shall be made;
and
(d) within thirty (30) days of the date upon
which the indebtedness is incurred, the
insurer shall cause the individual policy
or group certificate of insurance to be
delivered to the consumer if it is not
delivered at the time the indebtedness is incurred; and

(e) within ten (10) days from the date the policy or certificate is delivered, the consumer shall be permitted to return the policy, certificate of insurance or the notice of proposed insurance and receive a refund of any premium paid for the insurance if he is not satisfied with the insurance for any reason. Such insurance is void and the parties are in the same position as if no certificate, policy or notice of proposed insurance had been issued.

(2) The creditor shall promptly notify the consumer of any failure or delay in providing the insurance, and until he does so the creditor is liable to the consumer for the amount of such insurance which he has undertaken to provide. If the creditor permits a policy of insurance to lapse contrary to his agreement with the consumer, the creditor is liable to the consumer for the amount of such insurance.
(3) A creditor who agrees to arrange for, obtain or maintain a policy of insurance owes a fiduciary duty to the consumer with respect to such agreement.

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

SECTION 4.105 MAXIMUM CHARGE FOR INSURANCE

(1) If a creditor contracts for or receives a charge for insurance, the charge imposed for the insurance shall have a reasonable relation both to the obligation of the consumer in the consumer credit transaction and to the benefits provided by the insurance.

(2) Except as provided in subsection (3), the charge imposed for the insurance shall not exceed the premium to be charged by the insurer, as computed at the time the charge to the consumer is determined, conforming to any rate filings required by law and made by the insurer with the [Commissioner of Insurance].
4.105(3)

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

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

SECTION 4.106 REFUND OR CREDIT REQUIRED; AMOUNT

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

(a) the insurance is not provided or is provided for a shorter term than that for which the charge to the consumer 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. For the purposes of this Section, in the case of accident, health, loss of income or similar insurance,
termination occurs on the date of the
death of the insured.

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

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

(4) A refund or credit required by this Section is
appropriate as to amount if it is prorated or computed
pursuant to a method prescribed or approved by the
[Commissioner of Insurance] which is consistent with
proration.
4.106(5)

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

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

SECTION 4.107 REQUIRED INSURANCE; CHOICE OF INSURER

(1) A charge for consumer credit insurance may not be imposed or collected if the insurance is acquired by the creditor. A charge may be made only if prior to the time the parties enter into the consumer credit transaction

(a) the creditor clearly and conspicuously discloses in writing the fact that the insurance is not required and the actual cost of the insurance if it is to be obtained, and

(b) the consumer affirmatively indicates his desire to obtain the insurance at the disclosed cost in a writing separate from that evidencing the transaction.
(2) The consumer shall, upon notice to the creditor, have the option of providing a required amount of insurance against loss of or damage to property or against liability arising from ownership or use of the property through existing policies of insurance owned or controlled by the consumer, or of providing the required coverage through any insurer authorized to engage in the business of insurance within this State.

(3) Prior to the time the parties enter into the transaction, the creditor shall conspicuously disclose in writing to the consumer his right to provide any required insurance himself if he so desires.

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

Section 4.108 Deferral, refinancing and consolidation agreements; duplicate charges; limitation on amount

(1) In addition to the limitations of Section 4.103, the creditor may not receive a separate charge for insurance in connection with a deferral (Section 2.207), a refinancing (Section 2.208) or a consoli-
4.108(1)

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

(a) the consumer agrees in writing at the
time of deferral, refinancing or con-
solidation that a specific charge may
be made; and

(b) the consumer is to be provided with in-
urance for an amount or a term, or in-
urance of a kind, in addition to that
to which he would have been entitled
had there been no deferral, refinancing
or consolidation; and

(c) the consumer receives a refund or credit
on account of any unexpired term of exis-
ting insurance in the amount that would
be required if the insurance were termi-
nated (Section 4.106); and

(d) the charge does not exceed the amount
permitted by this Article; and

(e) the total amount of the insurance cover-
age on the policy or policies involved
in the transactions does not exceed the
amount permitted by this Article.

(2) A creditor may not impose a separate charge
for insurance which duplicates insurance with respect
to which the creditor has previously contracted for or received a separate charge.

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

SECTION 4.109 FEES OR COMMISSIONS; INDIRECT BENEFITS

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

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

SECTION 4.110 COOPERATION BETWEEN ADMINISTRATOR AND (COMMISSIONER OF INSURANCE)

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 separately or jointly
4.110
pursue investigations, prosecute suits and take other
official action, as may seem to them appropriate.

SECTION 4.111 ADMINISTRATIVE ACTION OF (COMMISSIONER
OF INSURANCE)

(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 4.106), forms, schedules
of premium rates and charges (Section 4.204), and
his approval or disapproval thereof and, in case of
violation, may make an order for compliance.

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

SECTION 4.112 CLAIMS

(1) All claims with respect to insurance provided
in relation to a consumer credit transaction shall be
promptly reported to the insurer or its designated claim representative, and the insurer shall maintain adequate claim files. All claims shall be settled within a reasonable time and pursuant to the terms of the insurance contract.

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

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

SECTION 4.113 VIOLATIONS OF THIS PART

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

SECTION 4.201 AGREEMENT TO CHARGES; REQUIREMENTS

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

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

(b) a clear, conspicuous and specific statement in writing is provided by the creditor to the consumer before the
consummation of the transaction, stating that the insurance is not a factor in the approval by the creditor of the extension of credit, and setting forth the cost of such insurance, individually itemized, if it is understood that a separate charge for such insurance is or may be imposed on or paid by the consumer; and

(c) the consumer desires the insurance coverage, and gives specific dated and separately signed affirmative written indication of his desire after receiving the disclosure required under paragraph (b); and

(d) the creditor receives no fee, commission or other benefit of any kind from the insurer except as a beneficiary of the insurance.

SECTION 4.202  TERM OF INSURANCE

(1) Consumer credit insurance provided by a creditor may be subject to the provision 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 the date the consumer becomes obligated to the creditor or the date the
4.202(1)
consumer applies for the insurance, whichever is later, except

(a) if any required evidence of insurability is not provided until more than thirty (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 a prior debt, the term may commence on the effective date of the policy.

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

(3) The originally scheduled term of the insurance shall extend at least until the due date of the last scheduled payment of the obligation, except

(a) if the insurance relates to an open end credit plan, the term need extend only until the payment of the account and may
be sooner terminated if at least thirty (30) days notice is given to the consumer, or
(b) if the consumer is advised in writing in a clear and conspicuous manner that the insurance will be written for a specified shorter time and affirmatively approves in writing, the term need extend only until the end of the specified time.

(4) The term of the insurance shall not extend more than ten (10) days after the originally scheduled due date of the last scheduled payment of the debt unless it is extended without additional cost to the consumer or as an incident to a deferral (Section 2.207), refinancing (Section 2.208) or consolidation (Section 2.209) agreement.

SECTION 4.203 AMOUNT OF INSURANCE
(1) The amount of credit life insurance shall not exceed the initial obligation however the obligation may be repayable, except
(a) where an obligation is repayable in instalments, the amount of insurance shall not exceed the scheduled or actual amount
of the unpaid obligation, whichever is
greater, and
(b) if the insurance is provided in connec-
tion with an open end credit plan, the
amount of insurance shall not exceed the
unpaid balance on the last day of each
billing cycle.

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

SECTION 4.204  FILING AND APPROVAL OF RATES AND FORMS
(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, unless the [Commissioner of
Insurance] has approved the form or schedule and 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 pro-
posed insurance, applications for insurance, endorse-
ments 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]. Within ninety (90) days
after the filing of any form or schedule, the [Commis-
sioner of Insurance] shall approve any filing unless
the premium rates or charges are unreasonable in rela-
tion to the benefits provided under the form, or
unless the form contains provisions which are unjust,
unfair, inequitable or deceptive, or encourage mis-
representations of the coverage, or are confusing or
misleading to the consumer or are contrary to any
provisions of this Act or of the insurance laws of
this State or of any rule promulgated thereunder. If
at the expiration of ninety (90) days from the filing
of any form or schedule the [Commissioner of Insurance]
has taken no action thereon, the insurer may seek from
the [ ] Court an order to the [Commissioner of In-
surance] to show cause why he has not acted.
(3) If a group policy has been delivered in an-
other state, the forms to be filed by the insurer with
the [Commissioner of Insurance] are a true and accurate
copy of the group policy, 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 de-
livered in this State; and
(b) the applicable premium rates or charges
do not exceed those established by appli-
cable rule or by this Act; and
(c) they do not contain provisions which are
unjust, unfair, inequitable or deceptive,
or encourage misrepresentation of the
coverages, or are contrary to any provi-
sions of this Act or of the insurance laws
of this State, or of any rule promulgated
thereunder.

Section 4.205 Regulation of Premiums
(1) No later than six (6) months following the
effective date of this Act, the [Commissioner of In-
surance] shall, by rule, limit the maximum premiums
which may be charged consumers directly or indirect-
ly for consumer credit insurance. The [Commissioner
of Insurance] shall ensure that the maximum premiums so established are reasonable in relation to the benefits conferred and that consumers are adequately protected against excessive premium charges.

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

(3) Maximum premiums established under this Section shall be based upon a ratio of losses to premiums which is reasonable and which protects consumers against excessive premium charges as determined by the [Commissioner of Insurance]. The benefits provided by any such policy shall be presumed reasonable in relation to the premium charged or to be charged if the ratio of losses incurred to premiums earned is seventy (70) per cent or may reasonably be expected to be seventy (70) per cent. If the ratio of losses incurred to premiums earned is less or can reasonably be expected to be less than seventy (70) per cent, the benefits provided shall be presumed unreasonable in relation to the premium charged. Determination of a
4.205(3)

reasonable relation of benefits to premiums shall be made by the [Commissioner of Insurance] for each policy form filed for approval. The [Commissioner of Insurance] may limit the use of any such form to those creditors or consumers whose experience was the basis for approval and such other creditors or consumers likely to experience similar mortality or morbidity.

(4) Not later than six (6) months following the effective date of this Act, the [Commissioner of Insurance] shall, by rule, promulgate premium rates for consumer credit insurance based upon the seventy (70) per cent loss ratio standard as set forth in subsection (3) which rates shall be acceptable without further justification. No charge may be made for consumer credit insurance which exceeds such rates except as provided in this subsection. The [Commissioner of Insurance] shall from time to time raise or lower the acceptable premium charges permitted for such insurance for any particular creditor, class of creditors or classes of transactions whenever the [Commissioner of Insurance] determines that the actual loss experience for the particular creditor, class of creditors or class of transactions produces a ratio of losses to premiums which differs substantially based on credible data in the most recent two (2) year period from the
seventy (70) per cent loss ratio established by subsection (3).

(5) In order to implement this Section, insurers shall, under rules of the [Commissioner of Insurance], file an annual report with the [Commissioner of Insurance] and the Administrator setting forth data pertaining to actual losses in relation to premiums and charges collected and such other information including the actual incremental administrative expenses experienced as may be required by the [Commissioner of Insurance] in order to further the purposes of this Act.

SECTION 4.206 VIOLATIONS OF THIS PART

Any violation of this Part is subject to the provisions of Section 8.105.
PART 3
PROPERTY AND LIABILITY INSURANCE

SECTION 4.301 AGREEMENTS TO CHARGES; REQUIREMENTS

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

(a) the insurance is furnished by an insurer not related to the creditor, and the insurance and the charges conform with the requirements of this Article [and all other provisions of law governing the insurance]; and
(b) a clear, conspicuous and specific statement in writing is provided by the creditor to the consumer before the consummation of the transaction setting forth the cost of such insurance, individually itemized, if it is understood that the insurance will or may be arranged by or obtained through the creditor, and stating that the consumer may choose the person through whom the insurance is to be obtained; and

(c) the consumer elects to purchase insurance coverage arranged by or obtained through the creditor, and gives specific dated and separately signed affirmative written indication of such election after receiving the disclosures required under paragraph (b); and

(d) the creditor receives no fee, commission or other benefit of any kind from the insurer except as a beneficiary of such insurance.

(2) Whenever any creditor provides only for physical damage insurance in connection with the sale and financing of any goods, the creditor must also obtain
4,301(2)
a separate written acknowledgment by the consumer that
the insurance provided does not include liability in-
surance. Such acknowledgement shall be made in the
manner and form prescribed by the [Commissioner of
Insurance] and a copy thereof shall be provided to
the consumer. A violation of this subsection is sub-
ject to the provisions of Section 8.107.

SECTION 4,302 ADDITIONAL REQUIREMENTS FOR
PROPERTY INSURANCE

In addition to the requirements of Section 4.103,
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 which is
collateral for the consumer credit trans-
action; and

(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 the credit,
which for the purposes of this Part means
that the term is customary and does not extend substantially beyond a scheduled maturity.

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

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 consumer is on the consumer only to the extent that the consumer is responsible for any deficiency in the effective coverage of the insurance, even though the insurance covers only the interest of the creditor.

