1980

Title 70B: Utah Uniform Consumer Credit Code - 1980

Utah Code Annotated

TITLE 70B

UTAH UNIFORM CONSUMER CREDIT CODE

Chapter

CHAPTER 1

GENERAL PROVISIONS AND DEFINITIONS

Part

PART 1

SHORT TITLE, CONSTRUCTION, GENERAL PROVISIONS

Section

70B-1-101. Short title. This act (70B-1-101 to 70B-9-103) shall be known and may be cited as Utah Uniform Consumer Credit Code.

History: L. 1969, ch. 18, § 1.101.

Compiler's Notes.

Please note that the section numbers assigned in the Uniform Consumer Credit Code differ in style from that employed generally in Utah Code Annotated. As in the Uniform Commercial Code, Title 70A, this was done for the purpose of comparison with laws of the other states where the Uniform Consumer Credit Code has been adopted. We have assigned Title 70B for the Utah Uniform Consumer Credit Code and have designated a chapter of the Title for each article of the Uniform Consumer Credit Code. The

numbering of the Code has been preserved with the Title number 70B as a prefix and a hyphen substituted for the decimal point; e.g., section 1.101 of the Uniform Consumer Credit Code is now 70B-1-101 in Utah Code Annotated.

Comment of Commissioners on Uniform State Laws.

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

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

Title of Act.

An act to be known as the Utah Uniform Consumer Credit Code, relating to certain consumer and other credit transactions and constituting the Uniform Consumer Credit Code; consolidating and revising certain aspects of the law relating to consumer and other loans, consumer and other sales of goods, services and interests in land, and consumer leases; revising the law relating to usury; regulating certain practices relating to insurance in consumer credit transactions; providing for administrative regulation of certain consumer credit transactions; making uniform the law with respect thereto; amending section 7-9-16, Utah Code Annotated 1953, as amended by chapter 20, Laws of Utah 1961, and chapter 17, Laws of Utah 1967; amending section 70A-9-203 (2), Utah Code Annotated 1953, as enacted by chapter 154, Laws of Utah 1965; amending section 78-23-1, Utah Code Annotated 1953; repealing chapter 10 of Title 7, Utah Code Annotated 1953; repealing section 15-1-2, Utah Code Annotated 1953, as amended by chapter 24, Laws of Utah 1953, chapter 20, Laws of Utah 1955, and chapter 25, Laws of Utah 1965; repealing section 15-1-2a, Utah Code Annotated 1953, as enacted by chapter 24, Laws of Utah 1953; repealing section 15-1-5, Utah Code Annotated 1953; repealing section 15-1-7, Utah Code Annotated 1953, as amended by chapter 21, Laws of Utah 1955; repealing section 15-1-10, Utah Code Annotated 1953; repealing chapter 5 of Title 15, Utah Code Annotated 1953; and providing effective dates. — Laws 1969, ch. 18.

Cross-References.

Consumer funds transfer facilities, 7-16.

Collateral References.

New Topic Service, AmJur 2d, Consumer Credit Protection.

Construction and effect of the Uniform Consumer Credit Code, 86 ALR 3d 317.

Law Reviews.

The UCCC in Utah, 1970 Utah L. Rev. 91.

Utah's UCCC: Boon, Boondoggle, or Just Plain Doggle, 1972 Utah L. Rev. 133.

70B-1-102. Purposes — Rules of construction.

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

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

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

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

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

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

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

(f) to conform the regulation of consumer credit transactions to the policies of the Federal Consumer Credit Protection Act (Act of May 29, 1968, P.L. 90-321, 82 Stat. 146, 15 U.S.C. Secs. 1601 to 1677; 18 U.S.C. Secs. 891 to 896); and

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

(3) A reference to a requirement imposed by this act includes reference to a related rule of the administrator adopted pursuant to this act.

History: L. 1969, ch. 18, § 1.102.

Comment of Commissioners on Uniform State Laws.

The Federal Consumer Credit Protection Act is referred to in the Comments as CCPA.

Under subsection (3), the disclosure provisions prescribed under this Act include the related rules prescribed by the Administrator pursuant to Section 6.104 (2). Moreover, under CCPA Section 103 (k) and Section 1.302 of this Act, reference to requirements of the CCPA includes reference to the regulations of the Board of Governors of the Federal Reserve System issued pursuant to the CCPA. Parts 3 of Articles 2 and 3 are designed to impose requirements for disclosures substantially similar to those imposed under CCPA Title I in order to qualify for exemption under CCPA Section 123. Neither CCPA, nor Parts 3 of Articles 2 and 3 of this Act state fully all applicable disclosure requirements. Reference must be made to the rules of the Administrator for detailed disclosure requirements.

70B-1-103. Supplementary general principles of law applicable. Unless displaced by the particular provisions of this act, the Uniform Commercial Code and the principles of law and equity, including the law relative to capacity to contract, principal and agent, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy, or other validating or invalidating cause shall supplement its provisions.

History: L. 1969, ch. 18, § 1.103.

Comment of Commissioners on Uniform State Laws.

The Uniform Commercial Code is referred to in the Comments as UCC.

Many transactions are subject both to this Act and to other bodies of law, particularly the UCC. In the event of conflict between this Act and Article 9 of the UCC the provisions of this Act control. UCC Sections 9-201 and 9-203. In other cases the provisions of this Act are supplemented by the UCC and other principles. In general such principles have not been repeated in this Act. For example, this Act is supplemented in appropriate cases by UCC Section 1-203, establishing a general duty of good faith in the performance or enforcement of a contract or duty within the UCC.

See Note following Section 9.103 as to UCC amendments possibly needed.

70B-1-104. Construction against implicit repeal. This act being a general act intended as a unified coverage of its subject matter, no part of it shall be deemed to be impliedly repealed by subsequent legislation if such construction can reasonably be avoided.

History: L. 1969, ch. 18, § 1.104.

70B-1-105. Severability. If any provision of this act or the application thereof to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of this act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

History: L. 1969, ch. 18, § 1.105.

70B-1-106. Adjustment of dollar amounts.

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

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

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

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

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

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

(4) The administrator shall issue a rule announcing

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

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

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

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

History: L. 1969, ch. 18, § 1.106.

Comment of Commissioners on Uniform State Laws.

Under this section the dollar amounts designated as subject to change will automatically change on July 1 of each even-numbered year if the change in the Consumer Price Index is great enough. The Act will be enacted in all jurisdictions with the dollar amounts now appearing in it without regard to when enactment occurs. December, 1967, has been selected as the reference base period. Examples of how the section operates follow. The actual Reference Base Index for December, 1967 was 118.2, but for ease of computation it is assumed that the Index was 100. The $300 figure appearing in Section 2.201 (2) (a) will be used as an illustrative dollar amount.

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

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

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

Case 4: The Index for December, 1975, is 122. The change from the Reference Base Index of 100 is an increase of 22%. The portion of 22% in excess of a multiple of 10% (here 20%) is disregarded and a 20% increase is indicated. 20% of $300 is $60. The dollar amount is $360, effective July 1, 1976.

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

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

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

$$\frac{\text{(old Index)}}{\text{(new Index)}} \quad \frac{200}{104} = \frac{100}{X} \quad \text{(old Reference Base Index)}$$

$$X = \frac{100 \times 104}{200}$$

X = 52 (revised Reference Base Index)

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

$$\frac{108.0 - 52.0}{52.0} = 1.077 = 107.7\%$$

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

70B-1-107. Waiver — Agreement to forego rights — Settlement of claims.

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

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

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

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

History: L. 1969, ch. 18, § 1.107.

Comment of Commissioners on Uniform State Laws.

Unlike UCC Section 1-102 (3) which broadly permits variation by agreement, this Act starts from the premise that a consumer may not in general waive or agree to forego rights or benefits under this Act. Compare UCC Section 9-501 (3). Waiver or other variation is specifically provided for in some sections, such as Section 5.204 (4) on rescission. In the absence of such a provision, waiver or agreement to forego must be part of a settlement, and settlements are subject to review as provided in this section.

70B-1-108. Effect of act on powers of organizations.

(1) This act prescribes maximum charges for all creditors, except lessors and those excluded (section 70B-1-202), extending consumer credit including consumer credit sales (section 70B-2-104), consumer loans (section 70B-3-104), and consumer related sales and loans (section 70B-2-602 and section 70B-3-602), and displaces existing limitations on the powers of those creditors based on maximum charges.

(2) Except as provided in subsection (1) and in the chapter on Effective Date and Repealer (sections 70B-9-101 to 70B-9-103), this act does not displace

(a) limitations on powers of supervised financial organizations (subsection (17) of section 70B-1-301) with respect to the amount of a loan to a single borrower, the ratio of a loan to the value of collateral, the duration of a loan secured by an interest in land, or other similar restrictions designed to protect deposits, or

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

History: L. 1969, ch. 18, § 1.108.

Compiler's Notes.

Subsections (2) and (3) of section 1.108 of the Uniform Consumer Credit Code were omitted; subsection (4) was renumbered as subsection (2).

Comment of Commissioners on Uniform State Laws.

1. The bracketed language [i.e., "and in the Article on Effective Date and Repealer (Article 9)] in subsections (3) [omitted in Utah] and (4) [renumbered as subsection (2) in Utah] should be included and the brackets omitted if the enacting State adds to the Article on Effective Date and Repealer (Article 9) provisions displacing limitations on powers of the kinds of organizations enumerated in subsections (3) and (4).

2. This section states the policy of this Act regarding the displacement of laws regulating suppliers of consumer credit and should be read as a guide for the preparation of the repealer provisions of Section 9.103, along with the explanatory note following that section.

3. This Act displaces existing usury laws; in addition, subsection (1) displaces existing limitations on maximum charges for all suppliers of consumer credit except lessors and those excluded under Section 1.202. In other respects, this Act differentiates among creditors depending on their status as either being or not being supervised financial organizations as defined in Section 1.301 (17), and among supervised financial organizations depending on whether they are (1) commercial or industrial banks or trust companies, or (2) thrift institutions such as credit unions, savings banks and savings and loan associations whether mutual or not.

4. Subsection (2) * * * [omitted in Utah].

5. Subsection (3) * * * [omitted in Utah].

6. Except for limitations based on maximum charges, and limitations based solely on amount or duration of credit, subsection (4) (a) [renumbered as subsection (2) (a) in Utah] retains as to all supervised financial organizations existing limitations and restrictions of the kinds enumerated designed to protect deposits such as the typical limitation to 10% of capital and surplus funds on bank loans to a single borrower. Subject to the same exceptions, subsection (4) (b) [renumbered as subsection (2) (b) in Utah] retains as to all organizations existing limitations on the powers they are authorized by law to exercise.

PART 2

SCOPE AND JURISDICTION

Section
70B-1-201. Territorial application.
70B-1-202. Exclusions.
70B-1-203. Jurisdiction and service of process.

70B-1-201. Territorial application.

(1) Except as otherwise provided in this section, this act applies to sales, leases, and loans made in this state and to modifications, including refinancings, consolidations, and deferrals, made in this

state, of sales, leases, and loans, wherever made. For purposes of this act

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

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

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

(2) With respect to sales made pursuant to a revolving charge account (section 70B-2-108), this act applies if the buyer's communication or indication of his intention to establish the account is received by the seller in this state. If no communication or indication of intention is given by the buyer before the first sale, this act applies if the seller's communication notifying the buyer of the privilege of using the account is mailed or personally delivered in this state.

(3) With respect to loans made pursuant to a lender credit card or similar arrangement (subsection (9) of section 70B-1-301), this act applies if the debtor's communication or indication of his intention to establish the arrangement with the lender is received by the lender in this state. If no communication or indication of intention is given by the debtor before the first loan, this act applies if the lender's communication notifying the debtor of the privilege of using the arrangement is mailed or personally delivered in this state.

(4) The part on Limitations on Creditors' Remedies (sections 70B-5-101 to 70B-5-108) of the chapter on Remedies and Penalties (sections 70B-5-101 to 70B-5-302) applies to actions or other proceedings brought in this state to enforce rights arising from consumer credit sales, consumer leases, or consumer loans, or modifications thereof, or extortionate extensions of credit, wherever made.

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

(a) a seller, lessor, lender, or assignee of his rights, may not collect charges through actions or other proceeding in excess of those permitted by the chapter on Credit Sales (sections 70B-2-101 to 70B-2-605) or by the chapter on Loans (sections 70B-3-101 to 70B-3-605); and

(b) a seller, lessor, lender, or assignee of his rights, may not enforce rights against the buyer, lessee, or debtor, with

respect to the provisions of agreements which violate the provisions on Limitations on Agreements and Practices (sections 70B-2-401 to 70B-2-416) of the chapter on Credit Sales (sections 70B-2-101 to 70B-2-605) or of the chapter on Loans (sections 70B-3-101 to 70B-3-605).

(6) Except as provided in subsection (4), a sale, lease, loan, or modification thereof, made in another state to a person who was not a resident of this state when the sale, lease, loan, or modification was made is valid and enforceable in this state according to its terms to the extent that it is valid and enforceable under the laws of the state applicable to the transaction.

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

(8) Notwithstanding other provisions of this section
   (a) except as provided in subsection (4), this act does not apply if the buyer, lessee, or debtor is not a resident of this state at the time of a credit transaction and the parties then agree that the law of his residence applies; and
   (b) this act applies if the buyer, lessee, or debtor is a resident of this state at the time of a credit transaction and the parties then agree that the law of this state applies.

(9) Except as provided in subsection (8), the following agreements by a buyer, lessee, or debtor are invalid with respect to consumer credit sales, consumer leases, consumer loans, or modifications thereof, to which this act applies:
   (a) that the law of another state shall apply;
   (b) that the buyer, lessee, or debtor consents to the jurisdiction of another state; and
   (c) that fixes venue.

(10) The following provisions of this act specify the applicable law governing certain cases:
   (a) applicability (section 70B-6-102) of the part on Powers and Functions of Administrator (section 70B-6-101 to 70B-6-116) of the chapter on Administration (sections 70B-6-101 to 70B-6-415); and
   (b) applicability (section 70B-6-201) of the part on Notification and Fees (sections 70B-6-201 to 70B-6-203) of the chapter on Administration (sections 70B-6-101 to 70B-6-415).

History: L. 1969, ch. 18, § 1.201.

Comment of Commissioners on Uniform State Laws.

1. This section enables the enacting State to apply this Act for the protection of its own consumer residents in multi-state transactions to the extent consistent with the need for workable operating procedures on the

part of creditors. The territorial applicability of the Act varies with the kind of protection safeguard involved. The major substantive protective provisions in this Act are those on rate ceilings (Parts 2 of Articles 2 and 3), disclosure of finance charges (Parts 3 of Articles 2 and 3), limitations on agreements and practices (Parts 4 of Articles 2 and 3), home solicitation sales (Part 5 of Article 2), and limitations on creditors' remedies (Part 1 of Article 5). Except for the disclosure provisions, this section allows the enacting State to apply all of these protective provisions to its own consumer residents when enforcement actions are brought against them in the enacting State.

In the case of a consumer who was a resident when the agreement was made, subsection (5) prohibits the creditor from collecting charges through actions to the extent that the charges exceed those permitted by Parts 2 of Articles 2 and 3 and from enforcing rights in violation of the provisions on limitations on agreements and practices of Parts 4 of Articles 2 and 3. The home solicitation provisions apply by definition to residents because subsection (1) makes this Act apply if the buyer's agreement or offer to purchase is received by the seller in this State and a home solicitation sale is defined in Section 2.501 as one in which the buyer's agreement or offer to purchase is received by the seller at the buyer's residence. Under subsection (4) a creditor is subject to the limitations on his remedies provided by Part 1 of Article 5 in actions he brings in the enacting State against all persons, whether or not they were residents at the time the credit agreement was made.

2. Subsections (1), (2), and (3) serve as general residual provisions governing those matters not specifically treated elsewhere in the section and control the applicability of the disclosure provisions. Under these subsections the creditor has a measure of control over the applicability of the Act with respect to the disclosure requirements and can arrange his interstate operations in a manner which minimizes the operational difficulties arising from the variations in the disclosure requirements of the different state laws. This flexibility on the part of creditors with respect to the applicability of the disclosure provisions offers no threat to consumers because the Federal Consumer Credit Protection Act assures consumers that disclosure requirements will be substantially similar in all states to those prescribed under this Act. The danger that creditors may be able to induce consumers to agree that the applicable law will be that of a creditors' haven that has no effective consumer credit protection has led to invalidating choice of law agreements except where the law chosen is that of the state of the consumer's residence. Subsections (8) and (9).

70B-1-202. Exclusions. This act does not apply to

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

(2) the sale of insurance by an insurer, except as otherwise provided in the chapter on Insurance (sections 70B-4-101 to 70B-4-304).

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

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

History: L. 1969, ch. 18, § 1.202.

Comment of Commissioners on Uniform State Laws.

Subsection (1) is derived from CCPA Section 104 (1). Subsection (3) is derived from CCPA Section 104 (4). Unless excluded by regulations of the Federal Reserve Board, pawnbrokers will be subject to the CCPA.

70B-1-203. Jurisdiction and service of process.

(1) The district courts of this state may exercise jurisdiction over any creditor with respect to any conduct in this state governed by this

act or with respect to any claim arising from a transaction subject to this act. In addition to any other method provided by statute or by the Rules of Civil Procedure, personal jurisdiction over a creditor may be acquired in a civil action or proceeding instituted in such district courts by the service of process in the manner provided by this section.

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

History: L. 1969, ch. 18, § 1.203.

Comment of Commissioners on Uniform State Laws.

This section bestows jurisdiction on the courts of the enacting State over creditors who violate the Act and provides a method of obtaining personal jurisdiction by service of process.

PART 3

DEFINITIONS

Section
70B-1-301. General definitions.
70B-1-302. Definition — Federal Consumer Credit Protection Act.
70B-1-303. Index of definitions in act.

70B-1-301. General definitions. General definitions. — In addition to definitions appearing in subsequent chapters, in this act:

(1) "Actuarial method" means the method, defined by rules adopted by the administrator, of allocating payments made on a debt between principal or amount financed and loan finance charge or credit service charge pursuant to which a payment is applied first to the accumulated loan finance charge or credit service charge and the balance is applied to the unpaid principal or unpaid amount financed. Until such a rule has been adopted, or to the extent that the rule does not cover a particular transaction, "actuarial method" means the method of allocating payments made on a debt between

principal or amount financed and loan finance charge or credit service charge, pursuant to which a payment is applied first to the accumulated loan finance charge or credit service charge and the balance is applied to the unpaid principal or amount financed.

(2) "Administrator" means the administrator designated in chapter 6 on Administration (section 70B-6-103).

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

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

(5) "Closing costs" with respect to a debt secured by an interest in land includes:
   (a) fees or premiums for title examination, title insurance, or similar purposes including surveys,
   (b) fees for preparation of a deed, settlement statement, or other documents,
   (c) escrows for future payments of taxes and insurance,
   (d) fees for notarizing deeds and other documents,
   (e) appraisal fees, and
   (f) credit reports

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

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

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

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

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

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

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

(10) "Official fees" means:

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

(b) premiums payable for insurance in lieu of perfecting a security interest otherwise required by the creditor in connection with the sale, lease, or loan, if the premium does not exceed the fees and charges described in paragraph (a) which would otherwise be payable.

(11) "Organization" means a corporation, government or governmental subdivision or agency, trust, estate, partnership, co-operative, or association.

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

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

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

to the organization, (c) the spouse of a person related to the organization, and (d) a relative by blood or marriage of a person related to the organization who shares the same home with him.

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

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

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

(a) organized, chartered, or holding an authorization certificate under the laws of this state or of the United States which authorize the person to make loans and to receive deposits, including a savings, share, certificate or deposit account, and

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

(18) "Arrange for the extension of credit" means to provide or offer to provide consumer credit which is or will be extended by another person under a business or other relationship under which the person arranging the credit receives or will receive a fee, compensation, or other similar consideration for the service or has knowledge of the credit terms and participates in the preparation of the contract documents required in connection with the extension of credit; but it does not include honoring a credit card or similar device where no finance charge is imposed at the time of that transaction.

(19) "Creditor" means a person who in the ordinary course of business regularly extends or arranges for the extension of consumer credit or offers to extend or arranges for the extension of consumer credit.

History: L. 1969, ch. 18, § 1.301; 1975, ch. 209, § 1.

Compiler's Notes.

The Utah enactment added the second sentence of subsection (1) and, in subsection (12), in the first sentence, omitted "excluding a down payment, with respect to a debt arising from a consumer credit sale pursuant to which no credit service charge is made, or (c) two or more periodic payments" after "four or more periodic payments" and, in the second sentence, omitted "is more than twice the amount of any other periodic payment" after "two or more periodic payments."

The 1975 amendment inserted "excluding a down payment" after "four or more periodic payments" in subd. (12) (b); inserted "a consumer credit sale pursuant to which no credit service charge is made, or" at the end of subd. (12) (b); added subd. (12) (c); inserted "is more than twice the amount of any other periodic payment" after "two or more periodic payments" in the middle of the second sentence of subsec. (12); added subsecs. (18) and (19); and made minor changes in punctuation.

Comment of Commissioners on Uniform State Laws.

[Subsection (1).] This subsection is derived from CCPA Section 107 (a) (1) (A). For a discussion of the operation of the actuarial method, see Comment to Section 2.304.

[Subsection (3).] This definition is derived from UCC Section 1-201 (3).

[Subsection (4).] This definition of "agricultural products" is derived from the Agricultural Marketing Act of 1946, 7 U.S.C. Section 1626.

Though the definition of "agricultural products" is broad, the operative definition is "agricultural purpose" and this is narrowed by the requirement that the person dealing with the agricultural products be one who cultivates, plants, propagates, or nurtures the agricultural products.

[Subsection (5).] Except for "including surveys" in subsection (5) (a), this definition is derived from CCPA Section 106 (e).

[Subsection (6).] This definition is derived in part from UCC Section 1-201 (10).

The phrase "for decision by the court" makes clear that whether or not a term or clause is conspicuous is a question of law and not of fact.

[Subsection (8).] This definition is derived in part from CCPA Section 302 (a).

[Subsection (9).] The lender credit card arrangement is one under which the card issuer agrees to pay to third parties debts incurred by the card holder. The bank credit card and the travel and entertainment credit card are familiar examples. The arrangement for the card issuer's payment of the card holder's debt to the third party may take different forms. It does not matter under this definition whether the arrangement calls for the third party to be the payee of a draft drawn by the card holder on the card issuer, for the card issuer to take an assignment of the debt from the third party, or for the card issuer merely to pay to the third party the card holder's debt. Each of these methods is sufficiently similar in function to be treated alike by this section. "Seller credit card," excluded from the definition of "lender credit card," is defined in Section 1.301 (16).

[Subsection (10).] This subsection is derived from CCPA Section 106 (d).

[Subsection (12).] The term's principal use is in the definitions of "consumer credit sale" (Section 2.104) and "consumer loan" (Section 3.104) where it is used to exclude transactions payable in one installment if no finance charge is made. In addition paragraph (b) excludes from the definition of "consumer credit sale" the familiar 90-day, three-payment contract in which no charge for credit is specified. However, a consumer credit sale is payable in installments if the buyer has the option of either paying the cash price in full in 90 days without a credit service charge, or of paying in installments the amount financed, plus a credit service charge.

[Subsection (15).] This definition is derived from UCC Section 1-201 (31).

[Subsection (16).] Examples of a seller credit card are department store charge cards, gasoline credit cards, and automobile leasing credit cards. A department store card issued primarily for the purpose of purchasing goods from that store qualifies as a seller credit card even though the card holder may also use it at other stores in a shopping center. A card issued by a gasoline wholesaler primarily for the purpose of buying petroleum products from retailers which are subsidiaries of or franchised by the card issuer is a seller credit card even though the card holder may also use it for motel or restaurant services. A card issued by a car rental company primarily to enable the card holder to lease automobiles from the rental company, its subsidiaries, or its franchised outlets, is a seller credit card even though the card holder may also use it to obtain a nominal amount of cash from the rental company.

[Subsection (17).] This definition defines the class of lender which may engage in the business of making supervised loans or taking assignments of such loans for collection without first being licensed under the Act by the Administrator. Sections 3.501 and 3.502. If a lender of this class is subject to supervision by an official or agency other than the Administrator, the powers of examination, investigation, and enforcement under this Act may be exercised by that official or agency. Section 6.105. This class of lender typically includes persons authorized to make loans and receive deposits or their equivalent, such as commercial banks, savings banks, savings and loan associations, and credit unions.

70B-1-302. Definition — Federal Consumer Credit Protection Act. As used in this act the words "Federal Consumer Credit Protection Act" mean the Consumer Credit Protection Act (Public Law 90-321; 82 Stat. 146)

(15 U.S.C. Secs. 1601 to 1677; 18 U.S.C. Secs. 891 to 896), as amended, and include regulations issued pursuant to that act.

History: L. 1969, ch. 18, § 1.302.

Comment of Commissioners on Uniform State Laws.

See Comment to Section 1.102.

70B-1-303. Index of definitions in act. Definitions in this act and the sections in which they appear are:

"actuarial method" — section 70B-1-301(1)
"administrator" — section 70B-1-301(2)
"administrator" — section 70B-6-103
"agreement" — section 70B-1-301(3)
"agricultural purpose" — section 70B-1-301(4)
"amount financed" — section 70B-2-111
"annual percentage rate" (sale) — section 70B-2-304
"annual percentage rate" (loan) — section 70B-3-304
"business collateral" — section 70B-3-105
"cash price" — section 70B-2-110
"closing costs" — section 70B-1-301(5)
"conspicuous" — section 70B-1-301(6)
"consumer credit insurance" — section 70B-4-103(1)
"consumer credit sale" — section 70B-2-104
"consumer lease" — section 70B-2-106
"consumer loan" — section 70B-3-104
"consumer related loan" — section 70B-3-602
"consumer related sale" — section 70B-2-602
"contested case" — section 70B-6-402(1)
"corresponding nominal annual percentage rate" (sale) — section 70B-2-304
"corresponding nominal annual percentage rate" (loan) — section 70B-3-304
"credit" — section 70B-1-301(7)
"Credit Insurance Act" — section 70B-4-103(2)
"credit service charge" — section 70B-2-109
"earnings" — section 70B-1-301(8)
"Federal Consumer Credit Protection Act" — section 70B-1-302
"goods" — section 70B-2-105(1)
"home solicitation sale" — section 70B-2-501
"lender" — section 70B-3-107(1)
"lender credit card or similar arrangement" — section 70B-1-301(9)
"license" — section 70B-6-402(2)
"licensing" — section 70B-6-402(3)
"loan" — section 70B-3-106
"loan finance charge" — section 70B-3-109
"merchandise certificate" — section 70B-2-105(2)
"official fees" — section 70B-1-301(10)

"organization" — section 70B-1-301(11)
"party" — section 70B-6-402(4)
"payable in installments" — section 70B-1-301(12)
"person" — section 70B-1-301(13)
"person related to" — section 70B-1-301(14)
"precomputed" (loan) — section 70B-3-107(2)
"precomputed" (sale) — section 70B-2-105(7)
"presumed" or "presumption" — section 70B-1-301(15)
"principal" — section 70B-3-107(3)
"regulated lender" — section 70B-3-501(2)
"regulated loan" — section 70B-3-501(1)
"revolving charge account" — section 70B-2-108
"revolving loan account" — section 70B-3-108
"rule" — section 70B-6-402(5)
"sale of goods" — section 70B-2-105(4)
"sale of an interest in land" — section 70B-2-105(6)
"sale of services" — section 70B-2-105(5)
"seller" — section 70B-2-107
"seller credit card" — section 70B-1-301(16)
"services" — section 70B-2-105(3)
"supervised financial organization" — section 70B-1-301(17)
"supervised lender" — section 70B-3-501(4)
"supervised loan" — section 70B-3-501(3)

History: L. 1969, ch. 18, § 1.303.

Compiler's Notes.

The Utah enactment inserted the reference to the definition of "business collateral" and omitted a reference to the definition of "loan primarily secured by an interest in land — section 3.105." See 1969 Special Session amendment of 70B-3-105.

CHAPTER 2

CREDIT SALES

Part
1. General provisions.
2. Maximum charges.
3. Disclosure and advertising.
4. Limitations on agreements and practices.
5. Home solicitation sales.
6. Sales other than consumer credit sales.

PART 1

GENERAL PROVISIONS

Section
70B-2-101. Short title.
70B-2-102. Scope.
70B-2-103. Definitions in chapter.
70B-2-104. Definition — "Consumer credit sale."
70B-2-105. Definitions — "Goods" — "Merchandise certificate" — "Services" — "Sale of goods" — "Sale of services" — "Sale of an interest in land" — "Precomputed."

70B-2-101. Short title. This chapter (70B-2-101 to 70B-2-605) shall be known and may be cited as Utah Uniform Consumer Credit Code — Credit Sales.

History: L. 1969, ch. 18, § 2.101.

Collateral References.

New Topic Service, AmJur 2d, Consumer Credit Protection.

70B-2-102. Scope. This chapter applies to consumer credit sales, including home solicitation sales, and consumer leases; in addition part 6 applies to consumer related sales.

History: L. 1969, ch. 18, § 2.102.

Comment of Commissioners on Uniform State Laws.

"Consumer related sale" is defined and a maximum rate of credit service charge established in Section 2.602.

70B-2-103. Definitions in chapter. The following definitions apply to this act and appear in this chapter as follows:

"amount financed" — section 70B-2-111
"annual percentage rate" — section 70B-2-304(2)
"cash price" — section 70B-2-110
"consumer credit sale" — section 70B-2-104
"consumer lease" — section 70B-2-106
"consumer related sale" — section 70B-2-602
"corresponding nominal annual percentage rate" — section 70 B-2-304(3)
"credit service charge" — section 70B-2-109
"goods" — section 70B-2-105(1)
"home solicitation sale" — section 70B-2-501
"merchandise certificate" — section 70B-2-105(2)
"precomputed" — section 70B-2-105(7)
"revolving charge account" — section 70B-2-108
"sale of goods" — section 70B-2-105(4)
"sale of an interest in land" — section 70B-2-105(6)
"sale of services" — section 70B-2-105(5)
"seller" — section 70B-2-107
"services" — section 70B-2-105(3)

History: L. 1969, ch. 18, § 2.103.

70B-2-104. Definition — "Consumer credit sale."

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

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

(2) Unless the sale is made subject to this act by agreement (section 70B-2-601), "consumer credit sale" does not include:
(a) a sale in which the seller allows the buyer to purchase goods or services pursuant to a lender credit card or similar arrangement, or
(b) except as provided with respect to maximum charges (section 70B-2-201), disclosure (section 70B-2-301) and debtors' remedies (section 70B-5-201), a sale of an interest in land which is used or expected to be used as the residence of the buyer.

(3) The amount of $25,000 in subsection (1) is subject to change pursuant to the provisions on adjustment of dollar amounts (section 70B-1-106).

History: L. 1969, ch. 18, § 2.104; 1975, ch. 210, § 1.

Compiler's Notes.

The 1975 amendment inserted "or arranged" after "credit is granted" in subd. (1) (a); inserted "maximum charges (section 70B-2-201)" near the beginning of subd. (2) (b); substituted "which is used or expected to be used as the residence of the buyer" at the end of subd. (2) (b) for "if the credit service charge does not exceed 10 per cent per year calculated according to the actuarial method on the unpaid balances of the amount financed on the assumption that the debt will be paid according to the agreed terms and will not be paid before the end of the agreed term"; and made minor changes in punctuation.

Effective July 1, 1978, the figure of $25,000 specified in subd. (1) (e) was increased by Administrative Rule No. 11 issued by the Commissioner of Financial Institutions to $45,000 pursuant to the provisions on adjustment of dollar amounts in section 70B-1-106.

Comment of Commissioners on Uniform State Laws.

1. Since most of the operative provisions of this Act apply either to consumer credit sales, or to consumer loans, or to both, the definition of consumer credit sale is one of the key scope definitions of the Act. In defining a consumer credit sale as one made by a commercial seller to a buyer who is a natural person for an amount financed not exceeding $25,000 (except in the case of land sales) for a personal, family, household, or agricultural purpose, this Act applies to the same sales transactions as CCPA Sections 103 (f) and (h), and 104 (3). This Act applies to credit jewelers or clothiers who sell on installments but make no identifiable charge for credit. The requirement that a sale be either payable in installments or subject to a finance charge to qualify as a consumer credit sale excludes a great mass of transactions, e.g., the 30-day retail charge account and the short-term credit furnished by professional men and artisans on a one-payment basis in connection with sales of their services for which no service charge is made. Sales by non-commercial creditors or sales for other than a consumer purpose are covered by this Act only to the extent of the limited provisions of Part 6 on consumer related sales.

2. Drafts of the Uniform Consumer Credit Code prepared prior to enactment of the CCPA completely excluded sales of interests in land where the rate of the credit service charge did not exceed 10% from the definition of consumer credit sale and thus from

coverage of the Act. The 10% cut-off was chosen as a convenient line of demarcation between two dissimilar transactions — the home mortgage and the high rate, "small loan" type of real estate loan. The exclusion of the home mortgage was made because the problems of home financing are sufficiently different to justify separate statutory treatment. On the other hand, the high rate second mortgage transaction has been a major source of consumer complaint and merits full coverage by the Act. Since the CCPA applies to all real estate credit without regard to the rate of finance charge, the Final Draft of this Act was changed to reflect this by making the 10% exclusion inapplicable to disclosure and related debtors' remedies.

70B-2-105. Definitions — "Goods" — "Merchandise certificate" — "Services" — "Sale of goods" — "Sale of services" — "Sale of an interest in land" — "Precomputed."

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

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

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

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

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

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

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

History: L. 1969, ch. 18, § 2.105.

Comment of Commissioners on Uniform State Laws.

[Subsection (2).] "Merchandise certificate" primarily means the kind of scrip issued by merchants to facilitate the purchase on credit of a number of relatively small items so that a separate contract or agreement is not required for each item purchased; it does not include a trading stamp redeemable only at a stamp redemption center.

[Subsection (3).] The retail installment sales acts often excluded from the definition

of services those furnished by members of professions — physicians, dentists, and the like. This Act makes no such exclusion, but the definition of consumer credit sale in Section 2.104 (1) (d) excludes the usual arrangement that professional men use in selling their services in that they usually do not enter into installment contracts with their patients or clients and do not impose finance charges. However, this Act does apply to the so-called "credit dentist" who sells his services on installment contract with or without provision for a finance charge.

[Subsection (4).] This subsection is derived from CCPA Section 103 (g).

[Subsection (7).] A credit transaction is precomputed whether the credit charge is "added-on" to the amount financed or, as is common in loan situations, the "discount" method is used and the credit charge is deducted from the face amount of the credit at the time of the credit extension. In both transactions the debt is expressed as a sum comprising the amount financed and the amount of the credit charge.

70B-2-106. Definition — "Consumer lease."

(1) "Consumer lease" means a lease of goods
   (a) which a lessor regularly engaged in the business of leasing makes to a person, other than an organization, who takes under the lease primarily for a personal, family, household, or agricultural purpose,
   (b) in which the amount payable under the lease does not exceed $25,000, and
   (c) which is for a term exceeding four months.

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

(3) The amount of $25,000 in subsection (1) is subject to change pursuant to the provisions on adjustment of dollar amounts (section 70B-1-106).

History: L. 1969, ch. 18, § 2.106.

Compiler's Notes.

Effective July 1, 1978, the figure of $25,000 specified in subd. (1) (b) was increased by Administrative Rule No. 11 issued by the Commissioner of Financial Institutions to $45,000 pursuant to the provisions on adjustment of dollar amounts in section 70B-1-106.

Comment of Commissioners on Uniform State Laws.

Leasing has become a popular alternative to credit sales as a means of distributing goods to consumers and merits inclusion in a comprehensive consumer credit code. The four-month term requirement in subsection (1) (c) excludes from the Act the innumerable hourly, daily, or weekly rental or hire agreements typically involving automobiles, trailers, home repair tools, sick room equipment, and the like. If the transaction, though in form a lease, is in substance a sale within the meaning of Section 2.105 (4), it is treated as a sale for all purposes in this Act and the provisions on consumer leases are inapplicable. The Act requires disclosure of the elements of the consumer lease transaction (Section 2.311); places limits on advertising respecting consumer leases (Section 2.313); contains a number of contract limitations applicable to consumer leases (Part 4 of Article 2, notably Section 2.406); makes provisions for remedies and penalties in consumer lease transactions (Article 5); and gives the Administrator powers over consumer lease transactions (Article 6). Since a credit service charge is not made in the usual consumer lease transaction, the rate ceiling provisions of the Act are inapplicable.

70B-2-107. Definition — "Seller." Except as otherwise provided, "seller" includes an assignee of the seller's right to payment but use of

the term does not in itself impose on an assignee any obligation of the seller with respect to events occurring before the assignment.

History: L. 1969, ch. 18, § 2.107.

Comment of Commissioners on Uniform State Laws.

Though the assignee takes all rights conferred by this Act on the seller, he is liable for the obligations imposed on the seller by this Act only with respect to occurrences after the assignment. Unless the assignee undertakes direct collection of payments or enforcement of rights arising from the sale, he is not subject to penalties under Section 5.202.

70B-2-108. Definition — "Revolving charge account." "Revolving charge account" means an arrangement between a seller and a buyer pursuant to which (1) the seller may permit the buyer to purchase goods or services on credit either from the seller or pursuant to a seller credit card, (2) the unpaid balances of amounts financed arising from purchases and the credit service and other appropriate charges are debited to an account, (3) a credit service charge if made is not precomputed but is computed on the outstanding unpaid balances of the buyer's account from time to time, and (4) the buyer has the privilege of paying the balances in installments.

History: L. 1969, ch. 18, § 2.108.

70B-2-109. Definition — "Credit service charge." "Credit service charge" means the sum of (1) all charges payable directly or indirectly by the buyer and imposed directly or indirectly by the seller as an incident to the extension of credit, including any of the following types of charges which are applicable: time price differential, service, carrying or other charge, however denominated, premium or other charge for any guarantee or insurance protecting the seller against the buyer's default or other credit loss; and (2) charges incurred for investigating the collateral or credit-worthiness of the buyer or for commissions or brokerage for obtaining the credit, irrespective of the person to whom the charges are paid or payable, unless the seller had no notice of the charges when the credit was granted. The term does not include charges as a result of default, additional charges (section 70B-2-202), delinquency charges (section 70B-2-203), or deferral charges (section 70B-2-204).

History: L. 1969, ch. 18, § 2.109.

Comment of Commissioners on Uniform State Laws.

The first part of the definition is derived from CCPA Section 106 (a) with changes made to relate the definition to sales. The second part broadens the definition to include in the credit service charge charges for commissions and brokerage whether or not the creditor imposes them so long as he knew of the charges. Charges for default, additional charges, delinquency charges, and deferral charges are expressly excluded from the definition of credit service charge; these charges are separately treated for rate ceiling and disclosure purposes.

70B-2-110. Definition — "Cash price." Except as the administrator may otherwise prescribe by rule, the "cash price" of goods, services, or an interest in land means the price at which the goods, services, or interest in land are offered for sale by the seller to cash buyers in the ordinary

course of business, and may include (1) applicable sales, use, and excise and documentary stamp taxes, (2) the cash price of accessories or related services such as delivery, installation, servicing, repairs, alterations, and improvements, and (3) amounts actually paid or to be paid by the seller for registration, certificate of title, or license fees. The cash price stated by the seller to the buyer pursuant to the provisions on disclosure (sections 70B-2-301 to 70B-2-313) of this chapter is presumed to be the cash price.

History: L. 1969, ch. 18, § 2.110.

Comment of Commissioners on Uniform State Laws.

1. Some sellers attempt to "bury" the charge they actually impose for credit by overstating the cash price, particularly in poverty areas where consumer sophistication is low and where other sources of credit are largely unavailable. This section enables the Administrator or a court to deal with this practice. For the disclosure and limitation of credit service charges to be meaningful, the cash price in credit sales must be a true cash price. The consumer or Administrator can rebut the presumption that the cash price disclosed is the true cash price by showing that the cash price disclosed is not offered to cash buyers in the ordinary course of business. If the cash price disclosed is not a true cash price, the seller may be liable for a violation of disclosure provisions (Section 5.203) and, if the credit service charge would have been excessive had the true cash price been used, for an excess charge.

2. The seller has the option of either including the charges enumerated in (1), (2), and (3) of this section in the cash price or stating them separately. In either case the sum on which the credit service charge is based will be the same, since the amount financed includes both the cash price and the enumerated charges. Section 2.111.

70B-2-111. Definition — "Amount financed." "Amount financed" means the total of the following items to the extent that payment is deferred:

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

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

(3) if not included in the cash price

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

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

(c) additional charges permitted by this chapter (section 70B-2-202).

History: L. 1969, ch. 18, § 2.111.

Comment of Commissioners on Uniform State Laws.

This term is a key definition in both Part 2 (Maximum Charges) and Part 3 (Disclosure) for it determines the amount on which the credit service charge is imposed. Cash payments to the seller at the inception of the sale for such items as registration, certificate of title, or license fees are not deferred and are not part of the amount financed.

PART 2

MAXIMUM CHARGES

Section

70B-2-201. Credit service charge for consumer credit sales other than revolving charge accounts.

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

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

(a) the total of

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

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

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

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

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

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

(b) the effect of prepayment is governed by the provisions on rebate upon prepayment (section 70B-2-210).

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

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

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

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

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

(7) The amounts of $300 and $1,000 in subsection (2) are subject to change pursuant to the provisions on adjustment of dollar amounts (section 70B-1-106).

History: L. 1969, ch. 18, § 2.201.

Compiler's Notes.

Effective July 1, 1978, the figures of $300 and $1,000 specified in subd. (2) (a) were increased by Administrative Rule No. 11 issued by the Commissioner of Financial Institutions to $540 and $1,800 pursuant to the provisions on adjustment of dollar amounts in section 70B-1-106.

Comment of Commissioners on Uniform State Laws.

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

(1) Provisions for disclosure of the credit service charge and loan finance charge both in dollar amounts and as annual percentages (Article 2, Part 3; Article 3, Part 3) are designed to facilitate comparative shopping. This is the most effective means of limiting prices. For most goods and services offered for sale in competitive markets, disclosure of the price has been deemed sufficient to regulate prices.

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

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

Because of the different cost structures that will be developed as a result of this Act, comparison of these rate ceilings cannot be made to existing rate ceilings. In this respect, the rate ceilings in this section are intimately related to other parts of the Act which provide for limitations on agreements and practices (Article 2, Parts 4 and 5; Article 3, Part 4) and for limitations on creditors'

remedies (Article 5, Part 1). Provisions such as holding the assignee subject to defenses (Section 2.404), buyer's right to cancel (2.502), no assignment of earnings (2.410; 3.403), and restrictions on deficiency judgments in consumer credit sales (5.103) will tend to raise operating costs of credit grantors above current levels. Other things being equal, these provisions would require higher rate ceilings than now exist. If they were not provided, the least credit-worthy consumers now in the market would be relegated to the illegal market.

The rate ceiling declines with the amount of credit granted by design. There are substantial fixed costs in granting consumer installment credit. Up to a point the relative amount of fixed costs decline as the amount of credit granted increases. The present rate structure is designed not to restrict the amount of credit granted in any size category. Consequently, any changes in the rate ceilings provided would require a complete re-evaluation of the gradation in the structure, as well as of the other above-mentioned sections of this Act which are closely related in an economic sense to rate ceilings.

2. **Explanation of operation of rate ceilings.** This explanation of maximum rates applies equally to credit service charges made under Section 2.201 and to loan finance charges made under Sections 3.201 and 3.508.

