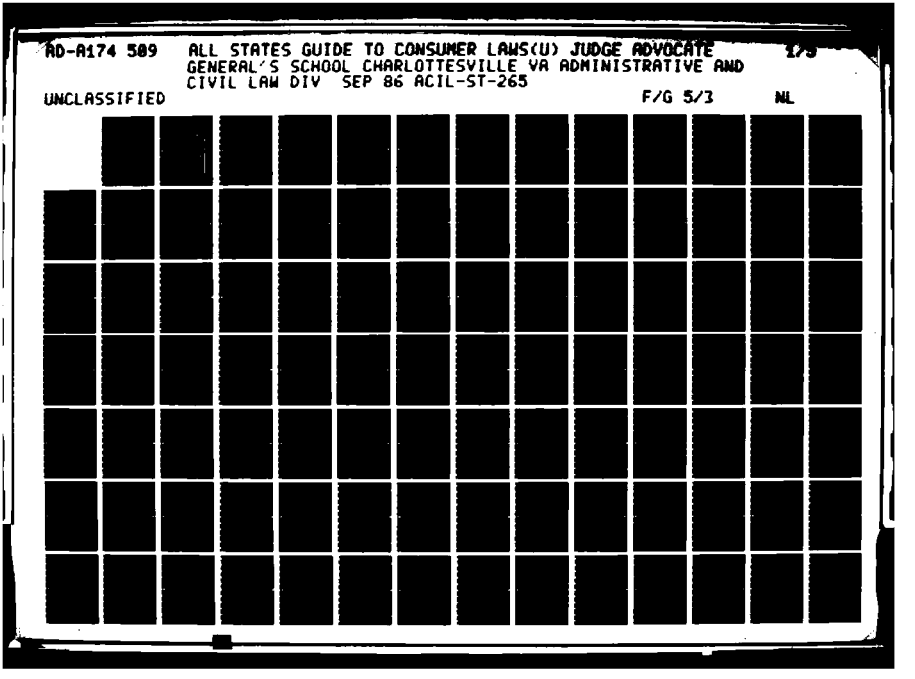
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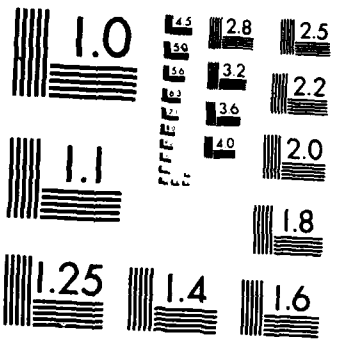

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PREFACE

This book is intended to provide legal assistance officers with a basic understanding of federal and state consumer laws and a single volume reference to the laws governing consumer affairs in the 50 states, District of Columbia, Guam, Puerto Rico, and the Virgin Islands. Every state has developed a statutory scheme for the protection of consumers. Knowledge of these laws is needed to advise clients properly on their consumer problems.

Legal assistance officers are advised that these state and territorial statutes are subject to amendment by legislatures and interpretation by courts. Therefore, additional research and verification may be required. This text does not purport to promulgate Department of the Army policy or to be directory in any sense.

This consumer law guide will be updated annually by the Legal Assistance Branch of the Administrative and Civil Law Division, The Judge Advocate General's School, U.S. Army. Revisions will be forwarded to legal assistance officers as published. To insure the continued usefulness and accuracy of this book, all judge advocates and legal assistance officers are asked to notify the Legal Assistance Branch of any changes in these state and territorial laws and procedures. This information should be addressed to The Judge Advocate General's School, U.S. Army, ATTN: JAGS-ADA-LA, Charlottesville, Virginia 22903-1781.

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TABLE OF CONTENTS

		Page
1.	CIVILIAN INDEBTEDNESS	1-1
	A. GENERAL	1-1
	B. SOLDIERS' AND SAILORS' CIVIL RELIEF ACT AND CIVILIAN INDEBTEDNESS	1-1
	1. Section 526 - Recomputation of Interest Rates	1-2
	2. Section 590 - "Anticipatory Relief"	1-3
	3. Sections 521-524 - Stay Provisions	1-3
	4. Section 520 - Reopening Default Judgments	1-5
	5. Other Consumer-Related SSCRA Provisions	1-6
	a. Section 532 - Mortgage Contracts Entered Into Prior to Entry Onto Active Duty	1-6
	b. Section 531 - Installment Contracts for Purchase of Property Entered Into Before Entry Onto Active Duty	1-7
	6. Interest Revisited	1-7
	C. INTEREST AND USURY DEFINED	1-7
	D. PREVENTIVE LAW-BUDGET COUNSELING	1-8
	E. CONFLICT OF INTERESTS WITHIN THE COMMAND	1-8
	F. JUDICIAL AND NON-JUDICIAL METHODS OF SATISFYING CREDITORS	1-9
	1. Debt Pooling by Commercial Entities	1-9
	2. Assignments for the Benefit of Creditors and Composition Agreements	1-9
	G. CREDIT COUNSELING SERVICES	1-10
	1. Private and Public Non-Federal Services	1-10
	2. Army Community Services Debt Counseling	1-10
	H. CREDITORS' COMMUNICATIONS	1-11
	I. DEBT COLLECTORS' COMMUNICATIONS	1-11
	J. CHART OF STATE DEBT COLLECTION STATUTES	1-15
2.	U.S. BANKRUPTCY COURT PROCEDURES AND PRACTICE	2-i
I.	INTRODUCTION	2-1
	A. PURPOSE	2-1
	B. STATUTES AND RULES	2-1
	C. SOURCES OF INFORMATION	2-2
	D. THE PARTIES	2-4
	E. PURPOSES OF BANKRUPTCY	2-5
	F. BANKRUPTCY PROCEEDINGS	2-5

II. FILING THE CASE 2-6
A. VOLUNTARY/INVOLUNTARY CASES 2-6
B. SECTION 109 "WHO MAY BE A DEBTOR" 2-7
C. JURISDICTION AND VENUE 2-7
D. PROCEDURE 2-8
III. CRITICAL PROVISIONS OF CHAPTER 3 2-11
A. AUTOMATIC STAY 2-11
B. LEASES AND EXECUTORY CONTRACTS 2-12
C. TERMINATION OF UTILITIES 2-13
IV. CRUCIAL PROVISIONS OF CHAPTER 5 2-13
A. CLAIMS 2-13
B. EXEMPTIONS 2-14
C. EXCEPTIONS TO DISCHARGE 2-15
D. PROPERTY OF THE ESTATE 2-15
E. TURNOVER 2-16
F. AVOIDANCE POWERS 2-16
V. CHAPTER 7 LIQUIDATION 2-17
A. PURPOSE 2-17
B. DISCHARGE 2-17
C. DEBTOR'S RIGHTS 2-17
VI. CHAPTER 13 ADJUSTMENT OF DEBTS 2-17
A. PURPOSE 2-17
B. CONTENTS OF A PLAN 2-18
C. CONFIRMATION 2-19
D. DISCHARGE 2-20
E. ADVANTAGES TO THE DEBTOR 2-21
F. DISADVANTAGES TO THE DEBTOR 2-21
G. ADVANTAGES TO CREDITORS 2-22
H. DISADVANTAGES TO CREDITORS 2-22
APPENDIX A - STATE EXEMPTIONS 2-23
APPENDIX B - FEDERAL EXEMPTIONS 2-24

3. COMMERCIAL PRACTICES AND CONTROLS 3-1
A. INTRODUCTION 3-1
B. CONSUMER PROTECTIONS WITHIN THE MILITARY 3-1
1. Department of Defense Policies 3-1
2. Army Community Service 3-2
3. Installation Control 3-2
4. On-and-Off Installation Control 3-3
C. FEDERAL STATUTORY AND REGULATORY CONSUMER PROTECTIONS 3-3
1. Consumer Credit Protection Act 3-3
2. Truth in Lending Act 3-3
a. Introduction 3-3
b. Scope of the Act 3-3
c. General Disclosure Requirements 3-4
d. Specific Disclosure Requirements 3-5
e. Rescission 3-5

f. Liability of Credit Cardholder 3-6
g. Enforcement of Truth in Lending Act 3-6
h. Defenses to Civil Liability 3-7
3. Fair Credit Billing Act 3-8
4. Right of Cardholder to Assert Claims or Defenses Against Card Issuer 3-9
5. Offsets by Card Issuer Prohibited 3-10
6. Discounts/Tie-In Arrangements 3-10
7. Restriction on Garnishments 3-11
8. Fair Credit Reporting Act 3-12
9. Equal Credit Opportunity Act 3-12
a. Introduction 3-12
b. Special Treatment for Certain Classes of Transactions 3-13
c. Credit Applications 3-13
d. Evaluations of Application 3-13
e. Extensions of Credit 3-14
f. Notification 3-14
g. Credit History 3-14
h. Enforcement 3-15
10. Consumer Leasing Act 3-15
a. Consumer Lease Disclosures 3-15
b. Balloon Payments 3-16
c. Advertising 3-16
d. Enforcement 3-17
11. Truth-in-Warranties Act 3-17
a. The Disclosure Rule 3-17
b. Presale Availability Rule 3-18
c. Informal Dispute Settlements 3-19
12. Fair Debt Collection Practices Act 3-19
a. Introduction 3-19
b. Communication With Third Parties 3-19
c. Communications With the Consumer 3-19
d. Validation of Debts 3-20
e. Ceasing of Communications 3-20
f. Enforcement 3-20
13. Real Estate Settlement Procedures Act 3-20
a. Coverage of the Act 3-20
b. Disclosures 3-20
c. Prohibition Against Kickbacks and Unearned Fees 3-21
d. Title Companies 3-21
e. Escrow Accounts 3-21
f. Enforcement 3-22
14. Odometer Requirements 3-22
15. Consumer Product Safety Act 3-22

16. Home Solicitation (Door-to-Door Sales) ... 3-22
17. Mail Order Merchandise ... 3-23
18. Unordered Merchandise ... 3-24
19. FTC Credit Practices Rule ... 3-24
D. STATE STATUTORY AND REGULATORY CONSUMER PROTECTIONS ... 3-26

4. ARMED FORCES DISCIPLINARY CONTROL BOARDS ... 4-1
A. GENERAL ... 4-1
B. ROLE OF THE LEGAL ASSISTANCE OFFICER ... 4-1
C. ORGANIZATION AND FUNCTIONS ... 4-2
D. "OFF-LIMITS" DESIGNATION ... 4-2
E. LEGAL AUTHORITY FOR "OFF-LIMITS" DESIGNATION ... 4-3
F. REFERENCES ... 4-4

5. INSURANCE ... 5-1
A. LIFE INSURANCE ... 5-1
1. General ... 5-1
2. Servicemen's Group Life Insurance (SGLI) ... 5-2
B. HEALTH INSURANCE ... 5-5
C. PROPERTY AND CASUALTY INSURANCE ... 5-5
1. Motor Vehicles ... 5-6
2. Real Estate ... 5-6
3. *Personal Property* ... 5-6
a. General ... 5-6
b. Mortgage Insurance for Soldiers ... 5-6

6. AUTOMOBILES ... 6-1
A. REGISTRATION ... 6-1
B. COUNTY OR CITY LICENSE PLATES ... 6-1
C. DRIVER'S LICENSE OR PERMITS ... 6-1
D. INSPECTION ... 6-2
E. AUTOMOBILE FINANCING ... 6-2
1. Service or Carrying Charges ... 6-2
2. Payment ... 6-2
3. Overseas Shipment of Financed Automobiles ... 6-2
4. Refinancing ... 6-3
5. Deficiency Judgments ... 6-3
F. MOTOR VEHICLE LIABILITY INSURANCE ... 6-3
G. REFERENCES ... 6-4
H. FTC USED MOTOR VEHICLE TRADE REGULATION RULE ... 6-6
I. FTC USED CAR DISCLOSURE FORMS ... 6-8
J. STATE LEMON LAWS ... 6-12

K. STATE-BY-STATE LISTING OF LEMON LAW LEGISLATION 6-31
L. STATE MOTOR VEHICLE REGISTRATION STATUTES AND REGISTRATION DOCUMENTS CONTAINING ODOMETER READINGS 6-33
M. TABLE OF STATE ODOMETER STATUTES 6-35
N. TABLE OF STATE MOTOR VEHICLE REPAIR LAWS AND REGULATIONS 6-36

7. COMPENDIUM OF STATE STATUTES
Alabama 7-1
Alaska 7-5
Arizona 7-9
Arkansas 7-14
California 7-18
Colorado 7-24
Connecticut 7-29
Delaware 7-33
District of Columbia 7-37
Florida 7-42
Georgia 7-47
Guam 7-51
Hawaii 7-56
Idaho 7-60
Illinois 7-66
Indiana 7-72
Iowa 7-77
Kansas 7-82
Kentucky 7-87
Louisiana 7-92
Maine 7-97
Maryland 7-104
Massachusetts 7-110
Michigan 7-116
Minnesota 7-121
Mississippi 7-127
Missouri 7-132
Montana 7-137
Nebraska 7-145
Nevada 7-152
New Hampshire 7-159
New Jersey 7-165
New Mexico 7-171
New York 7-176
North Carolina 7-184
North Dakota 7-189
Ohio 7-195
Oklahoma 7-201

Oregon 7-208
Pennsylvania 7-215
Puerto Rico 7-220
Rhode Island 7-226
American Samoa 7-230
South Carolina 7-232
South Dakota 7-238
Tennessee 7-242
Texas 7-248
Utah 7-254
Vermont 7-260
Virginia 7-265
Virgin Islands 7-270
Washington 7-274
West Virginia 7-281
Wisconsin 7-285
Wyoming 7-291

CHAPTER I

CIVILIAN INDEBTEDNESS

A. GENERAL

Soldiers are expected to discharge their private indebtedness and financial obligations in such a manner as to avoid bringing discredit on the military service.[1] However, the enforcement of private obligations of persons in the military service is a matter for civil authorities. Generally, the Department of the Army is without the legal authority to require a member to pay a private debt or to divert any part of his or her pay in satisfaction thereof, even though the indebtedness may have been reduced to a judgment by civil court.[2]

Soldiers and civilian creditors should be familia with Department of the Army policies relating to civilian indebtedness. Every effort should be made to effect settlement without resort to a complaint to the commanding officer. The latter not only involves administrative time and expense but also may materially affect the professional status of the soldier. In cases of irresponsibility, gross carelessness, neglect, dishonesty, or evasiveness in the financial obligation of a soldier, the commanding officer may initiate administrative or disciplinary action.[3] Board action under the provisions of Chapter 14, AR 635-200, denial of reenlistment, filing in permanent records or UCMJ action may be available where the soldier indicates an established pattern showing dishonorable failure to pay debts.

Department of Defense and Department of Army references which address indebtedness of military members include:

- DOD Directive 1344.7, Personal Commercial Affairs;
- DOD Directive 1344.9, Indebtedness of Military Personnel;
- AR 600-15, Indebtedness of Military Personnel; and
- DA Pam 360-520, Credit: Master or Servant.

B. SOLDIERS' AND SAILORS' CIVIL RELIEF ACT (SSCRA)[4] AND CIVILIAN INDEBTEDNESS

The SSCRA is designed to help those who acquired obligations before they came in the military service and who can no longer meet these obligations because their ability to pay has been materially affected due to military service. It is also designed to enable a military member to obtain relief, and if necessary, a day in court, should military duties might conflict with that right. Quite frankly, the SSCRA and its concordant benefits are often overlooked in consumer law cases. An axiom for any legal assistance attorney in any matter whatsoever should always be:

WHAT ARE THE SSCRA IMPLICATIONS OF THIS ACTION ON MY CLIENT?

With that threshold question always in mind, what SSCRA relief might there be for the typical legal assistance client?

There are numerous SSCRA provisions which are of primary importance to legal assistance attorneys in consumer cases. Among the more important are:

Section 526,[5] which can lead to a reduction in interest on installment obligations incurred by the soldier prior to entry onto active duty; Section 590,[6] which permits a soldier to seek "anticipatory relief" from contractual obligations where the soldier's ability to meet the obligations is materially affected by reason of military service, Sections 521-524,[7] which permit the soldier to apply from a stay in legal proceedings where the soldier's ability to appear and defend is materially affected by reason of military service; and Section 520,[8] which allows a soldier to reopen any default judgment in which the soldier's ability to appear and defend was materially affected by reason of military service.

1. Section 526 - Recomputation of Interest Rates.

Section 526 provides that no obligation bearing interest at a rate of interest in excess of 6% a year entered into prior to entry into military service shall bear interest in excess of 6% a year unless the obligee applies to a court to permit the interest rate to remain as originally contracted for, and satisfies the court that the soldier's ability to pay is not materially affected by military service.[9] The impact of this provision can be powerful, especially in period when credit cards and small loans often carry on annual percentage rate in excess of 18%. The section must be invoked with caution, however. First, only pre-service obligations are covered. A soldier who obtains a bank card after entry onto active duty is ineligible for this relief.[10] Even a soldier who had a bank card or revolving charge account many years before entry onto active duty may have trouble obtaining relief. Payment made to banks and department stores for goods purchased on credit are generally considered applied toward the purchases made "first in time." This prevents a creditor from levying on all goods purchased on a defaulted accousnt, rather than those on which some security may still be claimed. Applying such a theory, a bank or department store could "trace" goods purchased, and if the outstanding balance was attributable to goods purchased only after entry onto active duty, the creditor might argue that § 526 is inapplicable.[11]

Next, the soldier's ability to pay the obligation must be materially affected by military service. Thus, the soldier whose pay increased upon entry onto active duty and who is not experiencing financial difficulties, would be unlikely to succeed in seeking a recomputation of interest rates.

Finally, soldiers must be warned that the interest in excess of 6% is not forgiven, only delayed while the soldier is on active duty. A soldier who obtains a reduction in the rate of interest may force a substantial

"balloon" payment of deferred interest charges after leaving active duty. The soldier should also be advised that he will be unable to dispose of the collateral upon which the obligation exists until it is satisfied. For example, a soldier who desires to trade in an automobile and who has had the interest rate recomputed, may experience difficulty in accomplishing a trade-in.

2. Sections 590 - "Anticipatory Relief"

A request for a reduction in interest rates can also be coupled with a request for anticipatory relief under the SSCRA. In fact, many lenders may exhibit great reluctance to grant a soldier a reduction in interest rates. But warned that the soldier may be forced to seek anticipatory relief from a court, many creditors will accede. In fact, the prospect that a soldier will go to court to assert a right to anticipatory relief is often enough to encourage creditors to agree voluntarily to lower payments.

The anticipatory relief provisions state that a soldier, at any time during his period of military service or within six months thereafter, may apply to court for relief of any obligation or liability incurred by him prior to his entry onto active duty. Unless the court finds that the soldier's ability to comply has not been affected by reason of the military service, it may grant the soldiers a stay in the enforcement of the obligations or reduce the payments required by the soldiers during such a stay.[12]

3. Sections 521-524 - Stay Provisions

Sections 521-524 kick in whenever the soldier is a plaintiff or defendant in an on-going civil court proceeding and encounters difficulty in being able to appear because of military duty. The court, under Section 521[13] in its own discretion may grant a stay in the proceedings on its own motion. Or, the military member has the right to petition forf a stay. The court, upon a military member's petition, is required to grant the stay unless the court makes a finding that the soldier's ability to appear and defend or to prosecute the action as not materially affected by reason of his military service. There is substantial misunderstanding of this stay provision. Some argue that the stay is "automatic." While the stay is prima facie automatic, it is in the nature of a rebuttable presumption. For the benefit of a soldier seeking such a stay, a legal assistance attorney providing assistance to the soldiers should provide evidence of the material effect - whether it is the ability of the soldier to be present because of military mission requirements, or for personal reason - insufficient accrued leave or insufficient finances. This raises the threshhold for the opposing party. For example, a soldier who raises only his military status and nothing more in requesting a stay can easily be overcome by an opposing party who asks the court to take judicial notice of the current military pay code and the statutes which authorize 30 days paid leave per year for military personnel. On the other hand, the soldier who provides an affidavit outlining financial difficulties or a lack of leave, or of the need for him to be present for military duties (especially if corroborated by an affidavit from his first sergeant or commander) forces the party opposing the stay to meet an impossibly high burden. Since the Supreme Court has

long taken a hands-off approach on dictating which party has the burden of demonstrating material effect (or lack thereof),[14] it is better for legal assistance attorney, on behalf of the soldier, to seize the initiative and leave nothing to the vagaries of a far-distant court.

Section 522 concerns another reason why the soldier should seek a Section 521 stay. Section 522 provide that when any action is enforce a contract is stayed pursuant to the SSCRA, or in any case where the soldier fails to comply with the term of a contract and reserve the risk of a fine or penalty for noncompliance, the court has the authority to relieve the enforcement of the fine or penalty on such terms as the court may deem fair and just.[15] Before a court can accord such relief however, two threshhold requirements must be met. First, the court must find that the person was in the military service when the fine or penalty was incurred. Second, it must have been the military service which materially impaired the soldier from paying or performing as required on the obligations. Thus, late payment charges on an installment contract or a delinquency fine or penalty or a promissory note could be forgiven by a court.[16]

Section 523[17] expands the protection offered by Section 521. Recall that Section 521 provides for granting of an automatic stay where ability of a soldier to appear in an on-going civil court action is materially affected by reason of military service. But Section 521 does not contemplate proceedings wherein the soldier has had property levied on, attached, or garnished whether pre- or post judgment. Section 523 does. Section 523 not only permits the court to grant a stay, execution of a judgment or similar order, but permits the court to vacate the execution of judgments, attachments or garnishments, whether pre- or post-judgment attachment or garnishment. Like Section 521 relief, Section 523 relief can be granted by a court on its own motion in its own discretion, or upon application for relief by the soldiers, or some person on his behalf. Again, like Section 521, a court considering Section 523 relief is required to grant the relief unless it finds that the soldier's ability to comply with the judgment or order entered or sought is not materially affected by reason of military service. Thus, this is not a stay of the proceedings, like a Section 521 stay, but a stay or a vacation of an execution order, a writ of attachment or a writ of garnishment. To give an example, the Army's "Sure-Pay" program mandates that soldiers have bank accounts into which the monthly pay may be deposited by electronic transfer. Where a commercial creditor is not permitted by federal law to garnish a soldier's wages which are held by the US Army Finance and Accounting Center,[18] that limitation no longer applies where the soldier's pay has been deposited into a bank account. Thus, a commercial creditor attempting to garnish a soldier's bank account would be a prime party against whom a legal assistance officer should seek Section 523 relief on behalf of a soldier. The same could well apply for a soldier whose pay is being garnished for alimony and child support obligations - he could petition the court issuing the writ for a stay or a vacation of the order or writ, based on changed circumstances due to entering the military.[19] One caveat is, that in requesting relief from a post-judgment garnishment, attachment or execution order, a soldier may implicitly consent that the original judgment is valid and may thereafter be precluded from reopening or attacking the underlying judgment.[20]

Section 524[21] specifies that the stay of any action, proceeding, attachment or execution ordered by a court under the SSCRA may be stayed by the court for the period of the soldier's active duty and up to three months thereafter, subject to any terms which the court deems just. This also is much misunderstood. Those peripherally familiar with the SSCRA are often of the mistaken opinion that when the court grants a SSCRA stay, it is automatically for the period of service and three months thereafter. Section 524 clearly provides otherwise. Section 524 also provides that where the soldier is a co-defendant in any action, the court may permit the action to proceed with respect to the other defendants.

4. Section 520 - Reopening Default Judgments

Recall that Section 590 permits a soldier to seek anticipatory relief - the soldier may be aware that his military status prevents him from meeting future obligations and may be worried that a creditor will later attempt judicial action. Section 521, 522 and 523 permit requests for stays in on-going actions,[22] and Section 524 describes the length of any stay that might be granted. What if the action has proceeded to judgment? While Section 523 permits the vacation of a judgment, there are several limiting factors. First, there are only judgments where the soldier has had property seized, attached or garnished. What about those cases where the soldier's status is changed, particularly in the family law area. For example, a decree of divorce, or a decree of paternity finding that the soldier is the father, or on adoption decree, terminating the soldier's parental rights. Section 523's vacation provisions does not reach these. Second, what does "vacation" mean? Limited to its strictest terms, "vacation" does not usually mean that the order is vacated in its entirety, this permitting a relitigation of all underlying issues. In the limited sense, vacation may mean only "suspended". That is, vacated only until that point in time when the soldier is no longer materially affected by reason of military service. For example, at least one case has held that one who avails himself of Section 523 relief admits the validity of the underlying judgment and may thereafter not relitigate it.[23]

Thus, the provisions of Section 520[24] are substantial. Section 520 permits a soldier to petition a court to reopen any default-judgment to which he may be subject. This again, is a significant arguing point when negotiating with an opposing civilian counsel over a consumer debt where the soldier has tangible or intangible property within the court's jurisdiction. While many of those unfamiliar with the SSCRA may be of the opinion that the right to a reopening of the judgment is automatic, it is not. First the order to reopen may only be granted by the court which entered the original order. Second, the soldier must be able to show that he had a meritorious or legal defense to the action, or to some part of the action. The "meritorious defense" prong would go to the soldier's military status: "I could not appear and defend because I had no leave accrued"; "I could not appear and defend because I had insufficient pay for a plane ticket"; or, "I could not appear and defend because my unit was in the field." The legal defense prong would involve any defenses, claims or setoffs permitted by state statute, the jurisdiction's state or common law

or any permitted by federal law.[25] Second, the soldier must apply to reopen the default judgment within a period of active duty in which the judgment was entered or within 90 days thereafter.

One stumbling block for military attorneys who counsel soldiers for whom the § 520 reopening provisions may be applicable is that in order to avail themselves of the stay proceedings, the soldier must not have entered "any" appearance. Although it is possible to distinguish "general" appearances from "special" appearances, the phrase "any appearance" can arguably encompass both. Thus, a Legal Assistance attorney's letter to a court clerk requesting a stay (which was granted) was later held to be an appearance by the soldier sufficient to subject the soldier to the court's in personam jurisdiction.[26] Legal assistance attorneys must therefore be exceedingly creative in ways to apprise the court or the court clerk of the defendant's military status and the attendant justifications for a delay, without jeopardizing the client's right to request a Section 520 reopening. Local case law should be examined to determine what constitutes an appearance. If case law is not available, attempt to find a Reserve Component attorney in the locality or state, contact the local judge or court clerk. Another alternative would be where the opposing counsel has not indicated the soldier's military status in the initial pleadings, as required by Section 520. If the opposing counsel accedes, and so notifies the court, a Section 521 or Section 523 stay would be appropriate. If the opposing counsel fails to so advise the court, it buttresses the soldier's argument for a petition to reopen the proceedings.

5. Other Consumer-Related SSCRA Provisions.

(a) Section 532[27] - Mortgage Contracts Entered Into Prior To Entry Onto Active Duty.

This is a real-life fact situation: Your client, a new Army soldier, tells you that he has received orders for Germany and wants to arrange for shipment of his car. He owned the car outright before he entered the Army, but pledged it to finance his family's living expenses while he was in basic training. He has two years of payments remaining on the installment obligation. His lender has indicated that if he attempts to remove the collateral from the jurisdiction in which the loan was entered, it will attempt to accelerate the note. Does he have any recourse?

The answer is yes. Section 532 provides that where a soldier has mortgaged real or personal property and still owns it, and where it has been given as security prior to his entry onto active duty, if any person entitled to benefits under the contract attempts to enforce it in court, the court may stay the proceedings, or accord such other equitable relief as may be necessary to preserve the interests of all the parties. The court may also appoint three disinterested appraisers in order to settle the case, unless that would result in an undue hardship for the soldier. The key here is that no seizure of the property shall be considered just for any breach, even if authorized under terms of the contract, unless the soldier has waived SSCRA protections or the court by it's order, permits seizure.

(b) Section 531 - Installment Contracts For Purchase of Property[28] Entered Into Before Entry Onto Active Duty.

This ection applies where a soldier has, prior to military service, entered into an installment contract to buy real or personal property, or to lease real or personal property, and has paid a deposit, or has paid an installment payment. If so, the seller or the seller's assignee are prohibited under the terms of Section 531 from rescinding the contract and/or repossessing the property during the soldier's period of active duty, unless pursuant to a court order. Violation of this provision carries a misdemeanor penalty of one year's imprisonment, a $1,000 fine or both.

Section 531 should be used in tandem by a Legal Assistance Attorney when requesting a reduction in interest payments under Section 526, or for general relief in reducing the soldier's debt obligations. Warning a creditor of these potential misdemeanor provisions often encourages agreement which accord the soldier relief and benefit the creditor.

6. Interest Revisited.

Recall that Section 526 permits a soldier to petition for relief from interest rates above 6% per annum on obligations incurred prior to entry onto active duty. What about the soldier whose pre-active duty contract is usurious, or the soldier whose contract is post-active duty (and not entitled to Section 526 interest rate reduction), but usurious? The next section discusses interest and usury.

C. INTEREST AND USURY DEFINED

Interest is compensation for the use of money. Usury is charging or receiving compensation in excess of the amount allowed by law for the use of money.[29] The legal assistance attorney should inform soldiers of those recognized reliable means of obtaining credit.

State statutes generally fix the rates of interest and prescribe penalties for usury. Usually, the statutes fix interest rates for three types of transactions:

— "Legal rate" when no rate is stipulated by the parties;

— "Contract rate," which is the maximum rate on which the parties may agree; and

— "Judgment rate," which is the rate the state allows on court judgments.

Any charge above these rates constitutes usury. In most states, the statutes impose a penalty on usurious transactions. These penalties range from declaring all interest forfeited up to making the contract void. Some states permit the recovery of damages in multiple amounts of the usurious interest charged.

Most states have special laws governing interest rates on small loans, industrial bank loans, bank installment loans, and credit unions. Generally they are higher than those allowed on other loans.

The question arises, how does one determine that an interest rate is usurious? As indicated, questions of federal and state law are involved. Consulting the Truth-In-Lending Act, Regulation Z and the Federal Reserve Board's Official Staff Commentary on what charges constitute the "finance charge" is critical. The finance charges on a loan are synonimous with interest. If the total finance charges can be extrapolated into an amount of interest which exceeds state or federal standards the contract is usurious. For Army legal assistance attorneys, Army Regulation 600-15, Indebtedness of Military Personnel (14 March 1986),[30] contains a handy appendix which permits one to calculate interest rates on consumer contracts of 5 years or less. Those who do not have access to a rate table, or would like one more extensive than the Army reprint should contact the Federal Reserve Board, Washington, D.C.

D. PREVENTIVE LAW—BUDGET COUNSELING

One function of the Army Legal Assistance Program is the prevention of problems of indebtedness.[31] The Army Preventive Law Program, for the time being, remains a command responsibility.[32] Although AR 600-14, Preventive Law, requires commanders to have an effective preventive law program, which includes personal affairs and money management, it is incumbent upon military attorneys to insure that the program is a success. The Judge Advocate General has emphasized this in TJAG Policy Letter 85-10, Army Preventive Law Program (17 December 1985). Legal assistance attorneys should not operate in a vacuum, however. The Army Community Services Program[33] at larger installations generally will have paid or volunteer budget counsellors who may be available to give similar unit training classes. Similarly, the local on-installation bank or credit union may have personnel who can provide budget counseling or consumer law preventive law classes.

Whatever the local assets such as ACS volunteers, banks or credit unions, the legal assistance attorney should seize the initiative and give unit training classes on basic contract law, the uses and abuses of powers of attorneys, obligations of landlords and tenants, fundamentals of personal and family finance, and other matters of everyday interest and importance to soldiers. Unit training classes by members of the Legal Assistance Office aid in making soldiers more cautious in the handling of their personal affairs. Articles in installation publications are also helpful in informing soldiers of their financial obligations.

E. CONFLICT OF INTERESTS WITHIN THE COMMAND

In advising on matters of personal indebtedness, the legal assistance officer may be placed in the position of attempting to advise two parties with different interests. The commander of the soldier client may ask the judge advocate for an opinion as to whether a debt is legitimately disputed or whether the member is honestly trying to resolve his debts. In this

station, if the judge advocate has already been consulted by the soldier, the commander should be referred to another officer within the office for advice concerning the legal aspects of the debt.

F. JUDICIAL AND NON-JUDICIAL METHODS OF SATISFYING CREDITORS

Frequently, the soldier owes the debt and readily admits it but has simply overextended his credit. In some cases a letter from the soldier explaining his position and his inability to make payments to the full extent required will suffice. Many creditors in hardship cases routinely extend the payment period and accept reduced individual payments. This normally means the member will also have to pay more interest and finance charges. Another option is arranging for the creditor to repossess the merchandise and accepting reduced compensation.

(1) Debt Pooling by Commercial Entities.

Debt pooling provides another method of resolving financial difficulty. Debt-pooling firms are not loan companies; rather, their purpose is to work out a plan with the debtor and his creditors for paying off the debtor's creditors. The debtor agrees to turn over to the agency a certain portion of his earnings, which the agency agrees to pay to the creditors, less specified fees and expenses. The agency's fee is usually a percentage of the entire indebtedness as listed by the debtor.

If honestly operated, such agencies can perform a valuable service for persons deeply enmeshed in debt. Unfortunately, this has not always been the case. Sometimes the money is not paid to the creditors at all, or only part of it is paid. Frequently, creditors refuse to participate in the debt poolers' plan but the agency does not so notify the debtor. On other occasions the debt poolers pay their entire fee first and it is a substantial period before money is available to pay the creditors. Accepting the services of a debt pooler does not always prevent court proceedings. Frequently the debtor finds that instead of getting out of debt he simply has another creditor, the debt pooler. Because of the distress caused by unethical debt poolers, many states have found it necessary to take legislative action either prohibiting or regulating the business of debt pooling. The local statutes should be consulted when considering this option.

(2) Assignments For The Benefit Of Creditors And Composition Agreements And Related State Law Protections.

There are traditional remedies under state law which often pre-date federal bankruptcy law. While these alternatives may be little-used, they should not be overlooked, particularly if the soldier is interested in avoiding the stigma of federal bankruptcy. It is important to realize that these state law provisions do not override federal bankruptcy law.[34]

Some states permit a debtor in financial difficulty to take bankruptcy under state law by petitioning a court to be declared insolvent.[35] The

debtor's creditors are made defendants. The complaint asks that he be declared insolvent by the court and asks that a receiver be appointed to take charge of his property. The receiver then distributes the property among the creditors. The debtor is permitted to keep any exempt real and personal property.

Another alternative is an Assignment for the Benefit of Creditors.[36] Here, the debtor is not declared insolvent by a court, but an assignee is appointed, subject to court approval. The assignee takes immediate possession of all the debtor's property (except that exempt by state law), inventories it, files the inventory with the court, and posts a bond in double the value of the property. The assignee is usually, but is not required to be, a creditor acting on behalf of all other creditors. The assignee then arranges for the sale or distribution of the property to satisfy all creditors. The action may be attacked by the creditors for fraud, but if all creditors agree, the debtor can have all debt extinquished. Assignment for the Benefit of Creditor statute are flexible enough that the assignee can collect and dispose of all property in a one-time distribution, or perhaps continue the assignment for a period of time so that all creditors eventually obtain satisfaction on their debts. A continuing arrangement may not be feasible for enlisted soldiers because of federal statutory prohibitions on assignments of wages.[37]

A final alternative to bankruptcy is the composition agreement. This is a matter of contract between the debtor and all creditors, and does not involve the courts. A legal assistance attorney, acting on behalf of a financially distressed soldier, may be able to work out an agreement between the soldier and all creditors for payment of the soldier's obligations. When creditors are apprised that if they will agree to such a plan it will prevent the soldier from being forced into bankruptcy, most creditors readily consent.

H. CREDIT COUNSELING SERVICES

(1) Private And Public Non-Federal Services. Credit counseling clinics are sponsored by local businesses, labor unions, and social service agencies to help debtors liquidate debts by arranging smaller monthly payments. A service counselor can frequently help obtain a large consolidation loan that the debtor could not secure by himself. Services are provided free or at a nominal cost to the client. This spares the debtor and the creditor the expense of a garnishment action, collection procedure, or lawsuit. Effective credit counseling significantly reduces the frequency of bankruptcy proceedings. For a directory of member clinics, write: The National Foundation for Consumer Credit, 1819 H Street N.W., Washington, D.C. 20006.

(2) Army Community Service Debt Counselling. The Army Community Service Program,[38] has a Consumer Affairs And Financial Assistance Program that debt counselling and preventive law consumer and financial planning guidance. Large installations will have both paid and volunteer debt counsellors. Legal assistance attorneys should coordinate closely with these personnel to assist soldiers with debt problems. The

program also contains a consumer advocacy program and a complaint resolution system.[39]

I. CREDITORS' COMMUNICATIONS

A few states have enacted statutes which prohibit creditors, except under certain circumstances, from contacting the debtors' employers in attempts to force debtors to pay their obligations. Commanding officers are considered to stand in the place of employers in relation to these statutes. Accordingly, in those states where such laws exist (Florida, Louisiana, Maryland, Massachusetts, New York, North Carolina, and Wisconsin), creditors compliance with them is expected. The law of the state where the commander is located, not the law of the state where the debt was incurred or the debtor is located, governs in these circumstances.

Army Regulation Number 600-15, Indebtedness of Military Personnel,[40] restricts when commanders may take action on letters of indebtedness from creditors. It requires creditors to comply with all state statutes. In addition, creditors are expected to provide the Truth in Lending Act disclosures (see Chapter 3, Section C.2, this pamphlet), and to make a good faith effort themselves to collect the debt prior to contacting the commander. If the servicemember justifiably disputes the debt, the commander is to return the letter of indebtedness without taking action. Finally, even if all of the regulatory requirements have been met by the creditors, the commander still has the discretion to take no action. The commander is required to respond to requests for assistance, even when determining to take no action upon some.

J. DEBT COLLECTORS' COMMUNICATIONS

Debt collectors are those entities who collect debts due another. The Fair Debt Collection Practices Act restricts them from contacting employers. Generally, they are not to contact third parties except to obtain information as to where the consumer is located, or for other reasons only with the consent of the consumer, with court permission, or as is reasonably necessary to effectuate a postjudgment remedy. AR 600-15 incorporates these provisions of the Fair Debt Collection Practices Act.

1. Dep't of Army Regulation No. 600-15, Indebtedness of Military Personnel, para. 1-5a (14 March 1986).

2. Id. The military can take monies out of a soldier's pay in two instances: (1) pursuant to a garnishment decree for alimony and child support and (2) pursuant to a bankruptcy court order for a Chapter 13 petition (Adjustment of Debts of an Individual with Regular Income).

3. Id., Chapter 3.

4. 50 U.S.C. App. §§ 501-548, 560-591 (1982) (originally enacted as Act of Oct. 7, 1940, ch. 888, 54 Stat. 1178). For an overview of the act, see generally, Dep't of Army Pamphlet 27-166, Soldiers' and Sailors' Civil Relief Act (August 1981).

5. 50 U.S.C. App. § 526 (1982).

6. 50 U.S.C. App. § 590 (1982).

7. 50 U.S.C. App. §§ 521-524 (1982).

8. 50 U.S.C. App. § 520 (1982).

9. 50 U.S.C. App. § 526 (1982).

10. Shield v. Hall, 207 S.W.2d 997 (Tex. 1948).

11. There is no case law on this point. A resourceful legal assistance attorney, confronted with such an argument could respond that the date of the contract, not the date of the specific purchase, controls. The analogy would be to a bank on financial institution which extends materialmen, for example, a line of credit. Financial institutions are prone to argue that their "security" is perfected as of the date that the line of credit is opened, not the date that a particular "draw" on a line of credit is made.

12. 50 U.S.C. § 590 (1982).

13. 50 U.S.C. App. 521 (1982).

14. Boone v. Lightner, 319 U.S. 561 at 569 (1943).

15. 50 U.S.C. App. § 522 (1982).

16. See Dep't of the Army Pamphlet 27-166, Soldiers' and Sailors' Civil Relief Act, para. 3-8 (August 1981).

17. 50 U.S.C. App. § 523 (1982).

18. 42 U.S.C. § 459 (1982).

19. McGlynn v. McGlynn, 35 N.Y.S.2d 6 (Sup. Ct. 1942); McKinney v. McKinney, 50 N.Y.S.2d 8 (Sup. Ct. 1944).

20. Akron Auto Finance Co. v. Stonebroker, 66 Ohio App. 507, 35 N.E.2d 585 (1941).

21. 50 U.S.C. § 524 (1982).

22. Section 522 also permits anticipatory relief "in any case where a person fails to perform any obligation and a fine or penalty for such nonperformance is incurred. . ." 50 U.S.C. § 522 ( ). Late penalty fees, however, are not generally substantial enough to merit a request for anticipatory relief, and most often relief will be requested as part of a defense, answer, set-off counter claim or request for relief after a creditor initiates action.

23. Infra, note 20.

24. 50 U.S.C. App. 5520 (1982).

25. For example, violation of a state's Unfair and Deceptive Trade Practices Act, violation of a state case interpreting such an act or a case interpreting the general contract law principles of the state, or provisions of the Federal Truth-In-Lending Act (15 U.S.C. § 1601-1693).

26.

27. 50 U.S.C. § 52 (1982).

28. 50 U.S.C. § 531 (1982).

29. See DA Pam 360-520.

30. See infra note 1.

31. Dep't of Army Regulation 27-3, para. 2-7, Legal Assistance (1 April 1984).

32. Dep't of Army Regulation 600-14, Preventive Law (30 September 1965).

33. Army Regulation 360-8, Army Community Service Program (8 July 1985 UPDATE).

34. International Shoe v. Pinkus, 278 U.S. 261.

35. See, e.g., Ark. Stat. Ann. §§ 36-201 to 36-208.

36. See, e.g., Ark. Stat. Ann. §§ 36-301 to 36-308.

37. 37 U.S.C.A. § 701(c).

38. Dep't of the Army Regulation 608-1, Army Community Service Program, Chapter 4 (8 July 1985 UPDATE).

39. Id., paras. 4-5, 4-6.

40. Infra, note 1.

CHART OF STATE DEBT COLLECTION STATUTES

CHART OF STATE DEBT COLLECTION STATUTES

STATE STATUTES	COVERAGE		PRIVATE ACTIONS			REGULATIONS AUTHORIZED	ABUSIVE PRACTICES SPECIFIED	LICENSING
	COLLECTION AGENCIES	CREDITORS	ACTUAL DAMAGES	STATUTORY DAMAGES	INJUNCTION			
ALABAMA (none)								
ALASKA ALASKA STAT §§ 08 24 0 011 - 24 380 (Collection Agencies)	yes		no mention of private actions			yes	yes[1]	yes
ALASKA ALASKA STAT §§ 45 50 471 - 561 (Unfair Trade Practices)	yes[2]	yes	yes[3]	yes	yes	yes	yes	no
ARIZONA ARIZ REV STAT ANN §§ 32-1001 to -1057 (Collection Agencies)	yes		no mention of private actions			yes	yes[4]	yes
ARKANSAS ARK STAT ANN §§ 71-2001 to 2015 (Collection Agencies)	yes		no mention of private actions			yes	yes[5]	yes
CALIFORNIA CAL BUS & PROF CODE §§ 6850-6956 (West) (Collection Agencies)	yes		yes[6]	yes		yes[7]	yes[8]	yes
CALIFORNIA CAL CIV CODE §§ 1788-1788 32 (Collection Agencies)	yes	no	yes	yes		no[9]	yes	no

1 The use of simulated legal documents is the only abusive practice specifically mentioned in the Alaska collection agency statute *See* ALASKA STAT § 08 24 320

2 *See* State v O Neill Investigations, Inc 609 P 2d 520 (1980) (state unfair trade practices act applied to debt collection agency despite existence of another specific collection agency statute)

3 Private actions for actual and statutory damages are expressly authorized ALASKA STAT § 45 50 531(a) While an injunction is clearly available in a class action suit (§ 45 50 531(b)), the authorization of that remedy is less clear in individual actions On that issue, § 45 50 531(a) provides only a statement that a court may award whatever "equitable relief it considers necessary or proper

4 *See* ARIZ REV STAT ANN §§ 32-1051 to -1055

5 *See* ARK STAT ANN § 71-2008

6 Private actions for actual and statutory damages are authorized CAL BUS & PROF CODE § 6947 1 (West) Statutory damages are available only for violations of § 6947 1(j) *See id* § 6947 1(b) Under § 6947 1(j), a collection agency cannot condition the filing, recording, or delivery of an acknowledgement of satisfaction of judgment upon the debtor s performance of an act or payment in excess of that to which the judgment creditor is entitled

7 *See* 16 CAL ADM CODE § 600

8 *See* CAL BUS & PROF CODE § 6947 (West)

9 Title does not supersede existing regulations of the Director of Consumer Affairs unless inconsistent CAL CIV CODE § 1788 32

STATE STATUTES	COVERAGE		PRIVATE ACTIONS			REGULATIONS AUTHORIZED	ABUSIVE PRACTICES SPECIFIED	LICENSING
	COLLECTION AGENCIES	CREDITORS	ACTUAL DAMAGES	STATUTORY DAMAGES	INJUNCTION			
COLORADO COLO. REV. STAT. §§ 12-14-101 to -136 (Collection Agencies)	yes		no mention of private actions			yes	yes[10]	yes
COLORADO COLO. REV. STAT. §§ 5-1-101 to -12-105 (Consumer Credit Code)	yes	yes	yes[11]		yes	yes	yes[12]	yes[13]
CONNECTICUT CONN. GEN. STAT. (1981) §§ 36-243a to -243c (Creditors' Collection Practices)		yes	no mention of private actions			yes	yes	no
CONNECTICUT CONN. GEN. STAT. (1979) §§ 42-127 to -133 (Collection Agencies)	yes		no mention of private actions[14]			yes	yes[15]	yes
CONNECTICUT CONN. GEN. STAT. (1979) §§ 42-110a to -110q (Unfair Trade Practices)	yes[16]	yes	yes[17]	yes	yes	yes	no	no
DELAWARE[18] DEL. CODE ANN. tit. 30, § 2301(40) (A revenue-raising measure only)	yes		no mention of private actions				no	yes
DISTRICT OF COLUMBIA D.C. CODE ANN. §§ 28-3814 to -3816 (Debt Collection)	yes	yes	yes[19]			yes	yes[20]	no

10 *See* COLO. REV. STAT. § 12-14-124

11 Private actions for actual damages and injunctions are authorized. COLO. REV. STAT. § 5-5-108(2).

12 *See* COLO. REV. STAT. § 5-5-108

13 Supervised lenders are licensed. COLO. REV. STAT. § 73-3-502.

14 Although the Connecticut collection agency statute makes no mention of private actions, it does contain language which could be construed as a cross-reference to the unfair and deceptive trade practices statute. *See* CONN. GEN. STAT. (1979) §§ 42-131a to -131c (distinguishing acts prohibited under § 42-131 from acts that are "unfair and deceptive"). One section of the state's UDAP statute, *id.* §§ 42-110a to -110q, does provide a right of private action for actual and punitive damages and for injunctions. *See id.* § 42-110g.

15 *See* CONN. GEN. STAT. (1979) § 42-131

16 *See* Poquonock Ave. Assocs. v. Society for Sav., Clearinghouse No. 31,045 (Conn. Super. Ct. 1980) (state UDAP statute applied to collection agency)

17 The private remedies are authorized. CONN. GEN. STAT. (1979) § 42-110g

18 *See also* DEL. CODE ANN. tit. 11, § 5916 (criminal statute prohibiting constables and justices of the peace from engaging in certain collection activities)

19 Actual as well as punitive damages may be recovered. D.C. CODE ANN. § 28-3814(j)(1)-(2)

20 D.C. CODE ANN. §§ 28-3814(c) to -3815(i)

STATE STATUTES	COVERAGE		PRIVATE ACTIONS			REGULATIONS AUTHORIZED	ABUSIVE PRACTICES SPECIFIED	LICENSING
	COLLECTION AGENCIES	CREDITORS	ACTUAL DAMAGES	STATUTORY DAMAGES	INJUNCTION			
DISTRICT OF COLUMBIA CONSUMER PROTECTION PROCEDURES ACT (July 22, 1976, D C Law 1-76, § 1, 23 D C REG 1185)	yes	yes	yes[21]	yes[22]		yes	yes[23]	no
DISTRICT OF COLUMBIA D C CODE ANN §§ 22-3423 to -3425 (Criminal statute banning use of "D C " etc. to create false impression)	yes		NA	NA	NA	NA	NA	NA
FLORIDA FLA STAT §§ 559 55– 78 (Consumer Collection Practices)	yes	yes	yes[24]	yes	yes		yes[25]	yes[26]
FLORIDA FLA STAT §§ 501 201– 213 (Deceptive & Unfair Trade Practices)	yes[27]	yes	yes[28]	no	yes	yes	no	no
GEORGIA[29] GA CODE ANN §§ 25-301 to -9903 (Industrial Loan Act)		small loan companies		yes[30]		yes	yes[31]	yes
HAWAII HAWAII REV STAT §§ 443A-1 to -17 (Collection Agencies)	yes		yes[32]	yes	yes	yes	yes[33]	yes

21 *See* Consumer Protection Procedures Act of 1976, D C Law 1-76, 23 DCR 1185, § 6(g)(2) (empowering the Office of Consumer Protection to redress consumer injury through contract damages)

22 *See id* §6(k)(1)(A)(D) (permitting treble damages, reasonable attorney's fees, and punitive damages).

23 *See id* § 5(m) (making unlawful the threatening or harassing of a consumer with any act other than legal process, by telephone, cards, or letters)

24 FLA STAT § 559 77

25 FLA STAT §§ 559 72- 73 *See also id* § 559 75

26 The licensing requirement applies only to collection agencies, although the other provisions of the statute apply to persons generally *See* FLA STAT §§ 559 57, 72

27 The applicability of the deceptive and unfair trade practices act to collection activities is established in Op Fla Atty Gen , 07-32 (March 28, 1977)

28 FLA STAT §§ 501 211(1) (injunction), 211(2) (actual damages)

29 *See also* GA CODE ANN § 9-405 (collection agencies and practice of law)

30 GA CODE ANN § 25-9903 establishes the penalties, in general, for violations of the Industrial Loan Act If the lender is unlicensed, the contract may be declared null and void *Id* § 25-9903(a) If a licensed lender violates the act, the borrower may recover twice the interest and loan fees or $100, whichever is greater *But cf id* §§ 25-312, -315 1 (sections focusing on unreasonable collection tactics but making no mention of statutory damages)

31 GA CODE ANN § 25-315 1

32 Private actions are made available by cross-reference HAWAII REV STAT § 443A-17 makes certain abusive collection practices violations of the Hawaii UDAP statute, *id* § 480-2 The UDAP remedies are given in *id* § 480-13

33 HAWAII REV STAT §§ 443A-12 to -16

STATE STATUTES	COVERAGE		PRIVATE ACTIONS			REGULATIONS AUTHORIZED	ABUSIVE PRACTICES SPECIFIED	LICENSING
	COLLECTION AGENCIES	CREDITORS	ACTUAL DAMAGES	STATUTORY DAMAGES	INJUNCTION			
IDAHO IDAHO CODE §§ 26-2222 to -2252 (Collection Agencies)	yes		no mention of private actions			yes	yes[34]	yes
ILLINOIS ILL. REV. STAT. ch. 111, §§ 2001–2040 (Collection Agencies)	yes		no mention of private actions[35]			yes	yes[36]	yes
ILLINOIS[37] ILL. REV. STAT. ch. 121½, §§ 262–272 (Consumer Fraud & Deceptive Practices)	yes	yes	yes[38]				yes[39]	no
INDIANA IND. CODE ANN. §§ 25-11-1-1 to -12 (Burns) (Collection Agencies)	yes		no mention of private actions			yes	no	yes
IOWA[40] IOWA CODE ANN. §§ 537.1101– 7103 (West) (Consumer Credit Code)	yes	yes	yes[41]	yes	yes	yes	yes[42]	no
KANSAS (none)								
KENTUCKY (none)								

34 IDAHO CODE § 26-2229A

35 The courts have found a right of private action under this statute. *See* Sherman v. Field Clinic & Collection Accounts Terminal, 74 Ill. App. 3d 21, 392 N.E.2d 154 (1974)

36 ILL. REV. STAT. ch. 111, §§ 2012-2033

37 Illinois has an additional debt collection statute, ILL. REV. STAT. ch. 38, § 17-5, which establishes a fine of up to $3000 for violations of the Collection Agency Act, *id.* ch. 111, §§ 2001-2040

38 ILL. REV. STAT. ch. 121½, § 270a provides that the court may award actual damages or any other relief it deems proper, which suggests that injunctions may also be available.

39 Only two abuses are specifically mentioned. *See* ILL. REV. STAT. ch. 121½, § 262H (certain attempts to collect from spouse of obligor), § 262I (certain communications with employer)

40 The Iowa Consumer Credit Code has a chapter specifically devoted to debt collection. *See* IOWA CODE ANN. §§ 537.7101-7103. *See also* State *ex rel.* Miller v. National Farmer's Org., 278 N.W.2d 905 (Iowa 1979) (the debt collection chapter applies to persons generally).

41 IOWA CODE ANN. § 537.5108(2) provides that actual damages and injunctions are available in private actions for unconscionable conduct in collecting debts. *Id.* § 537.5201 authorizes actual and statutory damages for violations of § 537.7103 (unfair debt collection practices).

42 IOWA CODE ANN. § 537.7103

STATE STATUTES	COVERAGE		PRIVATE ACTIONS			REGULATIONS AUTHORIZED	ABUSIVE PRACTICES SPECIFIED	LICENSING
	COLLECTION AGENCIES	CREDITORS	ACTUAL DAMAGES	STATUTORY DAMAGES	INJUNCTION			
LOUISIANA[43] LA REV STAT ANN §§ 9:3510–:3571 (West) (Consumer Credit Code)	yes	yes	yes[44]			yes	yes[45]	yes[46]
MAINE ME REV STAT ANN tit 32, §§ 571–584 (Collection Agencies)	yes		no mention of private actions			yes	yes[47]	yes
MAINE ME REV STAT ANN tit 9-A, §§ 1 101–7 127 (Consumer Credit Code)	yes	yes	yes[48]	yes		yes	yes	yes[49]
MARYLAND MD ANN CODE art 56, §§ 323–329C (Collection Agencies)	yes		no mention of private actions				no	yes
MARYLAND MD COM LAW CODE ANN §§ 13-101 to -501 (Consumer Protection)	yes	yes	yes[50]			yes	yes[51]	no
MARYLAND MD COM LAW CODE ANN §§ 14-201 to -204 (Debt Collection)	yes	yes	yes[52]			yes[53]	yes[54]	no

43 *See also* LA REV STAT ANN § 14:353 (West) (criminal statute prohibiting simulated legal documents)

44 The scope of the right of private action is unclear The Louisiana consumer credit statute contains two references to private actions LA REV STAT ANN § 9:3562(5) (West) and *id* § 9:3552A(1) (West) Section 9 3562(5) reserves the debtor's right to bring actions under LA CIV CODE ANN art 2315 (West) (torts, including malicious prosecution and defamation) *See, e g*, Tuyes v Chambers, 81 So 265 (La 1919) (publicizing debtor's name); Robinson v Goudchaux's, 307 So 2d 287 (La 1975) (malicious prosecution by department store on bounced check) Beyond an action in tort, statutory damages may be recoverable *See* LA REV STAT ANN § 9 3552A(1)(a) (West) (providing that consumer may recover three times the finance charge and attorney s fees for intentional violations (not committed in good faith) of this chapter)

45 LA REV STAT ANN § 9:3562 (West)

46 Supervised lenders are licensed LA REV STAT ANN § 9 3558 (West)

47 ME REV STAT ANN tit 32, § 576

48 Private actions are authorized ME REV STAT ANN tit 9-A, § 5-201

49 Supervised lenders are licensed ME REV STAT ANN tit 9-A, § 2-302

50 MD COM LAW CODE ANN § 13-408

51 Abusive practices are specified by cross-reference Section 13-301 of the Maryland consumer protection statute (MD COM LAW CODE ANN §§ 13-101 to -501) defines "unfair or deceptive trade practices" to include violations of the Consumer Debt Collection Act, *id* §§ 14-201 to -204, which specifies collection abuses at *id* § 14-202

52 MD COM LAW CODE ANN § 14-203

53 Although the debt collection statute fails to mention regulations, violations of it are also violations of the Consumer Protection Act (*see* note 50 *supra*) and the latter act does authorize regulations

54 MD COM LAW CODE ANN § 14-202

STATE STATUTES	COVERAGE		PRIVATE ACTIONS			REGULATIONS AUTHORIZED	ABUSIVE PRACTICES SPECIFIED	LICENSING
	COLLECTION AGENCIES	CREDITORS	ACTUAL DAMAGES	STATUTORY DAMAGES	INJUNCTION			
MASSACHUSETTS MASS GEN LAWS ANN ch 93 §§ 24-26 (West) (Collection Agencies)	yes		no mention of private actions[55]			yes	no	yes
MASSACHUSETTS[56] MASS GEN LAWS ANN ch 93, § 42 (Unfair, Deceptive Collection Procedures)	yes	yes	yes[57]	yes	yes	yes[58]	yes	no
MICHIGAN[59] MICH COMP LAWS ANN §§ 339 901-916 (Collection Agencies)	yes	yes	yes[60]	yes		yes	yes[61]	yes[62]
MINNESOTA MINN STAT ANN §§ 332 31-45 (West) (Collection Agencies)	yes		no mention of private actions			yes	yes[63]	yes
MISSISSIPPI MISS CODE ANN § 97-9-1 (Simulated Legal Documents Criminal)	yes	yes	NA	NA	NA	NA	NA	NA
MISSOURI (none)								
MONTANA (none)								
NEBRASKA NEB REV STAT §§ 81-8,158 to 183 (Collection Agencies)	yes		no mention of private actions			yes	no	yes

55 *But see* Baldassari v Public Fin Trust 337 N E 2d 701 (Mass 1975) (in dicta court suggested it would be willing to find a private right of action)

56 *See also* MASS GEN LAWS ANN ch 272 § 97A (simulated court documents prohibited)

57 The private right of action is established by cross-reference MASS GEN LAWS ANN ch 93 § 49 makes violations of that section violations of ch 93A (unfair or deceptive acts) The UDAP remedies are given in *id* ch 93A § 9

58 940 CODE MASS REG §§ 7 00 11 (1979)

59 *See also* MICH COMP LAWS ANN §§ 600 7961-7971 (constables and justices prohibited from acting as collection agents) § 750 368 (simulated legal process)

60 Actual and statutory damages are allowed MICH COMP LAWS ANN § 339 916

61 MICH COMP LAWS ANN §§ 339 915 915a

62 The collection practices of both creditors and collection agencies are covered under the Michigan statute although collection agencies alone are subject to the licensing requirements MICH COMP LAWS ANN § 339 904

63 MINN STAT ANN § 332 37 (West)

STATE STATUTES	COVERAGE		PRIVATE ACTIONS			REGULATIONS AUTHORIZED	ABUSIVE PRACTICES SPECIFIED	LICENSING
	COLLECTION AGENCIES	CREDITORS	ACTUAL DAMAGES	STATUTORY DAMAGES	INJUNCTION			
NEVADA Nev Rev Stat §§ 649.005-.435 (Collection Agencies)	yes		no mention of private actions			yes	yes[64]	yes
NEW HAMPSHIRE N H Rev Stat Ann §§ 358-C:1 to C:4 (Unfair Debt Collection)	yes	yes	yes[65]	yes	yes	yes	yes[66]	no
NEW JERSEY N J Stat Ann §§ 45:18:1 to -61 (West) (Collection Agencies)	yes		no mention of private actions				no	bond
NEW MEXICO N M Stat Ann §§ 61-18-1 to -66 (Collection Agencies)	yes		no mention of private actions			yes	no	yes
NEW YORK[67] N Y Gen Bus Law §§ 600-603 (McKinney) (Debt Collection Procedures)	yes	yes	no mention of private actions[68]				yes[69]	no
NORTH CAROLINA N C Gen Stat §§ 66-49.24 to -50 (Collection Agencies)	yes		yes[70]	yes			yes[71]	yes
NORTH CAROLINA N C Gen Stat §§ 75-50 to -56 (Prohibited Acts by Debt Collectors)		yes[72]	yes[73]				yes[74]	no
NORTH CAROLINA N C Gen Stat §§ 53-166 to -190 (Consumer Finance Act)		yes[75]		yes[76]		yes	no	yes

64 Nev Rev Stat § 649.375
65 Private actions are authorized N H Rev Stat Ann § 358-C:4
66 N H Rev Stat Ann § 358-C:3
67 *See also* N Y Penal § 190.50 (McKinney) (simulated legal process)
68 *But see* R Givens *The Practice Commentary*, N Y Gen Bus Law §§ 600-603 (1980-81 Pocket Part p 148) (argues that case law supports private right of action for actual damages)
69 N Y Gen Bus Law § 601 (McKinney)
70 Private actions are authorized N C Gen Stat § 66-49.50
71 N C Gen Stat §§ 66-49.42 to .47
72 Collection agencies are excluded from the coverage of this act N C Gen Stat § 75-50(3)
73 *See* N C Gen Stat §§ 75-16 -.56
74 N C Gen Stat § 75-1.1
75 Statute applies to small loan licensees N C Gen Stat § 53-166(a)
76 Any contract of loan ... the collecting of which violates any provision of this Article ... shall be void N C Gen Stat § 53-166(b)

STATE STATUTES	COVERAGE		PRIVATE ACTIONS			REGULATIONS AUTHORIZED	ABUSIVE PRACTICES SPECIFIED	LICENSING
	COLLECTION AGENCIES	CREDITORS	ACTUAL DAMAGES	STATUTORY DAMAGES	INJUNCTION			
NORTH DAKOTA N.D. CENT. CODE §§ 13-05-01 to -10 (Collection Agencies)	yes		no mention of private actions			yes	no	yes
OHIO OHIO REV. CODE ANN. §§ 1345.01-.99 (Page) (Consumer Sales Practices Act)	yes[77]	yes	yes[78]	yes	yes	yes	no	no
OKLAHOMA (none)								
OREGON OR. REV. STAT. §§ 646.639-.656 (Unlawful Debt Collection Practices)	yes	yes	yes[79]	yes	yes	yes	yes[80]	no
OREGON OR. REV. STAT. §§ 697.010-.470 (Billing, Factoring, & Collection Agencies)	yes[81]		no mention of private actions			yes	no	yes
PENNSYLVANIA[82] 18 PA. CONS. STAT. ANN. § 7311 (Purdon) (Unlawful Collection Practices)	yes		no mention of private actions				yes	no
PENNSYLVANIA 73 PA. CONS. STAT. ANN. §§ 201-1 to -8 (Purdon) (Unfair Trade Practices)	yes	yes	yes[83]	yes		yes[84]	no	no
RHODE ISLAND (none)								
SOUTH CAROLINA[85] S.C. CODE § 6-111 (Consumer Credit Code)	yes	yes	no mention of private actions			yes	no	no

77 *See* Liggins v. May Co., 44 Ohio Misc. 81, 337 N.E.2d 816 (C.P. 1975) (Ohio Consumer Sales Practices Act applies to debt collection activities)
78 Private actions are allowed. OHIO REV. CODE ANN. § 1345.09
79 Private actions are allowed. OR. REV. STAT. § 646.641
80 OR. REV. STAT. § 646.639(2)
81 This statute covers billing, factoring, debt consolidating, and collection agencies (and excludes from coverage consumer credit sellers). *See* OR. REV. STAT. §§ 697.021-.025
82 This is a criminal statute making certain collection practices misdemeanors
83 Private actions are authorized. 73 PA. CONS. STAT. ANN. § 201-9.2 (Purdon)
84 *See* 37 PA. CODE ch. 303 (*extensive regulations governing collection practices*)
85 The South Carolina Consumer Credit Code provides for administrative enforcement only. Fraudulent or unconscionable debt collection conduct is prohibited

STATE STATUTES	COVERAGE		PRIVATE ACTIONS			REGULATIONS AUTHORIZED	ABUSIVE PRACTICES SPECIFIED	LICENSING
	COLLECTION AGENCIES	CREDITORS	ACTUAL DAMAGES	STATUTORY DAMAGES	INJUNCTION			
SOUTH DAKOTA[86] S.D. COMP. LAWS ANN. § 54-4-10 (Installment Loan Licensing)								
TENNESSEE TENN. CODE ANN. §§ 62-2001 to -2012 (Collection Agencies)	yes		no mention of private actions			yes	yes[87]	yes
TEXAS[88] TEX. REV. CV. STAT. ANN. arts. 5069-11.01 to .11 (Vernon) (Debt Collection)	yes	yes	yes[89]		yes		yes[90]	no
UTAH UTAH CODE ANN. §§ 12-1-1 to -8 (Collection Agencies)	yes		no mention of private actions				no	bond
VERMONT VT. STAT. ANN. tit. 9, §§ 2451a–2462 (Consumer Fraud)	yes	yes	yes[91]	yes		yes[92]	no	no
VIRGINIA VA. CODE §§ 54-729.2 to .26 (Collection Agencies)	yes		no mention of private actions				no	yes
WASHINGTON WASH. REV. CODE ANN. §§ 19.16.100–.950 (Collection Agencies)	yes		yes[93]	yes	yes	yes	yes[94]	yes
WEST VIRGINIA W. VA. CODE §§ 47-16-1 to -5 (Collection Agencies)	yes		no mention of private actions[95]				no	yes

86. S.D. COMP. LAWS ANN. § 54-4-10 prohibits licensed lending businesses from operating in conjunction with collection businesses.
87. TENN. CODE ANN. §§ 62-2011 (prohibits simulated legal forms), -2012 (incorporates FTC and FCC guides on debt collection).
88. *See also* TEX. REV. CIV. STAT. ANN. art. 6252-24 (Vernon) (peace officers and debt collection).
89. Private actions are authorized. TEX. REV. CIV. STAT. ANN. art. 5069-1.10 (Vernon).
90. TEX. REV. CIV. STAT. ANN. arts. 5069-11.02 to .06.
91. Private right of action is authorized. VT. STAT. ANN. tit. 9, § 2461.
92. Rule CF 104.01 to 104.07.
93. Private actions are authorized by way of cross-reference to the Washington UDAP statute. WASH. REV. CODE ANN. § 19.16.440.
94. WASH. REV. CODE ANN. § 19.16.250.
95. The West Virginia statute makes no express mention of private actions, except that W. VA. CODE § 47-16-5 provides that, in addition to a civil penalty for operating without a license, a collection agency may "also be civilly liable as otherwise provided by law."

STATE STATUTES	COVERAGE		PRIVATE ACTIONS			REGULATIONS AUTHORIZED	ABUSIVE PRACTICES SPECIFIED	LICENSING
	COLLECTION AGENCIES	CREDITORS	ACTUAL DAMAGES	STATUTORY DAMAGES	INJUNCTION			
WEST VIRGINIA W. Va. Code §§ 46A-2-101 to -138 (Consumer Credit Protection)	yes	yes	yes[96]	yes		yes	yes[97]	yes[98]
WISCONSIN Wis. Stat. Ann. § 218.04 (West) (Collection Agencies)	yes		no mention of private actions			yes	no	yes
WISCONSIN Wis. Stat. Ann. §§ 427.101-.105 (West) (Debt Collection)	yes	yes	yes[99]	yes		yes	yes[100]	no
WYOMING Wyo. Stat. §§ 33-11-101 to -116 (Collection Agencies)	yes		no mention of private actions			yes	no	yes

[96] Private [illegible] authorized. W. Va. Code § 46A-5-101

[97] Acts [illegible] §§ 46A-2-123 to -129

[98] Some debt collectors are licensed. W. Va. Code § 46A-4-102

[99] Private [illegible] are authorized. Wis. Stat. Ann. §§ 427.105, .304

[100] Wis. Stat. Ann. § 427.104

CHAPTER 2

UNITED STATES BANKRUPTCY COURT PROCEDURES AND PRACTICE

TABLE OF CONTENTS

Page

I. INTRODUCTION 2-1

A. PURPOSE OF THIS PAPER 2-1

B. STATUTES AND RULES 2-1
1. U.S. Constitution 2-1
2. Bankruptcy Act (the Act) 2-1
3. Bankruptcy Code (the Code) 2-1
a. Chapter 1, 3, and 5 2-1
b. Chapter 7 2-2
c. Chapter 9 2-2
d. Chapter 11 2-2
e. Chapter 13 2-2
f. Chapter 15 2-2
4. Bankruptcy Rules (the Rules) 2-2
a. New set of Rules (1983) 2-2
b. Proposed Rules 2-2
c. Local Rules 2-2
d. Incorporate and supplement Federal Rules of Civil Procedure 2-2

C. SOURCES OF INFORMATION 2-2
1. Text Material 2-2
a. Collier on Bankruptcy 2-2
b. Collier Bankruptcy Practice Guide 2-3
c. Collier Bankruptcy Manual 2-3
d. Handbooks 2-3
e. Norton Bankruptcy Law and Practice 2-3
f. Bankruptcy Service 2-3
2. Cases 2-3
a. Bankruptcy Reporter 2-3
b. Collier Bankruptcy Cases Second 2-3
c. Bankruptcy Court Decisions 2-3
d. C.C.H. Bankruptcy Reporter 2-3

D. THE PARTIES 2-4
1. Bankruptcy Judge 2-4
2. Debtor 2-4

3. Chapter 7 Trustee 2-4
4. Chapter 13 Trustee 2-4
5. Chapter 11-The "Debtor-in-Possession" 2-4
6. Creditors Committees 2-4
7. United States Trustee 2-5

E. PURPOSES OF BANKRUPTCY 2-5
1. To give Debtor fresh start 2-5
2. To divide assets equally between creditors 2-5
a. Secured creditors 2-5
b. Priority claims 2-5
c. Unsecured claims 2-5
d. Remaining balance of funds 2-5

F. BANKRUPTCY PROCEEDINGS 2-5
1. Administration matters or motions 2-5
2. Motions 2-5
3. Adversary proceedings 2-6

II. FILING THE CASE 2-6

A. VOLUNTARY/INVOLUNTARY CASES 2-6
1. Voluntary cases 2-6
2. Involuntary cases 2-6
a. Who can file involuntary 2-6
(1) Farmers 2-6
(2) Corporations that are not moneyed 2-6
b. Aggregate claims of $5,000 2-6
c. Section 303(h) 2-6
d. Why file an involuntary 2-6
e. No involuntary Chapter 13's 2-7

B. SECTION 109 "WHO MAY BE A DEBTOR?" 2-7
1. Must be "person" 2-7
2. Exceptions to Chapter 7 2-7
a. Railroad 2-7
b. Thrift institution 2-7
c. Insurance Company 2-7
3. Municipalities 2-7
4. Eligible Persons under Chapter 7 or Chapter 11 2-7
5. Section 101(33) Chapter 13 2-7
a. Regular incomes 2-7
b. Amount of Debt 2-7
6. Section 109(f) prohibition 2-7
a. Failure to obey Court orders 2-7
b. Voluntary Dismissal 2-7

C. JURISDICTON AND VENUE 2-7
1. 11 U.S.C. § 1334 2-7
2. 11 U.S.C. § 1409 2-8
3. 28 U.S.C. § 157 2-8
4. 28 U.S.C. § 157(b)(5) 2-8

D. PROCEDURE 2-8
1. Papers 2-8
a. Petition 2-8
b. Statement of Financial Affairs 2-8
c. Schedules 2-8
d. Disclosure of Attorneys' fees 2-9
e. Appointment of Attorneys and Professionals 2-9
f. Debtor's Schedule of Current Income 2-9
g. Debtor's Statement of Intent 2-9
2. Filing Fee 2-9
3. First Meeting of Creditors 2-10
a. Rule 2003
b. Who presides 2-10
c. Questioning of Debtor 2-10
d. Future examination of Debtor 2-10
e. First Meeting in Chapter 13 2-10
(1) Individual plans 2-10
(2) Local Custom 2-10
(3) En mass meetings 2-10
4. Discharge and Confirmation 2-10
a. Section 524(d) 2-10
b. Section 1325 2-10
c. Chapter 13 cases 2-10

III. CRITICAL PROVISIONS OF A CHAPTER 3 2-11

A. Automatic Stay - Section 362 2-11
1. Section 101 (14) 2-11
2. Section 362 (b) 2-11
3. Section 362 (d) 2-11
a. Grounds for relief from stay 2-11
(1) For cause 2-11
(2) Lack of Equity 2-11
b. Court determination 2-11
4. Chapter 13 Automatic Stay 2-11
a. Section 362 and Section 1301 2-11
(1) Individual liability 2-11
(2) Disposition of the case 2-12

b. Section 1301(c) 2-12
(1) Party receiving consideration is not in bankruptcy 2-12
(2) Plan does not propose payment 2-12
(3) Irreparable harm to creditor 2-12
c. Section 1301(d) 2-12
5. See Section 361 (adequate protection) 2-12
6. Caveat 2-12

B. LEASES AND EXECUTORY CONTRACTS - Section 365 2-12
1. Expired leases 2-12
2. Trustee 2-12
3. Shopping Center leases 2-12
4. No assumption 2-12
5. Section 365 (d) 2-12
a. Chapter 7 cases 2-12
b. Chapters 9, 11, and 13 2-12
c. Payments on leases 2-12
6. Section 362(h) & (i) 2-13

C. TERMINATION OF UTILITIES - Section 366 2-13

IV. CRUCIAL PROVISIONS OF CHAPTER V 2-13

A. CLAIMS 2-13
1. Section 501-507 2-13
2. Section 506(d) 2-13
3. Extent of security 2-13
4. Section 502 2-13
5. Priority Claims 2-13
a. Administrative 2-13
b. "Gap" claims 2-13
c. Wages 2-13
d. Pension funds 2-13
e. Claims of Grain sellers 2-13
f. Consumer claims 2-13
g. Non-dischargeable/pre-petition 2-13
6. Other priorities 2-13
a. Section 506(b) 2-13
b. Section 364(c) 2-14

B. EXEMPTIONS - Section 522 2-14
1. Choice of Exemptions 2-14
2. State Exemptions 2-14
3. Section 522(m) 2-14
4. Section 522(l) 2-14
5. Section 522(f) 2-14

b. Non-possessory/non-purchase money 2-14
(1) Household furnishings 2-14
(2) Implements 2-14
(3) Health aids 2-14
c. In re Allen 2-15
d. 16 C.F.R. § 444 2-15

C. EXCEPTIONS TO DISCHARGE - Section 523 2-15
1. Certain Debts 2-15
a. Section 1328(a)(2) 2-15
b. Non-Dischargeable Debts in Chapter 7 or 11 cases 2-15
(1) Taxes 2-15
(2) Unscheduled debts 2-15
(3) Fines 2-15
(4) Educational loans 2-15
(5) Drunk Drivers 2-15
(6) Claims not discharged in a prior bankruptcy 2-15
c. Creditor Objections 2-15
(1) Fraud 2-15
(2) Embezzlement 2-15
(3) Willful and malicious injury 2-15

D. PROPERTY OF THE ESTATE - Section 541 2-15
1. Creation of the estate § 541 2-16
2. Recovery of property 2-16
3. Post-petition acquisition 2-16
a. Bequest, etc 2-16
b. Property settlement 2-16
c. Beneficiary 2-16
4. Section 1306 2-16

E. TURNOVER 2-16
1. Sections 542-543 2-16
2. Creditor in possession 2-16

F. AVOIDANCE POWERS 2-16
1. Section 544 2-16
2. Section 545 2-16
3. Section 546 2-16
4. Section 547 2-16
5. Section 548 2-16
6. Section 551 2-16
7. Section 552 2-16
8. Section 553 2-17
9. Section 554 2-17

V. CHAPTER 7 LIQUIDATION 2-17

A. PURPOSE 2-17

B. DISCHARGE 2-17
1. Section 727(a)(1) 2-17
2. Objections 2-17

C. DEBTOR'S RIGHTS 2-17
1. Reaffirmation 2-17
a. 60-day effectiveness period 2-17
b. Fully binding 2-17
2. Redemption § 722 2-17
3. Section 542 (community property) 2-17
4. Discrimination § 525 2-17

VI. CHAPTER 13 ADJUSTMENT OF DEBTS 2-17

A. PURPOSE 2-17

B. CONTENTS OF PLAN 2-18
1. Requirements 2-18
a. Provide for submission 2-18
b. Full Payment-priority claims 2-18
c. Treatment of classified claims 2-18
2. Plan Variations 2-18
a. Designation of classes 2-18
(1) Co-signed claims 2-18
(2) Returned checks 2-18
(3) Divorce Decrees 2-19
(4) Medical claims 2-19
(5) Administrative convenience 2-19
(6) Child Support 2-19
b. Modification of secured claims 2-19
c. Security interest in real property 2-19
d. Improvident purchases 2-19
e. Executory Contracts 2-19
f. Other provisions not inconsistent with the Code 2-19
3. Length of Chapter 13 Plan 2-19

C. CONFIRMATION 2-19
1. Must comply with Code 2-19
2. Payment of filing fees 2-19
3. Good faith proposal 2-20
4. Distribution-not less than Chapter 7 2-20
5. Secured claims 2-20
a. Holder has accepted claim 2-20

b. Holder retains lien 2-20
c. Debtor surrenders property 2-20
6. Court feels debtor will comply 2-20
7. Objections-Trustee or unsecureds 2-20
a. Plan is 100% pay out 2-20
b. Disposable income 2-20

D. DISCHARGE 2-20
1. Section 1328(a) 2-20
2. Section 727(a)(1) 2-20
3. Section 523 2-20

E. ADVANTAGES TO DEBTOR 2-21
1. Debtor's bills are paid 2-21
2. Automatic stay of creditors 2-21
3. Debtor retains property 2-21
4. Debtor protects credit 2-21
5. Security clearance protected 2-21
6. Avoids Chapter 7 stigma 2-21
7. Payments remain constant unless Court orders otherwise 2-21
8. Debtor receives interest savings 2-21

F. DISADVANTAGES TO THE DEBTOR 2-21
1. All financial affairs are under the jurisdiction of the Court 2-21
2. Expenses (Court costs, etc.) 2-22
3. Payroll Deductions (§ 1324(b)) 2-22
4. "Debtors' School" 2-22

G. ADVANTAGES TO CREDITORS 2-22
1. Paid without further collection efforts 2-22
2. Payroll deductions prevent diversion of funds by debtor 2-22
3. All creditors treated equitably 2-22

H. DISADVANTAGES TO CREDITORS 2-22
1. Lose the right to collect interest 2-22
2. Lapse in payment at the beginning of Plan 2-22

APPENDIX A - STATE EXEMPTIONS 2-23

APPENDIX B - FEDERAL EXEMPTIONS 2-24

I. INTRODUCTION

A. Purpose of this Paper. This is a general overview of consumer bankruptcy law from a practical viewpoint. It is not designed to be a legal treatise nor to investigate fine points of bankruptcy law. It is written from the standpoint of a consumer because Legal Assistance Attorneys will typically be advising consumers.

B. Statutes and Rules.

1. U.S. Constitution. Article I, Section 8 provides that Congress shall have the power "To establish . . . uniform Laws on the subject of Bankruptcies throughout the United States."

2. Bankruptcy Act (the Act). Congress seems to do a major revision of the bankruptcy laws every forty years. The Bankruptcy Act of 1898 was substantially revised by the Chandler Act of 1938.

3. Bankruptcy Code (the Code). The next forty-year revision was the Bankruptcy Code of 1978 which completely replaced the Act. It became effective October 1, 1979. Because of the publicity surrounding the Code and the fact that it was adopted as this country was entering a business recession, the Code has become one of the "hot" areas of the law. The Code contains a number of provisions which could be classified as consumer protection statutes or at least as being consumer-oriented. References to section numbers in this paper are to sections of the Code unless otherwise indicated.

The Code is codified at 11 U.S.C. §§ 101 and following. The jurisdiction of bankruptcy courts is set forth in 28 U.S.C., primarily at §§ 1334 and 157.

Both the Code and Title 28 were significantly amended in 1984 by the Bankruptcy Amendments and Federal Judgeship Act of 1984 ("BAFJA").

The Code itself is divided into chapters.

a. Chapters 1, 3, and 5 are of general application and provisions in these Chapters normally apply to all other Chapters of the Bankruptcy Code.

b. Chapter 7 governs liquidations.

c. Chapter 9 governs reorganization of municipalities.

d. Chapter 11 is utilized for reorganizations. Generally, only individuals with large amounts of debt or, more usually, business entities use Chapter 11. It is expensive and complicated.

e. Chapter 13 is the procedure for personal reorganizations which is officially titled "Adjustment of Debts of an Individual with Regular Income."

f. Chapter 15 only applies in districts, such as the Northern District of Texas, in which the United States Trustee pilot project is in force. In those districts, the Trustee is a Justice Department employee.

4. Bankruptcy Rules (the Rules).

a. A complete new set of Bankruptcy Rules, designed to carry out the provisions of the Code, became effective August 1, 1983. They replaced the prior rules which were known as the Rules of Bankruptcy Procedure, which in turn had replaced some General Orders concerning Bankruptcy issued by the United States Supreme Court.

b. A complete new set of proposed rules is now out for comment.

c. Many districts have local rules for both general federal practice and bankruptcy practice.

d. The Rules, whether national or local, incorporate and supplement but do not replace the Federal Rules of Civil Procedure.

C. Sources of Information.

1. Text Material.

a. Collier on Bankruptcy published by Matthew Bender is the "Granddaddy" bankruptcy treatise. This multi-volume work tells you all you want to know about bankruptcy (and probably a whole lot more). It is arranged by sections of the Bankruptcy Code which makes it difficult to use if you are not thoroughly familiar with the Bankruptcy Code.

b. Collier Bankruptcy Practice Guide published by Matthew Bender is a seven-volume set designed to be a practical guide in bankruptcy cases. It is arranged on a subject matter basis and is probably much easier to use if you are not familiar with the sections of the Bankruptcy Code.

c. Collier Bankruptcy Manual by Matthew Bender is a three-volume set designed for general practitioners and those who do not practice bankruptcy law on a regular basis. This would probably be an adequate reference for most military law offices.

d. There are a number of handbooks and practice manuals put out by a number of different publishers. Unfortunately the author has not had enough experience with any of them to rate them. They would serve the same purpose as the Collier Bankruptcy Manual.

e. Norton Bankruptcy Law and Practice by William L. Norton, Jr. published by Callaghan. A five volume treatise on bankruptcy giving a step-by-step approach to procedural and substantive bankruptcy matters. The comprehensive checklists help ensure sequential guidance in handling a bankruptcy case from beginning to end.

f. Bankruptcy Service, Lawyers Edition, by The Lawyers Co-operative Publishing Company. A twelve-volume service for practice, similar in scope and form to Colliers but with practice pointers typical of Lawyers Co-op's Total Client Service Library.

2. Cases. Law book publishers saw a chance to sell a lot of books by publishing bankruptcy decisions. Practically every written opinion by a Bankruptcy Judge is published in one or more of these services. The services generally publish in addition, District Court opinions and Appellate opinions in bankruptcy cases. These publications are:

a. Bankruptcy Reporter by West Publishing Company.

b. Collier Bankruptcy Cases Second by Matthew Bender.

c. Bankruptcy Court Decisions by CRR Publishing Company.

d. C.C.H. Bankruptcy Reporter by Commerce Clearing House.

Each of these has good and bank points; all of them try to furnish information in usable form.

Bankruptcy Courts are often considered primarily courts of equity; whether that is correct or not, they do tend to be result oriented. It is commonly said that you can select the result you want on any particular bankruptcy problem, and more than likely you will find several decisions by bankruptcy judges supporting your position. Of course, there will be a number of decisions supporting the opposite position. It has been my experience that bankruptcy judges are not very impressed with opinions of other bankruptcy judges; the main benefit of this type of research is to give you some ideas for points to make during your arguments.

D. The Parties.

1. Bankruptcy Judge. Prior to the enactment of the 1978 Bankruptcy Code, bankruptcy judges performed not only judicial functions but also ministerial functions. Judges were relegated to less than full judicial stature because of the arcane referee system that existed under the Bankruptcy Act of 1898. The enactment of the 1978 reform legislation restructured the judicial system and the administration of bankruptcy cases. The referee system under which bankruptcy courts were subordinate adjuncts of the district courts was abolished. However, the creation of independent bankruptcy courts was shortlived--BAFJA brought bankruptcy courts back under the district level structure as "units" of the district courts. BAFJA also swept away the broad exclusive jurisdiction granted bankruptcy courts under the 1979 Reform Act to hear all matters under Title 11. Under BAFJA, the district courts are vested with primary bankruptcy jurisdiction; however, for the most part, bankruptcy jurisdiction is delegated to their "units" of the District court, the bankruptcy courts.

Bankruptcy judges are appointed to fourteen year terms by the various Circuit Courts of Appeals. They are clearly Article I judges.

2. Debtor. With the adoption of the Code, the term "Bankrupt" was dropped, and all persons involved in any type of bankruptcy proceeding are referred to as Debtors - § 101(12).

3. Chapter 7 Trustee. The Trustee is the liquidating agent - §§ 321 to 326. It is his obligation to gather the assets belonging to the bankruptcy estate and to distribute them to the creditors in accordance with provisions of Chapter 7. Under Chapters 3 and 5, the Chapter 7 Trustee has power to avoid transfers, compel turnover, etc. These persons are appointed to panels, pursuant to 28 U.S.C. § 604(f); thereafter, they are appointed to cases on a rotation system.

4. Chapter 13 Trustee. Primarily an administrator, Chapter 13 Trustees supervise Chapter 13 cases and Chapter 13 debtors. They are responsible for reviewing plans for feasibility, and the judges rely on their recommendations. They collect the plan payments and distribute payments to creditors. The bankruptcy judges appoint these persons.

5. Chapter 11 - The "Debtor-in-Possession." Although a Chapter 11 Trustee may be appointed for cause (§ 1104), usually the debtor remains in possession; a "DIP" has the powers of a Chapter 7 trustee (§ 1107).

6. Creditors Committees. Committees to represent unsecured creditors, equity security holders, or other proper groups can be appointed in Chapter 11 cases. These committees typically employ attorneys and may employ accountants - Section 1102.

7. United States Trustee - 28 U.S.C. §§ 581-589. One of the objects of the Code was to remove the Bankruptcy Judge from a great deal of administrative detail and supervision over Trustees. As an experiment, a United States Trustee pilot program was instituted in eighteen federal judicial districts. The United States Trustee program is modeled after the United States Attorney system and is supervised by the Department of Justice. The function of the United States Trustee is to supervise Trustees and Debtors-in-Possession. The United States Trustee's office conducts meetings of creditors and has the right to be heard on any matter before the Bankruptcy Judge.

E. Purposes of Bankruptcy.

1. To give the honest but insolvent debtor a fresh start. See the discussion of Discharge and Dischargeability in the section of this paper on Chapter 7.

2. To divide the assets among the creditors on an equitable basis.

a. Secured creditors are either paid off or retain their liens. The Trustee has broad powers to set aside liens which are fraudulent or which are not properly perfected. The Trustee has an obligation to check each lien thoroughly and, if possible, to defeat it so as to increase the pool of money available for the unsecured creditors.

b. Priority claims must be paid before unsecured creditors. Basically these are administrative expenses, wages, consumer deposits, and taxes - Section 507.

c. Unsecured claims are paid whatever is available for distribution on a pro rata basis.

d. Any balance is paid to subordinated debt, then to stockholders or equity holders or, with individuals, to the debtor.

F. Bankruptcy Proceedings.

1. Most proceedings before the court are either case administration matters — i.e., discharge hearings, confirmation hearings (Chapter 13 plans), etc. — or motions.

2. Motions under § 362 comprise the largest number of proceedings. These are motions concerning the automatic stay. See § III-A below.

3. Adversary proceedings are lawsuits within the bankruptcy case. These follow the formalities of pleading, answer, and discovery. In general, the Federal Rules of Civil Procedure apply to adversary proceedings. The limited bankruptcy list of what constitutes adversary proceedings is set out in Rule 7001. In general, these are the most important matters within the bankruptcy case.

II. FILING THE CASE

A. Voluntary/Involuntary Cases.

1. Most bankruptcies are voluntary cases. See §§ 301 and 302; § 302 governs joint (husband/wife) cases.

2. Involuntary cases are governed by § 303.

a. An involuntary petition can be filed against any person (which includes partnerships and corporations) who could be a debtor under Chapter 7 or 11 except:

(1) A farmer - a farmer is a person who receives more than 80% of his income from farming. Thus an involuntary could not be filed against a large corporate farmer - Section 101(17).

(2) A corporation that is not a moneyed business or commercial corporation - Section 303. The only example that I can think of for a corporation that would not be a moneyed business or commercial corporation would be a non-profit corporation engaged in some religious or charitable activity.

b. The petition must generally be filed by three or more creditors having noncontingent unsecured claims aggregating at least $5,000.00. However, if their debtor has less than twelve creditors, one creditor whose noncontingent unsecured claim is at least $5,000.00 can file the petition. There are special provisions with respect to partnerships - Section 303(b).

c. The petitioning creditors must show that the debtor is generally not paying such debtor's debts as they become due or that within the last 120 days a receiver has been appointed for substantially all of the debtor's assets - Section 303(h). There are severe penalties on creditors who file an involuntary petition improperly.

d. Why file an involuntary? If the debtor is dissipating his assets or if he has made a substantial preferential payment, the creditors may wish to put a stop to the wasting of the assets or to recover that preference for the benefit of all of the creditors.

e. There is no provision for involuntary Chapter 13 petitions.

B. Section 109 - "Who may be a debtor."

1. Must be a "person" - almost anything but a true trust or estate is a "person." See § 101(33).

2. A person may file under Chapter 7 unless it is a:

a. Railroad

b. Thrift institution

c. Insurance company

3. A municipality may file under Chapter 9 if it is both a municipality and allowed to utilize bankruptcy by state law. There are other criteria as well.

4. Generally, only persons eligible to file Chapter 7 may file under Chapter 11; however, railroads may file under 11; conversely, stockbrokers/commodity brokers may not file under Chapter 11.

5. Only individuals [human under § 101(33) and (8)] may file Chapter 13 and then:

a. Only if the individual or, in joint cases, spouses have regular income; see § 101(27);

b. Only if the individual or spouses jointly owe less than $100,000.00 unsecured and $350,000.00 secured debt - only liquidated debt "counts;" stockbroker/commodity brokers are excluded.

6. Note: § 109(f) prohibits any debtor from filing a new bankruptcy within 180 days after a previous case was dismissed:

a. For failure to obey orders of the court or appear before the court; or

b. Where the debtor sought voluntary dismissal following the filing of a motion to lift the automatic stay (see § 362).

C. Jurisdiction and venue.

1. Jurisdiction for all cases is in the District Court - 11 U.S.C. § 1334 which then assigned the case to the "unit" below.

2. Venue is in the district where the debtor has resided for the greater part of the last 6 months - 11 U.S.C. § 1409.

3. See also 28 U.S.C. § 157, which, after 1984, creates two concepts — core proceedings and related proceedings. Core proceedings are those in which the bankruptcy judge enters final orders. Related proceedings are reviewed de novo by the district court.

4. Bankruptcy judges no longer have jurisdiction over personal injury or wrongful death claims, 28 U.S.C. § 157(b)(5); they no longer have jurisdiction of cases requiring consideration of a statute of the United States affecting interstate commerce, 28 U.S.C. § 157(d).

D. Procedure.

1. Papers. The debtor furnishes the information to his attorney to prepare the following papers for the filing of a Chapter 7 proceedings. All of the papers are sworn to or signed under penalties of perjury by the debtor.

a. Petition - Official Form 1. A one-page statement in which the debtor asks the Court for relief and sets forth acts to establish venue. In individual cases, a form stating that the availability of both Chapters 7 and 13 have been explained to the debtor must be attached.

b. Statement of Financial Affairs - Official Form 7 or Form 8. A description of the debtor's financial activities for the past two years, including transfers of property, payment of debts, and disclosure of bank accounts.

c. Schedules - Official Form 6. A detailed listing of debtor's assets and liabilities. All creditors are listed even though the debtor disputes the debt or the debt is contingent. This is an opportunity for the debtor to get rid of all old claims. It is a good idea for the debtor to list everyone with whom he has dealt over a reasonable period of time (for example, two years) so that any claims which he might have forgotten are take into account. It is very important for the debtor to get the proper address and zip code for each creditor. If the creditor uses account numbers for its customers, it is highly desirable for the debtor to put his account number with that creditor as part of the creditor's address. This facilitates the creditor finding the claim on its records and often prevents the debtor being harassed after the filing of the petition.

d. Disclosure of Attorneys Fees. The fees and expenses paid by the debtor to his attorney must be disclosed - Section 329. The Court has the obligation to review the attorneys' fees to make sure that they are reasonable. If they are excessive, the Court has the authority to order the attorney to pay the excess to the Trustee, or to a third party who paid the fee. § 329.

e. Appointment of attorneys and professionals. Under § 327, all professionals serving post-petition must be appointed by Court order. Where an attorney wishes to serve post-petition, he must be appointed. All fees are reviewed under § 330.

f. Debtor's Schedule of Current Income and Expenditures - required by all debtors under § 521(1).

g. Individual Debtor's Statement of Intent. See § 521(2) as to intent concerning secured consumer debts intent must be noticed and performed on the schedule set up in that subsection.

2. Filing Fee. For Chapter 7 or 13 cases, even for joint cases, the fee is $60.00 - 28 U.S.C. 1930. The filing fee can, with permission of the Court, be paid in installments, but the debtor cannot pay any fees to his attorney until the filing fee is paid in full - Official Forms 2 and 3. If the attorney's fees are not paid in full prior to the filing of the petition, the attorney can ask to be paid out of the estate, but if there are no funds in the estate, then the balance of attorney's fees is discharged just like all other debts. Usually this process will only be used in Chapter 13 cases.

The filing fee in a non-railroad Chapter 11 case is $200.00.

3. First Meeting of Creditors. Meetings of creditors are provided for in Section 341 and consequently this is often referred to as the 341 Meeting. In the typical consumer case, it is the only meeting of the creditors.

a. Rule 2003 provides that the meeting will be held not less than twenty nor more than forty days after the petition is filed.

b. The meeting is presided over by the Bankruptcy Clerk or by the Chapter 7 or 13 Trustee. Section 341 prohibits the Judge from presiding at or attending any meeting of creditors.

c. The debtor is sworn. His attorney asks the first group of questions, generally relating to venue, exemptions, and any particular problems. The Trustee and then the creditors are permitted to ask questions. The creditors are not required to be represented by attorneys at these meetings. If the debtor and his attorney have done a good job in preparing the schedules, there should be no surprises at this meeting.

d. The debtor is subject to examination at future meetings of creditors or by deposition. These are rare in the typical consumer case. If the Trustee needs additional information, he will generally contact the attorney for the debtor, but he may ask for an informal meeting with the debtor and his attorney.

e. If the case is a Chapter 13 case, an analysis of the plan is made by the Trustee who presides at the first meeting. During the meeting, the Plan, the Chapter 13 Statement, and the list of exempt property are reviewed by the Trustee and the creditors present. Each claim which has been filed by that time is reviewed and an attempt is made to determine the value of the collateral held by secured creditors.

(1) Each Chapter 13 Plan is individually tailored to the needs and financial problems of the debtor. This is one of the good things about Chapter 13 from the debtor's standpoint, but one that does make it difficult for creditors who would prefer to have uniformity.

(2) In each metropolitan area there are local customs about the ways of handling particular debts. When a Plan is proposed which follows these local customs, it is much more readily accepted by the creditor community.

(3) In some places it is the custom to hold the first meetings in mass, but more often they are held on an individual basis.

4. Discharge and Confirmation hearings.

a. Approximately ninety days after the First Meeting of Creditors, the debtor will appear before the Bankruptcy Judge. In a Chapter 7 case, it will be to receive a discharge - Section 524(d). If objections to the discharge or to the dischargeability of a particular debt are filed, this hearing will be at a later date. Some Bankruptcy Judges use this as an occasion to advise the debtors of the importance of the discharge and to encourage better financial planning in the future. Others treat this as a very formal, but rather perfunctory ceremony. If the debtor wishes to reaffirm a debt, that matter is presented to the Court at the same time. Some Bankruptcy Judges feel that it is not necessary to hold a discharge hearing, particularly if there are not debts to be reaffirmed. Some Judges are not holding discharge hearings where the debtor would have to travel a great distance or miss a day of work in order to attend the discharge hearing.

b. In a Chapter 13 case, the debtor will appear (unless excused; see local rules) for a confirmation hearing. Section 1325. Some Bankruptcy Courts routinely hold hearings to confirm Chapter 13 Plans. Other Bankruptcy Courts do not require the debtor to attend a confirmation hearing, unless there is an objection to the confirmation filed by the Trustee or a creditor.

c. Discharge hearings for Chapter 13 cases are (almost universally) not held.

III. CRITICAL PROVISIONS OF CHAPTER 3

A. Automatic Stay - Section 362

1. The filing of petition operates to stay all actions on debt against the debtor or his property including suits, foreclosures, collection actions, setoffs, and proceedings in the tax court. This stay is against all entities which includes persons, corporations, partnerships, estates, trusts, and governmental units - § 101(14).

2. There is excepted from the automatic stay under § 362(b) a limited number of items including criminal actions, exercise of the police or regulatory power, and the issuance of a notice of tax deficiency.

3. A creditor may ask for relief from the automatic stay in order to foreclose on property on which the creditor has a lien - § 362(d). The Court must commence a preliminary hearing on such requests within thirty days after the motion is filed and must hold the final hearing within thirty days after the preliminary hearing under § 362(e). The decision must be rendered within thirty days thereafter. Rule 4001.

a. The grounds upon which a creditor usually brings such motion are:

(1) For cause, including lack of adequate protection of the creditor's interest in the property; or

(2) If the debtor does not have any equity in the property and such property is not necessary to an effective reorganization.

b. The Court can terminate the stay thereby allowing the creditor to proceed with foreclosure on the asset or can condition the continuance of the stay upon some action by the debtor, such as making periodic payments.

4. Chapter 13 Automatic Stay.

a. The automatic stay of Section 362 is in effect in a Chapter 13 case as well as a Chapter 7 case. In addition, in Chapter 13 cases, § 1301 provides a stay protecting cosigners, by providing that "a creditor may not act, or commence or continue any civil action, to collect all or any part of a consumer debt of the debtor from any individual that is liable on such debt with the debtor, or that secured such debt, unless--

(1) such individual became liable on or secured such a debt in the ordinary course of such individual's business; or

(2) the case is closed, dismissed, or converted to a case under Chapter 7 or 11 of this title."

b. The Court is instructed to allow a creditor relief from the stay to the extent that - Section 1301(c)

(1) The party who is not in Chapter 13 received the consideration for the debt;

(2) The plan filed by the debtor proposes not to pay such claim; or

(3) Such creditor's interest would be irreparably harmed by such stay.

c. Under § 1301(d), twenty days following filing by a creditor of allegations under § 1301(c), the stay terminates unless the debtor files a written objection or response.

5. See § 361 for example of "adequate protection."

6. Caveat: This is the most frequently litigated area in bankruptcy law. It is tremendously important, and, here, a thorough understanding of case law is critical.

B. Leases and Executory Contracts - § 365

1. Expired leases and contracts are not affected by filing.

2. The Trustee may only assume/assume and assign if there is cure.

3. There are special rules for leases in shopping centers.

4. No assumption, etc., where prohibited by statute or where the contract is one to loan money.

5. Subsection (d) establishes the following time periods:

a. Chapter 7 cases: Trustee must act within 60 days;

b. Chapters 9, 11, and 13; Trustee must act as to executory contracts and non-residential realty within 60 days; as to residential realty, need not act until plan confirmed.

c. Payments must start on leases no more than 60 days after filing; unless court orders otherwise, no payments can be missed, even if due within the 60 days.

6. Special Rules apply where debtor is lessor/obligor. See § 362(h) & (i).

C. Termination of Utilities. § 366 controls and prohibits unilateral termination until 20 days after the petition.

IV. CRUCIAL PROVISIONS OF CHAPTER V.

A. Claims - §§ 501 - 507.

1. Except in Chapter 11, a creditor must file a claim on the proof of claim form. See § 501-502; See Rules 3001, et seq.; see Official Forms 19, 20, or 21.

