

RESOLUTION OF THE
NAVAJO NATION COUNCIL

Adopting Various Navajo Nation Consumer Protection Laws

WHEREAS:

1. The Navajo Nation Council is the governing body of the Navajo Nation, pursuant to 2 N.N.C. §102 (A); and
2. There are presently no Navajo Nation laws providing protection to Navajo consumers who enter into business transactions within the Nation; and
3. There are no laws defining what are acceptable consumer business practices, regulating pawn transactions or automobile sales, or setting reasonable limits on the amounts which may be charged for loans; and
4. As a consequence of this absence of Navajo Nation lawmaking in the area of consumer transactions, Navajo consumers are prey to a host of unscrupulous, dishonest and predatory business practices. Some small loan businesses are known to charge up to 300 percent per year (300%) on small loans. Pawn operators often retain the surplus from default sales; and
5. Navajo law is needed to address these problems. The Navajo Nation Council has reviewed the proposed legislation establishing comprehensive consumer protection laws (attached hereto as Exhibit One) and believes their adoption to be in the best interests of the Navajo people; and
6. The Economic Development Committee of the Navajo Nation Council has reviewed the proposed legislation and recommends its adoption (attached hereto as Exhibit Two).

NOW THEREFORE BE IT RESOLVED THAT:

The Navajo Nation Council adopts the Consumer Protection Laws attached as Exhibit One to this resolution into Title 5 of the Navajo Nation Code.

CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the Navajo Nation Council at a duly called meeting at Window Rock, Navajo Nation (Arizona), at which a quorum was present and that same was passed by a vote of 73 in favor, 0 opposed and 0 abstained, this 21st day of July 1999.

Edward T. Begay
Edward T. Begay, Speaker
Navajo Nation Council
July 22, 1999
Date Signed

Motion: Tom LaPahe
Second: Albert Lee

ACTION BY THE NAVAJO NATION PRESIDENT:

1. I hereby give notice that I will not veto the foregoing legislation, pursuant to 2 N.N.C. §1005 (C)(10), on this 3rd day of AUGUST 1999.



Kelsey A. Begaye, President
Navajo Nation

2. I hereby veto the foregoing legislation, pursuant to 2 N.N.C. §1005 (C)(10), this ___ day of _____, 1999 for the reason(s) expressed in the attached letter to the Speaker.

Kelsey A. Begaye, President
Navajo Nation

Chapter 7. Consumer Protection

Subchapter 1. Unfair Trade Practices

§ 1101. Title

This subchapter may be cited as the Navajo Nation Unfair Consumer Practices Act.

§ 1102. Purpose

The purpose of this Act is to protect consumers within the Navajo Nation from a wide range of unfair, deceptive and unconscionable sales practices by sellers of goods and services within the Nation.

§1103. Definitions

As used in the Navajo Nation Unfair Consumer Practices Act:

A. "person" includes, where applicable, natural persons, corporations, trusts, partnerships, associations, cooperative associations, clubs, companies, firms, joint ventures or syndicates;

B. "seller-initiated telephone sale" means a sale, lease or rental of goods or services in which the seller or his representative solicits the sale by telephoning the prospective purchasers and in which the sale is consummated entirely by telephone or mail, but does not include a

transaction:

(1) in which a person solicits a sale from a prospective purchaser who has previously made an authorized purchase from the seller's business; or

(2) in which the purchaser is accorded the right of rescission by the provisions of the Consumer Credit Protection Act, 15 U.S.C. 1635 or regulations issued pursuant thereto;

C. "trade" or "commerce" includes the advertising, offering for sale, sale or distribution of any services and any property and any other article, commodity or thing of value, including any trade or commerce directly or indirectly affecting the people of the Navajo Nation;

D. "unfair or deceptive trade practice" means any false or misleading oral or written statement, visual description or other representation of any kind knowingly made in connection with the sale, lease, rental or loan of goods or services or in the extension of credit or in the collection of debts by any person in the regular course of his trade or commerce, which may, tends to, or does, deceive or mislead any person and includes but is not limited to:

(1) representing goods or services as those of another when the goods or services are not the goods or services of another;

(2) causing confusion or misunderstanding as to the source, sponsorship, approval or certification of goods or services;

(3) causing confusion or misunderstanding as to affiliation, connection or association with or certification by another;

(4) using deceptive representations or designations of geographic origin in connection with goods or services;

(5) representing that goods or services have sponsorship, approval, characteristics,

ingredients, uses, benefits or quantities that they do not have or that a person has a sponsorship, approval, status, affiliation or connection that he or she does not have;

(6) representing that goods are original, new, or unused if they are deteriorated, altered, reconditioned, reclaimed, used or secondhand, or if the goods have been used to an extent that is materially different from the fact;

(7) representing that goods or services are of a particular standard, quality or grade or that goods are of a particular style or model if they are of another;

(8) disparaging the goods, services or business of another by false or misleading representations;

(9) indicating that goods or services will be supplied in greater quantity than the seller intends;

(10) offering goods or services with intent not to supply reasonable expectable public demand;

(11) making false or misleading statements of fact concerning the price of goods or services, the prices of competitors or one's own price at a past or future time or the reasons for, existence of, or amounts of, price reduction;

(12) making false or misleading statements of fact for the purpose of obtaining appointments for the demonstration, exhibition or other sales presentation of goods or services;

(13) packaging goods for sale in a container that bears a trademark or trade name identified with goods formerly packaged in the container, without authorization, unless the container is labeled or marked to disclaim a connection between the contents and the trademark or trade name;

(14) using exaggeration, innuendo or ambiguity as to a material fact or failing to state a material fact if doing so deceives or tends to deceive;

(15) stating that a transaction involves a warranty, a disclaimer of warranties, particular warranty terms, or other rights, remedies or obligations that it does not involve;

(16) stating that services, replacements or repairs are needed if they are not needed;

(17) failure to deliver the quality or quantity of goods or services contracted for;

(18) stating or suggesting that goods or services are available to the consumer for a reason that does not exist;

(19) stating or suggesting that goods or services have been supplied in accordance with a previous representation, if they have not;

(20) requiring the execution of any consent to storage, consent to repair, or consent to removal of property from the Navajo Nation as a contract condition.

E. "Unconscionable trade practice" means any act or practice in connection with the sale, lease, rental or loan, or in connection with the offering for sale, lease, rental or loan, of any goods or services or in the extension of credit or in the collection of debts which to a person's detriment:

(1) takes advantage of the lack of knowledge, lack of formal education, ignorance, illiteracy, inability to read or understand the language of an agreement or the verbal representation made in connection to a transaction, or the ability, experience or capacity of a person to an unreasonably unfair degree; or

(2) results in a gross disparity between the value received by a person and the price paid; or

(3) results in a gross disparity between the price paid and the price at which similar property or services were readily obtainable in similar transactions by like consumers at the time the transaction was entered into; or

(4) results in a transaction in which the consumer is unable to receive a substantial benefit from the subject of the transaction at the time the transaction is entered into; or

(5) results in a transaction for which there was no reasonable probability of payment of the obligation in full at the time the transaction was entered into; or

(6) results in transaction which is substantially one-sided in favor of the supplier; or

(7) is based upon a misleading statement of opinion which the consumer was likely to rely upon to his or her detriment.

§ 1104. Unfair or deceptive and unconscionable trade practices prohibited.

Unfair or deceptive trade practices and unconscionable trade practices in the conduct of any trade or commerce are unlawful.

§ 1105. Chain referral sales technique; prohibited.

The use or employment of any chain referral sales technique, plan, arrangement or agreement whereby the buyer is induced to purchase merchandise or services upon the seller's representation or promise that if the buyer will furnish the seller names of other prospective buyers of like or identical merchandise that the seller will contact the named prospective buyers

and the buyer will receive a reduction in the purchase price by means of a cash rebate, commission, credit toward balance due or any other consideration, is declared to be an unlawful practice within the meaning of the Unfair Consumer Practices Act.

§ 1106. Misrepresentation of motor vehicles; penalty.

A. the willful misrepresentation of the age or condition of a motor vehicle by any person including regrooving tires or performing chassis repair, without informing the purchaser of the vehicle that the regrooving or chassis repair has been performed, is an unlawful practice within the meaning of the Unfair Consumer Practices Act. Unless the alleged misrepresentation is based wholly on repair of damage, the disclosure of which was not required pursuant to Subsection B of this section when there has been repair for which disclosure is required shall constitute prima facie evidence of willful misrepresentation.

