

Commercial Lessor Licensing Requirements II - 2006 Update
Expanded New Discussion of Provisions for Prepayment Premiums, Documentation and Modification
Fees, and Other Unusual Statutes Affecting Your Business
ELA Legal Forum
May 1, 2006

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Business Model: A commercial finance company, already doing business in (and qualified as a foreign corporation) in all fifty (50) states. The entity does not engage in consumer transactions (household, personal, or family use) but does enter into retail direct loans and leases, dealer inventory financing (wholesale transactions), and acquires installment or conditional sale contracts (indirect loans, which could include financed insurance) from sellers, including motor vehicle dealers and equipment distributors. The entity also has only one office -- no branches or regional operations and is not a bank or other depository institution regulated by a state banking authority, the Federal Reserve or the FDIC.

State	License Requirement	Statutory Reference	Overview	Special Considerations/Notes
Alabama	Business, Vocational or Occupation License	§§40-12-83	Persons engaged in "discounting or buying conditional sales contracts . . . mortgages on personal property	
	Banks and financial Institutions, Small loans	§§ 5-18-1 – 5-18-24	Regulates lenders making loans of \$1,000 or less. Exemption for the business of financing motor vehicles, refrigerators and other personal property.	Violation can result in \$500 fine and/or 6 months imprisonment.
	Business, Vocational or Vocational License	§§40-12-222	License required for a person "engaging or continuing" in Alabama in the business of leasing or renting tangible personal	<u>Herring v. Chris Myers Pontiac – GMC</u> 628 So.2d 574(Ala. 1993) - Summary judgment not permitted where evidence indicated possibility of

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AL cont'd			property. .	misrepresentation as to application of doc fee
Alaska	Alaska Small Loans Act	Ak. St. § 06.20.010-06.20.100 Ak St. § 06.20.030	Regulates loans of \$ 25,000 or less Application Fees-- \$1,000 investigation fees; \$500 single office license; \$ 2,000 multiple office license.	Does not distinguish between consumer and commercial loans (§ 06.20.010). Nothing prohibits municipalities from passing local business license fees, so check local requirements. <i>See McCormick v. City of Dillingham</i> , 16 P.3d 735 (Alaska 2001).
		Ak. St. § 06.020.050	\$25,000 Bond requirement.	
		Ak. St. § 06.20.060	Liquidity Requirement-- Must have \$25,000 liquid assets at business location.	
		Ak. St. § 43.70.020	Must have business license to engage in a business in the state.	
		Ak. St. § 43.70.030	\$100 fee.	
	Model Foreign Bank Loan Act	§§ 06.10.010 – 06.10.050	Defines foreign bank as lending organization whose principal office is in another state and is small loan company.	Exempt from state laws if no office in Alaska
	Revenue and Taxation , Alaska Business License Act	§§ 43.70.020 – 43.70.120	Fee for the privilege of engaging in business in the state. If licensed as "Small Loan Company," may be required to pay tax. See case law on exemptions.	
Arizona	Motor Vehicle Sales Finance License		Loans or transactions that are to be secured, even in part, by real estate located in Arizona could subject the lender to licensing under the mortgage broker— mortgage banker—commercial mortgage banker statutes in Title 6, Chapter 9.	<i>A "Motor Vehicle Sales Finance Company" is regulated by A.R.S. 44-281. License is required if lender has office in Arizona (44-282 and Op. Atty. Gen. No 69-5).</i> A.R.S. § 47-2101 (Arizona's UCC) defines a "Financing Agency" as a financing company that, in the ordinary course of business, makes advances against goods or documents of title. There are no apparent licensing requirements for such an entity, however.
Arkansas	Motor Vehicle Lessor	§§ 23-112-301	Unlawful to engage in the business as a . .	

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AR cont'd	License		. motor vehicle lessor without first obtaining a license ...regardless of whether person maintains or has a place of business in this state.	
California	Dept. of Corporations Sales Finance License-	Fin. C. § 22100 Ca. Fin. Code § 22163-22164 Ca. Bus.& Prof. Code § 16000 & 16100	A "finance lender" is defined to include any person who is engaged in the business of making consumer loans or making commercial loans. Conditional Sales Contracts (§22054) and Insurance Premium Finance Contracts are excluded (§19563) Finance Lender must be licensed by the Commissioner of Corporations before transacting business in California. Application now requires fingerprints Application fee is \$100, plus the fingerprint processing fee, the criminal history record check fee, and an additional \$200. Comm'r may require that rates of charges be stated fully and clearly, in licensees documents, and in advertising. Cities and Counties have authority to license businesses for regulation purposes.	Licensees are exempt from usury limits. Application and annual reports are lengthy and time extensive. See generally §§ 22150. Must notify of any change in officers. State can and will do on-site assessments Annual reports Due by March 15 each year. Sales & Marketing: Content is regulated. See §§ 22162 et seq. In a loan or forbearance situation, failure to obtain a license could subject the lender to the laws of usury. A "willful violation" subjects the violator to \$10,000 penalty and/or up to 1 year in jail. §§22780. Imprisonment requires knowledge of rule.
Colorado				No applicable statutes.
Connecticut	Sales Finance Companies	§ 36a-536	Sales finance companies acquiring or lending against retail installment contracts or installment loan contracts must be licensed. Note: Defines "made in this state" very broadly §36a-770 (9).	A "retail installment contract" is any security agreement evidencing an agreement to pay the retail price of goods in installments and pursuant to which a security interest is taken in such goods. §36a-772 restricts interest that can be charged in retail

