§ 351. Restrictions on loans subject to the provisions of this article; interest; other charges. 1. Every licensee hereunder may loan any sum of money not exceeding the maximum principal amounts prescribed in section three hundred forty of this article, and may charge, contract for, and receive thereon interest at the rate or rates agreed to by the licensee and the borrower. Such interest may either (a) be calculated on the actual unpaid principal balances of the loan or in the case of a loan commitment from the date of each advance thereunder for the actual time outstanding, according to a generally accepted actuarial method at a fixed or variable rate and in accordance with the provisions of the evidence of the indebtedness or (b) precomputed under subdivision five of this section.

2. On any loan with a variable rate of interest made pursuant to this subdivision, the rate shall be determined at regular intervals as set forth in the evidence of indebtedness and in accordance with such regulations as the superintendent of financial services shall prescribe but said rate shall not vary more often than once in any three month period and shall be based on a published index that is (a) readily available, (b) independently verifiable, (c) beyond the control of the licensee, and (d) approved by the superintendent.

The superintendent of financial services shall adopt regulations, including but not limited to: (i) providing for disclosure to the borrower by the licensee of the circumstances under which the rate may increase, any limitations on the increase, the effect of an increase and an example of the payment terms that would result from an increase; (ii) providing for disclosure to the borrower by the licensee of a history of the fluctuations of the index over a reasonable period of time; and (iii) providing for notice to the borrower from the licensee prior to any rate increase or change in the terms of payment.

3. Loans may be granted under an open end or closed end loan agreement providing for a fixed or variable rate.

4. Interest, consideration, or charges for the use of money shall not be deducted or received in advance and shall be computed on unpaid

principal balances. Such interest, consideration, or charges shall not be compounded; provided that, if part or all of the principal amount of any loan contract is the unpaid principal balance of a prior loan, the unpaid interest, consideration or charges for the use of money on such prior loan which have accrued within sixty days before the making of such loan contract may be incorporated as interest bearing principal in the principal amount of such loan contract, and for the purposes of this subdivision any such new loan shall be deemed a separate loan transaction.

5. When a closed-end loan agreement requires repayment in substantially equal and consecutive monthly installments of principal and interest combined, the interest may be precomputed at the agreed rate on scheduled unpaid principal balances according to the terms of the agreement and added to the principal amount of the loan. Every payment may be applied to the combined total of principal and precomputed interest until the loan agreement is fully paid and the acceptance or payment of interest on loans made under the provisions of this subdivision shall not be deemed to constitute payment, deduction or receipt thereof in advance nor compounding under subdivision four of this section. Such precomputed interest shall be subject to the following adjustments:

(a) If the loan agreement is prepaid in full by cash, a new loan, refinancing or otherwise before the final installment date, the borrower shall receive a refund of (i) the unearned portion of the interest the amount of which portion shall be determined according to a generally accepted actuarial method; provided, however, that if the amount of precomputed interest (A) is less than ten dollars, no refund shall be required; or (B) exceeds the sum of ten dollars and the earned interest is less than that amount, the licensee may retain such an additional amount as will bring the earned interest to ten dollars and refund the remainder, and provided further, that unless the loan is refinanced, no refund shall be required if it amounts to less than one dollar; and (ii) if a charge was made to the borrower for credit related insurance for insuring the borrower the excess of the charge to the borrower therefor over the insurance charges paid or payable by the licensee, if such insurance charges were paid or payable by the licensee periodically, or

the refund for such insurance charges received or receivable by the licensee, if such premium was paid or payable in a lump sum by the licensee, provided that no such refund shall be required if it amounts to less than one dollar. In the event (i) the maturity of the loan is accelerated due to the default of the borrower or otherwise and judgment is obtained, or (ii) repayment is made pursuant to any credit related insurance policy for which a charge was made to the borrower for the premium thereon, the borrower or legal representative, as the case may be, shall be entitled to the same refund of interest and insurance charges as if the loan had been prepaid in full on the date of acceleration or repayment.

