

2016 Regular Session

HOUSE BILL NO. 793

BY REPRESENTATIVE CARMODY

CREDIT/CONSUMER: Provides for the Louisiana Installment Loan Act

1 AN ACT

2 To enact Chapter 20 of Title 6 of the Louisiana Revised Statutes of 1950, to be comprised  
3 of R.S. 6:1371 through 1395, relative to regulating installment loans; to provide for  
4 definitions; to provide for licensing requirements; to provide for nonresidents; to  
5 provide for licensee qualifications; to provide for powers of the commissioner of the  
6 Office of Financial Institutions; to regulate licensee applications; to provide form  
7 requirements; to provide for fees; to require furnishing of certain securities; to  
8 provide for civil liability; to provide for criminal history records checks; to provide  
9 for license issuing; to regulate license denials and renewals; to provide for hearings;  
10 to provide for nontransferability; to authorize licensees; to restrict licensees; to  
11 provide for violations; to provide for customer default; to provide for loan term and  
12 form requirements; to require certain loan provisions; to limit refinancing; to regulate  
13 record keeping; to prohibit certain acts; to clarify scope; to provide for obligations  
14 of certain persons; to provide for review procedures; to provide for penalties; to  
15 provide for consent orders; to provide for emergency action; to provide for complaint  
16 procedures; to impose reporting requirements; to implement a multi-state automated  
17 licensing system; to clarify confidentiality and privilege; to provide for exceptions;  
18 to restrict local government; to provide for rules and regulations; to provide for  
19 effectiveness; and to provide for related matters.

20 Be it enacted by the Legislature of Louisiana:

1           Section 1. Chapter 20 of Title 6 of the Louisiana Revised Statutes of 1950,  
2   comprised of R.S. 6:1371 through 1395, is hereby enacted to read as follows:

3           §1371. Short title

4                   This Chapter shall be known and may be cited as the "Louisiana Installment  
5           Loan Act".

6           §1372. Definitions

7                   As used in this Chapter, the following terms and phrases have the meanings  
8           hereinafter ascribed to them:

9                   (1) "Commissioner" means the commissioner of the office of financial  
10           institutions (OFI) or his designee.

11                   (2) "Control" means possession, direct or indirect, of the power to direct or  
12           cause the direction of management and policies of a person, whether through  
13           ownership of voting securities by contract or otherwise, if no individual shall be  
14           deemed to control a person solely on account of being a director, officer, or  
15           employee of the person. For purposes of this Paragraph, a person who, directly or  
16           indirectly, owns, controls, holds the power to vote, or holds proxies representing  
17           twenty-five percent or more of the current outstanding voting securities issued by  
18           another person is presumed to control the other person, and the commissioner may  
19           determine whether a person, in fact, controls another person.

20                   (3) "Controlling person" means any person in control of a licensee.

21                   (4) "Default" means either of the following:

22                   (a) The failure of a customer to make a required payment within a certain  
23           number of days of the due date as agreed upon by the licensee and the customer in  
24           the installment loan plan, provided that the period may not exceed sixty-one days  
25           after the due date.

26                   (b) The failure of a customer to otherwise perform the obligations pursuant  
27           to the installment loan plan.

28                   (5) "Installment loan" means a loan made pursuant to an installment loan  
29           plan.

1           (6) "Installment loan plan" means a written agreement subject to this Chapter  
2           between a licensee and customer establishing a credit plan under which the licensee  
3           periodically contemplates credit transactions that:

4                     (a) May be unsecured or secured by personal property.

5                     (b) Shall not have a term longer than twelve months.

6                     (c) Shall be fully amortized and payable in substantially equal monthly  
7           payments.

8                     (d) Are subject to prepayment in whole or in part at any time without penalty.

9           (7) "Licensee" means a person licensed to offer installment loans pursuant  
10          to this Chapter.

11           (8) "Person means an individual, group of individuals, partnership,  
12          association, corporation, or any other business, unit, or legal entity.

13          §1373. Licensing requirements; nonresidents

14                     A.(1) No person shall engage in the business of making installment loans  
15          unless the person is licensed to make installment loans pursuant to this Chapter.

16                     (2) A person shall be deemed to be engaged in the business of making  
17          installment loans in this state if the person induces a consumer, while located in this  
18          state, to enter into an installment loan plan in this state through the use of facsimile,  
19          telephone, Internet, or other means. A separate license shall be required for each  
20          location from which the business of making installment loans is conducted.

21                     B.(1) Any nonresident person seeking licensure pursuant to this Chapter  
22          shall furnish the commissioner with the name and address of a resident of this state  
23          upon whom notices or orders issued by the commissioner, or process affecting a  
24          licensee pursuant to this Chapter, may be served.

25                     (2) A nonresident licensee shall promptly notify the commissioner in writing  
26          of any change in its designated agent for service of process, and the change shall not  
27          become effective until approved by the commissioner.

28          §1374. Qualifications

1           A. An applicant for a license to make installment loans shall meet the  
2           following requirements:

3                   (1) A tangible net worth that comprises tangible assets, less liabilities, of not  
4                   less than fifty thousand dollars for each location.

5                   (2) The financial responsibility, financial condition, business experience,  
6                   character, and general fitness of the applicant shall reasonably warrant the belief that  
7                   the applicant's business shall be conducted, lawfully, honestly, carefully and  
8                   efficiently. In determining whether these qualifications have been met, and for the  
9                   purpose of investigating compliance with this Subtitle, the commissioner may review  
10                  and approve any of the following:

11                   (a) The relevant business records and the capital adequacy of the applicant.

12                   (b) The competence, experience, integrity, and financial ability of any person  
13                   who is a director, a shareholder with ten percent or more shares of the applicant, or  
14                   a person who owns or controls the applicant.

15                   (c) Any record of the applicant or any person referred to in this Chapter for  
16                   any criminal activity, any fraud or other act of personal dishonesty, any act,  
17                   omission, or practice that constitutes a breach of a fiduciary duty, or any suspension,  
18                   revocation, or removal by any agency or department of the United States or any state,  
19                   from participation in the conduct of any business.

20                  B. The commissioner shall periodically review the licensee's compliance  
21                  with Subsection A of this Section.

