APPENDIX

APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 21-1020

TITLEMAX OF DELAWARE, INC., d/b/a TitleMax;
TITLEMAX OF OHIO, INC., d/b/a TitleMax;
TITLEMAX OF VIRGINIA, INC., d/b/a TitleMax;
TMX FINANCE OF VIRGINIA, INC.

v.

ROBIN L. WEISSMANN,
in Her Official Capacity as Secretary of the
Pennsylvania Department of Banking and Securities,

Appellant

On Appeal from the United States District Court
for the District of Delaware
(D.C. Civil No. 1:17-cv-01325)
Magistrate Judge: Honorable Mary Pat Thynge

Argued December 8, 2021

Before: SHWARTZ, PORTER, and FISHER, Circuit Judges.

(Filed: January 24, 2022)

Douglas D. Herrman
Troutman Pepper Hamilton Sanders LLP
Hercules Plaza, Suite 5100
1313 N. Market Street, P.O. Box 1709
Wilmington, DE 19899

Richard J. Zack [ARGUED]
Troutman Pepper Hamilton Sanders LLP
3000 Two Logan Square
18th and Arch Streets
Philadelphia, PA 19103

Counsel for Plaintiffs-Appellees

Sean A. Kirkpatrick
Office of Attorney General of Pennsylvania
Strawberry Square
Harrisburg, PA 17120

Claudia M. Tesoro [ARGUED]
Office of Attorney General of Pennsylvania
1600 Arch Street
Suite 300
Philadelphia, PA 19103

Counsel for Defendant-Appellant

OPINION OF THE COURT

SHWARTZ, Circuit Judge.

In this case, we are required to determine whether applying Pennsylvania usury laws to an out-of-state lender violates the dormant Commerce Clause. We conclude that it does not.

I

A

TitleMax Delaware, TitleMax Virginia, TitleMax Ohio, and TMX Finance Virginia (collectively "TitleMax") provide motor vehicle loans. When any customer, including a Pennsylvanian, seeks a loan from TitleMax, "[t]he entire loan process—from the application to the disbursement of funds—takes place . . . at one of TitleMax's brick-and-mortar locations . . . . If a loan is approved and TitleMax is the lender, TitleMax and the borrower execute a loan agreement . . . and the borrower receives the loan proceeds," App. 19, in the form of "a check drawn on a bank outside of Pennsylvania," App. 96. The loan agreement sets forth an interest rate as high as 180% and terms to secure the loan.

Under the agreement, the borrower grants TitleMax a security interest in the vehicle. To perfect the lien, the borrower provides TitleMax with the vehicle identification number, license plate number, and title certificate number. TitleMax then records its lien on the motor vehicle with the appropriate state authority, such as the Pennsylvania Department of Transportation ("PennDOT").

In addition to perfecting the lien in the borrower's state, TitleMax conducts servicing activities there, such as collecting payments, sending "phone calls[] or text messages," and "repossess[ing vehicles]." App. 326, 337. Borrowers can make payments while

physically present in their home state in a variety of ways, including mailing, calling TitleMax to use a debit card, or visiting a "local money transmitter . . . to have fees transmitted to a TitleMax location." App. 181, 339.

TitleMax does not dispute that, prior to 2017, it engaged in these activities with Pennsylvania residents and repossessed vehicles located in Pennsylvania when a Pennsylvania-resident borrower defaulted.

TitleMax does not have any offices, employees, agents, or brick-and-mortar stores in Pennsylvania and is not licensed as a lender in the Commonwealth. TitleMax claims that it has never used employees or agents to solicit Pennsylvania business, and it does not run television ads within Pennsylvania, but its advertisements may reach Pennsylvania residents.

B

Two statutes, the Consumer Discount Company Act ("CDCA"), 7 Pa. Stat. §§ 6201-6221, and the Loan Interest and Protection Law ("LIPL"), 41 Pa. Stat. §§ 101-605, address lending activity. For example, the CDCA provides that "no person shall . . . make[] loans or advance[] money on credit, in the amount or value of . . . []$25,000[] or less, and charge, collect, contract for or receive interest . . . which aggregate in excess of the interest that the lender would otherwise be permitted by law to charge." 7 Pa. Stat. § 6203(A). The LIPL sets forth a maximum interest rate of 6% for most loans below $50,000. 41 Pa. Stat. § 201(a).

Pursuant to its authority to enforce these laws, Pennsylvania's Department of Banking and Securities (the "Department") issued a subpoena requesting documents regarding TitleMax's

interactions with Pennsylvania residents. 7 Pa. Stat. § 6212, 41 Pa. Stat. § 506. The subpoena sought loan agreements between TitleMax and Pennsylvania consumers, information presented to Pennsylvania consumers through the mail or internet, solicitations or offerings circulated or aired in Pennsylvania, records of TitleMax employees who traveled to Pennsylvania, a list of vehicles repossessed in Pennsylvania, a record of complaints from Pennsylvania consumers, a record of invoices or bills sent to Pennsylvania consumers, and any electronic transfers of funds from Pennsylvania consumer bank accounts.[1]

TitleMax stopped making loans to Pennsylvania residents after receiving the subpoena and asserts that it has lost revenue as a result.

C

TitleMax filed this action in the United States District Court for the District of Delaware, seeking injunctive and declaratory relief for, among other things, violations of the Commerce Clause. Separately, the Department filed a petition to enforce the subpoena in the Pennsylvania Commonwealth Court (the "Petition Action").[2]

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[1] TitleMax claims it does not have the "technological capability to identify all TitleMax entities that provided loans and/or credit services to borrowers who resided in Pennsylvania at the time their loan was originated or the arrangement of their loan was facilitated," and thus "does not know the identity of all TitleMax entities that provided loans to Pennsylvania residents." App. 207.

[2] TitleMax removed the Petition Action to the Middle District of Pennsylvania. Pa. Dep't of Banking and Sec. v. TitleMax of

In this action, the parties conducted discovery and filed cross-motions for summary judgment based on Younger abstention and the dormant Commerce Clause. The District Court granted TitleMax's motion and denied the Department's. The Court held that Younger abstention did not apply but found that, because TitleMax's loans are "completely made and executed outside Pennsylvania and inside TitleMax [brick-and-mortar] locations in Delaware, Ohio, or Virginia," the Department's subpoena's effect is to apply Pennsylvania's usury laws extraterritorially in violation of the Commerce Clause. TitleMax of Del., Inc. v. Weissmann, 505 F. Supp. 3d 353, 357-60 (D. Del. 2020).

The Department appeals.

Del., Inc. et al., No. 1:17-cv-02112-JPW (M.D. Pa. Nov. 16, 2017), ECF No. 1. The District Court remanded the case for lack of subject matter jurisdiction. Id., ECF No. 49. The Petition Action remains pending.