SECTION 4.304 CANCELLATION BY CREDITOR

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

(a) upon the entry of final judgment in favor of the creditor in an action brought pursuant to Section 7.204, or

(b) in accordance with a written agreement between the consumer and the creditor entered
4.304(1) into at a time subsequent to the original transaction.

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

SECTION 4.305 VIOLATIONS OF THIS PART

Any violation of this Part is subject to the provisions of Section 8.105.
ARTICLE 5
CREDIT REPORTING

Part 1
GENERAL PROVISIONS

Section
5.101 APPLICABILITY
This Article applies to credit reporting agencies and to merchants who prepare, provide, purchase or use consumer reports or any information contained in a consumer report.
5.102

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

(1) "Account" as used in this Article means any actual or alleged debt or other obligation of a consumer of whatever nature.

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

SECTION 5.103 DEFINITIONS: "CONSUMER REPORT";
"CONSUMER REPORTING AGENCY"

(1) "Consumer report" as used in this Article means any written, oral or other communication of any information bearing upon the credit worthiness, credit standing or credit capacity of the consumer which is used or expected to be used or is collected in whole or in part for the purpose of serving as a factor in establishing the eligibility of a consumer for credit and credit insurance. The term does not include a report containing information solely as to transactions between the consumer and the person making the report or any authorization or approval of a specific extension of credit by the issuer of a credit card or by the creditor.
of an open end credit plan to persons authorized to extend credit to the consumer pursuant to that credit card or that plan.

(2) "Consumer reporting agency" means any person other than a government instrumentality who regularly engages in whole or in part in the business of providing consumer reports.

SECTION 5.104 DEFINITIONS: "FILE"; "MERCHAND"

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

(2) "Merchant" as used in this Article means any person other than a government instrumentality who uses a consumer report received from a consumer reporting agency or who provides information to a consumer reporting agency pursuant to a contract or for a fee or who otherwise regularly provides information to a consumer reporting agency.
SECTION 5.105  DISCLOSURE TO CONSUMER OF PROPOSED INVESTIGATION AND CONSUMER REPORT

Neither a consumer reporting agency nor a merchant shall procure or prepare or cause to be procured or prepared a consumer report

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

(b) without having obtained the consumer's written permission to undertake the proposed investigation and consumer report; and

(c) without having notified the consumer of the name and address of the consumer reporting agency which is to conduct the proposed investigation and consumer report; and

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

SECTION 5.106  PROHIBITED INFORMATION; ACCURACY, RELEVANCY AND OBsolescence OF INFORMATION

(1) Neither a consumer reporting agency nor a merchant shall collect, evaluate, prepare, use or report
information which is not reasonably relevant, based upon objective criteria, to the purpose for which it is sought.

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

(3) Neither a consumer reporting agency nor a merchant shall collect, evaluate, prepare, use or report information relative to a criminal offense unless there has been a conviction for the offense.

(4) Neither a consumer reporting agency nor a merchant shall collect, evaluate, prepare, use or report information which is obsolete or which it has reason to know is inaccurate or irrelevant.

(5) A consumer reporting agency and a merchant shall adopt and maintain reasonable procedures designed to
(a) verify the accuracy and relevancy of information in their files; and
(b) to exclude inaccurate and irrelevant information from their files; and
(c) to eliminate obsolete information from their files.

SECTION 5.107 PRESERVING CONFIDENTIALITY

A consumer reporting agency and a merchant shall maintain procedures designed to preserve the confidentiality of information in their files. These procedures shall include limiting access to information to authorized employees and maintaining training programs to acquaint employees with the need for preserving confidentiality. Whenever a reporting agency or merchant transmits information by any means or medium of communication, it shall take steps to prevent unauthorized access to such information.

SECTION 5.108 ACCESS BY GOVERNMENTAL AGENCIES

A consumer reporting agency and a merchant shall not provide information on consumers in their files to a governmental agency for purposes other than those authorized in Section 5.201 unless pursuant to the
order of a court having jurisdiction to issue such an order. Identifying information such as names, addresses or places of employment may be provided to such agencies upon written request.

SECTION 5.109 OBSOLETE INFORMATION

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

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

(a) bankruptcies and all other insolvency proceedings of all types after seven (7) years from the date of the most recent adjudication; and

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

(c) suits, judgments and tax liens after seven (7) years from the date of their initial filing; and
5.109(2)

(d) records of conviction after three (3) years from the date of release from confinement or, if there was no confinement, from the date of conviction or other disposition, but such items shall no longer be reported if at any time it is learned that a full pardon has been granted; and

(e) any other adverse information not otherwise specified in this Section after three (3) years.

(3) Adverse information shall not be reported unless the information has been received or its accuracy has been verified within six (6) months prior to making the report.
PART 2
CONSUMER REPORTING AGENCIES

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

SECTION 5.201 USES FOR WHICH INFORMATION MAY BE
    PROVIDED

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

(2) No consumer reporting agency shall provide a
    report to a prospective user if it knows or has reason
5.201(2)

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

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

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

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

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

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

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

(a) use for market research or marketing
purposes, or
(b) use by a private detective or private detective agency in investigations conducted by the detective or detective agency.

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

SECTION 5.202 ACCESS BY CONSUMER TO FILE

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

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

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

(c) the recipients of any consumer report concerning the consumer which it has provided for any purpose within the two (2) year period preceding the request.

(2) The requirements of subsection (1) respecting the disclosure of sources of information and the
5.202(2)

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

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

(a) during normal business hours and on
    reasonable notice; and
(b) in person if the consumer appears in
    person and provides proper identification; or
(c) by telephone if the individual has made a
    written request, with proper identification,
    for telephone disclosure and the toll
    charge, if any, for the telephone call
    is prepaid by or charged directly to the
    consumer; or
(d) by providing trained personnel to explain
    to the consumer any information provided
    to him pursuant to subsection (1).

(4) The consumer may be accompanied by one (1)
    other person of his choice.
(5) No consumer reporting agency shall require a consumer to grant immunity from legal action to the consumer reporting agency or its sources of information as a condition for the disclosures required by subsection (1).

(6) A consumer is entitled to receive the disclosures required by this Section with respect to his file from each consumer reporting agency without charge once during each calendar year and each time a notice pursuant to Section 5.105 and Section 5.302 is received by the consumer. A consumer reporting agency may impose a reasonable charge for additional disclosure.

SECTION 5.203 CORRECTION OF INACCURATE, IRRELEVANT AND MISLEADING INFORMATION

(1) A consumer reporting agency shall adopt reasonable procedures to enable a consumer to correct any inaccurate, irrelevant or misleading information in his file.

(2) If any item of information contained in his file is disputed by a consumer on the ground that it is inaccurate, irrelevant or misleading the consumer reporting agency shall promptly investigate and record
5.203(2)

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

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

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

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

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

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

(a) promptly indicate in the file that the
item is disputed; and
(b) permit the consumer to file a statement containing his view of the disputed item; and
(c) promptly forward a copy of the statement of the consumer to all persons who have received the disputed item during the previous two (2) years; and
(d) include the statement of the consumer in all subsequent consumer reports; and
(e) indicate in all subsequent consumer reports that the item is disputed.

SECTION 5.204 DISCLOSURE OF ADVERSE INFORMATION OF PUBLIC RECORD

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

(a) give written notice to the consumer that the information has been obtained and is being reported and of the name and address of the depository of the public record; and
(b) given written notice to the consumer of his rights under Section 5.202 and Section 5.203; and
5.204(1)

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

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

Section 5.301 USE OF REPORTS FROM CONSUMER REPORTING AGENCY

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

(2) No merchant shall use a consumer report or disclose information therein except for a legitimate business purpose.
Section 5.302  Disclosure to Consumer of Consumer Report

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

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

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

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

shall promptly give written notice to the consumer of the action taken and of the fact that the action was due in whole or in part to a consumer report. The notice shall include the name and address of the consumer reporting agency which provided the report and a statement of the rights of the consumer pursuant to Section 5.202 and Section 5.203.
SECTION 5.303 REPORT OF INFORMATION TO CONSUMER REPORTING AGENCY

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

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

SECTION 5.304 REPORT OF DISPUTED ACCOUNT TO CONSUMER REPORTING AGENCY

(1) After receiving notice that an account is disputed by the consumer, a merchant shall not report to a consumer reporting agency that the account is delinquent
5.304(1)

(a) without reporting to the consumer reporting agency that the account is disputed and providing a brief description of the respective allegations of the parties, and

(b) without providing the consumer with a copy of the information reported pursuant to subsection (1)(a), the name and address of the consumer reporting agency and a statement of the rights of the consumer pursuant to Section 5.202 and Section 5.203.

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

(3) For purposes of this Section, an account is disputed when the consumer or his attorney has given notice to a merchant that the consumer contests the allegations of the merchant concerning rights, obligations or liabilities of the parties.

Section 5.305 Merchant Harassment

No merchant shall threaten any consumer with
consequences adverse to his credit standing by reason of a report to be made by the merchant to a consumer reporting agency. Nothing in this Section shall prohibit a merchant from reporting information to a credit reporting agency in conformance with this Article.
PART 4
REMEDIES

SECTION 5,401 VIOLATIONS OF THIS ARTICLE

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

SECTION 5,402 ACTION FOR COMMUNICATION OF FALSE, MISLEADING OR INACCURATE INFORMATION

If the consumer has sustained actual damages as a result of the communication of any false, misleading or inaccurate information by a consumer reporting agency or a merchant, he has a cause of action against that consumer reporting agency or merchant and is entitled to recover his actual damages without regard to any defense, including the exercise of due care, on the part of the consumer reporting agency or merchant.
ARTICLE 6
DEBT COLLECTION

Part 1
GENERAL PROVISIONS

Section 6.101 APPLICABILITY

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

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

(1) "Claim" as used in this Article means any obligation, judgment or security interest, or alleged obligation or security interest, arising from a consumer transaction.

(2) "Debt collector" as used in this Article means any person engaging or aiding directly or indirectly in
6.102(2)

enforcing claims, and includes creditors and their agents
when they are so acting.
PART 2
PROHIBITED PRACTICES

SECTION 6.201 PRACTICE OF LAW BY DEBT COLLECTORS

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

(a) performance of legal services, provision of legal advice or making of a false representation or false implication that any person is an attorney; or
6.201

(b) solicitation of assignments of claims for the purpose of suit or at the instigation of an attorney; or

(c) institution of judicial proceedings on behalf of another person; or

(d) any communication with a consumer in the name of an attorney or upon stationery or other written matter bearing an attorney's name; or

(e) any demand for or payment of money constituting a share of compensation for services performed or to be performed by an attorney in collection of a claim.

Section 6.202 Threats or Coercion

No debt collector shall enforce or attempt to enforce any claim by means of any threat, coercion or attempt to coerce. Without limiting the general application of the foregoing, the following conduct is a violation of this Section:

(a) use, or expressed or implicit threat of use, of violence or other criminal means, to cause harm to a person, reputation or property; or
(b) accusation or threat to accuse any person of fraud, crime or conduct which, if true, would tend to disgrace a person or in any way subject him to ridicule or the contempt of society; or

(c) false accusations or threat to make accusations that a consumer is willfully refusing to pay a just claim; or

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

(e) threat that non-payment of a claim will result in the arrest of any person or the seizure, garnishment, attachment or sale of any property or wages of any person without a court order permitting such action; or

(f) threat to take any action prohibited by this Act or any other law regulating the conduct of debt collectors, including but not limited to Title II - Extortionate Credit Transactions of the Federal Consumer
6.202

Credit Protection Act.

SECTION 6.203 HARASSMENT; ABUSE

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

(a) use of profane or obscene language or
language the natural consequence of which
is to abuse the hearer or reader; or
(b) placement of telephone calls without a
meaningful disclosure of the identity of
the caller; or
(c) causing expense to any person in the form
of long distance telephone tolls, telegram
fees or other charges incurred through the
use of a medium of communication, by con-
cealment of the true purpose of the notice,
letter, message or communication; or
(d) causing a telephone to ring or engaging any
person in telephone conversation repeatedly
or continuously, or at unusual times or at
times known to be inconvenient.
SECTION 6.204  UNREASONABLE PUBLICATION

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

(a) communication of information relating to a claim to an employer of the consumer or to any agent of an employer of the consumer; or

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

(c) disclosure, publication or communication to a third person of any information relating to a claim other than through proper legal action, process or proceeding; or

(d) use of any form of communication to the consumer which ordinarily may be seen by other persons, that displays or conveys any information about the consumer other
than the name, address and phone number of
the debt collector.

