

# WHEN LENDERS CAN LEGALLY PROVIDE LOANS WITH EFFECTIVE ANNUAL INTEREST RATES ABOVE 1,000 PERCENT, IS IT TIME FOR CONGRESS TO CONSIDER A FEDERAL INTEREST CAP ON CONSUMER LOANS?

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## I. INTRODUCTION

The question of whether interest rates should be regulated for the good of society has been debated by secular and religious authorities for millennia. Plato advocated a complete bar on charging interest, writing that “no one shall deposit money with another whom he does not trust as a friend, nor shall he lend money upon interest; and the borrower should be under no obligation to repay either capital or interest.”<sup>1</sup> Aristotle echoed his teacher’s sentiments, writing in his *Politics*:

[F]or usury is most reasonably detested, as it is increasing our fortune by money itself, and not employing it for the purpose it was originally intended, namely exchange.

And this is the explanation of the name (TOKOS), which means the breeding of money. For as offspring resemble their parents, so usury is money bred of money. Whence of all forms of money-making it is most against nature.<sup>2</sup>

Proscriptions against usury and money lending generally can also be found rooted in religious traditions, including those of the Jewish, Christian and Muslim faiths. Jews were forbidden to charge interest on loans to other Jews under Biblical Law<sup>3</sup> and under Talmudic Law.<sup>4</sup> Christians were likewise forbidden from charging interest on loans through the Middle Ages both by the prohibitions found on the Old Testament and by various Canons of the Catholic Church.<sup>5</sup> For Muslims, *ribā*, or

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1. PLATO, LAWS, bk V, at 109 (Benjamin Jowett trans.)(348 B.C.).

2. ARISTOTLE, POLITICS: A TREATISE ON GOVERNMENT,, Book I, Chapter X (A.M. William Ellis trans.,George Routledge and Sons 1985)(350 B.C.).

3. 20 HAIM HERMANN COHN AND BEN-ZION ELIASH, *Usury*, in ENCYCLOPAEDIA JUDAICA 437 (Michael Berenbaum and Fred Skolnik eds., 2d ed. 2007).

4. *Id.* at 438-440.

5. See 14 T.F. DIVINE, *Usury*, in NEW CATHOLIC ENCYCLOPEDIA 353-54 (2d ed. 2003).

usury, is prohibited by the Qur'ān.<sup>6</sup> It was not until the Statute of Usury of 1545<sup>7</sup> during the Reformation in England that interest at a rate of less than ten percent could be imposed without penalty.<sup>8</sup> This and subsequent usury statutes did not make it legal to charge interest, but they removed any punishment for charging rates less than the statutory maximum.<sup>9</sup> By 1886, the United States stood as a nation built upon strong usury laws, with each state having its own regulations.<sup>10</sup> But problems developed that required states to create exceptions to the usury laws, and within decades, usury laws varied widely from state to state.<sup>11</sup>

In the United States today, usury can be defined as “[a] **bargain under which a greater profit than is permitted by law is paid, or is agreed to be paid to a creditor by or on behalf of the debtor for a loan of money, or for extending the maturity of a pecuniary debt, is usurious and illegal.**”<sup>12</sup> **Restrictions on the highest rate of interest allowed by law (if any) are generally set by the states.** In 2007, Congress placed an interest rate cap of 36 percent<sup>13</sup> on covered members of the armed forces and their dependents.<sup>14</sup> The regulation applies to members of the armed forces on active duty and those on active guard and reserve duty<sup>15</sup> and to their covered dependents.<sup>16</sup> Congress has not, however, opted to place any interest caps on the interest that may be agreed to in contracts involving non-military personnel for whom only restrictions set by the states of their domicile apply. Whether and to what extent citizens are protected against unreasonably high interest rates, therefore, is a matter for state legislatures to decide.

## II. STATE RESTRICTIONS ON USURY

Almost all states today restrict the maximum rate of interest that may be charged to a borrower by a creditor with the maximum rate often varying depending on the type of borrower involved, the amount borrowed and the purpose of the loan with wide-ranging differences among the states as to the maximum interest rate applicable

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6. 7 FAZLUR RAHMAN, *Islam: An Overview [First Edition]* in ENCYCLOPEDIA OF RELIGION 4574 (Lindsay Jones ed. 2d ed. 2005).

7. Act Against Usury 1545, 37 Hen. 8, c. 9 (Eng.).

8. Kevin M. Teeven, *A History of Legislative Reform of the Common Law of Contract*, 26 U. TOL. L. REV. 35, 45 (1994).

9. *Id.* at 45, n.67.

10. Steven Mercatante, *The Deregulation of Usury Ceilings, Rise of Easy Credit, and Increasing Consumer Debt*, 53 S.D. L. REV. 37, 39 (2008) (referencing James M. Ackerman, *Interest Rates and the Law: A History of Usury*, 1981 ARIZ. ST. L.J. 61 at 85 (1981)).

11. *Id.* (referencing James M. Ackerman, *Interest Rates and the Law: A History of Usury*, 1981 ARIZ. ST. L.J. 61, 108 (1981)).

12. RESTATEMENT (FIRST) OF CONTRACTS § 526 (AM. LAW INST. 1932).

13. 10 U.S.C.A. § 987(b) (West 2015).

14. 10 U.S.C.A. § 987(a) (West 2015).

15. 10 U.S.C.A. § 987(i)(1)(A)-(B) (West 2015).

16. 10 U.S.C.A. § 987(i)(2) (West 2015). This section defines a covered dependent as those defined under 10 U.S.C.A. § 1072 (A), (D), (E), and (I) namely a spouse, dependent child under 21 (or 23 if in college or any age if disabled) and an unmarried person placed under the legal custody of the military member by a court of competent jurisdiction and who has been in that member's custody for 12 months. (The same age restrictions as for a child apply.)

to a variety of loans as Table 1 illustrates. The consequences of entering into usurious loans can also vary widely with respect to criminal and civil penalties. For purposes of ease of comparison, Table 1 contains a compilation of the maximum interest rate allowable in the 50 states and in the District of Columbia. The table also notes the civil penalties for creditors who make usurious loans. (The criminal penalties for usury, where applicable, are not are not referenced in the table.

<b>Table 1: Maximum Allowable Interest Rate by State</b>		
<b>State</b>	<b>Maximum Allowable Annual Interest Rate</b>	<b>Effect of Usurious Contract</b>
<b>Alabama</b>	6 percent on oral contracts and 8 percent on written contracts <sup>17</sup> Loans or credit sales up to \$2,000 may not exceed a 6 percent. <sup>18</sup> In the alternative, creditors may charge a maximum of 2 percent above the prime rate for credit sales. <sup>19</sup> Revolving credit arrangements may carry a maximum monthly interest rate of 1.75 percent for the first \$750 and 1.5 percent for any amount above \$750. <sup>20</sup>	Entire interest is forfeit. <sup>21</sup>
<b>Alaska</b>	10.5 percent <sup>22</sup> For loan amounts of up to \$25,000 the maximum interest that may be charged is the greater of 10 percent or 5 points above the rate charged member banks for advances by the 12th Federal Reserve District on the day on which the contract or loan commitment is made. <sup>23</sup>	Entire interest is forfeit. <sup>24</sup>

17. ALA. CODE § 8-8-1 (1975). For loans made by savings and loan institutions in the state and secured by a savings account, the maximum yearly rate of interest is limited to 2 percent above the interest paid by the institution to the depositor on the secured account ALA. CODE § 8-8-1.2 (1975). Interest on loans of \$2,000 or more, however, are not subject to a usury defense ALA. CODE § 8-8-5 (1975). Numerous exceptions are provided under Alabama law for charging higher rates of interest by, among others, certain public hospital corporations ALA. CODE § 22-21-6 (1975), certain municipal bonds ALA. CODE § 11-20-5 (1975), Water Pollution Control Authority securities ALA. CODE § 22-34-14 (1975), and notes, bonds or other securities issued by the State or any instrumentality thereof ALA. CODE § 8-8-7 (1975).

18. ALA. CODE § 11-20-48(a)(1975).

19. ALA. CODE § 8-8-14(b)(1975) (prime rate is the average prime rate of the three largest banks in New York City three days prior to the sale).

20. *Id.*

21. ALA. CODE § 8-8-12 (1975) Usury cannot be pleaded as a defense against a holder in due course of a negotiable instrument. ALA. CODE § 8-8-12(b) (1975).

22. ALASKA STAT. § 45.45.010(a) (2015).

23. ALASKA STAT. § 45.45.010 (b) (2015).

24. ALASKA STAT. § 45.45.040 (2015).

<b>Arizona</b>	10 percent for oral agreements <sup>25</sup> No maximum rate on written agreements <sup>26</sup>	Entire interest is forfeit. <sup>27</sup>
<b>Arkansas</b>	17 percent <sup>28</sup>	Unspecified <sup>29</sup>
<b>California</b>	7 percent <sup>30</sup> 10 percent if agreed to in writing in contracts involving personal, family or household purposes <sup>31</sup> The greater of 10 percent or 5 points above the prime rate established by the Federal Reserve Bank of San Francisco for other loans <sup>32</sup> .	Treble the amount of the usurious interest paid is recoverable. <sup>33</sup>
<b>Colorado</b>	45 percent (written agreement required) <sup>34</sup>	Contract void as to usurious interest (usurious portion of interest not recoverable). <sup>35</sup>
<b>Connecticut</b>	12 percent <sup>36</sup>	Principal and entire interest forfeit. <sup>37</sup>
<b>Delaware</b>	5 points above the Federal Reserve discount rate. <sup>38</sup> No limit on loans in excess of \$100,000 that are not secured by a mortgage. <sup>39</sup>	Usurious portion of interest is not recoverable. <sup>40</sup>

25. ARIZ. REV. STAT. ANN § 44-1201 (2011).

26. *Id.*

27. ARIZ. REV. STAT. ANN § 44-1202 (2011).

28. ARK. CONST. amend. 89, § 3. There is no maximum rate of interest that applies to loans made to or by governmental units in the state or to bonds issued by governmental units absent rules to the contrary being established by the General Assembly (ARK. CONST. amend. 89, § 1 (3)).

