

Delaware Statutes

§ 2201. Definitions

In this chapter, unless the context otherwise requires:

- (1) "Person" means an individual, corporation, partnership or any other business entity or group or combination of individuals however organized.
- (2) "Licensee," "licensed lender," "person licensed" or "lender" means any person duly licensed or regulated by the Commissioner pursuant to this chapter and, in addition, means any person or class of persons exempt from any or all of the provisions of this chapter in accordance with § 2202(b) of this title, to the extent and for such purposes as determined by the Commissioner in order to effectuate the purposes of this chapter.
- (3) "Commissioner" means the State Bank Commissioner.
- (4) "Payment period" means the period of time scheduled by the terms of a loan to elapse between the days upon which installment payment are required to be made on such loan.

Credits

66 Laws 1987, ch. 22, § 1; 68 Laws 1991, ch. 105, § 18; 72 Laws 1999, ch. 15, § 29, eff. April 9, 1999.

§ 2202. License required

(a) Every person desiring to transact the business of lending money in this State shall be required to obtain a license under this chapter; provided, however, that a person that makes not more than 5 loans within any 12-month period shall be deemed not to be transacting the business of lending money. Except as otherwise provided by law, loans made by any such unlicensed lender shall fall under Chapter 23 of Title 6. This chapter shall not apply:

- (1) To any banking organization, federal credit union or insurance company; or
 - (2) To any other person, if and to the extent that such person is lending money in accordance with and as authorized by any other applicable law of this State or the United States, including but not limited to the registration requirements in Chapter 17 of this title.
- (b) The Commissioner shall be authorized to exempt from any or all of the provisions of this chapter such persons or classes of persons, or loans or classes of loans, as the Commissioner shall find inappropriate to include within the coverage of this chapter in order to effectuate the purposes of this chapter. The Commissioner may by regulation establish procedures for application, fees and other requirements for an exemption pursuant to this subsection.

(c) A person shall not be deemed to be transacting the business of lending money within the meaning of this section solely by reason of the circumstance that such person is a participating merchant, as such term is used in this chapter.

Credits

66 Laws 1987, ch. 22, § 1; 68 Laws 1991, ch. 105, § 19; 70 Laws 1996, ch. 327, § 43, eff. May 2, 1996; 72 Laws 1999, ch. 15, § 30, eff. April 9, 1999.

§ 2203. Application and fees

(a) Every application for a license shall be in writing in the form prescribed by the Commissioner and shall contain the name and complete address or addresses where the business of the applicant is to be conducted and, if the applicant be a partnership, association, corporation or other form of business organization, the names and complete addresses of each member, director and principal officer thereof. Such application shall also include a description of the activities of the applicant, in such detail and for such periods as the Commissioner may require, as well as such further information as the Commissioner may require. The Commissioner, at the time the application is submitted or in connection with an investigation of the application, may require the applicant, the spouse of the applicant, a principal of, individual who is a person in control of, or proposed responsible individual of the applicant, or any other individual associated with the applicant and the proposed licensed activities, to provide the Commissioner or the Commissioner's designee with a complete set of fingerprints for purposes of a criminal background investigation. Such applicant, at the time of making such application, shall pay to the Commissioner as an investigation fee the sum of \$250 which shall not be refundable.

(b) Upon approval, the applicant shall pay an annual license fee of \$250 which shall be payable annually thereafter. No abatement in the amount of said license fee shall be made if the license is issued for less than 1 year or if the license is surrendered, canceled or revoked prior to the expiration of the period for which such license was issued. Every license shall expire on December 31 of each year.

(c) In addition to the annual license fee required by subsection (b) of this section, each licensee making short-term consumer loans, as defined in § 2227 of this title, and/or title loans, as defined in § 2250 of this title, shall pay an annual high-cost loan license fee surcharge of \$1,500 for each licensed office. There is hereby created within the State Treasury a special fund to be designated as the Financial Literacy Education Fund which shall be used to fund grants to or contracts with schools or other organizations that provide financial and economic literacy skills to adults and youth in accordance with guidelines and/or regulations to be established by the Commissioner and the Delaware Secretary of Education. All fees which are by law payable under this subsection shall be paid into the State Treasury and to the credit of the Financial Literacy Education Fund.

Credits

66 Laws 1987, ch. 22, § 1. Amended by 68 Laws 1991, ch. 105, § 20; 77 Laws 2009, ch. 164, § 2, eff. July 16, 2009; 82 Laws 2019, ch. 78, § 2, eff. June 27, 2019.

§ 2204. Issuance of license

Upon the filing of an application for a license, if the Commissioner shall find that the financial responsibility, experience, character and general fitness of the applicant and of the members thereof (if the applicant be a copartnership or association) and of the officers and directors thereof (if the applicant be a corporation) are such as to command the confidence of the community and to warrant belief that the business will be operated honestly, fairly and efficiently within the purpose of this chapter, the Commissioner shall thereupon issue a license to transact business in accordance with this chapter. If the Commissioner shall not so find, the Commissioner shall not issue such license and the Commissioner shall notify the applicant of the denial, give notice of the grounds for refusal and notify the applicant of the right to request a hearing. If the applicant requests a hearing the Commissioner shall hold such hearing under Chapter 101 of Title 29. The Commissioner shall approve or deny every application for license hereunder within 90 days from the date the Commissioner determines that the application as filed with the Commissioner is complete.

Credits

66 Laws 1987, ch. 22, § 1; 68 Laws 1991, ch. 105, § 21; 70 Laws 1995, ch. 186, § 1, eff. July 10, 1995.

§ 2205. Changes in officers or directors of licensee

In the event that there shall be any change among the officers, partners or directors of any licensee, the licensee shall forthwith notify the Commissioner of the name, address and occupation of each new officer, partner or director and provide such other information as the Commissioner may require.

Credits

66 Laws 1987, ch. 22, § 1.

§ 2206. License requirements; acquisition

(a) A licensee shall obtain a license for each office or other place of business from which its licensed business is conducted upon payment of the required fees for each office and compliance with all applicable provisions of law. In the event the location of a licensed office is changed during the term of the license, the Commissioner shall issue without charge an amended license for the new location. In case there is a change of name but no change in corporate structure, the Commissioner shall issue without charge an amended license for the new name. Such license shall not be otherwise transferable or assignable. The Commissioner may issue more than 1 license to the same applicant upon payment of the required fees and compliance with all applicable provisions of law.

(b) Upon written request, the Commissioner may in the Commissioner's discretion grant conditional approval for the acquired licensee to conduct its business under its existing license for a period not to exceed 60 days in cases where the control of the licensee changes and where a new application for licensure has been filed in accordance with § 2203 of this title.

Credits

66 Laws 1987, ch. 22, § 1; 70 Laws 1995, ch. 6, §§ 8, 9, eff. Feb. 10, 1995; 70 Laws 1995, ch. 186, § 1, eff. July 10, 1995; 72 Laws 1999, ch. 15, § 31, eff. April 9, 1999; 80 Laws 2016, ch. 225, § 4, eff. May 9, 2016.

