

Model Tribal Consumer Protection Code

I. Chapter _____. Jurisdiction/Applicability

A. Title

This chapter may be cited to as the “[Tribe/Pueblo Name] Jurisdiction Act”

B. Purpose

The purpose of the [Tribe/Pueblo Name] Jurisdiction Act is to provide notice to residents and nonresidents that their conduct or omission to act may result in the [Tribe/Pueblo Name] obtaining jurisdiction over them where permitted by the laws of [Tribe/Pueblo Name], [Tribe/Pueblo Name]’s treaties with the United States of America, and applicable federal law.

C. Definitions

1. As used in the [Tribe/Pueblo Name] Jurisdiction Act:

- a. “Person” includes an individual, executor, administrator, or other personal representative, or a corporation, partnership, association or any other legal or commercial entity, whether or not a citizen or domiciliary of the [Tribe/Pueblo Name] and whether or not organized under the laws of the [Tribe/Pueblo Name]. The term includes all natural persons, or other legal entity with capacity to sue or be sued.

D. General Jurisdiction

1. The Courts of the [Tribe/Pueblo Name] shall have exclusive jurisdiction over:

- a. Civil Causes of Action
 - i. All civil actions in which the defendant is a resident of the [Tribe/Pueblo Name] or the defendant has caused an injury to occur within the territorial jurisdiction of the [Tribe/Pueblo Name].
- b. Miscellaneous
 - i. All other matters provided by [Tribe/Pueblo Name] statutory law, [Tribe/Pueblo Name]’s treaties with the United States of America, including general principles of American law applicable to courts of general jurisdiction.

E. Long-Arm Civil Jurisdiction

1. Personal jurisdiction based upon enduring relationship or status. A Court of the [Tribe/Pueblo Name] may exercise personal and subject matter jurisdiction over a person domiciled in, organized under the laws of, or maintaining his, her or its place of business within [Tribe/Pueblo Name] as to any cause of action or claim for relief. A Court of the [Tribe/Pueblo Name] may exercise personal jurisdiction over any member of the [Tribe/Pueblo Name] regarding that person’s status as a member of the [Tribe/Pueblo Name]. A Court of the [Tribe/Pueblo Name] may exercise civil jurisdiction

over any person who assumes tribal relations with **[Tribe/Pueblo Name]** and the **[Tribe/Pueblo Name]** by marriage, adoption, guardianship or other enduring relationship with members of the **[Tribe/Pueblo Name]**.

2. Personal jurisdiction based on conduct. A Court of the **[Tribe/Pueblo Name]** may exercise personal and subject matter jurisdiction over any non-member who consents to jurisdiction by commercial dealings, residence, employment, written or implied consent, or any action which causes injury which affects the health, welfare or safety of the **[Tribe/Pueblo Name]**, or any other act which constitutes the assumption of tribal relations and the resulting express or implied consent to jurisdiction. A Court of the **[Tribe/Pueblo Name]** must exercise personal jurisdiction over a person, who acts directly or by agent, as to the cause of action for relief arising from the person's:
 - a. Transacting any business in the **[Tribe/Pueblo Name]**;
 - b. Contracting at any place to supply services or things within the **[Tribe/Pueblo Name]**;
 - c. Causing tortious injury by any act or omission within the **[Tribe/Pueblo Name]**;
 - d. Having an interest in, using or possessing real property in the **[Tribe/Pueblo Name]**, including the actual occupancy or lease or trust land, allotted land, fee land, or any other land within the **[Tribe/Pueblo Name]** Indian country;
 - e. Contracting to insure any person, property, or risk located within the **[Tribe/Pueblo Name]**;
 - f. Causing an act which creates an environmental hazard or degradation of the air, waters, flora, fauna, cultural artifact, or other resource of the **[Tribe/Pueblo Name]**;
 - g. Any action or inaction outside this jurisdiction which causes actual injury or damage within the **[Tribe/Pueblo Name]**, where such injury or damage was reasonably foreseeable and the exercise of jurisdiction complies with due process and where not prohibited by federal law.

F. Territorial Jurisdiction

The territorial jurisdiction of the **[Tribe/Pueblo Name]** shall extend to the **[Tribe/Pueblo Name]**, defined as all lands within the exterior boundaries of the **[Tribe/Pueblo Name]** Indian Reservation, all land within the limits of dependent **[Tribe/Pueblo Name]** Indian communities, all **[Tribe/Pueblo Name]** allotments, all land owned in fee by the **[Tribe/Pueblo Name]**, and all other land held in trust for, owned in fee by, or leased by the United States of America to the **[Tribe/Pueblo Name]**.

