

1 Columbia, the United States or any district, territory or possession of the United States, or any
2 foreign country), or a government or governmental subdivision or agency of a credit card device.

3 (4) “Credit card plan” or “plan” shall mean any arrangement or plan between a borrower
4 and a credit card lender for open-end, revolving extensions of credit made available through a
5 credit card device. Provided, however, said “credit card plan” or “plan” does not include an
6 extension of credit, the prepayment of which is secured by real property.

7 **6-26.1-2. Authorization to make loans -- Usury.** -- Any credit card lender may, subject
8 to any limitations on lending authorities contained in its charter or otherwise imposed by law,
9 offer and extend credit to a borrower and in connection therewith may charge and collect interest,
10 interest fees and charges, and other charges permitted by this chapter and may take such security
11 as collateral in connection therewith as may be acceptable to the credit card lender.

12 **6-26.1-3. Variable rates.** -- If the agreement governing a credit card plan so provides,
13 the periodic percentage rate or rates of interest under such plan may vary in accordance with a
14 schedule or formula. Such periodic rate or rates may vary from time to time as the rate
15 determined in accordance with such schedule or formula varies and such periodic rate or rates, as
16 so varied, may be made applicable to all or any part of outstanding unpaid indebtedness under the
17 plan on or after the first day of the billing cycle that contains the effective date of such variation,
18 including any such indebtedness arising out of purchases made or loans obtained prior to such
19 variation in the periodic percentage rate or rates. Without limitation, a permissible schedule or
20 formula hereunder may include provisions in the agreement governing the plan for a change in
21 the periodic percentage rate or rates of interest applicable to all or any part of outstanding unpaid
22 indebtedness, whether by variation of the then applicable periodic percentage rate or rates of
23 interest, variation of an index or margin or otherwise, contingent upon the happening of any event
24 or circumstance specified in the plan, which event or circumstance may include, but not be
25 limited to, the failure of the borrower to perform in accordance with the terms of the plan.

26 **6-26.1-4. Interest.** -- A credit card lender may charge and collect interest under a credit
27 card plan on outstanding unpaid indebtedness in the borrower’s account under the plan at such
28 daily, weekly, monthly, annual or other periodic percentage rate or rates as the agreement
29 governing the plan provides or as established in the manner provided in the agreement governing
30 the plan. If the agreement governing the plan so provides, the outstanding unpaid indebtedness
31 may include the amount of any interest, interest fees and charges, and other charges outstanding.
32 Interest may be calculated using an average daily balance, two-cycle average daily balance,
33 adjusted balance or previous balance method or using any other balance computation method
34 provided for in the agreement governing the plan. Credit card transactions may be included in the

1 outstanding unpaid indebtedness as of such time as may be specified in the agreement governing
2 the plan. Periodic billing cycles may be established in such manner and shall have the duration as
3 may be specified in the agreement governing the plan.

4 **6-26.1-5. Interest fees and charges. --** (a) In addition to or in lieu of interest at a
5 periodic percentage rate or rates as provided in section 6-26.1-4, a credit card lender may, if the
6 agreement governing the credit card plan so provides, charge and collect, as interest, in such
7 manner or form as the plan may provide, one or more of the following:

8 (1) Daily, weekly, monthly, annual or other periodic charges in such amount or amounts
9 as the agreement may provide for the privileges made available to the borrower under the plan;

10 (2) A transaction charge or charges in such amount or amounts as the agreement may
11 provide for each separate purchase, loan, or other transaction under the plan;

12 (3) A minimum charge for each daily, weekly, monthly, annual or other scheduled
13 billing period under the plan during any portion of which there is an outstanding unpaid
14 indebtedness under the plan;