§ 2207. Renewal of license

Every holder of a license or a renewal thereof, as provided for in this section, desiring to continue the transaction of the business as provided for in this chapter, shall at least 30 days prior to the expiration of such license or renewal thereof make application to the Commissioner on forms to be provided by the Commissioner for a license renewal. The Commissioner may mandate that applications for renewal shall be treated as new applications if said renewal applications are not on file with the office of the State Bank Commissioner at least 30 days prior to the expiration of such license or renewal thereof. Licensees who have not complied with supervisory letters or who have not paid the supervisory assessment or examination fees may be refused license renewal.

Credits

66 Laws 1987, ch. 22, § 1; 70 Laws 1996, ch. 327, § 42, eff. May 2, 1996.

§ 2208. Surety bonds and irrevocable letters of credit

(a) Surety bonds. –

(1) Every licensee shall file with the Commissioner, in a form satisfactory to the Commissioner, an original corporate surety bond, with surety provided by a corporation authorized to transact business in this State, in the principal sum to be determined by the Commissioner, except that the bond amount shall not be less than \$50,000 nor more than \$200,000. In determining the amount of the bond required for a licensee, the Commissioner shall consider, among other things:

- a. The dollar value of the lender's Delaware business;
- b. The dollar value of advance fees collected by the lender;
- c. The periods for which such fees are held before a loan is funded; and
- d. Such other and further criteria as the Commissioner may deem necessary and appropriate.

(2) No bond shall be accepted unless the following requirements are satisfied:

- a. The aggregate value of the bond shall be equal to or greater than the amount determined in accordance with subsection (a)(1) of this section;

b. The term of the bond shall be commensurate with the license period or continuous;

c. The expiration date of the bond shall not be earlier than midnight of the date on which the license expires; and

d. The bond shall run to the State for the benefit of the office of the State Bank Commissioner and for the benefit of all consumers injured by any wrongful act, omission, default, fraud or misrepresentation by a licensee in the course of its activity as a licensee. Compensation under the bond shall be for amounts which represent actual losses and shall not be payable for claims made by business creditors, third-party service providers, agents or persons otherwise in the employ of the licensee. Surety claims shall be paid to the office of the State Bank Commissioner by the insurer not later than 90 days after receipt of a claim. Claims paid after 90 days shall be subject to daily interest at the legal rate. The aggregate liability of the surety on the bond, exclusive of any interest which accrues for payments made after 90 days, shall in no event exceed the amount of such bond.

(3) If the licensee changes its surety company or the bond is otherwise amended, the licensee shall immediately provide the Commissioner with the amended original copy of the surety bond. No cancellation of an existing bond by a surety shall be effective unless written notice of its intention to cancel is filed with the Commissioner at least 30 days before the date upon which cancellation shall take effect.

(4) The Commissioner may require potential claimants to provide such documentation and affirmations as the Commissioner may determine to be necessary and appropriate. In the event the Commissioner determines that multiple consumers have been injured by a licensee, the Commissioner shall cause a notice to be published for the purpose of identifying all relevant claims.

(5) When a surety company receives a claim against the bond of a licensee, it shall immediately notify the Commissioner and shall not pay any claim unless and until it receives notice to do so from the Commissioner.

(6) The Commissioner shall have a period of 2 calendar years after the effective date of cancellation or termination of the surety bond by the insurer to submit claims to the insurer.

(b) Irrevocable letters of credit. -- In lieu of requiring the filing of a surety bond, the Commissioner may, at the Commissioner's discretion, accept from a licensee an irrevocable letter of credit.

(1) Such irrevocable letters of credit shall be provided by an insured depository institution (as defined in the Federal Deposit Insurance Act at 12 U.S.C. § 1813(c)) acceptable to the Commissioner, in a form satisfactory to the Commissioner in the

principal sum to be determined by the Commissioner, except that the irrevocable letter of credit amount shall not be less than \$50,000 nor more than \$200,000. In determining the amount of the irrevocable letter of credit required for a licensee, the Commissioner shall consider, among other things:

- a. The dollar value of the lender's Delaware business;
- b. The dollar value of advance fees collected by the lender;
- c. The periods for which such fees are held before a loan is funded; and
- d. Such other and further criteria as the Commissioner may deem necessary and appropriate.

(2) No irrevocable letter of credit shall be accepted unless the following requirements are satisfied:

- a. The aggregate value of the irrevocable letter of credit shall be equal to or greater than the amount determined by subsection (b)(1) of this section;
- b. The irrevocable letter of credit shall run to the State for the benefit of the office of the State Bank Commissioner and for the benefit of all consumers injured by the wrongful act, omission, default, fraud or misrepresentation by a licensee in the course of its activity as a licensee. Compensation under the irrevocable letter of credit shall be for amounts which represent actual losses and shall not be payable for claims made by business creditors, third-party service providers, agents or persons otherwise in the employ of the licensee. The aggregate liability of the insured depository institution issuing the irrevocable letter of credit shall in no event exceed the amount of such irrevocable letter of credit; and
- c. Draws upon such irrevocable letters of credit shall be available by sight drafts thereunder, in amounts determined by the Commissioner, up to the aggregate amount of the irrevocable letter of credit. Such drafts shall be honored in accordance with § 5-112(1) of Title 6.

(3) The Commissioner may require potential claimants to provide such documentation and affirmations as the Commissioner may determine to be necessary and appropriate. In the event the Commissioner determines that multiple consumers have been injured by a licensee, the Commissioner shall cause a notice to be published for the purpose of identifying all relevant claims.

(4) The Commissioner may refuse release of an irrevocable letter of credit, following the surrender of a license, up to 2 years after the effective date of such termination of licensure.

Credits

66 Laws 1987, ch. 22, § 1; 68 Laws 1991, ch. 105, § 22; 70 Laws 1996, ch. 356, § 2, eff. June 7, 1996.

§ 2209. Suspension, revocation or surrender of license

(a) The Commissioner may revoke any license issued hereunder if the Commissioner shall find that:

(1) The licensee has violated any provision of this chapter or any rule or regulation made by the Commissioner under and within the authority of this chapter or of any other law, rule or regulation of this State or the United States.

(2) Any fact or condition exists which, if it had existed at the time of the original application for such license, would have warranted the Commissioner in refusing originally to issue such license.

(3) The licensee has engaged in business activities or practices in connection with extensions of credit to consumers, which could be deemed unfair or deceptive by nature of intent. Such activities and practices include, but are not limited to, the use of tactics which mislead the consumer, misrepresent the consumer transaction or any part thereof or otherwise create false expectations on the part of the consumer.

(b) The Commissioner may temporarily suspend any license pending the issuance of a final order as provided in Chapter 101 of Title 29.

(c) Except as provided in subsection (b) of this section, no license shall be revoked or suspended except after notice and an opportunity for the licensee to request a hearing in accordance with Chapter 101 of Title 29.

(d) Any licensee may surrender any license by delivering to the Commissioner such license together with written notice that it thereby surrenders such license, but such surrender shall not affect such licensee's civil or criminal liability for acts committed prior to such surrender.

(e) No revocation, suspension or surrender of any license shall impair or affect the obligation of any preexisting lawful contract between the licensee and any person.

