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CH. 6 ADMINISTRATION

CHAPTER 6
ADMINISTRATION

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ARTICLE 1
POWERS AND FUNCTION OF ADMINISTRATOR

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§ 6101. Short Title.

This Chapter shall be known and may be cited as *Uniform Consumer Credit Code-Administration*.

§ 6102. Applicability.

This Article applies to persons who in this Territory:

(1) make or solicit consumer credit sale, consumer leases, consumer loans, sales other than consumer credit sales for which credit service charge ceilings are set by § 2602 (certain other sales to individuals) and loans other than consumer loans for which loan finance charge ceilings are set by § 3602 (certain other loans to individuals); or

(2) collect payments or enforce rights arising from these sales, leases or loans, wherever they are made.

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§ 6103. Administrator.

Administrator means the Savings and Loan Commissioner.

NOTE: The *Administrator* of this Title and the *Savings & Loan Commissioner* positions are placed with the Director of Revenue & Taxation, who carries other titles, as well.

§ 6104. Powers of Administrator.

(1) In addition to other powers granted by this Title, the Administrator may within the limitations provided by law:

(a) receive and act on complaints, take action designed to obtain voluntary compliance with this Title, or commence proceedings on his own initiative;

(b) counsel persons and groups on their rights and duties under this Title;

(c) establish program for the education of consumers with respect to credit and practices and problems;

(d) foster and encourage the establishment and operation of non-profit consumer credit counseling agencies;

(e) make studies appropriate to effectuate the purposes and policies of this Title and make the results available to the public;

(f) adopt, promulgate, amend and rescind substantive rules in cases specifically authorized by this Title, and adopt, promulgate, amend and rescind procedural rules to carry out the provisions of this Title; and

(g) appoint any necessary attorneys, hearing examiners, clerks and other employees and agents, and authorize attorneys appointed under this Section to appear for and represent the Administrator in court.

(2) No liability shall be imposed under this Title for an act done or omitted in conformity with a rule or guideline of the Administrator notwithstanding that after the act or omission the rule or guideline may be amended or rescinded or be determined by judicial or other authority to be invalid for any reason.

§ 6105. Powers of Administrator With Respect to Supervised Financial Organizations.

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(1) With respect to supervised financial organizations, the powers of investigation (§ 6106) and administrative enforcement (§ 6108) shall be exercised by the official or agency to whose supervision the organization is subject. All other powers of the Administrator under this Title may be exercised by him with respect to a supervised financial organization.

(2) If the Administrator receives a complaint or other information concerning non-compliance with this Title by a supervised financial organization, he shall inform the official or agency having supervisory authority over the organization concerned. The Administrator may request information about supervised financial organizations from the officials or agencies supervising them.

(3) The Administrator and any official or agency of this Territory having supervisory authority over a supervised financial organization are authorized and directed to consult and assist one another in maintaining compliance with this Title. 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.

§ 6106. 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 whether the act has been committed, and, to the extent necessary for this purpose, may administer oaths or affirmations, and upon his own motion or upon request of any party may subpoena witnesses, compel their attendance, take evidence and require the production of any matter which is relevant to the investigation, including the existence, description, nature, custody, condition and location of any books, documents or other tangible things and the identity and location of persons having knowledge of relevant facts, or any other matter reasonably calculated to lead to the discovery of material evidence.

(2) 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 Superior Court of Guam for an order compelling compliance.

§ 6107. Application of Administrative Adjudication Act.

Except as otherwise provided, all administrative action taken by the Administrator pursuant to this Chapter is governed by the Administrative

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Adjudication Act.

§ 6108. 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 Title. A respondent aggrieved by an order of the Administrator may obtain judicial review, and the Administrator may obtain an order of the court for enforcement of its order in the Superior Court of Guam. The proceeding for review or enforcement is initiated by filing a petition in the court. Copies of the petition shall be served upon all parties of record.

(2) Within thirty (30) days after service of the petition for review upon the Administrator, or within such further time as 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. The court may 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. The court shall have power to grant such temporary relief or restraining order as it deems just, and to 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 a 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 remit the case to the Administrator in the interest of justice for the purpose of adducing additional specified and material evidence and seeking findings thereon, provided he shows good cause for the failure to adduce this evidence before the Administrator.

(4) The jurisdiction of the Superior Court shall be exclusive and its final judgment or decree shall be subject to review by the District Court in the same manner and form and within the same effect as in appeals from a final judgment or decree in a mandate 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

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within thirty (30) days after a copy of the order of the Administrator is received. If no proceeding is so initiated, the Administrator may obtain a decree of the court for enforcement of its order upon showing that a copy of the petition for enforcement was served on the respondent 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 (§ 6111).

