

HOUSE BILL 1297

I2, I1

(8lr1549)

ENROLLED BILL
— *Economic Matters/Finance* —

Introduced by **Delegates Aumann and Frick**

Read and Examined by Proofreaders:

Proofreader.

Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this

_____ day of _____ at _____ o'clock, _____ M.

Speaker.

CHAPTER _____

1 AN ACT concerning

2 **Commercial Law – Consumer Loans and Credit – Miscellaneous Provisions**

3 FOR the purpose of authorizing a lender to elect to make a certain loan to a borrower under
4 certain circumstances; providing that certain provisions of law do not apply to
5 certain loans under certain circumstances; prohibiting certain persons from making
6 certain loans under certain circumstances; providing that certain loans are void and
7 unenforceable under certain circumstances; prohibiting certain persons from
8 ~~receiving or retaining certain principal, interest, fees, or other compensation~~
9 collecting or attempting to collect in a certain manner certain money or enforcing or
10 attempting to enforce a certain contract in a certain manner under certain
11 circumstances; prohibiting certain persons from selling, assigning, or otherwise
12 transferring certain loans under certain circumstances; authorizing a certain lender
13 to collect a certain rate of interest, charge, discount, or other consideration; altering
14 the circumstances under which certain lenders may make certain loans; altering the
15 application of certain provisions of law regarding interest and usury and certain

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.

Italics indicate opposite chamber/conference committee amendments.



1 small consumer loans; altering a certain prohibition on a certain lender contracting
 2 for, charging, or receiving certain fees or charges; altering a certain prohibition on a
 3 certain lender taking a certain security interest; altering a certain prohibition on a
 4 person lending a certain amount under certain circumstances; prohibiting a certain
 5 person from collecting or attempting to collect a certain amount from a borrower;
 6 ~~repealing a certain prohibition against a lender taking certain actions; requiring a~~
 7 ~~certain person who makes installment loans or engages in credit services business~~
 8 ~~activities to be licensed under certain provisions of law and specifying that the~~
 9 ~~person is subject to certain provisions; requiring certain licensing, investigatory,~~
 10 ~~enforcement, and penalty provisions to be interpreted, construed, and applied in a~~
 11 ~~certain manner; providing for a delayed effective date; providing for the application~~
 12 ~~of certain provisions of this Act; defining and altering certain terms; making stylistic~~
 13 ~~and conforming changes; and generally relating to consumer loans and credit.~~

14 BY repealing and reenacting, with amendments,

15 Article – Commercial Law

16 Section 12–101, 12–111, 12–112, 12–114, 12–301, 12–303, 12–311(c), 12–314,
 17 12–401, and 12–601(k)

18 Annotated Code of Maryland

19 (2013 Replacement Volume and 2017 Supplement)

20 BY adding to

21 Article – Commercial Law

22 Section ~~12–114.1~~ 12–101.1, 12–114.1, and 12–402.1

23 Annotated Code of Maryland

24 (2013 Replacement Volume and 2017 Supplement)

25 BY repealing

26 Article – Commercial Law

27 Section 12–313

28 Annotated Code of Maryland

29 (2013 Replacement Volume and 2017 Supplement)

30 BY repealing and reenacting, without amendments,

31 Article – Commercial Law

32 Section 12–601(f)

33 Annotated Code of Maryland

34 (2013 Replacement Volume and 2017 Supplement)

35 ~~BY repealing and reenacting, with amendments,~~

36 ~~Article – Financial Institutions~~

37 ~~Section 11–303~~

38 ~~Annotated Code of Maryland~~

39 ~~(2011 Replacement Volume and 2017 Supplement)~~

40 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,

41 That the Laws of Maryland read as follows:

Article – Commercial Law

1

2 12–101.

3 (a) In this subtitle the following words have the meanings indicated.

4 (b) “Borrower” means a person who borrows money under this subtitle.

5 (c) “Commercial loan” means a loan which is made:

6 (1) Solely to acquire or carry on a business or commercial enterprise; or

7 (2) To any business or commercial organization.

