

Consumer Financial Regulation: Pennsylvania

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A Q&A guide to consumer finance regulation in Pennsylvania. This Q&A addresses state-specific laws governing the offering and sale of consumer financial products and services, including credit cards, residential mortgages, and consumer loans, and covers topics including licensing, fair lending, and unfair and deceptive trade practices.

CONSUMER LENDING

1. Does your jurisdiction impose licensing requirements on financial institutions engaged in consumer lending services? If so, please:

- Identify the state agency responsible for enforcing the relevant statute.
- Describe the types of licenses required, such as company, branch, and individual licenses.
- Identify which types of entities are subject to the licensing requirement.
- List any exemptions from the licensing requirement, including minimum loan thresholds.

The following statutes and regulations govern the licensing of financial institutions engaged in consumer lending services:

- Non-mortgage consumer discount companies are governed by:
 - the Consumer Discount Company Act (7 Pa. Stat. Ann. §§ 6201 to 6219); and
 - title 10, sections 41.1 to 57.33 of the Pennsylvania Administrative Code.
- Money transmitters are governed by:
 - the Money Transmitter Act (7 Pa. Stat. Ann. §§ 6101 to 6122); and
 - title 10, sections 19.1 to 19.8 of the Pennsylvania Administrative Code.

- Motor vehicle finance companies are governed by:
 - title 12, sections 6101 to 6355 of the Pennsylvania Consolidated Statutes; and
 - title 10, sections 41.1 to 57.33 of the Pennsylvania Administrative Code.
- Pawnbrokers are governed by:
 - the Pawnbrokers License Act (63 Pa. Stat. Ann. §§ 281-1 to 281-32); and
 - title 10, sections 61.1 to 67.13 of the Pennsylvania Administrative Code.
- Check cashers are governed by:
 - The Check Casher Licensing Act (63 Pa. Stat. Ann. §§ 2301 to 2334); and
 - title 10, sections 81.1 to 81.62 of the Pennsylvania Administrative Code.

STATE AGENCY

The Pennsylvania Department of Banking and Securities (PA DBS) enforces these laws (7 Pa. Stat. Ann. §§ 6110 and 6212; 12 Pa. Cons. Stat. §§ 6102 and 6274; 63 Pa. Stat. Ann. §§ 281-8 and 2304).

TYPES OF LICENSES

The PA DBS may issue the following types of licenses:

- For non-mortgage consumer discount companies:
 - a consumer discount company license; or
 - a consumer discount branch company license
- For money transmitters, a company license.
- For motor vehicle finance companies:
 - a motor vehicle finance company license; or
 - a motor vehicle finance company branch license.
- For pawnbrokers:
 - a pawnbroker company license; or
 - a pawnbroker branch license.
- For check cashers:
 - a check casher company license; or
 - a check casher branch license.



COVERED ENTITIES**Non-Mortgage Consumer Discount Companies: 7 Pa. Stat. Ann. §§ 6201 to 6219 and 10 Pa. Code §§ 41.1 to 57.33**

A person or entity must obtain a license from the PA DBS if that person or entity both:

- Is in the business of negotiating or making loans or advances of money on credit that is \$25,000 or less.
- Charges, collects, contracts for, or receives interest, discounts, bonuses, fees, fines, commissions, charges, or other considerations which aggregate in excess of the interest that the lender would otherwise be permitted by law to charge.

(7 Pa. Stat. Ann. § 6203.)

Money Transmitters: 7 Pa. Stat. Ann. §§ 6101 to 6122 and 10 Pa. Code §§ 19.1 to 19.8

A person or entity engaged in the business of transmitting money using a transmittal instrument for a fee or other consideration must apply for a license (7 Pa. Stat. Ann. § 6102).

Motor Vehicle Finance Companies: 12 Pa. Cons. Stat. §§ 6101 to 6355 and 10 Pa. Code §§ 41.1 to 57.33

An installment seller, sales finance company, and a collector-repossessor must obtain a license (12 Pa. Cons. Stat. § 6211).

Pawnbrokers: 63 Pa. Stat. Ann. §§ 281-1 to 281-32 and 10 Pa. Code §§ 61.1 to 67.13

A person or entity must obtain a license if the person or entity:

- Engages in the business of lending money on the deposit or pledge of personal property, other than choses in action, securities, or written evidences of indebtedness.
- Purchases personal property with an expressed or implied agreement or understanding to sell it back at a later time at a stipulated price.
- Lends money on goods, wares, or merchandise pledged, stored, or deposited as collateral security.

Check Cashers: 63 Pa. Stat. Ann. §§ 2301 to 2334 and 10 Pa. Code §§ 81.1 to 81.62

A person or entity that engages in the business of cashing of checks for a fee must obtain a license (63 Pa. Stat. Ann. § 2311).

EXEMPTIONS**Non-Mortgage Consumer Discount Companies: 7 Pa. Stat. Ann. §§ 6201 to 6219 and 10 Pa. Code §§ 41.1 to 57.33**

The Consumer Discount Company Act does not apply to a person, partnership, association, or corporation:

- Operating under the laws related to banking institutions, building and loan associations, and credit unions.
- Licensed under the Small Loans Act (7 Pa. Stat. Ann. §§ 6151 to 6157) (repealed).
- Licensed by the PA DBS.

(7 Pa. Stat. Ann. § 6217.)

