

Regular Session, 2014

SENATE BILL NO. 84

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

CONSUMERS. Provides relative to consumer credit transactions. (8/1/14)

1 AN ACT

2 To amend and reenact R.S. 9:3560(A), 3578.3, 3578.5 and 3578.6, and R.S. 51:1406(1), and

3 to enact R.S. 9:3537 and R.S. 9:3578.8(E), relative to consumer credit transactions,

4 deferred presentment transactions and small loans; to provide relative to holding of

5 checks; to provide relative to licensing; to provide certain definitions, limitations,

6 and requirements; to provide for the adoption of regulations and the implementation

7 of a database; to provide relative to certain prohibited acts and violations of such

8 acts; to provide for certain terms, conditions, and procedures; and to provide for

9 related matters.

10 Be it enacted by the Legislature of Louisiana:

11 Section 1. R.S. 9:3560(A), 3578.3, 3578.5 and 3578.6, are hereby amended and
12 reenacted and R.S. 9:3537 and R.S. 9:3578.8(E) are hereby enacted to read as follows:

13 **§3537. Holding of checks**

14 **With respect to a consumer credit transaction, an extender of credit shall**

15 **not accept a check, as defined by R.S. 9:3516, from the issuer and agree to hold**

16 **the check for a period of time in exchange for payment to the issuer.**

17 * * *

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

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

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

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

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

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

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

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

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

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

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

7 * * *

8 §3578.3. Definitions

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

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

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

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

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

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

21 **(d) No consumer shall enter into more than ten deferred presentment**
 22 **transactions within twelve consecutive months.**

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

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

27 ~~(5)~~**(4)** "Prepayment" means payment in full of the deferred presentment
 28 transaction or small loan amount prior to the end of the term of that transaction or
 29 loan.

1 ~~(6)~~**(5)** "Small loan" means a consumer loan, as defined in R.S. 9:3516(14),
 2 of three hundred fifty dollars or less, made for a term of sixty days or less. **No**
 3 **consumer shall enter into more than ten small loans within twelve consecutive**
 4 **months.**

* * *

6 §3578.5. Rebate upon prepayment

7 Upon the prepayment in full of a deferred presentment transaction or small
 8 loan, ~~during the first five days of the term of such transaction or loan only,~~ the
 9 licensee shall refund any and all unearned charges by a method no less favorable to
 10 the consumer than the actuarial method, ~~less twenty dollars of the original fee, which~~
 11 ~~shall be considered earned and shall not be subject to refund. Should the consumer~~
 12 ~~make prepayment after the first five days of the term of the transaction or loan, the~~
 13 ~~licensee shall not be required to make any refund.~~

14 §3578.6. Prohibited acts

15 A. A licensee shall not:

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

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

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

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

28 (5) Threaten any customer with prosecution or refer for prosecution any
 29 check accepted as payment of a deferred presentment transaction and returned by the

1 lender's depository institution for reason of insufficient funds.

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

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

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

15 **(9) Through the use of mail, telephone, Internet, electronic or any other**
16 **means, engage in any device or subterfuge intended to evade the requirements**
17 **of this Chapter, including but not limited to:**

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

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

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

25 **(d) Disguising a deferred presentment transaction or small loan as a**
26 **revolving line of credit, or making or assisting a borrower to obtain a revolving**
27 **line of credit for the purpose of avoiding the requirements of Subsection(A)(1)**
28 **of this Section.**

29 B. It shall be unlawful for any small loan lender, for any reason and by any

1 means, including but not limited to direct deposit and personal tender, to accept as
 2 payment, offer to accept as payment, or require for use as security any check issued
 3 pursuant to the federal Social Security Act. In addition, it shall be unlawful for any
 4 lender making small loans to act as a depository institution for the acceptance of any
 5 check issued pursuant to the federal Social Security Act, unless such lender is a
 6 federally insured financial institution.

