

# INSTALLMENT LOANS

WILL STATES PROTECT BORROWERS FROM  
A NEW WAVE OF PREDATORY LENDING?



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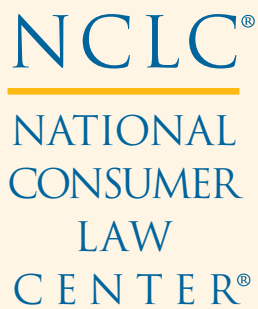
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## ABOUT THE NATIONAL CONSUMER LAW CENTER

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# INSTALLMENT LOANS

## WILL STATES PROTECT BORROWERS FROM A NEW WAVE OF PREDATORY LENDING?

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## EXECUTIVE SUMMARY

The state laws that govern installment loans have received little attention in the past decades. Credit cards, where state law is largely preempted, are the most widespread source of small-dollar credit, and the federal-level reforms of 2009 eliminated many of the abusive credit card practices that had arisen. In the subprime and deep subprime market, policymakers have focused on the harms of payday loans. Dangerous installment loans have flown under the radar, a market that is expected to grow as restrictions on payday loans increase and payday lenders evolve to evade protections.

The interest rate caps and other protections that state installment loan laws provide for consumers will therefore be of great importance over the coming years. Do state installment loan laws protect consumers, or will gaps in the laws provide a haven for high-cost lenders? Even if the interest rate is lower than on a payday loan, an installment loan can cause as much or more damage if it has a high rate applied to a larger amount for a longer period of time.

This report analyzes the strengths and weaknesses of state laws that regulate installment loans and similar longer term loans structured as open-end lines of credit. We survey the key features of these laws and analyze the full cost permitted in each state for two sample loans, a six-month \$500 loan and a two-year \$2000 loan. To analyze the cost of these loans, we have calculated full annual percentage rates (“full APRs”) that include all fees.

Caps on interest rates and loan fees are the primary way in which state laws protect borrowers. Reasonable interest rates align the interests of the lender and the borrower and provide an incentive to make loans that borrowers can afford to repay. But state installment loan laws vary greatly as to whether they cap rates, and how effective the rate caps are with fees and other loopholes included.

Some state laws place an ostensibly reasonable limit on the interest rate, but also allow other loan charges such as origination fees. These fees can dramatically increase the full APR. For example, Louisiana caps the interest rate for a \$500 loan at 36%, but also allows a \$50 origination fee and a \$20 documentation fee, bringing the full APR to 85%. Other states permit the ruse of a fee paid to a broker—a credit services organization (CSO)—on top of the purported loan rate. For example, unlimited CSO fees make Ohio’s limits on loan charges illusory.

*For a \$500 closed-end installment loan, with all fees included:*

- In 19 states and the District of Columbia, the full APR is 16% to 36%,
- 13 states allow interest and fees that can bring the full APR as high as 54%,
- 10 states allow fees that can potentially bring the full APR for a \$500 loan up to between 61% and 116%,
- 4 states place no cap on the interest rate except that it cannot be unconscionable—so one-sided that it shocks the conscience, and
- 4 states have no rate cap or ban on unconscionability at all.



States almost always impose lower rate caps for larger loans, which is appropriate. Rate caps are often structured based on tiers of credit. For example, Iowa's Regulated Loan Act caps interest at 36% on the first \$1,000, 24% on the next \$1,800, and 18% on the remainder. The resulting APR, which blends these rates, is 31% on a \$2,000 loan.

*For a \$2,000 closed-end installment loan:*

- 31 states and the District of Columbia cap the full APR at 17% to 36%,
- 6 states allow just a bit more (38% to 41%)
- 2 states allow rates and fees that can bring the full APR as high as 82%,
- 6 states place no cap on the interest rate except that it cannot be unconscionable, and
- 5 states have no rate cap at all.

In some states, the rate caps and the full APRs we have calculated are not airtight, because the state has looser rules for open-end lines of credit. (Open-end credit—a credit card is the prime example—does not have a fixed loan amount or term). Of the 44 states whose non-bank lending statutes specifically allow open-end credit, some do not cap interest rates, and some have rate caps but do not have unambiguous, airtight caps on the fees that lenders can impose. Because of these unclear limits, we were unable to calculate full APRs for these states. The remaining states cap both rates and fees, but the caps vary greatly. An extreme case is Tennessee, which enacted an open-end credit law in 2014 that purports to limit interest to 24%, but allows a daily charge that brings the full APR up to 279%. Provisions like these give lenders an incentive to structure loans as open-end in order to evade rate caps on installment loans.

*Of the 44 states whose non-bank lending statutes specifically allow open-end credit:*

- 14 states fail to cap rates for a \$500 cash advance and 16 fail to cap rates for a \$2,000 advance.
- 14 states have rate caps but do not have unambiguous, airtight caps on the fees that lenders can impose for a \$500 cash advance, and 13 fall into this category for a \$2,000 advance.
- For a \$500 cash advance, 7 states cap it between 39% and 54%, 4 cap it at 59% to 89%, and Tennessee caps it at 279%.
- For a \$2,000 cash advance, 11 states cap the full APR at 36% or less, 3 states cap it between 39% and 42%, and Tennessee caps it at 279%.

Most states permit charges for credit insurance and other add-on products, which can significantly add to the cost of the loan, often without providing any benefit. Or state laws may not stop lenders from increasing the cost of credit in a nearly invisible way through loan-flipping, new fees, and archaic formulas for allocating payments to principal, interest, fees, and add-on charges.

Considering both closed-end installment loans and open-end credit, the implications as payday loans evolve are mixed. Of the 36 states that currently allow payday lending, including hybrid states that impose some limits, only three states have solid rate caps of 36% or less for a \$500 loan or line of credit. Ten payday states have caps from 18% to



48%, but some permit fees that could drive the full APR higher. The other 23 payday states have even weaker protections against a high rate \$500 installment loan or line of credit.

The non-payday states do better but are not without risks. Of the 15 jurisdictions (14 states and the District of Columbia) that do not allow payday lending, 10 cap the rate for a \$500 loan or credit line at 18% to 38%, though some states do not have firm caps on fees for open-end credit. Five non-payday states permit rates of 54% to 65% for a \$500 loan.

Many states place maximum term limits on loans. For a \$1,000 loan, 23 statutes have term limits that range from 18 to 38 months. Three other statutes have limits that range from 4 to 8 years, and the other states have no term limit.

States have few protections, or weak protections, against balloon payment loans. The states that require payments to be substantially equal typically limit this protection to loans under a certain amount, such as \$1000. States generally do not prevent payment schedules by which the borrower's initial payments go only to finance charges, without reducing the principal. Only a few states require lenders to evaluate the borrower's ability to repay a loan, and these requirements are weak. A few states restrict the collateral that a lender can take, but usually these restrictions apply only to very small loans, such as those under \$700.

## KEY RECOMMENDATIONS FOR STATES

State laws provide important protections for installment loan borrowers. But states should examine their laws to eliminate loopholes or weaknesses that can be exploited. States should also be on the lookout for seemingly minor proposals to make changes that could gut protections. Our key recommendations are:

- Place clear, loophole-free caps on interest rates for both installment loans and open-end credit. A maximum APR of 36% is appropriate for smaller loans, such as those of \$1000 or less, with a lower rate for larger loans. Prohibit or strictly limit loan fees, which undermine interest rate caps and provide incentives for loan flipping.
- Ban the sale of credit insurance and other add-on products, which primarily benefit the lender and increase the cost of credit.
- Require full pro-rata or actuarial rebates of all loan charges when loans are refinanced or paid off early and prohibit prepayment penalties.
- Limit balloon payments, interest-only payments, and excessively long loan terms. An outer limit of 24 months for a loan of \$1000 or less and 12 months for a loan of \$500 or less might be appropriate, with shorter terms for high-rate loans.
- Require lenders to ensure that the borrower has the ability to repay the loan according to its terms, in light of the consumer's other expenses, without having to borrow again or refinance the loan.

- 
- Prohibit devices, such as security interests in household goods, auto titles and post-dated checks, which coerce repayment of unaffordable loans.
  - Employ robust licensing and public reporting requirements for lenders.
  - Tighten up other lending laws, including credit services organization laws, so that they do not serve as a means of evasion.
  - Minimize differences between state installment loan laws and state open-end credit laws, so that high-cost lenders do not simply transform their products into open-end credit.
  - Make unlicensed or unlawful loans void and uncollectible, and allow both borrowers and regulators to enforce these remedies.

In theory, installment loans can be safer and more affordable than balloon payment payday loans. But states need to be vigilant to prevent the growth of larger and longer predatory loans that can create a debt trap that is impossible to escape.

## INTRODUCTION

The state laws that govern installment loans have received little attention in the past decades. In 1978, the Supreme Court ruled that banks that issue credit cards—the biggest source of small dollar credit today—could generally ignore state rate caps.<sup>1</sup> In the years that followed, many states carved out exemptions from their usury laws for payday lending, short-term single-payment loans with annual percentage rates (APRs) averaging 391%. Between payday loans and credit cards, the impact of state installment loan laws receded into the background.

However, in the past few years a number of states have banned or greatly restricted payday loans.<sup>2</sup> In addition, the Consumer Financial Protection Bureau (CFPB) has released an outline of proposed rules that may clamp down on some of the most abusive features of payday loans—their short term, their balloon-payment structure, and their built-in unaffordability.<sup>3</sup>

Given these developments, high-cost non-bank lenders will likely seek to migrate into installment lending. While the CFPB has proposed some protections for certain installment loans (those secured by a deposit account or a car title), the CFPB does not have the power to limit interest rates, and the scope and impact of the final rule remains to be seen.

The interest rate caps and other protections that state installment loan laws provide for consumers will therefore be of great importance over the coming years. Do state installment loan laws protect consumers, or will gaps in the laws provide a haven into which payday lenders can move? A high-cost installment loan will be even worse than a payday loan if it binds the borrower to an unaffordable payment at an extortionate interest rate for a bigger loan and a longer period of time. This report analyzes the strengths and weaknesses of state installment loan laws in this new era.

### *Which State Installment Loan Laws Are Examined*

In this report, we examine state laws that allow entities other than depository institutions to make installment loans to consumers. The report focuses on the laws applicable to the non-bank lenders that are currently involved in payday lending but may move into installment lending. The report thus excludes laws, and provisions of laws, that are applicable only to banks, savings and loan associations, credit unions, and similar institutions. It also excludes state laws that apply only to installment lending that is secured by real estate or other collateral. We have only analyzed state credit statutes that allow loans of at least \$500 over at least a six-month term, so we have excluded most state payday loan laws. (The extent to which payday loan laws can be used to make longer-term payday installment loans is discussed in Section I(K)(1).) The report is based on state laws as amended through the beginning of 2015.

Installment lending may be either closed-end or open-end. A closed-end loan is a loan of a specified amount for a specified term, such as a loan for \$1000 repayable over one year. With open-end credit, the lender instead authorizes the consumer to borrow amounts

from time to time up to a credit limit. The payment term is not set in advance. Nor is the payment amount, beyond a minimum payment that may fluctuate. Thus the term depends on the amounts borrowed and the payments made. As the consumer repays the debt, freeing up more of the credit line, the consumer can borrow more money. Credit cards are one type, but not the only type, of open-end credit. Since the terms of open-end and closed-end credit are inherently different, and since they are often governed by different state laws, this report first examines closed-end credit laws and then open-end credit laws.

Some of the laws that this report analyzes were first enacted in the 1920s or earlier. Many have been amended piecemeal over the intervening years, often leaving confusing, duplicative, or contradictory provisions. Many statutes are plagued by imprecise or archaic language. Some express caps on interest by using archaic calculation shortcuts—invariably producing results that favor lenders rather than consumers—that were devised in the era before computers. Some of these laws have been little-used and little-examined for decades. Because of their complexity, their archaic provisions, and the unsystematic way they have been amended over the years, they may offer opportunities for abusive lending that were never contemplated by their drafters.

Detailed summaries of the laws addressed in this report are included in Appendix C (state installment loan laws) and Appendix D (state open-end credit laws).

## Methodology

A key component of this report is a comparison of the maximum APR permitted for installment loans under different state laws. The purpose of an APR is to express the full cost of a loan on an annual basis, so that the costs of loans of different amounts, different lengths, and different mixtures of interest and fees can be compared to each other.<sup>4</sup>

The APR provides a way to measure the relative cost of two loans. The APR is especially important for revealing the full cost of a loan that charges fees in addition to a periodic interest rate. For example, Arizona allows 36% interest on a \$500 six-month loan, but also allows an origination fee of 5% of the principal. Taking both the interest and this origination fee into account, the APR is 54%. If only the interest were allowed, the APR would be 36%.

The APR is especially important for revealing the full cost of a loan that charges fees in addition to a periodic interest rate.

Throughout this report, we discuss the “full APR.” The federal Truth in Lending Act (TILA),<sup>5</sup> as implemented by Regulation Z, sets forth rules for calculating and disclosing an APR in consumer credit transactions. However, because of loopholes in Regulation Z, an APR calculated by its rules does not include all the charges that creditors impose as a condition of the extension of credit. These loopholes are especially significant for open-end loans but can also plague closed-end loans. As a result, the APR calculated under TILA rules often understates the real cost of a loan.

Instead of using the TILA APR calculation rules for this report, we have calculated “full APRs.” Our full APRs include not only the interest that the state law allows the lender

to charge, but also all fees specified in the statute that are a condition of the extension of credit. We include these fees whether or not they are included in the APR as defined by TILA and whether they are charged at the outset of the loan or built into the loan to be charged later.<sup>6</sup>

Thus, in calculating the “full APR,” we include all fees that the borrower is bound to pay in order to obtain and use the extension of credit. These fees include, for example, application fees, investigation fees, document preparation fees, transaction fees, “points,” annual fees, and monthly fees. We term these fees “loan fees,” and we refer to the total of these fees plus interest as the “finance charge.” We do not, however, include charges such as late charges or dishonored check charges that are imposed only if some future, avoidable event occurs.<sup>7</sup> Nor do we include any fees that can be charged only for mortgage loans, since the report focuses solely on non-real estate lending. We also do not include credit insurance premiums in the “full APR” calculations. As discussed throughout this report, however, charges for credit insurance premiums and other ancillary products often drive up the cost of credit significantly.

For this report, we have calculated the maximum “full APRs” allowed under each state’s installment loan laws for two hypothetical loans: a \$500, six-month loan and a \$2000 two-year loan. If a state has several statutes, or its statute allows several different rates, we have used the highest rate allowed. For open-end credit, we have calculated the “full APR” for:

1. a \$500 cash advance, taken at the time of account opening, with payments sufficient to repay the advance in six months, with no additional cash advances, and
2. a \$2000 cash advance, taken at account opening and repaid over a two-year period with no additional advances.

For open-end credit statutes that allow an annual fee, we charged the first annual fee at account opening, and the second one (for the two-year loan) on the anniversary date, at which point we adjusted the payment amount to take the additional charge into account.

In many states, the allowed rates produce a higher “full APR” for the \$500 loan. This occurs for two reasons. First, states tend to impose lower rate caps on larger loans. Second, in states where lenders are permitted to charge a fixed fee on top of the interest rate, that fee will have a greater impact on a smaller loan than a larger one. For example, an additional \$50 charged on a \$500 loan will have more of an impact on the APR than the same \$50 fee will have on a \$2000 loan.

Many state lending laws have ambiguities that affect the calculation of the full APR. For example, a lending law may allow a lender to charge an origination fee without specifying whether it can also charge interest on that fee. In the absence of clear statutory language or regulatory guidance, we treat origination fees as amounts that can be added to the principal and on which interest can be charged. For other ambiguities, we have used our best judgment to find an interpretation that seems consistent with the statutory language and the intent of the statute. We have included footnotes regarding significant ambiguities. Policymakers should consider issuing regulations or other guidance to close loopholes created by these ambiguities that high-cost lenders could exploit.

State regulators in a number of states reviewed the summaries of their state loan laws in Appendices C and D, on which we based our “full APR” calculations. However, the summaries are ours and should not be attributed to any state official. The summaries simplify complex provisions, do not purport to capture the statutes’ nuances or ambiguities, and do not represent legal advice. Moreover, given the complexities and ambiguities of state credit laws, our full APRs should not be regarded as authoritative. Any corrections should be brought to the attention of the authors.

## I. STATE CLOSED-END INSTALLMENT LOAN LAWS

### A. Interest Rates and Loan Fee Caps—Or Their Absence

#### 1. Overview

Caps on interest rates and loan fees have long been the primary vehicle by which states protect consumers from predatory lending. All 13 original colonies set maximum rates for loans, and small-dollar loan markets still normally operate with state-mandated price limitations.<sup>8</sup> Research has shown that prices for deep subprime loans often reach levels that are far higher than necessary to ensure availability of credit.<sup>9</sup> When combined with unusually long repayment terms or schemes that encourage borrowers to refinance loans, high interest rates can lead to extended and unmanageable debt.

In addition to limiting the cost of the loan for the borrower, limits on finance charges encourage lenders to make efforts to ensure that all borrowers have the ability to repay the loans. Excessive interest rates enable lenders to generate significant profits from a loan portfolio even when many borrowers eventually default. High profits on loans that are repaid in full can inure the lender to significant defaults. In addition, with a high enough interest rate, especially on a longer term loan, the lender is made whole and begins making a profit well before the loan is fully repaid. Thus, even loans that default at some point may be profitable.

Consequently, with high interest rates, lenders have less incentive to ensure that their borrowers can actually afford to repay the loans in full on the terms specified in the agreement. The fact that the lender can obtain a tax write-off of the unpaid principal reduces this incentive even more: With a high-interest loan, the unpaid principal (and thus the write-off) can be significant even after the borrower has made payments equal to or exceeding the amount borrowed. High rate lenders may in fact prefer borrowers who will struggle to repay, because these borrowers will also be unlikely to afford to repay the loan early and deprive the lender of the high interest it was expecting.

Interest rate caps provide a simple way of aligning the lender’s and the borrower’s incentives so that both rise or fall together. Interest rate caps go a long way to ensure borrowers’ ability to repay, without the need for detailed underwriting requirements. The states’ role in limiting interest rates will remain important since the CFPB lacks statutory authority to do so.<sup>10</sup> Indeed, the detailed rules that CFPB has proposed for payday



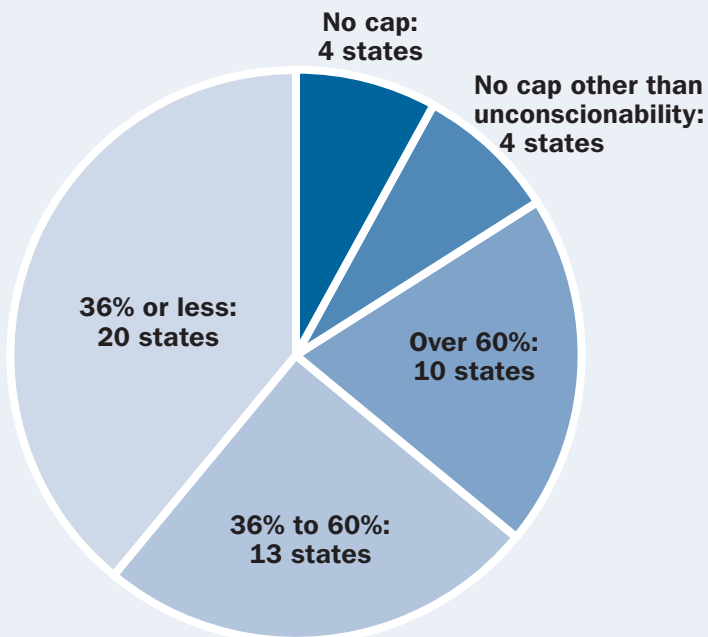
and installment loans show the complexity and the difficulty in ensuring ability to pay in the absence of rate limits.

Most states currently cap interest rates and loan fees (fees imposed as a condition of the extension of credit) for closed-end consumer installment loans. However, five states place no explicit cap on these finance charges for all or some consumer installment loans between \$500 and \$2000. In six additional states, the only cap is a statutory prohibition against “unconscionable” loan terms—terms that are so one-sided as to shock the conscience. As detailed in the following sections, the remaining states cap interest rates and loan fees, but often at levels that allow full APRs in excess of 36%.

Even in many states that ostensibly have lower caps on interest and loan fees, lenders can dramatically increase their profit and the cost of the loan to the borrower by adding premiums for insurance products, such as credit life insurance and credit unemployment

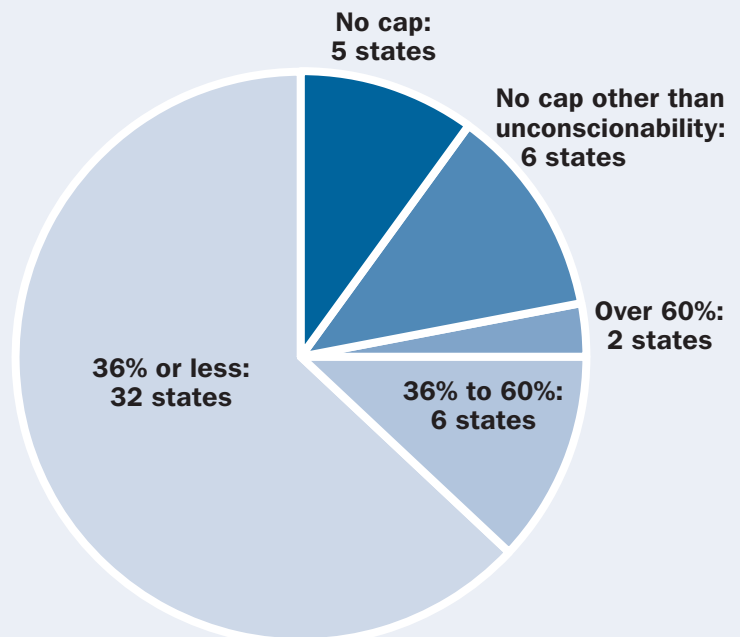
The states’ role in limiting interest rates will remain important since the CFPB lacks statutory authority to do so.

CHART 1  
**Full APRs Allowed  
for a Six-Month \$500 Loan**



- No stated cap on finance charges
- No numerical cap, but prohibits unconscionability (loan terms that are so one-sided as to shock the conscience)

CHART 2  
**Full APRs Allowed  
for a Two-Year \$2000 Loan**



- Allowable full APR over 60%
- Allowable full APR between 36% and 60%
- Allowable full APR of 36% or less

insurance, that produce large commissions for the lender but rarely provide meaningful benefits to borrowers.<sup>11</sup> As discussed later in this report, refinancing or “flipping” loans to take advantage of lender-friendly formulas for rebating unearned finance charges and insurance premiums can also significantly increase the cost of the loans.

## 2. Does the state cap interest rates and loan fees for installment loans?

Eleven states do not cap interest rates for some or all closed-end consumer installment loans of the amounts (\$500 to \$2000) examined in this study. Some of these states cap non-interest loan fees, but leave the interest rate uncapped so that the lender can still charge whatever it chooses.

Delaware, Missouri, North Dakota (for loans over \$1000) and South Dakota place no cap of any sort on interest rates. This report also treats Ohio as a state without any cap because, as discussed in Section I(K)(3), the caps that exist in its lending laws are easily evaded by credit services organizations.

Six additional states — Alabama (for loans of \$2000 or more), Idaho, New Mexico, South Carolina (for loans over \$600), Utah, and Wisconsin — do not cap interest rates or loan fees but do prohibit unconscionability (either in the lending law or in the state deceptive practices statute). Unconscionability provisions generally allow courts to strike or reform contracts or clauses that take advantage of borrowers to a grossly unfair degree. As discussed in Section I(A)(6), a prohibition of unconscionability has some potential to act as an outer limit on finance charges.

TABLE 1  
States that Do Not Cap Interest Rates for Installment Loans

| STATE          | LOANS FOR WHICH THERE IS NO CAP | DOES STATUTE PROHIBIT UNCONSCIONABILITY? |
|----------------|---------------------------------|--|
| Alabama        | Loans of \$2000 or more         | Yes                                      |
| Delaware       | All loans                       | No                                       |
| Idaho          | All loans                       | Yes                                      |
| Missouri       | All loans                       | No                                       |
| New Mexico     | All loans                       | Yes (state deceptive practices statute)  |
| North Dakota   | Loans of more than \$1000       | No                                       |
| Ohio*          | All loans                       | No                                       |
| South Carolina | Loans of more than \$600        | Yes                                      |
| South Dakota   | All loans                       | No                                       |
| Utah           | All loans                       | Yes                                      |
| Wisconsin      | All loans                       | Yes                                      |

See Section I(A)(6) for an explanation of unconscionability.

\*Ohio's rate caps are ineffective because they can be circumvented through credit services organizations. See Section I(K)(3).

All of these 11 states currently allow payday lending. (See Section III). If the CFPB imposes strict rules on payday lending but does not effectively stop unaffordable installment lending, high-cost lenders in these states may simply move to high-cost installment loans. In fact, payday lenders in some of these states are already making payday installment loans—high-cost installment loans where the lender holds a post-dated check or its equivalent. (See Section I(K)(1).) Unless the state has and is able to enforce an unconscionability limit, these states can expect to see lenders making installment loans with APRs as high as 1500%.<sup>12</sup>

The closed-end installment loan laws in the remaining states cap both interest rates and loan fees. However, some of these caps are very high. For example, Texas allows a full APR of 93% on a six-month \$500 loan, and 82% on a two-year \$2000 loan. The full APRs that the 50 states and the District of Columbia allow for these two sample loans—a six-month \$500 loan and a two-year \$2000 loan—are analyzed in the next two sections.

Although this report focuses on loans between \$500 and \$1500, it should be noted that California and Virginia have no cap on interest rates for loans over \$2500, so the same issues arise in those states, but for slightly larger loans. California prohibits unconscionable loan terms, but Virginia does not have a statutory prohibition of unconscionability. (See Appendix C).

### *3. Interest and loan fees allowed by the states for a six-month \$500 loan*

This study first looks at the interest and loan fees allowed by states for a six-month loan of \$500. Eight states—Delaware, Idaho, Missouri, New Mexico, Ohio, South Dakota, Utah, and Wisconsin—place no numerical cap on the charges a lender may impose for this loan, although Idaho, New Mexico, Utah, and Wisconsin prohibit unconscionable loan terms.

The 43 remaining states and the District of Columbia all cap both interest rates and loan fees for the \$500 loan examined in this study. In some of the states, however, the caps are very high. For example, the allowable interest and loan fees together yield a full APR of 72% in South Carolina, 94% in Alabama, and 116% in Oklahoma for this loan. Seven additional states allow a full APR greater than 60% for this loan, 13 states allow a full APR between 36% and 60%, and 20 states cap the full APR at 36% or lower. Altogether, 23 of the states that cap interest and loan fees allow full APRs of more than 36% on a six-month installment loan of \$500.

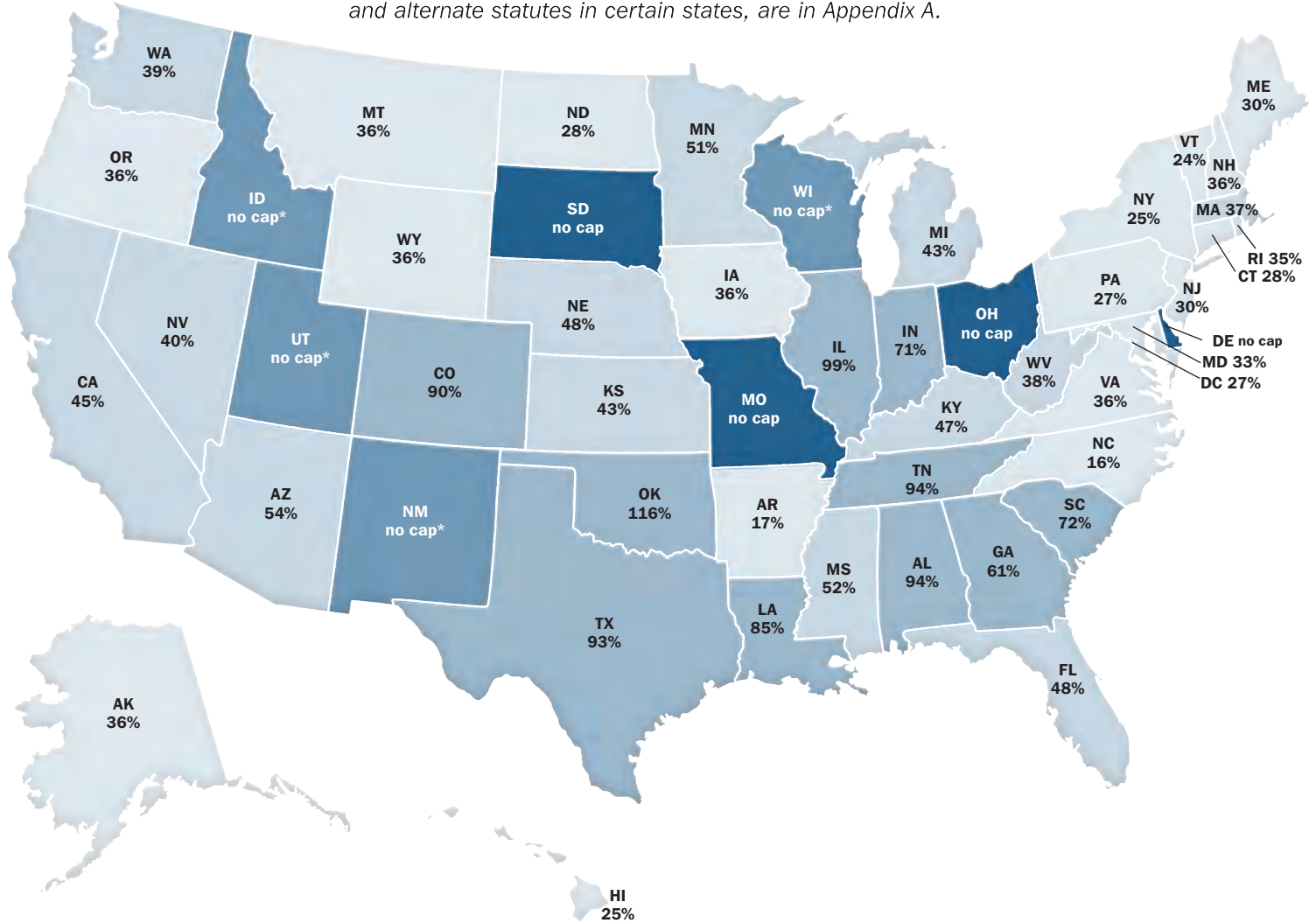
It should be stressed that these APRs include only interest and loan fees, *not* charges for credit insurance or other add-on products. As discussed in the section of this report regarding loan flipping (see Section I(B)), lenders can dramatically increase the effective cost of a loan by adding credit insurance and by refinancing the loan frequently.

Lenders can dramatically increase the effective cost of a loan by adding credit insurance and by refinancing the loan frequently.

MAP 1

## Full APRs Allowed for Six-Month \$500 Installment Loan

*Details regarding all APRs shown on this map, and notes regarding caveats and alternate statutes in certain states, are in Appendix A.*

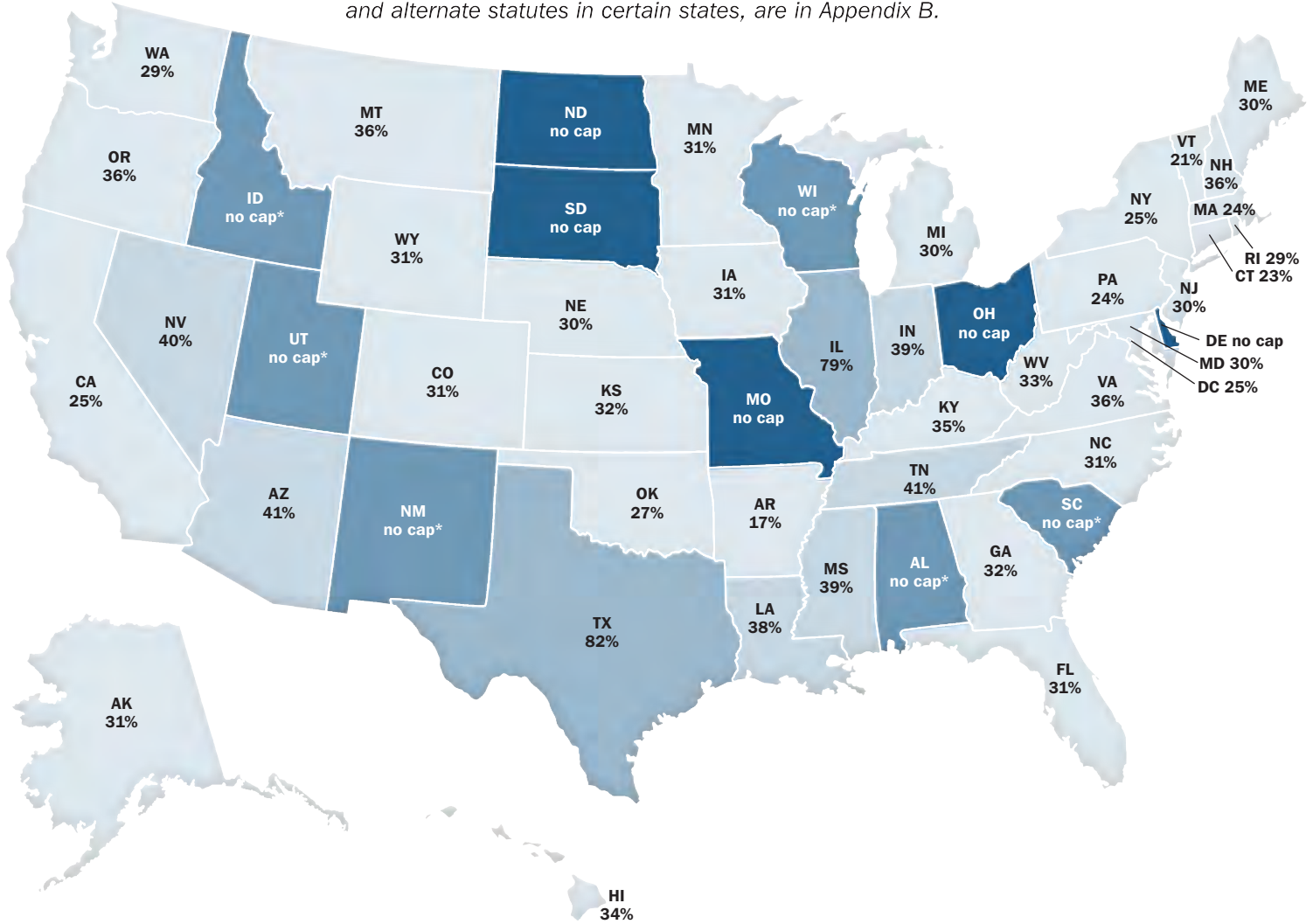


- No stated cap on finance charges
- No cap other than unconscionability (no cap\*)
- Allowable full APR over 60%
- Allowable full APR between 36% and 60%
- Allowable full APR of 36% or less

## MAP 2

### Full APRs Allowed for Two-Year \$2000 Installment Loan

Details regarding all APRs shown on this map, and notes regarding caveats and alternate statutes in certain states, are in Appendix B.



- No stated cap on finance charges
- No cap other than unconscionability (no cap\*)
- Allowable full APR over 60%
- Allowable full APR between 36% and 60%
- Allowable full APR of 36% or less

#### 4. Interest and loan fees allowed by the states for a two-year \$2000 loan

The preceding discussion focused on a six-month loan of \$500. For a two-year loan of \$2000, eleven states—Alabama, Delaware, Idaho, Missouri, New Mexico, North Dakota, Ohio, South Carolina, South Dakota, Utah, and Wisconsin—place no numerical cap on the charges a lender may impose. Six of those states do, however, prohibit unconscionable loan terms.

The 40 remaining jurisdictions cap the finance charges for such a loan. Two of these jurisdictions allow the full APR to exceed 60%, six allow a full APR between 36% and 60%, and 32 states limit the full APR to 36% or less.

#### 5. Both the interest rate and loan fees must be capped to avoid rendering an interest rate cap illusory

If a state caps interest without capping loan fees, the interest rate cap can be illusory, providing no actual protection to borrowers.

All of the full APRs discussed in the preceding sections take both the interest rate and loan fees into account. If a state caps interest without capping loan fees, the interest rate cap can be illusory, providing no actual protection to borrowers. A state that caps the interest rate at a reasonable rate undermines that cap if it allows high loan fees.

For example, Indiana allows 36% interest on a \$500 six-month loan but also allows an origination fee of \$50. While the APR might appear to be 36%, taking both the interest and this origination fee into account, the full APR is 71% for a six-month loan of \$500.

A few states cap “interest” but are silent on the amount of loan fees that can be charged or whether the loan fees are counted within the “interest” rate cap. In some of these states, courts or regulators have required all fees and periodic interest, together, to fall

TABLE 2  
Examples of Full APRs Produced by Stated Interest Rate Cap  
Plus Loan Fees for Six-Month \$500 Loan

| STATE     | INTEREST RATE CAP | LOAN FEES ALLOWED                               | FULL APR |
|-----------|-------------------|---|----------|
| Arizona   | 36%               | 5% of principal                                 | 54%      |
| Indiana   | 36%               | \$50  | 71%      |
| Louisiana | 36%               | \$50 original fee and \$20 documentation fee    | 85%      |
| Oklahoma  |                   | 10% of principal plus monthly charge of \$22.05 | 116%     |



under the interest rate cap. Arkansas, for example, interprets the interest rate cap in its state constitution in this way.<sup>13</sup> This approach is consistent with the broad definition of “interest” under federal law<sup>14</sup> and may be a viable approach in states in which there has not yet been a definitive ruling.<sup>15</sup>

Another danger with loan fees is that they may be set in an amount that is appropriate for a large loan but not for a small loan. For example, an origination fee of \$100 may be reasonable for an \$8,000 loan, and would not push the full APR up very much for a loan of that size. For a \$300 loan, however, a \$100 origination fee would be grossly unreasonable. A \$100 origination fee on top of 36% interest would result in a full APR—the true cost of credit—of 149% for a six-month loan of \$300. This example demonstrates why state laws should require the sum of both interest and loan fees to fall below an APR cap.

Loan fees can also be disguised as third-party fees if the lender is allowed to mark up or receive a commission from those fees. For example, if a lender charges a borrower \$15 for registering a lien on a vehicle title when the cost to the lender is actually just \$4, the \$11 overage is a disguised origination fee. Borrowers are less likely to notice loan fees, and are more likely to be lulled into acceding to such fees, if they believe that the fees are third-party fees over which the lender has no control. Allowing lenders to mark these fees up also gives them an incentive to pile them on, even for services that are not necessary.

High front-loaded loan fees can also encourage loan flipping, which dramatically increases the cost of credit. Some state installment loan laws allow a new origination fee each time a loan is refinanced, without requiring any rebate of the previous origination fee. Other states require a rebate of unearned fees but allow a rebate formula that favors the lender. The effect of the repeated imposition of loan fees with each refinancing, plus rebate formulas for interest and insurance that favor the lender, is discussed in detail in Section I(B).

The most effective approach with respect to loan fees is to prohibit them and require the entire cost of the loan to be included in the interest rate. Fees can be used to distort interest rates, evade rate caps, and deceive consumers as to the real cost of loans. Loan fees also provide incentives for loan flipping. The sum of loan fees and interest charges should be required to stay below the statutory cap.

An alternative approach is to set a cap on interest, and a separate cap on loan fees, taking care to ensure that the loan fees are not large enough to distort the interest rate and that a large loan fee is not allowed on a small loan. Fees paid for third party services should be strictly limited to the actual cost of the service, and lenders should be prohibited from receiving any benefit from the payment of third party fees. States should also take care to close the loophole for credit services organization fees. (See Section I(K)(3)). In addition, to avoid creating incentives for loan flipping, lenders should be required either to charge periodic interest only or to rebate the unearned portion of loan fees upon refinancing or prepayment, using an actuarial or pro rata calculation method, as discussed in Section I(B)(2).

Leaving even one fee uncapped can enable high-cost lenders to evade all the other limits on the cost of credit.

Whichever approach is taken, the statute's caps should apply to all fees. Leaving even one fee uncapped can enable high-cost lenders to evade all the other limits on the cost of credit. A number of states implement this principle by prohibiting lenders from directly or indirectly charging any further or other amount in addition to the interest and charges that are specifically authorized by the lending statute.<sup>16</sup>

## *6. The role of unconscionability as a limit on the cost of credit*

In many of the states that do not cap interest rates for installment loans, there may actually be a cap of sorts in the form of a prohibition against unconscionable provisions in credit agreements.<sup>17</sup> One definition of an unconscionable provision is one that is so outrageously unfair that it shocks the conscience.<sup>18</sup>

A number of state installment loan statutes include a prohibition against unconscionability. (See Appendix C). A similar prohibition is a part of a number of state deceptive practices statutes. In New Mexico, for example, such a prohibition is found in the state deceptive practices statute and has been applied to consumer credit.<sup>19</sup> The deceptive practices statutes in 16 other jurisdictions—Alabama, Arkansas, D.C., Florida, Idaho, Indiana, Kansas, Kentucky, Michigan, Nebraska, New Jersey, New York, Ohio, Oregon, Texas, and Utah—also prohibit unconscionable acts and practices, and one of California's deceptive practices statutes prohibits inclusion of an unconscionable clause in a contract.<sup>20</sup> States vary, however, in the extent to which their deceptive practices statutes apply to loans.<sup>21</sup> There is also a common-law doctrine of unconscionability that may apply in states that do not have a statutory prohibition.<sup>22</sup>

A high APR is a key factor cited by courts in determining whether a consumer credit transaction is unconscionable.<sup>23</sup> Other factors include:

- any disparity in bargaining power between the parties;
- inclusion of onerous terms in fine print or in unusually complex clauses;
- whether the terms were excessively one-sided;
- whether the consumer had the reasonable ability to repay the obligation;
- whether the transaction was likely to benefit the consumer; and
- whether the price was grossly excessive.<sup>24</sup>

Several of these factors, in addition to the high APR, could be used to show the unconscionability of high cost lending. Lenders have substantial bargaining power over consumers who have damaged credit and are desperate for cash. High-cost loans are often structured in complex ways that obscure the cost of the loan. Lenders often rely on onerous one-sided default and collection provisions rather than making any determination that the consumer can afford the loan. High default or refinancing rates, or repayment schedules that result in little progress in repaying a loan, can show that consumers had no reasonable ability to repay the loan<sup>25</sup> and that the credit did not benefit the consumer.

An interest rate or fee that is substantially above that offered by the majority of creditors providing similar credit products could be considered unconscionable.

Nonetheless, it would be a mistake for states to rely on a prohibition against unconscionable loan terms in the place of clear caps on interest and fees. Enforcing a prohibition against unconscionability is a difficult undertaking. Litigation is typically necessary, and the case is likely to be long and complex even when mounted by a state regulator or attorney general. When consumers seek to enforce a prohibition against unconscionability in court, they face obstacles such as arbitration clauses inserted in loan contracts by lenders. Some courts have been willing to find outrageously high finance charges unconscionable,<sup>26</sup> but others have expressed reluctance to exercise even clear statutory authority to do so.<sup>27</sup> The most useful aspect of a prohibition against unconscionability is that it might give state regulators authority to set specific guidelines for what interest rates and loan fees are unconscionable.

*Recommendation:* States should cap interest rates and loan fees for installment loans. The best and most transparent approach is to require the full APR, including not just interest but all loan fees, not to exceed a certain figure. A maximum rate of 36% might be appropriate for the smallest, shortest loans, such as those of \$1000 or less, and a 36% rate cap has widespread support and a long pedigree.<sup>28</sup> Larger or longer loans should have a lower cap. For example, the Alaska Small Loans Act prohibits loan fees and caps interest at 36% on the loan amount up to \$850; the interest cap is 24% on the remainder up to \$10,000.<sup>29</sup> Vermont's Licensed Lenders Act allows 24% on the first \$1000 and 12% on the remainder, or 18% on the whole balance, with no origination fees.<sup>30</sup>

Approximately the same limits on finance charges can be achieved by capping the interest rate and loan fees separately. This is a less desirable approach because it is less transparent, as the statute's stated interest rate will not accurately reflect the cost of the loan. If caps are structured this way (as is currently the case in most state installment loan laws), the caps should be calibrated to produce fee-inclusive APRs, *i.e.* full APRs, of no more than approximately 36% for the shortest, smallest loans, and lower APRs for longer or larger loans.

Regardless of the structure of the limit on finance charges, the statute should explicitly prohibit lenders from directly or indirectly charging any other fees or charges.

## ***B. Loan Packing and Flipping***

### ***1. Credit Insurance and Other Add-on Products***

Creditors often increase their profits on installment loans, without adding equivalent benefits to consumers, through the sale of credit insurance and other add-on products. The practice of cramming unnecessary products, such as low-value insurance, into a loan while retaining a large portion of the price of the add-on product is generally known as "loan packing."

Generally speaking, credit insurance is insurance that is sold by a lender and tied to the amount of a loan, with the proceeds going to the lender to pay off the loan. For example,

when there is credit life insurance on a loan and the borrower dies, then the insurance pays off the loan and there is no claim on the borrower's estate. When a loan includes credit property insurance, the proceeds are paid to the lender if the collateral for the loan is destroyed.

With most types of credit insurance, only a small part of each premium dollar paid by the borrower is used to pay claims, while the insurance company pays the lender more than half of each premium dollar in commissions and profit-sharing.<sup>31</sup> The profit-sharing

can take the form of back-end commissions or proceeds from a captive reinsurance scheme in which the lender pays the premium to the insurer, which in turn pays a portion of the premium to a reinsurance company owned by the lender (a captive reinsurer). Captive reinsurers are often organized in an offshore location that offers favorable tax treatment of profits.

The high proportion of the premium retained by the creditor is particularly inappropriate since the primary beneficiary of the insurance is the creditor. For example, credit life insurance means that the lender is repaid even if the borrower dies. Few states implement vigorous oversight of credit insurance premiums, so credit insurance represents a lucrative profit center for creditors.

Even though most of these add-on products are ostensibly voluntary, generally lenders achieve very high penetration rates—in some cases, nearly 100%.<sup>32</sup> If 100% of the borrowers are purchasing an unnecessary and exorbitantly priced product, that is a

good indication that the decision about whether to purchase the product is not really voluntary. Often lenders add the insurance products into every loan as a matter of course, and remove them only if the consumer notices them and objects.

Abuses common in the sale of credit insurance include:

- Adding credit insurance to loan contracts in such a way that consumers are led to believe that they have no choice but to pay for them.
- Exorbitantly expensive products. Most non-credit insurance product have loss ratios in the neighborhood of at least 70%, meaning that 70% of the premiums are paid back to consumers in claims. Credit insurance products typically have loss ratios of at best 44% to as low as 13%.<sup>33</sup>
- Back-end underwriting, in which credit insurance premiums are charged to consumers even when they do not qualify (for example, credit accident and health insurance provided to a disabled consumer). The insurer then denies the claims that consumers file, but keeps the premiums for all the other ineligible consumers.
- Selling more credit insurance than will be necessary to pay off the loan. This inflates the cost of the insurance premiums and the amount of the loan, increasing the interest charged for the loan, and the amount the consumer has to repay.
- Unfair methods of rebating unearned premiums, such as through the Rule of 78s (described in Section I(B)(2)).

With most types of credit insurance, only a small part of each premium dollar paid by the borrower is used to pay claims, while the insurance company pays the lender more than half of each premium dollar in commissions and profit-sharing.

Credit property insurance has been particularly subject to abuse. Gaps in the FTC's Credit Practices Rule mean that a creditor can take a security interest in certain items of the borrower's personal property even when it has little or no resale value. (See Section I(D)(1).) The security interest gives the creditor a justification for requiring that the personal property be protected from loss by property insurance. Insuring collateral that has little value and that does not actually secure the loan is just a way to increase the cost of credit for the borrower.

Debt protection products (debt suspension and debt cancellation agreements) are an add-on product of particular concern. With a debt suspension or cancellation agreement, the lender agrees, for a price, to cancel or suspend the debt upon the occurrence of certain events, such as the unemployment of the borrower. In contrast to insurance, the charge for a debt protection agreement is paid directly to the lender rather than to an insurer. Neither the charge nor the substance of the agreement is scrutinized by a state insurance department because debt cancellation and suspension agreements are considered banking products. There is little or no oversight of these agreements by state and federal banking regulators. As a result they are very expensive and provide little if any benefit to borrowers.

Regulations under the Truth in Lending Act allow the cost of credit insurance and debt protection products to be excluded from the APR as long as the agreement to purchase them is ostensibly voluntary and meets certain other minimal requirements.<sup>34</sup> These costs therefore fly under the radar, and act as a substantial, yet nearly invisible, increase to the cost of credit. States that allow lenders to charge consumers for debt protection products give the lenders an easy way to evade rate caps.

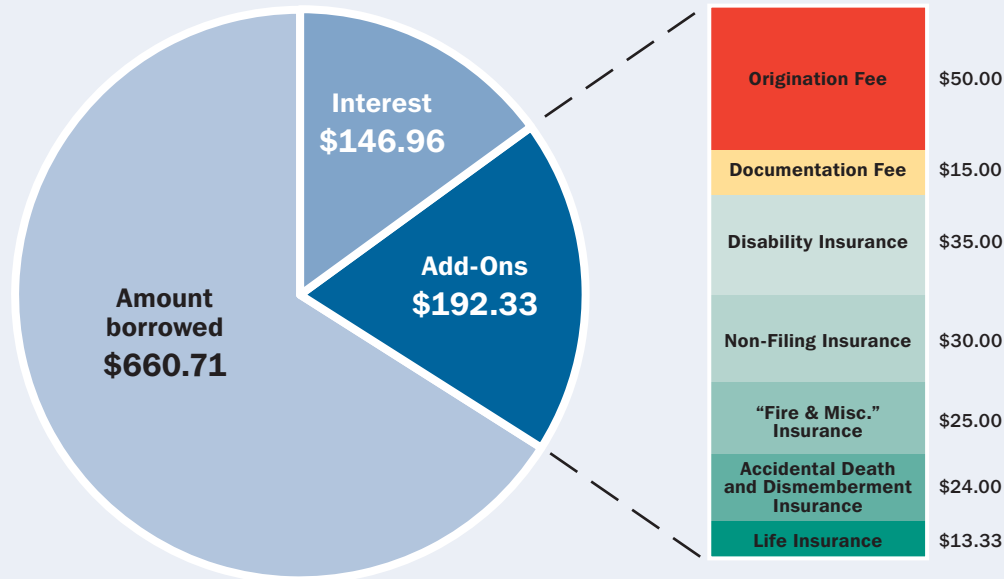
State installment loan laws vary widely in the add-on products they allow. Almost all states allow creditors to charge borrowers for at least some types of credit insurance. Only a few ban the inclusion of insurance in certain loans, and these prohibitions usually apply only to small loans with extremely high payday-style interest rates that other states ban altogether. Some states ban certain types of insurance—typically credit property insurance—for loans under a certain dollar amount, such as \$800. At the other end of the spectrum, some states allow the lender to charge for not only all types of credit insurance but also other types of insurance such as accidental death and dismemberment insurance, insurance on property other than the collateral, and life insurance that is unrelated to the loan. Hawaii allows lenders, with approval of the commissioner, to sell accidental death and dismemberment insurance, auto club memberships, and home and automobile security plans, whether or not related to the loan.<sup>35</sup>

A ten-month loan from Louisiana illustrates how packing of insurance and other add-on products can swell the cost of a loan. The loan included \$659.43 to refinance an earlier loan, plus the borrower received \$1.28 in cash. Then the lender added not only \$146.96 in interest but also \$192.33 in fees and insurance charges. If all of these charges are included in the calculation, the APR for the loan is 100%, not the 55% APR that the lender disclosed (see chart 3 on next page).

CHART 3

### How Add-Ons Swell the Cost of a Ten-Month Loan

\$1000 total repayment of obligation



*This example is taken from an actual loan made in Louisiana.*

Allowing add-on products can also encourage loan flipping. When a borrower refinances a loan, the lender typically cancels the existing credit insurance, gives the borrower a partial refund of the premium, places new insurance, and charges the borrower for the new insurance.<sup>36</sup> If the formula for the refund—the rebate formula—allows the lender to keep more of the insurance premium than has actually been earned, the lender has another incentive to refinance loans frequently. Flipping is discussed in Section I(B)(3).

When installment lenders sell credit insurance, they typically do not charge premiums month-by-month. Instead, they charge for the insurance on a “single premium” basis—that is, they charge the full premium up front for the full term of the loan, and then charge finance charges on that amount. Especially when the interest rate is high, the additional cost can be significant.<sup>37</sup> In addition, with financed single premium credit insurance, the borrower never sees a comparison between the total cost of the loan, or the monthly payment, with and without the credit insurance. As a result, consumers are not aware of the true cost and less able to evaluate the relative value for credit insurance. Fannie Mae and Freddie Mac have long prohibited the financing of single premium credit insurance in real estate lending, and Freddie Mac has characterized this practice as a predatory lending practice.<sup>38</sup> In 2010 Congress expanded this ban to all home mortgages.<sup>39</sup>



### *Recommendations:*

*Restrict sale of credit insurance.* State installment loan laws should prohibit lenders from selling or charging the borrower for any credit insurance. Lenders who want the protection of insurance should absorb the charge themselves.

*Restrict amount and scope of credit insurance.* To the extent the law allows credit insurance premiums to be charged to borrowers, the terms and costs should be strictly limited. Credit property insurance should not be allowed on household goods or personal items. Credit insurance coverage should not exceed the amount that will be owed on the debt if a claim is made. For example, since credit life insurance will pay the balance of the loan when the borrower dies, and will not have to cover interest that has not yet accrued, the insurance coverage should not include the unearned interest.

*Ban up-front premiums.* Premiums for credit insurance should not be charged up-front, but only on a month-by-month basis.

*Require reasonable loss ratios.* States should require loss ratios of at least 80% for credit insurance.

*Prohibit commissions and other profit-sharing.* States should prohibit the lender from having any financial interest in credit insurance other than the potential receipt of the proceeds in the event of a qualifying event such as the borrower's death or disability.

*Prohibit non-insurance debt protection products or impose significant restrictions.* States should prohibit the sale of debt protection products in connection with consumer loans. At a minimum, states should require these products to maintain an 80% loss ratio,<sup>40</sup> to be charged only month-by-month, and to cover no more than the amount that will be owed if a claim is made.

*Prohibit lenders from selling other add-on products.* States should prohibit lenders from selling add-on products such as auto club memberships and non-credit insurance that are not related to the loan.

*Require pro-rata or actuarial rebates.* If a loan is paid off early or refinanced, the lender should be required to rebate the unearned portion of the premium for any insurance-type product, using a pro-rata or actuarial formula, not the Rule of 78s. As discussed in the next section, the Rule of 78s unfairly favors the lender.

## **2. Rebate Requirements and Prepayment Penalties**

When a consumer pays off a loan early or refinances it, it makes sense that the consumer should be charged interest only for the amount of time that the loan was actually outstanding. Yet many state installment loan laws allow lenders to charge the consumer more interest than has actually been earned. The statute may explicitly authorize the lender to keep a certain amount of unearned interest, such as \$5 or \$10. The law may specify that certain loan fees do not need to be rebated. Or it may allow the lender to use an archaic method—the Rule of 78s—for approximating the amount of interest that has been earned.<sup>41</sup>

The Rule of 78s was developed in an era without computers. The rule is so named because it is based on assigning a number to each month in the loan term, and adding these numbers together. For a 12-month loan,  $1 + 2 + 3 + 4 + 5 + 6 + 7 + 8 + 9 + 10 + 11 + 12 = 78$ . The rule allows the creditor to attribute  $1/78^{\text{th}}$  of the interest to the last month of the loan,  $2/78^{\text{th}}$  to the second-to-last month, and so on. Then the rebate is computed based on the sum of these fractions. For example, if the consumer pays off the loan when just two payments are left owing, the rebate would be  $1/78^{\text{th}}$  plus  $2/78^{\text{th}}$  of the interest on the loan, for a total of  $3/78^{\text{th}}$  of the interest. For complicated reasons, this formula allows the lender to keep more of the interest than it has actually earned at a given point in time, *i.e.*, more than it has earned when calculated on an actuarial basis.

The need for a rebate of unearned interest upon prepayment arises when the loan note obligates the consumer to pay the principal plus the dollar amount that will be earned in interest and other charges over the life of the loan. When the borrower's obligation is structured in this way, the loan is termed a precomputed interest loan. If the borrower pays off the loan early or refinances, the lender must determine how much of the pre-computed interest should be rebated to the consumer.

For example, if the consumer borrows \$1000 at 10% interest, payable in monthly installments over a year, the interest will come to \$55.22. The loan obligation can be written in either of two ways—as an obligation to pay \$1000 at 10% interest, computed from time to time on the unpaid balance, or as an obligation to pay \$1055.22 (the \$1000 borrowed plus the \$55.22 in interest). In the latter case, the interest is computed in advance and built into the obligation. When a consumer pays off the loan early, the lender will have to figure out how much of the \$55.22 in precomputed interest should be rebated to the consumer.

Some states do not allow interest to be computed in advance and added to the loan note, but require the note to oblige the borrower to pay the principal at a specified rate of interest. For these interest-bearing loan obligations, there is no need to calculate a rebate upon prepayment, but a prepayment penalty can achieve the same result as a rebate formula that favors the lender.

Table 3 illustrates the difference between a Rule of 78s rebate and an actuarial rebate for a \$2000 24-month loan at 36% interest. The difference is the “Rule of 78s penalty”—the unearned interest that the lender is able to keep when a consumer refinances.

TABLE 3  
**Rule of 78s Penalty for 24-month \$2000 Loan at 36%**  
*Showing the difference between a Rule of 78s rebate and an actuarial rebate  
for a \$2000 24-month loan at 36% interest*

| IF LOAN IS REFINANCED AFTER... | RULE OF 78s PENALTY |
|--------------------------------|---------------------|
| 4 months                       | \$20.95             |
| 8 months                       | \$27.98             |
| 12 months                      | \$24.73             |

Where a rebate is required, the Rule of 78s produces an inaccurate calculation that always favors the lender. Moreover, some state lending laws increase the Rule of 78s penalty by allowing the lender to deduct some amount such as \$10 from the rebate.

A non-actuarial rebate, such as one calculated by the Rule of 78s, operates exactly the same as a prepayment penalty and has all the same negative effects. It increases the balance owed on a loan and deters consumers from paying loans off early. By deterring consumers from refinancing out of high-cost unaffordable loans, it reduces any incentive the lender may have to ensure that a loan is affordable.

Yet perhaps the most pernicious effect of the Rule of 78s is the way it encourages loan-flipping. Since the lender reaps the Rule of 78s penalty only when a loan is repaid early or refinanced, authorization of the Rule of 78s gives the lender the incentive to refinance early and often. Flipping is discussed in the next section of this report.

Because of its unfairness and the invisible way that it drives up the cost of credit, use of the Rule of 78s is prohibited by federal law,<sup>42</sup> but only for credit transactions longer than 61 months. Whether to abolish it for shorter-term loans is currently left to the states. Some states require actuarial rebates for all loans of whatever length, but many allow the Rule of 78s for all or most loans with terms less than 61 months. State laws also often require rebates only for interest and allow the lender to treat loan fees as fully earned upon consummation.<sup>43</sup> The rebate requirements under each state's installment loan laws are summarized in the Closed-End Installment Loan Summaries (Appendix C).

*Recommendation:* To limit incentives to flip loans and maximize fees, credit insurance and all finance charges, including both interest and fees, should be subject to rebate. The rebate should be at least a full actuarial rebate, reflecting the amount of interest that has actually been earned. However, states should also consider requiring *pro rata* rebates, which will create a positive disincentive to flip loans.<sup>44</sup>

To limit incentives to flip loans and maximize fees, credit insurance and all finance charges, including both interest and fees, should be subject to rebate.

### 3. Loan Flipping

In addition to the problems that fees and credit insurance cause by adding to the cost of a loan, some state credit laws lack controls to prevent creditors from compounding those problems by imposing multiple fees or charges through refinancing. The fees may be up-front loan charges that are treated as fully earned at consummation so they can be reimposed each time a loan is refinanced, without any rebate. In addition, inadequate rebate formulas, such as the Rule of 78s, may allow a lender to keep a portion of unearned interest or unearned credit insurance premiums when refinancing. These incentives encourage “loan flipping”—the practice of repeat refinancing—and drive up the true cost of borrowing. Loan flipping is a key part of the business model of high-rate installment lenders.<sup>45</sup>

### *How loan flipping works*

Several different devices can enable lenders to multiply the cost of a loan disproportionately when a loan is refinanced early. Each of these practices results in up-front charges being reimposed upon refinancing without earlier charges being rebated or otherwise being appropriately limited due to the shorter term of the original loan.

Origination fees that are treated as earned at consummation, and thus do not have to be rebated when a loan is refinanced, create a powerful incentive to flip loans. Particularly for loans in small dollar amounts, the repeated reimposition of origination fees causes the cost of the loan to escalate dramatically upon refinancing.

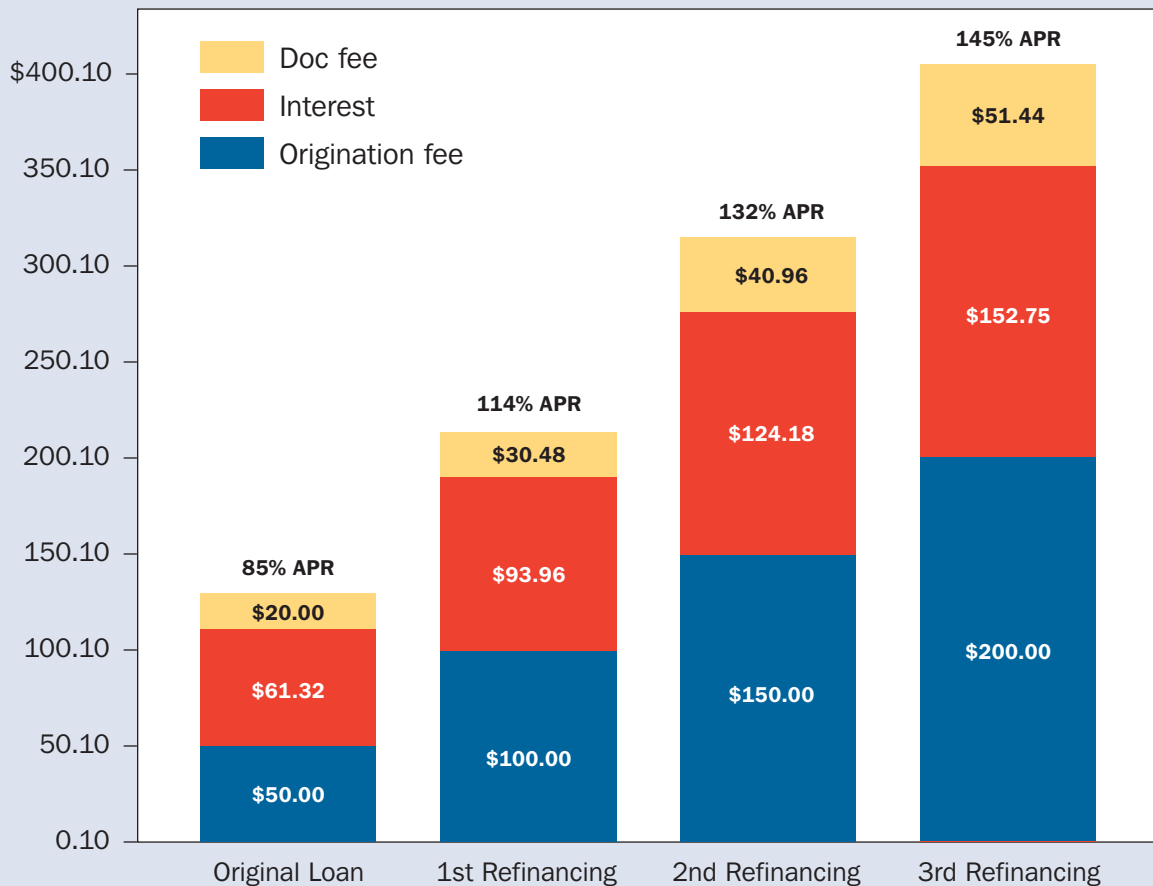
Another incentive to flip loans involves using the Rule of 78s to calculate the loan balance upon refinancing (by determining how much of the consumer's previous payments are allocated to interest and how much to principal). As noted in Section I(B)(2), a rebate of unearned interest upon prepayment is necessary when the loan note obligates the consumer to pay the interest expected over the entire life of the loan.

If a lender refinances a loan early and often, the Rule of 78s penalty alone can increase the APR significantly. For example, if a \$2000 two-year loan at 36% is refinanced three times, each time after three months, with no new credit extended, the effect of the Rule of 78s penalty—even without any origination fees or other charges—is to increase the APR from 36% to 38%. This increase does not come from stretching out the term of the loan, but from the addition of unearned interest to the loan balance at each refinancing. A two-point increase (which is not apparent to the borrower) can be significant, particularly if the lender is building up the principal by lending more at each refinancing. Allowing rebates to be calculated by the Rule of 78s encourages lenders to find the sweet spot—the point at which refinancing most increases the cost of a loan.

The cumulative effect of these incentives when a loan is repeatedly refinanced can be illustrated by two loans under the law of a sample state—Louisiana. Louisiana allows interest of 36% per year on the first \$1400 of a loan, and 27% on the remainder up to \$4000.<sup>46</sup> In addition, it allows a \$50 origination fee and a \$20 “documentation” fee to be added to the loan.<sup>47</sup> It allows the lender to use the Rule of 78s to calculate the rebate of unearned interest that is owed when a borrower refinances, and allows the lender to deduct \$25 before applying the rule of 78s as long as the prepayment occurs in the first half of the contract term.<sup>48</sup> No rebate of less than \$1 is required.<sup>49</sup> No rebate is required of the \$50 origination fee when a loan is refinanced, so the full \$50 fee can be charged each time.<sup>50</sup> Chart 4 (see next page) shows the effect of repeated refinancing on the cost of a \$500 six-month loan in Louisiana.

The three refinancings result in a 12-month loan for \$500 with a full APR of 145%. If the borrower had originally taken out a \$500 loan repayable over 12 months, the full APR would have been considerably lower—63%—and would have cost the consumer \$282 less. By flipping the loan, the lender has dramatically increased the cost of credit.

CHART 4  
Effect of Refinancing a \$500 Six-Month Louisiana Loan Three Times

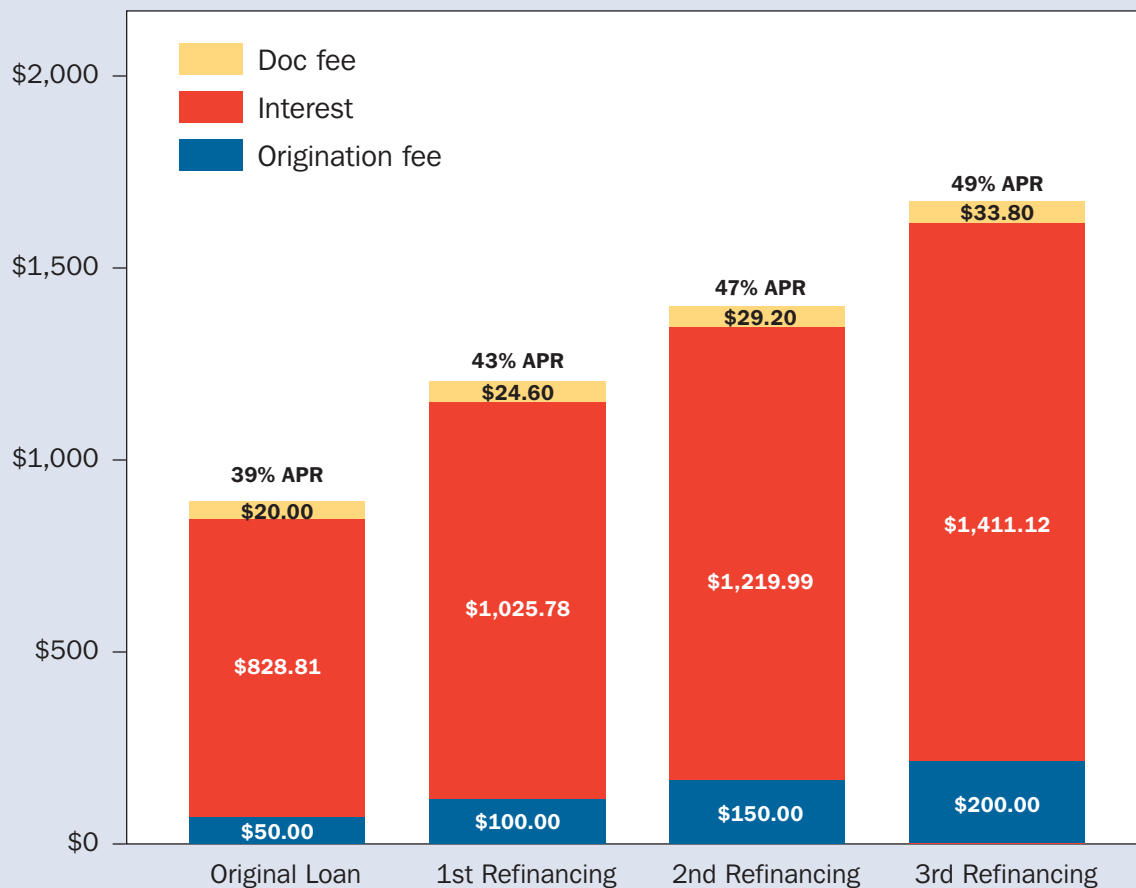


The example assumes that 1) the borrower refinanced the loan three times, each time after making the second payment; and 2) the borrower did not obtain any new money upon refinancing, but simply refinanced the remaining balance each time so that it would be repayable over six months. The result of the three refinancings is an increase in the repayment period from 6 months to 12 months.

Chart 5 (see next page) shows the effect of repeated refinancing on the cost of a \$2000 24-month loan in Louisiana. Flipping the \$2000 loan three times extends the repayment period to 33 months, and causes the full APR to increase from 39% to 49%. If the borrower had originally taken out a \$2000 loan repayable over 33 months, the full APR would have been just 36% and would have cost the borrower \$452 less.

These examples actually understate the effect of loan flipping, because they do not take credit insurance and other add-on products into account. Not only do these additional

CHART 5

**Effect of Refinancing a \$2000 Two-Year Louisiana Loan Three Times**

The example assumes that 1) the borrower refinanced the loan three times, each time after making the third payment; and 2) the borrower did not obtain any new money upon refinancing, but simply refinanced the remaining balance each time so that it would be repayable over six months. The result of the three refinancings is an increase in the repayment period from 24 months to 33 months.

charges increase the cost of the loan, but states' rules for rebating credit insurance premiums upon refinancing can build in an incentive to flip loans. Some states allow lenders to use the Rule of 78s when rebating credit insurance premiums upon refinancing, creating a second Rule of 78s penalty.

### *What factors increase the cost of credit when loans are flipped?*

The preceding examples illustrate the factors that increase the cost of loans when they are flipped and that incentivize lenders to flip loans:

- *Up-front loan origination fees that are treated as fully earned at consummation.* Up-front fees that are not rebated upon refinancing are the most significant factor in



increasing the cost of the loans in these examples. Up-front fees give lenders a significant incentive to flip loans.

- *Rebates of interest.* Inadequate formulas for rebating unearned interest, such as the Rule of 78s, build up the cost of credit when a loan is refinanced, particularly where the interest rate is high and the refinancing occurs early in the loan term. Reaping the “Rule of 78s penalty” by flipping loans can be part of a high-cost lender’s business model.<sup>51</sup>
- *Credit insurance premiums.* An inadequate formula for rebating credit insurance premiums will increase the cost of the loan in the same way as an inadequate formula for rebating unearned interest.

### *Interest-only payment schedules and flipping*

Payment schedules that are structured so that the borrower’s initial payments are applied only to finance charges, or cover only a tiny amount of principal, can also give lenders an incentive to engage in repeat refinancing. For example, an installment payday lender’s website discloses the following biweekly payment schedule:

TABLE 4  
Payment Schedule for Selected Loan Amount

| PAYMENT | PRINCIPLE<br>BALANCE | FEE BALANCE | TOTAL DUE | AMOUNT TO<br>PAYOFF |
|---------|----------------------|-------------|-----------|---------------------|
| 1       | \$300.00             | \$105.00    | \$105.00  | \$105.00            |
| 2       | \$300.00             | \$105.00    | \$105.00  | \$405.00            |
| 3       | \$300.00             | \$105.00    | \$105.00  | \$405.00            |
| 4       | \$300.00             | \$105.00    | \$105.00  | \$405.00            |
| 5       | \$300.00             | \$105.00    | \$105.00  | \$405.00            |
| 6       | \$300.00             | \$105.00    | \$130.00  | \$405.00            |
| 7       | \$275.00             | \$96.25     | \$121.25  | \$371.25            |
| 8       | \$250.00             | \$87.50     | \$112.50  | \$337.50            |
| 9       | \$225.00             | \$78.75     | \$103.75  | \$303.75            |
| 10      | \$200.00             | \$70.00     | \$95.00   | \$270.00            |
| 11      | \$175.00             | \$61.25     | \$86.25   | \$236.25            |
| 12      | \$150.00             | \$52.50     | \$77.50   | \$202.50            |
| 13      | \$125.00             | \$43.75     | \$68.75   | \$168.75            |
| 14      | \$100.00             | \$35.00     | \$60.00   | \$135.00            |
| 15      | \$75.00              | \$26.25     | \$51.25   | \$101.25            |
| 16      | \$50.00              | \$17.50     | \$67.50   | \$67.50             |

From an installment lender’s website, <https://www.castlepayday.com/loan-rates> (adjusting loan amount to \$300). “Principle” is misspelled in the original.

This schedule applies the borrower's payment entirely to a biweekly fee—a biweekly finance charge—for the first five payments (*i.e.* the first ten weeks of the loan), so that the borrower makes no progress whatever in reducing the principal. For the sixth payment, the schedule increases the borrower's payment so that it finally pays more than the biweekly fee and the borrower begins reducing the principal. From then on, the payment amount decreases a little each time, keeping the borrower indebted longer than would be the case if the payment amount stayed constant.

Early interest-only payments like this payment schedule also provide an incentive to flip loans. If a consumer who could not pay the higher payments that begin at month six refinanced the loan after the fifth payment—before any principal had been reduced—the refinancing would add five more payments and \$525 to the cost of the loan. After those five payments, the borrower still would not have reduced the principal at all.

This is just one example of the flipping incentives and the potential for perpetual debt that can occur when lenders have the ability to select non-standard payment schedules or manipulate the amount of a loan. For example, if a lender charges flat monthly fees rather than interest, it could charge higher fees in the early months of the loan, thereby front-loading the loan costs. In that case, the lender will have the ability not only to create long-term or perpetual debt by refinancing early and often, but will also increase the APR by doing so.

### State approaches to loan flipping

A number of state installment loan laws place some restrictions on the fees that creditors can charge when they refinance installment loans. One relatively common measure is to reduce the allowable origination fee, or prohibit it, when a loan is refinanced within a certain time period after origination.

A few state installment loan statutes, particularly those that allow high-rate installment lending, impose a waiting period or place a numerical limit on the number of times a loan can be refinanced during a given period. For example, for loans of \$4,000 or less that have APRs over 36%, the Illinois Consumer Installment Loan Act prohibits refinancing within the first 75 days.<sup>52</sup>

If a state imposes restrictions on the number of times a loan can be refinanced, it must be watertight and the state must create a robust system of monitoring. Payday lenders, whose business model depends on frequent re-lending, have been extremely creative in devising ways to evade these limits. They may consider the repayment of a loan followed immediately by a new loan not to be a rollover. Or the state may lack a database to keep track of rollovers. A CFPB study found that states that have cooling-off periods that limit same-day renewals have renewal rates that are nearly identical to states without these limitations.<sup>53</sup>

An even better approach is to eliminate the loan features that give lenders financial incentives to repeatedly refinance loans. Prohibiting up-front fees, requiring significant rebates, and requiring the loan to amortize so that the borrower pays off a reasonable

amount of principal every month can be more effective than giving lenders a financial incentive to flip loans and then trying to prevent them from doing so.

*Recommendations* The simplest way to deter loan flipping is to:

- completely prohibit up-front fees and add-on products;
- require an actuarial rebate of unearned interest when a loan with precomputed interest is refinanced; and
- require payments to amortize the loan on a regular schedule.

If the cost of a loan is charged entirely through a periodic interest rate with regularly amortizing payments, loan flipping will not increase the APR (although it will extend the term of the debt and increase the cost of the loan). A state that allows up-front fees should prohibit lenders from charging a new up-front fee upon refinancing or should require at least an actuarial rebate, and preferably a pro-rata rebate, of the previous up-front fees. The state should mandate similar measures with respect to any credit insurance or add-on products that the statute allows. The rate of interest that is allowed, and the amount of any credit insurance or up-front fees that are allowed, are also important—the higher the charge, the more the lender profits from flipping, and the greater the incentive to flip loans.

The simplest way to deter loan flipping is to:

- completely prohibit up-front fees and add-on products;
- require an actuarial rebate of unearned interest when a loan with precomputed interest is refinanced; and
- require payments to amortize the loan on a regular schedule.

## C. Repayment of the Loan

### 1. Weak Protections against Balloon Payments and Interest-Only Payments

Loans with manageable installment payments are a key feature of affordable lending. Single-payment loans and balloon loans are designed to be unaffordable and to encourage frequent refinancing and perpetual debt.<sup>54</sup>

Many state installment loan laws are surprisingly weak in their requirements regarding the payment schedule. A number of states require that loans be repayable in substantially equal installments, except when necessary to accommodate the borrower's seasonal or irregular income. However, often the requirement applies only to loans under a certain amount such as \$1,000. Consumers are likely to have at least as much trouble making a balloon payment after a series of installment payments on a large loan as they do making a balloon payment on a smaller loan. Many of the laws do not even require installment payments, so they could conceivably be interpreted to allow single-payment loans.

Another weakness of many of the state laws—even those that require substantially equal installments—is that they say nothing about the payments being amortizing (paying principal with each payment). Lenders could structure the loans so that the borrower's initial payments are applied only to finance charges, or cover only a tiny amount of principal. (See Section I(B)(3).) Non-amortizing payments prevent borrowers from making progress on their loans and paying them off early if they have extra cash.

To protect consumers, state laws should require consumer loans to be repayable in substantially equal, fully amortizing payments due at weekly, biweekly, semi-monthly, or monthly intervals.

Non-amortizing payments also magnify the effect of a high interest rate, because more of the principal is outstanding for a longer time.

*Recommendations* To protect consumers, state laws should require consumer loans to be repayable in substantially equal, fully amortizing payments due at weekly, biweekly, semi-monthly, or monthly intervals. It is reasonable to allow adjustments to accommodate the borrower's seasonal or irregular income, but to prevent evasions states should require that lenders document such income irregularities. States should prohibit creditors from structuring loans so that the borrower's payments are applied only or primarily to finance charges and should require that each payment make significant, regular progress in repaying principal.

## ***2. Only a Few States Require Any Evaluation of Borrower's Ability to Repay***

In a well-functioning market, the interests of lenders and borrowers are aligned. Lenders have an incentive to lend only to borrowers who are able to make the payments as scheduled. If the payments prove unaffordable, both the lender and the borrower lose.

Yet in certain credit markets, the lender's and the borrower's interests diverge. High interest rates, non-amortizing payments, and loan-flipping that builds up the cost of the loan and keeps the borrower in long-term debt can ensure profits for the lender even when many borrowers eventually default. Payments that are not affordable can be used affirmatively to push consumers to refinance, resulting in perpetual debt. Coercive repayment mechanisms like postdated checks and aggressive debt collection techniques often force borrowers to repay credit using money that is needed for necessities.

Lender incentives to make only loans that consumers are able to repay can even break down in mainstream markets. The recent mortgage crisis and the abuses that led to the 2009 Credit CARD Act are cases in point.<sup>55</sup> For that reason, recent reforms of both the mortgage and credit card markets have included ability to repay requirements.

Problems of unaffordable lending are especially acute in markets where high interest rates can protect a lender from losses that occur with high level of defaults. High profits on the loans from those borrowers who do repay, or who make a number of payments before defaulting, provide cover for more defaults than could be tolerated in a mainstream market with lower interest rates. Even high-rate loans that default can at times be profitable. As long as the lender can use techniques like preauthorized payments and collection threats to keep the borrower in the sweatbox—*i.e.*, paying the loan—for a significant period of time, the lender can collect enough revenue to cover the loan principal and a profit even if the borrower ultimately defaults.

Lenders target and manage the default rates in their loan portfolios, and high cost lenders typically have planned for high default rates. High rates can desensitize lenders to the pain suffered by large numbers of borrowers who struggle to repay unaffordable loans. This insensitivity is problematic regardless of how cause-and-effect run—whether

high rates cause high default rates or whether high default rates in subprime lending “cause” lenders to charge higher rates to cover those defaults.

High-cost loans can be unaffordable in the long term even if the payment could be managed in any given month. The burden of making payments month in and month out can make a loan unsustainable—and thus unaffordable—over the long term. The total cost of a high-rate loan can take resources that a cash-strapped family ultimately does not have, leading to default. High cost lenders may be more concerned with a short-term assessment of ability to pay over a few months rather than the borrower’s ability to sustain the payments and total charges over the life of the loan.

Loans that are designed and underwritten to be affordable are better loans for consumers. Ability to pay requirements can lead to loans with lower rates, in more manageable amounts, or with smaller payments and more time to repay. (But smaller payments can still result in unaffordable loans if the term is disproportionately long, as discussed in the next section.)

Solid underwriting can mean that some consumers, who have no extra money in their budgets for a loan payment, cannot obtain credit. That is appropriate. The consequences of lending without regard to ability to repay can be devastating. Failed loans cause great harm to borrowers: default charges, repossession, lawsuits, wage garnishment, and bank account garnishment. Borrowers who are unable to repay loans end up with bad marks on their credit reports that exclude them from mainstream credit and that can even affect their ability to rent an apartment, get a job, or get insurance. Credit cannot solve every problem or make up for a fundamental lack of income.

Despite the importance of affordability, only a few state installment loan statutes require lenders to make any evaluation of whether the borrower can afford to repay the loan. California,<sup>56</sup> Oregon,<sup>57</sup> Missouri,<sup>58</sup> and Texas<sup>59</sup> require lenders to determine or take into consideration the borrower’s creditworthiness or ability to repay an installment loan. The payday installment loan laws in Colorado<sup>60</sup> and Illinois,<sup>61</sup> and the Illinois installment loan act,<sup>62</sup> set standards based on the borrower’s income. New Mexico’s Small Loan Act requires lenders to report on their procedures to determine borrowers’ ability to repay their loans, but does not explicitly require lenders to make these determinations.<sup>63</sup> Hawaii’s industrial loan law requires lending to be “consistent with prudent lending practices.”<sup>64</sup> And Iowa’s<sup>65</sup> and South Carolina’s<sup>66</sup> lending laws list inability to repay as a factor the court may consider in determining whether a loan is unconscionable.

Most of these provisions lack specifics or teeth. Requiring a lender merely to consider the borrower’s ability to repay, without setting more specific standards, is unlikely to be effective in preventing unaffordable lending. Some of the provisions require only that the borrower’s income be considered, not the borrower’s other obligations and the amount of money left available each month. But even more specific ability-to-pay requirements by themselves may be less effective without structural limits on lending such as restrictions on interest rates, loan fees, loan packing, loan flipping, security interests, and loan duration. In addition, the effectiveness of a lender’s underwriting practices must be evaluated not only by looking the application process but also at how the

loans perform in practice, through a regular examination of the lender’s portfolio and business practices, followed by enforcement if appropriate.

*Recommendation:* Capping interest and fees at 36% or less is the simplest, most effective way to ensure that lenders appropriately consider ability to pay, because it gives the lender a low tolerance for defaults and an incentive to underwrite properly. Interest rate caps should be combined with other structural restrictions on loans to deter unaffordable lending.

Capping interest and fees at 36% or less is the simplest, most effective way to ensure that lenders appropriately consider ability to pay.

In addition, states should require lenders to design and underwrite their loans to ensure that the consumer has the ability to repay the loan according to its terms, in light of the consumer’s other expenses, without having to borrow again or refinance the loan. Determining ability to pay requires evaluating not only whether a payment can fit into the consumer’s monthly budget but also whether that payment—and the burden of the total amount of payments—is likely to be sustainable over the entire term of the loan. States should collect data on loan performance

in order to evaluate whether lenders are making affordable loans in practice rather than just on paper. Significant rates of defaults, refinancings, repeat borrowing, bounced payments or other indicators of distress show that the lender is lending without regard to ability to pay.

### 3. Restrictions on the Length of Loans

High interest rates are particularly problematic when imposed over a long period of time. Not only does a long term extend the burden of high rates, but it can result in payments that barely reduce principal because, according to standard amortization methods, initial periodic payments on the loan will consist almost entirely of interest.

The significance of the term of the loan is especially pronounced at triple-digit interest rates. A long loan term extends the burden of high rates, resulting in an enormous total cost that drains a family’s resources. For example, borrowing \$500 at 400% interest over two years will require 24 payments of \$166. That same payment amount — \$166—would pay off a hypothetical \$410 loan completely in just six months, even at the same 400% interest rate, saving the borrower \$2941 in interest.

TABLE 5  
**Comparison of Two-Year and Six-Month Loan at 400% Interest  
with \$166 Monthly Payment**

| PAYMENT<br>AMOUNT | INTEREST<br>RATE | NUMBER OF<br>PAYMENTS | AMOUNT<br>BORROWED | TOTAL INTEREST<br>PAID |
|-------------------|------------------|-----------------------|--------------------|------------------------|
| \$166             | 400%             | 24                    | \$500              | \$3527                 |
| \$166             | 400%             | 6                     | \$410              | \$586                  |



Keeping the loan length reasonable helps to ensure the borrower's ability to afford the total loan payments and to prevent the burden of the loan from outstripping its benefit. A \$500 loan that drains over \$3000 from a struggling family can be devastating to a household's overall financial health.

In addition, the longer the term, the more likely that the borrower will experience some event such as irregular income, illness, unemployment, or unplanned expenses that will lead to default. The longer the term, the more tenuous is any assessment of the borrower's repayment ability. This is especially true among the lower income, credit impaired consumers who would take out high cost loans. Many of those consumers will juggle part-time jobs with irregular hours or otherwise have income that is not dependable for the long term. Like other consumers, they are likely to have unplanned expenses arise, but they are less likely to have the capacity to meet those expenses.

A long term loan combined with high rates can also result in payments that barely reduce principal. Even with standard amortization methods, initial periodic payments on the loan will consist almost entirely of interest. For example, a one-year \$300 loan at 425% interest will have biweekly payments of about \$50. After six months, the consumer will have paid \$650 but only \$36 of that will go towards principal. The consumer has made extensive payments and has made almost no progress in repaying principal.