8 (d) “Effective rate of simple interest” means the yield to maturity rate of interest
9 received or to be received by a lender on the face amount of a loan, computed in accordance
10 with § 12–107 of this subtitle.11 (e) “Interest” means, except as specifically provided in § 12–105 of this subtitle,
12 any compensation directly or indirectly imposed by a lender for the extension of credit for
13 the use or forbearance of money, including any loan fee, origination fee, service and
14 carrying charge, investigator’s fee, time–price differential, and any amount payable as a
15 discount or point or otherwise payable for services.16 (f) “Lender” means A LICENSEE OR a person who makes a loan ~~under~~ SUBJECT
17 TO this subtitle.18 **(G) “LICENSEE” MEANS A PERSON THAT IS REQUIRED TO BE LICENSED TO**
19 **MAKE LOANS SUBJECT TO THIS SUBTITLE, REGARDLESS OF WHETHER THE PERSON**
20 **IS ACTUALLY LICENSED.**21 ~~(G)~~ **(H) (1) “LOAN” MEANS A LOAN OR AN ADVANCE OF MONEY OR**
22 **CREDIT SUBJECT TO THIS SUBTITLE, REGARDLESS OF WHETHER THE LOAN OR**
23 **ADVANCE OF MONEY OR CREDIT IS OR PURPORTS TO BE MADE UNDER THIS**
24 **SUBTITLE.**25 **(2) “LOAN” DOES NOT INCLUDE A:**26 **(I) A LOAN OR ADVANCE OF MONEY OR CREDIT SUBJECT TO**
27 **SUBTITLE 3 OF THIS TITLE, UNLESS A WRITTEN ELECTION IS MADE UNDER §**
28 **12–101.1 OF THIS SUBTITLE;**29 **(II) A PLAN OR LOAN FOR WHICH A WRITTEN ELECTION IS MADE**
30 **UNDER SUBTITLE 3, SUBTITLE 4, SUBTITLE 9, OR SUBTITLE 10 OF THIS TITLE; OR**

1 (III) AN INSTALLMENT SALE AGREEMENT AS DEFINED IN §
 2 12-601 OF THIS TITLE.

3 [(g)] ~~(H)~~ (I) "Person" includes an individual, corporation, business trust, statutory
 4 trust, estate, trust, partnership, association, two or more persons having a joint or common
 5 interest, or any other legal or commercial entity.

6 [(h)] ~~(I)~~ (J) "Point" means a fee, premium, bonus, loan origination fee, service
 7 charge, or any other charge equal to 1 percent of the principal amount of a loan which is
 8 charged by the lender at or before the time the loan is made as additional compensation for
 9 the loan.

10 [(i)] ~~(J)~~ (K) "Simple interest" means interest charged on the principal amount
 11 loaned to the borrower.

12 [(j)] ~~(K)~~ (L) "Stated rate of interest" means the annual rate of interest stated in
 13 percentage which appears on the face of the bond, draft, mortgage, deed of trust, security
 14 agreement, promissory note, or other instrument which evidences the indebtedness.

15 [(k)] ~~(L)~~ (M) "Usury" means the charging of interest by a lender in an amount which
 16 is greater than that allowed by this subtitle.

17 [(l)] ~~(M)~~ (N) "Wages" means all remuneration paid to any employee for ~~his~~ THE
 18 EMPLOYEE'S employment, including the cash value of all remuneration paid in any
 19 medium other than cash.

20 12-101.1.

21 (A) ON OR AFTER JANUARY 1, 2019, A LENDER MAY, AT THE LENDER'S
 22 OPTION, ELECT TO MAKE A LOAN TO ANY BORROWER EITHER UNDER THIS SUBTITLE
 23 OR AS OTHERWISE AUTHORIZED BY APPLICABLE LAW.

24 (B) IF A LENDER MAKES A WRITTEN ELECTION IN THE AGREEMENT, NOTE,
 25 OR OTHER EVIDENCE OF THE LOAN SPECIFYING THAT THIS SUBTITLE WILL GOVERN
 26 THE LOAN, SUBTITLES 3, 4, 5, 6, 9, AND 10 OF THIS TITLE DO NOT APPLY TO THE
 27 LOAN.

28 (C) IF A LENDER THAT MAKES OR CONTRACTS TO MAKE A LOAN DOES NOT
 29 MAKE A WRITTEN ELECTION UNDER THIS SUBTITLE OR SUBTITLE 3, SUBTITLE 4,
 30 SUBTITLE 9, OR SUBTITLE 10 OF THIS TITLE, THIS SUBTITLE STILL APPLIES TO THE
 31 LOAN IF THE LOAN IS:

32 (1) FOR AN AMOUNT OVER \$25,000; OR

1 **(2) (I) FOR AN AMOUNT OF \$25,000 OR LESS; AND**

2 **(II) NOT SUBJECT TO SUBTITLE 3 OF THIS TITLE.**

3 12-111.

