

Regular Session, 2014

HOUSE BILL NO. 239

BY REPRESENTATIVES JAMES, ALFRED WILLIAMS, AND HONORE AND
SENATOR BROOME

CONSUMERS: Provides relative to consumer credit loans and transactions

1 AN ACT

2 To amend and reenact R.S. 9:3578.3(3) through (6), 3578.4(A)(1), 3578.5, and
3 3578.6(A)(7), to enact R.S. 9:3537, 3578.3(7), and 3578.6(A)(9) and (C), and to
4 repeal R.S. 9:3560(A)(8) and 3578.3(4), relative to consumer credit transactions; to
5 prohibit preliminary check holding; to provide for definitions; to modify relative to
6 refunds and deferred presentment transactions or small loans; to provide
7 modifications relative to creditor provisions and chargeable interest; to provide for
8 creditor and transactional prohibitions; and to provide for related matters.

9 Be it enacted by the Legislature of Louisiana:

10 Section 1. R.S. 9:3578.3(3) through (6), 3578.4(A)(1), 3578.5, and 3578.6(A)(7) are
11 hereby amended and reenacted and R.S. 9:3537, 3578.3(7), and 3578.6(A)(9) and (C) are
12 hereby enacted to read as follows:

13 §3537. Prohibition; check holding

14 With respect to a consumer credit transaction, an extender of credit shall not
15 accept a check, as defined in R.S. 9:3516, from the issuer and agree to hold the check
16 for a period of time in exchange for payment to the issuer.

17 * * *

18 §3578.3. Definitions

19 As used in this Chapter, the following terms have the following meanings
20 ascribed to them:

21 * * *

1 (3) "Interest" means all charges and fees assessed, payable directly or
2 indirectly, including fees pursuant to R.S. 9:3530(C) in connection with or as a
3 condition of a deferred presentment transaction or small loan.

4 ~~(3)~~(4) "Licensee" means a person licensed pursuant to this Chapter that
5 offers deferred presentment transactions or small loans, or both.

6 ~~(4)~~(5) "Partial payment" means a payment of fifty dollars or more on a
7 deferred presentment transaction or small loan.

8 ~~(5)~~(6) "Prepayment" means payment in full of the deferred presentment
9 transaction or small loan amount prior to the end of the term of that transaction or
10 loan.

11 ~~(6)~~(7) "Small loan" means a consumer loan, as defined in R.S. 9:3516(14),
12 of three hundred fifty dollars or less, made for a term of sixty days or less.

13 §3578.4. Finance charge and fees

14 A.(1) ~~In conjunction with a deferred presentment transaction or small loan~~
15 ~~Notwithstanding any other provision of law,~~ a licensee may charge a fee not to
16 exceed ~~sixteen and seventy-five one hundredths percent of the face amount of the~~
17 ~~check issued or in the case of a small loan, the equivalent rate of interest, provided~~
18 ~~however that such fee or interest does not exceed forty-five dollars, regardless of the~~
19 ~~name or type of charge~~ thirty-six percent interest annually. Any transaction or loan
20 made or collected in violation of this Paragraph is void and the licensee shall not
21 have the right to collect, receive, or retain any principal, interest, fees, or other
22 charges.

23 * * *

24 §3578.5. Rebate upon prepayment

25 Upon the prepayment in full of a deferred presentment transaction or small
26 loan, ~~during the first five days of the term of such transaction or loan only,~~ the
27 licensee shall refund any and all unearned charges by a method no less favorable to
28 the consumer than the actuarial method, ~~less twenty dollars of the original fee, which~~
29 ~~shall be considered earned and shall not be subject to refund. Should the consumer~~

CODING: Words in ~~struck through~~ type are deletions from existing law; words underscored are additions.

1 ~~make prepayment after the first five days of the term of the transaction or loan, the~~
2 ~~licensee shall not be required to make any refund.~~

3 §3578.6. Prohibited acts

4 A. A licensee shall not:

5 * * *

6 (7) ~~Renew or roll over a deferred presentment transaction or small loan.~~
7 ~~However, a licensee may accept a partial payment of twenty-five percent of the~~
8 ~~amount advanced plus fees charged and enter into a new deferred presentment~~
9 ~~transaction or renew the small loan for the remaining balance owed.~~ Once a deferred
10 presentment transaction or small loan has been completed, a consumer may enter
11 into a new transaction or loan with the licensee. A deferred presentment transaction
12 or small loan shall be considered completed when the amount advanced has been
13 paid in full by the consumer.

14 * * *

15 (9) Engage in any device or subterfuge intended to evade the requirements
16 of this Chapter through any method, including but not limited to mail, telephone,
17 Internet, or any electronic means, or by doing any of the following:

18 (a) Offering, making, assisting a borrower to obtain, or brokering a deferred
19 presentment transaction or small loan at a rate of interest prohibited by Louisiana
20 law, or acting as an agent for a third party in such a transaction.