22                  §1375. Application; form requirements

23                   Each application for a license shall be in a form established by the  
24                   commissioner by promulgation of an administrative rule, including the following:

25                   (1) The legal name, residence and business address of the applicant, and if  
26                   the applicant is a partnership, association, or corporation, the legal name, residence  
27                   and business address of every member, officer, managing employee, and director of  
28                   the applicant.

1           (2) Every person licensed pursuant to this Chapter shall maintain an agent in  
2           this state for service of process. The name, address, telephone number, and  
3           electronic mail address of the agent shall be filed with the application. The  
4           commissioner shall be notified in writing by the licensee at least five days prior to  
5           any change in the status of an agent.

6           (3) Other data and information the commissioner may reasonably require  
7           about the applicant, its directors, trustees, officers, members, managing employees,  
8           or agents.

9           §1376. Fees; security; background check

10           A. Each application for a license required by this Chapter shall be  
11           accompanied by the following:

12           (1)(a) A filing fee of seven hundred fifteen dollars and a supervision fee of  
13           five hundred dollars which shall not be subject to refund unless the license is  
14           granted, and the filing fee shall constitute the license fee for the first license year or  
15           part thereof.

16           (b) The filing fee or supervision fee shall be applicable to each location.

17           (2)(a) An audited financial statement including but not limited to a balance  
18           sheet, a statement of income or loss, and a statement of changes in financial position  
19           for the immediately preceding fiscal year, prepared in accordance with generally  
20           accepted accounting principles by a certified public accountant or public accounting  
21           firm, neither of which is affiliated with the applicant.

22           (b)(i) For a newly created entity, the commissioner may accept only a balance  
23           sheet prepared by a certified public accountant or public accounting firm, neither of  
24           which is affiliated with the applicant, accompanied by a projected income statement  
25           demonstrating that the applicant will have adequate capital after payment of start-up  
26           costs.

27           (ii) If the applicant does not have an audited financial statement meeting the  
28           requirements, it may submit a financial statement of its parent if the financial  
29           statement is audited in accordance with generally accepted accounting principles by

1 a certified public accountant or public account firm, neither of which is affiliated  
2 with the applicant.

3 (3)(a) A surety bond issued by an insurer regulated by the office of the  
4 commissioner of insurance of this state and not affiliated with the applicant, in the  
5 amount of twenty-five thousand dollars for each location. However, the aggregate  
6 amount of the surety bond required for a single licensee shall not exceed two  
7 hundred thousand dollars.

8 (b) In lieu of the surety bond, the applicant shall file an irrevocable letter of  
9 credit, in the amount of the surety bond, issued by any federally insured bank,  
10 savings bank, or credit union, none of which is affiliated with the applicant.

11 (c) The surety bond or irrevocable letter of credit shall be in a form  
12 satisfactory to the office of the commissioner of insurance and shall be payable to  
13 the office of financial institutions for the benefit of any person who is injured  
14 pursuant to an installment loan by the fraud, misrepresentation, breach of contract,  
15 financial failure or violation of any provision of this Chapter by a licensee.

16 (d)(i) In the case of a surety bond, the aggregate liability of the surety bond  
17 shall not exceed the principal sum of the surety bond.

18 (ii) In the case of an irrevocable letter of credit, applicants shall obtain letters  
19 of credit for terms of not less than three years and renew the letters of credit  
20 annually.

21 (e) If the licensee fails to pay a person or the commissioner, as required by  
22 this Chapter, then a person may bring suit against the licensee directly on the surety  
23 bond or irrevocable letter of credit in any court of competent jurisdiction, or the  
24 commissioner may bring suit in the Parish of East Baton Rouge, which shall have  
25 exclusive venue in all matters relating to this Chapter on behalf of those persons, in  
26 either one or successive actions. The surety bond or irrevocable letter of credit shall  
27 be maintained by the licensee for not less than three years following the expiration,  
28 revocation, or surrender of the licensee's license.

1           B.(1) The commissioner is authorized to require an applicant for a license to  
2           consent to a criminal history records check and to provide fingerprints with the  
3           application in a form acceptable to the commissioner. The commissioner may  
4           require such consent and fingerprints from any individual who is a director, officer,  
5           or ten percent or more shareholder of the applicant or who owns or controls the  
6           applicant, as well as from any other individual associated with the applicant as is  
7           reasonably necessary to meet the purposes of this Chapter.

8           (2) Refusal of any person to consent to a criminal history records check or to  
9           provide fingerprints pursuant to this Subsection constitutes grounds for the  
10          commissioner to deny the applicant a license.

11          (3) Any criminal history records check conducted pursuant to this Subsection  
12          shall be conducted by the Louisiana Bureau of Criminal Identification and  
13          Information, the Federal Bureau of Investigation, or both, and the results of the  
14          criminal history records check shall be forwarded to the commissioner.

15          §1377. Issuing requirements

16          A.(1) Upon the filing of an application in a form prescribed by the  
17          commissioner, accompanied by the fees and documents required by this Chapter, the  
18          commissioner shall investigate to ascertain whether the requirements prescribed by  
19          Chapter have been satisfied.

20          (2) If the commissioner finds that the requirements have been satisfied, and  
21          approves the documents, the commissioner shall issue to the applicant a license to  
22          engage in the business of making installment loans in this state.

23          B. The license shall be conspicuously posted in the licensee's place of  
24          business at all times.

25          C. A license issued pursuant to this Chapter shall remain in force and effect  
26          through the remainder of the year ending December thirty-first after its date of  
27          issuance unless earlier surrendered, suspended, or revoked pursuant to this Chapter.

28          §1378. Denial of licensure; hearing; procedure

1           A. If the commissioner determines that an applicant is not qualified to  
2           receive a license, the commissioner shall notify the applicant in writing that the  
3           application has been denied, including the basis for denial.

4           B. If the commissioner denies an application, or if the commissioner fails to  
5           act on an application within ninety days after the filing of a properly completed  
6           application, the applicant may make a written demand to the commissioner for a  
7           hearing before the commissioner on the question of whether the license should be  
8           granted.

