

Regular Session, 2014

SENATE BILL NO. 84

BY SENATORS NEVERS, ADLEY AND BROOME AND REPRESENTATIVES
HONORE, JAMES AND ALFRED WILLIAMS

CONSUMERS. Provides relative to consumer credit transactions.

1 AN ACT

2 To amend and reenact R.S. 9:3560(A), 3578.3, 3578.4(A), 3578.5 and 3578.6, and to enact
3 R.S. 9:3537, relative to consumer credit transactions, deferred presentment
4 transactions and small loans; to provide relative to holding of checks; to provide
5 relative to licensing; to provide relative to partial payments and interest; to provide
6 relative to certain limitations on loans, loan fees and interest rates; to provide relative
7 to certain prohibited acts and violations of such acts; to provide for certain terms,
8 conditions, and procedures; and to provide for related matters.

9 Be it enacted by the Legislature of Louisiana:

10 Section 1. R.S. 9:3560(A), 3578.3, 3578.4(A), 3578.5 and 3578.6 are hereby
11 amended and reenacted and R.S. 9:3537 is hereby enacted to read as follows:

12 **§3537. Holding of checks**

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

16 * * *

17 §3560. Licenses not required

1 A. Notwithstanding R.S. 9:3557, the following persons shall be exempt from
2 the consumer loan licensing requirements under this Part:

3 (1)(a) A bank, savings and loan association, or similar financial institution
4 organized, certified, and supervised by an agency of either the United States of
5 America or the state of Louisiana pursuant to the banking, currency and related laws
6 of the United States of America or the state of Louisiana.

7 (b) A subsidiary of any state-chartered entity described in Subparagraph (a)
8 of this Paragraph in which eighty percent or more of the ownership rests with such
9 parent entity.

10 (2) A trust administered by a bank or a bank trust department.

11 (3) A governmental agency, instrumentality, or public entity organized by
12 act of congress or the Legislature of Louisiana.

13 (4) An insurance company when entering into a life insurance loan to a
14 policyholder.

15 (5) A qualified pension plan when entering into an extension of credit to a
16 plan participant.

17 (6) A bona fide pledgee of a consumer credit transaction to secure a bona
18 fide loan thereon.

19 (7) A seller or other creditor refinancing a retail installment transaction
20 subject to the Motor Vehicle Sales Finance Act.

21 ~~(8) A creditor having no office within this state offering credit to Louisiana~~
22 ~~consumers through the mails and other means of interstate commerce.~~

23 ~~(9)~~**(8)** Unless otherwise provided by rule or regulation of the commissioner,
24 persons whose lending activities pertain to federally related mortgage loans, and who
25 are subject to licensing, supervision or auditing by the Federal National Mortgage
26 Association, the Federal Home Loan Mortgage Corporation, the Governmental
27 National Mortgage Association, the Veterans Administration, or the United States
28 Department of Housing and Urban Development. Such lenders may also make loans
29 secured by a second or junior lien or mortgage on owner-occupied one-to-four family

1 residential immovable property made contemporaneously with federally related
2 mortgage loans or as part of a mortgage revenue bond loan program, or sold on the
3 secondary market to the Federal National Mortgage Association, the Federal Home
4 Loan Mortgage Corporation, or the Governmental National Mortgage Association,
5 and the entity sells ten or fewer of such loans over any calendar year.

6 * * *

7 §3578.3. Definitions

8 As used in this Chapter, the following terms have the following meanings
9 ascribed to them:

10 (1) "Commissioner" means the commissioner of the office of financial
11 institutions.

12 (2) "Deferred presentment transaction" means a transaction made pursuant
13 to a written agreement whereby a licensee:

14 (a) Accepts a check from the issuer dated as of the date it was written;

15 (b) Agrees to hold the check for a period of time not to exceed thirty days
16 prior to negotiation or presentment; ~~and~~

17 (c) Pays to the issuer of the check the amount of the check less the fee
18 permitted in R.S. 9:3578.4(A). The amount paid to the issuer of the check may not
19 exceed three hundred fifty dollars.

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

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

24 ~~(5)~~**(4)** "Prepayment" means payment in full of the deferred presentment
25 transaction or small loan amount prior to the end of the term of that transaction or
26 loan.

27 ~~(6)~~**(5)** "Small loan" means a consumer loan, as defined in R.S. 9:3516(14),
28 of three hundred fifty dollars or less, made for a term of sixty days or less.

29 **(6) "Interest" means all charges and fees assessed, payable directly or**

1 indirectly, including fees allowed under R.S. 9:3530 in connection with or as a
2 condition of a deferred presentment transaction or small loan.

3 §3578.4. Finance charge and fees

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

13 (2) However, if the loan remains unpaid at contractual maturity, the licensee
14 may charge one of the following:

15 (a) An amount equal to the rate of thirty-six percent per annum for a period
16 not to exceed one year and beginning one year after contractual maturity, the rate
17 shall not exceed eighteen percent per annum.

18 (b) A one-time delinquency charge as authorized in R.S. 9:3527(A)(1).

19 * * *

20 §3578.5. Rebate upon prepayment

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

28 §3578.6. Prohibited acts

29 A. A licensee shall not:

1 (1) Except for reasonable attorney fees and costs awarded by a court, charge,
2 contract for, receive, or collect a loan finance charge or credit service charge, or any
3 other fee or charge other than as provided in R.S. 9:3578.4.