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CT cont'd	Small Loan Lenders Motor Vehicle Lessor License	§ 36a-555 § 14-15	A license to make small loans (\$15,000 or less) and charge excessive interest (greater than 12% per annum) is required. Does not apply to banks. Requires licensure for lessor of motor vehicles from the Commissioner of Motor Vehicles.	sales of motor vehicles and other goods §36a-778 restricts delinquency and collection charges. §36a-784 restricts charges on renewals and extensions. An "installment loan contract" is an agreement to repay in installments an amount loaned to a retail buyer to pay the retail purchase price of goods and in which goods a security interest is taken. (Conn. Gen. Stat. § 36a-770) Certificate required – Form IRB3613C
Delaware	State Taxes, Costs Occupational Licenses and Taxes Licensed Lenders	30 §§ 2301-2305 5§2202	Requires licensure for commercial lessors of real estate and for "finance or small loan agencies" Any person "transacting the business of lending money" must be licensed. Exceptions include (i) lenders making five or fewer loans in any 12-month period and (ii) lenders that are banks or "banking organizations." . (5 Del. C. § 2208)	"Finance or small loan agency" is "every person engaged in the business of lending money, with or without security, to other persons, with repayment to be made by installments or otherwise, but shall not include banks or trust companies." Licensee must file a surety bond (or irrevocable letter of credit) with the state bank commissioner
	Motor Vehicle Retail Installment Contracts	5 Del. C. § 2902	Lenders in motor vehicle retail installment contracts, as well as sales finance companies in the business of purchasing such contracts, are subject to licensing	Retail installment sales contracts include leases for security of motor vehicles (but not true leases). Licensee must file a surety bond or irrevocable LOC. (5 Del. C. §2914)
	Lessor's License	30 Del. C. § 4305	Lessors of tangible personal property, including motor vehicles, must obtain a license. In addition, lessors must pay annual lessor license tax at rate of 0.230% of lease rental payments received, with certain deductibles permitted.	
District of Columbia	Taxation: Financial Institution: Note Brokers	§47-2505	Note brokers shall pay a tax of \$100 per annum. Every person, firm, company or association not	

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DC cont'd	Money Lenders; Licenses	§ 26-901	<p>incorporated (except private banks and bankers) that loans money on promissory notes without real estate or security or advances money on personal property as security without possession of said personal property shall be deemed a note broker .</p> <p>"Loan Shark Law". Illegal to loan money for which interest rate of greater than 6% per annum is charged on collateral of any kind, without procuring license.</p> <p>Does not apply to any loan greater than \$25,000. (DC ST § 26-912).</p>	<p>Licensee must post surety bond of \$5,000. (DC ST § 26-903). In determining whether lawful maximum interest rate is exceeded, must take into account "all fees, expenses . . . of every character." (DC ST § 26-905)</p>
Florida	Motor Vehicle Sales Finance License	FL Statues Chapter 520	<p>License required to engage in the "business of a motor vehicle retail installment seller" (520.03)</p>	<p>§520.07 regulates late fees; .08 interest rate; and .09 prepayment fees.</p> <p>§697.07 – If a note is silent, it may be prepaid without penalty.</p> <p><u>Nacron v. General American Life Insurance Co.</u> 516 So.2d 41(3d DCA Fla. 1987) – Prepayment premium clause (10%) upheld error</p> <p><u>Florida National Bank v. BankAtlantic</u> 589 So.2d 255 (Fla. 1991) – Court may add prepayment penalty to be added to other remedies where borrower intentionally defaults.</p>
Georgia				<p>O.C.G.A. §7-4-2(b)(ii) – No prepayment penalty allowed unless stipulated in contract.</p> <p><u>In re Curtis</u>, 83 B.R. 853 (Bnkr. S.D.Ga.. 1988) – Statute interpreted to mean that prepayment premiums may be charged if stipulated in contract.</p> <p><u>Shell Oil v. Shaw</u> 141 Fla. 745, 194 So. 327 (1940) – Automatic renewal permitted (in real estate lease)</p>