Money Transmitters: 7 Pa. Stat. Ann. §§ 6101 to 6122 and 10 Pa. Code §§ 19.1 to 19.8

The licensing requirements do not apply to:

- Banks, bank and trust companies, credit unions, savings banks, and private banks insured by the Federal Deposit Insurance Corporation (FDIC) and organized under:
 - Pennsylvania law;
 - federal law; or
 - another state's laws.
- Similar credit unions organized under the laws of the US or another state, and insured by the National Credit Union Share Insurance Fund.
- Savings and loan associations and building and loan associations organized under federal or Pennsylvania law.

(7 Pa. Stat. Ann. § 6103.)

Motor Vehicle Finance Companies: 12 Pa. Cons. Stat. §§ 6101 to 6355 and 10 Pa. Code §§ 41.1 to 57.33

There are no exemptions.

Pawnbrokers: 63 Pa. Stat. Ann. §§ 281-1 to 281-32 and 10 Pa. Code §§ 61.1 to 67.13

The Pawnbrokers Act does not apply to any person, persons, partnership, association, or corporation either:

- Operating under the laws relating to banking institutions, building and loan associations, credit unions, or conducting business under a license issued by the PA DBS under the provisions of any other statute.
- Conducting a business as a storage warehouseman.

(63 Pa. Stat. Ann. § 281-30.)

Check Cashers: 63 Pa. Stat. Ann. §§ 2301 to 2334 and 10 Pa. Code §§ 81.1 to 81.62

The Check Casher Licensing Act does not apply to:

- An insured depository institution, affiliate, or service corporation of a depository institution supervised or regulated by either:
 - the PA DBS;
 - the National Credit Union Administration;
 - the Office of Thrift Supervision;
 - the FDIC;
 - the Comptroller of the Currency; or
 - the Board of Governors of the Federal Reserve or the Federal Reserve Banks.
- A company licensed under the Consumer Discount Company Act, the Money Transmission Business Licensing Law, the Secondary Mortgage Loan Act, and the Mortgage Bankers and Brokers Act:
 - in the normal course of business;
 - with specifically relating to lending transactions; and
 - engaged in the activities regulated under these laws.
- A retail food store licensed as a food establishment, or as a public eating or drinking place that receives less than 1% of its annual gross revenue from cashing checks.

(63 Pa. Stat. Ann. § 2331.)

2. Does your jurisdiction impose any restrictions on payday lending, deferred presentment services or other short-term, small-dollar lending activities? If so, please:

- Identify the state agency responsible for enforcing the relevant statute.
- Describe the key substantive provisions of the statute, including the maximum loan term, loan amount, finance charges and fees permitted by the statute.

Pennsylvania does not have a statute that specifically governs or restricts payday lending activities. However, Pennsylvania's usury and licensing laws effectively prohibit payday lending activities in the state, specifically:

- The Check Cashers Licensing Act (63 Pa. Stat. Ann. § 2325).
- The Loan Interest and Protection Law (maximum interest rate law) (41 Pa. Stat. Ann. § 201).
- The Consumer Discount Company Act (7 Pa. Stat. Ann. §§ 6201 to 6219).
- The Corrupt Organizations Act (18 Pa. Cons. Stat. § 911 (h)(1)(iv)).

STATE AGENCY

The Pennsylvania Department of Banking and Securities (PA DBS) is responsible for enforcing the laws and regulations affecting payday lending activities (63 Pa. Stat. Ann. § 2325; 7 Pa. Stat. Ann. § 6212).

KEY SUBSTANTIVE PROVISIONS

Check cashers cannot cash or advance money on post-dated checks (63 Pa. Stat. Ann. § 2325). The statute restricts check cashers from facilitating cash advance loans or similar payday loans.

Pennsylvania's interest rate laws further prohibit payday lending. Under Pennsylvania law:

- Interest on consumer loans under \$50,000 (or \$35,000 if the loans are unsecured and non-collateralized) is capped at 6% (41 Pa. Stat. Ann. § 201).
- Lenders wishing to make loans of \$25,000 or less at interest rates higher than 6% must be licensed under the Consumer Discount Company Act (CDCA) (7 Pa. Stat. Ann. § 6203).

The CDCA licensing requirements also apply to out-of-state online lenders that have no offices in Pennsylvania (*Cash Am. Net of Nevada, LLC v. Com., Dep't of Banking*, 8 A.3d 282, 294 (Pa. 2010)).

In addition, under the Pennsylvania Corrupt Organizations Act, a person or entity that offers a consumer loan at an interest rate at or greater than 25% may face criminal penalties (18 Pa. Cons. Stat. § 911 (h)(1)(iv)).

FOREIGN LANGUAGE DISCLOSURES

3. Must financial institutions provide disclosures in a language other than English to consumers engaged in credit transactions? If so, please:

- Define the relevant statute's key terms.
- Explain which types of credit transactions are subject to the disclosure requirement.
- List any exemptions to the foreign language disclosure requirement.

Pennsylvania does not require financial institutions to provide disclosures in a language other than English to consumers engaged in credit transactions.

4. Does your jurisdiction have a fair lending, human rights, civil rights or comparable anti-discrimination statute that applies to lending or other credit transactions? If so, please:

- Identify the state agency responsible for enforcing the statute.
- Describe the statute's key substantive provisions, including the prohibited bases of discrimination.
- Describe the penalties for statutory violations.
- Describe any significant differences between the statute and any relevant federal law.

