

2020 State Legislative Session Preview and 2019 Review

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Overview

2019 Elections Summary

Only a few states held “off-year” elections in 2019; however, the elections shifted party control of two attorney general offices, one gubernatorial seat, and a handful of state legislative seats. Democratic Governor Andy Beshear was able to flip the gubernatorial seat in **Kentucky** by a narrow margin of about 5,000 votes. The gubernatorial race in **Mississippi** appeared to be close in the weeks leading up to the race, but Republican Lt. Gov. Tate Reeves was able to pull out the victory and maintain a Republican trifecta in the state. **Louisiana** held special elections on November 16. Democratic Governor John Bel Edwards won a second term with 51 percent of the vote.

Republicans won each of the three attorney general races held in 2019. The position remained under Republican control in **Louisiana**. In **Kentucky**, Republican Daniel Cameron’s victory gave the position to the Republicans for the first time in over seven decades. In **Mississippi**, Republican Lynn Fitch won the seat for Republicans for the first time in over 140 years.

Republicans now hold a supermajority in the **Louisiana** Senate of 27 to 12 after picking up two previously Democratic seats. In the House, Republicans picked up eight seats, bringing their numbers to 68, two short of the 70 needed to make a supermajority.

In the **Mississippi** House, Republicans won 75 seats compared to the Democrats’ 46 seats, with one seat won by an Independent. In the Senate, Republicans gained three additional seats in the election, for a total of 36 seats, with Democrats in turn losing three seats for 16 seats, meaning

the Republicans maintained their supermajority control of both chambers. In the **New Jersey** Assembly, Republicans made small gains by picking up three seats in the chamber, though Democrats held on to their majority in the chamber 52-28. In **Virginia**, every seat in the House and Senate was on the ballot, and Democrats turned the state into a Democratic trifecta by taking control of both chambers from the Republicans. In the House, Democrats came out of the election with 55 seats to Republicans' 45. In the Senate, Democrats won 21 seats to Republicans' 19, guaranteeing them a majority even without Democratic Lt. Gov. Justin Fairfax's vote.

Missouri held a special election for House Districts 22, 36, 74, 78, 99 and 158, resulting in one seat flipped from Republican to Democrat in House District 99.

Legislative Trends Overview

The following is a brief analysis of legislation considered and enacted over the last several sessions for seven major categories of legislation: Cards, Lending, Traditional Installment Loans, Privacy and Fraud, Vehicle Finance, Debt Collection, and Mortgage Lending. Using this data allows us to form a picture as to how the upcoming 2020 session may shape up.

Tracking legislative trends across the nation from year to year is difficult since only 20 states start and end their legislative sessions in the same year, each year.¹ **Montana, Nevada, North Dakota** and **Texas** each hold a single-year session only on odd-years. Twenty-four states², the **District of Columbia** and the **U.S. Congress** hold biennial sessions that begin on odd-years and end on even-years. Included with those 24 states is **Arkansas**; however, the legislature only considers appropriations bills during the even years of the session. **Virginia** and **New Jersey** hold biennial sessions that begin on even-years and end on odd-years. Finally, **Puerto Rico** holds quadrennial legislative sessions—the current session began in 2017 and will end in 2020.

Adding to this complexity of tracking legislative trends is the fact that not all sessions start on the same day or even in the same month, and special sessions could be called after a legislature has adjourned its regular session sine die.

For the purposes of this paper, legislative trends were tracked using “session periods” as enumerated below to help give a consistent picture on the ebb-and-flow of introductions and enactments than may be had when only looking at a set calendar or fiscal year. These session periods contain the following legislative sessions:³

- **2009-2011**: 2009; 2009-2010; 2010; 2010-2011
- **2011-2013**: 2011; 2011-2012; 2012; 2012-2013
- **2013-2015**: 2013; 2013-2014; 2014; 2014-2015
- **2015-2017**: 2015; 2015-2016; 2016; 2016-2017

¹ These states are **AL, AR, AZ, CO, CT, FL, ID, IN, KY, LA, MD, MO, MS, NM, OR, RI, SD, UT, WV** and **WY**.

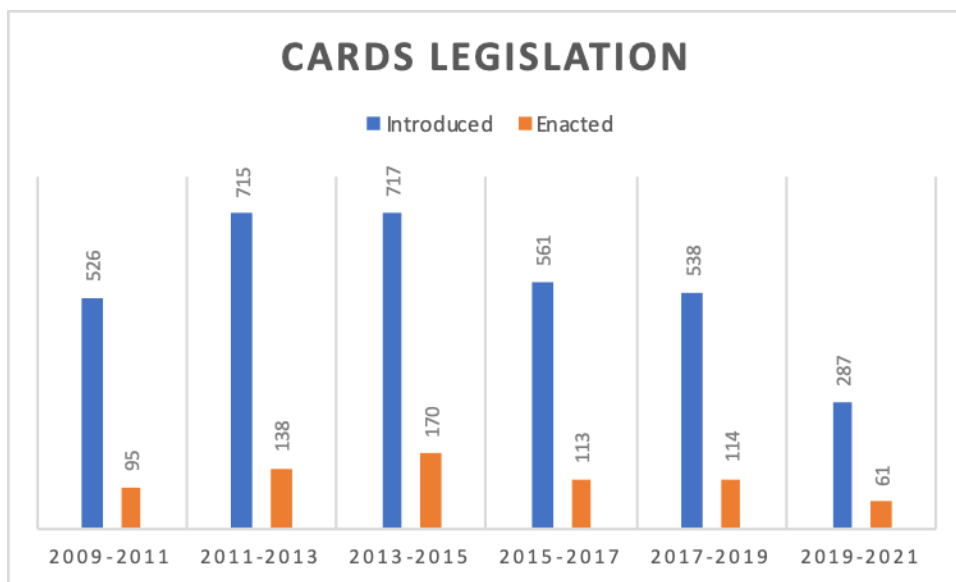
² These states are **AK, CA, DE, GA, HI, IA, IL, KS, MA, ME, MI, MN, NC, NE, NH, NY, OH, OK, PA, SC, TN, VT, WA** and **WI**.

³ **Puerto Rico**'s quadrennium has been omitted, therefore the legislative data points do not include Puerto Rico's introduced or enacted legislation.

- **2017-2019:** 2017; 2017-2018; 2018; 2018-2019⁴
- **2019-2021:** 2019; 2019-2020; 2020; 2020-2021⁵

As explained in AFSA’s August 2018 *Legislative Data Trends in Consumer Credit* white paper,⁶ the AFSA*Track state legislative tracking database was created in November 2008. In the decade-plus since, primary categories, subcategories and keywords used to pull in relevant texts have been added, removed, changed and updated—activities which themselves can cause fluctuations in the overall bill counts that are not related to legislative activity or other ongoing world events. Extreme inflation or deflation of bill counts typically indicate such internal database changes. The best example of this is reflected in the differences between the first data points gathered for the 2009-2011 session period and the 2011-2013 session period. During that time AFSA*Track was being fully fleshed out and refined, especially with subcategories being added under primary categories and keywords being revised to ensure relevant legislation was appropriately captured. This is why certain categories appeared to grow astronomically (sometimes by thousands of percentage points) between these session periods.

Cards Legislation



Cards legislation introductions remained almost the same from 2011 through 2015, though enactments increased about 23 percent during the 2013-2015 session period. This coincides with the CFPB scrutiny of credit card issuers regarding ancillary products offered along with extensions of credit. Introduced legislation began to taper off in 2015, going down about 22

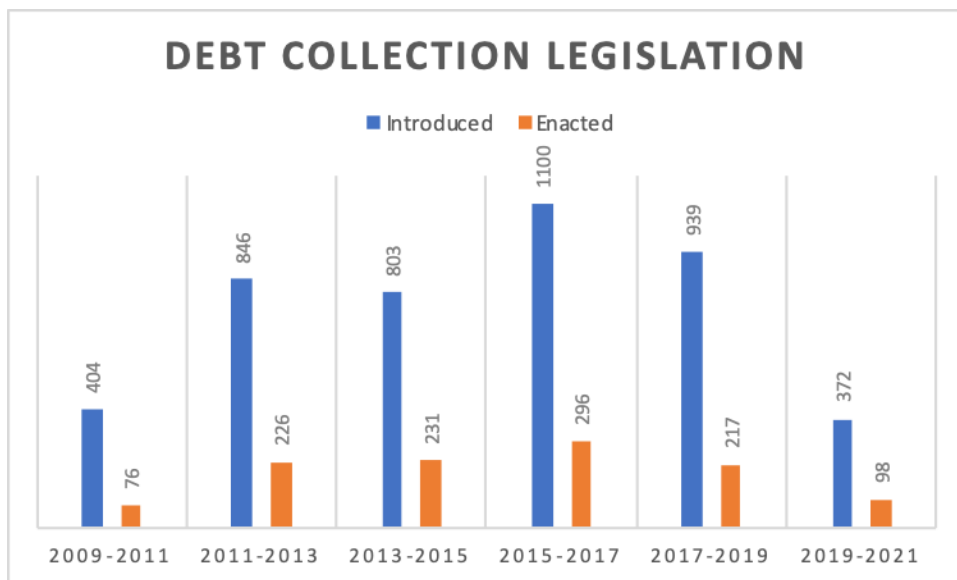
⁴ The number of bills introduced and/or enacted for the 2018-2019 session are as of early December 2019. These numbers could increase for the session period since **New Jersey** will not adjourn the second half of its biennium until January 14, 2020, when it gavel in its new biennium.

⁵ The number of bills introduced, prefiling and/or enacted for the 2019-2021 session period are as of early December 2019. These numbers will increase for the session period since 24 states will begin the latter half of their biennia in 2020; and the states with 2020 and 2020-2021 sessions are still prefiling and have yet to gavel in their sessions.

⁶ Available [here](#).

percent during the 2015-2017 session period. Introductions declined slightly over the 2017-2019 session period, but the rate of enactment increased slightly. At the end of 2019, the ongoing 2019-2021 session period is looking to stay at a similar rate as the 2015-2017 and 2017-2019 session, or even surpass them. For a closer look at cards legislative topics, see [below](#).

Debt Collection Legislation



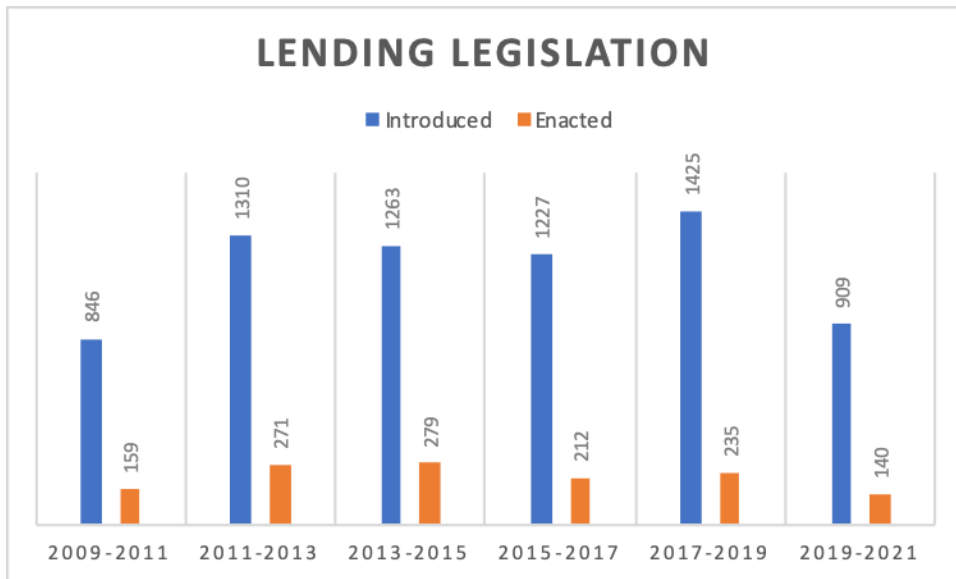
Debt collection tends to be heavily legislated year to year and peaked during the 2015-2017 session period, which may be due to increased attention being paid to debt buying practices in particular. *The New York Times* published an article in August 2014 concerning debt buying which could very well have inspired more legislation to be introduced when many states convened their sessions in January 2015 and beyond.⁷ However, the spike in introduced legislation did not show a corresponding increase in the enactment rate. About 29 percent of the bills were enacted during the 2013-2015 session period, but this decreased by about two percent during the 2015-2017 session period. Enactments for debt collection bills slipped down an additional four percent over the 2017-2019 session period, which saw about 15 percent fewer bills. It appears that debt collection legislation may maintain similar levels through the 2019-2021 session period. A closer examination of debt collection legislative trends is [below](#).

