

LC01323

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2003

A N A C T

RELATING TO COMMERCIAL LAW -- CREDIT CARD LENDING

Introduced By: Senators Cote, Bates, Celona, and Blais

Date Introduced: February 06, 2003

Referred To: Senate Financial, Technology, Regulatory

It is enacted by the General Assembly as follows:

1 SECTION 1. Title 6 of the General Laws entitled "Commercial Law -- General
2 Regulatory Provisions" is hereby amended by adding thereto the following chapter:

3 CHAPTER 6-26.1

4 CREDIT CARD LENDING

5 **6-26.1-1. Definitions.** -- For purposes of this chapter, the following definitions shall
6 apply:

7 (1) "Credit card device" shall include any means of making a credit card transaction
8 available to a borrower pursuant to a credit card plan, including, but not limited to, a card, draft or
9 check, identification code, other means of identification, or other credit device or code, whether
10 made directly or indirectly by means of telephone, point of sale terminal, automated teller
11 machine, computer or other electronic or other communication or device, or through the mail.

12 (2) "Credit card lender" or "lender" shall mean any entity that is an institution as defined
13 by section 19-9-1, or licensee as defined by section 19-14-1, which offers or extends credit in the
14 form of a credit card transaction.

15 (3) "Credit card transaction" shall mean any loan or extension of credit made pursuant to
16 a credit card plan. Without limitation of the foregoing, a credit card transaction may be extended
17 under a credit card plan by a credit card lender's acquisition of obligations arising out of the
18 honoring by a merchant, or other third-party, a credit card lender or other financial institution
19 (whether chartered or organized under the laws of this or any other state, the District of

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 repayment 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. The terms of prepayment of the outstanding unpaid indebtedness relating
2 to a credit card plan involving a borrower other than an individual borrower shall be as the lender
3 and the borrower may agree.

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

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

21 **6-26.1-7. Omitted installments. --** A credit card lender may at any time and from time
22 to time unilaterally extend to a borrower under a credit card plan the option of omitting monthly
23 installments.

24 **6-26.1-8. Insurance. --** (a) A credit card lender may request but not require an individual
25 borrower to be insured in respect of a credit card plan under a life, health, accident, health and
26 accident or other credit or other permissible insurance policy or program, whether group or
27 individual.

28 (b) In the case of a borrower borrowing under a credit card plan for other than personal,
29 household or family purposes, a credit card lender may require the borrower to obtain insurance,
30 from an insurer acceptable to the credit card lender, under a life, health, accident, health and
31 accident or other credit or other permissible insurance policy or program, whether group or
32 individual.

33 **6-26.1-9. Delinquent installments. --** (a) If the agreement governing a credit card plan
34 so provides, a credit card lender may impose, as interest, a late or delinquency charge upon any

1 outstanding unpaid installment payments or portions thereof under the plan which are in default;
2 provided, however, that no more than one such late or delinquency charge may be imposed in
3 respect of any single such installment payment or portion there, regardless of the period during
4 which it remains in default; and provided further, however, that for the purpose only of the
5 preceding provision all payments by the borrower shall be deemed to be applied to satisfaction of
6 installment payments in the order in which they become due. Nothing contained in this section
7 shall limit, restrict or otherwise affect the right of a credit card lender to change the percentage
8 rate or rates of interest applicable to the credit plan between the credit card lender and a borrower
9 upon the occurrence of a delinquency or default or other failure of the borrower to perform in
10 accordance with the terms of the plan.

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

13 **6-26.1-10. Attorneys' fees -- Costs. --** In the event a borrower defaults under the terms
14 of a plan, the credit card lender may, if the borrower's account is referred to an attorney (not a
15 regularly salaried employee of the credit card lender) or to a third party for collection and if the
16 agreement governing the credit card plan so provides, charge and collect from the borrower a
17 reasonable attorneys' fee. In addition, following a borrower's default, the credit card lender may,
18 if the agreement governing the plan so provides, recover from the borrower all court, alternative
19 dispute resolution or other collection costs (including, without limitation, fees and charges of
20 collection agencies) actually incurred by the credit card lender.

21 **6-26.1-11. Amendment of agreement. --** (a) Unless the agreement governing a credit
22 card plan otherwise provides, a credit card lender may at any time and from time to time amend
23 such agreement in any respect, whether or not the amendment or the subject of the amendment
24 was originally contemplated or addressed by the parties or is integral to the relationship between
25 the parties. Without limiting the foregoing, such amendment may change terms by the addition
26 of new terms or by the deletion or modification of existing terms, whether relating to plan
27 benefits or features, the rate or rates of interest, the manner of calculating interest or outstanding
28 unpaid indebtedness, variable schedules or formulas, interest fees and charges, fees, collateral
29 requirements, methods for obtaining or repaying extensions of credit, attorneys' fees, plan
30 termination, the manner for amending the terms of the agreement, arbitration or other alternative
31 dispute resolution mechanisms, or other matters of any kind whatsoever. Unless the agreement
32 governing a credit card plan otherwise expressly provides, any amendment may, on and after the
33 date upon which it becomes effective as to a particular borrower, apply to all then outstanding
34 unpaid indebtedness in the borrower's account under the plan, including any such indebtedness

1 that arose prior to the effective date of the amendment. An agreement governing a credit card
2 plan may be amended pursuant to this section regardless of whether the plan is active or inactive
3 or whether additional borrowings are available thereunder. Any amendment that does not
4 increase the rate or rates of interest charged by a credit card lender to a borrower under section 6-
5 26.1-3 or section 6-26.1-4 of this chapter may become effective as determined by the credit card
6 lender, subject to compliance by the credit card lender with any applicable notice requirements
7 under the truth in lending act (15 U.S.C. sections 1601 et seq.), and the regulations promulgated
8 thereunder, as in effect from time to time. Any notice of an amendment sent by the credit card
9 lender may be included in the same envelope with a periodic statement or as part of the periodic
10 statement or in other materials sent to the borrower.

11 (b)(1) If an amendment 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, the credit card
13 lender shall mail or deliver to the borrower, at least fifteen (15) days before the effective date of
14 the amendment, a clear and conspicuous written notice that shall describe the amendment and
15 shall also set forth the effective date thereof and any applicable information required to be
16 disclosed pursuant to the following provisions of this section.

17 (2) Any amendment that increases the rate or rates of interest charged by a credit card
18 lender to a borrower under section 6-26.1-3 or section 6-26.1-4 of this chapter may become
19 effective as to a particular borrower if the borrower does not, within fifteen (15) days of the
20 earlier mailing or delivery of the written notice of the amendment (or such longer period as may
21 be established by the credit card lender), furnish written notice to the credit card lender that the
22 borrower does not agree to accept such amendment. The notice from the credit card lender shall
23 set forth the address to which a borrower may send notice of the borrower's election not to accept
24 the amendment and shall include a statement that, absent the furnishing of notice to the credit
25 card lender of nonacceptance within the referenced fifteen (15) day (or longer) time period, the
26 amendment will become effective and apply to such borrower. As a condition to the
27 effectiveness of any notice that a borrower does not accept such amendment, the credit card
28 lender may require the borrower to return to it all credit devices. If, after fifteen (15) days from
29 the mailing or delivery by the credit card lender of a notice of an amendment (or such longer
30 period as may have been established by the credit card lender as referenced above), a borrower
31 uses a plan by making a purchase or obtaining a loan, notwithstanding that the borrower has, prior
32 to such use, furnished the credit card lender notice that the borrower does not accept an
33 amendment, the amendment may be deemed by the credit card lender to have been accepted and
34 may become effective as to the borrower as of the date that such amendment would have become

1 effective but for the furnishing of notice by the borrower (or as of any later date selected by the
2 credit card lender).

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

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

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

25 (c) For purposes of this section, the following are examples of amendments that shall not
26 be deemed to increase the rate or rates of interest charged by a credit card lender to a borrower
27 under section 6-26.1-3 or section 6-26.1-4 of this chapter:

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

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

34 (3)(i) A change in the schedule or formula used under a variable rate plan under section

1 6-26.1-3 of this chapter that varies the determination date of the applicable rate, the time period
2 for which the applicable rate will apply or the effective date of any variation of the rate, or any
3 other similar change; or

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

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

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

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

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

24 **6-26.1-12. Materiality of terms. -- All terms, conditions and other provisions of and**
25 **relating to a credit card plan as contained in this chapter or any other applicable chapter, or in the**
26 **agreement governing the plan (other than those which are interest fees and charges under this**
27 **chapter), including, without limitation, provisions relating to the method of determining the**
28 **outstanding unpaid indebtedness on which interest is applied, time periods within which interest**
29 **or interest fees and charges may be avoided, reasons for default and the right to cure any default,**
30 **right to accelerate, account cancellation, choice of law, change in terms requirements, right to**
31 **charge and collect attorneys' fees, court and collection costs and the compounding of interest or**
32 **interest fees and charges, shall be and hereby are deemed to be material to the determination of**
33 **interest applicable to a plan under Rhode Island law, under the most favored lender doctrine, and**
34 **under section 85 of the national credit card lending act (12 U.S.C. section 85) or section 521 of**

1 the depository institutions deregulation and monetary control act of 1980 (12 U.S.C. section
2 1831d).

3 **6-26.1-13. Applicable law.** -- An agreement governing a credit card plan shall be
4 governed by the laws of the state of Rhode Island, and any other law of this state limiting the rate
5 or amount of interest, discounts, points, finance charges, service charges or other charges or fees
6 shall not apply to extensions of credit under a credit card plan operated in accordance with this
7 chapter.

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

10 **6-26-2. Maximum rate of interest.** -- (a) Subject to the provisions of title 19, no person,
11 partnership, association, or corporation loaning money to or negotiating the loan of money for
12 another, except duly licensed pawnbrokers shall, directly or indirectly, reserve, charge, or take
13 interest on a loan, whether before or after maturity, at a rate which shall exceed the greater of
14 twenty-one percent (21%) per annum or the alternate rate specified in subsection (b) of this
15 section of the unpaid principal balance of the net proceeds of the loan not compounded, nor taken
16 in advance, nor added on to the amount of the loan.

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

25 (c) For purposes of this section, interest shall not be construed to include charges
26 pursuant to chapters 30 and 31 of title 27; premiums for insurance in an amount not exceeding the
27 reasonable value of property offered as security for a loan against any substantial risk of loss,
28 liability, damage, or destruction in conformity with the insurance laws of this state; premiums for
29 insurance providing loss of income or involuntary unemployment coverage if the coverage is not
30 a factor in the approval by the lender of the extension of credit and the debtor gives specific
31 written indication that the cost of this coverage has been conspicuously disclosed to the debtor,
32 that the debtor realizes that the coverage is not a condition for the extension of credit, and that the
33 debtor voluntarily desires the coverage; commercial loan commitment or availability fees to
34 assure the availability of a specified amount of credit for a specified period of time or, at the

1 borrower's option, compensating balances in lieu of the fees; reasonable attorney's fees
2 customarily charged for the preparation of loan, security, or mortgage documents and for the
3 collection of defaulted loans; fees for title examination or title insurance; other customary and
4 reasonable costs incident to the closing, supervision, and collection of loans in this state; and
5 consideration received for the redemption, sale, transfer, or other disposition of equity securities
6 by a small business investment company licensed under the provisions of the United States
7 "Small Business Investment Act of 1958" [15 U.S.C. section 631 et seq.], as amended, or an
8 entity which would qualify for regulation as a business development company under the
9 provisions of the "Investment Company Act of 1940" [15 U.S.C. section 80a-1 et seq.], as
10 amended, whether or not the equity securities were acquired by such small business investment
11 company or business development company in connection with or as an incident to the extension
12 of credit. Any of the foregoing charges, if paid or advanced by the lender, may be considered part
13 of the net proceeds of the loan, and if paid by the debtor, shall not be deducted from the net
14 proceeds of the loan.

15 (d) Notwithstanding anything to the contrary in this chapter or in any other provision of
16 Rhode Island law, ~~with respect to credit card transactions: (1) the provisions of subsection (a) of~~
17 ~~this section shall not be applicable; (2) the interest rate shall be as agreed upon between lender~~
18 ~~and debtor; and (3) the following fees shall be construed as interest: fees for late payment, cash~~
19 ~~advance fees, overlimit fees, returned check fees and annual membership fees.~~ the provisions of
20 this chapter shall not be applicable with respect to credit card transactions as defined in chapter 6-
21 26.1. Said chapter 6-26.1 only shall apply to all such transactions.

22 (e) Notwithstanding the provisions of subsection (a) of this section and/or any other
23 provision in this chapter to the contrary, there is no limitation on the rate of interest which may be
24 legally charged for the loan to, or use of money by, a commercial entity, where the amount of
25 money loaned exceeds the sum of one million dollars (\$1,000,000) and where repayment of the
26 loan is not secured by a mortgage against the principal residence of any borrower; provided, that
27 the commercial entity has first obtained a pro forma methods analysis performed by a certified
28 public accountant licensed in the state of Rhode Island indicating that the loan is capable of being
29 repaid.

30 SECTION 3. This act shall take effect on January 1, 2004.

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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.

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