Pennsylvania does not have a statute governing unlawful discriminatory practices in credit transactions generally. However, the Pennsylvania Human Relations Act (PHRA) prohibits unlawful discriminatory practices regarding housing and residential real estate-related transactions (43 Pa. Stat. Ann. §§ 951 to 963).

STATE AGENCY

The PHRA is enforced by the Pennsylvania Human Relations Commission (PA HRC) (43 Pa. Stat. Ann. § 960).

KEY SUBSTANTIVE PROVISIONS

Title 43, Section 955 of the Pennsylvania Statutes prohibits a person from doing any of the following based on a protected status:

- Refusing to sell, lease, or finance, or deny or withhold residential housing or commercial property to a person.
- Refusing to lend money (secured by a mortgage or otherwise) or withholding financing for the acquisition, construction, rehabilitation, repair, or maintenance of residential housing or commercial property.
- Discriminating on the terms or conditions of a loan (secured by a mortgage or otherwise) for the acquisition, construction, rehabilitation, repair, or maintenance of housing accommodation or commercial property.
- Printing, publishing, or circulating a statement or advertisement relating to a loan (secured by a mortgage or otherwise) for the acquisition, construction, rehabilitation, repair, or maintenance of residential housing or commercial property which indicates a preference, limitation, specification, or discrimination.
- Making an inquiry, eliciting information, making or keeping a record, or using an application containing questions or entries in connection with a loan (secured by a mortgage or otherwise) for the acquisition, construction, rehabilitation, repair or maintenance of residential housing or commercial property.

Protected Statuses

A person cannot discriminate based on the following:

- Race.
- Color.
- Familial status.
- Age.
- Religious creed.

- Ancestry.
- Sex.
- National origin.
- Handicap or disability.
- Use of a guide or support animal because:
 - of the user's blindness, deafness, or physical handicap; or
 - the user is a handler or trainer of guide or support animals.
- Being known to have a relationship or association with an individual who has a handicap or disability.

(43 Pa. Stat. Ann. § 955 (h).)

PENALTIES FOR STATUTORY VIOLATIONS

If the PA HRC determines that a lending institution violated the PHRA, the PA HRC must issue an order requiring that the lending institution both:

- Cease and desist from its unlawful discriminatory practices.
- Take affirmative action, for example, lending money for housing needs on equal terms.

The PA HRC may also award actual damages, including damages caused by humiliation and embarrassment. (43 Pa. Stat. Ann. § 959 (f)(1).)

The PA HRC may also impose civil penalties of up to:

- \$10,000, for a first violation.
- \$25,000, if the respondent had a previous violation within five years of the date of the order.
- \$50,000, if the respondent has had more than one previous violation within seven years of the date of the order.

(43 Pa. Stat. Ann. § 959 (f)(2).)

SIGNIFICANT DIFFERENCES FROM FEDERAL LAW

Unlike the federal Fair Housing Act and the Equal Credit Opportunity Act, the PHRA also prohibits discrimination against people who:

- Use or handle support animals.
- Have a relationship with or associate with an individual with a handicap or disability.

(See 42 U.S.C. §§ 3604 and 3605; 43 Pa. Stat. Ann. § 955 (h).)

For more information about the federal anti-discrimination laws, see Practice Note, Fair Lending Laws (<http://us.practicallaw.com/w-000-6668>).

5. Does your jurisdiction impose restrictions on the maximum interest rate that may be charged on a loan? If so, please:

- Identify the state agency responsible for enforcing the relevant statute.
- Describe the key substantive provisions of the statute, including the types of loans subject to the restrictions.
- Identify any exemptions from the restrictions.
- Describe any significant differences between the statute and any federal law.

Pennsylvania has two usury statutes that govern the maximum interest rates that lenders may charge in the state:

- The Loan Interest and Protection Law (maximum interest rate law) (41 Pa. Stat. Ann. § 201).
- The Pennsylvania Corrupt Organizations Act (18 Pa. Cons. Stat. § 911 (h)(1)(iv)).

In addition, the Consumer Discount Company Act (CDCA) requires individuals who wish to make loans of \$25,000 or less at interest rates higher than 6% to obtain a license (7 Pa. Stat. Ann. § 6203).

STATE AGENCY

The Pennsylvania Attorney General (PA AG) enforces the maximum interest rate statute and the Pennsylvania Corrupt Organizations Statute (41 Pa. Stat. Ann. § 506; 18 Pa. Cons. Stat. § 911 (e)).

The Pennsylvania Department of Banking and Securities enforces the maximum interest rate statute and the CDCA (41 Pa. Stat. Ann. § 506; 7 Pa. Stat. Ann. § 6212).

KEY SUBSTANTIVE PROVISIONS

Maximum Interest Rate Law: 41 Pa. Stat. Ann. § 201

Lenders cannot charge an annual interest rate greater than 6% on consumer loans that are:

- \$50,000 or less, for secured and collateralized loans.
- \$35,000 or less for unsecured and non-collateralized loans. (41 Pa. Stat. Ann. § 201.)

The 6% usury rate does not apply to:

- Business loans (41 Pa. Stat. Ann. § 201 (b)).
- Residential mortgage loans (41 Pa. Stat. Ann. § 301).

(See Exemptions.)

A lender that violates this law:

- May be required to pay a \$10,000 fine for each offense (41 Pa. Stat. Ann. § 505 (b)).
- May face a civil action from the borrower and be required to pay the borrower:
 - three times the amount of the excess interest and charges (41 Pa. Stat. Ann. § 502); and
 - attorneys' fees (41 Pa. Stat. Ann. § 503.)
- Knowingly and intentionally may face third degree misdemeanor charges (41 Pa. Stat. Ann. § 505 (a)).