Lending Legislation

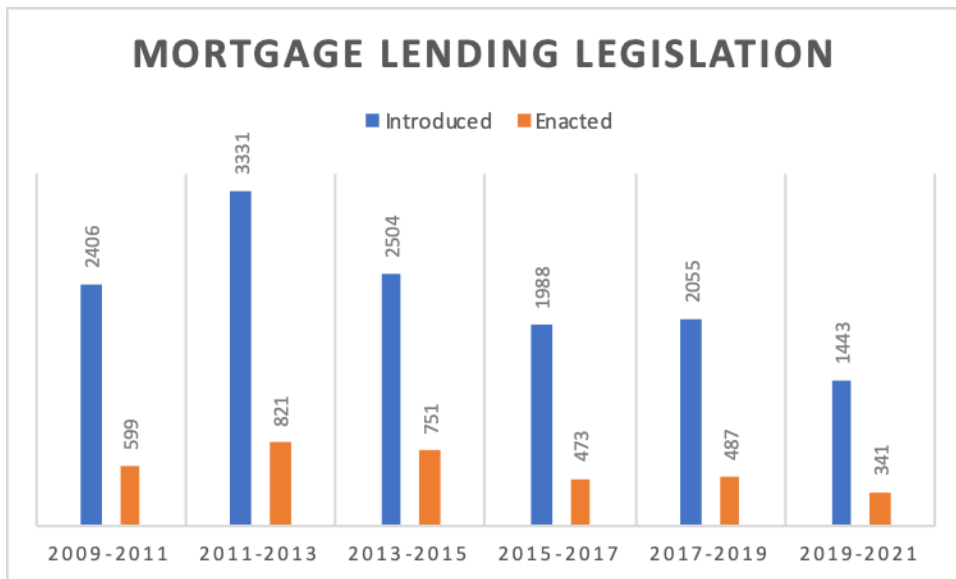
The lending category broadly covers issues like student loans, lending license requirements, payday loans and pawnbrokers, which means that this category sees an abundance of legislation considered each year. After gradually declining over a few session periods, the 2017-2019 session period saw a 16 percent increase for introduced bills; however, the rate of enactments did not similarly increase. While there is already a large amount of lending legislation as the first part of the 2019-2021 session comes to a close, this is the first year of biennial state sessions, so

⁷ The New York Times, *Paper Boys*, at <https://www.nytimes.com/interactive/2014/08/15/magazine/bad-paper-debt-collector.html> (August 15, 2014).

introductions will likely level off for the remainder of the session period and end at about the same level as the prior session period. A closer look at lending legislation is [below](#).



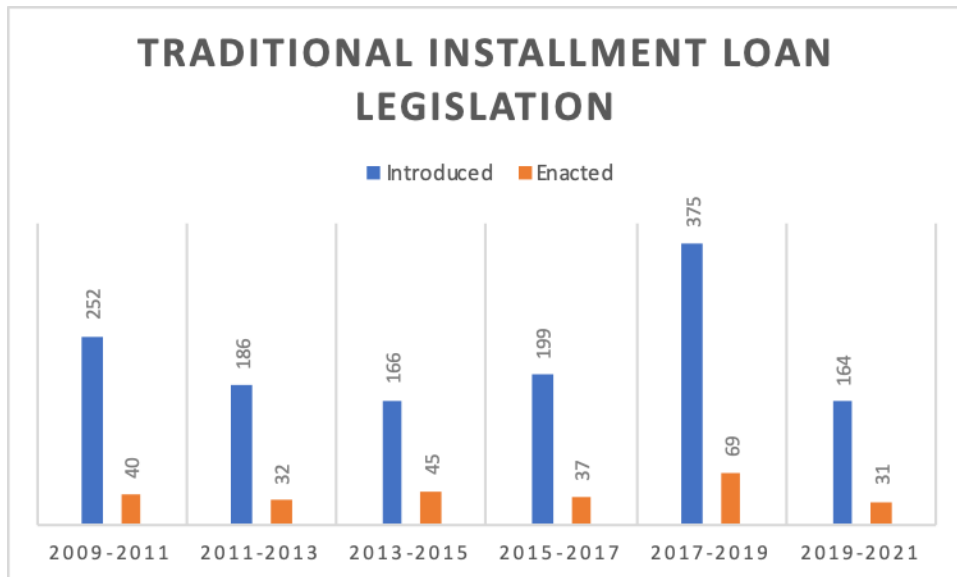
Mortgage Lending Legislation



Mortgage lending legislation had been decreasing relative to its peak during the 2011-2013 session period, but it appears both introductions and enactments are rising and could potentially reach the same levels as the 2013-2015 session period. This category covers all mortgage-specific issues, including licensing requirements for originators and servicers, foreclosure, mediation, vacant property upkeep requirements and reverse mortgages. Legislation regarding mortgages spiked as part of the continuing fallout from the 2008 financial crisis and following increased attention on mortgage lending practices by the CFPB. Rates of enactment peaked during the 2013-2015 session period, with nearly 30 percent of legislation signed by governors

or otherwise allowed to become law. This dropped to about 23 percent for the subsequent session periods. For a closer look at mortgage lending, see [below](#).

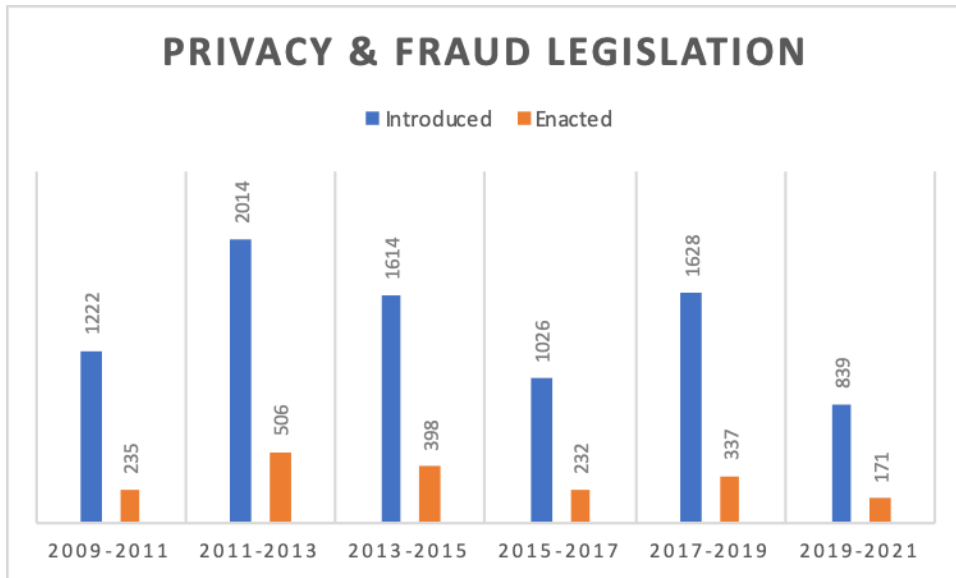
Traditional Installment Loan Legislation



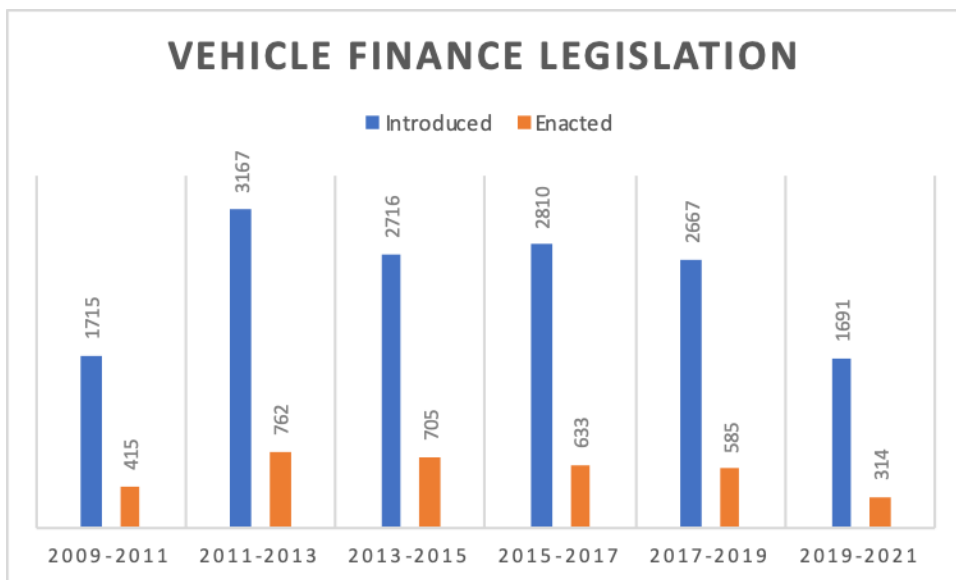
Legislation concerning traditional installment loans is the least introduced relative to AFSA*Track’s other primary lending categories. The 2013-2015 session period saw the lowest amount of legislation, though enactments increased by about 10 percent during that same time. During those session periods greater scrutiny of the payday lending industry likely wrapped in traditional installment lenders. The 12 percent uptick for introductions during the 2017-2019 session period is likely attributable to the addition of new subcategories rather than an actual increase in overall legislation. The current session period is shaping up to have about the same amount of legislation introduced and enacted. For more on issues affecting traditional installment lending, see [below](#).

Privacy & Fraud Legislation

Privacy and Fraud legislation declined by 50 percent from 2011 through 2016; however, due to the recent wave of data security and data breach issues that have plagued retailers, hotel chains, and credit reporting agencies, among others, legislation increased by almost 57 percent during the 2017-2019 session period. The enactment rate decreased though by about two percent. The remaining few states without data breach notification laws enacted such legislation in 2018. However, the enactment of the California Consumer Privacy Act (CCPA) in 2018 has inspired other states to consider similar such legislation, and information privacy remains a looming concern in light of ongoing data breaches and data leaks of major companies. The level of legislation on this topic is likely to reach similar levels as the 2017-2019 session, if not surpass it. A closer look at the Privacy and Fraud activity is [below](#).



Vehicle Finance Legislation



Vehicle finance legislation remained relatively steady over the past few session periods after peaking during the 2011-2013 session period. Although that session period had the most bills introduced, the 2013-2015 session period had a slightly higher enactment rate. Enactment rates have decreased over more recent sessions. Vehicle finance is another very broad category that covers many aspects either directly or indirectly related to lending for automobile purchases, including vehicle-specific sales tax issues, automated license plate reader systems, dealer franchise issues, towing and impoundments, payment assurance devices and vehicle service contracts, and liens and lienholder notifications. The 2019-2021 session period is shaping up to the reach similar levels as the 2017-2019 session period. A closer look at vehicle finance legislation is [below](#).

A. General Interest ([click back to top](#))

A.1. Ancillary Products

The ancillary products referred to in this section include credit monitoring, credit insurance/debt suspension, guaranteed asset protection (GAP), motor vehicle service contracts and credit property insurance. Opponents of these products sometimes refer to them as “add-on” products, though “ancillary product” is a term AFSA often uses, since these products include an additional protection or service that is complementary to the main credit product. Recently, some in the industry have referred to them as either “voluntary protection products” or “borrower protection products.”