Extended periods of nearly interest-only payments defeat consumers' expectations about the progress they are making in repaying a loan and make it difficult for them to get out of a high-rate loan even if they have extra income. Many consumers expect to be able to pay off a loan early when they receive a tax refund, a bonus, or extra hours at work. They will not understand that after making \$650 in payments, they will have reduced the principal by only \$36. Even when they attempt to pay early or make extra payments, the loan will cost much more and take much longer than they expect.

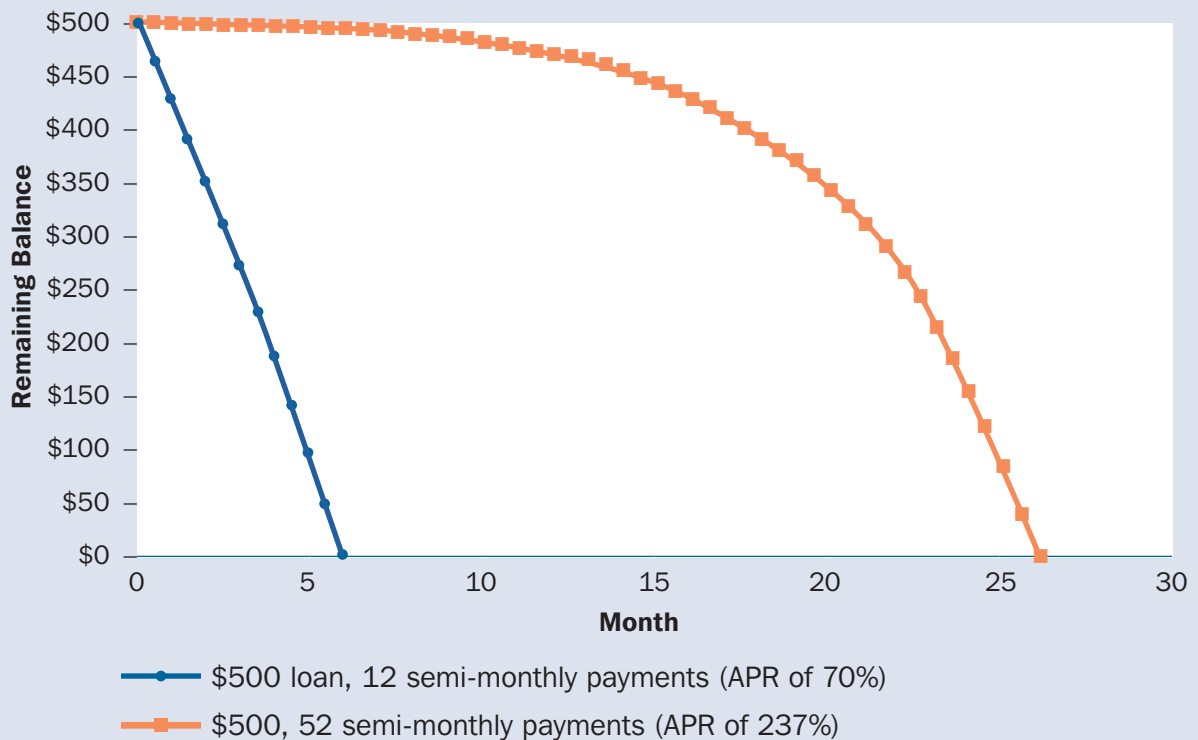
Chart 6 (see next page) contrasts two \$500 loans. Each requires payments of \$50 twice a month, but one has a term of six months, so requires twelve payments. The other has a term of two years, so requires 24 payments. After paying for four months on either loan (\$400 in payments), the borrower has reduced the principal of the six-month loan by \$314 but has reduced the principal of the two-year loan by only \$6. A consumer who has \$200 in extra pay or a tax refund could pay off the six-month loan after four months. The consumer could not do so on the two-year loan.

The higher the interest rate allowed on the loan, the shorter the maximum allowable loan term should be. Any justification for a higher rate is greatly reduced if the lender will collect interest over a substantial period. In addition, when considering ability to pay, a lower payment should be required if the consumer will be obligated to make that payment over a long period of time.

Of the statutes we surveyed, 26 impose restrictions on the length of the loan term.<sup>67</sup> Many statutes impose different restrictions depending on the amount of the loan, for example a cap of 25 months if the loan is \$1000 or less, and a cap of 37 months if the loan is greater than \$1000 but less than \$3000.<sup>68</sup> Many of the statutes restrict the length of the

CHART 6

**Remaining Principal Balance by Month  
\$500 Loan with \$50 Semi-Monthly Payments  
Six-Month v. Two-Year Term**



loan only if the lender charges the highest of several interest rates allowed by the statute. (These loans are often referred to as “supervised loans” and are typically subject to a number of special restrictions). In some states, there are several statutes allowing installment loans, and some may be subject to a limit on the length of the loan while others are not.

In addition, loans arranged by credit services organizations in Texas are limited to 180 days.<sup>69</sup> Hawaii limits the loan term to 48 months if interest is precomputed, in which case the statute allows use of add-on or discount methods of computing the maximum amount of interest that can be charged.<sup>70</sup> The distortions produced by these archaic methods of expressing a rate cap increase with longer loan terms. Similarly, Pennsylvania’s Consumer Discount Company Act prohibits use of the discount interest method if the loan term exceeds seven years and 15 days.<sup>71</sup> The add-on and discount methods of expressing a rate cap are described later in the “Lack of Transparency” section of this report (Section I(I)).

TABLE 6  
Maximum Length Allowed for \$1000 Loan

| LOAN TERM MAY NOT EXCEED... | STATES   |
|-----------------------------|--|
| 18 months                   | Oklahoma   |
| 24 to 26 months             | Alabama (Small Loan Act), Alaska, Colorado, Connecticut, Indiana, Maine, North Dakota, Rhode Island, South Carolina  |
| 36 to 38 months             | Alabama (Consumer Credit Act), California, Georgia, Idaho, Iowa, Kansas, Maryland, Nebraska, New Jersey, Tennessee, Texas (Consumer Loans), Wisconsin, Wyoming |
| 48 to 50 months             | Texas (Subchapter K)   |
| 60 to 61 months             | Kentucky   |
| 8 years                     | North Carolina   |

*Only the states that set maximums are included in this table.*

**Recommendation:** Restrictions on the length of loans should be calibrated to the amount of the loan and the cost of the loan. Assuming that a state has a fully-effective limit on the interest rate and loan fees so that the full APR does not exceed 36%, an outer limit of 24 months for a loan of \$1000 or less and 12 months for a loan of \$500 or less might be appropriate. A number of existing state laws impose a 24-month limit on a loan of \$1000, and a 12-month limit on a loan of half the size would be consistent with that limit. Longer terms should be allowed for larger loans, broken down by tiers, and for loans with very low interest rates. In addition, as noted, the lender must be required to ascertain that the borrower can afford the payment amount through an analysis of income and other obligations, anticipating income and expense fluctuations likely to take place over the course of a longer term loan.

Restrictions on the length of loans should be calibrated to the amount of the loan and the cost of the loan.

## D. What Security Can the Lender Take?

### 1. Restrictions on Collateral

Another key question is what collateral a state installment loan law allows a lender to take. Until the FTC's Credit Practices Rule<sup>72</sup> took effect in 1985, small loan companies made a practice of taking a security interest in the borrower's household goods. If the borrower defaulted, the lender would threaten to repossess the borrower's beds, dressers, stove, refrigerator, and other essential household goods. These items had little or no resale value, so the primary purpose of taking the security interest was not to secure the loan but to be able to threaten debtors with loss of all their household goods. A secondary purpose was to enable the lender to sell high-priced credit property insurance on the

collateral—again, not for the purpose of insuring collateral that had little or no value to the lender, but in order to reap the commissions from the insurance.

The Credit Practices Rule prohibits consumer lenders from taking non-purchase money security interests in household goods, but it has many gaps. It applies only to a closed list of household goods. The list has not been updated since the rule was promulgated and so it completely fails to reflect the electronic age. It does not prevent lenders from taking security interests in items such as mobile phones, computers, tablets, cameras, or even cars, child car seats, lawnmowers, carpets, and tools.<sup>73</sup>

Motor vehicles, in particular, have been used to secure high cost loans in recent years. In states that have restricted payday lending, some lenders have moved to auto title loans.<sup>74</sup> (See Section I(K)(2).) The threat of losing a car, which can cause devastating consequences—even the loss of a job—frequently induces consumers to roll these loans over when they come due, creating a long-term cycle of debt.<sup>75</sup>

The Credit Practices Rule does not preclude states from protecting more types of personal property from security interests, and some states have done so. For example, Maryland’s Consumer Loan Law prohibits security interests in any personal property, not just in household goods, for loans under \$700.<sup>76</sup> However, most state installment loan laws do not include any such restrictions.

A number of state installment loan laws prohibit lenders from taking the borrower’s home as collateral for loans below a certain dollar amount such as \$3000. Especially when the installment loan law allows relatively high rates, these prohibitions are important to avoid excessive risk to borrowers and their families.

### *Recommendations*

*Household goods.* To prevent lenders from taking security interests in goods that are of value only to the debtor and that enable the lender to pack the loan with worthless high-cost credit property insurance, states should prohibit installment lenders from taking security interests in any household goods.

States should prohibit installment lenders from taking security interests in any household goods.

*Vehicles.* States should not allow high-rate loans secured by a vehicle. And, for any loan, regardless of the rate, states should be wary of loans that are secured by a vehicle but are not for the purpose of purchasing or repairing the vehicle. Such loans should be allowed, if at all, only at the lowest interest rates, and with strong protections against avoidable repossession.

*The borrower’s home.* States should also prohibit installment lenders from taking a security interest in the borrower’s home except for low-rate loans above a dollar threshold such as \$3000.

## 2. Post-dated Checks and Preauthorized Payment Methods

Payday loan statutes typically authorize the lender to secure the loan with a post-dated check. Most state installment loan laws were passed long before payday lenders began operating in the state and do not authorize post-dated checks. A few state installment loan laws limit the types of “instruments” that a lender may require as “evidence” of the debt, but these appear to be intended to prevent lenders from requiring consumers to sign negotiable instruments that would cut off defenses because of the holder-in-due course doctrine.<sup>77</sup>

Instead of taking post-dated checks, some lenders—particularly on-line payday lenders—take the borrower’s preauthorization for electronic payments. Although the federal Electronic Fund Transfer Act (EFTA) prohibits a lender from requiring repayment by recurring, preauthorized electronic transfers,<sup>78</sup> lenders are permitted to offer a discount as an incentive.<sup>79</sup> For example, some credit unions make loans at 21% but will discount that rate to 19% if repaid electronically. Many online high-rate lenders use more coercive techniques, such as refusing to disburse the loan electronically (making the consumer wait for a paper check in the mail) if the consumer does not agree to repay electronically. Some lenders have also imposed high fees to exercise the option to pay under than electronically. Such tactics may well violate the EFTA’s compulsory use ban.<sup>80</sup> That Act also gives consumers the right to revoke authorization and stop payment of electronic payments.<sup>81</sup>

Some lenders also use remotely created checks (RCCs)<sup>82</sup> as a back-up payment method if a consumer revokes authorization of an electronic payment.<sup>83</sup> RCCs are paper checks created by the lender that, in the place of the borrower’s signature, have a statement such as “authorized by the drawer.” Consumers do not have the same clear rights with respect to RCCs as they do for electronic payments under the EFTA.

Post-dated checks and other preauthorized payment methods can be used to mask inability to pay and generally subject consumers to harmful consequences. The lender has a strong likelihood of being paid whether or not the consumer can afford to make the payment at the time, jeopardizing the consumer’s ability to meet other expenses and causing other checks to bounce. If the payment to the lender bounces or the consumer stops payment on it, the consumer faces high bank fees. Lenders who hold post-dated checks also frequently threaten consumers with criminal prosecution for passing a bad check if the consumer stops payment on it or it bounces, even though the lender required the check and probably knew the account did not have sufficient funds at the time it was written, and the consumer likely intended to make good on it.<sup>84</sup>

**Recommendation:** States should not permit lenders to secure loans with post-dated checks, RCCs, or coerced electronic repayment. These payment devices should not be permitted either as a primary repayment method or as a back-up method to extract payment in the event that the consumer revokes authorization for an electronic payment.

States should not permit lenders to secure loans with post-dated checks, remotely created checks, or coerced electronic repayment.

The EFTA should be interpreted to ban all but a modest monetary discount as an incentive for preauthorized electronic payments. States should prohibit lenders from delaying delivery of the loan proceeds or using other measures beyond a minimal rate discount to provide incentives to agree to electronic repayment.

### 3. Wage Assignments

A wage assignment is an agreement by the debtor for his or her employer to deduct payments on a debt from the debtor's wages. Unlike wage garnishment, a wage assignment does not require a court order of any sort. The creditor simply sends the wage assignment to the employer, who pays a portion of the debtor's wages to the creditor on each payday.

States should prohibit wage assignments, including payroll deduction, for loans over 36% (or lower for larger loans).

The FTC's Credit Practices Rule<sup>85</sup> prohibits wage assignments in consumer credit transactions, but with several significant exceptions. It allows a wage assignment if it is by its terms revocable at the will of the debtor; if it is a payroll deduction plan; or if it applies only to wages already earned at the time of the assignment.

Even with the FTC's restrictions, wage assignments can be used abusively. A high-cost lender may obtain the debtor's signature on a wage assignment, and then threaten to present it to the borrower's employer if the borrower does not pay. Indeed, a high-cost lender in Illinois has borrowers sign wage assignments that explicitly apply if the borrower defaults.<sup>86</sup> Borrowers may fear discharge or other adverse employment action (which the Credit Practices Rule does not explicitly prohibit) if the employer learns of the debt and the debtor's default. Moreover, even though the FTC rule requires wage assignments other than payroll deduction plans to be revocable, it does not require that the borrower be notified of this right. Nor does it limit the amount of a debtor's wages that can be assigned.

Wage assignments through payroll deduction plans can also be used as a substitute for underwriting for ability to pay. A lender who is guaranteed repayment by the right to skim the worker's wages before they are paid does not need to determine if the borrower can afford to repay the loan or has other debts or necessities that preclude taking on another expense. Indeed, some payday lenders are shopping high-cost payroll deduction loans to employers as an employee "benefit." Some responsible lenders who make low rate loans also do so through payroll deduction or split direct deposit. But, in addition to charging a low rate, the better lenders will assess ability to pay, looking at expenses and not just income, and will give the employee the right to cancel the deduction or direct deposit.

Many state installment loan laws prohibit wage assignments altogether. State labor laws may also prohibit payroll deduction plans for loans. Some payday lenders are seeking changes to or exemptions from such laws. A payroll deduction for a loan made through an employer may also result in a violation of state or federal minimum wage laws.



*Recommendation:* States should prohibit wage assignments, including payroll deduction, for loans over 36% (or lower for larger loans). In addition, if a state allows payroll deductions for loans, the deductions should be voluntary and revocable, and the consumer should be clearly informed of these rights and how to revoke authorization. States should not alter their rules for payroll deductions in order to accommodate high-cost payday-loan-style workplace loans.

### *E. Late Fees and Post-Maturity Interest Rates*

Our study looked at fees that the borrower is bound to pay, and did not analyze state lending laws' provisions about late fees. However, it is common for state installment loan laws to limit late fees. A typical approach is to limit the late fee to a dollar amount specified in the statute or a percentage of the missed payment, whichever is less.

Late fees that exceed the lender's losses caused by the late payment can drive up the cost of credit. If the late fee is high enough, it can even act as an incentive to the lender to make unaffordable loans. This is particularly so if the lender has obtained electronic access to the borrower's bank account, so that it can withdraw the late charge directly.

An important related protection is to limit the interest rate after loan maturity—*i.e.* after the original due date of the final payment—to the legal interest rate or some other low rate. If a creditor can continue to earn a high interest rate after a consumer defaults, the creditor has less incentive to ensure that the loan is repayable when made. The consequences of an unaffordable loan also escalate dramatically for a borrower who defaults.

A number of state credit laws have such a provision.<sup>87</sup> In addition, a statutory provision limiting the term of a loan may be construed to prohibit the lender from charging interest at the statutory maximum past the length of the maximum term. However, some states allow loans to accrue interest at triple-digit contract rates for years, long after the original maturity date of the loan. For example, a Missouri consumer borrowed \$100 in late 2006 but soon fell behind on payments. When the lender sued two and a half years later, it won a judgment for \$913, because the debt had continued to accrue interest at 200%. The lender then garnished the borrower's wages for years, but after nearly \$3600 in payments she still had not cleared the debt.<sup>88</sup>

*Recommendation:* Late charges should be limited to modest and reasonable amounts. An appropriate provision would be one modeled after a provision in Ohio's Small Loan Act that limits late fees to 5% of the required minimum payment or \$5.00, whichever is greater.<sup>89</sup> The state lending law should require the interest rate to revert to the legal rate or some other low rate upon loan maturity.

Late charges should be limited to modest and reasonable amounts.

### *F. Licensure Requirements*

Licensure requirements are an important way for states to determine which lenders are operating in the state and whether they are complying with the state's laws. Checking

for a license is also a simple way for third parties (such as banks and payment processors) to avoid involvement with potentially illegal lenders.

All states except Arkansas impose licensure or registration requirements on installment lenders other than depository institutions. Some states require licensure for any entity engaging in the business of consumer lending, while other states require licensure only if the lender makes loans at interest rates above a certain threshold. A handful of states require registration rather than licensure. Arkansas does not require licensing or registration, but also limits finance charges to 17%, so it does not allow high-cost lending.

The consequences of non-licensure are also important. In some states, a loan made without a required license is void, and the borrower has no obligation to pay principal, interest, or other charges. Collecting on a void loan is unlawful. These provisions enhance enforcement of the state lending law and the protection of consumers.

States should retain their licensure requirements for non-depository lenders. To ensure enforcement, state statutes should make all loans made by unlicensed lenders void.

Some statutes void the loan indirectly, by providing that a lender can charge interest over a certain amount only if the lender is licensed, and providing that a loan that includes illegal interest is void. In other states, the borrower is relieved of the obligation to pay the interest or charges, but still must repay the principal. Some states do not specify any consequence of non-licensure.

Licensing requirements with consequences make it easier to identify renegade lenders and to stop their collection activity. Though some lenders try to evade licensing requirements by affiliating with Native American tribes, the Supreme Court has held that states can require licenses of tribal businesses off-reservation,

and that states have the power to seek injunctions and take other actions to stop unlicensed activity.<sup>90</sup>

*Recommendation:* States should retain their licensure requirements for non-depository lenders. To ensure enforcement, state statutes should make all loans made by unlicensed lenders void.

### G. Reporting Requirements

Most states require annual reporting by installment lenders, and provide for some level of supervision by state regulators. However, the reporting requirements vary widely, and generally do not require information about defaulted loan rates, a critical indication of unaffordable lending. Some states do not mandate periodic reports by licensed or registered lenders, but give regulators the authority to request reports.

*Recommendation:* States should require uniform reporting, in a uniform data format, including the following information on an annual basis for all loans made in each calendar year. Lenders should be required to report the number of loans, broken down by the year in which the loan was made and by:

- the APRs charged
- the length of the loan

- the types of security taken (including any post-dated check or ACH authorization, if not prohibited by the statute)
- refinancings (including new money lent) and whether the refinancing followed a default
- the amount of late fees
- the number of loans, broken down by loans to new borrowers vs. loans to existing borrowers and by size and type of loan
- the number of borrowers and the number who default, broken down the same way
- the dollar amounts lent and repaid by consumers
- ancillary products sold, including insurance sold and premiums paid

Information about defaults should be provided based on the numbers of loans and the number of borrowers, rather than dollar amounts. Reporting by dollar amount can mask a high default rate if defaults are primarily occurring on small dollar loans or after consumers have repaid a portion of the loan. The information reported should be made publicly available.<sup>91</sup>

#### *H. Enforceability*

Our study does not catalog the enforcement provisions of state laws. However, enforceability is a critical provision of state installment loan laws. A right without a remedy is no right at all. Enforcement is particularly important in the lending arena as evasion attempts are so common.

State regulators should have broad and flexible enforcement powers, including the ability to seek injunctions, issue civil penalties or fines, order refunds, and revoke a lender's licensure. Consumers should also have the ability to enforce the provisions of state lending laws that are intended to protect them.

A particularly important provision is that loans that violate state rate caps or are made without a state license (see Section I(F)) should be deemed void and uncollectible, with any payment authorization also deemed void. (If an electronic payment deducted by a lender is unauthorized, then the consumer has the right under federal law to demand that her bank reverse it.) Many state lending laws have provisions making illegal loans void, but not all do. In some states a loan is void only if it is made by an unlicensed entity, not if it exceeds the statutory rate caps.

**Recommendation:** State lending laws should provide for enforcement both by state regulators and by consumers, and should provide that a loan is void and uncollectible if it violates the state rate cap or is made without a license.

State lending laws should provide for enforcement both by state regulators and by consumers, and should provide that a loan is void and uncollectible if it violates the state rate cap or is made without a license.

## I. Lack of Transparency

A significant weakness of many state installment loan laws is their lack of clarity. Some were originally adopted in the 1920s. Many have been amended repeatedly and on a piecemeal basis over the decades. Inconsistencies, obscure terms, and archaisms abound. Some offer a highly confusing array of alternate limits on finance charges. West Virginia provides for five different alternative rate schemes: a series of actuarial rates ranging from 18% to 31% depending on the size of the loan and whether it is secured by real estate; 6% add-on interest; 6% discount interest, capped at 15% actuarial; a floating rate based on the federal discount rate; or 18% actuarial.

State installment loan laws often obscure the true cost of credit. For example, some state laws set what appears to be a reasonable interest rate cap but then render it meaningless by allowing uncapped loan fees. Others use an archaic “add-on” or “discount” formula to define the interest rate cap. These formulas may appear reasonable, but they do not reflect the true actuarial interest rate: 24% “add-on” interest for a one-year loan of \$1,000

amounts to 41% actuarial interest, and 24% “discount” interest amounts to 53% actuarial. (The reason is that both add-on and discount interest are calculated without taking into account the fact that the loan balance will decline because of the consumer’s payments.<sup>92</sup>) In addition, as discussed in Section I(B), state installment loan laws may be subtly structured to encourage loan flipping, a nearly invisible way to increase the cost of credit.

While the incomprehensibility of current state laws likely arose inadvertently over time, payday lenders and their legislative allies have been pushing new installment loan bills that deliberately obscure the cost of the loans. These bills raise interest rates dramatically to triple digit levels, but do so in a fashion that makes it hard to understand, and easy to feign ignorance, about what legislators are doing. For example, in 2014 Tennessee enacted an open-end credit law that purports to limit interest to 24%, but allows an additional 0.7%—defined by the statute not to be interest—to be charged per day. The two periodic charges together come to 279% per year.<sup>93</sup>

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**Recommendation:** If state installment loan laws are amended, legislators should insist on straightforward rates without fees or other complexities. Legislators should be suspicious of amendments that do not clearly and simply spell out the full rates permitted.

## J. Anti-Evasion Provisions and Internet Lending

Many state installment loan laws include anti-evasion provisions.<sup>94</sup> Given the inventiveness of high-cost lenders who seek to evade state credit laws, a strong, flexible anti-evasion provision is a key element of any effective installment loan law.

Loan size issues deserve particular attention. A number of states have stronger substantive protections for loans below a certain amount. For example, South Carolina caps

If state installment loan laws are amended, legislators should insist on straightforward rates without fees or other complexities.

interest rates only for loans of \$600 or less. Lenders may try to evade these protections by lending more than the consumer wants, and then encouraging the consumer to use the excess proceeds to make several payments early. In these states, the anti-evasion provision should include a prohibition against lending more than the consumer requests and a presumption that early repayments of principal show evasions.<sup>95</sup>

Another evasion involves loan-splitting. If the lending law, for example, allows a higher interest rate on the first \$1000 of a loan than on the remainder, a lender may seek to split a \$1500 loan into two \$750 loans in order to charge the higher rate on the full \$1500. Many state lending laws specifically prohibit loan splitting.<sup>96</sup>

Internet lending is a common means of evading state consumer credit protections. While many states have been successful in applying their laws to loans made to state residents by out-of-state lenders, some courts have struggled to determine what state's law applies to loans made through the internet.

Another evasion involves teaming up with a Native American tribe, or a member of the tribe. Under the doctrine of tribal sovereign immunity, tribes may be immune from certain lawsuits under state law.<sup>97</sup> Payday and high-cost installment lenders that affiliate themselves with tribes claim that state laws and licensing requirements do not apply to them. However, sovereign immunity only means immunity from a lawsuit, not an exemption from compliance with the law. The Supreme Court has been clear that "Indians going beyond reservation boundaries" are subject to any generally applicable state law," and that the state "has many other powers" beyond suing the tribe directly.<sup>98</sup> Thus, if state law so provides (see Section I(H)), a loan made by a tribal lender may be void if it violates state law. Tribal immunity also does not apply to nontribal entities involved with an illegal loan, such as a third-party debt collector or a bank that processes or permits a lender to debit an illegal or unauthorized payment.

*Recommendation:* State installment loan laws should include strong, flexible anti-evasion provisions, including prohibitions against loan splitting and against lending more than the borrower requests. To ensure that their protections are meaningful, states should adopt watertight rules applying their laws to all loans made to state residents, whether through in-state offices or through electronic or telephonic means.

#### *K. Other Ways to Make Installment Loans: Payday Installment Loans, Auto Title Loans, and Credit Services Organizations*

The preceding analysis of state installment loan laws would not be complete without a discussion of three other means by which a high-cost six-month \$500 loan may be made in some states. In some states, a payday installment loan law, a vehicle title loan law, or a credit services organization (CSO) law allows lenders to make installment loans that are considerably more expensive than the rates permitted under the state installment loan statute.

State installment loan laws should include strong, flexible anti-evasion provisions, including prohibitions against loan splitting and against lending more than the borrower requests.

## 1. Payday installment loan laws

Although payday loans are typically very short-term, balloon-payment loans, in a few states lenders are making longer-term installment loans secured by a post-dated check or the electronic equivalent. In Texas, lenders make payday installment loans for terms up to 180 days under a state credit services organizations law. (See Section I(K)(3)). There is no limit on the credit service organization's fee, so there is no effective cap. In Ohio, payday installment loans are made both under a general lending law and through credit services organizations. New Mexico's payday loan statute allows payday installment loans with terms up to 35 days, and Wisconsin's allows them with terms up to 90 days. There are also reports of payday installment loans, either open-end or closed-end, in Delaware and some of the other states that do not cap interest rates on installment loans or open-end credit.

Illinois and Colorado have relatively new statutes that specifically allow payday installment loans. The Illinois statute allows a full APR of 435% for a payday installment loan, and allows the term of the loan to be as long as 180 days. By comparison, Illinois's installment loan laws limit the full APR for a six-month \$500 loan to 99%. The Colorado payday loan statute, which allows loans up to \$500, includes a complicated rebate requirement that, along with other provisions, has largely induced lenders to abandon single-payment payday loans in favor of six-month installment loans. The law allows a full APR up to 180% for a six-month \$500 loan,<sup>99</sup> as compared to 90% under the state's installment loan law.

In other states, payday loan statutes are structured in a way that makes them unlikely candidates for high-rate installment lending. A limit on the length of the loan may be built into the statute. Or the rate structure may dramatically reduce the lender's return if it makes loans with longer terms, giving payday lenders the incentive to make numerous short loans instead of longer ones. For example, under a payday loan law that allows the lender to impose a finance charge of \$15 per \$100 borrowed, the full APR for a \$500 loan is 780% if the loan is payable in one week, and 390% if it is payable in two weeks. If the \$500 plus the \$75 finance charge is payable in six monthly installments of \$95.83, the full APR is 50%.

TABLE 7  
Full APR for \$500 Loan under Law Allowing Finance Charge of \$15 per \$100

| PAYABLE IN...          | FULL APR |
|------------------------|----------|
| 1 week                 | 780%     |
| 2 weeks                | 390%     |
| 6 monthly installments | 50%      |



While this report does not analyze the laws under which lenders are making payday installment loans, policymakers should take these laws into account when addressing installment lending. If the payday loan law is usable as a method of making high-rate installment loans, it will provide a path for lenders to evade any protections in the installment loan law.

*Recommendation:* State installment loan laws should clearly spell out their relationship to other lending laws. For example, an installment loan law could provide that, notwithstanding any other law, all loans that meet the scope requirements of the installment loan law (e.g., loans up to \$5000 made to consumers) are governed by that statute, unless the lender is specifically excluded.

## 2. Auto title loans

A number of states also allow high-rate loans secured by a vehicle.<sup>100</sup> These loans are often termed auto title loans even though they are actually secured by the motor vehicles, not the titles; the titles simply reflect the security interests. These lenders take non-purchase security interests in the car; in other words, the loans are made for a reason other than to purchase the car, and the lender has a security interest in the car as protection against non-payment. These loans are less ubiquitous than payday loans, because they are only available to borrowers who have cars. Many states prohibit these loans altogether. Others limit their duration to short terms. But in other states, auto title lenders have begun making high-rate loans structured as multi-payment loans rather than single-payment loans.<sup>101</sup>

In the states that allow them, longer-term high-rate loans secured by a vehicle can be used as a way to evade protections built into state installment loan laws. The loans are dangerous for consumers because of the very high rates that are charged, the very low loan-to-value ratio between the money received in the loan by the borrower as compared to the value of the car, and the severe consequences that loss of a car causes to a low-income consumer.

States should not allow high-rate loans secured by a vehicle.

*Recommendation:* States should not allow high-rate loans secured by a vehicle.

## 3. The credit services organization loophole

Another potential evasion is the credit services organization loophole. About 30 states have laws regulating credit services organizations.<sup>102</sup> These laws, although primarily aimed at “credit repair” operations, often include within their scope companies that arrange extensions of credit for consumers. If these laws are not written tightly enough, they can offer lenders a way to evade interest rate caps. The lender makes a loan through a CSO, a purportedly separate third party that arranges or brokers loans from other entities for a fee. The borrower must pay the CSO fee—which can be higher than the cost of the loan itself—on top of the interest rate and any other fees for the loan.

Payday lenders in Texas and Ohio are operating under this model and charge fees that far exceed state interest rate caps. For example, in Ohio’s Small Loan Act would limit

the full APR to 39% for a six-month \$500 loan, and its Second Mortgage Loan Act would limit it to 43%. For a two-year \$2000 loan, the allowable full APRs would be 28% and 31%. However, these caps are ineffective in Ohio because the state allows CSOs to charge an additional—uncapped — fee for arranging a loan.<sup>103</sup>

The CSO's fee is obviously a cost of credit, and should be included in any calculation of the APR to determine the true cost of credit to the consumer. While CSO fees are encompassed within the APR as defined by Regulation Z under the Truth in Lending Act, some states permit these fees to be in addition to the charges allowed by the lending statute. If a state allows a CSO to charge fees on top of the maximum interest rate and origination charges authorized by the installment loan law, it renders any protections against high-cost unaffordable lending illusory.

*Recommendation:* States should ban CSO fees or should include all fees, including CSO fees, in their rate caps.

## II. STATE OPEN-END CREDIT LAWS

### A. Why State Open-End Credit Laws Are Important

The state installment loan laws discussed in Section I of this report cannot be considered in isolation. Forty-four states have at least one statute that allows non-bank lenders to extend open-end credit. If a state open-end credit statute places fewer limits on high-cost lending than its installment loan law does, high-cost lenders are likely to attempt to structure their loans as open-end credit.

For example, the APR disclosure required under the federal Truth in Lending Act (TILA) for open-end credit consists solely of periodic interest, and does not include the impact of fees. Thus, it can dramatically understate the cost of credit. As a result, there is a history of attempts by lenders to structure credit as open-end as a way of avoiding effective disclosure.<sup>104</sup> Federal regulators have not been successful in defining open-end credit strictly enough to avoid this abuse.

A similar problem occurs with state open-end credit laws. Some of these laws cap “interest” or “rates” for open-end credit without clearly including all fees in the cap, or have no caps at all. These laws invite high-cost lenders to structure their loans as open-end credit.

For example, in 2006, after federal regulators required banks to stop allowing the “rent-a-bank” model that payday lenders had used in Pennsylvania, Advance America attempted to return to the state with an open end product that offered a \$500 line of credit. The company charged just 5.98% periodic interest (slightly below the legal rate of 6%) on the amount of credit extended, but also charged a \$149.95 monthly fee, for an effective interest rate of 431%.<sup>105</sup> State regulators eventually won a court decision that not just the interest but also the monthly fee had to fall within the state's interest rate cap,<sup>106</sup> but the episode illustrates the likelihood that high-cost lenders will seek to use open-end credit laws if single-payment payday loans are prohibited.

The weakness of TILA's APR calculation and disclosure requirements for open-end credit make state open-end credit laws a particularly enticing vehicle for high-cost lenders. TILA and Regulation Z require open-end creditors to include *just* periodic interest, not monthly, annual or other fees, in the APR. As a result, the Pennsylvania open-end payday loan was disclosed—legally—as 5.98% APR. This example illustrates why regulators, courts, and legislatures should not look to the TILA APR in defining what charges must be included in the “rate” or “interest” permitted under state law. The Military Lending Act takes a sounder approach, including a wide variety of fees to determine whether a loan exceeds its 36% cap.<sup>107</sup>

## *B. Which Open-End Credit Laws Are Examined in This Report*

This section looks at state laws that allow lenders other than depository institutions (banks, savings and loan associations, credit unions, etc.) to extend open-end credit. Not all states have such laws, but the majority do. These laws typically allow an entity such as a finance company to obtain a state license to extend open-end credit. Some allow just credit card lending, while others allow any type of open-end credit.

A number of states have special statutes for open-end credit. In other states, provisions regarding open-end credit are embedded in a more broadly-applicable consumer lending statute. Both types of provisions are included in this part of the report. Consumer lending statutes that do not specifically provide for open-end credit are not included in this part of the report, but only in the preceding section.

Some states have lending laws that apply explicitly to closed-end credit but are silent about their application to open-end credit. If the law is written in a way that appears to contemplate only closed-end loans, we have not included it in this section of the report. For example, the provisions of some state credit laws depend on the number of months in the loan term. Since open-end credit does not have a fixed loan term, provisions like this are an indication that the statute does not authorize the lenders that fall within its scope to engage in open-end lending.

In some states, there are several different statutes that allow non-depository lenders to extend open-end credit. In those states, this report bases its full APR calculations on the statute that allows the highest rate, as high-cost lenders are most likely to gravitate to that statute.

## *C. Caps on Interest Rates and Loan Fees for Open-End Credit*

### *1. Overview*

State open-end credit laws fall into three categories in terms of caps on interest rates and loan fees:

- Some place no fixed cap on interest rates, although some of these states provide that interest rates cannot be unconscionably high.
- Some cap interest rates, but do not have unambiguous, airtight caps on the fees that lenders can impose.

- Some cap both interest rates and fees, providing some assurance that open-end credit laws will not become a haven for predatory lenders.

These varying approaches result in a wide range of maximum APRs that non-bank lenders can charge for open-end credit. For a \$500 cash advance, repayable over six months, seven states place no cap on the interest the lender can charge and seven have no fixed cap but prohibit unconscionable credit terms. Fourteen states cap interest but do not have numerical caps on all fees, although many of these require fees to be “reasonable” or prohibit unconscionability. Of the states that cap both interest and fees, five allow full APRs over 60%, seven allow full APRs between 36% and 60%, and four limit the full APR to 36% or less. The remaining states do not have specific laws allowing non-bank lenders to extend open-end credit.

For a \$2000 cash advance, payable over two years, seven states place no cap on the interest rate and nine place no cap other than unconscionability. Thirteen cap interest but do not have numerical caps on all fees, although many of these require fees to be “reasonable” or prohibit unconscionability. Of the states that cap both interest and fees, one—Tennessee—allows the APR to be as high as 279%, three cap them at rates that allow full APRs between 36% and 60%, and eleven have caps that limit the full APR to 36% or less.

Details about these statutes are discussed in the next subsections of this report.

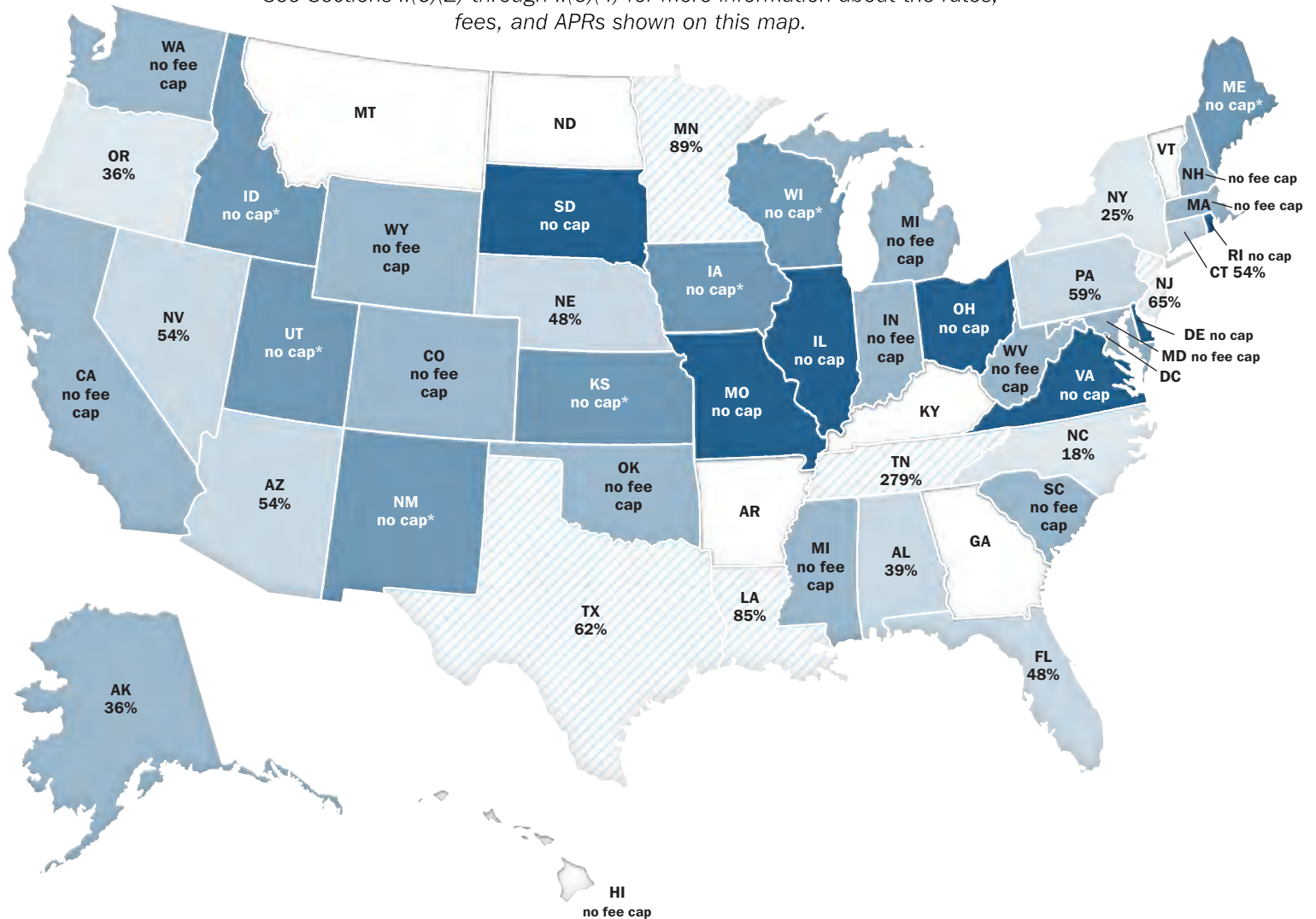
## ***2. State open-end credit statutes that do not place a numerical cap on interest rates***

In 16 states, the open-end credit statute places no numerical cap on the allowable interest rate. In ten of these states—Alabama (for loans of \$2000 or more), Delaware, Idaho, Missouri, New Mexico, Ohio, South Carolina (for loans of less than \$600), South Dakota, Utah, and Wisconsin—state law also allows closed-end lending by non-depositories without a cap, so the open-end lending statute is no more attractive to a high-rate lender than the closed-end lending statute. But there are six states—Illinois, Iowa, Kansas, Maine, Rhode Island, and Virginia — where the closed-end lending statute caps rates but the open-end statute does not. In those six states, high-cost lenders are likely to structure products to take advantage of the open-end statute. The open-end credit statutes in these states deserve particularly careful attention.

MAP 3

## Full APRs Allowed for a \$500 Cash Advance Repayable Over Six Months

See Sections II(C)(2) through II(C)(4) for more information about the rates, fees, and APRs shown on this map.



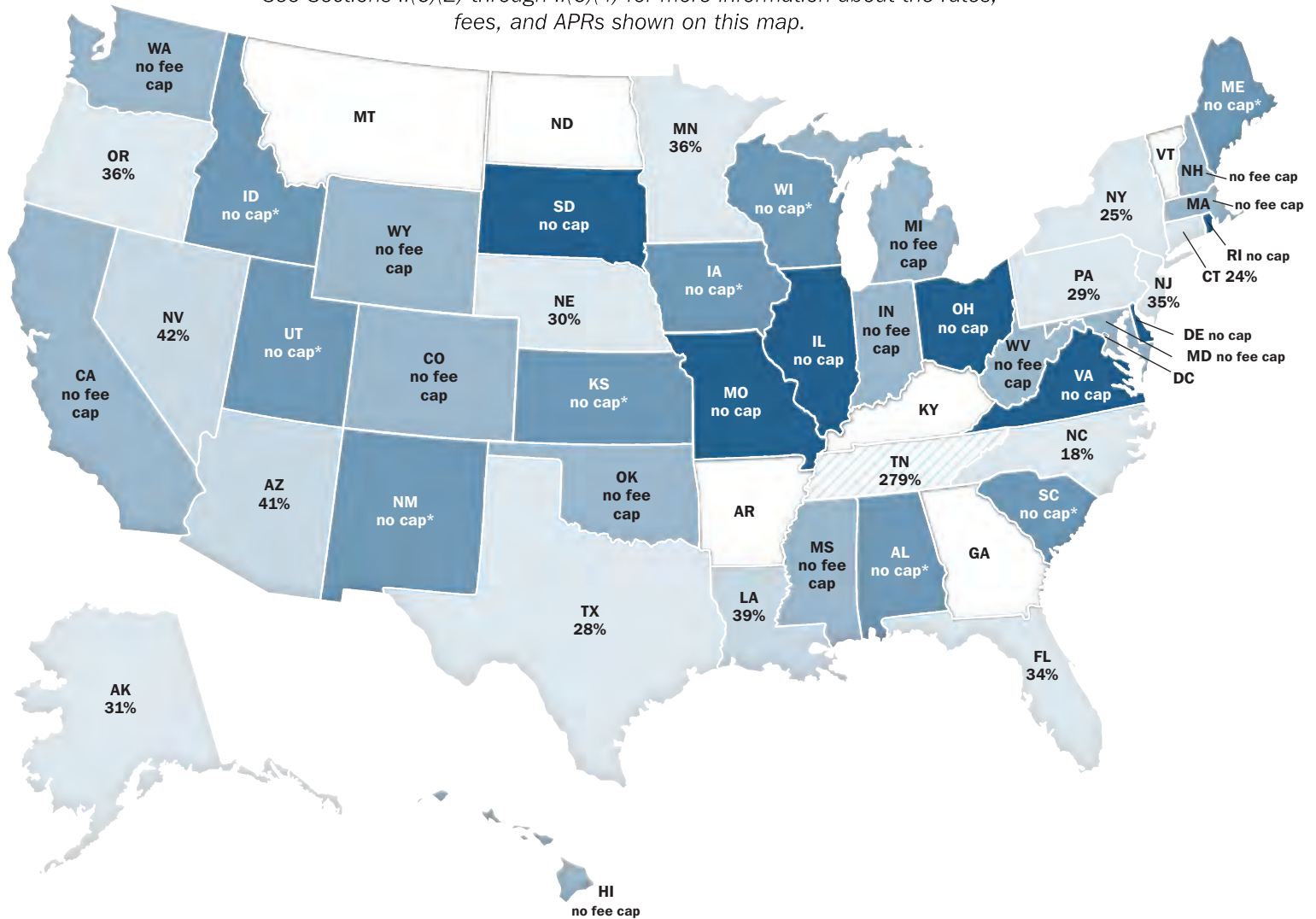
- No stated cap on finance charges
- No numerical cap, but prohibits against unconscionability (no cap\*)
- Cap on interest but no numerical cap on all fees
- Allowable full APR over 60%
- Allowable full APR between 36% and 60%
- Allowable full APR of 36% or less
- No specific provisions for non-bank lenders to extend open-credit



MAP 4

## Full APRs Allowed for a \$2000 Cash Advance Repayable Over Two Years

See Sections II(C)(2) through II(C)(4) for more information about the rates, fees, and APRs shown on this map.



- No stated cap on finance charges
- No numerical cap, but prohibition against unconscionability (no cap\*)
- Cap on interest but no numerical cap on all fees
- Allowable full APR over 60%
- Allowable full APR between 36% and 60%
- Allowable full APR of 36% or less
- No specific provisions for non-bank lenders to extend open-credit



TABLE 8

**States that Do Not Place Numerical Cap on Interest Rates for Open-End Credit**

| STATE   | DOES STATUTE PROHIBIT UNCONSCIONABILITY? |
|---|--|
| Alabama (for loans of \$2000 or more)         | Yes                                      |
| Delaware                                      | No                                       |
| Idaho   | Yes                                      |
| Illinois                                      | No                                       |
| Iowa  | Yes                                      |
| Kansas  | Yes                                      |
| Maine   | Yes                                      |
| Missouri                                      | No                                       |
| New Mexico                                    | Yes (state deceptive practices statute)  |
| Ohio*   | No                                       |
| Rhode Island                                  | No                                       |
| South Carolina (for loans of more than \$600) | Yes                                      |
| South Dakota                                  | No                                       |
| Utah  | Yes                                      |
| Virginia                                      | No                                       |
| Wisconsin                                     | Yes                                      |

See Section I(A)(6) for an explanation of unconscionability.

\*Ohio's rate caps are ineffective because they can be circumvented through credit services organizations. See Section I(K)(3).

In many of the states that do not cap interest rates for open-end credit, there is actually a cap of sorts in the form of a prohibition against unconscionable provisions in credit agreements. The extent to which a prohibition against unconscionable credit terms can act as a limit on the cost of credit is discussed in Section I(A)(6). The state open-end credit laws in Alabama, Idaho, Iowa, Kansas, Maine, South Carolina, Utah, and Wisconsin include this prohibition, and in one other state, New Mexico, such a prohibition is found in the state deceptive practices statute and has been applied to consumer credit to find a high rate unconscionable.<sup>108</sup> There is also a common-law doctrine of unconscionability that may apply in states that do not have a statutory prohibition.<sup>109</sup> These unconscionability provisions can and should operate as an outer limit on the cost of credit, but a more explicit cap would be far better for consumers.

### 3. States that cap rates but not all loan fees

The second group is comprised of states that cap interest rates for open-end credit but do not have an explicit cap on loan fees—origination, periodic or other fees that are required as a condition of the extension of credit.<sup>110</sup> These states may give the appearance of protecting consumers but, depending on how they are interpreted, the lack of an explicit cap on fees may still allow exploitation by high-rate lenders. The Pennsylvania open-end credit product previously offered by Advance America illustrates this danger: the credit line carried a deceptively-reasonable 5.98% interest rate, but required a monthly fee of \$149.95 for a \$500 line of credit. However, the courts in Pennsylvania ultimately ruled that both interest and the monthly fee had to fall within the state's interest rate cap.<sup>111</sup>

It is interesting to note that all of the states that fall into this category cap both interest and fees on all or most closed-end installment loans.<sup>112</sup> (See Section I(A)(1).) As a result, these states should expect that payday lenders looking for the credit vehicle that permits the highest revenue will likely try to introduce open-end credit products to exploit any ambiguity around fees.

Many of the states that fall into this category have some limiting language on origination and periodic fees. For example, some require that fees be in "reasonable" amounts. Others include a general prohibition of unconscionable charges in the statute. Although these non-numerical caps can be a difficult measure by which to limit charges, regula-

tors should be alert to attempts by high-rate lenders to introduce open-end credit products with fees that exceed these standards. Regulators should consider defining these standards in advance, at a minimum by providing examples of reasonable fees or fees that exceed the statutory standard.

There are several benchmarks that regulators could use to limit fees on open-end credit. These approaches could be used to define "reasonable" fees, fees that are not "unconscionable," or fees that are not so high as to evade and therefore violate an interest rate cap:

- The Truth in Lending Act's cap on penalty fees such as late charges and over-limit fees, which is currently \$27 for the first violation.<sup>113</sup>
- The National Credit Union Administration's cap of \$20 on the origination fees that credit unions may charge for payday alternative loans. This cap is a particularly appropriate model because it is a fee limit designed to prevent evasions of a usury cap.<sup>114</sup>
- A fee sufficient to cover only the costs that would be permitted in an application fee excluded from the TILA APR for closed-end credit. Under TILA and Regulation Z, application fees may cover origination costs but not the cost of credit.<sup>115</sup> This analogy is appropriate because it limits the use of high fees that would allow a deceptively low APR to be disclosed under the weak TILA disclosure rules.
- The median cap in the states that do cap these fees. A fee that substantially exceeds the maximum allowed in other states is likely unreasonable or unconscionable.

States that permit unspecified fees that could evade interest rates caps should consider defining what fees are reasonable.

TABLE 9  
States that Cap Interest Rates But Not All Fees for Open-End Credit

| STATE  | INTEREST RATE ALLOWED   | FEES PERMITTED BY STATUTE FOR WHICH NO NUMERICAL CAP IS STATED    | DOES STATUTE PROHIBIT UNREASONABLE OR UNCONSCIONABLE FEES?           |
|--|---|---|--|
| California   | split rate ranging from 30% on first \$225 to 12% on amount over \$1650 | Participation fee   | Yes  |
| Colorado   | 21%   | Annual fee  | Yes  |
| Hawaii   | 24%   | Participation fees imposed on an annual, periodic, or other basis | No   |
| Indiana  | 36%   | Annual fee  | Yes  |
| Maryland   | 24%   | Annual fee and transaction fee                                    | No   |
| Massachusetts  | 18%   | Annual fee  | Yes (deceptive practices statute)                                    |
| Michigan<br>Regulatory Loan Act; Credit Card Arrangements* | 18%   | Annual fee  | No   |
| Mississippi  | 21%   | Any fees other than interest**                                    | No   |
| New Hampshire  | 36%   | Application and participation fee                                 | Regulator has authority to investigate unreasonable or unfair fee*** |
| Oklahoma   | 27% on first \$2910   | Annual or membership fees, transaction fees, cash advance fees    | Yes  |
| South Carolina (for loans of \$600 or less)                | 18%   | Annual fee  | Yes  |
| Washington   | 25%   | Annual fee  | No   |
| West Virginia  | 31% plus loan processing fee of 2% of amount financed                   | Annual fee  | Yes  |
| Wyoming  | 36% on first \$1000, 21% on remainder                                   | Annual fee for credit card  | Yes  |

See Section I(A)(6) for an explanation of unconscionability.

\*A second law, Mich. Comp. Laws §§ 493.01 to 493.24, allows an interest rate of 25% plus an annual fee. The law does not place a numerical cap on the annual fee, but requires that it be reasonable.

\*\*Mississippi's lending law, Miss. Code § 75-17-19(6), is ambiguous about what charges and fees can be imposed. It appears that a non-bank lender cannot impose an annual fee, because annual fees are specifically addressed by § 75-19-17(2). Fees that would undermine the limit in § 75-17-19(1) on the periodic rate might also be at least implicitly prohibited.

\*\*\*This provision is still in effect, but has been repealed effective January 2, 2016.

- The bona fide, reasonable, and customary fees charged in the mainstream credit card market—the largest open-end credit market. For example, an annual fee could not exceed the cost of the typical annual fee for a credit card with a similar credit limit and no rewards. A fee substantially in excess of that amount could be defined as unreasonable or unconscionable. Recently announced revised rules under the Military Lending Act would require the development of this data, so it would be readily available to regulators.<sup>116</sup>
- A fee that does not substantially distort the rate cap in the statute. For example, a fee that raises the full APR by more than a few percentage points above the permitted interest rate could be considered an evasion of the interest rate cap.

Regardless of the benchmark chosen, in no case should a state allow the fees to exceed 25% of the credit line during the first year. This is the limit Congress placed on up-front fees for fee-harvester credit cards.<sup>117</sup>

Even without specific limits on fees, courts may interpret a statute (either the lending statute or a state criminal usury statute) to encompass fees within any “interest” cap. For example, Arkansas courts interpret the interest rate cap in its state constitution to encompass not just interest but also all fees.<sup>118</sup>

Moreover, even in a state that places neither a numerical nor non-numerical cap on fees for open-end credit, high fees might be challenged as a means of evading a rate cap. By capping the periodic interest rate, the legislature clearly indicated an intent to limit the cost of credit. Fees that increase that rate substantially can be challenged as evading the rate cap and as unfair or deceptive for that reason.

In addition, many of the open-end credit statutes allow an uncapped fee only for credit cards. The statute may have limiting language about what constitutes a credit card, what types of credit cards can charge the fee, and what lenders can impose it. There may also be inherent limits associated with the type of fee the statute authorizes. For example, it may be possible to interpret an uncapped annual fee as limited to the costs the lender actually incurs for once-a-year administrative tasks.

Another relevant point is to evaluate whether the extension of credit is actually disguised closed-end credit. If the lender is making open-end loans to consumers who did not initially seek a line of revolving credit, but only sought to borrow a single fixed sum, the loan may be considered spurious open-end credit. Then the loan should be evaluated under the standards for closed-end credit, and rates and fees in excess of those standards would be illegal. Many state installment loan laws prohibit evasions and provide that the statute’s caps apply to any extension of credit, even if it is structured in a way to evade the statute’s scope.

#### ***4. States that provide numerical (but sometimes very high) caps on open-end credit charges***

A final category of states sets numerical caps on both rates and other charges<sup>119</sup> for open-end credit. States with numerical caps on both interest rates and other charges provide the clearest ceiling on costs for consumers. However, these caps vary. When significant

fees are allowed, the full APRs are substantially higher than the interest rate permitted. In some states, the interest rate is capped at 36%, but fees such as investigation fees and annual fees are also allowed. These fees bring the full APR for a \$500 cash advance paid off over six months to as high as 89% in Minnesota. In addition, in some states the protections apply only to certain loans. For example, Alabama caps interest rates and fees, but only if the amount of credit extended is less than \$2000.<sup>120</sup> Tennessee's 2014 "Flexible Credit Act" allows full APRs of 279% on open-end cash advances up to \$4000 (see table 10 on next page).

### *5. Effective and ineffective ways to define a cap on rates and charges*

As noted, the Truth in Lending Act requires disclosure of the APR for open-end credit. But as implemented in Regulation Z, the open-end APR includes only periodic interest. Because of the inaccuracy of the TILA APR as a measure of the cost of open-end credit, states should not define a finance charge cap for open-end credit by referring to the TILA APR calculation rules. The result of using the TILA definition would cause the cap on finance charges to be illusory. The TILA open-end APR does not include flat fees and would permit disclosure of a 0% APR for a line of credit with true costs in the triple digits.

There are several ways to provide an effective cap on loan charges. One is to cap the interest rate, but require that all components of the cost of credit, including annual, monthly, or other periodic fees, transaction fees, over-limit fees, account-opening fees, and application fees, be included in the definition of interest.

Since the loan term is not set in advance for open-end credit, this approach raises some calculation issues. The U.S. Department of Defense has recently adopted a calculation method for including both fees and periodic interest in determining whether open-end credit falls below the 36% rate cap set by the Military Lending Act.<sup>121</sup> Incorporating the same method into state lending laws might enhance consistency and ease of administration. Any state that adopts this approach should either require that annual fees be included in the calculation or impose a separate cap on them, as the new Defense regulations do.<sup>122</sup>

A second approach is to impose separate caps on the periodic interest rate and the allowable fees. If a state adopts this second approach, it should take care to scale the fees to the size of the extension of credit. A \$50 annual fee might be reasonable for a \$10,000 line of credit, but it would be excessive for a \$300 line of credit. Limiting fees to a percentage of the cash advance up to a maximum, rather than setting them as flat fees, avoids this problem.

**Recommendation:** States should cap both interest and fees for open-end credit. As with closed-end loans, the best way to cap charges for open-end loans is to require all or almost all costs to be included in a clear, simple periodic interest rate, with no fees that distort that rate or provide incentives for loan flipping. If a state allows non-interest fees for open-end credit, it should impose a tight cap on those fees. In setting a cap on fees,

The best way to cap charges for open-end loans is to require all or almost all costs to be included in a clear, simple periodic interest rate, with no fees that distort that rate or provide incentives for loan flipping.

TABLE 10

## States that Set Numerical Caps on Rates and Fees for Open-End Credit

| STATE   | INTEREST RATE CAP                              | CAP ON LOAN FEES   | FULL APR FOR \$500 6-MONTH CASH ADVANCE | FULL APR FOR \$2000 2-YEAR CASH ADVANCE |
|---|--|--|---|---|
| Alabama (cap applies only to loans of less than \$2000) | 21% on first \$750, 18% on remainder           | Surcharge of 6% of amount financed   | 39%                                     | no cap                                  |
| Alaska  | 36% on first \$850, 24% on remainder           | No fees allowed  | 36%                                     | 31%                                     |
| Arizona   | 36% on first \$3000                            | 5% of principal, capped at \$150   | 54%                                     | 41%                                     |
| Connecticut   | 19.8%  | \$50 annual fee  | 54%                                     | 24%                                     |
| Florida   | 30% on first \$3000                            | \$25 investigation fee; \$25 annual fee on each anniversary date                     | 48%                                     | 34%                                     |
| Louisiana (revolving loan account)                      | 18%  | \$50 origination fee plus \$20 document fee  | 85%                                     | 39%                                     |
| Minnesota   | 33% on first \$1125, 19% on remainder          | \$50 annual fee, \$30 cash advance fee   | 89%                                     | 36%                                     |
| Nebraska  | 24% on first \$1000, 21% on remainder          | 7% of first \$2000 and 5% of remainder, or \$500, whichever is less                  | 48%                                     | 30%                                     |
| Nevada  | 40%  | \$20 annual fee  | 54%                                     | 42%                                     |
| New Jersey  | 30%  | \$50 annual fee  | 65%                                     | 35%                                     |
| New York  | 25%  | Must fall within 25% cap   | 25%                                     | 25%                                     |
| North Carolina  | 16%  | None   | 18%                                     | 18%                                     |
| Oregon*   | 36% (or a discount window rate plus 30 points) | None   | 36%                                     | 36%                                     |
| Pennsylvania  | 24%  | \$50 annual fee  | 59%                                     | 29%                                     |
| Tennessee   | 279%   | None   | 279%                                    | 279%                                    |
| Texas   | 21%  | \$50 annual fee; plus cash advance fee of \$2 or 2% of advance, whichever is greater | 62%                                     | 28%                                     |

The fee-inclusive or “full” APRs in this table take into account all fees that are required as a condition of the extension of credit, including origination fees, periodic fees, and cash advance fees, but not post-transaction charges such as late fees and returned check fees.

\*Oregon also allows lenders to charge “other reasonable and bona fide fees, expenses or damages, subject to oversight and regulation by the Department of Consumer and Business Services.” Or. Rev. Stat. § 725.340(1)(b).



states should keep small-dollar lines of credit in mind, and should not allow disproportionately large fees for small lines of credit.

Because of the inaccuracy of the TILA APR as a measure of the cost of open-end credit, states should not define a finance charge cap for open-end credit by referring to the TILA APR calculation rules. The calculation method recently adopted by the Department of Defense for determining whether open-end credit falls under the Military Lending Act's 36% cap might be a reasonable approach, or states can simply specify separate maximums for the interest rate and fees.

If a state's only explicit cap on interest rates or loan fees for open-end credit is an unreasonableness or unconscionability standard, regulators should consider issuing guidance or regulations to define the standard.

#### *D. Payment schedules for open-end credit*

##### *1. Repayment period*

Other loan features can make open-end credit abusive even in states that set effective limits on the interest rates and fees. For example, if a lender sets the consumer's monthly payment so low that the consumer never or barely reduces the principal, open-end credit will amount to perpetual debt. In states that prohibit unconscionable terms, it may be an unconscionable practice to combine high rates with low payments so that the consumer is effectively paying interest only and remains indebted for an excessive period.

However, a far clearer approach is to have an explicit requirement that payments be set at an amount that will repay the principal over a reasonable time period. Without that requirement, consumers with open-end debt can pay extraordinarily large amounts to repay it. For example, it would take a consumer over 20 years to pay off a \$1,000 balance at 36% interest if the consumer makes only a minimum payment of 1% of the balance plus the finance charge each month.<sup>123</sup>

Reasonable progress on repaying the principal is especially important for small loans and for loans of any size for which high interest rates are charged. Lenders should not be permitted to put a consumer in long term debt for a small loan. Nor should they bind the consumer to high rates for an extended period. (Of course, ensuring ability to make that payment is also a critical component of open-end lending, as it is for closed-end loans.)

**Recommendation:** States should require the lender to schedule payments no less frequently than monthly. To avoid perpetual debt, the lender should be required to set the payment amount so that it amortizes the debt over a reasonable time period. The higher the interest rate is, the more important a short repayment period is. The limits on the length of loans suggested above for small-dollar installment loans (24 months for loans of \$1000 or less and 12 months for loans of \$500 or less) would be appropriate for open-end credit with credit limits in those amounts, especially if the interest rates are high.

States should require the lender to schedule payments no less frequently than monthly. To avoid perpetual debt, the lender should be required to set the payment amount so that it amortizes the debt over a reasonable time period.

## 2. Affordability

Most open-end credit statutes do not require lenders to consider the borrower's ability to repay the credit. Oregon's is the most specific, requiring lenders to determine, for the majority of loans made under a consumer finance license, the creditworthiness of the borrower based on information about the borrower's financial condition, such as income, assets, debts, and financial obligations, and the nature and value of any collateral used to secure the loan.<sup>124</sup> The few requirements that exist in other states are quite weak, requiring at most that lenders consider ability to repay, without specifics.<sup>125</sup>

The absence of a requirement that lenders determine whether the borrower can repay the credit is particularly problematic in states that do not set firm caps on interest and loan fees for open-end credit. The combination of unlimited rates and fees, together with no ability-to-pay requirement, leaves lenders free to lead borrowers into a debt trap.

*Recommendation:* The recommendations in Section I(C)(2) regarding affordability for closed-end credit are equally applicable to open-end credit.

### E. Uniformity Between Open-End and Closed-End Credit Rules

As noted in Section II(A), lenders have often sought to disguise credit transactions as open-end credit in order to take advantage of weaker disclosure requirements and substantive limits. For these reasons, the anti-evasion provisions of state credit laws should be written broadly enough to prohibit structuring closed-end credit as open-end.

More fundamentally, states should reduce the incentives for this type of evasion by keeping the rules for open-end credit as close as possible to those for closed-end credit. Limits on interest rates and loan fees should be calibrated to produce the comparable full APRs for both open-end and closed-end credit. The recommendations made in the closed-end credit section of this report regarding add-on products, restrictions on the length of loans, limits on security, caps on late fees and post-maturity interest rates, licensure, reporting, enforceability, transparency, and anti-evasion provisions apply equally to open-end credit.

One area in which it makes sense for the rules for open-end credit to diverge from those for closed-end credit is repayment terms. Since the balance due on open-end credit will go up and down depending on whether the borrower makes additional purchases and obtains additional cash advances, payments cannot be set in substantially equal installments. A requirement that the payment amount be set so that it includes a specified percentage of the outstanding balance makes more sense. As discussed in Section II(D), such a requirement is also an appropriate way to limit the repayment period for open-end credit.

Loan flipping has also been less of a problem with open-end credit, since a borrower can obtain an additional advance, up to the credit limit, at any time without the need for refinancing. However, fees for additional draws on a credit line can be used to pad the interest rate and operate as a form of flipping if the draws are necessary to cover unaffordable payments. The same thing can happen if a creditor offers to increase the credit

line for additional fees. Rules that limit fees as much as possible and limit charges to periodic interest alone will ensure transparency in the rate and help prevent abuses.

*Recommendation:* The anti-evasion provisions of state credit laws should be written broadly enough to encompass structuring closed-end credit as open-end. The rules for open-end credit should be as close as possible to those for closed-end credit to avoid giving lenders an incentive to disguise loans as open-end.

### III. IMPLICATIONS FOR PAYDAY LENDING IN THE STATES

One purpose of this study is to evaluate the extent to which high-cost lenders are likely to move into high-cost installment lending if the CFPB restricts single-payment payday loans. This should be a concern in all states that do not cap interest rates, or have high or ineffective caps, for installment loans or open-end credit. In payday loan states, lenders may simply move to high-cost installment loans or credit lines. As high-cost installment loans or credit lines take root, they may also migrate to non-payday states that do not have sufficient protections. Even in states that appear to cap interest rates and fees for longer term loans, lenders may exploit any weaknesses in the state's protections against loan packing and flipping as a way to introduce high-cost loan products.

Of the 27 states that currently allow payday lending without significant restrictions, ten—Idaho, Illinois, Iowa, Kansas, Missouri, New Mexico, Ohio, South Dakota, Utah, and Wisconsin—have no cap at all on interest, or no cap other than unconscionability under at least one open-end or installment loan statute that non-depository lenders can use for a six-month \$500 loan or cash advance. Eight states—California, Hawaii, Indiana, Michigan, Mississippi, Oklahoma, South Carolina, and Wyoming—cap the interest rate, but leave at least one fee without a numerical cap. The remaining ten states cap the full APR, but the cap is as high as 94% and only two states—Alaska and North Dakota—cap the full APR at 36% or lower.

Nine states have a “hybrid” approach to payday lending: they currently allow payday lending, but with at least fairly significant restrictions.<sup>126</sup> Four of these states—Delaware, Maine, Rhode Island, and Virginia—have no cap at all under at least one open-end or installment loan statute that non-depository lenders can use for a six-month \$500 loan. In addition, Washington limits open-end creditors to an interest rate of 25% but allows an annual fee without a stated cap. Oregon caps the full APR at 36% and the remaining three states—Colorado, Delaware, and Minnesota—provide a cap that is higher than 36%.

Of the 15 jurisdictions that do not allow payday lending, four—Maryland, Massachusetts, New Hampshire, and West Virginia—allow open-end credit with a cap on the interest rate but without a numerical cap on fees. Five—Arizona, Connecticut, Georgia, New Jersey, and Pennsylvania—allow full APRs between 38% and 65%. Six—Arkansas, the District of Columbia, Montana, New York, North Carolina, and Vermont—cap the full APR on a six-month \$500 loan at 36% or lower.

TABLE 11

**States that Allow Payday Lending, Showing Maximum Full APR  
Allowed for \$500 Six-Month Loan or Cash Advance**

| STATE          | FULL APR ALLOWED  |
|----------------|---|
| Alabama        | 94%   |
| Alaska         | 36%   |
| Hawaii         | 18% plus annual fee without stated cap for open-end   |
| California     | 45% or, for open-end, capped interest rate plus participation fee, which must not be unconscionable                                   |
| Idaho          | No cap except unconscionability on rates or fees  |
| Illinois       | No cap on interest rate for open-end*   |
| Indiana        | 71% or, for open-end, 36% plus “reasonable” annual fee  |
| Iowa           | No cap other than unconscionability on interest rate for open-end   |
| Kansas         | No cap other than unconscionability on interest rate or fees for open-end   |
| Kentucky       | 47%   |
| Louisiana      | 85%   |
| Michigan       | 43% or, for open-end, 18% plus an annual fee without stated cap under one statute, and 25% plus “reasonable” annual fee under another |
| Mississippi    | 52% or, for open-end, 21% plus other charges and fees agreed upon**   |
| Missouri       | No cap on interest  |
| Nebraska       | 48%   |
| Nevada         | 54% for open-end  |
| New Mexico     | No cap on interest other than unconscionability   |
| North Dakota   | 28%   |
| Ohio           | No cap (because of credit services organization loophole)   |
| Oklahoma       | 116% for closed-end; 27% for open end plus annual fee, which must not be unconscionable   |
| South Carolina | 72%, or for open-end, 18% plus annual annual fee, which must not be unconscionable  |
| South Dakota   | No cap on interest or fees  |
| Tennessee      | 279% for open-end credit under “Flexible Credit Act”  |
| Texas          | 93%   |
| Utah           | No cap on interest or fees other than unconscionability   |
| Wisconsin      | No cap on interest or fees other than unconscionability   |
| Wyoming        | 36% plus annual fee, with no cap other than unconscionability, for lender credit card   |

*Table shows full APR for installment loan or open-end credit, whichever is higher.*

\* Illinois also has a payday installment loan statute that allows a full APR of 435% on a 180-day \$500 loan. See Section I(K)(1).

\*\* Mississippi’s lending law, Miss. Code § 75-17-19(6), is ambiguous about what charges and fees can be imposed. See Section II(C)(3).

TABLE 12

**States that Take “Hybrid” Approach to Payday Lending, Showing Maximum Full APR Allowed for \$500 Six-Month Loan or Cash Advance**

| STATE        | FULL APR ALLOWED   |
|--------------|--|
| Colorado     | 90%*   |
| Delaware     | No cap on interest or fees   |
| Florida      | 48%  |
| Maine        | No cap other than unconscionability on interest or fees for open-end |
| Minnesota    | 89% for open-end   |
| Oregon       | 36%  |
| Rhode Island | No cap on interest or fees for open-end                              |
| Virginia     | No cap on interest or fees for certain open-end credit plans         |
| Washington   | 25% plus annual fee with no stated cap for open-end                  |

*Table shows full APR for installment loan or open-end credit, whichever is higher.*

*\*Colorado also has a payday installment loan law that allows a full APR of 180% for a 6-month loan of \$500.*

TABLE 13

**States that Do Not Allow Payday Lending, Showing Maximum Full APR Allowed for \$500 Six-Month Loan or Cash Advance**

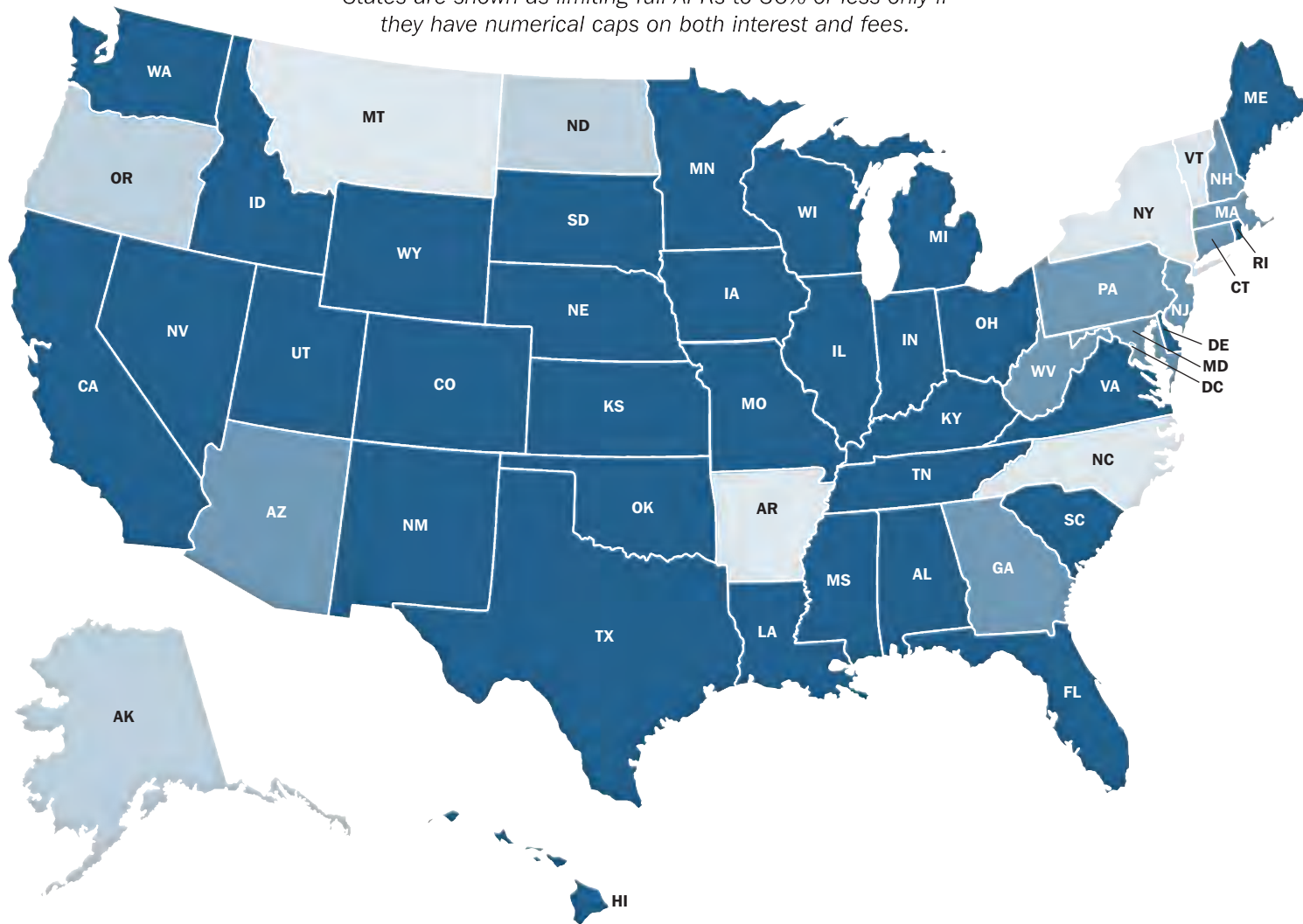
| STATE                | FULL APR ALLOWED  |
|----------------------|---|
| Arizona              | 54%   |
| Arkansas             | 17%   |
| Connecticut          | 54% for open-end  |
| District of Columbia | 27%   |
| Georgia              | 61%   |
| Maryland             | 24% plus annual fee with no stated cap for open-end   |
| Massachusetts        | 18% plus annual fee with no stated cap other than unconscionability for open-end                                    |
| Montana              | 36%   |
| New Hampshire        | 36% for open-end, plus fee; regulator has authority to investigate fees that are unreasonable, unfair, or deceptive |
| New Jersey           | 65% for open-end  |
| New York             | 25%   |
| North Carolina       | 18%   |
| Pennsylvania         | 59% for open-end  |
| Vermont              | 24%   |
| West Virginia        | 38% or, for open-end, capped interest rate plus fee, which must not be unconscionable                               |

*Table shows full APR for installment loan or open-end credit, whichever is higher.*

MAP 5

## Full APR Allowed for \$500 6-Month Installment or Open-End Loans in Payday and Non-Payday States

*States are shown as limiting full APRs to 36% or less only if they have numerical caps on both interest and fees.*



- Payday and "hybrid" states that allow full APRs over 36%
- States that prohibit payday lending but allow full APRs over 36%
- Payday and "hybrid" states that limit full APRs to 36% or less
- States that prohibit payday lending and limit full APRs to 36% or less



## IV. RECOMMENDATIONS

The following is a summary of the recommendations made throughout this report.

*Place clear, understandable, loophole-free caps on interest rates and loan fees for both installment loans and open-end credit.*

- A maximum APR of 36% is appropriate for smaller loans, such as those of \$1000 or less, with a lower rate for larger loans. See Section I(A).
- Prohibit or strictly limit loan fees in order to prevent them from undermining the interest rate cap or providing an incentive for loan flipping. See Sections I(A)(5), I(B)(3).
- Ban the sale of credit insurance and other add-on products, which primarily benefit the lender and increase the cost of credit. See Section I(B)(1).
- Avoid archaic methods of calculating interest rate caps, and insist upon transparent statutory language that does not obscure the true cost of credit. See Section I(I).
- Tighten up other lending laws, including credit services organization laws, so that they do not serve as a means of evasion. See Section I(K).
- Minimize differences between state installment loan laws and state open-end credit laws, so that high-cost lenders do not simply transform their products into open-end credit. See Section II.

*Structure lending laws to eliminate incentives for loan-flipping.* See Section I(B).

- Eliminate front-loaded charges and base the cost of credit solely on a periodic interest rate. See Sections I(A), I(B).
- Require full pro-rata or actuarial rebates of all loan charges when loans are refinanced or paid off early and prohibit prepayment penalties. See Section I(B)(2).

*Require terms that enable consumers to make regular progress in repaying the loan.*

- Limit balloon payments and interest-only payments. See Section I(C)(1).
- Prohibit excessively long loan terms. An outer limit of 24 months for a loan of \$1000 or less and 12 months for a loan of \$500 or less might be appropriate, with shorter terms for high-rate loans. See Sections I(C)(1), I(C)(3).

*Ensure that lending is based on ability to pay, not ability to collect.*

- Require lenders to ensure that the borrower has the ability to repay the loan according to its terms in light of the borrower's other expenses, without having to borrow again or refinance the loan. See Section I(C)(2).
- Prohibit devices, such as post-dated checks and security interests in household goods and auto titles, that coerce repayment of unaffordable loans. See Sections I(D)(1), I(D)(2).

- Prohibit lenders from taking wage assignments or obtaining payroll deductions for loans over 36% (lower for larger loans). See Section I(D)(3).

*Help consumers who run into bumps in the road.*

- Limit late charges to modest and reasonable amounts.
- Require the interest rate to revert to the legal rate or some other low rate upon maturity (including default). See Section I(E).

*Ensure compliance with the law and remedies for injured consumers.*

- Employ robust licensing and public reporting requirements for lenders and make unlicensed or unlawful loans void and uncollectible. See Sections I(F), I(G).
- Make unlicensed or unlawful loans void and uncollectible. See Section I(H).
- Include watertight anti-evasion provisions and apply the laws to all loans made to state residents, whether through in-state offices or through electronic or telephonic means. See Section I(J).

## ENDNOTES

1. *Marquette Nat'l Bank v. First of Omaha Corp.*, 439 U.S. 299 (1978).
2. See Susanna Montezemolo, Center for Responsible Lending, *Payday Lending Abuses and Predatory Practices, The State of Lending in America & Its Impact on U.S. Households* 13 (Sept. 2013), <http://www.responsiblelending.org/state-of-lending/reports/10-Payday-Loans.pdf>
3. [http://files.consumerfinance.gov/f/201503\\_cfpb\\_outline-of-the-proposals-from-small-business-review-panel.pdf](http://files.consumerfinance.gov/f/201503_cfpb_outline-of-the-proposals-from-small-business-review-panel.pdf).
4. See 15 U.S.C. § 1601(a) ("It is the purpose of [the Truth in Lending Act, which requires disclosure of the APR] to assure a meaningful disclosure of credit terms so that the consumer will be able to compare more readily the various credit terms available to him..."); National Consumer Law Center, *Truth in Lending* § 1.1.1 (9th ed. 2015) (purpose of TILA to provide uniformity and enable comparison of disclosures of cost of credit).
5. The Truth in Lending Act, 15 U.S.C. § 1601 *et seq.*, was enacted in 1968. It requires disclosure of the APR and other key credit terms, and standardizes the language and calculations for these disclosures.
6. The Department of Defense has adopted a similar fee-inclusive approach in implementing the Military Lending Act's 36% cap on certain extensions of credit to servicemembers. See 32 C.F.R. § 232.3(h).
7. We also do not include fees imposed by state offices for recording security interests, since the report focuses on unsecured loans. TILA also allows lenders to exclude these fees in most circumstances when calculating the APR to disclose to the consumer. In any event, many states limit lenders to passing through the actual charge imposed by the state office.
8. See Pew Charitable Trusts, *Payday Lending in America: Policy Solutions* 39 (2013).
9. Pew Charitable Trusts, "How State Rate Limits Affect Payday Loan Prices" (Apr. 10, 2014), available at <http://www.pewtrusts.org/en/research-and-analysis/fact-sheets/2014/04/10/how-state-rate-limits-affect-payday-loan-prices>.
10. 12 U.S.C. § 5517(o).
11. See Paul Kiel, "The 182% Loan: How Installment Lenders Put Borrowers in a World of Hurt," *ProPublica*, May 13, 2013, available at [www.propublica.org/article/installment-loans-world-finance](http://www.propublica.org/article/installment-loans-world-finance).
12. See *State ex rel. King v. B & B Investment Group, Inc.*, 329 P.3d 658 (N.M. 2014) (finding lender's interest rates, which were as high as 1500%, substantively unconscionable). *James v. Nat'l Fin. LLC*, 2014 WL 6845560, at \*2 (Del. Ch. Dec. 5, 2014), in which the court ruled on Truth in Lending disclosure issues, provides another example of a high-cost installment loan. The loan at issue there was for \$200 and required 26 bi-weekly payments of \$60 and a final balloon payment of \$260, for a total of payments of \$1620 and an APR of 838.45%.
13. See, e.g., *Ark. Sav. & Loan Ass'n v. Mack Truck of Ark., Inc.*, 566 S.W.2d 128 (Ark. 1978).
14. *Smiley v. Citibank (South Dakota), N.A.*, 517 U.S. 735, 116 S. Ct. 1730, 135 L. Ed.2d 25 (1996).
15. See National Consumer Law Center, *Consumer Credit Regulation* §§ 4.2, 4.3 (2012) (judicial decisions on this question).
16. See, e.g., Conn. Gen. Stat. § 36a-563(h) ("In addition to the charges provided for by sections 36a-555 to 36a-573, inclusive, and service charges that are imposed for a check that is dishonored as provided in subsection (i) of section 52-565a, no further or other charge or amount for any examination, service, brokerage, commission or other thing, or otherwise, shall be directly or indirectly charged, contracted for or received").
17. See, e.g., *Gulfcro of Louisiana, Inc. v. Brantley*, 430 S.W.3d 7 (Ark. 2013) (lender acted unconscionably by making series of high-cost loans that borrowers could not repay); *State ex*

- rel. King v. B & B Investment Group, Inc.*, 329 P.3d 658 (N.M. 2014) (finding lender's interest rates, which were as high as 1500%, substantively unconscionable); *Drogorub v. Payday Loan Store*, 826 N.W.2d 123 (Wis. Ct. App. 2012) (court may take 294% interest rate into account even though state law does not cap interest rates; finding high-rate auto title loan unconscionable when borrower was uneducated and in desperate need and had no other choices, and lender rushed the loan closing).
18. *Television Capital Corp. v. Paxson Communications Corp.*, 894 A.2d 461, 467 (D.C. 2006).
  19. *State ex rel. King v. B & B Investment Group, Inc.*, 329 P.3d 658 (N.M. 2014) (finding lender's interest rates, which were as high as 1500%, substantively unconscionable).
  20. See National Consumer Law Center, *Unfair and Deceptive Acts and Practices* § 4.4.1 (8th ed. 2012).
  21. *Id.* § 2.2.1.
  22. See, e.g., *Gulfcoco of Louisiana, Inc. v. Brantley*, 430 S.W.3d 7 (Ark. 2013) (relying on common law doctrine of unconscionability to hold that lender acted unconscionably by making series of high-cost loans that borrowers could not repay). See generally National Consumer Law Center, *Unfair and Deceptive Acts and Practices* § 4.4.9.2 (8th ed. 2012); National Consumer Law Center, *Mortgage Lending* § 4.8.1 (2012).
  23. See, e.g., *State ex rel. King v. B & B Investment Group, Inc.*, 329 P.3d 658 (N.M. 2014) (finding lender's interest rates, which were as high as 1500%, substantively unconscionable); *Drogorub v. Payday Loan Store*, 826 N.W.2d 123 (Wis. Ct. App. 2012) (charging 294% interest rate was unconscionable where inexperienced borrower was in great need and had no other alternatives and no opportunity to negotiate or ask questions, and lender did not explain the loan terms).
  24. National Consumer Law Center, *Unfair and Deceptive Acts and Practices* §§ 4.4.2, 4.4.3 (8th ed. 2012); National Consumer Law Center, *Mortgage Lending* § 4.8.2 (2012).
  25. See, e.g., *Gulfcoco of Louisiana, Inc. v. Brantley*, 430 S.W.3d 7 (Ark. 2013) (mortgage loan was unconscionable where lender knew that borrowers had been unable to repay much smaller unsecured loan that it refinanced).
  26. *State ex rel. King v. B & B Investment Group, Inc.*, 329 P.3d 658 (N.M. 2014) (finding lender's interest rates, which were as high as 1500%, substantively unconscionable); *Family Fin. Servs., Inc. v. Spencer*, 677 A.2d 479 (Conn. App. Ct. 1996) (finding mortgage loan unconscionable under common law, where borrower had limited knowledge of English and limited reading ability, and loan was unaffordable and required large balloon payment). See generally National Consumer Law Center, *Consumer Credit Regulation* § 2.4.7 (2012).
  27. *De La Torre v. CashCall, Inc.* 56 F.Supp.3d 1105 (N.D. Cal. 2014).
  28. Lauren K. Saunders, National Consumer Law Center, *Why 36%? The History, Use, and Purpose of the 36% Interest Rate Cap* (April 2013), available at <http://www.nclc.org/images/pdf/pr-reports/why36pct.pdf>.
  29. Alaska Stat. §§ 06.20.230, 06.20.260(a).
  30. Vt. Stat. Ann. tit. 8, §§ 2230, 2231.
  31. See, e.g., *Fed. Deposit Ins. Corp. v. Gulf Life Ins.*, 737 F.2d 1513 (11th Cir. 1984) (noting that credit life insurer received only 35% of premiums, paying 65% to the creditor's officers, employees, and stockholders); Center for Economic Justice and Consumer Federation of America, Letter to Sen. Dodd, *et al.* (July 29, 2009), available at [http://www.consumerfed.org/elements/www.consumerfed.org/file/CFPA\\_insurance\\_letter\\_7-29-09.pdf](http://www.consumerfed.org/elements/www.consumerfed.org/file/CFPA_insurance_letter_7-29-09.pdf) (documenting loss ratios of 44% for credit life, 38% for credit disability, and 13% for credit unemployment insurance). See generally National Consumer Law Center, *Consumer Credit Regulation* § 6.2.3 (2012).