29. The forfeiting of interest is not specifically addressed in ARK. CONST. amend. 89. Article 19, Section 13 of the Arkansas Constitution provided that all loans that are usurious “shall be void as to the unpaid interest” and that the borrower is entitled to “twice the amount of interest paid.” See *Smith v. Eisen*, 245 S.W. 3d 160, 167 (Ark. Ct. App. 2006). However, ARK. CONST. amend. 89, § 14 has repealed Article 19, Section 13.

30. CAL. CONST. Art. 15, § 1, Sec. 1 (West 2015).

31. CAL. CONST. Art. 15, § 1, Sec. 1(1) (West 2015).

32. CAL. CONST. Art. 15, § 1, Sec. 1(2) (West 2015).

33. CAL. UNCOD INIT MEASURES AND STATS 1919-1§3(a) (Deering 1919).

34. COLO. REV. STAT. § 5-12-103 (1) (2012). (If interest is unspecified in a contract or if an oral agreement is involved, the rate of interest would be 8 percent under COLO. REV. STAT. § 5-12-101.)

35. COLO. REV. STAT. § 5-5-201 (2) (2012). (Any amount paid in excess of the maximum interest allowed by law is recoverable by the debtor and punitive damages may be awarded under COLO. REV. STAT. § 5-5-201 (3).)

36. CONN. GEN. STAT. ANN. § 37-4 (West 2015).

37. CONN. GEN. STAT. ANN. § 37-8 (West 2015).

38. DEL. CODE. ANN. tit. 6 § 2301(a) (2015).

39. DEL. CODE. ANN. tit. 6 § 2301(c) (2015).

40. DEL. CODE. ANN. tit. 6 § 2304 (2015) (stating that the greater or treble damages or \$500 are awardable to the debtor if the entire usurious interest has been paid).

<b>Florida</b>	18 for loans up to \$500,000. No maximum rate for loans above \$500,000. <sup>41</sup>	Entire interest forfeit. <sup>42</sup>
<b>Georgia</b>	7 percent absent a written contract <sup>43</sup> 16 percent in loans with a written contract for debt up to \$3,000 <sup>44</sup>	Entire interest is forfeit. <sup>45</sup>
<b>Hawaii</b>	10 percent absent a written agreement with a different rate <sup>46</sup> 12 percent maximum rate for written consumer credit contracts other than credit cards <sup>47</sup> 24 percent for financial institutions regulated by chapter 412 [Code of Financial Institutions] other than credit unions and trust companies <sup>48</sup>	Entire interest is forfeit. <sup>49</sup>
<b>Idaho</b>	12 percent absent a written agreement specifying a different rate <sup>50</sup> No maximum rate in general for written contracts <sup>51</sup>	Unspecified.
<b>Illinois</b>	9 percent for written contracts <sup>52</sup> No interest limit on retail charge agreements <sup>53</sup> 18 percent for revolving credit agreements <sup>54</sup>	Debtor may recover an amount equal to twice the entire interest, discount and charges due on the loan or paid by the debtor, whichever is greater. <sup>55</sup>
<b>Indiana</b>	25 percent <sup>56</sup> The maximum rate for revolving loans and other supervised loans <sup>57</sup> can be either of the following two options:	Interest payable is the maximum interest allowed by law. The usuri-

41. FLA. STAT. ANN. § 687.03(1) (West 2015).

42. FLA. STAT. ANN. § 687.04 (West 2015).

43. GA. CODE ANN. § 7-4-2(a)(1)(A) (2015).

44. GA. CODE ANN. § 7-4-2(a)(2) (2015).

45. GA. CODE ANN. § 7-4-10 (2015).

46. HAW. REV. STAT. § 478-2 (West 2015).

47. HAW. REV. STAT. § 478-4(a) (West 2015).

48. *Id.*

49. HAW. REV. STAT. § 478-5 (West 2015).

50. IDAHO CODE ANN. § 28-22-104 (West 2015).

51. IDAHO CODE ANN. § 28-42-201(1) (West 2015).

52. 815 ILL. COMP. STAT. ANN. 205/4(1) (West 2015).

53. 815 ILL. COMP. STAT. ANN. 405/28 (West 2015).

54. 815 ILL. COMP. STAT. ANN. 205/4.2 (West 2015).

55. 815 ILL. COMP. STAT. ANN. 205/6 (West 2015).

56. IND. CODE ANN. § 24-4.5-3-201 (West 2015).

57. IND. CODE ANN. § 24-4.5-3-501(1) (West 2015) (a supervised loan is a consumer loan with an interest

	<p>Option 1: 36 percent on first \$2,000 of unpaid balance;<sup>58</sup> and 21 percent on the unpaid balance that is more than \$2,000 and less than \$4,000;<sup>59</sup> and 15 percent on the balance that is greater than \$4,000<sup>60</sup></p> <p>Option 2: 25 percent on the unpaid balance<sup>61</sup></p>	<p>ous portion of the interest is unenforceable and, if paid, must be refunded to the debtor.<sup>62</sup></p>
<b>Iowa</b>	<p>5 percent contracts not expressed in a writing or when interest is not stated<sup>63</sup> No maximum interest rate as to written contracts involving real estate, loans for business and agricultural purposes, and some loans for personal, family or household purposes for real estate exceeding an indexed threshold amount.<sup>64</sup> 21 percent for consumer credit sales not involving open-end credit<sup>65</sup> No limit for open-end consumer credit sales<sup>66</sup></p>	<p>Interest is forfeit and an 8 percent penalty on the remaining unpaid principal is assessed to be paid to the State.<sup>67</sup></p>
<b>Kansas</b>	<p>10 percent in the absence of agreement to a different rate<sup>68</sup> 15 percent generally<sup>69</sup> (not applicable to business or agricultural loans<sup>70</sup>) No limit on open end consumer loans not secured by a first or second mortgage<sup>71</sup> 36 percent on the portion of the unpaid balance which is \$860 or less, and 21</p>	<p>Interest above permitted rate is forfeit (an additional amount equal to the excess interest and reasonable attorney's fees may also be recovered in a counterclaim by the debtor in any action by the creditor to</p>

rate of 25% or more).

58. IND. CODE ANN. § 24-4.5-3-508(2)(a)(i) (West 2015).

59. IND. CODE ANN. § 24-4.5-3-508(2)(a)(ii) (West 2015).

60. IND. CODE ANN. § 24-4.5-3-508(2)(a)(iii) (West 2015).

61. IND. CODE ANN. § 24-4.5-3-508(2)(b) (West 2015).

62. IND. CODE ANN. § 24-4.5-5-202(3) (West 2015).

63. IOWA CODE ANN. § 535.2(1)(a)-(g) (West 2015).

64. IOWA CODE ANN. § 535.2(2) (West 2015). *See also* 12 C.F.R. § 1026.3 (2015).

65. IOWA CODE ANN. § 537.2202(1) (West 2015).

66. *Id.*

67. IOWA CODE ANN. § 537.2201(2) (West 2015).

68. KAN. STAT. ANN. § 16-201 (2015).

69. KAN. STAT. ANN. § 16-207(a) (2015).

70. KAN. STAT. ANN. § 16-207(e) (2015).

71. KAN. STAT. ANN. § 16a-2-401(1) (2015).

	percent on the portion of the unpaid balance which exceeds \$860 <sup>72</sup> 18 percent for consumer loans secured by a first or second mortgage <sup>73</sup>	enforce the usurious contract). <sup>74</sup>
<b>Kentucky</b>	8 percent absent a writing <sup>75</sup> 4 percent above the Federal Reserve bank discount rate for written loans up to \$15,000 or 19 percent, whichever is less <sup>76</sup> No limit for loans above \$15,000 <sup>77</sup>	Entire interest is forfeit. If usurious interest has been paid, twice the amount of the interest paid may be recovered. <sup>78</sup>
<b>Louisiana</b>	12 percent pursuant to a written contract <sup>79</sup> Does not apply to commercial or business loans <sup>80</sup>	Entire interest is forfeit. <sup>81</sup>
<b>Maine</b>	For consumer credit sales other than open-end credit interest may not exceed the greater of: 18 percent, <sup>82</sup> or 30 percent of unpaid balance up to \$1,000 and 21 percent on amounts greater than \$1,000 up to \$2,800 and 15 percent on amounts above \$2,800. <sup>83</sup> 18 percent for open-end credit other than credit cards. <sup>84</sup> No interest limit on lender credit cards <sup>85</sup> No limit for non-consumer transactions <sup>86</sup>	Debtor need not pay the portion of the interest that is higher than that allowed by law. <sup>87</sup> If the interest has been paid, the usurious portion of the interest may be reclaimed by the debtor. <sup>88</sup>

72. KAN. STAT. ANN. § 16a-2-401(2) (2015).

73. KAN. STAT. ANN. § 16a-2-401(3)-(4) (2015).

74. KAN. STAT. ANN. § 16-207(d) (2015).

75. KY. REV. STAT. ANN. § 360.010(1) (West 2015).

76. *Id.*

77. *Id.*

78. KY. REV. STAT. ANN. § 360.020(1) (West 2015).

79. LA. REV. STAT. ANN. § 9:3500(C)(1) (2015).

80. LA. REV. STAT. ANN. § 9:3500(D) (2015).

81. LA. REV. STAT. ANN. § 9:3501 (2015).

82. ME. REV. STAT. ANN., tit. 9 § 2-201(2)(B) (2015).

83. ME. REV. STAT. ANN., tit. 9 § 2-201(2)(A) (2015).

84. ME. REV. STAT. ANN., tit. 9 § 2-402(4) (2015).

85. ME. REV. STAT. ANN., tit. 9 § 2-402(5) (2015).

86. ME. REV. STAT. ANN., tit. 9 § 2-601 (2015).

87. ME. REV. STAT. ANN., tit. 9 § 5-201(3) (2015).

88. *Id.*

<b>Maryland</b>	8 percent for loans evidenced by a written, signed agreement. <sup>89</sup> Loans secured by a borrower's certificate of deposit may carry an interest 2 percent greater than the interest on the CD. <sup>90</sup> 24 percent for loans secured by collateral other than a savings account and for certain unsecured loans. <sup>91</sup> No maximum rate on some loans secured by a first mortgage on residential property. <sup>92</sup>	Forfeit the greater of three times the amount of interest and charges above those authorized by law or \$500. <sup>93</sup>
<b>Massachusetts</b>	6 percent if there is no written agreement to the contrary. <sup>94</sup> 20 percent for loans evidenced by a written agreement. <sup>95</sup> 21 percent for retail installment sales agreements. <sup>96</sup>	All interest is forfeit in consumer retail agreements. <sup>97</sup> In other agreements, excess interest paid above the lawful rate is recoverable. <sup>98</sup>
<b>Michigan</b>	5 percent. <sup>99</sup> 7 percent if evidenced by a writing. <sup>100</sup> (Not applicable to corporate borrowers. <sup>101</sup> )	All interest forfeit. <sup>102</sup>
<b>Minnesota</b>	6 percent unless a higher rate is agreed to in writing. <sup>103</sup> 8 percent if evidenced by a writing. <sup>104</sup> No maximum rate for contracts of \$100,000 or more. <sup>105</sup>	Usurious contracts are void. <sup>107</sup> Excess interest paid above permitted rate is recoverable. <sup>108</sup>