There were 116 bills concerning ancillary products considered in 30 states⁸ and the U.S. Congress. Of these bills, 41 have been enacted, and 53 bills will carry over for consideration in 2020. At least three bills have been prefiled for upcoming sessions in **Florida** and **Missouri**.

A.1.1. Credit Insurance/Debt Suspension

Review of the 2019 Session

Missouri [SB 246](#) died upon adjournment while still pending third reading in the House. The bill would have increased, from 10 years to 15 years, the maximum duration of a credit transaction subject to regulation under the statutes governing credit insurance. Identical companion [HB 815](#) passed the Senate Insurance and Banking Committee, but also died upon adjournment.

Preview of the 2020 Session

Missouri [HB 1543](#) and [SB 669](#), which are refiles of HB 815 and SB 246 above, were prefiled for the 2020 session on December 1 and 2, respectively. HB 1543 is sponsored by Representative John Black, R-Marshfield. SB 669 is sponsored by Senator Lincoln Hough, R-Springfield.

A.1.2. Guaranteed Asset Protection (GAP)

There were 17 bills concerning GAP considered in 12 states,⁹ with eight enacted and six still pending further consideration in 2020. No bills have been prefiled yet for the 2020 session.

A.1.3 Motor Vehicle Service Contracts

⁸ These states are: **AR, AZ, CA, CT, DE, GA, HI, IA, IL, IN, MA, MD, MI, MO, MS, NC, ND, NJ, NM, NV, NY, OH, OK, OR, RI, SC, TN, TX, VA** and **WA**.

⁹ These states are: **AR, AZ, CT, GA, IL, MA, MD, ND, NJ, OR, TX** and **VA**.

There were 79 bills considered in 2019 regarding vehicle services contracts in 26 states,¹⁰ and 27 were enacted with 33 carrying over to 2020 for further consideration. No bills have been prefiled yet for the 2020 session.

Other legislative issues relating specifically to Vehicle Finance are discussed [below](#).

A.1.4 Payment Assurance Devices

Only four bills concerning payment assurance devices were considered during 2019, with two bills carrying over for further consideration in **New York** and one bill each having died in **Indiana** and **Virginia**, respectively. No bills have been prefiled yet for the 2020 session.

New York [AB 3897](#) was introduced on January 31, 2019, by Assemblymember Michael DenDekker, D-East Elmhurst, and referred to Assembly Transportation Committee, where it remains pending. Identical companion bill [SB 758](#) was introduced on January 9, 2019, and referred to the Senate Consumer Protection Committee, where it also remains pending. These bills would prohibit the installation of starter interrupt devices, as defined, on certain vehicles. Among various provisions, it would prohibit new or used motor vehicle dealers or lenders from installing such a device on a motor vehicle purchaser's or lessee's motor vehicle.

A.2. Arbitration

There were 198 bills regarding arbitration introduced for consideration in 2019 in 36 states,¹¹ the **District of Columbia** and the **U.S. Congress**. There have been 33 bills enacted, and 101 will carry over for further consideration in the 2020 session. Four bills with arbitration provisions were prefiled so far for the 2020 session, all in **Florida**.

CFPB Overturned Rule

In November 2017, the CFPB's then recently adopted rule regarding arbitration clauses was overturned via the Congressional Review Act.¹² The rule would have banned the use of mandatory arbitration clauses in contracts for consumer financial products. In May 2019, an [amendment](#) to **United States HR 1500** to reinstate the rule was adopted just prior to it passing the House along a party-line vote. The bill remains pending in the Senate Banking, Housing and Urban Affairs Committee. In the unlikely event that the bill is passed by the Republican controlled Senate, Republican President Donald Trump has already stated that he would veto it.¹³

A.3. Credit Reporting/Credit History

¹⁰ These states are: **AR, AZ, CA, CT, DE, GA, HI, IA, IN, MA, MS, NC, ND, NJ, NM, NV, NY, OH, OK, OR, RI, SC, TN, TX, VA** and **WA**.

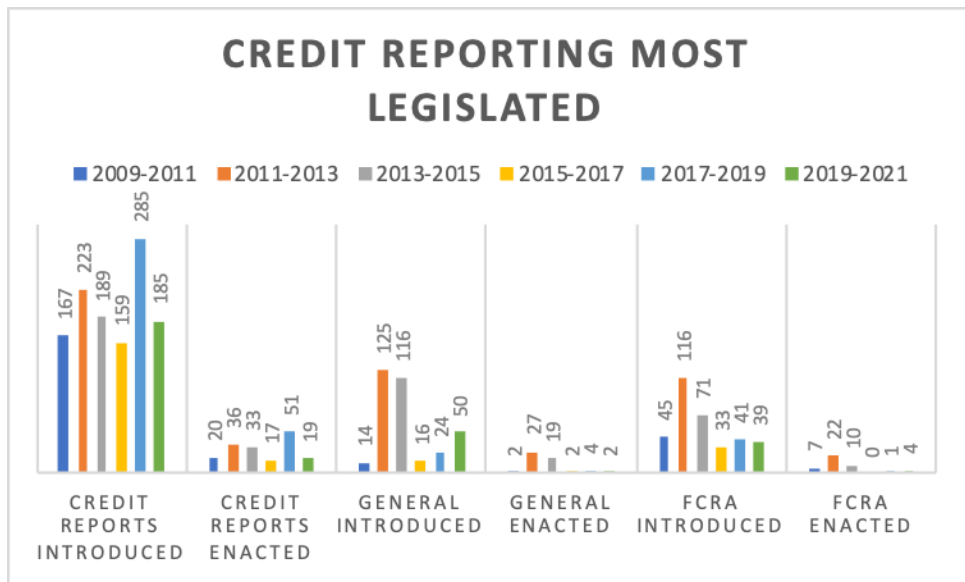
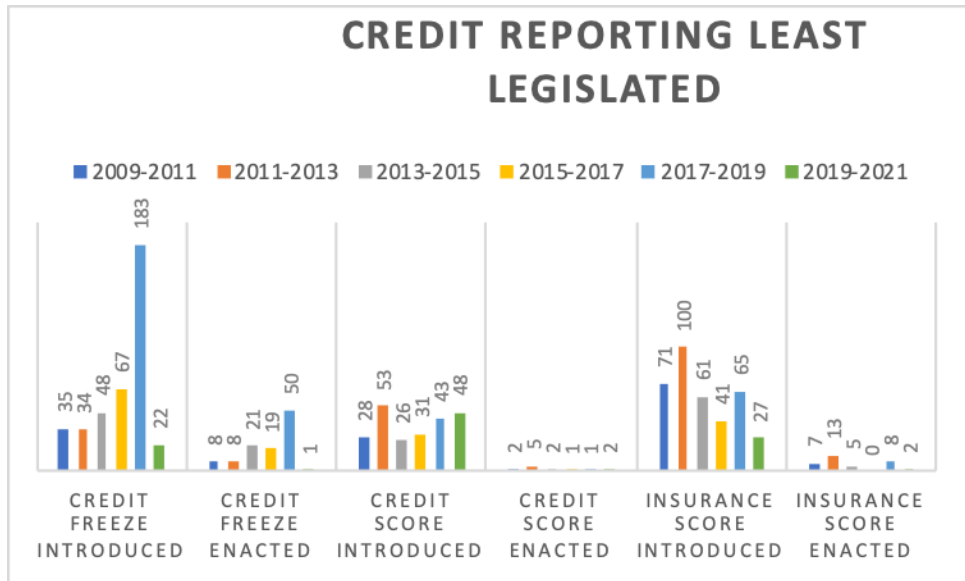
¹¹ These states are: **AK, AR, CA, CO, CT, FL, GA, HI, ID, IL, IN, KS, KY, MA, MD, ME, MI, MN, MO, MS, NC, ND, NE, NJ, NM, NV, NY, OR, RI, SC, TN, TX, UT, VA, VT** and **WY**.

¹² InsideARM.com, *Trump Kills Cordray's Arbitration Rule; Would He Do the Same for Debt Collectors?*, at <https://www.insidearm.com/news/00043426-trump-kills-cordrays-arbitration-rule-wou/> (November 2, 2017).

¹³ InsideARM.com, *House Passes Consumers First Act, Bill now Goes to Republican-Controlled Senate*, at <https://www.insidearm.com/news/00045069-house-passes-consumers-first-act-bill-now/> (May 23, 2019).

There were 268 bills regarding credit reporting in 2019 in 33 states,¹⁴ the **District of Columbia** and the **U.S. Congress**. So far, 31 of these bills have been enacted, and 142 will carry over for further consideration during the 2020 session. There have been three bills prefiled so far in **Florida** and **Missouri**.

Credit Reporting Legislation Trends



Credit Reports, Fair Credit Reporting Act (FCRA), General and Insurance Score legislation all were on the decline until the 2017-2019 session period, in the wake of the national credit bureau data breach in 2017. Since the breach, credit freeze legislation has increased with a steady

¹⁴ These states are: **AR, AZ, CA, CT, FL, GA, HI, IL, IN, LA, MA, MD, ME, MI, MN, MO, MS, NC, NE, NH, NJ, NV, NY, OH, OR, PA, RI, SC, TN, TX, VA, VT** and **WV**.

enactment rate; typically, around 25 percent of the bills are enacted each session period, while 27 percent of such bills were enacted for the 2017-2019 session period. The full effects of the data breach are still playing out across the states, and more legislation will likely be considered during the 2019-2021 session period than any previous session. Credit score legislation introductions have already passed the total number for the entire 2017-2019 session period; credit report introductions are already at about two-thirds of the introductions from the prior session period, and legislation with provisions concerning the FCRA have also seen a noticeable increase.

Nevada Credit History Legislation & AFSA Lawsuit

Nevada SB 311/Chapter 280 was signed by Democratic Governor Steve Sisolak on June 1, 2019. Effective October 1, the law, in part, allows an applicant with no credit history to request that a creditor deem the credit history of the applicant to be identical to the credit history of the applicant's spouse or former spouse established during the marriage. Failure by the creditor to comply with the request will be deemed discrimination based on marital status, which is already protected under state law and allows for enforcement by private right of action. This section of the bill was added via amendment late in the legislative session.

Following the law's enactment, AFSA had multiple conversations with the Commissioner of Financial Institutions to explain that the law's requirements are preempted by the federal FCRA and Equal Credit Opportunity Act (ECOA) and impossible to implement on a practical level. With no solution before the law's effective date, AFSA filed [suit](#) in federal court on October 1 seeking to enjoin enforcement of the law.¹⁵

CDIA Lawsuits

In the latter half of 2019, the Consumer Data Industry Association (CDIA) filed suits in three states, **Maine**, **New Jersey** and **Texas**, citing preemption by the FCRA on recently passed laws in each of the states that would modify certain credit reporting requirements.

The first lawsuit, brought on September 9, 2019, seeks to prevent the enforcement of Texas [SB 1037](#), which became effective upon enactment on May 31, 2019, on the basis of FCRA preemption.¹⁶ The law prohibits a credit reporting agency (CRA) from furnishing a consumer report that includes information on a medical collection account when the consumer had health insurance at the time services were received and the collection relates to billing for an outstanding balance owed to an emergency care provider or a facility-based provider for an out-of-network benefit claim.