Pennsylvania Corrupt Organizations Law: 18 Pa. Cons. Stat. § 911 (h) (1) (iv)

A lender cannot charge an annual interest rate of 25% or more on a loan. A person who violates that provision is considered to have engaged in racketeering activity and may face first degree felony charges. (18 Pa. Cons. Stat. § 911 (c), (h)(1)(v).)

Consumer Discount Company Act: 7 Pa. Stat. Ann. § 6203

A lender who wishes to make loans in amounts less than \$25,000 with interest rates greater than 6% must be licensed under the CDCA. A licensed lender may make loans that are greater than the rate specified in the maximum interest rate law. (7 Pa. Stat. Ann. § 6203.)

COVERED LOANS

The maximum interest rate law applies to:

- Secured or collateralized consumer loans of \$50,000 or less.
- Unsecured, uncollateralized consumer loans of \$35,000 or less

A licensed lender may make loans that are greater than the rate specified in the maximum interest rate law. (7 Pa. Stat. Ann. § 6203.)

The interest rate provisions specified in the Pennsylvania Corrupt Organizations Act apply to all loans (18 Pa. Cons. Stat. § 911 (c), (h)(1)(v)).

EXEMPTIONS

The maximum interest rate law does not apply to:

- Business loans (41 Pa. Stat. Ann. § 201 (b)).
- Residential mortgage loans (41 Pa. Stat. Ann. § 301).
- Commitments to enter into residential mortgages, even if the interest rate is greater than the maximum interest rate for residential mortgage loans at the time of consummation (41 Pa. Stat. Ann. § 303).
- Loans insured or guaranteed by the federal government (41 Pa. Stat. Ann. § 302).

SIGNIFICANT DIFFERENCES FROM FEDERAL LAW

Federal law does not impose a general maximum interest rate on loans. However, certain federal regulations may cap interest rates on particular types of loans. For example, the federal Credit Union Act requires that federal credit union loans cannot exceed a specified interest rate (12 U.S.C. § 1785).

6. Does your jurisdiction limit the maximum finance charge that may be charged on a loan? If so, please:

- Identify the state agency responsible for enforcing the relevant statute.
- Define the relevant statute's key terms.
- Identify the types of loans subject to the statute.
- List any statutory exemptions.
- Describe any significant differences between the statute and any relevant federal law.

In Pennsylvania, a finance charge cannot exceed the maximum rates specified by the maximum interest rate law and the Corrupt Organizations Act (see Question 5). In addition, Pennsylvania limits the amount of finance charges that may be imposed:

- By licensed installment sellers on buyers of motor vehicles (12 Pa. Cons. Stat. § 6243).
- In connection with home improvement installment contracts (73 Pa. Stat. Ann. § 500-301).

STATE AGENCY

The Pennsylvania Department of Banking and Securities (PA DBS) administers the Motor Vehicle Finance Act (12 Pa. Cons. Stat. § 6202).

The Pennsylvania Attorney General or the district attorney of a county in Pennsylvania enforce the Home Improvement Finance Act (73 Pa. Stat. Ann. § 500-502).

KEY SUBSTANTIVE PROVISIONS

Motor Vehicle Sales Finance Act: 12 Pa. Cons. Stat. §§ 6201 to 6275

Licensed installment sellers of motor vehicles may charge finance charges on installment sale contracts for the sale of motor vehicles as follows:

- For new motor vehicles, finance charges cannot exceed the equivalent of:
 - 18% simple interest per year on the unpaid balance, generally;
 - 7.5% per year, if the new motor vehicle has a purchase price of \$10,000 or more and is used primarily for a commercial purpose; or
 - 10% per year for either a new truck and truck tractor having a manufacturer's gross vehicular weight of 13,000 pounds or more, or a new semitrailer and trailer designed for use in combination with a truck tractor.
- For used motor vehicles, finance charges cannot exceed the equivalent of:
 - 18% simple interest per year on the unpaid balance, if the used vehicle was designated by the manufacturer during a year that is two years or less before the year in which the initial sale is made; and
 - 21% simple interest per year on the unpaid balance, if the used vehicle was designated by the manufacturer during a year that is more than two years before the year in which the initial sale is made.

(12 Pa. Cons. Stat. § 6243 (d), (e).)

For a manufactured home, the maximum finance charge cannot exceed that specified by the federal National Housing Act (12 Pa. Cons. Stat. § 6243 (c); 12 U.S.C. §§ 1701 to 1750g).

Home Improvement Finance Act: 73 Pa. Stat. Ann. §§ 500-101 to 500-602

The maximum finance charges that may be charged on a home improvement installment contract are as follows:

- For home improvement installment contracts that are payable in substantially equal successive monthly installments, the limit is \$8 per \$100 per year. However, the maximum finance charge is modified proportionately, depending on the length of the contract term, the amount contracted for, or both.
- For home improvement installment contracts that are not payable in substantially equal successive monthly installments, the limit is an amount which will provide the same yield as if the contract were payable in substantially equal successive monthly installments.
- If the amount of any installment is more than double the amount of any other installment except the down payment, the limit for the portion of the principal amount financed that is included in the larger installment is the equivalent of 6% annual simple interest:
 - starting on the date on which the finance charge begins to accrue; and
 - to the due date of the larger installment.