15 (4) Reasonable fees for services rendered or for reimbursement of expenses incurred in
16 good faith by the credit card lender or its agents in connection with the plan, or other reasonable
17 fees incident to the application for and the opening, administration and termination of a plan
18 including, without limitation, commitment, application and processing fees, official fees and
19 taxes, costs incurred by reason of examination of title, inspection, appraisal, recording, mortgage
20 satisfaction or other formal acts necessary or appropriate to the security for the plan, and filing
21 fees;

22 (5) Returned payment charges or charges imposed for the return of a draft or check
23 drawn on a credit card plan evidencing an extension of credit under such plan;

24 (6) Documentary evidence charges;

25 (7) Stop payment fees;

26 (8) Overlimit charges;

27 (9) Automated teller machine charges or other electronic or interchange fees or charges;

28 (10) Prepayment charges authorized under subsection (b) of this section; and

29 (11) Subject to any limitations contained in this chapter, such other fees and charges as
30 are set forth in the agreement governing the plan.

31 (b) An individual borrower may pay the outstanding unpaid indebtedness charged to the
32 borrower's account under a plan in full at any time. Except for a charge imposed to terminate a
33 plan if the agreement governing the plan so provides, a credit card lender may not impose any
34 prepayment charge in connection with the payment of outstanding unpaid indebtedness in full by

1 an individual borrower. A credit card lender may charge and collect any prepayment or charge
2 specified in the agreement governing the plan in connection with the payoff and termination of a
3 plan that is secured by a real estate mortgage. The terms of prepayment of the outstanding unpaid
4 indebtedness relating to a credit card plan involving a borrower other than an individual borrower
5 shall be as the lender and the borrower may agree.

6 (c) No charges assessed in accordance with this section shall be deemed void as a
7 penalty or otherwise unenforceable under any statute or the common law.

8 **6-26.1-6. Overdraft accounts. --** If credit under a credit card plan is offered and
9 extended in connection with a demand deposit account or other transaction account maintained by
10 the borrower pursuant to an agreement or arrangement whereby the holder of the deposit account
11 agrees to honor checks, drafts or other debits to such account, which if paid would create or
12 increase a negative balance in such account, by making extensions of credit to such borrower
13 under such credit card plan, any charges customarily imposed under the terms governing such
14 demand deposit or other transaction account in the absence of any associated credit card plan
15 (including, without limitation, check charges, monthly maintenance charges, checkbook charges,
16 charges for checks drawn on funds in excess of an available line of credit and other similar
17 charges) may continue to be imposed on such account without specific reference thereto or
18 incorporation thereof by reference in the agreement governing the credit card plan and the amount
19 of any such charge, to the extent the balance in such demand deposit or other transaction account
20 is insufficient to pay such a charge, may be charged to the borrower's account under the plan as a
21 loan thereunder and may be included in outstanding unpaid indebtedness in accordance with the
22 terms of the agreement governing such credit card plan.

23 **6-26.1-7. Omitted installments. --** A credit card lender may at any time and from time
24 to time unilaterally extend to a borrower under a credit card plan the option of omitting monthly
25 installments.

26 **6-26.1-8. Insurance. --** (a) A credit card lender may request but not require an individual
27 borrower to be insured in respect of a credit card plan under a life, health, accident, health and
28 accident or other credit or other permissible insurance policy or program, whether group or
29 individual, and in the event that an individual borrower's outstanding unpaid indebtedness under
30 the plan is secured by an interest in real or personal property, a credit card lender may require the
31 borrower to obtain insurance, from an insurer acceptable to the credit card lender against loss of
32 or damage to such property, or against the liability arising out of the ownership or use of the
33 property and may finance the premiums for such insurance.

34 (b) In the case of a borrower borrowing under a credit card plan for other than personal,

1 household or family purposes, a credit card lender may require the borrower to obtain insurance,
2 from an insurer acceptable to the credit card lender, under a life, health, accident, health and
3 accident or other credit or other permissible insurance policy or program, whether group or
4 individual, and in the event that the borrower's outstanding unpaid indebtedness under the plan is
5 secured by an interest in real or personal property, the credit card lender may require the borrower
6 to obtain insurance, from an insurer acceptable to the credit card lender, against loss of or damage
7 to such property, or against the liability arising out of the ownership or use of the property and
8 may finance the premiums for such insurance.