4 **(A) THIS SECTION DOES NOT APPLY TO A LOAN SUBJECT TO § 12-114.1 OF**
5 **THIS SUBTITLE.**

6 **(B) [An] A PRIVATE** action for usury under this subtitle may not be brought more
7 than **[six] 6** months after the loan is satisfied.

8 12-112.

9 **(A) THIS SECTION DOES NOT APPLY TO A LOAN SUBJECT TO § 12-114.1 OF**
10 **THIS SUBTITLE.**

11 **(B)** A claim or plea of usury is not available against a legal or equitable assignee,
12 endorsee, or transferee of any bond, draft, mortgage, deed of trust, security agreement,
13 promissory note, or other instrument or evidence of indebtedness, if he receives it for a bona
14 fide and legal consideration without notice of any usury in its creation or subsequent
15 assignment.

16 12-114.

17 **(A) THIS SECTION DOES NOT APPLY TO A LOAN SUBJECT TO § 12-114.1 OF**
18 **THIS SUBTITLE.**

19 **[(a)] (B) (1)** Any person who violates the usury provisions of this subtitle
20 shall forfeit to the borrower the greater of:

21 (i) Three times the amount of interest and charges collected in
22 excess of the interest and charges authorized by this subtitle; or

23 (ii) The sum of \$500.

24 **(2)** A claim or plea of usury is not valid if, within 30 days from the date the
25 loan contract was executed, the lender:

26 (i) Notifies the borrower and any other party to the loan contract
27 that the loan was usurious; and

28 (ii) Agrees to modify it by substituting for the usurious rate of
29 interest a legal rate of interest not exceeding the stated rate of interest.

1 **[(b)] (C)** Any person who violates the disclosure provisions of § 12-106(b) and (c)
 2 of this subtitle is guilty of a misdemeanor and on conviction is subject to a fine not exceeding
 3 \$1,000 or imprisonment not exceeding **[one] 1** year or both.

4 **[(c)] (D)** Even if a loan document is executed outside of the State, this section is
 5 applicable if the loan is made to a resident of Maryland and is secured by property located
 6 within the State.

7 **12-114.1.**

8 **(A) (1)** **IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS**
 9 **INDICATED.**

10 **(2) (I)** **“COVERED LOAN” MEANS A LOAN SUBJECT TO §**
 11 **12-103(A)(3) OR (C) OF THIS SUBTITLE, MADE FOR PERSONAL, FAMILY, OR**
 12 **HOUSEHOLD PURPOSES, REGARDLESS OF WHETHER THE LOAN IS OR PURPORTS TO**
 13 **BE MADE UNDER THIS SUBTITLE.**

14 **(II)** **“COVERED LOAN” DOES NOT INCLUDE ~~A LOAN SUBJECT TO~~**
 15 **~~SUBTITLE 3 OF THIS TITLE;~~**

16 **1. A LOAN OR AN ADVANCE OF MONEY OR CREDIT**
 17 **SUBJECT TO SUBTITLE 3 OF THIS TITLE, UNLESS A WRITTEN ELECTION IS MADE**
 18 **UNDER § 12-101.1 OF THIS SUBTITLE;**

19 **2. A PLAN OR LOAN FOR WHICH A WRITTEN ELECTION**
 20 **HAS BEEN MADE UNDER SUBTITLE 3, SUBTITLE 4, SUBTITLE 9, OR SUBTITLE 10 OF**
 21 **THIS TITLE; OR**

22 **3. AN INSTALLMENT SALE AGREEMENT AS DEFINED IN §**
 23 **12-601 OF THIS TITLE.**

24 **~~(3) “OUT-OF-STATE LENDER” MEANS A PERSON WHO MAKES A LOAN~~**
 25 **~~VALIDLY IN ANOTHER STATE THAT COMPLIES WITH A COMPARABLE LOAN LAW OF~~**
 26 **~~THE OTHER STATE.~~**

27 **~~(4)~~ (3)** **“UNLICENSED PERSON” MEANS A PERSON WHO IS NOT:**

28 **(I)** **LICENSED IN THE STATE TO MAKE A COVERED LOAN; AND**

29 **(II)** **EXEMPT FROM LICENSING IN THE STATE.**

1 (B) THIS SECTION APPLIES TO A COVERED LOAN MADE ~~BY A PERSON~~
2 ~~DOMICILED IN ANOTHER STATE TO A BORROWER WHO IS A RESIDENT OF THE STATE~~
3 ~~IF THE APPLICATION FOR THE LOAN ORIGINATED IN THE STATE TO ANY PERSON.~~

4 (C) (1) AN UNLICENSED PERSON MAY NOT MAKE A COVERED LOAN.