The portion of the finance charge must payable in substantially equal periodic installments throughout the specified period.

(73 Pa. Stat. Ann. § 500-301.)

COVERED LOANS

The Motor Vehicle Sales Finance Act covers auto installment sales contracts and installment contracts for manufactured homes (12 Pa. Cons. Stat. § 6243 (c) to (e)).

The Home Improvement Finance Act covers home improvement installment contracts (73 Pa. Stat. Ann. § 500-301).

EXEMPTIONS

There are no exemptions under both the Motor Vehicle Sales Finance Act and the Home Improvement Finance Act.

SIGNIFICANT DIFFERENCES FROM FEDERAL LAW

Federal law does not have statutes that regulate installment sales contracts.

7. Does your jurisdiction limit the maximum amount of fees that may be charged on a loan? If so, please:

- Identify the state agency responsible for enforcing the relevant statute.
- Define the relevant statute's key terms.
- Identify the types of loans subject to the statute.
- List any statutory exemptions.
- Describe any significant differences between the statute and any relevant federal law.

The following Pennsylvania laws contain certain restrictions of fees in the context of installment contracts.

- The Motor Vehicle Sales Finance Act governs auto installment sales and installment contracts for manufactured homes (12 Pa. Cons. Stat. §§ 6201 to 6275).
- The Home Improvement Finance Act governs home improvement installment contracts (73 Pa. Stat. Ann. §§ 500-101 to 500-602).

STATE AGENCY

The Pennsylvania Department of Banking and Securities (PA DBS) administers the Motor Vehicle Finance Act (12 Pa. Cons. Stat. § 6202).

The Pennsylvania Attorney General or the district attorney of a county in Pennsylvania enforce the Home Improvement Finance Act (73 Pa. Stat. Ann. § 500-502).

KEY SUBSTANTIVE PROVISIONS

Motor Vehicle Sales Finance Act: 12 Pa. Cons. Stat. §§ 6201 to 6275

For an installment contract for a motor vehicle, a lender cannot collect a late charge for a payment that is not made within ten days of its scheduled due date that is greater than:

- 4% on the amount in arrears for a heavy commercial motor vehicle.
 - 2% on the amount in arrears, for all other motor vehicles.
- (12 Pa. Cons. Stat. § 6245.)

An installment seller may require a buyer of a motor vehicle under an installment sale contract to purchase insurance on the motor vehicle at the buyer's expense. However, the insurance charges cannot exceed:

- The insurance charges that others must pay to the insurance company for similar coverage.
 - The limitations on premiums, commissions, and other charges specified under Pennsylvania law, regulations, and other authority.
- (12 Pa. Cons. Stat. § 6241.)

Home Improvement Finance Act: 73 Pa. Stat. Ann. §§ 500-101 to 500-602

A home improvement contract may require that the borrower pay a delinquency charge on each installment that is in default for not less than ten days. The charge must be the lesser of either:

- 5% of the installment amount unpaid.
- \$5.

(73 Pa. Stat. Ann. § 500-209.)

If the premium paid for insurance is included in the installment contract and a separate charge is made to the buyer, the amount of the insurance cannot exceed rates both:

- Established in the then current published applicable manual of a recognized standard insurance rating bureau.
- The rates fixed or approved under Pennsylvania law, regulations, and other authority.

(73 Pa. Stat. Ann. § 500-205.)

COVERED LOANS

The Motor Vehicle Sales Finance Act covers auto installment sales contracts and installment contracts for manufactured homes (12 Pa. Cons. Stat. § 6243 (c) to (e)).

The Home Improvement Finance Act covers home improvement installment contracts (73 Pa. Stat. Ann. § 500-301).

EXEMPTIONS

There are no exemptions under both the Motor Vehicle Sales Finance Act and the Home Improvement Finance Act.

SIGNIFICANT DIFFERENCES FROM FEDERAL LAW

8. Does your jurisdiction prohibit financial institutions from engaging in unfair, deceptive or abusive acts or practices? If so, please:

- Identify the state agency responsible for enforcing the relevant statute and describe any key agency guidance regarding the statute.
- Define the relevant statute's key terms.
- Describe the penalties for statutory violations.
- Describe any significant differences between the statute and relevant federal law.

The Unfair Trade Practices and Consumer Protection Law prohibits unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce in Pennsylvania (73 Pa. Stat. Ann. §§ 201-1 to 201-9.3).

STATE AGENCY

The Pennsylvania Attorney General (PA AG) administers and enforces this law (73 Pa. Stat. Ann. § 201-3.1).

KEY TERMS

"Unfair methods of competition" and "unfair or deceptive acts or practices" are defined as:

- Passing off goods or services as those of another.
- Causing likelihood of confusion or of misunderstanding about the source, sponsorship, approval, or certification of goods or services.
- Causing likelihood of confusion or of misunderstanding about affiliation, connection or association with, or certification by, another.
- Using deceptive representations or designations of geographic origin in connection with goods or services.
- Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have or that a person has a sponsorship, approval, status, affiliation, or connection that the person does not have.
- Representing that goods are original or new if they are deteriorated, altered, reconditioned, reclaimed, used, or secondhand.
- Representing that goods or services are of a particular standard, quality or grade, or that goods are of a particular style or model, if the goods or services are of another.
- Disparaging the goods, services, or business of another by false or misleading representation of fact.
- Advertising goods or services with intent not to sell them as advertised.
- Advertising goods or services with intent not to supply reasonably expectable public demand, unless the advertisement discloses a limitation of quantity.
- Making false or misleading statements of fact concerning the reasons for, existence of, or amounts of price reductions.
- Promising or offering before the time of sale to pay, credit, or allow to a buyer:
 - compensation or reward for procuring a contract for purchase of goods or services with another; or
 - a referral of the name or names of another party to procure (or attempt to procure) a contract of purchase with another when the payment, credit, compensation, or reward is contingent on an event occurring after the contract to purchase is signed.
- Promoting or engaging in a plan where goods or services are sold to a person for a consideration, and where the purchaser secures or attempt to secure one or more persons to join the plan on further consideration (pyramid scheme). Consideration is defined as an investment of cash or the purchase of goods, other property, training, or services, but does **not** include:
 - payments made for sales demonstration equipment;
 - materials used in making sales and not for resale, which is provided at no profit to any person in the program, or the company or corporation; or
 - a minimal initial payment of \$25 or less.
- Failing to comply with the terms of a written guarantee or warranty given to the buyer at, before, or after a contract for the purchase of goods or services is made.
- Knowingly misrepresenting that services, replacements, or repairs are needed if they are not needed.
- Making repairs, improvements, or replacements on tangible, real, or personal property that is below the standard of that agreed to in writing.
- Making solicitations for sales of goods or services over the telephone without first clearly, affirmatively and expressly stating:
 - the identity of the seller;
 - that the purpose of the call is to sell goods or services;
 - the nature of the goods or services; and
 - that no purchase or payment is necessary to be able to win a prize or participate in a prize promotion if a prize promotion is offered.

The telemarketer must make the disclosure before or in conjunction with the description of the prize to the person called. If the person called requests, the telemarketer must disclose the no-purchase/no-payment entry method for the prize promotion.
- Using a contract, form, or any other document related to a consumer transaction which contains a confessed judgment clause that waives the consumer's right to assert a legal defense to an action.
- Soliciting an order for the sale of goods to be ordered by the buyer through the mail or by telephone unless, at the time of the solicitation, the seller has a reasonable basis to expect that it will be able to ship any ordered merchandise to the buyer:
 - within the time clearly and conspicuously stated in the solicitation; or
 - if no time is clearly and conspicuously stated, within 30 days after receipt of a properly completed order from the buyer. However, if the buyer applies to the seller for credit to pay for the merchandise (in whole or in part) when ordering the merchandise, the seller then has 50 days.
- Failing to inform the purchaser of a new motor vehicle offered for sale at retail by a motor vehicle dealer that:
 - any rustproofing of the new motor vehicle offered by the motor vehicle dealer is optional; and
 - the new motor vehicle has been rustproofed by the manufacturer and the nature and extent, if any, of the manufacturer's warranty which applies to the rustproofing;
- Engaging in any other fraudulent or deceptive conduct which creates a likelihood of confusion or of misunderstanding.

(73 Pa. Stat. Ann. § 201-2.)

PENALTIES

A person, firm, or corporation that violates this law may face:

- A \$1,000 civil penalty per violation, if the violation is willful.
- A \$3,000 civil penalty per violation, if the violation is willful and the victim is 60 years of age or older.

(73 Pa. Stat. Ann. § 201-8.)

In addition, a party may file a civil claim against a person, firm, or corporation that violated the law. If the plaintiff prevails, the defendant may face:

- An injunction.
- An order to pay the greater of either:
 - \$100; or
 - the amount of money or property, real or personal, that the person, firm, or corporation obtained by violating this law.

- An order to pay treble damages of at least \$100.
- An order to pay costs and attorneys' fees.

(73 Pa. Stat. Ann. § 201-9.2.)

A permanent injunction, judgment, or order of the court that a court issues in an action brought by the Pennsylvania Attorney General is prima facie evidence that the defendant used or employed unlawful acts or practices (73 Pa. Stat. Ann. § 201-9.2 (b)).

SIGNIFICANT DIFFERENCES FROM FEDERAL LAW

Title X of the Dodd-Frank Act (the Consumer Financial Protection Act) prohibits unfair, deceptive, or abusive acts or practices. In contrast, the Pennsylvania Unfair Trade Practices and Consumer Protection Law is limited to unfair methods of competition and unfair or deceptive acts or practices.

For more information about the federal Consumer Financial Protection Act, see Practice Note, Summary of the Dodd-Frank Act: Consumer Financial Protection (<http://us.practicallaw.com/2-543-6265>).

DEBT COLLECTION

9. Does your jurisdiction have a statute governing debt collection activities? If so, please:

- Identify the key agency responsible for enforcing the statute.
- Describe the key substantive provision of the statute.
- Describe any significant differences between the statute and any relevant federal law, including the Fair Debt Collection Practices Act.

Pennsylvania has a Fair Credit Extension Uniformity Act (FCEUA), which governs debt collection activities (73 Pa. Stat. Ann. §§ 2270.1 to 2270.6).

STATE AGENCY

The Pennsylvania Attorney General (PA AG) enforces the FCEUA. A violation of the FCEUA constitutes a violation of the Unfair Trade Practices and Consumer Protection Law (73 Pa. Stat. Ann. § 2270.5; see Question 8).

KEY SUBSTANTIVE PROVISIONS

A debt collector commits an unfair and deceptive debt collection act or practice under the FCEUA if the debt collector violates a provision of the federal Fair Debt Collection Practices Act (15 U.S.C. §§ 1692 to 1692p; 73 Pa. Stat. Ann. § 2270.4 (a)).