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

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

TABLE A

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

	Unpaid Principal Balances Outstanding During Month				Application of $142.64 Monthly Payments	
Mo.	@36%	@21%	@15%	Total	Charges	Principal
1	$300.00	$700.00	$500.00	$1,500.00	$ 27.50	$ 115.14
2	300.00	700.00	384.86	1,384.86	26.06	116.58
3	300.00	700.00	268.28	1,268.28	24.60	118.04
4	300.00	700.00	150.24	1,150.24	23.13	119.51
5	300.00	700.00	30.73	1,030.73	21.63	121.01
6	300.00	609.72	—	909.72	19.67	122.97
7	300.00	486.75	—	786.75	17.52	125.12
8	300.00	361.63	—	661.63	15.33	127.31

Mo.	Unpaid Principal Balances Outstanding During Month @36%	@21%	@15%	Total	Application of $142.64 Monthly Payments Charges	Principal
9	300.00	234.32	—	534.32	13.10	129.54
10	300.00	104.78	—	404.78	10.83	131.81
11	272.97	—	—	272.97	8.19	134.45
12	138.52	—	—	138.52	4.12*	138.52
TOTALS					$211.68	$1,500.00

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

36%	on $ 300.00	= $ 9.00	
21%	on 700.00	= 12.25	
15%	on 30.73	= .38	
	$1,030.73	$21.63	

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

For purposes of disclosure under Section 2.304 (2) and 3.304 (2) the credit grantor must determine the single annual percentage rate which, when applied according to the actuarial method, earns the same dollar amount of charge that is produced by the graduated rates. Table B shows that an annual rate of 25.10% applied monthly to the periodic declining unpaid balances produces the same total dollar charge of $211.68 calculated by application of graduated rates in Table A.

TABLE B

Amortization Schedule for $1,500 Paid in Twelve Equal and Consecutive Monthly Installments of Principal and Charge Combined Showing That the Flat Annual Percentage Rate of 25.10% Computed by the Actuarial Method Yields $211.68.

Mo.	Unpaid Principal Balances	Application of $142.64 Monthly Payments Charges	Principal
1	$1,500.00	$ 31.38	$ 111.26
2	1,388.74	29.05	113.59
3	1,275.15	26.67	115.97
4	1,159.18	24.25	118.39
5	1,040.79	21.77	120.87
6	919.92	19.24	123.40
7	796.52	16.66	125.98
8	670.54	14.03	128.61

Mo.	Unpaid Principal Balances	Application of Monthly Charges	$142.64 Payments Principal
9	541.93	11.34	131.30
10	410.63	8.59	134.05
11	276.58	5.79	136.85
12	139.73	2.91*	139.73
		$211.68	$1,500.00

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

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

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

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

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

(3) The agreement may call for the computation of the graduated rates on parts of the actual unpaid balance for the time actually outstanding when each payment is made. In this case there is no rebate for prepayment in full because charges are collected only as earned, and there are no separate charges for default or deferment.

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

3. **Explanation of subsection (5).** With respect to Section 2.201 (5), the variation permitted is limited to 8 per cent of the rate of the finance charge and does not permit an 8 percentage point variation. For example, if a credit grantor were to levy an annual add-on

finance charge of $10 per $100 of initial unpaid balance, under the provisions of this section he could establish the following maximum range for one-year contracts:

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

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

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

To gain the convenience of using a single dollar amount of credit service charge for a specified range of amounts financed the credit grantor must undercharge for amounts financed above the median. Thus the $10 credit service charge is $0.76 less than the $10.76 credit service charge that could have been received by precise application of an add-on rate of $10 per $100 per annum on the initial unpaid balance. These results are summarized below for one-year monthly installment contracts.

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

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

Cross-References.

Rebate upon prepayment, 70B-2-210.

70B-2-202. Additional charges.

(1) In addition to the credit service charge permitted by this part, a seller may contract for and receive the following additional charges in connection with a consumer credit sale:
   (a) official fees and taxes;
   (b) charges for insurance as described in subsection (2);
   (c) charges for other benefits, including insurance, conferred on the buyer, if the benefits are of value to him and if the charges are reasonable in relation to the benefits, are of a type which is not for credit, and are excluded as permissible additional charges from the credit service charge by rule adopted by the administrator; and
   (d) with respect to any real property transaction, closing costs (section 70B-1-301(5)), if they are bona fide, reasonable in amount, and not for the purpose of circumvention or evasion of this act.

(2) An additional charge may be made for insurance written in connection with the sale, other than insurance protecting the seller against the buyer's default or other credit loss,
   (a) with respect to insurance against loss of or damage to property, or against liability, if the seller furnishes a clear and

specific statement in writing to the buyer, setting forth the cost of the insurance if obtained from or through the seller, and stating that the buyer may choose the person through whom the insurance is to be obtained; and

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

History: L. 1969, ch. 18, § 2.202; 1975, ch. 210, § 2.

Compiler's Notes.

The 1975 amendment inserted subd. (1) (d); deleted subsec. (3) which read: "For the purposes of the part on Disclosure and Advertising (sections 70B-2-301 to 70B-2-313), if the credit service charge with respect to a sale of an interest in land does not exceed 10 per cent per year (paragraph (b) of subsection (2) of section 70B-2-104), reasonable closing costs even though not within subsection (1) may be treated as additional charges"; and made minor changes in phraseology and punctuation.

Comment of Commissioners on Uniform State Laws.

1. Paragraph (c) of subsection (1), above, sets standards to be observed by the Administrator in determining whether charges are to be excluded from the credit service charge as permissible additional charges pursuant to paragraph (c). These standards conform to the legislative history of CCPA Section 106 (d) (4) as indicated in the "Statement of Managers" on page 25 of the Conference Report on the CCPA under the heading "Other Charges" and to the text of CCPA Section 106 (d) (4). Section 6.104 (2) of this Act directs the Administrator to take into account federal regulations on the subject before adopting his rules.

2. CCPA Section 106 (b) requires that charges or premiums for insurance be included in the "finance charge" for the purposes of disclosing the annual percentage rate or corresponding nominal annual percentage rate unless the insurance meets the tests specified in paragraph (a) or paragraph (b) of subsection (2). The effect of subsection (2) is to require that charges or premiums for insurance be included in the credit service charge for ceiling purposes as well unless the insurance meets the tests specified in paragraph (a) or paragraph (b) of subsection (2).

70B-2-203. Delinquency charges.

(1) With respect to a precomputed consumer credit sale, refinancing or consolidation, or revolving charge accounts on which no credit service charge is assessed, the parties may contract for a delinquency charge on any installment not paid in full within ten days after its scheduled due date in an amount not exceeding the greater of:

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

(b) the deferral charge (subsection (1) of section 70B-2-204) that would be permitted to defer the unpaid amount of the installment for the period that it is delinquent.

(2) A delinquency charge under paragraph (a) of subsection (1) may be collected only once on an installment however long it remains in default. No delinquency charge may be collected if the installment has been deferred and a deferral charge (section 70B-2-204)

has been paid or incurred. A delinquency charge may be collected at the time it accrues or at any time thereafter.

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

(4) The amount of $5 in subsection (1) is subject to change pursuant to the provisions on adjustment of dollar amounts (section 70B-1-106).

History: L. 1969, ch. 18, § 2.203; 1975, ch. 210, § 3.

Compiler's Notes.

The 1975 amendment inserted "or revolving charge accounts on which no credit service charge is assessed" near the beginning of subsec. (1); and made minor changes in punctuation.

Effective July 1, 1978, the figure of $5 specified in subd. (1) (a) was increased by Administrative Rule No. 11 issued by the Commissioner of Financial Institutions to $9 pursuant to the provisions on adjustment of dollar amounts in section 70B-1-106.

Comment of Commissioners on Uniform State Laws.

1. It should be noted that this section and later sections providing for deferral charges (Section 2.204), credit service charge upon refinancing (Section 2.205), and rebate upon prepayment (Section 2.210) apply only to precomputed sales. When a credit service charge is precomputed, the calculations are based on the assumption that all scheduled payments will be made when due. Section 2.201 (3).

2. If a buyer is late in making a payment on a precomputed sale, the seller would receive no income for the period of the delay unless a separate delinquency charge were permitted. The alternative of not permitting delinquency charges is rejected, because the result would be to enforce a lower effective ceiling on credit service charge rates for delinquent buyers than for buyers who paid promptly. The same line of reasoning that calls for a delinquency charge also supports rebates of appropriate portions of the credit service charge upon prepayment (Section 2.210). Instead of paying behind schedule, the buyer is paying ahead of schedule. Consequently, he is entitled to a rebate of a portion of the prescheduled credit service charge.

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

70B-2-204. Deferral charges.

(1) With respect to a precomputed consumer credit sale, refinancing, or consolidation, the parties before or after default may agree in writing to a deferral of all or part of one or more unpaid installments, and the seller may make and collect a charge not exceeding the rate previously stated to the buyer pursuant to the provisions on disclosure (70B-2-301 to 70B-2-313) applied to the amount or amounts deferred for the period of deferral calculated without regard to differences in lengths of months, but proportionally for a part of a month, counting each day as 1/30th

of a month. A deferral charge may be collected at the time it is assessed or at any time thereafter.

(2) The seller, in addition to the deferral charge, may make appropriate additional charges (section 70B-2-202), and the amount of these charges which is not paid in cash may be added to the amount deferred for the purpose of calculating the deferral charge.

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

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

History: L. 1969, ch. 18, § 2.204.

Comment of Commissioners on Uniform State Laws.

Where the buyer finds that he is unable to make the payments under a contract for a period of time, the parties may choose to use the deferral device for giving him an extension of time in preference to rewriting the entire contract under Section 2.205. The seller may make a charge for the period of deferral at a rate not in excess of that disclosed to the buyer at the time of the original contract. In determining the amount deferred and the period of deferral, this section allows the parties to treat the payments due during the period of deferral as delayed until made after the original maturity of the contract, or, in the alternative, to treat the entire unpaid balances as delayed for the period of the deferral. For example, if the parties agree to a one month deferral at the time the seventh of twelve monthly payments is due, the deferral may be considered as postponing the payment of the single installment for six months until it is made at the end of the thirteenth month or as delaying all six unpaid installments by one month.

70B-2-205. Credit service charge on refinancing. With respect to a consumer credit sale, refinancing, or consolidation, the seller may by agreement with the buyer refinance the unpaid balance and may contract for and receive a credit service charge based on the amount financed resulting from the refinancing at a rate not exceeding that permitted by the provisions on credit service charge for consumer credit sales (section 70B-2-201). For the purpose of determining the credit service charge permitted, the amount financed resulting from the refinancing comprises the following:

(1) if the transaction was not precomputed, the total of the unpaid balance and accrued charges on the date of refinancing, or, if the transaction was precomputed, the amount which the buyer would have been required to pay upon prepayment pursuant to the provisions on rebate upon prepayment (section 70B-2-210) on the date of refinancing, except that for the purpose of computing this amount no minimum credit service charge (subsection (6) of section 70B-2-201) shall be allowed; and

(2) appropriate additional charges (section 70B-2-202), payment of which is deferred.

History: L. 1969, ch. 18, § 2.205.

Comment of Commissioners on Uniform State Laws.

This section provides the method of obtaining the amount financed on which the credit service charge is based when a sale is refinanced, and sets the ceiling for the charge. In the refinancing of a precomputed sale the balance owing is treated as though it is prepaid and the buyer is credited with all refunds computed without allowing any credit service charge. A credit service charge is then calculated on an amount financed which is the balance owing less refunds. If the refinanced sale is not precomputed no refunds need be credited to the buyer, and the amount financed is found merely by taking the unpaid balance and accrued charges at the date of refinancing.

70B-2-206. Credit service charge on consolidation. If a buyer owes an unpaid balance to a seller with respect to a consumer credit sale, refinancing, or consolidation, and becomes obligated on another consumer credit sale, refinancing, or consolidation with the same seller, the parties may agree to a consolidation resulting in a single schedule of payments pursuant to either of the following subsections:

(1) The parties may agree to refinance the unpaid balance with respect to the previous sale pursuant to the provisions on refinancing (section 70B-2-205) and to consolidate the amount financed resulting from the refinancing by adding it to the amount financed with respect to the subsequent sale. The seller may contract for and receive a credit service charge based on the aggregate amount financed resulting from the consolidation at a rate not exceeding that permitted by the provisions on credit service charge for consumer credit sales (section 70B-2-201).

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

History: L. 1969, ch. 18, § 2.206.

Comment of Commissioners on Uniform State Laws.

Consolidation refers to the process of adding together amounts owing with respect to more than one sale. There are two ways of consolidating and both are described in this section. Subsection (1) involves the familiar "rewrite": the old balance is refinanced under Section 2.205 and added to the amount financed under the new sale. The credit service charge is based on the aggregate amounts financed. Under subsection (2) no refinancing entailing a refund of credit service charge is involved. The balances owing are simply added together and made payable on one schedule of payments. This usually means that the maturity of the first sale will be extended.

70B-2-207. Credit service charge for revolving charge accounts.

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

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

(a) the average daily balance of the account,

(b) the unpaid balance of the account on the last day of the billing cycle after deducting payments and credits, or

(c) the median amount within a specified range within which the average daily balance of the account or the unpaid balance of the account on the last day of the billing cycle after

deducting payments and credits is included. A charge may be made pursuant to this paragraph only if the seller, subject to classifications and differentiations he may reasonably establish, makes the same charge on all balances within the specified range and if the percentage when applied to the median amount within the range does not produce a charge exceeding the charge resulting from applying that percentage to the lowest amount within the range by more than 8 per cent of the charge on the median amount.

(3) In determining the balance of a revolving charge account upon which a credit service charge will be charged, the balance may not be determined by using the prior balance method, which is using the balance at the end of the previous billing cycle without deducting all amounts credited during the period of the current billing cycle.

(4) If the billing cycle is monthly, the charge may not exceed 1 ½ per cent of the amount pursuant to subsection (2). 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. For the purposes of this section, a variation of not more than four days from month to month is "the same day of the billing cycle."

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

History: L. 1969, ch. 18, § 2.207; 1975, ch. 210, § 4.

Compiler's Notes.

The 1975 amendment, in subsec. (2), inserted "connection with" after "may be made in," and substituted "not exceeding the greatest of" for "no greater than" after "percentage of an amount"; substituted "last day" for "same day" in subds. (2) (b) and (2) (c); inserted "after deducting payments and credits" at the end of subd. (2) (b) and again near the beginning of subd. (2) (c) after "billing cycle"; inserted subsec. (3); redesignated former subsecs. (3) and (4) as subsecs. (4) and (5); deleted former subsec. (5) which read: "The amounts of $500 in subsection (3) are subject to change pursuant to the provisions on adjustment of dollar amounts (section 70B-1-106)"; in subsec. (4), substituted "1 ½ per cent" near the beginning for "2 per cent of that part," and deleted "which is $500 or less and 1 ½ per cent on that part of this amount which is more than $500" from the end of the first sentence; and made minor changes in phraseology and punctuation.

Administrative Rule #7, Department of Financial Institutions, March 28, 1975, read in part: "Sections 70B-2-207 and 70B-3-201 . . . have been amended by the Utah 41st Legislature to prohibit the use of the prior balance method in determining the balance of a revolving charge or loan account upon which credit service or loan finance charge may be assessed.

"These amendments will become law too soon to permit those creditors presently using the prior balance method of computation to give the six months' notice of change as required by Sections 70B-2-416 (2) and 70B-3-408 (2). . . . Therefore, it being contrary to the public interest to require six months' notice of change, this rule is hereby adopted to authorize a fifteen-day notice of change by those creditors changing from the prior bal-

ance method to some other authorized method of computing the balance, subject to credit service or loan finance charges."

Comment of Commissioners on Uniform State Laws.

1. See Comment 3 to Section 2.201 for a discussion of the median amount method of computing the credit service or loan finance charge provided in subsection (2) (c). The "classifications and differentiations" language in subsection (2) (c) is intended to give the seller some flexibility in using this method of determining the credit service charge. He need not use this method for all his customers nor need he use it for all his transactions with one customer, but may classify his transactions and customers on reasonable bases.

2. CCPA Section 127 (b) (6) requires the disclosure of the finance charge on open end credit plans in terms of an annual percentage rate if "the total finance charge exceeds 50¢ for a monthly or longer billing cycle, or the pro rata part of 50¢ for a billing cycle shorter than monthly." It would for all practical purposes be impossible to express a minimum charge in terms of an annual percentage rate. Consequently, subsection (4) prescribes as the minimum the amount of the charge for which the CCPA requires no annual percentage rate disclosure. It also prescribes the method of calculating the pro rata part of the permitted minimum charge when the billing cycle is less than one month.

3. Subsection (2) contemplates that the charge in each billing cycle may be computed on any of the amounts specified in paragraphs (a) to (c) of the subsection.

70B-2-208. Advances to perform covenants of buyer.

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

(2) A credit service charge may be made for sums advanced pursuant to subsection (1) at a rate not exceeding the rate stated to the buyer pursuant to the provisions on disclosure (sections 70B-2-301 to 70B-2-313) with respect to the sale, refinancing, or consolidation, except that with respect to a revolving charge account the amount of the advance may be added to the unpaid balance of the account and the seller may make a credit service charge not exceeding that permitted by the provisions on credit service charge for revolving charge accounts (section 70B-2-207).

History: L. 1969, ch. 18, § 2.208.

Comment of Commissioners on Uniform State Laws.

If the agreement so provides the seller may add to the debt sums that he pays for the performance of duties on behalf of the buyer. If he does so he must disclose the details of the transaction to the buyer. If the original sale was made pursuant to a revolving charge account, the seller may add the amount of the advance to the unpaid balance of the account. In other cases the seller may make a credit service charge on these additional amounts at a rate not in excess of the rate disclosed to the buyer for the original sale. Normally he would compute this charge for the remaining period of the sale agreement, and increase the amounts of the buyer's remaining payments accordingly.

70B-2-209. Right to prepay. Subject to the provisions on rebate upon prepayment (section 70B-2-210), the buyer may prepay in full the unpaid balance of a consumer credit sale, refinancing, or consolidation at any time without penalty.

History: L. 1969, ch. 18, § 2.209.

Comment of Commissioners on Uniform State Laws.

This section does not apply to the sale of an interest in land in which the credit service charge does not exceed 10% since such a sale is not a consumer credit sale. Section 2.104 (2) (b). Nor does this section give a buyer a right to make a partial prepayment; this can be done only with the consent of the creditor and the rebate provisions of Section 2.210 do not apply. Application of the "Rule of 78" under Section 2.210 is not the exaction of a penalty by a creditor within the meaning of Section 2.209.

DECISIONS UNDER FORMER LAW

Acceleration clause not affected.

Statute giving buyer right to prepay and providing for refund does not mean that conditional sales contract is made unenforceable upon exercise of acceleration clause by seller; purpose of statute is to assure buyer of right to make payments in advance of due date, regardless of contract provisions attempting to restrict that right, and to compel seller to give buyer refund credit on interest charge whenever payment is made in advance of due date. Golden Spike Equipment Co. v. Crowshaw (1965) 16 U 2d 391, 401 P 2d 949.

70B-2-210. Rebate upon prepayment.

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

(2) Upon prepayment in full of a consumer credit sale, refinancing, or consolidation, other than one pursuant to a revolving charge account, if the credit service charge then earned is less than any permitted minimum credit service charge (subsection (6) of section 70B-2-201) contracted for, whether or not the sale, refinancing, or consolidation is precomputed, the seller may collect or retain the minimum charge, as if earned, not exceeding the credit service charge contracted for.

(3) (a) Except as otherwise provided in this subsection with respect to a sale of an interest in land or a consumer credit sale secured by an interest in land, the unearned portion of the credit service charge is a fraction of the credit service charge of which the numerator is the sum of the periodic balances scheduled to follow the computational period in which prepayment occurs, and the denominator is the sum of all periodic balances under either the sale agreement or, if the balance owing resulted from a refinancing (section 70B-2-205) or a consolidation (section 70B-2-206), under the refinancing agreement or consolidation agreement. In the case of a sale of an interest in land or a consumer credit sale secured by an interest in land, reasonable sums actually paid or payable to

persons not related to the seller for customary closing costs included in the credit service charge are deducted from the credit service charge before the calculation prescribed by this subsection is made.

(b) With respect to a precomputed transaction entered into on or after July 1, 1977, and payable according to its original terms in more than 61 installments, the unearned portion of the credit service charge is, at the option of the creditor, either:

(i) That portion which is applicable to all fully-unexpired computational periods as originally scheduled, or if deferred, as deferred, which follow the date of prepayment. For this purpose the applicable charge is the total of that which would have been made for each such period, had the consumer credit sale not been precomputed, by applying to unpaid balances of principal, according to the actuarial method, the annual percentage rate of charge previously stated to the debtor pursuant to the provisions on disclosure (part 3 of this chapter) based upon the assumption that all payments were made as originally scheduled, or if deferred, as deferred. The creditor, at his option, may round the annual percentage rate to the nearest quarter of one per cent if such procedure is not consistently used to obtain a greater yield than would otherwise be permitted; or

(ii) The total credit service charge minus the earned credit service charge. The earned credit charge shall be determined by applying the annual percentage rate previously stated to the debtor pursuant to the provisions on disclosure (part 3 of this chapter) according to the actuarial method to the actual unpaid balances for the actual time the balances were unpaid up to the date of prepayment. If a delinquency or deferral charge was collected, it shall be treated as a payment.

(4) In this section

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

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

(c) the "interval" to the due date of the first scheduled installment or the final scheduled payment date is measured from

the date of a sale, refinancing, or consolidation, or any later date prescribed for calculating maximum credit service charges (subsection (4) of section 70B-2-201), and includes either the first or last day of the interval;

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

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

(a) If the computational period is one month and

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

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

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

(c) If the computational period is one week and

(i) if the number of days in the interval to the due date of the first scheduled installment is less than five days,

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

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

(6) If a deferral (section 70B-2-204) has been agreed to, the unearned portion of the credit service charge shall be computed without regard to the deferral. The amount of deferral charge earned at the date of prepayment shall also be calculated. If the deferral charge earned is less than the deferral charge paid, the difference shall be added to the unearned portion of the credit service charge. If any part of a deferral charge has been earned but has not been paid, that part shall be subtracted from the unearned portion of the credit service charge, or shall be added to the unpaid balance.

(7) This section does not preclude the collection or retention by the seller of delinquency charges (section 70B-2-203).

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

(9) Upon prepayment in full of a consumer credit sale by the proceeds of consumer credit insurance (section 70B-4-103), the buyer or his estate is entitled to the same rebate as though the buyer had prepaid the agreement on the date the proceeds of the insurance are paid to the seller, but no later than ten business days after satisfactory proof of loss is furnished to the seller.

History: L. 1969, ch. 18, § 2.210; 1977, ch. 274, § 1.

Compiler's Notes.

The 1977 amendment redesignated the prior text of subsec. (3) as subd. (3) (a); and added subd. (3) (b).

Comment of Commissioners on Uniform State Laws.

1. Examples of the application of Section 2.210 follow:

Example 1:

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

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

a. The "computational period" is one month (subsection (4) (b)). The "interval to the due date of the first installment" starts

July 1 (subsection (4) (c) and subsection (4) of Section 2.201) and, being one month, constitutes one computational period. No part of subsection (5) is applicable.

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

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

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

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

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

Example 2:

Time sale contract executed July 1, 1968, and goods delivered same day. Payable in 26 equal weekly payments beginning July 8. Sale price is $400.00, credit service charge is $31.60, and the weekly payment is $16.60. Debtor prepays in full on July 29, 1968.

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

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

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

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

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

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

Example 3:

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

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

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

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

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

$$\frac{7}{30} \times \frac{\text{Beginning balance}}{\text{Denominator as determined above}} \times \text{Credit Service Charge.}$$

$$\frac{7}{30} \times \frac{1{,}071.24}{6{,}963.06} \times 71.24 = \$2.56.$$

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

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

c. Refund is $\frac{3{,}213.72}{6{,}963.06} \times 71.24 = \$32.88.$

$32.88 minus adjustment of $2.56 = $30.32.

Example 4:

Time sale contract executed June 28, 1968, and goods delivered July 3, 1968. Payable in 26 weekly payments beginning July 8. Sale price is $400.00, credit service charge is

$31.60, and the weekly payment is $16.60. Debtor prepays in full on July 23, 1968.

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

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

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

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

$$\frac{3 \text{ Beginning balance}}{7 \text{ Denominator as determined above}} \times \text{Credit service charge.}$$

$$\frac{3}{7} \times \frac{431.60}{5,826.60} \times 31.60 = \$1.00.$$

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

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

c. Refund is $\frac{4,199.80}{5,826.60} \times 31.60 = 22.78.$

$22.78 minus adjustment of $1.00 = $21.78.

Example 5:

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

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

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

Balance of $1,104.36 for four computational periods	= $ 4,417.44
Balance of $552.18 for 12 computational periods	= 6,626.16
Total denominator	$11,043.60

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

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

c. Refund is $\frac{\$4,969.62}{\$11,043.60} \times 104.36 = \$46.96$

Example 6:

Same facts as in Example 5, except the debtor did not pay the installment due 11/15/68 in full, but paid $184.18 (approximately one-third of the installment) and was permitted to defer the rest ($369.00) until March 15 (four months). A deferral charge of $17.00 was assessed, so the amount coming due March 15 is $385.00. Debtor prepays in full on January 10, 1969.

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

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

$$\frac{64}{120} \times 17 = \$9.07$$

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

ance, the prior provisions of Section 2.210 apply.

[Subsection (3).] Subsection (3), together with paragraph (a) of subsection (4), states the "Rule of 78" with respect to a sale, refinancing or consolidation payable in equal installments at equal intervals from the date of the sale, refinancing or consolidation to the final scheduled payment date. In the case of such a sale, refinancing or consolidation, "computational period" may read as "scheduled payment period", and the provisions relating to irregular payment schedules, viz., paragraphs (b), (c) and (d) of subsection (4) and subsection (5) in its entirety, may be disregarded.

PART 3

DISCLOSURE AND ADVERTISING

Section

70B-2-301. Applicability — Information required.

(1) For purposes of this part (sections 70B-2-301 to 70B-2-313), consumer credit sale includes the sale of an interest in land without regard to the rate of the credit service charge if the sale is otherwise a consumer credit sale (section 70B-2-104).

(2) The seller shall disclose to the buyer to whom credit is extended with respect to a consumer credit sale the information required by either
   (a) this part, or
   (b) except with respect to a consumer credit sale of an interest in land or secured by an interest in land, the Federal Consumer Credit Protection Act.

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

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

History: L. 1969, ch. 18, § 2.301.

Compiler's Notes.

The Utah enactment added "that the class * * * under that act" at the end of subsection (3).

Comment of Commissioners on Uniform State Laws.

1. Reference must be made to the Administrator's rules for detailed disclosure requirements.

2. The exclusion in Section 2.104 (a) (b) from the definition of consumer credit sale of sales in which the rate of the credit service charge does not exceed 10% is removed by subsection (1) in order to make the coverage of this Act with respect to the provisions on disclosure (Part 3) coextensive with those of the CCPA.

3. In cases of variations between the disclosure provisions under this Act and those prescribed under the CCPA, subsections (2) and (3) allow the seller to comply with either even though the transaction is one of a class exempted from the CCPA by the Board. This permits an interstate creditor to use the same disclosure procedures in a state having this Act as he uses in states in which the CCPA applies. One class of transactions in which the Act does not give the seller this option is real property transactions. CCPA Section 106 (e) allows closing costs to be excluded from the finance charge in real property transactions. However, Section 2.202 (3) of this Act requires the seller to include in the credit service charge any real property closing costs as defined in Section 1.301 (5) which fall within the definition of credit service charge in Section 2.109 if the credit service charge on the sale exceeds 10%.

Cross-References.

Civil liability for violation, 70B-5-203.

Law Reviews.

Regulation Z and the UCCC: The Bewildering Maze of Credit Disclosure Provisions, 1979 B. Y. U. L. Rev. 394.

70B-2-302. General disclosure requirements and provisions.

(1) The disclosures required by this part

(a) shall be made clearly and conspicuously;

(b) shall be in writing, a copy of which shall be delivered to the buyer or lessee;

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

(d) except as the rules adopted by the administrator otherwise prescribe, need not be contained in a single writing or made in the order set forth in this part;

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

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

(g) shall be made on the assumption that all scheduled payments will be made when due; and

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

(2) Except with respect to sales made by telephone or mail (section 70B-2-305),

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

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

(3) Except as provided with respect to rescission by a buyer (section 70B-5-204) and civil liability for violations of disclosure provisions (subsection (4) of section 70B-5-203), written acknowledgment of receipt by a buyer or lessee to whom a statement is required to be given pursuant to this part

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

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

History: L. 1969, ch. 18, § 2.302.

Comment of Commissioners on Uniform State Laws.

1. The basic policy of this Part is that disclosure be made "clearly and conspicuously." Implementation of this policy with respect to order and terminology is to be found in the Administrator's rules.

2. These general provisions are similar to those of Chapter 2 of the CCPA. All the requirements of CCPA Sections 121, 122, and 124 are found in subsections (1) and (2). The requirement of CCPA Sections 128 (b) and 139 (b) that disclosures are to be made before credit is extended is found in subsection (2). The accompanying language that disclosure may be made in the sale agreement is also found in these sections of the CCPA. This language negates any implication that since disclosure must be made before credit is extended the written disclosure must be made in a writing separate from the writing evidencing the credit extension.

3. In making an acknowledgment effective as between the original parties to create a presumption that the disclosure acknowledged was in fact given, subsection (3) (a) follows the provisions of a number of existing state laws. Subsection (3) (b) is derived from CCPA Section 131.

Exemption from reporting provisions.

Financing statement which complied with all disclosure requirements except that it recited that down payment had been received, when in fact, part of the down payment had been deferred through use of noninterest-bearing notes payable three weeks later, was exempt from the strict reporting provisions of this act. Redhouse v. Quality Ford Sales, Inc. (1975) 511 F 2d 230.

70B-2-303. Overstatement. The disclosure of an amount or percentage which is greater than the amount or percentage required to be disclosed under this part does not in itself constitute a violation of this part if the overstatement is not materially misleading and is not used to avoid meaningful disclosure.

History: L. 1969, ch. 18, § 2.303.

Comment of Commissioners on Uniform State Laws.

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

DECISIONS UNDER FORMER LAW

Separate agreement.

Conditional sales contract was valid where it could be performed independently of performance or nonperformance of simulta-

neously executed and separate "Reference Sales Plan" agreement by which buyer was to be given credit for furnishing names of prospective purchasers. Lundstrom v. Radio Corporation of America (1965) 17 U 2d 114, 405 P 2d 339, 14 ALR 3d 1058.

70B-2-304. Calculation of rate to be disclosed.

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

(2) "Annual percentage rate"

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

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

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

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

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

(4) If a seller is permitted to make the same credit service charge for all amounts financed within a specified range (subsection (5) of section 70B-2-201) or for all balances within a specified range (subsection (2) of section 70B-2-207), he shall state the annual percentage rate or corresponding nominal annual percentage rate, which is appropriate, as applied to the median amount of the range within which the actual amount financed or balance is included.

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

(a) the annual percentage rate may be rounded to the nearest quarter of 1 per cent for consumer credit sales payable in

substantially equal installments when a seller determines the total credit service charge on the basis of a single add-on, discount, periodic, or other rate, and the rate is converted into an annual percentage rate under procedures prescribed by rule by the administrator;

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

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

History: L. 1969, ch. 18, § 2.304.

Comment of Commissioners on Uniform State Laws.

1. The definition of "annual percentage rate" is derived from CCPA Section 107 (a). The definition of "corresponding nominal annual percentage rate" is derived from CCPA Section 127 (a) (4) and (b) (5). Subsection (5) is derived from CCPA Section 107 (c) - (e).

2. Section 6.104 (2) contemplates that the Administrator will adopt rules permitting disclosure with respect to agreements involving minor irregularities of payment terms as if the schedule of payments were regular.

3. The assumption underlying the actuarial method is that a periodic payment is applied first to the accumulated unpaid credit service charge. If the payment exceeds the unpaid accumulated credit service charge, the remainder of the payment is applied to reduce the unpaid balance of the amount financed.

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

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

Rate disclosure involves finding that rate which will generate the stated credit service charge when applied to the unpaid balances of the amount financed according to the actuarial method. A monthly rate of 1% produces a credit service charge of $12.56, the difference between the sum of the monthly payments and the amount financed. The annual percentage rate would be twelve times the monthly rate, or 12%. In mathematical literature this is generally referred to as the nominal annual rate.

Note the application of the actuarial method. In the first month the first $5 (1% x $500) of the monthly payment of $128.14 is applied to the credit service charge, leaving a balance of $123.14. This remainder is then applied to reduce the unpaid balance of the amount financed from $500 to $376.86. The same process is repeated in subsequent months.

Penalty.

Used car dealer who testified he was unable to calculate the average rate of interest on installment sales contract on which payments were $126.72 per month for five months and $86.72 per month for the remaining 25 months was nevertheless liable for statutory penalty under former section 70B-5-203 for failure to enter annual percentage rate in contract as required by this section. Knox v. Thomas (1973) 30 U 2d 15, 512 P 2d 664.

70B-2-305. Sales made by telephone or mail.

(1) With respect to a consumer credit sale, other than a sale made pursuant to a revolving charge account, if the seller receives a purchase order or offer by mail or telephone without personal solicitation, the seller complies with this part if (a) he makes the disclosures at the time and in the manner provided in the general disclosure requirements and provisions (subsection (2) of section 70B-2-302), or (b) the seller's catalog or other printed material distributed to the public sets forth the cash price, the method of determining the deferred payment price, and the terms of financing, including the annual percentage rate, and before the first payment is due on the sale, he gives the information required by this part including the notice prescribed in subsection (2).

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

History: L. 1969, ch. 18, § 2.305.

Comment of Commissioners on Uniform State Laws.

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

2. If the seller's procedures are to receive purchase orders or offers from buyers by telephone or mail without personal solicitation, the Act prescribes three alternative methods of making disclosure to buyers. First, he may sell pursuant to revolving charge accounts and make the disclosure required by Section 2.310 at the time the account is opened and on each periodic billing statement. Second, he may comply with Section 2.302 (2) by making disclosure before the credit is extended. He can do this in telephone or mail transactions only by postponing the time credit is extended until after the time of telephone or mail contact and by making disclosure before credit is extended. For example, the seller and buyer may agree that the sale is not complete and the buyer is not bound until the goods are delivered. Disclosure could then be made upon delivery. Third, the seller may distribute a catalog or printed material to the public which contains the information set out in subsection (1) (b); the telephone or mail sale would then be followed with specific disclosure before the first payment is due.

3. If the seller chooses to make specific disclosure on the post-transaction basis described above in the third alternative, he must give the buyer the notice prescribed in subsection (2). After he receives the notice the buyer has options of continuing with the credit sale or of converting it into what is in effect a cash sale by paying the seller the amount indicated in the notice. This sum may not include any part of the credit service charge.

70B-2-306. Consumer credit sales not pursuant to revolving charge accounts.

(1) This section applies to a consumer credit sale not made pursuant to a revolving charge account (section 70B-2-310).

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

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

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

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

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

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

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

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

(h) amount of other additional charges (section 70B-2-202), and a brief description or identification of them;

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

(j) except in the case of a sale of a dwelling, the amount of the credit service charge and the amount of the unpaid balance (amount financed plus credit service charge);

(k) rate of the credit service charge as applied to the amount financed in accordance with the provisions on calculation of rate (section 70B-2-304), except in the case of a credit service charge which does not exceed $5.00 when the amount

financed does not exceed $75 or $7.50 when the amount financed exceeds $75;

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

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

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

History: L. 1969, ch. 18, § 2.306; 1975, ch. 210, § 5.

Compiler's Notes.

The 1975 amendment deleted "when the credit service charge does not exceed 10 per cent per year (section 70B-2-104)" after "sale of a dwelling" in subd. (2) (j); and made minor changes in phraseology and punctuation.

Comment of Commissioners on Uniform State Laws.

1. This section, derived in part from CCPA Section 128, enumerates the information to be disclosed by a seller in the closed end credit sale. Under subsections (2) (b), (e), and (f), the seller may elect either to state separately the charges for taxes, certificate of title, registration or license fees, and official fees, or to include them as part of the cash price. Similarly under subsection (2) (b) he may either state separately the charges for such related services as installation costs or include them in the cash price.

2. Subsection (2) (j) provides that in the case of a sale of a dwelling the amount of the credit service charge need not be stated unless the rate of the charge exceeds 10% per year. In long term, high balance transactions like the usual land sale contract, the cost of credit to the buyer is accurately reflected by the disclosure of a rate of credit service charge, and the great bulk of these transactions will fall within the 10% exemption. In these cases the buyer is presumably comparing the cost of credit with rates offered by mortgage lenders, and the dollar amount of a credit service charge in such long term transactions is of less concern. CCPA Section 128 (a) (6) makes a similar exception, but without the 10% limitation.

70B-2-307. Refinancing. If the seller refinances the balance owing with respect to a consumer credit sale, refinancing, or consolidation pursuant to the provisions on refinancing (section 70B-2-205), he shall state to the buyer the following:

(1) unpaid balance before refinancing;

(2) amount and brief itemization of rebates to which the buyer would have been entitled if the debt had been prepaid pursuant to the provisions on rebate upon prepayment (section 70B-2-210) on the date of refinancing, except that for the purpose of computing this amount no minimum credit service charge (subsection (6) of section 70B-2-201) shall be allowed;

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

(4) amount financed resulting from the refinancing;

(5) amount of credit service charge;

(6) amount of unpaid balance;
(7) number of payments, amount of each payment, due date of first payment, and the due date of subsequent payments or interval between payments; and
(8) rate of the credit service charge as applied to the amount financed in accordance with the provisions on calculation of rate (section 70B-2-304), except in the case of a credit service charge which does not exceed $5.00 when the amount financed does not exceed $75 or $7.50 when the amount financed exceeds $75.

History: L. 1969, ch. 18, § 2.307.

Comment of Commissioners on Uniform State Laws.

If a precomputed sale is refinanced (Section 2.205), the transaction is treated as though the balance were prepaid and the unearned portion of the credit service charge were rebated accordingly. A new amount financed resulting from the refinancing is found by deducting the rebates from the unpaid balance and adding any additional charges in connection with the refinancing. This section requires the seller to disclose the steps taken in determining the new amount financed and to detail the information concerning the amount and rate of the credit service charge in the refinanced transaction.

70B-2-308. Consolidation.

(1) Except as provided in subsection (2), if the parties agree to consolidate an existing unpaid balance from a previous consumer credit sale, refinancing, or consolidation, with the amount financed from a subsequent consumer credit sale, refinancing, or consolidation, the seller shall state:
  (a) with respect to the refinanced unpaid balance, the information required by the provisions on refinancing (subsections (1) through (4) of section 70B-2-307);
  (b) with respect to the subsequent sale, the information required by the provisions on consumer credit sales other than revolving charge accounts (paragraphs (a) through (j) of subsection (2) of section 70B-2-306);
  (c) the aggregate amount financed, the amount of the credit service charge, the amount of the unpaid balance, the number of payments, the amount of each payment, the due date of the first payment, and the due dates of subsequent payments or the interval between payments; and
  (d) the rate of the credit service charge as applied to the aggregate amount financed in accordance with the provisions on calculation of rate (section 70B-2-304), except in the case of a credit service charge which does not exceed $5.00 when the aggregate amount financed does not exceed $75 or $7.50 when the amount financed exceeds $75.
(2) If a consumer credit sale is made pursuant to an agreement providing for the addition of the unpaid balance resulting from a subsequent sale to an existing unpaid balance resulting from a previous

sale, and the buyer has approved in writing both the annual percentage rate or rates and the method of computing the credit service charge or charges,

(a) the information required to be given with respect to the subsequent sale (section 70B-2-306) may be given on or before the due date of the first installment under the consolidated schedule of payments; and

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

History: L. 1969, ch. 18, § 2.308.

Comment of Commissioners on Uniform State Laws.

1. If the parties agree to consolidate amounts owing with respect to more than one sale (Section 2.206), the seller either may give the information required by subsection (1) before the subsequent sale or he may postpone giving it until the date of the first payment under the consolidated agreement if he complies with the requirements of subsection (2). Under subsection (1) the creditor must disclose the information concerning the refinancing of the old balance, the details of the new sale, the aggregate amount financed resulting from adding the refinanced unpaid balance to the amount financed under the new sale, and the amount and rate of the credit service charge on the aggregate amount financed.

2. If the seller finds it inconvenient to give the information regarding the consolidation at the time of the subsequent sale, he can avail himself of the right afforded by subsection (2) of delaying disclosure. However, the seller can take advantage of subsection (2) only when the parties have agreed to permit him to consolidate subsequent sales and the buyer has indicated in writing his approval of the method to be used in computing the credit service charge on the consolidated balance and of the rate of the credit service charge. Subsection (2) is derived from CCPA Section 712 (d); the security problem raised in that section of the CCPA is covered in Section 2.409.

70B-2-309. Deferral. If the seller makes a deferral pursuant to the provisions on deferral charges (section 70B-2-204), he shall state to the buyer, at the time of or promptly after the deferral:

(1) amount deferred;

(2) any appropriate additional charges (section 70B-2-202);

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

(4) time to which payment is deferred; and

(5) amount and annual percentage rate of the deferral charge and when it is payable.

History: L. 1969, ch. 18, § 2.309.

Comment of Commissioners on Uniform State Laws.

As explained in the Comment to Section 2.204, the parties may agree that the amount deferred is either the amount of payments that would otherwise become due during the deferral period or, alternatively, the entire unpaid balance. If the former course is taken, the time to which payment is deferred would usually be a date or dates after the original maturity of the contract. If the latter course is taken, the time to which payment is

deferred would be the period during which the buyer is excused from making regular payments.

70B-2-310. Revolving charge accounts.

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

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

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

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

(d) corresponding nominal annual percentage rate (subsection (3) of section 70B-2-304); if more than one corresponding nominal annual percentage rate may be used, the amount of a balance to which each corresponding nominal annual percentage rate applies shall also be stated;

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

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

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

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

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

(h) a statement, in a form prescribed by regulations of the administrator, of the protection provided by sections 70B-10-101 and 70B-10-110 to a debtor and the creditor's responsibilities under sections 70B-10-102 and 70B-10-110. With respect to each of the two billing cycles per year, at

semiannual intervals, the creditor shall transmit the statement to each debtor (to) whom the creditor is required to transmit a statement under subsection (2) of this section.

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

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

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

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

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

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

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

(g) if the credit service charge for the billing cycle exceeds 50¢ for a monthly or longer billing cycle, or the prorata part of 50¢ for a billing cycle shorter than monthly, the credit service charge expressed as an annual percentage rate (paragraph (b) of subsection (2) of section 70B-2-304); if more than one periodic percentage is used to calculate the credit service charge, the seller, in lieu of stating a single annual percentage rate may state more than one annual percentage rate and the amount of the balance to which each annual percentage rate applies;

(h) if the credit service charge for the billing cycle does not exceed 50¢ for a monthly or longer billing cycle, or the prorata part of 50¢ for a billing cycle shorter than monthly, the corresponding nominal annual percentage rate (subsection (3) of section 70B-2-304);

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

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

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

(l) the address to be used by the creditor for the purpose of receiving billing inquiries from the debtor.

(3) In the case of any existing revolving charge account having an outstanding balance of more than $1 at or after the close of the creditor's first full billing cycle under the plan after the effective date of subsection (1) or any amendments to it, the items described in subsection (1), to the extent applicable and not previously disclosed, shall be disclosed in a notice mailed or delivered to the debtor not later than the time of mailing the next statement required by subsection (2).

History: L. 1969, ch. 18, § 2.310; 1975, ch. 209, § 2.

Compiler's Notes.

The 1975 amendment added subds. (1) (h) and (2) (l); added subsec. (3); and made minor changes in phraseology and punctuation.

Comment of Commissioners on Uniform State Laws.

1. This section is derived in substance from CCPA Section 127. Disclosure must be made pursuant to subsection (1) before the buyer makes the first purchase under his revolving charge account. In order to be sure that he has complied, the seller must make the requisite disclosure at or before the time he gives the buyer a credit card or otherwise empowers him to use a revolving charge account. With respect to revolving charge accounts in existence on the date this Act takes effect, the seller must give the information required by subsection (1) not later than thirty days after the Act's effective date. Section 9.101 (4). If the seller wishes to change the terms of his revolving charge accounts, he must do so in accordance with the procedures set out in Section 2.416 and need not give the full disclosure called for by subsection (1).

