

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), 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

1 creditor has not obtained a license, if required by this Chapter or R.S. 9:3578.1 et
2 seq., at the time the transaction is made.

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

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

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

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

18 * * *

19 §3557. Authority to make consumer loans

20 * * *

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

1 commissioner requires at least ten days prior to the time the assignment is made, and
2 the commissioner has not objected, and such creditor promptly applies for a license
3 and his application has not been denied.

4 * * *

5 §3560. Licenses not required

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

8 * * *

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

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

24 * * *

25 §3561. Single place of business; additional licenses

26 A. Each licensee ~~shall maintain a place of business in the state and, unless~~
27 ~~otherwise provided by rule, making consumer loans to Louisiana residents shall~~
28 maintain records of its consumer loans at ~~that~~ the location stated on its license. Not
29 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, to the commissioner at a location within this state
10 convenient to the commissioner, or via electronic transmittal or delivery of optical
11 imaging disc containing electronic copies of the records, pay the reasonable and
12 necessary expenses for the commissioner or his representatives to examine them at
13 the place where they are maintained. The method of examination and delivery of
14 records will be at the sole discretion of the commissioner. The commissioner may
15 designate representatives, including comparable officials of the state in which the
16 records are located, to inspect them on his behalf.

17 * * *

18 §3561.2. Registration of licensees with the secretary of state

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

23 * * *

24 §3578.4. Finance charge and fees

25 A.

26 * * *

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

1 (2) Upon default, the licensee may take action to collect only the amount
2 outstanding on the extended payment plan. A licensee is prohibited from collecting
3 any amount on an extended payment plan other than what the consumer owes
4 pursuant to the plan on the date of default.

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

8 G.(1) At each licensed location or on the homepage of a licensee's website,
9 the licensee shall prominently post a notice visible to the public and all those visiting
10 the website stating that if a consumer is unable to repay either a deferred presentment
11 transaction or small loan when due, the consumer may enter into one extended
12 payment plan for either a deferred presentment transaction or small loan if he notifies
13 the licensee as required by R.S. 9:3578.4.1(B)(1) before the payment is due of his
14 inability to make payment.

15 (2)(a) A licensee shall also notify a person of his right to enter into an
16 extended payment plan by including the following statement, in at least sixteen point
17 bold type, on the first page of each deferred presentment or small loan agreement:
18 "IF YOU CANNOT MAKE PAYMENT WHEN DUE, YOU CAN ASK TO ENTER
19 INTO AN EXTENDED PAYMENT PLAN ONCE IN A TWELVE-MONTH
20 PERIOD, BUT THE REQUEST MUST BE MADE BEFORE PAYMENT IS DUE.
21 SHOULD YOUR LENDER (LICENSEE) REFUSE TO ENTER INTO AN
22 EXTENDED PAYMENT PLAN UPON YOUR REQUEST BEFORE THE DUE
23 DATE, CONTACT THE OFFICE OF FINANCIAL INSTITUTIONS AT 1-888-
24 525-9414."

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

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 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 La. 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 La. 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.

Proposed law authorizes certain finance charges and fees in conjunction with a deferred presentment transaction or small loan.

Present law provides that if the loan remains unpaid at contractual maturity, then the licensee may charge (1) an amount equal to the rate of 36% per annum for a period not to exceed one year and beginning one year after contractual maturity, the rate shall not exceed 18% per annum, or (2) a one-time delinquency charge of 5% of the unpaid amount or \$10, whichever is greater.

Proposed law removes that authority of the licensee to charge the one-time delinquency charge of 5% of the unpaid amount or \$10, whichever is greater.

Proposed law permits a consumer who is unable to repay either a deferred presentment transaction or small loan when due to a licensee to elect once in any 12-month period to repay the licensee the amount due by means of installments, referred to as an extended payment plan.

Proposed law provides that a consumer is ineligible for an extended payment plan if the consumer previously obtained an extended payment plan from the licensee within the preceding 12 months.

Proposed law requires the consumer to request to enter into the plan before the due date of the outstanding deferred presentment transaction or small loan.

Proposed law provides that if a consumer is unable to request to enter into an extended payment plan prior to the due date of the outstanding deferred presentment transaction or small loan because of incapacitation that results in or from hospitalization, upon the consumer's presentation of proof of hospitalization, the lender shall allow the consumer to request to enter into the plan within 72 hours from the discharge of the consumer from the hospital.