2. A creditor with actual knowledge who fails to file a proof will receive no distribution and will lose the claim but not any lien. See § 506(d).

3. A claim is secured only to the extent of the value of collateral. § 506.

4. A claim is allowable only to the extent permitted under § 502.

5. Certain claims or expenses may have priority. Section 507 establishes the following priorities:

a. Administrative expenses and post-petition taxes;

b. "Gap" claims; § 502(f);

c. Wages up to $2,000.00 per employee.

d. If "c" doesn't exhaust the $2,000.00 allowance, any unfunded pension claim up to a total, wages and pensions, of $2,000.00.

e. Claims of grain sellers and fish farmers against certain purchases.

f. $900.00 per consumer in consumer claims.

g. All non-dischargeable pre-petition taxes.

6. Other priorities.

a. See § 506(b)

b. See § 364(c)

B. Exemptions - § 522.

1. The debtor is entitled to take either the state or the federal exemptions. He must choose one complete set of exemptions. However, states, through legislative action, may require that only state exemptions be used. A list of states in which only the state exemptions are available is at Appendix A. Appendix A also lists those states where the debtor may choose either the state or federal exemptions. The federal exemptions are at Appendix B. Section 522(b).

2. State Exemptions. The state exemptions are actually the exemptions allowed under state law and exemptions allowed under non-bankruptcy federal law - Section 522(b)(2). These exemptions are based on the debtor's domicile for the greater part of the last 180 days.

3. In a joint case, availability of exemptions is limited - Section 522(m). Both must take the same exemptions.

4. The debtor claims his exemptions in the schedules - Section 522(l). The Trustee or any creditor may file objections to the list of exemptions within thirty days after the First Meeting of Creditors - Rule 4003. If no objection is filed, the exemptions are deemed allowed and no formal Order of the Court is entered allowing the exemptions. Waivers of exemptions are unenforceable - Section 522(e). A claim of exemptions may be modified if the Trustee has not acted in reliance on the listing. In re Eldridge, 15 B.R. 594 (S.D.N.Y. - 1981).

5. The debtor may avoid a lien on exempt property under Section 522(f) if such lien is;

a. A judicial lien.

b. A non-possessory, non-purchase money security interest in any:

(1) Household furnishing, household goods, wearing apparel, appliances, books, animals, crops, musical instruments, or jewelry that are held primarily for personal, family, or household use of the debtor or a dependent of the debtor.

(2) Implements, professional books, or tools of the trade of the debtor or trade of a dependent of the debtor; or

(3) Professionally prescribed health aids for the debtor or a dependent of the debtor.

c. But see In re Allen, 725 F.2d 290 (5th Cir. 1984); Judge Ayers just refused to continue to follow Allen.

d. See also 16 C.F.R. § 444 making the taking non-possessory, non-purchase money liens in certain household goods unfair trade practice.

C. Exceptions to Discharge - § 523.

1. Except in successful Chapter 13 cases, certain debts are non-dischargeable.

a. In all cases - 7, 11, or 13, child support, alimony, and maintenance are never dischargeable. See also § 1328(a)(2).

b. In Chapter 7 or 11 cases, the following are automatically non-dischargeable:

(1) Taxes assessed within 3 years or due because debtor failed to file or filed a fraudulent return;

(2) Debts not scheduled;

(3) Fines, etc., owed to governmental units;

(4) Educational loans;

(5) Claims against drunk drivers;

(6) Claims that were not discharged in a prior bankruptcy.

c. In Chapter 7 or 11 cases, the creditor must object in order to avoid debts created by:

(1) Fraud, either actual or constructive, including certain purchases of luxuries, etc., on the eve of bankruptcy.

(2) Embezzlement, larceny, etc.

(3) Willful and malicious injury.

D. Property of the Estate

The commencement of a case creates an estate which is composed of the following property under Section 541.

1. All legal or equitable interests of the debtor in property as of the commencement of the case. Note that this includes exempt property.

2. All property recovered for the benefit of the estate.

3. Any property that the debtor becomes entitled to acquire within six months after the date of the filing of the petition:

a. By bequest, devise, or inheritance.

b. As a result of a property settlement agreement in divorce proceedings.

c. As a beneficiary of a life insurance policy or of a death benefit plan.

4. Proceeds, product, offspring, rents, and profits from property of the estate, except for wages of an individual Debtor after the commencement of the case. Note that in a Chapter 13, future wages are property of the estate. - Section 1306.

E. Turnover

1. Custodians or others must turnover property of the estate after the petition is filed §§ 542-543.

2. A creditor in possession of collateral who has not liquidated the collateral must turn it over.

F. Avoidance Powers

1. § 544 allows avoidance of unperfected liens. The Trustee is either a perfect judgment lien creditor or a perfect bona fide purchaser of realty.

2. § 545 allows avoidance of statutory liens such as those for rent.

3. § 546 limits the avoiding powers.

4. § 547 allows avoidance of preferences. However, § 547(c) contains numerous exceptions.

5. § 548 allows attacks on fraudulent conveyances.

6. All avoided liens are "preserved for the estate." § 551.

7. § 552 controls floating liens post-petition.

8. § 553 governs set-offs, whether pre- or post-petition.

9. § 554 allows abandonment of burdensome assets.

V. CHAPTER 7 LIQUIDATION

A. Purpose. The purpose of a Chapter 7 from the standpoint of a debtor is to be relieved of most, if not all, of his obligations to his creditors; in other words to give him a fresh start. From the standpoint of creditors the objection of a Chapter 7 proceedings is to divide the assets equitably among the creditors.

B. Discharge.

1. Only individuals are dischargeable. See § 727(a)(1).

2. Upon objection, a debtor may be denied discharge on grounds set forth in Exhibit E.

C. Debtor's Rights.

1. Reaffirmation - Section 524(c) and (d). Reaffirmation agreements are permitted to be negotiated without court approval if debtor is represented by counsel. See BAFJA changes.

a. The reaffirmation becomes effective if the debtor does not revoke it within sixty days.

b. The reaffirmation makes the debt fully binding on the debtor as if the debtor had never filed bankruptcy.

2. Redemption - § 722. Debtor may redeem other exempt personal property from lien holders by paying market value, in cash.

3. Discharge in community states where one spouse files. See § 524.

4. Discrimination prohibited by public entities and private employers - see § 525.

VI. CHAPTER 13 - ADJUSTMENT OF DEBTS OF AN INDIVIDUAL WITH REGULAR INCOME

A. Purpose. The purpose of a Chapter 13 is to allow a debtor who really wants to pay his bills longer time and lower payments in which to pay them. Generally, payments into a Chapter 13 Plan are lower in amount than the debtor's pre-petition debt service. Interest is not paid on general,

unsecured claims. However, the Trustee's fee is 10% of all payments. Typically, a debtor is able to keep all of his property, including nonexempt assets.

Members of the credit community have become convinced that persons who take the easy way out through a Chapter 7 are often very quickly in financial difficulty again. On the other hand, persons who pay their debts out generally do not get into financial difficulty again. Chapter 13 should be looked upon as a rehabilitation process for the benefit of both the debtors and the creditors. Through a Chapter 13 Plan a person is able to restore self-confidence and, hopefully, the confidence of the credit community.

B. Contents of a Plan - section 1322.

1. The Plan shall:

a. Provide for the submission of all or such portion of the future earnings or other future income of the debtor to the supervision and control of the Trustee as is necessary for the execution of the Plan; (usually, a pay order is entered, with the Trustee receiving payments from debtor's employer);

b. Provide for full payment in deferred cash payments of all priority claims;

c. If the Plan classifies claims, provide for the same treatment of such claim within a particular class.

2. The Plan may:

a. Designate a class or classes of unsecured claims, but may not discriminate unfairly against a class so designated. Here is where a lawyer's ingenuity can come into play and where Court decisions range from very strict to very liberal. Some examples are:

(1) Treat cosigned claims as a separate class and provide that interest at the contract rate will be paid on them. In this way, the creditor will have no grounds against the cosigner. Such cosigned debts are normally paid along with the secured creditors. This treatment is specifically permitted under the BAFJA amendments.

(2) Treat returned checks as a separate class and provide for them to be paid early in the Plan on the theory that there is a potential criminal violation and if the debtor were put in jail he could not pay anyone.

(3) Handle a sticky divorce problem by providing that the debtor will pay in full those debts he was ordered to pay under a divorce decree, but only pay a token amount to those debts which his spouse was ordered to pay in the divorce decree.

(4) Create a separate class of bills to medical providers whose services will be needed in the future and provide for them to be paid a greater percentage than the other unsecured creditors.

(5) Administrative convenience - pay the small bills first.

(6) Provide for full payment of child support obligation, but a lesser percentage to unsecured creditors.

b. Modify rights of holders of secured claims (take longer to pay them out) and the rights of holders of unsecured claims.

c. An exception to the ability to modify the rights of holders of secured claims relates to a claim secured only by a security interest in real property that is the debtor's principal residence. Those rights cannot be modified, but default can be cured within a reasonable time.

d. If the debtor has made an improvident purchase, the collateral can be returned to the creditor in full or partial satisfaction of the debt. If return constitutes only partial satisfaction, the creditor can file a claim for the balance as an unsecured claim.

e. The debtor can reject executory contracts and unexpired leases. This is a good way to get out of health spa contracts and high cost leases of furniture and appliances. The creditor can file a claim for loss as an unsecured creditor, but few lessors do this.

f. Include any other appropriate provision not inconsistent with the Code.

3. The Plan may provide for payment over a period of three years or, with Court approval, for up to five years.

C. Confirmation. Under Section 1325 the Court shall confirm the Plan if:

1. The Plan complies with the Code.

2. The filing fees have been paid or provision made for payment.

3. The Plan has been proposed in good faith and not by any means forbidden by law.

4. The value, as of the effective date of the Plan, of property to be distributed under the Plan to the unsecured creditors is not less than would be paid in a Chapter 7 liquidation. While most plans pay large percentages, this is the minimum legal requirement. There is a significant dispute concerning "0%" plans; i.e., if there would be nothing paid under Chapter 7, must the Chapter 13 propose to pay more than zero to unsecured.

5. With respect to each allowed secured claim:

a. The holder of the claim has accepted the Plan;

b. The holder retains its lien and receives value not less than the allowed amount of its claim; or

c. The debtor surrenders the property to the creditor.

6. The Court feels the debtor will be able to make the payments under the Plan and to comply with it.

7. After BAFJA, unsecured creditors or the Trustee may object unless:

a. The Plan will pay 100% of claims, or

b. Debtor is devoting all disposable income to the plan.

D. Discharge.

1. The discharge in a fully completed Chapter 13 Plan is much greater than a discharge in a Chapter 7. Section 1328(a) provides that upon completion of the Plan the Court shall grant a discharge of all debts except long-term debts which were not intended to be paid in full during the course of the Plan and more importantly alimony and child support obligations.

2. Note that the debtor cannot get a discharge in a Chapter 7 liquidation within six years after a Chapter 13 unless the completed Chapter 13 Plan paid 100% of the allowed unsecured claims, or paid at least 70% of such claims and was proposed by the debtor in good faith and was the debtor's best effort - Section 727(a)(9).

3. The debtor may get a hardship discharge if his failure to complete the Plan is due to circumstances beyond his control and creditors received as much as they would have received in a Chapter 7 liquidation. In the case of a hardship discharge, the nondischargeable debts under Section 523 are not discharged.

E. Advantages to the Debtor.

1. The debtor gets to pay his bills at a rate he can afford while at the same time taking care of his family in a reasonable manner. Hopefully, he learns to live on a budget so that he can manage his financial affairs after the Plan is paid out.

2. Because of the automatic stay, the debtor and his family can live a normal life without fear of creditor harassment. Note that this automatic stay prevents the creditor from contacting the debtor's employer.

3. The debtor retains his property, including nonexempt property.

4. The debtor's credit is, hopefully, protected. However, under the Fair Credit Reporting Act, 15 U.S.C. 1681c(a)(1), either a Chapter 7 or Chapter 13 case can only be on the debtor's record for ten years from the date of the filing of the petition; in some cases, and particularly where the debtor applies for a loan of more than $50,000.00, bankruptcies can be reported forever.

5. If the debtor has sensitive employment requiring a security clearance, the filing of the Chapter 13 Plan relieves the pressure of the bills and that security clearance can generally be retained.

6. The debtor avoids the stigma of bankruptcy and can look the world in the eye knowing that he has paid his honest debts. Chapter 7 gives the debtor a sense of failure while a Chapter 13 Plan restores the debtor's confidence.

7. Once payments into the Chapter 13 Plan are established, they remain the same unless changed by Court Order. The debtor can make additional payments into the Plan at any time. The Court may grant temporary relief from the payments in the event of a financial emergency.

8. The debtor receives a substantial interest saving. Interest is allowed on fully secured claims and the Court can set the rate; unsecured tax claims and on an unsecured portion of partially secured claims earn no interest. No interest, penalty, or late charge is allowed on any unsecured debt. In most instances, this reduction in interest completely offsets the cost of the Plan to the debtor.

F. Disadvantages to the Debtor.

1. The debtor literally submits his financial affairs to the jurisdiction of the Court. There is no extra money at Christmas or birthdays so the debtor must buy things as he can afford them, or save up for those

special occasions. The debtor cannot incur any new bills without prior approval of the Court.

2. There are expenses in the form of Court costs, attorney's fees, and Trustee's fees. Generally, these costs are offset by the interest saving.

3. The payments into the Chapter 13 Plan are by payroll deduction - Section 1324(b). The Orders of the Bankruptcy Court are specifically excluded from the Federal garnishment limitations 15 U.S.C. 1674(b)(1)(B).

4. In some areas the Court requires the debtor to attend a Family Financial Management Seminar ("Debtors' School").

G. Advantages to Creditors.

1. The big advantage to creditors is that they get paid with little additional effort. There is no need for the creditor to be continuing to spend money trying to collect the account. If collection efforts had continued, the creditor would probably have had to give up one-third to one-half of the claim to a collection agency or an attorney. If the debtor had taken a Chapter 7, the creditor probably would have gotten nothing at all.

2. Since the debtor's payments into the Plan are frequently made by payroll deduction, the creditor has an assurance that the payments will continue and that the debtor will not be allowed to divert the money to new purchases.

3. The creditor also has the assurance that it will be treated fairly and equitably under the Plan and that no creditor will get more than its share of each distribution.

H. Disadvantages to Creditors.

1. Except for secured claims, as described above, creditors lose the right to collect interest, including precomputed interest, penalites, and late charges as of the date of the filing of the petition. Contrast this with the probable total loss to creditors if the debtor had filed a Chapter 7.

2. There is often a lapse in the payments to the creditors at the beginning of a Plan because the Trustee does not receive any funds until the payroll deduction starts. In addition, because most Plans are very tight, secured and priority claims are generally paid first, and it is often several months before payments commence to unsecured creditors.

APPENDIX A

STATE EXEMPTIONS

Only State Exemptions Available

The following States have enacted laws precluding debtors from electing the uniform federal bankruptcy exemptions under the BRA of 1978:

Florida
Louisiana
Ohio
Virginia
Wyoming
Georgia
Indiana
Kentucky
Nebraska
Kansas
Alabama
Tennessee
Oklahoma
South Dakota
Arizona
Illinois
Missouri
Idaho
South Carolina
Utah
Nevada
Arkansas
West Virginia
Delaware
Iowa
Maryland
North Dakota
Colorado
Maine
Montana
North Carolina
Oregon
New Hampshire

Both State and Federal Exemptions Available

The following States permit debtors the use of the uniform federal bankruptcy exemptions:

Alaska
California
Connecticut
Hawaii
Massachusetts
Michigan
Minnesota
Mississippi
District of Columbia
New Jersey
New Mexico
New York
Pennsylvania
Rhode Island
Texas
Vermont
Washington
Wisconsin

APPENDIX B

FEDERAL EXEMPTIONS

The following property may be exempted from the debtor's estate unless specifically prohibited by the applicable state law (see 11 U.S.C. § 522(d)):

(1) The debtor's aggregate interest, not to exceed $7,500 in value, in real property or personal property that the debtor or a dependent of the debtor uses as a residence, in a cooperative that owns property that the debtor or a dependent of the debtor uses as a residence, or in a burial plot for the debtor or a dependent of the debtor.

(2) The debtor's interest, not to exceed $1,200 in value in one motor vehicle.

(3) The debtor's interest, not to exceed $200 in value in any particular item, or $4,000 in aggregate value, in household furnishings, household goods, wearing apparel, appliances, books, animals, crops, or musical instruments, that are held primarily for the personal, family, or household use of the debtor or a dependent of the debtor.

(4) The debtor's aggregate interest, not to exceed $500 in value, in jewelry held primarily for the personal, family, or household use of the debtor or a dependent of the debtor.

(5) The debtor's aggregate interest, not to exceed in value $400 plus up to $3,750 of any unused amount of the exemption provided under paragraph (1) of this subsection.

(6) The debtor's aggregate interest, not to exceed $750 in value, in any implements, professional books, or tools of the trade of the debtor or the trade of a dependent of the debtor.

(7) Any unmatured life insurance contract owned by the debtor, other than a credit life insurance contract.

(8) The debtor's aggregate interest, not to exceed in value $4,000 less any amount of property of the estate transferred in the manner specified in section 542(d) of this title, in any accrued dividend or interest under, or loan value of, any unmatured life insurance contract owned by the debtor under which the insured is the debtor or an individual of whom the debtor is a dependent.

(9) Professional prescribed health aids for the debtor or a dependent of the debtor.

(10) The Debtor's right to receive —

(A) a social security benefit, unemployment compensation, or a local public assistance benefit;

(B) a veterans' benefit;

(C) a disability, illness, or unemployment benefit;

(D) alimony, support, or separate maintenance, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor;

(E) a payment under a stock bonus, pension, profitsharing, annuity, or similar plan or contract on account of illness, disability, death, age, or length of service, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor, unless —

(i) such plan or contract was established by or under the auspices of an insider that employed the debtor at the time the debtor's rights under such plan or contract arose;

(ii) such payment is on account of age or length of service; and

(iii) such plan or contract does not qualify under section 401(a), 403(a), 403(b), 408, or 409 of the Internal Revenue Code of 1954 (26 U.S.C. 401(a), 403(a), 403(b), 408, or 409).

(11) The debtor's right to receive, or property that is traceable to—

(A) an award under a crime victim's reparation law;

(B) a payment on account of the wrongful death of an individual of whom the debtor was a dependent, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor;

(C) a payment under a life insurance contract that insured the life of an individual of whom the debtor was a dependent on the date of such individual's death, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor;

(D) a payment, not to exceed $7,500, on account of personal bodily injury, not including pain and suffering or compensation for actual pecuniary loss, of the debtor or an individual of whom the debtor is a dependent; or

(E) a payment in compensation of loss of future earnings of the debtor or an individual of whom the debtor is or was a dependent, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor.

CHAPTER 3

COMMERCIAL PRACTICES AND CONTROLS

A. INTRODUCTION

Consumer protection is a relatively recent phenomenon in this country. While protections were enacted in the past to protect consumers from flagrant abuses, it has only been within the last two decades that one can discern a trend toward protecting consumers in everyday dealings with merchants. While many only think of the consumer movement in the civilian community, consumer protection is just as important for members of the military community. The legal assistance attorney may expect to be identified as the focal point for consumer protection within the military community. Army Community Services (ACS) has also developed consumer programs at many installations and the legal assistance attorney should closely coordinate with ACS personnel to avoid duplication of effort.

The purpose of this chapter is to examine some of the protections that may be utilized to assist military consumers. In addition, some of the federal statutory and regulatory consumer protections will be highlighted.

Any discussion of consumer protection would be remiss if it did not mention the essential role of consumer education. Consumer protection laws cannot assist the consumer if the consumer is unaware of them. Consumer protection is an area ideal for a preventive law program. Through this program informed consumers are placed in a much better position to protect themselves. The preventive law program for consumers should be established through the Legal Assistance Office and the Army Community Service. See Dep't of Army Regulation 27-3, para. 2-7, Legal Assistance (1 April 1984) and Army Regulation 608-1, Chapter 4, Army Community Service Program (15 July 1985 UPDATE).

B. CONSUMER PROTECTIONS WITHIN THE MILITARY

1. Department of Defense Policies. DOD Directive 1344.7 outlines policies regarding personal commercial solicitation on military installations.[1] The directive states policies governing private commercial solicitation on military installations. It provides that solicitors entering a military installation to sell to soldiers and their families will be denied access unless they have a specific appointment with their prospective customers. Installation commanders are given plenary power over solicitors, on base personal commercial solicitation being a privilege and not a right. Included among the grounds for suspension or revocation of solicitation privileges are knowing and willful violations of the Truth in Lending Act, personal misconduct by a company's agent or representative while on the military installation, failure to incorporate and abide by the Standards of Fairness, and substantiated adverse complaints or reports regarding the quality of the goods, services and commodities, and the manner in which they are offered for sale. For a complete discussion of the authority of an installation commander to regulate commercial solicitations, see Dep't of Army Pam 27-21, Military Administrative Law (1 October 1985 UPDATE), para. 2-17.

DOD Directive 1344.9[2] outlines policies regarding indebtedness of military personnel. This directive also incorporates by reference the Truth in Lending Act (15 U.S.C. § 1601-1693r) and provides that creditors who have not complied with the Act will not be given assistance in collection of debts owed to them by soldiers. The Directive provides that processing of debt complaints will not be extended to those "(a) who have not made a bona fide effort to collect the debt directly from the military member; (b) whose claims are patently false and misleading; (c) or whose claims are obviously exorbitant."[3] The directive requires that the creditor certify compliance with the Truth in Lending Act, state laws, and DOD Standards of Fairness requirements. The Army has implemented DoD Directive 1344.9 with Army Regulation 600-15, Indebtedness of Military Personnel.[4] The regulation contains basic guidance for commanders to follow when responding to letters of indebtedness concerning a member of their command. The regulation also contains appendices which include sample responses and a table for calculating interest rates.

2. Army Community Service. The Army Community Service Program includes "Consumer Education" as one of the basic services of Army Community Service,[5] the purpose being to provide information and assistance to soldiers and their families as consumers. In furtherance of this added service, DA Pamphlet 608-3, "Your Consumer Affairs Handbook," has been published by Army Community Service.[6]

Chapter 4 of the Army Community Services Regulation describes an ambitious program for soldiers and their families. Besides a basic education program, ACS paid workers and volunteers maintain financial assistance services (which include debt liquidation assistance and budget development and financial planning), a consumer advocacy program, a complaint resolution program and a public information and outreach program. Army Community Service can also provide soldiers or their families with emergency financial assistance in obtaining grants or loans through Army Emergency Relief or the Red Cross. It bears repeating that Legal Assistance Offices should coordinate closely with ACS Consumer Affairs and Financial Assistance Program personnel to share efforts and avoid needless duplication of work.

3. Installation Control. Installation commanders have certain regulatory controls available to assist them in protecting military consumers. Army Regulation 210-7, "Commercial Solicitation on Army Installations,"[7] implements DoD Directive 1344.7 and regulates commercial solicitation on Army installations. No person may enter an installation and transact business as a matter of right.[8] Solicitation must be authorized by the installation commander. In addition, the solicitor must obtain an appointment with the consumer, door-to-door solicitations are prohibited, and the business transaction may only be conducted in family quarters or other areas designated by the installation commander.[9] Solicitation in barracks used as quarters is specifically prohibited.[10] Procedures are provided to withdraw solicitation privileges of those who fail to comply with the regulation and the installation commander's requirements.[11] The regulation also addresses the sale of insurance on the installation.[12]

4. On-And Off Installation Control. One other regulatory power that may be exercised in the interest of consumer protection is the "off-limits" sanction under Army Regulation 190-24, "Armed Forces Disciplinary Control Boards and Off-Installation Military Enforcement." While the "off-limits" sanction has been frequently exercised in discrimination and morale cases, Army Regulation 190-24 expressly recognizes the use of such power in cases involving "unfair commercial or consumer practices."[13] See Chapter 4 for a fuller discussion of this important board.

C. FEDERAL STATUTORY AND REGULATORY CONSUMER PROTECTIONS

1. Consumer Credit Protection Act. The Federal Consumer Credit Protection Act[14] is an "umbrella" statute, made up of a number of independent subparts. Perhaps the most famous of these subparts is the Truth in Lending Act,[15] which commonly overshadows the parent Consumer Credit Protection Act. However, in addition to the Truth in Lending Act, the Consumer Credit Protection Act includes, inter alia, the Fair Credit Billing Act,[16] Credit Advertising,[17] Consumer Leases,[18] Credit Reporting Agencies,[19] Equal Credit Opportunity,[20] Debt Collection Practices,[21] and Electronic Fund Transfers.[22]

2. Truth in Lending Act.

a. Introduction. The use of credit has proliferated since World War II. With this increased use of credit by the public, problems concerning credit transactions became apparent. One problem was the inability for credit users to effectively comparison shop to determine which credit was cheaper. Creditors would quote the price of credit in many different forms, such as: 15 percent, a dollar add-on, an annual percentage rate, a certain percentage per month, and a certain amount for every $100 borrowed. To remedy this, the Truth in Lending Act[23] was enacted. The purpose of the Truth in Lending Act is to require uniform disclosure of credit terms so the consumer knows what the charge is and will be able to comparison shop. It is a disclosure statute. It does not give the consumer substantive rights such as a usury statute does. It merely requires credit terms be disclosed in a uniform manner.

The Truth in Lending Act became effective on July 1, 1969. It was substantially amended by the Truth in Lending Simplification Act of 1980 (P.L. 96-221), which took effect on April 1, 1982. The Federal Reserve Board has published inplementing regulations, known as Regulation Z.[24] For ease of research, the current Regulation Z is published on Appendix to West's U.S. Code Annotated, Title 15, §§ 1601-1700.

b. Scope of the Act. This statute applies when four conditions are met: First, the credit must be extended to a consumer. This is a cardholder or a natural person to whom consumer credit is offered or extended. Second, the offering or extension of credit is done by a "creditor". This is one who regularly extends credit and to whom the obligation is initially payable. An arranger of credit falls within this

definition. The statute and Regulation Z should be referred to for others who fall within the definition of creditor. Third, the credit is subject to a finance charge or payable in more than four installments. Fourth, the credit is primarily for personal, family, or household purposes.

Certain transactions are specifically excluded. These include:

— Extensions of credit for business, commercial, and agricultural purposes, and to one other than a natural person;

— Credit over $25,000 not secured by real property or a dwelling;

— Public utility credit;

— Transactions in securities and commodities accounts; and

— Home fuel budget plans.

c. General Disclosure Requirements. The statute and Regulation Z provide general disclosure requirements which are applicable for all extensions of credit which fall within the scope of the Act. "Open end" disclosure requirements are then addressed followed by disclosures for "other than open end credit." "Open end credit" is generally that credit obtained by using credit cards. It is defined as credit under a plan in which:

— Repeated transactions are contemplated;

— A finance charge may be imposed on the unpaid balance; and

— The amount of credit that may be extended to the consumer, up to a limit set by the creditor, is generally made available to the extent that any outstanding balance is repaid.

"Other than open end credit," commonly referred to as "closed end credit," is defined as "credit other than open end credit."[25] Common characteristics include a fixed amount of credit extended at the outset to be repaid in a predetermined number of installments at a predetermined dollar amount. A car loan from a financial institution is an example of this type of credit.

The disclosure requirements were simplified by the 1980 amendments to the Act. Creditors and lessors must disclose to the consumer who is obligated. The primary obligor is disclosed if there is more than one obligor. If there is more than one creditor, only one need provide the disclosure. The disclosures are to be made clearly and conspicuously in writing. They must be segregated from all the other terms of the transaction and in a form the consumer may keep. Thus, the disclosures must be free of intermingling with other data. The disclosures should be made before the consummation of the transaction. Consummation is

defined as "the time that a consumer becomes contractually obligated on a credit transaction."[26]

The "finance charge" and "annual percentage rate" must be disclosed, using those terms, and must be more conspicuous then the other terms. Examples of how they are accentuated is by capitalizing them, by putting them in bold print, by using a contrasting color, by underlining them or by setting them off with asterisks. The finance charge is the cost of consumer credit expressed as a dollar amount. It does not include any charge of a type payable in a comparable cash transaction. Examples include interest, loan fees, credit report fees, assumption fees, and mandatory insurance. The annual percentage rate is a measure of the cost of credit, expressed as a yearly rate. It relates the amount and timing of value received by the consumer to the amount and timing of payments made.

d. Specific Disclosure Requirements. The Act requires specific disclosures in addition to the general disclosures. Each of the two types of transactions, open end and other than open end, have disclosures unique to them.

Open end credit disclosures must be made prior to the first transaction under the plan. Required disclosures include an explanation of the finance charge, other charges, security interest, and a statement of billing rights. Periodic statements must also be made. They must contain the previous balance, identification of the transactions, credits to the account, periodic rates, balance on which the finance charge is computed, the amount of the finance charges, the annual percentage rate, other charges, closing date of the billing cycle and the new balance on that date, an explanation of the free ride period, and the address for notice of billing errors.

Closed end transactions also have unique disclosures. These include the finance charge, the annual percentage rate, the amount financed, the identity of the creditor, the payment schedule, total of payments, whether there is a demand feature, the total sale price, whether there is a charge for late payments, if there is a security interest in property, security interest charges, reference to information in the underlying contract, insurance data, assumption policy, and whether there is a required deposit.

e. Rescission. The right to rescind is the right to cancel an obligation. In a credit plan in which a security interest is or will be acquired in a consumer's principal dwelling, each consumer whose ownership interest is subject to the security interest has the right to rescind the transaction. This rescission right applies to both open end and closed end credit transactions.

The Truth in Lending Act exempts the following closed end credit transactions from the right to rescind: (1) residential mortgage transactions, (2) a refinancing or consolidation by the same creditor of an extension of credit already secured by the consumer's principal dwelling, (3) a transaction in which a state agency is a creditor, (4) an advance, other than an initial advance, in a series of advances treated as a single

transaction and (5) a renewal of optimal insurance premiums. Residential mortgage transactions and credit plans in which a state agency is a creditor are the open end credit exceptions to rescission.

The consumer has until midnight of the third business day following consummation, delivery of the notice of the right to rescind, or delivery of all material disclosures, whichever occurs last, to rescind. To exercise the right, the consumer notifies the creditor of the rescission by mail, telegram or other written communication.

The consumer must be given notice of the right to rescind. This notice must be on a separate document and shall be clear and conspicuous.

The consumer may waive the right to rescind in the event of a bona fide personal financial emergency when the consumer determines that a delay of three business days would create an undue hardship. The consumer must provide the creditor a written signed statement describing the emergency and waiving the right to rescind.

f. Liability of Credit Cardholder. The Truth in Lending Act provides protection to credit cardholders for their unauthorized use.[27] The liability of a cardholder for the unauthorized use of a credit card shall not exceed the lesser of $50, or the amount charged by the unauthorized user prior to the consumer's notice to the card issuer of the unauthorized use or loss of the card. Notice by the consumer may be given in person, in writing, or telephonically.

A card issuer may hold a cardholder liable only if:

— The card has been accepted;

— Adequate notice of potential liability was furnished to the cardholder; and

— The cardholder has provided a means to identify the cardholder as the person authorized to use the card.

g. Enforcement of Truth in Lending Act. Enforcement of Truth in Lending comes from three primary sources—administrative agencies, the US Attorney General's Office, and from the consumer himself.

(1) The administrative agency responsible for particular enterprises is set forth below:

(a) National Bank ..... Comptroller of the Currency

(b) State Member Bank ..... Federal Reserve System

(c) Nonmember Bank ..... Federal Deposit Insurance Corporation

(d) Savings and Loan Association ..... Federal Home Loan Bank Board

(e) Federal Credit Union ..... Bureau of Federal Credit Unions

(f) Creditor Subject to the Civil Aeronautics Board ..... CAB

(g) Creditor Subject to the Interstate Commerce Commission ICC

(h) Creditor Subject to the Packers and Stockyards Act ..... Secretary of Agriculture

(i) Any Other Creditor ..... Federal Trade Commission

For those creditors whose operation is not subject to any regulatory agencies, the FTC is given enforcement responsibilities. Loan and finance companies, retail sales outlets, mail order retailers, home improvement companies, service credit companies and automobile dealers are some of the businesses which will be subject to FTC regulation. A violation of Truth in Lending will be considered a violation of the Federal Trade Commission Act and will be subject to the remedial provisions of that Act.

Criminal sanctions cover any knowing and willful violation of the provisions of the Act, including disclosure and advertising violations. Maximum penalties are a $5,000 fine or one year's imprisonment, or both.

(2) In addition, the aggrieved consumer can institute civil action for disclosure violations. Liability may consist of actual damages, court costs and reasonable attorney fees and a statutory penalty of twice the finance charge with a minimum liability of $100 and maximum of $1,000 exists.

This statutory penalty applies only for material disclosures. These are defined as errors in disclosing the right to rescind, the finance charge, the amount financed, the annual percentage rate, the total of payments, the schedule of payments, and the security interest.

h. Defenses to Civil Liability.

(1) Unintentional Clerical Error. There is no liability if the creditor shows by a preponderance of the evidence that the violation

was unintentional and the result of a bona fide error notwithstanding the maintenance of procedures to avoid such. An error in interpreting the law does not fall within this defense.

(2) Notification and Adjustment. There is no liability if, within 60 days after discovering an error and prior to commencement of an action or the receipt of written notice of error from the obligor, the creditor or assignee notifies the obligor of the error and makes appropriate adjustments.

(3) Good Faith Reliance. There will be no liability for an act done in good faith in conformity with any rule, regulation or interpretation by the Federal Reserve Board. This is the case even though the rule or interpretation is amended or rescinded after the complained of Act.

(4) Model Forms. The Federal Reserve Board has published model forms for creditors and lessors. A creditor or lessor who uses the appropriate form is deemed to be in compliance with the Truth in Lending Act with respect to other than numerical disclosures. The creditor or lessor may change the forms as long as the substance, clarity and meaningful sequence of the disclosures are not affected.

3. Fair Credit Billing Act. The Truth in Lending Act and Regulation Z provide procedures for raising and resolving billing errors on periodic billing statements.[28] The Act's protections are triggered only if the problem falls within the statute's definition of "billing error." They are defined as:

— a transaction on the periodic statement by one without authority,

— an improperly identified transaction,

— a transaction for property not accepted or not delivered,

— a failure to credit the account,

— a computational error,

— a transaction in which the consumer desires additional clarification, and

— a failure to transmit the billing statement to the last address of the consumer unless the address was furnished less than 20 days before the end of the billing cycle.

When there is a billing error as defined above, the consumer initiates the protections of the Act by sending a "billing error notice." This is a written notice which is sent to the card issuer's designated address for receiving these notices. It must be sent no later than 60 days after the periodic billing statement with the alleged error is mailed. The notice

must contain the consumer's name and account number, a statement of the belief of a billing error and a short explanation of it; and the date, type and estimated amount of the error.

The creditor must acknowledge the consumer's notice or must render a decision within 30 days of receipt of the notice. Within two billing cycles and in no case more than 90 days, the account must be corrected or the consumer must be told why the creditor believes the bill is correct. While waiting for an answer, the consumer need not pay the amount in question nor any minimum payments or finance charges that apply to it. All parts of the bill that are not in dispute must be paid. The creditor may not restrict or close an account solely because the consumer alleges a billing error, until after the creditor has complied with the investigation and answering procedures. A creditor can apply the disputed amount against the credit limit.

After receiving written notice of the billing error, the creditor may not make an adverse credit report or report that the amount is delinquent based upon the consumer's failures to pay the disputed amount. The account may be reported as delinquent if the card issuer concludes the bill is correct and the consumer still refuses to pay.

If the creditor fails to take one of the above actions, the creditor forfeits the right to collect the disputed amount from the consumer up to a maximum of $50. The Federal Reserve System is charged with administering the Act and has issued implementing regulations for creditors to follow.

4. Right of Cardholder to Assert Claims or Defenses Against Card Issuer. In addition to providing consumers a means of contesting alleged errors in credit billing accounts, the Fair Credit Billing Act, also limits the "holder-in-due-course" defense for the issuers of open-end plan credit cards.[29]

When a person who honors a credit card fails to satisfactorily resolve a dispute as to property or services purchased with the credit card, the cardholder may assert against the card issuer all claims (other than tort claims) and defenses arising out of the transaction. The cardholder may withhold payment up to the amount of credit outstanding for the property or services that gave rise to the dispute and any finance or other charges imposed on that amount. The consumer may avail himself of this provision only if:

— The consumer has made a good faith attempt to obtain resolution from the person honoring the credit card;

— The amount of the transaction exceeds $50; and

— The place of the initial transaction occurred within the same [illegible] of, the mailing address previously provided by the consumer.

The last two restrictions are not applicable if the person who honored the credit card:

— Is the same person as the card issuer;

— Is controlled by the card issuer;

— Is under direct or indirect common control with the card issuer;

— Is a franchised dealer in the card issuer's products or services; or

— Obtained the order for the transaction through a mail solicitation made by or participated in by the card issuer in which the cardholder was solicited to enter into such transaction by using the credit card issued by the card issuer.

If the cardholder withholds payment of the amount of credit outstanding for the disputed transaction, the card issuer shall not report that amount as delinquent until the dispute is settled or judgment is rendered.

5. Offsets by Card Issuer Prohibited. A card issuer may not take any action, either before or after termination of credit card privileges, to offset a cardholder's indebtedness arising from a consumer credit transaction under the relevant credit card plan against funds of the cardholder held on deposit with the card issuer. This does not alter or affect the right of a card issuer, acting under state or federal law, to do any of the following with regard to funds of a cardholder held on deposit with the card issuer:

— Obtain or enforce a consensual security interest in the funds;

— Attach or otherwise levy upon the funds; or

— Obtain or enforce a court order relating to the funds.

This does not prohibit a plan, if authorized in writing by the cardholder, under which the card issuer may periodically deduct all or part of the cardholder's credit card debt from a deposit account held with the card issuer.

6. Discounts/Tie-In Arrangements.[30] No card issuer may, by contract or otherwise:

— Prohibit any person who honors a credit card from offering a discount to a consumer to induce the consumer to pay by cash, check, or similar means rather than by use of a credit card for the purchase of property or services; or

— Require any person who honors the card issuer's credit card to maintain any account or obtain any other service not essential to the operation of the credit card plan from the card issuer, as a condition of participation in a credit card plan. If maintenance of an account for clearing purposes is determined to be essential to the operation of the credit card plan, it may be required only if no service charges or minimum balance requirements are imposed.

7. Restrictions on Garnishments. Garnishment is a court proceeding in which a judgment creditor, whether an individual or a commercial entity, seeks to reach the employee's wages before the employer pays the employee. The Consumer Credit Protection Act places restrictions on garnishment as a creditor's remedy.[31] Congress noted that: "[t]he unrestricted garnishment of compensation due for personal services encourages the making of predatory extensions of credit."[32]

Moneys due from the United States to any individual, to include military personnel, is subject to garnishment for child support and alimony.

In general, the Act limits the amount of money that may be garnished during a pay period to the lesser of 25 percent of the disposable earnings for that pay period or the amount by which disposable earnings exceed 30 times the federal minimum wage.

The above restrictions of the amount which may be garnished do not apply to:

— An enforceable order of support issued by a court or in accordance with a credible administrative body;

— A court order issued under Chapter XIII of the Bankruptcy Act (Adjustment of Debts of an Individual with Regular Income); or

— A debt due for any state or federal tax.

Pursuant to the above, the law treats garnishments pursuant to support orders differently. In this case the maximum amount which may be garnished for any work week is 50 percent of disposable earnings if the garnishee is supporting a spouse or dependent child, other than the one to whom the support order is given. If the garnishee is not supporting this second spouse or dependent child, 60 percent of the week's disposable income may be garnished. The amounts are increased to 55 percent and 65 percent respectively if the garnishment is to enforce a support order for a period prior to the twelve week period ending with the beginning of the workweek.

In addition, the Act prohibits, by means of criminal sanction, the discharge of any employee because that employee's wages have been subjected to garnishment for any one indebtedness.

If state law provides for exempting greater amounts from garnishment, the state law applies.

8. Fair Credit Reporting Act.[33] An elaborate mechanism has developed for investigating and evaluating the credit worthiness, character, and general reputation of consumers. Businesses which collect this consumer information and sell it to third parties are known as "consumer reporting agencies." The Fair Credit Reporting Act is designed:

— To require consumer reporting agencies to adopt reasonable procedures to ensure the accuracy, confidentiality and proper utilization of consumer reports;

-- To ensure users inform consumers when adverse action is taken based upon a consumer report; and

-- To give the consumer access to the contents of the consumer report and an opportunity to correct inaccuracies.

Rights under the Act entitle the individual:

— To be told the name and address of the consumer reporting agency when he is denied credit, insurance, or employment on the basis of a report;

-- To be told the sources of information in the file (other than opinions contained in an investigative report) and to whom the data has been given;

-- To have data contained in a file be kept confidential until investigation and verification have been completed;

-- To have disputed information investigated by the agency and unverified data removed and to have notice of its removal sent to all those who originally received the incorrect data;

— To be informed of certain credit investigations before they occur; and

-- To bring an action against those who do not comply with the Act.

If the consumer disputes any of the information in the file, the agency must reinvestigate the information, unless the agency determines the dispute to be frivolous or irrelevant. If a reinvestigation does not resolve the dispute, the consumer may submit a statement in rebuttal. The agency must furnish a copy of the disputed statement to all subsequent recipients of the consumer's file.

9. Equal Credit Opportunity Act. a. Introduction. The Equal Credit Opportunity Act[34] is intended to prevent creditors from discriminating against applicants for credit. It prohibits discrimination

based upon sex, marital status, race, color, religion, national origin, age, the fact that an applicant's income is derived in whole or part from a public assistance program, or because of the good faith exercise of any right under the Consumer Credit Protection Act. That Act does not guarantee a consumer will get credit because creditors may still determine credit worthiness by considering such factors as the income, expenses, debts and reliability of the applicant.

b. Special Treatment for Certain Classes of Transactions. Transactions not primarily for personal, family, or household purposes are exempted from the Act. Other classes of transactions are treated specially by excluding certain provisions of the Act from application. These include:

— Public utility transactions;

— Securities and commodities transactions;

— Extensions of credit which are not made pursuant to a credit card account in which there is no finance charge, and that are not payable by agreement in more than four installments; and

— Extensions of credit to governmental entities.

c. Credit Applications. A creditor may request information of a spouse only if:

— The spouse will be using the account or will be contractually liable on it;

— The applicant will be relying on the spouse's income for repayment;

— The applicant resides in a community property state; or

— The applicant is relying on alimony, child support or separate maintenance payments for repayment.

A creditor may not ask the sex of an applicant. However, the creditor may inform the applicant that designation of title (Mr., Mrs., Ms.) is optional.

A creditor shall not request information concerning birth control devices or intentions concerning the raising of children. Inquiry about dependents may be made.

Race, color, or national origin may not be asked. Inquiry may be made of an applicant's permanent residence and immigration status.

d. Evaluations of Application. Generally, the creditor may use any information in evaluation of a credit applicant as long as it is not used to discriminate on a prohibited basis (sex, marital status, race, national origin, religion, or income from public assistance).

Age should not be considered unless the applicant is:

— Too young to contract;

— The applicant is 62 or over and that age will favor the applicant;

— The creditor uses a statistically sound credit scoring system which favors applicants aged 62 or over; or

-- The creditor uses ages as a predictive value (such as income will be reduced due to retirement).

The creditor cannot consider whether the applicant has a telephone listing in his name but may consider whether there is a telephone in the house.

In evaluating income, a creditor must not:

— Refuse to consider public assistance income in the same manner as other income;

— Assume or aggregate statistics that a woman of child-bearing age will have diminished or interrupted income in the future;

— Discount or refuse to consider income because it is derived from part-time employment or from a pension, annuity, or retirement benefit program (but the creditor may consider whether the income will continue in the future).

e. Extensions of Credit. The consumer has a right to have credit in her maiden name (Mary Smith), his/her first name and his/her spouse's surname (Mary Jones), or his/her first name and a combined surname (Mary Smith-Jones).

The consumer may obtain credit without a co-signer, other than a joint applicant, if the applicant meets the creditor's standards.

A consumer has the right to keep his/her account open after a change of name or marital status or after reaching a certain age or retirement unless the creditor has evidence of inability or unwillingness to pay.

f. Notification. A creditor must notify an applicant of approval or disapproval of credit within 30 days of receipt of an application. If the application is rejected, the creditor must either give the specific reasons why or inform the applicant that he/she has the right to have them if a request is made within 60 days.

g. Credit History. Many married, separated, divorced, and widowed women do not have credit histories in their own names even though they have used credit in the past. Often this is because women lost

their own credit histories when they married and changed their names or creditors typically reported credit histories on accounts shared by a married couple in the husband's name only. To solve this problem, the Act requires creditors to report credit histories to credit bureaus in both spouses' names.

The creditor must not use unfavorable information about an account shared with a spouse or former spouse if the consumer can show that the bad credit rating does not accurately reflect the consumer's willingness or ability to pay. In addition, the creditor may not refuse to consider, on the consumer's request, the credit history of any account held in a spouse or former spouse's name in which the consumer can demonstrate an accurate picture of the consumer's willingness and ability to pay.

h. Enforcement. A consumer who believes he has been discriminated against should complain to the creditor by showing the creditor he is aware of the law. Violations may be reported to the appropriate government agency. The Act also provides for civil liability.

10. Consumer Leasing Act. In recognition of the increased leasing of automobiles and other durable goods for consumer use, Congress enacted the Consumer Leasing Act of 1976.[35] This Act requires full disclosure requirements of lease advertising and lease transactions. These disclosures are used to compare one lease with another or to compare the cost of leasing with the cost of buying. The law also limits any extra payment which may be required at the end of a lease.

A consumer lease is defined as "[A] contract in the form of a lease or bailment for the use of personal property by a natural person for a period of time exceeding four months, and for a total contractual obligation not exceeding $25,000, primarily for personal, family or household purposes. . . ."[36] A transaction will still be considered to be a consumer lease even though the lessee has an option to purchase or otherwise become the owner of the property at the expiration of the lease. Credit sales and leases for agricultural, business, or commercial purposes are excluded from the definition of a consumer lease. The law does not cover daily car rentals, month-to-month rentals which can be cancelled without penalty at the end of the month, loans for apartments or houses or the furniture that comes with a rented apartment, nor property leased to businesses.

a. Consumer Lease Disclosures. The lessor must provide the consumer a dated written statement setting forth the costs and terms of the lease. This includes:

— A description of the property;

— The amount of any advance payment, such as a security deposit;

— The amount payable for license, registration, and taxes for any other fees, such as maintenance;

— The amount of any other charges not included in the periodic payments. (This includes liabilities imposed at the end of the lease);

— The number, amount, and dates regular payments are due, as well as the total amount of the periodic payments;

— The type of insurance required;

— A statement identifying any express warranties;

— An identification of the party who is responsible for maintaining and servicing the property and the standards for reasonable wear and use;

— A description of any security interest held;

— The penalty for default or late payment;

— Whether or not the lesser can purchase the leased property and, if so, when and at what price;

— How the lessee or the lessor can cancel the lease and the charges for doing so; and

— Disclosures concerning balloon payments.

b. Balloon Payments. Balloon payments are costs at the end of the lease which are determined by subtracting the estimated value of the property at the beginning of the lease. For example, a leasing company may estimate, at the beginning date of the lease, a car will be worth $5,000 at the end of a three year lease. At the end of the three years, the lessee will obtain the actual value of the car. If it is only worth $4,000 at this time, the balloon payment is $1,000.

If there is a balloon payment, the lessor must disclose such as well as how it is calculated.

Lessors advertise low monthly rental rates and estimate the termination value high. Then a large balloon payment makes up for the low monthly payments. To avoid this, there is a rebuttable presumption that the estimated value is unreasonable and not in good faith to the extent that it exceeds the realized value by more than three times the average monthly payment. This does not apply if the property has been excessivly used (for instance, if a car has been driven substantially more than the average number of miles for a year) or there has been unreasonable wear and tear.

c. Advertising. The Act also regulates the advertisement of leases. The lessor may not advertise specific costs and terms of the lease unless he has leased at those costs and terms or intends to.

If a leasing company advertises the amount or number of payments or that any or no downpayment is required, it must also disclose several other terms. These other terms include:

— The fact that it is a lease;

— The amount of any security deposit or that none is required;

— The number, amounts, and due date of regular payments and the total amount of them;

— A statement whether there is an option to buy and, if so, when and at what price; and

— A statement of liabilities at the end of the lease.

d. Enforcement. Complaints may be sent to the appropriate federal agency which supervises the lessor. The consumer may bring a civil action for violations. Damages include court costs and attorney fees.

11. Truth-in-Warranties Act. Consumer product warranties became the subject of Congressional enactment under the Magnuson-Moss Warranty—Federal Trade Commission Improvement Act.[37]

The Act does not require a supplier of consumer products to give a written warranty. The supplier has three options:

— To give no warranty;

— To give a written warranty; or

— To give a service contract. In the case of consumer goods costing more than $10, if the supplier gives a written warranty, he must designate whether it is a "full" or a "limited" warranty. The criteria for a "full" warranty are established in the Act. Of particular importance, is that a written warranty may not modify or disclaim any implied warranties.

The Federal Trade Commission has published guidelines on the implementation and enforcement of the Act.[38] In addition, the Commission has published final implementing rules. These rules govern the disclosure of written warranty terms and conditions, presale availability of written warranty terms, and informal dispute settlement procedures.

a. The Disclosure Rule. Certain disclosures are required of written warranties on consumer products costing the consumer more than $15. The rules require that the written warranty document must "clearly and conspicuously disclose in simple and readily understood language":[39]

— The party or parties to whom the warranty is extended;

— The product or parts thereof covered by the warranty;

— The actions the warrantor will take to conform to the warranty;

— The commencement and duration of the warranty;

— The procedure the consumer must follow to enforce a warranty obligation;

— Information as to the availability of informal dispute settlement procedures;

— Any limitations on the duration of implied warranties;

— Any exclusions of or limitations on incidental or consequential damages; and

— The fact that the consumer may enjoy rights under state law in addition to the rights specified in the written warranty.

b. Presale Availability Rule.[40] This rule is applicable to consumer products which cost the consumer more than $15. The presale availability rule places duties on both the seller and the warrantor. Sellers are required to make the text of any written warranty available for the presale review of prospective buyers. In addition, the seller must refrain from removing or obscuring any warranty disclosure materials provided by the warrantor except where necessary for display or promotion purposes or where other authorized means are used to make the warranty information available.

Warrantors must provide sellers with warranty materials and information to allow sellers to comply with their disclosure requirements under the rule.

Catalog and mail order sales and door-to-door sales receive individual attention under the rule. Catalog and mail order sellers must either set out the full text of the warranty in the catalog or solicitation, or notify the prospective buyer as to where they may obtain a free copy of the warranty. Door-to-door sellers must, prior to the consummation of the sale, inform prospective buyers that they have copies of the written warranty available for presale review.

In 1985 the Federal Trade Commission proposed amending the Presale Availability Rule.[41]

Under the current version of Rule 702.3(a), retailers may make applicable product warranties available to consumers prior to sale through one of four methods. Three of those methods involve the open display of the warranty text on or near the product. The fourth method relies on

binders containing warranty texts, accompanied by notices or signs informing consumers of the availability of the binders. The proposed Rule would continue the requirement that retailers make warranties available to consumers prior to the sale of any consumer product. Rather than specify the form in which the warranty is to be made available, however, the proposed Rule would create a general requirement that retailers make warranties "readily available" to consumers, either by displaying their text or by making them available for examination by consumers upon request. Any of the methods of disclosure specified in the current Rule would satisfy the requirements of the proposed Rule. In addition, however, retailers could discharge their obligations under the proposed Rule by making warranties readily available to consumers upon request. This amendment has not yet become final.

c. Informal Dispute Settlements. The informal dispute settlement procedures provides that the warrantor may not incorporate an informal settlement mechanism into a written warranty unless the mechanism meets the minimum requirements set forth in the rule. The rule requires notification to consumers of the settlement mechanism, and places the minimum requirements for the establishment and operation of the settlement mechanism.

12. Fair Debt Collection Practices Act. a. Introduction. The Congress, in response to complaints about the abusive practices of debt collectors, passed the Fair Debt Collection Practices Act.[42] The purpose of this statute is to eliminate abusive debt collection practices by debt collectors, to insure that those collectors who refrain from using abusive debt collection practices are not competitively disadvantaged, and to promote consistent state action to protect consumers against debt collection abuses. The Act accomplishes this by restricting contacts by debt collectors to third parties and debtors, by requiring validation of debts, and by providing for a means by which a consumer can cease debt collector communication to him.

b. Communication With Third Parties. Third parties are parties other than the debtor, the creditor, the debt collector and their representatives. Generally, the debt collector is not to communicate with third parties. A few exceptions exist. A debt collector may contact one other than the consumer to acquire location information. Location information is a consumer's place of abode, his telephone number, or his place of employment. Otherwise, a debt collector may contact a third party only with the consumer's consent, with permission of the court, or as is reasonably necessary to effectuate a postjudgment judicial remedy.

c. Communications With the Consumer. Communications are allowed with the consumer but there are protections. Communications are not to be at any unusual time or place nor at the consumer's place of employment if the debt collector has reason to know the employer prohibits such contact. If an attorney represents the consumer and the debt collector is aware of this, he should communicate only with the attorney.

The Act prohibits three classes of conduct. First, a debt collector may not engage in any conduct the natural consequence of which is to harrass, oppress, or abuse any person in connection with a debt. Secondly, a debt collector may not use any false, deceptive, or misleading representation in connection with the collection of any debt. Thirdly, a debt collector may not use unfair or unconscionable means to collect any debt. Each of these three general prohibitions also contain specific acts which are prohibited. For instance, under the prohibition of harrassment section, the use of physical violence and obscene language are specifically prohibited. The legal assistance officer should first determine if the complained of act is specifically prohibited. If it is not specifically prohibited, an argument that it is generally prohibited may be appropriate.

d. Validation of Debts. A frequent complaint is debt collectors contact consumers who do not owe a debt or who have paid it. To correct this, the statute requires that the collector provide written notice within five days of the initial communication identifying the debt and the creditor, and explaining how the consumer can require the collector to verify the debt. Collection efforts must discontinue until verification is completed.

e. Ceasing of Communications. The consumer has the ability to stop the collector from communicating with him. This is done by the consumer notifying the collector in writing that he refuses to pay the debt or that he desires the collector to cease further communications. If done, the collector must discontinue all future communications except to inform the consumer he may or will invoke a specific remedy (such as a lawsuit), or to inform the consumer he will discontinue communications.

f. Enforcement. Administrative enforcement is by the Federal Trade Commission. The Act also provides a civil cause of action for the consumer.

13. Real Estate Settlement Procedures Act. Giving cognizance to the need for reform of the real estate settlement (closing) process in this country and the need for greater consumer knowledge of the costs involved in the process, Congress enacted the Real Estate Settlement Procedures Act.[43] The Act does not place a limit on the amount of closing costs that may be charged. Rather, the purpose of the Act is to inform prospective residential real estate mortgagees of the settlement process in general and of the specific costs involved in their particular transactions. It is a disclosure statute. In addition, it prohibits certain unfair practices.

a. Coverage of the Act. RESPA covers most residential mortgage loans used to finance the purchase of one to four family properties, such as a house, condominium, a cooperative apartment, a lot with a mobile home, or a lot on which a house will be built.

b. Disclosures. The statute requires most certain settlement costs be disclosed using a standard form and be provided the borrower prior to or at the time of settlement. The consumer will have greater and more timely information on the nature and costs of the settlement process and

will be protected from unnecessarily high settlement charges caused by abusive practices.

(1) Uniform Settlement and Standard Form. This is a form developed for the statement of settlement costs. It must be used by those who conduct settlement with a federally related mortgage loan. It requires an itemization of all charges to be paid by the borrower and seller in connection with the settlement. Exemptions to this are those charges not imposed upon the borrower or the seller by the lender and which are to be paid for separately outside of settlement.

The lender must provide a good faith estimate, as a dollar amount or range, of each charge for a settlement service which the borrower is likely to incur. Although settlement costs are unique with each transaction, some of the common charges which will be itemized on the form include: sales price, taxes, earnest (deposit) money, broker's commission, loan origination fee, loan discount (points), approval fee, credit report fee, lender's inspection fee, mortgage insurance application fee, assumption fee, interest, insurance, title charges, closing fee, notary fee, attorney's fees, survey costs, and pest inspection costs.

The implementing HUD regulations require the statement to be available for inspection during the business day immediately preceding the date of settlement.[44] It must be mailed or delivered to the borrower at or before settlement. The borrower may waive, in writing, the right of delivery prior to or at settlement time. In that case, it should be provided as soon as practicable after settlement.

(2) Special Information Booklets. The lender, in addition to providing the good faith estimates, must provide the borrower with a HUD booklet. Part One of the booklet describes the settlement process and the nature of the charges. It also contains information about the consumer's rights and remedies available under RESPA, and alerts him to unfair or illegal practices.

Part Two is an item by item explanation of settlement services and costs with sample forms and worksheets which may be used in making cost comparisons.

c. Prohibition Against Kickbacks and Unearned Fees. The Act prohibits the giving or accepting of any fee, kickback, or thing of value for referrals of business to another. Also, no charge may be given nor received for a real estate settlement service other than for services actually performed.

d. Title Companies. A seller may not require, as a condition to selling the property, that title insurance be purchased by the buyer from any particular company.

e. Escrow Accounts. There are limitations on the amounts that the lender may require be placed in escrow for costs such as taxes and insurance premiums.

f. Enforcement. There are criminal and civil penalties for violations of the Act.

14. Odometer Requirements. Purchases of motor vehicles rely heavily on the odometer reading as an index of the condition and value of the vehicle. Congress, in 1972, enacted a statute designed to prohibit tampering with odometers.[45] It is illegal for a person to disconnect, reset or alter an odometer with intent to change the miles indicated on it. In addition, a transferor of a motor vehicle must disclose, in writing, the cumulative odometer reading or that the actual mileage is unknown.

The Act provides civil and criminal penalties. The Department of Transportation and the Federal Trade Commission provide administrative enforcement.

15. Consumer Product Safety Act. Recognizing the conflicting State legislation and limited federal guidelines, Congress has enacted the Consumer Product Safety Act[46] to protect the public against unreasonable risks of injury associated with consumer product.

Though certain articles are specifically excluded (e.g., certain drugs, boats, cosmetics, foods, motor vehicles), "consumer product" is defined as:

> [A]ny article or component part thereof, produced or distributed (i) for sale to a consumer for use in or around a permanent or temporary household or residence, a school, in recreation, or otherwise, or (ii) for the personal use, consumption or enjoyment of a consumer in or around a permanent or temporary household or residence, a school, in recreation, or otherwise. . . .[47]

Standards for consumer products are designed and regulated by the five-member Consumer Product Safety Commission. The Commission:

— Has the power to make rules and regulations establishing Federal and minimum State standards for consumer products;

— Serves as a clearinghouse for information and research; and

— Provides rules for product certification and labeling.

Civil and criminal penalties are provided for violation of the Act. In addition, suits may be brought by aggrieved consumers in their individual capacities in the Federal courts.

16. Home Solicitation (Door-to-door Sales). Pursuant to a regulation published by the Federal Trade Commission,[48] consumers have a three-day right of rescission in door-to-door sales transactions. A "door-to-door sale" is defined as:

> A sale, lease, or rental of consumer goods or services with a purchase price of $25 or more, whether under single or multiple contracts, in which the seller or his representative personally solicits the sale, including those in response to or following an invitation by the buyer, and the buyer's agreement or offer to purchase is made at a place other than the place of business of the seller.[49]

The seller must inform the consumer both orally and in writing concerning the right of rescission and must furnish the consumer with a copy of the contract and a notice of cancellation. Both must be written in the principal language used during the sales presentation. Door-to-door sellers are prohibited from inserting a confession of judgment or waiver of the right of rescission into any door-to-door sales contract and from selling or assigning any note or other evidence of indebtedness to a third party within five days of the signing of the contract.

The buyer has until midnight of the third business day after the date of the transaction to cancel. Sundays and certain federal holidays are not business days. Cancellation is effected by mailing or delivering a signed and dated copy of the notice of cancellation or any other written notice, or sending a telegram to the seller.

Upon cancellation, the parties are returned to the status quo ante. Within ten days of receipt of the cancellation notice, payments are to be refunded, property which was traded in must be returned, negotiable instruments cancelled, and security interests terminated. The buyer is to keep the goods in substantially the same condition as received for the seller to pick up. The seller has 20 days from the receipt of the cancellation notice to pick them up.

Failure to comply with the regulation constitutes an unfair and deceptive act or practice. In addition, the contract may be unenforceable by the seller. Army Regulation 210-7, Commercial Solicitation on Army Installations (15 April 1982), incorporates the FTC Home Solicitation Rule for Army installations.[50] The legal assistance attorney should research state statutes to determine if the local jurisdiction has a law which parallels the FTC regulation. See Chapter 7 for a state-by-state discussion of state law protections.

17. Mail Order Merchandise. Consumers obtain items through the mail and sales catalogs which are unavailable locally. There have been numerous complaints that merchandise ordered by mail is not received until months later, or never received. The Federal Trade Commission has a regulation which is designed to correct this problem entitled, "Mail Order Merchandise."[51]

The rule applies to mail order sales in commerce. It does not apply to:

— Subscriptions, such as magazine sales, ordered for serial delivery, after the initial shipment is made;

— Mail order seeds and growing plants; and

— C.O.D. orders.

When purchasing by mail the buyer must receive the merchandise when the seller advertises delivery will be made or, if there is no promised delivery date, the seller must ship the merchandise no later than 30 days after the order comes in. If the seller cannot meet the promised delivery date, or the 30 day limit, he must so advise the buyer. He must also provide a new delivery date and give the buyer the option to either cancel the order or to agree to a new shipping date.

If the revised shipping date is 30 days or less from the original shipping date, a failure to reject it by the buyer is deemed acceptance of the revised shipping date. If it is more than 30 days or the buyer cannot provide a revised shipping date, a failure to respond by the buyer is deemed to be an automatic rejection of the revised shipping date.

Failure to comply with the regulation is an unfair method of competition and an unfair or deceptive act and practice. Violations should be brought to the attention of the Federal Trade Commission.

18. Unordered Merchandise. It has been a practice for some businesses to send unordered merchandise through the mails to consumers. It was hoped the consumer would feel that he had to buy it. The Postal Reorganization Act prohibits this in most cases.[52]

There are only two instances in which merchandise can be sent legally through the mails without a consumer's consent:

— Free samples that are clearly and plainly marked as such; and

— Merchandise mailed by a charitable organization asking for contributions.

In either of the above cases, the merchandise can be considered as a gift.

In all other cases, it is illegal to send merchandise through the mails unless the consumer has requested it. It too can be considered a gift. In addition, the consumer can complain to the Federal Trade Commission or the U.S. Postal Service of the practice.

19. FTC Credit Practice Rule.[53] In 1984 the Federal Trade Commission culminated more than eleven years of investigation, hearings, and research with a final trade regulation rule governing credit practices, issued on March 1, 1984, which took effect on March 1, 1985.

The purpose of the rule is to restrict certain remedies used by lenders and retail installment sellers in consumer credit contracts. The rule makes it an unfair credit practice for a lender or retail installment seller to

include a cognovit, or confession of judgment clause, or other waiver of a right to notice and opportunity to be heard in an agreement with a consumer. The rule also prohibits lenders and retail installment sellers from requiring a consumer to waive any limitations or exemptions from attachment, execution or other process on the consumer's real or personal property unless the waiver applies solely to property subject to a security interest executed in connection with the obligation.

Assignment of wages or other earnings is prohibited, except under limited circumstances. It will also be an unfair credit practice for lenders and retail installment sellers to take a security interest in a consumer's household goods unless it is a purchase money security interest in the household goods which are the subject of the transaction.

A specific prohibition will also govern how lenders and retail installment sellers credit late charges to a consumer's account. The FTC found that the rule was necesssary because some lenders and retail installment sellers engage in a practice known as "creeping" or "pyramiding" a late charge, i.e., using an accounting principle that results in the assessment of a multiple delinquency charge due to a single late payment. Under this method, when a consumer pays late, the payment is first applied to any late charge, then to the interest charge, and finally to the principal amount of the payment. Any payments thereafter are automatically delinquent because the subsequent payment is first applied to the remaining balance. Timely payments in succeeding months are given the same treatment, the cumulative effect of which can be substantial.

The rule also contains protections for cosigners, including a notice which must be given to cosigners before they become obligated to the lender or retail installment seller. The notice states:

> You are being asked to guarantee this debt. Think carefully before you do. If the borrower doesn't pay the debt, you will have to. Be sure you can afford to pay if you have to, and that you want to accept this responsibility.
>
> You may have to pay up to the full amount of the debt if the borrower does not pay. You may also have to pay late fees or collection costs, which increase this amount.
>
> The creditor can collect this debt from you without first trying to collect from the borrower. The creditor can use the same collection methods against you that can be used against the borrower, such as suing you, garnishing your wages, etc. If this debt is ever in default, the fact may become a part of your credit record.
>
> This notice is not the contract that makes you liable for the debt.

Legal assistance attorneys should encourage compliance by local lenders and sellers and should discuss the rule in preventive law classes.

20. Used Cars. The FTC has also issued a trade regulation rule governing used cars. For a discussion of this rule, see Chapter 6, Automobiles.

D. STATE STATUTORY AND REGULATORY CONSUMER PROTECTIONS

It is not possible within this chapter to list all the available consumer protections of the various states. However, it is essential that the Legal Assistance Officer be apprised of those protections and remedies available under the law of the state in which he or she is practicing. Included is the need to be aware of the state government agencies and offices that may assist consumers. The Legal Assistance Branch annually distributes Army-wide to all Legal Assistance offices the Consumer's Resource Book. This publication is a handy compilation of "where to write and complain" addresses. For a free copy, write: Consumer's Resource Handbook, Consumer Information Center, Pueblo, Colorado 81009.

Such a knowledge of state consumer protections is necessary for two reasons. First, the state laws or regulations may provide greater protection than do their federal counterparts, or the state laws or regulations may fill a federal void. Second, state agencies are in a better position to contact both the consumer and the merchant or businessman. The consumer may receive better relief or satisfaction by dealing with a state agency rather than a federal agency.

The difficulty that arises in attempting to discuss state consumer protections results from the great variety of protections afforded by the various states. An attempt was made with the Uniform Consumer Credit Code to supplant the existing hodgepodge of state statutes presently controlling the extension and collection of all kinds of credit. The UCCC provides for the repeal of all existing statutes involving consumer credit matters. All consumer credit regulations and statutes would be combined into a single law, with separate articles, in a structure similar to that of the Uniform Commercial Code. However, the UCCC is only a proposed uniform law, and the extent of its adoption varies from state to state. The UCCC has not received the degree of acceptance accorded to the UCC.

1. Dep't of Defense Directive No. 1344.7, Personal Commercial Solicitation on DoD Installations. (13 February 1986).

2. Dep't of Defense Directive No. 1344.9, Indebtedness of Military Personnel (7 May 1979).

3. Id. para. E.3.

4. Dep't of Army Regulation 600-15, Indebtedness of Military Personnel (14 March 1986).

5. Dep't of Army Regulation No. 608-1, Army Community Services Program, Chapter 4 (15 July 1985 UPDATE).

6. Dep't of Army Pamphlet 608-3, Your Consumer Affairs Handbook (June 1975). While sections of this publication are badly out of date, some useful information may be gleaned from it.

7. Army Reg. No. 210-7, Commercial Solicitation on Army Installations (15 April 1982).

3. Id. para. 2-2.

9. Id. para 2-5.

10. Id. para. 2-8f(4).

11. Id. Chapter 4.

12. Id. Chapter 3.

13. Dep't of Army Regulation No. 190-24, Armed Forces Disciplinary Control Boards and Off-Installation Military Enforcement, para. 2-5b(10) (15 Nov. 1982). This regulation is a joint services regulation and has been implemented in Marine Corps Order No. 1620.2b, Air Force Regulation 125-11 and Commandant Instruction No. 1620.1C (Navy).

14. 15 U.S.C. § 1601-1693r (1982).

15. 15 U.S.C. §§ 1601-1665 (1982).

16. 15 U.S.C. §§ 1666-1666j (1982).

17. 15 U.S.C. §§ 1661-1665a (1982).

18. 15 U.S.C. §§ 1667-1667e (1982).

19. 15 U.S.C. §§ 1681-1681t (1982).

20. 15 U.S.C. §§ 1691-1691f (1982).

21. 15 U.S.C.A §§ 1692-1692o (1982).

22. 15 U.S.C.A. §§ 1693-1693r (1982).

23. 15 U.S.C. §§ 1601-1665 (1970), as amended 15 U.S.C.A. §§ 1601-1646 (1980).

24. Truth in Lending Regulation Z, 12 C.F.R. 226 (as amended to March 15, 1982).

25. Regulation Z, 12 C.F.R. 2262(a)(10).

26. Regulation Z, 12 C.F.R. 226.2(a)(13).

27. 15 U.S.C.A. § 1643 (1982).

28. 15 U.S.C. §§ 1666-1666j (1982) and 12 C.F.R. 226.13.

29. 15 U.S.C. § 1666i (1982).

30. 15 U.S.C. § 1666f (1982).

31. 15 U.S.C. §§ 1671-1677 (1982).

32. 15 U.S.C. § 1671 (1982).

33. 15 U.S.C. §§ 1681-1681t (1982).

34. 15 U.S.C. §§ 1691-1691e (1982). See also Regulation B, 12 C.F.R. Part 202.

35. 15 U.S.C. §§ 1667-1667e (1982).

36. Id. § 1667(i).

37. 15 U.S.C. §§ 2301-2312 (1982).

38. 16 C.F.R. Part 701.1.

39. 15 U.S.C.A. § 2302.

40. 16 C.F.R. Part 702.

41. 50 FED. REGISTER 18,495 (May 1, 1985).

42. 15 U.S.C. §§ 1692-1692o.

43. Real Estate Settlement Procedures Act, 12 U.S.C. §§ 2601-2616 (1982).

44. 24 C.F.R. § 3500.10.

45. 15 U.S.C. §§ 1981-1991 (1982).

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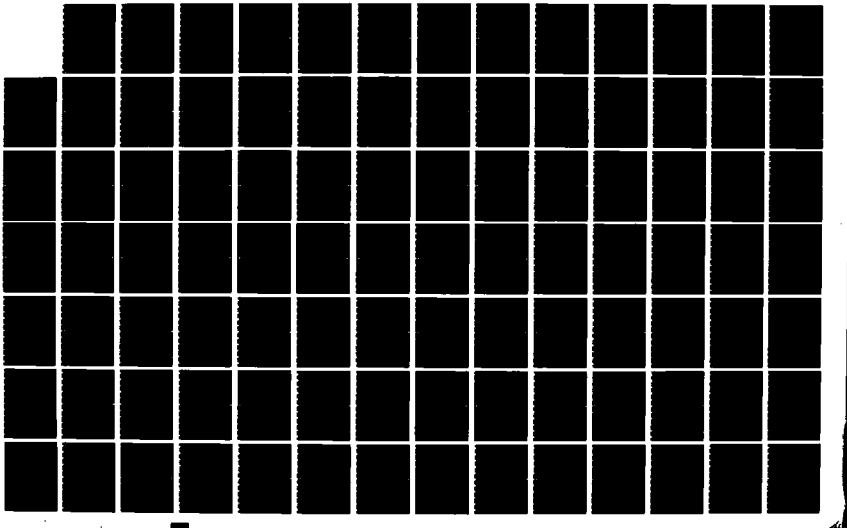

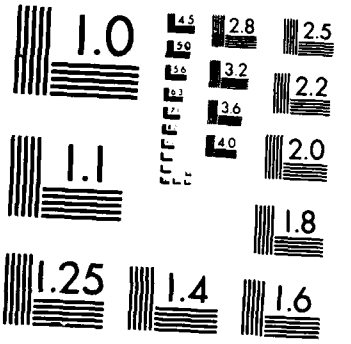

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46. 15 U.S.C. § 2051-2081 (1982).

47. 15 U.S.C. § 2052.

48. 16 C.F.R. Part 429 (1975).

49. Id. § 429.1.

50. Dep't of Army Regulation 210-7, Commercial Solicitation On Army Installations, para. 2-12 (15 April 1982).

51. 16 C.F.R. Part 435 (1975).

52. 39 U.S.C. § 3009 (1982).

53. 16 C.F.R. Part 444 (1984).

CHAPTER 4

ARMED FORCES DISCIPLINARY CONTROL BOARDS

A. GENERAL

Armed Forces Disciplinary Control Boards are established by joint service agreement to assist commanders in eliminating conditions inimical to the health, welfare, morale and discipline of military personnel. In addition, the Armed Forces Disciplinary Control Boards will insure the establishment and maintenance of the highest degree of liaison between military and civil law enforcement authorities. These boards receive information on undesirable conditions affecting military personnel, with particular reference to establishments or areas within civilian communities which harbor such conditions. They report the existence of such conditions to commanders together with recommended action and cooperate with civil authorities regarding these problems. They also recommend to commanders the designation of certain areas and establishments as "off-limits" to military personnel, and the removal of such designations, when appropriate. "Undesirable conditions" include conditions relating to drug abuse, and drug paraphernalia,[1] venereal disease, racial and other discriminatory practices, liquor violations, improper discipline, illicit gambling and unfair commercial practices.

B. ROLE OF THE LEGAL ASSISTANCE OFFICER

With respect to unfair commercial practices, an Armed Forces Disciplinary Control Board is in a better position to deal with unscrupulous proprietors than the individual servicemember or spouse. Most businessmen realize that having their establishments declared "off-limits" will result in adverse publicity and financial loss. Thus, the referral of such cases to these boards may contribute greatly to protecting servicemembers and their spouses from unscrupulous merchants.

Often legal assistance attorney are the only persons who can detect a pattern of unfair or unethical practices by a particular business or firm. In such cases of a pattern of misconduct, the legal assistance officer may deviate from the recommended procedure of having the client present the complaint to the Board and may make the SJA aware of the problem and proceed to the Board under his or her guidance, if the clients involved agree to such disclosure of privileged information. Normally, the legal assistance officer will aid in these matters by explaining the functions and procedures of the Board to their client and, if requested, will assist in the preparation of the complaint. Such complaints should be sworn and documented as fully as possible.

Another important area where action by an Armed Forces Disciplinary Control Board can be requested is that involving racial discrimination in off-post housing and public accommodations.

C. ORGANIZATION AND FUNCTIONS

The Armed Forces Disciplinary Control Boards are established pursuant to Joint Agreement on Armed Forces Disciplinary Control Boards, 15 March 1950, a written joint service agreement between the Army, Navy, Air Force and Treasury. Service policy providing for uniform implementation of this joint agreement is set forth in AR 190-24.

Armed Forces Disciplinary Control Boards (AFDCBs) may be established by installation, base, or station commanders. Where installations of two or more services are located or which are frequented by personnel of two or more services, there will be joint service participation in any AFDCB. In such cases, the commander of the service with the greatest number of troops shall serve as the "sponsoring commander" of the board. Designated sponsoring commanders are responsible for providing administrative support to their respective boards, including the promulgation of implementing directives, maintenance of current "off-limits" rosters, and providing a recorder for the board.

Major Army, Navy, Marine Corps, Air Force and Coast Guard commanders will monitor the establishment of and participation in AFDCBs by subordinate commands and will resolve any differences among subordinate commanders with regard to matters affecting board responsibilities.

The membership of the board shall include, as a minimum, representatives in the following areas: law enforcement, legal, health and environment, public affairs, equal opportunity, safety, chaplains, alcohol and drug abuse, personnel and community activities. Voting members and the President of the Board will be designated by the sponsoring commander. The boards will meet at least quarterly to receive reports and take appropriate action on conditions within their jurisdictional areas relating to any matters affecting the health, safety, welfare, morale and discipline of the military or their families.

D. "OFF-LIMITS" DESIGNATION

Establishments and areas harboring conditions adversely affecting the health, morale, and welfare of military personnel may be designated "off-limits" by commanders. Such action is generally the result of recommendation by an Armed Forces Disciplinary Control Board. Service personnel are, of course, prohibited from entering such places. In the United States, "off-limits" signs are not posted, but may be posted overseas if the host country doesn't object. Sponsoring commanders, however, do publish approved lists of such establishments and areas. As a general policy, "off-limits" establishments will not be visited by military law enforcement personnel unless circumstances warrant.

"Off-limits" designation is considered only when other alternatives have not been successful. Commanders are required first to attempt to correct such adverse conditions through informal communication with the proprietors of such places, cooperation with law enforcement agencies, and

normal community relations. If such actions are unsuccessful, the commander will submit a complete report to the local board servicing his or her area. Individual servicemembers or their spouses can submit sworn complaints to their local commanders.

The local board may appoint an investigator to personally verify such report or complaint. If adverse conditions appear to exist, the board will send the proprietor a letter of notification, informing of the complaint, giving a reasonable time to correct the alleged conditions, and advising of the right to present information to the board.[2] If the adverse conditions persist, the board should recommend the imposition of the "off-limits" sanction. The recommendation of the local board is then forwarded to the sponsoring commander in the area of the board's jurisdiction. The local sponsoring commander may approve the recommendation and, upon such approval, the president of the board will notify the proprietor concerned of the action taken. No definite time limit is set when an "off-limits" sanction is imposed. The adequacy of the corrective action taken by the proprietor is the determining factor.

In an emergency situation, the commander may temporarily declare an establishment or area "off-limits". Such action must be reported immediately to both the next major commander and the local board. The local board will process this report in the same manner as a normal request for "off-limits" action.

In overseas areas, "off-limits" procedures may be established. In so far as AR 190-24 is compatible with the local situation, it should be used as guidance in the formulation of such procedures.

E. LEGAL AUTHORITY FOR "OFF-LIMITS" DESIGNATION

Legal authority to govern the conduct of service personnel, and thus the right to prescribe that certain areas or establishments are "off-limits" to them, may be traced to Article I of the Constitution, which states that "The Congress shall have power . . . to make Rules for the Government and Regulation of the land and naval Forces," and Article II, which states that "The President shall be Commander in Chief of the Army and Navy of the United States. . ."

Congress has specifically granted authority to the Executive to prescribe regulations for the government of the Armed Forces, and thus to prescribe rules for the conduct of service personnel, through such statutes as Title 10, United States Code, sections 121, 3061, 6011, 8012, and Title 5, United States Code, section 301.[3]

It has been held that where a commander acts within the limits of his or her legal power and authority in placing an establishment "off-limits," an action to challenge this action cannot be maintained without impleading the sovereign, even though abuse of discretion be alleged. Thus, if the United States does not consent to be sued, courts lack the jurisdiction to inquire into the action taken.[4] In the most recent reported case involving action by an AFDCB, the court suggested that there is no property interest

w'th which the military interferes when soldiers are ordered not to do business with a particular establishment.[5] The due process provisions of AR 190-24, if closely followed, should meet judicial muster, even if a property interest is found. For additional discussion of a commander's off-post authority, see Dep't of Army Pamphlet 27-21, Military Administrative Law (1 October 1985 UPDATE), para. 2-17d.

F. REFERENCES.

DOD Dir. 1010.4, (25 Aug. 1980).

DOD Dir. 1344.7, (1 Jul 1969).

AR 190-24, (15 Nov. 1982).

1. See para. 2-2a(7) to AR 190-24, 15 Nov. 1982, which ensures that commanders assess the availability of drug abuse paraphernalia in the vicinity of DOD installations. See also DOD Directive 1010.4, 25 Aug. 1980, Alcohol and Drug Abuse by DOD Personnel.

2. For a detailed discussion of "off-limits" procedures see Appendix B of AR 190-24. A revision of AR 190-24 was published in 47 Federal Register 8350, 26 Feb. 1982, and may also be found in 32 Code of Federal Regulations 631.

3. See also, 10 U.S.C. § 3012(b)(1)(g).

4. Ainsworth v. Barn Ballroom Co., 157 F.2d 97 (4th Cir., 1946); Harper v. Jones, 195 F.2d 705 (10th Cir. 1952).

5. Metlin v. Palastra, 729 F.2d 353 (5th Cir. 1984).

CHAPTER 5

INSURANCE

A. LIFE INSURANCE

1. **General.** The importance of life insurance in providing financial security for individuals and their families is widely recognized. Through life insurance a person can create an immediate estate of sufficient size to assure adequate income for surviving family members. Because this "estate creation" function of life insurance is unique, it frequently offers a good means of guaranteeing a satisfactory level of income for a servicemember's dependents in the event of premature death.

Although the need for life insurance may be apparent, it is not always easy to determine the amount that should be maintained and the type of policy which should be selected. In determining life insurance needs, close attention should be given to the various military benefits available for military survivors, especially the Survivors Benefit Plan and Social Security. The crucial factors are the desired monthly income a servicemember would like his or her survivors to have and whether financial means are available to purchase life insurance of a large enough amount to provide that income when combined with other benefits. Valuable advice on the relative cost of life insurance is provided in "A Shoppers Guide to Life Insurance" published by the Pennsylvania Insurance Department, Harrisburg, Pa.

Soldiers contemplating the purchase of commercial insurance should determine whether the policy will be issued with a "war clause" —a provision limiting the company's liability if the insured dies while engaged in military service. It is important to keep in mind that supplementary benefits provided by rider (e.g., accidental death benefits) may be so restricted even when no "war clause" is included in the basic policy.

Experience following the Gander, Newfoundland aircrash, which killed 248 soldiers of the 101st Airborne Division in December 1985 demonstrated that some life insurance companies may attempt to invoke "war clause" provisions.

Such clauses allow insurance companies to avoid payment on a contract of insurance if the soldier is killed in war or by a "military service hazard". The phrase "killed by a military service hazard" may be interpreted by insurance companies to mean anytime a soldier dies on active duty. These military service clauses are often buried in lengthy insurance contracts and are seldom discovered by or brought to the attention of the soldier. The end result could be denial of coverage under the terms of the policy and hardship for the soldier's survivors. To avoid these potential problems, soldiers should be counselled to carefully read all provisions contained in any insurance policy prior to acquiring the coverage. Make sure the policy does not contain a clause that could be interpreted in such a way as to deny coverage to an active duty soldier. By being aware of the ramifications of military service exclusion provisions

contained in insurance contracts, soldiers can avoid this problem and can assure they have adequate coverage for their families.

Another consideration are provisions (§§ 400-408)[1] in the Soldiers and Sailors' Civil Relief Act concerning Veterans' Administration guaranteed payment of life insurance premiums for soldiers. Granted, the provisions are limited, but available nonetheless. One limitation is that the policy cannot exceed $10,000.[2] Another, and perhaps the major reason policies should be examined for war clauses is that in order to obtain the VA premium payment guarantee, the policy must contain no war clause.[3] Other requirements are that the soldier must have purchased the insurance more than six months prior to entry onto active duty and have paid at least one premium prior to that time.[4] If these requirements are met, the soldier may apply to the Veteran's Administration to have the VA guarantee premium payments. This is done by making application on VA Form 9-380.[5] The form is to be forwarded by the soldier to the insurance company, which completes it and sends it to the Va with a copy of the policy. The VA reviews the policy, and if it meets the SSCRA requirements discussed above, issues a guarantee. Once the VA guarantee is given, the policy will not terminate, lapse or be forfeited because the soldier failed to make premium payments. The government does not make any payments the soldier fails to make or is unable to make, but simply guarantees that any premiums not paid during the soldier's period of active duty or two years thereafter will be paid at the end of that period. The caveat to make soldiers keenly aware of is that whatever the VA is required to pay, the soldier then owes the VA, and all actions, up to and including a civil suit by the VA against the soldier are permitted.[6]

2. Servicemen's Group Life Insurance (SGLI).[7] All soldiers on active duty, active duty for training, or inactive duty training scheduled in advance by competent authority, are provided $50,000 of group life insurance. The amount was raised from $35,000 to $50,000 following the Gander air crash. This term coverage, underwritten by a large number of commercial insurance companies and supervised by the Administrator of Veteran's Affairs, is payable without regard to any other life insurance which a soldier may have in force.

The soldier may elect in writing not be insured, or to be insured for less than the maximum amount. Unless a soldier on active duty or active duty for training under call or orders not limited to 30 days or less rejects coverage in this manner, a monthly premium is automatically deducted from his or her pay. Premium rates for SGLI coverage are much lower than commercial policies because the premium attributable to the hazards of military service is paid by the government.

In specified circumstances, coverage is extended to soldiers proceeding directly to, or returning directly from, active duty, active duty for training, or inactive duty training scheduled in advance by competent authority.

At the death of an insured the proceeds are payable to the beneficiary designated by the insured. If the insured has not designated a beneficiary

or if such beneficiary does not survive the insured, the insurance proceeds pass "by law" and are paid in the following order of precedence:

— Surviving widow or widower.

— Surviving child or children and descendents of deceased children by representation.

— Surviving parents or parent.

— Executor or administrator of the insured's estate.

— Other next of kin whose entitlement is established under the laws of the insured's domicile.

It is critical that military attorneys properly counsel soldiers about the implications of the "by law" designation. The statutory designations override the soldier's privately or publicly expressed intent. Several unfortunate situations arose concerning victims of the Gander crash. In one case the soldier was only days short of a final divorce and had indicated to his parents that he wanted them to have the SGLI proceeds should something happen to him. But he had not changed the beneficiary designation form and his estranged wife, who qualified as a "surviving widow" because of his "by law" designation on the form, got the proceeds. Even a soldier's indication in his will as to how the proceeds should pass will not override the designation he has made on the SGLI form, even if the will is dated after the date of the SGLI form. Since the designation is pursuant to federal law, federal law overrides any conflicting state law provisions.

Legal Assistance attorneys must help educate clients and the military personnel center clerks who prepare the SGLI beneficiary designation forms about the changes of the "by law" designation. Some personnel clerks will insist that the soldier is required to specify "by law" on the form, or if not "by law", then who will receive the proceeds, stated in terms of percentages (e.g., "1/4 to _____"). A soldier is permitted to make any designation, in any proportion that he may elect to choose, and should not be forced by an imperious personnel clerk into making a designation that will create subsequent hardship and headache for those intended to receive the proceeds and create a windfall for unintended persons.

Additionally, the soldier may elect to have the proceeds paid in a lump sum or in 36 equal monthly installments. In the event no settlement election has been made by the insured, the beneficiary may select either method of payment—and may elect to receive payment installments even if the insured elected to have the payment in lump sum. When the insured elects payment in 36 equal monthly payments, no change in the method or term of payment is authorized after death. Benefits may be paid directly to a minor surviving spouse by the insurer. With certain limited statutory exceptions, benefits due or to become due are exempt from taxation and claims of creditors, and are not liable to attachment, levy or seizure, either before or after receipt by the beneficiary.

For an insured member on active duty or active duty for training under calls or orders not limited to 30 days or less, coverage terminates 120 days after separation or release from active duty, unless on the date of such separation or release the insured is totally disabled, in which event coverage terminates one year after the date of such separation or release or on the date the insured ceases to be totally disabled, whichever is earlier, but in no event earlier than 120 days after such separation or release.

For an insured member on active duty or active duty for training under calls or orders specifying a period of 30 days or less, coverage normally terminates on the last day of such duty. For an insured member on inactive duty training scheduled in advance by competent authority, coverage normally terminates at the end of such scheduled training period. However, if on the last day of such period of active duty, or at the end of the scheduled training period, the insured is suffering from a disability incurred or aggravated during such period, coverage will continue for the period of the disability.

At the end of the 31st day of a continuous period of absence without leave, confinement by civil authorities under a sentence adjudged by a civilian court, or confinement by military authorities under a court-martial sentence involving total forfeiture of pay and allowances, the coverage of an insured servicemember terminates. Insurance so terminated, together with any beneficiary designation in effect for such insurance at termination, is automatically revived by restoration to active duty or active duty for training with pay.

An insured member leaving duty or active duty for training under calls or orders not limited to 30 days or less may, by written application convert his SGLI to Veterans' Group Life Insurance (VGLI) during the 120 day extension period after separation or release. VGLI is a 5-year nonrenewable term policy which is, like SGLI, supervised by the Veterans Administration. No medical exam is required to convert SGLI to VGLI, and the premimum rates, though not as low as SGLI rates, are quite reasonable.

At the end of the 5-year VGLI term, VGLI participants are guaranteed the right to convert their VGLI policy to an individual private policy of life insurance written by a participating commercial company. Individuals converting to commerical insurance must pay the same premium rates as any other civilian of their age and sex, but no proof of insurability is required.

Upon request, the Office of Servicemen's Group Life Insurance, 212 Washington Street, Newark, New Jersey 07102, will furnish an insured eligible to convert VGLI to an individual policy of life insurance a list of companies in which the conversion may be made. Selection of a particular company from this list is left to the insured. An individual policy may not restrict benefits or require an additional premium if the insured engages in military service.

Soldiers who elected not to be insured under SGLI may acquire group insurance coverage by making written application, submitting proof of good health, and complying with any other terms and conditions prescribed by the Administrator. This same procedure is required of those who elected to be insured for less than maximum coverage and who later want to increase their coverage to a higher amount.

B. HEALTH INSURANCE.

Soldiers normally have less reason to be concerned with commercial health insurance than members of the general public because of the medical services available to them and the benefits available to their dependents under the Dependent's Medical Care Program and the Civilian Health and Medical Program of the Uniform Services (CHAMPUS). In certain circumstances, however, it may be appropriate to continue a health insurance policy in force for family members when the soldier has entered upon active duty for only a limited period. Another reason would be for dental coverage. Family member entitlements to dental care at an active duty dental clinic are generally limited to emergency or "extraordinary" care, and CHAMPUS will pay dental costs only under similar circumstances.

Many commerical policies now include a provision permitting insureds who enter military service to suspend their protection for the duration of active duty, while retaining full coverage for other persons insured by the policy. A reduction in premium is granted for the period the suspension is in effect. The policy should be examined to determine whether or not this privilege is available and what restrictions, if any, may be imposed. It is important to remember that neither the suspension of coverage, nor the resulting reduction in premium, is automatic.

C. PROPERTY AND CASUALTY INSURANCE.

1. Motor Vehicles. The desirability of obtaining collision insurance and other coverages designed to reimburse an owner for loss or damages to his own vehicle is normally left to the discretion of the individual. Such coverage almost always will be required by the lending institution if an automobile is financed. Policies obtained at the time financing is arranged should be examined carefully to be certain that they include liability coverage in addition to the collison coverage required by the lender.

All military and civilian personnel must have liability insurance which meets the requirements of AR 210-7, AR 190-5 or applicable state law in order to secure and retain driving privileges on Army installations within the United States. Policies must meet the basic requirements of the state where the installation is located and must meet or exceed the minimum limits prescribed in that state's financial responsibility law. Policies must also provide both bodily injury and property damage liability coverage for all drivers authorized by the named insured to operate the vehicle.

Overseas commanders are guided by AR 210-7 but may prescribe such controls as are appropriate to the local situation. Persons who plan to use

an automobile outside the continental United States should examine their insurance coverage carefully prior to departure. Policies issued by domestic insurers frequently contain geographic limitations and may not apply to operation of the vehicle in locations outside the United States and Canada. Such coverage can nevertheless be obtained from many US and foreign companies.

2. Real Estate.

a. General. Soldiers who own real estate undoubtedly will want to maintain at least fire and extended coverage on any buildings located on the property. "Homeowner" policies are available in most locations within the United States for property which the owner occupies as a residence. The coverage provided by these policies is considerably broader than that offered in the typical fire insurance contract and includes personal liability, medical expense, and "off-premises" protection in addition to insurance on buildings and contents. In many cases the broader protection will more than justify the slightly higher premium charge.

"Deductible" features are becoming increasingly common in the property insurance field as a means of limiting the company's obligation to pay small claims. Individuals who want to avoid the operation of "deductible" clauses should ask their insurance agent about the possibility of paying a higher premium in order to obtain "first dollar" coverage.

3. Personal Property.

b. Mortgage Insurance for Soldiers. Another program of benefit to soldiers are provisions within the National Housing Act which helps soldiers purchase housing for themselves and their families. These provisions have been implemented in Army Regulation 608-8, Mortgage Insurance for Service Members.[10] Under this program, the Army will pay mortgage insurance payments for qualifying soldiers. the major limitatin is that the loan must have been endorsed by the U.S. Department of Housing and Urban Development on a Certificate of Eligibility issued before April 1, 1980. Soldiers may be entitled to reimbursement under the Military Personnel Claims Act for loss, damage, or destruction of their personal property under circumstances held to be "incident to service."[9] This should not be regarded as a complete substitute for adequate commercial insurance even for persons living in such quarters. Payment under claims regulations is limited to the reasonable cost of replacement items and may not exceed $25,000. Consequently, the Military Personnel Claims Act may not fully compensate the owner for property having unusual value—such as heirlooms or antiques, and privatge insurance is imperative. This is so not only because of the overall $25,000 limit, but also because the reimbursement tables place limits on the amount which may be paid per item. For example, a private automobile may be worth in excess of $1,500 (and probably is), but the maximum amount which the Army will pay is $1,500.

1. 50 U.S.C. App. §§ 540-548 (1982).

2. 50 U.S.C. App. § 541 (1982).

3. 50 U.S.C. App. § 540(a) (1982).

4. Id.

5. 38 C.F.R. Part 7.26(d) (1978).

6. 50 U.S.C. § 546; 38 C.F.R. Part 7.30 (1978).

7. The SGLI program is governed by statute (38 U.S.C. §§ 765 to 779) and by Army Regulation. See, Dep't of Army Regulation 608-2, Government Life Insurance (15 June 1982).

8. See, e.g., Ridgeway v. Ridgeway, 454 U.S. 46 (1981).

9. Dep't of Army Regulation 27-20, Claims (18 September 1970 w/ch 18).

10. Dep't of Army Regulation 608-8, Mortgage Insurance For Service Members (18 September 1974 UPDATE).

CHAPTER 6

AUTOMOBILES[1]

A. REGISTRATION

A soldier who has complied with the motor vehicle registration requirements of his or her state of domicile is not required to register a private automobile in the state where that member is stationed pursuant to military orders.[2] However, this is not applicable to spouses. Care must be exercised therefore in determining the local requirements for registration of a vehicle owned jointly by the soldier and a spouse. In such a situation, a state could require that the spouse comply with its registration requirement even though the jointly owned car is registered in the soldier's state of domicile.

Where the vehicle is not registered in the state of domicile, the state of temporary residence may legally require registration and refuse to recognize an out-of-state registration. Selection of state registration should be carefully considered, taking into account relative license fees, sales and excise taxes, effect of personal property tax, driver's license, inspection, and other facts. Each case must be considered on an individual basis.

B. COUNTY OR CITY LICENSE PLATES

Some states, in the exercise of their police power, require the purchase of county or city license plates or stickers. The soldier whose automobile is registered in his domiciliary state may be issued the plates/stickers free, or in some instances, be assessed a nominal fee to cover the costs. The nominal fee to cover costs is not the payment referred to in the following paragraph.

The requirement of payment by non-domiciliaries for the use and operation of a vehicle within a city or county is considered precluded by Section 514 of the Soldiers' and Sailors' Civil Relief Act,[3] so long as the servicemember has fully complied with registration requirements in his or her domicile.[4]

C. DRIVER'S LICENSE OR PERMITS

Most states permit a nonresident soldier stationed in the state pursuant to military orders to use his or her home state driver's license if the home state vehicle registration is retained. A few states will recognize the non-resident soldier's home state driver's license or an out-of-state driver's license, regardless of the state where the vehicle is registered. Spouses of service personnel are not necessarily accorded the same treatment. In many states spouses must comply with the state's driver licensing requirement. Local laws should be reviewed to determine the requirements to be met by military dependents.

Most states will require, before issuance of a driver's license, that the applicant surrender any other state's operator's permit that the applicant may have in his possession. The surrendered license will be returned to the issuing state with the appropriate information and it is within the discretion of the issuing state as to whether the license will be returned to the servicemember.

An increasing number of states require that a photograph appear on the face of the license.

D. INSPECTION

States, as part of their police power, may require inspection of the motor vehicles of their residents. This applies to vehicles of soldiers stationed in other than their state of domicile even where their automobiles are registered in their state of domicile, because they are considered residents for this purpose.

Where the state requires inspection, but exempts vehicles of servicemembers registered in their domiciliary state, it is still advisable to recommend that they have their automobile inspected as an added safety measure. Reference should be made to the motor vehicle laws of the state where the military installation is located.

E. AUTOMOBILE FINANCING

1. Service or Carrying Charges. These charges might appropriately be described as a cost of installment credit. They are also known as finance charges. By the great weight of state legal authority these charges are not considered as interest, and may be appropriately charged in addition to normal interest.

2. Payment. Most states permit a borrower to prepay any amount of a loan at any time. Some states permit prepayment of full installments on any installment date. Where state law is silent on prepayment the borrower should seek inclusion of a prepayment clause in the contract before signing. Generally, a borrower who repays the loan in full is entitled to a refund of the unearned interest and charges. Some states permit refunds for partial payments; others do not. In prepayment loan cases, the formula or table used to compute the portion to be rebated may vary and is properly a subject of negotiation at the time the borrower-purchaser enters into the contract.

3. Overseas Shipment of Financed Automobiles. Certain state laws impose criminal and civil penalties for removing a motor vehicle on which a lien exists from such state without the lienor's consent. In many instances, the lienor will not grant such permission thus forcing the servicemember to pay off the loan, refinance the automobile, or leave the automobile behind in the United States. Those companies allowing overseas movement of the vehicle outside the United States often require a substantial cash payment as insurance against the loss of their security interest. The DOD Standards of Fairness, published as an Appendix to both AR 210-7 and AR 600-15,

permit a soldier to remove collateral such as an automobile from the jurisdiction of the creditor simply on notice to the creditor. Lenders who want to do business on military installation or receive official military assistance in resolving indebtedness complaints are required to comply with the DOD standards of fairness.

4. Refinancing. Individuals who desire to refinance should be cautioned that refinancing will involve new carrying charges and that an additional cash payment is usually demanded by the company accepting the vehicle for refinancing. It is advisable where possible to borrow money from a bank or credit union, using the car as security, to pay off the old loan.

5. Deficiency Judgments. In cases of default under conditional sales installment contracts, or mortgages, the creditor is entitled to an election of remedies. The election is generally not satisfied until the obligation is paid or satisfied. Thus, the conditional vendor may repossess the chattel (automobile), sell the same, usually at auction, and apply the proceeds of the sale, less expenses, to the debt. If the net auction price is insufficient to satisfy the debt, as it generally is, the creditor in some states may go into court and apply for a deficiency judgment for the balance. Other states hold that the conditional vendor is precluded from any further action in satisfaction of the balance. See the Uniform Credit Code for its provisions relating to these judgments.

F. MOTOR VEHICLE LIABILITY INSURANCE

All military personnel should be counseled regarding obtaining the minimum motor vehicle liability insurance. Minimum motor vehicle liability as defined in AR 210-7 means bodily injury and property damage liability insurance issued by an accredited insurer, "in policy amounts not lower than the minimum limits prescribed in the financial responsibility or compulsory law of the state in which the installation is located." Commanders will cooperate with local and state officials to obtain assigned risk insurance for military personnel requiring it, and will also conduct driver training programs.

Army personnel are required to maintain automobile liability insurance pursuant to AR 190-5 in return for the privilege of driving on military installations. Although there are restrictions on solicitation for the sale of automobile insurance on Army installation, they are not as stringent as for the sale of life insurance. This in keeping with the policy of encouraging military personnel to maintain adequate automobile insurance coverage.[10]

A handy reference on the automobile license and registration laws of all 50 states is Digest of Motor Laws, published annually by American Automobile Association, 8111 Gatehouse Road, Falls Church, Va 22047 (703) 222-6541.