B. Except as provided in Subsections C and D of this section, a seller of a motor vehicle shall furnish at the time of sale of a motor vehicle an affidavit that:

(1) describes the vehicle; and

(2) states to the best of the seller's knowledge whether there has been an alteration or chassis repair due to wreck damage.

C. No affidavit shall be required pursuant to this section if the flat rate manual cost of the alteration or chassis repair is less than six percent of the sales price of the vehicle.

D. In the case of a private-party sale of a vehicle, an affidavit shall not be furnished.

§ 1107. Private remedies.

A. A person likely to be damaged by an unfair or deceptive trade practice or by an unconscionable trade practice of another may be granted an injunction against it under the principles of equity and on terms that the court considers reasonable. Proof of monetary damage, loss of profits or intent to deceive or take unfair advantage of any person, is not required.

B. Any person who suffers any loss of money or property, real or personal, as a result of any employment by another person of a method, act or practice declared unlawful by the Unfair Consumer Practices Act may bring an action to recover actual damages or the sum of one thousand dollars (\$1,000), whichever is greater. Where the trier of fact finds that the party charged with an unfair or deceptive trade practice or an unconscionable trade practice has willfully engaged in the trade practice, the court may award up to three times actual damages or three thousand dollars (\$3,000), whichever is greater, to the party complaining of the practice.

C. The court shall award attorneys' fees and costs to the party complaining of an unfair or deceptive trade practice or unconscionable trade practice if he prevails. The court shall award attorneys' fees and costs to the party charged with an unfair or deceptive trade practice or an unconscionable trade practice if it finds that the party complaining of such trade practice brought an action for which there was no subjective good faith basis. Attorneys' fees shall be calculated using the Lodestar method.

D. The relief provided in this section is in addition to remedies otherwise available against the same conduct under the common law or other statutes of the Navajo Nation.

E. In any class action filed under this section, the court may award damages to the

named plaintiffs as provided in subsection B. of this section and may award members of the class such actual damages as were suffered by each member of the class as a result of the unlawful method, act or practice.

F. Proof of an unfair or deceptive trade practice or unconscionable trade practice shall be a defense and absolute bar to recovery to a claim on any contract or obligation filed with the courts of the Navajo Nation. A defendant who prevails on such a defense shall be awarded attorneys fees incurred through responding to the claim, which shall be calculated using the Lodestar method.

§ 1108. Construction.

The Unfair Consumer Practices Act neither enlarges nor diminishes the rights of parties in private litigation.

§ 1109. Door-to-door sales; contracts; requirements; prohibitions.

A. In connection with any door-to-door sale, it constitutes an unfair or deceptive trade practice for any seller to:

(1) fail to furnish the buyer with a fully completed receipt or copy of any contract pertaining to such sale at the time of its execution that is in the same language as that principally used in the oral sales presentation and that shows the date of the transaction and contains the name and address of the seller and, in immediate proximity to the space reserved in the contract

for the signature of the buyer or on the front page of the receipt if a contract is not used and in bold face type of a minimum size of ten points, a statement in substantially the following form:

"You, the buyer, may cancel this transaction at any time prior to midnight of the third business day after the date of this transaction. See the attached notice of cancellation form for an explanation of this right.";

(2) fail to furnish each buyer, at the time he signs the door-to-door sales contract or otherwise agrees to buy consumer goods or services from the seller, a completed form in duplicate, captioned "NOTICE OF CANCELLATION", that shall be attached to the contract or receipt and easily detachable and that shall contain in ten-point bold face type the following information and statements in the same language as that used in the contract:

"NOTICE OF CANCELLATION

Date

You may cancel this transaction, without any penalty or obligation, within three business days from the above date.

If you cancel, any property traded in, any payments made by you under the contract or sale and any negotiable instrument executed by you will be returned within ten business days following receipt by the seller of your cancellation notice and any security interest arising out of the transaction will be canceled.

If you cancel, you must make available to the seller at your residence, in substantially as good condition as when received, any goods delivered to you under this contract or sale; or you may, if you wish, comply with the instructions of the seller regarding the return shipment of the goods at the seller's expense and risk.

If you do make the goods available to the seller and the seller does not pick them up within twenty days of the date of your notice of cancellation, you may retain or dispose of the goods without any further obligation. If you fail to make the goods available to the seller or if you agree to return the goods to the seller and fail to do so, then you remain liable for performance of all obligations under the contract.

To cancel this transaction, mail or deliver a signed and dated copy of this cancellation notice or any other written notice or send a telegram to:

(Name of seller)

at _____

(Address of seller's place of business)

not later than midnight of

(Date)

I hereby cancel this transaction.

(Date)

(Buyer's signature)";

(3) fail, before furnishing copies of the notice of cancellation to the buyer, to complete both copies by entering the name of the seller, the address of the seller's place of business, the date of the transaction and the date, not earlier than the third business day following the date of the transaction, by which the buyer may give notice of cancellation;

(4) include in any door-to-door contract or receipt any confession of judgment or any waiver of any of the rights to which the buyer is entitled under this section or 7 N.N.C. section 607, including specifically his right to cancel the sale in accordance with the provisions of this section;

(5) fail to inform each buyer orally, at the time he signs the contract or purchases the goods or services, of his right to cancel;

(6) misrepresent in any manner the buyer's right to cancel;

(7) fail or refuse to honor any valid notice of cancellation by a buyer and, within ten business days after the receipt of such notice, fail to:

(a) refund all payments made under the contract or sale;

(b) return in substantially as good condition as when received by the seller any goods or property traded in; and

(c) cancel and return any negotiable instrument executed by the buyer in connection with the contract or sale and take any action necessary or appropriate to terminate promptly any

security interest created in the transaction;

(8) negotiate, transfer, sell or assign any notice or other evidence of indebtedness to a finance company or other third party prior to midnight of the fifth business day following the day the contract was signed or the goods or services were purchased; and

(9) fail to notify the buyer, within ten business days of receipt of his notice of cancellation, whether the seller intends to repossess or to abandon any shipped or delivered goods.

B. The cancellation period provided for in this section shall not begin until the buyer has been informed of his right to cancel and has been provided with copies of the notice of cancellation.

C. For the purposes of this section:

(1) "business day" means any calendar day except Sunday or the following business holidays: New Year's Day, Washington's birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans' Day, Thanksgiving Day, Christmas Day, Martin Luther King, Jr.'s birthday and any other legal public holiday of the Navajo Nation or the United States;

(2) "consumer goods or services" means goods or services other than perishable goods or agricultural products purchased, leased or rented primarily for personal, family or household purposes, including courses of instruction or training, regardless of the purpose for which they are taken;

(3) "door-to-door sale" means a sale, lease or rental of consumer goods or services with a purchase price of twenty-five dollars (\$25.00) or more, whether under single or multiple contracts, in which the seller or his representative personally solicits the sale, including those in

response to or following an invitation by the buyer, and the buyer's agreement or offer to purchase is made at a place other than the primary place of business of the seller. A door-to-door sale includes seller initiated telephone sales and sales at periodic outdoor markets. A door-to-door sale does not include a transaction:

(a) made pursuant to prior negotiations in the course of a visit by the buyer to a retail business establishment having a fixed permanent location where the goods are exhibited or the services are offered for sale on a continuing basis;

(b) in which the consumer is accorded the right of rescission by the provisions of the Consumer Credit Protection Act, 15 U.S.C. 1635, or regulations issued pursuant thereto;

(c) in which the buyer has initiated the contract and the goods or services are needed to meet a bona fide immediate personal emergency of the buyer, and the buyer furnishes the seller with a separate dated and signed personal statement in the buyer's handwriting describing the situation requiring immediate remedy and expressly acknowledging and waiving the right to cancel the sale within three business days;

(d) in which the buyer has initiated the contract and specifically requested the seller to visit his home for the purpose of repairing or performing maintenance upon the buyer's personal property. If in the course of such a visit the seller sells the buyer the right to receive additional services or goods other than replacement parts necessarily used in performing the maintenance or in making the repairs, the sale of those additional goods or services would not fall within this exclusion;

(e) pertaining to the sale or rental of real property, to the sale of insurance or to the sale of securities or commodities by a broker-dealer registered with the securities and exchange

commission; or

(f) in which a consumer acquires the use of goods under the terms of a rental-purchase agreement with an initial rental period of one week or less, by placing a telephone call to a lessor and by requesting that specific goods be delivered to the consumer's residence or such other place as the consumer directs and consummation of the rental-purchase agreement occurs after the goods are delivered;

(4) "place of business" means the main or permanent branch office or local address of a seller;

(5) "purchase price" means the total price paid or to be paid for the consumer goods or services, including all interest and service charges; and

(6) "seller" means any person, partnership, corporation or association engaged in the door-to-door sale of consumer goods or services.

or

(g) for the sale of handcrafts, including but not limited to jewelry, weavings, paintings, drawings, or other works of graphic art and ceramics, and food items or herbs and herbal remedies collected, processed or made, in any manner whatsoever, and offered for sale by an enrolled member of the Navajo Nation.