A creditor commits an unfair and deceptive debt collection act or practice under the FCEUA if the creditor does any of the following acts listed under Title 73, Section 2270.4 (b) of the Pennsylvania Consolidated Statutes. Under the FCEUA:

- While communicating with a person other than the consumer to obtain information about the consumer's location, a creditor must:
 - identify himself, state that he is confirming or correcting information regarding the consumer's location information concerning the consumer, and identify his employer only if the person expressly requests;
- not state that the consumer owes any debt;
- not communicate with the person more than once unless either the person requests that the creditor do so, or the creditor reasonably believes that the person's earlier response is erroneous or incomplete and that the person now has correct or complete location information;
- not communicate by postcard;
- not use any language or symbol on any envelope or in the contents of any communication that indicates that the communication relates to the collection of a debt; and
- not communicate with any person other than the attorney after the creditor knows the consumer is represented by an attorney for the debt and the creditor has knowledge of or can readily determine the attorney's name and address. However, a creditor may communicate with another person if the attorney fails to respond within a reasonable period to the creditor.
- Without the consumer's prior, direct consent to the creditor or a court's express permission, a creditor cannot communicate with a consumer regarding the collection of any debt:
 - at any unusual time or place, or a time or place known or which should be known to be inconvenient to the consumer. Unless the creditor has knowledge specifying otherwise, a creditor must assume that the convenient time to communicate with a consumer is after 8:00 a.m. and before 9:00 p.m. local time at the consumer's location;
 - if the creditor knows the consumer is represented by an attorney for the debt and has knowledge of or can readily determine the attorney's name and address. However, the creditor may communicate with the consumer if the attorney fails to respond within a reasonable period to the creditor, or the attorney consents to direct communication with the consumer; or
 - at the consumer's place of employment, if the creditor knows or has reason to know that the consumer's employer prohibits the consumer from receiving the communication.
- Except when communicating with a person who is not the consumer to determine the consumer's location, a creditor cannot communicate with a person **except** for any of the following unless the creditor has the consumer's prior, direct consent, a court's express permission or as reasonably necessary to execute a post-judgment judicial remedy:
 - the consumer;
 - the consumer's attorney;
 - a consumer reporting agency, if otherwise permitted by law;
 - a debt collector; or
 - the debt collector or creditor's attorney.
- A creditor cannot engage in conduct in which a person would be harassed, oppressed, or abused regarding a debt collection.
- A creditor cannot use any false, deceptive, or misleading representation or means in connection collecting a debt.
- A creditor cannot use unfair or unconscionable means to collect or attempt to collect a debt.

SIGNIFICANT DIFFERENCES FROM FEDERAL LAW

Unlike the federal Fair Debt Collection Practices Act (FDCPA), the FCEUA exempts from the definition of debt collector people who serve or attempt to serve legal process on another person regarding the judicial enforcement of a debt (15 U.S.C. § 1602; 73 Pa. Stat. Ann. § 2270.3).

For more information on the federal laws governing debt collection (for example, the FDCPA), see Practice Note, Consumer Regulations Governing Debt Collection (<http://us.practicallaw.com/1-538-2786>).

10. Please describe any circumstances under which financial institutions or collection agencies in your jurisdiction are prohibited from collecting a debt from a consumer.

Pennsylvania law does not specify any circumstances in which a financial institution or collection agency cannot collect a debt from a consumer.

11. Please describe any statute of limitations for collecting unpaid debts, including credit card debt.

The statute of limitations for collecting unpaid debts is four years (42 Pa. Cons. Stat. § 5525).

GIFT CARDS AND PREPAID CARDS

12. Does your jurisdiction impose any restrictions on the offering of gifts cards, gift certificates or other general-use prepaid cards? If so, please describe the key substantive provisions, including any provisions governing expiration dates, fees or disclosures.

Pennsylvania does not impose specific restrictions regarding gift cards. However, issuers of gift cards must comply with the state Unclaimed Property Law (72 Pa. Stat. Ann. §§ 1301.1 to 1301.6). Issuers must report unredeemed gift certificates and gift cards to the Pennsylvania Treasury Department:

- Two years after the date the gift card or certificate expires.
- If the gift card does not have an expiration date, three years after the gift card or certificate was purchased.

(72 Pa. Stat. Ann. § 1301.6)

The Unclaimed Property Law does not apply to qualified gift certificates, which are defined as a gift card or gift certificate that does not have:

- An expiration date.
- Any post-sale charges or fees, including service charges, dormancy fees, account maintenance fees, cash out fees, replacement card fees, or activation or reactivation fees.

(72 Pa. Stat. Ann. § 1301.1.)

13. Does your jurisdiction regulate any ancillary credit products offered by financial institutions, such as debt cancellation or guaranteed asset protection, as insurance products? If so, please:

- Identify the state agency responsible for regulation of these credit products.
- Describe the key substantive provisions of the relevant regulation.

Pennsylvania law does not regulate ancillary credit products. However, Pennsylvania requires insurance providers for limited line credit insurance products to obtain a license (40 Pa. Stat. Ann. §§ 310.1 to 310.14). Limited line credit insurance includes the following types of insurance:

- Credit life.
 - Credit disability.
 - Credit property.
 - Credit unemployment.
 - Involuntary unemployment.
 - Mortgage life.
 - Mortgage guaranty.
 - Mortgage disability.
 - Guaranteed automobile protection (GAP).
- (40 Pa. Stat. Ann. § 310.1.)