On September 19, 2019, CDIA filed for judgment against two Maine laws—[LD 110/Chapter 77](#) and [LD 748/Chapter 407](#)—that modified [10 M.R.S. § 1310-H](#). Chapter 77 prohibits a CRA from reporting on medical debt until 180 days have passed since the date of first delinquency and

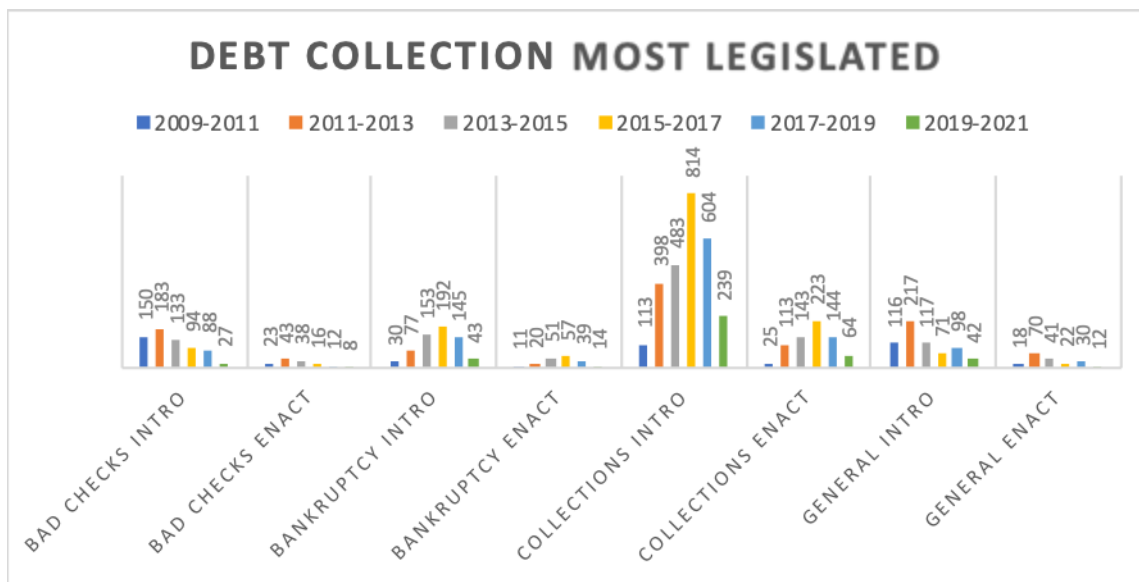
¹⁵ For the full docket of case documents, see the Notable Laws & Legislation section of AFSA's Interactive State Map at <https://www.afsaonline.org/State/Interactive-Map/Nevada>.

¹⁶ Legal Newsline, *Consumer Data Industry Association sues Texas over law that regulates information on consumer reports*, at <https://legalnewsline.com/stories/513710149-consumer-data-industry-association-sues-texas-over-law-that-regulates-information-on-consumer-reports> (September 23, 2019).

prohibits the reporting of medical debt if the consumer and creditor have settled or paid the account and requires the removal of that debt from the consumer’s report. Chapter 407 requires CRAs to reinvestigate any debt in which a consumer provides documentation to a CRA of “economic abuse.” If the CRA finds that the debt is the result of economic abuse, it then must remove any reference to the debt. CDIA argues these provisions are preempted by the FCRA.¹⁷

On October 17, 2019, CDIA filed a lawsuit seeking to block New Jersey [SB 3452/Chapter 183](#), which requires credit reports to be made in 11 foreign languages, if requested by the consumer. CDIA argues that the FCRA preempts the law and that the law violates the First Amendment by compelling speech in languages other than English.¹⁸

A.4. Debt Collection

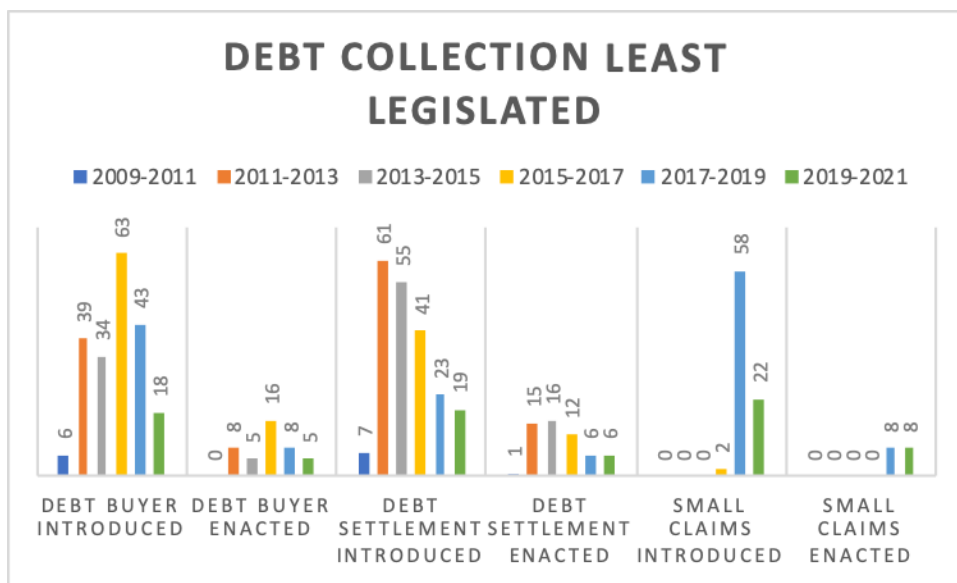


The least legislated subcategories under Debt Collection, relative to the broader subcategories discussed below, are Debt Buyer, Debt Settlement Companies and Small Claims Judgments. It should be noted, however, that the Small Claims Judgments subcategory was recently added, so reliable trend data is not yet available. The snapshot provided by the 2017-2019 session period suggests it will be at least on par with the other smaller subcategories. Issues covered by Small Claims Judgments include procedural matters as well as the monetary limits for which a small claim may be made. Debt Buyer legislation showed an 85 percent increase in legislative activity during the 2015-2017 session period over the prior session period. As mentioned above, this is likely due to the spotlight put on debt buying practices by *The New York Times* and other similar publications in late 2014 and early 2015. This in turn brought more attention upon debt

¹⁷ TroutmanSanders, *CDIA Files Suit Against Maine to Enforce Preemption of State Law by FCRA*, at <https://www.consumerfinancialserviceslawmonitor.com/2019/10/cdia-files-suit-against-maine-to-enforce-preemption-of-state-law-by-fcra/> (October 4, 2019).

¹⁸ TroutmanSanders, *New Jersey Sued by Trade Association for Requiring Credit Reports in Eleven Foreign Languages*, at <https://www.consumerfinancialserviceslawmonitor.com/2019/10/new-jersey-sued-by-trade-association-for-requiring-credit-reports-in-eleven-foreign-languages/> (October 23, 2019).

collection practices in general, as illustrated by the chart below. Debt Settlement Company legislation peaked during the 2011-2013 session period and has declined significantly since, with only about a third as many bills considered during the 2017-2019 session period.



The Collections/Garnishment subcategory broadly tracks most legislation that contains any provisions any affecting debt collection or wage garnishment laws, including licensing, required disclosures, debt verification, and exemptions from collection or garnishment. Of the more specific subcategories, Bankruptcy is the next most legislated. The Bad Checks subcategory includes legislation with provisions that concern fees and penalties regarding bad checks, as well as changes to laws regarding legal punishments for passing of bad checks.

A.4.1 Debt Settlement Companies

Debt settlement companies (DSCs), also called “debt relief” or “debt adjustment” companies, claim they can settle a consumer’s debt with a significant reduction in the amount owed to a creditor or debt collector. DSCs often cast themselves as working on behalf of consumers to settle their debts for “pennies on the dollar” and claim they either prevent debt enforcement actions from being taken against a consumer or stop an action that has already begun.¹⁹ However, these companies charge consumers significant fees and do not generally disclose that creditors are under no obligation to work with the DSC and can still obtain (and may accelerate the process of obtaining) a judgment against a borrower who is working with a DSC.²⁰

There were 24 bills concerning debt settlement companies considered in 13 states.²¹ Of these bills, seven have been enacted, and 10 bills will carry over for further consideration during 2020. No new bills have been prefiled for the upcoming 2020 session to date.

¹⁹ Consumer Financial Protection Bureau, *What are debt settlement/debt relief services and should I use them?*, at <https://www.consumerfinance.gov/ask-cfpb/what-are-debt-settlementdebt-relief-services-and-should-i-use-them-en-1457/> (February 15, 2017).

²⁰ *Id.*

²¹ These states are: IA, IN, MA, MD, MS, ND, NJ, NV, NY, OH, RI, TN and VA.

Colorado Attorney General Enforcement Action

On August 19, 2019, **Colorado** Attorney General Phil Weiser announced \$175,263 in refunds for 315 customers that had been wronged by Nationwide Debt Reduction Services and Sky Bridge Financial, LLC.²² Between 2017 and 2019, Sky Bridge made supervised loans to Nationwide's Colorado customers, despite both companies being wholly owned and operated by the same individuals. Under Colorado law, a debt management company and a lender with shared ownership cannot provide lending and debt management services to customers to protect consumers from a conflict of interest. Both companies are prohibited from entering into new contracts to provide debt management services or supervised loans in Colorado.

A.5. Military Lending

A.5.1 Military Lending Act (MLA) Incorporated into State Laws

Arizona Representative Kelli Butler, D-Paradise Valley, introduced [HB 2458](#) on January 18, 2019, but it died in the House without being considered in committee. Nearly identical to the federal MLA, it would have created various requirements for consumer credit extended to military members and their dependents, including prohibiting an annual interest rate greater than 36 percent, including all fees and charges for ancillary products.

Nevada [SB 201/Chapter 177](#) was signed by Democratic Governor Steve Sisolak on May 28, 2019. The law, among other provisions, incorporated provisions from the federal MLA and prohibits a lender from charging an APR greater than 36 percent to a covered servicemember or a dependent of a covered servicemember. This provision takes effect July 1, 2020.

A.5.2 Mortgage Protections

There were 32 bills concerning mortgage protections for military members that were considered in 15 states²³ and the U.S. Congress. Of these bills, two have been enacted, and 22 bills will carry over for further consideration during 2020. At least one bill has been prefiled for the upcoming 2020 session in **Florida**.

A.6. Privacy and Fraud

A.6.1. Data Breach

²² Office of the Colorado Attorney General, *Attorney General Phil Weiser announces \$175,263 refund for customers of Nationwide Debt Reduction Services and Sky Bridge Financial*, at <https://coag.gov/press-releases/8-19-19/> (August 19, 2019).

²³ These states are: **CA, CT, HI, IL, MA, MD, MN, MS, NJ, NY, OH, OR, PA, TX and WI.**

There were 232 bills concerning data breach considered in 37 states,²⁴ the U.S. Congress and the **District of Columbia**. Of these, 46 have been enacted, and 131 bills will carry over for further consideration in 2020. At least one bill has been prefiled for the 2020 session in **Missouri**.

A.6.2. Elderly Exploitation

There were 229 bills concerning elderly exploitation considered in 39 states,²⁵ the U.S. Congress and the **District of Columbia**. Of these bills, 60 have been enacted so far, and 95 bills will carry over for further consideration during 2020. At least two bills have been prefiled for the upcoming 2020 session in **Florida** and **Missouri**.

A.6.3. Identity Theft

There were 149 bills concerning identity theft considered in 30 states²⁶ and the U.S. Congress. Of these bills, 29 have been enacted so far, and 73 bills will carry over for further consideration during 2020. No bills been prefiled for any upcoming 2020 session yet.

A.6.4. Information Privacy

There were 262 bills concerning information privacy considered in 39 states,²⁷ the U.S. Congress and the **District of Columbia**. Of these bills, 54 have been enacted, and 138 bills will carry over for further consideration in 2020. At least five bills have been prefiled for the upcoming 2020 session in **Florida** and **Missouri**.

California Consumer Privacy Act Update

From January – March 2019, the California attorney general held a series of public forums across the state to receive stakeholder input as part of its preliminary rulemaking implementing the CCPA. The statutory deadline for the rulemaking is July 1, 2020, but the CCPA is effective January 1, 2020. As a result, many companies are unsure how to comply prior to the rulemaking deadline and are concerned they will have to rebuild their compliance programs after the attorney general issues the rules. Numerous bills were introduced and considered in 2019 with the purpose of amending the CCPA further, with several bills enacted, including:

- [AB 25/Chapter 763](#), which was signed by Democratic Governor Gavin Newsom on October 11, 2019 and becomes effective January 1, 2020. This act requires a business to disclose and deliver information to a consumer free of charge within 45 days of receiving a verifiable consumer request from the consumer. The act allows a business to require

²⁴ These states are: **AL, AR, AZ, CA, CT, DE, FL, HI, IA, IL, IN, LA, MA, MD, MI, MN, MO, MS, MT, NC, ND, NH, NJ, NM, NV, NY, OH, OK, OR, PA, TN, TX, UT, VA, VT, WA** and **WV**.