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Hawaii				No applicable statutes.
Idaho				No applicable statutes.
Illinois	Sale Finance Agency Act	205ILCS 660/3 205ILCS660/2	License required to "engage in the business of a sales finance agency" Sales Finance agency means a person, irrespective of state of domicile or state of business, engaged in Illinois in whole or in part, in the business of purchasing or making loans secured by retail installment contracts.	Exempt if a licensee under Consumer Installment Loan Act. Does not apply to Motor Vehicle Retail Installment Sales (375).
Indiana	None			The sale of motor vehicles on Sunday is prohibited - Section 24-4-6-1 - no mention of financing.
Iowa				Loan Brokers are regulated under Chapter 535C
Kansas	None			
Kentucky	Motor Vehicle Sales	KRS §§ 190.030	A motor vehicle leasing dealer "shall not engage in business in this state at any location without a license issued for that location." Note: license will only be issued to those who have fixed sales building or place of business.	Note: A "motor vehicle leasing dealer" is "any person engaged in the business of regularly making available or offering to make available or arranging for another person to use a motor vehicle pursuant to a lease. . . ." KRS 190.010(7).
Louisiana	Motor Vehicles Lessor's License Personal Property Lessor Occupational License Occupational License	§§32-1252.15 §§47:354 §§47-354	Motor vehicle lessor is "any person, firm . . . engaged in the business of motor vehicle leasing or rental business. §§32-1252.15 (a). State or federally chartered banks are excluded. §§32-1252 .15(b)(i). For every fixed location, for businesses engaged in the business of leasing or renting movable property. Business of lending or of dealing in notes secured by chattel mortgages or other liens	Comments: evidence of license is required to obtain certificate of title, Proof of liability insurance must be provided as well as evidence of compliance with local zoning laws - even for out of state lessors.32§§1254.N Employee or sales people working in area must be registered as a Agent §§32.1252.10.1. . Comment: Right of "Self -Help" (as opposed to replevin or judicial foreclosure) for motor vehicles is only available if (i) specific language is used in the

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LA cont'd				<p>contract,(ii) a "notice of repossession" is given prior to exercise and (iii) lessor is either a bank "chartered" under LA, federal, or state law or has applicable LA Consumer Credit or Motor Vehicle Sales Finance License (required only for consumer loans) §§10.9-609(b)</p> <p>La. Rev. Stat. §3316 – For true and "financed" leases, early termination fees are permitted if stated in contract and fixed in an amount or otherwise reasonable.</p> <p><u>Castano v. Bellina</u> 503 So.2d 195 (La. App. 4th Cir. 1987) – Prepayment premium must be stated in instrument.</p> <p><u>Guloco Finance Company v. Garrett</u> 631 So.2d 602(La. 8. App. La. App. 3rd. Cir. 1994) – Document fee is not included in the loan finance charge</p> <p><u>210 Baronne Street Ld. V. Pisano</u>, 526 So.2d 345 (La. App. 4th Cir. 1988) – Automatic renewal appears enforceable (case decided on other grounds – real estate)</p>
Maine	None			
Maryland	<p>Credit Grantor Licensing, Commercial Law Article</p> <p>Installment Loan License, Financial Institutions Article</p>	<p>§§ 12-915(a) and 12-1015(a)</p> <p>§ 11-302</p>	<p>License is required by a credit grantor to make commercial loans. "Credit grantor" means a corporation or other legal or commercial entity that is subject to supervision, examination, and regulation by a governmental agency.</p> <p>License is required for the making of 5 or more loans or extensions of credit per year. Banks, savings & loan associations, and credit unions are excepted.</p>	
Massachusetts	Motor Vehicles, ALM GL ch. 90	§ 32H	Requires license for engaging in the business of leasing motorcycles.	

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MA cont'd	Small Loans, ALM GL ch. 140	§ 32H	License is required to make small loans (\$6,000 or less) and charge interest in excess of 12% per annum. Law is not applicable to certain banks and subsidiaries of such banks. (ALM GL ch. 140, § 114A).	
Michigan	none			
Minnesota	Regulated Loans License	MSA §§56.01 and 56.131	No person "shall engage in the business" of making loans not exceeding \$100,000 without first obtaining license from Commerce Division Comment: Dept. of Commerce has in past verbally confirmed that license is not needed without office/employees in state Interest rates for Installment Sales Contracts for motor vehicles are governed by § 47.59.4.	Violation is a gross misdemeanor (§56.19) and loan is void (§56.19.3) Retail Installment Sale Contracts have restrictions on delinquency fees (31-1-235), transfer of equity fees (31-1-234).
Mississippi	Motor Vehicle Sales Finance License - Dept. of Banking and Consumer Finance Motor Vehicle Small Loan Regulatory Law & Small Loan Privilege Tax Finance Company Privilege Tax	Mississippi Code – Section 63-19-1, et seq. §§75-67-103 et. seq and §§75-67-203 et. Seq. Chapter 21 §§ 27-21- 27-21-19	A sales finance company is "a person engaged in whole or in part, in the business of purchasing retail installment contracts from a retail seller." §63-19-3.(k). No bank authorized to do business in [MS] shall be required to obtain a license. They shall, however, comply with all of the other provisions of this chapter. §§63-19-7. § 75-67-105 provides that no person shall engage in the business of lending money, without being the holder of a valid license as provided by §§ 75-67-201 through 243. § 75-67-41 exempts banks and "dealers and sellers or purchasers of conditional	Applies to conditional sales contracts Prepayment premiums should not exceed \$50 (63-19-47) Transfer of equity (assignment and assumption) fee \$15.00 (63-19-37) Financed Insurance - if any insurance is cancelled, or the premium adjusted, any refund of the insurance premium received by the holder shall be credited to the final installments of the contract.