§ 1110. Limitation of retail purchases unlawful.

It is unlawful for any merchant to advertise or offer for sale any item of merchandise with a limitation upon the number of the item that any retail purchaser may purchase at the advertised price. It is further unlawful for any merchant offering or advertising any item of

merchandise in his place of business at any given price to refuse to sell to any prospective retail purchaser for cash the whole or any part of his stock of such item at such price. However, this section shall not be applicable to a purchaser purchasing for resale. All remedies available under the Unfair Consumer Practices Act shall apply to violations of this subsection.

Subchapter 2. Pyramid or Multilevel Sales

§ 1111. Title

This subchapter may be cited as the Navajo Nation Pyramid Promotional Schemes Act.

§1112. Purpose

The purpose of this Act is to shield residents of the Navajo Nation from pyramid sales schemes and to provide authority to halt such schemes before residents of the Nation are subjected to financial loss.

§ 1113. Definitions.

As used in the Pyramid Promotional Schemes Act:

A. "compensation" includes a payment based on a sale or distribution made to a person who either is a participant in a pyramid promotional scheme or has the right to become a

participant upon payment;

B. "consideration" means the payment of cash or the purchase of goods, services or intangible property but does not include;

(1) the purchase of goods or services furnished at cost to be used in making sales and not for resale; or

(2) time and effort spent in pursuit of sales or recruiting activities; and

C. "pyramid promotional scheme" means any plan or operation by which a participant gives consideration for the opportunity to receive compensation which is derived primarily from any person's introduction of other persons into participation in the plan or operation rather than from the sale of goods, services or intangible property by the participant or other persons introduced into the plan or operation.

§ 1114. Prohibition; defenses excluded.

A. A persons shall not establish, operate, advertise or promote a pyramid promotional scheme.

B. A limitation as to the number of persons who may participate or the presence of additional conditions affecting eligibility for the opportunity to receive compensation under the plan or operation does not change the identity of the scheme as a pyramid promotional scheme nor is it a defense under this article that a participant, on giving consideration, obtains any goods, services or intangible property in addition to the right to receive compensation.

§ 1115. Private remedies.

A. A person likely to be damaged by any method, act or practice which is declared by the Pyramid Promotional Schemes Act to be unlawful may be granted an injunction against it under the principles of equity and on terms that the court considers reasonable. Proof of monetary damage, loss of profits or intent to deceive or take unfair advantage of any person is not required.

B. Costs shall be allowed to the prevailing party unless the court otherwise directs. The court may award attorneys' fees to a prevailing defendant if:

(1) the party complaining of an unlawful practice has brought an action which he or she knew to be groundless.

C. The relief provided in this section is in addition to remedies otherwise available against the same conduct under the common law or other statutes of the Navajo Nation.

§1116. Action by Attorney General

A. Whenever the Attorney General has reasonable belief that any persons is using, has used or is about to use any method, act or practice which is declared by the Pyramid Promotional Schemes Act to be unlawful and that proceedings would be in the public interest, he may bring an action in the name of the Navajo Nation against that person to restrain, by temporary or permanent injunction, the use of such method, act or practice. The action may be brought in the district court of the district in which the person resides or has his principal place of business or in the district court in the district in which the person is using, has used or is about to use the

practice which has been alleged to be unlawful under the Pyramid Promotional Schemes Act. The Attorney General acting on behalf of the Navajo Nation shall not be required to post bond when seeking a temporary or permanent injunction.

B. In any action brought under Subsection A of this section, the court may, upon petition of the attorney general, require that the person engaged in the unlawful practice make restitution to all persons of money, property or other things received from them in any transaction related to the unlawful practice; and it is further provided that if the court finds that a person is willfully using or has willfully used a method, act or practice declared unlawful by the Pyramid Promotional Schemes Act, the Attorney General, upon petition to the court, may recover on behalf of the Navajo Nation a civil penalty not exceeding ten thousand dollars (\$10,000) per violation.

Subchapter 3. Motor Vehicle Warranties

§ 1117. Title

This subchapter may be cited as the Motor Vehicle Warranties Compliance Act.

§ 1118. Purpose

The purpose of this Act is to provide a mechanism which ensures that consumers of new or used motor vehicles within the Navajo Nation are able to enforce warranty rights in those

vehicles.

§ 1119. Definitions.

As used in the Motor Vehicle Quality Assurance Act:

- A. "collateral charges" means those additional charges to a consumer not directly attributed to a manufacturer's suggested retail price label for a new motor vehicle and includes all taxes, license, title and registration fees and other governmental charges related to the purchase of the vehicle;
- B. "comparable motor vehicle" means an identical or reasonably equivalent motor vehicle;
- C. "consumer" means the purchaser, other than for purposes of resale, of a new or used motor vehicle normally used for personal, family or household purposes, any persons to whom such a motor vehicle has been transferred during the duration of an express warranty applicable to the motor vehicle and any other persons entitled by the terms of warranty to enforce the obligations of the warranty;
- D. "express warranty" means any written or oral affirmation of the fact of promise made by a manufacturer to a consumer in connection with the sale of new motor vehicles which relates to the nature of the material or workmanship or to a specified level of performance over a specified period of time, including any terms or conditions precedent to the enforcement of obligations pursuant to the warranty;
- E. "manufacturer" means any person engaged in the manufacturing, assembling,

importing or distributing of a motor vehicle as a regular business; and

F. "motor vehicle" means a passenger motor vehicle including an automobile, pickup truck, motorcycle or van normally used for personal, family or household purposes, whose gross vehicle weight is less than ten thousand pounds.

G. "used motor vehicle" means any motor vehicle that, at the time of purchase by the buyer, has been previously owned by or has been used by the seller in a manner consistent with ownership, or that has a certified odometer reading of 5,000 miles or more.

§ 1120. Conformation to express warranties for new motor vehicles.

A. If a new motor vehicle does not conform to all applicable express warranties and the consumer reports the nonconformity to the manufacturer, its agent or its authorized dealer during the term of such express warranties or during the period of two years following the date of original delivery of the motor vehicle to a consumer, whichever is the earlier date, the manufacturer, its agent or its authorized dealer shall make such repairs as are necessary to conform the vehicle to such express warranties.

B. If the manufacturer or its agent or authorized dealer, after a reasonable number of attempts, is unable to conform the new motor vehicle to any applicable express warranty by repairing or correcting any defect or condition which substantially impairs the use and market value of the motor vehicle to the consumer, the manufacturer shall replace the motor vehicle with a comparable motor vehicle or accept return of the vehicle from the consumer and refund to the consumer the full purchase price including all collateral charges, less a reasonable allowance for

the consumer's use of the vehicle. The subtraction of a reasonable allowance for use shall apply when either a replacement or refund of the new motor vehicle occurs. As used in this subsection, a reasonable allowance for use shall be an amount equal to the number of miles driven by the consumer prior to his first report of the nonconformity to the manufacturer, agent or dealer and during any subsequent period when the vehicle is not out of service by reason of repair multiplied by 30 cents per mile. Refunds shall be made to consumers or lienholders as their interests may appear.

C. It shall be presumed that a reasonable number of attempts as mentioned in Subsection B of this section have been undertaken to conform a new motor vehicle to the applicable express warranties if:

(1) the same uncorrected nonconformity has been subject to repair four or more times by the manufacturer or its agents or authorized dealers within the express warranty term or during the period of two years following the date or original delivery of the motor vehicle to a consumer, whichever is the earlier date, but the nonconformity continues to exist; or

(2) the vehicle is in the possession of the manufacturer, its agent or authorized dealer for repair a cumulative total of thirty or more business days during such term or during such period whichever is the earlier date, exclusive of down time for routine maintenance as prescribed by the manufacturer. The term of an express warranty, such one-year period and such thirty-day period shall be extended by any period of time during which repair services are not available to the consumer because of war, invasion, strike, fire, flood or other natural disaster. In no event shall the presumption herein provided apply against a manufacturer unless the manufacturer has received prior direct written notification from or on behalf of the consumer and

an opportunity to cure the defect alleged. The manufacturer shall provide written notice and instruction to the consumer, either in the warranty or a separate notice, of the right to file this written notification before invoking the remedies available pursuant to the Motor Vehicle Warranties Compliance Act.

