

INSTALLMENT LOANS

WILL STATES PROTECT BORROWERS FROM
A NEW WAVE OF PREDATORY LENDING?

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APPENDIX E

UNCONSCIONABILITY PROVISIONS OF
STATE CLOSED-END INSTALLMENT LOAN LAWS

This appendix includes the full text of the unconscionability prohibitions of state closed-end installment loan laws. It does not include the unconscionability prohibitions found in other state laws, such as state deceptive practices statutes. The provisions in this appendix are up-to-date as of early 2015.

CITATION	APPLIES TO	FULL TEXT
Ala. Code § 5-19-16	contract or any provision of it	With respect to a consumer credit transaction, if the court as a matter of law finds the contract or any provision of the contract to have been unconscionable at the time it was made, the court may refuse to enforce the contract, or it may enforce the remainder of the contract without the unconscionable provision, or it may so limit the application of any unconscionable provision as to avoid any unconscionable result.
Cal. Civil Code § 1670.5(a)	contract or any clause	If the court as a matter of law finds the contract or any clause of the contract to have been unconscionable at the time it was made the court may refuse to enforce the contract, or it may enforce the remainder of the contract without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result. <i>See also</i> Cal. Fin. Code § 22302 (stating that this provision applies to loans subject to Finance Lenders Law).

CITATION	APPLIES TO	FULL TEXT
Colo. Rev. Stat. Ann. § 5-5-109(1),	“the transaction”; any term or part of the agreement or transaction. However, for loans made under Deferred Deposit Loan Act, if lender complies with requirements addressing ability to repay, and the loan otherwise complies with this and other applicable law, neither the consumer’s inability to repay nor the lender’s decision to obtain or not obtain additional information concerning the consumer’s creditworthiness shall be cause to determine that a loan is unconscionable. § 5-3.1-122(4).	(1) With respect to a transaction that is, gives rise to, or leads the consumer to believe will give rise to a consumer credit transaction, if the court as a matter of law finds: (a) The agreement or transaction to have been unconscionable at the time it was made, or to have been induced by unconscionable conduct, the court may refuse to enforce the agreement; or (b) Any term or part of the agreement or transaction to have been unconscionable at the time it was made, the court may refuse to enforce the agreement, enforce the remainder of the agreement without the unconscionable term or part, or so limit the application of any unconscionable term or part as to avoid any unconscionable result.
Idaho Code § 28-45-106(1), (3)	the agreement or any clause, but a charge or practice permitted by the Act is not in itself unconscionable	(1) With respect to a regulated consumer credit sale, or regulated consumer loan, if the court as a matter of law finds the agreement or any clause of the agreement to have been unconscionable at the time it was made the court may refuse to enforce the agreement, or it may enforce the remainder of the agreement without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result. ... (3) For the purpose of this section, a charge or practice expressly permitted by this act is not in itself unconscionable.
Ind. Code § 24-4.5-5-108	the agreement or any clause, but a charge or practice expressly permitted by the statute is not in itself unconscionable	(1) With respect to a consumer credit sale, consumer lease, or consumer loan, if the court as a matter of law finds the agreement or any clause of the agreement to have been unconscionable at the time it was made the court may refuse to enforce the agreement, or it may enforce the remainder of the agreement without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result. ... (3) For the purpose of this section, a charge or practice expressly permitted by this Article is not in itself unconscionable.
Iowa Code § 537.5108 (1), (4), (8)	the agreement or transaction, or any term or part of it. Statute specifies factors to consider. Charge or practice expressly permitted by the statute is not unconscionable.	1. With respect to a transaction that is, gives rise to, or leads the debtor to believe it will give rise to a consumer credit transaction, in an action other than a class action, if the court as a matter of law finds the agreement or transaction to have been unconscionable at the time it was made, or to have been induced by unconscionable conduct, the court may refuse to enforce the agreement, or if the court finds any term or part of the agreement or transaction to have been unconscionable at the time it was made, the court may refuse to enforce the agreement, or may enforce the remainder of the agreement without the unconscionable term or part, or may so limit the application of any unconscionable term or part as to avoid any unconscionable result. ...