G. Writs or orders

The District Court shall have the power to issue any writs or orders necessary and proper to complete the exercise of their jurisdiction.

II. Chapter _____. Finance Charge Rates Limitation Act

A. Title

This chapter may be cited as the “[Tribe/Pueblo Name] Finance Charge Rate Limitation Act”.

B. Purpose

The purpose of this Act is to ensure against the lending of money within the [Tribe/Pueblo Name] at unconscionable, excessive or usurious rates of interest. The Act also prevents the enforcement of contracts within the [Tribe/Pueblo Name]’s jurisdiction regardless of where they are entered into, which charge usurious interest rates.

C. Definitions

1. As used in the [Tribe/Pueblo Name] Finance Charge Rate Limitation Act:
 - a. “finance charge” shall include all charges which are incident to, or a condition of, the extension of credit.

D. Retail Installment Contract Rates

1. 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 (1½%) 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.
2. 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.

E. Private remedies

1. 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.
2. 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).
3. 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.

F. Procedures for Garnishment

1. Jurisdiction

- a. The tribal court shall have jurisdiction over the garnishment of any personal property or money which is located within the exterior boundaries of the **[Tribe/Pueblo's Name]** and belongs to a resident within the boundaries of the **[Tribe/Pueblo's Name]**. Money or personal property owned by or due a resident within the boundaries of the **[Tribe/Pueblo's Name]** is subject to garnishment only in strict compliance with this Chapter.
2. Pre-judgment garnishment prohibited
 - a. Garnishment is not available to seize money or property prior to judgment
3. Payment of judgments from individual Indian money accounts
 - a. Trust property is not subject to garnishment, except in accordance with 25 C.F.R. § 115.
4. Procedure for garnishing property
 - a. Time limit

When a tribal court judgment has not been paid or otherwise satisfied, the party in whose favor judgment was entered is entitled at any time within six (6) years after entry of judgment, excluding any period during which the judgment is stayed or enjoined, to a garnishment judgment to enforce the original judgment from the personal property or money of the judgment debtor which is held by third parties.
 - b. Written petition

The judgment creditor shall file a petition with the clerk of the tribal court containing: a concise statement of the facts of the case and what action the court took; the amount of the judgment or the terms of the judgment; a statement that the judgment remains unpaid or unsatisfied; a statement identifying the property or money sought to be garnished and its location; whether any writs have previously been issued to satisfy the same judgment and whether any writs remain outstanding; and the amount of expenses, incurred or expected to be incurred by the judgment creditor to satisfy the judgment, and any interest claimed as accruing after entry of judgment. The petition shall be served on the judgment debtor and the third party holding the property of the judgment debtor (garnishee) in accordance with applicable rules of civil procedure.
 - c. Written response

Within twenty (20) days of receipt of the petition, the judgment debtor may file with the clerk a written response to the petition containing: an admission to or denial of any of the facts in the petition; an explanation of the facts denied; a statement of exempt property or money under the terms of f. of this chapter and any defenses to the garnishment.

d. Hearing on petition

After reasonable notice to the judgment debtor, the tribal court shall hold a hearing on the petition. At the hearing, the court shall determine whether a garnishment judgment should be issued, and if so, what property of the judgment debtor is available for garnishment in accordance with this chapter

e. Issuance of garnishment judgment

If the tribal court determines that the garnishee holds property or money which can be used to satisfy the original judgment, a garnishment judgment shall be entered directing the garnishee to deliver immediately to the court clerk the money or property. The judgment creditor may then obtain the money or property after court costs are paid. After turning over the property, the garnishee shall no longer be liable to the judgment debtor for the amount of the property.

G. Public and private sale of property

1. Appraisal of property

Immediately upon receipt of the property, the clerk shall cause it to be appraised by three disinterested persons, one selected by the judgment creditor, one by the judgment debtor, and one by the clerk, and all to be admonished by the clerk to make an impartial appraisal. If either party fails to select an appraiser, the clerk shall make the selection. However, the parties may agree on one appraiser, and may agree to allow the clerk to select the one appraiser. If a majority of the appraisers cannot agree on an appraisal within forty-eight (48) hours, the Clerk may appoint new appraisers. Appraisers must be qualified by knowledge or experience.

2. Notice of sale

The clerk shall, within five (5) days after appraisal, post in three (3) public places within the exterior boundaries of the **[Tribe/Pueblo's Name]** and publish in the local paper, a notice of sale containing a full description of the property to be sold, its appraised value, the names of the parties to the judgment, and the time and place of sale.

3. Time and place of sale

The sale must be held not less than ten (10) days nor more than thirty (30) days after posting and publication of the notice. The place of sale shall be a convenient public location within the exterior boundaries of the **[Tribe/Pueblo's Name]**.

