

AN ACT

To provide for the licensing and regulation of finance companies, other than banks, making consumer loans, and for other purposes.

**BE IT ENACTED BY THE TWELFTH NORTHERN MARIANAS
COMMONWEALTH LEGISLATURE:**

Section 1. To Division 6 Banking and Financial Institutions, add the following new chapter 10:

“§ 6950. Definitions. As used in this chapter:

(1) For open-end loan plans, "annual percentage rate" means the annual percentage rate determined under section 226.14(b) of Regulation Z. For all other loans, "annual percentage rate" means the annual percentage rate determined under section 226.22 of Regulation Z.

(2) "Automated loan machine" means a machine that can perform loan origination functions without the presence of an operator other than the borrower.

(3) "Department" means the Department of Commerce.

(4) "Finance charge" means finance charge determined under section 226.4 of Regulation Z.

(5) "Licensee" means every person licensed under this chapter.

(6) "Open-end credit card plan" means an open-end loan plan under which:

(a) The licensee issues one or more cards, checks, letters of credit or other devices to the borrower; and

(b) The borrower may obtain advances from the licensee, either directly or in connection with purchases of goods and services by using the card, check, letter of credit or other device.

(7) "Open-end loan plan" means a plan or arrangement, the agreement for which expressly states that it is made pursuant to section 6973, under which loans are made, and under which:

(a) The licensee may permit the borrower to obtain advances of money from the licensee from time to time or the licensee may advance money on behalf of the borrower from time to time as directed by the borrower;

(b) The unpaid balances and interest, discount, consideration, finance charge and other charges are debited to an account;

(c) Interest is calculated on the unpaid balance in the borrower's account from time to time, which balance may include all advances made on behalf of the borrower and all interest, discount, consideration, finance charge and other charges authorized under section 6972.

(8) "Person" means an individual or a partnership, association or corporation.

(9) "Regulation Z" means Regulation Z issued by the Board of Governors of the Federal Reserve System (12 CFR Part 226) to implement the federal Truth in Lending Act (15 U.S.C. 1601 et seq.) as such regulation existed on October 1, 1999.

(10) "Secretary" means the Secretary of Commerce or his or her authorized designee.

§ 6951. Construction of chapter. Nothing in this chapter shall be construed or held to limit the rights, powers or privileges granted to any person by any law of the Commonwealth or of the United States whereby the loaning of money or extending of

credit is regulated, provided that such person is operating in compliance with the provisions of such law.

§ 6952. Short title. This chapter may be cited as the “Regulated Loan Act of 2000”.

§ 6953. License required for certain loans. No person, without first obtaining a license under this chapter, shall charge or receive, directly or indirectly, on or in connection with any loan, any interest, discount or consideration, which in the aggregate is greater than the interest, discount or consideration that the lender would be permitted to charge for a loan of money if the lender were not a licensee.

§ 6954. Incomplete promises to pay prohibited. No licensee shall take any note or promise to pay in which blanks are left to be filled in after execution.

§ 6955. False advertising prohibited. No licensee or other person shall advertise, print, display, publish, distribute or broadcast or cause or permit to be advertised, printed, displayed, published, distributed or broadcast in any manner whatsoever any statement or representation with regard to the rates, terms or conditions for loans which is false, misleading or deceptive.

§ 6956. Residence qualifications of licensees. No license shall be granted to any person unless

(1) if the person is an individual, the individual is a bona fide resident of the Commonwealth;

(2) if the person is a partnership or association, all members of the partnership or association are bona fide residents of the Commonwealth;

(3) if the person is a corporation, the corporation is

(a) a corporation organized under the laws of the Commonwealth in good standing,

(b) a foreign corporation legally qualified to transact business in the Commonwealth, or

(c) a foreign corporation not required to obtain a certificate of authority under 4 CMC § 4641.

§ 6957. Application for license; initial license fee.