5 (2) A PERSON MAY NOT MAKE A COVERED LOAN IF THE PERSON
6 DIRECTLY OR INDIRECTLY CONTRACTS FOR, CHARGES, OR RECEIVES A RATE OF
7 INTEREST, CHARGE, DISCOUNT, OR OTHER CONSIDERATION THAT IS GREATER THAN
8 THE AMOUNT AUTHORIZED UNDER STATE LAW.

9 (3) A PERSON MAY NOT MAKE A COVERED LOAN THAT VIOLATES THE
10 FEDERAL MILITARY LENDING ACT.

11 (D) (1) ~~EXCEPT AS PROVIDED IN PARAGRAPH (6) OF THIS SUBSECTION, A~~
12 A COVERED LOAN MADE BY AN UNLICENSED PERSON IS VOID AND UNENFORCEABLE.

13 (2) (I) EXCEPT AS PROVIDED IN ~~PARAGRAPH (6) OF THIS~~
14 ~~SUBSECTION AND~~ SUBPARAGRAPH (II) OF THIS PARAGRAPH, A COVERED LOAN IS
15 VOID AND UNENFORCEABLE IF A PERSON CONTRACTS FOR A COVERED LOAN THAT
16 HAS A RATE OF INTEREST, CHARGE, DISCOUNT, OR OTHER CONSIDERATION
17 GREATER THAN THE AMOUNT AUTHORIZED UNDER STATE LAW.

18 (II) A COVERED LOAN IS NOT VOID AND UNENFORCEABLE IF:

19 1. A CLERICAL ERROR OR MISTAKE RESULTED IN THE
20 RATE OF INTEREST, CHARGE, DISCOUNT, OR OTHER CONSIDERATION BEING
21 GREATER THAN THE AMOUNT AUTHORIZED UNDER STATE LAW; AND

22 2. A PERSON CORRECTS THE ERROR OR MISTAKE
23 ~~BEFORE ANY PAYMENT IS RECEIVED~~ THE FIRST PAYMENT IS DUE UNDER THE LOAN.

24 (3) A COVERED LOAN THAT VIOLATES THE FEDERAL MILITARY
25 LENDING ACT IS VOID AND UNENFORCEABLE.

26 (4) ~~A PERSON MAY NOT RECEIVE OR RETAIN ANY PRINCIPAL,~~
27 ~~INTEREST, FEES, OR OTHER COMPENSATION WITH RESPECT TO ANY LOAN THAT IS~~
28 ~~VOID AND UNENFORCEABLE UNDER THIS SECTION.~~

29 (5) ~~A PERSON MAY NOT SELL, ASSIGN, OR OTHERWISE TRANSFER A~~
30 ~~LOAN THAT IS VOID AND UNENFORCEABLE UNDER THIS SECTION.~~

31 (6) (I) ~~IF AN OUT OF STATE LENDER MAKES A COVERED LOAN,~~
32 ~~THE COVERED LOAN IS NOT VOID AND UNENFORCEABLE.~~

~~(H) AN OUT-OF-STATE LENDER MAY NOT COLLECT A RATE OF INTEREST, CHARGE, DISCOUNT, OR OTHER CONSIDERATION THAT IS GREATER THAN THE AMOUNT AUTHORIZED UNDER STATE LAW.~~

(4) WITH RESPECT TO A LOAN THAT IS VOID AND UNENFORCEABLE UNDER THIS SECTION, A PERSON MAY NOT:

(I) COLLECT OR ATTEMPT TO COLLECT, DIRECTLY OR INDIRECTLY, ANY AMOUNT FROM THE BORROWER;

(II) ENFORCE OR ATTEMPT TO ENFORCE THE CONTRACT AGAINST ANY PROPERTY SECURING THE LOAN; OR

(III) SELL, ASSIGN, OR OTHERWISE TRANSFER THE LOAN TO ANOTHER PERSON.

12-301.

(a) In this subtitle the following words have the meanings indicated.

(b) “Commissioner” means the Commissioner of Financial Regulation.

(c) “Lender” means a LICENSEE OR A person who makes a loan [under] SUBJECT TO this subtitle.