4. Procedure of sale

The clerk shall sell the property publicly to the highest bidder for cash, but not for less than the appraised value. The high bidder shall pay over the amount of his bid to the clerk and receive the property. The clerk shall issue the purchaser a certificate of sale which shall describe the property, the amount paid, and the judgment debtor's redemption

rights. If the high bidder refuses to pay, the clerk may again sell the property in accordance with this chapter, and further bids from the bidder refusing to pay shall be rejected.

5. Private sale

If the clerk is unable to sell the property for its appraised value, the clerk may hold it for fourteen (14) days after the date of the attempted public sale during which time he shall sell it to the first person offering him the appraised value in cash. If the clerk is unable to sell the property privately, the clerk shall return it to the creditor, but if the debt is less than the appraised price, the clerk shall not deliver the property until the creditor pays the debtor the excess in cash. If, at the end of fourteen (14) days after the attempted private sale, the property remains unclaimed by the creditor, the clerk shall return it to the debtor.

6. Proceeds of sale

The clerk shall first pay the costs of the sale and any outstanding court costs. The remainder of the proceeds up to the amount of the judgment shall be paid to the judgment creditor. If any amount remains, the amount shall be returned to the judgment debtor.

7. Deficiency

If the proceeds of the sale are not sufficient to satisfy the judgment, the judgment debtor continues to be liable for any deficiency. The judgment creditor may use any methods provided in this code to collect the deficiency.

H. Redemption of property

The judgment debtor shall have the right, any time before the sale of his property, to redeem said property by paying to the clerk the total amount of the judgment plus any outstanding court costs and costs of garnishment to date. In the case of real property, the judgment debtor shall also have, within one (1) year of the date of sale, the right to redeem the real property by paying to the purchaser the full purchase price at the sale, plus interest at the rate of ten percent (10%) per annum and costs. The court may restrain the commission of waste or changing the character of the property during the redemption period, but the purchaser may use the property in the manner it has been previously used, make necessary repairs thereon, and make reasonable use of wood, timber or crops thereon.

I. Property subject to garnishment

1. Trust property shall not be subject to garnishment, except judgments may be satisfied from Individual Indian Money Accounts in accordance with 25 C.F.R. § 115. All other personal property and money shall be exempt from garnishment, except that property subject to attachment as described in this code's procedure for execution, is subject to garnishment and the following is further exempt from garnishment: wages or earnings from personal services in excess of thirty percent

(30%) of the debtor's take home pay, except that orders of the court for child support, bankruptcy or State and Federal taxes shall have precedence over a garnishment judgment. Exemption is automatic and need not be claimed.

2. The debtor may defeat a garnishment of wages by showing that the wages, if lost, will impose a substantial hardship on the debtor or his family;
3. Salary, wages, credits, or other property in the possession of the tribe, Bureau of Indian Affairs, Indian Health Service, State, county, city, town or school districts, are subject to garnishment under the terms of this Chapter;
4. No employer may discharge an employee by reason of the fact that his earnings have been subject to garnishment. If an employer violates this provision, the employee may, within ninety (90) days, bring a civil action against the employer for the recovery of wages lost, not to exceed wages for six (6) weeks, and reinstatement.
5. Real or personal property that the debtor or a dependent of the debtor claims as his principal residence.

J. Foreign Judgments and Writs of Garnishment

1. Foreign judgments and writs of garnishment may not be enforced against income derived in **[Tribe/Pueblo's Name]** or property located within the exterior boundaries of the **[Tribe/Pueblo's Name]**.
2. A person or business seeking to enforce a foreign judgment or writ of garnishment against income derived in **[Tribe/Pueblo's Name]** or property located within the exterior boundaries of the **[Tribe/Pueblo's Name]** must:
 - a. Petition the **[Tribe/Pueblo's Name]**'s court praying for an order granting comity of the foreign judgment;
 - b. the petition requesting comity must establish that the defendant was provided due process in the proceeding that lead to issuance of the foreign judgment; and
 - c. foreign judgments based upon a sale, transaction or debt that violates **[Tribe/Pueblo's Name]**'s laws shall not be granted comity.

III. Chapter ____. Truth in Lending Act

A. Title

This chapter may be cited as the "**[Tribe/Pueblo Name]** Truth in Lending Act".

B. Purpose

The purpose of this Chapter is to ensure the meaningful disclosure of credit terms so that consumers may compare the alternatives available to them and use credit in an informed manner, and to protect consumers against inaccurate and unfair credit billing.