§ 6109. Assurance of Discontinuance.

If it is claimed that a person has engaged in conduct subject to an order by the Administrator (§ 6108) or by a court (§§ 6110 through 6112), 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.

§ 6110. Injunctions Against Violations of the Act.

The Administrator may bring a civil action in the Superior Court of Guam to restrain a person from violating this Title and for other appropriate relief.

§ 6111. Injunctions Against Unconscionable Agreements and Fraudulent or Unconscionable Conduct.

(1) The Administrator may bring a civil action in the Superior Court of Guam to restrain a creditor or a person acting in his behalf from engaging in a course of:

- (a) making or enforcing the unconscionable terms of 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

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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 have 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 in the same area by buyers or lessees of similar credit-worthiness;

(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 interest 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

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practice expressly permitted by this Title is not unconscionable.

§ 6112. Temporary Relief.

With respect to an action brought to enjoin violations of the Act (§ 6110) or unconscionable agreements or fraudulent or unconscionable conduct (§ 6111), the Administrator may apply to the court for appropriate temporary relief against a respondent, pending final determination of proceedings, but only after a hearing held upon notice to the respondent. If the court finds 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 such temporary relief or restraining order as it deems appropriate.

§ 6113. Civil Actions by Administrator.

(1) If a creditor refuses, within a reasonable time after demand, to refund an excess charge, the Administrator may bring a civil action in the Superior Court of Guam against a creditor for making or collecting charges in excess of those permitted by this Title. An action may relate to transactions with more than one (1) debtor. If it is found that an excess charge has been made, the court may order the respondent to refund to the debtor the amount of the excess charge. A refund may be made by reducing the debtor's obligation by the amount of the excess charge. If the debtor has paid to the creditor an amount in excess of the lawful obligation under the agreement, the excess amount shall be paid to the debtor. If it is found that an excess charge has been made, the court may also order the respondent to pay to the debtor a civil penalty in an amount determined by the court not in excess of the greater if either ten (10) times the amount of the excess charge, or the amount of the credit service or loan finance charge. If a debtor brings an action against a creditor to recover an excess charge, a subsequent action by the Administrator to recover for the same excess charge shall be suspended while the debtor's action is pending and shall be dismissed if the debtor's action results in a final judgment granting or denying debtor's claim. No action pursuant to this Subsection may be brought more than three (3) years after the excess charge was made or more than one (1) year after the date of the last scheduled payment of the agreement pursuant to which the charge was made, whichever is later.

(2) If a creditor has made an excess charge in deliberate violation of or in reckless disregard for this Title, the Administrator may bring a civil

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action in the Superior Court of Guam against the creditor to recover a civil penalty even though he has refunded the excess charge before the Administrator commences the action to recover the penalty. The court may order the respondent to pay to the debtor a penalty in an amount determined by the court not in excess charge, or the amount of the credit service or loan finance charge. If the debtor brings an action against a creditor to recover a penalty pursuant to this Subsection, a subsequent action by the Administrator to recover the same penalty shall be suspended while the debtor's action is pending and shall be dismissed if the debtor's action results in a final judgment granting or denying the debtors claim. No action pursuant to this Subsection may be brought more than three (3) years after the excess charge was made or more than one (1) year after the date of the last scheduled payment of the agreement pursuant to which the charge was made, whichever is later.

(3) The Administrator may bring a civil action in the Superior Court of Guam against a creditor or a person acting in his behalf to recover a civil penalty for willfully violating this Title. If the court finds that the defendant has engaged in a course of repeated and willful violations of this Title, it may assess a civil penalty of no more than Five Thousand Dollars (\$5,000.00). No civil penalty pursuant to this Subsection may be imposed for making unconscionable agreements or engaging in a course of fraudulent or unconscionable conduct, or for violations of this Title occurring more than one (1) year before the action is brought.

(4) 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 Section.

ARTICLE 2
NOTIFICATION AND FEES

- § 6201. Applicability.
- § 6202. Notification.
- § 6203. Agent for Service of Process.
- § 6204. Fees.

§ 6201. Applicability.

This Article applies to persons making consumer credit sales, consumer leases or consumer loans, payable in installments, to which

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this Title applies (§ 1201), and persons taking assignments of obligations arising from these sales, leases or loans, other than assignments in bulk as security for loans.

§ 6202. Notification.