2. In order to comply with subsection (1) (b) the seller should indicate whether the service charge is computed on the balance at the beginning of the cycle, on the adjusted balance (that is, beginning balance less credits), or otherwise. If the seller's periodic rates are 2% per month on the first $500 of a balance and 1 ½% on all amounts above this, he would comply with subsection (1) (d) by disclosing the corresponding nominal annual percentage rates to be 24% on the first $500 of the balance and 18% on all amounts above this.

3. Subsection (2) prescribes the disclosures the seller must make on the periodic billing statement. If there is no outstanding balance in a buyer's account at the end of a billing cycle, the seller need send a periodic statement containing disclosures only if a credit service charge was made with respect to that billing. A number of alternative methods are open to the seller for compliance with subsection (2) (b): (1) he may briefly describe each item purchased on the periodic statement with the amount and date of each purchase stated; (2) he may describe it on a sales slip given to the buyer at the time of the sale or enclosed with the billing statement; or (3) he may identify it on either the periodic statement or the sales slip by use of a symbol which is explained by an accompanying identification list.

70B-2-311. Consumer leases. With respect to a consumer lease the lessor shall give to the lessee the following information:

(1) brief description or identification of the goods;

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

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

(4) amount of other charges not included in the periodic payments and a brief description of the charges;

(5) brief description of insurance to be provided or paid for by the lessor, including the types and amounts of the coverages;
(6) number of periodic payments, the amount of each payment, the due date of the first payment, the due dates of subsequent payments or interval between payments, and the total amount payable by the lessee;
(7) statement of the conditions under which the lessee may terminate the lease prior to the end of the term; and
(8) statement of the liabilities the lease imposes upon the lessee at the end of the term.

History: L. 1969, ch. 18, § 2.311.

Comment of Commissioners on Uniform State Laws.

This Act treats a consumer lease as an alternative to a consumer credit sale for the distribution of consumer goods on a periodic payment basis. See Comment to Section 2.106. The consumer lessee is to be given full disclosure of all charges imposed as well as information concerning the amounts, number and schedule of periodic payments. The lessor must also set out the terms under which the lessee may end the lease prior to the end of its term and any liabilities the lessee may incur at the termination of the lease. See Section 2.406.

70B-2-312. Content of periodic statements. A creditor who transmits periodic statements in connection with any consumer credit sale not made pursuant to a revolving charge account shall set forth in each statement each of the following items:
(1) the annual percentage rate of the credit service charge with respect to each consumer credit sale to which the statement relates;
(2) the date by which or the period, if any, within which payment must be made in order to avoid further credit service charges or other charges; and
(3) to the extent the administrator may require by rule as appropriate to the terms and conditions under which the consumer credit sale is made, the other items set forth in the provisions on disclosure with respect to revolving charge accounts (subsection (2) of section 70B-2-310).

History: L. 1969, ch. 18, § 2.312.

Comment of Commissioners on Uniform State Laws.

This section is derived from CCPA Section 126. The Administrator's rules should be consulted for the manner of complying with this provision.

70B-2-313. Advertising.
(1) No seller or lessor shall engage in this state in false or misleading advertising concerning the terms or conditions of credit with respect to a consumer credit sale or consumer lease.
(2) Without limiting the generality of subsection (1) and without requiring a statement of rate of credit service charge if the credit service charge is not more than $5.00 when the amount financed does not exceed $75, or $7.50 when the amount financed exceeds $75, an advertisement with respect to a consumer credit sale made by

the posting of a public sign, or by catalog, magazine, newspaper, radio, television, or similar mass media, is misleading if

(a) it states the rate of credit service charge and the rate is not stated in the form required by the provisions on calculation of rate to be disclosed (section 70B-2-304), or

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

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

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

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

History: L. 1969, ch. 18, § 2.313.

Comment of Commissioners on Uniform State Laws.

1. The exemption by the Board of Governors of the Federal Reserve System under CCPA Section 123 of the classes of credit transactions covered by this Act does not extend to advertising. Hence, both Section 2.313 of this Act and the provisions of Chapter 3 of the CCPA, together with the Board's regulations, are in effect in the enacting State. Subsection (1) states a general prohibition of false or misleading advertising on the part of sellers or lessors. No such general prohibition is found in the federal provisions. This prohibition affects advertising by the seller or lessor in the enacting State whether or not the consumer credit sale or consumer lease is made there.

2. Subsection (2) sets out specific instances of misleading advertising. The federal provisions, though greater in scope and detail, are in harmony with subsection (2), and subsection (5) makes clear that an advertisement which complies with the federal provisions does not violate subsection (2).

PART 4

LIMITATIONS ON AGREEMENTS AND PRACTICES

Section

70B-2-401. Scope. This part (sections 70B-2-401 to 70B-2-416) applies to consumer credit sales and consumer leases.

History: L. 1969, ch. 18, § 2.401.

70B-2-402. Use of multiple agreements. A seller may not use multiple agreements with intent to obtain a higher credit service charge than would otherwise be permitted by this chapter or to avoid disclosure of an annual percentage rate pursuant to the provisions on disclosure and advertising (70B-2-301 to 70B-2-313). The excess amount of credit service charge provided for in agreements in violation of this section is an excess charge for the purposes of the provisions on the effect of violations on rights of parties (section 70B-5-202) and the provisions on civil actions by the administrator (section 70B-6-113).

History: L. 1969, ch. 18, § 2.402.

Comment of Commissioners on Uniform State Laws.

1. The graduated rate ceiling structure of this Act (Section 2.201) allows a seller to charge the highest rates on amounts financed up to $300 and the next highest rates on amounts financed up to $1,000. In order to achieve maximum rates, a seller might arbitrarily divide a sale into two or more agreements in order that the amount financed under each is within the $300 amount on which the highest rate can be charged. If a seller in violation of this section divides a $500 sale into two sales of $250 on which he charges the maximum rate permitted by Section 2.201, the amount by which the combined credit service charges on the two sales exceeds the credit charge which would have been permitted on a sale of $500 is treated as an excess charge for the purpose of Sections 5.202 and 6.113.

2. A somewhat different problem is present with respect to the effect of multiple sale agreements on disclosure. Here the concern is that a seller will employ multiple agreements in order to keep the amounts financed under each agreement low enough to fall within the minimum charge provisions of Section 2.306 (2) (k) which excuse the seller from having to disclose an annual percentage rate. The disclosure aspect of this section is derived from CCPA Section 128.

DECISIONS UNDER FORMER LAW

Separate agreement.

Conditional sales contract was valid where it could be performed independently of performance or nonperformance of simultaneously executed and separate "Reference Sales Plan" agreement by which buyer was to be given credit for furnishing names of prospective purchasers. Lundstrom v. Radio Corporation of America (1965) 17 U 2d 114, 405 P 2d 339, 14 ALR 3d 1058.

70B-2-403. Certain negotiable instruments prohibited. In a consumer credit sale or consumer lease, other than a sale or lease primarily for an agricultural purpose, the seller or lessor may not take a negotiable instrument other than a check as evidence of the obligation of the buyer or lessee. A holder is not in good faith if he takes a negotiable instrument with notice that it is issued in violation of this section. A holder in due course is not subject to the liabilities set forth in the provisions on the effect of violations on rights of parties (section 70B-5-202) and the provisions on civil actions by the administrator (section 70B-6-113).

History: L. 1969, ch. 18, § 2.403.

Comment of Commissioners on Uniform State Laws.

Since the prohibition against certain negotiable instruments in consumer financing will be well known in the financial community

after enactment of this Act, professional financers buying consumer paper will normally not qualify as holders in due course with respect to instruments taken by dealers in violation of this section and negotiated to them. To qualify as a holder in due course all requirements of UCC Section 3-302 must be satisfied. However, it is possible that in rare cases second or third takers may not know of an instrument's consumer origin; in this unusual situation the policy favoring negotiability is upheld in order not to cast a cloud over negotiable instruments generally. A person who takes a negotiable instrument in violation of this section is subject to Sections 5.202 and 6.113. Compare Unico v. Owen, 50 N. J. 101, 232 A. 2d 405 (1967).

DECISIONS UNDER FORMER LAW

Bona fide purchaser of note.

One purchasing note for valuable consideration without notice of any of its infirmities, and without intent to evade provisions of statute relating to usury, was entitled to enforce collection of note. Rosenblum v. Gomoll (1918) 52 U 206, 173 P 243.

70B-2-404. (Assignee subject to defenses.) With respect to a consumer credit sale or consumer lease, other than a sale or lease primarily for an agricultural purpose, an assignee of the rights of the seller or lessor is subject to all claims and defenses of the buyer or lessee against the seller or lessor arising out of the sale or lease notwithstanding an agreement to the contrary, but the assignee's liability under this section may not exceed the amount owing to the assignee at the time the claim or defense is asserted against the assignee. Rights of the buyer or lessee under this section can only be asserted as a matter of defense to or set off against a claim by the assignee.

History: L. 1969, ch. 18, § 2.404.

Compiler's Notes.

Alternative A of section 2.404 of the Uniform Consumer Credit Code was adopted in Utah. The caption was not adopted and is given here in brackets.

Comment of Commissioners on Uniform State Laws.

[Alternative A.] This section codifies a growing body of decisions in connection with UCC Section 9-206. See, e.g., Quality Fin. Co. v. Hurley, 337 Mass. 150, 148 N. E. 2d 385, 388-89 (1958); Unico v. Owen, 50 N. J. 101, 232 A. 2d 405 (1967).

[Alternative B.] * * *

Notice of assignment.

Assignee of a contract for sale of hair pieces and accoutrements for personal use was unable to recover from buyer where buyer returned merchandise to assignor and received a receipt therefor prior to receiving notice of the assignment of the debt to assignee, where the assignment was one with full recourse against the assignor. Peoples Finance & Thrift Co. v. Landes (1972) 28 U 2d 392, 503 P 2d 444.

Waiver of defense clause.

Covenants against asserting defenses are enforceable in sales "primarily for an agricultural purpose" absent some persuasive reason for avoiding them; no such reason was established by the fact that the assignee of the note and security agreement was the manufacturer of the farm equipment sold and had approved buyer's credit application by telephone and financed the sale. John Deere Co. of Moline v. Behling (1971) 26 U 2d 30, 484 P 2d 170.

70B-2-405. Balloon payments. With respect to a consumer credit sale, other than one primarily for an agricultural purpose or one pursuant to a revolving charge account, if any scheduled payment is more than twice as large as the average of earlier scheduled payments, the buyer has the right to refinance the amount of that payment at the time it is due without penalty. The terms of the refinancing shall be no less favorable to the

buyer than the terms of the original sale. These provisions do not apply to the extent that the payment schedule is adjusted to the seasonal or irregular income of the buyer.

History: L. 1969, ch. 18, § 2.405.

Comment of Commissioners on Uniform State Laws.

Balloon payments can be used to induce a buyer to enter into a burdensome contract by offering him invitingly small installment payments until the end of the contract when the buyer is confronted with a balloon payment too large to pay. This section meets that threat by giving the buyer the right to have the amount of the balloon payment refinanced under terms no less favorable than those of the original sale. Under the refinancing, the size of the installment payments may not exceed the average scheduled payments excluding the balloon payment and the rate of credit service charge may not exceed that under the original agreement. If the balloon payment was agreed to by the parties to accommodate the buyer because of his seasonal or irregular income expectations, the abuse at which the section is aimed is not present and the section does not apply.

70B-2-406. Restriction on liability in consumer lease. The obligation of a lessee upon expiration of a consumer lease, other than one primarily for an agricultural purpose, may not exceed twice the average payment allocable to a monthly period under the lease. This limitation does not apply to charges for damages to the leased property or for other default.

History: L. 1969, ch. 18, § 2.406.

Comment of Commissioners on Uniform State Laws.

This section is designed to protect consumer lessees against abuses associated with what are described in some areas of the country as "open end" leases. Under such an agreement the parties contract that at the expiration of the lease the article leased, usually an automobile, will have a certain depreciated value and will be sold. If it brings less than the agreed depreciated value, the lessee is liable for the difference; if it brings more, the lessee is entitled to the surplus. Under such an agreement, the lessee will have no understanding of how much the lease might cost him unless he can accurately predict what the second-hand market will be at the expiration of the lease. Moreover, if the lessor sets an unrealistically high depreciated value the contingent liability of the lessee will increase accordingly, and the seller can offer deceptively low rental payments to a gullible customer.

Under this section the liability, contingent or otherwise, of the lessee at the end of the term of the lease is limited to twice the average monthly rental payment. This limitation not only avoids the possibility of a large contingent liability on the part of the lessee at the end of the term but also gives the lessee a basis for comprehending how much the lease will actually cost him.

70B-2-407. Security in sales or leases.

(1) With respect to a consumer credit sale, a seller may take a security interest in the property sold. In addition, a seller may take a security interest in goods upon which services are performed or in which goods sold are installed or to which they are annexed, or in land to which the goods are affixed or which is maintained, repaired or improved as a result of the sale of the goods or services, if in the case of a security interest in land the debt secured is $1,000 or more, or, in the case of a security interest in goods the debt secured in $300 or more. The seller may also take a security interest in any property of the buyer to secure the debt arising from a consumer credit sale primarily for an agricultural purpose. Except as provided with respect to cross-collateral (section 70B-2-408), a seller

may not otherwise take a security interest in property of the buyer to secure the debt arising from a consumer credit sale.

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

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

(4) The amounts of $1,000 and $300 in subsection (1) are subject to change pursuant to the provisions on adjustment of dollar amounts (section 70B-1-106).

History: L. 1969, ch. 18, § 2.407.

Compiler's Notes.

Effective July 1, 1978, the figures of $300 and $1,000 specified in subsec. (1) were increased by Administrative Rule No. 11 issued by the Commissioner of Financial Institutions to $540 and $1,800 pursuant to the provisions on adjustment of dollar amounts in section 70B-1-106.

Comment of Commissioners on Uniform State Laws.

This section limits sellers and lessors with respect to the manner in which they may secure the obligation arising from a consumer credit sale (Section 2.104) or consumer lease (Section 2.106).

1. Sales of goods. A seller may take a security interest in the goods sold but not in other goods or land of the buyer unless the goods sold become closely connected with the goods or land in which the security interest is taken. Under this section an appliance dealer may retain a security interest in a washing machine sold but may not take a security interest in other appliances of the buyer to secure the sale obligation unless he complies with Section 2.408. Except as provided in Section 2.408, a seller of goods may take additional security for the sale obligation in other goods or land of the buyer only if the debt secured is substantial — $300 in the case of a security interest in goods, $1,000 in the case of a security interest in land — and then only if the goods or land in which the additional security interest is taken are goods in which the goods sold are installed or to which they are annexed or land to which the goods sold are annexed or which is maintained, repaired, or improved by the goods sold.

2. Sales of services. The seller may not take a security interest in goods or land of the buyer to secure an obligation arising out of the sale of services unless the services are performed on the goods or are used to maintain, repair, or improve the land. Even then, the debt secured must be $300 in the case of a security interest in goods and $1,000 in the case of a security interest in land. Thus a seller of dancing lessons may not take a security interest in goods or land of the buyer, and a carpenter or painter may take a security interest in the buyer's residence only if the debt arising from the sale of services is $1,000 or more.

3. Sales of land. The seller can retain a security interest only in the land sold and not in other goods or land of the buyer. It should be noted, however, that this section applies only to consumer credit sales and a sale of an interest in land in which the credit service charge is 10% or less is not a consumer credit sale. Section 2.104 (2).

4. Consumer leases. A lessor may not secure the lease obligation by taking a security interest in property of the lessee.

5. Sales for agricultural purposes. Farmers sometimes secure the unpaid balance of a sale obligation by giving security interests in their land or farm equipment. In order not to disturb this practice, an exception in the application of this section is made for sales and leases for agricultural purposes.

70B-2-408. Cross-collateral.

(1) In addition to contracting for a security interest pursuant to the provisions on security in sales or leases (section 70B-2-407), a seller in a consumer credit sale may secure the debt arising from the sale by contracting for a security interest in other property if as a result of a prior sale the seller has an existing security interest in the other property. The seller may also contract for a security

interest in the property sold in the subsequent sale as security for the previous debt.

(2) If the seller contracts for a security interest in other property pursuant to this section, the rate of credit service charge thereafter on the aggregate unpaid balances so secured may not exceed that permitted if the balances so secured were consolidated pursuant to the provisions on consolidation involving a refinancing (subsection (1) of section 70B-2-206). The seller has a reasonable time after so contracting to make any adjustments required by this section. "Seller" in this section does not include an assignee not related to the original seller.

History: L. 1969, ch. 18, § 2.408.

Comment of Commissioners on Uniform State Laws.

1. A seller who sells goods on credit to a buyer in more than one sale may secure the debts arising from each sale by a cross-security interest in the other goods sold so long as the seller has an existing security interest in the other goods. Section 2.409 specifies when a seller loses his security interest in goods in a cross-collateral situation.

2. Subsection (1) allows cross-collateral to be taken either for separate debts or for consolidated debts, but subsection (2) limits the rate of the credit service charge that a seller may charge in the separate debt case to that chargeable had the debts been consolidated pursuant to Section 2.206 (1). To illustrate, if a buyer who owes seller a $275 balance from one sale makes a subsequent $250 purchase, the seller may consolidate these debts under Section 2.206 (1) so that the credit service charge would be calculated on the sum of the refinanced balance of the first sale, e.g., $260, and the amount financed under the second sale, $250, or a total of $510. Under Section 2.201, the seller may then charge a maximum rate of 36% on the first $300 and 21% on the next $210. However, if the debts were kept separate, the seller might charge the maximum of 36% on both the $275 and $250 balances. In effect subsection (2) prevents the seller from taking the advantages of cross-collateral without also offering the buyer the lower rates that would have resulted had the debts been consolidated pursuant to Section 2.206 (1).

70B-2-409. Debt secured by cross-collateral.

(1) If debts arising from two or more consumer credit sales, other than sales primarily for an agricultural purpose or pursuant to a revolving charge account, are secured by cross-collateral (section 70B-2-408) or consolidated into one debt payable on a single schedule of payments, and the debt is secured by security interests taken with respect to one or more of the sales, payments received by the seller after the taking of the cross-collateral or the consolidation are deemed, for the purpose of determining the amount of the debt secured by the various security interests, to have been first applied to the payment of the debts arising from the sales first made. To the extent debts are paid according to this section, security interest in items of property terminate as the debts originally incurred with respect to each item is paid.

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

to the account and then to the payment of debts in the order in which the entries to the account showing the debts were made.

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

History: L. 1969, ch. 18, § 2.409.

Comment of Commissioners on Uniform State Laws.

1. When a seller consolidates debts arising from sales and secures the consolidated debt by security interests in the goods sold in these sales or when a seller secures separate debts by cross-collateral (Section 2.408), this section prevents the seller from retaining a security interest in all of the goods until the buyer's entire debt is paid. The basis of the section is that a security interest in goods terminates when the debt incurred in the sale of the goods is paid. For the purpose of determining when this debt is paid, subsection (1) allocates the buyer's payments first to the debts first incurred. Thus if the seller consolidates debts of $100, $200, and $300 arising from sales made in that order, the security interest in the goods purchased pursuant to the $100 sale terminates when $100 of the consolidated debt is paid. If the seller does not consolidate these debts but secures them by cross-collateral, he must allocate all of the buyer's payments to the $100 debt until it is paid off, and so forth. Subsection (2) applies this first-payments-against-first-debts rule to revolving charge accounts.

2. Subsection (3) applies to the case in which the buyer purchases a $750 TV in one department at 9:30 a.m. and a $150 typewriter in another department at 10:00 a.m. Subsequently the debts are consolidated. This subsection relieves the seller of having to keep records of the exact hour a sale is made. It is derived from CCPA Section 128 (d).

70B-2-410. No assignment of earnings. A seller or lessor may not take an assignment of earnings of the buyer or lessee for payment or as security for payment of a debt arising out of a consumer credit sale or a consumer lease. An assignment of earnings in violation of this section is unenforceable by the assignee of the earnings and revocable by the buyer or lessee. This section does not prohibit an employee from authorizing deductions from his earnings if the authorization is revocable.

History: L. 1969, ch. 18, § 2.410.

Comment of Commissioners on Uniform State Laws.

This Act recognizes the potential for hardship for a consumer and his dependents which may result from a disruption of the steady flow of family income. Just as Section 5.104 prevents a creditor from attaching unpaid earnings of a debtor before he obtains judgment, this provision precludes a creditor from reaching the debtor's earnings pursuant to an irrevocable wage assignment obtained from the debtor. The purpose of both sections is to afford the debtor an opportunity to have his debt determined by a court before his unpaid earnings are taken against his will by a creditor. This provision prohibits a seller or lessor from taking either an assignment of earnings as payment or as security for payment for a debt or a sale of earnings in payment of the price or rental. A revocable payroll deduction authorization in favor of a credit is not forbidden by this section.

70B-2-411. Referral sales. With respect to a consumer credit sale or consumer lease the seller or lessor may not give or offer to give a rebate or discount or otherwise pay or offer to pay value to the buyer or lessee as an inducement for a sale or lease in consideration of his giving to the seller or lessor the names of prospective purchasers or lessees, or otherwise aiding the seller or lessor in making a sale or lease to another person, if

the earning of the rebate, discount or other value is contingent upon the occurrence of an event subsequent to the time the buyer or lessee agrees to buy or lease. If a buyer or lessee is induced by a violation of this section to enter into a consumer credit sale or consumer lease, the agreement is unenforceable by the seller or lessor and the buyer or lessee, at his option, may rescind the agreement or retain the goods delivered and the benefit of any services performed, without any obligation to pay for them.

History: L. 1969, ch. 18, § 2.411.

Comment of Commissioners on Uniform State Laws.

1. The typical referral sale scheme which would be barred by this section is one in which the seller, before closing the sale, offers to reduce the price by $25 for every name of a person the buyer supplies who will agree to buy from the seller. The seller may be able to make an inflated price tag much more palatable to a buyer if he can convince the buyer that the referral plan will greatly reduce the amount he will actually have to pay. The buyer may not realize until later that his friends, whose names he submitted are not as gullible as he and that he is bound to pay the original balance of the contract price.

2. The evil this section is aimed at is the raising of expectations in a buyer of benefits to accrue to him from events which are to occur in the future. This provision has no effect on a seller's agreement to reduce at the time of the sale the price of an item in exchange for the buyer's giving the seller a list of prospective purchasers or assisting in other ways if the price reduction is not contingent on whether the purchasers do in fact buy or on whether other events occur in the future.

3. The misuse of the referral sale scheme has been so pervasive in some segments of vendor credit that this provision, in an effort to halt these practices, not only makes agreements in violation of this section unenforceable but also allows the buyer to retain the goods sold or the benefit of services rendered with no obligation to pay for them. Alternatively, the buyer may rescind the agreement, return the goods, and recover any payment.

70B-2-412. Notice of assignment. The buyer or lessee is authorized to pay the original seller or lessor until the buyer or lessee receives notification of assignment of the rights to payment pursuant to a consumer credit sale or consumer lease and that payment is to be made to the assignee. A notification which does not reasonably identify the rights assigned is ineffective. If requested by the buyer or lessee, the assignee must seasonably furnish reasonable proof that the assignment has been made and unless he does so the buyer or lessee may pay the seller or lessor.

History: L. 1969, ch. 18, § 2.412.

Comment of Commissioners on Uniform State Laws.

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

70B-2-413. Attorney's fees. With respect to a consumer credit sale or consumer lease the agreement may provide for the payment by the buyer or lessee of reasonable attorney's fees after default and referral to an attorney not a salaried employee of the seller or lessor, or his assignee.

History: L. 1969, ch. 18, § 2.413.

Compiler's Notes.

Alternative B of the Uniform Consumer Credit Code was adopted in the Utah enactment. The Utah act omitted "not in excess of 15 per cent of the unpaid debt" after "attorney's fees"; substituted "of the seller or lessor, or his assignee" for "of the seller, or of the lessor or his assignee" after "salaried employee"; and omitted a second sentence reading: "A provision in violation of this section is unenforceable."

Comment of Commissioners on Uniform State Laws.

[Alternative A.] * * *

[Alternative B.]. This section reflects a policy decision to treat attorney's fees not as part of the seller's general overhead to be indirectly borne by all his customers but as a charge to be imposed, at least in part, on the defaulting buyer who gives rise to the expense. This section allows the parties to agree that upon default and referral of the claim to an attorney a charge can be made. * * * There is no requirement that the attorney must file suit against the buyer to earn the fee.

70B-2-414. Limitation on default charges. Except for reasonable expenses incurred in realizing on a security interest, the agreement with respect to a consumer credit sale may not provide for any charges as a result of default by the buyer other than those authorized by this act. A provision in violation of this section is unenforceable.

History: L. 1969, ch. 18, § 2.414.

Comment of Commissioners on Uniform State Laws.

This Act limits the credit related charges a seller may impose on a buyer not only at the outset of the contract but also at the default stage. Except for delinquency charges (Section 2.203) * * * and expenses arising from realizing on collateral (UCC Section 9-504), the seller may impose no collection or default charges on a buyer.

* * *

70B-2-415. Authorization to confess judgment prohibited. A buyer or lessee may not authorize any person to confess judgment on a claim arising out of a consumer credit sale or consumer lease. An authorization in violation of this section is void.

History: L. 1969, ch. 18, § 2.415.

Comment of Commissioners on Uniform State Laws.

This section reflects the view of the great majority of states in prohibiting authorizations to confess judgment. It is consistent with the policy of the Act of assuring the consumer a right to a judicial hearing before judgment is entered against him or his rights are otherwise affected. See Sections 2.410 (No Assignment of Earnings) and 5.104 (No Garnishment Before Judgment). It does not prohibit the consumer himself from confessing judgment pursuant to the laws of this State.

70B-2-416. Change in terms of revolving charge accounts.

(1) If a seller makes a change in the terms of a revolving charge account without complying with this section any additional cost or charge to the buyer resulting from the change is an excess charge and subject to the remedies available to debtors (section 70B-5-202) and to the administrator (section 70B-6-113).

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

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

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

(b) the buyer elects to pay an amount designated on a billing statement (subsection (2) of section 70B-2-310) as including

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

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

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

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

History: L. 1969, ch. 18, § 2.416; 1975, ch. 209, § 3.

Compiler's Notes.

The 1975 amendment deleted subd. (3) (c) which read: "the change involves no significant cost to the buyer"; redesignated former subds. (3) (d) and (3) (e) as subds. (3) (c) and (3) (d); and made minor changes in punctuation.

Comment of Commissioners on Uniform State Laws.

1. New developments in consumer credit practices may require changes in the terms of revolving charge accounts and revolving loan accounts. A national chain department store may have hundreds of thousands of customers with revolving charge accounts and a bank may have hundreds of thousands of credit card customers with revolving loan accounts. An insurmountable problem would confront the store or bank were it necessary to obtain from each customer his signed consent to a change in terms. Experience in retail sales credit indicates that only a minority of customers take the trouble to return an express approval or disapproval of a change in terms proposed as a condition of the future use of revolving charge accounts. Nevertheless, merchants and banks should not be able to take advantage of customers by a change which is unfair, unanticipated or inadequately communicated.

The parallel provisions of Sections 2.416 and 3.408 enable creditors to change the terms of revolving accounts in a manner which is feasible for creditors yet safeguards the interests of their revolving account customers.

2. Subsections (2) of both sections provide to the creditor a means of making a proposed change effective as to customer balances in a revolving account both before and after notice to the customer of the change. For a creditor to comply with subsections (2), he must give the customer written notice of at least six months before the change is to take effect and repeat the notice twice during the six-month period.

If the customer disapproves the change he may avoid any liability predicated on it: (a) with respect to the future, by refraining from making further purchases or loans under the revolving account, and (b) with respect to the balance in the account at the time of the notice of change by paying it in full within six months.

3. The six-month notice requirement of subsections (2) of both sections is made inapplicable by subsections (3) in five situations. Subsections (3) (c) cover changes which involve no substantial cost to the customer; the other four involve overt action by the customer manifesting agreement, and adequate notice of the change to him.

4. Subsections (4) of both sections prescribe that a notice provided for in the sections is given to the customer when mailed to him at the address used by the creditor for sending periodic billing statements.

PART 5

HOME SOLICITATION SALES

Section

70B-2-501. Definition — Home solicitation sales. "Home solicitation sale" means a consumer credit sale of goods, other than farm equipment, or services in which the seller or a person acting for him engages in a personal solicitation of the sale at a residence or place of employment of the buyer and the buyer's agreement or offer to purchase is there given to the seller or a person acting for him. It does not include a sale made pursuant to a pre-existing revolving charge account, or a sale made pursuant to prior negotiations between the parties at a business establishment at a fixed location where goods or services are offered or exhibited for sale.

History: L. 1969, ch. 18, § 2.501; 1975, ch. 208, § 1.

Compiler's Notes.

The 1975 amendment inserted "or place of employment" after "residence" near the middle of the section.

Comment of Commissioners on Uniform State Laws.

1. The Act singles out for special treatment consumer credit sales in which the transaction is negotiated face-to-face at a residence of the buyer. An underlying consideration for Part 5 is the belief that in a significant proportion of such sales the consumer is induced to sign a sales contract by high pressure techniques. The Act recognizes that many buyers in such cases may be unwilling parties to the transaction and gives to them a limited right to cancel the sale. Section 2.502. The right of cancellation applies to "home solicitation sales."

2. The definition of "home solicitation sales" differentiates between those types of transactions which have been the subject of particular abuse and those which have not. Although high pressure salesmanship can be practiced anywhere, the underlying theory of Section 2.501 is that the sale in the home is particularly susceptible to such methods. Two elements are required to bring a transaction within the definition. First, there must be personal solicitation at a residence of the buyer. Because the term "personal solicitation" is used, Part 5 applies only to those sales in which the buyer and seller engage in a face-to-face confrontation at a residence of the buyer. Second, the act of the buyer in binding himself by agreeing or offering to purchase must also take place at a residence of the buyer. The phrase "at a residence" rather than "in a residence" is used to prevent avoidance of the Act by the expedient of having the buyer sign the contract outside of, but in the immediate vicinity of, the home.

3. Sellers who sell by means of solicitation in the home can avoid the application of Part 5 by having the contract or offer to purchase signed by the buyer at the office of the seller or at some place other than the buyer's residence. If the buyer must go to the seller's office or some other place to sign the contract or offer there is less likelihood that he is acting because of undue pressure by the seller. Similarly, where the buyer has already established a prior relationship with the seller by having a preexisting revolving charge account or by having previously negotiated with the seller with respect to the sale at the seller's business establishment the likelihood of coercion of the buyer is substantially less. This Part does not apply in these cases.

70B-2-502. Buyer's right to cancel.

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

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

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

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

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

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

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

(6) If a home solicitation sale is also subject to the provisions on debtors' right to rescind certain transactions (section 70B-5-204), the buyer may proceed either under those provisions or under this part.

History: L. 1969, ch. 18, § 2.502.

Comment of Commissioners on Uniform State Laws.

1. The buyer has a right to cancel a home solicitation sale pursuant to this section. The notice of cancellation must be in writing, given to the seller at the address stated in the agreement signed by the buyer, and given prior to midnight of the third business day after the day the buyer signs an agreement or offer to purchase which complies with Section 2.503. These are the only formal requirements of the Act with respect to the buyer's cancellation.

2. Although the Act does not require that a notice of cancellation be mailed it is assumed that this will be the normal method of cancellation. Notice of cancellation is given at the time of mailing. The risk of nonreceipt of a mailed notice of cancellation is placed on the seller, but the buyer has the burden of proving that the notice was properly mailed.

3. Goods and services are frequently sold on credit to a buyer at his home because of an emergency. Common examples are emergency repairs to broken water pipes, furnaces, appliances and the like. Since such transactions may come within the definition of home solicitation sales, sellers may be reluctant to perform services or deliver goods before expiration of the 3-day cancellation period. Application of the right to cancellation to emergency situations would have the undesirable effect of seriously deterring credit sellers from performing in time to deal with emergencies. Subsection (5) therefore provides that the buyer may not cancel a sale if the stated conditions are met. The word "emergency" is not defined; the intention of the subsection is to protect the seller who in good faith relies on the statement of the buyer that an emergency exists and who performs immediately at the request of the buyer.

4. The right to cancel provided by Section 2.502 is not exclusive. It in no way affects the right that the buyer may have independent of the Act to revoke an offer to purchase which has not been accepted by the seller, or to rescind because of fraud, duress, breach of warranty or other causes. Section 5.204 provides for a limited right of rescission with respect to transactions in which a security interest is taken in the debtor's home. If a transaction falls within both Section 2.502 and Section 5.204 the debtor may elect to proceed under either section.

70B-2-503. Form of agreement or offer — Statement of buyer's rights.

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

(2) The statement must:

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

(b) read as follows:

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

(c) Compliance with any notice of cancellation or similar requirement of any rule of the Federal Trade Commission which by its terms applies to a home solicitation sale covered by this act shall be deemed compliance with subsection (2)(b) of this section; such compliance, however, shall be totally consistent with this act.

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

History: L. 1969, ch. 18, § 2.503; 1975, ch. 210, § 6.

Compiler's Notes.

The 1975 amendment deleted "If you cancel, the seller may keep all or part of your cash down payment" from the end of the quoted language in subd. (2) (b); added subd. (2) (c); and made a minor change in punctuation.

Comment of Commissioners on Uniform State Laws.

The three-day period for cancellation does not begin to run until the buyer signs a written agreement or offer to purchase complying with this section. To comply, the agreement or offer must contain the date on which the buyer actually signs it and the caption and statement required by subsection (2).

70B-2-504. Restoration of down payment.

(1) Within ten days after a home solicitation sale has been canceled or an offer to purchase revoked the seller must tender to the buyer any payments made by the buyer and any note or other evidence of indebtedness.

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

(3) A provision permitting the seller to keep all or any part of any payment, note or evidence of indebtedness is in violation of this section and unenforceable.

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

History: L. 1969, ch. 18, § 2.504; 1975, ch. 210, § 7.

Compiler's Notes.

The 1975 amendment deleted "Except as provided in this section" at the beginning of the section; and substituted the present language of subsec. (3) for "The seller may retain as a cancellation fee 5 per cent of the cash price but not exceeding the amount of the cash down payment. If the seller fails to comply with an obligation imposed by this section, or if the buyer avoids the sale on any ground independent of his right to cancel provided by the provisions on the buyer's right to cancel (subsection (1) of section 70B-2-502) or revokes his offer to purchase, the seller is not entitled to retain a cancellation fee."

Comment of Commissioners on Uniform State Laws.

1. The ten-day period during which the seller must tender to the buyer any payments and any evidence of indebtedness runs from the time the sale has been cancelled, i.e., from the time the buyer delivers a written notice of cancellation to the seller or deposits the notice in a mailbox. Section 2.502.

2. If the seller took a trade-in as part of a home solicitation sale which has been cancelled he must tender the goods traded in. The risk of loss or damage to the goods rests with the seller. If he cannot tender the goods in substantially as good condition as when received, the buyer may elect to take in cash the trade-in allowance fixed by the parties in the contract. This provision is designed to protect the buyer where goods traded in have not been tendered or have been damaged. In such case he is given an election to sue either for return of the goods or for the trade-in allowance.

3. The purpose of Part 5 is to protect buyers from contracts that they may have been coerced into entering by high pressure tactics on the part of the seller. On the other hand, many home solicitation sales are freely entered into by buyers without coercion; in such cases a buyer should not be encouraged to cancel simply because of a change of mind. Subsection (3) attempts to strike a balance by allowing the seller to protect his interest by requiring the buyer to make a cash down payment. If the buyer makes a cash down payment and then cancels, the seller may retain a part of the down payment not in excess of 5% of the cash price. Section 2.110. If the seller does not obtain a cash down payment he is not entitled to receive anything as a fee for cancellation. The objective of sellers who rely on coercion by high pressure techniques normally is to obtain the buyer's signature to the sale contract. The requirement of a substantial down payment can be expected to limit the ability of a seller to obtain the signatures of reluctant buyers.

4. The right of the seller to retain the cancellation fee provided by subsection (3) is restricted to those cases in which the buyer cancels his obligation pursuant to Section 2.502. If the buyer simply revokes an offer which has not yet been accepted by the seller, the buyer is exercising a privilege independent of the Act, and the seller has no right to retain a cancellation fee pursuant to subsection (3). If the parties have made a contract which the buyer then rescinds because of fraud, duress, breach of warranty or other cause independent of Section 2.502 the seller again has no right to retain any cancellation fee.

5. As a means of assuring compliance by the seller, subsection (4) provides that the buyer may retain possession of any goods delivered to him by the seller with respect to a sale cancelled under Section 2.502 until the seller complies with his obligations under Section 2.504. While in possession of the goods the buyer has a lien as security for his claim against the seller.

70B-2-505. Duty of buyer — No compensation for services prior to cancellation.

(1) Except as provided by the provisions on retention of goods by the buyer (subsection (4) of section 70B-2-504), within a reasonable time after a home solicitation sale has been canceled or an offer to purchase revoked, the buyer upon demand must tender to the seller any goods delivered by the seller pursuant to the sale but he is not obligated to tender at any place other than his residence. If the seller fails to demand possession of goods within a reasonable time after cancellation or revocation, the goods become the property of the buyer without obligation to pay for them. For the purpose of this section, forty days is presumed to be a reasonable time.

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

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

History: L. 1969, ch. 18, § 2.505.

Comment of Commissioners on Uniform State Laws.

1. Subsections (1) and (2) state the obligations of the buyer in the case of a cancelled home solicitation sale. To protect the buyer from the seller who may seek to impose an obligation on the buyer by unreasonable delays in demanding delivery of the goods the seller must demand possession within a reasonable time and forty days is presumed to be a reasonable time. Goods not demanded within a reasonable time become the property of the buyer without obligation to pay for them.

2. To protect the seller the section imposes on the buyer a duty to take reasonable care of the goods while they are in his possession. Except for this duty of care, under subsection (2) the goods delivered under a home solicitation sale are at the seller's risk both prior to and after cancellation by the buyer; a buyer may cancel a sale after destruction of the goods without his fault if the destruction occurred during the three-day cancellation period.

3. With respect to home solicitation sales involving the sale of services it is not possible to restore the parties to their original positions if services have been performed prior to cancellation. Subsection (3) discourages a seller from performing any services during the three-day cancellation period by requiring him to act entirely at his own risk. He is entitled to no compensation except the cancellation fee for any services performed during this period if the contract is cancelled. Section 2.504.

PART 6

SALES OTHER THAN CONSUMER CREDIT SALES

Section

70B-2-601. Sales subject to act by agreement of parties. The parties to a sale other than a consumer credit sale may agree in a writing signed by the parties that the sale is subject to the provisions of this act applying

to consumer credit sales. If the parties so agree the sale is a consumer credit sale for the purposes of this act.

History: L. 1969, ch. 18, § 2.601.

Comment of Commissioners on Uniform State Laws.

The consumer purpose test is the basic standard for determining the coverage of this Act, but a purpose test can cause difficulties for a creditor in ascertaining the buyer's purpose. Since the right to charge a given rate may depend on whether the purpose of the purchase is personal or business (Section 2.602), the creditor takes a risk whenever he makes a charge for credit. This section permits creditors, by inserting an appropriate clause in a sale contract, to be certain that the transaction is a consumer credit sale for the purposes of this Act. If the creditor is willing to subject himself to all the restrictions of the Act, there is no reason why he should not be able to make the same charges to any buyer as those he can make to one who buys for a consumer purpose.

70B-2-602. Definition — Consumer related sale — Rate of credit service charge.

(1) A "consumer related sale" is a sale of goods, services, or an interest in land which is not subject to the provisions of this act applying to consumer credit sales and in which the amount financed does not exceed $25,000 if the buyer is a person other than an organization.

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

(3) With respect to a consumer related sale made pursuant to a revolving charge account, the parties may contract for the payment of a credit service charge not in excess of that permitted by the provisions on credit service charge for revolving charge accounts (section 70B-2-207).

(4) The amount of $25,000 in subsection (1) is subject to change pursuant to the provisions on adjustment of dollar amounts (section 70B-1-106).

History: L. 1969, ch. 18, § 2.602; 1975, ch. 210, § 8.

Compiler's Notes.

The 1975 amendment deleted subds. (1) (b) and (1) (c) which read: "(b) the debt is secured primarily by a security interest in a one or two family dwelling occupied by a person related to the debtor, or (c) the buyer is an organization."

Effective July 1, 1978, the figure of $25,000 specified in subsec. (1) was increased by Administrative Rule No. 11 issued by the Commissioner of Financial Institutions to $45,000 pursuant to the provisions on adjustment of dollar amounts in section 70B-1-106.

Comment of Commissioners on Uniform State Laws.

1. Many relatively small credit transactions with individuals are not within the general provisions of the Act because the purpose of the transaction is not personal, family, household, or agricultural. However, a debtor in a small transaction for a business purpose may need some protection in credit transactions. Therefore, Part 6 of this Article extends a measure of protection over a special category of relatively small credit sales defined as consumer related sales. The principal transactions covered are (1) a credit sale by a seller not regularly engaged in similar credit transactions, (2) a credit sale to an individual for a business purpose, and (3) a sale to an organization of a one or two family dwelling occupied by an individual

related to the organization. A transaction is not a consumer related sale if the amount financed exceeds $25,000 or, except in the case of a sale of such a dwelling, if the buyer is an organization.

2. This section provides that consumer related sales are subject to an 18% rate ceiling in the case of closed end credit and in the case of revolving credit 2% on monthly balances up to $500 and 1 ½% on monthly balances above that sum. Sections 2.603 and 2.604 specify the other provisions of the Act which apply to consumer related sales. Among these are provisions governing the amounts of additional charges and delinquency charges, provisions on refinancing and consolidation, and provisions on advances to perform covenants of the buyer. Section 2.604 contains special provisions on default and deferral charges. Disclosure provisions do not apply to consumer related sales.

70B-2-603. Applicability of other provisions to consumer related sales. Except for the rate of the credit service charge and the rights to prepay and to rebate upon prepayment, the provisions of sections 70B-2-201 to 70B-2-210 apply to a consumer related sale.

History: L. 1969, ch. 18, § 2.603.

70B-2-604. Limitation on default charges in consumer related sales.

(1) The agreement with respect to a consumer related sale may provide for only the following charges as a result of the buyer's default:
   (a) reasonable attorney's fees and reasonable expenses incurred in realizing on a security interest;
   (b) deferral charges not in excess of 18 per cent per year of the amount deferred for the period of deferral; and
   (c) other charges that could have been made had the sale been a consumer credit sale.

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

History: L. 1969, ch. 18, § 2.604.

70B-2-605. Credit service charge for other sales. With respect to a sale other than a consumer credit sale or a consumer related sale, the parties may contract for the payment by the buyer of any credit service charge.

History: L. 1969, ch. 18, § 2.605.

Comment of Commissioners on Uniform State Laws.

This section applies to sales which are neither consumer credit sales nor consumer related sales. In this residual category of sales fall those made to organizations other than in some land transactions and those made to individuals which are over $25,000 in amount. In sale transactions in which very large sale prices are involved or in which the buyers are business organizations, buyers are usually sophisticated enough to take care of themselves in negotiating credit charges. Moreover, it is difficult to impose an arbitrary rate ceiling for transactions such as these which will be high enough to allow for high risk business transactions without setting a limit that is so high as to be virtually meaningless for most sales. See Section 5.107 on extortionate extensions of credit.

CHAPTER 3

LOANS

Part
1. General provisions.

2. Maximum charges.
3. Disclosure and advertising.
4. Limitations on agreements and practices.
5. Regulated and supervised loans.
6. Loans other than consumer loans.

PART 1

GENERAL PROVISIONS

Section
70B-3-101. Short title.
70B-3-102. Scope.
70B-3-103. Definitions in chapter.
70B-3-104. Definition — "Consumer loan."
70B-3-105. Definition — "Loan primarily secured by an interest in land."
70B-3-106. Definition — Loan.
70B-3-107. Definitions — Lender — Precomputed principal.
70B-3-108. Definition — Revolving loan account.
70B-3-109. Definition — Loan finance charge.