(f) Every license issued hereunder shall remain in force and effect until the same shall have expired or shall have been surrendered, revoked or suspended in accordance with this chapter, but the Commissioner shall have authority to reinstate a suspended license or to issue a new license to a licensee whose license shall have been revoked if no fact or condition then exists which would have warranted the Commissioner in refusing originally to issue such license under this chapter.

(g) Whenever the Commissioner shall revoke or suspend a license issued pursuant to this chapter, he shall forthwith execute a written order to that effect. The Commissioner shall

forthwith serve the written order upon the licensee. Any such order may be reviewed in the manner provided by Chapter 101 of Title 29.

Credits

66 Laws 1987, ch. 22, § 1; 68 Laws 1991, ch. 105, § 23; 68 Laws 1992, ch. 303, § 37; 70 Laws 1995, ch. 186, § 1, eff. July 10, 1995; 73 Laws 2001, ch. 24, §§ 7-9, eff. April 17, 2001; 77 Laws 2009, ch. 126, § 3, eff. July 8, 2009.

§ 2210. Supervision and examination of business by Commissioner

- (a) Every person or combination of persons licensed to transact business as provided in this chapter in the State shall be subject to the supervision and examination of the State Bank Commissioner and shall be examined by the Commissioner or his authorized representative annually or at such intervals as the Commissioner deems necessary.
- (b) On the occasion of every examination, the Commissioner or the Commissioner's authorized representative shall be given access to every part of the office or place of business visited and to the assets, securities, books and papers of the business.
- (c) The examination made by the Commissioner or the Commissioner's authorized representative shall be a thorough examination into the affairs of the business visited, the resources and liabilities, the investment of the funds, the mode of conducting the business and the compliance or noncompliance with this Code or any regulations promulgated thereunder, and any other statutes or regulations of this State or the United States; and in connection with such examination the Commissioner or the Commissioner's authorized representative may examine, under oath or affirmation, any and all persons connected with or associated with the licensee.
- (d) If, in the Commissioner's opinion, it is necessary for a thorough examination of a licensee, the Commissioner may retain 1 or more accountants, attorneys, appraisers or other third parties to assist the Commissioner in such examination. Within 10 days after receipt of a statement from the Commissioner, such licensee shall pay or reimburse the fees, costs and expenses of any third parties retained by the Commissioner under this subsection.
- (e) The Commissioner may prescribe regulations to carry out the purposes of this chapter.

Credits

66 Laws 1987, ch. 22, § 1; 68 Laws 1992, ch. 303, § 38; 70 Laws 1995, ch. 186, § 1, eff. July 10, 1995; 77 Laws 2009, ch. 126, § 4, eff. July 8, 2009.

§ 2211. Maintenance of books and records by licensee

- (a) Every licensee shall maintain such books, accounts and records relating to all transactions within this chapter as will enable the Commissioner to enforce full compliance with this chapter.
- (b) Each licensee that engages in the business of making mortgage loans, as defined by § 2403(13) of this title, shall submit to the Nationwide Mortgage Licensing System and Registry

developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators reports of condition, which shall be in such form and shall contain such information as the Nationwide Mortgage Licensing System and Registry may require.

Credits

66 Laws 1987, ch. 22, § 1. Amended by 77 Laws 2009, ch. 96, § 4, eff. July 30, 2009.

§ 2212. Retention of books and records by licensee

All books, accounts and records of the licensee shall be preserved and kept available as provided in this chapter for such period of time as the Commissioner may by regulation require.

Credits

66 Laws 1987, ch. 22, § 1.

§ 2213. Contents of books and records

The Commissioner may prescribe the minimum information to be shown in such books, accounts and records of the licensee so that such records will enable the Commissioner to determine compliance with this chapter.

Credits

66 Laws 1987, ch. 22, § 1.

§ 2213A. Multi-state automated licensing system

(a) The Commissioner is authorized to participate in any automated system involving 1 or more other states that will facilitate any aspect of the application and licensing processes of this chapter.

(b) Upon joining any such system, the Commissioner may by regulation establish:

(1) Any additional requirements for a license under this chapter that the Commissioner determines are necessary for participation in the system;

(2) Prelicensing education and testing, and postlicensing continuing education of individuals employed by the applicants or licensees subject to the system; and

(3) Any additional investigation fees, any fees paid directly to the administrator of the system, or any other fee required by the system to process an application or maintain a license, in such amount as the Commissioner determines is necessary to participate in the system.

(c) The administrator of any such system in which the Commissioner participates is authorized to act on behalf of the Commissioner to collect from the applicants and licensees subject to the

system any payments due the Commissioner under this chapter, to collect information and maintain records in electronic or other format relating to those applicants and licensees, and to submit fingerprints and any other information required for a criminal history background check to the Federal Bureau of Investigation or other law-enforcement agency.

(d) Information maintained on any such system in which the Commissioner participates regarding the applicants and licensees subject to the system may be shared with any other state participating in that system for the purpose of licensing, regulating, or supervising that same applicant or licensee under a statute similar to this chapter, if that state could have obtained that same information directly from the applicant or licensee under its own law. The Commissioner shall ensure that the system maintains appropriate confidentiality, privacy, data security, and security breach notification policies that are in full compliance with Delaware law.

Credits

Added by 76 Laws 2008, ch. 264, § 2, eff. June 30, 2008.

§ 2214. Definitions

As used in this subchapter:

- (1) “Revolving credit plan” or “plan” means a plan contemplating the extension of credit under an account governed by an agreement between a licensee and a borrower pursuant to which:
 - a. The licensee permits the borrower and, if the agreement governing the plan so provides, persons acting on behalf of or with authorization from the borrower, from time to time to make purchases from participating merchants and/or to obtain loans by use of a credit device;
 - b. The amounts of such purchases from participating merchants and loans are charged to the borrower’s account under the revolving credit plan;
 - c. The borrower is required to pay the licensee the amounts of all purchases and loans charged to such borrower’s account under the plan but has the privilege of paying such amounts outstanding from time to time in full or otherwise in accordance with the agreement governing the plan; and
 - d. Interest may be charged and collected by the licensee from time to time on the outstanding unpaid indebtedness under such plan.
- (2) “Purchases” mean payments for property of whatever nature, real or personal, tangible or intangible, and payments for services, licenses, taxes, official fees, fines, private or governmental obligations or any other thing of value.
- (3) “Loan” means cash advances or loans to be paid to or for the account of the borrower.

(4) “Credit device” means any card, check, identification code or other means of identification contemplated by the agreement governing the plan.

(5) “Outstanding unpaid indebtedness” means on any day an amount not in excess of the total amount of purchases from participating merchants and loans charged to the borrower’s account under the plan which is outstanding and unpaid at the end of the day, after adding the aggregate amount of any new purchases from participating merchants and loans charged to the account as of that day and deducting the aggregate amount of any payments and credits applied to that indebtedness as of any day and, if the agreement providing the plan so provides, may include the amount of any interest and additional charges, including late or delinquency charges, which have accrued to the account and which are unpaid at the end of the day. Purchases and loans may be included in outstanding unpaid indebtedness as of such time as may be specified in the agreement governing the plan.

Credits

66 Laws 1987, ch. 22, § 1; 71 Laws 1997, ch. 19, § 63, eff. April 23, 1997; 72 Laws 1999, ch. 15, § 32, eff. April 9, 1999.