(1) Application for the license shall be in writing in the form prescribed by the secretary and shall contain the name and both the residence and business addresses of the applicant, and if the applicant is a partnership or association, of every member thereof and if a corporation, of each officer and director thereof. The application shall also contain the address of the principal place where the business is to be conducted and any other information which the secretary may require.

(2) An applicant at the time of making application shall pay to the secretary an initial license fee of \$300 for the period terminating on the last day of the current calendar year. In case the license is not issued for cause or if the application is withdrawn after the applicant has been investigated by the secretary, no part of the license fee shall be refunded.

§ 6958. Issuance of license; conditions.

(1) Conditioned upon the applicant's compliance with this chapter and the payment of the license fee, the secretary, within 60 days after receipt of a completed application referred to in section 6957, shall disapprove the application or shall issue and deliver a license to the applicant to make loans in accordance with this chapter. However, before issuing a license, the secretary must first find upon investigation that the financial responsibility, experience, character and general fitness of the applicant, and of the members thereof if the applicant is a partnership or association, and of the officers and directors thereof if the applicant is a corporation, are such as to command the confidence of the community and to warrant the belief that the business will be operated honestly, fairly and efficiently within the purposes of this chapter.

(2) A licensee may make loans by mail. A licensee may make and complete loans at the borrower's residence or at other places not named in the license for the convenience of the borrower. A licensee is not required to obtain a license for a location where cards, checks, letters of credit or other devices issued by the licensee are accepted or honored unless a license is otherwise required for such location.

(3) A licensee may make loans through an automated loan machine at an unlicensed location if the licensee:

(a) notifies the department in writing of the existence and location of the automated loan machine; and

(b) posts at the location of the automated loan machine the address of a licensed location and a telephone number at which the licensee may be contacted.

§ 6959. Disapproval of application. If the secretary disapproves an application for a license, the secretary shall notify the applicant immediately, giving the reason for the disapproval.

§ 6960. Form of license; posting; transferability. The license shall be in a form prescribed by the secretary and shall state the address of the principal place where the business is to be conducted and the full name of the licensee. The license shall be kept conspicuously posted in the principal place of business of the licensee and shall not be transferable or assignable.

§ 6961. License fees. Each licensee shall pay to the secretary each year after the year the license is issued an annual license fee of \$300. The fee shall be paid on or before March 15 of each year.

§ 6962. Annual report of licensee; penalty for failure to report.

(1) On or before March 15 of each year every licensee shall file a report with the secretary giving such relevant information as the secretary may require concerning the business and operations during the preceding calendar year of

each licensed place of business conducted by the licensee within the Commonwealth. The report shall be in the form prescribed by the secretary.

(2) Every licensee who fails to file any report required under this chapter within the time specified may be subject to a penalty of \$100 per day for each day's delay in addition to any other penalty provided for herein.

§ 6963. Additional licenses to same applicant. The secretary may issue more than one license to the same licensee if the licensee complies with all the provisions of this chapter governing an original issuance of a license for each such additional license. However, each additional license shall be for a separate and distinct principal place of business for making and completing loans as provided in this chapter.

§ 6964. Change of place of business. When a licensee wishes to change the principal place of business to another location, the licensee shall submit written notice thereof, together with the license, to the secretary. The secretary shall amend the license of the licensee to reflect the new location and shall return the amended license to the licensee.

§ 6965. Revocation of licenses.

(1) The secretary may revoke any license under this chapter upon 60 days' notice to the licensee stating the contemplated action and the grounds therefore and upon reasonable opportunity for a hearing in connection therewith, if the secretary finds that:

(a) The licensee has failed to pay the annual license fee or failed to comply with the provisions of law to keep the corporation in good standing if such licensee is a corporation;

(b) The licensee has repeatedly and willfully violated any material provisions of this chapter or any rule made by the secretary under the authority of this chapter; or

(c) Any fact or condition exists which if it had existed at the time of the original application for such license, clearly would have warranted the secretary in refusing originally to issue the license.