32. See, e.g., *Aclin Ford v. Cordell*, 625 S.W.2d 459 (Ark. 1982). See generally National Consumer Law Center, *Consumer Credit Regulation* § 3.9.4.5.2.4 (2012).
33. Center for Economic Justice and Consumer Federation of America, Letter to Sen. Dodd, *et al.* (July 29, 2009), available at [http://www.consumerfed.org/elements/www.consumerfed.org/file/CFPA\\_insurance\\_letter\\_7-29-09.pdf](http://www.consumerfed.org/elements/www.consumerfed.org/file/CFPA_insurance_letter_7-29-09.pdf) (documenting loss ratios of 44% for credit life, 38% for credit disability, and 13% for credit unemployment insurance); Center for Economic Justice, Letter to Jennifer J. Johnson, Secretary of the Board of Governors of the Federal Reserve System at 8 (Dec. 23, 2010), available at [http://www.federalreserve.gov/SECRS/2011/January/20110131/R-1390/R-1390\\_122310\\_57662\\_390705390769\\_1.pdf](http://www.federalreserve.gov/SECRS/2011/January/20110131/R-1390/R-1390_122310_57662_390705390769_1.pdf) (noting that, by contrast, average loss ratios from 1999 to 2008 were 67.3% for ordinary life insurance, 73.2% for group life insurance, and 77% for group disability insurance).
34. 12 C.F.R. § 1026.4(d)(3).
35. Haw. Rev. Stat. § 412:9-201. See also Miss. Code § 75-67-121 (allowing sale of auto club membership after loan has been approved); Neb. Rev. Stat. §§ 45-1024(5), 45-1026 (allowing lenders to sell not only credit insurance but also any other type of insurance or motor club service); Tex. Fin. Code Ann. § 342.457 (allowing lender to offer automobile club memberships); Wis. Stat. §§ 422.202(2s), 424.301 (allowing lender to sell not only credit insurance but also future service contracts or motor club service contracts if certain conditions are met, and mechanical breakdown, extended warranty or maintenance service contracts or insurance).
36. Most state installment loan laws include rebate requirements for unearned interest and sometimes for up-front fees. State credit insurance laws, which we did not survey, may also include provisions for rebates of unearned premiums.
37. See, e.g., Hearing on Predatory Mortgage Lending: The Problem, Impact and Responses, Hearing Before the S. Comm. on Banking, Housing, and Urban Affairs (July 26, 2001), available at [http://www.banking.senate.gov/01\\_07hr/072601/miller.htm#N\\_25](http://www.banking.senate.gov/01_07hr/072601/miller.htm#N_25) (written testimony of Iowa Attorney General Thomas J. Miller; giving example in which adding single premium credit insurance increased the total of payments on a 20-year balloon mortgage note by \$76,586).
38. [www.freddiemac.com/learn/pdfs/uw/Pred\\_requirements.pdf](http://www.freddiemac.com/learn/pdfs/uw/Pred_requirements.pdf) (Sept. 2013) (identifying predatory lending practices that lenders must avoid, including adding credit insurance products that are not paid on a monthly or other periodic basis). See also <https://www.fanniemae.com/content/guide/selling/> (click on Part B, then B7-3-05) (June 30, 2015) (Fannie Mae's similar policy prohibiting sale of single-premium credit insurance).
39. 15 U.S.C. § 1639c(d) (applies to all closed-end dwelling-secured mortgages, and all open-end mortgages that are secured by a principal dwelling; applies to all credit insurance and debt cancellation agreements, with an exception for certain unemployment insurance).
40. The loss ratio is often termed the "benefit ratio" in the context of debt cancellation agreement. See Gary Fagg and Keith Nelson, *Debt Protection Products: A Practical Guide for Lenders* 144 (2008) (referring to the terms as synonymous).
41. See National Consumer Law Center, *Consumer Credit Regulation* § 5.8.2.2 (2012) (detailed explanation of Rule of 78s); "Rule of 78s," [http://en.wikipedia.org/wiki/Rule\\_of\\_78s](http://en.wikipedia.org/wiki/Rule_of_78s) (brief explanation of Rule of 78s).
42. 15 U.S.C. § 1615.
43. The federal rebate law is unclear as to whether it applies to loan fees that are not "interest." See *Davis v. Pacific Capital Bank*, 550 F.3d 915 (9th Cir. 2008) (interpreting federal rebate statute to apply just to charges that vary according to the length of time the credit is outstanding). See generally National Consumer Law Center, *Consumer Credit Regulation* § 5.8.4.2.2 (2012).

44. A *pro rata* rebate would mean that, for example, one-twelfth of the interest would be rebated for each month remaining of a twelve-month loan. If the rebate must be calculated on a *pro rata* basis, it will give the consumer a larger rebate than if it were calculated actuarially. A few states require *pro rata* rebates, but usually only in very narrow circumstances. Alabama's "Mini-Code" requires a *pro rata* refund of the finance charge if a loan is renewed or refinanced within the first 120 days. Ala. Code § 5-19-4(h). South Carolina has a similar provision for renewals or refinancings within the first 90 days. S.C. Code § 34-29-140(c). Colorado's payday installment loan law requires a *pro rata* rebate of interest. Colo. Rev. Stat. § 5.3.1-105.
45. See Michael Corkery, "States Ease Interest Rate Laws That Protected Poor Borrowers," *New York Times* Oct. 21, 2014 ("About 60 percent of OneMain's loans are so-called renewals — a trend one analyst called "default masking" because borrowers may be able to refinance before they run into trouble paying back their current balance"); Springleaf Financial Services, 2013-A Private Placement Memorandum ("renewals historically have been, and Springleaf believes they will continue to be, an important component of Springleaf's business plan with respect to personal loans and as such Springleaf expects that a substantial portion of the Loans will be renewed"), available at <http://investor.springleaffinancial.com/asset-backed-securities.cfm> (click "Accept" and then on SLTF 2013-A).
46. La. Rev. Stat. § 9:3519(A).
47. La. Rev. Stat. § 9:3530(A), (C).
48. La. Rev. Stat. § 9:3532.
49. *Id.*
50. La. Rev. Stat. § 9:3530(A)(3). Since the statute specifies that no rebate of the \$50 origination fee is required, but does not have similar language with respect to the \$20 documentation fee, our calculations apply a Rule of 78s rebate to the documentation fee plus the interest on the loan.
51. See Paul Kiel, "The 182 Percent Loan: How Installment Lenders Put Borrowers in a World of Hurt," *ProPublica*, May 13, 2013, available at <http://www.propublica.org/article/installment-loans-world-finance>.
52. 205 Ill. Comp. Stat. Ann. § 670/17.3(c).
53. <http://www.consumerfinance.gov/newsroom/cfpb-finds-four-out-of-five-payday-loans-are-rolled-over-or-renewed/>
54. See Pew Charitable Trusts, *Payday Lending in America: Policy Solutions* (Oct. 2013).
55. In the mortgage market, securitization and the quest for high rates led to a push to originate loans with less and less attention to underwriting. In the credit card market, lucrative late fees, over-the-limit fees, and bait-and-switch penalty rates made struggling consumers desirable customers.
56. Cal. Admin. Code tit. 10, § 1452 (regulation under California Finance Lenders Law).
57. Or. Admin. Rule 441-730-0015.
58. Mo. Rev. Stat. § 367.185(4).
59. Tex. Admin. Code tit. 7, § 83.852.
60. Colo. Rev. Stat. § 5-3.1-122(2), (3).
61. 815 Ill. Comp. Stat. Ann. § 122/2-5(e).
62. 205 Ill. Comp. Stat. Ann. §§ 670/17.4.
63. N.M. Stat. § 58-15-10.1(A).
64. Haw. Rev. Stat. § 412:9-300.
65. Iowa Code § 537.5108.
66. S.C. Code Ann. § 37-5-108.
67. In addition, Illinois restricts the length of a payday installment loan to 180 days. 815 Ill.



- Comp. Stat. Ann. § 122/2-5(c).
68. See, e.g., Colo. Rev. Stat. § § 5-2-308.
69. Tex. Fin. Code § 393.201(b)(2).
70. Haw. Rev. Stat. § 412:9-302(b).
71. Pa. Stat. Ann. tit. 7, § 6214(H).
72. 16 C.F.R. Part 444.
73. See National Consumer Law Center, *Federal Deception Law* § 2.3.7 (2012).
74. See, e.g., <http://www.azfamily.com/story/28340919/did-auto-title-loans-replace-payday-loans-in-arizona> (Sept. 1, 2011) (documenting high-cost lenders' migration into auto title loans in Arizona).
75. See Pew Charitable Trusts, *Auto Title Loans: Market practices and borrowers' experiences* 11 (March 2015), available at <http://www.pewtrusts.org/en/research-and-analysis/reports/2015/03/auto-title-loans>; Center for Responsible Lending, *The State of Lending in America & Its Impact on U.S. Households: Car-Title Lending* (July 2013), available at <http://www.responsiblelending.org/state-of-lending/reports/7-Car-Title-Loans.pdf>.
76. Md. Code Ann., Com. Law §12-311(c).
77. See National Consumer Law Center, *Federal Deception Law* § 4.5 (2012) (state "holder" statutes); National Consumer Law Center, *Mortgage Lending* § 10.7 (2012) (the holder-in-due-course doctrine under Article 3 of the Uniform Commercial Code).
78. 15 U.S.C. 1693k; 12 C.F.R. § 1005.10(e).
79. Consumer Financial Protection Bur., Official Commentary on Regulation E, § 10(e)(1)-1.
80. The EFTA prohibits a lender from requiring the consumer to repay by preauthorized electronic fund transfer as a condition of credit. 15 U.S.C. § 1693k(1). Regulation E permits a reduced APR or "cost-related incentive" to repay electronically. Supplement I to Part 205, Official Staff Interpretations, § 10(e)(1)-1. But price disparities that are so high as to be coercive, or nonmonetary incentives, may operate to effectively make electronic repayment a requirement.
81. 15 U.S.C. § 1693e.
82. A similar instrument, the remotely created payment order (RCPO), looks like an RCC but is processed from the beginning as an electronic image and never existed in paper form. Both RCCs and RCPOs are processed through the check system and are indistinguishable in the system from traditional checks.
83. For example, NetCredit (Enova) gives consumers only two repayment options, ACH or RCC. <https://www.netcredit.com/faq>.
84. See Texas Appleseed, *Payday Businesses Unlawfully File 1500 Criminal Complaints Against Borrowers to Collect Money* (Dec. 17, 2014), available at [https://www.texasappleseed.org/sites/default/files/FINAL-PaydayComplaintRelease\\_Dec17.pdf](https://www.texasappleseed.org/sites/default/files/FINAL-PaydayComplaintRelease_Dec17.pdf).
85. 16 C.F.R. § 444.2(a)(3).
86. People of the State of Illinois by Madigan v. CMK Investments, Inc., No. 2014CH04694 (Cir. Ct. of Cook County, Ill., attachment to complaint filed Mar. 18, 2014).
87. For example, Connecticut requires that the interest rate be reduced to no more than 12% on any balance remaining unpaid at the end of the maximum loan term allowed under its Small Loan Lenders Law. Conn. Gen. Stat. § 36a-563(h). North Carolina requires: "After the maturity date of any loan contract made under the provisions of this section and until the loan contract is paid in full by cash, new loan, refinancing or otherwise, no charges other than interest at eight percent (8%) per annum shall be computed or collected from any party to the loan upon the unpaid principal balance of the loan." N.C. Gen. Stat. § 53-173(d).

88. Paul Kiel, “When Lenders Sue, Quick Cash Can Turn Into a Lifetime of Debt,” *ProPublica*, Dec.13,2013,available at<http://www.propublica.org/article/when-lenders-sue-quick-cash-can-turn-into-a-lifetime-of-debt>.
89. Ohio Rev. Code § 1321.16(C)(3).
90. *Michigan v. Bay Mills Indian Community*, 134 S. Ct. 2024, 188 L. Ed. 2d 1071 (2014).
91. As an example of an informative annual report, see North Carolina Commissioner of Banks, Consumer Finance Annual Report (2012), available at [http://www.nccob.gov/public/docs/News/Pub%20And%20Research/2012\\_Consumer\\_Finance\\_Annual\\_Report.pdf](http://www.nccob.gov/public/docs/News/Pub%20And%20Research/2012_Consumer_Finance_Annual_Report.pdf).
92. See National Consumer Law Center, *Consumer Credit Regulation* § 5.3 (2012).
93. Tenn. Code Ann. § 45-12-111.
94. See, e.g., Ala. Code § 5-18-4(c) (“[This Act applies] to any person who seeks to evade its application by any device, subterfuge, or pretense whatsoever including, but not thereby limiting the generality of the foregoing: The loan, forbearance, use or sale of credit (as guarantor, surety, endorser, comaker, or otherwise), money, insurance, goods or things in action; the use of collateral or related sales or purchases of goods or services or agreements to sell or purchase, whether real or pretended; and, receiving or charging compensation for goods or services, whether or not sold, delivered, or provided and the real or pretended negotiation, arrangement, or procurement of a loan through any use of activity of a third person, whether real or fictitious”).
95. California has such a provision. Cal. Fin. Code § 2225(a) provides:  
If a borrower applies for a loan in a bona fide principal amount of less than the specified amount and a loan to that borrower of a bona fide principal amount of the specified amount or more if made by a licensed finance lender, no adequate economic reason for the increase in the size of the loan exists, and by prearrangement or understanding between the borrower and the licensee a substantial payment is to be made upon the loan with the effect of reducing the bona fide principal amount of the loan to less than the specified amount within a short time after the making of the loan other than by reason of a requirement that the loan be paid in substantially equal periodical installments, then the loan shall not be deemed to be a loan of the bona fide principal amount of the specified amount or more and the regulatory ceiling provisions shall be deemed to be used for the purpose of evading this division unless the loan complies with the other provisions of the section that includes the regulatory ceiling provisions.
96. See, e.g., Ala. Code § 5-18-15(h) (“No licensee shall divide into separate parts any contract made for the purpose of or with the effect of obtaining charges in excess of those authorized by this section”); Alaska Stat. Ann. § 06.20.240 (“A licensee may not induce or permit a person, or a husband and wife jointly or severally, to split up or divide a loan or to become obligated, directly or contingently or both, under more than one loan contract at the same time, for the purpose or with the result of obtaining a higher rate of interest than would otherwise be permitted by AS 06.20.230. However, a licensee may enter into new or different loan transactions with the borrower or the borrower’s spouse at a different time so long as the purpose of the additional transaction does not violate this section.”).
97. However, tribal sovereign immunity is not airtight and there may be many ways in which tribes are subject to suit. See National Consumer Law Center, *Consumer Credit Regulation* § 9.6.3 (2012).
98. *Michigan v. Bay Mills Indian Community*, 134 S. Ct. 2024, 188 L. Ed. 2d 1071 (2014).
99. See Pew Charitable Trusts, *Payday Lending in America: Policy Solutions* (Oct. 2013) (discussion of Colorado law).
100. For more information about vehicle title loans, see Pew Charitable Trusts, *Auto Title Loans: Market practices and borrowers’ experiences* (March 2015), available at <http://www.pewtrusts.org/en/research-and-analysis/reports/2015/03/auto-title-loans>; Center for Responsible

Lending, *The State Of Lending: Car-Title Loans* (July 11, 2013), available at <http://www.responsiblelending.org/state-of-lending/car-title-loans/>.

101. See Center for Responsible Lending, “Car Title Lending: Disregard for Borrowers’ Ability to Repay” (May 12, 2014) at 4, available at <http://www.responsiblelending.org/other-consumer-loans/car-title-loans/research-analysis/Car-Title-Policy-Brief-Ability-to-Repay-May-12-2014.pdf>.
102. See National Consumer Law Center, *Fair Credit Reporting* § 15.3, Appx. H (8th ed. 2013) (text analysis and state-by-state summaries of state CSO laws).
103. See “Policy Matters Ohio, Keys for Collateral” (Dec. 2012), available at <http://www.policymattersohio.org/wp-content/uploads/2012/12/AutoTitleES-Dec2012.pdf>.
104. See National Consumer Law Center, *Truth in Lending* § 6.2.3 (8th ed. 2012).
105. Pa. Dept. of Banking v. NCAS of Del., LLC, 948 A.2d 752 (Pa. 2008).
106. *Id.*
107. 32 C.F.R. § 232.3. See National Consumer Law Center, *Consumer Credit Regulation* § 2.2.5.8 (2012).
108. State *ex rel.* King v. B & B Investment Group, Inc., 329 P.3d 658 (N.M. 2014) (finding lender’s interest rates, which were as high as 1500%, substantively unconscionable). See National Consumer Law Center, *Unfair and Deceptive Acts and Practices* § 4.4.1 (8th ed. 2012).
109. See National Consumer Law Center, *Unfair and Deceptive Acts and Practices* § 4.4.9.2 (8th ed. 2012); National Consumer Law Center, *Mortgage Lending* § 4.8.1 (2012).
110. This analysis takes into account origination fees, periodic fees, and cash advance fees, but not post-transaction charges such as late fees and returned check fees.
111. Pa. Dept. of Banking v. NCAS of Del., LLC, 948 A.2d 752 (Pa. 2008).
112. South Carolina does so only for loans of \$600 or less, leaving loans over \$600 without a cap. California caps the interest rate and loan fees for closed-end loans only if the amount lent is less than \$2500.
113. 12 C.F.R. § 1026.52(b)(1)(ii)(A). The regulation allows the fee to be increased to \$38 for a second violation within a specified time period. The fee increases regularly, as it is indexed to inflation.
114. Payday alternative loans are able to charge up to 28% interest, higher than the 18% usury cap that normally applies to federal credit unions.
115. Official Interpretations of Regulation Z § 1026.4(c)(1)-1.
116. Dept. of Defense, Final Rules, 80 Fed. Reg. 43560 (July 22, 2015). The Military Lending Act caps the cost of certain extensions of credit made to members of the armed forces.
117. 15 U.S.C. § 1637(n)(1); 12 C.F.R. § 1026.52(a).
118. See, e.g., Ark. Sav. & Loan Ass’n v. Mack Truck of Ark., Inc., 566 S.W.2d 128 (Ark. 1978) (service charge, commitment fee, points, and the like are interest). See generally National Consumer Law Center, *Consumer Credit Regulation* § 4.2.1 (2012).
119. This analysis takes into account fees that are required as a condition of the extension of credit, including origination fees, periodic fees, and cash advance fees, but not post-transaction charges such as late fees and returned check fees.
120. Ala. Code § 8-8-14(b).
121. Dept. of Defense, Final Rule, 80 Fed. Reg. 43560 (July 22, 2015). The new calculation determines the APR for each month individually. The monthly calculation includes all charges imposed that month, regardless of whether they are included in the APR under TILA, and charges for credit insurance and other ancillary products imposed that month. Credit card annual fees can be excluded, however, if they are bona fide, reasonable, and customary, with a safe harbor for fees no higher than the average fees charged by five of the largest credit card lenders.

122. *Id.*
123. It will take 21 years and 9 months to pay off a \$1000 cash advance at 36% where the payment is the finance charge plus 1% of the principal, with a minimum payment of \$15.00. Calculated on July 27, 2015, using the credit card minimum payment calculator at <http://online2.statefarm.com/calcs/CalculatorSelectorServlet.do?calcName=minPayOff>. See generally National Consumer Law Center, *Consumer Credit Regulation*, § 8.6.8 (2012).
124. Or. Admin. Rule Reg. 441-730-0015.
125. The only ability-to-repay requirements we have found that apply to the state open-end credit statutes discussed in this report are: Cal. Admin. Code tit. 10, § 1452 (requiring lender to take into consideration the financial ability of the borrower to repay the loan); Haw. Rev. Stat. § 412:9-300 (requiring lender to make loans that are consistent with “prudent lending practices”); and N.M. Stat. § 58-15-10.1(A)(14) (lender’s annual report must include procedures the licensee follows as a standard practice to establish each consumer’s ability to repay a loan). In addition, Iowa and South Carolina list inability to repay as a factor in determining whether a loan is unconscionable. Iowa Code § 537.5108; S.C. Code § 37-5-108.
126. A “hybrid” state is one that allows payday lending but 1) imposes a rate cap around 10% of the borrowed principal (lower than most states but still high enough to allow triple-digit APRs), 2) restricts the number of loans per borrower, or 3) allows borrowers multiple pay periods to repay loans. Storefronts that offer payday loans exist in substantial numbers in these states, but the market may be more consolidated. Pew Charitable Trusts, *Payday Lending in America: Who Borrows, Where They Borrow, and Why* 20 (July 2012).

## APPENDIX A

### FULL APR TABLES FOR SIX-MONTH \$500 LOAN

TABLE A-1  
**States that Do Not Cap Interest Rates  
for Six-Month \$500 Installment Loan**

| STATE      | DOES STATUTE PROHIBIT UNCONSCIONABILITY? | STATE               | DOES STATUTE PROHIBIT UNCONSCIONABILITY? |
|------------|--|---------------------|--|
| Delaware   | No                                       | Ohio <sup>1,2</sup> | No                                       |
| Idaho      | Yes                                      | South Dakota        | No                                       |
| Missouri   | No                                       | Utah                | Yes                                      |
| New Mexico | Yes (state deceptive practices statute)  | Wisconsin           | Yes                                      |

<sup>1</sup> For a six-month \$500 loan, Ohio's Small Loan Act would limit the full APR to 39%, and its Second Mortgage Loan Act would limit it to 43%. For a two-year \$2000 loan, the allowable full APRs would be 28% and 31%. However, these caps are ineffective in Ohio because the state allows credit services organizations to charge an additional—uncapped—fee for arranging a loan.

<sup>2</sup> Ohio's Consumer Sales Practices Act, Ohio Rev. Code § 1345.03, includes a prohibition of unconscionability and applies to lenders making loans under the state's payday loan act, but most other non-mortgage lenders are exempt. Ohio Rev. Code § 1345.01(A) (exempting financial institutions and dealers in intangibles as defined by Ohio Rev. Code § 5725.01).

TABLE A-2  
**States that Allow Full APRs of More Than 36%  
on Six-Month \$500 Installment Loan**

| STATE                 | FULL APR ALLOWED                       | STATE                      | FULL APR ALLOWED |
|-----------------------|--|----------------------------|------------------|
| Alabama               | 94%                                    | Michigan                   | 43%              |
| Arizona               | 54%                                    | Minnesota <sup>3</sup>     | 51%              |
| California            | 45%                                    | Mississippi                | 52%              |
| Colorado <sup>1</sup> | 90% (Consumer Credit Code)             | Nebraska                   | 48%              |
| Florida               | 48%                                    | Nevada                     | 40%              |
| Georgia               | 61%                                    | Oklahoma                   | 116%             |
| Illinois <sup>2</sup> | 99% (Consumer Installment<br>Loan Law) | South Carolina             | 72%              |
| Indiana               | 71%                                    | Tennessee                  | 94%              |
| Kansas                | 43%                                    | Texas <sup>4</sup>         | 93%              |
| Kentucky              | 47%                                    | Washington                 | 39%              |
| Louisiana             | 85%                                    | West Virginia <sup>5</sup> | 38%              |
| Massachusetts         | 37%                                    |                            |                  |

<sup>1</sup> In addition, Colorado's payday installment loan statute allows APRs up to 180% for payday loans up to \$500, as discussed in Section I(K)(1).

<sup>2</sup> In addition, the Illinois payday installment loan statute allows APRs up to 435% for payday loans with terms up to 180 days, as discussed in Section I(K)(1).

<sup>3</sup> Minnesota's short-term loan law may allow APRs as high as 89% on a six-month loan, but the loan would require a contorted payment schedule.

<sup>4</sup> Texas also allows a credit services organization to arrange a loan with a term of up to 180 days, and to charge an additional fee that adds considerably to the APR.

<sup>5</sup> West Virginia also allows a "reasonable documentary charge," which would increase this APR.



TABLE A-3  
**States that Cap Full APR  
for Six-Month \$500 Loan at 36% or Less**

| STATE                      | FULL APR ALLOWED | STATE                     | FULL APR ALLOWED |
|----------------------------|------------------|---------------------------|------------------|
| Alaska                     | 36%              | New Jersey                | 30%              |
| Arkansas                   | 17%              | New York                  | 25%              |
| Connecticut                | 28%              | North Carolina            | 16%              |
| District of Columbia       | 27%              | North Dakota              | 28%              |
| Hawaii                     | 25%              | Oregon <sup>2</sup>       | 36%              |
| Iowa                       | 36%              | Pennsylvania              | 27%              |
| Maine                      | 30%              | Rhode Island <sup>3</sup> | 35%              |
| Maryland                   | 33%              | Vermont                   | 24%              |
| Montana                    | 36%              | Virginia                  | 36%              |
| New Hampshire <sup>1</sup> | 36%              | Wyoming                   | 36%              |

<sup>1</sup> New Hampshire also allows an application or participation fee.

<sup>2</sup> Oregon also allows lenders to charge “other reasonable and bona fide fees, expenses or damages, subject to oversight and regulation by the Department of Consumer and Business Services.” Or. Rev. Stat. § 725.340(1)(b).

<sup>3</sup> Rhode Island also allows “other customary and reasonable costs incident to the closing, supervision, and collection of loans in this state.”

## APPENDIX B

### FULL APR TABLES FOR TWO-YEAR \$2000 LOAN

TABLE B-1  
**States that Do Not Cap Interest Rates for Two-Year \$2000 Installment Loan**

| STATE               | LOANS FOR WHICH THERE IS NO CAP | DOES STATUTE PROHIBIT UNCONSCIONABILITY? |
|---------------------|---------------------------------|--|
| Alabama             | Loans of \$2000 or more         | Yes                                      |
| Delaware            | All loans                       | No                                       |
| Idaho               | All loans                       | Yes                                      |
| Missouri            | All loans                       | No                                       |
| New Mexico          | All loans                       | Yes (state deceptive practices statute)  |
| North Dakota        | Loans of more than \$1000       | No                                       |
| Ohio <sup>1,2</sup> | All loans                       | No                                       |
| South Carolina      | Loans of more than \$600        | Yes                                      |
| South Dakota        | All loans                       | No                                       |
| Utah                | All loans                       | Yes                                      |
| Wisconsin           | All loans                       | Yes                                      |

<sup>1</sup> For a six-month \$500 loan, Ohio's Small Loan Act would limit the full APR to 39%, and its Second Mortgage Loan Act would limit it to 43%. For a two-year \$2000 loan, the allowable full APRs would be 28% and 31%. However, these caps are ineffective in Ohio because the state allows credit services organizations to charge an additional—uncapped—fee for arranging a loan.

<sup>2</sup> Ohio's Consumer Sales Practices Act, Ohio Rev. Code § 1345.03, includes a prohibition of unconscionability and applies to lenders making loans under the state's payday loan act, but most other non-mortgage lenders are exempt. Ohio Rev. Code § 1345.01(A) (exempting financial institutions and dealers in intangibles as defined by Ohio Rev. Code § 5725.01).

TABLE B-2

**Full APRs Allowed for 2-Year \$2000 Loan In States that Cap Finance Charges**

| STATE                | FULL APR ALLOWED | STATE                      | FULL APR ALLOWED |
|----------------------|------------------|----------------------------|------------------|
| Alaska               | 31%              | Minnesota                  | 31%              |
| Arizona              | 41%              | Mississippi                | 39%              |
| Arkansas             | 17%              | Montana                    | 36%              |
| California           | 25%              | Nebraska                   | 30%              |
| Colorado             | 31%              | Nevada                     | 40%              |
| Connecticut          | 23%              | New Hampshire <sup>1</sup> | 36%              |
| District of Columbia | 25%              | New Jersey                 | 30%              |
| Florida              | 31%              | New York                   | 25%              |
| Georgia              | 32%              | North Carolina             | 31%              |
| Hawaii               | 24%              | Oklahoma                   | 27%              |
| Illinois             | 79%              | Oregon <sup>2</sup>        | 36%              |
| Indiana              | 39%              | Pennsylvania               | 24%              |
| Iowa                 | 31%              | Rhode Island <sup>3</sup>  | 29%              |
| Kansas               | 32%              | Tennessee                  | 41%              |
| Kentucky             | 35%              | Texas                      | 82%              |
| Louisiana            | 38%              | Vermont                    | 21%              |
| Maine                | 30%              | Virginia                   | 36%              |
| Maryland             | 30%              | Washington                 | 29%              |
| Massachusetts        | 24%              | West Virginia              | 33%              |
| Michigan             | 30%              | Wyoming                    | 31%              |

<sup>1</sup> New Hampshire also allows an application or participation fee.

<sup>2</sup> Oregon also allows lenders to charge “other reasonable and bona fide fees, expenses or damages, subject to oversight and regulation by the Department of Consumer and Business Services.” Or. Rev. Stat. § 725.340(1)(b).

<sup>3</sup> Rhode Island also allows “other customary and reasonable costs incident to the closing, supervision, and collection of loans in this state.”

## APPENDIX C

### SUMMARIES OF STATE CLOSED-END INSTALLMENT LOAN STATUTES

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#### INTRODUCTION

This set of summaries encompasses state statutes that allow lenders other than depository institutions to make installment loans. It excludes statutes and statutory provisions that:

- Are limited to credit for the purchase of goods or services.
- Are limited to credit that is secured by real or personal property.
- Apply only to loans of less than \$500, or that apply only to loans with repayment periods of less than six months.
- Relate solely to non-consumer transactions.
- Relate solely to automobile title lending.
- Relate to open-end credit (those statutes are summarized in a separate appendix).
- Allow lending only by banks or similar depository institutions (but these summaries do include state industrial loan laws).

Some states have special statutes for installment loans. In other states, provisions regarding installment loans are embedded in a more broadly applicable consumer lending statute. Those provisions are included in these summaries.

Interest rates stated in these summaries are actuarial and per year unless otherwise specified. Where a statute expresses a rate cap in the form of “add-on” interest or “discount interest” (two non-actuarial methods of expressing a rate cap), these summaries use those terms. See *National Consumer Law Center*,

*Consumer Credit Regulation* Ch. 5 (2012), updated at [www.nclc.org/library](http://www.nclc.org/library), for an explanation of non-actuarial interest rate calculations. For the sake of simplicity, interest rates that are calculated by applying a rate to a declining balance are referred to as “actuarial” for the most part in these summaries, without regard to whether they allow unpaid interest to be added to the principal. However, for some statutes that are particularly clear that unpaid interest is not to be added to the principal, these summaries term the interest rate “simple” interest. Where a statute specifies a monthly rather than annual interest rate, in most cases these summaries convert the interest rate to an annual rate.

These summaries identify provisions in state installment loan laws that prohibit unconscionable or unreasonable charges. These summaries do not, however, list other state sources of unconscionability rules. For example, a number of state unfair and deceptive practices statutes prohibit unconscionable consumer transactions. Whether those laws apply to credit terms varies from state to state and is beyond the scope of these summaries. See National Consumer Law Center, *Unfair and Deceptive Acts and Practices* §§ 2.2.1, 4.4 (8th ed. 2012), updated at [www.nclc.org/library](http://www.nclc.org/library) for a discussion of these issues. Many states also recognize a common law prohibition of unconscionability.

The summaries contained in this appendix list the types of insurance for which the statutes allow creditors to charge consumers. If the statute prohibits creditors from charging consumers for insurance in certain transactions, such as loans under a certain

amount, that is noted. However, the summaries do not list other restrictions, such as restrictions on the rates or the reasonableness of the insurance.

State installment loan statutes typically identify the fees other than interest that lenders can charge. These summaries list those fees to the extent that they are conditions of the extension of credit. In other words, these summaries list fees, such as investigation fees, document preparation fees, origination fees, transaction fees, and “points,” that the borrower is bound to incur in order to get or use the extension of credit. The summaries do not include charges that relate solely to loans secured by real estate, or charges such as extension or deferment charges, collection costs, charges for dishonored checks, and charges for special processing of payments that are imposed only if future events occur. Most state installment loan statutes allow lenders to pass through to consumers fees for recording and releasing security interests, including fees for noting a lien on a motor vehicle certificate of title. These fees are described collectively as recording fees in these summaries, but details about the amount of the fees are omitted.

Some state consumer credit statutes provide that the consumer has the right to prepay a loan, but do not explicitly state whether a prepayment penalty can be charged. In some cases, the statute may explicitly or implicitly forbid any charge that is not specifically allowed. These statutes will likely be interpreted to allow prepayment without penalty, since the statute does not specifically allow a prepayment penalty.

The statutes’ provisions for rebates of unearned interest upon repayment must be read with the federal rebate statute, 15 U.S.C. § 1615, in mind. The federal law requires the rebate of unearned interest upon prepayment. Moreover, it prohibits any rebate method less favorable than the actuarial method for a consumer credit transaction with a term exceeding sixty-one months, and overrides less protective state laws. The rebate provisions of many of the state installment loan laws are consistent with these federal requirements, but inconsistent state provisions are preempted by the federal law.

Another federal restriction relevant to these summaries relates to wage assignments. The FTC’s Credit Practices Rule, 16 C.F.R. § 444.2(a)(3), prohibits wage assignments unless they are revocable or apply only to wages already earned, with exceptions for payroll deduction plans and for wages that were already earned at the time of the assignment. Many state installment loan laws have a similar prohibition, but the federal rule overrides any less protective state laws.

Many state consumer credit statutes require certain lenders to be licensed. These summaries describe any consequences that attach to unlicensed lending that are specified in the statute. In some cases, the consequences may be indirect. For example, some statutes allow a lender to charge more than a certain rate only if licensed, and provide that a loan is void if it includes unauthorized charges. Under these statutes, any charges above that rate in a loan by an unlicensed lender are unauthorized, so the lack of a license means that the loan is void.

These summaries simplify complex statutory provisions, and do not attempt to capture all the nuances of the statutes or resolve ambiguities. They are based primarily on a close reading of the statutory language, and courts may have interpreted these laws in unexpected ways. We asked regulators in each state to review their state’s summaries, and many did, but the conclusions and summaries are ours and do not represent an official interpretation or the views of state regulators. Consumers and lenders should consult an attorney or other authoritative source about the application and interpretation of these laws, and attorneys should review their state statutes, regulations, and judicial decisions thoroughly before advising clients about their requirements. Corrections should be brought to the attention of the authors.

These summaries were prepared in early 2015 and do not reflect amendments that may have occurred since then. These summaries are also included as Appendix D to *National Consumer Law Center, Consumer Credit Regulation* (2012), updated at [www.nclc.org/library](http://www.nclc.org/library), and will be updated there.

## ALABAMA

### *Ala. Code §§ 5-18-1 to 5-18-23 (Small Loan Act).*

*What types of lenders does it apply to (e.g., banks vs. non-banks)?* Does not apply to:

- Banks, trust companies, savings or building and loan associations, and credit unions.
- Pawnbrokers.
- Various agricultural loans.
- The business of financing the purchase of motor vehicles, refrigerators, or other personal property.
- Loans insured or guaranteed by the United States or any of its agencies.

### **§ 5-18-4(b).**

*Licensure requirements and implications of licensure:* License required to engage in business of making loans of less than \$1,000 and charge more than would be permitted without a license. § 5-18-4(a).

*Size and length of loans to which the statute applies, and any restrictions in the statute on these features:* Statute applies only to loans of less than \$1,000. §§ 5-18-4, 5-18-18. Loan term must not exceed 25 months (12 months if loan is made under alternate rate structure). § 5-18-15(i), (m)(2).

*Other restrictions on applicability of statute (e.g., it only applies if lender takes a mortgage on real property):* Statute is silent.

*What rate of interest is allowed?*

- 36% on first \$200, and 24% on remainder, and, if the scheduled monthly payment is at least \$30, an account maintenance fee of \$3 for each month of the scheduled period of repayment. §§ 5-18-15(a), (b), (m)(4), 8-8-14(a). A surcharge of 6% of the amount financed can be added to the principal.
- Alternative rate structure (allowed if loan term is no more than 12 months and payments are at least \$40 per month):

- Acquisition charge not in excess of 10% of the amount of principal; and Installment account handling charge in an amount no greater than the following:
  - \$12 per month on loan of at least \$100 but no more than \$300;
  - \$14 per month on loan of more than \$300 but no more than \$400;
  - \$16 per month on loan of more than \$400 but no more than \$500;
  - \$17 per month on loan of more than \$500 but no more than \$800;
  - \$20 per month on loan of more than \$800 but less than \$1,000.
- For loan made under alternative rate structure, no insurance charge or interest surcharge is permitted. § 5-18-15(m)(4).
- Any lender may lend at 2 percentage points above the prime rate. § 8-8-14(b).

*What loan fees are allowed?* Recording fees. § 5-18-15(g).

*What types of insurance are allowed, and any limits the lending statute places on charges?* May require property insurance on collateral and offer credit life, disability, and unemployment insurance. §§ 5-18-17, 5-19-20. For loan made under alternative rate structure (see above), no insurance charge is permitted. § 5-18-15(m)(4).

*Does statute prohibit all other fees besides those specifically allowed?* Yes. § 5-18-15(h).

*Does statute restrict balloon payments or irregular payment schedules?* Every loan contract must require payment in installments at approximately equal periodic intervals (except to accommodate seasonal income). No installment contracted for shall be substantially larger than any preceding installment. §§ 5-18-15(i), 5-18-16(c).

*Any restrictions on refinancing?* Statute is silent.

*Any rebate requirements or restrictions on prepayment penalties?* Rule of 78s refund (sum of the balances method) for full prepayment; statute also specifies



rebate rules when borrower makes partial prepayment of three or more installments. § 5-18-15(d). For prepayment in full of loan made under alternative rate structure (see above), the installment account handling charge is subject to refund, but not the acquisition charge. § 5-18-15(m)(3). Prepayment penalties are likely prohibited because not specifically permitted. See § 5-18-15(h).

*What security interests (or postdated checks or ACH authorizations) are allowed or prohibited?* Statute prohibits licensee from taking a lien upon real estate, except a judgment lien. § 5-18-4.

*Does statute prohibit unconscionable loan charges?* Statute is silent.

*Must lender underwrite or evaluate borrower's ability to repay?* Statute is silent.

*If state has a criminal usury law, is lending under this statute exempt from it?* Not applicable.

*Reporting requirements, including detail about what must be reported and whether there are any requirements that the state agency review or take other steps regarding the reports:* Annual report in form prescribed by supervisor, who shall publish annual analysis and recapitulation. § 5-18-11(b).

*Other significant features:* Prohibits loan-splitting. §§ 5-18-15(h), 5-18-18. Anti-evasion provision. § 5-18-4(c).

### **Ala. Code §§ 5-19-1 to 5-19-33 (Consumer Credit Act or "Mini-Code").**

*What types of lenders does it apply to (e.g., banks vs. non-banks)?* Applies generally to all creditors, except pawnbrokers, insurance agents or agencies that charge collection fee on unpaid balances for insurance premiums, and policy loans by life insurance companies. In addition, provisions other than that § 5-19-1(1) (definition of "finance charge") and § 5-19-3 (maximum finance charges), do not apply to:

- A transaction involving an interest in real property where creditor is exempt from licensing.
- Non-consumer transactions.

- A credit transaction by a tax-exempt trust or by a bank or trust company in its capacity as a fiduciary under any qualified employer stock bonus, pension, or profit-sharing plan.
- A municipal pension system created under Alabama law.

### **§ 5-19-31.**

*Licensure requirements and implications of licensure:* With exceptions for banks, savings or building and loan associations, savings banks, other thrift institutions, bank holding companies, thrift holding companies, credit unions, and federally constituted agencies, a license is required to make consumer loans to Alabama residents or take assignments of consumer credit contracts. § 5-19-22(a). Any person licensed under the Small Loan Act may engage in business under that Act, but shall not make loans in excess of \$1,000 unless such person is also licensed under this Act. § 5-19-22(f). If lender makes loan without a license, it may still bring suit on the loan, but only after acquiring licensure. § 5-19-19(b).

*Size and length of loans to which the statute applies, and any restrictions in the statute on these features:* Statute has certain provisions that apply to loans under \$2,000 and loans over \$2,000. For closed-end loans of \$1,000 or less that are payable in installments, term shall be no more than 36 months and 15 days, and no more than 24 months and 15 days if the original amount financed is \$300 or less. § 5-19-18.

*Other restrictions on applicability of statute (e.g., it only applies if lender takes a mortgage on real property):* Statute is silent.

*What rate of interest is allowed?*

- For loan of less than \$2,000: Add-on rates of \$15 per \$100 per year for the first \$750, plus \$10 per \$100 per year for remainder. In addition, lender may charge an interest surcharge of 6% of the first \$2,000 of the amount financed. § 8-8-14(a).
- For loan of \$2,000 or more: Any rate, subject to "all laws relating to unconscionability in consumer transactions." § 5-19-3(e) (incorporating § 8-8-5).

*What loan fees are allowed?* Account maintenance fee of \$3.00 for each month, which shall not bear interest. § 5-19-33(a).

*What types of insurance are allowed, and any limits the lending statute places on charges?* Credit life, disability, and involuntary unemployment insurance; property insurance on collateral and liability insurance, but only if original amount financed is \$300 or more and the value of the property is \$300 or more; non-filing insurance; other insurance as allowed by rule. § 5-19-20.

*Does statute prohibit all other fees besides those specifically allowed?* Statute provides penalties for charging a finance charge in excess of the amount authorized by the statute, § 5-19-19(a), but otherwise is silent.

*Does statute restrict balloon payments or irregular payment schedules?* Debtor has right to refinance any balloon payment on terms at least as favorable as the original terms, except where payments have been adjusted to conform to the debtor's seasonal or irregular income, or loan is repayable in a single principal payment irrespective of the scheduled interest payments. § 5-19-7. For closed-end transactions where debt is payable in installments and in which original amount financed is \$1,000 or less, debt shall be scheduled to be payable in substantially equal installments at equal periodic intervals, except to the extent that the schedule of payments is adjusted to the seasonal or irregular income of the debtor or when the transaction is a single principal payment obligation irrespective of the scheduled interest payments. § 5-19-18.

*Any restrictions on refinancing?* If loan is renewed or refinanced within first 120 days, debtor is entitled to pro rata refund of finance charge. § 5-19-4(h).

*Any rebate requirements or restrictions on prepayment penalties?* Debtor may prepay without penalty. §§ 5-19-3(d)(3), 5-19-4(c). For loan with original term of more than 61 months, actuarial rebate; for all other transactions, Rule of 78s (sum of the balances), but no refund of less than \$1.00 need be made. § 5-19-4(c). When creditor has charged the 6% interest surcharge

permitted by § 8-8-14, and borrower prepays within first 90 days, borrower is entitled to pro rata rebate of the surcharge, except that creditor may retain \$25. § 8-8-14(a).

*What security interests (or postdated checks or ACH authorizations) are allowed or prohibited?* Statute is silent.

*Does statute prohibit unconscionable loan charges?* Yes. § 5-19-16. See also § 8-8-5(a) (allowing agreed rate transactions but subjecting them to this unconscionability rule).

*Must lender underwrite or evaluate borrower's ability to repay?* Statute is silent.

*If state has a criminal usury law, is lending under this statute exempt from it?* Not applicable.

*Reporting requirements, including detail about what must be reported and whether there are any requirements that the state agency review or take other steps regarding the reports:* Statute is silent.

*Other significant features:* Loan-splitting prohibited. § 5-19-17.

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## ALASKA

*Alaska Stat. §§ 06.20.010 to 06.20.920 (Small Loans Act).*

*What types of lenders does it apply to (e.g., banks vs. non-banks)?* All lenders except:

- Exception from license requirement only: Banks, savings banks, trust companies, building and loan associations, and credit unions. § 06.20.010(b).
- Complete exemption: Individual loans by pawnbrokers where separate and individual loans do not exceed \$750 or loan shops where separate and individual loans do not exceed \$500. § 06.20.330.

*Licensure requirements and implications of licensure:* A license is required for the business of making loans up to \$25,000 at an interest rate greater than otherwise permitted by law for non-licensees.

§§ 06.20.010(a), 06.20.300. Non-licensee is limited to rate that can be charged without a license, § 06.20.300, and loan is unenforceable if more interest has been charged than permitted by the Act, § 06.20.310.

*Size and length of loans to which the statute applies, and any restrictions in the statute on these features:* Law applies to loans of \$25,000 and less. Except for open-end loans under § 06.20.285, licensee may not enter into loan that provides for a scheduled repayment of principal over more than the maximum terms set out below opposite the respective size of loans.

| PRINCIPAL AMOUNT OF LOAN | MAXIMUM TERM                |
|--------------------------|-----------------------------|
| up to \$1,000            | 24 and 1/2 months           |
| Over \$1,000 to \$2,500  | 48 and 1/2 months           |
| Over \$2,500 to \$5,000  | 60 and 1/2 months           |
| Over \$5,000 to \$25,000 | as agreed to by the parties |

### § 06.20.250(c).

*Other restrictions on applicability of statute (e.g., it only applies if lender takes a mortgage on real property):* Statute is silent.

*What rate of interest is allowed?* For loan up to \$25,000:

- 36% on first \$850;
- 24% on amount over \$850 but not exceeding \$10,000; and
- Any rate agreed by contract on remainder.

§ 06.20.230. For amounts greater than \$25,000, a licensee may not charge more interest than allowed for non-licensees. § 06.20.280.

*What loan fees are allowed?* Recording fees, or non-filing insurance premiums that do not exceed these fees. For loans over \$10,000, whether or not secured by an interest in real estate: reasonable costs and fees paid by a licensee for appraisals, surveys, title insurance or reports, and credit reports. § 06.20.260(a).

*What types of insurance are allowed, and any limits the lending statute places on charges?* Credit insurance (defined as credit life insurance, credit disability

insurance, and credit unemployment insurance), insurance on pledged property, and non-filing insurance. § 06.020.260.

*Does statute prohibit all other fees besides those specifically allowed?* Yes. § 06.20.260.

*Does statute restrict balloon payments or irregular payment schedules?* Yes, payments must be in substantially equal amounts and must be due at least once a month, with the first payment beginning no later than 45 days from the date the loan is made. There are exceptions for seasonal or extraordinary income. § 06.20.250(d), (e).

*Any restrictions on refinancing?* Statute is silent.

*Any rebate requirements or restrictions on prepayment penalties?* Statute is silent on rebate requirements. Prepayment penalties are likely prohibited because not authorized by § 06.20.260. Lender must permit payment to be made in advance in any amount at any time. § 06.20.270(3).

*What security interests (or postdated checks or ACH authorizations) are allowed or prohibited?* Statute does not include restrictions on security interests. It refers to credit insurance on pledged property and to loans secured by interests in real estate, so appears to contemplate these security interests. § 06.20.260(a)(2), (4).

*Does statute prohibit unconscionable loan charges?* Statute is silent.

*Must lender underwrite or evaluate borrower's ability to repay?* Statute is silent.

*If state has a criminal usury law, is lending under this statute exempt from it?* Not applicable.

*Reporting requirements, including detail about what must be reported and whether there are any requirements that the state agency review or take other steps regarding the reports:* Annual report containing information as the department may reasonably require. § 06.20.190.

*Other significant features:* Loan-splitting prohibited. § 06.20.240.

### *Alaska Stat. § 45.45.080 (Installment Loans).*

*What types of lenders does it apply to (e.g., banks vs. non-banks)?* Applies to any “lender of money.” § 45.45.080(a).

*Licensure requirements and implications of licensure:* Statute is silent.

*Size and length of loans to which the statute applies, and any restrictions in the statute on these features:* Loan not exceeding \$10,000. Period of not over 7 years. § 45.45.080(b).

*Other restrictions on applicability of statute (e.g., it only applies if lender takes a mortgage on real property):* Statute is silent.

*What rate of interest is allowed?* Interest at \$6 a year for each \$100 (true annual interest rate for “add-on method” of computation at a rate not to exceed 11.1%; or “true annual interest rate for ‘discount method’ of computation at a rate not to exceed 11.8 percent) upon the original face amount of the instrument evidencing the loan for the entire period of the loan.” § 45.45.080(b).

*What loan fees are allowed?* Recording fees. § 45.45.080(c)(3), (4).

*What types of insurance are allowed, and any limits the lending statute places on charges?* Lender may charge premiums paid by lender for insurance required or obtained as security for or by reason of the installment loan. § 45.45.080(c)(2).

*Does statute prohibit all other fees besides those specifically allowed?* Yes. The only charges permitted are specified in § 45.45.080(c).

*Does statute restrict balloon payments or irregular payment schedules?* Yes. Loan must be repayable in substantially equal installments. § 45.45.080(b).

*Any restrictions on refinancing?* Statute is silent.

*Any rebate requirements or restrictions on prepayment penalties?* Rule of 78s (sum of the balances method), but no refund of less than \$5.00 need be made. § 45.45.080(b).

*What security interests are allowed or prohibited (including postdated checks and ACH authorization)?* No limits indicated. Statute provides that lender may charge interest on loan “upon the security of personal property or otherwise.” § 45.45.080(a).

*Does statute prohibit unconscionable loan charges?* Statute is silent.

*Must lender underwrite or evaluate borrower’s ability to repay?* Statute is silent.

*Is lending under this statute exempt from state criminal usury law?* Not applicable.

*Reporting requirements, including detail about what must be reported and whether there are any requirements that the state agency review or take other steps regarding the reports:* Statute is silent.

*Other significant features:* Not applicable.

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## ARIZONA

### *Ariz. Rev. Stat. Ann. §§ 6-601 to 6-638 (Consumer Lenders Act).*

*What types of lenders does it apply to (e.g., banks vs. non-banks)?* Primarily non-bank lenders making at least three consumer loans per calendar year to state residents. Specific exclusions:

- Banks, savings banks, trust companies, savings and loan associations, profit sharing and pension trusts, credit unions, insurance companies, and receiverships.
- Licensed pawnbrokers.
- Lenders making fewer than two such loans per calendar year to state residents (*see* § 6-601(16)(b)).
- Mortgage brokers.
- Certain educational loans.

### *§ 6-602*

*Licensure requirements and implications of licensure:* License required to engage in consumer lender business (making loans of \$10,000 or less) unless exempt.



§ 6-603(A). Loan made by unlicensed lender is void. § 6-613(B).

*Size and length of loans to which the statute applies, and any restrictions in the statute on these features:* Maximum loan size subject to statute: \$10,000 or less. §§ 6-601(7), 6-602(B). Maximum loan term for consumer loans:

- 24 months and 15 days for loans up to \$1,000.
- 36 months and 15 days for loans greater than \$1,000 but no more than \$2,500.
- 48 months and 15 days for loans greater than \$2,500 but no more than \$4,000.
- 60 months and 15 days for loans greater than \$4,000 but no more than \$6,000.
- Any agreed on time period for loans of more than \$6,000.

#### § 6-637(A).

*Other restrictions on applicability of statute (e.g., it only applies if lender takes a mortgage on real property):* Statute is silent.

*What rate of interest is allowed?* 36% on first \$3,000 and 24% on remainder. § 6-632(A).

*What loan fees are allowed?*

- Recording fees, or cost of non-filing insurance up to that amount. § 6-635(A)(3).
- Loan origination fee of 5% of loan, capped at \$150. § 6-635(A)(4).

*What types of insurance are allowed, and any limits the lending statute places on charges?* Property insurance on collateral, life insurance, credit disability insurance, and credit unemployment insurance. §§ 6-636, 6-638.

*Does statute prohibit all other fees besides those specifically allowed?* Yes. § 6-635(C).

*Does statute restrict balloon payments or irregular payment schedules?* Consumer loans: Yes, note must provide for approximately equal periodic installments. § 6-637(B). *See also* § 6-634(A).

*Any restrictions on refinancing?* Prohibits charging of a loan origination fee if loan is refinanced within one year. § 6-635(A)(4)(a).

*Any rebate requirements or restrictions on prepayment penalties?* Lender must allow prepayment at any time. § 6-637(F). Actuarial rebate. § 6-634(B).

*What security interests are allowed or prohibited (including postdated checks and ACH authorization)?* Statute is silent, but references in various sections appear to contemplate security interests in personal and real property. *See, e.g.,* §§ 6-635(A)(3) and § 6-636(E) (referring to property insurance and security interests).

*Does statute prohibit unconscionable loan charges?* Statute is silent.

*Must lender underwrite or evaluate borrower's ability to repay?* Statute is silent.

*Is lending under this statute exempt from state criminal usury law?* Criminal usury statute, § 13-2208, only criminalizes charging interest greater than authorized by other law.

*Reporting requirements, including detail about what must be reported and whether there are any requirements that the state agency review or take other steps regarding the reports:* Annual report in form prescribed by superintendent, including lender's standard APRs for several types of loans, including a \$500 unsecured consumer loan payable in 12 equal monthly installments, a \$2,500 consumer loan secured by a motor vehicle payable in 36 equal monthly installments, and a \$9,000 consumer loan secured in full by real property payable in 120 equal monthly installments, Superintendent must compile quarterly report of the standard APRs. §§ 6-609, 6-635(D).

*Other significant features:* Anti-evasion provision. § 6-603(B). Referral fees prohibited. § 6-611(B).

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## ARKANSAS

*Ark. Const. amend. 89; Ark. Code Ann. §§ 4-57-101 to 4-57-108 (Consumer Loans and Credit Sales).*

*What types of lenders does it apply to (e.g., banks vs. non-banks)?* All loans other than bonds issued and loans made by governmental units, and loans by federally insured depository institutions. Ark. Const. amend. 89, §§ 1, 2.

*Licensure requirements and implications of licensure:* Statute and constitution are silent.

*Size and length of loans to which the statute applies, and any restrictions in the statute on these features:* Statute and constitution are silent.

*Other restrictions on applicability of statute (e.g., it only applies if lender takes a mortgage on real property):* Statute and constitution are silent.

*What rate of interest is allowed?* 17%. Ark. Const. amend. 89, § 3; Ark. Code Ann. § 4-57-104.

*What loan fees are allowed?* Statute and constitution are silent.

*What types of insurance are allowed, and any limits the lending statute places on charges?* Statute and constitution are silent.

*Does statute prohibit all other fees besides those specifically allowed?* Yes. Ark. Code Ann. § 4-57-105.

*Does statute restrict balloon payments or irregular payment schedules?* Statute and constitution are silent.

*Any restrictions on refinancing?* Statute and constitution are silent.

*Any rebate requirements or restrictions on prepayment penalties?* Statute and constitution are silent.

*What security interests are allowed or prohibited (including postdated checks and ACH authorization)?* Statute and constitution are silent.

*Does statute prohibit unconscionable loan charges?* Statute and constitution are silent.

*Must lender underwrite or evaluate borrower's ability to repay?* Statute and constitution are silent.

*Is lending under this statute exempt from state criminal usury law?* Statute and constitution are silent.

*Reporting requirements, including detail about what must be reported and whether there are any requirements that the state agency review or take other steps regarding the reports:* Statute and constitution are silent.

*Other significant features:* Not applicable.

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## CALIFORNIA

*Cal. Fin. Code §§ 22000 to 22757 (West) (Finance Lenders Law).*

*What types of lenders does it apply to (e.g., banks vs. non-banks)?* "Finance lender" includes any person engaged in the business of making consumer loans (defined by § 22204 to include loans of less than \$5,000 for non-consumer purposes) or making commercial loans. § 22009. "Finance lender" includes any person engaged in the business of making consumer loans as defined in § 22203 or making commercial loans of \$5,000 or more, § 22009. Consumer loans also include commercial loans of less than \$5,000 as defined by § 22204. The above statute does not apply to:

- Banks, trust companies, savings and loan associations, insurance premium finance agencies, credit unions, small business investment companies, community advantage lenders, or California business and industrial development corporations.
- Licensed pawnbrokers (when acting under the authority of that license).
- Licensed payday lenders.
- Check cashers holding valid permit.
- College or university making loan for program or course of study leading to a degree or certificate.
- Broker-dealer acting pursuant to a certificate under state law.
- Person who makes 5 or fewer commercial loans in a 12-month period, if the loans are incidental to the person's business § 22050.



- A public corporation, public entity other than the state, or any of their agencies (§ 22050).
- Certain agricultural credit (§ 22051).
- Retail sales contracts (§ 22054).
- Premium financing (§ 22055).
- Loans under certain state development and waste management programs (§ 22056).
- Cemetery brokers (§ 22058).
- Certain credit cards issued by an organization to its members for a fee designed to cover the administrative costs of the plan (§ 22052).
- Loan made or arranged by state-licensed real estate broker and secured by a lien on real property, or made to a licensed real estate broker who is making such a loan, even if loan is then sold to a finance lender (§ 22057).
- Loans made or arranged by licensed residential mortgage lender or servicers (§ 22060).
- Nonprofit church extension funds (§ 22061).
- Certain commercial bridge loans (§ 22062).
- Loans made by franchisors to franchisees (§ 22063).
- Certain investments by charities and foundations (§ 22064).

The Finance Lenders Law has a structured regulatory threshold of loan amounts of \$2,500, \$5,000, and \$10,000 or more in which certain interest rates, fees, and other charges are exempt as summarized in § 22250 and § 22251. Loans of \$5,000 or more are exempt from some of the Act's provisions. Loans of \$10,000 or more are largely exempt from the provisions relevant to these summaries. § 22250.

*Licensure requirements and implications of licensure:* Must have license to engage in business of making consumer loans. §§ 22100(a), 22009 (definition of finance lender). Willful violation of any provision of Act renders loan void. § 22750.

*Size and length of loans to which the statute applies, and any restrictions in the statute on these features:* Closed-end loan, other than certain student loans, must be repayable over no more than:

- 24 months and 15 days if less than \$500;
- 36 months and 15 days if at least \$500 but less than \$1,500.
- 48 months and 15 days if at least \$1,500 but less than \$3,000.
- 60 months and 15 days if at least \$3,000 but less than \$5,000.

§ 22334. Loan under Pilot Program for Increased Access to Responsible Small Dollar Loans must be repayable over a period of no less than:

- 90 days if less than \$500.
- 120 days if at least \$500 but less than \$1,500.
- 180 days if at least \$1,500 (but no more than program's cap of \$2,500).

#### § 22370(a)(5).

*Other restrictions on applicability of statute (e.g., it only applies if lender takes a mortgage on real property):* Statute is silent.

*What rate of interest is allowed?*

- For loans of less than \$2,500: 2.5% per month on first \$225; 2% per month on amount over \$225 but no more than \$900; 1.5% per month on amount over \$900 but no more than \$1,650; and 1% per month on remainder. § 22303.
- Alternative rate for loans less than \$2,500: The greater of 1.6% per month on the unpaid principal balance or 5/6 of 1% per month plus a percentage per month equal to 1/12 of the annual rate prevailing on the 25th day of the second month of the quarter preceding the quarter in which the loan is made, as established by the Federal Reserve Bank of San Francisco. § 22304.
- For the Pilot Program for Increased Access to Responsible Small Dollar Loans: As an alternative to the charges authorized by §§ 22303 or 22304 (see above), an approved licensee may charge: (1) the lesser of 36% or the sum of 32.75% plus the United States prime lending rate on the first \$1,000 of the principal and (2) the lesser of 35% or the sum of

28.75% plus the United States prime lending rate on the remainder. § 22370(b).

- Statute does not state a limit on interest rate for loans of \$2,500 or more.

*What loan fees are allowed?*

- For loans of \$2,500 or less: Administrative fee of 5% or \$50 (of the bona fide loan amount), whichever is less.
- For loans of more than \$2,500 but less than \$5,000: \$75.
- \$5,000 or more: Limits do not apply.

§§ 22250, 22305. Recording fees, and any premium for non-filing insurance. § 22336 (limited to actual statutory fee paid to public officer). For loans made under Pilot Program for Increased Access to Responsible Small Dollar Loans: approved licensee may charge administrative fee of: (1) 7% of the principal or \$90, whichever is less, on the first loan made to a borrower and (2) 6% of the principal or \$75, whichever is less, on the second and subsequent loans made to that borrower. May not charge same borrower an administrative fee more than once in any 4-month period. § 22370(c).

*What types of insurance are allowed, and any limits the lending statute places on charges?* Licensee may provide credit insurance, including credit life, disability insurance, and loss-of-income insurance, and property insurance on collateral. §§ 22313, 22314(b) (both are inapplicable to loans of over \$10,000). Credit insurance and property insurance are prohibited for loans under the Pilot Program for Increased Access to Responsible Small Dollar Loans. § 22370(g).

*Does statute prohibit all other fees besides those specifically allowed?* Yes. §§ 22306, 22326 (but these provisions are applicable only to loans of less than \$5,000). The statute prohibits all other fees besides those specifically allowed by statute such as late fees, NSF fee, and lien fee when provided for in the loan agreements for loans less than \$5,000. For loans of \$5,000 or more, the fees must be provided for in the loan agreement and limited to actual cost.

*Does statute restrict balloon payments or irregular payment schedules?* Closed-end loan of less than \$10,000, other than educational loan, must be payable in substantially equal periodical installments. § 22307(b), (c) and Cal. Code Regs. tit. 10, §1453.

*Any restrictions on refinancing?* No administrative fee for refinancing unless at least one year since receipt of a previous administrative fee. § 22305. For loans made under Pilot Program for Increased Access to Responsible Small Dollar Loans, refinancing is prohibited unless borrower has repaid at least 60% of principal, is current on the loan, meets ability-to-repay requirements, and, if loans are for personal, family, or household purposes, has not previously refinanced the outstanding loan more than once. An administrative fee shall not be charged for refinancing unless at least 8 months have passed since the receipt of a previous administrative fee paid by the borrower. § 22370(c)(3), (4).

*Any rebate requirements or restrictions on prepayment penalties?* Borrower may prepay at any time. For loans less than \$10,000, no prepayment penalty may be charged due to the fact that all payments must be substantially equal with no balloon payment. § 22307(b), (c); Cal. Code Regs. tit. 10, § 1453. For loan over \$10,000, any prepayment penalty intended to be collected must be provided for in the loan agreement. §§ 22337, 22400(a)(2). Borrower is entitled to actuarial rebate of precomputed interest, but no refund need be made if less than \$1.00. §§ 22400(a)(2), 22402.

*What security interests (or postdated checks or ACH authorizations) are allowed or prohibited?* Security interest in real property, other than judgment lien, is prohibited for consumer loan of less than \$5,000. § 22330. Loans under the Pilot Program for Increased Access to Responsible Small Dollar Loans must be unsecured. § 22370(a)(1). Under the Finance Lenders Law, loans may be unsecured, secured by personal property, secured by real property, and or by business equipment. Postdated checks may be accepted by a lender. ACH authorizations are permitted only if requested by the borrower and cannot be a requirement of the loan by the lender.

*Does statute prohibit unconscionable loan charges?* Yes. § 22302 (applying unconscionability prohibition of Civil Code § 1670.5 to all loans subject to the Act).

*Must lender underwrite or evaluate borrower's ability to repay?* Yes. § 22370(f)(4) (Pilot Program for Increased Access to Responsible Small Dollar Loans); Cal. Code Regs. tit. 10, § 1452 (all loans made under California Finance Lenders Law).

*If state has a criminal usury law, is lending under this statute exempt from it?* Not applicable. Note also that § 22002 exempts credit transactions governed by this Act from state constitution's interest rate cap.

*Reporting requirements, including detail about what must be reported and whether there are any requirements that the state agency review or take other steps regarding the reports:* Annual report with relevant information in form prescribed by commissioner. Reports shall be made available to the public for inspection except, upon lender's request, the balance sheet contained in the annual report of a sole proprietor or any other non-publicly traded persons. Commissioner must file composite report annually. §§ 22159, 22160. Lender participating in the Pilot Program for Increased Access to Responsible Small Dollar Loans must file annual report separate from any other annual report licensee may have to file. § 22367. On or before July 1, 2015, and again, on or before January 1, 2017, the commissioner shall post a report on his or her Internet website summarizing utilization of the Pilot Program for Increased Access to Responsible Small Dollar Loans. § 22380.

*Whether the law authorizes open-end credit:* Yes. § 22450.

*Other significant features:* Prohibition against lending more than the borrower wants. § 22251. Loan-splitting prohibited (but this section does not apply to loans of \$5,000 or more). § 22327. Anti-evasion provisions. §§ 22326 (inapplicable to loans of \$5,000 or more), 22335.

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## COLORADO

### *Colo. Rev. Stat. §§ 5-1-101 to 5-13-103 (Consumer Credit Code).*

*What types of lenders does it apply to (e.g., banks vs. non-banks)?* All creditors extending consumer credit except loans to government, non-installment sales of insurance, certain transactions under public utility or common carrier tariffs, certain transactions with pawnbrokers, certain aspects of transactions involving securities and commodities accounts, and certain state-guaranteed loans. § 5-1-202. Some provisions apply just to "supervised lenders," defined as depository institutions and licensed lenders, or to "supervised loans," defined as consumer loans at more than 12%. § 5-1-301(46).

*Licensure requirements and implications of licensure:* Must be a supervised financial organization (defined by § 5-1-301(45) as taking deposits) or have obtained a license in order to engage in the business of making supervised loans (defined by § 5-1-301(47) as consumer loans at more than 12%) or to collect on them. §§ 5-2-301. If lender makes supervised loan without a required license, consumer is not required to pay the finance charge. § 5-5-201.

*Size and length of loans to which the statute applies, and any restrictions in the statute on these features:* "Consumer loan" means a loan made or arranged by a person regularly engaged in the business of making loans in which either the principal does not exceed \$75,000 or the debt is secured by land. § 5-1-301(15). Closed-end supervised loan of \$1,000 or less shall be payable over no more than 25 months; for loan of more than \$1,000 but not more than \$3,000, over no more than 37 months. § 5-2-308. The minimum term of a loan made pursuant to § 5-2-214 (alternative charges for loans not exceeding \$1,000) shall be 90 days and the maximum term shall be 12 months. § 5-2-214(2).

*Other restrictions on applicability of statute (e.g., it only applies if lender takes a mortgage on real property):* Statute is silent.

*What rate of interest is allowed?*

- For a consumer loan other than a supervised loan, 12%, but lender may charge minimum of \$25. § 5-2-201(1), (7).
- For a supervised loan, the greater of either: (a) 36% on first \$1,000, plus 21% on next \$2,000, plus 15% on remainder or (b) 21%. In either case, lender may charge minimum of \$25. § 5-2-201(2), (7).
- In the alternative, for a supervised loan of \$1,000 or less with a term of at least 90 days but no more than 12 months that is repayable in substantially equal installments, supervised lender may charge: (1) an acquisition charge of 10% of the amount financed (7.5% for a refinancing); and (2) a monthly installment account:

| AMOUNT FINANCED     | PER MONTH CHARGE |
|---------------------|------------------|
| \$100.00–\$300.00   | \$12.50          |
| \$300.01–\$500.00   | \$15.00          |
| \$500.01–\$750.00   | \$17.50          |
| \$750.01–\$1,000.00 | \$20.00          |

§ 5-2-214(1), (2). Creditor may contract for prepaid finance charge, but total finance charge shall not exceed that permitted for consumer credit transactions. § 5-2-207(1).

*What loan fees are allowed?*

- Official fees and taxes.
- Reasonable charges for other benefits conferred on the consumer if they meet certain requirements and are authorized by the administrator.

### § 5-2-202(1).

*What types of insurance are allowed, and any limits the lending statute places on charges?* Creditor may provide and charge for insurance. § 5-4-104. Statute specifically mentions property insurance, liability insurance covering liability arising out of ownership or use of property related to the credit transaction, and credit life, accident, and health insurance. §§ 5-2-202(3), 5-4-301, 5-4-303. Creditor may not charge for property insurance unless the amount financed is \$1,000 or

more and the value of the property is \$1,000 or more. § 5-4-301.

*Does statute prohibit all other fees besides those specifically allowed?* Consumer is not required to pay a charge in excess of that allowed by the statute. § 5-5-201(2). In addition, for loans subject to the alternative charges authorized by § 5-2-214, statute provides that no charge is allowed other than those specifically provided for. § 5-2-214(3).

*Does statute restrict balloon payments or irregular payment schedules?* Supervised closed-end loans of \$3,000 or less (with exception for seasonal or irregular income), and all loans made pursuant to § 5-2-214 (alternative charges for loans not exceeding \$1,000) shall be scheduled to be payable in substantially equal installments at equal periodic intervals. §§ 5-2-214(2), 5-2-308. Consumer has right to refinance any balloon payment at creditor's prevailing rates if the consumer meets the creditor's normal credit standards and if the creditor is still in the business of making such transactions, unless schedule was adjusted for borrower's seasonal or irregular income. § 5-3-208.

*Any restrictions on refinancing?* If loan is refinanced within one year, prepaid finance charge can be imposed only on new money portion, or lender must rebate unearned portion of prepaid finance charge. § 5-2-207(2). A lender may not refinance a loan made pursuant to § 5-2-214 (alternative charges for loans not exceeding \$1,000) more than 3 times in one year. § 5-2-214(8).

*Any rebate requirements or restrictions on prepayment penalties?* For precomputed obligation with 61 or fewer installments, Rule of 78s (sum of the balances method), but creditor may retain a minimum charge contracted for, up to \$25; otherwise, actuarial. No rebate of less than \$1.00 is required. § 5-2-211. Special rules for rebates upon prepayment of loans made under § 5-2-214. § 5-2-214(4), (5).

*What security interests (or postdated checks or ACH authorizations) are allowed or prohibited?* For a consumer loan of \$3,000 or less, security interest in land



is prohibited and void. § 5-3-204. Wage assignment is prohibited and unenforceable. § 5-3-206. No collateral is allowed for any loan made pursuant to § 5-2-214 (alternative charges for loans not exceeding \$1,000). § 5-2-214(7).

*Does statute prohibit unconscionable loan charges?* Yes: § 5-5-109.

*Must lender underwrite or evaluate borrower's ability to repay?* Statute is silent.

*If state has a criminal usury law, is lending under this statute exempt from it?* Criminal usury statute, which makes it a crime to charge more than 45%, provides that it is inapplicable to charges and fees permitted by the Consumer Credit Code. § 18-15-104.

*Reporting requirements, including detail about what must be reported and whether there are any requirements that the state agency review or take other steps regarding the reports:* Annual report in form prescribed by administrator. Information contained in annual reports may be published only in composite form. § 5-2-304(2).

*Other significant features:* Prohibits loan-splitting. § 5-3-205.

### **Colo. Rev. Stat. §§ 5-3.1-101 to 5-3.1-123 (Deferred Deposit Loan Act).**

*What types of lenders does it apply to (e.g., banks vs. non-banks)?* Applies to all persons who make or arrange deferred deposit loans (payday loans). § 5-3.1-102(5).

*Licensure requirements and implications of licensure:* Supervised lender's license required to engage in business of deferred deposit loans. § 5-3.1-116.

*Size and length of loans to which the statute applies, and any restrictions in the statute on these features:* Loans for more than \$500 prohibited. § 5-3.1-106. No maximum loan term, but minimum is six months. § 5-3.1-103.

*Other restrictions on applicability of statute (e.g., it only applies if lender takes a mortgage on real property):* Applies only to loans for which creditor takes a dated instrument (including an ACH authorization). § 5-3.1-102(3).

*What rate of interest is allowed?* 20% of the first \$300 loaned plus 7½% of the remainder. May also charge 45% interest. § 5-3.1-105.

*What loan fees are allowed?* Monthly maintenance fee of \$7.50 per \$100.00 loaned, up to \$30.00 per month. This fee may be charged for each month the loan is outstanding 30 days after the date of the original loan transaction. § 5-3.1-105.

*What types of insurance are allowed, and any limits the lending statute places on charges?* Insurance charges are prohibited because they are not specifically authorized. § 5-3.1-105.

*Does statute prohibit all other fees besides those specifically allowed?* Yes. § 5-3.1-105.

*Does statute restrict balloon payments or irregular payment schedules?* Statute is silent.

*Any restrictions on refinancing?* Must be 30-day waiting period between loans. § 5-3.1-106. Loan may not be renewed more than once. § 5-3.1-108. Upon renewal of a loan, lender may assess an additional finance charge not to exceed an APR of 45%. § 5-3.1-108(2). Nothing prohibits lender from refinancing a deferred deposit loan as a supervised loan subject to the provision of the Consumer Credit Code, articles 1 to 9, except that lender may not charge the minimum finance charge contained in § 5-2-201(7) (\$25). § 5-3.1-108(4).

*Any rebate requirements or restrictions on prepayment penalties?* Lender must accept prepayment and may not charge a penalty. § 5-3.1-103 Borrower who pre-pays is entitled to pro rata rebate of interest based on the ratio of time left before maturity to loan term, but is not entitled to a rebate of the other finance charges. § 5-3.1-105.

*What security interests (or postdated checks or ACH authorizations) are allowed or prohibited?* Definition describes "dated instrument" as "sole security." § 5-3.1-102(3), (4).

*Does statute prohibit unconscionable loan charges?* Yes. § 5-5-109 (made applicable to these loans by §§ 5-3.1-119 and 5-3.1-122). However, if lender complies with

requirements addressing ability to repay (see below), and the loan otherwise complies with this and other applicable law, neither the consumer's inability to repay nor the lender's decision to obtain or not obtain additional information concerning the consumer's creditworthiness shall be cause to determine that a loan is unconscionable. § 5-3.1-122(4).

*Must lender underwrite or evaluate borrower's ability to repay?* Lender must require consumer to fill out a loan application and provide a pay stub or other evidence of income at least once in each 12-month period. If amount borrowed is not more than 25% of consumer's monthly gross income and benefits, lender shall not be obligated to investigate the consumer's continued debt position, and consumer's ability to repay the loan need not be further demonstrated. § 5-3.1-122(2), (3).

*If state has a criminal usury law, is lending under this statute exempt from it?* Criminal usury statute, which makes it a crime to charge more than 45%, provides that it is inapplicable to charges and fees permitted by the Consumer Credit Code, of which this article is a part. § 18-15-104.

*Reporting requirements, including detail about what must be reported and whether there are any requirements that the state agency review or take other steps regarding the reports:* Annual report in form prescribed by administrator, including proof of licensee's financial responsibility. Information contained in annual reports may be published only in composite form. §§ 5-2-304, 5-3.1-115.

*Other significant features:* The provisions of the Consumer Credit Code, articles 1 to 9, apply to a lender unless such provisions are inconsistent with this article. § 5-3.1-119. Anti-evasion provision. § 5-3.1-121. Incorporates prohibition against loan splitting, but provides that it is not a violation if consumer obtains a deferred deposit loan voluntarily and separately from spouse and consumer's action is documented in writing, signed by consumer, and retained by lender. § 5-3.1-123.

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## CONNECTICUT

*Conn. Gen. Stat. §§ 36a-555 to 36a-573 (Small Loan Law). See also Conn. Agencies Regs. §§ 36a-570-1 to 36a-570-17.*

*What types of lenders does it apply to (e.g., banks vs. non-banks)?* All lenders except banks, credit unions, savings and loan association wholly owned subsidiary service corporations, persons who make loans for agricultural, commercial, industrial or governmental use or extend retail credit through an open-end credit plan, mortgage lenders or mortgage correspondent lenders licensed pursuant to § 36a-489 when making residential mortgage loans, and licensed pawnbrokers. § 36a-555.

*Licensure requirements and implications of licensure:* Must be licensed in order to make, offer, broker, assist a borrower, or in whole or in part, arrange through a third party or act as an agent for a third party a loan in the amount of \$15,000 or less and charge interest greater than 12%. § 36a-555

*Size and length of loans to which the statute applies, and any restrictions in the statute on these features:* Loans of \$15,000 and less. § 36a-555. A loan governed by this statute shall not originally schedule any repayment of the cash advance over a period in excess of:

- 24 months and 15 days if the amount of the original cash advance was \$1,000 or less; or
- 36 months and 15 days if the amount of the original cash advance was between \$1,000 and \$1,800; or
- 72 months and 15 days if the amount of the original cash advance was over \$1,800. § 36a-568.

In addition, interest rate must be reduced to 12% on any balance scheduled to be repaid after these periods. § 36a-563(h).

*Other restrictions on applicability of statute (e.g., it only applies if lender takes a mortgage on real property):* Statute is silent.

*What rate of interest is allowed?* On loan of \$1,800 or less, or any loan that is unsecured or secured only by credit life insurance, add-on interest of \$17 per



hundred per year on first \$600 and \$11 per \$100 per year on remainder; on other loans, add-on rate of \$11 per \$100 per year. § 36a-563(a).

*What loan fees are allowed?* Specified closing costs for loan secured by real property. § 36a-563(i).

*What types of insurance are allowed, and any limits the lending statute places on charges?* Credit life and accident and health insurance. § 36a-566.

*Does statute prohibit all other fees besides those specifically allowed?* Yes. § 36a-563(h).

*Does statute restrict balloon payments or irregular payment schedules?* Payments must be substantially equal in amount or so arranged that no installment is substantially greater in amount than any preceding installment, and must be payable at approximately equal intervals not exceeding one month. § 36a-568.

*Any restrictions on refinancing?* No part of the principal balance remaining unpaid by a borrower 24 months and 15 days after making such contract where the original cash advance was \$1,000 or less, or 36 months and 15 days where the original cash advance was between \$1,000 and \$1,800, shall directly or indirectly be renewed or refinanced by the lender. § 36a-563(h). No loan shall be renewed or refinanced unless a distinct advantage to the borrower (other than restoration to a contractually up-to-date condition) results therefrom. Conn. Agencies Regs. § 36a-570-4(d). No loan may be refinanced earlier than 90 days after consummation, unless payment is reduced by 10% or \$5, whichever is greater, or at least \$75 in new money is extended. Conn. Agencies Regs. § 36a-570-13.

*Any rebate requirements or restrictions on prepayment penalties?* Actuarial if loan term exceeds 48 months and 15 days, and otherwise Rule of 78s. No refund of less than \$1.00 need be made. § 36a-563(b), (f). Prepayment is permitted. §§ 36a-563(f), 36a-567. Prepayment penalties are likely prohibited, because not authorized by § 36a-563(h). See also Conn. Agencies Regs. § 36a-570-17(e) (prepayment penalties in mortgage loans exceeding \$5,000).

*What security interests are allowed or prohibited (including postdated checks and ACH authorization)?* Security interests in household goods and wage assignments as security are prohibited. Lender may take a security interest in chattels or personal property other than household goods, except that if the cash advance is \$1,800 or less a security interest in an automobile is prohibited. Security interest in real estate is allowed only if cash advance is exceeds \$1,800. § 36a-568.

*Does statute prohibit unconscionable loan charges?* Statute is silent.

*Must lender underwrite or evaluate borrower's ability to repay?* Statute is silent.

*Is lending under this statute exempt from state criminal usury law?* Statute is silent, but criminal usury statute, § 37-4 prohibits interest over 12% only if not otherwise provided by law.

*Reporting requirements, including detail about what must be reported and whether there are any requirements that the state agency review or take other steps regarding the reports:* Lender must annually furnish a sworn statement to commissioner of the condition of the business. § 36a-569.

*Other significant features:* Loan-splitting prohibited. § 36a-563(h).

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## DELAWARE

*Del. Code Ann. tit. 5, §§ 2227 to 2245 (Regulated Closed-End Credit, Licensed Lenders).*

*What types of lenders does it apply to (e.g., banks vs. non-banks)?* Applies to all persons transacting the business of lending money. Excludes anyone making fewer than 6 loans within a 12-month period and banks, federal credit unions, insurance companies, and anyone lending under other state or federal law. § 2202.

*Licensure requirements and implications of licensure:* Must have license to transact business of lending

money. § 2202. Licensees may make closed-end loans within the limits of this statute. § 2228(a).

*Size and length of loans to which the statute applies, and any restrictions in the statute on these features:* Statute is silent.

*Other restrictions on applicability of statute (e.g., it only applies if lender takes a mortgage on real property):* Statute is silent.

*What rate of interest is allowed?* Any rate agreed upon. §§ 2229, 2237.

*What loan fees are allowed?*

- Reasonable fees for services rendered or expenses incurred, such as commitment fees, official fees and taxes, premiums for insurance protecting the licensee against the borrower's default or other credit loss, costs for title examination, inspection, recording and other formal acts necessary or appropriate to the security of the loan, filing fees, attorney fees and travel expenses.
- Other charges that Commissioner includes in a schedule of costs, fees, services, points, premiums and other reasonable expenses.

## § 2231.

*What types of insurance are allowed, and any limits the lending statute places on charges?* Life, health, accident, health and accident or other permissible insurance on borrower; property and liability insurance on collateral. § 2233.

*Does statute prohibit all other fees besides those specifically allowed?* Yes. § 2231(3).

*Does statute restrict balloon payments or irregular payment schedules?* Statute is silent.

*Any restrictions on refinancing?* Refinancing and refinancing fees are explicitly authorized under § 2235(a).

*Any rebate requirements or restrictions on prepayment penalties?* Borrower may prepay at any time. Prepayment penalty prohibited except for residential mortgage loan. Actuarial rebate required, but no refund

need be made if less than \$5. § 2234. Licensee may not impose any prepayment charge, except that in the case of a residential mortgage loan may charge any prepayment penalty or charge specified in the agreement governing, or the bond, note or other evidence of, the loan. § 2234(e).

*What security interests are allowed or prohibited (including postdated checks and ACH authorization)?* Any security is allowed (§ 2228(a)) except an interest in wages. § 2242(a).

*Does statute prohibit unconscionable loan charges?* Statute is silent.

*Must lender underwrite or evaluate borrower's ability to repay?* Statute is silent.

*Is lending under this statute exempt from state criminal usury law?* Not applicable.

*Reporting requirements, including detail about what must be reported and whether there are any requirements that the state agency review or take other steps regarding the reports:* Statute is silent.

*Other significant features:* Not applicable.

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## DISTRICT OF COLUMBIA

*D.C. Code §§ 26-901 to 26-912 (Money Lenders Law with licensing provisions), 28-3301 (interest rate limitations).*

*What types of lenders does it apply to (e.g., banks vs. non-banks)?* Licensure law does not apply to "the legitimate business" of national banks, licensed bankers, licensed mortgage brokers, licensed mortgage lenders, trust companies, savings banks, building and loan associations, small business investment companies, or life insurance companies. § 26-910(a).

*Licensure requirements and implications of licensure:* Must have license to engage in business of loaning money at more than 6%. § 26-901(a).

*Size and length of loans to which the statute applies, and any restrictions in the statute on these features:* Licensure

law does not apply to loans greater than \$25,000. § 26-912(a)(5). Licensure law also provides that licensed lender cannot make loan of more than \$200. § 26-905. The result appears to be that a lender such as a bank or licensed mortgage broker that is exempt from the licensure provisions of §§ 26-901 to 26-912 may make loans at the 24% interest rate allowed by § 28-3301; and a lender that is subject to the licensure requirements of §§ 26-901 to 26-912 may also make loans at 24% interest, but is limited to loans of \$200 or less. *See In re Parkwood, Inc.*, 461 F.2d 158, 180 (D.C. Cir. 1971) (if lender has obtained a license, then it can charge interest at the rate provided by the code provision, but is limited to loans of \$200 or less).

*Other restrictions on applicability of statute (e.g., it only applies if lender takes a mortgage on real property):* Licensure law is inapplicable to any loan to a corporation that is unable to plead usury as a defense; to a loan secured by real estate outside the District; or to a loan to a borrower outside the District.

*What rate of interest is allowed?* 24%. §§ 26-905, 28-3301(a).

*What loan fees are allowed?* Lender may charge points, but they are limited to 1% of principal unless they buy down the interest rate. § 28-3301(e)(2).

*What types of insurance are allowed, and any limits the lending statute places on charges?* Statute is silent.

*Does statute prohibit all other fees besides those specifically allowed?* Statute is silent.

*Does statute restrict balloon payments or irregular payment schedules?* Statute is silent.

*Any restrictions on refinancing?* Statute is silent.

*Any rebate requirements or restrictions on prepayment penalties?* Statute is silent.

*What security interests are allowed or prohibited (including postdated checks and ACH authorization)?* Statute is silent.

*Does statute prohibit unconscionable loan charges?* Statute is silent.

*Must lender underwrite or evaluate borrower's ability to repay?* Statute is silent.

*Is lending under this statute exempt from state criminal usury law?* Statute is silent.

*Reporting requirements, including detail about what must be reported and whether there are any requirements that the state agency review or take other steps regarding the reports:* Annual statement in the form of a trial balance of its books specifying liabilities and assets, plus such other information as may be called for. § 26-904.

*Other significant features:* Statute is silent.

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## FLORIDA

### *Fla. Stat. §§ 516.001 to 516.36 (Consumer Finance Act).*

*What types of lenders does it apply to (e.g., banks vs. non-banks)?* Any lender except banks, savings banks, trust companies, building and loan associations, credit unions, or industrial loan and investment companies. A pawnbroker may not be licensed to transact business under the chapter. § 516.02(4).

*Licensure requirements and implications of licensure:* Must have license to engage in business of making "consumer finance loans." § 516.02.

*Size and length of loans to which the statute applies, and any restrictions in the statute on these features:* Statute applies to "consumer finance loans," defined as those of \$25,000 or less at interest rate over 18%. §§ 516.01(2).

*Other restrictions on applicability of statute (e.g., it only applies if lender takes a mortgage on real property):* Statute is silent.

*What rate of interest is allowed?*

- 30% on first \$3,000.
- 24% on next \$1,000.
- 18% on amount over \$4,000.

## § 516.031(1).

*What loan fees are allowed?*

- \$25 credit investigation fee. § 516.031(3)(a)(1).
- Brokerage fee on a loan or line of credit of more than \$10,000.
- Documentary excise tax and recording fees or non-filing insurance not exceeding those fees.

§ 516.031(3)(a)(5), (6).

*What types of insurance are allowed, and any limits the lending statute places on charges?* Credit property, credit life, and disability insurance. § 516.35.

*Does statute prohibit all other fees besides those specifically allowed?* Yes. § 516.031(a).

*Does statute restrict balloon payments or irregular payment schedules?* Loan must be repaid in monthly installments as nearly equal as mathematically practicable. § 516.36.

*Any restrictions on refinancing?* If all or part of the consideration for a new loan contract is the unpaid principal balance of a prior loan with the licensee, the principal amount payable under the new loan contract may include not more than 60 days of unpaid interest accrued on the prior loan. § 516.031(5).

*Any rebate requirements or restrictions on prepayment penalties?* Statute requires lender to permit repayment at any time, with interest up to date of payment. § 516.15(3). Prepayment penalties are likely prohibited because not authorized by § 516.031.

*What security interests are allowed or prohibited (including postdated checks and ACH authorization)?* Security interest in land is prohibited for loan of less than \$1,000. § 516.031(1). Wage assignments are invalid. § 516.17.

*Does statute prohibit unconscionable loan charges?* Statute is silent.

*Must lender underwrite or evaluate borrower's ability to repay?* Statute is silent.

*Is lending under this statute exempt from state criminal usury law?* Criminal usury statute, § 687.071, prohibits charging more than 45% interest "[u]nless otherwise specifically allowed by law."

*Reporting requirements, including detail about what must be reported and whether there are any requirements that the state agency review or take other steps regarding the reports:* Statute is silent.

*Other significant features:* No loan splitting allowed. §§ 516.031(4); 516.21. Anti-evasion provisions, specifically addressing sham purchases and sale of wages. §§ 516.02(2), 516.26.

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## GEORGIA

### *Ga. Code Ann. §§ 7-3-1 to 7-3-29 (Industrial Loan Act).*

*What types of lenders does it apply to (e.g., banks vs. non-banks)?* All lenders making loans of \$3,000 or less at interest rates over 8% simple interest, except banks, trust companies, real estate loan or mortgage companies, federal savings and loan associations, Georgia building and loan associations, credit unions, pawnbrokers, the state university system or its educational units, to private colleges and universities in state, or to student loan transactions of such entities. §§ 7-3-2, 7-3-6.

*Licensure requirements and implications of licensure:* License required for the business of making loans of \$3,000 or less at an interest rate over 8% simple interest, unless expressly exempted. § 7-3-8. Loan made without a required license is void. § 7-3-29(a).

*Size and length of loans to which the statute applies, and any restrictions in the statute on these features:* Applies to loans of \$3,000 or less at interest rate over 8%. §§ 7-3-2, § 7-3-6. Statute allows licensee to make loans with terms of no more than 36 months and 15 days. § 7-3-14.

*Other restrictions on applicability of statute (e.g., it only applies if lender takes a mortgage on real property):* Statute is silent.