§ 1121. Affirmative defenses.

It shall be an affirmative defense to any claim under the Motor Vehicle Warranties Compliance Act that:

- A. an alleged nonconformity does not substantially impair the use and market value of the motor vehicle;
- B. a nonconformity is the result of abuse, neglect or unauthorized modifications or alterations of the motor vehicle;
- C. a claim by a consumer was not filed in good faith; or
- D. any other affirmative defense allowed by law.

§ 1122. Used motor vehicles; title; implied warranty of merchantability disclaimer; waiver; burden of proof; remedies.

A. Unless the seller is a used motor vehicle dealer, before the seller attempts to sell a used motor vehicle the seller shall possess the title to the used motor vehicle and the title shall be in the seller's name.

B. A used motor vehicle dealer shall not exclude, modify or disclaim the implied warranty of merchantability or limit the remedies for a breach of that warrant, except as otherwise provided in this section, before midnight of the thirtieth calendar day after delivery of a used motor vehicle or until a used motor vehicle is driven fifteen hundred (1500) miles after delivery, whichever is earlier. In calculating time under this subsection, a day on which the warranty is breached is excluded and all subsequent days in which the motor vehicle fails to conform with the implied warranty of merchantability is also excluded in calculating instance under this subsection, the miles driven to obtain or in connection with repair, servicing or testing of the motor vehicle that fails to conform with the implied warranty of merchantability are excluded. An attempt to exclude, modify or disclaim the implied warranty of merchantability or to limit the remedies for a breach of that warranty, except as otherwise provided in this section, in violation of this subsection renders a purchase agreement voidable at the option of the purchases.

C. For the purposes of this section, the implied warranty of merchantability is met if the motor vehicle functions in a safe condition and is substantially free of any defect that significantly limits the use of the motor vehicle for the ordinary purpose of transportation on any public highway. The implied warranty of merchantability expires at midnight of the thirtieth calendar day after delivery of a used motor vehicle or until a used motor vehicle is driven fifteen hundred (1500) miles after delivery, wherever is earlier. In calculating time under this subsection, a day on which the warranty is breached is excluded and all subsequent days in which the motor vehicle fails to conform with the implied warranty of merchantability is also excluded. In calculating distance under this subsection, the miles driven to obtain or in

connection with the repair, servicing or testing of the motor vehicle that fails to conform with the implied warranty of merchantability are excluded.

D. The implied warranty of merchantability described in this section does not extend to damage that occurs after the sale of the motor vehicle and that is the result of any abuse, misuse, neglect, failure to perform regular maintenance or to maintain adequate oil, coolant or other required fluid or lubricant or off road use, racing or towing.

E. If the implied warranty of merchantability described in this section is breached, the consumer shall give reasonable notice to the seller before the purchaser exercises any remedies. The seller shall have a reasonable opportunity to repair the vehicle and the consumer shall pay one-half of the cost of the first two repairs necessary to bring the vehicle in compliance with the warranty. The consumer's payments are limited to a maximum payment of twenty-five dollars for each repair. The seller shall pay the costs of all subsequent repairs.

F. The maximum liability of the seller under this section is limited to the purchase price paid for the used motor vehicle.

G. An agreement for the sale of a used motor vehicle by a used motor vehicle dealer is voidable at the option of the consumer unless it contains on its face the following conspicuous statement printed in bold-faced ten point or larger type set off from the body of the agreement:

The seller hereby warrants that this vehicle will be fit for the ordinary purposes for which the vehicle is used for 30 days or 1500 miles after delivery, whichever is earlier, except with regard to particular defects disclosed on the first page of this agreement. You (the purchaser) will have to pay up to \$25.00 for each of the first two repairs if the warranty is violated.

H. The inclusion of the statement prescribed in subsection G of this section in the agreement does not create an express warranty.

I. A consumer of a used motor vehicle may waive the implied warranty of merchantability described in this section only for a particular defect in the vehicle and only if all of the following conditions are satisfied:

1. The used motor vehicle dealer fully and accurately discloses to the consumer that because of circumstances unusual to the Used motor vehicle dealer's business, the used motor vehicle has a particular defect.

2. The consumer agrees to buy the used motor vehicle after disclosure of the defect.

3. Before the sale, the consumer indicates agreement to the waiver by signing and dating the following conspicuous statement that is printed on the first page of the sales agreement in bold-faced ten point or larger type and that is written in the language in which the presentation was made:

Attention purchaser: sign here only if the dealer told you that this vehicle has the following problem(s) and that you agree to buy the vehicle on those terms:

1. _____
2. _____
3. _____

J. The dealer has the burden to prove by a preponderance of the evidence that the dealer complied with subsection I of this section.

K. For any breach of the implied warranty of merchantability described in this section, the consumer may, once the seller has had a reasonable opportunity to repair as described in

subsection E, bring an action to recover the purchase price paid. The court shall award attorneys' fees, calculated using the lodestar method, to a prevailing purchaser.

§ 1123. Limitation of action.

Any action brought to enforce the provisions of the Motor Vehicle Warranties Compliance Act shall be commenced within two years following the date of original delivery of the motor vehicle to a consumer.

§ 1124. Attorney fees.

A consumer who prevails in an action brought to enforce the provisions of the Motor Warranties Compliance Assurance Act shall be entitled to receive attorneys' fees, calculated using the Lodestar method, and court costs from the manufacturer. If a consumer does not prevail in such an action and brings that action for frivolous reasons or in subjective bad faith, the manufacturer shall be entitled to receive attorneys' fees and court costs from the consumer.

Subchapter 4. Rental - Purchase Agreements

§ 1125. Title

This subchapter may be cited as the Navajo Nation Rental-Purchase Agreement Act.

§ 1126 . Purpose

The purpose of this Act is to define the rights of consumers who enter into rental-purchase agreements and to protect their interest in those agreements or the property obtained pursuant to those agreements.

§ 1127. Definitions.

As used in the Rental-Purchase Agreement Act:

A. "advertisement" means a commercial message in any medium that solicits a consumer to enter a rental-purchase agreement;

B. "cash sale price" means the price stated in a rental-purchase agreement for which the lessor would have sold and the consumer would have bought the goods that are the subject matter of a rental-purchase agreement if the transaction had been a sale for cash and may include any taxes and charges for delivery, installation, servicing, repairs, alterations or improvements;

C. "consumer" means an individual who rents goods under a rental-purchase agreement to be used primarily for personal, family or household purposes;

D. "consummation" means the date on which a consumer enters a rental-purchase agreement;

E. "goods" means personal property of which a consumer acquires use under a rental-purchase agreement;

F. "lessor" means a person who regularly provides the use of goods under rental-

purchase agreements and to whom rental payments are initially payable on the face of the rental-purchase agreement; and

G. "rental-purchase agreement" means an agreement for the use of goods by an individual for personal, family or household purposes, for an initial period of four months or less, that is automatically renewable with each payment after the initial period, that does not obligate or require the consumer to continue renting or using the goods beyond the initial period and that permits the consumer to become the owner of the goods.

§ 1128. Exempted transactions; relationship to other laws.

A. The Rental-Purchase Agreement Act does not apply to the following

- (1) rental-purchase agreements made primarily for business, commercial or agricultural purposes;
- (2) a lease of a safe deposit box;
- (3) a lease or bailment of personal property that is incidental to the lease of real property and provides that the consumer has no option to purchase the leased property;
- (4) a lease of a motor vehicle;
- (5) a lease of a mobile home.

§ 1129. General requirements of rental-purchase agreements.

A. Each rental-purchase agreement shall be in writing, dated, signed by the consumer and lessor and completed as to all essential provisions.

B. The printed or typed portion of the rental-purchase agreement, other than instructions for completion, shall be in a size equal to at least eight-point type. The rental-purchase agreement shall be designated "rental-purchase agreement".

C. The lessor shall deliver to the consumer, or mail to him at his address shown on the rental-purchase agreement, a copy of the agreement as accepted by the consumer. Until the lessor does so, a consumer who has not received delivery of the rented goods shall have the right to rescind his rental-agreement and receive a refund of all payments made. An acknowledgment by the consumer of delivery of a copy of the rental-purchase agreement shall be in a size equal to at least ten-point bold type and, if contained in the agreement, shall appear directly above the consumer's signature.

