

2022 Regular Session

SENATE BILL NO. 381

BY SENATOR WARD

LOANS. Creates the "Louisiana Credit Access Loan Act". (gov sig)

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AN ACT

To enact Chapter 15 of Title 51 of the Louisiana Revised Statutes of 1950, to be comprised of R.S. 51:1501 through 1506, relative to the regulation of credit access loans; to provide for terms, procedures, prohibitions, and penalties; to require disclosure; to provide for definitions; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. Chapter 15 of Title 51 of the Louisiana Revised Statutes of 1950, comprised of R.S. 51:1501 through 1506 is hereby enacted to read as follows:

CHAPTER 15. LOUISIANA CREDIT ACCESS LOAN ACT

§1501. Short title

This Chapter shall be known and may be cited as the "Louisiana Credit Access Loan Act".

§1502. Scope

This Chapter shall not apply to the following:

(1) Any federally insured depository institution.

(2) A subsidiary of any state chartered or federally chartered entity

described in Paragraph (1) of this Section in which eighty percent or more of

1 the ownership rests with such parent entity.

2 (3) Any loan subject to the provisions of the Louisiana Motor Vehicles
3 Sales Finance Act, R.S. 6:969.1 et seq.

4 (4) Deferred presentment transactions or small loans governed by the
5 Louisiana Deferred Presentment and Small Loan Act (R.S. 9:3578.1 et seq.) or
6 installment loans pursuant to the Louisiana Consumer Credit Law (R.S. 9:3510
7 et seq.).

8 §1503. Definitions

9 A. As used in this Chapter, the following terms and phrases mean as
10 follows:

11 (1) "Check" means any check, draft, item, orders, or requests for
12 payment of money, negotiable orders, withdrawal, or any other instrument used
13 to pay a debt or transfer money from one to another.

14 (2) "Commissioner" means the commissioner of the office of financial
15 institutions.

16 (3) "Consumer" or "borrower" means a natural person who purchases
17 goods, services, or movable or immovable property or rights therein, for a
18 personal, family, or household purpose, including the borrowing party in a
19 credit access loan.

20 (4) "Credit access loan" means any interest-bearing loan payable in
21 substantially equal installments, which does or includes the following:

22 (a) Offered by a licensee to a borrower in compliance with this Chapter.

23 (b) Includes a principal amount not exceeding one thousand five hundred
24 dollars.

25 (c) Includes a loan term of not less than ninety days and not more than
26 three hundred sixty-five days.

27 (5) "Licensee" or "lender" means any person who engages in offering
28 credit access loans and who is licensed pursuant to the Louisiana Consumer
29 Credit Law (R.S. 9:3510 et seq.).

1 **(6) "OFI" means the office of financial institutions.**

2 **(7) "Principal" means the amount financed or amount deferred pursuant**
3 **to a credit access loan agreement executed between a consumer or borrower**
4 **and a licensee or lender.**

5 **§1504. Credit access loan; terms; disclosure; procedure**

6 **A. (1) A credit access loan agreement entered between a licensee and a**
7 **borrower according to this Chapter shall include or do the following:**

8 **(a) Authorize the borrower to rescind the agreement within one business**
9 **day at no cost.**

10 **(b) A disclosure notice written in at least twelve-point, bold font stating:**

11 **You are entitled by Louisiana law to cancel this**
12 **transaction at no cost to you by notifying your lender of**
13 **your intent to cancel this transaction by close of the**
14 **business day immediately following the date you sign this**
15 **agreement and by returning to the lender all loan**
16 **proceeds provided to you.**

17 **(c)(i) A disclosure notice written in at least sixteen-point, bold font on the**
18 **first page of each credit access loan agreement stating:**

19 **You may request an extended payment plan if you**
20 **are unable to pay the loan in full when due, but the**
21 **request shall be made prior to [Insert final payment due**
22 **date here]. The request shall be made in writing and be**
23 **delivered by hand, by mail, or by facsimile to:**
24 **[Licensee/lender to insert name, email address, phone**
25 **number and facsimile number here]. Contact the Office of**
26 **Financial Institutions (OFI) at 1-888-525-9414, 8660**
27 **United Plaza Blvd, Baton Rouge, LA 70809, if**
28 **[Licensee/lender name here] refuses to grant your timely**
29 **request for an extended payment plan or if you have any**

1 other complaint regarding your lender's activity.

2 (ii) The disclosure notices required by this Subparagraph shall be visibly
3 posted at each licensee location and on the homepage of the licensee's website.

4 B. A licensee may contract for and receive the following from a
5 borrower:

6 (1)(a) A loan finance charge, calculated according to the actuarial
7 method, not exceeding thirty-six percent per year on the unpaid balances of the
8 principal.