SECTION 6.205 FALSE, DECEPTIVE OR MISLEADING
REPRESENTATIONS

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

(a) use of any name, while engaging in
debt collection, other than the true
name of the debt collector; or

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

(c) any false representation or false impli-
cation that the debt collector has in his
possession information or something of
value for the consumer; or
(d) failure to clearly disclose the name and
full business address of the person to whom
the claim has been assigned for collection,
or to whom the claim is owed, at the time
of making any demand for money; or
(e) any false representation or false impli-
cation of the character, extent or amount
of a claim against a consumer or of its
status in any legal proceedings; or
(f) any false representation or false impli-
cation that any debt collector is vouched
for, bonded by, affiliated with or an in-
strumentality, agent or official of this
State or any other state or the Federal
government or any local government; or
(g) use or distribution or sale of any
written communication which simulates or
is falsely represented to be a document
authorized, issued or approved by a court,
an official or any other governmental or
public authority, or which creates a false
impression about its source, authorization
or approval; or
(h) any representation that a failure of the
consumer to satisfy a claim may cause the
amount of the claim to be increased by the
addition of an attorney's fee, an investigation fee, a service fee or any other fee or charge when such fee or charge is not authorized by this Act; or

(i) any false representation or false implication about the status or true nature of or the services rendered by the debt collector or his business; or

(j) any false representation or false implication that a claim may be enforced without resort to legal process; or

(k) any false representation or false implication that a claim may be enforced by legal process without prior notice and hearing for the consumer.

SECTION 6.206 UNFAIR OR UNCONSCIONABLE MEANS

No debt collector shall use unfair or unconscionable means to enforce or attempt to enforce any claim. Without limiting the general application of the foregoing, the following conduct is a violation of this Section:

(a) seeking or obtaining any written statement, waiver or acknowledgment in any form that purports to affirm a debt discharged in
bankruptcy, acknowledge a debt barred by
a statute of limitations, waive or diminish
an exemption from attachment, seizure, levy
or execution or waive or diminish any
legal benefit to the consumer; or

(b) increasing any liability of the consumer
unless expressly allowed by law and made
intelligently, knowingly and voluntarily
by the consumer after a complete and con-
spicuous disclosure by the debt collec-
tor; or

(c) seeking or obtaining a statement in any
form acknowledging the receipt of a notice
or disclosure or due performance of an obli-
gation of a merchant or of any other fact,
if the debt collector knows or has reason
to know that the statement is false, decep-
tive or misleading; or

(d) collecting or attempting to collect from
the consumer all or any part of the fee
or charge for services rendered by the
debt collector; or

(e) collecting or attempting to collect any
finance or other charge, fee or expense
incidental to the principal obligation un-
less the charge, fee or expense is autho-
ized by this Act; or

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

**SECTION 6.207 COMMUNICATIONS LAWS AND REGULATIONS**

No debt collector shall use, distribute, sell or
prepare for use any communication that violates or
fails to conform to any laws and regulations, Federal
or State, governing the use of any means or medium of
communication.
Every debt collector who has received a claim for collection shall, prior to any attempt to enforce or enforcement of the claim, provide the consumer

(a) a brief description in writing of the nature of the legal relationship between the debt collector and the previous creditor, such as assignee with full recourse, assignee without recourse, holder, agent, debt collector on contingent fee basis or other relevant status, or

(b) the disclosures required pursuant to Section 2.413 and with any other disclosures required by law.
6.302

**SECTION 6.302 ACCESS OF CONSUMER TO FILE**

The debt collector, upon request and proper identification of the consumer, shall

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

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

(c) clearly and accurately disclose to the consumer the nature, substance and sources of all information in its possession regarding the claim.

**SECTION 6.303 VIOLATIONS OF THIS ARTICLE**

Any violation of this Article is subject to the provisions of Section 8.108.
ARTICLE 7
ENFORCEMENT OF CREDIT OBLIGATIONS

Part 1
GENERAL PROVISIONS

Section

7.101  APPLICABILITY

7.102  DEFINITION: "DEFAULT"

7.103  ACCRUAL OF ACTION: LIMITATIONS

7.104  UNENFORCEABLE RIGHTS OR OBLIGATIONS

7.105  JURISDICTION OF ACTIONS

7.106  PLEADING: PROOF

7.107  ATTACHMENT OR SETOFF BEFORE JUDGMENT

7.108  RIGHT TO CURE DEFAULT

7.109  STAY OF ENFORCEMENT OF JUDGMENT

7.110  EXEMPT PROPERTY

7.111  LIABILITY OF COSIGNER

7.112  DOING BUSINESS WITHOUT VALID REGISTRATION

Section 7.101  APPLICABILITY

This Article applies to actions and other proceedings brought by the creditor to enforce rights claimed to arise from a consumer credit transaction. It does
not apply to foreclosure and similar proceedings brought
to enforce security interests in real property.

SECTION 7.102 DEFINITION: "DEFAULT"

(1) "Default" with respect to a consumer credit
transaction other than one pursuant to an open end
credit plan means that the consumer, without justifica-
tion pursuant to any provision of law, has remaining
unpaid

(a) if the transaction is scheduled to be paid
in full in six (6) or fewer instalments,
any two (2) or more delinquent instalments
the total amount of which is equal to more
than fifteen (15) per cent of the transac-
tion total, or any remaining balance with-
in two (2) months after the due date of
the final instalment, or

(b) if the transaction is scheduled to be paid
in full in more than six (6) instalments,
any delinquent instalment or instalments
the total amount of which is equal to more
than fifteen (15) per cent of the transac-
tion total, or any remaining balance within
three (3) months after the due date of the
final instalment.
(2) "Default" with respect to an open end credit plan means that the consumer, without justification pursuant to any provision of law, has remaining unpaid (a) three (3) or more successive periodic payments which are required by the terms of the plan to be paid as a minimum of the new balance stated in the periodic billing statement, or
(b) any four (4) or more periodic payments which are required by the terms of the plan to be paid as a minimum of the new balance stated in the periodic billing statement, within a twelve (12) month period.

(3) With respect to a consumer credit transaction, the creditor may bring an action for any amount currently due from the consumer notwithstanding the absence of a default if the creditor has not accepted an offer by the consumer to voluntarily surrender the collateral (Section 7.203) or has not elected to enforce his security interest by action (Section 7.204). Nothing in this subsection shall be construed to permit acceleration of all or any part of the obligation of the consumer arising from a consumer credit transaction.
SECTION 7.103  ACCRUAL OF ACTION; LIMITATIONS

(1) Except as provided in subsection (3) of Section 7.102, no cause of action shall accrue in favor of the creditor with respect to a consumer credit transaction except by reason of the default of the consumer. Upon the default of the consumer the creditor shall be entitled to recover in an action the amount which the consumer would have been entitled to pay, on the date the action was brought, upon prepayment in full of the total obligation pursuant to Section 2.211. As of the date an action is brought no further finance or other charge shall apply to the unpaid balance of the obligation unless the consumer subsequently exercises his right to cure the default pursuant to Section 7.108.

(2) An action by the creditor with respect to the obligation of the consumer pursuant to a consumer credit transaction may be brought in [any court of competent jurisdiction] before the expiration of two (2) years from the default of the consumer.

(3) A cause of action arising from a consumer credit transaction which creates a security interest in personal property shall be subject to the limitations provided in the Part on Enforcement of Security Interests (Part 2 of this Article), whether or not the

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creditor is seeking or has sought to realize upon the security interest.

SECTION 7.104 UNENFORCEABLE RIGHTS OR OBLIGATIONS

There is no right or obligation enforceable by action against the consumer arising from any term of an agreement, charge, process, act, practice or other conduct which is in violation of this Act.

SECTION 7.105 JURISDICTION OF ACTIONS

An action by the creditor arising from a consumer credit transaction may be brought only in the county in which the consumer resides at the commencement of the action, or, if the obligation is secured by an interest in real property, in the county in which the real property is located. If the papers offered for filing in the action do not comply with this Section, they shall not be accepted by the [clerk] of the court. Any order or other process issued by the Court in an action brought in violation of this Section is void.
7.106

SECTION 7.106 PLEADING; PROOF

(1) In an action brought by the creditor arising from a consumer credit transaction, the complaint shall set forth specifically the facts constituting the default of the consumer, the amount which the creditor is claiming and the computations by which that amount was determined and the amount, itemized, which the consumer is required to pay to cure the default (Section 7.108), and shall be accompanied by an accurate copy of the writing evidencing the transaction.

(2) No default judgment shall be entered in the action in favor of the creditor unless specific competent evidence shown by testimony within the personal knowledge of an affiant or witness is adduced showing that the creditor is entitled to the relief sought in the action.

SECTION 7.107 ATTACHMENT OR SETOFF BEFORE JUDGMENT PROHIBITED

(1) Except as provided in Section 7.205, prior to entry of final judgment in an action against a consumer arising from a consumer credit transaction, the creditor may not
(a) attach any property, including unpaid earnings, of the consumer, whether by attachment, garnishment or any other process, or

(b) set off or otherwise deny the consumer access to funds or other property of the consumer on deposit with the creditor unless possession of or control over the funds or property has been specifically granted the creditor as security for the obligation.

(2) An order, process or other action in violation of this Section is void.

SECTION 7.108 RIGHT TO CURE DEFAULT

(1) In any action brought by a creditor based on the default of the consumer, the complaint shall include or be accompanied by a notice informing the consumer of his right to cure his default pursuant to the provisions of this Section.

(2) At any time before the issuance of a final judgment the consumer may cure his default by tendering to the creditor the amount of his current obligation
7.108(2)
and, at the option of the creditor, any court costs
incurred by the creditor and a performance deposit not
in excess of the amount of one instalment or periodic
payment.

(3) For the purposes of this Part the current
obligation of the consumer is the aggregate of all
payments scheduled to be due at the time of the
tender, plus any unpaid delinquency or deferral charges.
Nothing in this subsection shall be construed to permit
acceleration of all or any part of the obligation of
the consumer arising from a consumer credit transaction.

(4) Any performance deposit may be held by the
creditor against the remaining obligation of the
consumer. Upon regular performance by the consumer
throughout the duration of the obligation the deposit
shall be credited to the account of the consumer at the
time it becomes equal to the remaining balance. In the
event of a subsequent default, prepayment or any other
occurrence which requires the computation pursuant to
this Act of the outstanding obligation of the consumer,
the deposit shall be credited to the amount paid for
the purposes of the computation.
(5) Once the consumer has cured his default pursuant to this Section the action of the creditor shall be dismissed and the consumer shall be restored to all of his rights and obligations pursuant to the transaction as though the default had not occurred.

SECTION 7.109 STAY OF ENFORCEMENT OF JUDGMENT

(1) A stay of enforcement of a judgment against a consumer in an action arising from a consumer credit transaction may be ordered by the court on condition that the consumer pay to the creditor such amounts at such times as the court finds within the financial ability of the consumer consistent with his other obligations.

(2) The court may make an order pursuant to subsection (1) for good cause on its own motion, or on the application of either party upon reasonable notice to the other party, at the time of the making of the judgment or at any time thereafter, and may modify or revoke the order for good cause on its own motion or on the application of either party upon reasonable advance notice to the other party at any time thereafter.
SECTION 7.110 EXEMPT PROPERTY

(1) Except as the creditor enforces a valid security interest the following property of the consumer is exempt from levy, execution, sale and other similar process in satisfaction of a judgment for an obligation arising from a consumer credit transaction:

(a) unpaid earnings; and

(b) personal effects, household furnishings, appliances and clothing of the consumer and his dependents; and

(c) real property used as the principal residence of the consumer or his dependents; and

(d) tools of the trade and other property necessary for the consumer to earn an income or provide sustenance for himself and his dependents; and

(e) other property necessary for the maintenance of a moderate standard of living for the consumer and his dependents.

(2) Nothing in this Section shall be construed to displace other provisions of law which afford additional or greater protection to the property of the consumer.
(3) An order or process in violation of this Section is void.

SECTION 7.111 LIABILITY OF COSIGNER

(1) To recover in an action against a cosigner with respect to an obligation arising from a consumer credit transaction, the creditor must plead and prove, in addition to any other requirements of this Part, that the creditor materially relied on the assumption of the obligation by the cosigner as a condition for the extension of the credit and that the cosigner agreed to be bound by the terms of the agreement.

(2) In addition to defenses arising from the requirements of subsection (1) and any other provision of law, a cosigner is entitled to assert against the creditor all defenses and claims arising out of the transaction which are available to the principal obligor.

SECTION 7.112 DOING BUSINESS WITHOUT VALID REGISTRATION

No person who engages in the business of extending or arranging credit or who engages in the business of taking assignments of and undertaking direct collection
of payments from or enforcement of rights against
consumers arising from consumer credit transactions, or
who engages in the business of debt collection shall
have the benefit of any provision of this Article with
respect to the enforcement of the obligations pursuant
to the transaction unless he had a valid registration
pursuant to the Part on Registration and Fees (Part 2 of
Article 9) at the time of the extension of credit or
taking of the assignment or the account for collection.
PART 2
ENFORCEMENT OF SECURITY INTERESTS

Section
7.201 GENERAL PROVISIONS
7.202 NON-JUDICIAL ENFORCEMENT PROHIBITED
7.203 VOLUNTARY SURRENDER OF COLLATERAL
7.204 PROCESS FOR POSSESSION; PLEADINGS
7.205 SEIZURE OF COLLATERAL PRIOR TO FINAL JUDGMENT
7.206 RECOVERY OF PROPERTY SEIZED PRIOR TO FINAL JUDGMENT
7.207 RIGHTS IN COLLATERAL AFTER JUDGMENT
7.208 PROHIBITION OF DEFICIENCY; RIGHT TO SURPLUS

Section 7.201 GENERAL PROVISIONS

(1) Subject to the provisions on security interests (Section 2.411 and Section 2.412) the creditor may acquire a security interest in goods to secure the obligation of the consumer arising from a consumer credit transaction.