89. MD. CODE ANN., COM. LAW § 12-103(a)(1) (West 2015).

90. MD. CODE ANN., COM. LAW § 12-103(a)(2) (West 2015).

91. MD. CODE ANN., COM. LAW § 12-103(a)(3) (West 2015).

92. MD. CODE ANN., COM. LAW § 12-103(b)(1) (West 2015).

93. MD. CODE ANN., COM. LAW § 12-114(a)(1) (West 2015).

94. MASS. ANN. LAWS, ch. 107, § 3 (LexisNexis 2015).

95. MASS. ANN. LAWS, ch. 271, § 49 (LexisNexis 2015).

96. MASS. ANN. LAWS, ch. 255D, § 11(B) (LexisNexis 2015).

97. MASS. ANN. LAWS, ch. 255D, § 29(A) (LexisNexis 2015).

98. MASS. ANN. LAWS, ch. 140, § 106 (LexisNexis 2015).

99. MICH. COM. LAWS SERV. § 438.31 (LexisNexis 2015).

100. *Id.*

101. MICH. COM. LAWS SERV. § 450.1275 (LexisNexis 2015).

102. MICH. COM. LAWS SERV. § 438.32 (LexisNexis 2015).

103. MINN. STAT. § 334.01 (subdiv. 2) (LexisNexis 2015).

104. *Id.*

105. MINN. STAT. ANN. § 334.01 (subdiv. 3) (West 2015).

107. MINN. STAT. ANN. § 334.03 (West 2015).

108. MINN. STAT. ANN. § 334.02 (West 2015).

	4.5 percent above the discount rate on 90-day commercial paper Federal reserve rate for the District encompassing Minnesota when business or agricultural loans are involved. <sup>106</sup>	
<b>Mississippi</b>	8 percent <sup>109</sup> For written agreements, the greater of 10 percent or 5 percent above discount rate on 90-day commercial paper of the Federal Reserve bank in the Federal Reserve district where the lender is located. <sup>110</sup> For partnerships, religious organizations and for-profit and not-for-profit entities, the greater of 15 percent or 5 percent above discount rate on 90-day commercial paper of the Federal Reserve bank in the Federal Reserve district where the lender is located for loans in excess of \$2,500. <sup>111</sup>	Forfeiture provision for entire interest only available if lender executes evidence of debt in a note or contract purporting to have a rate of interest not greater than 6 percent but actually charges a greater rate of interest (whether usurious or legal). <sup>112</sup> Specific remedies are not provided by statute.
<b>Missouri</b>	10 percent (written agreement required) or 3 points above the index of long-term U.S. Government Bonds, whichever is higher. <sup>113</sup> Banks, trust companies and savings and loans associations can purchase any note, bill of exchange, or other evidence of debt at any price agreed upon. <sup>114</sup>	Twice the amount of interest paid above the legal rate is recoverable by the debtor along with court costs and reasonable attorney's fees. <sup>115</sup>
<b>Montana</b>	15 percent or an amount that is 6 percentage points per year above the prime rate published by the Federal Reserve system in its statistical release H.15 Selected Interest Rates for bank prime loans dated 3 business days prior to the execution of the agreement. <sup>116</sup>	Forfeiture of a sum double the amount of interest that the note, bill, or other evidence of debt carries or that has been agreed to be paid on the note, bill, or other evidence of debt. <sup>117</sup>

106. MINN. STAT. ANN. § 334.011 (subdiv. 1) (West 2015). Section 334.011, subdivision 2 of the Minnesota Code requires all interest to be forfeit for such loans and allows twice the amount of the usurious interest paid. MINN. STAT. § 334.01 (subdiv. 2)(West 2015).

109. MISS. CODE ANN. § 75-17-1(1) (LexisNexis 2015).

110. MISS. CODE ANN. § 75-17-1(2) (LexisNexis 2015).

111. MISS. CODE ANN. § 75-17-1(3) (LexisNexis 2015).

112. MISS. CODE ANN. § 75-17-3 (LexisNexis 2015).

113. MO. ANN. STAT. § 408.030(1) (West 2015).

114. MO. ANN. STAT. § 408.030(4) (West 2015).

115. MO. ANN. STAT. § 408.030(2) (West 2015).

116. MONT. CODE ANN. § 31-1-107(1) (2015).

117. MONT. CODE ANN. § 31-1-108(1) (2015).

<b>Nebraska</b>	16 percent. <sup>118</sup>	All interest is forfeit. <sup>119</sup>
<b>Nevada</b>	No maximum rate. <sup>120</sup>	Not applicable.
<b>New Hampshire</b>	10 percent unless otherwise agreed to in writing. <sup>121</sup>	Unspecified.
<b>New Jersey</b>	6 percent absent a written contract. <sup>122</sup> 16 percent if expressed in a written contract. <sup>123</sup>	Unspecified
<b>New Mexico</b>	15 percent absent a written contract. <sup>124</sup> 15 percent on current or open accounts but parties may set a higher rate by agreement. <sup>125</sup> No limit to loans to corporations. <sup>126</sup> No limit to business or commercial loans in excess of \$500,000. <sup>127</sup>	Forfeiture of interest in excess of that allowed by law. <sup>128</sup>
<b>New York</b>	16 percent. <sup>129</sup> No limit on loans of \$250,000 or more other than one or two family home mortgages. <sup>130</sup> No limit on any loan of \$2,500,000 or more. <sup>131</sup> Usury defense not available to corporations, associations and joint stock companies. <sup>132</sup>	Usurious contracts are void. <sup>133</sup>
<b>North Carolina</b>	For loans of up to \$15,000 payable in not less than 12 months nor more than 96 months and not secured by a mortgages on real property or deeds of	Forfeiture of entire interest. <sup>139</sup> If usurious interest has been paid by the debtor, an action

118. NEB. REV. STAT. ANN. § 45-101.03(1) (West 2015).

119. NEB. REV. STAT. ANN. § 45-105 (West 2015).

120. NEV. REV. STAT. ANN. § 99.050 (West 2015).

121. N.H. REV. STAT. § 336:1(I) (2015).

122. N.J. STAT. ANN. § 31:1-1(a) (West 2015).

123. *Id.*

124. N.M. STAT. ANN. § 56-8-3 (2015).

125. N.M. STAT. ANN. § 56-8-5 (2015).

126. N.M. STAT. ANN. § 56-8-9(B) (2015).

127. N.M. STAT. ANN. § 56-8-9(C) (2015).

128. N.M. STAT. ANN. § 56-8-13 (2015).

129. N.Y. BANKING LAW § 14-a(1) (McKinney 2015).

130. N.Y. GEN. OBLIG. LAW § 5-501(6)(a) (McKinney 2015).

131. N.Y. GEN. OBLIG. LAW § 5-501(6)(b) (McKinney 2015).

132. N.Y. GEN. OBLIG. LAW § 5-511(1) (McKinney 2015).

133. N.Y. GEN. OBLIG. LAW § 5-521(1) (McKinney 2015).

139. N.C. GEN. STAT. ANN. § 24-2 (West 2015).

	<p>trust, the maximum interest is as follows:</p> <p>30 percent on the first \$4,000, 24 percent on amounts more than \$4,000 up to \$8,000, and</p> <p>18 percent on amounts in excess of \$8,000 up to \$10,000.<sup>134</sup></p> <p>18 percent on loans for amounts greater than \$10,000 and not more than \$15,000.<sup>135</sup></p> <p>18 percent for revolving credit loans.<sup>136</sup></p> <p>No limit on fixed rate loans in excess of \$25,000.<sup>137</sup></p> <p>For loans other than open-ended loans of up to \$25,000 the maximum interest is as follows:</p> <p>The greater of 16 percent or 6 points above U.S. Treasury Bills with a six month maturity.<sup>138</sup></p>	<p>may be brought to recover twice the amount of the interest paid.<sup>140</sup></p>
<b>North Dakota</b>	<p>5.5 percent above the average of U.S. Treasury Bills maturing in six months.<sup>141</sup></p> <p>Limit does not apply to corporations, limited liability companies, cooperative corporations or associations or trusts.<sup>142</sup> The limit also does not apply to partnerships, limited partnerships, or associations that file a state or federal partnership income tax return.<sup>143</sup></p>	<p>Forfeiture of the entire interest and 25 percent of the principal.<sup>144</sup> If usurious interest has been paid, twice the amount of interest paid is recoverable by the debtor along with 25 percent of the principal.<sup>145</sup></p>
<b>Ohio</b>	<p>8 percent<sup>146</sup></p> <p>For retail sales contracts, the greater of 8 percent for balances of \$750 or less plus a finance charge of \$0.50 for the first \$50 and \$0.25 for each additional</p>	<p>Forfeiture of interest above that allowed by law.<sup>153</sup></p>