(d) “Licensee” means a person who is REQUIRED TO BE licensed under Title 11, Subtitle 2 of the Financial Institutions Article, the Maryland Consumer Loan Law – Licensing Provisions, REGARDLESS OF WHETHER THE PERSON IS ACTUALLY LICENSED.

(e) **(1) “Loan” means any loan or advance of money or credit [made under] SUBJECT TO this subtitle, REGARDLESS OF WHETHER THE LOAN OR ADVANCE OF MONEY OR CREDIT IS OR PURPORTS TO BE MADE UNDER THIS SUBTITLE.**

(2) “LOAN” DOES NOT INCLUDE AN INSTALLMENT SALE AGREEMENT AS DEFINED IN § 12-601 OF THIS TITLE.

(f) “Person” includes an individual, corporation, business trust, statutory trust, estate, trust, partnership, association, two or more persons having a joint or common interest, or any other legal or commercial entity.

(g) “Wages” means all remuneration paid to any employee for [his] THE EMPLOYEE’S employment, including the cash value of all remuneration paid in any medium other than cash.

1 12-303.

2 **(A) (1) THIS SUBTITLE APPLIES TO A LOAN OF \$25,000 OR LESS MADE**
 3 **FOR PERSONAL, FAMILY, OR HOUSEHOLD PURPOSES.**

4 **(2) EXCEPT AS PROVIDED IN PARAGRAPH ~~(2)~~ (3) OF THIS**
 5 **SUBSECTION, THIS SUBTITLE APPLIES REGARDLESS OF:**

6 **(I) WHETHER THE TRANSACTION IS OR PURPORTS TO BE MADE**
 7 **UNDER THIS SUBTITLE;**

8 **(II) WHETHER THE TRANSACTION IS OR PURPORTS TO BE AN**
 9 **INSTALLMENT LOAN;**

10 **(III) THE DURATION OF THE REPAYMENT PERIOD;**

11 **(IV) WHETHER THE TRANSACTION IS OR PURPORTS TO BE**
 12 **NONRECOURSE OR CONTINGENT; AND**

13 **(V) WHETHER THE TRANSACTION PURPORTS TO BE THE**
 14 **PURCHASE OF WAGES, PENSIONS, GOVERNMENTAL BENEFITS, OR OTHER SIMILAR**
 15 **FUTURE PAYMENT STREAMS.**

16 **(3) THIS SUBTITLE DOES NOT APPLY TO:**

17 **(I) A PLAN OR LOAN FOR WHICH A WRITTEN ELECTION HAS**
 18 **BEEN MADE UNDER SUBTITLE 1, SUBTITLE 4, SUBTITLE 9, OR SUBTITLE 10 OF THIS**
 19 **TITLE;**

20 **(II) A LOAN MADE BY AN INDIVIDUAL PROVIDED THE**
 21 **INDIVIDUAL:**

22 **1. DOES NOT MAKE MORE THAN THREE LOANS IN A**
 23 **CALENDAR YEAR; AND**

24 **2. DOES NOT ENGAGE IN THE BUSINESS OF MAKING**
 25 **LOANS; OR**

26 **(III) A LOAN BETWEEN AN EMPLOYER AND AN EMPLOYEE.**

27 **~~(a)~~ (B) A lender may not make a loan ~~under~~ SUBJECT TO this subtitle unless**
 28 **the loan is in an original amount or value which does not exceed [\$6,000] ~~\$12,000~~ \$25,000.**

1 ~~(C)~~ (1) The purpose of this subsection is to prevent evasion of the
2 provisions of this subtitle by means of a purchase or assignment of wages.

3 (2) For the purposes of this subtitle:

4 (i) The payment of ~~[\$6,000]~~ ~~\$12,000~~ \$25,000 or less in money,
5 credit, goods, or things in action as consideration for any sale, assignment, or order for the
6 payment of wages, whether earned or to be earned, is considered a loan of money secured
7 by the sale, assignment, or order for payment of wages; and

8 (ii) The amount by which the wages exceed the consideration paid
9 for them is considered interest or charges on the loan from the date of the payment to the
10 date the wages are payable.

11 (3) The transaction described in this subsection is governed by and subject
12 to the provisions of this subtitle.

13 ~~(C)~~ (D) This subtitle applies but is not limited to a lender who:

14 (1) As security for a loan, use, or forbearance of money, goods, or things in
15 action or for any loan, use, or sale of credit, whether or not the transaction is or purports to
16 be made under this subtitle, makes a pretended purchase of property from any person and
17 permits the owner or pledgor to retain possession of the property; or

18 (2) By any device or pretense of charging for his services or otherwise,
19 seeks to obtain any interest, charges, discount, or like consideration.