G. REFERENCES.

Soldiers often encounter problems with used cars. While remedies are available under the Uniform Commercial Code (see pp. 6-13 to 6-15), these are limited and the dollar values involved and the work required, it is often difficult for a client to find a lawyer who will take the case, unless substantial legal fees are paid up front. The FTC in 1984 issued a trade regulation rule governing used cars and a violation of it can be the basis of a complaint for an unfair and deceptive practice lodged with the regional FTC office. The rules and the forms required to be provided follow. Leal assistance attorneys may also refer complaints against used car dealers to the Armed Forces Disciplinary Control Board (see Chapter 4) and the local state attorney general consumer affairs representative.

1. For automobile requirements, see Dep't of Army Regulation 210-7, Commercial Solicitation on Army Installations (15 April 1982), para. 3-11 to 3-14 and Dep't of Army Regulation 190-5, Motor Vehicle Traffic Supervision (1 August 1973) w/Ch2 and IO7 (7 April 1986), para. 3-3a(3) of IO5 (8 February 1985).

2. 50 U.S.C. App. § 574 (1982).

3. Codified at 50 U.S.C. App. § 574 (1982).

4. See California v. Buzard, 382 U.S. 386 (1966).

FTC USED MOTOR VEHICLE TRADE REGULATION RULE

(49 Fed. Reg. 45725 (Nov. 19, 1984), to be codified at 16 C.F.R. Part 455)

PART 455—USED MOTOR VEHICLE TRADE REGULATION RULE

Sec

455.1 General duties of a used vehicle dealer; definitions.
455.2 Consumer sales—window form.
455.3 Window form
455.4 Contrary statements
455.5 Spanish language sales
455.6 State exemptions.
455.7 Severability

Authority: 88 Stat. 2189, 15 U.S.C. 2309; 38 Stat. 717, as amended 15 U.S.C. 41 et seq.

§ 455.1 General duties of a used vehicle dealer; definitions.

(a) It is a deceptive act or practice for any used vehicle dealer, when that dealer sells or offers for sale a used vehicle in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act:

(1) To misrepresent the mechanical condition of a used vehicle;

(2) To misrepresent the terms of any warranty offered in connection with the sale of a used vehicle; and

(3) To represent that a used vehicle is sold with a warranty when the vehicle is sold without any warranty.

(b) It is an unfair act or practice for any used vehicle dealer, when that dealer sells or offers for sale a used vehicle *in or affecting commerce* as "commerce" is defined in the Federal Trade Commission Act:

(1) To fail to disclose, prior to sale, that a used vehicle is sold without any warranty; and

(2) To fail to make available, prior to sale, the terms of any written warranty offered in connection with the sale of a used vehicle.

(c) The Commission has adopted this Rule in order to prevent the unfair and deceptive acts or practices defined in paragraphs (a) and (b). It is a violation of this Rule for any used vehicle dealer to fail to comply with the requirements set forth in §§ 455.2 through 455.5 of this part. If a used vehicle dealer complies with the requirements of §§ 455.2 through 455.5 of this part, the dealer does not violate this Rule. (d) The following definitions shall apply for purposes of this part:

(1) "Vehicle" means any motorized vehicle, other than a motorcycle, with a gross vehicle weight rating (GVWR) of less than 8500 lbs., a curb weight of less than 6,000 lbs., and a frontal area of less than 46 sq. ft.

(2) "Used vehicle" means any vehicle driven more than the limited use necessary in moving or road testing a new vehicle prior to delivery to a consumer, but does not include any vehicle sold only for scrap or parts (title documents surrendered to the state and a salvage certificate issued).

(3) "Dealer" means any person or business which sells or offers for sale a used vehicle after selling or offering for sale five (5) or more used vehicles in the previous twelve months, but does not include a bank or financial institution, a business selling a used vehicle to an employee of that business, or a lessor selling a leased vehicle by or to that vehicle's lessee or to an employee of the lessee.

(4) "Consumer" means any person who is not a used vehicle dealer.

(5) "Warranty" means any undertaking in writing, in connection with the sale by a dealer of a used vehicle, to refund, repair, replace, maintain or take other action with respect to such used vehicle and provided at no extra charge beyond the price of the used vehicle.

(6) "Implied warranty" means an implied warranty arising under state law (as modified by the Magnuson-Moss Act) in connection with the sale by a dealer of a used vehicle.

(7) "Service contract" means a contract in writing for any period of time or any specific mileage to refund, repair, replace, or maintain a used vehicle and provided at an extra charge beyond the price of the used vehicle, provided that such contract is not regulated in your state as the business of insurance.

(8) "You" means any dealer, or any agent or employee of a dealer, except where the term appears on the window form required by § 455.2(a).

§ 455.2 Consumer sales—window form.

(a) *General duty.* Before you offer a used vehicle for sale to a consumer, you must prepare, fill in as applicable and display on that vehicle a "Buyers Guide" as required by this Rule.

(1) Use a side window to display the form so both sides of the form can be read, with the title "Buyers Guide" facing to the outside. You may remove a form temporarily from the window during any test drive, but you must return it as soon as the test drive is over.

(2) The capitalization, punctuation and wording of all items, headings, and text on the form must be exactly as required by this Rule. The entire form must be printed in 100% black ink on a white stock no smaller than 11 inches high by 7¼ inches wide in the type styles, sizes and format indicated. When filling out the form, follow the directions in (b) through (e) of this section and § 455.4 of this part.

(b) *Warranties*—(1) *No Implied Warranty—"As Is"/No Warranty.* (i) If you offer the vehicle without any implied warranty, *i.e.*, "as is," mark the box provided. If you offer the vehicle with implied warranties only, substitute the disclosure specified below, and mark the box provided. If you first offer the vehicle "as is" or with implied warranties only but then sell it with a warranty, cross out the "As Is—No Warranty" or "Implied Warranties Only" disclosure, and fill in the warranty terms in accordance with paragraph (b)(2) of this section.

(ii) If your state law limits or prohibits "as is" sales of vehicles, that state law overrides this part and this rule does not give you the right to sell "as is." In such states, the heading "As Is—No Warranty" and the paragraph immediately accompanying that phrase must be deleted from the form, and the following heading and paragraph must be substituted. If you sell vehicles in states that permit "as is" sales, but you choose to offer implied warranties only, you must also use the following disclosure instead of "As Is—No Warranty":[1]

Implied Warranties Only

This means that the dealer does not make any specific promises to fix things that need repair when you buy the vehicle or after the

[1] *See* § 455.5 n. 4 for the Spanish version of this disclosure

time of sale. But, state law "implied warranties" may give you some rights to have the dealer take care of serious problems that were not apparent when you bought the vehicle.

(2) *Full/Limited Warranty.* If you offer the vehicle with a warranty, briefly describe the warranty terms in the space provided. This description must include the following warranty information:

(i) Whether the warranty offered is "Full" or "Limited."[2] Mark the box next to the appropriate designation.

(ii) Which of the specific systems are covered (for example, "engine, transmission, diffential"). You cannot use shorthand, such as "drive train" or "power train" for covered systems.

(iii) The duration (for example, "30 days or 1,000 miles, whichever occurs first").

(iv) The percentage of the repair cost paid by you (for example, "The dealer will pay 100% of the labor and 100% of the parts."

(v) *If the vehicle is still under the manufacturer's original warranty,* you may add the following paragraph below the "Full/Limited Warranty" disclosure: MANUFACTURER'S WARRANTY STILL APPLIES. The manufacturer's original warranty has not expired on the vehicle. Consult the manufacturer's warranty booklet for details as to warranty coverage, service location, etc. If, following negotiations, you and the buyer agree to changes in the warranty coverage, mark the changes on the form, as appropriate. If you first offer the vehicle with a warranty, but then sell it without one, cross out the offered warranty and mark either the "As Is—No Warranty" box or the "Implied Warranties Only" box, as appropriate.

(3) *Service contracts.* If you make a service contract (other than a contract that is regulated in your state as the business of insurance) available on the vehicle, you must add the following heading and paragraph below the "Full/Limited Warranty" disclosure and mark the box provided.[3]

☐ Service Contract

A service contract is available at an extra charge on this vehicle. If you buy a service contract within 90 days of the time of sale, state law "implied warranties" may give you additional rights.

(c) *Name and Address.* Put the name and address of your dealership in the space provided. If you do not have a dealership, use the name and address of your place of business (for example, your service station) or your own name and home address.

(d) *Make, Model, Model Year, VIN.* Put the vehicle's name (for example, "Chevrolet"), model (for example, "Vega"), model year, and Vehicle Identification Number (VIN) in the spaces provided. You may write the dealer stock number in the space provided or you may leave this space blank.

(e) *Complaints.* In the space provided, put the name and telephone number of the person who should be contacted if any complaints arise after sale.

§ 455.3 Window form.

(a) *Form given to buyer.* Give the buyer of a used vehicle sold by you the window form displayed under § 455.2 containing all of the disclosures required by the Rule and reflecting the warranty coverage agreed upon. If you prefer, you may give the buyer a copy of the original, so long as that copy accurately reflects all of the disclosures required by the Rule and the warranty coverage agreed upon.

(b) *Incorporated into contract.* The information on the final version of the window form is incorporated into the contract of sale for each used vehicle you sell to a consumer. Information on the window form overrides any contrary provisions in the contract of sale. To inform the consumer of these facts, include the following language conspicuously in each consumer contract of sale:

The information you see on the window form for this vehicle is part of this contract. Information on the window form overrides any contrary provisions in the contract of sale.

§ 455.4 Contrary statements.

You may not make any statements, oral or written, or take other actions which alter or contradict the disclosures required by §§ 455.2 and 455.3. You may negotiate over warranty coverage, as provided in § 455.2(b) of this part, as long as the final warranty terms are identified in the contract of sale and summarized on the copy of the window form you give to the buyer.

§ 455.5 Spanish language sales.

If you conduct a sale in Spanish, the window form required by § 455.2 and the contract disclosures required by § 455.3 must be in that language. You may display on a vehicle both an English language window form and a Spanish language translation of that form. Use the following translation and layout for Spanish language sales:[4]

§ 455.6 State exemptions.

(a) If, upon application to the Commission by an appropriate state agency, the Commission determines, that—

(1) There is a state requirement in effect which applies to any transaction to which this rule applies; and

(2) That state requirement affords an overall level of protection to consumers which is as great as, or greater than, the protection afforded by this Rule; then the Commission's Rule will not be in effect in that state to the extent specified by the Commission in its determination, for as long as the State administers and enforces effectively the state requirement.

(b) Applications for exemption under Subsection (a) should be directed to the Secretary of the Commission. When appropriate, proceedings will be commenced in order to make a determination described in paragraph (a) of this section, and will be conducted in accordance with Subpart C of Part 1 of the Commission's Rules of Practice.

§ 455.7 Severability.

The provisions of this part are separate and severable from one another. If any provision is determined to be invalid, it is the Commission's intention that the remaining provisions shall continue in effect.

By direction of the Commission.
Commissioner Bailey dissenting.

Dated: November 9, 1984.

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[2] A "Full" warranty is defined by the Federal Minimum Standards for Warranty set forth in 104 of the Magnuson-Moss Warranty Act, 15 U.S.C. 2304 (1975). *The Magnuson-Moss Warranty Act does not apply to vehicles manufactured before July 4, 1975.* Therefore, if you choose not to designate "Full" or "Limited" for such cars, cross out both designations, leaving only "Warranty."

[3] Use the following language for the "Implied Warranties Only" disclosure when required by § 455.2(b)(1):

Garantías implícitas solamente

Este término significa que el vendedor no hace promesas específicas de arreglar lo que requiera reparación cuando usted compre el vehículo o después del momento de la venta. Pero, la "garantías implícitas" de la ley estatal pueden darle a usted algunos derechos y hacer que el vendedor resuelva problemas graves que no aparecían cuando usted compró el vehículo.

Use the following language for the "Service Contract" disclosure required by § 455.2(b)(3):

CONTRATO DE SERVICIO. Este vehículo tiene disponible un contrato de servicio a un precio adicional. Pida los detalles en cuanto a cobertura, deducible, precio y exclusiones. Si adquiere usted un contrato de servicio dentro de los 90 días del momento de la venta, las "garantías implícitas" de acuerdo a la ley del estado pueden conceder derechos adicionales.

BUYERS GUIDE

28 pt Trumvirate Bold caps

2 pt Rule

IMPORTANT: Spoken promises are difficult to enforce. Ask the dealer to put all promises in writing. Keep this form.

10/12 Trumvirate Bold c & lc flush left ragged right maximum line 42 picas

VEHICLE MAKE _____ MODEL _____ YEAR _____ VIN NUMBER _____

10 pt Baseline Rule
6 pt Trumvirate Bold caps

DEALER STOCK NUMBER (Optional) _____

10 pt Baseline Rule
6 pt Trumvirate Bold caps

WARRANTIES FOR THIS VEHICLE:

10 pt Trumvirate Bold caps

2 pt Rule

☐ AS IS - NO WARRANTY

64 pt Box
42 pt Trumvirate Bold caps

YOU WILL PAY ALL COSTS FOR ANY REPAIRS. The dealer assumes no responsibility for any repairs regardless of any oral statements about the vehicle.

10/10 Trumvirate Bold c & lc flush left ragged right maximum line 42 picas

1 pt Rule

☐ WARRANTY

64 pt Box
42 pt Trumvirate Bold caps

☐ FULL ☐ LIMITED WARRANTY. The dealer will pay _____% of the labor and _____% of the parts for the covered systems that fail during the warranty period. Ask the dealer for a copy of the warranty document for a full explanation of warranty coverage, exclusions, and the dealer's repair obligations. Under state law, "implied warranties" may give you even more rights.

10/10 Trumvirate Bold c & lc 41½ picas indent on 2nd line

SYSTEMS COVERED:	DURATION:

10 pt Trumvirate Bold caps

10 pt Baseline Rule

☐ SERVICE CONTRACT. A service contract is available at an extra charge on this vehicle. Ask for details as to coverage, deductible, price, and exclusions. If you buy a service contract within 90 days of the time of sale, state law "implied warranties" may give you additional rights.

10/10 Trumvirate Bold c & lc maximum line 42 picas

PRE PURCHASE INSPECTION: ASK THE DEALER IF YOU MAY HAVE THIS VEHICLE INSPECTED BY YOUR MECHANIC EITHER ON OR OFF THE LOT.

10/10 Trumvirate Bold caps flush left ragged right maximum line 42 picas

SEE THE BACK OF THIS FORM for important additional information, including a list of some major defects that may occur in used motor vehicles.

10/10 Trumvirate Bold c & lc flush left ragged right maximum line 42 picas

12 pt Trumvirate Bold lc
flush left ragged right
maximum line 42 picas

2 pt Rule

8/9 Trumvirate Bold c & lc
flush left ragged right
maximum line 20 picas
1 em indent on 2nd line

Below is a list of some major defects that may occur in used motor vehicles.

Frame & Body
- Frame-cracks, corrective welds, or rusted through
- Dogtracks—bent or twisted frame

Engine
- Oil leakage excluding normal seepage
- Cracked block or head
- Belts missing or inoperable
- Knocks or misses related to camshaft lifters and push rods
- Abnormal exhaust discharge

Transmission & Drive Shaft
- Improper fluid level or leakage excluding normal seepage
- Cracked or damaged case which is visible
- Abnormal noise or vibration caused by faulty transmission or drive shaft
- Improper shifting or functioning in any gear
- Manual clutch slips or chatters

Differential
- Improper fluid level or leakage excluding normal seepage
- Cracked or damaged housing which is visible
- Abnormal noise or vibration caused by faulty differential

Cooling System
- Leakage including radiator
- Improperly functioning water pump

Electrical System
- Battery leakage
- Improperly functioning alternator, generator, battery, or starter

Fuel System
- Visible leakage

Inoperable Accessories
- Gauges or warning devices
- Air conditioner
- Heater & Defroster

Brake System
- Failure warning light broken
- Pedal not firm under pressure (DOT spec.)
- Not enough pedal reserve (DOT spec.)
- Does not stop vehicle in straight (DOT spec.)
- Hoses damaged
- Drum or rotor too thin (Mfgr. Specs)
- Lining or pad thickness less than 1/32 inch
- Power unit not operating or leaking
- Structural or mechanical parts damaged

Steering System
- Too much free play at steering wheel (DOT specs.)
- Free play in linkage more than 1/4 inch
- Steering gear binds or jams
- Front wheels aligned improperly (DOT specs.)
- Power unit belts cracked or slipping
- Power unit fluid level improper

Suspension System
- Ball joint seals damaged
- Structural parts bent or damaged
- Stabilizer bar disconnected
- Spring broken
- Shock absorber mounting loose
- Rubber bushings damaged or missing
- Radius rod damaged or missing
- Shock absorber leaking or functioning improperly

Tires
- Tread depth less than 2/32 inch
- Sizes mismatched
- Visible damage

Wheels
- Visible cracks, damage or repairs
- Mounting bolts loose or missing

Exhaust System
- Leakage

2 pt Rule

DEALER

ADDRESS

SEE FOR COMPLAINTS

10 pt Baseline Rule
8 pt Trumvirate Bold caps

2 pt Rule

IMPORTANT: The information on this form is part of any contract to buy this vehicle. Removal of this label before consumer purchase (except for purpose of test-driving) is a violation of federal law (16 C.F.R. 455).

10/12 Trumvirate Bold c & lc
maximum line 42 picas

GUIA DEL COMPRADOR

28 pt Thumvirate Bold caps

2 pt Rule

IMPORTANTE: Las promeses verbales son difíciles de hacer cumplir. Solicite al vendedor que ponga todas las promeses por escrito. Conserve este formulario.

10/12 Thumvirate Bold c & lc flush left ragged right maximum line 42 picas

MARCA DEL VEHICULO _____ MODELO _____ AÑO _____ NUMERO DE IDENTIFICACION _____

10 pt Baseline Rule

6 pt Thumvirate Bold caps

NUMERO DE ABASTO DEL DISTRIBUIDOR (Opcional) _____

10 pt Baseline Rule

6 pt Thumvirate Bold caps

GARANTIAS PARA ESTE VEHICULO:

10 pt Thumvirate Bold caps

2 pt Rule

☐ COMO ESTA - SIN GARANTIA

36 pt Box

32 pt Thumvirate Bold caps

USTED PAGARA TODOS LOS GASTOS DE CUALQUIER REPARACION QUE SEA NECESARIA. El vendedor no asume ninguna responsabilidad por cualquier las reparaciones, sean cuales sean las declaraciones verbales que haya hecho acerca del vehículo.

10/10 Thumvirate Bold c & lc maximum line 42 picas

1 pt Rule

☐ GARANTIA

36 pt Box

32 pt Thumvirate Bold caps

☐ **COMPLETA** ☐ **LIMITADA. El vendedor pagará _____% de la mano de obra y _____% de los repuestos los sistemas cubiertos que dejen de funcionar durante el periodo de garantía. Pida al vendedo una copia del documento de garantía donde se explican detalladamente la cobertura de le garantía, exclusiones y las obligaciones que tiene el vendedor de realizar reparaciones. Conforme a la ley estatal, las "garantías implícitas" pueden darle a usted incluso más derechos.**

10/10 Thumvirate Bold c & lc 6½ picas indent on 2nd line

SISTEMAS CUBIERTOS POR LA GARANTIA: **DURACION:**

10 pt Thumvirate Bold caps

10 pt Baseline Rule

_____ _____

_____ _____

_____ _____

_____ _____

_____ _____

_____ _____

_____ _____

_____ _____

_____ _____

_____ _____

CONTRATO DE SERVICIO. Este vehículo tiene disponible un contrato de servicio a un precio adicional. Pida los detalles en cuanto a cobertura, deducible, precio y exclusiones. Si adquiere usted un contrato de servicio dentro de los 90 días del momento de la venta, las 'garantías implícitas' de acuerdo a la ley del estado pueden concederle derechos adicionales.

10/10 Thumvirate Bold c & lc maximum line 42 picas

INSPECCION PREVIA A LA COMPRA: PREGUNTE AL VENDEDOR SI PUEDE USTED TRAER UN MECANICO PARA QUE INSPECCIONE EL AUTOMOVIL O LLEVAR EL AUTOMOVIL PARA QUE ESTE LO INSPECCIONE EN SU TALLER.

10/10 Thumvirate Bold caps maximum line 42 picas

VEASE EL DORSE DE ESTE FORMULARIO donde se proporciona información adicional importante, incluyendo una lista de algunos de los principales defectos que pueden ocurrir en vehículos usados.

10/10 Thumvirate Bold c & lc flush left ragged right maximum line 42 picas

A continuación presentamos una lista de algunos de los principales defectos que pueden ocurrir en vehículos usados.

12 pt Triumvirate Bold lc
flush left ragged right
maximum line 42 picas

2 pt Rule

Chasis y carrocería
- Chasis grietas soldaduras correctivas u oxidado
- Chasis doblado o torcido

Motor
- Fuga de aceite excluyendo el escape normal
- Bloque o tapa de recamara agrietados
- Correas que faltan o no funcionan
- Falla o pistonec
- Emision excesiva de humo por el sistema de escape

Transmisión y eje de cardan
- Nivel de liquido inadecuado o fuga excluyendo filtración normal
- Cubierta agrietada o dañada visible
- Vibración o ruido anormal ocasionado por una transmisión o eje de cardan defectuoso
- Cambio de marchas o funcionamiento inadecuado en cualquier marcha
- Embrague manual patina o vibra

Diferencial
- Nivel de liquido inadecuado o fuga excluyendo filtración normal
- Cubierta agrietada o dañada visible
- Ruido o vibración anormal ocasionado por diferencial defectuoso

Sistema de refrigeración
- Fuga incluido el radiador
- Bomba de agua defectuosa

Sistema electrico
- Fuga en las baterías
- Alternador generador batería o motor de arranque defectuosos

Sistema de combustible
- Escape visible de combustible

Accesorios avenados
- Indicadores o medidores del cuadro de instrumentos
- Acondicionador de aire
- Calefactor y descarchador

Sistema de frenos
- Luz de advertencia de falla dañada
- Pedal no firma bajo presión (Especif del Dpto de Transp.)
- Juego insuficiente en el pedal (Especif del Dpto de Transp.)
- No detiene el vehiculo en linea recta (Especif del Dpto de Transp.)
- Conductos dañados
- Tambor o disco muy delgados (Especif del fabricante)
- Grosor de las bandas de los frenos menor de 1/32 de pulgada
- Sistema de servofreno dañado o con escape
- Partes estructurales o mecánicas danadas

Sistema de dirección
- Juego excesivo en el volante (Especif. Dpto. de Transp.)
- Juego en el varillaje en exceso de 1M pulgada
- Engranaje del volante de dirección se agarrota
- Ruedas delanteras mal alineadas (Especif. del Dpto. de Transp.)
- Correas del sistema de servodirección agrietadas o flojas
- Nivel del liquido del sistema de servodirección inadecuado

Sistema de suspensión
- Sellos de conexión de rodamientos defectuosos
- Piezas estructurales dobladas o dañadas
- Barra de estabilización desconectada
- Resorte roto
- Montura del amortiguador floja
- Bujes de goma dañadas o ausentes
- Estabilizador para curvas dañadas o ausente
- Amortiguador tiene fuga o funciona defectuosamente

Llantas
- Profundidad de la banda de rodamiento menor de 2/32 de pulgada
- Diferentes tamanos de llanta
- Danos visibles

Ruedas
- Grietas visibles danos o reparaciones
- Pernos de montaje sueltos o ausentes

Sistema de Escape
- Fuga

8/9 Triumvirate Bold c & lc
flush left ragged right
maximum line 20 picas
1 em indent on 2nd line

2 pt Rule

2 pt Rule

VENDEDOR

10 pt Baseline Rule

6 pt Triumvirate Bold caps

DIRECCION

VEASE PARA RECLAMACIONES

IMPORTANTE La informacion contenida en este formulario forma parte de todo contrato de compra de este vehiculo. Constituye una contravencion de la ley federal (16 C.F.R. 455) quitar este rotulo antes de la compra del vehiculo por el consumidor (salvo para conducir el automovil en calidad de prueba).

2 pt Rule

10/12 Triumvirate Bold c & lc
maximum line 42 picas

STATE LEMON LAWS

I. INTRODUCTION

In 1986, new car sales are expected to increase to 10.7 million units.[1] Americans spent over $88.2 billion on the purchase of new and used automobiles in 1983.[2] Except for a house, the purchase of a car is not only a necessity, but the most important major investment that will be made by most consumers. For many of our soldiers and family members, it may well be the largest expenditure of personal income and savings. Certainly, the automobile has become an expensive status symbol which reflects each consumer's unique character and position in society.[3]

Consumers will reasonably expect some minor and trivial problems to arise before a car is broken in.[4] During 1983, automobile owners spent $38.8 billion in repairs and maintenance costs.[5] But when a substantial problem with the vehicle develops and repeated efforts by the dealer to repair do not produce satisfactory results, the consumer becomes aware that he may be an owner of a "lemon".[6]

No product has been the subject of more litigation than automobiles.[7] While the consumer advocacy movements of the 1970's induced both Congress and state legislatures to enact numerous consumer protection statutes,[8] not until three years ago were laws enacted by several states to protect the consumers who had purchased lemons. Given the importance of automobiles to soldier consumers, legal assistance practitioners should be familiar with the remedies available under applicable state Uniform Commercial Codes (UCC), and the federal Magnuson-Moss Warranty Act.[9] To be fully effective, however, the legal assistance practitioner should also be familiar with the potential benefits existing under state lemon laws.

This article will provide an overview of the major provisions commonly found in state lemon laws. Available remedies will be explored and analyzed under both the traditional UCC approach and the lemon law disputes process. As a caveat, this article is not a substitute for a thorough review of the specific state lemon law applicable to a client's case. Following this article is a recitation of the statutory citations for each state's law. The central focus of this article will be a practical review of the prelitigation informal dispute settlement mechanisms incorporated into many of these lemon laws and the Magnuson-Moss Act.[10] These built-in informal arbitration mechanisms provide new fertile ground for legal assistance to clients who neither have the financial resources nor the time to litigate disputes in judicial forums. Arbitration under lemon laws

key process in which the client can most successfully receive redress without the cost and uncertainties of litigation. The legal assistance practitioner, when consulted, must be ready to provide effective advice in this critical area.

II. DEVELOPMENT OF LEMON LAWS

State lemon laws were created in part to remedy weaknesses which resulted from sole reliance on the Uniform Commercial Code and Magnuson-Moss Warranty Act.[11] Lemon laws find their impetus in the Magnuson-Moss Warranty Act, which requires refund or replacement when a consumer product is covered under a written, full warranty.[12]

Manufacturers of automobiles have easily circumvented this remedy by providing limited, rather than full warranties for their automobiles. Additionally, there is no requirement under the UCC for a manufacturer to include an express warranty requiring full refund or replacement of the entire automobile. In fact, the UCC gives the manufacturer or dealer the right to disclaim the implied warranties of merchantability and fitness for a particular purpose.[13] The cost of litigating a warranty case often exceeds the damages claimed. These costs in relation to possible returns resulted in discouraging consumers and lawyers from bringing suits.[14] Both the UCC and the Magnuson-Moss Warranty Act failed to define key terms, thus creating uncertainty of the appropriate recourses the consumer should pursue. Lemon laws were enacted to fill these gaps and make consumer remedies more certain.[15]

In 1982, Connecticut began this legislative trend by enacting the first new automobile repair or replace state lemon law.[16] Following Connecticut's lead, within a few years many more states have enacted very similar lemon laws. With the recent passage of lemon laws in Kansas, Mississippi, Oklahoma, North Dakota, New Mexico and Utah, the total number of states with lemon laws has risen to 42.[17] As a universal characteristic, these state lemon laws appear as hybrid legislation. They merge the Uniform Commercial Code's concepts of revocation and warranties with some of the Magnuson-Moss Warranty Act's provision enhancing warranty protection and informal settlement mechanisims. Accordingly, in order to have a clear understanding of state lemon laws, the legal advisor must first have a working knowledge of applicable UCC provisions and the Magnuson-Moss Warranty Act.

A. Remedies for Lemon Owners Under the UCC

1. Revocation.

A buyer will normally not have a hint that he has purchased a lemon until after he has accepted delivery and driven the vehicle off the dealer's lot. Assuming acceptance has occurred, a buyer may, under section 2-608

of the Uniform Commercial Code, revoke acceptance of the car if a nonconformity substantially impairs its value to him. Section 2-608 revocation is only possible, however, if the defect was latent or could not be discovered before acceptance because of the dealer's conduct in inducing the acceptance, or, if the buyer was aware of the nonconformity, the buyer accepted the car on the assumption that the defect could reasonably be cured, and it has not.[18] Additionally, the buyer must revoke acceptance within a reasonable time after discovery of the nonconformity and before any substantial change in the condition of the vehicle has occurred. To be effective, the buyer must give the seller notice prior to revocation.[19]

A revocation, which is properly invoked, should legally permit the buyer the right to recover the purchase price and to be awarded incidental and consequential damages.[20]

In providing useful advice on whether to revoke, consider all the difficult judgments the practitioner must correctly make: Does the nonconformity substantially impair the value of the vehicle? Since its acceptance, has the vehicle undergone a substantial change? Will the lapse of time, mileage, wear and tear, result in a substantial change? Has more than a reasonable time passed since the discovery of the substantial impairment? Was the acceptance reasonably induced by the difficulty of discovery of the defects or by the seller's assurance. As to all these issues, the buyer has the burden of proving by a preponderance of the evidence that his conduct was reasonable.[21] Both the UCC and case law have failed to provide definitions or bright line standards to guide consumers and lawyers in determining the proper interpretation of a "substantial change" or a "substantial impairment." Nor does the UCC contain only express guidance on how long or how many chances a dealer must be given to cure the defect.[22]

The UCC and case law generally prohibit a buyer, upon revocation, from exercising conduct of ownership. Typically, he is requireed to hold the vehicle with reasonable care until the dealer removes or takes control ot it.[23] In cases of revocation of commercial goods, the buyer is expected to set its goods aside and take reasonable care of them until the seller can make arrangements to reclaim them. Applying this to a consumer automobile situation, arguably once revokation is invoked, the lemon should not be used by the buyer. This is just not a practical possibility for most consumers, and a strict interpretation of this rule can lead to unfortunate results for the consumer. The temptation of an idle vehicle in a one family car household may prove too great for a buyer or his family members. In Gasque v. Mooers Motor Car Co. Inc.,[24] the Supreme Court of Virginia held that revocation was ineffective when the buyer continued to use the defective vechicle and accumulated an additional 2,600 miles on it. The court went further and inferred that this additional useage was strong evidence that no substantial impairment of value had occurred and that the

buyer had failed to revoke his acceptance within a reasonable time.[25] The fact that the car had numerous defects and that the dealer had been given seven opportunities to repair these defects[26] matter not to the court. To avoid the pitfalls of Gasque, in a state which does not have a lemon law and relief is being sought under the UCC, the practitioner must stress to the client that the vehicle must not be used at all. Also, the prayer for relief must not only request revocation of the contract and return of the purchase price, the consumer must request damages. The Gasque court noted that the remedy of revocaction under the UCC lied solely against the "seller" of goods, not against a remote manufacturer.[27] Of little comfort to Ms. Gasque, approximately six weeks after the decision, Virginia passed a lemon law.[28] In a state with a lemon law, the attorney should make sure the law permits the dealer the right to deduct certain amounts for the consumer's continued reasonable use of the car. The attorney should argue that this provision abrogates the UCC problem highlighted in Gasque.

2. Breach of Warranty Under the UCC

A short review of the history of automobile warranties would reflect a standard pattern of promises that the manufacturer would repair any defective parts occurring within a specified period or prior to the accumulation of specified mileage. Often times, these impressive and lengthy pledges contain hidden disclaimers of all other expressed and implied warranties.[29] The passage of the UCC resulted in establishing uniform requirements for express and implied warranties and effective disclosure for disclaiming implied warranties.[30]

A consumer's right to a replacement or refund of the purchase price under Magnusson-Moss is substantially ineffective in a new car automobile case given that all manufacturers except American Motors Corporation offer only limited warranties. Further, all manufacturers limit express or implied warranties only to those contained in the contract.[31] Therefore, warranties that are limited or disclaim express and implied warranties serve more as sales tools inasmuch as they tend to give the owner a false confidence in the integrity and quality of the car, rather than a meaningful promise to refund or replace a lemon.

Although UCC remedies appear to have many disadvantages in litigating a lemon case, the legal assistance counsel should include UCC averments in his complaint. The consequential and incidental damages, to include the care, storage and custody of the car, rental costs of a substitute vehicle and legal costs and fees under the UCC, appear to be more liberal than under specific lemon laws.[32] Additionally, except for New York and Rhode Island, lemon laws only cover the sale of new cars.[33] The remedies available under the UCC would be applicable whether a dealer sold a new or a used lemon.[34]

B. Remdies Under Federal Law

1. The Magnuson-Moss Warranty Act

The Magnuson-Moss Warranty Act was enacted to end certain abuses in consumer product warranties. Among these abuses were inadequate disclosure and disclaimers within the warranties. Often the consumer learned of the warranty after consumation of the sale. The warranties that were offered did not provide assurances of warranty performance or overall product reliability.[36]

Under the Act, sellers who provide "full" written warranties are required to repair defects within a reasonable time or replace the produce or refund the purchase price if the defects are not remedied after a "reasonable number of attempts".[37] The Act prohibits the disclaimer or modification of any implied warranty by a seller who provides a written warranty.[38] But more importantly, the Act encourages manufacturers and consumers to settle disputes through informal disputes settlement mechanisms which meet the requirements of the Federal Trade Commission.[39] To ensure resolution through the informal dispute settlement process, the Act prevents the consumer from commencing a civil action until he has resorted to and remains unsatisfied with the informal settlement mechanism.[40] The Act also allows the admission of the informal settlement decision in any subsequent civil action.[41] These requirements for informal arbitration and the admissiability of the decision have generally been incorporated within state lemon laws.[42]

Again, automobile manufacturers are relieved of the Magnusson-Moss provisions for replacement or refund by offering "limited", rather than full, warranties.[43] Although limited warranties provide remedies, they warrant separate parts or components of the finished automobile and not the entire automobile itself. Therefore, as long as the manufacturer repairs and replaces defective parts within a reasonable time, the manufacturer has fulfilled its warranty obligation and at best, a consumer would be allowed to recover only the diminution in the value of the car caused by the defect.[44] Even if all automombile manufacturers offered a full warranty, Magnusson-Moss fails to define what constitutes a reasonable time or reasonable number of attempts to remedy the defect.[45]

As noted previously, by providing a limited warranty, Magnusson-Moss precludes the auto maker or dealer from disclaiming the implied Warranty of Merchantability.[46] Furthermore, under the Magnusson-Moss, the prevailing consumer would be entitled to damages and attorney's fees.[47] Therefore, unlike most state lemon laws, if the dealer provided any kind of a written warranty, the Act would provide a remedy in a used car transaction. Accordingly, despite some of the weaknesses identified in the Act, the legal assistance lawyer should investigate whether an informal arbitration hearing procedure, pursuant to Magnusson-Moss is available to resolve any disputes covered by a limited warranty.

2. GM-FTC Arbitration Agreement.

A lawyer must be vigilant to discover alternative remedies available to an injured customer. Occasionally, a client may seek assistance on a lemon which was purchased prior to the effective date of a recently passed state lemon law. However, there may be limited relief possible if the client's car is a General Motors (GM) product. On November 16, 1983, GM signed a consent decree with the Federal Trade Commission resulting in binding arbitration on GM for any unresolved complaints concerning the powertrain components.[48] These components consist of the engine and transmission.[49] GM vehicles with the following components are involved in the GM-FTC agreement:

1. THM 200 automatic transmissions beginning with 1976 models
2. Camshafts or lifters in 305 and 350 CID gas engines produced in plaints operated by Chevrolet since 1974
3. Fuel injection pumps or fuel injectors in 350 CID diesel engines produced in plants operated by Oldsmobile.[50]

Estimates indicate that of the 20 million cars built with these components, seven million are defective.[51] Under the agreement, consumers may invoke the arbitration system through November 21, 1991 regardless of how old the car may be.[52] Theoretically, a 27-year-old lemon could be the subject of binding arbitration.

In order to meet its obligation under the consent decree, GM has consented to the mediation and arbitration program administered by the Better Business Bureau (BBB)[53]. This program is in addition to the already existing voluntary mediation programs which GM and several other manufacturers have with the BBB.[54] The consent decree program is operated at no cost to the consumer and the decision is not binding on the consumer. The remedies provided the consumer include replacement of the vehicle or refund of the purchase price. Legal assistance attorneys should caution clients, however, not to expect large amounts of money if they prevail. The typical award ranges from several hundred to several thousand dollars.

III. LEMON LAW PROVISIONS

A. Common Provisions

Most lemon laws require a manufacturer to give a consumer a refund or replacement car if the same substantial defect in the consumer's vehicle cannot be repaired after three to four attempts or where a car has spent a cumulative total of 30 to 45 days in the repair shop for the same or a related defect, and the defect was brought to the dealer's or

manufacturer's attention during the first year of operation. These laws normally apply only to new vehicles.[55] In essence, they extend and supplement the warranties provided by new car manufacturers and dealers. Normally, the consumer must provide written notice of the defect to either or both the manufacturer and dealer during the statutory warranty period.[56]

Lemon statutory warranty periods are normally one year or 12,000 miles (two years or 18,000 miles in New York), whichever occurs first, after the date of delivery of the car to the consumer.[57] Under lemon laws, the manufacturer's warranty must often disclose the consumer's rights.[58] Refund remedies include the full purchase price, taxes, preparation fees and any other charges, offset by a reasonable allowance for the consumer's use of the vehicle. Attorney's fees are often included.[59] Common to most lemon laws is a requirement that if the manufacturer has an arbitration program which complies with Federal Trade Commission standards, the consumer must use it before court action under the lemon law can be commenced.[60]

B. Advantages and Disadvantages

Under lemon laws, the consumer may continue to operate the vehicle while the dispute process is being exhausted.[61] Unlike a UCC revocation, as highlighted by the Gasque case, the vehicle need not sit idle.

The consumer is provided certainty as to what constitutes a reasonable time within which the dealer must have "cured" any defects. But, more importantly, the remedy of refund or replacement applies to both full and limited warranties. Therefore, new car manufacturers are not allowed the out permitted under Magnusson-Moss of offering only a limited warranty.

A shortcoming of most lemon statutes is the incorporation of UCC language requiring substantial impairment before the consumer may exercise rights under the lemon law.[62] Accordingly, pre-lemon law UCC cases provide a major body of law which, depending on the jurisdiction, can restrict the interest and policy considerations of lemon law legislation. Additionally, some lemon laws contain short statute of limitations, authorizing civil suits normally within only six months of the expiration of the express warranty term or 18 months from the original delivery of the car, although notice to the dealer of the defect extends the warranty term as to that defect.[63]

Several lemon statutes limit coverage to only written warranties, thus excluding many of the oral guarantees and assurances given by a dealer. With the exception of a few states, lemon laws do not cover implied warranties.[64] Lemon statutes also may give the consumer a false expectation of timely resolution of any dispute. The legal assistance

practitioner must emphasize to the client that lemon legislation still requires that the manufacturer be given opportunities to cure the defects. The passage of months and even, possibly, years may occur before the consumer is voluntarily provided a refund or a replacement. Since what constitutes "substantial impairment" is often a fact question, an obstinate dealer or manufacturer may have to be sued to obtain the protection of the lemon law, occasioning further delay and expense for the client. These built-in mechanisms may result in wearing out the consumer or the acceptance of an unsatisfactory settlement.

C. Affirmative Defenses

Generally, lemon laws include specific affirmative defenses which the manufacturer has the burden of establishing.[65] The manufacturer or dealer may also rebut the presumption that three to four attempts to repair were sufficient opportunities to cure a defect.[66]

These affirmative defenses are typically the consumer's abuse, neglect, alterations, or unauthorized modifications of the automobile.[67] In some states, the lack of substantial impairment is characterized as an affirmative defense.[68] Unlike the UCC, this would appear to reduce the consumer's prima facie case to only a showing of nonconformity after a reasonable number of repair attempts have been made. Consumers who have attempted to modify the engine, transmission or even suspension systems risk a high probability of being unsuccessful in obtaining relief.

Although not an affirmative defense, most lemon statutes require that the consumer give the manufacturer notice of the defect as a precondition to obtaining lemon law relief. In essence, this notice becomes an element of the consumer's affirmative case, which he must prove.[69] Accordingly, the manufacturer may move to dismiss based on failure to provide proper notice required by the statutes. Lemon statutes vary as to whom must be notified and the method of notification required.[70]

To preserve a consumer's case and to place all interested parties on notice, it is good practice to provide written notice to both the dealer and manufacturer before the expiration of the statutory warranty period by certified mail with return receipt requested. The notice should be a self-serving letter detailing and identifying the problem, the number of repair attempts, the extent of damages incurred, the fact that the defects still exist, a declaration of intent to pursue a replacement or refund claim and a request for information concerning any informal disputes settlement process available under the warranty.[71]

IV. THE USE OF INFORMAL ARBITRATION

A. Federal Informal Disputes Settlement Procedures

Pursuant to its authority under the Magnuson-Moss Warranty Act, the Federal Trade Commission (FTC) promulgated rules creating minimum requirements for establishing an informal settlement program.[72] If the manufacturer's warranty program meets the standards outlined in the FTC rules and is incorporated in the warranty, most lemon laws will require the consumer to go through the informal dispute resolution process before initiating civil suit.[73]

For a manufacturer's informal dispute procedure to qualify under the FTC rules, the procedure must be free of charge to the consumer and insulated from any influence by the manufacturer or dealer. More importantly, the consumer is not bound by the decision of the arbitration mechanism.[74] However, the decision of the informal arbitration mechanism is admissible as evidence in subsequent litigation.[75]

Dispute resolution programs established under these rules must maintain an index of all disputes and be subjected to annual audits and scrutiny by the FTC. Hearings on disputes must be open to observers and a written decision must be rendered by the arbitrator within 40 days after completion of the hearing. Manufacturers who establish FTC-equivalent dispute resolution programs must insure that the program follows written guidelines and has adequate funds on which to operate.[76]

Several manufacturers have voluntarily committed funds to the third party arbitration programs such as those administered by the BBB. The BBB program serves as an example of what will qualify under the FTC rules.[77] Although other programs may also qualify under the FTC rules, counsel should carefully compare their rules to the FTC requirements. Failure to comply with the FTC rules allows the consumer to sue without first resorting to the arbitration program.[78] Since many state lemon statutes have adopted, by reference, the arbitration provisions established in the Magnuson-Moss Warranty Act,[79] the legal assistance counsel should be cautious in merely referring the client to a small claims court without resorting first to the informal arbitration mechanism.[80] A judgment by a small claims court may be dismissed or vacated for failure to follow the procedures established in the lemon law statute. If the program does not qualify under the FTC rules and is binding on the consumer, the practitioner should alert his client that an adverse result at arbitration could then preclude civil suit.[81]

To assist the client, the legal assistance practitioner should become familiar with the FTC rules and the arbitration process. He should obtain the rules created by the other third party dispute resolution programs such as the BBB and the Ford and Chrysler consumer panels.[82]

B. The Arbitration Process

Prior to arbitration, agreement should be reached on the issues to be arbitrated and the rules which will be applicable to the arbitration. If agreed by both parties, the consumer may have the appearing to personally present his case, or of submitting his claim to the arbitrator totally in written form.[83]

If a hearing is requested, it will be conducted informally before an arbitrator or panel. The rules of evidence are not applicable and all parties have an opportunity to speak and to present evidence.[84] The evidence usually consists of documents such as sales contracts, work orders, warranty, owner's manual, proof of title and written statements of passengers and mechanics. Witnesses may be presented and questioned by the other party or the arbitrator.[85]

Although the procedures are informal and the decision nonbinding on the consumer, it is critical to remember that the consumer's presentation at the arbitration hearing is crucial in obtaining a favorable result. Success at the arbitration stage eliminates the necessity for a later outlay of attorneys fees, court costs and the attendant delays which are characteristic of civil suits. Furthermore, even if litigation is later necessary, the admission in evidence of a favorable arbitrator's decision could prove dispositive to the court's judgment.[86]

C. Practical Recommendations

Regardless of what forum ultimately resolves the dispute, the key to success depends upon the keeping of good records, providing adequate notice, and using the arbitration program effectively.[87] The legal assistance counsel with relatively little time or effort, can help the consumer assemble his case, prepare his statement and rehearse his presentation for the arbitration hearing. A well-coached case brought by a consumer on his own behalf may prove far more convincing to a legally untrained arbitrator than an effective presentation by an attorney.[88]

The client should be coached to remain cordial and not give the impression of being a petty chronic complainer or inflexible to suggestions of the arbitrator. Visible hostility to the manufacturer's representative should be avoided. Such hostility detracts from the presentation and leads to confusion. The client should be encouraged to write down in advance, his statement and outline the presentation of the case. Organization in the presentation should be stressed.[89]

Since the arbitration hearing or subsequent litigation may not occur until the passage of months, if not years, from the discovery of the defect, it is imperative that the client maintain complete and accurate records of his efforts to have the problem corrected.

All work on the vehicle should be recorded. Persons contacted and telephone efforts should be documented. Routine warranty maintenance should be obtained and recorded. An affidavit from a certified independent mechanic may well be worth the cost. Written statements from other third persons who have observed the defect may also prove helpful.[90] If possible, the client should attempt to bring some of these people to the hearing to testify and act as observers. Any bills, to include tow charges, hotel and car rental charges should be submitted to the arbitrator to illustrate the inconvenience and loss of money from the defect.[91] In some cases, showing the vehicle and its defect to the arbitrator may be all the proof needed. Typically, the arbitrator will want to test drive the car.

V. CONCLUSION

While celebrating the one hundredth year anniversary of the invention of the automobile, U.S. auto manufacturers are expected to enjoy another year of healthy profits in 1986.[92] Undoubtedly, some of these profits will result from the sale of a number of lemons. It is not surprising that the purchase of an automobile symbolizes the second largest expenditure for 65% of American families and the largest purchase for 15% of the families.[93] What is surprising is that only recently have specific statutes been enacted to provide adequate remedies to the purchaser of a lemon.

For most consumers, the limited repair or replace parts warranty provides adequate protection against minor defects which are expected to occur in mass produced goods. However, for the owner of a lemon, these limited warranties are inadequate. Lemon laws appear to eliminate many of the shortcomings which would result from sole reliance of the UCC or the Magnuson-Moss Warranty Act. The legal assistance attorney must be ready to apply lemon statutes in conjuction with remedies available under the UCC and Magnuson-Moss Warranty Act. The fact that many lemon laws now enacted have incorporated the Magnuson-Moss type of informal settlement procedure underscores the critical role that arbitration has in this area. Lemon statutes which encourage the creation and use of informal settlement programs provide a reasonable alternative to the consumer who can neither afford the cost nor uncertainties of civil litigation.

The legal assistance attorney should be mindful that the publicity surrounding the passage of lemon laws may have created false expectations of prompt relief. Clients must be fully advised of the time and effort necessary to trigger lemon law provisions. Care should be taken to preserve and document repair attempts, days of lost use and required

notification to the manufacturer and dealer. In the event informal arbitration is required, the attorney must be ready to advise the client on how to effectively present his case. Success at the hearing will be crucial in resolving the dispute.

FOOTNOTES

* This Appendix is based on a paper prepared by Captain Eddie Williamson while a student in the 34th Graduate Course, TJAGSA, in April 1986.

1. U.S. Dept of Commerce, International Trade Administraton 1986 U.S. Industrial Outlook, 36-2 (1985).

2. U.S. Dept of Commerce, Bureau of the Census, Statistical Abstract of the United States, 587 (1985) [hereinafter cited as Statistical Abstract of the United States].

3. Comment, L.B. 155: Nebraska's "Lemon Law": Synthesizing Remedies for the Owner of a "Lemon", 17 Creighton L. Rev. 345 (1984) [hereinafter cited as Comment, Nebraska's Lemon Law].

4. Comment, "Lemon Laws" in Ohio Turn Sour for the Dealer, 13 Cap. U.L. Rev. 609 (1984) [hereinafter cited as Comment, Lemon Laws in Ohio].

5. Statistical Abstract of the United States, supra note 2 at 587.

6. Throughout this article, the term "lemon" will be used to describe an automobile which fails to conform to applicable warranties and whose nonconformity substantially impairs its use and value. The term, "lemon law" will be used to refer to the body of recently enacted state statutes commonly classifed under motor vehicle warranty acts; see e.g. Kan. Stat. Ann. 1985 supp. § 50-645.

7. R. Billings, Handling Automobile Warranty and Repossession Cases, vii, (1984), [hereinafter cited as R. Billings].

8. Comment, Virginia's Lemon Law: The Best Treatment for Car Owner's Canker?, 19 U. Rich. L. Rev. 405 (1985) [hereinafter cited as Comment, Virginia's Lemon Law].

9. 15 USC §§ 2301 to 2312 (1982).

10. See 15 USC § 2310(a) and 16 CFR § 703; See e.g. VA Code §59.1 - 207.13 G.

11. Rigg, Lemon Laws, 18 Clearinghouse Rev. 1147 (1985). [hereinafter cited as Rigg].

12. See 15 USC § 2303(a) and 15 USC 2304(a)(4).

13. See generally Uniform Commercial Code §2-316, (1977) [hereinafter cited as U.C.C.].

14. R. Billings, supra note 7, at 162.

15. See Comment, "Lemon Laws" in Ohio, supra note 4, at 637; see also R. Billings, supra note 7 at 79.

16. R. Billings, supra note 7 at 78.

17. Kan. Stat. Ann. §50-645 (1985 supp); Miss. Code Ann. §63-17-151 (1985); Okla. Stat. Ann §901 (1985); N.D. Cent Code §51-07-16 (1985); N.M. Stat. Ann §57-16A-1 (1985); Utah Code Ann §13-20-1 (1985); See also 3 National Consumer Law Center Reports, 7,8 (1984); A Twist of Lemon, 50 Consumer Rep. 192, 193 (1985).

18. See generally U.C.C. §2-608 (1977).

19. U.C.C. §2-608(2) (1977); See also Comment, Virginia's Lemon Law, supra note 8, at 408.

20. U.C.C. §2-714 (1), (2) and (3) (1977).

21. Gasque v. Mooers Motor Car Co., Inc., 227 Va. 154, 161, 313 S. E. 2d 384, 389 (VA 1984).

22. J. McEttrick, Defective Motor Vehicles: The Massachusetts Lemon Law and Recent Used Car Cases Under Chapter 93A, 70 Mass L. Rev. 30, 33; See also J. White & R. Summers, Handbook of the Law Under the Uniform Commercial Code, 303 (2d ed. 1980).

23. U.C.C. § 2-602 (1977); See also Sellman Auto Inc. v. McCowan, 513 P. 2d 1228 (1973); Comment, Virginia's Lemon Law supra note 8 at 405.

24. 313 S.E. 2d 384 (VA 1984).

25. Id. at 389.

26. Id. at 387.

27. Id. at 390.

28. See Comment, Virginia Lemon Law supra note 8 at 406; VA Code Ann §59.1-207 (cum supp. 1985).

29. See R. Billings, supra note 7 at § 6.1; see generally 99 ALR 2d 1421.

30. U.C.C. § 2-313 and §§ 2-316(2) (1977).

31. Virginia's Lemon Law supra note 8 at 410.

32. See Rigg supra note 11, at 1158-1160.

33. Authors research reflects that of the 41 existing Lemon Statutes, only New York, N.Y. General Business Law §198-b (McKinney 1985); and Rhode Island, R.I. Gen. Laws §31-5.4-1 (1985) have enacted used car lemon laws. See also Rigg supra note 11 at 1147.

34. Whittle v. Timesavers, Inc., 614 F. supp. 115, 117 (D.C. Va 1985).

35. 15 USC §§ 2301-2312.

36. Comment, Nebraska's Lemon Law supra note 3 at 359.

37. 15 USC § 2304(a)(4).

38. Id. at § 2308.

39. Id. at § 2310.

40. Id. at § 2310(a)(3)(i).

41. Id. at § 2310(a)(3)(ii).

42. Rigg supra note 11 at 1156; see, e.g., Kan. Stat. Ann. § 50-645 (2)(3) (1985 supp).

43. R. Billings, supra note 7 at 171; see also 15 USC § 2303(a)(2).

44. Comment, Lemon Laws in Ohio, supra note 4 at 611.

45. Id. at 637.

46. 15 USC § 2308.

47. Id. at § 2310(d)(2).

48. See 48 Fed. Reg. 20730 (May 9, 1983); 48 Fed. Reg. 54333 (Dec. 2, 1983). See generally R. Billings, supra note 7 at § 4.4.

49. 48 Fed. Reg. 20732 (May 9, 1983).

50. Id. at 20731.

51. 3 National Consumer Law Center Report 24 (1985).

52. R. Billings, supra note 7 at 68.

53. Id. at 70.

54. See generally J. Kinnard, Lemon Litigation, 72 and 73 (1983). See also, R. Billings, supra note 7 at §§ 4.4, 4.8. In 1977 GM voluntarily established in connection with the BBB, a national third party arbitration program. Subsequently, Volkswagen and Nissan established similar programs with the BBB. Prior to 1983, these voluntary programs would not have qualified under the FTC rules establishing informal arbitration programs in compliance with the Magnuson-Moss Warranty Act. Originally, the GM-BBB voluntary program was binding on the consumer. In 1983, this voluntary arbitration program was changed to allow the consumer the choice of either accepting or rejecting the arbitrator's decision.

55. Rigg, supra note 11 at 1150; see also R. Billings supra note 7 at 79.

56. Rigg, supra note 11 at 1150.

57. Id. at 1151.

58. See generally 16 CFR 701 (1986).

59. Rigg, supra note 11 at 1159.

60. Comment, Virginia's Lemon Law supra note 8 at 413 n.51.

61. See Comment, Buyer's Remedies for a Defective Automobile: The U.C.C. versus the Oklahoma Lemon Law, 21 Tulsa L.J. 318, 345 (1985). [hereinafter cited as Comment, Oklahoma Lemon Law].

62. Comment, Virginia's Lemon Law, supra note 8 at 426.

63. Rigg, supra note 11 at 1160.

64. Id. at 1151.

65. Id. at 1152; see, e.g., VA code ann. § 59.1-207.13H. (cum supp 1985).

66. Comment, Lemon Law: Putting the Squeeze on Automobile Manufacturers, 61 Wash. U.L.Q. 1125, 1153 (1984).

67. Rigg, supra note 11 at 1152.

68. Comment, Oklahoma Lemon Law supra note 61 at 345.

69. Rigg, supra note 11 at 1150.

70. Id. at 1150.

71. R. Billings, supra note 7 at § 4.20.

72. 16 CFR § 703 (1986).

73. 15 USC § 2310(a)(3)(c)(i).

74. See generally 16 CFR § 703 (1986).

75. 15 USC § 2310(a)(3)(c)(ii).

76. 16 CFR §§ 703.3, 703.4, 703.5 (1986).

77. See J. Kinnard, Lemon Litigation, 72 and 73 (1983); see also R. Billings supra note 7 at §§4.4., 4.11, 4.12, 4.13, 4.14.

78. See 16 CFR §§ 703.3-.8; see also Comment, Virginia Lemon Law, supra note 8 at 414.

79. See Comment, Virginia's Lemon Law supra note 8 at 413, n.51; see also Rigg supra note 11, at 1156; see e.g. Kan. Stat. ann. §50-645(e) (1985 supp).

80. See 16 CFR § 703.5(g)(1) (1986); this FTC rule infers that only after dissatisfaction with the arbitrators' decision, legal remedies "including use of small claims court may be pursued".

81. See generally, R. Billings supra note 7 at § 4.8.

82. See Comment, Virginia's Lemon Law supra note 8 at 416; See also R. Billings supra note 7 at § 4.14; see, e.g., BBB Autoline Modified Rules for the Arbitration of Automotive Disputes (1984).

83. 16 CFR § 703.5(f)(1) (1986).

84. R. Billings supra note 7 at 75.

85. See Comment, Virginia's Lemon Law supra note 8 at 417.

86. Id. at 422.

87. See R. Billings supra note 7 at § 4.20.

88. See Comment, Virginia's Lemon Law supra note 8 at 422.

89. Id. at 416 and 422.

90. See R. Billings supra note 7 at 75.

91. Id. at 71.

92. U.S. Dept of Commerce, International Trade Administration, 1986 U.S. Industrial Outlook, 36-3 (1985).

93. See Comment, Lemon Laws: Putting the Squeeze on Automobile Manufacturers, 61 Wash. U.L.Q. 1125 n.1 (1984).

STATE-BY-STATE LISTING OF LEMON LAW LEGISLATION

Alaska - Alaska Stat. § 45.45.300 (1984).

Arizona - Ariz. Rev. Stat. § 44-1261-1265 (West 1984).

California - Cal. [Civ.] Code § 1793.2 (West Supp. 1984).

Colorado - Colo. Rev. Stat. § 42-12-101 (1984).

Connecticut - Conn. Gen. Stat. § 42-179 (West Supp. 1983).

Delaware - Del. Code Ann., tit. 6 § 5001 (Supp. 1983).

District of Columbia - D.C. Code, §§ 40-1301 to 40-1309 (1985).

Florida - Fla. Stat. Ann. § 681.10-108 (West Supp. 1984), amended by Act of May 29, 1984, ch. 84-85, 1984 Ala. Ses. Law Ser. 20 (West).

Hawaii - Hawaii Rev. Stat. § 437 (1984).

Illinois - Ill. Rev. Stat. ch 121-1/2, § 1201-08 (1983).

Iowa - Act of Mary 15, 1984, H. File 2234, 1984 Iowa Legis. Serv. 164 (West).

Kansas - Kan. Stat. Ann. § 50-645 (1985 Supp).

Kentucky - Ky. Rev. Stat. § 367.860 - .870 (Bobbs Merrill Supp. 1984).

Louisiana - La. Rev. Stat. § 51:1941-46 (1984).

Maine - Me. Rev. Stat. Ann. tit. 203-A § 1161 (1983).

Maryland - Md. Com. Law Code Ann. § 14-1401 (1984).

Massachusetts - Mass. Gen. Laws Ann. Ch. 90 § 7N1/2 (West 1983).

Minnesota - Minn. Stat. § 325F.665 (1983 Supp.)

Mississippi - Miss. Code Ann. § 63-17-151 (1985).

Missouri - H.992, 82nd Gen. Assem., 2d Reg. Sess. 1984 Mo. Laws (1984).

Montana - Mont. Code Ann. § 61-4-501 (1983).

Nebraska - Neb. Rev. Stat. § 60-2701 - 2709 (Supp. 1983).

Nevada - Nev. Rev. Stat. § 598.751 (1983).

New Hampshire - N.H. Rev. Stat. Ann. § 357-D (Supp. 1983).

New Jersey - N.J. Rev. Stat. § 56:1219 (1983).

New Mexico - N.M. Stat. Ann. § 57-16A-1 (1985).

New York - N.Y. Gen. Bus. Law § 198-a (McKinney 1983).

North Carolina - N.C. Gen. Stat. § 25-2-103(1)(d) (Supp. 1983).

North Dakota - N.D. Cent. Code § 51-07-16 (1985).

Oklahoma - Okla. Stat. Ann. § 901 (1985).

Oregon - Or. Rev. Stat. § 646.315 (1983).

Pennsylvania - Pa. Stat. Ann. tit. 73 § 2001-14 (1984).

Rhode Island - R.I. Gen. Laws § 31-5.2-1 - 13 (Supp. 1984).

Tennessee - 1984 Tenn. Public Acts 1004.

Texas - Tex. Rev. Civ. Stat. Ann. art. 4413(36) § 6.07 (Vernon Supp. 1983).

Utah - Utah Code Ann. § 13-20-1 (1985).

Vermont - Vt. Stat. Ann. tit. 9 § 4170-81 (1984).

Virginia - Va. Code § 59.1 - 207.7-207.12 (Supp. 1984).

Washington - Wash. Rev. Code § 19.118.010 - .070 (West Supp. 1984-85).

West Virginia - W. Va. Code § 46A-6A-1 - 8 (Supp. 1984).

Wisconsin - Wis. Stat. § 218.015 (West Supp. 1984).

Wyoming - Wyo. Stat. Ann. § 40-17-101 (Supp. 1984).

(NOTE - The statutes of Kentucky and North Carolina are not considered true lemon laws.)

STATE MOTOR VEHICLE REGISTRATION STATUTES AND REGISTRATION DOCUMENTS CONTAINING ODOMETER READINGS

All states have motor vehicle title statutes. The citation for each state statute is given below. Most states require odometer readings on some of the documents used in the registration process. Documents containing odometer readings for each state are listed below. Registration document information was taken from National Automobile Dealers Association, N.A.D.A., *Title and Registration Book: Summary of Motor Vehicle Laws and Registration* (loose-leaf service).

ALABAMA—ALA. CODE §§ 32-8.1 to 87 (1975). Certificate of Title; Application for Certificate of Title; Non-Negotiable Certificate of Title for a Vehicle.

ALASKA—ALASKA STAT. §§ 28.10.011 to .493 (1962). Certificate of Title now being issued.

ARIZONA—ARIZ. REV. STAT. ANN. §§ 28-301 to -343 (1976). Certificate of Title; Application for Certificate of Title and Registration.

ARKANSAS—ARK. STAT. ANN. §§ 75-101 to -197 (1979). Application for: Renewal, Registration, Non-Negotiable Registration, Title and Registration, Title and Renewal, Transfer, Replacement, Title, Corrected Title.

CALIFORNIA—CAL. VEH. CODE §§ 4000-56000 (West 1971). Certificate of Ownership; Application for Registration of New or Used Non-Resident Vehicle.

COLORADO—COLO. REV. STAT. §§ 42-6-101 to -143 (1973). Certificate of Title.

CONNECTICUT—CONN. GEN. STAT. ANN. §§ 14-165 to -211 (West 1958). Certificate of Title, since 1977.

DELAWARE—DEL. CODE ANN. tit. 21 §§ 2101 to 2120A (1979). Certificate of Title, currently being issued; Application for Title, currently being issued; Dealers Reassignment Form (used by dealers to transfer ownership); Salvage Certificate.

DISTRICT OF COLUMBIA—D.C. CODE ANN. §§ 40-101 to 105 (1968). Certificate of Title; Application for Certificate of Title.

FLORIDA—FLA. STAT. ANN. §§ 319.01 to .36 (West 1975). Certificate of Title with a lien; Certificate of Title without a lien; Certificate of Registration.

GEORGIA—GA. CODE ANN. §§ 68-401a to -443a (1980). Certificate of Title; Title Application; Certificate of Registration.

HAWAII—HAWAII REV. STAT. §§ 286-41 to -69 (1976). Certificate of Ownership, Application for Registration and Title.

IDAHO—IDAHO CODE §§ 49-401 to -433 (1980).

ILLINOIS—ILL. ANN. STAT. Ch. 95-1/2 §§ 3-101 to -121 (Smith-Hurd 1971). Certificate of Title; Application for Title and Registration; Registration Card; Junking Certificate; Salvage Certificate.

INDIANA—IND. CODE ANN. §§ 9-1-2-1 to -3 (West 1979). Certificate of Title.

IOWA—IOWA CODE ANN. §§ 321.17 to .44 (West 1966). Certificate of Title; Registration Receipt; Odometer Mileage Statement.

KANSAS—KAN. STAT. ANN. §§ 8-126 to -177(b) 1982. Certificate of Title; Application for Certificate of Title; Non-Highway Vehicles; Certificate of Title for Former Non-Highway Vehicles.

KENTUCKY—KY. REV. STAT. §§ 8-126 to -177(b)(1982). Certificate of Title; Certificate of Title.

LOUISIANA—LA. REV. STAT. ANN. §§ 32:701 to 734 (West 1963). Certificate of Title; Application for Certificate of Registration; Certificate of Registration.

MAINE—ME. REV. STAT. ANN. tit. 29 §§ 2361 -2378 (1964). Certificate of Title; Application for Certificate of Title; Registration Certificate Application; Registration Certificate.

MARYLAND—MD. TRANSP. CODE ANN. §§ 13-101 to -119 (1982). Certificate of Title; Application for Certificate of Title; Notice of Security Interest Filing; Certificate of Repossession and Subsequent Assignment of Ownership.

MASSACHUSETTS—MASS. GEN. LAWS ANN. Ch. 90D § 1-38 (West Supp. 1984-1985). Certificate of Title; Application for Title and Registration.

MICHIGAN—MICH. COMP. LAWS ANN. §§ 257.201 to .242(a)(West 1977). Certificate of Title.

MINNESOTA—MINN. STAT. §§ 168A.01 to .31 (Supp. 1984). Certificate of Title; Application to Title/Registration a Motor Vehicle.

MISSISSIPPI—MISS. CODE ANN. §§ 63-21-1 to -77 (1972). Application for Certificate of Title.

MISSOURI—Mo Ann Stat §§ 301 010 to 440 (Vernon 1972) Certificate of Title, Application for Missouri Title and/or License

MONTANA—Mont. Code Ann §§ 61-3-201 to -205 (1981); Certificate of Title.

NEBRASKA—Neb. Rev. Stat. §§ 60-101 to -117 (1978). Certificate of Title.

NEVADA—Nev. Rev. Stat. §§ 482.205 to .290 (1979). Certificate of Title.

NEW HAMPSHIRE—N.H. Rev. Stat. Ann. §§ 261.1 to .31 (1982). Certificate of Title; Application for Certificate of Title.

NEW JERSEY—N.J. Stat. Ann. §§ 39-10-1 to -25 (West 1973). Certificate of Title; Application for Certificate of Ownership.

NEW MEXICO—N.M. Stat. Ann. §§ 64-3-1 to -20 (1978). Certificate of Title; Application for Vehicle of Title and Registration.

NEW YORK—N.Y. Veh. §§ 2101 -2135 (McKinney Supp. 1984-1985). Certificate of Title, effective 4/1/82; (title effective 1978 also had mileage reading).

NORTH CAROLINA—N.C. Gen. Stat. §§ 20-50 to -71 (1983). Certificate of Title; Application for Title, Transfer Title.

NORTH DAKOTA—N.D. Cent. Code §§ 39-05-01 to -36 (1972). Certificate of Title.

OHIO—Ohio Rev. Code Ann. §§ 4505.01 to .99 (Page 1982). Certificate of Title.

OKLAHOMA—Okla. Stat. Ann. tit. 47 §§ 23. to 23.13 (West 1962, Supp. 1984). Certificate of Title.

OREGON—Or. Rev. Stat. §§ 481.103 to .200 (1981). Certificate of Title, effective 7/79.

PENNSYLVANIA—75 Pa. Cons. Stat. Ann. §§ 1101 to 1119 (Purdon 1977). Certificate of Title; Application for Certificate of Title.

PUERTO RICO—Certificate of Title; Application for Certificate of Title.

RHODE ISLAND—R.I. Gen. Laws §§ 31-3.1-1 to -38 (1982) Certificate of Title, Private Passenger Car Registration and Title Application

SOUTH CAROLINA—S.C. Code Ann. §§ 46-11 to -21 (Law Co-op 1976). Certificate of Title, Application for Licenses and Registration, Transfer and Registration, Certificate of Title.

SOUTH DAKOTA—S.D. Codified Laws Ann. §§ 32-3-1 to -56 (1984). Certificate of Title, effective Jan. 1, 1979 (old certificate of title to be used with Odometer Statement MV-609); Application for Motor Vehicle Title and Registration; License Plate Renewal Certificate.

TENNESSEE—Tenn. Code Ann. §§ 55-3-101 to -130 (1980). Certificate of Title (old style that does not have odometer reading acceptable until further notice). Application for Certificate of Title and Registration.

TEXAS—Tex. Rev. Civ. Stat. Ann. art. 6687-1 §§ 1-65 (Vernon 1977). Certificate of Title (odometer reading appears on titles issued after March 10, 1974); Application for Certificate of Title; Non-Negotiable Title.

UTAH—Utah Code Ann. §§ 41-1-18 to -61 (1981). Certificate of Title, effective 3/1/79 (old Certificate without odometer reading acceptable until further notice); Application for Certificate of Title; Application for Registration Certificate.

VERMONT—Vt. Stat. Ann. tit. §§ 2011-2029 (1978). Certificate of Title; Application for Certificate of Title; Vehicle Registration, Tax and Title Application.

VIRGINIA—Va. Code §§ 46.1 to .87 (1950). Certificate of Title; Application for Certificate of Title.

WASHINGTON—Wash. Rev. Code Ann. §§ 46.12.005 to .240 (1970). Certificate of Title; Application for Certificate of Title.

WEST VIRGINIA—W. Va. Code §§ 17A-3-1- to -23 (1974). Certificate of Title (old Certificate without odometer reading acceptable until further notice); Application for Certificate of Title.

WISCONSIN—Wis. Stat. Ann. §§ 342.01 to .14 (West 1971). Certificate of Title; Application for Registration and Title; Odometer Mileage Statement.

WYOMING—Wyo. Stat. §§ 31-30 to -48 (1957). Certificate of Title (now being used); Application for Certificate of Title.

STATE ODOMETER STATUTES

Most states prohibit odometer tampering. A list, which may be incomplete, of states with statutory prohibitions is set out below. Some states have only criminal penalties. Those marked with an asterisk provide for civil recovery.

Alaska*: ALASKA STAT. § 45.50.471(18) (1975).
Arizona: ARIZ. REV. STAT. ANN. § 44–1223 (1977).
Arkansas*: ARK. STAT. ANN. §§ 75–2401 to –2404 (1979).
California: CAL. VEH. CODE §§ 28050–28051 (Deering 1980).
Colorado*: COLO. REV. STAT. §§ 42–6–201 to –208 (1973).
Connecticut: CONN. GEN. STAT. ANN. § 14–106(b) (West 1975).
Florida: FLA. STAT. § 319.35 (1975).
Georgia: GA. CODE ANN. §§ 68–1828, 68–9951 (1975).
Hawaii: HAWAII REV. STAT. §§ 292–1 to –18 (1976).
Iowa: IOWA CODE ANN. § 321.71 (West 1975).
Kansas: KAN. STAT. ANN. § 8–611 (Supp. 1974).
Louisiana: LA. REV. STAT. ANN. § 32.726.1 (West Supp. 1981).
Maryland: MD. TRANS. CODE ANN. § 22–415 (1977).
Massachusetts*: MASS. GEN. LAWS ANN. ch. 266, § 141 (Michie/Law. Co-op 1980).
Michigan*: MICH. COMP. LAWS § 257.233a (1975).
Minnesota*: MINN. STAT. ANN. §§ 325E.13 to .16 (West 1975).
Missouri*: MO. ANN. STAT. §§ 407.510 to .555 (Vernon 1975).
Nebraska: NEB. REV. STAT. §§ 60–2301 to –2307 (1979).
Nevada*: NEV. REV. STAT. §§ 484.606 to .6069 (1979).
New Hampshire: N.H. STAT. ANN. §§ 260:91 to :92 (1977).
New Jersey: N.J. STAT. ANN. § 2C:21–8 (West 1979).
New Mexico: N.M. STAT. ANN. § 57–12–6 (1978).
New York: N.Y. GEN. BUS. LAW § 392–e (McKinney Supp. 1975).
North Carolina*: N.C. GEN. STAT. §§ 20–340 to –350 (1978).
North Dakota: N.D. CENT. CODE § 39–21–51 (1979).
Oregon: OR. REV. STAT. §§ 646.860, 646.990 (1969).
Rhode Island: R.I. GEN. LAWS §§ 31–23.2–1 to –9 (Supp. 1981).
Tennessee: TENN. CODE ANN. § 39–1970 (1975).
Texas: TEX. REV. CIV. STAT. ANN. art. 6696b (Vernon 1975 Supp.).
Utah: UTAH CODE ANN. §§ 41–6–177 to –180 (Supp. 1981).
Vermont: VT. STAT. ANN. tit. 23, § 1704(a) (1975).
Virginia: VA. CODE §§ 46.1–15.1 to .2 (1980).
Washington*: WASH. REV. CODE ANN. §§ 46.37.540 to .600 (Supp. 1981) (purchasers who bring suit may recover attorney fees and costs).
Wisconsin: WIS. STAT. ANN. § 218.01(7a) (West 1957).

Odometer tampering may also be prohibited in some states by regulation under motor vehicle dealer licensing acts or unfair and deceptive acts and practices statutes. Even without a specific regulation, odometer tampering would probably be considered an unfair and deceptive act. *See, e.g.*, Brown v. Town & Country Auto Sales, Inc., Civil No. 9*5,702 (Ohio C.P. Cuyahoga County, May 5, 1974), *aff'd*, Civil No. 33,510 (Ohio Ct. App. Dec. 12, 1974) (odometer tampering a violation of Ohio Consumer Sales Practices Act, OHIO REV. CODE ANN. § 1345 (Baldwin 1978))

TABLE OF STATE MOTOR VEHICLE REPAIR LAWS AND REGULATIONS

ALASKA—Alaska Rev. Stat. Ann. §§ 45 45.130-.240 (1982 Supp.). Estimate required upon customer request; invoices required, must be retained for 2 years; subcontracting permitted; return or inspection of parts required upon customer request; disclosure of consumer rights required regarding right to an estimate. Practices prohibited: indicating that car is in dangerous condition when it is not; misrepresenting cost of repairs to customer; charging for unauthorized repairs or charging for repairs exceeding estimate; misrepresenting that repairs were done when they were not. Penalties/sanctions: Attorney general action—fine, injunction; private right of action—actual damages or $200.

ALABAMA—None

ARIZONA—None

ARKANSAS—None

CALIFORNIA—Cal. Bus. & Prof. Code §§ 9880-9889 (Deering 1982 Supp.). Estimate required; invoices required, must be retained for 2 years; subcontracting permitted with permission only; return or inspection of parts required upon customer request; disclosure of consumer rights required regarding return of parts, number to call for complaints; license required for garages. Practices prohibited—authorizing or making untrue statements, fraud, gross negligence, violation of provisions. Penalties/ sanctions: Attorney general action—fine, revocation of license; criminal penalties up to 6 months jail; private right of action—damages.

COLORADO—Colo. Rev. Stat. § 42-11-101-109 (1981). Estimate required, must be within 10% or $10 of actual charges, can be waived by the customer; invoices required, must include name of mechanic; subcontracting permitted. Practices prohibited: indicating car is in dangerous condition when it is not; charging for unauthorized repairs or charging for repairs exceeding estimate, authorizing or making untrue statements, fraud. Penalties/sanctions: criminal penalties—misdemeanor; private right of action—costs and attorneys fees and damages

CONNECTICUT—Conn. Gen. Stat. § 14-51 to -65 (West Supp. 1982). Estimate required, but only upon customer request if less than $50, and can be waived by customer; invoices required, must disclose hourly labor charge; subcontracting permitted; return or inspection of parts required. Disclosure of consumer rights required regarding estimate, invoices, customer rights; license required for mechanics and garages. Practices prohibited: indicating car is in dangerous condition when it is not; charging for unauthorized repairs or charging for repairs exceeding estimate. Penalties/sanctions: attorney general action—revocation of license, fine.

DELAWARE—None

DISTRICT OF COLUMBIA—D.C. Mun. Reg. tit. 74 § 3. Estimate required, must be within $20 if repairs are under $300, within 10% over $300; invoices required; subcontracting not permitted; disclosure of customer rights required; mechanics and garages must be licensed. Practices prohibited: authorizing or making untrue statement, fraud; negligence. Penalties/sanctions: revocation of license.

FLORIDA—Fla. Stat. Ann. §§ 559.901-559-923 (West 1982 Supp.). Estimate required if repairs cost more than $50, can exceed estimate by $10 or 10% but not more than $50; invoices required, retained for six months; subcontracting permitted; return or inspection of parts required upon customer request; disclosure of consumer rights required regarding estimates, return of parts. Penalties/sanctions: attorney general action—fine, injunction, attorneys fees, damages, private

right of action—no liens, attorneys fees and costs, damages.

GEORGIA—None

HAWAII—Hawaii Rev. Stat. §§ 47(b)7,437B (1976). Estimate required, must be within 10%, or within 15% if more than $100, estimate can be waived, but even with waiver dealer must make reasonable attempt to contact consumer; invoices required, retained for 2 years; subcontracting not permitted; return or inspection of parts required upon customer request; license required for garage and mechanics. Practices prohibited: causing or allowing a customer to sign any work order which does not state the repairs requested by the customer or the automobile's odometer reading at the time of repair; failing or refusing to give to a customer a copy of any document requiring his signature, as soon as the customer signs such document; authorizing or making untrue statement; fraud; gross negligence; wilful departure from trade practices for good and workmanlike repair; subcontracting repair work without the knowledge or consent of the customer; conducting business in an unlicensed location. Penalties/sanctions: attorney general action—fine, injunction, restitution; private right of action—civil action.

IDAHO—Idaho APA § 04.01.12,1-13, 3 (1980). Estimate required upon customer request; return or inspection of parts required upon customer request. Practices prohibited: authorizing or making untrue statement; fraud; misrepresenting that repairs were done when they were not; indicating car is in dangerous condition when it is not. Penalties/sanctions same as Idaho Code § 48-601.

ILLINOIS—None

INDIANA—None

IOWA—None

KANSAS—None

KENTUCKY—None

LOUISIANA—La M V Comm. Regs § 25 (1975) Estimate required upon customer request if more than $125, cannot exceed by more than 25%, invoices required; return or inspection of parts required, disclosure of customer rights regarding right to estimate required Practices prohibited: Indicating that car is in dangerous condition when it is not; authorizing or making untrue stsatement, fraud Penalties/sanctions same as La. Rev. Stat. Ann. § 51:1401.

MAINE—Me. Rev. Stat. Ann. tit. 29, § 2601 (1982). Return or inspection of parts required; disclosure of customer rights required.

MARYLAND—Md. Com. Law Code Ann. § 14-1001-1009 (1982). Estimate required if $50, cannot exceed by 10%; invoice required, must list customer rights; return or inspection of parts required. Practices prohibited: charging for unauthorized repairs or charging for repairs exceeding estimate; authorizing or making untrue statement; fraud; false, untrue or misleading advertising. Penalties/sanctions: attorney general action—fine, jail, injunction and costs; private right of action—damages.

MASSACHUSETTS—Mass. Admin. Code tit. 940, § 5.05 (1980).
Estimate required if $50, cannot exceed estimate by 10%; invoices required, must list name of mechanic; return or inspection of parts required; disclosure of consumer rights required. Practices prohibited: Charging for unauthorized repairs or charging for repairs exceeding estimate; authorizing or making untrue statement; fraud; violation of false, untrue or misleading advertising Remedy: Violation of the regulations constitutes a violation M.G.L. ch. 93A.

MICHIGAN— Mich. Comp. Laws Ann. §§ 257.1301-257.1340 (1982 Supp.). Invoices required, must list name of mechanic; subcontracting permitted; licensing required for mechanics and garages. Practices prohibited Charging for unauthorized repairs or charging for repairs exceeding estimate; indicating car is in dangerous condition when it is not; misuse of waiver; refusal to honor warranty. Penalties/sanctions: attorney general action—injunction, restitution, fine; criminal penalties; jail; private right of action—damages; multiple damages and attorneys fees for willful violation.

MINNESOTA—Minn. Stat. Ann. §§ 325F.56-325F.64 (West 1982). Estimate required upon customer request if $50, cannot exceed estimate by 10%; invoices required if $50, retained for 1 year; subcontracting permitted; return or inspec-

tion of parts required upon customer request, disclosure of consumer rights required regarding right to estimate. Practices prohibited: charging for unauthorized repairs or charging for repairs exceeding estimate; violation of provisions; failure to return parts; failure of subcontractor to return parts. Penalties/ sanctions: private right of action—treble damages, costs and attorneys fees, punitive damages.

MISSOURI—None

MISSISSIPPI—None

MONTANA—Mont. Admin. R. § 8.3.201 (1980). Estimate required upon customer request if $50, must be within 10% or $25; invoices required; return or inspection of parts required upon customer request. Practices prohibited: charging for unauthorized repairs or charging for repairs exceeding estimate; indicating car is in dangerous condition when it is not; misrepresenting that repairs were done when they were not. Penalties/sanctions: Department of Business Regulation—injunction; private right of action—treble damages.

NEBRASKA—None

NEVADA—Nev. Rev. Stat. §§ 598.690-598.745 (1979). Estimate required upon customer request, if customer elects must be retained for 1 year, must be within 20% or $40, may be waived in writing; return or inspection of parts required upon customer request; disclosure of consumer rights regarding right to estimate required. Penalties/sanctions: attorney general action—fine; private right of action—damages.

NEW HAMPSHIRE—N.H. Rev. Stat. Ann. § 358-D (1981 Supp). Estimate required upon customer request, must be within 10%, can be waived in writing; invoices required; subcontracting is permitted, but the garage is responsible for the work of the subcontractor; return or inspection of parts is required upon customer request; dislosure of consumer rights is required. Penalties/ sanctions attorney general action—injunction, criminal penalties; private right of action—double or treble damages if wilful

NEW JERSEY—N.J. Admin. Code tit. § 13:45A-7 (1982 Supp.) Estimate required, can be waived in writing; invoice required, must include any warranty; return or inspection of parts required upon customer request. Practices prohibited: authorizing or making untrue statement; fraud. Penalties/sanctions: attorney general action—injunction, fine; private right of action—attorneys fees, costs, treble damages.

NEW YORK—N.Y. Veh. & Traf. Law § 398-398-I (Consol. 1982-3 Supp.). Estimate required upon customer request; invoices required, must be retained for 2 years; return or inspection of parts required upon customer request; disclosure of customer rights and number for complaints required; licensing required for garages except for minor repairs. Practices prohibited: Authorizing or making untrue statements; fraud; negligence on two or more occaasions; gross overcharge. Penalties/sanctions: attorney general action—revocation of license, fine, restitution.

NORTH CAROLINA—None

NORTH DAKOTA—None

OHIO—Ohio Admin. Code § 109:4-3-13 (1978). Estimate required if $25, must be within 10%; invoices required; return or inspection of parts required. Practices prohibited: Misrepresenting that repairs were done when they were not; indicating that car is in dangerous condition when it is not; authorizing or making untrue statements, fraud. Penalties/sanctions. See Ohio Rev. Code Ann. § 1345.01, including treble damages and attorney fees.

OKLAHOMA—None

OREGON—Or. Rev. Stat. § 746.275 300 (1981) (applies only to cars that have been physically damaged; body and fender, frame shop). Estimate required, can be waived in writing, invoices required, return or inspection of parts required. Practices prohibited: misrepresenting that repairs were done when they were not; refusing insurer access to premises; indicating that car is in dangerous condition when it is not. Penalties/ sanctions: private right of action—damages or $100, and attorneys fees.

PENNSYLVANIA—37 Pa. Cons. Stat. § 301.1-36 (1982 Supp.) Estimate required whenever possible, invoices required, disclosure of customer rights required. Practices prohibited: authorizing or making untrue statements, fraud.

misrepresenting that repairs were made when they were not, indicating that the car is in dangerous condition when it is not.

RHODE ISLAND—R.I. Gen. Laws §§ 5-38-1—5-38-24 (1982 Supp.) (applied only to body repair shops, excludes mechanical or electrical repair shops or shops making auto adjustments). Invoices required, must be retained for 2 years; must display license to operate; auto body shops must be licensed. Penalties/sanctions: Attorney general action—$100 fine, injunction, revocation of license; no private right of action.

SOUTH CAROLINA—None

SOUTH DAKOTA—None

TENNESSEE—None

TEXAS—Tex. Bus. & Com. Code § 17.46 (Vernon 1983 Supp). Practices prohibited: Charging for unauthorized repairs or charging for repairs exceeding estimate; authorizing or making untrue statement, fraud; misrepresenting that repairs have been made when they have not; indicating that the car is in dangerous condition when it is not. Penalties: private right of action—actual double & treble damages; injunction, attorneys fees and costs.

UTAH—Rules under Utah Code Ann. § 13-11-1 (1973) Estimate required upon customer request if $25, must be within 10%; invoices required; return or inspection of parts required.

VERMONT—None

VIRGINIA—Va. Code § 59.1-207.1-6 (1982 replacement volume). Estimate required if $25, applies only to non-peak hours between 10 a.m.-4 p.m. Penalties/ sanctions: attorney general action—injunction, restitution; private right of action—attorneys fees and costs, and damages or $100.

WASHINGTON—Wash. Rev. Code Ann. § 42.71 (1984 Supp.). Estimate, or limit on repairs required if 75 must be within 10%, can be waived; invoice required, must be retained for 1 year; subcontracting permitted; return or inspection of parts required upon customer request; disclosure of consumer rights is required. Practices prohibited: mechanic keeping car. Penalties/ sanctions: attorney general action—injunction, restitution; private right of action—treble damages and costs and attorneys fees. No possessory lien if no written estimate given.

WEST VIRGINIA—None

WISCONSIN—Wis. Admin. Agency Ag § 132.01-.10 (1981). Estimate required if $25, can be waived; invoices required, must be retained for 2 years; return or inspection of parts required. Practices Prohibited: misrepresenting: cost of repairs, terms of any warranty, that repairs are necessary, that repairs have been made, that motor vehicle is in a dangerous condition) collecting for unauthorized unnecessary, or unperformed repairs.

WYOMING—None

TABLE OF STATE MOTOR VEHICLE INSPECTION STATUTES

ALABAMA—Ala. Code § 32-18-1 to 8 (1975). No state-wide inspection requirement, but cities have the right to require inspection of vehicles owned by residents or by persons who maintain a business in the city. Fine of $100 or six months imprisonment per day of violation.

ALASKA—Alaska Stat. §28.05.011 to .091 (1978). No regular inspections required, but an unsafe vehicle is considered unlawful and may be impounded.

ARIZONA—Ariz. Rev. Stat. Ann. §§ 28-982 to 983 (1976). No regular inspection required, but police officers may spot check upon reasonable cause to believe a vehicle is in violation of the law.

ARKANSAS—Ark. Stat. Ann. § 75.2101 to 2116 (1979). Inspection required annually and upon sale or transfer unless prior inspection was within 30 days of sale or transfer. Ten days allowed after inspection to correct defects. Vehicle may not be licensed if it has not been inspected. A violation, including falsification of inspection stickers, is considered a misdemeanor the penalty for which is a fine.

CALIFORNIA—Cal. Veh. Code § 2806 and § 24007 (West 1971). No regular safety inspections required, but police officer or sheriff having reasonable cause to believe vehicle is unsafe can require inspection. Dealers are forbidden to sell vehicles that are unsafe.

COLORADO—Colo. Rev. Stat. § 42-4-306.1 (1984). No regular safety inspections required, but a police officer having reasonable cause to believe vehicle is unsafe may require spot inspection. Fine of $100.00 for violation, unless violation is cured within 30 days.

CONNECTICUT—Conn. Gen. Stat. Ann. § 14-103 (1970 & Supp. 1981). No regular inspection required, but state police officers may spot check vehicles. Any vehicle that does not pass such an inspection and is not repaired within ten days is required to surrender its license plate.

DELAWARE—Del. Code Ann. tit. 21 §§ 2141-2144. Vehicles must be inspected prior to any registration or re-registration. Spot inspections by state police officers allowed, with five days given to cure defects.

DISTRICT OF COLUMBIA—D.C. Code Ann. § 40-201 to 207 (1981 & Supp. 1984). Annual safety inspection required for registration. Mayor has discretion to issue inspection permit valid for two years or new vehicle. Penalty for use of vehicle whose registration has been revoked for failure of safety inspection is fine of $300.

FLORIDA—Fla. Stat. § 325.001 (Supp. 1985). State-wide safety inspection repealed, but counties have discretion to establish inspection requirements.

GEORGIA—Ga. Code Ann. § 68E-107 (Supp. 1984). No regular safety inspections, but law enforcement officers have right to inspect if they suspect violation of equipment standard. Such a violation is considered a misdemeanor.

HAWAII—Hawaii Rev. Stat. § 286-21 to 30 (1976 & Supp. 1983). Inspection required annually for most vehicles, every six months for certain classes of vehicles including those over ten years old and rentals. A vehicle involved in an accident which renders it unsafe must be reinspected. Police officers have the right to conduct spot inspections and can remove inspection sticker and revoke registration if vehicle is found to be a menace. Penalty for operation of motor vehicle without inspection sticker is $100.00 or 30 days in jail.

IDAHO—Repealed

ILLINOIS—Ill. Rev. Stat. ch. 95 1/2 § 13-100 to 116 (Supp. 1984). Vehicles must be inspected

every six months. No dealer can sell a used car without an inspection sticker unless it is being sold strictly for repair or junking. Penalty for obtaining an inspection sticker without a valid test is a fine up to $300 and license suspension of up to 180 days.

INDIANA—Repealed

IOWA—Iowa Code Ann. § 321.238 (Supp. 1984). Vehicles must be inspected annually. Additional inspection required if car is sold. Sellers may not knowingly sell a vehicle that does not meet safety inspection requirements, unless it is sold with a limited title for purpose of repair.

KANSAS—Kan. Stat. Ann. § 8-1750 to 1760 (1982). Vehicles must be inspected annually and upon sale, unless prior inspection was within 90 days of sale. Any seller who violates this provision is liable to the purchaser for all costs necessary to have the vehicle pass inspection, as well as being guilty of a misdemeanor.

KENTUCKY—Repealed

LOUISIANA—La. Rev. Stat. Ann. § 32:1301 to 1310 (1963 & Supp. 1985). Inpsections required at intervals of six to twelve months. Penalty for violation is fine of up to $500 and/or imprisonment of up to six months.

MAINE—Me. Rev. Stat. Ann. tit. 29 §§ 2501 to 2525 (1978 & Supp. 1984). Annual inspection required. No vehicle may be sold without a valid inspection sticker that has been issued within 30 days prior to sale. Violation of this provision makes the seller liable for a fine of up to $1000 and is considered an unfair trade practice.

MARYLAND—Md. Transp. Code Ann. §§ 23-101 to 23-109 (1984). No regular inpsection required, but vehicle must be inspected within 30 days prior to sale and inspection certificate issued within prior 90 days tendered to obtain title and registration. Penalty for violation of this provision is not specified.

MASSACHUSETTS—Mass. Gen. Laws Ann. ch. 90 §§ 7A to 7Z (1983 Supp.). Annual inspection required. A sale of a used vehicle may be voided if the vehicle fails to pass an inspection within seven days of sale and the repairs necessary to allow vehicle to pass exceed ten percent of the purchase price.

MICHIGAN—Mich. Comp. Laws Ann. § 257.715 (Supp. 1984). No regular inspection required, but police may spot check, either based on reasonable cause to believe a vehicle is in violation or in a temporary check lane on the highway.

MINNESOTA—Minn. Stat. § 169.771 to .78 (1960 & Supp. 1985). No state-wide inspection required, but municipalities may require inspections of those who use municipal streets. Also, police are directed to make spot checks of vehicles.

MISSISSIPPI—Miss. Code Ann. § 63-13-1 to 29 (1972 & Supp. 1984). Annual inspection required. All new and used vehicles sold by dealers must have a current inspection sticker. No penalty specified for failure to comply with this provision.

MISSOURI—Mo. Ann. Stat. §§ 307.350 to .395 (1973 & Supp. 1985). Annual inspection required for registration. Seller must obtain new inspection within 60 days prior to transfer or sale. Violation of statute is considered misdemeanor.

MONTANA—Mont. Code Ann. §§ 61-9-501 to 504 (1983). No regular inspections required, but inspections may be required upon reasonable cause to believe that a vehicle is in violation of the vehicle code.

NEBRASKA—Repealed

NEVADA—Nev. Rev. Stat. § 484.695 to .701 (1983). No regular inspection required, but vehicles may be spot checked upon reasonable cause to believe they are in violation of vehicle code or are unsafe.

NEW HAMPSHIRE—N.H. Rev. Stat. Ann. § 266:1 to 8a (1982). Inpsections required every six months and a current inspection is required for registration. Dealers who sell vehicles that they consider unsafe shall destroy the inspection sticker and file a statement of the sale signed by dealer and purchaser.

NEW JERSEY—N.J. Stat. Ann. §§ 39:8-1 to 65 (Supp. 1984). Annual inspection required. Police directed to conduct roadside spot checks.

NEW MEXICO—Repealed

NEW YORK—N.Y. Veh. & Traf. Law § 301 to 309e (McKinney 1970 & Supp. 1984). Annual inspection required for registration. Re-inspection required after vehicle has been involved in an accident.

NORTH CAROLINA—N.C. Gen. Stat. § 20-183.2 to 183.8 (1983). Annual inspection required. Dealers must re-inspect vehicles before sale, unless sold to a buyer authorized to do self inspections or if the vehicle is sold to a non-resident and not required to be registered in the state.

NORTH DAKOTA—N.D. Cent. Code § 39-03-09 (1980). No regular inspection, but highway patrol authorized to do spot check.

OHIO—Ohio Rev. Code Ann. § 4513.02 (1983). No regular inspections required, but highway patrol authorized to conduct spot checks and to issue inspection stickers.

OKLAHOMA—Okla. Stat. tit. 47 §§ 851 to 860 (1981). Annual inspections required. All vehicles sold by dealers must be inspected and have a current inspection sticker. Penalty for violation is fine of up to $500.00 and/or 30 days imprisonment.

OREGON—Or. Rev. Stat. §§ 483.050 to .065 (1983). No regular inspection required, but police may spot check, either based on reasonable cause, or as part of a highway inspection.

PENNSYLVANIA—75 Pa. Cons. Stat. Ann. § 4701 to 4732 (1977 & Supp. 1984-85). Annual inspection required. Vehicles must be inspected within ten days of sale.

RHODE ISLAND—R.I. Gen. Laws § 31-38-1 to 20 (1982 and Supp. 1984). Annual inspection required. All used cars sold by dealers must have valid inspection stickers unless sold for parts only. An [illegible] is [illegible]

SOUTH CAROLINA—S.C. [illegible] §§ [illegible] to 5440 (Law Co-op. 1976 & Supp. 1984). [illegible] inspection stickers [illegible]

sold in state. Inspection sticker is not considered warranty and is not admissible evidence.

SOUTH DAKOTA—S.D. Codified Laws Ann. § 32-21 (1984). Statutes requiring regular inspection have been repealed, but highway patrol retains authority to spot-check vehicles.

TENNESSEE—Repealed

TEXAS—Tex. Rev. Civ. Stat. Ann. Art. 6701d § 140 to 142A (Vernon Supp. 1985). Annual inspection required for registration.

UTAH—Utah Code Ann. §§ 41-6-155 to 165.5 (1981). Annual inspections required and vehicle registration may be suspended for failure to comply with inspection code.

VERMONT—Vt. Stat. Ann. tit. 23 § 1221 to 1226 (1978). Inspection required every six months. Registration may be revoked for failure to comply with inspection.

VIRGINIA—Va. Code § 46.1-315 to 326.1 (1980 & Supp. 1984). Annual inspection required. Any vehicle which does not pass inspection will be issued a rejection sticker allowing 15 days for repair.

WASHINGTON—Wash. Rev. Code Ann. §§ 46.32.010 to .070 (1970 & Supp. 1985). Statute grants authority to state police chief to require periodic inspections, but does not specify requirements.

WEST VIRGINIA—W. Va. Code § 17C-16-1 to 9 (1974 & Supp. 1984). Annual inspection required. Vehicle registration can be revoked for failure to comply with inspection statute.

WISCONSIN—Wis. Stat. § 110.075 (Supp. 1984-85). No regular inspection required, but traffic officers or motor vehicle inspectors can spot check and issue inspection stickers exempting vehicle from further spot checks for one year.

WYOMING—Wyo. Stat. § 31-5-301 (1977). No provisions regarding inspection, but statute provides that it is a misdemeanor to operate an unsafe vehicle.

USER'S NOTE

Each state section has been broken down into 11 uniform categories. The first ten are listed alphabetically as follows:

Bankruptcy Exemptions
Credit Reporting
Debt Collection
Home Solicitation Sales
Minor's Contracts
Repossession Requirements
Statutes of Limitations
Truth-In Lending
Unfair and Deceptive Trade Practices*
Warranties

The last is a catch-all section entitled "Miscellaneous State Statutory Provisions." For example, if the state has a statute of frauds it will be captured in this section.

The state section cites to state code provisions. Except for those states which do not title their code provisions in numerical sequence, all code provisions are referenced by numerical designation only.

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* This section is reprinted with permission from the 1985 Supplement to Unfair and Deceptive Acts and Practices, National Consumer Law Center, 11 Beacon Street, Boston MA 02108. These laws are commonly known as "UDAP" laws.

Alabama

BANKRUPTCY EXEMPTIONS

Federal - See Chapter 2 supra.

State - Homestead exemption - $5,000. § 6-10-2.

Personalty exemption - $3,000 and all proper and necessary wearing apparel, family portraits and all books used in the family. § 6-10-6.

CREDIT REPORTING

Federal - Fair Credit Reporting Act. See Chapter 3 supra.

State - No statutory provision.

DEBT COLLECTION

Federal - Fair Debt Collection Practices Act. See Chapter 3 supra.

State - No statutory equivalent. Regarding creditors and debtors, see Alabama Consumer Credit Act of 1971. § 5-19-1 et. seq.

HOME SOLICITATION SALE

Federal - FTC Trade Regulation Rule. See Chapter 3 supra.

State - The buyer has the right to cancel a home solicitation sale until midnight of the third business day following execution of an agreement or offer to purchase. Notice of cancellation is effective when delivered or when deposited in the mail properly addressed to the seller, postage prepaid. The sales agreement must contain a conspicuous notice of this cancellation right. § 5-19-12(a).

The buyer must take reasonable care of the goods and tender the goods at his or her residence to the seller upon demand. However, the buyer takes title to the merchandise if the seller fails to demand such possession within 40 days after receipt of the notice of cancellation. The seller must return any refunds received to the buyer within 10 days after cancellation of the sale. § 5-19-12(b).

A sale under pre-existing open-end credit plans, a previously negotiated sale, and an emergency sale with a non-pre-printed waiver signed by the buyer are not included in the protections provided by this statute. § 5-19-12(c).

Alabama

MINOR'S CONTRACT

Age of majority to contract - 19. § 26-1-1.

Contractual liability - Minor is liable only for necessaries received as a result of a contractual relationship. § 7-1-103.

REPOSSESSION REQUIREMENTS

The creditor must make an affidavit that the property in question belongs to the creditor. The creditor also must execute a bond in such sum and with such surety as may be approved by the clerk. Notice to the debtor is not required.

If the creditor repossesses or voluntarily accepts surrender of the goods sold in which he has a security interest and the original cash price was $1,000 or less, the debtor is not personally liable to the creditor for the unpaid balance of the debt arising from this sale and the creditor is not required to sell the collateral. § 5-19-13.

STATUTE OF LIMITATIONS

Contract under seal - 10 years. § 6-2-33.
Simple written contract - 6 years. § 6-2-34.
Contract for sale of goods - 4 years. § 7-2-725.
Oral contracts - 6 years. § 6-2-34.
Judgments - Courts of record - 20 years. § 6-2-32.

TRUTH-IN-LENDING REQUIREMENTS

Federal - Truth-in-Lending Act. See Chapter 3 supra.

State - Statutory Equivalency Provisions. Any creditor, when extending credit with respect to a consumer credit sale, loan, or lease other than open-end credit, shall furnish the debtor duplicate copies of all instruments executed by the debtor in connection with the transaction. The contract shall contain the following statement printed in eight point type immediately above the space for the debtor's signature: "CAUTION - IT IS IMPORTANT THAT YOU THOROUGHLY READ THIS CONTRACT BEFORE YOU SIGN IT." § 5-19-6.

UNFAIR AND DECEPTIVE TRADE PRACTICES

ALA. CODE § 8-19-1 (Supp. 1983).

Prohibited Practices (§ 8-19-5): 21 enumerated practices, including "bait and switch advertising," false representations of fact concerning the quality of goods or services, and false or misleading statements concerning

the need for repairs, plus a catchall provision prohibiting other unconscionable or deceptive practices.

Special Requirements: Violations must be knowing; not based on reasonable belief.