9           C. Any hearing on the denial of a license shall be conducted pursuant to the  
10          Administrative Procedures Act, provided that the burden of proof that the applicant  
11          is entitled to a license shall be on the applicant. A decision of the commissioner  
12          following any hearing on the denial of a license is subject to review pursuant to the  
13          provisions of the Administrative Procedure Act.

14          §1379. License renewal

15           A.(1) Licenses issued pursuant to this Chapter shall expire on December  
16           thirty-first annually.

17           (2) Each license may be renewed for the ensuing twelve-month period upon  
18           submission of an application by the license holder showing continued compliance  
19           with the requirements of this Chapter and including an annual license renewal fee of  
20           two hundred and ninety dollars to be submitted to the commissioner by December  
21           first.

22           B. A licensee making timely and complete application for renewal of its  
23           license shall be permitted to continue to operate pursuant to its existing license until  
24           its application is approved or denied.

25          §1380. Nontransferability; change of control; violations; notice requirement

26           A. A license issued pursuant to this Chapter is not transferable or assignable.

27           B.(1) The prior written approval of the commissioner is required for the  
28           continued operation of an installment loan business whenever a change in control of



1        a licensee is proposed. The commissioner may require information deemed  
2        necessary to determine whether a new application is required.

3                (2) Reasonable and actual costs incurred by the commissioner in investigating  
4        a change of control request shall be paid by the person requesting approval. If the  
5        person acquiring control of a licensee is already licensed pursuant to this Chapter,  
6        the person must notify the commissioner thirty days prior to the acquisition.

7                (3) Whenever control is acquired or exercised in violation of this Section, the  
8        license shall be deemed revoked as of the date of the unlawful acquisition of control,  
9        and the licensee or its controlling person shall surrender the license to the  
10       commissioner on demand.

11               C. A licensee shall notify the commissioner thirty days before any change in  
12       the licensee's principal place of business, branch office, or name.

13       §1381. Collection of fees; principal amount of loan; restrictions; forms of payment;  
14       customer default; licensee authority

15               A. Notwithstanding any other law to the contrary, a licensee authorized to  
16       make installment loans pursuant to this Chapter may charge and collect fees in a  
17       manner consistent with this Section.

18               B. A licensee may charge and collect a periodic interest rate not to exceed  
19       twenty percent per month.

20               C. The maximum principal loan amount of an installment loan shall be one  
21       thousand five hundred dollars and adjusted every other year by the commissioner of  
22       the office of financial institutions to reflect the percentage changes in the Consumer  
23       Price Index published by the Bureau of Labor Statistics of the Department of Labor.

24               D.(1) In addition to a maximum loan amount of one thousand five hundred  
25       dollars, a lender is further prohibited from making an installment loan if the total of  
26       scheduled payments coming due in a month exceeds twenty percent of the borrower's  
27       gross monthly income.

1           (2) For the purposes of determining a borrower's gross monthly income  
2           pursuant to this Subsection, a lender shall obtain and maintain third party verification  
3           of all income considered in making the determination.

4           (3) For the purposes of this Subsection, "month" means a period extending  
5           from a given date in one calendar month to the same date in the succeeding calendar  
6           month, or if there is no same date in the succeeding calendar month, the last day of  
7           the succeeding calendar month.

8           E. Any installment loan as described in this Chapter shall require payment,  
9           in the form of cash, money order, debit card, or prepaid debit card, or any other  
10          instrument for payment of money, whether or not negotiable, including any  
11          authorization for electronic payment of money, on or before the due date of each  
12          billing cycle.

13          F. If a customer defaults pursuant to the terms of an installment loan plan and  
14          the licensee refers the customer's account to an attorney, for collection, the licensee  
15          may do the following:

16               (1) If the installment loan so provides, charge and collect from the customer  
17               a reasonable attorney's fee.

18               (2) If the installment loan, or in the case of secured plans, the security  
19               agreement or similar instrument, so provides, recover from the customer all  
20               collection and court costs, including, in the case of secured plans, all costs of  
21               enforcing the security agreement or similar instrument actually incurred by the  
22               licensee, including those incurred on appeal.

23               (3) Dispose of property after default shall occur in a commercially reasonable  
24               manner in accordance with law.

25          G. If a check is returned to a licensee from a payor financial institution due  
26          to insufficient funds, no licensee shall have the authority to assess a handling charge  
27          against the maker or drawer of the returned check.

28          §1382. Loan terms; form requirements; required provisions; refinancing

1           A.(1) A licensee shall provide each customer a written explanation, in clear,  
2           understandable language, of the fees and charges to be charged by the licensee. The  
3           style, content and method of executing the required written explanation shall comply  
4           with federal truth-in-lending laws and shall contain a statement that the customer  
5           may prepay the unpaid balance in whole or in part at any time without penalty.

6           (2) The commissioner may promulgate administrative rules establishing  
7           additional requirements in order to assure complete and accurate disclosure of the  
8           fees and charges to be charged by a licensee pursuant to installment loan.

9           B. An installment loan shall include, along with other state or federal law  
10          requirements, all of the following:

11          (1) A next-business-day customer's right of rescission for any installment  
12          loan.

13          (2) A notice informing the customer that complaints may be made to the  
14          commissioner, including the telephone number and address of the office of the  
15          commissioner.

16          C.(1) An installment loan may not be refinanced more than one time.

17          (2) A refinanced installment loan may not be for a loan amount greater than  
18          the original installment loan amount and must have payments less than the originally  
19          scheduled installment loan payments.

20          §1383. Record requirements; applicability of federal law; prohibited acts;  
21          enforceability

22          A.(1) Each licensee shall keep and use in its business any books, accounts  
23          and records the commissioner may require to effectuate the provisions of this  
24          Chapter and the rules promulgated thereto.

25          (2) Every licensee shall preserve the books, accounts, and records for at least  
26          four years. Any licensee, after receiving the prior written approval of the  
27          commissioner, may maintain records at a location within or outside this state.

28          B. A licensee shall not engage in unfair or deceptive acts, practices, or  
29          advertising in the conduct of the licensed business.

1           C. A licensee shall not use any device or agreement, including agreements  
2           with affiliated licensees, with the intent to obtain greater charges than otherwise  
3           would be authorized by this Chapter.