(2) Upon the default (Section 7.102) of the consumer the secured creditor has only those rights and remedies provided in this Article. Subject to the limitations contained in this Part, the creditor may waive his security interest and pursue his claim to
7.201(2)

judgment as one unsecured. If the creditor elects to waive his security interest, the collateral may not thereafter be retaken and is not subject to levy or sale on execution or similar proceedings pursuant to any judgment.

(3) Each requirement of this Part is a condition precedent for a proper taking of collateral.

SECTION 7.202 NON-JUDICIAL ENFORCEMENT PROHIBITED

No person shall take possession of collateral by other than legal process pursuant to this Part, notwithstanding any provision of law or term of a writing.

SECTION 7.203 VOLUNTARY SURRENDER OF COLLATERAL

(1) The consumer may at any time offer to voluntarily surrender all of his rights and interests in the collateral to the creditor. If the creditor elects to accept the surrender, he may not thereafter pursue any claim for judgment on the obligation.

(2) If the consumer voluntarily surrenders the collateral to the creditor and the creditor accepts the
surrender, the disposition of the collateral is subject to the provisions of Section 7.207 and Section 7.208.

SECTION 7.204 PROCESS FOR POSSESSION: PLEADINGS

(1) In an action brought to enforce a security interest in collateral no process shall issue to take possession of the property until final judgment has been rendered in favor of the creditor except as otherwise provided in Section 7.205.

(2) In an action brought to enforce a security interest in collateral the complaint shall comply with the requirements of Section 7.106.

SECTION 7.205 SEIZURE OF COLLATERAL PRIOR TO FINAL JUDGMENT

(1) No process shall issue with regard to the collateral prior to final judgment, except as provided in this Section.

(2) In order for process to issue with regard to the collateral prior to final judgment, the creditor must move simultaneously with or after the filing of the complaint for the court to issue such process. The mo-
7.205(2) 

tion shall be supported by sworn affidavits showing the 
fair market value of the collateral and 

(a) that the issuance of process is necessary 
to obtain jurisdiction over the collateral 
because the consumer is absent from the 
jurisdiction and there is no alternative 
means of obtaining jurisdiction over the 
the consumer, or 

(b) that the issuance of process is necessary 
because the consumer is about to remove 
any or all of the collateral from the state 
with the intent to defraud the creditor.

(3) If it appears to the court that any of the 
affidavits made pursuant to this Section are presented 
in bad faith, the court shall order the creditor to 
pay the consumer the reasonable expenses caused by the 
filing of the affidavit, including reasonable attorney's 
fees, and any offending affiant, party or attorney, may 
be found guilty of contempt for filing the affidavit.

(4) No process shall issue pursuant to this 
Section unless the creditor posts a bond with suffi-
cient sureties in an amount not less than one hundred 
dollars ($100) and at least double the value of the 
property as stated in the affidavit.
Upon examination of the complaint and affidavits and by reason of specific competent evidence shown by testimony within the personal knowledge of an affiant or witness setting forth the facts upon which the creditor is relying, the court may issue process with regard to the collateral if it appears more probable than not that:

(a) the creditor has a valid security interest in the collateral; and
(b) the consumer is in default on the obligation; and
(c) the relevant factors set out in subsection (2) are present; and
(d) providing the consumer with notice and an opportunity to be heard will greatly endanger the ability of the creditor to recover the collateral.

The collateral shall not be delivered to the creditor until ordered by the court pursuant to the provisions of Section 7.206.

Any settlement between the parties subsequent to the issuance of process pursuant to this Section must be approved by the court before it is effective.
SECTION 7.206 RECOVERY OF PROPERTY SEIZED PRIOR TO FINAL JUDGMENT

(1) Upon issuance of process pursuant to the provisions of Section 7.205, the court shall provide the consumer with the best notice possible including notice sent by registered or certified mail to his last reasonably ascertainable address. The notice shall contain a description of the property seized, the name of the creditor who moved for its seizure and the facts alleged by the creditor to necessitate its seizure, and shall inform the consumer of his right,

(a) if the process issued pursuant to the provisions of subsection (2)(a) of Section 7.205, to file a general appearance at any time prior to a hearing on the merits in order to effect the immediate return of the property to him, or

(b) if the process issued pursuant to the provisions of subsection (2)(b) of Section 7.205, to demand a hearing to contest the allegations of the creditor and to have the property immediately returned to him if the court so orders at the hearing.

(2) If the property of the consumer was seized pursuant to the provisions of subsection (2)(a) of Section

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7.205 and the consumer files a general appearance prior to the trial on the merits, the court shall order the collateral returned immediately to the consumer. If the consumer does not file a general appearance prior to the trial on the merits and the creditor prevails at the trial, the court may order the property delivered to the creditor.

(3) If the property of the consumer was seized pursuant to the provisions of subsection (2)(b) of Section 7.205 the consumer may obtain a hearing to contest the allegations of the creditor at any time before the trial on the merits by filing a demand for the hearing with the court. Upon filing, the court shall schedule a hearing on the date requested by the consumer, or as soon thereafter as is practicable, and shall notify the creditor of that date. If the consumer does not file a demand for a hearing and the creditor prevails at the trial on the merits, the court may order the property delivered to the creditor.

(4) At the hearing pursuant to subsection (3) the court shall order the collateral returned immediately to the consumer if the creditor is unable to show by a preponderance of the evidence that the danger still exists of the consumer removing the collateral with the intent
Section 7.206(4) to defraud the creditor if it is returned immediately to
the consumer. If the creditor prevails at the trial on
the merits, the court may order the property delivered to
the creditor.

Section 7.207 Rights in Collateral After Judgment
Subject to the provisions of Section 7.208 the credi-
tor shall take all rights and interests in the collateral
upon final judgment entered in his favor or upon accep-
tance of a voluntary surrender of the collateral.

Section 7.208 Prohibition of Deficiency; Right to Surplus
(1) If the creditor takes possession of collateral
pursuant to an action authorized by this Part, or by the
acceptance of the voluntary surrender of the collateral
by the consumer, the consumer is not personally liable
to the creditor for any unpaid balance of the obligation.

(2) If the consumer has paid at least fifty (50)
per cent of the amount financed in the transaction, the
creditor shall sell the collateral at a public sale within
ninety (90) days after he takes possession of the collat-
eral. The proceeds of the sale shall be applied pursuant
to the requirements of [Section 9-504(1) of the Uniform Commercial Code] with the exception that attorney's fees and legal expenses incurred by the creditor shall not be included as expenses of the creditor.

(3) Promptly after completion of distribution of the proceeds but prior to the expiration of ninety (90) days after the sale if the distribution is not then complete the creditor shall provide the consumer with a written accounting of the sale which shall include a statement of all receipts and disbursements included in the account and the name and address of the buyer and the relation, if any, of the buyer to the creditor.

(4) The consumer is not liable for any deficiency, but is entitled to any surplus which remains after distributing the proceeds. In a proceeding for a surplus, it is presumed that the collateral was in average condition at the time of surrender and that it was sold for its fair market value. The fair market value of the collateral is a question for the trier of fact. Periodically published trade estimates of the retail value of goods are presumed, to the extent they are recognized in the particular trade or business, to be the fair market value of the collateral.
ARTICLE 8

CONSUMER REMEDIES AND ACTIONS

PART 1

REMEDIES FOR VIOLATIONS

Section

8.101 APPLICABILITY
8.102 REMEDIES TO BE LIBERALLY ADMINISTERED
8.103 LIMITATIONS OF ACTIONS
8.104 UNCONSCIONABILITY
8.105 REMEDY FOR CERTAIN VIOLATIONS: $100 OR 10 PER CENT OF TRANSACTION TOTAL
8.106 REMEDY FOR CERTAIN VIOLATIONS: $500 OR 20 PER CENT OF TRANSACTION TOTAL
8.107 REMEDY FOR CERTAIN VIOLATIONS: $1000 OR 30 PER CENT OF TRANSACTION TOTAL
8.108 REMEDY FOR CERTAIN VIOLATIONS: VARIABLE RECOVERY
8.109 TRANSACTIONS WHICH ARE VOID
8.110 EXEMPLARY DAMAGES FOR WILFUL VIOLATIONS
8.111 LIABILITY OF CORPORATE OFFICERS, AGENTS AND EMPLOYEES
8.112 LIMITATIONS ON LIABILITY OF COMMUNICATIONS MEDIA
8.113 LITIGATION EXPENSES AND REASONABLE ATTORNEY'S FEES
SECTION 8.101 APPLICABILITY

This Article applies to the rights and remedies of the consumer arising from the provisions of this Act and consumer credit transactions under this Act. Nothing in this Act shall preclude the consumer from pursuing other rights and remedies with respect to a consumer credit transaction, whether established by decision or other law, in addition to those provided in this Article.

SECTION 8.102 REMEDIES TO BE LIBERALLY ADMINISTERED

(1) The remedies provided by this Article shall be liberally administered to the end that the consumer as the aggrieved party shall be put in at least as good a position as if the creditor had fully complied with this Act. In addition to any specific remedy provided by this Article, the consumer is always entitled to recover actual damages, including incidental, consequential and special damages, notwithstanding any agreement to the contrary. Actual damages always include damages for emotional distress or mental anguish suffered, without regard to whether there is accompanying physical injury. Exemplary damages may be recovered pursuant to the provisions of Section 8.110.
8.102(2)

(2) Any right or obligation declared by this Act is enforceable by action unless the provision declaring it specifies a different and limited effect.

SECTION 8.103 LIMITATIONS OF ACTIONS

(1) An action brought by a consumer pursuant to a provision of this Article may be brought in [any court of competent jurisdiction] before the expiration of four (4) years from the date of the discovery by the consumer of a violation of this Act, or in the case of an action based on an obligation of the creditor pursuant to a consumer credit transaction, before the expiration of six (6) years from the conduct or occurrence giving rise to the action.

(2) Any recovery to which the consumer is entitled pursuant to a provision of this Article may be recovered whether or not the obligation of the consumer is enforceable by action and may be set off against the obligation of the consumer under the transaction and may be raised as a defense or counterclaim to any action without regard to the limitations prescribed in subsection (1).
SECTION 8.104 UNCONSCIONABILITY

(1) If the court finds, as a matter of law, with respect to a consumer credit transaction that the agreement, any term or aspect of the agreement or any aspect or result of the transaction is unconscionable, or that the agreement or transaction was induced or enforced by unconscionable conduct, it may refuse to enforce the agreement or term, or it may enforce the remainder of the agreement without the unconscionable term, or it may so limit the application of any unconscionable aspect of the agreement or transaction as to avoid an unconscionable result.

(2) Without limiting the scope of subsection (1) the court may consider as pertinent to the issue of unconscionability:

(a) that the creditor knew or had reason to know of the inability of the consumer to adequately protect his interests because of physical or mental infirmities, ignorance, illiteracy, lack of education, lack of experience or sophistication or inability to understand the language in which the agreement was written or the negotiations occurred and that he took advantage of these or similar factors; or
(b) that at the time the agreement was made the creditor knew or had reason to know of the inability of the consumer to receive substantial benefits, or benefits reasonably anticipated from the subject matter of the transaction; or

(c) that the creditor knew or had reason to know at the time the agreement was made that there was no reasonable probability of payment in full of the obligation by the consumer; or

(d) that the natural effect of the term, act or practice in question is to cause consumers to misunderstand the true nature of the transaction or their rights and duties; or

(e) that the terms of the transaction require the consumer to encumber property or other value beyond what is the immediate subject of the transaction; or

(f) that there existed, without economic justification, a gross disparity between the price of the goods or services which were the subject of the transaction and their value measured by the price at which similar goods or services were readily obtainable by
other consumers in this State, or by other tests of true value; or

(g) that the creditor contracted for or received, separate charges for insurance or other benefits not directly related to the transaction, with the effect of making the transaction, considered as a whole, unconscionable; or

(h) that the terms of the agreement include the waiver of any consumer rights provided by this Act; or

(i) that the writing purporting to evidence the obligation of the consumer contains terms or authorizes practices prohibited by law or public policy; or

(j) definitions or interpretations of unconscionability in statutes, regulations, rulings and decisions of legislative, administrative or judicial bodies in this State or elsewhere.

(3) With respect to violations of rules promulgated by the Administrator pursuant to Section 9.103

(a) proof of the use of any term of an agreement or of the commission of any act, practice or conduct specifically prohibited as uncon-
scionable by a rule of the Administrator is conclusive evidence that such act, practice or conduct is unconscionable, and

(b) upon proof of the use of any terms of an agreement or of the commission of any act, practices or conduct specifically prohibited by a rule of the Administrator, other than one relating to unconscionability, the person who has used the term or has committed the act, practice or conduct has the burden of establishing that it is not unconscionable in the circumstances of the particular case.

