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The original instrument was prepared by Julie J. Baxter. The following digest, which does not constitute a part of the legislative instrument, was prepared by Martha Hess.

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## 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.

Proposed law requires licensed lenders to independently verify the total number of deferred presentment transactions entered into by the consumer within the immediately preceding twelve consecutive months. Verification must include examination of the licensed lender's records maintained at the location at which the consumer is applying for the transaction and at other locations within the state that are owned and operated by the licensed lender, as well as utilization of the real-time access common database approved by the commissioner under proposed 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 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 in conjunction with a deferred presentment transaction or small loan, a licensee may charge a fee not to exceed sixteen and seventy-five one hundredths percent 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 \$45.00, regardless of the name or type of charge. Proposed law retains present law.

Proposed law provides that a licensed lender may charge to the consumer any actual common

database cost incurred in an amount not to exceed \$1.00 per loan transaction, which charge shall be included in, and shall not be in addition to, the amount of fees the licensed lender is authorized to charge under present law.

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 authorizes the commissioner to approve the use of 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.

Proposed law authorizes the commissioner to allow a charge to be designated by the outside contractor or third party service not to exceed \$1.00 per transaction, which amount may be charged to the consumer, provided that the amount of this charge is included in, and shall not be in addition to, the amount of fees the licensee is authorized to charge under present law. Provides that the licensee shall remit the transaction charge amount directly to the outside contractor or third party service approved by the commissioner to utilize and maintain the common database system.

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 requires each database provider to indemnify and hold harmless the licensees for any breach of confidentiality due to the provider's data security and further requires that each database provider post a \$5,000,000 bond to secure any possible liabilities as a result of a security breach.

Proposed law requires database providers to protect borrower's identity by using a numerical identification system in lieu of a social security number.

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, 3578.4(A), 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.

Committee Amendments Proposed by Senate Committee on Finance to the engrossed bill

1. Requires licensed lenders to independently verify the total number of deferred presentment transactions entered into by the consumer within the immediately preceding twelve consecutive months, and provides requirements of verification.
2. Authorizes licensed lenders to charge the consumer actual common database cost, not to exceed \$1.00 per loan transaction, as part of fees charged under present law.
3. Authorizes the commissioner to approve the use of a single common database with real-time access through an Internet connection for licensed lenders who make deferred presentment transactions and small loans.
4. Authorizes the commissioner to allow outside contractor or third party service to charge consumer, not to exceed \$1.00 per transaction, as part of fees charged under present law.
5. Requires each database provider to indemnify and hold harmless the licensees for any breach of confidentiality due to the provider's data security and to post a \$5,000,000 bond to secure any possible liabilities as a result of a security breach.

6. Requires database providers to protect borrower's identity by using a numerical identification system in lieu of a social security number.