9 (b) The loan finance charge described in Subparagraph (a) of this
10 Paragraph shall not include the fees or charges enumerated in Paragraphs (2)
11 through (5) of this Subsection.

12 (2) A monthly maintenance fee not exceeding thirteen percent of the
13 principal amount originally contracted but only if the fee is not added to the
14 unpaid balances of the principal subject to the loan finance charge described in
15 Paragraph (1) of this Subsection.

16 (3) Delinquency charges authorized by R.S. 51:1505.

17 (4) Charges imposed by the licensee resulting from returned payments
18 related to dishonored checks, electronic funds transfers, negotiable orders of
19 withdrawal, or share drafts issued by the borrower.

20 (5) An underwriting fee not exceeding fifty dollars but only when the
21 principal amount originally contracted for is at least four hundred dollars.

22 C.(1) All fees and charges imposed relating to the credit access loan,
23 except those charges described in Paragraphs (3) and (4) of Subsection B, shall
24 be included in the calculation of the total amount of fees and charges and shall
25 not exceed one thousand five hundred dollars.

26 (2) Fees or charges not authorized by this Chapter shall not be imposed,
27 relative to a credit access loan, including but not limited to any charges related
28 to cashing loan proceeds if such proceeds are delivered by check.

29 D.(1) Prior to offering a credit access loan agreement to a borrower, a

1 licensee shall reasonably attempt to verify either the borrower's gross monthly
2 income, exclusive of any income other than gross pay received, or the
3 borrower's monthly funds received net of taxes and other deductions.

4 (2) A licensee shall be determined in compliance with this Subsection if
5 the licensee obtains at least one document from the borrower, which is dated not
6 earlier than ninety days before the date of the borrower's initiation of the loan
7 transaction and not later than the date the loan is made, that reasonably verifies
8 the information required by Paragraph (1) of this Subsection, including but not
9 limited to a recent pay stub.

10 §1505. Prohibitions; violation

11 A. A licensee shall not do any of the following related to a credit access
12 loan:

13 (1) Use any device or agreement that charges or collects more fees,
14 payments, or interest from the borrower than authorized by this Chapter,
15 including execution of another financial agreement with the buyer other than
16 an extended payment plan, execution of a sales or leaseback or rebate
17 agreement, executing catalog sales, and executing any other transaction with the
18 borrower intended or designed to evade the requirements of this Chapter.

19 (2) Include in a credit access loan agreement any of the following:

20 (a) A hold harmless clause.

21 (b) A confession of judgment clause.

22 (c) A provision in which the borrower agrees not to assert a claim or
23 defense arising out of the agreement.

24 (d) A provision by which a person acting on behalf of the licensee is
25 treated as an agent of the borrower relating to the credit access loan.

26 (3) Accept real or personal property or any interest in property other
27 than a check.

28 (4)(a) Draft funds electronically from a borrower's account without the
29 borrower's express written authorization.

1 **(b) Notwithstanding any provision of this Section, nothing herein shall**
2 **be construed to prohibit the conversion of a negotiable instrument into an**
3 **electronic form for processing through an automated clearing house system.**

4 **(5) Fail to stop attempts to draft funds electronically from a borrower's**
5 **account upon request from the borrower or the borrower's authorized agent.**

6 **(6) Fail to consider whether the borrower can repay the loan according**
7 **to its terms and whether the borrower's original request regarding loan term**
8 **and amount were within the limitations imposed according to this Chapter.**

9 **(7) Charge, contract for, receive, or collect a loan finance charge or**
10 **credit service charge, or any other fee not authorized by this Chapter, except for**
11 **reasonable attorney fees and costs awarded by a court.**

12 **(8) Refuse a partial loan payment of at least fifty dollars.**

13 **(9) Divide a credit access loan into multiple agreements for the purpose**
14 **of obtaining a higher fee or charge.**

15 **(10) Threaten any customer with prosecution or refer for prosecution**
16 **any check accepted as payment of a credit access loan and returned by the**
17 **lender's depository institution for reason of insufficient funds.**

18 **(11) Execute or structure loan repayment in a manner intended or**
19 **designed to evade the requirements of this Chapter.**

20 **B. Notwithstanding any provision of this Chapter, any credit access loan**
21 **complying with the Chapter shall be exempt from and shall not constitute a**
22 **violation of R.S. 14:511.**

23 **C. OFI and the commissioner may administer and enforce compliance**
24 **with this Chapter according to applicable law, including but not limited to the**
25 **Louisiana Consumer Credit Law (R.S. 9:3510 et seq.) and the Administrative**
26 **Procedure Act (R.S. 49:950 et seq.).**

27 **§1506. Borrower default; delinquent penalty**

28 **A.(1) A licensee may charge and collect from the borrower a late penalty**
29 **of no more than ten percent of the delinquent amount but only when the terms**

1 of the penalty are clearly disclosed, in writing, in the credit access loan
2 agreement.