*What rate of interest is allowed?* 10% discount interest if loan is for 18 months or less; otherwise, 10% add-on interest. § 7-3-14(1).

*What loan fees are allowed?*

- Loan fee of 8% of the first \$600 of face amount of contract plus 4% of the excess.
- \$3 maintenance charge for each month in loan contract. § 7-3-14(5).
- Recording fees, or on loans over \$100, non-filing insurance if no more than those fees. § 7-3-15.

*What types of insurance are allowed, and any limits the lending statute places on charges?* Property insurance; life, health, and accident insurance on the principal party. § 7-3-14(3).

*Does statute prohibit all other fees besides those specifically allowed?* Yes. § 7-3-15.

*Does statute restrict balloon payments or irregular payment schedules?* Statute is silent but § 7-3-14(1) refers to single-payment and installment payment schedules.

*Any restrictions on refinancing?* Lender may not charge 6% origination fee on that part of loan used to pay or apply on a prior loan or installment of a prior loan from the same lender to the same borrower made within preceding 6 months (within the preceding 2 months if loan balance is \$ 300 or less). § 7-3-14(2). Statute prohibits loan to pay balance due on note or contract purchased by the lender until 90 days after purchase. § 7-3-16.

*Any rebate requirements or restrictions on prepayment penalties?* Borrower may prepay all or part of unpaid balance on any installment contract. Prepayment penalties are likely prohibited because not authorized by § 7-3-15. Rule of 78s rebate of interest (sum of the balances method), but no refund of less than \$1 need be made. § 7-3-17. Upon refinancing, lender must also recalculate interest and charges, and if they exceed 5% per month (the criminal usury cap), lender must refund the excess. Ga. Comp. R. & Regs. § 120-1-10-.04.

*What security interests are allowed or prohibited (including postdated checks and ACH authorization)?* Statute is silent

*Does statute prohibit unconscionable loan charges?* Statute is silent.

*Must lender underwrite or evaluate borrower's ability to repay?* Statute is silent.

*Is lending under this statute exempt from state criminal usury law?* Loans under this statute are not exempt from the criminal usury statute, § 7-4-18, which caps interest at 5% per month, except that the criminal usury statute does not apply to the maintenance charges of \$3 per month allowed by § 7-3-14(5). § 7-3-14(2), (5).

*Reporting requirements, including detail about what must be reported and whether there are any requirements that the state agency review or take other steps regarding the reports:* Commissioner may require annual reports from lenders. § 7-3-12.

*Other significant features:* Loan splitting prohibited. § 7-3-15.

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## HAWAII

*Haw. Rev. Stat. §§ 412:9-100 to 412:9-501 ("Article 9") (Financial Service Loan Companies).*

*What types of lenders does it apply to (e.g., banks vs. non-banks)?* Depository and non-depository financial services loan companies. §§ 412:9-100, 412:9-101.

*Licensure requirements and implications of licensure:* Must have license as financial services loan company to make loans at rates in excess of those permitted by other law. § 412:9-101.

*Size and length of loans to which the statute applies, and any restrictions in the statute on these features:* Relevant provisions apply to "consumer loan," defined to include only those for \$25,000 or less or which are secured by real property or the borrower's dwelling. § 412:9-100. The maximum term of a precomputed

loan is 48 months. If term is more than 48 months, simple interest rate must be charged. § 412:9-302(b).

*Other restrictions on applicability of statute (e.g., it only applies if lender takes a mortgage on real property):* This statute (Article 9) applies to loans made at an interest rate higher than permitted by law other than Article 9 (e.g., higher than permitted by the Interest and Usury Law, ch. 478).

*What rate of interest is allowed?* May charge interest on precomputed basis or simple interest basis (method described in detail). § 412:9-301.

- For precomputed loan with term up to 48 months, may charge interest paid or deducted in advance (i.e., add-on or discount interest) at 14% per year for first 18 months of term, 10.5% per year for next 12 months of term, 7% per year for next 12 months of term, and 4% per year for last 6 months of term. For precomputed loan with term exceeding 48 months, 24% APR (as defined by TILA; i.e., actuarial). §§ 412:9-301, 412:9-302.
- For simple interest loans: 24% simple interest, plus any other charges that are excluded or excludable from the determination of finance charge under TILA. § 412:9-302.

*What loan fees are allowed?* Fees, charges, and expenses reasonably related to the consumer loan, such as charges for credit reports, recording fees, wire transfer fees, attorney fees for preparing loan documents, and a variety of other listed fees that are actually paid to third parties, affiliates, or subsidiaries for services actually rendered and without kickbacks. § 412:9-304(6). (Rules for loans secured by real property are found in § 412:9-304(5).) Nonrefundable discount, points, loan fees, and origination charges are permitted on simple interest loans, but must be included as interest to determine compliance with the 24% cap; these charges are not permitted if loan is precomputed and interest is determined by the discount or add-on method. § 412:9-304(4).

*What types of insurance are allowed, and any limits the lending statute places on charges?* Credit-related insurance products, including credit life insurance, credit

disability insurance, accident, and health or sickness insurance, involuntary unemployment insurance, personal property insurance, and mortgage protection insurance. § 412:9-200(6). With commissioner's approval, may also sell accidental death and dismemberment insurance and auto club memberships and home and automobile security plans, whether or not connected with a loan. § 412:9-201.

*Does statute prohibit all other fees besides those specifically allowed?* Yes. § 412:9-304.

*Does statute restrict balloon payments or irregular payment schedules?* Statute is silent.

*Any restrictions on refinancing?* Statute is silent.

*Any rebate requirements or restrictions on prepayment penalties?* Prepayment penalty is allowed for certain loans secured by real estate, § 412:9-304(2)(A), but not on a variable rate or open-end loan, on a precomputed loan, or on a loan that is not secured by real estate. § 412:9-304(2). If original loan term is less than 60 months, Rule of 78s rebate; otherwise refund of difference between interest originally charged and actuarially earned. No refund need be made if less than \$1, and lender may retain at least \$15. § 412:9-306. For precomputed loan with original term of 60 months or less, Rule of 78s rebate (sum of the balance method); otherwise actuarial. No refund less than \$1 need be made, and lender may retain minimum charge of \$15. § 412:9-306.

*What security interests (or postdated checks or ACH authorizations) are allowed or prohibited?* Loan may be unsecured or secured by real or personal property of any kind. § 412:9-200(1).

*Does statute prohibit unconscionable loan charges?* Statute is silent, but § 412:9-300 requires lender to make loans that are consistent with "prudent lending practices" and "in compliance with all applicable federal and state laws."

*Must lender underwrite or evaluate borrower's ability to repay?* Statute allows lender to make loans "that are consistent with prudent lending practices," § 412:9-300, but otherwise is silent.



*If state has a criminal usury law, is lending under this statute exempt from it?* Not applicable. (§ 412:9-303 exempts loans made under Article 9 from Hawaii's general usury statute, §§ 478-5, 478-6, which is a non-criminal statute.)

*Reporting requirements, including detail about what must be reported and whether there are any requirements that the state agency review or take other steps regarding the reports:* Statute is silent.

*Other significant features:* Not applicable.

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## IDAHO

### *Idaho Code Ann. §§ 28-41-101 to 28-49-107 (Credit Code).*

*What types of lenders does it apply to (e.g., banks vs. non-banks)?* Prescribes maximum charges for all creditors, except those excluded, extending credit as a regular business. § 28-41-107. Does not apply to licensed pawnbrokers, extensions of credit to government agencies, sales of insurance, or certain transactions under public utility tariffs. § 28-41-202. Banks are exempt from licensing requirement. § 28-46-301(2).

*Licensure requirements and implications of licensure:* License required for business of making "regulated consumer loans," defined by § 28-41-301(23), (28), (35), (39), (44) as those payable in at least two installments or for which a finance charge is imposed, or taking assignments of and collecting on such loans. Banks and other depository institutions, licensed mortgage lenders, and governmental agencies are exempt from licensing requirement. § 28-46-301(2). Debtor has right to sue for civil damages if lender makes loan without required license. § 28-45-201(a).

*Size and length of loans to which the statute applies, and any restrictions in the statute on these features:* Regulated closed-end consumer loan of \$1,000 or less must be payable over no more than 37 months; over 25 months if \$300 or less. § 28-43-310.

*Other restrictions on applicability of statute (e.g., it only applies if lender takes a mortgage on real property):* Statute is silent.

*What rate of interest is allowed?* Agreed rate. § 28-42-201(1).

*What loan fees are allowed?* Any other charge, unless expressly prohibited or limited by the Act. § 28-42-201(1).

*What types of insurance are allowed, and any limits the lending statute places on charges?* Generally allows creditor to provide and charge for insurance. § 28-44-104. This authority is not explicitly limited to credit insurance, although the statute specifically mentions credit life insurance, property insurance, and liability insurance, §§ 28-44-202(1), 28-44-301(3), 28-44-303. Property and liability insurance must cover property related to the credit transaction. §§ 28-44-301, 28-44-303. Property insurance is allowed only if the amount financed is \$500 or more, the value of the property is \$500 or more, and other conditions are met. § 28-44-303.

*Does statute prohibit all other fees besides those specifically allowed?* No. In addition to finance charge permitted, creditor may contract for and receive any other charge, except to the extent expressly prohibited or limited by Act. § 28-42-201(1).

*Does statute restrict balloon payments or irregular payment schedules?* With some exceptions, consumer has right to refinance any balloon payment in a regulated consumer credit transaction. § 28-43-307. Regulated closed-end consumer loans of \$1,000 or less must be payable in substantially equal installments at equal periodic intervals except to adjust for borrower's seasonal or irregular income. § 28-43-310.

*Any restrictions on refinancing?* Statute is silent.

*Any rebate requirements or restrictions on prepayment penalties?* Statute allows prepayment penalty in specified amount, but only for certain real-property-secured transactions other than same-lender refinance; otherwise, may prepay in full at any time without penalty. § 28-42-306. Actuarial rebate

required if original loan term exceeds 61 months; otherwise, Rule of 78s (sum of the balances method). § 28-42-307(3)(a), (b). For precomputed regulated consumer loan, no rebate required if less than \$1.00. § 28-42-307(1). In addition, for any non-open-end regulated consumer loan, creditor may retain minimum charge of \$5.00 if principal was \$75.00 or less, or \$7.50 if principal was more than \$75. § 28-42-307(2).

*What security interests (or postdated checks or ACH authorizations) are allowed or prohibited?* Wage assignment is prohibited and unenforceable, but debtor may revocably authorize deductions from earnings. § 28-43-304. Security interest in land is prohibited and void unless principal exceeds \$1,000. § 28-43-309.

*Does statute prohibit unconscionable loan charges?* Yes. § 28-45-106.

*Must lender underwrite or evaluate borrower's ability to repay?* Statute is silent.

*If state has a criminal usury law, is lending under this statute exempt from it?* Not applicable.

*Reporting requirements, including detail about what must be reported and whether there are any requirements that the state agency review or take other steps regarding the reports:* Annual report in form prescribed by administrator. § 28-46-304.

*Other significant features:* Not applicable.

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## ILLINOIS

### 815 Ill. Comp. Stat. Ann. § 205/4a (Interest Act).

*What types of lenders does it apply to (e.g., banks vs. non-banks)?* Applies broadly to all installment lenders, but interest rate limits do not apply to most banks or to lenders licensed under Consumer Finance Act or Installment Loan Act. § 205/4a(a).

*Licensure requirements and implications of licensure:* Statute is silent.

*Size and length of loans to which the statute applies, and any restrictions in the statute on these features:* Applies to loans of \$25,000 or less, payable in two or more installments over no more than 181 months. § 205/4a(a).

*Other restrictions on applicability of statute (e.g., it only applies if lender takes a mortgage on real property):* Statute excepts purchase money, real estate mortgage loans. § 205/4a(a).

*What rate of interest is allowed?* 9% add-on interest per year, but cap does not apply to interest rate charged by: (1) any bank that has its main office or a branch in the state; (2) a savings and loan association chartered under state law, a savings bank chartered under state law, a federal savings and loan association established under the U.S. law and having its main office in the state; or (3) any lender licensed under either the Consumer Finance Act or the Consumer Installment Loan Act. § 205/4a(a)(i), (ii). Where the principal of an installment loan is \$300 or more and the repayment period is 6 months or more, a minimum charge of \$15 may be collected instead of interest, but only one minimum charge may be collected from the same person during one year. § 205/4a(b).

*What loan fees are allowed?* Recording fees; \$5 service charge if principal is \$800 or less. § 205/4a(b), (e).

*What types of insurance are allowed, and any limits the lending statute places on charges?* Credit life insurance and credit accident and health insurance, but if there are two or more obligors, only one charge for credit life insurance and credit accident and health insurance may be made and only one of the obligors may be required to be insured; property insurance on security other than household goods, furniture, and personal effects. § 205/4a(c), (d).

*Does statute prohibit all other fees besides those specifically allowed?* Yes. §§ 205/4a(e), 205/5.

*Does statute restrict balloon payments or irregular payment schedules?* Statute is silent.

*Any restrictions on refinancing?* For installment loan of \$300 or less payable over 6 months or more, only one

\$15 minimum charge, and only one \$5 service charge may be collected during one year. § 205/4a(b).

*Any rebate requirements or restrictions on prepayment penalties?* May pay in full at any time. Lender must make rebate of precomputed interest in accord with § 670/15(f)(3), which does not specify calculation method, but § 670/16(m) allows lender to disclose that it is using Rule of 78s (sum of the balances method). § 205/4a(i). Statute refers to prepayment penalties that lender may impose. § 205/4a(f)(12).

*What security interests (or postdated checks or ACH authorizations) are allowed or prohibited?* Statute is silent.

*Does statute prohibit unconscionable loan charges?* Statute is silent.

*Must lender underwrite or evaluate borrower's ability to repay?* Statute is silent.

*If state has a criminal usury law, is lending under this statute exempt from it?* Criminal usury statute "does not apply to any loan authorized to be made by any person licensed under the Consumer Installment Loan Act or to any loan permitted by Sections 4, 4.2 and 4a of the Interest Act or by any other law of this State." 720 Ill. Comp. Stat. Ann. § 5/17-59(d).

*Reporting requirements, including detail about what must be reported and whether there are any requirements that the state agency review or take other steps regarding the reports:* Statute is silent.

*Other significant features:* Not applicable.

### 205 Ill. Comp. Stat. Ann. §§ 670/1 to 670/27 (Consumer Installment Loan Act).

*What types of lenders does it apply to (e.g., banks vs. non-banks)?* Does not apply to banks, savings and loan associations, savings banks, credit unions, or licensees under the Residential Mortgage License Act for residential mortgage loans made pursuant to that Act. Does not apply to business loans or payday loans. § 670/21.

*Licensure requirements and implications of licensure:*

License required to engage in the business of making loans of \$40,000 or less at interest rates higher than could be charged without a license. Payday lenders are ineligible for licenses except to make vehicle title loans. § 670/1.

*Size and length of loans to which the statute applies, and any restrictions in the statute on these features:* Amount not exceeding \$40,000. §§ 670/1, 670/15(a). Loan contract must provide for repayment of principal and charges within 181 months. § 670/17. Term of a "small consumer loan" (defined by § 670/15(b) as one for \$4,000 or less at more than 36%, other than a payday or vehicle title loan) cannot exceed 180 days. § 670/17.3(a).

*Other restrictions on applicability of statute (e.g., it only applies if lender takes a mortgage on real property):* Statute is silent.

*What rate of interest is allowed?* APR of 36%, except that vehicle title loans have no cap. § 671/16(g). For "small consumer loan" of \$1,500 or less, licensee may charge interest at APR of no more than 99% calculated in accordance with federal Truth in Lending Act. § 670/17.2(a)(1).

*What loan fees are allowed?* Recording fees or non-filing insurance up to that amount; \$25 to prepare documents and review credit report. § 670/15d.

- For "small consumer loan" of \$1,500 or less: an acquisition charge of 10% of the amount financed. § 670/17.2(a)(2).
- For "small consumer loan" over \$1,500 (but no more than \$4,000): an acquisition charge not to exceed \$100 for first loan (reduced to \$50 for first refinance and to \$25 for subsequent refinances), and a monthly installment account handling charge, not to exceed the following amounts, but APR calculated in accordance with TILA cannot exceed 99%:

| AMOUNT FINANCED       | PER MONTH CHARGE |
|-----------------------|------------------|
| \$1,500.01–\$1,600.00 | \$69.00          |
| \$1,600.01–\$1,700.00 | \$72.00          |
| \$1,700.01–\$1,800.00 | \$75.00          |
| \$1,800.01–\$1,900.00 | \$78.00          |
| \$1,900.01–\$2,000.00 | \$81.00          |
| \$2,000.01–\$2,100.00 | \$84.00          |
| \$2,100.01–\$2,200.00 | \$87.00          |
| \$2,200.01–\$2,300.00 | \$90.00          |
| \$2,300.01–\$2,400.00 | \$92.00          |
| \$2,400.01–\$2,500.00 | \$94.00          |
| \$2,500.01–\$2,600.00 | \$96.00          |
| \$2,600.01–\$2,700.00 | \$98.00          |
| \$2,700.01–\$2,800.00 | \$100.00         |
| \$2,800.01–\$2,900.00 | \$102.00         |
| \$2,900.01–\$3,000.00 | \$104.00         |
| \$3,000.01–\$3,100.00 | \$106.00         |
| \$3,100.01–\$3,200.00 | \$108.00         |
| \$3,200.01–\$3,300.00 | \$110.00         |
| \$3,300.01–\$3,400.00 | \$112.00         |
| \$3,400.01–\$3,500.00 | \$114.00         |
| \$3,500.01–\$3,600.00 | \$116.00         |
| \$3,600.01–\$3,700.00 | \$118.00         |
| \$3,700.01–\$3,800.00 | \$120.00         |
| \$3,800.01–\$3,900.00 | \$122.00         |
| \$3,900.01–\$4,000.00 | \$124.00         |

**670/17.2(b).** Acquisition charges for “small consumer loans” are to be adjusted for inflation.

§ 670/17.2(e). In addition, lender can charge \$1 on any “small consumer loan” for submitting loan information into consumer reporting service. 670/17.2(c).

*What types of insurance are allowed, and any limits the lending statute places on charges?* Credit life insurance, credit accident and health insurance, involuntary unemployment insurance, credit property insurance, or other credit insurance policies. § 670/15a. Lender may require property damage insurance on real and personal property that is collateral if loan principal exceeds \$500. § 670/15b(a).

*Does statute prohibit all other fees besides those specifically allowed?* Yes. § 670/15d.

*Does statute restrict balloon payments or irregular payment schedules?* Interest-bearing loans must be fully

amortizing and repayable in substantially equal and consecutive weekly, biweekly, semimonthly, or monthly installments. § 670/15(e)(3). Precomputed loans must be repayable in substantially equal and consecutive weekly, biweekly, semimonthly, or monthly installments, except that the first installment period may be up to one month and 15 days and the first installment amount may be correspondingly larger, and monthly payment dates may be omitted to accommodate seasonal income. § 670/15(f)(1). A “small consumer loan” must be fully amortizing and be repayable in its entirety in a minimum of 6 substantially equal and consecutive payments with a period of not less than 180 days to maturity. § 670/17.3(a).

*Any restrictions on refinancing?* A licensee is prohibited from refinancing a “small consumer loan” during the first 75 days of the loan term. § 670/17.3(c). For “small consumer loan” of more than \$1,500, allowable acquisition charge is reduced to \$50 for first refinance and to \$25 for additional refinances. § 670/17.2(b)(1)(A), (C).

*Any rebate requirements or restrictions on prepayment penalties?* Prepayment penalties are likely prohibited because not authorized by § 670/15d. Rule of 78s (sum of the balances method). §§ 670/15(f)(3), 670/16(m). However, for “small consumer loan,” actuarial rebate is required of the unearned interest or unearned portion of the monthly installment account handling charge. § 670/17.2(d).

*What security interests (or postdated checks or ACH authorizations) are allowed or prohibited?* Security interest in real estate, other than judgment lien, is prohibited for loan of \$3,000 or less. § 670/16b. At the time a loan is made or within 20 days thereafter, a licensee shall not accept a postdated check, or accept a check and agree to hold it for a period of days before deposit or presentment. § 670/19.2. Lender may not condition extension of credit on the borrower’s repayment by preauthorized electronic fund transfers. § 670/15(d-5).

*Does statute prohibit unconscionable loan charges?* Statute is silent.



*Must lender underwrite or evaluate borrower's ability to repay?* Licensee is prohibited from making a "small consumer loan" (one for \$4,000 or less at more than 36%) to a consumer if the monthly payment exceeds 22.5% of consumer's documented gross monthly income. § 670/17.4.

*If state has a criminal usury law, is lending under this statute exempt from it?* Criminal usury statute "does not apply to any loan authorized to be made by any person licensed under the Consumer Installment Loan Act or to any loan permitted by Sections 4, 4.2 and 4a of the Interest Act or by any other law of this State." 720 Ill. Comp. Stat. Ann. § 5/17-59(d).

*Reporting requirements, including detail about what must be reported and whether there are any requirements that the state agency review or take other steps regarding the reports:* Annual report giving such relevant information as the director may reasonably require. Director may publish an annual analysis and recapitulation. § 670/11(b).

*Other significant features:* Not applicable.

### **815 Ill. Comp. Stat. Ann. § 122/2-5 (Installment loan provisions of Payday Loan Reform Act).**

*What types of lenders does it apply to (e.g., banks vs. non-banks)?* Any lender making payday loans. Banks, savings banks, savings and loan associations, credit unions, and insurance companies are exempt, but their agents are subject to the Act other than the provisions relating to finance charges. § 122/1-15.

*Licensure requirements and implications of licensure:* Licensure required. § 122/3-3.

*Size and length of loans to which the statute applies, and any restrictions in the statute on these features:* Installment payday loan is defined as one for at least 112 days but no more than 180 days in which the creditor requires a post-dated check, ACH access, or a wage assignment. §§ 122/1-10, 122/2-5(c). Statute does not explicitly cap the amount of the loan, but provides an implicit cap by limiting the amount of the payment coming due in first month of the loan, when

combined with the payment amount on all other payday loans, to 22.5% of borrower's gross monthly income.

*Other restrictions on applicability of statute (e.g., it only applies if lender takes a mortgage on real property):* Statute is silent.

*What rate of interest is allowed?* \$15.50 per \$100.00 per payment period, computed on outstanding balance. § 122/2-5(e-5).

*What loan fees are allowed?* \$1 verification fee for checking payday loan database. § 122/2-10(a-5).

*What types of insurance are allowed, and any limits the lending statute places on charges?* No insurance may be sold in connection with a loan. § 122.4-5(11).

*Does statute prohibit all other fees besides those specifically allowed?* Yes. § 122/2-10(b).

*Does statute restrict balloon payments or irregular payment schedules?* Loan must be repayable in substantially equal installments due at intervals of at least 13 days but no more than one month (with exception for minor irregularities in first installment). § 122/2-5(c)(i).

*Any restrictions on refinancing?* Only one refinancing allowed, and total period of indebtedness may not exceed 180 days; otherwise, rollovers are prohibited. §§ 122/2-5(c)(ii), 122/2-30. Two-day waiting period between loans. § 122/2-5(c)(iii).

*Any rebate requirements or restrictions on prepayment penalties?* Actuarial rebate required. § 122/2-5(e-5). Consumer has right to prepay in increments of \$5 of more without penalty. § 122/2-35(g).

*What security interests (or postdated checks or ACH authorizations) are allowed or prohibited?* Security interest in personal property prohibited. § 122/2-5(f). Creditor may take postdated check or authorization to debit borrower's account. §§ 122/1-10 (definition of "payday loan"), 122/2-35. No other security is allowed. § 122.4-5(6), (13).

*Does statute prohibit unconscionable loan charges?* Statute is silent.

*Must lender underwrite or evaluate borrower's ability to repay?* Loan payments must not exceed specified percentage of borrower's income. § 122/2-5(e).

*If state has a criminal usury law, is lending under this statute exempt from it?* Criminal usury statute "does not apply to any loan authorized to be made by any person licensed under the Consumer Installment Loan Act or to any loan permitted by Sections 4, 4.2 and 4a of the Interest Act or by any other law of this State." 720 Ill. Comp. Stat. Ann. § 5/17-59(d).

*Reporting requirements, including detail about what must be reported and whether there are any requirements that the state agency review or take other steps regarding the reports:* Annual report required, including number and total dollar amount of loans; maximum, minimum, and average dollar amount; average term and APR; and default rate. § 122/2-55.

*Other significant features:* Anti-evasion provisions. §§ 122/1-15(b), 122/4-5(2). Late charges and collection charges prohibited. § 122/4-5(14).

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## INDIANA

### *Ind. Code §§ 24-4.5-1-101 to 24-4.5-6-204 (Uniform Consumer Credit Code).*

*What types of lenders does it apply to (e.g., banks vs. non-banks)?* Applies broadly to all creditors, except:

- Extensions of credit to government or governmental agencies.
- Most sales of insurance by insurers.
- Certain transactions under public utility, municipal utility, or common carrier tariffs.
- Rates and charges of licensed pawnbrokers.
- Non-consumer loans.
- Installment agreements for purchase of home fuels in which a finance charge is not imposed.
- Federally-related student loans.
- Certain transactions in securities or commodities accounts.

- Certain loans by non-profit organizations or made in connection with state or federal programs.

### *§ 24-4.5-1-202.*

*Licensure requirements and implications of licensure:* License required to engage regularly in the making of non-mortgage consumer loans, taking assignments of these loans in Indiana or collecting on them in Indiana, but licensing requirement does not apply to lending by depository institutions, their subsidiaries, or credit union service organizations, or to collection by licensed collection agency. § 24-4.5-3-502. Loan made without a required license is void. § 24-4.5-5-202(2).

*Size and length of loans to which the statute applies, and any restrictions in the statute on these features:* Relevant statutory provisions apply to any "consumer loan," defined to exclude those exceeding \$53,500 (adjusted for inflation) unless the debt is secured by an interest in land or by personal property used or expected to be used as the debtor's principal dwelling. § 24-4.5-1-301.5(9). Supervised closed-end loans (defined by § 24-4.5-3-501(1) as those at more than 25%) of \$4,000 or less must be payable over no more than 37 months if principal is more than \$1,100 (adjusted for inflation from \$300 pursuant to 750 Ind. Admin. Code § 1-1-1), or over no more than 25 months if the principal is \$1,100 or less. § 24-4.5-3-511(1).

*Other restrictions on applicability of statute (e.g., it only applies if lender takes a mortgage on real property):* Statute is silent.

*What rate of interest is allowed?* For consumer loans other than supervised loans: 25%. § 24-4.5-3-201. For supervised loans: Either:

- 36% on first \$2,000 (adjusted for inflation), 21% on next \$2,000 (adjusted for inflation), and 15% on remainder; or
- 25%.



### § 24-4.5-3-508(1), (2).

*What loan fees are allowed?*

- Official fees and taxes.
- Charges for other benefits, including insurance, conferred on debtor, if the department determines that the benefits are of value to the debtor and if the charges are reasonable in relation to benefits.
- Origination fee of \$50.

### §§ 24-4.5-3-201(8)(b), 24-4.5-3-202, 24-4.5-3-508(8).

*What types of insurance are allowed, and any limits the lending statute places on charges?* Property or liability insurance, credit insurance providing life, accident, unemployment or other loss of income, or health coverage. § 24-4.5-3-202(2). Property insurance is allowed only if amount financed is \$1,110 or more (adjusted for inflation from \$300 pursuant to 750 Ind. Admin. Code § 1-1-1), the value of the property is \$1,100 or more (adjusted for inflation), and other conditions are met. § 24-4.5-4-301.

*Does statute prohibit all other fees besides those specifically allowed?* Debtor is not required to pay a charge in excess of that allowed by the Code. § 24-4.5-5-202(3).

*Does statute restrict balloon payments or irregular payment schedules?* Debtor has the right to refinance any balloon payment without penalty, on terms no less favorable than the original terms, except where payment schedule was adjusted to the seasonal or irregular income of the debtor, and except for loans that are interest-only until final payment. § 24-4.5-3-402. Supervised closed-end loans of \$4,000 or less are payable in a single installment or shall be scheduled to be payable in substantially equal installments at equal periodic intervals, except where payments are adjusted to the seasonal or irregular income of the debtor. § 24-4.5-3-511(1).

*Any restrictions on refinancing?* Statute limits origination fees for refinances. § 24-4.5-3-201(10), 24-4.5-3-508(10).

*Any rebate requirements or restrictions on prepayment penalties?* Except where loan is primarily secured by land, debtor may prepay in full at any time without penalty. § 24-4.5-3-209. Rule of 78s rebate (sum of the balances method), but actuarial if loan term exceeds 61 months. No rebate required if less than \$1. Origination fee need not be rebated, and lender that does not charge origination fee may retain minimum finance charge of \$30 (adjusted for inflation pursuant to § 24-4.5-1-106). §§ 24-4.5-3-201(9), 24-4.5-3-210, 24-4.5-3-508(7).

*What security interests (or postdated checks or ACH authorizations) are allowed or prohibited?* Wage assignments prohibited and unenforceable, but employee may authorize deductions from earnings if revocable. § 24-4.5-3-403. For supervised loan where principal is \$4,000 or less (adjusted for inflation pursuant to 750 Ind. Admin. Code § 1-1-1), security interest in land is prohibited and void. § 24-4.5-3-510.

*Does statute prohibit unconscionable loan charges?* Yes. § 24-4.5-5-108.

*Must lender underwrite or evaluate borrower's ability to repay?* Statute is silent.

*If state has a criminal usury law, is lending under this statute exempt from it?* Indiana's criminal usury law does not exempt UCCC, but it criminalizes charging more than 45% interest only if lender has a reputation for using violence or other criminal means to collect the debt. § 24-4.5-5-107. *See also* § 35-45-7 (criminalizing lending at more than two times 36% interest).

*Reporting requirements, including detail about what must be reported and whether there are any requirements that the state agency review or take other steps regarding the reports:* Annual report as required by the department. § 24-4.5-3-505(5). Since 2000 the department has accepted a third-party CPA annual report either at the review or audited level at time of application and upon request by the DFI showing a minimum net worth of \$100,000 and minimum liquid assets of \$50,000.

*Other significant features:* Loan-splitting prohibited. § 24-4.5-3-509.

## IOWA

### *Iowa Code §§ 536.1 to 536.30 (Regulated Loan Act).*

*What types of lenders does it apply to (e.g., banks vs. non-banks)?* Excludes banks, trust companies, building and loan associations, credit unions, licensed pawnbrokers, and domestic corporations operating under chapter 536A (Industrial Loan Law). § 536.20.

*Licensure requirements and implications of licensure:* License under the Regulated Loan Act is required in order to make loans of \$54,600 or less (adjusted for inflation) at rate greater than a non-licensee could charge, but a “supervised financial organization” (i.e., a depository institution), a licensee under the Industrial Loan Law, or a lender that enters into fewer than 10 supervised loans per year in the state and has neither an office physically located in the state nor engages in face-to-face solicitation in the state need not be licensed. License also required to collect on supervised loans, with three-month grace period. § 536.1 (incorporating the exclusions from licensure found in § 537.2301).

*Size and length of loans to which the statute applies, and any restrictions in the statute on these features:* Statute applies to loans of no more than the “threshold amount” (\$54,600, adjusted for inflation), or less. §§ 536.1, 537.1301.

*Other restrictions on applicability of statute (e.g., it only applies if lender takes a mortgage on real property):* Statute is silent.

*What rate of interest is allowed?* Until superintendent sets different rates, statute allows 36% on first \$150; 24% on next \$150; 18% on amount over \$300 but not exceeding \$700; and 12% on remainder. § 536.13(4). For loans of \$10,000 or less, superintendent has adopted a rule allowing 36% on first \$1,000; 24% on amount exceeding \$1,000 but not exceeding \$2,800; and 18% on remainder up to \$10,000. Iowa Admin. Code r. 187-15.5(536). For loans over \$10,000, the maximum rate of interest or charges a licensee may charge shall be the greater of the rate permitted by

chapter 535 (2 percentage points above a Treasury bill rate, § 535.2(3)(a)(1)) or the rate authorized for supervised financial organizations by chapter 537 (21%). § 536.13(7a).

*What loan fees are allowed?* Statute’s limits, summarized in the preceding entry, apply to “interest or charges.”

*What types of insurance are allowed, and any limits the lending statute places on charges?* Credit life and accident and health insurance; property and liability insurance. §§ 536.26, 536.27.

*Does statute prohibit all other fees besides those specifically allowed?* Statute is silent.

*Does statute restrict balloon payments or irregular payment schedules?* Statute is silent.

*Any restrictions on refinancing?* Statute is silent.

*Any rebate requirements or restrictions on prepayment penalties?* Must permit prepayment in any amount on any loan at any time. § 536.14(1). Actuarial rebate required, but lender may retain minimum charge of \$5.00 to \$7.50 if loan is prepaid in full. § 536.13 (incorporating UCCC rules).

*What security interests (or postdated checks or ACH authorizations) are allowed or prohibited?* Iowa’s UCCC limits apply. § 536.13(7)(b).

*Does statute prohibit unconscionable loan charges?* Unconscionability provision of Iowa’s UCCC applies. § 536.13(7)(b).

*Must lender underwrite or evaluate borrower’s ability to repay?* Statute is silent, but probability of repayment is a listed factor in determining unconscionability.

*If state has a criminal usury law, is lending under this statute exempt from it?* Not applicable.

*Reporting requirements, including detail about what must be reported and whether there are any requirements that the state agency review or take other steps regarding the reports:* Annual report giving such relevant information as superintendent reasonably may require. Superintendent shall publish annual analysis and

recapitulation. § 536.11. Superintendent shall make an annual report containing a summary of license applications approved or denied by the superintendent; a summary of the assets, liabilities and capital structure of all licensees, and volume of consumer installment of credit outstanding per licensee; an estimate of the disbursements of agency funds for consumer credit protection; and other required or appropriate information. § 536.29.

*Other significant features:* Not applicable.

### ***Iowa Code §§ 536A.1 to 536A.32 (Industrial Loan Law).***

*What types of lenders does it apply to (e.g., banks vs. non-banks)?* Industrial loan companies are defined as corporations operating under the provisions of this law and engaged in the business of loaning money and charging interest or other compensation. § 536A.2(6). Does not apply to:

- Banks, trust companies, building and loan associations, savings and loan associations, insurance companies, regulated loan companies organized under chapter 536, or credit unions.
- Lenders that make only first mortgage real estate loans.
- Licensed real estate brokers or salespersons.
- Persons engaged exclusively in purchasing commodity financing or commercial paper.
- Pawnbrokers.
- Loans to corporations.

### ***§ 536A.5.***

*Licensure requirements and implications of licensure:* For a loan other than a consumer loan, person shall not engage in the business of operating an industrial loan company in the state without a license. For a consumer loan, must have license in order to engage in the business of operating an industrial loan company without a license, but a “supervised financial organization” (i.e., a depository institution), a licensee under the Regulated Loan Act, or a lender that enters into fewer than 10 supervised loans per year in the

state and has neither an office physically located in the state nor engages in face-to-face solicitation in the state need not be licensed. § 536A.3 (incorporating the exclusions from licensure found in § 537.2301). Individuals, partnerships, nonprofit organizations, and unincorporated associations are ineligible for licensure. § 536A.4.

*Size and length of loans to which the statute applies, and any restrictions in the statute on these features:* Statute is silent.

*Other restrictions on applicability of statute (e.g., it only applies if lender takes a mortgage on real property):* Statute is silent.

*What rate of interest is allowed?* 10% add-on or discount interest per year (10 cents per hundred per year). § 536A.23(1)(a)(1).

*What loan fees are allowed?* Service charge of \$1 for each \$50 of the amount of the note, up to \$120. § 536A.23(1)(b).

*What types of insurance are allowed, and any limits the lending statute places on charges?* Insurance on real or personal property collateral; credit life and accident and health insurance. § 536A.23(1)(c).

*Does statute prohibit all other fees besides those specifically allowed?* Statute is silent.

*Does statute restrict balloon payments or irregular payment schedules?* Statute is silent, except for defining industrial loan company as one that makes loans that are payable in one payment or in weekly, monthly or other periodic installments. § 536A.2(6).

*Any restrictions on refinancing?* Statute is silent.

*Any rebate requirements or restrictions on prepayment penalties?* Borrower may prepay in whole or part at any time. § 536A.26. Actuarial rebate required, but no rebate less than \$1.00 need be made, and creditor may retain a minimum charge of \$5.00 if amount financed was \$75.00 or less, and \$7.50 if amount financed was more than \$75.00. § 537.2510. § 536A.31 (incorporating UCCC rules).

*What security interests (or postdated checks or ACH authorizations) are allowed or prohibited?* Iowa's ICCA limits apply. § 536A.31.

*Does statute prohibit unconscionable loan charges?* Unconscionability provision of Iowa's UCCC applies. § 536A.31.

*Must lender underwrite or evaluate borrower's ability to repay?* Statute is silent, but probability of repayment is a listed factor in determining unconscionability.

*If state has a criminal usury law, is lending under this statute exempt from it?* Not applicable.

*Reporting requirements, including detail about what must be reported and whether there are any requirements that the state agency review or take other steps regarding the reports:* Annual report showing assets and liabilities; operating statement showing income, expenses, and net profit; and other relevant information as superintendent shall reasonably require. Superintendent shall publish annual analysis and recapitulation of such reports. § 536A.14. Superintendent shall make annual report containing: a summary of license applications approved or denied; a summary of the assets, liabilities and capital structure of all licensees, and volume of consumer installment credit outstanding per licensee; an estimate of the disbursements of agency funds for consumer credit protection; and other required or appropriate information. § 536A.29.

*Other significant features:* Iowa UCCC applies to consumer loans made by licensees. § 536A.31.

### ***Iowa Code §§ 537.1101 to 537.8101 (Consumer Credit Code).***

*What types of lenders does it apply to (e.g., banks vs. non-banks)?* Applies generally to entities extending credit, § 537.1108, but excludes:

- Extensions of credit to government or governmental agencies.
- Non-installment sales of insurance.
- Transactions under public utility or common carrier tariffs in some circumstances.

- Transactions in securities or commodities accounts.
- Pawnbrokers, as to most provisions.

### ***§ 537.1202.***

*Licensure requirements and implications of licensure:* License required to make supervised loans (defined by § 537.1301(46) as consumer loans that exceed the usual rate cap) or undertake their collection (with 3-month grace period) unless person is a "supervised financial organization" (i.e., a depository institution) or is licensed under the Regulated Loan Act or Industrial Loan Law or enters into fewer than 10 supervised loans per year in the state and has neither an office physically located in the state nor engages in face-to-face solicitation in the state. § 537.2301(2), (3). Consumer has a claim for statutory and actual damages if creditor makes supervised loan without required license. § 537.5201(1)(a)(1).

*Size and length of loans to which the statute applies, and any restrictions in the statute on these features:* Closed-end supervised loans of \$1,000 or less must be payable over no more than 37 months, or over 25 months if the amount financed is \$300 or less. However, lender may make a closed-end loan that is repayable in a single payment if the amount financed does not exceed \$1,000 and if the finance charge does not exceed the rate permitted by § 537.2401(1) to be charged by a supervised financial organization. § 537.2308.

*Other restrictions on applicability of statute (e.g., it only applies if lender takes a mortgage on real property):* "Consumer loan" does not include a debt secured by a first lien on real property. § 537.1301(15)(b)(2).

*What rate of interest is allowed?* For closed-end loan not secured by a motor vehicle certificate of title, any lender may charge the greater of maximum allowed by state or federal law for similar lenders, and supervised lender has additional option of charging 21%. § 537.2401(1).

*What loan fees are allowed?* Official fees and taxes; registration, certificate of title or license fees; charges for other benefits if valuable to consumer, reasonably



priced, and approved by rule. § 537.2501(1). For consumer loan of \$3,000 or less with term of 12 months or less that is not used for purchase of a motor vehicle and is not secured by borrower's dwelling, depository institution may charge application fee of 10% or \$30, whichever is less. § 537.2501(1)(j).

*What types of insurance are allowed, and any limits the lending statute places on charges?* Property or liability insurance and credit life, accident, health, and unemployment insurance. § 537.2501(2).

*Does statute prohibit all other fees besides those specifically allowed?* Consumer is not obligated to pay a charge in excess of that allowed by the Code. § 537.5201(2).

*Does statute restrict balloon payments or irregular payment schedules?* Closed-end supervised loans of \$1,000 or less must be payable in substantially equal installments at substantially equal periodic intervals except to accommodate debtor's seasonal or irregular income. However, lender may make a closed-end credit loan that is repayable in a single payment if the amount financed does not exceed \$1,000 and if the finance charge does not exceed 21% or maximum allowed by state or federal law for similar lenders. § 537.2308 (incorporating § 537.2401 by reference). Consumer has right to refinance any balloon payment on terms no less favorable than original terms, except where (1) payment was adjusted to debtor's seasonal or irregular income or scheduled payments on other obligations; (2) loan exceeds \$5,000 and is secured by an interest in land; (3) loan is secured by a motor vehicle certificate of title; or (4) administrator has adopted additional exceptions. § 537.3308.

*Any restrictions on refinancing?* Where finance charge exceeds 18% per year, rate upon refinancing is limited to original rate. § 537.2504.

*Any rebate requirements or restrictions on prepayment penalties?* Consumer may prepay in full at any time. § 537.2509. Actuarial rebate required, but no rebate less than \$1.00 need be made, and creditor may retain a minimum charge of \$5.00 if amount financed was \$75.00 or less, and \$7.50 if amount financed was more than \$75.00. § 537.2510.

*What security interests (or postdated checks or ACH authorizations) are allowed or prohibited?* For supervised loan with finance charge exceeding 15% and amount financed of \$2,000 or less, security interest in real property used as a residence for the consumer or the consumer's dependents is prohibited and void. § 537.2307. For supervised loan, non-purchase money security interest in the clothing, dining table and set of chairs, refrigerator, heating stove, cooking stove, radio, beds and bedding, couch, two living room chairs, cooking utensils, or kitchenware used by the consumer, the consumer's dependents, or the family with whom the consumer resides is prohibited and void. § 537.3301. Wage assignment is prohibited and unenforceable, but borrower may revocably authorize payroll deductions. § 537.3305.

*Does statute prohibit unconscionable loan charges?* Yes. § 537.5108.

*Must lender underwrite or evaluate borrower's ability to repay?* Statute is silent, but probability of repayment is a listed factor in determining unconscionability.

*If state has a criminal usury law, is lending under this statute exempt from it?* Not applicable.

*Reporting requirements, including detail about what must be reported and whether there are any requirements that the state agency review or take other steps regarding the reports:* Annual report in form prescribed by licensing authority relating to all supervised loans made by licensee. § 537.2304(2). Administrator must make annual report to state legislature on the operation of the agencies charged with administering this law, and on the problems of persons of small means obtaining credit. § 537.6104(5).

*Other significant features:* Loan-splitting prohibited. § 537.3304.

## KANSAS

### *Kan. Stat. Ann. §§ 16a-1-101 to 16a-9-102 (Consumer Credit Code).*

*What types of lenders does it apply to (e.g., banks vs. non-banks)?* Act applies to “consumer credit transactions,” broadly defined. § 16a-1-301(5). Excludes extensions of credit to government or governmental agencies, non-installment sales of insurance, certain transactions under public utility or common carrier tariffs, licensed pawnbrokers (except for disclosure requirements), and transactions covered by the insurance premium finance act. § 16a-1-202.

*Licensure requirements and implications of licensure:* Must be licensed engage in the business of making supervised loans (ones in which APR exceeds 12%) or taking assignments of them and collecting on them (with 3-month grace period), unless lender is a supervised financial organization (defined by § 16a-1-301(44) as a depository institution). § 16a-2-301(1). Supervised loan made without required license is void. § 16a-5-201(2).

*Size and length of loans to which the statute applies, and any restrictions in the statute on these features:* Parts 3 and 4, which include the installment lending provisions, apply to “consumer loans,” defined by § 16a-1-301(17) to exclude: (1) loans, other than those secured by land, where the amount financed exceeds \$25,000; (2) certain first mortgage loans; and (3) loans from IRS-qualified pension plans. § 16a-2-102. Closed-end consumer installment loan of \$1,000 or less at more than 12% must be payable over no more than 37 calendar months, or over no more than 25 months if amount financed is \$300 or less. § 16a-2-308.

*Other restrictions on applicability of statute (e.g., it only applies if lender takes a mortgage on real property):* Statute is silent.

*What rate of interest is allowed?* 36% on first \$860, and 21% on remainder. § 16a-2-401(2), (6).

*What loan fees are allowed?*

- Official fees and taxes.

- Charges for other benefits if valuable to consumer, reasonable in price, and identified by administrator’s rules.
- Prepaid finance charge of 2% of amount financed or \$100, whichever is less (but a higher amount if consumer loan is first or second mortgage or is secured by manufactured home). § 16a-2-401.

### *§ 16a-2-501.*

*What types of insurance are allowed, and any limits the lending statute places on charges?* Statute generally authorizes creditor to provide and charge for insurance, including vendor’s single interest insurance if insurance has no right of subrogation against consumer, property insurance and liability insurance on property related to the credit transaction, and credit life, accident and health, and loss of income insurance, but not other insurance protecting creditor against consumer’s default or other credit loss. §§ 16a-2-501(2), 16a-4-104(1), 16a-4-301, 16a-4-303. Creditor may charge for property insurance only if amount financed is \$900 or more and the property is worth \$900 or more. § 16a-4-301.

*Does statute prohibit all other fees besides those specifically allowed?* Consumer is not required to pay any charge in excess of that allowed by the Act, § 16a-5-201(3), but otherwise statute is silent.

*Does statute restrict balloon payments or irregular payment schedules?* Closed-end consumer installment loan of \$1,000 or less at more than 12% must be payable in substantially equal installments at substantially equal periodic intervals except to accommodate debtor’s seasonal or irregular income. § 16a-2-308. Consumer has right to refinance any balloon payment without penalty on terms no less favorable than the original terms, except for loan secured by real estate mortgage or where payment schedule was adjusted to debtor’s seasonal or irregular income. § 16a-3-308.

*Any restrictions on refinancing?* If loan is refinanced within first 12 months, prepaid finance charge is



limited to the lesser of \$100 or 2% of the additional amount financed. § 16a-2-401(9).

*Any rebate requirements or restrictions on prepayment penalties?* Consumer may prepay in full at any time without penalty. § 16a-2-509. Finance charge must be computed by actuarial method, § 16a-2-103(1), and statute makes no provision for any non-actuarial calculation for rebate due upon prepayment. Upon prepayment in full, but not upon a refinancing, of a closed-end transaction, creditor may retain a minimum charge of \$5.00 if amount financed was \$75.00 or less, or \$7.50 if amount financed was more than \$75.00. § 16a-2-510(1).

*What security interests (or postdated checks or ACH authorizations) are allowed or prohibited?* Security interest in land is prohibited and void for consumer loan where finance charge exceeds 12% and amount financed is \$3,000 or less. § 16a-2-307. Wage assignment is prohibited and unenforceable, but consumer may revocably authorize payroll deductions. § 16a-3-305.

*Does statute prohibit unconscionable loan charges?* Yes: § 16a-5-108.

*Must lender underwrite or evaluate borrower's ability to repay?* Statute is silent.

*If state has a criminal usury law, is lending under this statute exempt from it?* Not applicable.

*Reporting requirements, including detail about what must be reported and whether there are any requirements that the state agency review or take other steps regarding the reports:* Annual report in form prescribed by administrator. § 16a-2-304(5).

*Other significant features:* Loan-splitting prohibited. § 16a-3-304.

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## KENTUCKY

*Ky. Rev. Stat. Ann. §§ 286.4-410 to 286.4-991 (West) (Consumer Loan Companies).*

*What types of lenders does it apply to (e.g., banks vs. non-banks)?* Applies generally to lenders other than banks, savings banks, trust companies, building and loan associations, cooperative marketing associations, credit unions, loan and investment companies, and licensed pawnbrokers. § 286.4-410(2).

*Licensure requirements and implications of licensure:* Must have license to engage in business of making loans of \$15,000 or less at rate of interest greater than otherwise permitted by law. § 286.4-420.

*Size and length of loans to which the statute applies, and any restrictions in the statute on these features:* \$15,000 or less. §§ 286.4-420, 286.4-530(1). For loans of \$3,000 or less, term may not exceed 60 months and 15 days. For loans exceeding \$3,000, term may not exceed 120 months. § 286.4-580(2).

*Other restrictions on applicability of statute (e.g., it only applies if lender takes a mortgage on real property):* Statute is silent.

*What rate of interest is allowed?*

- 36% if loan is for \$3,000 or less.
- 24% if loan is for more than \$3,000.

§ 286.4-530(1).

*What loan fees are allowed?*

- Recording fees, or premium for non-filing insurance if no more than those fees.
- A credit investigation charge of \$1.50 for each \$50.00 or fraction thereof of the principal, but only on first \$2,000.00 and only if loan is made as a result of the investigation. § 286.4-533(4).

*What types of insurance are allowed, and any limits the lending statute places on charges?* Property insurance on tangible personal property collateral other than household goods, but only if loan exceeds \$300. § 286.4-560(1). Insurance on the life, unemployment,

health, and/or disability of the borrower(s).  
§ 286.4-560(2).

*Does statute prohibit all other fees besides those specifically allowed?* Yes. 286.4-530(10).

*Does statute restrict balloon payments or irregular payment schedules?* Substantially equal installments at approximately equal periodic intervals, but lender can make adjustments for borrower's seasonal income. § 286.4-580(2).

*Any restrictions on refinancing?* For same-lender refinancing, principal cannot include unpaid charges that have accrued more than 60 days before the making of the new loan. § 286.4-530(9).

*Any rebate requirements or restrictions on prepayment penalties?* Prepayment penalties are likely prohibited because not authorized by § 286.4-530(10). Rule of 78s (sum of the balances method), but no refund of less than \$1.00 need be made, and no refund for partial prepayments need be made. § 286.4-530(2), (6).

*What security interests (or postdated checks or ACH authorizations) are allowed or prohibited?* Wage assignments are regulated but not prohibited. § 286.4-570. No licensee shall take any mortgage or other lien instrument upon real estate as security where principal is \$3,000 or less, unless such lien is subject to a prior mortgage. § 286.4-580(3).

*Does statute prohibit unconscionable loan charges?* Statute is silent.

*Must lender underwrite or evaluate borrower's ability to repay?* Statute is silent.

*If state has a criminal usury law, is lending under this statute exempt from it?* Not applicable.

*Reporting requirements, including detail about what must be reported and whether there are any requirements that the state agency review or take other steps regarding the reports:* Annual report giving information on financial condition of licensee and other relevant information as the commissioner may reasonably require. Commissioner shall publish annual analysis and recapitulation. § 286.4-590.

*Other significant features:* Loan splitting prohibited. § 286.4-530(11). Wage assignments are limited to 10% of paycheck. § 286.4-570.

### ***Ky. Rev. Stat. Ann. §§ 286.7-410 to 286.7-990 (West) (Industrial Loan Corporations).***

*What types of lenders does it apply to (e.g., banks vs. non-banks)?* Any five persons may organize an industrial loan company and apply for a certificate of approval to do business. §§ 286.7-410(2), 286.7-420, 286.7-450.

*Licensure requirements and implications of licensure:* Cannot engage in the business of making loans at a rate of interest in excess of the legal rate of interest prescribed in § 360.010 without obtaining certificate from state unless authorized by other specific statutory provisions. § 286.7-540.

*Size and length of loans to which the statute applies, and any restrictions in the statute on these features:* Principal may not exceed \$7,500, and loan must be repayable over no more than 5 years and 32 days. § 286.7-460(1). However, limit on amount of loan is \$10,000 if rates allowed for banks are charged. § 286.7-460(4).

*Other restrictions on applicability of statute (e.g., it only applies if lender takes a mortgage on real property):* Statute is silent.

*What rate of interest is allowed?* \$7 per \$100 add-on or discount interest. § 286.7-460(1). May also charge interest on loans or extensions of credit in the same manner and at the same rate as is permitted by § 286.3-215 for banks and trust companies (\$8 per \$100), as long as loan does not exceed \$10,000. § 286.7-460(4).

*What loan fees are allowed?* \$1 for each \$50 or fraction thereof loaned, for expenses such as investigation and document preparation, but only on the first \$2,000 loaned, and only if loan is made as a result of an examination or investigation; recording fees. §§ 286.7-460(3), 286.7-480.

*What types of insurance are allowed, and any limits the lending statute places on charges?* Property insurance on tangible personal property, except household

goods, offered as security for a loan not exceeding \$7,500; life insurance on one borrower; accident and health insurance. § 286.7-480.

*Does statute prohibit all other fees besides those specifically allowed?* Yes. § 286.7-480.

*Does statute restrict balloon payments or irregular payment schedules?* Loans must be repayable in substantially equal monthly or weekly installments. § 286.7-460(1).

*Any restrictions on refinancing?* Statute is silent.

*Any rebate requirements or restrictions on prepayment penalties?* Prepayment penalties are likely prohibited because not authorized by § 286.7-480. Borrower has right to repay loan in whole or in part at any time. Rule of 78s rebate, but lender may retain \$10 to cover its acquisition costs and need not make rebate of less than \$1. § 286.7-500(2).

*What security interests (or postdated checks or ACH authorizations) are allowed or prohibited?* May not take wage assignment or first lien on real estate other than judgment lien, but may take junior lien. § 286.7-510(1).

*Does statute prohibit unconscionable loan charges?* Statute is silent.

*Must lender underwrite or evaluate borrower's ability to repay?* Statute is silent.

*If state has a criminal usury law, is lending under this statute exempt from it?* Not applicable.

*Reporting requirements, including detail about what must be reported and whether there are any requirements that the state agency review or take other steps regarding the reports:* Annual report giving information on company's financial condition and other relevant information as commissioner may reasonably require. § 286.7-530(3).

*Other significant features:* Loan splitting prohibited. § 286.7-510(2).

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## LOUISIANA

### *La. Rev. Stat. Ann. §§ 9:3510 to 9:3568 (Consumer Credit Law).*

*What types of lenders does it apply to (e.g., banks vs. non-banks)?* Relevant provisions apply to consumer loans, broadly defined by § 9:3516(14). Law does not apply to:

- Extensions of credit to organizations, including government or governmental agencies.
- Most non-installment sales of insurance.
- Certain transactions under public utility or common carrier tariffs.
- Motor vehicle credit transactions subject to the Motor Vehicle Sales Finance Act.
- Credit unions.
- Pawnbrokers.
- Extensions of credit for business, commercial, or agricultural purposes.
- Federally related mortgage loans.

### *§ 9:3512.*

*Licensure requirements and implications of licensure:* May not contract more than 4 transactions over any calendar year without obtaining license. Creditor with in-state office must also obtain license in order to take assignments of and undertake direct collection of payments from or consumer loans and collect them (with three-month grace period). §§ 9:3514, 9:3557. The following are exempt from the licensing requirement:

- Banks, savings and loan associations, and similar institutions.
- A subsidiary of a state-chartered bank, savings and loan association, or similar institution if the parent owns 80% or more of it.
- A trust administered by a bank or a bank trust department.
- Governmental entities.
- Insurance companies making life insurance loans to policyholders.

- A qualified pension plan when extending credit to a plan participant.
- A bona fide pledgee of a consumer credit transaction to secure a bona fide loan thereon.
- A seller or other creditor refinancing a retail installment transaction subject to the Motor Vehicle Sales Finance Act.
- A creditor having no office within the state that offers credit to Louisiana consumers through the mails and other means of interstate commerce.
- Persons whose lending activities pertain to certain federally related mortgage loans, unless otherwise provided by rule.

### § 9:3560.

*Size and length of loans to which the statute applies, and any restrictions in the statute on these features:* Statute is silent.

*Other restrictions on applicability of statute (e.g., it only applies if lender takes a mortgage on real property):* Statute is silent.

*What rate of interest is allowed?* Maximum finance charge for loan not made with a lender credit card:

- 36% per year on first \$1,400;
- 27% per year on amount exceeding \$1,400 but not exceeding \$4,000;
- 24% per year on amount exceeding \$4,000 but not exceeding \$7,000; and
- 21% per year on remainder.

§ 9:3519(A). In lieu of all other finance charges, lender may contract for and receive a minimum loan finance charge of not more than \$15 when the amount advanced does not exceed \$200 or \$25 when the amount advanced exceeds \$200. § 9:3519(E).

*What loan fees are allowed?* Lender may charge:

- \$50 origination fee. § 9:3530(A).
- Non-real estate related notary fees, up to \$15. § 9:3530(B).
- \$20 documentation fee. § 9:3530(C).

- License tag fees; electronic lien and title fees. § 9:3530(F).

*What types of insurance are allowed, and any limits the lending statute places on charges?* Any type of credit insurance (defined by § 22:47(16) to include credit life, credit health, and disability insurance, accidental death and dismemberment insurance whether or not the benefits are payable toward the credit obligation, credit property and casualty insurance, credit unemployment insurance, vendors single interest insurance, vendors dual interest insurance, credit fire insurance, and GAP insurance authorized by the state insurance code. §§ 9:3542, 9:3543.

*Does statute prohibit all other fees besides those specifically allowed?* Yes. § 9:3554.1(B).

*Does statute restrict balloon payments or irregular payment schedules?* Statute is silent.

*Any restrictions on refinancing?* Statute restricts charging of \$50 origination fee when loan is refinanced within first 30 days. § 9:3530(A).

*Any rebate requirements or restrictions on prepayment penalties?* May prepay in full at any time. § 9:3531(A). Rule of 78s rebate (sum of balances method), but first deduct \$25 if prepayment occurs within first half of contract term, and no rebate less than \$1 is required. Prepaid finance charges need not be rebated upon prepayment in full of a simple interest transaction if original amount financed under the transaction was \$10,000 or more, term was 36 months or longer, and the prepaid finance charges did not exceed 5%. § 9:3532.

*What security interests (or postdated checks or ACH authorizations) are allowed or prohibited?* Statute is silent.

*Does statute prohibit unconscionable loan charges?* Yes. § 9:3551.

*Must lender underwrite or evaluate borrower's ability to repay?* Statute is silent.

*If state has a criminal usury law, is lending under this statute exempt from it?* Not applicable.



*Reporting requirements, including detail about what must be reported and whether there are any requirements that the state agency review or take other steps regarding the reports:* Statute is silent.

*Other significant features:* Loan-splitting prohibited. § 9:3535.

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## MAINE

### *Me. Rev. Stat. Ann. tit. 9-A §§ 2-101 to 6-113 (Consumer Credit Code).*

*What types of lenders does it apply to (e.g., banks vs. non-banks)?* Applies to “consumer loans,” broadly defined by § 1-301(14). Does not apply to:

- Non-installment sales of insurance.
- Provision of public utility services.
- Rates and charges for credit unions and pawnbrokers that are set by other law.
- Transactions in securities or commodities accounts.
- Certain educational loans.
- Certain transactions that are secured by first mortgages or that finance or refinance the acquisition or initial construction of real estate.
- No-interest loans by non-profit housing organizations.
- Other transactions identified by rule.

#### *§ 1-201.*

*Licensure requirements and implications of licensure:*

To make supervised loans (defined by § 1-301(40) as those at more than 12.25% or that are secured by real estate), or take assignments of them and collect on them, must be supervised financial organization (defined by § 1-301 as banks and other depository institutions, nondepository trust companies, uninsured banks, and merchant banks) or have license. § 2-301. If lender is unlicensed, debtor is not obligated to pay any application fee, prepaid finance charge or closing cost, nor the loan finance charge

owed for the first 12 months of the loan, and may recover any part that has been paid. § 5-201.

*Size and length of loans to which the statute applies, and any restrictions in the statute on these features:* Definition of “consumer loan” excludes those for more than \$50,000 (adjusted for inflation) unless the loan is secured by manufactured housing or an interest in land. § 1-301(14). Supervised closed-end installment loans of \$1,000 or less must be payable over no more than 25 months. § 2-308.

*Other restrictions on applicability of statute (e.g., it only applies if lender takes a mortgage on real property):* Statute is silent.

*What rate of interest is allowed?*

- 30% per year on first \$2,000;
- 24% on next \$2,000; and
- 18% on remainder.

However, if amount financed exceeds \$8,000, lender may not charge more than 18%. § 2-401(2). Lender may contract for minimum charge of not more than:

- \$5 when the amount financed does not exceed \$75;
- \$15 when the amount financed exceeds \$75, but is less than \$250; or
- \$25 when the amount financed is \$250 or more.

#### *§ 2-401(7).*

*What loan fees are allowed?* For consumer credit transaction or open-end credit plan, lender may charge:

- Official fees and taxes.
- Charges for other benefits authorized by rule, if valuable to consumer and reasonable in relation to benefits or of a type that is not for credit.

#### *§ 2-501.*

*What types of insurance are allowed, and any limits the lending statute places on charges?* Creditor may charge for insurance, including vendor’s single interest insurance with respect to which insurer has no right of subrogation against consumer, property insurance on property related to the credit transaction, liability



insurance, and consumer credit insurance providing life, accident or health coverage or involuntary unemployment coverage, but not other insurance protecting creditor against consumer's default or other credit loss. §§ 2-501, 4-104. Charging for credit accident and health is prohibited unless there is a minimum payment of \$30 per month or a loan duration of at least 18 months. § 4-104(3). Except pursuant to open-end credit, creditor may not charge for property insurance unless amount financed is \$1,400 or more and the cash price of the item or property is \$1,400 or more. § 4-301.

*Does statute prohibit all other fees besides those specifically allowed?* Debtor is not required to pay a charge in excess of that allowed by the Code. § 5-201(3).

*Does statute restrict balloon payments or irregular payment schedules?* Closed-end installment loans must be payable in substantially equal installments except to accommodate debtor's seasonal or irregular income, and with an exception allowing a final balloon payment if term is at least four years and consumer has right to refinance on the terms then generally offered by the creditor. § 3-308. Closed-end supervised installment loan of \$1,000 or less must also be payable at equal periodic intervals. § 2-308.

*Any restrictions on refinancing?* For most consumer credit transactions, rate upon refinancing is limited to 1% more per year than original rate. § 2-504.

*Any rebate requirements or restrictions on prepayment penalties?* Unless loan is secured by land, may prepay in full or in part at any time without penalty, subject to minimum charges permitted by law. Lender must provide actuarial rebate, but, upon prepayment (but not refinancing), lender may retain minimum charge of \$5 if amount financed was \$75 or less, \$15 if amount financed was more than \$75 but less than \$250, and \$25 if amount financed was more than \$250. If rebate is less than \$1, no rebate need be made. §§ 2-509, 2-510.

*What security interests (or postdated checks or ACH authorizations) are allowed or prohibited?* Wage assignment is prohibited and void, but consumer may

revocably authorize deductions from earnings. § 3-305. Security interest in land is prohibited and void for a supervised loan that has an APR greater than 18%. Security interest in consumer's principal residence is prohibited for supervised loan in which amount financed is \$2,800 or less, unless lender already holds first mortgage. § 2-307.

*Does statute prohibit unconscionable loan charges?* Yes. § 5-108.

*Must lender underwrite or evaluate borrower's ability to repay?* Statute is silent.

*If state has a criminal usury law, is lending under this statute exempt from it?* Not applicable.

*Reporting requirements, including detail about what must be reported and whether there are any requirements that the state agency review or take other steps regarding the reports:* Administrator may require licensed supervised lender to file annual and quarterly reports, and additional reports if deemed necessary. Information contained in reports may be published only in composite form. § 2-304.

*Other significant features:* Loan-splitting prohibited. § 3-304.

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## MARYLAND

*Md. Code Ann., Com. Law §§ 12-301 to 12-317 (West) (Consumer Loan Law—Credit Provisions); Md. Code Ann., Fin. Inst. §§ 11-201 to 11-223 (West) (Consumer Loan Law—Licensing Provisions) (These two laws are cited jointly as the Maryland Consumer Loan Law).*

*What types of lenders does it apply to (e.g., banks vs. non-banks)?* Applies to lenders if they make loans under this law, except that the depositories that are not required to be licensed are exempt. Com. Law § 12-302.

*Licensure requirements and implications of licensure:* May not engage in the business of making loans under this subtitle unless lender is licensed under

or exempt from licensing requirements. Com. Law § 12-302. *See also* Fin. Inst. § 11-204(a). Banks, trust companies, savings banks, credit unions, and savings and loan associations are not eligible for licensure, and their powers are unaffected by the licensure law. Fin. Inst. § 11-202.

*Size and length of loans to which the statute applies, and any restrictions in the statute on these features:* Applies to loans of \$6,000 or less Com. Law §§ 12-303(a). *See also* Com. Law § 12-314. Maximum term may not exceed: (1) 30 months and 15 days for loan of \$700 or less; (2) 36 months and 15 days for loan of more than \$700 but less than \$2,000; or (3) 72 months and 15 days for loan of \$2,000 or more. Com. Law § 12-306(e).

*Other restrictions on applicability of statute (e.g., it only applies if lender takes a mortgage on real property):* Statute is silent.

*What rate of interest is allowed?* First alternative:

- For a loan of \$2,000 and under, 33% on first \$500, 24% on amount over \$500 but not more than \$700, and 15% on remainder.
- For a loan between \$2,000 and \$3,500: 21%.
- For a loan between \$3,500 and \$5,000, 18%.
- For a loan over \$5,000, 16.2%.

Second alternative (for loans that meet certain conditions):

- For loan of \$2,000 or less, 33% on first \$1,000 and 24% on remainder.
- For loan of more than \$2,000, 24%.

### **Com. Law § 12-306(a)(2)-(6).**

*What loan fees are allowed?* Recording fees, or premiums for non-filing insurance if no more than those fees. Com. Law § 12-307(a).

*What types of insurance are allowed, and any limits the lending statute places on charges?* Property insurance on any real or personal property collateral; credit health insurance covering any one or more borrowers; credit life insurance on one borrower if loan is for

less than \$700 and on more than one borrower if loan is for \$700 or more; and credit involuntary unemployment benefit insurance covering one borrower. Com. Law § 12-312.

*Does statute prohibit all other fees besides those specifically allowed?* Yes. Com. Law § 12-313(a)(1). *See also* Com. Law § 12-314 (loan of \$6,000 or less is unenforceable if lender takes a rate of interest, charge, discount, or other consideration greater than authorized, with exception for clerical errors or mistakes that are corrected before any payment is received).

*Does statute restrict balloon payments or irregular payment schedules?* A loan may be made at the split rates (36% and 24%) authorized by Com. Law § 12-306(6) provided that the loan does not include a balloon payment, unless payment in full is due on demand or in 1 year or less. Com. Law § 12-307(iv).

*Any restrictions on refinancing?* Only 60 days of past-due interest can be included in principal of refinanced loan. Com. Law § 12-306(c).

*Any rebate requirements or restrictions on prepayment penalties?* Borrower may prepay in full or in part at any time without penalty. Com. Law § 12-308(c). Statute prohibits lender from entering into precomputed loan, and requires interest to be computed actuarially, so effectively prohibits Rule of 78s rebates. Com. Law § 12-306(d)(1).

*What security interests (or postdated checks or ACH authorizations) are allowed or prohibited?* Security interest in real property (other than judgment lien) for any loan under \$2,000, or in personal property for any loan under \$700, is prohibited and void. Com. Law § 12-311(c). Wage assignments prohibited. Com. Law § 12-311(b)(2).

*Does statute prohibit unconscionable loan charges?* Statute is silent.

*Must lender underwrite or evaluate borrower's ability to repay?* No, only for mortgage loans (Com. Law §§ 12-311e).

*If state has a criminal usury law, is lending under this statute exempt from it?* Not applicable.

*Reporting requirements, including detail about what must be reported and whether there are any requirements that the state agency review or take other steps regarding the reports:* The Commissioner shall report to the appropriate state's attorney any alleged criminal violation of Fin. Inst. § 11-220.

*Other significant features:* Wage assignment is treated as a loan. Com. Law § 12-303(b). Anti-evasion provisions. Com. Law § 12-303(c); Fin. Inst. § 11-204(a)(b)(2)(iii). Loan splitting prohibited. Com. Law § 12-313(a)(2).

***Md. Code Ann., Com. Law §§ 12-1001 to 12-1029 (West) (Credit Grantor Closed End Credit Provisions).***

*What types of lenders does it apply to (e.g., banks vs. non-banks)?* Applies to any "credit grantor," defined to include, *inter alia*, any legal or commercial entity making a loan or other extension of credit which is incorporated, chartered, or licensed under state or federal law, and subject to supervision, examination, and regulation, pursuant to state or federal law; any money transmitter licensed in Maryland; or any retailer. Definition includes any bank, trust company, depository institution, or savings bank having a branch in the state. Com. Law § 12-1001(g).

*Licensure requirements and implications of licensure:* Credit grantors are subject to the licensing, investigatory, enforcement and penalty provisions of Fin. Inst. §§ 11-301 to 11-304 unless exempt therefrom. Com. Law § 12-1015(a); Fin. Inst. § 11-302(b). This licensing provision does not apply to banks, savings and loan associations, credit unions, licensees under the Consumer Loan Law, sellers of goods or services that do not make loans or act as a credit services business, certain mortgage lenders that are licensed or exempt from licensure requirements, and certain educational loans. Fin. Inst. § 11-301.

*Size and length of loans to which the statute applies, and any restrictions in the statute on these features:* Provisions regarding "consumer borrowers" apply to consumer loans (ones for personal, family, or

household purposes) regardless of amount. Com. Law § 12-1001(f).

*Other restrictions on applicability of statute (e.g., it only applies if lender takes a mortgage on real property):* Lender may take any security acceptable to it. Com. Law § 12-1002(b).

*What rate of interest is allowed?* 24%. Com. Law § 12-1003(a), (b). Note that the general usury statute, Com. Law § 12-103, also allows an interest rate of 24% on unsecured loans and loans secured by personal property, so lenders may prefer to operate under the general usury statute.

*What loan fees are allowed?* For consumer loans, lender may charge reasonable fees for services rendered or for reimbursement of expenses incurred in good faith for: (1) attorney fees for preparation, closing, or disbursement of the loan; (2) expenses, taxes, or charges paid to governmental agencies; and (3) examination of title, appraisal, or other costs necessary or appropriate to security of the loan. Fee must be an actual and verifiable expense and not retained by the lender. Com. Law § 12-1005(d). Loan fees, points, finder's fees, and other charges are prohibited unless loan is secured by a lien on residential real property. Com. Law § 12-1005(a)(2).

*What types of insurance are allowed, and any limits the lending statute places on charges?* Credit life insurance, credit health insurance, credit involuntary unemployment benefit insurance, and similar insurance coverages is optional; purchase of property insurance, title insurance, and credit loss insurance may be required if the loan is secured. Com. Law §§ 12-1005(d)(1)(iii)(4), 12-1007. Lender may charge for optional debt cancellation agreement. Com. Law § 12-1005(c).

*Does statute prohibit all other fees besides those specifically allowed?* Yes. Com. Law § 12-1005(d)(1).

*Does statute restrict balloon payments or irregular payment schedules?* Installment loan to consumer may not require balloon payment at maturity, with exceptions for loan secured by lien on residential real property, loan of \$30,000 or more secured by passenger car,

or loan of \$10,000 or more secured by a motorcycle. Com. Law § 12-1003(c).

*Any restrictions on refinancing?* Statute is silent.

*Any rebate requirements or restrictions on prepayment penalties?* Consumer borrower may prepay in full at any time without charge. Lender must give actuarial rebate of precomputed interest charge, but need not make rebate of less than \$5. Com. Law § 12-1009(a), (b).

*What security interests (or postdated checks or ACH authorizations) are allowed or prohibited?* Wage assignments prohibited and unenforceable, Com. Law § 12-1023(b)(2)(1), but otherwise credit grantor may take any security as collateral as may be acceptable to it. Com. Law § 12-1002(b).

*Does statute prohibit unconscionable loan charges?* Statute is silent.

*Must lender underwrite or evaluate borrower's ability to repay?* For mortgages only. Com. Law § 12-1029.

*If state has a criminal usury law, is lending under this statute exempt from it?* Not applicable.

*Reporting requirements, including detail about what must be reported and whether there are any requirements that the state agency review or take other steps regarding the reports:* Statute is silent.

*Other significant features:* Not applicable.

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## MASSACHUSETTS

### *Mass. Gen. Laws ch. 140, § 90.*

*What types of lenders does it apply to (e.g., banks vs. non-banks)?* Applies generally to all loans.

*Licensure requirements and implications of licensure:* Statute is silent.

*Size and length of loans to which the statute applies, and any restrictions in the statute on these features:* Less than \$1,000.

*Other restrictions on applicability of statute (e.g., it only applies if lender takes a mortgage on real property):* Statute is silent.

*What rate of interest is allowed?* Statute has effect of capping interest at 18%: it provides that a loan of less than \$1,000 made at a rate of more than 6% is discharged by payment of the principal plus interest at the agreed rate or 18%, whichever is less. Ch. 140, § 90.

*What loan fees are allowed?* Not exceeding \$5.00 "for the actual expenses of making and securing the loan." Ch. 140, § 90.

*What types of insurance are allowed, and any limits the lending statute places on charges?* Statute is silent.

*Does statute prohibit all other fees besides those specifically allowed?* Effect of statute is to nullify any other fees.

*Does statute restrict balloon payments or irregular payment schedules?* Statute is silent.

*Any restrictions on refinancing?* Statute is silent.

*Any rebate requirements or restrictions on prepayment penalties?* Actuarial method for calculating rebates: Loan may be discharged by paying sum actually borrowed plus interest at the agreed rate (or at 18% if agreed rate exceeds 18%) for the time the loan is actually outstanding, plus \$5; but no rebate if loan is repaid within first 6 months. Ch. 140, § 90.

*What security interests (or postdated checks or ACH authorizations) are allowed or prohibited?* Statute is silent.

*Does statute prohibit unconscionable loan charges?* No, but Mass. Code Regs. tit. 940, § 3.16(1) provides that an act or practice is violation of the state deceptive practices statute, Mass. Gen. Laws Ch. 93A (which applies to lending) if it is oppressive or unconscionable in any respect.

*Must lender underwrite or evaluate borrower's ability to repay?* Statute is silent.

*If state has a criminal usury law, is lending under this statute exempt from it?* Criminal usury state provides:



"The provisions of this section shall not apply to any loan the rate of interest for which is regulated under any other provision of general or special law or regulations promulgated thereunder or to any lender subject to control, regulation or examination by any state or federal regulatory agency." Ch. 271, § 49(e).

*Reporting requirements, including detail about what must be reported and whether there are any requirements that the state agency review or take other steps regarding the reports:* Statute is silent.

*Other significant features:* Not applicable.

**Mass. Gen. Laws ch. 140, § 96 (Small Loan Business); Mass. Gen. Laws ch. 140, §§ 98, 100, 103, 106–108, 110, 114, 114A; 209 Mass. Code Regs. § 26.01.**

*What types of lenders does it apply to (e.g., banks vs. non-banks)?* Applies generally to all lenders in business of making loans of \$6,000 or less at more than 12%. Ch. 140, § 96.

*Licensure requirements and implications of licensure:* Must have license to engage in business of making, purchasing, or arranging loans of \$6,000 or less, where interest exceeds 12%. Ch. 140, § 96. Loan made by unlicensed lender is void. Ch. 140, § 110. Loan companies and loan associations established by special charter, and fraternal mutual benefit societies the membership of which is limited to the employees of any one person and which make loans to its members only, shall be subject to the supervision of the commissioner, but need not procure a license. Ch. 140, § 114. Trust companies, savings banks, co-operative banks, savings and loan associations, credit unions, national banking associations, federal savings banks, federal savings and loan associations, or any subsidiary of the foregoing shall not be subject to licensing and other small loan provisions, but must abide by statute's limits on interest, expenses and other consideration. Ch. 140, § 114A.

*Size and length of loans to which the statute applies, and any restrictions in the statute on these features:* \$6,000 or less. Ch. 140, § 96.

*Other restrictions on applicability of statute (e.g., it only applies if lender takes a mortgage on real property):* Statute applies only to loans made primarily for personal, family, or household purposes. Statute, except for interest rate limit, does not apply to certain loans by secondary educational institutions. Statute does not apply to home mortgage loans and open-end mortgage loans. Ch. 140, § 96.

*What rate of interest is allowed?* 23%. Ch. 140, § 100; 209 Mass. Code Regs. § 26.01(1)(a). All sums charged against or paid by the borrower for making or securing the loan, including, *inter alia*, interest, brokerage, recording fees, and commissions, must fall within this cap. Ch. 140, § 96.

*What loan fees are allowed?* An administrative fee of \$20 upon the granting of a loan. This fee may not be assessed more than once during any 12 month period. 209 Mass. Code Regs. § 26.01(1)(a). Recording fees. Ch. 140, § 100.

*What types of insurance are allowed, and any limits the lending statute places on charges?* Statute is silent.

*Does statute prohibit all other fees besides those specifically allowed?* Yes. Ch. 140, §§ 100, 106.

*Does statute restrict balloon payments or irregular payment schedules?* Statute and but regulations provide that interest may be precomputed only when contract requires repayment in substantially equal and consecutive monthly installments of principal and interest charges. Ch. 140, § 100; 209 Mass. Code Regs. § 26.01(4).

*Any restrictions on refinancing?* Lender can charge \$20 administrative fee only once in any 12-month period, and must notify borrower of option to take out a new loan rather than refinancing an existing loan at a higher rate. 209 Mass. Code Regs. § 26.01(1).

*Any rebate requirements or restrictions on prepayment penalties?* Authorities are contradictory. Statute requires actuarial method, Ch. 140, § 100, yet 209 Mass. Code Regs. § 26.01(4)(b) authorizes Rule of 78s (sum of payments):



*What security interests (or postdated checks or ACH authorizations) are allowed or prohibited?* Personal property and assignment of wages specifically allowed. Ch. 140, § 107.

*Does statute prohibit unconscionable loan charges?* No, but Mass. Code Regs. tit. 940, § 3.16(1) provides that an act or practice is violation of the state deceptive practices statute, Mass. Gen. Laws Ch. 93A (which applies to lending) if it is oppressive or unconscionable in any respect.

*Must lender underwrite or evaluate borrower's ability to repay?* Statute is silent.

*If state has a criminal usury law, is lending under this statute exempt from it?* Criminal usury statute provides: "The provisions of this section shall not apply to any loan the rate of interest for which is regulated under any other provision of general or special law or regulations promulgated thereunder or to any lender subject to control, regulation or examination by any state or federal regulatory agency." Ch. 271, § 49(e).

*Reporting requirements, including detail about what must be reported and whether there are any requirements that the state agency review or take other steps regarding the reports:* Annual report containing information as commissioner may require. Ch. 140, § 98.

*Other significant features:* Loan splitting prohibited. Ch. 140, § 100.

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## MICHIGAN

### *Mich. Comp. Laws §§ 493.1 to 493.24 (Regulatory Loan Act).*

*What types of lenders does it apply to (e.g., banks vs. non-banks)?* Applies generally to lenders, but exempts banks, savings banks, industrial banks, trust companies, building and loan associations, credit unions, and licensed pawnbroking. §§ 493.2, 493.20.

*Licensure requirements and implications of licensure:* Must have license to make loans at rate higher than non-licensee can charge. § 493.2(1).

*Size and length of loans to which the statute applies, and any restrictions in the statute on these features:* Statute is silent.

*Other restrictions on applicability of statute (e.g., it only applies if lender takes a mortgage on real property):* Statute is silent.

*What rate of interest is allowed?* 25%. §§ 493.13, 445.1854.

*What loan fees are allowed?*

- Loan processing fee not to exceed 5% of the principal, up to \$250 (adjusted for inflation), which may be added to principal. The current maximum fee is \$300. See [www.michigan.gov/documents/difs/Bulletin\\_2014-01-CF\\_445955\\_7.pdf?20150318124433](http://www.michigan.gov/documents/difs/Bulletin_2014-01-CF_445955_7.pdf?20150318124433).
- Recording fees.

### **§ 493.13(4).**

*What types of insurance are allowed, and any limits the lending statute places on charges?* Licensee may provide credit insurance, and any other insurance under the insurance code. § 493.13a.

*Does statute prohibit all other fees besides those specifically allowed?* Yes. § 493.13(4).

*Does statute restrict balloon payments or irregular payment schedules?* Statute is silent.

*Any restrictions on refinancing?* Statute is silent.

*Any rebate requirements or restrictions on prepayment penalties?* Borrower may prepay in any amount at any time. § 493.14(c). Prepayment penalties are prohibited because not authorized by § 493.13(4). Loan contract cannot have precomputed interest, so there will be no need for a rebate. § 493.13(3).

*What security interests (or postdated checks or ACH authorizations) are allowed or prohibited?* Forbids liens on real estate other than judgment liens. § 493.12(2). Wage assignments are invalid. § 493.17.

*Does statute prohibit unconscionable loan charges? Statute is silent.*

*Must lender underwrite or evaluate borrower's ability to repay? Statute is silent.*

*If state has a criminal usury law, is lending under this statute exempt from it? Statute is silent, but criminal usury law, § 438.41, criminalizes charging more than 25% only when lender is not authorized by law to do so.*

*Reporting requirements, including detail about what must be reported and whether there are any requirements that the state agency review or take other steps regarding the reports: Annual financial statement, including information on earnings, and annual report on volume and type of business activities. Commissioner shall publish an annual analysis and recapitulation. § 493.11.*

*Other significant features: Loan-splitting prohibited. § 493.13(4). Anti-evasion provision. § 493.18(1), (2).*

#### ***Mich. Comp. Laws §§ 445.1851 to 445.1864 (Credit Reform Act).***

*What types of lenders does it apply to (e.g., banks vs. non-banks)? Act applies to extensions of credit made by regulated lenders. "Regulated lender" means a depository institution, a licensee under the consumer financial services act, the secondary mortgage loan act, the motor vehicle sales finance act, or the regulatory loan act (summarized above), or a seller under the home improvement finance act. § 445.1852(i). (Any entity, whether licensed or not, may loan money at the legal interest rate set by § 438.31.)*

*Licensure requirements and implications of licensure: "Regulated lenders" other than depository institutions and sellers under home improvement finance act must be licensed under the consumer financial services act, the secondary mortgage loan act, the motor vehicle sales finance act, or the regulatory loan act (summarized above), or a seller under the home improvement finance act. § 445.1852(i).*

*Size and length of loans to which the statute applies, and any restrictions in the statute on these features: Statute is silent.*

*Other restrictions on applicability of statute (e.g., it only applies if lender takes a mortgage on real property): Statute is silent.*

*What rate of interest is allowed? 25%. § 445.1854.*

*What loan fees are allowed? Except for depository institutions and as otherwise provided by law, a regulated lender may require the borrower to pay a processing fee of 2% of amount of credit extended. § 445.1856(1) (a). A depository institution may charge all fees and charges that are agreed to or accepted by the borrower. § 445.1857. (A licensee under the Regulatory Loan Act may charge a processing fee of 5%, up to the maximum amount of \$300, but cannot charge an additional 2% processing fee over and above the 5% processing fee.)*

*What types of insurance are allowed, and any limits the lending statute places on charges? Statute is silent.*

*Does statute prohibit all other fees besides those specifically allowed? Yes. §§ 445.1852(f), 445.1856(4), 445.1857(3).*

*Does statute restrict balloon payments or irregular payment schedules? Statute is silent.*

*Any restrictions on refinancing? Statute is silent.*

*Any rebate requirements or restrictions on prepayment penalties? An agreement by a borrower or buyer to pay a penalty is void and unenforceable, but prepayment charges are not penalties. § 445.1858(c). Actuarial rebate of precomputed interest is required. § 445.1855.*

*What security interests (or postdated checks or ACH authorizations) are allowed or prohibited? Statute is silent.*

*Does statute prohibit unconscionable loan charges? No.*

*Must lender underwrite or evaluate borrower's ability to repay? Statute is silent.*

*If state has a criminal usury law, is lending under this statute exempt from it? Statute is silent, but criminal usury law, § 438.41, criminalizes charging more than*

25% only when lender is not authorized by law to do so.

*Reporting requirements, including detail about what must be reported and whether there are any requirements that the state agency review or take other steps regarding the reports:* Statute is silent.

*Other significant features:* Not applicable.

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## MINNESOTA

### *Minn. Stat. § 47.59 (Financial institution credit extension maximum rates).*

*What types of lenders does it apply to (e.g., banks vs. non-banks)?* Law applies to any “financial institution,” defined as a bank, a bank and trust, a trust company with banking powers, a saving bank, a savings association, an industrial loan and thrift company organized under chapter 53, a regulated lender organized under chapter 56 (see next summary), or an operating subsidiary of any such institution. § 47.59 subdiv. 1(k).

*Licensure requirements and implications of licensure:* Statute is silent, but the lenders to which it applies are required by other law to be licensed or chartered or the equivalent.

*Size and length of loans to which the statute applies, and any restrictions in the statute on these features:* Statute is silent. Size of loans is determined by law under which the lender is licensed or chartered.

*Other restrictions on applicability of statute (e.g., it only applies if lender takes a mortgage on real property):* Statute is silent.

*What rate of interest is allowed?*

- 21.75% on unpaid balance; or
- 33% on first \$1,125 (adjusted for inflation) and 19% on remainder.

### *§ 47.59 subdiv. 3(a).*

*What loan fees are allowed?*

- Official fees and taxes.

- Charges for other benefits conferred on the borrower that are of a type that is not for credit. § 47.59 subdiv. 6(a)(6).
- Onetime \$25 loan administrative fee if principal is \$6,480 or less (adjusted for inflation). § 47.59 subdiv. 6(d).

*What types of insurance are allowed, and any limits the lending statute places on charges?* Property insurance; liability insurance; credit insurance providing life, accident, health, or unemployment coverage; and vendor’s single interest insurance. § 47.59 subdiv. 6(b).

*Does statute prohibit all other fees besides those specifically allowed?* Borrower is not required to pay any charge in excess of those allowed by the statute. § 47.59 subdiv. 14.

*Does statute restrict balloon payments or irregular payment schedules?* Statute is silent.

*Any restrictions on refinancing?* No.

*Any rebate requirements or restrictions on prepayment penalties?* Borrower may prepay in full at any time without penalty. § 47.59 subdiv. 9. Actuarial rebate required, but no refund required if less than \$7.50. § 47.59 subdiv. 3(f), (h).

*What security interests (or postdated checks or ACH authorizations) are allowed or prohibited?* Wage assignment is unenforceable unless it is a revocable payroll deduction or preauthorized payment plan or applies only to wages already earned at the time of the assignment. § 47.59 subdiv. 12(c). Other than this, statute is silent about what security interests are authorized or prohibited, but it refers to charges for perfecting security interests.

*Does statute prohibit unconscionable loan charges?* Statute is silent.

*Must lender underwrite or evaluate borrower’s ability to repay?* Statute is silent.

*If state has a criminal usury law, is lending under this statute exempt from it?* Not applicable.

*Reporting requirements, including detail about what must be reported and whether there are any requirements that the state agency review or take other steps regarding the reports:* Statute is silent, but an annual report is required by chapters 53 and 56 and § 47.60.

*Other significant features:* Not applicable.

