

537.1301 General definitions.

As used in this chapter, unless otherwise required by the context:

1. *"Actuarial method"* means the method of allocating payments made on a debt between the amount financed and the finance charge, pursuant to which a payment is applied first to the accumulated finance charge and any remainder is subtracted from, or any deficiency is added to, the unpaid balance of the amount financed. The administrator may adopt rules not inconsistent with the Truth in Lending Act further defining the term and prescribing its application.
2. *"Administrator"* means the administrator designated in section 537.6103.
3. *"Affiliate"* as used in reference to a state bank means the same as defined in section 524.1101. *"Affiliate"* as used in reference to a national banking association means the same as defined in section 524.1101, except that the term "national banking association" shall be substituted for the term "state bank". *"Affiliate"* as used in reference to a savings and loan association shall mean the same as defined in 12 C.F.R. § 561.4.
4. *"Agreement"* means the oral or written bargain of the parties in fact as found in their language or by implication from other circumstances including course of dealing or usage of trade or course of performance.
5. *"Amount financed"* means:
 - a. In the case of a sale, the cash price of the goods, services, or interest in land, plus the amount actually paid or to be paid by the seller pursuant to an agreement with the buyer to discharge a security interest in, a lien on, or a debt with respect to property traded in, less the amount of any down payment whether made in cash or in property traded in, plus additional charges if permitted under paragraph "c".
 - b. In the case of a loan, the net amount paid to, receivable by, or paid or payable for the account of the debtor, plus the amount of any discount excluded from the finance charge under subsection 21, paragraph "b", subparagraph (3), plus additional charges if permitted under paragraph "c" of this subsection.
 - c. In the case of a sale or loan, additional charges permitted under section 537.2501, to the extent that payment is deferred, that the charge is not otherwise included, in the amount permitted respectively in paragraph "a" or "b", and that the charge is authorized by and disclosed to the consumer as required by law.
6. *"Billing cycle"* means the time interval between periodic billing statement dates.
7. *"Card issuer"* means a person who issues a credit card.
8. *"Cardholder"* means a person to whom a credit card is issued or who has agreed with the card issuer to pay obligations arising from the issuance or use of the card to or by another person.
9. *"Cash price"* of goods, services, or an interest in land means, except in the case of a consumer rental purchase agreement, the price at which they are sold by the seller to cash buyers in the ordinary course of business, and may include the cash price of accessories or services related to the sale, such as delivery, installation, alterations, modifications, and improvements, and taxes to the extent imposed on a cash sale of the goods, services, or interest in land.
10. *Conspicuous.* A term or clause is conspicuous when it is so written that a reasonable person against whom it is to operate ought to have noticed it. Whether or not a term or clause is conspicuous is for decision by the court.
11. *"Consumer"* means the buyer, lessee, or debtor to whom credit is granted in a consumer credit

transaction.

12. "*Consumer credit transaction*" means a consumer credit sale or consumer loan, or a refinancing or consolidation thereof, or a consumer lease, or a consumer rental purchase agreement.

13. *Consumer credit sale.*

a. Except as provided in paragraph "b", a consumer credit sale is a sale of goods, services, or an interest in land in which all of the following are applicable:

(1) Credit is granted either pursuant to a seller credit card or by a seller who regularly engages as a seller in credit transactions of the same kind.

(2) The buyer is a person other than an organization.

(3) The goods, services or interest in land are purchased primarily for a personal, family or household purpose.

(4) Either the debt is payable in installments or a finance charge is made.

(5) With respect to a sale of goods or services, the amount financed does not exceed twenty-five thousand dollars.

b. A "*consumer credit sale*" does not include:

(1) A sale in which the seller allows the buyer to purchase goods or services pursuant to a lender credit card.

(2) A sale of an interest in land if the finance charge does not exceed twelve percent per year calculated on the actuarial method on the assumption that the debt will be paid according to the agreed terms and will not be paid before the end of the agreed term.

(3) A consumer rental purchase agreement as defined in section 537.3604.

14. *Consumer lease.*

a. Except as provided in paragraph "b", a consumer lease is a lease of goods in which all of the following are applicable:

(1) The lessor is regularly engaged in the business of leasing.

(2) The lessee is a person other than an organization.

(3) The lessee takes under the lease primarily for a personal, family, or household purpose.

(4) The amount payable under the lease does not exceed twenty-five thousand dollars.

(5) The lease is for a term exceeding four months.

b. A consumer lease does not include a consumer rental purchase agreement as defined in section 537.3604.