70B-3-101. Short title. This chapter (70B-3-101 to 70B-3-605) shall be known and may be cited as Utah Uniform Consumer Credit Code — Loans.

History: L. 1969, ch. 18, § 3.101.

Collateral References.

New Topic Service, AmJur 2d, Consumer Credit Protection.

70B-3-102. Scope. This chapter applies to consumer loans, including regulated and supervised loans; in addition part 6 (70B-3-601 to 70B-3-605) applies to consumer related loans.

History: L. 1969, ch. 18, § 3.102.

Comment of Commissioners on Uniform State Laws.

"Consumer related loan" is defined and a maximum rate of loan finance charge established in Section 3.602.

70B-3-103. Definitions in chapter. The following definitions apply to this act and appear in this chapter as follows:

"annual percentage rate" — section 70B-3-304(2)
"business collateral" — section 70B-3-105
"consumer loan" — section 70B-3-104
"consumer related loan" — section 70B-3-602(1)
"corresponding nominal annual percentage rate" — section 70B-3-304(3)
"lender" — section 70B-3-107(1)
"loan" — section 70B-3-106
"loan finance charge" — section 70B-3-109
"precomputed" — section 70B-3-107(2)
"principal" — section 70B-3-107(3)
"regulated lender" — section 70B-3-501(2)
"regulated loan" — section 70B-3-501(1)
"revolving loan account" — section 70B-3-108
"supervised lender" — section 70B-3-501(4)

"supervised loan" — section — section 70B-3-501(3)

History: L. 1969, ch. 18, § 3.103.

Compiler's Notes.

The Utah enactment inserted the reference to the definition of "business collateral" and omitted a reference to the definition of "loan primarily secured by an interest in land — section 3.105". See 1969 Special Session amendment of 70B-3-105.

70B-3-104. Definition — "Consumer loan."

(1) Except with respect to a loan primarily secured by an interest in land (section 70B-3-105), "consumer loan" is a loan made by a person regularly engaged in the business of making loans in which
   (a) the debtor is a person other than an organization;
   (b) the debt is incurred primarily for a personal, family, household, or agricultural purpose;
   (c) either the debt is payable in installments or a loan finance charge is made; and
   (d) either the principal does not exceed $25,000 or the debt is secured by an interest in land.

(2) The amount of $25,000 in subsection (1) is subject to change pursuant to the provisions on adjustment of dollar amounts (section 70B-1-106).

History: L. 1969, ch. 18, § 3.104; 1969 (1st S.S.), ch. 2, § 1.

Compiler's Notes.

The 1969 amendment substituted the exception at the beginning of subsection (1) for "Except as provided in subsection (2)"; deleted former subsection (2) which read: "(2) Unless the loan is made subject to this act by agreement (Section 3.601), 'consumer loan' does not include a loan which is secured primarily by (a) business collateral, if at the time the loan is made the value of this collateral is substantial in relation to the amount of the loan or, (b) except as provided with respect to disclosure (Section 3.301) and debtors' remedies (Section 5.201), an interest in land, if at the time the loan is made the value of this collateral is substantial in relation to the amount of the loan, and the loan finance charge does not exceed 10 percent per year calculated according to the actuarial method on the unpaid balances of the principal on the assumption that the debt will be paid according to the agreed terms and will not be paid before the end of the agreed term"; and renumbered former subsection (3) as present subsection (2).

Effective July 1, 1978, the figure of $25,000 specified in subd. (1) (d) was increased by Administrative Rule No. 11 issued by the Commissioner of Financial Institutions to $45,000 pursuant to the provisions on adjustment of dollar amounts in section 70B-1-106.

Consumer loan.

Transaction wherein lender issued check payable jointly to buyer and seller of truck in return for security interest in truck and promissory note from buyer, is a consumer loan within meaning of this section and 70B-3-106, and not a consumer credit sale; finance company is entitled, upon default of buyer, to repossess collateral and seek deficiency judgment after public or private sale of collateral. Peoples Finance & Thrift Co. of Ogden v. Perry (1973) 30 U 2d 282, 516 P 2d 1400.

Regularly engaged.

Corporation whose business activities consist mainly of buying real estate contracts at discount, but makes loans and has a license to do so, is regularly engaged in business of making loans. Wasescha v. Terra, Inc. (1974) 528 P 2d 802.

70B-3-105. Definition — "Loan primarily secured by an interest in land." Unless the loan is made subject to this act by agreement (section 70B-3-601), and except as provided with respect to maximum charges (sections 70B-3-201 and 70B-3-508), disclosure (section 70B-3-301) and debtors'

remedies (section 70B-5-201), "consumer loan" and "consumer related loan" do not include a "loan primarily secured by an interest in land," if the loan is secured by a first lien against a dwelling to finance the acquisition of that dwelling. A loan to finance the original construction of the dwelling and a loan to refinance any such construction loan shall both be deemed a loan to finance the acquisition of that dwelling.

History: L. 1969, ch. 18, § 3.105; 1969 (1st S.S.), ch. 2, § 2; 1975, ch. 210, § 9.

Compiler's Notes.

Prior to the 1969 amendment this section read: "'Business collateral' means an interest in land used primarily for other than a person, family, household, or agricultural purpose, or accounts or contract rights other than earnings, business equipment, chattel paper, documents of title, instruments other than investment securities, inventory, or business general intangibles. Business equipment does not include farm equipment."

The 1975 amendment inserted "maximum charges (sections 70B-3-201 and 70B-3-508)" after "with respect to" near the beginning of the first sentence; inserted "and 'consumer related loan'" after "'consumer loan' and"; and substituted "the loan is secured by * * * the acquisition of that dwelling" at the end of the first sentence for "at the time the loan is made the value of this collateral is substantial in relation to the amount of the loan, and the loan finance charge does not exceed ten per cent per year calculated according to the actuarial method on the unpaid balances of the principal on the assumption that the debt will be paid according to the agreed terms and will not be paid before the end of the agreed term. Nothing herein will prevent the acceleration of payment without penalty."

Comment of Commissioners on Uniform State Laws.

1. The purpose of this section is to exclude the ordinary home mortgage from all provisions of this Act except those on disclosure (Section 3.301) and debtors' remedies (Section 5.201); however, the Act is intended to include as consumer loans high rate loans which are characteristic of the second mortgage small loan business. Because the ordinary home mortgage invariably has a loan finance charge below 10%, the exclusion has been based on the amount of the loan finance charge.

2. See Comment to Section 2.104.

70B-3-106. Definition — Loan. "Loan" includes

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

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

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

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

History: L. 1969, ch. 18, § 3.106.

Comment of Commissioners on Uniform State Laws.

A loan is made when a creditor creates debt by advancing money to the debtor or to a person in his behalf, by crediting an account on which the debtor can draw, or by paying a retailer or other person the obligation incurred by the holder of a lender credit card (Section 1.301 (9)). A loan is also made when the creditor agrees to forbear collecting a debt arising from a loan; forbearance of a debt arising from a sale is subject to the provisions on deferral, refinancing, consolidation, or revolving charge accounts (Sections 2.204 — 2.207) and is not classified as a loan by this Act.

Consumer loan.

Transaction wherein lender issued proceeds of loan in form of check jointly payable to buyer and seller of vehicle in return for buyer's promissory note and security interest in vehicle, is a "loan" within meaning of this section and not a consumer credit sale; lender was entitled, upon default of buyer, to

repossession of collateral and deficiency judgment after sale of collateral. Peoples Finance & Thrift Co. of Ogden v. Perry (1973) 30 U 2d 282, 516 P 2d 1400.

70B-3-107. Definitions — Lender — Precomputed principal.

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

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

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

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

(b) the amount of any discount excluded from the loan finance charge (subsection (2) of section 70B-3-109), and,

(c) to the extent that payment is deferred,

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

(ii) additional charges permitted by this chapter (section 70B-3-202).

History: L. 1969, ch. 18, § 3.107.

Comment of Commissioners on Uniform State Laws.

[Subsection (1).] See Comment to Section 2.107, defining seller.

[Subsection (2).] See Comment to Section 2.105 (7), defining "precomputed" as to sales.

[Subsection (3).] This term is a key definition in both Part 2 (Maximum Charges) and Part 3 (Disclosure) for it determines the amount on which the loan finance charge is imposed. An advance payment of loan finance charge or a required compensating balance is deducted from the face amount of the "net amount paid" under paragraph (a) of this subsection. Section 3.109 (2) states that the discount resulting from the lender's purchasing or satisfying an obligation of the debtor incurred pursuant to a lender credit card is not part of the loan finance charge, and paragraph (b) of this subsection makes clear that this discount is part of the principal. Cash payments to the lender for such items as registration, certificate of title, or license fees are not deferred and are not part of the principal.

70B-3-108. Definition — Revolving loan account. "Revolving loan account" means an arrangement between a lender and a debtor pursuant to which

(1) the lender may permit the debtor to obtain loans from time to time,

(2) the unpaid balances of principal and the loan finance charge and other appropriate charges are debited to an account,

(3) a loan finance charge if made is not precomputed but is computed on the outstanding unpaid balances of the debtor's account from time to time, and

(4) the debtor has the privilege of paying the balances in installments.

History: L. 1969, ch. 18, § 3.108.

Comment of Commissioners on Uniform State Laws.

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

70B-3-109. Definition — Loan finance charge.

(1) "Loan finance charge" means the sum of

(a) all charges payable directly or indirectly by the debtor and imposed directly or indirectly by the lender as an incident to the extension of credit, including any of the following types of charges which are applicable: interest or any amount payable under a point, discount, or other system of charges, however denominated, premium or other charge for any guarantee or insurance protecting the lender against the debtor's default or other credit loss; and

(b) charges incurred for investigating the collateral or creditworthiness of the debtor or for commissions or brokerage for obtaining the credit, irrespective of the person to whom the charges are paid or payable unless the lender had no notice of the charges when the loan was made. The term does not include charges as a result of default, additional charges (section 70B-3-202), delinquency charges (section 70B-3-203), or deferral charges (section 70B-3-204).

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

History: L. 1969, ch. 18, § 3.109.

Comment of Commissioners on Uniform State Laws.

1. As to subsection (1), see Comment to Section 2.109 defining credit service charge.

2. A lender credit card issuer usually purchases or satisfies the obligation of a credit card holder to a retailer at a discount from the face amount of the obligation. Subsection (2) provides that this discount is not a part of the loan finance charge, but is subject to modification by rules adopted by the Administrator pursuant to his duty under Section 6.104 (2) to "adopt rules not inconsistent with the Federal Consumer Credit Protection Act" including, as defined in Section 1.302, "regulations issued pursuant to that Act."

PART 2

MAXIMUM CHARGES

Section

70B-3-201. Loan finance charge for consumer loans other than supervised loans.

(1) With respect to a consumer loan other than a supervised loan (section 70B-3-501), a lender may contract for and receive a loan finance charge, calculated according to the actuarial method, not exceeding 18 per cent per year on the unpaid balances of the principal.

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

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

(b) the effect of prepayment is governed by the provisions on rebate upon prepayment (section 70B-3-210).

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

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

(a) the loan finance charge shall be deemed not to exceed 18 per cent per year if the loan finance charge contracted for an received does not exceed a charge in each monthly billing cycle which is 1 ½ per cent of an amount not exceeding the greatest of:

(i) the average daily balance of the debt,

(ii) the unpaid balance of the debt on the last day of the billing cycle, after deducting payments and credits, or

(iii) subject to subsection (5), the median amount within a specified range within which the average daily balance or the unpaid balance of the debt on the last day of the billing cycle after deducting payments and credits is included; for the purposes of this subparagraph and subparagraph (ii), a variation of not more than four days from month to month is "the same day of the billing cycle";

(iv) in determining the balance of a revolving loan account upon which a loan finance charge will be charged, the balance may not be determined by using the prior balance method, which is using the balance at the end of

the previous billing cycle without deducting all amounts credited during the period of the current billing cycle.

(b) if the billing cycle is not monthly, the loan finance charge shall be deemed not to exceed 18 per cent per year if the loan finance charge contracted for and received does not exceed a percentage which bears the same relation to 1 ½ per cent as the number of days in the billing cycle bears to thirty; and

(c) notwithstanding subsection (1), if there is an unpaid balance on the date as of which the loan finance charge is applied the lender may contract for and receive a charge not exceeding 50¢ if the billing cycle is monthly or longer, or the prorata part of 50¢ which bears the same relation to 50¢ as the number of days in the billing cycle bears to thirty, if the billing cycle is shorter than monthly, but no charge may be made pursuant to this paragraph if the lender has made an annual charge for the same period as permitted by the provisions on additional charges (paragraph (c) of subsection (1) of section 70B-3-202).

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

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

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

History: L. 1969, ch. 18, § 3.201; 1975, ch. 210, § 10.

Compiler's Notes.

The 1975 amendment substituted "not exceeding the greatest of" at the end of subd. (4) (a) for "no greater than"; substituted "last" for "same" in subds. (4) (a) (ii) and (4) (a) (iii); inserted "after deducting payments and credits" after "billing cycle" in subds. (4) (a) (ii) and (4) (a) (iii); inserted subd. (4) (a) (iv); and made minor changes in phraseology and punctuation.

Administrative Rule #7, Department of Financial Institutions, March 28, 1975, read in part: "Sections 70B-2-207 and 70B-3-201 . . . have been amended by the Utah 41st Legislature to prohibit the use of the prior balance method in determining the balance of a revolving charge or loan account upon which credit service or loan finance charges may be assessed.

"These amendments will become law too soon to permit those creditors presently using the prior balance method of computation to give the six months' notice of change as required by Sections 70B-2-416 (2) and 70B-3-408 (2). . . . Therefore, it being contrary to the public interest to require six months' notice of change, this rule is hereby adopted to authorize a fifteen-day notice of change by those creditors changing from the prior balance method to some other authorized method of computing the balance, subject to credit service or loan finance charges."

Comment of Commissioners on Uniform State Laws.

1. For an extensive explanation of the purposes and operation of the rate ceilings provisions of this Act, see the Comment to Section 2.201. Section 3.201 sets the ceiling for all consumer loans other than supervised loans at 18% on the unpaid balances of the principal, and this ceiling applies to revolving credit as well as to closed end credit. Ceilings for supervised loans are found in Section 3.508. The operation of revolving loan accounts is such that a creditor cannot know whether he is exceeding a rate ceiling stated in terms of a rate calculated according to the actuarial method unless he has the equipment to calculate the rate on daily balances. In "deeming" that 1 ½% per month on certain unpaid balances is the equivalent of 18% per year, subsection (4) allows a creditor to use revolving loan credit without requiring him to make a daily balance calculation.

2. Subsection (4) (a) contemplates that the 1 ½% charge in each monthly billing cycle may be computed on any of the amounts specified in subparagraphs (i)-(iii) of the subsection.

DECISIONS UNDER FORMER LAW

Acceleration clause.

Acceleration clauses are not usurious. Mathis v. Holland Furnace Co. (1946) 109 U 449, 166 P 2d 518, 522.

Borrower not particeps criminis.

Borrower is not particeps criminis with lender in usurious transaction. National American Life Ins. Co. v. Bayou Country Club, Inc. (1965) 16 U 2d 417, 403 P 2d 26.

Cost of collection and attorney's fees.

Where loan contract provided that borrower was to pay costs of collection in event of default, and reasonable attorney's fees resulting therefrom, in addition to maximum interest allowed by law, such charges were not demand for additional interest and did not make loan contract usurious. Peoples Finance & Thrift Co. v. Blomquist (1964) 16 U 2d 157, 397 P 2d 293.

Defense of usury as personal to mortgagor.

In suit to foreclose corporate mortgage, stockholder of mortgagor could not interpose defense of usury predicated on gifts of stock to mortgagee by other stockholders which, if added to interest provided in mortgage, would make it usurious, since defense of usury is personal to mortgagor. Rospigliosi v. Glenallen Min. Co. (Grace et al., interveners) (1926) 69 U 41, 252 P 276.

Industrial loan companies.

Rate of interest allowed industrial loan companies is an exception to the interest rates generally allowed. Seaboard Finance Co. v. Wahlen (1953) 123 U 529, 260 P 2d 556, 557.

Intent of lender.

A corrupt or unlawful intent to violate the usury law is a necessary element of usury and must be proved. The intent to constitute usury is the intent to exact interest in excess of amount allowed by the statute — not the specific intent to violate the statute. Mathis v. Holland Furnace Co. (1946) 109 U 449, 166 P 2d 518, 522; Rossberg v. Holesapple (1953) 123 U 544, 260 P 2d 563, 566.

Interest after maturity.

Note providing for interest, after maturity of the entire balance, at the highest lawful contract rate, and for 15 per cent of the principal and interest of the note, or at the option of the holder, a reasonable sum, as attorney's fees did not violate the usury statute. Mathis v. Holland Furnace Co. (1946) 109 U 449, 166 P 2d 518, 522.

Interest shown on lender's books conclusive.

Where lender's books showed certain amount of interest had been paid by borrower, that amount was to be considered interest for purposes of determining usury, and lender was not free to change designation of that money to payment on principal in order to avoid application of usury laws. National American Life Ins. Co. v. Bayou Country Club, Inc. (1965) 16 U 2d 417, 403 P 2d 26.

Sale of credit.

A sale of credit, as distinguished from a loan of money, does not come within the purview of usury laws. However, the mere fact that the lender had to travel and use his credit to borrow the necessary money from a third party before he could make available the funds to the borrower does not make the transaction between the parties a sale or loan of credit instead of a loan of money. Rossberg v. Holesapple (1953) 123 U 544, 260 P 2d 563, 566.

Usury laws, generally.

Under former statute permitting interest at rate of 12% per annum, note calling for interest at rate of 1% per month was not usurious. Brown v. Johnson (1913) 43 U 1, 7,

134 P 590, 46 LRA (NS) 1157, Ann Cas 1916C 321.

Usury Law does not operate retrospectively. Brunswick Realty Co. v. University Inv. Co. (1913) 43 U 75, 134 P 608.

Usury laws are enacted primarily for the benefit of the borrower; the penalties are not primarily for purpose of punishing the lender. Rospigliosi v. Glenallen Min. Co. (1926) 69 U 41, 47, 252 P 276.

Sections on usury apply to relationships between parties established by their voluntary acts, and not to interest imposed by statute. McFarlane v. Winters (1949) 114 U 502, 201 P 2d 494.

70B-3-202. Additional charges.

(1) In addition to the loan finance charge permitted by this part, a lender may contract for and receive the following additional charges in connection with a consumer loan:
   (a) official fees and taxes;
   (b) charges for insurance as described in subsection (2);
   (c) annual charges, payable in advance, for the privilege of using a lender credit card or similar arrangements which entitles the user to purchase goods or services from at least 100 persons not related to the issuer of the lender credit card or similar arrangement, under an arrangement pursuant to which the debts resulting from the purchases are payable to the issuer;
   (d) charges for other benefits, including insurance, conferred on the debtor, if the benefits are of value to him and if the charges are reasonable in relation to the benefits, are of a type which is not for credit, and are excluded as permissible additional charges from the loan finance charge by rule adopted by the administrator;
   (e) with respect to any real property transaction, closing costs (section 70B-1-301(5)), if they are bona fide, reasonable in amount, and not for the purpose of circumvention or evasion of this act.

(2) An additional charge may be made for insurance written in connection with the loan, other than insurance protecting the lender against the debtor's default or other credit loss,
   (a) with respect to insurance against loss of or damage to property, or against liability, if the lender furnishes a clear and specific statement in writing to the debtor, setting forth the cost of the insurance if obtained from or through the lender, and stating that the debtor may choose the person through whom the insurance is to be obtained; and,
   (b) with respect to consumer credit insurance providing life, accident, or health coverage, if the insurance coverage is not a factor in the approval by the lender of the extension of credit, and this fact is clearly disclosed in writing to the debtor, and if, in order to obtain the insurance in connection

with the extension of credit, the debtor gives specific affirmative written indication of his desire to do so after written disclosure to him of the cost thereof.

History: L. 1969, ch. 18, § 3.202; 1975, ch. 210, § 11.

Compiler's Notes.

In the adoption of section 3.301 of the Uniform Consumers Credit Code, the Utah enactment substituted a reference to "paragraph (b) of subsection (2) of section 3.104" for a reference to "section 3.105" in former subsection (3). See 1969 Special Session amendment of 70B-3-105.

The 1975 amendment inserted subd. (1) (e); deleted subsec. (3) which read: "For the purposes of the part on Disclosure and Advertising (sections 70B-3-301 to 70B-3-312), if the loan finance charge with respect to a loan primarily secured by an interest in land does not exceed 10 per cent per year (paragraph (b) of subsection (2) of section 70B-3-104), reasonable closing costs even though not within subsection (1) may be treated as additional charges"; and made minor changes in punctuation.

Comment of Commissioners on Uniform State Laws.

See Comment to Section 2.202.

70B-3-203. Delinquency charges.

(1) With respect to a precomputed consumer loan, refinancing, or consolidation, the parties may contract for a delinquency charge on any installment not paid in full within ten days after its scheduled due date in an amount not exceeding the greater of
   (a) an amount, not exceeding $5, which is 5 per cent of the unpaid amount of the installment, or
   (b) the deferral charge (subsection (1) of section 70B-3-204) that would be permitted to defer the unpaid amount of the installment for the period that it is delinquent.

(2) A delinquency charge under paragraph (a) of subsection (1) may be collected only once on an installment however long it remains in default. No delinquency charge may be collected if the installment has been deferred and a deferral charge (section 70B-3-204) has been paid or incurred. A delinquency charge may be collected at the time it accrues or at any time thereafter.

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

(4) If two installments or parts thereof of a precomputed loan are in default for ten days or more, the lender may elect to convert the loan from a precomputed loan to one in which the loan finance charge is based on unpaid balances. In this event he shall make a rebate pursuant to the provisions on rebate upon prepayment (section 70B-3-210) as of the maturity date of the first delinquent installment, and thereafter may make a loan finance charge as authorized by the provisions on loan finance charge for consumer loans (section 70B-3-201) or the provisions on loan finance charge

for supervised loans (section 70B-3-508), whichever is appropriate. The amount of the rebate shall not be reduced by the amount of any permitted minimum charge (section 70B-3-210). If the lender proceeds under this subsection, any delinquency or deferral charges made with respect to installments due at or after the maturity date of the first delinquent installment shall be rebated, and no further delinquency or deferral charges shall be made.

(5) The amount of $5 in subsection (1) is subject to change pursuant to the provisions on adjustment of dollar amounts (section 70B-1-106).

History: L. 1969, ch. 18, § 3.203.

Compiler's Notes.

Effective July 1, 1978, the figure of $5 specified in subd. (1) (a) was increased by Administrative Rule No. 11 issued by the Commissioner of Financial Institutions to $9 pursuant to the provisions on adjustment of dollar amounts in section 70B-1-106.

Comment of Commissioners on Uniform State Laws.

See Comment to Section 2.203.

Cross-References.

Rebate upon prepayment, 70B-3-210.

70B-3-204. Deferral charges.

(1) With respect to a precomputed consumer loan, refinancing, or consolidation, the parties before or after default may agree in writing to a deferral of all or part of one or more unpaid installments, and the lender may make and collect a charge not exceeding the rate previously stated to the debtor pursuant to the provisions on disclosure (sections 70B-3-301 to 70B-3-312) applied to the amount or amounts deferred for the period of deferral calculated without regard to difference in the lengths of months, but proportionally for a part of a month, counting each day as 1/30th of a month. A deferral charge may be collected at the time it is assessed or at any time thereafter.

(2) The lender may, in addition to the deferral charge, make appropriate additional charges (section 70B-3-202), and the amount of these charges which is not paid in cash may be added to the amount deferred for the purpose of calculating the deferral charge.

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

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

History: L. 1969, ch. 18, § 3.204.

Comment of Commissioners on Uniform State Laws.

See Comment to Section 2.204.

70B-3-205. Loan finance charge on refinancing. With respect to a consumer loan, refinancing, or consolidation, the lender may by agreement with the debtor refinance the unpaid balance and may contract for and receive a loan finance charge based on the principal resulting from the refinancing at a rate not exceeding that permitted by the provisions on loan finance charge for consumer loans (section 70B-3-201) or the provisions on loan finance charge for supervised loans (section 70B-3-508), whichever is appropriate. For the purpose of determining the loan finance charge permitted, the principal resulting from the refinancing comprises the following:

(1) if the transaction was not precomputed, the total of the unpaid balance and the accrued charges on the date of the refinancing, or, if the transaction was precomputed, the amount which the debtor would have been required to pay upon prepayment pursuant to the provisions on rebate upon prepayment (section 70B-3-210) on the date of refinancing, except that for the purpose of computing this amount no minimum charge (section 70B-3-210) shall be allowed; and

(2) appropriate additional charges (section 70B-3-202), payment of which is deferred.

History: L. 1969, ch. 18, § 3.205.

Comment of Commissioners on Uniform State Laws.

See Comment to Section 2.205.

70B-3-206. Loan finance charge on consolidation.

(1) If a debtor owes an unpaid balance to a lender with respect to a consumer loan, refinancing, or consolidation, and becomes obligated on another consumer loan, refinancing, or consolidation with the same lender, the parties may agree to a consolidation resulting in a single schedule of payments. If the previous consumer loan, refinancing, or consolidation was not precomputed, the parties may agree to add the unpaid amount of principal and accrued charges on the date of consolidation to the principal with respect to the subsequent loan. If the previous consumer loan, refinancing, or consolidation was precomputed, the parties may agree to refinance the unpaid balance pursuant to the provisions on refinancing (section 70B-3-205) and to consolidate the principal resulting from the refinancing by adding it to the principal with respect to the subsequent loan. In either case the lender may contract for and receive a loan finance charge based on the aggregate principal resulting from the consolidation at a rate not in excess of that permitted by the provisions on loan finance charge for consumer loans (section 70B-3-201) or the provisions on loan finance charge for supervised loans (section 70B-3-508), whichever is appropriate.

(2) The parties may agree to consolidate the unpaid balance of a consumer loan with the unpaid balance of a consumer credit sale. The

parties may agree to refinance the previous unpaid balance pursuant to the provisions on refinancing sales (section 70B-2-205) or the provisions on refinancing loans (section 70B-3-205), whichever is appropriate, and to consolidate the amount financed resulting from the refinancing or the principal resulting from the refinancing by adding it to the amount financed or principal with respect to the subsequent sale or loan. The aggregate amount resulting from the consolidation shall be deemed principal, and the creditor may contract for and receive a loan finance charge based on the principal at a rate not in excess of that permitted by the provisions on loan finance charge for consumer loans (section 70B-3-201) or the provisions on loan finance charge for supervised loans (section 70B-3-508), whichever is appropriate.

History: L. 1969, ch. 18, § 3.206.

Comment of Commissioners on Uniform State Laws.

When a creditor consolidates amounts owing with respect to more than one consumer loan, subsection (1) prescribes the method of finding the aggregate principal amount on which the loan finance charge is based and sets the ceiling for the charge. Subsection (2) applies to the case in which a creditor consolidates debts arising from both loans and sales and provides in effect that the provisions of Article 3 apply to the consolidated debt.

70B-3-207. Conversion to revolving loan account. The parties may agree to add to a revolving loan account the unpaid balance of a consumer loan, not made pursuant to a revolving loan account, or a refinancing, or consolidation thereof, or the unpaid balance of a consumer credit sale, refinancing or consolidation. For the purpose of this section

(1) the unpaid balance of a consumer loan, refinancing, or consolidation is an amount equal to the principal determined according to the provisions on refinancing (section 70B-3-205); and

(2) the unpaid balance of a consumer credit sale, refinancing, or consolidation is an amount equal to the amount financed determined according to the provisions on refinancing (section 70B-2-205).

History: L. 1969, ch. 18, § 3.207.

Comment of Commissioners on Uniform State Laws.

The parties may agree to convert a consumer loan or consumer credit sale into a revolving loan account. This section provides that the loan or sale is treated as refinanced at the time of the conversion and the unpaid balance resulting from the refinancing is added to the revolving loan account.

70B-3-208. Advances to perform covenants of debtor.

(1) If the agreement with respect to a consumer loan, refinancing, or consolidation contains covenants by the debtor to perform certain duties pertaining to insuring or preserving collateral and if the lender pursuant to the agreement pays for performance of the duties on behalf of the debtor, the lender may add the amounts paid to the debt. Within a reasonable time after advancing any sums, he shall state to the debtor in writing the amount of the sums advanced, any charges with respect to this amount, and any

revised payment schedule and, if the duties of the debtor performed by the lender pertain to insurance, a brief description of the insurance paid for by the lender including the type and amount of coverages. No further information need be given.

(2) A loan finance charge may be made for sums advanced pursuant to subsection (1) at a rate not exceeding the rate stated to the debtor pursuant to the provisions on disclosure (sections 70B-3-301 to 70B-3-312) with respect to the loan, refinancing, or consolidation, except that with respect to a revolving loan account the amount of the advance may be added to the unpaid balance of the debt and the lender may make a loan finance charge not exceeding that permitted by the provisions on loan finance charge for consumer loans (section 70B-3-201) or for supervised loans (section 70B-3-508), whichever is appropriate.

History: L. 1969, ch. 18, § 3.208.

Comment of Commissioners on Uniform State Laws.

See Comment to Section 2.208.

70B-3-209. Right to prepay. Subject to the provisions on rebate upon prepayment (section 70B-3-210), the debtor may prepay in full the unpaid balance of a consumer loan, refinancing, or consolidation at any time without penalty.

History: L. 1969, ch. 18, § 3.209.

Comment of Commissioners on Uniform State Laws.

This section does not apply to a loan primarily secured by an interest in land in which the loan finance charge does not exceed 10% since it is not a consumer loan. Section 3.105. Nor does this section give to a debtor a right to make a partial prepayment; this can only be done with the consent of the creditor and the rebate provisions of Section 3.210 do not apply. Application of the "Rule of 78" under Section 3.210 is not the exaction of a penalty by a creditor within the meaning of Section 3.209.

70B-3-210. Rebate upon prepayment.

(1) Except as provided in subsection (2), upon prepayment in full of the unpaid balance of a precomputed consumer loan, refinancing, or consolidation, an amount not less than the unearned portion of the loan finance charge calculated according to this section shall be rebated to the debtor. If the rebate otherwise required is less than $1.00, no rebate need be made.

(2) Upon prepayment in full of a consumer loan, other than one pursuant to a revolving loan account, a refinancing or consolidation, whether or not precomputed, the lender may collect or retain a minimum charge within the limits stated in this subsection if the loan finance charge earned at the time of prepayment is less than any minimum charge contracted for. The minimum charge may not exceed the amount of loan finance charge contracted for, or $5.00 in a transaction which had a principal of $75 or less, or $7.50 in a transaction which had a principal of more than $75.

(3) (a) Except as otherwise provided in this subsection with respect to a loan primarily secured by an interest in land, the unearned portion of the loan finance charge is a fraction of the loan finance charge of which the numerator is the sum of the periodic balances scheduled to follow the computational period in which prepayment occurs, and the denominator is the sum of all periodic balances under either the loan agreement or, if the balance owing resulted from a refinancing (section 70B-3-205) or a consolidation (section 70B-3-206), under the refinancing agreement or consolidation agreement. In the case of a loan primarily secured by an interest in land, reasonable sums actually paid or payable to persons not related to the lender for customary closing costs included in the loan finance charge are deducted from the loan finance charge before the calculation prescribed by this subsection is made.

(b) With respect to a precomputed transaction entered into on or after July 1, 1977, and payable according to its original terms in more than 61 installments, the unearned portion of the loan finance charge is, at the option of the lender, either:

(i) The portion which is applicable to all fully-unexpired computational periods as originally scheduled, or if deferred, as deferred, which follow the date of prepayment. For this purpose the applicable charge is the total of that which would have been made for each such period, had the consumer loan not been precomputed, by applying to unpaid balances of principal, according to the actuarial method, the annual percentage rate of charge previously stated to the debtor pursuant to the provisions on disclosure (part 3 of this chapter) based upon the assumption that all payments were made as originally scheduled, or if deferred, as deferred. The lender, at his option, may round the annual percentage rate to the nearest quarter of one per cent if that procedure is not consistently used to obtain a greater yield than would otherwise be permitted; or

(ii) The total loan finance charge minus the earned loan finance charge. The earned loan finance charge shall be determined by applying the annual percentage rate previously stated to the debtor pursuant to the provisions on disclosure (part 3 of this chapter) according to the actuarial method to the actual unpaid balances for the actual time the balances were unpaid up to the date of prepayment. If a delinquency or deferral charge was collected, it shall be treated as a payment.

(4) In this section

(a) "periodic balance" means the amount scheduled to be outstanding on the last day of a computational period before

deducting the payment, if any, scheduled to be made on that day;

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

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

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

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

(a) If the computational period is one month and

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

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

(b) Notwithstanding paragraph (a), if the computational period is one month, the number of days in the interval to the due date of the first installment exceeds one month by not more than fifteen days, and the schedule of payments is otherwise regular, the lender at his option may exclude the extra days and the charge for the extra days in computing the unearned loan finance charge: but if he does so and a rebate is required before the due date of the first scheduled installment, he

shall compute the earned charge for each elapsed day as 1/30th of the amount the earned charge would have been if the first interval had been one month.

(c) If the computational period is one week and

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

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

(6) If a deferral (section 70B-3-204) has been agreed to, the unearned portion of the loan finance charge shall be computed without regard to the deferral. The amount of deferral charge earned at the date of prepayment shall also be calculated. If the deferral charge earned is less than the deferral charge paid, the difference shall be added to the unearned portion of the loan finance charge. If any part of a deferral charge has been earned but has not been paid, that part shall be subtracted from the unearned portion of the loan finance charge or shall be added to the unpaid balance.

(7) This section does not preclude the collection or retention by the lender of delinquency charges (section 70B-3-203).

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

(9) Upon prepayment in full of a consumer loan by the proceeds of consumer credit insurance (section 70B-4-103), the debtor or his estate is entitled to the same rebate as though the debtor had prepaid the agreement on the date the proceeds of the insurance are paid to the lender, but no later than 10 business days after satisfactory proof of loss is furnished to the lender.

History: L. 1969, ch. 18, § 3.210; 1977, ch. 274, § 2.

Compiler's Notes.

The 1977 amendment redesignated the prior text of subsec. (3) as subd. (3) (a) and added subd. (3) (b).

Comment of Commissioners on Uniform State Laws.

[Subsection (3).] Subsection (3), together with paragraph (a) of subsection (4), states the "Rule of 78" with respect to a loan, refinancing, or consolidation payable in equal installments at equal intervals from the date of the loan, refinancing, or consolidation to the final scheduled payment date. In the case of such a loan, refinancing, or consolidation, "computational period" may be read as "scheduled payment period", and the provisions relating to irregular payment schedules, viz., paragraphs (b), (c) and (d) of subsection (4) and subsection (5), in its entirety, may be disregarded.

[Subsection (9).] See Comment to Section 2.210.

PART 3

DISCLOSURE AND ADVERTISING

Section

70B-3-301. Applicability — Information required.

(1) For purposes of this part (sections 70B-3-301 to 70B-3-312), consumer loan includes a loan secured primarily by an interest in land without regard to the rate of the loan finance charge if the loan is otherwise a consumer loan (section 70B-3-104).

(2) The lender shall disclose to the debtor to whom credit is extended with respect to a consumer loan the information required by either
   (a) this part, or
   (b) except with respect to a loan secured primarily by an interest in land, the Federal Consumer Credit Protection Act.

(3) For the purposes of paragraph (b) of subsection (2), information which would otherwise be required pursuant to the Federal Consumer Credit Protection Act is sufficient even though the transaction is one of a class of credit transactions exempted from that act pursuant to regulation of the Board of Governors of the Federal Reserve System.

History: L. 1969, ch. 18, § 3.301.

Compiler's Notes.

In the adoption of Section 3.301 of the Uniform Consumer Credit Code, the Utah enactment substituted a reference to "section 3.104" for a reference to "section 3.105" and omitted "consumer" before "loan secured" in subsection (2) (b). See 1969 Special Session amendment of 70B-3-105.

Comment of Commissioners on Uniform State Laws.

Reference must be made to the Administrator's rules for detailed disclosure requirements. See Comments to Sections 1.102 and 2.301.

Cross-References.
Civil liability for violation, 70B-5-203.

Law Reviews.
Regulation Z and the UCCC: The Bewildering Maze of Credit Disclosure Provisions, 1979 B. Y. U. L. Rev. 394.

70B-3-302. General disclosure requirements and provisions.

(1) The disclosures required by this part
  (a) shall be made clearly and conspicuously;
  (b) shall be in writing, a copy of which shall be delivered to the debtor;
  (c) may use terminology different from that employed in this part if it conveys substantially the same meaning;
  (d) except as the rules adopted by the administrator otherwise prescribe, need not be contained in a single writing or made in the order set forth in this part;
  (e) may be supplemented by additional information or explanations supplied by the lender;
  (f) need be made only to the extent applicable and only as to those items for which the lender makes a separate charge to the debtor;
  (g) shall be made on the assumption that all scheduled payments will be made when due; and
  (h) comply with this part although rendered inaccurate by any act, occurrence, or agreement subsequent to the required disclosure.

(2) Except with respect to loans made by telephone or mail (section 70B-3-305), loans made pursuant to a binding commitment (subsection (3) of section 70B-3-306), and loans made pursuant to a lender credit card (section 70B-3-310),
  (a) the disclosures required by this part shall be made before credit is extended, but may be made in the loans, refinancing, or consolidation agreement, or other evidence of indebtedness to be signed by the debtor if set forth conspicuously therein, and need be made only to one debtor if there are more than one, and
  (b) if an evidence of indebtedness is signed by the debtor, the lender shall give him a copy when the writing is signed.

(3) Except as provided with respect to rescission by a debtor (section 70B-5-204) and civil liability for violations of disclosure provisions (subsection (4) of section 70B-5-203), written acknowledgment of receipt by a debtor to whom a statement is required to be given pursuant to this part
  (a) in an action or proceeding by or against the original lender, creates a presumption that the statement was given, and
  (b) in an action or proceeding by or against an assignee without knowledge to the contrary when he acquires the obligation,

is conclusive proof of the delivery of the statement and, unless the violation is apparent on the face of the statement, of compliance with this part.

History: L. 1969, ch. 18, § 3.302.

Comment of Commissioners on Uniform State Laws.
See Comment to Section 2.302.

70B-3-303. Overstatement. The disclosure of an amount or percentage which is greater than the amount or percentage required to be disclosed under this part does not in itself constitute a violation of this part if the overstatement is not materially misleading and is not used to avoid meaningful disclosure.

History: L. 1969, ch. 18, § 3.303.

Comment of Commissioners on Uniform State Laws.
See Comment to Section 2.303.

70B-3-304. Calculation of rate to be disclosed.

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

(2) "Annual percentage rate"

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

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

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

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

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

(4) If a lender is permitted to make the same loan finance charge for all principal amounts within a specified range (subsection (5) of section 70B-3-201) or for all balances within a specified range (subsection (4) of section 70B-3-201 and subsection (5) of section 70B-3-508), he shall state the annual percentage rate or corresponding nominal annual percentage rate, whichever is appropriate, as applied to the median amount of the range within which the actual principal amount or balance is included.

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

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

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

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

History: L. 1969, ch. 18, § 3.304.

Comment of Commissioners on Uniform State Laws.

See Comment to Section 2.304.

70B-3-305. Loans made by telephone or mail. With respect to a consumer loan, other than a loan made pursuant to a revolving loan account, if the lender receives a request for an extension of credit by mail or telephone without personal solicitation, the lender complies with this part if the lender's printed material distributed to the public or the loan agreement or other printed material delivered to the debtor sets forth the terms of financing, including the annual percentage rate for representative amounts of credit, and if he gives the information required by this part on or before the date the first payment is due on the loan.

History: L. 1969, ch. 18, § 3.305.

Comment of Commissioners on Uniform State Laws.

This section is derived from CCPA Section 129 (c).

If a lender receives requests for loans by mail or telephone without personal solicitation, this section allows him to delay disclosure until the date of the first payment if he has published or given to the debtor sufficient information to indicate the terms on which he is offering to extend credit. Alternatively, he may comply with the general disclosure provisions and requirements of Section 3.302.

70B-3-306. Consumer loans not pursuant to revolving loan account.

(1) This section applies to a consumer loan not made pursuant to a revolving loan account (section 70B-3-309).

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

(a) Net amount paid to, receivable by, or paid or payable for the account of the debtor or in the case of a loan resulting from a refinancing, the amount prescribed by the provisions on loan finance charge on refinancing (subsection (1) of section 70B-3-205); if any amount is paid or payable to a third person, a brief itemization, which may be contained in a separate writing or writings, shall also be given;

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

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

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

(e) Amount of other additional charges (section 70B-3-202), and a brief description or identification of them;

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

(g) Except in the case of a loan secured by a first lien on a dwelling, made to finance the purchase of that dwelling, the amount of the loan finance charge and the amount of the unpaid balance (principal plus loan finance charge);

(h) Rate of the loan finance charge as applied to the principal in accordance with the provisions on calculation of rate (section 70B-3-304), except in the case of a loan finance charge which does not exceed $5 when the principal does not exceed $75 or $7.50 when the principal exceeds $75;

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

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

(k) Description of any security interest held or to be retained or acquired by the lender in connection with the extension

of credit, and a clear identification of the property to which the security interest relates.

(3) If a lender makes a binding commitment to make a consumer loan by allowing the debtor to draw on the lender and at the time the commitment is made the amount of the loan has not been determined, the lender shall then give to the debtor a statement of the terms under which the loan will be made, including the rate of the loan finance charge calculated in accordance with the provisions on calculation of rate (section 70B-3-304). If the rate of the loan finance charge varies according to the amount of the loan, the lender shall state the minimum and maximum annual percentage rates which would be applicable to the amounts which could be drawn pursuant to the commitment. If additional charges (section 70B-3-202) may be made, the lender shall also state the conditions under which the charges may be made, the amount or method of computing the charges, and a brief description or identification of the charges. Within a reasonable time after the loan is made, and in any event on or before the due date of the first installment, the lender shall give the information required by this section.

(4) If a lender requires as a condition to making a loan primarily secured by an interest in land or a loan secured by real estate containing only a single-family owner-occupied dwelling that the borrower establish and make monthly payments to a reserve account for the purpose of receiving and disbursing payments by a borrower to be applied to payment of taxes, insurance premiums or other charges relating to the real property securing the loan, in addition to the information required by subsection (2) of this section, the lender shall give the borrower the following information:

(a) The fact that the creation and maintenance of the reserve account is required as a condition to making the loan;

(b) Whether interest will be paid on funds deposited in the account;

(c) If interest is to be paid, the rate thereof and the balance on which it is to be calculated;

(d) The amount of each monthly payment to the reserve account for the first year.

(5) Sections 70B-5-203, 70B-5-204, and 70B-5-301 are applicable to the disclosures required by subsection (4) of this section.

History: C. 1953, 70B-3-306, enacted by L. 1979, ch. 124, § 12.

Compiler's Notes.

Laws 1979, ch. 124, § 12 repealed old section 70B-3-306 (L. 1969, ch. 18, § 3.306; 1975, ch. 210, § 12), relating to consumer loans not pursuant to revolving loan account, and enacted new section 70B-3-306.

Comment of Commissioners on Uniform State Laws.

1. This section, derived in part from CCPA Section 129, enumerates the information to be disclosed by a lender in a closed end loan transaction. Since lenders generally treat a refinancing as the making of a new loan for disclosure purposes, Part 3 contains no separate section on refinancing like that

found in Article 2 (Section 2.307). In the case of a refinancing, subsection (2) (a) requires the lender to disclose the refinanced balance as the net amount of the loan.

2. Subsection (2) (g) provides that in the case of a purchase money loan on a dwelling the amount of the loan finance charge need not be stated unless the rate of the charge exceeds 10% per year. In long term, high balance transactions like the usual home mortgage loan, the cost of credit to the debtor is accurately reflected by the disclosure of a rate of loan finance charge, and the great bulk of home mortgages will fall within the 10% exemption. The high rate consumer loan, even though secured by real estate, is likely to be on a smaller balance and for a shorter term than the usual home mortgage, and the debtor is presumably comparing the cost of credit with rates offered by small loan companies and the dollar amount of the loan finance charge is an important factor in making a comparison. CCPA Section 129 (a) (4) makes a similar exception, but without the 10% limitation.