§ 2215. Extension of credit

Any licensee may offer and extend credit under a revolving credit plan to a borrower and in connection therewith may charge and collect the interest and other charges permitted by this subchapter and may take such security as collateral in connection therewith as may be acceptable to the licensee. Without limitation of the foregoing, credit may be extended under a revolving credit plan by a licensee’s acquisition of obligations arising out of the honoring by a merchant, a bank or other financial institution (whether chartered or organized under the laws of this or any other state, the District of Columbia, the United States or any district, territory or possession of the United States, or any foreign country) or a government or governmental subdivision or agency of a credit device made available to a borrower under a plan, whether directly or indirectly by means of telephone, point of sale terminal or other electronic or similar device or through the mail.

Credits

66 Laws 1987, ch. 22, § 1.

§ 2216. Interest

A licensee may charge and collect interest under a revolving credit plan on outstanding unpaid indebtedness in the borrower’s account under the plan at such daily, weekly, monthly, annual or other periodic percentage rate or rates as the agreement governing the plan provides or as established in the manner provided in the agreement governing the plan. Periodic interest may be calculated using an average daily balance, 2-cycle average daily balance, adjusted balance or previous balance method or using any other balance computation method provided for in the agreement governing the plan. Periodic billing cycles may be established in such manner and shall have such duration as may be specified in the agreement governing the plan.

Credits

66 Laws 1987, ch. 22, § 1; 71 Laws 1997, ch. 19, § 64, eff. April 23, 1997.

§ 2217. Variable rates

If the agreement governing the revolving credit plan so provides, the periodic percentage rate or rates of interest under such plan may vary in accordance with a schedule or formula. Such periodic percentage rate or rates may vary from time to time as the rate determined in accordance with such schedule or formula varies and such periodic percentage rate or rates, as so varied, may be made applicable to all or any part of outstanding unpaid indebtedness under the plan on or after the first day of the billing cycle that contains the effective date of such variation including any such indebtedness arising out of purchases made from a participating merchant or loans obtained prior to such variation in the periodic percentage rate or rates. Without limitation, a permissible schedule or formula hereunder may include provision in the agreement governing the plan for a change in the periodic percentage rate or rates of interest applicable to all or any part of outstanding unpaid indebtedness, whether by variation of the then applicable periodic percentage rate or rates of interest, variation of an index or margin or otherwise, contingent upon the happening of any event or circumstance specified in the plan, which event or circumstance may include the failure of the borrower to perform in accordance with the terms of the plan. Nothing herein precludes a licensee from charging or reserving a right to charge, by discretion or otherwise, a rate lower than any maximum rate provided for in any schedule or formula.

Credits

66 Laws 1987, ch. 22, § 1; 68 Laws 1992, ch. 303, § 39; 71 Laws 1997, ch. 19, § 65, eff. April 23, 1997; 77 Laws 2010, ch. 279, § 2, eff. June 10, 2010.

§ 2218. Additional charges

(a) In addition to or in lieu of interest at a periodic percentage rate or rates as provided in §§ 2216 and 2217 of this title, a licensee may, if the agreement governing the revolving credit plan so provides, charge and collect 1 or more of the following:

- (1) A daily, weekly, monthly, annual or other periodic charge in such amount or amounts as the agreement may provide for the privileges made available to the borrower under the plan;
- (2) A transaction charge or charges in such amount or amounts as the agreement may provide for each separate purchase or loan under the plan;
- (3) A minimum charge for each daily, weekly, monthly, annual or other scheduled billing period under the plan during any portion of which there is an outstanding unpaid indebtedness under the plan;
- (4) Reasonable fees for services rendered or for reimbursement of expenses incurred in good faith by the licensee or its agents in connection with such loan, including, without limitation, commitment fees, official fees and taxes, premiums or other charges for any

guarantee or insurance protecting the licensee against the borrower's default or other credit loss, or costs incurred by reason of examination of title, inspection, recording and other formal acts necessary or appropriate to the security of the loan, filing fees, attorney's fees and travel expenses;

(5) Prepayment charges authorized by subsection (b) of this section; and

(6) Such other charges as the Commissioner shall include in an itemized schedule of the maximum amounts which may be charged to an applicant for an extension of credit for costs, fees, services, points, premiums and all other reasonable expenses which may be incurred by such applicant in connection with the extension of credit. The maximum amounts permitted by said schedule may vary with the amount of the extension of credit and shall bear a reasonable relationship to such extensions of credit, the services required and the complexity of the transaction. No licensee or any other person shall demand, collect or receive from any borrower, directly or indirectly, any other charges, or any greater amounts for any authorized charges than those permitted by said schedule or otherwise under this chapter.

(b) A borrower may pay the outstanding unpaid indebtedness charged to the borrower's account under a plan in full at any time. Except for a charge imposed to terminate a plan if the agreement governing the plan so provides, a licensee may not impose any prepayment charges in connection with the payment of outstanding unpaid indebtedness in full by a borrower. A licensee may charge and collect any prepayment penalty or other charge specified in the agreement governing the plan in connection with the payoff and termination of a plan that is secured by a real estate mortgage.

(c) No charges assessed by a licensee in accordance with this section shall be deemed void as a penalty or otherwise unenforceable under any statute or the common law.

Credits

66 Laws 1987, ch. 22, § 1; 70 Laws 1996, ch. 327, § 44, eff. May 2, 1996; 71 Laws 1997, ch. 19, §§ 66, 67, eff. April 23, 1997.

§ 2219. Terms for indebtedness

A licensee may, if the agreement governing a revolving credit plan so provides, impose different terms (including, without limitation, the terms governing the periodic percentage rate or rates used to calculate interest, the method of computing the outstanding unpaid indebtedness to which such rate or rates are applied, the amounts of other charges and the applicable installment repayment schedule) in respect to indebtedness arising out of purchases and indebtedness arising out of loans made under the plan.

Credits

66 Laws 1987, ch. 22, § 1.

§ 2220. Omitted installments

A licensee may at any time and from time to time unilaterally extend to a borrower under a revolving credit plan the option of omitting monthly installments.

Credits

66 Laws 1987, ch. 22, § 1.

§ 2221. Insurance

(a) A licensee may request but not require an individual borrower to be insured in respect of a revolving credit plan under a life, health, accident, health and accident or other credit or other permissible insurance policy, whether group or individual, and in the event that an individual borrower's outstanding unpaid indebtedness under the plan is secured by an interest in real or personal property, a licensee may require the borrower to obtain insurance, from an insurer acceptable to the licensee, against loss of or damage to such property or against the liability arising out of the ownership or use of the property and may finance the premiums for such insurance.

(b) The offer and placement of insurance under this section shall be subject in all respects to the applicable provisions of Title 18.