### **Minn. Stat. § 47.601 (Consumer Short-Term Loans)**

*What types of lenders does it apply to (e.g., banks vs. non-banks)?* “Consumer short-term lender” means an individual or entity, other than a state or federally chartered bank, savings bank, or credit union, engaged in the business of making or arranging consumer short-term loans. § 47.601 subdvs. 1(d), 1(e).

*Licensure requirements and implications of licensure:* A loan is void, and the borrower is not obligated to pay any amounts owing if the loan is made by a consumer short-term lender who has not obtained an applicable license from the commissioner. § 47.601 subd. 6(b).

*Size and length of loans to which the statute applies, and any restrictions in the statute on these features:* Applies to “consumer short-term loan,” defined as a loan which has a principal amount, or an advance on a credit limit, of \$1,000 or less and requires a minimum payment within 60 days of loan origination of more than 25% of the principal balance. Excludes pawn transactions and other transactions where lender’s sole recourse for recovery after default, other than a lawsuit for damages for the debt, is to proceed against physical goods pledged as collateral. § 47.601 subd. 1(d).

*Other restrictions on applicability of statute (e.g., it only applies if lender takes a mortgage on real property):* § 47.601 operates as a reporting statute for loans of \$1,000 or less; lenders operate under other statutes when making these loans.

*What rate of interest is allowed?* No contract or agreement between a consumer short-term loan lender and a borrower residing in Minnesota may contain a provision “in which interest rates, fees, charges, or

loan amounts exceed those allowable under § 47.59, subd. 6, or § 47.60, subd. 2, other than by de minimis amounts if no pattern or practice exists.” § 47.59 subd. 6 allows:

- Official fees and taxes.
- Charges for other benefits conferred on the borrower that are of a type that is not for credit. § 47.59 subd. 6(a).
- Onetime \$25 loan administrative fee if principal is \$6,480 or less (adjusted for inflation). § 47.59 subd. 6(d).
- “[T]he finance charges permitted by this section,” which would include those set forth in subd. 3: either 21.75% on unpaid balance or 33% on first \$1,125 (adjusted for inflation) and 19% on remainder.

### **§ 47.60, subd. 2 allows:**

- 7% of loan amount, with a minimum of \$10, plus a \$5 administrative fee, if loan is greater than \$100 but no more than \$250.
- 6% of loan amount, with a minimum of \$17.50, plus a \$5.00 administrative fee, if loan is more than \$200.
- Lesser amounts for loans of \$100 or less.

*What loan fees are allowed?* See preceding entry.

*What types of insurance are allowed, and any limits the lending statute places on charges:* Statute is silent.

*Does statute prohibit all other fees besides those specifically allowed?* Fees allowed by § 47.60, subd. 2, are “in lieu of the interest, finance charges, or fees in any other law.” § 47.60, subd. 2(a). Loan is void, and statute gives borrower the right to sue if lender charges more than the rates, fees, or charges allowed. § 47.601, subdvs. 2(a)(3)(ii), 6(b)(3).

*Does statute restrict balloon payments or irregular payment schedules?* Statute is silent.

*Any restrictions on refinancing?* Statute is silent.

*Any rebate requirements or restrictions on prepayment penalties?* Statute is silent.



*What security interests (or postdated checks or ACH authorizations) are allowed or prohibited?* Statute refers to holding of a check evidencing the borrower's obligation on a short-term loan, § 47.601 subdiv. 2(a), but otherwise is silent.

*Does statute prohibit unconscionable loan charges?* Statute is silent.

*Must lender underwrite or evaluate borrower's ability to repay?* Statute is silent.

*If state has a criminal usury law, is lending under this statute exempt from it?* Not applicable.

*Reporting requirements, including detail about what must be reported and whether there are any requirements that the state agency review or take other steps regarding the reports:* Annual report containing total dollar amount, over and above principal, collected on consumer short-term loans; the average APR and range of APRs; the number of individual borrowers, broken down by the number who obtained: (i) 5 or more loans; (ii) 10 or more loans; (iii) 15 or more loans; and (iv) 20 or more loans; and the total number and dollar amount of loans charged off or written off. § 47.601 subdiv. 4.

*Other significant features:* No forum or choice of law other than Minn. No class action ban for certain violations. § 47.601 subdiv. 2.

### ***Minn. Stat. §§ 56.0001 to 56.26 (Regulated Loan Act).***

*What types of lenders does it apply to (e.g., banks vs. non-banks)?* Lenders making loans under this statute are referred to as "regulated lenders." The statute excludes banks, savings associations, trust companies, licensed pawnbrokers, and credit unions. § 56.002.

*Licensure requirements and implications of licensure:* Must have license in order to make loans with the charges allowed by this statute, but industrial loan and thrift companies need not be licensed, and certain federally-related entities may purchase mortgage loans from licensees without being licensed. §§ 56.01,

56.002. Loan made without required license is unenforceable. § 56.18.

*Size and length of loans to which the statute applies, and any restrictions in the statute on these features:* Not exceeding \$100,000 or 15% of a Minnesota corporate licensee's stock and surplus. § 56.131, subdiv. 1(a).

*Other restrictions on applicability of statute (e.g., it only applies if lender takes a mortgage on real property):* Statute is silent.

*What rate of interest is allowed?* On loan up to \$100,000, lender may charge either: (1) 21.75% or (2) 33% on first \$1,125 (adjusted for inflation) and 19% on the remainder. § 56.131, subdiv. 1(a) (incorporating § 47.59).

*What loan fees are allowed?*

- Recording fees and taxes, or the cost of non-filing insurance if no greater than this amount.
- Onetime \$25 loan administrative fee if principal is \$6,480 or less (adjusted for inflation).

### ***§ 56.131 subdiv. 2(e).***

*What types of insurance are allowed, and any limits the lending statute places on charges?* Life, accident, health, and involuntary unemployment insurance; property insurance on collateral. § 56.155.

*Does statute prohibit all other fees besides those specifically allowed?* Yes. §§ 56.131 subdiv. 2, 56.15.

*Does statute restrict balloon payments or irregular payment schedules?* Statute is silent.

*Any restrictions on refinancing?* Statute is silent except for loans secured by real estate. § 56.131 subdiv. 2.

*Any rebate requirements or restrictions on prepayment penalties?* Borrower may prepay in any amount at any time. § 56.14(3). Actuarial rebate required. § 56.131 subdiv. 6 (incorporating § 47.59, subdiv. 3(f), (h)). Special rules for rebates involving discount points on real-estate-secured loans of \$18,000 or more. §§ 56.131, subdiv. 6, 47.59, subdiv. 3(e).



*What security interests (or postdated checks or ACH authorizations) are allowed or prohibited?* Limits wage assignments to 10% of wages but does not prohibit them. § 56.17. Prohibits lien on real estate for loan of \$6,840 or less. § 56.12.

*Does statute prohibit unconscionable loan charges?* Statute is silent.

*Must lender underwrite or evaluate borrower's ability to repay?* Statute is silent.

*If state has a criminal usury law, is lending under this statute exempt from it?* Not applicable.

*Reporting requirements, including detail about what must be reported and whether there are any requirements that the state agency review or take other steps regarding the reports:* Annual report containing the information required by the commissioner, who shall publish an annual analysis and recapitulation. § 56.11.

*Other significant features:* Loan-splitting prohibited. § 56.131 subdiv. 3. Anti-subterfuge (anti-deception) provision. § 56.18. If lender takes a wage assignment, the transaction is governed by this chapter. §§ 56.16, 56.17.

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## MISSISSIPPI

*Miss. Code Ann. §§ 75-17-21 and 75-67-101 to 75-67-139 (Small Loan Regulatory Law).*

*What types of lenders does it apply to (e.g., banks vs. non-banks)?* Everyone except:

- Banks, savings banks, trust companies, building and loan associations, insurance companies, pawnbrokers, and credit unions.
- Loans made to the lender's employees or farm tenants.
- Lenders making loans secured only by real estate.
- Loans for farming or agricultural operations.
- Loans insured or guaranteed by the U.S.

- Dealers and sellers or purchasers of conditional sales or retained title contracts on real or personal property.
- Occasional lenders not regularly engaged in the business of lending money.

### §§ 75-67-135, 75-67-241.

*Licensure requirements and implications of licensure:* No person shall engage in the business of lending money except as authorized by this article (§§ 75-67-101 to 75-67-139), and without being the holder of a valid and subsisting license to engage in such business as provided by the Small Loan Privilege Tax Law (§§ 75-67-201 to 75-67-247). § 75-67-105(1).

*Size and length of loans to which the statute applies, and any restrictions in the statute on these features:* Statute is silent.

*Other restrictions on applicability of statute (e.g., it only applies if lender takes a mortgage on real property):* Statute is silent.

*What rate of interest is allowed?*

- 36% on first \$1,000.
- 33% on amount over \$1,000 but not exceeding \$2,500.
- 24% on amount over \$2,500 but not exceeding \$5,000.
- 14% on remainder.

The 36% rate is to be increased by the number of percentage points by which the discount rate exceeds 8%, and the other rates by the number of percentage points by which the discount rate exceeds 10%. § 75-17-21(1), (4). In the alternative, on loans of \$25,000 or more: 18%. § 75-17-21(2).

*Origination and other fees are allowed:* Closing fee of \$25 or 4% of total payments due on loan, whichever is greater, if loan is for \$10,000 or less; otherwise, \$500. § 75-17-21(3). If loan is for \$100 or more, recording fees and a reasonable fee paid to an attorney for investigating title to property given as security. § 75-67-121.

*What types of insurance are allowed, and any limits the lending statute places on charges?* On loan of \$100 or more, lender may charge for property insurance on collateral and life, health and/or accident insurance on any borrower. May sell auto club membership after loan has been approved. § 75-67-121.

*Does statute prohibit all other fees besides those specifically allowed?* Yes. § 75-17-119 (all finance charges are forfeited if lender charges any charge in excess of that expressly permitted).

*Does statute restrict balloon payments or irregular payment schedules?* “Licensee” is defined as an entity that holds a license and that engages in the business of lending money to be paid back in monthly installments or other regular installments for periods of more or less than 1 month. § 75-67-103(b).

*Any restrictions on refinancing?* Statute is silent.

*Any rebate requirements or restrictions on prepayment penalties?* When loan is prepaid in full, lender must make Rule of 78s rebate, but need not make refund of less than \$1. Calculation is to be based on the number of days by which the loan is paid in advance, less 20 days. § 75-67-127(1)(c).

*What security interests are allowed or prohibited (including postdated checks and ACH authorization)?* Allows security interests in real or personal property. § 75-67-127(1)(a). *See also* § 75-67-103(b) (definition of “licensee” applies whether or not the lender requires security from the borrower as indemnity for the repayment of the loan).

*Does statute prohibit unconscionable loan charges?* Statute is silent.

*Must lender underwrite or evaluate borrower’s ability to repay?* Statute is silent.

*Is lending under this statute exempt from state criminal usury law?* Not applicable.

*Reporting requirements, including detail about what must be reported and whether there are any requirements that the state agency review or take other steps regarding the reports:* Statute is silent.

*Other significant features:* Not applicable.

### [Miss. Code Ann. §§ 75-67-39, 75-67-41 \(Installment Loans\).](#)

*What types of lenders does it apply to (e.g., banks vs. non-banks)?* “Any persons, natural or artificial, including domestic and foreign corporations, lending money in this state.” § 75-67-39.

*Licensure requirements and implications of licensure:* Statute is silent.

*Size and length of loans to which the statute applies, and any restrictions in the statute on these features:* Statute is silent.

*Other restrictions on applicability of statute (e.g., it only applies if lender takes a mortgage on real property):* Statute is silent.

*What rate of interest is allowed?* 7%. § 75-67-39. But 10% if the borrower prepays, defaults, or breaches any covenant entitling the lender to declare the whole indebtedness due and payable and to a foreclosure of the security. § 75-67-41

*What loan fees are allowed?* Statute is silent.

*What types of insurance are allowed, and any limits the lending statute places on charges?* Statute is silent.

*Does statute prohibit all other fees besides those specifically allowed?* Statute is silent.

*Does statute restrict balloon payments or irregular payment schedules?* Statute requires monthly or weekly installments, § 75-67-39, but otherwise is silent.

*Any restrictions on refinancing?* Statute is silent.

*Any rebate requirements or restrictions on prepayment penalties?* If consumer prepays, can be required to pay interest at 10% for period that loan was actually outstanding. § 75-67-41.

*What security interests are allowed or prohibited (including postdated checks and ACH authorization)?* Lender may take security interest in real or personal property. § 75-67-39.

*Does statute prohibit unconscionable loan charges? Statute is silent.*

*Must lender underwrite or evaluate borrower's ability to repay? Statute is silent.*

*Is lending under this statute exempt from state criminal usury law? Statute is silent.*

*Reporting requirements, including detail about what must be reported and whether there are any requirements that the state agency review or take other steps regarding the reports: Statute is silent.*

*Other significant features:* These two statutory provisions remain on the books but are rarely or never used in Mississippi. They are the remaining vestiges of previous loan statutes that were superseded in the 1950s by the adoption of the Small Loan Regulatory Law.

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## MISSOURI

### *Mo. Rev. Stat. §§ 408.100 to 408.213 (Interest on Small Loans).*

*What types of lenders does it apply to (e.g., banks vs. non-banks)?* Applicable broadly to loans made by any person, firm, or corporation that are not made under other Missouri laws. §§ 408.100, 408.190.

*Licensure requirements and implications of licensure:* Statute is silent. This is not a licensing statute.

*Size and length of loans to which the statute applies, and any restrictions in the statute on these features:* Statute is silent.

*Other restrictions on applicability of statute (e.g., it only applies if lender takes a mortgage on real property):* Statute excludes loans which are secured by a lien on real estate, nonprocessed farm products, livestock, farm machinery or crops, and loans to corporations. § 408.100.

*What rate of interest is allowed?* Any rate agreed to by parties. § 408.100.

*What loan fees are allowed?*

- On closed-end loans for 30 days or longer, fee of 10% of principal, not to exceed \$75.00. § 408.140(1)(1).
- Recording fees, or premium for non-filing insurance if no more than this amount. § 408.140(1)(2).

*What types of insurance are allowed, and any limits the lending statute places on charges?* Non-filing insurance, property and liability insurance, life, health, accident, and involuntary unemployment insurance; GAP insurance if loan has collateral. § 408.140(1).

*Does statute prohibit all other fees besides those specifically allowed?* Yes. §§ 408.140(1), 408.150.

*Does statute restrict balloon payments or irregular payment schedules?* If loan contract provides for payment in consecutive monthly installments, no installment shall be substantially greater than any other installment. § 408.120.

*Any restrictions on refinancing?* Statute is silent.

*Any rebate requirements or restrictions on prepayment penalties?* Prepayment penalties likely not allowed because not listed in §§ 367.100 to 367.200 or § 408.140(1). For precomputed note, Rule of 78s rebate (sum of the balances method) is allowed if initial loan term is 61 months or less and loan is for \$5,000 or less; actuarial rebate required for loan of more than \$5,000. § 408.170.

*What security interests are allowed or prohibited (including postdated checks and ACH authorization)?* Prohibits non-purchase-money security interests in household furnishings, appliances, or clothing of the borrower or dependents for consumer loan of less than \$500, or in any goods if loan is less than \$150. § 408.551 (providing that loans made under § 408.100 are subject to § 408.558). Wage assignment is void. § 408.551 (providing that loans made under § 408.100 are subject to § 408.560). Law inapplicable to loans secured by real estate or certain farm assets. § 408.100.

*Does statute prohibit unconscionable loan charges?* Statute is silent.

*Must lender underwrite or evaluate borrower's ability to repay?* Statute is silent.

*Is lending under this statute exempt from state criminal usury law?* Statute is silent, but criminal usury statute, § 408.095, criminalizes charging interest greater than 24% only when not permitted by other Missouri laws.

*Reporting requirements, including detail about what must be reported and whether there are any requirements that the state agency review or take other steps regarding the reports:* Statute is silent.

*Other significant features:* Prohibition against loan-splitting. § 408.200. Wage assignment is treated as loan. § 408.210.

### **Mo. Rev. Stat. § 408.510 (Consumer Installment Loans).**

*What types of lenders does it apply to (e.g., banks vs. non-banks)?* Applies to all persons licensed to make consumer installment loans. § 408.510.

*Licensure requirements and implications of licensure:* Consumer installment lenders must register under § 367.110. **§ 408.510.**

*Size and length of loans to which the statute applies, and any restrictions in the statute on these features:* "Consumer installment loans" means secured or unsecured loans of any amount and payable in at least four substantially equal installments over a period of at least 120 days. **§ 408.510.**

*Other restrictions on applicability of statute (e.g., it only applies if lender takes a mortgage on real property):* Statute is silent.

*What rate of interest is allowed?* Any rate agreed to by parties. § 408.510 (incorporating § 408.100).

*What loan fees are allowed?*

- A fee of 10% of principal, not to exceed \$75.00.
- Recording fees, or premium for non-filing insurance if no more than this amount.

### **§ 408.510 (incorporating § 408.140(1)).**

*What types of insurance are allowed, and any limits the lending statute places on charges?* Property and liability insurance, life, health, accident, and involuntary unemployment insurance; GAP insurance if loan has collateral. § 408.510 (incorporating § 408.140(1)).

*Does statute prohibit all other fees besides those specifically allowed?* Yes, § 408.510 by reference to § 408.140.

*Does statute restrict balloon payments or require substantially equal installments?* Loan must be payable in at least four substantially equal installments. § 408.510.

*Any restrictions on refinancing?* Statute is silent.

*Any rebate requirements or restrictions on prepayment penalties?* Prepayment penalty is likely prohibited because not listed in § 408.140. For precomputed note, Rule of 78s rebate (sum of the balances method) is allowed if initial loan term is 61 months or less and loan is for \$5,000 or less; actuarial rebate required for loan of more than \$5,000. § 408.510 (incorporating § 408.170).

*What security interests are allowed or prohibited (including postdated checks and ACH authorization)?* Prohibits non-purchase-money security interests in household furnishings, appliances, or clothing of the borrower or dependents for consumer loan of less than \$500, or in any goods if loan is less than \$150. § 408.510 (incorporating § 408.558). Wage assignment is void. § 408.510 (incorporating § 408.560).

*Does statute prohibit unconscionable loan charges?* Statute is silent.

*Must lender underwrite or evaluate borrower's ability to repay?* When making or negotiating loans, lender must take into consideration in determining the size and duration of a loan contract the financial ability of borrowers to reasonably repay the loan in the time and manner as specified in the loan contract. § 367.185(4), made applicable to installment lenders by §§ 408.510, 408.512.

*Is lending under this statute exempt from state criminal usury law?* Statute is silent, but criminal usury statute,



§ 408.095, criminalizes charging interest greater than 24% only when not permitted by other Missouri laws.

*Reporting requirements, including detail about what must be reported and whether there are any requirements that the state agency review or take other steps regarding the reports:* Statute is silent.

*Other significant features:* Not applicable.

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## MONTANA

### *Mont. Code Ann. §§ 32-5-101 to 32-5-409 (Consumer Loan Act).*

*What types of lenders does it apply to (e.g., banks vs. non-banks)?* Does not apply to regulated lender (as defined in § 31-1-111) to which the exemption from interest rate limits in § 31-1-112 applies [namely, the following are not covered by Consumer Loan Act: a bank, building and loan association, savings and loan association, trust company, credit union, credit association, residential mortgage lender licensee, development corporation, bank holding company, or mutual or stock insurance company; a subsidiary of an entity already described; a state or federal agency authorized to lend money; a corporation or other entity established by Congress or the state that is owned, in whole or in part, by the U.S. or the state that is authorized to lend money. Does not apply to a person who makes fewer than 4 consumer loans a year with the person's own funds, does not represent that the person is a licensee, and complies with the provisions of § 31-1-1. § 32-5-103(5).

*Licensure requirements and implications of licensure:* Unless lender is exempt, license is required to engage in business of making consumer loans in any amount for compensation. § 32-5-103(1).

*Size and length of loans to which the statute applies, and any restrictions in the statute on these features:* Statute is silent.

*Other restrictions on applicability of statute (e.g., it only applies if lender takes a mortgage on real property):* "Consumer loan" must be for personal, family, or

household use, and is defined to exclude residential mortgage loans and payday loans. § 32-5-102(2)(b).

*What rate of interest is allowed?* 36%. § 32-5-301(1).

*What loan fees are allowed?*

- Recording fees, or premium for non-filing insurance if no greater than those fees.
- Fees for title examination, title insurance, or similar purposes, including survey.
- Fees for preparation of documents.
- Notary fees.
- Appraisal fees.
- Credit report fees.

### *§ 32-5-301(2).*

*What types of insurance are allowed, and any limits the lending statute places on charges?* Property insurance on collateral, credit life insurance, credit disability insurance, and loss of income insurance, but only if loan principal exceeds \$300. § 32-5-306.

*Does statute prohibit all other fees besides those specifically allowed?* Yes. § 32-5-301(5)(a).

*Does statute restrict balloon payments or irregular payment schedules?* Single-payment loans are permissible as long as the payment is due at least 45 days but no more than one year from date loan is made. If loan contract provides for installment payments, then: (1) the payments must be due at approximately equal periodic intervals, except to accommodate borrowers with seasonal incomes; and (2) no payment can be substantially larger than any previous payment except that balloon payment loans are permissible as long as they do not negatively amortize. If loan contract provides for monthly installment payments, first installment must be due no more than 45 days after loan was made. § 32-5-302.

*Any restrictions on refinancing?* Statute is silent.

*Any rebate requirements or restrictions on prepayment penalties?* May prepay in whole or in part without penalty at any time. § 32-5-303(1)(i). Section 32-5-311



prohibits precomputed interest, so implicitly forbids use of Rule of 78s.

*What security interests (or postdated checks or ACH authorizations) are allowed or prohibited?* Regulates but does not prohibit wage assignments. § 32-5-310.

*Does statute prohibit unconscionable loan charges?* Statute is silent.

*Must lender underwrite or evaluate borrower's ability to repay?* Statute is silent.

*If state has a criminal usury law, is lending under this statute exempt from it?* Not applicable.

*Reporting requirements, including detail about what must be reported and whether there are any requirements that the state agency review or take other steps regarding the reports:* Annual report containing information prescribed by department. § 32-5-308.

*Other significant features:* Anti-evasion provision. § 32-5-103(3). Loan splitting prohibited. § 32-5-301(5) (a). Limits any wage assignment to 10% of wages. § 32-5-310.

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## NEBRASKA

### *Neb. Rev. Stat. §§ 45-1001 to 45-1069 (Installment Loan Act).*

*What types of lenders does it apply to (e.g., banks vs. non-banks)?* Any person, other than a financial institution (defined by §§ 8-101 and 45-1002(g) as a bank, savings bank, building and loan association, savings and loan association, credit union, or similar organization covered by federal deposit insurance, or a trust company) is eligible for a license and to be allowed to make loans under the Installment Loan Act. § 45-1003.

*Licensure requirements and implications of licensure:* Act does not apply to loans made by nonlicensees if the interest rate does not exceed 16%. §§ 45-1002(3), (4), 45-101.03. License required to charge the interest rates and other charges allowed by the Installment Loan Act. 45-1004(1).

*Size and length of loans to which the statute applies, and any restrictions in the statute on these features:*

- Statute is inapplicable to loans for more than \$25,000 that are not secured by real property. § 45-1025(2).
- Except for loans secured by manufactured homes, the maximum loan term for loans greater than \$3,000 and less than \$25,000 is 145 months. § 45-1024(1).
- If principal is no more than \$3,000, term must not exceed 36 months. § 45-1025(3).

*Other restrictions on applicability of statute (e.g., it only applies if lender takes a mortgage on real property):* Statute is silent.

*What rate of interest is allowed?* 24% on first \$1,000, and 21% on remainder § 45-1024(1). In the alternative, licensee may charge general usury rate (16%). § 45-1025(1) (incorporating §§ 45-101.03 and 45-101.04).

*What loan fees are allowed?* Nonrefundable loan origination fee, including reasonable expenses for making, closing, disbursing, extending, readjusting, or renewing of loans, including abstracting, recording, releasing, and registration fees; title examinations; credit reports; survey; and fees and expenses charged for electronic title and lien services, but not to exceed the lesser of \$500 or 7% of first \$2,000 and 5% of remainder, but must fall within 24% interest cap. § 45-1024(5).

*What types of insurance are allowed, and any limits the lending statute places on charges?* Property and liability insurance on motor vehicle; fire and extended-coverage insurance on real property or tangible personal property; involuntary unemployment or job protection insurance; life, health, and accident insurance; any other type of insurance or motor club service; nonfiling insurance; charges for debt cancellation contracts or debt suspension contracts; amounts charged for a guaranteed asset protection waiver. §§ 45-1024(5), 45-1026.

*Does statute prohibit all other fees besides those specifically allowed? Yes.* § 45-1024(4).

*Does statute restrict balloon payments or irregular payment schedules? Precomputed loan contracts must provide for substantially equal installments payable at approximately equal periodic intervals, with minor variation allowed for first payment period.* § 45-1025(3).

*Any restrictions on refinancing? If licensee has made another loan to borrower within the previous 12 months, the nonrefundable loan origination fee may be charged only on new funds advanced on each successive loan.* § 45-1024(5).

*Any rebate requirements or restrictions on prepayment penalties? Borrower may prepay one or more full installments at any time.* § 45-1022. For prepayment in full, borrower is entitled to actuarial rebate, but no rebate of less than \$1 need be made. § 45-1024(2)(c).

*What security interests are allowed or prohibited (including postdated checks and ACH authorization)? Statute imposes requirements on wage assignments but does not prohibit them.* §§ 45-1028, 45-1030.

*Does statute prohibit unconscionable loan charges? Statute is silent.*

*Must lender underwrite or evaluate borrower's ability to repay? Statute is silent.*

*Is lending under this statute exempt from state criminal usury law? Not applicable.*

*Reporting requirements, including detail about what must be reported and whether there are any requirements that the state agency review or take other steps regarding the reports: Annual report of the licensee's earnings, operations, assets, and other relevant information as the department may reasonably require.* § 45-1018.

*Other significant features: Anti-evasion provisions.* §§ 45-1015, 45-1021.

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## NEVADA

*Nev. Rev. Stat. §§ 675.010 to 675.490 (Installment Loan and Finance Act).*

*What types of lenders does it apply to (e.g., banks vs. non-banks)? Applies to any person who makes installment loans that are not governed by state payday loan law. Does not apply to:*

- Banks, national banking associations, savings banks, trust companies, savings and loan associations, credit unions, mortgage brokers, mortgage bankers, thrift companies, pawnbrokers, insurance companies, or real estate investment trusts.
- Loans from employee benefit plans.
- Firms or corporations principally engaged in mortgage lending with approval by Fannie Mae, HUD and the Department of Veterans Affairs.
- Person holding a nonrestricted state gaming license.
- Licensed payday lenders.

*§ 675.040. Commissioner may grant additional exemptions.* § 675.055.

*Licensure requirements and implications of licensure: Must have license to engage in business of lending, except for deferred deposit loan services, high-interest loan services (those charging APR of more than 40%), or title loan services, which must obtain appropriate license under §§ 604A.010–604A.150).* § 675.060.

*Size and length of loans to which the statute applies, and any restrictions in the statute on these features: Statute is silent.*

*Other restrictions on applicability of statute (e.g., it only applies if lender takes a mortgage on real property): Statute is silent.*

*What rate of interest is allowed? Statute does not specify an interest rate, but § 604A.400 prohibits any lender, including one licensed under this Act, from operating a “high-interest loan service” without obtaining a license under chapter 604A. § 604A.0703 defines a*

“high-interest loan” as one, other than a payday loan, a vehicle title loan, or a refund anticipation loan, that charges interest at more than 40%. Reading these statutes together with this Act, a licensee under this Act cannot charge more than 40% interest without obtaining a license under chapter 604A. Since chapter 604A allows licensees to make high-interest loans only if the term is limited to 150 days, § 604A.408(2), longer-term installment loans at rates exceeding 40% cannot be made regardless of licensure.

*What loan fees are allowed?* Any fees imposed on the licensee pursuant to this Act. 675.300.

*What types of insurance are allowed, and any limits the lending statute places on charges?* Life, health or disability, and involuntary unemployment insurance; property insurance on collateral; insurance protecting lender’s interest in the collateral; single interest non-filing insurance; and any other credit-related insurance approved by the commissioner. § 675.300.

*Does statute prohibit all other fees besides those specifically allowed?* Statute is silent.

*Does statute restrict balloon payments or irregular payment schedules?* The high-interest loan statute, §§ 604A.408(2)(a) and 604A.480(2)(a)(3) requires certain high-cost loans with terms of up to 150 days to be payable in installments, but there is no similar requirement for the longer-term loans governed by chapter 675.

*Any restrictions on refinancing?* Statute is silent.

*Any rebate requirements or restrictions on prepayment penalties?* Lender must allow prepayment. § 675.360. Statute is silent about rebates.

*What security interests (or postdated checks or ACH authorizations) are allowed or prohibited?* Wage assignments are invalid. § 675.340. Prohibits security interest on real property, other than judgment lien, except real property upon which is situated a manufactured home or factory-built housing that also secures the loan. § 675.350.

*Does statute prohibit unconscionable loan charges?* Statute is silent.

*Must lender underwrite or evaluate borrower’s ability to repay?* Statute is silent. *But cf.* § 604A.450 (requiring borrower to sign affidavit that vehicle title loan is affordable).

*If state has a criminal usury law, is lending under this statute exempt from it?* Not applicable.

*Reporting requirements, including detail about what must be reported and whether there are any requirements that the state agency review or take other steps regarding the reports:* Annual report containing information prescribed by commissioner. § 675.260.

*Other significant features:* Anti-evasion provisions. §§ 675.035, 675.070 675.300.

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## NEW HAMPSHIRE

### *N.H. Rev. Stat. Ann. §§ 399-A:1 to 399-A:19 (Small Loans).*

*What types of lenders does it apply to (e.g., banks vs. non-banks)?* Any person engaged in the business of making small loans, including closed-end loans, open-end loans, title loans, and payday loans. § 399-A:1(XV) (moved to §§ 399-A:1(XX) and 399-A:2 as of Jan. 1, 2016).. Chapter does not apply to banks, trust companies, insurance companies, savings or building and loan associations, credit unions, or lenders that exclusively make educational loans. § 399-A:2(III).

*Licensure requirements and implications of licensure:* License required to engage in business of making small loans, i.e., those with finance charges greater than 10% (other than recording fees and costs of repossession or sale of collateral). §§ 399-A:1(XIV) (moved to § 399-A:1(XX) as of Jan. 1, 2016), 399-A:2(I). Unlicensed lender is barred from recovering any finance charge, delinquency charge, or collection charge. § 399-A:18(II).

*Size and length of loans to which the statute applies, and any restrictions in the statute on these features:* Statute applies to loan of \$10,000 or less. § 399-A:1(XIV) (moved to § 399-A:1(XX) as of Jan. 1, 2016).

*Other restrictions on applicability of statute (e.g., it only applies if lender takes a mortgage on real property):* Statute is silent.

*What rate of interest is allowed?* 36% APR, calculated under federal Truth in Lending Act rules, but excluding one application fee per borrower per year and one participation or membership fee per borrower per year. § 399-A:12(I), (II) (moved to § 399-A:16(I) as of Jan. 1, 2016).

*What loan fees are allowed?* Statute allows recording fees, but prohibits any other charges for examination, service, brokerage, commission, or other fee, except repossession costs. § 399-A:11(XI) (moved to § 399-A:15(XI) as of Jan. 1, 2016).

*What types of insurance are allowed, and any limits the lending statute places on charges?* Credit life, accident and health, and involuntary unemployment insurance, and property insurance on collateral. § 399-A:11(XII), (XIII) (moved to § 399-A:15(XII), (XIII) as of Jan. 1, 2016).

*Does statute prohibit all other fees besides those specifically allowed?* Yes. § 399-A:11(XI) (moved to § 399-A:15(XI) as of Jan. 1, 2016).

*Does statute restrict balloon payments or require substantially equal installments?* Statute is silent.

*Any restrictions on refinancing?* Only restriction (other than § 399-A:13(VII) (moved to § 399-A:17(VII) as of Jan. 1, 2016), which applies only to payday loans), is that refinanced loan can include only 60 days of unpaid interest from prior loan. § 399-A:11(IV) (moved to § 399-A:15(IV) as of Jan. 1, 2016).

*Any rebate requirements or restrictions on prepayment penalties?* Lender must permit prepayment. § 399-A:12(VI)(d) (moved to § 399-A:15(XVI)(d) as of Jan. 1, 2016). Prepayment penalties are likely prohibited because not listed in § 399-A:11(XI) (moved to § 399-A:15(XI) as of Jan. 1, 2016). Statute is silent about rebates, but **§ 399-A:11(IV)** (moved to § 399-A:15(IV) as of Jan. 1, 2016) requires interest to be computed only on unpaid principal balances, which implies that any rebate must be actuarial.

*What security interests are allowed or prohibited (including postdated checks and ACH authorization)?* Any security agreed upon, § 399-A:12(II) (moved to § 399-A:16(II) as of Jan. 1, 2016), except that security interest on real estate, or on household furniture presently in use if loan is for \$2,000 or less, is prohibited and void. § 399-A:11(VIII), (IX) (moved to § 399-A:15 (IX), (X)) as of Jan. 1, 2016).

*Does statute prohibit unconscionable loan charges?* No, but statute gives the commissioner exclusive authority and jurisdiction to investigate charges, including interest and fees, that are or may be unreasonable or an unfair or deceptive act or practice under the state deceptive practices statute. § 399-A:12(VII) (repealed as of Jan. 1, 2016).

*Must lender underwrite or evaluate borrower's ability to repay?* Statute is silent.

*Is lending under this statute exempt from state criminal usury law?* Not applicable.

*Reporting requirements, including detail about what must be reported and whether there are any requirements that the state agency review or take other steps regarding the reports:* Annual report; financial statement including balance sheet, income statement, statement of changes in owners' equity, cash flow statement, and note disclosures. Commissioner shall publish annual analysis of this information. § 399-A:(6)(I), (II) (moved to § 399-A:10(I), (II) as of Jan. 1, 2016).

*Other significant features:* Prohibits lender from allowing any borrower to be obligated to it on one or more contracts if combined principal balance exceeds \$10,000. § 399-A:12(III). Requires lender to allow borrower to cancel up to close of next business day. § 399-A:12(XVIII) (moved to § 399-A:15(XVIII) as of Jan. 1, 2016).



## NEW JERSEY

### *N.J. Stat. Ann. §§ 17:11C-1 to 17:11C-49 (West) (New Jersey Consumer Finance Licensing Act).*

*What types of lenders does it apply to (e.g., banks vs. non-banks)?* Applies to anyone making covered loans, but depository institutions, trust companies, insurance companies, and pawnbrokers are exempt. § 17:11C-6.

*Licensure requirements and implications of licensure:* License required to engage in consumer loan business, i.e., make consumer loans of \$50,000 or less at rates greater than a non-licensee may charge. § 17:11C-3. Loan made without a required license is void unless lender meets statutory good faith error requirements. § 17:11C-33(b).

*Size and length of loans to which the statute applies, and any restrictions in the statute on these features:* Statute applies to loans of \$50,000 or less, payable in one or more installments. § 17:11C-2 (definition of “consumer loan”). Term of closed-end installment loan in an amount of:

- \$1,000 or less shall not exceed 36 months and 15 days.
- More than \$1,000 but no more than \$2,500 shall not exceed 48 months and 15 days.
- More than \$2,500 but no more than \$5,000 shall not exceed 60 months and 15 days.
- More than \$5,000 but no more than \$10,000 shall not exceed 84 months and 15 days.
- Over \$10,000 shall not exceed 120 months and 15 days.

### **§ 17:11C-35.**

*Other restrictions on applicability of statute (e.g., it only applies if lender takes a mortgage on real property):* Statute is silent.

*What rate of interest is allowed?* Statute allows any rate set by contract. §§ 17:11C-32(a), 17:11C-36(a). However, criminal usury statute caps interest at 30%. §§ 2C:21-19, 17:11C-37.

*What loan fees are allowed?* Recording fees. § 17:11C-33.

*What types of insurance are allowed, and any limits the lending statute places on charges?* Credit life insurance, credit health or disability insurance, credit involuntary unemployment insurance, property insurance on collateral. § 17:11C-21(a).

*Does statute prohibit all other fees besides those specifically allowed?* Yes. §§ 17:11C-33(a), 17:11C-41(f).

*Does statute restrict balloon payments or irregular payment schedules?* Statute contemplates single-payment loans. § 17:11C-3. Every multiple installment closed-end fixed-rate consumer loan contract must provide for repayment in installments payable at approximately equal periodic intervals of time and arranged so that no installment is substantially greater in amount than any preceding installment, but adjustments are allowed to accommodate seasonal income. § 17:11C-41(d).

*Any restrictions on refinancing?* Statute is silent.

*Any rebate requirements or restrictions on prepayment penalties?* Borrower may prepay closed-end installment loan in any amount at any time. § 17:11C-34(c). Prepayment penalties are likely prohibited because not authorized by § 17:11C-33(a). Statute is silent on rebate method, but § 17:11C-32 requires that interest and payments be calculated based on actuarial method, and that it should be computed only on unpaid principal balances, which implies that actuarial rebates must be made.

*What security interests (or postdated checks or ACH authorizations) are allowed or prohibited?* Wage assignments are prohibited and void. § 17:11C-41(a). Liens on real estate other than judgment liens are prohibited. § 17:11C-41(b).

*Does statute prohibit unconscionable loan charges?* Statute is silent.

*Must lender underwrite or evaluate borrower's ability to repay?* Statute is silent.

*If state has a criminal usury law, is lending under this statute exempt from it?* No. Criminal usury statute,



§ 2C:21-19, prohibits charging more than 30% notwithstanding any statute permitting an agreed rate.

*Reporting requirements, including detail about what must be reported and whether there are any requirements that the state agency review or take other steps regarding the reports:* Annual report with information specified by commissioner. § 17:11C-43.

*Other significant features:* Prohibits evasions, including those accomplished by way of wage assignments or sale-resale of personal property. §§ 17:11C-38, 17:11C-40, § 17:11C-41(e). Loan-splitting prohibited. §§ 17:11C-32(g), 17:11C-37.

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## NEW MEXICO

### *N.M. Stat. Ann. §§ 58-15-1 to 58-15-39 (Small Loan Act).*

*What types of lenders does it apply to (e.g., banks vs. non-banks)?* Applies to lenders making loans of \$2,500 or less. Exempts banks, savings and loan associations, credit unions, and licensed pawnbrokers. § 58-15-3(A), (C).

*Licensure requirements and implications of licensure:* May not engage in business of lending in amounts of \$2,500 or less without first having obtained a license. § 58-15-3(A).

*Size and length of loans to which the statute applies, and any restrictions in the statute on these features:* Statute applies only to “installment loan,” defined as a loan that is to be repaid in a minimum of 4 successive substantially equal payments, with a period of no less than 120 days to maturity. § 58-15-2(E).

*Other restrictions on applicability of statute (e.g., it only applies if lender takes a mortgage on real property):* Statute is silent.

*What rate of interest is allowed?* Statute requires use of simple interest method, § 58-15-14.1, but does not otherwise limit interest rates.

*What loan fees are allowed?* Recording fees, but not notary fees for taking or releasing a lien. § 58-15-20(A), (C).

*What types of insurance are allowed, and any limits the lending statute places on charges?* Statute allows term life insurance or credit life insurance, but no other type of life insurance, and prohibits property insurance on unsecured loans. § 58-15-16. Statute also gives director the authority to regulate insurance sales by licensees, § 58-15-11, but does not otherwise specify what types of insurance can be sold.

*Does statute prohibit all other fees besides those specifically allowed?* Fees not specifically allowed are prohibited.

*Does statute restrict balloon payments or require substantially equal installments?* Installment loan is defined as one to be repaid in substantially equal payments. § 58-15-2(E).

*Any restrictions on refinancing?* Statute is silent.

*Any rebate requirements or restrictions on prepayment penalties?* Prepayment penalties are unenforceable. § 58-15-15.1.

*What security interests are allowed or prohibited (including postdated checks and ACH authorization)?* Definition of “installment loan” excludes those for which lender requires post-dated checks or debit authorizations. § 58-15-2(E). § 58-15-32 allows postdated checks and ACH authorizations only for payday loans.

*Does statute prohibit unconscionable loan charges?* Statute is silent, but state deceptive practices statute’s prohibition against unconscionability has been applied to loan charges.

*Must lender underwrite or evaluate borrower’s ability to repay?* Annual report must include procedures the licensee follows as a standard practice to establish each consumer’s ability to repay a loan. § 58-15-10.1(A)(14).

*Is lending under this statute exempt from state criminal usury law?* No, but state’s criminal usury law, §§ 30-43-1 to 30-43-5, applies only where violence or other non-petty criminal acts are threatened or used

in collection of a debt that carries an interest rate exceeding 45%.

*Reporting requirements, including detail about what must be reported and whether there are any requirements that the state agency review or take other steps regarding the reports:* The statute requires an annual report giving such relevant information as the director may reasonably require concerning the business and operations during the preceding calendar year for each licensed place of business. A summary of the reports shall be included in the published annual report of the director. § 58-15-10(C). Annual report must include: (1) a description of each loan product offered by the licensee, including: (a) all fees; (b) the minimum, maximum and average annual interest rate; (c) the frequency of periodic payments; (d) the term of the loan; and (e) any other standard conditions of the loan product; (2) the total number of transactions entered into for each loan product in the following amounts: (a) \$500 or less; (b) \$501 to \$1,000; (c) \$1,001 to \$3,000; (d) \$3,001 to \$5,000; and (e) greater than \$5,000; (3) the total number of loans and the total dollar amount of loan principal for each loan product; (4) the average principal loan amount for each loan product; (5) the total number of loans for which the loan principal and accrued interest was not paid in full; (6) the total dollar amount of principal loaned; (7) the total dollar amount of loan principal repaid; (8) the total dollar amount of interest received; (9) the total dollar amount and description of fees received; (10) the total number of loans that were secured by collateral of some type and the total number of such loans in which the security was foreclosed upon or repossessed; (11) the total amount of loan principal and the total amount of accrued interest written-off or charged-off; (12) the percent of consumers who were new consumers; (13) the number of loans that were renewed, refinanced or extended prior to being repaid in full; and (14) procedures the licensee follows as a standard practice to establish each consumer's ability to repay a loan. §§ 58-15-10, 58-15-10.1(A). However, the department reports that only licensees that make any loan product, with the

exception of payday loans, that exceeds an APR of 175%, are required to submit annual reports.

*Other significant features:* Anti-evasion provisions. §§ 58-15-3(D), 58-15-21.

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## NEW YORK

### *N.Y. Banking Law §§ 340 to 361 (McKinney) (Licensed Lender Law).*

*What types of lenders does it apply to (e.g., banks vs. non-banks)?* Applies to anyone making loans of \$25,000 or less to an individual for personal, family, household, or investment purposes (up to \$50,000 if a business or commercial loan) who charges more than otherwise legal rate. Does not apply to pawnbrokers licensed under Gen. Bus. Law §§ 40–55. Banking Law § 340.

*Licensure requirements and implications of licensure:* License required. § 340. Statute prohibits any entity other than a licensee from charging interest greater than the otherwise legal rate, and provides that a loan is unenforceable if more interest is charged than allowed by law. § 356.

*Size and length of loans to which the statute applies, and any restrictions in the statute on these features:* \$25,000 or less (\$50,000 or less if a business or commercial loan). §§ 340, 351.

*Other restrictions on applicability of statute (e.g., it only applies if lender takes a mortgage on real property):* Statute is silent.

*What rate of interest is allowed?* § 351 allows agreed rate, but criminal usury law has 25% cap. N.Y. Penal Law § 190.40. For loans greater than the \$25,000 or \$50,000 scope of this statute, licensee is limited to the rate permitted by Gen. Oblig. Law § 5-501 (namely 16%). Banking Law § 353.

*What loan fees are allowed?* Recording fees, or non-filing insurance premiums up to \$7. § 351(6)(a).

*What types of insurance are allowed, and any limits the lending statute places on charges?* Property insurance on collateral other than household goods if loan is for

\$250 or more; liability insurance on a motor vehicle securing the loan; credit life insurance, credit accident and health insurance, and credit unemployment insurance. § 357.

*Does statute prohibit all other fees besides those specifically allowed?* Yes. §§ 351(6), 353.

*Does statute restrict balloon payments or require substantially equal installments?* Statute is silent.

*Any restrictions on refinancing?* Refinanced loan can include only 60 days of unpaid interest from prior loan, § 351(4), but otherwise statute is silent.

*Any rebate requirements or restrictions on prepayment penalties?* Actuarial rebate, but lender may keep minimum charge of \$10 and no refund of less than \$1 need be made. § 351(5)(a). Licensee must permit payment to be made in advance in any amount on any loan at any time. § 352. Prepayment penalties likely prohibited since not authorized by §§ 351(3), 353.

*What security interests are allowed or prohibited (including postdated checks and ACH authorization)?* May not take lien other than judgment lien upon real estate. § 350(2). Assignment of unearned wages is prohibited unless revocable or a payroll deduction plan. § 354.

*Does statute prohibit unconscionable loan charges?* Statute is silent.

*Must lender underwrite or evaluate borrower's ability to repay?* Statute is silent.

*Is lending under this statute exempt from state criminal usury law?* No. See N.Y. Dept. of Fin. Servs., Banking Interpretation (Nov. 6, 2007), available at [http://www.dfs.ny.gov/legal/interpret\\_opinion/banking/lo071106.htm](http://www.dfs.ny.gov/legal/interpret_opinion/banking/lo071106.htm); Banking Interpretation (June 13, 2006), available at [http://www.dfs.ny.gov/legal/interpret\\_opinion/banking/lo060613.htm](http://www.dfs.ny.gov/legal/interpret_opinion/banking/lo060613.htm).

*Reporting requirements, including detail about what must be reported and whether there are any requirements that the state agency review or take other steps regarding the reports:* Annual report giving such information as superintendent may require. Superintendent shall

publish annual report showing the combined assets and liabilities of all licensed lenders. § 349.

*Other significant features:* Not applicable.

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## NORTH CAROLINA

### *N.C. Gen. Stat. §§ 53-164 to 53-191 (Consumer Finance Act).*

*What types of lenders does it apply to (e.g., banks vs. non-banks)?* Law does not apply to banks, trust companies, savings and loan associations, cooperative credit unions, agricultural credit corporations or associations organized under the laws of North Carolina, production credit associations organized under the Farm Credit Act, pawnbrokers, industrial banks, the business of negotiating real estate loans, or certain persons engaged in the business of dealing in, buying, or discounting installment obligations secured by personal property. § 53-191.

*Licensure requirements and implications of licensure:* Must have license to engage in business of lending in amounts of \$15,000 or less and contract for charges greater than permitted by the state's general usury law (6 points above Treasury rate or 16%, whichever is higher, as set by § 24-1.1). §§ 53-166(a), 53-168(a).

*Size and length of loans to which the statute applies, and any restrictions in the statute on these features:* Statute allows licensees to make loans of \$15,000 or less, which must be repayable in substantially equal consecutive monthly payments over at least 12 months but no more than 96 months. § 53-176(a).

*Other restrictions on applicability of statute (e.g., it only applies if lender takes a mortgage on real property):* Statute is silent.

*What rate of interest is allowed?*

- For loan not exceeding \$10,000, 30% on first \$4,000, 24% on next \$4,000, and 18% on remainder.
- For loan exceeding \$10,000, 18%.

## § 53-176(a).

*What loan fees are allowed?*

- Processing fee of \$25 for loans up to \$2,500; 1% of the cash advance for loans above \$2,500, not to exceed a total fee of \$40. § 53-176(b).
- Recording fees, or premium for non-filing insurance if at least \$1.00 less than recording fees, but not notary fees. § 53-177(a).

*What types of insurance are allowed, and any limits the lending statute places on charges?* Credit life, credit accident and health, credit unemployment, and credit property insurance. § 53-189.

*Does statute prohibit all other fees besides those specifically allowed?* Yes. § 53-178.

*Does statute restrict balloon payments or require substantially equal installments?* Must provide for repayment in substantially equal installments at approximately equal periodic intervals of time. § 53-180(a). Payments must be due monthly. § 53-176(a).

*Any restrictions on refinancing?* Processing fee can be charged no more than twice in any 12-month period. § 53-176(b). Upon refinancing, loan principal can include no more than 90 days of unpaid interest from the prior loan. § 53-173(b).

*Any rebate requirements or restrictions on prepayment penalties?* Borrower may prepay all or any part of a loan without penalty. § 53-176(e). Statute is silent on rebate requirements, but § 53-173, which requires interest to be calculated on the unpaid balances, implies that rebates must be actuarial.

*What security interests are allowed or prohibited (including postdated checks and ACH authorization)?* Security interests in real estate are prohibited. §§ 53-176(a), 53-180(f). Wage assignments are prohibited and unenforceable. § 53-180(b).

*Does statute prohibit unconscionable loan charges?* Statute is silent.

*Must lender underwrite or evaluate borrower's ability to repay?* Statute is silent.

*Is lending under this statute exempt from state criminal usury law?* Not applicable.

*Reporting requirements, including detail about what must be reported and whether there are any requirements that the state agency review or take other steps regarding the reports:* Annual report, including licensee's assets, liabilities, income, expense, gain, loss, and any other information as the commissioner may require. § 53-184(b).

*Other significant features:* Anti-evasion provision. § 53-166. No loan splitting. § 53-178. Licensee shall not grant a loan in one office to any borrower who already has a loan in another office (in-state or out-of-state) operated by the same entity or a related entity. § 53-179. Sale of wages is a loan. § 53-180(b).

## *N.C. Gen. Stat. §§ 24-1 to 24-11.2 (Interest—General Provisions).*

*What types of lenders does it apply to (e.g., banks vs. non-banks)?* Applies to all lenders. §§ 24-1.1(a), 53-141(2) (applying these rates to industrial banks).

*Licensure requirements and implications of licensure:* Not a licensing statute.

*Size and length of loans to which the statute applies, and any restrictions in the statute on these features:* Does not apply to loans over \$300,000. § 24-1.1(f).

*Other restrictions on applicability of statute (e.g., it only applies if lender takes a mortgage on real property):* Interest rate limits inapplicable to loans over \$300,000, loans not made to individuals, loans for non-consumer purposes, and revolving credit offered by banks. § 24-9.

*What rate of interest is allowed?*

- For loan not exceeding \$25,000, 16% or 6 percentage points above a Treasury bill rate, whichever is higher.
- For loan exceeding \$25,000, no cap.



## § 24-1.1(a), (c).

*What loan fees are allowed?* For loan not secured by real property, bank or savings institution may charge origination fee of .025% of loan amount or \$50, whichever is higher. § 24-1.1(e). Also, recording fees, third-party fees, and fees due to governmental bodies under loan guarantee and similar programs. § 24-8(d).

*What types of insurance are allowed, and any limits the lending statute places on charges?* Statute is silent.

*Does statute prohibit all other fees besides those specifically allowed?* Statute allows parties to contract for interest “not in excess” of the stated amounts. § 24-1.1(a). See also §§ 24-8 (general prohibition against charging amounts other than those authorized), 53-141(2) (providing that industrial banks may charge interest “not exceeding” these rates).

*Does statute restrict balloon payments or require substantially equal installments?* Statute is silent.

*Any restrictions on refinancing?* Statute is silent.

*Any rebate requirements or restrictions on prepayment penalties?* Statute is silent.

*What security interests are allowed or prohibited (including postdated checks and ACH authorization)?* Statute is silent.

*Does statute prohibit unconscionable loan charges?* Statute is silent.

*Must lender underwrite or evaluate borrower’s ability to repay?* Statute is silent.

*Is lending under this statute exempt from state criminal usury law?* Not applicable.

*Reporting requirements, including detail about what must be reported and whether there are any requirements that the state agency review or take other steps regarding the reports:* Statute is silent.

*Other significant features:* Statute is silent.

## NORTH DAKOTA

### *N.D. Cent. Code §§ 13-04.1-01 to 13-04.1-17 (Money Brokers).*

*What types of lenders does it apply to (e.g., banks vs. non-banks)?* Chapter does not apply to: banks; credit unions; savings and loan associations; insurance companies; mortgage loan originators; state or federal agencies and their employees; institutions chartered by the Farm Credit Administration; trust companies; any other person or business regulated and licensed by the state; brokers, real estate brokers, or real estate salespersons who arrange financing for real estate they are selling; retail sellers or others that provide lease financing; or leases on real property. § 13-04.1-02.1.

*Licensure requirements and implications of licensure:* Must have license to engage in money brokering (arranging or providing loans or leases). §§ 13-04.1-01.1(4) (definition of “money brokering”), 13-04.1-02.

*Size and length of loans to which the statute applies, and any restrictions in the statute on these features:* Statute imposes restrictions only on loans of \$1,000 or less. For these loans, loan term must not exceed 24 1/2 months. § 13-04.1-09.2(1), (5).

*Other restrictions on applicability of statute (e.g., it only applies if lender takes a mortgage on real property):* Statute is silent.

*What rate of interest is allowed?*

For loans of \$1,000 or less:

- 30% on first \$250;
- 24% on next \$250;
- 21% on next \$250; and
- 18% on remainder

Lender may calculate finance charge on an add-on (dollars per hundred) basis as long as the resulting finance charge does not exceed these percentage-based amounts. § 13-04.1-09.2(1). For loans over \$1,000, there is no restriction on finance charges. The criminal usury statute’s cap is 5.5 percentage



points above a Treasury bill rate, but no less than 7%, § 47-14-09, but it is inapplicable to any loan made by a lending institution which is regulated or funded by an agency of a state or of the federal government, so would not apply to a lender licensed under this statute.

*What loan fees are allowed?* Recording fees.  
§ 13-04.1-09.2(7).

*What types of insurance are allowed, and any limits the lending statute places on charges?* Statute allows lender to charge premium for insurance “provided for by rule,” § 13-04.1-09.2(7), but no rules have been found, so lenders do not have authority to charge borrowers for insurance for the loans of \$1,000 or less that are subject to this provision. Other than that, statute is silent, except that it provides that it is a violation to knowingly cause or require a borrower to obtain property insurance coverage in an amount that exceeds the replacement cost of the improvements as established by the property insurer. § 13-04.1-09(14).

*Does statute prohibit all other fees besides those specifically allowed?* Yes, for loans of \$1,000 or less.  
§ 13-04.1-09.2(7).

*Does statute restrict balloon payments or irregular payment schedules?* Loans must require payment in installments payable at approximately equal periodic intervals, except to accommodate borrowers with seasonal incomes. No installment contracted for may be substantially larger than any preceding installment. § 13-04.1-09.2(1), (5) (applicable to loans of \$1,000 or less).

*Any restrictions on refinancing?* Statute is silent.

*Any rebate requirements or restrictions on prepayment penalties?* Yes, for loans of \$1,000 or less. For prepayment in full of loan under § 13-04.1-09.2 in which charges have been calculated on an add-on (dollar per hundred) basis, lender must make Rule of 78s rebate, but no refund of \$1 or less need be made. § 13-04.1-09.2(2). Prepayment penalties are likely prohibited because not authorized by § 13-04.1-09.2(7).

*What security interests (or postdated checks or ACH authorizations) are allowed or prohibited?* Statute is silent.

*Does statute prohibit unconscionable loan charges?* Statute is silent.

*Must lender underwrite or evaluate borrower’s ability to repay?* Statute is silent.

*If state has a criminal usury law, is lending under this statute exempt from it?* Criminal usury statute’s cap applies “[e]xcept as otherwise provided by the laws of this state,” and also does not apply to a loan “made by a lending institution which is regulated or funded by an agency of a state or of the federal government.” § 47-14-09(2)(e).

*Reporting requirements, including detail about what must be reported and whether there are any requirements that the state agency review or take other steps regarding the reports:* Statute is silent.

*Other significant features:* Loan splitting prohibited for loans of \$1,000 or less. § 13-04.1-09.2(6).

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## OHIO

*Ohio Rev. Code Ann. §§ 1321.01 to 1321.20 (West) (Small Loans).*

*What types of lenders does it apply to (e.g., banks vs. non-banks)?* Does not apply to:

- Banks, savings banks, savings societies, trust companies, or credit unions.
- Savings and loan associations whose business is substantially confined to real estate loans and evidences of their own indebtedness.
- Lenders registered under §§ 1321.51 to 1321.60 (Second Mortgage Security Loans).
- Insurance premium finance companies.
- Licensees under the Short Term Loan Act.
- Licensees under the state insurance law.

## § 1321.02.

*Licensure requirements and implications of licensure:*

Must have license to engage in business of lending money in amounts of \$5,000 or less and charge interest and charges greater than amount that would be allowable for unlicensed lender. Loan in violation of this requirement is void. § 1321.02.

*Size and length of loans to which the statute applies, and any restrictions in the statute on these features:* \$5,000 or less. § 1321.02.

*Other restrictions on applicability of statute (e.g., it only applies if lender takes a mortgage on real property):* Statute is silent.

*What rate of interest is allowed?* 28% on first \$1,000, and 22% on remainder, § 1321.13(A), or agreed rate up to 25%. § 1321.15(B). However, a credit services organization that is completely separate from the lender may be able to charge a fee to arrange a loan at these rates, thereby increasing the cost of credit to the borrower.

*What loan fees are allowed?*

- Recording fees.
- Fees for credit reports.
- For loan of \$500 or less, origination fee of \$15 or 1% of the principal, whichever is greater; for all other loans, \$30 or 1% of the principal, whichever is greater.

## § 1321.13(G), (I).

*What types of insurance are allowed, and any limits the lending statute places on charges?*

Credit life, accident and health insurance, and unemployment insurance; property insurance on collateral or other property. § 1321.13(E), (F).

*Does statute prohibit all other fees besides those specifically allowed?* Yes. § 1321.13(G). However, Ohio Admin. Code 1301:8-2-20 allows licensees to engage in other transactions with borrowers, provided the transactions are not a condition of the loan.

*Does statute restrict balloon payments or require substantially equal installments?* Precomputed loan must be repayable in substantially equal and consecutive monthly installments, but lender may make adjustments to accommodate borrower with seasonal income, and minor deviations are allowed for first payment. § 1321.13(D)(1).

*Any restrictions on refinancing?* Allowable origination fee is reduced to \$15 for refinancing of loan of \$500 or less within six months, and reduced to \$30 for any refinancing of loan over \$500. § 1321.13(I).

*Any rebate requirements or restrictions on prepayment penalties?* Rule of 78s if loan term is 61 months or less; otherwise actuarial. §§ 1321.01(A)(9) (definition of “applicable charge”), 1321.13(D)(3).

*What security interests are allowed or prohibited (including postdated checks and ACH authorization)?* Security interest, other than judgment lien, in real estate is prohibited. § 1321.12. Wage assignments are invalid, but employee may authorize revocable payroll deduction plan. § 1321.32.

*Does statute prohibit unconscionable loan charges?* Statute is silent.

*Must lender underwrite or evaluate borrower’s ability to repay?* Statute is silent.

*Is lending under this statute exempt from state criminal usury law?* Statute is silent, but criminal usury statute, § 2905.21, allows interest in excess of its cap if “otherwise authorized by law.”

*Reporting requirements, including detail about what must be reported and whether there are any requirements that the state agency review or take other steps regarding the reports:* Annual report giving information as required by the superintendent of financial institutions. The division publishes an annual analysis and recapitulation of the reports. § 1321.09(A).

*Other significant features:* Loan-splitting prohibited. § 1321.15.

*Statute name and citation:* Ohio Rev. Code Ann. §§ 1321.51 to 1321.60 (Second Mortgage Security Loans).

*What types of lenders does it apply to (e.g., banks vs. non-banks)?* Does not apply to:

- Banks, savings banks, trust companies, savings and loan associations, and credit unions, and their subsidiaries if regulated by a federal banking agency and owned and controlled by the depository institution.
- Life, property, or casualty insurance companies licensed to do business in the state Loans made pursuant to §§ 1321.01 to 1321.19 (Small Loan Act).
- Business loans described in § 1343.01(B)(6).
- Political subdivisions and governmental agencies and organizations.
- Colleges.
- Credit union service organizations that use services provided by registered mortgage loan originators or that hold a valid letter of exemption.

#### § 1321.53(D).

*Licensure requirements and implications of licensure:* Must register in order to, *inter alia*, make loans of \$5,000 or more that exceed the generally applicable interest rate cap and are unsecured or secured by other than real property. § 1321.52(A)(1)(d), (C). Lender has no right to collect any interest or charges on loan made in violation of registration requirement. § 1321.52(D).

*Size and length of loans to which the statute applies, and any restrictions in the statute on these features:* Registration requirement applies only if lender is making residential mortgage loans or loans of \$5,000 or more that are unsecured or secured by other than real estate. § 1321.52(A)(1)(d).

*Other restrictions on applicability of statute (e.g., it only applies if lender takes a mortgage on real property):* Statute is silent.

*What rate of interest is allowed?* 21% or agreed rate up to 25%. §§ 1321.57(A), 1321.571.

*What loan fees are allowed?*

- Recording fees. § 1321.57(H).
- Fee up to \$10 for credit investigation. § 1321.57(H).
- Origination charges as follows (§ 1321.57(J)):
  - For unsecured loans, \$15 if loan is \$500 or less; \$30 if loan is more than \$500 but less than \$1,000; \$100 if loan is at least \$1,000 but less than \$5,000; and \$250 or 1% of principal, whichever is greater, if loan is at least \$5,000;
  - For loan secured by goods or real estate, \$15 if loan is \$500 or less; \$30 if loan is more than \$500 but less than \$1,000; \$100 if loan is more than \$1,000 but less than \$2,000; \$200 if loan is at least \$2,000 but less than \$5,000; and \$250 or 1% of principal, whichever is greater, if loan is at least \$5,000.

*What types of insurance are allowed, and any limits the lending statute places on charges?* Credit life insurance, credit accident and health insurance, and unemployment insurance; property insurance on collateral and other property. § 1321.57(F).

*Does statute prohibit all other fees besides those specifically allowed?* Yes. § 1321.57(H). However, it also provides that it does not prohibit a registrant from engaging in other transactions with the borrower, provided that they are not a condition of the loan.

*Does statute restrict balloon payments or irregular payment schedules?* Precomputed loans must be repayable in monthly installments of principal and interest combined, except that minor variations are allowed for due date and amount of first payment, and installment due dates may be omitted to accommodate borrowers with seasonal income. § 1321.57(D).

*Any restrictions on refinancing?* If refinancing occurs within 90 days, lender cannot charge origination fee on amount applied to unpaid balance of prior loan. § 1321.57(J)(2).

*Any rebate requirements or restrictions on prepayment penalties?* When a precomputed loan is prepaid in full, Rule of 78s rebate (sum of the balances method) if loan term is 61 months or less; otherwise actuarial

rebate. §§ 1321.51(I), 1321.57(D)(3). Special rules for loans secured by real estate § 1321.57(G). Prepayment penalties are likely prohibited because not authorized except for loans secured by real estate. § 1321.57(G), (H)(1).

*What security interests (or postdated checks or ACH authorizations) are allowed or prohibited?* A registrant may make unsecured loans, loans secured by a first or junior mortgage on a borrower's real estate, loans secured by other than real estate, and loans secured by any combination of mortgages and security interests. § 1321.52(C). Wage assignments are invalid, but employee may authorize revocable payroll deduction plan. § 1321.32.

*Does statute prohibit unconscionable loan charges?* Statute is silent.

*Must lender underwrite or evaluate borrower's ability to repay?* Statute is silent.

*If state has a criminal usury law, is lending under this statute exempt from it?* Statute is silent, but criminal usury statute, § 2905.21, allows interest in excess of its cap if "otherwise authorized by law."

*Reporting requirements, including detail about what must be reported and whether there are any requirements that the state agency review or take other steps regarding the reports:* Annual report. The division shall publish an annual analysis of the information. § 1321.55(B).

*Other significant features:* Loan splitting prohibited. § 1321.59.

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## OKLAHOMA

### *Okla. Stat. tit. 14A, §§ 1-101 to 6-113 (Consumer Credit Code).*

*What types of lenders does it apply to (e.g., banks vs. non-banks)?* Act prescribes maximum charges for all creditors, except lessors, but excludes:

- Extensions of credit to government or governmental agencies.
- Most sales of insurance.

- Transactions under public utility or common carrier tariffs if certain elements are regulated.
- Pawnbrokers.
- For most purposes, loans to build or purchase a residence or to refinance such a loan when made by a lender whose loans are supervised by an agency of the U.S. or made by a FHA approved mortgagee.

**§ 1-202.** In addition, "consumer loan" is defined to exclude, for purposes other than disclosure requirements, loans granted by institutions of postsecondary education, and certain loans secured primarily by an interest in land if finance charge does not exceed 13%. §§ 3-104, 3-105.

*Licensure requirements and implications of licensure:* In order to make (or take an assignment of and collect) a supervised loan (defined by § 3-501 as one exceeding 10% interest), must either be a supervised financial organization (a depository institution organized, chartered, or authorized under Oklahoma or U.S. statutes) or obtain a license. § 3-502. Loan made in violation of licensure requirements is void. § 5-202.

*Size and length of loans to which the statute applies, and any restrictions in the statute on these features:* Excludes loans over \$50,000 (adjusted annually for inflation) except for private student loans and loans secured by an interest in land. § 3-104. For loans of \$1,470 or less made under § 3-508B, maximum loan term is one month for each \$20 of principal (one month for each \$10 if loan is for less than \$490, up to a maximum term of 18 months). For loans greater than \$143.95 made under § 3-508B, the minimum loan term is 60 days. § 3-508B(2), (3). Closed-end supervised loan of \$4,900 or less at more than 18% must be payable over no more than 49 months (no more than 37 months if principal is \$1,470 or less). § 3-511.

*Other restrictions on applicability of statute (e.g., it only applies if lender takes a mortgage on real property):* Statute is silent.

*What rate of interest is allowed?* For loan other than supervised loan, 10%. § 3-201(1). For supervised loan, either:



- 25%; or
- 27% on first \$2,910, 23% on amount over \$2,910 but not exceeding \$6,200, and 20% on amount over \$6,200. § 3-508A.

In the alternative, on loans of \$1,470 or less, supervised lender may charge:

- For loan up to \$143.95, \$4.80 for each \$24.00 of principal.
- For loan over \$143.95 and up to \$171.50, 10% of the amount of the principal, plus \$14.70 per month as installment account handling charge.
- For loan over \$171.50 but not exceeding \$343.00, 10% of the principal plus \$17.15 per month as installment account handling charge.
- For loan over \$343.00 but not exceeding \$490.00, 10% of the principal plus \$19.60 per month as installment account handling charge.
- For loan over \$490.00 but not exceeding \$735.00, 10% of the principal plus \$22.05 per month as installment account handling charge.
- For loan over \$735.00 but not exceeding \$1,470.00, 10% of the principal plus \$24.50 per month as installment account handling charge

### § 3-508B(1).

*What loan fees are allowed?*

- Official fees, defined by § 1-301(11) as recording fees or non-filing insurance premium if less than those fees.
- Reasonable closing costs and taxes, including taxes for recording instruments.
- Charges for other benefits, including insurance, if valuable to debtor, reasonable in cost, and authorized by rule.
- A charge for processing debtor's application for credit, including but not limited to costs of services such as credit reports, credit investigations, appraisals, and fees for preparation of loan-related documents.
- Fees for pest infestation or flood hazard inspections conducted prior to closing.

§ 3-202(1). Section 6-104(4) gives the administrator the authority to adopt rules limiting these charges. This authority includes limiting the charges if necessary to protect Oklahoma debtors from being subjected to charges which are unreasonable or excessive as compared to the prevailing charges being imposed by out-of-state lenders and sellers.

*What types of insurance are allowed, and any limits the lending statute places on charges?* Statute allows creditor to charge for insurance written in connection with the loan, other than insurance protecting the lender against the debtor's default or other credit loss, and specifically mentions property or liability insurance and credit life, accident, and health insurance. §§ 3-202(3), 4-104. Insurance charges are not allowed on loans made under § 3-508B (loans of \$1,470 or less). § 3-508B(5).

*Does statute prohibit all other fees besides those specifically allowed?* § 3-508B(5), which governs certain loans of \$1,470 or less, prohibits any other fees, but otherwise statute is silent.

*Does statute restrict balloon payments or irregular payment schedules?* For closed-end consumer loan, debtor has right to refinance any balloon payment without penalty on terms at least as favorable as original terms, unless payment schedule was adjusted to seasonal or irregular income of debtor. § 3-402. Any loan made under the terms of § 3-508B (loans of \$1,470 or less) shall be scheduled to be payable in substantially equal installments at not less than 30-day intervals. § 3-508B(3). Closed-end supervised loan of \$4,900 at more than 18% must be payable in substantially equal installments at equal periodic intervals except to accommodate debtor's seasonal or irregular income. § 3-511.

*Any restrictions on refinancing?* Statute is silent.

*Any rebate requirements or restrictions on prepayment penalties?* Debtor may prepay in full at any time without penalty. § 3-209. Upon prepayment in full of precomputed loan, borrower is entitled to actuarial rebate if loan term is more than 61 months, but otherwise Rule of 78s rebate (sum of balances method).



No rebate required if less than \$1.00, and lender may keep minimum charge of \$5.00 if principal was \$75 or less, or \$7.50 if principal was more than \$75.00. § 3-210.

*What security interests (or postdated checks or ACH authorizations) are allowed or prohibited?* Wage assignments are prohibited and unenforceable, but employee may revocably authorize deductions from earnings. § 3-403(1). Security interest in land is prohibited and void for supervised loan with principal or credit limit of \$4,900 or less and finance charge over 21%. § 3-510. Security interest in motor vehicle is prohibited for supervised loan of \$300 or less. § 3-515.

*Does statute prohibit unconscionable loan charges?* Yes. § 5-108.

*Must lender underwrite or evaluate borrower's ability to repay?* Statute is silent.

*If state has a criminal usury law, is lending under this statute exempt from it?* Not applicable.

*Reporting requirements, including detail about what must be reported and whether there are any requirements that the state agency review or take other steps regarding the reports:* Supervised lenders are required to file an annual report regarding their business operations for each licensed place of business. The department compiles the information from each licensee's report into a consolidated report of the industry. § 3-506(5).

*Other significant features:* Prohibits loan-splitting. § 3-509.

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## OREGON

*Or. Rev. Stat. §§ 725.010 to 725.910  
(Consumer Finance Act).*

*What types of lenders does it apply to (e.g., banks vs. non-banks)?* Applies to any person making "consumer finance loans," defined as secured or unsecured loans or lines of credit that have periodic payments and terms longer than 60 days. §§ 725.010, 725.045. However, the Act does not apply to loans of \$50,000 or less

(including business and agricultural loans) if interest rate does not exceed the greater of 12 percent, or five percent in excess of the discount rate. § 725.045 (cross-referencing §§ 82.010, 82.025). See next entry for exemptions from licensure requirement.

*Licensure requirements and implications of licensure:* Must have license to conduct a business in which person makes a consumer finance loan of \$50,000 or less, or acts as an agent, broker or facilitator for a person that makes such a loan. § 725.045(1). Section 725.045 creates an exception by cross-referencing § 82.025, which makes the generally-applicable prohibition against lending at a rate greater than authorized by statute inapplicable to FDIC-insured depository institutions, trust companies, credit unions, pawnbrokers, HUD-approved mortgage lenders, first lien and purchase money mortgage loans, certain other mortgage loans, federally guaranteed or insured loans, loans by tax-qualified retirement plans, bona fide sales of securities or commercial paper, and interest charged by broker-dealers in certain circumstances.

*Size and length of loans to which the statute applies, and any restrictions in the statute on these features:* "Consumer finance loan" means a loan that is unsecured or secured by personal or real property and that has periodic payments and terms longer than 60 days. § 725.010(2).

*Other restrictions on applicability of statute (e.g., it only applies if lender takes a mortgage on real property):* Statute is silent.

*What rate of interest is allowed?* The greater of 36% APR or 30 percentage points in excess of the discount window primary credit rate. § 725.340(1).

*What loan fees are allowed?* May contract for and receive other reasonable and bona fide fees, expenses or damages, subject to oversight and regulation by the Department of Consumer and Business Services, including, by cross-reference to TILA, taxes and recording fees or non-filing insurance if no greater than the recording fees, and similar pass-through fees or charges. § 725.340(1)(b). The statutory list also

includes prepayment fees and various types of collection expenses. The Department's regulations, Or. Admin. R. 441-730-0000 to 441-730-0320, do not specify any other charges and fees that are allowed.

*What types of insurance are allowed, and any limits the lending statute places on charges?* Statute specifically allows force-placement of insurance on the collateral, but otherwise is silent about insurance. § 725.340(3). The Department's regulations, Or. Admin. R. 441-730-0000 to 441-730-0320, refer to credit insurance but do not specify the types for which the borrower may be charged.

*Does statute prohibit all other fees besides those specifically allowed?* Statute is silent. Section 725.340(1)(b) provides for the collection of "other reasonable and bona fide fees, expenses or damages, subject to oversight and regulation" and provides examples, but fees are not limited to those examples.

*Does statute restrict balloon payments or irregular payment schedules?* Statute is silent.

*Any restrictions on refinancing?* Statute is silent.

*Any rebate requirements or restrictions on prepayment penalties?* Upon prepayment in full of precomputed loan, borrower is entitled to actuarial rebate, but lender may keep minimum charge of \$75 or 10% of amount financed, whichever is less. § 725.340(2)(c). In addition, Or. Admin. R. 441-730-0205 prohibits prepayment penalties in certain circumstances.

*What security interests (or postdated checks or ACH authorizations) are allowed or prohibited?* Loan may be unsecured or secured by personal or real property. § 725.010(2). Wage assignments are prohibited and unenforceable, but borrower may recoverably authorize payroll deductions. § 725.355. Or. Admin. R. 441-730-0015 prohibits lender from requiring postdated check or debit authorization as a condition of making a loan.

*Does statute prohibit unconscionable loan charges?* No, but statute limits fees other than interest to those that are reasonable and bona fide. § 725.340(1)(b).

*Must lender underwrite or evaluate borrower's ability to repay?* Statute is silent, but Or. Admin. R. 441-730-0015 requires a determination of the creditworthiness of a borrower based on the information about the borrower's financial condition, such as his or her income, assets, debts, and financial obligations, and the nature and value of any collateral used to secure the loan for the majority of loans made under a consumer finance license.

*If state has a criminal usury law, is lending under this statute exempt from it?* Not applicable.

*Reporting requirements, including detail about what must be reported and whether there are any requirements that the state agency review or take other steps regarding the reports:* Annual report containing information required by the director. § 725.190.

*Other significant features:* Not applicable.

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## PENNSYLVANIA

### 7 Pa. Stat. Ann. §§ 6201 to 6219 (West) (Consumer Discount Company Act).

*What types of lenders does it apply to (e.g., banks vs. non-banks)?* Does not apply to: banking institutions, building and loan associations, credit unions, or entities licensed by the state Secretary of Banking under any other statute; installment sales or lease-purchases of personal property; or non-profit membership organizations that finance physicians', surgeons', or dentists' obligations. § 6217.

*Licensure requirements and implications of licensure:* License required to engage in business of making loans of \$25,000 or less and charge more than would be permitted without a license. § 6203.

*Size and length of loans to which the statute applies, and any restrictions in the statute on these features:* \$25,000 or less. § 6203. Lender may not charge discount interest on loan with term exceeding seven years and 15 days. § 6214(H).

*Other restrictions on applicability of statute (e.g., it only applies if lender takes a mortgage on real property):* Statute is silent.

*What rate of interest is allowed?* Either 24% actuarial, or discount interest, calculated as follows:

- When contract is payable within 48 months, \$9.50 per \$100 per year.
- When contract is payable in more than 48 months, discount interest of \$9.50 per \$100 per year for the first 48 months plus \$6 per \$100 per year for remainder.

### §§ 6213(E), 6217.1.

*What loan fees are allowed?*

- Service charge of \$1.50 for each \$50.00 or fraction thereof, capped at \$150.00, when interest is charged by the discount method § 6213(F).
- Minimum charge of \$6.00 per year (\$3.00 per year if loan is for \$25 or less. § 6213(G).
- Recording fees. § 6213(M).

*What types of insurance are allowed, and any limits the lending statute places on charges?* Statute allows lender to charge insurance premiums. §§ 6213(N), 6214(B). Statute refers to insurance on collateral, § 6218, but otherwise does not specify what types of insurance are allowed. Lender may also sell automobile and home security plans. § 6213(Q)(2).

*Does statute prohibit all other fees besides those specifically allowed?* Yes. § 6214(B).

*Does statute restrict balloon payments or irregular payment schedules?* Lender may require payment of contracts in equal weekly, semi-monthly, monthly or any other periodic installments. § 6213(J). All installment contracts shall provide for repayment in substantially equal periods and in substantially equal amounts, except as necessary to take borrower's intermittent income into account. § 6214(F).

*Any restrictions on refinancing?* Licensee may charge service charge only on new money portion of refinance within four months of original loan. § 6214(E).

*Any rebate requirements or restrictions on prepayment penalties?* Borrower may prepay in whole or part at any time. Upon prepayment in full, borrower is entitled to Rule of 78s rebate (sum of balances method), but lender need not make rebate of less than \$1. § 6214(D). Prepayment penalties are likely prohibited because not authorized by § 6214(B).

*What security interests (or postdated checks or ACH authorizations) are allowed or prohibited?* Loan may be unsecured or secured by real or personal property. § 6213. However, licensees that engage in residential mortgage lending must meet special requirements under Pennsylvania's Mortgage Licensing Act, 7 Pa. Cons. Stat. Ann. §§ 6101 to 6153.

*Does statute prohibit unconscionable loan charges?* Statute is silent.

*Must lender underwrite or evaluate borrower's ability to repay?* Statute is silent.

*If state has a criminal usury law, is lending under this statute exempt from it?* This statute is silent, but criminal usury statute, 18 Pa. Stat. Ann. §§ 4806.1(h), 4806.3, applies only when interest over its 36% cap is not otherwise authorized by law

*Reporting requirements, including detail about what must be reported and whether there are any requirements that the state agency review or take other steps regarding the reports:* Annual report giving information as the Secretary of Banking may require. § 6210.

*Other significant features:* No loan splitting. § 6214(C). Does not prohibit wage assignments and sale-resale arrangements, but provides that the amount the lender receives in excess of the amount borrowed is interest. § 6218. Anti-evasion provisions. § 6218.

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## RHODE ISLAND

*R.I. Gen. Laws §§ 19-14-1 to 19-14-7 (licensure provisions), §§ 19-14.2-1 to 19-14.2-16 (Small Loan Lenders Act).*

*What types of lenders does it apply to (e.g., banks vs. non-banks)?* Chapter 14, which includes primarily the licensing provisions, is inapplicable to a variety of types of business loans; certain loans made by life insurance companies; certain educational loans; the purchase of retail or loan installment contracts from a federal bank receiver or liquidator; credit sales; municipal, state, or federal agencies that make loans; and the negative equity portion of vehicle financing. Licensing provisions also do not apply to nonprofit charitable, educational, or religious organizations; persons who make fewer than 6 loans in a 12-month period; regulated institutions and banks or credit unions, including out-of-state banks and credit unions that meet certain conditions; closing agents; employees of lenders; attorneys performing loan closings; or licensed check cashers that make payday loans. § 19-14.1-10.

*Licensure requirements and implications of licensure:* Sections 19-14-1 and 19-14-2 require a variety of lenders, including small loan lenders, to be licensed.

*Size and length of loans to which the statute applies, and any restrictions in the statute on these features:* \$5,000 or less. §§ 19-14.2-1, 19-14.2-8. Term of loan of \$1,000 or less may not exceed 25 months. Term of loan exceeding \$1,000 but not exceeding \$5,000 may not exceed 60 months. § 19-14.2-11.

*Other restrictions on applicability of statute (e.g., it only applies if lender takes a mortgage on real property):* “Small loan” is defined as one not secured by real estate. § 19-14-1(12).

*What rate of interest is allowed?*

- For loans up to and including \$300, 36%.
- For loans exceeding \$300 but not exceeding \$800, 30%.
- For loans exceeding \$800 but not exceeding \$5,000, 24%.

### § 19-14.2-8.

*What loan fees are allowed?* Lawful filing fees, plus “other fees listed in § 6-26-2(c) or as authorized by regulation.” § 19-14.2-12. The additional fees listed in § 6-26-2 are attorney fees for preparation of loan documents, fees for title examination or title insurance, and “other customary and reasonable costs incident to the closing, supervision, and collection of loans in this state.”

*What types of insurance are allowed, and any limits the lending statute places on charges?* Credit life insurance, credit accident and health insurance, credit unemployment insurance, property and liability insurance on collateral. §§ 19-14.2-3, 19-14.2-12 (incorporating § 6-26-2, which incorporates tit. 27, chs. 30 and 31).

*Does statute prohibit all other fees besides those specifically allowed?* Yes. § 19-14.2-12.

*Does statute restrict balloon payments or require substantially equal installments?* Contract must provide for repayment of the loan in substantially equal installments at approximately equal periodical intervals of time. § 19-14.2-11.

*Any restrictions on refinancing?* Principal of refinance loan cannot include unpaid interest that accrued on the prior loan more than 60 days previously, and cannot include any unpaid interest more than once in any 12-month period. § 19-14.2-10.

*Any rebate requirements or restrictions on prepayment penalties?* Lender shall permit prepayment in any amount at any time. § 19-14.2-4(2). Prepayment penalties are likely prohibited because not authorized by § 19-14.2-12. For precomputed interest on loans of 60 months or less, rebates to be calculated using the Rule of 78s. If greater than 60 months, simple interest method. § 19-14.1-2.

*What security interests are allowed or prohibited (including postdated checks and ACH authorization)?* Statute prohibits wage assignments. § 19-14.2-5(5). Statute regulates security interests in household furniture but does not prohibit them. § 19-14.2-7.



*Does statute prohibit unconscionable loan charges?* Statute is silent.

*Must lender underwrite or evaluate borrower's ability to repay?* Statute is silent.

*Is lending under this statute exempt from state criminal usury law?* Statute is silent, but criminal usury statute, § 6-26-2, states that its interest rate limits are "[s]ubject to the provisions of title 19."

*Reporting requirements, including detail about what must be reported and whether there are any requirements that the state agency review or take other steps regarding the reports:* Annual report with information that director may reasonably require. § 19-14-22.

*Other significant features:* Wage assignments are prohibited. § 19-14.2-5(5). Wage assignment transaction is a loan. § 19-14.2-6. No loan splitting. § 19-14.2-9. Anti-evasion provision. § 19-14.2-1(2).

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## SOUTH CAROLINA

### *S.C. Code Ann. tit. 37, ch. 3 ("South Carolina Consumer Protection Code-Loans").*

*What types of lenders does it apply to (e.g., banks vs. non-banks)?* Applies generally to all lenders except federal credit unions (§ 37-1-202(10)). It applies to:

- Supervised financial organizations (i.e., a federally or state supervised depository lender, § 37-1-301(27)).
- Supervised lenders (a lender authorized to make supervised loans (i.e., loans at greater than 12% interest § 37-3-502) § 37-3-501(2).
- Restricted Lenders (a lender licensed under tit. 34, ch. 29 to make loans of \$7,500 or less) except for their rates and charges (and the requirements for supervised lenders are inapplicable to restricted lenders).

Does not apply to:

- Extensions of credit to governments or governmental agencies.

- Most insurance sales, insurance rates, and insurance premium finance company transactions.
- Transactions under public or municipal utility or common carrier tariffs that meet certain conditions.
- Pawnbrokers.
- Rates and charges for restricted lenders, and their examination and licensing.
- Agricultural credit, for most purposes.
- Government-supported student loans.
- Federal credit unions.
- Certain transactions in securities or commodities accounts.

### § 37-1-202.

*Licensure requirements and implications of licensure:* To make supervised loans (defined by § 37-3-501(1) as consumer loans exceeding 12% interest other than mortgage loans and deferred presentment (payday) loans), or to take assignments of them and collect on them, must either be a "supervised financial organization" (defined by § 37-1-301(27) as a depository institution or an organization authorized to advance or service insurance premiums) or obtain a license. § 37-3-502. If creditor makes supervised loan without a required license, consumer has claim for actual and statutory damages, and is not obligated to pay the excess charge. § 37-5-202.

*Size and length of loans to which the statute applies, and any restrictions in the statute on these features:* "Consumer loan" is defined as one in which principal does not exceed \$90,000 (adjusted for inflation from \$25,000) or the debt is secured by land. § 37-3-104. Supervised loan of \$1,080 (adjusted for inflation from \$300) or less must be payable over no more than 25 months; if more than \$1,080 but no more than \$3,600 (adjusted for inflation from \$1,000), must be payable over no more than 37 months. § 37-3-511.

*Other restrictions on applicability of statute (e.g., it only applies if lender takes a mortgage on real property):* "Consumer loan" is defined to exclude those where principal exceeds \$90,000 (adjusted for inflation from



\$25,000) unless the debt is secured by land. § 37-3-104. However, first lien mortgage loans are excluded from the definition of “consumer loan” for purposes of the provisions that are relevant to this summary. § 37-3-105. In addition, “supervised loan” is defined to exclude those secured by residential real estate or the borrower’s dwelling. § 37-3-501(1)(a).

*What rate of interest is allowed?* Lenders who are not supervised lenders: 12% per year. § 37-3-201(1). Supervised financial organizations (defined by § 37-1-301(27) as federally or state supervised depository lenders): 18% or any other rate that lender files and posts. § 37-3-201(2)(b). Supervised lenders may charge 18% (§ 37-3-201(c)) or:

- On loan not exceeding \$150: \$2.50 per month, plus initial charge of 7% of cash advance or \$56, whichever is less. (The total amount is considered to be the finance charge.)
- On loan of more than \$150 but not exceeding \$600: \$25 per \$100 per year (calculated by the add-on method), plus 7% of cash advance or \$56, whichever is less.
- On loan of more than \$600: any rate that lender files and posts.

§ 37-3-201(2)(a) (setting rates for loans up to \$600 as those authorized by § 34-29-140, and requiring that maximum charge not exceed the rate filed with the state and posted); § 37-3-201(2)(b) (allowing any filed and posted rate for loan over \$600).

*What loan fees are allowed?*

- Official fees (defined by § 37-1-301(17) as recording fees or, with some limitations, non-filing insurance premiums, limited by § 37-4-208 to 75% of the recording fees) and taxes.
- Charges for other benefits conferred on the debtor, if valuable to the debtor and reasonable in price, of a type which is not for credit, and authorized by rule as permissible additional charges.

### § 37-3-202(1).

*What types of insurance are allowed, and any limits the lending statute places on charges?* May charge for insurance, including property insurance on property related to the credit transaction; liability insurance; credit life, accident and health, and unemployment insurance; vendor’s single interest insurance; and non-credit term life insurance; but cannot charge for insurance protecting the lender against the debtor’s default or other credit loss. § 37-3-202.

*Does statute prohibit all other fees besides those specifically allowed?* Consumer is not obligated to pay a charge in excess of that allowed by the statute. § 37-5-202(2).