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MS cont'd			sales or retained title contracts on real or personal property" and lenders "making loans only secured by real estate."	
Missouri	Motor Vehicle Leasing License	V.A.M.S.144.010 and 144.070, .440	Sales/use tax elections can not be made without leasing license	Required to license leased units through DMV
	Motor Vehicle Sales Finance Company License	V.A.M.S 365.030	No person shall engage in the business of a sales finance company "in this State" without a license.	Exceptions for registrants who are licensed consumer lenders under 367.100-.200.
Montana	Retail Installment Sales Finance License - Division of Banking & Financial Institutions	MCA Title 31-Chapter 1-Part 2	Covers all goods, not just motor vehicles §31-1-202(d). A person may not engage in the business of a sales finance company, including the purchase of retail installment contracts that are entered into in this state. §31-1-221. A sales finance company is a "person engaged, in whole or in part, in purchasing retail installment contracts from one or more persons." §31-1-202 (g)	Exemptions for state banks and trust companies and persons who make "only isolated purchases" that are not made in the "course of repeated and successive purchases" from the same seller. A person who knowingly engages in the business of a sales finance company in Montana without a license can be punished by a fine of not more than \$500 and/or imprisonment of not more than six months. Prepayments regulated by 31.1-242
Nebraska	Installment Sales License	Nebraska Statutes Chapter 45-345	No person shall act as a sale finance company in Nebraska without obtaining a license whether or not such person maintains an office, place of doing business, or agent in Nebraska." A sales finance company is a "person purchasing one or more installment contracts from one or more sellers."	Exemption for banks, trust companies & industrial loan companies regulated by Nebraska, any other state or chartered by the United States. No loan, made outside Nebraska, for an amount of \$3,000 or less, "for which a greater rate of interest than that permitted by 45-1025 has been charged, shall be enforced in this state. §45-1042. Restrictions on delinquency fees in installments sales contracts (§45-341), origination fees, and interest rates (45-338)
Nevada	Installment Loans	NRS §§675.060	No person may engage in the business of lending in Nevada without a license for each office or other place of business at which the person engages in such business.	Exemption for banks, savings banks doing business under the authority of Nevada or the United States. NRS§§675.040.
	Business License	NRS § 360.780	May not conduct business without a license.	A person engages in the "business of lending in Nevada" if he (a) solicits loans in Nevada or makes loans to persons in Nevada, unless these are "isolated,

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NV cont'd	<p>Excise Tax</p> <p>Installment Loans</p> <p>Business Tax</p>	<p>NRS § 363B.110</p> <p>NRS § 675.100</p> <p>NRS § 675.140</p> <p>NRS § 675.180</p> <p>NRS § 364.010 <i>et seq.</i></p>	<p>Applicable to any employers if paying employees in state.</p> <p>Fees for License Application: \$1,000, plus fees incurred by Commissioner for investigation, and additional pro-rated annual fee.</p> <p>Licenses expire on 12/31, renewal is set at no more than \$1,000.</p> <p>Liquid funds of \$50,000 must be available at the site.</p> <p>Counties may collect business taxes.</p>	<p>incidental, or occasional transactions;" or (b) is located in Nevada and solicits loans outside Nevada or makes loans to persons outside Nevada unless these are "isolated, incidental, or occasional transactions."</p>
New Hampshire	<p>Fee for Substituting Insurance Policy</p> <p>Regulation of Small Loans</p>	<p>§ 399-C:1</p> <p>§ 399-A:2</p>	<p>No person making a loan, including loans secured by personal property, may require a separate or additional charge or fee, other than insurance premium, for the purpose of substituting a new insurance policy for an existing insurance policy already provided by a NH insurance agent or company.</p> <p>License required to make a "small loan," which is defined as loan in the amount of \$10,000 or less, and where lender receives charges and interest in an aggregate amount greater than 10% per annum. Banks are excluded from requirement.</p>	<p>It is not clear whether this statute includes commercial loans. The definition of "open-end" loans limits open-end loans to consumer transactions. However, "closed-end" loans are defined as all loans which are not open-end loans, leaving open the possibility that commercial loans are contemplated.</p>
New Jersey	Renting and Leasing of Motor Vehicles	§§ 45:21-2 and 45:21-5	Any person that is in the business of leasing motor vehicles must file with the clerk of the applicable municipality (i) a policy of insurance, insuring such owner against loss from liability arising from	These provisions do not apply to motor vehicles used in the transportation of passengers for hire. (N.J. Stat. 45:21-1)

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NJ cont'd	<p>Foreign Banks</p> <p>Small Business Loan Act</p>	<p>§ 17:9A-453</p> <p>Title 17, Article 12B</p>	<p>operation by lessee and (ii) a power of attorney designating such clerk its attorney for receipt of service of process relating to litigation involving such motor vehicles.</p> <p>A commercial lending company, other than a bank that is a U.S. affiliate of a foreign bank, must be licensed to transact business in the State.</p> <p>For a loan to a small business with gross income not greater than \$1,000,000, the amount of loan may not exceed \$50,000, and borrower may prepay unpaid balance in full without penalty.</p>	
New Mexico				<p>Usury: Without a written contract, the interest rate on money due under a contract (oral) cannot exceed 15%. NMSA §56-8-3</p> <p>On loans exceeding \$500,000, there is no maximum rate except as agreed to by parties. NMSA § 56-8-9</p>
New York	<p>Licensed Lender Law</p> <p>Anti-Evergreen</p>	<p>Banking Law, Article IX, §§340-365</p> <p>§ 5-901.</p>	<p>License is required to make business and commercial loans of \$50,000 or less. License is not required if (i) transactions are merely isolated, incidental or occasional or (ii) rate of interest is not greater than that otherwise permitted by applicable state usury law. Except for certain items including filing fees and insurance premiums, lender is prohibited from charging additional fees and expenses. (NY CLS Bank § 351)</p> <p>Provision for automatic renewal of a lease is enforceable only if lessor gives written</p>	