4           D. A licensee shall comply with any state or federal law, rule, or regulation  
5           applicable to any business authorized or conducted pursuant to this Chapter  
6           including but not limited to the federal Truth in Lending Act, 15 U.S.C. 1601, et seq.,  
7           the federal Equal Credit Opportunity Act, 15 U.S.C. 1691, and the federal Fair Debt  
8           Collection Practices Act, 15 U.S.C. 1692, et seq.

9           E.(1) No installment loan subject to the provisions of this Chapter shall do  
10          any of the following:

11           (a) Provide that the law of a jurisdiction other than this state applies.

12           (b) Provide that the customer consents to the jurisdiction of another state or  
13          foreign country.

14           (c) Establish venue.

15           (d) Waive any provision of this Chapter.

16           (2) Any provision described in this Section that is contained in an installment  
17          loan subject to the provisions of this Chapter shall be void and not enforceable as a  
18          matter of public policy.

19          §1384. Scope

20           A. The business of making installment loans in accordance with this Chapter  
21          shall not be subject to or controlled by any other statute governing the imposition of  
22          interest, fees, or loan charges.

23           B. A licensee shall not have the powers enumerated in this Chapter without  
24          first complying with the law regulating the particular transaction involved, but  
25          licensees legally exercising any of the powers set forth in this Chapter shall not be  
26          deemed in violation of any other provision of law.

27          §1385. Authority of the commissioner; investigations of noncompliance

28           A.(1) To assure compliance with this Chapter, the commissioner may  
29          examine the relevant business, books, and records of any licensee. Further, for the

1 purposes of discovering violations of this Chapter and determining whether persons  
2 are subject to this Chapter, the commissioner may examine or investigate persons  
3 licensed pursuant to this Chapter and persons reasonably suspected by the  
4 commissioner of conducting business that requires a license pursuant to this Chapter.

5 (2) The commissioner may exercise his authority including but not limited  
6 to the following:

7 (a) Summoning witnesses and examining them under oath or affirmation.

8 (b) Compelling the production of books and records that may be relevant to  
9 the examination or investigation.

10 B.(1) A licensee or unlicensed person subject to the licensing requirements  
11 of this Chapter, that is examined or investigated in accordance with this Chapter,  
12 shall pay to the commissioner the reasonable and actual expenses of the investigation  
13 or examination.

14 (2) The expenses shall be payable in addition to all other fees, taxes, and  
15 costs required by law.

16 §1386. Independent examiner; authority; procedure; appeal; grounds for suspension  
17 or revocation of license

18 A.(1) The commissioner of the office of financial institutions shall appoint  
19 an independent hearing examiner to conduct all administrative hearings involving  
20 alleged violations of this Chapter.

21 (2) The independent hearing examiner is authorized to exercise all powers  
22 granted by the Administrative Procedure Act in conducting hearings. The  
23 independent hearing examiner shall recommend penalties authorized by this Chapter,  
24 and issue proposed orders, with proposed findings of fact and proposed conclusions  
25 of law, to the commissioner pursuant to the Administrative Procedure Act.

26 (3) The commissioner shall review the proposed order and issue a final  
27 agency order in accordance with Administrative Procedure Act. The costs of the  
28 hearing examiner may be assessed by the hearing examiner against the respondent,  
29 unless the respondent is the prevailing party.

1           (4) Any person aggrieved by a final agency order of the commissioner may  
2           obtain judicial review in accordance with the Administrative Procedure Act. The  
3           jurisdiction and venue of any such action shall be in the district court of the Parish  
4           of East Baton Rouge.

5           B. The commissioner may, after notice and hearing, suspend or revoke any  
6           license if the commissioner finds that the licensee has knowingly or through lack of  
7           due care done any of the following:

8           (1) Failed to pay any fees, expenses, or costs imposed by the commissioner  
9           pursuant to the authority of this Chapter.

10           (2) Committed any fraud, engaged in any dishonest activities, or made any  
11           misrepresentations.

12           (3) Violated any provision of this Chapter, any administrative rule  
13           promulgated pursuant to this Chapter, or any other law in the course of the licensee's  
14           dealings as a licensee.

15           (4) Made a false statement in the application for the license or failed to give  
16           a true reply to a question in the application.

17           (5) Demonstrated incompetency or untrustworthiness to act as a licensee.

18           C. If the reason for revocation or suspension of a licensee's license at any one  
19           location is of general application to all locations operated by a licensee, the  
20           commissioner may revoke or suspend all licenses issued to a licensee.

21           D. A hearing shall be held on written notice given at least twenty days prior  
22           to the date of the hearing and shall be conducted in accordance with the  
23           Administrative Procedure Act.

24           §1387. Authority of the commissioner after a hearing; violations; penalties;  
25           permanent ban

26           A. After notice and opportunity for a hearing, if the commissioner finds that  
27           a person has violated this Chapter, or any administrative rule promulgated thereto,  
28           the commissioner may take the following actions or any combination of such actions:

1           (1) Order the person to cease and desist violating the Chapter or any  
2           administrative rule promulgated pursuant thereto.

3           (2) Require the refund of any fees collected by the person in violation of this  
4           Chapter.

5           (3) Order the person to pay to the office of financial institutions a civil  
6           penalty of not more than one thousand dollars for each transaction in violation of this  
7           Chapter or for each day that a violation occurs or continues.

8           B. (1) When in the public interest and after notice and opportunity for a  
9           hearing, if the commissioner finds that a person has violated this act, or any  
10          administrative rule promulgated thereto, the commissioner may take the following  
11          actions or any combination of such actions:

12           (a) Censure the violator.

13           (b) Suspend the violator for a period not to exceed twelve months.

14           (c) Bar a person from any position of employment, management, or control  
15          of a licensee, if the commissioner finds that the violator has done one of the  
16          following:

17           (i) Been convicted or pled guilty to, or pled nolo contendere to, any crime.

18           (ii) Been held liable by final judgment or any administrative judgment by any  
19          public agency, when the criminal, civil, or administrative judgment involved any  
20          offense reasonably related to the qualifications, functions, or duties of a person  
21          engaged in the business of making installment loans pursuant to this Chapter.

22           (2)(a) Persons suspended or barred pursuant to this Subsection are prohibited  
23          from participating in any business activity of a licensee and from engaging in any  
24          business activity on the premises where a licensee is conducting its business.