9 **6-26.1-9. Delinquent installments. --** (a) If the agreement governing a credit card plan
10 so provides, a credit card lender may impose, as interest, a late or delinquency charge upon any
11 outstanding unpaid installment payments or portions thereof under the plan which are in default;
12 provided, however, that no more than one such late or delinquency charge may be imposed in
13 respect of any single such installment payment or portion there, regardless of the period during
14 which it remains in default. Nothing contained in this section shall limit, restrict or otherwise
15 affect the right of a credit card lender to change the percentage rate or rates of interest applicable
16 to the credit plan between the credit card lender and a borrower upon the occurrence of a
17 delinquency or default or other failure of the borrower to perform in accordance with the terms of
18 the plan.

19 (b) No charges assessed by a credit card lender in accordance with this section shall be
20 deemed void as a penalty or otherwise unenforceable under any statute or the common law.

21 **6-26.1-10. Attorneys' fees -- Costs. --** In the event a borrower defaults under the terms
22 of a plan, the credit card lender may, if the borrower's account is referred to an attorney (not a
23 regularly salaried employee of the credit card lender) or to a third party for collection and if the
24 agreement governing the credit card plan so provides, charge and collect from the borrower a
25 reasonable attorneys' fee. In addition, following a borrower's default, the credit card lender may,
26 if the agreement governing the plan so provides, recover from the borrower all court, alternative
27 dispute resolution or other collection costs (including, without limitation, fees and charges of
28 collection agencies) actually incurred by the credit card lender.

29 **6-26.1-11. Amendment of agreement. --** (a) Unless the agreement governing a credit
30 card plan otherwise provides, a credit card lender may at any time and from time to time amend
31 such agreement in any respect, whether or not the amendment or the subject of the amendment
32 was originally contemplated or addressed by the parties or is integral to the relationship between
33 the parties. Without limiting the foregoing, such amendment may change terms by the addition
34 of new terms or by the deletion or modification of existing terms, whether relating to plan

1 benefits or features, the rate or rates of interest, the manner of calculating interest or outstanding
2 unpaid indebtedness, variable schedules or formulas, interest fees and charges, fees, collateral
3 requirements, methods for obtaining or repaying extensions of credit, attorneys' fees, plan
4 termination, the manner for amending the terms of the agreement, arbitration or other alternative
5 dispute resolution mechanisms, or other matters of any kind whatsoever. Unless the agreement
6 governing a credit card plan otherwise expressly provides, any amendment may, on and after the
7 date upon which it becomes effective as to a particular borrower, apply to all then outstanding
8 unpaid indebtedness in the borrower's account under the plan, including any such indebtedness
9 that arose prior to the effective date of the amendment. An agreement governing a credit card
10 plan may be amended pursuant to this section regardless of whether the plan is active or inactive
11 or whether additional borrowings are available thereunder. Any amendment that does not
12 increase the rate or rates of interest charged by a credit card lender to a borrower under section 6-
13 26.1-3 or section 6-26.1-4 of this chapter may become effective as determined by the credit card
14 lender, subject to compliance by the credit card lender with any applicable notice requirements
15 under the truth in lending act (15 U.S.C. sections 1601 et seq.), and the regulations promulgated
16 thereunder, as in effect from time to time. Any notice of an amendment sent by the credit card
17 lender may be included in the same envelope with a periodic statement or as part of the periodic
18 statement or in other materials sent to the borrower.

19 (b)(1) If an amendment increases the rate or rates of interest charged by a credit card
20 lender to a borrower under section 6-26.1-3 or section 6-26.1-4 of this chapter, the credit card
21 lender shall mail or deliver to the borrower, at least fifteen (15) days before the effective date of
22 the amendment, a clear and conspicuous written notice that shall describe the amendment and
23 shall also set forth the effective date thereof and any applicable information required to be
24 disclosed pursuant to the following provisions of this section.