²⁵ These states are: **AR, AZ, CA, CT, DE, FL, GA, HI, IA, ID, IL, IN, LA, MA, MD, ME, MI, MN, MO, MS, MT, ND, NE, NH, NJ, NV, NY, OK, OR, PA, RI, SC, TN, TX, UT, VA, WA, WI** and **WV**.

²⁶ These states are: **AZ, CA, CT, DE, FL, HI, IA, IL, IN, LA, MA, MD, ME, MI, MN, MO, MS, NC, NJ, NM, NY, OH, OK, OR, PA, TX, UT, VA, WA** and **WV**.

²⁷ These states are: **AL, AR, AZ, CA, CT, DE, FL, HI, IA, IL, IN, KS, LA, MA, MD, ME, MI, MN, MO, MS, MT, ND, NH, NJ, NM, NV, NY, OK, OR, PA, RI, SD, TN, TX, UT, VA, VT, WA** and **WI**.

reasonable authentication for a verifiable consumer request and it prohibits a business from requiring a consumer to create an account with the business in order to make a verifiable consumer request, but the business may require a consumer who maintains an existing account to submit the request through that account;

- [AB 1355/Chapter 757](#), which was also signed by Governor Newsom on October 11, and requires businesses to disclose to consumers that a consumer has the right to request specific pieces of information the business has collected about the consumer and that the consumer has the right to request that the business delete the collected information. It also requires a business under the CCPA to include in their online privacy policy or website a disclosure about consumer rights and obtain affirmative consent from those over the age of 13 and under the age of 16 for sale of their information. It also clarifies the CCPA's Fair Credit Reporting Act exemption;
- [AB 1564/Chapter 759](#), also signed on October 11, which exempts businesses that operate exclusively online from the CCPA requirement to maintain a toll-free number for the purposes of customer requests. Instead, it allows online businesses to provide an email address to those that have direct relationships with California residents from whom they collect personal information.

On October 11, 2019, the attorney general's office released [proposed regulations](#). Four hearings regarding the regulations were held in the ensuing months and public comments on the regulations were accepted until December 6, 2019; AFSA attended the hearings that were held in Los Angeles, San Francisco and Fresno and submitted [written comments](#) regarding the proposed regulations. Highlights of the proposed regulatory provisions include:

- What to include in notices and how those should appear to consumers when collecting personal information in the first instance ("easy to read"); informing them on how to opt-out of a sale of personal information; explaining financial incentives; and posting an outward-facing privacy policy;
- The methods a business must provide for consumer requests to know and to delete personal information;
- The methods to provide for consumer requests to opt-out of a sale of personal information;
- An explanation on how a business should verify a consumer's identity when seeking to process requests;
- A statement that a "service provider," a person or entity that processes personal information on behalf of a business and for a business purpose, shall not use such information received either from the business itself or from the consumer's direct interaction for the purposes of providing services to another person or entity;
- An explanation that businesses must comply with a reasonable method for obtaining affirmative authorization from the parent or guardian of a child, in addition to any obligations under the Children's Online Privacy Protection Act;
- Clarification that a financial incentive or a price or service difference is discriminatory and prohibited, if the business treats a consumer differently because they exercised their rights under the CCPA;

- A requirement that a business must establish, document, and comply with a training policy to ensure all individuals responsible for handling consumer requests or the business' compliance with the CCPA are informed of all the necessary requirements under the law.²⁸

On November 13, 2019, Alistair Mactaggart—the activist behind the original ballot initiative that inspired the CCPA—filed a [ballot initiative](#) for the 2020 November election that proposes several changes and additions to the CCPA. For more on the ballot initiative, see [below](#).

Similar Legislation in Other States

In 2019 several states introduced bills exactly like the CCPA, while others offered their own pared back versions. **Hawaii, Illinois, Louisiana, Maryland, Massachusetts, Minnesota, Mississippi, Montana, New Jersey, New Mexico, New York, North Dakota, Oregon, Pennsylvania, Rhode Island, Texas and Washington** introduced CCPA copy-cat bills that would have restricted or banned the collection, use or sale of a consumer's personal identifying information and/or would have required a similar set of individual consumer data privacy rights.

Maine passed a privacy law much narrower than the CCPA. [LD 946/Chapter 216](#), signed by Democratic Governor Janet Mills on June 6, 2019, requires Maine internet service providers to seek and obtain affirmative consent from consumers before selling, sharing or allowing access to that customer's personal information by third parties. The law becomes effective July 1, 2020.

Nevada passed a data privacy law in 2019, but it is also much narrower than the CCPA. [SB 220/Chapter 211](#), signed by Democratic Governor Steve Sisolak on May 30, 2019, requires that companies offer consumers the ability to opt-out of the sale of their personally identifiable information and respond to consumer opt-out requests within 60 days, beginning October 1, 2019. It includes attorney general enforcement.

Washington came the closest to passing a CCPA-style privacy law in 2019 with [SB 5376](#). Citing lack of time, lawmakers chose not to pass the bill before adjournment. SB 5376 would recognize the principle that consumers retain ownership interest in their personal data, including personal data that undergoes processing and, among various requirements, would require businesses confirm consumers' personal data is being processed and provide access to such data. A detailed summary of the bill can be read [here](#). House companion [HB 1854](#) also failed to pass prior to the adjournment of the 2019 session. The bills are likely to be considered further in 2020.

Meanwhile, a handful of states created various interim data privacy task forces and advisory councils; these acts include **Connecticut** [SB 1108/Act 19-24](#), **Hawaii** [HCR 225 HD 1 SD 1](#), **North Dakota** [HB 1485](#) and **Texas** [HB 4390](#). **Louisiana** passed a resolution, [HR 249](#), calling to establish a task force to study data privacy and the sale of consumer information.

²⁸ Snell & Wilmer, *CCPA Updates: California AG Releases Proposed Regulations*, at <https://www.jdsupra.com/legalnews/ccpa-updates-california-ag-releases-20764/> (December 2, 2019).

A.7. Access to Banking for Marijuana Businesses

At the end of 2019, only nine states do not have fully legalized cannabis use in either medical or recreational form.²⁹ The majority of other states have legalized the use of cannabis at least for medical purposes, with recreational cannabis use legalized in 11 states.³⁰ ³¹ Cannabis remains prohibited federally, however, which makes it difficult for financial services to legitimate cannabis businesses where use has been legalized. Legislators in both major parties are working to find a way to provide financial services to cannabis businesses, since these businesses otherwise have no choice but to operate entirely on a cash basis, which is unwieldy and impractical on a large scale, and is much less secure and accurate than electronic transactions. In 2019, several states considered or passed legislation regarding financial services for cannabis businesses.³² The Trump Administration has indicated a preference to allow legalization play out on a state-by-state basis,³³ and there is bipartisan legislation moving through congress that would authorize financial institutions to provide services to cannabis businesses operating in states where use has been legalized.³⁴

B. All-In Rate Caps ([click back to top](#))

The federal Truth in Lending Act (TILA) is intended to promote the informed use of consumer credit through clear and unequivocal disclosures relating to the terms and costs of credit. Annual Percentage Rate (APR) is a required disclosure of the cost of consumer credit under TILA. Its usefulness, however, is limited to comparing *like* credit transactions by setting a single standard to determine the cost of credit in each proposed transaction.

Because APR is valid only for comparing comparable credit transactions and relates only to the cost of the credit, APR has never been associated with the cost of goods, services or insurance. This is why, in TILA, the cost of voluntary ancillary products like credit insurance are expressly excluded from the finance charge if the creditor provides the consumer with certain written disclosures. “All-in” rate caps undermine TILA because they include the cost of goods, services or insurance that are unrelated to the cost of credit and not comparable between credit products.

²⁹ These states are **Alabama, Idaho, Indiana, Kentucky, Mississippi, South Dakota, Texas, Virginia and Wyoming**. This list does not include states that have merely decriminalized the use of cannabis.

³⁰ These states are **Alaska, California, Colorado, Illinois, Maine, Massachusetts, Michigan, Nevada, Oregon, Vermont, Washington**, and the **District of Columbia**. *Note: while the use of recreational cannabis has been legalized in Vermont, the state still has yet to pass a law regarding the sales of recreational cannabis. As of the publication of this paper, only sales of cannabis for medical purposes have been legalized and are regulated.*

³¹ Looking ahead to 2020, the next states likely to legalize recreational cannabis use include **Arizona, Arkansas, Florida, Missouri, New Jersey and South Dakota**. *See also: The Motley Fool, 6 States Trying to Legalize Recreational Marijuana in 2020*, at <https://www.fool.com/investing/2019/11/17/6-states-trying-to-legalize-recreational-marijuana.aspx> (November 17, 2019).

³² These bills include: **Illinois HB 3953**, **Illinois SB 1557/Public Act 101-0593**, **Michigan SB 141/Public Act 55**, and **Utah SB 1002**.

³³ Boston Globe, *President Trump reiterates his administration will let states legalize marijuana*, at <https://www.bostonglobe.com/news/marijuana/2019/09/03/president-trump-reiterates-his-administration-will-let-states-legalize-marijuana/q3O3QE1SZLO8o3u3XwoZKN/story.html> (September 3, 2019).

³⁴ The federal bills include: [HR 1595](#), [HR 3884](#), [S 1200](#), and [S 2227](#).

Use of all-in rate caps has proved confusing for consumers, because creditors are then legally obligated to disclose two APRs. Depending on a state's disclosure requirements, an all-in rate cap would mean creditors must either disclose to the consumer both the all-in rate under state law and the TILA APR, or only the TILA APR, which, if ancillary products or other fees are involved, is lower than and inconsistent with the rate calculated for the purposes of the state's rate cap. Neither option presents the consumer with a clear understanding of the loan contract and cost of credit, undermining the central purpose of TILA.

Review of the 2019 Session

Indiana [SB 104](#) was defeated on a third reading in the Senate on February 26, 2019. It would have changed the current incremental finance charge limits that apply to small loans up to \$550 and set a maximum allowable annual finance charge of 36 percent of the principal. This finance charge would have included all charges for an ancillary product or service and any other charge or fee incident to making or collecting a small loan. It would have additionally prohibited certain other acts with respect to the financing of small loans and made a violation of these provisions a deceptive act subject to penalties. As amended in the Senate Insurance and Financial Institutions Committee, it would have additionally prohibited a credit services organization from making, offering, arranging, brokering or guaranteeing any extension of credit that constitutes a small loan under these provisions regardless of the method in which the credit organization made such extension of credit or whether the organization had a physical location in the state. [SB 84](#), identical to the introduced version on SB 104, died while pending in the Senate Insurance and Financial Institutions Committee, while companion bill [HB 1098](#) died while pending in the House Financial Institutions Committee.

Preview of the 2020 Session

No new all-in rate cap bills have been prefiled yet for the upcoming 2020 legislative session.

C. Electronic Payment Systems ([click back to top](#))

C.1. Payroll Cards

Thirty bills concerning payroll cards were considered in 18 states,³⁵ the U.S. Congress and the **District of Columbia**. Of these bills, seven have been enacted, and 17 bills will carry over for further consideration during 2020. No bills concerning payroll cards have been prefiled for any upcoming 2020 session.

C.2. Prepaid, Stored Value and Reloadable Cards³⁶

³⁵ These states are: **AR, CO, DE, GA, IA, IL, MA, ME, MN, NJ, NV, NY, OR, SC, TX, VA, VT** and **WA**.

³⁶ These numbers do not include bills with provisions related to payroll cards. For the number of bills considered during 2019 related to payroll cards, see section C.1.

There were 149 bills concerning prepaid cards considered in 37 states,³⁷ the **U.S. Congress** and the **District of Columbia**. Of these bills, 23 have been enacted so far, and 76 bills will carry over for further consideration during 2020. At least four bills concerning prepaid cards have been prefiled for the upcoming 2020 sessions in **Florida**.

