

ACT No. 636

Regular Session, 2014

HOUSE BILL NO. 766

BY REPRESENTATIVE PONTI

1 AN ACT

2 To amend and reenact R.S. 9:3557(B), 3560(A)(8), 3561(A), 3561.1(G)(1), 3578.4(A)(2),
3 and 3578.7, to enact R.S. 9:3518.4, 3561.2, and 3578.4.1, and to repeal R.S.
4 9:3560(A)(9), relative to record maintenance for and licensees of consumer credit
5 transactions; to nullify certain consumer transactions and deferred presentment
6 transactions; to provide relative to the location of offices of makers of consumer
7 loans; to provide relative to records retention of makers of consumer loans; to
8 provide relative to makers of consumer loans registration with the secretary of state;
9 to permit certain licensees to offer extended payment plans prior to default of certain
10 consumer credit or deferred presentment transactions; to provide relative to notice
11 requirements for certain consumer credit or deferred presentment transactions; to
12 provide for an effective date; and to provide for related matters.

13 Be it enacted by the Legislature of Louisiana:

14 Section 1. R.S. 9:3557(B), 3560(A)(8), 3561(A), 3561.1(G)(1), and 3578.4(A)(2)
15 and 3578.7 are hereby amended and reenacted and R.S. 9:3518.4, 3561.2, and 3578.4.1 are
16 hereby enacted to read as follows:

17 §3518.4. Contract validity; consumer credit transactions; deferred presentment
18 transactions

19 A.(1) A consumer credit transaction as defined by R.S. 9:3516(13) or
20 deferred presentment transaction as defined by R.S. 9:3578.3(2) shall be null, void,
21 unenforceable, and uncollectible as being contrary to the policy of this state if the
22 creditor has not obtained a license, if required by this Chapter or R.S. 9:3578.1 et
23 seq., at the time the transaction is made.

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

3 (3) Upon request of the borrower, the creditor shall return any property taken
4 as collateral within thirty days of the request. If the collateral property has been
5 disposed of at the time of the request, the creditor shall reimburse the borrower an
6 amount equal to the current value of the collateral as determined by any recognized
7 market for the type of collateral or, if there is no recognized market, the fair market
8 value of any such property as determined by commercially reasonable standards.

9 B. Any person who attempts to enforce or collect pursuant to the agreements
10 nullified by this Section shall be subject to fines, penalties, assessments, and
11 applicable administrative and legal actions at the discretion of the commissioner
12 within the powers granted to him under this Chapter.

13 C. The provisions of this Section shall not apply to creditors exempt from
14 the consumer loan licensing requirements pursuant to R.S. 9:3560, any non-recourse
15 consumer financial transaction, or any other creditor not required to obtain a license
16 from the Office of Financial Institutions.

17 * * *
18 §3557. Authority to make consumer loans
19 * * *

20 ~~B. Provided that the creditor has one or more offices in this state, a~~ A
21 creditor may not take assignments of and undertake direct collection of payments
22 from or enforce rights against consumers arising from consumer loans, without first
23 having obtained a license from the commissioner as provided under this Part. A
24 creditor may, however, collect and enforce consumer loan obligations of which he
25 has taken assignment for three months without a license if he notifies the
26 commissioner in writing of his intention to take assignments of consumer loans,
27 including the name and address of the proposed assignee and assignor, the number
28 of loans assigned, the dollar amount of the assignment, and other information the
29 commissioner requires at least ten days prior to the time the assignment is made, and

CODING: Words in ~~struck through~~ type are deletions from existing law; words underscored are additions.

1 the commissioner has not objected, and such creditor promptly applies for a license
2 and his application has not been denied.

3 * * *

4 §3560. Licenses not required

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

7 * * *

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

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

23 * * *

24 §3561. Single place of business; additional licenses

25 A. Each licensee ~~shall maintain a place of business in the state and, unless~~
26 ~~otherwise provided by rule, making consumer loans to Louisiana residents~~ shall
27 maintain records of its consumer loans at ~~that~~ the location stated on its license. Not
28 more than one place of business shall be maintained under the same license, but the

1 commissioner shall issue additional licenses to the same licensed lender upon his
2 compliance with all the provisions of this Part governing issuance of a license.

3 * * *

4 §3561.1. License; examination; renewal fees; records

5 * * *

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

18 * * *

19 §3561.2. Registration of licensees with the secretary of state

20 Any person required to be licensed pursuant to this Chapter shall, prior to
21 application for licensure, be duly registered with the Louisiana secretary of state and
22 be in possession of a certificate of authority to transact business pursuant to R.S.
23 12:304 or 1345 or R.S. 9:3422, as applicable.

24 * * *

25 §3578.4. Finance charge and fees

26 A.

27 * * *

28 (2) ~~However, if~~ If the loan remains unpaid at contractual maturity, the
29 licensee may charge ~~one of the following:~~

1 ~~(a) An an amount equal to the rate of thirty-six percent per annum for a~~
2 period not to exceed one year and beginning one year after contractual maturity, the
3 rate shall not exceed eighteen percent per annum.

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

5 * * *

6 §3578.4.1. Extended payment plan; terms; conditions

7 A.(1) A consumer who is unable to repay either a deferred presentment
8 transaction or small loan when due to a licensee, may elect once in any twelve-month
9 period to repay the licensee the amount due under the deferred presentment
10 transaction or small loan by means of installments, referred to as an extended
11 payment plan in this Section.