20 ~~(D) THIS SUBTITLE APPLIES TO A LOAN OR AN ADVANCE OF MONEY OF~~
21 ~~\$12,000 OR LESS MADE FOR PERSONAL, FAMILY, HOUSEHOLD, OR AGRICULTURAL~~
22 ~~PURPOSES;~~

23 ~~(1) REGARDLESS OF WHETHER THE TRANSACTION IS OR PURPORTS~~
24 ~~TO BE MADE UNDER THIS SUBTITLE;~~

25 ~~(2) REGARDLESS OF WHETHER THE TRANSACTION IS OR PURPORTS~~
26 ~~TO BE AN INSTALLMENT LOAN;~~

27 ~~(3) REGARDLESS OF THE DURATION OF THE REPAYMENT PERIOD;~~

28 ~~(4) REGARDLESS OF WHETHER THE TRANSACTION IS OR PURPORTS~~
29 ~~TO BE NONRECOURSE OR CONTINGENT; AND~~

30 ~~(5) REGARDLESS OF WHETHER THE TRANSACTION PURPORTS TO BE~~
31 ~~THE PURCHASE OF WAGES, PENSIONS, GOVERNMENTAL BENEFITS, OR OTHER~~
32 ~~SIMILAR FUTURE PAYMENT STREAMS.~~

1 [(d)] (E) (1) A lender who lends or contracts to lend an amount which exceeds
2 [\$6,000] ~~\$12,000~~ **\$25,000** may not directly or indirectly contract for, charge, or receive
3 any interest, fee, or other charge in excess of that which [he] **THE LENDER** would be
4 permitted to charge if [he] **THE LENDER** were not authorized to make loans under this
5 subtitle.

6 (2) The provisions of this subsection apply to any debt in excess of **[\$6,000]**
7 ~~**\$12,000**~~ **\$25,000** which is directly or contingently owed or contracted to be so owed by any
8 person jointly or severally:

9 (i) Whether as a borrower, an endorser, guarantor, or surety for a
10 borrower, or otherwise; and

11 (ii) Whether the debt is part of a single transaction or the aggregate
12 of more than one transaction.

13 12-311.

14 (c) (1) A lender may not take any security interest in:

15 (i) Real property for any loan under **[\$2,000]** **\$4,000** in value or
16 amount; or

17 (ii) Personal property for any loan under **[\$700]** **\$1,400** in value or
18 amount.

19 (2) Any lien taken in violation of this subsection is void.

20 (3) This subsection does not apply to or affect a lien on an interest in real
21 property which results from a judgment obtained by the lender based on a loan otherwise
22 secured or unsecured.

23 [12-313.

24 (a) With respect to any loan, a lender may not:

25 (1) Directly or indirectly contract for, charge, or receive any interest,
26 discount, fee, fine, commission, charge, brokerage, or other consideration in excess of that
27 permitted by this subtitle;

28 (2) Divide into separate parts any contract made for the purpose or with
29 the effect of obtaining charges in excess of those permitted by this subtitle; or

30 (3) Enforce a contract of surety or guarantee unless the loan contract with
31 the borrower is executed also by the surety or guarantor.

1 **(b)** If any amount in excess of the charges permitted by this subtitle is directly or
 2 indirectly contracted for, charged, or received by a licensee or a person who is exempt from
 3 licensing, and (1) if the excess charge was made willfully for the benefit of the lender, then
 4 the lender may not receive or retain any interest or compensation with respect to the loan;
 5 or (2) if the excess charge was not made willfully for the benefit of the lender, and if the
 6 lender does not correct the error before the borrower makes the next payment on the loan,
 7 then the lender is liable to the borrower for an amount equal to three times the excess
 8 amount, but the lender may continue to receive principal, interest, or compensation with
 9 respect to the loan.]

10 12-314.