(4) If it is claimed or appears to the court that the agreement, or any term or aspect of the agreement or any aspect or result of the transaction is or may be unconscionable or was or may have been induced or enforced by unconscionable conduct, the parties shall be afforded a reasonable opportunity to present evidence as to its setting, purpose and effect to aid in making the determination.
SECTION 8.105 REMEDY FOR CERTAIN VIOLATIONS: $100 OR 10 PER CENT OF TRANSACTION TOTAL

For a violation which is subject to the provisions of this Section, the consumer shall recover from the person violating this Act an amount equal to

(a) ten (10) per cent of the transaction total or one hundred dollars ($100), whichever is greater, and

(b) the actual damages, including any incidental, consequential and special damages, sustained by the consumer as a result of the violation.

SECTION 8.106 REMEDY FOR CERTAIN VIOLATIONS: $500 OR 20 PER CENT OF TRANSACTION TOTAL

For a violation which is subject to the provisions of this Section, the consumer shall recover from the person violating this Act an amount equal to

(a) twenty (20) per cent of the transaction total or five hundred dollars ($500), whichever is greater, and

(b) the actual damages, including any incidental, consequential and special damages, sustained by the consumer as a result of the violation.
8.107

**SECTION 8.107 REMEDY FOR CERTAIN VIOLATIONS; $1000 OR 30 PER CENT OF TRANSACTION TOTAL**

For a violation which is subject to the provisions of this Section, the consumer shall recover from the person violating this Act an amount equal to

(a) thirty (30) per cent of the transaction total or one thousand dollars ($1000), whichever is greater, and

(b) the actual damages, including any incidental, consequential and special damages, sustained by the consumer as a result of the violation.

**SECTION 8.108 REMEDY FOR CERTAIN VIOLATIONS; VARIABLE RECOVERY**

For a violation which is subject to the provisions of this Section, the consumer shall recover from the person violating this Act an amount equal to

(a) not less than one hundred dollars ($100) nor more than twenty five hundred dollars ($2500), determined by the court, and

(b) the actual damages, including any incidental, consequential and special damages, sustained by the consumer as a result of the violation.
SECTION 8.109 TRANSACTIONS WHICH ARE VOID

For a violation which is subject to the provisions of this Section, the consumer is entitled to retain the goods, services, money or other credit received pursuant to the transaction which gave rise to the violation without obligation to pay any part of the transaction total. In addition, the consumer is entitled to recover from the person violating this Act any sums paid or any property transferred pursuant to the transaction. If any property is not recoverable or is not recoverable in substantially the condition in which it was at the time the consumer transferred it, the consumer is entitled to recover in lieu thereof the agreed value or the retail fair market value of the property, whichever is greater.

SECTION 8.110 EXEMPLARY DAMAGES FOR WILFUL VIOLATIONS

(1) In addition to any other remedy provided by this Article, the consumer may recover exemplary damages from a person who has committed a wilful and knowing violation of this Act.

(2) In an action in which exemplary damages are sought to be recovered, evidence with respect to the existence of similar conduct in transactions between
8.110(2)
the creditor and other consumers is admissible for the
purposes of proving that a violation was wilful or of
proving the degree of the wilfulness of the violation.

SECTION 8.111 LIABILITY OF CORPORATE OFFICERS,
AGENTS AND EMPLOYEES
(1) With respect to a violation of a provision
of this Act by a person who is a corporation, an
officer, agent or employee of the corporation is
personally liable to the consumer for amounts which
the consumer is entitled to recover from the corpora-
tion under this Article if:
(a) the consumer recovers judgment against
the corporation and execution is returned
unsatisfied, and
(b) the officer, agent or employee either
(i) had knowledge of the facts constituting
a violation of this Act, had reason to
know that a violation was being commit-
ted and had the authority to prevent a
violation from occurring, or
(ii) wilfully participated in a violation of
this Act with reason to know that a vio-
lation was being committed.
(2) Nothing in this Section shall preclude joint liability, with the person violating this Act, of an officer, agent or employee who wilfully participated in a violation of this Act.

(3) An action pursuant to subsection (1) may be commenced within four (4) years from the date execution against the corporation is returned unsatisfied.

SECTION 8.112 LIMITATIONS ON LIABILITY OF COMMUNICATIONS MEDIA

(1) No person shall be liable for the printing or dissemination of any advertisement or information which violates a provision of this Act if such person is acting solely as owner or employee of the medium through which such advertisement or information was printed or disseminated.

(2) The provisions of subsection (1) are not applicable in the case of any person who knew or should have known that the advertisement or information printed or disseminated violated any of the provisions of this Act.
8.113

SECTION 8.113 LITIGATION EXPENSES AND REASONABLE ATTORNEY'S FEES

(1) If the consumer recovers judgment in an action pursuant to this Article, on his own behalf or on behalf of a class of consumers pursuant to Section 8.202, whether as an original claim, set-off or counterclaim, the person against whom judgment is rendered is liable to the consumer in the aggregate amount of the costs and expenses reasonably incurred on behalf of the consumer in connection with such action or proceeding, together with a reasonable attorney's fee for services furnished in connection with such action or proceeding.

(2) In determining the reasonableness of the award of attorney's fees pursuant to subsection (1), the court shall consider, where relevant

(a) the time required to prosecute or defend the action or proceeding; and

(b) the novelty and difficulty of the issues involved and the skill requisite to properly conduct the cause; and

(c) the customary fees in the State for similar services; and

(d) whether the employment of the attorney in the particular case will preclude his appearance for others; and
(e) the contingency or certainty of the compensation; and

(f) the character of the employment, whether casual or for an established and constant client; and

(g) the extent to which the attorney has reasonably incurred costs and expenses in connection with the proceedings; and

(h) the benefits to the client or the advantages to the public resulting from the services.

(3) If the consumer is represented by an attorney employed by a non-profit organization, the organization is entitled to the same amounts to which a private attorney would be entitled for the expenses and costs sustained and the services provided.
PART 2
INJUNCTIONS AND CLASS ACTIONS

SECTION 8.201 INJUNCTIONS; RESTRAINING ORDERS; TEMPORARY RESTRAINING ORDERS

8.202 CLASS ACTIONS

SECTION 8.201 INJUNCTIONS; RESTRAINING ORDERS; TEMPORARY RESTRAINING ORDERS

(1) Whether or not there is a claim or a right to recover money or damages or there is an adequate remedy at law and irrespective of whether there is irreparable injury or any individualized harm, the consumer, the Administrator or the Attorney General may bring a civil action in the [ ] Court to restrain a person from violating this Act or any rule promulgated pursuant thereto.

(2) The plaintiff in an action under this Section may apply to the court for appropriate temporary relief against a respondent pending final determination of the action. If the court finds after a hearing held upon notice to the respondent that there is reasonable cause to believe that the respondent is engaging, or is
threatening to engage or is likely to engage in conduct
sought to be restrained, it may grant a restraining
order or preliminary injunction or any other temporary
relief it deems appropriate, and may continue, modify
or revoke the order at any time as the interests of
justice may require. The court may require that a bond
or other security in an amount the court deems appro-
priate be given for the payment of damages and costs
suffered by parties wrongfully restrained before a
restraining order or preliminary injunction shall issue,
except that no security shall be required where, as a
practical matter, the requirement of security would
operate as a bar to otherwise appropriate relief.

(3) (a) A temporary restraining order or other
appropriate temporary relief may be
granted without written or oral notice to
the adverse party or his attorney if
(i) it reasonably appears from specific
facts shown by affidavit or by veri-
fied complaint that the respondent
is engaging, is threatening to
engage or is likely to engage, in
conduct which is violative of this
Act; and
(ii) the circumstances, including but not limited to potential harm, indicate that delay would not be in the public interest; and

(iii) the attorney of the applicant has certified to the court in writing the efforts which have been made to give notice to the adverse party or his attorney and the court concludes that a good faith effort to effect notice has been made.

(b) Every temporary order granted without notice shall be endorsed with the date and hour of issuance, shall be filed with the office of the clerk and entered of record, and shall expire by its terms within a period of time from its entry, not to exceed ten (10) days. An order may be renewed in the same manner as issuance of an original order and shall be subject to the same limitations. The court shall set matters in which temporary orders have been granted for preliminary hearing at the earliest possible time.

(c) no temporary restraining order shall issue without notice unless a bond or other
security in an amount the court deems appropriate is given for the payment of damages and costs suffered by parties wrongfully restrained, except that no security shall be required where, as a practical matter, the requirement of security would operate as a bar to otherwise appropriate relief.

SECTION 8.202  CLASS ACTIONS

(1) An action may be brought by a consumer on his own behalf as well as on behalf of the members of a class of consumers, similarly situated, to recover money or damages and for any other relief to which a member of the class would be entitled in an action brought on his own behalf under the provisions of this Act.

(2) Notwithstanding subsection (1), if the amount assessed against a person who has violated this Act, exclusive of actual and exemplary damages, is less than five hundred dollars ($500) for each member of the class, that amount may not be recovered in a class action except on behalf of those members of the class who are named parties or have otherwise appeared in the
action personally or though an attorney prior to a
compromise, settlement or judgment. Nothing in this
subsection shall be construed to prevent the recovery
of actual and exemplary damages on behalf of all
members of the class.

(3) Whether or not there is a claim or a right
to recover money or damages under subsection (1) or
there is an adequate remedy at law, and irrespective
of whether there is any irreparable injury or any
individualized harm, an action may be brought on behalf
of the members of a class of consumers, similarly
situated, for a declaratory judgment, an injunction or
other appropriate equitable or ancillary relief to which
a member of the class would be entitled in an action
brought on his own behalf under the provisions of this
Act.

(4) The Administrator or the Attorney General
may intervene in the action or join as a party or
may bring an action under this Section if the court
finds that he will fairly and adequately protect
the interests of the class. The appearance of the
Administrator or the Attorney General in an action
under this Section shall not preclude any person
otherwise entitled to participate in the action from so doing.

(5) The court shall consider only the following questions in determining whether an action may be maintained as a class action:

(a) without regard to the size of the class, will the representative party or parties fairly and adequately represent the class, and

(b) without regard to the size of the class, is there a question of law or fact common to the class.

If the finding in both instances is affirmative, the court shall allow the action to be maintained on behalf of the members of the class.

(6) As soon as practicable after the commencement of a class action brought pursuant to this Section and prior to a prosecution of the case on the merits, the court shall hold a hearing to determine whether it shall be maintained as a class action. The court shall make a written finding on the issues of fairness and adequacy of representation and of common question of law or fact. An interlocutory appeal may be taken from this finding.
8.202(7)

(7) In actions under this Section, the court in order to protect the interest of the various parties and to expedite a fair disposition of the proceeding may make appropriate orders

(a) limiting the action to particular classes, persons or issues; or
(b) dividing a class into subclasses and treating each subclass as a class; or
(c) determining the course of proceedings or prescribing measures to prevent undue repetition or complication in the presentation of evidence or argument; or
(d) requiring that notice be given in the manner the court directs to some or all of the members and to the Administrator of any step in the action, including the terms of a proposed compromise or settlement and the extent of the judgment; or
(e) requiring that some or all of the members have an opportunity to signify whether they consider the representation fair and adequate, or to withdraw from the action by a day certain or to intervene and present claims or defenses; or
(f) requiring that some or all of the members have an opportunity to express their
sentiment regarding any proposed step in the action, including the terms of a proposed compromise or settlement and the proposed extent of the judgment; or

(g) directing any party to provide the Administrator with whatever information is needed to assist the Administrator in carrying out an order of the court; or

(h) approving or disapproving a proposed dismissal, compromise or settlement.

(8) (a) If the action is to be permitted as a class action, the court shall direct the Administrator to serve upon the class the best possible notice of the action, including individual notice to all members who can be identified through reasonable effort, which states that

(i) the court will exclude him from the class if he so requests by a specified date; and

(ii) the judgment, whether favorable or not, will include all members who do not request exclusion; and
(iii) any member who does not request exclusion, may if he desires, enter an appearance through counsel.

(b) notwithstanding subsection (a), any member of the class to whom individual notice has not been sent or who has not had actual notice of the action shall not be bound by the judgment or any compromise or settlement approved by the court unless by petition to the court he elects to be so bound.

(9) A class action shall not be voluntarily dismissed, settled or compromised without the prior approval of the court on motion following notice to all members of the class as required in subsection (8)(a). The terms of the proposed compromise or settlement shall be set forth in the notice, and such notice shall state that any member of the class who does not submit to the court by a stated date his agreement to be bound by the terms of the proposal will be excluded from the class. The court shall apportion all costs of notice between the Administrator and the defendant in such manner as it deems just.
(10) The judgment in a class action shall describe those to whom the notice was directed and who have not been excluded and those the court finds to be members of the class. The best possible notice of the judgment shall be given in the manner the court directs to each person who received the original notice and has not been excluded. If the judgment is for the plaintiff the court shall direct the defendant to reimburse the Administrator for all costs of notice.

