

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, 3578.4(A), 3578.5 and 3578.6, and R.S.
3 51:1406(1), and to enact R.S. 9:3537 and R.S. 9:3578.8(E), relative to consumer
4 credit transactions, deferred presentment transactions and small loans; to provide
5 relative to holding of checks; to provide relative to licensing; to provide relative to
6 certain charges and fees; to provide certain definitions, limitations, and requirements;
7 to provide for the adoption of regulations and the implementation of a database; to
8 provide relative to certain prohibited acts and violations of such acts; to provide for
9 certain terms, conditions, and procedures; and to provide for related matters.

10 Be it enacted by the Legislature of Louisiana:

11 Section 1. R.S. 9:3560(A), 3578.3, 3578.4(A), 3578.5 and 3578.6, are hereby
12 amended and reenacted and R.S. 9:3537 and R.S. 9:3578.8(E) are hereby enacted to read as
13 follows:

14 **§3537. Holding of checks**

15 **With respect to a consumer credit transaction, an extender of credit shall**
16 **not accept a check, as defined by R.S. 9:3516, from the issuer and agree to hold**
17 **the check for a period of time in exchange for payment to the issuer.**

* * *

§3560. Licenses not required

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

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

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

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

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

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

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

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

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

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

~~(9)~~**(8)** Unless otherwise provided by rule or regulation of the commissioner, persons whose lending activities pertain to federally related mortgage loans, and who are subject to licensing, supervision or auditing by the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Governmental National Mortgage Association, the Veterans Administration, or the United States

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

8 * * *

9 §3578.3. Definitions

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

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

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

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

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

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

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

24 **(e) A licensed lender must independently verify the total number of**
 25 **deferred presentment transactions entered into by the consumer within the**
 26 **immediately preceding twelve consecutive months. Verification must include**
 27 **examination of the licensed lender's own records, including records maintained**
 28 **at the location at which the consumer is applying for the transaction and**
 29 **records maintained at other locations within the state that are owned and**

1 operated by the licensed lender, as well as utilization of the real-time access
2 common database approved by the commissioner under R.S. 9:3578.8.

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

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

7 ~~(5)~~**(4)** "Prepayment" means payment in full of the deferred presentment
8 transaction or small loan amount prior to the end of the term of that transaction or
9 loan.

10 ~~(6)~~**(5)** "Small loan" means a consumer loan, as defined in R.S. 9:3516(14),
11 of three hundred fifty dollars or less, made for a term of sixty days or less. **No**
12 **consumer shall enter into more than ten small loans within twelve consecutive**
13 **months.**

14 * * *

15 §3578.4. Finance charge and fees

16 A.(1)**(a)** In conjunction with a deferred presentment transaction or small
17 loan, a licensee may charge a fee not to exceed sixteen and seventy-five one
18 hundredths percent of the face amount of the check issued or in the case of a small
19 loan, the equivalent rate of interest, provided however that such fee or interest does
20 not exceed forty-five dollars, regardless of the name or type of charge.

21 **(b) A licensed lender may charge to the consumer any actual common**
22 **database cost incurred in association with R.S. 9:3578.8(E) and R.S. 9:3514(B)**
23 **in an amount not to exceed one dollar per loan transaction. The amount of this**
24 **charge shall be included in, and shall not be in addition to, the amount of fees**
25 **the licensed lender is authorized to charge under Paragraph (A)(1) and**
26 **Subsection C of this Section.**

27 * * *

28 §3578.5. Rebate upon prepayment

29 Upon the prepayment in full of a deferred presentment transaction or small

1 loan, ~~during the first five days of the term of such transaction or loan only~~, the
2 licensee shall refund any and all unearned charges by a method no less favorable to
3 the consumer than the actuarial method, ~~less twenty dollars of the original fee, which~~
4 ~~shall be considered earned and shall not be subject to refund. Should the consumer~~
5 ~~make prepayment after the first five days of the term of the transaction or loan, the~~
6 ~~licensee shall not be required to make any refund.~~

7 §3578.6. Prohibited acts

8 A. A licensee shall not:

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

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

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

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

21 (5) Threaten any customer with prosecution or refer for prosecution any
22 check accepted as payment of a deferred presentment transaction and returned by the
23 lender's depository institution for reason of insufficient funds.

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

26 (7) Renew or roll over a deferred presentment transaction or small loan.
27 ~~However, a licensee may accept a partial payment of twenty-five percent of the~~
28 ~~amount advanced plus fees charged and enter into a new deferred presentment~~
29 ~~transaction or renew the small loan for the remaining balance owed. Once a deferred~~

1 presentment transaction or small loan has been completed, a consumer may enter
2 into a new transaction or loan with the licensee. A deferred presentment transaction
3 or small loan shall be considered completed when the amount advanced has been
4 paid in full by the consumer.

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

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

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

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

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

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

22 B. It shall be unlawful for any small loan lender, for any reason and by any
23 means, including but not limited to direct deposit and personal tender, to accept as
24 payment, offer to accept as payment, or require for use as security any check issued
25 pursuant to the federal Social Security Act. In addition, it shall be unlawful for any
26 lender making small loans to act as a depository institution for the acceptance of any
27 check issued pursuant to the federal Social Security Act, unless such lender is a
28 federally insured financial institution.

29 **C. A violation of this Section shall constitute a violation of Chapter 13**

1 of Title 51 of the Louisiana Revised Statutes of 1950.

2 * * *

3 §3578.8. Powers of the commissioner; adoption of rules and regulation

4 * * *

5 E.(1) The commissioner shall approve as provided in this Section the use
6 of a single common database with real-time access through an Internet
7 connection for licensed lenders who make deferred presentment transactions
8 and small loans pursuant to this Chapter, hereinafter referred to in this
9 Subsection as "licensees". The database shall be accessible to the commissioner
10 and to the licensees so that the commissioner shall be able to verify the number
11 and nature of transactions that are outstanding for a particular consumer. The
12 commissioner is hereby authorized to allow a charge to be designated by the
13 outside contractor or third party service not to exceed one dollar per
14 transaction. The licensee may charge this amount to the consumer, provided
15 that the amount of this charge shall be included in, and shall not be in addition
16 to, the amount of fees the licensee is authorized to charge under R.S. 9:3578.4.
17 The licensee shall remit the transaction charge amount directly to the outside
18 contractor or third party service approved by the commissioner to utilize and
19 maintain the common database system.

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

23 (3) Licensees shall submit such loan transaction data before entering
24 into each transaction in such format as required by the commissioner, including
25 but not limited to the borrower's name, social security number or employment
26 authorization alien number, address, driver's license number, amount of
27 transaction, date of transaction, the date the transaction is closed, and such
28 additional information as required by the commissioner.

29 (4) Each database provider shall indemnify and hold harmless the

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 SenateCommittee 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.