Persons subject to this Article shall file notification with the Administrator in the form and in the manner prescribed by him. Notification shall be filed within thirty (30) days after the effective date of this Title, or within thirty (30) days after commencing business in this Territory, and, thereafter, on or before June 30th of each year. The notification shall state:

- (1) name of the person;
- (2) name in which business is transacted if different from (1);
- (3) address of principal office, which may be outside this Territory;
- (4) address of all offices or retail store, if any, in this Territory at which consumer credit sales, consumer leases or consumer loans payable in installments, are made, or in the case of a person taking assignments of obligations, the offices, if any, within this Territory at which business is transacted;
- (5) if consumer credit sales, consumer leases or consumer loans, payable in installments are made otherwise than at an office or retail store in this Territory, a brief description of the manner in which they are made;
- (6) address of designated agent upon whom service of process may be made in this Territory pursuant to § 6203;
- (7) if regulated loans are made, a statement to that effect.

§ 6203. Agent for Service of Process.

(1) A person required to file notification who is a nonresident of this Territory or who is a corporation not incorporated in or qualified to do business in this Territory, shall designate an agent upon whom service of process may be made in this Territory with respect to any action or proceedings under this Title. The Agent shall be a resident of this Territory or a corporation incorporated in or qualified to do business in this Territory. If no agent is designated, the Director of Revenue and Taxation shall be the person upon whom process may be served. In this

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case service is not effective unless the plaintiff (which may be the Administrator in a proceeding instituted by him) forthwith sends a copy of the process and of the pleading by certified mail to the defendant or respondent at his last known address and the plaintiff's affidavit of compliance with this Section is filed in the case on or before the return day of the process, if any, or within such further time as the court allows.

(2) If any person engages in conduct prohibited by this Title, and has not filed a consent to service of process and personal jurisdiction over him cannot otherwise be obtained in this Territory, that conduct authorizes the Director of Revenue and Taxation to receive service of process in any noncriminal proceeding against him which grows out of the conduct and which is brought under this Title with the same force and validity as if served on him personally. Notice shall be given as provided in Subsection (1).

NOTE: Reference to *Director of Finance*, changed by Compiler to *Director of Revenue and Taxation* by authority of P.L. 9-228, effective August 7, 1968.

§ 6204. Fees.

(1) A person required to file notification *shall* file on or before June 30th of each year and pay an annual fee of Twenty Dollars (\$20.00).

(2) Persons required to file notification who are sellers, lessors or lenders *shall* pay an additional fee at the time stated in Subsection (1) of Twenty Dollars (\$20.00) for each One Hundred Thousand Dollars (\$100,000.00) or part thereof, in excess of One Hundred Thousand Dollars (\$100,000.00) of the original unpaid balances arising from consumer credit sales, consumer leases and consumer loans, payable in installments, made within the twelve (12) months last preceding June 30th and held by the seller, lessor or lender for more than thirty (30) days after the inception of the sale, lease or loan giving rise to the obligations. 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 stated in Subsection (1) of Twenty Dollars (\$20.00) for each One Hundred Thousand Dollars (\$100,000.00), or part thereof, in excess of One Hundred Thousand Dollars (\$100,000.00), of the unpaid balances at the time of the assignment of obligations arising from consumer credit sales, consumer leases and consumer loans,

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payable in installments taken by assignment within the twelve (12) months last preceding June 30th; provided, that an assignee need *not* pay a fee with respect to an obligation on which the assignor or other person has already paid a fee.

SOURCE: Amended by P.L. 29-002:V:I:34 (May 18, 2007).

ARTICLE 3
COUNCIL OF ADVISORS ON CONSUMER CREDIT

§ 6301. Council of Advisors on Consumer Credit.

§ 6302. Function of Council; Conflict of Interest.

§ 6303. Meetings.

§ 6301. Council of Advisors on Consumer Credit.

(1) There is hereby created the Council of Advisors on Consumer Credit consisting of five (5) members, who shall be appointed by the Governor with the advice and consent of the Legislature. 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 (4) years. Of those members first appointed, two (2) shall be appointed for a term of one (1) year, one (1) for a term of two (2) years, one (1) for a term of three (3) years, and one (1) for a term of four (4) years. A member chosen to fill a vacancy otherwise than by expiration of term shall be appointed for the unexpired term of the member whom he is to succeed. A member of the Council is eligible for reappointment.

(3) Members of the Council shall serve without compensation but are entitled to reimbursement of expenses incurred in the performance of their duties.

§ 6302. Function of Council; Conflict of Interest.

The Council shall advise and consult with the Administrator concerning the exercise of his own powers under this Title and may make recommendations to him. Members of the Council may assist the Administrator in obtaining compliance with this Title. Since it is an

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objective of this Article to obtain competent representatives of creditors and the public to serve on the Council and to assist and cooperate with the Administrator in achieving the objectives of this Title, service on the Council shall not in itself constitute a conflict of interest regardless of the occupations or associations of the members.

§ 6303. 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 such additional meetings as may be called by the Chairman.