II[3]

We agree with the District Court that Younger abstention does not bar us from hearing this case but hold that applying[4] the CDCA and LIPL to TitleMax's conduct does not violate the Commerce Clause.[5]

A

In general, federal courts are "obliged to decide cases within the scope of federal jurisdiction." Sprint Commc'ns, Inc. v. Jacobs, 571 U.S. 69, 72 (2013). In certain limited circumstances, however, "the prospect of undue interference with state proceedings counsels

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[3] The District Court had jurisdiction under 28 U.S.C. §§ 1331 and 1343. We have jurisdiction under 28 U.S.C. § 1291. We review a district court's order granting summary judgment de novo, Mylan Inc. v. SmithKline Beecham Corp., 723 F.3d 413, 418 (3d Cir. 2013), and we view the facts and make all reasonable inferences in the non-movant's favor, Hugh v. Butler Cnty. Fam. YMCA, 418 F.3d 265, 267 (3d Cir. 2005). Summary judgment is appropriate where "there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). The moving party is entitled to judgment as a matter of law when the non-moving party fails to make "a sufficient showing on an essential element of her case with respect to which she has the burden of proof." Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986).

[4] The parties agree that TitleMax's challenge to an investigation into a violation of Pennsylvania law is ripe.

[5] In its single-count Amended Complaint, TitleMax listed both the Commerce Clause and the Due Process Clause as grounds to enjoin the Department's investigation, but TitleMax did not rely on the Due Process Clause in its motion for summary judgment and mentioned due process only in a footnote in its brief before us. Thus, TitleMax has not preserved its due process claim. See Resol. Tr. Corp. v. Dunmar Corp., 43 F.3d 587, 599 (11th Cir. 1995) ("[G]rounds alleged in the complaint but not relied upon in summary judgment are deemed abandoned.").

against federal relief." Id. Under the Younger abstention doctrine, federal courts must refrain from interfering with three types of state proceedings. One of these is civil enforcement proceedings. Id. at 78.

A "civil enforcement proceeding" warrants Younger abstention where the proceeding is "akin to a criminal prosecution" in "important respects." Id. at 79 (citation omitted). To determine if a civil enforcement proceeding is quasi-criminal in nature, we consider whether (1) the action "was commenced by the state in its sovereign capacity," (2) the action was "initiated to sanction the federal plaintiff for some wrongful act," (3) there are "other similarities to criminal actions, such as a preliminary investigation that culminated with the filing of formal charges," and (4) "the State could have alternatively sought to enforce a parallel criminal statute." ACRA Turf Club, LLC v. Zanzuccki, 748 F.3d 127, 138 (3d Cir. 2014); see also Sprint, 571 U.S. at 79 ("Investigations are commonly involved.").

The Petition Action is not a "civil enforcement proceeding[]." Sprint, 571 U.S. at 73; ACRA Turf Club, 748 F.3d at 138. Although the Petition Action was commenced by the Department, a state agency, it was filed to enforce a subpoena, not to sanction TitleMax. See Pa. Dep't of Banking & Sec. v. TitleMax of Del., Inc., 1:17-cv-02112-JPW (M.D. Pa. Nov. 16, 2017), ECF No. 1-2 (Petition to Enforce an Investigative Subpoena and Enjoin Respondents), at 10 ("In the event that a person fails to comply with a subpoena for documents or testimony issued by the [D]epartment, the [D]epartment may request an order from the Commonwealth Court requiring the person to produce the requested information."), 13 (requesting relief of an "Order against [TitleMax]

requiring them to provide the information or documents required by the investigative subpoena, to enjoin them from further refusing any future requests for information made by the department, and to require Respondents to pay costs associated with bringing this action and conducting this investigation"). While enforcement of the subpoena may require TitleMax to produce information, it is not "retributive in nature" or "imposed to punish . . . some wrongful act." ACRA Turf Club, 748 F.3d at 140 (citation and quotation marks omitted). Indeed, no activity has occurred in the Petition Action, and the threat of contempt of court for noncompliance with an order that the state court may enter in the future is insufficient to convert the Petition Action as it currently stands into a quasi-criminal case. See also Malhan v. Sec'y U.S. Dep't of State, 938 F.3d 453, 464 (3d Cir. 2019) (holding that an unfiled state proceeding cannot be part of an abstention analysis). Finally, while Pennsylvania has a parallel statute that make usury a crime, see, e.g., 18 Pa. Stat. § 4806.3 ("Whoever engages in criminal usury . . . is guilty of a felony"), the existence of that criminal statute does not outweigh the other facts that show that the Petition Action here is not quasi-criminal.

Another type of case in which Younger abstention may apply is one that furthers the state court's ability to perform its judicial function. Sprint, 571 U.S. at 78. The Department relies on Juidice v. Vail, 430 U.S. 327 (1977), to argue that the threat of contempt for noncompliance with the subpoena invokes a unique judicial function. In Juidice, the Supreme Court held that federal-court interference with a state's contempt process is "an offense to the State's interest . . . likely to be every bit as great as it would be were this a criminal proceeding." Id. at 336 (citing Huffman v.

Pursue, Ltd., 420 U.S. 592, 604 (1975)). There, however, the defendant was held in contempt for failing to comply with a subpoena for a deposition. In contrast, the Petition Action presents only a possibility of contempt, akin to any other case where courts issue orders and a party's noncompliance can lead to contempt. The Commonwealth Court has neither issued orders enforcing the subpoena nor made contempt findings. Id. at 329-30. There is thus no judicial contempt process with which this federal case can interfere. See Malhan, 938 F.3d at 464-65 (noting that Juidice only required abstention because the state courts had issued contempt orders at the time the federal lawsuit was commenced and holding that, because a garnishment order against the plaintiff was vacated a year earlier, the purported judicial action was not "wait[ing] to be entered" as required for abstention).

Thus, Younger abstention does not bar us from reaching the merits of this case.[6]

B

The Commerce Clause provides that "Congress shall have Power . . . To regulate Commerce . . . among the several States." U.S. Const., art. I, § 8, cl. 3. This affirmative grant of authority to Congress "also encompasses an implicit or 'dormant' limitation on the authority of the States to enact legislation affecting interstate commerce." Instructional Sys., Inc. v. Comput. Curriculum Corp., 35 F.3d 813, 823 (3d Cir. 1994) (citing Healy v. Beer Inst., 491 U.S. 324, 326 n.1 (1989)). When evaluating whether a state

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[6] The third category of cases to which Younger may apply is state criminal prosecutions, Sprint, 571 U.S. at 78, but the Petition Action is not a criminal prosecution.

statute violates the Commerce Clause, we examine the statute's effect on interstate commerce. Brown-Forman Distillers Corp. v. N.Y. State Liquor Auth., 476 U.S. 573, 579 (1986). For example,

> [w]hen a state statute directly regulates or discriminates against interstate commerce, or when its effect is to favor in-state economic interests over out-of-state interests, we have generally struck down the statute without further inquiry. When, however, a statute only has indirect effects on interstate commerce and regulates evenhandedly, we have examined whether the State's interest is legitimate and whether the burden on interstate commerce clearly exceeds the local benefits.