15. *Consumer loan.*

a. Except as provided in paragraph "b", a "*consumer loan*" is a loan in which all of the following are

applicable:

- (1) The person is regularly engaged in the business of making loans.
- (2) The debtor is a person other than an organization.
- (3) The debt is incurred primarily for a personal, family or household purpose.
- (4) Either the debt is payable in installments or a finance charge is made.
- (5) The amount financed does not exceed twenty-five thousand dollars.

b. A "consumer loan" does not include:

- (1) A sale or lease in which the seller or lessor allows the buyer or lessee to purchase or lease pursuant to a seller credit card.
- (2) A debt which is secured by a first lien on real property and which is incurred primarily for the purpose of acquiring that real property, or refinancing a contract for deed to that real property, or constructing on that real property a building containing one or more dwelling units.
- (3) A loan financed by the Iowa finance authority and secured by a lien on land.
- (4) A consumer rental purchase agreement as defined in section 537.3604.

c. In determining which loans are consumer loans under this subsection the rules of construction stated in this paragraph shall be applied:

- (1) A debt is incurred primarily for the purpose to which a majority of the loan proceeds are applied or are designated by the debtor to be applied.
- (2) Loan proceeds used to refinance or pay a prior loan owed by the same borrower are incurred for the same purposes and in the same proportion as the principal of the loan refinanced or paid.
- (3) Loan proceeds used to pay a prior loan by a different borrower are incurred for the new borrower's purposes in agreeing to pay the prior loan.
- (4) The assumption of a loan by a different borrower is treated as if the new borrower had obtained a new loan and had used all of the proceeds to pay the loan assumed.
- (5) The provisions of this paragraph shall not be construed to modify or limit the provisions of section 535.8, subsection 2, paragraph "c" or "e".

16. "Credit" means the right granted by a person extending credit to a person to defer payment of debt, to incur debt and defer its payment, or to purchase property or services and defer payment therefor.

17. "Credit card" means a card or device issued under an arrangement pursuant to which a card issuer gives a cardholder the privilege of purchasing or leasing property or purchasing services, obtaining loans, or otherwise obtaining credit from the card issuer or other persons. A transaction is "pursuant to a credit card" if credit is obtained according to the terms of the arrangement by transmitting information contained on the card or device orally, in writing, by mechanical or automated methods, or in any other manner. A transaction is not "pursuant to a credit card" if the card or device is used solely to identify the cardholder and credit is not obtained according to the terms of the arrangement.

18. "*Creditor*" means the person who grants credit in a consumer credit transaction or, except as otherwise provided, an assignee of a creditor's right to payment, but use of the term does not in itself impose on an assignee any obligation of the assignee's assignor. In the case of credit granted pursuant to a credit card, the "creditor" is the card issuer and not another person honoring the credit card.

19. "*Credit union service organization*" means an organization, corporation, or association whose membership or ownership is primarily confined or restricted to credit unions or organizations of credit unions and whose purpose is primarily designed to provide services to credit unions, organizations of credit unions, or credit union members.

20. "*Earnings*" means compensation paid or payable to an individual or for the individual's account for personal services rendered or to be rendered by the individual, whether denominated as wages, salary, commission, bonus, or otherwise, and includes periodic payments pursuant to a pension, retirement or disability program.

21. *Finance charge*.

a. Except as otherwise provided in paragraph "b", "*finance charge*" means the sum of all charges payable directly or indirectly by the consumer and imposed directly or indirectly by the creditor as an incident to or as a condition of the extension of credit, including any of the following types of charges which are applicable:

(1) Interest or any amount payable under a point, discount or other system of charges, however denominated, except that with respect to a consumer credit sale of goods or services a cash discount of five percent or less of the stated price of goods or services which is offered to the consumer for payment by cash, check or the like either immediately or within a period of time, is not part of the finance charge for the purpose of determining maximum charges pursuant to section 537.2401. A cash discount permitted by this subparagraph is not part of the finance charge for the purpose of determining compliance with section 537.3201 if it is properly disclosed as required by the Truth in Lending Act as amended to and including July 1, 1982 and regulations issued pursuant to that Act prior to July 1, 1982.

(2) Time price differential, credit service, service, carrying or other charge, however denominated.

(3) Premium or other charge for any guarantee or insurance protecting the creditor against the consumer's default or other credit loss.

(4) Charges incurred for investigating the collateral or credit-worthiness of the consumer or for commissions or brokerage for obtaining the credit, irrespective of the person to whom the charges are paid or payable, unless the creditor had no notice of the charges when the credit was granted.

b. "*Finance charge*" does not include:

(1) Charges as a result of default or delinquency if made for actual unanticipated late payment, delinquency, default, or other like occurrence unless the parties agree that these charges are finance charges. A charge is not made for actual unanticipated late payment, delinquency, default or other like occurrence if imposed on an account which is or may be debited from time to time for purchases or other debts and, under its terms, payment in full or at a specified amount is required when billed, and in the ordinary course of business the consumer is permitted to continue to have purchases or other debts debited to the account after the imposition of the charge.