Credits

66 Laws 1987, ch. 22, § 1.

§ 2222. Delinquent installments

(a) If the agreement governing a revolving credit plan so provides, a licensee may impose, as interest, a late or delinquency charge upon any outstanding unpaid installment payments or portions thereof under the plan which are in default; provided, however, that no more than 1 such late or delinquency charge may be imposed in respect of any single such installment payment or portion thereof regardless of the period during which it remains in default; and provided further, however, that for the purpose only of the preceding provision all payments by the borrower shall be deemed to be applied to satisfaction of installment payments in the order in which they become due. Nothing contained in this section shall limit, restrict or otherwise affect the right of a licensee under and pursuant to §§ 2216 and 2217 of this title to change the periodic percentage rate or rates of interest applicable to the revolving credit plan between the licensee and a borrower upon the occurrence of a delinquency or default or other failure of the borrower to perform in accordance with the terms of the plan.

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

Credits

66 Laws 1987, ch. 22, § 1; 68 Laws 1992, ch. 303, § 40; 70 Laws 1996, ch. 327, § 45, eff. May 2, 1996; 71 Laws 1997, ch. 19, § 68, eff. April 23, 1997.

§ 2223. Attorney's fees; costs

In the event a borrower defaults under the terms of a plan, the licensee may, if the borrower's account is referred to an attorney (not a regularly salaried employee of the licensee) or to a third party for collection and if the agreement governing the revolving credit plan so provides, charge and collect from the borrower a reasonable attorney's fee. In addition, following a borrower's default, the licensee may, if the agreement governing the plan so provides, recover from the borrower all court, alternative dispute resolution or other collection costs (including, without limitation, fees and charges of collection agencies) actually incurred by the licensee.

Credits

66 Laws 1987, ch. 22, § 1; 72 Laws 1999, ch. 15, § 33, eff. April 9, 1999.

§ 2224. Amendment of agreement

(a) Unless the agreement governing a revolving credit plan otherwise provides, a licensee may at any time and from time to time amend such agreement in any respect, whether or not the amendment or the subject of the amendment was originally contemplated or addressed by the parties or is integral to the relationship between the parties. Without limiting the foregoing, such amendment may change terms by the addition of new terms or by the deletion or modification of existing terms, whether relating to plan benefits or features, the rate or rates of periodic interest, the manner of calculating periodic interest or outstanding unpaid indebtedness, variable schedules or formulas, interest charges, fees, collateral requirements, methods for obtaining or repaying extensions of credit, attorney's fees, plan termination, the manner for amending the terms of the agreement, arbitration or other alternative dispute resolution mechanisms, or other matters of any kind whatsoever. Unless the agreement governing a revolving credit plan otherwise expressly provides, any amendment may, on and after the date upon which it becomes effective as to a particular borrower, apply to all then outstanding unpaid indebtedness in the borrower's account under the plan, including any such indebtedness that arose prior to the effective date of the amendment. An agreement governing a revolving credit plan may be amended pursuant to this section regardless of whether the plan is active or inactive or whether additional borrowings are available thereunder. Any amendment that does not increase the rate or rates of periodic interest charged by a licensee to a borrower under § 2216 or § 2217 of this title shall become effective as determined by the licensee, subject to compliance by the licensee with any applicable notice requirements under the Truth in Lending Act (15 U.S.C. §§ 1601 et seq.), and the regulations promulgated thereunder, as in effect from time to time. Any notice of an amendment sent by the licensee may be included in the same envelope with a periodic statement or as part of the periodic statement or in other materials sent to the borrower.

(b)(1) If an amendment increases the rate or rates of periodic interest charged by a licensee to a borrower under § 2216 or § 2217 of this title, the licensee shall mail or deliver to the borrower, at least 15 days before the effective date of the amendment, a clear and conspicuous written notice that shall describe the amendment and shall also set forth the effective date thereof and any applicable information required to be disclosed pursuant to the following provisions of this section.

(2) Any amendment that increases the rate or rates of periodic interest charged by a licensee to a borrower under § 2216 or § 2217 of this title shall become effective as to a particular borrower if the borrower does not, within 15 days of the earlier of the mailing or delivery of the written notice of the amendment (or such longer period as may be established by the licensee), furnish written notice to the licensee that the borrower does not agree to accept such amendment. The notice from the licensee shall set forth the address to which a borrower may send notice of the borrower's election not to accept the amendment and shall include a statement that, absent the furnishing of notice to the licensee of nonacceptance within the referenced 15 day (or longer) time period, the amendment will become effective and apply to such borrower. As a condition to the effectiveness of any notice that a borrower does not accept such amendment, the licensee may require the borrower to return to it all credit devices. If, after 15 days from the mailing or delivery by the licensee of a notice of an amendment (or such longer period as may have been established by the licensee as referenced above), a borrower uses a plan by making a purchase or obtaining a loan, notwithstanding that the borrower has prior to such use furnished the licensee notice that the borrower does not accept an amendment, the amendment may be deemed by the licensee to have been accepted and may become effective as to the borrower as of the date that such amendment would have become effective but for the furnishing of notice by the borrower (or as of any later date selected by the licensee).

(3) Any amendment that increases the rate or rates of periodic interest charged by a licensee to a borrower under § 2216 or § 2217 of this title may, in lieu of the procedure referenced in paragraph (2) of this subsection, become effective as to a particular borrower if the borrower uses the plan after a date specified in the written notice of the amendment that is at least 15 days after the mailing or delivery of the notice (but that need not be the date the amendment becomes effective) by making a purchase or obtaining a loan; provided, that the notice from the licensee includes a statement that the described usage after the referenced date will constitute the borrower's acceptance of the amendment.

(4) Any borrower who furnishes timely notice electing not to accept an amendment in accordance with the procedures referenced in paragraph (2) of this subsection and who does not subsequently use the plan, or who fails to use such borrower's plan as referenced in paragraph (3) of this subsection, shall be permitted to pay the outstanding unpaid indebtedness in such borrower's account under the plan in accordance with the rate or rates of periodic interest charged by a licensee to a borrower under § 2216 or § 2217 of this title without giving effect to the amendment; provided however, that the licensee may convert the borrower's account to a closed end credit account as governed by subchapter III of this chapter, on credit terms substantially similar to those set forth in the then-existing agreement governing the borrower's plan.

(5) Notwithstanding the other provisions of this subsection, no notice required by this subsection of an amendment of an agreement governing a revolving credit plan shall be required, and any amendment may become effective as of any date agreed upon between a licensee and a borrower, with respect to any amendment that is agreed upon between the licensee and the borrower, either orally or in writing.

(c) For purposes of this section, the following are examples of amendments that shall not be deemed to increase the rate or rates of periodic interest charged by a licensee to a borrower under § 2216 or § 2217 of this title:

- (1) A decrease or increase in the required number or amount of periodic installment payments;
- (2) Any change to a plan that increases the rate or rates in effect immediately prior to the change by less than $\frac{1}{4}$ of 1 percentage point per annum; provided that a licensee may not make more than 1 such change in reliance on this paragraph with respect to a plan within any 12-month period;
- (3)a. A change in the schedule or formula used under a variable rate plan under § 2217 of this title that varies the determination date of the applicable rate, the time period for which the applicable rate will apply or the effective date of any variation of the rate, or any other similar change, or
 - b. Any other change in the schedule or formula used under a variable rate plan under § 2217 of this title; provided that the initial interest rate that would result from any such change under this paragraph (3), as determined on the effective date of the change or, if notice of the change is mailed or delivered to the borrower prior to the effective date, as of any date within 60 days before mailing or delivery of such notice, will not be an increase from the rate in effect on such date under the existing schedule or formula;
- (4) A change from a variable rate plan to a fixed rate, or from a fixed rate to a variable rate plan so long as the initial rate that would result from such a change, as determined on the effective date of the change, or if the notice of the change is mailed or delivered to the borrower prior to the effective date, as of any date within 60 days before mailing or delivery of such notice, will not be an increase from the rate in effect on such date under the existing plan;
- (5) A change from a daily periodic rate to a periodic rate other than daily or from a periodic rate other than daily to a daily periodic rate; and
- (6) A change in the method of determining the outstanding unpaid indebtedness upon which periodic interest is calculated (including, without limitation, a change with respect to the date by which or the time period within which a new balance or any portion thereof must be paid to avoid additional periodic interest).