Instructional Sys., 35 F.3d at 824 (quoting Brown-Forman, 476 U.S. at 579). One way a challenged statute can "directly regulate" interstate commerce is if the statute has "extraterritorial effects that adversely affect economic production (and hence interstate commerce) in other states." Cloverland-Green Spring Dairies, Inc. v. Pa. Milk Mktg. Bd., 462 F.3d 249, 261-62 (3d Cir. 2006). A state law that directly controls commerce wholly outside its borders violates the dormant Commerce Clause, regardless of whether the state legislature intended for the statute to do so. Healy, 491 U.S. at 336.[7] If the state statute

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[7] TitleMax argues that "[w]here the extraterritoriality doctrine has been invoked . . . discrimination does not matter and is not an element of the claim," and that therefore "the Pike balancing test and related principles are . . . not relevant." Appellees' Br. at 38 n.14. This argument misunderstands the necessary analysis. Extraterritorial effect does not

does not have such extraterritorial reach or discriminate against out-of-staters, then it will be upheld unless the burden on interstate commerce is "clearly excessive in relation to the putative local benefits." Pike v. Bruce Church, Inc., 397 U.S. 137, 142 (1970). This examination is sometimes referred to as Pike balancing.

We thus follow a two-step approach in analyzing TitleMax's Commerce Clause claim here. Initially, we address the "territorial scope of the transaction that [Pennsylvania] has attempted to regulate"[8] and whether such transactions occur "wholly outside" the state. A.S. Goldmen & Co., Inc. v. N.J. Bureau of Sec., 163 F.3d 780, 786 (3d Cir. 1999). If the transactions do not occur wholly outside of Pennsylvania, then "we determine whether the [regulation] is invalid under the [Pike] balancing test." Am. Exp. Travel Related Servs., Inc. v. Sidamon-Eristoff, 669 F.3d 359, 372 (3d Cir. 2012).

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automatically trigger special examination. Indeed, some extraterritorial effect must be tolerated because, by analogy, courts routinely decide choice-of-law questions for contracts that cover multiple states, and there is "nothing untoward about applying one state's law" to "activities outside [that] state." See Instructional Sys., 35 F.3d at 825 ("[I]t is inevitable that a state's laws, whether statutory or common law, will have extraterritorial effects.").

[8] By issuing the subpoena, the Department is thus asserting that its usury laws may apply to TitleMax's conduct. We therefore examine whether applying Pennsylvania's usury laws to TitleMax's conduct violates the Commerce Clause.

The CDCA regulates loans and collection activity. 7 Pa. Stat. § 6213(A). TitleMax's transactions with Pennsylvanians involve both loans and collection, and these activities do not occur "wholly outside" of Pennsylvania. TitleMax's transactions involve more than a simple conveyance of money[9] at a brick-and-mortar store in a location beyond Pennsylvania's border. Rather, the loan creates a creditor-debtor relationship that imposes obligations on both the borrower and lender until the debt is fully paid. For instance, Pennsylvanians with TitleMax loans made payments to TitleMax while physically present in the state. See Quik Payday, Inc. v. Stork, 549 F.3d 1302, 1308 (10th Cir. 2008) (holding that a loan transaction is not "wholly extraterritorial" and thus not problematic under the dormant Commerce Clause where the "transfer of loan funds to the borrower would naturally be to a bank in [the consumer's state]"). In addition, TitleMax's loan agreements grant TitleMax "a security interest in the Motor Vehicle," which in the case of a Pennsylvania

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[9] Moreover, even if TitleMax's transactions were understood to be limited to the "origination" of the loan, our precedent makes clear that contracts between a Pennsylvanian and an out-of-stater do not occur "wholly outside" Pennsylvania. In A.S. Goldmen, we noted that conceptions of the territorial scope of contracts have evolved over time. Under the "traditional" approach, a contract is "made" in the state where the offer is accepted. 163 F.3d at 786-87. Under the "modern" approach, contracts formed between citizens in different states "implicate the regulatory interests of both states." Id. Here, TitleMax extended credit to Pennsylvanians and, under the modern view, it does not matter that the consumers would have been physically outside of Pennsylvania when the transaction was initiated.

borrower is a Pennsylvania-registered automobile. App. 567-68. TitleMax records these liens with PennDOT and may repossess the vehicle if the consumer defaults on his loan. Thus, by extending loans to Pennsylvanians, TitleMax takes an interest in property located and operated in Pennsylvania.

These aspects of loan servicing make TitleMax's conduct different from that in the Healy line of cases, which largely involved transactions in goods that ended at the point of sale. See, e.g., Healy, 491 U.S. at 327 (price of beer); Baldwin v. G.A.F. Seelig, Inc., 294 U.S. 511, 519-20 (1935) (price of milk for producers); see also Pharm. Rschs. & Mfrs. of Am. v. Walsh, 538 U.S. 644, 669 (2003) (noting the extraterritoriality rule in Healy is "not applicable" to cases where a statute does not tie prices of in-state products to out-of-state prices).[10] Unlike the sale of a good, a TitleMax loan has a longer lifespan: it involves later payments and permits a physical taking (repossession) from inside another state. Because TitleMax both receives payment from within Pennsylvania and maintains a security interest in

[10] For this reason, the authorities TitleMax relies upon are inapt. See Dean Foods Co. v. Brancel, 187 F.3d 609, 620 (7th Cir. 1999) (volume premiums on milk); Legato Vapors, LLC v. Cook, 847 F.3d 825 (7th Cir. 2017) (construction and maintenance of manufacturing facilities); Carolina Trucks & Equip., Inc. v. Volvo Trucks of N. Am., Inc., 492 F.3d 484 (4th Cir. 2007) (sales by truck dealers); Ass'n for Accessible Med. v. Frosh, 887 F.3d 664 (4th Cir. 2018) (price of prescription drugs); Sam Francis Found. v. Christies, Inc., 784 F.3d 1320 (9th Cir. 2015) (terms and conditions of artwork sales).

vehicles located in Pennsylvania that it can act upon, its conduct is not "wholly outside" of Pennsylvania.[11]

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[11] A lack of "physical presence" in a state is not dispositive under a Commerce Clause analysis. See South Dakota v. Wayfair, Inc., 138 S. Ct. 2080, 2095, 2099 (2018). In Wayfair, the Supreme Court rejected the "physical presence" rule from Quill Corp. v. North Dakota, 504 U.S. 298 (1992), which held that States could not require businesses without a physical presence in their state to collect its sales tax and that mere shipment of goods into a consumer's state was insufficient for "presence." 138 S. Ct. at 2099. The Wayfair Court held that the Quill rule was incorrect and unworkable because "[m]odern e-commerce" facilitates closer connections between consumers and businesses regardless of physical presence or proximity. Id. at 2095. The Court explained that "a company with a website accessible in South Dakota may be said to have a physical presence in the [customer's] State via the customers' computers." Id. Applying the same reasoning here, the fact that TitleMax operates no brick-and-mortar stores in Pennsylvania does not close TitleMax off from Pennsylvania consumers. On the contrary, TitleMax's advertisements, through its website and through third-parties, reach customers in Pennsylvania and TitleMax informs Pennsylvania callers that they need to "come into the store to further discuss anything as far as the loan products," not that they cannot do business with them, App. 174. Indeed, their business relationship continues after the Pennsylvanian leaves the store and returns to Pennsylvania.