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NY cont'd			notice to lessee 15 days (but not more than 30 days) prior to expiration "calling attention" to such provision.	
North Carolina	Installment Paper Dealers Loan Agencies Loan Brokers Regulation of Motor Vehicle Captive Finance Sources	§ 340 §105-88 §66-106 N.C.G.S.A. §§20-308.13- .22	Person "engaged in the business of dealing in, buying, or discounting installment paper notes evidences of debt. Each location at which business is conducted which is "making loans or lending money". Any person who in return for consideration promises to (i) obtain or assist another in obtaining, a loan or (ii) consider whether or not it will make a loan to such person Applicable to any captive finance source who engages directly or indirectly in purposeful contacts within NC	Banks are exempt and if a person "deals in, buys, or discounts any obligations" without paying the tax, the person may not bring an action in State court to enforce collection until the person pays the amount of the tax, penalties and interest due. Banks are exempt. A loan made in violation is not collectible. (d) Lenders who advance more than \$1 million annually, in aggregate, in NC are exempt. <u>West Raleigh Group v. Massachusetts Mutual Life Insurance Co.</u> 809 F. Supp. 384 (E.D.N.C. 1992) – Prepayment premiums permissible. Restricts enforceability of contracts between dealer and captive finance source.
North Dakota	Consumer Finance Act	ND ST 13-03.1-03	License required for lending in amounts not to exceed \$35k	Violation is a felony. Fine of \$5k per violation. If a contract in excess of \$1k violates statute, lender has no right to collect any interest or charges. 13.03.1-18
Ohio	Small Loans: Licenses	ORCA §1321.02	No person shall engage in the business of lending amounts of \$5,000 or less without a license.	Exemptions for any state or US bank Insurance Premium Financing requires license (1321.71& 72).
Oklahoma				
Oregon		ORS § 725.045 ORS § 725.110	Must have a license for making a consumer loan of \$50,000. Must be legally qualified to conduct business.	
Pennsylvania	Motor Vehicle Sales Finance Act	69 P.S. § 604	License is required for installment sellers and sales finance companies. "Installment seller" is defined as a person who sells,	

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PA cont'd			<p>hires or leases motor vehicles under installment sales contracts (includes leases subject to Article 9 but not true leases).</p> <p>"Sales finance company" is one engaged in the business of financing motor vehicle installment sales contracts.</p> <p>Certain charges and fees not explicitly enumerated in the statute (e.g., insurance premiums, default charges and finance charges) are prohibited. (69 P.S. § 631).</p> <p>Sales finance companies must post \$5,000 surety bond upon application for license. (69 P.S. 606)</p> <p>Note: In PA, the motor vehicle dealer licensing requirements do not apply to sales finance companies selling repossessed vehicles (63 P.S. § 818.37)</p>	
Rhode Island	Licensed Activities	§ 19-14-2	<p>A license is required for a lender who makes or funds a loan in RI. The term "loan" includes the purchase or acquisition of retail installment sale contracts.</p> <p>Lender-licensee must maintain minimum net worth of \$100k and post a surety bond of \$25k (R.I. Gen. Laws, §§ 19-14-5 and 19-14-6). These licensing requirements are inapplicable with respect to (i) loans to corporations or other business entities, (ii) if to individuals, loans for business or commercial purposes over \$25k, and (ii) intermittent loans (less than 6 loans in 12 month period). (R.I. Gen. Laws, §19-14.1-</p>	<p>§6-13-4 of the Unfair Sales Practice Act provides that a lessor of personal property under a written lease containing an automatic lease renewal shall give written notice to the lessee not more than 90 nor less than 45 days prior to the expiration of the lease term.</p> <p>The notice shall state the date upon which the lease term shall expire and shall advise the lessee that the lease will be automatically renewed unless the lessee gives written notice to the contrary. If the lessor does not give the required notice the renewal shall be voidable at the option of the lease.</p> <p>This provision does not apply to any lease with a term of less than one year or where the fmv of the property</p>