(11) If the court grants relief against a defendant in an action under this Section, the defendant is liable for the aggregate amount of court costs and litigation expenses determined by the court to have been reasonably incurred by or on behalf of the representative party or parties, together with a reasonable attorney's fee (Section 8.113) for services furnished in connection with the action or proceeding. A non-profit organization or agency of the government which represents consumers or the people of this State in an action under this Section is entitled to the same amounts to which a private attorney would be entitled for the expenses and costs sustained and services provided.
8.202(12)

(12) During the pendency and until the final determination of an action under this Section, the running of any period of limitation applicable to a claim within the purview of the relief requested or granted in such action is tolled.

(13) A final judgment is admissable as evidence of the facts on which it is based in any subsequent action or proceeding.

(14) The Administrator, whether or not a party to the action, shall bear the costs of notice to the members of the class and may recover such costs from the defendant as provided in this Section, and is entitled to notice and an opportunity to be heard on any issue of notice or apportionment of cost.
ARTICLE 9
ADMINISTRATION

PART 1
POWERS AND FUNCTIONS OF ADMINISTRATOR

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

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9.101

SECTION 9.101 APPLICABILITY

This Article applies to any person whose conduct or activities are subject to any of the provisions of this Act.

SECTION 9.102 DEFINITION: "ADMINISTRATOR"

Administrator means [ ].

Comment: Effective and energetic administration is vital to the Act. Since each state has a different structure in its executive branch, the Act does not specifically identify the Administrator. The draftsmen recommend that where possible the administering agency be a new office, directly responsible to the Governor, with no duties other than administration of this Act and other consumer protection legislation. We discourage extending the responsibilities of banking, insurance and other existing departments to include administration of this Act because these departments are already overburdened.

SECTION 9.103 GENERAL POWERS OF ADMINISTRATOR

(1) The Administrator shall adopt, amend and repeal rules necessary to interpret and to carry out the purposes and policies of this Act, to prevent circumvention of and to facilitate compliance with any provision of this Act. The rules may

(a) contain classifications, differentiations, interpretations, adjustments or exceptions
and other provisions deemed necessary by
the Administrator; and
(b) prescribe the form and content of notices,
disclosures, writings, agreements and
such other documents as are required by
provisions of this Act or rules promulgated
by the Administrator.

(2) In addition to any other powers conferred by
this Act, the Administrator shall
(a) receive and act on complaints in whatever
manner he deems necessary to obtain compli-
ance with this Act; and
(b) commence actions on his own initiative to
obtain compliance with this Act; and
(c) counsel persons and groups on their rights
and duties under this Act; and
(d) establish programs for the education of con-
sumers with respect to consumer practices
and problems; and
(e) make studies appropriate to effectuate the
purposes and policies of this Act and make
the results available to the public; and
(f) survey and test the effectiveness of forms,
notices, disclosures and other writings
relevant to the enforcement of this Act; and
(g) hold such public or private hearings as he deems necessary or proper to effectuate the purposes and policies of this Act; and

(h) subpoena witnesses, compel their attendance, adduce evidence and require the production of such relevant matter as he deems necessary or proper to effectuate the purposes and policies of this Act; and

(i) adopt as a rule a description of the organization of his office, stating the general course and method of the operations of his office and the methods whereby the public may obtain information or make submissions or requests; and

(j) adopt rules of practice setting forth the nature and requirements of all formal and informal procedures available, including a description of all forms and instructions used by the Administrator or his office; and

(k) maintain such offices as he deems necessary within this State; and

(l) appoint such attorneys, hearing examiners, clerks and other employees and agents as in the judgment of the Administrator are reasonably necessary to perform his functions under this Act; fix their compensa-
tion; and authorize such attorneys to appear
for and represent the Administrator in court.

(3) Upon failure without lawful excuse to obey a
subpoena or order issued pursuant to subsection (2)(h)
or to give testimony and upon reasonable notice to all
persons affected thereby, the Administrator may apply to
the [ ] Court for an order compelling compliance.

SECTION 9.104 INVESTIGATORY POWERS

(1) In addition to any other powers conferred by
this Act, the Administrator shall

(a) conduct whatever investigations are neces-
sary to perform his duties under this Act;

and

(b) conduct random examinations of persons and
conduct subject to this Act; and

(c) conduct an investigation, within a reason-
able time, upon receipt of a written com-
plaint signed by ten (10) or more consumers.

(2) In addition to any other powers conferred by
this Act, the Administrator may, in the course of an
investigation
(a) administer oaths and affirmations; and

(b) subpoena witnesses, compel their attendance, adduce evidence and require the production of any matter relevant to the investigation, including the existence, description, nature, custody, condition and location of any books, documents, records and other tangible things; and

(c) obtain access for purposes of examination to such books, records and other documents as are relevant to the investigation; and

(d) compel the disclosure of the identity and location of persons having knowledge of relevant facts; and

(e) compel the disclosure of any other matter reasonably calculated to lead to the discovery of relevant evidence; and

(f) recover the cost of making any investigation resulting in an action in which the Administrator prevails.

(3) If the records of a person being investigated are located outside this State, the person at his option shall either make them available to the Administrator at a convenient location within this State or pay the expenses reasonably and necessarily incurred by 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.

(4) The Administrator may by rule require that certain records be kept within this State and that he be notified of their location.

(5) Upon failure without lawful excuse to obey a subpoena or order issued pursuant to subsection (2) or to give testimony and upon reasonable notice to all persons affected thereby, the Administrator may apply to [ ] Court for an order compelling compliance.

SECTION 9.105 ADMINISTRATIVE POWERS WITH RESPECT TO SUPERVISED FINANCIAL ORGANIZATIONS AND OTHER PERSONS

(1) All powers and duties of the Administrator under this Act shall be exercised by him with respect to a supervised financial organization, as well as with respect to all other persons subject to this Act.
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.

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 obtaining 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 empowered to take the action under this or other law.

Nothing contained in this Section shall preclude the Administrator from exercising all of the powers and duties conferred on him by this Act.

SECTION 9.106 REPRESENTATION OF THE INTERESTS OF CONSUMERS

For the purpose of representing the interests of consumers and if in the judgment of the Administrator
the interests or activities of consumers may be sub-
stantially affected, the Administrator may

(a) as of right intervene as a party or other-
wise participate in any State administra-
tive proceeding or activity; and

(b) intervene as a party or as amicus curiae
in any judicial proceeding in the courts
of this State; and

(c) appear before Federal agencies, commissions
or legislative bodies for purposes of pre-
senting testimony; and

(d) to the extent permissible by law, partici-
pate in any Federal administrative proceed-
ing or activity; and

(e) join as a party or appear as amicus curiae
in any Federal court proceeding to the
extent permissible by law.

(2) The Administrator may seek judicial review of
any State agency action which is subject to judicial re-
view and which in his judgment substantially affects the
interests of consumers.

(3) Upon receipt of a written petition signed by
twenty five (25) or more consumers or by an association
or organization representing at least twenty five (25)
consumers requesting representation pursuant to this Section, the Administrator shall within a reasonable time take action pursuant to this Section to represent an interest of consumers or shall state in writing the reasons for denial of the petition. Denial of a petition under this subsection may be appealed to the [ ] Court.

SECTION 9.107 DUTY TO REPORT

(1) The Administrator shall report annually [on or before January 1] to the [Governor and/or Legislature] on the operation of his office, on practices in consumer transactions, on the use of consumer credit in the State, on problems attending the collection of debts, on the problems of persons of limited means in consumer transactions and on the operation of this Act. For the purpose of making the report, the Administrator is authorized to conduct research, hold hearings and make appropriate studies. The report shall include

(a) a description of the examination and investigation procedures and policies of his office; and

(b) a statement of policies followed in deciding whether to investigate or examine persons subject to this Act; and
(c) a statement of policies followed in deciding whether to bring actions authorized under this Act; and

(d) a statement of the number and percentages of classes of persons registered pursuant to this Act who are periodically investigated or examined; and

(e) a statement of the types of consumer problems which have come to his attention and the disposition of them under existing law, and recommendations if any, for legislation to deal with those problems; and

(f) a complete survey of the availability and costs of various types of credit available in the State to the consumer and the cost to the creditor of each type of credit, with a comparison of each with the prevailing rates of charges for credit, both the maximums permitted by law and the amounts actually charged if below the maximums; and

(g) a statement reviewing creditor profits from credit operations; and

(h) a statement of sales and advertising practices tending to promote debt in such a way as to jeopardize the financial security of consumers; and
(i) a list of all challenges to any action of the Administrator in a judicial proceeding and a brief description of the facts in each case; and

(j) a list of all persons against whom complaints have been filed or investigations commenced along with a brief description of the facts of each case and the action taken in each case, if that case has not been resolved within six months from the filing of the complaint or the commencement of the investigation, whichever is earlier; and

(k) such recommendations for modifications or additions to this Act as in the experience and judgment of the Administrator are necessary; and

(l) such other statements or recommendations as are necessary or proper to achieve the purposes or policies of this section or to effectuate the purposes or policies of this Act.

(2) Within ten (10) days following its submission to the [Governor and/or Legislature], the Administrator shall publish and make available to the communications
media and other interested parties, copies of his report, and may impose a charge for the report not to exceed the cost of publication.

SECTION 9.108 APPLICATION OF PART ON ADMINISTRATIVE PROCEDURE AND JUDICIAL REVIEW

Except as otherwise provided, the 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 Act.

SECTION 9.109 ENFORCEMENT ORDERS

(1) After notice, the Administrator may order a person subject to this Act or a person acting in his behalf to cease and desist from violating this Act. The order becomes final within ninety (90) days of issue unless a person adversely affected or aggrieved by the order files a written request to the Administrator for a hearing. If the request for a hearing is not acted upon within thirty (30) days of the filing of such request, the order in question is rescinded. Within thirty (30) days of the close of any hearing to review an order, the Administrator must either reissue,
modify, rescind or postpone the effective date of the order or such order is rescinded.

(2) 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. Review of an action by the Administrator may be sought only after the exhaustion of all administrative remedies, filing of a petition for review within thirty (30) days of the final action of the Administrator and upon service of such petition on all parties of record.

(3) Within thirty (30) days of service on the Administrator of a petition for review, or within such additional time as the court may allow, the Administrator shall transmit to the court the original or a certified copy of the record upon which the order is based. The record may be reproduced in any manner which produces a readable copy. The copy of the record of the Administrator, including all testimony, shall be available at reasonable times for examination by all parties without cost. By stipulation of all parties to the review, the record may be abbreviated.
(4) The court, after hearing, may
   (a) grant any temporary relief or restraining order it deems just, consistent with the purposes and policies of this Act; or
   (b) remand the matter to the Administrator for further proceedings; or
   (c) enter an order enforcing the order of the Administrator; or
   (d) upon finding that the Administrator was clearly in error in view of the record as a whole, enter an order modifying or rescinding the order of the Administrator.

(5) Parties to the review may not raise objections or arguments not presented to the Administrator for his consideration in the proceedings prior to review unless the failure to present the objection or argument is excused for good cause shown.

(6) The court, may, when in its opinion the interest of justice will be served, remand the action to the Administrator for further proceedings to adduce specific evidence or to make specific findings.

(7) The jurisdiction of the [ ] Court shall be exclusive and its final judgment shall be subject to
9,109(7)
review by the [ ] Court in the same manner and form
and with the same effect as appeals from any other ad-
ministrative order.

SECTION 9,110 REMEDIES OF CONSUMERS NOT AFFECTED
The grant of powers to the Administrator in this
Article does not affect remedies available to consumers
under this Act or under other principles of law or
equity.

SECTION 9,111 VIOLATIONS AND ENFORCEMENT
(1) In actions or proceedings by the Administrator
to enforce this Act or to enjoin violations thereof,
the Administrator may, in addition to other relief,
recover an amount equal to the value that accrued to
the defendant as a consequence of the violation of this
Act. But nothing in this Section shall be construed as
exposing persons to double liability or penalties under
this Act.

(2) Amounts recovered pursuant to subsection (1)
shall be retained by the Administrator for the benefit
of the consumers who were the victims of the violations
in connection with which the recovery was made. The
Administrator shall give the best notice possible to
the consumer beneficiaries of the fund and promptly
process claims of those consumers against the fund. If
funds remain unclaimed for a period of [ ] years,
they shall be transferred to the Administrator for use
in the Administration of this Act.

(3) In addition to such other amounts as the Admin-
istrator may be entitled to recover, he may recover in
a civil suit from a person who willfully violates any
provision of this Act not less than [one thousand dol-
ars ($1000)] and not more than [ten thousand dollars
($10,000)] for each violation.

SECTION 9.112 FEES AND RECOVERIES

(1) Any sums of money obtained or recovered by the
Administrator pursuant to this Act shall be retained by
the Administrator unless a different disposition is
expressly provided for by this Act.

(2) Any sums of money retained by the Administrator
pursuant to subsection (1) shall be used by him in the
administration of this Act.
PART 2
REGISTRATION AND FEES

SECTION

9.201 REGISTRATION REQUIRED
9.202 REGISTRATION APPLICATION
9.203 FEES
9.204 VALIDATION
9.205 TERM OF VALIDATION
9.206 INVALIDATION OF REGISTRATION
9.207 DOING BUSINESS WITHOUT VALID REGISTRATION;
   UNENFORCEABILITY OF CONTRACTS
9.208 DOING BUSINESS WITHOUT VALID REGISTRATION;
   LOSS OF LIEN
9.209 DOING BUSINESS WITHOUT VALID REGISTRATION;
   PENALTY

9.201 REGISTRATION REQUIRED

(1) On or after [date], it shall be unlawful for
any person to engage in the business of extending or
arranging the credit in connection with a consumer credit
transaction unless such person has a valid registration
pursuant to the requirements of this Part.