D. The rental-purchase agreement shall contain the names of the lessor and consumer, the lessor's business address and the residence or other address of the consumer as specified by the consumer.

E. The lessor shall disclose to the consumer the information required by Section 1130 of the Rental-Purchase Agreement Act on the face of the rental-purchase agreement above the line for the consumer's signature. The disclosures shall be made at or before consummation of the rental-purchase agreement. In a transaction involving more than one lessor, only one lessor need make the disclosures, but all lessors shall be bound by the disclosures. If a disclosure becomes inaccurate as a result of any act, occurrence or any agreement by the consumer after delivery of the required disclosures, the resulting inaccuracy is not a violation of the Rental-

Purchase Agreement Act.

F. A lessor who provides an advertisement in any language other than English shall have rental-purchase agreements printed in each non-English language of the advertisement and shall make those rental-purchase agreements available to consumers.

§ 1130. Disclosures.

A. For each rental-purchase agreement, the lessor shall disclose in the agreement the following items, as applicable:

(1) whether the periodic payment is weekly, monthly or otherwise, the dollar amount of each payment and the total number and total dollar amount of all periodic payments necessary to acquire ownership of the goods;

(2) a statement that the consumer will not own the goods until the consumer has paid the total amount necessary to acquire ownership;

(3) a statement advising the consumer whether the consumer is liable for loss or damage to the goods and, if so, a statement that the liability will not exceed the fair market value of the goods as of the time they are lost or damaged;

(4) a brief description of the goods, sufficient to identify the goods to the consumer and the lessor, including an identification number, if applicable, and a statement indicating whether the goods are new or used. A statement that indicates new goods are used is not a violation of the Rental-Purchase Agreement Act;

(5) a statement of the cash sale price of the goods, but if one rental-purchase agreement

involves a lease of two or more items as a set, a statement of the aggregate cash price of all items shall satisfy this requirement;

(6) the total of initial payments paid or required at or before consummation of the rental-purchase agreement delivery of the goods, whichever is later;

(7) a statement that the total amount of payments does not include other charges or fees and a statement of all other charges or fees;

(8) a statement clearly summarizing the terms of the consumer's option to purchase, including a statement that the consumer has the right to exercise an early purchase option, and the price, formula or method for determining the early purchase price;

(9) a statement identifying the party responsible for maintaining or servicing the goods while they are being rented, together with a description of that responsibility and a statement that if any part of a manufacturer's express warranty covers the goods at the time the consumer acquires ownership of them, it shall be transferred to the consumer, if allowed by the terms of the warranty;

(10) a statement that the consumer may terminate the rental-purchase agreement without penalty by voluntarily surrendering or returning the goods in good repair, reasonable wear and tear excepted, along with any past due rental payments upon expiration of any rental period. This disclosure shall be in bold type; and

(11) notice of the right to reinstate a rental-purchase agreement, as provided in the Rental-Purchase Agreement Act; and

(12) the following notice printed or typed in size equal to at least ten-point bold type:

"NOTICE TO THE CONSUMER

Do not sign this agreement before you read it or if it contains blank spaces. You are entitled to a copy of the agreement you sign."

B. with respect to matters governed by the federal Consumer Credit Protection Act, 15 U.S.C. Sections 1601 et seq., compliance with that act satisfies the requirements of this section.

§ 1131. Prohibited provisions.

A rental-purchase agreement shall not contain:

- A. a confession of judgment;
- B. a negotiable instrument;
- C. a security interest or any other claim of a property interest in any property of the consumer;
- D. a wage assignment;
- E. a waiver by the consumer of claims or defenses;
- F. a provision authorizing the lessor or a person acting on the lessor's behalf to enter upon the consumer's premises unlawfully or to commit any breach of the peace in the repossession of goods;
- G. a provision either waiving the terms of 7 N.N.C. section 607 or purporting to be an advance consent to the removal of property from the Navajo Nation. The provisions of section

607 of Title 7 shall apply to all rental-purchase agreements;

H. a provision requiring the purchase of insurance or a liability damage waiver from the lessor for goods that are the subject of the rental-purchase agreement;

I. a provision that mere failure to return goods constitutes probable cause for a criminal action;

J. a provision requiring the consumer to make a payment in addition to regular periodic payments in order to acquire ownership of the goods or a provision requiring the consumer to make periodic payments totaling more than the dollar amount necessary to acquire ownership as disclosed pursuant to section 1125 of the Rental-Purchase Agreement Act;

K. a provision for more than one reinstatement fee on any one periodic payment, regardless of the period of time during which it remains unpaid; or

L. a provision of or a late charge or any other type of charge or penalty for reinstating a rental-purchase agreement, other than a reinstatement fee; however, a lessor may use the term "late charge" or a similar term to refer to a reinstatement fee.

§ 1132. Reinstatement.

A. A consumer who fails to make a timely rental payment may reinstate the rental-purchase agreement without losing any rights or options that exist under the agreement by the payment of the following charges within five days of the renewal date of an agreement with monthly periodic payments or within two days of the renewal date of an agreement requiring periodic payments more frequently than monthly:

(1) all past due rental charges;

(2) if the goods have been picked up, the reasonable costs of pickup and redelivery;

and

(3) any applicable reinstatement fee.

B. If a consumer has paid less than two-thirds of the total of payments necessary to acquire ownership of the goods and has returned or voluntarily surrendered the goods within seven days of the renewal date, other than through judicial process, the consumer may reinstate the rental-purchase agreement during a period of not less than twenty-one days after the date of the return of the goods.

C. If a consumer has paid two-thirds or more of the total of payments necessary to acquire ownership of the goods and has returned or voluntarily surrendered the goods within seven days of the renewal date, other than through judicial process, the consumer may reinstate the rental-purchase agreement during a period of not less than thirty days after the date of the return of the goods.

D. Nothing in this section shall prevent a lessor from attempting to repossess property in conformity with 7 N.N.C. section 607 during the reinstatement period, but such a repossession shall not affect the consumer's right to reinstate. Upon reinstatement, the lessor shall provide the consumer with the same goods, if available, or with substitute goods of comparable quality and condition.

§ 1133. Renegotiations and extensions.

A. A renegotiation occurs when any term of a rental-purchase agreement that is required to be disclosed by Section 1125 of the Rental-Purchase Agreement Act is changed by agreement between the lessor and consumer. A renegotiation creates a new rental-purchase agreement requiring the lessor to give all the disclosures required by Section 1125 of the Rental-Purchase Agreement Act.

B. A renegotiation shall not include:

(1) reinstatement of a rental-purchase agreement in accordance with Section 1127 of the Rental-Purchase Agreement Act;

(2) a lessor's waiver or failure to assert any claim against the consumer;

(3) a deferral, extension or waiver of a portion of a periodic payment or of one or more periodic payments; or

(4) a change, made at the consumer's request, of the day of the week or month on which periodic payments are to be made.

§ 1134. Advertising.

A. An advertisement that refers to or states the dollar amount of a periodic payment and the right to acquire ownership of a specific item shall also clearly and conspicuously stated:

(1) that the transaction advertised is a rental-purchase agreement;

(2) the total number and total amount of periodic payments necessary to acquire ownership of the item; and

(3) that the consumer acquires no ownership rights in the item unless the total amount necessary to acquire is paid.

B. Any owner or personnel of any medium in which an advertisement appears or through which it is disseminated shall not be liable for failure to comply with the provisions of this section.

C. The provisions of Subsection A of this section shall not apply to an advertisement that does not refer to or state the amount of any payment or that is published in the yellow pages of a telephone directory or in any similar directory of business.

D. Every item displayed or offered under a rental-purchase agreement shall bear a tag or card that clearly and conspicuously indicates in Arabic numerals each of the following:

(1) the cash price of the item;

(2) the amount of the periodic payment; and

(3) the total number and total amount of periodic payments necessary to acquire ownership.

E. An advertisement in any language other than English shall contain disclosures as required by this section in the non-English language.

§ 1135. Enforcement; remedies; limitations.

A. A lessor who fails to comply with requirements of the Rental-Purchase Agreement Act is liable to the consumer damaged thereby in an amount equal to:

(1) the actual damages sustained by the consumer as a result of the lessor's failure to comply and twenty-five percent of the total of payments necessary to acquire ownership, but not less than five hundred dollars (\$500) or more than one thousand dollars (\$1,000); and

(2) the costs of the action and attorneys' fees, calculated using the Lodestar method, as determined by the court.

