

HOUSE BILL 1297

I2, I1

8lr1549

By: **Delegates Aumann and Frick**

Introduced and read first time: February 9, 2018

Assigned to: Economic Matters

Committee Report: Favorable with amendments

House action: Adopted with floor amendments

Read second time: March 13, 2018

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
16 small consumer loans; altering a certain prohibition on a certain lender contracting
17 for, charging, or receiving certain fees or charges; altering a certain prohibition on a
18 certain lender taking a certain security interest; altering a certain prohibition on a
19 person lending a certain amount under certain circumstances; prohibiting a certain
20 person from collecting or attempting to collect a certain amount from a borrower;
21 repealing a certain prohibition against a lender taking certain actions; ~~requiring a~~
22 ~~certain person who makes installment loans or engages in credit services business~~
23 ~~activities to be licensed under certain provisions of law and specifying that the~~
24 ~~person is subject to certain provisions; requiring certain licensing, investigatory,~~
25 ~~enforcement, and penalty provisions to be interpreted, construed, and applied in a~~

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.



~~1 certain manner; providing for a delayed effective date; providing for the application~~
~~2 of certain provisions of this Act; defining and altering certain terms; making stylistic~~
~~3 and conforming changes; and generally relating to consumer loans and credit.~~

4 BY repealing and reenacting, with amendments,

5 Article – Commercial Law

6 Section 12–101, 12–111, 12–112, 12–114, 12–301, 12–303, 12–311(c), 12–314,
 7 12–401, and 12–601(k)

8 Annotated Code of Maryland

9 (2013 Replacement Volume and 2017 Supplement)

10 BY adding to

11 Article – Commercial Law

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

13 Annotated Code of Maryland

14 (2013 Replacement Volume and 2017 Supplement)

15 BY repealing

16 Article – Commercial Law

17 Section 12–313

18 Annotated Code of Maryland

19 (2013 Replacement Volume and 2017 Supplement)

20 BY repealing and reenacting, without amendments,

21 Article – Commercial Law

22 Section 12–601(f)

23 Annotated Code of Maryland

24 (2013 Replacement Volume and 2017 Supplement)

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

26 ~~Article – Financial Institutions~~

27 ~~Section 11–303~~

28 ~~Annotated Code of Maryland~~

29 ~~(2011 Replacement Volume and 2017 Supplement)~~

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

31 That the Laws of Maryland read as follows:

32 **Article – Commercial Law**

33 12–101.

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

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

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

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

2 (2) To any business or commercial organization.

3 (d) “Effective rate of simple interest” means the yield to maturity rate of interest
4 received or to be received by a lender on the face amount of a loan, computed in accordance
5 with § 12–107 of this subtitle.

6 (e) “Interest” means, except as specifically provided in § 12–105 of this subtitle,
7 any compensation directly or indirectly imposed by a lender for the extension of credit for
8 the use or forbearance of money, including any loan fee, origination fee, service and
9 carrying charge, investigator’s fee, time–price differential, and any amount payable as a
10 discount or point or otherwise payable for services.

11 (f) “Lender” means A LICENSEE OR a person who makes a loan ~~under~~ SUBJECT
12 TO this subtitle.

13 **(G) “LICENSEE” MEANS A PERSON THAT IS REQUIRED TO BE LICENSED TO**
14 **MAKE LOANS SUBJECT TO THIS SUBTITLE, REGARDLESS OF WHETHER THE PERSON**
15 **IS ACTUALLY LICENSED.**

16 ~~(G)~~ **(H) (1) “LOAN” MEANS A LOAN OR AN ADVANCE OF MONEY OR**
17 **CREDIT SUBJECT TO THIS SUBTITLE, REGARDLESS OF WHETHER THE LOAN OR**
18 **ADVANCE OF MONEY OR CREDIT IS OR PURPORTS TO BE MADE UNDER THIS**
19 **SUBTITLE.**

20 **(2) “LOAN” DOES NOT INCLUDE A:**

21 **(I) A LOAN OR ADVANCE OF MONEY OR CREDIT SUBJECT TO**
22 **SUBTITLE 3 OF THIS TITLE, UNLESS A WRITTEN ELECTION IS MADE UNDER §**
23 **12–101.1 OF THIS SUBTITLE;**

24 **(II) A PLAN OR LOAN FOR WHICH A WRITTEN ELECTION IS MADE**
25 **UNDER SUBTITLE 3, SUBTITLE 4, SUBTITLE 9, OR SUBTITLE 10 OF THIS TITLE; OR**

26 **(III) AN INSTALLMENT SALE AGREEMENT AS DEFINED IN §**
27 **12–601 OF THIS TITLE.**

28 ~~[(g)]~~ ~~(H)~~ **(I)** “Person” includes an individual, corporation, business trust, statutory
29 trust, estate, trust, partnership, association, two or more persons having a joint or common
30 interest, or any other legal or commercial entity.

