

Chapter 2 Finance Charges and Related Provisions

Part 1 Consumer Credit Agreements

70C-2-101 Finance and other charges.

Except where restricted or otherwise covered by provisions of this title, the parties to a consumer credit agreement may contract for payment by the debtor of any finance charge and other charges and fees.

Enacted by Chapter 159, 1985 General Session

70C-2-102 Delinquency charges.

- (1)
 - (a) The parties to any consumer credit agreement may contract for a delinquency charge on any installment not paid in full by its scheduled due date in an amount not exceeding the greater of:
 - (i) \$30; or
 - (ii) 5% of the delinquent unpaid amount of the installment.
 - (b) Notwithstanding Subsection (1)(a), in a contract, renewed, executed, or modified on or after May 3, 1999, a depository institution as defined in Section 7-1-103 may contract for and collect a delinquency charge on an installment not paid in full by its scheduled due date in excess of the limitation imposed under Subsection (1)(a).
- (2) This section may not be interpreted to require a creditor to accept a partial payment for an installment.
- (3)
 - (a) A delinquency charge as authorized by this section may be collected only once on each installment regardless of how long it remains delinquent.
 - (b) A delinquency charge may not be collected if:
 - (i) the installment has been deferred; and
 - (ii) a deferral charge under Section 70C-2-103 has been paid or incurred.
 - (c) A delinquency charge may be collected:
 - (i) at the time it accrues; or
 - (ii) any time after it accrues.

Amended by Chapter 171, 1999 General Session

70C-2-103 Deferral charges.

- (1) The parties to any consumer credit agreement before or after default may agree in writing to defer all or part of one or more unpaid installments. Except in connection with an open-end credit agreement, the parties may also agree in writing at any time that if an installment is not paid within 10 days after its due date, the creditor may unilaterally grant a deferral. The creditor may collect a reasonable charge which the debtor expressly agrees to pay as consideration for a deferral. A deferral charge may be collected at the time it accrues or at any time thereafter.
- (2) A delinquency charge made by the creditor on an installment may not be retained if a deferral charge is agreed to under this section covering the same period of delinquency. A creditor that

accelerates the maturity of a consumer credit debt may not make or collect a deferral charge for any period following the date acceleration is declared.

Enacted by Chapter 159, 1985 General Session

70C-2-104 Advances to perform covenants of buyer.

If a consumer credit agreement contains covenants by the debtor to perform certain duties pertaining to insuring or preserving collateral and the creditor pursuant to the agreement pays for performance of the duties on behalf of the debtor, the creditor may add the amounts paid to the unpaid principal of the debt.

Enacted by Chapter 159, 1985 General Session

70C-2-105 Attorney's fees.

A consumer credit agreement may provide for the payment of reasonable attorney's fees in the event of default and referral to an attorney including one who is a salaried employee of the creditor or its assignee.

Enacted by Chapter 159, 1985 General Session

**Part 2
Limitations on Agreements and Practices**

70C-2-201 Authorization to confess judgment prohibited.

A creditor or its successor in interest may not, directly or indirectly, take or receive from a debtor an obligation that constitutes or contains a cognovit or confession of judgment, warrant of attorney, or other waiver of the right to notice and the opportunity to be heard in the event of suit or process thereon.

Enacted by Chapter 159, 1985 General Session

70C-2-202 Assignment of earnings prohibited.

A creditor may not directly or indirectly take or receive from a debtor an obligation that constitutes or contains an assignment of wages or other earnings unless

- (1) the assignment by its own terms is revocable at the will of the debtor;
- (2) the assignment is a payroll deduction plan, commencing at the time of the transaction, in which the debtor authorized a series of wage deductions as a method of making each payment; or
- (3) the assignment applies only to wages or other earnings already earned at the time of the assignment.

Enacted by Chapter 159, 1985 General Session

70C-2-203 Additional security in consumer leases prohibited.

A lessor, in order to secure the debt arising from a consumer lease, may not take a security interest in the dwelling of the lessee. A security interest taken in violation of this section is void from its inception.

Enacted by Chapter 159, 1985 General Session

70C-2-204 Certain negotiable instruments prohibited.

With respect to a consumer credit sale not involving real property, the seller may not take a negotiable instrument under Section 70A-3-104 other than a check as evidence of the obligation of the buyer. A holder is not in good faith under Subsection 70A-1a-201(2)(t) if he takes a negotiable instrument with notice that it is issued in violation of this section. A holder in due course under Section 70A-3-302 is not subject to the liabilities set forth in the provisions on the effect of violations on rights of parties under Section 70C-7-201.

Amended by Chapter 272, 2007 General Session

70C-2-205 Assignee subject to defenses.

With respect to a consumer credit sale, an assignee of the rights of the seller is subject to all defenses of the buyer against the seller arising out of the credit sale, but the assignee's liability under this section may not exceed the amount owing to the assignee at the time the defense is asserted against the assignee, and the rights of the buyer may only be asserted as a matter of defense to or setoff against a claim by the assignee.

Enacted by Chapter 159, 1985 General Session

70C-2-206 Settlement of claims.

- (1) A claim by a debtor against a creditor for an excess charge, other violation of this title, or civil penalty if disputed in good faith, may be settled by agreement for less value than the amount claimed, unless a court, as a matter of law, finds the settlement to have been unconscionable at the time it was made.
- (2) A claim, whether or not disputed, against a debtor may be settled for less value than the amount claimed.

Enacted by Chapter 159, 1985 General Session

70C-2-207 Referral sales.

With respect to a consumer credit sale, the seller may not give or offer to give a rebate or discount or otherwise pay or offer to pay value to the buyer as an inducement for a sale in consideration of his giving to the seller the names of prospective purchasers or otherwise aiding the seller in making a sale 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 agrees to buy. If a buyer is induced by a violation of this section to enter into a consumer credit sale, the agreement is unenforceable by the seller and the buyer may rescind the agreement and retain any goods delivered until all payments made by the debtor have been fully refunded to him. The buyer may retain the benefit of any services performed without any obligation to pay for them. This section does not apply if any goods delivered to the buyer are damaged while in the buyer's possession or are not delivered to the seller at the buyer's residence, or at any other place agreed on by the parties, within a reasonable time after the seller tenders or delivers a full refund of all payments to the buyer.

Enacted by Chapter 159, 1985 General Session