As a result, Midwest Title Loans, Inc. v. Mills, 593 F.3d 660 (7th Cir. 2010), on which the District Court relied in finding TitleMax's conduct was "wholly outside" Pennsylvania, is unpersuasive. Midwest relied in part on the reasoning of Quill, see, e.g., 593 F.3d at 668 ("[Quill] is an example of extraterritorial regulation held to violate the [C]ommerce [C]lause even though the entity sought to be regulated received substantial benefits from the regulating state, just as Indiana's regulation of Illinois lenders furthers a local interest—the protection of gullible or necessitous borrowers"), which is no longer good law. Aside from the "physical presence" rule in Quill,

For these reasons, applying the Pennsylvania statutes to TitleMax does not violate the extraterritoriality principle.

2

Having determined that TitleMax's conduct does not occur wholly outside of Pennsylvania, we must determine "whether the burdens [from the state law being applied] on interstate commerce substantially outweigh[] the putative local benefits." Cloverland-Green, 462 F.3d at 258; see also Pike, 397 U.S. at 142 (holding that where a statute addresses "a legitimate local public interest, and its effects on interstate commerce are only incidental, it will be upheld unless the burden imposed on such commerce is clearly excessive in relation to the putative local benefits"). The only burdens to be considered in the balancing test are those that "discriminate against interstate commerce."[12] Old Bridge Chems., Inc. v. N.J. Dep't of Env't Prot., 965 F.2d 1287, 1295 (3d Cir. 1992).

Midwest's primary authority was Healy, see 593 F.3d at 666, which involved a price affirmation statute, not a statute regulating loans and continuing obligations to pay. Moreover, Midwest took a narrower view of the loan transaction than our Circuit has taken. Cf. Aldens, Inc. v. Packel, 524 F.2d 38, 45 (3d Cir. 1975) (holding that a Chicago mail-order business's credit transactions with Pennsylvanians were subject to Pennsylvania's Goods and Services Installment Act because the burden on interstate commerce from regulating interest rates—the "time-price differential"—does not depend on "the happenstance of respective locations of buyer and seller"). Thus, its analysis does not govern.

[12] "If a legitimate local purpose is found, then the question becomes one of degree. And the extent of the burden that will be tolerated will of course depend on the nature of the local interest involved, and on whether it could be promoted as well with a lesser impact on interstate activities." Pike, 397 U.S. at 142.

On the interstate commerce burdens side, application of Pennsylvania's usury laws to transactions with Pennsylvanians puts TitleMax in no different position than an in-state lender. See Instructional Sys., 35 F.3d at 826-27 ("[W]here the burden on out-of-state interests rises no higher than that placed on competing in-state interests, it is a burden on commerce rather than a burden on interstate commerce." (emphasis in original)). While it may be true that TitleMax could be subject to different interest rate caps depending on the borrower's state of residence, this result is not a "clearly excessive" burden on interstate commerce. First, a burden on a lender is not a burden on interstate commerce. Exxon Corp. v. Gov. of Md., 437 U.S. 117, 127-28 (1978) ("The [Commerce] Clause protects the interstate market, not particular interstate firms, from prohibitive or burdensome regulations."). Second, a lack of uniformity in state interest rates is not an undue burden, as "Congress has deferred to the states on the matter of maximum interest rates in consumer credit transactions." Aldens, Inc. v. Packel, 524 F.2d 38, 45, 48-49 (3d Cir. 1975) (holding that application of Pennsylvania's installment contracts law to a mail-order creditor's business with Pennsylvania residents did not violate the Commerce Clause). Once it is clear that the laws do not discriminate between in-staters and out-of-staters, "the inquiry as to the burden on interstate commerce should end" and further analysis of the local benefits is unnecessary. Instructional Sys., 35 F.3d at 827.

Even if we consider the local benefits, we would conclude that they weigh in favor of applying Pennsylvania laws to TitleMax. The laws protect Pennsylvania consumers from usurious lending rates.

TitleMax's interest rates may be as high as 180% but if the CDCA and LIPL applied, TitleMax's rates for Pennsylvania customers would be capped at 6%.[13] Cash Am. Net of Nev., LLC v. Pa. Dep't of Banking, 8 A.3d 282, 285-86 (Pa. 2010). "Pennsylvania's interest in the rates which its residents pay for the use of money for purchase of goods delivered into Pennsylvania is substantial enough to satisfy any due process objection to its attempt at regulating [credit on installment contracts]." Aldens, 524 F.2d at 43. The local interest in prohibiting usurious lending is equally important when evaluating a Commerce Clause challenge. See, e.g., Aldens, Inc. v. LaFollette, 552 F.2d 745, 751, 753 (7th Cir. 1977) (holding that "[p]rotecting . . . citizens from usurious credit terms imposed when they are residents of the state" is a local interest sufficient for due process and for interstate-commerce balancing); Cash Am., 8 A.3d at 292 ("It is well established that public policy in this Commonwealth prohibits usurious lending, and this prohibition has been recognized for over 100 years."). Thus, any burden does not clearly exceed the local benefits. Pike, 397 U.S. at 142.

Pennsylvania has a strong interest in prohibiting usury. Applying Pennsylvania's usury laws to TitleMax's loans furthers that interest, and any burden on interstate commerce from doing so is, at most, incidental. Pennsylvania may therefore investigate and apply its usury laws to TitleMax without violating the Commerce Clause.

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[13] Not all car loans in Pennsylvania are capped at 6%. See 12 Pa. Stat. § 6243(e)(2) (capping interest rates at 21% for older, used motor vehicles).

III

For the foregoing reasons, we will reverse the judgment in favor of TitleMax and direct that the District Court enter judgment in favor of the Department.

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

TITLEMAX OF DELAWARE, INC., TITLEMAX OF OHIO, INC., TITLEMAX OF VIRGINIA, INC., and TMX FINANCE OF VIRGINIA, INC., Plaintiffs, v. ROBIN L. WEISSMANN, Defendant.	C. A. No. 17-1325-MPT December 7, 2020

MEMORANDUM OPINION

This action concerns the legality of an Investigative Subpoena for the Production of Documents and Information (the "Subpoena")[1] issued by the Commonwealth of Pennsylvania Department of Banking and Securities pursuant to Pennsylvania state law that is currently being litigated by these

[1] D.I. 44-1, Ex. 1. The subpoena was issued pursuant to Section 401.F of the Department of Banking and Securities Code, 71 P.S. § 733-401.F; Section 12 of the CDCA, 7 P.S. § 6212; and Section 506 of the LIPL, 41 P.S. § 506. *Id.*

same parties in a Pennsylvania state court. TitleMax of Delaware, Inc. d/b/a TitleMax ("TM DE"), TitleMax of Ohio, Inc. d/b/a TitleMax ("TM OH"), TitleMax of Virginia, Inc., d/b/a TitleMax ("TM VA"), and TMX Finance of Virginia, Inc. ("TMX VA") (collectively, "TitleMax") brought this action against Robin L. Weissmann (the "Secretary"), in her official capacity as Secretary of the Pennsylvania Department of Banking and Securities (the "Department").[2]

TitleMax's two-count Amended Complaint alleges the Subpoena attempts to regulate commercial activity that takes place wholly outside of the Commonwealth of Pennsylvania in violation of the Commerce Clause and Due Process Clause of the United States Constitution.[3] Count One requests injunctive relief pursuant to 42 U.S.C. § 1983 and *Ex parte Young*,[4] based on the Commerce Clause prohibition of the Department's application of the Pennsylvania Loan Interest and Protection Law ("LIPL") and Consumer Discount Company Act ("CDCA") to TitleMax because it operates "wholly outside" of Pennsylvania.[5] Count One also alleges the Due Process Clause similarly prevents application of the LIPL and CDCA because TitleMax does not have sufficient "minimum contacts" with the state.[6] Count Two requests a judgment under 28 U.S.C. § 2201 that the Secretary has no authority to enforce against TitleMax the LIPL, CDCA, or any other laws or

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[2] D.I. 5 (Amended Complaint).