*Does statute restrict balloon payments or irregular payment schedules?* Consumer has right to refinance any balloon payment without penalty at terms no less favorable than the original terms, with various exceptions, unless contract provides a different formula. § 37-3-402. Supervised loan of \$3,600 or less (adjusted for inflation from \$1,000) must be repayable in substantially equal installments at equal periodic intervals except when adjusted due to borrower’s seasonal or irregular income. § 37-3-511.

*Any restrictions on refinancing?* Lender holding license as supervised lender may not renew a loan of \$1,000 or less more than one time during any 15-month period where the amount actually given to the customer is less than ten percent of the net outstanding loan balance at the time of renewal. § 37-3-515.

*Any rebate requirements or restrictions on prepayment penalties?* Debtor may prepay in full at any time without penalty. § 37-3-209. Upon prepayment in full of a precomputed consumer loan, lender has option of either actuarial or Rule of 78s rebate if loan has no more than 61 installments; otherwise actuarial method is required. Whether loan is precomputed or not, creditor may retain minimum charge up to \$15, and no rebate of less than \$1.00 need be made. § 37-3-210.

*What security interests are allowed or prohibited (including postdated checks and ACH authorization)?*

“Consumer loan” does not include a loan secured by a first lien or equivalent security interest in real estate. § 37-3-105(1). “Supervised loan” is defined to exclude those secured by residential real estate or the borrower’s dwelling. § 37-3-501(1)(a). A security interest in land is prohibited and void for a supervised loan of \$3,600 or less (adjusted for inflation from \$1,000). § 37-3-510. Wage assignments are prohibited and unenforceable, but borrower may revocably authorize payroll deductions. § 37-3-403.

*Does statute prohibit unconscionable loan charges?* Yes. § 37-5-108.

*Must lender underwrite or evaluate borrower’s ability to repay?* No separate requirement, but must consider to determine if unconscionable. § 37-5-108(4)(b).

*Is lending under this statute exempt from state criminal usury law?* Not applicable.

*Reporting requirements, including detail about what must be reported and whether there are any requirements that the state agency review or take other steps regarding the reports:* Entities licensed to make supervised loans must file annual report stating: the number and aggregate dollar amounts of loans that renewed existing accounts, that were made to new borrowers; that received a final entry other than by renewal; the number of new loans and aggregate dollar amounts made to former borrowers; the number of renewals in which the borrower received a cash advance which was less than ten percent of the net outstanding loan balance at the time of renewal; the number of loans and aggregate dollar amounts outstanding at the beginning and at the end of the reporting period; and the highest annual percentage rate and most frequent annual percentage rate charged by the lender on loans of various sizes. § 37-3-505.

*Other significant features:* Prohibits loan splitting for supervised loans. § 37-3-509.

## S.C. Code Ann. §§ 34-29-10 to 34-29-260 (Consumer Finance Law).

*What types of lenders does it apply to (e.g., banks vs. non-banks)?* Consumer finance companies (also referred

to as restricted lenders), defined as all persons conducting the business of making advances of cash in amounts of \$75,000 or less. §§ 34-29-10, 37-3-501(3). Excludes banks, savings and loan associations, savings banks, trust companies, insurance companies, credit unions, licensed pawnbrokers, and loans made to corporations. § 34-29-20(b).

*Licensure requirements and implications of licensure:* Must be licensed in order to engage in business of lending amounts of \$7,500 or less at interest rate higher than general usury statute allows (which § 34-31-20 sets at 8.75%). § 34-29-20(a).

*Size and length of loans to which the statute applies, and any restrictions in the statute on these features:* Statute allows loans of \$7,500 or less. § 34-29-140(a). Loan term cannot exceed:

|                                    |               |
|------------------------------------|---------------|
| Cash advance of \$1,000 or less    | 24 1/2 months |
| Cash advance of \$1,001 to \$1,500 | 36 1/2 months |
| Cash advance of \$1,501 to \$2,000 | 48 1/2 months |
| Cash advance of \$2,001 to \$7,500 | 60 1/2 months |

## § 34-29-140(b).

*Other restrictions on applicability of statute (e.g., it only applies if lender takes a mortgage on real property):* Statute is silent.

*What rate of interest is allowed?*

- For loan not exceeding \$150: \$2.50 per month.
- For loan exceeding \$150 but not exceeding \$2,000: \$25 per \$100 per year on first \$720 (adjusted for inflation from \$600, \$18 per \$100 per year on amount exceeding \$720 but no more than \$1,200 (adjusted for inflation from \$1,000), and \$12 per \$100 per year on amount exceeding \$1,200 but not exceeding \$2,400 (adjusted for inflation from \$2,000). These rates are calculated by the add-on method.
- For loan of more than \$2,400 but not exceeding \$7,500: add-on rate of \$9 per \$100 per year.

In addition, a \$2 maintenance fee for each month in the loan term. § 34-29-140(a)(3), (i), (j).

*What loan fees are allowed?*

- For loans authorized under § 34-29-140(a)(1) and (2), i.e., loans up to \$2,400 (adjusted for inflation from \$2,000), 7% of the cash advance or \$56, whichever is less.
- For loans authorized under § 34-29-140(c), i.e., loans between \$2,400 and \$7,500, 5% of the cash advance or \$200, whichever is less.

§ 34-29-140. In addition, lender can charge for recording fees, or non-filing insurance if no more than 75% of those fees, § 34-29-164.

*What types of insurance are allowed, and any limits the lending statute places on charges?* Property insurance on personal property that is collateral; insurance on life and earning capacity of not more than two obligors; accident and health insurance. §§ 34-29-160.

*Does statute prohibit all other fees besides those specifically allowed?* Yes. If an amount in excess of charges permitted by chapter 29 is charged, contracted for, or received, except as result of accidental or bona fide error, the contract of loan is void, and licensee has no right to collect or receive any principal, interest, charge, or recompense. § 34-29-140(e).

*Does statute restrict balloon payments or irregular payment schedules?* Payments must be in substantially equal, consecutive monthly installments and shall be in an amount not less than \$10 per month, exclusive of finance charges. § 34-29-140(b). However, loans not exceeding \$150 may be payable weekly. § 34-29-140(a)(1).

*Any restrictions on refinancing?* Lender may not renew a loan more than one time during any 15-month period where the actual dollars given to the customer is less than 10% of the net outstanding loan balance at the time of renewal. § 34-29-140(k). For loans up to \$2,000, lender may impose initial charge (7% or \$56) on a renewal loan only once in any three-month period. § 34-29-140(a)(2). For loans over \$2,000, lender may impose initial charge (5% or \$200) only once on a renewal loan in any 12-month period. § 34-29-140(a)(3).

*Any rebate requirements or restrictions on prepayment penalties?* Borrower has right to prepay in full and is entitled to Rule of 78s rebate (sum of the balances method), but if loan is renewed or refinanced during the first 90 days, refund shall be pro rata. § 34-29-140(c).

*What security interests are allowed or prohibited (including postdated checks and ACH authorization)?* Lender may not make purchase money mortgage loan, but may make non-purchase money loan secured by primary or secondary lien on real estate. § 34-29-140(h). See also §§ 37-22-110, 37-22-120 (because it is a security interest on real estate, restricted lender is required to have mortgage lending license as well). Liens on household furniture are restricted but not prohibited. § 34-29-150(e).

*Does statute prohibit unconscionable loan charges?* Yes. § 37-5-108(6).

*Must lender underwrite or evaluate borrower's ability to repay?* No separate requirement, but must consider to determine if unconscionable. § 37-5-108(4)(b).

*Is lending under this statute exempt from state criminal usury law?* Not applicable.

*Reporting requirements, including detail about what must be reported and whether there are any requirements that the state agency review or take other steps regarding the reports:* Annual report giving information on licensee's financial condition, balance sheets, income and expenses; a reconciliation of surplus with the balance sheets; a schedule of assets; an analysis of charges, size of loans and types of actions undertaken to effect collection; and such other relevant information as the board may prescribe. Report must also include: number of loans and aggregate dollar amounts which renewed existing accounts, which were made to former borrowers, and which were made to new borrowers; number of loans and aggregate dollar amounts which received a final entry other than by renewal; number of renewals in which the borrower received a cash advance which was less than ten percent of the net outstanding loan balance at the time of renewal; and number of loans and aggregate dollar

amounts outstanding at beginning and end of reporting period. Board shall publish annual analysis and recapitulation. § 34-29-100.

*Other significant features:* Loan-splitting prohibited. § 34-29-140(d). Anti-evasion provision. § 34-29-20(a).

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## SOUTH DAKOTA

### *S.D. Codified Laws §§ 54-4-36 to 54-4-75 (Money Lenders Licenses).*

*What types of lenders does it apply to (e.g., banks vs. non-banks)?* Any person engaged in the business of lending money. § 54-4-40. Statute exempts banks and their subsidiaries, South Dakota chartered trust companies, and retail installment sellers. §§ 54-4-37, 54-4-64.

*Licensure requirements and implications of licensure:* No person may engage in the business of lending money (defined by § 54-4-36(2) to include originating, selling, servicing, acquiring, or purchasing loans, or servicing, acquiring, or purchasing retail installment loans) without a license. §§ 54-4-40, 54-4-52.

*Size and length of loans to which the statute applies, and any restrictions in the statute on these features:* “Short-term consumer loan” is defined as any loan to any individual borrower with a duration of six months or less, including a payday loan. § 54-4-36(13). “Installment loan” is a loan made to be repaid in specified amounts over a certain number of months. § 54-4-36(7). The maximum principal amount of any payday loan, or the total outstanding principal balances of all payday loans made by a licensee to a single borrower, may not exceed \$500 at any time. § 54-4-66.

*Other restrictions on applicability of statute (e.g., it only applies if lender takes a mortgage on real property):* Statute is silent.

*What rate of interest is allowed?* Licensee may charge interest and other fees at rates, amounts, and terms as agreed to by the parties. § 54-4-44. *See also* §§ 54-3-13, 54-3-14 (regulated lenders, including installment loan licensees, are exempt from all limitations on interest rates they may charge).

*What loan fees are allowed?* See preceding entry.

*What types of insurance are allowed, and any limits the lending statute places on charges?* Property insurance on tangible property that is collateral. § 54-4-59. Debt cancellation or suspension contracts. § 54-4-75. Statute also provides that a licensee may sell insurance to anyone with whom the licensee has a lending relationship, and requires that credit life insurance or any other life or health insurance must be voluntary. § 54-4-60.

*Does statute prohibit all other fees besides those specifically allowed?* Statute is silent.

*Does statute restrict balloon payments or irregular payment schedules?* Statute is silent.

*Any restrictions on refinancing?* No licensee may renew, rollover, or flip a short-term consumer loan more than four times; each time, the debtor must reduce the principal amount of the loan by not less than ten percent of the original amount of the loan. § 54-4-65.

*Any rebate requirements or restrictions on prepayment penalties?* Statute is silent.

*What security interests (or postdated checks or ACH authorizations) are allowed or prohibited?* “Loan” is defined to include unsecured loans and loans secured by real or personal property. § 54-4-11.

*Does statute prohibit unconscionable loan charges?* Statute is silent.

*Must lender underwrite or evaluate borrower’s ability to repay?* Statute is silent.

*If state has a criminal usury law, is lending under this statute exempt from it?* Not applicable.

*Reporting requirements, including detail about what must be reported and whether there are any requirements that the state agency review or take other steps regarding the reports:* Statute is silent.

*Other significant features:* Not applicable.



## TENNESSEE

### *Tenn. Code Ann. §§ 45-5-101 to 45-5-612 (Industrial Loan and Thrift Companies).*

*What types of lenders does it apply to (e.g., banks vs. non-banks)?* Industrial loan and thrift companies, industrial banks, industrial investment companies. § 45-5-103(a). Law is inapplicable to banks (other than industrial banks), savings and loan associations, credit unions, insurance companies, any other persons engaged in the business of making loans who are subject to supervision and regulation by a state or federal administrative agency, and licensed pawnbrokers. § 45-5-104.

*Licensure requirements and implications of licensure:* Registration required. § 45-5-103(a).

*Size and length of loans to which the statute applies, and any restrictions in the statute on these features:* For loan \$300 or less, loan term may not exceed 24 months; for loan of more than \$300 but less than \$1,000, may not exceed 36 months; for loan of \$1,000 or more that is subject to chapter's limitations on interest and loan charges, may not exceed 181 months. § 45-5-302(2). The minimum term of any loan made under the alternative rate structure described in § 45-5-403(b)(1) is 3 months, and the maximum term is 25 months. § 45-5-403(b)(2).

*Other restrictions on applicability of statute (e.g., it only applies if lender takes a mortgage on real property):* Statute is silent.

*What rate of interest is allowed?*

- On loan of less than \$100, 7.5% per annum discount interest, but capped at 18% actuarial. On loan of \$100 or more, 24% actuarial. §§ 45-5-301, 45-5-401(a)(1).
- As an alternative to the loan charges permitted under § 45-5-403(a) and interest permitted under § 45-5-301, for loan with term of at least 3 months but no more than 25 months, lender may charge an acquisition charge of 10% of principal plus and account handling charge of:

- \$12 per month for loan of \$100 or more but no more than \$300;
  - \$14 per month for loan over \$300 but no more than \$400;
  - \$16 per month for loan over \$400 but no more than \$500;
  - \$20 per month for loan over \$500 but no more than \$1,000;
  - \$23 per month for loan over \$1,000 but no more than \$1,250;
  - \$26 per month for loan over \$1,250 but no more than \$1,500;
  - \$29 per month for loan over \$1,500 but no more than \$1,750;
  - \$32 per month for loan over \$1,750 but no more than \$2,000.
- No insurance or other charge is allowed for a loan under this section except late charges, dishonored check charges, and attorney fees for collection. § 45-5-403(b)(1), (4).

*What loan fees are allowed?*

- 4% of loan amount or a flat service charge of \$10 (less if loan is under \$100). § 45-5-403(a)(1), (2).
- In addition:
  - Recording fees or non-filing insurance if no more than those fees;
  - Installment maintenance fee of \$2.50 per month for loan of less than \$100, \$3.50 per month for loan of \$100 or more but no more than \$750, \$3.00 per month for loan of more than \$750 but no more than \$1,250, and \$2.50 per month for loan over \$1,250.

§ 45-5-403(a). These fees are not permitted for loans under alternative rate structure. § 45-5-403(b)(1), (4). A general provision of the statute provides that these loan charges can be imposed only if the loan term is at least three years. § 45-5-301(3).

*What types of insurance are allowed, and any limits the lending statute places on charges?* Property insurance on the collateral; life, disability, and involuntary unemployment insurance; individual term life and accidental death and dismemberment insurance.



§§ 45-5-301(4), (5), (12), 45-5-305. No insurance allowed on loans under alternative rate structure in § 45-5-403(b)(1). § 45-5-403(b)(4).

*Does statute prohibit all other fees besides those specifically allowed?* Yes. § 45-5-403(a).

*Does statute restrict balloon payments or irregular payment schedules?* Statute is silent.

*Any restrictions on refinancing?* The flat service charges authorized by § 45-5-403(a)(2) (\$2 to \$10) cannot be charged on the portion of a loan that refinances an earlier loan. § 45-5-403(a)(2)(C).

*Any rebate requirements or restrictions on prepayment penalties?* If borrower prepays loan of less than \$100, entitled to actuarial rebate, with special calculation method if loan was repayable in single installment. Borrower has right to prepay loan of \$100 or more only if contract so provides. § 45-5-402(b)(1). If lender allows borrower to prepay loan of \$100 or more, borrower is entitled to Rule of 78s rebate (sum of the balances method), unless loan term is 61 months or more, in which case actuarial rebate is required. No rebate required if less than \$1. § 45-5-402(a)(2), (b)(2) (C). On the prepayment of any loan under the alternative rate structure described in § 45-5-403(b)(1), the installment account handling charges are subject to rebate under § 45-5-402. § 45-5-403(b)(3).

*What security interests (or postdated checks or ACH authorizations) are allowed or prohibited?* Loans may be unsecured or secured by real or personal property. § 45-5-301(1).

*Does statute prohibit unconscionable loan charges?* Statute is silent.

*Must lender underwrite or evaluate borrower's ability to repay?* Statute is silent.

*If state has a criminal usury law, is lending under this statute exempt from it?* Not applicable.

*Reporting requirements, including detail about what must be reported and whether there are any requirements that the state agency review or take other steps regarding the reports:* Annual report stating names and addresses

of registrant's officers and directors or partners, and persons owning controlling interest in registrant; registrant's business locations and the nature of the business conducted at each location; names and addresses of all affiliated lenders and affiliated insurance companies doing business in the state; and balance sheets, statements of income and expense, summaries of types of loans made, and other statistical information that may reasonably be required by the commissioner. Commissioner must prepare annual analysis and recapitulation of the reports. § 45-5-503. Registrants must also report certain events such as bankruptcy, revocation or suspension proceedings, and indictments or convictions. § 45-5-507.

*Other significant features:* Loan-splitting prohibited. § 45-5-302(11).

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## TEXAS

*Tex. Fin. Code Ann. §§ 342.051 to 342.560 (West) (Consumer Loans).*

*What types of lenders does it apply to (e.g., banks vs. non-banks)?* Applies to all lenders, but exempts some from licensure requirement.

*Licensure requirements and implications of licensure:* Must hold a license to engage in business of making, transacting, negotiating, collecting, or servicing loans subject to the chapter, or to charge interest greater than that otherwise authorized. Banks, savings banks, savings and loan associations, insurance premium finance companies, insurance agents who arrange loans on behalf of banks, savings banks, or savings and loan associations, e-filers authorized by IRS who arrange refund anticipation loans, and certain licensed or registered mortgage lenders and originators (limited to home equity and secondary mortgage loans) need not be licensed. § 342.051.

*Size and length of loans to which the statute applies, and any restrictions in the statute on these features:* For loans made under the add-on rates allowed by § 342.201(a) or the split rates allowed by § 342.201(e), **loan term cannot exceed:**

- 37 months if loan is for \$1,500 or less.
- 49 months if loan is for more than \$1,500 but no more than \$3,000.
- 60 months if loan is for more than \$3,000.

### § 342.508.

*Other restrictions on applicability of statute (e.g., it only applies if lender takes a mortgage on real property):* Statute applies to loans for consumer purposes, other than certain mortgage loans, if interest rate exceeds 10%. § 342.005.

*What rate of interest is allowed?*

For loan not secured by real property, three alternatives:

- Add-on interest of:
  - \$18 per \$100 per year on first \$2,010 (adjusted for inflation from original amount of \$300); and;
  - \$8 per \$100 per year on amount over \$2,010 but no more than \$16,750 (adjusted for inflation from original amount of \$2,500). § 342.201(a).
- The simple interest rates set by §§ 303.001 to 303.017 (twice the rate on certain Treasury bills, with a cap ranging from 18% to 24% for consumer loans). §§ 342.201(d), 303.009.
- Split simple interest rates (referred to in Texas as “graduated rates” or “three-tiered rates”) as follows:
  - 30% on first \$3,350 (adjusted for inflation from original amount of \$500);
  - 24% on amount greater than \$3,350 but no more than \$7,035 (adjusted for inflation from original amount of \$1,050); and
  - 18% on amount greater than \$3,350 but no more than \$16,750 (adjusted for inflation from \$2,500). § 342.201(e).

See next summary for loans under subchapter F (Alternate Charges for Certain Loans), applicable to loans of \$1,340 or less.

*What loan fees are allowed?* Administrative fee of \$100. § 342.201(f); 7 Tex. Admin. Code § 83.503 (increasing the fee to \$100, effective July 10, 2014, and stating that

it may be charged in addition to interest). Recording fees or non-filing insurance if less than those fees. §§ 342.416, 342.502(b).

*What types of insurance are allowed, and any limits the lending statute places on charges?* Lender may require property insurance on tangible personal property collateral for non-real property loan, but only if cash advance is \$300 or more. § 342.401. If cash advance is \$100 or more, lender may offer credit life, credit health and accident, and involuntary unemployment insurance. § 342.402. For loan that is not secured by real property and for which the finance charges are computed under the simple interest rates (18% to 24%) allowed by § 342.201(d), lender may offer, but not require, a debt suspension agreement or debt cancellation agreement, and, if a motor vehicle is collateral, a gap waiver agreement. § 342.4021. Authorized lender (a bank, savings association, or licensed consumer lender) may offer, but not require, an automobile club membership. § 342.457.

*Does statute prohibit all other fees besides those specifically allowed?* Yes. § 342.502.

*Does statute restrict balloon payments or irregular payment schedules?* No. Statute refers to single-payment loans and irregular transactions. §§ 342.201(c), 342.202. *See also* § 342.001(1), (2) (definitions of irregular and regular transactions).

*Any restrictions on refinancing?* Administrative fee (\$100) can be charged only once in any 180-day period, and only once in any 365-day period if lender charged the split simple interest rates allowed by § 342.201(e). § 342.201(f).

*Any rebate requirements or restrictions on prepayment penalties?* Lender must allow prepayment. § 342.453. Rebate is to be calculated using the “scheduled installment method,” which involves applying a daily rate to the unpaid balance of the principal amount as if each payment will be made on its scheduled installment date. No refund is required if amount is less than \$1. §§ 342.002(a), 342.351 to 342.353. *See also* 7 Tex. Admin. Code §§ 83.751 (prohibiting Rule of 78s for loans under this subchapter),

83.752 (identifying the fees that are subject to rebate), 83.753 (reiterating computation method). Prepayment penalties are prohibited on all chapter 342 consumer loans because they are not specifically authorized by § 342.502.

*What security interests (or postdated checks or ACH authorizations) are allowed or prohibited?* Wage assignments and liens on real property, other than judgment liens, are prohibited, but lender may take an assignment of a warrant drawn against a state fund or a claim against a state fund or a state agency. § 342.503.

*Does statute prohibit unconscionable loan charges?* Statute is silent.

*Must lender underwrite or evaluate borrower's ability to repay?* Statute is silent, but administrative rule requires lenders making loans under chapter 342 to consider, in determining the size, duration, and schedule of installments, the financial ability of the borrower to repay the loan, and evaluate whether the borrower should be reasonably able to repay all other known obligations concurrently. 7 Tex. Admin. Code § 83.852.

*If state has a criminal usury law, is lending under this statute exempt from it?* Not applicable.

*Reporting requirements, including detail about what must be reported and whether there are any requirements that the state agency review or take other steps regarding the reports:* Authorized lender (a bank, savings association, or licensed consumer lender) must file annual report containing information required by the commissioner. Commissioner shall publish annual consolidated analysis and recapitulation. § 342.559. However, 7 Tex. Admin. Code § 83.835 limits the annual reporting requirement to licensees of the Office of the Consumer Credit Commissioner, so it does not apply to banks, savings banks, savings and loan associations, or other lenders that need not be licensed.

*Other significant features:* Loan splitting prohibited. § 342.501. Anti-evasion provision. § 342.051(b).

## **Tex. Fin. Code Ann. §§ 342.251 to 342.260 (West) (Subchapter F: Alternate Charges for Certain Loans).**

*What types of lenders does it apply to (e.g., banks vs. non-banks)?* Applies to all lenders, but exempts some from licensure requirement.

*Licensure requirements and implications of licensure:* Must hold a license to engage in business of making, transacting, negotiating, collecting, or servicing loans subject to the chapter, or to charge interest greater than that otherwise authorized. Banks, savings banks, savings and loan associations, insurance premium finance companies, insurance agents who arrange loans on behalf of banks, savings banks, or savings and loan associations, e-filers authorized by IRS who arrange refund anticipation loans, and certain licensed or registered mortgage lenders and originators (limited to home equity and secondary mortgage loans) need not be licensed. § 342.051.

*Size and length of loans to which the statute applies, and any restrictions in the statute on these features:* Allows loans of \$1,340 or less (adjusted for inflation from \$200). § 342.251. Maximum scheduled loan term for a loan of \$100 or less is one month for each multiple of \$10 of the cash advance or six months, whichever is less; for a loan of more than \$100, one month for each multiple of \$20. § 342.255.

*Other restrictions on applicability of statute (e.g., it only applies if lender takes a mortgage on real property):* Statute applies to loans for consumer purposes, other than certain mortgage loans, if interest rate exceeds 10%. § 342.005.

*What rate of interest is allowed?*

- For loan of less than \$30, \$1.00 acquisition charge for each \$5 advanced.
- For loan of at least \$30 but no more than \$100, acquisition charge of 10% of the cash advance, plus account handling fee of \$3.00 a month if cash advance is \$35.00 or less, \$3.50 a month if cash advance is more than \$35.00 but no more than

\$70.00, and \$4.00 a month if cash advance is more than \$70.00.

- For loan of more than \$100 but no more than \$1,340 (adjusted for inflation from \$100 and \$200), acquisition charge of \$10, or, if cash advance is \$30 or more, 10% of the cash advance or \$100, whichever is less; plus account handling fee of \$4 a month for each \$100 advanced.

**§§ 342.251, 342.252, 342.259.** 7 Tex. Admin. Code § 83.605.

*What loan fees are allowed?* No additional fees are allowed. **§ 342.254.**

*What types of insurance are allowed, and any limits the lending statute places on charges?* No insurance charges are authorized. **§ 342.254.**

*Does statute prohibit all other fees besides those specifically allowed?* Yes. **§ 342.254.**

*Does statute restrict balloon payments or require substantially equal installments?* No. Lender may make single-payment loan. **§ 342.253.** May also require weekly, biweekly, or semimonthly installments. **§ 342.258.**

*Any restrictions on refinancing?* Lender may not collect acquisition charge more than once a month. 7 Tex. Admin. Code § 83.605.

*Any rebate requirements or restrictions on prepayment penalties?* Upon prepayment of loan of \$30 or more, lender must make rebate of account handling charge, calculated using the Rule of 78s. No refund is required if amount is less than \$1. §§ 342.256, 342.259(b) (incorporating §§ 342.351 to 342.353). See also 7 Tex. Admin. Code §§ 83.751(b)(1) (allowing Rule of 78s for loans under this subchapter), 83.755 (identifying fees that are subject to rebate). Prepayment penalties are prohibited on all chapter 342 consumer loans because they are not specifically authorized by **§ 342.502.**

*What security interests are allowed or prohibited (including postdated checks and ACH authorization)?* Wage assignments and liens on real property, other than judgment liens, are prohibited, but lender may take

an assignment of a warrant drawn against a state fund or a claim against a state fund or a state agency. **§ 342.503.**

*Does statute prohibit unconscionable loan charges?* No.

*Must lender underwrite or evaluate borrower's ability to repay?* Statute is silent, but administrative rule requires lenders making loans under chapter 342 to consider, in determining the size, duration, and schedule of installments, the financial ability of the borrower to repay the loan, and evaluate whether the borrower should be reasonably able to repay all other known obligations concurrently. 7 Tex. Admin. Code § 83.852.

*Is lending under this statute exempt from state criminal usury law?* Not applicable.

*Reporting requirements, including detail about what must be reported and whether there are any requirements that the state agency review or take other steps regarding the reports:* Authorized lender (a bank, savings association, or licensed consumer lender) must file annual report containing information required by the commissioner. Commissioner shall publish annual consolidated analysis and recapitulation. **§ 342.559.** However, 7 Tex. Admin. Code § 83.835 limits the annual reporting requirement to licensees of the Office of the Consumer Credit Commissioner, so it does not apply to banks, savings banks, savings and loan associations, or other lenders that need not be licensed.

*Other significant features:* Loan splitting prohibited. **§ 342.501.** Anti-evasion provision. **§ 342.051(b).**

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## UTAH

**Utah Code Ann. §§ 70C-1-101 to 70C-8-203 (West) (Consumer Credit Code).**

*What types of lenders does it apply to (e.g., banks vs. non-banks)?* Applies generally to extensions of credit, broadly defined, to natural persons for consumer purposes, but excludes:



- Business, commercial, or agricultural credit.
- Closed-end credit secured by a first lien on a dwelling or building lot.
- Certain transactions in securities or commodities accounts.
- Credit over \$50,000 (adjusted for inflation), unless secured by real property or a personal-property dwelling.
- Certain transactions under public utility or common carrier tariffs.
- Most insurance sales.
- Licensed pawnbrokers.
- Certain educational loans.
- Rent-to-own transactions.

### §§ 70C-1-201, 70C-1-202.

*Licensure requirements and implications of licensure:* Licensure is not required, but creditors subject to the Code, other than federally insured depository institutions and their wholly-owned subsidiaries, must file notification with the department at least 30 days before commencing business in the state. § 70C-8-202.

*Size and length of loans to which the statute applies, and any restrictions in the statute on these features:* Law does not apply to extension of credit that is not secured by the consumer's principal dwelling and in which the amount financed or credit limit exceeds \$50,000 (adjusted annually for inflation). § 70C-1-202.

*Other restrictions on applicability of statute (e.g., it only applies if lender takes a mortgage on real property):* Statute is silent.

*What rate of interest is allowed?* Any rate set by contract. § 70C-2-101.

*What loan fees are allowed?* Any charges and fees other than those restricted or covered by other provisions of the Code. § 70C-2-101.

*What types of insurance are allowed, and any limits the lending statute places on charges?* Except as otherwise provided in statute, a creditor may agree to provide insurance. Statute specifically mentions property

insurance on collateral, credit life insurance, and liability insurance. §§ 70C-6-103, 70C-1-204, 70C-6-202, 70C-6-303.

*Does statute prohibit all other fees besides those specifically allowed?* Debtor is not required to pay any charge in excess of those allowed by the Code. § 70C-7-201.

*Does statute restrict balloon payments or require substantially equal installments?* Debtor has right to refinance balloon payment on creditor's current credit terms if the creditor is still offering that type of credit and the debtor is credit worthy. § 70C-3-102.

*Any restrictions on refinancing?* Statute is silent.

*Any rebate requirements or restrictions on prepayment penalties?* Debtor may prepay closed-end consumer credit debt at any time without penalty, with exception for certain loans secured by a dwelling. Rebate method is actuarial, but parties may agree that prepaid finance charges up to 5% of principal are not subject to rebate upon prepayment; prepaid finance charges over that amount must be rebated using pro rata method. Amounts paid to third parties in connection with setting up the credit are not subject to rebate unless the creditor becomes entitled to a rebate of any part of the payment as a result of the prepayment. § 70C-3-101.

*What security interests are allowed or prohibited (including postdated checks and ACH authorization)?* Wage assignments prohibited unless revocable, or a payroll deduction plan, or applicable only to wages already earned at the time of the assignment. § 70C-2-202.

*Does statute prohibit unconscionable loan charges?* Yes. § 70C-7-106.

*Must lender underwrite or evaluate borrower's ability to repay?* Statute is silent.

*Is lending under this statute exempt from state criminal usury law?* Criminal usury statute, § 76-6-520, applies only where lender charges rate higher than that authorized by other law.

*Reporting requirements, including detail about what must be reported and whether there are any requirements that*



*the state agency review or take other steps regarding the reports: Statute is silent.*

*Other significant features: Not applicable.*

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## VERMONT

*Vt. Stat. Ann. tit. 8, §§ 2200 to 2244 (Licensed Lenders Act).*

*What types of lenders does it apply to (e.g., banks vs. non-banks)?* Most of the relevant provisions apply to licensed lenders. § 2201(a)

*Licensure requirements and implications of licensure:* Must have license to engage in business of making loans, except for:

- Political subdivisions of the state, or state or federal agencies or public instrumentalities.
- Gas or electric utilities subject to jurisdiction of the public service board engaging in energy conservation or safety loans.
- Depository institutions and similar organizations.
- Pawnbrokers.
- Insurance companies.
- Sellers that finance sales of goods or services.
- Certain low-volume seller/financers of homes.
- Certain non-profit lenders.
- Low-volume lenders who charge no more than 12% interest.
- Motor vehicle sellers who finance negative equity in some circumstances.
- Certain unsecured commercial loans.
- Nonprofit organizations that make college loans.
- Mortgage loans with family members.
- Housing finance agencies.

**§ 2201.** Loan made without required license is void. § 2215(d)(1).

*Size and length of loans to which the statute applies, and any restrictions in the statute on these features: Statute*

*does not apply to commercial loans of \$1 million or more. § 2201(h).*

*Other restrictions on applicability of statute (e.g., it only applies if lender takes a mortgage on real property): Statute is silent.*

*What rate of interest is allowed?* For installment loan, 24% on first \$1,000 and 12% on remainder, or 18%, whichever is higher. § 2230(a) (incorporating tit. 9, § 41a(b)(5)). For single payment loans, 18%. tit. 9, § 41a(b)(1).

*What loan fees are allowed?* Recording fees. § 2231.

*What types of insurance are allowed, and any limits the lending statute places on charges?* Credit life and disability insurance. § 2231. In addition, § 2241(13) refers to property insurance.

*Does statute prohibit all other fees besides those specifically allowed?* Yes. §§ 2231(b), 2233.

*Does statute restrict balloon payments or irregular payment schedules?* Except for mortgage loans, must require repayment in substantially equal consecutive monthly installments. § 2231(a).

*Any restrictions on refinancing?* Statute is silent.

*Any rebate requirements or restrictions on prepayment penalties?* Borrower may prepay in any amount at any time without penalty. § 2232a(d).

*What security interests are allowed or prohibited (including postdated checks and ACH authorization)?* Wage assignments are limited to 10% of wages but are not prohibited. § 2235.

*Does statute prohibit unconscionable loan charges?* Statute is silent.

*Must lender underwrite or evaluate borrower's ability to repay?* Statute is silent.

*Is lending under this statute exempt from state criminal usury law?* Criminal usury statute, Vt. Stat. Ann. tit. 9, § 50(e), prohibits collecting interest at rate over that authorized by other law.

*Reporting requirements, including detail about what must be reported and whether there are any requirements that the state agency review or take other steps regarding the reports:* Annual report giving such relevant information as the Commissioner reasonably may require; annual financial statement with balance sheet and income statement. Commissioner shall publish annual analysis and recapitulation. § 2224.

*Other significant features:* Loan splitting prohibited. § 2230(c). Wage assignment is treated as a loan. § 2234.

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## VIRGINIA

### *Va. Code Ann. §§ 6.2-1500 to 6.2-1543 (Consumer Finance Companies).*

*What types of lenders does it apply to (e.g., banks vs. non-banks)?* Does not apply to banks, savings institutions, trust companies, building and loan associations, industrial loan associations, credit unions, licensed pawnbrokers, or persons operating in accordance with the specific provisions of any other provision of title 6.2, which includes provisions regarding vehicle title lenders, payday lenders, and mortgage lenders. § 6.2-1503.

*Licensure requirements and implications of licensure:* Must have license to make loans to individuals for consumer purposes at interest rate greater than allowed by general usury law (12%). License requirement does not apply to payday lenders, mortgage lenders, and those extending open-end loans. § 6.2-1501. Banks, savings institutions, trust companies, building and loan associations, industrial loan associations, and credit unions are ineligible for licensure, but a subsidiary of a bank or savings institution may obtain a license. § 6.2-1502. Loan made without a required license is void. § 6.2-1541.

*Size and length of loans to which the statute applies, and any restrictions in the statute on these features:* Statute is silent.

*Other restrictions on applicability of statute (e.g., it only applies if lender takes a mortgage on real property):* Statute is silent.

*What rate of interest is allowed?*

- Loan of up to \$2,500: 36%.
- More than \$2,500: any rate stated in contract.

### *§ 6.2-1520(A).*

*What loan fees are allowed?* Processing fee, but for a loan of \$2,500 or less it is treated as interest for determining whether loan is within the 36% cap; recording fees, or, on loans over \$100, the premium for non-filing insurance if no more than that amount. §§ 6.2-1520(C), 6.2-1523.

*What types of insurance are allowed, and any limits the lending statute places on charges?* Insurance for the protection and benefit of the borrower; for loans over \$100, non-filing insurance. § 6.2-1523.

*Does statute prohibit all other fees besides those specifically allowed?* Yes. § 6.2-1523.

*Does statute restrict balloon payments or irregular payment schedules?* Loan contract must provide for repayment in substantially equal monthly installments, but first payment period can be up to 45 days. § 6.2-1524(K).

*Any restrictions on refinancing?* Statute is silent.

*Any rebate requirements or restrictions on prepayment penalties?* Prepayment allowed. § 6.2-1524(F). Prepayment penalties impliedly prohibited because not authorized by § 6.2-1523. A general lending statute, § 6.2-404, applicable to “any loan of money,” provides that rebates to be calculated using the Rule of 78s unless the loan has an initial maturity of more than 61 months. However, provides: “The annual rate of interest shall be charged only upon principal balances outstanding from time to time. Interest shall not be charged on an add-on basis and shall not be compounded or paid, deducted or received in advance,” so interest cannot be precomputed and a the Rule of 78s rebate provision is irrelevant.

*What security interests (or postdated checks or ACH authorizations) are allowed or prohibited?* Lien on real estate, other than judgment lien, is prohibited and void. § 6.2-1524(C). Wage assignments are limited to 10% of the borrower's salary, wages, commissions or other compensation for services, but are not prohibited. § 6.2-1526. Liens on household furniture are regulated but not prohibited. § 6.2-1527.

*Does statute prohibit unconscionable loan charges?* Statute is silent.

*Must lender underwrite or evaluate borrower's ability to repay?* Statute is silent.

*If state has a criminal usury law, is lending under this statute exempt from it?* Not applicable.

*Reporting requirements, including detail about what must be reported and whether there are any requirements that the state agency review or take other steps regarding the reports:* Annual report giving such relevant information as may reasonably be required. § 6.2-1534.

*Other significant features:* Wage assignment is treated as security for a loan, and implicit interest rate shall not exceed 10% . § 6.2-1525. Anti-evasion provision. § 6.2-1501.

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## WASHINGTON

### Wash Rev. Code §§ 31.04.015 to 34.04.903 (Consumer Loan Act).

*What types of lenders does it apply to (e.g., banks vs. non-banks)?* Applies to loans, broadly defined, but excludes:

- Banks, savings banks, trust companies, savings and loan or building and loan associations, and credit unions.
- Pawnbrokers.
- Retail installment sellers, unless credit is extended to purchase merchandise certificates, coupons, open or closed loop stored value, or other similar items issued and redeemable by a retail seller other than the retail seller extending the credit.
- Entities making loans under check cashers law.

- Business, commercial, or agricultural loans unless secured by borrower's primary residence.
- "Any person making loans made to government or government agencies or instrumentalities or making loans to organizations as defined in the federal truth in lending act."
- Entities making loans under housing trust fund law or HUD, USDA, or similar federal programs
- Loans made by nonprofit housing organizations or under federal- or state-funded low-income housing programs.
- "Entities making loans that are not residential mortgage loans under a credit card plan."
- Individuals employed by a licensed residential loan servicing company, unless so required by federal law or regulation.
- Licensed entities that process payments on seller-financed loans secured by liens on real or personal property.

### § 31.04.025.

*Licensure requirements and implications of licensure:* License required. If non-mortgage loan is made without a required license, fees, or interest must be refunded. § 31.04.035(1).

*Size and length of loans to which the statute applies, and any restrictions in the statute on these features:* Statute is silent.

*Other restrictions on applicability of statute (e.g., it only applies if lender takes a mortgage on real property):* Statute is silent.

*What rate of interest is allowed?* 25%. § 31.04.105(1).

*What loan fees are allowed?*

- Nonrefundable, prepaid, origination fee not to exceed 4% of the first \$20,000 and 2% of remainder. § 31.04.105(2).
- Actual fees paid to third parties who provide goods or services, including credit reporting agencies, title companies, appraisers, structural and pest inspectors, and escrow companies. No fees other than

appraisal fees meeting statutory requirements may be collected unless a loan is made. § 31.04.105(3).

*See also* Wash. Admin. Code §§ 208-620-555, 208-620-560 (providing details about fees).

*What types of insurance are allowed, and any limits the lending statute places on charges?* Licensee may sell insurance covering real and personal property, covering the life or disability or both of borrower, and covering the involuntary unemployment of borrower. §31.04.105(10).

*Does statute prohibit all other fees besides those specifically allowed?* Statute is silent.

*Does statute restrict balloon payments or irregular payment schedules?* Statute is silent.

*Any restrictions on refinancing?* Statute is silent.

*Any rebate requirements or restrictions on prepayment penalties?* Actuarial rebate required. § 31.04.125.

*What security interests (or postdated checks or ACH authorizations) are allowed or prohibited?* Statute is silent.

*Does statute prohibit unconscionable loan charges?* Statute is silent.

*Must lender underwrite or evaluate borrower's ability to repay?* Statute is silent, and administrative code, Wash. Admin. Code § 208-620-506, which requires that underwriting standards include analysis of ability to repay, applies only to mortgage lending.

*If state has a criminal usury law, is lending under this statute exempt from it?* Not applicable.

*Reporting requirements, including detail about what must be reported and whether there are any requirements that the state agency review or take other steps regarding the reports:* Annual report with information as director may reasonably require. Director shall publish annual analysis and recapitulation § 31.04.155.

*Other significant features:* Not applicable.

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## WEST VIRGINIA

### *W. Va. Code §§ 46A-1-101 to 46A-8-102 (Consumer Credit and Protection Act).*

*What types of lenders does it apply to (e.g., banks vs. non-banks)?* Applies generally to consumer lending, but excludes:

- Extensions of credit to government or governmental agencies or instrumentalities.
- Sale of insurance by an insurer, except as otherwise provided.
- Certain transactions under public utility or common carrier tariffs.
- Licensed pawnbrokers.
- Mortgage lender and broker licensees, to the extent of a conflict with certain other laws.

### *§§ 46A-1-103, 46A-1-105.*

*Licensure requirements and implications of licensure:* Must obtain license in order to make regulated consumer loans (defined by § 46A-1-102(38) as loans at more than 18% except those that qualify for federal preemption of state interest rate limits or where another state law authorizes the interest rate) or take assignments of and undertake collection of them. § 46A-4-101. Loan made without a required license is void. § 46A-5-101(2).

*Size and length of loans to which the statute applies, and any restrictions in the statute on these features:* "Consumer loan" is defined as one where either the principal does not exceed \$45,000 or the debt is secured by an interest in land or a factory-built home. § 46A-1-102(15).

*Other restrictions on applicability of statute (e.g., it only applies if lender takes a mortgage on real property):* Statute is silent.

*What rate of interest is allowed?*

- For loan of \$2,000 or less by regulated lender that is not secured by real property, 31% actuarial.



- For loan by regulated lender of greater than \$2,000 or which is secured by real property, 27% actuarial, but 18% if loan exceeds \$10,000. § 46A-4-107.
- In the alternative, any lender may charge 6% add-on interest, or 6% discount interest (capped at 15% actuarial). § 46A-3-104(1) (incorporating § 47-6-5a).
- As an additional alternative, lender may charge 1 percent in excess of federal discount rate. § 31A-4-30a (made applicable to non-bank lenders by § 46A-3-117).
- As a final alternative, any lender may charge 18% actuarial, by virtue of a board order under §§ 47A-1-1 to 47A-1-4.

Lender may charge minimum finance charge of \$5.00 if amount loaned does not exceed \$75.00, or \$7.50 if amount loaned exceeds \$75.00. § 46A-3-104(4).

*What loan fees are allowed?* Regulated lender may charge 2% of the amount financed as an origination fee, points or investigation fee (5% if loan is secured by real estate), but this fee plus interest must fall within the caps set by § 46A-4-107(4). Lender may also charge:

- Official fees (defined by § 46A-1-102(28) as recording fees or non-filing insurance premiums if no more than those fees) and taxes.
- Charges for other benefits, including insurance, conferred on the consumer, if the benefits are of value, the charges are reasonable and of a type which is not for credit, and are excluded as permissible additional charges from the finance charge by rule adopted by the commissioner
- Documentary charge if reasonable in amount and applied equally to cash and credit customers.

#### §§ 46A-3-109(a); 46A-4-107(4).

*What types of insurance are allowed, and any limits the lending statute places on charges?* Insurance on life and earning capacity of any consumer obligor; property insurance on collateral; vendor's or creditor's single interest insurance with respect to which the insurer has no right of subrogation. § 46A-3-109(b).

*Does statute prohibit all other fees besides those specifically allowed?* Yes, for regulated lenders. § 46A-4-107(4).

*Does statute restrict balloon payments or irregular payment schedules?* For closed-end non-agricultural consumer loan of less than \$1,500, consumer has right to refinance any balloon payment without penalty, unless payment schedule was adjusted for seasonal or irregular income. § 46A-2-105. Balloon payments prohibited in loans by regulated lender unless preempted by federal law. Payment schedule that produces negative amortization is prohibited. § 46A-4-110a(2).

*Any restrictions on refinancing?* Only provision relates solely to loans secured by real estate. § 46A-4-107(4).

*Any rebate requirements or restrictions on prepayment penalties?* Consumer may prepay in full at any time without penalty, with exception for certain loans secured by land. § 46A-3-110. Rule of 78s rebate (sum of the balances method) required upon prepayment in full if loan term is 36 months or less; otherwise, actuarial method. No rebate if less than \$1.00, and for loan not secured by real property lender may retain prepaid finance charges up to 2% of amount financed. § 46A-3-111(2) (incorporating § 47-6-5d).

*What security interests (or postdated checks or ACH authorizations) are allowed or prohibited?* Wage assignments are allowed but are revocable and limited to 25% of disposable earnings, and are prohibited altogether and void for regulated consumer lenders. §§ 46A-2-116, 46A-4-109(2). Regulated consumer lender may not take non-purchase money security interest in household goods in the possession and use of the borrower; for items other than household goods, security interest is allowed but regulated. § 46A-4-109(3).

*Does statute prohibit unconscionable loan charges?* Yes. § 46A-2-121.

*Must lender underwrite or evaluate borrower's ability to repay?* Statute is silent.

*If state has a criminal usury law, is lending under this statute exempt from it?* Criminal usury provision,



§ 46A-5-103, only criminalizes certain violations of the Consumer Credit and Protection Act, so does not provide an independent limit on the rates the Act authorizes.

*Reporting requirements, including detail about what must be reported and whether there are any requirements that the state agency review or take other steps regarding the reports:* Annual report in form prescribed by commissioner relating to all regulated consumer loans made and showing in detail the actual financial condition and the amount of the assets and liabilities of such financial institution. § 46A-4-104.

*Other significant features:* Loan-splitting prohibited. § 46A-4-108.

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## WISCONSIN

### *Wis. Stat. § 138.09 (Licensed Lenders).*

*What types of lenders does it apply to (e.g., banks vs. non-banks)?* Does not apply to banks, savings banks, savings and loan associations, trust companies, credit unions, or any of their affiliates, or to payday loans. § 138.09(1a).

*Licensure requirements and implications of licensure:* Must obtain license to do business under provision, charge interest authorized by provision, or assess finance charge on consumer loan over 18% per year. § 138.09(1m)(a).

*Size and length of loans to which the statute applies, and any restrictions in the statute on these features:* Term of loan that is scheduled to be repaid in substantially equal installments at equal periodic intervals may not exceed 24 months and 15 days if loan is for \$700 or less, or 36 months and 15 days if loan is for more than \$700 but no more than \$3,000. § 138.09(7)(d)(1).

*Other restrictions on applicability of statute (e.g., it only applies if lender takes a mortgage on real property):* Statute is silent.

*What rate of interest is allowed?* A loan made after October 31, 1984, is not subject to any maximum interest rate limit. § 138.09(7)(bp).

*What loan fees are allowed?*

- Official fees and taxes.
- Other fees approved by administrator
- Future service contracts or motor club service contracts if certain conditions are met.
- Mechanical breakdown, extended warranty or maintenance service contracts or insurance.
- The fee for filing a termination statement if loan is secured by merchandise other than a motor vehicle, a manufactured home, or a boat.

**§ 138.09(7)(i)** (specifying certain allowable charges and incorporating § 422.202).

*What types of insurance are allowed, and any limits the lending statute places on charges?* Property insurance; credit life insurance; credit accident and sickness insurance. § 138.09(7)(h).

*Does statute prohibit all other fees besides those specifically allowed?* Statute is silent.

*Does statute restrict balloon payments or irregular payment schedules?* Statute is silent.

*Any restrictions on refinancing?* Only restriction applies only to home-secured loans. § 138.09(7)(jm).

*Any rebate requirements or restrictions on prepayment penalties?* Borrower is entitled to prepay loan in whole or part. § 138.09(8)(c). Borrower is entitled to Rule of 78s rebate upon prepayment in full of a loan of less than \$5,000 that is precomputed, payable in substantially equal installments at approximately equal intervals, and for term of less than 37 months; otherwise, actuarial rebate, but lender may round interest rate down to nearest .025% when calculating the rebate. If combined rebate of interest and credit insurance premiums is less than \$1, no rebate need be made. §§ 138.09(7)(gm)(3), (4), 422.209.

*What security interests (or postdated checks or ACH authorizations) are allowed or prohibited?* Statute refers to real property, manufactured home, motor vehicle.

*Does statute prohibit unconscionable loan charges?* Statute is silent, but generally incorporates Wisconsin Consumer Act, which prohibits unconscionability. § 139.08(7)(k).

*Must lender underwrite or evaluate borrower's ability to repay?* Statute is silent.

*If state has a criminal usury law, is lending under this statute exempt from it?* Criminal usury law, § 943.27, applies only where lender charges a rate that is prohibited by some other law.

*Reporting requirements, including detail about what must be reported and whether there are any requirements that the state agency review or take other steps regarding the reports:* Annual report giving reasonable and relevant information that the division may require. § 138.09(3)(f).

*Other significant features:* Loan splitting prohibited. § 138.09(7)(j). Anti-evasion provision. § 138.09(9)(a).

### **Wis. Stat. §§ 421.101 to 427.105 (Wisconsin Consumer Act).**

*What types of lenders does it apply to (e.g., banks vs. non-banks)?* Act applies broadly to consumer credit transactions. § 421.107. Does not apply to:

- Extensions of credit to organizations.
- Transactions in which all parties are organizations.
- Certain transactions under public utility or common carrier tariffs.
- Pawnbrokers' rates and charges.
- Most sales of insurance.
- Consumer credit transactions in which amount financed exceeds \$25,000.
- First lien real estate mortgage transactions.
- Certain securities transactions.
- Motor vehicle leases that do not meet definition of consumer lease.

- Transactions for agricultural purposes, except for debt collection restrictions and a disclosure provision.
- For some purposes, certain consumer credit transactions made, insured, or guaranteed by a government agency.

### **§§ 421.202(1), 421.203**

*Licensure requirements and implications of licensure:* Registration requirement for those who make or solicit consumer credit transactions (except a person who engages in consumer credit transactions solely through honoring credit cards issued by third parties not related to such person), or who directly collect payments from or enforce rights against customers arising from such transactions. § 426.201.

*Size and length of loans to which the statute applies, and any restrictions in the statute on these features:* Statute is limited to loans of \$25,000 or less. § 421.202. For closed-end loan other than one pursuant to §138.09 (see above), loan term is limited to: 25 months if total of payments is \$700 or less; 37 months if total of payments is more than \$700, but does not exceed \$1,400; or 49 months if total of payments is more than \$1,400, but does not exceed \$2,000, unless the transaction is for the acquisition of or substantial improvement to real property in which case such period shall not exceed 61 months. Special rules for certain loans for the purpose of an improvement to real property. Exceptions for certain educational loans and loans made by administrative agencies. § 422.403.

*Other restrictions on applicability of statute (e.g., it only applies if lender takes a mortgage on real property):* Statute is silent.

*What rate of interest is allowed?* No limit. § 422.201(2) (bn).

*What loan fees are allowed?* Official fees (defined by § 421.301(26) as recording fees or non-filing insurance if no more than those fees) and taxes. § 422.202(1).

*What types of insurance are allowed, and any limits the lending statute places on charges?* Credit life insurance;

credit accident and sickness insurance; credit unemployment insurance; other insurance if certain conditions are met; future service contracts or motor club service contracts if certain conditions are met; mechanical breakdown, extended warranty or maintenance service contracts or insurance; liability insurance on collateral; property insurance on collateral, but only if amount financed is \$800 or more and the value of the property is \$800 or more. §§ 422.202(2s), 424.301.

*Does statute prohibit all other fees besides those specifically allowed?* Statute is silent.

*Does statute restrict balloon payments or irregular payment schedules?* No. Provision requiring substantially equal installments does not apply to loans made after 1984. § 422.402(6).

*Any restrictions on refinancing?* Minor restrictions. § 422.205.

*Any rebate requirements or restrictions on prepayment penalties?* Borrower may prepay in full or part at any time without penalty. § 422.208. Upon prepayment in full, borrower is entitled to Rule of 78s rebate (sum of the balances method) if amount financed was less than \$5,000 and initial term was less than 37 months; otherwise, actuarial method required, but lender may round interest rate down to nearest .025% when calculating the rebate. If the total of all rebates is less than \$1, no rebate need be made. § 422.209(1), (1m), (2).

*What security interests (or postdated checks or ACH authorizations) are allowed or prohibited?* Act does not apply to transactions secured by a first lien on real estate. § 421.202(7). Wage assignments are prohibited unless revocable. § 422.404. For a consumer loan, lender may not take a non-purchase money security interest in: (a) clothing of the customer and the customer's dependents and the following, if they are not fixtures: dining table and chairs, refrigerator, heating stove, cooking stove, radio, beds and bedding, couch and chairs, cooking utensils and kitchenware; or (b) real property if the obligation secured is less than \$1,000. § 422.417(3).

*Does statute prohibit unconscionable loan charges?* Yes. § 425.107.

*Must lender underwrite or evaluate borrower's ability to repay?* Statute is silent.

*If state has a criminal usury law, is lending under this statute exempt from it?* § 943.27 criminalizes loan contracts with interest exceeding 20% actuarial, but only if the rate is prohibited by a law other than § 943.27.

*Reporting requirements, including detail about what must be reported and whether there are any requirements that the state agency review or take other steps regarding the reports:* Administrator must report annually on practices in consumer transactions, on the use of consumer credit in the state, on problems attending the collection of debts, on the problems of persons of limited means in consumer transactions, and on the operation of the Act, including certain of the administrator's policies and procedures and recommendations for amendments to the Act. The administrator shall make available upon request a list of all persons against whom complaints have been filed and the results of all investigations completed or not being actively pursued along with a brief description of the facts of each case and the action taken in each. § 426.104.

*Other significant features:* Loan splitting prohibited. § 422.414.

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## WYOMING

[Wyo. Stat. Ann. §§ 40-14-101 to 40-14-702 \(Consumer Credit Code\).](#)

*What types of lenders does it apply to (e.g., banks vs. non-banks)?* Act applies broadly to all creditors extending consumer credit including consumer loans, but, except for loan originator licensing, excludes:

- Extensions of credit to government or governmental agencies or instrumentalities.
- The sale of insurance by an insurer if the premium is not financed.

- Certain transactions under public utility or common carrier tariffs.
- Ceilings on rates and charges or limits on loan maturities for credit unions.
- Agricultural credit, for most purposes.

### § 40-14-121.

*Licensure requirements and implications of licensure:* To make supervised loans, i.e., loans with interest rate higher than 10%, or to take assignments of and collect such loans (with 3-month grace period), must have license or be a supervised financial organization (defined by § 40-14-140(xix) as a depository institution, other than an insurer, that is subject to federal or state supervision). § 40-14-342. Loan made in violation of licensure requirements is void. § 40-14-521(b).

*Size and length of loans to which the statute applies, and any restrictions in the statute on these features:* Relevant provisions apply to “consumer loans,” defined to exclude those in which the principal exceeds \$75,000, unless the debt is secured by an interest in land or a dwelling located in Wyoming, and to exclude most first mortgage loans if interest rate is 18% or less. §§ 40-14-304, 40-14-305. Closed-end supervised loan must be payable over no more than 25 months if the principal is \$300 or less, and over no more than 37 months if the principal is more than \$300 but no more than \$1,000. § 40-14-351.

*Other restrictions on applicability of statute (e.g., it only applies if lender takes a mortgage on real property):* Statute is silent.

*What rate of interest is allowed?*

- For consumer loan other than a supervised loan, 10%, but, except as provided for pawnbrokers in § 40-14-360(f) and post-dated check cashers in § 40-14-363, lender may charge a minimum loan finance charge of \$30.00. § 40-14-310(a), (f).
- For supervised loan with of \$75,000 or less, either 36% on first \$1,000 and 21% on remainder, or 21% on entire amount. Where principal exceeds \$75,000, any finance charge specified in loan agreement. § 40-14-348.

*What loan fees are allowed?*

- Official fees (defined by § 40-14-140(a)(xi) as recording fees or non-filing insurance premiums if no more than those fees) and taxes.
- Charges excluded from the loan finance charge by the federal Consumer Credit Protection Act or by rule adopted by the administrator.

### § 40-14-311.

*What types of insurance are allowed, and any limits the lending statute places on charges?* Credit insurance providing life, accident, or health coverage; property and liability insurance on property related to the credit transaction. §§ 40-14-311(b), 40-14-450, 40-14-452. Creditor may charge for property insurance only if amount financed is \$300 or more and the value of the property is \$300.00 or more. § 40-14-450.

*Does statute prohibit all other fees besides those specifically allowed?* Statute is silent.

*Does statute restrict balloon payments or irregular payment schedules?* For closed-end consumer loan, debtor has right to refinance any balloon payment on terms at least as favorable as original terms, as long as creditor is still offering that type of credit and the debtor is creditworthy, except where payment schedule was adjusted for seasonal or irregular income. § 40-14-333. Closed-end supervised loans of \$1,000 or less must be payable in substantially equal installments at equal periodic intervals except to accommodate debtor’s seasonal or irregular income. § 40-14-351.

*Any restrictions on refinancing?* Statute is silent.

*Any rebate requirements or restrictions on prepayment penalties?* Debtor may prepay in full at any time without penalty. § 40-14-318. Rule of 78s rebate if original loan term did not exceed 61 monthly installments; otherwise, actuarial. No rebate required if less than \$1, and lender may retain minimum finance charge of \$30. § 40-14-319.

*What security interests (or postdated checks or ACH authorizations) are allowed or prohibited?* Wage assignments prohibited and unenforceable for consumer



loans, but borrower may authorize deductions from earnings if the authorization is revocable, and lender may take an assignment of commissions or accounts receivable payable to the debtor for services rendered. § 410-14-334. For a supervised loan where principal is \$1,000 or less, security interest in land is prohibited and void. § 40-14-350.

*Does statute prohibit unconscionable loan charges?* Yes. § 40-14-508.

*Must lender underwrite or evaluate borrower's ability to repay?* Statute is silent.

*If state has a criminal usury law, is lending under this statute exempt from it?* Not applicable.

*Reporting requirements, including detail about what must be reported and whether there are any requirements that*

*the state agency review or take other steps regarding the reports:* Administrator must make annual report on the operation of his office, on the use of consumer credit in the state, and on the problems of persons of small means obtaining credit from persons regularly engaged in extending sales or loan credit. The report shall include a description of certain of the administrator's procedures and policies, the number and percentages of offices which are periodically investigated or examined, a statement of the types of consumer credit problems of creditors and debtors which have come to his attention and their disposition, and the activities of his office. Administrator may require reports from lenders. § 40-14-604(e), (h), (j).

*Other significant features:* Loan splitting prohibited. § 40-14-349.



## APPENDIX D

### SUMMARIES OF STATE OPEN-END CREDIT STATUTES

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#### INTRODUCTION

This set of summaries encompasses state statutes that allow lenders other than depository institutions to extend unsecured open-end consumer credit, by credit card or otherwise, for cash advances. It excludes open-end credit statutes that are limited to:

- Credit for the purchase of goods or services.
- Credit that is secured by real property.
- Advances of less than \$500, or that must be repaid over less than six months.
- Vehicle title loans.
- Non-consumer transactions.
- Lending by banks, credit unions, or similar depository institutions.

Some states have special statutes for open-end credit. In other states, provisions regarding open-end credit are embedded in a more broadly-applicable consumer lending statute. Both types of provisions are included in these summaries. Consumer lending statutes that do not specifically provide for open-end credit are not included in these summaries, but are summarized only in the separate set of summaries of state installment loan laws.

Interest rates stated in these summaries are actuarial and per year unless otherwise specified. For the sake of simplicity, interest rates that are calculated by applying a rate to a declining balance are referred to as “actuarial” for the most part in these summaries, without regard to whether they allow unpaid interest to be added to the principal. However, for some statutes that are particularly clear that unpaid interest is not to be added to the principal, these summaries

term the interest rate “simple” interest. Where a statute specifies a monthly rather than annual interest rate, in most cases these summaries convert the interest rate to an annual rate.

Since open-end credit is universally structured as interest-bearing rather than precomputed, these summaries assume that rebate formulae for precomputed interest are inapplicable to open-end credit, so summaries of those provisions are not included. Similarly, since add-on and discount interest rates can be calculated only if the number of months in the loan term is known at the outset of the transaction, which is not the case for open-end credit, these summaries assume that statutes that allow only discount or add-on interest are inapplicable to open-end credit. See *National Consumer Law Center, Consumer Credit Regulation* Ch. 5 (2012), updated at [www.nclc.org/library](http://www.nclc.org/library), for an explanation of add-on and discount interest rate calculations and the difference between precomputed and interest-bearing obligations.

These summaries identify provisions in state open-end credit laws that prohibit unconscionable or unreasonable charges. These summaries do not, however, list other state sources of unconscionability rules. For example, a number of state unfair and deceptive practices statutes prohibit unconscionable consumer transactions. Whether those laws apply to credit terms varies from state to state and is beyond the scope of these summaries. See *National Consumer Law Center, Unfair and Deceptive Acts and Practices* §§ 2.2.1, 4.4 (8th ed. 2012), updated at [www.nclc.org/library](http://www.nclc.org/library) for a discussion of these issues. Many states also recognize a common law prohibition of unconscionability.

These summaries list the types of insurance for which the statutes allow creditors to charge consumers. If the statute prohibits creditors from charging consumers for insurance in certain transactions, such as loans under a certain amount, that is noted. However, the summaries do not list other restrictions, such as restrictions on the rates or the reasonableness of the insurance. They list fees that the consumer must pay in order to get or use the extension of credit, including annual or monthly fees, transaction charges, and up-front charges such as investigation charges and credit report fees. They do not include charges that relate solely to open-end credit secured by real estate or charges such as extension or deferment charges, collection costs, charges for dishonored checks, and charges for special processing of payments that are imposed only if future events occur.

Some provisions of state consumer credit statutes apply to extensions of credit that have scheduled payments within certain dollar limits or that have a term of a specific length. Since open-end credit is generally defined as having an indefinite payment period and undetermined payment amounts, these summaries assume that such provisions are inapplicable to open-end credit.

Some state consumer credit statutes provide that the consumer has the right to prepay a loan, but do not explicitly state whether a prepayment penalty can be charged. In some cases, the statute may forbid any charge that is not specifically allowed. These statutes will likely be interpreted to allow prepayment without penalty, since the statute does not specifically allow a prepayment penalty.

Many of the state open-end credit laws address wage assignments. The FTC's Credit Practices Rule, 16 C.F.R. § 444.2(a)(3), prohibits wage assignments unless they are revocable or apply only to wages already earned, with an exception for payroll deduction plans. The federal rule overrides any less protective state laws.

Many state consumer credit statutes require certain lenders to be licensed. These summaries describe the consequences stated by the statute that attach to

unlicensed lending that are specified in the statute. In some cases, there may be indirect consequences. For example, some statutes allow a lender to charge more than a certain rate only if licensed, and provide that a loan is void if it includes unauthorized charges. Under these statutes, any charges above that rate in a loan by an unlicensed lender are unauthorized, so the lack of a license means that the loan is void.

These summaries simplify complex statutory provisions, and do not attempt to capture the statutes' nuances or resolve ambiguities. They are based primarily on a close reading of the statutory language, and courts may have interpreted these laws in unexpected ways. We asked regulators in each state to review their state's summaries, and many did, but the conclusions and summaries are ours and do not represent an official interpretation or the views of state regulators. Consumers and lenders should consult an attorney or other authoritative source about the application and interpretation of these laws, and attorneys should review their state statutes, regulations, and judicial decisions thoroughly before advising clients about their requirements. Corrections should be brought to the attention of the authors.

These summaries were prepared in early 2015 and do not reflect amendments that may have occurred since then. These summaries are also included as Appendix E to *National Consumer Law Center, Consumer Credit Regulation* (2012), updated at [www.nclc.org/library](http://www.nclc.org/library), and will be updated there.

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## ALABAMA

*Ala. Code §§ 5-19-1 to 5-19-33 (Consumer Credit Act or "Mini-Code").*

*What types of lenders it applies to (e.g., banks vs. non-banks):* Applies generally to all creditors, except pawnbrokers and insurance agents or agencies that charge collection fees on unpaid balances for insurance premiums. In addition, provisions other than that § 5-19-1(1) (definition of "finance charge") and § 5-19-3 (maximum finance charges), do not apply to:

- A transaction involving an interest in real property where creditor is exempt from licensing.
- Non-consumer transactions.
- A credit transaction by a trust institution in its capacity as a fiduciary under any plan or agreement qualified under applicable federal law, or a trust exempt under federal tax law.
- A municipal pension system created under Alabama law.
- A policy loan by a life insurance company.

### § 5-19-31.

*Licensure requirements and implications of licensure:*

Unless creditor is bank, savings or building and loan association, savings bank or other thrift institutions, bank holding company, thrift holding company, credit union, or federally constituted agency, may not make consumer loans to Alabama residents or take assignments of consumer credit contracts without license. § 5-19-22(a). Any person licensed under the Small Loan Act may engage in business under that Act, but shall not make loans in excess of \$1,000 unless such person is also licensed under this Act. § 5-19-22(f).

*Size and length of loans to which the statute applies, and any restrictions in the statute on these features:* Statute has certain provisions that apply only to loans of less than \$2,000 and others that apply only to loans of \$2,000 or more.

*Other restrictions on applicability of statute (e.g., it only applies if lender takes a mortgage on real property):* Statute is silent.

*What rate of interest is allowed?* Banks, savings and loans associations, savings banks, and credit unions can charge agreed rate on open-end credit plan. § 5-19-3(e) (incorporating § 5-20-5). For open-end credit extended by other entities with credit limit less than \$2,000, 1-3/4% per month on first \$750 and 1-1/2% on excess, § 8-8-14(b), but may charge minimum finance charge of \$0.50 per month. § 5-19-3(c). In addition, creditor may charge surcharge of 6% of amount financed. § 8-8-14(a). For open-end credit

with credit limit of \$2,000 or more, any creditor can charge agreed rate unless unconscionable. § 5-19-3(e) (incorporating § 8-8-5).

*What loan fees are allowed?* Statute does not identify any fees that are allowed.

*What types of insurance are allowed, and any limits the lending statute places on charges?* Credit life, disability, and involuntary unemployment insurance; property insurance on collateral and liability insurance, but only if original amount financed is \$300 or more and the value of the property is \$300 or more; non-filing insurance. § 5-19-19.

*Does statute prohibit all other fees besides those specifically allowed?* Statute is silent.

*Does statute restrict balloon payments or irregular payment schedules?* Statute is silent.

*Any restrictions on refinancing?* Provisions apply only to closed-end credit.

*Any restrictions on prepayment penalties?* Provision applies only to closed-end credit.

*What security interests (or postdated checks or ACH authorizations) are allowed or prohibited?* Statute is silent.

*Does statute prohibit unconscionable loan charges?* Yes. § 5-19-16. *See also* § 8-8-5(a) (allowing agreed rate transactions but subjecting them to this unconscionability rule).

*Must lender underwrite or evaluate borrower's ability to repay?* Statute is silent.

*If state has a criminal usury law, is lending under this statute exempt from it?* Not applicable.

*Reporting requirements, including detail about what must be reported and whether there are any requirements that the state agency review or take other steps regarding the reports:* Statute is silent.

*Other significant features:* Prohibits loan-splitting. § 5-19-17.

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## ALASKA

### *Alaska Stat. §§ 06.20.010 to 06.20.920 (Small Loans Act).*

*What types of lenders it applies to (e.g., banks vs. non-banks):* All lenders except:

- Exception from license requirement only: banks, savings banks, trust companies, building and loan associations, and credit unions. § 06.20.010(b)
- Complete exemption: Individual loans by pawn-brokers where separate and individual loans do not exceed \$750 or loan shops where separate and individual loans do not exceed \$500. § 06.20.330.

*Licensure requirements and implications of licensure:*

A license is required for the business of making loans up to \$25,000 at an interest rate greater than otherwise permitted by law for non-licensees. §§ 06.20.010(a), 06.20.300. Non-licensee is limited to rate that can be charged without a license, § 06.20.300, and loan is unenforceable if more interest has been charged than permitted by the Act. § 06.20.310.

*Size and length of loans to which the statute applies, and any restrictions in the statute on these features:* Licensee may make open-end loans not exceeding an aggregate total of \$25,000. § 06.20.285(a).

*Other restrictions on applicability of statute (e.g., it only applies if lender takes a mortgage on real property):* Statute is silent.

*What rate of interest is allowed?*

- 3% a month on balance of \$850 or less;
- 2% a month on balance exceeding \$850 but not exceeding \$10,000; and
- Any rate agreed by contract on unpaid principal balance exceeding \$10,000 but not exceeding \$25,000.

§ 06.20.230(b). For amounts greater than \$25,000, licensee may not charge more interest than allowed for non-licensees. § 06.20.280.

*What loan fees are allowed?*

- Recording and titling fees, including non-filing insurance premiums that do not exceed these fees.
- For loans over \$10,000, reasonable costs and fees paid by a licensee for appraisals, surveys, title insurance or reports, and credit reports. § 06.20.260(a).

*What types of insurance are allowed, and any limits the lending statute places on charges?* General: Statute allows charges for credit insurance, insurance on pledged property, and non-filing insurance. § 06.020.260. Open-end loans: consumer credit, credit loss of income, and property insurance. §§ 06.20.260, 06.20.287.

*Does statute prohibit all other fees besides those specifically allowed?* Yes. § 06.20.260.

*Does statute restrict balloon payments or require substantially equal installments?* Yes, payments must be in substantially equal amounts and must be due at least once a month, with the first payment beginning not later than 45 days from the date the loan is made. There are exceptions for seasonal or extraordinary income. § 06.20.250(d), (e).

*Any restrictions on refinancing?* Statute is silent.

*Any restrictions on prepayment penalties?* Prepayment penalties are prohibited because not authorized by § 06.20.260. Lender must permit payment to be made in advance in any amount at any time. § 06.20.270(3).

*What security interests are allowed or prohibited (including postdated checks and ACH authorization)?* “A licensee may secure the payment of an open-end loan in the same manner as other loans under this chapter may be secured.” § 06.20.285(c).

*Does statute prohibit unconscionable loan charges?* Statute is silent.

*Must lender underwrite or evaluate borrower’s ability to repay?* Statute is silent.

*Is lending under this statute exempt from state criminal usury law?* Not applicable.



*Reporting requirements, including detail about what must be reported and whether there are any requirements that the state agency review or take other steps regarding the reports:* Annual report containing information as the department may reasonably require. § 06.20.190.

*Other significant features:* Prohibits loan splitting. § 06.20.240. Anti-evasion provisions. §§ 06.20.290, 06.20.300.

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## ARIZONA

### *Ariz. Rev. Stat. Ann. §§ 6-601 to 6-638 (Consumer Lenders Act).*

*What types of lenders it applies to (e.g., banks vs. non-banks):* Primarily non-bank lenders making at least 3 consumer loans per calendar year to state residents. Specific exclusions:

- Banks, savings banks, trust companies, savings and loan associations, profit sharing and pension trusts, credit unions, insurance companies or receiverships if the consumer lender loan transactions are regulated by the other law or are under the jurisdiction of a court.
- Licensed pawnbrokers.
- Lenders making fewer than two such loans per calendar year to state residents (*see* § 6-601(16)(b)).
- Mortgage brokers.
- Loans that are lawfully made to nonresidents of the state in any other state under a similar law.

### § 6-602.

*Licensure requirements and implications of licensure:* License required to engage in business of consumer lender unless exempt. § 6-603(A). Loan made by unlicensed lender is void. § 6-613(B).

*Size and length of loans to which the statute applies, and any restrictions in the statute on these features:* Credit limit of \$10,000 or less. §§ 6-601(9), (12), 6-602(B).

*Other restrictions on applicability of statute (e.g., it only applies if lender takes a mortgage on real property):* Statute is silent.

*What rate of interest is allowed?* Revolving loans and home equity revolving loans:

- Credit limit of \$3,000: 36%.
- Credit limit over \$3,000: either 36% on first \$3,000 and 24% on remainder or the equivalent blended rate.

### § 6-632(B)

*What loan fees are allowed?*

- Recording fees, or cost of non-filing insurance up to that amount. § 6-635(A)(3).
- Loan origination fee of 5% of agreed credit limit, capped at \$150. § 6-635(A)(4).

*What types of insurance are allowed, and any limits the lending statute places on charges?* Property insurance on collateral, life insurance, credit disability insurance, credit unemployment insurance. §§ 6-636, 6-638.

*Does statute prohibit all other fees besides those specifically allowed?* Yes. § 6-635(C).

*Does statute restrict balloon payments or irregular payment schedules?* Prohibits balloon payments, call options and other contract provisions that permit lender to accelerate payment of an open-end loan for any reason other than consumer's default are prohibited, except during first 15 years. If lender exercises call option after 15 years and loan is not in default, it must amortize the amount due over at least 60 monthly installments. § 6-637(D).

*Any restrictions on refinancing?* Statute is silent.

*Any restrictions on prepayment penalties?* Lender must allow prepayment. § 6-637(F).

*What security interests (or postdated checks or ACH authorizations) are allowed or prohibited?* Statute is silent, but references in various sections appear to contemplate security interests in personal and real property. *See, e.g.,* §§ 6-635(A)(3) and 6-636(E).



(referring to property insurance and security interests).

*Does statute prohibit unconscionable loan charges?* Statute is silent.

*Must lender underwrite or evaluate borrower's ability to repay?* Statute is silent.

*If state has a criminal usury law, is lending under this statute exempt from it?* Statute is silent.

*Reporting requirements, including detail about what must be reported and whether there are any requirements that the state agency review or take other steps regarding the reports:* Annual report in form prescribed by superintendent, including lender's standard APRs for several types of loans, including a consumer revolving loan with an agreed on credit limit of \$3,000 and a home equity revolving loan with an agreed on credit limit of \$15,000, and the number of consumer revolving loans under \$1,000. Superintendent must compile quarterly report of the standard APRs. §§ 6-609, 6-635(D).

*Other significant features:* Not applicable.

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## CALIFORNIA

*Cal. Fin. Code §§ 22000 to 22780 (West) (Finance Lenders Law).*

*What types of lenders it applies to (e.g., banks vs. non-banks):* "Finance lender" includes any person engaged in the business of making consumer loans or making commercial loans, including a personal property broker. § 22009. "Finance lender" includes any person engaged in the business of making consumer loans as defined in § 22203 or making commercial loans of \$5,000 or more § 22009. Consumer loans also include commercial loans of less than \$5,000 as defined by § 22204. The above statute does not apply to:

- Banks, trust companies, savings and loan associations, insurance premium finance agencies, credit unions, small business investment companies,

or community advantage lenders doing business under state or federal law.

- California business and industrial development corporations when acting under federal law or other state authority.
- Licensed pawnbrokers (when acting under the authority of that license).
- Licensed payday lenders.
- Check cashers holding valid permit or license.
- College or university making loan for program or course of study leading to a degree or certificate.
- Broker-dealer acting pursuant to a certificate under state law.
- Person who makes 5 or fewer loans in a 12-month period or who makes commercial loans of more than \$5,000 or under open-end credit program, if the loans are incidental to the person's business.
- A public corporation, public entity other than the state, or any of their agencies § 22050.
- Certain credit cards issued by an organization to its members for a fee designed to cover the administrative costs of the plan. § 22052.
- Loan made or arranged by state-licensed real estate broker and secured by a lien on real property, even if loan is then sold to a finance lender, or made to a licensed real estate broker who is making such a loan. § 22057.
- Loan made or arranged by a licensed residential mortgage lender or servicer when acting under the authority of that license. § 22060.

*Licensure requirements and implications of licensure:* Must have license to engage in business of making consumer loans. §§ 22100(a), 22009 (definition of finance lender). Willful violation of any provision of Act renders loan void. § 22750.

*Size and length of loans to which the statute applies, and any restrictions in the statute on these features:* None, but some provisions vary based on size of loan. Loans of \$5,000 or more are exempt from some of the Act's provisions. Loans of \$10,000 or more are exempt from all of the provisions relevant to these

summaries. § 22250. The Finance Lenders Laws has a structured regulatory threshold of loan amounts of \$2,500, \$5,000, and \$10,000 or more in which certain interest rates, fees and other charges are exempt as summarized in §22467. Refer to § 22467 to determine the bona fide principal amount specified in the regulatory ceiling provisions for open-end loans.

*Other restrictions on applicability of statute (e.g., it only applies if lender takes a mortgage on real property):* Statute is silent.

*What rate of interest is allowed?* Except for open-end loans with a bona fide principal of \$5,000 or more, § 22452 incorporates by reference the finance charge allowed for closed-end credit:

- For loans of \$2,500 or less: 2.5% per month on amount up to \$225; 2% per month on amount over \$225 and up to \$900; 1.5% per month on amount over \$900 and up to \$1,650; and 1% per month on remainder. § 22303.
- Alternative rate for loans of \$2,500 or less: the greater of 1.6% per month on the unpaid principal balance or 5/6 of 1% per month plus a percentage per month equal to 1/12 of the annual rate prevailing on the 25th day of the second month of the quarter preceding the quarter in which the loan is made, as established by the Federal Reserve Bank of San Francisco. § 22304.

*What loan fees are allowed?* For open-end loans up to \$5,000, § 22454 allows licensee to charge the same fees, costs, and expenses as are permitted for closed-end loans: if loan is \$2,500 or less, an administrative fee of 5% or \$50, whichever is less; if loan is more than \$2,500, a \$75 administrative fee. No administrative fee for refinancing unless at least one year since receipt of a previous administrative fee. Only one administrative fee may be received until loan has been repaid in full. § 22305 (but inapplicable to loans of \$5,000 or more). May also charge a participation fee pursuant to § 22462. May also charge recording fees, and any premium for non-filing insurance. § 22336.

*What types of insurance are allowed, and any limits the lending statute places on charges?* For open-end credit with bona fide principal amount of less than \$5,000, § 22454 allows licensee to use § 22313(a)–(d), which allows licensee to provide insurance on tangible personal or real property that secures the loan (Note that all real estate loans must to be \$5,000 or more.) In addition, the sale of credit insurance (credit life, credit disability, and credit unemployment insurance) is regulated for loans with a bona fide principal amount of less than \$10,000 under § 22455.

*Does statute prohibit all other fees besides those specifically allowed?* Yes. § 22306. See also § 22326. The statute prohibits all other fees besides those specifically allowed by statute such as late fees, NSF fee, and lien fee when provided for in the loan agreements for loans less than \$5,000. For loans of \$5,000 or more, the fees must be provided for in the loan agreement and limited to actual cost.

*Does statute restrict balloon payments or irregular payment schedules?* Statute requires minimum monthly payment for loans under \$5,000, which must either be a specified percentage of the balance or an amount sufficient to pay all charges plus some principal. § 22453. Requirement of substantially equal installments does not apply to open-end loans. § 22307; Cal. Code Regs. tit. 10, § 1453.

*Any restrictions on refinancing?* For loans up to \$5,000: No administrative fee for refinancing unless at least one year since receipt of a previous administrative fee. § 22305

*Any restrictions on prepayment penalties?* The borrower has the privilege of paying the account in full at any time. § 22450(d). Any prepayment penalty intended to be collected must be provided for in the loan agreement.

*What security interests (or postdated checks or ACH authorizations) are allowed or prohibited?* Statute prohibits collateral sales agreements other than a pledge, assignment, or mortgage of real or personal property. § 22312. Security interest in real property, other than

judgment lien, is prohibited if loan is for less than \$5,000. § 22330. Loans may be unsecured, secured by personal property, secured by real property, and/or by business equipment. Postdated checks may be accepted by a lender. ACH authorizations are permitted only if requested by the borrower and cannot be a requirement of the loan by the lender.

*Does statute prohibit unconscionable loan charges?* Yes. § 22302; Civil Code § 1670.5.

*Must lender underwrite or evaluate borrower's ability to repay?* Ability to pay provisions, § 22370(f)(4), apply only to Pilot Program for Increased Access to Responsible Small Dollar Loans. For all loans under the Finance Lenders Law, lenders are required to evaluate the borrower ability to repay pursuant to § 22714 and Cal. Code Regs. tit. 10, § 1452.

*If state has a criminal usury law, is lending under this statute exempt from it?* Not applicable. Note also that § 22002 exempts credit transactions governed by this Act from state constitution's interest rate cap.

*Reporting requirements, including detail about what must be reported and whether there are any requirements that the state agency review or take other steps regarding the reports:* Annual report with relevant information in form prescribed by commissioner. Reports shall be made available to the public for inspection except, upon lender's request, the balance sheet contained in the annual report of a sole proprietor or any other non-publicly traded persons. Licensee must also make other special reports as required. § 22159. Lender participating in the Pilot Program for Increased Access to Responsible Small Dollar Loans must file annual report separate from any other annual report licensee may have to file. § 22367.

*Other significant features:* Loan-splitting prohibited (but this section does not apply to loans of \$5,000 or more). § 22327. Anti-evasion provisions. §§ 22326, 22335. Prohibition against lending more than borrower wants. §§ 22251, 22467.

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## COLORADO

### *Colo. Rev. Stat. §§ 5-1-101 to 5-13-103 (Consumer Credit Code).*

*What types of lenders it applies to (e.g., banks vs. non-banks):* All creditors extending consumer credit except loans to government, non-installment sales of insurance, certain transactions under public utility or common carrier tariffs, certain transactions with pawnbrokers, certain transactions involving securities and commodities accounts, and certain state-guaranteed loans. § 5-1-202. Some provisions apply just to "supervised lenders," defined as depository institutions and licensed lenders, or to "supervised loans," defined as those at more than 12%. § 5-1-301(46).

*Licensure requirements and implications of licensure:* Must be a supervised financial organization (defined as taking deposits) or have a license in order to engage in the business of making supervised loans (ones at more than 12%) or to collect on them. §§ 5-2-301, 5-1-301(47). If lender makes supervised loan without a required license, consumer is not required to pay the finance charge. § 5-5-201.

*Size and length of loans to which the statute applies, and any restrictions in the statute on these features:* "Consumer loan" means a loan made or arranged by a person regularly engaged in the business of making loans in which either the principal does not exceed \$75,000 or the debt is secured by land. § 5-1-301(15).

*Other restrictions on applicability of statute (e.g., it only applies if lender takes a mortgage on real property):* Statute is silent. Note that this summary does not include the special provisions for loans of \$1,000 or less authorized by § 5-2-214 that are payable in substantially equal installments over 90 days to 12 months, since they do not appear adapted to open-end credit.

*What rate of interest is allowed?*

- For a consumer loan other than a supervised loan, 12%.
- For a supervised loan pursuant to a revolving credit account, 21%.

### § 5-2-201(1), (3).

*What loan fees are allowed?*

- Official fees and taxes.
- Charges for insurance.
- Annual fee for credit card or similar arrangement.
- Reasonable charges for other benefits conferred on the consumer if they meet certain requirements and are authorized by the administrator.
- \$2.00 or 2.5% of each cash advance on a credit card.

### § 5-2-202(1).

*What types of insurance are allowed, and any limits the lending statute places on charges?* Creditor may agree to provide and charge for insurance. § 5-4-104. Statute specifically mentions property insurance, liability insurance covering liability arising out of ownership or use of property related to the credit transaction, and credit life, accident, and health insurance. §§ 5-2-202(3), 5-4-301, 5-4-303. Creditor may not charge for property insurance unless the amount financed is \$1,000 or more and the value of the property is \$1,000 or more, and other conditions are met. § 5-4-301.

*Does statute prohibit all other fees besides those specifically allowed?* Consumer is not required to pay any charge in excess of amount allowed by the Code. § 5-5-201(2).

*Does statute restrict balloon payments or irregular payment schedules?* All loans made pursuant to § 5-2-214 (alternative charges for loans not exceeding \$1,000) shall be scheduled to be payable in substantially equal installments at equal periodic intervals. § 5-2-214(2).

*Any restrictions on refinancing?* Statute is silent.

*Any restrictions on prepayment penalties?* Consumer may prepay in full at any time without penalty. § 5-2-210.

*What security interests (or postdated checks or ACH authorizations) are allowed or prohibited?* For a consumer loan where the amount financed is \$3,000 or less, security interest in land is prohibited and void.

Wage assignment is prohibited and unenforceable. § 5-3-206.

*Does statute prohibit unconscionable loan charges?* Yes. § 5-5-109.

*Must lender underwrite or evaluate borrower's ability to repay?* Statute is silent.

*If state has a criminal usury law, is lending under this statute exempt from it?* Not applicable.

*Reporting requirements, including detail about what must be reported and whether there are any requirements that the state agency review or take other steps regarding the reports:* Annual report in form prescribed by administrator. Information contained in annual reports may be published only in composite form. § 5-2-304(2).

*Other significant features:* Prohibits loan-splitting. § 5-3-205.

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## CONNECTICUT

### Conn. Gen. Stat. §§ 36a-555 to 36a-573 (Small Loan Law).

*What types of lenders it applies to (e.g., banks vs. non-banks):* All except banks, credit unions, savings and loan association wholly owned subsidiary service corporations, persons who make loans for agricultural, commercial, industrial, or governmental use or extend credit through an open-end credit plan for the retail purchase of consumer goods or services, mortgage lenders, or mortgage correspondent lenders when making residential mortgage loans, and licensed pawnbrokers. § 36a-555.

*Licensure requirements and implications of licensure:* Must be licensed in order to make, broker, or arrange a loan of \$15,000 or less and charge interest greater than 12%. § 36a-555.

*Size and length of loans to which the statute applies, and any restrictions in the statute on these features:* Statute applies to loans of \$15,000 or less. § 36a-565(a).



*Other restrictions on applicability of statute (e.g., it only applies if lender takes a mortgage on real property):* Statute is silent.

*What rate of interest is allowed?* 19.8%. § 36a-565(c).

*What loan fees are allowed?* \$50 annual fee. § 36a-565(c).

*What types of insurance are allowed, and any limits the lending statute places on charges?* Credit life and credit accident and health insurance. § 36a-565(g).

*Does statute prohibit all other fees besides those specifically allowed?* Yes. § 36a-565(c).

*Does statute restrict balloon payments or irregular payment schedules?* Borrower has privilege of paying the account in full at any time or, if the account is not in default, in monthly installments of fixed or determinable amounts as provided in the agreement. § 36a-565(a).

*Any restrictions on refinancing?* Provision does not apply to open-end loans.

*Any restrictions on prepayment penalties?* Borrower has privilege of paying the account in full at any time. § 36a-565(a). Prepayment penalties are probably prohibited because they are not specifically allowed and § 36a-565(c) prohibits all fees not specifically permitted.

*What security interests (or postdated checks or ACH authorizations) are allowed or prohibited?* For open end loans, statute prohibits wage assignments and security interests in household goods, chattels, tangible or intangible personal property, motor vehicles or real property. § 36a-565(h).

*Does statute prohibit unconscionable loan charges?* Statute is silent.