C.3. Credit and Debit Cards

There were 346 bills concerning credit and debit cards considered in 42 states,³⁸ the **U.S. Congress** and the **District of Columbia**. Of these bills, 67 have been enacted, and 154 bills will carry over for further consideration during 2020. At least seven bills concerning credit and debit cards have been prefiled for the upcoming 2020 sessions in **Florida, Missouri** and **Virginia**.

C.3.1. Interchange Fees and Surcharging

Review of the 2019 Session³⁹

Mississippi [SB 2011](#) died in the Senate Accountability, Efficiency and Transparency Committee on February 5, 2019. It would have prohibited counties and municipalities from imposing a surcharge or transaction fee on certain payments by credit card, charge card, debit card or other form of electronic payment in lieu of payment by cash, check or similar means.

New Jersey [AB 466](#), which would have prohibited retail mercantile establishments from imposing surcharges on consumer credit card purchases, died in the Assembly Consumer Affairs Committee, where it had remained pending since its introduction on January 9, 2018. A version of this bill has been introduced by Assemblymember Gary Shaer, D-Passaic, each session since 2012, but it has never made significant progress.

Preview of the 2020 Session⁴⁰

Massachusetts [HB 316](#) was heard in the Joint Consumer Protection and Professional Licensure Committee on July 8, 2019, where it remains pending. The bill would repeal a law which bans credit card companies from prohibiting sellers from offering discounts for cash payments, which further bans sellers from imposing a surcharge for use of a credit card, and which excludes discounts for non-credit payments from classification as a finance charge. The bill is sponsored by Representative David Muradian, R-Grafton, who is not a member of the committee.

New York [AB 4515](#) remains pending in the Assembly Consumer Affairs and Protection Committee since its introduction on February 4, 2019. The bill would prohibit the imposition of

³⁷ These states are: **AR, CA, CO, CT, DE, FL, GA, HI, IA, IL, IN, KS, MA, ME, MI, MN, MO, MS, MT, NC, ND, NJ, NM, NV, NY, OK, OR, PA, RI, SC, TX, UT, VA, VT, WA, WI** and **WV**.

³⁸ These states are: **AR, AZ, CA, CO, CT, FL, GA, HI, IA, IL, IN, KY, LA, MA, MD, ME, MI, MN, MO, MS, MT, NC, ND, NH, NJ, NM, NV, NY, OH, OK, OR, PA, RI, SC, TN, TX, VA, VT, WA, WI, WV** and **WY**.

³⁹ Other bills of interest that were considered but failed to advance in 2019 include **New Jersey** [AB 577](#); **New Jersey** [AB 907](#) and **New Jersey** [SB 2050](#).

⁴⁰ Other bills of interest that may see consideration in 2020 include: **New York** [AB 992](#) and companion [SB 693](#); **New York** [AB 8707](#); **New York** [AB 8734](#) and companion [SB 5520](#) and **South Carolina** [HB 4744](#).

a surcharge by a seller in a sales transaction on a holder who uses a debit card. The bill is sponsored by Assemblymember David Weprin, D-Queens.

C.4. Virtual Currency

There were 224 bills concerning virtual currency considered by 47 states,⁴¹ the U.S. Congress and the **District of Columbia**. Of these bills, 59 have been enacted, and 86 bills will carry over for further consideration during 2020. No bills have been prefiled for the 2020 session.

C.5. Real Time Sales Tax Remittance

Real time sales tax remittance (RTSTR; also called accelerated sales tax remittance) would require third-party payment processors and issuers of private label retail credit cards to receive and remit sales tax from retail merchants on a daily basis by skimming off the sales tax portion of a credit or debit transaction at the point-of-sale and routing it directly to the government. Over the years, a few states—including **Arizona, Connecticut, Massachusetts and Missouri**—have considered implementing RTSTR under the theory that it would boost the overall revenue collected. However, each proposal has been found to be unfeasible.

Implementing RTSTR would require a wholesale overhaul of retail technology and software and impose significant cost and compliance burdens on payments processors, payment networks, financial institutions and merchants, in part, because, payment systems do not differentiate between payment elements, such as the cost of goods and the sales tax levied on it. Fitting in a tax collection component would create vulnerabilities and undermine the ability to transmit thousands of transactions per second. Even if future technology makes RTSTR possible, it is not clear how such a system would handle returned merchandise.⁴² To avoid situations in which merchants refund customers money that has already been paid to the government in tax, the government would need to return money to merchants in real-time.

Connecticut made another attempt to implement real time sales tax remittance by an amendment that was added to [SB 877](#), which ultimately died in the Senate upon adjournment after previously passing the Joint Finance, Revenue and Bonding Committee. The bill would have required the revenue commissioner to require retailers to enter into an agreement with an electronic payment processing company to provide automated sales tax collection and remittance.

In Massachusetts, the Senate Revenue Working Group, led by Senator Adam Hinds, D-Pittsfield, met in October 2019 to explore ways to modernize the state's tax code. During the meeting the

⁴¹ These states are: **AL, AR, AZ, CA, CO, CT, DE, FL, GA, HI, IA, ID, IL, IN, KS, KY, LA, MA, MD, ME, MI, MN, MO, MT, NC, ND, NE, NH, NJ, NM, NV, NY, OH, OK, OR, RI, SC, SD, TN, TX, UT, VA, VT, WA, WI, WV** and **WY**.

⁴² According to the National Retail Federation, the median rate of returned items is 10 percent. See National Retail Federation, *2017 Organized Retail Crime Survey*, at <https://6a83cd4f6d8a17c1b6dd-0490b3ba35823e24e2c50ce7533598b0.ssl.cf1.rackcdn.com/Original%20research,%20reports/Organized%20Retail%20Crime%20Survey%202017.PDF> (November 17, 2017).

group again considered real time sales tax remittance and said it was likely to be taken up for further consideration in the future.⁴³

Missouri [HB 648](#) died in the House Ways and Means Committee upon adjournment of the 2019 session. The bill would have required sellers to use a payment processor to collect and remit online sales tax. The bill was sponsored by Representative Jim Murphy, R-St. Louis, who was first elected to the House in 2018.

D. Mortgage Lending & Servicing ([click back to top](#))

D.1. Appraisal Management Companies

In 2019, 76 bills concerning appraisal management companies were considered in 31 states,⁴⁴ the U.S. Congress and the **District of Columbia**. Of these bills, 42 were enacted, and 15 bills will carry over for further consideration during 2020. No bills concerning appraisal management companies have been prefiled for the upcoming 2020 session.

D.2. Foreclosure

There were 538 bills concerning foreclosure considered in 44 states,⁴⁵ the U.S. Congress and the **District of Columbia**. Of these bills, 107 have been enacted, and 255 bills will carry over for further consideration during 2020. At least five bills concerning foreclosure have been prefiled for the upcoming 2020 sessions in **Arizona** and **Florida**.

D.3 Vacant Property Upkeep

In 2019, 99 bills concerning vacant property upkeep were considered in 27 states⁴⁶ and the U.S. Congress. Of these bills, 14 have been enacted, and 44 bills in 13 states will carry over for further consideration during 2020. No bills have been prefiled for the upcoming 2020 session.

D.3.1 Vacant Property Upkeep Ordinances

⁴³ The Berkshire Eagle, *Hinds group's tax ideas have revenue-neutrality in mind*, at <https://www.berkshireeagle.com/stories/hinds-groups-tax-ideas-have-revenue-neutrality-in-mind.588709> (October 29, 2019).

⁴⁴ These states are: **AL, AR, AZ, CO, CT, DE, GA, HI, IL, IN, LA, MA, MD, MN, MO, MS, NC, ND, NE, NM, NV, NY, OH, OK, SC, TX, VA, VT, WA, WV** and **WY**.

⁴⁵ These states are: **AL, AR, AZ, CA, CO, CT, DE, FL, GA, HI, IA, IL, IN, KS, KY, LA, MA, MD, ME, MI, MO, MS, MT, NC, ND, NE, NH, NJ, NM, NV, NY, OH, OK, OR, PA, RI, SC, TN, TX, VA, VT, WA, WV** and **WY**.

⁴⁶ These states are: **AR, CO, CT, DE, HI, IA, IL, IN, KS, KY, MD, MI, MO, MS, MT, ND, NE, NJ, NV, NY, OR, PA, RI, TX, VA, VT** and **WY**.

The number of ordinances requiring mortgagees to maintain and/or register vacant properties has increased significantly in recent years. In 2000, there were only about 20 such ordinances adopted across the country, but as of December 2019, that number has grown to at least 898.⁴⁷

Many of the ordinances were adopted in the wake of the financial crisis as properties went into foreclosure at unprecedented rates and borrowers walked away without notifying lenders. Although on their face vacant property ordinances seek to designate a “responsible party” for a vacant property and collect money—often through fees and fines—to pay for the upkeep, the underlying motive for such ordinances may be to force lenders to take on the expense and responsibility of caring for vacant properties before the foreclosure process is completed.

D.4 Reverse Mortgages

There were 22 bills regarding reverse mortgages considered in 2019 in eight states;⁴⁸ of these bills two have been enacted, and 16 will carry over for possible further consideration in 2020. No bills have been prefiled yet for the 2020 session.

D.5 Electronic Notary

In 2019, 55 bills concerning electronic notary were considered in 30 states.⁴⁹ Of these bills, 14 have been enacted and 26 bills in 12 states will carry over for further consideration during 2020. Two bills concerning have been prefiled for the upcoming 2020 session in **Missouri**.

E. Traditional Installment Loans ([click back to top](#))

E.1 Rate Caps (See also the all-in rate cap section [above](#).)

California Democratic Governor Gavin Newsom signed [AB 539/Chapter 708](#) on October 10, 2019. Effective January 1, 2020, the law amends the California Financing Law (CFL) and authorizes a licensee with respect to a loan of a bona fide principal amount of \$2,500 or more but less than \$10,000, to contract for or receive charges at a rate not exceeding an annual simple interest rate of 36 percent plus the Federal Funds Rate, as well as apply certain other principles of the CFL to such loans. Existing law sets no rate cap on loans above \$2,500.

⁴⁷ U.S. Department of Housing and Urban Development, Office of Policy Development and Research, *Cityscape: A Journal of Policy Development and Research, New Data on Local Vacant Property Registration Ordinances*, Volume 15, Number 2, at <http://www.huduser.org/portal/periodicals/cityscpe/vol15num2/ch22.pdf> (2013) and American Financial Services Association, *Municipalities with Vacant, Abandoned & Foreclosed Property Ordinances*, at <https://www.afsaonline.org/LinkClick.aspx?fileticket=1f7tldjX6n0%3d&portalid=0> (December 30, 2019); see also AFSA, *Vacant & Abandoned Properties: Municipal Ordinances (Alaska-Kentucky)*, https://www.afsaonline.org/LinkClick.aspx?fileticket=wGDIY_1UMMw%3d&portalid=0 (December 30, 2019) and AFSA, *Vacant & Abandoned Properties: Municipal Ordinances (Louisiana-Wyoming)*, at <https://www.afsaonline.org/LinkClick.aspx?fileticket=7gLTuJHJiu0%3d&portalid=0> (December 30, 2019).

⁴⁸ These states are: MA, ME, NJ, NV, NY, OR, PA and SC.

⁴⁹ These states are: AK, AL, AZ, CA, CO, CT, FL, HI, IA, ID, KY, LA, MA, MO, MS, MT, NC, ND, NE, NJ, NM, NV, NY, OH, SC, SD, UT, VA, WA and WI.

It also specifies that a licensee may contract for and receive an administrative fee, as defined, in addition to these charges. Existing law prohibits licensees from entering into a contract for a consumer loan of at least \$3,000 but less than \$5,000 from exceeding a maximum term of 60 months and 15 days; this law increases the maximum principal loan amount in these circumstances to \$10,000. It also prohibits a licensee from entering into a contract for a consumer loan that is at least \$2,500 but less than \$10,000 that provides for a scheduled repayment of principal that is less than 12 months.