3 (2) Notwithstanding Paragraph (1) of this Subsection, a licensee shall not
4 impose a delinquent penalty on any borrower unless the borrower has failed to
5 pay the delinquent amount within ten days following the applicable due date.

6 B. A credit access loan agreement may require that the borrower pay all
7 costs awarded by a court, in addition to reasonable attorney fees that shall not
8 exceed twenty-five percent of the unpaid loan amount, but only when the
9 borrower has defaulted and the licensee has referred the matter to an attorney
10 for collection.

11 Section 2. The office of financial institutions shall promulgate any administrative
12 regulations deemed necessary to implement and effectuate the purposes of this Act by no
13 later than one hundred eighty days from the effective date of this Act.

14 Section 3. This Act shall become effective upon signature of the governor or, if not
15 signed by the governor, upon expiration of the time for bills to become law without signature
16 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
17 vetoed by the governor and subsequently approved by the legislature, this Act shall become
18 effective on the day following such approval.

The original instrument and the following digest, which constitutes no part
of the legislative instrument, were prepared by Xavier I. Alexander.

DIGEST

SB 381 Original 2022 Regular Session Ward

Proposed law creates the "Louisiana Credit Access Loan Act".

Proposed law provides exceptions to applicability and provides definitions. Proposed law provides for a consumer/borrower to gain access to a credit access loan from a lender/licensee. Proposed law defines a "credit access loan" as any interest-bearing loan payable in substantially equal installments, which does or includes the following:

- (1) Offered by a licensee to a borrower.
- (2) Includes a principal amount not exceeding \$1,500.
- (3) Includes a loan term of not less than 90 days and not more than 365 days.

Proposed law provides that the terms of a credit access loan agreement shall include or do the following:

- (1) Authorize the borrower to rescind the agreement within one business day at no cost.
- (2) A disclosure notice to be written in at least 12-point, bold font stating that the borrower is entitled to cancel the transaction at no cost by notifying the lender of his intent to cancel the transaction by close of the business day immediately following the date the agreement is signed and by returning to the lender all loan proceeds.
- (3) A disclosure notice to be written in at least 16-point, bold font on the first page of each credit access loan agreement stating that the borrower may request an extended payment plan if unable to pay the loan in full when due and provides the process for requesting such.

Proposed law provides that the disclosure notices shall also be visibly posted at each licensee location and on the homepage of the licensee's website.

Proposed law authorizes the licensee to contract for and receive the following from a borrower:

- (1) A loan finance charge, calculated according to the actuarial method, not exceeding 36% per year on the unpaid balances of the principal.
- (2) A monthly maintenance fee not exceeding 13% of the principal amount originally contracted under certain circumstances.
- (3) Delinquency charges.
- (4) Non-sufficient funds (NSF) charges.
- (5) An underwriting fee not exceeding \$50 but only when the principal amount originally contracted for is at least \$400.

Proposed law provides that all fees and charges imposed, except delinquency and NSF charges, shall be included in the calculation of the total amount of fees and charges and shall not exceed \$1,500. Prohibits any other charges not specifically authorized by proposed law.

Proposed law provides requirements for verifying a borrower's income.

Proposed law provides that certain acts are prohibited by a licensee including the execution of a second device or agreement intended or designed to evade requirements, the inclusion of a hold harmless clause and confession of judgment clause in an agreement, electronic draft of funds from a borrower's account without specific consent, refusal of a partial loan payment of \$50 or more, and others. Proposed law provides the authority for enforcement with the office of financial institutions (OFI).

Proposed law provides that a licensee may charge and collect from the borrower a late penalty of no more than 10% of the delinquent amount but only when the terms of the penalty are clearly disclosed, in writing, in the credit access loan agreement and the borrower has failed to pay the delinquent amount within 10 days following the applicable due date.

Proposed law provides that the agreement may require that the borrower pay all costs awarded by a court, in addition to reasonable attorney fees that shall not exceed 25% of the unpaid loan amount, but only when the borrower has defaulted and the licensee has referred the matter to an attorney for collection.

Proposed law requires OFI to promulgate rules necessary to implement and effectuate the purposes of proposed law within 180 days of proposed law becoming effective.

Effective upon signature of the governor or lapse of time for gubernatorial action.

(Adds R.S. 51:1501-1506)