[3] D.I. 5 ¶ 1 (citing U.S. Const. I, § 8, cl. 3 & amend. XIV, § 1).

[4] 209 U.S. 123, 28 S.Ct. 441, 52 L.Ed. 714 (1908).

[5] D.I. 5 ¶¶ 48-54.

[6] *Id.*

regulations the Department is empowered to administer and enforce, because extraterritorial application of these laws would violate the Commerce Clause and Due Process Clause.[7]

Presently before the court are the parties' cross-motions for summary judgment.[8] For the reasons discussed below, TitleMax's motion is granted, and the Department's motion is denied.

I. BACKGROUND FACTS [9]

Each TitleMax entity is licensed in their respective states and incorporated in Delaware.[10] Each provided loans for personal, family, and household purposes that are secured by the borrower's motor vehicle.[11] The Department served the Subpoena on August 22, 2017.[12] On September 18, 2017,

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[7] D.I. 5 ¶¶ 55-56.

[8] D.I. 45 (TitleMax); D.I. 48 (Department). Briefing is found at D.I. 46 (TitleMax opening brief); D.I. 49 (Department opening brief); D.I. 50 (TitleMax brief in opposition to D.I. 48 and reply in support of D.I. 45); and D.I. 51 (Department reply brief in support of D.I. 48). TitleMax also filed a Motion for Leave to File Supplemental Response in Opposition to Defendant's Motion for Summary Judgment, D.I. 53 (Motion for Leave), which the Department opposes. *See* D.I. 54. For the reasons discussed below, the court grants TitleMax's Motion for Leave. Briefing on the motion is found at D.I. 53 (TitleMax opening brief) and D.I. 54 (Department opposition brief).

[9] The Background Facts are taken from the parties' Joint Stipulation of Facts. D.I. 44.

[10] D.I. 44 ¶¶ 1-4.

[11] *Id.* Each entity provided the loans directly, expect TM OH which connected borrowers with a third-party lender who provided the loans. *Id.* ¶ 3.

[12] *Id.* ¶ 6.

TitleMax commenced this action in this court.[13] The Department filed a petition in the Commonwealth Court of Pennsylvania (the "State Commonwealth Court") to enforce the Subpoena (the "Petition") on September 22, 2017.[14] TitleMax removed the Department's Petition to the United States District Court for the Middle District of Pennsylvania (the "Middle District of Pennsylvania") on November 16, 2017.[15] On December 15, 2017, the Department filed a motion to remand the Middle District of Pennsylvania action to the State Commonwealth Court.[16] The parties subsequently agreed to several extensions and a stay of both cases pending their attempts to resolve the matters amicably.[17] On June 10, 2019, the parties informed the Middle District of Pennsylvania that they were unable to reach a resolution.[18] On January 10, 2020, the Middle District of Pennsylvania issued a Memorandum Opinion and entered an Order granting the Department's motion to remand.[19] The Department's Petition is now pending in the State Commonwealth Court.[20]

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[13] *Id.* ¶ 7.

[14] *Id.* ¶ 8.

[15] *Id.* ¶ 9.

[16] *Id.* ¶ 10.

[17] *Id.* ¶ 11.

[18] *Id.* ¶ 12.

[19] *Id.* ¶ 13.

[20] *Id.* ¶ 14.

II. GOVERNING LAW

A grant of summary judgment pursuant to FED. R. CIV. P. 56 is appropriate if materials in the record, such as depositions, documents, electronically stored information, admissions, interrogatory answers, affidavits and other like evidence show that there is no genuine issue as to any material fact, and the moving party is entitled to judgment as a matter of law.[21] The movant bears the burden of establishing the lack of a genuinely disputed material fact by demonstrating "that there is an absence of evidence to support the nonmoving party's case."[22] "Facts that could alter the outcome are 'material,' and disputes are 'genuine' if evidence exists from which a rational person could conclude that the position of the person with the burden of proof on the disputed issue is correct."[23] "Where the record taken as a whole could not lead a rational trier of fact to find for the non-moving party, there is no genuine issue for trial."[24]

This standard does not change merely because there are cross-motions for summary judgment.[25] Cross-motions for summary judgment:

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[21] FED. R. CIV. P. 56 (a) and (c).

[22] *Celotex Corp. v. Catrett*, 477 U.S. 317, 325, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986).

[23] *Horowitz v. Fed. Kemper Life Assurance Co.*, 57 F.3d 300, 302 n.1 (3d Cir. 1995) (internal citations omitted).

[24] *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587, 106 S.Ct. 1348, 89 L.Ed.2d 538 (1986) (internal quotations omitted).

[25] *Appelmans v. City of Philadelphia*, 826 F.2d 214, 216 (3d Cir. 1987).

> are no more than a claim by each side that it alone is entitled to summary judgment, and the making of such inherently contradictory claims does not constitute an agreement that if one is rejected the other is necessarily justified or that the losing party waives judicial consideration and determination whether genuine issues of material fact exist.[26]

"The filing of cross-motions for summary judgment does not require the court to grant summary judgment for either party."[27]

III. DISCUSSION

Pursuant to the court's Scheduling Order, TitleMax and the Department filed cross-motions for summary judgment on May 1 and May 4, respectively.[28] On June 23, 2020, TitleMax filed its Motion for Leave, essentially a motion to file a sur-reply brief to the Department's Reply Brief.[29]

The parties' summary judgment motions present competing arguments over whether the court should abstain from deciding the merits of TitleMax's constitutional claims as articulated in the United States Supreme Court's decision in *Younger v. Harris*, 401 U.S. 37, 91 S.Ct. 746, 27 L.Ed.2d 669 (1971)

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[26] *Rains v. Cascade Indus., Inc.*, 402 F.2d 241, 245 (3d Cir. 1968).

[27] *Krupa v. New Castle County*, 732 F. Supp. 497, 505 (D. Del. 1990).

[28] D.I. 45; D.I. 48.

[29] D.I. 53. Attached to the Motion for Leave is TitleMax's proposed sur-reply brief. *See* D.I. 53-2.