Scope: "Trade or commerce" includes offering for sale, distribution, or lease of any goods, including real estate and franchises, services or things of value. Most violations must involve consumer transactions, but sellers can be any legal entity.

Exclusions: Advertisements done by any newspaper publisher, or advertisements distributed through radio and television media, or telephone company with no knowledge; activity regulated by insurance code or bank regulated by state or federal banking department, violations of Federal Consumer Credit Protection Act and State Securities or Sales of Checks Act; utility, telephone company or railway regulated by state public service commisson; activity subject to Title 10 ch. 4 art. 6.

Private Remedies (§ 8-19-10): Actual damages, $100 minimum damages; treble damages are discretionary based on frequency, seriousness and intent; court shall award attorney fees to successful consumer, or to respondent if suit frivolous or brought to harass; injunctive relief; class actions specifically prohibited.

Limitations: Pecuniary injury required; claimant must elect common law or UDAP remedies; 15 day notice letter is required; statute of limitations is 1 year from date violation should have been discovered, in any event within 4 years of the transaction, but no statute of limitations for counterclaim, and 1 year period from expiration of long term contract or warranties.

State Remedies (§ 8-19-4): AG or DA enforces; $2000 per initial violation; injunctive relief; sequestration of assets; license suspension; other relief; may represent a class of claimants for actual damages, costs and attorney fees; contempt and $25,000 per violation of injunction; business dissolution after second violation of any injunction; misdemeanor penalties for continuous, willfull violations.

Precedential Value of FTC Interpretations: FTC interpretations are given "great weight."

WARRANTIES

Unless excluded or modified, a warranty that the goods shall be merchantable is implied in a contract for their sale if the seller is a merchant with respect to goods of that kind. Under this section the serving for value of food or drink to be consumed either on the premises or elsewhere is a sale. § 7-2-314.

Alabama

Where the seller at the time of contracting has reason to know any particular purpose for which the goods are required and that the buyer is relying on the seller's skill or judgment to select or furnish suitable goods, there is, unless excluded or modified, an implied warranty that the goods shall be fit for such purpose. § 7-2-315.

Implied warranties, including the warranty of merchantability can be limited or excluded in writing. Remedies for breach of warranty also can be limited. § 7-2-316.

Alaska

BANKRUPTCY EXEMPTIONS

Federal - See Chapter 2 supra.

State - Homestead exemption - $27,000 including aggregate ownership interests which cannot exceed $27,000. § 09.38.010.

Personalty exemption - (1) Aggregate value of $1,500 chosen by the individual from the following categories of property:

a. Household goods and wearing apparel.

b. Books and musical instruments.

c. Family portraits and heirlooms.

(2) Jewelry not to exceed $500;

(3) $1,400 in aggregate value of implements, professional books, and tools of the trade.

(4) $500 for the value of pets.

(5) A motor vehicle exemption of $1,500 is the full value of the vehicles does not exceed $10,000. § 09.38.020.

CREDIT REPORTING

Federal - Fair Credit Reporting Act. See Chapter 3 supra.

State - No statutory provision.

DEBT COLLECTION

Federal - Fair Debt Collection Practices Act. See Chapter 3 supra.

State - No statutory provision.

HOME SOLICITATION SALE

Federal - FTC Trade Regulation Rule. See Chapter 3 supra.

State - The buyer has the right to cancel a door-to-door (home-solicitation) sale within five days of entering into the contract. The seller must give the purchaser written notice of his right to revoke at the time of

sale. Revocation of the contract is effective upon tender of rejected goods to the seller or agent, or upon the posting of a registered letter (marked Deliver to Addressee Only, Return Receipt) of rejection to the seller or his agent. § 45.02.350(a). The seller must bear the cost of return of the rejected goods. § 45.02.350(b).

A previously negotiated sale, a sale in which the buyer initiated the sale and the goods are needed for an emergency, a sale conducted entirely by mail, a sale in which the buyer requested the seller to visit his home for repair or maintenance, and a sale conducted at the purchaser's place of business are not included in the protections provided by this statute. § 45.02.350(c).

MINOR'S CONTRACT

Age of majority to contract - 18. § 25.20.010.

Contractual liability - Minor is liable only for the reasonable price of necessaries received as a result of a contractual relationship. § 45.01.103.

REPOSSESSION REQUIREMENTS

At any time after an action is commenced for repossession of property, a creditor can claim immediate possession of the property by submitting an affidavit to the peace officer. § 09.40.260. The creditor also must submit an undertaking with the affidavit showing that sufficient sureties are bound in double the value of the property for prosecution of the action. § 09.40.270. Notice to the debtor is not required. The debtor can secure return of the property by submitting to the peace officer, a written undertaking approved by the clerk of court and executed by sufficient sureties bound in double the value of the property. § 09.40.280.

The foregoing statutory provisions are subject to Alaska Civil Rule 89 which recognizes constitutional requirements of due process previously established by the United States Supreme Court.

STATUTE OF LIMITATIONS

Contract under seal - 10 years. § 09.10.040.
Simple written contract - 6 years. § 09.10.050.
Contract for sale of goods - 4 years. § 45.02.725.
Oral contracts - 6 years. § 09.10.050.
Judgments - Courts of record - 10 years. § 09.10.040.

TRUTH-IN-LENDING REQUIREMENTS

Federal - Truth-in-Lending Act. See Chapter 3 supra.

Alaska

State - A retail installment contract must be contained within a single document which is dated and signed by the buyer. § 45.10.010. The retail seller shall provide the buyer with a copy of the contract. Until the seller does so, the buyer is obligated to pay only the cash sale price. § 45.10.020.

The contract must contain a number of items including any finance or service charges to the buyer. § 45.10.030. The extent of any service charge shall not exceed the amounts specified in § 45.10.120.

Enforcement may be by the Attorney General, § 45.10.170 or by barring recovery to the seller for any service charge under the contract. § 45.10.190.

UNFAIR AND DECEPTIVE TRADE PRACTICES

Prohibited Practices: Unfair methods of competition and unfair or deceptive acts or practices, including 25 enumerated practices.

Special Requirements: None specified.

Scope: Trade or commerce.

Exclusions: Advertisement done by disinterested publisher, radio or television media without knowledge of falsity; acts regulated by state or federal law or agency, unless law does not prohibit the UDAP violation; act regulated by AS 21.36 governing trade practices in insurance or AS 06.05, Alaska Banking Code.

Private Remedies: Actual damages; $200 minimum damages; treble damages discretionary for willful violations; necessary equitable relief; class actions for actual damages and equitable remedies subject to AG approval; "may" award attorney's fees to consumer; or to respondent if successful.

Limitations: Loss of money or property required; statute of limitations is 2 years from date violation should have been discovered.

State Remedies: AG has substantive and procedural rule-making powers and enforces; injunction; restitution; $5,000 per initial violation; $25,000 per violation of injunction.

Precedential Value of FTC Interpretations: Great weight.

WARRANTIES

Unless excluded or modified, a warranty that the goods shall be merchantable is implied in a contract for their sale if the seller is a

merchant with respect to goods of that kind. Under this section the serving for value of food or drink to be consumed either on the premises or elsewhere is a sale. § 45.02.314.

Where the seller at the time of contracting has reason to know a particular purpose for which the goods are required and that the buyer is relying on the seller's skill or judgment to select or furnish suitable goods, there is, unless excluded or modified, an implied warranty that the goods shall be fit for that purpose. § 45.02.315.

Implied warranties, including the warranty of merchantability can be limited or excluded in writing. Remedies for the breach of warranty also can be limited. § 45.02.316.

Arizona

BANKRUPTCY EXEMPTIONS

Federal - See Chapter 2 supra.

State - Homestead exemption - $50,000 for house and land, or mobile home and land. § 33-1101.

Personalty exemption - §§ 33-1121 through 33-1133.

CREDIT REPORTING

Federal - Fair Credit Reporting Act. See Chapter 3 supra.

State - The purposes for which a consumer report can be issued by a consumer reporting agency are basically the same as the federal law with a few exceptions. See Chapter 1 supra. Upon written request and a proper showing of identification, a consumer reporting agency must disclose to a consumer the contents of its file used for making a consumer report on the consumer and all the facts and circumstances relative thereto. The agency also must disclose the names and addresses of all persons requesting a report during the previous 6 months. § 44-1693(a)(4). No fee may be required for these services. § 44-1693(d).

A creditor who denies credit, a licensing agency which denies a license, and an employer who denies a consumer employment, promotion or retention shall, upon written request, reveal the name and address of any consumer reporting agency whose report was used to make a final decision. § 44-1693. If a consumer disputes any item on his consumer report, he can give the agency written notice of the item, and then the agency has 15 days within which to admit the inaccuracy, deny the inaccuracy or state that it has had insufficient time to complete its investigation. § 44-1694. If there is an inaccuracy in the report, it must be immediately corrected and any person receiving a report of the inaccurate information must be informed of the correct information. § 44-1694(c).

No consumer reporting agency is liable to a consumer for any inaccurate information corrected in compliance with § 44-1694, § 44-1695(a). The agency is liable for damages, attorney's fees and court costs incurred from its refusal to correct a report. § 44-1695(b). An agency, user, or informer is liable for actual and punitive damages, attorney's fees, and court costs if it acts willfully and maliciously with intent to harm a consumer or its actions constitute gross negligence. § 44-1695(c).

Arizona

DEBT COLLECTION

Federal - Fair Debt Collection Practices Act. See Chapter 3 supra.

State - Statutory provisions regulating collection agencies. Collection agencies shall not attempt to collect any debt unless such debt is justly due from and legally chargeable against the debtor. Nor shall any agency engage in any unfair or misleading practices or resort to any oppressive, vindictive, or illegal means or methods of collection. § 32-1051.

Enforcement may be by the State Banking Superintendent in a hearing for suspension or revocation of license or through criminal prosecution. §§ 32-1053, 32-1055, 32-1056.

HOME SOLICITATION SALE

Federal - FTC Trade Regulation Rule. See Chapter 3 supra.

State - The buyer has the right to cancel a home solicitation sale until midnight of the third business day following execution of an agreement. § 44-5002(a). Cancellation occurs when the buyer gives written notice of cancellation in person or by telegram, or deposits notice in the U.S. Mail to the seller at the address specified for notice. § 44-5002(b). This notice of cancellation must indicate an intention of the buyer not to be bound by the home solicitation sale. § 44-5002(c).

The buyer must take reasonable care of the goods in his possession and tender the goods upon demand at his or her residence within 20 days after cancellation of the home solicitation sale. If the seller fails to take possession of the goods within 20 days after cancellation, the goods become the property of the buyer without further obligations. § 44-5007(a,b). The buyer may not cancel the home solicitation sale if he asked the seller to provide the goods or services due to an emergency and the seller makes a substantial beginning of performance before notice of cancellation and the goods cannot be returned to the seller in as good condition as received by the buyer. § 44-5007(d).

The seller must tender any payments or trade-ins to the buyer within 10 days after cancellation of the sale. § 44-5006. The seller is entitled to a cancellation fee if he has performed services pursuant to the sale before cancellation. This fee is the lesser of five percent (5%) of the cash price, $15, or the amount of the cash down payment. § 44-5007(c). The seller must also restore any altered property to its original condition.

A sale made pursuant to a pre-existing account with a seller, and a sale made pursuant to prior negotiations between the parties at a business establishment where goods are offered and exhibited for sale are not included in the protections provided by this statute. § 44-5001(1).

MINOR'S CONTRACT

Age of majority to contract - 18. § 1-215.

Contractual liability - Minor is liable only for the reasonable price of necessaries received as a result of a contractual relationship. § 44-2203.

REPOSSESSION REQUIREMENTS

The creditor must make an affidavit stating:

(1) That he is the owner of the property or is lawfully entitled to its possession;

(2) That the property is wrongfully detained by the debtor; and

(3) The actual value of the property and that it has not been seized under any process, execution, or attachment against the property of the creditor, or if so seized, that it is exempt from seizure. § 12-1301.

The creditor also must execute and deliver to the officer a bond made payable to the debtor in an amount not less than double the value of the property. § 12-1303. Notice to the debtor is required upon the filing of an application for a provisional remedy. § 12-2405. The debtor can cause the property to be returned to him by executing a bond to the creditor in double the value of the property within 2 days after the property was taken. § 12-1304.

See also § 44-5501.

STATUTE OF LIMITATIONS

For debts evidenced by a contract written in the state - 6 years; 4 years for out-of-state contract. §§ 12-548, 12-550.
Contract for sale of goods - 4 years. § 47-2725.
Oral contracts - 3 years. § 12-543.
Judgments - 4 years for foreign judgments. §§ 12-544, 12-549.

TRUTH-IN-LENDING REQUIREMENTS

Federal - Truth-in-Lending Act. See Chapter 3 supra.

State - Creditors, other than banks, savings and loan associations, credit unions, mortgage brokers, and licensed pawn brokers engaged in making consumer loans shall display or have available to the public in printed form a full and accurate schedule of charges. Printed forms shall disclose, in close proximity to the borrower's signature line, that the

borrower may take copies of the documents away for review prior to signing them. §§ 6-620, 6-602B.

Within 10 days after any consumer loan is made, the creditor shall deliver to the borrower a printed copy of § 6-622 and either exact copies of the instruments evidencing indebtedness or a clear statement of the amount and date of the loan, a schedule of payments, the type of any security, the creditor's name and address, each person primarily obligated and the agreed rates of charge. Charges which have been precomputed and subject to refund or recomputation shall also be disclosed. § 6-621a.

Consumer loan means the loan of money in an original principal amount of ten thousand dollars or less. § 6-601(1).

§ 6-622. Maximum rates of charge on loans.

A. On any loan in an original principal amount not exceeding one thousand dollars a licensee may contract for and receive charges at a rate not exceeding three per cent per month.

B. On any loan in which the original principal amount exceeds one thousand dollars a licensee may contract for and receive charges at a rate not exceeding three per cent per month on that part of the unpaid balance not exceeding five hundred dollars, and two per cent per month on that part of the unpaid balance exceeding five hundred dollars and not exceeding ten thousand dollars.

C. A licensee may contract for and receive charges on the entire amount of the unpaid principal balance of the loan at the single annual percentage rate which would earn not more than the total amount of charges at the scheduled maturity of the contract as would the several different rates that otherwise would be applicable under subsection B, to different portions of the unpaid principal balance, if the loan is paid according to the agreed terms.

D. Prepaid finance charges or fees commonly referred to as points are prohibited.

Similar provisions apply to loans secured by a mortgage. § 6-901 et. seq. See § 4-6001 et. seq. for retail installment sales provisions.

UNFAIR AND DECEPTIVE TRADE PRACTICES

ARIZ. REV. STAT. ANN. § 44-1521 (1967 & Supp. 1983-1984).

Arizona

Prohibited Practices: Deception, omission of material fact with intent.

Special Requirements: None specified.

Scope: Sale, offer for sale, or lease of goods, intangibles, real estate or services.

Exclusions: Advertisements of publisher, radio or television media without knowledge; advertising complying with FTC regulations.

Private Remedies: None specified. (Courts imply private right of action.)

Limitations: None specified.

State Remedies: AG specifically and county attorney by inference given enforcement powers; procedural rulemaking in AG; injunction; receiver; $5,000 per initial violation; $10,000 for violation of injunction; court costs, with attorney's fees discretionary; misdemeanor penalties.

Precedential Value of FTC Interpretations: Used as a guide.

WARRANTIES

Unless excluded or modified, a warranty that the goods shall be merchantable is implied in a contract for their sale if the seller is a merchant with respect to goods of that kind. Under this section the serving for value of food or drink to be consumed either on the premises or elsewhere is a sale. § 47-2314(A).

Where the seller at the time of contracting has reason to know any particular purpose for which the goods are required and that the buyer is relying on the seller's skill or judgment to select or furnish suitable goods there is, unless excluded or modified, an implied warranty that the goods shall be fit for such purpose. § 47-2315.

Implied warranties, including the warranty of merchantability, can be limited or excluded in writing. The remedies for breach of warranty also can be limited. § 47-2316.

Arkansas

BANKRUPTCY EXEMPTIONS

Federal - See Chapter 2 supra.

State - Homestead exemption - Rural - 160 acres not to exceed the value of $2,500, but not to be reduced to less than 80 acres regardless of value. Ark. CONST. art. IX § 4.

Urban - 1 acre of land not to exceed the value of $2,500, but never to be reduced to less than one-quarter of an acre. Ark. CONST. art. IX § 5.

Personalty exemption - Single individual or not head of a family - $200 and wearing apparel. Ark. CONST. art. IX § 1.

Married individual or head of a family - $500 and the entire family's wearing apparel. Ark. CONST. art. IX § 2.

CREDIT REPORTING

Federal - Fair Credit Reporting Act. See Chapter 3 supra.

State - No statutory provision.

DEBT COLLECTION

Federal - Fair Debt Collection Practices Act. See Chapter 3 supra.

State - No statutory provision. But see Collection Agency Regulation. §§ 71-2001 through 71-2010.

HOME SOLICITATION SALE

Federal - FTC Trade Regulation Rule. See Chapter 3 supra.

State - The buyer has the right to cancel a home solicitation sale until midnight of the third business day following execution of the agreement or offer to purchase. The time limitation on the buyer's right to cancel does not begin to run until notice of the right to cancel is given, if the seller fails to give both oral and written notice of the buyer's right to cancel. § 70-917(c, d).

The buyer must take reasonable care of the goods and tender the goods at his or her residence in substantially the same condition as delivered. If the seller fails to demand possession of the goods within 20 days after receipt of the notice of cancellation, then the buyer can keep

the goods. The seller must return any payments, trade-ins, or evidences of indebtedness to the buyer. § 70-917(c).

The following sales are not included in the protections provided by this chapter:

(1) A sale for less than $25.00;

(2) A previously negotiated sale;

(3) A sale in which the buyer initiated the contact and requested the seller to come to his home; (§ 70-915).

(4) A sale where the goods are to be delivered at one time if: (A) the buyer's signature is not required, (B) the buyer makes no payment prior to delivery, (C) the goods are not delivered within 3 business days of the order, (D) the buyer may refuse to accept the goods or return them for refund without any liability, and (E) the buyer's right to cancel or refuse delivery is conspicuously set forth on the sales receipt. § 70-920.

MINOR'S CONTRACT

Age of majority to contract - 18. § 57-103.

Contractual liability - Minor is liable only for necessaries received as a result of a contractual relationship. §§ 67-554, 85-1-103.

REPOSSESSION REQUIREMENTS

The creditor must make an affidavit stating:

(1) A particular description of the property;

(2) The actual value of the property, and the damages which the creditor believes should be recovered;

(3) That the creditor is the owner of the property and is entitled to its immediate possession;

(4) That the property is wrongfully detained by the debtor, with the alleged cause of detention;

(5) That the property has not been taken for a tax or fine against the creditor or seized under an execution or attachment against his property; and

(6) That the creditor's cause of action has accrued within 3 years. § 34-2102.

The creditor also must have executed a bond in the presence of the sheriff with a surety, stating the sum adjudged against him not to exceed double the value of the property and the court costs. § 34-2105. Notice to the debtor of the opportunity of a hearing before seizure of the property is required. § 34-2119(c). Within 2 days after the property is seized by the sheriff, the debtor can recover it by executing a bond to the creditor with sufficient sureties for double the value of the property. § 34-2109.

STATUTE OF LIMITATIONS

Contract under seal - 5 years. § 37-210.
Simple written contract - 5 years. § 37-209.
Contract for the sale of goods - 4 years. § 85-2-725.
Oral contracts - 3 years. § 37-206.
Judgments - Courts of record - 10 years. § 37-212.

TRUTH-IN-LENDING REQUIREMENTS

Federal - Truth-in-Lending Act. See Chapter 3 supra.

State - No state truth-in-lending statute.

UNFAIR AND DECEPTIVE TRADE PRACTICES

ARK. STAT. ANN. § 70-901 (1979 & Supp. 1983).

Prohibited Practices: Deceptive practices, omission of material fact with intent to cause reliance, and 7 enumerated practices.

Special Requirements: None specified.

Scope: Sale or advertisement of goods and services.

Exclusions: Advertising complying with FTC standards; acts permitted by laws administered by state departments of insurance, securities, commerce, public service, and banking; broadcasters, printers, publishers and others who disseminate information without actual knowledge of deceptive nature of advertising or practice.

Private Remedies: None specified.

Limitations: None specified.

State Remedies: AG through consumer counsel and Consumer Protection Division has rulemaking power; misdemeanor penalties; injunction; restitution; forfeiture of state licenses; costs for willful violation; $10,000 for initial violation or violation of injunction.

Arkansas

Precedential Value of FTC Interpretations; Not mentioned.

WARRANTIES

Unless excluded or modified, a warranty that the goods shall be merchantable is implied in a contract for their sale if the seller is a merchant with respect to goods of that kind. Under this section the serving for value of food or drink to be consumed either on the premises or elsewhere is a sale. § 85-2-314.

Where the seller at the time of contracting has reason to know any particular purpose for which the goods are required and that the buyer is relying on the seller's skill or judgment to select or furnish suitable goods, there is, unless excluded or modified, an implied warranty that the goods shall be fit for such purpose. § 85-2-315.

Implied warranties, including the warranty of merchantability, can be limited or excluded in writing. Remedies for breach of warranty also can be limited. § 85-2-316.

California

BANKRUPTCY EXEMPTIONS

Federal - See Chapter 2 supra.

State - Homestead exemption -

(a) The amount of the homestead exemption is the following:

(1) $30,000 unless the judgment debtor or spouse of same who resides in the homestead is a person described in paragraph (2).

(2) $45,000 if the judgment debtor or spouse of same who resides in the homestead is either or both of the following:

(A) A person 65 years of age or older.

(B) A member of a family unit if at least one member owns no interest in the homestead or whose only interest in the homestead is a community property interest with the judgment debtor. Code of Civil Procedure § 704.730. "Homestead" includes residential homes, mobile homes, and boats. Code of Civil Procedure § 704.710.

Personal Exemptions -

(a) Motor vehicles of an aggregate equity of $1,200 or less. Code of Civil Procedure § 704.010.

(b) Household furnishings and furniture and personal effects ordinarily and reasonably used in the household which are not of extraordinary value. Code of Civil Procedure § 704.020.

(c) Jewelry, heirlooms, and art of an aggregate equity of not more than $2,500. Code of Civil Procedure § 704.040.

(d) Personal property necessary to and used in debtor's trade or business of an aggregate equity of $2,500 if used by debtor alone or of $5,000 if used by debtor and his spouse. Code of Civil Procedure § 704.060.

(e) Direct deposit Social Security benefits. See Code of Civil Procedure § 704.080 for amounts and conditions of exemption.

(f) Life insurance policies. See Code of Civil Procedure § 704.100 for amounts and conditions of exemption.

(g) Public and private retirement benefits, vacation credits, unemployment benefits, disability benefits, and Worker's Compensation benefits, etc. See Code of Civil Procedure § 704.110 - 704.210.

CREDIT REPORTING

Federal - Fair Credit Reporting Act. See Chapter 3 supra.

State - The Consumer Credit Reporting Agencies Act requires that a reporting agency allow a consumer to visually inspect all files maintained on his account upon request. Depending upon the manner selected by the consumer, disclosure can be by phone, mail or in person. Civil Code § 1785.10. The report must disclose the recipients of any consumer reports on the consumer within the past two years if the report was for employment purposes and within the past six months for all other purposes. Civil Code § 1785.10(b). Adjudicated bankruptcies which antedate the report by more than 14 years, unpaid judgments which antedate the report by more than 10 years, and other adverse information which antedates the report by more than 7 years are prohibited from being included in the report. Civil Code § 1785.13.

The consumer credit report is free to the consumer if the request is made within 30 days of notification of adverse action taken pursuant to a credit application. Civil Code § 1785.17. For negligent violations of this Act, the debtor can recover actual damages, including court costs, loss of wages, attorney's fees and damages for pain and suffering. For willful violations, actual damages plus punitive damages of not less than $100 nor more than $5,000 are recoverable. Civil Code § 1785.31(a). In either case, injunctive relief may also be given, Civil Code § 1785.31(b).

DEBT COLLECTION

Federal - Fair Debt Collection Practices Act. See Chapter 3 supra.

State - The Robbins-Rosenthal Fair Debt Collection Practices Act is applicable to anyone who in the ordinary course of business regularly engages in debt collection, except attorneys. Civil Code § 1788.2(c). The Act requires that the agency and the caller be identified in any telephonic communication with the debtor. Civil Code § 1788.11(b). Any attempt to collect a consumer debt by the use of threats, obscene or profane language, communications with third parties, misrepresentations in communications, or obtaining an affirmation from a bankrupt without proper disclosures is strictly prohibited by the Act. Civil Code §§ 1788.10 to 1788.14.

A debt collector who violates the Robbins-Rosenthal Act is liable to the debtor for actual damages sustained by the debtor. Civil Code § 1788.30(a). If the violation is willful, additional damages of not less than $100 nor more than $1,000 will be assessed. Civil Code § 1788.30(b). The

debt collector incurs no liability if he corrects the mistake or error within 15 days after its discovery or after receipt of written notice from the debtor. Civil Code § 1788.30(d). Attorney's fees may be awarded to the prevailing party. Civil Code § 1788.30(c). The remedies provided in the Act are in addition to any others provided by law. Civil Code § 1788.32.

HOME SOLICITATION SALE

Federal - FTC Trade Regulation Rule. See Chapter 3 supra.

State - The buyer has the right to cancel a home solicitation sale until midnight of the third business day following execution of an agreement or offer to purchase. Cancellation is effective when the buyer gives the seller written notice at the address specified in the agreement or when deposited in the mail properly addressed to the seller, postage prepaid. Civil Code § 1689.6(a-c). The sales agreement must contain a conspicuous notice of this cancellation right. Civil Code § 1689.7(a).

The buyer must take reasonable care of the goods and tender the goods at his or her residence to the seller upon demand. Civil Code § 1689.11(b). However, if the seller fails to demand possession within 20 days after cancellation of the contract, the buyer takes title to the goods without obligation to pay for them. Civil Code § 1689.11(a). The seller must return to the buyer any payments previously made, and any evidences of indebtedness. Civil Code § 1689.10(a). The seller must also restore any altered property to substantially as good condition as it was when the services were rendered. Civil Code § 1689.11(c).

A sale involving a vehicle required to be registered, a sale involving rescission rights under the federal Truth-in-Lending Act, professional and financial services are not included in the protections provided by this statute. Civil Code § 1689.5. Also not included in the protections of the statutes are sales where the goods are affixed to realty and they are subsequently sold or encumbranced to an independent third party and emergency services or repairs initiated by the buyer. Civil Code §§ 1689.9, 1689.13.

See also Bus. & Prof. C. § 17500.3.

MINOR'S CONTRACT

A minor is anyone under the age of eighteen (18). Civil Code § 25. A minor may not disaffirm an otherwise valid obligation entered into under the express authority or direction of a statute. Civil Code § 37. In other cases, a minor may disaffirm a contract, before attaining the age of eighteen (18) or within a reasonable time afterwards, except in the following cases: 1) a contract to pay the reasonable value of necessaries provided they have actually been furnished to him; 2) court approved

contracts for artistic or creative services; 3) court approved professional sport contracts; 4) contracts for pregnancy care. Civil Code §§ 34.5, 36. Minors living separate from their parents who are fifteen (15) years or older may not disaffirm contracts for medical or dental care. Civil Code § 34.6.

REPOSSESSION REQUIREMENTS

Personal Property sold on contract or installment account (other than motor vehicles) - Seller may retake goods without prior notice if retaking can be accomplished without breach of the peace. Civil Code § 1812.2; Commercial Code § 9503. Within ten (10) days thereafter, seller must give buyer written notice of his intent to sell the goods or retain them in full satisfaction of the indebtedness. The notice must specify the date of any sale, the amount of overdue payments and that the buyer has a right to redeem within ten (10) days after the notice by making the overdue payments. Civil Code § 1812.2. In the event a sale occurs, any surplus must be paid to the buyer. Civil Code § 1812.4. Seller may not thereafter recover any deficiency. Civil Code § 1812.5. If notice is not properly given, seller is liable to buyer for damages plus $10.00. Civil Code § 1812.2. Willful violation is a misdemeanor. Civil Code § 1812.6.

Motor Vehicles sold on conditional sales contract - Seller may retake vehicle without prior notice if retaking can be accomplished without a breach of the peace. Commercial Code § 9503. Within sixty (60) days following repossession, seller must give buyer notice that buyer may redeem the vehicle by paying the full itemized indebtedness within fifteen (15) days and that buyer also has a right to reinstate, within the same period, by paying the itemized contract balance, collection charges and repossession costs. Civil Code § 2983.2. In some cases involving buyer misconduct, buyer does not have a right to reinstatement. See Civil Code §§ 2983.2(a)(2), 2983.3(b). The redemption and/or reinstatement period must be extended for ten (10) days upon buyer's timely written request. The notice must further advise buyer of seller's intent to dispose of the vehicle upon the expiration of fifteen (15) days of notice if it is mailed from and given to an address in California. Otherwise the period is twenty (20) days. Within forty-five (45) days after disposition, upon buyer's request, seller must account to buyer. Within said period, he must also pay over any surplus to buyer. Civil Code § 2983.2.

Seller is entitled to any deficiency unless he had wrongfully and in bad faith denied buyer his right to reinstate the contract. Civil Code § 2983.3. Violation of the foregoing requirements is a misdemeanor. Civil Code § 2983.6.

Note: The foregoing requirements and procedures apply only to sellers who are engaged in the business of selling or leasing motor vehicles under conditional sales contracts. Civil Code § 2981(b).

California

STATUTE OF LIMITATIONS

Contract under seal - 4 years. Code of Civil Procedure § 337.
Simple written contract - 4 years. Code of Civil Procedure § 337.
Contract for the sale of goods - 4 years. Commercial Code § 2725.
Oral contracts - 2 years. Code of Civil Procedure § 339.
Judgments - Courts of record - 10 years. Code of Civil Procedure § 337.5.

TRUTH-IN-LENDING REQUIREMENTS

Federal - Truth-in-Lending Act. See Chapter 3 supra.

State - Any information required to be disclosed in a retail installment contract, conditional sale contract, or other document may be set forth in terminology required under Regulation Z. Nothing in the state laws prohibits the disclosure of additional information required or permitted under Regulation Z. Civil Code § 1801.5. "Regulation Z" means any rule, regulation, or interpretation promulgated by the Board of Governors of the Federal Reserve System under the federal Truth-in-Lending Act, as amended (15 U.S.C. 1601 et seq.). Civil Code § 1802.18.

UNFAIR AND DECEPTIVE TRADE PRACTICES

CAL. CIV. CODE § 1750 (West 1973 & Supp. 1984).

Prohibited Practices: 19 enumerated unfair methods of competition and unfair or deceptive practices.

Special Requirements: Intentional violation and not result of bona fide error notwithstanding a reasonable error avoidance procedure needed to sustain action for damages; no damages awarded if correction or replacement given.

Scope: Transactions that result in sale or lease of goods or services to any consumer.

Exclusions: Construction and/or sale of entire residence, or all or part of commercial or industrial structure; sales of realty; advertisements done by publisher, radio and television media, with no knowledge of falsity; non-consumer transactions; non-intentional violations with correction or replacement made.

Private Remedies: Class actions with $300 minimum damages; actual damages, injunction; punitive damages; any other relief court deems proper.

California

Limitations: Consumer must suffer damages; give 30 day notice letters if seeks damages; no damages if correction or replacement given; 3 year statute of limitation from commission of act.

State Remedies: None specified.

Precedential Value of FTC Interpretations: None specified.

CAL. BUS. & PROF. CODE §§ 17200 & 17500 (Deering 1976 & Supp. 1984).

Prohibited Practices: Untrue or misleading statements and unfair methods of competition including unfair, fraudulent or unlawful business practices and deceptive advertising.

Special Requirements: None specified.

Scope: Acts of unfair competition and false or misleading statements applies to disposal of real or personal property, performance of services by advertising, or public outcry.

Exclusions: False and misleading statements do not apply to trade or professional association, state agency, board or commission of consumer affairs which enacts rules or code of professional ethics prohibiting lawful advertisement.

Private Remedies: Injunction; receiver; restitution or orders necessary to prevent unfair competition; losses and expenses as a result of false advertising only, plus $50.

Limitations: 4 year statute of limitations from time the cause accrues for unfair methods of competition.

State Remedies: Criminal penalties of 6 months' imprisonment and/or maximum $2500 fine for untrue or misleading statements; AG, DA, or city attorney enforces and state or local Department of Consumer Affairs may request action; injunction; maximum $2500 per violation; expenses of investigation and prosecution to state or local consumer agency; $6000 per intentional injunction violation; court considers extent of harm, persistent conduct, length of time of conduct, assets of plaintiff and corrective action by defendant.

Precedential Value of FTC Interpretations: None specified.

WARRANTIES

California has a comprehensive consumer warranties law, the purpose of which is to accord the consumer a wide range of protections. See Civil Code §§ 1790-1797.6.

Colorado

BANKRUPTCY EXEMPTIONS

Federal - See Chapter 2 supra.

State - Homestead exemption - $20,000. § 38-41-201.

Personalty exemption -

(1) $750 worth of necessary wearing apparel;
(2) $500 worth of jewelry;
(3) $750 worth of library books;
(4) $1,500 worth of household goods;
(5) $300 worth of fuel and provisions;
(6) $1,500 worth of stock-in-trade;
(7) $1,000 motor vehicle; if debtor disabled or age 65 or older - $3,000;
(8) $1,500 worth of books for the library of a professional.

§ 13-54-102.

CREDIT REPORTING

Federal - Fair Credit Reporting Act. See Chapter 3 supra.

State - See § 12-14-107.

DEBT COLLECTION

Federal - Fair Debt Collection Practices Act. See Chapter 3 supra.

State - An injunction may be granted and the debtor may recover actual damages if the court finds that a debt collector has engaged in unconscionable conduct in collecting a debt. § 5-5-108(2). Some acts which may be found unconscionable are (A) using or threatening violence or force against the debtor, (B) communicating with the debtor at frequent intervals or unusual hours, (C) using fraudulent, deceptive or misleading representations, and (D) causing or threatening to cause injury to the debtor's reputation or economic status. § 5-5-108(4).

See also Colorado Fair Debt Collection Practices Act - § 12-14-101 et. seq.

HOME SOLICITATION SALE

Federal - FTC Trade Regulation Rule. See Chapter 3 supra.

Colorado

State - The buyer has the right to cancel a home solicitation sale until midnight of the third business day following execution of an agreement or offer to purchase. § 5-2-502(1). Cancellation occurs when the buyer gives written notice of cancellation to the seller at the address stated in the agreement or offer to purchase. § 5-2-502(2). Notice of cancellation is effective when deposited in the mailbox properly addressed to the seller, postage prepaid. § 5-2-502(3).

The buyer may cancel the home solicitation sale by notifying the seller in any manner and by any means of his intention to cancel, if the seller has failed to obtain his signature to a written agreement or offer to purchase which contains the buyer's rights. § 5-2-503(3). The buyer's right of cancellation automatically expires 3 years after the date of consummation of the home solicitation sale.

The buyer must take reasonable care of the goods and tender the goods at his or her residence to the seller upon demand. However, the buyer takes title to the goods if the seller fails to demand such possession within 40 days after cancellation or revocation of the agreement. § 5-2-505. The seller must tender any payments, notes of indebtedness, or goods received to the buyer within 10 days after cancellation of the sale. § 5-2-504(1).

A sale made pursuant to a pre-existing revolving charge account, a previously negotiated sale at a business establishment, an emergency sale, a sale conducted entirely by mail or telephone, and a sale involving a rescission right under the federal Truth-in-Lending Act are not included in the protections provided by this statute. §§ 5-2-501, 5-2-502(5).

MINOR'S CONTRACT

Age of majority to contract - 18. § 13-22-101.

Contractual liability - Minor is liable only for necessaries received as a result of a contractual relationship. § 4-1-103.

REPOSSESSION REQUIREMENTS

The creditor must file a verified complaint or a complaint and an affidavit showing:

(1) That the creditor is the owner of the property or entitled to its possession;

(2) That the property is being detained by the debtor and how the debtor came into possession of the property;

(3) A description of the property, along with its location and a statement of its actual value; and

(4) That the property has not been taken for a tax assessment or fine or seized under an execution, or if seized, that it is exempt from seizure. Rule 104(b), C.R.C.P.

The creditor also must execute a bond with such surety as the court may require and in an amount set by the court but not exceeding double the value of the property. Rule 104(e), C.R.C.P. A show cause order will be issued to the debtor if the creditor has complied with the requirements of the affidavit. A hearing must be held within 10 days after issuance of the show cause order before a final determination as to the proper disposition of the property can be made. Rule 104(c), C.R.C.P. If the debtor gained possession of the property by theft, or the property is negotiable instruments or credit cards, or the property is perishable, or the debtor has waived his right to a hearing, an order of possession can be issued prior to a hearing. Rule 104(d), C.R.C.P.

The debtor can regain possession of the property by executing a bond with such surety as the court requires and in an amount not to exceed double the value of the property as set by the court. A notice of filing of the bond must be served on the creditor or his attorney, along with a copy of the bond. Rule 104(j), C.R.C.P.

See also Uniform Consumer Credit Code - Limitations on Creditors' Remedies - §§ 5-5-101 to 5-5-112.

STATUTE OF LIMITATIONS

Contract under seal - 6 years. § 13-80-110.
Simple written contract - 6 years. § 13-80-110.
Contract for sale of goods - 4 years. § 4-2-725.
Oral contracts - 6 years. § 13-80-110.
Judgments - Courts of record - 20 years. § 13-52-102.

TRUTH-IN-LENDING REQUIREMENTS

Federal - Truth-in-Lending Act. See Chapter 3 supra.

State - The Colorado Consumer Credit Code requires the creditor to disclose to the buyer his credit charges as an annual percentage rate and any other charges, usually before credit is extended. § 5-2-304. These disclosures are required for sales, loans, and revolving credit transactions. §§ 5-2-306, 5-2-310, § 5-3-301. Credit extensions to the government, the sale of insurance by an insurer, regulated public utilities and common carriers, the rates and charges of a licensed pawnbroker, and the disclosure of rates and charges dealing with securities transactions by a broker dealer registered with SEC are excluded from the provisions of the state truth-in-

lending disclosure requirements. § 5-1-202.

A creditor who fails to disclose required information to a person entitled to the information is liable to that person in an amount equal to the sum of: (A) twice the credit service charge (but not less than $100 nor more than $1,000), and, (B) in a successful action to enforce liability, the costs of the action plus attorney's fees. § 5-5-203. A creditor is not liable in an action brought against him, if within sixty days after discovery of an error and prior to written notice of the error or institution of a civil or criminal action, the creditor makes the adjustments and notifies the debtor. § 5-5-203(2). A creditor who willfully fails to provide information which he is required to disclose is guilty of a misdemeanor and upon conviction shall be punished by a fine not to exceed $5,000, or by imprisonment not to exceed 1 year, or both. § 5-5-302.

UNFAIR AND DECEPTIVE TRADE PRACTICES

COLO. REV. STAT. § 6-1-101 (1973 & Supp. 1983).

Prohibited Practices: 18 enumerated deceptive practices.

Special Requirements: None specified.

Scope: Practices in course of a person's business, vocation or occupation.

Exclusions: Conduct complying with rules or statutes administered by state or federal agency; publishers, advertising agencies, broadcasters or printers who disseminate information without knowledge of deception.

Private Remedies: Damages, attorney fees "may" be awarded to prevailing party.

State Remedies: AG or DA enforces; injunction; restitution; civil penalties include maximum $10,000 for violation of injunction; rulemaking.

Precedential Value of FTC Interpretations: None specified.

WARRANTIES

Unless excluded or modified, a warranty that the goods shall be merchantable is implied in a contract for their sale if the seller is a merchant with respect to goods of that kind. Under this section the serving for value of food or drink to be consumed either on the premises or elsewhere is a sale. § 4-2-314.

Where the seller at the time of contracting has reason to know any particular purpose for which the goods are required and that the buyer is relying on the seller's skill or judgment to select or furnish suitable goods,

there is, unless excluded or modified, an implied warranty that the goods shall be fit for such purpose. § 4-2-315.

Implied warranties, including the warranty of merchantability, can be limited or excluded in writing. Remedies for breach of warranty also can be limited. § 4-2-316.

Connecticut

BANKRUPTCY EXEMPTIONS

Federal - See Chapter 2 supra.

State - Homestead exemption - No statutory provision.

Personalty exemption -

(1) All necessary wearing apparel, bedding, and household furniture;
(2) All occupational and professional tools;
(3) Wedding and engagement rings;
(4) One motor vehicle not to exceed the value of $1500. § 52-352(b).

CREDIT REPORTING

Federal - Fair Credit Reporting Act. See Chapter 3 supra.

State - A creditor must furnish to a consumer, the name and address of the credit rating agency which issued a report which the creditor will use partially or wholly as a basis for adverse action against a consumer applying for credit for personal, family or household purposes. After proper identification and a written request by the consumer, a credit rating agency shall disclose all information in its files (except medical information), for purposes of verification and correct any mistakes. § 36-432.

DEBT COLLECTION

Federal - Fair Debt Collection Practices Act. See Chapter 3 supra.

State - No creditor shall use any abusive, harassing, fraudulent, deceptive or misleading representation, device or practice to collect or attempt to collect any debt. § 36-243(b).

HOME SOLICITATION SALE

Federal - FTC Trade Regulation Rule. See Chapter 3 supra.

State - The buyer has the right to cancel a home solicitation sale until midnight of the third business day following execution of an agreement or offer to purchase. § 42-137(a). Cancellation occurs when the buyer gives written notice of cancellation to the seller at the address specified in the agreement or when deposited in a mailbox, properly addressed. § 42-

137(b). Notice of cancellation is effective if it indicates an intention on the part of the buyer not to be bound by the agreement. § 42-137(c). The sales agreement must contain a conspicuous notice of this cancellation right. § 42-135(a).

The buyer must take reasonable care of the goods and tender the goods at his or her residence to the seller upon demand. If the seller fails to take possession of goods within 20 days after cancellation, the goods become the property of the buyer without obligation to pay for them. § 42-139(a). The seller must return any payments made by the buyer and any evidences of indebtedness within 10 business days after cancellation of the sale. § 42-138(a).

The following types of sales are not included in the protections provided by this statute:

(1) A previously negotiated sale;

(2) An emergency sale with a buyer's handwritten waiver of the cancellation right;

(3) A sale conducted entirely by mail or telephone;

(4) A sale in which the buyer initiated the contact and requested the seller to visit his home for personal property repairs;

(5) A sale pertaining to the sale of real property, newspapers, securities or commodities, and insurance;

(6) A sale made pursuant to a home party plan sales and demonstration; and

(7) A sale for less than $25, excluding magazine sales. § 42-134(a).

MINOR'S CONTRACT

Age of majority to contract - 18. § 1-1d.

Contractual liability - Minor is liable only for reasonable value of necessaries received as a result of a contractual relationship. § 42-2.

REPOSSESSION REQUIREMENTS

The creditor must make an affidavit that the property in question belongs to him and that he is entitled to its immediate possession. The affidavit must contain a statement of the true and just value of the goods. The creditor also must execute a bond with at least one surety, in an amount at least double the value of the property. § 52-518. The debtor is

entitled to a hearing before the property is repossessed, with notice being served on him at least 4 days prior to the hearing. § 52-278(c). The hearing is limited to a determination of whether or not there is probable cause to sustain the validity of the plaintiff's claim. § 52-278(d).

STATUTE OF LIMITATIONS

Contract under seal - 6 years. § 52-576.
Simple written contract - 6 years. § 52-576.
Contract for sale of goods - 4 years. § 42a-2-725.
Oral contracts - 3 years. § 52-581.
Judgments - Courts of record - 25 years. § 52-598.

TRUTH-IN-LENDING REQUIREMENTS

Federal - Truth-in-Lending Act. See Chapter 3 supra.

State - The Connecticut Truth-in-Lending Act requires the creditor to disclose all credit and lease terms before credit is extended to the prospective debtor. § 36-393a(a). These disclosures are required for loans, sales of property, or services, or otherwise. § 36-393(e). All transactions exempt under § 104 of the Federal Consumer Credit Protection Act are also exempt from the provisions of the state truth-in-lending act. § 36-393b(b).

A creditor who fails to disclose required information is liable to that person in an amount equal to the sum of: (1) actual damage sustained by the debtor; (2) twice the credit service charge (but not less than $100 - nor more than $1000); and (3) in a successful action to enforce liability, the costs of the action plus attorney's fees. § 36-407(a). A creditor is not liable in an action brought against him, if within 60 days after discovery of an error and prior to receipt of written notice of the error from the debtor or the institution of civil or criminal action, the creditor makes the adjustment and notifies the debtor. § 36-407(b). A creditor who willfully gives false information or fails to provide information that he is required to disclose shall, upon conviction, be fined not more than $5,000 and/or be imprisoned for not more than one year. § 36-399.

UNFAIR AND DECEPTIVE TRADE PRACTICES:

Prohibited Practices: Unfair methods of competition and unfair or deceptive acts or practices.

Special Requirements: None specified.

Scope: Trade or commerce means the advertising, sale, lease, or offer for sale or lease, of any services or property, real or intangible, or anything else of value.

Connecticut

Exclusions: Actions permitted under law as administered by board or officer of state or U.S.; advertisements done by disinterested publisher, radio and television media, with no knowledge of falsity.

Private Remedies: Actual damages; punitive damages in court's discretion; "may" provide injunctive or other equitable relief; class actions; court "may" award costs and attorney's fees to consumer or class denied monetary remedy; receiver.

Limitations: Ascertainable loss of money or property suffered; mail complaint to AG; 3 year limitation period.

State Remedies: Enforced by Commissioner of consumer protection or AG; injunction; restitution; receivership; equitable relief; $25,000 or suspension of corporate charter or licenses per injunction violation; $2,000 for each willful violation; rulemaking by commissioner.

Precedential Value of FTC Interpretations: Guided by FTC.

WARRANTIES

Unless excluded or modified, a warranty that the goods shall be merchantable is implied in a contract for their sale if the seller is a merchant with respect to goods of that kind. Under this section the serving for value of food or drink to be consumed either on the premises or elsewhere is a sale. § 42a-2-314.

Where the seller at the time of contracting has reason to know any particular purpose for which the goods are required and that the buyer is relying on the seller's skill or judgment to select or furnish suitable goods, there is, unless excluded or modified, an implied warranty that the goods shall be fit for such purpose. § 42a-2-315.

Implied warranties, including the warranty of merchantability, can be limited or excluded in writing. Remedies for breach of warranty also can be limited. § 42a-2-316.

Delaware

BANKRUPTCY EXEMPTIONS

Federal - See Chapter 2 supra.

State - Homestead exemption - No statutory provision.

Personalty exemption-

(1) All wearing apparel, family bible, school books, family library and family pictures;
(2) All leased or hired pianos and organs;
(3) All sewing machines used by seamstresses or private families; and
(4) All necessary trade or business tools, not to exceed the value of $75 in New Castle and Sussex Counties, and $50 in Kent County. T.10 § 4902.

A head of a family is given an additional exemption of personal property not exceeding the value of $500. T.10 § 4903.

CREDIT REPORTING

Federal - Fair Credit Reporting Act. See Chapter 3 supra.

State - No statutory provision.

DEBT COLLECTION

Federal - Fair Debt Collection Practices Act. See Chapter 3 supra.

State - No statutory provision.

HOME SOLICITATION SALE

Federal - FTC Trade Regulation Rule. See Chapter 3 supra.

State - The buyer has the right to cancel a home solicitation sale until midnight of the third business day following execution of an agreement or offer to purchase. Notice is effective when mailed or delivered, or by sending a telegram to the seller at his place of business. 6 § 4404(2). The sales agreement must contain a conspicuous notice of this cancellation right. 6 § 4404(1).

The buyer must take reasonable care of the goods and tender the goods at his or her residence to the seller upon demand. However, the

buyer takes title to the goods if the seller does not pick them up within 20 days of the date on the notice of cancellation. The seller must return any negotiable instruments or payments received from the buyer within 10 business days after cancellation of the sale. 6 § 4404(2).

The following sales are not included in the protections provided by this statute:

(A) Sales under $25;
(B) A previously negotiated sale;
(C) A buyer-initiated emergency sale, accompanied by a written buyer's statement waiving the right to cancel;
(D) A buyer-initiated transaction conducted entirely by mail or telephone;
(E) A buyer initated contact for the repair or maintenance of the buyer's personal property; and
(F) A transaction relating to the sale or rental of real property, and the sale of insurance or securities or commodities by a broker-dealer registered with the Securities and Exchange Commission. 6 § 4403(1).

MINOR'S CONTRACT

Age of majority to contract - 18. T.1 § 701, T.6 § 2705.

Contractual liability - Minor is liable only for necessaries received as a result of a contractual relationship. T.6 § 1-103.

REPOSSESSION REQUIREMENTS

The creditor must bring an action stating that he is entitled to possession of the property in question. T.10 § 3905. The bringing of the action serves as a sufficient demand for all purposes. T.10 § 3907. There is no requirement for the making of an affidavit, posting a bond, or giving notice to the debtor.

For Retail Installment Sales - See T.6 § 4346.

STATUTE OF LIMITATIONS

Contract under seal - No statutory provision.
Simple written contract - 3 years. T.10 § 8106.
Contract for sale of goods - 4 years. T.6 § 2-725.
Oral contracts - 3 years. T.10 § 8106.
Judgments - Courts of record - 5 years. T.10 § 5072.

TRUTH-IN-LENDING REQUIREMENTS

Federal - Truth-in-Lending Act. See Chapter 3 supra.

Delaware

State - Disclosures made under the federal Truth-in-Lending Act, as amended [15 U.S.C.A. § 1601 et seq.], are deemed to comply with comparable, but literally inconsistent disclosure requirements of the state law. T.6 § 4351, T.5 § 2912.

Retail Installment Sales - See T.6 § 4301 et. seq.

Sale of Motor Vehicles - See T.5 § 2901 et. seq.

UNFAIR AND DECEPTIVE TRADE PRACTICES

DEL. CODE ANN. tit. 6 § 2531 (1974 & Supp. 1982).

Prohibited Practices: 11 enumerated deceptive practices, other conduct creating likelihood of misunderstanding.

Special Requirements: None specified.

Scope: In course of business, vocation or occupation.

Exclusions: Conduct complying with local, state or federal statute or rule; publishers, broadcasters, printers or other person who disseminates information without knowledge of deception.

Private Remedies: Injunction; attorney's fees "may" be awarded successful party in exceptional cases; treble damages.

Limitations: None specified.

State Remedies: None specified.

Precedential Value of FTC Interpretations: None specified.

WARRANTIES

Unless excluded or modified, a warranty that the goods shall be merchantable is implied in a contract for their sale if the seller is a merchant with respect to goods of that kind. Under this section the serving for value of food or drink to be consumed either on the premises or elsewhere is a sale. T.6 § 2-314.

Where the seller at the time of contracting has reason to know any particular purpose for which the goods are required and that the buyer is relying on the seller's skill or judgment to select or furnish suitable goods, there is, unless excluded or modified, an implied warranty that the goods shall be fit for such purpose. T.6 § 2-315.

Delaware

Implied warranties, including the warranty of merchantability, can be limited or excluded in writing. Remedies for breach of warranty also can be limited. T.6 § 2-316.

District of Columbia

BANKRUPTCY EXEMPTIONS

Federal - See Chapter 2 supra.

State - Homestead exemption - No statutory provision.

Personalty exemption - (Head of Family or Household)

(1) $300 worth of wearing apparel per family member;
(2) $300 worth of beds, household furniture and furnishings, sewing machines, radios;
(3) Provisions for 3 months support;
(4) Fuel for 3 months;
(5) $200 worth of debtor's trade or business tools, with $200 worth of stock or materials;
(6) $300 worth of office furniture and library of a professional man or artist;
(7) $500 automobile, cart or wagon, if used principally in debtor's trade or business; and
(8) $400 worth of family library and all family pictures. § 15-501.

A person earning a major portion of his livelihood in the District of Columbia, and who provides the principal support for a family, is given a $200 exemption of his earnings (other than wages), insurance, annuities and pension benefits per month, for 2 months next preceding the issuance of process against him. § 15-503(a).

A person earning the major portion of his livelihood in the District of Columbia, but not providing for a family is given an exemption of $60 per month of his earnings, insurance, annuities, and pensions for 2 months next preceding the date of attachment. The wearing apparel of such persons, not exceeding $300 in value, and mechanic's tools not exceeding $200 in value are also exempt. § 15-503(b).

CREDIT REPORTING

Federal - Fair Credit Reporting Act. See Chapter 3 supra.

State - No statutory provision.

DEBT COLLECTION

Federal - Fair Debt Collection Practices Act. See Chapter 3 supra.

District of Columbia

State - All debt collectors are prohibited from using any of the following methods in an attempt to collect a consumer debt:

(1) Threats or coercion of a debtor;
(2) Oppression, harassment, or abuse of a debtor;
(3) Any unreasonable publication of information relating to an alleged indebtedness or debtor;
(4) Any fraudulent, deceptive or misleading representation;
(5) Any unfair or unconscionable means; and
(6) The use, distribution or selling of any written communication which fails to conform to U.S. postal laws and regulations. Any debt collector that is found to have willfully violated any of the foregoing provisions is subject to liability to any person affected by the violation for all proximately caused damages. Punitive damages may also be awarded for willful violations by a debt collector. § 28-3814.

HOME SOLICITATION SALE

Federal - FTC Trade Regulation Rule. See Chapter 3 supra.

State - The buyer has the right to cancel a home solicitation sale until midnight of the third business day following execution of an agreement or offer to purchase. § 28-3811(b). Cancellation occurs when the buyer gives written notice of cancellation to the seller at the address stated in the agreement. § 28-3811(c). Notice is effective, if given by mail, when deposited in the mail properly addressed to the seller, postage prepaid. 28-3811(d). The sales agreement must contain a conspicuous notice of this cancellation right. § 28-3811(g). Until the seller has notified the buyer of his rights of cancellation, the buyer may notify the seller in any manner of his intention to cancel. § 28-3811(g)(3).

The buyer must take reasonable care of the goods and tender the goods at his or her residence to the seller upon demand. However, the buyer takes title to the merchandise if the seller fails to demand such possession within 40 days after receipt of the notice of cancellation. § 28-3811(i).

The buyer may not cancel a home solicitation sale if the buyer requested the services due to an emergency, and (A) the seller makes a substantial beginning of performance before notice of cancellation, (B) the goods cannot be returned to the seller in as good condition as when received by the buyer, and (C) the buyer has signed a waiver of his right to cancel. § 28-3811(f).

The seller must return any funds received or goods traded in to the buyer within 10 days after cancellation of the sale. § 28-3811(h). The seller is neither entitled to a cancellation fee nor compensation for any services performed prior to cancellation of the agreement. §§ 28-

3811(h)(i).

A sale of farm equipment, a sale under a pre-existing revolving credit account, and a previously negotiated sale are not included in the protections provided by this statute. § 28-3811(a).

MINOR'S CONTRACT

Age of majority to contract - 18. § 28: 1-103.

Contractual liability - Minor is liable only for necessaries received as a result of a contractual relationship. § 28: 1-103.

REPOSSESSION REQUIREMENTS

The creditor must file a complaint in replevin and an affidavit stating the following:

(1) That the creditor is entitled to possession of the chattels, and a brief description of the property;
(2) That the debtor has seized or detains such chattels; and
(3) That the chattels were not subject to seizure or detention and were not taken upon a writ of replevin between the parties. § 16-3703.

The creditor also must enter into an undertaking with surety, approved by the clerk, to abide by and perform the judgment of the court. § 16-3704. Notice to the debtor is required. §§ 16-3705, 16-3706.

The creditor may request the Calendar Control Judge to set a date for hearing at which the plaintiff will be required to prove the validity of his claim. The debtor also will be allowed to be heard. D.C.R. CIV. P. 64-2(b). Notice must be served on the debtor at least 5 court days prior to the hearing date. D.C.R. CIV. P.64-2(c). If there is immediate danger that the debtor will destroy or conceal the property, repossession can be obtained without a prior adversary hearing. D.C.R. CIV. P. 64-2(f). The debtor may move for the return of the property. The court may order the property to be returned and require the debtor to enter into an undertaking with surety, similar to that required of the creditor. § 16-3708.

See also Limitation on Creditors' Remedies - § 28-3812(e).

STATUTE OF LIMITATIONS

Contract under seal - 12 years. § 12-301.
Simple written contract - 3 years. § 12-301.
Contract for sale of goods - 4 years. § 28: 2-725.
Oral contracts - 3 years. § 12-301.
Judgments - Courts of record - 3 years. § 12-301.

District of Columbia

TRUTH-IN-LENDING REQUIREMENTS

Federal - Truth-in-Lending Act. See Chapter 3 supra.

State - The District of Columbia has adopted specific sections of the federal "Truth in Lending Act," as amended, and incorporated them into the D.C. Municipal Regulations (D.C.M.R.) by reference. The following sections of the federal Act were adopted: 15 U.S.C. §§ 1605, 1606, 1631, 1632, 1634, 1637, 1638, 1661, 1662, 1663, 1664, and 1665.
Title 16 D.C.M.R. § 101.

Extension of credit for business purposes, extension of credit for more than $25,000 not secured by real property or a dwelling, extension of credit for public utility services, transactions in securities or commodities accounts, and home fuel budget plans are excluded from the D.C. Truth in Lending disclosure requirements. 16 D.C.M.R. 101, 12 C.F.R. 226.3.

UNFAIR AND DECEPTIVE TRADE PRACTICES

D.C. CODE ANN. § 28-3901 (1981 & Supp. 1983).

Prohibited Practices: 26 enumerated deceptive, unfair or unlawful trade practices, including unconscionable terms.

Special Requirements: None specified.

Scope: Trade practices defined as advertising, sale, offer for sale, lease of consumer goods or services.

Exclusions: Non-consumer practices, personal injury for tort; landlord-tenant relations; Public Service Commission; professional services of clergy, lawyers, physicians, Christian Scientists; advertisements done by publisher, radio and television media of others' goods or with no knowledge of falsity; acts of government agency.

Private Remedies: If consumer suffered damages by violation, consumer may receive actual damages, treble damages, attorney's fees or other remedy; punitive damages; receive civil penalties if violation of consent decree or order; court may also order injunction, actual damages, treble damages, attorney's fees or other remedy.

Limitations: Consumer must suffer damage for private action.

State Remedies: Office of Consumer Protection: rulemaking; order restitution, rescission, reformation, repairs and replacement; suspend license if no other board oversees it; maximum $1000 for each violation of order or consent decree; court "may" order: injunction, treble damages, attorney's fees.

Precedential Value of FTC Interpretations: None specified.

WARRANTIES

Unless excluded or modified, a warranty that the goods shall be merchantable is implied in a contract for their sale if the seller is a merchant with respect to goods of that kind. Under this section the serving for value of food or drink to be consumed either on the premises or elsewhere is a sale. § 28: 2-314.

Where the seller at the time of contracting has reason to know any particular purpose for which the goods are required and that the buyer is relying on the seller's skill or judgment to select or furnish suitable goods, there is, unless excluded or modified, an implied warranty that the goods shall be fit for such purposes. § 28: 2-315.

Implied warranties, including the warranty of merchantability, can be limited or excluded in writing. Remedies for breach of warranty also can be limited. § 28: 2-316.

MISCELLANEOUS STATE STATUTORY PROVISIONS

1. Revolving Credit Accounts.

Where seller or financial institution extends credit to buyer unpaid balances are debited to account, credit service charge is computed on outstanding unpaid balance, and buyer has privilege of paying balance in full or in installments, monthly credit service charge may not exceed 2% of outstanding balance. §§ 28-3701, 28-3702.

2. Consumer Credit Sales and Installment Loans

Consumer credit sales not exceeding $25,000 and direct installment loans (not including loans secured on real estate or direct motor vehicle installation loans) are subject to various protections, including (a) prohibition of balloon payments (§ 28-3803); (b) assignment of earnings and authorization to confess judgment are prohibited (§ 28-3804); (c) attorney fees for creditors in excess of 15 % are prohibited (§ 28-3806); (d) negotiable instruments in consumer credit sales are prohibited (§ 28-3807); (e) assignee is subject to all claims and defenses of consumer not exceeding amount owed at time of assignment (§ 28-3808); (f) lender who makes direct installment loan to consumer is subject to all claims and defenses of consumer not exceeding amount of loan (§ 28-3808); (g) cross-collateral arrangements are regulated (§ 28-3805); (h) creditor remedies are defined by statute (§ 28-3812); (i) consumer remedies are defined by statute (§ 28-3813).

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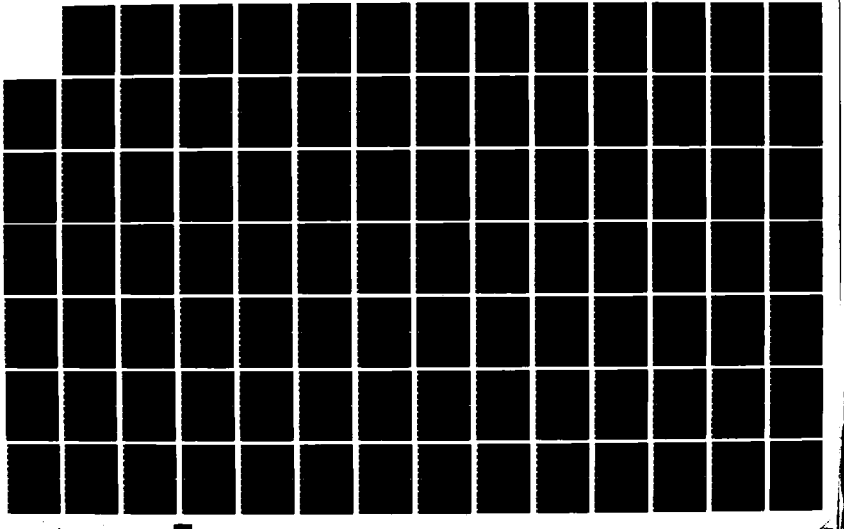

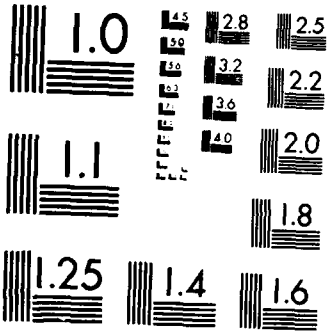

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Florida

BANKRUPTCY EXEMPTIONS

Federal - See Chapter 2 supra. Florida has opted out of the exemptions available under the Federal Bankruptcy Code. § 222.20. Accordingly, the only exemptions available are the homestead exemption and the $1,000 personal property exemption.

State - Homestead exemption - 160 acres of contiguous land and improvements thereon, if homestead located outside a municipality; one-half acre of contiguous land, if homestead located within a municipality. Fla. Const. Art. X, § 4.

Personalty exemption - $1,000. Fla. Const. Art. X, § 4.

CREDIT REPORTING

Federal - Fair Credit Reporting Act. See Chapter 3 supra.

State - No person in collecting consumer claims shall disclose any information affecting a debtor's reputation to anyone other than the debtor or his family, with knowledge that the other person has no legitimate business purpose for the information. No such person shall disclose the existence of a known disputed debt to anyone without also disclosing the dispute. If the debtor is advised of the possible disclosure of a disputed debt, the debtor must be told that the dispute will also be disclosed. No such person shall post or publish for the general public, the names of consumers with outstanding debts. § 559.72. Violations of the above provisions are punishable by the greater of actual damages or $500, plus attorney's fees and court costs. The award of punitive damages lies within the discretion of the court. § 559.77.

DEBT COLLECTION

Federal - Fair Debt Collection Practices Act. See Chapter 3 supra.

State - In collecting consumer claims, whether or not licensed, no person shall:

(1) Falsely represent that they are acting on behalf of a law enforcement office or governmental agency;

(2) Use or threaten force or violence;

(3) Disclose to another information affecting the debtor's credit reputation, without also disclosing the existence of a dispute or disclosing to any person information affecting the debtor's general reputation with knowledge or reason to know that the information is false or the other person has no legitimate business need for the information;

(4) Communicate or threaten to communicate with the debtor's employer before obtaining a final judgment against the debtor, unless the debtor has acknowledged existence of the debt after it was placed for collection;

(5) Use profane, obscene, vulgar or abusive language while communicating with the debtor or a member of his family;

(6) Attempt or threaten to enforce a nonlegitimate claim or to use a nonexistent legal right;

(7) Use a communication which simulates legal process or which appears to have been prepared by a governmental agency or attorney-at-law or orally misrepresenting oneself as being an attorney or associated with an attorney;

(8) Publish or threaten to publish the debtor's name on a "deadbeat list";

(9) Refuse to provide adequate identification when requested to do so by a debtor;

(10) Mail any communication, with words printed on the outside which are calculated to embarrass the debtor. § 559.72.

A debtor may bring a civil action against a person for violations of the prohibited acts provisions. Recovery by the debtor is limited to the greater of actual damages or $500; punitive damages and other equitable relief may be awarded in the discretion of the court; attorney's fees and costs are also recoverable by the prevailing party. § 559.77.

HOME SOLICITATION SALE.

Federal - FTC Trade Regulation Rule. See Chapter 3 supra.

State - The buyer has the right to cancel a home solicitation sale until midnight of the third business day following execution of an agreement or offer to purchase. The buyer must give the seller written notice of cancellation at the address stated on the agreement or offer to purchase. If the notice is mailed, it becomes effective upon postmarking. The notice of cancellation is sufficient if it indicates the intention of the buyer not to be bound by the agreement. Notice of the buyer's right to cancel must appear on all notes and other evidences of indebtedness. § 501.025.

The buyer must take reasonable care of the goods and tender the goods at his or her residence to the seller upon demand. However, the buyer takes title to the goods without obligation to pay for them if the seller fails to demand such possession within 40 days after cancellation. § 501.045. The seller must return any funds received or goods traded in to the buyer within 10 days after cancellation of the sale. § 501.041. Upon cancellation of the sale, the seller may not keep any part of any cash down payment. §501.031.

A credit sale of $25 or less, a sale made at a commercial exhibit, a sale of insurance, and a sale of farm equipment are not included in the protections provided by this statute. §§ 501.021, 501.035.

The seller must provide the buyer with identification provided by the seller's business including the seller's name, description and signature; the parent company's name, address and phone number; and the name, address and signature of the seller's supervisor. In phone solicitations, sales materials and contracts sent to the buyer must disclose the name, address, and phone number of the parent company. § 501.046.

The seller shall not misrepresent the terms or conditions of the sale; misrepresent his company affiliation; misrepresent his reasons for soliciting the sale (e.g., contest) or his inability to perform another job; or allege or imply that the agreement is noncancellable. § 501.047.

MINOR'S CONTRACT

Age of majority to contract is 18. § 743.07. Disability is removed for a minor who is or has been married. § 743.01.

Contractual liability - Generally a minor is liable only for necessaries received as a result of a contractual relationship. § 671.103. But see, §§ 743.04, 743.05.

REPOSSESSION REQUIREMENTS

The creditor must file a complaint showing the following information:

(1) A description of the property, a statement of its value and its location;
(2) A statement that the creditor is the owner of the property or entitled to its possession, describing the source of that title or right;
(3) A statement that the property is wrongfully detained and the cause of the debtor's detention of the property;
(4) A statement that the property has not been taken for tax, assessment or fine pursuant to law, or seized under an order of execution or attachment against the creditor's property. § 78.055.

The creditor is not required to execute a bond unless he is seeking a prejudgment writ of replevin, in which case, he must post bond in amount of twice the value of the goods, or the amount owing, whichever is less. Prejudgment writ requirements are stringent. § 78.068. Notice to the debtor of the time and place of the show-cause hearing is required unless it is waived by the debtor. Suggested language is found in § 78.075. The hearing cannot be held sooner than 5 days after service of notice on the debtor. § 78.065.

The debtor can stay the issuance of a writ of replevin by posting a written undertaking with surety, approved by the court, in an amount equal to the value of the property. § 78.067. The debtor may obtain the release of property seized under a prejudgment writ of replevin by posting bond within 5 days of service of the writ in an amount of one and one-fourth the amount due and owing on the property. § 78.068 (4). He may within 10 days of service of the writ file a motion to dissolve a prejudgment writ. § 78.068(6).

STATUTE OF LIMITATIONS

Contracts:
Contract under seal - No statutory provision.
Simple written contract - 5 years. § 95.11(2).
Oral contracts - 4 years. § 95.11(3)(k).
Action to rescind a contract - 4 years. § 95.11(3)(l).
Specific performance of contract - 1 year. § 95.11(5)(a).
Contract for sale of goods - 4 or 5 years, depending upon whether contract written or oral. §§ 95.11(2), 95.11(3).
Other:
Taking or detaining personal property - 4 years. § 95.11(3)(h).
Action to recover specific personal property - 4 years. § 95.11(3)(i).
Fraud - 4 years. § 95.11(3)(j).
Judgment of a court of record - 20 years. § 95.11(1).

TRUTH-IN-LENDING REQUIREMENTS

Federal - Truth-in-Lending Act. See Chapter 3 supra.

State - A creditor shall deliver to the debtor, at the time the loan is made, a statement showing in clear terms the amount and date of the loan and the date of its maturity; the nature of any security; the names and addresses of the creditor and the debtor; and the rate of interest charged. § 516.15. For retail installment sales provisions - § 520.34. Motor vehicle sales provisions - § 520.07.

UNFAIR AND DECEPTIVE TRADE PRACTICES

FLA. STAT. ANN. § 501.201 (West 1979 & Supp. 1983).

Prohibited Practices: Unfair methods of competition and unfair or deceptive acts or practices.

Special Requirements: None specified.

Scope: Trade or commerce; consumer transactions include sales and leases of consumer services and intangibles for personal, family or household purpose or business opportunity requiring personal services and expenditure of funds.

Exclusions: Practice permitted by federal or state law; personal injury or death actions; actions for property other than subject of consumer transactions; good faith holder of negotiable instrument or transferee of credit agreement without knowledge; banking and insurance activities regulated by state or federal agencies; publisher, broadcaster, printer or other person who disseminates information for others without actual knowledge of violation.

Private Remedies: Injunction, actual damages awarded consumer who has suffered loss, provided retailer not in good faith and acted with knowledge; damaged consumer may be reimbursed by Consumer Fraud Trust Fund; attorney's fees and costs to prevailing party of consumer transaction.

Limitations: For state and department actions for class or declaratory judgment, need probable cause hearing and notice letter; statute of limitations for state or department is later of 2 years from violation or 1 year from last payment of consumer transaction.

State Remedies: Enforced by Department of Legal Affairs or state attorney; substantive rulemaking in department; declaratory judgment; injunction; class actions for actual damages, if against retailer, act with knowledge or in bad faith; receiver; modify unconscionable contracts; other relief; unjust enrichment damages if supplier commits bona fide error with reasonable procedures; department brings cease and desist order if in public interest, with $5000 for each violation of order; attorney's fees and costs if is "complete absence of justiciable issue" or bad faith claim.

Precedential Value of FTC Interpretations: Due consideration and great weight given.

WARRANTIES

Unless excluded or modified, a warranty that the goods shall be merchantable is implied in a contract for their sale if the seller is a merchant with respect to goods of that kind. Under this section the serving for value of food or drink to be consumed either on the premises or elsewhere is a sale. § 672.314.

Where the seller at the time of contracting has reason to know any particular purpose for which the goods are required and that the buyer is relying on the seller's skill or judgment to select or furnish suitable goods, there is, unless excluded or modified, an implied warranty that the goods shall be fit for such purpose. § 672.315.

Implied warranties, including the warranty of merchantability can be limited or excluded in writing. Remedies for breach of warranty also can be limited. § 672.316.

Georgia

BANKRUPTCY EXEMPTIONS

Federal - See Chapter 2 supra.

State - Homestead exemption - $5,000. § 44-13-100(a)(1).

Personalty exemption -

(1) Annuity, pension or disability benefits necessary for the support of the debtor or his dependent;
(2) $1,000 worth of motor vehicles;
(3) $3,500 total aggregate value of household furnishings, household goods, wearing apparel, appliances, books and musical instruments held primarily for personal or household use, but no single item shall be worth more than $200;
(4) $500 worth of jewelry;
(5) $400 worth of property;
(6) $500 worth of professional books or tools; and
(7) Any unmatured life insurance contract owned by the debtor other than a credit life insurance contract.
(8) Professinally prescribed health aids for the debtor or a dependent. § 44-13-100(a).

CREDIT REPORTING

Federal - Fair Credit Reporting Act. See Chapter 3 supra.

State - No statutory provision.

DEBT COLLECTION

Federal - Fair Debt Collection Practices Act. See Chapter 3 supra.

State - No debt collector shall collect or attempt to collect any money due or alleged to be due from a debtor by the use of:

(1) Threats or coercion;
(2) Unreasonable harassment, oppression, or abusive language;
(3) Unreasonable publication of information relating to an indebtedness or a debtor;
(4) Fraudulent, deceptive, or misleading representations; or
(5) Any unfair or unconscionable means. Rules of the Comptroller General, Industrial Loan Department, effective January 23, 1974. §§ 120-1-14-.20 to 120-1-14-.24.

Georgia

A collection agency or debt collector that engages in unlawful conduct to collect a debt is subject to having its license suspended or revoked. § 120-1-14-.26.

HOME SOLICITATION SALE

Federal - FTC Trade Regulation Rule. See Chapter 3 supra.

State - The buyer has the right to cancel a home solicitation sale until midnight of the third business day following execution of the agreement. § 10-1-6(a). Notice of cancellation is effective when given to the seller at his place of business, by certified mail, return receipt requested. § 10-1-6(b). The buyer's notice of cancellation is effective if it just indicates an intention of the buyer not to be bound by the sale. § 10-1-6(f).

The buyer must return any merchandise received in the same condition as he received it. § 10-1-6(e). The seller must return any funds or goods received to the buyer within 10 days after cancellation of the sale. § 10-1-6(c). The seller must pick up the goods within a reasonable time after cancellation of the sale and at that time, he may recover from the buyer the lesser of the actual costs of picking up the merchandise or $5. § 10-1-6(e). The seller also may receive 5% of the gross sales price of the merchandise or $25, whichever is less, as liquidated damages. § 10-1-6(d). A cash sale is not included in the protections provided by this statute. § 10-1-2(a)(4).

MINOR'S CONTRACT

Age of majority to contract - 18. § 39-1-1.

Contractual liability - Minor is liable only for necessaries received as a result of a contractual relationship. § 11-1-103. The contract for necessaries is binding on the minor as if he were an adult, but the party furnishing the necessaries must prove that the parent or guardian of such minor has failed or refused to supply sufficient necessaries for him. § 13-3-20(b).

REPOSSESSION REQUIREMENTS

There are no statutory provisions dealing with repossession in general. There are specific statutes for attachment of property (see § 18-3-1 et seq.); trover (see § 44-12-150 et seq.); and equitable remedies, such as ne exeat (see § 23-3-20 et seq.).

STATUTE OF LIMITATIONS

Contract under seal - 20 years. § 9-3-23.
Simple written contract - 6 years. § 9-3-24.

Georgia

Contract for sale of goods - 4 years. §§ 11-2-725, 10-1-14.
Oral contracts - 4 years. § 9-3-25.
Judgments - Contracts of record - 7 years. § 9-12-60.

TRUTH-IN-LENDING REQUIREMENTS

Federal - Truth-in-Lending Act. See Chapter 3 supra.

State - No statutory equivalent. For retail installment provisions - § 10-1-3. Motor vehicle sales provisions - §§ 10-1-32, 10-1-33.

UNFAIR AND DECEPTIVE TRADE PRACTICES

GA. CODE ANN. § 106-701 (1968 & Supp. 1982 & Supp. 1983).

Prohibited Practices: 11 enumerated deceptive practices and conduct likely to create misunderstanding.

Special Requirements: None specified.

Scope: Action in course of his business, vocation, or occupation.

Exclusions: Conduct which complies with federal, state, or local rules or statutes; publishers, broadcasters, printers or other persons who disseminate information without knowledge of deceptive character.

Private Remedies: Injunction; costs to prevailing party; attorney's fees to prevailing party in court's discretion if consumer's case groundless or seller knew of deception.

Limitations: None specified.

State Remedies: None specified.

Precedential Value of FTC Interpretations: None specified.

GA. CODE ANN. § 106-1201 (Supp. 1982 & Supp. 1983).

Prohibited Practices: Unfair or deceptive acts or practices in consumer transaction, with 14 enumerated acts.

Special Requirements: None specified.

Scope: Consumer transactions including sale, lease, rental or goods, services, real or personal property for personal, family, household purposes; in trade or commerce including the sale, or offer for sale, lease, advertising, distribution of any goods, services, real or personal property, intangibles, or thing of value.

Georgia

Exclusions: Actions authorized by rules or laws administered by state or U.S.; advertisements done by publisher, radio and television media, with no knowledge of falsity, did not prepare advertisement, or no direct financial interest in product.

Private Remedies: Injunction; general damages; exemplary and treble damages for intentional violations; costs and attorney's fees to successful consumer; to respondent if bad faith rejection of settlement offer; actual damages if violation result of non-negligent bona fide error notwithstanding reasonable procedures.

Limitations: Suffer injury or damage; as result of consumer acts or practices; notice letters; Administrator's equitable actions in public interest and with notice letters; 2 year statute of limitations if should have known of violation or after state action terminated; no statute of limitations for set off.

State Remedies: Administrator enforces; injunction; receiver; general damages; substantive rulemaking; $25,000 per violation of injunction; $2,000 per intentional violation.

Precedential Value of FTC Interpretations: Construction to be interpreted consistently with FTC.

WARRANTIES

Unless excluded or modified, a warranty that the goods shall be merchantable is implied in a contract for their sale if the seller is a merchant with respect to goods of that kind. Under this section the serving for value of food or drink to be consumed either on the premises or elsewhere is a sale. § 11-2-314.

Where the seller at the time of contracting has reason to know any particular purpose for which the goods are required and that the buyer is relying on the seller's skill or judgment to select or furnish suitable goods, there is, unless excluded or modified, an implied warranty that the goods shall be fit for such purpose. § 11-2-315.

Implied warranties, including the warranty of merchantability, can be limited or excluded in writing. Remedies for breach of warranty also can be limited. § 11-2-316.

Guam

BANKRUPTCY EXEMPTIONS

Federal - See Chapter 2 supra.

State - Homestead exemption - Head of a family - $3,000; any other person - $2,000. C.C. § 1260.

Personalty exemption -

(1) Necessary household, table and kitchen furniture, including one stove, stovepipes, beds and bedding;

(2) The farming utensils or implements of farming, not exceeding in value the sum of fifty dollars ($50.00) in all;

(3) One horse, or one carabao, or one ox or other beast of burden with one cart for same, together not exceeding one hundred fifty dollars ($150.00) in value, and necessarily used by him in his ordinary occupation; also food for such beast of burden for one month, also seed grain or vegetables actually provided, reserved or on hand for the purpose of planting or sowing at any time within the ensuing six months, not exceeding in value the sum of twenty-five dollars ($25.00);

(4) Books and articles connected with religious worship, together not exceeding twenty-five dollars ($25.00) in value;

(5) The necessary clothing of the debtor and that of all his immediate family together not exceeding fifty dollars ($50.00) in value and the provisions already provided for family use sufficient for three months;

(6) The tools or implements of a mechanic or artisan, necessary to carry on his trade, not exceeding twenty-five dollars ($25.00) in value;

(7) The professional libraries of lawyers, judges, clergymen, doctors, and preachers, not exceeding two hundred fifty dollars ($250.00) in value;

(8) One fishing boat and one net not exceeding a total value of fifty dollars ($50.00), the property of any fisherman who uses them;

(9) Gravestones lettered or in use;

(10) One cow and its suckling calf, two sows and their suckling pigs, fifteen hens and three roosters; and the food for such cows, hogs, and chickens for one month;

(11) All arms, uniforms, and the accouterments required by law to be kept for the Guam militia;

(12) All money received by any person, a resident of the Territory of Guam as a pension from the United States Government, or as a pension or retirement salary from the government of Guam, whether the same shall be in the actual possession of such pensioner, or deposited or loaned by him;

(13) The earnings of the judgment debtor for his personal services rendered at any time within 30 days next preceding the levy of execution or attachment, when it appears by the debtor's affidavit or otherwise, that such earnings are necessary for the use of his family residing in Guam, supported in whole or in part by his labor; but where debts are incurred by any such person, or his wife or family for the common necessaries of life, or have been incurred at a time when the debtor had no family residing in the Territory of Guam, supported in whole or in part by his labor, or incurred for personal services rendered by any employee or former employee, then one-half (1/2) of such earnings above-mentioned is nevertheless subject to execution, garnishment, or attachment to satisfy debts so incurred. C.P.C. § 690.

CREDIT REPORTING

Federal - Fair Credit Reporting Act. See Chapter 3 supra.

State - No statutory provision.

DEBT COLLECTION

Federal - Fair Debt Collection Practices Act. See Chapter 3 supra.

State - No statutory provision.

HOME SOLICITATION SALE

Federal - FTC Trade Regulation Rule. See Chapter 3 supra.

State - The buyer has the right to cancel a home solicitation sale until midnight of the third business day following execution of an agreement or offer to purchase. C.C. § 1802.502(1). Cancellation occurs when the buyer gives written notice of cancellation to the seller at the address stated in the agreement. C.C. § 1802.502(2). Notice is effective when delivered or when deposited in the mail properly addressed to the seller, postage prepaid. C.C. § 1802.502(3). The sales agreement must contain a conspicuous notice of this cancellation right. C.C. § 1802.503(2). Until the seller has notified the buyer of his rights of cancellation, the buyer may notify the seller in any manner of his intention to cancel. C.C. § 1802.503(3).

The buyer must take reasonable care of the goods and tender the goods at his or her residence to the seller upon demand. However, the buyer takes title to the goods, without obligation to pay for them, if the seller fails to demand such possession within 40 days after receipt of the notice of cancellation. C.C. § 1802.505. The seller must return any funds received or goods traded in to the buyer within 10 days after cancellation of the sale. C.C. § 1802.504(1,2). The seller may retain as a cancellation

fee five percent (5%) of the cash price but not exceeding $15 or the amount of the cash down payment, whichever is less. C.C. § 1802.504(3).

The following transactions are not included in the protections provided by this statute:

(1) A sale made pursuant to a pre-existing revolving charge account;
(2) A sale made pursuant to a pre-existing agreement between the parties at the seller's place of business; and
(3) A cash sale. C.C. § 1802.501.

MINOR'S CONTRACT

Age of majority to contract - 18. C.C. § 25.

Contractual liability - Minor is liable only for necessaries received as a result of a contractual relationship. C.C. § 36.

REPOSSESSION REQUIREMENTS

The creditor must file an affidavit showing:

(1) That the creditor is the owner of the property claimed (particularly describing it), or is entitled to the possession thereof;
(2) That the property is wrongfully detained by the debtor;
(3) The alleged cause of the detention;
(4) That it was not taken for a tax, assessment, or fine pursuant to law or seized, under an execution or an attachment against the property of the creditor; or if so seized that it is by law exempt from seizure; and
(5) The actual value of the property. C.P.C. § 510.

The creditor also must file a bond executed by two or more sureties, approved by the court, in double the value of the property as stated in the affidavit for prosecution of the action. C.P.C. § 512.

After the creditor has filed his affidavit and bond, the marshal must forthwith take the property described in the affidavit. The debtor must be served with a copy of the affidavit, notice and undertaking. C.P.C. § 512. The marshal also must file the notice, undertaking, and affidavit, with his proceedings thereon, with the clerk of court within 5 days after taking the property mentioned therein. C.P.C. § 520. At any time before delivery of the property to the creditor, the debtor may, if he does not except to the creditor's sureties, require the return of the property to his possession by giving the marshal a bond executed by two or more sufficient sureties in double the value of the property as stated in the creditor's affidavit. C.P.C. § 514.

STATUTE OF LIMITATIONS

Contract under seal - 4 years. C.C. § 1629, C.P.C. § 337.
Simple written contract - 4 years. C.P.C. § 337.
Contract for sale of goods - 4 years. C.P.C. § 337.
Oral contracts - 2 years. C.P.C. § 339.
Judgments - Courts of record - 5 years. C.P.C. § 336.

TRUTH-IN-LENDING REQUIREMENTS

Federal - Truth-in-Lending Act. See Chapter 3 supra.

State - The Guam Uniform Consumer Credit Code - Credit Sales Law and Loans Law require a creditor to disclose to the buyer, usually before credit is extended, his credit charges in dollars and cents and as an annual percentage rate. Disclosure is required for credit sales, revolving credit transactions and loans. §§ 1802.306, 1802.310, 1803.306. Sales in which the amount financed is $25,000 or more and leases in which the amount payable under the lease is $25,000 or more are excluded from coverage under the Guam UCCC Credit Sales Law. C.C. § 1802.301. Loans in which the principal is $25,000 or more are excluded from coverage under the Guam UCCC Loans Law. C.C. § 1803.301.

A creditor who fails to disclose information to a person entitled to the information may be held liable to that person in an amount not in excess of the greater of either $100 or an amount twice the credit service charge or loan finance charge, provided that the amount may not exceed $1,000 on any credit transaction. C.C. § 1805.202(1). A creditor is not liable in an action brought against him if within 15 days after his discovery of an error and prior to written notice from the debtor of the error or institution of the action, the creditor makes the proper adjustments and notifies the debtor. C.C. § 1805.202(2). A creditor who willfully fails to provide information which he is required to disclose is guilty of a misdemeanor and upon conviction shall be punished by a fine not to exceed $5,000, or by imprisonment not to exceed one year, or both. C.C. § 1805.302.

WARRANTIES

In a contract to sell or a sale, unless a contrary intention appears, there is an implied warranty that:

(1) The seller has the right to sell the goods and in the case of a contract to sell he will have a right to sell the goods at the time the property is to pass;
(2) That the buyer shall have the quiet possession of the goods against any lawful claims; and

(3) That the goods shall be free at the time of the sale from any charge or encumbrance in favor of any third person, not declared or known to the buyer before or at the time when the contract sale is made. C.C. § 1733.

Where there is a contract to sell or a sale of goods by description, there is an implied warranty that the goods shall correspond with the description and if the contract or sale be by sample, as well as description, it is not sufficient that the bulk of the goods corresponds with the sample if the goods do not also correspond with the description. C.C. § 1734. There is no implied warranty or condition as to the quality or fitness for any particular purpose of goods supplied under a contract to sell or a sale, except as follows:

(1) Where the buyer, expressly or by implication, makes known to the seller the particular purposes for which the goods are required, and it appears that the buyer relies on the seller's skill or judgment (whether he be the grower or manufacturer or not), there is an implied warranty that the goods shall be reasonably fit for such purpose;

(2) Where the goods are bought by description from a seller who deals in goods of that description (whether he be the grower or manufacturer or not), there is an implied warranty that the goods shall be of merchantable quality;

(3) If the buyer has examined the goods, there is no implied warranty as regards defects which such examination ought to have revealed;

(4) In the case of a contract to sell or a sale of a specified article under its patent or other trade name, there is no implied warranty as to its fitness for any particular purpose;

(5) An express warranty or condition does not negative a warranty or condition implied under this Act unless inconsistent therewith. C.C. § 1735.

In the case of a contract to sell or a sale by sample:

(1) There is an implied warranty that the bulk shall correspond with the sample in quality;

(2) There is an implied warranty that the buyer shall have a reasonable opportunity of comparing the bulk with the sample, except so far as otherwise provided in § 1767(3);

(3) If the seller is a dealer in goods of that kind, there is an implied warranty that the goods shall be free from any defect rendering them unmerchantable which would not be apparent on reasonable examination of the sample. C.C. § 1736.

Hawaii

BANKRUPTCY EXEMPTIONS

Federal - See Chapter 2 supra.

State - Homestead exemption -

(1) $30,000 worth of real property for head of family or an individual 65 years of age or older;
(2) $20,000 worth of real property for any other person. § 651-92.

Personalty exemption -

(1) All necessary household furnishings and appliances, books, and wearing apparel personally used by the debtor or his family;
(2) $1,000 worth of jewelry and watches;
(3) $1,000 motor vehicle;
(4) Tools, instruments, uniforms, furnishings, books, equipment, a motor vehicle, and other personal property ordinarily and reasonably necessary for use in the debtor's trade, business, or profession by which he earns his livelihood; and
(5) Wages, salaries and commissions due the debtor for services rendered during the 31 days before the date of the proceeding. § 651-121.

CREDIT REPORTING

Federal - Fair Credit Reporting Act. See Chapter 3 supra.

State - No statutory provision.

DEBT COLLECTION

Federal - Fair Debt Collection Practices Act. See Chapter 3 supra.

State - No state statutory provisions. But see Prohibited Acts and Practices of Collection Agencies - §§ 443A-12 to 443A-17.

HOME SOLICITATION SALE

Federal - FTC Trade Regulation Rule. See Chapter 3 supra.

State - The buyer has the right to cancel a home solicitation sale until midnight of the third business day following execution of an agreement or offer to purchase. In order to cancel the sale, the buyer must mail or

deliver a notice of cancellation to the seller's place of business. The buyer also may send a telegram to the seller. § 481C-2.

The buyer must take reasonable care of the goods and tender the goods at his or her residence. However, the buyer takes title to the goods if the seller fails to pick them up within 20 days of the date of the buyer's notice of cancellation. If the buyer fails to make the goods available to the seller or if he fails to return the goods pursuant to an agreement with the seller, the buyer remains liable for the performance of all obligations under the contract. The seller must return any funds received or goods traded in to the buyer within 10 business days following receipt of the notice of cancellation. § 481C-2.

A previously negotiated sale at a business establishment, an emergency sale with a buyer's handwritten statement expressly waiving the right to cancel the sale, a sale conducted entirely by mail or telephone, a sale in which the buyer initiated the contact and requested the seller to visit his home for repair work, and a sale under $5 or $25 if the merchandise can be delivered at one time are not included in the protections provided by this statute. § 481C-1.

MINOR'S CONTRACT

Age of majority to contract - 18. § 577.1

Contractual liability - Minor is liable only for the reasonable price of necessaries received as a result of a contractual relationship. § 490:1-103.

REPOSSESSION REQUIRMENTS

The creditor must make an affidavit stating:

(1) That the creditor is entitled to immediate possession of the property;
(2) The value of the property;
(3) A description of the property;
(4) That the property was not taken for tax, assessment, or fine pursuant to law, or seized under execution against the creditor or his property;
(5) That the property is in the possession of the debtor and the facts relating to the possession thereof by the debtor; and
(6) In actions for immediate possession of the property, the names of all persons other than the debtor who claim or may claim an interest in the property. § 654-1.

The creditor also must execute a bond to the debtor in such sum and with such sureties as may be approved by the court. § 654-2. Neither prior notice nor a hearing are required to be given to the debtor. The debtor can

regain possession of the property prior to its delivery to the creditor by making an affidavit of his interest stating his right to possession and by executing a bond to the creditor in such an amount and with such sureties as may be approved by the court, conditioned that he will appear in and defend the action, and deliver the property to the creditor and pay all costs, should the creditor be adjudged entitled to possession of the property. § 654-5.

STATUTE OF LIMITATIONS

Contract under seal - 6 years. § 657.1.
Simple written contract - 6 years. § 657.1.
Contract for sale of goods - 4 years. § 490:2-725.
Oral contracts - 6 years. § 657.1.
Judgments - Courts of record - 10 years. § 657.5.

TRUTH-IN-LENDING REQUIREMENTS

Federal - Truth-in-Lending Act. See Chapter 3 supra.

State - For disclosure requirements under the Industrial Loan Companies Act, Retail Installment Sales Act, and Small Loan Act, see §§ 408-17, 476-2 to 476-7, 409-2.1, 409-17.

UNFAIR AND DECEPTIVE TRADE PRACTICES

HAWAII REV. STAT. § 480 (1976 & Supp. 1982).

Prohibited Practices: Unfair methods of competition and unfair or deceptive trade practices.

Special Requirements: None specified.

Scope: Trade or commerce.

Exclusions: Acts permitted by state insurance law.

Private Remedies: Minimum $1,000, actual damages; attorney's fees and costs; injunction with attorney's fees and costs for successful plaintiff; treble damages; contract in violation of statute void and unenforceable.

Limitations: Show action is in public interest if against non-merchant; 4 year statute of limitations after accrual: limitations suspended during pendency of state or county action except for damages to its property and one year thereafter.

State Remedies: AG or director of consumer protection awarded treble damages not less than $500 or exceeding $10,000: injunction; $500 to

$10,000 for injunction violation; AG brings class actions for actual compensatory damages; AG, DA or City Attorney for treble damages to its property or business.

Precedential Value of FTC Interpretations: None specified.

HAWAII REV. STAT. § 481A (1976 & Supp. 1982).

Prohibited Practices: 11 enumerated deceptive practices and catchall prohibiting conduct creating misunderstanding.

Special Requirements: None specified.

Scope: Actions in course of his business, vocation or occupation including individuals, corporations, partnerships, trusts, estates, government agency, or any commercial entity.

Exclusions: Conduct complying with rules or statutes of federal, state or local government; publishers, broadcasters, printers or others who disseminate information without knowledge of deceptive character.

Private Remedies: Injunction; costs unless court directs otherwise; attorney's fees to prevailing party "may" be awarded if suit is groundless or willful violation.

Limitations: None specified.

State Remedies: None specified.

Precedential Value of FTC Interpretations: None specified.

WARRANTIES

Unless excluded or modified, a warranty that the goods shall be merchantable is implied in a contract for their sale if the seller is a merchant with respect to goods of that kind. Under this section the serving for value of food or drink to be consumed either on the premises or elsewhere is a sale. § 490:2-314.

Where the seller at the time of contracting has reason to know any particular purpose for which the goods are required and that the buyer is relying on the seller's skill or judgment to select or furnish suitable goods, there is, unless excluded or modified, an implied warranty that the goods shall be fit for such purpose. § 490:2-315.

Implied warranties, including the warranty of merchantability, can be limited or excluded in writing. Remedies for breach of warranty also can be limited. § 490:2-316.

Idaho

BANKRUPTCY EXEMPTIONS

Federal - See Chapter 2 supra.

State -

a. Real property: Idaho law allows a "homestead exemption" if a properly acknowledged "declaration of homestead" has been recorded in the county where the property is located. The maximum value of the exemption is $25,000. §§ 55-1004, 1201, 1301, 1304.

b. Personal property: An individual may claim exemptions in the following property:

(1) Not exceeding $500 per item, nor a total value of $4,000 per household under this subsection:

(a) Furnishings and appliances necessary for one household, including one firearm;

(b) Wearing apparel, books, household pets and musical instruments held for personal use of the individual or of a dependent;

(c) Family portraits and heirlooms;

(2) $250 worth of jewelry held for personal use;

(3) $1,000 in professional books and tools of the trade;

(4) One motor vehicle not exceeding the value of $500; and

(5) All national guard or military service arms, uniforms or equipment; and

(6) A water right not exceeding 160 inches of water, together with crops growing on 50 acres of land, but not exceeding the value of $1,000. § 11-605.

CREDIT REPORTING

Federal - Fair Credit Reporting Act. See Chapter 3 supra.

State - No statutory provision.

DEBT COLLECTION

Federal - Fair Debt Collection Practices Act. See Chapter 3 supra.

State - No statutory provision, but see Consumer Protection Act - § 48-601 et seq. and § 26-2229A, which regulates collection agencies.

HOME SOLICITATION SALE

Federal - FTC Trade Regulation Rule. See Chapter 3 supra.

State - The buyer has the right to cancel a home solicitation sale until midnight of the third business day following execution of an agreement or offer to purchase. § 28-43-402(1). Notice is effective when delivered or when deposited in the mail properly addressed to the seller, postage prepaid. § 28-43-402(2,3). The notice of cancellation only needs to indicate an intention of the buyer not to be bound by the sale. § 28-43-402(4). The sales agreement must contain a conspicuous notice of this cancellation right. § 28-43-403(2). Until the seller has notified the buyer of his cancellation rights, the buyer can cancel the sale by notifying the seller in any manner. § 28-43-403(3).

The buyer must take reasonable care of the goods and tender the goods at his or her residence to the seller upon demand. However, the buyer takes title to the merchandise if the seller fails to demand such possession within 40 days of receipt of the notice of cancellation. § 28-43-405. The seller must return any funds received or goods traded in to the buyer within 10 days after cancellation of the sale. § 28-43-404.

A cash sale, a sale made pursuant to a pre-existing revolving charge account, a previously negotiated sale at a business establishment, a sale conducted entirely by mail or telephone, and a sale subject to the provisions of the Federal Consumer Credit Protection Act are not included in the protections provided by this statute. § 28-43-401.

MINOR'S CONTRACT

Age of majority to contract - 18. § 32-101.

Contractual liability - Minor is liable only for the reasonable price of necessaries received as a result of a contractual relationship, for himself or his family, when he is not under the care of a parent or guardian able to provide for him or them. §§ 32-104, 28-1-103.

REPOSSESSION REQUIREMENTS

Under Idaho's claim and delivery statutes, in order to obtain a court order for possession of personal property, the creditor must show under oath:

(1) That the creditor is the owner or entitled to possession of the property, and must give a particular description of it;
(2) That the property is wrongfully detained by the debtor, stating how the debtor came into possession of it;
(3) The actual value of the property and its location; and
(4) That the property has not been taken for tax, assessment, or fine, pursuant to a law or seized under an execution against the property of the creditor. § 8-302(1).

The creditor also must enter into a written undertaking, executed by 2 or more sufficient sureties, for a sum equal to double the value of the property, as determined by the court. § 8-303. Notice to the debtor of the date and time of the show cause hearing is required. The hearing cannot be sooner than 5 days from the issuance of the order. § 8-302(2).

The creditor can obtain possession of the property before a hearing is held if: (a) the debtor gained possession of the property by larceny; (b) the property is perishable; (c) the property consists of negotiable instruments or credit cards. § 8-302(3). The debtor can regain possession of the property by filing with the court a written undertaking, executed by 2 or more sureties, for double the value of the property as stated by the creditor. § 8-306.

Regarding consumer credit transactions see §§ 28-45-101 to 28-45-109.

STATUTE OF LIMITATIONS

A. Actions upon contracts in general: five years. § 5-216.
   1. Contracts for sale of goods: four years. § 28-2-725.
   2. Oral contracts: four years. § 5-217.

B. Enforcement of judgments: six years. § 5-215.

C. Actions for fraud or for property damage: three years. § 5-218.

D. Actions Under Idaho Consumer Protection Act: two years. § 48-619.

E. Actions for personal injury or professional malpractice: two years. § 5-219.

F. Actions for damages caused by defective products (strict liability in tort): two years. § 6-1403(3).

G. Actions under the Idaho Credit Code - Consumer Credit Sales and open-end consumer loans - 2 years, other consumer credit transactions - 1 year. § 28-45-201.

TRUTH-IN-LENDING REQUIREMENTS

See the Idaho Credit Code (1983), which has superseded the Idaho/Uniform Consumer Credit Code (1971). The new code overrides federal preemption, § 28-49-105, but incorporates federal law on certain points as noted below.

The Idaho Code requires a creditor to make whatever disclosures to the borrower or buyer that are specifically mandated by the Federal Consumer Credit Protection Act. § 28-43-201. A creditor who fails to disclose the information to a consumer entitled to such information is liable to the consumer to the extent provided by the Federal Consumer Credit Protection Act. § 28-45-203. A creditor who willfully fails to provide information which he is required to disclose is also guilty of a misdemeanor and upon conviction may be punished by a fine not to exceed $5,000 or imprisonment not to exceed one year, or both. § 28-45-402.

The Idaho Credit Code provides that "[w]ith respect to a loan or credit sale, the rate of finance charge shall be that which is agreed upon between the parties to the transaction." § 28-42-201.