(2) The secretary may revoke only the particular license with respect to which grounds for revocation may occur or exist, or, if the secretary finds that such grounds for revocation are of general application to all offices or to more than one office operated by a licensee, the secretary may revoke all the licenses or such number of licenses issued to the licensee as the grounds for revocation apply to, as the case may be.

(3) Prior to institution of license revocation proceedings, the secretary shall give 60 days notice to the licensee of the facts or conduct which warrant the intended action, and the licensee shall be given an opportunity to show compliance with all lawful requirements for retention of the license.

(4) In the event the secretary finds the public interest and circumstances require expedited action, then the secretary can petition the court for injunctive relief, including a temporary restraining order, to suspend a license for up to 60 days. In such event, notice shall be given in accordance with the Commonwealth Rules of Civil Procedure. The court shall grant expedited relief only if the court finds that irreparable injury, loss or damage will result to the Commonwealth or to borrowers if expedited relief is not granted.

§ 6966. License denial procedure; hearing.

(1) If the secretary denies a license, or proposes to revoke a license, opportunity for hearing shall be accorded as provided in the Administrative Procedure Act, 1 CMC § 9101 *et seq.*

(2) Conduct of hearings, issuance of orders and judicial review of rules and orders shall be as provided in the Administrative Procedure Act, 1 CMC § 9101 *et seq.*

§ 6967. Surrender of license. Any licensee may surrender any license issued to the licensee by delivering written notice to the secretary that the licensee thereby surrenders the license. However, surrender of the license shall not affect the licensee's civil or criminal liability for acts committed prior to the surrender.

§ 6968. Effect of revocation or surrender. The revocation or surrender of any license shall not impair or affect the rights or obligations of any preexisting contract between the licensee and any borrower.

§ 6969. Reinstatement of revoked license; fee. The secretary may reinstate any revoked license upon the licensee's compliance with the provisions of law under this chapter. For such reinstatement of license the licensee shall pay a reinstatement fee of \$25.

§ 6970. Inspection and examination of licensees.

(1) Each licensee is subject to inspection by the secretary. The secretary may periodically conduct an examination of each licensee to determine whether the licensee is complying with the provisions of this chapter and rules adopted thereunder and to secure information required by the secretary under this chapter.

(2) In addition to examinations under subsection (1) of this section, the secretary may conduct examinations of a licensee at other times as the secretary deems necessary.

(3) For purposes of any examination under this section:

(a) The secretary shall have free access to the place of business and to the books, accounts, safes and vaults of the licensee.

(b) The secretary may conduct an examination without prior notice to the licensee.

(c) The secretary shall have authority to examine under oath all persons whose testimony the secretary may require in order to conduct the examination.

§ 6971. Books and records of licensee. Subject to the provisions of this chapter, the secretary may prescribe the minimum information to be included in the books and records to be kept by the licensee. All such books and records shall be preserved and available for at least two years after making the final entry on any loan recorded therein. Record keeping systems maintained in whole or in part by mechanical or electronic data processing and storage methods which provide information equivalent to that otherwise required are permitted. Records may be located outside the Commonwealth. If the licensee's records are located outside the Commonwealth, the licensee shall make them available to the secretary at a convenient location within the Commonwealth within a reasonable time after request for the records by the secretary.

§ 6972. Interest and other charges.

(1) 4 CMC, Division 5, Chapter 3 shall not apply to any licensee under this chapter or to any loan or contract made by a licensee under this chapter.

(2) Notwithstanding 4 CMC, Division 5, Chapter 3, or subsection (3) of this section, or any other provision of law, a licensee may charge and receive any interest, discount, consideration, finance charge and other charges for loans, unsecured or secured by real property or personal property or both, as agreed upon by the licensee and the borrower; however, whether or not Regulation Z applies to the loan, the annual percentage rate for a loan may not exceed 34%.

(3) No action shall be maintained in any court of the Commonwealth to recover a higher rate of interest than 2 percent per month on the balance due upon any contract made by a licensee under this chapter.