CITATION	APPLIES TO	FULL TEXT
		<p>4. In applying subsection 1, consideration shall be given to each of the following factors, among others, as applicable:</p> <p>a. Belief by the seller, lessor, or lender at the time a transaction is entered into that there is no reasonable probability of payment in full of the obligation by the consumer or debtor. However, the rental renewals necessary to acquire ownership in a consumer rental purchase agreement shall not be construed to be the obligation contemplated in this subsection if the consumer may terminate the agreement without penalty at any time. As used in this paragraph, “obligation” means the initial periodic lease payments and any other additional advance payments required at the consummation of the transaction.</p> <p>b. In the case of a consumer credit sale, consumer lease, or consumer rental purchase agreement, knowledge by the seller or lessor at the time of the sale or lease of the inability of the consumer to receive substantial benefits from the property or services sold or leased.</p> <p>c. In the case of a consumer credit sale, consumer lease, or consumer rental purchase agreement, gross disparity between the price of the property or services sold or leased and the value of the property or services measured by the price at which similar property or services are readily obtainable in consumer credit transactions by like consumers.</p> <p>d. The fact that the creditor contracted for or received separate charges for insurance with respect to a consumer credit sale or consumer loan with the effect of making the sale or loan, considered as a whole, unconscionable.</p> <p>e. The fact that the seller, lessor or lender has knowingly taken advantage of the inability of the consumer or debtor reasonably to protect the consumer’s or debtor’s interests by reason of physical or mental infirmities, ignorance, illiteracy or inability to understand the language of the agreement, or similar factors.</p> <p>f. The fact that the seller, lessor or lender has engaged in conduct with knowledge or reason to know that like conduct has been restrained or enjoined by a court in a civil action by the administrator against any person pursuant to the provisions on injunctions against fraudulent or unconscionable agreements or conduct in section 537.6111.</p> <p>...</p> <p>8. For the purpose of this section, a charge or practice expressly permitted by this chapter is not in itself unconscionable.</p>
<p>Kan. Stat. Ann. § 16a-5-108(1), (3)</p>	<p>the agreement or any clause, but a charge or practice expressly permitted by the statute is not unconscionable</p>	<p>(1) With respect to a consumer credit transaction, if the trier of fact finds:</p> <p>(a) The agreement to have been unconscionable at the time it was made, or to have been induced by unconscionable conduct, the court may refuse to enforce the agreement; or</p> <p>(b) any clause of the agreement to have been unconscionable at the time it was made, the court may refuse to enforce the agreement, or may enforce the remainder of the agreement without the unconscionable clause, or may so limit the application of any unconscionable clause as to avoid any unconscionable result.</p> <p>...</p> <p>(3) For the purpose of this section, a charge or practice expressly permitted by this act is not unconscionable.</p>

CITATION	APPLIES TO	FULL TEXT
La. Stat. Ann. § 9:3551	the agreement or any clause, but agreement, charge, clause or practice that is expressly permitted or “necessarily implied” as being permitted is not unconscionable	With respect to a consumer credit transaction, if the court as a matter of law finds the agreement or any clause of the agreement to have been unconscionable at any time it was made the court may refuse to enforce the agreement, or it may enforce the remainder of the agreement without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result; provided, however, for the purposes of this chapter, an agreement, clause, charge or practice expressly permitted by this chapter or any other law or regulation of this state or of the United States or subdivision of either, or an agreement, clause, charge or practice necessarily implied as being permitted by this chapter or any other law or regulation of this state or the United States or any subdivision of either is not unconscionable.
Me. Rev. Stat. Ann. tit. 9-A, § 5-108(1), (3)	agreement or any clause, but change [sic] or practice expressly permitted is not in and of itself unconscionable in the absence of other practices and circumstances	<p>1. With respect to a consumer credit transaction, if the court as a matter of law finds:</p> <p>A. The agreement to have been unconscionable at the time it was made, or to have been induced by unconscionable conduct, the court may refuse to enforce the agreement; or</p> <p>B. Any clause of the agreement to have been unconscionable at the time it was made, the court may refuse to enforce the agreement, or may enforce the remainder of the agreement without the unconscionable clause, or may so limit the application of any unconscionable clause as to avoid any unconscionable result.</p> <p>...</p> <p>3. For the purpose of this section, a change or practice expressly permitted by this Act is not in and of itself unconscionable in the absence of other practices and circumstances.</p>
Okla. Stat. Ann. tit. 14A, § 5-108(1), (3)	the agreement or any clause, but a charge or practice expressly permitted by the statute is not in itself unconscionable	<p>1) With respect to a consumer credit sale, consumer lease, or consumer loan, if the court as a matter of law finds the agreement or any clause of the agreement to have been unconscionable at the time it was made the court may refuse to enforce the agreement, or it may enforce the remainder of the agreement without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result.</p> <p>...</p> <p>(3) For the purposes of this section, a charge or practice expressly permitted by this act is not in itself unconscionable.</p>