25           (b) This Subsection shall not be construed to prohibit suspended or barred  
26          persons from having their personal transactions processed by a licensee.

27          §1388. Consent order; emergency action

28           A.(1) The commissioner may enter into a consent order at any time with any  
29          person to resolve any matter arising pursuant to this Section.

1           (2) A consent order shall be signed by the person to whom it is issued, or a  
2           duly authorized representative, and shall indicate agreement to the terms contained  
3           in the order.

4           (3) A consent order need not constitute an admission by any person that any  
5           provision of this Chapter or any administrative rule or order promulgated or issued  
6           pursuant to this Chapter has been violated nor need it constitute a finding by the  
7           commissioner that the person has violated this Chapter, any administrative rule, or  
8           order issued pursuant to this Chapter.

9           B. Notwithstanding the issuance of a consent order, the commissioner may  
10          seek civil or criminal penalties concerning matters encompassed by the consent  
11          order.

12          C. In cases involving extraordinary circumstances requiring emergency  
13          action, the commissioner may take any enforcement action authorized by this  
14          Chapter without providing the opportunity for a prior hearing but shall promptly  
15          afford a subsequent hearing upon an application to rescind the action taken that is  
16          filed with the commissioner within twenty days after receipt of the notice of the  
17          commissioner's emergency action.

18          §1389. Written complaints against a licensee; investigation based on report; court  
19          enforcement

20          A. Any person aggrieved by the conduct of a licensee pursuant to this  
21          Chapter in connection with the licensee's regulated activities may file a written  
22          complaint with the commissioner who may investigate the complaint.

23          B. In the course of the investigation of the complaint, the commissioner may  
24          do any of the following:

25               (1) Subpoena witnesses.

26               (2) Administer oaths.

27               (3) Examine any individual under oath or affirmation.

28               (4) Compel the production of records, books, papers, contracts, or other  
29          documents relevant to the investigation.



1           C. If any person fails to comply with a subpoena of the commissioner  
2           pursuant to this Section or fails to testify concerning any matter about which the  
3           person may be interrogated pursuant to this Chapter, the commissioner may petition  
4           any court of competent jurisdiction for enforcement.

5           D. The license of any licensee pursuant to this Chapter who fails to comply  
6           with a subpoena of the commissioner may be suspended pending compliance with  
7           the subpoena.

8           E. The commissioner shall have exclusive administrative power to investigate  
9           and enforce any and all complaints relating to the business of making installment  
10          loans filed by any person that are not criminal in nature.

11          §1390. Required reports to the commissioner

12          Within fifteen days of the occurrence of any one of the following events, a  
13          licensee shall file a written report with the commissioner describing the event and  
14          its expected impact on the activities of the licensee in this state:

15               (1) The filing for bankruptcy or reorganization by the licensee.

16               (2) Revocation or suspension proceedings instituted against the licensee by  
17               any state or governmental authority.

18               (3) The denial of the opportunity to engage in the business of making loans  
19               by any state or governmental authority.

20               (4) Any felony indictment of the licensee or any of its directors, officers, or  
21               principals.

22               (5) Any felony conviction of the licensee or any of its directors, officers, or  
23               principals.

24               (6) Other events that the commissioner may determine and identify by  
25               administrative regulation.

26          §1391. Annual reports; required contents; composite reports; form

27               A. Each licensee shall file an annual report with the commissioner on the date  
28               of the renewal application as required pursuant to R.S. 6:1379 of this Chapter,  
29               containing the following information:

1           (1) The names and addresses of persons owning a controlling interest in each  
2           licensee.

3           (2) The location of all places of business operated by the licensee and the  
4           nature of the business conducted at each location.

5           (3) The names and addresses of all affiliated entities regulated pursuant to  
6           this Chapter doing business in this state.

7           (4) An audited financial statement including but not limited to a balance  
8           sheet, statement of income or loss, and statement of changes in financial position for  
9           the immediately preceding fiscal year end prepared in accordance with generally  
10           accepted accounting principles by a certified public accountant or public accounting  
11           firm, neither of which is affiliated with the licensee.

12           (5) If the licensee is a corporation, the names and addresses of its officers and  
13           directors; if the licensee is a partnership, the names and addresses of the partners; or  
14           if the licensee is a limited liability company, the names and addresses of the board  
15           of governors or managers of the limited liability company.

16           B. A composite report may be filed if the licensee holds two or more licenses  
17           or is affiliated with other licensees, but a composite report shall not be required.

18           C. The reports shall be filed in a form reasonably required by the  
19           commissioner and shall be sworn to by a responsible officer of the licensee.

20           D. The information submitted by licensees shall be confidential.

21           §1392. Multi-state automated licensing system; regulations; transition deadlines;  
22           costs

23           A. In addition to any other powers conferred upon the commissioner by law,  
24           the commissioner is authorized to require persons subject to this Chapter to be  
25           licensed through a multi-state automated licensing system. Pursuant to this  
26           authority, the commissioner may do any of the following:

27           (1) Promulgate administrative rules that are reasonably necessary for  
28           participation in, transition to, or operation of a multi-state automated licensing  
29           system.

1           (2) Establish relationships or enter into agreements that are reasonably  
2           necessary for participation in, transition to, or operation of a multi-state automated  
3           licensing system. The agreements may include but are not limited to operating  
4           agreements, information sharing agreements, interstate cooperative agreements, and  
5           technology licensing agreements.

6           (3) Require that applications for licensing pursuant to this Chapter and  
7           renewals of such licenses be filed with a multi-state automated licensing system.

8           (4) Require that any fees required to be paid pursuant to this Chapter be paid  
9           through a multi-state automated licensing system.

10           (5) Establish deadlines for transitioning licensees to a multi-state automated  
11           licensing system.

12           (6) Deny any applications or renewal applications not filed with a multi-state  
13           automated licensing system after such deadlines have passed, notwithstanding any  
14           dates established elsewhere in this Chapter; however, the commissioner shall provide  
15           reasonable notice of any transition deadlines to licensees.

16           (7) Take such further actions as are reasonably necessary to give effect to this  
17           Section.