4 (2) Sell any goods when those goods are financed with the proceeds of the
5 loan or sell insurance in connection with a deferred presentment transaction or small
6 loan. The sale and financing of services, including but not limited to utility payment
7 services, financial or tax services, or the sale of prepaid telephone services and
8 telephone-related products which are not financed with the proceeds of the loan,
9 shall not be deemed a violation of this Chapter.

10 (3) Refuse a partial loan payment of fifty dollars or greater.

11 (4) Divide a deferred presentment transaction or small loan into multiple
12 agreements for the purpose of obtaining a higher fee or charge.

13 (5) Threaten any customer with prosecution or refer for prosecution any
14 check accepted as payment of a deferred presentment transaction and returned by the
15 lender's depository institution for reason of insufficient funds.

16 (6) Structure the repayment of a loan in such a manner as to attempt to
17 circumvent the provisions of this Chapter.

18 (7) Renew or roll over a deferred presentment transaction or small loan.
19 ~~However, a licensee may accept a partial payment of twenty-five percent of the~~
20 ~~amount advanced plus fees charged and enter into a new deferred presentment~~
21 ~~transaction or renew the small loan for the remaining balance owed.~~ Once a deferred
22 presentment transaction or small loan has been completed, a consumer may enter
23 into a new transaction or loan with the licensee. A deferred presentment transaction
24 or small loan shall be considered completed when the amount advanced has been
25 paid in full by the consumer.

26 (8) Take any direct or indirect interest, possessory or otherwise, whether
27 perfected or unperfected, in any property in connection with a small loan, or a
28 deferred presentment transaction.

29 **(9) Through the use of mail, telephone, Internet, electronic or any other**

1 means, engage in any device or subterfuge intended to evade the requirements
2 of this Chapter, including but not limited to:

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

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

8 (c) Disguising deferred presentment transactions or small loan proceeds
9 as cash rebates for the pretextual installment sale of goods or services.

10 (d) Disguising a deferred presentment transaction or small loan as a
11 revolving line of credit, or making or assisting a borrower to obtain a revolving
12 line of credit for the purpose of avoiding the requirements of Subsection(A)(1)
13 of this Section.

14 B. It shall be unlawful for any small loan lender, for any reason and by any
15 means, including but not limited to direct deposit and personal tender, to accept as
16 payment, offer to accept as payment, or require for use as security any check issued
17 pursuant to the federal Social Security Act. In addition, it shall be unlawful for any
18 lender making small loans to act as a depository institution for the acceptance of any
19 check issued pursuant to the federal Social Security Act, unless such lender is a
20 federally insured financial institution.

21 C. A violation of this Section shall constitute a violation of Chapter 13
22 of Title 51 of the Louisiana Revised Statutes of 1950.

23 * * *

The original instrument and the following digest, which constitutes no part
of the legislative instrument, were prepared by Julie J. Baxter.

DIGEST

Nevers (SB 84)

Proposed law provides that, with respect to a consumer credit transaction, an extender of credit shall not accept a check, as defined by 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.

Present law provides that a creditor having no office in this state offering credit to Louisiana consumers through the mails and other means of interstate commerce shall be exempt from

the consumer loan licensing requirements under the licensing provisions of the Louisiana Consumer Credit Law.

Proposed law deletes present law.

Present law in Louisiana's Deferred Presentment and Small Loan Act defines "partial payment" as a payment of fifty dollars or more on a deferred presentment transaction or small loan.

Proposed law deletes the definition of "partial payment" in present law.

Proposed law in Louisiana's Deferred Presentment and Small Loan Act defines "interest" to mean all charges and fees assessed, payable directly or indirectly, including fees allowed under R.S. 9:5530 in connection with or as a condition of a deferred presentment transaction or small loan.

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 however that such fee or interest does not exceed \$45, regardless of the name or type of charge.

Proposed law provides that notwithstanding any other provision of law, a licensee may charge a fee not to exceed 36% interest annually. Proposed law further provides that any transaction or loan made or collected in violation of proposed law is void, and the licensee shall not have the right to collect, receive, or retain any principal, interest, fees or other charges.

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

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

Present law provides that a licensee under Louisiana's Deferred Presentment and Small Loan Act shall not renew or roll over a deferred presentment transaction or small loan, but 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 provides that a licensee under Louisiana's Deferred Presentment and Small Loan Act shall not renew or roll over a deferred presentment transaction or small loan.

Proposed law provides that a licensee under Louisiana's Deferred Presentment and Small Loan Act shall not engage in any device or subterfuge intended to evade the requirements of the Act through any means, including but not limited to mail, telephone, Internet or any electronic means, by offering, making, assisting a borrower to obtain, or brokering a deferred presentment transaction or small loan at a rate of interest prohibited by Louisiana law, or acting as an agent for a third party in such a transaction; making deferred presentment transactions or small loans disguised as personal property sales, consumer credit sales, and leaseback transactions; disguising preferred presentment transactions or small loan proceeds as cash rebates for the pretextual installment sale of goods or services; or disguising a preferred 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 requirements of present law.

Proposed law provides that the performance of one of the prohibited acts under Louisiana's Deferred Presentment and Small Loan Act shall constitute a violation of Louisiana's Unfair Trade Practices and Consumer Protection Law.

Effective August 1, 2014.

(Amends R.S. 9:3560(A), 3578.3, 3578.4(A), 3578.5 and 3578.6; adds R.S. 9:3537)