Credits

66 Laws 1987, ch. 22, § 1; 66 Laws 1988, ch. 403, § 3; 70 Laws 1995, ch. 217, § 2, eff. July 12, 1995; 71 Laws 1997, ch. 19, § 69, eff. April 23, 1997; 72 Laws 1999, ch. 15, §§ 34, 35, eff. April 9, 1999.

§ 2225. Application of other State laws

Any other law of this State limiting the rate or amount of interest, discount, points, finance charges, service charges or other charges which may be charged, taken, collected, received or reserved shall not apply to extensions of credit under a revolving credit plan operated in accordance with this subchapter.

Credits

66 Laws 1987, ch. 22, § 1.

§ 2226. Nonexclusivity; captions

(a) The provisions of this subchapter are not exclusive and a licensee may at its option elect to extend credit either pursuant to this subchapter or as otherwise permitted by applicable law.

(b) Section headings and captions contained in this subchapter are inserted only as a matter of convenience and for reference and do not and shall not be construed to define, limit, extend or describe the scope of this subchapter or the meaning or intent of any section hereof.

Credits

66 Laws 1987, ch. 22, § 1.

§ 2227. Definitions

As used in this subchapter:

- (1) “Business day” means, with respect to rescission under § 2235A of this title, all calendar days except Sundays and legal public holidays.
- (2) “Closed end credit” means the extension of credit by a licensee to a borrower pursuant to an arrangement or agreement which is not a revolving credit plan as defined in subchapter II of this chapter.
- (3) “Conspicuously displayed” means highlighted through the use of capitalization, bold print, underlining or some combination thereof.
- (4) “Loan” means any single extension of closed end credit.
- (5) “Right of rescission” means, with respect to any short-term consumer loan, the right to return any amount borrowed, in full, on or before the close of business of the business day following the day on which such sum has been disbursed or advanced without the incursion of any fee or other charges.
- (6) “Rollover” means, with respect to any short-term consumer loan, the extension of an outstanding and unpaid indebtedness beyond the stated repayment period solely on the basis of the payment of a fee without approval of a new loan application.

(7) “Short-term consumer loan” means a loan of \$1,000 or less made to an individual borrower that charges interest and/or fees for which the stated repayment period is less than 60 days and is not secured by title to a motor vehicle.

(8) “Workout agreement” means an agreement between an individual borrower and a licensee for the repayment of an outstanding and unpaid indebtedness. The workout agreement must provide for payments in equal installments over a period of at least 90 days and the licensee may not assess any other fee, interest charge, or other charge on the borrower as a result of converting the loan into a workout agreement.

Credits

66 Laws 1987, ch. 22, § 1; 73 Laws 2002 (3rd Sp. Sess.), ch. 398, § 3, eff. July 9, 2002; 78 Laws 2012, ch. 278, § 1, eff. Jan. 1, 2013.

§ 2228. Extension of credit

(a) Any licensee may, subject to any limitations on lending authority contained in its charter or otherwise imposed by law and subject to the other provisions of this subchapter, offer and extend closed end credit to a borrower and, in connection therewith, may charge and collect the interest and other charges permitted by this subchapter and may take such security as collateral in connection therewith as may be acceptable to the licensee. Loans to any 1 borrower may not exceed 20% of the paid-in capital stock and surplus of such lender.

(b) All licensees will maintain records or other comparable evidence of their activity taken to reach a decision on a loan. If a commitment between a licensee and an applicant is not met (regardless of whether a similar loan at a higher rate is closed or not) and the delay is the licensee’s fault, or the licensee cannot demonstrate through its records or other comparable evidence that it took reasonably diligent steps to meet its deadline, such action or inaction taken by the licensee may be deemed to be an unsafe and unsound operating practice. In such a case, the Commissioner shall take appropriate action which may include, but is not limited to, an order to refund certain fees paid by the applicant to the licensee.

Credits

66 Laws 1987, ch. 22, § 1; 68 Laws 1991, ch. 105, § 24.

§ 2229. Interest

A licensee may charge and collect interest in respect of a loan at such daily, weekly, monthly, annual or other periodic percentage rate or rates as the agreement governing the loan provides or as established in the manner provided in such agreement and may calculate such interest by way of simple interest or such other method as the agreement governing the loan provides. If the interest is precomputed it may be calculated on the assumption that all scheduled payments will be made when due. For purposes hereof, a year may but need not be a calendar year and may be such period of from 360 to 366 days, including or disregarding leap year, as the licensee may determine.

Credits

66 Laws 1987, ch. 22, § 1.

§ 2230. Variable rates

If the agreement governing the loan so provides, the periodic percentage rate or rates of interest charged and collected in respect of the loan may, if the interest is not precomputed and taken in advance, vary in accordance with a schedule or formula. Such periodic percentage rate or rates may vary from time to time as the rate determined in accordance with such schedule or formula varies and such periodic percentage rate or rates, as so varied, may be made applicable to all or any part of outstanding unpaid amounts of such loan on and after the effective date of such variation. This section shall not be construed to limit the authority of a licensee to charge and collect interest in respect of a loan in the manner and at the rate or rates authorized in any other section of this subchapter. Without limitation, a permissible schedule or formula hereunder may include provisions in the agreement governing the loan for a change in the periodic percentage rate or rates of interest applicable to all or any part of outstanding unpaid amounts whether by variation of the then applicable periodic percentage rate or rates of interest, variation of an index or margin or otherwise, contingent upon the happening of any event or circumstance specified in the loan agreement, which event or circumstance may include the failure of the borrower to perform in accordance with the terms of the loan agreement.