11 **(a)** A person may not lend **[\$6,000] ~~\$12,000~~ \$25,000** or less if **[the]:**

12 **(1)** **THE** person directly or indirectly contracts for, charges, or receives a
 13 greater rate of interest, charge, discount, or other consideration than that authorized by
 14 the laws of this State;

15 **(2)** **THE TRANSACTION VIOLATES THE FEDERAL MILITARY LENDING**
 16 **ACT; OR**

17 **(3)** **THE PERSON IS NOT LICENSED UNDER OR EXEMPT FROM THE**
 18 **LICENSING REQUIREMENTS UNDER THE MARYLAND CONSUMER LOAN LAW –**
 19 **LICENSING PROVISIONS.**

20 **(b)** **(1)** **(I)** A loan made in the amount of **[\$6,000] ~~\$12,000~~ \$25,000** or less,
 21 **REGARDLESS OF** whether **[or not]** the loan is or purports to be made under this subtitle,
 22 is **VOID AND** unenforceable if **[a]:**

23 **1.** **EXCEPT AS PROVIDED IN SUBPARAGRAPH (II) OF THIS**
 24 **PARAGRAPH, A PERSON CONTRACTS FOR A LOAN THAT HAS A** rate of interest, charge,
 25 discount, or other consideration greater than that authorized **[by the laws of this State is**
 26 **contracted for by any person unless the excess rate contracted for is the result of a] UNDER**
 27 **STATE LAW;**

28 **2.** **THE LOAN VIOLATES THE FEDERAL MILITARY**
 29 **LENDING ACT; OR**

30 **3.** **A PERSON WHO IS NOT LICENSED UNDER OR EXEMPT**
 31 **FROM THE LICENSING REQUIREMENTS UNDER TITLE 11, SUBTITLE 2 OF THE**
 32 **FINANCIAL INSTITUTIONS ARTICLE MADE THE LOAN.**

33 **(II)** **A LOAN IS NOT VOID AND UNENFORCEABLE IF:**

1 1. A clerical error or mistake **RESULTED IN THE RATE OF**
2 **INTEREST, CHARGE, DISCOUNT, OR OTHER CONSIDERATION BEING GREATER THAN**
3 **THE AMOUNT AUTHORIZED UNDER STATE LAW; and [the]**

4 2. A person corrects the error or mistake before **THE FIRST**
5 **PAYMENT IS DUE UNDER THE LOAN** ~~OR BEFORE any payment is received under the loan.~~

6 (2) [The] A person [who is neither a licensee nor exempt from licensing]
7 may not receive or retain any principal, interest, **FEES**, or other compensation with respect
8 to any loan that is **VOID AND** unenforceable under this subsection.

9 (3) This subsection does not apply to a person who is ~~a licensee or who is~~
10 exempt from licensing under this subtitle.

11 (c) **(1)** This section does not apply to a loan transaction validly made in
12 another state in compliance with a similar loan law of that state. [However, a]

13 **(2)** A lender may not collect an amount that is more than the total amount
14 that would be permitted if this subtitle were applicable.

15 **(3)** This section applies to all loans made by a lender domiciled in another
16 state to a borrower who is a resident of this State if the application for the loan originated
17 in this State.

18 ~~**(D)** **A PERSON MAY NOT SELL, ASSIGN, OR OTHERWISE TRANSFER A LOAN**~~
19 ~~**THAT IS VOID AND UNENFORCEABLE UNDER THIS SECTION.**~~

20 ~~**(E)** **A PERSON MAY NOT COLLECT OR ATTEMPT TO COLLECT, DIRECTLY OR**~~
21 ~~**INDIRECTLY, ANY AMOUNT FROM A BORROWER WITH RESPECT TO A LOAN THAT IS**~~
22 ~~**VOID AND UNENFORCEABLE UNDER THIS SECTION.**~~

23 **(D) WITH RESPECT TO A LOAN THAT IS VOID AND UNENFORCEABLE UNDER**
24 **THIS SECTION, A PERSON MAY NOT:**

25 **(1) COLLECT OR ATTEMPT TO COLLECT, DIRECTLY OR INDIRECTLY,**
26 **ANY AMOUNT FROM THE BORROWER;**

27 **(2) ENFORCE OR ATTEMPT TO ENFORCE THE CONTRACT AGAINST**
28 **ANY PROPERTY SECURING THE LOAN; OR**

29 **(3) SELL, ASSIGN, OR OTHERWISE TRANSFER THE LOAN TO ANOTHER**
30 **PERSON.**

1 (a) In this subtitle the following words have the meanings indicated.

2 (b) “Lender” means:

3 (1) A licensee; or

4 (2) A person who makes a secondary mortgage loan but is exempt expressly
5 from the licensing requirements of the Maryland Mortgage Lender Law.

6 (c) “Licensee” means a person who is REQUIRED TO BE licensed under the
7 Maryland Mortgage Lender Law, REGARDLESS OF WHETHER THE PERSON IS
8 ACTUALLY LICENSED.

9 12-402.1.

10 (A) (1) ON OR AFTER JANUARY 1, 2019, A LENDER MAY, AT THE LENDER’S
11 OPTION, ELECT TO MAKE A LOAN TO ANY BORROWER EITHER UNDER THIS SUBTITLE
12 OR AS OTHERWISE AUTHORIZED BY APPLICABLE LAW.

13 (2) IN ORDER TO MAKE A LOAN UNDER THIS SUBTITLE, A LENDER
14 SHALL MAKE A WRITTEN ELECTION IN THE AGREEMENT, NOTE, OR OTHER EVIDENCE
15 OF THE LOAN SPECIFYING THAT THIS SUBTITLE WILL GOVERN THE LOAN.

16 (B) (1) IF A LENDER ELECTS TO MAKE A LOAN UNDER THIS SUBTITLE IN
17 ACCORDANCE WITH THIS SECTION, SUBTITLES 1, 3, 9, AND 10 OF THIS TITLE DO NOT
18 APPLY TO THE LOAN.

19 (2) IF A LENDER WHO MAKES OR CONTRACTS TO MAKE A LOAN DOES
20 NOT MAKE A WRITTEN ELECTION UNDER THIS SUBTITLE OR SUBTITLE 1, SUBTITLE
21 3, SUBTITLE 9, OR SUBTITLE 10 OF THIS TITLE:

22 (I) SUBTITLE 1 OF THIS TITLE WILL APPLY TO THE LOAN IF THE
23 LOAN IS:

24 1. FOR AN AMOUNT OVER \$25,000; OR

25 2. A. FOR AN AMOUNT OF \$25,000 OR LESS; AND

26 B. NOT SUBJECT TO SUBTITLE 3 OF THIS TITLE; OR

27 (II) SUBTITLE 3 OF THIS TITLE WILL APPLY TO THE LOAN IF THE
28 LOAN IS:

29 1. FOR AN AMOUNT OF \$25,000 OR LESS; AND

2. SUBJECT TO SUBTITLE 3 OF THIS TITLE.

12-601.

(f) "Consumer goods" means goods bought for use primarily for personal, family, or household purposes, as distinguished from industrial, commercial, or agricultural purposes.

(k) (1) "Goods" means all tangible personal property that has a cash price of ~~[\$25,000]~~ **\$100,000** or less.

(2) "Goods" does not include money or things in action.

~~Article Financial Institutions~~~~11-303.~~

~~(A) A license under this subtitle shall be applied for and issued in accordance with, and is subject to, the licensing and investigatory provisions of Subtitle 2 of this title, the Maryland Consumer Loan Law—Licensing Provisions.~~

~~(B) A PERSON WHO MAKES INSTALLMENT LOANS OR ENGAGES IN CREDIT SERVICES BUSINESS ACTIVITIES REQUIRING LICENSING UNDER § 11-302(B) OF THIS SUBTITLE:~~

~~(1) SHALL BE LICENSED UNDER THIS SUBTITLE; AND~~

~~(2) IS SUBJECT TO THE LICENSING, INVESTIGATORY, ENFORCEMENT, AND PENALTY PROVISIONS OF:~~

~~(i) THIS SUBTITLE;~~

~~(ii) SUBTITLE 2 OF THIS TITLE; AND~~

~~(iii) THE APPLICABLE PROVISIONS OF:~~

~~1. TITLE 12, SUBTITLES 1, 9, AND 10 OF THIS ARTICLE;~~

~~AND~~

~~2. TITLE 14, SUBTITLE 19 OF THE COMMERCIAL LAW~~

~~ARTICLE.~~

~~(C) THE LICENSING, INVESTIGATORY, ENFORCEMENT, AND PENALTY PROVISIONS OF SUBTITLE 2 OF THIS TITLE SHALL BE INTERPRETED, CONSTRUED,~~

1 ~~AND APPLIED TO A PERSON REQUIRING LICENSING UNDER § 11-302(B) OF THIS~~
2 ~~SUBTITLE AS IF:~~

3 ~~(1) THE PERSON WERE APPLYING FOR A LICENSE TO MAKE LOANS~~
4 ~~SUBJECT TO THE MARYLAND CONSUMER LOAN LAW; OR~~

5 ~~(2) THE PERSON'S BUSINESS ACTIVITIES CONSISTED OF MAKING~~
6 ~~LOANS SUBJECT TO THE MARYLAND CONSUMER LOAN LAW.~~

7 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
8 ~~October 1, 2018~~ January 1, 2019.

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.