Selected special limitations.

a. Garnishment: See "All States Garnishment Guide—Idaho."

b. Assignments of earnings: Irrevocable assignments are unenforceable. § 28-43-304.

c. Authorizations to confess judgment: Such authorizations ae void. § 28-43-305.

d. Balloon payments: With certain exceptions, the consumer has a right to refinance any payment more than twice the average amount of earlier payments. § 28-43-307.

e. Referral sales: The seller may not use rebates or discounts as a method of obtaining from the buyer the names of other prospective customers. § 28-43-308.

f. Land as security: Interests in land cannot be taken as security for loans of $1,000 or less. § 28-43-309.

g. Attorney fees: A lender may not collect attorney fees on loans of $1,000 or less. Neither may a lender or credit seller collect attorney fees for an attorney who is a salaried employee. §§ 28-43-311, 312.

h. Deficiency judgments: In a consumer credit sale of goods or services for $1,000 or less, if the seller repossesses or voluntarily accepts surrender of undamaged goods sold or of undamaged property in which the seller was given a security interest, the consumer is not liable for the balance of the debt. § 28-45-103.

Idaho

UNFAIR AND DECEPTIVE TRADE PRACTICES

IDAHO CODE § 48-601 (1977 & Supp. 1983).

Prohibited Practices: 16 enumerated unfair methods of competition and unfair or deceptive acts or practices including a catchall prohibiting misleading consumer pretice. § 48-603.

Special Requirements: Respondent knows or should know of violation.

Scope: Trade or commerce by definition means the advertising, sale or offer for sale of any goods or services including residential repair and goods repair and service.

Exclusions: Actions permitted by laws of state public utility or state or U.S. regulatory body; advertisements done by publisher, broadcasters, printers or retailers in good faith reliance of material supplied by others and without knowledge of deceptive or misleading character; actions regulated by state insurance code; actions complying with applicable FTC statutes or regulations.

Private Remedies: Void contract for purchase or lease of goods or services if suffered loss; actual damages or $500, which ever is greater; punitive damages in court's discretion; equitable relief "as deemed necessary" in repeated or flagrant violations; attorney's fees to prevailing plaintiff, to defendant in court's discretion if action spurious or to harass.

Limitations: Must suffer ascertainable loss in money or property; statute of limitations 2 years after cause accrues.

State Remedies: AG enforces; injunction if based on probable cause and in public interest and upon notice; restitution; revocation of state license for repeated violations; court makes additional orders "as may be necessary"; maximum $10,000 or dissolution of corporation, in court's discretion for violation of injunction; substantive rulemaking. §§ 48-604, 606, 611, 612.

Precedential Value of FTC Interpretations: Given due consideration and great weight.

WARRANTIES

1. Warranties.

Unless conspicuously excluded or modified, a warranty that the goods shall be merchantable is implied in a contract for their sale if the seller is a merchant with respect to goods of that kind. Under this section the serving for value of food or drink to be consumed either on the premises or elsewhere is a sale. § 28-2-314.

Where the seller at the time of contracting has reason to know any particular purpose for which the goods are required and that the buyer is relying on the seller's skill or judgment to select or furnish suitable goods, there is, unless excluded or modified, an implied warranty that the goods shall be fit for such purpose. § 28-2-315.

Implied warranties, including the warranty of merchantability, can be limited or excluded in writing. Remedies for breach of warranty also can be limited. § 28-2-316.

2. Strict Liability in Tort.

a. Idaho recognizes strict liability in tort for property damage or personal injury caused by defective products. See, e.g., Shields v. Morton Chemical Co., 95 Idaho 674, 518 P.2d 857 (1974).

b. Such liability is limited to the "useful safe life" of the product (ordinarily ten years) and may be diminished by the "comparative responsibility" of the consumer for misusing, altering, or failing to inspect the product. §§ 6-1403 to 1405.

MISCELLANEOUS STATE STATUTORY PROVISIONS

Statutes of frauds.

1. Real property: A contract to sell real property, or to lease it for more than one year, must be in writing; but a contract fully or partially performed may be specifically enforced. § 9-508. See, e.g., Tew v. Manwaring, 94 Idaho 50, 480 P.2d 896 (1971).

2. Personal property: A contract to sell goods for a price of $500 or more must be evidenced by a writing, unless the goods are specifically manufactured for the consumer or payment has been made on the goods. § 28-2-201.

BANKRUPTCY EXEMPTIONS

Federal - See Chapter 2 supra.

State - Homestead exemption - $7,500. 110 § 12-901.

Personalty exemption -

(a) The necessary wearing apparel, bible, school books, and family pictures of the debtor and the debtor's dependents; and

(b) The debtor's equity interest, not to exceed $2,000 in value, in any other property;

(c) The debtor's interest, not to exceed $1,200 in vlaue, in any one motor vehicle;

(d) The debtor's equity interest, not to exceed $750 in value, in any implements, professional books or tools of the trade of the debtor;

(e) Professionally prescribed health aids for the debtor or a dependent of the debtor;

(f) All proceeds payable because of the death of the insured and the aggregate net cash value of any or all life insurance and endowment policies and annuity contracts payable to a wife or husband of the insured, or to a child, parent or other person dependent upon the insured, whether the power to change the beneficiary is reserved to the insured or not and whether the insured or the insured's estate is a contingency beneficiary or not;

(g) The debtor's right to receive:

(1) a social security benefit, unemployment compensation, or public assistance benefit,

(2) a veteran's benefit,

(3) a disability, illness, or unemployment benefit,

(4) alimony, support or separate maintenance, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor; and

(5) a payment under any pension plans or contracts, to the extent necessary for the support of the debtor and any dependent of the debtor, unless

(A) such payment is on account of age or length of service; and

(B) such plan or contract does not qualify under Sections 401(a), 403(a), 403(b), 408 or 409 of the Internal Revenue Code (26 U.S.C.A. §§ 401, 403, 408 or 409).

(h) The debtors right to receive, or property that is traceable to:

(1) an award under a crime victim's reparation law;

(2) a payment on account of the wrongful death of an individual of whom the debtor was a dependent, to the extent reasonably necessary for the support of the debtor;

(3) a payment under a life insurance contract that insured the life of an individual of whom the debtor was a dependent, to the extent reasonably necessary for the support of the debtor or a dependent of the debtor; and

(4) a payment, not to exceed $7500 in value, on account of personal bodily injury of the debtor or an individual of whom the debtor was a dependent.

For purposes of this subsection (h), a debtor's right to receive an award or payment shall be exempt for a maximum of 2 years after the debtor's right to receive such award or payment accrues; property traceable to such an award or payment shall be exempt for a maximum of 5 years after such award or payment accrues; and such an award or payment and property traceable to such an award or payment shall be exempt only to the extent of the amount of the award or payment, without interest or appreciation from the date of such award or payment.

Money due the debtor from the sale of any personal property which was exempt from judgment, attachment or distress for rent at the time of such sale is exempt from attachment and garnishment to the same extent that such property would be exempt had the same not been sold by such debtor.

If a debtor owns property exempt under this Section and he or she purchased such property with the intent of converting nonexempt property into exempt property or in fraud of his or her creditors, such property shall not be exempt from judgment, attachment or distress for rent. Property acquired within 6 months of the filing of the petition for bankruptcy shall be presumed to have been acquired in contemplation of bankruptcy. 110 § 12-1001.

CREDIT REPORTING

Federal - Fair Credit Reporting Act. See Chapter 3 supra.

State - No statutory provision.

DEBT COLLECTION

Federal - Fair Debt Collection Practices Act. See Chapter 3 supra.

State - No debt collector while collecting or attempting to collect a debt shall engage in any of the following acts:

(1) The use of threats or violence against a debtor, his family or his property;

(2) The use of harassment tactics or abusive language toward a debtor, or any member of his family;

(3) Disclosure of the debtor's indebtedness to persons without a legitimate business need;

(4) Failure of the debt collector to properly disclose the name of his business;

(5) The use of any misrepresentations or deceptive trade practices against the debtor; and

(6) The collection of any unauthorized interest, fee, or other charge unless expressly authorized by the agreement. 111 §§ 2012 to 2033.

A debt collector who engages in any of the prohibited acts may have his license suspended or revoked. 111 § 2037. If the debt collector's actions also constitute either a deceptive collection practice or disorderly conduct, the debt collector may be punished by a fine not to exceed $3,000. 38 §§ 17-5, 26-1.

HOME SOLICITATION SALE

Federal - FTC Trade Regulation Rule. See Chapter 3 supra.

State - The buyer has the right to cancel a home solicitation sale until midnight of the third business day following execution of an agreement or offer to purchase. In order to cancel the sale, the buyer must mail or deliver a notice of cancellation to the seller's place of business. The buyer also may send a telegram to the seller. 121 1/2 § 262B.

The buyer must take reasonable care of the goods and tender the goods at his or her residence. However, the buyer takes title to the goods if the seller fails to pick them up within 20 days of the date of the buyer's notice of cancellation. If the buyer fails to make the goods available to the seller or if he fails to return the goods pursuant to an agreement with the seller, the buyer remains liable for the performance of all obligations under the contract. The seller must return any funds received or goods traded in to the buyer within 10 business days following receipt of the notice of cancellation. 121 1/2 § 262B.

A previously negotiated sale at a business establishment, a sale in which the buyer has a right of recission under the Consumer Protection Act (15 U.S.C. § 1635), an emergency sale with a buyer's handwritten statement expressly waiving the right to cancel the sale, a sale conducted entirely by mail or telephone, a sale in which the buyer initiated the contact and requested the seller to visit his home for repair work, and a sale under $25 are not included in the protections provided by this statute. 121 1/2 § 262B.

Illinois

MINOR'S CONTRACT

Age of majority to contract - 18. 110 1/2 § 11-1.

Contractual liability - Minor is liable only for necessaries received as a result of a contractual relationship. 26 § 1-103.

REPOSSESSION REQUIREMENTS

The creditor must file a verified complaint which states:

(1) A description of the property;
(2) That the creditor is the owner of the property or is entitled to its possession;
(3) That the property is wrongfully detained by the debtor; and
(4) That the property has not been taken for any tax, assessment or fine pursuant to any law, or seized under any execution or attachment against the property of the creditor. 110 § 19-104.

The creditor also must execute a bond with sufficient surety for double the value of the property. 110 § 19-112 Notice to the debtor must be given at least 5 days before a hearing in court to contest the entry of an order for replevin. 110 § 19-105. Notice to the debtor is not required if:

(a) The property is likely to be destroyed or concealed by the debtor;
(b) The debtor is likely to leave the state (with the property);
(c) The property is perishable or is subject to an imminent sale or transfer; or
(d) The debtor obtained possession of the property by theft. (110 § 19-106).

The debtor may regain possession of the property by executing a bond and security, approved by the sheriff or other officer, in an amount double the value of the property. 110 § 19-116.

STATUTE OF LIMITATIONS

Contract under seal - 10 years. 110 § 13-206.
Simple written contract - 10 years. 110 13-206.
Contract for sale of goods - 4 years. 26 § 2-725.
Oral contracts - 5 years. 110 § 13-205.
Judgments - Courts of record - 20 years. 110 § 13-218.

TRUTH-IN-LENDING REQUIREMENTS

Federal - Truth-in-Lending Act. See Chapter 3 supra.

Illinois

State - The Illinois Consumer Installment Loan Act requires a creditor to disclose to the buyer, prior to making a loan, his finance charges in dollars and cents and as an annual percentage rate. 17 § 5420.

For disclosure requirements under the Illinois Retail Installment Sales Act and the Illinois Motor Vehicle Retail Installment Sales Act, see 121 1/2 §§ 503-506, 121 1/2 §§ 563-566.

UNFAIR AND DECEPTIVE TRADE PRACTICES

ILL. REV. STAT. ch. 121 1/2, § 261 (Supp. 1983-1984).

Prohibited Practices: Unfair methods of competition and unfair or deceptive acts or practices including concealment or omission of any material fact with intent to cause reliance, including 15 enumerated prohibitions.

Special Requirements: None specified.

Scope: Trade or commerce means advertising, sale, or offer for sale or distribution of any real, personal or intangible property or services, and any other thing of value.

Exclusions: Actions authorized under state or U.S. laws; those governed by trademark laws; advertisements done by disinterested publisher, radio and television media, with no knowledge of falsity or if did not prepare the ad; unknowing deceptive communication by licensed realtor.

Private Remedies: Actual damages or other proper relief in court's discretion; court "may" award attorney's fees and costs to prevailing party.

Limitations: AG action in public interest; statute of limitations is 3 years from accrual, action by AG tolls private action for pendency of suit and one year after.

State Remedies: AG enforces and has rulemaking power; court has discretion to exercise all powers necessary including injunction, revoke license, receiver, restitution; maximum $50,000 civil penalty; costs.

Precedential Value of FTC Interpretations: Consideration given.

ILL. REV. STAT. ch. 121 1/2 § 311 (Supp. 1983-1984).

Prohibited Practices: 11 enumerated deceptive trade practices plus a catchall prohibiting any conduct likely to cause confusion.

Special Requirements: None specified.

Illinois

Scope: In course of his business, vocation or occupation.

Exclusions: Conduct complying with state or federal statute; publishers, broadcasters, printers or other persons who disseminate information without knowledge of its deceptive character.

Private Remedies: Injunctive relief; costs or attorney's fees if defendant willfully violated act.

Limitations: None specified.

State Remedies: None specified.

Precedential Value of FTC Interpretations: Construed to promote uniformity of states enacting.

WARRANTIES

Unless excluded or modified, a warranty that the goods shall be merchantable is implied in a contract for their sale if the seller is a merchant with respect to goods of that kind. Under this section the serving for value of food or drink to be consumed either on the premises or elsewhere is a sale. 26 § 2-314.

Where the seller at the time of contracting has reason to know any particular purpose for which the goods are required and that the buyer is relying on the seller's skill or judgment to select or furnish suitable goods, there is, unless excluded or modified, an implied warranty that the goods shall be fit for such purpose. 26 § 2-315.

Implied warranties, including the warranty of merchantability, can be limited or excluded in writing. Remedies for breach of warranty also can be limited. 26 § 2-316.

Indiana

BANKRUPTCY EXEMPTIONS

Federal - See Chapter 2 supra.

State - Homestead exemption - $7,500. § 34-2-28-1. The exemption is individually available to joint debtors concerning property held by them as tenants by the entirety.

Personalty exemption (§ 34-2-28-1) -

(1) $4,000 worth of other real estate or tangible personal property;
(2) $100 worth of intangible personal property;
(3) Professionally prescribed health aids; and
(4) Any interest the debtor has in real estate, which is held by tenants by the entirety on the date of filing the petition, unless a joint petition is filed by the debtor and debtor's spouse or their individual petitions are consolidated.

The total value of all exempted property (excluding (3) and (4) above) shall not exceed $10,000. § 34-2-28-1.

CREDIT REPORTING

Federal - Fair Credit Reporting Act. See Chapter 3 supra.

State - No statutory provision.

DEBT COLLECTION

Federal - Fair Debt Collection Practices Act. See Chapter 3 supra.

State - No statutory provision.

HOME SOLICITATION SALE

Federal - FTC Trade Regulation Rule. See Chapter 3 supra.

State - The buyer has the right to cancel a home solicitation sale until midnight of the third business day following execution of an agreement or offer to purchase. § 24-4.5-2-502(1). Notice of cancellation is effective when delivered or when deposited in the mail properly addressed to the seller, postage prepaid. § 24-4.5-2-502(2,3). The notice is sufficient if it expresses an intention of the buyer not to be bound by the home solicitation sale. § 24-4.5-2-502(4). The sales agreement must contain a conspicuous

notice of this cancellation right. Until the buyer is notified of his rights of cancellation, the buyer can cancel the agreement by notifying the seller in any manner. § 24-4.5-2-503. If the buyer requested the goods or services because of an emergency, the buyer may not cancel the sale if (a) the seller has made a substantial good faith beginning of performance before receiving the notice of cancellation, and (b) in the case of goods, the goods cannot be returned to the seller in a condition as good condition as when received by the buyer. § 24-4.5-2-502(5).

The buyer must take reasonable care of the goods and tender the goods at his or her residence to the seller upon demand. However, the buyer takes title to the merchandise if the seller fails to demand such possession within a reasonable time after receipt of notice of cancellation. By statute 40 days is presumed a "reasonable time." § 24-4.5-2-505. The seller must return any funds received or goods traded in to the buyer within 10 days after cancellation of the sale. § 24-4.5-2-504(1,2). The seller may retain a cancellation fee of five percent (5%) of the cash price, but not exceeding the amount of the cash down payment, unless the buyer avoids the sale on a ground independent of his right to cancel or revokes his offer to purchase. § 24-4.5-2-504(3).

A cash sale, a sale of farm equipment, a sale made pursuant to a pre-existing revolving charge account, and a previously negotiated sale at a business establishment are not included in the protections provided by this statute. § 24-4.5-2-501. See also § 24-5-6-1 to 24-5-6-2.

MINOR'S CONTRACT

Age of majority to contract - 18. § 34-1-2-5.5. However, a minor of 16 or more years may contract for personal life, accident, and sickness insurance or annuities. § 27-1-12-15(a).

Contractual liability - Minor is liable only for necessaries received as a result of a contractual relationship. § 26-1-1-103. A minor is not bound by contracts into which the minor enters, but a minor's contracts are only voidable rather than void.

REPOSSESSION REQUIREMENTS

The creditor must make an affidavit showing (§ 34-1-9.1-2):

(1) That the creditor is the owner of the property or entitled to the possession of it;
(2) That the property has not been taken for tax assessment or fine, pursuant to statute, or seized under an execution or attachment against the property of the creditor;
(3) That the property has been wrongfully taken or detained;

(4) The value of the property and the county in which the property is located; and

(5) A description of the property.

The creditor also must execute a bond in such sum (not less than the value of the property) and with such surety as may be approved by the court. § 34-1-9.1-6. Notice to the debtor concerning the date, time, and place of the show cause hearing must be promptly given. The hearing cannot be held sooner than 5 days, excluding Sundays and holidays, from the service of the order upon the debtor. § 34-1-9.1-3.

The creditor can gain possession of the property without prior notice or a hearing being afforded the debtor if (§ 34-1-9.1-4):

(1) The debtor acquired the property by theft or criminal conversion;

(2) The property consists of negotiable instruments or credit cards; or

(3) The property is perishable or is in danger of destruction or concealment, removal from the state, or sale to an innocent purchaser.

The debtor can require the return of the property by executing a bond in an amount equal to the value of the property and with such surety as may be approved by the court. § 34-1-9.1-8.

STATUTE OF LIMITATIONS

Written contracts and promissory notes for the payment of money: If executed before 1 September 1982 - 10 years. § 34-1-2-2(5). If executed after 31 August 1982 - 6 years. § 34-1-2-2(5).

Written contracts other than those for the payment of money: If entered into before 1 September 1982 - 20 years. § 34-1-2-2(6). If entered into on or after 1 September 1982 - 10 years. § 34-1-2-2(6).

Contracts for the sale of goods - 4 years. § 26-1 2-725. 15 years for realty. § 34-1-2-3.

Oral contracts - 6 years. § 34-1-2-1.

Employment agreements not in writing - 2 years. § 34-1-2-1.5.

Judgments - Courts of record - 20 years. § 34-1-2-14.

TRUTH-IN-LENDING REQUIREMENTS

Federal - Truth-in-Lending Act. See Chapter 3 supra.

Indiana

State - With respect to consumer credit sales or loans, the Indiana Uniform Consumer Credit Code (IUCCC) requires a creditor to disclose to a buyer or debtor to whom credit is extended, the information required by the Federal Consumer Credit Protection Act. §§ 24-4.5-2-301, 24-4.5-3-301. The IUCCC does not apply to (§ 24-4.5-1-202):

(1) Extensions of credit to the government;
(2) Sale of specified insurance by insurers (except under IUCCC Chapter 4);
(3) Transactions under public or municipal utilities, or common carrier tariffs, if Indiana or the United States regulates the charges for service;
(4) Rates and charges of licensed pawnbrokers;
(5) Transactions for agricultural purposes;
(6) Sales of goods, services, or interests in land purchased for purposes other than personal, family, or household purposes; and
(7) Loans in which the debt is incurred for purposes other than personal, family, or household purposes.

A creditor who fails to disclose information to a person entitled to the information is liable to that person in an amount equal to the sum of (A) twice the credit service charge (but not less than $100 nor more than $1,000) and (B) in a successful action to enforce liability under (A), the costs of the action together with the attorney's fees. § 24-4.5-5-203(1). The creditor is not liable to a debtor bringing action if, within 15 days after discovery of an error and prior to written notice of the error or institution of the action, the creditor makes the proper adjustments and notifies the debtor. § 24-4.5-5-203(2). A creditor who willfully fails to provide information which is legally subject to mandatory disclosure is guilty of a Class A misdemeanor and, upon conviction, shall be punished by imprisonment not to exceed 1 year, and may be fined not more than $5,000. §§ 24-4.5-5-302, 35-50-3-2.

UNFAIR AND DECEPTIVE TRADE PRACTICES

IND. CODE ANN. § 24-5-0.5-1 (Burns 1982 & Supp. 1983).

Prohibited Practices: 14 enumerated deceptive acts.

Special Requirements: Act's subject matter is consumer transaction.

Scope: Consumer transaction defined as sale, lease or assignment of personal or real property, service or intangible to individual for personal, family purpose. No private actions for real property transactions.

Exclusions: Supplier in good faith reliance on representation made by another if discloses source to consumer; acts permitted by federal or state law.

Indiana

Private Remedies: Actual damages for non-real property consumer transaction; attorney's fees "may" be awarded prevailing party; class actions by damaged consumers who "may" be awarded non-contingent attorney's fees if prevailing party in non-real property consumer transaction; court may void contracts; security for costs may be imposed.

Limitations: Rely on uncured or incurable deceptive act for actual damages; notice to supplier within 6 months of discovery, 1 year of act, or 30 days of warranty; statute of limitations 2 years after act; except for counterclaims on contract brought by supplier or assignee with or without notice.

State Remedies: AG enforces; injunction; restitution; court may void contract; $15,000 per violation of injunction with costs to the state; maximum $500 per knowing violation; maximum $500 per incurable violation done with intent to defraud.

Precedential Value of FTC Interpretations: None specified.

WARRANTIES

Unless excluded or modified, a warranty that the goods shall be merchantable is implied in a contract for their sale if the seller is a merchant with respect to goods of that kind. Under this section, the serving for value of food or drink to be consumed either on the premises or elsewhere is a sale. § 26-1-2-314.

Where the seller at the time of contracting has reason to know both that the goods are required for a particular purpose and that the buyer is relying on the seller's skill or judgment to select or furnish suitable goods, there is, unless excluded or modified, an implied warranty that the goods shall be fit for such purpose. § 26-1-2-315.

Implied warranties, including the warranty of merchantability, can be limited or excluded in writing. Remedies for breach of warranty also can be limited. § 26-1-2-316.

Iowa

BANKRUPTCY EXEMPTIONS

Federal - See Chapter 2 supra.

State - Homestead exemption - Not to exceed one-half acre within a city or forty acres elsewhere, provided it may be enlarged to a value of at least $500. § 561.2. No more than one dwelling house with appurtenances thereto. § 561.3. The entire homestead of a U.S. Government pensioner is exempted if it is purchased and paid for with U.S. Government pension money. § 627.9.

Personalty exemption (§ 627.6):

(1) All wearing apparel kept for actual use and the receptacles necessary to contain them, not to exceed $200 for any one item or $1000 in the aggregate;

(2) One shotgun and rifle;

(3) Private libraries, family bibles, pictures and paintings, not to exceed $200 for any one item or $1000 in the aggregate.

(4) An interest in a burying ground, not to exceed one acre;

(5) Two cows, two calves, fifty sheep, six stands of bees, $100 worth of poultry, five hogs, all pigs under six months of age and the necessary food for these animals for six months;

(6) Interest in household furnishings, goods or appliances held for personal, family or household use, not to exceed $200 for any one item or $2000 in the aggregate;

(7) Unmatured life insurance policies, other than credit life insurance contracts.

(8) Social security benefits; unemployment compensation; veterans' benefits; disability benefits; necessary alimony or support; and necessary pension or annuity payments on account of illness, disability, death, age, or length of service; and professionally prescribed health aids;

(9) Musical instruments;

(10) One motor vehicle, not to exceed $1,200 in value;

(11) The proper tools, books or implements of a profession or trade other than farming.

(12) Two horses or mules or two yokes of cattle, the wagon or other vehicle, the proper harness or tackle, or other necessary husbandry implements where the debtor is a farmer; and

(13) Accrued wages and state and federal tax refunds as of the date of filing a petition in bankruptcy proceedings, not to exceed $1000 in the aggregate.

Items (9) through (13) may not exceed $5000 in the aggregate. A debtor filing a petition in bankruptcy may not exempt from the bankruptcy estate property specified in 11 U.S.C. § 522(d) (1979). § 627.10.

CREDIT REPORTING

Federal - Fair Credit Reporting Act. See Chapter 3 supra.

State - No statutory provision.

DEBT COLLECTION

Federal - Fair Debt Collection Practices Act. See Chapter 3 supra.

State - A debt collector is prohibited from using any of the following practices to collect or attempt to collect a debt (§ 537.7013):

(1) The use of illegal threats or coercion;
(2) The use of oppression, harassment, or abusive language and conduct;
(3) The dissemination of information relating to a debt or debtor to someone other than a person who might reasonably be expected to be liable for the debt;
(4) The use of any fraudulent, deceptive or misleading representations or means to collect a debt or to obtain information concerning a debtor; and
(5) The distribution, selling or preparing of a written communication that violates United States postal laws and regulations.

HOME SOLICITATION SALE

Federal - FTC Trade Regulation Rule. See Chapter 3 supra.

State - The buyer has the right to cancel a home solicitation sale until midnight of the third business day following execution of an agreement or offer to purchase. Notice of cancellation is effective when delivered or when deposited in the mail properly addressed to the seller, postage prepaid. The sales agreement must contain a conspicuous notice of this cancellation right. §§ 82.2, 82.3.

The buyer must take reasonable care of the goods and tender the goods at his or her residence to the seller upon demand. However, the buyer takes title to the merchandise if the seller fails to retrieve it within 20 days of the date of the notice of cancellation. § 82.3. The seller must return any funds received or goods traded in to the buyer within 10 days after cancellation of the sale. The seller also must cancel and return any negotiable instruments executed by the buyer in connection with the sale. § 82.4(5).

The following transactions are not included in the protections provided by this statute (§ 82.1):

(a) A sale made pursuant to prior negotiations at the seller's place of business;
(b) A sale with a purchase price of less than $25;
(c) A sale in which the buyer has a right of rescission under the Consumer Credit Protection Act, 15 U.S.C. § 1635;
(d) A sale conducted entirely by mail or telephone;
(e) A buyer-initiated emergency sale with a statement signed by the buyer waiving the right of cancellation;
(f) A buyer-initiated transaction in which the buyer requested the seller to visit his home for the repair or maintenance of his personal property; and
(g) A sale of insurance, a sale of securities or commodities by a registered broker, or a sale or rental of real property.

MINOR'S CONTRACT

Age of majority to contract - 18. § 599.1.

Contractual liability - Minor is liable only for necessaries received as a result of a contractual relationship. §§ 599.2, 554.1103.

REPOSSESSION REQUIREMENTS

The creditor must file a verified petition stating (§ 643.1):

(1) A particular description of the property;
(2) The actual value of the property;
(3) The facts constituting the creditor's right to possession of the property and the extent of this interest;
(4) That the property was not taken on an order or judgment of a court, nor under an execution or attachment against the creditor; and
(5) The facts constituting the cause of detention and the damages which the creditor seeks.

The creditor also must execute a bond, with sureties to be approved by the court, in an amount equal to twice the value of the property to be taken. § 643.7. The court prescribes the type of notice and the opportunity for a hearing that will be afforded the debtor. § 643.5. The debtor may recover the property by executing a bond to the creditor, with sureties approved by the clerk or other officer, and by providing assurances that he will appear in the action and abide by the decision of the court. § 643.12.

STATUTE OF LIMITATIONS

Contract under seal - 10 years. § 614.1(5).
Simple written contract - 10 years. § 614.1(5).

Contract for sale of goods - 10 years, if written. § 614.1(5). 5 years, if unwritten. § 614.1(4). See § 554.2725.

Oral contracts - 5 years. § 614.1(4).

Judgments - Courts of record - 20 years. § 614.1(6).

TRUTH-IN-LENDING REQUIREMENTS

Federal - Truth-in-Lending Act. See Chapter 3 supra.

State - The Iowa Consumer Credit Code (ICCC) requires a creditor to disclose to a consumer the information required by the Federal Truth-in Lending Act. § 537.3201. See Chapter 1 supra. The Iowa truth-in-lending disclosure requirements are not applicable to the following (§ 537.1202):

(1) Extensions of credit to the government;
(2) Sale of specified insurance by insurers (except under ICCC Art. 4);
(3) Transactions under public utility or common carrier tariffs, if Iowa or the United States regulates the charges for services;
(4) Transactions in securities or commodities with registered brokers.

A creditor who fails to disclose information to a person entitled to the information is liable to that person in an amount equal to the sum of (a) twice the finance charge (but not less than $100 nor more than $1,000), and (b) in a successful action to enforce the liability under paragraph (a), the costs of the action together with reasonable attorney's fees. § 537.5203(1). The creditor is not liable in an action brought by a debtor if, within 15 days after discovery of an error and prior to the receipt of written notice of the error or the institution of an action, the creditor makes the proper adjustments and notifies the debtor. § 537.5203(2). A creditor who willfully fails to provide required information is guilty of a serious misdemeanor and, upon conviction, shall be punished by a fine not to exceed $1,000, or by imprisonment not to exceed 1 year, or both. §§ 537.5302, 903.1. Criminal liability under this section is in lieu of, and not in addition to, the creditor's criminal liability under the Federal Truth-in-Lending Act. § 537.5302(4).

UNFAIR AND DECEPTIVE TRADE PRACTICES

IOWA CODE ANN. § 714.16 (West 1979 & Supp. 1983-1984).

Prohibited Practices: Deceptive acts or concealment, suppression or omission of material fact with intent to cause reliance including 4 enumerated practices.

Special Requirements: Intent to cause reliance for deceptive act; repair or replacement made to new merchandise before sale not exceeding $300 or

10% of cost if seller posts notice and purchaser does not request disclosure of material fact.

Scope: Sale, or offer for sale, or advertisement of any goods, commodities, intangibles, stocks, bonds, securities, realty or services.

Exclusions: Advertisements done by publisher, radio and television media, with no knowledge of falsity; advertisements that comply with FTC rules, regulations, and statutes.

Private Remedies: None specified. (But see § 5.3.2 (1984 Supp.), infra.)

Limitations: None specified.

State Remedies: AG enforces; upon notice; injunction; dissolve corporation or revoke state licenses; any other relief required; restitution; receiver for substantial and willful violation; costs; rulemaking.

Precedential Value of FTC Interpretations: None specified.

WARRANTIES

Unless excluded or modified, a warranty that the goods shall be merchantable is implied in a contract for their sale if the seller is a merchant with respect to goods of that kind. Under this section, the serving for value of food or drink to be consumed either on the premises or elsewhere is a sale. § 554.2314.

Where the seller at the time of contracting has reason to know both that the goods are required for a particular purpose and that the buyer is relying on the seller's skill or judgment to select or furnish suitable goods, there is, unless excluded or modified, an implied warranty that the goods shall be fit for such purpose. § 554.2315.

Implied warranties, including the warranty of merchantability, can be limited or excluded in writing. Remedies for breach of warranty also can be limited. § 554.2316.

Kansas

BANKRUPTCY EXEMPTIONS

Federal - See Chapter 2 supra.

State - Homestead exemption - 160 acres of farming land if the homestead is located outside the city limits, or one acre of land located within the limits of an incorporated town or city together with the improvements located on the land. § 60-2301.

Personalty exemption (§ 60-2304) -

(1) Furnishings, equipment and supplies, including food and fuel, for one year;
(2) $500 worth of debtor's ornaments, including jewelry;
(3) One means of conveyance for transportation;
(4) A burial plot; and
(5) The books, documents, furniture and instruments necessary in carrying on the debtor's profession or trade, but not to exceed a total value of $5,000.

CREDIT REPORTING

Federal - Fair Credit Reporting Act. See Chapter 3 supra.

State - The Kansas Fair Credit Reporting Act (§ 50-701), is substantially the same as the Federal Act. See Chapter 1 supra. The Kansas Fair Credit Reporting Act differs from the Federal Act in its provisions for criminal liability for violations of the Act. The Kansas Act provides that any person who knowingly and willfully obtains information from a consumer reporting agency under false pretenses and any officer or employee of a consumer reporting agency who knowingly and willfully provides information to a person not authorized to receive the information shall be punished for a class A misdemeanor upon conviction. §§ 50-718, 50-719. Any person violating a provision of the Act that does not have a designated penalty shall be punished for a class C misdemeanor upon conviction. § 50-720.

DEBT COLLECTION

Federal - Fair Debt Collection Practices Act. See Chapter 3 supra.

State - No statutory provision.

Kansas

HOME SOLICITATION SALE

Federal - FTC Trade Regulation Rule. See Chapter 3 supra.

State - The buyer has the right to cancel a home solicitation sale until midnight of the third business day following execution of an agreement or offer to purchase. § 50-640(a). Notice of cancellation is effective when delivered or when deposited in the mail properly addressed to the seller, postage prepaid. The sales agreement must contain a conspicuous notice of this cancellation right. § 50-640(b)(1), (2).

The buyer must take reasonable care of the goods and tender the goods at his or her residence to the seller upon demand. However, the buyer takes title to the merchandise if the seller fails to pick such merchandise up within 20 days of the date of the notice of cancellation. The seller must return any funds received or goods traded in to the buyer within 10 business days after cancellation of the sale. The seller also must cancel and return any negotiable instruments executed by the buyer in connection with the sale. § 50-640(b)(2).

The following transactions are not included in the protections provided by this statute (§ 50-640(c)(1):

(a). A sale made pursuant to prior negotiations at the seller's place of business;
(b) A sale with a purchase price of less than $25;
(c) A sale in which the buyer has a right of rescission under the Consumer Credit Protection Act (15 U.S.C. § 1635);
(d) A buyer-initiated emergency sale with a statement in the buyer's handwriting and signed by the buyer waiving the right of cancellation;
(e) A sale conducted entirely by mail or telephone;
(f) A buyer-initiated transaction in which the buyer requested the seller to visit his home for the repair or maintenance of his personal property; and
(g) A sale of insurance, or a sale of securities or commodities by a registered broker, and a sale or rental of real property.

MINOR'S CONTRACT

Age of majority to contract - 18 if unmarried, 16 if married. § 38-101.

Contractual liability - Minors are absolutely liable only on contracts for necessaries. Minors are liable on other contracts unless disaffirmed within a reasonable time after the minor reaches majority. §§ 38-102, 38-103, 84-1-103.

Kansas

REPOSSESSION REQUIREMENTS

The creditor must make an affidavit or file a verified petition stating:

(1) That he is the owner of the property, sufficiently describing it, or that he is lawfully entitled to its possession;
(2) That the property is wrongfully detained by the debtor, and
(3) The estimated value of the property. § 60-1005(a).

The creditor also must make a bond in double the value of the property as stated in the affidavit or verified petition, with one or more sufficient sureties. The debtor must be notified that the creditor has applied for an order of replevin and that a hearing on the validity of the creditor's claim will be held. § 60-1005(b).

Notice to the debtor and an opportunity for a hearing are not required if:

(1) Possession of the property by the creditor is necessary to secure an important governmental or public interest; and
(2) There is an imminent danger that the debtor will destroy or conceal the property. § 60-1005(b).

Within 24 hours after the copy of the replevin order has been served on the debtor, he can cause the property to be returned to him by executing a bond approved by the sheriff, in double the value of the property as stated in the order, with one or more sufficient sureties. § 60-1005(f).

STATUTE OF LIMITATIONS

Contract under seal - 5 years. §§ 60-511, 16-106.
Simple written contract - 5 years. § 60-511.
Contract for sale of goods - 4 years. § 84-2-725.
Oral contracts - 3 years. § 60-512.
Judgments - Courts of record - A judgment may be continuously kept alive by execution every 5 years. § 60-2403.

TRUTH-IN-LENDING REQUIREMENTS

Federal - Truth-in-Lending Act. See Chapter 3 supra.

State - The Kansas Consumer Credit Code requires a creditor to disclose to the consumer the information required by the federal Truth-in-Lending Act and in all respects to comply with the Act. § 16a-3-206. See Chapter 1 supra. The Kansas truth-in-lending disclosure requirements are not applicable to the following:

(1) Extensions of credit to the government;

(2) The sale of insurance by insurers (except under UCCC, Art. 4);
(3) Transactions under public utility or common carrier tariffs, if Kansas or the United States regulates the charges for services;
(4) Nonrealty credit over $25,000; and
(5) Transactions covered by the Kansas Insurance Premium Finance Company Act. §§ 16a-1-202, 16a-1-301.

A creditor who fails to disclose information to a person entitled to the information is liable to that person in an amount equal to the sum of (a) twice the finance charge (but not less than $100 nor more than $1,000), and (b) in a successful action to enforce the liability under (a), the costs of the action together with attorney's fees. § 16a-5-203(1). The creditor is not liable in an action brought against him if within 15 days after discovery of an error and prior to the receipt of written notice of the error or institution of an action, the creditor makes the proper adjustments and notifies the debtor. § 16a-5-203(2). A creditor who willfully and knowingly fails to provide information which he is required to disclose is guilty of a misdemeanor and upon conviction shall be punished by a fine not to exceed $2,500, or by imprisonment not to exceed one year, or both. §§ 16a-5-302, 21-4502, 21-4503. This criminal liability is in lieu of and not in addition to the criminal liability under the Federal Truth-in-Lending Act. § 16a-5-302(2).

UNFAIR AND DECEPTIVE TRADE PRACTICES

KAN. STAT. ANN. § 50-623 (1983).

Prohibited Practices: Any deceptive acts or practices or omission as to a material fact including 10 enumerated prohibitions; or unconscionable practice including 6 enumerated prohibitions.

Special Requirements: Consumer transaction; all enumerated deceptive prohibitions require knowing or intentional act.

Scope: Consumer transaction is a sale, lease, or assignment for value or services to a consumer for personal, family, household or agricultural purposes.

Exclusions: Personal injury or death claims; property damage not subject of consumer transaction; publisher, broadcaster, printer or other person who disseminates information without actual knowledge of violation.

Private Remedies: Declaratory judgment; injunction; minimal $2000 per violation, minimum $10,000 per willful violation of injunction or other penalties court may deem proper; class actions for declaratory judgment or injunction, or if consumer suffers loss for actual damages; reasonable attorney's fees to prevailing party, to supplier if suit groundless.

Limitations: None specified.

State Remedies: AG or local prosecuting attorney or agencies supervising suppliers enforces; procedural rulemaking by AG; declaratory judgment; injunction; actual damages; reasonable expenses and investigation fees; consent judgments including restitutionary relief and expenses; court may make other orders "necessary"; receiver; revoke licenses; grant other appropriate relief; minimum $2000 per violation; minimum $10,000 per willful violation of injunction or other penalties court may deem proper.

Precedential Value of FTC Interpretations: None specified.

WARRANTIES

Unless excluded or modified, a warranty that the goods shall be merchantable is implied in a contract for their sale if the seller is a merchant with respect to goods of that kind. Under this section the serving for value of food or drink to be consumed either on the premises or elsewhere is a sale. § 84-2-314.

Where the seller at the time of contracting has reason to know both that the goods are required for a particular purpose and that the buyer is relying on the seller's skill or judgment to select or furnish suitable goods, there is, unless excluded or modified, an implied warranty that the goods shall be fit for such purpose. § 84-2-315.

Implied warranties, including the warranty of merchantability, can be limited or excluded in writing. Remedies for breach of warranty also can be limited. § 84-2-316.

Kentucky

BANKRUPTCY EXEMPTIONS

Federal - See Chapter 2 supra.

State - Homestead exemption - $5,000. $427.060.

Personalty exemption (§§ 427.010-427.170) -

(1) $3,000 worth of household furnishings, jewelry, personal clothing, and ornaments;
(2) $3,000 worth of tools, equipment and livestock of a person engaged in farming;
(3) One motor vehicle and its necessary accessories not exceeding $2,500 in the aggregate;
(4) Professionally prescribed health aids;
(5) Debtor's tools not exceeding $300.00 in value necessary in the debtor's trade;
(6) Professional library, office equipment, etc. of a minister, attorney, physician, surgeon, chiropractor, veterinarian or dentist necessary in the practice of such profession not exceeding $1,000.00 in value;
(7) One motor vehicle not exceeding $2,500.00 in value with necessary accessories used in the practice of such profession.
(8) A general exemption in addition to all other exemptions in the amount of $1,000.00 to be applied toward any property, real or personal, tangible or intangible (applies toward bankruptcy only). Note: Federal Bankruptcy exemptions do not apply in Kentucky. § 427.170; and
(9) The lesser of:
(a) 25% of the debtor's disposable earnings for that week, or
(b) The amount by which his disposable earnings for that week exceed 30 times the federal minimum hourly wage prescribed by 6(a)(1) of the Fair Labor Standards Act of 1938 in effect at the time the earnings are payable.

CREDIT REPORTING

Federal - Fair Credit Reporting Act. See Chapter 3 supra.

State - No statutory provision.

DEBT COLLECTION

Federal - Fair Debt Collection Practices Act. See Chapter 3 supra.

Kentucky

State - § 367.170 provides as follows:

> Unfair, false, misleading or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful.
>
> (2) For the purpose of this section, unfair shall be construed to mean unconscionable.

The Fair Debt Collection Practices Act (FDCPA) serves as a guideline for determining what is an unfair, false, misleading, or deceptive practice in violation of the Kentucky Consumer Protection Act. The FDCPA, 15 U.S.C. § 1692(e)(4) states that such practices include:

> (4) The representative or implication that nonpayment of any debt will result in the arrest or imprisonment of any person . . . unless such action is lawful and the debt collector or creditor intends to take such action.
>
> (5) The threat to take any action that cannot legally be taken or is not intended to be taken.

HOME SOLICITATION SALE

Federal - FTC Trade Regulation Rule. See Chapter 3 supra.

State - The buyer has the right to cancel a home solicitation sale until midnight of the third business day following execution of an agreement or offer to purchase. § 367.420(1). Notice of cancellation is effective when delivered or when deposited in the mail properly addressed to the seller, postage prepaid. § 367.420(2,3). The sales agreement must contain a conspicuous notice of this cancellation right. § 367.430(2). Until the buyer is notified of his cancellation rights, he may cancel the agreement by notifying the seller in any manner. § 367.430(3). The buyer cannot cancel the home solicitation sale if the buyer requested the seller to provide goods or services 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 as good condition as when received by the buyer. § 367.420(5).

The buyer must take reasonable care of the goods and tender the goods at his or her residence to the seller upon demand. § 367.450(1, 2). However, the buyer takes title to the merchandise if the seller fails to demand such possession within 40 days after receipt of the notice of cancellation. § 367.450(1). The seller must return any funds received or goods traded in to the buyer within 10 days after cancellation of the sale. § 367.440.

A sale for less than $25, an insurance sale, and a previously negotiated sale at a business establishment are not included in the protections provided by this statute. §§ 367.410, 367.450(4).

MINOR'S CONTRACT

Age of majority to contract - 18. § 2.015.

Contractual liability - Minor is liable only for necessaries received as a result of a contractual relationship. § 355.1-103. A minor of 15 years old can contract for insurance and be bound as a person of legal age. § 304.14-070.

REPOSSESSION REQUIREMENTS

Repossession by a secured creditor holding valid security interest in collateral where debtor defaults.

(1) Self-help repossession. Unless otherwise agreed, a secured party has, upon default, the right to take possession of the collateral. This party may proceed without judicial process if this can be done without breach of the peace. § 355.9-503.

(2) Judicial action repossession.

The creditor must file a written motion for the writ of possession or file an affidavit stating (§ 425.011):

(1) That the creditor is entitled to possession of the property;
(2) That the property is wrongfully detained by the debtor and describe how the debtor came into possession of the property;
(3) The value of the property and a description of it;
(4) The location of the property; and
(5) That the property was not taken for purposes of a tax or fine pursuant to a statute, or seized under an order of execution.

The creditor must also execute a bond with one or more sufficient sureties, in an amount at least twice the value of the property, as determined by the judicial officer. § 425.111.

At least 7 and not more than 60 days before possession is sought, the creditor must make a formal demand for possession of the property and deliver a copy of the complaint, motion and summons to the debtor. This demand must notify the debtor that he has 7 days in which to request a hearing. § 425.012. The debtor can prevent the taking of the property or regain possession of the property by executing a bond with one or more sufficient sureties in an amount equal to the creditor's bond, or if no

judicial determination has been made, the value of the property stated in the creditor's application for the writ of possession. § 425.116.

STATUTE OF LIMITATIONS

Contract under seal - 15 years. §§ 371.020, 413.090.
Simple written contract - 15 years. § 413.090.
Contract for sale of goods - 4 years. § 355.2-725.
Oral contracts - 5 years. § 413.120.
Judgments - Courts of record - 15 years. § 413.090.

TRUTH-IN-LENDING REQUIREMENTS

Federal - Truth-in-Lending Act. See Chapter 3 supra.

State - The requirements of the Kentucky Credit Disclosure Law are met when a creditor complies with the requirements of the Federal Truth-in-Lending Act. § 360-212. The Kentucky law requires disclosure for loans and revolving credit transactions, but not for sales. §§ 360.220, 360.225. The Kentucky truth-in-lending requirements are not applicable to the following:

(1) The extension of credit for an amount over $25,000;
(2) Motor vehicle sales (see §§ 190.100-190.140);
(3) Pawnbrokers (see § 226.050);
(4) Sales under the Instalment Sales law (see §§ 371.220, 371.300); and
(5) Transactions in which there is no finance charge or in which the debt is substantially secured by collateral (see § 360.240).

A creditor who willfully fails to disclose information to a person entitled to the information forfeits his right to recover any finance, delinquency, collection or refinancing charge. The creditor is not liable for non-disclosure if he can show by a preponderance of the evidence that the violation was due to a bona fide error. § 360.265. A creditor who willfully fails to disclose required information to a consumer may also be guilty of a criminal violation punishable by a fine not to exceed $500, or by imprisonment not to exceed 6 months, or both. § 360.991.

UNFAIR AND DECEPTIVE TRADE PRACTICES

KY. REV. STAT. § 367.110 (Supp. 1982).

Prohibited Practices: Unfair or deceptive acts or practices; unfair construed to mean unconscionable.

Special Requirements: None specified.

Kentucky

Scope: In trade or commerce defined as the advertising, or offer for sale of any service, real, personal, tangible or intangible property and any other thing of value.

Exclusions: Advertisements done by publisher, radio and television media, with no knowledge of falsity.

Private Remedies: Actual damages; equitable relief court deems "necessary or proper"; punitive damages where appropriate; attorney's fees and costs to prevailing party.

Limitations: Must be consumer transaction and suffer actual loss for actual damages; statute of limitations is 1 year after end of AG suit or 2 years after violation.

State Remedies: Consumer's Advisory Council and division of consumer protection given advisory power; AG has enforcement power and may grant it to state and county attorneys; injunction; restitution; receiver; revoke license.

Precedential Value of FTC Interpretations: None specified.

WARRANTIES

Unless excluded or modified, a warranty that the goods shall be merchantable is implied in a contract for their sale if the seller is a merchant with respect to goods of that kind. Under this section, the serving for value of food or drink to be consumed either on the premises or elsewhere is a sale. § 355.2-314.

Where the seller at the time of contracting has reason to know both that the goods are required for a particular purpose and that the buyer is relying on the seller's skill or judgment to select or furnish suitable goods, there is, unless excluded or modified, an implied warranty that the goods shall be fit for such purpose. § 355.2-315.

Implied warranties, including the warranty of merchantability, can be limited or excluded in writing. Remedies for breach of warranty also can be limited. § 355.2-316.

Louisiana

BANKRUPTCY EXEMPTIONS

Federal - See Chapter 2 supra.

State - Homestead exemption - $15,000. La. Const. art. 12 § 9 and La. Const. art. 14 § 34. § 20:1.

Personalty exemption (§ 13:3881) -

(1) 75 percent of the debtor's disposable earnings for any week, but in no case shall the amount be less than an amount equal to thirty (30) times the federal minimum hourly wage in effect at the time the earnings are payable;

(2) The tools, instruments and books necessary to the exercise of the debtor's trade or profession, and one pickup truck and trailer actually used in the debtor's trade;

(3) A right of personal servitude, of use and habitation, of usufruct of the estate of a minor child, and the income from dotal property; and

(4) All necessary household furnishings used by the debtor or his family; family portraits; arms and military accoutrements; musical instruments; and the poultry, fowl, and one cow kept by the debtor for the use of his family.

(5) Any wedding or engagement rings worn by either spouse, provided the value of the ring does not exceed five thousand dollars.

CREDIT REPORTING

Federal - Fair Credit Reporting Act. See Chapter 3 supra.

State - No statutory provision.

DEBT COLLECTION

Federal - Fair Debt Collection Practices Act. See Chapter 3 supra.

State - Lousiana law provides that a creditor may not contact any person, other than an extender of credit or a credit reporting agency, who is not living or residing in the debtor's household regarding the debtor's obligation to pay the debt. § 9:3562.

The creditor may contact anyone without the debtor's consent:

(A) To ascertain information concerning the debtor's credit worthiness, character, general reputation, or personal characteristics expected to be used in establishing the detor's eligibility for credit; or

(B) To ascertain the whereabouts of the debtor, when there is reason to believe that the debtor has moved or changed employment. § 9:3562(2).

After the debtor has defaulted on his promise to pay and notified the creditor in writing by registered or certified mail to cease further contact with the debtor in regard to the indebtedness, the creditor is limited to one mail contact per month to the debtor. The creditor is also limited to four personal contacts with the debtor, after receipt of notice to cease contact with the debtor. § 9:3562(3). The creditor is not prohibited from doing the following (§ 9:3562(6)):

(A) Contacting any person in order to discover property of the debtor that may be seized to satisfy a debt reduced to judgment; or
(B) Making amicable demands and filing suit on the debt; or
(C) Contacting persons related to the debtor, if permission is given in writing at the time the debt arises or anytime thereafter. § 9:3562(4); or
(D) Obtaining a judgment and resuming contracts with the debtor, notwithstanding the provisions of § 9:3562(3).

HOME SOLICITATION SALE

Federal - FTC Trade Regulation Rule. See Chapter 3 supra.

State - The consumer has the right to cancel a home solicitation sale until midnight of the third business day after the day on which the consumer signs an agreement or offer to purchase. § 9:3538A. Notice is effective when delivered or when deposited in the mail properly addressed to the seller, postage prepaid. § 9:3538 B, C.

The sales agreement must contain a conspicuous notice of this cancellation right. § 9:3539A, B. Until the seller has notified the buyer of his rights of cancellation, the buyer may cancel the sale by notifying the seller in any manner of his intention to cancel. § 9:3539C.

The buyer may not cancel a home solicitation sale if the buyer requested the goods or services 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 as good condition as when received by the buyer. § 9:3538E.

The buyer must take reasonable care of the goods and tender the goods at his or her residence to the seller upon demand. § 9:3541A, B. However, the buyer takes title to the goods, without obligation to pay for them, if the seller fails to demand such possession within 40 days after receipt of the notice of cancellation. § 9:3541A. The seller must return

any funds received or goods traded in to the buyer within 10 days after cancellation of the sale. § 9:3540A, B. The seller may retain a cancellation fee of five percent (5%) of the cash price but not exceeding the amount of the cash down payment. If the seller fails to comply with an obligation imposed on him, or if the buyer avoids the sale on a ground independent of his right to cancel the agreement or revokes his offer to purchase, the seller is not entitled to retain a cancellation fee. § 9:3540.

A sale made pursuant to a pre-existing revolving charge account, a cash sale, a catalogue credit sale, a sale of a motor vehicle, and a sale previously negotiated at the seller's place of business are not included in the protections provided by this statute. § 9:3516(18).

For additional Home Solicitation Sale's Provisions - see §§ 9:2711-2711.1.

MINOR'S CONTRACT

Age of majority to contract - 18. Civil Code (CC) Art. 37.

Contractual liability - Minor is liable only for necessaries received as a result of a contractual relationship. CC Art. 1923.

REPOSSESSION REQUIREMENTS

The creditor must file a verified petition or make an affidavit stating the nature of the claim and the amount thereof, and the grounds relied upon to support the issuance of a writ of sequestration. Code of Civil Procedure (CCP) Art 3501. The creditor must also execute a bond in an amount determined by the court to be sufficient to protect the debtor against any damage resulting from a wrongful issuance. CCP Art. 3574. A writ of sequestration to enforce a lessor's privilege shall be issued without the furnishing of security. CCP Art. 3575. Notice to the debtor is not required. The debtor may obtain the release of the property seized under a writ of sequestration by furnishing security for the satisfaction of any judgment which may be rendered against him. CCP Art. 3507. If the debtor does not effect the release of the property within ten days of the seizure, the property may be released to the creditor upon the furnishing of security in the lesser amount of either 1 1/4 the value of the property as determined by the court, or 1 1/4 the amount of the claim. CCP Arts. 3576, 3508. A written hold harmless agreement may be substituted in lieu of security at the discretion of the sheriff. CCP Art. 3507.1.

STATUTE OF LIMITATIONS

Contract under seal - 10 years. CC Art. 3499.
Simple written contract - 10 years. CC Art. 3499.
Contract for sale of goods - 10 years. CC Art. 3499.

Louisiana

Oral contracts - 10 years. CC Art. 3499.
Judgments - Courts of record - 10 years. CC Art. 3501.

TRUTH-IN-LENDING REQUIREMENTS

Federal - Truth-in-Lending Act. See Chapter 3 supra.

State - No statutory provision. But see Louisiana Consumer Credit Law §§ 9:3510-3536.

UNFAIR AND DECEPTIVE TRADE PRACTICES

LA. REV. STAT. ANN. § 51:1401 (West Supp. 1984).

Prohibited Practices: Unfair methods of competition and unfair or deceptive acts or practices.

Special Requirements: None specified.

Scope: Trade or commerce defined as advertising, sale, offers for sale of any service, property, intangible, and any thing of value.

Exclusions: Actions subject to State Public Service Commission or public utility regulatory body, banking or insurance commissioner; advertisements done by publisher, radio and television media, with no knowledge of falsity, no direct financial interest; acts complying with FTC; seller of products or services who disseminates advertisements of promotional material received from manufacturer except for consumer actions.

Private Remedies: Actual damages; treble damages for knowing violation done after notice given by director or AG; attorney's fees and costs to successful consumer, to defendant if suit in bad faith and groundless or brought for harassment.

Limitations: Need ascertainable loss for private action; statute of limitations one year from transaction for private action; investigation by AG if in public interest.

State Remedies: Governor's Consumer Protection Division has rulemaking, subject to AG approval; AG and DA enforces; injunction; court "may" issue additional relief necessary as compensation; $5000 per violation of injunction.

Precedential Value of FTC Interpretations: FTC acts control over state act.

Louisiana

WARRANTIES

When the parties make no provision for a particular situation, it must be assumed that they intended to bind themselves not only to the express provisions of the contract, but also to whatever the law, equity, or usage regards as implied in a contract of that kind or necessary for the contract to achieve its purpose. CC Art. 2054.

Maine

BANKRUPTCY EXEMPTIONS

Federal - See Chapter 2 supra.

State - Homestead exemption - $7,500. 14 § 4422.

Personalty exemption (14 § 4422) -

(1) One motor vehicle, not to exceed $1,200 in value;

(2) The debtor's interest, not to exceed $200 in value in any item of household furnishings, wearing apparel, appliances, books, crops, or musical instruments;

(3) $500 worth of jewelry plus a wedding ring and an engagement ring;

(4) $1,000 worth of professional books or tools of the trade necessary for carrying on the debtor's trade or business;

(5) One cooking stove, all furnaces and stoves used for heating, and heating fuel not to exceed 10 cords of wood, 5 tons of coal, and 1,000 gallons of petroleum or its equivalent;

(6) All food provisions necessary for 6 months, all seed, fetilizers, and feed necessary to raise and harvest food for one growing season, and all tools and equipment necessary for raising and harvesting food;

(7) Debtor's interest in one of every type of farm implement necessary for debtor to raise and harvest agricultural products commercially;

(8) One boat not exceeding 5 tons burden used for commercial fishing;

(9) Any unmatured life insurance contract other than credit life insurance, disability benefits and pensions, and $4000 accrued dividend, interest, or loan value;

(10) Legal awards to the extent necessary for the support of the debtor or his dependent except for a $7,500 limitation on recovery for bodily injury, not including pain and suffering or compensation for actual pecuniary loss;

(11) Professionally prescribed health aids; and

(12) $400 in any other property whether or not otherwise exempt.

CREDIT REPORTING

Federal - Fair Credit Reporting Act. See Chapter 3 supra.

State - Issuance of Consumer Reports - Information may only be released for the purposes set forth in 10 § 1313.

Maine

Investigative Consumer Reports - Substantially the same as under federal law. 10 § 1314.

Disclosures

Agency to consumer - Substantially the same as under federal law, except the consumer has a right to disclosure of medical information withheld to a licensed physician of his choice. 10 § 1315(1)(A). A copy of the customer's file can be mailed to him, upon written request with proper identification, at a charge not to exceed the agency's actual costs for reproduction and mailing. 10 § 1316(2)(C). If the disclosure is made in person, then the costs shall not exceed the actual costs of photocopying. If the request for a copy of the file is made after an adverse consumer determination, there is no charge to the customer for the disclosure. 10 § 1316. A disclosure fee, not to exceed $2, may be charged when the consumer is not entitled to a free disclosure of the report. 10 § 1316 (2-A).

User to Consumer - Substantially the same as under federal law. See Chapter 2 supra.

Investigative Reports - Maine prohibits adverse information from being included in subsequent reports unless the information is a matter of public record, has been verified, or was received within 3 months before the subsequent report. The report must be in writing and retained in the file of the consumer to whom it relates for a period of 2 years following its completion, if it was compiled or reported for employment purposes, and 6 months for all other purposes. 10 § 1319.

Disputed Accuracy - Substantially the same as under federal law, except Maine allows the reporting agency to retain the inaccurate report, as long as it is kept separate from the other reports and is conspicuously marked. "Inaccurate information" includes materially incomplete information. 10 § 1317.

Public Record Information for Employment Purposes - Substantially the same as under federal law. 10 § 1318.

Violation and Penalities

Civil Liability - Substantially the same as under federal law, except that treble damages are allowed for willful noncompliance with the statute and additional damages of not less than $100 for each violation involving negligence and for each inaccurate consumer report contributing to an adverse action. 10 §§ 1322, 1323.

Criminal Liability - The state and federal penalties are the same for obtaining information under false pretenses and the unauthorized disclosure of information by employees or officers. 10 §§ 1325, 1326.

Enforcement - The state provisions relating to jurisdiction of the courts and limitations of actions are substantially similar to the federal law. 10 § 1324.

DEBT COLLECITON

Federal - Fair Debt Collection Practices Act. See Chapter 3 supra.

State - In attempting to collect an alleged debt arising from a consumer credit sale, consumer lease, or loan, a person shall not:

(A) Use or threaten force or violence;
(B) Threaten criminal prosecution;
(C) Disclose or threaten to disclose information affecting the debtor's reputation for credit worthiness with knowledge or reason to know the information is false;
(D) Communicate more than twice to the debtor's employer information concerning the existence of the debt before or after obtaining final judgment;
(E) Disclose or threaten to disclose to a person other than the debtor or his spouse information affecting the debtor's reputation, with knowledge that the other person does not have a legitimate business need for the information;
(F) Disclose or threaten to disclose information about a disputed debt without disclosing that fact;
(G) Claim or attempt to enforce a right barred by statute or a final order of the Supreme Judicial Court or a United State's court;
(H) Use any communication which gives the appearance of being authorized when it is not; or
(I) Engage in conduct in violation of an adminsitrative rule, after like conduct has been restrained or enjoined by a final order of a court. 9-A § 5-116.

See also Collection Agencies - 32 §§ 571-584.

HOME SOLICITATION SALE

Federal - FTC Trade Regulation Rule. See Chapter 3 supra.

State - The buyer has the right to cancel a home solicitation sale until midnight of the third business day following execution of an agreement or offer to purchase. 9-A § 3-502(1). Written notice of cancellation is effective when delivered or when deposited in the mail properly addressed to the seller, postage prepaid. 9-A § 3-502(2,3).

The sales agreement must contain a conspicuous notice of this cancellation right. 9-A § 3-503(2). Until the seller has notified the buyer

of his rights of cancellation, the buyer may cancel the sale by notifying the seller in any manner of his intention to cancel. 9-A § 3-503(4).

The buyer must take reasonable care of the goods and tender the goods at his or her residence to the seller upon demand. However, the buyers takes title to the goods without obligation to pay for them, if the seller fails to demand such possession within 40 days after receipt of the notice of cancellation. 9-A § 3-505(1,2). The seller must return any funds received or goods traded in to the buyer within 20 days after cancellation of the sale. 9-A § 3-504(1,2). The seller may not retain a cancellation fee. 9-A § 3-504(4). The seller may not affix goods permanently to real estate or appurtenances until the buyer's right of cancellation has lapsed. 9-A § 3-502(5).

A sale made pursuant to a pre-existing open-end credit account, a previously negotiated sale at the seller's business, a sale subject to rescission under the Federal Truth-in-Lending Act, a sale of farm equipment, and a sale of securities by a registered broker are not included in the protections provided by this statute. 9-A §§ 3-501, 3-506.

Maine's laws relating to consumer solicitation sales is substantially the same as the home solicitation sales law. 32 §§ 4661 to 4670. The only differences are that the buyer must tender the goods at his or her residence within 20 days after the notice of cancellation and the seller must return the downpayment within 15 days after receipt of the notice of cancellation. 32 §§ 4665, 4666. The seller cannot affix any goods permanently to the real estate until the buyer's right of cancellation has lapsed. 32 § 4664-A. A violation of the consumer solicitation sales law by a seller is punishable by a fine not to exceed $500, or by imprisonment for not more than 6 months, or both. 32 § 4667. A sale where the gross price, including interest, is less than $25, a sale covered by Title 9-A, Home Solicitation Sales, any sale of insurance, and a sale of securities by a registered broker are not included in the protections provided by this statute. 32 § 4668.

MINOR'S CONTRACT

Age of majority to contract - 18. 1 § 73.

Contractual liability - Minor is liable only for necessaries received as a result of a contractual relationship. 11 § 1-103.

REPOSSESSION REQUIREMENTS

The creditor is required to make an affidavit and move for approval. Maine R. CIV. P. 64(c). When goods unlawfully detained from the owner or person entitled to the possession thereof, or attached or taken on execution, are claimed by any person other than the defendant in the action

in which they are so attached, the owner or person may replevy the goods. 14 § 7301. The creditor also must execute a bond to the debtor, with sufficient sureties or a surety company authorized to do business in Maine as surety, in double the value of the property to be replevied. 14 § 7303. The writ of replevin may not be executed unless both it and the amount of the replevin bond are approved by the Court. The order of approval may be entered only after notice to the debtor and hearing and upon a finding by the court that there is a reasonable liklihood that the creditor will prevail in the action. Rule 64(c), Maine R. CIV. P.

An order approving a writ of replevin and the amount of the bond may be entered ex parte, and without notice to the debtor, upon findings of the court that the creditor will likely prevail and he has satisfied the bond requirements and that either:

(1) The person of the debtor is not subject to the jurisdiction of the court; or

(2) There is clear danger that the debtor if notified in advance of replevin of the property, will remove it from the state or conceal it; or

(3) There is immediate danger that the debtor will damage or destroy the property. Rule 64(h), Maine R. CIV. P.

On two days' notice to the creditor, a debtor subjected to an ex parte order, can move for the return of the property to him, and the court shall proceed to hear and determine the motion as expeditiously as justice requires. Rule 64(i), Maine R. CIV. P.

STATUTE OF LIMITATIONS

Contract under seal - 20 years. 14 § 751.
Simple written contract - 6 years . 14 § 752.
Contract for sale of goods - 4 years. 11 § 2-725.
Oral contracts - 6 years. 14 § 752.
Judgments - Courts of record - 20 years. 14 § 864.

TRUTH-IN-LENDING REQUIREMENTS

Federal - Truth-in-Lending Act. See Chapter 3 supra.

State - The Maine Consumer Credit Code - truth-in-lending provisions require the creditor to disclose to the buyer, usually before extending credit, his credit charges in dollars and cents and as an annual percentage rate. Disclosure is required for sales, loans, and revolving credit transactions. 9-A §§ 8-205, 8-206. The following transactions are excluded from coverage under the Maine truth-in-lending provisions, 9-A § 1-202:

(1) Extensions of credit to the government, or for business or commercial purposes;

(2) Transactions under public utility or common carrier tariffs if Maine or the United States regulates the charges for the services;
(3) Transactions in securities or commodities with a registered broker-dealer;
(4) Agricultural transactions.

A creditor who fails to disclose information to a person entitled to the information is civilly liable to that person in an amount equal to the sum of (9-A § 8-208(1)):

(A) Actual damages;
(B) Twice the finance charge, or in the case of a consumer lease, twenty-five per cent (25%) of the total amount of monthly payments under the lease, but in either case, the liability shall not be less than $100 nor greater than $1,000; and
(C) In a successful action to enforce the foregoing liability, the costs of the action together with attorney's fees. A creditor is not liable in an action brought against him if within 60 days after discovery of an error and prior to receipt of written notice of the error from the debtor or institution of an action, the creditor makes the proper adjustments and notifies the debtor. 9-A § 8-208(2). A creditor who willfully and knowingly fails to provide information which he is required to disclose is guilty of a Class D crime punishable by a maximum fine of $1,000, or imprisonment of up to 1 year, or both. 9-A § 8-109; 17-A §§ 1252, 1301.

UNFAIR AND DECEPTIVE TRADE PRACTICES

ME. REV. STAT. ANN. tit. 5 § 206 (1979 & Supp. 1983-1984).

Prohibited Practices: Unfair methods of competition and unfair or deceptive acts or practices.

Special Requirements: None specified.

Scope: Trade or commerce defined as advertising, sale or offer for sale of any services, real or personal property, intangibles or any thing of value.

Exclusions: Actions permitted under laws administered by state or U.S. regulatory board.

Private Remedies: Restitution; other equitable relief court may deem necessary; attorney's fees and costs if violation proven.

Limitations: AG acts in public interest and upon notice; private actions require consumer transaction resulting in damage.

State Remedies: AG enforces and has rulemaking power; injunction; restitution; $10,000 maximum for violation of injunction; costs of

investigation and suit if permanent injunction granted to AG; to prevailing party if action frivolous; maximum $5000 for intentional avoidance or knowledgeable concealment.

Precedential Value of FTC Interpretations: Guided by FTC.

ME. REV. STAT. ANN. tit. 10 § 1211 (1980 & Sup. 1983-1984).

Prohibited Practices: 11 enumerated deceptive practices including a catchall provision prohibiting any conduct likely to create confusion or misunderstanding.

Special Requirements: None specified.

Scope: In course of his business, vocation or occupation.

Exclusions: Conduct complying with federal, state or local statute or rules; publishers, broadcasters, printers or other persons who disseminate information without knowledge of deceptive character.

Private Remedies: Injunction; attorneys fees to prevailing party "may" be awarded in exceptional cases; costs or attorney's fees against defendant only if willful violation.

Limitations: None specified.

State Remedies: None specified.

Precedential Value of FTC Interpretations: Construed to make uniform laws of states which enact statutes.

WARRANTIES

Unless excluded or modified, a warranty that the goods shall be merchantable is implied in a contract for their sale if the seller is a merchant with respect to goods of that kind. Under this section the serving for value of food or drink to be consumed either on the premises or elsewhere is a sale. 11 § 2-314.

Where the seller at the time of contracting has reason to know any particular purpose for which the goods are required and that the buyer is relying on the seller's skill or judgment to select or furnish suitable goods, there is, unless excluded or modified, an implied warranty that the goods shall be fit for such purpose. 11 § 2-315.

Implied warranties of consumer goods, including the warranty of merchantability, cannot be limited or excluded in writing. Remedies for breach of warranty covering consumer goods also cannot be limited. "Consumer goods" include mobile homes. 11 § 2-316.

Maryland

BANKRUPTCY EXEMPTIONS

Federal - See Chapter 2 supra.

State - Homestead exemption - $2,500. Courts and Judicial Proceedings (CJ) § 11-504(f).

Personalty exemptions (CJ § 11-504(b)) -

(1) Wearing apparel, books, tools, instruments or appliances necessary for carrying on the debtor's trade or profession, except those kept for sale, lease, or barter;
(2) Money payable in the event of sickness, accident, injury or death of any person;
(3) Professionally prescribed health aids for the debtor or his dependents;
(4) $500 worth of household furnishings, household goods, wearing apparel, appliances, books and animals kept as pets or other items held primarily for personal, family or household use of the debtor or any of his dependents; and
(5) $3,000, or property of any kind equivalent to $3,000.

CREDIT REPORTING

Federal - Fair Credit Reporting Act. See Chapter 3 supra.

State - The Maryland Consumer Credit Reporting Agencies law is substantially the same as the Federal Fair Credit Reporting Act. See Chapter 2 supra.

Issuance of Consumer Reports - Substantially the same as the federal law except that the eligibility for insurance need not necessarily be for a personal, family or household purpose. Commercial Law (CL) §§ 14-1202, 14-1205.

Disclosures

Agency to Consumer - Substantially the same as the federal law except that an additional written explanation of codes or trade language used is required. The federal law requires that disclosure be made of any consumer report, for employment purposes furnished within the two year period preceding the request, or for any other purpose in the six month period preceding the request, but the state law does not have this requirement. CL § 14-1206.

User to Consumer - Same as the federal law. CL §§ 14-1204, 14-1212.

Prohibited Disclosures - Obsolete Information - Same as the federal law. CL § 14-1203.

Investigative Reports - Same as the federal law. CL § 14-1211.

Report Procedures - Compliance - Same as the federal law. CL § 14-1205.

Disputed Accuracy - If a consumer disputes the completeness or accuracy of any informaton in his file and notifies the consumer reporting agency in writing of this fact, the agency must reinvestigate the information within 30 days unless it has reasonable grounds to believe that the dispute is frivolous. If the information cannot be verified or is found to be inaccurate, the consumer reporting agency must delete the information within 7 days and mail written notice of the correction to the consumer and anyone who received a copy of the erroneous information. CL § 14-1208.

Public Record Information for Employment Purposes - Same as the federal law. CL § 14-1210.

Violations and Penalties

Civil liability - Same as the federal law. CL §§ 14-1204, 14-1207, 14-1212, 14-1213, 14-1214.

Criminal liability - Same as the federal law. CL §§ 14-1214 to 14-1218.

DEBT COLLECTION

Federal - Fair Debt Collection Practices Act. See Chapter 3 supra.

State - Maryland Consumer Debt Collection Act - In collecting or attempting to collect an alleged debt a collector may not (CL § 14-202):

(1) Use or threaten force or violence;
(2) Threaten criminal prosecution, unless the transaction involved the violation of a criminal statute;
(3) Disclose or threaten to disclose information which affects the debtor's reputation for credit worthiness with knowledge that the information is false;
(4) Except as permitted by statute, contact a person's employer with respect to a delinquent indebtedness before obtaining final judgment against the debtor;

(5) Except as permitted by statute, disclose or threaten to disclose to a person other than the debtor or his spouse or, if the debtor is a minor, his parent, information which affects the debtor's reputation, whether or not for credit worthiness, with knowledge that the other person does not have a legitimate business need for the information;

(6) Communicate with the debtor or a person related to him with the frequency, at the unusual hours, or in any other manner as reasonably can be expected to abuse or harass the debtor;

(7) Use obscene or grossly abusive language in communicating with the debtor or a person related to him;

(8) Claim, attempt, or threaten to enforce a right with knowledge that the right does not exist; or

(9) Use a communication which simulates legal or judicial process or gives the appearance of being authorized, issued, or approved by a government, governmental agency, or lawyer when it is not.

A collector who violates any provision of this subtitle is liable for any damages proximately caused by the violation, including damages for emotional distress or mental anguish suffered with or without accompanying physical injury. CL § 14-203.

HOME SOLICITATION SALE

Federal - FTC Trade Regulation Rule. See Chapter 3 supra.

State - Maryland Door-to-Door Sales Act - The buyer has the right to cancel a door-to-door (home solicitation) sale until midnight of the third business day following execution of an agreement or offer to purchase. CL § 14-302(1)(ii). Notice of cancellation is effective when delivered or when deposited in the mail properly addressed to the seller, postage prepaid. The sales agreement must contain a conspicuous notice of this cancellation right. CL § 14-302(2).

The buyer must make available to the seller at the buyer's residence, in substantially as good condition as when received, any goods delivered to said buyer under the sale; or may, at said buyer's option, comply with the seller's instructions regarding return of the goods. However, the buyer takes title to the goods, without obligation to pay for them, if the seller fails to pick up the goods within 20 days of the date of the notice of cancellation. The seller must notify the buyer, within 10 days after receipt of the notice of cancellation, whether he intends to repossess or to abandon the delivered goods. The seller also must return any funds received or goods traded in to the buyer and cancel and return any negotiable instruments within 10 business days after receipt of the notice of cancellation. CL § 14-302(2), (9).

The following transactions are not included in the protections provided by this statute (CL § 14-301(d)):

(1) A sale, lease, or rental with a purchase price of less than $25;
(2) A previously negotiated sale at the seller's place of business;
(3) A sale subject to rescission under the Federal Consumer Credit Protection Act;
(4) A buyer initiated emergency sale, with a handwritten statement from the buyer waiving the right to cancel the sale, and the seller in good faith has made a substantial beginning of performance of the contract;
(5) A sale conducted and consumated entirely by mail or telephone;
(6) A buyer initiated sale, where the buyer requests the seller to visit his home for repair or maintenance of his personal property; and
(7) A sale or rental of real property, a sale of insurance, and a sale of securities or commodities by a registered broker-dealer.

Any person who violates any provision of this subtitle is liable to the person affected by a violation for all damages proximately caused by the violation and for reasonable attorney's fees incurred by the person damaged. CL § 14-304.

MINOR'S CONTRACT

Age of majority to contract - 18. CL § 1-103.

Contractual liability - Minor is liable only for necessaries received as result of a contractual relationship. Anderson v. Smith, 33 Md. 465 (1871).

REPOSSESSION REQUIREMENTS

A lender may repossess goods securing a loan under an agreement if the borrower is in default in payment of any sum due under the agreement; performance of any other condition which the agreement lawfully requires him to perform in order to obtain unencumbered title to the goods; or the performance of any promise the breach of which is expressly made a ground for repossessing the goods. The lender may repossess goods only by legal process or self help without use of force. At least 10 days before he repossesses any goods, a lender may serve a written notice on the borrower of his intention to repossess the goods. Within 5 days after he repossesses the goods, the lender shall deliver to the borrower personally or send to him at his last known address by registered or certified mail, a written notice which states: the rights of the borrower to redeem the goods, and the amount payable for them; the rights of the borrower as to resale, and his liability for a deficiency; and the exact location where the goods are stored and the address where any payment is to be made or notice delivered. For 15 days after the lender gives this notice, the lender must retain the repossessed goods. During the 15 day period following the lender's notice the borrower may redeem and take possession of the goods; and resume the performance of the agreement. To redeem the goods, the borrower shall: tender the amount due under the agreement at the time of redemption,

without giving effect to any provision which allows acceleration of any installment otherwise payable after that time; tender performance of any other promise for the breach of which the goods were repossessed; and if the discretionary written warning notice to repossess the goods was given 10 days before the repossession, pay the actual and reasonable expenses of retaking and storing the goods. CL § 12-115.

STATUTE OF LIMITATIONS

Contract under seal - 12 years. CJ § 5-102.
Simple written contract - 3 years. CJ § 5-101.
Contract for sale of goods - 4 years. CL § 2-725.
Oral contracts - 3 years. CJ § 5-101.
Judgments - Courts of record - 12 years. CJ § 5-102.

TRUTH-IN-LENDING REQUIREMENTS

Federal - Truth-in-Lending Act. See Chapter 3 supra.

State - The Maryland Interest and Usury Law requires that a lender disclose to the borrower, before the extension of a loan, the total finance charge in dollars, and annual effective rate of simple interest charged stated in percentage rate. CL § 12-106(b)(1). A disclosure that complies with the Federal Truth-in-Lending Act is sufficient to meet the requirements of this title. CL § 12-106(b)(4). A loan made to a corporation, a commercial loan in excess of $15,000 not secured by residential real property, or a commercial loan in excess of $75,000 secured by residential real property, are excluded from the disclosure requirements of the interest and usury law. CL § 12-106(a). A lender who fails to disclose information to a person entitled to the information is guilty of a misdemeanor and upon conviction is subject to a fine not exceeding $1,000, or imprisonment not exceeding one year, or both. CL § 12-114.

For Retail Credit Account and Installment Sales Disclosure Requirements - see CL §§ 12-503, 12-606.

UNFAIR AND DECEPTIVE TRADE PRACTICES

MD. COMM. LAW CODE ANN. § 13-101 (1983).

Prohibited Practices: Numerous enumerated unfair or deceptive trade practices.

Special Requirements: None specified.

Scope: Trade practices in sale, offer for sale, or lease of consumer goods, realty or services; extension of consumer credit or consumer debt collection.

Maryland

Exclusions: Professional services; insurance agent licensed by state; Christian Science practitioner; merchants regulated by Public Service commission; advertisements done by publisher, radio and television media, with no knowledge of falsity; must be a consumer transaction.

Private Remedies: Actual damages.

Limitations: Must sustain loss or injury for private action.

State Remedies: More stringent rulemaking by county or municipal agency; Division of Consumer Protection may issue cease and desist order and suspend license if fails to and has rulemaking power; injunction; AG can recover costs; $1,000 per merchant violation; $5,000 per repeat violation; criminal penalties; restitution.

Precedential Value of FTC Interpretations: Due consideration and weight given.

WARRANTIES

Unless excluded or modified, a warranty that the goods shall be merchantable is implied in a contract for their sale if the seller is a merchant with respect to goods of that kind. Under this section the serving for value of food or drink to be consumed either on the premises or elsewhere is a sale. CL § 2-314.

Where the seller at the time of contracting has reason to know any particular purpose for which the goods are required and that the buyer is relying on the seller's skill or judgment to select or furnish suitable goods, there is, unless excluded or modified, an implied warranty that the goods shall be fit for such purpose. CL § 2-315.

Implied warranties, including the warranty of merchantability can be limited or excluded in writing. Remedies for breach of warranty also can be limited. CL § 2-316. The provisions of CL § 2-316 do not apply to sales of consumer goods. Maryland prohibits the disclaimer of implied warranties in consumer sales. CL § 2-316.1.

Massachusetts

BANKRUPTCY EXEMPTIONS

Federal - See Chapter 2 supra.

State - Homestead exemption - $50,000. 236 § 18. See also 188 § 1.

Personalty exemption (235 § 34) -

(1) Necessary wearing apparel and bedding materials; one heating unit for the house; an amount up to $75 per month to pay for the fuel, heat, light and water.
(2) $3000 worth of other necessary household furniture;
(3) $200 worth of bibles, school books, and library;
(4) Two cows, twelve sheep, two swine, and four tons of hay;
(5) $500 worth of tools and fixtures necessary for carrying on the debtor's trade or business;
(6) $500 worth of materials and stock designed by debtor and necessary for his trade or business;
(7) $300 worth of provisions necessary, procured and intended for the use of the family;
(8) One pew occupied by the debtor and family for worship;
(9) $500 worth of boats and tackle of fisherman used in the prosecution of their business;
(10) Militia uniform of an officer or soldier and the arms required by law to be kept by him;
(11) Rights of burial and tombs;
(12) A sewing machine not to exceed $200 in value;
(13) $100 share worth in co-operative associations;
(14) Estates of homestead or $200 per month necessary for paying the rent for the dwelling unit of the family;
(15) $125 worth of wages each pay period for personal labor and services; and
(16) An automobile worth up to $700 necessary for transportation or employment.

CREDIT REPORTING

Federal - Fair Credit Reporting Act. See Chapter 3 supra.

State - The Massachusetts Fair Credit Reporting Act is substantially the same as the Federal Fair Credit Reporting Act.

Issuance of Consumer Reports — Same as the federal law except that a report can be issued to a person who, the agency believes intends to use the information in connection with a transaction entered into or being

negotiated with a consumer, if, by the terms of the transaction, either party transfers an interest in real or personal property, pays money or renders services, or becomes obligated to transfer property, pay money or render services. 93 § 51(3)(e).

Disclosures

Agency to Consumer - Same as the federal law but the agency must disclose the contents as well as the nature and substance of all non-medical information in its files. 93 § 56.

User to Consumer - Same as the federal law with the additional requirement that the notification and agency identification requirement applies also to instances where the user terminates a consumer's credit, insurance or employment. 93 § 62.

Procedure - Same as the federal law, except that in relation to disputed information which is not resolved by reinvestigation, the consumer reporting agency cannot limit the length of the statement on the dispute filed by the consumer. 93 § 58.

Violations and Penalties

Civil liability - Same as the federal law except the remedies pertaining to negligent non-compliance are non-exclusive. 93 § 64.

Criminal liability - Same as the federal law.

DEBT COLLECTION

Federal - Fair Debt Collection Practices Act. See Chapter 3 supra.

State - A creditor, an attorney of a creditor and an assignee of a creditor are prohibited from using any unfair, deceptive or unreasonable method to collect or attempt to collect a debt incurred for personal, family, or household purposes from a natural person present or residing in Massachusetts. Collecting or attempting to collect a debt shall be deemed unreasonable if (93 § 49):

(A) The creditor communicates or threatens to communicate about the debt to someone other than the person who might be reasonably expected to be liable therefor. (This includes language on an envelope indicating that the communication relates to the collection of a debt);

(B) The creditor communicates with the debtor after notification from the debtor's attorney to address all further communications concerning the debt to him;

(C) The creditor communicates with the debtor in such a manner as to harass or embarrass the debtor; and

(D) The creditor communicates with the debtor through the use of instruments that simulate the form and appearance of judicial process.

HOME SOLICITATION SALES

Federal - FTC Trade Regulation Rule. See Chapter 3 supra.

State - The buyer has the right to cancel a home solicitation sale until midnight of the third business day following execution of an agreement or offer to purchase. Notice of cancellation is effective when delivered or when deposited in the mail properly addressed to the seller, postage prepaid. The sales agreement must contain a conspicuous notice of this cancellation right. 93 § 48(A), (B), (C).

The buyer must take reasonable care of the goods and tender the goods at his or her residence to the seller upon demand. However, the buyer takes title to the goods if the seller does not pick the goods up within 20 days after the date of the notice of cancellation. The seller must return any funds received or goods traded in to the buyer and cancel and return any negotiable instruments within 10 business days after cancellation of the sale. The seller shall notify the buyer of any intention to repossess or abandon the goods within ten business days of receipt of the notice of cancellation. 93 § 43(B),(D).

The following transactions are not included in the protections provided by this statute (93 § 48(A), (K); 140D § 2):

(1) A sale or lease for $25 or less;
(2) An emergency sale initiated by the buyer with a handwritten statement of the buyer waiving the right to cancel the sale;
(3) Credit transactions involving extensions of credit primarily for business, commercial, or agricultural purposes, or to government or governmental agencies or instrumentalities, or to organizations;
(4) Transactions in securities or commodities accounts with a broker-dealer registered with the Securities and Exchange Commission;
(5) Credit transactions other that those in which a security interest is or will be acquired in real property, or in personal property used or expected to be used as the principal dwelling of the consumer, in which the total amount financed exceeds twenty-five thousand dollars;
(6) Transactions under public utility tariffs, if the commissioner determine that the public utilities commission regulates the charges for such public utility services involved, the charges for delayed payment, and any discount allowed for early payment; and
(7) Loans made, insured, or guaranteed pursuant to a program authorized by 20 U.S.C. 1070, et seq. of Title IV of the Higher Education Act of 1965.

Massachusetts

MINOR'S CONTRACT

Age of majority to contract - 18. 4 § 7, 231 § 85P.

Contractual liability - Minor is liable only for necessaries received as a result of a contractual relationship. 106 § 1-103.

REPOSSESSION REQUIREMENTS

For repossession of consumer goods upon default - see 255 §§ 13I, 13J; 255D §§ 21, 22.
See also Replevin - 247 §§ 7-22.

STATUTE OF LIMITATIONS

Contract under seal - 20 years. 260 § 1.
Simple written contract - 6 years. 260 § 2.
Contract for sale of goods - 4 years. 106 § 2-725.
Oral contracts - 6 years. 260 § 2.
Judgments - Courts of record - 20 years. 260 § 20.

TRUTH-IN-LENDING REQUIREMENTS

Federal - Truth-in-Lending Act. See Chapter 3 supra.

State - The Massachusetts' Consumer Credit Cost Disclosure Act requires the creditor to disclose to the buyer, usually before extending credit, his credit charges in dollars and cents and as an annual percentage rate. See generally 140D §§ 1-32. Disclosure is required for sales, loans, and revolving credit transactions. 140D §§ 11, 12. The following transactions are exempt from coverage under the Massachusetts' Consumer Credit Cost Disclosure Act (140D § 2):

(A) Extensions of credit to the government, or primarily for business, commercial or agricultural purposes;
(B) Transactions in securities or commodities with a broker-dealer registered with the Securities and Exchange Commission;
(C) Credit transactions in which the amount financed exceeds $25,000;
(D) Transactions under public utility tariffs, if the public utilities commission regulates the charges for the services;
(E) Loans made, insured or guaranteed pursuant to a program authorized by 20 U.S.C. 1070, et. seq. of the Title IV of the Higher Education Act of 1965.

A creditor who fails to disclose information to a person entitled to the information is civilly liable to that person in an amount equal to the sum of actual damages; twice the finance charge (but not less than $100

nor more than $1,000); and in a successful action to enforce the foregoing liability, the costs of the action together with reasonable attorney's fees. 140D § 32(a). A creditor is not liable in an action brought against him, if within 60 days after discovery of an error and prior to the receipt of the debtor's written notice of the error or institution of an action, the creditor makes the proper adjustments and notifies the debtor. 140D § 32(b). A creditor who willfully and knowingly fails to provide information which he is required to disclose will be punished by a fine not to exceed $5,000, or by imprisonment of not more than one year, or both. 140D § 31.

The Massachusetts' Retail Installment Sales and Services Act (RISS) and the Motor Vehicle Retail Installment Sales Act (MVRIS) are substantially similar to the Consumer Credit Cost Disclosure Act, with a few exceptions. The RISS Act does not apply to loans and the MVRIS does not apply to loans or revolving credit transactions. The civil penalties under both Acts for a failure to disclose required information is forfeiture of the finance charge. 255D § 29, 255B § 22. The criminal penalties under both acts for the willful failure to disclose information is a fine not to exceed $500, imprisonment of not more than six months, or both. 255D § 30, 255B § 21.

UNFAIR AND DECEPTIVE TRADE PRACTICES

MASS. GEN. LAWS ANN. ch, 93A (West 1975 & Supp. 1984).

Prohibited Practices: Unfair methods of competition and unfair or deceptive acts or practices.

Special Requirements: None specified.

Scope: Trade or commerce includes advertising, offers or consummation of sale, rent or lease, of any services, real or personal property, intangibles, or any other article of value.

Exclusions: None specified.

Private Remedies: Actual damages and equitable relief, including injunction, as court deems necessary and proper; class actions; minimum $25 damages; double or treble damages for willful or knowing violation or bad faith refusal to settle with reason to know of violation; attorney's fees and costs to prevailing plaintiff unless rejected reasonable offer of settlement.

Limitations: AG acts in public interest and upon notice for injunction; consumer action if injured and provides notice letters; consumer limited to resonable relief tendered if rejects a settlement offer; respondent may suspend court action to bring action before appropriate regulatory board if court action would require acts inconsistent with regulatory scheme or

regulatory board has substantial interest; court may issue interlocutory orders to preserve status quo.

State Remedies: AG has rulemaking consistent with FTC laws and federal court interpretations; AG enforces; injunction; restitution; maximum $10,000 per injunction violation; maximum $5000 for noncompliance with discovery procedures; dissolve corporation for habitual injunction violations.

Precedential Value of FTC Interpretations: Guided by FTC interpretations.

WARRANTIES

Unless excluded or modified, a warranty that the goods shall be merchantable is implied in a contract for their sale if the seller is a merchant with respect to goods of that kind. Under this section the serving for value of food or drink to be consumed either on the premises or elsewhere is a sale. 106 § 2-314.

Where the seller at the time of contracting has reason to know any particular purpose for which the goods are required and that the buyer is relying on the seller's skill or judgment to select or furnish suitable goods, there is, unless excluded or modified, an implied warranty that the goods shall be fit for such purpose. 106 § 2-315.

Implied warranties, including the warranty of merchantability can be limited or excluded in writing. Remedies for breach of warranty also can be limited. 106 § 2-316. The provisions of 106 § 2-316 do not apply to sales of consumer goods, services, or both. Massachusetts prohibits the disclaimer of implied warranties in consumer sales. 106 § 2-316A.

Michigan

All citations, unless otherwise noted, are to Michigan Compiled Laws Annotated.

BANKRUPTCY EXEMPTIONS

Federal - See Chapter 2 supra.

State - Homestead exemption - $3,500.

Personalty exemption (§ 600.6023) -

(1) All family pictures, all arms and accouterments required by law to be kept by any person, all wearing apparel, and provisions and fuel for family subsistence for 6 months;

(2) $1,000 worth of household goods, furniture and utensils;

(3) A pew, slip, or seat occupied by the debtor or debtor's family in any house of worship, and all cemeteries, tombs and rights of burial while in use as repositories of the dead;

(4) 10 sheep, 2 cows, 5 swine, 100 hens, 5 roosters and a sufficient amount of hay and grain, growing or otherwise, for properly keeping such animals and poultry for 6 months;

(5) $1,000 worth of the tools, implements, vehicles, and stock necessary to enable the debtor to carry on his principal profession, trade, occupation or business;

(6) Insurance, death and disability benefits; and

(7) $1,000 worth of shares held by a member of any association incorporated under the provisions of Act No. 17 of Public Acts of 1901, except that this exemption is not available to any person who has a homestead exempted under state law.

CREDIT REPORTING

Federal - Fair Credit Reporting Act. See Chapter 3 supra.

State - No statutory provision.

DEBT COLLECTION

Federal - Fair Debt Collection Practices Act. See Chapter 3 supra.

State - All debt collectors, including attorneys acting to collect a client's claim, are prohibited from doing any of the following acts to collect a consumer debt:

(A) Using misleading or deceptive communications;

(B) Using forms or instruments which simulate judicial process or official sanction;
(C) Making an inaccurate, misleading, untrue, deceptive statement or claim in a communication to collect a debt;
(D) Misrepresenting the debtor's legal rights;
(E) Communicating with the debtor without accurately disclosing the caller's identity;
(F) Communicating with a debtor represented by an attorney, without first contacting the attorney;
(G) Communicating with a debtor's employer without the debtor's written consent, unless responding to the employers inquiry or in an earnest attempt to locate the debtor;
(H) Using or employing, in connection with the collection of a debt, a person acting as a peace or law enforcement officer;
(I) Using or threatening physical violence;
(J) Publishing or threatening to publish a list of debtors or publicizing that a consumer is a debtor;
(K) Using a harassing, oppressive or abusive method to collect a debt;
(L) Using profane or obscene language;
(M) Using a method contrary to postal laws and regulations;
(N) Failing to implement a procedure designed to prevent violations by employees; and
(O) Communicating with a consumer regarding a debt by postcard. § 445.252.

Any person who engages in prohibited conduct in an attempt to collect a debt is liable to the consumer for actual damages or $50, whichever is greater. If the method or practice is a willful violation, then treble damages can be awarded, but not less than $150, and an award of reasonable attorney's fees and court costs is mandatory. § 445.257. If the action against the debt collector is brought by the Attorney General, then the amount recoverable may not exceed $500 per violation. § 445.256(1).

HOME SOLICITATION SALE

Federal - FTC Trade Regulation Rule. See Chapter 3 supra.

State - The buyer has the right to cancel a home solicitation sale until midnight of the third business day following execution of an agreement or offer to purchase. Cancellation occurs when the buyer gives written notice of cancellation to the seller at the address stated in the agreement. Notice is effective when delivered or when deposited in the mail properly addressed to the seller, postage prepaid. § 445.112(1-3).

The buyer may not cancel a home solicitation sale if the buyer requested the services because of an emergency, and (A) the seller in good faith makes a substantial beginning of performance before the buyer gives

notice of cancellation, (B) in the case of goods, the goods cannot be returned to the seller in as good condition as when received by the buyer, and (C) the buyer has signed a personally handwritten statement describing the emergency and waiving his right to cancel. § 445.112(5). The sales agreement must contain a conspicuous notice of this cancellation right. § 445.113(1). Until the seller has notified the buyer of his rights of cancellation, the buyer may notify the seller in any manner of his intention to cancel. § 445.113(4).

The buyer must take reasonable care of the goods and tender the goods at his or her residence to the seller upon demand. However, the buyer takes title to the goods if the seller fails to demand such possession within 20 days after receipt of the notice of cancellation. § 445.115(1). The seller must return any funds received or goods traded in to the buyer within 10 days after cancellation of the sale. § 445.114.

The following transactions are excluded from the protections provided by this statute:

(1) A sale for $25 or less;
(2) A sale made pursuant to a preexisting revolving charge account;
(3) A sale made pursuant to prior negotiations between the parties at a fixed business establishment;
(4) A sale of insurance by a licensed insurance agent;
(5) A sale of services by a licensed real estate broker or salesperson; and
(6) A sale of agricultural or horticultural equipment and machinery which is demonstrated to the consumer by the vendor at the request of either or both of the parties. § 445.111(a).

MINOR'S CONTRACT

Age of majority to contract - 18. § 722.52.

Contractual liability - Minor is liable only for necessaries received as a result of a contractual relationship. § 440.1103. The minor may not assert his age as a defense if he willfully misrepresents his age to be 18 or over. § 600.1403.

REPOSSESSION REQUIREMENTS

See § 600.2920(1). Repossession under the Uniform Commercial Code - Secured Transactions section (§ 440.9503) is also available.

STATUTE OF LIMITATIONS

Contract under seal - 6 years. § 600.5807.
Simple written contract - 6 years. § 600.5807.

Michigan

Contract for sale of goods - 4 years. § 440.2725.
Oral contracts - 6 years. § 600.5807.
Judgments - Courts of record - 10 years. § 600.5809.

TRUTH-IN-LENDING REQUIREMENTS

Federal - Truth-in-Lending Act. See Chapter 3 supra.

State - Creditor compliance with the Federal Truth-in-Lending Act constitutes compliance with the disclosure provisions of Michigan's Regulatory Loan Act of 1963, § 493.14a, Retail Installment Sales Act, § 445.851a, and Home Improvement Finance Act, § 445.1111. See Motor Vehicle Retail Installment Sales Act, § 566.302, for disclosure provisions involving motor vehicle sales.

UNFAIR AND DECEPTIVE TRADE PRACTICES

MICH. COMP. LAWS ANN. § 445.901 (Supp. 1983-1984).

Prohibited Practices: 29 enumerated unfair, unconscionable or deceptive practices.

Special Requirements: None specified.

Scope: Trade or commerce defined as business providing for personal, family, household purposes, including advertising, sale or offer for sale, lease of service, real or personal property, intangibles, or any other article.

Exclusions: Franchises; non-consumer transactions; conduct authorized by state or U.S. statute; advertisements done by disinterested publisher, radio and television media, with no knowledge of falsity; 8 enumerated Michigan statutes except for private actions.

Private Remedies: Declaratory judgment; injunction; actual damages, $250 minimum damages plus attorney's fees; class action for actual damages; restitution; strike unconscionable clauses; receiver or other appropriate relief.

Limitations: AG acts upon probable cause with notice given; statute of limitations for private actions or class action by AG is later of 6 years from act or 1 year from last payment; private party must suffer loss for civil penalty or class action; no statute of limitations for counterclaim in private action; if violation occurs by bona fide error despite reasonable procedures, then limited to actual damages.

State Remedies: AG enforces and has procedural rulemaking power; injunction with costs to prevailing party; maximum $25,000 for persistent and knowing violation; maximum $5000 per injunctive or judgment

violation; restitution; criminal penalties; $5000 per knowing failure to appear or acts in avoidance or concealment after notice of investigation; class actions for actual damages or restitution, strike unconscionable contract clause, or other appropriate relief, such as receiver.

Precedential Value of FTC Interpretations: None specified.

WARRANTIES

Unless excluded or modified, a warranty that goods shall be merchantable is implied in a contract for their sale if the seller is a merchant with respect to goods of that kind. Under this section the serving for value of food or drink to be consumed either on the premises or elsewhere is a sale. § 440.2314.

Where the seller at the time of contracting has reason to know any particular purpose for which the goods are required and that the buyer is relying on the seller's skill or judgment to select or furnish suitable goods, there is, unless excluded or modified, an implied warranty that the goods shall be fit for such purpose. § 440.2315.

Implied warranties, including the warranty of merchantability can be limited or excluded in writing. Remedies for breach of warranty also can be limited. § 440.2316.

Minnesota

BANKRUPTCY EXEMPTIONS

Federal - See Chapter 2 supra.

State - Homestead exemption - May include any quantity of land not in excess of 80 acres of rural property or 1/2 acre of city property. § 510.02.

Personalty exemption (§ 550.37) -

(1) Family bible, library and musical instruments;
(2) Church pew and grave plot;
(3) All wearing apparel, one watch, utensils and food stuff of debtor and family;
(4) $4500 worth of household goods;
(5) $5000 worth of implements, office furniture, machines, and books of the debtor's trade, business or profession; $10,000 worth if debtor's occupation is farming;
(6) All items used to educate the youth;
(7) $20,000 worth of life insurance payments to child or spouse; $5,000 for each additional dependant; all insurance proceeds arising from destruction or damage to property;
(8) A mobile home inhabited by debtor;
(9) One motor vehicle to the extent of value not exceeding $2000;
(10) The greater of 75 percent of disposable earnings or 40 times the federal minimum hourly wage;
(11) All relief based on need and the wages and salary of a person who is a recipient of relief based on need;
(12) Earnings of a minor child;
(13) Damages recoverable by reason of a levy upon or a sale under execution of debtor's exempt personal property;
(14) Rights of action for personal injury;
(15) Up to $4000 of debtor's interest in any accrued dividends or interest under or loan value of any life insurance;
(16) Debtor's right to receive payment under a stock bonus, pension or annuity on account of illness, age or length of service, to the extent necessary to support debtor and his dependents.

CREDIT REPORTING

Federal - Fair Credit Reporting Act. See Chapter 3 supra.

State - Every credit card issuer is required to include on each billing statement the name, address and telephone number of the department

designated by it to receive requests by the account holder to correct mistakes or make adjustments to the billing statement. If the credit card holder notifies the card issuer in writing of a questioned or disputed charge, within 30 days of receipt of the letter the card issuer is required to investigate the matter and send the credit card holder an explanatory response in clear and definite terms. A violation of this law is enjoinable under Minnesota law. § 325G.05.

DEBT COLLECTION

Federal - Fair Debt Collection Practices Act. See Chapter 3 supra.

State - Collection agencies are prohibited from using any of the following methods in an attempt to collect a consumer debt (§ 332.37):

(1) Threatening garnishment or suit by a particular lawyer, unless the lawyer has been actually retained;
(2) Using off-duty sheriff or process servers to collect the debt;
(3) Using collection methods which violate State or Federal law;
(4) Furnishing legal advice;
(5) Misleading a debtor through the use of false legal documents;
(6) Employing a lawyer without specific creditor authorization;
(7) Publishing a debtor list, using shame cards or shame automobiles, advertising for sale the claim as a means to force payment, or use similar methods of intimidation;
(8) Using name or manner which implies the agency is part of any governmental department;
(9) Holding itself out as a debt prorater or adjuster unless there is no charge to the debtor;
(10) Violating any provision of the Fair Debt Collection Practices Act of 1977 while attempting to collect on any indebtedness.