Credits

66 Laws 1987, ch. 22, § 1; 68 Laws 1992, ch. 303, § 41.

§ 2231. Additional charges

In addition to or in lieu of interest at a periodic percentage rate or rates permitted by §§ 2229 and 2230 of this title, the licensee may charge and collect, in respect of a loan:

(1) Reasonable fees for services rendered or for reimbursement of expenses incurred in good faith by the licensee or its agents in connection with such loan, including, without limitation, commitment fees, official fees and taxes, premiums or other charges for any guarantee or insurance protecting the licensee against the borrower's default or other credit loss, or costs incurred by reason of examination of title, inspection, recording and other formal acts necessary or appropriate to the security of the loan, filing fees, attorney's fees and travel expenses;

(2) If the agreement governing a loan so provides, a licensee may impose, as interest, a late or delinquency charge upon any outstanding unpaid installment payments or portions thereof under the loan agreement which are in default; provided, however, that no more than 1 such delinquency charge may be imposed in respect of any single such installment payment or portion thereof regardless of the period during which it remains in default; and provided further that no such delinquency charge may exceed 5% of the amount of any such installment or portion thereof in default. Nothing contained in this subdivision shall limit, restrict or otherwise affect the right of a licensee under and pursuant to § 2230 of this title to change the periodic percentage rate or rates of interest applicable to the

loan agreement between the licensee and a borrower upon the occurrence of a delinquency or default or other failure of the borrower to perform in accordance with the terms of the loan agreement;

(3) Such other charges as the Commissioner shall include in an itemized schedule of the maximum amounts which may be charged to an applicant for a loan for costs, fees, services, points, premiums and all other reasonable expenses which may be incurred by such applicant in connection with a loan. The maximum amounts permitted by said schedule may vary with the amount of the loan and shall bear a reasonable relationship to such loan, the services required and the complexity of the transaction. No licensee shall demand, collect or receive from any applicant for a loan, directly or indirectly, any other charges, or any greater amounts for any authorized charges than those permitted by said schedule or this subchapter. Every licensee shall furnish to every applicant for a loan a copy of said schedule at the time when such application is made.

Credits

66 Laws 1987, ch. 22, § 1; 68 Laws 1992, ch. 303, § 42; 70 Laws 1996, ch. 327, § 46, eff. May 2, 1996.

§ 2232. Deferred installments

A licensee may at any time or from time to time permit a borrower to defer installment payments of a loan and may, in connection with such deferral, charge and collect deferral charges and may also require payment by such borrower of the additional cost to the licensee of premiums for continuing in force, until the end of such period of deferral, any insurance coverage provided in connection with the loan pursuant to § 2231 of this title.

Credits

66 Laws 1987, ch. 22, § 1.

§ 2233. Insurance

(a) A licensee may request but not require a borrower to be insured in respect of a loan under a life, health, accident, health and accident or other permissible insurance policy, whether group or individual, and in the event that a loan to a borrower is secured by an interest in real or personal property, the licensee may require the borrower to obtain insurance, from an insurer acceptable to the licensee, against loss of or damage to such property or against the liability arising out of the ownership or use of the property and may finance the premiums for such insurance.

(b) The offer and placement of insurance under this section shall be subject in all respects to the applicable provisions of Title 18.

Credits

66 Laws 1987, ch. 22, § 1.

§ 2234. Prepayment

(a) A borrower may prepay a loan in full at any time.

(b) If interest charged pursuant to § 2229 of this title in respect to a loan has been precomputed and taken in advance, then, in the event of prepayment of the entire indebtedness, the licensee shall refund to such borrower the unearned portion of the precomputed interest charge. This refund shall be in an amount not less than the amount which would be refunded if the unearned precomputed interest charge were calculated in accordance with the actuarial method, except that the borrower shall not be entitled to a refund which is less than \$5. The unearned portion of the precomputed interest charge is, at the option of the licensee, either:

(1) That portion of the precomputed interest charge which is allocable to all originally scheduled or, if deferred, all deferred payment periods, or portions thereof, ending subsequent to the date of prepayment. The unearned precomputed interest charge is the total of that which would have been earned for each such period, or portion thereof, had the loan not been precomputed, by applying to unpaid balances of principal, according to the actuarial method, an annual percentage rate based on the precomputed interest charges, assuming that all payments were made as scheduled, or as deferred, if deferred. The licensee, at its option, may round this annual percentage rate to the nearest one quarter of 1 percent; or

(2) The total precomputed interest charge less the earned precomputed interest charge. The earned precomputed interest charge shall be determined by applying an annual percentage rate based on the total precomputed interest charge, under the actuarial method, to the unpaid balances for the actual time those balances were unpaid up to the date of prepayment.

(c) As used in subsection (b) of this section:

(1) "Actuarial method" means the method of allocating payments made on a loan between the outstanding balance of the loan and interest pursuant to which a payment is applied first to the accumulated interest and any remainder is subtracted from the outstanding balance of the loan.

(2) "Precomputed interest charge" means interest as computed by the add-on, discount or other similar method.

(3) "Payment period" means the time period within which periodic installment payments of a loan are due as provided in the agreement governing the loan.

(d) If a charge was made for premiums for insuring such borrower under an insurance policy pursuant to § 2233 of this title, then, in the event of prepayment, the licensee shall refund to such borrower the excess of the charge to such borrower therefor over the premiums paid or payable to the licensee, if such premiums were paid or payable to the licensee periodically, or the refund for such insurance premium received or receivable by the licensee, if such premium was paid or

payable in a lump sum by the licensee, provided that no such refund shall be required if it amounts to less than \$5.

(e) In connection with any prepayment of any loan by an individual borrower, the licensee may not impose any prepayment charge, except that in the case of a residential mortgage loan, the lender may charge and collect any prepayment penalty or charge specified in the agreement governing, or the bond, note or other evidence of, the loan.

Credits

66 Laws 1987, ch. 22, § 1.

§ 2235. Refinancing

(a) A borrower may, with the consent of the licensee, refinance the entire outstanding and unpaid amount of a loan, and the licensee may charge and collect a refinancing charge in connection with any such refinancing.

(b) For the purposes of this section, the entire outstanding and unpaid amount of a loan shall be deemed to be:

(1) If the interest and charges in respect of the loan were not taken in advance, the total of the unpaid balance and the accrued and unpaid interest and charges on the date of refinancing; or

(2) If the interest and charges on the loan were precomputed and taken in advance, the amount which the borrower would have been required to pay upon the prepayment on the date of refinancing pursuant to § 2234 of this title governing refund upon prepayment.

Credits

66 Laws 1987, ch. 22, § 1.

§ 2235A. Short-term consumer loans

(a) In addition to such other limitations and requirements as are imposed pursuant to other provisions of this subchapter, short-term consumer loans shall be subject to the following:

(1) Notwithstanding any other provision of law, no licensee shall make, and no borrower shall receive, a short-term consumer loan that would cause the borrower to have more than 5 short-term consumer loans from all licensees in any 12-month period. For the purposes of this section a rollover or a refinancing shall be considered a short-term consumer loan. Any loan made or collected in violation of this paragraph is void, and the licensee does not have the right to collect, receive, or retain any principal, interest, fees or other charges. A violation of this section is a violation of Chapter 25 of Title 6.

(2) No licensee shall make more than 4 rollovers of an existing short-term consumer loan. A licensee may, following not more than the maximum allowable number of rollovers,

enter into a workout agreement with the borrower or take such other actions as are lawful to collect any outstanding and unpaid indebtedness.

(3) No licensee shall make a short-term consumer loan unless such loan is subject to a right of rescission on the part of the individual borrower.

(4) No licensee shall pursue or threaten to pursue criminal action against an individual borrower in connection with the nonpayment of any amount due, including the unpaid return of any check or automated clearing house transaction.