12 (2) A consumer is ineligible for an extended payment plan if the consumer
13 previously obtained an extended payment plan from the licensee within the
14 preceding twelve months. The twelve-month period shall be measured from the date
15 that the extended payment plan is executed between the licensee and the consumer.

16 B.(1) To be eligible for an extended payment plan, the consumer shall
17 request to enter into the plan before the due date of the outstanding deferred
18 presentment transaction or small loan.

19 (2) If a consumer is unable to request to enter into the plan prior to the due
20 date of the outstanding deferred presentment transaction or small loan because of
21 incapacitation that results in or from hospitalization, upon the consumer's
22 presentation of proof of hospitalization, the lender shall allow the consumer to
23 request to enter into the plan within seventy-two hours from the discharge of the
24 consumer from the hospital.

25 (3) The licensee and consumer shall execute an agreement, in writing, that
26 modifies the terms of the outstanding small loan or deferred presentment transaction
27 and establishes the terms of the extended payment plan.

28 C.(1) The terms of the extended payment plan shall provide for the
29 following:

1 (a) Allow the consumer to repay the outstanding deferred presentment
2 transaction or small loan, including any fees due prior to entering into the plan, in at
3 least four substantially equal installments.

4 (b) Allow the consumer to prepay sums due pursuant to an extended
5 payment plan in full at any time without penalty.

6 (c) Prohibit the licensee from charging the consumer any interest, or
7 additional charges or fees during the term of the plan.

8 (d) Require that the first plan installment shall be due no sooner than thirty
9 days following the execution of the plan, unless a shorter period of time is agreed to
10 by the consumer and licensee based on when the consumer receives income. The
11 dollar amount of each installment shall be substantially the same and the installment
12 due dates shall be spread out substantially evenly over the term of the extended
13 payment plan.

14 (2) The terms of the extended payment plan may permit the licensee to do
15 either of the following:

16 (a) With each payment under the plan by a consumer, provide for the return
17 of the consumer's previously held check and require a new check for the remaining
18 balance under the plan.

19 (b) Require the consumer to provide multiple checks, one for each of the
20 installments in the amounts of each installment at the time the plan is executed.

21 D. A licensee shall immediately provide consumer receipts, signed and dated
22 by the licensee, for any payments made in connection with the extended payment
23 plan. The receipts shall also state the balance due under the extended payment plan
24 after each payment.

25 E.(1) If the consumer fails to pay any extended payment plan installment
26 when due, the consumer shall be in default of the extended payment plan, and the
27 licensee may immediately accelerate payment on only the remaining balance of the
28 extended payment plan.

29 (2) Upon default, the licensee may take action to collect only the amount
30 outstanding on the extended payment plan. A licensee is prohibited from collecting

1 any amount on an extended payment plan other than what the consumer owes
2 pursuant to the plan on the date of default.

3 F. If a consumer enters into an extended payment plan, the consumer and
4 licensee are prohibited from entering into a subsequent deferred presentment
5 transaction or small loan until repayment in full of the extended payment plan.

6 G.(1) At each licensed location or on the homepage of a licensee's website,
7 the licensee shall prominently post a notice visible to the public and all those visiting
8 the website stating that if a consumer is unable to repay either a deferred presentment
9 transaction or small loan when due, the consumer may enter into one extended
10 payment plan for either a deferred presentment transaction or small loan if he notifies
11 the licensee as required by Paragraph (B)(1) of this Section before the payment is
12 due of his inability to make payment.

13 (2)(a) A licensee shall also notify a person of his right to enter into an
14 extended payment plan by including the following statement, in at least sixteen point
15 bold type, on the first page of each deferred presentment or small loan agreement:
16 "IF YOU CANNOT MAKE PAYMENT WHEN DUE, YOU CAN ASK TO ENTER
17 INTO AN EXTENDED PAYMENT PLAN ONCE IN A TWELVE-MONTH
18 PERIOD, BUT THE REQUEST MUST BE MADE BEFORE PAYMENT IS DUE.
19 SHOULD YOUR LENDER (LICENSEE) REFUSE TO ENTER INTO AN
20 EXTENDED PAYMENT PLAN UPON YOUR REQUEST BEFORE THE DUE
21 DATE, CONTACT THE OFFICE OF FINANCIAL INSTITUTIONS AT 1-888-
22 525-9414."

23 (b) In addition, a consumer shall sign the following statement acknowledging
24 that he has been informed of the extended payment plan. The statement shall be in
25 at least twelve point bold type, on the first page of each deferred presentment
26 transaction or small loan agreement below the statement required by Subparagraph
27 (a) of this Paragraph:

28 "I acknowledge that I understand that I may be eligible to enter into an
29 extended payment plan if I cannot make payment when due. In order to be
30 potentially eligible for an extended payment plan, I understand that it is my

1 responsibility to notify my lender that I cannot make payment before payment is due.
2 I have asked any questions I have about the extended payment plan and my lender
3 (licensee) answered all questions to my satisfaction."

4 [SIGNATURE BLOCK]

5 [DATE]

6 * * *

7 §3578.7. Posting of notice; toll-free number

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

13 * * *

14 Section 2. R.S. 9:3560(A)(9) is hereby repealed in its entirety.

15 Section 3. This Act shall become effective on January 1, 2015.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____