C. Definitions

1. As used in this chapter:
 - a. "Billing cycle" means the interval between the days or dates of regular periodic statements.
 - b. "Credit" means the right to defer payment of debt or to incur debt and defer its payment.
 - c. "Open-end credit" means consumer credit extended by a creditor under a plan in which:
 - i. the creditor reasonably contemplates repeated transactions;
 - ii. the creditor may impose a finance charge from time to time on an outstanding unpaid balance; and
 - iii. the amount of credit that may be extended to the consumer during the term of the plan (up to any limit set by the creditor) is generally made available to the extent that any outstanding balance is repaid.
 - d. "Periodic rate" means a rate of finance charge that is or may be imposed by a creditor on a balance for a day, week, month, or other time period.
 - e. "Security interest" means an interest in property that secures performance of a consumer credit obligation.

D. Jurisdiction

The **[Tribe/Pueblo's Name]** 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 where not prohibited by federal law.

E. Exempted Transactions

1. This Chapter does not apply to the following:
 - a. Credit transactions involving extensions of credit primarily for business or commercial purposes.
 - b. Credit transactions other than those involving real or personal property used as the principal dwelling of the consumer in which the total amount financed exceeds fifty thousand dollars (\$50,000.00).

F. Disclosure Statement – Open-end Credit

1. Before the opening of any account under an open-end consumer credit plan, the creditor shall disclose in writing in a clear and conspicuous manner to the consumer each of the following items:
 - a. the conditions under which a finance charge may be imposed, including the time period within which any credit extended may be repaid without incurring a finance charge;
 - b. the method of determining the balance upon which a finance charge will be imposed;
 - c. the method of determining the amount of the finance charge;

- d. the periodic rate or rates used to compute the finance charge and the balances to which they will apply, and the corresponding annual percentage rate;
 - e. identification of any other charges and their method of calculation;
 - f. if the credit is secured, a statement of what property will be taken as security; and
 - g. a statement setting out the protection provided by [Section 9 of this Chapter].
2. For each billing cycle, the creditor shall send to the consumer a statement setting forth the following:
 - a. the outstanding balance of the account at the beginning of the statement period;
 - b. the amount and date of each extension of credit;
 - c. the total amount credited to the account during the period;
 - d. the amount of any finance charge added to the account during the period;
 - e. the periodic rate or rates charged, the corresponding annual percentage rate, and the balances against which they are applied;
 - f. the balance on which the finance charge was computed and a statement of how the balance was determined, including whether the balance is determined without first deducting all credits during the period;
 - g. the outstanding balance of the account at the end of the period;
 - h. the date by which payment must be made to avoid additional finance charges, if any; and
 - i. the address to be used by the creditor for the purpose of receiving billing inquiries.
- G. Disclosure Statement – All Other Credit Transactions
1. For each credit transaction other than under an open-end credit plan, the creditor shall disclose in writing in a clear and conspicuous manner to the consumer before the credit is extended, the following items:
 - a. the identity of the creditor;
 - b. the amount financed which shall be computed as follows:
 - i. take the principal amount of the loan or the cash price less down-payment and trade-in;
 - ii. add any charges which are not part of the finance charge or of the principal amount of the loan and which are financed by the consumer;
 - iii. subtract any charges which are part of the finance charge but which will be paid by the consumer before or at the time of closing the transaction, or have been withheld from the proceeds of the credit.
 - c. the finance charge expressed as a percentage rate or rates and as an annual percentage rate;

- d. the total of payments which is the sum of the amount financed and the finance charge;
- e. the number, amount, and due dates or period of payments scheduled to repay the total of payments;
- f. in a sale of property or services, the total sales price which is the total of the cash price of the property or services, additional charges, and the finance charge;
- g. descriptive explanations of the terms "amount financed", "finance charge", "annual percentage rate", "total of payments", and "total sales price";
- h. where the credit is secured, a statement of the property in which the security interest is taken; and
- i. a description of how late payments are handled.

H. Right of Rescission

1. In any consumer credit transaction in which a security interest is acquired in any property which is used as the principal dwelling of the person to whom credit is extended, the consumer shall have the right to rescind the transaction until midnight of the third business day following the closing of the transaction or the delivery of the disclosure and forms required by this Section by notifying the creditor of his intention to rescind. The creditor shall clearly and conspicuously disclose in writing to the consumer the right under this Section. The creditor shall also provide appropriate forms for the creditor to exercise his right to rescind.
2. When a consumer exercises his right under this Section, he is not liable for any finance or other charges and any security interest given becomes null and void. Any money paid or property given by the consumer will be returned within seven (7) days. If any property has been given to the consumer by the creditor, it shall be tendered to the creditor upon the performance of the creditor's obligations under this Subsection.