(4) Payments of money or property made in excess of the annual percentage rate allowable in subsection 6972(2), whether made in advance or not, as to the excess of interest above the rate allowed by law at the time of making the contract, shall be taken to be payments made on account of principal, and judgment shall be rendered for no more than the balance found due, after deducting the excess of interest so paid.

(5) Any person who directly or indirectly receives any interest, discount or consideration for or upon the loan or forbearance to enforce the payment of money, goods and things in action, greater than the amount allowable in §6972(2) shall be guilty of usury, and upon conviction thereof shall be imprisoned for a period of not more than six months, or fined not more than \$100.00, or both.

§ 6973. Open-end loan plan; interest; additional charges; security for plan; necessary disclosures.

(1) A licensee may make loans under an open-end loan plan and may receive interest, discount, consideration, finance charge and other charges as provided in section 6972.

(2) Interest on an open-end loan plan may be calculated by multiplying a periodic rate by the average daily balance of the account during the billing cycle. The average daily balance is the sum of the unpaid balances of the account each day of the billing cycle divided by the number of days in the billing cycle. The unpaid balance each day is determined by adding to any unpaid balance unpaid as of the beginning of that day all advances and other debits and deducting all payments and other credits to the account that day. A billing cycle may be considered to be monthly notwithstanding a variation of not more than four days from month-to-month.

(3) Any security interest in real or personal property shall be promptly released if:

(a) there has been no outstanding balance for 12 months and the borrower either does not have or surrenders the unilateral right to create a new outstanding balance; or

(b) if the account is terminated by the licensee or the borrower and paid in full.

(4) Sections 6954 and 6975 do not apply to any open-end loan plan.

(5) The open-end loan plan agreement shall contain the name and address of the borrower and of the licensee and shall disclose the date of the agreement, the method of determining the minimum periodic payments which will be required, and the nature of the security taken.

(6) Except for an account which the licensee deems to be uncollectible or which is affected by a case under the United States Bankruptcy Code or similar law or with respect to which delinquency collection procedures have been instituted or where furnishing the statement would violate Commonwealth or federal law, the licensee shall mail or cause to be delivered to the borrower, for each billing cycle at the end of which there is an unpaid balance of more than \$1 in the account or with respect to which interest, discount, consideration, finance charge or other charges are imposed, a statement setting forth the outstanding balance in the account at the beginning of the billing cycle, the date and amount of any subsequent advance during the cycle, the amounts of payments credited to the account during the billing cycle, the amount of any finance charge or other charges debited to the account during the billing cycle, the closing date of the billing cycle, the outstanding balance on that closing date and the minimum monthly payment required.

§ 6974. Open-end credit card plan authorized.

(1) A licensee may transact business and extend credit to borrowers under an open-end credit card plan. A licensee may offer an open-end credit card plan in conjunction with noncredit features or services available to the borrower through use of the card or other device. The noncredit features or services shall not be subject to regulation under this chapter.

(2) The agreement between the licensee and the borrower relating to the open-end credit card plan shall conform to the requirements of section 6973(5), except that the borrower's name and address and the date of the agreement need not be included in the agreement if the borrower has submitted a signed and

dated application to the licensee seeking the issuance of one or more cards or other devices.

§ 6975. Licensee duty toward borrowers. Every licensee shall:

(1) Deliver to the borrower at the time any loan is made a statement in the English language showing in clear and distinct terms:

- (a) The name and address of the borrower and of the licensee.
- (b) The amount and the date of the loan and the terms of payment.
- (c) The nature of the security for the loan.

(2) Make available to the borrower upon request a plain and complete receipt for all cash payments made on account of any such loan at the time such payments are received by the licensee, specifying the amount of the payment and the unpaid balance of such loan, if any remains.

(3) Upon repayment of the loan in full or upon renewal thereof, mark indelibly each note signed by the borrower that no longer evidences an indebtedness with the word "Paid" or "Renewed." In the case of repayment in full the licensee also shall do the following:

(a) To the extent and in the manner required by law, release any mortgage or security agreement that no longer secures a loan, and restore any security or collateral.

