

2018 Regular Session

SENATE BILL NO. 365

BY SENATOR WARD

LOANS. Creates the Louisiana Credit Access Loan Act. (8/1/19)

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AN ACT

To enact Chapter 20 of Title 6 of the Louisiana Revised Statutes of 1950, to be comprised of R.S. 6:1371 through 1379, relative to the regulation of credit access loans; to enact the Louisiana Credit Access Loan Act; to provide relative to credit access loans and payment plans; to provide certain terms, procedures, conditions, requirements, restrictions, prohibitions, exemptions, and definitions; to provide for certain charges; to provide relative to default and penalties; to provide for certain powers of the commissioner; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. Chapter 20 of Title 6 of the Louisiana Revised Statutes of 1950, comprised of R.S. 6:1371 through 1379, is hereby enacted to read as follows:

§1371. Short title

This Chapter shall be known and may be cited as the "Louisiana Credit Access Loan Act".

§1372. Definitions

A. As used in this Chapter, the following terms and phrases have the meanings herein ascribed to them:

1 **(1) "Credit access loan" means any loan offered by a licensee that is**
2 **subject to and meets the requirements imposed by the provisions of this**
3 **Chapter.**

4 **(2) "Licensee" means any person who offers credit access loans and is**
5 **licensed pursuant to Chapter 2 of Title 9 of the Louisiana Revised Statutes of**
6 **1950.**

7 **(3) "Commissioner" means the commissioner of the office of financial**
8 **institutions.**

9 **§1373. Credit access loan; terms; restrictions**

10 **A. Any credit access loan offered by a licensee shall adhere to the**
11 **following requirements:**

12 **(1) The term of the loan shall not be less than three months and shall not**
13 **exceed twelve months.**

14 **(2) The amount of the loan shall not be less than five hundred dollars and**
15 **shall not exceed eight hundred seventy-five dollars.**

16 **(a) The restriction imposed by this Paragraph shall be adjusted every**
17 **other year by the commissioner to reflect the percentage changes indicated in**
18 **the most recent Consumer Price Index as published by the Bureau of Labor**
19 **Statistics of the Department of Labor.**

20 **(b) The intent of Subparagraph (a) of this Paragraph is to allow for**
21 **credit access loan limits to increase in conjunction with increases in the cost of**
22 **living and other market fluctuations as represented by the Consumer Price**
23 **Index.**

24 **(3) A licensee is prohibited from imposing any penalty for the**
25 **prepayment of a credit access loan. At the time of prepayment, all remaining**
26 **full monthly service charges are considered unearned. The extender of credit**
27 **shall refund or credit to the consumer's account all unearned service charges.**
28 **Such refund shall be calculated by the number of full months remaining in the**
29 **contract after prepayment times the monthly service charge that is calculated**

1 in accordance with R.S. 6:1374(A).

2 (4) A licensee is prohibited from offering any credit access loan that
3 requires the aggregate of payments coming due in a month to exceed twenty
4 percent of the gross monthly income of the borrower.

5 (a) For the purposes of determining a borrower's gross monthly income
6 pursuant to this Paragraph, a licensee shall obtain and maintain verification of
7 all income considered in making the determination. Acceptable forms of income
8 verification shall include but not be limited to copies of earnings statements, tax
9 statements, bank statements or benefits statements. In the event proof of income
10 is unavailable, the licensee may accept a statement and certification of income
11 signed by the borrower.

12 (b) For the purposes of this Paragraph, "monthly" means a period
13 extending from a given date in one calendar month to the same date in the
14 succeeding calendar month, or if there is no same date in the succeeding
15 calendar month, the last day of the succeeding calendar month.

16 (5) Scheduled repayment of a credit access loan is permitted on a
17 biweekly, bimonthly, or monthly basis, and in substantially equal installments.

18 B. A credit access loan may be either unsecured or secured by personal
19 property of the borrower. Such personal property shall not include household
20 goods.

21 C. A credit access loan shall include, along with any other applicable
22 state or federal law requirements, the following:

23 (1) A next-business-day customer's right of rescission for any credit
24 access loan at no cost to the borrower.

25 (2) The credit access loan contract shall include in at least twelve point
26 bold type the following disclosure:

27 You have a legal right under Louisiana law to cancel this transaction at
28 no cost to you by notifying your lender of your intent to cancel the
29 transaction by close of business of the next business day after signing this

1 agreement and returning to the lender all loan proceeds provided to you.