I. Civil Liabilities

1. Any creditor who fails to comply with any requirement imposed by this Chapter shall be liable in an amount equal to the sum of any actual damage sustained, plus twice the amount of any finance charge in connection with the transaction.
2. A creditor shall not be liable for a violation of this Chapter if, within sixty (60) days after discovering an error, the creditor notifies the consumer of the error and makes whatever adjustments are necessary to assure that the consumer will not be required to pay an amount in excess of the charge actually disclosed.
3. A creditor may not be liable for a violation of this Chapter if he shows by a preponderance of evidence that the violation was not intentional

and resulted from a bona fide error notwithstanding the maintenance of procedure reasonably adopted to avoid any such error.

J. Credit Billing

1. If a consumer, within sixty (60) days after the date of a statement, notifies the creditor in writing of an error in billing, the creditor shall, within sixty (60) days of the notice:
 - a. make appropriate correction to the account, including the crediting of any finance charges on amounts erroneously billed; or
 - b. send a written explanation or clarification to the consumer after conducting an investigation, setting forth why the creditor believes the billing was correct.
2. The notice given by the consumer shall enable the creditor to identify the name and account of the consumer, state the amount of the billing error, and the reasons why the consumer believes that the statement contains a billing error.
3. Any creditor who fails to comply with the requirements of this Section forfeits any right to collect from the consumer the amount of the billing error indicated in the consumer's notice and any finance charges thereon, except that the amount forfeited may not exceed fifty dollars (\$50.00). The creditor may not report the amount in dispute as delinquent to any third party, nor may the creditor report or threaten to report to any person information relating to the consumer's failure to pay the amount in dispute which would reflect on the consumer's credit rating.

IV. Chapter __. Unfair and Deceptive Trade Practices Act

A. Title

This chapter may be cited as the “[Tribe/Pueblo Name] Unfair Practices Act”.

B. Purpose

The purpose of this Act is to protect consumers within the [Tribe/Pueblo's Name] from a wide range of unfair, deceptive and unconscionable sales practices by sellers of goods and services within the [Tribe/Pueblo's Name] or from having unfair, deceptive and unconscionable contracts entered into outside of the [Tribe/Pueblo's Name] enforced against them within the [Tribe/Pueblo's Name].

C. Definitions.

1. As used in the [Tribe/Pueblo Name] Unfair Practices Act:
 - a. “person” means, 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 the seller's representative solicits the sale by telephoning the prospective purchaser and in

which the sale is consummated entirely by telephone or mail, but does not include a transaction:

- i. in which a person solicits a sale from a prospective purchaser who has previously made an authorized purchase from the seller's business; or
 - ii. in which the purchaser is accorded the right of rescission by the provisions of the federal Consumer Credit Protection Act, 15 U.S.C. 1635 or regulations issued pursuant thereto;
- c. "trade" or "commerce" includes the advertising, offering for sale, distribution, lease, rental or loan of goods or any services and any property and any other article, commodity or thing of value, or in the extension of credit or in the collection of debts by a person, including any trade or commerce affecting the residents of **[Tribe/Pueblo Name]**;
- d. "unfair or deceptive trade practice" means an act specifically declared unlawful pursuant to the **[Tribe/Pueblo Name]** Unfair Practices Act, a 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 a person in the regular course of the person's trade or commerce, that may, tends to or does deceive or mislead any person and includes:
- i. representing goods or services as those of another when the goods or services are not the goods or services of another;
 - ii. causing confusion or misunderstanding as to the source, sponsorship, approval or certification of goods or services;
 - iii. causing confusion or misunderstanding as to affiliation, connection or association with or certification by another;
 - iv. using deceptive representations or designations of geographic origin in connection with goods or services;
 - v. 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 the person does not have;
 - vi. representing that goods are original or new if they are deteriorated, altered, reconditioned, reclaimed, used or secondhand;
 - vii. 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;
 - viii. disparaging the goods, services or business of another by false or misleading representations;

- ix. offering goods or services with intent not to supply them in the quantity requested by the prospective buyer to the extent of the stock available, unless the purchaser is purchasing for resale;
 - x. offering goods or services with intent not to supply reasonable expectable public demand;
 - xi. 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;
 - xii. 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;
 - xiii. 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;
 - xiv. 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;
 - xv. stating that a transaction involves rights, remedies or obligations that it does not involve;
 - xvi. stating that services, replacements or repairs are needed if they are not needed;
 - xvii. failing to deliver the quality or quantity of goods or services contracted for.
- e. "unconscionable trade practice" means an 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, including services provided by licensed professionals, or in the extension of credit or in the collection of debts that to a person's detriment:
- i. takes advantage of the lack of knowledge, ability, experience or capacity of a person to a grossly unfair degree; or
 - ii. results in a gross disparity between the value received by a person and the price paid.
- f. "language principally used" means the language that is used to discuss, present, or negotiate the material terms and conditions of the sale regardless of the partial use of some concepts, phrases or words in the English Language during the negotiations or sales presentation;
- g. "collection of debt" means any effort by any person acting in the regular course of his or her trade or commerce, including, but not

limited to, the original lender or obligee, or any assignee of the original lender or obligee, or any assignee of any owner of the debt other than the original lender or obligee, or any third party attempting to collect the debt on behalf of the debt owner, to obtain payment of all or any part of the debt from the person who owes the debt.