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RI cont'd	Motor Vehicle Rental Licenses	§ 31-5-33(b)	10). No person shall engage in RI "in the business of renting or leasing motor vehicles" to any person without securing a license. Renting or leasing 5 or more vehicles in a year is considered "in the business."	being leased exceeds \$100 k on the date the lease is executed.
South Carolina	Consumer Finance Law	§34 -29-20	A license is required for the "business of lending in the amounts of \$7,500 or less" and contracting to receive insurance in excess of that permitted by general usury statute.	Exception for any bank or savings and loan association doing business under the authority of South Carolina or the United States and the law does not apply to "loans made to a corporation." A contract made in violation of the statute is void and the lender shall have no right to collection principal, interest, or charges and any person who knowingly or willfully violates or participates in the violation shall be punishable by a fine of not more than \$1,000 and/or imprisonment for not more than 6 months.
South Dakota	Money Lending License	SDCL – 54-4 -36 - 63.	License required for any person who "engages in the business of lending money."	Exemption for state or national banks. Section 54-4-37
Tennessee				Tenn. Code Ann. §47-14-108 permits prepayment premiums Tenn Code Ann. §47-14-113 – "Loan charges" must be fair and reasonable. Inspections and servicing of collateral expressly permitted
Texas	Occupations Code; Regulations Related to Motor Vehicles, Sale or Lease of Motor Vehicles License Requirements	VTCA Occupations Code §§2301.251	A license is required to serve as a "vehicle lessor" in Texas.	Exemption for a state or federally chartered financial institution or a trust or other entity that owns an interest in a vehicle lease and the vehicle that is the subject of the lease, if the lease covering the vehicle is initiated, managed, serviced, and administered by a licensed vehicle lessor. §2301.254
	Finance Code; Regulation of Interest, Loans & Financed	VTCA Finance Code §348.501	Specifically includes heavy commercial vehicles. A person may not serve as a "holder" unless the person holds a	Authorized lenders, including credit unions have exemption.

State	License Requirement	Statutory Reference	Overview	Special Considerations/Notes
TX cont'd	Transactions, Motor Vehicle Installment Sales Finance License		<p>license. A holder is the person to whom a retail installment contract or the outstanding balance under the contract is sold or is otherwise transferred.</p> <p>Extensive requirements under Sales Finance License, including specific contract format, verbiage usage - see attachment.</p>	<p>Direct loans (two party transactions do not require license)</p> <p>Tex. Stat. Ann. §306.005 – parties to commercial loans may agree to prepayment premiums.</p> <p>Premiums do not constitute interest . <u>Bearden v. Tarrant Savings Association</u> 643 SW 2d 247 (Tex. App. – FW 1982) – It is not required that the amounts so charged be “reasonable”.</p> <p><u>Texas Airfinance v. Lesikar</u> 777 SW 2d 559(Tex, App.– Hous. 1989) Prepayment premium is not permitted where note is accelerated due to borrower default</p> <p><u>Remington Rand v. Sugarland Industries</u>, 137 Tex. 409, 153 SW 2d 477 (1941). – Automatic renewal enforced in personal property lease.</p>
Utah	Title Lenders	<p>UCA § 7-24-102</p> <p>UCA § 7-24-201</p> <p>UCA § 7-1-401(8)</p>	<p>Title lenders arrange loans secured by motor vehicles, mobile homes and motorboats, but does not include sale of vehicles.</p> <p>No title loans may be made without registration.</p> <p>Registration fee, \$300</p>	<p>Utah law is very protective of lawful contracts between parties, and thus, no usury limit exists. “With a few exceptions, it is still axiomatic in contract law that ‘persons dealing at arm’s length are entitled to contract on their own terms without intervention of the course for the purpose of relieving one side or the other from the effects of a bad bargain.</p> <p><i>Blesinger v. Behunin</i>, 584 P.2d 801 (Utah 1978). “Parties to a lawful contract may agree upon any rate of interest for the loan or forbearance of any money goods, or chose in action that is the subject of their contract. UCA § 15-1-1.</p>
Vermont	Lender License	§ 2201	<p>Commercial lenders and sales finance companies must obtain a license. Exceptions include (i) banks, (ii) lenders making only commercial loans of \$1,000,000 or more, and (iii) lenders who loan an aggregate of less than \$50,000 in</p>	<p>Licensing statute does not apply to “commercial leases,” defined as true leases and leases for security (finance leases). (8 V.S.A. § 2239; 9 V.S.A. §§ 2351(16) and 2401(20)).</p>

State	License Requirement	Statutory Reference	Overview	Special Considerations/Notes
VT cont'd			any one year at rates of interest of 12% per annum or less. Commercial lenders must also post surety bond of \$100,000. (8 V.S.A. § 2203).	
Virginia				Va. Code Ann. §6.1-330.77 – Document fee permitted for “sellers of goods” and will not be included in finance charge.
Washington	Washington Consumer Loan Act	RCWA § 31.04.035 § 31.04.045 § 31.04.085 § 31.04.145	All entities must have a license to make secured or unsecured loans. Licensee must hold a bond in favor of the state. Licensee pays an annual assessment, due 3/1. Assessment is determined by the Director. Director to make periodic investigations of licensee's files, books and licensee to pay costs.	
West Virginia	Direct Leasing by Banks	§ 31A-4-38	Banking institutions may acquire and lease personal property pursuant to leases in which the aggregate rentals will exceed a reasonable estimate of the total expenditures made in connection with the acquisition, ownership, maintenance and protection of the property	Division of Motor Vehicle Lessor License required to title units §46A-4-1-1
Wisconsin	Motor Vehicle Sales Finance License	WI Statutes §§218.0101 to 218.0163	A license is required for any sales finance company to engage in business in Wisconsin.	License requires \$25k bond or irrevocable LOC SBA lender in Wisconsin must be licensed (224.90)
Wyoming				
Puerto Rico	Sales Finance License	7 L.P.R.A. §§ 1071 et. Seq.	Required for all loan transactions	

MOTOR VEHICLE DEALER INSTALLMENT SALE DISCLOSURES

Barry S. Marks
Baker, Donelson, Bearman, Caldwell & Berkowitz, P.C.
Phone: (205) 250-8333
bmarks@bakerdonelson.com

PLEASE NOTE: THE MATERIALS ASSEMBLED BELOW ARE THE RESULT OF A NECESSARILY CURSORY REVIEW OF STATUTORY LAWS IN 50 STATES. THE WRITER SUGGESTS THAT COUNSEL THOROUGHLY REVIEW PRECEDENT, REGULATIONS, AND INTERPRETATIONS, AS WELL AS ADDITIONAL STATUTORY MATERIALS BEFORE PROCEEDING IN ANY STATE.