(2) On or after [date], it shall be unlawful for
any person to engage in the business of taking assignments 
of and undertaking direct collection of payments from 
or enforcement of rights against consumers arising 
from consumer credit transactions unless such person 
has a valid registration pursuant to the requirements 
of this Part.

(3) On or after [date], it shall be unlawful for 
any person to engage in the business of debt collection 
or in the business of consumer reporting agency unless 
such person has a valid registration pursuant to the 
requirements of this Part.

SECTION 9.202 REGISTRATION APPLICATION

(1) Every person required to register pursuant to 
Section 9.201 shall file with the Administrator within 
thirty (30) days after the effective date of this Act 
or within thirty (30) days after commencing business in 
this State, and thereafter, on or before [January 31] of 
each year, the following information on an application 
form that the Administrator may prescribe:
(a) name of the person; and
(b) name in which business is transacted if 
different from subsection (1)(a); and
9.202(1)

(c) if a partnership, the name and address of each partner; and

(d) if a corporation, the name and address of each officer, director and each stockholder holding five (5) per cent or more of the voting stock; and

(e) if an association other than in subsection (1)(c) or subsection (1)(d), the name and address of such persons as the Administrator shall by rule prescribe; and

(f) address of principal office, which may be outside this State; and

(g) address of all offices and places of business, if any, in this State; and

(h) if consumer credit transactions or other business subject to this Part is conducted other than at an office or permanent place of business in this State, a brief description of the manner in which they are made or business conducted; and

(i) address of designated agent upon whom service of process may be made in this State; and

(j) the name and residence address of the person in actual and personal charge of the
business and personnel of each office or place of business; and

(k) the full name, residence address, residence telephone number and social security number of each employee or agent engaged in debt collection, if any; and

(l) such other information as the Administrator may from time to time require to effectuate the purposes and policies of this Act.

(2) The Administrator shall be notified in writing within fifteen (15) days of any changes, additions or modifications relative to information required by this Section.

SECTION 9.203 FEES

(1) A person required to register shall on or before [January 31] of each year pay to the [Administrator] an annual fee of [ten dollars ($10)] for that year.

(2) Persons required to register who are in the business of extending or arranging credit in connection with a consumer credit transaction shall pay an additional fee at the time and in the manner
9.203(2)

stated in subsection (1) of [ten dollars ($10)] for each one hundred thousand dollars ($100,000), or part thereof, in excess of one hundred thousand dollars ($100,000), of the original unpaid balances arising from consumer credit transactions made in this State within the preceding calendar year. A refinancing of a consumer credit transaction resulting in an increase in the amount of an obligation is considered a new transaction to the extent of the amount of the increase.

(3) Persons required to register who are assignees shall pay an additional fee at the time and in the manner stated in subsection (1) of [ten dollars ($10)] for each one hundred thousand dollars ($100,000), or part thereof, of the unpaid balances at the time of the assignment of obligations arising from consumer credit transactions made in this State and taken by assignment during the preceding calendar year.

(4) Persons required to register who are engaged in the business of debt collection, or are consumer reporting agencies shall pay an additional fee at the time and in the manner stated in subsection (1) of [ten dollars ($10)] for each one hundred thousand dollars ($100,000), or part thereof, in excess of one hundred
thousand dollars ($100,000), of their gross volume from
such business.

(5) A person required to register shall submit
such financial and other data as the Administrator
may reasonably require which will support the computa-
tion of the amount of the fee.

(6) The Administrator shall bring an action
in the [ ] Court to recover any fees that he
determines are due and owing under this Section.

SECTION 9.204 VALIDATION

(1) Upon receipt of the registration application,
properly completed, and receipt of the required fee,
the Administrator shall validate the registration and
send proof of such validation to the registrant,
provided, however, that the Administrator shall not
validate the application of any person whose
registration has previously been invalidated or who
has previously been refused validation or who
the Administrator finds has previously violated this
Act unless such person shall have complied with this
Part and with any reasonable conditions which the
9.204(1) Administrator may establish to insure future compliance with this Act by such person.

(2) For the purposes of this Section, the term "person" includes
   (a) in the case of a corporation, each officer, director and each stockholder holding five (5) per cent or more of the voting stock; and
   (b) in the case of a partnership, each partner; and
   (c) in the case of an association, each officer.

(3) A registration is effective on the date of validation by the Administrator.

SECTION 9.205 TERM OF VALIDATION
   (1) A registration which is not renewed ceases to be valid on January 31 of each year.

   (2) A registration ceases to be valid when any information in the registration form deemed material by rule of the Administrator is no longer current, unless within fifteen (15) days the registrant files
with the Administrator, in the manner prescribed by
him, the information necessary to make the registration
current.

(3) A registration ceases to be valid on the date
and for the period of time stipulated in an order of the
Administrator pursuant to Section 9.206.

(4) A registration that has ceased to be valid
for any reason may be renewed or reinstated only upon
the submission of a new application for registration
pursuant to Section 9.202, the payment of the fee
required by Section 9.203, the fulfilment of any
conditions authorized by Section 9.204 and the
expiration of any time period specified pursuant to
Section 9.206.

SECTION 9.206 INVALIDATION OF REGISTRATION

(1) The Administrator by order may invalidate for
any stated period, but not to exceed five (5) years, the
registration of any person who the Administrator finds,
after notice and hearing, has directed, authorized,
allowed, engaged in or carried on a course of conduct
which shows a disregard for the purposes and policies
of this Act.
9.206(2)

(2) In any hearing pursuant to subsection (1), it is no defense that an employee or agent of the registrant acted contrary to the instructions or policies of the registrant or that the registrant did not personally participate. A registrant is strictly accountable for the conduct of his employees and agents.

(3) The expiration of a valid registration shall not deprive the Administrator of jurisdiction to proceed with any investigation or proceeding against a registrant or to render a decision invalidating a registration.

SECTION 9.207 DOING BUSINESS WITHOUT VALID REGISTRATION; UNENFORCEABILITY OF CONTRACTS

No person who engages in the business of extending or arranging credit in connection with a consumer credit transaction, or who engages in the business of taking assignments of and undertaking direct collection of payments from or enforcement of rights against consumers arising from consumer credit transactions, or who engages in the business of debt collection or who engages in the business of a credit reporting agency shall have the right to enforce any contract or agreement arising from the conduct of such business unless he had a valid
registration at the time of entering into such contract or agreement. An assignee or transferee shall have no greater right of enforcement.

SECTION 9.208 DOING BUSINESS WITHOUT VALID REGISTRATION; LOSS OF LIEN

No person who engages in the business of extending or arranging credit in connection with a consumer credit transaction, or who engages in the business of taking assignments of and undertaking direct collection of payments from or enforcement of rights against consumers arising from consumer credit transactions, or who engages in the business of debt collection or who engages in the business of a credit reporting agency shall have the benefit of any lien arising by operation of law from the conduct of such business unless he had a valid registration at the time of acquiring such lien.

SECTION 9.209 DOING BUSINESS WITHOUT VALID REGISTRATION; PENALTY

The Administrator may recover in a civil action from a person who without a valid registration engages in the business of extending or arranging the credit in connection with a consumer credit transaction, or who
9.209 engages in the business of taking assignments of and
undertaking direct collection of payments from and en-
forcement of rights against consumers arising from
consumer credit transactions, or who engages in the
business of debt collection on who engages in the
business of a credit reporting agency, a civil penalty
of one thousand dollars ($1000) for each day that the
business has been conducted without a valid registra-
tion.
SECTION 9.301 COUNCIL OF ADVISORS ON CONSUMER AFFAIRS

(1) There is hereby created the Council of Advisors on Consumer Affairs consisting of twenty five (25) members, who shall be appointed by the Governor. In appointing members of the Council, the Governor shall seek to achieve a fair representation from the various segments of the consumer industry and the public, but the representatives of the public shall never be less than a majority. One of the Advisors representing the public shall be designated by the Governor as Chairman. The Chairman shall serve for [one (1) year - two (2) years] and is eligible for reappointment as Chairman.

(2) The term of office of each member of the Council is [four (4)] years. Of those members first appointed, [six (6)] shall be appointed for a term of [one (1)] year, [six (6)] for a term of [two (2)] years, [six
9,301(2)

(6) for a term of [three (3)] years and [seven (7)] for a term of [four (4)] years. A member chosen to fill a vacancy arising otherwise than by expiration of term shall be appointed for the unexpired term of the member whom he is to succeed. A member of the Council is eligible for reappointment.

(3) Members of the Council shall serve without compensation but are entitled to reimbursement of expenses incurred in the performance of their duties.

SECTION 9,302 FUNCTION OF COUNCIL; CONFLICT OF INTEREST

(1) The Council shall advise and consult with the Administrator concerning the exercise of his duties under this Act and shall make recommendations to him regarding the exercise of his powers.

(2) Members of the Council may assist the Administrator in the manner the Administrator sees fit in obtaining compliance with this Act. Since it is the objective of this Part to obtain competent representatives of industry and the public to serve on the Council and to assist the Administrator in achieving the objectives of this Act, service on the Council shall not, in and
of itself, constitute a conflict of interest regardless of the occupations or associations of the members.

**SECTION 9.303 MEETINGS**

(1) The Council and the Administrator shall meet together at a time and place designated by the Chairman at least twice each year. The Council shall hold additional meetings with the Administrator when called by the Chairman or when requested by the Administrator or by at least five (5) members of the Council.

(2) A quorum for enactment of any business shall consist of a simple majority of the members present, provided that a majority of the members present represent the public.
PART 4
ADMINISTRATIVE PROCEDURE AND JUDICIAL REVIEW

Section
9.401 SUPPLEMENT TO PART 1
9.402 DEFINITIONS: "CONTESTED CASE"; "PARTY"; "RULE"
9.403 PUBLIC INFORMATION; ADOPTION OF RULES; AVAILABILITY OF RULES AND ORDERS
9.404 PROCEDURE FOR ADOPTION OF RULES
9.405 FILING AND TAKING EFFECT OF RULES
9.406 PUBLICATION OF RULES
9.407 PETITION FOR ADOPTION OF RULES
9.408 DECLARATORY JUDGMENT ON VALIDITY OR APPLICABILITY OF RULES
9.409 DECLARATORY RULINGS BY ADMINISTRATOR
9.410 CONTESTED CASES: NOTICE; HEARING; RECORDS
9.411 RULES OF EVIDENCE; OFFICIAL NOTICE
9.412 DECISIONS AND ORDERS
9.413 JUDICIAL REVIEW OF CONTESTED CASES
9.414 APPEALS

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SECTION 9.401 SUPPLEMENT TO PART 1

This Part supplements the provisions of the Part on Powers and Functions of Administrator (Part 1 of this Article).

SECTION 9.402 DEFINITIONS: "CONTESTED CASE"; "PARTY"; "RULE"

For the purposes of this Part

(1) "contested case" means a proceeding, including but not limited to one pursuant to the provisions of subsection (1) of Section 9.109, in which the legal rights, duties or privileges of a party are required by law to be determined by the Administrator after the opportunity for hearing.

(2) "party" means the Administrator and each person named or admitted as a party, any person seeking as of right to be admitted, and any person who is aggrieved by action taken and seeks to be admitted as a party.

(3) "rule" means the whole or any part of a statement of the Administrator of general or particular applicability and future effect which implements, interprets or prescribes law or policy and statements describing the organization, procedure or practice requirements
9.402(3)
of the Administrator's office. The term includes
the amendment or repeal of a prior rule but does not
include statements concerning only the internal manage-
ment of the Administrator's office and not affecting
the rights of the public nor does it include intraoffice
memoranda.

SECTION 9.403 PUBLIC INFORMATION; AVAILABILITY OF RULES;
ADOPTION OF RULES AND ORDERS
(1) The Administrator shall cause to be published
for distribution to the public without cost
(a) descriptions of the organization of his
office and the established places at which,
the employees from whom, and the methods
whereby, the public may obtain information,
make submittals or requests and obtain
decisions; and
(b) statements of general course and method by
which the functions of the Administrator
are carried out including the nature and
requirements of all formal and informal
procedures available; and
(c) rules of procedure, descriptions of forms
available or the place at which the forms
may be obtained, and instructions as to
the scope and content of all papers, reports or examinations; and

(d) substantive rules of general applicability adopted as authorized by law and statements of general policy or interpretations of general applicability formulated and adopted by the Administrator; and

(e) each amendment, revision or repeal of the foregoing; and

(f) a pamphlet containing all of the foregoing written in simplified, non-legal and non-technical language capable of being understood by one with no more than average education of the citizenry of the state.