B. A consumer may not take any action to offset the amount for which a lessor is potentially liable under Subsection A of this section against any amount owed by the consumer, unless the amount of the lessor's liability has been determined by judgment of a court of competent jurisdiction in an action in which the lessor was a party. This subsection does not bar a consumer then in default on an obligation from asserting a violation of the Rental-Purchase Agreement Act as an original action or as a defense or counterclaim to an action brought by a lessor against the consumer.

C. A consumer may assert a violation of the Rental-Purchase Agreement Act as an original action or as a defense or counterclaim to an action brought by a lessor against the consumer.

D. The remedies of a consumer, pursuant to the provisions of this section, are in addition to any other rights or remedies available to a consumer pursuant to applicable laws or regulations.

E. No action under this section may be brought in any court of competent jurisdiction more than two years after the date the consumer made his last rental payment or more than two years after the date of the occurrence of the violation that is the subject of the suit, whichever is later.

§ 1136. Lessor's defenses.

A. If a lessor establishes by a preponderance of evidence that a violation of the Rental-Purchase Agreement Act was unintentional or the result of a bona fide error notwithstanding the maintenance of procedures reasonably adopted to avoid such errors, the lessor shall not be subject to the provisions of Section 1131 of the Rental-Purchase Agreement Act and the validity of the transaction is not affected. Examples of bona fide errors are clerical errors, calculation errors, errors due to unintentionally improper computer programming or data entry and printing errors, but do not include errors of legal judgment with respect to a lessor's obligations under the Rental-Purchase Agreement Act.

B. A lessor is not subject to the provisions of Section 1131 of the Rental-Purchase Agreement Act if, within sixty days after discovering a failure to comply with a requirement of the Rental-Purchase Agreement Act and prior to the institution of an action for noncompliance and prior to the receipt of written notice of the noncompliance from the consumer, the lessor notifies the consumer of the noncompliance and makes whatever adjustments in the appropriate account are necessary to correct the noncompliance.

C. No provision of Section 1131 of the Rental-Purchase Agreement Act applies to any action done or omitted in good faith in conformity with some provision of that act, notwithstanding that after the action or omission has occurred the provision is amended, rescinded or determined by judicial or other competent authority to be invalid for any reason.

Subchapter 5. Pawn Transactions

§ 1137. Title

The provisions of this subchapter may be cited as the Navajo Nation Pawn Regulation Act.

§ 1138. Definitions

As used in the Pawn Regulation Act

- A. "pawnbroker" means a person engaged in the business of making pawn transactions;
- B. "pawn service charge" means the sum of all charges, payable directly or indirectly by the pledgor and imposed directly or indirectly by the pawnbroker as an incident to the pawn transaction;
- C. "pawnshop" means the location or premises at which a pawnbroker regularly conducts his business;
- D. "pawn transaction" means either the act between a pawnbroker and a person pledging a good of lending money or extending credit on the security or pledged goods or of purchasing tangible personal property with an express or implied agreement or understanding that it may be redeemed or repurchased by the seller at a stipulated price;
- E. "person" means an individual, partnership, corporation, joint venture, trust, association or any other legal entity however organized;
- F. "pledged goods" means tangible personal property other than choses in action, securities or printed evidences of indebtedness, which property is deposited with or otherwise

actually delivered into the possession of a pawnbroker in the course of his business in connection with the pawn transaction;

G. "local law enforcement agency" means the Navajo Department of Public Safety, and

H. "local government" or "local government authority" means a chapter or other local government.

§ 1139. Purpose.

The purpose of the Pawn Regulation Act is to:

A. Prevent frauds, unfair practices, discriminations against, impositions on, or abuses of, the citizens of the Navajo Nation.;

B. Exercise the police power of the Nation to insure a sound system of making pawn transactions and acquiring and disposing of tangible personal property by and through pawnshops and to prevent unlawful pawn transactions, particularly in stolen property, through regulating pawnbrokers and certain persons employed by or in pawnshops;

C. Ensure financial responsibility to the Nation and to the public;

D. Ensure compliance with federal, Navajo Nation and local laws, rules, regulations and ordinances;

E. Assist local governments in the exercise of their police power; and

F. To protect from exploitation, abuse or its own improvidence that segment of society within the Nation which relies from time to time for its need upon money or credit extended by pawnbrokers and given upon the security of art, handcraft or movable personal possessions.

§ 1140. Permits required, inspection fee; penalty.

A. In addition to any occupational or other license required by the local government, every pawnbroker shall obtain a pawnbroker permit from his or her local government, and that permit shall be conspicuously displayed in the pawnbroker's place of business. Said permit will expire on July 1 of each year and must be renewed by that date. Upon obtaining the permit, every pawnbroker shall register with the local law enforcement agency.

B. The local government may impose upon pawnbrokers a pawnbroker permit fee, in an amount to be set by the local government, to cover the expense of administration of the Pawn Regulation Act. No person who has been convicted of a felony shall be eligible for a permit.

C. Doing business as a pawnbroker without a permit constitutes a violation of this section and is subject to the general penalty provisions of the Pawn Regulation Act.

§ 1141. Administration; applicability of other laws.

A. The local government may adopt such rules and regulations as necessary for the equitable administration of the Pawn Regulation Act;

B. Nothing in the Pawn Regulation Act shall be construed to prohibit a local government from enacting additional requirements governing pawnbrokers, not inconsistent with that Act.

§ 1142. Pawnbroker; bond required.

No person shall engage in business as a pawnbroker without having executed and

delivered a bond to his local government in the sum of five thousand dollars (\$5,000). The bond shall be in a form approved by the local government and shall be conditioned upon the conduct of the pawnbroker's business according to the provisions of the Pawn Regulation Act. The bond shall be for the benefit of each and every person damaged by a breach of any condition set forth in the bond. Every pawnbroker shall provide the local government with thirty days' notice in writing of the cancellation of the bond.

§ 1143. Application for permit; requirements.

A. Each application for an original or a renewal permit shall be submitted in writing to the local government and contain such information as is required by the local government and be accompanied by the applicable permit fee amount.

B. Each application shall be accompanied by the name, social security number, address and date of birth of each agent, servant and employee of the applicant engaged in the business of pawn transactions. Changes in such list must be indicated on each renewal application.

C. Every pawnbroker shall furnish with each application for an original or renewal permit proof of execution and delivery of the bond to the local government.

§ 1144. Suspension or revocation of permit; notice; hearing.

A. The local government authority may institute proceedings for the suspension or revocation of any permit issued pursuant to the Pawn Regulation Act upon the filing of a written

complaint by the local law enforcement agency, the designated representative of that local law enforcement agency or the Attorney General, charging the permit holder or an employee thereof, of having violated any provision of the Pawn Regulation Act.

B. The local government authority shall serve written notice upon the permitholder of the alleged violation. The notice requirement is satisfied if personal service of the notice is had upon the holder of the permit or is posted in a conspicuous place upon the permitholder's place of business.

C. The local government authority shall set a date for hearing on the complaint not more than ten days, nor less than five days, after the date of notice unless waived by all parties thereto. The notice provided for in subsection B. of this section shall specify the date and time of the hearing.

D. The permitholder and any other interested person shall have the right to appear at this administrative hearing and to produce evidence. The rules of evidence shall not apply. If, after holding this hearing, the local government authority determines that the permitholder is in violation of the provisions of the Pawn Regulation Act as charged in the complaint, the local government authority shall issue a written order. The order may suspend the permit for a stated period of time or permanently revoke the permit. The local government authority shall cause such order to be served upon the permitholder and filed in the administrative offices of the local government for public inspection within five business days after the hearing. Service of the order on the permitholder shall be as specified in Subsection B of this section, and the official serving the order shall have the authority to remove the permit from the premises and deliver the permit to the local government authority. This hearing shall be the final administrative remedy.

§ 1145. Pawnbroker reports; records; delivery; violations.

A. Every pawnbroker shall each day accurately complete a report of all used property of every kind received or purchased in a pawn transaction during the preceding business day on a form approved by the local law enforcement agency. Either a driver's license or other photo identification card shall be required of each person entering into a pawn transaction with a pawnbroker. Each item received shall be listed on a separate report form. Said report shall include the following:

- (1) name of item;
- (2) description of the item including make and model number, if any;
- (3) serial number and other identifying marks, if any;
- (4) date, time and type of pawn transaction;
- (5) name and address of person offering the item;
- (6) description of the persons offering the item including sex, complexion, hair color, approximate height and weight, and date of birth; and
- (7) type of identification used by person offering item and identifying number of said identification. If the person presents a driver's license, the report shall also indicate the state of issuance.