134. N.C. GEN. STAT. ANN. § 53-176(a)(1) (West 2015).

135. N.C. GEN. STAT. ANN. § 53-176(a)(2) (West 2015).

136. N.C. GEN. STAT. ANN. § 24-11(a) (West 2015).

137. N.C. GEN. STAT. ANN. § 24-1.1(a)(2) (West 2015).

138. N.C. GEN. STAT. ANN. § 24-1.1(c) (West 2015).

140. *Id.*

141. N.D. CENT. CODE ANN. § 47-14-09(1) (West 2015).

142. N.D. CENT. CODE ANN. § 47-14-09(2)(b) (West 2015).

143. N.D. CENT. CODE ANN. § 47-14-09(2)(c) (West 2015).

144. N.D. CENT. CODE ANN. § 47-14-10 (West 2015).

145. N.D. CENT. CODE ANN. § 47-14-10(1) (West 2015).

146. OHIO REV. CODE ANN. § 1343.01(A) (LexisNexis 2015).

153. OHIO REV. CODE ANN. § 1317.061 (LexisNexis 2015).

	<p>\$50 of debt, or 1.5 percent per month.<sup>147</sup></p> <p>No limit on loans in excess of \$100,000.<sup>148</sup></p> <p>No limit for contracts with registered brokers or dealers for debt payable on demand and secured by stocks, bonds or other securities.<sup>149</sup></p> <p>Revolving charge retail sales agreements may carry an alternate rate of up to 25 percent.<sup>150</sup></p> <p>No limit on loans evidenced by a demand instrument that is not secured by household furnishings or goods used for household, personal or family use.<sup>151</sup></p> <p>No limit for most business loans<sup>152</sup></p>	
<b>Oklahoma</b>	<p>10 percent in the absence of legislation providing for a different rate<sup>154</sup></p> <p>10 percent for consumer loans.<sup>155</sup></p> <p>45 percent for other than consumer loans<sup>156</sup>.</p>	Forfeiture of entire interest; If any usurious interest has been paid, twice the interest paid is recoverable. <sup>157</sup>
<b>Oregon</b>	<p>9 percent in the absence of an agreement for a different rate.<sup>158</sup></p> <p>For loans up to \$50,000, the higher or 12 percent or 5 percent above the average discount rate for 90-day commercial paper set by the Federal Reserve bank in the district in which the loan is made.<sup>159</sup></p>	All interest is forfeit. <sup>160</sup>

147. OHIO REV. CODE ANN. § 1317.06(A)(1)-(2) (LexisNexis 2015).

148. OHIO REV. CODE ANN. § 1343.01(B)(1) (LexisNexis 2015).

149. OHIO REV. CODE ANN. § 1343.01(B)(2) (LexisNexis 2015).

150. OHIO REV. CODE ANN. § 1317.061 (LexisNexis 2015).

151. OHIO REV. CODE ANN. § 1343.01(B)(5) (LexisNexis 2015).

152. OHIO REV. CODE ANN. § 1343.01(B)(6) (LexisNexis 2015).

154. OKLA. CONST. art. IV, § 2.

155. OKLA. STAT. ANN. tit. 14A, § 3-201(1) (West 2015).

156. OKLA. STAT. ANN. tit. 14A, § 3-605 (West 2015) (referencing § 5-107 (2) as the highest rate allowed for non-consumer loans [45 percent as of this writing]).

157. OKLA. CONST. art. IV, § 3.

158. OR. REV. STAT. § 82.010(1) (West 2015).

159. OR. REV. STAT. § 82.010(3) (West 2015).

160. OR. REV. STAT. § 82.010(4) (West 2015). (But note: certain financial institutions, mortgage lenders, and interest charged by broker-dealers are exempt from the usury provisions in O.R.S. § 82.010 (3)-(4) under O.R.S. § 82.025 (1)-(8).)

<b>Pennsylvania</b>	6 percent for loans up to \$50,000. <sup>161</sup> No limit on loans in excess of \$50,000. <sup>162</sup> No limit on unsecured loans greater than \$35,000. <sup>163</sup> No limit on business loans regardless of amount. <sup>164</sup> 2.5 percent above the Monthly Index of Long Term United States Government Bond Yields for residential mortgage loans. <sup>165</sup>	Forfeiture of interest above that allowed by law. <sup>166</sup> If excess interest has been paid, three times the excess interest paid is recoverable. <sup>167</sup> Costs and reasonable attorney's fees are also recoverable by a prevailing debtor. <sup>168</sup>
<b>Rhode Island</b>	The higher of: 21 percent or 9 percent plus the domestic prime rate as published in the Money Rates section of The Wall Street Journal. <sup>169</sup> No limit on credit card loans. <sup>170</sup> No limit on loans to commercial entities in excess of \$1,000,000 not secured by a mortgage against the residence of any principal borrower. <sup>171</sup>	Usurious contracts are void, <sup>172</sup> except as to holders in due course of negotiable instruments. <sup>173</sup> Payments of interest and/or principal are recoverable by the debtor. <sup>174</sup> If the lenders are financial institutions and if a usurious contract is knowingly made, then all interest is forfeit. <sup>175</sup> In such cases, twice the amount of any interest paid by the debtor is recoverable. <sup>176</sup>
<b>South Carolina</b>	6 percent absent a written contract. <sup>177</sup> No limit for written contracts generally. <sup>178</sup>	Excess charges beyond those allowed by law are recoverable. <sup>187</sup> If excess charges are not refunded

161. 41 PA. CONS. STAT. § 201(a) (2015).

162. 41 PA. CONS. STAT. § 201(b) (2015).

163. 41 PA. CONS. STAT. § 201(b)(2) (2015).

164. 41 PA. CONS. STAT. § 201(b)(3) (2015).

165. 41 PA. CONS. STAT. § 301(b) (2015).

166. 41 PA. CONS. STAT. § 501 (2015).

167. 41 PA. CONS. STAT. § 502 (2015).

168. 41 PA. CONS. STAT. § 503 (2015).

169. R.I. GEN. LAWS § 6-26-2(a)-(b) (1956).

170. R.I. GEN. LAWS § 6-26-2(d) (1956). *See also* R.I. GEN. LAWS § 6-26.1-4 (1956) (allowing credit card lenders to set interest "at any daily, weekly, monthly, annual or other periodic percentage rate").

171. R.I. GEN. LAWS § 6-26-2(e) (1956).

172. R.I. GEN. LAWS § 6-26-4(a) (1956).

173. R.I. GEN. LAWS § 6-26-4(b) (1956).

174. R.I. GEN. LAWS § 6-26-4(c) (1956).

175. R.I. GEN. LAWS § 6-26-4(d) (1956).

176. *Id.*

177. S.C. CODE ANN. § 37-10-106(1) (1976).

178. *Id.*

187. S.C. CODE ANN. § 37-5-202(3) (1979).

	<p>Exception for consumer contracts: 12 percent for consumer loans with lenders who are not supervised lenders.<sup>179</sup></p> <p>For consumer loans with supervised lenders rates are as follows for loans up to \$7,500:</p> <p>Loans up to \$150, \$2.50 charge per month in lieu of interest;<sup>180</sup></p> <p>Loans greater than \$150 up to \$2,000, \$25 per \$100 borrowed for the first \$600, \$18 per \$100 borrowed on amounts exceeding \$600 up to \$1,000, and \$12 per \$100 for amounts exceeding \$1,000 up to \$2,000.<sup>181</sup> This sliding scale is based on a 12 month loan with allowable interest for loans of lesser or greater duration adjusted accordingly to effect the yearly maximum interest charges.<sup>182</sup> An additional amount not to exceed the lesser of \$56 or 7 percent of the amount borrowed may also be charged.<sup>183</sup></p> <p>Loans in excess of \$2,000 up to \$7,500 are limited to 9 percent annual interest on the entire loan.<sup>184</sup> An additional charge of the lesser of 5 percent of the amount borrowed or \$200 may also be assessed on such loans.<sup>185</sup> Splitting of loans greater than \$2,000 into multiple loans for the purpose of obtaining a higher interest rate is prohibited.<sup>186</sup></p>	<p>on request when a consumer loan is involved, a court may impose a penalty of not less than \$100 nor more than \$1,000 on the lender.<sup>188</sup></p>
<b>South Dakota</b>	No maximum rate for written agreements. <sup>189</sup>	Not applicable.
<b>Tennessee</b>	10 percent absent legislation to the contrary. <sup>190</sup> For bank installment loans:	Usurious interest above the permitted rate may be offset as a defense

179. S.C. CODE ANN. § 37-3-201(1) (1976).

180. S.C. CODE ANN. § 34-29-140(a)(1) (1976).

181. S.C. CODE ANN. § 34-29-140(a)(2) (1976).

182. *Id.*

183. *Id.*

184. S.C. CODE ANN. § 34-29-140(a)(3) (1976).

185. *Id.*

186. S.C. CODE ANN. § 34-29-140(d) (1979).

188. *Id.*

189. S.D. CODIFIED LAWS § 54-3-1.1 (2015).

190. TENN. CONST. art. 11, § 7.

	<p>10.53 percent on loans of less than 6 months.<sup>191</sup></p> <p>11.58 percent on loans greater than six months but less than one year.<sup>192</sup></p> <p>12.59 percent for loans of at least 12 months but less than 24 months.<sup>193</sup></p> <p>13.38 percent for loans of at least 24 months but less than 36 months.<sup>194</sup></p> <p>14.17 percent for loans of at least 36 months but less than 48 months.<sup>195</sup></p> <p>15.04 percent for loans of at least 48 months but less than 60 months.<sup>196</sup></p> <p>16.02 percent for loans of at least 60 months but less than 72 months.<sup>197</sup></p> <p>17.15 percent for loans at least 72 months but less than 84 months.<sup>198</sup></p> <p>18 percent for loans 84 months or longer.<sup>199</sup></p>	<p>against creditor in an action to collect on the debt.<sup>200</sup></p>
<b>Texas</b>	<p>10 percent in the absence of a statute to the contrary.<sup>201</sup></p> <p>Consumer loans that are not secured by real property may carry maximum interest rates as follows:</p> <p>30 percent up to \$500.<sup>202</sup></p> <p>24 percent on amounts greater than \$500 up to \$1,050.<sup>203</sup></p> <p>18 percent on amounts greater than \$1,050 up to \$2,500.<sup>204</sup></p>	<p>Creditors are liable to obligors for three times the difference between the usurious contract rate and the maximum interest allowed by law or, in the alternative, the lesser of 20 percent of the principal amount or \$2,000.<sup>205</sup></p>

191. TENN. CODE ANN. § 45-2-1106(1)(A)(i) (2015).

192. TENN. CODE ANN. § 45-2-1106(1)(A)(ii) (2015).

193. TENN. CODE ANN. § 45-2-1106(1)(A)(iii) (2015).

194. TENN. CODE ANN. § 45-2-1106(1)(A)(iv) (2015).

195. TENN. CODE ANN. § 45-2-1106(1)(A)(v) (2015).

196. TENN. CODE ANN. § 45-2-1106(1)(A)(vi) (2015).

197. TENN. CODE ANN. § 45-2-1106(1)(A)(vii) (2015).

198. TENN. CODE ANN. § 45-2-1106(1)(A)(viii) (2015).

199. TENN. CODE ANN. § 45-2-1106(1)(A)(ix) (2015).

200. TENN. CODE ANN. § 47-14-110. *See also* TENN. CODE ANN. § 47-14-115(a) (2015) (giving Chancery Court concurrent jurisdiction with courts of law for the abatement and recovery of usurious charges beyond those allowed by law).