(2) The Administrator shall make available for public inspection and copying at his office

(a) the record and findings of all investigations and hearings; and

(b) all rules, orders, decisions, opinions and all other written statements of policy or interpretations formulated, adopted or used by the Administrator in the discharge of his functions; and

(c) any other information, facts or data received or compiled by the Administrator.
9.403(3)

(3) The provisions of subsection (2) do not apply to

(a) matters that are related solely to the internal personnel rules and practices of the office of the Administrator, or

(b) files of investigations which are not completed, provided that any investigation file which has been open for more than six (6) months shall be open to public inspection unless the Administrator can show good cause why disclosure should be withheld.

(4) No rule, order or decision of the Administrator is valid or effective against any person or party, nor may it be invoked by the Administrator for any purpose, until it has been made available for public inspection as required by subsection (1) and subsection (2) and filed with the [Secretary of State] as required by Section 9.405. This provision is not applicable in favor of any person or party who has actual knowledge thereof.
SECTION 9.404  PROCEDURE FOR ADOPTION OF RULES

(1) Prior to adoption, amendment or repeal of any rule, the Administrator shall

(a) give notice at least twenty (20) days before intended action including

(i) a statement of the time, place and nature of public rule making proceedings; and

(ii) reference to the legal authority under which the rule is proposed; and

(iii) either the terms or substance of the proposed rule or a description of the subjects and issues involved;

and

(b) afford all interested persons an opportunity to participate in the rule making through

(i) submission of written data, views or arguments, and

(ii) presentation of oral argument where deemed appropriate by the Administrator or where twenty five (25) or more persons or an association representing at least twenty five (25) persons requests such opportunity.
9.404(2)

(2) The notice required by subsection (1)(a) shall be mailed to all persons who have made timely request of the Administrator for such advance notice of rule making proceedings and shall be published in [

](3) After consideration of the relevant matter presented in a rule making proceeding, the Administrator shall

(a) incorporate in the rules adopted a concise general statement of their basis and purpose, and

(b) issue a concise statement of the findings, conclusions and supporting reasons for any action taken including failure to adopt the rule.

(4) If the Administrator finds that immediate adoption, amendment or repeal of a rule is necessary to carry out the purposes of this Act and that compliance with the requirements of subsection (1) would be contrary to the public interest, the provisions of subsection (1) shall not apply and the Administrator may adopt, amend or repeal a rule as an emergency rule, amendment or repeal. No emergency rule, amendment or repeal shall be effective for longer than thirty (30) days unless
during that time the Administrator commences proceedings pursuant to subsection (1) for permanent adoption, amendment or repeal of the rule.

(5) No rule is valid unless adopted in substantial compliance with this Section and Section 9.405. A proceeding to contest any rule on the ground of non-compliance with the procedural requirements of this Section and Section 9.405 must be commenced within two (2) years from the effective date of the rule.

SECTION 9.405 FILING AND TAKING EFFECT OF RULES

(1) The Administrator shall file in the office of the [Secretary of State] a certified copy of each rule adopted by him. The [Secretary of State] shall keep a permanent register of the rules open to public inspection.

(2) Each rule hereafter adopted is effective twenty (20) days after filing, or on any later date specified in the rule, except that emergency rules shall be effective immediately upon filing.
SECTION 9.406 PUBLICATION OF RULES

(1) The [Secretary of State] shall compile, index and publish all effective rules adopted by the Administrator. Compilations shall be supplemented or revised as often as necessary.

(2) Compilations shall be made available upon request to [agencies and officials of this State] free of charge and to other persons at prices fixed by the [Secretary of State] to cover mailing and publication costs.

SECTION 9.407 PETITION FOR ADOPTION OF RULES

(1) Any person may petition the Administrator requesting the promulgation, amendment or repeal of a rule. Within thirty (30) days after submission of a petition, the Administrator either shall deny the petition in writing stating his reasons for the denial or shall initiate rule-making proceedings pursuant to Section 9.404.

(2) The denial of a petition under subsection (1) may be appealed to the [ ] Court.
SECTION 9.408 DECLARATORY JUDGMENT ON VALIDITY OR
APPLICABILITY OF RULES

A person who has exhausted all administrative reme-
dies and who is aggrieved by an order may test the va-

didity or applicability of a rule in an action for
declaratory judgment in the [ ] Court if it is
alleged that the rule, or its threatened application,
interferes with or impairs, or threatens to interfere
with or impair the legal rights or privileges of that
person. The Administrator shall be made a party to the
action.

SECTION 9.409 DECLARATORY RULINGS BY ADMINISTRATOR

The Administrator shall provide by rule for the
filing and prompt disposition of petitions for declara-
tory rulings by the Administrator as to the applicability
of any statutory provision or of any rule of the Adminis-
trator. Rulings disposing of petitions have the same
status as decisions or orders in contested cases.

SECTION 9.410 CONTested CASES; NOTICE; HEARING; RECORDS

(1) In a contested case, all parties shall be af-
forded, after reasonable notice, an opportunity to be
heard.
(2) The notice pursuant to subsection (1) shall include

(a) a statement of the time, place and nature of the hearing; and

(b) a statement of the legal authority and jurisdiction pursuant to which the hearing is to be held; and

(c) reference to the particular provisions of the statutes and rules involved; and

(d) a concise statement of the matters asserted.

If the Administrator or other party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter, upon application, a more definite and detailed statement shall be provided.

(3) All parties and, so far as the orderly and expeditious conduct of the hearing permits, all other interested persons shall be given the opportunity to respond and present evidence and argument on all issues involved.

(4) The Administrator upon his own initiative or at the request of any party may subpoena witnesses, compel their attendance, adduce evidence and require the
production of any matter which is relevant to any hearing conducted pursuant to this Section.

(5) At any hearing pursuant to this Section

(a) any person compelled to appear in person is entitled to be accompanied, represented and advised by counsel or other qualified representative, and

(b) any party is entitled to appear in person or by or with counsel or other qualified representative.

(6) Unless precluded by law, informal disposition may be made of any contested case by stipulation, agreed settlement, consent order or default.

(7) The record in a contested case shall include

(a) all pleadings, motions, intermediate rulings; and

(b) evidence received or considered; and

(c) a statement of matters officially noticed; and

(d) questions and offers of proof, objections and rulings thereon; and

(e) proposed findings and exceptions; and
(f) any decision, opinion or report by the officer presiding at the hearing; and

(g) all staff memoranda or data submitted to the hearing officer or members of the office of the Administrator in connection with their consideration of the case; and

(h) a complete statement of any informal disposition under subsection (6).

(8) Oral proceedings or any part thereof, shall be recorded at the request of the Administrator or any party. Recording within the meaning of this subsection means the use of any device or procedure, including stenographer or tape recorder, which is reasonably calculated to produce an accurate verbatim record of the proceeding. The party requesting the recording or transcription shall bear the expense thereof, unless such party has established indigency, in which case he shall be entitled to a free copy of such transcription.

(9) Findings of fact shall be based exclusively on the evidence and on matters officially noticed.
SECTION 9.411 RULES OF EVIDENCE; OFFICIAL NOTICE

In contested cases

(1) Irrelevant, immaterial or unduly repetitious evidence shall be excluded. Evidence not admissible under judicial standards may be admitted (except where precluded by statute) if it is of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs. The Administrator shall give effect to the rules of privilege recognized by law. Objections to evidentiary offers may be made and shall be noted in the record.

(2) Subject to these requirements, when a hearing will be expedited and the interests of the parties will not be prejudiced substantially, any part of the evidence may be received in written form. Documentary evidence may be received in the form of copies or excerpts, if the original is not readily available. Upon request, parties shall be given an opportunity to compare the copy with the original.

(3) A party may conduct cross-examination required for a full and true disclosure of the facts.

(4) Notice may be taken of judicially cognizable facts. In addition, notice may be taken of generally
recognized technical or scientific facts within the
specialized knowledge of the Administrator. Parties
shall be notified either before or during the hearing,
or by reference in preliminary reports or otherwise, of
the material noticed, including any staff memoranda or
data, and the parties shall be afforded an opportunity
to contest the material so noticed. The experience,
technical competence and specialized knowledge of the
Administrator may be utilized in the evaluation of the
evidence.

SECTION 9.412 DECISIONS AND ORDERS

A final decision or an order adverse to a party in
a contested case shall be in writing or stated in the
record. A final decision shall include findings of fact
and conclusions of law, separately stated. Findings of
fact, if set forth in statutory language, shall be
accompanied by a concise and explicit statement of the
underlying facts supporting the findings. If, in accor-
dance with rules of the Administrator, a party has sub-
mitted proposed findings of fact, the decision shall
include a ruling upon each proposed finding. Parties
shall be notified either personally or by mail of any
decision or order. Upon request a copy of the decision

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or order shall be delivered or mailed forthwith to each party and to his attorney of record.

SECTION 9.413 JUDICIAL REVIEW OF CONTESTED CASES

(1) A person who has exhausted all administrative remedies available before the Administrator and who is aggrieved by a final decision in a contested case is entitled to judicial review under this Part. This Section does not limit utilization of review, redress, relief or trial de novo provided by law. A preliminary, procedural or intermediate action or ruling of the Administrator is immediately reviewable if review of the final decision of the Administrator would not provide an adequate remedy.

(2) Proceedings for review are instituted by filing a petition in the [ ] Court within [thirty (30)] days after notice of the final decision of the Administrator is mailed or, if a rehearing is requested, within [thirty (30)] days after the decision thereon. Copies of the petition shall be served upon the Administrator and all parties of record.

(3) The filing of the petition does not itself stay enforcement of the decision of the Administrator. The
Administrator may grant, or the reviewing court may order, a stay upon appropriate terms.

(4) This Section is subject to the provisions of Section 9.108.

(5) Within [thirty (30)] days after the service of the petition, or within any further time allowed by the court, the Administrator shall transmit to the reviewing court the original or a certified copy of the entire record of the proceeding under review. By stipulation of all parties to the review proceedings, the record may be abbreviated. A party unreasonably refusing to stipulate to limit the record may be taxed by the court for the additional costs. The court may require or permit subsequent corrections or additions to the record.

(6) If, before the date set for hearing, application is made to the court for leave to present additional evidence, and it is shown to the satisfaction of the court that the additional evidence is material and that there were good reasons for failure to present it in the proceeding before the Administrator, the court may order that the additional evidence be taken before the Administrator, upon conditions determined by the court. The Administrator may modify his findings and
decision by reason of the additional evidence and shall file that evidence and any modifications, new findings or decisions with the reviewing court.

(7) The review shall be conducted by the court without a jury and shall be confined to the record. In cases of alleged irregularities in procedure before the Administrator, not shown in the record, proof thereon may be taken in court. The court, upon request, shall hear oral argument and receive written briefs.

(8) The court shall not substitute its judgment for that of the Administrator as to the weight of the evidence on questions of fact. The court may affirm the decision of the Administrator or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions or decisions are

(a) in violation of constitutional or statutory provisions; or

(b) in excess of the statutory authority of the Administrator; or

(c) made upon unlawful procedure; or

(d) affected by other error of law; or
9,413(8)

(e) clearly erroneous in view of the evidence on the whole record; or

(f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

SECTION 9,414 APPEALS

An aggrieved party may obtain a review of any final judgment of the [ ] Court under this Part by appeal to the [ ] Court. The appeal shall be taken as in other civil cases.
ARTICLE 10
EFFECTIVE DATE AND REPEALER

SECTION
10.101 TIME OF TAKING EFFECT;
PROVISIONS FOR TRANSITION
10.102 SPECIFIC REPEALER AND AMENDMENTS
10.103 GENERAL REPEALER

SECTION 10.101 TIME OF TAKING EFFECT;
PROVISIONS FOR TRANSITION

(1) Except as otherwise provided in this Section, this Act takes effect at 12:01 a.m. on [ ] . It applies to transactions entered into and events occurring after that date, including but not limited to

(a) consumer credit transactions whenever made which are refinanced, consolidated or deferred after this Act takes effect, and

(b) transactions pursuant to open end credit plans entered into, arranged or agreed to before this Act takes effect.

(2) The Part on Preservation of Claims, Defenses and Equities of Consumer of the Article on Consumer Credit Transactions (Part 6 of Article 2) and the Article on Ad-
ministration of Credit Accounts (Article 3) apply to all consumer credit transactions made before this Act takes effect and the Article on Debt Collection (Article 6) and the Article on Enforcement of Credit Obligations (Article 7) apply to all consumer credit transactions made before this Act takes effect insofar as they regulate activities and limit the remedies of creditors and debt collectors.

(3) To the extent appropriate to permit the Administrator to prepare for operation of this Act when it takes effect, the Article on Administration (Article 9) takes effect [insert either "immediately" or the earliest time possible under the constitutional or statutory requirements of the enacting State].

SECTION 10.102 SPECIFIC REPEALER AND AMENDMENTS

(1) The following acts and parts of acts are repealed:

(a) [ ]
(b) [ ]
(c) [and so on].

(2) The following acts and parts of acts are amended:

(a) [ ]
(b) [   ]

(c) [and so on].

Section 10.103 GENERAL REPEALER

Except as provided in the preceding Section, all acts, parts and sections of acts inconsistent with this Act are hereby repealed.