25 (2) Any amendment that increases the rate or rates of interest charged by a credit card
26 lender to a borrower under section 6-26.1-3 or section 6-26.1-4 of this chapter may become
27 effective as to a particular borrower if the borrower does not, within fifteen (15) days of the
28 earlier mailing or delivery of the written notice of the amendment (or such longer period as may
29 be established by the credit card lender), furnish written notice to the credit card lender that the
30 borrower does not agree to accept such amendment. The notice from the credit card lender shall
31 set forth the address to which a borrower may send notice of the borrower's election not to accept
32 the amendment and shall include a statement that, absent the furnishing of notice to the credit
33 card lender of nonacceptance within the referenced fifteen (15) day (or longer) time period, the
34 amendment will become effective and apply to such borrower. As a condition to the

1 effectiveness of any notice that a borrower does not accept such amendment, the credit card
2 lender may require the borrower to return to it all credit devices. If, after fifteen (15) days from
3 the mailing or delivery by the credit card lender of a notice of an amendment (or such longer
4 period as may have been established by the credit card lender as referenced above), a borrower
5 uses a plan by making a purchase or obtaining a loan, notwithstanding that the borrower has, prior
6 to such use, furnished the credit card lender notice that the borrower does not accept an
7 amendment, the amendment may be deemed by the credit card lender to have been accepted and
8 may become effective as to the borrower as of the date that such amendment would have become
9 effective but for the furnishing of notice by the borrower (or as of any later date selected by the
10 credit card lender).

11 (3) Any amendment that increases the rate or rates of interest charged by a credit card
12 lender to a borrower under section 6-26.1-3 or section 6-26.1-4 of this chapter may, in lieu of the
13 procedure referenced in subsection (2) of this section, become effective as to a particular
14 borrower if the borrower uses the plan after a date specified in the written notice of the
15 amendment that is at least fifteen (15) days after the mailing or delivery of the notice (but that
16 need not be the date the amendment becomes effective) by making a purchase or obtaining a
17 loan; provided, that the notice from the credit card lender includes a statement that the described
18 usage after the references date will constitute the borrower's acceptance of the amendment.

19 (4) Any borrower who furnishes timely notice electing not to accept an amendment in
20 accordance with the procedures referenced in subsection (2) of this section and who does not
21 subsequently use the plan, or who fails to use such borrower's plan as referenced in subsection (3)
22 of this section, shall be permitted to pay the outstanding unpaid indebtedness in such borrower's
23 account under the plan in accordance with the rate or rates of interest charged by a credit card
24 lender to a borrower under section 6-26.1-3 or section 6-26.1-4 of this chapter without giving
25 effect to the amendment; provided however, that the credit card lender may convert the
26 borrower's account to a closed end credit account on credit terms substantially similar to those set
27 forth in the then-existing agreement governing the borrower's plan.

28 (5) Notwithstanding the other provisions of this section, no notice required by this section
29 of an amendment of an agreement governing a credit card plan shall be required, and any
30 amendment may become effective as of any date agreed upon between a credit card lender and a
31 borrower, with respect to any amendment that is agreed upon between the credit card lender and
32 the borrower, either orally or in writing.