201. TEX. CONST. ART. 16, § 11.

202. TEX. FIN. CODE ANN. § 342.201(e)(1) (West 2015). Note that dollar amounts are indexed per V.T.C.A., Finance Code § 341 Subchapter C yearly based on the Consumer Price Index.

203. TEX. FIN. CODE ANN. § 342.201(e)(2) (West 2015).

204. TEX. FIN. CODE ANN. § 342.201(e)(3) (West 2015).

205. TEX. FIN. CODE ANN. § 305.001(a)(1)-(2) (West 2015).

<b>Utah</b>	Parties may agree to any rate. <sup>206</sup> If no rate is agreed to, then the interest defaults to 10 percent. <sup>207</sup>	Unspecified.
<b>Vermont</b>	<p>12 percent generally<sup>208</sup></p> <p>18 percent for single payment loans by lenders regulated by Title 8 and federal savings and loan associations.<sup>209</sup></p> <p>18 percent for the first \$500.00 and 15 percent for the balance in excess of \$500.00 for retail installment contracts.<sup>210</sup></p> <p>No limit for bank credit cards.<sup>211</sup></p> <p>18 percent for loans secured by new vehicles and 20 percent for loans secured by vehicles older than the current or previous model year.<sup>212</sup></p> <p>24 percent on the first \$1000.00 and 12 percent on the balance in excess of \$1000.00; or 18 percent annual percentage rate on the aggregate balance outstanding whichever is higher for installment loans other than those noted above.<sup>213</sup></p> <p>18 percent for loans secured by subordinate liens on real estate.<sup>214</sup></p> <p>21 percent for retail charge agreements<sup>215</sup></p>	Creditors who knowingly enter into usurious contracts forfeit all interest and half of the principal loan amount. <sup>216</sup> If usurious interest is paid by a debtor, however, only the amount of the interest above the permissible rate is recoverable along with interest thereon and reasonable attorney's fees. <sup>217</sup>
<b>Virginia</b>	<p>12 percent generally.<sup>218</sup></p> <p>No limit on bank installment loans.<sup>219</sup></p> <p>Consumer finance companies may charge the following rates on consumer loans:</p>	Interest in excess of that permitted by law is recoverable and, when such charges are willful, twice the amount of such interest paid is recoverable along with the excess

206. UTAH CODE ANN. § 15-1-1 (LexisNexis 1953).

207. *Id.*

208. VT. STAT. ANN. tit. IX, § 41a(a) (2015).

209. VT. STAT. ANN. tit. IX, § 41a(b)(1) (2015).

210. VT. STAT. ANN. tit. IX, § 41a(b)(2) (2015).

211. VT. STAT. ANN. tit. IX, § 41a(b)(3) (2015).

212. VT. STAT. ANN. tit. IX, § 41a(b)(4) (2015) (applicable to "motor vehicles, mobile homes, travel trailers, aircraft, watercraft and farm equipment").

213. VT. STAT. ANN. tit. IX, § 41a(b)(5) (2015).

214. VT. STAT. ANN. tit. IX, § 41a(b)(7) (2015).

215. VT. STAT. ANN. tit. IX, § 41a(b)(9) (2015).

216. VT. STAT. ANN. tit. IX, § 50(b) (2015).

217. VT. STAT. ANN. tit. IX, § 50(a) (2015).

218. VA. CODE ANN. § 6.2-303(A) (2015).

219. VA. CODE ANN. § 6.2-309 (2015).

	<p>36 percent for loans up to \$2,500;<sup>220</sup> and  Any rate agreed to for loans in excess of \$2,500.<sup>221</sup>  36 percent for payday loans [in addition with a fee of up to 20 percent]<sup>222</sup>  Motor vehicle title loans:  22 percent per month for the first \$700;<sup>223</sup>  18 percent per month for amounts above \$700 up to \$1,400;<sup>224</sup>  15 percent per month for amounts above \$1,400.<sup>225</sup>  No limit on loans to entities.<sup>226</sup></p>	<p>interest paid, court costs and reasonable attorney's fees.<sup>227</sup> If usurious interest has not been paid, a borrower may plead usury as a defense to an action on the contract and if proven, judgment will be entered only for the principal sum, will all interest forfeit by the lender.<sup>228</sup></p>
<b>Washington</b>	<p>12 percent or four percentage points above the Federal Reserve System published rate for twenty-six week treasury bills, whichever is higher.<sup>229</sup>  No limit for loans to profit and non-profit corporations, Massachusetts trusts, associations, trusts, general partnerships, joint ventures, limited partnerships, and governments and governmental subdivisions, agencies, or instrumentalities.<sup>230</sup>  No limit for loans primarily for agricultural, commercial, investment, or business purposes.<sup>231</sup></p>	<p>All interest is forfeit and creditors may only recover the principal amount minus the rate of interest contracted for.<sup>232</sup> If interest has been paid, the creditor is entitled to a return only of the principal amount of the loan minus twice the rate of interest contracted for.<sup>233</sup></p>
<b>Washington D.C.</b>	<p>24 percent on written contracts generally.<sup>234</sup>  No limit on the interest that can be charged on loans in excess of \$2,500</p>	<p>Interest above the legal rate paid is recoverable within one year of payment by the debtor.<sup>241</sup></p>

220. VA. CODE ANN. § 6.2-1520(A)(1) (2015).

221. VA. CODE ANN. § 6.2-1520(A)(2) (2015).

222. VA. CODE ANN. § 6.2-1817(A) (2015). An additional loan fee of 20 percent of the amount advanced can be also be imposed as well as a \$5 loan verification fee under § 6.2-1817(B)-(C) of the Virginia Code. VA. CODE ANN. § 6.2-1817(B)-(C) (2015).

223. VA. CODE ANN. § 6.2-2216(A)(1) (2015).

224. VA. CODE ANN. § 6.2-2216(A)(2) (2015).

225. VA. CODE ANN. § 6.2-2216(A)(3) (2015).

226. VA. CODE ANN. § 6.2-308 (2015).

227. VA. CODE ANN. § 6.2-305 (2015).

228. VA. CODE ANN. § 6.2-304 (2015).

229. WASH. REV. CODE ANN. § 19.52.020(1) (West 2015).

230. WASH. REV. CODE ANN. § 19.52.080 (West 2015).

231. *Id.*

232. WASH. REV. CODE ANN. § 19.52.030(1) (West 2015).

233. *Id.*

234. D.C. CODE ANN. § 28-3301(a) (2015).

241. D.C. CODE ANN. § 28-3304 (2015).

	<p>that are not secured by a mortgage on real property or a cooperative apartment lease that are the primary residence of the borrower if any of the following conditions are satisfied:<sup>235</sup></p> <ul style="list-style-type: none"> <li>· The borrower is a not for profit corporation;<sup>236</sup></li> <li>· The borrower is an individual, group of individuals, corporation, unincorporated association, partnership, or other entity, and the loan is made for the purpose of acquiring or carrying on a business, professional, or commercial activity;<sup>237</sup> the borrower is an individual, a group of individuals, corporation, unincorporated association, partnership, or any other entity, and the loan is made for the purpose of acquiring any real or personal property as an investment or for carrying on an investment activity;<sup>238</sup></li> <li>· The borrower is a religious society, formed under, or subject to, Chapter 4 of Title 29, and the loan is made for the purpose of acquiring or making an improvement on any real or personal property for purposes other than commercial or investment activities.<sup>239</sup></li> </ul> <p>The Council of the District of Columbia is authorized to provide by exemptions to the maximum rates of interest allowable and to change the maximum allowable rates of interest by regulations.<sup>240</sup></p>	
<b>West Virginia</b>	Generally 6 percent on oral contracts <sup>242</sup> and 8 percent on written contracts. <sup>243</sup>	All interest is forfeit. <sup>245</sup> In addition, the borrower may recover from the original lender or any holder other than a holder in due course the

235. D.C. CODE ANN. § 28-3301(d)(1) (2015).

236. D.C. CODE ANN. § 28-3301(d)(1)(A) (2015).

237. D.C. CODE ANN. § 28-3301(d)(1)(B) (2015).

238. D.C. CODE ANN. § 28-3301(d)(1)(C) (2015).

239. D.C. CODE ANN. § 28-3301(d)(1)(D) (2015).

240. D.C. CODE ANN. § 28-3309 (2015).

242. W. VA. CODE ANN. § 47-6-5(a) (West 2015).

243. W. VA. CODE ANN. § 47-6-5(b) (West 2015).

245. W. VA. CODE ANN. § 47-6-6 (West 2015).

	9 percent on written contracts involving residential real estate secured by a first mortgage. <sup>244</sup>	greater of \$100 or four times the amount of interest agreed to be paid on any usurious contract. <sup>246</sup>
<b>Wisconsin</b>	12 percent. <sup>247</sup> No limits on loans to corporations or limited liability companies. <sup>248</sup> No limit for loans in excess of \$150,000 that are not secured by a mortgage on a one to four family dwelling that is the borrower's principal home. <sup>249</sup>	Principal amount in excess of \$2,000 is recoverable but all interest is generally forfeit. <sup>250</sup> If usurious interest has been paid, all interest paid may be recovered and up to \$2,000 of the principal amount. <sup>251</sup>
<b>Wyoming</b>	For consumer credit sales other than revolving credit in the amount of \$75,000 or less: 36 percent on the first \$1,000 and 21 percent on amounts above \$1,000. <sup>252</sup> No limit for loans in excess of \$75,000. <sup>253</sup> For consumer revolving credit sales: 1.75 percent per month. <sup>254</sup> 10 percent for consumer loans other than supervised loans. <sup>255</sup> No limit for non-consumer loans. <sup>256</sup>	Excess interest above that allowed by law is forfeit. <sup>257</sup>