3. Subsection (3) applies to a practice engaged in by some lenders of giving the debtor authority to draw on the lender in favor of a seller for the amount of a purchase. Since the lender does not know the amount of the price and other details of the sale at the time the commitment is made, he can only disclose the terms on which the loan will be made. After the purchase has been made by the debtor and the draft has been drawn, the lender can give the debtor the information required by subsection (2).

Effective Date.

Section 13 of Laws 1979, ch. 124 provided: "This act shall take effect on July 1, 1979."

Cross-References.

Interest on mortgage loan reserve accounts, 7-17-1 et seq.

70B-3-307. Consolidation. If the parties to a consumer loan or consumer credit sale agree to a consolidation (section 70B-3-206), the creditor shall give to the debtor the information required with respect to consumer loans not pursuant to a revolving loan account (section 70B-3-306). To comply with those provisions (paragraph (a) of subsection (2) of section 70B-3-306), the amount with respect to the previous loan or sale to be consolidated shall be separately stated and shall be added to the net amount paid to, receivable by, or paid or payable for the account of the debtor in connection with the subsequent loan or sale.

History: L. 1969, ch. 18, § 3.307.

Comment of Commissioners on Uniform State Laws.

If the lender consolidates two or more consumer loans or consolidates a consumer loan with a consumer credit sale pursuant to Section 3.206, he complies with this section by separately stating the refinanced balance of the previous transaction and by adding it to the net amount of the subsequent transaction. The total of these sums is not to be disclosed as the "net amount paid to . . ." under subsection (2) (a). The remainder of the disclosure required by Section 3.306 is then given on the basis of this consolidated balance.

70B-3-308. Deferral. If the lender makes a deferral pursuant to the provisions on deferral charges (section 70B-3-204), he shall state to the debtor, at the time of or promptly after the deferral:

(1) amount deferred;
(2) any appropriate additional charges (section 70B-3-202);
(3) aggregate amount deferred, which is the sum of the amount in (1) and any unpaid amount included in (2);
(4) time to which payment is deferred; and
(5) amount and annual percentage rate of the deferral charge and when it is payable.

History: L. 1969, ch. 18, § 3.308.

Comment of Commissioners on Uniform State Laws.

See Comment to Section 2.309.

70B-3-309. Revolving loan accounts.

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

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

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

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

(d) corresponding nominal annual percentage rate (subsection (3) of section 70B-3-304); if more than one corresponding nominal annual percentage rate may be used, the amount of a balance to which each corresponding nominal annual percentage rate applies shall also be stated;

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

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

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

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

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

(h) a statement, in the form prescribed by regulations of the administrator, of the protection provided by sections 70B-10-101 and 70B-10-110 to a debtor and the creditor's responsibilities under sections 70B-10-102 and 70B-10-110. With respect to each of two billing cycles per year, at semiannual intervals, the creditor shall transmit the statement to each debtor (to) whom the creditor is required to transmit a statement under subsection (2) of this section.

(2) If there is an outstanding balance owing at the end of the billing cycle or if a loan finance charge is made with respect to the billing cycle, the lender shall give to the debtor the following information within a reasonable time after the end of the billing cycle:
   (a) outstanding balance at the beginning of the billing cycle;
   (b) brief description or identification of loans made during the billing cycle in a statement or in accompanying canceled checks, memoranda or the like;
   (c) amount credited to the account during the billing cycle;
   (d) amount of loan finance charge and additional charges debited during the billing cycle, with an itemization or explanation to show the total amount of loan finance charge, if any, due to the application of one or more periodic percentages and the amount, if any, imposed as a minimum charge;
   (e) the periodic percentage used to calculate the loan finance charge; if more than one periodic percentage is used, each percentage and the amount of the balance to which each applies;
   (f) the balance on which the loan finance charge is computed and a statement of how the balance is determined;
   (g) if the loan finance charge for the billing cycle exceeds $.50 for a monthly or longer billing cycle, or the prorata part of $.50 for a billing cycle shorter than monthly, the loan finance charge expressed as an annual percentage rate (paragraph (b) of subsection (2) of section 70B-3-304); if more than one periodic percentage is used to calculate the loan finance charge, the lender, in lieu of stating a single annual percentage rate, may state more than one annual percentage rate and the amount of the balance to which each annual percentage rate applies;
   (h) if the loan finance charge for the billing cycle does not exceed $.50 for a monthly or longer billing cycle, or the prorata part of $.50 for a billing cycle shorter than monthly, the corresponding nominal annual percentage rate (subsection (3) of section 70B-3-304);
   (i) if the lender elects, the average effective annual percentage rate of return or the projected rate as prescribed in paragraph (e) of subsection (1);
   (j) outstanding balance at the end of the billing cycle;
   (k) date by which or period within which payment must be made to avoid additional loan finance charges; and
   (l) the address to be used by the creditor for the purpose of receiving billing inquiries from the debtor.

(3) in the case of any existing revolving loan account having an outstanding balance of more than $1 at or after the close of the creditor's first full billing cycle under the plan after the effective date

of subsection (1) or any amendments to it, the items described in subsection (1), to the extent applicable and not previously disclosed, shall be disclosed in a notice mailed or delivered to the debtor not later than the time of mailing the next statement required by subsection (2).

History: L. 1969, ch. 18, § 3.309; 1975, ch. 209, § 4.

Compiler's Notes.

The 1975 amendment added subd. (1) (h); deleted "if the balance is determined without first deducting all amounts credited during the period, that fact and the amounts credited shall also be stated" from the end of subd. (2) (f); added subd. (2) (l); added subsec. (3); and made minor changes in phraseology and punctuation.

Comment of Commissioners on Uniform State Laws.

See Comment to Section 2.310.

70B-3-310. Loans pursuant to lender credit card or similar arrangement. Before a consumer loan, other than one made pursuant to a revolving loan account, is first made pursuant to a lender credit card or similar arrangement, the lender shall give to the debtor a statement of the annual percentage rate or rates at which loans will be made to the debtor and brief description or identification of the additional charges that may be made. The lender shall give to the debtor the information required by this part with respect to consumer loans other than revolving loan accounts (section 70B-3-306) within a reasonable time after a loan is made and in any event before the due date of the first installment.

History: L. 1969, ch. 18, § 3.310.

Comment of Commissioners on Uniform State Laws.

Though credit cards are usually used in revolving credit transactions, they may be employed in closed end transactions as well. When they are so used no point-of-transaction disclosure is required if the lender complies with this section. The lender must disclose at the time the card is issued the terms under which it may be used in closed end transactions, and after the card is used the lender must give the full disclosure required by Section 3.306 before the due date of the first installment.

70B-3-311. Content of periodic statements. A creditor who transmits periodic statements in connection with any consumer loan not made pursuant to a revolving loan account shall set forth in each statement each of the following items:

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

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

(3) to the extent the administrator may require by rule as appropriate to the terms and conditions under which the consumer loan is made, the other items set forth in the provisions on disclosure with respect to revolving loan accounts (subsection (2) of section 70B-3-309).

History: L. 1969, ch. 18, § 3.311.

Comment of Commissioners on Uniform State Laws.

See Comment to Section 2.312.

70B-3-312. Advertising.

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

(2) Without limiting the generality of subsection (1), and without requiring a statement of rate of loan finance charge if the loan finance charge is not more than $5.00 when the principal does not exceed $75 or $7.50 when the principal exceeds $75, and advertisement with respect to a consumer credit loan made by the posting of a public sign, or by catalog, magazine, newspaper, radio, television, or similar mass media, is misleading if

(a) it states the rate of the loan finance charge and the rate is not stated in the form required by the provisions on calculation of rate to be disclosed (section 70B-3-304), or

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

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

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

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

History: L. 1969, ch. 18, § 3.312.

Comment of Commissioners on Uniform State Laws.

See Comment to Section 2.313.

PART 4

LIMITATIONS ON AGREEMENTS AND PRACTICES

Section

70B-3-401. Scope. This part (sections 70B-3-401 to 70B-3-409) applies to consumer loans.

History: L. 1969, ch. 18, § 3.401.

70B-3-402. Balloon payments. With respect to a consumer loan, other than one primarily for an agricultural purpose or one pursuant to a revolving loan account, if any scheduled payment is more than twice as large as the average of earlier scheduled payments, the debtor has the right to refinance the amount of that payment at the time it is due without penalty. The terms of the refinancing shall be no less favorable to the debtor than the terms of the original loan. These provisions do not apply to the extent that the payment schedule is adjusted to the seasonal or irregular income of the debtor.

History: L. 1969, ch. 18, § 3.402.

Comment of Commissioners on Uniform State Laws.

See Comment to Section 2.405.

70B-3-403. No assignment of earnings.

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

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

History: L. 1969, ch. 18, § 3.403.

Comment of Commissioners on Uniform State Laws.

See Comment to Section 2.410. Subsection (2) makes clear that "salary buying" falls within the prohibition of subsection (1).

70B-3-404. Attorney's fees. With respect to a consumer loan the agreement may provide for the payment by the debtor of reasonable attorney's fees after default and referral to an attorney not a salaried employee of the lender.

History: L. 1969, ch. 18, § 3.404.

Compiler's Notes.

The Utah enactment of section 3.404 does not follow the language of Alternatives A or B of section 3.404 of the Uniform Consumer Credit Code.

Comment of Commissioners on Uniform State Laws.

Omitted.

Cross-References.

Attorney's fees in agreements with respect to consumer credit sale or consumer lease, 70B-2-413.

Attorney's fees in agreements with respect to regulated and supervised loans, 70B-3-514.

DECISIONS UNDER FORMER LAW

Attorney's fees not additional interest.

Where loan contract provided that borrower was to pay costs of collection in event of default, and reasonable attorney's fees resulting therefrom, such charges were not demand for additional interest. Peoples Finance & Thrift Co. v. Blomquist (1964) 16 U 2d 157, 397 P 2d 293.

70B-3-405. Limitation on default charges. Except for reasonable expenses incurred in realizing on a security interest, the agreement with respect to a consumer loan may not provide for charges as a result of default by the debtor other than those authorized by this act. A provision in violation of this section is unenforceable.

History: L. 1969, ch. 18, § 3.405.

Comment of Commissioners on Uniform State Laws.

See Comment to Section 2.414.

70B-3-406. Notice of assignment. The debtor is authorized to pay the original lender until he receives notification of assignment of rights to payment pursuant to a consumer loan and that payment is to be made to the assignee. A notification which does not reasonably identify the rights assigned is ineffective. If requested by the debtor, the assignee must seasonably furnish reasonable proof that the assignment has been made and unless he does so the debtor may pay the original lender.

History: L. 1969, ch. 18, § 3.406.

Comment of Commissioners on Uniform State Laws.

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

70B-3-407. Authorization to confess judgment prohibited. A debtor may not authorize any person to confess judgment on a claim arising out of a consumer loan. An authorization in violation of this section is void.

History: L. 1969, ch. 18, § 3.407.

Comment of Commissioners on Uniform State Laws.

See Comment to Section 2.415.

70B-3-408. Change in terms of revolving loan accounts.

(1) If a lender makes a change in the terms of a revolving loan account without complying with this section any additional costs or charge to the debtor resulting from the change is an excess charge and subject to the remedies available to debtors (section 70B-5-202) and to the administrator (section 70B-6-113).

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

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

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

(b) the debtor elects to pay an amount designated on a billing statement (subsection (2) of section 70B-3-309) as including a new charge for a benefit offered to the debtor when the benefit and charge constitute the change in terms and when

the billing statement also states the amount payable if the new charge is excluded;

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

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

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

History: L. 1969, ch. 18, § 3.408; 1975, ch. 209, § 5.

Compiler's Notes.

The 1975 amendment substituted "written disclosure" in the second sentence of subsec. (2) for "written notice"; deleted former subd. (3) (c) which read: "the change involves no significant cost to the debtor"; redesignated former subds. (3) (d) and (3) (e) as subds. (3) (c) and (3) (d); and made minor changes in phraseology and punctuation.

Comment of Commissioners on Uniform State Laws.

See Comment to Section 2.416.

70B-3-409. Use of multiple agreements. A lender may not use multiple agreements with intent to avoid disclosure of an annual percentage rate pursuant to the provisions on disclosure and advertising (sections 70B-3-301 to 70B-3-312). The excess amount of loan finance charge provided for in agreements in violation of this section is an excess charge for the purposes of the provisions on the effect of violations on rights of parties (section 70B-5-202) and the provisions on civil actions by administrator (section 70B-6-113).

History: L. 1969, ch. 18, § 3.409.

Comment of Commissioners on Uniform State Laws.

This section prohibits a lender from using multiple agreements to keep the principal low enough to fall within the provisions of Section 3.306 (2) (h) which excuse the lender from having to disclose an annual percentage rate with respect to loan finance charges of $5 when the principal does not exceed $75, or of $7.50 otherwise. This section is derived from CCPA Section 128.

PART 5

REGULATED AND SUPERVISED LOANS

Section

70B-3-501. Definitions — Regulated loan — Regulated lender — Supervised loan — Supervised lender.

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

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

(3) "Supervised loan" means a regulated loan in which the rate of the loan finance charge exceeds 18 per cent per year as determined according to the provisions on loan finance charge for consumer loans (section 70B-3-201).

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

History: L. 1969, ch. 18, § 3.501.

Comment of Commissioners on Uniform State Laws.

Most of the provisions of Article 3 apply to all consumer loans. Part 5, however, has special provisions applying either to consumer loans in which the rate of loan finance charge exceeds 10% per year (regulated loans) or to those in which the rate exceeds 18% (supervised loans). A lender who makes regulated loans is called a regulated lender; a lender who makes supervised loans is called a supervised lender; supervised loan or lender is a subcategory of regulated loan or lender. Section 3.506, with respect to examinations and investigations, and Section 3.511, with respect to schedule of payments and maximum loan terms, apply to all regulated loans. Sections 3.503 — 3.505, Sections 3.508 — 3.510, Section 3.512 and Section 3.514 apply only to supervised loans.

70B-3-502. Authority to make and collect supervised loans.

(1) Unless a person is a supervised financial organization or has first obtained a license from the administrator authorizing him to make supervised loans, he shall not engage in the business of:
   (a) making supervised loans, or
   (b) taking assignments of and undertaking direct collection of payments from or enforcement of rights against debtors arising from supervised loans, but he may collect and enforce for three months without a license if he promptly applies for a license and his application has not been denied.

(2) The administrator may issue to a collection agency a restricted supervised lender license enabling the collection agency to take assignments of or undertake direct collection of payments from or enforcement of rights against debtors arising from supervised loans but excluding the power to make supervised loans.

History: L. 1969, ch. 18, § 3.502; 1975, ch. 210, § 13.

Compiler's Notes.

The 1975 amendment designated the former section as subsec. (1); redesignated

subds. (1) and (2) as subds. (1) (a) and (1) (b); added subsec. (2); and made minor changes in phraseology, style and punctuation.

Comment of Commissioners on Uniform State Laws.

1. Supervised lenders may include supervised financial organizations. Section 1.301 (17). Since supervised financial organizations are already subject to supervision by a state or federal official or agency, such organizations are not required to obtain a license under this Act from the Administrator, but their powers may be limited by statutes other than this Act. Section 1.108. Other persons making supervised loans in this State or taking assignments of supervised loans for collection or enforcement in this State must obtain a license from the Administrator.

2. Out-of-state lenders who make loans through the mail normally will not be subject to the licensing requirement if the evidence of debt is received by the lender out of this State. Section 1.201. An out-of-state lender who opens a loan office in this State at which evidence of debt for supervised loans is received must be licensed.

3. Licenses need not be renewed annually; such a requirement would merely increase the administrative burdens of the Administrator and the licensee. This section requires a licensee to obtain only one license to operate one or more offices in the State. While the single license permits the licensee to locate offices wherever he chooses, he must annually notify the Administrator of the location of each office. Section 6.202. Income for the operation of the office of the Administrator is derived from general appropriations rather than from the licensing of supervised lenders. Annual fees are required of all persons required to file notification under Section 6.203, not just licensees. This includes all persons making consumer credit sales, consumer leases or consumer loans and certain persons taking assignments of and undertaking direct collection of payments from or enforcement of rights against debtors arising from such sales, leases or loans.

4. If an unlicensed assignee not previously engaged in this State in the business of making collections or enforcing rights under the paper assigned to him undertakes collection or enforcement of rights, subsection (2) gives him a three-month grace period during which he can operate before obtaining a license.

DECISIONS UNDER FORMER LAW

Fees under Utah Small Loan Act.

The charge required to be paid by small loan companies in order to secure license under the Utah Small Loan Act is a license or occupation tax. Commercial Bank of Utah v. State (1952) 121 U 576, 244 P 2d 364.

70B-3-503. License to make supervised loans.

(1) The administrator shall receive and act on all applications for licenses to make supervised loans under this act. Applications shall be filed in the manner prescribed by the administrator and shall contain the information the administrator requires by rule to make an evaluation of the financial responsibility, character and fitness of the applicant.

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

(3) Upon written request, the applicant is entitled to a hearing on the question of his qualifications for a license if

(a) the administrator has notified the applicant in writing that his application has been denied, or

(b) the administrator has not issued a license within sixty days after the application for the license was filed. A request for a hearing may not be made more than fifteen days after the administrator has mailed a writing to the applicant notifying him that the application has been denied and stating in substance the administrator's findings supporting denial of the application.

History: L. 1969, ch. 18, § 3.503.

Comment of Commissioners on Uniform State Laws.

1. This section is intimately related to disclosure (Part 3 of Article 2 and Part 3 of Article 3) and to maximum charges (Part 2 of Article 2 and Part 2 of Article 3). The purpose is to facilitate entry into the cash loan field so that the resultant rate competition fostered by disclosure will generally force rates below the permitted maximum charges. To this end this section adopts a test of "financial responsibility, character and fitness" rather than the test of "convenience and advantage" often used in prior small loan laws. Competition is further encouraged by the absence of any licensing requirements in credit sales (Article 2), and in consumer loans other than supervised loans.

2. A secondary purpose is to reduce the likelihood of establishing localized monopolies in the granting of cash credit. Such monopolies tend to push rates charged to the maximum permitted levels and to establish conditions under which some share of the anticipated monopoly profits are devoted to direct or indirect pressures to obtain the license.

3. This section does not apply to supervised financial organizations. Their authority to open new offices at which they may receive deposits and make loans is found not in this Act but in the statutes otherwise governing those organizations.

4. If increased competition should cause the development of undesirable credit practices, these practices are subject to controls by the Administrator's powers to revoke or suspend a license (Section 3.504), by prohibition against multiple agreements (Section 3.509), by restrictions on real property security (Section 3.510), by the provisions on remedies and penalties (Article 5) and by the other powers of the Administrator (Article 6).

70B-3-504. Revocation or suspension of license.

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

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

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

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

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

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

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

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

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

History: L. 1969, ch. 18, § 3.504.

70B-3-505. Records — Annual reports.

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

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

History: L. 1969, ch. 18, § 3.505. **Comment of Commissioners on Uniform State Laws.**

1. This section seeks to give to the licensee wide discretion in the method of keeping records. No rigid requirements are imposed with respect to the method of record keeping. Instead, records are acceptable if kept in accordance with generally accepted accounting principles, and if they enable the Administrator to determine whether the licensee is complying with the Act. Modern techniques frequently require that records be kept in one central place, which in the case of multistate lenders may be outside the State. This section allows central record keeping and allows records to be kept anywhere so long as the Administrator is given free access to them. See Section 3.506 (2).

2. Licensees are required to file composite annual reports; information need not be given as to individual loan outlets. This allows the Administrator to compile statistics to aid him in his duties and to provide the Legislature with information necessary for a proper evaluation of the effectiveness of the Act. This section provides for confidential treatment by the Administrator of information contained in annual reports. The Administrator may not publish information concerning individual lenders; all information published must be in composite form.

70B-3-506. Examinations and investigations.

(1) The administrator shall examine periodically at intervals he deems appropriate the loans, business, and records of every licensee. In addition, for the purpose of discovering violations of this act or securing information lawfully required, the administrator or the official or agency to whose supervision the organization is subject (section 70B-6-105) may at any time investigate the loans, business, and records of any regulated lender. For these purposes he shall have free and reasonable access to the offices, places of business, and records of the lender.

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

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

(4) Upon failure without lawful excuse to obey a subpoena or to give testimony and upon reasonable notice to all persons affected thereby, the administrator may apply to the district court where his offices are located for an order compelling compliance.

History: L. 1969, ch. 18, § 3.506.

Compiler's Notes.

In the adoption of section 3.506 of the Uniform Consumer Credit Code, the Utah enact-

ment inserted "district" before, and "where his offices are located" after, "court" in subsection (4).

Comment of Commissioners on Uniform State Laws.

1. This section provides for periodic examinations of supervised lenders but there is no requirement of annual examinations. The Administrator may tailor his examination policy as he sees fit. With respect to regulated lenders who are not supervised lenders, the Act does not provide for periodic examinations; however, for the purpose of discovering violations of the Act or securing necessary information, investigations may be made by the Administrator, or in the case of supervised financial organizations, by the appropriate supervisory authority. Under Section 6.106 the Administrator has general authority to investigate any person who he has reasonable cause to believe has engaged in an act which is subject to action by the Administrator. The power of the Administrator with respect to regulated lenders is somewhat broader than his general authority in that investigations can be made without probable cause and are not restricted to the purpose of discovering violations.

2. Lenders are authorized to maintain records outside the State. The lender is given the option of making the records available to the Administrator within the State or paying the expenses of the Administrator to have them examined outside the State. Where records are kept outside the State the Act authorizes the examination to be made by officials of the state in which the records are kept. In that case these officials act as agents of the Administrator.

3. For the purpose of facilitating investigations, the Administrator is given wide powers, including the subpoena power and the power to require the giving of testimony under oath. These powers are similar to those given to the Administrator by Section 6.106. The Administrator may apply to the appropriate court for an order compelling compliance with his orders.

70B-3-507. (Application of administrative procedure and judicial review part of chapter on administration.) Except as otherwise provided, the part on Administrative Procedure and Judicial Review (sections 70B-6-401 to 70B-6-415) of the chapter on Administration (sections 70B-6-101 to 70B-6-415) applies to and governs all administrative action taken by the administrator pursuant to this part.

History: L. 1969, ch. 18, § 3.507.

Compiler's Notes.

The compiler substituted the bracketed caption of this section for the following caption contained in the Utah enactment: "Application of — Administrative Procedure Act — Part on Administrative Procedure and Judicial Review to Part."

Comment of Commissioners on Uniform State Laws.

If the State has an adequate State administrative procedure act reference should be made to it in this section. Otherwise Part 4 of Article 6 should be enacted and referred to here. * * * See Comment to Section 6.401.

70B-3-508. Loan finance charge for supervised loans.

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

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

(a) the total of

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

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

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

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

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

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

(b) the effect of prepayment is governed by the provisions on rebate upon prepayment (section 70B-3-210).

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

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

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

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

(6) The amounts of $300 and $1,000 in subsection (2) are subject to change pursuant to the provisions on adjustment of dollar amounts (section 70B-1-106).

History: L. 1969, ch. 18, § 3.508.

Compiler's Notes.

Effective July 1, 1978, the figures of $300 and $1,000 specified in subd. (2) (a) were increased by Administrative Rule No. 11 issued by the Commissioner of Financial Institutions to $540 and $1,800 pursuant to the provisions on adjustment of dollar amounts in section 70B-1-106.

Comment of Commissioners on Uniform State Laws.

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

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

DECISIONS UNDER FORMER LAW

Deduction from proceeds as consideration.

Where lender's agent, pursuant to lender's instructions, took $14,500 from proceeds of $65,000 loan, kept $2,000 and deposited remainder in lender's account as consideration for making loan, and lender, in seeking to foreclose loan, claimed principal sum of $65,000 even though $14,500 could be regarded as interest only since it was never credited to borrower as part of principal, and where $2,600 interest charged deducted from borrower's first five monthly installments appeared on lender's books, lender was guilty of usury. National American Life Ins. Co. v. Bayou Country Club, Inc. (1965) 16 U 2d 417, 403 P 2d 26.

Cost of collection and attorney's fees.

Where loan contract provided that borrower was to pay costs of collection in event of default, and reasonable attorney's fees resulting therefrom, in addition to maximum interest allowed by law, such charges were not demand for additional interest and did not make loan contract usurious. Peoples Finance & Thrift Co. v. Blomquist (1964) 16 U 2d 157, 397 P 2d 293.

Interest shown on lender's books conclusive.

Where lender's books showed certain amount of interest had been paid by borrower, that amount was to be considered interest for purposes of determining usury, and lender was not free to change designation of that money to payment on principal in order to avoid application of usury laws. National American Life Ins. Co. v. Bayou Country Club, Inc. (1965) 16 U 2d 417, 403 P 2d 26.

Particeps criminis.

Borrower is not particeps criminis with lender in usurious transaction. National American Life Ins. Co. v. Bayou Country Club, Inc. (1965) 16 U 2d 417, 403 P 2d 26.

70B-3-509. Use of multiple agreements. With respect to a supervised loan, no lender may permit any person, or husband and wife, to become obligated in any way under more than one loan agreement with the lender or with a person related to the lender, with intent to obtain a higher rate of loan finance charge than would otherwise be permitted by the provisions on loan finance charge for supervised loans (section 70B-3-508) or to avoid disclosure of an annual percentage rate pursuant to the provisions on disclosure and advertising (sections 70B-3-301 to 70B-3-312). The excess amount of loan finance charge provided for in agreements in violation of this section is an excess charge for the purposes of the provisions on effect of violations on rights (section 70B-5-202) and the provisions on civil actions by administrator (section 70B-6-113).

History: L. 1969, ch. 18, § 3.509.

Comment of Commissioners on Uniform State Laws.

See Comment to Section 2.402.

70B-3-510. Restrictions on interest in land as security.

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

(2) The amount of $1,000 in subsection (1) is subject to change pursuant to the provisions on adjustment of dollar amounts (section 70B-1-106).

History: L. 1969, ch. 18, § 3.510.

Compiler's Notes.

Effective July 1, 1978, the figure of $1,000 specified in subsec. (1) was increased by Administrative Rule No. 11 issued by the Commissioner of Financial Institutions to $1,800 pursuant to the provisions on adjustment of dollar amounts in section 70B-1-106.

Comment of Commissioners on Uniform State Laws.

See Comment to Section 2.407.

70B-3-511. Regular schedule of payments — Maximum loan term.

(1) Regulated loans, not made pursuant to a revolving loan account and in which the principal is $1,000 or less, shall be scheduled to be payable in substantially equal installments at equal periodic intervals except to the extent that the schedule of payments is adjusted to the seasonal or irregular income of the debtor, and

(a) over a period of not more than 37 months if the principal is more than $300, or

(b) over a period of not more than 25 months if the principal is $300 or less. Nothing herein shall prevent full payment without penalty, and provided further, interest may be charged only to date of prepayment. Except as specifically provided for in this act.

(2) The amounts of $300 and $1,000 in subsection (1) are subject to change pursuant to the provisions on adjustment of dollar amounts (section 70B-1-106).

History: L. 1969, ch. 18, § 3.511; 1969 (1st S.S.), ch. 3, § 1.

Compiler's Notes.

The amendment by Chapter 3, Laws 1969 (First Special Session) inserted "not made" after "Regulated loans" in the first sentence in subsec. (1) to correct the inadvertent omission of the words in the enactment by Chapter 18 and inserted "Nothing herein shall prevent full payment without penalty, and provided further, interest may be charged only to the date of prepayment. Except as specifically provided for in this act" at the end of subd. (1) (b). The latter provisions do not appear in section 3.511 of the Uniform Consumer Credit Code.

Effective July 1, 1978, the figures of $300 and $1,000 specified in subsec. (1) were increased by Administrative Rule No. 11 issued by the Commissioner of Financial Institutions to $540 and $1,800 pursuant to the provisions on adjustment of dollar amounts in section 70B-1-106.

Effective Date.

Section 2 of chapter 3, Laws 1969 (1st S. S.) provided:

"Section 2. This act shall take effect at 12:01 a.m. on July 1, 1969."

70B-3-512. Conduct of business other than making loans. A licensee may carry on other business at a location where he makes supervised loans unless he carries on other business for the purpose of evasion or violation of this act.

History: L. 1969, ch. 18, § 3.512.

Comment of Commissioners on Uniform State Laws.

A seller who makes loans must comply with Article 3 with respect to his loan operations.

70B-3-513. Application of other provisions. Except as otherwise provided, all provisions of this act applying to consumer loans apply to regulated loans.

History: L. 1969, ch. 18, § 3.513.

70B-3-514. Limitation on attorney's fees. The agreement may provide for the payment by the debtor of a reasonable attorney's fee after default and referral to an attorney not a salaried employee of the lender.

History: L. 1969, ch. 18, § 3.514.

Compiler's Notes.

The Utah enactment does not follow the language of section 3.514 of the Uniform Consumer Credit Code.

Comment of Commissioners on Uniform State Laws.

If Alternative A of Section 3.404 is selected, Section 3.514 should be omitted.

* * *

Cross-References.

Attorney's fees in agreements with respect to consumer credit sale or consumer lease, 70B-2-413.

Attorney's fees in agreements with respect to consumer loan, 70B-3-404.

PART 6

LOANS OTHER THAN CONSUMER LOANS

Section

70B-3-601. Loans subject to act by agreement of parties. The parties to a loan other than a consumer loan may agree in writing signed by the parties that the loan is subject to the provisions of this act applying to consumer loans. If the parties so agree, the loan is a consumer loan for the purposes of this act.

History: L. 1969, ch. 18, § 3.601.

Comment of Commissioners on Uniform State Laws.

See Comment to Section 2.601.

70B-3-602. Definition — Consumer related loan — Rate of loan finance charge.

(1) A "consumer related loan" is a loan which is not subject to the provisions of this act applying to consumer loans and in which the principal does not exceed $25,000; if the debtor is a person other than an organization.

(2) With respect to a consumer related loan, including one made pursuant to a revolving loan account, the parties may contract for the payment by the debtor of a loan finance charge not in excess of that permitted by the provisions on loan finance charge for consumer loans other than supervised loans (section 70B-3-201).

(3) The amount of $25,000 in subsection (1) is subject to change pursuant to the provisions on adjustment of dollar amounts (section 70B-1-106).

History: L. 1969, ch. 18, § 3.602; 1975, ch. 210, § 14.

Compiler's Notes.

Former subd. (1) (c) was added in the Utah 1969 enactment and does not appear in section 3.602 of the Uniform Consumer Credit Code.

The 1975 amendment deleted "(b) the debt is secured primarily by a security interest in a one or two family dwelling occupied by a person related to the debtor, or (c) the debtor is an organization" at the end of subsec. (1); and made minor changes in phraseology, style and punctuation.

Effective July 1, 1978, the figure of $25,000 specified in subsec. (1) was increased by Administrative Rule No. 11 issued by the Commissioner of Financial Institutions to $45,000 pursuant to the provisions on adjustment of dollar amounts in section 70B-1-106.

Comment of Commissioners on Uniform State Laws.

1. Many relatively small credit transactions with individuals do not fall within the general provisions of the Act because the purpose of the transaction is not personal, family, household, or agricultural. However, a debtor in a small transaction for a business purpose may need some protection in credit transactions. Therefore, Part 6 of this Article extends a measure of protection over a special category of relatively small loans defined as consumer related loans. The principal transactions covered are (1) a loan by a lender not regularly engaged in making similar loans, (2) a loan to an individual for a business purpose, and (3) a loan to an organization secured primarily by a security interest in a one or two family dwelling occupied by an individual related to the organization. A transaction is not a consumer related loan if the principal exceeds $25,000 or, except in the case of a loan secured by such a dwelling, if the debtor is an organization.

2. Section 3.602 provides that consumer related loans are subject to a rate ceiling of 18% computed according to the provisions on loan finance charge for consumer loans generally (Section 3.201). Sections 3.603 and 3.604 specify the other provisions of the Act which apply to consumer related loans. Among these are provisions governing the amounts of additional charges and delinquency charges, provisions on refinancing and consolidation, and provisions on advances to perform covenants of the debtor. Section 3.604 contains special provisions on default and deferral charges. Disclosure provisions do not apply to consumer related loans.

70B-3-603. Applicability of other provisions to consumer related loans. Except for the rate of the loan finance charge and the rights to prepay and to rebate upon prepayment, the provisions of sections 70B-3-201 to 70B-3-210 apply to a consumer related loan.

History: L. 1969, ch. 18, § 3.603.

70B-3-604. Limitation on default charges in consumer related loans.

(1) The agreement with respect to a consumer related loan may provide for only the following charges as a result of the debtor's default:

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

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

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

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

History: L. 1969, ch. 18, § 3.604.

70B-3-605. Loan finance charge for other loans. With respect to a loan other than a consumer loan or a consumer related loan, the parties may contract for the payment by the debtor of any loan finance charge.

History: L. 1969, ch. 18, § 3.605.

Comment of Commissioners on Uniform State Laws.

This section applies to loans which are neither consumer loans nor consumer related loans. In this residual category of loans fall those made to organizations other than in some land transactions and those made to individuals which are over $25,000 in amount. In the belief that there is little place for usury limitations in sophisticated business transactions, this section follows those states which exempt loans to corporations from their usury laws and extends the exemption to other organizations as well. Placing arbitrary ceilings on the amount of interest which can be charged in larger business transactions may prevent persons engaged in high risk business ventures from obtaining needed capital loans. It is impossible to measure how much is too much interest with respect to large business transactions. If the limit is set so high as to provide adequately for speculative business ventures the limit becomes virtually meaningless for most transactions. If it is set at a level close to the top of the range for most business transactions it will preclude loans for extraordinary ventures. Hence, in this residual category the parties may contract for any loan finance charge they desire.

See Section 5.107 on extortionate extensions of credit.

CHAPTER 4

INSURANCE

Part
1. Insurance in general.
2. Consumer credit insurance.
3. Property and liability insurance.

PART 1

INSURANCE IN GENERAL

Section
70B-4-101. Short title.
70B-4-102. Scope — Relation to Credit Insurance Act — Applicability to parties.
70B-4-103. Definition — Consumer credit insurance — Credit Insurance Act.
70B-4-104. Creditor's provision of and charge for insurance — Excess amount of charge.
70B-4-105. Conditions applying to insurance to be provided by creditor.
70B-4-106. Unconscionability.
70B-4-107. Maximum charge by creditor for insurance.
70B-4-108. Refund or credit required — Amount.
70B-4-109. Existing insurance — Choice of insurer.
70B-4-110. Charge for insurance in connection with a deferral, refinancing, or consolidation — Duplicate charges.
70B-4-111. Co-operation between administrator and commissioner of insurance.
70B-4-112. Administrative action of commissioner of insurance.

70B-4-101. Short title. This chapter (sections 70B-4-101 to 70B-4-304) shall be known and may be cited as Utah Uniform Consumer Credit Code — Insurance.

History: L. 1969, ch. 18, § 4.101.

Collateral References.

New Topic Service, AmJur 2d, Consumer Credit Protection.

70B-4-102. Scope — Relation to Credit Insurance Act — Applicability to parties.

(1) Except as provided in subsection (2), this chapter applies to insurance provided or to be provided in relation to a consumer credit sale (section 70B-2-104), a consumer lease (section 70B-2-106), or a consumer loan (section 70B-3-104).

(2) The provision on cancellation by a creditor (section 70B-4-304) applies to loans the primary purpose of which is the financing of insurance. No other provision of this chapter applies to insurance so financed.

(3) This chapter supplements and does not repeal the Credit Insurance Act (title 31, chapter 34, Utah Code Annotated 1953). The provisions of this act concerning administrative controls, liabilities, and penalties do not apply to persons acting as insurers, and the similar provisions of the Credit Insurance Act do not apply to creditors and debtors.

History: L. 1969, ch. 18, § 4.102.

Compiler's Notes.

The inclusion of subsection (3) is indicated as optional in this section of the Uniform Consumer Credit Code. See paragraph 2 of the Comment of the Commissioners on Uniform State Laws, below.

Comment of Commissioners on Uniform State Laws.

1. A number of provisions of this Article are derived from the NAIC Model Act, prepared by the National Association of Insurance Commissioners, "to provide for the regulation of credit life insurance and credit accident and health insurance." In jurisdictions where the NAIC Model Act has been adopted there are many local variations in the text; and in some states where it has not been adopted parallel provisions appear in insurance department regulations issued under enabling legislation. In view of these diversities this Act does not refer to the NAIC Model Act as such, but reference is made to any local version of it by the expression "Credit Insurance Act." Section 4.103 (2). The scope of this Article is broader than that of the NAIC Model Act.

2. If the enacting State has not already enacted the NAIC Model Act for the regulation of credit life insurance and credit accident and health insurance, or similar legislation, material in brackets [i.e., "Relation to Credit Insurance Act — Applicability to Parties" in the caption and provisions of subsection (3)] should be omitted.

3. By subsection (2) a single provision of this Article is made applicable to lenders engaged in insurance premium financing. (The borrower should be forewarned of cancellation of his insurance by the lender: Section 4.304.) Nothing else in this Article affects the practices of a lender in that business.

The National Conference is aware that premium financing is regulated under special statutes in a number of states. It has considered the alternative courses of (1) exempting premium loans from this Act, and (2) proposing distinctive rules for premium loans as opposed to consumer loans generally. The National Conference has concluded, after deliberation, that the provisions of this Act may appropriately be applied to insurance premium loans.

4. Premium financing is regulated under special statutes in a number of states. In the preparation of this Act, consideration was given to alternative courses: (1) exempting insurance premium loans from the Act, and (2) proposing distinctive rules for insurance premium loans as opposed to consumer loans generally. It was concluded, after deliberation, that the provisions of this Act may appropriately be applied to insurance premium loans.

5. That insurance provided by an insurer is accompanied by an extension of credit does not alone make any of the provisions of this Article applicable. The definition of "services" in Section 2.105 (3) is limited to insurance provided by a person other than the insurer. There being no sale, lease, or loan related to the transaction, neither this Article nor any other provision of this Act applies. See Section 1.202 on exclusions.

70B-4-103. Definition — Consumer credit insurance — Credit Insurance Act. In this act

(1) "consumer credit insurance" means insurance, other than insurance on property, by which the satisfaction of debt in whole or in part is a benefit provided, but does not include
   (a) insurance provided in relation to a credit transaction in which a payment is scheduled more than ten years after the extension of credit;
   (b) insurance issued as an isolated transaction on the part of the insurer not related to an agreement or plan for insuring debtors of the creditor; or
   (c) insurance indemnifying the creditor against loss due to the debtor's default.

(2) "Credit Insurance Act" means the Model Act for the Regulation of Credit Life Insurance and Credit Accident and Health Insurance, chapter 34 of title 31, Utah Code Annotated 1953.

History: L. 1969, ch. 18, § 4.103.

Compiler's Notes.

The inclusion of subsection (2) is indicated as optional in this section of the Uniform Consumer Credit Code. See paragraph 1 of the Comment of the Commissioners on Uniform State Laws, below.

Comment of Commissioners on Uniform State Laws.

1. If the enacting State has not already enacted the NAIC Model Act for the regulation of credit life insurance and credit accident and health insurance, or similar legislation, material in brackets [i.e., "Credit Insurance Act" in the caption and provisions of subsection (2)] should be omitted.

2. The usual forms of consumer credit insurance provide benefits conditioned on the death or disability of the debtor, the contracts being described as credit life insurance and credit accident and health insurance. The insured event might also be loss of earnings in other ways, as by loss of employment. A type of insurance not embraced in the term "consumer credit insurance" is that procured by a creditor to guard against the uncollectibility of his accounts. Insurance of this type, although historically and properly called "credit insurance," is conditioned on the non-payment of debt, and does not serve any interest of debtors of the insured person. This is true also of insurance indemnifying the creditor against loss due to nonfiling of instruments. By contrast, the benefit of consumer credit insurance runs to debtors as well as creditors; any payment made to the creditor by the insurer under the policy satisfies the debtor's obligation to the extent of the payment.

3. The definition of "consumer credit insurance" excludes insurance related to long-term credit, following a similar but broader exclusion from the scope of the NAIC Model Act.

4. Exceptionally, there are occasions when credit life insurance or the like is appropriate but cannot be provided under a general arrangement for insuring debtors of the creditor. On these occasions the debtor may be expected to bargain actively about the insurance feature of the credit transaction. Therefore insurance issued as an isolated transaction is excluded from the definition of consumer credit insurance. It is also excluded from the scope of the NAIC Model Act.

Cross-References.

Rebate upon prepayment, 70B-2-210, 70B-3-210.

70B-4-104. Creditor's provision of and charge for insurance — Excess amount of charge.

(1) Except as otherwise provided in this chapter and subject to the provisions on additional charges (section 70B-2-202 and section 70B-3-202) and maximum charges (sections 70B-2-201 to 70B-2-210

and 70B-3-201 to 70B-3-210), a creditor may agree to provide insurance, and may contract for and receive a charge for insurance separate from and in addition to other charges. A creditor need not make a separate charge for insurance provided or required by him. This act does not authorize the issuance of any insurance prohibited under any statute, or rule thereunder, governing the business of insurance.

(2) The excess amount of a charge for insurance provided for in agreements in violation of this chapter is an excess charge for the purposes of the provisions of the chapter on Remedies and Penalties (sections 70B-5-101 to 70B-5-302) as to effect of violations on rights of parties (section 70B-5-202) and of the provisions of the chapter on Administration (70B-6-101 to 70B-6-415) as to civil actions by the administrator (section 70B-6-113).

History: L. 1969, ch. 18, § 4.104.

Comment of Commissioners on Uniform State Laws.

1. Subsection (1) broadly authorizes creditors to contract for and receive payments for providing insurance in the whole range of transactions within the scope of this Article. Section 4.102. A creditor may provide insurance without making a charge in addition to the credit service charge or loan finance charge, and in that event is not required to disclose any amount as a charge for insurance. Sections 2.306 (2) (g) and 3.306 (2) (d). "Separate charge" in this section has the same meaning as in the disclosure sections. If, however, the creditor requires insurance in connection with a consumer credit sale, consumer lease, or consumer loan, the fact that he includes the cost of providing it in a credit service charge or loan finance charge, giving the insurance "free," will not necessarily exclude him from restrictions under the Insurance Code or this Article.

Limitations are placed on the making of an additional or separate charge for insurance in Sections 2.202 and 3.202, and the authorization of this section is subject to those provisions. In addition, such a charge must be limited as provided in this Article. Section 4.107.

2. This Act does not purport to define "separate charge" for insurance. The question has been raised whether there is a separate charge for insurance when a creditor's credit service or loan finance charge varies depending upon whether or not consumer credit insurance is provided. This Act does not resolve that question.

70B-4-105. Conditions applying to insurance to be provided by creditor. If a creditor agrees with a debtor to provide insurance

(1) the insurance shall be evidenced by an individual policy or certificate of insurance delivered to the debtor, or sent to him at his address as stated by him, within 30 days after the term of the insurance commences under the agreement between the creditor and debtor; or

(2) the creditor shall promptly notify the debtor of any failure or delay in providing the insurance.

History: L. 1969, ch. 18, § 4.105.

70B-4-106. Unconscionability.

(1) In applying the provisions of the act on unconscionability (sections 70B-5-108 and 70B-6-111) to a separate charge for insurance, consideration shall be given, among other factors, to

(a) potential benefits to the debtor including the satisfaction of his obligations;

(b) the creditor's need for the protection provided by the insurance; and

(c) the relation between the amount and terms of credit granted and the insurance benefits provided.

(2) If consumer credit insurance otherwise complies with this chapter and other applicable law, neither the amount nor the term of the insurance nor the amount of a charge therefor is in itself unconscionable.

History: L. 1969, ch. 18, § 4.106.

Comment of Commissioners on Uniform State Laws.