(b) In addition to such other disclosure requirements as are imposed pursuant to other provisions of this subchapter, short-term consumer loans shall be subject to the following: No licensee shall make a short-term consumer loan unless the application for such loan, which application shall be written in both English and Spanish, contains a written disclosure, conspicuously displayed, that:

(1) The loan is designed as a short-term cash flow solution and not designed as a solution for longer term financial problems;

(2) Additional fees may accrue if the loan is rolled over; and

(3) Credit counseling services are available to consumers who are experiencing financial problems.

(c) Nothing in this section prohibits a licensee from refinancing the principal amount of a short-term consumer loan, subject to the limitations and requirements imposed herein.

(d) The Commissioner is authorized to promulgate rules and regulations to exempt certain loans or classes of loans from the requirements of this section.

(e) Every short-term consumer loan provider must post in plain view, in an area easily accessible to their customers at the entrance to the office and on any website, a schedule of fees and rates applicable to their loans, and a prominent statement that: "A payday loan is not intended to meet long-term financial needs."

(f) A licensee or licensee's agent shall not engage in any device or subterfuge intended to evade the requirements of this chapter through any method including, but not limited to, mail, telephone, Internet or any electronic means, including:

(1) Offering, making, or assisting a borrower to obtain a loan in violation of subsection (a) of this section, or brokering or acting as an agent for a third party in such a transaction, regardless of whether approval, acceptance or ratification is necessary to create a legal obligation for the third party.

(2) Disguising a short-term consumer loan as a revolving line of credit, or making or assisting a borrower to obtain a revolving line of credit for the purpose of avoiding the requirements of subsection (a) of this section.

Credits

Added by 73 Laws 2002 (3rd Sp. Sess.), ch. 398, § 4, eff. July 9, 2002. Amended by 77 Laws 2009, ch. 164, § 5, eff. July 16, 2009; 78 Laws 2012, ch. 278, § 2, eff. Jan. 1, 2013.

§ 2235B. Database

(a) The Commissioner shall, by contract with a third-party provider or otherwise, develop and implement a common database with real-time access through an Internet connection by means of which a licensee may determine:

- (1) Whether a borrower has an outstanding short-term consumer loan;
- (2) The number of short-term consumer loans the borrower has outstanding;
- (3) Whether the borrower is eligible for a loan under § 2235A(a) of this title; and
- (4) Any other information necessary to comply with this chapter.

(b) The Commissioner shall ensure that the provider of the database referred to in this section is responsible to:

- (1) Establish and maintain a process for responding to transaction verification requests from a licensee in the event the database is inaccessible due to technical difficulties;
- (2) Take reasonable measures to prevent identity theft;
- (3) Provide accurate and secure receipt, transmission and storage of borrower data; and
- (4) Provide the Commissioner or his or her designee complete access to the database.

(c) Licensees shall:

- (1) When entering into a short-term consumer loan, accurately and immediately submit to the database any data in the format that the Commissioner may require, including the borrower's name, address, social security or employment authorization number, gross monthly income, amount of transaction, interest rate, date of transaction, anticipated date loan will be paid off;
- (2) Promptly correct any incorrect data entered into the database that was previously submitted; and
- (3) Promptly record the date a short-term consumer loan is paid in full.

(d) A licensee must continue to enter and update all required information for any short-term consumer loans subject to this section that are outstanding or have not yet expired after the date on which the licensee no longer has the license required by this chapter. Within 10 business days

after ceasing to make loans subject to this section, the licensee must submit a plan for continuing compliance with this subsection to the Commissioner for approval. The Commissioner must promptly approve or disapprove the plan and may require the licensee to submit a new or modified plan that ensures compliance with this section.

(e) The Commissioner shall adopt rules or regulations for the administration and enforcement of this section. Such regulations shall include:

- (1) A requirement that identifying borrower information is deleted from the database on a regular and routine basis, 12 months after the loan is paid off;
- (2) Standards for the retention, archiving, and deletion of information entered or stored in the database;
- (3) A requirement that data collected pursuant to this section be used only as prescribed in this chapter or for research and reporting as authorized by the Banking Commissioner;
- (4) A rule authorizing a fee per transaction for data required to be submitted. The fee shall be payable by the licensee to the Commissioner. The fee must reasonably reflect the costs necessary to defray the expenses associated with administering the provisions of this section. A customer shall not be charged all or part of the fee.

(f) The database established under this section shall not be considered a public record for purposes of the Freedom of Information Act in Chapter 100 of Title 29.

Credits

Added by 78 Laws 2012, ch. 278, § 3, eff. Jan. 1, 2013. Amended by 70 Laws 1995, ch. 186, § 1, eff. July 10, 1995.

§ 2235C. Report by Commissioner

(a) The Commissioner shall collect and submit the following information to the Banking Committee of the Senate and the Economic Development/Banking/Insurance/Commerce Committee of the House of Representatives on or before March 15 of each year:

- (1) The total number and dollar amount of short-term consumer loan transactions;
- (2) The total number of individual borrowers who entered into short-term consumer loan transactions along with their gross monthly income;
- (3) The minimum, maximum, and average amount of short-term consumer loan transactions;
- (4) The minimum, maximum, and average annual percentage rate of short-term consumer loans;

- (5) The average number of days a short-term consumer loan is outstanding;
- (6) The number of borrowers entering into each permissible number of short-term consumer loans, 1 transaction to 5 transactions;
- (7) The default rate on short-term consumer loans;
- (8) Any other information that the commissioner believes is relevant or useful; and
- (9) Any other information requested by the banking committees at least 60 days before the Commissioner's report is due.

(b) The Commissioner shall require the database operator and licensees to submit any and all information necessary for the Commissioner to prepare the report referenced in subsection (a) of this section.

Credits

Added by 78 Laws 2012, ch. 278, § 4, eff. Jan. 1, 2013. Amended by 70 Laws 1995, ch. 186, § 1, eff. July 10, 1995.

§ 2236. Attorneys' fees; costs

In the event a borrower defaults under the terms of a loan, the licensee may, if the borrower's account is referred to an attorney (not a regularly salaried employee of the licensee) or to a third party for collection and if the agreement governing, or the bond, note or other evidence of, the loan so provides, charge and collect from the borrower a reasonable attorneys' fee. In addition, following a borrower's default, the licensee may, if the agreement governing, or the bond, note or other evidence of, the loan so provides, recover from the borrower all court, alternative dispute resolution or other collection costs (including, without limitation, fees and charges of collection agencies) actually incurred by the licensee.

Credits

66 Laws 1987, ch. 22, § 1; 72 Laws 1999, ch. 15, § 36, eff. April 9, 1999.

§ 2237. Application of other State laws

Any other law of this State limiting the rate or amount of interest, discount, points, finance charges, service charges or other charges which may be charged, taken, collected, received or reserved shall not apply to extensions of credit made in accordance with this subchapter.

Credits

66 Laws 1987, ch. 22, § 1.

§ 2238. Nonexclusivity; captions

(a) The provisions of this subchapter are not exclusive and a licensee may at its option elect to extend credit either pursuant to this subchapter or as otherwise permitted by applicable law.

(b) Section headings and captions contained in this subchapter are inserted only as a matter of convenience and for reference and do not and shall not be construed to define, limit, extend or describe the scope of this subchapter or the meaning or intent of any section hereof.

Credits

66 Laws 1987, ch. 22, § 1.