Even a cursory perusal of Table 1 makes it abundantly clear that there is little consistency in the regulation of interest rates or the civil consequences of usury at the state level. States protect classes of borrowers from interest rates deemed unreasonably high as they see fit, with some providing strong protection for borrowers with low interest rate caps and significant civil penalties, while others protect lenders (and the right of individuals to contract freely) through eschewing the regulation of usury altogether, by setting high rate caps, by exempting certain classes of borrowers from rate caps, and by failing to impose any significant civil penalty as a disincentive to

244. W. VA. CODE ANN. § 47-6-5(c) (West 2015).

246. *Id.*

247. WIS. STAT. ANN. § 138.05(1)(a) (West 2015).

248. WIS. STAT. ANN. § 138.05(5) (West 2015).

249. WIS. STAT. ANN. § 138.05(7) (West 2015).

250. WIS. STAT. ANN. § 138.06(1) (West 2015).

251. WIS. STAT. ANN. § 138.06(3) (West 2015).

252. WYO. STAT. ANN. § 40-14-212(b)(i)(A)-(B) (1977).

253. WYO. STAT. ANN. § 40-14-212(b)(ii) (1977).

254. WYO. STAT. ANN. § 40-14-218(c)(i) (1977).

255. WYO. STAT. ANN. § 40-14-310(a) (1977).

256. WYO. STAT. ANN. § 40-14-260 (1977).

257. WYO. STAT. ANN. § 40-14-521(c) (1977).

violate rate caps when these exist. Thus Nevada and Utah impose no maximum cap on interest rates, with Idaho, New Hampshire and South Dakota permitting any rate of interest to be charged as long as there is a written contract. A number of states, including Louisiana, Maine, Michigan, Minnesota, New Mexico, New York, North Dakota, Ohio, Pennsylvania, Virginia, Washington, Wisconsin and Wyoming, exempt either business entities and/or business loans from interest rate caps applicable to other borrowers in these states. In some states, interest caps are inapplicable if a loan amount exceeds a specific dollar amount, such as \$100,000 (and not secured by a mortgage) in Delaware, \$500,000 in Florida, \$15,000 in Kentucky, \$100,000 in Minnesota, \$250,000 in New York (other than loans secured by a mortgage for one and two family homes, and any loan with a value of more than \$2,500,000), \$25,000 (for fixed-rate loans) in North Carolina, \$100,000 in Ohio, \$35,000 in Pennsylvania for unsecured loans (\$50,000 for any loan), \$1,000,000 in Rhode Island for commercial loans (except those secured by a home mortgage), \$150,000 in Wisconsin (for loans not secured by a mortgage on a 1-4 family dwelling), and \$75,000 in Wyoming. Some states have relatively low caps, such as Alabama (generally 6-8 percent), California (7-10 percent), and West Virginia (6-9 percent), while others have relatively high caps, such as Colorado's 45 percent.

The civil consequences of entering into a usurious contract also vary widely from state to state as illustrated in Table 1. Among the states, Connecticut provides the harshest civil penalty making the creditor forfeit all interest as well as the principal amount of the loan. Twenty-three states and Washington D.C. provide for a forfeiture of the entire interest in an usurious contract: Alabama, Alaska, Arizona, California (treble the amount of interest actually paid is recoverable), Delaware, Florida, Georgia, Hawaii, Illinois (twice the entire interest is recoverable), Iowa, Kentucky, Louisiana, Massachusetts (but only in consumer retail agreements), Michigan, Montana (forfeiture of double the amount of interest), Nebraska, North Carolina, North Dakota (25 percent of principal is also forfeit), Oklahoma, Oregon, Vermont (half of the principal is also forfeit), Washington, Washington D.C., and Wisconsin. Sixteen states allow for the forfeiture of the excess interest above the legal rate: Colorado, Delaware, Indiana, Kansas, Maine, Maryland (the lesser of three times the amount above the maximum rate of interest or \$500 is recoverable), Minnesota, Missouri (twice the amount of interest paid above the legal rate is recoverable), New Mexico, Ohio, Pennsylvania, South Carolina, Tennessee (permits excess interest above legal rate actually paid to be offset as a defense in an action to collect on the debt), Texas (allows for the recovery of three times the amount of interest above the legal rate or, in the alternative, the lesser of 20 percent of the principal or \$2,000), Virginia (also allows for the recovery or twice the amount of interest above the permissible rate, court costs and reasonable attorney's fees for willful usury), and Wyoming. The remaining states either treat usurious contracts as void or do not make specific provisions as to a remedy in their statutory framework. If a state's statutory framework declares usurious contracts void, then generally no recovery may be sought in court by the creditor.<sup>258</sup>

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258. See, e.g., 44B AM. JUR. 2d *Interest and Usury* § 217 (2015).

### III. FEDERAL RESTRICTIONS ON USURY

The federal government has never imposed a general restriction on usury in the United States, leaving it up to the states to regulate the matter as they see fit. With the exception of loans to active duty military personnel and their dependents for whom a maximum interest rate of 36 percent is imposed by federal law,<sup>259</sup> Congress has been more concerned with mandating transparency as to the cost of credit transactions than with regulating interest rates or fees as such. The Truth in Lending Act (TILA),<sup>260</sup> for example, requires lenders to provide to consumers detailed information about the cost of credit that includes not only interest, points, and related charges<sup>261</sup> but also service or carrying charges,<sup>262</sup> any loan fee or finder's fee,<sup>263</sup> fees for investigation or credit reports,<sup>264</sup> credit insurance fees,<sup>265</sup> broker fees charged to the borrower,<sup>266</sup> and insurance premiums included in the finance charge.<sup>267</sup> Thus the emphasis is on providing credit to consumers with full disclosure rather than on protecting consumers from unfair or even unreasonable credit terms (with the noted exception of active duty personnel and their covered dependents.) Nevertheless, federal law does indirectly impact state usury laws in ways that undermine or negate state efforts to protect their citizens against usurious contracts.

#### A. *Nationally Chartered Banks are not Bound by State Usury Laws*

The National Bank Act allows nationally chartered banks to charge “interest at the rate allowed by the laws of the State, Territory, or District where the bank is located, or at a rate of 1 per centum in excess of the discount rate on ninety-day commercial paper in effect at the Federal reserve bank in the Federal reserve district where the bank is located, whichever may be the greater.”<sup>268</sup> Thus a nationally chartered bank located in Nevada, for example, where there is no maximum interest rate under state law may charge any interest not only in Nevada but also in loans made in any other state, regardless of the local state usury laws. Banks and other financial institutions chartered under state law are restricted by the usury laws of every state in which they do business, but not federally chartered banks as the U.S. Supreme Court made clear in *Marquette Nat'l Bank v. First of Omaha Serv. Corp.*<sup>269</sup> In *Marquette*, a Minnesota-chartered national banking association brought suit to enjoin the operation of a federally chartered Nebraska bank's credit card program in Minnesota until such time as it complied with Minnesota usury laws. The trial court permanently enjoined the Nebraska bank's subsidiary from issuing credit cards in Minnesota. The

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259. See Section I, *supra* and notes 13-15.

260. 15 U.S.C. § 1605 (2015).

261. 15 U.S.C. § 1605(a)(1) (2015).

262. 15 U.S.C. § 1605(a)(2) (2015).

263. 15 U.S.C. § 1605(a)(3) (2015).

264. 15 U.S.C. § 1605(a)(4) (2015).

265. 15 U.S.C. § 1605(a)(5) (2015).

266. 15 U.S.C. § 1605(a)(6) (2015).

267. 15 U.S.C. § 1605(b)-(c) (2015).

268. 12 U.S.C. § 85 (2015).

269. 439 U.S. 299 (1978).

Minnesota Supreme Court reversed, ruling that the National Bank Act permitted the Nebraska bank to charge its Minnesota credit card customers any interest rate sanctioned by Nebraska law. On certiorari, the U.S. Supreme Court affirmed. “Section 85 thus plainly provides that a national bank may charge interest ‘on any loan’ at the rate allowed by the laws of the State in which the bank is “located,”<sup>270</sup> wrote Justice Brennan, and then concluded that a nationally chartered bank is “‘located’ for purposes of the section in the State named in its organization certificate.”<sup>271</sup> Under current law, a bank can sidestep the usury laws of every state simply by obtaining a federal charter in a state that has no caps on interest charges.

### B. *Special Protection for Military Personnel*

As previously noted, federal law (commonly referred to as the Military Lending Act) protects active duty military personnel and their dependents from predatory loans by capping the maximum interest rate for these loans at 36 percent.<sup>272</sup> In addition, as of October 13, 2010, loans incurred by military service members individually or jointly with their spouses prior to entering military service are capped at six percent.<sup>273</sup> Interest above six percent is forgiven<sup>274</sup> for the period of the debtor’s military service and for a year thereafter.<sup>275</sup> Creditors can ask a court for protection from the interest reduction if they can convince a judge that the debtor’s ability to repay a loan at the original interest rate is not affected by the debtor’s military service.<sup>276</sup> Military reservists called to active duty are also provided relief from certain agricultural loans by having interest forgiven and principal payments deferred during the period of active duty.<sup>277</sup> Thus Congress has provided significant protection for active duty military personnel against predatory loans and has decreed that lenders provide temporary interest-free or low-interest loans under certain circumstances for active duty military personnel. No such protection is offered, however, to the general public. To the contrary, since nationally chartered banks can sidestep all state usury statutes by organizing in a state that places no restriction on interest rates, at least as regards federally chartered lenders, the federal government in effect preempts and nullifies states’ efforts to restrict unreasonably high interest rates or predatory lending practices that they deem violate the stated public policy of the state to the detriment of their citizens.

### C. *Tribal Immunity from State Usury Statutes*

Indian tribes in the United States enjoy sovereign immunity that is subject to Congressional limitation. Justice Kagan writing for the majority of a split United

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270. *Marquette Nat’l Bank v. First of Omaha Serv. Corp.*, 439 U.S. 299, 308 (1978).

271. *Id.* at 310.

272. *See* Section I, *supra* and notes 13-16.

273. 50 U.S.C.A. App. § 527(a)(1) (West 2015).

274. 50 U.S.C.A. App. § 527(a)(2) (West 2015).

275. *Id.*

276. 50 U.S.C.A. App. § 527(c) (West 2015).

277. 7 U.S.C.A. § 1982 (West 2015).