18           B. Nothing in this Section shall authorize the commissioner to require a  
19           person who is not subject to this Chapter to submit information to or to participate  
20           in a multi-state automated licensing system that is operated or participated in  
21           pursuant to this Chapter.

22           C.(1) Notwithstanding provisions of this Section to the contrary, the  
23           commissioner retains full authority and discretion to license persons pursuant to this  
24           Chapter and to enforce this Chapter to its fullest extent.

25           (2) Nothing in this Section shall be deemed to be a reduction or derogation  
26           of that authority and discretion.

27           D. Applicants for and holders of licenses issued pursuant to this Chapter  
28           shall pay all costs associated with submitting an application to or transitioning a  
29           license to a multi-state automated licensing system, as well as all costs required by

1 a multi-state automated licensing system for maintaining and renewing any license  
2 issued by the commissioner on a multi-state automated licensing system.

3 §1393. Information contained in multi-state automated licensing system; authority  
4 of the commissioner

5 The commissioner of the office of financial institutions is authorized to use  
6 a multi-state automated licensing system as an agent for channeling information,  
7 whether criminal or noncriminal in nature, whether derived from or distributed to the  
8 United States Department of Justice or any other state or federal governmental  
9 agency, or any other source, that the commissioner is authorized to request from, or  
10 distribute to, pursuant to this Chapter.

11 §1394. Confidentiality; privilege; scope; exception

12 A. In order to promote more effective regulation and reduce regulatory  
13 burden through supervisory information sharing, the following provisions shall apply  
14 to the information or material after the information or material has been disclosed to  
15 a multi-state automated licensing system:

16 (1) Any requirements pursuant to any federal or state law regarding the  
17 privacy or confidentiality of any information or material provided to a multi-state  
18 automated licensing system, and any privilege arising pursuant to federal or state  
19 law, including the rules of any federal or state court with respect to such information  
20 or material.

21 (2) Any such information or material may be shared with all state and federal  
22 regulatory officials with consumer credit oversight authority without the loss of  
23 privilege or the loss of confidentiality protections provided by federal or state law,  
24 including the protection available pursuant to state law.

25 B. For purposes of this Section, the commissioner is authorized to enter into  
26 agreements or sharing agreements with other governmental agencies, the Conference  
27 of State Bank Supervisors, or other associations representing governmental agencies  
28 as established by rule or order of the commissioner.

1           C. Information or material that is subject to a privilege or confidential  
2           pursuant to this Section shall not be subject to any of the following:

3           (1) Disclosure pursuant to any federal or state law governing the disclosure  
4           to the public of information held by an officer or any agency of the federal  
5           government or the respective state.

6           (2) Subpoena, discovery, or admission into evidence in any private civil  
7           action or administrative process, unless with respect to any privilege held by a  
8           multi-state automated licensing system applicable to such information or material,  
9           the person to whom such information or material pertains waives that privilege, in  
10          whole or in part, in the discretion of such person.

11          D. This Section shall supersede any inconsistent provisions of law pertaining  
12          to the records open to public inspection.

13          E. This Section shall not apply with respect to information or material  
14          relating to publicly adjudicated disciplinary and enforcement actions against persons  
15          subject to this Chapter that is included in a multi-state automated licensing system  
16          for access by the public.

17          §1395. Local government; lack of authority

18          Local government units including but not limited to cities, towns, and  
19          counties shall have no authority to regulate installment plan loans.

20          Section 2. The Office of Financial Institutions shall promulgate, in accordance with  
21          the Administrative Procedure Act, any rules and regulations necessary to implement the  
22          provisions of this Act.

23          Section 3. This Act shall become effective January 1, 2017.

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#### DIGEST

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)]

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HB 793 Original

2016 Regular Session

Carmody

**Abstract:** Creates the Louisiana Installment Loan Act and regulates installment loans.

Proposed law enacts the Louisiana Installment Loan Act.

Proposed law enumerates definitions for the purposes of proposed law in order to provide for clarification.

Proposed law makes it unlawful for any person to engage in the business of making installment loans unless the person is licensed to make installment loans pursuant to proposed law.

Proposed law deems a person to be engaged in the business of making installment loans in La. if the person induces a consumer, while located in La., to enter into an installment loan plan in La. through the use of facsimile, telephone, Internet, or other means. Proposed law declares that a separate license shall be required for each location from which the business of making installment loans is conducted.

Proposed law requires any nonresident person seeking licensure pursuant to proposed law to furnish the Commissioner ("commissioner") of the Office of Financial Institutions ("OFI") with the name and address of a resident of La. upon whom notices or orders issued by the commissioner, or process affecting a licensee pursuant to proposed law may be served.

Proposed law requires any nonresident licensee to promptly notify the commissioner in writing of any change in its designated agent for service of process, and the change shall not become effective until approved by the commissioner.

Proposed law requires an applicant for a license to make installment loans to meet the following requirements:

(1) A tangible net worth that comprises tangible assets, less liabilities, of not less than \$50,000 for each location.

(2) The financial responsibility, financial condition, business experience, character, and general fitness of the applicant shall reasonably warrant the belief that the applicant's business shall be conducted, lawfully, honestly, carefully and efficiently. In determining whether these qualifications have been met, and for the purpose of investigating compliance with this subtitle, the commissioner may review and approve any of the following:

(a) The relevant business records and the capital adequacy of the applicant.

(b) The competence, experience, integrity, and financial ability of any person who is a director, a shareholder with 10% or more shares of the applicant, or a person who owns or controls the applicant.

(c) Any record of the applicant or any person referred to in proposed law for any criminal activity, any fraud or other act of personal dishonesty, any act, omission, or practice that constitutes a breach of a fiduciary duty, or any suspension, revocation, or removal by any agency or department of the U.S. or any state, from participation in the conduct of any business.

Proposed law requires the commissioner to periodically review the licensee's compliance with proposed law.

Proposed law requires each application for a license shall be in a form established by the commissioner by promulgation of an administrative rule to include the following:

(1) The legal name, residence and business address of the applicant, and if the applicant is a partnership, association, or corporation, the legal name, residence and business address of every member, officer, managing employee, and director of the applicant.

(2) Every person licensed pursuant to proposed law shall maintain an agent in La. for service of process. The name, address, telephone number, and electronic mail address of the agent

shall be filed with the application. The commissioner shall be notified in writing by the licensee at least 5 days prior to any change in the status of an agent.