- h. "clear and conspicuous" means easily seen or noticed; readily visible or observable, attracts special attention, but all words do not have to be in capitalized lettering.
- i. "debt" means any obligation owed or alleged to be owed by one person to another.
- j. "debt collector" means any person who, in the regular course of the person's trade or commerce, collects or attempts to collect a debt owed or alleged to be owed by any person within the **[Tribe/Pueblo's Name]**'s jurisdiction, including, but not limited to, the original lender or obligee, any assignee of the original owner, and third party collectors who are "debt collectors" as defined by the Fair Debt Collection Practices Act, 15 U.S.C. Section 1692a(6).
- k. "good faith" means an honest, fair and reasonable belief that rests on a reasonable assessment of those facts reasonably and fairly available, and not necessarily limited only to those facts actually in possession. "Good faith" may require a fair and reasonable inquiry of others in possession of information known or believed to be relevant to the matter at issue.
- l. "least sophisticated consumer" means the standard for evaluating truth and deception under the federal Fair Debt Collection Practices Act, 15 U.S.C. Section 1692 et seq.
- m. "person" means natural persons, corporations, trusts, partnerships, associations, cooperative associations, clubs, companies, firms, joint ventures or syndicates.
- n. "business day" means any calendar day except Sunday or the following business holidays: New Year's Day, Presidents Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans' Day, Thanksgiving Day, Christmas Day, Martin Luther King, Jr. Day and any other legal public holiday of the **[Tribe/Pueblo's Name]** or the United States;
- o. "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;
- p. "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 place of business of the seller. A door-to-door sale includes seller initiated telephone sales. A door-to-door sale does not include a transaction:

- i. 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;
- ii. 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;
- iii. 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;
- iv. 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;
- v. 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
- vi. in which a consumer acquires the use of goods under the terms of a rental-purchase agreement made pursuant to the provisions of the Rental-Purchase Agreement Act, 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;
- q. "place of business" means the main or permanent branch office or local address of a seller;

- r. "purchase price" means the total price paid or to be paid for the consumer goods or services, including all interest and service charges; and
 - s. "seller" means any person, partnership, corporation or association engaged in the door-to-door sale of consumer goods or services.
 - t. "statute of limitation" means the time period established by law in which an aggrieved party may bring a cause of action in judicial proceedings; **[Can be adopted if tribe/pueblo does not have own SOL]** six (4) years for written contracts, four (2) years for unwritten contracts and accounts, or four (4) years for breach of contract for sale of goods.
 - u. "time-barred debt" means any debt that is not enforceable in a judicial proceeding because the applicable statute of limitation has run.
- D. 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.
- E. 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 **[Tribe/Pueblo Name]** Unfair Trade Practices Act.
- F. Misrepresentation of motor vehicles; penalty
1. 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 **[Tribe/Pueblo Name]** Unfair Practices Act, unless the alleged misrepresentation is based wholly on repair of damage, the disclosure of which was not required pursuant to Subsection C of this section. The failure to provide an affidavit 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.
 2. 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:
 - a. describes the vehicle; and
 - b. states to the best of the seller's knowledge whether there has been an alteration or chassis repair due to wreck damage.

3. 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.
4. In the case of a private-party sale of a vehicle, an affidavit shall be furnished only upon the request of the purchasing party.

G. Private remedies

1. 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 **[Tribe/Pueblo Name]**'s court considers reasonable. Proof of monetary damage, loss of profits or intent to deceive or take unfair advantage of any person is not required.
2. 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 **[Tribe/Pueblo Name]** Unfair 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 five thousand dollars (\$5,000), whichever is greater, to the party complaining of the practice.
3. The court shall award attorney fees (includes TCA fees) and costs to the party complaining of an unfair or deceptive trade practice or unconscionable trade practice if the party prevails. The court shall award attorney 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 that was groundless.
4. 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 this state.
5. 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.
6. A party to a court action for a private remedy pursuant to this section may request in writing during the (30) thirty day period following service of the summons and complaint on all parties named in the action that the parties attempt to settle the claim in early mediation or peacemaking. If a request for mediation or peacemaking is made, both parties must agree to mediation or peacemaking first, and if agreed, the parties shall choose a mutually acceptable mediator or peacemaker

and enter into mediation peacemaking within (60) sixty days of the appointment of an acceptable mediator unless otherwise agreed by the parties. A request for mediation or peacemaking may be rescinded at any time if agreed to by all parties.