States Supreme Court recently noted:

As ““domestic dependent nations,”” Indian tribes exercise “inherent sovereign authority” that is subject to plenary control by Congress. Unless and “until Congress acts, the tribes retain” their historic sovereign authority. Among the core aspects of sovereignty that tribes possess—subject to congressional action—is the “common-law immunity from suit traditionally enjoyed by sovereign powers.” That immunity applies whether a suit is brought by a State, or arises from a tribe’s commercial activities off Indian lands.<sup>278</sup>

In recent years, lenders aligned with Indian tribes across the country have successfully used tribal immunity in many states to defeat usury laws.<sup>279</sup> Despite criticism from consumer advocates and industry groups, as well as the mostly unsuccessful efforts of state attorneys general to enforce regulations, tribal-affiliated lenders operate with relative impunity.<sup>280</sup> Tribal sovereign immunity bars all suits against Indian tribes except for the limited circumstances where the tribe itself waives immunity or Congress clearly and expressly abrogates such immunity.<sup>281</sup> The U. S. Supreme Court in *Kiowa Tribe v. Manufacturing Technologies, Inc.*<sup>282</sup> made it clear that both the governmental and commercial activities of a tribe and on and off-reservation activities can be covered by tribal immunity.<sup>283</sup> To date, state actions, class action cases, and federal agency actions have yielded mixed results. Most agree that federally recognized sovereign tribes have the authority to engage in internet lending to state residents without those tribes being subjected to state authority. However, the extent to which tribal sovereign immunity shields service providers that assist tribes engaging in credit transactions outside of tribal land is by no means settled.<sup>284</sup> Whether non-tribal lenders who become affiliated with a tribe in what is often referred to as a “rent a tribe” arrangement in order to cloak themselves with tribal sovereign immunity and offer high-interest, high-fee loans outside of tribal lands through the Internet, through brick and mortar payday loan storefronts and through similar arrangements.<sup>285</sup> Typically these lenders reorganize an existing company under a tribal name, pay the tribe a fee, and operate their business from call centers or locations outside of tribal lands.<sup>286</sup> Tribal immunity for loans made outside of tribal

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278. *Michigan v. Bay Mills Indian Cmty.*, 134 S.Ct. 2024, 2027 (2014).

279. Adam Mayle, Note, *Usury on the Reservation: Regulation of Tribal-Affiliated Payday Lenders*, 31 REV. BANKING & FIN. L. 1053 (2012).

280. *Id.* at 1058.

281. Meredith L. Jewitt, *A Tradition of Sovereignty: Examining Tribal Sovereign Immunity in Bay Mills Indian Community V. Michigan*, 9 DUKE J. CONST. L. & PUB. POL’Y SIDEBAR 163, 167 (2014).

282. 523 U.S. 751 (1998).

283. *Id.* at 760.

284. See, e.g., Richard P. Eckman, et. al., *Update on Tribal Loans To State Residents*, 68 BUS. LAW. 677 (2013).

285. See generally Heather L. Petrovich, *Circumventing State Consumer Protection Laws: Tribal Immunity and Internet Payday Lending*, 91 N.C. L. REV. 326 (2012); Jennifer H. Weddle, *Nothing Nefarious: The Federal Legal and Historical Predicate for Tribal Sovereign Lending*, 61 APR FED. LAW. 58 (2014); Creola Johnson, *America’s First Consumer Financial Watchdog is on a Leash: Can The CFPB Use Its Authority to Declare Payday-Loan Practices Unfair, Abusive, And Deceptive?* 61 CATH. U. L. REV. 381 (2012).

286. *Id.* See Petrovich, *supra* note 285, at 342.

lands, however, is not always applied as a matter of course. In *Otoe–Missouria Tribe of Indians v. New York State Department of Financial Services*,<sup>287</sup> federally recognized Indian tribes in Oklahoma and Michigan brought action for a preliminary injunction preventing New York from banning the high-interest, short-term consumer loans they offered over the Internet, some of which exceeded a 1,000 percent annual interest rate<sup>288</sup>. The District Court for the Southern District of New York denied plaintiffs' motion for a preliminary injunction<sup>289</sup>, and plaintiff appealed. The Court of Appeals held that the District Court did not abuse its discretion in determining that plaintiffs failed to demonstrate the likelihood of success on the merits because the Court's conclusions that the loans did not occur on Native American soil was reasonable. Whether the U.S. Supreme Court would reach the same conclusion is unclear. But for the moment, at least, New York's right to protect its citizens from internet-based loans from Native American tribes that solicit New Yorkers outside of their sovereign tribal territory is upheld.

On the whole, however, efforts of state attorneys general to enforce regulations have been largely unsuccessful and tribal-affiliated payday lenders operate with relative impunity with the practice of lenders affiliating with tribes becoming more common.<sup>290</sup> In California and Colorado, courts have determined that lenders who are an arm of the tribe are not subject to state's usury laws.<sup>291</sup> As of this writing, the Supreme Court of California has agreed to hear an appeal from the California Court of Appeals decision dismissing five claims against tribal lenders on grounds of tribal immunity in *People v. Miami Nation Enterprises*.<sup>292</sup> Overall, it is abundantly clear that state regulators face extreme difficulty in actions to enforce usury laws against tribal lenders when such companies move to dismiss such actions for lack of jurisdiction based on tribal immunity.<sup>293</sup>

#### IV. FEDERAL LAW UNDERMINES STATE USURY STATUTES

The preemption of state usury statutes under federal law for federally chartered lenders and lenders affiliated with Native American tribes<sup>294</sup> have provided lenders with useful tools for avoiding usury restrictions at the state level. To date, Congress has only seen fit to protect military personnel and their families through the Military Lending Act against predatory lenders.<sup>295</sup> For the rest of Americans, only states currently offer protection against unreasonably high interest rates and credit fees. As previously discussed<sup>296</sup> and as is clearly evidenced in Table 1, most states have taken

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287. 769 F.3d 105 (2d Cir. (2014).

288. 974 F.Supp.2d 353, 355 (S.D.N.Y. 2013).

289. *Id.* at 355.

290. Mayle, *supra* note 279, at 1058.

291. *Id.* at 1062-64 (referencing, *inter alia*, *State ex rel. Suthers v. Cash Advance & Preferred Cash Loans*, 205 P.3d 389, 405-06 (Colo. App. 2008), *In re W. Sky Fin.*, 2011 WL 1540518 (MD Comm. Fin. Reg., 2011)).

292. *People v. Miami Nation Enterprises*, 324 P.3d 834 (Cal. 2014). Review had been granted by the California Supreme Court with final determination still pending as of this writing.

293. *See* Petrovich, *supra* note 285, at 343.

294. *See* Part III *supra*.

295. *See* Parts I and III *supra*.

296. *See* Part II *supra*.

steps to protect consumers from unreasonably high interest rates. Nevertheless, lenders that provide consumer loans in violation of state usury laws have thrived by managing to sidestep state regulations through the loopholes provided in federal law discussed in Part II *supra*. But even when federal law does not preempt state usury statutes, lenders can also exploit loopholes in state laws to circumvent state usury statutes.<sup>297</sup>

## V. PAYDAY LENDERS

No type of loan today poses a greater challenge for states who want to impose rate caps on consumer borrowing than payday loans.<sup>298</sup> Nor is any other type of loan shrouded in so much controversy due largely to three factors: 1. the extremely high effective interest rates that these loans impose on consumers;<sup>299</sup> 2. the vulnerable nature of the target consumer for these loans;<sup>300</sup> and 3. the business model that intentionally seeks to trap consumers with very limited resources into a cycle of borrowing from which they have great difficulty in extricating themselves.<sup>301</sup>

Payday loans are short-term loans that carry extremely high interest rates offered to consumers with a pressing need for cash.<sup>302</sup> As an example, a consumer with overdue utility bills whose next paycheck is two weeks away goes to a payday lender who provides a \$300 loan due in two weeks and charges a \$90 interest fee for an effective annual interest rate of 780 percent.<sup>303</sup> Two weeks later, when the loan is due, the consumer is unable to repay it, and the lender renews the loan, with the cycle repeating itself throughout the next year, at the end of which the consumer has paid \$1,800 in interest and still owes the entire original \$300 principal.<sup>304</sup>

Payday loans are loans intended to tide a consumer over to their next paycheck when the need for cash arises and can be described as “small, short-term, triple-digit

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297. See generally Creola Johnson, *America's First Consumer Financial Watchdog is on a Leash: Can the CFPB Use its Authority to Declare Payday-Loan Practices Unfair, Abusive, and Deceptive?*, 61 CATH. U. L. REV. 381, 397-398 (2012).

298. Allison S. Woolston, Note, *LAW & POLICY NOTE: Neither Borrower Nor Lender Be: The Future of Payday Lending in Arizona*, 52 ARIZ. L. REV. 853, 870 (2010) (noting that in New York vigorous criminal prosecution of state usury laws has been very effective at stamping out payday lenders in the state, but that usury statutes are meaningless without aggressive enforcement).

299. See Center for Responsible Lending, *Payday and Other Small Dollar Loans*, <http://www.responsiblelending.org/issues/payday-other-small-dollar-loans> (last visited December 30, 2015) (noting that payday loans carry an average annual interest rate of 391 percent).

300. Zoe Elizabeth Lees, Note, *Payday Peonage: Thirteenth Amendment Implications in Payday Lending*, 15 SCHOLAR 63, 65 (2012) (noting that the payday loan industry thrives at the expense of millions of underclass, economically impoverished Americans without the means to escape their economic condition).

301. Katie Jory, Note, *Mandatory Arbitration Clauses in Payday Lending Loans: How the Federal Courts Protect Unfair Lending Practices in the Name of Anti-Protectionism*, 24 OHIO ST. J. ON DISP. RESOL. 315, 318 (2009) (noting that the payday loan industry depends on chronic loan flippers, with nearly 90 percent of the industry's lending revenues coming from fees from borrowers who are trapped in a cycle of debt).

