

Regular Session, 2014

HOUSE BILL NO. 766

BY REPRESENTATIVE PONTI

FINANCIAL INSTITUTIONS: Provides relative to consumer credit transactions

1 AN ACT

2 To amend and reenact R.S. 9:3557(B), 3560(A)(8) and (9), 3561(A), and 3561.1(G)(1) and
3 to enact R.S. 9:3518.4 and 3561.2, relative to licensing and record maintenance for
4 consumer credit transactions; to nullify certain consumer transactions and deferred
5 presentment transactions; to provide relative to the location of offices of makers of
6 consumer loans; to provide relative to records retention of makers of consumer
7 loans; to provide relative to makers of consumer loans registration with the secretary
8 of state; and to provide for related matters.

9 Be it enacted by the Legislature of Louisiana:

10 Section 1. R.S. 9:3557(B), 3560(A)(8) and (9), 3561(A), and 3561.1(G)(1) are
11 hereby amended and reenacted and R.S. 9:3518.4 and 3561.2 are hereby enacted to read as
12 follows:

13 §3518.4. Contract validity; consumer credit transactions; deferred presentment
14 transactions

15 A.(1) A consumer credit transaction as defined by R.S. 9:3516(13) or
16 deferred presentment transaction as defined by R.S. 9:3578(2) shall be null, void,
17 unenforceable, and uncollectible as being contrary to the policy of this state if the
18 creditor has not obtained a license, if required by this Chapter or R.S. 9:3578.1 et
19 seq., at the time the transaction is made.

20 (2) The creditor shall forfeit all loans or transactions proceeds, fees, charges,
21 and other amounts paid in association with the transaction or loan.

1 §3560. Licenses not required

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

4 * * *

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

7 (9) Unless otherwise provided by rule or regulation of the commissioner,
8 persons whose lending activities pertain to federally related mortgage loans, and who
9 are subject to licensing, supervision or auditing by the Federal National Mortgage
10 Association, the Federal Home Loan Mortgage Corporation, the Governmental
11 National Mortgage Association, the Veterans Administration, or the United States
12 Department of Housing and Urban Development. Such lenders may also make loans
13 secured by a second or junior lien or mortgage on owner-occupied one-to-four family
14 residential immovable property made contemporaneously with federally related
15 mortgage loans or as part of a mortgage revenue bond loan program, or sold on the
16 secondary market to the Federal National Mortgage Association, the Federal Home
17 Loan Mortgage Corporation, or the Governmental National Mortgage Association,
18 and the entity sells ten or fewer of such loans over any calendar year.

19 * * *

20 §3561. Single place of business; additional licenses

21 A. Each licensee ~~shall maintain a place of business in the state and, unless~~
22 ~~otherwise provided by rule, making consumer loans to Louisiana residents shall~~
23 maintain records of its consumer loans at ~~that~~ the location stated on its license. Not
24 more than one place of business shall be maintained under the same license, but the
25 commissioner shall issue additional licenses to the same licensed lender upon his
26 compliance with all the provisions of this Part governing issuance of a license.

27 * * *

28 §3561.1. License; examination; renewal fees; records

29 * * *

1 G.(1) If the lender's records are located outside this state, the lender, at the
 2 commissioner's option, shall make them available in a format deemed by the
 3 commissioner to be acceptable to include physical reproductions and digital
 4 electronically imaged records, to the commissioner at a location within this state
 5 convenient to the commissioner, or via electronic transmittal or delivery of optical
 6 imaging disc containing electronic copies of the records, pay the reasonable and
 7 necessary expenses for the commissioner or his representatives to examine them at
 8 the place where they are maintained. The method of examination and delivery of
 9 records will be at the sole discretion of the commissioner. The commissioner may
 10 designate representatives, including comparable officials of the state in which the
 11 records are located, to inspect them on his behalf.

12 * * *

13 §3561.2. Registration of licensees with the secretary of state

14 Any person required to be licensed pursuant to this Chapter shall, prior to
 15 application for licensure, be duly registered with the Louisiana secretary of state and
 16 be in possession of a certificate of authority to transact business pursuant to R.S.
 17 12:304 or 1345 or R.S. 9:3422, as applicable.

18 Section 2. This Act shall be effective September 30, 2014.

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)]

Ponti

HB No. 766

Abstract: Provides relative to licensing and record maintenance pursuant to the Louisiana Consumer Credit Law and the Louisiana Deferred Presentment and Small Loan Act.

Proposed law provides that a consumer credit transaction as defined by present law (R.S. 9:3516(13)) or deferred presentment transaction as defined by present law (R.S. 9:3578(2)) shall be null, void, unenforceable, and uncollectible as being contrary to the policy of this state if the creditor has not obtained a license from the Office of Financial Institutions if required to do so.

Present law prohibits a creditor from taking assignments of and undertaking direct collection of payments from or enforcing rights against consumers arising from consumer loans without an office in this state and first having obtained a license from the commissioner of the office of financial institutions (OFI).

Proposed law retains present law and removes requirement that the creditor have an office in this state.

Present law provides that a creditor having no office within this state who offers credit to Louisiana consumers through the mail and other means of interstate commerce is not required to be licensed by OFI.

Proposed law removes present law.

Present law provides that each licensee shall maintain a place of business in the state and, unless otherwise provided by rule, shall maintain records of its consumer loans at that location.

Proposed law provides that each licensee making consumer loans to Louisiana residents, shall maintain records of its consumer loans at the location stated on its license.

Present law provides that if the lender's records are located outside this state, the lender, at the commissioner's option, shall make them available to the commissioner at a location within this state convenient to the commissioner, or, pay the reasonable and necessary expenses for the commissioner or his representatives to examine them at the place where they are maintained. The commissioner may designate representatives, including comparable officials of the state in which the records are located, to inspect them on his behalf.

Proposed law adds that if the lender's records are located outside this state, the lender, at the commissioner's option, shall make them available in a format deemed by the commissioner to be acceptable to include physical reproductions and digital electronically imaged records, or via electronic transmittal or delivery of optical imaging disc containing electronic copies of the records. The method of examination and delivery of records will be at the sole discretion of the commissioner.

Proposed law provides that any person required to be licensed pursuant to this Chapter shall, prior to application for licensure, be duly registered with the Louisiana secretary of state and be in possession of a certificate of authority to transact business pursuant to present law (R.S. 12:304 or 1345, or R.S. 9:3422), as applicable.

Effective September 30, 2014.

(Amends R.S. 9:3557(B), 3560(A)(8) and (9), 3561(A), and 3561.1(G)(1); Adds R.S. 9:3518.4 and 3561.2)