Furthermore, AB 539 prohibits a licensee from charging, imposing, or receiving any penalty for the prepayment of a loan under the CFL and also clarifies the charges and fees that may be included in the calculation of a “bona fide principal.” The law additionally imposes certain reporting requirements on lenders and requires lenders to offer credit education programs or seminars, as defined, to borrowers before disbursing the proceeds of a loan. AB 539 also applies several provisions relating to open-ended loans—including those authorizing the CFL to prescribe the amount upon which charges may be based, the amount of a minimum monthly payment, the amount of fees, costs and expenses a licensee may receive and the amount to be delivered by the licensee at the time the loan is made—to loans not exceeding \$10,000. Under current law, these provisions apply to loans of up to \$5,000.

E.2 Rate and Band Modernization

Review of the 2019 Section

Similar **Indiana** bills [SB 587](#) and [SB 613](#) both died upon adjournment of the 2019 session. The bills would have made several changes to the Uniform Consumer Credit Code, including replacing the tiered credit service charge authorized for consumer credit sales and the 25 percent loan finance charge authorized for consumer loans with a flat charge that could not exceed 36 percent per year on the unpaid balances. The bills would also have adjusted the minimum allowable service charge for consumer credit sales and the minimum allowable finance charge for consumer loans and amended the rules surrounding prepaid financing charges and the taking of security interests by sellers in consumer credit sales in goods sold dependent on debt owed.

Preview of the 2020 Session

Minnesota [HF 1501](#) passed the House Commerce Committee as amended on February 28, 2019; however, the bill was referred back to the committee as a procedural matter for any bills that were pending on the chamber calendar upon the adjournment of the legislature; it may be taken up for further consideration during the 2020 session. The bill would prohibit a consumer small loan lender from charging interest and fees, which, when combined, exceed an annual percentage rate of 36 percent. A House Research Summary on the bill is available [here](#). Companion bill [SF 1648](#) was introduced and referred to the Senate Commerce and Consumer Protection Committee on February 25, 2019, where it remains pending.

Nebraska [LB 188](#) had a motion to indefinitely postpone filed on February 11, 2019. The bill would provide that licensees could receive charges on loans not exceeding 29 percent per annum

instead of 24 percent per annum on that part of the unpaid principal balance not in excess of \$1,000, and 21 percent per annum on any remainder of the unpaid principal balance.

Nebraska [LR 229](#) remains pending in the Banking, Commerce and Insurance Committee since May 24, 2019. The resolution would create an interim study to examine the permissible interest rate on installment loans under the Nebraska Installment Loan Act.

E.3 Lending Databases

As lawmakers across the country look for ways to protect consumers from predatory lending practices, several states have sought to restrict the number or amount of payday loan obligations a borrower can have at any one time, because payday lenders—unlike traditional installment lenders—do not report to credit bureaus. States that move forward with these restrictions usually look to create a database system for lenders to use in determining whether or not a borrower is eligible for a new loan. These states require lenders to register with a specified database provider and regularly submit information such as the number of loans in a given week, fees and other charges made in connection with the loan. They must also submit a variety of personal identifying information on the borrowers who take out the loans.

It is AFSA's position that the imposition of statewide database reporting requirements upon traditional installment lenders is not necessary in the already-thorough regulatory environment in which they operate, and there is no obvious added benefit to consumers. These databases do not gather and track information in as much detail as credit reporting agencies and could lead to consumers being incorrectly and detrimentally denied a loan because of missing pieces of credit history. Ongoing industry concerns in regard to these databases are compounded by the fact that in the 17 years since the first database was established, a single company holds a monopoly on providing the service and is the primary driver of such legislation, often to the detriment of other types of regulatory reforms that could severely curtail the prevalence of payday loans and thus make the need for such a database moot.⁵⁰ In 2019, one state enacted such a database.

Nevada [SB 201/Chapter 177](#) was signed by Democratic Governor Steve Sisolak on May 28, 2019. The law, among other provisions, requires the Commissioner of Financial Institutions to develop, implement and maintain a database storing certain information relating to deferred deposit loans, title loans and high-interest loans made to customers in the state and sets forth certain requirements for licensees extending such loans to update certain information related to each loan made by the licensee. These provisions took effect July 1, 2019.

⁵⁰ American Financial Services Association, *State Payday Databases*, at https://www.afsaonline.org/LinkClick.aspx?fileticket=7UT2_AV54BM%3d&portalid=0 (June 2019).

F. Vehicle Finance ([click back to top](#))

F.1. Franchise with Captive Effects

There were 36 bills with provisions regarding franchise with captive effects considered in 17 states⁵¹ and the U.S. Congress in 2019; of these bills nine were enacted, and 13 will carry over for possible further consideration in 2020. No bills have been prefiled yet for the 2020 session.

F.2. Retail Installment Sales Contracts

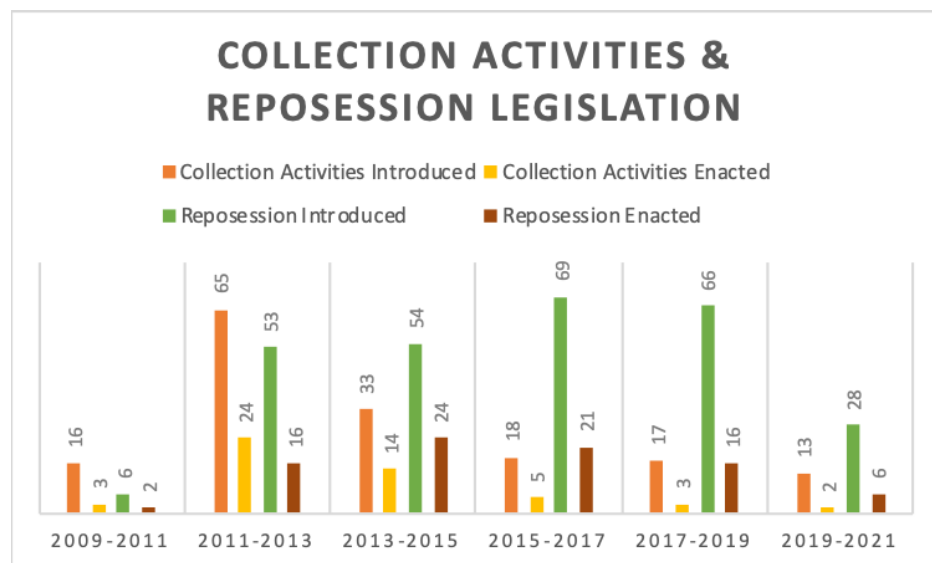
In 2019, there were 57 bills with provisions regarding retail installment sales contracts considered in 25 states⁵², the U.S. Congress and the **District of Columbia**. Of those bills, 18 have been enacted in 12 states, and 19 will carry over for possible further consideration in 2020. One bill has been prefiled for the 2020 session in **Arizona**.

F.3. Guaranteed Asset Protection (GAP) ([see above](#))

F.4. Titling & Lien Issues

There were 275 bills considered in 46 states in 2019;⁵³ of these bills 76 have been enacted, and 107 will carry over for possible further consideration in 2020. Six bills have been prefiled so far for the upcoming 2020 sessions in **Arizona, Florida and Virginia**.

F.5. Collections/Repossession



⁵¹ These states are: **AL, AZ, CA, CO, FL, IN, MA, MD, MN, MO, MS, MT, NC, NE, NJ, NM** and **VA**.

⁵² These states are: **AR, AZ, CA, CT, DE, IA, IL, IN, KY, MA, MO, MS, NC, ND, NH, NJ, NM, NV, NY, OR, RI, TX, VA, VT** and **WI**.

⁵³ Every state *except* **CT, DE, ID** and **LA**.

In 2019, 40 bills concerning vehicle finance collections or repossession were considered in 21 states,⁵⁴ the U.S. Congress and the **District of Columbia**. No bills have been prefiled yet for the upcoming 2020 session.

Legislation related to vehicle finance collection activities and repossession saw a general decrease in legislation considered from 2013 to 2015 compared to the previous two years, while legislation related to broader collections issues saw a general increase. The 2015-2017 and 2017-2019 periods both exhibited a smaller amount of legislation introduced than previous years, but a larger amount of legislation enacted, while the inverse seems to have occurred for legislation related to general debt collection issues. For the current session period, it appears that collections legislation may be on the rise as it is already near the same amount introduced for the entire 2017-2019 session period. Repossession legislation appears to have fallen off slightly so far. For more information on other debt collection issues, see [above](#).

F.6. Automated License Plate Recognition Systems

In 2019, there were 33 bills considered in 19 states⁵⁵ regarding the use of ALPR; of these bills none were enacted, and 20 will carry over for possible further consideration. One bill with provisions concerning ALPR has been prefiled so far in **Florida**.

F.7. Transportation Network Companies and Vehicle Sharing

F.7.1. Transportation Network Companies (TNCs)

There were 100 bills considered in 30 states⁵⁶ and the U.S. Congress concerning TNCs in 2019; of these bills, 17 have been enacted, and 54 will carry over for possible further consideration in 2020. There have been four bills prefiled so far in **Florida** for the 2020 session.

F.7.2. Vehicle Sharing

There were 97 bills concerning vehicle sharing in 34 states⁵⁷ and the **District of Columbia** in 2019; of these bills, 19 have been enacted and 41 will carry over for further possible consideration in 2020. There have been three bills prefiled for the 2020 session so far in **Florida**.

G. Evolution of FinTech Regulation ([click back to top](#))

As financial technology or “fintech” companies expand their influence in the marketplace, regulators, consumer advocates, and other financial institutions have raised concerns over how

⁵⁴ These states are: **AR, CA, CO, CT, FL, HI, IL, IN, MD, ME, MO, ND, NH, NJ, NV, NY, OK, SD, TX, VA** and **WA**.

⁵⁵ These states are: **CA, CT, FL, IA, IL, MA, MI, MS, NC, NJ, NY, OK, PA, RI, SC, TX, VT, WA** and **WV**.

⁵⁶ These states are: **AR, AZ, CA, CO, CT, DE, FL, GA, HI, IA, IL, IN, LA, MA, MD, MI, MN, NC, NJ, NV, NY, OH, OK, OR, PA, RI, SC, VA, WA** and **WI**.

⁵⁷ These states are: **AK, AL, AZ, CA, CO, FL, GA, HI, IA, IL, IN, KY, LA, MA, MD, ME, MN, NC, NE, NH, NJ, NM, NV, NY, OH, OR, PA, TN, TX, UT, VA, VT, WA** and **WV**.

these emerging sources of consumer credit should be regulated. While there is no formal definition of “fintech,” these companies are typically nonbank entities that through the use of new technology provide a wide range of products and services, ranging from online lending (through so-called “marketplace lending platforms”), automated investing, payment processing, peer-to-peer and business-to-business money transferring, and social trading platforms, among others. Not only do online lending platforms have to be reconciled with policies relating to consumer protection and securitization of loans, but their operation also carries implications for the regulation of national financial institutions with which these fintech companies often partner.

