

Blackfeet Tribal Law and Order Code

Circa 1999

CONSUMER PROTECTION

Chapter 1

CONSUMER CREDIT

Section 1. Scope of this Title.

- A. This Chapter applies to consumer credit transactions entered into on the Blackfeet Reservation. A consumer credit transaction is entered into on the Reservation if:
1. the contract, agreement or other writing evidencing the obligation is signed on the Reservation; or
 2. the proceeds of the loan or the collateral for the loan is delivered on the Reservation.
- B. The Limitations on Creditors Remedies in Section 8 of this Chapter applies to actions or proceedings brought in Tribal Court to enforce rights arising from consumer credit transactions wherever entered into.
- C. A consumer credit transaction which is entered into with a resident of the Reservation, but which is not covered by this Chapter, is valid and enforceable in Tribal Court to the extent it is enforceable under the laws of another jurisdiction, but the creditor may not collect an amount exceeding that allowed in Section 7 of this Chapter, nor may the creditor enforce any rights which conflict with Sections 7 and 8 of this Chapter.

Section 2. Jurisdiction.

The Blackfeet Tribe of Indians shall have jurisdiction over any creditor with respect to any conduct of the creditor subject to this Chapter or with respect to any claim arising from a transaction subject to this Chapter and where not prohibited by federal law.

Section 3. Invalid Agreements.

The following agreements or provisions of agreements entered into by a resident of the Reservation are invalid with respect to the consumer transaction:

1. that the law of another jurisdiction apply;
2. that the consumer consents to be subject to the process of another jurisdiction;
3. that the consumer appoints an agent to receive service of process; and
4. that the consumer consents to the jurisdiction of a court that does not otherwise have jurisdiction.

Section 4. Finance Charges.

- A. Consumer Credit Sales.

With respect to a consumer credit sale, a creditor may contract for and receive a finance charge not to exceed twenty-one percent (21%) per year on the unpaid balance of the amount financed.

B. Open-End Credit.

With respect to open-end credit, a creditor may contract for and receive a finance charge not to exceed one and three-quarters percent (1-3/4%) per month of the average daily balance.

C. Consumer Loans.

With respect to a consumer loan, a lender may contract for and receive a finance charge not to exceed twenty-one percent (21%) per year.

Section 5. Other Charges.

A creditor also may contract for and receive charges for official fees and taxes, and insurance and closing costs if the debt is secured by an interest in land, provided all such charges are bona fide, reasonable in amount if not otherwise set by law, and not for the purpose of circumvention of this Chapter. A delinquency charge may also be collected on any installment not paid within ten (10) days after its due date in an amount not to exceed five dollars (\$5.00) or five percent (5%) of the unpaid installment, whichever is less. A delinquency charge may be collected only once on an installment.

Section 6. Agreements and Practices.

A. Truth in Lending.

Lending practices shall be governed by Chapter 4 of this Title, Truth in Lending.

B. Notice to Consumer.

Except for open-end credit accounts the creditor shall give to the consumer a copy of any writing evidencing a consumer credit transaction. The writing shall contain a clear and conspicuous notice informing the consumer that he should not sign before reading it, that he is entitled to a copy of it, and that he is entitled to prepay the unpaid balance at any time without penalty and may be entitled to a refund of unearned charges in accordance with law. The following notice, if clear and conspicuous, complies with this Section.

NOTICE TO CONSUMER:

1. Do not sign this paper before you read it.
2. You are entitled to a copy of this paper.
3. You may prepay the unpaid balance at any time without penalty and may be entitled to a refund of unearned charges in accordance with law.

C. Changes in Open-End Credit Accounts.

Changes in the terms or conditions or method of determining the balance of an open-end credit account are effective only if the consumer agrees in writing or the creditor notifies the consumer by mail at least three (3) months before the effective date of the change.

D. Receipts for Payment.

A creditor shall provide a written receipt or periodic statement showing receipt for each payment.

E. Co-Signers.

A person is not obligated as a co-signer with respect to a consumer transaction unless, before or at the time of signing, he receives a notice substantially similar to the following:

NOTICE

You agree to pay the debt identified below although you may not personally receive any property, services, or money. You may be sued for payment although the person who receives the property, services, or money is able to pay. This Notice is not the contract that obligates you to pay. Read the contract for the exact terms of the debt.

Identification of Debt You May Have to Pay _____

Name of Debtor _____

Name of Creditor _____

Kind of Debt _____

I have received a copy of this Notice.

Date: _____ Signed: _____

A co-signer shall also receive a copy of the writing setting forth the terms of the debtor's obligation.

Section 7. Limitations on Agreements and Practice.

A. Security in Sales.

In a consumer credit sale, a seller may take a security interest in the property sold. In the case of sales of services in an amount over three hundred dollars (\$300.00), a seller may take a security interest in goods upon which services are performed or in which goods are installed. The seller may take a security interest in land which is maintained, repaired, or improved by services if the debt is more than one thousand dollars (\$1,000.00), except no security interest may be taken in trust land. A security interest taken in violation of this Section is void.

