

## **Part 2**

### **Debtors' Remedies**

#### **70C-7-201 Effect of violations by creditors -- Penalties -- Debtor's rights.**

- (1) A debtor is not obligated to pay a charge in excess of that allowed by this title, and if he has paid an excess charge he has a right to a refund. A refund may be made in whole or in part 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 party who made the excess charge or from an assignee of the creditor's rights who undertakes direct collection of payments from or enforcement of rights against the debtor with respect to the debt.
- (2) If a debtor is entitled to a refund and a party liable to the debtor in bad faith refuses to make a refund within a reasonable time after demand, the debtor may recover from that party a penalty in an amount to be determined by a court not exceeding the greater of either the amount of the finance charge or 10 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 title, the penalty may be recovered even though the creditor has refunded the excess charge.

Enacted by Chapter 159, 1985 General Session

#### **70C-7-202 Assignees of creditor.**

Except as otherwise specifically provided in this title, or unless the assignment is involuntary, any civil action for violation of this title which may be brought against the original creditor in any consumer 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.

Enacted by Chapter 159, 1985 General Session

#### **70C-7-203 Refunds and penalties as setoff to obligation.**

Refunds or penalties to which the debtor is entitled under 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.

Enacted by Chapter 159, 1985 General Session

#### **70C-7-204 Attorney's fees.**

In any case where it is found that a creditor has violated this title or its agreement with the debtor, the court may award reasonable attorney's fees to the debtor.

Enacted by Chapter 159, 1985 General Session

#### **70C-7-205 Statute of limitations.**

No action under this title may be brought more than one year after the date of the occurrence of the violation. This section does not bar a person from asserting a violation of this title in an action to collect the debt which is brought more than one year after the date of the occurrence of the

violation as a matter of defense by recoupment or setoff to the extent of the outstanding balance of the debt.

Enacted by Chapter 159, 1985 General Session

**70C-7-206 Creditor's defenses.**

- (1) If a creditor establishes by a preponderance of evidence that a violation of this title is unintentional or the result of a bona fide error, no penalty as specified in Sections 70C-7-201 and 70C-7-204 may be imposed and the validity of the transaction is not affected.
- (2) A creditor or assignee has no liability under this part for any failure to comply with any requirement imposed under this title if within 60 days after discovering an error, and prior to the institution of an action under this chapter or the receipt of written notice of the error from the debtor, the creditor or assignee 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 an amount in excess of the charge actually disclosed, or the dollar equivalent of the annual percentage rate actually disclosed, whichever is lower.
- (3) No provision of this part imposing any penalty applies to any action done or omitted in good faith in conformity with some provision of this title, notwithstanding that after the action or omission has occurred the provision is amended, rescinded, or determined by judicial or other competent authority to be invalid for any reason.

Enacted by Chapter 159, 1985 General Session