33 (c) For purposes of this section, the following are examples of amendments that shall not
34 be deemed to increase the rate or rates of interest charged by a credit card lender to a borrower

1 under section 6-26.1-3 or section 6-26.1-4 of this chapter:

2 (1) A decrease or increase in the required number or amount of periodic installment
3 payments;

4 (2) Any change to a plan that increases the rate or rates in effect immediately prior to the
5 change by less than one-quarter (¼) of one percent (1%) point per annum; provided that a credit
6 card lender may not make more than one such change in reliance on this paragraph with respect
7 to a plan within any twelve (12) month period;

8 (3)(i) A change in the schedule or formula used under a variable rate plan under section
9 6-26.1-3 of this chapter that varies the determination date of the applicable rate, the time period
10 for which the applicable rate will apply or the effective date of any variation of the rate, or any
11 other similar change; or

12 (ii) Any other change in the schedule or formula used under a variable rate plan under
13 section 6-26.1-3 of this chapter; provided, that the initial interest rate that would result from any
14 such change under this subsection (3), as determined on the effective date of the change or, if the
15 notice of the change is mailed or delivered to the borrower prior to the effective date, as of any
16 date within sixty (60) days before mailing or delivery of such notice, will not be an increase from
17 the rate in effect on such date under the existing schedule or formula.

18 (4) A change from a variable rate plan to a fixed rate, or from a fix rate to a variable rate
19 plan so long as the initial rate that would result from such a change, as determined on the
20 effective date of the change, or if the notice of the change is mailed or delivered to the borrower
21 prior to the effective date, as of any date within sixty (60) days before mailing or delivery of such
22 notice, will not be an increase from the rate in effect on such date under the existing plan;

23 (5) A change from a daily periodic rate to a periodic rate other than daily or from a
24 periodic rate other than daily to a daily periodic rate; and

25 (6) A change in the method of determining the outstanding unpaid indebtedness upon
26 which interest is calculated (including, without limitation, a change with respect to the date by
27 which or the time period within which a new balance or any portion thereof must be paid to avoid
28 additional interest).

29 (d) The procedures for amendment by a credit card lender of the terms of a plan to which
30 a borrower other than an individual borrower is a party may, in lieu of the foregoing provisions of
31 this section, be as the agreement governing the plan may otherwise provide.

32 **6-26.1-12. Materiality of terms. -- All terms, conditions and other provisions of and**
33 **relating to a credit card plan as contained in this chapter or any other applicable chapter, or in the**
34 **agreement governing the plan (other than those which are interest fees and charges under this**

1 chapter), including, without limitation, provisions relating to the method of determining the
2 outstanding unpaid indebtedness on which interest is applied, time periods within which interest
3 or interest fees and charges may be avoided, reasons for default and the right to cure any default,
4 right to accelerate, account cancellation, choice of law, change in terms requirements, right to
5 charge and collect attorneys' fees, court and collection costs and the compounding of interest or
6 interest fees and charges, shall be and hereby are deemed to be material to the determination of
7 interest applicable to a plan under Rhode Island law, under the most favored lender doctrine, and
8 under section 85 of the national credit card lending act (12 U.S.C. section 85) or section 521 of
9 the depository institutions deregulation and monetary control act of 1980 (12 U.S.C. section
10 1831d).

11 **6-26.1-13. Applicable law.** -- An agreement governing a credit card plan shall be
12 governed by the laws of the state of Rhode Island, and any other law of this state limiting the rate
13 or amount of interest, discounts, points, finance charges, service charges or other charges or fees
14 shall not apply to extensions of credit under a credit card plan operated in accordance with this
15 chapter.

16 SECTION 2. Section 6-26-2 of the General Laws in Chapter 6-26 entitled "Interest and
17 Usury" is hereby amended to read as follows:

18 **6-26-2. Maximum rate of interest.** -- (a) Subject to the provisions of title 19, no person,
19 partnership, association, or corporation loaning money to or negotiating the loan of money for
20 another, except duly licensed pawnbrokers shall, directly or indirectly, reserve, charge, or take
21 interest on a loan, whether before or after maturity, at a rate which shall exceed the greater of
22 twenty-one percent (21%) per annum or the alternate rate specified in subsection (b) of this
23 section of the unpaid principal balance of the net proceeds of the loan not compounded, nor taken
24 in advance, nor added on to the amount of the loan.