It may be shown that an agreement about insurance, like other terms of a consumer credit contract, is unconscionable, and the effects are those specified in Sections 5.108 and 6.111. However, it is the intent of this section that the issue be judged in relation to the particular risks insured. The section lists only some of the factors to be considered, and indicates that a balancing of benefits, needs, and costs is required. In general, the creditor's need for insurance protection and the debtor's potential benefit are more patent in connection with extensions of credit that are substantial as to amounts and periods; the expense of providing exceptional coverages is suspect in relation to relatively small extensions of credit. The relation between the credit terms and the insurance terms must be taken into account in applying this section.

70B-4-107. Maximum charge by creditor for insurance.

(1) Except as provided in subsection (2), if a creditor contracts for or receives a separate charge for insurance, the amount charged to the debtor for the insurance may not exceed the premium to be charged by the insurer, as computed at the time the charge to the debtor is determined, conforming to any rate filings required by law and made by the insurer with the commissioner of insurance.

(2) A creditor who provides consumer credit insurance in relation to a revolving charge account (section 70B-2-108) or revolving loan account (section 70B-3-108) may calculate the charge to a debtor in each billing cycle by applying the current premium rate to

(a) the average daily unpaid balance of the debt in the cycles;

(b) the unpaid balance of the debt or a median amount within a specified range of unpaid balances of debt on approximately the same day of the cycle. The day of the cycle need not be the day used in calculating the credit service charge (section 70B-2-207) or loan finance charge (section 70B-3-201 and section 70B-3-508), but the specified range shall be the range used for that purpose; or

(c) the unpaid balances of principal calculated according to the actuarial method.

History: L. 1969, ch. 18, § 4.107.

Comment of Commissioners on Uniform State Laws.

Subsection (1) generally limits the creditor's charge to the debtor for insurance to the premiums to be charged by the insurer. Subsection (2), applying to revolving charge and loan accounts, authorizes convenient

methods of calculating charges that might not be permitted if subsection (1) were applied inflexibly.

70B-4-108. Refund or credit required — Amount.

(1) Upon prepayment in full of a consumer credit sale or consumer loan by the proceeds of consumer credit insurance, the debtor or his estate is entitled to a refund of any portion of a separate charge for insurance which by reason of prepayment is retained by the creditor or returned to him by the insurer unless the charge was computed from time to time on the basis of the balances of the debtor's account.

(2) This chapter does not require a creditor to grant a refund or credit to the debtor if all refunds and credits due to the debtor under this chapter amount to less than $1.00, and except as provided in subsection (1) does not require the creditor to account to the debtor for any portion of a separate charge for insurance because

(a) the insurance is terminated by performance of the insurer's obligation;

(b) the creditor pays or accounts for premiums to the insurer in amounts and at times determined by the agreement between them; or

(c) the creditor receives directly or indirectly under any policy of insurance a gain or advantage not prohibited by law.

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

(a) the insurance is not provided or is provided for a shorter term than that for which the charge to a debtor for insurance was computed; or,

(b) the insurance terminates prior to the end of the term for which it was written because of prepayment in full or otherwise.

(4) A refund or credit required by subsection (3) is appropriate as to amount if it is computed according to a method prescribed or approved by the commissioner of insurance or a formula filed by the insurer with the commissioner of insurance at least thirty days before the debtor's right to a refund or credit becomes determinable, unless the method or formula is employed after the commissioner of insurance notifies the insurer that he disapproves it.

History: L. 1969, ch. 18, § 4.108.

Comment of Commissioners on Uniform State Laws.

1. Subsection (1) concerns a premium for consumer credit insurance, or any part of it, that is not treated by the insurer as earned, even though the insurer has paid benefits for which the premium charge was made. If the premium was the subject of a separate charge to the debtor, a refund must be made. Making the refund is not practicable, however, and is not required, if the charge has been computed on the debtor's outstanding balances. Subsection (2) (a) recognizes that

the insurer may, upon performance of its obligation, properly treat the premium as earned.

2. Subsection (2) (c) permits a creditor to derive from consumer credit insurance gains and advantages such as dividends and refunds resulting from favorable mortality or morbidity experience with respect to insured debtors, and is predicated on the following conclusions: (1) although the gains and advantages may be large to the creditor, they are relatively insignificant to each insured debtor and the calculating, clerical, and mailing costs of returning them to insured debtors would be unreasonably disproportionate to the amounts involved, and (2) the requirement of Article 4 that premiums for consumer credit insurance be reasonable in relation to benefits (Section 4.203), if properly enforced by the State Insurance [Commissioner], will preclude the possibility of the use of consumer credit insurance as a device by creditors for concealing hidden charges from debtors.

3. Subsection (4) commits to the State Insurance [Commissioner] the responsibility for approval of methods and formulas for computing refunds that are required by the circumstances stated in subsection (3).

70B-4-109. Existing insurance — Choice of insurer. If a creditor requires insurance, upon notice to the creditor the debtor shall have the option of providing the required insurance through an existing policy of insurance owned or controlled by the debtor, or through a policy to be obtained and paid for by the debtor, but the creditor may for reasonable cause decline the insurance provided by the debtor.

History: L. 1969, ch. 18, § 4.109.

Comment of Commissioners on Uniform State Laws.

This section is directed against the practice of "tying" the grant of credit to the purchase of insurance from a particular insurer, through a particular agent, or the like, a practice prohibited by many existing statutes including the NAIC Model Act.

70B-4-110. Charge for insurance in connection with a deferral, refinancing, or consolidation — Duplicate charges.

(1) A creditor may not contract for or receive a separate charge for insurance in connection with a deferral (section 70B-2-204 or section 70B-3-204), a refinancing (section 70B-2-205 or section 70B-3-205), or a consolidation (section 70B-2-206 or section 70B-3-206), unless

(a) the debtor agrees at or before the time of the deferral, refinancing, or consolidation that the charge may be made;

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

(c) the debtor receives a refund or credit on account of any unexpired term of existing insurance in the amount that would be required if the insurance were terminated (section 70B-4-108); and

(d) the charge does not exceed the amount permitted by this chapter (section 70B-4-107).

(2) A creditor may not contract for or receive a separate charge for insurance which duplicates insurance with respect to which the

creditor has previously contracted for or received a separate charge.

History: L. 1969, ch. 18, § 4.110.

Comment of Commissioners on Uniform State Laws.

A separate charge for insurance in connection with a deferral, a refinancing, or a consolidation, is permitted only if it has been agreed to by the debtor and bears an appropriate relation to the premium. Section 4.107. No new charge may be made for a coverage to which the debtor is already entitled. Actual termination of existing insurance is not required. Subsection (1) (b) recognizes that augmenting existing insurance coverage for a new separate charge is appropriate, but that "pyramiding" charges is not. Subsection (2) explicitly prohibits pyramiding.

70B-4-111. Co-operation 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 chapter. They may jointly pursue investigations, prosecute suits, and take other official action, as may seem to them appropriate, if either of them is otherwise empowered to take the action. If the administrator is informed of a violation or suspected violation by an insurer of this chapter, or of the insurance laws, rules, and regulations of this state, he shall advise the commissioner of insurance of the circumstances.

History: L. 1969, ch. 18, § 4.111.

Comment of Commissioners on Uniform State Laws.

Co-ordination of activities of creditors and insurers is essential to the provision of insurance related to consumer credit transactions. Accordingly, the public interest requires that the officials charged with supervising credit practices and those concerned with related insurance practices co-ordinate their efforts. This section encourages and empowers them to consult and work together in promoting compliance with this Article with efficiency and economy.

70B-4-112. Administrative action of commissioner of insurance.

(1) To the extent that his responsibility under this chapter requires, the commissioner of insurance shall issue rules with respect to insurers, and with respect to refunds (section 70B-4-108), forms, schedules of premium rates and charges (section 70B-4-203), 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 (sections 70B-6-401 to 70B-6-415) of the chapter on Administration (sections 70B-6-101 to 70B-6-415) which applies to and governs administrative action taken by the administrator also applies to and governs all administrative action taken by the commissioner of insurance pursuant to this section.

History: L. 1969, ch. 18, § 4.112.

Comment of Commissioners on Uniform State Laws.

1. Subsection (1) may be omitted in an enacting State in which the NAIC Model Act or a statute giving the [Commissioner] of Insurance the powers and duties provided for in subsection (1) is in force. If subsection (1) is omitted "(2)" at the beginning of subsection (2) should also be omitted.

2. If the enacting State has an adequate State administrative procedure act applying to and governing administrative action taken

by the [Commissioner] of Insurance, reference should be made to it in subsection (2), otherwise Part 4 of Article 6 should be enacted and referred to in subsection (2). * * * See Comment to Section 6.401.

PART 2

CONSUMER CREDIT INSURANCE

70B-4-201. Term of insurance.

(1) Consumer credit insurance provided by a creditor may be subject to the furnishing of evidence of insurability satisfactory to the insurer. Whether or not such evidence is required, the term of the insurance shall commence no later than when the debtor becomes obligated to the creditor or when the debtor applies for the insurance, whichever is later, except as follows:
   (a) if any required evidence of insurability is not furnished until more than thirty days after the term would otherwise commence, the term may commence on the date when the insurer determines the evidence to be satisfactory; or
   (b) if the creditor provides insurance not previously provided covering debts previously created, the term may commence on the effective date of the policy.

(2) The originally scheduled term of the insurance shall extend at least until the due date of the last scheduled payment of the debt except as follows:
   (a) if the insurance relates to a revolving charge account or revolving loan account, the term need extend only until the payment of the debt under the account and may be sooner terminated after at least thirty days' notice to the debtor; or
   (b) if the debtor is advised in writing that the insurance will be written for a specified shorter time, the term need extend only until the end of the specified time.

(3) The term of the insurance shall not extend more than fifteen days after the originally scheduled due date of the last scheduled payment of the debt unless it is extended without additional cost to the debtor or as an incident to a deferral, refinancing, or consolidation.

History: L. 1969, ch. 18, § 4.201.

Comment of Commissioners on Uniform State Laws.

1. Normally, the term of consumer credit insurance provided by a creditor should be the same as the term of the debt.

2. Subsection (1) permits postponement of the effective date of consumer credit insurance coverage until after the debt is incurred:

(1) under the preamble to subsection (1), when the debtor delays his application for the insurance — coverage does not then

become effective at least until the debtor applies for the insurance,

(2) under subsection (1) (a), when the insurer requires the debtor to furnish evidence of insurability satisfactory to the insurer and the debtor does not furnish the evidence "until more than thirty days after the term would otherwise commence" — coverage does not then become effective until the insurer determines the evidence of insurability to be satisfactory;

(3) under subsection (1) (b), when the creditor newly provides insurance with respect to debt previously created — coverage does not then become effective at least until the effective date of the policy.

3. However, under subsection (1), if evidence of insurability satisfactory to the insurer is required, and is furnished within "thirty days after the term would otherwise commence," coverage becomes effective when the term of the insurance would otherwise commence, e.g., the life of a debtor who less than thirty days after becoming obligated to a creditor furnishes evidence of insurability satisfactory to the insurer under a group policy insuring the lives of the creditor's debtors furnishing such evidence and who then dies is insured under the policy.

4. Subsection (2) specifies the circumstances when the term of consumer credit insurance need not extend to the due date of the last scheduled installment of the debt.

5. Subsection (3) limits, subject to the stated exceptions, the term of consumer credit insurance to fifteen days after the scheduled due date of the last installment of the debt.

70B-4-202. Amount of insurance.

(1) Except as provided in subsection (2),

(a) in the case of consumer credit insurance providing life coverage, the amount of insurance may not initially exceed the debt and, if the debt is payable in installments, may not at any time exceed the greater of the schedule or actual amount of the debt; or

(b) in the case of any other consumer credit insurance, the total amount of periodic benefits payable may not exceed the total of scheduled unpaid installments of the debt, and the amount of any periodic benefit may not exceed the original amount of debt divided by the number of periodic installments in which it is payable.

(2) If consumer credit insurance is provided in connection with a revolving charge account or revolving loan account, the amounts payable as insurance benefits may be reasonably commensurate with the amount of debt as it exists from time to time. If consumer credit insurance is provided in connection with a commitment to grant credit in the future, the amounts payable as insurance benefits may be reasonably commensurate with the total from time to time of the amount of debt and the amount of the commitment. If the debt or the commitment is primarily for an agricultural purpose, and there is no regular schedule of payments, the amounts payable as insurance benefits may equal the total of the initial amount of debt and the amount of the commitment.

History: L. 1969, ch. 18, § 4.202.

Comment of Commissioners on Uniform State Laws.

1. Subsection (1) provides generally applicable limitations on the amounts of consumer credit insurance and benefits.

2. Subsection (2) provides necessarily more flexible limitations on the amounts of consumer credit insurance benefits in connec-

tion with revolving charge and loan accounts, credit commitments, and debt and credit commitments for an agricultural purpose.

3. Experience has demonstrated that limitations of these kinds are essential to the effectiveness of the requirement of Section 4.203 (2) that premium rates be not unreasonable in relation to the benefits provided by consumer credit insurance.

70B-4-203. 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, if the commissioner of insurance has disapproved the form or schedule and has notified the insurer of his disapproval. A creditor may not use a form or schedule unless
   (a) the form or schedule has been on file with the commissioner of insurance for thirty days, or has earlier been approved by him; and
   (b) the insurer has complied with this section with respect to the insurance.

(2) Except as provided in subsection (3), all policies, certificates of insurance, notices of proposed insurance, applications for insurance, endorsements and riders relating to consumer credit insurance delivered or issued for delivery in this state, and the schedules of premium rates or charges pertaining thereto, shall be filed by the insurer with the commissioner of insurance. Within thirty days after the filing of any form or schedule he shall disapprove it if the premium rates or charges are unreasonable in relation to the benefits provided under the form, or if the form contains provisions which are unjust, unfair, inequitable, or deceptive, or encourage misrepresentation of the coverage, or are contrary to any provision of this act or the Credit Insurance Act or of any rule or regulation promulgated thereunder.

(3) If a group policy has been delivered in another state, the forms to be filed by the insurer with the commissioner of insurance are the group certificates and notices of proposed insurance. He shall approve them if
   (a) they provide the information that would be required if the group policy were delivered in this state; and
   (b) the applicable premium rates or charges do not exceed those established by his rules or regulations.

History: L. 1969, ch. 18, § 4.203.

Comment of Commissioners on Uniform State Laws.

1. Subsections (1) and (2) reaffirm and broaden the powers of the [Commissioner] of Insurance under the NAIC Model Act as to forms and schedules of premium rates or charges relating to consumer credit insurance. Unlike the NAIC Model Act which is directed primarily to insurers, this section is directed to both creditors and insurers. Moreover, in its formulation as to the relationship of premium rates and charges to the benefits provided, subsection (2) follows New York Insurance Law Section 154.7. That provision, as construed by the New York Court of Appeals in Old Republic Life Insurance Company v. Wikler, 9 N. Y. 2d 524, 175 N. E. 2d 147 (1961), gives the New York Superintendent of Insurance ample power as to premium rates for credit life and accident

and health insurance. Doubt, whether reasonable or not, has been expressed whether equivalent power is conferred by the corresponding formulation of Section 7B of the NAIC Model Act.

2. Subsection (3) facilitates insuring, as a group, the debtors of a creditor operating across state lines.

PART 3

PROPERTY AND LIABILITY INSURANCE

Section
70B-4-301. Property insurance.
70B-4-302. Insurance on creditor's interest only.
70B-4-303. Liability insurance.
70B-4-304. Cancellation by creditor.

70B-4-301. Property insurance.

(1) A creditor may not contract for or receive a separate charge for insurance against loss of or damage to property unless
   (a) the insurance covers a substantial risk of loss of or damage to property related to the credit transaction;
   (b) the amount, terms, and conditions of the insurance are reasonable in relation to the character and value of the property insured or to be insured; and
   (c) the term of the insurance is reasonable in relation to the terms of credit.

(2) The term of the insurance is reasonable if it is customary and does not extend substantially beyond a scheduled maturity.

(3) A creditor may not contract for or receive a separate charge for insurance against loss of or damage to property unless the amount financed or principal exclusive of charges for the insurance is $300 or more, and the value of the property is $300 or more.

(4) The amounts of $300 in subsection (3) are subject to change pursuant to the provisions on adjustment of dollar amounts (section 70B-1-106).

History: L. 1969, ch. 18, § 4.301.

Compiler's Notes.

Effective July 1, 1978, the figure of $300 specified in subsec. (3) was increased by Administrative Rule No. 11 issued by the Commissioner of Financial Institutions to $540 pursuant to the provisions on adjustment of dollar amounts in section 70B-1-106.

Comment of Commissioners on Uniform State Laws.

1. Subsection (1) imposes restrictions on property insurance similar to those provided by a number of retail installment sales acts.

2. Subsection (2) permits reasonable flexibility so that the expiration of the term of property insurance need not coincide exactly with the scheduled maturity of the debt.

3. Subsection (3) prohibits a separate charge for property insurance when either the amount of debt or the value of the property to be insured is relatively small.

70B-4-302. 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 debtor is on the debtor only to the extent of any deficiency in the effective

coverage of the insurance, even though the insurance covers only the interest of the creditor.

History: L. 1969, ch. 18, § 4.302.

Comment of Commissioners on Uniform State Laws.

This section prohibits a separate charge to the debtor for property insurance covering the creditor's interest in property unless the debtor also receives the benefit of the insurance to the extent he does not willfully cause the loss or damage, risk of which is insured. "Single interest" property insurance for which the creditor makes a separate charge to the debtor may not provide for subrogation of the insurer to the rights of the creditor as to any loss or damage not willfully caused by the debtor.

70B-4-303. Liability insurance. A creditor may not contract for or receive a separate charge for insurance against liability unless the insurance covers a substantial risk of liability arising out of the ownership or use of property related to the credit transaction.

History: L. 1969, ch. 18, § 4.303.

Comment of Commissioners on Uniform State Laws.

This section imposes restrictions with respect to liability insurance comparable to those imposed with respect to property insurance by subsection (1) of Section 4.301.

70B-4-304. Cancellation by creditor. A creditor shall not request cancellation of a policy of property or liability insurance except after the debtor's default or in accordance with a written authorization by the debtor, and in either case the cancellation does not take effect until written notice is delivered to the debtor or mailed to him at his address as stated by him. The notice shall state that the policy may be canceled on a date not less than ten days after the notice is delivered, or, if the notice is mailed, not less than thirteen days after it is mailed.

History: L. 1969, ch. 18, § 4.304.

Comment of Commissioners on Uniform State Laws.

This section requires advance written notice, by either the creditor or the insurer, of the prospective cancellation of property or liability insurance provided in connection with a consumer credit sale, consumer lease, or consumer loan, or financed under a loan whose primary purpose is the financing of insurance.

CHAPTER 5

REMEDIES AND PENALTIES

PART 1

LIMITATIONS ON CREDITORS' REMEDIES

70B-5-101. Short title. This chapter (70B-5-101 to 70B-5-302) shall be known and may be cited as Utah Uniform Consumer Credit Code — Remedies and Penalties.

History: L. 1969, ch. 18, § 5.101.

Collateral References.

New Topic Service, AmJur 2d, Consumer Credit Protection.

70B-5-102. Scope. This part (sections 70B-5-101 to 70B-5-108) applies to actions or other proceedings to enforce rights arising from consumer credit sales, consumer leases, and consumer loans; and, in addition, to extortionate extensions of credit (section 70B-5-107).

History: L. 1969, ch. 18, § 5.102.

Comment of Commissioners on Uniform State Laws.

Section 1.201 states the territorial applicability of this Act. Sections 2.601 and 3.601 provide for the applicability of this Act by written agreement.

70B-5-103. Restrictions on deficiency judgments in consumer credit sales.

(1) This section applies to a consumer credit sale of goods or services.

(2) If the seller repossesses or voluntarily accepts surrender of goods which were the subject of the sale and in which he has a security interest and the cash price of goods repossessed or surrendered was $1,000 or less, the buyer is not personally liable to the seller for the unpaid balance of the debt arising from the sale of the goods, and the seller is not obligated to resell the collateral.

(3) If the seller repossesses or voluntarily accepts surrender of goods which were not the subject of the sale but in which he has a security interest to secure a debt arising from a sale of goods or services or a combined sale of goods and services and the cash price of the sale was $1,000 or less, the buyer is not personally liable to the seller for the unpaid balance of the debt arising from the sale.

(4) For the purpose of determining the unpaid balance of consolidated debts or debts pursuant to revolving charge accounts, the allocation of payments to a debt shall be determined in the same manner as provided for determining the amount of debt secured by various security interest (section 70B-2-409).

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

(6) If the seller elects to bring an action against the buyer for a debt arising from a consumer credit sale of goods or services, when

under this section he would not be entitled to a deficiency judgment if he repossessed the collateral, and obtains judgment

(a) he may not repossess the collateral, and

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

(7) The amounts of $1,000 in subsections (2) and (3) are subject to change pursuant to the provisions on adjustment of dollar amounts (section 70B-1-106).

History: L. 1969, ch. 18, § 5.103.

Compiler's Notes.

Effective July 1, 1978, the figure of $1,000 specified in subsecs. (2) and (3) was increased by Administrative Rule No. 11 issued by the Commissioner of Financial Institutions to $18,000 pursuant to the provisions on adjustment of dollar amounts in section 70B-1-106.

Comment of Commissioners on Uniform State Laws.

1. Where there has been a default with respect to a secured consumer credit transaction, the rights of the creditor and debtor are controlled by Part 5 (Default) of UCC Article 9, except to the extent that such rights are changed by this Act. Under the UCC the creditor has the right to take possession of the collateral on default and may proceed without judicial process. UCC Section 9-503. The creditor may sell, lease or otherwise dispose of the collateral in public or private proceedings, and may buy at his own sale. The debtor is entitled to reasonable notification of the time and place of any public sale and reasonable notification of the time after which the collateral will be disposed of privately. UCC Section 9-504 (1) and (3). Proceeds are applied first to the expenses of repossession and disposition and then to satisfaction of the indebtedness. Any excess is paid to the debtor and the debtor is liable for any deficiency. UCC Section 9-504 (1) and (2). If the debtor has paid 60% of the cash price in the case of a sale or 60% of the principal in the case of a loan, and has not signed after default a statement renouncing his rights, the creditor must dispose of the collateral. If the creditor fails to dispose of the collateral within ninety days after repossession the debtor may recover in conversion. In all other cases the creditor may retain the collateral in satisfaction of the debt, if the debtor does not object after receipt of notification. UCC Section 9-505. The debtor has a right to redeem the collateral at any time before disposition of the collateral or satisfaction of the obligation, by tendering fulfillment of all obligations secured by the collateral as well as expenses of the creditor. UCC Section 9-506.

2. The provisions of the UCC outlined above are modified to some extent by this section with respect to proceedings to enforce rights arising from consumer credit sales. The UCC provisions remain unchanged as to consumer loans.

3. With respect to a consumer credit sale in which the cash price is $1000 or less, a seller who repossesses or voluntarily accepts surrender of goods sold in which he has a security interest may not obtain a deficiency judgment against the buyer if the proceeds on disposition of the goods are insufficient to pay the indebtedness and the expenses of the seller. The seller need not resell the goods. In cases of sales of $1000 or less, this section gives to the seller the option of either suing for the unpaid balance or repossessing, but he may not do both.

4. The seller may have a security interest in collateral other than goods sold in the consumer credit sale. The Act allows the seller to take a security interest in collateral other than goods sold in some sales of services, in consumer credit sales primarily for agricultural purposes, and in cross-collateral transactions in which a seller makes more than one sale to one buyer and takes a security interest in goods sold in one sale to secure debt arising from other sales. Sections 2.407 and 2.408. In these cases, if the cash price of the sale is $1000 or less, the seller who repossesses or voluntarily accepts surrender of collateral may not obtain a deficiency judgment against the buyer. The rights of the buyer with respect to compulsory disposition of collateral which was not the subject of the sale and recovery of any surplus on disposition are defined in UCC Sections 9-504 and 9-505.

5. Subsection (5) is designed to protect sellers against buyers who wrongfully damage collateral or who wrongfully refuse to surrender collateral. In addition to the right of the seller to repossess the collateral, the subsection gives to the seller a right of action for damages for the loss of value of the col-

lateral resulting from wrongful injury to the goods or, in the case of wrongful refusal to surrender the collateral, for any loss suffered by the seller because of his inability to repossess.

6. Subsection (6) prohibits a seller not entitled to a deficiency judgment under this section from achieving substantially the same result by first obtaining judgment for the price and then levying on the collateral on execution.

Consumer loan.

Transaction wherein finance company issued check payable jointly to buyer and seller of truck in return for security interest in vehicle and promissory note for debt, is a consumer loan and not a consumer credit sale of goods; finance company was entitled to repossess the collateral and obtain a deficiency judgment after sale of the collateral. Peoples Finance & Thrift Co. of Ogden v. Perry (1973) 30 U 2d 282, 516 P 2d 1400.

Law Reviews.

Comment, Peoples Finance & Thrift Co. v. Perry: The Use of Lender Credit to Avoid Consumer Protection Provisions of the UCCC, 1974 Utah L. Rev. 408.

70B-5-104. No garnishment before judgment. Prior to entry of judgment in an action against the debtor for debt arising from a consumer credit sale, a consumer lease, or a consumer loan, the creditor may not attach unpaid earnings of the debtor by garnishment or like proceedings.

History: L. 1969, ch. 18, § 5.104.

70B-5-105. Limitation on garnishment.

(1) For the purposes of this part:
   (a) "disposable earnings" means that part of the earnings of an individual remaining after the deduction from those earnings of amounts required by law to be withheld; and
   (b) "garnishment" means any legal or equitable procedure through which the earnings of an individual are required to be withheld for payment of a debt.

(2) The maximum part of the aggregate disposable earnings of an individual for any workweek which is subjected to garnishment to enforce payment of a judgment arising from a consumer credit sale, consumer lease, or consumer loan may not exceed the lesser of
   (a) 25 per cent of his disposable earnings for that week, or
   (b) the amount by which his disposable earnings for that week exceed forty times the federal minimum hourly wage prescribed by section 6 (a) (1) of the Fair Labor Standards Act of 1938, U.S.C. title 29, section 206 (a) (1), in effect at the time the earnings are payable.
   (c) In the case of earnings for a pay period other than a week, the administrator shall prescribe by rule a multiple of the federal minimum hourly wage equivalent in effect to that set forth in paragraph (b).

(3) No court may make, execute, or enforce an order or process in violation of this section.

History: L. 1969, ch. 18, § 5.105.

Comment of Commissioners on Uniform State Laws.

1. This section is derived from CCPA Sections 302 and 303. The exemption has been increased from thirty times the minimum hourly wage to forty in the belief that the

higher figure was justified in consumer transactions.

2. Section 5.104 prohibits all garnishment before judgment for collection of consumer debt. Section 5.105 limits the use of garnishment after judgment for collection of consumer debt. It complements rather than displaces local garnishment laws and applies only to garnishment and like proceedings directed toward one other than the consumer debtor, e.g., an employer. The consumer debtor's interests are adequately protected in proceedings supplementary to judgment in which the debtor is personally before the court and the court is therefore able to take his and his dependents' needs into consideration in granting an order against him for payment of a judgment on a consumer debt.

3. This section is designed to assure the consumer debtor that he will retain enough of his earnings to be able to support himself and his dependents by exempting a portion of his earnings from garnishment to enforce judgments for consumer debts. The exemption is based on the concept of "disposable earnings" rather than gross earnings. Disposable earnings are defined to include only those earnings which the debtor can spend after deductions required by law. If the law requires a portion of the debtor's wages to be withheld from him, the debtor has no power of disposition with respect to that portion, and that portion is therefore not included in disposable wages. Thus, amounts required to be withheld for social security or income taxes, amounts withheld pursuant to compulsory retirement, health insurance or similar plans imposed by law and amounts withheld because of a garnishment or levy by another creditor are excluded from "disposable earnings." However, if amounts are withheld from the debtor's earnings by the employer pursuant to a request by the employee or pursuant to a contract made by the employee or on his behalf by a labor union or similar organization, the amounts withheld are included in "disposable earnings" since the deduction is not required by law.

4. This section sets limits on the maximum amount of disposable earnings that a creditor in a consumer credit transaction may reach by garnishment. There is a double test. The creditor may not garnish more than (a) 25% of disposable earnings for any workweek or (b) the amount by which disposable earnings exceed forty times the Federal minimum hourly wage, whichever is less.

Example: An unmarried consumer debtor earns $3.10 an hour. Wages are paid on a weekly pay period running from Wednesday through Tuesday. During that period the debtor worked 38 hours. Gross wages were $117.80. The employer withholds Federal income taxes of $21.70, social security taxes of $5.18, union dues of $1.25 pursuant to a contract with the union, and $5 for a Christmas savings plan of which the employee is a member. Net wages paid to the employee are $84.67. "Disposable earnings" are $90.92; 25% of disposable earnings is $22.73; 40 x minimum hourly wage of $1.60 is $64; the excess of disposable earnings over $64.00 is $26.92.

Under Section 5.105 the creditor may garnish no more than $22.73, the lesser of $22.73 and $26.92.

5. This section is not meant to displace other provisions of state law which may provide additional protection to the debtor. For examples: (1) if state law provides that a debtor may defeat a garnishment by a showing that the wages subject to garnishment are necessary for the support of himself and his dependents, the debtor may take full advantage of that law; and (2) if state law exempts 90% of earnings, only $11.78 or 10% of earnings of $117.80 may be collected under the garnishment in the example above.

Effective Date.

Section 70B-9-101 (4) provides: "Sections 70B-5-105 and 70B-5-106 respecting garnishments take effect on July 1, 1970."

70B-5-106. [No discharge from employment for garnishment.] No employer may discharge any employee by reason of the fact that his earnings have been subjected to garnishment for any one indebtedness.

History: L. 1969, ch. 18, § 5.106.

Compiler's Notes.

The wording of the Utah enactment differs from the wording of section 5.106 of the Uniform Consumer Credit Code. The caption of the Uniform Code section was not adopted and is given here in brackets.

Comment of Commissioners on Uniform State Laws.

1. The penalty for violation of this section is found in Section 5.202 (6).

2. * * *

Effective Date.

Section 70B-9-101 (4) provides: "Sections 70B-5-105 and 70B-5-106 respecting garnishments take effect on July 1, 1970."

70B-5-107. Extortionate extensions of credit.

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

(2) If it is shown that an extension of credit was made at an annual rate exceeding 45 per cent calculated according to the actuarial method and that the creditor then had a reputation for the use or threat of use of violence or other criminal means to cause harm to the person, reputation, or property of any person to collect extensions of credit or to punish the nonrepayment thereof, there is prima facie evidence that the extension of credit was unenforceable under subsection (1).

History: L. 1969, ch. 18, § 5.107.

Comment of Commissioners on Uniform State Laws.

1. This section is derived from 18 U. S. C. Section 892, as added by Title II of the CCPA.

2. This section is intended to facilitate federal prosecutions with respect to making extortionate extensions of credit by providing one of the elements required for a prima facie case under the CCPA provision referred to above, viz., that the repayment of the extension of credit would be unenforceable through civil judicial processes against the debtor.

70B-5-108. Unconscionability.

(1) With respect to a consumer credit sale, consumer lease, or consumer loan, if the court as a matter of law finds the agreement or any clause of the agreement to have been unconscionable at the time it was made, the court may refuse to enforce the agreement, or it may enforce the remainder of the agreement without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result.

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

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

(4) If the court as a matter of law finds the agreement or any clause of the agreement to have been unconscionable, then in addition to the relief provided for in subsection (1) of this section, the person in violation of this section is liable and the debtor may recover from him a penalty in an amount determined by the court of:

(a) not less than $100 nor more than $5,000; and
(b) the costs of the action together with a reasonable attorney's fee.

(5) No class action may be brought under this section except for injunctive or declaratory relief.

(6) Nothing contained in subsection (5) shall prevent the recovery of penalties by the debtor as provided in subsection (4).

History: L. 1969, ch. 18, § 5.108; 1975, ch. 210, § 15.

Compiler's Notes.

The 1975 amendment added subsecs. (4), (5) and (6); and made minor changes in punctuation.

Comment of Commissioners on Uniform State Laws.

1. Subsections (1) and (2) are derived in large part from UCC Section 2-302. The omission of the adjective "commercial" from the provision in subsection (2) concerning the presentation of evidence as to the contract's "setting, purpose, and effect" is deliberate. Unlike the UCC, this section is concerned only with transactions involving consumers, and the relevant standard of conduct for purposes of this section is not that which might be acceptable as between knowledgeable merchants but rather that which measures acceptable conduct on the part of a businessman toward a consumer.

2. This section is intended to make it possible for the courts to police contracts or clauses which are found to be unconscionable. The basic test is whether, in the light of the background and setting of the market, the commercial needs of the particular trade or case, and the condition of the particular parties to the contract, the contract or clauses involved are so one-sided as to be unconscionable under the circumstances existing at the time of the making of the contract. The particular facts involved in each case are of utmost importance since certain contracts or contractual provisions may be unconscionable in some situations but not in others. The following cases illustrate prior application of the doctrine of unconscionability: Williams v. Walker-Thomas Furn. Co., 350 F. 2d 445 (D. C. Cir. 1965); American Home Improvement, Inc. v. MacIver, 105 N. H. 435, 201 A. 2d 886 (1964); Ellsworth Dobbs, Inc. v. Johnson, 50 N. J. 528, 236 A. 2d 843 (1967); Unico v. Owen, 50 N. J. 101, 232 A. 2d 405 (1967); Henningsen v. Bloomfield Motors, Inc., 32 N. J. 358, 161 A. 2d 69 (1960); Frostifresh Corp. v. Reynoso, 54 Misc. 2d 119, 281 N. Y. S. 2d 964 (Sup. Ct., App. Term, 2d Dept. 1967), rev'g in part 52 Misc. 2d 26, 274 N. Y. S. 2d 757 (Nassau Co. 1966).

Purchase with option to repurchase.

Agreement between owner of twice mortgaged house and defendant, from whom owner had sought to borrow money, whereby defendant would purchase the house for an agreed sum, from which the cost of encumbrances would be deducted and the balance paid owner, and owner would be given a 90-day option to repurchase at a price $2000 higher than the sale price, was not unconscionable and would not be set aside. Powell v. Bastian (1975) 541 P 2d 1127.

PART 2

DEBTORS' REMEDIES

Section
70B-5-201. Interests in land.
70B-5-202. Effect of violations on rights of parties.
70B-5-203. Civil liability for violation of disclosure provisions.
70B-5-204. Debtor's right to rescind certain transactions.
70B-5-205. Refunds and penalties as setoff to obligation.

70B-5-201. Interests in land. For purposes of the provisions of this part on civil liability for violation of maximum charges (section 70B-5-202 subparagraph (3) and (4)), disclosure provision (section 70B-5-203) and on the debtor's right to rescind certain transactions (section 70B-5-204);

(1) consumer credit sale includes a sale of an interest in land without regard to the rate of the credit service charge if the sale is otherwise a consumer credit sale (section 70B-2-104) or to the use or intended use of the collateral as a dwelling; and

(2) consumer loan includes a loan primarily secured by an interest in land without regard to the rate of the loan finance charge if the loan is otherwise a consumer loan (section 70B-3-104) or to the use or intended use of the collateral as a dwelling.

History: L. 1969, ch. 18, § 5.201; 1975, ch. 210, § 16.

Compiler's Notes.

In the adoption of section 5.201 of the Uniform Consumer Credit Code, the Utah enactment substituted a reference to "section 3.104" for a reference to "section 3.105" in subsection (2). See 1969 Special Session amendment in 70B-3-105.

The 1975 amendment inserted "maximum charges (section 70B-5-202 subparagraph (3) and (4))" in the introductory paragraph; added "or to the use or intended use of the collateral as a dwelling" at the end of subds. (1) and (2); and made minor changes in phraseology and punctuation.

Comment of Commissioners on Uniform State Laws.

A consumer credit sale is defined to include the sale of an interest in land if the other requisites of a consumer credit sale are present. Section 2.104 (1). Consumer loan is defined to include loans secured by an interest in land if the other requisites of a consumer loan are present. Section 3.104 (1). However, in both cases a transaction is generally excluded from the definition of consumer credit sale or consumer loan if the rate of the credit service or loan finance charge does not exceed 10% per year. Sections 2.104 (2) (b) and 3.105. For example, the ordinary home or farm mortgage at a rate of less than 10% per year is generally excluded from those provisions of the Act which apply only to consumer credit sales or consumer loans. Exceptions include: (1) Parts 3 on disclosure and advertising of Articles 2 and 3 which apply to a sale of an interest in land or a loan primarily secured by an interest in land without regard to the rate of charge, if the transaction is otherwise a consumer credit sale or a consumer loan (See Comment to Section 2.301); and (2) Sections 5.203 and 5.204 providing remedies to the debtor in the event of violation by the creditor of the provisions on disclosure.

DECISIONS UNDER FORMER LAW

Security agreement or sale and repurchase agreement.

Whether warranty deed coupled with collateral contract containing rental and repurchase provisions constituted a security agreement or absolute sale and repurchase agreement was question precluding summary judgment for defendant in an action for statutory penalty for usury. Kjar v. Brimley (1972) 27 U 2d 411, 497 P 2d 23.

70B-5-202. Effect of violations on rights of parties.

(1) If a creditor has violated the provisions of this act applying to certain negotiable instruments (section 70B-2-403), or limitations on the schedule of payments or loan term for regulated loans (section 70B-3-512), the debtor is not obligated to pay the credit service charge or loan finance charge, and has a right to recover from the person violating this act or from an assignee of that person's rights who undertakes direct collection of payments or enforcement of rights arising from the debt a penalty in an amount determined by the court not in excess of three times the amount of the credit service charge or loan finance charge. No action pursuant to this subsection may be brought more than one year after the due date

of the last scheduled payment of the agreement with respect to which the violation occurred.

(2) If a creditor has violated the provisions of this act applying to authority to make supervised loans (section 70B-3-502), the loan is void and the debtor is not obligated to pay either the principal or of the loan finance charge. If he has paid any part of the principal or of the loan finance charge, he has a right to recover the payment from the person violating this act or from an assignee of that person's rights who undertakes direct collection of payments or enforcement of rights arising from the debt. With respect to violations arising from loans made pursuant to revolving loan accounts, no action pursuant to this subsection may be brought more than two years after the violation occurred. With respect to violations arising from other loans, no action pursuant to this subsection may be brought more than one year after the due date of the last scheduled payment of the agreement pursuant to which the charge was paid.

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

(4) If a debtor is entitled to a refund and a person liable to the debtor refuses to make a refund within a reasonable time after demand, the debtor may recover from that person a penalty in an amount determined by a court not exceeding the greater of either the amount of the credit service or loan finance charge or ten times the amount of the excess charge. If the creditor has made an excess charge in deliberate violation of or in reckless disregard for this act, the penalty may be recovered even though the creditor has refunded the excess charge. No penalty pursuant to this subsection may be recovered if a court has ordered a similar penalty assessed against the same person in a civil action by the administrator (section 70B-6-113). With respect to excess charges arising from sales made pursuant to revolving charge accounts or from loans made pursuant to revolving loan accounts, no action pursuant to this subsection may be brought more than two years after the time the excess charge was made. With respect to excess charges arising from other consumer credit sales or consumer loans, no action pursuant to this subsection may be brought more than one year after the due date of the last scheduled payment of the agreement pursuant to which the charge was made.

(5) Except as otherwise provided, no violation of this act impairs rights on a debt.

(6) If an employer discharges an employee in violation of the provisions prohibiting discharge (section 70B-5-106), the employee may within sixty days bring a civil action for recovery of wages lost as a result of the violation and for an order requiring the reinstatement of the employee. Damages recoverable shall not exceed lost wages for six weeks.

(7) If the creditor establishes by a preponderance of evidence that a violation is unintentional or the result of a bona fide error no liability is imposed under subsections (1), (2), and (4) and the validity of the transaction is not affected.

(8) In any case in which it is found that a creditor has violated this act, the court may award reasonable attorney's fees incurred by the debtor.

History: L. 1969, ch. 18, § 5.202.

Compiler's Notes.

In the adoption of section 5.202 of the Uniform Consumer Credit Code, the Utah enactment, apparently in error, substituted a reference to "section 3.512" for "section 3.511" in subsection (1).

Comment of Commissioners on Uniform State Laws.

1. This section sets forth certain remedies of the debtor in the event of violation of the Act by the creditor. Subsection (1) describes the rights of the debtor in the event of violation of Section 2.403 with respect to the taking of a negotiable instrument in a consumer credit transaction, or of Section 3.511 with respect to the schedule of payments or maximum loan term of regulated loans. Subsection (2) describes the remedies available to the borrower when a loan at a rate of loan finance charge exceeding 18% is made by a person not authorized to make such a loan. Subsections (3) and (4) set forth the rights of the debtor with respect to excess charges by the creditor. Subsection (6) describes the rights of an employee who has been discharged in violation of Section 5.106.

2. The Act provides for other remedies in addition to those set forth in this section. The debtor has a defense to the enforcement of a transaction which violates Section 5.107 on extortionate extensions of credit. Section 5.108 gives the debtor a remedy in certain cases of unconscionability. Section 5.203 sets forth the rights of the debtor with respect to transactions in which the creditor has violated the provisions on disclosure. Parts 3 of Articles 2 and 3. Section 5.204, which is derived from CCPA Section 125, allows to the debtor a right of rescission with respect to transactions in which the creditor takes a security interest in the residence of the debtor. The debtor also has a right to cancel a home solicitation sale. Part 5 of Article 2.

3. In addition to the foregoing individual debtors' remedies the Act provides for actions by the Administrator for the benefit of debtors. The Administrator may issue cease and desist orders with respect to violations of the Act or may bring civil actions to restrain violations of the Act. Sections 6.108 and 6.110. The Administrator may also bring a civil action against a creditor for making or collecting charges in excess of those permitted by the Act; the court may order the respondent to refund to the overcharged debtors the amount of the excess charge and in some cases to pay to the debtors a civil penalty. Section 6.113. In addition, Section 6.111 provides for civil actions by the Administrator for injunctions against a course of making unconscionable agreements or of fraudulent or unconscionable conduct.

4. In addition to the individual debtors' remedies and remedies of the Administrator described above, the debtor may have other remedies based on general principles of law or equity, or based on the provisions of other applicable law. See Sections 1.103 and 6.115.

DECISIONS UNDER FORMER LAW

Conditional sales contract.

Section permitting recovery of usurious payments was sufficiently broad to include a

usurious conditional sales contract, as well as other usurious contracts. Morgan Motor & Finance Co. v. Oliver (1942) 101 U 492, 124 P 2d 778, followed and approved in Mathis v. Holland Furnace Co. (1946) 109 U 449, 166 P 2d 518.

Evidence.

Burden of proof was on one alleging usury to establish it by at least clear and convincing evidence, and not merely by a preponderance thereof. Brown v. Johnson (1913) 43 U 1, 13, 134 P 590, 46 LRA (NS) 1157, Ann Cas 1916C 321.

In a proceeding to recover usurious payments, plaintiff need not establish case by proof beyond a reasonable doubt; the evidence, however, must be strong, clear and convincing. Cobb v. Hartenstein (1915) 47 U 174, 152 P 424.

Jurisdiction.

In action against finance company based on alleged usurious loan, complaint was subject to demurrer in absence of allegation that contract was made in Utah or was subject to its laws. Farrer v. Atlas Acceptance Corp. (1939) 97 U 261, 92 P 2d 729.

Limitations.

The lender, in the case of a usurious loan secured by a pledge, cannot accept payments thereon and then insist that during the time payments were being made and accepted the statute of limitations was running against the right of the pledgor to recover; the pledgor could waive the provisions of the usury statute and pay the debt in full, or stop payment at any time and recover what he paid and the property pledged. Conner v. Smith (1917) 51 U 129, 169 P 158.

Particeps criminis.

Borrower is not particeps criminis with lender in usurious transaction. National American Life Ins. Co. v. Bayou Country Club, Inc. (1965) 16 U 2d 417, 403 P 2d 26.

Partner's action.

Notwithstanding that statute provided for action to recover usurious interest by the borrower or his "personal representatives," a surviving partner could maintain the action under the authority of 75-11-9. Cobb v. Hartenstein (1915) 47 U 174, 152 P 424, cited with approval in Mathis v. Holland Furnace Co. (1946) 109 U 449, 166 P 2d 518, 522.