On July 31, 2018, the Office of the Comptroller of the Currency (OCC) released an announcement that it would begin accepting national bank charter applications from fintech companies.⁵⁸ However, the **New York** Department of Financial Services (NYDFS) quickly followed with a lawsuit, calling the charters “lawless” and “ill-conceived.”⁵⁹ The Conference of State Bank Supervisors (CSBS) filed a similar suit to block the OCC from issuing special purpose national bank charters to fintech companies.⁶⁰ In September 2019, the **D.C.** federal district court granted the OCC’s motion to dismiss the CSBS lawsuit. In May 2019, a New York federal district court denied the OCC’s motion to dismiss a similar second lawsuit filed by the NYDFS.⁶¹ In October 2019, with the consent of both the OCC and the NYDFS, the court entered a final judgment against the OCC, positioning the OCC to appeal the May decision.⁶²

A handful of states considered legislation that would create regulatory “sandboxes” specifically for fintech companies to test innovative products. **Arizona** was the first state to enact such legislation in 2018.⁶³ In 2019, **Utah** Republican Governor Gary Herbert signed [HB 378/Session Law 243](#) on May 25, 2019, and it was retroactively effective on May 14. **Nevada** created its own sandbox for innovative products that became effective January 1, 2020, when Democratic Governor Steve Sisolak signed [SB 161/Chapter 611](#) on June 13, 2019. Five bills are pending possible further consideration in **Illinois**, **New York**, **North Carolina** and **South Carolina**.⁶⁴

⁵⁸ Office of the Comptroller of Currency, *OCC Begins Accepting National Bank Charter Applications from Financial Technology Companies*, at <https://www.occ.gov/news-issuances/news-releases/2018/nr-occ-2018-74.html> (July 31, 2018).

⁵⁹ Bloomberg, *N.Y. Sues Comptroller of Currency Over Fintech Charter Decision*, at <https://www.bloomberg.com/news/articles/2018-09-14/n-y-sues-comptroller-of-currency-over-fintech-charter-decision> (September 14, 2018). The NYDFS had previously sued the OCC for similar reasons in 2017; however, the suit was dismissed after the OCC put its original plans for charters on hold. CSBS brought a similar suit at that time.

⁶⁰ Credit Union Times, *Regulator to Request Injunction Keeping OCC from Issuing Fintech Charters*, at <https://www.cutimes.com/2018/12/03/regulator-to-request-injunction-keeping-occ-from-i/> (December 3, 2018).

⁶¹ Ballard Spahr, LLP, *Court dismisses lawsuit filed by state regulators to block OCC fintech charter*, at <https://www.consumerfinancemonitor.com/2019/09/05/court-dismisses-lawsuit-filed-by-state-regulators-to-block-occ-fintech-charter/> (September 5, 2019).

⁶² Ballard Spahr, LLP, *NY federal district enters final judgment against OCC in NYDFS lawsuit challenging fintech charter*, at <https://www.consumerfinancemonitor.com/2019/10/25/ny-federal-district-enters-final-judgment-against-occ-in-nydfs-lawsuit-challenging-fintech-charter/> (October 25, 2019).

⁶³ **Arizona** [HB 2434/Chapter 44](#) was signed by Republican Governor Doug Ducey on March 22, 2018. The program sunsets in July 2028. The law took effect on July 16, 2018.

⁶⁴ **Illinois** [HB 2825](#); **New York** [AB 2213](#); **North Carolina** [HB 1013](#); and **South Carolina** [HB 4351](#) and [SB 738](#).

H. State Attorney General Activity ([click back to top](#))

In 2019, there were 47 individual actions brought by state attorneys general, eight multistate actions and five joint state-federal enforcement actions.⁶⁵ Highlights of these actions are below:

Individual Actions:

Arizona:

- On March 4, a complaint was brought against a defendant for its alleged lending scheme, which featured interest ranging from an annual rate of 89 percent to 169 percent, greatly exceeding that allowed under Arizona law.

California:

- On May 16, a judgment was made against a defendant for delaying foreclosures and eviction actions by filing false bankruptcy and other court documents under fictitious names. Victims were instructed to deposit illegal advance fees and other large payments into the defendant's account. When the promised loan did not come through, they would proceed with the fabricated filings.
- On September 23, a suit was brought against a vehicle dealer for allegedly making false statements on credit applications, including by deceiving lenders about the value of vehicles and the consumer's ability to repay the loans. The company also allegedly tricked customers into paying thousands of dollars for extra add-on products, such as service contracts and GAP insurance, by telling customers that these add-ons were required by law, or by simply concealing the extra charge.

Kansas:

- On February 21, a settlement was reached for alleged violations of the state No-Call Act.

Massachusetts:

- On April 9, a settlement was reached with a defendant for allegedly offering homeowners loan modifications with payments that were temporarily lower and only covered the interest due on each month. After a few years, borrowers would see their mortgage payments balloon to higher amounts, setting borrowers up to again face foreclosure.
- On June 6, a settlement was reached with a defendant for allegedly originating and acquiring vehicle loans and auto leases with finance charges that exceeded the state's 21 percent usury cap and failing to properly disclose these finance charges on certain loans. The alleged usury violations, in connection with the auto loans, occurred because the companies failed to disclose properly certain insurance premiums on the loans.
- On August 7, a settlement was reached with a defendant for allegedly violating the state's Consumer Protection Act by providing high-interest loans to student borrowers looking to finance fees charged by so-called student loan "debt relief" companies for "documentation preparation services." They also allegedly violated the Massachusetts Truth in Lending Act by misrepresenting closed-end loans as revolving credit plans and did not disclose the true cost and terms of these loans.

⁶⁵ See American Financial Services Association, *State Attorneys General 2019 Financial Services Related Activities*, at <https://www.afsaonline.org/LinkClick.aspx?fileticket=G2PsDZWd-x8%3d&portalid=0> (November 2019).

- On August 12, a defendant settled for allegedly failure to comply with Massachusetts data security regulations because it did not have a written information security program (WISP) that included reasonable safeguards over consumers' credit card information that the company maintained and stored.

Minnesota:

- On August 21, defendants settled for allegedly failing to disclose to consumers that its financing plans carry 18 percent interest, failing to provide some consumers complete copies of their financing agreements at the time of sale, and failed to include in its financing agreements that consumers have the right to cancel their financing agreement within three days pursuant to Minnesota law.

Missouri:

- On September 26, a suit was brought against an auto dealer for allegedly violating the Missouri Merchandising Practices Act by failing to transfer vehicle titles at the time of sale, failing to pay-off vehicle liens as promised, and misrepresenting the benefits of warranties sold.
- On October 20, a suit was brought against a defendant for allegedly violating the state's No-Call Law and Telemarketing Practices Law.

New Jersey:

- On March 7, a lawsuit was brought against a vehicle dealer for allegedly preying on consumers unable to acquire credit at more traditional car dealerships by selling them high-mileage, used autos at grossly inflated prices; financing the sales through in-house loans with high interest rates and terms that created a high risk of default; and reclaiming and reselling the vehicles to different consumers in a practice known as "churning."

New York:

- On July 25, a settlement was reached with a defendant for allegedly inflating debts to try to collect more than consumers were legally obligated to pay, a practice known as "overbiffing", and using a variety of illegal tactics to obtain payments, such as threatening consumers with arrest.
- On August 1, a suit was brought against a defendant for allegedly offered disguised, predatory subprime home loans and illegal finance lease hybrid agreements to financially vulnerable consumers without a license. They entered into contracts with financially strained consumers that illegally required them to shoulder the burden of ensuring their properties were habitable. Often, consumers were deceived and trapped into paying for the treatment and repair of dangerous and unhealthy conditions in their new homes.
- On October 3, a suit was brought against an entity handling student loans for allegedly failing to properly administer the Public Service Loan Forgiveness (PSLF) program by failing to: accurately count PSLF-qualifying payments, apply policies consistently; provide borrowers with explanations of its determinations; and failing to inform borrowers of their options to appeal FedLoan's mistakes or undo their consequences.

North Carolina:

- On May 1, a settlement was reached with a defendant for allegedly violating North Carolina's Collection Agency Act by collecting debts without a permit and engaging in prohibited debt collection tactics, including pretending to be an attorney, harassing the homeowners, and making threats.

- On May 21, a restraining order was brought against a defendant for allegedly offering illegal online payday loans to financially distressed consumers at interest rates ranging from 120 to 200 percent, which far exceeds the interest rate limits allowed by state law. According to the complaint, the lender communicates with consumers via email and phone, but has attempted to evade consumer protection laws by requesting borrowers to drive across state lines to **South Carolina** to pick up their funds.

Pennsylvania:

- On July 24, a settlement was reached against a defendant for allegedly charging effective interest rates as high as 448 percent, affecting as many as 80,000 borrowers.

Multistate Enforcement Actions

- On January 8, the **District of Columbia** and 43 states settled with Neiman Marcus for suffering from a data breach that compromised 370,000 payment cards.
- On June 14, a settlement was reached by 43 states and the District of Columbia with Student CU Connect CUSO, LLC for collecting outstanding loans for tuitions at ITT Tech, a failed for-profit college that pressured and coerced students to accept temporary credits to cover tuition. When students were unable to repay the temporary credits, the students faced the choice of entering into high interest loans from CUSO or leaving school. Neither CUSO nor ITT informed students of the true cost of the temporary credits until after the credits were converted into a loan, causing students to default on loans and experience damaging credit reports.
- On July 22, attorneys general for 48 states and the District of Columbia reached a settlement with a national credit bureau for a data breach exposing personal information of 147 million consumers.

Joint State-Federal Enforcement Actions

- On July 1, **New York** and the FTC obtained a judgment against a defendant for creating portfolios of “phantom debts,” fake debts that consumers did not owe.
- On October 31, **California, Minnesota and North Carolina** along with the CFPB brought a lawsuit against the Consumer Advocacy Center for allegedly violating the Consumer Financial Protection Act of 2010 and the Telemarketing Sales Rule by deceiving consumers about the companies’ student loan debt relief and modification services. The defendants allegedly charged and collected illegal advance fees, misrepresented the purpose of the fees, misrepresented their ability to obtain loan forgiveness or lower borrowers’ monthly payments, among other alleged violations.

I. Ballot Initiatives ([click back to top](#))

So far, there are at least four ballot initiatives that will be considered in 2020 in three states that are of significant interest. These ballot initiatives include:

- In **Arizona**:

- [I-16-2020](#), which would institute a 36 percent all-in rate cap on title loans. It would also limit such loans to \$5,000 with a maximum term of four years;
- [C-06-2020](#), the “Economic Freedom Act,” which would amend the state constitution to prohibit the state or municipal governments from regulating the price of a private transaction, effectively overturning all rate caps in the state. The state’s prohibition on payday lending would be exempt. If both proposals pass, the amendment would preempt the rate cap initiative.
- In **California**, [Initiative 19-0021A1](#), which proposes many changes and additions to the CCPA (for more on the CCPA, see [above](#)). These provisions include:
 - An opt-in requirement for the sale of “sensitive” personal information, which includes financial account and payment card numbers, among other types of information;
 - A new opt-in requirement for the collection of personal information of minors;
 - A requirement to disclose if a company is “profiling” consumers by using their personal information to determine eligibility for financial or lending services, among other services;
 - The establishment of the California Privacy Protection Agency, a new regulatory body to enforce the law;
 - A requirement that amendments be “consistent with and further the purpose and intent” of the act.
- **Nebraska’s** [Payday Lending Initiative](#), which would institute a 36 percent rate cap for payday loans.

Conclusion ([click back to top](#))

The 2020 legislative session is shaping up to focus on innovative products and the privacy implications of existing products, while evergreen issues like rate caps and debt collection will continue draw interest from legislators and consumer activists. The financial services industry is still feeling the ripple effects of major data breaches, with legislation concerning consumer data privacy and credit reporting issues at the forefront as states look to strengthen their cybersecurity and data breach laws. However, depending on the final outcome of AFSA’s lawsuit in **Nevada** and other industry suits pending in **Maine**, **New Jersey** and **Texas**, it’s clear that states must more carefully consider the implications and possible federal preemption of new legislation.

The past session saw an increase in states introducing legislation creating regulatory “sandbox” frameworks for fintech or innovative companies, and **Utah** and **Nevada** joined **Arizona** in enacting such programs. This trend is likely to continue in 2020 as more states consider programs of their own. Regulation of the debt settlement industry is one emerging issue in 2020, as debt settlement companies continue to insert themselves between creditors and borrowers without accompanying consumer benefit. Some debt settlement companies may even try to extend loans of their own in schemes to “assist” consumers with settling their debts, as seen in the **Colorado** attorney general enforcement action in August 2019.

AFSA is committed to proactively monitoring all issues that could have an effect on the financial services industry and keeping members apprised of new developments as they occur.