CITATION	APPLIES TO	FULL TEXT
S.C. Code § 37-5-108(1), (4), (8), (9)	the agreement or transaction, or any term or part of it; specifies factors to consider; charge or practice expressly permitted by the statute is not in itself unconscionable, but prepaid charge that substantially exceeds usual and customary charge may be found unconscionable.	<p>(1) With respect to a transaction that is, gives rise to, or leads the debtor to believe will give rise to, a consumer credit transaction, if the court as a matter of law finds:</p> <p>(a) the agreement or transaction to have been unconscionable at the time it was made, or to have been induced by unconscionable conduct, the court may refuse to enforce the agreement; or</p> <p>(b) any term or part of the agreement or transaction to have been unconscionable at the time it was made, the court may refuse to enforce the agreement, enforce the remainder of the agreement without the unconscionable term or part, or so limit the application of any unconscionable term or part as to avoid any unconscionable result and award the consumer any actual damages he has sustained.</p> <p>...</p> <p>(4)(a) In applying subsection (1), consideration must be given to applicable factors, such as, but without limitation:</p> <p>(i) in the case of a consumer credit sale, consumer lease, or consumer rental-purchase agreement, knowledge by the seller or lessor at the time of the sale or lease of the inability of the consumer to receive substantial benefits from the property or services sold or leased;</p> <p>(ii) in the case of a consumer credit sale, consumer lease, consumer rental-purchase agreement, or consumer loan, gross disparity between the price of the property or services sold, leased, or loaned and the value of the property, services, or loan measured by the price at which similar property, services, or loans are readily obtainable in consumer credit transactions by like consumers;</p> <p>(iii) the fact that the creditor contracted for or received separate charges for insurance with respect to a consumer credit sale, consumer loan, or consumer rental-purchase agreement with the effect of making the sale or loan unconscionable, considered as a whole, when including the sale of insurance from which the consumer receives no potential benefit as referenced in Section 37-4-106(1)(a);</p> <p>(iv) the fact that the seller, lessor, or lender knowingly has taken advantage of the inability of the consumer or debtor reasonably to protect his interests by reason of physical or mental infirmities, ignorance, illiteracy, inability to understand the language of the agreement, or similar factors;</p> <p>(v) taking a nonpurchase money, nonpossessory security interest in household goods defined as the following: clothing, furniture, appliances, one radio and one television, linens, china, crockery, kitchenware, and personal effects, including wedding rings of the consumer and his dependents; except that when a purchase money consumer credit transaction is refinanced or consolidated, the security lawfully collateralizing the previous consumer credit transaction continues to secure the new consumer credit transaction, even if the new consumer credit transaction is for a larger amount or is in other respects a nonpurchase money consumer credit transaction; and further, that a nonpurchase money, nonpossessory security interest may be taken in a work of art, electronic entertainment equipment, except one television and one radio, items acquired as antiques and which are over one hundred years of age, and jewelry, except wedding rings.</p>

CITATION	APPLIES TO	FULL TEXT
		<p>In construing subitem (v), the courts must be guided by the interpretations and rulings of the federal courts and the Federal Trade Commission to the Credit Trade Regulation Rule (16 C.F.R. PART 444).</p> <p>(b) In applying subsection (1), consideration may be given to the extension of credit to a consumer if, considering the consumer's current and expected income, current obligations, and employment status, the creditor knows or should know that the consumer is unable to make the scheduled payment on the obligation when due. Rental renewals necessary to acquire ownership in a consumer rental-purchase agreement are not obligations contemplated in this item (b).</p> <p>...</p> <p>(8) For the purpose of this section, a charge or practice expressly permitted by this title is not in itself unconscionable.</p> <p>(9) Nothing in this title may be construed to prevent a finding of unconscionability where a creditor assesses an origination charge, prepaid finance charge, service, or other prepaid charge which substantially exceeds the usual and customary charge for the particular type of consumer credit transaction. In such a transaction the court shall consider the relative sophistication of the debtor and the creditor, the relative bargaining power of the debtor and creditor, and any oral or written representations made by the creditor regarding the credit service charge or the loan finance charge of the consumer credit transaction.</p>
Utah Code Ann. § 70C-7106(1), (3)	the agreement or any part of it, but charge or practice expressly permitted by the statute is not in itself unconscionable	<p>(1) With respect to a consumer credit agreement, if the court finds the agreement or any part of the agreement to have been unconscionable at the time it was made, the court may refuse to enforce the agreement, or it may enforce the remainder of the agreement without the unconscionable clause if that will avoid any unconscionable result.</p> <p>...</p> <p>(3) For the purposes of this section, a charge or practice expressly permitted by this title is not in itself unconscionable.</p>
W. Va. Code § 46A-2-121(1), (3)	the agreement or any term or part of it, but a charge or practice expressly permitted by the statute is not unconscionable.	<p>(1) With respect to a transaction which is or gives rise to a consumer credit sale, consumer lease or consumer loan, if the court as a matter of law finds:</p> <p>(a) The agreement or transaction to have been unconscionable at the time it was made, or to have been induced by unconscionable conduct, the court may refuse to enforce the agreement, or</p> <p>(b) Any term or part of the agreement or transaction to have been unconscionable at the time it was made, the court may refuse to enforce the agreement, or may enforce the remainder of the agreement without the unconscionable term or part, or may so limit the application of any unconscionable term or part as to avoid any unconscionable result.</p> <p>...</p> <p>(3) For the purpose of this section, a charge or practice expressly permitted by this chapter is not unconscionable.</p>