B. All reports required by this section shall be completed accurately and be made available by 12 o'clock noon of the day following the day of the pawn transaction and shall be delivered or mailed to the local law enforcement agency within three days of the pawn transaction.

C. Property purchased directly from another permitholder regulated by the Pawn Regulation who has already reported the item pursuant to this section is exempt from the requirements of this section.

D. Persistent or frequent erroneous or incomplete entries in or delays in the submitting of the above required reports shall constitute a violation of this section and are subject to the general penalty provisions of the Pawn Regulations.

E. The reports and records of the permitholder required pursuant to this section, as well as every item received in pawn, shall be available for inspection by the local government authority, the Attorney General, the local law enforcement agency or any sworn member of that law enforcement agency at all reasonable times.

F. Each item pledged to or purchased by the permitholder for which a report is required shall have attached to it a tag with an alphabetic or numerical identification system matching that item with its corresponding report and record.

§ 1146. Pawn ticket.

A. Every pawnbroker shall at the time of each pawn transaction deliver to the person pawning any good, a ticket signed by the pawnbroker containing the substance of the entry required to be made in his report pursuant to Section 1141 of the Pawn Regulation Act.

B. The holder such ticket shall be presumed to be the person entitled to redeem the pledge and the pawnbroker shall deliver such article to the person so presenting such ticket on payment of principal and all lawful charges.

C. The pawn ticket required by this section shall further contain all disclosures of credit terms required to be disclosed to the pledgor by the federal Truth in Lending Act.

§ 1147. Default; disposition of pledged property.

A. Except as otherwise specified in this section, upon default by the pledgor, the pawnbroker shall comply with the requirements of Sections 9-501 through 9-507, title 5A, Navajo Nation Code, in the disposition of the pledged goods.

B. Notwithstanding Subsection A of this section, the pawnbroker shall not dispose of the pledged property, except by redemption, until at least ninety days after the indebtedness has become due.

C. Notwithstanding Subsection A of this section, if the pawnbroker disposes of the pledged property by sale in the regular course of his business, such sale shall conform to the requirements of Section 9-504, title 5A, Navajo Nation Code, and if a surplus remains after sale of the pledged property the pawnbroker must make a record of the sale and the amount of the surplus and must notify the pledgor by first class mail sent to the pledgor's last known address of the amount of the surplus and the pledgor's right to claim it at a specified location within ninety days of the date of mailing of the notice if the surplus is one hundred dollars (\$100) or less, or within twelve months of the date of the mailing of the notice if the surplus is greater than one hundred dollars (\$100) . In the event that the first class mail addressed to any person is returned unclaimed to the pawnbroker, then the pawnbroker must post and maintain on a conspicuous public part of his premises an appropriately entitled list naming each such person. Ninety days

or twelve months, as applicable, after the date of such mailing posting whichever is later, the pawnbroker may retain any surplus remaining unclaimed by the pledgor as his own property.

§ 1148. Record of disposition of pledged property.

Every pawnbroker shall keep a permanent record, fully itemized, of all pledged property disposed of following default by the pledgor. The record shall include the following:

- A. The number of the pawn transaction;
- B. The name and address of the pledgor;
- C. The date of the pawn transaction and the date of the last payment received as service charge or on principal;
- D. The date of disposition of the pledged property pursuant to Section 11 of the Pawn Regulation Act;
- E. The method of disposition of the pledged property, and
- F. The amount and disposition of any surplus following disposition of the pledged property.

§ 1149. Pawn service charge.

- A. For the first thirty-day period of the pawn transaction, a pawnbroker may charge seven dollars fifty cents (\$7.50) or ten percent of the amount loaned, whichever is greater, provided that such charge shall not be made on the refinancing of an existing loan or credit

transaction. A loan or extension of credit shall be considered to be refinancing of an existing loan if any part of the proceeds of the subsequent loan is applied toward the payment of a prior loan with the same pawnbroker.

B. For the remaining period of the pawn transaction, including any refinancing, no pawnbroker shall charge directly, indirectly or by an subterfuge a pawn service charge in connection with any pawn transaction at a rate in excess of one and one-half (1 ½%) percent per month on the unpaid principal balance of the loan or extension of credit.

C. The foregoing pawn service charges are limiting maximums and nothing herein shall be construed to prohibit a pawnbroker from contracting for or receiving a lessor rate than here established.

§ 1150. Prohibited practices.

A pawnbroker shall not:

A. Knowingly enter into a pawn transaction with a person under the age of eighteen years or under the influence of alcohol, any narcotic, drug, stimulant or depressant;

B. Make any agreement requiring the personal liability of a pledgor in connection with the pawn transaction;

C. Accept any waiver, in writing or otherwise, of any right or protection accorded a pledgor under the Pawn Regulation Act;

D. Fail to exercise reasonable care to protect pledged goods from loss or damage;

E. Fail to return a pledged good to a pledgor upon payment of the full amount due to

the pawnbroker on the pawn transaction. In the event a pledged good is lost or damaged while in the possession of the pawnbroker, the pawnbroker shall compensate the pledgor for the reasonable value of the lost or damaged good;

F. Make any charge for insurance in connection with a pawn transaction;

G. Purchase or otherwise receive any item of property from which the manufacturer's name plate, serial number or identification mark has been obviously defaced, altered, covered or destroyed;

H. Purchase or otherwise receive any item of property which the permitholder knows is not lawfully owned by the person offering the same;

I. Enter into a pawn transaction in which the unpaid principle balance exceeds two thousand dollars (\$2,000);

J. Require that any of the proceeds of any cash loan be spent at the pawnbroker's place of business or in any other manner directed by the pawnbroker; or

K. Make any agreement in which the pledged property is a motor vehicle.

§ 1151. General penalties.

Any pawnbroker or permitholder who is found guilty of a violation of any provision of the Pawn Regulation Act shall be guilty of an offense. Any pawnbroker or permitholder who is not a member of the Navajo Nation and who is found guilty of a violation of the Act may be excluded from the Nation pursuant to 17 N.N.C. section 1901. Any pawnbroker or permitholder who violates any provision of the Pawn Regulation Act shall be subject to having his permit

revoked or suspended by the local government pursuant to the provisions of Section 1140 of the Pawnbrokers Act. Revocation or suspension of such permit will not bar prosecution of the permitholder under the penal provisions of the Pawn Regulation act. Criminal prosecution will not bar proceedings to revoke or suspend the holder's permit.

§ 1152. Forfeiture.

The violation of any provision of the Pawn Regulation Act in any covered transaction shall be deemed a forfeiture of the entire amount of the pawn service charge contracted for or allowable under the transaction. In the event a pawn service charge in excess of the amounts allowable under the Pawn Regulation Act has been paid in any covered transaction, the person by who it has been paid, or his or her legal representative, may recover back by civil action triple the amount of service charge paid, or one thousand dollars (\$1,000), whichever is greater. The court shall also award attorneys' fees, calculated by the Lodestar method. Any civil action under this section shall be commenced within two years from the date the usurious transaction was consummated.

Subchapter 6. Finance Charge Rates

§ 1153. Title

The provisions of this subchapter may be cited as the Navajo Nation Finance Charge

Rate Limitation Act.

§ 1154. Purpose

The purpose of this Act is to ensure against the lending of money within the Navajo Nation at unconscionable, excessive or usurious rates of interest. The Act also prevents the enforcement of contracts within the Nation, regardless of where they are entered into, which charge usurious interest rates.

§ 1155. Retail Installment Contract Rates

A. In any retail installment contract, including retail installment accounts, a seller may contract for and if so contracted for, the holder thereof may charge, receive, and collect a finance charge which shall not exceed one and one half percent (1 ½%) per month multiplied by the number of months, including any fraction in excess of more than 15 days as one month, elapsing between the date of such contract and the due date of the last installment. In the case of retail installment accounts, the finance charge shall not exceed this rate on the outstanding balances from month to month.

B. For purposes of this Act, the term "finance charge" shall include all charges which are incident to, or a condition of, the extension of credit.

§ 1156. Private remedies.

A. It shall be a complete defense to any claim on a retail installment contract that the rate charged is in excess of the rate authorized by this Act. No amount of charges in excess of those authorized by this Act may be reduced to judgment.

B. Any seller who contracts for a finance charge in excess of the rates authorized by this Act shall be liable for a penalty of three times the amount of the finance charge which is in excess of the rate authorized by this Act, but in any event not less than one thousand dollars (\$1,000).