70B-5-203. Civil liability for violation of disclosure provisions.

(1) Except as otherwise provided in this section, a creditor who, in violation of the provisions on disclosure (sections 70B-2-301 to 70B-2-313 and 70B-3-301 to 70B-3-312), other than the provisions on advertising (sections 70B-2-313 and 70B-3-312) of the chapter on Credit Sales (sections 70B-2-101 to 70B-2-605) and the chapter on Loans (sections 70B-3-101 to 70B-3-605), fails to disclose information to a person entitled to the information under this act, or who fails to comply with any requirement imposed under the chapter on Fair Credit Billing (70B-10-101 to 70B-10-110), is liable to that person in an amount equal to the sum of:

(a) any actual damage sustained by the person as a result of the failure;

(b) (i) in the case of an individual action twice the amount of any finance charge in connection with the transaction, except that liability under this subparagraph shall not be less than $100 nor greater than $1,000; or

(ii) in the case of a class action, such amount as the court may allow, except that as to each member of the class no minimum recovery shall be applicable, and the total recovery in the action shall not be more than the lesser of $500,000 or 1% of the net worth of the creditor; and

(c) in the case of any successful action to enforce the liability provided for in this subsection (1), the costs of the action,

together with a reasonable attorney's fee as determined by the court.

In determining the amount of award in any class action, the court shall consider, among other relevant factors, the amount of any actual damages awarded, the frequency and persistence of failures of compliance by the creditor, the resources of the creditor, the number of persons adversely affected, and the extent to which the creditor's failure of compliance was intentional.

(2) Recovery under the provisions of Section 130(a) of the Federal Truth in Lending Act shall preclude recovery under subsection (1) of this section for actions which violate both the Federal Truth in Lending Act or the Federal Fair Credit Billing Act and the Utah Uniform Consumer Credit Code.

(3) A creditor has no liability under this section if within fifteen days after discovering an error, and prior to the institution of an action under this section or the receipt of written notice of the error, the creditor notifies the person concerned of the error and makes whatever adjustments in the appropriate account are necessary to assure that the person will not be required to pay a credit service charge or loan finance charge in excess of the amount or percentage rate actually disclosed.

(4) A creditor may not be held liable in any action brought under this section for a violation of this act if the creditor shows by a preponderance of evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid the error.

(5) Except as otherwise specifically provided in this act, any civil action for a violation of this title which may be brought against the original creditor in any credit transaction may be maintained against any subsequent assignee of the original creditor where the violation from which the alleged liability arose is apparent on the face of the instrument assigned unless the assignment is involuntary.

(6) No provision of this section imposing any liability shall apply to any action done or omitted in good faith in conformity with some provision of this act, notwithstanding that after the action or omission has occurred, the provision is amended, rescinded, or determined by judicial or other authority to be invalid for any reason.

(7) The multiple failure to disclose to any person any information required under this chapter to be disclosed in connection with a single account under an open end consumer credit plan, other single consumer credit sale, consumer loan, or other extension of consumer credit, shall entitle the person to a single recovery under this section but continued failure to disclose after a recovery has been granted shall give rise to rights to additional recoveries.

(8) A person may not take any action to offset any amount for which a creditor is potentially liable to that person under subsection (1)(b) against any amount owing to the creditor by that person, unless the amount of the creditor's liability to that person has been determined by judgment of a court of competent jurisdiction in an action to which the person was a party.

(9) No action pursuant to this section may be brought more than one year after the date of the occurrence of the violation.

History: L. 1969, ch. 18, § 5.203; 1975, ch. 209, § 6; 1977, ch. 275, § 1.

Compiler's Notes.

The 1975 amendment inserted "or who fails to comply with any requirement imposed under the chapter on Fair Credit Billing (70B-10-101 to 70B-10-110)" near the end of the introductory portion of subsec. (1); inserted subd. (1) (a); redesignated former subds. (1) (a) and (1) (b) as subds. (1) (b) (i) and (1) (c); inserted "in the case of an individual action" at the beginning of subd. (1) (b) (i); substituted "except that liability under this subparagraph" in subd. (1) (b) (i) for "but the liability pursuant to this paragraph"; inserted subd. (1) (b) (ii); substituted "liability provided for in this subsection (1)" in subd. (1) (c) for "under paragraph (a)"; inserted the second paragraph of subsec. (1); inserted subsec. (2); redesignated former subsecs. (2) and (3) as subsecs. (3) and (4); substituted present subsec. (5) for "(4) Any action which may be brought under this section against the original creditor in any credit transaction involving a security interest in land may be maintained against any subsequent assignee of the original creditor where the assignee, its subsidiaries, or affiliates were in a continuing business relationship with the original creditor either at the time the credit was extended or at the time of the assignment, unless the assignment was involuntary, or the assignee shows by a preponderance of evidence that it did not have reasonable grounds to believe that the original creditor was engaged in violations of this act and that it maintained procedures reasonably adapted to apprise it of the existence of the violations"; inserted present subsecs. (6) through (8); redesignated subsec. (5) as subsec. (9); and made numerous changes in phraseology, style and punctuation.

The 1977 amendment substituted "$500,000" for "$100,000" in subd. (1) (b) (ii); and inserted "or the Federal Fair Credit Billing Act" after "Federal Truth in Lending Act" in subsec. (2).

Comment of Commissioners on Uniform State Laws.

This section is derived from Section 130 of the CCPA.

Exemptions from act.

Down payments which are deferred in the normal course of established business procedure by the use of short-term, noninterest-bearing notes, are exempt from the strict reporting conditions of this title. Redhouse v. Quality Ford Sales, Inc. (1975) 511 F 2d 230.

Improper damages.

Where no harm had resulted from the single technical violation of disclosure requirements on the financing statement, and no damages were established by the evidence, the assessment of damages against auto dealer was improper. Redhouse v. Quality Ford Sales, Inc. (1975) 511 F 2d 230.

Not intentional defense.

Used car dealer who testified he was unable to calculate the average rate of interest on installment sales contract on which payments were $126.72 per month for five months and $86.72 per month for the remaining 25 months, failed to establish a defense under former subsec. (3), present subsec. (4), and was liable for statutory penalty for failure to enter annual percentage rate in contract as required by 70B-2-304. Knox v. Thomas (1973) 30 U 2d 15, 512 P 2d 664.

70B-5-204. Debtor's right to rescind certain transactions.

(1) Except as otherwise provided in this section, in the case of a consumer credit sale or consumer loan with respect to which a security interest is retained or acquired in an interest in real property which is used or expected to be used as the residence of the person

to whom credit is extended, the debtor shall have the right to rescind the transaction until midnight of the third business day following the consummation of the transaction or the delivery of the disclosures required under this section and all other material disclosures required by this act, whichever is later, by notifying the creditor, in accordance with the rules of the administrator, of his intention to do so. The creditor shall clearly and conspicuously disclose, in accordance with rules of the administrator, to the debtor in a transaction subject to this section the rights of the debtor under this section. The creditor shall also provide, in accordance with rules of the administrator, an adequate opportunity to the obligor to exercise his right to rescind any transaction subject to this section.

(2) When a debtor exercises his right to rescind under subsection (1), he is not liable for any credit service charge, loan finance charge, or other charge, and any security interest given by the debtor becomes void upon the rescission. Within ten days after receipt of a notice of rescission, the creditor shall return to the debtor the money or property given as earnest money, down payment, or otherwise, and shall take any action necessary or appropriate to reflect the termination of any security interest created under the transaction. If the creditor has delivered property to the debtor, the debtor may retain possession of it. Upon the performance of the creditor's obligations under this section, the debtor shall tender the property to the creditor, except that if return of the property in kind would be impractical or inequitable, the debtor shall tender its reasonable value. Tender shall be made at the location of the property or at the residence of the debtor, at the option of the debtor. If the creditor does not take possession of the property within ten days after tender by the debtor, ownership of the property vests in the debtor without obligation on his part to pay for it.

(3) Notwithstanding any rule of evidence, written acknowledgment of receipt of any disclosure required under this act by a person to whom a statement is required to be given pursuant to this section does no more than create a rebuttable presumption of delivery thereof.

(4) The administrator, if he finds that the action is necessary in order to permit homeowners to meet bona fide personal financial emergencies, may prescribe rules authorizing the modification or waiver of any rights created under this section to the extent and under the circumstances set forth in those rules.

(5) This section does not apply to the creation or retention of a first lien against a dwelling to finance the acquisition of that dwelling. A loan to finance the original construction of the dwelling and a

loan to refinance any such construction loan shall both be deemed a loan to finance the acquisition of that dwelling.

(6) A debtor's right of rescission shall expire three years after the date of consummation of the transaction or upon the sale of the property, whichever occurs earlier, notwithstanding the fact that the disclosures required under this section or any other material disclosures required under this chapter have not been delivered to the debtor.

History: L. 1969, ch. 18, § 5.204; 1975, ch. 209, § 7.

Compiler's Notes.

In the adoption of section 5.204 of the Uniform Consumer Credit Code, the Utah enactment added the second sentence of subsection (5).

The 1975 amendment substituted "real property" for "land" near the beginning of subsec. (1); added subsec. (6); and made minor changes in phraseology.

Comment of Commissioners on Uniform State Laws.

This section is derived from CCPA Section 125.

DECISIONS UNDER FORMER LAW

Rescission time.

Although nearly four years had elapsed since the mortgage was executed, and the mortgagee had been paid in full, rescission of mortgage acquired by fraud, with unlawful interest charges, and made without informing borrower of her right to rescind, was allowed. Wasescha v. Terra, Inc. (1974) 528 P 2d 802.

70B-5-205. Refunds and penalties as setoff to obligation. Refunds or penalties to which the debtor is entitled pursuant to this part may be set off against the debtor's obligation, and may be raised as a defense to a suit on the obligation without regard to the time limitations prescribed by this part.

History: L. 1969, ch. 18, § 5.205.

DECISIONS UNDER FORMER LAW

Counterclaim based on usury.

Counterclaim based on usurious interest rates, which is not barred at time of commencement of lender's action, is not barred thereafter because it is not pleaded before expiration of full statutory time. Beehive Security Thrift & Loan v. Hyde (1965) 17 U 2d 130, 405 P 2d 417.

PART 3

CRIMINAL PENALTIES

Section
70B-5-301. Willful violations.
70B-5-302. Disclosure violation.

70B-5-301. Willful violations.

(1) A supervised lender who willfully makes charges in excess of those permitted by the provisions of the chapter on Loans (sections 70B-3-101 to 70B-3-605) applying to supervised loans (sections 70B-3-501 to 70B-3-514) is guilty of a misdemeanor and upon conviction may be sentenced to pay a fine not exceeding $500.

(2) A person, other than a supervised financial organization, who willfully engages in the business of making supervised loans without a license in violation of the provisions of this act applying to authority to make supervised loans (section 70B-3-502) is guilty of a misdemeanor and upon conviction may be sentenced to pay a fine not exceeding $5,000.

(3) A person who willfully engages in the business of making consumer credit sales, consumer leases, or consumer loans, or of taking assignments of rights against debtors arising therefrom and undertakes direct collection of payments or enforcement of these rights, without complying with the provisions of this act concerning notification (section 70B-6-202) or payment of fees (section 70B-6-203), is guilty of a misdemeanor and upon conviction may be sentenced to pay a fine not exceeding $100.

History: L. 1969, ch. 18, § 5.301.

DECISIONS UNDER FORMER LAW

Proof.

Proof beyond a reasonable doubt was required to convict under statute prescribing criminal penalty for usury. Cobb v. Hartenstein (1915) 47 U 174, 187, 152 P 424.

70B-5-302. Disclosure violation. A person upon conviction shall be fined not more than $5,000, or imprisoned not more than one year, or both, if he willfully and knowingly:

(1) gives false or inaccurate information or fails to provide information which he is required to disclose under the provisions of this act on disclosure and advertising (sections 70B-2-301 to 70B-2-313 or 70B-3-301 to 70B-3-312) of the chapter on Credit Sales (sections 70B-2-101 to 70B-2-605) or of the chapter on Loans (70B-3-101 to 70B-3-605), or of any related rule of the administrator adopted pursuant to this act;

(2) uses any table or chart, the use of which is authorized by rule of the administrator adopted pursuant to the provisions on calculation of rate to be disclosed (section 70B-2-304 and section 70B-3-304), in a manner which consistently understates the annual percentage rate determined according to those provisions; or

(3) otherwise fails to comply with any requirement of the provisions of this act on disclosure and advertising (sections 70B-2-301 to 70B-2-313 or 70B-3-101 to 70B-3-312) of the chapter on Credit Sales (70B-2-101 to 70B-2-605) or of the chapter on Loans (70B-3-101 to 70B-3-605), or of any related rule of the administrator adopted pursuant to this act.

(4) no provision of this section shall apply to any action done or omitted in good faith in conformity with the provisions of this act, notwithstanding that after such action or omission has occurred, such

provision is amended, rescinded, or determined by judicial or other authority to be invalid for any reason.

History: L. 1969, ch. 18, § 5.302; 1975, ch. 209, § 8.

Compiler's Notes.

The 1975 amendment substituted "upon conviction shall be fined not more than $5,000, or imprisoned not more than one year, or both" at the beginning of the section for "is guilty of a misdemeanor and upon conviction may be sentenced to pay a fine not exceeding $5,000"; deleted "rate" before "table" at the beginning of subd. (2); added subd. (4); and made minor changes in punctuation.

Comment of Commissioners on Uniform State Laws.

This section is derived from CCPA Section 112.

CHAPTER 6

ADMINISTRATION

Part
1. Powers and functions of administrator.
2. Notification and fees.
3. Council of advisors on consumer credit.
4. Administrative procedure and judicial review.

PART 1

POWERS AND FUNCTIONS OF ADMINISTRATOR

Section
70B-6-101. Short title.
70B-6-102. Applicability.
70B-6-103. Administrator.
70B-6-104. Powers of administrator — Harmony with federal regulations — Reliance on rules — Duty to report.
70B-6-106. Investigatory powers.
70B-6-107. Application of part on administrative procedure and judicial review.
70B-6-108. Administrative enforcement orders.
70B-6-109. Assurance of discontinuance.
70B-6-110. Injunctions against violations of act.
70B-6-111. Injunctions against unconscionable agreements and fraudulent or unconscionable conduct.
70B-6-112. Temporary relief.
70B-6-113. Civil actions by administrator.
70B-6-114. Omitted.
70B-6-115. Debtor's remedies not affected.
70B-6-116. Venue.

70B-6-101. Short title. This chapter (sections 70B-6-101 to 70B-6-415) shall be known and may be cited as Utah Uniform Consumer Credit Code — Administration.

History: L. 1969, ch. 18, § 6.101.

Collateral References.

New Topic Service, AmJur 2d, Consumer Credit Protection.

70B-6-102. Applicability. This part (70B-6-101 to 70B-6-116) applies to persons who in this state

(1) make or solicit consumer credit sales, consumer leases, consumer loans, consumer related sales (section 70B-2-602) and consumer related loans (section 70B-3-602); or

(2) directly collect payments from or enforce rights against debtors arising from sales, leases, or loans specified in subsection (1), wherever they are made.

History: L. 1969, ch. 18, § 6.102.

Comment of Commissioners on Uniform State Laws.

Section 1.201 states the territorial application of this Act. This Part has a broader territorial application than some other provisions, but this section is not intended to extend the territorial scope of other provisions beyond the limits specified in Section 1.201.

70B-6-103. Administrator. "Administrator" means the commissioner of financial institutions provided for in section 7-1-1, Utah Code Annotated 1953.

History: L. 1969, ch. 18, § 6.103.

Comment of Commissioners on Uniform State Laws.

In order to obtain the administration essential to the effectiveness of the Uniform Consumer Credit Code, the National Conference recommends centralizing all powers of administration in a single official or agency. In recognition of the fact that in some States a single official or agency either is not constitutionally possible or may not be politically feasible, the Act does not attempt to identify the Administrator. The Administrator may be a single State official or department, two or more State officials or departments, or a Commission. For example in a State in which a single official (e.g., Superintendent or Commissioner of Banks, Banking or Financial Institutions) or a single department (e.g., Banking Department, Commerce Department or Department of Financial Institutions) presently supervises both banks and other financial institutions such as consumer finance companies and sales finance companies, it may be desirable to designate that official or department as the single Administrator. If two or more State officials or departments are to share the powers of the Administrator, the National Conference recommends that a Commission including those officials or departments be designated as Administrator, and that, unless a statutory division of areas of power and authority is provided for, the Commission be given power to prescribe the areas in which the officials or departments who are members of the Commission shall exercise the power and authority of the Administrator.

70B-6-104. Powers of administrator — Harmony with federal regulations — Reliance on rules — Duty to report.

(1) In addition to other powers granted by this act, the administrator within the limitations provided by law may:

(a) receive and act on complaints, take action designed to obtain voluntary compliance with this act, or commence proceedings on his own initiative;

(b) counsel persons and groups on their rights and duties under this act;

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

(d) makes studies appropriate to effectuate the purposes and policies of this act and make the results available to the public;

(e) adopt, amend, and repeal substantive rules when specifically authorized by this act, and adopt, amend, and repeal procedural rules to carry out the provisions of this act;
(f) maintain offices within this state; and
(g) employ any necessary hearing examiners, clerks, and other employees and agents.

(2) The administrator shall adopt rules not inconsistent with the Federal Consumer Credit Protection Act to assure a meaningful disclosure of credit terms so that a prospective debtor will be able to compare more readily the various credit terms available to him and to avoid the uninformed use of credit. These rules may supersede any provisions of this act which are inconsistent with the Federal Credit Protection Act if the administrator finds such an inconsistency to exist and declares that the purpose of superseding this act is to resolve this inconsistency and may require disclosure by persons who arrange for the extension of credit, may contain classifications, differentiations, or other provisions, and may provide for adjustments and exceptions for any class of transactions subject to this act which in the judgment of the administrator are necessary or proper to effectuate the purposes or to prevent circumvention or evasion of, or to facilitate compliance with, the provisions of this act relating to disclosure of credit terms.

(3) To keep the administrator's rules in harmony with the Federal Consumer Credit Protection Act and the regulations prescribed from time to time pursuant to that act by the Board of Governors of the Federal Reserve System and with the rules of administrators in other jurisdictions which enact the Uniform Consumer Credit Code, the administrator, so far as is consistent with the purposes, policies and provisions of this act, shall:
(a) before adopting, amending, and repealing rules, advise and consult with administrators in other jurisdictions which enact the Uniform Consumer Credit Code; and
(b) in adopting, amending, and repealing rules, take into consideration:
(i) the regulations so prescribed by the Board of Governors of the Federal Reserve System; and
(ii) the rules of administrators in other jurisdictions which enact the Uniform Consumer Credit Code.

(4) Except for refund of an excess charge, no liability is imposed under this act for an act done or omitted in conformity with a rule of the administrator notwithstanding, that after the act or omission the rule may be amended or repealed or be determined by judicial or other authority to be invalid for any reason.

(5) The administrator shall report to the governor and legislature on the operation of his office, on the use of credit in the state, and

on the problems of persons of small means obtaining credit from persons regularly engaged in extending sales or loan credit. For the purpose of making the report, the administrator is authorized to conduct research and make appropriate studies. The report shall include a description of the examination and investigation procedures and policies of his office, a statement of policies followed in deciding whether to investigate or examine the offices of credit suppliers subject to this act, a statement of the number and percentages of offices which are periodically investigated or examined, a statement of the types of consumer credit problems of both creditors and debtors which have come to his attention through his examinations and investigations and the disposition of them under existing law, a statement of the extent to which the rules of the administrator pursuant to this act are not in harmony with the regulations prescribed by the Board of Governors of the Federal Reserve System pursuant to the Federal Consumer Credit Protection Act or the rules of administrators in other jurisdictions which enact the Uniform Consumer Credit Code and the reasons for such variations, and a general statement of the activities of his office and of others to promote the purposes of this act. The report shall not identify the creditors against whom action is taken by the administrator.

History: L. 1969, ch. 18, § 6.104; 1969 (1st S. S.), ch. 2, § 3; 1975, ch. 209, § 9.

Compiler's Notes.

In the adoption of section 6.104 of the Uniform Consumer Credit Code, the Utah enactment substituted the provisions of subsection (1) (g) for an optional provision reading: "appoint any necessary attorneys, hearing examiners, clerks, and other employees and agents and fix their compensation, and authorized attorneys appointed under this section to appear for and represent the administrator in court."

The amendment of this section by Chapter 2, Laws 1969 (First Special Session), revised this section to conform the Utah Code more closely to the requirements of the Federal Consumer Credit Protection Act and regulations issued thereunder and made changes as follows: inserted "may require disclosure by persons who arrange for the extension of credit" in the second sentence of subsec. (2); substituted "rules in harmony" for "rule in harmony" and corrected the spelling of "purposes" in subsec. (3); and substituted "rule may be amended" for "rules may be amended" in subsec. (4).

The 1975 amendment inserted "may supersede any provisions * * * to resolve this inconsistency and" in the second sentence of subsec. (2); deleted "consumer" before "credit" near the beginning of subsec. (5); and made minor changes in phraseology and punctuation.

Comment of Commissioners on Uniform State Laws.

1. The Administrator is given broad power to make studies relative to the proper working of this Act, to provide educational services for consumers, and advise persons and groups as to their rights and obligations under this Act. The various disclosure rules, rate limitations, and other provisions of the Act designed to protect the consumer cannot be fully effective unless consumers are aware of and understand their rights under the Act. Therefore, an essential part of the Administrator's total responsibility is providing consumer education.

2. Subsection (2) is derived from CCPA Sections 102, 103 (f), and 105. It requires the Administrator to adopt rules not inconsistent with the Federal Consumer Credit Protection Act, including, as defined in Section 1.302, regulations pursuant to that Act.

3. The direction to the Administrator in subsection (3) to keep his rules in harmony with the federal regulations issued pursuant to the CCPA and with the rules of administrators in other jurisdictions which enact the

Uniform Consumer Credit Code is derived from the Uniform Narcotic Drug Act Section 1 (14) (Alt.).

4. Under subsection (4), a person who acts in accordance with rules of the Administrator incurs no liability with respect to such conduct even if the rules are later amended, repealed or declared to be invalid, except that if a rule relating to charges is declared invalid, any excess charge made under the supposed authority of the invalid rule may be recovered by the debtor or by the Administrator for the debtors.

Effective Date.

Section 4 of ch. 2, Laws 1969 (1st S. S.) provided: "This act shall take effect at 12:01 a.m. on July 1, 1969."

Law Reviews.

Regulation Z and the UCCC: The Bewildering Maze of Credit Disclosure Provisions, 1979 B. Y. U. L. Rev. 394.

Compiler's Notes.

Section 6.105 of the Uniform Consumer Credit Code was omitted in the Utah enactment.

70B-6-106. Investigatory powers.

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

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

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

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

History: L. 1969, ch. 18, § 6.106.

Comment of Commissioners on Uniform State Laws.

1. Administrator under this section includes the official or agency referred to in Section 6.105 (1) [not adopted in Utah].

2. A course of conduct is an act subject to action by the Administrator under subsection (1).

3. The Administrator may commence an investigation under this section only if he has probable cause to believe that a violation of law or regulations has occurred which would subject the violator to action by the Administrator. Action by the Administrator includes both administrative enforcement and enforcement by civil action.

70B-6-107. Application of part on administrative procedure and judicial review. Except as otherwise provided, the part on Administrative Procedure and Judicial Review (sections 70B-6-401 to 70B-6-415) of this chapter applies to and governs all administrative action taken by the administrator pursuant to this chapter or pursuant to the part on Regulated and Supervised Loans (sections 70B-3-501 to 70B-3-514) of the chapter on Loans (70B-3-101 to 70B-3-605).

History: L. 1969, ch. 18, § 6.107.

Compiler's Notes.

In the adoption of Section 6.107 of the Uniform Consumer Credit Code, the Utah enactment inserted "pursuant to" before "the part on Regulated."

Comment of Commissioners on Uniform State Laws.

If the State has an adequate State administrative procedure act reference should be made to it in this section. Otherwise Part 4 of Article 6 should be enacted and referred to here. * * * See Comment to Section 6.401.

70B-6-108. Administrative enforcement orders.

(1) After notice and hearing the administrator may order a creditor or a person acting in his behalf to cease and desist from engaging in violations of this act. A respondent aggrieved by an order of the administrator may obtain judicial review of the order and the administrator may obtain an order of the court for enforcement of its order in the district court. Copies of the petition shall be served upon all parties of record.

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

(3) An objection not urged at the hearing shall not be considered by the court unless the failure to urge the objection is excused for good cause shown. A party may move the court to remand the case to the administrator in the interest of justice for the purpose of

adducing additional specified and material evidence and seeking findings thereon upon good cause shown for the failure to adduce this evidence before the administrator.

(4) The jurisdiction of the court shall be exclusive and its final judgment or decree shall be subject to review by the supreme court in the same manner and form and with the same effect as in appeals from a final judgment or decree in a special proceeding. The administrator's copy of the testimony shall be available at reasonable times to all parties for examination without cost.

(5) A proceeding for review under this section must be initiated within thirty days after a copy of the order of the administrator is received. If no proceeding is not initiated, the administrator may obtain a decree of the district court for enforcement of its order upon a showing that the order was issued in compliance with this section, that no proceeding for review was initiated within thirty days after copy of the order was received, and that the respondent is subject to the jurisdiction of the court.

(6) With respect to unconscionable agreements or fraudulent or unconscionable conduct by the respondent, the administrator may not issue an order pursuant to this section but may bring a civil action for an injunction (section 70B-6-111).

History: L. 1969, ch. 18, § 6.108.

Compiler's Notes.

In the adoption of section 6.108 of the Uniform Consumer Credit Code, the Utah enactment omitted a third sentence in subsection (1) reading: "Proceeding for review or enforcement is initiated by filing a petition in the court."

Comment of Commissioners on Uniform State Laws.

1. A cease and desist order issued under this section is not enforceable against the respondent until a judicial enforcement order is secured by the Administrator. However, unless the respondent files a petition for judicial review of the cease and desist order within thirty days after he receives a copy of the order, it becomes final and the Administrator may obtain enforcement of it without having to support his findings with substantial evidence. The Administrator in such a case need show only issuance of the order in compliance with this section, failure of the respondent to seek review within thirty days, and jurisdiction of the court. Any issues other than those mentioned above must be raised by the filing of a petition for review within the proper time.

2. The Administrator may not issue cease and desist orders under this section as to conduct which violates only the unconscionability or fraudulent conduct rules set out in Section 6.111.

70B-6-109. Assurance of discontinuance. If it is claimed that a person has engaged in conduct subject to an order by the administrator (section 70B-6-108) or by a court (sections 70B-6-110 through 70B-6-112), the administrator may accept an assurance in writing that the person will not engage in the conduct in the future. If a person giving an assurance of discontinuance fails to comply with its terms, the assurance is evidence that prior to the assurance he engaged in the conduct described in the assurance.

History: L. 1969, ch. 18, § 6.109.

Comment of Commissioners on Uniform State Laws.

If the person giving an assurance fails to comply with its terms, the assurance is admissible as evidence, either in a proceeding

before the Administrator or in the courts, that the person giving the assurance actually engaged in the conduct specified therein, and the weight to which the assurance is entitled is a question for the trier of fact and the court as in any other case involving the evaluation of evidence.

70B-6-110. Injunctions against violations of act. The administrator may bring a civil action to restrain a person from violating this act and for other appropriate relief.

History: L. 1969, ch. 18, § 6.110.

Comment of Commissioners on Uniform State Laws.

The Administrator has an option of proceeding either under this section or under Section 6.108. In an action under this section the Administrator, in addition to relief appropriate under other law of this State, may seek relief under Sections 6.112 and 6.113.

70B-6-111. Injunctions against unconscionable agreements and fraudulent or unconscionable conduct.

(1) The administrator may bring a civil action to restrain a creditor or a person acting in his behalf from engaging in a course of
   (a) making or enforcing unconscionable terms or provisions of consumer credit sales, consumer leases, or consumer loans;
   (b) fraudulent or unconscionable conduct in inducing debtors to enter into consumer credit sales, consumer leases, or consumer loans; or
   (c) fraudulent or unconscionable conduct in the collection of debts arising from consumer credit sales, consumer leases, or consumer loans.

(2) In an action brought pursuant to this section the court may grant relief only if it finds
   (a) that the respondent has made unconscionable agreements or has engaged or is likely to engage in a course of fraudulent or unconscionable conduct;
   (b) that the agreements or conduct of the respondent has caused or is likely to cause injury to consumers; and
   (c) that the respondent has been able to cause or will be able to cause the injury primarily because the transactions involved are credit transactions.

(3) In applying this section, consideration shall be given to each of the following factors, among others:
   (a) belief by the creditor at the time consumer credit sales, consumer leases, or consumer loans are made that there was no reasonable probability of payment in full of the obligation by the debtor;
   (b) in the case of consumer credit sales or consumer leases, knowledge by the seller or lessor at the time of the sale or lease of the inability of the buyer or lessee to receive substantial benefits from the property or services sold or leased;

(c) in the case of consumer credit sales or consumer leases, gross disparity between the price of the property or services sold or leased and the value of the property or services measured by the price at which similar property or services are readily obtainable in credit transactions by like buyers or lessees;

(d) the fact that the creditor contracted for or received separate charges for insurance with respect to consumer credit sales or consumer loans with the effect of making the sales or loans, considered as a whole, unconscionable; and

(e) the fact that the respondent has knowingly taken advantage of the inability of the debtor reasonably to protect his interests by reason of physical or mental infirmities, ignorance, illiteracy or inability to understand the language of the agreement, or similar factors.

(4) In an action brought pursuant to this section, a charge or practice expressly permitted by this act is not in itself unconscionable.

History: L. 1969, ch. 18, § 6.111.

Comment of Commissioners on Uniform State Laws.

1. Section 5.108 provides a private remedy for unconscionable consumer credit transactions. This section, in addition, permits the Administrator to bring suit to enjoin a person subject to the provisions of this Act from engaging in a course of conduct specified in subsection (1) (a), (b), or (c). These subsections cover three different areas of unconscionable conduct: (1) unconscionable contract terms, (2) fraudulent or unconscionable conduct in inducing consumers to enter into consumer credit transactions, and (3) fraudulent or unconscionable conduct in the collection of consumer credit debts.

2. One purpose of this section is to afford the Administrator a means of dealing with new patterns of fraudulent or unconscionable conduct unforeseen and, perhaps, unforeseeable at the writing of this Act. Another is to give him a more flexible remedy for halting reprehensible creditor practices that have been specifically and somewhat rigidly treated in previous consumer credit legislation. For instance, this Act has no specific prohibition against the creditor's allowing the debtor to sign a credit agreement containing blanks. In some situations there may be legitimate reasons for a contract to contain blanks at the time of signing. However, if the creditor deliberately leaves blanks to be filled in after the debtor's signature and without his consent, the Administrator may seek to restrain the practice as fraudulent or unconscionable conduct under this section.

3. Subsection (3) lists a number of specific factors to be considered on the issue of unconscionability. The following are illustrative of individual transactions which, if engaged in by or on behalf of a creditor as a course of conduct, would entitle the Administrator to injunctive relief under this section:

Under subsection (3) (a), a sale of goods to a low income consumer without expectation of payment but with the expectation of repossessing the goods sold and reselling them at a profit;

Under subsection (3) (b), a sale to a Spanish speaking laborer-bachelor of an English language encyclopedia set, or the sale of two expensive vacuum cleaners to two poor families sharing the same apartment and one rug;

Under subsection (3) (c), a home solicitation sale of a set of cookware or flatware to a housewife for $375 in an area where a set of comparable quality is readily available on credit in stores for $125 or less.

4. Subsection (4) prohibits a finding that a charge or practice expressly permitted by this Act is in itself unconscionable. However, even though a practice or charge is authorized by this Act, the totality of a particular creditor's conduct may show that the practice or charge is part of an unconscionable course of conduct. Therefore, in determining unconscionability, the creditor's total conduct, including that part of his conduct which is in accordance with the provisions of this Act, may be considered.

5. For cases illustrating the prior application of the doctrine of unconscionability in private actions, see Comment to Section

5.108. This doctrine was applied in an action by a public official in State ex rel. Lefkowitz v. ITM, Inc., 52 Misc. 2d 39, 275 N. Y. S. 2d 303 (Sup. Ct. 1966).

70B-6-112. Temporary relief. With respect to an action brought to enjoin violations of the act (section 70B-6-110) or unconscionable agreements or fraudulent or unconscionable conduct (section 70B-6-111), the administrator may apply to the court for appropriate temporary relief against a respondent, pending final determination of proceedings. If the court finds after a hearing held upon notice to the respondent that there is reasonable cause to believe that the respondent is engaging in or is likely to engage in conduct sought to be restrained, it may grant any temporary relief or restraining order it deems appropriate.

History: L. 1969, ch. 18, § 6.112.

70B-6-113. Civil actions by administrator.

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

that a violation is unintentional or the result of a bona fide error, no liability to pay a penalty shall be imposed under this subsection.

(2) The administrator may bring a civil action against a creditor or a person acting in his behalf to recover a civil penalty for willfully violating this act, and if the court finds that the defendant has engaged in a course of repeated and willful violations of this act, it may assess a civil penalty of no more than $5,000. No civil penalty pursuant to this subsection may be imposed for violations of this act occurring more than two years before the action is brought or for making unconscionable agreements or engaging in a course of fraudulent or unconscionable conduct.

History: L. 1969, ch. 18, § 6.113.

Comment of Commissioners on Uniform State Laws.

1. Subsection (1) allows the Administrator, where a creditor has imposed or collected excess credit service or loan finance charges, to bring suit for refunds on behalf of all debtors who have been overcharged, so long as the statute of limitations specified in the section has not run. Individual excess charges are often very small sums; this section provides a practicable way to litigate the question of whether such excess charges have been made. However, the individual borrower or buyer, if he chooses, may litigate separately from the Administrator the question of excess charges and this section provides for staying of the Administrator's action as to excess charges for which the debtor brings a separate action. See Section 5.202 (3) and (4) on the debtor's individual right to recover a refund or penalty.

2. An excess charge in the case of a revolving charge or loan account is made and the two year statute of limitations imposed by this section for the bringing of a suit for refund begins to run on the date on which any such excess charge is billed to the customer, even though an earlier agreement provided for the excess charge.

3. Under this section the Administrator may recover excess charges from an assignee only where the assignee has undertaken direct collection or enforcement. See Section 5.202 (3).

4. An action for a civil penalty under subsection (2) may be in lieu of or in addition to an action for a refund under subsection (1). The civil penalty under subsection (2) may be recovered for any violation of the Act, but not for unconscionable or fraudulent conduct under Section 6.111. The amount of the penalty to be imposed under subsection (2) is in the discretion of the court, but a penalty may be imposed only if it is found that the defendant has engaged in a course of repeated and willful violations of the Act.

70B-6-114. Omitted.

Compiler's Notes.

Section 6.114 of the Uniform Consumer Credit Code was omitted in the Utah enactment.

70B-6-115. Debtor's remedies not affected. The grant of powers to the administrator in this chapter does not affect remedies available to debtors under this act or under other principles of law or equity.

History: L. 1969, ch. 18, § 6.115.

Comment of Commissioners on Uniform State Laws.

1. It is not the intention of the grant of powers to the Administrator or of any of the other provisions of this Act dealing with debtors' remedies to diminish in any way the availability of debtors' remedies under other principles of law or equity or to impede the development of judicially created law in this area. For example, the debtor has a cause of action under Section 5.202 (3) and (4) to recover any charges in excess of those permitted in the Act and to recover a penalty in certain cases, and the Administrator may

also bring an action under Section 6.113 to recover excess charges and penalties in behalf of debtors. Whether or not a similar action by private parties would lie depends upon the State law with respect to class actions. This Act does not specifically authorize such class actions nor does it preclude them.

2. Certain other debtors' remedies provided by other applicable law are not affected by this Act. Examples include the UCC provisions concerning the buyer's revocation of acceptance of goods delivered (UCC Section 2-608), the buyer's right to cancel the contract and to take a security interest in the goods delivered (UCC Section 2-711), the buyer's right to incidental and consequential damages (UCC Section 2-715), and the buyer's remedies for fraud (UCC Section 2-721). So, too, the limitations on contract provided for in the UCC in regard to penalties, liquidated damages, and limitation of remedies (UCC Sections 2-718 and 2-719) continue to apply to transactions governed by this Act.

70B-6-116. Venue. The administrator may bring actions or proceedings in the district court where the administrator has his offices, or in his discretion, in the county in which an act on which the action or proceeding is based occurred or in a county in which respondent resides or transacts business.

History: L. 1969, ch. 18, § 6.116.

Compiler's Notes.

The Utah enactment substituted the above provision for an optional section 6.116 of the Uniform Consumer Credit Code as follows: "The administrator may bring actions or proceedings in a court in a county in which an act on which the action or proceeding is based occurred or in a county in which respondent resides or transacts business."

PART 2

NOTIFICATION AND FEES

Section
70B-6-201. Applicability.
70B-6-202. Notification.
70B-6-203. Fees.

70B-6-201. Applicability. This part (sections 70B-6-201 to 70B-6-203) applies to a person engaged in this state in making consumer credit sales, consumer leases, or consumer loans and to a person having an office or place of business in this state who takes assignments of and undertakes direct collection of payments from or enforcement of rights against debtors arising from these sales, leases, or loans.

History: L. 1969, ch. 18, § 6.201.

Comment of Commissioners on Uniform State Laws.

1. All persons who make consumer credit sales, consumer leases, or consumer loans in this State must file notification under Section 6.202. As to when a sale, lease or loan is made in this State see Section 1.201 on territorial application.

2. Assignees of consumer obligations must file notification under Section 6.202 only if all of the three following elements are present: (1) the assigned obligations arose out of sales, leases or loans made in this State, (2) the assignee has an office or place of business in this State, and (3) the assignee undertakes direct collection of payments from the debtors or direct enforcement of obligations against debtors. An assignee having no office or place of business within this State is not required to file notification even though he is engaged in direct collection or direct enforcement of consumer accounts in this State.

3. The direct collection provision excludes from the notification requirements the assignee "in bulk" or "for security" who leaves the collection of the obligation to the assignor and so has no relationship with the consumers with whom this Act is primarily

concerned. If an assignee for some reason, such as the default or bankruptcy of the assignor, takes over the direct collection or direct enforcement of obligations against consumers, he must at that time file notification.

4. Under Sections 2.104 (2) (a) and 2.106 (2) a transaction pursuant to a lender credit card or similar arrangement is excluded from the definitions of consumer credit sale and consumer lease and is classified as a loan made by the issuer of the card. Section 3.106. However, a transaction pursuant to a seller credit card may be a consumer credit sale or consumer lease. Consequently, a seller or lessor engaged in such transactions must file notification under Section 6.202.

70B-6-202. Notification.

(1) Persons subject to this part shall file notification with the administrator within thirty days after commencing business in this state, and, thereafter, on or before January 31 of each year. The notification shall state:
   (a) name of the person;
   (b) name in which business is transacted if different from (1);
   (c) address of principal office, which may be outside this state;
   (d) address of all offices or retail stores, if any, in this state at which consumer credit sales, consumer leases, or consumer loans are made, or in the case of a person taking assignments of obligations, the offices or places of business within this state at which business is transacted;
   (e) if consumer credit sales, consumer leases, or consumer loans are made otherwise than at an office or retail store in this state, a brief description of the manner in which they are made;
   (f) address of designated agent upon whom service of process may be made in this state (section 70B-1-203); and
   (g) whether regulated or supervised loans or both are made.

(2) If information in a notification becomes inaccurate after filing, no further notification is required until the following January 31.

History: L. 1969, ch. 18, § 6.202.

Comment of Commissioners on Uniform State Laws.

1. The basic rule is that notification must be filed within thirty days after commencing in this State business which is subject to this Act. In the case of an assignee who did not take the assignment with the intention of engaging in direct collection or enforcement but who at some later time finds it necessary to do so, notification is required thirty days after undertaking direct collection or enforcement.

2. Subsection (1) (e) requires a brief description of the manner of selling, leasing, or lending under which the creditor receives the debtor's offer at a place other than at an office or retail store, e.g., door to door selling, product parties.

3. Once a person has filed notification, he need file only once a year even though he changes his business name or opens additional places of business or makes other changes during the year.

70B-6-203. Fees.

(1) A person required to file notification shall on or before January 31 of each year pay to the administrator an annual fee to be fixed by the administrator, but not to exceed $50 per year.

(2) Persons required to file notification who are sellers, lessors, or lenders shall pay an additional fee at the time and in the manner stated in subsection (1) of $10 for each $100,000, or part thereof, in excess of $100,000, of the original unpaid balances arising from consumer credit sales, consumer leases, and consumer loans made in this state within the preceding calendar year and held either by the seller, lessor, or lender for more than thirty days after the inception of the sale, lease, or loan giving rise to the obligations, or by an assignee who has not filed notification. A refinancing of a sale, lease, or loan resulting in an increase in the amount of an obligation is considered a new sale, lease, or loan to the extent of the amount of the increase.

(3) Persons required to file notification who are assignees shall pay an additional fee at the time and in the manner stated in subsection (1) of $10 for each $100,000, or part thereof, of the unpaid balances at the time of the assignment of obligations arising from consumer credit sales, consumer leases, and consumer loans made in this state taken by assignment during the preceding calendar year, but an assignee need not pay a fee with respect to an obligation on which the assignor or other person has already paid a fee.

(4) Supervised financial organizations shall pay to the administrator the fees provided for in section 7-1-10, Utah Code Annotated 1953, and the fees provided for in this section shall not be applicable to supervised financial organizations.

(5) All fees collected by the administrator shall be deposited in the financial institutions fund as provided for in section 7-1-11, Utah Code Annotated 1953.

History: L. 1969, ch. 18, § 6.203.

Compiler's Notes.

In the enactment of section 6.203 of the Uniform Consumer Credit Code, the Utah enactment substituted "to be fixed by the administrator, but not to exceed $50 per year" for "of $10 for that year" in subsection (1) and added subsections (4) and (5).

Comment of Commissioners on Uniform State Laws.

1. Sellers, lessors, or lenders required to file notification under this Part must pay an annual fee of $10 [see Compiler's Notes, above]. In addition, those whose aggregate initial unpaid balances arising from consumer transactions during the preceding calendar year exceed $100,000 must pay an additional $10 for each $100,000 or part thereof above the first $100,000, except that no fee is required based on balances of obligations which within thirty days after they arise are assigned to an assignee who has filed notification.

2. Assignees required to file notification must pay an annual fee of $10 and, in addition, a fee of $10 for each $100,000 or part thereof of aggregate initial unpaid balances taken by assignment during the preceding year for which no fee has been paid.

3. For example, assume that a seller had total initial consumer credit sale unpaid balances during the preceding year of $975,000 of which within thirty days after the sales involved he assigned $325,000 to a sales finance company which had filed notification. The sum on which the seller must compute the fee in excess of $10 is $975,000 less $325,000 and less $100,000 because there is no additional fee imposed on a seller based on the first $100,000 of his accounts, or $550,000. Therefore, the seller's total fee will be $10 plus $60, or $70. The sales finance company's fee in addition to the basic $10 will be based on the total of the assigned accounts with no exclusion for the first $100,000 thereof. Therefore, the sales finance company's total

fee will be $10 plus $40, or $50. If the seller had paid a fee of $100 based upon the $975,000 of initial unpaid balances, including the assigned balance, the sales finance company's fee would be $10.

4. A seller, lessor or lender making consumer credit sales, consumer leases or consumer loans in this State cannot escape liability for the fees imposed by subsection (2) by assigning the resulting obligations to an out-of-state assignee who has not filed notification.

PART 3

COUNCIL OF ADVISORS ON CONSUMER CREDIT

Section
70B-6-301. Council of advisors on consumer credit.
70B-6-302. Function of council — Conflict of interest.
70B-6-303. Meetings.

70B-6-301. Council of advisors on consumer credit.