CITATION	APPLIES TO	FULL TEXT
Wis. Stat. Ann. § 425.107 (1)-(4)	any aspect of the transaction, any conduct directed against the customer by a party to the transaction, or any result of the transaction; lists factors; charge or practice that is expressly permitted by the statute is not in itself unconscionable, but the totality of a creditor's conduct may show that such practice or charge is part of an unconscionable course of conduct.	<p>(1) With respect to a consumer credit transaction, if the court as a matter of law finds that any aspect of the transaction, any conduct directed against the customer by a party to the transaction, or any result of the transaction is unconscionable, the court shall, in addition to the remedy and penalty authorized in sub. (5), either refuse to enforce the transaction against the customer, or so limit the application of any unconscionable aspect or conduct to avoid any unconscionable result.</p> <p>(2) Specific practices forbidden by the administrator in rules promulgated pursuant to <u>s. 426.108</u> shall be presumed to be unconscionable.</p> <p>(3) Without limiting the scope of sub. (1), the court may consider, among other things, the following as pertinent to the issue of unconscionability:</p> <ul style="list-style-type: none"> (a) That the practice unfairly takes advantage of the lack of knowledge, ability, experience or capacity of customers; (b) That those engaging in the practice know of the inability of customers to receive benefits properly anticipated from the goods or services involved; (c) That there exists a gross disparity between the price of goods or services and their value as measured by the price at which similar goods or services are readily obtainable by other customers, or by other tests of true value; (d) That the practice may enable merchants to take advantage of the inability of customers reasonably to protect their interests by reason of physical or mental infirmities, illiteracy or inability to understand the language of the agreement, ignorance or lack of education or similar factors; (e) That the terms of the transaction require customers to waive legal rights; (f) That the terms of the transaction require customers to unreasonably jeopardize money or property beyond the money or property immediately at issue in the transaction; (g) That the natural effect of the practice would reasonably cause or aid in causing customers to misunderstand the true nature of the transaction or their rights and duties thereunder; (h) That the writing purporting to evidence the obligation of the customer in the transaction contains terms or provisions or authorizes practices prohibited by law; and (i) Definitions of unconscionability in statutes, regulations, rulings and decisions of legislative, administrative or judicial bodies. <p>(4) Any charge or practice expressly permitted by chs. 421 to 427 and 429 is not in itself unconscionable but even though a practice or charge is authorized by chs. 421 to 427 and 429, the totality of a creditor's conduct may show that such practice or charge is part of an unconscionable course of conduct.</p>

CITATION	APPLIES TO	FULL TEXT
Wyo. Stat. Ann. § 40-14-508	the agreement or any clause, but a charge or practice expressly permitted by the statute is not in itself unconscionable	<p>(a) With respect to a consumer credit sale, consumer lease, or consumer loan, if the court as a matter of law finds the agreement or any clause of the agreement to have been unconscionable at the time it was made the court may refuse to enforce the agreement, or it may enforce the remainder of the agreement without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result.</p> <p>...</p> <p>(c) For the purpose of this section, a charge or practice expressly permitted by this act is not in itself unconscionable.</p>

Notes: Chart does not include provisions similar to unconscionability, e.g. a requirement that certain charges be “reasonable.”