7. If the parties do not agree on a mutually acceptable mediator or peacemaker, but still want to go through mediation the court shall appoint the mediator or peacemaker. If the early mediation pursuant to this section is entered into within (60) sixty days following the appointment of the mediator, the parties suing on the basis of unfair, deceptive or unconscionable trade practices or acts under the **[Tribe/Pueblo Name]** Unfair Practices Act shall be required to pay no more than thirty dollars (\$30.00) toward the cost of the mediation or peacemaking session and the other party shall pay the remainder of such cost, unless otherwise agreed by the parties. If a person is seeking injunctive relief in accordance with Subsection A of this section, the person may pursue the claim for injunctive relief prior to entering into the mediation or peacemaking session.

H. Advertising media excluded

The **[Tribe/Pueblo Name]** Unfair Practices Act does not apply to publishers, broadcasters, printers or other persons engaged in the dissemination of information or reproduction of printed or pictorial matters who publish, broadcast or reproduce material without knowledge of its deceptive or unconscionable character.

I. Door-to-door sales; contracts; requirements; prohibitions

1. In connection with any door-to-door sale, it constitutes an unfair or deceptive trade practice for any seller to:
 - a. 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 fourteen points, a statement in substantially the following form and in the language that is used in the contract:
 - i. "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.";
 - b. 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 fourteen-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)

- c. 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;
 - d. 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, including specifically his right to cancel the sale in accordance with the provisions of this section;
 - e. fail to inform each buyer orally, at the time he signs the contract or purchases the goods or services, of his right to cancel;
 - f. misrepresent in any manner the buyer's right to cancel;
 - g. 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:
 - i. refund all payments made under the contract or sale;
 - ii. return in substantially as good condition as when received by the seller any goods or property traded in; and
 - iii. 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;
 - h. 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
 - i. 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.
2. The cancellation period provided for in this section as applied to telephone initiated sales 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.
- J. Sales negotiated in a language other than English
1. This section applied to transactions that are negotiated in a language other than English and are finalized in an English-written agreement.
 2. This section is meant to deter unfair and deceptive practices that result in economic harm to consumers in transactions that are negotiated in a language other than English and are finalized in an English-written agreement without a translation of the material terms and conditions in the same language used in the oral sales presentation or negotiations.

3. In order to be in compliance with the **[Tribe/Pueblo Name]** Unfair Practices Act, the following requirements must be met:
 - a. Receipt or contract must be in same language used in oral negotiations
 - i. It is an unfair and deceptive business trade practice for any seller to fail to furnish the buyer with a summary translation of any receipt or contract pertaining to the sale of goods or services at the time of its execution that is in the same language as that principally used in the oral sales presentation or negotiations.
 - b. Requirements when another language other than English is used to sell goods and services:
 - i. The summary translation must contain the material terms and conditions of the parties' agreement.
 - ii. Sellers must also furnish the English language receipt or contract.
 - iii. If the language used principally during the oral presentation or negotiations is not a written language, the seller or his representative must provide a summary containing the material terms and conditions in English but must also read the material terms and conditions orally to the consumer in language used during the presentation or negotiations. The reader must certify that he or she is fluent in that language and that he or she accurately read the summary translation to the buyer in the language principally used during the oral presentation or negotiation.
- K. Collection of Time Barred Debt
1. The purpose of this rule is to ensure a uniform understanding and practice within the debt collection industry regarding what information is required to be provided to consumers when a debt that the debt collector, acting in the regular course of his or her trade or commerce, is attempting to collect is unenforceable in judicial proceedings due to the running of the applicable statute of limitation. The implementation of the notices required in this rule will obviate an industry-wide practice that tends to or does mislead or deceive by failing to provide material information to consumers.
 2. In order to be in compliance with the **[Tribe/Pueblo Name]** Unfair Practices Act, the following requirements must be met:
 - a. Affirmative duty to determine of time-barred debt
 - i. Every debt collector attempting to collect a debt within the jurisdiction of **[Tribe's Name]** has a duty to determine, in good faith, whether each debt it is attempting to collect is or is not time-barred.
 - b. Unfair or Deceptive Practices; Required disclosures