("*Younger* abstention"). TitleMax seeks to file a sur-reply brief to address the apparent change the Department's argument regarding the basis of *Younger* abstention.[30] TitleMax asserts that the Department's initial *Younger* abstention argument is based on the subpoena enforcement petition pending in the State Commonwealth Court, but thereafter in the Department's Reply Brief, D.I. 51, the asserted basis for *Younger* abstention now rests on a hypothetical enforcement action by the Department against TitleMax.[31] This court has previously granted leave to file a sur-reply when the proposed brief "responds to new evidence, facts, or arguments" raised in an opposing party's reply.[32]

Here, the Department changed the basis upon which it argues abstention under *Younger* is appropriate. In its combined Opening and Answering Brief, the Department argues the elements for *Younger* abstention are satisfied because "the pending Commonwealth Court proceeding implicates Pennsylvania's important interest in assessing a potential violation of its fundamental policy against high interest rates on consumer loans," and therefore, "given Pennsylvania's significant interest in the matter pending in the Commonwealth Court, the second *Younger* element is satisfied."[33] In its Reply Brief, however, the Department bases its argument for *Younger* abstention on a hypothetical enforcement

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[30] D.I. 53 at 1-2.

[31] *Id.* at 2.

[32] *Belden Techs., Inc. v. LS Corp.*, 2010 U.S. Dist. LEXIS 70424 at *3, 2010 WL 11205228 at *1 (D. Del. July 14, 2010).

[33] D.I. 49 at 15.

action mentioned in TitleMax's Reply Brief that would, if brought to fruition, focus on an enforcement action against TitleMax, alleging that their loans to Pennsylvanians violate Pennsylvania state law.[34] TitleMax is thus correct that the Department's abstention argument in their Reply Brief is no longer based on the pending State Commonwealth Court proceeding as it argued in its combined Opening and Answering Brief.

Because the Department substantially changed its original position by raising a new and different argument, the court grants TitleMax's Motion for Leave [35] and will consider its arguments presented in the proposed sur-reply brief attached thereto [36] in the court's analysis of the parties' cross-motions for summary judgement.

Both TitleMax and the Department seek judgment in their respective favor. TitleMax argues for summary judgment based on the Department's threatened extraterritorial imposition of Pennsylvania laws on TitleMax's operations, which violates the Commerce Clause of the United States Constitution.[37] It specifically maintains that: (1) the Commerce Clause's extraterritoriality principle prohibits regulation of out-of-state activity; (2) application of the extraterritoriality principle focuses on where the commercial activity takes place; (3) application of the extraterritoriality principle in factually similar cases has determined out of state

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[34] D.I. 51.

[35] D.I. 53.

[36] D.I. 53-2.

[37] D.I. 46 at 1.

regulation unconstitutional; and (4) *Midwest Title* and the extraterritoriality principle prohibit the Secretary's attempted regulation of out of state activities.[38] In its sur-reply brief, TitleMax also contends that *Younger* abstention is not applicable because the Department's petition in the State Commonwealth Court is not the type of proceeding that would allow this court to abstain pursuant to the criteria set forth in *Sprint*, and the Department's threatened enforcement action against TitleMax cannot be a basis for *Younger* abstention.[39] TitleMax further asserts that *Younger* abstention is inappropriate because the Department voluntarily submitted to this court's jurisdiction.

The Department argues the court should apply the *Younger* abstention doctrine and dismiss this action because: there is a pending state court proceeding that is judicial in nature; the State Commonwealth Court proceeding implicates important state interests; and TitleMax can raise the same arguments in the state court action.[40] The Department also contends it is entitled to judgment in its favor because the undisputed facts purportedly show it has not violated the Commerce Clause because: the Department does not seek to apply LIPL or CDCA to TitleMax; and the LIPL and CDCA do not violate the dormant commerce clause because neither discriminate against out-of-state businesses, each are

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[38] *Id.* at 2 (citing *Midwest Title Loans, Inc. v. Mills*, 593 F.3d 660 (7th Cir. 2010)).

[39] D.I. 53-2 at 4 (citing *Sprint Commc'ns, Inc.v. Jacobs,* 571 U.S. 69, 70, 134 S.Ct. 584, 187 L.Ed.2d 505 (2013)).

[40] D.I 49 at 9-10.

consistent with Supreme Court precedent, and TitleMax's reliance on *Midwest Title* is misplaced.[41] Lastly, the Department maintains the undisputed facts show that TitleMax has sufficient minimum contracts with Pennsylvania to satisfy the Due Process Clause.[42]

Under *Sprint*, abstention under *Younger* is an exception, not the rule, and is appropriate when there are one of three exceptional circumstances present to justify a federal court's refusal to decide a case in deference to the States: (1) hearing the case in federal court would intrude on an ongoing state criminal prosecution; (2) the case involves a state civil enforcement proceeding "akin to a criminal prosecution in important respects"; or (3) hearing the case in federal court would interfere with "pending civil proceedings involving certain orders . . . uniquely in furtherance of the state courts' ability to perform their judicial functions."[43] The Supreme Court recognized that the types of proceedings covered under the second *Sprint* circumstance are often "initiated by the federal plaintiff . . . for some wrongful act[,]" and "often culminate in the filing of a formal complaint or charges."[44] The Third Circuit further clarified that to be "akin to a criminal prosecution in important respects," a matter must be

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[41] *Id.* at 12-18.

[42] *Id.* at 20.

[43] *Sprint,* 571 U.S. at 70, 134 S.Ct. 584.

[44] *Id.* at 79, 134 S.Ct. 584.

"quasi-criminal" in nature, meaning that it would likely have a parallel criminal statute.[45]

The Department asserts that the enforcement proceeding TitleMax seeks to enjoin falls under the second *Sprint* category, because the Third Circuit has held that Pennsylvania's "fundamental policy" in applying its usury laws is quasi-criminal in nature.[46] However, TitleMax is not seeking to enjoin a state proceeding on the enforcement of Pennsylvania's usury laws; rather, it seeks a determination regarding the authority of the Department to issue the disputed Subpoena.[47] TitleMax correctly argues that *Younger* abstention cannot be based on a state proceeding that is merely threatened and not currently pending.[48] The subpoena matter pending in the State Commonwealth Court is not a criminal proceeding, and does not have any of the characteristics of a "quasi-criminal" state proceeding. Nor would the pending state proceeding being heard in federal court interfere with any important judicial function of the State Commonwealth Court. Given that *Younger* abstention would not be appropriate under any of the three exceptional circumstances set forth in *Sprint*, the parties' arguments regarding any purported waiver by the Department when it voluntarily submitted to this court's jurisdiction need not be

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[45] *Acra Turf Club, LLC v. Zanzucchi*, 748 F.3d 127, 138 (3d Cir. 2014).

[46] D.I. 51 at 6.

[47] D.I. 50 at 5.

[48] D.I. 53-2 at 4 (quoting *Malhan v. Sec'y United States Dep't of State*, 938 F.3d 453, 464 (3d Cir. 2019)).

addressed. Therefore, the Department's motion for summary judgment is denied.

