

Segment 3 - 07/12/21

Hawaii, Idaho, Illinois, Indiana and Iowa)

11. HAWAII: Duty bound by my obsession with accuracy, I felt it critical to actually visit this beautiful state to ensure that I had a thorough understanding of the cultural implications upon its statutory framework, one centered on principles of Aloha `āina, commonly translated as "love of the land." I discovered was that "love of the land" does not necessarily translate to "love of the lender." Here's what I learned:

Much to my surprise, a nondepository financial institution must have a license to engage in commercial lending in the State of Hawaii.

Hawaii Code of Financial Institutions Chapter 412:9-101 (2013). That exempts most federal and state-chartered banks, savings and loan companies, credit unions, and the like, but would appear to require a license to lend or broker loans if you don't fall within one of those exempt categories.

<https://law.justia.com/codes/hawaii/2019/title-22/chapter-412/section-412-9-101/>

The requirements for filing an application are set forth in *Hawaii Code of Financial Institutions Chapter 412:3-301 (2013).*

https://files.hawaii.gov/dcca/dfi/Laws_html/HRS0412/HRS_0412-0003-0301.htm

Here is a link to the form. Note that the investigation fee for an Application for Nondepository Financial Services Loan Companies is \$10,000!

https://cca.hawaii.gov/dfi/files/2020/02/DFI_Form_412-3-301_FSLC_Appln_Rev_09-2007-1-Fill-11.pdf

There is also a surprising requirement that a nondepository loan company maintain paid-in capital of not less than \$500,000! The paid in capital shall be in money!! *Hawaii Code of Financial Institutions Chapter 412:3-306 (1996).* And you thought California was rough.

<https://law.justia.com/codes/hawaii/2019/title-22/chapter-412/section-412-3-306/>

Finally, a person who commits a violation of the rules governing nondepository lenders may be subjected to serious penalties of up to \$100,000 a day.

<https://law.justia.com/codes/hawaii/2019/title-22/chapter-412/section-412-2-609-5/>

For a state known for its laid-back people and welcoming climate, these are certainly not welcome laws for lenders. In fact, I was somewhat shocked to find these laws, after quite a time-consuming search through the Hawaii statutes. Perhaps that is why there are so few Nondepository lenders in Hawaii. If anyone has any information that is contrary to my interpretation of those statutes, please let me know so I can revisit the issue. And Hawaii. In the meantime, we will move to the next state.

12. IDAHO: Commercial lenders and brokers do not need a license. Consumer lenders, including certain mortgage brokers, are governed by the Idaho Credit Code, which requires a "Regulated Lender License". Payday lenders need a special "Payday Lender License", though this type of loan is not illegal, although they are in many states (27 at last count).

<https://www.csbs.org/sites/default/files/2020-02/Idaho%20Final.pdf>

Loan brokers may not, directly or indirectly, receive a fee or any other compensation until a loan is made or a written commitment to loan or extend credit is made by an exempt person or entity. *Idaho Title 26, Chapter 25, §26-2503 (1992).* Violation of this law is a felony! *Idaho Title 26, Chapter 25, §26-2506 (1981).*

<https://legislature.idaho.gov/wp-content/uploads/statutesrules/idstat/Title26/T26CH25.pdf>

My advices, if you want to help the Idaho economy, don't take advance fees until you have a written commitment. Instead, just buy their wonderful potatoes.

13. ILLINOIS: Consumer lenders need to be licensed under the *Consumer Installment Loan Act 205 ILCS 670*. The Act does not apply to business loans. *205 ILCS 670/21.*

As a general rule, loan brokers do need to be licensed. *Illinois Loan Brokers Act of 1995 ILCS 175. (1996)*. There is an exemption, however, for “any person whose fee is wholly contingent on the successful procurement of a loan from a third party and to whom no fee, other than a *bona fide* third-party fee, is paid before the procurement.” *ILCS 175/15-80(a)(5) (2017)*.

“*Bona fide* third-party fee” includes fees for credit reports, appraisals and investigations and, if the loan is to be secured by real property, title examinations, an abstract of title, title insurance, a property survey and similar purposes. *ILCS 175/15-80(b) (2017)*. If you do qualify for this exemption, you will want to make sure you conform to the statutory guidelines as the penalties for failing to do so can be steep (up to \$10,000 for each violation). *ILCS 175/15-55 (1997)*. In addition, willful violation of these laws is a Class 4 felony. *ILCS 175/15-65 (1996)*.

ILLINOIS LOAN BROKERS ACT OF 1995:

<https://ilga.gov/legislation/ilcs/ilcs5.asp?ActID=2319&ChapterID=67>

14. INDIANA: Consumer lenders need to be licensed under the Uniform Indiana Consumer Credit Code. *IUCCC, Ind. Code. §24-4.5-2-201 (2017)*. Indiana may indeed want you, but you can’t go back there if you make an unsupervised consumer loan under \$50,000 with an interest rate that exceeds 21% (apologies to R. Dean Taylor), since a person who charges excessive interest is guilty of a misdemeanor. That’s not how you want to be wanted!

15. IOWA: Under the *Iowa Regulated Loan Act*, registration is required of any company or sole proprietorship that makes “supervised loans” to Iowa residents. *Iowa Code Chapter 536.1 (2014)* Companies making, servicing or brokering business purpose loans, or companies that are “supervised financial organizations” do not need to register. *Iowa Code Chapter 537.1301 (2021)*.

“Supervised loans” are consumer loans in which the interest rate is calculated according to a fairly complex actuarial method. It would be impossible to dig any deeper into the statute in this article, but here it is for your reading pleasure.

IOWA MONEY AND INTEREST: Iowa Code Chapter 535

<https://www.legis.iowa.gov/docs/code//535.pdf>

“Supervised financial organizations” are defined as “a person, other than an insurance company or other organization primarily engaged in an insurance business . . . or pursuant to the laws of any other state or of the

United States which authorizes the person to make loans and to receive deposits, including a savings, share, certificate or deposit account, and which is subject to supervision by an official or agency of this state, such other state, or of the United States." This is probably inapplicable to any non-bank lender, but the "business purpose" exemption is helpful for anyone who is not a bank.

IOWA CONSUMER CREDIT CODE: Iowa Code Chapter 537.1301(45)

<https://www.legis.iowa.gov/DOCS/ACO/IC/LINC/Section.537.1301.pdf>

In addition, companies, including sole proprietorships, who enter into less than ten supervised loans per year in Iowa and have neither an office physically located in Iowa nor engage in face-to-face solicitation in Iowa does not need to register.

The bottom line is that under certain circumstances, namely smaller transactions, you might need a license to be a lender or broker in Iowa. But if you do mainly larger transactions (more than \$58,300, as of 2020), or you do make fewer than ten transactions a year, you won't need to register.

One other noteworthy item: a loan broker may not assess or collect an advance fee until the broker successfully procures a loan for the borrower. *Iowa Code Chapter 535C.2A (2021)*. Violation of this law is a "serious misdemeanor". *Iowa Code Chapter 535C.6 (2021)*. If you're fined, you might find yourself thinking "Iowa lot of money to Iowa". Best to avoid that!

IOWA LOAN BROKERS LAW

<https://www.legis.iowa.gov/docs/ico/chapter/535C.pdf>