(1) There is hereby created the council of advisors on consumer credit consisting of sixteen members, who shall be appointed by the governor. One of the advisors shall be designated by the governor as chairman. In appointing members of the council, the governor shall seek to achieve a fair representation from the various segments of the consumer credit industry and the public.

(2) The term of office of each member of the council is four years. Of those members first appointed, four shall be appointed for a term of one year, four for a term of two years, four for a term of three years, and four for a term of four 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 receive a per diem allowance as approved by the board of examiners together with travel expenses as provided in section 63-2-15 and the rules and regulations promulgated under that section.

History: L. 1969, ch. 18, § 6.301; 1975, ch. 209, § 10.

Compiler's Notes.

In the adoption of section 6.301 of the Uniform Consumer Credit Code, the Utah enactment added "which shall be paid by the administrator" at the end of former subsec. (3).

The 1975 amendment rewrote subsec. (3) which, prior to amendment, read: "Members of the council shall serve without compensation but are entitled to reimbursement of expenses incurred in the performance of their duties, which shall be paid by the administrator."

70B-6-302. Function of council — Conflict of interest. The council shall advise and consult with the administrator concerning the exercise of his powers under this act and may make recommendations to him. Members of the council may assist the administrator in obtaining compliance with this act. Since it is an objective of this part to obtain competent representatives of creditors and the public to serve on the council and to assist and co-operate with the administrator in achieving the objectives

of this act, service on the council shall not in itself constitute a conflict of interest regardless of the occupations or associations of the members.

History: L. 1969, ch. 18, § 6.302.

70B-6-303. Meetings. The council and the administrator shall meet together at a time and place designated by the chairman at least twice each year. The council may hold additional meetings when called by the chairman.

History: L. 1969, ch. 18, § 6.303.

PART 4

ADMINISTRATIVE PROCEDURE AND JUDICIAL REVIEW

Section

70B-6-401. Applicability and scope. This part (sections 70B-6-401 to 70B-6-415) applies to the administrator, prescribes the procedures to be observed by him in exercising his powers under this act, and supplements the provisions of the part on Powers and Functions of Administrator (sections 70B-6-101 to 70B-6-116) of this chapter and of the part on Regulated and Supervised Loans (sections 70B-3-501 to 70B-3-514) of the chapter on Loans (sections 70B-3-101 to 70B-3-605).

History: L. 1969, ch. 18, § 6.401.

Comment of Commissioners on Uniform State Laws.

This Part is patterned after the Uniform Law Commissioners' Revised Model State Administrative Procedure Act, hereinafter referred to as the Revised Model Act. It is intended for adoption only in those states which have not enacted an adequate administrative procedure act which would apply to the actions of the Administrator under this Act. States which have acts covering only a part of the matter dealt with in this Part may find it desirable to adopt portions of this Part. States which presently have administrative procedure acts which depart markedly from the Revised Model Act may find it desirable to adopt this Part or some of its sections to apply to actions of the Administrator.

See Sections 3.507, 4.112, and 6.107.

70B-6-402. Definitions in part. In this part

(1) "Contested case" means a proceeding, including but not restricted to one pursuant to the provisions on administrative enforcement

orders (subsection (1) of section 70B-6-108) and licensing, in which the legal rights, duties, or privileges of a party are required by law to be determined by the administrator after an opportunity for hearing.

(2) "License" means a license authorizing a person to make supervised loans pursuant to the provisions on authority to make supervised loans (section 70B-3-502).

(3) "Licensing" includes the administrator's process respecting the grant, denial, revocation, suspension, annulment, withdrawal, or amendment of a license.

(4) "Party" means the administrator and each person named or admitted as a party, or who is aggrieved by action taken and seeks to be admitted as a party.

(5) "Rule" means each rule specifically authorized by this act that applies generally and describes the administrator's procedure or practice requirements or the organization of his office. The term includes the amendment or repeal of a prior rule but does not include

(a) statements concerning only the internal management of the administrator's office and not affecting private rights or procedures available to the public;

(b) declaratory rulings issued pursuant to the provisions on declaratory rulings by administrator (section 70B-6-409); or

(c) intra-office memoranda.

History: L. 1969, ch. 18, § 6.402.

Compiler's Notes.

In the adoption of section 6.402 of the Uniform Consumer Credit Code, the Utah enactment omitted "that applies generally and implements, interprets or prescribes law or policy, or each statement by the administrator" before "that applies generally" in subsection (5).

Comment of Commissioners on Uniform State Laws.

These definitions are derived from Section 1 of the Revised Model Act.

70B-6-403. Public information — Adoption of rules — Availability of rules and orders.

(1) In addition to other rule-making requirements imposed by law, the administrator shall:

(a) 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;

(b) 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;

(c) make available for public inspection all rules and all other written statements of policy or interpretations formulated,

adopted, or used by the administrator in the discharge of his functions;

(d) make available for public inspection all final orders, decisions, and opinions.

(2) 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 herein required. This provision is not applicable in favor of any person or party who has actual knowledge thereof.

History: L. 1969, ch. 18, § 6.403.

Comment of Commissioners on Uniform State Laws.

This Section is derived from Section 2 of the Revised Model Act.

70B-6-404. Procedure for adoption of rules.

(1) Prior to the adoption, amendment, or repeal of any rule, the administrator shall

(a) give at least twenty days' notice of his intended action. The notice shall include a statement of either the terms or substance of the intended action or a description of the subjects and issues involved, and the time when, the place where, and the manner in which interested persons may present their views thereon. The notice shall be mailed to all persons who have made timely request of the administrator for advance notice of his rule-making proceedings and shall be published in a newspaper of general circulation;

(b) afford all interested persons reasonable opportunity to submit data, views, or arguments, orally or in writing. In case of substantive rules, opportunity for oral hearing must be granted if requested by 25 persons, by a governmental subdivision or agency, or by an association having not less than 25 members. The administrator shall consider fully all written and oral submissions respecting the proposed rule. Upon adoption of a rule the administrator, if requested to do so by an interested person either prior to adoption or within thirty days thereafter, shall issue a concise statement of the principal reasons for and against its adoption, incorporating therein his reasons for overruling the considerations urged against its adoption.

(2) No rule is valid unless adopted in substantial compliance with this section. A proceeding to contest any rule on the ground of noncompliance with the procedural requirements of this section must be commenced within two years from the effective date of the rule.

(3) Compilations of all effective rules adopted by the administrator 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 administrator to cover mailing and publication costs.

History: L. 1969, ch. 18, § 6.404.

Compiler's Notes.

In the adoption of 6.404 of the Uniform Consumer Credit Code, the Utah enactment added "the Utah enactment a newspaper of general circulation" at the end of subsection (1) (a) and added subsection (3).

Comment of Commissioners on Uniform State Laws.

This Section is derived from Section 3 of the Revised Model Act.

70B-6-405. Omitted.

Compiler's Notes.

Section 6.405 of the Uniform Consumer Credit Code was omitted.

70B-6-406. Omitted.

Compiler's Notes.

Section 6.406 of the Uniform Consumer Credit Code was omitted.

70B-6-407. Petition for adoption of rules. An interested person may petition the administrator requesting the promulgation, amendment, or repeal of a rule. The administrator shall prescribe by rule the form for petitions and the procedure for their submission, consideration, and disposition. Within thirty days after submission of a petition, the administrator either shall deny the petition in writing, stating his reasons for the denials or shall initiate rule-making proceedings in accordance with the provisions on procedure for adoption of rules (section 70B-6-404).

History: L. 1969, ch. 18, § 6.407.

Comment of Commissioners on Uniform State Laws.

This Section is derived from Section 6 of the Revised Model Act.

70B-6-408. Declaratory judgment on validity or applicability of rules. The validity or applicability of a rule may be determined in an action for declaratory judgment in the district court in which the administrator has his offices 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 the plaintiff. The administrator shall be made a party to the action. A declaratory judgment may be rendered whether or not the plaintiff has requested the administrator to pass upon the validity or applicability of the rule in question.

History: L. 1969, ch. 18, § 6.408.

Comment of Commissioners on Uniform State Laws.

This Section is derived from Section 7 of the Revised Model Act.

70B-6-409. Declaratory rulings by administrator. The administrator shall provide by rule for the filing and prompt disposition of petitions or

declaratory rulings as to the applicability of any statutory provision or of any rule of the administrator. Rulings disposing of petitions have the same status as decisions or orders in contested cases.

History: L. 1969, ch. 18, § 6.409.

This Section is derived from Section 8 of the Revised Model Act.

Comment of Commissioners on Uniform State Laws.

70B-6-410. Contested cases — Notice — Hearing — Records.

(1) In a contested case, all parties shall be afforded an opportunity for hearing after reasonable notice.

(2) The notice shall include:
   (a) a statement of the time, place, and nature of the hearing;
   (b) a statement of the legal authority and jurisdiction under which the hearing is to be held;
   (c) a reference to the particular provisions of the statutes and rules involved;
   (d) a short and plain 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 furnished.

(3) Opportunity shall be afforded all parties to respond and present evidence and argument on all issues involved.

(4) Unless precluded by law, informal disposition may be made of any contested case by stipulation, agreed settlement, consent order, or default.

(5) The record in a contested case shall include:
   (a) all pleadings, motions, intermediate rulings;
   (b) evidence received or considered;
   (c) a statement of matters officially noticed;
   (d) questions and offers of proof, objections, and rulings thereon;
   (e) proposed findings and exceptions;
   (f) any decision, opinion, or report by the officer presiding at the hearing;
   (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.

(6) Oral proceedings or any part thereof shall be transcribed on request of any party, but at his expense.

(7) Findings of fact shall be based exclusively on the evidence and on matters officially noticed.

History: L. 1969, ch. 18, § 6.410.

This Section is derived from Section 9 of the Revised Model Act.

Comment of Commissioners on Uniform State Laws.

70B-6-411. Rules of evidence — Official notice. In contested cases:

(1) irrelevant, immaterial, or unduly repetitious evidence shall be excluded. The rules of evidence as applied in non-jury civil cases in the district courts of this state shall be followed. When necessary to ascertain facts not reasonably susceptible of proof under those rules, evidence not admissible thereunder may be admitted (except where precluded by statute) if it is of a type commonly relied upon by reasonably prudent men in the conduct of their affairs. The administrator shall give effect to the rules or privilege recognized by law. Objections to evidentiary offers may be made and shall be noted in the record. 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;

(2) 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-examinations 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 administrator's specialized knowledge. 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 they shall be afforded an opportunity to contest the material so noticed. The administrator's experience, technical competence, and specialized knowledge may be utilized in the evaluation of the evidence.

History: L. 1969, ch. 18, § 6.411.

This Section is derived from Section 10 of the Revised Model Act.

Comment of Commissioners on Uniform State Laws.

70B-6-412. Decisions and orders. A final decision or 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 accordance with rules of the administrator, a party submitted 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 or order shall be delivered or mailed forthwith to each party and to his attorney of record.

History: L. 1969, ch. 18, § 6.412.

This Section is derived from Section 12 of the Revised Model Act.

Comment of Commissioners on Uniform State Laws.

70B-6-413. Licenses.

(1) When the grant or denial of a license is required to be preceded by notice and opportunity for hearing, the provisions of this part concerning contested cases apply.

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

History: L. 1969, ch. 18, § 6.413.

Comment of Commissioners on Uniform State Laws.

This Section is derived from Section 14 of the Revised Model Act.

70B-6-414. 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 or the scope of judicial review available under other means 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 district court within thirty days after mailing notice of the final decision of the administrator or, if a rehearing is requested, within thirty 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) Within thirty days after the service of the petition, or within 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 shortened. 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.

(5) 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.

(6) 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 the court. The court, upon request, shall hear oral argument and receive written briefs.

(7) 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;
(b) in excess of the statutory authority of the administrator;
(c) made upon unlawful procedure;
(d) affected by other error of law;
(e) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
(f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

History: L. 1969, ch. 18, § 6.414.

Comment of Commissioners on Uniform State Laws. This Section is derived from Section 15 of the Revised Model Act.

70B-6-415. Appeals. An aggrieved party may obtain a review of any final judgment of the district court under this part by appeal to the supreme court. The appeal shall be taken as in other civil cases.

History: L. 1969, ch. 18, § 6.415.

CHAPTER 7

Reserved for Future Use

NOTE: Reserved for provisions concerning consumer credit counseling agencies.

CHAPTER 8

Reserved for Future Use

NOTE: Reserved for provisions concerning wage earner receiverships.

CHAPTER 9

EFFECTIVE DATE AND REPEALER

Section
70B-9-101. Time of taking effect — Provisions for transition.
70B-9-102. Continuation of licensing.
70B-9-103. Specific repealer and amendments.

70B-9-101. 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 July 1, 1969.

(2) Transactions entered into before this act takes effect and the rights, duties, and interests flowing from them thereafter may be terminated, completed, consummated, or enforced as required or permitted by any statute, rule of law, or other law amended, repealed, or modified by this act as though the repeal, amendment, or modification had not occurred, but this act applies to

(a) refinancings, consolidations, and deferrals made after this act takes effect of sales, leases, and loans whenever made;

(b) sales or loans made after this act takes effect pursuant to revolving charge accounts (section 70B-2-108) and revolving loan accounts (section 70B-3-108) entered into, arranged, or contracted for before this act takes effect; and

(c) all credit transactions made before this act takes effect in so far as the chapter on Remedies and Penalties (sections 70B-5-101 to 70B-5-302) limits the remedies of creditors.

(3) With respect to revolving charge accounts (section 70B-2-108) and revolving loan accounts (section 70B-3-108) entered into, arranged, or contracted for before this act takes effect, disclosure pursuant to the provisions on disclosure (section 70B-2-310 and section 70B-3-309), shall be made not later than thirty days after this act takes effect.

(4) Sections 70B-5-105 and 70B-5-106 respecting garnishments take effect on July 1, 1970.

History: L. 1969, ch. 18, § 9.101.

Compiler's Notes.

Subsection (2) of section 9.101 of the Uniform Consumer Credit Code was omitted; subsections (3) and (4) were renumbered as (2) and (3), respectively. Subsection (4) was added in the Utah enactment and does not appear in the Uniform Consumer Credit Code.

Comment of Commissioners on Uniform State Laws.

The thirty-day period in subsection [(3)] is derived from CCPA Section 127 (c).

Collateral References.

New Topic Service, AmJur 2d, Consumer Credit Protection.

70B-9-102. Continuation of licensing. All persons licensed or otherwise authorized under the provisions of Title 7, Utah Code Annotated 1953, on the effective date of this act are licensed to make supervised loans under this act pursuant to the part on Regulated and Supervised Loans (sections

70B-3-501 to 70B-3-514) of the chapter on Loans (sections 70B-3-101 to 70B-3-605), and all provisions of that part apply to the persons so previously licensed or authorized. The administrator may, but is not required to, deliver evidence of licensing to the persons so previously licensed or authorized.

History: L. 1969, ch. 18, § 9.102.

Comment of Commissioners on Uniform State Laws.

This section provides automatic licensing under Article 3, Part 5, for all lenders previously licensed under the State's licensed lender statutes prior to the effective date. No application or administrative action is required and the formal license under the prior statute, which will be repealed, will be a license under Part 5 of Article 3. The Administrator, at such time as his new duties under the Code permit him an opportunity, may substitute new licenses for those in the lenders' possession, but this is entirely a ministerial act.

70B-9-103. Specific repealer and amendments.

(1) The following acts and parts of acts are repealed:
- (a) Chapter 10 of Title 7, Utah Code Annotated 1953;
- (b) Section 15-1-2, Utah Code Annotated 1953, as amended by Chapter 24, Laws of Utah 1953, Chapter 20, Laws of Utah 1955, and Chapter 25, Laws of Utah 1965;
- (c) Section 15-1-2a, Utah Code Annotated 1953, as enacted by Chapter 24, Laws of Utah 1953;
- (d) Section 15-1-5, Utah Code Annotated 1953;
- (e) Section 15-1-7, Utah Code Annotated 1953, as amended by Chapter 21, Laws of Utah 1955;
- (f) Section 15-1-10, Utah Code Annotated 1953; and,
- (g) Chapter 5 of Title 15, Utah Code Annotated 1953.

(2) The following acts and parts of acts are amended:
- (a) Section 7-9-16, Utah Code Annotated 1953, as amended by Chapter 20, Laws of Utah 1961, and Chapter 17, Laws of Utah 1967, is amended to read as follows: (For text of amendment, see 7-9-16).
- (b) Section 70A-9-203(2), Utah Code Annotated 1953, as enacted by Chapter 154, Laws of Utah 1965, is amended to read as follows: (For text of amendment, see 70A-9-203(2)).
- (c) Section 78-23-1, Utah Code Annotated 1953, is amended to read as follows: (For text of amendment, see 78-23-1).

History: L. 1969, ch. 18, § 9.103.

Notes of Commissioners on Uniform State Laws re Repealer and Amendatory Provisions.

This Act is a comprehensive statute designed to regulate most aspects of consumer credit, maximum charges that may be made for consumer credit and rates of interest generally. Consumer credit covered includes sales credit related to the sale to consumers of goods or services, consumer loan credit, some credit related to the sale or financing of homes and some agricultural credit. All States have one or more acts regulating consumer credit and rates of interest and in many States additional provisions performing the same function appear in various other acts. To accommodate existing law to this Act, each State enacting this Act will need to repeal one or more existing acts or particular provisions in acts and may have to amend one or more other acts. The purpose of this Note is to suggest to the statutory revisor or other person preparing this Act

for introduction into a particular State Legislature the acts which should be repealed or amended. To produce the uniformity which the Commissioners believe desirable, acts should be repealed or amended as recommended in this Note.

Acts to Be Totally or Substantially Repealed.

Subject to other specific suggestions of this Note, certain existing acts devoted primarily to regulating consumer credit should be repealed in their entirety. The revisor or draftsman should insert in this section the appropriate statutes or provisions to be repealed. To help guide the search for these acts or provisions, a list of some of the common popular names of these acts follow, although there may be others in any particular jurisdiction:

Small loan acts, personal loan acts, consumer loan acts and acts licensing personal loan lenders, sales finance companies and consumer finance companies.

Installment loan laws.

Retail installment sales acts, motor vehicle installment sales acts, all goods acts.

Revolving sales credit acts, revolving loan acts.

Truth-in-lending acts.

Home solicitation sales acts.

Home improvement sales and loan acts.

Insurance premium financing acts.

Acts Permitting Maximum Charges for Credit and General Usury Acts.

Repeal of the above listed consumer credit regulatory acts will automatically repeal provisions in these acts permitting maximum charges for the types of credit dealt with in the acts. In addition, all general usury statutes and all other provisions in acts permitting maximum charges for loans, forbearance or the extension of credit should be repealed, excepting only provisions, if any, for maximum charges to be made by pawnbrokers.

Statutes providing for a "legal rate" of interest, that is, the rate to be applied for judgments, notes and other cases where there is no agreed rate or no agreement is possible (as in a judgment) should not be repealed. If these statutes are so intertwined with maximum contract rates, e.g., usury provisions, that it is difficult to separate the two types of provisions, total repeal of the usury and legal rate statute plus the addition of the following provision in this Act or elsewhere in the State statutes may be in order:

"If there is no agreement or provision of law for a different rate, the interest of money shall be at the rate of six per cent per annum."

Provisions of Existing Statutes Affecting Powers of Organizations.

In some States provisions relating to rates of interest are intertwined with provisions relating to powers of particular types of organizations, e.g., licensed lenders, consumer finance companies, commercial and industrial banks and trust companies, and thrift institutions such as credit unions, savings banks, and savings and loan associations whether or not organized for profit. In these cases statutory provisions should be repealed, preserved or amended according to Section 1.108 of this Act. See Comment to Section 1.108.

Uniform Commercial Code.

The 1962 Official Text of Uniform Commercial Code Section 9-203 (2) and the Note which follows subsection (2) read as follows:

"(2) A transaction, although subject to this Article, is also subject to . . . .*, and in the case of conflict between the provisions of this Article and any such statute, the provisions of such statute control. Failure to comply with any applicable statute has only the effect which is specified therein.

NOTE: At * in subsection (2) insert reference to any local statute regulating small loans, retail installment sales and the like."

If a State which enacted the UCC followed the instructions in the Note and inserted at the asterisk in UCC Section 9-203 (2) references to local statutes regulating small loans, retail installment sales and the like, UCC Section 9-203 (2) should be amended to substitute a reference to the Uniform Consumer Credit Code in lieu of those listed statutes. No other provisions of the UCC need be amended if it was enacted without variation from uniform language.

CHAPTER 10

BILLING ERRORS AND CREDIT CARD SALES

70B-10-101. Billing errors in statements — Procedures — Definitions.

(1) If a creditor, within sixty days after having transmitted to a debtor a statement of the debtor's account in connection with an extension of consumer credit or a consumer loan, receives at the address disclosed under sections 70B-2-310(2) (1) or 70B-3-309(2) (1) a written notice other than notice on a payment stub or other payment medium supplied by the creditor if the creditor so stipulates with the disclosure required under section 70B-2-310(1) (h) or 70B-3-309(1) (h) from the debtor in which notice the debtor:

(a) Sets forth or otherwise enables the creditor to identify the name and account number (if any) of the debtor;

(b) Indicates the debtor's belief that the statement contains a billing error and the amount of this billing error; and

(c) Sets forth the reasons for the debtor's belief (to the extent applicable) that the statement contains a billing error; the creditor shall pursue the procedures provided for in subsection (2).

(2) The creditor shall, unless the debtor has, after giving such written notice and before the expiration of the time limits specified in this section, agreed that the statement was correct:

(a) Not later than thirty days after the receipt of the notice, send a written acknowledgement thereof to the debtor, unless the action required in subsection (2) (b) is taken within this thirty day period; and

(b) Not later than two complete billing cycles of the creditor (in no event later than ninety days) after the receipt of the notice and prior to taking any action to collect the amount, or any part of it, indicated by the debtor under subsection (1) (b) either:

(i) Make appropriate corrections in the account of the debtor, including the crediting of any finance charges on amounts erroneously billed, and transmit to the debtor a notification of this correction and the creditor's explanation of any change in the amount indicated by the debtor under subsection (1) (b) and, if any such change is made and the debtor so requests, copies of documentary evidence of the debtor's indebtedness; or

(ii) Send a written explanation or clarification to the debtor after having conducted an investigation, setting forth to the extent applicable the reasons why the creditor believes the account of the debtor was correctly shown in the statement and, upon request of the debtor, provide copies of documentary evidence of the debtor's indebtedness. In the case of a billing error where the debtor alleges that the creditor's billing statement reflects goods not delivered to the debtor or his designee in accordance with the agreement made at the time of the transaction, the creditor may not construe such amount to be correctly shown unless he determines that the goods were actually delivered, mailed, or otherwise sent to the debtor and provides the debtor with a statement of this determination.

(3) After complying with the provisions of subsection (2) with respect to an alleged billing error, the creditor has no further responsibility under this section if the debtor continues to make substantially the same allegation with respect to such error.

(4) For the purposes of this section a "billing error" consists of any of the following:

(a) A reflection on a statement of an extension of credit which was not made to the debtor or, if made, was not in the amount reflected on the statement;

(b) A reflection on a statement of an extension of credit for which the debtor requests additional clarification including documentary evidence of it;

(c) A reflection on a statement of goods or services not accepted by the debtor or his designee or not delivered to the debtor or his designee in accordance with the agreement made at the time of the transaction;

(d) The creditor's failure to reflect properly on a statement a payment made by the debtor or a credit issued to the debtor;

(e) A computation error or similar error of an accounting nature of the creditor on a statement; or

(f) Any other error described in regulations of the administrator.

(5) For the purposes of this section, "action to collect the amount or any part of it" indicated by a debtor under subsection (1) (b) does not include the sending of statements of account to the debtor following written notice from the debtor as specified under subsection (1), if:

(a) The debtor's account is not restricted or closed because of the failure of the debtor to pay the amount indicated under subsection (1) (b); and

(b) The creditor indicates the payment of such amount is not required pending the creditor's compliance with this section.

(6) Nothing in this section shall be construed to prohibit any action by a creditor to collect any amount which has not been indicated by the debtor to contain a billing error.

(7) Pursuant to regulations of the administrator, the creditor operating a revolving charge account or a revolving loan account may not, prior to the sending of the written explanation or clarification required under subsection (2) (b) (ii), restrict or close an account with respect to which the debtor has indicated under subsection (1) that he believes the account to contain a billing error solely because of the debtor's failure to pay the amount indicated to be in error. Nothing in this subsection shall be deemed to prohibit a creditor from applying against the credit limit of the debtor's account the amount indicated to be in error.

(8) Any creditor who fails to comply with the requirements of this section or section 70B-10-102 forfeits any right to collect from the debtor the amount indicated by the debtor under subsection (1) (b) of this section and any finance charges thereon, except that the amount required to be forfeited under this section may not exceed $50.

History: C. 1953, 70B-10-101, enacted by L. 1975, ch. 209, § 11.

Title of Act.

An act amending the Utah Uniform Consumer Credit Code by amending sections 70B-1-301, 70B-2-310, 70B-2-416, 70B-3-309, 70B-3-408, 70B-5-203, 70B-5-204, 70B-5-302, and 70B-6-301, Utah Code Annotated 1953, as enacted by chapter 18, Laws of Utah 1969, and section 70B-6-104, Utah Code Annotated 1953, as enacted by chapter 18, Laws of Utah 1969, as amended by chapter 2, Laws of Utah 1969, first special session, and enacting sections 70B-10-101 through 70B-10-110 and sections 70B-11-101 through 70B-11-105, Utah Code Annotated 1953; relating to consumer credit and consumer loans; redefining payable in installments and defining arrange for the extension of credit and creditor; prescribing procedures by seller before changing terms in revolving charge account and revolving loan accounts and exceptions to notice; changing the criminal penalties regarding disclosure to include imprisonment; authorizing the administrator to adopt rules superseding provisions of this code inconsistent with Federal Consumer Credit Protection Act; providing a per diem allowance and travel expenses for members of council of advisors on consumer credit; conforming the provisions of the Utah Uniform Consumer Credit Code to the Federal Truth in Lending Act as amended by H. R. 11221; prescribing new procedures and rights in instances of billing errors; establishing certain changes in credit card sales; making it unlawful to discriminate in credit transactions on basis of sex or marital status and providing for exceptions and for remedies; and providing an effective date for certain provisions. — Laws 1975, ch. 209.

Collateral References.

New Topic Service, AmJur 2d, Consumer Credit Protection.

70B-10-102. Credit rating report limitations.

(1) After receiving a notice from a debtor as provided in subsection 70B-10-101(1), a creditor or his agent may not directly or indirectly threaten to report to any person adversely on the debtor's credit rating or credit standing because of the debtor's failure to pay the amount indicated by the debtor under subsection 70B-10-101(1)(b);

and this amount may not be reported as delinquent to any third party until the creditor has met the requirements of section 70B-10-101 and has allowed the debtor the same number of days (not less than ten) thereafter to making payment as is provided under the credit agreement with the debtor for the payment of undisputed amounts.

(2) If a creditor receives a further written notice from a debtor that an amount is still in dispute within the time allowed for payment under subsection (1) of this section, a creditor may not report to any third party that the amount of the debtor is delinquent because the debtor has failed to pay an amount which he has indicated under subsection 70B-10-101(1)(b), unless the creditor also reports that the amount is in dispute, and, at the same time, notifies the debtor of the name and address of each party to whom the creditor is reporting information concerning the delinquency.

(3) A creditor shall report any subsequent resolution of any delinquencies reported under subsection (2) to the parties to whom such delinquencies were initially reported.

History: C. 1953, 70B-10-102, enacted by L. 1975, ch. 209, § 12.

70B-10-103. Repayment without finance charges.

(1) If a revolving charge account plan or a revolving loan account plan provides a time period within which a debtor may repay any portion of the credit extended without incurring an additional finance charge, this additional finance charge may not be imposed in respect to such portion of the credit extended for the billing cycle of which such period is a part unless a statement which includes the amount upon which the finance charge for that period is based was mailed at least fourteen days prior to the date specified in the statement by which payment must be made in order to avoid imposition of that finance charge.

(2) Subsection (1) of this section does not apply in any case where a creditor has been prevented, delayed, or hindered in making timely mailing, or delivery of such periodic statement within the time period specified in subsection (1) because of an act of God, war, natural disaster, strike, or other excusable or justifiable cause, as determined under regulations of the administrator.

History: C. 1953, 70B-10-103, enacted by L. 1975, ch. 209, § 13.

70B-10-104. Posting of payments. Payments received from a debtor under a revolving charge account or revolving loan account by the creditor shall be posted promptly to the debtor's account as specified in regulations of the administrator. These regulations shall prevent a finance charge from

being imposed on any debtor if the creditor has received the debtor's payment in readily identifiable form in the amount, manner, location, and time indicated by the creditor to avoid the imposition of same.

History: C. 1953, 70B-10-104, enacted by L. 1975, ch. 209, § 14.

70B-10-105. Overpayment by debtor. Whenever a debtor transmits funds to a creditor in excess of the total balance due on a revolving charge account or revolving loan account, the creditor shall promptly upon the request of the debtor refund the amount of the overpayment, or credit such amount to the debtor's account.

History: C. 1953, 70B-10-105, enacted by L. 1975, ch. 209, § 15.

70B-10-106. Credit card sale return — Effect. With respect to any sales transaction where a credit card has been used to obtain credit, where the seller is a person other than the card issuer and where the seller accepts or allows the return of the goods or forgiveness of a debt for services which were the subject of such sale, the seller shall promptly transmit to the credit card issuer a credit statement with respect to it, and the credit card issuer shall credit the account of the debtor for the amount of the transaction.

History: C. 1953, 70B-10-106, enacted by L. 1975, ch. 209, § 16.

70B-10-107. Inducement not to use credit card — Discount factor.

(1) With regard to a credit card which may be used for extensions of credit in sales transactions in which the seller is a person other than the card issuer, the card issuer may not, by contract or otherwise, prohibit any such seller from offering a discount to a card holder to induce the card holder to pay by cash, check, or similar means rather than use a credit card.

(2) With respect to any sales transaction, any discount not in excess of 5% offered by the seller for the purpose of inducing payment by cash, check, or other means not involving the use of a credit card shall not constitute a finance charge if such discount is offered to all prospective buyers and its availability is disclosed to all prospective buyers clearly and conspicuously in accordance with regulations of the administrator.

History: C. 1953, 70B-10-107, enacted by L. 1975, ch. 209, § 17.

70B-10-108. Credit card issuance limitation. Notwithstanding any agreement to the contrary a card issuer may not require a seller, as a condition to participate in a credit card plan, to open an account with or procure any other service from the card issuer or its subsidiary or agent.

History: C. 1953, 70B-10-108, enacted by L. 1975, ch. 209, § 18.

70B-10-109. Offsets against credit card indebtedness — application.

(1) A card issuer may not take any action to offset a card holder's indebtedness arising in connection with a consumer credit transaction under the relevant credit card plan against funds of the card holder held on deposit with the card issuer unless:

(a) This action was previously authorized in writing by the card holder in accordance with the credit plan whereby the card holder agrees periodically to pay debts incurred in his open credit account by permitting the card issuer periodically to deduct all or a portion of such debt from the card holder's deposit account; and

(b) This action with respect to any outstanding disputed amount not be taken by the card issuer upon request of the card holder.

(2) In the case of any credit card account in existence on the effective date of this action, the previous written authorization referred to in subsection (1) (a) shall not be required until the date (after such effective date) when the account is renewed, but in no case later than one year after such effective date. The written authorization shall be deemed to exist if the card issuer has previously notified the card holder that the use of his credit card account will subject any funds which the card issuer holds in deposit accounts of that card holder to offset against any amounts due and payable on his credit card account which have not been paid in accordance with the terms of the agreement between the card issuer and the card holder.

(3) This section does not alter or affect the right of a card issuer to attach or otherwise levy upon funds of a card holder held on deposit with the card issuer if that remedy is constitutionally available to creditors generally.

History: C. 1953, 70B-10-109, enacted by L. 1975, ch. 209, § 19.

70B-10-110. Claims arising out of credit card transaction — Role of issuer and limitations.

(1) Subject to the limitation contained in subsection (2), a card issuer who has issued a credit card to a card holder pursuant to a revolving credit account or revolving loan account shall be subject to all claims (other than tort claims) and defenses arising out of any transaction in which the credit card is used as a method of payment or extension of credit if:

(a) The debtor has made a good faith attempt to obtain satisfactory resolution of a disagreement or problem relative to the transaction from the person honoring the credit card; and

(b) The amount of the initial transaction exceeds $50.

(2) The amount of claims or defenses asserted by the card holder may not exceed the amount of credit outstanding with respect to such transaction at the time the card holder first notifies the card issuer or the person honoring the credit card of the claim or defense. For the purpose of determining the amount of credit so outstanding, payments and credits to the card holder's account are deemed to have been applied, in the order indicated to the payment of:
   (a) Late charges in the order of their entry to the account;
   (b) Finance charges in the order of their entry to the account; and
   (c) Debits to the account other than provided in subsections (2) (a) and (2) (b), in the order in which each debit entry to the account was made.

History: C. 1953, 70B-10-110, enacted by L. 1975, ch. 209, § 20.

CHAPTER 11

CREDIT DISCRIMINATION

Section

70B-11-101. Credit discrimination, when prohibited — Inquiry — Credit assistance programs — Notification to applicant.

(1) It shall be unlawful for any creditor to discriminate against any applicant, with respect to any aspect of a credit transaction —
   (a) on the basis of race, color, religion, national origin, sex, marital status, or age (provided the applicant has the capacity to contract);
   (b) because all or part of the applicant's income derives from any public assistance program; or
   (c) because the applicant has in good faith exercised any right under the Federal Consumer Credit Protection Act or the Utah Uniform Consumer Credit Code.

(2) It shall not constitute discrimination for purposes of this title for a creditor —
   (a) to make an inquiry of marital status if such inquiry is for the purpose of ascertaining the creditor's rights and remedies applicable to the particular extension of credit and not to discriminate in a determination of credit-worthiness;

(b) to make an inquiry of the applicant's age or of whether the applicant's income derives from any public assistance program if such inquiry is for the purpose of determining the amount and probable continuance of income levels, credit history, or other pertinent element of credit-worthiness as provided in regulations of the administrator;

(c) to use any empirically derived credit system which considers age if such system is demonstrably and statistically sound in accordance with regulations of the administrator except that in the operation of such system the age of an elderly applicant may not be assigned a negative factor or value; or

(d) to make an inquiry or to consider the age of an elderly applicant when the age of such applicant is to be used by the creditor in the extension of credit in favor of such applicant.

(3) It is not a violation of this section for a creditor to refuse to extend credit offered pursuant to —

(a) any credit assistance program expressly authorized by law for an economically disadvantaged class of persons;

(b) any credit assistance program administered by a nonprofit organization for its members or an economically disadvantaged class of persons; or

(c) any special purpose credit program offered by a profit-making organization to meet special social needs which meets standards prescribed in regulations by the administrator; if such refusal is required by or made pursuant to such program.

(4) (a) Within 30 days (or such longer reasonable time as specified in regulations of the administrator for any class of credit transaction) after receipt of a completed application for credit, a creditor shall notify the applicant of its action on the application.

(b) Each applicant against whom adverse action is taken shall be entitled to a statement of reasons for such action from the creditor. A creditor satisfies this obligation by —

(i) providing statements of reasons in writing as a matter of course to applicants against whom adverse action is taken; or

(ii) giving written notification of adverse action which discloses the applicant's right to a statement of reasons within 30 days after receipt by the creditor of a request made within 60 days after such notification, and the identity of the person or office from which such statement may be obtained. Such statement may be given orally if the written notification advises the applicant of his right to have the statement of reasons confirmed in writing on written request.

(c) A statement of reasons meets the requirements of this section only if it contains the specific reasons for the adverse action taken.

(d) Where a creditor has been requested by a third party to make a specific extension of credit directly or indirectly to an applicant, the notification and statement of reasons required by this subsection may be made directly by such creditor, or indirectly through the third party, provided in either case that the identity of the creditor is disclosed.

(e) The requirements of subsection (b), (c), or (d) may be satisfied by verbal statements or notifications in the case of any creditor who did not act on more than 150 applications during the calendar year preceding the calendar year in which the adverse action is taken, as determined under regulations of the administrator.

(f) For purposes of this subsection, the term "adverse action" means a denial or revocation of credit, a change in the terms of an existing credit arrangement, or a refusal to grant credit in substantially the amount or on substantially the terms requested. Such term does not include a refusal to extend additional credit under an existing credit arrangement where the applicant is delinquent or otherwise in default, or where such additional credit would exceed a previously established credit limit.

History: C. 1953, 70B-11-101, enacted by L. 1977, ch. 275, § 2.

Compiler's Notes.

Laws 1977, ch. 275, § 2 repealed old section 70B-11-101 (L. 1975, ch. 209, § 21), relating to credit discrimination based on sex or marital status, and enacted a new section 70B-11-101.

Title of Act.

An act amending section 70B-5-203, Utah Code Annotated 1953, as enacted by chapter 18, Laws of Utah 1969, as amended by chapter 209, Laws of Utah 1975, and sections 70B-11-104 and 70B-11-105, Utah Code Annotated 1953, as enacted by chapter 209, Laws of Utah 1975, and repealing and re-enacting section 70B-11-101, Utah Code Annotated 1953, as enacted by chapter 209, Laws of Utah 1975; relating to credit applications and penalties for violation of the Uniform Consumer Credit Code; providing that creditors may not discriminate on the basis of race, color, religion, national origin, sex, marital status, age or receipt of public assistance in granting credit; and providing for an increase in class action penalties for violation of the Uniform Consumer Credit Code. — Laws 1977, ch. 275.

Collateral References.

New Topic Service, AmJur 2d, Consumer Credit Protection.

Law Reviews.

Utah Legislative Survey — 1975, 1975 Utah L. Rev. 790.

70B-11-102. Definitions and rules of construction in discrimination.

(1) The definitions and rules of construction provided in this section are applicable for the purposes of this chapter.

(2) "Applicant" means any person who applies to a creditor directly for an extension, renewal, or continuation of credit, or applies to a creditor indirectly by use of existing credit plans for an amount exceeding a previously established credit limit.

(3) "Credit" means the right granted by a creditor to a debtor to defer payment of debt, to incur debts and defer their payment, or to purchase property or services and defer payment for them.
(4) "Creditor" means any person who regularly extends, renews, or continues credit; any person who regularly arranges for the extension, renewal, or continuation of credit; or any assignee of an original creditor who participates in the decision to extend, renew, or continue credit.
(5) "Person" means a natural person, a corporation, government or governmental subdivision or agency, trust, estate, partnership, co-operative, or association.
(6) Any reference to any requirement imposed under this chapter includes reference to the regulations of the administrator under this chapter.

History: C. 1953, 70B-11-102, enacted by L. 1975, ch. 209, § 22.

70B-11-103. Administrator's regulations. The administrator shall promulgate regulations to carry out the purposes of this chapter. These regulations may contain, but are not limited to, such classifications, differentiations, or other provisions and may provide for such adjustments and exceptions for any class of transactions, as in the judgment of the administrator are necessary or proper to effectuate the purposes of this chapter, to prevent circumvention or evasion of it, or to facilitate or substantiate compliance with it. These regulations shall be promulgated as soon as possible after the date of enactment of this act, but in no event later than the effective date of this act.

History: C. 1953, 70B-11-103, enacted by L. 1975, ch. 209, § 23.

70B-11-104. Nondiscrimination — Separate credit — Election of remedies.

(1) A request for the signature of both parties to a marriage for the purpose of creating a valid lien, passing clear title, waiving inchoate rights to property, or assigning earnings, shall not constitute discrimination under this title; but this provision shall not be construed to permit a creditor to take sex or marital status into account in connection with the evaluation of creditworthiness of any applicant.
(2) Consideration or application of statutory property laws directly or indirectly affecting creditworthiness shall not constitute discrimination for purposes of this chapter.
(3) Any provision of statutory law which prohibits the separate extension of consumer credit to each party to a marriage shall not apply in any case where each party to a marriage voluntarily applies for

separate credit from the same creditor; but in any case where such statutory law is so preempted, each party to the marriage shall be solely responsible for the debt so contracted.

(4) When each party to a marriage separately and voluntarily applies for and obtains separate credit accounts with the same creditor, those accounts shall not be aggregated or otherwise combined for purposes of determining permissible finance charges or permissible loan ceilings under the laws of this state or of the United States.

(5) Except as otherwise provided in this chapter, the applicant shall have the option of pursuing remedies under this chapter in lieu of, but not in addition to, the remedies provided by Title VII of the Federal Consumer Credit Protection Act for actions which violate both Title VII of the Federal Consumer Credit Protection Act and this chapter.

History: C. 1953, 70B-11-104, enacted by L. 1975, ch. 209, § 24; L. 1977, ch. 275, § 3.

Compiler's Notes.

The 1977 amendment substituted references to the "Consumer Credit Protection Act" for those to the "Truth in Lending Act" in subsec. (5).

70B-11-105. Effect of noncompliance — Extent of awards — Time limitation for filing — Violation of Civil Rights Act.

(1) Any creditor who fails to comply with any requirement imposed under this chapter shall be liable to the aggrieved applicant in an amount equal to the sum of any actual damages sustained by the applicant acting either in an individual capacity or as a member of a class.

(2) Any creditor, other than a government or governmental subdivision or ageny, who fails to comply with any requirement imposed under this chapter shall be liable to the aggrieved applicant for punitive damages in an amount not greater than $10,000 as determined by the court in addition to any actual damages provided in subsection (1). In pursuing the recovery allowed under this subsection (2), however, the applicant may proceed only in an individual capacity and not as a representative of a class.

(3) Notwithstanding the provisions of subsection (2), any creditor who fails to comply with any requirement imposed under this chapter may be liable for punitive damages in the case of a class action in such amount as the court may allow, except that the total recovery in the action shall not exceed the lesser of $500,000 or 1% of the net worth of the creditor. In determining the amount of award in any class action, the court shall consider, among other relevant factors, the amount of any actual damages awarded, the frequency and persistence of failures of compliance by the creditor, the resources of the creditor, the number of persons adversely affected, and the extent to which creditor's failure of compliance was intentional.

(4) When a creditor fails to comply with any requirement imposed under this chapter, an aggrieved applicant may institute a civil action for preventive relief, including an application for a permanent or temporary injunction, restraining order, or other action.

(5) In the case of any successful action to enforce the liabilities provided in this section, the costs of the action, together with a reasonable attorney's fee as determined by the court, shall be added to any damages awarded by the court under subsections (1), (2) and (3) of this section.

(6) No provision of this chapter imposing any liability shall apply to any action done or omitted in good faith or conformity with any rule, regulation, or interpretation thereof by the administrator, notwithstanding that after such action or omission has occurred, the rule, regulation, or interpretation is amended, rescinded, or determined by judicial or other authority to be invalid for any reason.

(7) Without regard to the amount in controversy any action under this title may be brought in any district court of this state, or in any other court of competent jurisdiction, within two years from the date of the occurrence of the violation.

(8) No person aggrieved by a violation of this chapter and by a violation of section 805 of the Civil Rights Act of 1968 shall recover under this chapter and section 812 of the Civil Rights Act of 1968, if such violation is based on the same transaction.

History: C. 1953, 70B-11-105, enacted by L. 1975, ch. 209, § 25; L. 1977, ch. 275, § 4.

Compiler's Notes.

The 1977 amendment substituted "member" for "representative" before "of a class" at the end of subsec. (1); inserted "other than a government or governmental subdivision or agency" after "Any creditor" at the beginning of subsec. (2); deleted "as to each member of the class no minimum recovery shall be applicable and" after "except that" and substituted "$500,000" for "$100,000" in the middle of the first sentence of subsec. (3); in subsec. (7), increased the statute of limitations from one to two years after the date of the violation; and added subsec. (8).

Effective Date.

Section 26 of Laws 1975, ch. 209 provided: "Sections 70B-10-101 through 70B-10-110 and sections 70B-11-101 through 70B-11-105, Utah Code Annotated 1953, as enacted hereby, shall take effect on October 28, 1975."

Section 5 of Laws 1977, ch. 275 provided: "This act shall take effect on March 23, 1977."