(2) Additional charges as defined in section 537.2501, or deferral charges as defined in section 537.2503.

(3) A discount, if a creditor purchases or satisfies obligations of a cardholder pursuant to a credit card and the purchase or satisfaction is made at less than the face amount of the obligation.

(4) Lease payments for a consumer rental purchase agreement, or charges specifically authorized by this chapter for consumer rental purchase agreements.

22. *"Gift certificate"* means a merchandise certificate conspicuously designated as a gift certificate, and purchased by a buyer for use by a person other than the buyer.

23. *a. "Goods"* includes, but is not limited to:

(1) "Goods" as described in section 554.2105, subsection 1.

(2) Goods not in existence at the time the transaction is entered into.

(3) Things in action.

(4) Investment securities.

(5) Mobile homes regardless of whether they are affixed to the land.

(6) Gift certificates.

b. "Goods" excludes money, chattel paper, documents of title, instruments and merchandise certificates other than gift certificates.

24. *"Insurance premium loan"* means a consumer loan that is made for the sole purpose of financing the payment by or on behalf of an insured of the premium on one or more policies or contracts issued by or on behalf of an insurer, is secured by an assignment by the insured to the lender of the unearned premium on the policy or contract, and contains an authorization to cancel the policy or contract financed.

25. *"Lender"* means a person who makes a loan or, except as otherwise provided in this Act, a person who takes an assignment of a lender's right to payment, but use of the term does not in itself impose on an assignee any obligation of the lender.

26. *"Lender credit card"* means a credit card issued by a lender.

27. *a. "Loan"* means any of the following, except as provided in paragraph *"b"*:

(1) The creation of debt by the lender's payment of or agreement to pay money to the debtor or to a third person for the account of the debtor.

(2) The creation of debt by a credit to an account with the lender upon which the debtor is entitled to draw immediately.

(3) The creation of debt pursuant to a lender credit card in any manner, including a cash advance or the card issuer's honoring a draft or similar order for the payment of money drawn or accepted by the debtor, paying or agreeing to pay the debtor's obligation, or purchasing or otherwise acquiring the debtor's obligation from the obligee or the obligee's assignees.

(4) The creation of debt by a cash advance to a debtor pursuant to a seller credit card.

(5) The forbearance of debt arising from a loan.

b. "Loan" does not include:

(1) A card issuer's payment or agreement to pay money to a third person for the account of a debtor if the debt of the debtor arises from a sale or lease and results from use of a seller credit card.

(2) The forbearance of debt arising from a sale or lease.

28. "*Merchandise certificate*" means a writing not redeemable in cash and usable in its face amount in lieu of cash in exchange for goods or services. Sale of a merchandise certificate on credit is a credit sale beginning at the time the certificate is redeemed.

29. "*Mortgage lender*" means a domestic or foreign corporation authorized in this state to make loans secured by mortgages or deeds of trust.

30. "*Official fees*" means:

a. Fees and charges prescribed by law which actually are or will be paid to public officials for determining the existence of or for perfecting, releasing, terminating, or satisfying a security interest related to a consumer credit transaction.

b. Premiums payable for insurance in lieu of perfecting a security interest otherwise required by the creditor in connection with the transaction, if the premium does not exceed the fees and charges described in paragraph "a" which would otherwise be payable.

31. "*Open-end credit*" means an arrangement, other than a consumer rental purchase agreement, pursuant to which all of the following are applicable:

a. A creditor may permit a consumer, from time to time, to purchase or lease on credit from the creditor or pursuant to a credit card, or to obtain loans from the creditor or pursuant to a credit card.

b. The amounts financed and the finance and other appropriate charges are debited to an account.

c. The finance charge, if made, is computed on the account periodically.

d. Either the consumer has the privilege of paying in full or in installments, or the transaction is a consumer credit transaction solely because a delinquency charge or the like is treated as a finance charge pursuant to subsection 21, paragraph "b", subparagraph (1) of this section or the creditor otherwise periodically imposes charges computed on the account for delaying payment of it and permits the consumer to continue to purchase or lease on credit.

32. "*Organization*" means a corporation, government or governmental subdivision or agency, trust, estate, cooperative, or association.

33. "*Payable in installments*" means that payment is required or permitted by agreement to be made in more than four periodic payments, excluding a down payment. If any periodic payment other than the down payment under an agreement requiring or permitting two or more periodic payments is more than twice the amount of any other periodic payment excluding the down payment, a transaction is "payable in installments".

34. "*Person*" means:

a. A natural person, partnership, or an individual.

b. An organization.