B. No Assignment of Earnings.

A creditor may not take an assignment of earnings of the consumer for payment or as security for payment of a debt arising out of a consumer transaction. An assignment of earnings in violation of this Section is unenforceable and is revocable by the consumer. A consumer may authorize deductions from his earnings in favor of the creditor if the authorization is revocable, the consumer is given a copy of the authorization at the time of signing, and the writing contains a conspicuous notice that the authorization is revocable.

C. Authorization to Confess Judgment Prohibited.

A consumer may not authorize any person to confess judgment on a claim arising out of a consumer credit transaction. An authorization in violation of this Section is void.

D. Certain Negotiable Instruments Prohibited.

With respect to a consumer credit sale, the creditor may not take a negotiable instrument other than a check dated not later than ten (10) days after its issuance as evidence of the obligation of the consumer.

E. Balloon Payments.

If any scheduled payment of a consumer credit transaction is more than twice as large as the average of earlier scheduled payments, the consumer has the right, at his option, to refinance without penalty the

amount of that payment at the time it is due. The terms of the refinancing shall be no less favorable to the consumer than the terms of the original transaction. This provision shall not apply to open-end credit.

F. Referral Sales.

A seller may not give or offer a rebate or discount as an inducement for a sale if the rebate or discount is contingent upon the consumer providing the names of other people who must in fact buy from the seller. Such an agreement is unenforceable by the seller, and the consumer, at his option, may rescind the agreement or retain the property or the benefit of services performed without any obligation to pay for them.

Section 8. Limitations on Consumer's Liabilities.

A. Limitation on Default Charges.

Except for expenses incurred in seeking the possession of a security interest and delinquency charges provided in Section 4, a creditor may not require any other charges as a result of the default of the consumer.

B. Assignee Subject to Claims and Defenses.

With respect to a consumer credit sale, an assignee of the rights of the seller is subject to all claims and defenses of the consumer against the seller arising from the sale or services, notwithstanding that the assignee is a holder in due course of a negotiable instrument. A claim or defense of a consumer may be asserted against the assignee under this Section only if the consumer has made a good faith attempt to obtain satisfaction from the seller and then only to the extent of the amount owing to the assignee at the time the assignee has notice of the claim or defense. Oral notice is effective unless the assignee requests written confirmation.

C. Lender Subject to Claims and Defenses Arising From Sale.

A lender who makes a consumer loan to enable a consumer to buy from a particular seller is subject to all claims and defenses of the consumer against the seller arising from the sale or service if:

1. the seller arranges for the extension of credit;
2. the seller guarantees the loan;
3. the lender is related to the seller;
4. the loan is conditioned upon the consumer's purchase from the particular seller; or
5. the lender has knowledge or notice of substantial complaints by other buyers about the particular seller.

A claim or defense of a consumer may be asserted against the lender under this Section only if the consumer has made a good faith attempt to obtain satisfaction from the seller and then only to the extent of the amount owing to the lender at the time the lender has notice of the claim or defense. Oral notice is effective unless the lender requests written confirmation.

Section 9. Limitations on Creditor's Remedies.

A. Election of Remedies.

As to a consumer credit transaction, the creditor may elect to seek the return of the security interest or the money due on the loan, but both remedies may not be pursued at the same time. Where the debtor has paid sixty percent (60%) or more of the cash price or loan, the creditor may not seek return of the

property. Where return of the property is validly sought, the creditor may not seek thereafter a deficiency judgment if the value of the property at sale is less than the amount due. Where money due on the property is sought, the parties shall comply with the Rules of Civil Procedure in maintaining the action.

B. Pre-Judgment Garnishment Prohibited.

Before entry of judgment in an action against a consumer for a debt arising from a consumer credit transaction, the creditor may not garnish property or wages of the consumer.

C. Limitation on Garnishment.

After entry of judgment in an action against a consumer for a debt arising from a consumer credit transaction, a creditor must comply with all terms, conditions, and limitations of Title 1, Chapter 3, Procedures for Garnishment of Property, in garnishing the property of the consumer, including the limitations on property subject to garnishment.

D. Extortionate Extensions of Credit.

If it is the understanding of the creditor and the consumer at the time an extension of credit is made that delay in making repayment or failure to make repayment could result in the use of violence or other criminal means to cause harm to the person, reputation, or property of any person, the repayment of the extension of credit is unenforceable through civil judicial process against the consumer. There is prima facie evidence that the extension of credit was extortionate if the annual rate exceeds forty-five percent (45%) and the creditor then had a reputation for the use or threat of use of violence or other criminal means to cause harm to the person, reputation, or property of any person to collect extensions of credit or to punish nonpayment.