25 (b) The alternate rate shall mean the rate per annum which is equal to nine percentage
26 points (9%) plus an index which is the domestic Prime Rate as published in the Money Rates
27 section of The Wall Street Journal on the last business day of each month preceding the later of
28 the date of the debtor's agreement or the date on which the interest rate is predetermined in
29 accordance with the terms of the debtor's agreement. If the Wall Street Journal ceases publication
30 of the Prime Rate, the Director of Business Regulation shall designate a substantially equivalent
31 index. In the event an index is published as a range of rates, then the lowest rate shall be the
32 index.

33 (c) For purposes of this section, interest shall not be construed to include charges
34 pursuant to chapters 30 and 31 of title 27; premiums for insurance in an amount not exceeding the

1 reasonable value of property offered as security for a loan against any substantial risk of loss,
2 liability, damage, or destruction in conformity with the insurance laws of this state; premiums for
3 insurance providing loss of income or involuntary unemployment coverage if the coverage is not
4 a factor in the approval by the lender of the extension of credit and the debtor gives specific
5 written indication that the cost of this coverage has been conspicuously disclosed to the debtor,
6 that the debtor realizes that the coverage is not a condition for the extension of credit, and that the
7 debtor voluntarily desires the coverage; commercial loan commitment or availability fees to
8 assure the availability of a specified amount of credit for a specified period of time or, at the
9 borrower's option, compensating balances in lieu of the fees; reasonable attorney's fees
10 customarily charged for the preparation of loan, security, or mortgage documents and for the
11 collection of defaulted loans; fees for title examination or title insurance; other customary and
12 reasonable costs incident to the closing, supervision, and collection of loans in this state; and
13 consideration received for the redemption, sale, transfer, or other disposition of equity securities
14 by a small business investment company licensed under the provisions of the United States
15 "Small Business Investment Act of 1958" [15 U.S.C. section 631 et seq.], as amended, or an
16 entity which would qualify for regulation as a business development company under the
17 provisions of the "Investment Company Act of 1940" [15 U.S.C. section 80a-1 et seq.], as
18 amended, whether or not the equity securities were acquired by such small business investment
19 company or business development company in connection with or as an incident to the extension
20 of credit. Any of the foregoing charges, if paid or advanced by the lender, may be considered part
21 of the net proceeds of the loan, and if paid by the debtor, shall not be deducted from the net
22 proceeds of the loan.

23 (d) Notwithstanding anything to the contrary in this chapter or in any other provision of
24 Rhode Island law, ~~with respect to credit card transactions: (1) the provisions of subsection (a) of~~
25 ~~this section shall not be applicable; (2) the interest rate shall be as agreed upon between lender~~
26 ~~and debtor; and (3) the following fees shall be construed as interest: fees for late payment, cash~~
27 ~~advance fees, overlimit fees, returned check fees and annual membership fees. the provisions of~~
28 this chapter shall not be applicable with respect to credit card transactions as defined in chapter 6-
29 26.1. Said chapter 6-26.1 only shall apply to all such transactions.

30 (e) Notwithstanding the provisions of subsection (a) of this section and/or any other
31 provision in this chapter to the contrary, there is no limitation on the rate of interest which may be
32 legally charged for the loan to, or use of money by, a commercial entity, where the amount of
33 money loaned exceeds the sum of one million dollars (\$1,000,000) and where repayment of the
34 loan is not secured by a mortgage against the principal residence of any borrower; provided, that

1 the commercial entity has first obtained a pro forma methods analysis performed by a certified
2 public accountant licensed in the state of Rhode Island indicating that the loan is capable of being
3 repaid.

4 SECTION 3. This act shall take effect upon passage and shall apply retroactively to
5 January 1, 2003.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO COMMERCIAL LAW -- CREDIT CARD LENDING

1 This act would establish provisions governing the terms, conditions and obligations under
2 which a bank credit card plan may operate.

3 This act would take effect on passage and would apply retroactively to January 1, 2003.

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