Some 16 states have laws regulating installment sales of motor vehicles in non-consumer transactions. Many of these statutes are uniform in wording and require similar disclosures. An outline of the required disclosures and a suggested form of disclosure addendum are attached.

Although the statutes on their face apply only to sales by motor vehicle dealers, they should be considered when purchasing dealer paper and, possibly, in third party financings.

<u>State</u>	<u>Legal Authority</u>	<u>Disclosure Language</u>
Alaska	Alaska Stat. § 45.25.610	Alaska requires that a motor vehicle sales contract be in writing, signed by the parties and completed as to all essential provisions before the buyer signs the contract and the seller delivers the vehicle to the buyer.
Arizona	Ariz. Rev. Stat. § 44-287	See Disclosure Form; Note that in lieu of the notice provision set forth in the disclosure form, AZ requires a notice adjacent to the signature line in bold faced type setting forth the telephone number and address of the department of financial institutions and any complaints concerning the contract may be addressed to the department of financial institutions.
Arkansas	Ark. Code § 23-112-315	If a motor vehicle dealer charges a documentary fee for services rendered on behalf of purchaser in preparing, handling, and processing documents relating to, and closing a retail installment transacting, involving a new motor vehicle, the fee must be disclosed on the buyer's order form as a separate itemized charge and the following notice: "A DOCUMENTARY FEE IS NOT

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		AN OFFICIAL FEE. A DOCUMENTARY FEE IS NOT REQUIRED BY LAW, BUT MAY BE CHARGED TO BUYERS FOR HANDLING DOCUMENTS AND PERFORMING SERVICES RELATING TO THE COSING OF A SALE. THIS NOTICE IS REQUIRED BY LAW.”
Delaware	5 Del. Code. § 2907	See Disclosure Form; Note that Delaware requires only the first sentence of the notice provision in the Disclosure Form. Also, note that any acknowledgement in the contract that buyer has received delivery of a copy of the contract must be in at least 10 point bold type and appear directly above buyer’s signature.
Maryland	MD. Code § 12-606, COM. LAW.	See Disclosure Form. Note that MY requires the required disclosures to be made in a particular order.
Minnesota	Minn. Stat. Ann. § 168.71; § 168.72	See Disclosure Form.
Mississippi	Miss. Code Ann. § 63-19-3; § 63-19-31	See Disclosure Form; Note that in lieu of the notice provision set forth in the disclosure form, MS installment contracts must include language similar to the New Mexico notice provision set forth below.
New Hampshire	N.H. Rev. Stat. Ann. § 361-A: 7	See Disclosure Form; Note that in lieu of the notice provision set forth in the disclosure form, NH installment contracts must include language similar to the New Mexico notice provision set forth below.
New Mexico	N.M. Stat. Ann. § 58-19-7	See Disclosure Form; Note that in lieu of the notice provision set forth in the disclosure form, NM installment contracts must include a the following language in 12 point above the buyer’s signature: “1. DO NOT SIGN THIS CONTRACT BEFORE YOU READ IT OR IF IT CONTAINS ANY BLANK SPACES. 2. YOU ARE ENTITLED

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		TO AN EXACT COPY OF THE CONTRACT YOU SIGN. LIABILITY INSURANCE FOR BODILY INJURY CAUSES TO YOURSELF OR TO OTHERS OR PROPERTY DAMAGE CAUSED TO OTHERS IS NOT PROVIDED WITH THIS AGREEMENT. IF YOU DESIRE LIABILITY INSURANCE COVERAGE, YOU SHOULD OBTAIN SUCH COVERAGE FROM AN AGENT OF YOUR CHOICE.”
New York	N.Y. Law § 302	See Disclosure Form; Note that in addition to the notice provision set forth in the disclosure form, NY installment contracts must also include a reference to certain remedies and insurance in the notice provision.
North Carolina	N.C. Gen. Stat. § 20-303	Prior to delivery of the motor vehicle, the seller must deliver to the buyer a written statement describing clearly the motor vehicle sold to buyer, the cash sale price thereof, the cash paid down by the buyer, the amount credited the buyer for any trade-in and a description of the trade-in, the amount of the finance charge, the amount of any other charge specifying its purpose, the net balance due from the buyer, the terms of the payment of such net balance and a summary of any insurance protection to be effected.
Ohio	Ohio Rev. Code Ann. § 4517.26	Applies to every retail and wholesale motor vehicle financing. Requires the contract to include: description of motor vehicle, including VIN number and mileage; sale price, amount paid down by buyer; amount credited to buyer for trade-in and description of trade-in; amount of finance charge; amount charged for any insurance; statement of types of insurance provided by policy; amount of any other charge and a specification of its purpose; net balance due from the buyer; and the