(3) Other data and information the commissioner may reasonably require about the applicant, its directors, trustees, officers, members, managing employees, or agents.

Proposed law requires that each application for a license required by proposed law meet the following requirements or include the following:

(1)(a) A filing fee of \$715 and a supervision fee of \$500 which shall not be subject to refund unless the license is granted, and the filing fee shall constitute the license fee for the 1<sup>st</sup> license year or part thereof.

(b) The filing fee or supervision fee shall be applicable to each location.

(2)(a) An audited financial statement including but not limited to a balance sheet, a statement of income or loss, and a statement of changes in financial position for the immediately preceding fiscal year, prepared in accordance with generally accepted accounting principles by a certified public accountant or public accounting firm, neither of which is affiliated with the applicant.

(b)(i) For a newly created entity, the commissioner may accept only a balance sheet prepared by a certified public accountant or public accounting firm, neither of which is affiliated with the applicant, accompanied by a projected income statement demonstrating that the applicant will have adequate capital after payment of start-up costs.

(ii) If the applicant does not have an audited financial statement meeting the requirements, it may submit a financial statement of its parent if the financial statement is audited in accordance with generally accepted accounting principles by a certified public accountant or public account firm, neither of which is affiliated with the applicant.

(3)(a) A surety bond issued by an insurer regulated by the office of the commissioner of insurance of this state and not affiliated with the applicant, in the amount of \$25,000 for each location. However, the aggregate amount of the surety bond required for a single licensee shall not exceed \$200,000.

(b) In lieu of the surety bond, the applicant shall file an irrevocable letter of credit, in the amount of the surety bond, issued by any federally insured bank, savings bank, or credit union, none of which is affiliated with the applicant.

(c) The surety bond or irrevocable letter of credit shall be in a form satisfactory to the office of the commissioner of insurance and shall be payable to the office of financial institutions for the benefit of any person who is injured pursuant to an installment loan by the fraud, misrepresentation, breach of contract, financial failure or violation of any provision of proposed law by a licensee.

(d)(i) In the case of a surety bond, the aggregate liability of the surety bond shall not exceed the principal sum of the surety bond.

(ii) In the case of an irrevocable letter of credit, applicants shall obtain letters of credit for terms of not less than 3 years and renew the letters of credit annually.

(e) If the licensee fails to pay a person or the commissioner, as required by proposed law, then a person may bring suit against the licensee directly on the surety bond or irrevocable letter of credit in any court of competent jurisdiction, or the commissioner may bring suit in the Parish of East Baton Rouge ("EBR"), which shall have exclusive venue in all matters relating to proposed law on behalf of those persons, in either one or successive actions. The

surety bond or irrevocable letter of credit shall be maintained by the licensee for not less than 3 years following the expiration, revocation, or surrender of the licensee's license.

Proposed law authorizes the commissioner to require an applicant for a license to consent to a criminal history records check and to provide fingerprints with the application in a form acceptable to the commissioner. Proposed law authorizes the commissioner to require such consent and fingerprints from any individual who is a director, officer, or 10+% shareholder of the applicant or who owns or controls the applicant, as well as from any other individual associated with the applicant as is reasonably necessary to meet the purposes of proposed law. Proposed law clarifies that refusal of any person to consent to a criminal history records check or to provide fingerprints pursuant to proposed law constitutes grounds for the commissioner to deny the applicant a license. Proposed law requires that any criminal history records check conducted pursuant to proposed law shall be conducted by the La. Bureau of Criminal Id. and Information, the FBI, or both, and the results of the criminal history records check shall be forwarded to the commissioner.

Proposed law declares that if the commissioner finds that all licensing requirements have been satisfied and approves the documents, then the commissioner shall issue to the applicant a license to engage in the business of making installment loans in La.

Proposed law requires that any license shall be conspicuously posted in the licensee's place of business at all times.

Proposed law declares that a license issued pursuant to proposed law shall remain effective through the remainder of the year ending on December 31<sup>st</sup> after its date of issuance unless earlier surrendered, suspended, or revoked pursuant to proposed law.

Proposed law requires the commissioner to provide written notice to any applicant when the application has been denied, including the basis for denial. Proposed law provides that when the commissioner denies an application or if the commissioner fails to act on an application within 90 days after the filing of a properly completed application the applicant may make a written demand to the commissioner for a hearing before the commissioner on the question of whether the license should be granted. Proposed law requires that any hearing on the denial of a license shall be conducted pursuant to the Administrative Procedure Act ("APA"). Proposed law provides that the burden of proof that the applicant is entitled to a license shall be on the applicant. Proposed law further clarifies that any decision of the commissioner following any hearing on the denial of a license is subject to review pursuant to the provisions of the APA.

Proposed law declares that licenses issued pursuant to proposed law shall expire on December 31<sup>st</sup> annually. Proposed law provides that any license may be renewed for the ensuing 12 month period upon submission of an application by the license holder showing continued compliance with the requirements of proposed law. Proposed law requires an annual license renewal fee of \$290 to be submitted to the commissioner by December 1<sup>st</sup> annually. Proposed law provides that a licensee making timely and complete application for renewal of its license shall be permitted to continue to operate pursuant to its existing license until its application is approved or denied.

Proposed law declares that any license issued pursuant to proposed law is not transferable or assignable. Proposed law requires that the prior written approval of the commissioner is required for the continued operation of an installment loan business whenever a change in control of a licensee is proposed, and the commissioner may require information deemed necessary to determine whether a new application is required. Proposed law provides that reasonable and actual costs incurred by the commissioner in investigating a change of control request shall be paid by the person requesting approval. Proposed law mandates that if the person acquiring control of a licensee is already licensed pursuant to proposed law, the person must notify the commissioner 30 days prior to the acquisition. Proposed law states that whenever control is acquired or exercised in violation of proposed law, the license shall



be deemed revoked as of the date of the unlawful acquisition of control, and the licensee or its controlling person shall surrender the license to the commissioner on demand. Proposed law requires any licensee to notify the commissioner 30 days before any change in the licensee's principal place of business, branch office, or name.