TitleMax asserts the Department's actions violate the extraterritoriality aspect of the Commerce Clause by attempting to impose Pennsylvania's laws on its operations.[49] Alternatively, the Department argues that no violation of the Commerce Clause occurred because there are no broad extraterritorial principles that would trigger such a violation.[50]

There are multiple avenues whereby the Commerce Clause may be violated. The Department is correct that laws discriminatorily applied to impact in-state and out-of-state lenders differently violate the principles of the Commerce Clause.[51] However, the Department's assertion that discriminatory application of the law is "the only relevant inquiry" in a Commerce Clause analysis is misplaced.[52] The extraterritoriality principal on which TitleMax relies is recognized by the Supreme Court and multiple circuits. The Supreme Court has found that the Commerce Clause "precludes the application of a state statute to commerce that takes place wholly outside of the State's borders, whether or not the commerce has effects in the state" and a state law which "directly controls commerce occurring wholly outside the boundaries of a State exceeds the inherent limits of the enacting State's authority and is invalid regardless of whether the statute's extraterritorial

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[49] D.I. 50.

[50] D.I. 51.

[51] *Id.* at 8.

[52] *Id.*

reach was intended by the legislature."[53] In an extraterritoriality analysis, the "critical inquiry is whether the practical effect of the regulation is to control conduct beyond the boundaries of the state."[54] Moreover, the Third Circuit recognized that courts are authorized to invalidate state regulations "when their impact is so great that their practical effect . . . is to control conduct beyond the boundaries of the state."[55] In a case almost factually identical to the present matter, *Midwest Title*, the Seventh Circuit held the extraterritoriality principle should focus on where the transaction the state seeks to regulate takes place.[56]

Applying the *Midwest Title* standard, Pennsylvania is attempting to regulate transactions that occur completely outside its jurisdiction. In *Midwest Title*, loan agreements with Indiana residents made and executed in Illinois constituted activity "wholly inside" Illinois, thereby making it illegal under the Commerce Clause for Indiana to apply its state laws to those transactions.[57] Here, the loans by TitleMax to Pennsylvania residents are completely made and executed outside Pennsylvania and inside TitleMax locations in Delaware, Ohio, or Virginia.[58] To secure a loan from TitleMax,

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[53] *Healy v. Beer Institute*, 491 U.S. 324, 336, 109 S.Ct. 2491, 105 L.Ed.2d 275 (1989).

[54] *Id.*

[55] *A.S. Goldmen & Co. v. N.J. Bureau of Secs.*, 163 F.3d 780, 786 (3d Cir. 1999).

[56] *Midwest Title Loans, Inc. v. Mills*, 593 F.3d 660 (7th Cir. 2010).

[57] *Id.*

[58] D.I. 46 at 5.

Pennsylvania residents must travel to one of these states having TitleMax locations.[59] The loans are made and executed exclusively at those locations outside Pennsylvania, and any contact with Pennsylvania, such as phone calls, are purely incidental to these transactions.[60] Applying the proper standard, the Department's attempt to apply its usury laws to the loans issued by TitleMax violate the Commerce Clause. In light of this finding, the parties' other arguments need not be addressed. Therefore, Title-Max's motion for summary judgment is granted and the Department's motion for summary judgment is denied.

IV. CONCLUSION

For the reasons discussed herein:

1. TitleMax's Motion for Leave (D.I. 53) is GRANTED;
2. TitleMax's Motion for Summary Judgment (D.I. 45) is GRANTED; and
3. The Department's Motion for Summary Judgment (D.I. 48) is DENIED.

December 7, 2020

/s/ Mary Pat Thynge
Chief U.S. Magistrate Judge

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[59] *Id.*

[60] *Id.* at 6.

APPENDIX C

STATUTORY PROVISIONS INVOLVED

7 Pa. Stat. § 6203. License required

A. On and after the effective date of this act, no person shall engage or continue to engage in this Commonwealth, either as principal, employee, agent or broker, in the business of negotiating or making loans or advances of money on credit, in the amount or value of twenty-five thousand dollars ($25,000) or less, and charge, collect, contract for or receive interest, discount, bonus, fees, fines, commissions, charges, or other considerations which aggregate in excess of the interest that the lender would otherwise be permitted by law to charge if not licensed under this act on the amount actually loaned or advanced, or on the unpaid principal balances when the contract is payable by stated installments except a domestic business corporation organized under or existing by virtue of the Business Corporation Law[1] of this Commonwealth, after first obtaining a license from the Secretary of Banking of the Commonwealth of Pennsylvania in accordance with the provisions of this act.

B. Any person who shall hold himself out as willing or able to arrange for or negotiate such loans of twenty-five thousand dollars ($25,000), or less where the interest, discount, bonus, fees, fines, commissions or other considerations in the aggregate exceeds the interest that the lender would otherwise be permitted by law to charge or who solicits prospective borrowers

[1] 15 P.S. § 1001 et seq. (repealed); see 15 Pa.C.S.A. § 1101 et seq.

of such loans of twenty-five thousand dollars ($25,000), or less shall be deemed to be engaged in the business contemplated by this act, unless otherwise permitted by law to engage in such activities. The referring borrowers to a licensee shall not be deemed to be engaged in the business contemplated by this act if no charge, no matter how denominated, for such reference is imposed on the prospective borrower by the person making the reference. No licensee shall knowingly include in any loan under this act any amount which is to be paid by the borrower to another as a fee or charge, no matter how denominated, for referring said borrower to the licensee.

C. Notwithstanding subsection A, the Secretary of Banking may license a branch office in another state provided the licensee maintains a place of business in this Commonwealth which is licensed under the provisions of this act.

7 Pa. Stat. § 6213. Powers conferred on licensees

In addition to the general powers conferred upon a corporation by the Business Corporation Law of this Commonwealth,[1] a corporation licensed under this act shall have power and authority:

A. To lend money, credit, goods or things in action and charge, contract for, receive or collect charges herein provided.

B. To lend money on the security of real or personal property or without security.

C. To lend money on promissory or judgment notes with or without comakers, endorsers, guarantors or sureties.

D. To purchase contracts evidencing an agreement to pay a sum certain in money or credit at a fixed or determinable time.

E. To charge, contract for, receive or collect interest or discount at a rate not to exceed nine dollars and fifty cents ($9.50) per one hundred dollars ($100) per year when the contract is repayable within forty-eight (48) months from the date of making. When the contract is repayable more than forty-eight (48) months from the date of making, the rate of interest or discount which may be charged, contracted for, received or collected, shall not exceed nine dollars and fifty cents ($9.50) per one hundred dollars ($100) per year for the first forty-eight (48) months of the term of the contract plus six dollars ($6) per one hundred dollars ($100) per year for any remainder of the term of the contract. Such interest or discount shall be

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[1] 15 P.S. § 1001 et seq. (repealed); see 15 Pa.C.S.A. § 1101 et seq.

computed at the time the loan is made on the face amount of the contract for the full term of the contract from the date of the contract to the date of the scheduled maturity notwithstanding any requirement for installment payments. On contracts for periods which are less or greater than one year, or which are not a multiple of one year, the interest or discount shall be computed proportionately on even calendar months: Provided, however, That for a period of less than one month the computation may be based on a full calendar month. The face amount of any note or contract made pursuant to this act may, notwithstanding any other provision, exceed twenty-five thousand dollars ($25,000) by the amount of interest or discount and service or other charge authorized by this act collected or deducted in advance or added to the principal at the time of making the loan. As an alternative to the rates provided for in this clause, a licensee may charge, contract for, and collect interest at the rate and in the manner provided for in section 17.1 A:[2] Provided, however, That on loans secured by a security interest, mortgage or other lien on real property, and in which the principal amount exceeds five thousand dollars ($5,000), a licensee may not charge, contract for, receive, or collect interest in excess of the rate specified in section 9 of the act of December 12, 1980 (P.L. 1179, No. 219),[3] known as the "Secondary Mortgage Loan Act."