2 (3) Notice of the customer's right to enter into an extended payment plan
3 by including the following in at least sixteen point bold type, on the first page
4 of each credit access agreement:

5 IF YOU CANNOT PAY THE LOAN IN FULL WHEN DUE, YOU CAN
6 ASK TO ENTER INTO AN EXTENDED PAYMENT PLAN. BUT THE
7 REQUEST MUST BE MADE BEFORE FINAL PAYMENT IS DUE.
8 REQUESTS MUST BE IN WRITING AND MAY BE MADE IN PERSON, BY
9 EMAIL OR FACSIMILE TO: [Licensee/ lender to insert name, email address,
10 phone number and facsimile number here]. IF [Licensee/lender to insert name
11 here] REFUSES TO ENTER INTO AN EXTENDED PAYMENT PLAN UPON
12 YOUR REQUEST BEFORE THE DUE DATE, CONTACT THE OFFICE OF
13 FINANCIAL INSTITUTIONS AT 1-888-525-9414.

14 (4) A notice informing the customer that complaints may be made to the
15 commissioner, including the telephone number and address of the office of the
16 commissioner.

17 §1374. Finance charge; payment plan; conditions

18 A. In conjunction with a credit access loan, a licensee may impose a
19 monthly service charge not in excess of nine percent of the original loan amount.

20 B. Upon maturity of a loan, a borrower may opt into an extended
21 payment plan at no cost imposed by the licensee.

22 (b) The extended payment plan shall provide the borrower with an
23 additional sixty days in which to pay the remainder of the consecutive
24 unsecured loan amount and allow the borrower to pay such amount in up to a
25 maximum of four separate payments.

26 C. A borrower may not have more than one credit access loan, made
27 pursuant to this Act, outstanding at a time. A licensee shall rely on a private
28 third-party database approved by the commissioner of financial institutions to
29 verify borrower eligibility before entering into a credit access loan agreement.

1 The commissioner shall identify and contract with a private third-party
2 database provider who can provide real-time access through an internet
3 connection for licensees offering credit access loans pursuant to this Act.
4 Licensees shall be required to enter and maintain an accurate record of all
5 required information by the database regarding credit access loans made
6 pursuant to this Act. The database shall serve as the means to verify eligibility
7 of a consumer to enter into a credit access loan transaction as restricted by this
8 Section. The database shall be accessible to the Office of Financial Institutions
9 and licensees making credit access loans. Licensees shall submit such data
10 before entering into each credit access loan transaction in such format as the
11 office shall require by rule, which may include the drawer's transaction in such
12 format as the office shall require by rule, which may include the drawer's name,
13 social security number or employment authorization alien number, address,
14 driver's license number, amount of the transaction, date of the transaction, the
15 date the transaction is closed, and such additional information as required by
16 the office. The contract may provide for a per transaction fee to be paid to the
17 private third-party provider by the licensee. Such fee may be collected from the
18 borrower; however, the amount collected shall not exceed the actual amount
19 paid to the third-party provider. A licensee engaged in making credit access
20 loans provided for in this Act may rely on the information contained in the
21 database as accurate and is not subject to any administrative penalty or civil
22 liability as a result of relying on inaccurate information contained in the
23 database. The commissioner may adopt rules and regulations to administer and
24 enforce the provisions of this Subsection and to assure that the database is used
25 by licensees in accordance with this Subsection.

26 §1375. Default; penalty

27 A.(1) In the event a borrower is delinquent in a payment pursuant to the
28 terms of a credit access loan, the licensee may charge and collect from the
29 borrower a late charge of ten percent of the delinquent amount, provided that

1 the terms of such a charge are clearly disclosed in the credit access loan
2 agreement.

3 (2) No such charge as described in Paragraph (1) of this Subsection may
4 be imposed against a borrower unless the borrower has failed to pay the
5 delinquent amount within ten business days after the due date.

6 B. Any credit access loan agreement may provide for the payment by the
7 consumer of all costs awarded by a court and attorney fees not in excess of
8 twenty-five percent of the unpaid debt after default and referral to an attorney
9 for collection.

10 §1376. Prohibited acts

11 A licensee shall not:

12 (1) Except for reasonable attorney fees and costs awarded by a court,
13 charge, contract for, receive, or collect a loan finance charge or credit service
14 charge, or any other fee or charge other than as provided in R.S. 6:1374.

15 (2) Refuse a partial loan payment of fifty dollars or greater.

16 (3) Divide a credit access loan into multiple agreements for the purpose
17 of obtaining a higher fee or charge.

18 (4) Threaten any customer with prosecution or refer for prosecution any
19 check accepted as payment of a credit access loan and returned by the lender's
20 depository institution for reason of insufficient funds.

21 (5) Structure the repayment of a loan in such a manner as to attempt to
22 circumvent the provisions of this Chapter.

23 §1377. Posting of notice; toll-free number

24 A. At each licensed location and on the homepage of a licensee's website,
25 the licensee shall prominently post a notice visible to the public and all those
26 visiting the website. The notice shall state that if a consumer is unable to repay
27 a credit access loan made pursuant to this Act, the consumer may enter into an
28 extended payment plan if the consumer notifies the licensee before the payment
29 is due of their inability to make payment.