E. Unconscionable Transactions.

The Court may refuse to enforce any agreement or part of any agreement which it finds to be unconscionable. In applying this Section, consideration shall be given to the following:

1. belief by the seller at the time of the transaction that there is no reasonable probability of payment in full by the consumer or debtor;
2. knowledge by the seller of the inability of the consumer to receive substantial benefits from the property or services sold;
3. gross disparity between the price of the property or services sold and the value of similar property or services readily obtainable in credit transactions by like consumers;
4. separate charges for insurance with respect to a consumer credit sale or consumer loan which have the effect of making the sale or loan, considered as a whole, unconscionable ; and
5. the seller or lender has knowingly taken advantage of the inability of the consumer or debtor reasonably to protect his interests by reason of physical or mental infirmities, ignorance, illiteracy, inability to understand the language of the agreement, or similar factors.

F. Unconscionable Debt Collection.

If a creditor or a person on his behalf engages in or is likely to engage in unconscionable conduct in collecting a debt arising from a consumer credit transaction, the Court may grant an injunction and award the consumer any actual damages he has sustained. In applying this Section, consideration shall be given to the following:

1. using or threatening to use force, violence, or criminal prosecution against the consumer or members of his family;
2. communicating with the consumer or a member of his family at frequent intervals or at unusual hours

or under other circumstances so that it is a reasonable inference that the primary purpose of the communication was to harass the consumer;

3. using fraudulent, deceptive, or misleading representations such as a communication which simulates legal process or which gives the appearance of being authorized, issued, or approved by a government, governmental agency, or attorney at law when it is not or threatening or attempting to enforce a right with knowledge or reason to know that the right does not exist; and
4. causing or threatening to cause injury to the consumer's reputation or economic status by disclosing information affecting the consumer's reputation for creditworthiness with knowledge or reason to know that the information is false, communicating with the consumer's employer before obtaining a final judgment against the consumer, disclosing information affecting the consumer's credit or other reputation to a person with knowledge that the person does not have a legitimate business need for the information, or disclosing information concerning the existence of a debt known to be disputed by the consumer without disclosing that fact.

G. Hearing to Determine Unconscionability.

If it is claimed or appears to the Court that the agreement or transaction may be unconscionable, or that a person has engaged in or is likely to engage in unconscionable conduct in collecting a debt, the parties shall be afforded a reasonable opportunity to present evidence as to the claim. If the Court finds unconscionability under this Section, the Court may award reasonable fees to the attorney for the consumer. If the Court does not find unconscionability, and the consumer or debtor knew his claim to be groundless, the Court may award reasonable fees to the attorney for the party against whom the claim was made.

H. Default.

An agreement of the parties to a consumer credit transaction with respect to default on the part of the consumer is enforceable only to the extent that the consumer fails to make a payment as required by the agreement. If the consumer has been in default for ten (10) days, the creditor shall give written notice by mail or in person to the consumer, notification of the consumer's right to cure, the amount of payment and date by which payment must be made to cure the default.

I. Right to Cure.

After default, a creditor may neither accelerate maturity of the unpaid balance of the obligation, nor take possession of or enforce a security interest in goods that are collateral until twenty (20) days after notice of the consumer's right to cure is given, but in no case shall the creditor take possession of collateral or proceed against the consumer except in conformity with Title 1, Chapter 4, Repossession. At any time prior to the expiration of the twenty (20) day period, the consumer may cure the default by paying the amount of all unpaid sums due, plus any unpaid delinquency. For open-end credit accounts, the obligation is the unpaid balance of the account. Cure restores the consumer to his rights under the agreement as though the default had not occurred. With respect to subsequent defaults on the same obligation which occur within twelve (12) months after an earlier default as to which a creditor has given a notice of the consumer's right to cure, this provision gives the consumer no right to cure and imposes no limitation on the creditor's right to proceed against the consumer or goods that are collateral, but the creditor may not proceed against the consumer or collateral except in accordance with Title 1, Chapter 4, Repossession.

Section 10. Consumer's Remedies.

A. Effect of Violations.

If a creditor violates any provisions of this Chapter, the consumer has a cause of action to recover actual damages and a right to recover from the person violating this Chapter a civil penalty in an amount determined by the Court. No action may be brought more than two (2) years after the scheduled or accelerated maturity of the debt. Violations of this Chapter shall not impair rights on a debt except as otherwise noted.

B. Limitations on Liability of Creditor.

A creditor is not liable for a civil penalty if he corrects the violation, pays any refund due, and notifies the consumer within forty-five (45) days of its occurrence. A creditor also may not be held liable in an action brought under this Section if the creditor shows, by a preponderance of evidence, that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adopted to avoid the error.

C. Costs and Fees.

In an action in which it is found that a creditor has violated this Chapter, the Court shall award to the consumer the costs of the action and to his attorneys, their reasonable fees.