*Must lender underwrite or evaluate borrower's ability to repay?* Statute is silent.

*If state has a criminal usury law, is lending under this statute exempt from it?* Statute is silent. Criminal usury statute, § 37-4, prohibits interest over 12% only if not otherwise provided by law.

*Reporting requirements, including detail about what must be reported and whether there are any requirements that the state agency review or take other steps regarding the reports:* Lender must annually furnish a sworn statement to Commissioner of the condition of the business. § 36a-569.

*Other significant features:* Not applicable.

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## DELAWARE

*Del. Code Ann. tit. 5, §§ 2214-2226 (Revolving Credit).*

*What types of lenders it applies to (e.g., banks vs. non-banks):* Persons in the business of lending money, except banks, federal credit unions, insurance companies, and others that are lending money under the authority of another law. §§ 2201, 2202, 2215.

*Licensure requirements and implications of licensure:* Licensed required if person makes more than 5 loans within any 12-month period. § 2202.

*Size and length of loans to which the statute applies, and any restrictions in the statute on these features:* Statute is silent.

*Other restrictions on applicability of statute (e.g., it only applies if lender takes a mortgage on real property):* Statute is silent.

*What rate of interest is allowed?* Agreed rate. § 2216.

*What loan fees are allowed?* Daily, weekly, monthly, annual, or other periodic charge in agreed amount:

- Transaction charge or charges in agreed amount.
- A minimum charge for each daily, weekly, monthly, annual or other scheduled billing period whenever there is a balance.
- Reasonable fees for services rendered or expenses incurred, such as commitment fees, official fees and taxes, premiums for insurance protecting the licensee against the borrower's default or other credit loss, costs for title examination, inspection, recording and other formal acts necessary or



appropriate to the security of the loan, filing fees, attorney fees and travel expenses.

- Other charges that commissioner includes in a schedule of costs, fees, services, points, premiums and other reasonable expenses.

### § 2218(a).

*What types of insurance are allowed, and any limits the lending statute places on charges?* Credit life, health, accident, health and accident or other credit or other permissible insurance, plus property or liability insurance if debt is secured by real or personal property. § 2221.

*Does statute prohibit all other fees besides those specifically allowed?* Yes. § 2218(a)(6).

*Does statute restrict balloon payments or irregular payment schedules?* Periodic billing cycles may be established in such manner and shall have such duration as may be specified in agreement. § 2216.

*Any restrictions on refinancing?* Statute is silent.

*Any restrictions on prepayment penalties?* Unless debt is secured by a real estate mortgage, borrower may pay outstanding unpaid indebtedness in full at any time, and without penalty except for a charge imposed to terminate a plan. § 2218(b).

*What security interests (or postdated checks or ACH authorizations) are allowed or prohibited?* Licensee may take such security as collateral “as may be acceptable to the licensee.” § 2215.

*Does statute prohibit unconscionable loan charges?* Statute is silent.

*Must lender underwrite or evaluate borrower’s ability to repay?* Statute is silent.

*If state has a criminal usury law, is lending under this statute exempt from it?* Not applicable.

*Reporting requirements, including detail about what must be reported and whether there are any requirements that the state agency review or take other steps regarding the reports:* Statute is silent.

*Other significant features:* Not applicable.

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## FLORIDA

### *Fla. Stat. §§ 516.001 to 516.36 (Consumer Finance Act).*

*What types of lenders it applies to (e.g., banks vs. non-banks):* Any lender except banks, savings banks, trust companies, building and loan associations, credit unions, or industrial loan and investment companies. A pawnbroker may not be licensed to transact business under the chapter. § 516.02(4).

*Licensure requirements and implications of licensure:* Must have license to engage in business of making “consumer finance loans,” defined as those of \$25,000 or less for which lender charges interest greater than 18%. §§ 516.01(2), 516.02.

*Size and length of loans to which the statute applies, and any restrictions in the statute on these features:* Licensee may offer line of credit not exceeding \$25,000. § 516.01(3).

*Other restrictions on applicability of statute (e.g., it only applies if lender takes a mortgage on real property):* Licensee may offer line of credit, but not a credit card. § 516.01(3).

*What rate of interest is allowed?*

- 30% on first \$3,000.
- 24% on next \$1,000.
- 18% on amount over \$4,000.

### § 516.031(1).

*What loan fees are allowed?*

- \$25 credit investigation fee. § 516.031(3)(a)(1).
- \$25 annual fee on each anniversary date of a line-of-credit account.
- Brokerage fee on a loan or line of credit of more than \$10,000.
- Documentary excise tax and recording fees or non-filing insurance not exceeding those fees.

### § 516.031(3)(a).

*What types of insurance are allowed, and any limits the lending statute places on charges?* Credit property, credit life, and disability insurance. § 516.35.

*Does statute prohibit all other fees besides those specifically allowed?* Yes. § 516.031(a).

*Does statute restrict balloon payments or irregular payment schedules?* Statute is silent.

*Any restrictions on refinancing?* If all or part of the consideration for a new loan contract is the unpaid principal balance of a prior loan with the licensee, the principal amount payable under the new loan contract may include not more than 60 days of unpaid interest accrued on the prior loan. § 516.031(5).

*Any rebate requirements or restrictions on prepayment penalties?* Statute requires lender to permit repayment at any time, with interest up to date of payment. § 516.15(3). Prepayment penalties are likely prohibited because not authorized by § 516.031.

*What security interests are allowed or prohibited (including postdated checks and ACH authorization)?* Security interest in land is prohibited for loan of less than \$1,000. § 516.031(1). Wage assignments are invalid. § 516.17.

*Does statute prohibit unconscionable loan charges?* Statute is silent.

*Must lender underwrite or evaluate borrower's ability to repay?* Statute is silent.

*Is lending under this statute exempt from state criminal usury law?* Criminal usury statute, § 687.071, prohibits charging more than 45% interest "(u)nless otherwise specifically allowed by law."

*Reporting requirements, including detail about what must be reported and whether there are any requirements that the state agency review or take other steps regarding the reports:* Statute is silent.

*Other significant features:* No loan splitting allowed. §§ 516.031(4), 516.21. Anti-evasion provisions,

specifically addressing sham purchases and sale of wages. §§ 516.02(2), 516.26.

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## HAWAII

*Haw. Rev. Stat. §§ 412:9-100 to 412:9-501 ("Article 9") (Financial Service Loan Companies).*

*What types of lenders it applies to (e.g., banks vs. non-banks):* Depository and non-depository financial services loan companies.

*Licensure requirements and implications of licensure:* Must have license as financial services loan company to make loans at rates in excess of those permitted by other law. § 412:9-101.

*Size and length of loans to which the statute applies, and any restrictions in the statute on these features:* For open-end "consumer loans," special provisions address interest calculation, credit life and disability insurance calculation, security interests, and allowable open-end consumer loan charges. § 412:9-305. "Consumer loan" is defined to include only those made to a natural person primarily for personal, family, or household purposes, in which the principal amount is \$25,000 or less or which are secured by real property, or by personal property used or expected to be used as the borrower's principal dwelling. § 412:9-100.

*Other restrictions on applicability of statute (e.g., it only applies if lender takes a mortgage on real property):* Statute is silent.

*What rate of interest is allowed?* 24% a year simple interest, plus any other charges that are excluded or excludable from the determination of finance charge under TILA. § 412:9-302(b)(2). (For open-end credit, all charges are excluded from TILA's finance charge except for interest.) For an open-end account that is also a "credit card agreement," lender may charge 18% simple interest, including all fees. § 412:9-302(d) (referencing § 412-4, which references § 478-11.5).

*What loan fees are allowed?*

- Fee on annual, periodic, or other basis, for participation in an open-end loan account. § 412:9-305(b).
- Over-the-limit fee. § 412:9-305(b).
- Fees, charges, and expenses reasonably related to the consumer loan that are actually paid to third parties, affiliates, or subsidiaries for services actually rendered and without kickbacks. § 412:9-304(6).
- Nonrefundable discount, points, loan fees, and origination charges are permitted on simple interest loans, but must be included as interest to determine compliance with the 24% cap. § 412:9-304(4).

*What types of insurance are allowed, and any limits the lending statute places on charges?* Credit-related insurance products, including credit life insurance, credit disability insurance, accident, and health or sickness insurance, involuntary unemployment insurance, personal property insurance, and mortgage protection insurance. § 412:9-200(6). May also sell accidental death and dismemberment insurance, and auto club memberships and home and automobile security plans, whether or not connected with a loan. § 412:9-201. Special provisions apply to open-end consumer loans with credit life insurance or credit disability insurance provided, including calculation of the insurance charge. § 412:9-305(a)(3).

*Does statute prohibit all other fees besides those specifically allowed?* Yes, for consumer loans. § 412:9-304.

*Does statute restrict balloon payments or irregular payment schedules?* Statute is silent.

*Any restrictions on refinancing?* Statute is silent.

*Any restrictions on prepayment penalties?* Prepayment penalties prohibited on an open-end consumer loan. § 412:9-304(2)(B).

*What security interests (or postdated checks or ACH authorizations) are allowed or prohibited?* For open-end consumer loans: A financial services loan company may retain any security interest in real or personal property securing the loan until it is terminated. § 412:9-305(a)(4).

*Does statute prohibit unconscionable loan charges?* Statute is silent.

*Must lender underwrite or evaluate borrower's ability to repay?* Statute is silent, but § 412:9-300 requires lender to make loans that are consistent with "prudent lending practices, in compliance with all applicable federal and state laws."

*If state has a criminal usury law, is lending under this statute exempt from it?* Not applicable. (Section 412:9-303 exempts loans made under article 9 from Hawaii's general usury statute, §§ 478-5, 478-6, which is a non-criminal statute.)

*Reporting requirements, including detail about what must be reported and whether there are any requirements that the state agency review or take other steps regarding the reports:* Statute is silent.

*Other significant features:* Not applicable.

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## IDAHO

### *Idaho Code Ann. §§ 28-41-101 to 28-49-107 (Credit Code).*

*What types of lenders it applies to (e.g., banks vs. non-banks):* Applies broadly to all creditors, including small loan companies, licensed lenders, finance companies, sales finance companies, industrial banks and loan companies, and commercial banks. § 28-41-107. Does not apply to extensions of credit to government agencies, sale of insurance, transactions under public utility or common carrier tariffs in some circumstances, or the rates and charges of licensed pawnbrokers. § 28-41-202.

*Licensure requirements and implications of licensure:* License required for business of making "regulated consumer loans," § 28-46-301(1), defined as those payable in at least four installments or for which a finance charge is imposed, or taking assignments of and collecting on such loans. § 28-41-301(23), (28), (35), (39), (44). Banks and other depository institutions are exempt from licensing requirement. § 28-46-301(2).

*Size and length of loans to which the statute applies, and any restrictions in the statute on these features:* No provisions applicable to open-end loans.

*Other restrictions on applicability of statute (e.g., it only applies if lender takes a mortgage on real property):* Statute is silent.

*What rate of interest is allowed?* Agreed rate.  
§ 28-42-201(1).

*What loan fees are allowed?* In addition to finance charge permitted, creditor may contract for and receive any other charge, except to the extent expressly prohibited or limited by the Act.  
§ 28-42-201(1).

*What types of insurance are allowed, and any limits the lending statute places on charges?* Generally allows creditor to provide and charge for insurance. § 28-44-104. This authority is not explicitly limited to credit insurance, although the statute specifically mentions credit life insurance, property insurance, and liability insurance, 28-44-202(1), 28-44-301(3), 28-44-303. Property insurance is not allowed unless amount financed is \$500 or more and the value of the property is \$500 or more and other conditions are met. § 28-44-303.

*Does statute prohibit all other fees besides those specifically allowed?* No. In addition to finance charge permitted, creditor may contract for and receive any other charge, except to the extent expressly prohibited or limited by the Act. § 28-42-201(1).

*Does statute restrict balloon payments or irregular payment schedules?* Provisions do not apply to open-end loans.

*Any restrictions on refinancing?* Statute is silent.

*Any restrictions on prepayment penalties?* Statute allows prepayment penalty in specified amount but only for certain real property-secured transactions other than same-lender refinance; otherwise, may prepay in full at any time without penalty. § 28-42-306.

*What security interests (or postdated checks or ACH authorizations) are allowed or prohibited?* Wage assignment is prohibited and unenforceable, but debtor

may revocably authorize deductions from earnings in some circumstances. § 28-43-304. Security interest in land is prohibited and void unless principal exceeds \$1,000. § 28-43-309.

*Does statute prohibit unconscionable loan charges?* Yes.  
§ 28-44-106.

*Must lender underwrite or evaluate borrower's ability to repay?* Statute is silent.

*If state has a criminal usury law, is lending under this statute exempt from it?* Not applicable.

*Reporting requirements, including detail about what must be reported and whether there are any requirements that the state agency review or take other steps regarding the reports:* Annual report in form prescribed by administrator. § 28-46-304.

*Other significant features:* Not applicable.

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## ILLINOIS

### 815 Ill. Comp. Stat. § 205/4.2 (Revolving Credit; Billing Statements; Disclosures).

*What types of lenders it applies to (e.g., banks vs. non-banks):* Banks, savings and loan associations, credit unions, lenders licensed under Consumer Finance Act, Consumer Installment Loan Act or Sales Finance Agency Act, and any other lender. § 205/4.2.

*Licensure requirements and implications of licensure:* License is required for non-depository lender to charge more than 18%. § 205/4.2.

*Size and length of loans to which the statute applies, and any restrictions in the statute on these features:* Statute is silent.

*Other restrictions on applicability of statute (e.g., it only applies if lender takes a mortgage on real property):* Applies to revolving credit, defined by § 205/4.1 as an arrangement, including one that uses a credit card, for open-end loans or advances.

*What rate of interest is allowed?* Banks, savings and loan associations, credit unions, and lenders that are



licensed under Consumer Finance Act, Consumer Installment Loan Act or Sales Finance Agency Act may charge interest in any amount or at any rate agreed upon by the parties. Any other lender may charge 1 1/2% per month. § 205/4.2.

*What loan fees are allowed?* 25 cents for each loan or cash advance under the revolving credit plan, or an annual fee up to \$20. § 205/4.2.

*What types of insurance are allowed, and any limits the lending statute places on charges?* Credit life and credit accident and health insurance. § 205/4.2(d).

*Does statute prohibit all other fees besides those specifically allowed?* Yes. § 205/4.2(e). *See also* § 205/5 (creditor may not receive more than is expressly authorized by this or another state law).

*Does statute restrict balloon payments or irregular payment schedules?* No, and statute contemplates payment schedules that are other than monthly. § 205/4.2 (reference to “not monthly”).

*Any restrictions on refinancing?* Statute is silent.

*Any restrictions on prepayment penalties?* Statute is silent.

*What security interests (or postdated checks or ACH authorizations) are allowed or prohibited?* Statute allows a revolving credit arrangement which grants the debtor a line of credit in excess of \$5,000 to include a security interest in real property, but is otherwise silent about security interests. § 205/4.1.

*Does statute prohibit unconscionable loan charges?* Statute is silent.

*Must lender underwrite or evaluate borrower’s ability to repay?* Statute is silent.

*If state has a criminal usury law, is lending under this statute exempt from it?* Not applicable.

*Reporting requirements, including detail about what must be reported and whether there are any requirements that the state agency review or take other steps regarding the reports:* Statute is silent.

*Other significant features:* Not applicable.

## INDIANA

*Ind. Code §§ 24-4.5-1-101 to 24-4.5-6-204 (Uniform Consumer Credit Code).*

*What types of lenders it applies to (e.g., banks vs. non-banks):* Applies broadly to all creditors, except:

- Extensions of credit to government or governmental agencies.
- Most sales of insurance by insurers.
- Certain transactions under public utility, municipal utility, or common carrier tariffs.
- Rates and charges of licensed pawnbrokers.
- Non-consumer loans.
- Installment agreements for purchase of home fuels in which a finance charge is not imposed.
- Federally related student loans.
- Certain transactions in securities or commodities accounts.

*§§ 24-4.5-1-108, 24-4.5-1-202.*

*Licensure requirements and implications of licensure:* License required to engage regularly in Indiana in the making of non-mortgage consumer loans, taking assignments of these loans in Indiana, or undertaking direct collection of payments from or enforcement of rights against debtors arising from these loans in Indiana, but licensing requirement does not apply to lending by depository institutions, their subsidiaries, or credit union service organizations, or to collection by licensed collection agency. § 24-4.5-3-502. Loan made without a required license is void. § 24-4.5-5-202(2).

*Size and length of loans to which the statute applies, and any restrictions in the statute on these features:* Relevant statutory provisions apply to any “consumer loan,” defined to exclude those exceeding \$53,500 (adjusted for inflation) unless the debt is secured by an interest in land or by personal property used or expected to be used as the principal dwelling of the debtor. § 24-4.5-1-301.5(9).



*Other restrictions on applicability of statute (e.g., it only applies if lender takes a mortgage on real property):* Statute is silent.

*What rate of interest is allowed?* For consumer loans other than supervised loans: 25%, and lender who does not charge annual fee may charge 50 cents for each month in which there is an unpaid balance. § 24-4.5-3-201(1), (4). For supervised loans (those over 25%):

- 36% on balance up to \$2,000 (adjusted for inflation), 21% on balance above \$2,000 but no more than \$4,000 (adjusted for inflation), and 15% on remainder; or
- 25% on entire balance.

#### § 24-4.5-3-508(1), (2).

*What loan fees are allowed?* For consumer loans other than supervised loans made under revolving loan account, \$50 origination fee. § 24-4.5-3-201(8)(b). For all loans:

- Official fees and taxes.
- Annual participation fees, but they must be reasonable in amount, bear a reasonable relationship to the lender's costs to maintain and monitor the loan account, and not be assessed for the purpose of circumvention or evasion of the statute.
- Charges for other benefits, including insurance, if department determines they benefit the debtor and are reasonable in relation to benefits.
- Transaction fee of 2% of the amount of the transaction or \$10, whichever is less.
- Origination fee of \$50.
- Over-the-limit fee of \$25 if account is more than \$100 over the limit.

#### §§ 24-4.5-3-201, 24-4.5-3-202, 24-4.5-3-508(8).

*What types of insurance are allowed, and any limits the lending statute places on charges?* Property or liability insurance; credit insurance providing life, accident, unemployment or other loss of income, or health

coverage. § 24-4.5-3-202(2). However, property insurance is allowed only if amount financed is \$1,110 or more (adjusted for inflation from \$300 pursuant to 750 Ind. Admin. Code § 1-1-1), the value of the property is \$1,100 or more (adjusted for inflation), and other conditions are met. § 24-4.5-4-301.

*Does statute prohibit all other fees besides those specifically allowed?* Debtor is not required to pay a charge in excess of that allowed by the Code. § 24-4.5-5-202(3).

*Does statute restrict balloon payments or irregular payment schedules?* Provisions do not apply to open-end loans.

*Any restrictions on refinancing?* Statute is silent.

*Any restrictions on prepayment penalties?* Except where loan is primarily secured by land, debtor may prepay in full at any time without penalty. § 24-4.5-3-209.

*What security interests (or postdated checks or ACH authorizations) are allowed or prohibited?* Wage assignments prohibited and unenforceable, but employee may authorize deductions from earnings if revocable. § 24-4.5-3-403. For supervised loan where principal is \$4,000 or less (adjusted for inflation), security interest in land is prohibited and void. § 24-4.5-3-510.

*Does statute prohibit unconscionable loan charges?* Yes. § 24-4.5-6-111.

*Must lender underwrite or evaluate borrower's ability to repay?* Statute is silent.

*If state has a criminal usury law, is lending under this statute exempt from it?* Indiana's criminal usury law does not exempt UCCC, but it criminalizes charging more than 45% interest only if lender has a reputation for using violence or other criminal means to collect the debt. § 24-4.5-5-107. *See also* § 35-45-7 (criminalizing lending at more than two times 36% interest).

*Reporting requirements, including detail about what must be reported and whether there are any requirements that the state agency review or take other steps regarding the reports:* Annual report as required by the department. § 24-4.5-3-505(5).

*Other significant features:* Loan-splitting prohibited. § 24-4.5-3-509.

## IOWA

### *Iowa Code §§ 537.1101 to 537.8101 (Consumer Credit Code).*

*What types of lenders it applies to (e.g., banks vs. non-banks):* Applies generally to entities extending credit, but excludes:

- Extensions of credit to government or governmental agencies.
- Sale of insurance.
- Transactions under public utility or common carrier tariffs in some circumstances.
- Transactions in securities or commodities accounts.
- Pawnbrokers, as to most provisions.

### *§ 537.1202.*

*Licensure requirements and implications of licensure:* License required to make supervised loans (defined by § 537.1301(45) as those that exceed the usual rate cap) unless person is a “supervised financial organization” (i.e., a depository institution), is licensed under the Regulated Loan Act or Industrial Loan Law, or enters into fewer than 10 supervised loans per year in the state and has neither an office physically located in the state nor engages in face-to-face solicitation in the state. License also required to collect on supervised loans, with three-month grace period. § 537.2301(2), (3). Consumer has a claim for damages if creditor makes supervised loan without required license. § 537.5201(1)(a)(1).

*Size and length of loans to which the statute applies, and any restrictions in the statute on these features:* Provisions do not apply to open-end credit.

*Other restrictions on applicability of statute (e.g., it only applies if lender takes a mortgage on real property):* “Consumer loan” does not include a debt secured by a first lien on real property. § 537.1301(15)(b)(2).

*What rate of interest is allowed?* No cap unless secured by vehicle title. § 537.2402.

*What loan fees are allowed?*

- Official fees and taxes.
- Actual amounts for registration, certificate of title or license fees.
- Annual fee (with no stated cap) and \$15 over-the-limit fee for credit card that entitles cardholder to purchase or lease goods or services from at least 100 persons not related to card issuer.
- Reasonable annual fee for line of credit tied to deposit account that may be accessed by check.
- For consumer loan that does not exceed \$3,000 with term of no more than 12 months, depository institution may charge additional application fee of 10% or \$30, whichever is less.

### *§ 537.2501.*

*What types of insurance are allowed, and any limits the lending statute places on charges?* Property or liability insurance and credit life, accident, health, and unemployment insurance. § 537.2501(2).

*Does statute prohibit all other fees besides those specifically allowed?* Consumer is not obligated to pay a charge in excess of that allowed by the Code. § 537.5201(2).

*Does statute restrict balloon payments or irregular payment schedules?* Provisions do not apply to open-end credit.

*Any restrictions on refinancing?* Statute is silent.

*Any restrictions on prepayment penalties?* Consumer may prepay in full at any time, § 537.2509, but statute is silent about prepayment penalties for open-end credit.

*What security interests (or postdated checks or ACH authorizations) are allowed or prohibited?* For supervised loan with finance charge exceeding 15% and amount financed of \$2,000 or less, security interest in real property used as a residence for the consumer or the consumer’s dependents is prohibited and void. § 537.2307. For supervised loan, non-purchase money

security interest in the clothing, dining table and set of chairs, refrigerator, heating stove, cooking stove, radio, beds and bedding, couch, two living room chairs, cooking utensils, or kitchenware used by the consumer, the consumer's dependents, or the family with whom the consumer resides is prohibited and void. § 537.3301. Wage assignment is prohibited and unenforceable, but borrower may revocably authorize payroll deductions. § 537.3305.

*Does statute prohibit unconscionable loan charges?* Yes. § 537.6111.

*Must lender underwrite or evaluate borrower's ability to repay?* Statute is silent, but probability of repayment is a listed factor in determining unconscionability.

*If state has a criminal usury law, is lending under this statute exempt from it?* Not applicable.

*Reporting requirements, including detail about what must be reported and whether there are any requirements that the state agency review or take other steps regarding the reports:* Annual report in form prescribed by licensing authority relating to all supervised loans made by licensee. § 537.2304(2). Administrator must make annual report to state legislature on the operation of the agencies charged with administering this law, and on the problems of persons of small means obtaining credit. § 537.6104(5).

*Other significant features:* Loan-splitting prohibited. § 537.3304.

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## KANSAS

### *Kan. Stat. Ann. §§ 16a-2-101 to 16a-9-102 (Consumer Credit Code).*

*What types of lenders it applies to (e.g., banks vs. non-banks):* Act applies to "consumer credit transactions," broadly defined. § 16a-1-301(5). Excludes extensions of credit to government or governmental agencies, certain transactions under public utility or common carrier tariffs, licensed pawnbrokers (except for disclosure requirements), and transactions covered by the insurance premium finance act. § 16a-1-202.

*Licensure requirements and implications of licensure:* Must be licensed engage in the business of making supervised loans (ones in which APR exceeds 12%) or taking assignments of them and collecting on them (with 3-month grace period), unless lender is a supervised financial organization (defined by § 16a-1-301(44) as a depository institution). § 16a-2-301(1). Supervised loan made without required license is void. § 16a-5-201(22).

*Size and length of loans to which the statute applies, and any restrictions in the statute on these features:* Parts 3 and 4, which include the relevant provisions, apply to "consumer loans," defined by § 16a-1-301(17) to exclude loans, other than those secured by land, where the amount financed exceeds \$25,000, and, *inter alia*, certain first mortgage loans. **§ 16a-2-102.**

*Other restrictions on applicability of statute (e.g., it only applies if lender takes a mortgage on real property):* Statute is silent.

*What rate of interest is allowed?* Agreed rate unless the open-end credit is secured by a first or second mortgage or a manufactured home, in which case an 18% cap applies in some circumstances. § 16a-2-401(1), (3). For any period in which a finance charge is due on a consumer loan pursuant to open end credit, the parties may agree on a minimum amount. § 16a-2-401(10).

*What loan fees are allowed?*

- Official fees and taxes.
- Charges for insurance.
- Charges for other benefits if valuable to consumer, reasonable in price, and identified by administrator's rules.
- \$5 convenience fee for special processing of payment.
- Prepaid finance charge of 2% of amount financed or \$100, whichever is less (but a higher amount if consumer loan is first or second mortgage or is secured by manufactured home). § 16a-2-401.

- Annual or monthly fees, over-the-limit fees, and cash advance fees in amount agreed to by consumer.

### § 16a-2-501.

*What types of insurance are allowed, and any limits the lending statute places on charges?* Statute generally authorizes creditor to provide and charge for insurance, including vendor's single interest insurance if insurance has no right of subrogation against consumer, property insurance, liability insurance, and credit life, accident and health, and loss of income insurance, but not other insurance protecting creditor against consumer's default or other credit loss. §§ 16a-4-104(1), 16a-2-501(2).

*Does statute prohibit all other fees besides those specifically allowed?* Statute is silent.

*Does statute restrict balloon payments or irregular payment schedules?* Provisions do not apply to open-end credit.

*Any restrictions on refinancing?* Restrictions on pre-paid finance charges when same lender refinances. § 16a-2-401(9).

*Any restrictions on prepayment penalties?* Consumer may prepay in full at any time without penalty. § 16a-2-509.

*What security interests (or postdated checks or ACH authorizations) are allowed or prohibited?* Security interest in land is prohibited and void for consumer loan where finance charge exceeds 12% and amount financed is \$3,000 or less. § 16a-2-307. Wage assignment is prohibited and unenforceable, but consumer may revocably authorize payroll deductions. § 16a-3-305.

*Does statute prohibit unconscionable loan charges?* Yes. § 16a-5-108.

*Must lender underwrite or evaluate borrower's ability to repay?* Statute is silent.

*If state has a criminal usury law, is lending under this statute exempt from it?* Not applicable.

*Reporting requirements, including detail about what must be reported and whether there are any requirements that the state agency review or take other steps regarding the reports:* Annual report in form prescribed by administrator. § 16a-2-304(5).

*Other significant features:* Loan-splitting prohibited. § 16a-3-304.

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## LOUISIANA

### *La. Rev. Stat. Ann. §§ 9:3510 to 9:3568 (West) (Consumer Credit Law).*

*What types of lenders it applies to (e.g., banks vs. non-banks):* Relevant provisions apply to consumer loans, broadly defined by § 9:3516(14). Law does not apply to:

- Extensions of credit to organizations, including government or governmental agencies.
- Most insurance sales.
- Certain transactions under public utility or common carrier tariffs.
- Motor vehicle credit transactions subject to the Motor Vehicle Sales Finance Act.
- Credit unions.
- Pawnbrokers.
- Extensions of credit for business, commercial, or agricultural purposes.
- Certain federally related mortgage loans.

*Licensure requirements and implications of licensure:* May not contract more than 4 transactions over any calendar year without obtaining license. Creditor with in-state office must also obtain license in order to take assignments of and undertake direct collection of payments from or consumer loans and collect them (with 3-month grace period). § 9:3557. The following are exempt from the licensing requirement:

- Banks, savings and loan associations, and similar institutions.
- A subsidiary of a state-chartered bank, savings and loan association, or similar institution if the parent owns 80% or more of it.



- A trust administered by a bank or a bank trust department.
- Governmental entities.
- Insurance companies making life insurance loans to policyholders.
- A qualified pension plan when extending credit to a plan participant.
- A bona fide pledgee of a consumer credit transaction to secure a bona fide loan thereon.
- A seller or other creditor refinancing a retail installment transaction subject to the Motor Vehicle Sales Finance Act.
- A creditor having no office within the state that offers credit to Louisiana consumers through the mails and other means of interstate commerce.
- Persons whose lending activities pertain to certain federally related mortgage loans, unless otherwise provided by rule.

## § 9:3560.

*Size and length of loans to which the statute applies, and any restrictions in the statute on these features:* Statute is silent.

*Other restrictions on applicability of statute (e.g., it only applies if lender takes a mortgage on real property):* Statute is silent.

*What rate of interest is allowed?* For “revolving loan account” made with “lender credit card,” 1 1/2% per month. For other revolving loan account: 36% per year on amount not exceeding \$1,400; 27% per year on amount over \$1,400 but not exceeding \$4,000; 24% per year on amount over \$4,000 but not exceeding \$7,000; and 21% per year on amount over \$7,000. § 9:3519(A). Or, in lieu of all other finance charges, lender may contract for and receive a minimum loan finance charge of not more than \$15 when the amount advanced does not exceed \$200 or \$25 when the amount advanced exceeds \$200. § 9:3519.

*What loan fees are allowed?*

For lender credit card, 4% fee for each cash advance. § 9:3524(D).

For revolving loan account, \$50 origination fee.

Non-real estate related notary fees up to \$15.

\$20 documentation fee.

Reasonable over-the-limit fees in connection with revolving loan or lender credit card.

Dishonored check charge of \$25 or 5%, whichever is greater.

Fee for services performed by a public license tag agent, and electronic lien and title fees. § 9:3530.

*What types of insurance are allowed, and any limits the lending statute places on charges?* Any credit insurance authorized by the state insurance code; property insurance. § 9:3542, 9:3543.

*Does statute prohibit all other fees besides those specifically allowed?* Yes. § 9:3554.1(B).

*Does statute restrict balloon payments or irregular payment schedules?* Statute refers to monthly and “more frequent than monthly” schedules. § 9:3524.

*Any restrictions on refinancing?* Statute is silent.

*Any restrictions on prepayment penalties?* Consumer may prepay in full at any time. 9:3531(A). Statute allows specified prepayment penalty for loan secured by real estate but is silent as to any authority to impose prepayment penalty on other loans. § 9:3532.

*What security interests (or postdated checks or ACH authorizations) are allowed or prohibited?* Statute is silent.

*Does statute prohibit unconscionable loan charges?* Yes. § 9:3516(36).

*Must lender underwrite or evaluate borrower’s ability to repay?* Statute is silent.

*If state has a criminal usury law, is lending under this statute exempt from it?* Not applicable.

*Reporting requirements, including detail about what must be reported and whether there are any requirements that the state agency review or take other steps regarding the reports:* Statute is silent.

*Other significant features:* Loan-splitting prohibited. § 9:3535.



## MAINE

### *Me. Rev. Stat. Ann. tit. 9-A, §§ 2-101 to 6-113 (Consumer Credit Code).*

*What types of lenders it applies to (e.g., banks vs. non-banks):* Applies to “consumer loans,” broadly defined by § 1-301(14). Does not apply to sale of insurance, provision of public utility services, rates and charges for credit unions and pawnbrokers that are set by other law, transactions in securities or commodities accounts, certain educational loans, certain transactions that are secured by first mortgages or that finance or refinance the acquisition or initial construction of real estate, and other transactions identified by rule. § 1-201. Relevant provisions apply to supervised financial organizations (defined by § 1-301 as banks and other depository institutions, nondepository trust companies, uninsured banks, merchant banks) and lenders licensed to make supervised loans. § 2-301.

*Licensure requirements and implications of licensure:* Must be supervised financial organization or have license to make supervised loans (defined by § 1-301(40) as those at more than 12.25% or that are secured by real estate), or take assignments of them and collect on them. § 2-301. If lender is unlicensed, debtor is not obligated to pay any application fee, prepaid finance charge or closing cost, nor the loan finance charge owed for the first 12 months of the loan, and may recover any part that has been paid. § 5-201.

*Size and length of loans to which the statute applies, and any restrictions in the statute on these features:* Definition of “consumer loan” excludes those for more than \$50,000 unless the loan is secured by manufactured housing or an interest in land. § 1-301(14).

*Other restrictions on applicability of statute (e.g., it only applies if lender takes a mortgage on real property):* Statute is silent.

*What rate of interest is allowed?* For open-end credit other than a “lender credit card” 18%. For “lender credit card” (defined by § 1-301(16) and (22) as a card,

coupon book or other single credit device, issued by a supervised lender, that may be used from time to time to obtain credit, but excluding any device to the extent it accesses an asset account), agreed rate. § 2-402. (“Supervised lender” is defined by § 1-301(39) to include lenders who are licensed to make supervised loans under § 2-301.)

*What loan fees are allowed?*

- Official fees and taxes.
- Annual charge for the privilege of using a retail credit card or lender credit card.
- Charges authorized by rule adopted by the administrator if benefits are of value to consumer and reasonable in relation to benefits or of a type that is not for credit.
- For supervised lender, except in case of open-end credit plan secured by consumer’s principal dwelling or second or vacation home.
  - Daily, weekly, monthly, annual or other periodic charge in such amount as agreement may provide;
  - Transaction charge or charges in such amount as agreement may provide;
  - Minimum charge for each daily, weekly, monthly, annual, or other scheduled billing period during which there is an unpaid indebtedness;
  - Reasonable fees for services rendered or for reimbursement of expenses incurred in good faith by creditor or its agents in connection with the plan, or other reasonable fees incident to the application for and the opening, administration, and termination of the plan, including commitment, application and processing fees, official fees and taxes, and filing fees.

### *§§ 2-501, 2-507.*

*What types of insurance are allowed, and any limits the lending statute places on charges?* Creditor may charge for insurance, including vendor’s single interest insurance with respect to which insurer has no right of subrogation against consumer, property insurance, liability insurance, and consumer credit insurance providing life, accident or health coverage or

involuntary unemployment coverage, but not other insurance protecting creditor against consumer's default or other credit loss. §§ 2-501, 4-104. Charging for credit accident and health is prohibited unless there is a minimum payment of \$30 per month or a loan duration of at least 18 months. § 4-104(3).

*Does statute prohibit all other fees besides those specifically allowed?* Debtor is not required to pay a charge in excess of that allowed by the Code. § 5-201(3).

*Does statute restrict balloon payments or irregular payment schedules?* Provisions do not apply to open-end credit.

*Any restrictions on refinancing?* For most consumer credit transactions, rate upon refinancing is limited to 1% more per year than original rate. § 2-504.

*Any restrictions on prepayment penalties?* Unless loan is secured by land, may prepay in full or in part at any time without penalty, "except for minimum charges as permitted by law." § 2-509.

*What security interests (or postdated checks or ACH authorizations) are allowed or prohibited?* Wage assignment is prohibited and void, but consumer may revocably authorize deductions from earnings. Security interest in land is prohibited and void for a supervised loan that has an APR greater than 18%. Security interest in consumer's principal residence is prohibited for supervised loan in which amount financed or credit limit is \$2,800 or less, unless lender already holds first mortgage. §§ 3-305, 2-307

*Does statute prohibit unconscionable loan charges?* Yes. § 5-108.

*Must lender underwrite or evaluate borrower's ability to repay?* Statute is silent.

*If state has a criminal usury law, is lending under this statute exempt from it?* Not applicable.

*Reporting requirements, including detail about what must be reported and whether there are any requirements that the state agency review or take other steps regarding the reports:* Administrator may require licensed supervised lender to file annual and quarterly reports, and

additional reports if deemed necessary. Information contained in reports may be published only in composite form. § 2-304(2).

*Other significant features:* Loan-splitting prohibited. § 3-304.

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## MARYLAND

*Md. Code Ann., Com. Law §§ 12-901 to 12-925 (West) (Credit Grantor Revolving Credit Provisions).*

*What types of lenders it applies to (e.g., banks vs. non-banks):* Applies to any "credit grantor," defined to include, *inter alia*, any legal or commercial entity that is incorporated, chartered, or licensed pursuant to state or federal law, the lending operations of which are subject to supervision, examination, and regulation by a state or federal agency; any money transmitter licensed in Maryland; or any retailer. § 12-901(f)(1).

*Licensure requirements and implications of licensure:* Must comply with licensure requirements of Md. Code, Fin. Inst. §§ 11-301, 11-302, which requires licensure for installment lenders, with exceptions for banks, savings and loan associations, credit unions, and certain of their subsidiaries; licensees under the Consumer Loan Law (Fin. Inst. §§ 11-201 to 11-223); and certain sellers, mortgage lenders, and educational loans. § 12-915(a).

*Size and length of loans to which the statute applies, and any restrictions in the statute on these features:* Provisions regarding "consumer borrowers" apply to consumer loans regardless of amount if loan is for personal, family, or household purposes. § 12-901(d).

*Other restrictions on applicability of statute (e.g., it only applies if lender takes a mortgage on real property):* Statute is silent.

*What rate of interest is allowed?* 24%. § 12-903(a)(1).

*What loan fees are allowed?* For unsecured open end credit plan:

- Annual charge and transaction charges in any amounts the agreement provides.
- Minimum charge for each billing period during which there is an unpaid indebtedness.
- Fees incurred by the credit grantor and not retained by the credit grantor for attorney services in connection with loan preparation, closing, or disbursement.
- Special provisions for fees for open end credit plans secured by a bank account and for credit unions.

### § 12-905.

*What types of insurance are allowed, and any limits the lending statute places on charges?* Credit life, credit accident and health, credit disability, involuntary unemployment insurance, and similar coverage; property insurance, title insurance, and credit loss insurance if loan is secured. § 12-909(a).

*Does statute prohibit all other fees besides those specifically allowed?* Yes, with respect to an unsecured open end credit plan. § 12-905(1).

*Does statute restrict balloon payments or irregular payment schedules?* Yes, but the adjustment of payment amounts, due to fluctuations in unpaid balance or rate of interest, is defined not to result in a balloon payment. § 12-903(a)(2).

*Any restrictions on refinancing?* Statute is silent.

*Any restrictions on prepayment penalties?* Statute is silent.

*What security interests (or postdated checks or ACH authorizations) are allowed or prohibited?* Any security as collateral as may be acceptable to the credit grantor. § 12-902(a)(2). Wage assignments are prohibited and unenforceable as to revolving credit plans for consumer borrowers for consumer purposes. § 12-923(a), (b)(2).

*Does statute prohibit unconscionable loan charges?* Statute is silent.

*Must lender underwrite or evaluate borrower's ability to repay?* For mortgages only. § 12-925.

*If state has a criminal usury law, is lending under this statute exempt from it?* Not applicable.

*Reporting requirements, including detail about what must be reported and whether there are any requirements that the state agency review or take other steps regarding the reports:* Statute is silent.

*Other significant features:* Not applicable.

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## MASSACHUSETTS

*Mass. Gen. Laws ch. 140, §§ 114B, 114C; 209 Mass. Code Regs. § 26.01.*

*What types of lenders it applies to (e.g., banks vs. non-banks):* Any creditor. § 114B.

*Licensure requirements and implications of licensure:* None.

*Size and length of loans to which the statute applies, and any restrictions in the statute on these features:* Statute is silent.

*Other restrictions on applicability of statute (e.g., it only applies if lender takes a mortgage on real property):* Applies to open-end credit plans. § 114B. Section 114C applies to credit card issuers.

*What rate of interest is allowed?* Periodic rate of 18%, but if index rate determined by state banking commissioner based on U.S. Treasury bills exceeds 18%, creditor may charge rate established by creditor. Minimum charge of \$0.50 is allowed. Ch. 140, § 114B.

*What loan fees are allowed?* Credit card issuer may charge an annual fee. No cap stated. Ch. 140, § 114C.

*What types of insurance are allowed, and any limits the lending statute places on charges?* Statute is silent.

*Does statute prohibit all other fees besides those specifically allowed?* Statute is silent..

*Does statute restrict balloon payments or irregular payment schedules?* Statute is silent.

*Any restrictions on refinancing?* Statute is silent.

*Any restrictions on prepayment penalties?* Statute is silent.

*What security interests (or postdated checks or ACH authorizations) are allowed or prohibited?* Statute is silent.

*Does statute prohibit unconscionable loan charges?* No, but Mass. Code Regs. tit. 940, § 3.16(1) provides that an act or practice is violation of the state deceptive practices statute, Mass. Gen. Laws Ch. 93A (which applies to lending) if it is oppressive or unconscionable in any respect.

*Must lender underwrite or evaluate borrower's ability to repay?* Statute is silent.

*If state has a criminal usury law, is lending under this statute exempt from it?* Criminal usury statute, caps interest and expenses at 20%, and defines interest broadly. Ch. 271, § 49. It exempts any loan for which the rate of interest is regulated under any other law and any lender subject to control, regulation or examination by any state or federal regulatory agency. Ch. 271, § 49(e). Since Ch. 140, §§ 114B and 114C do not regulate "interest," but only the "periodic rate" and the "annual fee," it appears that the criminal usury statute applies to lenders operating under those statutes. However, a lender can exempt itself from the criminal usury statute by notifying the state attorney general of its intent to engage in higher-rate transactions. Ch. 271, § 49(d).

*Reporting requirements, including detail about what must be reported and whether there are any requirements that the state agency review or take other steps regarding the reports:* Must file annual report. Ch. 140, § 98.

*Other significant features:* Loan splitting prohibited. Ch. 140, § 100.

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## MICHIGAN

*Mich. Comp. Laws §§ 493.1 to 493.24 (Regulatory Loan Act).*

*What types of lenders it applies to (e.g., banks vs. non-banks):* Applies generally to lenders, but exempts banks, savings banks, industrial banks, trust companies, building and loan associations, credit unions, and licensed pawnbroking. §§ 493.2, 493.20.

*Licensure requirements and implications of licensure:* Must have license to make loans at rate higher than non-licensee can charge. § 493.2(1).

*Size and length of loans to which the statute applies, and any restrictions in the statute on these features:* Statute is silent.

*Other restrictions on applicability of statute (e.g., it only applies if lender takes a mortgage on real property):* Statute applies to open-end credit consisting of direct advances from the licensee or checks issued by the licensee, but not open-end credit available through the use of a credit card or charge card. § 493.13(1)(b).

*What rate of interest is allowed?* 25% per year, but a depository institution may charge any rate of interest or finance charge on a credit card. §§ 493.13(1) (incorporating § 445.1854).

*What loan fees are allowed?* Provision applies to open-end credit consisting of direct advances from the licensee or checks issued by the licensee, but not to open-end credit available through the use of a credit card or charge card. § 493.13(1)(b). Reasonable annual fee. § 493.13(8), (9).

*What types of insurance are allowed, and any limits the lending statute places on charges?* Credit insurance, and any other insurance under the insurance code. § 493.13a.

*Does statute prohibit all other fees besides those specifically allowed?* Yes. § 493.13(4).

*Does statute restrict balloon payments or irregular payment schedules?* Statute is silent.



*Any restrictions on refinancing?* Statute is silent.

*Any restrictions on prepayment penalties?* Licensee must permit payment to be made in advance in any amount on any loan at any time. § 493.14(c).

*What security interests (or postdated checks or ACH authorizations) are allowed or prohibited?* Forbids liens on real estate except by execution or otherwise after entry of judgment. § 493.12(2). Wage assignments are invalid. Security interest in borrower's household goods is invalid unless in writing and signed by borrower, plus borrower's spouse if borrower is married and not separated. § 493.17.

*Does statute prohibit unconscionable loan charges?* Statute is silent.

*Must lender underwrite or evaluate borrower's ability to repay?* Statute is silent.

*If state has a criminal usury law, is lending under this statute exempt from it?* Statute is silent. Criminal usury law, § 438.41, criminalizes charging more than 25% only when lender is not authorized or permitted by law to do so.

*Reporting requirements, including detail about what must be reported and whether there are any requirements that the state agency review or take other steps regarding the reports:* Annual financial statement, including information on earnings and statement of volume and type of business activities. Commissioner shall publish an annual analysis and recapitulation. § 493.11.

*Other significant features:* Anti-evasion provision. § 493.18(1), (2).

### **Mich. Comp. Laws §§ 445.1851 to 445.1864 (Credit Reform Act).**

*What types of lenders it applies to (e.g., banks vs. non-banks):* Act applies to extensions of credit made by regulated lenders. § 445.1854. "Regulated lender" means a depository institution, a licensee under the consumer financial services act, the motor vehicle sales finance act, or the regulatory loan act (summarized above), or a seller under the home improvement finance act. § 445.1852(i).

*Licensure requirements and implications of licensure:* Act applies to extensions of credit by "regulated lenders." § 445.1854. Non-depository lenders, other than sellers under home improvement finance act, qualify as "regulated lenders" only if they are licensed under other law. § 445.1852(i).

*Size and length of loans to which the statute applies, and any restrictions in the statute on these features:* Statute is silent.

*Other restrictions on applicability of statute (e.g., it only applies if lender takes a mortgage on real property):* Statute is silent.

*What rate of interest is allowed?* 25%, but depository institution may charge any rate of interest or finance charge on a credit card. § 445.1854.

*What loan fees are allowed?* Except for depository institutions and as otherwise provided by law, a regulated lender may require the borrower to pay a processing fee of 2% of amount of credit extended. § 445.1856(1)(a). A depository institution may charge, collect, and receive from a borrower or buyer all fees and charges that are agreed to or accepted by the borrower. § 445.1857.

*What types of insurance are allowed, and any limits the lending statute places on charges?* Statute is silent.

*Does statute prohibit all other fees besides those specifically allowed?* Statute is silent.

*Does statute restrict balloon payments or irregular payment schedules?* Statute is silent.

*Any restrictions on refinancing?* Statute is silent.

*Any restrictions on prepayment penalties?* An agreement by a borrower or buyer to pay a penalty is void and unenforceable, but this section defines prepayment charges not to be penalties. § 445.1858(c)

*What security interests (or postdated checks or ACH authorizations) are allowed or prohibited?* Statute is silent.

*Does statute prohibit unconscionable loan charges?* Statute is silent.



*Must lender underwrite or evaluate borrower's ability to repay?* Statute is silent.

*If state has a criminal usury law, is lending under this statute exempt from it?* Statute is silent. Criminal usury law, § 438.41, criminalizes charging more than 25% only when lender is not authorized by law to do so.

*Reporting requirements, including detail about what must be reported and whether there are any requirements that the state agency review or take other steps regarding the reports:* Statute is silent.

*Other significant features:* Not applicable.

### **Mich. Comp. Laws §§ 493.101 to 493.114 (Regulatory Loans; Credit Card Arrangements).**

*What types of lenders it applies to (e.g., banks vs. non-banks):* Applies generally to lenders that offer credit cards, but excludes banks, savings and loan associations, credit unions, and retail sellers or other creditors under the Retail Installment Sales Act, except that, to the extent such a lender uses the rate authority provided in the Act, it must also comply with the Act's other substantive provisions. § 493.114(1).

*Licensure requirements and implications of licensure:* Must be licensed under this Act or the consumer financial services act, §§ 487.2051 to 487.2072, in order to make or negotiate, or offer to make or negotiate, a credit card arrangement. § 493.102.

*Size and length of loans to which the statute applies, and any restrictions in the statute on these features:* Statute is silent.

*Other restrictions on applicability of statute (e.g., it only applies if lender takes a mortgage on real property):* Statute is silent.

*What rate of interest is allowed?* 18%. § 493.110(1).

*What loan fees are allowed?* Licensee may assess a fee for the privilege of having a credit card or charge card if fee is not computed as a percentage of the unpaid balance. § 493.110(1).

*What types of insurance are allowed, and any limits the lending statute places on charges?* Credit life or credit

accident and health insurance or any other insurance. § 493.110(2), (3).

*Does statute prohibit all other fees besides those specifically allowed?* Statute is silent.

*Does statute restrict balloon payments or irregular payment schedules?* Statute is silent.

*Any restrictions on refinancing?* Statute is silent.

*Any restrictions on prepayment penalties?* Statute is silent.

*What security interests (or postdated checks or ACH authorizations) are allowed or prohibited?* Statute is silent.

*Does statute prohibit unconscionable loan charges?* Statute is silent.

*Must lender underwrite or evaluate borrower's ability to repay?* Statute is silent.

*If state has a criminal usury law, is lending under this statute exempt from it?* Statute is silent. Criminal usury law, § 438.41, criminalizes charging more than 25% only when lender is not authorized by law to do so.

*Reporting requirements, including detail about what must be reported and whether there are any requirements that the state agency review or take other steps regarding the reports:* Statute is silent.

*Other significant features:* Not applicable.

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## **MINNESOTA**

### **Minn. Stat. § 47.59 (Financial Institution Credit Extension Maximum Rates).**

*What types of lenders it applies to (e.g., banks vs. non-banks):* Law applies to any "financial institution," defined as a bank, a bank and trust, a trust company with banking powers, a saving bank, a savings association, an industrial loan and thrift company organized under chapter 53, a regulated lender organized under chapter 56 (see next summary), or an operating subsidiary of any such institution. § 47.59 subdiv. 1(k).

*Licensure requirements and implications of licensure:* Statute is silent, but the lenders to which it applies are required by other law to be licensed or chartered or the equivalent.

*Size and length of loans to which the statute applies, and any restrictions in the statute on these features:* Statute is silent.

*Other restrictions on applicability of statute (e.g., it only applies if lender takes a mortgage on real property):* Statute is silent.

*What rate of interest is allowed?* For loan pursuant to open-end credit other than a credit card, § 47.59 subdiv. 3(a) allows:

- 21.75% on unpaid balance; or
- 33% on unpaid balance not exceeding \$1,125 and 19% per year on unpaid balance over \$1,125.

For credit card, 18%. § 47.59 subdiv. 3(a).

*What loan fees are allowed?*

- \$50 annual fee.
- Over-the-limit charges and charges for obtaining a cash advance in an amount not to exceed the \$30 charge permitted by § 604.113 for dishonored checks.
- The charges generally allowed for all extensions of credit: official fees and taxes; dishonored check fees; and charges for other benefits, including insurance, conferred on the borrower that are of a type that is not for credit.

#### § 47.59 subdiv. 6(a), (c).

*What types of insurance are allowed, and any limits the lending statute places on charges?* An additional charge may be made for insurance written in connection with the loan contract, including property insurance, liability insurance, credit insurance, or mortgage insurance providing life, accident, health, or unemployment coverage, and vendor's single interest insurance. 47.59 subdiv. 6(b).

*Does statute prohibit all other fees besides those specifically allowed?* Borrower is not required to pay any charge

in excess of those allowed by the statute. § 47.59 subdiv. 14.

*Does statute restrict balloon payments or irregular payment schedules?* Statute is silent.

*Any restrictions on refinancing?* Statute is silent.

*Any restrictions on prepayment penalties?* Borrower may prepay in full the unpaid balance of a consumer loan at any time without penalty. § 47.59 subdiv. 9.

*What security interests (or postdated checks or ACH authorizations) are allowed or prohibited?* Wage assignment is unenforceable unless it is a revocable payroll deduction or preauthorized payment plan or applies only to wages already earned at the time of the assignment. § 47.59 subdiv. 12(c). Other than this, statute is silent about what security interests are authorized or prohibited, but it refers to charges for perfecting security interests and insurance on property securing a loan.

*Does statute prohibit unconscionable loan charges?* Statute is silent.

*Must lender underwrite or evaluate borrower's ability to repay?* Statute is silent.

*If state has a criminal usury law, is lending under this statute exempt from it?* Not applicable.

*Reporting requirements, including detail about what must be reported and whether there are any requirements that the state agency review or take other steps regarding the reports:* Statute is silent, but an annual report to the commissioner of commerce is required by chapters 53 and 56 and § 47.60.

*Other significant features:* Not applicable.

#### **Minn. Stat. § 47.601 (Consumer Short-Term Loans).**

*What types of lenders it applies to (e.g., banks vs. non-banks):* "Consumer short-term lender" means an individual or entity, other than a state or federally chartered bank, savings bank, or credit union, engaged in the business of making or arranging consumer short-term loans. § 47.601subdiv. 1(d), (e).

*Licensure requirements and implications of licensure:* A loan is void, and the borrower is not obligated to pay any amounts owing if the loan is made by a consumer short-term lender who has not obtained an applicable license from the commissioner. § 47.601 subdiv. 6(b).

*Size and length of loans to which the statute applies, and any restrictions in the statute on these features:* “Consumer short-term loan” means a loan to a borrower which has a principal amount, or an advance on a credit limit, of \$1,000 or less and requires a minimum payment within 60 days of loan origination or credit advance of more than 25% of the principal balance or credit advance. § 47.601 subdiv. 1(d).

*Other restrictions on applicability of statute (e.g., it only applies if lender takes a mortgage on real property):* § 47.601 operates as a reporting statute for loans of \$1,000 or less; lenders operate under other statutes when making these loans.

*What rate of interest is allowed?* No contract or agreement between a consumer short-term loan lender and a borrower residing in Minnesota may contain a provision “in which interest rates, fees, charges, or loan amounts exceed those allowable under section 47.59, subdivision 6, or 47.60, subdivision 2, other than by de minimis amounts if no pattern or practice exists.” § 47.59, subdiv. 6 allows:

- \$50 annual fee.
- Over-the-limit charges and charges for obtaining a cash advance in an amount not to exceed the \$30 charge permitted by § 604.113 for dishonored checks.
- The charges generally allowed for all extensions of credit: official fees and taxes; dishonored check fees; and charges for other benefits, including insurance, conferred on the borrower that are of a type that is not for credit.

§ 47.60 subdiv. 2 allows:

- 7% of loan amount, with a minimum of \$10, plus a \$5 administrative fee, if loan is more than \$100 but no more than \$250.

- 6% of loan amount, with a minimum of \$17.50, plus a \$5 administrative fee, if loan amount is more than \$250.

Lesser amounts for loans of \$100 or less

*What loan fees are allowed?* See preceding entry.

*What types of insurance are allowed, and any limits the lending statute places on charges?* Statute is silent.

*Does statute prohibit all other fees besides those specifically allowed?* Statute is silent.

*Does statute restrict balloon payments or irregular payment schedules?* Statute is silent.

*Any restrictions on refinancing?* Statute is silent.

*Any restrictions on prepayment penalties?* Statute is silent.

*What security interests (or postdated checks or ACH authorizations) are allowed or prohibited?* Statute refers to holding of a check evidencing the borrower’s obligation on a short-term loan, 47.601 subdiv. 2(d), but this appears to be intended to prevent the assertion of the holder-in-due course defense. Otherwise the statute is silent.

*Does statute prohibit unconscionable loan charges?* Statute is silent.

*Must lender underwrite or evaluate borrower’s ability to repay?* Statute is silent.

*If state has a criminal usury law, is lending under this statute exempt from it?* Not applicable.

*Reporting requirements, including detail about what must be reported and whether there are any requirements that the state agency review or take other steps regarding the reports:* Annual report containing total dollar amount, over and above principal, collected on consumer short-term loans; the average APR and range of APRs; the number of individual borrowers, broken down by the number who obtained: (i) 5 or more loans; (ii) 10 or more loans; (iii) 15 or more loans; and (iv) 20 or more loans; and the total number and dollar amount of loans charged off or written off. § 47.601 subdiv. 4.

*Other significant features:* No forum or choice of law other than Minn. No class action ban for certain violations. § 47.601 subdiv. 2.

### **Minn. Stat. §§ 56.0001 to 56.26 (Regulated Loan Act).**

*What types of lenders it applies to (e.g., banks vs. non-banks):* Lenders making loans under this statute are referred to as “regulated lenders.” The statute excludes banks, savings associations, trust companies, licensed pawnbrokers, and credit unions. § 56.002.

*Licensure requirements and implications of licensure:* Must have license in order to make loans with the charges allowed by this statute, but industrial loan and thrift companies need not be licensed, and certain federally related entities may purchase mortgage loans from licensees without being licensed. §§ 56.002 56.01. Loan made without required license is unenforceable. § 56.18.

*Size and length of loans to which the statute applies, and any restrictions in the statute on these features:* Not exceeding \$100,000 or 15% of corporate licensee’s stock and surplus. § 56.01.

*Other restrictions on applicability of statute (e.g., it only applies if lender takes a mortgage on real property):* Statute is silent.

*What rate of interest is allowed?* For open-end credit other than a loan under an overdraft checking plan, either (1) 21.75% or (2) 33% on first \$1,125 (adjusted for inflation) and 19% on the remainder. For a credit card, 18%. §§ 56.125 subdiv. 1, 56.131 subdiv. 1(a), 47.59 subdiv. 3(a)(1).

*What loan fees are allowed?* Recording fees and taxes, or the cost of non-filing insurance if less than this amount. § 56.131 subdiv. 2, 5, 6 One-time \$25 loan administrative fee if principal is \$6,480 or less (adjusted for inflation). § 56.131 subdiv. 2.

*What types of insurance are allowed, and any limits the lending statute places on charges?* May sell credit life, accident and health, and unemployment insurance,

and property insurance on collateral. §§ 56.125(3), 56.155.

*Does statute prohibit all other fees besides those specifically allowed?* Yes. §§ 56.131 subdiv. 2, 56.15.

*Does statute restrict balloon payments or irregular payment schedules?* Statute is silent.

*Any restrictions on refinancing?* Statute is silent except for special provisions for loans secured by real estate. § 56.131 subdiv. 2.

*Any restrictions on prepayment penalties?* Borrower may pay in full at any time without penalty. § 56.125 subdiv. 1.

*What security interests (or postdated checks or ACH authorizations) are allowed or prohibited?* Lien on real estate is allowed only when outstanding balance first exceeds \$6,480 (adjusted for inflation); may remain in effect until account is terminated. § 56.125 subdiv. 2. Statute does not explicitly authorize other types of security interests, but does authorize non-filing insurance. § 56.131 subdiv. 2(c).

*Does statute prohibit unconscionable loan charges?* Statute is silent.

*Must lender underwrite or evaluate borrower’s ability to repay?* Statute is silent.

*If state has a criminal usury law, is lending under this statute exempt from it?* Not applicable.

*Reporting requirements, including detail about what must be reported and whether there are any requirements that the state agency review or take other steps regarding the reports:* Annual report containing the information required by the commissioner, who shall publish an annual analysis and recapitulation. § 56.11.

*Other significant features:* Prohibition against loan-splitting. § 56.131 subdiv. 3. Anti-subterfuge provision. § 56.18.



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## MISSISSIPPI

### *Miss. Code Ann. § 75-17-19 (Revolving Charge Agreements).*

*What types of lenders it applies to (e.g., banks vs. non-banks):* Any lender or issuer of credit cards and any retail seller. § 75-17-19(1).

*Licensure requirements and implications of licensure:* Statute is silent.

*Size and length of loans to which the statute applies, and any restrictions in the statute on these features:* Statute is silent.

*Other restrictions on applicability of statute (e.g., it only applies if lender takes a mortgage on real property):* Statute is silent.

*What rate of interest is allowed?* 21%, but may charge 50 cents in any month when there is a finance charge that is less than 50 cents. § 75-17-19(1), (4).

*What loan fees are allowed?* Bank that issues credit card may charge annual fee of \$12 per year. § 75-17-19(2). Statute also allows any lender or issuer of credit cards to provide “such products, services, charges and fees” as agreed upon. § 75-17-19(6). However, a licensee under the Small Loan Regulatory Law would be limited by §§ 75-67-119, 75-17-21, and 75-17-25 to a yield of 36%.

*What types of insurance are allowed, and any limits the lending statute places on charges?* Statute is silent.

*Does statute prohibit all other fees besides those specifically allowed?* Statute is silent.

*Does statute restrict balloon payments or irregular payment schedules?* Statute is silent.

*Any restrictions on refinancing?* Statute is silent.

*Any restrictions on prepayment penalties?* Statute is silent.

*What security interests (or postdated checks or ACH authorizations) are allowed or prohibited?* Statute is silent.

*Does statute prohibit unconscionable loan charges?* Statute is silent.

*Must lender underwrite or evaluate borrower’s ability to repay?* Statute is silent.

*If state has a criminal usury law, is lending under this statute exempt from it?* Not applicable.

*Reporting requirements, including detail about what must be reported and whether there are any requirements that the state agency review or take other steps regarding the reports:* Statute is silent.

*Other significant features:* Not applicable.

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## MISSOURI

### *Mo. Rev. Stat. §§ 408.100 to 408.213 (Interest on Small Loans).*

*What types of lenders it applies to (e.g., banks vs. non-banks):* Applicable broadly to loans that are not made under other Missouri laws. §§ 408.100, 408.190.

*Licensure requirements and implications of licensure:* Statute is silent. This is not a licensing statute.

*Size and length of loans to which the statute applies, and any restrictions in the statute on these features:* Statute excludes loans which are secured by a lien on real estate, nonprocessed farm products, livestock, farm machinery or crops, and loans to corporations. § 408.100.

*Other restrictions on applicability of statute (e.g., it only applies if lender takes a mortgage on real property):* Statute is silent.

*What rate of interest is allowed?* Any rate agreed to by parties. § 408.100.

*What loan fees are allowed?*

- Recording fees. § 408.140(1)(2).
- Insurance premiums. § 408.140(1)(5).
- Credit advance fee of lesser of \$75 or 10% of cash advance, if open-end credit contract is tied to a transaction account in a depository institution, such



account is in the institution's assets, and contract provides for open-end loans of 31 days or longer. § 408.140(1)(10).

- Annual fee of \$50. § 408.140(3).
- Any credit card fee which lenders in any contiguous states are permitted to charge. § 408.145.

*What types of insurance are allowed, and any limits the lending statute places on charges?* Non-filing insurance, property insurance, life, health, accident, and involuntary unemployment insurance. § 408.140(1).

*Does statute prohibit all other fees besides those specifically allowed?* Yes. § 408.140(1).

*Does statute restrict balloon payments or require substantially equal installments?* No. Loan contract may provide for repayment as the parties may agree. § 408.120.

*Any restrictions on refinancing?* Statute is silent.

*Any restrictions on prepayment penalties?* Statute is silent. § 408.170.

*What security interests are allowed or prohibited (including postdated checks and ACH authorization)?* Statute is silent.

*Does statute prohibit unconscionable loan charges?* Statute is silent.

*Must lender underwrite or evaluate borrower's ability to repay?* Statute is silent.

*Is lending under this statute exempt from state criminal usury law?* Statute is silent. Criminal usury statute, § 408.095, criminalizes charging interest greater than 24% only when not permitted by other Missouri laws.

*Reporting requirements, including detail about what must be reported and whether there are any requirements that the state agency review or take other steps regarding the reports:* Statute is silent.

*Other significant features:* Prohibition against loan-splitting. § 408.200.

## NEBRASKA

### *Neb. Rev. Stat. §§ 45-1001 to 45-1069 (Installment Loan Act).*

*What types of lenders it applies to (e.g., banks vs. non-banks):* Any person, other than a financial institution (defined by §§ 8-101 and 45-1002(g) as a bank, savings bank, building and loan association, savings and loan association, credit union, or similar organization covered by federal deposit insurance, or a trust company) is eligible for a license and to be allowed to make loans under the Installment Loan Act. § 45-1003.

*Licensure requirements and implications of licensure:* License required to charge the interest rates and other charges allowed by the Installment Loan Act. 45-1004(1).

*Size and length of loans to which the statute applies, and any restrictions in the statute on these features:* Statute's limitations do not apply to open-end credit. §§ 45-1025(3), 45-1066.

*Other restrictions on applicability of statute (e.g., it only applies if lender takes a mortgage on real property):* Statute authorizes licensees to make "preauthorized loans," defined to encompass open-end credit other than credit card lending. § 45-1061(5).

*What rate of interest is allowed?* 24% on first \$1,000, and 21% on remainder. §§ 45-1024(1), 45-1062.

*What loan fees are allowed?*

- Reasonable expenses for making, closing, disbursing, extending, readjusting, or renewing of loans, including abstracting, recording, releasing, and registration fees; title examinations; credit reports; survey; and fees and expenses charged for electronic title and lien services.
- Nonrefundable loan origination fee not to exceed the lesser of \$500 or 7% of first \$2,000 and 5% of remainder. § 45-1024(5).

*What types of insurance are allowed, and any limits the lending statute places on charges?* Property and liability

insurance on motor vehicle; fire and extended-coverage insurance on real property or tangible personal property; involuntary unemployment or job protection insurance; life, health, and accident insurance; any other type of insurance or motor club service; nonfiling insurance; charges for debt cancellation contracts or debt suspension contracts; amounts charged for a guaranteed asset protection waiver. §§ 45-1024(5), 45-1026, 45-1064.

*Does statute prohibit all other fees besides those specifically allowed?* Other than specified charges, no further or other amounts whatsoever shall be directly or indirectly charged, contracted for, or received. § 45-1024(4).

*Does statute restrict balloon payments or irregular payment schedules?* No. Borrower has the right to pay the balance in monthly installments. Minimum monthly payment is to be set by licensee but must be at least 1.5% of average daily balance (2% if average daily balance is \$3,000 or less). § 45-1063. Requirement of substantially equal installments does not apply to open-end credit. § 45-1066.

*Any restrictions on refinancing?* Statute is silent.

*Any restrictions on prepayment penalties?* Borrower may prepay one or more full installments at any time. § 45-1022.

*What security interests (or postdated checks or ACH authorizations) are allowed or prohibited?* Licensee may retain any security interest, including a mortgage on real property, until the preauthorized account is terminated. § 45-1065. Statute imposes requirements on wage assignments but does not prohibit them. §§ 45-1028, 45-1030

*Does statute prohibit unconscionable loan charges?* Statute is silent.

*Must lender underwrite or evaluate borrower's ability to repay?* Statute is silent.

*If state has a criminal usury law, is lending under this statute exempt from it?* Statute is silent.

*Reporting requirements, including detail about what must be reported and whether there are any requirements that the state agency review or take other steps regarding the reports:* Annual report of the licensee's earnings, operations, assets, and other relevant information as the department may reasonably require. § 45-1018.

*Other significant features:* Anti-evasion provision: wage assignment amounts to a loan. § 45-1021.

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## NEVADA

*Nev. Rev. Stat. §§ 675.010 to 675.490  
(Installment Loan and Finance Act).*

*What types of lenders it applies to (e.g., banks vs. non-banks):* Applies to any person who makes installment loans that are not governed by state payday loan law. Does not apply to:

- Banks, national banking associations, savings banks, trust companies, savings and loan associations, credit unions, mortgage brokers, mortgage bankers, thrift companies, pawnbrokers, insurance companies, or real estate investment trusts.
- Loans from employee benefit plans.
- Attorneys rendering legal services if loan is secured by real property.
- Real estate brokers if loan is secured by real property.
- Firms or corporations principally engaged in mortgage lending with approval by Fannie Mae, HUD, and the Department of Veterans Affairs.
- Person who provides money for investment in loans secured by a lien on real property, on his or her own account.
- Mortgage financing provided by seller of real property.
- Person holding a nonrestricted state gaming license.
- Licensed payday lenders.

§ 675.040. Commissioner may grant additional exemptions. § 675.055.

*Licensure requirements and implications of licensure:* Must have license to engage in business of lending, except for deferred deposit loan services, high-interest loan services, or title loan services, which must obtain appropriate license under other laws. § 675.060.

*Size and length of loans to which the statute applies, and any restrictions in the statute on these features:* Statute is silent

*Other restrictions on applicability of statute (e.g., it only applies if lender takes a mortgage on real property):* Statute is silent.

*What rate of interest is allowed?* For a loan for an indefinite term, agreed rate. However, § 604.400 prohibits any person, including a person licensed under this chapter, from operating a “high-interest loan service,” defined by §§ 604A.0703 and 604A.0705 as one making loans, including open-end loans, with an APR of more than 40%. Even with a license under chapter 604A, a lender can make high-rate loans only with loan terms up to 35 days (90 days if the loan is payable in installments). § 604A.408. Statute also allows imposition of 50 cent charge if interest in any month is less than that. § 675.363.

*What loan fees are allowed?*

- Any fees imposed on the licensee pursuant to Act.
- 25 cents per transaction, or annual fee of \$20. § 675.365.

*What types of insurance are allowed, and any limits the lending statute places on charges?* Title insurance on real property offered as security; life, health or disability, and involuntary unemployment insurance; property insurance on collateral; insurance protecting lender’s interest in the collateral; single interest non-filing insurance; and any other credit-related insurance approved by the commissioner. § 675.300.

*Does statute prohibit all other fees besides those specifically allowed?* Statute is silent.

*Does statute restrict balloon payments or irregular payment schedules?* Statute is silent.

*Any restrictions on refinancing?* Statute is silent.

*Any restrictions on prepayment penalties?* Prepayment allowed without penalty. § 675.361(4).

*What security interests (or postdated checks or ACH authorizations) are allowed or prohibited?* Wage assignments are invalid. § 675.340. Prohibits security interest on real property, other than judgment lien, except real property upon which is situated a mobile home or factory-built housing that also secures the loan. § 675.350.

*Does statute prohibit unconscionable loan charges?* Statute is silent.

*Must lender underwrite or evaluate borrower’s ability to repay?* Statute is silent.

*If state has a criminal usury law, is lending under this statute exempt from it?* Not applicable.

*Reporting requirements, including detail about what must be reported and whether there are any requirements that the state agency review or take other steps regarding the reports:* Annual report containing information prescribed by commissioner. § 675.260.

*Other significant features:* Anti-evasion provisions. §§ 675.035, 675.060, 675.070 675.300.

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## NEW HAMPSHIRE

*N.H. Rev. Stat. Ann. §§ 399-A:1 to 399-A:19 (Small Loans).*

*What types of lenders it applies to (e.g., banks vs. non-banks):* Any person engaged in the business of making small loans, including closed-end loans, open-end loans, title loans, and payday loans. § 399-A:1(XV) (moved to §§ 399-A:1(XX) and 399-A:2 as of Jan. 1, 2016) Chapter does not apply to banks, trust companies, insurance companies, savings or building and loan associations, credit unions, or lenders that exclusively make educational loans. § 399-A:2(III).

*Licensure requirements and implications of licensure:* License required to engage in business of making

small loans, i.e., those with finance charges greater than 10% (other than recording fees and costs of repossession or sale of collateral). §§ 399-A:1(XIV) (moved to § 399-A:1(XX) as of Jan. 1, 2016), 399-A:2(I). Loan is void if it includes charges in excess of those permitted by statute. § 399-A:11(V).

*Size and length of loans to which the statute applies, and any restrictions in the statute on these features:* Statute applies to loan of \$10,000 or less. § 399-A:1(XIV) (moved to § 399-A:1(XX) as of Jan. 1, 2016).

*Other restrictions on applicability of statute (e.g., it only applies if lender takes a mortgage on real property):* Statute is silent.

*What rate of interest is allowed?* 36% APR, calculated under federal Truth in Lending rules, but excluding one application fee per borrower per year and one participation or membership fee per borrower per year. § 399-A:12(II) (moved to § 399-A:16(I) as of Jan. 1, 2016).

*What loan fees are allowed?* See preceding entry. One annual application fee and one annual participation or membership fee per year. Statute allows recording fees, but prohibits any other charges for examination, service, brokerage, commission, or other fee, except repossession costs. § 399-A:11(XI) (moved to § 399-A:15(XI) as of Jan. 1, 2016).

*What types of insurance are allowed, and any limits the lending statute places on charges?* Credit life, accident and health, and involuntary unemployment insurance, and property insurance on collateral. § 399-A:11(XII), (XIII) (moved to § 399-A:15(XII), (XIII) as of Jan. 1, 2016).

*Does statute prohibit all other fees besides those specifically allowed?* Yes. § 399-A:11(XI) (moved to § 399-A:15(XI) as of Jan. 1, 2016).

*Does statute restrict balloon payments or require substantially equal installments?* Statute is silent.

*Any restrictions on refinancing?* None applicable to open-end credit.

*Any restrictions on prepayment penalties?* Lender must permit prepayment. § 399-A:12(VI)(d) (moved to § 399-A:15(XVI)(d) as of Jan. 1, 2016). Prepayment penalties are likely prohibited because not listed in § 399-A:11(XI) (moved to § 399-A:15(XI) as of Jan. 1, 2016).

*What security interests are allowed or prohibited (including postdated checks and ACH authorization)?* Any security agreed upon, § 399-A:12(II) (moved to § 399-A:16(II) as of Jan. 1, 2016), except that security interest on real estate, or on household furniture presently in use if loan is for \$2,000 or less, is prohibited and void. § 399-A:11(VIII), (IX) (moved to § 399-A:15 (IX), (X)) as of Jan. 1, 2016).

*Does statute prohibit unconscionable loan charges?* No, but statute gives the commissioner exclusive authority and jurisdiction to investigate charges, including interest and fees, whether for application on small loans, payday loans, and title loans that are or may be unreasonable or an unfair or deceptive act or practice under the state deceptive practices statute. § 399-A:12(VII) (repealed as of Jan. 1, 2016).

*Must lender underwrite or evaluate borrower's ability to repay?* Statute is silent.

*Is lending under this statute exempt from state criminal usury law?* Not applicable.

*Reporting requirements, including detail about what must be reported and whether there are any requirements that the state agency review or take other steps regarding the reports:* Annual report; financial statement including balance sheet, income statement, statement of changes in owners' equity, cash flow statement, and note disclosures. Commissioner shall publish annual analysis of this information. § 399-A(6)(I), (II) (moved to § 399-A:10(I), (II) as of Jan. 1, 2016).

*Other significant features:* Prohibits use of multiple loans so that borrower has principal balance over \$10,000. § 399-A:12(III). Requires lender to allow borrower to cancel up to close of next business day. § 399-A:12(XVIII) (moved to § 399-A:15(XVIII) as of Jan. 1, 2016).



## NEW JERSEY

### *N.J. Stat. Ann. §§ 17:11C-1 to 17:11C-49 (West) (New Jersey Consumer Finance Licensing Act).*

*What types of lenders it applies to (e.g., banks vs. non-banks):* Applies to anyone making covered loans, but depository institutions, trust companies, insurance companies, and pawnbrokers are exempt. § 17:11C-6.

*Licensure requirements and implications of licensure:* License required to engage in consumer loan business, i.e., make consumer loans of \$50,000 or less at rates greater than a non-licensee may charge. § 17:11C-3. Loan made without a required license is void unless lender meets statutory good faith error requirements. § 17:11C-33(b).

*Size and length of loans to which the statute applies, and any restrictions in the statute on these features:* Applies to any “consumer loan,” defined as one for \$50,000 or less, payable in one or more installments, but excludes residential mortgage loans. § 17:11C-2.

*Other restrictions on applicability of statute (e.g., it only applies if lender takes a mortgage on real property):* Statute is silent.

*What rate of interest is allowed?* Agreed rate. §§ 17:11C-32(a), 17:11C-36(a). However, criminal usury statute caps interest at 30%. § 2C:21-19. If licensee makes loan of more than \$50,000, it is limited to interest rates allowed for non-licensees. § 17:11C-37.

*What loan fees are allowed?*

- Recording fees.
- Annual fee of 1% of the line of credit or \$50, whichever is less.

### **§ 17:11C-33(a).**

*What types of insurance are allowed, and any limits the lending statute places on charges?* Credit life insurance, credit health or disability insurance, credit involuntary unemployment insurance, property insurance on collateral. §§ 17:11C-21(a), (b); 17:11C-36(f).

*Does statute prohibit all other fees besides those specifically allowed?* Yes. §§ 17:11C-33(a), 17:11C-41(f).

*Does statute restrict balloon payments or irregular payment schedules?* Lender must set monthly minimum payments to amortize initial loan advance as follows:

- For advance up to \$2,500: within 48 months and 15 days.
- For advance over \$2,500 up to \$5,000: within 60 months and 15 days.
- For advance over \$5,000 and up to \$10,000: within 84 months and 15 days.
- Over \$10,000: within 120 months and 15 days.

Whenever subsequent advances are made, minimum payment must be recalculated so that new balance is amortized within these periods. § 17:11C-36(e).

*Any restrictions on refinancing?* Statute is silent.

*Any restrictions on prepayment penalties?* Borrower may pay in full at any time. § 17:11C-2.

*What security interests (or postdated checks or ACH authorizations) are allowed or prohibited?* A consumer lender may take a security interest in personal property to secure an open-end consumer loan. § 17:11C-39. Wage assignments are prohibited and void. § 17:11C-41(a). Liens on real estate other than judgment liens are prohibited. § 17:11C-41(b).

*Does statute prohibit unconscionable loan charges?* Statute is silent.

*Must lender underwrite or evaluate borrower’s ability to repay?* Statute is silent.

*If state has a criminal usury law, is lending under this statute exempt from it?* No. Criminal usury statute, § 2C:21-19, prohibits charging more than 30% notwithstanding any statute permitting an agreed rate.

*Reporting requirements, including detail about what must be reported and whether there are any requirements that the state agency review or take other steps regarding the reports:* Annual report with information specified by commissioner. § 17:11C-43.



*Other significant features:* Prohibits evasions by way of wage assignments or sale-resale of personal property. §§ 17:11C-38, 17:11C-40. Loan-splitting prohibited. §§ 17:11C-32, 17:11C-37.

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## NEW MEXICO

### *N.M. Stat. Ann. §§ 58-15-1 to 58-15-39 (Small Loan Act).*

*What types of lenders it applies to (e.g., banks vs. non-banks):* Applies to lenders making loans of \$2,500 or less. Exempts banks, savings and loan associations, credit unions, and licensed pawnbrokers. § 58-15-3(A), (C).

*Licensure requirements and implications of licensure:* May not engage in business of lending in amounts of \$2,500 or less without first having obtained a license. § 58-15-3(A).

*Size and length of loans to which the statute applies, and any restrictions in the statute on these features:* “Installment loan” means a loan that is to be repaid in a minimum of 4 successive substantially equal payment amounts to pay off a loan in its entirety with a period of no less than 120 days to maturity. § 58-15-2(E). May not engage in business of lending in amounts of \$2,500 or less without first having obtained a license. § 58-15-3(A). Nothing in Act shall apply to a person making individual advances of \$2,500 or less under a written agreement providing for a total loan or line of credit in excess of \$2,500. § 58-15-3(B).

*Other restrictions on applicability of statute (e.g., it only applies if lender takes a mortgage on real property):* Statute is silent.

*What rate of interest is allowed?* Statute requires use of simple interest method, § 58-15-14.1, but does not otherwise limit interest rates.

*What loan fees are allowed?* Recording fees, but not notary fees for taking or releasing a lien. § 58-15-20(A), (C).

*What types of insurance are allowed, and any limits the lending statute places on charges?* Statute allows term life insurance or credit life insurance, but no other type of life insurance, and prohibits property insurance on unsecured loans. § 58-15-16. Statute also gives director the authority to regulate insurance sales by licensees, § 58-15-11, but does not otherwise specify what types of insurance can be sold.

*Does statute prohibit all other fees besides those specifically allowed?* All other fees not specifically allowed are prohibited.

*Does statute restrict balloon payments or require substantially equal installments?* Installment loan defined as one to be repaid in substantially equal payments. § 58-15-2(E).

*Any restrictions on refinancing?* Statute is silent.

*Any restrictions on prepayment penalties?* Prepayment penalties are unenforceable. § 58-15-15.1.

*What security interests are allowed or prohibited (including postdated checks and ACH authorization)?* “Installment loan” does not mean a loan in which a licensee requires, as a condition of making the loan, the use of post-dated checks or debit authorizations for repayment of that loan. § 58-15-2(E). Section 58-15-32 allows postdated checks and ACH authorizations only for payday loans.

*Does statute prohibit unconscionable loan charges?* Statute is silent, but state deceptive practices statute’s prohibition of unconscionability has been applied to credit charges.

*Must lender underwrite or evaluate borrower’s ability to repay?* Annual report must include procedures the licensee follows as a standard practice to establish each consumer’s ability to repay a loan. § 58-15-10.1(A)(14).

*Is lending under this statute exempt from state criminal usury law?* No, but state’s criminal usury law, §§ 30-43-1 to 30-43-5, applies only where violence or other non-petty criminal acts are threatened or used in collection of a debt that carries an interest rate exceeding 45%.

*Reporting requirements, including detail about what must be reported and whether there are any requirements that the state agency review or take other steps regarding the reports:* Annual report giving such relevant information as the director may reasonably require concerning the business and operations during the preceding calendar year for each licensed place of business. A summary of the reports shall be included in the published annual report of the director. § 58-15-10(C).

Annual report must include: (1) a description of each loan product offered by the licensee, including: (a) all fees; (b) the minimum, maximum and average annual interest rate; (c) the frequency of periodic payments; (d) the term of the loan; and (e) any other standard conditions of the loan product; (2) the total number of transactions entered into for each loan product in the following amounts: (a) \$500 or less; (b) \$501 to \$1,000; (c) \$1,001 to \$3,000; (d) \$3,001 to \$5,000; and (e) greater than \$5,000; (3) the total number of loans and the total dollar amount of loan principal for each loan product; (4) the average principal loan amount for each loan product; (5) the total number of loans for which the loan principal and accrued interest was not paid in full; (6) the total dollar amount of principal loaned; (7) the total dollar amount of loan principal repaid; (8) the total dollar amount of interest received; (9) the total dollar amount and description of fees received; (10) the total number of loans that were secured by collateral of some type and the total number of such loans in which the security was foreclosed upon or repossessed; (11) the total amount of loan principal and the total amount of accrued interest written-off or charged-off; (12) the percent of consumers who were new consumers; (13) the number of loans that were renewed, refinanced or extended prior to being repaid in full; and (14) procedures the licensee follows as a standard practice to establish each consumer's ability to repay a loan. §§ 58-15-10, 58-15-10.1(A). However, the department reports that only licensees that make any loan product, with the exception of payday loans, that exceeds an APR of 175%, are required to submit annual reports.

*Other significant features:* Anti-evasion provisions. §§ 58-15-3(D), 58-15-21.

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## NEW YORK

### *N.Y. Banking Law §§ 340 to 361 (McKinney) (Licensed Lender Law).*

*What types of lenders it applies to (e.g., banks vs. non-banks):* Applies to anyone making loans of \$25,000 or less to an individual for personal, family, household, or investment purposes (up to \$50,000 if a business or commercial loan) who charges more than otherwise legal rate. Does not apply to pawnbrokers licensed under Gen. Bus. Law §§ 40-55. § 340.

*Licensure requirements and implications of licensure:* License required. § 340. Statute prohibits any entity other than a licensee from charging interest greater than the otherwise legal rate, and provides that a loan is unenforceable if more interest is charged than allowed by law. § 356.

*Size and length of loans to which the statute applies, and any restrictions in the statute on these features:* \$25,000 or less (\$50,000 or less if a business or commercial loan). §§ 340, 351.

*Other restrictions on applicability of statute (e.g., it only applies if lender takes a mortgage on real property):* Statute is silent.

*What rate of interest is allowed?* Section 351 allows agreed rate, but criminal usury law has 25% cap. Penal Law § 190.40. For loans greater than the \$25,000 or \$50,000 scope of this statute, licensee is limited to the rate permitted by Gen. Oblig. Law § 5-501 (namely 16%). § 353.

*What loan fees are allowed?*

- Recording fees, or non-filing insurance premiums up to \$7.
- Until June 30, 2015, an annual fee of \$50 or 1% of the loan amount, whichever is less, on open end loan.

### *§ 351(6)(a).*

*What types of insurance are allowed, and any limits the lending statute places on charges?* Property insurance

on collateral other than household goods if loan is for \$250 or more; liability insurance on a motor vehicle securing the loan; credit life insurance, credit accident and health insurance, and credit unemployment insurance. § 357.

*Does statute prohibit all other fees besides those specifically allowed?* Yes. §§ 351(6), 353.

*Does statute restrict balloon payments or require substantially equal installments?* Statute is silent.

*Any restrictions on refinancing?* Statute is silent.

*Any restrictions on prepayment penalties?* Licensee must permit payment to be made in advance in any amount on any loan at any time. § 352.

*What security interests are allowed or prohibited (including postdated checks and ACH authorization)?* May not take lien other than judgment lien upon real estate. § 350(c). Assignment of unearned wages is prohibited unless revocable or a payroll deduction plan. § 354.

*Does statute prohibit unconscionable loan charges?* Statute is silent.

*Must lender underwrite or evaluate borrower's ability to repay?* Statute is silent.

*Is lending under this statute exempt from state criminal usury law?* No explicit exemption. Criminal usury statute, Penal Law § 190.40, prohibits a person, "not being authorized or permitted to do so," from charging more than 25%.

*Reporting requirements, including detail about what must be reported and whether there are any requirements that the state agency review or take other steps regarding the reports:* Annual report giving such information as superintendent may require. § 349. Any licensee that charges an annual fee on open end loan accounts shall also report information on open end loan borrowers, including their average annual income, the average amount of loans outstanding at the end of each calendar year, the average interest charged, the average amount of annual fees, and the geographic distribution of loans. § 351(6)(c) (expires and deemed repealed June 30, 2015). Superintendent shall publish

annual report showing the combined assets and liabilities of all licensed lenders. § 349.

*Other significant features:* Not applicable.

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## NORTH CAROLINA

### *N.C. Gen. Stat. § 24-11 (Open-end Credit).*

*What types of lenders it applies to (e.g., banks vs. non-banks):* Does not apply to banks, savings and loan associations, savings banks, or credit unions. § 24-9.

*Licensure requirements and implications of licensure:* Statute is silent. Note that §§ 53-166(a) and 53-168(a) require a creditor to have a license if it makes loans that exceed the interest rates provided by this chapter.

*Size and length of loans to which the statute applies, and any restrictions in the statute on these features:* Statute is silent.

*Other restrictions on applicability of statute (e.g., it only applies if lender takes a mortgage on real property):* Statute is silent.

*What rate of interest is allowed?* "Interest and service charges" must not exceed 18%. § 24-11(b).

*What loan fees are allowed?* None. Statute authorizes \$24 annual fee for purchase money credit, and late fees for any open-end credit, but is silent as to any authorization for origination fees for cash advances. § 24-11(a), (d1).

*What types of insurance are allowed, and any limits the lending statute places on charges?* Statute is silent.

*Does statute prohibit all other fees besides those specifically allowed?* Statute is silent.

*Does statute restrict balloon payments or require substantially equal installments?* Statute is silent.

*Any restrictions on refinancing?* Statute is silent.

*Any restrictions on prepayment penalties?* Statute is silent.

*What security interests are allowed or prohibited (including postdated checks and ACH authorization)?* If interest rate exceeds 15%, loan may not be secured by real or personal property or any other thing of value. § 24-11(c).