302. Creola Johnson, *Payday Loans: Shrewd Business or Predatory Lending?*, 87 MINN. L. REV. 1, 2 (2002).

303. *Id.*

304. *Id.*

interest rate loan, typically in the range of \$200 to \$500 dollars, secured by the consumer's post-dated check or debit authorization.<sup>305</sup> This gives payday lenders significant leverage over borrowers beyond that enjoyed by other lenders since borrowers know that the full amount of the loan will be automatically deducted from their checking account through an electronic transfer (or a post-dated check deposited by the lender on the loan's due date) triggering bank overdraft or bounced check fees. In addition, bad check statutes in many states allow a payday lender to sue for treble damages rather than just the cost of the loan and other associated collection costs.<sup>306</sup> And writing a bad check when one knows there are insufficient funds to cover it can also subject the drawer to criminal prosecution.<sup>307</sup> This provides payday lenders with a competitive advantage over other lenders that allows them to use threats of both civil and criminal prosecutions as a means of ensuring collection.<sup>308</sup> It also provides leverage to coerce borrowers to extend their loans for another term when they are unable to pay the full amount of the loan to avoid civil and criminal penalties, as well as bank fees for bounced checks. And it helps payday lenders to trap consumers into a cycle of debt that extends far beyond the original short-term of the loan. According to the Center for Responsible Lending, 90 percent of the revenue for payday loan businesses is generated by borrowers who cannot pay off their loans when due, and the typical payday borrower pays \$793 for a \$325 loan.<sup>309</sup>

Payday lenders essentially apply the same business model as loan sharks, namely providing loans of typically relatively small amounts for short periods of time at very high interest rates intended to trap the consumer into a cycle of borrowing.<sup>310</sup> For both payday lenders and criminal loan sharks, the intent is to keep lenders paying interest only on these loans while rolling over the full principal amount as many times as possible.<sup>311</sup> And loan sharks who form part of a criminal enterprise in Las Vegas have traditionally charged lower interest rates at five percent per week than their counterparts making legal payday loans.<sup>312</sup> Both those who defend and those who attack the payday loan industry agree on the importance of repeat customers for payday lenders, and some lenders offer incentives and loyalty programs to encourage borrowers to become repeat customers.<sup>313</sup>

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305. Nathalie Martin, *1,000% Interest—Good While Supplies Last: A Study of Payday Loan Practices and Solutions*, 52 ARIZ. L. REV. 563, 564 (2010).

306. Michael A. Satz, *How the Payday Predator Hides Among Us: The Predatory Nature of the Payday Loan Industry and its Use of Consumer Arbitration to Further Discriminatory Lending Practices*, 20 TEMP. POL. & CIV. RTS. L. REV. 123, 132 (2010).

307. 32 AM JUR 2d *False Pretenses* § 62 (“bad check” statutes).

308. Pearl Chin, Note, *Payday Loans: The Case for Federal Legislation*, 2004 U. ILL. L. REV. 723, 732 (2004).

309. Center for Responsible Lending, *Financial Quicksand: Payday lending sinks borrowers in debt with \$4.2 billion in predatory fees every year*, <http://www.responsiblelending.org/research-publication/financial-quicksand-payday-lending-sinks-borrowers-debt-4-2-billion-predatory> (last visited December 30, 2015).

310. Robert Mayer, *Loan Sharks, Interest-Rate Caps, and Deregulation*, 69 WASH. & LEE L. REV. 807, 812 (2012).

311. *Id.* at 815.

312. Chin, *supra* note 308, at 728.

313. See Martin, *supra* note 305, at 573.

## VI. THE NEED TO PROTECT CONSUMERS FROM PREDATORY LENDERS

There is no doubt that loans that carry extraordinarily high effective rates of interest will remain controversial. It is reasonable to expect that fringe lenders who issue loans without regard to the credit worthiness of their clients will charge a high rate of interest in order to defray the high risk of default.<sup>314</sup> But for these high interest rates, there might be no other recourse for borrowers of limited means in need of fast cash in an emergency situation. Reasonable people may differ on whether the high cost of payday loans and similar fringe credit market products are attributable to the higher risk of making such loans to sub-prime consumers or to the unbridled greed of lenders who offer a product at the highest cost that the market will bear. Fringe banking is certainly a profitable business that has grown from nearly nothing to a \$100 billion dollar industry over a period of two decades with more check cashing and payday businesses in the U.S. today than McDonald's, Burger King, Target, Sears, JCPenney, and Wal-Mart locations combined.<sup>315</sup>

There is some disturbing evidence that fringe credit market lenders such as payday lenders unfairly target communities of color with predatory loans that have a disparate impact on these communities.<sup>316</sup> There is also evidence of a disparate impact on women<sup>317</sup> and on the elderly.<sup>318</sup> The empirical evidence as to the impact of payday loans is inconclusive, but many local governments are convinced that payday lenders do more harm than good in their communities.<sup>319</sup> As a result, many municipalities have adopted moratoria on the development of new payday businesses and imposed land use restrictions on where payday lenders may locate in an attempt to stem the proliferation of these businesses.<sup>320</sup> But under current federal law, both states and local municipalities are powerless to control the interest charged by payday lenders who are affiliated with nationally chartered banks or Native-American tribes, even when that affiliation is tenuous at best as in the rent-a-tribe and rent-a-bank schemes.<sup>321</sup>

One might argue that if predatory loans are being offered to consumers at exorbitant rates through unfair marketing practices relief could always be found at the local small claims court under a claim to set aside loan agreements as unconscionable. But this option is also denied consumers by loan agreements that require binding arbitration and prevent consumers having their case heard in a court of law.<sup>322</sup> Class

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314. Robert W. Emerson, *Franchisees in a Fringe Banking World: Striking the Balance Between Entrepreneurial Autonomy and Consumer Protection*, 46 AKRON L. REV. 1, 17 (2013).

315. *Id.* at 3.

316. See Johnson, *supra* note 287, at 169-172.

317. Amy J. Schmitz, *Symposium: I. Fringe Economy Lending – The Problem, its Demographics, and Proposals for Change: Females on the Fringe: Considering Gender in Payday Lending Policy*, 89 CHI.-KENT L. REV. 65, 66 (2014).

318. Christopher L. Peterson, *Federalism and Predatory Lending: Unmasking the Deregulatory Agenda*, 78 TEMP. L. REV. 1, 14 (2005).

319. Sheila R. Foster, *Breaking Up Payday: Anti-Agglomeration Zoning and Consumer Welfare*, 75 OHIO ST. L.J. 57, 59 (2014).

320. *Id.* at 77.

321. See *supra* note 285 (referencing rent-a-tribe schemes); Chin, *supra* note 308, at 732-733 (referencing rent-a-bank schemes). See also Part III, *supra*.

322. See Satz, *supra* note 306, at 143-146.

action waivers are also often contained in these agreements.<sup>323</sup>

## VII. CONCLUSION

Throughout our history, the states protected their citizens against unreasonably high interest rates through usury statutes.<sup>324</sup> Most states today attempt to protect their citizens through usury statutes that define the outer limits of what state legislatures find to be reasonable interest rates and fees that may be exacted by lenders.<sup>325</sup> These statutes reflect the diversity one finds among the states, and a judgment made by the governing authorities under their plenary police powers of what is in the best interest of their citizens. There is no question that the federal government could regulate the payday loan industry or impose a general maximum interest rate cap, and some commentators have called for Congress to do just that.<sup>326</sup>

Payday lenders and other sub-prime lenders will continue to use the loopholes provided by federal law to flaunt state usury statutes until Congress addresses the issue. Given that it is federal law and federal preemption that have severely limited the ability of states to effectively protect their citizens from predatory loans, it is not unreasonable to call on Congress to provide a solution. One possible obvious solution is for Congress to extent the same protection to all American consumers that it did to military personnel and their families by imposing a maximum interest rate of 36 percent on all consumer loans.<sup>327</sup> This is perhaps the easiest solution, though it would create other serious issues, including imposing a federal interest rate cap on states that do not currently place a cap on interest rates, or have higher caps than Congress might impose. At the very least, Congress should address the most egregious problems caused by lenders in the sub-prime credit markets that include payday loans. It could impose the same 36 percent cap currently applicable to loans to military personnel at least to all consumer loans below a certain dollar threshold (e.g., \$1,000). It would also need to specifically make the interest cap applicable to lenders owned by or chartered by Native American tribes to borrowers outside of tribal lands to close that particular loophole.

A national poll of likely 2016 voters conducted in January 2015 shows very strong support for caps on payday loans among Democrat, Republican and Independent voters.<sup>328</sup> Among those polled, 61 percent of Democrats, 62 percent of Republicans and 58 percent of Independents had an unfavorable or very unfavorable view of

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323. *Id.* at 145.

324. *See* Part I, *supra*.

325. *See* Part II and table 1, *supra*.

326. *See, e.g.*, Eliot C. Schaefer, The Credit Card Act of 2009 Was Not Enough: A National Usury Rate Would Provide Consumers with the Protection They Need, 41 U. Balt. L. Rev. 741, 767 (2012) (calling on Congress to enact a national usury rate); Charles A. Bruch, Taking the Pay Out of Payday Loans: Putting an End to the Usurious and Unconscionable Interest Rates Charged by Payday Lenders, 69 U. Cin. L. Rev. 1257, 1288 (2001) (Calling on Congress to pass legislation to prevent payday loans from gaining a permanent foothold); Martin, *supra* note 305, at 302-304 (calling for a national rate cap).

327. *See* notes 13-16, *supra*.

328. Lake Research Partners and Chesapeake Beach Consulting conducted a survey of 800 likely 2016 voters Nationwide from January 13 - 19, 2015. The margin of error of the survey is +/- 3.5%. Complete results of the survey are available at <http://www.responsiblelending.org/media-center/press-releases/Memo-CRL-Bi-partisan-f-012215.pdf> (last visited March 12, 2015).

payday lenders.<sup>329</sup> 79 percent of Democrats, 75 percent of Republicans and 77 percent of Independents supported or strongly supported imposing rate caps on payday lenders.<sup>330</sup> The electorate is clearly united in its support for rate caps, at least on payday loans. At a time in our history when even the most casual of observers cannot fail to notice a lack of bipartisanship in Congress and a concomitant lack of cooperation between the legislative and executive branches, it would seem that an issue that appears to have overwhelming support from Democrat, Republican and Independent voters should merit serious attention. It could provide a salutary opportunity for the legislative and executive branches of government to work together to resolve a problem that the vast majority of the electorate across party affiliations seems to think should be resolved. Political expediency aside, Congress should address the current undermining of state usury statutes by federal law and promote the ends of justice by protecting everyone everywhere in the United States from predatory loans just as it has our men and women in uniform and their families.

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329. *Id.* at 1.

330. *Id.* at 2.