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		terms of payment of the net balance.
Oregon	OR. Rev. Stat. § 83.520	Must include the following notice: "Do not sign this contract before you have read it or if it contains any blank space, except that, (1) If delivery of the motor vehicle or mobile home is to be made to you after this contract is signed, the serial number or other identifying information and the due date of the first installment may be filled in at time of delivery; and (2) if the name of the financing agency is not known at the time the contract is executed, the name of the financing agent may be inserted in the contract on or about the date the name of the financing agency is owned. You are entitled to a copy of this contract. You have the right to pay off in advance the full amount due and to obtain a partial refund of the finance charge"
Pennsylvania	69 PA. Cons. Stat. § 614	<u>See Disclosure Form</u>
Texas	Tex. Finance Code Ann. § 345.102 FIN.	<u>See Disclosure Form</u>
Wisconsin	Wis. Stat. § 218.0142	<u>See Disclosure Form.</u> Note that this Section does not apply to a retail installment sale of a motor vehicle made on or after November 1, 1981, if the motor vehicle is to be used primarily for business or commercial purposes. Also note that this provision does not require a notice section.

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Disclosure Language Form¹

- (1) the words “RETAIL INSTALLMENT CONTRACT” at the top of the contract and directly above the space reserved for signature of the buyer;
- (2) the name of the seller and the buyer;
- (3) the place of business or address of the seller and the residence or other address of the buyer;
- (4) the date when signed by the buyer;
- (5) a description of the motor vehicle being sold;
- (6) the cash price of the retail installment transaction;
- (7) the amount of any down payment by the buyer, specifying the amounts paid in money and in goods traded in;
- (8) a description of any trade-in;
- (9) the amount financed, which may include the cost of insurance and sales and use taxes;
- (10) the amount of the finance charge;
- (11) any other itemized charges, including, but not limited to, charges for service contracts, delivery, installation, warranties and any official fees charged to the buyer which seller expects to be paid to a public official for filing or recording the contract or securing or evidencing buyer’s obligation;
- (12) the total of payments due from the buyer
- (13) terms of payment of the payments due from buyer;
- (14) amount and date of each payment necessary to pay the total;
- (15) a description of any additional collateral;

¹ Note that this form is a summary of the most commonly required disclosures and is meant only as an example. Please refer to the cited statutes for the exact requirements of each state.

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(16) a summary of any insurance coverage to be effected and a specific statement that liability insurance coverage for bodily injury and property damage caused to others is not included, if that is the case;

(17) the method by which any variable contract rate is computed;

(18) a notice in at least 12-point type that is bold-faced, capitalized or underlined or otherwise conspicuously set out from the surrounding written material and placed directly above the space reserved for the signature of the buyer:

“NOTICE TO THE BUYER—DO NOT SIGN THIS CONTRACT BEFORE YOU READ IT OR IF IT CONTAINS ANY BLANK SPACES. YOU ARE ENTITLED TO A COPY OF THE CONTRACT YOU SIGN. UNDER THE LAW YOU HAVE THE RIGHT TO PAY OFF IN ADVANCE THE FULL AMOUNT DUE AND UNDER CERTAIN CONDITIONS MAY OBTAIN A PARTIAL REFUND OF THE FINANCE CHARGE, TO REDEEM THE PROPERTY IF REPOSSESSED FOR A DEFAULT AND TO REQUIRE, UNDER CERTAIN CONDITIONS, A RESALE OF THE PROPERTY IF REPOSSESSED. KEEP THIS CONTRACT TO PROTECT YOUR LEGAL RIGHTS.”

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RETAIL INSTALLMENT CONTRACT

DISCLOSURE ADDENDUM

Purchase Price:	Base Purchase Price:	\$ _____
	Delivery:	\$ _____
	Taxes:	\$ _____
	Service Contracts:	\$ _____
	Warranties:	\$ _____
	Any other charges:	\$ _____

TOTAL: \$ _____

Amount of any down payment:	Cash:	\$ _____
	Value of Trade-in:	\$ _____

Description of any trade-in: _____

Amount Financed:	Balance of Purchase Price:	\$ _____
	Insurance:	\$ _____
	Taxes:	\$ _____
	Interest:	\$ _____
	Finance Charge:	\$ _____
	Any other charges:	\$ _____

TOTAL: \$ _____

Notice:

“NOTICE TO THE BUYER—DO NOT SIGN THIS CONTRACT BEFORE YOU READ IT OR IF IT CONTAINS ANY BLANK SPACES. YOU ARE ENTITLED TO A COPY OF THE CONTRACT YOU SIGN. UNDER THE LAW YOU HAVE THE RIGHT TO PAY OFF IN ADVANCE THE FULL AMOUNT DUE AND UNDER CERTAIN CONDITIONS MAY OBTAIN A PARTIAL REFUND OF THE FINANCE CHARGE, TO REDEEM THE PROPERTY IF REPOSSESSED FOR A DEFAULT AND TO REQUIRE, UNDER CERTAIN CONDITONS, A RESALE OF THE PROPERTY IF REPOSSESSED. KEEP THIS CONTRACT TO PROTECT YOUR LEGAL RIGHTS.”