HOME SOLICITATION SALE

Federal - FTC Trade Regulation Rule. See Chapter 3 supra.

State - The buyer has the right to cancel a home solicitation sale until midnight of the third business day following execution of an agreement or offer to purchase. Cancellation occurs when the buyer gives written notice of cancellation to the seller at the address stated in the agreement. Notice is effective, if given by mail, when deposited in the mail properly addressed to the seller, postage prepaid. § 325G.07. The sales agreement must contain a conspicuous notice of this cancellation right. Until the seller has notified the buyer of his rights of cancellation, the buyer may notify the seller in any manner of his intention to cancel. § 325G.08.

The buyer must take reasonable care of the goods and tender the goods at his or her residence to the seller upon demand. However, the

buyer takes title to the merchandise if the seller fails to demand such possession within 20 days after receipt of the notice of cancellation. § 325G.09.

The buyer may not cancel a home solicitation sale if the buyer requested the services due to an emergency, and (A) the seller in good faith makes a substantial beginning of performance before notice of cancellation and (B) in the case of goods, the goods cannot not be returned to the seller in as good condition as when received by the buyer, and (C) the buyer has signed a separate dated statement describing the emergency and waiving his right to cancel. § 325G.06. The seller must return any funds received or goods traded in to the buyer within 10 days after cancellation of the sale. The seller is not entitled to compensation for any services performed prior to cancellation of the agreement. § 325G.09.

The following transactions are not included in the protections provided by this statute (§ 325G.06):

(1) A sale for $25 or less;
(2) A sale of farm equipment;
(3) A previously negotiated sale between the parties at a fixed business establishment;
(4) A sale where the buyer requests the seller to visit his home to repair the buyer's property;
(5) A sale in which the buyer initiates the contact and requests the seller to visit his home to negotiate the sale, and the buyer acknowledges and waives his cancellation rights on a separate statement; and
(6) A sale of insurance, securities, or real property;
(7) A sale of a motor vehicle when the agreement is made at a place other than the buyer's residence.

MINOR'S CONTRACT

Age of majority to contract - 18. § 645.45.

Contractual liability - In the absence of fraud, a minor is liable for necessaries and for the value of benefit conferred in all other contracts. § 336.1-103.

REPOSSESSION REQUIREMENTS

A creditor seeking to recover possession of property after service of a summons and complaint but prior to final judgment shall proceed by motion. The creditor must make a motion accompanied by an affidavit which identifies the property, explains his right to possession, shows why the debtor is wrongfully detaining the property, gives the surrounding facts and circumstances and estimates the property value. § 565.23. The creditor must enter into a bond approved by the court of 1 1/2 times the

property value. The debtor may retain or recover the property by filing a similar bond with court approval. § 565.25. The creditor may recover the property prior to notice and hearing if the creditor shows that notice to the debtor is either impracticable or would endanger the creditor's ability to recover property, a probability of success on the merits, and the creditor will suffer irreparable harm if possession is not obtained prior to hearing. § 565.24. Otherwise, notice and hearing are conducted as a motion with a minimum of 5 days between the service and hearing date. § 565.23; Rule 6.04, Minnesota Rules of Civil Procedure.

See also, Consumer Transactions, Deficiency Judgments. § 325G.22.

STATUTE OF LIMITATIONS

Contract under seal - 6 years. § 541.05
Simple written contract - 6 years. § 541.05.
Contract for sale of goods - 4 years. § 336.2-725.
Oral contracts - 6 years. § 541.05.
Judgments - Courts of record - 10 years. § 541.04.
Strict product's liability - 4 years. § 541.05.

TRUTH-IN-LENDING REQUIREMENTS

Federal - Truth-in-Lending Act. See Chapter 3 supra.

State - Disclosure statements comparing the graduated payment mortgage with a conventional mortgage are required for the prospective borrower when a graduated payment mortgage is contemplated. § 47.201. For disclosure requirements regarding Industrial Loan and Thrift Companies, Regulated Loans, and Motor Vehicle Retail Installment Contracts—see §§ 53.04(4a), 56.14, and 168.71, respectively.

See also Consumer Warranties - § 325G.18.

UNFAIR AND DECEPTIVE TRADE PRACTICES

MINN. STAT. ANN. § 8.31 (West Supp. 1984).

Prohibited Practices: Unfair, discriminatory and other unlawful practices including § 325D.01 unfair discrimination and competition; § 325D.17 automobile dealer's anti-coercion act; § 325D.49 antitrust; § 325F.67 false and fraudulent advertising; § 325D.67 antidiscrimination; § 325D.68 monopolization of food products; and § 325F.68 prevention of consumer fraud.

Special Requirements: None specified.

Scope: In business, commerce or trade.

Minnesota

Exclusions: None specified.

Private Remedies: Actual damages; costs and attorney's fees; equitable relief as court determines.

Limitations: Consumer must sustain injury to sue.

State Remedies: AG enforces; injunction; civil penalties maximum of $25,000, if AG sues for consumer may obtain actual damages, equitable relief, costs and attorney's fees.

Precedential Value of FTC Interpretations: None specified.

MINN. STAT. ANN. § 325D.43 (West 1981 & Supp. 1984).

Prohibited Practices: 11 enumerated deceptive trade practices plus a catchall prohibiting any conduct likely to create confusion.

Special Requirements: None specified.

Scope: In course of his business, vocation or occupation.

Exclusions: Conduct complying with federal, state or local statute; publishers, broadcasters, printers or other persons who disseminate information without knowledge of deception or financial interest in goods.

Private Remedies: Injunction; costs to prevailing party unless court directs otherwise; court "may" award attorney's fees to prevailing party if suit groundless or willful violation found.

Limitations: None specified.

State Remedies: None specified.

Precedential Value of FTC Interpretations: Make uniform laws of enacting states.

WARRANTIES

Unless excluded or modified, a warranty that the goods shall be merchantable is implied in a contract for their sale if the seller is a merchant with respect to goods of that kind. Under this section the serving for value of food or drink to be consumed either on the premises or elsewhere is a sale. § 336.2-314.

Where the seller at the time of contracting has reason to know any particular purpose for which the goods are required and that the buyer is

relying on the seller's skill or judgment to select or furnish suitable goods, there is, unless excluded or modified, an implied warranty that the goods shall be fit for such purpose. § 336.2-315.

Implied warranties, including the warranty of merchantability can be limited or excluded in writing. Remedies for breach of warranty also can be limited. § 336.2-316.

Mississippi

BANKRUPTCY EXEMPTIONS

Federal - See Chapter 2 supra.

State - Homestead exemption - The residence of a state citizen up to 160 acres or $30,000, whichever is smaller, is exempt as a homestead. § 85-3-21.

Personalty exemption (§ 85-3-1) -

(1) The tools of a mechanic necessary for carrying on his trade;

(2) The agricultural implements of a farmer necessary for two (2) male laborers;

(3) The implements of a laborer necessary in his usual employment;

(4) The books of a student required for the completion of his education;

(5) The wearing apparel of every person;

(6) The libraries of all persons including pictures, drawings, and paintings not exceeding three thousand dollars ($3,000) in value; also the instruments of surgeons and dentists, used in their professions, not exceeding five thousand dollars ($5,000) in value;

(7) The arms and accoutrements of each person of the militia of the state;

(8) All globes, maps and other educational materials used by the teachers of schools, academics and colleges;

(9) The following property, to be selected by the debtor, to-wit;

(a) Two (2) work horses or mules, and one (1) yoke of oxen;

(b) Two (2) head of cows and calves;

(c) Ten (10) head of hogs;

(d) Twenty (20) head of sheep and goats, each;

(e) All poultry;

(f) All colts under three (3) years old raised in this state by debtor;

(g) Two hundred and fifty (250) bushels of corn;

(h) Ten (10) bushels of wheat or rice;

(i) Five hundred (500) pounds of pork, bacon, or other meat;

(j) One hundred (100) bushels of cottonseed;

(k) One (1) wagon, and one (1) buggy or cart, and one (1) set of harness for each business;

(l) Five hundred (500) bundles of fodder and one thousand (1,000) pounds of hay;

(m) Forty (40) gallons of sorghum, molasses, or cane syrup;

(n) One thousand (1,000) stalks of sugar cane;

(o) One (1) molasses mill and equipment not exceeding two hundred fifty dollars ($250);

(p) Two (2) bridles and one (1) saddle, and one (1) side-saddle;

(q) One (1) sewing machine;

(r) Household and kitchen furniture not exceeding in value five thousand dollars ($5,000);

(s) All family portraits; and

(t) One (1) mower and rake for cutting and gathering hay or grain.

In lieu of the items of personal property listed in paragraphs (1) through (9) above, the debtor may select tangible personal property of any kind, not exceeding six thousand five hundred dollars ($6,500) in value, which shall then be exempt. Such exempt property may include one or more of the items listed above, as well as other tangible personal property, but the aggregate shall not exceed six thousand five hundred dollars ($6,500) in value; provided, however, this paragraph shall not apply to distress warrants issued for collection of taxes due the state.

(10) (a) The proceeds of insurance on property, real and personal, exempt from execution or attachment, and the proceeds of the sale of such property.

(b) Income from disability insurance. All property, real, personal and mixed, for the collection or enforcement of any order or judgment, in whole or in part, issued by any court for civil or criminal contempt of said court; expressly excepted herefrom are such orders or judgments for the payment of alimony, separate maintenance and child support actions.

Nothing in this section shall in any way affect the rights or remedies of the holder or owner of a statutory lien or voluntary security interest.

CREDIT REPORTING

Federal - Fair Credit Reporting Act. See Chapter 3 supra.

State - No statutory provisions.

DEBT COLLECTION

Federal - Fair Debt Collection Practices Act. See Chapter 3 supra.

State - No statutory provision.

Mississippi

HOME SOLICITATION SALE

Federal - FTC Trade Regulation Rule. See Chapter 3 supra.

State - The buyer has the right to cancel a home solicitation sale until midnight of the third business day following execution of an agreement or offer to purchase. Cancellation occurs when the buyer gives written notice of cancellation to the seller at the address stated in the agreement. Notice is effective, if given by certified or registered mail, when deposited in the mail properly addressed to the seller, postage prepaid. § 75-66-3. The sales agreement must contain a conspicuous notice of this cancellation right. Until the seller has notified the buyer of his rights of cancellation, the buyer may notify the seller in any manner of his intention to cancel. § 75-66-5.

The buyer must take reasonable care of the goods and tender the goods at his or her residence to the seller upon demand. However, the buyer takes title to the merchandise if the seller fails to demand such possession within 40 days after receipt of the notice of cancellation. § 75-66-9.

The buyer may not cancel a home solicitation sale if the buyer requested the services due to an emergency, and (A) the seller in good faith makes a substantial beginning of performance before notice of cancellation and (B) in the case of goods, the goods cannot be returned to the seller in as good condition as when received by the buyer. § 75-66-3. The seller must return any funds received or goods traded in and cancel all indebtedness within 10 days after cancellation of the sale. § 75-66-7.

The seller is entitled to a cancellation fee of five percent (5%) of the cash price or the down payment, whichever is less. § 75-66-7. The seller is not entitled to compensation for any services performed prior to cancellation of the agreement. § 75-66-9.

A sale initiated by the buyer, a sale under a preexisting revolving credit account, a previously negotiated sale at a fixed business establishment, and a sale regulated by the Mississippi Public Service Commission are all excluded from the protections of this statute. § 75-66-1.

MINOR'S CONTRACT

Age of majority to contract - 21 years. § 1-3-27. Married persons 18 and older may execute contracts, sales and purchase agreements, mortgages, deeds or other legal documents pertaining to their residence. § 93-3-11. Any person age 15 or older may contract for life, health or accident insurance. § 83-7-19. All persons 18 or older, unless otherwise disqualified, may contract for personalties. § 93-19-13.

Contractual liability - Minor under 18 years of age is liable only for necessaries received as a result of a contractual relationship. § 75-1-103.

REPOSSESSION REQUIREMENTS

The creditor must make an affidavit that describes the property, gives its value, and sets forth why the creditor is entitled to the property, and declares that the debtor has wrongful possession of the property. The creditor must post a bond double the value of the property. § 11-37-101. A writ of replevin is issued which commands the sheriff to seize and take possession of the property, deliver it to the creditor after 2 days, unless bonded by the debtor, and summon the debtor to appear before the court. § 11-37-109. The debtor may within 2 days from the seizure of the property, have the property restored if he posts a bond double the property's value. § 11-37-115. Trial of a replevin action shall be no earlier than 5 days after the debtor is served. § 11-37-125.

STATUTE OF LIMITATIONS

Contract under seal - 6 years. § 15-1-49.
Simple written contract - 6 years. § 15-1-49
Contract for sale of goods - 6 years. § 75-2-725.
Oral contracts - 3 years, except that an oral employment contract has a 1 year limitation. § 15-1-29.
Judgments - Courts of record - 7 years. 15-1-43.

If the person against whom a foreign judgment or decree was or shall be rendered, was or shall be at the time of the institution of the action, a resident of this state, such action, founded on such judgment or decree, shall be commenced within the 3 years next after the rendition thereof, and not after. § 15-1-45.

TRUTH-IN-LENDING ACT

Federal - Truth-in-Lending Act. See Chapter 3 supra.

State - See Small Loan Regulatory Law - §§ 75-67-111, 75-67-127.
For Motor Vehicle Sales - see § 63-19-31.

UNFAIR AND DECEPTIVE TRADE PRACTICES

MISS. CODE ANN. § 75-24-1 (Supp. 1983).

Prohibited Practices: 11 enumerated unfair methods of competition and unfair or deceptive practices.

Special Requirements: None specified.

Mississippi

Scope: Trade or commerce defined as advertising or offer for sale of any service, real or personal property, intangibles, and any other thing of value.

Exclusions: Advertisements done by disinterested publisher, radio and television media, with no knowledge of falsity; officer acting under court order.

Private Remedies: Actual damages; restitution in set off or counterclaim action; attorney's fees for prevailing party.

Limitations: AG action in public interest; private action based on consumer transaction resulting in loss.

State Remedies: AG through Office of Consumer Protection, district and county attorney enforces; injunction; court may make judgments necessary including: restitution, receiver, revocation of license; $5000 per injunction violation; maximum $500 per willful violation.

Precedential Value of FTC Interpretations: None specified.

WARRANTIES

A warranty that the goods shall be merchantable is implied in a contract for their sale if the seller is a merchant with respect to goods of that kind. Under this section the serving for value of food or drink to be consumed either on the premises or elsewhere is a sale. § 75-2-314.

Where the seller at the time of contracting has reason to know any particular purpose for which the goods are required and that the buyer is relying on the seller's skill or judgment to select or furnish suitable goods, there is an implied warranty that the goods shall be fit for such purpose. § 75-2-315.

Any limitation of remedies which would deprive the buyer of a remedy to which he may be entitled for breach of an implied warranty of merchantability or fitness for a particular purpose shall be prohibited. § 75-2-719(4).

Missouri

BANKRUPTCY EXEMPTIONS

Federal - See Chapter 2 supra.

State - Homestead exemption - $8,000. § 513.475.

Personalty exemption (§ 513.430) -

(1) $1000 worth of household furnishings, household goods, wearing apparel, appliances, books, animals, crops or musical instruments;

(2) $500 worth of jewelry;

(3) $400 worth of any other property of any kind;

(4) $2000 worth of implements, books and tools necessary for the practice of a trade;

(5) Any motor vehicle, not to exceed $500 in value;

(6) Any mobile home used as a principle residence, not to exceed $1000 in value.

(7) All unmatured life insurance contracts, other than credit life insurance contracts;

(8) Accrued dividends or interest under, or loan value of, unmatured life insurance contracts; provided, however, that if proceedings under Title 11 of the U.S.C. are commenced, the amount exempt shall not exceed $5000 less any amount of property of the debtor transferred by the life insurance company to itself in good faith if such transfer is to pay a premium or to carry out a nonforfeiture insurance option and is required to be so transferred automatically under a life insurance contract with such company that was entered into before commencement of such proceedings. No amount of accrued dividends or interest shall be exempt from any claim for child support or where the insurance contract was purchased within six months prior to the commencement of proceedings under Title 11.

(9) Professionally prescribed health aids;

(10) Social security benefits, unemployment compensation, veterans' benefits, disability benefits, and alimony or support that does not exceed $500 a month;

(11) Payments under a stock bonus, pension, profitsharing, annuity or similar plan or contract on account of illness, disability, death, age or length of service, to the extent necessary for the support of debtor or his dependents unless:

(i) Such plan or contract was established by or with the support an insider that employed the debtor at the time his rights under the plan or contract arose;

(ii) Such payment is on account of age or length of service; and

(iii) Such plan does not qualify under certain sections of the Internal Revenue Code of 1954.

(12) The debtor's right to receive, or property that is traceable to, a payment for the wrongful death of an individual on whom the debtor was dependent, to the extent necessary for the support of the debtor or his dependents.

CREDIT REPORTING

Federal - Fair Credit Reporting Act. See Chapter 3 supra.

State - No statutory provision.

DEBT COLLECTION

Federal - Fair Debt Collection Practices Act. See Chapter 3 supra.

State - No statutory provision.

HOME SOLICITATION SALE

Federal - FTC Trade Regulation Rule. See Chapter 3 supra.

State - The buyer has the right to cancel a home solicitation sale until midnight of the third business day following execution of an agreement or offer to purchase. § 407.705(1). Notice of cancellation is effective when delivered or when deposited in the mail properly addressed to the seller, postage prepaid. § 407.705(2). The buyer may not cancel the home solicitation if the buyer requested the seller to provide goods or services due to 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. § 407.705(3). The sales agreement must contain a conspicuous notice of this cancellation right. § 407.710(2). Until the seller has notified the buyer of his cancellation rights, the buyer may cancel the sale by notifying the seller in any manner of his intention to cancel. § 407.710(3).

The buyer must take reasonable care of the goods and tender the goods at his or her residence to the seller upon demand. However, the buyer takes title to the goods if the seller fails to demand such possession within 20 days after receipt of the notice of cancellation. § 407.720. The seller must return any funds or notes of indebtedness received or goods traded in to the buyer within 10 days after cancellation of the sale. § 407.715.

A cash sale, a sale of real property, a sale of personal property which is incident to the sale of real property, a sale made pursuant to a pre-

existing revolving charge account, and a sale previously negotiated at the seller's place of business are not included in the protections provided by this statute. § 407.700.

MINOR'S CONTRACT

Age of majority to contract - 18. § 431.055.

Contractual liability - Minor is liable only for necessaries received as a result of a contractual relationship. § 400.1-103.

REPOSSESSION REQUIREMENTS

The creditor must make an affidavit showing:

(1) That the creditor is the owner of the property or is lawfully entitled to the possession thereof;
(2) A description of the property with sufficient clarity to identity it;
(3) That the property is wrongfully detained by the debtor;
(4) The actual value of the property;
(5) That the property has not been seized under any process, execution or attachment against the property of the creditor; and
(6) That the creditor will be in danger of losing his property unless it is taken from the debtor's possession. § 533.010.

The creditor also must execute a bond with two or more sureties, approved by the sheriff, in double the value of the property stated in the affidavit. The creditor may pledge bearer securities issuec by the United Sttes in lieu of executing a security bond. § 533.030. Notic to the debtor and an opportunity for a hearing prior to repossession are not required. Before the sheriff delivers the property to the creditor, the debtor can regain possession of the property by executing a bond to the creditor, with two or more sufficient sureties, to be approved by the sheriff, in double the value of the property as stated in the creditor's affidavit. § 533.040.

STATUTE OF LIMITATIONS

Contract under seal - 10 years. § 516.110.
Simple written contract - 10 years. § 516.110.
Contract for sale of goods - 4 years. § 400.2-725.
Oral contracts - 5 years. § 516.120.
Judgments - Courts of record - 10 years. § 516.350.

TRUTH-IN-LENDING REQUIREMENTS

Federal - Truth-in-Lending Act. See Chapter 3 supra.

Missouri

State - No statutory provision.

Every retail sales contract requiring the buyer to make one or more deferred payments shall be in writing and shall contain the following (§ 408.260):

(1) The cash sales price;
(2) The amount of any down payment and a description of the items used to make any noncash portion of such down payment;
(3) The difference between (1) and (2);
(4) The amount of any charges for credit life insurance or other benefits;
(5) the amount of any official fees;
(6) The sum of (3), (4), and (5);
(7) The amount of any "time charge" (the difference between the cash sales price and the amount the retail buyer pays or agrees to pay);
(8) The total amount of the deferred payments, which is the sum of (6) and (7), and the amount and due date of each such payment.
(9) The total amount to be paid by the buyer.

The seller shall provide the buyer with a signed copy of the contract. § 408.260. Penalties for failing to disclose information required to be disclosed under § 408.260 are set forht at § 408.370.

For disclosure requirements in small loan contracts see Consumer Finance Act § 408.130.

UNFAIR AND DECEPTIVE TRADE PRACTICES

MO. REV. STAT. § 407.010 (1979 & Supp. 1984).

Prohibited Practices: Deceptive acts or concealment or omission of material fact with intent other rely.

Special Requirements: None specified.

Scope: Sale, offer for sale, or advertisement of any merchandise including goods, commodities, intangibles, realty, or services.

Exclusions: Advertisements done by publisher, radio and television media, with no knowledge of falsity; advertisements complying with FTC statutes; institutions supervised by director of division of saving and loans, insurance, or finance unless director authorizes AG to act.

Private Remedies: Actual damages, punitive damages discretionary; court "may" award attorney's fees to prevailing party; equitable relief necessary or proper; class action for actual damages; injunction.

Missouri

Limitations: For private action, must purchase or lease goods or servces for personal, family, household purposes and suffer ascertainable loss; AG gets injunction only after notice to defendant.

State Remedies: AG enforces; injunction after notice to defendant; court may make necessary orders including: receiver, restitution; maximum $5000 per injunction violation; costs.

Precedential Value of FTC Interpretations: None specified.

WARRANTIES

Unless excluded or modified, a warranty that the goods shall be merchantable is implied in a contract for their sale if the seller is a merchant with respect to goods of that kind. Under this section the serving for value of food or drink to be consumed either on the premises or elsewhere is a sale. § 400.2-314.

Where the seller at the time of contracting has reason to know any particular purpose for which the goods are required and that the buyer is relying on the seller's skill or judgment to select or furnish suitable goods, there is, unless excluded or modified, an implied warranty that the goods shall be fit for such purpose. § 400.2-315.

Implied warranties, including the warranty of merchantability, can be limited or excluded in writing. Remedies for breach of warranty also can be limited. § 400.2-316.

Montana

All citations, unless otherwise noted, are to the Montana Code Annotated (MCA).

BANKRUPTCY EXEMPTIONS

Federal - See Chapter 2 supra.

State - § 31-2-106

Homestead exemption § 25-13-615; § 70-32-101, 104 - $40,000, but not consisting of more than:

(1) A quantity of land not exceeding 320 acres used for agricultural purposes and the dwelling house or mobile home thereon and its appurtenances and not included in any municipality;
(2) A quantity of land not exceeding 1 acre, not used for agricultural or commercial purposes and not in a municipality, and the dwelling house or mobile home thereon and appurtenances; or
(3) A quantity of land not exceeding one fourth of an acre, located in a municipality, and the dwelling house or mobile home thereon and appurtenances. § 70-32-104.

Personalty exemption - § 25-13-611.

(1) All wearing apparel of debtor and family;
(2) $200 worth of chairs, tables, desks and books;
(3) All necessary household furnishings, including one sewing machine, stoves, heating apparatus, beds and bedding, and provisions and fuel for family use sufficient for 3 months;
(4) 1 horse, saddle, and bridle; 2 cows and their calves; 4 hogs, 50 domestic fowls and feed for such animals for 3 months;
(5) One clock and all family pictures;
(6) The tools, property, and instruments necessary for an individual to carry on a trade or profession § 25-13-612;
(7) The property necessary to carry out governmental functions § 25-13-613;
(8) The earnings of the debtor for personal services rendered any time within 45 days next preceding the levy of execution or attachment, if necessary for the support of the debtor or his family § 25-13-614;
(9) Life insurance benefits attributable to premiums not exceeding $500 per year § 25-13-616; and
(10) One vehicle, not to exceed the value of $1,000, except where debt incurred for common necessaries of life (debtor must be 60 years old, or head of a family). § 25-13-617.

AD-A174 509 ALL STATES GUIDE TO CONSUMER LAWS(U) JUDGE ADVOCATE GENERAL'S SCHOOL CHARLOTTESVILLE VA ADMINISTRATIVE AND CIVIL LAW DIV SEP 86 ACIL-ST-265 4/5

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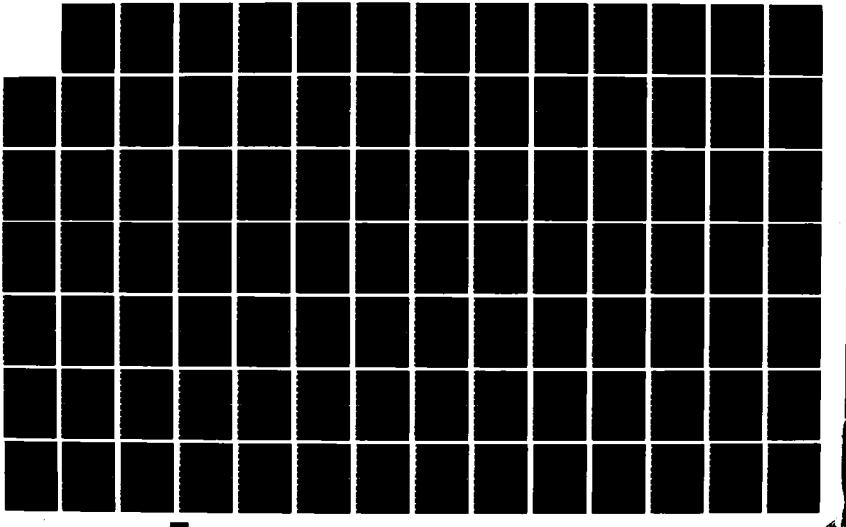

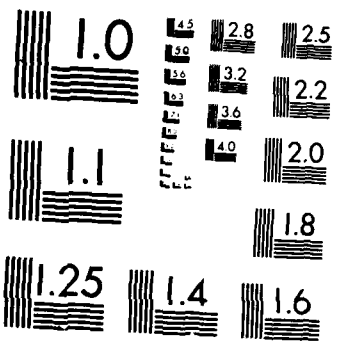

MICROCOPY RESOLUTION TEST CHART
NATIONAL BUREAU OF STANDARDS 1963-A

An unmarried person who is not the head of a family is only entitled to the exemptions of wearing apparel and earnings. An unmarried person over 60 years of age is allowed the same exemptions as the head of a family. §§ 25-13-602, 25-13-611 to 25-13-617.

CREDIT REPORTING

Federal - Fair Credit Reporting Act. See Chapter 3 supra.

State - Issuance of Consumer Reports. - Substantially the same as the Federal law. §§ 31-3-111, 31-3-121.

Disclosures

Agency to Consumer - Every consumer reporting agency must, upon request and proper identification of the consumer, clearly and accurately disclose to the consumer: (a) the nature and substance of all information (except medical information) in its files at the time of the request; and (b) the sources of the information. § 31-3-122. The disclosures are to be made during normal business hours and on reasonable notice. Disclosures may be made in person after proper identification of the consumer, or by telephone if the consumer has made a written request. Trained personnel must be on hand to explain the information. The consumer is allowed to have one other person accompany him during the interview, but the agency can require the consumer to provide them with a written statement granting that permission. § 31-3-123. When the reporting agency reports public record information for employment purposes which is likely to have an adverse effect on ability to gain employment, the agency must either notify the consumer that the information is being reported, or it must maintain strict procedures to insure that the information is complete and up to date. § 31-3-126.

User to Consumer

A person may not procure or cause to be prepared, or distribute an investigative consumer report unless the consumer is notified in a writing mailed or delivered to the consumer within 3 days after the date on which the report was first requested. A statement also must be included that the consumer can request a detailed disclosure of the nature and scope of the investigation. The requested disclosure must be made in a writing mailed or delivered to the consumer within 5 days after the date on which the consumer request was received or such report was first requested, whichever is the latter. If the report is used for employment purposes, the reporting agency does not have to follow these provisions. § 31-3-113. Whenever credit or insurance is denied, or the costs for such credit or insurance is increased because of information contained in a consumer report from a consumer agency, the consumer must be notified of that fact

along with the name of the reporting agency. If credit or insurance is denied or the costs for such credit or insurance increased, because of information provided by a person other than a reporting agency, the user must disclose the nature of the information to the consumer upon written request of the consumer within 60 days after the consumer learned of such adverse action. § 31-3-131. The consumer must be advised at that time of his right to make such a request.

Prohibited Disclosures

Obsolete Information - A consumer report may not contain any of the following information (§ 31-3-112):

(1) Bankruptcies which antedate the report by more than 14 years;
(2) Suits and judgments which antedate the report by more than 7 years or until the governing statute of limitations has expired, whichever is longer; and
(3) Paid tax liens, accounts placed for collection, criminal records, or any other adverse information which antedates the report by more than seven years.

Investigative Reports - No adverse information (other than matters of public record) may be included in a subsequent consumer report unless such adverse information has been verified in the process of making the subsequent consumer report. § 31-3-115.

Report Procedures - Compliance - Every consumer reporting agency must maintain reasonable procedures designed to avoid violations and the furnishings of consumer reports for unauthorized purposes. They must identify all users of the information and certify the purposes for which the information is sought. A consumer reporting agency cannot furnish a consumer report to anyone if it has reason to believe that the consumer report will not be used for a permitted purpose. The agency must use procedures to assure the accuracy of the information on an individual, and it must keep a record of all persons using the information and the source of the information. Any person supplying information must be told that they are liable for supplying false information. § 31-3-114.

Disputed Accuracy - If a consumer's dispute of the accuracy of his consumer report is directly conveyed to the agency, the agency must reinvestigate unless it has reasonable grounds to believe the dispute is irrelevant or frivolous. Inaccurate or unverifiable information must be deleted and all users of it notified. The consumer may file a brief explanation of an unresolved disputed item and each subsequent user of the report must be notified of the statement's contents. The consumer is notified of all users who have the disputed information. § 31-3-124.

Violations - Penalties

Civil - A consumer reporting agency or user which willfully fails to comply with the law is liable to the consumer for any actual damages sustained, any punitive damages awarded by the court, and in a successful action, court costs plus reasonable attorney's fees. §§ 31-3-142, 31-3-143.

Criminal - A violation of the law is considered an unfair trade practice. (§ 31-3-153), punishable by a fine of $2,000 and/or 1 year in prison.

DEBT COLLECTION

Federal - Fair Debt Collection Practices Act. See Chapter 3 supra.

State - No statutory provision.

HOME SOLICITATION SALE

Federal - FTC Trade Regulation Rule. See Chapter 3 supra.

State - Title 30, Chapter 14, part 5 (§ 30-14-501 et seq.) is substantially similar to the "Uniform Unfair Trade Practices & Consumer Protection Law." The buyer has the right to cancel a personal solicitation sale (a sale made by telephone or at a place other than seller's place of business) until midnight of the third business day following execution of an agreement or offer to purchase. § 30-14-504(1). If the personal solicitation was made by phone, buyer may cancel at any time prior to his execution of sale document. § 30-14-504(1). Notice of cancellation is effective when delivered or when deposited in the mail properly addressed to the seller, postage prepaid. § 30-14-504(3). The notice of cancellation must be mailed by certified mail, unless the seller fails to fulfill all of his notice obligations. § 30-14-505. The sales agreement must contain a conspicuous notice (copy in statute) of this cancellation right. Until the seller notifies the buyer of his cancellation rights, the buyer can cancel the sale by notifying the seller in any manner of his intention to cancel. § 30-14-505(2). The buyer cannot cancel if the goods cannot be returned to the seller in substantially the same condition as when received by the buyer. § 30-14-504(5).

The buyer must take reasonable care of the goods and tender the goods at his or her residence to the seller upon demand, so long as seller has returned any down payment. § 30-14-507(2) and 30-14-506(4). However, the buyer takes title to the goods, without obligation to pay for them, if the seller fails to demand such possession within 40 days after cancellation or revocation of the sale. § 30-14-507(1). The seller must return any funds received or goods traded in to the buyer within 10 days after cancellation of the sale. § 30-14-506(1, 2).

The following transactions are not included in the protections provided by these statutes (§ 30-14-502):

(A) An attempted sale in which the buyer personally knows the seller, the name of the business or organization he represents, and the identity or kind of goods or services offered for sale;
(B) A sale where the buyer initiated the contact;
(C) A sale of a newspaper subscription in which the seller is a minor engaged in both delivery and sale of the newspaper;
(D) A sale of an insurance policy; and
(E) A sale for less than $25.00.

MINOR'S CONTRACT

Age of majority to contract - 18. Mont. Const. Art. II, § 14.

Contractual liability - Minor is liable for necessaries received as a result of a contractual relationship and obligations entered into by him under the express authority or direction of a statute or after being granted limited emancipation (§ 41-3-408). §§ 41-1-305, 41-1-306.

REPOSSESSION REQUIREMENTS

The creditor must make an affidavit stating:

(1) Facts which establish reasonable belief that he is the owner of the property or entitled to its possession and that seizure is necessary to prevent removal or destruction of the property;
(2) That the property is wrongfully detained by the debtor;
(3) That the property has not been taken for a tax, assessment or fine, pursuant to statute, or seized under an execution or an attachment against the property of the creditor; and
(4) The particular description of the property and its actual value. § 27-17-201.

The creditor also must execute a bond with two or more sufficient sureties approved by the sheriff, in double the value of the property as stated in the creditor's affidavit. § 27-17-205.

The sheriff cannot seize any property unless an order from the judge of the court having jurisdiction of the cause is attached to the affidavit. (§ 27-17-203). The judge will only sign the order of seizure if he is satisfied:

(1) That the creditor has made a prima facie showing of his right to possession of the property at a show cause hearing before him with at least 3 days' notice to the debtor or by publication; or

(2) That the delay caused by notice and a hearing would seriously impair the remedy sought by the creditor. Evidence of impairment must be presented in open court, and the court must specify the reasons explicitly.

At any time before delivery of the property to the creditor, the debtor can require the return of the property to him, by giving the sheriff a bond executed with two more sufficient sureties, in double the value of the property as stated in the creditor's affidavit. § 27-17-304.

STATUTE OF LIMITATIONS

Contract under seal - 8 years. §§ 27-2-202(1), 1-4-204.
Simple written contract - 8 years. § 27-2-202(1).
Contract for sale of goods - 4 years. § 30-2-725.
Oral contracts - 5 years. § 27-2-202(2).
Judgments - Courts of record - 10 years. § 27-2-201.
Justice Court - 5 years. § 27-2-201.

TRUTH-IN-LENDING REQUIREMENTS

Federal - Truth-in-Lending Act. See Chapter 3 supra.

State - No statutory provision.

UNFAIR AND DECEPTIVE TRADE PRACTICES

MONT. CODE ANN. § 30-14-101 (1983).

Prohibited Practices: Unfair methods of competition and unfair or deceptive acts or practices.

Special Requirements: None specified.

Scope: Trade or commerce defined to include advertising, sale, or offer for sale of any services, real or personal property, intangibles or any thing of value.

Exclusions: Transactions permitted by state or U.S. law administered by public service commission; advertisements done by disinterested publishers, radio and television media, advertising agency or retail merchants with no knowledge of falsity; national advertising.

Private Remedies: $200 minimum; actual damages; treble damages discretionary; court may provide equitable relief necessary or proper; attorney's fees "may" be awarded prevailing party.

Limitations: Must purchase or lease goods or services primarily for personal or family purposes and suffer an ascertainable loss.

State Remedies: Rulemaking in department of commerce consistent with FTC; enforcement by department and in county attorney or AG if requested; injunction if in public interest and upon notice; court may make additional orders necessary, including; restitution, receiver, revoke license, suspend charter or license and other relief required; court has discretion to dissolve corporate franchise or maximum $10,000 per injunction violation; $500 per willful violation of act; criminal penalties for fraudulent conduct.

Precedential Value of FTC Interpretations: Due consideration and great weight.

WARRANTIES

Unless excluded or modified, a warranty that the goods shall be merchantable is implied in a contract for their sale if the seller is a merchant with respect to goods of that kind. The serving for value of food or drink to be consumed either on the premises or elsewhere is a sale. § 30-2-314.

Where the seller at the time of contracting has reason to know any particular purpose for which the goods are required and that the buyer is relying on the seller's skill or judgment to select or furnish suitable goods, there is, unless excluded or modified, an implied warranty that the goods shall be fit for such purpose. § 30-2-315.

Implied warranties, including the warranty of merchantability can be limited or excluded in writing. Remedies for breach of warranty also can be limited. § 30-2-316.

NEW MOTOR VEHICLE WARRANTIES ("Lemon Law") § 61-4-501 to 507.

Applicability—

(1) New motor vehicle (not motor home) sold in Montana after October 1, 1983;

(2) Bought by a consumer (not for purpose of resale);

(3) Which does not conform to all express warranties; and

(4) Which the manufacturer/dealer/agent has attempted to repair four or more times, or the vehicle has been out of service for 30 or more business days.

Remedy—Manufacturer shall replace defective vehicle with a new vehicle of same model and style and of equal value OR its equivalent OR may recover the vehicle and refund to the consumer the full purchase price (less taxes, fees and reasonable allowance for consumer's use of the vehicle). Choice is up to the manufacturer.

Montana

Warranty Period—Either the term of the express agreement or one year from the original date of delivery to the consumer, whichever is earlier. Period may be extended by consumer's advising manufacturer/agent in writing during the period of the defects.

Exception—Law not applicable when vehicle was subject to abuse, neglect, or unauthorized modification or alteration.

Nebraska

BANKRUPTCY EXEMPTIONS

Federal - See Chapter 2 supra. (These exemptions have been rejected in Nebraska. § 25-15, 105.)

State - Homestead exemption - $6,500, but not exceeding 160 acres of land not located in any incorporated city or village, or a quantity of contiguous land not exceeding two lots within any incorporated city or village. § 40-101.

Personalty exemption -

(A) All persons without land, town lots or houses subject to exemption as homestead shall have exempt $2,500 worth of personal property. § 25-1552.

(B) Specific exemptions -

(1) The immediate personal possessions of the debtor;

(2) All necessary wearing apparel of the debtor or his family; all kitchen utensils and furniture not exeeding $1,500;

(3) All equipment and tools used by the debtor or his family for their support, not exceeding $1,500;

(4) The provisions for the debtor and his family necessary for six months support, and the fuel necessary for six months;

(5) The lesser of the following amounts of the debtors aggregate disposable earnings for one week:

(i) Twenty-five percent of his disposable earnings;

(ii) The amount by which his disposable earnings exceed thirty times the federal minimum hourly wage prescribed by § 206(a)(1) of Title 29 of the U.S.C.; or

(iii) Fifteen percent of his disposable earnings for that week, if the individual is a head of a family. §§ 25-1556, 25-1558; and

(6) All proceeds, cash values, and benefits accruing under any annuity contract or insurance policy payable upon the death of the insured to a beneficiary other than the insured's estate shall be exempt from attachment, garnishment or other legal or equitable process. This section shall not apply to any loan value in excess of $5000 of an unmatured life insurance contract. § 44-371.

CREDIT REPORTING

Federal - Fair Credit Reporting Act. See Chapter 3 supra.

State - No statutory provision.

DEBT COLLECTION

Federal - Fair Debt Collection Practices Act. See Chapter 3 supra.

State - All collection agencies must be licensed by the State. A licensee may not:

(a) Use or threaten to use violence;
(b) Use obscene or profane language;
(c) Cause a telephone to ring or engage a person in telephone conversation at times known to be inconvenient to the borrower;
(d) Falsely represent the character, amount, or legal status of any debt;
(e) Falsely represent that an individual is an attorney when he or she is not;
(f) Falsely represent that nonpayment of any debt will result in the arrest or imprisonment of the borrower or any member of the borrower's household;
(g) Threaten to take any action that the licensee knows cannot legally be taken at the time the threat is made;
(h) Falsely represent that the borrower committed any crime when he or she did not;
(i) Communicate or threaten to communicate to any person credit information which is known to be false;
(j) Use or distribute any written communication which falsely represents that it is a document authorized, issued, or approved by any court, official, or agency of the United States or any state;
(k) Charge or collect any fees, charges, or expenses, incidental to the collection of any loan, unless such amount is expressly authorized by the loan agreement or permitted by law;
(l) Accept from any person a check or other payment instrument postdated by more than five days unless such person is notified in writing of the licensee's intent to deposit such check or instrument not more than ten nor less than three business days prior to such deposit;
(m) Solicit any postdated check or other postdated payment instrument for the purpose of threatening or instituting criminal prosecution;
(n) Deposit or threaten to deposit any postdated check prior to the date on such check;
(o) Cause charges to be made to any person for communications by concealment of the true purpose of the communication, including, but not limited to, collect telephone calls and telegram fees;
(p) Communicate with a borrower regarding a debt by postcard; or
(q) Communicate with a borrower at the borrower's place of employment if the licensee has received actual notice that the borrower's employer prohibits the borrower from receiving such communication. § 45-177.

A licensee shall not contact any person, who is not living, residing, or present in the household of the borrower regarding the borrower's obligation to pay a debt, other than the borrower's spouse, the borrower's attorney, another creditor, or a credit reporting agency. § 45-173. The borrower may waive the benefits of § 45-173, by giving his consent at any time subsequent to the date the debt arises. § 45-174. The licensee may contact any person without the borrower's consent:

(1) To ascertain information relating to a borrower's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living which is used or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing the borrower's eligibility for credit or insurance if such contacts are not designed to collect a delinquent debt; or

(2) To locate the borrower when the licensee has reason to believe the borrower has changed his or her employment or has moved from his or her last-known address. § 45-175.

If the borrower has defaulted on his or her promise to pay and if he or she has given specific notice in writing, by registered or certified mail, instructing the licensee to cease further contacts with the borrower in regard to the indebtedness, the licensee shall, after such notice, except as provided in sections 45-177 and 45-178, limit contacts to one notice per month by mail. No notice shall be designed to threaten action not otherwise permitted by law. § 45-176.

A licensee is not prohibited from:

(a) Contacting any person in order to discover property belonging to the borrower that may be seized to satisfy a debt that has been reduced to judgment;

(b) Making amicable demand and filing suit on the debt; or

(c) Contacting persons related to the debtor if permission is specifically given in writing at the time the debt arises or at any time after such debt arises. § 45-177.

Nothing shall limit a borrower's right to bring an action for damages. When the licensee has filed suit and obtained judgment, the licensee shall be permitted to resume contact with the borrower against whom judgment has been obtained. § 45-178.

HOME SOLICITATION SALE

Federal - FTC Trade Regulation Rule. See Chapter 3 supra.

State - The buyer has the right to cancel a home solicitation sale until midnight of the third business day following notification, by seller, of his cancellation rights. §§ 69-1603(1), 1604(5). Notice of cancellation is

effective when deposited in the mail properly addressed to the seller. § 69-1603(2). The sales agreement must contain a conspicuous notice of this cancellation right. § 69-1604(1) & (2).

The seller must, within 10 days of cancellation, return to the buyer any funds received and within 20 days of cancellation, the seller must return any property received from the buyer. § 69-1605(1, 3). The buyer must take reasonable care of the goods and tender the goods, or, if inequitable, their reasonable value, at his or her residence or the location of the property, to the seller upon seller's required repayment and return as set forth above. However, the buyer takes title to the merchandise, without obligation to pay for it, if the seller fails to take possession of the property within 20 days after the buyer has tendered the property. § 69-1606.

The statute covers a sale, lease, or rental of consumer goods or services where the seller solicits, and buyer makes his agreement or offer, at a place other than seller's place of business. It includes transactions in response to, or upon an invitation of buyer, but not the following:

(1) A lease sale for less than $25;

(2) Where the consumer has the right of rescission under the Consumer Credit Protection Act (15 U.S.C. § 1635);

(3) A sale initiated by the buyer for an emergency with a signed, handwritten statement by the buyer waiving his right to cancel the sale;

(4) A sale conducted entirely by mail or telephone;

(5) A sale in which the buyer initiated the contact and requested the seller to perform maintenance or repair work on the buyer's personal property; and

(6) A sale of securities or commodities by a registered broker-dealer. § 69-1601.

Violations of the statute entitle buyer to damages, court costs and reasonable attorney fees.

MINOR'S CONTRACT

Age of majority to contract - 19; unless married. Marriage before age 19 terminates minority. § 38-101.

Contractual liability - Minor is liable only for necessaries received as a result of a contractual relationship. UCC § 1-103.

REPOSSESSION REQUIREMENTS

The plaintiff in an action to recover personal property must, at the commencement of suit or before answer, request delivery of such property and file an affidavit showing:

(1) A description of the property claimed;
(2) That the creditor is the owner of the property or that he is entitled to its immediate possession;
(3) That the property is wrongfully detained by the debtor; and
(4) That the property was not taken in execution on any order or judgment against the creditor, or for the payment of any fine, tax, or assessment, or by virtue of an order of delivery, or, in the alternative, that the property was taken on execution on a judgment or order, other than an orde of delivery in replevin, and that the same is exempt from such execution or attachment under Nebraska law.

A specific request for the delivery of the property and the issuance of an order by the court to that effect must be attached to the affidavit. § 25-1093.01. The creditor also must execute a bond with one or more sufficient sureties, to the debtor in at least double the value of the property taken. § 25-1098.

Upon the filing of such affidavit and request for delivery, the debtor with full knowledge of the consequences of his actions may execute a voluntary, intelligent and knowing waiver of his rights to notice and a hearing and the court will order the replevy. Absent such a waiver, the court will issue a temporary order to the creditor telling him to hold the property unimpaired and unencumbered. The temporary order also shall contain a notice that a hearing will be had and specifying the date, time and place of such hearing. The date of such hearing shall be seven days after service of the order upon the debtor, but in no event later than fourteen days after service. § 25-1093.02. The debtor can require the return of the property to his possession by executing a bond to the creditor, before the delivery of the property to the creditor, with one or more sufficient sureties, in at least double the value of the property taken. § 25-1098.

STATUTE OF LIMITATIONS

Contract under seal - 5 years. § 25-205.
Simple written contract - 5 years. § 25-205.
Contract for sale of goods - 4 years. UCC § 2-725.
Oral contracts - 4 years. § 25-206.
Judgments - Courts of record - Kept alive by execution every 5 years. § 25-1515.

TRUTH-IN-LENDING REQUIREMENTS

Federal - Truth-in-Lending Act. See Chapter 3 supra.

State - Incorporates disclosures required by Federal Consumer Credit Protection Act, § 45-205.

UNFAIR AND DECEPTIVE TRADE PRACTICES

NEB. REV. STAT. § 59-1601 (1978 & Supp. 1983).

Prohibited Practices: Unfair methods of competition and unfair or deceptive acts or practices.

Special Requirements: None specified.

Scope: Trade or commerce defined as sale of assets or services, assets including real or personal property, intangibles and anything of value.

Exclusions: Non-profit labor, agricultural or horticultural organizations in lawful pursuits; civil penalties do not apply to advertisements done by publishers, radio and television media, with no knowledge of falsity; transactions permitted or regulated by Public Service Commission; federal power commission, or regulatory body acting under state or U.S. authority; public power and/or irrigation district, cooperatives, municipalities or associations furnishing electricity to consumers.

Private Remedies: Injunction; actual damages; attorney's fees and costs; court has discretion to increase damages to include immeasurable actual damages up to $1000.

Limitations: Must be injured in business or property for private remedy; 4 year statute of limitations after clause accrues; tolled during pendancy of AG action except for civil penalty for injunction violation or actions predicated on party suffering actual injury to business or property.

State Remedies: Ag enforces; injunction; attorney's fees and costs discretionary to prevailing party; court "may" make additional orders including restitution; if party suffers injury in business or property, then may be awarded actual damages, attorney's fees and costs, court has discretion to increase award of actual damages up to $1000 to include immeasurable actual damages; maximum $25,000 or dissolution of franchise for injunction violation; maximum $2000 per violation.

Precedential Value of FTC Interpretations: None specified.

NEB. REV. STAT. § 87-301 (1981 & Supp. 1982).

Prohibited Practices: 14 enumerated deceptive trade practices and all unconscionable acts by supplier in consumer transactions.

Special Requirements: None specified.

Scope: In course of his business, vocation or occupation.

Nebraska

Exclusions: Conduct complying with federal, state or local statutes or rules; publishers, broadcasters, printers or others who disseminate information without knowledge of deceptive character.

Private Remedies: Injunction; attorneys fees to prevailing party discretionary based on groundless suit brought or willful violation; if entered sale or lease, may rescind contract or retain merchandise or service without paying.

Limitations: One year statute of limitations form date of purchase.

State Remedies: AG or county attorney with consent of AG enforces; rulemaking in AG; revoke license or other relief necessary; injunction; court may order necessary relief including restitution; criminal penalties, including maximum $5000 and/or 5 years imprisonment for willful injunction violation or violate terms of voluntary compliance.

Precedential Value of FTC Interpretations: To effectuate general purpose to make uniform laws of enacting states.

WARRANTIES

Unless excluded or modified, a warranty that the goods shall be merchantable is implied in a contract for their sale if the seller is a merchant with respect to goods of that kind. Under this section the serving for value of food or drink to be consumed either on the premises or elsewhere is a sale. UCC § 2-314.

Where the seller at the time of contracting has reason to know any particular purpose for which the goods are required and that the buyer is relying on the seller's skill or judgment to select or furnish suitable goods, there is, unless excluded or modified, an implied warranty that the goods shall be fit for such purpose. UCC § 2-315.

Implied warranties, including the warranty of merchantability can be limited or excluded in writing. Remedies for breach of warranty also can be limited. UCC § 2-316.

Nevada

BANKRUPTCY EXEMPTIONS

Federal - See Chapter 2 supra.

State - Homestead exemption - $90,000. § 115.010.

Personalty exemption -

(1) $1,500 worth of private libraries, and all family pictures;

(2) $3,000 worth of necessary household goods, appliances, furniture and home and yard equipment;

(3) $4,500 worth of farm trucks, farm stock, farm tools, farm equipment, supplies and seed;

(4) $4,500 worth of professional libraries, office equipment and supplies, and the tools, instruments and materials necessary to carry on the trade of the debtor for the support of himself and family;

(5) The cabin or dwelling of a miner, his cars and implements necessary for carrying on a mining operation worked by him, all not exceeding $4,500;

(6) One vehicle if the judgment debtor's equity does not exceed $1,000 or the creditor is paid an amount equal to the excess above that equity;

(7) All fire engines and fire apparatus, and furniture and uniforms of a fire company;

(8) For any pay period, 75 percent of the disposable earnings of the debtor during that period, or the amount by which his disposable earnings for each week of such period exceed 30 times the minimum hourly wage prescribed by § 6(a)(1) of the Fair Labor Standard Act of 1938 and in effect at the time the earnings are payable, whichever is greater.

(9) All uniforms, arms, and accouterments required by law to be kept by any person;

(10) All court houses, jails, and public buildings of any county of Nevada; and

(11) All benefits accruing out of any life insurance if the annual premium does not exceed $1,000.00. § 21.090.

A bona fide owner of a collection or cabinet of metal-bearing ores, geological specimens, art curiosities or paleontological remains, who properly arranges, classifies, numbers and catalogues the collection in a suitable book, is also entitled to hold this property exempt from execution. § 21.100.

CREDIT REPORTING

Federal - Fair Credit Reporting Act. See Chapter 3 supra.

Nevada

State - No statutory provision.

DEBT COLLECTION

Federal - Fair Debt Collection Practices Act. See Chapter 3 supra.

State - Collection agencies are licensed by the state through its Department of Commerce. § 649.075, .051. A collection agency, its manager, agents or employees shall not:

(1) Use any device, pretense or deceptive means to collect any debt, nor use any type of notice which simulates legal process or purports to be from a governmental authority or attorney;

(2) Collect or attempt to collect any interest, charge, fee or expense incidental to the principal obligation unless authorized by law, or judicially determined to be proper and legally due from the debtor;

(3) Assign or transfer any claim or account upon termination or abandonment of its collection business unless prior written consent by the customer is obtained;

(4) Operate its business or solicit claims for collection from any location, address or post office other than that listed on its license or as may be prescribed by the administrator;

(5) Harass a debtor's employer in collecting or attempting to collect a claim;

(6) Advertise for sale or threaten to advertise for sale any claim as a means to enforce payment of the claim, unless acting under court order;

(7) Publish or post, or cause to be published or posted any list of debtors except for benefit of stockholders or membership in relation to its internal affairs;

(8) Conduct or operate, in conjunction with its collection agency business, a debt counseling or prorater service whereby a debtor assigns or turns over to the counselor or prorater any of his earnings or other funds from apportionment and payment of his debts or obligations. § 649. 375. Any person who violates any provision of this chapter is guilty of a misdemeanor, § 649.435, and may suffer loss of their license. § 649.395.

HOME SOLICITATION SALE

Federal - FTC Trade Regulation Rule. See Chapter 3 supra.

State - The buyer has the right to cancel a door-to-door (home solicitation) sale until midnight of the third business day following execution of an agreement or offer to purchase. Notice is effective when telegraphed, delivered, or desposited in the mail properly addressed to the seller, postage prepaid. § 598.230. The sales agreement must contain a conspicuous notice of this cancellation right and a copy of the agreement must be furnished to buyer. §§ 598.240, 598.250.

The buyer must tender the goods at his or her residence to the seller upon demand or if directed by seller, return them at seller's expense. However, the buyer takes title to the goods, without obligation to pay for them, if the seller does not pick the goods up or provide instructions to the buyer, within 20 days of the date of the notice of cancellation. The seller must return any funds received or property traded in to the buyer within 10 business days after cancellation of the sale. § 598.250. The seller is entitled to collect a cancellation fee which is equal to the lesser of 5 percent of the total purchase price, $15, or any down payment paid by the buyer at the time the contract is entered into or executed. § 598.260.

The following transactions are not included in the protections provided by this statute:

(1) A sale, lease, or purchase for less than $25;

(2) A sale made pursuant to a preexisting retail charge agreement or pursuant to prior negotiations between the parties at the seller's place of business;

(3) A sale in which the buyer has the right of rescission under the provisions of the Consumer Credit Protection Act, 15 U.S.C. § 1635;

(4) A sale initiated by the buyer for any emergency with a handwritten statement by the buyer waiving his right to cancel the sale;

(5) A sale conducted entirely by mail or telephone;

(6) A buyer initiated sale in which the buyer requests the seller to visit his home for repair or maintenance of the buyer's personal property;

(7) A sale or rental of real property, a sale of insurance; or the sale of securities or commodities by a registered broker-dealer;

(8) A sale or rental of vehicles;

(9) A sale or rental of mobile homes;

(10) A sale pertaining to the provision of facilities and services furnished by utilities under the jurisdiction of the public service commission of Nevada. § 598.180.

Any seller violating the statute may be sued civilly by the District Attorney or the Commissioner of Consumer Affairs, and incur a penalty of not more than $2,500.00. § 598.270.

MINOR'S CONTRACT

Age of majority to contract - 18. § 129.010.

REPOSSESSION REQUIREMENTS: In Nevada, replevin is known as "claim and delivery."

Plaintiff in an action to recover personal property may at the time of issuing the summons, or at any time before answer, claim the delivery of such property to him. § 31.840. The following outlines procedures for "temporary repossession" prior to final adjudication of all claims:

Nevada

Proceedings by Plaintiff. Where delivery is claimed, an affidavit shall be made by plaintiff, or by some one in his behalf and filed with court, showing: (1) that plaintiff is owner of property claimed (particularly describing it), or is lawfully entitled to possession thereof; (2) that property is wrongfully detained by defendant; (3) alleged cause of detention thereof according to his best knowledge, information and belief; (4) that same has not been taken for a tax, assessment, or fine, pursuant to a statute, or seized under an execution or an attachment against property of plaintiff, or if so seized that it is exempt by statute; and (5) actual value of property. § 31.850.

If affidavit meets requirements, court will issue an order to defendant to show cause why property should not be taken from him and delivered to plaintiff. § 31.853. Hearing is held to determine who, with reasonable probability, is entitled to possession pending final adjudication. Following finding for plaintiff, writ of possession may be issued if plaintiff files written undertaking executed by two or more sufficient sureties, approved by court, to effect they are bound to defendant in double value of property for return of property to defendant is return thereof is ordered. If plaintiff is reasonably beieved to be secured party, no undertaking will be required. § 31.863.

Writ of possession may issue prior to a hearing if plaintiff establishes that: (1) Defendant gained possession by criminal act; (2) property consists of negotiable instruments or credit cards; or (3) property is perishable or in immediate danger of destruction, concealment, removal from state, or sale. A written undertaking is also required. § 31.856.

Writ of possession describes property and its location, directs sheriff to seize and retain it, and advises defendant of his right to except to sureties or file a written undertaking for delivery of property. §§ 31.866-31.870.

Proceedings by Defendant. Defendant may within two days after service of such copy give notice to sheriff that he excepts to sufficiency of the sureties. If he fails to do so, he is deemed to have waived all objection to them. § 31.880.

If defendant does not except to sureties, he may at any time, before delivery of property to plaintiff, require return thereof, upon filing with court and serving plaintiff with a written undertaking, approved by court and executed by two or more sufficient sureties, to effect they are bound in double value of property, for delivery thereof to plaintiff, if such delivery be adjudged and for payment to him of such sum as may for any cause be recovered against defendant. § 31.890.

Claims of Third Parties. If such return of property is not so required within five days after serving writ of possession and undertaking upon defendant,

it must be delivered to plaintiff unless property is claimed by some other person than defendant or his agent, and such person makes an affidavit of his title thereto, or right to possession thereof, stating grounds of such title or right, and files affidavit with court and serves a copy upon sheriff, in which instance sheriff is not bound to keep property or deliver it to plaintiff, unless plaintiff on demand of sheriff or his agent, indemnifies sheriff against such claim by an undertaking, by two sufficient sureties or surety company, accompanied by their affidavits that they are worth double value of property, as specified in affidavit, over and above their debts and liabilities, exclusive of property exempt from execution, and are freeholders, or householders in county. No claim to such property by any other person than defendant or his agent shall be alid against sheriff unless so made. § 31.940.

STATUTE OF LIMITATIONS: A civil action is commenced by filing a complaint with the Clerk of the Court and any such action must be commenced within the following time periods:

Within six years: Action on judgment or decree of court within United States or on contract, obligation or liability evidenced by writing, sealed or unsealed, not limited by specific statute. § 11.190.

Within five years: Actions to recover real property or the possession or rents or profits thereof, except as hereinafter stated. § 11.030-§ 11.180.

Within four years: (1) Actions upon accounts; (2) actions upon contracts, obligations or liabilities not founded upon instruments in writing. § 11.190. Statute commences to run from date of last transation or last item charged, or last credit given; and whenever any payment on principal or interest has been or shall be made upon an existing contract, whether it be a bill of exchange, promissory note or other evidence of indebtedness, if such payment be made after the same shall have become due, the limitation shall commence from the time the last payment was made. (3) Actions for breach of contracts of sale under Uniform Commercial Code. § 104.2725; (4) Malpractice action, after date of injury, or two years after plaintiff discovers, or should have, injury, whichever occurs first, in action against professional health care provider for negligence, rendering professional services without consent, or for error or omission in such provider's practice. § 41A.097; (5) Malpractice actions against accountants, attorneys and veterinarians measured from time plaintiff discovered or should have discovered facts constituting cause of action. § 11.207.

Within three years: (1) Upon a liability created by a statute other than a penalty or forfeiture; (2) for waste or trespass on real property; (3) for taking, detaining or injurying goods and chattels; (4) an action for relief upon the grund of fraud, time running from discovery; (5) action against guardian by his ward § 11.190; (6) action to recover real estate sold by

guardian, time running from termination of guardianship; (7) action to recover real estate sold by executor or administrator in probate proceedings, time running from sale §§ 11.260 and 11.270; (8) action against corporate directors on statutory liability, time running from discovery § 11.380.

Within two years: (1) Against sheriff, coroner or constable for official misconduct; (2) upon statute for penalty or forfeiture; (3) for libel, slander, assault, battery, false imprisonment or seduction; (4) action against sheriff, or other officer, for escape of prisoner arrested or imprisoned on civil process; (5) action to recover damages for injury to person or for death of person by wrongful act or neglect of another § 11.190; (6) after plaintiff discovers, or should have, injury due to negligence, rendering services without consent, or error or omission by professinal health care provider § 41A.097; (7) upon action to recover mining claim or possession thereof § 11.060.

GENERAL LIMIATION PERIOD: The four-year limitation applies to actions for any relief not otherwise specified in NRS § 11.190 to § 11.220.

LIABLITIES PREVENTING RUNNING OF STATUTE: If a person entitled to bring an action be at the time the cause of action accured within the age of 18 years or insane, then the time of such disaiblity shall not be a part of the time limited for the commencement of the action.

TRUTH-IN-LENDING REQUIREMENTS

Federal - Truth-in-Lending Act. See Chapter 3 supra.

State - No statutory provision.

UNFAIR AND DECEPTIVE TRADE PRACTICES

NEV. REV. STAT. §§ 598.360, 41.600 (1983).

Prohibited Practices: 17 enumerated deceptive trade practices.

Special Requirements: None specified.

Scope: In course of his business or occupation.

Exclusions: Conduct complying with federal, state or local rules or statutes; publisher, advertising agencies, broadcasters and printers who disseminate information without knowledge of deceptive character.

Private Remedies: Actual damages if prevails as victim of consumer fraud.

Nevada

Limitations: DA shall not institute actions until state agency or regulatory authority has reasonable time to investigate or within 30 days if immediate action not mandated by circumstances.

State Remedies: Commissioner of Consumer Affairs, Director of Department of Commerce or DA enforces; injunction; court may make orders necessary including restitution; maximum $10,000 for violation of court order or injunction; $2500 maximum per willful violation; criminal penalties; rulemaking in commission and director.

Precedential Value of FTC Interpretations: None specified.

WARRANTIES

Unless excluded or modified, a warranty that the goods shall be merchantable is implied in a contract for their sale if the seller is a merchant with respect to goods of that kind. Under this section the serving for value of food or drink to be consumed either on the premises or elsewhere is a sale. § 104.2314.

Where the seller at the time of contracting has reason to know any particular purpose for which the goods are required and that the buyer is relying on the seller's skill or judgment to select or furnish suitable goods, there is, unless excluded or modified, an implied warranty that the goods shall be fit for such purpose. § 104.2315.

Implied warranties, including the warranty of merchantability can be limited or excluded in writing. Remedies for breach of warranty also can be limited. § 104.2316.

New Hampshire

BANKRUPTCY EXEMPTIONS

Federal - See Chapter 2 supra.

State - Homestead exemption - $5,000. § 480:1.

Personalty exemption - § 511:2.

(1) Necessary wearing apparel for the debtor and his family;

(2) Necessary beds, bedsteads and bedding for debtor and family;

(3) $2,000 worth of houshold furniture;

(4) One cooking stove, one heating stove, one refrigerator, and necessary utensils belonging to the same;

(5) One sewing machine;

(6) $400 worth of provisions and fuel;

(7) The uniforms, arms and equipment of persons in the militia;

(8) $800 worth of the bibles, the school books and the library of the debtor, used by him or his family;

(9) $1,200 worth of the debtor's tools of his occupation;

(10) One hog and one pig, and other pork when slaughtered;

(11) Six sheep and their fleeces;

(12) One cow, a yoke of oxen or a horse, when required for farming or teaming purposes, and 4 tons of hay;

(13) $300 worth of domestic fowl;

(14) The debtor's interest in one pew, and in one burial lot; and

(15) One automobile not exceeding $1,000 in value. § 511:2.

(16) Jewelry owned by debtor and family to the value of $500.00.

CREDIT REPORTING

Federal - Fair Credit Reporting Act. See Chapter 3 supra.

State - Disclosures - Agency to Consumer - Upon request, a consumer reporting agency must disclose to the consumer all information in its files, the sources of the information, and the recipients of any reports on the consumer it has furnished. § 359-B:9(I). Whenever an investigative consumer report is requested by any person, the consumer reporting agency shall furnish to the consumer investigated upon his request, and upon payment by the consumer investigated of a reasonable copy fee: (a) A copy of the investigative consumer report; (b) Information normally required to be disclosed upon proper request by the consumer; (c) The names of all sources of information in its files on the consumer which were actually

used in the preparation of the investigative consumer report; and, (d) The names of all persons to whom the investigative consumer report was sent. § 359-B:9(III).

DEBT COLLECTION

Federal - Fair Debt Collection Practices Act. See Chapter 3 supra.

State - A debt collector is prohibited from collecting or attempting to collect a debt in an unfair, deceptive, or unreasonable manner. § 358-C:2. Any debt collection or attempt to collect a debt shall be deemed unfair, deceptive or unreasonable if the debt collector:

(1) Communicates or attempts to communicate with the debtor, orally or in writing, by causing the telephone to ring excessively or at strange hours, or by using profane or vulgar language;

(2) Calls or writes the debtor at his place of employment, unless he has been unable to otherwise contact the debtor. The debt collector can call the debtor at his place of employment provided:

(a) The debtor has not told him otherwise;

(b) The debt collector does not reveal the nature of the call unless asked by the employer; and

(c) The debt collector makes no more than one phone call per month to the debtor at his place of employment;

(3) Fails to properly and accurately identify himself in all communications with the debtor;

(4) Uses or threatens the use of force or violence;

(5) Threatens to take any unlawful action or action which the debt collector in the regular course of business does not take;

(6) Communicates or threatens to communicate, except by proper judicial process, the fact of the debt to a person other than the person who might reasonably be expected to be liable therefor;

(7) Communicates directly with the debtor, except through proper legal action, after notification from an attorney, financial counseling organization or other person representing the debtor that all further communications should be addressed to the attorney;

(8) Communicates with debtor through the use of forms which simulate the form and appearance of judicial process;

(9) Makes any material false representation or implication concerning the debt;

(10) Makes any representation that the principal obligation will definitely be increased by the addition of attorney's fees or service fees, when they are illegal or when the award of such fee is in the discretion of the court;

(11) Collects or attempts to collect any interest or other charge which is not expressly authorized by the agreement creating the obligation;

(12) Threatens that nonpayment of the debt will result in the arrest of a person or seizure of their property without also notifying them of the necessity of a court order and their opportunity to appear in court and contest the charge; or

(13) Threatens to assign or sell to another the account of or claim against the debtor while representing that the result of such sale will be that the debtor will lose any defense to the debt or would be subjected to harsh, reindictive or abusive collection attempts. § 358-C:3.

Any debt collector who engages in prohibited conduct while attempting to collect a debt shall be liable to the debtor for the larger amount of:

(a) $200 plus costs and reasonable attorney's fees for each violation, in an action brought by an individual debtor; or

(b) All damages proximately caused by the violation. § 358-C:4(I).

HOME SOLICITATION SALE

Federal - FTC Trade Regulation Rule. See Chapter 3 supra.

State - The buyer has the right to cancel a home solicitation sale until midnight of the third business day following execution of an agreement or offer to purchase. Notice is effective when delivered, deposited in the mail properly addressed to the seller, postage prepaid, or the merchandise returned. The sales agreement must contain a conspicuous notice of this cancellation right. § 361-B:2(I).

The seller must return any funds received or property traded in to the buyer within 15 days after cancellation of the sale. § 361-B:2(I)(b,c). If seller does so the buyer must tender the goods at the point of delivery or pursuant to the seller's directions and at seller's cost. However, the buyer takes title to the goods, without obligation to pay for them, if the seller fails to make an effort to recover the property within 90 days after the sale of the property. §§ 361-B:2(I)(c), 361-B:2(IV,V).

A sale of goods for less than $25, a sale of a product of the seller's own labor or farm, and a sale at the seller's permanent place of business are not included in the protections provided by this statute. §§ 361-B:1, 320:3.

MINOR'S CONTRACT

Age of majority to contract - 18. §§ 21:44, 21-B:1.

Contractual liability - Minor is liable only for necessaries received as a result of a contractual relationship. § 382-A:1-103.

REPOSSESSION REQUIREMENTS

The creditor must file a complaint or application which states:

(1) That the creditor is the owner of the property claimed or is entitled to its possession, and shall attach a copy of any written instrument upon which such title or right is claimed;

(2) The name in which the property is wrongfully detained, the means by which the debtor came into possession of the property, and the cause of such detention;

(3) A particular description of the property, a statement of its actual value, the location of the property, and the name and address of the debtor; and

(4) Whether or not the property is exempt from execution, and the name and address of any known lienholder. § 536-A:2.

The creditor also must execute a bond with one or more sufficient sureties, approved by the court, double the value of the property as determined by the court. § 536-A:7.

The court shall then issue an order to the debtor requiring him to show cause why the property should not be taken from him and returned to the creditor. The order shall fix the date and time for the hearing which shall be no sooner than 10 days nor later than 20 days from the issuance of the order. § 536-A:3. The preliminary notice shall include a temporary order restraining the debtor from removing the property from the state or damaging, altering, or disposing of it. § 536-A:4. The writ of replevin may be issued prior to a hearing, if probable cause exists that:

(1) The debtor gained possession of the property by theft;

(2) The property consists of negotiable instruments or credit cards; or

(3) The property is perishable and will perish before any noticed hearing can be held, or the property is in danger of immediate destruction or concealment. § 536-A:12.

At any time prior to the hearing of the order to show cause or before delivery of the property to the creditor, the debtor can require the return of the property to his possession, by executing a bond with one or more sufficient sureties, approved by the court, in double the value of the property, as stated in the verified complaint of the creditor, or as determined by the court. § 536-A:14. At the order to show cause hearing the court will make a preliminary determination which party, with reasonable probability, is entitled to possession pending final adjudication, of the parties' claims. § 536-A:5.

STATUTE OF LIMITATIONS

Contract under seal - 20 years. § 508:5.
Simple written contract - 6 years. § 508:4.
Contract for sale of goods - 4 years. § 382-A:2-725.
Oral contracts - 6 years. § 508:4.
Judgments - Courts of record - 20 years. § 508:5.

TRUTH-IN-LENDING REQUIREMENTS

Federal - Truth-in-Lending Act. See Chapter 3 supra.

State - The New Hampshire Disclosure of Finance Charges Act requires that the creditor disclose to the buyer, concurrently with the consummation of the transaction to extend credit, his finance charges in dollars, rate of interest, monthly rate of charge or a combination thereof. § 399-B:2. Disclosure is required for sales, loans and revolving credit transactions. § 399-B:1. The following transactions are excluded from coverage under the New Hampshire Disclosure of Finance Charges Act:

(1) A sale accompanied with an instrument creating or involving liens against real estate or any interest in real estate;

(2) A sale of goods bought for commercial, industrial, or business use; and

(3) A sale of motor vehicles, accessories, equipment, parts or repairs. §§ 399-B:7, 399-B:8.

The violation of the statute is a crime. § 399-B:4.

UNFAIR AND DECEPTIVE TRADE PRACTICES

N.H. REV. STAT. ANN. § 358-A:1 (Supp. 1981 & Supp. 1983).

Prohibited Practices: *Unfair method of competition or any unfair or* deceptive acts or practices including 12 enumerated prohibitions.

Special Requirements: None specified.

Scope: Trade or commerce defined to include advertising, sale, offer for sale of any service, real or personal property, intangible and any other thing of value.

Exclusions: Trade or commerce permitted under state or U.S. laws; trade or commerce 20% of whose gross revenue is from interstate commerce, except if action occurs primarily and substantially in state and FTC fails to object to AG action after notice sent; actions FTC has commenced until dismissed, complies or issue cease and desist order; publishers, broadcasters, printers or others engaged in dissemination of information without knowledge of its deceptive character.

Private Remedies: Actual damages; equitable relief including injunction as court deems necessary and proper; $200 if violation established; double or treble damages for willful or knowing violation; costs and attorney's fees to prevailing plaintiff; class action for actual damages or may allow injunctive or equitable relief and attorney's fees.

New Hampshire

Limitations: Two year statute of limitations from date of transaction; no civil penalties if defendant in good faith misunderstanding of this statute; AG must send notice letters.

State Remedies: Rulemaking in AG; AG or consumer protection and antitrust division under AG supervision enforces; injunction; restitution; court may have necessary orders, may award maximum $10,000 per violation; receiver; criminal penalties for violation of act or injunction; costs and expenses may be awarded state, maximum $500 for failure to comply with notice; court may dissolve corporate franchise for habitual injunction violations.

Precedential Value of FTC Interpretations: Guided by FTC.

WARRANTIES

Unless excluded or modified, a warranty that the goods shall be merchantable is implied in a contract for their sale if the seller is a merchant with respect to goods of that kind. Under this section the serving for value of food or drink to be consumed either on the premises or elsewhere is a sale. § 382-A:2-314.

Where the seller at the time of contracting has reason to know any particular purpose for which the goods are required and that the buyer is relying on the seller's skill or judgment to select or furnish suitable goods, there is, unless excluded or modified, an implied warranty that the goods shall be fit for such purpose. § 382-A:2-315.

Implied warranties, including the warranty of merchantability can be limited or excluded in writing. Remedies for breach of warranty also can be limited. § 382-A:2-316.

New Jersey

BANKRUPTCY EXEMPTIONS

Federal - See Chapter 2 supra.

State - Homestead exemption - No statutory provision.

Workers Compensation - Exempt. § 34:15-29.

Personalty exemption - All wearing apparel of the debtor, and $1,000 worth of goods and chattel, shares of stock or interests in any corporation and personal property of every kind. § 2A:17-19.

Insurance - Life insurance for benefit of another; annuities up to $500/month; proceeds of health insurance and insurance for dismemberment or disability. §§ 17B:24-6, 7 & 8.

CREDIT REPORTING

Federal - Fair Credit Reporting Act. See Chapter 3 supra.

State - If a creditor, having transmitted to a consumer a statement of the consumer's account, receives from the consumer at an address designated therefor by the creditor on the statement within 60 days of the mailing of said statement, a written notice, on a document other than a document provided by the creditor to accompany payment, by mail or other delivery setting forth sufficient information to enable the creditor to identify the consumer and the account, the amount and transaction shown in the statement which the consumer in good faith believes to be a billing error, and the facts providing the basis for the consumer's belief that the statement is in error; the creditor shall not communicate unfavorable credit information concerning the consumer to any person, including but not limited to credit bureaus or credit reporting agencies, based upon the consumer's failure to pay the amount believed by him to be a billing error, until the creditor has:

a. Not later than 30 days after receipt of the notice, mail a written acknowledgment to the consumer; and

b. Not later than 90 days after receipt of the notice and prior to taking any action to collect the amount believed by the consumer to be a billing error, (1) make appropriate corrections in the account of the consumer and mail to the consumer a written notice stating that the amount believed to be in error has been corrected and will be shown on the next statement mailed to the consumer or (2) send a written notice to the consumer setting forth the reasons why the creditor believes the account of the consumer was correctly shown in the statement. § 56:11-3.

Notwithstanding the receipt by a creditor of a notice from a consumer as described in this act, a creditor may, subject to the provisions of this act, transmit statements of account to the consumer which include an amount believed by the consumer to be a billing error, and the creditor, further, may undertake collection procedures not attributable to such consumer's failure to pay, nor directed at, such disputed amount. § 56:11-4.

Any creditor, having received a notice from a consumer as provided in this act, who fails to comply with the requirements of the act:

a. If such an amount is not in fact a billing error, forfeits any rights to collect from the consumer any finance charge or other charge imposed by the creditor in connection with the amount so specified, from the date of the mailing of such notice to the date the creditor complies with section 3 of this act; and

b. If such amount is in fact a billing error, is liable to the consumer in an amount equal to the sum of:

(1) the actual damages sustained by the consumer as a result of the failure of the creditor to comply with such section;

(2) twice the amount of the billing error shown in the statement of the consumer's account except that liability under this paragraph shall not be greater than $100.00; and (3) in the case of any successful action to enforce the foregoing liability, the costs of the action together with a reasonable attorney's fee as determined by the court.

c. If such amount is in fact a billing error but the creditor shows by a preponderance of evidence that the violation was not intentional and resulted from bona fide error made despite the maintenance of procedures reasonably adopted to avoid any such error, the creditor shall be liable to the consumer only to the extent of the actual damages sustained by the consumer as a result of the failure of the creditor to comply with such section and the costs of any action brought to enforce collection of such erroneous bill together with a reasonable attorney's fee as determined by the court. § 56:11-7.

DEBT COLLECTION

Federal - Fair Debt Collection Practices Act. See Chapter 3 supra.

State - New Jersey law provides that a person is guilty of a disorderly persons offense when, with purpose to enforce a claim or judgment for money or property, he sends, mails or delivers to another person a notice, document or other instruments which has no judicial or official sanction and which in its format or appearance simulates a summons, complaint, court order or process or an insignia, seal or printed form of a Federal,

State or local government or an instrumentality thereof, or is otherwise calculated to induce a belief that such notice, document or instrument has a judicial or official sanction. § 2C:21-19(d). A person convicted of a disorderly persons offense may be sentenced to imprisonment for a definite term which shall be fixed by the court and shall not exceed 6 months, § 2C:43-8, and/or a fine of up to $1,000.00. § 2C:43-3.

HOME SOLICITATION SALE

Federal - FTC Trade Regulation Rule. See Chapter 3 supra.

State - The buyer has the right to cancel a home solicitation sale until 5 p.m. of the third business day following execution of an agreement or offer to purchase. § 17:16C-61.6. Cancellation of the agreement occurs when the buyer gives notice of his intent to rescind the sale by certified mail, return receipt requested, to the seller at the address stated in the agreement. § 17:16C-61.5(a)(1). The sales receipt must contain a conspicuous notice of the cancellation right. § 17:16C-61.6.

The buyer must tender the goods at his or her residence and pursuant to the retail installment contract. § 17:16C-61.5(a)(2). The seller must pick up the goods at his own expense, and return any funds received or goods traded in to the buyer within 10 business days after receipt of the notice of cancellation. § 17:16C-61.5(b). The seller must keep a record of the receipt of the notice of cancellation for at least 18 months. § 17:16C-61.5(d).

The following transactions are not included in the protections provided by this statute:

(1) A sale for $25 or less;

(2) A sale of motor vehicles or boats, and motor vehicle or boat accessories;

(3) Mail order, telephone, or catalogue sales;

(4) A sale in which the buyer has requested the retail seller to enter into the sale at a place other than the retail seller's place of business; and

(5) A sale in which the buyer has requested the seller to conduct a demonstration or exhibition at a place other than the seller's place of business and also requested to enter into a sale at that place at the same time he has requested such demonstration or exhibition. § 17:16C-61.5.

MINOR'S CONTRACT

Age of majority to contract - 18. § 9:17B-1.

Contractual liability - Minor is liable only for necessaries received as a result of a contractual relationship. § 12A:1-103.

New Jersey

REPOSSESSION REQUIREMENTS

Notice and an opportunity for the debtor to be heard prior to repossession of the property are not required by statute. However, the New Jersey Supreme Court declared that: "insofar as our statute deviates from [the standard of notice and hearing set forth in Fuentes v. Shevin, 407 U.S. 67 (1972)] it . . . is unconstitutional." Singer v. Gardiner, 65 N.J. 403, 415 (1974).

The New Jersey Supreme Court also adopted Court Rule 4:61 to establish the procedure for replevin. This rule applies only to repossession undertaken under a writ executed by a court officer or sheriff's officer. It does not apply to self help repossession undertaken by a secured creditor under Article 9-503 of the Uniform Commercial Code (N.J.S.A. 12A:9-503).

The rule requires a hearing by the court on at least 3 days notice to debtor. The debtor must file his response at least 1 day before the hearing. The court will grant the motion for possession if he finds a probability that final judgment will be in favor of movant. Court Rule 4:61-1(a). The repossession may be allowed without hearing if the court finds the party in possesion is about to abscond, or destroy, hide or dispose of the property. Court Rule 4:61-1(b).

The debtor can prevent delivery of the goods to the creditor by posting bond in double the amount of goods and by delivering a written claim to the property to the sheriff, specifying the goods so claimed, within 48 hours after service of the writ upon him. § 2A:59-6. In lieu of the bond, the sheriff may accept a deposit in cash, amounting to double the appraised value of the goods. § 2A:59-8.

STATUTE OF LIMITATIONS

Contract under seal - 16 years. § 2A:14-4. (Except when plaintiff is a merchant or financial institution - then 6 years).
Simple written contract - 6 years. § 2A:14-1.
Contract for sale of goods - 4 years. § 12A:2-725.
Oral contracts - 6 years. § 2A:14-1.
Judgments - Courts of record - 20 years. § 2A:14-5.
Personal injuries. § 2A:14-2.

TRUTH-IN-LENDING REQUIREMENTS

Federal- Truth-in-Lending Act. See Chapter 3 supra.

State - To the extent that the provisions of New Jersey law are inconsistent with respect to disclosure, advertising, terminology, type size, method of computation of finance charges, form content or time of delivery provisions and requirements of the federal Truth-in-Lending Act

and Regulation Z, compliance with the federal rules is deemed compliance with the New Jersey laws. § 17:3B-1. Retail charge accounts are subject to the requirements of the federal Truth-in-Lending Act and Regulation Z applicable to open end credit.

UNFAIR AND DECEPTIVE TRADE PRACTICES

N.J. STAT. ANN. § 56:8-1 (West 1964 & Supp. 1983-1984).

Prohibited Practices: Unconscionable commercial practice, deception, fraud or knowing concealment, suppression or omission of material fact with intent to cause reliance including numerous enumerated prohibitions.

Special Requirements: None specified.

Scope: In connection with sale or advertisement of any merchandise or real estate; sales by definition include rentals, offers for sale and merchandise includes services or anything offered to the public for sale.

Exclusions: Advertisements done by publisher, radio and television media, with no knowledge of falsity; refund policy does not apply to perishables, custom ordered merchandise, motor vehicle or merchandise by law not returnable.

Private Remedies: Actual and treble damages; attorney's fees and costs; refund of money; other appropriate legal or equitable relief.

Limitations: Must suffer ascertainable loss.

State Remedies: AG or director of county or municipal office of consumer affairs enforces; rulemaking in AG; restitution; injunction; receiver; annul corporate charter; revoke license; enjoin from managing or owning business or serving as officer or director; costs to AG; maximum $2000 for first offense; maximum $5000 each subsequent offense; cease and desist orders; maximum $25,000 per violation of such order.

Precedential Value of FTC Interpretations: None specified.

WARRANTIES

Unless excluded or modified, a warranty that the goods shall be merchantable is implied in a contract for their sale if the seller is a merchant with respect to goods of that kind. Under this section the serving for value of food or drink to be consumed either on the premises or elsewhere is a sale. § 12A:2-314.

Where the seller at the time of contracting has reason to know any particular purpose for which the goods are required and that the buyer is

relying on the seller's skill or judgment to select or furnish suitable goods, there is, unless excluded or modified, an implied warranty that the goods shall be fit for such purpose. § 12A:2-315.

Implied warranties, including the warranty of merchantability can be limited or excluded in writing. Remedies for breach of warranty also can be limited. § 12A:2-316.

New Mexico

BANKRUPTCY EXEMPTIONS

Federal - See Chapter 2 supra.

State - Homestead exemption - $20,000. § 42-10-9. Persons who do not own a homestead may in addition to other exemptions hold exempt real or personal property in the amount of $2,000 in lieu of the homestead exemption. § 42-10-10.

Personalty exemption -

(1) $500 worth of personal property;
(2) One motor vehicle in the amount of $4,000;
(3) Tools of trade up to $1,500;
(4) Jewelry in the amount of $2,500;
(5) Clothing, furniture, books and medical-health equipment being used for the health of the person and not for his profession;
(6) Any interest in or proceeds from a pension or retirement fund, §§ 42-10-1 and 42-10-2;
(7) Life, accident and health insurance benefits, § 42-10-3; and
(8) Benefits from benevolent associations in the amount of $5,000, § 42-10-4.

CREDIT REPORTING

Federal - Fair Credit Reporting Act - See Chapter 3 supra.

State - Issuance of Consumer Reports. A credit bureau may supply a non-credit-granting government agency only identifying information, such as names, addresses, former addresses, places of employment and former employment, except in response to legal process or for investigation for security purposes § 56-3-3. Reports to businesses, professionals and individuals shall be made only for the purposes of granting credit or other bona fide business transactions such as evaluation of present or prospective credit risks or evaluation of the qualifications of present or prospective employees. § 56-3-4.

Disclosures - Agency to Consumer - A credit bureau upon request and after adequate identification, must disclose the contents of all information about that consumer which is included in his credit report or rating. § 56-3-2(B).

Prohibited Information - Obsolete Information - A credit bureau may report the following matters for no longer than the specified periods:

(1) Bankruptcies of all types for not longer than fourteen years from the date of adjudication of the most recent bankruptcy;

(2) Accounts placed for collection and accounts charged to profit and loss for not longer than seven years, or until the governing statute of limitations has expired, whichever is the longer period;

(3) Suits and judgments for not longer than seven years from date of entry, or until the governing statute of limitations has expired, whichever is the longer period;

(4) Paid tax liens for not longer than seven years and unpaid tax liens for any length of time;

(5) Arrests and indictments pending trial, or convictions of crimes, for not longer than seven years from date of release or parole. Such items shall no longer be reported if at any time it is learned that after a conviction a full pardon has been granted, or after an arrest or indictment a conviction did not result; and

(6) Any other data not otherwise specified in this section, for not longer than seven years.

A credit bureau shall delete as soon as practical any items of derogatory information that can no longer be verified. § 56-3-6.

Procedures

Compliance - In dealing with businesses, professionals, and individuals, the credit bureau must require service contracts to be executed in which the subscriber certifies that inquiries will only be made for bona fide business purposes. Service will be denied to a subscriber who fails to make the certification. § 56-3-4.

Personnel Reporting - A credit bureau which furnishes a personnel-reporting service shall adopt rigid safeguards in order that the specialized information developed in the course of such investigations other than credit information is maintained separately and not reported except in connection with subsequent personnel investigations. § 56-3-5.

Disputed Accuracy - A credit bureau must give the consumer forms upon which to correct errors. The credit bureau also must make any necessary reinvestigation for the purposes of updating and correcting a credit report, if a consumer has been denied credit as a result of the report. If the consumer has not been denied credit, the credit bureau may charge $5 for the reinvestigation. § 56-3-2(C).

Violations and Penalties - After a credit bureau has been given written notice of error in its credit report, the credit bureau is liable for any subsequent report which fails to correct the error. § 56-3-2(D). A credit bureau that willfully fails to comply with the provisions relating to collection agencies is liable to the consumer in an amount equal to:

(A) Actual damages;
(B) Punitive damages as the court may allow; and

(C) In a successful action under this section, costs of the action, and reasonable attorney's fees. § 56-3-7.

A credit bureau that negligently fails to comply with the provision of the collection agencies is liable to the consumer in an amount equal to (1) actual damages sustained; and (2) in a successful action under this section, costs of the action and reasonable attorney's fees. § 56-3-7. A person who knowingly and willfully obtains information from a credit bureau under false pretenses, or an officer or employee who knowingly and willfully provides information concerning a consumer to a person or firm not authorized to receive that information is guilty of a fourth degree felony. § 56-3-8.

DEBT COLLECTION

Federal - Fair Debt Collection Practices Act. See Chapter 3 supra.

State - A. New Mexico licenses Collection Agencies and prohibits any collection agency from using any of the following methods in an attempt to collect a debt:

(1) Advertise for sale or threaten to advertise for sale any claim as a means of endeavoring to enforce a payment thereon, § 61-18-55;

(2) Publish or post, or cause to be published or posted any list of debtors; and

(3) Use any method contrary to the postal laws and regulations of the United States. § 61-18-56.

B. The Unfair Trade Practice Act also applies to collection agencies. § 57-12-1.

HOME SOLICITATION SALE

Federal - FTC Trade Regulation Rule. See Chapter 3 supra.

State - No statutory provision.

MINOR'S CONTRACT

Age of majority to contract - 18. § 28-6-1.

Contractual liability - Minor is liable only for necessaries received as a result of a contractual relationship. § 55-1-103.

REPOSSESSION REQUIREMENTS

The creditor must make an affidavit stating:

(1) That the creditor is lawfully entitled to possession of the property;

(2) That the property was wrongfully taken or wrongfully detained by the debtor;
(3) That the creditor has reason to believe that the debtor may conceal, dispose of, or waste the property, during the pendency of the trial;
(4) That the right of action accrued within one year; and
(5) Specific facts from which it clearly appears that the other allegations are true. § 42-8-5.

The creditor also must execute a bond with sufficient sureties to the officer to whom the writ is directed, in double the value of the property. § 42-8-6.

Upon the debtor's motion before trial, the court shall detemine the truth of the facts stated in the creditor's affidavit. If the creditor fails to prove the truth of the facts stated, the writ is dissolved, debtor receives damages, and the action proceeds as if no writ has been issued. § 42-8-19. Any time within five days after service of the writ of replevin on him, the debtor can regain possession of the property by giving to the sheriff a bond with two or more sufficient sureties in double the value of the property as stated in the creditor's affidavit. § 42-8-21.

STATUTE OF LIMITATIONS

Contract under seal - 6 years. § 37-1-3.
Simple written contract - 6 years. § 37-1-3.
Contract for sale of goods - 4 years. § 55-2-725.
Oral contracts - 4 years. § 37-1-4.
Judgments - Courts of record - 7 years. § 37-1-2.

TRUTH-IN-LENDING REQUIREMENTS

Federal - Truth-in-Lending Act. See Chapter 3 supra.

State - Compliance with the federal Truth-in-Lending Act and Regulation Z needed to comply with the Retail Instalment Sales Act § 56-1-1. This statute requires that (1) the contract be designated "Retail Installment Contract" in large type, (2) contain advice that buyer not sign before reading or if it contains blank spaces; and (3) a notice that buyer is entitled to a copy of the contract. § 56-1-2,3. No contract may provide (1) for acceleration of installment without default, (2) authorization to confess judgment or collect the debt, (3) waiver of defenses. § 56-1-5.

UNFAIR AND DECEPTIVE TRADE PRACTICES

N.M. STAT. ANN. § 57-12-1 (1978 & Supp. 1983).

Prohibited Practices: Unfair or deceptive trade practices, including 17 enumerated prohibitions, and 2 enumerated unconscionable trade practices.

New Mexico

Special Requirements: False or misleading statements must be knowingly made; unconscionable trade practice must act to plaintiff's detriment.

Scope: Trade or commerce includes advertising, sale, or offers for sale of any services, property, commodity or thing of value. Unfair or deceptive practice and unconscionable trade practice must be in connection with sale, lease, rental or loan of goods or services, extension of credit or debt collection in regular course of trade.

Exclusions: Actions permitted by state or U.S. laws; publishers, broadcasters, printers or others who reproduce material without knowledge of deceptive or unconscionable character.

Private Remedies: Injunction; $100 minimum damages; actual damages; costs to prevailing party, unless court directs otherwise; attorney's fees to prevailing party if plaintiff brings groundless suit or defendant willfully violates; class actions for actual damages or minimum $100 damages.

Limitations: AG must act in public interest; acceptance of restitution pursuant to assurance bars any damage recovery on same practice; actual or minimum damages only if private party show suffered loss.

State Remedies: AG or DA if delegated by AG enforces; injunction; restitution; maximum $5000 per willful violation; rulemaking in AG; writ of ne exeat may be granted.

Precedential Value of FTC Interpretations: Guided by FTC.

WARRANTIES

Unless excluded or modified, a warranty that the goods shall be merchantable is implied in a contract for their sale if the seller is a merchant with respect to goods of that kind. Under this section the serving for value of food or drink to be consumed either on the premises or elsewhere is a sale. § 55-2-314.

Where the seller at the time of contracting has reason to know any particular purpose for which the goods are required and that the buyer is relying on the seller's skill or judgment to select or furnish suitable goods, there is, unless excluded or modified, an implied warranty that the goods shall be fit for such purpose. § 55-2-315.

Implied warranties, including the warranty of merchantability can be limited or excluded in writing. Remedies for breach of warranty also can be limited. § 55-2-316.

New York

BANKRUPTCY EXEMPTIONS

Federal - See Chapter 2 supra.

State - Homestead exemption - $10,000. CPLR § 5206(a).

Also, land set aside as a family or private burying ground if: (1) a portion of it has been actually used for that purpose; (2) it must not exceed in extent one-fourth of an acre; and, (3) it must not contain any building or structure, except one or more vaults or other places of deposit for the dead. CPLR § 5206(f).

Personalty exemption -

(1) All stoves kept for use in the debtor's dwelling house and the necessary fuel for 60 days; one sewing machine and it appurtenances;

(2) The family bible, family pictures, and school books, plus $50 worth of other books used as part of the debtor's library;

(3) A seat or pew occupied by the debtor or his family in a place of public worship;

(4) $450 worth of domestic animals and the necessary food for them for 60 days; all necessary food for the debtor and his family for 60 days;

(5) All wearing apparel, household furniture, one mechanical gas or electric refrigerator, one radio receiver, one television set, crockery, tableware and cooking utensils necessary for the judgment debtor and the family;

(6) A wedding ring; a watch not exceeding $35 in value;

(7) The necessary working tools and implements, including those of a mechanic, farm machinery, team, professional instruments, furniture and library, not exceeding $600 in value, together with the necessary food for the team for sixty days, provided the articles are necessary to the carrying on of the debtor's profession or calling;

(8) Any property held in trust for the debtor, where the trust has been created by a person other than the judgment debtor;

(9) Ninety percent of the income or other payments from a trust, the principal of which is exempt; ninety percent of the earnings of the debtor for personal services rendered within 60 days before, and at any time after, an income execution is delivered to the sheriff; and, payments pursuant to an award in a matrimonial action;

(10) Uniform, arms, and equipment used by a person in the military; and

(11) Ninety percent of any money or debt due or to become due to the debtor for the sale of milk produced on a farm operated by him and delivered for his account to a licensed milk dealer.

(12) Money deposited as security for the rental of real property to be used as a residence and money deposited as security with a gas, electric, water, steam, telegraph or telephone corporation rendering utility services to such residence.

(13) Medical and dental accessions to the human body and all personal property or equipment needed to sustain or maintain major life activities or to provide mobility for a permanently disabled person, except such part as a court determines to be unnecessary for the reasonable requirements of the debtor and his dependents.

(14) Guide dogs, hearing dogs, or any animals trained to aid a permanently disabled person, together with the food for such dogs or animals, except such part as a court determines to be unnecessary for the reasonable requirements of the debtor and his dependents. CPLR § 5205.

CREDIT REPORTING

Federal - Fair Credit Reporting Act. See Chapter 3 supra.

State - A consumer report may only be furnished in response to a court order, to a consumer's written request, to persons who will use it to check on the consumer's credit worthiness, employment purposes, insurance, licensing, or where a legitimate business need to know exists. The consumer must be informed of the request for his consumer report. Consumers have a right to review their credit information and can have errors corrected or identified as disputed by the consumer. Chapter 20, Article 25, §§ 380-380-s.

DEBT COLLECTION

Federal - Fair Debt Collection Practices Act. See Chapter 3 supra.

State - All debt collectors are prohibited from using any of the following methods in attempting to collect a consumer debt:

(1) Simulate in any manner a policeman or government official or legal or judicial process;

(2) Knowingly collect an unjust or illegal debt;

(3) Disclosing false information affecting the debtor's credit worthiness;

(4) Communicating with debtor's employer without consent from the debtor;

(5) Disclosing information about a disputed debt without also disclosing that the debt is disputed;

(6) Abusing or harrassing the debtor or his family;

(7) Threatening any action which the principal creditor normally does not take. Chapter 20, Article 29H, § 601.

New York

HOME SOLICITATION SALE

Federal - FTC Trade Regulation Rule. See Chapter 3 supra.

State - New York's Door-To-Door Sales Protection Act is found at Chapter 40, Article 10A, § 425-431.

The buyer has the right to cancel a home solicitation sale until midnight of the third business day following execution of an agreement or offer to purchase. Cancellation occurs when the buyer gives written notice of cancellation to the seller at the address stated in the agreement. Notice is effective, if given by mail, when deposited in the mail properly addressed to the seller, postage prepaid. § 427.

The sales agreement must contain a conspicuous notice of this cancellation right. Until the seller has notified the buyer of his rights of cancellation, the buyer may notify the seller in any manner of his intention to cancel. § 428.

The buyer must take reasonable care of the goods and tender the goods at his or her residence to the seller upon demand. However, the buyer takes title to the merchandise if the seller fails to demand such possession within 20 days after receipt of the notice of cancellation. § 430.

The buyer may not cancel a home solicitation sale if the buyer requested the services due to an emergency, and the buyer has signed a waiver of his right to cancel. § 426. The seller must return any funds received or goods traded in to the buyer within 10 days after cancellation of the sale. § 429. The seller is not entitled to compensation for any services due prior to cancellation of the agreement. § 430.

A sale of farm equipment, a sale under a preexisting revolving credit account, and a previously negotiated sale are not included in the protections provided by this statute. Also excluded are sales consumated entirely by mail or telephone, sales of $25 or less, real estate, insurance, or securities transactions, and sales initiated by the buyer which requested the seller to visit the buyer's home to repair personal property. § 426.

MAIL ORDER SALES

Federal - FTC Trade Regulation Rule. See Chapter 3 supra.

State - The New York mail-order merchandise law applies to any mail-order business which is located in New York or advertises a New York state mailing address. The law provides that no person, partnership, firm, association, corporation, agent or employee thereof who conducts a mail-order business shall:

(A) Advertise for sale merchandise which is not reasonably anticipated to be available for shipment within thirty days from the date of publication of advertisement or from the date the catalog or circular is mailed, unless a longer period of time is clearly and conspicuously stated in such advertisement. Whenever the term "thirty days" appears in this section, such term shall include a longer period of time if clearly and conspicuously stated in such advertisement;

(B) Accept orders for merchandise which is not reasonably anticipated to be available for shipment within thirty days from the date of receipt of the order together with payment or with charge account authorization;

(C) Unless the seller qualifies and elects to be governed by paragraph (I) fail to either ship ordered merchandise or issue a refund (if payment has been remitted) for ordered merchandise which is not available within thirty days of receipt of the order and payment therefor;

(D) Unless the seller qualifies and elects to be governed by paragraph (I) fail to either ship ordered merchandise or issue a credit (if charge-account authorization has been given and exercised by seller) for ordered merchandise which is not available within thirty days of receipt of the order and charge-account authorization therefor;

(E) Fail to issue a refund or credit the customer's account if promised, upon demand of the customer within thirty days from the date of receipt of the request for such refund, provided the merchandise has been returned, if required;

(F) Fail to maintain a record of each complaint alleging failure to ship merchandise or furnish services connected with merchandise solicited and ordered on a pre-paid basis and the disposition of each such complaint. Such record shall be kept for a period of at least eighteen months following the disposition of such complaint;

(G) Fail to maintain records showing the employment of systems and procedures designed to comply with the requirements of this subdivision;

(H) Fail to disclose in all advertising or other promotional materials containing a post office box address including order blanks and forms, the legal name of the company soliciting the order and the complete street address of such company;

(I) Where the seller, due to circumstances beyond his control, is unable to make shipment within the time required by this section, the provisions of paragraphs (C) and (D) of this subdivision shall not apply if the seller elects to be governed by this paragraph and does either of the following:

(i) Sends to the buyer a notice of delayed shipment, stating the duration of the expected delay, providing the buyer with the opportunity to express his choice whether to cancel his order and receive a refund, be shipped the merchandise or be furnished the services by a specified later date, or to accept substitute merchandise of equivalent or superior quality. If the seller proposes to substitute merchandise, he shall describe it in detail, indicating how it differs from the goods ordered. The notice shall be sent by first class mail and accompanied by a self-addressed,

postage paid device upon which the buyer may indicate his choice, and mailed in advance of the expiration of the thirty day period, or that time stated in the solicitation. The notice shall expressly advise the buyer that the order will be immediately cancelled and a refund forwarded where the buyer does not choose otherwise by response within thirty-five days of the date of mailing by the seller of the above notice. If, prior to shipment, the seller receives a response from the buyer requesting refund, such refund shall be promptly made. If no response is received prior to the expiration of the thirty-five day period after the date of the mailing by the seller of the above notice, the seller shall make a prompt refund.