MONEY TRANSMISSION

14. Does your jurisdiction impose licensing requirements on entities engaged in money transmission services? If so, please:

- Identify the state agency responsible for enforcing the relevant statute.
- Identify which types of entities are subject to the licensing requirement.
- Describe the criteria the entity must meet to apply for a license, including any minimum net worth, security or permissible investment requirements.

The following statutes and regulations govern the licensing of persons or entities engaged in the business of transmitting money or receiving money for transmission:

- Title 7, Sections 6101 to 6122 of the Pennsylvania Statutes.
- Title 10, Sections 19.1 to 19.8 of the Pennsylvania Administrative Code.

STATE AGENCY

The Pennsylvania Department of Banking and Securities (PA DBS) administers and enforces these statutes and regulations (7 Pa. Stat. Ann. § 6110). A person who engages in money transmission without a license is guilty of a misdemeanor (7 Pa. Stat. Ann. § 6116).

COVERED ENTITIES

A person or entity cannot engage in the business of transmitting money by means of a transmittal instrument for a fee or other consideration without a license (7 Pa. Stat. Ann. § 6102). However, the licensing requirements do not apply to:

- Banks.
- Bank and trust companies.
- Credit unions.
- Savings and loan associations and building and loan associations organized under Pennsylvania or federal law.

(7 Pa. Stat. Ann. § 6103.)

APPLICATION CRITERIA

An applicant for a money transmitter license must:

- Pay a \$1,000 investigation and license fee.
- Maintain a \$1 million bond.
- Produce a financial statement showing a net worth of at least \$500,000.
- Have at least five years' experience in business and be of good character and reputation, if applying as an individual, or, if applying as an organization, have officers and directors who have at least five years' experience and be of good character and reputation. (7 Pa. Stat. Ann. §§ 6104 and 6106.)

STATE LAW PREEMPTION

15. Has a federal court or federal agency evaluated any statute of your jurisdiction to determine whether the statute is preempted by a federal consumer financial law? If so, please describe the holding of each federal court or federal agency decision.

Federal courts have evaluated Pennsylvania statutes to determine whether they are preempted by federal consumer financial law. These courts have held the following:

- The National Bank Act:
 - did not preempt a borrower's claims against a lender for wrongful use of civil proceedings under Title 42, Section 8351 of the Pennsylvania Consolidated Statutes, and a violation of Pennsylvania's Unfair Trade Practices and Consumer Protection Law based on excessive interest rate charges.
 - preempts a borrower's claim for a violation of Title 41, Section 301 of the Pennsylvania Consolidated Statutes (specifies the maximum interest rate for residential mortgages). (*Poskin v. TD Banknorth, N.A.*, 687 F. Supp. 2d 530 (W.D. Pa. 2009).)
- The National Bank Act and the regulations of the US Office of the Comptroller of the Currency did not preempt consumers' claims against national banks for violating Pennsylvania's Unfair Trade Practices and Consumer Protection Law by failing to disclose material terms and conditions of gift cards (*Mwantembe v. TD Bank, N.A.*, 669 F. Supp. 2d 545, 550 (E.D. Pa. 2009)).
- The Fair Credit Reporting Act (FCRA):
 - preempted consumers' claim against a furnisher of credit information for a violation of Pennsylvania's Unfair Trade Practices and Consumer Protection Law; and
 - did not preempt the consumers' common law tort claim for defamation because of issues of material fact. (*Manno v. Am. Gen. Fin. Co.*, 439 F. Supp. 2d 418 (E.D. Pa. 2006).)

- The Fair Credit Reporting Act:
 - preempted a mortgagor's claim against a mortgagee for a violation of Pennsylvania's Unfair Trade Practices and Consumer Protection Law, and
 - did not preempt common law tort claims alleging defamation, intentional interference with prospective contractual relations, and fraud. (*Sites v. Nationstar Mortg. LLC*, 646 F. Supp. 2d 699 (M.D. Pa. 2009).)
- The Fair Debt Collection Practices Act preempted a consumer's Pennsylvania state law claim for venue purposes (*Holton v. Huff*, 2012 WL 1354024 (M.D. Pa. Apr. 16, 2012)).
- The Truth in Lending Act did not preempt an individual's claim against a bank for rescission under the Pennsylvania Unfair Trade Practices and Consumer Protection Law in an action arising out of a reverse mortgage transaction (*Johnson v. MetLife Bank*, 2011 WL 4389582 (E.D. Pa., Sept. 21, 2011)).
- Neither the Home Owners' Loan Act or the National Bank Act preempted the Pennsylvania Real Estate Appraisers Certification Act (*Fid. Nat'l Info. Sols., Inc. v. Sinclair*, 2004 WL 764834 (E.D. Pa. Mar. 31, 2004)).
- The Equal Credit Opportunity Act, the Real Estate Settlement Procedures Act, and the Truth in Lending Act did not preempt a mortgagor's claims against a mortgagee for violations of the Pennsylvania Unfair Trade Practices and Consumer Protection Law and the Pennsylvania Fair Credit Extension Uniformity Act. The federal laws would preempt the state laws only when and to the extent that a state law conflicts with federal law and regulations. (*Jamal v. WMC Mortg. Corp.*, 2005 WL 724204 (E.D. Pa. Mar. 28, 2005).)

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