21 (b) Making deferred presentment transactions or small loans disguised as
22 personal property sales, consumer credit sales, and leaseback transactions.

23 (c) Disguising deferred presentment transaction or small loan proceeds as
24 cash rebates for the pretextual installment sale of goods or services.

25 (d) Disguising a deferred presentment transactions or small loan as a
26 revolving line of credit, or making or assisting a borrower to obtain a revolving line
27 of credit for the purpose of avoiding the provisions of Subsection A of this Section.

28 * * *

1 C. A violation of this Section is a violation of the Unfair Trade Practices and
 2 Consumer Protection Law, Chapter 13 of Title 51 of the Louisiana Revised Statutes
 3 of 1950.
 4 Section 2. R.S. 9:3560(A)(8) and 3578.3(4) are hereby repealed in their entirety.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

James

HB No. 239

Abstract: Modifies various provisions relative to consumer credit loans and creditors.

Present law (R.S. 9:3516) defines "check" as any check, draft, item, orders or requests for payment of money, negotiable orders, withdrawal, or any other instrument used to pay a debt or transfer money from one to another.

Proposed law provides that an extender of credit shall not accept an issuer's check as defined in present law (R.S. 9:3516) from the issuer and agree to hold the check for a period of time in exchange for payment to the issuer.

Proposed law defines "interest" as all charges and fees assessed, payable directly or indirectly, including a documentation fee not to exceed \$10 under present law (R.S. 9:3530(C)) in connection with or as a condition of a deferred presentment transaction or small loan.

Present law provides that a creditor having no office in the state of La. offering credit to La. consumers through mail and other means of interstate commerce is exempt from consumer loan licensing requirements. Proposed law deletes present law.

Present law defines "partial payment" as a payment of \$50 or more on a deferred presentment transaction or small loan. Proposed law deletes "partial payment" as a definition.

Present law provides that in conjunction with a deferred presentment transaction or small loan, a licensee may charge a fee not to exceed 16.75% of the face amount of the check issued or, in the case of a small loan, the equivalent rate of interest, provided that such fee or interest does not exceed \$45, regardless of the name or type of charge. Proposed law deletes present law and provides that a licensee may charge a fee not to exceed 36% interest annually.

Proposed law voids any transaction or loan made or collected in violation of proposed law and further provides that a licensee in violation has no right to collect, receive, or retain any principal, interest, fees, or other charges.

Present law provides that upon the consumer's prepayment in full of a deferred presentment transaction or small loan during the first five days of the term of the transaction or loan, a licensee shall refund any and all unearned charges by a method no less favorable to the consumer than the actuarial method, minus \$20 of the original fee, which shall be considered earned by the licensee and not subject to refund. Proposed law deletes present law.

Proposed law provides that a licensee shall refund any and all unearned charges by a method no less favorable than the actuarial method upon the consumer's prepayment in full of a deferred presentment transaction or small loan.

Present law prohibits a licensee from renewing or rolling over a deferred presentment transaction or small loan; however, present law provides that a licensee may accept a partial payment of 25% of the amount advanced plus fees charged and enter into a new deferred presentment transaction or renew the small loan for the remaining balance owed. Proposed law deletes present law.

Proposed law adds that a licensee shall not engage in any device or subterfuge intended to evade the requirements of law through any method, including but not limited to mail, telephone, Internet, or any electronic means, or by doing any of the following:

- (1) Offering, making, assisting a borrower to obtain, or brokering a deferred presentment transaction or small loan at a rate of interest prohibited by La. law, or acting as an agent for a third party in such a transaction.
- (2) Making deferred presentment transactions or small loans disguised as personal property sales, consumer credit sales, and leaseback transactions.
- (3) Disguising deferred presentment transactions or small loan proceeds as cash rebates for the pretextual installment sale of goods or services.
- (4) Disguising a deferred presentment transaction or small loan as a revolving line of credit, or making or assisting a borrower to obtain a revolving line of credit for the purpose of avoiding the licensee's provision under present law (R.S. 9:3578.6(A)(1)) pursuant to proposed law (R.S. 9:3578.4(A)(1)).

Proposed law provides that a violation of a provision under R.S. 9:3578.6 is a violation of the Unfair Trade Practices and Consumer Protection Law (R.S. 51:1401 et seq.).

(Amends R.S. 9:3578.3(3)-(6), 3578.4(A)(1), 3578.5, and 3578.6(A)(7); Adds R.S. 9:3537, 3578.3(7), and 3578.6(A)(9) and (C); Repeals R.S. 9:3560(A)(8) and 3578.3(4))