(ii) Sends the customer substitute merchandise of equivalent or superior quality, if the consumer is extended the opportunity to return the substituted merchandise and the seller promises to refund to the customer the postage cost of returning such merchandise together with any portion of the purchase price previously paid by the customer. Prior to or at the time of shipment of the substitute merchandise, a notice shall be provided to the customer stating the right to obtain a refund and reimbursement for the postage cost incurred in returning the substituted merchandise.

For purposes of subparagraphs (i) and (ii) of this paragraph, merchandise may not be considered of "equivalent or superior" quality if it is not substantially similar to the merchandise ordered, or not fit for the usual purposes for which such merchandise is used, or if the seller normally offers the substituted merchandise at a price lower than the price of the merchandise ordered.

Whenever there shall be a violation of this section, an application may be made by the attorney general in the name of the people of the state of New York to a court or justice having jurisdiction to issue an injunction, and upon notice to the defendant of not less than five days, to enjoin and restrain the continuance of such violations; and if it shall appear to the satisfaction of the court or justice that the defendant has, in fact, violated this section, an injunction may be issued by such court or justice, enjoining and restraining any further violation, without requiring proof that any person has, in fact, been injured or damaged thereby. In any such proceeding the court may make allowances to the attorney general as provided in section eighty-three hundred three, subdivision six of the civil practice law and rules, and direct restitution. In connection with any such proposed application, the attorney general is authorized to take proof and make a determination of the relevant facts and to issue subpoenas in accordance with the civil practice law and rules. Chapter 20, Article 26, § 396-m.

MINOR'S CONTRACT

Age of majority to contract - 18. Chapter 24-A, Article 1, § 1-202.

Contractual liability - Minor is liable only for necessaries received as a result of a contractual relationship. UCC § 1-103.

New York

REPOSSESSION REQUIREMENTS

The creditor must make an affidavit which clearly identifies the property; states the creditor's rights to possession; alleges that the debtor wrongfully holds the property; tells what actions creditor has commenced; gives the value of property; and if seizure without notice is desired, justifies this with facts. The creditor must also enter into sufficient surety, acceptable to the court, of twice the value of the property. The creditor, in a seizure without notice, must move for an order giving the debtor notice within 5 days of seizure. Upon motion with sufficient grounds and surety, the debtor can have court order return the property to the debtor. CPLR 7102 and 7103.

STATUTE OF LIMITATIONS

Contract under seal - 6 years. CPLR § 213.
Simple written contract - 6 years. CPLR § 213.
Contract for sale of goods - 4 years. UCC § 2-725.
Oral contracts - 6 years. CPLR § 213.
Judgments - Courts of record - 20 years. CPLR § 211(b).

TRUTH-IN-LENDING REQUIREMENTS

Federal - Truth-in-Lending Act. See Chapter 3 supra.

State - All New York credit transactions are subject to the Federal Truth-in-Lending Act.

UNFAIR AND DECEPTIVE TRADE PRACTICES

N.Y. EXEC. LAW § 63(12) (Consol. Supp. 1983-1984).

Prohibited Practices: Repeated fraudulent or illegal acts, including deception, suppression or unconscionable contractual provisions.

Special Requirements: None specified.

Scope: Conduct or transaction of business.

Exclusions: None specified.

Private Remedies: None specified.

Limitations: Injunction had upon 5 days notice.

State Remedies: AG enforces; injunction; restitution; damages; cancel filed certificate; court may award other relief proper.

New York

Precedential Value of FTC Interpretations: None specified.

N.Y. GEN. BUS. LAW § 349 and § 350 (Consol. 1968 & Supp. 1983-1984).

Prohibited Practices: Deceptive acts or practices and false advertising.

Special Requirements: None specified.

Scope: In conduct of business, trade or commerce or furnishing of any service in state.

Exclusions: Action subject to and in compliance with FTC, U.S. agency or federal court rules; any broadcaster or printer of advertising.

Private Remedies: Injunction for deceptive act; actual damages; minimum $50; treble damages discretionary up to $1,000 if is willful or knowing violation; court "may" award attorney's fees to prevailing plaintiff.

Limitations: AG must give notice and provide opportunity for hearing before injunction, unless not in public interst; private action predicated on injury.

State Remedies: AG enforces; injunction, restitution available for deceptive act; $500 per violation of false advertising.

Precedential Value of FTC Interpretations: None specified.

WARRANTIES

Unless excluded or modified, a warranty that the goods shall be merchantable is implied in a contract for their sale if the seller is a merchant with respect to goods of that kind. Under this section the serving for value of food or drink to be consumed either on the premises or elsewhere is a sale. UCC § 2-314.

Where the seller at the time of contracting has reason to know any particular purpose for which the goods are required and that the buyer is relying on the seller's skill or judgment to select or furnish suitable goods, there is, unless excluded or modified, an implied warranty that the goods shall be fit for such purpose. UCC § 2-315.

Implied warranties, including the warranty of merchantability can be limited or excluded in writing. Remedies for breach of warranty also can be limited. UCC § 2-316.

Purchasers of new motor vehicles during the first 18,000 miles of oepration or during the period of two years following the date of original delivery, whichever is the earlier date, has several statutory rights to

enforce all applicable express warranties for defects or conditions in motor vehicles that substantially impair its value. Upon promptly reporting the "non-conformity" to the manufacturer, its agents, or its authorized dealer, the "non-conformity" or defect shall be corrected at no charge to the consumer and if the manufacturer is unable to repair or correct any "non-conformity" the consumer has the option of having the manufacturer replace the motor vehicle with a comparable motor vehicle or accept return of the vehicle from the consumer and refund to the consumer the full purchase price including sales taxes, etc., less a reasonable allowance for the consumer's use of the vehicle in excess of the first 12,000 miles of operation. The refund or replacement option is available for a "non-conformity' that has bene subject to repair four or more times within the first 18,000 miles of operation or two years, or if the vehicle is out of service by reason of repair of "non-conformity" for a cumulative total of 30 days or more.

An informal dispute settlement procedure may also be applicable. See General Busienss Law § 198-A.

North Carolina

BANKRUPTCY EXEMPTIONS

Federal - Not applicable. § 1C-1601(f).

State -

1. The exemptions under G.S. § 1C-1601(a) or under Article X of the North Carolina Constitution ($1,000.00 real property and $500.00 personal property); and

2. Any interest in property which the debtor has an interest as a tenant by the entirety or joint tenant, to the extent that such interest as a tenant by the entirety or joint tenant is exempt from process under applicable non-bankruptcy state law.

3. Exemptions are taken in equity, i.e., the difference between the fair market value of an individual's property and valid liens. Provided, however, an individual may utilize § 522(f) of the Bankruptcy Code.

4. G.S. § 1C-1601(a) provides that each individual, resident of this State, who is a debtor, is entitled to retain free of the enforcement of the claims of his creditors:

(a) Homestead. The debtor's aggregate interest, not to exceed $7,500.00 in value, in real property or personal property that the debtor or a dependent of the debtor uses as a residence, in a cooperative that owns property that the debtor or a dependent of the debtor uses as a residence, or in a burial plot for the debtor or a dependent of the debtor.

(b) The debtor's aggregate interest in any property, not to exceed $2,500.00 in value, less any amount of the homestead exemption used.

(c) The debtor's interest, not to exceed $1,000.00 in value, in one motor vehicle.

(d) The debtor's aggregate interest, not to exceed $2,500.00 in value for the debtor plus $500.00 for each dependent of the debtor, not to exceed $2,000.00 total for dependents, in household furnishings, household goods, wearing apparel, appliances, books, animals, crops, or musical instruments, that are held primarily for the personal, family, or household use of the debtor or a dependent of the debtor.

(e) $500.00 in professional books or tools of trade.

(f) Life insurance.

(g) Prescribed health aids.

(h) Recovery of compensation for personal injury.

CREDIT REPORTING

Federal - Fair Credit Reporting Act. See Chapter 3 supra.

State - No statutory provision.

DEBT COLLECTION

Federal - Fair Debt Collection Practices Act. See Chapter 3 supra.

State - A collection agency that has properly obtained a permit and posted at least a $5,000 bond must at all times identify itself (including permit number) in all correspondence with debtors. §§ 66-49.28, 66-49.34. The collection agency also must furnish a debtor who pays in cash with a receipt. § 66-49.38. The collection agency is strictly prohibited from using any of the following methods to collect any debts:

(1) Threats and coercion; § 66-49.43,

(2) Any conduct the natural consequence of which is to oppress, harass or abuse; § 66-49.44,

(3) Any unreasonable publication of a consumer's debt; § 66-49.45,

(4) Deceptive representation; § 66-49.46,

(5) Any unconscionable means. § 66-49.47.

(6) Unauthorized practice of law. § 66-49.48.

For any violation of the prohibited acts, a collection agency may be liable for the debtor's actual damages and for an additional sum of not less than $100 nor greater than $1000. § 66-49.50. The same prohibitions are applicable to persons or businesses whose primary business is not the collection of bad debts, i.e. an attorney. §§ 75-50 to 75-56.

HOME SOLICITATION SALE

Federal - FTC Trade Regulation Rule. See Chapter 2 supra.

State - The buyer has the right to cancel a home solicitation sale until midnight of the third business day following execution of an agreement or offer to purchase. § 25A-39(a). Cancellation occurs when the buyer gives written notice of cancellation to the seller. Notice of cancellation is effective when delivered or when deposited in the mail properly addressed to the seller, postage prepaid. § 25A-39(c). Additionally, if the goods or services have not been received by the buyer within 30 days after execution of the contract (and the delay is the fault of the seller), the buyer can rescind the contract and recover a refund of all payments previously made. § 25A-39(f).

The buyer may not cancel a home solicitation sale in which the buyer requested the seller to deliver the goods due to an emergency if (1) the seller has begun substantial performance of the contract before receiving

notification; (2) the goods cannot be returned to the seller in as good condition as when received by the buyer; and (3) unless the buyer returns the goods to sellers at buyer's expense. § 25A-39(e).

The buyer must take reasonable care of the goods and tender the goods at his or her residence to the seller upon demand after revocation or cancellation. The seller must make complete refund and notify the buyer of his intentions to repossess or to abandon the goods within 10 days after receipt of the notice of cancellation. If the goods are then made available to the seller and the seller fails to pick them up within 20 days, the buyer may retain or dispose of the goods without further obligation. § 25A-42(a).

A sale made pursuant to a preexisting revolving charge account, a sale after a similar business transaction between the parties, a sale on the premises where the goods are offered for sale, a sale subject to rescission under the federal Truth-in-Lending Act, and sales of wearing apparel, motor vehicles, farm equipment, and goods and services to be used within 10 days regarding funeral services are not included in the protections provided by this statute. § 25A-38.

MINOR'S CONTRACT

Age of majority to contract - 18. § 48A-2.

Contractual liability - Minor is liable for necessaries received as a result of a contractual relationship and for obligations imposed by statute (such as motor vehicle insurance). Nationwide v. Chantos, 293 N.C. 431, 238 S.E.2d 597 (1977).

REPOSSESSION REQUIREMENTS

The creditor must make an affidavit before the clerk of court stating:

(1) That the creditor is the owner of the property or entitled to its possession;

(2) That the property is wrongfully detained by the debtor and the alleged causes of the detention;

(3) That the property has not been taken for tax, assessment or fine pursuant to a statute, or seized under an execution or attachment against the property of the creditor; and

(4) The actual value of the property. § 1-473.

The creditor also must execute a bond in an amount double the value of the property and which must be approved by the sheriff. § 1-475. Notice to the debtor is required and a hearing before the clerk, appealable to a judge, must be held not less than 10 days after service of the notice. § 1-474.1. Waiver of these rights is available. § 1-474.1.

North Carolina

STATUTE OF LIMITATIONS

Contract under seal - 10 years. § 1-47(2).
Simple written contract - 3 years. § 1-52(1).
Contract for sale of goods - 4 years. § 25-2-725.
Oral contracts - 3 years. § 1-52(1).
Judgments - Courts of record - 10 years. §§ 1-47(1) & 1-306.

TRUTH-IN-LENDING REQUIREMENTS

Federal - Truth-in-Lending Act. See Chapter 3 supra.

State - No state truth-in-lending statute.

UNFAIR AND DECEPTIVE TRADE PRACTICES

N.C. GEN. STAT. § 75-1 (1981 & Supp. 1983).

Prohibited Practices: Unfair methods of competition and unfair or deceptive acts or practices including 7 enumerated prohibitions.

Special Requirements: None specified.

Scope: In or affecting commerce, which includes all business activities.

Exclusions: Professional services by member of learned profession; advertisements done by a disinterested publisher, radio or television media, with no knowledge of falsity.

Private Remedies: Actual damages; treble damages; attorney's fees to prevailing party discretionary based on finding of willful violation and unwarranted refusal to resolve suit.

Limitations: Private action based on injury to person or business; statute of limitations is 4 years after cause accrues; limitations tolled in private action while state action pending and 1 year afterwards; AG brings action if in his opinion it is in public interest.

State Remedies: AG enforces; criminal penalties discretionary with court; injunction; court "may" order restitution or cancel contracts; court has discretion to impose maximum $5000 per knowing violation or violation of court order with court considering all relevant circumstances including extent of harm, persistence and length of violation, assets of party and corrective action by defendant.

Precedential Value of FTC Interpretations: None specified.

North Carolina

WARRANTIES

Unless excluded or modified (§ 25-2-316), a warranty that the goods shall be merchantable is implied in a contract for their sale if the seller is a merchant with respect to goods of that kind. Under this section the serving for value of food or drink to be consumed either on the premises or elsewhere is a sale. § 25-2-314.

Where the seller at the time of contracting has reason to know any particular purpose for which the goods are required and that the buyer is relying on the seller's skill or judgment to select or furnish suitable goods, there is, unless excluded or modified, an implied warranty that the goods shall be fit for such purpose. § 25-2-315.

Implied warranties, including the warranty of merchantability can be limited or excluded in writing, if the writing is conspicuous. The remedies for breach of warranty also can be limited. § 25-2-316.

North Dakota

BANKRUPTCY EXEMPTIONS

Federal - See Chapter 2 supra.

State - Homestead exemption - $80,000. § 47-18-01.

Personalty exemption - Absolute Exemption:

(1) All family pictures;

(2) A pew or other sitting in any house of worship and a lot or lots in any burial ground;

(3) The family Bible and all schoolbooks used by the family, and the family library not exceeding in value $100;

(4) All wearing apparel and clothing of the debtor and his family;

(5) All the necessary provisions for the debtor and his family for one year and the necessary fuel for one year;

(6) All crops and grain, both threshed and unthreshed, raised by the debtor on not to exceed 160 acres of land in one tract occupied by the debtor, either as owner or tenant, and if the debtor takes advantage of this subsection he shall not avail himself of any additional alternative exemptions provided by law;

(7) All insurance benefits resulting from insurance covering any or all of the absolute exemptions;

(8) Any house trailer or mobile home occupied as a residence by the debtor or his family. § 28-22-02.

Additional Exemptions: In addition to the absolute exemptions, the head of a family may select from his other personal property, any goods, chattels, merchandise, money and other personal property not exceeding in value the sum of $5,000, which shall also be exempt. § 28-22-03.

Specific Alternative Exemptions: Instead of the additional exemption in 28-22-03, the head of a family may select the following property, which then shall be exempt:

(1) All miscellaneous books and musical instruments for the use of the family not exceeding $1500 in value;

(2) All household and kitchen furniture, not exceeding $1,000 in value;

(3) Livestock and farm implements not exceeding $4,500 in value; and

(4) The tools and implements of any mechanic kept for the purpose of carrying on his trade or business, and in addition thereto stock in trade not exceeding $1,000 in value. The library and instruments of any professional person not exceeding $1,000 in value. § 28-22-04.

Additional Absolute Exemptions for Residents:

(1) In lieu of the homestead exemption, up to $7500.
(2) A motor vehicle, not to exceed $1200.
(3) Accrued dividend, interest, or cash value of an unmatured life insurance policy, not to exceed $4000.
(4) A payment, not to exceed $7500, on account of the wrongful death of an individual of whom the debtor was a dependent, to the extent reasonably necessary for the support of the debtor or his dependent; or on account of personal bodily injury, not including pain and suffering or compensation for actual pecuniary loss, of the debtor or an individual of whom the debtor is a dependent.
(5) Social security benefit.
(6) Veteran's disability pension. § 28-22-03.1.

CREDIT REPORTING

Federal - Fair Credit Reporting Act. See Chapter 3 supra.

State - The North Dakota Human Rights Act, which took effect 1 July 1983, makes it a discriminatory practice for any person to deny credit, increase the charges or fees for or collateral required to secure credit, restrict the amount or use of credit extended, or impose different terms or conditions with respect to credit extended to a person because of race, color, religion, sex, national origin, age, physical or mental handicap, marital status or receipt of public assistance, except as permitted under the federal Equal Credit Opportunity Act. § 14-02.4-17.

DEBT COLLECTION

Federal - Fair Debt Collection Practices Act. See Chapter 3 supra.

State - No statutory provision.

HOME SOLICITATION SALE

Federal - FTC Trade Regulation Rule. See Chapter 3 supra.

State - The buyer has the right to cancel a home solicitation sale until midnight of the third business day following execution of an agreement or offer to purchase. Cancellation occurs when the buyer gives written notice of cancellation to the seller at the address stated in the agreement. Notice of cancellation is effective when delivered to the seller, sent by ordinary mail, postage prepaid, or by telegram. § 51-18-02. The buyer may not cancel a home solicitation sale if the buyer requested the services because of an emergency, and (a) the seller in good faith makes a substantial

beginning of performance before the buyer gives notice of cancellation, and (b) the goods cannot be returned to the seller in substantially as good condition as when the buyer received them. § 51-18-07(4). The sales agreement must contain a conspicuous notice of this cancellation right. § 51-18-04.

The buyer must take reasonable care of the goods and tender the goods at his or her residence to the seller upon demand. However, the buyer takes title to the goods, without obligation to pay for them, if the seller fails to take possession of such goods within 20 days after cancellation of the sale. § 51-18-07(1,2). The seller must return any funds received or goods traded in to the buyer within 10 days after cancellation of the sale. § 51-18-06.

The following transactions are not included in the protections provided by this statute:

(1) A previously negotiated sale at the seller's place of business;
(2) A sale of insurance;
(3) A sale of goods or services for less than $25. §§ 51-18-01(3), 51-18-08.

MINOR'S CONTRACT

Age of majority to contract - 18. § 14-10-02.

Contractual liability - Minor is liable only for the reasonable price of necessaries received as a result of a contractual relationship. §§ 9-02-01, 14-10-12, and 41-01-03.

REPOSSESSION REQUIREMENTS

The creditor must make an affidavit stating:

(1) That the creditor is the owner of the property, with a particular description of it, or that he is lawfully entitled to the possession of the property;
(2) That the property is wrongfully detained by the debtor;
(3) The alleged cause of the detention;
(4) That the property has not been taken for a tax, assessment, or fine pursuant to a statute, or seized under an execution or attachment against the property of the creditor;
(5) The actual value of the property;
(6) That a court order has been issued authorizing delivery hereunder, and is attached:
(a) Pursuant to notice to the debtor and hearing on an order to show cause; or
(b) Without notice to the debtor if, in addition to satisfying the requirements for an order to show cause, probable cause appears to the court that:

1. The debtor gained possession of the property by theft or fraud;
2. The property consists of negotiable instruments or credit cards;
3. The property is perishable and will be irreparably damaged before a hearing can be held; or
4. The property is in immediate danger of destruction, serious harm, concealment, or removal from the state, or of sale to an innocent purchaser. § 32-07-02.

The creditor also must execute a bond with one or more sufficient sureties approved by the sheriff, in double the value of the property, as stated in the affidavit. § 32-07-04. At any time before delivery of the property to the creditor, the debtor, if he does not except to the creditor's sureties or the amount of his bond, may require the return of the property to him, by giving to the sheriff an executed bond with two or more sufficient sureties, in double the value of the property as stated in the creditor's affidavit. § 32-07-06.

In a secured transaction, unless otherwise agreed, the secured party, upon default, may proceed to take possession of the collateral if this can be done without breach of the peace, or may proceed by action. § 41-09-49.

STATUTE OF LIMITATIONS

Contract under seal - 6 years. §§ 28-01-16, 9-06-11.
Simple written contract - 6 years. § 28-01-16.
Contract for sale of goods - 4 years. § 41-02-104.
Oral contracts - 6 years. § 28-01-16.
Judgments - Courts of record - 10 years. § 28-01-15.
Malpractice - 2 years. § 28-01-18.

TRUTH-IN-LENDING REQUIREMENTS

Federal - Truth-In-Lending Act. See Chapter 3 supra.

State - The North Dakota Revolving Charge Accounts law requires a creditor to disclose to a retail buyer his credit service charges. The credit service charges must be stated in terms of a monthly percentage rate. § 51-14-02. These disclosures are required only for revolving charge accounts.

Any person who violates any of the disclosure requirements shall be guilty of a Class A misdemeanor. Any revolving charge account or any act in the making or collection of any revolving charge account which violates the disclosure requirements of the Revolving Charge Accounts law shall result in the forfeiture of all credit service charges that have been paid or that may become due or payable thereunder, and in the event that such

violation is willful, the retail seller shall have no right to collect, receive or retain any principal, credit service charge, interest, or other charge whatsoever. § 51-14-05.

The North Dakota Retail Installment Sales Act requires certain disclosures, but provides that if the retail installment sale is also subject to the Federal Truth-In-Lending Act the seller may comply with that Act rather than the disclosure provisions of the North Dakota law. § 51-13-02.

UNFAIR AND DECEPTIVE TRADE PRACTICES

Prohibited Practices: Deceptive practices.

Special Requirements: Act done with intent others rely.

Scope: Sale or advertisement of any merchandise; sale includes offers for sale and merchandise includes goods, commodities, intangibles, realty or services.

Exclusions: Advertisements done by publisher, radio and television media, with no knowledge of falsity.

Private Remedies: None specified.

Limitations: Injunction given pursuant to notice by AG.

State Remedies: AG enforces and has rulemaking power; injunction; other orders as may be necessary, including restitution and receiver; costs, expenses and attorney's fees to AG; maximum $5000 per violation "may" be assessed.

Precedential Value of FTC Interpretations: None specified.

WARRANTIES

Unless excluded or modified, a warranty that the goods shall be merchantable is implied in a contract for their sale if the seller is a merchant with respect to goods of that kind. Under this section the serving for value of food or drink to be consumed either on the premises or elsewhere is a sale. § 41-02-31.

Where the seller at the time of contracting has reason to know any particular purpose for which the goods are required and that the buyer is relying on the seller's skill or judgment to select or furnish suitable goods, there is, unless excluded or modified, an implied warranty that the goods shall be fit for such purpose. § 41-02-32.

North Dakota

Implied warranties, including the warranty of merchantability can be limited or excluded in writing. Remedies for breach of warranty also can be limited. § 41-02-33.

Ohio

BANKRUPTCY EXEMPTIONS

Federal - See Chapter 2 supra.

State - Homestead exemption - One parcel or item of real or personal property used as a residence, not to exceed $5,000 in value. § 2329.66(A)(1).

Personalty exemption -

(1) One motor vehicle, not to exceed $1,000 in value;

(2) Wearing apparel, beds and bedding, not to exceed $200 for any particular item;

(3) One cooking unit and one refrigerator, not to exceed $300 for each item;

(4) Implements, books or tools of a profession, trade, or business, including agriculture, not to exceed $750 in the aggregate.

(5) The person's interest in beneficiary funds, contracts, life insurance, annuities, money, charity, relief, benefits under policies of sickness; accident insurance, etc., all as exempted under specific sections of the Revised Code.

(6) Professionally prescribed or medically necessary health aids;

(7) One burial lot;

(8) The person's interest in moneys for living maintenance or rights, worker's compensation, unemployment compensation, aid to dependent children payments, and poor relief payments, all as exempted under specific sections of the Revised Code;

(9) Cash, money due within 90 days, tax refunds, and money on deposit with a bank not to exceed $400;

(10) Personal use household furnishings, household goods, appliances, books, animals, crops, musical instrument, firearms, and hunting and fishing equipment, not to exceed $200 in any item;

(11) Jewelry not to exceed $400 in one item and not to exceed $200 in every other item of jewelry;

(12) Alimony, child support, alllowance, or maintenance to the extent reasonably necessary for support; and

(13) Except as provided in § 3113.21 of the Ohio Revised Code, personal earnings of the debtor owed to him for services rendered within thirty days before the issuing of an attachment or other process, the rendition of a judgment, or the making of an order, under which the attempt may be made to subject such earnings to the payment of a debt, damage, fine, or amercement, in an amount equal to the greater of the following amounts:

(a) If paid weekly, thirty times the current federal minimum hourly wage; if paid bi-weekly, sixty times the current federal minimum hourly wage; if paid semi-monthly, sixty-five times the current federal

minimum hourly wage; or if paid monthly, one hundred thirty times the current federal minimum hourly wage which is in effect at the time the earnings are payable, as prescribed by the "Fair Labor Standards Act of 1938," 52 Stat. 1060, 29 U.S.C. 206(a)(1), and any amendments thereto or reenactment thereof;

(b) Seventy-five percent of the disposable earnings owed to the debtor. § 2329.66.

CREDIT REPORTING

Federal - Fair Credit Reporting Act. See Chapter 3 supra.

State - No statutory provision.

DEBT COLLECTION

Federal - Fair Debt Collection Practices Act. See Chapter 3 supra.

State - No statutory provision.

HOME SOLICITATION SALE

Federal - FTC Trade Regulation Rule. See Chapter 3 supra.

State - The buyer has the right to cancel a home solicitation sale until midnight of the third business day after the buyer signs an agreement or offer to purchase. Cancellation occurs when the buyer gives written notice of cancellation to the seller at the address stated in the agreement. Notice by mail is effective upon the date of postmarking; notice by telegram is effective when the telegram is ordered; notice by personal delivery is effective when delivered to the seller or the seller's address. The sales agreement must contain a conspicuous notice of this cancellation right. § 1345.22. Until the seller has notified the buyer of his rights of cancellation, the buyer may notify the seller in any manner of his intention to cancel. § 1345.23(C).

The buyer must take reasonable care of the goods and tender the goods at his or her residence to the seller upon demand. However, the buyer takes title to the goods, without obligation to pay for them, if the seller fails to pick them up within 20 days after the date of the notice of cancellation. The seller must return any funds received, goods traded in and any negotiable instruments to the buyer within 10 business days after cancellation of the sale. § 1345.23(B).

The following transactions are not included in the protections provided by this statute:

(1) A sale in which the total purchase price is less than $25;

(2) A sale conducted entirely by mail or telephone if initiated by the buyer, and without any other contact between the seller or his representative prior to delivery of the goods or performance of the service;

(3) A previously negotiated sale at the seller's permanent place of business;

(4) A sale in which the buyer initiates the contact for the purpose of negotiating a purchase and the seller has a business establishment at a fixed location in Ohio where the goods or services are regularly offered or exhibited for sale;

(5) A sale in which the buyer initiates the contact to meet a personal emergency, and the seller is given a handwritten, signed statement from the buyer waiving his right to cancel the sale;

(6) A sale in which the buyer initiated the contact and requested the seller to visit his home for the purpose of repairing or performing maintenance upon the buyer's personal property;

(7) A sale in which the buyer is accorded the right of rescission by the Consumer Credit Protection Act, 15 U.S.C. § 1635; and

(8) Sales made by licensed insurance agents, real estate brokers, broker-dealers and securities dealers, auctioneers, and automobile dealers and salesmen. § 1345.21.

MINOR'S CONTRACT

Age of majority to contract - 18. § 3109.01.

Contractual liability - Minor is liable only for necessaries received as a result of a contractual relationship. § 1301.03.

REPOSSESSION REQUIREMENTS

The creditor must make an affidavit stating:

(1) Description and value of the property claimed;

(2) If the interest in the property is based upon a written instrument, a copy of the instrument;

(3) That the property is wrongfully detained, and list any reason that respondent may claim the detention is not wrongful;

(4) The use to which the respondent has put the property;

(5) The extent to which the movant will be damaged by the respondent's continued detention of the property;

(6) Location of the property;

(7) That the property was not taken for a tax, assessment, or fine pursuant to statute, or seized under execution of judgment against the property of the movant or, if so seized, that it is statutorily exempt from seizure. § 2737.03.

The creditor must execute a bond with sufficient sureties in double the value of the property, as stated in the order. § 2737.10.

The court may issue an order of possesion without prior notice to the respondent and without conducting a hearing if the court finds that there is probable cause that the creditor will suffer irreparable injury if the order is delayed until the respondent has been given an opportunity for a hearing. § 2737.19. Otherwise, the respondent must be given notice and the opportunity to request a hearing. § 2737.04. The respondent may recover the property taken pursuant to an order of possession by filing a bond equal to the creditor's bond, or if no bond has been filed by the creditor then the bond shall be twice the value of the property. If the respondent is indigent, the court may waive the bond requirement or set a lower amount, as fairness requires. § 2737.11.

STATUTE OF LIMITATIONS

Contract under seal - 15 years. § 2305.06.
Simple written contract - 15 years. § 2305.06.
Contract for sale of goods - 4 years. § 1302.98.
Oral contracts - 6 years. § 2305.07.
Judgments - Courts of record - 21 years. § 2325.18.

TRUTH-IN-LENDING REQUIREMENTS

Federal - Truth-in-Lending Act. See Chapter 3 supra.

State - No statutory provision.

UNFAIR AND DECEPTIVE TRADE PRACTICES

OHIO REV. CODE ANN. § 1345.01 (Baldwin 1984).

Prohibited Practices: Unfair and deceptive act or practice including 11 enumerated prohibitions; or any unconscionable act or practice including 7 enumerated situations for consideration.

Special Requirements: None specified.

Scope: Applies to acts by suppliers, includes sellers, lessor or other business person dealing directly or indirectly with a consumer. Must also be consumer transaction which includes a sale, lease, assignment, award by chance or transfer of goods, service, franchise or intangible for personal, family, household purposes.

Exclusions: Transactions governed by § 4905.03 which governs public utilities commission and § 5725.01 which governs financial institutions; acts between attorney or physician and clients; actions not involving consumers or suppliers; acts permitted by federal or state law except AG may receive injunction; personal injury or death claims; publisher, broadcaster, printer or other person who disseminates information or reproduces printed matter if done for another and without knowledge.

Ohio

Private Remedies: Rescind transaction; actual damages; treble damages; minimum $200; class action for actual damages or "other appropriate relief," declaratory judgment, injunction; court may award attorney's fees to prevailing party if consumer action is groundless and in bad faith or supplier commits a knowing violation.

Limitations: AG brings actions against suppliers on consumer transactions and in public interest; AG actions have 2 year statute of limitations after occurrence; private actions 2 years after occurrence or 1 year after AG action terminates, private action for rescission must be within reasonable time after should have discovered violation and before subject matter substantially changes; private action by consumer precludes his inclusion in subsequent class action by AG on same transaction; no statute of limitations on counterclaims in suppliers suit. No civil penalties, attorney's fees or amounts over actual damages if supplier proves bona fide error after reasonable procedures caused violation; acts permitted by FTC rule, trade regulation or federal courts and not prohibited by state statute before occurrence limits AG remedy to injunctive relief, no remedy in consumer action against supplier; in private action, consumer must choose between rescission and damages.

State Remedies: Director of Commerce has substantive and procedural rulemaking powers and acts upon petition of any person; AG enforces; may obtain assurance of compliance conditioned on consumer reimbursement; declaratory judgment; injunction; $500 per each day injunction is violated if supplier has notice; class actions for consumers damaged by violation; court may make appropriate orders including receiver; reimbursement; specific performance; strike unconscionable clauses; court "may" impose maximum $25,000 civil penalty; revoke suppliers license or permit.

Precedential Value of FTC Interpretations: Due consideration and great weight given in interpretation and rulemaking.

WARRANTIES

Unless excluded or modified, a warranty that the goods shall be merchantable is implied in a contract for their sale if the seller is a merchant with respect to goods of that kind. Under this section the serving for value of food or drink to be consumed either on the premises or elsewhere is a sale. § 1302.27.

Where the seller at the time of contracting has reason to know any particular purpose for which the goods are required and that the buyer is relying on the seller's skill or judgment to select or furnish suitable goods, there is, unless excluded or modified, an implied warranty that the goods shall be fit for such purpose. § 1302.28.

Ohio

Implied warranties, including the warranty of merchantability can be limited or excluded in writing. Remedies for breach of warranty also can be limited. § 1302.29.

Oklahoma

BANKRUPTCY EXEMPTIONS

Federal - See Chapter 2 supra.

State - Homestead exemption - Property not located within any city, town or village - Not more than 160 acres of land.

Property located within a city, town or village - Not more than one acre, but the value shall not exceed $5,000, and in no event shall the homestead be reduced to less than one-quarter of an acre. If the homestead is used for both residence and business purposes, the interests therein shall not exceed $5,000. 31 § 2.

Personalty exemption -

(1) All household and kitchen furniture;

(2) Any lot or lots in a cemetery held for the purpose of sepulcher;

(3) All implements of husbandry used upon the homestead;

(4) All tools, apparatus, and books used in any trade or profession of the debtor or his dependent;

(5) All books, portraits & pictures, and wearing apparel that are held primarily for the personal, family or household use of such debtor or his dependent.

(6) All professionally prescribed health aids for the debtor or his dependent;

(7) Five milk cows and their calves under six months old, that are held primarily for the personal, family or household use of the debtor;

(8) One hundred chickens, that are held primarily for the personal, family, or household use of the debtor;

(9) Two horses and two bridles and two saddles, that are held primarily for the personal, family, or household use of the debtor;

(10) One motor vehicle not to exceed $1,500 in value;

(11) One gun, ten hogs, and twenty head of sheep, that are held primarily for the personal, family or household use of such debtor;

(12) All provisions and forage on land, or growing for home consumption, and for the use of exempt stock for one year;

(13) Seventy-five percent of all current wages or earnings for personal or professional services earned during the last ninety days, except as provided in Title 12 of the Oklahoma Statutes in garnishment proceedings for collection of child support;

(14) The debtor's right to receive alimony, support, separate maintenance or child support payments to the extent necessary for his support or the support of any of his dependents; and

(15) The debtor's interest in a claim for bodily injury, death or workers' compensation claim, for a net amount not in excess of $50,000, but not including any claim for exemplary or punitive damages. 31 § 1.

CREDIT REPORTING

Federal - FTC Trade Regulation Rule. See Chapter 3 supra.

State - Oklahoma law regulates the credit rating business.

Issuance of Consumer Reports - Any person, firm or corporation engaged in or purporting to furnish retail merchants the financial or credit rating of any person who is the actual or prospective customer of such retail merchant shall, before furnishing such rating, submit, either in person or by mailing to his last known post office address to the person whose rating is about to be reported, a request asking for a statement of the assets and liabilities of such person. 24 § 81.

Disclosures

Agency to Consumer - Whenever an opinion in writing upon the financial or credit standing of any person is about to be submitted for the purpose of establishing a financial or credit rating of customers, to be used by the retail business concerns, the person, firm or corporation submitting such opinion shall first mail a copy of such opinion to the person about whom the opinion is given, at his proper post office address. 24 § 82.

User to Consumer - Whenever a credit or financial rating of any person is contained in any book or list which was circulated among retail business concerns for the purpose of establishing a financial or credit rating of consumers, any person, firm or corporation having such book or list in his or its possession, custody or control shall, upon demand made in person, produce and show such rating to the person so rated. 24 § 84.

Violations and Penalties

Civil Liability - Any person, firm or corporation who knowingly promulgates or publishes a false opinion or statement in any book or list as to the credit or financial standing of any person, and circulates such book or list among wholesale or retail business concerns, shall be liable in damages to the person about whom the false opinion or statement is made, for the full amount of injury sustained, and in addition thereto for exemplary damages in any sum to be fixed by the jury. 24 § 83.

Criminal Liability - Any person, firm, or corporation who knowingly promulgates a false opinion or statement is guilty of a misdemeanor, and upon conviction thereof, shall be punished by up to 1 year imprisonment or by a fine not exceeding $5,000. 24 § 83. Any person, firm, or corporation failing or refusing to permit a person rated to see the rate book or list is guilty of a misdemeanor, and upon conviction shall be fined in any sum not less than $25 nor more than $1,000. 24 § 84. Every person, firm or corporation, or the agent, clerk or employee thereof, who knowingly makes, causes to be made, or permits to be made, any false credit statement to

any wholesale dealer, for the purpose of establishing credit in general or with such dealer, or to any person, firm or corporation engaged in furnishing credit statements to wholesale merchants in general or to any particular person, firm or corporation engaged in the wholesale business, shall be punished by imprisonment for up to one year or by a fine not exceeding $5,000. 24 § 85.

DEBT COLLECTION

Federal - Fair Debt Collection Practices Act. See Chapter 3 supra.

State - No statutory provision.

HOME SOLICITATION SALE

Federal - FTC Trade Regulation Rule. See Chapter 3 supra.

State - The buyer has the right to cancel a home solicitation sale until midnight of the third business day after the buyer signs an agreement or offer to purchase. 14A § 2-502(1). Cancellation occurs when the buyer gives written notice of cancellation to the seller at the address stated in the agreement. 14A § 2-502(2). Notice is effective when delivered or when deposited in the mail properly addressed to the seller, postage prepaid. 14 § 2-502(3).

The buyer may not cancel a home solicitation sale if the buyer requested the services because of an emergency, and (A) the seller makes a substantial beginning of performance before the buyer gives notice of cancellation and (B) in the case of goods, the goods cannot be returned to the seller in as good condition as when received by the buyer. 14A § 2-502(5). The sales agreement must contain a conspicuous notice of this cancellation right. 14A § 2-503. Until the seller has notified the buyer of his rights of cancellation, the buyer may notify the seller in any manner of his intention to cancel. 14A § 2-503(3).

The buyer must take reasonable care of the goods and tender the goods at his or her residence to the seller upon demand. However, the buyer takes title to the goods if the seller fails to demand such posssession within a reasonable time after receipt of the notice of cancellation, with forty (40) days being presumed to be a reasonable time. 14A § 2-505(1,2). The seller must return any funds received or goods traded in to the buyer within 10 days after cancellation of the sale. 14A § 2-504(1,2). The seller may retain as a cancellation fee 5 percent (5%) of the cash price, but not exceeding the amount of the cash down payment. If the seller fails to comply with all of his obligations, or if the buyer avoids the sale on any ground independent of his right to cancel the sale, or revokes his offer to purchase, the seller is not entitled to retain a cancellation fee. 14A § 2-504(3).

A cash sale, a sale of farm equipment, a sale made pursuant to a preexisting revolving charge account, and a sale previously negotiated at a business establishment at a fixed location where goods or services are offered or exhibited for sale are not included in the protections provided by this statute. 14A § 2-501.

MINOR'S CONTRACT

Age of majority to contract - 18. 15 § 13.

Contractual liability - Minor is liable only for the reasonable value of necessaries received as a result of a contractual relationship. 15 § 20, 22.

REPOSSESSION REQUIREMENTS

The creditor must file a verified petition that alleges facts which show:

(1) A description of the property claimed;

(2) That the creditor is the owner of the property or has a special ownership or interest therein, stating the facts in relation thereto, and that he is entitled to the immediate possession of the property;

(3) That the property is wrongfully detained by the debtor;

(4) The actual value of the property;

(5) That the property was not taken in execution on any order or judgment against the creditor, or for the payment of any tax, fine or amercement assessed against him, or any other mesne or final process issued against the creditor; or, if taken in execution, that it is exempt by law from being taken; and

(6) The prayer for relief requests that the court issue an order for the immediate delivery of the property. 12 § 1571.

The creditor also must execute a bond with one or more sufficient sureties, to be approved by the clerk, in double the value of the property as stated in the petition. The bond must be filed with the clerk. 12 § 1573.

The clerk must serve a summons on the debtor which notifies the debtor that an order for delivery of the property is sought and that he can file a written objection to the order within 5 days of the service of the summons. If no objection is filed, the order of delivery is granted without a hearing. If a written objection is filed, the court will promptly set the matter for hearing. 12 § 1571(A)(3). Prejudgment delivery of the property can be ordered if the debtor cannot be served and the judge finds that a reasonable effort to serve him was made and the creditor shows the probable truth of the allegations in his petition. The debtor also may move to have the prejudgment order dissolved within 5 days. 12 § 1571(B). The debtor may require the return of the property to his possession by executing a bond to the creditor, with one or more sufficient sureties, to be

approved by the sheriff, in double the value of the property as stated in the creditor's affidavit. 12 § 1577.

STATUTE OF LIMITATIONS

Written contract - 5 years. 12 § 95.
Contract for sale of goods - 5 years. 12A § 2-725.
Oral contracts - 3 years. 12 § 95.
Judgments - Courts of record - Judgment kept alive by execution every 5 years. 12 § 735.

TRUTH-IN-LENDING REQUIREMENTS

Federal - Truth-In-Lending Act. See Chapter 3 supra.

State - The Oklahoma Uniform Consumer Credit Code requires the creditor to disclose to the buyer, usually before credit is extended, his credit charges in dollars and cents and as an annual percentage rate or as a nominal annual percentage rate. 14A § 2-306. Disclosure is required for sales, loans and revolving credit transactions. 14A §§ 2-306, 2-310, 3-301. The Oklahoma Uniform Consumer Credit Code does not apply to the following:

(1) Extensions of credit to the government;
(2) The sale of insurance by an insurer, except as provided in UCCC, Article 4;
(3) Transactions under public utility or common carrier tariffs if a subdivision or agency of Oklahoma or the United States regulates the charges for the services;
(4) Licensed pawnbrokers;
(5) Loans made to enable the debtor to build or purchase a residence or to refinance such loan when made by a lender whose loans are supervised by an agency of the United States or made by a Federal Housing Administration approved mortgagee, unless the loan is made subject to the Act by agreement or other sections of the Act.
(6) Margin accounts; and
(7) Sales of goods or services where the amount financed exceeds forty-five thousand dollars ($45,000.00). 14A §§ 1-202, 2-104.

A creditor who fails to disclose information to a person entitled to the information is civilly liable to that person in an amount equal to the sum of (a) any actual damage sustained; twice the amount of the credit service charge (but not less than $100 nor more than $1,000); (b), the costs of the action together with attorney's fees; and (c) in a successful action to enforce liability under. 14A § 5-203(1). A creditor is not liable in an action brought against him if within 60 days after discovering an error and prior to written notice of the error or to the institution of an action, the creditor makes the proper adjustments and notifies the debtor. 14A § 5-203(2). A creditor that willfully and knowingly fails to provide information

which he is required to disclose is guilty of a misdemeanor and upon conviction shall be punished by a fine not to exceed $5,000, or imprisonment not to exceed one year, or both. 14A § 5-302.

UNFAIR AND DECEPTIVE TRADE PRACTICES:

OKLA STAT. ANN. tit. 78 § 51 (West 1976 & Supp. 1983-1984)

Prohibited Practices: 11 enumerated deceptive trade practices.

Special Requirements: None specified.

Scope: In course of his business, vocation, or occupation.

Exclusions: Conduct complying with federal, state or local statute, or agency rules and orders; advertisements done by publisher, radio and television media, with no knowledge of falsity; dealers covered by Motor Vehicle Commission.

Private Remedies: Injunction; actual damages; court has discretion to award attorney's fees to prevailing party, with fees mandatory to prevailing party if suit based on willful violation or plaintiff acting in bad faith; class actions brought by trade associations for its members of injunction.

Limitations: None specified.

State Remedies: None specified.

Precedential Value of FTC Interpretations: None specified.

OKLA. STAT. ANN. tit. 15 § 751 (West Supp. 1983-1984).

Prohibited Practices: 15 enumerated unlawful practices.

Special Requirements: None specified.

Scope: In course of his business.

Exclusions: Advertisements done by publisher, radio and television media, with no knowledge of falsity; transactions regulated by Corporate Commission, or state or U.S. regulatory body; acts by retailers or others in good faith and without knowledge, if based on information supplied by others.

Private Remedies: Actual damages; costs and attorney's fees; maximum $2000 per unconscionable violation with court considering 4 enumerated circumstances.

Oklahoma

Limitations: None specified.

State Remedies: AG or DA enforces; declaratory judgment; injunction; actual damages; civil penalties with maximum of $2000 per violation for unconscionable conduct brought for consumer, court considers 4 circumstances; expenses and investigation fees; consent judgments including restitution or specific performance stipulation; court may make orders necessary including specific performance, restitution, receiver or revoke license; $10,000 per willful violation of injunction or court order plus other penalties as court deems necessary and proper; costs and attorney's fees.

Precedential Value of FTC Interpretations: None specified.

WARRANTIES

Unless excluded or modified, a warranty that the goods shall be merchantable is implied in a contract for their sale if the seller is a merchant with respect to goods of that kind. Under this section the serving for value of food or drink to be consumed either on the premises or elsewhere is a sale. 12A § 2-314.

Where the seller at the time of contracting has reason to know any particular purpose for which the goods are required and that the buyer is relying on the seller's skill or judgment to select or furnish suitable goods, there is, unless excluded or modified, an implied warranty that the goods shall be fit for such purpose. 12A § 2-315.

Implied warranties, including the warranty of merchantability can be limited or excluded in writing. Remedies for breach of warranty also can be limited. 12A § 2-316.

Oregon

BANKRUPTCY EXEMPTIONS

Federal - See Chapter 2 supra.

State - Homestead exemption - $15,000, and if the homestead is not located in any town or city, the quantity of land shall not exceed 160 acres. If the homestead is located in a town or city, the quantity of land shall not exceed one block. §§ 23.240, 23.250. A mobile home and the property on which it is situated is also exempt from execution to the value of $15,000 if no other homestead exemption is claimed. § 23.164.

Personalty exemption -

(1) $300 worth of books, pictures and musical instruments;

(2) $900 worth of wearing apparel, jewelry, and other personal items;

(3) $750 worth of tools, implements, apparatus, team, harness or library necessary for the debtor to carry on his trade or profession; also, sufficient quantity of food to support such team, if any, for 60 days;

(4) A vehicle to the value of $1,200;

(5) $1,000 worth of domestic animals and poultry for family use and food sufficient to support such animals for 60 days;

(6) $1,450 worth of household goods, furniture, radios, a television set and utensils kept for use by the debtor or his family; provisions actually provided for family use and necessary for the support of a householder and family for 60 days and also 60 days' supply of fuel;

(7) All state property;

(8) Prescribed hearing aids;

(9) Spousal and child support;

(10) Debtor right to receive property traceable to:

(a) Award under any crime victim reporation law,

(b) Personal injury award up to $7,500, or

(c) Payment for loss earnings.

(11) Any personal property not to exceed $400. § 23.160.

(12) All pensions granted any person for employment by or services for the government of the United States; and §§ 23.170.

(13) The lesser amount of: (a) 25 percent of the debtor's disposable earnings; (b) The amount by which his disposable earnings for that week exceed 40 times the applicable federal minimum hourly wage prescribed by 6(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206); or (c) The amount described in (a) or (b) above minus any amount required to be withheld pursuant to an order issued under ORS 23.777 or 23.783. § 23.185.

Oregon

CREDIT REPORTING

Federal - Fair Credit Reporting Act. See Chapter 3 supra.

State - No statutory provision.

DEBT COLLECTION

Federal - Fair Debt Collection Practices Act. See Chapter 3 supra.

State - It shall be an unlawful collection practice for a debt collector, while collecting or attempting to collect a debt, to do any of the following:

(a) Use or threaten the use of force or violence to cause physical harm to a debtor, his family or his property;

(b) Threaten arrest or criminal prosecution;

(c) Threaten the seizure, attachment or sale of a debtor's property where such action can only be taken pursuant to court order without disclosing that prior court proceedings are required;

(d) Use profane, obscene or abusive language in communicating with a debtor or his family;

(e) Communicate with the debtor or any member of his family repeatedly or continously or at times known to be inconvenient to that person with intent to harass or annoy the debtor or any member of his family;

(f) Communicate or threaten to communicate with a debtor's employer concerning the nature or existence of the debt;

(g) Communicate without the debtor's permission or threaten to communicate with the debtor at his place of employment if such place is other than the debtor's residence, except that the debt collector may:

(1) Write to the debtor at his place of employment if no home address is reasonably available and if the envelope does not reveal that the communication is from a debt collector other than a provider of the goods or services from which the debt arose.

(2) Telephone a debtor's place of employment without informing any other person of the nature of the call or identifying the caller as a debt collector, but only if the debt collector is unable to contact a debtor at his residence. The debt collector may not contact the debtor at his place of employment more frequently than once each business week.

(h) Communicate with the debtor in writing without clearly identifying the name of the debt collector, the name of the person, if any, for whom the debt collector is attempting to collect the debt and the debt collector's business address;

(i) Communicate with the debtor verbally without disclosing to the debtor within 30 seconds the name of the individual making the contact and the true purpose thereof;

(j) Cause any expense to the debtor in the form of long distance telephone calls, telegram fees or other charges incurred by a medium of communication, by concealing the true purpose of the debt collector's communication;

(k) Attempt to or threaten to enforce a right or remedy with knowledge or reason to know that the right or remedy does not exist, or threaten to take any action which the debt collector in the regular course of business does not take;

(l) Use any form of communication which simulates legal or judicial process or which gives the appearance of being authorized, issued or approved by a governmental agency, governmental official or attorney-at-law when it is not in fact so approved or authorized;

(m) Represent that an existing debt may be increased by the addition of attorney fees, investigation fees or any other fees or charges when such fees or charges may not legally be added to the existing debt;

(n) Collect or attempt to collect any interest or any other charges or fees in excess of the actual debt unless such are expressly authorized by the agreement creating the debt or expressly allowed by law;

(o) Threaten to assign or sell the debtor's account with an attending misrepresentation or implication that the debtor would lose any defense to the debt or would be subjected to harsh, vindictive or abusive collection tactics. § 646.639.

Any person injured as a result of willful use or employment by another person of an unlawful collection practice may bring an action in an appropriate court to enjoin the practice or to recover actual damages or $200, whichever is greater. The court or the jury may award punitive damages, and the court may provide such equitable relief as it deems necessary or proper. In any action brought by a person under this section; the court may award, in addition to the relief provided, reasonable attorney fees and costs. If the defendant prevails, the court may award reasonable attorney fees and costs if it finds the action to be frivolous. § 646.641.

HOME SOLICITATION SALE

Federal - FTC Trade Regulation Rule. See Chapter 3 supra.

State - The buyer has the right to cancel a home solicitation sale until midnight of the third business day following execution of an agreement or offer to purchase. § 83.720(1). Cancellation occurs when the buyer gives written notice of cancellation to the seller at the address stated in the agreement. § 83.720(2). Notice is effective when delivered or when deposited in the mail properly addressed to the seller, postage prepaid. § 83.720(3).

The buyer may not cancel a home solicitation sale if the buyer in a separate signed writing not furnished by the seller requested the services because of an emergency, and (A) the seller makes a substantial beginning of performance before the buyer gives notice of cancellation, (B) in the case of goods, the goods cannot be returned to the seller in as good condition as when received by the buyer. § 83.720(5). The sales agreement must contain a conspicuous notice of this cancellation right. § 83.730(2).

Until the seller has notified the buyer of his rights of cancellation, the buyer may notify the seller in any manner of his intention to cancel. § 83.730(3).

The buyer must take reasonable care of the goods and tender the goods at his or her residence to the seller upon demand. However, the buyer takes title to the goods if the seller fails to demand such possession within 20 days after receipt of the notice of cancellation. The seller must return any funds received or goods traded in to the buyer within 10 days after cancellation of the sale. §§ 83.740, 83.750.

The following transactions are not included in the protections provided by this statute:

(1) A sale made pursuant to a preexisting revolving charge account;

(2) A contract in writing for the sale or lease of a house or business property or the construction of a new house or business property;

(3) A previously negotiated sale at the seller's place of business;

(4) A cash sale for less than $25; and

(5) A sale of insurance, farm equipment or motor vehicles. § 83.710(2).

MINOR'S CONTRACT

Age of majority to contract - 18. § 109.510.

Contractual liability - Minor is liable only for necessaries received as a result of a contractual relationship. § 71. 1030.

REPOSSESSION REQUIREMENTS

The creditor must obtain an order for provisional process (claim and delivery) by filing with the clerk of court an affidavit or sworn petition requesting specific provisional process and showing:

(1) The name and residence or place of business of the defendant;

(2) Whether the underlying claim is based on a consumer transaction and whether provisional process in a consumer good is sought;

(3) Description of the claimed property in particularity sufficient to make possible its identification, and the plaintiff's estimate of the value and location of the property;

(4) Whether the plaintiff's claim to provisional process is based upon ownership, entitlement to possession, a security interest or otherwise;

(5) A copy or verbatim recital of any writing or portion of a writing which evidences the origin or source of the plaintiff's claim to provisional process;

(6) Whether the claimed property is wrongfully detained by the defendant or another person;

(7) Whether the claimed property has been taken by public authority for a tax, assessment or fine;

(8) If the plaintiff claims that the defendant has waived his right to be heard, a copy of the writing evidencing such waiver and a statement of when and in what manner the waiver occurred;

(9) If provisional process is based on notice of a bulk transfer under ORS Chapter 76 or a similar statute or provision of law, a copy of the notice;

(10) Facts, if any, which tend to establish that there is a substantial danger that the defendant or another person is engaging in, or is about to engage in, conduct which would place the claimed property in danger of destruction, serious harm, concealment, removal from this state or transfer to an innocent purchaser;

(11) Facts, if any, which tend to establish that without restraint immediate and irreparable injury, damage, or loss will occur;

(12) Facts, if any, which tend to establish that there is substantial danger that the defendant or another person probably would not comply with a temporary restraining order; and

(13) That there is no reasonable probability that the defendant can establish a successful defense to the underlying claim. Rule of Civil Procedure 83 A. 29.025.

The creditor does not have to file a bond with the court, but sheriff may require a bond. R.C.P. 84D. Based on the affidavit, petition, and the evidence if presented, the court will decide whether there is probable cause to sustain the validity of the underlying claim, and consider whether to order issuance of provisional process, a restraining order or a show cause order. R.C.P. 83 E.

The court will then notify the debtor to appear for a hearing at a place fixed by the court and at a fixed time after the third day after service of the order to show cause why provisional process should not issue. The order will notify the debtor that he can file affidavits on his behalf and that if he fails to show up, the court will order issuance of the provisional process. R.C.P. 83G. The debtor can waive his rights to notice and a hearing at any time. R.C.P. 83H. The court, in its discretion, can order issuance of a provisional remedy without conducting a show cause hearing, if the claimed property is in danger of destruction, serious harm, concealment, or removal from the state. R.C.P. 83I.

STATUTE OF LIMITATIONS

Contract under seal entered into before Aug. 13, 1965 - 10 years §§ 12.070, 42.115.

Simple written contract - 6 years. § 12.080.

Contract for sale of goods - 4 years. § 72.7250.

Oral contracts - 6 years. § 12.080.

Judgments - Courts of record - 10 years. § 12.070.

Oregon

TRUTH-IN-LENDING REQUIREMENTS

Federal - Truth-in-Lending Act. See Chapter 3 supra.

State - Any retail instalment contract or security agreement which complies with the disclosure requirements of the federal Truth-in-Lending Act is deemed to comply with the disclosure of the Retail Instalment Sales Law and the Motor Vehicle Retail Instalment Sales Act. § 83.810.

UNFAIR AND DECEPTIVE TRADE PRACTICES

OR. REV. STAT. § 646.605 (1983).

Prohibited Practices: 2 enumerated unconscionable tactics in business and 20 enumerated unfair or deceptive acts or practices, including a catchall for "any other" unfair or deceptive conduct.

Special Requirements: None specified.

Scope: Trade or commerce defined as advertising or distributing by sale or rental any real estate, goods or services, which include only those obtained primarily for personal, family or household purposes.

Exclusions: Definition section excludes insurance; conduct complying with federal, state or local statute; advertisements done by publisher, radio and television media, with no knowledge of falsity.

Private Remedies: Actual damages; $200 minimum damages; punitive damages; equitable relief deemed proper; court may award costs and attorney's fees, if judgment for defendant, based on finding of frivolous action.

Limitations: AG or DA acts upon probable cause; private action based on ascertainable loss as result of willful violation; no judgment rendered for plaintiff until plaintiff sends copy of complaint to AG; private action statute of limitations is one year from discovery, tolled during state prosecution of violation, limitations waived for counterclaims under this Act.

State Remedies: AG has rulemaking power; AG or DA enforces; injunction upon notice letter except it would cause immediate public harm or defendant violated terms of assurance to comply within 2 years of its making; attorney's fees to prevailing party may be awarded, and shall be if prosecution prevails or defendant prevails after good faith compliance entered into, or if AG or DA did not have reasonable grounds to waive the notice before injunction; court may make additional orders including restitution; maximum $25,000 per willful violation of act, injunction or

assurance of compliance; court has discretion to order dissolution of license or franchise for injunction violation.

Precedential Value of FTC Interpretations: None specified.

Pennsylvania

BANKRUPTCY EXEMPTIONS

Federal - See Chapter 2 supra.

State - Homestead exemption - No statutory provision.

Personalty exemption -

(1) $300 worth of bank notes, money, securities, real property, judgments or other indebtedness due the debtor;

(2) Wearing apparel;

(3) Bibles and school books;

(4) Sewing machines belonging to seamstresses or used and owned by private families;

(5) Uniforms and accoutrements as provided by 51 Pa. C.S. § 4103;

(6) Certain amounts of retirement, pension or annuity payments;

(7) Varying amounts payable or paid under group, accident and disability, and annuity insurance;

(8) Tangible personal property on exhibition or deposited by exhibitors at any international exhibition held under auspices of the Federal Government; and

(9) The wages, salaries and commissions of individuals while in the hands of the employer, except upon an action or proceeding for support or for board for four weeks or less. 42 P.S. §§ 8123 to 8127.

CREDIT REPORTING

Federal - Fair Credit Reporting Act. See Chapter 3 supra.

State - Procedures.—Implementation of Federal Law.—If separate notice is given by an insurance company to applicants that a consumer credit investigation report may be used in connection with an application, one copy of the form is to be filed with the Insurance Department. If the notice is printed as part of the application or policy, two copies of the amended, prior-approved form are to be sent to the Department. In any filing or correspondence regarding this subject, the letter of transmittal must state as part if its caption, "Federal Fair Credit Reporting Act." (Letter of Insurance Commissioner to Presidents of all Insurance Companies, Authorized to Transact the Business of Life Insurance and Health and Accident Insurance in the Commonwealth of Pensylvania, Pa. B. Doc. No. 71-740, filed April 2, 1971)

DEBT COLLECTION

Federal - Fair Debt Collection Practices Act. See Chapter 3 supra.

State - It is unlawful for a collection agency to:

(1) Appear for or represent a creditor or other person in any proceeding or action in any court, or before any justice of the peace or magistrate;

(2) Furnish or offer to furnish legal services, directly or indirectly, or to offer to render or furnish such services within or without this Commonwealth;

(3) Buy, take an assignment of, or to become in any manner interested in the buying or taking of an assignment of any claim, directly or indirectly, for the purpose of collecting or enforcing the payment thereof;

(4) Act for, represent or undertake to render services for any debtor with regard to the proposed settlement or adjustment of the affairs of the debtor, or to demand, ask for, or receive any compensation for services in connection with the settlement or collection of any claim except from the creditor for whom it has rendered lawful services;

(5) To solicit employment for any attorney-at-law, or to receive from or divide with any such attorney-at-law any portion of any fee received by such attorney-at-law; and

(6) Coerce or intimidate any debtor by delivering or mailing any paper or document simulating or intending to simulate a summons, warrant, writ or court process as a means for the collection of a claim.

Whoever violates any of the prohibited practices is guilty of a misdemeanor of the third degree. 18 P.S. § 7311.

HOME SOLICITATION SALE

Federal - FTC Trade Regulation Rule. See Chapter 3 supra.

State - The buyer has the right to cancel a home solicitation sale until midnight of the third business day following execution of an agreement or offer to purchase. Cancellation occurs when the buyer gives written notice of cancellation to the seller at the address stated in the agreement. Notice is effective when delivered or when deposited in the mail properly addressed to the seller, postage prepaid. 73 P.S. § 201-7(a).

The buyer may not cancel a home solicitation sale if the buyer requested the services because of an emergency, and the buyer has hand-written and signed a waiver of his right to cancel. 73 P.S. 201-7(J). The sales agreement must contain a conspicuous notice of this cancellation right. 73 P.S. § 201-7(b)(1).

The buyer must take reasonable care of the goods and tender the goods at his or her residence to the seller upon demand. However, the

buyer takes title to the goods if the seller fails to demand such possession within 20 days after receipt of the notice of cancellation. The seller must return any funds received or goods traded in to the buyer within 10 business days after cancellation of the sale. 73 P.S. § 201-7(2).

A sale or contract for the sale of goods or services having a sale price of less than $25 and a sale of realty are not included in the protections provided by this statute. 73 P.S. § 201-7(K), (L).

MINOR'S CONTRACT

Age of majority to contract - 18. Pa. R.C.P. No. 76.

Contractual liability - Minor is liable only for necessaries received as a result of a contractual relationship. 13 P.S. § 1103.

REPOSSESSION REQUIREMENTS

The creditor must file a verified complaint with the prothonotary stating:

(1) A description of the property;
(2) The value of the property;
(3) The location of the property, if known; and
(4) The material facts upon which the creditor's claim is based. Pa. R.C.P. No. 1073.1.

The creditor also must execute a bond in double the value of the property, with security approved by the prothonotary, and naming the Commonwealth as obligee. Pa. R.C.P. No. 1075.3.

After the complaint has been filed, the creditor may move for the issuance of a writ of seizure. The court will then fix the date and time of the hearing which shall not be less than 48 hours after filing the motion for the writ of seizure. Notice must be given to the debtor, informing him of the hearing place, date, and time, at least 24 hours before the hearing. Pa. R.C.P. No. 1075.1. A writ of seizure can be issued without a hearing being held, if the creditor satisfies the court of the probable validity of his claim to possession and that there is probable cause to believe that before notice can be given or hearing held, (1) the value of the property and the creditor's interest therein will be adversely affected by the continued possession and use by the debtor; or (2) the debtor or other person in possession will conceal, dispose, encumber, waste the property or remove it from the county. A hearing shall be held within 72 hours after seizure of the property. Pa. R.C.P. No. 1075.2. The debtor can regain possession of the property by filing a counterbond within 72 hours after seizure of the property, in the same amount as the original bond, with security approved by the prothonotary, naming the Commonwealth of Pennsylvania as obligee. Pa. R.C.P. No. 1076.

Pennsylvania

STATUTE OF LIMITATIONS

Contract under seal - 20 years. 42 P.S. § 5529.
Simple written contract - 4 years. 42 P.S. § 5525.
Action for Breach of Contract for sale of goods - 4 years. 13 P.S. § 2725.
Oral contracts - 4 years. 42 P.S. § 5525(3).
Judgments - Courts of record - 4 years. 42 P.S. § 5525(5).

TRUTH-IN-LENDING REQUIREMENTS

Federal - Truth-in-Lending Act. See Chapter 3 supra.

State - No statutory provision.

UNFAIR AND DECEPTIVE TRADE PRACTICES

PA. STAT. ANN. tit. 73 § 201-1 (Purdon 1971 & Supp. 1983-1984).

Prohibited Practices: 16 enumerated unfair methods of competition and unfair or deceptive acts or practices and a catchall prohibiting any other fraudulent conduct likely to create confusion.

Special Requirements: None specified.

Scope: Trade and commerce means advertising, sale, offers for sale of any service, real or personal property, intangibles and any other thing of value.

Exclusions: Advertisements done by publisher, radio and television media, with no knowledge of falsity.

Private Remedies: Actual damages; $100 minimum damages; treble damages discretionary; may provide additional relief if proper.

Limitations: State action for injunction must be in public interest; private action for consumers and predicated upon ascertainable loss.

State Remedies: AG has rulemaking power, after public hearing; AG or DA enforces; injunction; court has discretion to award restitution; maximum $5000 per violation of injunction or assurance of compliance; equitable relief deemed proper; maximum $1000 per willful violation, court has discretion to dissolve business for violation of injunction; may appoint a receiver.

Precedential Value of FTC Interpretations: None specified.

Pennsylvania

WARRANTIES

Unless excluded or modified, a warranty that the goods shall be merchantable is implied in a contract for their sale if the seller is a merchant with respect to goods of that kind. Under this section the serving for value of food or drink to be consumed either on the premises or elsewhere is a sale. 13 P.S. § 2314.

Where the seller at the time of contracting has reason to know any particular purpose for which the goods are required and that the buyer is relying on the seller's skill or judgment to select or furnish suitable goods, there is, unless excluded or modified, an implied warranty that the goods shall be fit for such purpose. 13 P.S. § 2315.

Implied warranties, including the warranty of merchantability can be limited or excluded in writing. Remedies for breach of warranty also can be limited. 13 P.S. § 2316.

BANKRUPTCY EXEMPTIONS

Federal - See Chapter 2 supra.

State - Homestead Exemption:

(a) Homestead Exemption Law - $1,500. (T.31 LPRA Sec. 1851, 1852.)

(b) Property Exemptions: T32, Sec. 1130.

(1) Chairs, tables, desks and books, to the value of one hundred ($100) dollars, belonging to the judgment debtor;

(2) Necessary household, table and kitchen furniture belonging to the judgment debtor, including one sewing machine in actual use in the family, or belonging to a women, and stove, furniture, beds, bedding and bedsteads, not exceeding in value two hundred ($200) dollars, wearing apparel, hanging pictures, oil paintings and drawings, drawn or painted by any member of the family, and family portraits and their necessary frames, provisions actually provided for individual or family use sufficient for one month; one cow with her suckling calf, and one hog with her suckling pigs;

(3) The farming utensils or implements of husbandry of a farmer, not exceeding in value the sum of two hundred ($200) dollars; also, two oxen, or two horses, or two mules, and their harness, one cart or wagon, and food for such oxen, horses or mules for one month; also a water right not to exeed the amount of water used for irrigation of lands actually cultivated by him; also, all seed, grain or vegetables actually provided, reserved on hand for the purpose of planting or sowing at any time within the ensuing six months, not exceeding in value the sum of two hundred ($200) dollars;

(4) Tools or implements of a mechanic or artisan necessary to carry on his trade, not exceeding in value the sum of three hundred ($300) dollars; the notarial seal and records of a notary public; the instruments and chest of a surgeon, physician, surveyor, and dentist, necessary to the exercise of their profession, with their scientific and professional libraries; the law or professional libraries and office furniture of attorneys, counselors, physicians and judges, and the libraries of ministers of the gospel;

(5) The motor vehicle considered under the Traffic Law of Puerto Rico, as amended, sections 301-1873 of Title 9, as the working tool of its owner; but this exemption shall not be applicable with respect to the collection of debts in connection with the purchase of acquisition price of said vehicle, or incurred for the improvement or the repair thereof, or for fuel, parts or accessories therefor. As to the civil liability resulting from damages to a third person by said motor vehicle, the same shall be exempted from execution up to the sum of six thousand ($6,000) dollars;

(6) The cabin or dwelling of a miner, not exceeding the value the sume of two hundred ($200) dollars; also, his sluices, pipes, hose, windlass, derrick, cars, pumps, and tools, not exceeding in value two hundred dollars; also, one saddle animal, and one pack animal, together with their saddles and equipments belonging to a miner actually engaged in prospecting, not exceeding in value one hundred ($100) dollars:

(7) Two oxen, two horses, or two mules, and their harness; and one cart, wagon, dray or truck by the use of which a cartman, drayman, truckman, juckster, peddler, hackman, teamster or other laborer habitually earns a living; and one house with vehicle and harness, or other equipment used by a physician, surgeon or minister of the gospel, in making his professional visits, with food for such oxen, horses or mules for one month;

(8) Three-fourths of the earnings of the judgment debtor for personal services rendered at any time within thirty days next preceding the levy of execution, or levy of attachment, when it appears by the debtor's affidavit, or otherwise, that such earnings are necessary for the use of his family residing in this Commonwealth, supported wholly or in part by his labor;

(9) The shares held by a member of a homestead association duly incorporated, not exceeding in value five hundred ($500) dollars, if the person holding the share is not the owner of a homestead under the laws of this Commonwealth;

(10)All moneys, benefits, privileges, or immunities accruing or in any manner growing out of any life insurance on the life of the debtor, when the beneficiary may be the spouse or legal representative of the insured, if the proceeds of the policy is to belong to the spouse or heir by law of such deceased debtor, and when they are not, to any amount represented by an annual premium not exceeding fifty ($50) dollars;

(11) All fire engines, hooks and ladders, with the carts, trucks and carriages, hose, buckets, implements, and apparatus thereto appertaining, and all furniture and uniforms of any fire company or department organized under any law of this Commonwealth;

(12) All arms, uniforms, and accounterments required by law to be kept by any person; also one gun;

(13) All courthouses, jails, public offices, and buildings, schoolhouses, lots, grounds, and personal property appertaining thereof; the fixtures, furnitures, books, papers and appurtenances belonging and appertaining to the courthouse, jail, and public office belonging to any district of this island, or for the use of schools, and all cementeries, public squares, parks, and places, public buildings, town halls, markets, buildings for the use of fire departments and military organizations, and the lots and grounds thereto belonging and appertaining, owned or held by any town or incorporated city, or dedicated by such twon or city to health, ornament, or public use, or for the use of any fire or military company organized under the laws of this Commonwealth. No article or species of property mentioned in this section is exempt from execution issued upon a judgment recovered for its price, or upon a mortgagee thereon;

(14) All funds, possessions and properties of labor organizations shall likewise be exempt from the attachment and execution when the attachment or execution orders are entered in actions arising from or as a result of or in connection with labor disputes, lockouts or strikes; and any attachment or execution orders entered in such actions shall be without any effect;

(15) Common iceboxes expressly designed and commercially known for home use; home-use kitchens; wash machines for home use whose cash price does not exceed two hundred ($200) dollars; radio receiving sets whose cash price does not exceed one hundred ($100) dollars; television sets for home use whose cash price does not exceed two hundred and fifty ($250) dollars per unit, and electric irons for home use, are likewise exempted from attachment and execution. T.32 LPRA Sec. 1130.

CREDIT REPORTING

Federal - Fair Credit Reporting Act. See Chapter 3 supra.

State - No statutory provision.

DEBT COLLECTION

Federal - Fair Debt Collection Practices Act. See Chapter 3 supra.

State - Collecting Agencies Act: T10 sec. 981 et. seq.: No collecting agency may:

(1) Carry out actions for collection in relation to accounts, bills or debts without having been previously authorized in writing by the client;

(2) Institute judicial proceedings against a debtor in the name of the client without having been previously authorized in writing therefor;

(3) Refuse to, or fail to return to the client as the latter's request, all documents or papers kept with an account, when such account is returned to the client, when the collection has been performed or when the client desists to continue action for collection;

(4) Operate under the name or in such a manner as to imply that such agency is a branch of or is associated with any department of the federal, commonwealth or municipal government, or to use any seal, insignia, envelope or other format which simulates that of any government department or agency;

(5) Withhold an amount of money in excess of the quota previously agreed upon between the parties as fees for the service rendered;

(6) Use or threaten to use physical violence to collect an account;

(7) Publish or threaten to publish a list of debtors of diffuse information with respect to the debt, as well as the use of the telegraph for collection purposes;

(8) Require from the debtor the signing of a promissory note for an amount in excess of the debt;

(9) Collect or require from the debtor the payment of additional charges on the indebted amount as well as the expenses incurred by the collection agency in its normal action of collection or any other expenses including counsel fees not agreed upon, except when it may be so authorized by a final judgment;

(10) Intimidate the debtor by using documents which simulate in their form and appearance judicial documents;

(11) Mix the money belonging to clients with the operation funds of the agency or use part of same to defray expenses of the agency unless so authorized by the client;

(12) File judicial action for collection of money without previously having required from the debtor in writing the payment of the debt by certified mail with acknowledgment of receipt. No court may assume jurisdiction in an action for recovery of money instituted by a collection agency without compliance with this requirement having been alleged and proven. T.10 LPRA Sec. 981p.

HOME SOLICITATION SALE

Federal - FTC Trade Regulation Rule. See Chapter 3 supra.

State - Retail Installment Sales and Finance Companies: T.10 LPRA Sc 751.: The buyer has the right to cancel a domicile retail installment contract (home solicitation sale) until 3 working days after the date of delivery of the goods. No particular method of cancellation is prescribed. There shall be no surcharge if the cancellation is made within the time limit. The seller is not bound to accept the goods if the latter has suffered damages or deterioration in the hands of the buyer. The return and subsequent acceptance of damaged goods does not relieve the buyer from the payment of compensation for damage to the goods.

MINOR'S CONTRACT

Non-emancipated minor is incapable to consent. T31. Sec. 3402.

Contractual liability - The contract obligation of an emancipated minor is limited to the amount of his income for one year. T.31 LPRA Sec. 915.

Age of majority to contract - 21. T.31 LPRA Sec. 971.

STATUTE OF LIMITATIONS

Contract causes of action vary from 1 to 20 years; normally 15 years. T.31 LPRA sec. 5294.

Puerto Rico

TRUTH-IN-LENDING REQUIREMENTS

Federal - Truth-in-Lending Act. See Chapter 3 supra.

State - Puerto Rico's Retail Installment Sales and Finance Companies Act requires a creditor to disclose to the buyer his credit charges in dollars and cents and as an annual percentage rate. T.10 LPRA Sec. 742. These disclosures are not required for loans and revolving credit transactions. There are no statutory provisions relating to exempted and excluded transactions.

A creditor who fails to disclose information to a person entitled to the information is civilly liable to that person for a sum of money equal to not less than $100 nor more than $1,000, as determined by the Administrator. A creditor that fails to disclose required information may alternatively be found guilty of a misdemeanor and punished by a fine of not more than $500, or by imprisonment for not more than 6 months, or both. T.10 LPRA Sec. 792.

WARRANTIES

Consumer Goods and Domestic Appliances - T.10 LPRA sec. 112-113.

The sale in Puerto Rico of any goods and domestic appliances which contain warranty certificates in which Puerto Rico is not included in the cover of said warranty is hereby prohibited. T.10 LPRA Sec. 112. The Director of the Consumer Service Administration is empowered to impose fines, upon service of notice and holding of an administrative hearing for any violation of the warranty provisions, as well as to the orders that may be issued and to the regulations that may be adopted pursuant thereto. The fines imposed shall not be less than $25 nor more than $1,000. T.10 LPRA Sec. 112b.

In every sale of goods and domestic appliances made in Puerto Rico, there shall be executed separated documents for the sale contract of the appliance and for the contract or service insurance, if any. In case both contracts are executed jointly, the contract or service insurance shall only take effect immediately upon the expiration of the warranty term of the appliance sold. T.10 LPRA Sec. 113.

Contracts or service insurances shall be optional and the vender shall so state clearly and expressly to the vendee. T.10 LPRA Sec. 113a. Every vendor of goods or domestic appliances shall abstain from pressing or coercing or otherwise influencing a vendee to execute a contract or acquire a service insurance with the sale of goods or domestic appliances. T.10 LPRA Sec. 113b.

Puerto Rico

Any person who violates the provisions of this title shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than one hundred (100) dollars nor more than five hundred (500) dollars or by imprisonment in jail not to exceed six (6) months, or both penalties in the discretion of the court. T.10 LPRA Sec. 113c.

NOTE: The Consumer Service Administration of Puerto Rico is a government agency which deals with the protection of consumers' rights. The Administrator of this agency is empowered to effect necessary remedies to insure that consumers' rights are protected and to watch over violations of statutes designed to ensure the protection of consumers' rights.

Rhode Island

BANKRUPTCY EXEMPTIONS

Federal - See Chapter 2 supra.

State - Homestead exemption - No statutory provision.

Personalty exemption-

(1) The necessary wearing apparel of the debtor or of his family;

(2) $500 worth of the debtor's working tools necessary in his usual occupation, and the professional library of any professional man in actual practice;

(3) The household furniture and family stores of a housekeeper in the whole, including beds and bedding, not exceeding $1,000 in value;

(4) $300 worth of the bibles, schoolbooks, and other books in use in the family;

(5) 1 lot, or right of burial, in any cemetery.

(6) Wages due or accruing to any seaman;

(7) Debts secured by bills of exchange or negotiable promissory notes;

(8) (a) The entire salary and wages of any debtor due or payable from any director of social welfare or public welfare, or from any charitable organization, whenever such salaries or wages are to be paid or supplied, directly or indirectly, from any fund or money appropriated or contributed for the relief of the poor or in aid of unemployment, and the debtor is the object of such relief or aid;

(b) The entire wages or salary of any debtor due or payable from any employer, where the debtor has been the object of relief from any state, federal, or municipal corporation or agency, for a period of one year from and after the time when said debtor ceases to be the object of such relief;

(c) The salary or wages due or payable to any other debtor, not exceeding $50;

(9) The salary and wages of the wife and of the minor children of any debtor; and

(10) Such other property, real, personal or mixed, in possession or action, as is or shall be exempted from attachment and execution, either permanently or temporarily, by general or special acts, charters of incorporation, or by policy of the law. § 9-26-4.

Also exempt from execution is any person's interest in a pension fund or any pension derivable therefrom, for the benefit of policemen or firemen and created or held by authority of law of any city or town, or public officer or officers or board of officers. § 9-26-5.

Rhode Island

CREDIT REPORTING

Federal - Fair Credit Reporting Act. See Chapter 3 supra.

State - No statutory provision.

DEBT COLLECTION

Federal - Fair Debt Collection Practices Act. See Chapter 3 supra.

State - No statutory provision.

HOME SOLICITATION SALE

Federal - FTC Trade Regulation Rule. See Chapter 3 supra.

State - The buyer has the right to cancel a home solicitation sale until midnight of the third business day following execution of an agreement or offer to purchase, excluding Sunday and any holiday on which regular mail deliveries are not made. Cancellation occurs when the buyer gives written notice of cancellation to the seller at the address stated in the agreement. The notice of cancellation shall be sent by registered or certified mail. Notice of cancellation is effective when delivered or when deposited in the mail properly addressed to the seller. The notice of cancellation must indicate the intention on the part of the buyer not to be bound by the sale. § 6-28-3. The sales agreement must contain a conspicuous notice of this cancellation right to be valid. § 6-28-4.

The buyer must take reasonable care of the goods and tender the goods at his or her residence to the seller upon demand. However, the buyer takes title to the goods if the seller fails to take possession of the goods within 20 days after cancellation of the sale. § 6-28-7. The seller must return any funds received and goods traded in to the buyer within 20 days after cancellation of the sale. § 6-28-5(a,b). The seller may retain as a cancellation fee 5 percent of the cash price, $5, or the amount of the cash down payment, whichever is least. § 6-28-5(c). If the sales agreement fails to conform to the requirements for it and the buyer has notified the seller of his intention to cancel, the seller has 30 days to return any deposit made by the buyer. § 6-28-4.

A sale of insurance and a sale of real estate are not included in the protections provided by this statute. § 6-28-2.

A violation of the statute is a misdemeanor, § 6-28-8, and provides debtor with double damages, § 6-28-4(c).

Rhode Island

MINOR'S CONTRACT

Age of majority to contract - 18. § 15-12-1.

Contractual liability - Minor is liable only for necessaries received as a result of a contractual relationship. § 6A-1-103.

REPOSSESSION REQUIREMENTS

The creditor is not required to make an affidavit before seeking a writ of replevin. If the unlawfully detained goods or chattel exceed $5,000 in value, the creditor must apply to the superior court for the writ, and if the goods or chattel are less than $5,000 in value, the creditor must apply to the district court for the writ. §§ 34-21-1, 34-21-2. The creditor must execute a bond to the debtor, with sufficient sureties or a surety company authorized to do business in Rhode Island, in double the value of the goods to be replevied. § 34-21-4. Notice to the debtor is not required. If the creditor's bond or sureties are not approved by the court, and the creditor fails to comply with a court order concerning them within 3 days after the sheriff has taken possession of the property, the property must be returned to the debtor. Failure of the creditor to comply with the order operates as an adjudication of the title to the goods and chattels replevied in favor of the debtor. § 34-21-5.

STATUTE OF LIMITATIONS

Contract under seal - 20 years. § 9-1-17.
Simple written contract - 10 years. § 9-1-13.
Contract for sale of goods - 4 years. § 6A-2-725.
Oral contracts - 10 years. § 9-1-13.
Judgments - Courts of record - 20 years. § 9-1-17.

TRUTH-IN-LENDING REQUIREMENTS

Federal - Truth-In-Lending Act. See Chapter 3 supra.

State - No statutory provision.

UNFAIR AND DECEPTIVE TRADE PRACTICES

R.I. GEN LAWS § 6-13.1-1 (1969 & Supp. 1983).

Prohibited Practices: 17 enumerated unfair methods of competition and unfair or deceptive practices including 6.13.1.1.(13).

Special Requirements: None specified.

Rhode Island

Scope: Trade or commerce includes advertising, sale, offers for sale of any service, real or personal property, intangible and any other thing of value.

Exclusions: Actions permitted under state or U.S. laws administered by department of business regulation or other regulatory body.

Private Remedies: Actual damages; minimum $200; punitive damages; proper equitable relief "may" be provided; class action for actual and punitive damages and court has discretion to award injunction or other equitable remedy; court may award attorney's fees and costs.

Limitations: AG action if in public interest and notice given for injunction; private actions for consumers who suffer ascertainable loss.

State Remedies: AG enforces; injunction; court may make additional orders necessary including restitution, receiver, revocation of license; maximum $10,000 or dissolution of corporation per injunction violation.

Precedential Value of FTC Interpretatons: Due consideration and great weight.

WARRANTIES

Unless excluded or modified, a warranty that the goods shall be merchantable is implied in a contract for their sale if the seller is a merchant with respect to goods of that kind. Under this section the serving for value of food or drink to be consumed either on the premises or elsewhere is a sale. § 6A-2-314.

Where the seller at the time of contracting has reason to know any particular purpose for which the goods are required and that the buyer is relying on the seller's skill or judgment to select or furnish suitable goods, there is, unless excluded or modified, an implied warranty that the goods shall be fit for such purpose. § 6A-2-315.

Implied warranties, including the warranty of merchantability can be limited or excluded in writing. Remedies for breach of warranty also can be limited. § 6A-2-316.

American Samoa

STATUTES Consumer Protection - A.S.C. Ann. §§ 27.0401 to 27.0405
Loans & Interest - A.S.C. Ann. §§ 28-1501 to 28.1510

BANKRUPTCY EXEMPTIONS

Federal - See Chapter 2, supra.

Territorial - Real property of Samoa is not subject to execution, unless it is a judgment foreclosing on a valid mortgage. 43 § 1528. no others found.

CREDIT REPORTING

Federal - Fair Credit Reporting Act. See Chapter 3, supra.

Territory - None.

DEBT COLLECTION

Federal - Fair Debt Collection Practices Act. See Chapter 3, supra.

Territory - None.

HOME SOLICITATION SALE

Federal - FTC Trade Regulation Rule. See Chapter 3, supra.

Territory - None.

INTEREST RATES - §§ 28.1501 TO 28.1510.

Small Loans: $8 per $100 per year on loans up to $8,000. § 28.1502.

Other Loans: 15% per year.

Penalty: Class A misdemeanor and forfeiture of full amount of debt.

MINOR'S CONTRACT - No statutory provision found.

REPOSSESSION REQUIREMENTS

(1) American Samoa has no apparent separate provision for repossession of goods by a crediter. The territory has not adopted the Uniform Commercial Code, but has adopted the Uniform Negotiable Instruments Law as promulgated by the U.S. National Conference of

Commissioners on Uniform State Laws. Any provisions contained within it for repossession by a merchant of goods securing a negotiable instrument would be applicable. § 27.2503.

(2) The territory has special proceedings for attachment and garnishment. For Garnishment Proceedings, see the All States Garnishment Guide, ACIL-ST-264. Requirements for attachment are:

(a) Before or after judgment, a plaintiff may seek a writ of attachment on any express or implied contract to have seized any nonexempt property as security for the satisfaction of any judgment recovered. § 43.0901.

(b) Before any writ of attachment may issue, the plaintiff must submit an affidavit to the clerk of court showing that the defendant is indebted to the plaintiff, the amount of the indebtedness, and that the attachment is not sought for purposes of fraud, hinderance, or delay. § 43.0902.

(c) A bond in double the amount for which plaintiff seeks judgment must be approved by the clerk of court. § 43.903(a). No bond is required if the plaintiff is the government of Samoa or the Attorney General of Samoa on behalf of a Samoan suing a non-Somoan.

TRUTH-IN-LENDING REQUIREMENTS

Federal - Truth-in-Lending Act. See Chapter 3, supra.

Territory - No federal equivalent, but § 29.1501 to § 27-1532 specifies the following:

(1) No merchant, trader, or storekeeper may sell goods to a Samoan on credit for more than the current selling price of like goods at the place where the credit transaction took place. But it is permissible for a Samoan to agree to pay up to 8% per year interest on overdue accounts arising out of credit transactions. § 27.4501.

(2) No conditional rules contract is valid unless all the following conditions are met. § 27.1510.

(a) It is in writing signed by the person to be bound and attested to by at least one witness;

(b) It is filed with the territorial registrar within 10 days after its execution;

(c) It truly states the consideration upon which it is based or the debt or liability which it was intended to secure and contains a description of the specific articles or land to be sold or mortgaged.

WARRANTIES - No express statutory provision, but general authority exists for the Director of the Bureau of Consumer Protection, Department of Legal Affairs, to initiate enforcement actions for "unlawful acts or practices" against the consuming public. §§ 27.0401 to 27.0403.

South Carolina

BANKRUPTCY EXEMPTIONS

Federal - See Chapter 2 supra.

State - Homestead exemption - $1,000. § 15-41-10.

Personalty exemption -

(1) The debtor's aggregate interest, not to exceed $5,000 in value, in real property or personal property that the debtor or a dependent of the debtor uses as a residence, in a cooperative that owns property that the debtor or his dependent uses as a residence, or in a burial plot for the debtor. The aggregate value of multiple homestead exemptions allowable to a single living unit may not exceed $10,000;

(2) One motor vehicle not to exceed $1,200;

(3) $2,500 worth of household furnishings, household goods, wearing apparel, books and musical instruments held primarily for personal, family or household use of the debtor or the debtor's dependent.

(4) $500 worth of jewelry held primarily for the personal, family or household use of the debtor or the debtor's dependent;

(5) $1,000 worth of the debtor's aggregate interest in cash and other liquid assets; however, this exemption is only available to an individual who does not claim a homestead exemption;

(6) $750 worth of implements, professional books or tools of the trade of the debtor or the debtor's dependent;

(7) Any unmatured life insurance contract owned by the debtor, other than a credit life insurance contract;

(8) $4,000 worth of accrued dividend or interest under, or loan value of any unmatured life insurance contract owned by the debtor under which the insured is the debtor or an individual of whom the debtor is a dependent, less any property transferred under § 542(d) of the Bankruptcy Code of 1978;

(9) Professionally prescribed health aids;

(10) The debtor's right to receive social security benefits, unemployment compensation, veteran's benefits, disability benefits, alimony, support or separate maintenance, and payments under a stock bonus, pension, profit sharing or an annuity; and

(11) The debtor's right to receive property that is traceable to: (A) an award under a crime victim's reparation law; (B) a payment on bodily injury of the debtor or the wrongful death or bodily injury of another indiviudal of whom the debtor was or is a dependent; and (C) a payment under a life insurance contract that insured the life of an individual of whom the debtor was a dependent on the date of the individual's death. § 15-41-200.

CREDIT REPORTING

Federal - Fair Credit Reporting Act. See Chapter 3 supra.

State - No statutory provision.

DEBT COLLECTION

Federal - Fair Debt Collection Practices Act. See Chapter 3 supra.

State - No statutory provision.

HOME SOLICITATION SALE

Federal - FTC Trade Regulation Rule. See Chapter 3 supra.

State - The buyer has the right to cancel a home solicitation sale until midnight of the third business day following execution of an agreement or offer to purchase. § 37-2-502(1). Cancellation occurs when the buyer gives written notice of cancellation to the seller at the address stated in the agreement. § 37-2-502(2). Notice is effective when delivered or when deposited in the mail properly addressed to the seller, postage prepaid. § 37-2-502(3).

The buyer may not cancel a home solicitation sale if the buyer requested the services because of an emergency, and (A) the seller makes a substantial beginning of performance before the buyer gives notice of cancellation, (B) in the case of goods, the goods cannot be returned to the seller in as good condition as when received by the buyer. § 37-2-502(5). The sales agreement must contain a conspicuous notice of this cancellation right. § 37-2-503(2). Until the seller has notified the buyer of his rights of cancellation, the buyer may notify the seller in any manner of his intention to cancel. § 37-2-503(3).

The buyer must take reasonable care of the goods and tender the goods at his or her residence to the seller upon demand. § 37-2-505(2). However, the buyer takes title to the goods if the seller fails to demand such posssession within 40 days after receipt of the notice of cancellation. § 37-2-505(1). The seller must return any funds received or goods traded in to the buyer within 10 days after cancellation of the sale. § 37-2-504.

The following transactions are not included in the protections provided by this statute:

(1) A sale made pursuant to a preexisting revolving charge account;
(2) A previously negotiated sale at the seller's place of business;
(3) A sale conducted entirely by mail or telephone;
(4) A sale which is subject to the provisions of the federal Truth-In-Lending Act on the consumer's right to rescind certain transactions. § 37-

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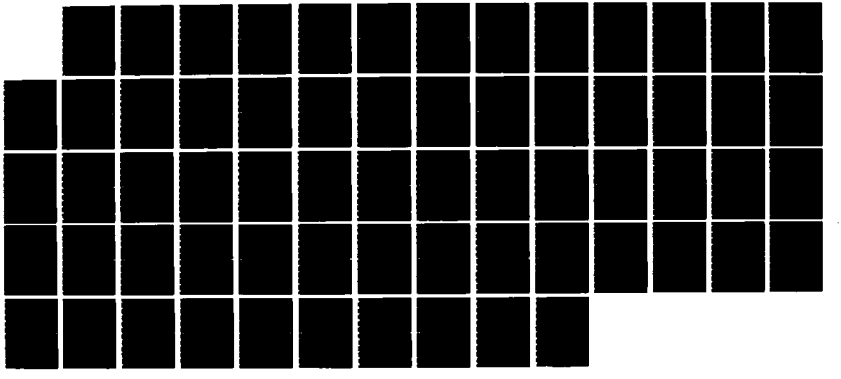

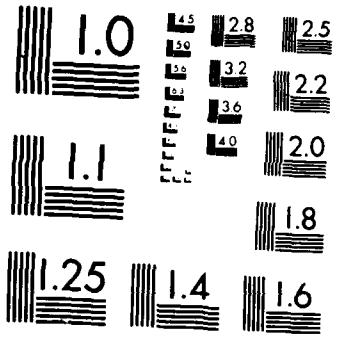

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MINOR'S CONTRACT

Age of majority to contract - 18. S.C. Const. art. XVII, § 14.

Contractual liability - Minor is liable only for necessaries received as a result of a contractual relationship. § 36-1-103.

REPOSSESSION REQUIREMENTS

The creditor must make an affidavit which shows:

(1) That the creditor is the owner of the property claimed, particularly describing it, or is lawfuly entitled to the possession thereof by virtue of a special property interest therein, and the facts in respect to which shall be set forth;

(2) That the property is wrongfully detained by the debtor;

(3) The alleged cause of the detention;

(4) That the property has not been taken for a tax, assessment or fine pursuant to a statute or seized under an execution or attachment against the property of the creditor; and

(5) The actual value of the property. § 15-69-30.

The creditor also must execute a bond with one or more sufficient sureties, approved by the court, in double the value of the property as stated in the affidavit. § 15-69-50.

The creditor must attach to the affidavit a notice of a right to a preseizure hearing which notifies the debtor that he may demand a hearing within 5 days from the date of service by notifying the clerk of court in writing of such evidence touching upon the probable validity of the creditor's claim. § 15-69-40. If the debtor (A) fails to demand a preseizure hearing within 5 days of service, or (B) after such hearing, the judge shall find that the creditor's claim for immediate possession should be allowed, or (C) the clerk of court or judge finds that a preseizure hearing has been waived in writing, or (D) the clerk of court or judge finds that there is a probability that the claimed property is in immediate danger of being destroyed or concealed by the debtor, then the clerk of court or the judge shall endorse the affidavit requiring the sheriff to take possession of the property. § 15-69-50. Any time before the property has been delivered to the creditor, the debtor can require the return of the property to him by giving the sheriff a bond executed by two or more sufficient sureties in double the value of the property as stated in the creditor's affidavit. § 15-69-140.

STATUTE OF LIMITATIONS

Contract under seal - 20 years.* § 15-3-520.

South Carolina

Simple written contract - 6 years. § 15-3-530.
Contract for sale of goods - 6 years. § 36-2-725.
Oral contracts - 6 years. § 15-3-530.
Judgments - Courts of record - 10 years. § 15-39-20.

*An action on a sealed note and a personal bond for the payment of money are both subject to a 6 year statute of limitation. § 15-3-520.

TRUTH-IN-LENDING REQUIREMENTS

Federal - Truth-In-Lending Act. See Chapter 3 supra.

State - The South Carolina Consumer Protection Code requires a creditor to disclose to the consumer the information required by the federal Truth-In-Lending Act and in all respects to comply with the provisions of the Act. §§ 37-2-301, 37-3-301. Also, see Chapter 3 supra.

The following transactions are exempted or excluded from coverage under the South Carolina Consumer Protection Code:

(1) Extensions of credit to the government or governmental agencies;

(2) A sale of insurance by an insurer (except CPC Art. 4);

(3) Transactions under public utility, municipal utility or common carrier tariffs if South Carolina or the United States regulates the charges for services;

(4) A licensed pawnbroker;

(5) Licensing or examining restricted lenders [§ 37-3-501(4)];

(6) Rates and charges for advancing insurance premiums by insurance agents;

(7) Rates and charges on loans, and rates and charges on restricted loans [§ 37-3-501(3)];

(8) Loans and sales or leases made primarily for agricultural purposes;

(9) Loans to or on behalf of students pursuant to a government supported educational loan program;

(10) Federally chartered credit unions;

(11) First mortgage loans made to enable the debtor to build or purchase a residence, when made by a lender whose loans are subject to supervision by South Carolina or the United States or made by a Federal Housing Administration approved mortgagee. § 37-1-202.

A creditor who fails to disclose information to a person entitled to the information is civilly liable to that person for actual damages and a penalty in an amount determined by the court, but not less than $100 nor more than $1,000. § 37-5-202(1). A creditor is not liable for a penalty for failure to disclose information, if he notifies the debtor of a violation before the creditor receives from the debtor written notice of the violation or the debtor has brought an action, and the creditor corrects the violation

within 60 days after notifying the debtor. § 37-5-202(6). A creditor who willfully fails to provide information which he is required to disclose is guilty of a misdemeanor and upon conviction shall be punished by a fine not to exceed $5,000, or imprisonment not to exceed one year, or both. § 37-5-302.

UNFAIR AND DECEPTIVE TRADE PRACTICES

S.C. CODE ANN. § 39-5-10 (Law. Co-op. 1976 & Supp. 1983)

Prohibited Practices: Unfair methods of competition and unfair or deceptive acts or practices.

Special Requirements: None specified.

Scope: Trade or commerce defined to include advertising, sale, and offers for sale of any service, real or personal property, intangible and any other thing of value.

Exclusions: Actions permitted by state or U.S. law; advertisements done by disinterested publisher, radio and television media, with no knowledge of falsity; actions governed by Title 38, Ch. 55 §§ 38-55-10 thru 38-55-410 relating to regulation of insurance; actions that comply with FTC statutes.

Private Remedies: Actual damages; treble damages for willful or knowing violation and court "may" provide other relief deemed proper; attorney's fees and costs to successful plaintiff.

State Remedies: AG, County or City Atty. upon AG approval enforces; injunction with costs to state; court may make additional orders necessary including restitution, revocation of license; assurance of compliance may stipulate costs, restitution; rulemaking; maximum $5000 per willful violation; maximum $15,000 or corporate dissolution per injunction violation and costs to AG.

Precedential Value of FTC Interpretatons: Guided by FTC interpretations.

WARRANTIES

Unless excluded or modified, a warranty that the goods shall be merchantable is implied in a contract for their sale if the seller is a merchant with respect to goods of that kind. Under this section the serving for value of food or drink to be consumed either on the premises or elsewhere is a sale. § 36-2-314.

Where the seller at the time of contracting has reason to know any particular purpose for which the goods are required and that the buyer is relying on the seller's skill or judgment to select or furnish suitable goods,

there is, unless excluded or modified, an implied warranty that the goods shall be fit for such purpose. § 36-2-315.

Implied warranties, including the warranty of merchantability can be limited or excluded in writing. Remedies for breach of warranty also can be limited. § 36-2-316.

South Dakota

BANKRUPTCY EXEMPTIONS

Federal - See Chapter 2 supra.

State - Homestead exemption - $30,000, but no limitation applies if the person is 70 years of age or older or the unremarried surviving spouse of such person so long as it continues to possess the character of a homestead. § 43-45-3.

Personalty exemption -

(1) All family pictures;

(2) A pew or sitting in any house of worship;

(3) A lot or lots in any burial grounds;

(4) The family bible, and all schoolbooks used by the family, and all other books used as part of the family library, not exceeding in value $200;

(5) All wearing apparel and clothing of the debtor and his family;

(6) The provisions for the debtor and his family necessary for one year's supply, either provided or growing, or both, and fuel necessary for one year. § 43-45-2.

CREDIT REPORTING

Federal - Fair Credit Reporting Act. See Chapter 3 supra.

State - No statutory provision.

DEBT COLLECTION

Federal - Fair Debt Collection Practices Act. See Chapter 3 supra.

State - No statutory provision.

HOME SOLICITATION SALE

Federal - FTC Trade Regulation Rule. See Chapter 3 supra.

State - The buyer has the right to cancel a home solicitation sale until midnight of the third business day following execution of an agreement or offer to purchase. § 37-24-5.3. Cancellation occurs when the buyer gives written notice of cancellation to the seller at the address stated in the agreement. Notice is effective when delivered, when telegramed or when deposited in the mail properly addressed to the seller, postage prepaid. § 37-24-5.4. The sales agreement must contain a conspicuous notice of this cancellation right. § 37-24-5.3.

The buyer must take reasonable care of the goods and tender the goods at his or her residence to the seller upon demand. However, the buyer takes title to the goods, without obligation to pay for them, if the seller fails to pick up the goods within 20 days after the date of the notice of cancellation. The seller must return any funds received or goods traded in to the buyer within 10 business days after cancellation of the sale. § 37-24-5.4.

The following transactions are not included in the protections provided by this statute:

(1) A sale made pursuant to prior negotiations at the seller's place of business;

(2) A sale in which the consumer is accorded the right of rescission by the provisions of the Consumer Credit Protection Act (15 U.S.C. § 1635);

(3) An emergency sale in which the buyer initiated the contact and the buyer furnishes the seller with a handwritten, dated statement describing the situation and acknowledging and waiving his rights to cancel the sale in 3 days;

(4) A sale conducted entirely by mail or telephone;

(5) A sale in which the buyer initiated the contact and requested the seller to visit his home for repairing or performing maintenance upon the buyer's personal property;

(6) A sale or rental of real property, a sale of insurance or a sale of securities or commodities by a registered broker-dealer; and

(7) The sale, lease or repair of motor vehicles, metal buildings, farm machinery, or implements or mobile homes, by a dealer having a fixed permanent location and place of business in South Dakota where such goods and services are offered on a continuing basis. § 37-24-5.2.

(8) Sale or rental of goods or services with purchase price less than $25.00. § 37-24-5.1.