C. The court shall award attorneys' fees, calculated using the lodestar method, to any consumer who prevails on a defense or claim under this Act. Any claim under this Act must be brought within two years of the date on which the claim is created.

Subchapter 7. Motor Vehicle Deficiency Charges

§ 1157. Title

This subchapter may be cited as the Motor Vehicle Consumer Protection Act.

§ 1158. Purpose

The purpose of the Motor Vehicle Consumer Protection Act is to protect buyers of new or used motor vehicles both inside and beyond the territorial boundaries of the Navajo Nation.

The Act is designed to help remedy problems faced by buyers when used motor vehicles break down shortly after their purchase, leaving buyers with no recourse against the seller, and

when deficiency judgments are issued against buyers that do not fairly reflect the detriment suffered by the seller, but which create enormous and unjust burdens for the buyers.

The protections offered by this Act should be effected by limiting the relief offered by Navajo Nation courts to the seller of a motor vehicle if that seller fails to offer the buyer such protections as are detailed herein.

§ 1159. Definitions

As used in the Motor Vehicle Consumer Protection Act:

A. "deficiency" means the difference between the contract sales price of a motor vehicle, as contracted for between buyer and seller (including all interest or financing costs charged to the buyer, less any unearned finance charges rebated according the accounting rule of 78ths), and the sum of (a) all payments made toward that contract sales price by the purchaser, and (b) any sum acquired by the seller for the resale of the motor vehicle at auction for the purpose of recouping the contract sales price;

B. "motor vehicle" means a passenger motor vehicle including an automobile, pickup truck, motorcycle or van normally used for personal, family or household purposes which is legally registered for use on the Navajo Nation, and whose gross vehicular weight is less than ten thousand pounds;

C. "used motor vehicle" means any motor vehicle that, at the time of purchase by the buyer, has been previously owned by or has been used by the seller in a manner consistent with ownership, or that has a certified odometer reading of 5,000 miles or more;

D. "seller" means any person or entity in the business of selling motor vehicles at the

rate of five motor vehicles or more per year in the 365 days preceding an action governed by this subchapter and who is a plaintiff in an action governed by this subchapter, and does not include individuals who are the sellers of motor vehicles previously used for their own personal, family or household purposes, and who have sold less than five motor vehicles in the year preceding an action governed by this subchapter;

E. "buyer" means any person subject to the laws of the Navajo Nation who has bought a motor vehicle and who is the defendant in an action governed by this subchapter, and may include any cosigner, surety or guarantor to a motor vehicle sales contract;

F. "principal" means any amount due, on a motor vehicle sales contract or retail installment sales contract, as consideration for the item tendered to the buyer by the seller, exclusive of financing charges;

G. "financing charges" means any amount due on a retail sales contract as consideration for the extension of credit on a contract, exclusive of the cost of the principal.

§ 1160. Limitation on Issuance of Deficiency Judgments for Used Motor Vehicles

A. No court of the Navajo Nation shall have jurisdiction to enter a judgment, or to recognize or enforce a judgement of a foreign court, requiring a defendant to pay a deficiency on a motor vehicles sales contract or a motor vehicle retail installment sales contract, without first having obtained sufficient evidence of the following:

1. That the seller of the used motor vehicle agreed;

- (a) in writing and at the time of sale,

(b) to accept the return of the used motor vehicle at any time during the duration of a ten (10) day "grace" period beginning the day following the delivery of the vehicle to the buyer, on the basis of any complaint whatsoever regarding the quality, condition, or price of the vehicle, for a full and immediate refund of all monies paid by the buyer, and

(c) had the buyer sign an acknowledgment of this agreement, and

(d) that such acknowledgment form provided sufficient notification of the buyer's rights under this subchapter; and

(e) that seller provided a copy of such form to the buyer at the time and place of delivery; and

2. That the buyer failed to return the used motor vehicle within that grace period.

B. In the event the vehicle is returned during the grace period, the seller may charge the buyer a reasonable rate for mileage actually used by the buyer, not to exceed 30 cents (.30) per mile.

C. The grace period does not apply to the sale of new motor vehicles.

D. For the purposes of this section, it will be insufficient evidence for a seller merely to affirm the offer of the required grace period by statement in pleading, unless such pleadings are accompanied by a copy of the written agreement to such a grace period that bears the buyer's signature of acknowledgment dated at the time of sale.

E. In cases where the buyer's English language skills are sufficiently limited to prevent a thorough understanding of written forms or spoken English instructions, as shown by a preponderance of the evidence, the written agreement to the grace period that bears the buyer's signature of acknowledgment must also be accompanied by a certification that a translator

assisted to fully explain the agreement.

F. This protection may not be waived by buyers at any time; any attempt to waive these rights shall be considered a nullity by the court despite evidence of consideration paid for the signing of such waiver.

G. In any claim or action brought by a seller in which the seller claims a deficiency which is not authorized by the terms of this subchapter, the court shall award attorney' fees, calculated using the lodestar method, to a buyer who prevails on a defense that the deficiency was not authorized by this Act.

§ 1161. Limitation on the Amount of Deficiency Judgments for Motor Vehicles

A. A judgment against a buyer ordering the payment of a deficiency on a motor vehicle sales contract or a motor vehicle retail installment sales contract shall be calculated to allow only the recovery of the seller's actual costs and projected profits, and therefore shall be limited to an amount not to exceed the sum of:

1. A percentage, calculated as the current prime lending rate plus two percent, of either the seller's original purchase costs for the motor vehicle, if any, or the manufacturer's suggested retail price, whichever in the court's estimation is a more accurate means of discovering the seller's projected profits from the motor vehicle's sale in a given case; plus
2. The seller's original costs to purchase the motor vehicle, if any, minus any amount paid by the buyer toward the principal to the date of the court's order, minus any amount gained by the seller from the resale of the vehicle at auction subsequent to the vehicle's

repossession, for the recoupment of the seller's purchase costs; plus

3. Financing charges due under the contract from the date of sale to the date of the court's order, minus any amount paid by the buyer toward the financing charges to the date of the court's order; plus

4. Reasonable documented repossession costs, if any; plus

5. Reasonable documented attorney's fees, if any.

B. The seller's costs must be established by a preponderance of the evidence; however, statistical evidence of costs will not be a substitute for evidence specific to the complaint.

C. In cases where a motor vehicle retail installment contract has been assigned to a party other than the seller, the assignee shall have the same rights and liabilities as would the seller for purposes of recovery under this Act, and the buyer has the same rights and liabilities against that assignee as they would against the seller.

D. For the purposes of this section, payments made pursuant to motor vehicle retail installment sales contracts are to be allotted to principal and interest according to the accounting method agreed to by the motor vehicle retail installment sales contract.

RESOLUTION OF THE
ECONOMIC DEVELOPMENT COMMITTEE
OF THE NAVAJO NATION COUNCIL

Recommending the Adoption of Various Navajo Nation
Consumer Protection Laws

WHEREAS:

1. Pursuant to 2 N.N.C. §724, the Economic Development Committee of the Navajo Nation Council is empowered to review all legislation relating to commerce and business with the Navajo Nation; and

2. There are presently no Navajo Nation laws providing protection to consumers within the Navajo Nation who enter into business transactions within the Nation; and

3. There are no laws defining what are acceptable consumer business practices, regulating pawn transactions or automobile sales, or setting reasonable limits on the amounts which may be charged for loans; and

4. As a consequence of this absence of Navajo Nation lawmaking in the area of consumer transactions, Navajo consumers are prey to a host of unscrupulous, dishonest and predatory business practices. Some small loan businesses are known to charge up to 300 per cent per year (300%) on small loans. Pawn operators often retain the surplus from default sales; and

5. Navajo law is needed to address these problems. The Economic Development Committee of the Navajo Nation Council has reviewed the proposed legislation establishing comprehensive consumer protection laws (attached as Exhibit One) and believes its adoption to be in the best interest of the Navajo people.

NOW THEREFORE BE IT RESOLVED THAT:

The Economic Development Committee of the Navajo Nation Council recommends that the Navajo Nation Council adopt the Consumer Protection Laws, attached as Exhibit One to this resolution, into Title Five of the Navajo Nation Code.

CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the Economic Development Committee of the Navajo Nation Council at a duly called meeting at Window Rock, Navajo Nation (Arizona), at which a quorum was present and that same was passed by a vote of 5 in favor, 0 opposed and 0 abstained, this 21st day of October 1998.


David L. John, Chairperson
Economic Development Committee

Motion: Bennie Shelly
Second: Tim Goodluck