F. To charge, contract for, receive or collect on any contract a service charge of one dollar and fifty cents ($1.50) for each fifty dollars ($50), or fraction thereof,

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[2] 7 P.S. § 6217.1.

[3] 7 P.S. § 6609 (repealed); see now, 7 Pa.C.S.A. § 6122.

provided that the total service charge shall not exceed one hundred fifty dollars ($150) on any contract.

G. To charge, contract for, or collect for interest or discount and service charge a minimum charge of three dollars ($3.00) on any contract of twenty-five dollars ($25) or less, which is payable in one year by a single payment, or is payable in one year, by installment payments and a minimum charge of six dollars ($6.00) on any contract in excess of twenty-five dollars ($25), which is payable in one year by a single payment, or is payable in one year by installment payments. On contracts for periods which are less or greater than one year, a proportionate minimum charge may be collected which shall be computed on even calendar months: Provided, however, That for a period less than one month the computation of the minimum charge may be based on a full calendar month.

H. To collect or deduct interest or discount and service charges in advance; or to add interest or discount and service charges to the principal amount of the contract and divide the total into equal or substantially equal installment payments; or to collect interest or discount and service charges wholly or partially at any time during the term of the contract; or to collect interest or discount and service charges at the end of the term of the contract.

I. [Reserved].

J. To require payment of contracts in equal weekly, semi-monthly, monthly or any other periodic installments: Provided, however, The first installment period may exceed one month by as much as fifteen (15) days without being deemed violative of this provision.

K. To collect an additional charge for extension, deferment or default in the payment of any contract or for extension, deferment or default in the payment of any installment on a contract at the rate of one and one-half per cent (1 ½ %) per month on the amount extended, deferred or in arrears: Provided, however, A minimum charge of one dollar ($1) may be collected for any extension, deferment or default of ten (10) or more days.

L. To renew or refinance contracts. On a contract which is renewed or refinanced prior to the expiration of the term of the contract, a refund shall be made of unearned interest or discount which has been prepaid and shall be computed as on a prepaid contract.

M. To collect from the consumer, in addition to the interest or discount and service charges permitted under this act, the actual fees charged by a public official or agency of the Commonwealth for recording and satisfying a judgment, mortgage, encumbrance or lien on any real or personal property which constitutes security on a contract.

N. To collect from the consumer, in addition to the interest or discount and service charges permitted under this act, the premium actually paid for insurance required or obtained as security for, or by reason of, a loan made or contract purchased, provided insurance is obtained from an insurance company authorized by the laws of Pennsylvania to conduct business in this Commonwealth. Any benefit or return to the licensee from the sale or provision of such insurance shall not be deemed a violation of this act when the insurance is written pursuant to the laws of this Commonwealth governing insurance.

O. [Reserved].

P. To collect attorney's fees and court costs incurred in the collection of any contract in default and to collect actual and reasonable expenses of repossessing, storing and selling collateral, pledged as security on any contract in default.

Q. To conduct the business regulated by this act in any licensed place of business where another business is conducted by the licensee or another person unless the Secretary of Banking shall find, after a hearing, the conduct of the other business has concealed evasions of this act and shall order such person to desist from such conduct and to offer other services and products for voluntary purchase subject to the provisions of this clause.

(1) The licensee, or such other person, may offer the types of products or services described in subclause (2) provided, however, that if the products or services are to be offered to an applicant or applicants for a loan:

(i) the products or services shall not be offered to such applicant or applicants until the loan has been approved and the applicants, or the applicant being offered the service or product in the case of co-applicants, have been advised that the loan has been approved, either orally or in writing;

(ii) when the applicant has been advised that the loan is approved and products or services are then offered orally, by telephone or otherwise, the applicant shall also be advised that the purchase of the service or product is not required in order to qualify for the loan and that the purchase thereof is voluntary;

(iii) whether or not an oral disclosure has been made as provided in paragraph (ii), the applicant or applicants shall be provided a separate and distinct disclosure written in plain language to be signed by the applicant prior to the closing of the loan which clearly states that the purchase of the service or product is not required in order to obtain the loan and that the purchase thereof is voluntary; and

(iv) if the cost of the service or product is to be included in the loan and paid from the loan proceeds, a separate loan proceeds check shall be drawn, made payable to the borrower or borrowers, for the cost or price of the service or product which may then be endorsed by the borrower or borrowers to the vendor of the service or product after closing at the option of the borrower or borrowers.

(2) A licensee may offer the types of services and products described in this subclause and may conduct or permit others to conduct the types of business described in this subclause within the same office, room or place of business where the licensee conducts its licensed business without prior approval by the Secretary of Banking.

(i) Automobile security plans which provide protection against automobile emergencies and which provide for full or partial reimbursement of certain costs incurred as the result of such emergencies, such as towing, lost key service, emergency transportation, stolen automobile expenses, bail bonds, emergency treatment expense, legal defense and similar or related items, which may include extended warranties,

travel discounts and service items, among other things.

(ii) Home security plans which provide protection against home emergencies and provide full or partial reimbursement of certain costs incurred because of home emergencies, such as medical costs, health insurance deductibles, pharmacy service, extended warranties, lost or stolen key protection, credit card liability coverage, and which may include life-saving training, home security training and protection services and products, among other things.

(iii) First mortgage lending in accordance with all applicable Federal and State law and regulation.

(iv) Secondary mortgage lending in accordance with all applicable Federal and State law and regulation.

(v) Sales finance agreements pursuant to applicable law and regulation.

(vi) Income tax preparation services.

(vii) Commercial or business loans, including installment sales financing contracts for commercial purposes.

(viii) Credit card agreements, including additional services or goods which are or may be offered in connection with such credit cards or credit card agreements.

R. To collect a fee for a subsequent dishonored check or instrument taken in payment, not to exceed the service charge permitted to be imposed under 18 Pa.C.S. § 4105(e)(3) (relating to bad checks).

41 Pa. Stat. § 201. Maximum lawful interest rate

(a) Except as provided in Article III of this act, the maximum lawful rate of interest for the loan or use of money in an amount of fifty thousand dollars ($50,000) or less in all cases where no express contract shall have been made for a less rate shall be six per cent per annum.

(b) The maximum lawful rate of interest set forth in this section shall not apply to:

(1) an obligation to pay a sum of money in an original bona fide principal amount of more than fifty thousand dollars ($50,000);

(2) an unsecured, noncollateralized loan in excess of thirty-five thousand dollars ($35,000); or

(3) business loans of any principal amount.