31 ~~[(h)]~~ ~~(H)~~ **(J)** “Point” means a fee, premium, bonus, loan origination fee, service
32 charge, or any other charge equal to 1 percent of the principal amount of a loan which is

1 charged by the lender at or before the time the loan is made as additional compensation for
2 the loan.

3 [(i)] ~~(J)~~ **(K)** “Simple interest” means interest charged on the principal amount
4 loaned to the borrower.

5 [(j)] ~~(K)~~ **(L)** “Stated rate of interest” means the annual rate of interest stated in
6 percentage which appears on the face of the bond, draft, mortgage, deed of trust, security
7 agreement, promissory note, or other instrument which evidences the indebtedness.

8 [(k)] ~~(L)~~ **(M)** “Usury” means the charging of interest by a lender in an amount which
9 is greater than that allowed by this subtitle.

10 [(l)] ~~(M)~~ **(N)** “Wages” means all remuneration paid to any employee for ~~his~~ **THE**
11 **EMPLOYEE’S** employment, including the cash value of all remuneration paid in any
12 medium other than cash.

13 **12-101.1.**

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

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

21 **(C) IF A LENDER THAT MAKES OR CONTRACTS TO MAKE A LOAN DOES NOT**
22 **MAKE A WRITTEN ELECTION UNDER THIS SUBTITLE OR SUBTITLE 3, SUBTITLE 4,**
23 **SUBTITLE 9, OR SUBTITLE 10 OF THIS TITLE, THIS SUBTITLE STILL APPLIES TO THE**
24 **LOAN IF THE LOAN IS:**

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

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

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

28 12-111.

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

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

3 12-112.

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

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

11 12-114.

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

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

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

18 (ii) The sum of \$500.

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

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

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

25 **[(b)] (C)** Any person who violates the disclosure provisions of § 12-106(b) and (c)
26 of this subtitle is guilty of a misdemeanor and on conviction is subject to a fine not exceeding
27 \$1,000 or imprisonment not exceeding [one] **1** year or both.

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

31 **12-114.1.**

1 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS
2 INDICATED.

3 (2) (I) "COVERED LOAN" MEANS A LOAN SUBJECT TO §
4 12-103(A)(3) OR (C) OF THIS SUBTITLE, MADE FOR PERSONAL, FAMILY, OR
5 HOUSEHOLD PURPOSES, REGARDLESS OF WHETHER THE LOAN IS OR PURPORTS TO
6 BE MADE UNDER THIS SUBTITLE.

7 (II) "COVERED LOAN" DOES NOT INCLUDE ~~A LOAN SUBJECT TO~~
8 ~~SUBTITLE 3 OF THIS TITLE;~~

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

12 2. A PLAN OR LOAN FOR WHICH A WRITTEN ELECTION
13 HAS BEEN MADE UNDER SUBTITLE 3, SUBTITLE 4, SUBTITLE 9, OR SUBTITLE 10 OF
14 THIS TITLE; OR

15 3. AN INSTALLMENT SALE AGREEMENT AS DEFINED IN §
16 12-601 OF THIS TITLE.

17 ~~(3) "OUT-OF-STATE LENDER" MEANS A PERSON WHO MAKES A LOAN~~
18 ~~VALIDLY IN ANOTHER STATE THAT COMPLIES WITH A COMPARABLE LOAN LAW OF~~
19 ~~THE OTHER STATE.~~

20 ~~(4)~~ (3) "UNLICENSED PERSON" MEANS A PERSON WHO IS NOT:

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

22 (II) EXEMPT FROM LICENSING IN THE STATE.

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

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

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

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

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

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

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

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

14 2. A PERSON CORRECTS THE ERROR OR MISTAKE
15 BEFORE ANY PAYMENT IS RECEIVED THE FIRST PAYMENT IS DUE UNDER THE LOAN.

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

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

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

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

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

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

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

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

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

5 12-301.

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

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

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

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

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

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

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

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

25 12-303.