(b) Release any Uniform Commercial Code of the Northern Mariana Islands filing that no longer secures a loan, to the extent and in the manner required by 5 CMC § 9404.

(c) Return any assignment given by the borrower that no longer secures a loan.

(d) Return to the borrower each canceled note that no longer evidences an indebtedness or alternatively, acknowledge in writing to the borrower that the loan has been repaid.

§ 6976. Cease and desist order.

(1) The secretary may issue and serve upon a licensee or a director, officer, employee or agent of a licensee an order to cease and desist from a violation when the secretary has reasonable cause to believe that the person to whom the order is directed is violating, has violated or is about to violate any material provision of this chapter or a rule or order of the secretary. Before issuing an order under this subsection, the secretary shall give the person who will be named in the order at least 20 days notice in writing of the secretary's intention to issue the order.

(2) An order under subsection (1) of this section shall include the following:

(a) A statement of the facts constituting the violation.

(b) A provision requiring the person named in the order to cease and desist from the violation. The provision may be mandatory or otherwise.

(c) The effective date of the order.

(d) A notice to the person named in the order of the right to a contested case hearing under the Administrative Procedure Act, 1 CMC § 9101 *et seq.*

(3) An order under this section shall be effective as to a person immediately upon.

(4) An order under this section that has become effective remains in effect until it is withdrawn by the secretary or by a court order.

§ 6977. Enforcement actions. The secretary may institute any action or other proceeding that the secretary considers necessary for enforcing any provision of this chapter or any rule, order or action adopted, issued or taken by the secretary under this chapter.

§ 6978. Rulemaking authority; notice.

(1) In accordance with the Administrative Procedure Act, 1 CMC § 9101 *et seq.*, the secretary may adopt rules for the purpose of carrying out this chapter.

(2) In addition to the notice requirements of the Administrative Procedure Act, 1 CMC § 9101 *et seq.*, before the secretary adopts a rule, the secretary shall submit a copy of the rule to each licensee.

§ 6979. Person not liable for good faith acts or omissions. A licensee or other person may not be held personally liable for an act done or omitted by the person in good faith and in compliance with an interpretation, rule or order of the secretary regardless of whether the interpretation, rule or order is later amended or rescinded or is later determined by judicial or other authority to be invalid. Any interpretation by the secretary under this section shall state it is issued under to this section.

§ 6980. Civil penalties.

(1) The secretary may assess any person who violates any material provision of any final order of the secretary under this chapter, a civil penalty in an amount determined by the secretary of not more than \$10,000 per violation.

(2) Civil penalties under this section may be imposed only after a hearing under the Administrative Procedure Act, 1 CMC § 9101 *et seq.*

(3) All moneys collected under this section shall be paid to the Treasurer of the Commonwealth.

§ 6981. Exclusions. This chapter does not apply to banks, pawnshops, trust companies, savings and loan associations, or credit unions.”

Section 2. Severability. If any provision of this Act or the application of any such provision to any person or circumstance should be held invalid by a court of competent jurisdiction, the remainder of this Act or the application of its provisions to persons or circumstances other than those to which it is held invalid shall not be affected thereby.

Section 3. Savings Clause. This Act and any repealer contained herein shall not be construed as affecting any existing right acquired under contract or acquired under statutes repealed or under any rule, regulation or order adopted under the statutes. Repealers contained in this Act shall not affect any proceeding instituted under or pursuant to prior law. The enactment of this Act shall not have the effect of terminating, or in any way modifying, any liability, civil or criminal, which shall already be in existence at the date this Act becomes effective.

Section 4. Effective Date. This Act shall take effect upon its approval by the Governor or upon its becoming a law without such approval.

CERTIFIED BY:

ATTESTED TO BY:

/s/ Benigno R. Fitial

/s/ Evelyn C. Fleming

Benigno R. Fitial
Speaker of the House

Evelyn C. Fleming
House Clerk

Approved this 28th day of December, 2000

/s/ Pedro P. Tenorio

PEDRO P. TENORIO
GOVERNOR

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS