

2010 -- S 2258

LC01597

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2010

A N A C T

RELATING TO COMMERCIAL LAW - GENERAL REGULATORY PROVISIONS -  
INTEREST AND USURY

Introduced By: Senators Sheehan, Crowley, Raptakis, Pichardo, and Gallo

Date Introduced: February 11, 2010

Referred To: Senate Corporations

It is enacted by the General Assembly as follows:

1 SECTION 1. Section 6-26-2 of the General Laws in Chapter 6-26 entitled "Interest and  
2 Usury" is hereby amended to read as follows:

3 **6-26-2. Maximum rate of interest.** -- (a) Subject to the provisions of title 19, no person,  
4 partnership, association, or corporation loaning money to or negotiating the loan of money for  
5 another, except duly licensed pawnbrokers, shall, directly or indirectly, reserve, charge, or take  
6 interest on a loan, whether before or after maturity, at a rate which shall exceed the greater of  
7 twenty-one percent (21%) per annum or the alternate rate specified in subsection (b) of this  
8 section of the unpaid principal balance of the net proceeds of the loan not compounded, nor taken  
9 in advance, nor added on to the amount of the loan.

10 (b) The alternate rate means the rate per annum which is equal to nine percentage points  
11 (9%) plus an index which is the domestic prime rate as published in the Money Rates section of  
12 The Wall Street Journal on the last business day of each month preceding the later of the date of  
13 the debtor's agreement or the date on which the interest rate is redetermined in accordance with  
14 the terms of the debtor's agreement. If the Wall Street Journal ceases publication of the prime  
15 rate, the director of business regulation shall designate a substantially equivalent index. In the  
16 event an index is published as a range of rates, then the lowest rate shall be the index.

17 (c) (1) For purposes of this section, interest shall not be construed to include:

18 (i) Charges pursuant to chapters 30 and 31 of title 27;

1 (ii) Premiums for insurance in an amount not exceeding the reasonable value of property  
2 offered as security for a loan against any substantial risk of loss, liability, damage, or destruction  
3 in conformity with the insurance laws of this state;

4 (iii) Premiums for insurance providing loss of income or involuntary unemployment  
5 coverage if the coverage is not a factor in the approval by the lender of the extension of credit and  
6 the debtor gives specific written indication that the cost of this coverage has been conspicuously  
7 disclosed to the debtor, that the debtor realizes that the coverage is not a condition for the  
8 extension of credit, and that the debtor voluntarily desires the coverage;

9 (iv) Commercial loan commitment or availability fees to assure the availability of a  
10 specified amount of credit for a specified period of time or, at the borrower's option,  
11 compensating balances in lieu of the fees;

12 (v) Reasonable attorney's fees customarily charged for the preparation of loan, security,  
13 or mortgage documents and for the collection of defaulted loans;

14 (vi) Fees for title examination or title insurance;

15 (vii) Other customary and reasonable costs incident to the closing, supervision, and  
16 collection of loans in this state; and

17 (viii) Consideration received for the redemption, sale, transfer, or other disposition of  
18 equity securities by a small business investment company licensed under the provisions of the  
19 "Small Business Investment Act of 1958", 15 U.S.C. section 631 et seq., as amended, or an entity  
20 which would qualify for regulation as a business development company under the provisions of  
21 the "Investment Company Act of 1940", 15 U.S.C. section 80a-1 et seq., as amended, whether or  
22 not the equity securities were acquired by a small business investment company or business  
23 development company in connection with or as an incident to the extension of credit.

24 (2) Any of the preceding charges, if paid or advanced by the lender, may be considered  
25 part of the net proceeds of the loan, and if paid by the debtor, shall not be deducted from the net  
26 proceeds of the loan.

27 ~~(d) Notwithstanding anything to the contrary in this chapter or in any other provision of~~  
28 ~~Rhode Island law, the provisions of this chapter shall not be applicable with respect to credit card~~  
29 ~~transactions as defined in chapter 26.1 of this title. Chapter 26.1 shall apply exclusively to all~~  
30 ~~such transactions.~~

31 (e) (d) Notwithstanding the provisions of subsection (a) of this section and/or any other  
32 provision in this chapter to the contrary, there is no limitation on the rate of interest which may be  
33 legally charged for the loan to, or use of money by, a commercial entity, where the amount of  
34 money loaned exceeds the sum of one million dollars (\$1,000,000) and where repayment of the

1 loan is not secured by a mortgage against the principal residence of any borrower; provided, that  
2 the commercial entity has first obtained a pro forma methods analysis performed by a certified  
3 public accountant licensed in the state of Rhode Island indicating that the loan is capable of being  
4 repaid.

5 SECTION 2. Sections 6-26.1-1, 6-26.1-2, 6-26.1-3, 6-26.1-4, 6-26.1-6, 6-26.1-8, 6-26.1-  
6 9, 6-26.1-10, 6-26.1-11, 6-26.1-12 and 6-26.1-13 of the General Laws in Chapter 6-26.1 entitled  
7 "Credit Card Lending" are hereby repealed.

8 ~~**6-26.1-1. Definitions.** -- For purposes of this chapter, the following definitions shall  
9 apply:~~

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

15 ~~-(2) "Credit card lender" or "lender" means any entity that is a lending institution as  
16 defined by section 19-9-1, or licensee as defined by section 19-14-1, which offers or extends  
17 credit in the form of a credit card transaction.~~

18 ~~-(3) "Credit card transaction" means any loan or extension of credit made pursuant to a  
19 credit card plan. Without limitation of the foregoing, a credit card transaction may be extended  
20 under a credit card plan by a credit card lender's acquisition of obligations arising out of the  
21 honoring by a merchant, or other third party, a credit card lender or other financial institution  
22 (whether chartered or organized under the laws of this or any other state, the District of  
23 Columbia, the United States or any district, territory or possession of the United States, or any  
24 foreign country), or a government or governmental subdivision or agency of a credit card device.~~

25 ~~-(4) "Credit card plan" or "plan" means any arrangement or plan between a borrower and  
26 a credit card lender for open end, revolving extensions of credit made available through a credit  
27 card device, provided, however, said "credit card plan" or "plan" does not include an extension of  
28 credit, the repayment of which is secured by real property.~~

29 ~~**6-26.1-2. Authorization to make loans -- Usury.** -- Any credit card lender may, subject  
30 to any limitations on lending authorities contained in its charter or otherwise imposed by law,  
31 offer and extend credit to a borrower and in connection with the credit may charge and collect  
32 interest, interest fees and charges, and other charges permitted by this chapter and may take any  
33 security as collateral in connection with it that may be acceptable to the credit card lender.~~

34 ~~**6-26.1-3. Variable rates.** -- If the agreement governing a credit card plan so provides, the~~

1 ~~periodic percentage rate or rates of interest under the plan may vary in accordance with a~~  
2 ~~schedule or formula. The periodic rate or rates may vary from time to time as the rate determined~~  
3 ~~in accordance with the schedule or formula varies and the periodic rate or rates, as so varied, may~~  
4 ~~be made applicable to all or any part of outstanding unpaid indebtedness under the plan on or~~  
5 ~~after the first day of the billing cycle that contains the effective date of the variation, including~~  
6 ~~any indebtedness arising out of purchases made or loans obtained prior to the variation in the~~  
7 ~~periodic percentage rate or rates. Without limitation, a permissible schedule or formula pursuant~~  
8 ~~to this section may include provisions in the agreement governing the plan for a change in the~~  
9 ~~periodic percentage rate or rates of interest applicable to all or any part of outstanding unpaid~~  
10 ~~indebtedness, whether by variation of the then applicable periodic percentage rate or rates of~~  
11 ~~interest, variation of an index or margin or otherwise, contingent upon the happening of any event~~  
12 ~~or circumstance specified in the plan, which event or circumstance may include, but not be~~  
13 ~~limited to, the failure of the borrower to perform in accordance with the terms of the plan.~~

14 ~~**6-26.1-4. Interest.** — A credit card lender may charge and collect interest under a credit~~  
15 ~~card plan on outstanding unpaid indebtedness in the borrower's account under the plan at any~~  
16 ~~daily, weekly, monthly, annual or other periodic percentage rate or rates that the agreement~~  
17 ~~governing the plan provides or as established in the manner provided in the agreement governing~~  
18 ~~the plan. If the agreement governing the plan so provides, the outstanding unpaid indebtedness~~  
19 ~~may include the amount of any interest, interest fees and charges, and other charges outstanding.~~  
20 ~~Interest may be calculated using an average daily balance, two cycle average daily balance,~~  
21 ~~adjusted balance or previous balance method or using any other balance computation method~~  
22 ~~provided for in the agreement governing the plan. Credit card transactions may be included in the~~  
23 ~~outstanding unpaid indebtedness as of any time as may be specified in the agreement governing~~  
24 ~~the plan. Periodic billing cycles may be established in any manner and shall have the duration that~~  
25 ~~may be specified in the agreement governing the plan.~~

26 ~~**6-26.1-6. Overdraft accounts.** — If credit under a credit card plan is offered and~~  
27 ~~extended in connection with a demand deposit account or other transaction account maintained by~~  
28 ~~the borrower pursuant to an agreement or arrangement whereby the holder of the deposit account~~  
29 ~~agrees to honor checks, drafts or other debits to the account, which if paid would create or~~  
30 ~~increase a negative balance in the account, by making extensions of credit to the borrower under~~  
31 ~~the credit card plan, any charges customarily imposed under the terms governing the demand~~  
32 ~~deposit or other transaction account in the absence of any associated credit card plan (including,~~  
33 ~~without limitation, check charges, monthly maintenance charges, checkbook charges, charges for~~  
34 ~~checks drawn on funds in excess of an available line of credit and other similar charges) may~~

1 ~~continue to be imposed on the account without specific reference to it or incorporation of it by~~  
2 ~~reference in the agreement governing the credit card plan and the amount of the charge, to the~~  
3 ~~extent the balance in the demand deposit or other transaction account is insufficient to pay such a~~  
4 ~~charge, may be charged to the borrower's account under the plan as a loan under it and may be~~  
5 ~~included in outstanding unpaid indebtedness in accordance with the terms of the agreement~~  
6 ~~governing the credit card plan.~~

7 ~~**6-26.1-8. Insurance.** -- (a) A credit card lender may request but not require an individual~~  
8 ~~borrower to be insured in respect of a credit card plan under a life, health, accident, health and~~  
9 ~~accident or other credit or other permissible insurance policy or program, whether group or~~  
10 ~~individual.~~

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

16 ~~**6-26.1-9. Delinquent installments.** -- (a) If the agreement governing a credit card plan so~~  
17 ~~provides, a credit card lender may impose, as interest, a late or delinquency charge upon any~~  
18 ~~outstanding unpaid installment payments or portions of it under the plan which are in default;~~  
19 ~~provided, however, that no more than one such late or delinquency charge may be imposed in~~  
20 ~~respect of any single installment payment or portion of it, regardless of the period during which it~~  
21 ~~remains in default; and provided further, however, that for the purpose only of the preceding~~  
22 ~~provision all payments by the borrower shall be deemed to be applied to satisfaction of~~  
23 ~~installment payments in the order in which they become due. Nothing contained in this section~~  
24 ~~shall limit, restrict or otherwise affect the right of a credit card lender to change the percentage~~  
25 ~~rate or rates of interest applicable to the credit plan between the credit card lender and a borrower~~  
26 ~~upon the occurrence of a delinquency or default or other failure of the borrower to perform in~~  
27 ~~accordance with the terms of the plan.~~

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

30 ~~**6-26.1-10. Attorneys' fees -- Costs.** -- In the event a borrower defaults under the terms of~~  
31 ~~a plan, the credit card lender may, if the borrower's account is referred to an attorney (not a~~  
32 ~~regularly salaried employee of the credit card lender) or to a third party for collection and if the~~  
33 ~~agreement governing the credit card plan so provides, charge and collect from the borrower a~~  
34 ~~reasonable attorneys' fee. In addition, following a borrower's default, the credit card lender may,~~

1 ~~if the agreement governing the plan so provides, recover from the borrower all court, alternative~~  
2 ~~dispute resolution or other collection costs (including, without limitation, fees and charges of~~  
3 ~~collection agencies) actually incurred by the credit card lender.~~

4 ~~**6-26.1-11. Amendment of agreement.** --- (a) Unless the agreement governing a credit~~  
5 ~~card plan otherwise provides, a credit card lender may at any time and from time to time amend~~  
6 ~~the agreement in any respect, whether or not the amendment or the subject of the amendment was~~  
7 ~~originally contemplated or addressed by the parties or is integral to the relationship between the~~  
8 ~~parties. Without limiting the foregoing, the amendment may change terms by the addition of new~~  
9 ~~terms or by the deletion or modification of existing terms, whether relating to plan benefits or~~  
10 ~~features, the rate or rates of interest, the manner of calculating interest or outstanding unpaid~~  
11 ~~indebtedness, variable schedules or formulas, interest fees and charges, fees, collateral~~  
12 ~~requirements, methods for obtaining or repaying extensions of credit, attorneys' fees, plan~~  
13 ~~termination, the manner for amending the terms of the agreement, arbitration or other alternative~~  
14 ~~dispute resolution mechanisms, or other matters of any kind whatsoever. Unless the agreement~~  
15 ~~governing a credit card plan otherwise expressly provides, any amendment may, on and after the~~  
16 ~~date upon which it becomes effective as to a particular borrower, apply to all then outstanding~~  
17 ~~unpaid indebtedness in the borrower's account under the plan, including any indebtedness that~~  
18 ~~arose prior to the effective date of the amendment. An agreement governing a credit card plan~~  
19 ~~may be amended pursuant to this section regardless of whether the plan is active or inactive or~~  
20 ~~whether additional borrowings are available under it. Any amendment that does not increase the~~  
21 ~~rate or rates of interest charged by a credit card lender to a borrower under section 6-26.1-3 or~~  
22 ~~section 6-26.1-4 may become effective as determined by the credit card lender, subject to~~  
23 ~~compliance by the credit card lender with any applicable notice requirements under the Truth in~~  
24 ~~Lending Act (15 U.S.C. section 1601 et seq.), and the regulations promulgated under it, as in~~  
25 ~~effect from time to time. Any notice of an amendment sent by the credit card lender may be~~  
26 ~~included in the same envelope with a periodic statement or as part of the periodic statement or in~~  
27 ~~other materials sent to the borrower.~~

28 ~~-(b) (1) If an amendment increases the rate or rates of interest charged by a credit card~~  
29 ~~lender to a borrower under section 6-26.1-3 or section 6-26.1-4, the credit card lender shall mail~~  
30 ~~or deliver to the borrower, at least fifteen (15) days before the effective date of the amendment, a~~  
31 ~~clear and conspicuous written notice that shall describe the amendment and shall also set forth the~~  
32 ~~effective date of it and any applicable information required to be disclosed pursuant to the~~  
33 ~~following provisions of this section.~~

34 ~~-(2) Any amendment that increases the rate or rates of interest charged by a credit card~~

1 ~~lender to a borrower under section 626.13 or section 626.14 may become effective as to a~~  
2 ~~particular borrower if the borrower does not, within fifteen (15) days of the earlier mailing or~~  
3 ~~delivery of the written notice of the amendment (or any longer period that may be established by~~  
4 ~~the credit card lender), furnish written notice to the credit card lender that the borrower does not~~  
5 ~~agree to accept the amendment. The notice from the credit card lender shall set forth the address~~  
6 ~~to which a borrower may send notice of the borrower's election not to accept the amendment and~~  
7 ~~shall include a statement that, absent the furnishing of notice to the credit card lender of~~  
8 ~~nonacceptance within the referenced fifteen (15) day (or longer) time period, the amendment will~~  
9 ~~become effective and apply to the borrower. As a condition to the effectiveness of any notice that~~  
10 ~~a borrower does not accept the amendment, the credit card lender may require the borrower to~~  
11 ~~return to it all credit devices. If, after fifteen (15) days from the mailing or delivery by the credit~~  
12 ~~card lender of a notice of an amendment (or any longer period that may have been established by~~  
13 ~~the credit card lender as referenced above), a borrower uses a plan by making a purchase or~~  
14 ~~obtaining a loan, notwithstanding that the borrower has prior to the use furnished the credit card~~  
15 ~~lender notice that the borrower does not accept an amendment, the amendment may be deemed by~~  
16 ~~the credit card lender to have been accepted and may become effective as to the borrower as of~~  
17 ~~the date that the amendment would have become effective but for the furnishing of notice by the~~  
18 ~~borrower (or as of any later date selected by the credit card lender).~~

19 ~~(3) Any amendment that increases the rate or rates of interest charged by a credit card~~  
20 ~~lender to a borrower under section 626.13 or section 626.14 may, in lieu of the procedure~~  
21 ~~referenced in subdivision (2) of this subsection, become effective as to a particular borrower if the~~  
22 ~~borrower uses the plan after a date specified in the written notice of the amendment that is at least~~  
23 ~~fifteen (15) days after the mailing or delivery of the notice (but that need not be the date the~~  
24 ~~amendment becomes effective) by making a purchase or obtaining a loan; provided, that the~~  
25 ~~notice from the credit card lender includes a statement that the described usage after the~~  
26 ~~references date will constitute the borrower's acceptance of the amendment.~~

27 ~~(4) Any borrower who furnishes timely notice electing not to accept an amendment in~~  
28 ~~accordance with the procedures referenced in subdivision (2) of this subsection and who does not~~  
29 ~~subsequently use the plan, or who fails to use the borrower's plan as referenced in subdivision (3)~~  
30 ~~of this subsection, shall be permitted to pay the outstanding unpaid indebtedness in the borrower's~~  
31 ~~account under the plan in accordance with the rate or rates of interest charged by a credit card~~  
32 ~~lender to a borrower under section 626.13 or section 626.14 without giving effect to the~~  
33 ~~amendment; provided, however, that the credit card lender may convert the borrower's account to~~  
34 ~~a closed end credit account on credit terms substantially similar to those set forth in the then-~~

1 ~~existing agreement governing the borrower's plan.~~

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

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

10 ~~-(1) A decrease or increase in the required number or amount of periodic installment~~  
11 ~~payments;~~

12 ~~-(2) Any change to a plan that increases the rate or rates in effect immediately prior to the~~  
13 ~~change by less than one quarter of one percentage point (0.25%) per annum; provided that a~~  
14 ~~credit card lender may not make more than one such change in reliance on this subdivision with~~  
15 ~~respect to a plan within any twelve (12) month period;~~

16 ~~-(3) (i) A change in the schedule or formula used under a variable rate plan under section~~  
17 ~~6-26.1-3 that varies the determination date of the applicable rate, the time period for which the~~  
18 ~~applicable rate will apply or the effective date of any variation of the rate, or any other similar~~  
19 ~~change; or~~

20 ~~-(ii) Any other change in the schedule or formula used under a variable rate plan under~~  
21 ~~section 6-26.1-3; provided, that the initial interest rate that would result from any change under~~  
22 ~~this subdivision (3), as determined on the effective date of the change or, if the notice of the~~  
23 ~~change is mailed or delivered to the borrower prior to the effective date, as of any date within~~  
24 ~~sixty (60) days before mailing or delivery of the notice, will not be an increase from the rate in~~  
25 ~~effect on the date under the existing schedule or formula.~~

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

31 ~~-(5) A change from a daily periodic rate to a periodic rate other than daily or from a~~  
32 ~~periodic rate other than daily to a daily periodic rate; and~~

33 ~~-(6) A change in the method of determining the outstanding unpaid indebtedness upon~~  
34 ~~which interest is calculated (including, without limitation, a change with respect to the date by~~

1 ~~which or the time period within which a new balance or any portion of it must be paid to avoid~~  
2 ~~additional interest).~~

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

6 ~~**6-26.1-12. Materiality of terms.** --- All terms, conditions and other provisions of and~~  
7 ~~relating to a credit card plan as contained in this chapter or any other applicable chapter, or in the~~  
8 ~~agreement governing the plan (other than those which are interest under this chapter,) including,~~  
9 ~~without limitation, provisions relating to the method of determining the outstanding unpaid~~  
10 ~~indebtedness on which interest is applied, time periods within which interest or interest fees and~~  
11 ~~charges may be avoided, reasons for default and the right to cure any default, right to accelerate,~~  
12 ~~account cancellation, choice of law, change in terms requirements, right to charge and collect~~  
13 ~~attorneys' fees, court and collection costs and the compounding of interest or interest fees and~~  
14 ~~charges, shall be and hereby are deemed to be material to the determination of interest applicable~~  
15 ~~to a plan under Rhode Island law, under the most favored lender doctrine, and under Section 85~~  
16 ~~of the National Credit Card Lender Act (12 U.S.C. section 85) or Section 521 of the Depository~~  
17 ~~Institutions Deregulation and Monetary Control Act of 1980 (12 U.S.C. section 1831d).~~

18 ~~**6-26.1-13. Applicable law.** --- An agreement governing a credit card plan shall be~~  
19 ~~governed by the laws of the state of Rhode Island, and any other law of this state limiting the rate~~  
20 ~~or amount of interest, discounts, points, finance charges, service charges or other charges or fees~~  
21 ~~shall not apply to extensions of credit under a credit card plan operated in accordance with this~~  
22 ~~chapter.~~

23 SECTION 3. This act shall take effect upon passage.

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LC01597  
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EXPLANATION  
BY THE LEGISLATIVE COUNCIL  
OF

A N A C T

RELATING TO COMMERCIAL LAW - GENERAL REGULATORY PROVISIONS -  
INTEREST AND USURY

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1           This act would repeal the provisions of the general laws which regulate credit card  
2   lending, and would subject credit card interest to a maximum rate of interest of twenty-one  
3   percent (21%) alternating to nine percent (9%) greater than the domestic prime rate published in  
4   the Wall Street Journal.

5           This act would take effect upon passage.

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