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

28 (2) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION,
29 THIS SUBTITLE APPLIES REGARDLESS OF:

30 (I) WHETHER THE TRANSACTION IS OR PURPORTS TO BE MADE
31 UNDER THIS SUBTITLE;

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

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

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

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

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

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

13 **(II) A LOAN MADE BY AN INDIVIDUAL PROVIDED THE**
 14 **INDIVIDUAL:**

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

17 **2. DOES NOT ENGAGE IN THE BUSINESS OF MAKING**
 18 **LOANS; OR**

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

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

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

24 (2) For the purposes of this subtitle:

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

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

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

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

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

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

13 ~~(D) THIS SUBTITLE APPLIES TO A LOAN OR AN ADVANCE OF MONEY OF~~
14 ~~\$12,000 OR LESS MADE FOR PERSONAL, FAMILY, HOUSEHOLD, OR AGRICULTURAL~~
15 ~~PURPOSES;~~

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

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

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

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

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

26 [(d)] **(E)** (1) A lender who lends or contracts to lend an amount which exceeds
27 ~~[\$6,000] \$12,000~~ **\$25,000** may not directly or indirectly contract for, charge, or receive
28 any interest, fee, or other charge in excess of that which [he] **THE LENDER** would be
29 permitted to charge if [he] **THE LENDER** were not authorized to make loans under this
30 subtitle.

31 (2) The provisions of this subsection apply to any debt in excess of **[\$6,000]**
32 ~~\$12,000~~ **\$25,000** which is directly or contingently owed or contracted to be so owed by any
33 person jointly or severally:

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

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

5 12-311.

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

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

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

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

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

15 [12-313.

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

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

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

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

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

1 12-314.

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

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

6 (2) **THE TRANSACTION VIOLATES THE FEDERAL MILITARY LENDING**
7 **ACT; OR**

8 (3) **THE PERSON IS NOT LICENSED UNDER OR EXEMPT FROM THE**
9 **LICENSING REQUIREMENTS UNDER THE MARYLAND CONSUMER LOAN LAW –**
10 **LICENSING PROVISIONS.**

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

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

19 2. **THE LOAN VIOLATES THE FEDERAL MILITARY**
20 **LENDING ACT; OR**

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

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

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

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

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

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

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

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

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

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

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

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

17 (1) COLLECT OR ATTEMPT TO COLLECT, DIRECTLY OR INDIRECTLY,
18 ANY AMOUNT FROM THE BORROWER;

19 (2) ENFORCE OR ATTEMPT TO ENFORCE THE CONTRACT AGAINST
20 ANY PROPERTY SECURING THE LOAN; OR

21 (3) SELL, ASSIGN, OR OTHERWISE TRANSFER THE LOAN TO ANOTHER
22 PERSON.

23 12-401.

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

25 (b) “Lender” means:

26 (1) A licensee; or

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

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

4 12-402.1.

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

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

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

14 (2) IF A LENDER WHO MAKES OR CONTRACTS TO MAKE A LOAN DOES
15 NOT MAKE A WRITTEN ELECTION UNDER THIS SUBTITLE OR SUBTITLE 1, SUBTITLE
16 3, SUBTITLE 9, OR SUBTITLE 10 OF THIS TITLE:

17 (i) SUBTITLE 1 OF THIS TITLE WILL APPLY TO THE LOAN IF THE
18 LOAN IS:

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

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

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

22 (ii) SUBTITLE 3 OF THIS TITLE WILL APPLY TO THE LOAN IF THE
23 LOAN IS:

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

25 2. SUBJECT TO SUBTITLE 3 OF THIS TITLE.

26 12-601.

27 (f) “Consumer goods” means goods bought for use primarily for personal, family,
28 or household purposes, as distinguished from industrial, commercial, or agricultural
29 purposes.

1 (k) (1) "Goods" means all tangible personal property that has a cash price of
2 ~~[\$25,000]~~ **\$100,000** or less.

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

4 ~~Article—Financial Institutions~~

5 ~~11-303.~~

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

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

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

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

15 ~~(I) THIS SUBTITLE;~~

16 ~~(II) SUBTITLE 2 OF THIS TITLE; AND~~

17 ~~(III) THE APPLICABLE PROVISIONS OF:~~

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

19 ~~AND~~

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

21 ~~ARTICLE.~~

22 ~~(C) THE LICENSING, INVESTIGATORY, ENFORCEMENT, AND PENALTY~~
23 ~~PROVISIONS OF SUBTITLE 2 OF THIS TITLE SHALL BE INTERPRETED, CONSTRUED,~~
24 ~~AND APPLIED TO A PERSON REQUIRING LICENSING UNDER § 11-302(B) OF THIS~~
25 ~~SUBTITLE AS IF:~~

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

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

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

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.