Proposed law requires the licensee and consumer to execute an agreement, in writing, that modifies the terms of the outstanding small loan or deferred presentment plan and establishes the terms of the extended payment plan.

Proposed law provides that the terms of the extended payment plan shall:

- (1) Allow the consumer to repay the outstanding deferred presentment transaction or small loan, including any fees due prior to entering into the plan, in at least four substantially equal installments.
- (2) Allow the consumer to prepay sums due pursuant to an extended payment plan in full at any time without penalty.
- (3) Prohibit the licensee from charging the consumer any interest, or additional charges or fees during the term of the plan.
- (4) Require that the first plan installment shall be due no sooner than thirty days following the execution of the plan, unless a shorter period of time is agreed to by the consumer and licensee based on when the consumer receives income. The dollar amount of each installment shall be substantially the same and the installment due dates shall be spread out substantially evenly over the term of the extended payment plan.

Proposed law provides that the terms of the extended payment plan may permit the licensee to do either of the following:

- (1) With each payment under the plan by a consumer, provide for the return of the consumer's previously held check and require a new check for the remaining balance under the plan.
- (2) Require the consumer to provide multiple checks, one for each of the installments in the amounts of each installment at the time the plan is executed.

Proposed law requires that a licensee immediately give a consumer receipts, signed and dated by the licensee, for any payments made in connection with the extended payment plan. The receipts shall also state the balance due under the extended payment plan after each payment.

Proposed law provides that if the consumer fails to pay any extended payment plan installment when due, the consumer shall be in default of the extended payment plan and the licensee may immediately accelerate payment on only the remaining balance of the extended payment plan.

Proposed law provides that upon default, the licensee may take action to collect only the amount outstanding on the extended payment plan.

Proposed law provides that a licensee is prohibited from collecting any amount on an extended payment plan other than what the consumer owes pursuant to the plan on the date of default.

Proposed law provides that if a consumer enters into an extended payment plan, the consumer and licensee are prohibited from entering into a subsequent deferred presentment transaction or small loan until repayment in full of the extended payment plan.

Proposed law provides that at each licensed location or on the homepage of a licensee's website, a licensee shall prominently post a notice visible to the public and all those visiting the website stating that if a consumer is unable to repay either a deferred presentment transaction or small loan when due, the consumer can enter into one extended payment plan for either a deferred presentment transaction or small loan if he notifies the licensee before the payment is due of his inability to make payment.

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

Proposed law requires a consumer to sign a statement acknowledging that he has been informed of the extended payment plan. The statement shall be in at least twelve-point bold type, on the first page of each deferred presentment transaction or small loan agreement.

Present law provides that the commissioner may provide a notice, which includes a toll-free number to the commissioner's office, which shall be posted, along with the fees as allowed under present law, in a conspicuous manner by the licensee at the lending location.

Proposed law provides that the commissioner may provide a notice, which includes a toll-free number to the commissioner's office, which shall be posted, along with the fees as allowed under present law, in a conspicuous place and manner by the licensee at the lending location or on the homepage of the website of the licensee, or both if the licensee has both a physical location in the state and a website.

Effective Sept. 30, 2014.

(Amends R.S. 9:3557(B), 3560(A)(8), 3561(A), 3561.1(G)(1), 3578.4(A)(2) and 3578.7; Adds R.S. 9:3518.4, 3561.2, and 3578.4.1); Repeals R.S. 9:3560(A)(9))

Summary of Amendments Adopted by House

Committee Amendments Proposed by House Committee on Commerce to the original bill.

1. Removed the authorization for the maker of a deferred presentment transaction or small loan to charge a one-time delinquency charge of 5% of the unpaid amount or \$10, whichever is greater, if the loan remains unpaid at contractual maturity.

2. Authorized a consumer to enter into an extended payment plan with a deferred presentment transaction or small loan licensee if certain conditions are met.

House Floor Amendments to the engrossed bill.

1. Made technical changes.
2. Provided that if a consumer is unable to request to enter into an extended payment plan prior to the due date of the outstanding deferred presentment transaction or small loan because of incapacitation that results in or from hospitalization, upon the consumer's presentation of proof of hospitalization, the lender shall allow the consumer to request to enter into the plan within 72 hours from the discharge of the consumer from the hospital.
3. Required a consumer to sign a statement acknowledging that he has been informed of the extended payment plan. The statement shall be in at least twelve-point bold type, on the first page of each deferred presentment transaction or small loan agreement.