(b) (i) In the event of default of more than ten days in the payment of any scheduled installment, the licensee may charge and collect a default charge not exceeding five percent of the installment in default. This charge may not be collected more than once for the same default and may be collected at the time of such default or at any time thereafter.

(ii) After the final due date or upon acceleration of maturity for default, the licensee may charge interest at the original agreed rate on actual unpaid balances if the loan agreement so provides.

(c) If payment of all unpaid installments on which no default charge has been charged and collected is deferred one or more full months, and if the loan agreement so provides, the licensee may charge and collect an amount which shall be equal to the difference between the refund that would be required for prepayment in full as of the scheduled due date of the first deferred installment and the amount which would be required for prepayment in full as of one month prior to said date, multiplied by the number of months in the deferment period. The deferment period is that period in which no scheduled payment has been made and in which no payment is required by reason of the deferment. Such charge may be collected at the time of deferment or may be collected at any time thereafter. If a refund of precomputed interest is required during a deferment period the borrower shall also receive a refund of the deferment charge for the number of months remaining in said period, for which purpose a portion of a month exceeding fifteen days shall be deemed a month.

(d) If two or more installments or parts thereof are in default for five days or more, the licensee may, if the loan agreement so provides,

elect to convert the loan from a precomputed one to one in which interest is paid on actual unpaid balances. In this event, the licensee shall make the same refund of interest as if the loan were prepaid in full on the scheduled payment due date preceding the date of conversion and thereafter may charge interest at the agreed rate, by the actuarial method, on actual unpaid balances for the time actually outstanding.

6. * (a) In addition to the interest, consideration, or charges above specified, no further or other charge or amount whatsoever for any examination, service, brokerage, commission, expense, fee, or bonus or other thing or otherwise shall be directly or indirectly charged, contracted for, or received, except the premium or identifiable charge for insurance authorized by section three hundred fifty-seven of this article; the lawful fees, if any, actually and necessarily paid out by the licensee to any public officer for filing, recording, or releasing in any public office any instrument securing the loan, which fees may be collected when the loan is made or at any time thereafter or non-filing insurance premiums not in excess of seven dollars in lieu of filing, recording or releasing any such instrument; an annual fee on open end loans authorized by the superintendent and made pursuant to subdivision three of this section, provided, however, that no such fee shall exceed an amount equal to one percent of the amount of the loan or fifty dollars, whichever is less; and a fee, not to exceed the amount set forth in section 5-328 of the general obligations law, for return by a depository institution of a dishonored check, negotiable order of withdrawal, or share draft.

* NB Effective until June 30, 2027

* (a) In addition to the interest, consideration, or charges above specified, no further or other charge or amount whatsoever for any examination, service, brokerage, commission, expense, fee, or bonus or other thing or otherwise shall be directly or indirectly charged, contracted for, or received, except the premium or identifiable charge for insurance authorized by section three hundred fifty-seven of this article; the lawful fees, if any, actually and necessarily paid out by the licensee to any public officer for filing, recording, or releasing in any public office any instrument securing the loan, which fees may be collected when the loan is made or at any time thereafter or non-filing

insurance premiums not in excess of seven dollars in lieu of filing, recording or releasing any such instrument; and a fee, not to exceed the amount set forth in section 5-328 of the general obligations law, for return by a depository institution of a dishonored check, negotiable order of withdrawal, or share draft.

* NB Effective June 30, 2027

(b) Any licensee which knowingly receives, reserves or charges a greater rate of interest than that authorized by this section shall forfeit the entire interest which the note, or other evidence of debt carries with it, or which has been agreed to be paid thereon, and if a greater rate of interest has been paid, the person paying the same or his legal representative may recover from the licensee twice the entire amount of interest thus paid.

* (c) In addition to other such information as the superintendent may require, any licensee which charges an annual fee on open end loan accounts shall annually report, in a manner and form prescribed by the superintendent, information to the department on open end loan borrowers, which shall include: average annual income of borrowers at the time of the loan, average amount of loans outstanding at the end of each calendar year, average interest charged, average amount of annual fees, and geographic distribution of loans made by the licensee.

* NB Repealed June 30, 2027