7 **C. A violation of this Section shall constitute a violation of Chapter 13**
 8 **of Title 51 of the Louisiana Revised Statutes of 1950.**

9 * * *
 10 §3578.8. Powers of the commissioner; adoption of rules and regulation

11 * * *
 12 * * *
 13

14 **E. (1)The commissioner shall implement as provided in this Section the**
 15 **use of a single common database with real-time access through an Internet**
 16 **connection for licensed lenders who make deferred presentment transactions**
 17 **and small loans pursuant to this Chapter, hereinafter referred to in this**
 18 **Subsection as "licensees." The database shall be accessible to the commissioner**
 19 **and to the licensees so that the commissioner shall be able to verify the number**
 20 **and nature of transactions that are outstanding for a particular consumer. On**
 21 **or before August 1, 2015, the commissioner shall provide by rules and**
 22 **regulations through the Administrative Procedures Act for the implementation**
 23 **of this real-time access common database.**

24 **(2) No licensee shall engage in lending activity with a consumer who has**
 25 **taken out more than ten loans under this Chapter in the previous twelve**
 26 **consecutive months.**

27 **(3) Licensees shall submit such loan transaction data before entering**
 28 **into each transaction in such format as required by the commissioner, including**
 29 **but not limited to the borrower's name, social security number or employment**
 30 **authorization alien number, address, driver's license number, amount of**
 31 **transaction, date of transaction, the date the transaction is closed, data**
 32 **reporting requirements of R.S. 9:3554(A)(6) and such additional information**

1 **as required by the commissioner.**

2 * * *

3 Section 2. R.S. 51:1406(1) is hereby amended and reenacted to read as follows:

4 §1406. Exemptions

5 The provisions of this Chapter shall not apply to:

6 (1) Any federally insured financial institution, its subsidiaries, and affiliates
7 or any licensee of the Office of Financial Institutions, its subsidiaries, and affiliates,
8 **except as provided by R.S. 9:3578.6(C)**, or actions or transactions subject to the
9 jurisdiction of the Louisiana Public Service Commission or other public utility
10 regulatory body, the commissioner of financial institutions, **except as provided by**
11 **R.S. 9:3578.6(C)**, the insurance commissioner, the financial institutions and
12 insurance regulators of other states, or federal banking regulators who possess
13 authority to regulate unfair or deceptive trade practices.

14 * * *

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.

Proposed law adds to the definition of "deferred presentment transaction" that no consumer shall enter into more than ten deferred presentment transactions within twelve consecutive months.

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 adds to the definition of "small loans" that no consumer shall enter into more than ten small loan transactions within twelve consecutive months.

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.

Proposed law provides that the commissioner of the Office of Financial Institutions shall implement as provided in proposed law a single common database with real-time access through an Internet connection for licensed lenders who make deferred presentment transactions and small loans pursuant to present law. Provides that the database shall be accessible to the commissioner and to the licensees so that the commissioner shall be able to verify the number and nature of transactions that are outstanding for a particular consumer. Provides that on or before August 1, 2015, the commissioner shall provide by rules and regulations through the Administrative Procedures Act for the implementation of this real-time access common database.

Proposed law provides that no licensee shall engage in lending activity with a consumer who has taken out more than ten loans under present law in the previous twelve consecutive month.

Proposed law provides that licensees shall submit such loan transaction data before entering into each transaction in such format as required by the commissioner, including but not limited to the borrower's name, social security number of employment authorization alien number, address, driver's license number, amount of transaction, date of transaction, the date the transaction is closed, data reporting requirements of R.S. 9:3554(A)(6) and such additional information as required by the commissioner.

Proposed law removes the exemption in present law for the applicability of the Louisiana Unfair Trade Practices and Consumer Protection Act to deferred presentment transactions and small loans.

Effective August 1, 2014.

(Amends R.S. 9:3560(A), 3578.3, 3578.5 and 3578.6, and R.S. 51:1406(1); adds R.S. 9:3537 and 3578.8(E))

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Judiciary A to the engrossed bill

1. Provides that no consumer shall enter into more than ten deferred presentment transactions within twelve consecutive months.
2. Provides that no consumer shall enter into more than ten small loans within twelve consecutive months.
3. Deletes proposed definition of "interest."
4. Deletes proposed changes to current finance charges allowed in deferred presentment transactions and small loans.
5. Adds law providing that the commissioner of the Office of Financial Institutions shall implement a single common database with real-time access through an Internet connection for licensed lenders who make deferred presentment transactions and small loans.
6. Adds that no licensed lender shall engage in lending activity with a consumer who has taken out more than ten loans under the Louisiana Deferred Presentment and Small Loans Act in the previous twelve consecutive months.
7. Removes the current exemption in the Louisiana Unfair Trade Practices and Consumer Protection Act for deferred presentment transactions and small loans.