*Does statute prohibit unconscionable loan charges?* Statute is silent.

*Must lender underwrite or evaluate borrower's ability to repay?* Statute is silent.

*Is lending under this statute exempt from state criminal usury law?* Not applicable.

*Reporting requirements, including detail about what must be reported and whether there are any requirements that the state agency review or take other steps regarding the reports:* Statute is silent.

*Other significant features:* Not applicable.

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## OHIO

### *Ohio Rev. Code Ann. §§ 1321.01 to 1321.20 (West) (Small Loans).*

*What types of lenders it applies to (e.g., banks vs. non-banks):* Does not apply to:

- Banks, savings banks, savings societies, trust companies, or credit unions.
- Savings and loan associations whose business is substantially confined to real estate loans and evidences of their own indebtedness.
- Lenders registered under §§ 1321.51 to 1321.60 (Second Mortgage Security Loans).
- Insurance premium finance companies.
- Licensees under the Short Term Loan Act.
- Licensees under the state insurance law.

### **§ 1321.02.**

*Licensure requirements and implications of licensure:* Must have license to engage in business of lending money in amounts of \$5,000 or less and charge

interest and charges greater than amount that would be allowable for unlicensed lender. § 1321.02.

*Size and length of loans to which the statute applies, and any restrictions in the statute on these features:* \$5,000 or less. § 1321.02.

*Other restrictions on applicability of statute (e.g., it only applies if lender takes a mortgage on real property):* Statute is silent.

*What rate of interest is allowed?* 28% on unpaid principal balance of \$1,000 or less, and 22% on balance over \$1,000. §§ 1321.13(A), 1321.16(B). In the alternative, licensee may charge agreed rate, but not exceeding an APR of 25%. § 1321.131. If licensee extends credit over \$5,000, it is limited to the rates that non-licensees may charge. § 1321.15(B). However, a credit services organization that is completely separate from the lender may be able to charge a fee to arrange a loan at these rates, thereby increasing the cost of credit to the borrower.

*What loan fees are allowed?*

- Recording fees and fees for credit reports. § 1321.13(G).
- Origination fees up to: (1) On loans in the principal amount of \$500 or less, the greater of \$15 or 1% of the principal (for refinancing made after than 6 months, flat amount of \$15); (2) On all other loans, the greater of \$30 or 1% of the principal (for any refinancing, flat amount of \$30). § 1321.13(I).
- Annual fee of the greater of 1% of the original credit line or \$30 for first year, but not exceeding \$20 for subsequent years. § 1321.16(C).

*What types of insurance are allowed, and any limits the lending statute places on charges?* Credit life, accident and health insurance, and unemployment insurance; property insurance on collateral or other property. § 1321.13(E), (F).

*Does statute prohibit all other fees besides those specifically allowed?* Yes. § 1321.13(G). However, Ohio Admin. Code 1301:8-2-20 allows licensees to engage in other transactions with borrowers, provided the transactions are not a condition of the loan.



*Does statute restrict balloon payments or require substantially equal installments?* The borrower may pay in full at any time or, if the account is not in default, in monthly installments of fixed or determinable amounts as provided in the agreement subject to minimum payment requirements as determined by licensee and set forth in agreement. § 1321.16(A)(4), (D).

*Any restrictions on refinancing?* Statute is silent, except that allowable origination fees are reduced for certain refinancings. § 1321.13(I).

*Any restrictions on prepayment penalties?* The borrower may pay in full at any time. § 1321.16(A)(4).

*What security interests are allowed or prohibited (including postdated checks and ACH authorization)?* Security interest, other than judgment lien, in real estate is prohibited. § 1321.12. Wage assignments are invalid, but borrower may authorize revocable payroll deduction plan. § 1321.32.

*Does statute prohibit unconscionable loan charges?* Statute is silent.

*Must lender underwrite or evaluate borrower's ability to repay?* Statute is silent.

*Is lending under this statute exempt from state criminal usury law?* Statute is silent Criminal usury statute, § 2905.21, allows interest in excess of its cap if "otherwise authorized by law."

*Reporting requirements, including detail about what must be reported and whether there are any requirements that the state agency review or take other steps regarding the reports:* Annual report giving information as required by the superintendent of financial institutions. The division publishes an annual analysis and recapitulation of the reports. § 1321.09(A).

*Other significant features:* Loan-splitting prohibited. § 1321.15(A).

## Ohio Rev. Code Ann. §§ 1321.51 to 1321.60 (West) (Second Mortgage Security Loans).

*What types of lenders it applies to (e.g., banks vs. non-banks):* Does not apply to:

- Banks, savings banks, trust companies, savings and loan associations, and credit unions, and their subsidiaries if regulated by a federal banking agency and owned and controlled by the depository institution.
- Life, property, or casualty insurance companies licensed to do business in the state.
- Loans made pursuant to §§ 1321.01 to 1321.19 (Small Loan Act).
- Business loans described in § 1343.01(B)(6).
- Political subdivisions and governmental agencies and organizations.
- Colleges.
- Credit union service organizations that use services provided by registered mortgage loan originators or that hold a valid letter of exemption.

### § 1321.53(D).

*Licensure requirements and implications of licensure:*

Must register in order to: (1) make or collect on residential mortgage loans that are secured by other than a first lien on real estate or (2) make loans of \$5,000 or more that exceed the generally-applicable interest rate cap and are unsecured or secured by other than real property. § 1321.52(A)(1).

*Size and length of loans to which the statute applies, and any restrictions in the statute on these features:* Statute is silent.

*Other restrictions on applicability of statute (e.g., it only applies if lender takes a mortgage on real property):* Statute is silent.

*What rate of interest is allowed?* 21% or agreed rate up to 25% §§ 1321.58(B), 1321.571. However, a credit services organization that is completely separate from the lender may be able to charge a fee to arrange a loan at these rates, thereby increasing the cost of credit to the borrower.



*What loan fees are allowed?*

- If credit line is less than \$5,000, \$150 annual fee for first year; if credit line is \$5,000 or more, \$250 for first year. For subsequent years, 0.5% of credit line or \$50, whichever is greater. § 1321.58(C)(1), (2).
- Recording fees. § 1321.57(H).
- \$10 for credit investigation. § 1321.57(H).
- Origination charges as follows (§ 1321.57(J)):
  - For unsecured loans, \$15 if loan is \$500 or less; \$30 if loan is more than \$500 but less than \$1,000; \$100 if loan is at least \$1,000 but less than \$5,000; and \$250 or 1% of principal, whichever is greater, if loan is at least \$5,000;
  - For loan secured by goods or real estate, \$15 if loan is \$500 or less; \$30 if loan is more than \$500 but less than \$1,000; \$100 if loan is more than \$1,000 but less than \$2,000; \$200 if loan is at least \$2,000 but less than \$5,000; and \$250 or 1% of principal, whichever is greater, if loan is at least \$5,000.

## § 1321.58(C).

*What types of insurance are allowed, and any limits the lending statute places on charges?* Credit life, accident and health insurance, and unemployment insurance; property insurance on collateral and on other property. § 1321.57(E), (F).

*Does statute prohibit all other fees besides those specifically allowed?* Yes. § 1321.57(H). However, it also provides that it does not prohibit a registrant from engaging in other transactions with the borrower, provided that they are not a condition of the loan.

*Does statute restrict balloon payments or irregular payment schedules?* The borrower at any time may pay all or any part of the unpaid balance on the account or, if the account is not in default, the borrower may pay the unpaid balance in installments subject to minimum payment requirements as determined by the registrant and set forth in the open-end loan agreement. § 1321.58(D).

*Any restrictions on refinancing?* Statute's refinancing restrictions relate solely to loans secured by real estate. § 1321.57 (G)(1).

*Any restrictions on prepayment penalties?* Statute allows prepayment penalty if loan is secured by real estate, § 1321.57(G), but otherwise is silent so banned because not expressly allowed.

*What security interests (or postdated checks or ACH authorizations) are allowed or prohibited?* A registrant may make unsecured loans, loans secured by a first or junior mortgage on a borrower's real estate, loans secured by other than real estate, and loans secured by any combination of mortgages and security interests. § 1321.52(C).

*Does statute prohibit unconscionable loan charges?* Statute is silent.

*Must lender underwrite or evaluate borrower's ability to repay?* Statute is silent.

*If state has a criminal usury law, is lending under this statute exempt from it?* Statute is silent. Criminal usury statute, § 2905.21, allows interest in excess of its cap if "otherwise authorized by law."

*Reporting requirements, including detail about what must be reported and whether there are any requirements that the state agency review or take other steps regarding the reports:* Annual report, on forms supplied by the division. The division shall publish an annual analysis of the information. § 1321.55(B).

*Other significant features:* Loan splitting prohibited. § 1321.59. No registrant, licensee, or person making loans without a certificate of registration in violation of § 1321.52(A) shall, in connection with making or offering to make residential mortgage loans, engage in any unfair, deceptive, or unconscionable act or practice prohibited by the state deceptive practices statute. § 1321.59(O).

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## OKLAHOMA

### *Okla. Stat. tit 14A, §§ 1-101 to 6-113 (Consumer Credit Code).*

*What types of lenders it applies to (e.g., banks vs. non-banks):* Act prescribes maximum charges for all creditors, except lessors, but excludes:

- Extensions of credit to government or governmental agencies.
- Most sales of insurance.
- Transactions under public utility or common carrier tariffs if certain elements are regulated.
- Pawnbrokers.
- For most purposes, loans to build or purchase a residence or to refinance such a loan when made by a lender whose loans are supervised by an agency of the U.S. or made by a FHA approved mortgagee.

**§ 1-202.** Statute also excludes loans granted by institutions of postsecondary education, § 3-104, and certain loans secured primarily by an interest in land if finance charge does not exceed 13%. § 3-105.

*Licensure requirements and implications of licensure:* In order to make (or take an assignment of and collect) a supervised loan (one exceeding 10% interest), must either be a supervised financial organization (a depository institution organized, chartered, or authorized under Oklahoma or federal statutes) or obtain a license. § 3-502. Loan made in violation of licensure requirements is void. § 5-202.

*Size and length of loans to which the statute applies, and any restrictions in the statute on these features:* Excludes loans over \$50,000 (adjusted annually for inflation) except for loans secured by an interest in land and private student loans. § 3-104.

*Other restrictions on applicability of statute (e.g., it only applies if lender takes a mortgage on real property):* Statute is silent.

*What rate of interest is allowed?* For loan other than supervised loan, 10%. § 3-201(1). For supervised loan,

including a loan pursuant to a revolving loan account either:

- 25%; or
- 27% on unpaid balance up to \$2,910, 23% on unpaid balance over \$2,910 but not exceeding \$6,200, and 20% on unpaid balance over \$6,200. § 3-508A.

*What loan fees are allowed?*

- Official fees.
- Reasonable closing costs and taxes, including taxes for recording instruments.
- Charges for other benefits, including insurance, if authorized by rule.
- A charge for processing debtor's application for credit, including costs of credit reports, credit investigations, appraisals, and fees for preparation of loan-related documents.
- Annual fee.
- Transaction fees.
- Cash advance fees.
- Over-the-limit charges.

**§§ 3-202, 3-203.2(b).** Section 6-104(4) gives the administrator the authority to adopt rules limiting these charges. This authority includes limiting the charges if necessary to protect Oklahoma debtors from being subjected to charges which are unreasonable or excessive as compared to the prevailing charges being imposed by out-of-state lenders and sellers.

*What types of insurance are allowed, and any limits the lending statute places on charges?* Statute allows creditor to charge for insurance written in connection with the loan, other than insurance protecting the lender against the debtor's default or other credit loss, and specifically mentions property or liability insurance and credit life, accident, and health insurance. §§ 3-202(3), 4-104.

*Does statute prohibit all other fees besides those specifically allowed?* Statute is silent.

*Does statute restrict balloon payments or irregular payment schedules?* Provisions do not apply to open-end loans.

*Any restrictions on refinancing?* Statute is silent.

*Any restrictions on prepayment penalties?* Debtor may prepay in full at any time without penalty. § 3-209.

*What security interests (or postdated checks or ACH authorizations) are allowed or prohibited?* Wage assignments are prohibited and unenforceable, but employee may authorize deductions from earnings if the authorization is revocable. § 3-403(1). Security interest in land is prohibited and void for supervised loan with principal or credit limit of \$4,900 or less and finance charge over 21%. § 3-510.

*Does statute prohibit unconscionable loan charges?* Yes. §§ 4-106, 5-108, 6-111.

*Must lender underwrite or evaluate borrower's ability to repay?* Statute is silent.

*If state has a criminal usury law, is lending under this statute exempt from it?* Statute is silent.

*Reporting requirements, including detail about what must be reported and whether there are any requirements that the state agency review or take other steps regarding the reports:* Supervised lenders are required to file an annual report regarding their business operations for each licensed place of business. The department compiles the information from each licensee's report into a consolidated report of the industry. § 3-506(5).

*Other significant features:* Prohibits loan-splitting. § 3-509.

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## OREGON

### *Or. Rev. Stat. §§ 725.010 to 725.910 (Consumer Finance Act).*

*What types of lenders it applies to (e.g., banks vs. non-banks):* Applies to any person making "consumer finance loans," defined as secured or unsecured loans or lines of credit that have periodic payments

and terms longer than 60 days. However, the Act does not apply to loans of \$50,000 or less (including business and agricultural loans) if interest rate does not exceed the greater of 12%, or 5% in excess of the discount rate. § 725.045 (cross-referencing §§ 82.010, 82.025). See next entry for exemptions from licensure requirement.

*Licensure requirements and implications of licensure:* Must have license to conduct a business in which person makes a consumer finance loan of \$50,000 or less, or acts as an agent, broker or facilitator for a person that makes such a loan. § 725.045(1). Section 725.045 creates an exception by cross-referencing § 82.025, which makes the generally-applicable prohibition against lending at a rate greater than authorized by statute inapplicable to FDIC-insured depository institutions, credit unions, pawnbrokers, HUD-approved mortgage lenders, first-lien and purchase-money mortgage loans, certain other mortgage loans, federally-guaranteed or insured loans, loans by tax-qualified retirement plans, bona fide sales of securities or commercial paper, and interest charged by broker-dealers in certain circumstances.

*Size and length of loans to which the statute applies, and any restrictions in the statute on these features:* "Consumer finance loan" means a loan that is unsecured or secured by personal or real property and that has periodic payments and terms longer than 60 days. § 725.010(2).

*Other restrictions on applicability of statute (e.g., it only applies if lender takes a mortgage on real property):* Statute is silent.

*What rate of interest is allowed?* 36% APR or 30 percentage points in excess of the discount window primary credit rate, whichever is greater. §§ 725.340, 725.345(2).

*What loan fees are allowed?* May contract for and receive other reasonable and bona fide fees, expenses or damages, subject to oversight and regulation by the Department of Consumer and Business Services, including:

- Items exempted from the computation of the finance charge in accordance with TILA and similar pass-through fees or charges.
- Prepayment fees and late fees.

### § 725.340(1)(b).

*What types of insurance are allowed, and any limits the lending statute places on charges?* Statute specifically allows force-placement of insurance on the collateral, but otherwise is silent about insurance. § 725.340(3).

*Does statute prohibit all other fees besides those specifically allowed?* Yes. § 725.345(2).

*Does statute restrict balloon payments or irregular payment schedules?* Statute is silent.

*Any restrictions on refinancing?* Statute is silent.

*Any restrictions on prepayment penalties?* Prepayment fees allowed. § 725.340(1)(b). Rebate provisions do not apply to open-end loans. Or. Admin. R. 441-730-0205 prohibits prepayment penalties on home equity loans and on unsecured lines of credit, and in certain other circumstances, such as where the licensee demands repayment of all or part of the unpaid balance of the loan, where payment was made from benefits resulting from death of the borrower, where the collateral has been foreclosed or repossessed and proceeds have been used toward the balance, or where the licensee acts pursuant to a contract clause allowing it to demand payment in full.

*What security interests (or postdated checks or ACH authorizations) are allowed or prohibited?* A security interest in real or personal property may be taken to secure an open-end loan plan. § 725.345(3). Wage assignments are prohibited and unenforceable, but borrower may revocably authorize payroll deductions. § 725.355.

*Does statute prohibit unconscionable loan charges?* No, but statute limits fees other than interest to those that are reasonable and bona fide. § 725.340(1)(b).

*Must lender underwrite or evaluate borrower's ability to repay?* Statute is silent, but Or. Admin. R.

441-730-0015 requires a determination of the credit-worthiness of a borrower based on the information about the borrower's financial condition, such as his or her income, assets, debts, and financial obligations, and the nature and value of any collateral used to secure the loan for the majority of loans made under a consumer finance license.

*If state has a criminal usury law, is lending under this statute exempt from it?* Not applicable.

*Reporting requirements, including detail about what must be reported and whether there are any requirements that the state agency review or take other steps regarding the reports:* Annual report containing information required by the director. § 725.190.

*Other significant features:* Not applicable.

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## PENNSYLVANIA

### 7 Pa. Stat. Ann. §§ 6201 to 6219 (West) (Consumer Discount Company Act).

*What types of lenders it applies to (e.g., banks vs. non-banks):* Does not apply to banking institutions, building and loan associations, credit unions, or entities licensed by Pennsylvania Secretary of Banking. § 6217.

*Licensure requirements and implications of licensure:* License required to engage in business of making loans of \$25,000 or less and charge more than would be permitted without a license. § 6203.

*Size and length of loans to which the statute applies, and any restrictions in the statute on these features:* Definition of "revolving loan account" to which statute applies includes requirement that unpaid principal balance not exceed \$25,000. § 6202.

*Other restrictions on applicability of statute (e.g., it only applies if lender takes a mortgage on real property):* Statute is silent.

*What rate of interest is allowed?* 24% (§ 6217.1).

*What loan fees are allowed?* \$50 annual fee. § 6217.1.



*What types of insurance are allowed, and any limits the lending statute places on charges?* Statute does not specify what types of insurance are allowed. However, it refers to insurance on collateral (§ 6218), the lender's right to collect insurance premiums from the borrower (§ 6213(N)), and a requirement that insurance coverages be disclosed (§ 6217.1(B)).

*Does statute prohibit all other fees besides those specifically allowed?* Yes. § 6214(B).

*Does statute restrict balloon payments or irregular payment schedules?* Lender may require payment of contracts in equal weekly, semi-monthly, monthly or any other periodic installments. § 6213(I). Except as otherwise permitted by Act, all installment contracts shall provide for repayment in substantially equal periods and in substantially equal amounts, except as necessary to take borrower's intermittent income into account. § 6214(F).

*Any restrictions on refinancing?* Licensee shall not collect service charge when only the unpaid balance of an existing contract is renewed or refinanced prior to the expiration of 4 months from the date of such existing contract (but may collect service charge on any new money). § 6214(E).

*Any restrictions on prepayment penalties?* Borrower may prepay in whole or part at any time. § 6214(D). Penalties not specifically allowed so banned.

*What security interests (or postdated checks or ACH authorizations) are allowed or prohibited?* Licensee may lend money on the security of real or personal property or without security. § 6213.

*Does statute prohibit unconscionable loan charges?* Statute is silent.

*Must lender underwrite or evaluate borrower's ability to repay?* Statute is silent.

*If state has a criminal usury law, is lending under this statute exempt from it?* This statute is silent. Criminal usury statute, 18 Pa. Stat. Ann. §§ 4806.1(h), 4806.3, applies only when interest over its 36% cap is not otherwise authorized by law.

*Reporting requirements, including detail about what must be reported and whether there are any requirements that the state agency review or take other steps regarding the reports:* Annual report giving information as the secretary of banking may require. § 6210.

*Other significant features:* No loan splitting. § 6214(C). Does not prohibit wage assignments and sale-resale arrangements, but provides that the amount the lender receives in excess of the amount borrowed is interest. § 6218.

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## RHODE ISLAND

### *R.I. Gen. Laws §§ 6-26.1-1 to 6-26.1-13 (Credit Card Lenders).*

*What types of lenders it applies to (e.g., banks vs. non-banks):* Applies to any lending institution or licensee under § 19-14-1 that offers or extends credit in the form of a credit card transaction. "Lending institution" is defined by § 19-9-1 as any regulated institution and any person that makes loans of money or negotiates the lending of money for another in any state or jurisdiction. § 19-14-1 provides for licensure of, inter alia, lenders making small loans, check cashers, debt-management service providers, and mortgage loan originators. § 6-26.1-1(2).

*Licensure requirements and implications of licensure:* Statute applies to credit card lenders licensed under § 19-14-1. § 19-14-26.1 provides that lender that makes loan without a license required by § 19-14-1 forfeits right to collect interest, fees, and charges.

*Size and length of loans to which the statute applies, and any restrictions in the statute on these features:* Statute is silent.

*Other restrictions on applicability of statute (e.g., it only applies if lender takes a mortgage on real property):* Statute applies to "credit card plans," defined to exclude those secured by real property. § 6-26.1-1(4).

*What rate of interest is allowed?* Agreed rate. § 6-26.1-4.



*What loan fees are allowed?*

- Daily, weekly, monthly, annual, or other periodic fees in any amount agreed.
- Transaction charges in any amount agreed.
- A minimum charge for each billing period when there is an outstanding indebtedness.
- Reasonable fees for services rendered or for reimbursement of expenses incurred in good faith by credit card lender or agents in connection with plan, or other reasonable fees incident to the application for and the opening, administration and termination of a plan, including commitment, application and processing fees.
- Official fees and taxes.
- Costs incurred for title examination, inspection, appraisal, recording, mortgage satisfaction, or other formal acts necessary or appropriate to the security for plan, and filing fees.
- Over-the-limit charges.
- Prepayment charges authorized under this law.
- Subject to any limitations contained in chapter, any other fees and charges set forth in agreement.

#### § 6-26.1-5(a).

*What types of insurance are allowed, and any limits the lending statute places on charges?* Life, health, accident, health and accident or other credit or other permissible insurance policy or program. § 6-26.1-8(a).

*Does statute prohibit all other fees besides those specifically allowed?* Statute is silent.

*Does statute restrict balloon payments or irregular payment schedules?* Statute is silent. § 6-26.1-7.

*Any restrictions on refinancing?* Statute is silent.

*Any restrictions on prepayment penalties?* Individual borrower may pay outstanding balance in full at any time, and with no penalty except for a charge imposed to terminate a plan if the agreement so provides. § 6-26.1-5(b).

*What security interests (or postdated checks or ACH authorizations) are allowed or prohibited?* Statute allows lender to take any security as collateral, § 6-26.1-2, except that statute does not apply to extensions of credit secured by real property. § 6-26.1-1(4).

*Does statute prohibit unconscionable loan charges?* Statute is silent.

*Must lender underwrite or evaluate borrower's ability to repay?* Statute is silent.

*If state has a criminal usury law, is lending under this statute exempt from it?* Criminal usury law, § 6-26-2(d), provides that it does not apply to this statute.

*Reporting requirements, including detail about what must be reported and whether there are any requirements that the state agency review or take other steps regarding the reports:* Annual report. § 19-14-22.

*Other significant features:* Not applicable.

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## SOUTH CAROLINA

### S.C. Code Ann. §§ 37-3-101 to 37-3-413 (Consumer Protection Code).

*What types of lenders it applies to (e.g., banks vs. non-banks):* Applies generally to consumer credit transactions. § 37-1-201. Includes rules for “supervised” loans (those exceeding 12% interest). Also includes rules for “restricted loans” (certain loans of \$7,500 or less), which are summarized in the closed-end summaries. Does not apply to:

- Extensions of credit to governments or governmental agencies.
- Most insurance sales, insurance rates, and insurance premium finance company transactions.
- Transactions under public or municipal utility or common carrier tariffs that meet certain conditions.
- Pawnbrokers.
- Rates and charges for restricted lenders, and their examination and licensing.
- Agricultural loans, for most purposes.

- Government-supported student loans.
- Federal credit unions.
- Certain transactions in securities or commodities accounts.

### § 37-1-202.

*Licensure requirements and implications of licensure:* To make supervised loans (those exceeding 12% interest), or to take assignments of them and collect on them, must either be a “supervised financial organization” (defined by § 37-1-301(27) as a depository institution or an organization authorized to advance or service insurance premiums) or obtain a license. § 37-3-502. If creditor makes supervised loan without a required license, consumer is not obligated to pay the excess charge. § 37-5-202.

*Size and length of loans to which the statute applies, and any restrictions in the statute on these features:* “Consumer loan” is defined as one in which principal does not exceed \$90,000 (adjusted for inflation from \$25,000) or the debt is secured by land. § 37-3-104. Supervised loan of \$1,080 (adjusted for inflation from \$300) or less must be payable over no more than 25 months; if more than \$1,080 but no more than \$3,600 (adjusted for inflation from \$1,000), must be payable over no more than 37 months. § 37-3-511.

*Other restrictions on applicability of statute (e.g., it only applies if lender takes a mortgage on real property):* “Consumer loan” is defined to exclude those where principal exceeds \$90,000 (adjusted for inflation from \$25,000) unless the debt is secured by land. § 37-3-104. However, first lien mortgage loans are excluded from the definition of “consumer loan” for purposes of the provisions that are relevant to this summary. § 37-3-105. In addition, “supervised loan” is defined to exclude those secured by residential real estate or the borrower’s dwelling. § 37-3-501(1)(a).

*What rate of interest is allowed?* Lenders other than supervised lenders: 12%. Supervised financial organizations (defined by § 37-1-301(27) as federally or SC supervised depository lenders): 18% or any other rate

that lender files and posts. § 37-3-201(2)(b). Supervised lenders:

- Cash advance no greater than \$600: “maximum charges imposed in Section 34-29-140 as disclosed as an annual percentage rate, ... and provided further that the maximum charge shall not exceed the rate posted and filed pursuant to Section 37-3-305” § 37-3-201(2). For these loans, § 34-29-140(a) allows \$2.50 per month if the loan is \$150 or less, and \$25 per \$100 per year for larger loans, plus an initial charge of 7% of the cash advance or \$56, whichever is less and a \$2 maintenance fee for each month in the loan contract. (§ 34-29-140(a) also specifies rates for cash advances greater than \$600, but these are irrelevant since § 37-3-201 allows lender to charge any rate that it files and posts for loans greater than \$600.)
- Cash advance greater than \$600: any rate that lender files and posts. § 37-3-201(a)(2)(b).
- Or, for loan of any amount, lender may charge 18%. § 37-3-201(c).

*What loan fees are allowed?*

- Official fees and taxes.
- Annual fee for lender credit card meeting certain requirements.
- Over-the-limit fee for certain lender credit cards: \$10 plus the lesser of 10% of credit limit or \$100.
- Charges for other benefits conferred on the debtor, if valuable to the debtor and reasonable in price, of a type which is not for credit, and authorized by rule as permissible additional charges.

### § 37-3-202.

*What types of insurance are allowed, and any limits the lending statute places on charges?* May charge for insurance, including property insurance; liability insurance; credit life, accident and health, and unemployment insurance; vendor’s single interest insurance; and noncredit term life insurance, but not for insurance protecting the lender against the debtor’s default or other credit loss. § 37-3-202.

*Does statute prohibit all other fees besides those specifically allowed?* § 37-5-202(2) provides that a consumer is not obligated to pay a charge in excess of that allowed by the statute.

*Does statute restrict balloon payments or require substantially equal installments?* Provision does not apply to revolving loan account.

*Any restrictions on refinancing?* No.

*Any restrictions on prepayment penalties?* Debtor may prepay in full at any time without penalty. § 37-3-209.

*What security interests are allowed or prohibited (including postdated checks and ACH authorization)?* “Consumer loan” does not include a loan secured by a first lien or equivalent security interest in real estate. § 37-3-105(1). “Supervised loan” is defined to exclude those secured by residential real estate or the borrower’s dwelling. § 37-3-501(1)(a). A security interest in land is prohibited for a supervised loan of \$3,600 or less (adjusted for inflation from \$1,000) or an open-end loan with a credit limit of less than \$5,000. § 37-3-510. Wage assignments are prohibited and unenforceable, but borrower may revocably authorize payroll deductions. § 37-3-403.

*Does statute prohibit unconscionable loan charges?* Yes. § 37-5-108, made applicable to restricted loans by §§ 37-1-106 and 37-1-201.

*Must lender underwrite or evaluate borrower’s ability to repay?* No separate requirement, but must consider to determine if unconscionable. § 37-5-108(4)(b).

*Is lending under this statute exempt from state criminal usury law?* Not applicable.

*Reporting requirements, including detail about what must be reported and whether there are any requirements that the state agency review or take other steps regarding the reports:* Statute is silent.

*Other significant features:* Prohibits loan splitting. § 37-3-509.

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## SOUTH DAKOTA

### *S.D. Codified Laws §§ 54-4-36 to 54-4-75 (Money Lenders Licenses).*

*What types of lenders it applies to (e.g. banks vs. non-banks)?* Any person engaged in the business of lending money. § 54-4-40. Statute exempts banks and their subsidiaries, South Dakota chartered trust companies, and retail installment sellers. §§ 54-4-37, 54-4-64.

*Licensure requirements and implications of licensure:* No person may engage in the business of lending money (defined by § 54-4-36(2) to include originating, selling, servicing, acquiring, or purchasing loans, or servicing, acquiring, or purchasing retail installment loans) without a license. §§ 54-4-40, 54-4-52.

*Size and length of loans to which the statute applies, and any restrictions in the statute on these features:* Statute defines “loan” to include installment loan (i.e., one to be repaid in specified amounts over a certain number of months), open-end loan, or single-pay loans. § 54-4-36(7), (11). “Short-term consumer loan” is defined as any loan to any individual borrower with a duration of six months or less, including a payday loan. § 54-4-36(13). “Installment loan” is a loan made to be repaid in specified amounts over a certain number of months. § 54-4-36(7).

*Other restrictions on applicability of statute (e.g., it only applies if lender takes a mortgage on real property):* Statute is silent.

*What rate of interest is allowed?* Licensee may charge interest and other fees at rates, amounts, and terms as agreed to by the parties. § 54-4-44. *See also* §§ 54-3-13, 54-3-14 (regulated lenders, including installment loan licensees, are exempt from all limitations on interest rates they may charge).

*What loan fees are allowed?* See preceding entry.

*What types of insurance are allowed, and any limits the lending statute places on charges?* Property insurance on tangible property that is collateral. § 54-4-59. Debt cancellation or suspension contracts. § 54-4-75. Statute also provides that a licensee may sell insurance

to anyone with whom the licensee has a lending relationship, and requires that credit life insurance or any other life or health insurance must be voluntary. § 54-4-60.

*Does statute prohibit all other fees besides those specifically allowed?* Statute is silent.

*Does statute restrict balloon payments or irregular payment schedules?* Statute is silent.

*Any restrictions on refinancing?* Statute is silent except for restrictions on short-term consumer loans. § 54-4-65.

*Any restrictions on prepayment penalties?* Statute is silent.

*What security interests (or postdated checks or ACH authorizations) are allowed or prohibited?* “Loan” is defined to include unsecured loans and loans secured by real or personal property. § 54-4-11.

*Does statute prohibit unconscionable loan charges?* Statute is silent.

*Must lender underwrite or evaluate borrower’s ability to repay?* Statute is silent.

*If state has a criminal usury law, is lending under this statute exempt from it?* Not applicable.

*Reporting requirements, including detail about what must be reported and whether there are any requirements that the state agency review or take other steps regarding the reports:* Statute is silent.

*Other significant features:* Not applicable.

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## TENNESSEE

### *Tenn. Code Ann. §§ 45-5-101 to 45-5-612 (Industrial Loan and Thrift Companies).*

*What types of lenders it applies to (e.g., banks vs. non-banks):* Industrial loan and thrift companies, industrial banks, industrial investment companies. § 45-5-103(a). Law is inapplicable to banks (other than industrial banks), savings and loan associations, credit unions, insurance companies, any other

persons engaged in the business of making loans who are subject to supervision and regulation by a state or federal administrative agency, and licensed pawnbrokers. § 45-5-104.

*Licensure requirements and implications of licensure:* Registration required. § 45-5-103(a).

*Size and length of loans to which the statute applies, and any restrictions in the statute on these features:* No restrictions. Open-end credit plans are defined as “plans under which a registrant contemplates repeated loans that may be without fixed maturities or limitation as to the length of term.” § 45-5-301(2).

*Other restrictions on applicability of statute (e.g., it only applies if lender takes a mortgage on real property):* Statute is silent.

*What rate of interest is allowed?* On loan of less than \$100, 7.5% per annum discount interest, but capped at 18% actuarial. On loan of \$100 or more, 24% actuarial. For all open-end credit plans, 24% actuarial. §§ 45-5-301, 45-5-401(c). (Section 45-5-403(b)(1) offers an alternative, but the calculations depend on the number of months in the loan term, so it is inapplicable to open-end credit, which is defined by § 45-5-301(2)(A)(iii) as having no fixed loan term.)

*What loan fees are allowed?*

- 4% of loan amount or a flat service charge of \$10 (less if loan is under \$100), or, for open-end credit or loans secured by real property, the actual bona fide, reasonable expenses directly incident to the loan that are paid to third parties, including title examination, title insurance, surveys, document preparation, credit reports, and appraisals. § 45-5-403(a)(1), (2).
- In addition:
  - Recording fees or non-filing insurance.
  - Installment maintenance fee of \$2.50 per month for loan of less than \$100, \$3.50 per month for loan of \$100 or more but no more than \$750, \$3.00 per month for loan of more than \$750 but no more than \$1,250, and \$2.50 per month for loan over \$1,250.



**§ 45-5-403.** A general provision of the statute provides that these loan charges can be imposed only if the loan term is at least three years. § 45-5-301(3).

*What types of insurance are allowed, and any limits the lending statute places on charges?* Property insurance on the collateral; life, disability, or involuntary unemployment insurance. §§ 45-5-301(4), (5), (12), 45-5-305.

*Does statute prohibit all other fees besides those specifically allowed?* Yes. § 45-5-403.

*Does statute restrict balloon payments or irregular payment schedules?* Statute is silent.

*Any restrictions on refinancing?* The flat service charges authorized by § 45-5-403(a)(2) cannot be charged on the portion of a loan that refinances an earlier loan. § 45-5-403(a)(2)(C).

*Any restrictions on prepayment penalties?* Statute is silent about prepayment penalties. Borrower has right to prepay loan of \$100 or more only if contract so provides. § 45-5-402(b)(1).

*What security interests (or postdated checks or ACH authorizations) are allowed or prohibited?* May lend money with or without security, and take as security real or personal property, or both. § 45-5-301(1).

*Does statute prohibit unconscionable loan charges?* Statute is silent.

*Must lender underwrite or evaluate borrower's ability to repay?* Statute is silent.

*If state has a criminal usury law, is lending under this statute exempt from it?* Not applicable.

*Reporting requirements, including detail about what must be reported and whether there are any requirements that the state agency review or take other steps regarding the reports:* Annual report stating names and addresses of registrant's officers and directors or partners, and persons owning controlling interest in registrant; registrant's business locations and the nature of the business conducted at each location; names and addresses of all affiliated lenders and affiliated insurance companies doing business in the state; and

balance sheets, statements of income and expense, summaries of types of loans made, and other statistical information that may reasonably be required by the commissioner. Commissioner must prepare annual analysis and recapitulation of the reports. § 45-5-503. Registrants must also report certain events such as bankruptcy, revocation or suspension proceedings, and indictments or convictions. § 45-5-507.

*Other significant features:* Loan-splitting prohibited. § 45-5-302(11).

### **Tenn. Code Ann. §§ 45-12-101 to 45-12-126 (Flexible Credit Act).**

*What types of lenders it applies to (e.g., banks vs. non-banks):* Applies to licensees under this statute. § 45-12-103(a).

*Licensure requirements and implications of licensure:* Licensure required. § 45-5-103(a).

*Size and length of loans to which the statute applies, and any restrictions in the statute on these features:* Statute limits outstanding principal balance to \$4000. § 45-12-111(d).

*Other restrictions on applicability of statute (e.g., it only applies if lender takes a mortgage on real property):* Applies to any "flex loan plan," defined as an open-end credit plan under which the licensee contemplates repeated noncommercial loans for personal, family, or household purposes, that may be unsecured or secured by personal property; may be without fixed maturities or limitation as to the length of term; and are subject to prepayment in whole or in part at any time without penalty. § 45-12-102(6).

*What rate of interest is allowed?* 24% per annum. § 45-12-111(b). However, the licensee may also collect a "customary fee" of up to 0.7% per day (255% per year) of the average daily balance, which the statute defines not to be interest. § 45-12-111(c). Combining this with the 24% interest rate equals 279%.

*What loan fees are allowed?* Statute is silent.

*What types of insurance are allowed, and any limits the lending statute places on charges?* Statute is silent.



*Does statute prohibit all other fees besides those specifically allowed? Statute is silent.*

*Does statute restrict balloon payments or irregular payment schedules? Lender must require payments in amounts sufficient to reduce principal balance by at least 3% per month. § 45-12-111(e).*

*Any restrictions on refinancing? Statute is silent.*

*Any restrictions on prepayment penalties? Prohibited. § 45-12-102(6).*

*What security interests (or postdated checks or ACH authorizations) are allowed or prohibited? Loans may be unsecured or secured by personal property. § 45-12-102(6)(A).*

*Does statute prohibit unconscionable loan charges? Statute is silent.*

*Must lender underwrite or evaluate borrower's ability to repay? Statute is silent.*

*If state has a criminal usury law, is lending under this statute exempt from it? Not applicable.*

*Reporting requirements, including detail about what must be reported and whether there are any requirements that the state agency review or take other steps regarding the reports: Annual report is required, but statute does not require it to include any information about loans made. Commissioner must prepare annual analysis and recapitulation of the reports. § 45-12-122. Registrants must also report certain events such as bankruptcy, revocation or suspension proceedings, and indictments or convictions. § 45-12-121.*

*Other significant features: Loan-splitting prohibited, but the prohibition can be evaded by having the borrower sign a paper. § 45-12-113(c)(1). Anti-evasion provision. § 45-12-113(d).*

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## TEXAS

*Tex. Fin. Code Ann. §§ 346.001 to 346.206 (West) (Revolving Credit Accounts).*

*What types of lenders it applies to (e.g., banks vs. non-banks): Applies to "revolving credit accounts," defined to include both those by which a consumer may obtain direct loans ("revolving loan accounts") and those that provide credit cards that can be used to purchase goods or services from a third party or obtain loans from the creditor or a third party ("revolving triparty accounts"). §§ 346.003, 346.004. Statute is limited to personal, family, or household use unless the contract opts in to coverage. § 346.004.*

*Licensure requirements and implications of licensure: Must hold a license under Consumer Loans Law, § 342.051, to engage in business of making, transacting, negotiating, collecting, or servicing loans subject to chapter 342, or to charge interest greater than that otherwise authorized. Banks, savings banks, savings and loan associations, insurance premium finance companies, insurance agents who arrange loans on behalf of banks, savings banks, or savings and loan associations, e-filers authorized by IRS who arrange refund anticipation loans, and certain licensed or registered mortgage lenders and originators (limited to home equity and secondary mortgage loans) need not be licensed. § 346.005(b).*

*Size and length of loans to which the statute applies, and any restrictions in the statute on these features: Statute is silent.*

*Other restrictions on applicability of statute (e.g., it only applies if lender takes a mortgage on real property): Statute is silent.*

*What rate of interest is allowed? 18%. § 346.101.*

*What loan fees are allowed?*

- Annual fee of \$50 if credit limit \$5,000 or less, \$75 if credit limit exceeds \$5,000 but does not exceed \$25,000, and \$125 if credit limit exceeds \$25,000.
- Cash advance charge of \$2 or 2% of the advance, whichever is greater.

- Over-the-limit fee of \$15 or 5% of the amount by which the credit limit is exceeded, whichever is greater.
- Recording fees.

### §§ 346.103, 346.202.

*What types of insurance are allowed, and any limits the lending statute places on charges?* Section 346.201 incorporates chapter 342: Lender may require property insurance on tangible personal property collateral for non-real property loan, but only if cash advance is \$300 or more. § 342.401. If cash advance is \$100 or more, lender may offer credit life, credit health and accident, and involuntary unemployment insurance at the time the loan is made. § 342.402. For loan that is not secured by real property, lender may offer, but not require, a debt suspension agreement or debt cancellation agreement, and, if a motor vehicle is collateral, a gap waiver agreement. § 342.4021.

*Does statute prohibit all other fees besides those specifically allowed?* Yes, by virtue of § 349.001.

*Does statute restrict balloon payments or irregular payment schedules?* Statute is silent.

*Any restrictions on refinancing?* Statute is silent.

*Any restrictions on prepayment penalties?* Prepayment penalties are prohibited on all chapter 342 loans because they are not specifically authorized.

*What security interests (or postdated checks or ACH authorizations) are allowed or prohibited?* Creditor may require or take real or personal property as collateral. § 346.201.

*Does statute prohibit unconscionable loan charges?* Statute is silent.

*Must lender underwrite or evaluate borrower's ability to repay?* Statute is silent.

*If state has a criminal usury law, is lending under this statute exempt from it?* Not applicable.

*Reporting requirements, including detail about what must be reported and whether there are any requirements that*

*the state agency review or take other steps regarding the reports:* Lenders licensed under § 342.051 must file annual reports. See § 342.559.

*Other significant features:* Loan-splitting prohibited. § 346.203.

### Tex. Fin. Code Ann. §§ 342.051 to 342.560 (West) (Consumer Loans).

*What types of lenders it applies to (e.g., banks vs. non-banks):* Applies to all lenders, but exempts some from licensure requirement.

*Licensure requirements and implications of licensure:* Must hold a license to engage in business of making loans subject to the chapter, or to charge interest greater than that otherwise authorized. Banks, savings banks, savings and loan associations, insurers, insurance agents who arrange loans, e-filers authorized by IRS who arrange refund anticipation loans, and certain licensed or registered mortgage lenders and originators need not be licensed. § 342.051.

*Size and length of loans to which the statute applies, and any restrictions in the statute on these features:* For loans made under the add-on rates allowed by § 342.201(a) or the split rates allowed by § 342.201(e), loan term cannot exceed:

- 37 months if loan is for \$1,500 or less.
- 49 months if loan is for more than \$1,500 but no more than \$3,000.
- 60 months if loan is for more than \$3,000.

§ 342.508. The statute does not include any exemption for open-end credit from this generally-applicable provision.

*Other restrictions on applicability of statute (e.g., it only applies if lender takes a mortgage on real property):* Statute applies to loans for consumer purposes, other than certain mortgage loans, if interest rate exceeds 10%. § 342.005.

*What rate of interest is allowed?* Three alternatives:

- Simple interest rates that produce the equivalent of add-on interest of:

- \$18 per \$100 per year on first \$2,010 (adjusted for inflation from original amount of \$300); and
  - \$8 per \$100 per year on amount over \$2,010 but no more than \$16,750 (adjusted for inflation from original amount of \$2,500). §§ 342.201(a), 342.455(g).
- The rates set by §§ 303.001 to 303.017 (twice the rate on certain Treasury bills, with a 21% cap). §§ 342.201(d), 303.009(d).
- Split simple interest rates (referred to in Texas as “graduated rates” or “three-tiered rates”) as follows:
  - 30% on first \$3,350 (adjusted for inflation from original amount of \$500);
  - 24% on amount greater than \$3,350 but no more than \$7,035 (adjusted for inflation from original amount of \$1,050); and
  - 18% on amount greater than \$7,035 but no more than \$16,750 (adjusted for inflation from \$2,500). § 342.201(e).

#### § 342.455 (incorporating § 342.201).

*What loan fees are allowed?* Administrative fee of \$100. § 342.455 (incorporating § 342.201(f)); 7 Tex. Admin. Code § 83.503 (increasing the fee to \$100, effective July 10, 2014, and stating that it may be charged in addition to interest).

*What types of insurance are allowed, and any limits the lending statute places on charges?* Lender may require property insurance on tangible personal property collateral for non-real property loan, but only if cash advance is \$300 or more. § 342.401. If cash advance is \$100 or more, lender may offer credit life, credit health and accident, and involuntary unemployment insurance. § 342.402. For loan that is not secured by real property and for which the finance charges are computed under the simple interest rates (18% to 24%) allowed by § 342.201(d), lender may offer, but not require, a debt suspension agreement or debt cancellation agreement, and, if a motor vehicle is collateral, a gap waiver agreement. § 342.4021. Authorized lender (a bank, savings association, or licensed consumer lender) may offer, but not require,

an automobile club membership. § 342.457. *See also* § 342.455(e) (referring to insurance coverage in open-end credit contracts).

*Does statute prohibit all other fees besides those specifically allowed?* Yes. § 342.502.

*Does statute restrict balloon payments or irregular payment schedules?* No. Statute refers to single-payment loans and irregular transactions. §§ 342.201(c), 342.202. *See also* § 342.001(1), (2) (definitions of irregular and regular transactions).

*Any restrictions on refinancing?* Administrative fee (\$100) can be charged only once in any 180-day period, and only once in any 365-day period if lender charged the split simple interest rates allowed by § 342.201(e). § 342.201(f).

*Any restrictions on prepayment penalties?* Lender must allow prepayment. § 342.453. Prepayment penalties are prohibited on all chapter 342 consumer loans because they are not specifically authorized by § 342.502.

*What security interests (or postdated checks or ACH authorizations) are allowed or prohibited?* Wage assignments and liens on real property, other than judgment liens, are prohibited, but lender may take an assignment of a warrant drawn against a state fund or a claim against a state fund or a state agency. § 342.503.

*Does statute prohibit unconscionable loan charges?* Statute is silent.

*Must lender underwrite or evaluate borrower’s ability to repay?* Statute is silent, but administrative rule requires lenders making loans under chapter 342 to consider, in determining the size, duration, and schedule of installments, the financial ability of the borrower to repay the loan, and evaluate whether the borrower should be reasonably able to repay all other known obligations concurrently. 7 Tex. Admin. Code § 83.852.

*If state has a criminal usury law, is lending under this statute exempt from it?* Not applicable.

*Reporting requirements, including detail about what must be reported and whether there are any requirements that the state agency review or take other steps regarding the reports:* Authorized lender (a bank, savings association, or licensed consumer lender) must file annual report containing information required by the commissioner. Commissioner shall publish annual consolidated analysis and recapitulation. § 342.559. However, 7 Tex. Admin. Code § 83.835 limits the annual reporting requirement to licensees of the Office of the Consumer Credit Commissioner, so it does not apply to banks, savings banks, savings and loan associations, or other lenders that need not be licensed.

*Other significant features:* Loan splitting prohibited. § 342.501. Anti-evasion provision. § 342.051(b).

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## UTAH

### *Utah Code Ann. §§ 70C-1-101 to 70C-8-203 (West) (Consumer Credit Code).*

*What types of lenders it applies to (e.g., banks vs. non-banks):* Applies generally to extensions of credit to natural persons, but excludes:

- Business, commercial, or agricultural credit.
- Closed-end credit secured by a first lien on a dwelling or building lot.
- Certain transactions in securities or commodities accounts.
- Credit over \$50,000 (adjusted for inflation) or with a credit limit over that amount, unless secured by real property or a personal-property dwelling.
- Certain transactions under public utility or common carrier tariffs.
- Most insurance sales.
- Pawnbrokers.
- Certain educational loans.
- Rent-to-own transactions

### *§§ 70C-1-201, 70C-1-202.*

*Licensure requirements and implications of licensure:* Licensure is not required, but creditors subject to the Code, other than federally insured depository institutions and their wholly owned subsidiaries, must file notification with the department at least 30 days before commencing business in the state. § 70C-8-202.

*Size and length of loans to which the statute applies, and any restrictions in the statute on these features:* Law does not apply to extension of credit that is not secured by the consumer's principal dwelling and in which the amount financed or credit limit exceeds \$50,000 (adjusted annually for inflation). § 70C-1-202.

*Other restrictions on applicability of statute (e.g., it only applies if lender takes a mortgage on real property):* Statute is silent

*What rate of interest is allowed?* Rate set by contract. § 70C-2-101. Statute also provides that, if there is an unpaid balance in an open-end account on the date the finance charge is applied, the creditor may assess a minimum charge. § 70C-4-101.

*What loan fees are allowed?* Parties may contract for payment of any finance charge and other charges and fees except where restricted or otherwise covered by provisions of the Code. § 70C-2-101.

*What types of insurance are allowed, and any limits the lending statute places on charges?* Except as otherwise provided in statute, a creditor may agree to provide insurance. Statute specifically mentions property insurance on collateral, credit life insurance, and liability insurance. §§ 70C-6-103, 70C-1-204, 70C-6-202, 70C-6-303.

*Does statute prohibit all other fees besides those specifically allowed?* Yes. § 70C-7-201.

*Does statute restrict balloon payments or require substantially equal installments?* Provision does not apply to open-end credit.

*Any restrictions on refinancing?* Statute is silent.

*Any restrictions on prepayment penalties?* Provisions do not apply to open-end credit.



*What security interests are allowed or prohibited (including postdated checks and ACH authorization)?* Wage assignments prohibited unless revocable, or a payroll deduction plan, or applicable only to wages already earned at the time of the assignment. § 70C-2-202.

*Does statute prohibit unconscionable loan charges?* Yes. § 70C-7-106.

*Must lender underwrite or evaluate borrower's ability to repay?* Statute is silent.

*Is lending under this statute exempt from state criminal usury law?* Statute is silent.

*Reporting requirements, including detail about what must be reported and whether there are any requirements that the state agency review or take other steps regarding the reports:* Statute is silent.

*Other significant features:* Not applicable.

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## VIRGINIA

*Va. Code Ann. § 6.2-312 (Open-End Credit Plans); Va. Code Ann. §§ 6.2-313, 6.2-318, 6.2-400.*

*What types of lenders it applies to (e.g., banks vs. non-banks):* Applies broadly to lenders engaged in extending credit under open-end credit plans. § 6.2-312(A). However, licensed payday lenders are prohibited from extending open-end credit under this section. § 6.2-312(C).

*Licensure requirements and implications of licensure:* Statute is silent.

*Size and length of loans to which the statute applies, and any restrictions in the statute on these features:* Statute is silent.

*Other restrictions on applicability of statute (e.g., it only applies if lender takes a mortgage on real property):* Statute is silent.

*What rate of interest is allowed?* Bank or savings institution may impose finance charges and other charges or fees as agreed by the parties. § 6.2-313. Credit

unions and other non-bank lenders may also impose finance charges and other charges and fees as agreed by the parties, but only for open-end credit plans that allow a grace period of at least 25 days from the billing date to pay the balance without incurring finance charges. §§ 6.2-312(A), 6.2-318. A lender is unlikely to offer cash advances under such a plan.

*What loan fees are allowed?* See preceding entry.

*What types of insurance are allowed, and any limits the lending statute places on charges?* Statute is silent.

*Does statute prohibit all other fees besides those specifically allowed?* Statute is silent.

*Does statute restrict balloon payments or irregular payment schedules?* Statute is silent.

*Any restrictions on refinancing?* Statute is silent.

*Any restrictions on prepayment penalties?* Provisions do not apply to open-end loans.

*What security interests (or postdated checks or ACH authorizations) are allowed or prohibited?* May be secured by a subordinate mortgage or deed of trust on residential real estate. § 6.2-312(B). No person shall make a loan or otherwise extend credit under an open-end credit plan or any other lending arrangement that is secured by a non-purchase money security interest in a motor vehicle unless such loan or extension of credit is made in accordance with, or is exempt from, the provisions of chapter 22 (motor vehicle title loans). § 6.2-312(D).

*Does statute prohibit unconscionable loan charges?* Statute is silent.

*Must lender underwrite or evaluate borrower's ability to repay?* Statute is silent.

*If state has a criminal usury law, is lending under this statute exempt from it?* Not applicable.

*Reporting requirements, including detail about what must be reported and whether there are any requirements that the state agency review or take other steps regarding the reports:* Statute is silent.

*Other significant features:* Not applicable.



## WASHINGTON

### *Wash. Rev. Code §§ 31.04.015 to 34.04.903 (Consumer Loan Act).*

*What types of lenders it applies to (e.g., banks vs. non-banks):* Applies to loans, broadly defined, but excludes:

- Banks, savings banks, trust companies, savings and loan or building and loan associations, and credit unions.
- Pawnbrokers.
- Retail installment sellers, unless credit is extended to purchase merchandise certificates, coupons, open or closed loop stored value, or other similar items issued and redeemable by a retail seller other than the retail seller extending the credit.
- Entities making loans under check cashers law.
- Business, commercial, or agricultural loans unless secured by borrower's primary residence.
- "Person making loans made to government or government agencies or instrumentalities or making loans to organizations as defined in the federal TILA."
- Entities making loans under housing trust fund law.
- Entities making loans under programs of the U.S. Department of Agriculture, HUD, or other similar federal government programs.
- Loans made by nonprofit housing organizations or under federal- or state-funded low-income housing programs.
- "Entities making loans that are not residential mortgage loans under a credit card plan."
- Individuals employed by a licensed residential loan servicing company, unless so required by federal law or regulation.
- Licensed entities that process payments on seller-financed loans secured by liens on real or personal property.

### **§ 31.04.025.**

*Licensure requirements and implications of licensure:* License required. If non-mortgage loan is made without a required license, fees or interest must be refunded. § 31.04.035(1).

*Size and length of loans to which the statute applies, and any restrictions in the statute on these features:* Statute is silent.

*Other restrictions on applicability of statute (e.g., it only applies if lender takes a mortgage on real property):* Statute is silent.

*What rate of interest is allowed?* 25%. § 31.04.115(2)(a).

*What loan fees are allowed?*

- Nonrefundable, prepaid, origination fee not to exceed 4% of the first \$20,000 and 2% of remainder. § 31.04.105(2).
- Actual fees paid to third parties who provide goods or services, including credit reporting agencies, title companies, appraisers, structural and pest inspectors, and escrow companies. However, no charge may be collected unless a loan is made, except for reasonable fees properly incurred in connection with an appraisal that meets statutory requirements. § 31.04.105(3).
- For open-end loan: May charge other authorized fees, plus annual fee, payable each year in advance. § 31.04.115(3).

*See also* Wash. Admin. Code §§ 208-620-555, 208-620-560 (providing details about fees).

*What types of insurance are allowed, and any limits the lending statute places on charges?* Licensee may sell insurance covering real and personal property, covering the life or disability or both of borrower, and covering the involuntary unemployment of borrower. §§ 31.04.105(10), 31.04.115(4).

*Does statute prohibit all other fees besides those specifically allowed?* Statute is silent.

*Does statute restrict balloon payments or irregular payment schedules?* For open-end loan: The borrower

may prepay in full at any time without prepayment penalty or, if the account is not in default, in monthly installments of fixed or determinable amounts as provided in the agreement. § 31.04.115(1)(d).

*Any restrictions on refinancing?* Statute is silent.

*Any restrictions on prepayment penalties?* Borrower has the privilege of paying the account in full at any time without prepayment penalty. § 31.04.115(1)(d).

*What security interests (or postdated checks or ACH authorizations) are allowed or prohibited?* For open-end loan: security interest in real or personal property is allowed. § 31.04.115(5).

*Does statute prohibit unconscionable loan charges?* Statute is silent.

*Must lender underwrite or evaluate borrower's ability to repay?* Statute is silent. Cf. Wash. Admin. Code § 208-620-506 (requiring that underwriting standards for mortgage loans include analysis of ability to repay).

*If state has a criminal usury law, is lending under this statute exempt from it?* Not applicable.

*Reporting requirements, including detail about what must be reported and whether there are any requirements that the state agency review or take other steps regarding the reports:* Annual report with information as director may reasonably require. Director shall publish annual analysis and recapitulation § 31.04.155.

*Other significant features:* Not applicable.

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## WEST VIRGINIA

### *W. Va. Code §§ 46A-1-101 to 46A-8-102 (Consumer Credit and Protection Act).*

*What types of lenders it applies to (e.g., banks vs. non-banks):* Applies generally to consumer lending, but excludes:

- Extensions of credit to government or governmental agencies or instrumentalities.
- Sale of insurance by an insurer, except as otherwise provided.

- Certain transactions under public utility or common carrier tariffs.
- Licensed pawnbrokers.
- Mortgage lender and broker licensees, to the extent of a conflict with state Mortgage Lender, Broker and Servicer Act.

### *§§ 46A-1-103, 46A-1-105.*

*Licensure requirements and implications of licensure:* Must obtain license in order to make “regulated” consumer loans or take assignments of them and collect them. § 46A-4-101. “Regulated consumer loan” is one with an interest rate over 18%, except those that qualify for federal law preemption from state interest rate limitations, including federal law bank parity provisions, or where other state law specifically permits the lender to make the loan at that rate without a regulated consumer lender license. § 46A-1-102(38). Loan made without a required license is void. § 46A-5-101(2).

*Size and length of loans to which the statute applies, and any restrictions in the statute on these features:* “Consumer loan” is defined as one where either the principal does not exceed \$45,000 or the debt is secured by an interest in land or a factory-built home. § 46A-1-102(15).

*Other restrictions on applicability of statute (e.g., it only applies if lender takes a mortgage on real property):* Statute is silent.

*What rate of interest is allowed?* Several alternate rates are allowed:

- 18% on the first \$750 of unpaid principal balance and 12% on the unpaid principal balance in excess of \$750, but lender may charge a minimum of \$0.50 for any month in which there is an unpaid balance. § 46A-3-106.
- The alternate rate set forth in § 31a-4-30a: 1% in excess of 90-day discount rate. § 46A-3-117.
- The alternate rate set forth in §§ 47-6-5b and 47-6-5c: 1-1/2% above long-term T-bills. § 46A-3-117.

- Regulated lender may charge: For loan of \$2,000 or less that is not secured by real property, 31% actuarial. For loan of greater than \$2,000 or which is secured by real property, 27% actuarial, but 18% if loan exceeds \$10,000. § 46A-4-107(1), (2), (3).
- For a loan of \$2,000 or less, a regulated consumer lender may charge 31% plus a processing fee of 2% of the amount financed, as long as the lender charges no other finance charges. § 46A-4-107(7).
- As a final alternative, any lender may charge 18% actuarial, by virtue of a board order under §§ 47A-1-1 to 47A-1-4.

*What loan fees are allowed?* Lender may charge (and add to principal) 2% of the amount financed as an origination fee, points or investigation fee, but may charge 5% if loan is secured by real estate. Lender may also charge:

- Official fees and taxes.
- Annual fee for lender credit card that can be used to purchase goods or services from at least 100 persons not related to the issuer.
- Charges for other benefits, including insurance, in certain circumstances if commissioner adopts rule.
- Documentary charge if reasonable in amount and applied equally to cash and credit customers.

#### § 46A-3-109(a).

*What types of insurance are allowed, and any limits the lending statute places on charges?* Insurance on the consumer's life and earning capacity, on any real or personal property offered as security, and vendor's or creditor's single interest insurance with respect to which the insurer has no right of subrogation. § 46A-3-109(b).

*Does statute prohibit all other fees besides those specifically allowed?* Yes. § 46A-4-107(4).

*Does statute restrict balloon payments or irregular payment schedules?* Provision does not apply to open-end credit.

*Any restrictions on refinancing?* Only provision relates solely to loans secured by real estate. § 46A-4-107(4).

*Any restrictions on prepayment penalties?* Consumer may repay in full the unpaid balance of a consumer loan, refinancing or consolidation at any time without penalty (with an exception for certain loans secured by real estate). § 46A-3-110.

*What security interests (or postdated checks or ACH authorizations) are allowed or prohibited?* Wage assignments are allowed but must be revocable and limited to 25% of disposable earnings, and are prohibited altogether and void for regulated consumer lenders. §§ 46A-2-116, 46A-4-109(2). Other than a purchase money lien, no regulated consumer lender may take a security interest in household goods in the possession and use of the borrower, and agreement creating non-purchase money security interest in items other than household goods must be in writing, signed in person by the borrower, and by borrower's spouse if borrower is married (unless they are separated); non-complying security interest is void. § 46A-4-109(3).

*Does statute prohibit unconscionable loan charges?* Yes. § 46A-2-121.

*Must lender underwrite or evaluate borrower's ability to repay?* Statute is silent.

*If state has a criminal usury law, is lending under this statute exempt from it?* Criminal usury provision, § 46A-5-103, only criminalizes certain violations of the Consumer Credit and Protection Act, so does not provide an independent limit on the rates the Act authorizes.

*Reporting requirements, including detail about what must be reported and whether there are any requirements that the state agency review or take other steps regarding the reports:* Annual report in form prescribed by commissioner relating to all regulated consumer loans made, including the lender's financial condition, assets, and liabilities. § 46A-4-104.

*Other significant features:* Loan-splitting prohibited. § 46A-4-108.

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## WISCONSIN

### *Wis. Stat. §§ 421.101 to 427.105 (Wisconsin Consumer Act).*

*What types of lenders it applies to (e.g., banks vs. non-banks):* Act applies broadly to consumer credit transactions. § 421.107. Does not apply to:

- Transactions in which all parties are organizations.
- Certain transactions under public utility or common carrier tariffs.
- Pawnbrokers' rates and charges.
- Most sales of insurance.
- Consumer credit transactions in which amount financed exceeds \$25,000.
- First lien real estate mortgage transactions.
- Certain securities transactions.
- Motor vehicle leases that do not meet definition of consumer lease.
- Transactions for agricultural purposes, except for debt collection restrictions and a disclosure provision.
- For some purposes, certain consumer credit transactions made, insured, or guaranteed by a government agency.

### *§§ 421.202, 421.203.*

*Licensure requirements and implications of licensure:* Registration requirement for those who make or solicit consumer credit transactions (except a person who engages in consumer credit transactions solely through honoring credit cards issued by third parties not related to such person), and those who directly collect payments from or enforce rights against customers arising from such transactions. § 426.201. Lenders other than banks, savings banks, savings and loan associations, trust companies, credit unions, or any of their affiliates, or licensed payday lenders must also have license to charge more than 18% on consumer loans § 138.09.

*Size and length of loans to which the statute applies, and any restrictions in the statute on these features:* Act does not apply to consumer credit transactions in which amount financed exceeds \$25,000. § 421.202(6).

*Other restrictions on applicability of statute (e.g., it only applies if lender takes a mortgage on real property):* Statute is silent.

*What rate of interest is allowed?* No limit. § 422.201(2) (bn), (10s), 138.09(bp).

*What loan fees are allowed?* Fees and charges that are agreed upon by the parties, which may include periodic membership fees, cash advance fees, charges for exceeding a designated credit limit, charges for late payments, charges for providing copies of documents and dishonored check charges. § 420.202(2m).

*What types of insurance are allowed, and any limits the lending statute places on charges?* Creditor may charge for credit life insurance, credit accident and sickness insurance, credit unemployment insurance, and other insurance, § 422.202(2s), but may not charge for property insurance unless amount financed is \$800 or more and value of property is \$800 or more. § 424.301(3). May also charge for future service contracts; motor club service contracts; mechanical breakdown, extended warranty, or maintenance service contracts; and other charges approved by the administrator. § 422.202(2s).

*Does statute prohibit all other fees besides those specifically allowed?* Statute is silent.

*Does statute restrict balloon payments or irregular payment schedules?* No. See closed-end credit summary.

*Any restrictions on refinancing?* Provision does not apply to open-end credit.

*Any restrictions on prepayment penalties?* May prepay in full at any time without penalty. § 422.208.

*What security interests (or postdated checks or ACH authorizations) are allowed or prohibited?* Act does not apply to transactions secured by a first lien on real estate. § 421.202(7). Wage assignments are prohibited unless revocable at will by the customer. § 422.404.



In a consumer loan transaction that constitutes an interlocking loan (a purchase-money loan in which the lender has a relationship with the seller or lessor) , no creditor shall take a negotiable instrument, other than a check, as evidence of the obligation of the customer. § 422.406(2). For a consumer loan, lender may not take a non-purchase money security interest in: (a) clothing of the customer and the customer's dependents and the following, if they are not fixtures: dining table and chairs, refrigerator, heating stove, cooking stove, radio, beds and bedding, couch and chairs, cooking utensils and kitchenware or (b) real property if the obligation secured is less than \$1,000. § 422.417(3).

*Does statute prohibit unconscionable loan charges?* Yes. § 425.107.

*Must lender underwrite or evaluate borrower's ability to repay?* Statute is silent.

*If state has a criminal usury law, is lending under this statute exempt from it?* Section 943.27 criminalizes loan contracts with interest exceeding 20% actuarial, but only if the rate is prohibited by a law other than § 943.27.

*Reporting requirements, including detail about what must be reported and whether there are any requirements that the state agency review or take other steps regarding the reports:* Administrator must report annually on practices in consumer transactions, on the use of consumer credit in the state, on problems attending the collection of debts, on the problems of persons of limited means in consumer transactions, and on the operation of the Act, including the administrator's procedures and policies and recommendations for amendments to the Act. The administrator shall make available upon request a list of all persons against whom complaints have been filed and the results of all investigations completed or not being actively pursued along with a brief description of the facts of each case and the action taken in each. § 426.104.

*Other significant features:* Loan splitting prohibited. § 138.09(7)(j). Anti-evasion provision. § 138.09(9)(a).

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## WYOMING

### *Wyo. Stat. Ann. §§ 40-14-101 to 40-14-702 (Consumer Credit Code).*

*What types of lenders it applies to (e.g., banks vs. non-banks):* Act prescribes maximum charges for all creditors, § 40-14-107. However, except as required by § 40-14-641 (provision on loan originator licensing) Act does not apply to extensions of credit to government or governmental agencies; the sale of insurance by an insurer if the premium is not financed; certain transactions under public utility or common carrier tariffs; ceilings on credit unions' rates and charges or limits on their loan maturities; or credit transactions primarily for agricultural purposes except as provided. § 40-14-121.

*Licensure requirements and implications of licensure:* To make supervised loans, i.e., loans with interest rate higher than 10%, must have license or be a supervised financial organization (a depository institution, other than an insurer, that is subject to federal or state supervision). Must also have license to take assignments of and collect upon supervised loans (with 3-month grace period). § 40-14-342. Loan made in violation of licensure requirements is void. § 40-14-521(b).

*Size and length of loans to which the statute applies, and any restrictions in the statute on these features:* Relevant provisions apply to "consumer loans," defined to exclude those in which the principal exceeds \$75,000, unless the debt is secured by an interest in land or a dwelling located in Wyoming. § 40-14-304. However, "consumer loan" does not include a first mortgage loan that is not precomputed and that is primarily secured by an interest in land if: (i) at the time the loan is made the value of the collateral is substantial in relation to the amount of the loan and (ii) the finance charge does not exceed 18% actuarial. § 40-14-305.

*Other restrictions on applicability of statute (e.g., it only applies if lender takes a mortgage on real property):* Statute is silent.



*What rate of interest is allowed?* For consumer loan other than a supervised loan, 10%, but (with exceptions for pawnbrokers and post-dated check cashers), lender may charge a minimum loan finance charge of \$30.00. § 40-14-310(a), (f). For a supervised loan with initial principal of \$75,000 or less, either 36% on first \$1,000 and 21% on remainder, or 21% on entire unpaid balance. Where the initial principal exceeds \$75,000, any finance charge specified in loan agreement. § 40-14-348.

*What loan fees are allowed?*

- Official fees and taxes.
- Annual fee for lender credit card (see definition at § 40-14-140(a)(v)) or similar arrangement that entitles the user to purchase goods or services from at least 100 persons not related to the issuer.
- Charges excluded from the loan finance charge by the federal Consumer Credit Protection Act or by rule adopted by the administrator.

### § 40-14-311.

*What types of insurance are allowed, and any limits the lending statute places on charges?* Credit insurance providing life, accident, or health coverage, property insurance, and liability insurance. §§ 40-14-40440-14-431, 40-14-452. Creditor may charge for property insurance only if amount financed is \$300 or more and the value of the property is \$300 or more. § 40-14-450.

*Does statute prohibit all other fees besides those specifically allowed?* Statute is silent.

*Does statute restrict balloon payments or irregular payment schedules?* Provisions do not apply to open-end credit.

*Any restrictions on refinancing?* Statute is silent.

*Any restrictions on prepayment penalties?* Debtor may prepay without penalty. § 40-14-318.

*What security interests (or postdated checks or ACH authorizations) are allowed or prohibited?* Wage assignments prohibited and unenforceable for consumer

loans, but employee may authorize deductions from earnings if the authorization is revocable, and lender may take an assignment of commissions or accounts receivable payable to the debtor for services rendered. § 410-14-334. For a supervised loan where principal is \$1,000 or less, security interest in land is prohibited and void. § 40-14-350.

*Does statute prohibit unconscionable loan charges?* Yes. § 40-14-508.

*Must lender underwrite or evaluate borrower's ability to repay?* Statute is silent.

*If state has a criminal usury law, is lending under this statute exempt from it?* Not applicable.

*Reporting requirements, including detail about what must be reported and whether there are any requirements that the state agency review or take other steps regarding the reports:* Administrator may conduct research and make appropriate studies and must make annual report on the operation of his office, on the use of consumer credit in the state, and on the problems of persons of small means obtaining credit from persons regularly engaged in extending sales or loan credit. The report shall include a description of certain of the administrator's procedures and policies, the number and percentages of offices which are periodically investigated or examined, a statement of the types of consumer credit problems of creditors and debtors which have come to his attention and their disposition, and the activities of his office. § 40-14-604(e).

*Other significant features:* Loan splitting prohibited. § 40-14-349.

## APPENDIX E

### UNCONSCIONABILITY PROVISIONS OF STATE CLOSED-END INSTALLMENT LOAN LAWS

This appendix includes the full text of the unconscionability prohibitions of state closed-end installment loan laws. It does not include the unconscionability prohibitions found in other state laws, such as state deceptive practices statutes. The provisions in this appendix are up-to-date as of early 2015.

| CITATION                               | APPLIES TO  | FULL TEXT  |
|--|---|--|
| Ala. Code<br>§ 5-19-16                 | contract or any provision of it   | With respect to a consumer credit transaction, if the court as a matter of law finds the contract or any provision of the contract to have been unconscionable at the time it was made, the court may refuse to enforce the contract, or it may enforce the remainder of the contract without the unconscionable provision, or it may so limit the application of any unconscionable provision as to avoid any unconscionable result.  |
| Cal. Civil Code<br>§ 1670.5(a)         | contract or any clause  | If the court as a matter of law finds the contract or any clause of the contract to have been unconscionable at the time it was made the court may refuse to enforce the contract, or it may enforce the remainder of the contract without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result.<br><i>See also</i> Cal. Fin. Code § 22302 (stating that this provision applies to loans subject to Finance Lenders Law).  |
| Colo. Rev. Stat. Ann.<br>§ 5-5-109(1), | “the transaction”; any term or part of the agreement or transaction. However, for loans made under Deferred Deposit Loan Act, if lender complies with requirements addressing ability to repay, and the loan otherwise complies with this and other applicable law, neither the consumer’s inability to repay nor the lender’s decision to obtain or not obtain additional information concerning the consumer’s creditworthiness shall be cause to determine that a loan is unconscionable.<br>§ 5-3.1-122(4). | (1) With respect to a transaction that is, gives rise to, or leads the consumer to believe will give rise to a consumer credit transaction, if the court as a matter of law finds:<br>(a) The agreement or transaction to have been unconscionable at the time it was made, or to have been induced by unconscionable conduct, the court may refuse to enforce the agreement; or<br>(b) Any term or part of the agreement or transaction to have been unconscionable at the time it was made, the court may refuse to enforce the agreement, enforce the remainder of the agreement without the unconscionable term or part, or so limit the application of any unconscionable term or part as to avoid any unconscionable result. |

| CITATION                                 | APPLIES TO   | FULL TEXT   |
|--|--|---|
| Idaho Code<br>§ 28-45-106(1), (3)        | the agreement or any clause, but a charge or practice permitted by the Act is not in itself unconscionable   | <p>(1) With respect to a regulated consumer credit sale, or regulated consumer loan, if the court as a matter of law finds the agreement or any clause of the agreement to have been unconscionable at the time it was made the court may refuse to enforce the agreement, or it may enforce the remainder of the agreement without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result.</p> <p>...</p> <p>(3) For the purpose of this section, a charge or practice expressly permitted by this act is not in itself unconscionable.</p>  |
| Ind. Code<br>§ 24-4.5-5-108              | the agreement or any clause, but a charge or practice expressly permitted by the statute is not in itself unconscionable   | <p>(1) With respect to a consumer credit sale, consumer lease, or consumer loan, if the court as a matter of law finds the agreement or any clause of the agreement to have been unconscionable at the time it was made the court may refuse to enforce the agreement, or it may enforce the remainder of the agreement without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result.</p> <p>...</p> <p>(3) For the purpose of this section, a charge or practice expressly permitted by this Article is not in itself unconscionable.</p>  |
| Iowa Code<br>§ 537.5108<br>(1), (4), (8) | the agreement or transaction, or any term or part of it. Statute specifies factors to consider. Charge or practice expressly permitted by the statute is not unconscionable. | <p>1. With respect to a transaction that is, gives rise to, or leads the debtor to believe it will give rise to a consumer credit transaction, in an action other than a class action, if the court as a matter of law finds the agreement or transaction to have been unconscionable at the time it was made, or to have been induced by unconscionable conduct, the court may refuse to enforce the agreement, or if the court finds any term or part of the agreement or transaction to have been unconscionable at the time it was made, the court may refuse to enforce the agreement, or may enforce the remainder of the agreement without the unconscionable term or part, or may so limit the application of any unconscionable term or part as to avoid any unconscionable result.</p> <p>...</p> <p>4. In applying subsection 1, consideration shall be given to each of the following factors, among others, as applicable:</p> <p>a. Belief by the seller, lessor, or lender at the time a transaction is entered into that there is no reasonable probability of payment in full of the obligation by the consumer or debtor. However, the rental renewals necessary to acquire ownership in a consumer rental purchase agreement shall not be construed to be the obligation contemplated in this subsection if the consumer may terminate the agreement without penalty at any time. As used in this paragraph, "obligation" means the initial periodic lease payments and any other additional advance payments required at the consummation of the transaction.</p> |

| CITATION                            | APPLIES TO   | FULL TEXT  |
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|                                     |  | <p>b. In the case of a consumer credit sale, consumer lease, or consumer rental purchase agreement, knowledge by the seller or lessor at the time of the sale or lease of the inability of the consumer to receive substantial benefits from the property or services sold or leased.</p> <p>c. In the case of a consumer credit sale, consumer lease, or consumer rental purchase agreement, gross disparity between the price of the property or services sold or leased and the value of the property or services measured by the price at which similar property or services are readily obtainable in consumer credit transactions by like consumers.</p> <p>d. The fact that the creditor contracted for or received separate charges for insurance with respect to a consumer credit sale or consumer loan with the effect of making the sale or loan, considered as a whole, unconscionable.</p> <p>e. The fact that the seller, lessor or lender has knowingly taken advantage of the inability of the consumer or debtor reasonably to protect the consumer's or debtor's interests by reason of physical or mental infirmities, ignorance, illiteracy or inability to understand the language of the agreement, or similar factors.</p> <p>f. The fact that the seller, lessor or lender has engaged in conduct with knowledge or reason to know that like conduct has been restrained or enjoined by a court in a civil action by the administrator against any person pursuant to the provisions on injunctions against fraudulent or unconscionable agreements or conduct in <a href="#">section 537.6111</a>.</p> <p>...</p> <p>8. For the purpose of this section, a charge or practice expressly permitted by this chapter is not in itself unconscionable.</p> |
| Kan. Stat. Ann. § 16a-5-108(1), (3) | the agreement or any clause, but a charge or practice expressly permitted by the statute is not unconscionable | <p>(1) With respect to a consumer credit transaction, if the trier of fact finds:</p> <p>(a) The agreement to have been unconscionable at the time it was made, or to have been induced by unconscionable conduct, the court may refuse to enforce the agreement; or</p> <p>(b) any clause of the agreement to have been unconscionable at the time it was made, the court may refuse to enforce the agreement, or may enforce the remainder of the agreement without the unconscionable clause, or may so limit the application of any unconscionable clause as to avoid any unconscionable result.</p> <p>...</p> <p>(3) For the purpose of this section, a charge or practice expressly permitted by this act is not unconscionable.</p>  |



| CITATION                                      | APPLIES TO   | FULL TEXT   |
|---|--|---|
| La. Stat. Ann. § 9:3551                       | the agreement or any clause, but agreement, charge, clause or practice that is expressly permitted or “necessarily implied” as being permitted is not unconscionable | With respect to a consumer credit transaction, if the court as a matter of law finds the agreement or any clause of the agreement to have been unconscionable at any time it was made the court may refuse to enforce the agreement, or it may enforce the remainder of the agreement without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result; provided, however, for the purposes of this chapter, an agreement, clause, charge or practice expressly permitted by this chapter or any other law or regulation of this state or of the United States or subdivision of either, or an agreement, clause, charge or practice necessarily implied as being permitted by this chapter or any other law or regulation of this state or the United States or any subdivision of either is not unconscionable. |
| Me. Rev. Stat. Ann. tit. 9-A, § 5-108(1), (3) | agreement or any clause, but change [sic] or practice expressly permitted is not in and of itself unconscionable in the absence of other practices and circumstances | <p>1. With respect to a consumer credit transaction, if the court as a matter of law finds:</p> <p>A. The agreement to have been unconscionable at the time it was made, or to have been induced by unconscionable conduct, the court may refuse to enforce the agreement; or</p> <p>B. Any clause of the agreement to have been unconscionable at the time it was made, the court may refuse to enforce the agreement, or may enforce the remainder of the agreement without the unconscionable clause, or may so limit the application of any unconscionable clause as to avoid any unconscionable result.</p> <p>...</p> <p>3. For the purpose of this section, a change or practice expressly permitted by this Act is not in and of itself unconscionable in the absence of other practices and circumstances.</p>   |
| Okla. Stat. Ann. tit. 14A, § 5-108(1), (3)    | the agreement or any clause, but a charge or practice expressly permitted by the statute is not in itself unconscionable   | <p>1) With respect to a consumer credit sale, consumer lease, or consumer loan, if the court as a matter of law finds the agreement or any clause of the agreement to have been unconscionable at the time it was made the court may refuse to enforce the agreement, or it may enforce the remainder of the agreement without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result.</p> <p>...</p> <p>(3) For the purposes of this section, a charge or practice expressly permitted by this act is not in itself unconscionable.</p>  |

| CITATION                                  | APPLIES TO   | FULL TEXT  |
|---|--|--|
| S.C. Code<br>§ 37-5-108(1), (4), (8), (9) | the agreement or transaction, or any term or part of it; specifies factors to consider; charge or practice expressly permitted by the statute is not in itself unconscionable, but prepaid charge that substantially exceeds usual and customary charge may be found unconscionable. | <p>(1) With respect to a transaction that is, gives rise to, or leads the debtor to believe will give rise to, a consumer credit transaction, if the court as a matter of law finds:</p> <p>(a) the agreement or transaction to have been unconscionable at the time it was made, or to have been induced by unconscionable conduct, the court may refuse to enforce the agreement; or</p> <p>(b) any term or part of the agreement or transaction to have been unconscionable at the time it was made, the court may refuse to enforce the agreement, enforce the remainder of the agreement without the unconscionable term or part, or so limit the application of any unconscionable term or part as to avoid any unconscionable result and award the consumer any actual damages he has sustained.</p> <p>...</p> <p>(4)(a) In applying subsection (1), consideration must be given to applicable factors, such as, but without limitation:</p> <p>(i) in the case of a consumer credit sale, consumer lease, or consumer rental-purchase agreement, knowledge by the seller or lessor at the time of the sale or lease of the inability of the consumer to receive substantial benefits from the property or services sold or leased;</p> <p>(ii) in the case of a consumer credit sale, consumer lease, consumer rental-purchase agreement, or consumer loan, gross disparity between the price of the property or services sold, leased, or loaned and the value of the property, services, or loan measured by the price at which similar property, services, or loans are readily obtainable in consumer credit transactions by like consumers;</p> <p>(iii) the fact that the creditor contracted for or received separate charges for insurance with respect to a consumer credit sale, consumer loan, or consumer rental-purchase agreement with the effect of making the sale or loan unconscionable, considered as a whole, when including the sale of insurance from which the consumer receives no potential benefit as referenced in <a href="#">Section 37-4-106(1)(a)</a>;</p> <p>(iv) the fact that the seller, lessor, or lender knowingly has taken advantage of the inability of the consumer or debtor reasonably to protect his interests by reason of physical or mental infirmities, ignorance, illiteracy, inability to understand the language of the agreement, or similar factors;</p> <p>(v) taking a nonpurchase money, nonpossessory security interest in household goods defined as the following: clothing, furniture, appliances, one radio and one television, linens, china, crockery, kitchenware, and personal effects, including wedding rings of the consumer and his dependents; except that when a purchase money consumer credit transaction is refinanced or consolidated, the security lawfully collateralizing the previous consumer credit transaction continues to secure the new consumer credit transaction, even if the new consumer credit transaction is for a larger amount or is in other respects a nonpurchase money consumer credit transaction; and further, that a nonpurchase money, nonpossessory security interest may be taken in a work of art, electronic entertainment equipment, except one television and one radio, items acquired as antiques and which are over one hundred years of age, and jewelry, except wedding rings.</p> |

| CITATION                           | APPLIES TO  | FULL TEXT   |
|------------------------------------|---|---|
|                                    |   | <p>In construing subitem (v), the courts must be guided by the interpretations and rulings of the federal courts and the Federal Trade Commission to the Credit Trade Regulation Rule (16 C.F.R. PART 444).</p> <p>(b) In applying subsection (1), consideration may be given to the extension of credit to a consumer if, considering the consumer's current and expected income, current obligations, and employment status, the creditor knows or should know that the consumer is unable to make the scheduled payment on the obligation when due. Rental renewals necessary to acquire ownership in a consumer rental-purchase agreement are not obligations contemplated in this item (b).</p> <p>...</p> <p>(8) For the purpose of this section, a charge or practice expressly permitted by this title is not in itself unconscionable.</p> <p>(9) Nothing in this title may be construed to prevent a finding of unconscionability where a creditor assesses an origination charge, prepaid finance charge, service, or other prepaid charge which substantially exceeds the usual and customary charge for the particular type of consumer credit transaction. In such a transaction the court shall consider the relative sophistication of the debtor and the creditor, the relative bargaining power of the debtor and creditor, and any oral or written representations made by the creditor regarding the credit service charge or the loan finance charge of the consumer credit transaction.</p> |
| Utah Code Ann. § 70C-7-106(1), (3) | the agreement or any part of it, but charge or practice expressly permitted by the statute is not in itself unconscionable  | <p>(1) With respect to a consumer credit agreement, if the court finds the agreement or any part of the agreement to have been unconscionable at the time it was made, the court may refuse to enforce the agreement, or it may enforce the remainder of the agreement without the unconscionable clause if that will avoid any unconscionable result.</p> <p>...</p> <p>(3) For the purposes of this section, a charge or practice expressly permitted by this title is not in itself unconscionable.</p>  |
| W. Va. Code § 46A-2-121(1), (3)    | the agreement or any term or part of it, but a charge or practice expressly permitted by the statute is not unconscionable. | <p>(1) With respect to a transaction which is or gives rise to a consumer credit sale, consumer lease or consumer loan, if the court as a matter of law finds:</p> <p>(a) The agreement or transaction to have been unconscionable at the time it was made, or to have been induced by unconscionable conduct, the court may refuse to enforce the agreement, or</p> <p>(b) Any term or part of the agreement or transaction to have been unconscionable at the time it was made, the court may refuse to enforce the agreement, or may enforce the remainder of the agreement without the unconscionable term or part, or may so limit the application of any unconscionable term or part as to avoid any unconscionable result.</p> <p>...</p> <p>(3) For the purpose of this section, a charge or practice expressly permitted by this chapter is not unconscionable.</p>  |

| CITATION                                | APPLIES TO   | FULL TEXT  |
|---|--|--|
| Wis. Stat. Ann.<br>§ 425.107<br>(1)-(4) | any aspect of the transaction, any conduct directed against the customer by a party to the transaction, or any result of the transaction; lists factors; charge or practice that is expressly permitted by the statute is not in itself unconscionable, but the totality of a creditor's conduct may show that such practice or charge is part of an unconscionable course of conduct. | <p>(1) With respect to a consumer credit transaction, if the court as a matter of law finds that any aspect of the transaction, any conduct directed against the customer by a party to the transaction, or any result of the transaction is unconscionable, the court shall, in addition to the remedy and penalty authorized in sub. (5), either refuse to enforce the transaction against the customer, or so limit the application of any unconscionable aspect or conduct to avoid any unconscionable result.</p> <p>(2) Specific practices forbidden by the administrator in rules promulgated pursuant to <u>s. 426.108</u> shall be presumed to be unconscionable.</p> <p>(3) Without limiting the scope of sub. (1), the court may consider, among other things, the following as pertinent to the issue of unconscionability:</p> <p>(a) That the practice unfairly takes advantage of the lack of knowledge, ability, experience or capacity of customers;</p> <p>(b) That those engaging in the practice know of the inability of customers to receive benefits properly anticipated from the goods or services involved;</p> <p>(c) That there exists a gross disparity between the price of goods or services and their value as measured by the price at which similar goods or services are readily obtainable by other customers, or by other tests of true value;</p> <p>(d) That the practice may enable merchants to take advantage of the inability of customers reasonably to protect their interests by reason of physical or mental infirmities, illiteracy or inability to understand the language of the agreement, ignorance or lack of education or similar factors;</p> <p>(e) That the terms of the transaction require customers to waive legal rights;</p> <p>(f) That the terms of the transaction require customers to unreasonably jeopardize money or property beyond the money or property immediately at issue in the transaction;</p> <p>(g) That the natural effect of the practice would reasonably cause or aid in causing customers to misunderstand the true nature of the transaction or their rights and duties thereunder;</p> <p>(h) That the writing purporting to evidence the obligation of the customer in the transaction contains terms or provisions or authorizes practices prohibited by law; and</p> <p>(i) Definitions of unconscionability in statutes, regulations, rulings and decisions of legislative, administrative or judicial bodies.</p> <p>(4) Any charge or practice expressly permitted by chs. 421 to 427 and 429 is not in itself unconscionable but even though a practice or charge is authorized by chs. 421 to 427 and 429, the totality of a creditor's conduct may show that such practice or charge is part of an unconscionable course of conduct.</p> |



| CITATION                          | APPLIES TO   | FULL TEXT  |
|-----------------------------------|--|--|
| Wyo.<br>Stat. Ann.<br>§ 40-14-508 | the agreement or any clause,<br>but a charge or practice<br>expressly permitted by<br>the statute is not in itself<br>unconscionable | (a) With respect to a consumer credit sale, consumer lease,<br>or consumer loan, if the court as a matter of law finds the<br>agreement or any clause of the agreement to have been<br>unconscionable at the time it was made the court may refuse<br>to enforce the agreement, or it may enforce the remainder of<br>the agreement without the unconscionable clause, or it may<br>so limit the application of any unconscionable clause as to<br>avoid any unconscionable result.<br>...<br>(c) For the purpose of this section, a charge or<br>practice expressly permitted by this act is not in itself<br>unconscionable. |

Notes: Chart does not include provisions similar to unconscionability, e.g. a requirement that certain charges be “reasonable.”

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