- i. It is an unfair or deceptive trade practice for any debt collector acting in the regular course of his or her trade or commerce, whether directly or indirectly, by letter, telephone, electronically or by any other means, to collect or to attempt to collect from any person any payment of any debt that the debt collector knows or has reason to know is a time-barred debt, or to seek or obtain from any person any payment, admission, affirmation, acknowledgement of a debt, or new promise to pay, or any waiver of legal rights or defenses with regard to any debt, that the debt collector knows or has reason to know is a time-barred debt unless the debt collector discloses the following information:
 - a. the disclosure is prefaced with the following statement: "We are required by the **[Tribe's Name]** law to notify you of the following information. This information is not legal advice.";
 - b. either that the debt is unenforceable through a lawsuit because the time for filing has expired, or that it may be unenforceable through a lawsuit because the time for filing may have expired;
 - c. if the debt is time-barred, the person cannot be required to pay the debt through a lawsuit;
 - d. the person is not required by the law: to sign any admission, affirmation or acknowledgement of, or new promise to pay the debt; or to make any payment on the debt; or to waive any of his or her rights with regard to the effect of the running of the applicable statute of limitation;
 - e. an explanation of the consequences with regard to the revival of the statute of limitation resulting from: any payment on the debt; any signed admission, affirmation or acknowledgement of the debt; any signed new promise to pay the debt; any waiver of the debtor's legal rights resulting from the unenforceability of the debt due to the running of the applicable statute of limitation.
- ii. A debt collector who makes the following disclosure shall be deemed to have complied with the requirements of the **[Tribe/Pueblo Name]** Unfair Trade Practices Act if: "We are required by **[Tribe/Pueblo Name]** law to notify you of the following information. This information is not legal advice: This debt may be too old for you to be sued on it in court. If it is too old, you can't be required to pay it through a lawsuit.

You can renew the debt and start the time for the filing of a lawsuit against you to collect the debt if you do any of the following: make any payment of the debt; sign a paper in which you admit that you owe the debt or in which you make a new promise to pay; sign a paper in which you give up (“waive”) your right to stop the debt collector from suing you in court to collect the debt.”

- iii. The disclosures required by the **[Tribe/Pueblo Name]** Unfair Trade Practices Act shall be in plain language, in fourteen-point bold face type, shall be designed to reasonably and fairly inform the least sophisticated consumer and the statements must be made in the same language that used in the contract.
- iv. If the demand for payment is in a language other than English, the debt collector shall give the disclosures required by the **[Tribe/Pueblo Name]** Unfair Trade Practices Act in that language, in fourteen-point bold face type, shall be designed to reasonably and fairly inform the least sophisticated consumer.
- v. In the case of written communications, the disclosures required by the Unfair Trade Practices Act shall be clear and conspicuous and shall be placed on the front page.
- vi. In the case of oral communications, the disclosures required by **[Tribe/Pueblo Name]** Unfair Trade Practices Act shall be made immediately before the first statement requesting payment, or, if no request for payment is made, no later than immediately after reference to the debt is first made. In the event the collection agent is made aware that the debtor does not speak or has limited English proficiency, the debt collector must have the oral communications and notices proficiently interpreted into the primary language of the debtor.
- vii. The disclosures required by **[Tribe/Pueblo Name]** Unfair Trade Practices Act shall be given only to those debtors whom the debt collector reasonably and in good faith determines owes a debt that is time-barred.
- viii. It is a defense to the requirements of **[Tribe/Pueblo Name]** Unfair Trade Practices Act, if, in making the erroneous determination, the debt collector exercised reasonable efforts to determine whether the debt was time-barred or not and made the error in good faith, as supported by the debt collector’s documentation. The absence of any documentation creates a rebuttable presumption of the lack of reasonable efforts and good faith.

L. Invalid Agreements

1. The following agreements or provisions of agreements entered into by a resident of the **[Tribe/Pueblo Name]** are invalid with respect to the consumer transaction:
 - a. that the law of another jurisdiction apply;
 - b. that the consumer consents to be subject to the process of another jurisdiction;
 - c. that the consumer appoints an agent to receive service of process; and
 - d. that the consumer consents to the jurisdiction of a court that does not otherwise have jurisdiction.
2. Contracts of Adhesion
 - a. Contracts of adhesion are strictly construed against the drafter
 - b. A contract shall be deemed an adhesion contract if it is:
 - i. drafted to drastically favor the seller's interests,
 - ii. offered with a representation that the seller will enter into the transaction only on the terms contained in the document, and
 - iii. designed to minimize the actionable obligations of the seller.
 - c. Arbitration Clauses
Arbitration clauses contained in contracts are deemed to be terms of adhesion and unenforceable against a resident of the **[Tribe/Pueblo's Name]**, unless evidence is provided that shows the clause was the product of direct negotiations between the parties and not boiler plate language inserted by the drafter.