HLS 14RS-1227 ORIGINAL

Regular Session, 2014

HOUSE BILL NO. 766

1

BY REPRESENTATIVE PONTI

FINANCIAL INSTITUTIONS: Provides relative to consumer credit transactions

AN ACT

2	To amend and reenact R.S. 9:3557(B), 3560(A)(8) and (9), 3561(A), and 3561.1(G)(1) and
3	to enact R.S. 9:3518.4 and 3561.2, relative to licensing and record maintenance for
4	consumer credit transactions; to nullify certain consumer transactions and deferred
5	presentment transactions; to provide relative to the location of offices of makers of
6	consumer loans; to provide relative to records retention of makers of consumer
7	loans; to provide relative to makers of consumer loans registration with the secretary
8	of state; and to provide for related matters.
9	Be it enacted by the Legislature of Louisiana:
10	Section 1. R.S. 9:3557(B), 3560(A)(8) and (9), 3561(A), and 3561.1(G)(1) are
11	hereby amended and reenacted and R.S. 9:3518.4 and 3561.2 are hereby enacted to read as
12	follows:
13	§3518.4. Contract validity; consumer credit transactions; deferred presentment
14	<u>transactions</u>
15	A.(1) A consumer credit transaction as defined by R.S. 9:3516(13) or
16	deferred presentment transaction as defined by R.S. 9:3578(2) shall be null, void,
17	unenforceable, and uncollectible as being contrary to the policy of this state if the
18	creditor has not obtained a license, if required by this Chapter or R.S. 9:3578.1 et
19	seq., at the time the transaction is made.
20	(2) The creditor shall forfeit all loans or transactions proceeds, fees, charges,
21	and other amounts paid in association with the transaction or loan.

Page 1 of 5

CODING: Words in $\frac{\text{struck through}}{\text{struck through}}$ type are deletions from existing law; words $\frac{\text{underscored}}{\text{are additions}}$.

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

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

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

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§3557. Authority to make consumer loans

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

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1	§3560. Licenses not required
2	A. Notwithstanding R.S. 9:3557, the following persons shall be exempt from
3	the consumer loan licensing requirements under this Part:
4	* * *
5	(8) A creditor having no office within this state offering credit to Louisiana
6	consumers through the mails and other means of interstate commerce.
7	(9) Unless otherwise provided by rule or regulation of the commissioner,
8	persons whose lending activities pertain to federally related mortgage loans, and who
9	are subject to licensing, supervision or auditing by the Federal National Mortgage
10	Association, the Federal Home Loan Mortgage Corporation, the Governmental
11	National Mortgage Association, the Veterans Administration, or the United States
12	Department of Housing and Urban Development. Such lenders may also make loans
13	secured by a second or junior lien or mortgage on owner-occupied one-to-four family
14	residential immovable property made contemporaneously with federally related
15	mortgage loans or as part of a mortgage revenue bond loan program, or sold on the
16	secondary market to the Federal National Mortgage Association, the Federal Home
17	Loan Mortgage Corporation, or the Governmental National Mortgage Association,
18	and the entity sells ten or fewer of such loans over any calendar year.
19	* * *
20	§3561. Single place of business; additional licenses
21	A. Each licensee shall maintain a place of business in the state and, unless
22	otherwise provided by rule, making consumer loans to Louisiana residents shall
23	maintain records of its consumer loans at that the location stated on its license. Not
24	more than one place of business shall be maintained under the same license, but the
25	commissioner shall issue additional licenses to the same licensed lender upon his
26	compliance with all the provisions of this Part governing issuance of a license.
27	* * *

§3561.1. License; examination; renewal fees; records

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G.(1) 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 <u>electronically imaged records</u>, to the commissioner at a location within this state convenient to the commissioner, or via electronic transmittal or delivery of optical imaging disc containing electronic copies of the records, pay the reasonable and necessary expenses for the commissioner or his representatives to examine them at the place where they are maintained. The method of examination and delivery of records will be at the sole discretion of the commissioner. The commissioner may designate representatives, including comparable officials of the state in which the records are located, to inspect them on his behalf. §3561.2. Registration of licensees with the secretary of state Any person required to be licensed pursuant to this Chapter shall, prior to application for licensure, be duly registered with the Louisiana secretary of state and be in possession of a certificate of authority to transact business pursuant to R.S. 12:304 or 1345 or R.S. 9:3422, as applicable.

DIGEST

Section 2. This Act shall be effective September 30, 2014.

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

Ponti HB No. 766

Abstract: Provides relative to licensing and record maintenance pursuant to the Louisiana Consumer Credit Law and the Louisiana Deferred Presentment and Small Loan Act.

<u>Proposed law</u> provides that a consumer credit transaction as defined by <u>present law</u> (R.S. 9:3516(13)) or deferred presentment transaction as defined by <u>present law</u> (R.S. 9:3578(2)) shall be null, void, unenforceable, and uncollectible as being contrary to the policy of this state if the creditor has not obtained a license from the Office of Financial Institutions if required to do so.

<u>Present law</u> 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 the office of financial institutions (OFI).

Page 4 of 5

CODING: Words in struck through type are deletions from existing law; words <u>underscored</u> are additions.

<u>Proposed law</u> retains <u>present law</u> and removes requirement that the creditor have an office in this state.

<u>Present law</u> 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.

<u>Present law</u> 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.

<u>Proposed law</u> provides that each licensee making consumer loans to Louisiana residents, shall maintain records of its consumer loans at the location stated on its license.

<u>Present law</u> 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.

<u>Proposed law</u> 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.

<u>Proposed law</u> provides that any person required to be licensed pursuant to this Chapter shall, prior to application for licensure, be duly registered with the Louisiana secretary of state and be in possession of a certificate of authority to transact business pursuant to <u>present law</u> (R.S. 12:304 or 1345, or R.S. 9:3422), as applicable.

Effective September 30, 2014.

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