MINOR'S CONTRACT

Age of majority to contract - 18. § 26-1-1.

Contractual liability - Minor is liable only for necessaries received as a result of a contractual relationship and for contracts made pursuant to express statutory authority. §§ 26-2-4, 26-2-5.

REPOSSESSION REQUIREMENTS

The creditor must make an affidavit stating:

(1) That the creditor is the owner of the property claimed, particularly describing it, or is lawfully entitled to possession thereof, by virtue of a special property therein, and the facts in respect to which shall be set forth;

(2) That the property is wrongfully detained by the debtor;
(3) The alleged cause of the detention;
(4) That the property has not been taken for a tax, assessment, or fine, pursuant to a statute, or seized under an execution or attachment against the property of the creditor; and
(5) The actual value of the property. § 21-15-2.

The creditor also must execute a bond with one or more sufficient sureties approved by the sheriff, or a cash deposit, in double the value of the property as stated in the affidavit. § 21-15-4. If cash is deposited, it must be left with the clerk or the judge having jurisdiction. § 21-15-5.

After the filing of the complaint, summons, and the affidavit, the judge shall by order require cause to be shown at a specified time and place, after reasonable notice to the debtor, why the creditor should not have delivery of the property. § 21-15-3. At any time before delivery of the property to the creditor, the debtor can require the return of the property to his possession, by giving the sheriff a bond, or receipt for cash deposit, in amount and sufficiency as required on the creditor's bond, and securing the creditor for delivery of the property. § 21-15-12.

STATUTE OF LIMITATIONS

Contract under seal - 20 years. § 15-2-6.
Simple written contract - 6 years. § 15-2-13.
Contract for sale of goods - 4 years. § 57A-2-725.
Oral contracts - 6 years. § 15-2-13.
Judgments - Courts of record - 20 years. § 15-2-6.

TRUTH-IN-LENDING REQUIREMENTS

Federal - Truth-In-Lending Act. See Chapter 3 supra.

State - No statutory provision.

UNFAIR AND DECEPTIVE TRADE PRACTICES

S.D. CODIFIED LAWS ANN. § 37-24-1 (1977 & Supp. 1983)

Prohibited Practices: Deceptive acts or practices, including 14 enumerated prohibitions.

Special Requirements: None specified.

Scope: In conduct of business.

Exclusions: Advertisements done by disinterested publisher, radio and television media, with no knowledge of falsity; acts permitted by state or U.S. laws or regulations.

Private Remedies: Actual damages.

Limitations: Statute of limitations is 2 years after discovery.

State Remedies: Director of Consumer Protection has rulemaking power; AG or state's attorney with AG approval has enforcement power; director may accept assurance of compliance that stipulates costs and restitution; AG may get injunction if provides notice; maximum $5000 per injunction violation; maximum $2000 per intentional violation; court may make necessary additional orders including restitution and receiver.

Precedential Value of FTC Interpretatons: None specified.

WARRANTIES

Unless excluded or modified, a warranty that the goods shall be merchantable is implied in a contract for their sale if the seller is a merchant with respect to goods of that kind. Under this section the serving for value of food or drink to be consumed either on the premises or elsewhere is a sale. § 57A-2-314.

Where the seller at the time of contracting has reason to know any particular purpose for which the goods are required and that the buyer is relying on the seller's skill or judgment to select or furnish suitable goods, there is, unless excluded or modified, an implied warranty that the goods shall be fit for such purposes. § 57A-2-315.

Implied warranties, including the warranty of merchantability can be limited or excluded in writing. Remedies for breach of warranty also can be limited. § 57A-2-316.

Tennessee

BANKRUPTCY EXEMPTIONS

Federal - See Chapter 2 supra.

State - Homestead exemption - $5,000 allowed to everyone regardless of whether he is head of a family. $7,500 is allowed to individuals who jointly own and use real property as their principal place of residence, but if only one of the joint owners is involved in the proceeding wherein the homestead exemption is claimed, the exemption shall be $5,000. § 26-2-301.

Personalty exemption - § 47-2-112.

(1) $4,000 worth of personal property selected by the debtor. § 26-2-102.

(2) All necessary and proper wearing apparel for the debtor and his family and the trunks or receptacles necessary to carry them;

(3) All family portraits and pictures;

(4) The family bible and schoolbooks. § 26-2-103.

(5) All money received as a pension from the state of Tennessee. § 26-2-104.

(6) The maximum part of the aggregate disposable earnings of an individual for any workweek which is subjected to garnishment may not exceed:

(a) Twenty-five percent (25%) of his disposable earnings for that week; or

(b) The amount by which his disposable earnings for that week exceed thirty (30) times the federal minimum hourly wage at the time the earnings for any pay period become due and payable, whichever is less. § 26-2-106.

(7) To the above allowances, there shall be added as exempt to the judgment debtor the sum of two dollars fifty cents ($2.50) per week for each dependent child under sixteen (16) years of age and a resident of this state. § 26-2-107.

(8) Insurance benefits which may hereafter become due and payable under contracts of accident, health, or disability insurance. § 26-2-110.

(9) The debtor's right to receive a social security benefit, unemployment compensation, local public assistance, a veteran's benefit, or a pension that vests as a result of a disability; and to the same extent that earnings are exempt pursuant to § 26-2-106, a payment under a stock bonus, pension, profit sharing, annuity or similar plan or contract on account of death, age, or length of service;

(10) Alimony to the extent that payment becomes due more than thirty (30) days after the debtor asserts a claim to such exemption in any judicial proceeding;

(11) The debtor's right not to exceed in the aggregate fifteen thousand dollars ($15,000) to receive property that is traceable to:

(a) An award not to exceed $5,000 under a crime victims reparation law;

(b) A payment not to exceed $7,500 on account of personal bodily injury, not including pain or suffering or compensation for actual pecuniary loss; or

(c) A payment not to exceed $10,000 on account of the wrongful death of an individual of whom the debtor was a dependent;

(12) A payment in compensation for loss of earnings reasonably necessary for the support of the debtor and any dependent of the debtor;

(13) The debtor's aggregate interest not to exceed $750 in value in any implements, professional books, or tools of the trade of the debtor, or the trade of the debtors dependent; and

(14) Professionally prescribed health care aids for the debtor or his dependent. § 26-2-111.

CREDIT REPORTING

Federal - FTC Trade Regulation Rule. See Chapter 3 supra.

State - No statutory provision.

DEBT COLLECTION

Federal - Fair Debt Collection Practices Act. See Chapter 3 supra.

State - No statutory provision.

HOME SOLICITATION SALE

Federal - FTC Trade Regulation Rule. See Chapter 3 supra.

State - The buyer has the right to cancel a home solicitation sale until midnight of the third business day following execution of an agreement or offer to purchase. § 47-16-103(1). Cancellation occurs when the buyer gives written notice of cancellation to the seller at the address stated in the agreement. § 47-16-103(2). Notice is effective when delivered or when deposited in the mail properly addressed to the seller, postage prepaid. § 47-16-103(3).

The buyer may not cancel a home solicitation sale if the buyer requested the services because of an emergency, and (A) the seller makes a substantial beginning of performance before the buyer gives notice of cancellation, (B) in the case of goods, the goods cannot be returned to the seller in as good condition as when received by the buyer, and (C) the buyer

has signed a waiver of his right to cancel. § 47-16-103(5). The sales agreement must contain a conspicuous notice of this cancellation right. § 47-16-104(b). Until the seller has notified the buyer of his rights of cancellation, the buyer may notify the seller in any manner of his intention to cancel. § 47-16-104(d).

The buyer must take reasonable care of the goods and tender the goods at his or her residence to the seller upon demand. However, the buyer takes title to the goods, without obligation to pay for them, if the seller fails to demand such posssession within 20 days after receipt of the notice of cancellation. § 47-16-106(a,b). The seller must return any funds received or goods traded in to the buyer within 10 days after cancellation of the sale. § 47-16-105. The seller is entitled to compensation only to the extent of the fair market value for any services performed prior to cancellation of the sale. § 47-16-106(c).

The following transactions are not included in the protections provided by this statute:

(1) A sale or lease of farm equipment, motor vehicles, insurance, or securities;

(2) A cash sale of less than $25;

(3) A sale or lease made pursuant to a preexisting revolving charge account;

(4) A sale or lease made pursuant to prior negotiations between the parties;

(5) A sale of real estate or listing agreements; and

(6) A sale of farm animals or produce or similar perishable items. § 47-16-102(4).

MINOR'S CONTRACT

Age of majority to contract - 18. § 1-3-113(a).

Contractual liability - Minor is liable only for necessaries received as a result of a contractual relationship. § 47-1-103.

REPOSSESSION REQUIREMENTS

The creditor must file a complaint in the circuit or chancery court or cause a warrant to issue in the general sessions court in order to institute an action to recover personal property. If the creditor's right of possession is founded on a writing, a copy of the writing must be attached as an exhibit to the affidavit. The complaint or warrant shall be sworn to or have attached a sworn affidavit stating:

(1) That the creditor is entitled to possession of the described property and the reason he is so entitled;

(2) A description of the property;

(3) The value of the property. § 29-30-103.

Tennessee

The creditor can expedite the proceeding for obtaining a writ of possession by filing an application and a verified complaint simultaneously during the first session of court. The court shall hear the parties and order the issuance of the writ of possession where the court finds that:

(A) That at least five (5) days prior to such application plaintiff mailed by certified mail or delivered to defendant a notice of the time and place of such application and that:

(i) Such notice had either been received by the defendant, or was directed to the defendant at the address stated in any writing, signed by the defendant, and on which the plaintiff's claim to possession is founded;

(ii) Such notice was accompanied by a copy of plaintiff's complaint, including a copy of any writing on which the plaintiff's claim to possession was founded; and

(iii) The plaintiff is entitled to possession of the property, or that there is no substantial controversy as to the plaintiff's right to such possession; or

(B) (i) That the property was obtained by fraud, misrepresentation or theft, or

(ii) That the defendant is:

(a) Concealing the property;

(b) Likely to remove it from the jurisdiction of the court;

(c) Likely to dispose of the property;

(d) Endangering the property by unusually hazardous use; or

(e) Seriously impairing the plaintiff's security interest in the property, such as use in some manner other than that contemplated by the parties or by failing to maintain hazard insurance on the property where the written instrument or agreement on which the plaintiff's claim is founded requires such insurance. § 29-30-106.

A writ of possession issued pursuant to (B) shall be conditioned on the plaintiff's posting a bond in an amount fixed by the court which shall not be less than the value of the property. § 29-30-106. After the action to recover personal property has been properly filed with the clerk, process shall issue to the debtor stating that a possessory hearing will be held on a date and at a time specified before the judge or chancellor of the court where the action is filed. The possessory hearing shall be held not less than 5 or more than 20 days after the process is served on the debtor. The process must notify the debtor that his failure to appear and offer evidence will result in issuance of the writ of possession. If the action is filed in the court of general session, the process shall notify the debtor that his failure to appear and offer evidence will result in the entering of a default judgment against him for the relief sought in the warrant. § 29-30-104.

There are no statutory provisions relating to a redelivery bond.

STATUTE OF LIMITATIONS

Contract under seal - 6 years. § 28-3-109.
Simple written contract - 6 years. § 28-3-109.
Contract for sale of goods - 4 years. § 47-2-725.
Oral contracts - 6 years. § 28-3-109.
Judgments - Courts of record - 10 years. § 28-3-110.

TRUTH-IN-LENDING REQUIREMENTS

Federal - Truth-In-Lending Act. See Chapter 3 supra.

State - Compliance with the requirements of the Consumer Credit Protection Act, commonly referred to as the federal "Truth-In-Lending Act," shall be deemed compliance with any requirement of the statutes of Tennessee relating to the disclosure of information in connection with credit transactions. § 47-14-125.

UNFAIR AND DECEPTIVE TRADE PRACTICES

TENN. CODE ANN. § 47-18-101 (1979 & Supp. 1983).

Prohibited Practices: Unfair or deceptive acts or practices, including 20 enumerated prohibitions and a catchall provision prohibiting any other deceptive consumer act.

Special Requirements: None specified.

Scope: Trade or commerce defined as advertising, offering for sale, lease, or rental any goods, services, real or personal property, intangible and any other thing of value.

Exclusions: Acts authorized by state or U.S. laws; advertisements done by publisher, radio and television media, with no knowledge of falsity; credit terms; retailer in good faith and without actual knowledge of violation.

Private Remedies: Actual damages; court may award treble damages and other relief necessary and proper for willful or knowing violation; declaratory judgment; injunction provided no state action filed; attorney's fees and costs to prevailing plaintiff.

Limitations: Injunction if in public interest and upon notice; private action if suffered ascertainable loss; court may set aside unreasonable settlement 1 year from making; court may limit private party to terms of reasonable offer of settlement; statute of limitations is 1 year from discovery and 4 years from transaction.

Tennessee

State Remedies: AG & reporter at request of consumer affairs division enforces; knowing violation of assurance of compliance results in maximum $1,000 per violation; injunction; costs; court may make orders necessary including restitution, revoke license for knowing and persistent violation.

Precedential Value of FTC Interpretatons: Interpreted and construed consistent with FTC.

WARRANTIES

Unless excluded or modified, a warranty that the goods shall be merchantable is implied in a contract for their sale if the seller is a merchant with respect to goods of that kind. Under this section the serving for value of food or drink to be consumed either on the premises or elsewhere is a sale. § 47-2-314.

Where the seller at the time of contracting has reason to know any particular purpose for which the goods are required and that the buyer is relying on the seller's skill or judgment to select or furnish suitable goods, there is, unless excluded or modified, an implied warranty that the goods shall be fit for such purpose. With respect to the sale of cattle, hogs, sheep, and horses, there shall be no implied warranty that these animals are free from disease. § 47-2-315.

Implied warranties, including the warranty of merchantability can be limited or excluded in writing. Remedies for breach of warranty also can be limited. § 47-2-316.

BANKRUPTCY EXEMPTIONS

Federal - See Chapter 2 supra.

State - Homestead exemption - The homestead shall consist of:

(1) For a family, not more than two hundred acres, which may be in one or more parcels, with the improvements thereon, if not in a city, town, or village; or

(2) For a single, adult person, not a constituent of a family, not more than one hundred acres, which may be in one or more parcels, with the improvements thereon, if not in a city, town, or village; or

(3) For a family or a single, adult person, not a constituent of a family, a lot or lots, not to exceed one acre together with any improvements thereon, if in a city, town, or village. UTCA Property Code section 41.001.

Personalty exemption -

(a) Personal property (not to exceed an aggregate fair market value of $15,000 for each single, adult person, not a constituent of a family, or $30,000 for a family) is exempt from attachment, execution and every type of seizure for the satisfaction of liabilities, except for encumbrances properly fixed thereon, if included among the following:

(1) Furnishings of a home, including family heirlooms, and provisions for consumption;

(2) All of the following which are reasonably necessary for the family or a single, adult person, not a constituent of a family; implements of farming or ranching; tools, equipment, apparatus (including a boat), and books used in any trade or profession; wearing apparel; two firearms and athletic and sporting equipment;

(3) All passenger cars and light trucks, as those terms are defined by Section 2, Uniform Act Regulating Traffic on Highways, as amended (Article 6701d, Vernon's Texas Civil Statutes), that are not held or used for production of income or, whether held or used for production of income or not, any two of the following categories of means of travel: two animals from the following kinds with a saddle and bridle for each: horses, colts, mules, and donkeys; a bicycle or motorcycle; a wagon, cart, or dray, with harness reasonably necessary for its use; an automobile or station wagon; a truck cab; a truck trailer; a camper-truck; a truck; a pickup truck;

(4) Livestock and fowl not to exceed the following in number and forage on hand reasonably necessary for their consumption: 5 cows and their calves, one breeding-age bull, 20 hogs, 20 sheep, 20 goats, 50 chickens, 30 turkeys, 30 ducks, 30 geese, 30 guineas;

(5) Household pets;

(6) The cash surrender value of any life insurance policy in force for more than two years to the extent that a member or members of the family of the insured person or a dependent or dependents of a single, adult person, not a constituent of a family, is beneficiary thereof; and

(7) Current wages for personal services. UTCA Property Code sections 42.001, 42.002.

CREDIT REPORTING

Federal - Fair Credit Reporting Act. See Chapter 3 supra.

State - Violations. - Any person or credit reporting bureau who knowingly furnishes false information regarding another person's credit worthiness, credit standing, or credit capacity is guilty of a misdemeanor and upon conviction is punishable by a fine of not more than $200. ART. 9016.

DEBT COLLECTION

Federal - Fair Debt Collection Practices Act. See Chapter 3 supra.

State - Texas law prohibits a debt collector from collecting or attempting to collect any debt alleged to be due and owing by a consumer by employing any of the following practices:

(1) The use of threats, coercion, or attempts to coerce, ART. 5069-11.02;

(2) The use of oppressive methods, harassment, or abuse of any person, ART. 5069-11.03;

(3) The use of any unfair or unconscionable means, ART. 5069-11.04; and

(4) The use of any fraudulent, deceptive or misleading representations, ART. 5069-11.05.

Any person who engages in acts or practices which are prohibited by law is guilty of a misdemeanor, and upon conviction is punishable by a fine of not less than $100 nor more than $500 for each violation. ART. 5069-11.09.

HOME SOLICITATION SALE

Federal - FTC Trade Regulation Rule. See Chapter 3 supra.

State - The buyer has the right to cancel a home solicitation sale until midnight of the third business day following execution of an agreement or offer to purchase. ART. 5069-13.02(a). Cancellation occurs when the buyer gives written notice of cancellation to the seller at the address stated in the agreement. Notice is effective when delivered or when deposited in the mail properly addressed to the seller, postage prepaid.

ART. 5069-13.02(c). The sales agreement must contain a conspicuous notice of this cancellation right. ART. 5069-13.02(b).

The buyer must take reasonable care of the goods and tender the goods at his or her residence to the seller upon demand. However, the buyer takes title to the goods, without obligation to pay for them if the seller fails to demand such possession within 20 days after receipt of the notice of cancellation. ART. 5069-13.06. The seller must return any funds received or goods traded in to the buyer within 10 business days after cancellation of the sale. ART. 5069-13.03(5).

The following transactions are not included in the protections provided by this statute:

(1) A sale of farm equipment;

(2) A sale of goods for less than $25;

(3) A sale made pursuant to a preexisting revolving charge account or retail charge agreement;

(4) A sale made pursuant to prior negotiations between the parties at a fixed business location;

(5) A sale of realty for less than $100; and

(6) A sale of realty in which the purchaser is represented by a licensed attorney, or in which the transaction is negotiated by a licensed real estate broker, or in which the transaction is being negotiated by the person who owns the realty not at the residence of the customer. ART. 5069-13.01(5).

MINOR'S CONTRACT

Age of majority to contract - 18. Sec. 129.001, UTCA Civil Practice and Remedies Code.

Contractual liability - Minor is liable only for necessaries received as a result of a contractual relationship. UCC § 1.103.

REPOSSESSION REQUIREMENTS

The creditor must file an affidavit stating:

(1) That the creditor is the owner of the property, or some interest therein specifying such interest, and is entitled to the possession thereof;

(2) If the suit be to foreclose a mortgage or enforce a lien upon the property, the fact of the existence of such mortgage or lien, that the same is just and unsatisfied, and the amount of the same still unsatisfied, and the date when due;

(3) A description of the property to be sequestered, and the value of each article of property and the county in which it is situated;

(4) It shall set forth one or more of the causes named in section 62.001 of the UTCA Civil Practice and Remedies Code, entitling him to the writ which includes:

(A) When a person sues for the title or possession of any personal property of any description, and makes oath that he fears the debtor or person in possession thereof will injure, ill-treat, waste or destroy such property, or remove the same out of the limits of the county during the pendency of the suit; or

(B) When a person sues for the foreclosure of a mortgage or the enforcement of a lien upon personal property of any description, and makes oath that he fears the debtor or person in possession thereof will injure, ill-treat, waste or destroy, or remove the same out of the county during the pendency of the suit, section 62.001; TEXAS R. CIV. P. 696.

The creditor also must file with the officer authorized to issue the writ of sequestration a bond payable to the debtor in the amount fixed by the court's order with sufficient surety or sureties as provided by statute to be approved by such officer. TEXAS R. CIV. P. 698.

The debtor shall be served in any manner provided for service of citation, with a copy of the writ of sequestration, the application, accompanying affidavits, and orders of the court as soon as practicable following the levy of the writ. Service of the writ on the debtor notifies him that he can regain possession of the property by filing a replevy bond. TEXAS R. CIV. P. 700a. At any time before judgment, the debtor may replevy the property by executing a bond, with sufficient surety or sureties as provided by statute, to be approved by the officer who levied the writ, payable to the creditor in the amount fixed by the courts order. TEXAS R. CIV. P. 701.

STATUTE OF LIMITATIONS

Contract under seal - 4 years. UTCA Civil Practice and Remedies Code section 16.04.

Simple written contract - 4 years. UTCA Civil Practice and Remedies Code section 16.04.

Contract for sale of goods - 4 years. UCC § 2.725.

Oral contracts - 4 years. UTCA Civil Practice and Remedies Code section 16.04.

Judgments - Courts of record - 10 years. UTCA Civil Practice and Remedies Code section 31.006.

TRUTH-IN-LENDING REQUIREMENTS

Federal - Truth-In-Lending Act. See Chapter 3 supra.

State - Compliance with the federal Truth-in-Lending Act and Regulation Z is deemed compliance with the Texas Insurance Premium Finance Law. ART. 24.12.

Texas

UNFAIR AND DECEPTIVE TRADE PRACTICES

TEX. BUS. & COM. CODE ANN. § 17.41 (Vernon 1968 & Supp. 1984).

Prohibited Practices: Deceptive acts or practices, including 23 enumerated prohibitions with consumers having additional actions for breach of warranty, insurance violation, or an unconscionable act that takes grossly unfair advantage of consumer's lack of knowledge or results in gross disparity between what was paid and received.

Special Requirements: None specified.

Scope: Trade or commerce defined as advertising, offers for sale, sales or lease of any service, goods, real or personal property, intangible and any other thing of value.

Exclusions: State acts against insurance agency only on request of State Board or Commissioner of Insurance; owners or employees of newspaper, magazine, telephone directory, billboard, broadcast station who advertises without knowledge or benefit from violation; acts authorized by FTC rules or regulations.

Private Remedies: Actual damages; double damages maximum of $1000; maximum $1000 treble damages for knowing violation; injunction; restitution; any other relief deemed proper including receiver, revoke license; attorney's fees and costs to prevailing plaintiff, to defendant if action in bad faith, groundless or brought to harass.

Limitations: No double recovery of actual damages and penalties for same act; state acts in public interest and upon notice for injunction; private actions for consumers that suffer actual damages; no receiver or license suspension for consumer if also regulated by state agency with those powers; consumer civil penalties only if notice letters sent, unless statute of limitations would run; is defense if consumer rejects a written settlement providing for actual damages and attorney's fees; in consumer claims, defense exists if proves gave plaintiff written notice of defendant's reliance without knowledge on false information, provided in government records, tests, or another source; consumer may get actual damages only for false information provided by third party who should have foreseen it was for consumer; statute of limitations is 2 years from discovery of violation; additional 180 days given if consumer proves defendant knowingly induced postponement of action.

State Remedies: Consumer protection division and DA or county attorney upon notice to division enforces; maximum $2000 per violation, not to exceed total of $10,000; injunction; court may make additional orders, including restitution, receiver; $10,000 per injunction violation, not to

exceed $50,000; criminal penalties of $5000 and/or 1 year imprisonment for intentional concealment of evidence.

Precedential Value of FTC Interpretatons: Guided by FTC Act.

WARRANTIES

Unless excluded or modified, a warranty that the goods shall be merchantable is implied in a contract for their sale if the seller is a merchant with respect to goods of that kind. Under this section the serving for value of food or drink to be consumed either on the premises or elsewhere is a sale. UCC § 2.314.

Where the seller at the time of contracting has reason to know any particular purpose for which the goods are required and that the buyer is relying on the seller's skill or judgment to select or furnish suitable goods, there is, unless excluded or modified, an implied warranty that the goods shall be fit for such purpose. UCC § 2.315.

Implied warranties, including the warranty of merchantability can be limited or excluded in writing. Remedies for breach of warranty also can be limited. UCC § 2.316.

Utah

BANKRUPTCY EXEMPTIONS

Federal - See Chapter 2 supra.

State - Homestead exemption - A homestead shall be exempt in an amount not exceeding $8,000 in value for a head of family, $2,000 for a spouse, and $500 in value for each other dependent. § 78-23-3.

Personalty exemption--

(1) A burial plot for the individual and his family;

(2) Health aids reasonably necessary to enable the individual or a dependent to work or sustain health;

(3) Benefits the individual or his dependent have received or are entitled to receive by reason of disability, illness, or unemployment from any source;

(4) Benefits paid or payable for medical, surgical, or hospital care to the extent they are used by an individual or his dependent to pay for such care;

(5) Veterans benefits;

(6) Money or property received, and rights to receive money or property for child support;

(7) One clothes washer and dryer, one refrigerator, one freezer, one stove, one sewing machine, all carpets in use, provisions sufficient for three months actually provided for individual or family use, all wearing apparel, not including jewelry or furs, of every individual and dependent, also all beds and bedding for every individual or dependent;

(8) Works of art depicting the debtor, or the debtor and his resident family, or produced by the debtor or the debtor and his resident family, except where works of art are held by the debtor as part of a trade or business;

(9) Proceeds of insurance, a judgment, or a settlement, or other rights accruing as a result of bodily injury of the individual or of the wrongful death or bodily injury of another individual of whom the individual was or is a dependent to the extent that such proceeds are compensatory. § 78-23-5.

Besides the property specified above, an individual is entitled to exemption of the following property to the extent reasonably necessary for the support of the individual and his dependents:

(1) Money or property received, and rights to receive money or property for alimony or separate maintenance;

(2) Proceeds or benefits paid or payable on the death of an insured, if the individual was the spouse or a dependent of the insured; and

(3) Assets held, payments, and amounts payable under a stock bonus, pension, profit-sharing, annuity, or similar plan providing benefits other than by reason of illness or disability. § 78-23-6.

An individual is entitled to an exemption of unmatured life insurance contracts owned by him. If the contracts have accrued dividends and loan values totaling more than $1,500 available to the individual, a judgment creditor may obtain a court order directing the individual debtor to pay the creditor, and authorizing the creditor on the debtor's behalf to obtain payment of, the amount of the accrued dividends and loan values exceeding $1,500 or the amount of the creditor's claim, whichever is less. § 78-23-7.

(1) An individual is entitled to exemption of the following property up to an aggregate value of items in each subparagraph of $500:

(a) Furnishings and appliances reasonably necessary for one household;

(b) Animals, books, and musical instruments, if reasonably held for the personal use of the individual or his dependents;

(c) An heirloom or other item of particular sentimental value to the individual.

(2) An individual is entitled to an exemption of implements, professional books, or tools of the trade of the individual, all having an aggregate value not exceeding $1,500; and one motor vehicle having a value not exceeding $1,500 where such motor vehicle is used for the claimant's business or profession. Business or professional use of a motor vehicle does not include transportation to and from a claimant's place of work or business. § 78-23-8.

DEBT COLLECTION

Federal - Fair Debt Collection Practices Act. See Chapter 3 supra.

State - No statutory provision.

CREDIT REPORTING

Federal - Fair Credit Reporting Act. See Chapter 3 supra.

State - No statutory provision.

HOME SOLICITATION SALE

Federal - FTC Trade Regulation Rule. See Chapter 3 supra.

State - The buyer has the right to cancel a home solicitation sale until midnight of the third business day following execution of an agreement or offer to purchase. Cancellation occurs when the buyer gives written notice of cancellation to the seller at the address stated in the agreement. Notice is effective when delivered or when deposited in the mail properly addressed to the seller, postage prepaid. § 70C-5-102(3).

The buyer may not cancel a home solicitation sale if the buyer requested the services because of an emergency, and (A) the seller makes a substantial beginning of performance before the buyer gives notice of cancellation and (B) in the case of goods, the goods cannot be returned to the seller in as good condition as when received by the buyer. § 70C-5-102(5). The sales agreement must contain a conspicuous notice of this cancellation right. § 70C-5-103(2). Until the seller has notified the buyer of his rights of cancellation, the buyer may notify the seller in any manner of his intention to cancel. § 70C-5-103(4).

The buyer must take reasonable care of the goods and tender the goods at his or her residence to the seller upon demand. However, the buyer takes title to the goods, without obligation to pay for them, if the seller fails to demand such possession within 40 days after receipt of the notice of cancellation. § 70C-5-105. The seller must return any funds received or goods traded in to the buyer within 10 days after cancellation of the sale. § 70C-5-104.

The following transactions are not included in the protections provided by this statute:

(1) A cash sale;

(2) A sale of farm equipment;

(3) A sale made pursuant to a preexisting open-end charge account; and

(4) A sale made pursuant to prior negotiations between the parties at the seller's place of business. § 70C-5-101.

MINOR'S CONTRACT

Age of majority to contract - 18. § 15-2-1.

Contractual liability - Minor is liable not only for necessories but also by his contracts, unless he disaffirms them within a reasonable time upon reaching majority. § 15-2-2.

REPOSSESSION REQUIREMENTS

The creditor must make an affidavit showing:

(1) A description of the property claimed;

(2) That the creditor is the owner of the property or has a special ownership or interest therein, stating the facts in relation thereto, and that he is entitled to the possession thereof;

(3) That the property is wrongfully detained by the debtor and the alleged cause of the detention;

(4) That the property has not been taken for a tax, assessment or fine pursuant to a statute, or seized under an execution or an attachment against the property of the creditor; and

(5) The actual value of the property. UTAH R. CIV. P. 64B(b).

The creditor also must execute a bond with sufficient sureties in double the value of the property, as stated in the creditor's affidavit. UTAH R. CIV. P. 64B(c).

Notice to the debtor is not required, although after the writ has been executed the sheriff must serve on the debtor a copy of the affidavit, undertaking and writ. UTAH R. CIV. P. 64B(c). At any time before delivery of the property to the creditor, the debtor may require the return of the property to his possession, by serving upon the sheriff and the creditor and filing with the court, a bond with sufficient sureties in double the value of the property as stated in the creditor's affidavit. UTAH R. CIV. P. 64B(e). The prejudgment writ of replevin can be issued without notice to the debtor or an opportunity to be heard if it clearly appears from the affidavit or complaint that immediate and irreparable injury, loss, or damage will result to the applicant before notice can be served and a hearing had thereon. UTAH R. CIV. P. 64A.

STATUTE OF LIMITATIONS

Contract under seal - 6 years. § 78-12-23.
Simple written contract - 6 years. § 78-12-23.
Contract for sale of goods - 4 years. § 70A-2-725.
Oral contracts - 4 years. § 78-12-25.
Judgments - Courts of record - 8 years. § 78-12-22.

TRUTH-IN-LENDING REQUIREMENTS

Federal - Truth-in-Lending Act. See Chapter 3 supra.

State - The Utah Truth-in-Lending laws were repealed in 1985.

UNFAIR AND DECEPTIVE TRADE PRACTICES

UTAH CODE ANN. §§ 13-2-1 and 13-5-1 (1953 & Supp. 1983).

Prohibited Practices: Unfair methods of competition, including many enumerated unlawful practices.

Special Requirements: None specified.

Scope: In trade or commerce defined as intrastate commerce.

Exclusions: Banks, common carriers and other public utilities subject to regulation; sales made to close out stock upon notice to public; sales of damaged goods upon notice to public; sales made in price competition; sales at prices set by interstate competition.

Utah

Private Remedies: Injunction, actual damages; treble damages, minimum $2000 damages; court costs; maximum $5000 per day of injunction violation, upon notice of injunction given.

Limitations: Division acts in public interest; actual damages given only if injury occurred.

State Remedies: Division of Consumer Protection and AG or county attorney upon request of division may enforce; injunction; actual damages; treble damages; minimum $2000 damages, costs, maximum $5000 and/or 12 months imprisonment for knowing violation; division has rulemaking power; $2000 per day of injunction violation upon notice of injunction.

Precedential Value of FTC Interpretations: None specified.

UTAH CODE ANN. § 13-11-1 (Supp. 1983).

Prohibited Practices: Deceptive acts or practices by a supplier in consumer transaction; including 14 enumerated prohibitions and unconscionable practice by supplier in consumer transaction.

Special Requirements: None specified.

Scope: Consumer transaction includes offers or solicitations and sale, lease, assignment, of services, tangible or intangible property for primarily personal, family or household purposes or business opportunity requiring expenditure of money or property and services on continuing basis.

Exclusions: Securities and insurance excepted from definition of consumer transaction; violation not done by supplier in connection with a consumer transaction; act permitted by state or federal law; personal injury or death claims; property claims other than subject to consumer transaction; credit terms; public utilities regulated by state Public Services Commission; publisher, broadcaster, printer or other person that disseminates information for others if done without actual knowledge of violation.

Private Remedies: Declaratory judgment, injunction, actual damages, minimum $2000 plus court costs, class actions for declaratory judgment, injunction and appropriate ancillary relief or actual damages; attorney's fees to prevailing party if consumer action is groundless or supplier violation proven or settled.

Limitations: Only unjust enrichment of supplier as damages if he proves violation by bona fide error despite reasonable procedures; statute of limitations for state is 2 years from violation; consumer action predicated upon loss suffered; statute of limitations for consumer is 2 years from occurrence or within 1 year after state action terminated; no statute of limitations on consumer counterclaims.

State Remedies: Division of Consumer Protection or state official or agency with supervisory authority over supplier enforces; maximum $5000 per day of injunction violation; substantive and procedural rulemaking; declaratory judgment; injunction; actual damages; class action for actual damages; court may make appropriate orders, including: receiver, reimbursement, specific performance, strike unconscionable clauses; assurance of compliance may be conditioned on reimbursement or corrective action.

Precedential Value of FTC Interpretations: Make state regulation consistent with FTC policies on consumer protection, make uniform with states that enact similar law.

WARRANTIES

Unless excluded or modified, a warranty that the goods shall be merchantable is implied in a contract for their sale if the seller is a merchant with respect to goods of that kind. Under this section the serving for value of food or drink to be consumed either on the premises or elsewhere is a sale. § 70A-2-314.

Where the seller at the time of contracting has reason to know any particular purpose for which the goods are required and that the buyer is relying on the seller's skill or judgment to select or furnish suitable goods, there is, unless excluded or modified, an implied warranty that the goods shall be fit for such purpose. § 70A-2-315.

Implied warranties, including the warranty of merchantability can be limited or excluded in writing. Remedies for breach of warranty also can be limited. § 70A-2-316.

Vermont

BANKRUPTCY EXEMPTIONS

Federal - See Chapter 2 supra.

State - Homestead exemption - $30,000. T.27 § 101.

Personalty exemption -

(1) Suitable apparel, bedding, tools, arms and articles of household furniture, as may be necessary for sustaining life;

(2) One sewing machine kept for use;

(3) One cow not exceeding in value $100.00;

(4) The best swine or the meat of one swine;

(5) Sheep not exceeding in number ten, nor in value $100.00, and one year's product of such sheep in wool, yarn or cloth;

(6) Forage sufficient for keeping not exceeding ten sheep, one cow and two oxen or horses, as the debtor may select, through one winter;

(7) Ten cords of fire wood or five tons of coal;

(8) Twenty bushels of potatoes;

(9) The pistols, side arms and equipment of a soldier in the service of the United States, and kept by him or his heirs as mementoes of his service;

(10) Growing crops;

(11) Ten bushels of grain;

(12) One barrel of flour;

(13) Three swarms of bees and their hives with their produce in honey;

(14) Two hundred pounds of sugar;

(15) Lettered gravestones;

(16) The Bibles and other books used in a family;

(17) One pew or slip in a meetinghouse or place of religious worship;

(18) Live poultry not exceeding in value $10.00;

(19) The professional books and instruments of physicians and dentists to the value of $200.00;

(20) The professional books of clergymen and attorneys at law, to the value of $200.00;

(21) One tool chest kept for use by a mechanic;

(22) One yoke of oxen or steers, as the debtor may select;

(23) Two horses kept and used for team work, and such as the debtor may select in lieu of oxen or steers, but not exceeding in value the sum of $300.00;

(24) One two-horse wagon with whiffletrees and neck yoke or one one-horse wagon used for teaming, or one ox-cart, as the debtor may choose;

(25) One sled or one set of traverse sleds, either for oxen or horses, as the debtor may select;

(26) Two harnesses, two halters, two chains, one plow, and one ox yoke, which, with the oxen or steers or horses which the debtor may select for team work, shall not exceed in value $350.00.

Personal property shall not be exempt from attachment on an action brought to recover payment for the purchase price thereof, or for material or labor expended on the same. T.12 § 2740.

CREDIT REPORTING

Federal - Fair Credit Reporting Act. See Chapter 3 supra.

State - No statutory provision.

DEBT COLLECTION

Federal - Fair Debt Collection Practices Act. See Chapter 3 supra.

State - No statutory provision.

HOME SOLICITATION SALE

Federal - FTC Trade Regulation Rule. See Chapter 3 supra.

State - The buyer has the right to cancel a home solicitation sale until midnight of the third business day following execution of an agreement or offer to purchase. T.9 § 2454(a)(1). Cancellation occurs when the buyer gives written notice of cancellation to the seller at the address stated in the agreement. T.9 § 2454(a)(2). Notice is effective when delivered or when deposited in the mail properly addressed to the seller, postage prepaid. T.9 § 2454(a)(3).

The buyer may not cancel a home solicitation sale if the buyer requested the services because of an emergency, and (A) the seller makes a substantial beginning of performance before the buyer gives notice of cancellation, and (B) in the case of goods, the goods cannot be returned to the seller in as good condition as when received by the buyer, and (C) the consumer's request is both handwritten and signed by the consumer. T.9 § 2454(a)(5). The sales agreement must contain a conspicuous notice of this cancellation right. T.9 § 2454(b)(1). Until the seller has notified the buyer of his rights of cancellation, the buyer may notify the seller in any manner of his intention to cancel. T.9 § 2454(b)(3).

The buyer must take reasonable care of the goods and tender the goods at his or her residence to the seller upon demand. T.9 § 2454(d)(4). However, the buyer takes title to the goods, without obligation to pay for them if the seller fails to demand such possession within 20 days after

receipt of the notice of cancellation. T.9 § 2454(d). The seller must return any funds received or goods traded in to the buyer within 10 days after cancellation of the sale. T.9 § 2454(c).

The following transactions are not included in the protections provided by this statute:

(1) A sale made pursuant to prior negotiations at the seller's place of business;

(2) A sale in which the consumer initiated the contact and specifically requested the seller to visit his home for the purpose of repairing or performing maintenance upon the consumer's personal property;

(3) A sale conducted entirely by mail or telephone;

(4) A sale with a purchase price of less than $25.00, with no written contract; and

(5) Sale of real property, insurance, or securities by a registered SEC broker.

(6) Purchase of less than $500. T.9 § 2451(a).

MINOR'S CONTRACT

Age of majority to contract - 18. T.1 § 173.

Contractual liability - Minor is liable only for necessaries received as a result of a contractual relationship. T.9A § 1-103.

REPOSSESSION REQUIREMENTS

The creditor is required to make an affidavit, and he may replevy the goods on writ of replevin filled out and issued to the creditor's attorney by the clerk of the court in the county where the goods are located upon the order of a Superior or District Court Judge. V.R.C.P. 64(b)(1). The creditor also must execute a bond based upon the reasonable valuation for the property of which replevin is sought. An order of approval may be issued only upon motion after five days' notice to the debtor and hearing and upon findings by the court that there is a reasonable likelihood that the creditor will prevail in the replevin action, and that the bond required by law has been given by the creditor. V.R.C.P. 64(b)(2).

An order of approval may be issued ex parte upon motion and findings by the court (A) that there is a reasonable likelihood that the creditor will prevail in the replevin action, that the bond required by law has been given by the creditor, that the amount of the bond is based upon a reasonable valuation for the property of which replevin is sought; and (B) that either (i) the person of the debtor is not subject to the jurisdiction of the action; or (ii) there is a clear danger that the debtor will remove the property from the state, if notified in advance; or (iii) there is immediate danger that the debtor will damage, destroy, or sell to a bona fide purchaser. V.R.C.P. 64(b)(3).

On two days notice to the creditor, the debtor from whom the property has been taken pursuant to an ex parte order may appear and move the judge or the Presiding Judge of the court in which the action is pending for an order for the return of the property to him. The judge will then as expeditiously as possible hear and determine the motion. V.R.C.P. 64(i).

STATUTE OF LIMITATIONS

Contract under seal - 8 years. T.12 § 507.
Simple written contract - 6 years. T.12 § 511.
Contract for sale of goods - 4 years. T.9A § 2-725.
Oral contracts - 6 years. T.12 § 511.
Judgments - Courts of record - 8 years. T.12 § 506.

TRUTH-IN-LENDING REQUIREMENTS

Federal - Truth-in-Lending Act. See Chapter 3 supra.

State - No statutory provision.

UNFAIR AND DECEPTIVE TRADE PRACTICES

VT. STAT. ANN. tit. 9 § 2451 (1970 & Supp. 1983).

Prohibited Practices: Unfair methods of competition and unfair or deceptive acts or practices.

Special Requirements: None specified.

Scope: In commerce.

Exclusions: Advertisements done by publisher, radio and television media, with no knowledge of falsity.

Private Remedies: Equitable relief; actual damages; restitution; attorney's fees; exemplary damages not exceeding treble consideration given.

Limitations: State acts in public interest; private action by consumer who sustains injury.

State Remedies: AG rulemaking consistent with FTC Act; AG or state's attorney if authorized by AG enforces; injunction; maximum $10,000 per violation; restitution to consumer; costs and expenses; maximum $10,000 per injunction violation.

Precedential Value of FTC Interpretations: Guided by FTC construction.

WARRANTIES

Unless excluded or modified, a warranty that the goods shall be merchantable is implied in a contract for their sale if the seller is a merchant with respect to goods of that kind. Under this section the serving for value of food or drink to be consumed either on the premises or elsewhere is a sale. T.9A § 2-314.

Where the seller at the time of contracting has reason to know any particular purpose for which the goods are required and that the buyer is relying on the seller's skill or judgment to select or furnish suitable goods, there is, unless excluded or modified, an implied warranty that the goods shall be fit for such purpose. T.9A § 2-315.

Implied warranties, including the warranty of merchantability can be limited or excluded in writing. Remedies for breach of warranty also can be limited. T.9A § 2-316.

Virginia

BANKRUPTCY EXEMPTIONS

Federal - See Chapter 2 supra.

State - Homestead exemption - $5,000. § 34-4.

Personalty exemption -

(1) The family Bible;

(2) Wedding and engagement rings;

(3) Family pictures, schoolbooks and library for the use of the family;

(4) A lot in a burial ground;

(5) All necessary wearing apparel of the debtor and his family, all beds, bedsteads and bedding necessary for the use of such family, two dressers or two dressing tables, wardrobes, chifforobes or chests of drawers or a dresser and a dressing table;

(6) Carpets, rugs, linoleum or other floor covering;

(7) All stoves and appendages put up and kept for the use of the family not exceeding three;

(8) All cats, dogs, birds, squirrels, rabbits and other pets not kept or raised for sale;

(9) One cow and her calf until one year old, and one horse;

(10) Six chairs, six plates, one table, twelve knives, twelve forks, two dozen spoons, twelve dishes, or if the family consists of more than twelve, then a plate, knife, fork and two spoons, and a dish for each member thereof;

(11) Two basins, one pot, one oven, six pieces of wooden or earthenware;

(12) One dining room table, one buffet, china press, one icebox, freezer or refrigerator of any construction, one washing machine, one clothes dryer not to exceed one hundred fifty dollars in value, one loom and its appurtenances, one kitchen safe or one kitchen cabinet or press, one spinning wheel, one pair of cards, one axe and provisions other than those hereinafter set out of the value of fifty dollars;

(13) Two hoes;

(14) Fifty bushels of shelled corn, or, in lieu thereof, twenty-five bushels of rye or buckwheat;

(15) Five bushels of wheat, or one barrel of flour;

(16) Twenty bushels of potatoes, two hundred pounds of bacon or pork, three dogs, fowl not exceeding in value twenty-five dollars, all canned and frozen goods, canned fruits, preserved fruits or home-prepared food put up and prepared for use and consumption of the family, twenty-five dollars in value of forage or hay, one cooking stove and utensils for cooking therewith, one sewing machine, and in case of a mechanic, the tools and utensils of his trade, and in case of an oysterman or fisherman his

boat and tackle, not exceeding one thousand five hundred dollars in value; if the boat and tackle exceed fifteen hundred dollars in value the same shall be sold, and out of the proceeds the oysterman or fisherman shall first receive one thousand five hundred dollars in lieu of such boat and tackle. § 34-26.

If the householder be at the time actually engaged in the business of agriculture, there shall also be exempt from such levy or distress, while he is so engaged, to be selected by him or his agent, the following articles, or so many thereof as he may have, to wit: a pair of horses or mules unless he selects or has selected a horse or mule under the preceding section, in which case he shall be entitled to select only one, with the necessary gearing, one wagon or cart, one tractor, not exceeding in value three thousand dollars, two plows, one drag, one harvest cradle, one pitchfork, one rake, two iron wedges and fertilizer and fertilizer material not exceeding in value one thousand dollars. § 34-27.

The maximum part of the aggregate disposable earnings of an individual for any workweek which is subjected to garnishment may not exceed the lesser of the following amounts:

(1) Twenty-five per centum of his disposable earnings for that week, or

(2) The amount by which his disposable earnings for that week exceed thirty times the federal minimum hourly wage prescribed by § 206(a)(1) of Title 29 of the United States Code in effect at the time earnings are payable. § 34-29.

CREDIT REPORTING

Federal - Fair Credit Reporting Act. See Chapter 3 supra.

State - No statutory provision.

DEBT COLLECTION

Federal - Fair Debt Collection Practices Act. See Chapter 3 supra.

State - It is a Class 4 misdemanor to use any document simulating legal process to collect money. § 18.2-213.

HOME SOLICITATION SALE

Federal - FTC Trade Regulation Rule. See Chapter 3 supra.

State - The buyer has the right to cancel a home solicitation sale until midnight of the third business day following execution of an agreement or offer to purchase. § 59.1-21.3(1). The buyer has 30 days to cancel the sale if the seller fails to immediately identify himself as a seller or lessor, or

misrepresents his purpose at the time of the solicitation. § 59.1-21.7. Cancellation occurs when the buyer gives written notice of cancellation to the seller at the address stated in the agreement. § 59.1-21.3(2). Notice is effective when delivered or when deposited in the mail properly addressed to the seller, postage prepaid. § 59.1-21.3(3).

The buyer may not cancel a home solicitation sale if the buyer requested the services because of an emergency, and (A) the seller makes a substantial beginning of performance before the buyer gives notice of cancellation, (B) in the case of goods, the goods cannot be returned to the seller in as good condition as when received by the buyer, and (C) the buyer has signed a waiver of his right to cancel. § 59.1-21.3(5). The sales agreement must contain a conspicuous notice of this cancellation right. § 59.1-21.4. Until the seller has notified the buyer of his rights of cancellation, the buyer may notify the seller in any manner of his intention to cancel. § 59.1-21.4(3).

The buyer must take reasonable care of the goods and tender the goods at his or her residence to the seller upon demand. However, the buyer takes title to the goods, without obligation to pay for them, if the seller fails to demand such possession within 20 days after receipt of the notice of cancellation. § 59.1-21.6. The seller must return any funds received or goods traded in to the buyer within 10 days after cancellation of the sale. § 59.1-21.5.

The following transactions are not included in the protections provided by this statute:

(1) A sale of farm equipment;
(2) A cash sale of less than $25;
(3) A sale or lease made pursuant to a preexisting revolving charge account; and
(4) A sale or lease made pursuant to prior negotiations between the parties. § 59.1-21.2.

MINOR'S CONTRACT

Age of majority to contract - 18. § 1-13.42.

Contractual liability - Minor is liable only for necessaries received as a result of a contractual relationship. § 8.1-103.

REPOSSESSION REQUIREMENTS

The creditor must apply to the court in an action of or warrant in detinue seeking the return of the specified property. Although the creditor is not required to make an affidavit, he may present evidence to the court in the form of affidavits or ore tenus. § 8.01-114(c). The creditor's evidence or that of his witnesses must show:

(1) The kind, quantity and value of the property;
(2) (A) That such property will be sold, removed, secreted, or otherwise disposed of by the debtor; or
(B) That such property will be destroyed or materially damaged or injured if permitted to remain longer in the debtor's possession; and
(3) That the creditor's claim of entitlement has a substantial basis. § 8.01-114(b).

The creditor also must execute a bond payable to the debtor with sufficient surety, to be approved by and filed with the clerk, judge, substitute judge or magistrate, in an amount at least double the estimated value of the property. § 8.01-115.

Within twenty-one days after the issuance of any ex parte order or process pursuant to § 8.01-114, or upon application of either party, in either event after reasonable notice, the court shall conduct a hearing to review the decision to issue the order or other process, or to consider the creditor's request for issuance of such order or process. If the creditor gives reasonable notice of his intention to apply for such an order or process before the court, the hearing may be held on the return day of the warrant. § 8.01-119. The debtor can secure the return of the property to his possession any time after seizure of the property by executing a bond payable to the creditor, with sufficient surety, to be approved by the officer, in an amount equal to double the estimated value of the property. § 8.01-116.

STATUTE OF LIMITATIONS

Contract under seal - 5 years. § 8.01-246.
Simple written contract - 5 years. § 8.01-246.
Contract for sale of goods - 4 years. § 8.2-725.
Oral contracts - 3 years. § 8.01-246.
Judgments - Courts of record - 20 years. § 8.01-251.

TRUTH-IN-LENDING REQUIREMENTS

Federal - Truth-In-Lending Act. See Chapter 3 supra.

State - No statutory provision.

UNFAIR AND DECEPTIVE TRADE PRACTICES

VA. CODE § 59.1-196 (1982 & Supp. 1983).

Prohibited Practices: 16 prohibited fraudulent acts, including catchall for deceptive practices.

Virginia

Special Requirements: None specified.

Scope: Committed by a supplier in a consumer transaction, defined as advertising, sale, lease, or offer for sale or lease of goods or services for personal, family or household purpose and purchase money loans secured by deeds of trust or mortgages, if not excluded by act.

Exclusions: Acts authorized by state or U.S. laws, regulations or advisory opinions; advertisements done by publisher, radio and television media, with no knowledge of falsity; consumer transactions regulated by Federal Consumer Credit Protection Act; banking, loan companies, public service corporation; insurance regulated by State Corporated Commission or federal regulatory body.

Private Remedies: Actual damages, minimum $100; may be awarded attorney's fees and court costs; court may make additional orders, including restitution.

Limitations: State remedies predicated on notice given; private action based on loss suffered; restitution allowed if plaintiff identified within 180 days from grant of permanent injunction; suppliers who prove violation unintended, as result of act they had no control over or bona fide error despite reasonable procedures, limited to restitution.

State Remedies: AG, Commonwealth Attorney, City or County Attorney enforces; injunction; maximum $1000 per willful violation; maximum $200 expenses per willful violation; maximum $5000 per willful injunction violation with maximum $200 expenses per violation; contempt for violation of court order.

Precedential Value of FTC Interpretations: None specified.

WARRANTIES

Unless excluded or modified, a warranty that the goods shall be merchantable is implied in a contract for their sale if the seller is a merchant with respect to goods of that kind. Under this section the serving for value of food or drink to be consumed either on the premises or elsewhere is a sale. § 8.2-314.

Where the seller at the time of contracting has reason to know any particular purpose for which the goods are required and that the buyer is relying on the seller's skill or judgment to select or furnish suitable goods, there is, unless excluded or modified, an implied warranty that the goods shall be fit for such purpose. § 8.2-315.

Implied warranties, including the warranty of merchantability can be limited or excluded in writing. Remedies for breach of warranty also can be limited. § 8.2-316.

Virgin Islands

BANKRUPTCY EXEMPTIONS

Federal - See Chapter 2 supra.

Territory -

(1) Homestead exemption - $30,000 in value, and the homestead cannot exceed 5 acres in extent if not located in a town laid off into blocks or lots, or if located in any such town, then it shall not exceed one-fourth of one acre. Tit. 5 § 478.

(2) Personalty exemption -

(a) Necessary wearing apparel owned by any person for the use of himself or his family, except watches and jewelry;

(b) The tools, implements, apparatus or library necessary to enable an artisan, mechanic or professional person to carry on the trade, occupation or profession by which such person habitually earns their living;

(c) $3,000 worth of household goods, furniture, and utensils, if owned by the head of a family and in actual use or kept for use by and for his family; and

(d) All property of any public corporation or the government of the Virgin Islands. Tit. 5 § 479.

CREDIT REPORTING

Federal - Fair Credit Reporting Act. See Chapter 3 supra.

Territory - No statutory provision.

DEBT COLLECTION

Federal - Fair Debt Collection Practices Act. See Chapter 3 supra.

Territory - No statutory equivalent but §§ 101, 102(a) and 102(b), referred to above, apply to the collection of consumer debts and § 110 supplement only rules and regulation of the FTC.

HOME SOLICITATION SALE

Federal - FTC Trade Regulation Rule. See Chapter 3 supra.

Territory - No statutory equivalent, but § 101 and § 102(a) make deceptive trade pactices and § 102(b) including unconscionable trade practices including the sale or offering for sale of consumer goods or violation of the act and § 110 states that the provisions of the Consumer

Protection Act are meant to supplement rulesa dn regulations of the Federal Trade Commmission.

MINOR'S CONTRACT

Age of majority to contract - 18. T.16 § 261.

Contractual liability A minor is liable only for necessaries received as a result of a contractual relationship. 3 V.I. Op. Atty. Gen. 343, cited in tit. 16, § 261, Effects of Age of Majority.

REPOSSESSION REQUIREMENTS

The creditor must make an affidavit showing:

(1) Repossession of consumer goods purchased on credit. Prior to or after any action by the seller or his agents to repossess consumer goods under the terms of any such conditional sales contract or contracts involving both previous and subsequent purchases which have not been fully paid, the seller must retroactively allocate all payments received under the contract or contracts to the various purchases in the same proportion or ratio as the original cash prices of the various purchases bear to one another. However, the amount of initial or down payment involved in each purchase shall be allocated in its entirety to such purchase. The results of such allocation shall be reported to the buyer who has the right to complete payment on any of the purchases consolidated in the conditional sales contract within fifteen days from receipt of the allocation report from the seller. Any purchases upon which the payments have been so completed are exempt from repossession by the seller. Provisions of this section do not apply to sales involving equipment, parts, or other merchandise attached or affixed to goods previously purchased or repairs or services rendered by the seller in connection therewith at the buyer's request. Tit. 9, § 254.

(2) Procedures to Effect Reposseson of Personal Property Owned by Plaintiff.

(a) That the creditor is the owner of the property claimed (particularly describing it) or is lawfully entitled to the possession thereof by virtue of a special property therein, the facts in respect to which shall be set forth;

(b) That the property is wrongfully detained by the debtor;

(c) The alleged cause of the detention;

(d) That the same has not been taken for a tax, assessment or fine, pursuant to a statute, or seized under an execution or attachment against the creditor's property; or if so seized, that it is by statute exempt from seizure; and

(e) The actual value of the property. Tit. 5 § 212.

The creditor also must execute a bond with two or more sufficient sureties, approved by the marshal, in double the value of the property as stated in the affidavit for the prosecution of the action.

The marshal must serve on the defendant a copy of the affidavit, indorsement thereon, and undertaking executed by 2 or more sureties approved by the marshal. Tit. 5 § 214. At any time before the delivery of the property to the creditor, the debtor may, if he does not except to the creditor's sureties, require the return of the property to his possession by giving the marshal a bond executed by two or more sufficient sureties, to be approved by the marshal, in double the value of the property as stated in the affidavit of the creditor. Tit. 5 § 216.

STATUTE OF LIMITATIONS

Contract under seal - 20 years. T.5 § 31(1).
Simple written contract - 6 years. T.5 § 31(3).
Contract for sale of goods - 4 years. T.11A § 2-725.
Oral contracts - 6 years. T.5 § 31(3).
Judgments - Courts of record - 20 years. T.5 § 31(1).

TRUTH-IN-LENDING REQUIREMENTS

Federal - Truth-in-Lending Act. See Chapter 3 supra.

Territory - Disclosure of Finance Charges, tit. 9, §§ 251-257 and tit. 11, §§ 951 to 956 (Interest and Usury). Any person engaged in the business of extending credit shall furnish to each person to whom such credit is extended, concurrently with the consummation of the transaction or agreement to extend credit, a clear statement in writing setting forth the finance charges, expressed in dollars, rate of interest, or monthly rate of charge, or a combination thereof, to be borne by such person in connection with such extension of credit as originally scheduled. T.9 § 252.

(2) Where a buyer makes any subsequent purchases of consumer goods from a seller from whom he has previously purchased goods or services under one or more conditional sales contracts, and the amounts under the contract or contracts have not been fully paid, the subsequent purchases may be included in and consolidated with one or more of the prior contract or contracts. A memorandum of the additional purchases shall be prepared by the seller, inserted in or attached to the seller's counterpart of the contract and shall set forth:

(a) A description of the additional goods or services so purchased;

(b) The consolidated total indebtedness of the buyer;

(c) The finance charge stated either as the additional amount on the subsequent purchase or as the total amount on the consolidated contract; and

(d) The revised installment payments. A copy of the memorandum shall be furnished to the buyer. T.9 § 253.

(3) Persons engaging in the business of extending credit are required to post all fees and charges for automobile loans specifically and all consumer laws generally, in a conspicuous public place.

(4) Any person who willfully any provision of this chapter shall be fined not more than $500, or imprisoned not more than sixty days, or both. T.9 § 257.

WARRANTIES

Unless excluded or modified, a warranty that the goods shall be merchantable is implied in a contract for their sale if the seller is a merchant with respect to goods of that kind. Under this section the serving for value of food or drink to be consumed either on the premises or elsewhere is a sale. Tit. 11A § 2-314.

Where the seller at the time of contracting has reason to know any particular purpose for which the goods are required and that the buyer is relying on the seller's skill or judgment to select or furnish suitable goods, there is, unless excluded or modified, an implied warranty that the goods shall be fit for such purpose. Tit. 11A § 2-315.

Implied warranties, including the warranty of merchantability can be limited or excluded in writing. Remedies for breach of warranty also can be limited. Tit. 11A § 2-316.

Washington

BANKRUPTCY EXEMPTIONS

Federal - See Chapter 2 supra.

State - Homestead exemption - $25,000. § 6.12.050.

Personalty exemption -

(1) All wearing apparel of every person and family, but not to exceed $750 in value in furs, jewelry, and personal ornaments for any person;

(2) $1,000 worth of private libraries, and all family pictures and keepsakes;

(3) To each person or family:

(A) $1,500 worth of household goods, appliances, furniture and home and yard equipment;

(B) Provisions and fuel for the comfortable maintenance of the family for three months; and

(C) $500 worth of other property, of which not more than $100 in value may consist of cash, bank accounts, savings and loan accounts, stocks, bonds, or other securities;

(4) One motor vehicle used for personal transportation not to exceed $1,200 in value; and only one exemption per person of the following;

(5) To a farmer, $3,000 worth of farm trucks, farm stock, farm tools, farm equipment, supplies and seed;

(6) To a physician, surgeon, attorney, clergyman, or other professional person, $3,000 worth of that person's library, office furniture, office equipment, and supplies; or

(7) To any other person, $3,000 worth of the tools and instruments and materials used to carry on his or her trade for the support of himself or herself or family. § 6.16.020.

* Wages may be claimed as exempt to the same extent as allowed under the statute relating to garnishment. § 6.16.020.

CREDIT REPORTING

Federal - Fair Credit Reporting Act. See Chapter 3 supra.

State - No statutory provision.

DEBT COLLECTION

Federal - Fair Debt Collection Practices Act. See Chapter 3 supra.

Washington

State - No licensee (collection agency) or employee of a licensee shall:

(1) Directly or indirectly aid or abet any unlicensed person to engage in business as a collection agency in this state or receive compensation from such unlicensed person;

(2) Collect or attempt to collect a claim by the use of any means contrary to the postal laws and regulations of the United States postal department;

(3) Publish or post or cause to be published or posted, any list of debtors commonly known as "bad debt lists" or threaten to do so;

(4) Have in his possession or make use of any badge, use a uniform of any law enforcement agency or any simulation thereof, or make any statements which might be construed as indicating an official connection with any federal, state, county, or city law enforcement agency, or any other governmental agency, while engaged in collection agency business;

(5) Perform any act or acts, either directly or indirectly, constituting the practice of law;

(6) Advertise for sale or threaten to advertise for sale any claim as a means of endeavoring to enforce payment thereof or agreeing to do so for the purpose of soliciting claims, except where the licensee has acquired claims as an assignee for the benefit of creditors or where the licensee is acting under court order;

(7) Use any name while engaged in the making of a demand for any claim other than the name set forth on his or its current license issued hereunder;

(8) Give or send to any debtor or cause to be given or sent to any debtor, any notice, letter, message, or form which represents or implies that a claim exists unless it shall indicate in clear and legible type:

(a) The name of the licensee and the city, street, and number at which he is licensed to do business;

(b) The name of the original creditor to whom the debtor owed the claim if such name is known to the licensee or employee;

(c) If the notice, letter, message, or form is the first notice to the debtor or if the licensee is attempting to collect a different amount than indicated in his or its first notice to the debtor, an itemization of the claim asserted must be made;

(9) Communicate or threaten to communicate, the existence of a claim to a person other than one who might be reasonably expected to be liable on the claim in any manner other than through proper legal action, process, or proceedings except under the following conditions:

(a) A licensee or employee of a licensee may inform a credit reporting bureau of the existence of a claim: Provided, that if the licensee or employee of a licensee reports a claim to a credit reporting bureau, the licensee shall upon receipt of written notice from the debtor that any part of the claim is disputed, forward a copy of such written notice to the credit reporting bureau;

(b) A licensee or employee in collecting or attempting to collect a claim may communicate the existence of a claim to a debtor's employer if the claim has been reduced to a judgment;

(c) A licensee or employee in collecting or attempting to collect a claim that has not been reduced to judgment, may communicate the existence of a claim to a debtor's employer if:

(i) The licensee or employee has notified or attempted to notify the debtor in writing at his last known address or place of employment concerning the claim and the debtor after a reasonable time has failed to pay the claim or has failed to agree to make payments on the claim in a manner acceptable to the licensee, and

(ii) The debtor has not in writing to the licensee disputed any part of the claim: Provided, that the licensee or employee may only communicate the existence of a claim which has not been reduced to judgment to the debtor's employer once unless the debtor's employer has agreed to additional communications;

(d) A licensee may for the purpose of locating the debtor or locating assets of the debtor communicate the existence of a claim to any person who might reasonably be expected to have knowledge of the whereabouts of a debtor or the location of assets of the debtor if the claim is reduced to judgment, or if not reduced to judgment; when

(i) The licensee or employee has notified or attempted to notify the debtor in writing at his last known address or last known place of employment concerning the claim and the debtor after a reasonable time has failed to pay the claim or has failed to agree to make payments on the claim in a manner acceptable to the licensee, and

(ii) The debtor has not in writing disputed any part of the claim;

(e) A licensee may communicate the existence of a cliam to its customers or clients if the claim is reduced to judgment, or if not reduced to judgment, when:

(i) The license has notified or attempted to notify the debtor in writing at his last known address or last known place of employment concerning the claim and the debtor after a reasonable time has failed to pay the claim or has failed to agree to make payments on the claim in a manner acceptable to the licensee, and

(ii) The debor has not in writing disputed any part of the claim.

(10) Threaten the debtor with impairment of his credit rating if a claim is not paid;

(11) Communicate with the debtor after notification in writing from an attorney representing such debtor that all further communications relative to a claim should be addressed to the attorney; Provided, that if a licensee requests in writing information from an attorney regarding such claim and the attorney does not respond within a reasonable time, the licensee may communicate directly with the debtor until he or it again receives notification in writing that an attorney is representing the debtor;

(12) Communicate with a debtor or anyone else in such a manner as to harass, intimidate, threaten, or embarrass a debtor, including but not limited to communication at an unreasonable hour, with unreasonable frequency, by threats of force or violence, by threats of criminal prosecution, and by use of offensive language;

(13) Communicate with the debtor through use of forms or instruments that simulate the form or appearance of judicial process, the form or appearance of government documents, or the simulation of a form or appearance of a telegraphic or emergency message;

(14) Communicate with the debtor and represent or imply that the existing obligation of the debtor may be or has been increased by the addition of attorney fees, investigation fees, service fees, or any other fees or charges when in fact such fees or charges may not legally be added to the existing obligation of such debtor;

(15) Threaten to take any action against the debtor which the licensee cannot legally take at the time the threat is made;

(16) Send any telegram or make any telephone calls to a debtor concerning a debt or for the purpose of demanding payment of a claim or seeking information about a debtor, for which the charges are payable by the addressee or by the person to whom the call is made;

(17) In any manner convey the impression that the licensee is vouched for, bonded to or by, or is an instrumentality of the state of Washington or any agency or department thereof;

(18) Collect or attempt to collect in addition to the principal amount of a claim any sum other than allowable interest, collection costs or handling fees expressly authorized by statute, and, in the case of suit, attorney's fees and taxable court costs;

(19) Procure from a debtor or collect or attempt to collect on any written note, contract, stipulation, promise or acknowledgment under which a debtor may be required to pay any sum other than principal, allowable interest, and, in the case of suit, attorney's fees and taxable court costs. § 19.16.250.

HOME SOLICITATION SALE

Federal - FTC Trade Regulation Rule. See Chapter 3 supra.

State - The buyer has the right to cancel a home solicitation sale until midnight of the third business day following execution of an agreement or offer to purchase. Cancellation occurs when the buyer gives written notice of cancellation by certified mail, return receipt requested, to the seller at the address stated in the agreement. § 63.14.154(1)(c).

The buyer must take reasonable care of the goods and tender the goods at the place of delivery to the seller. The seller must return any funds received or goods traded in to the buyer within 10 days after cancellation of the sale. The buyer incurs no additional liability for cancellation of the sale. § 63.14.154(2). A cash sale is not included in the protections provided by this statute.

MINOR'S CONTRACT

Age of majority to contract - 18. § 26.28.010, earlier if married to a person of 18. § 26.28.020.

Contractual liability - Minor is liable for necessaries and all other contracts unless disaffirmed within a reasonable time after age 18 and unless he returns all money and property received by virtue of the disaffirmed contracts. § 26.28.030.

REPOSSESSION REQUIREMENTS

The creditor must make an affidavit showing:

(1) That the creditor is the owner of the property claimed (particularly describing it), or is lawfully entitled to the possession thereof, by virtue of a special property therein including a security interest, the facts in respect to which shall be set forth;

(2) That the property is wrongfully detained by the debtor;

(3) That the same has not been taken for a tax, assessment, or fine pursuant to a statute, or seized under an execution or attachment against the property of the creditor; and

(4) The actual value of the property. § 7.64.020.

At the time of filing the complaint or any time thereafter, the creditor may petition the judge to issue an order requiring the debtor to show cause why an order putting the creditor in possession of the property pending final disposition should not be issued. The hearing shall be set no earlier than 10 days and no later than twenty-five days from the date of the order. The order shall contain the date, time and place of the hearing and it must be served on the debtor no later than 5 days before the hearing date. A copy of the creditor's affidavit must also be served on the debtor. § 7.64.020. At the hearing on the order to show cause or at any time before the delivery of the property to the creditor, the debtor may require the return of the property to his possession upon giving to the sheriff or filing with the court a bond executed by one or more sufficient sureties to the effect that they are bound in an amount equal to the value of the bond filed by the creditor. § 7.64.050.

STATUTE OF LIMITATIONS

Contract under seal - 6 years. § 4.16.040.
Simple written contract - 6 years. § 4.16.040.
Contract for sale of goods - 4 years. § 62A.2-725.
Oral contracts - 3 years. § 4.16.080.
Judgments - Courts of record - 10 years. § 4.56.210.

TRUTH-IN-LENDING REQUIREMENTS

Federal - Truth-in-Lending Act. See Chapter 3 supra.

State - The Washington Credit Disclosure Act (Retail Installment Sales of Goods and Services) requires a seller to disclose to the buyer, usually before credit is extended, his credit service charges in dollars and cents and as an annual percentage rate. Disclosure is required for sales, but not for loans or revolving credit transactions. § 63.14.040. Service contracts subject to governmental price control and home improvement retail sale transactions which are financed or insured by the Federal Housing Administration are excluded from coverage under the Washington Credit Disclosure Act. §§ 63.14.010(2), 63.14.020.

A seller who violates an order or injunction issued pursuant to the Credit Disclosure Act shall forfeit and pay a civil penalty of not more than $1,000. § 63.14.210. Any seller who willfully and intentionally fails to provide information to a buyer which he is required to disclose is guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than $1,000, or imprisonment for not more than 6 months, or both. § 63.14.170.

UNFAIR AND DECEPTIVE TRADE PRACTICES

WASH. REV. CODE ANN. § 19.86.010 (1978 & Supp. 1983-1984)

Prohibited Practices: Unfair methods of competition and unfair or deceptive acts.

Special Requirements: Act must be injurious to public interest.

Scope: Trade and commerce; defined as sale of services or assets including any real or personal property, intangible and any other thing of value.

Exclusions: Nonprofit labor, agricultural or horticultural organization; civil penalties do not apply to advertisements done by publisher, radio and television media, in good faith and with no knowledge of falsity; actions permitted or regulated by state utilities, transportaton commission, federal power commission or acts permitted by state or U.S. law or regulatory body.

Private Remedies: Injunction; actual damages; costs and attorney's fees; treble damages at court's discretion, not to exceed $1000.

Limitations: Private action predicated upon injury to business or property; statute of limitations is 4 years after cause accrues, limitations tolled during pendancy of AG action on same matter except for civil penalties for injunction violation.

State Remedies: AG enforces; court has discretion to award prevailing party costs and attorney's fees; additional orders necessary including restitution; maximum $2000 per violation, maximum $25,000 or dissolution of corporation per injunction violation.

Precedential Value of FTC Interpretatons: Guided by FTC interpretations.

WARRANTIES

Unless excluded or modified, a warranty that the goods shall be merchantable is implied in a contract for their sale if the seller is a merchant with respect to goods of that kind. Under this section the serving for value of food or drink to be consumed either on the premises or elsewhere is a sale. § 62A.2-314.

Where the seller at the time of contracting has reason to know any particular purpose for which the goods are required and that the buyer is relying on the seller's skill or judgment to select or furnish suitable goods, there is, unless excluded or modified, an implied warranty that the goods shall be fit for such purpose. § 62A.2-315.

Implied warranties, including the warranty of merchantability can be limited or excluded in writing. Remedies for breach of warranty also can be limited. § 62A.2-316.

West Virginia

BANKRUPTCY EXEMPTIONS

Federal - See Chapter 2 supra.

State - Homestead exemption - $5,000. § 38-9-1.

Personalty exemption -
(1) $1,000 worth of personal property; and
(2) Any mechanic, artisan or laborer residing in West Virginia, whether he be a husband, wife, parent, or other head of household, or not, may hold the working tools of his trade or occupation to the value of $50; provided, that in no case shall the exemption allowed any one person exceed $1,000. § 38-8-1.

CREDIT REPORTING

Federal - Fair Credit Reporting Act. See Chapter 3 supra.

State - No statutory provision.

DEBT COLLECTION

Federal - Fair Debt Collection Practices Act. See Chapter 3 supra.

State - West Virginia law prohibits a debt collector or a debt collection agency from engaging in any of the following practices in an attempt to collect an alleged debt:

(1) Engaging in conduct deemed the practice of law, § 46A-2-123;
(2) Collecting or attempting to collect any money alleged to be due and owing by means of any threat, coercion or attempt to coerce, § 46A-2-124;
(3) Unreasonably oppressing or abusing any person in the collection or attempt to collect any debt alleged to be due, § 46A-2-125;
(4) Unreasonably publicizing information relating to any alleged indebtedness or consumer, § 46A-2-126;
(5) Using any fraudulent, deceptive or misleading representation or means to collect or attempt to collect claims or to obtain information concerning consumers, § 46A-2-127;
(6) Using any unfair or unconscionable means to collect or attempt to collect any claim, § 46A-2-128; and
(7) Using, distributing, selling or preparing for use any written communication which violates or fails to conform to United States postal laws and Regulations. § 46A-2-129.

West Virginia

HOME SOLICITATION SALE

Federal - FTC Trade Regulation Rule. See Chapter 3 supra.

State - The buyer has the right to cancel a home solicitation sale until midnight of the third business day following execution of an agreement or offer to purchase. Cancellation occurs when the buyer gives written notice of cancellation to the seller at the address stated in the agreement. Notice is effective when delivered or when deposited in the mail properly addressed to the seller, postage prepaid. § 46A-2-132.

The buyer may not cancel a home solicitation sale if the buyer requested the services because of an emergency, and (A) the seller makes a substantial beginning of performance before the buyer gives notice of cancellation and (B) the goods cannot be returned to the seller in as good condition as when received by the buyer. § 46A-2-132. The sales agreement must contain a conspicuous notice of this cancellation right. Until the seller has notified the buyer of his rights of cancellation, the buyer may notify the seller in any manner of his intention to cancel. § 46A-2-133.

The buyer must take reasonable care of the goods and tender the goods at his or her residence to the seller upon demand. However, the buyer takes title to the goods if the seller fails to demand such possession within 20 days after receipt of the notice of cancellation. The seller must return any funds received or goods traded in to the buyer within 10 days after cancellation of the sale. § 46A-2-134.

The following transactions are not included in the protections provided by this statute:

(1) A sale of $25 or less;
(2) A sale made pursuant to a preexisting open end credit account;
(3) A sale made pursuant to prior negotiations between the parties;
(4) A sale of motor vehicles, mobile homes, or farm equipment; and
(5) A sale which is subject to rescission under the federal Truth-in-Lending Act. § 46A-1-102(19).

MINOR'S CONTRACT

Age of majority to contract - 18. § 2-3-1.

Contractual liability - Minor is liable only for necessaries received as a result of a contractual relationship. § 46-1-103.

REPOSSESSION REQUIREMENTS

The creditor is not required to make an affidavit concerning the property, but he must file a verified complaint describing the property.

The creditor must initiate a civil action and demand immediate possession of the desired property. § 55-6-1. The creditor also must execute a bond, with good security to be approved by the clerk of the circuit court or the magistrate in an amount at least double the value of the property claimed. § 55-6-2. After the creditor has demanded immediate possession of the property, a prejudgment hearing must be held in not less than five nor more than ten days after service upon the debtor of the summons, a verified complaint, and a notice of the time, place, and purpose of the prejudgment hearing. § 55-6-1. If the court determines that there is a substantial probability that the creditor will prevail upon trial, the court may order the immediate seizure of the property. § 55-6-2. The debtor can require the return of the property to his possession if within three days after such taking, he executes a bond with good security, to be approved by an officer, payable to the creditor, in an amount at least double the value of the property. § 55-6-4.

STATUTE OF LIMITATIONS

Contract under seal - 10 years. § 55-2-6.
Simple written contract - 10 years. § 55-2-6.
Contract for sale of goods - 4 years. § 46-2-725.
Oral contracts - 5 years. § 55-2-6.
Judgments - Courts of record - 10 years. § 38-3-18.

TRUTH-IN-LENDING REQUIREMENTS

Federal - Truth-in-Lending Act. See Chapter 3 supra.

State - No statutory provision.

UNFAIR AND DECEPTIVE TRADE PRACTICES

W.VA. CODE § 46A-6-101 (1980 & Supp. 1983)

Prohibited Practices: Unfair methods of competition and unfair or deceptive practices, including 14 enumerated prohibitions.

Special Requirements: None specified.

Scope: Trade or commerce defined as advertising, sale, offers for sale any goods or services.

Exclusions: Acts reasonable to develop and preserve business; acts not injurious to public interest; acts controlled by ch. 47 on Regulation of Trade, 47-11-A controlling antitrust, and 47-11-B controlling closeout sales, fire sales, and defunct business sales; advertisements done by disinterested publisher, radio and television media, with no knowledge of falsity.

West Virginia

Private Remedies: $200 minimum damages; actual damages; equitable relief in court's discretion if deemed necessary or proper; court may reform a consumer contract if defendant refuses to change contract to plain language after consumer so requests.

Limitations: Ascertainable loss for private action.

State Remedies: AG has rulemaking power; injunction action, other equitable relief, other appropriate relief.

Precedential Value of FTC Interpretatons: Guided by federal court interpretations.

WARRANTIES

Unless excluded or modified, a warranty that the goods shall be merchantable is implied in a contract for their sale if the seller is a merchant with respect to goods of that kind. Under this section the serving for value of food or drink to be consumed either on the premises or elsewhere is a sale. § 46-2-314.

Where the seller at the time of contracting has reason to know any particular purpose for which the goods are required and that the buyer is relying on the seller's skill or judgment to select or furnish suitable goods, there is, unless excluded or modified, an implied warranty that the goods shall be fit for such purpose. § 46-2-315.

Implied warranties, including the warranty of merchantability can be limited or excluded in writing. Remedies for breach of warranty also can be limited. § 46-2-316.

New Motor Vehicles. Within 1 year of delivery of a new motor vehicle, or during the term of the express warranties, whichever occurs last, the manufacturer, its agent or dealer, must conform the vehicle to the express warranties within a reasonable number of attempts (presumed to be 3 § 46A-6A-5). If it cannot do so and if the defect substantially impairs use or value, the vehicle must be replaced. § 46A-6A-4.

Wisconsin

BANKRUPTCY EXEMPTIONS

Federal - See Chapter 2 supra.

State - Homestead exemption - $25,000. § 815.20.

Personalty Exemption -

(1) The family bible;

(2) Family pictures and school books; personal library;

(3) A seal or pew in a place of public worship;

(4) All wearing apparel;

(5) Jewelry and other articles of personal adornment, not to exceed $400 in value;

(6) One television set and one radio;

(7) All beds, bedsteads, and bedding;

(8) All stoves and appendages;

(9) All cooking utensils and all household furniture, not to exceed $200 in value;

(10) One gun, rifle or other firearm, not to exceed $50 in value;

(11) Eight cows, 10 swine, 50 chickens, 2 horses or 2 mules, 10 sheep and the wool from the same, and the necessary food for these animals for one year's support;

(12) One automobile, not to exceed $1,000 in value.

(13) One wagon, cart or dray, one sleigh, one plow, one drag, one binder, one tractor not to exceed $1,500 in value, one corn binder, one mower, one springtooth harrow, one disc harrow, one seeder, one hay loader, one corn planter, one set of heavy harness and other farming utensils, also small tools and implements, not to exceed $300 in value;

(14) Necessary provisions for one year's support and necessary fuel for one year;

(15) The tools, implements and stock in trade of a mechanic, miner, merchant, or other person, not to exceed $200 in value;

(16) All sewing machines for family use;

(17) Printing materials and presses used in the business of any printer or publisher, not to exceed $1,500 in value;

(18) The uniform, arms and equipments of any member of the Wisconsin national guard, and all military property of any company, regiment or brigade thereof;

(19) Books, maps, plats and other papers used to make abstracts of title to land;

(20) The interest owned by any inventor in any invention secured to him by a U.S. patent;

(21) Sixty percent of the income (gross receipts less federal and state withholding and social security taxes) of an individual without dependents for each 30-day period prior to service of process in the

proceeding to collect a debt, but not less than $75 nor more than $100. The one claiming this exemption may elect to have the exemption computed on a 90-day basis;

(22) A basic exemption on the income of any individual with dependents for each 30-day period prior to service of process in the proceeding to collect a debt, of $120 plus an additional $20 for each dependent. The amount allowed as exemption for dependents shall be limited to such an amount that the total amount exempt shall not exceed 75% of the income. The one claiming the exemption may elect to have the exemption computed on a 90-day basis;

(23) All moneys arising from insurance of any property exempted from sale on execution, including the homestead, when such property has been destroyed by fire;

(24) Cemetery lots, the monuments therein, coffins and other articles for burial, and the tombstone or monument for the grave of whomsoever purchased;

(25) Pensions on account of service in any fire or police department in any city in Wisconsin whose population exceeds one hundred thousand;

(26) The savings account held by a member of a local savings and loan association as defined in § 215.01(24), the savings account held by a member of a federal savings and loan association organized under the laws of the United States and the savings account held by a depositor of a bank or credit union, to the value of $1,000 at the time of withdrawal thereof; but this section shall not apply to any person owning a homestead which is exempt;

(27) All defense bonds, war savings bonds, defense stamps, thrift stamps, war savings stamps, victory notes, or any other governmental issue of bonds or savings stamps, held by any person, not to exceed $200 in the aggregate.

(28) All money recieved by Wisconsin residents as pensions, compensation, government insurance, or adjusted compensation, back pension, compensation, or insurance from the United States government of account of military or naval service from the United States government administered by the Veterans Administration, whether the same is in the actual possession of such person, or deposit, or loaned.

(29) All moneys from any life insurance company or health and accident insurance company, for partial, total, temporary or permanent disability under any contract of insurance, but not to exceed $150 per month; and

(30) All moneys received or receivable by a person as federal disability under subchapter II of 42 U.S.C.

The exemptions provided for in (11) - (17), (19), (20), (23) and (26) shall extend only to debtors having an actual residence in Wisconsin, and when such debtors and their families or any of them shall be removing from one place of residence to another, and those granted in (4) - (13), (17), (19) - (22), (23) and (26) hereof shall not be claimed as against an attachment or execution issued upon a judgment for the creditor in an action brought to

recover compensation for any manual or domestic labor rendered by any female in or about the dwelling of another. § 815.18.

CREDIT REPORTING

Federal - Fair Credit Reporting Act. See Chapter 3 supra.

State - No statutory provision.

DEBT COLLECTION

Federal - Fair Debt Collection Practices Act. See Chapter 3 supra.

State - In attempting to collect an alleged debt arising from a consumer credit transaction or other consumer transaction where there is an agreement to defer payment, a debt collector shall not:

(a) Use or threaten force or violence to cause physical harm to the customer, his dependents or his property;

(b) Threaten criminal prosecution;

(c) Disclose or threaten to disclose information adversely affecting the consumer's reputation for credit worthiness with knowledge or reason to know that the information is false;

(d) Initiate or threaten to initiate communication with the customer's employer prior to obtaining final judgment against the customer; but this paragraph does not prohibit a debt collector from communicating with the customer's employer solely to verify employment status or earnings or where an employer has an established debt counseling service or procedure;

(e) Disclose or threaten to disclose to a person other than the customer or his spouse information affecting the customer's reputation, whether or not for credit worthiness, with knowledge or reason to know that the other person does not have a legitimate business need for the information, but this paragraph does not prohibit the disclosure to another person of information permitted to be disclosed to him by statute;

(f) Disclose or threaten to disclose information concerning the existence of a debt known to be reasonably disputed by the customer without disclosing the fact that the customer disputes the debt;

(g) Communicate with the customer or a person related to him with such frequency or at such unusual hours or in such a manner as can reasonably be expected to threaten or harass the customer;

(h) Engage in other conduct which can reasonably be expected to threaten or harass the customer or a person related to him;

(i) Use obscene or threatening language in communicating with the customer or a person related to him;

(j) Claim, or attempt or threaten to enforce a right with knowledge or reason to know that the right does not exist;

(k) Use a communication which simulates legal or judicial porcess or which gives the appearance of being authorized, issued or approved by a government, governmental agency or attorney-at-law when it is not;

(l) Threaten action against the customer unless like action is taken in regular course or is intended with respect to the particular debt; or

(m) Engage in conduct in violation of a rule adopted by the administrator after like conduct has been restrained or enjoined by a court in a civil action by the administrator against any person pursuant to the provisions on injunctions against false, misleading, deceptive or unconscionable agreements or conduct. (SS 426.109 and 426.110). § 427.104.

HOME SOLICITATION SALE

Federal - FTC Trade Regulation Rule. See Chapter 3 supra.

State - The buyer has the right to cancel a home solicitation sale (consumer approval transaction) until midnight of the third business day after the seller has given the written notice of cancellation rights required by statute. § 423.202(1). Cancellation occurs when the buyer gives written notice of cancellation to the seller at the address stated in the agreement. Notice is effective when delivered or when deposited in the mail properly addressed to the seller. § 423.202(2). If the property which is the subject of the transaction must be custom made in the ordinary course of business, and is unique to that transaction, the merchant may require that the notice of cancellation, if given, be made by certified or registered mail. § 423.202(2m).

The buyer may not cancel a home sale if:

(A) The buyer has determined that a delay of 3 business days in performance of the merchants obligation under the transaction will jeopardize the welfare, health or safety of natural persons or endanger the buyer's property;

(B) The buyer furnishes the merchant with a separate dated and signed personal statement describing the situation requiring immediate remedy and modifying or waiving his right of rescission;

(C) The seller makes a substantial beginning of performance before the buyer gives notice of cancellation; and

(D) In the case of goods, the goods cannot be returned to the seller in as good condition as when received by the buyer. § 423.202(4).

The sales agreement must contain a conspicuous notice of this cancellation right. § 423.203.

The buyer must take reasonable care of the goods and tender the goods at his or her residence to the seller upon demand and seller's refund. However, the buyer takes title to the goods, without obligation to pay for them, if the seller fails to demand such possession within 20 days after tender by the buyer. § 423.205. The seller must return any funds received to the buyer within 10 days after cancellation of the sale and all property traded in must be returned within 20 days after cancellation of the sale. § 423.204.

The following transactions are not included in the protections provided by this statute:

(1) A sale of $25 or less;
(2) A sale or lease or listing for sale of real property;
(3) A sale of goods at auction;
(4) A sale or lease of goods at auction for an agricultural purpose;
(5) Loans made to finance the sale of goods at auction for an agricultural purpose; and
(6) A catalog sale which is not accompanied by any other solicitation. § 423.201.
(7) A consumer loan conducted or consummated entirely by mail. § 423.201.

MINOR'S CONTRACT

Age of majority to contract - 18. § 990.01.

Contractual liability - Minor is liable only for necessaries received as a result of a contractual relationship. § 401.103.

REPOSSESSION REQUIREMENTS

Wisconsin has no constitutional prejudgment repossession law. However, a secured party may repossess without legal action if he can do so without a breach of peace. § 409.503.

STATUTE OF LIMITATIONS

Contract under seal - 6 years. § 893.43.
Simple written contract - 6 years. § 893.43.
Contract for sale of goods - 6 years. § 402.725.
Oral contracts - 6 years. § 893.43.
Judgments - Courts of record - 20 years. § 893.40.

TRUTH-IN-LENDING REQUIREMENTS

Federal - Truth-in-Lending Act. See Chapter 3 supra.

State - No statutory provision.

UNFAIR AND DECEPTIVE TRADE PRACTICES

WIS. STAT. ANN. § 100.20 (West 1973 & Supp. 1983-1984)

Prohibited Practices: Unfair methods of computation and unfair trade practices.

Wisconsin

Special Requirements: None specified.

Scope: In business.

Exclusions: None specified.

Private Remedies: Actual damages, twice pecuniary loss awarded; costs and attorney's fees.

Limitations: Department acts after public hearing for rulemaking and injunction and cancellation; must give notice; private actions require pecuniary loss.

State Remedies: Department has rulemaking and enforcement powers; injunction; court has discretion to make other orders, including: restitution, cancel corporate certificate if in public interest for substantial and willful violation; maximum $200 and/or 6 months imprisonment; criminal penalties, $25 to $5000 and/or imprisonment for intentional failure to obey regulation or order; Department of Justice or DA recovers $100 to $10,000 per injunction violation.

Precedential Value of FTC Interpretatons: None specified.

WARRANTIES

Unless excluded or modified, a warranty that the goods shall be merchantable is implied in a contract for their sale if the seller is a merchant with respect to goods of that kind. Under this section the serving for value of food or drink to be consumed either on the premises or elsewhere is a sale. § 402.314.

Where the seller at the time of contracting has reason to know any particular purpose for which the goods are required and that the buyer is relying on the seller's skill or judgment to select or furnish suitable goods, there is, unless excluded or modified, an implied warranty that the goods shall be fit for such purpose. § 402.315.

Implied warranties, including the warranty of merchantability can be limited or excluded in writing. Remedies for breach of warranty also can be limited. § 402.316.

Motor Vehicles. If a consumer reports a non-conformity with a new car express warranty and makes it available for repair during the warranty period or one year, whichever is sooner, the manufacture or dealer must repair same. If he fails to do so within 4 attempts or the vehicle is out of service for 30 days, he must replace it or make complete refund. The consumer must consent to an informal dispute settlement procedure. § 218.015.

Wyoming

BANKRUPTCY EXEMPTIONS

Federal - See Chapter 2 supra.

State - Homestead exemption - $10,000. Sec. 1-20-101.

The possibility exists that the Homestead Exemption could be as much as $30,000.00 if read in conjunction with the Wyoming Probate Code provisions relating to homesteads and case law interpreting homestead exemption provisions.

Personalty exemption -

(1) $1,000 worth of the necessary wearing apparel of every person, § 1-20-105;

(2) The family bible, pictures and school books;

(3) A lot in any cemetery or burial ground;

(4) Furniture, bedding, provisions and other household articles exceeding $2,000.00. If two or more persons occupy the same residence, each is entitled to a separate exemption.

(5) The tools, a motor vehicle, team, implements or stock in trade of any person used and kept for the purpose of carrying on his trade or business, or the library, instruments, and implements of any professional man, not exceeding in value $2,000. § 1-20-106.

The person claiming the exemption must be a bona fide resident of the State. Sec. 1-20-108.

CREDIT REPORTING

Federal - Fair Credit Reporting Act. See Chapter 3 supra.

State - No statutory provision.

DEBT COLLECTION

Federal - Fair Debt Collection Practices Act. See Chapter 3 supra.

State - No statutory provision.

HOME SOLICITATION SALE

Federal - FTC Trade Regulation Rule. See Chapter 3 supra.

State - The buyer has the right to cancel a home solicitation sale until midnight of the third business day following execution of an agreement or

offer to purchase and receipt of the completed contract including notice of cancellation rights. Cancellation occurs when the buyer gives written notice of cancellation to the seller at the address stated in the agreement. Notice is effective when delivered or when deposited in the mail properly addressed to the seller, postage prepaid. § 40-12-104(b).

The buyer may not cancel a home solicitation sale if the buyer requested the services because of an emergency, and (A) the seller makes a substantial beginning of performance before the buyer gives notice of cancellation and (B) in the case of goods, the goods cannot be returned to the seller in as good condition as when received by the buyer. § 40-12-104(c). The sales agreement must contain a conspicuous notice of this cancellation right. § 40-12-104(d).

The buyer must take reasonable care of the goods and tender the goods at his or her residence to the seller upon demand. However, the buyer takes title to the goods if the seller fails to demand such possession within 30 days after receipt of the notice of cancellation. § 40-12-104(f, g). The seller must return any funds received or goods traded in to the buyer within 10 days after cancellation of the sale. The seller may retain as a cancellation fee five percent (5%) of the cash price but not exceeding the amount of the cash down payment. § 40-12-104(e).

The following transactions are not included in the protections provided by this statute:

(1) A sale of farm equipment;

(2) A cash sale for $25 or less;

(3) A sale made pursuant to a preexisting revolving charge account; and

(4) A sale made pursuant to prior negotiations between the parties at the seller's place of business. § 40-12-104(a).

MINOR'S CONTRACT

Age of majority to contract - 19. § 14-1-101.

Contractual liability - Minor is liable only for necessaries received as a result of a contractual relationship other contracts executed by minors are voidable. Wyoming appears to follow common law in this area.

REPOSSESSION REQUIREMENTS

The creditor must make an affidavit showing:

(1) A description of the property taken;

(2) That the creditor is the owner of the property or has special interest therein, and if the ownership or interest is special or partial, the fact shall be stated;

(3) That the property is wrongfully detained by the debtor; and

(4) That it was not taken upon any process issued against the creditor, or if taken under such process that the property was exempt from execution expressly or upon demand or selection by the creditor, and is not held for a tax, or if held for a tax that it is not held for any tax legally assessed or levied against the creditor. § 1-34-102.

The creditor also must execute a bond in writing to the debtor, with sufficient surety, in at least double the value of the property taken. § 1-34-107.

Following execution of the bond with sufficient sureties, the court shall issue an order for hearing stating the cause of the complaint against the debtor, the nature of the remedy sought, the property sought, and the time and place of the hearing. The order for hearing shall be served not less than three (3) days before the day of hearing appointed by the court. § 1-34-103(b). If the evidence presented at the hearing shows that there is probable cause to believe the creditor is entitled to possession of the property, the court shall order delivery of the property to the creditor. § 1-34-103(c). The debtor can require the return of the property to his possession by executing a written bond to the creditor, within forty-eight (48) hours after the sheriff takes custody of the property described, with sufficient sureties, in at least double the value of the property taken. § 1-34-108. A creditor with a security interest may repossess property, without judicial process, if he can do so without a breach of peace. § 34-21-962.

STATUTE OF LIMITATIONS

Contract under seal - 10 years. § 1-3-105.
Simple written contract - 10 years. § 1-3-105.
Contract for sale of goods - 4 years. § 34-21-299.5.
Oral contracts - 8 years. § 1-3-105.
Judgments - Courts of record - 5 years. § 1-17-307, but the judgment may be revived within 21 years after it becomes dormant. § 1-16-503.
Recovery of Real Property - 10 years, Sec. 1-3-103.

TRUTH-IN-LENDING REQUIREMENTS

Federal - Truth-In-Lending Act. See Chapter 3 supra.

State - The Wyoming Uniform Consumer Credit Code and the Rules of the State Examiner (R. St. Ex.) (the State Examiner is the Administrator of the Wyoming Uniform Consumer Credit Code), require a creditor to disclose to the buyer, usually before credit is extended, his credit charges in dollars and cents and as an annual percentage rate. Disclosure is required for sales, loans and revolving credit transactions. §§ 40-14-226, 40-14-227 and R. St. Ex. § 2.8(a); §§ 40-14-324, 40-14-325 and R. St. Ex. § 2.8(d); §§ 40-14-231, 40-14-328, and R. St. Ex. § 2.7(a). The following

transactions are exempted from coverage under the Wyoming UCCC provisions and the Rules of the State Examiner:

(1) Extensions of credit to the government or governmental agencies;

(2) The sale of insurance by an insurer if the premium is financed (except as provided in Article 4 on Insurance);

(3) Transactions under public utility or common carrier tariffs if a subdivision or agency of Wyoming or of the United States regulates the charges for services;

(4) Ceilings or rates and charges or limits on loan maturities of a credit union organized under the laws of Wyoming or of the United States if ceilings or limits are established by these laws; and

(5) Credit Sales, loans or leases primarily for agricultural purposes except as provided in Articles 2 and 3 of Part 6 of this code. Sec. 40-14-121 as amended.

(6) A consumer related loan not in excess of $25,000.00 if:

(a) debtor is a person other than an organization; or,

(b) debt is secured primarily by a security interest in a one or two family dwelling occupied by a person related to the debtor. Sec. 40-14-355.

(7) Loans in excess of $25,000 (principal amount) or secured by an interest in land. Sec. 40-14-304.

A creditor who fails to disclose information to a person entitled to the information relating to credit sales and loans is liable to that person in an amount equal to the sum of:

(A) Twice the credit service charge (but not less than $100 or more than $1,000); and

(B) In the case of a successful action to enforce the liability under paragraph (A), the costs of the action together with attorney's fees. § 40-14-522(a).

The statute of limitations for violations is one (1) year. Sec. 40-14-522(f). The debtor has the right to rescind the transaction within three (3) business days following consummation of that transaction or delivery of the disclosures required whichever is later. Sec. 40-14-523(a).

A creditor is not liable in an action brought against him if within 15 days after discovery of an error and prior to written notice of the error or institution of an action, the creditor makes the adjustments and notifies the debtor. § 40-14-522(b). A creditor that willfully and knowingly fails to provide information which he is required to disclose, gives false or inaccurate information or otherwise fails to comply with the act is guilty of a misdemeanor and upon conviction may be punished by a fine not to exceed $5,000.00, or by imprisonment not to exceed one year, or both. Sec. 40-14-541. A creditor who willfully makes charges in excess of those permitted on loans is guilty of a misdemeanor and may be punished by a fine not to exceed $1,000.00, or by imprisonment not to exceed six months,

or both. An unlicensed creditor who makes loans is guilty of a misdemeanor and is subject to a fine not exceeding $5,000.00, or one year imprisonment, or both. A creditor or assignor of a creditor who attempts collection or enforcement without proper notification or payment of fees is guilty of a misdemeanor and may be subject to a fine not exceeding $1,000.00. Sec. 40-14-540(a)(b)(c).

UNFAIR AND DECEPTIVE TRADE PRACTICES

WYO. STAT. § 40-12-101 (1977 & Supp. 1983)

Prohibited Practices: 14 enumerated deceptive trade practices.

Special Requirements: Violation must be knowing.

Scope: In course of business and in a consumer transaction, defined as the advertising, sale, offer for sale of any merchandise, including real or personal property, services, intangible or any other article of value for personal, family, or household purposes.

Exclusions: Non-consumer transactions; acts permitted by state or federal law, regulation or decision; advertisements done by publisher, radio and television media, with no knowledge of falsity.

Private Remedies: Class actions or individual actions for actual damages and attorney's fees to prevailing plaintiff.

Limitations: AG acts in public interest upon notice given in injunction; private action if relies on uncured violation and suffers damages as result, "uncured" defined as notice given of violation and no offer of cure made within 15 days or within reasonable time; statute of limitations is 1 year from furnishing of notice of violation, notice must be given by consumer within 1 year of discovery or 2 years after consumer violation unless is uncured; statute is exclusive remedy for enumerated violations.

State Remedies: AG enforces; injunction; maximum $5000 for violation of permanent injunction.

Precedential Value of FTC Interpretatons: None specified.

WARRANTIES (See the Uniform Commercial Code Sections on Warranties for further interpretation of the below cited statutory sections).

Unless excluded or modified, a warranty that the goods shall be merchantable is implied in a contract for their sale if the seller is a merchant with respect to goods of that kind. Under this section the serving for value of food or drink to be consumed either on the premises or elsewhere is a sale. § 34-21-231.

Wyoming

Where the seller at the time of contracting has reason to know any particular purpose for which the goods are required and that the buyer is relying on the seller's skill or judgment to select or furnish suitable goods, there is, unless excluded or modified, an implied warranty that the goods shall be fit for such purpose. § 34-21-232.

Implied warranties, including the warranty of merchantability can be limited or excluded in writing. Remedies for breach of warranty also can be limited. § 34-21-233.

Express warranties cannot be negated if it is unreasonable to do so. Sec. 34-21-233.

MOTOR VEHICLES - W.S. Sec. 40-17-101 ("Lemon Law")

If a new motor vehicle does not conform to the express warranties and the consumer reports the nonconformity within one year of delivery, the manufacturer, dealer or agent must repair the vehicle even if the one year period has expired.

If the motor vehicle is not able to be repaired after a reasonable number of attempts (defined as at least three (3) times) or the vehicle is out of service for repair for a cumulative total of thirty business days, the manufacturer, agent or authorized dealer shall:

(a) replace the vehicle with a new or comparable vehicle; or,

(b) accept the return of the vehicle and refund the full purchase price less reasonable allowance for use.

MISCELLANEOUS STATUTES

MOTOR VEHICLES - W.S. § 40-17-101 ("Lemon Law")

If a new motor vehicle does not conform to the express warranties and the consumer reports the noncomformity within one year of delivery, the manufacturer, dealer, or agent must repair the vehicle even if the one year period has expired.

If the motor vehicle is not able to be repaired after a reasonable number of attempts (defined as at least three (3) times) or the vehicle is out of service for repair for a cumulative total of thirty business days, the manufacturer, agent, or authorized dealer shall:

(a) replace the vehicle with a new or comparable vehicle; or,

(b) accept the return of the vehicle and refund the full purchase price less reasonable allowance for use.

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