1 **B. The commissioner may provide a notice, which includes a toll-free**
2 **number to the commissioner's office, which shall be posted, along with the fees**
3 **as allowed under this Chapter, in a conspicuous place and manner by the**
4 **licensee at the lending location or on the homepage of the website of the licensee,**
5 **or both if the licensee has a physical location in the state and a website.**

6 **§1378. Powers of the commissioner; adoption of rules and regulations**

7 **A. Except where inconsistent with the provisions of this Chapter, the**
8 **commissioner may apply the provisions of Parts I, VII, VIII, IX, and X of**
9 **Chapter 2 of Code Title XII of Code Book III of Title 9 of the Louisiana Revised**
10 **Statutes of 1950, the Louisiana Consumer Credit Law, for purposes of**
11 **administering and regulating the activities of licensees and the provisions of this**
12 **Chapter.**

13 **B. The commissioner may adopt rules and regulations as he deems**
14 **necessary to implement the purposes and provisions of this Chapter.**

15 **§1379. Exemptions**

16 **The provisions of this Chapter shall not apply to:**

17 **(1) Any federally insured depository institution.**

18 **(2) A subsidiary of any state chartered or federally chartered entity**
19 **described in Paragraph (1) of this Section in which eighty percent or more of**
20 **the ownership rests with such parent entity.**

21 **(3) Any loan subject to the provisions of the Louisiana Motor Vehicles**
22 **Sales Finance Act, R.S. 6:969.1 et seq.**

23 **(4) Deferred presentment transactions or small loans governed by the**
24 **Louisiana Deferred Presentment and Small Loan Act, R.S. 9:3578.1 et seq. or**
25 **installment loans pursuant to the Louisiana Consumer Credit Law, R.S. 9:3510**
26 **et seq.**

27 Section 2. The provisions of this Act shall become effective on August 1, 2019.

The original instrument was prepared by Nancy Vicknair. The following digest, which does not constitute a part of the legislative instrument, was prepared by Cathy Wells.

DIGEST

SB 365 Reengrossed

2018 Regular Session

Ward

Proposed law enacts the Louisiana Credit Access Loan Act.

Proposed law enumerates definitions for the purposes of proposed law in order to provide for clarification.

Proposed law provides that any credit access loan offered by a licensee shall adhere to the following requirements:

- (1) The term of the loan shall not be less than three months and shall not exceed 12 months.
- (2) The amount of the loan shall not be less than \$500 and shall not exceed \$875.
 - (a) The restriction imposed by proposed law, relative to maximum loan amounts, shall be adjusted every other year by the Commissioner (commissioner) of the Office of Financial Institutions (OFI) to reflect the percentage changes indicated in the most recent Consumer Price Index (CPI) as published by the Bureau of Labor Statistics of the Dept. of Labor.
 - (b) The intent of proposed law is to allow for credit access loan limits to increase in conjunction with increases in the cost of living and other market fluctuations as represented by the CPI.
- (3) A licensee is prohibited from imposing any penalty for the prepayment of a credit access loan. At the time of prepayment all remaining full monthly service charges are considered unearned. The extender of credit shall refund or credit to the borrower's account all unearned service charges. Proposed law required the refund to be calculated by the number of full months remaining in the contract after prepayment times the monthly service charge that is calculated in accordance with law.
- (4) A licensee is prohibited from offering credit access loans that requires the aggregate of payments coming due in a month to exceed twenty percent of the gross monthly income of the borrower.
 - (a) For the purposes of determining a borrower's gross monthly income pursuant to proposed law, a licensee shall obtain and maintain verification of all income considered in making the determination.
 - (b) For the purposes of proposed law, "monthly" means a period extending from a given date in one calendar month to the same date in the succeeding calendar month, or if there is no same date in the succeeding calendar month, the last day of the succeeding calendar month.
- (5) Scheduled repayment of a credit access loan is permitted on a biweekly, bimonthly or monthly basis, and in substantially equal installments.

Proposed law provides that a credit access loan may be either unsecured or secured by personal property of the borrower. Proposed law prohibits household goods from being used to secure a loan.

Proposed law provides that a credit access loan shall include, along with any other applicable present law requirements, the following:

- (1) A next-business-day customer's right of rescission for any credit access loan at no cost to the borrower.
- (2) Disclosures printed on loan documents specifying the procedure necessary for borrower to cancel or enter into an extended payment plan and the refusal of lender to enter into an extended payment plan.

Proposed law states that, in conjunction with a credit access loan, a licensee may impose a monthly service charge not in excess of 9% of the original loan amount.