35. *a. "Person related to"* with respect to a natural person or an individual means any of the following:

- (1) The spouse of the individual.
- (2) A brother, brother-in-law, sister, or sister-in-law of the individual.
- (3) An ancestor or lineal descendant of the individual or the individual's spouse.
- (4) Any other relative, by blood or marriage, of the individual or the individual's spouse, if the relative shares the same home with the individual.

b. "Person related to" with respect to an organization means:

- (1) A person directly or indirectly controlling, controlled by or under common control with the organization.
- (2) An officer or director of the organization or a person performing similar functions with respect to the organization or to a person related to the organization.
- (3) The spouse of a person related to the organization.
- (4) A relative by blood or marriage of a person related to the organization who shares the same home with the person.

36. A *"precomputed consumer credit transaction"* is a consumer credit transaction, other than a consumer lease or a consumer rental purchase agreement, in which the debt is a sum comprising the amount financed and the amount of the finance charge computed in advance. A disclosure required by the Truth in Lending Act does not in itself make a finance charge or transaction precomputed.

37. *"Presumed"* or *"presumption"* means that the trier of fact must find the existence of the fact presumed unless and until evidence is introduced which would support a finding of its nonexistence.

38. *"Sale of goods"* includes, but is not limited to, any agreement in the form of a bailment or lease of goods if the bailee or lessee pays or agrees to pay as compensation for use a sum substantially equivalent to or in excess of the aggregate value of the goods involved and it is agreed that the bailee or lessee will become, or for no other or a nominal consideration has the option to become, the owner of the goods upon full compliance with the terms of the agreement. *"Sale of goods"* does not include a consumer rental purchase agreement.

39. *"Sale of an interest in land"* includes, but is not limited to, a lease in which the lessee has an option to purchase the interest, by which all or a substantial part of the rental or other payments previously made by the lessee are applied to the purchase price.

40. *"Sale of services"* means furnishing or agreeing to furnish services for a consideration and includes making arrangements to have services furnished by another.

41. *"Seller"* means a person who makes a sale or, except as otherwise provided in this chapter, a person who takes an assignment of the seller's right to payment, but use of the term does not in itself impose on an assignee any obligation of the seller.

42. *"Seller credit card"* means either of the following:

a. A credit card issued primarily for the purpose of giving the cardholder the privilege of using the credit card to purchase or lease property or services from the card issuer, persons related to the card issuer, persons

licensed or franchised to do business under the card issuer's business or trade name or designation, or from any of these persons and from other persons as well.

b. A credit card issued by a person other than a supervised lender primarily for the purpose of giving the cardholder the privilege of using the credit card to purchase or lease property or services from at least one hundred persons not related to the card issuer.

43. "Services" includes, but is not limited to:

a. Work, labor, and other personal services.

b. Privileges or benefits with respect to transportation, hotel and restaurant accommodations, education, entertainment, recreation, physical culture, hospital accommodations, funerals, cemetery accommodations, and the like.

c. Insurance.

44. "Supervised financial organization" means a person, other than an insurance company or other organization primarily engaged in an insurance business, which is organized, chartered, or holding an authorization certificate pursuant to chapter 524, 533, or 534, 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.

45. "Supervised loan" means a consumer loan, including a loan made pursuant to open end credit, in which the rate of the finance charge, calculated according to the actuarial method, exceeds the rate of finance charge permitted in chapter 535.

With respect to a consumer loan made pursuant to open end credit, the finance charge shall be deemed not to exceed the rate permitted in chapter 535 if the finance charge contracted for and received does not exceed a charge for each monthly billing cycle which is one-twelfth of that rate multiplied by the average daily balance of the open end account in the billing cycle for which the charge is made. The average daily balance of the open end account is the sum of the amount unpaid each day during that cycle divided by the number of days in the cycle. The amount unpaid on a day is determined by adding to the balance, if any, unpaid as of the beginning of that day all purchases and other debits and deducting all payments and other credits made or received as of that day. If the billing cycle is not monthly, the finance charge shall be deemed not to exceed that rate per year if the finance charge contracted for and received does not exceed a percentage which bears the same relation to that rate as the number of days in the billing cycle bears to three hundred sixty-five. A billing cycle is monthly if the closing date of the cycle is the same date each month or does not vary by more than four days from the regular date.

[C58, 62, 66, 71, 73, § 322.2(12)(15), C75, 77, 79, S79, C81, § 537.1301; 81 Acts, ch 76, 8, ch 177, § 3, 4; 82 Acts, ch 1153, § 913, 18(1), ch 1253, § 42]

83 Acts, ch 101, § 114; 83 Acts, ch 124, § 24, 25; 87 Acts, ch 80, §2634; 97 Acts, ch 187, § 1; 2003 Acts, ch 44, §92; 2005 Acts, ch 44, §1