Proposed law provides that upon maturity of a loan, a borrower may opt into an extended payment plan at no cost imposed by the licensee. Proposed law requires the extended payment plan provides the borrower with an additional 60 days in which to pay the remainder of the consecutive unsecured loan amount and allow the borrower to pay such amount in up to a maximum of four separate payments.

Proposed law prohibits a borrower from having more than one credit access loan outstanding at a time.

Proposed law requires a licensee to rely on a private third-party database approved by the commissioner to verify borrower's eligibility before entering into a credit access loan agreement. Requires the commissioner to identify and contract with a private third-party database provider who can provide real-time access through an internet connection for licensees offering credit access loans pursuant to law. Proposed law authorizes the commissioner to adopt rules and regulations to assure the database is used by licensees pursuant to law.

Proposed law requires third-party database provider to maintain an accurate database and be accessible to the OFI and licensees. Proposed law requires licensees to submit data before entering into each credit access loan in such format as the commissioner requires by rule.

Proposed law authorizes a per transaction fee to be paid to the third-party database provider and authorizes such fee to be collected from the borrower; however, the amount collected is prohibited from exceeding the actual amount paid to database provider.

Proposed law provides that licensees may rely on information contained in the third-party database and shall not be subject to any penalty or civil liability as a result of relying on inaccurate information contained in the database.

Proposed law provides that, in the event a borrower is delinquent in a payment pursuant to the terms of an installment loan, the licensee may charge and collect from the borrower a late charge of 10% of the delinquent payment amount, provided that the terms of such a charge are clearly disclosed in the installment loan agreement.

Proposed law states that no such charge as described in proposed law may be imposed against a borrower unless the borrower has failed to pay the delinquent amount within 10 business days after the due date.

Proposed law provides that any credit access loan agreement may provide for the payment by the consumer of all costs awarded by a court and attorney fees not in excess of 25% of the unpaid debt after default and referral to an attorney for collection.

Proposed law further provides that a licensee shall not:

- (1) Except for reasonable attorney fees and costs awarded by a court, charge, contract for, receive, or collect a loan finance charge or credit service charge, or any other fee or charge other than as provided in proposed law.
- (2) Refuse a partial loan payment of \$50 or greater.
- (3) Divide a credit access loan into multiple agreements for the purpose of obtaining a higher fee or charge.
- (4) Threaten any customer with prosecution or refer for prosecution any check accepted as payment of a credit access loan and returned by the lender's depository institution for reason of insufficient funds.
- (5) Structure the repayment of a loan in such a manner as to attempt to circumvent the provisions of proposed law.

Proposed law requires each licensed credit access loan lender to post a visible notice at each of his locations and on each homepage of the licensee's website a notice stating if consumer is unable to repay a credit access loan, the consumer may enter into an extended payment plan if the consumer notifies the licensee before the payment is due.

Proposed law provides that the commissioner may provide a notice, which includes a toll-free number to the commissioner's office, which shall be posted, along with the fees as allowed under proposed law, in a conspicuous place and manner by the licensee at the lending location or on the homepage of the website of the licensee, or both if the licensee has a physical location in the state and a website.

Proposed law further provides that commissioner may adopt rules and apply certain present law for purposes of administering and regulating the activities of licensees and the provisions of proposed law.

Proposed law exempts from the provisions of proposed law any federally insured depository institution, or a subsidiary of any state chartered or federally chartered entity in which 80% or more of the ownership rests with such parent entity, any loan subject to the provisions of the LA Motor Vehicles Sale Finance Act, and deferred presentment transactions or small loans governed by the LA Deferred Presentment and Small Loan Act, or installment loans pursuant to the LA Consumer Credit Law.

Effective August 1, 2019.

(Adds R.S. 6:1371-1379)

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Commerce, Consumer Protection, and International Affairs to the original bill

1. Changes name of Act to Louisiana Credit Access Loan Act.
2. Changes effective date from Jan. 1, 2019, to Aug. 1, 2019.
3. Revises provisions relative to installment loan terms, restrictions, and exemptions.

Senate Floor Amendments to engrossed bill

1. Changes terminology from "installment" to "credit access" loans.
2. Removes requirement for lender to obtain and maintain third-party income verification.
3. Specifies types of acceptable forms of income verification that may be used.
4. Authorizes lender to accept a statement and certification of income signed by the borrower if income cannot be verified.
5. Prohibits household goods from being used to secure a loan.
6. Adds disclosure language concerning cancelling loan, paying off loan, or entering to extended payment option that is required to be printed by lender on loan documents.
7. Prohibits a borrower from having more than one credit access loan outstanding at a time.
8. Authorizes credit access loan agreements to provide for the payment by the consumer of all costs awarded by a court and attorney fees not in excess of 25% of the unpaid debt after default and referral to an attorney for collection.
9. Exempts certain loans and deferred presentment transactions from provisions of proposed law.