Proposed law authorizes licensees to make installment loans pursuant to proposed law may charge and collect fees in a manner consistent with proposed law. Proposed law authorizes a licensee to charge and collect a periodic interest rate not to exceed 20% per month. Proposed law limits the maximum principal loan amount of an installment loan to \$1,500 and adjusted every other year by the commissioner to reflect the percentage changes in the Consumer Price Index published by the Bureau of Labor Statistics of the Dept. of Labor. Proposed law further restricts a licensee from making an installment loan if the total of scheduled payments coming due in a month exceeds 20% of the borrower's gross monthly income. Proposed law declares that, for the purpose of determining a borrower's gross monthly income pursuant to proposed law, a lender shall obtain and maintain third party verification of all income considered in making the determination. Proposed law clarifies that a "month" means a period extending from a given date in one calendar month to the same date in the succeeding calendar month, or if there is no same date in the succeeding calendar month, the last day of the succeeding calendar month. Proposed law requires certain forms of payments on or before the due date of each billing cycle.

Proposed law establishes procedure for circumstances in which a customer defaults pursuant to the terms of an installment loan plan. Regarding customer default, proposed law authorizes licensees to refer the customer's account to an attorney for collection and do any of the following:

- (1) If the installment loan so provides, charge and collect from the customer a reasonable attorney fee.
- (2) If the installment loan, or in the case of secured plans, the security agreement or similar instrument, so provides, recover from the customer all collection and court costs, including, in the case of secured plans, all costs of enforcing the security agreement or similar instrument actually incurred by the licensee, including those incurred on appeal.
- (3) Dispose of property after default shall occur in a commercially reasonable manner in accordance with law.

Proposed law provides that if a check is returned to a licensee from a payor financial institution due to insufficient funds, no licensee shall have the authority to assess a handling charge against the maker or drawer of the returned check.

Proposed law requires licensees to provide each customer a written explanation, in clear, understandable language, of the fees and charges to be charged by the licensee. The style, content and method of executing the required written explanation shall comply with federal truth-in-lending laws and shall contain a statement that the customer may prepay the unpaid balance in whole or in part at any time without penalty. Proposed law requires installment loans to include a next-business-day customer's right of rescission for any installment loan and a notice informing the customer that complaints may be made to the commissioner, including the telephone number and address of OFI. Proposed law states that an installment loan may not be refinanced more than 1 time. Proposed law restricts refinanced installment loans by stating that the loan amount may not be for a greater than the original installment loan amount and must have payments less than the originally scheduled installment loan payments.

Proposed law requires each licensee to keep and use in its business any books, accounts and records the commissioner may require to effectuate the provisions of proposed law. Proposed law requires licensees to preserve the books, accounts, and records for at least 4 years but provides that any licensee, after receiving the prior written approval of the

commissioner, may maintain records at a location within or outside La. Proposed law prohibits unfair or deceptive acts, practices, or advertising in the conduct of the licensed business. Proposed law prohibits the use any device or agreement, including agreements with affiliated licensees, with the intent to obtain greater charges than otherwise would be authorized by proposed law. Proposed law enumerates multiple provisions of present law for the purpose of restricting the businesses of licensees. Proposed law prohibits installment loans from doing any of the following:

- (1) Provide that the law of a jurisdiction other than this state applies.
- (2) Provide that the customer consents to the jurisdiction of another state or foreign country.
- (3) Establish venue.
- (4) Waive any provision of this Chapter.

Proposed law clarifies that any prohibited provision as described in proposed law shall be void and not enforceable as a matter of public policy.

Proposed law clarifies the scope of the authority of proposed law and provides licensees with limited liability for adherence to the provisions of proposed law.

Proposed law clarifies that, for the purpose of discovering violations of proposed law and determining whether persons are subject to proposed law, the commissioner is authorized to investigate persons licensed pursuant to proposed law and persons reasonably suspected by the commissioner of conducting business that requires a license pursuant to proposed law. Proposed law authorizes the commissioner to summon witnesses and examine them under oath or affirmation and compel the production of books and records that may be relevant to the examination or investigation.

Proposed law provides that a licensee or unlicensed person subject to proposed law, who is examined or investigated in accordance with proposed law, shall pay to the commissioner the reasonable and actual expenses of the investigation or examination. Proposed law clarifies that the expenses shall be payable in addition to all other fees, taxes, and costs required by law.

Proposed law requires the commissioner to appoint an independent hearing examiner to conduct all administrative hearings involving alleged violations of proposed law. Proposed law requires that the independent hearing examiner shall have authority to exercise all powers granted by the APA in conducting hearings. Proposed law requires the independent hearing examiner to recommend penalties authorized by proposed law and issue proposed orders with proposed findings of fact and proposed conclusions of law to the commissioner pursuant to the APA. Proposed law requires the commissioner to review the proposed order and issue a final agency order in accordance with the APA. Proposed law clarifies that the costs of the hearing examiner may be assessed by the hearing examiner against the respondent, unless the respondent is the prevailing party. Proposed law authorizes any person aggrieved by a final agency order of the commissioner to obtain judicial review in accordance with the APA. Proposed law declares that the jurisdiction and venue of any such action shall be in the district court of the Parish of East Baton Rouge. Proposed law authorizes the commissioner to, after notice and hearing, suspend or revoke any license if a licensee has knowingly or through lack of due care done any of the following:

- (1) Failed to pay any fees, expenses, or costs imposed by the commissioner pursuant to proposed law.
- (2) Committed any fraud, engaged in any dishonest activities, or made any misrepresentations.

(3) Violated any provision of proposed law, any administrative rule promulgated pursuant to proposed law, or any other law in the course of the licensee's dealings as a licensee.

(4) Made a false statement in the application for the license or failed to give a true reply to a question in the application.

(5) Demonstrated incompetency or untrustworthiness to act as a licensee.

Proposed law clarifies that if the reason for revocation or suspension of a licensee's license at any one location is of general application to all locations operated by a licensee, the commissioner may revoke or suspend all licenses issued to a licensee. Proposed law requires that a hearing shall be held on written notice given at least 20 days prior to the date of the hearing and shall be conducted in accordance with the APA.

Proposed law establishes grounds for penalties that may include one or more of the following:

(1) Ordering the person to cease and desist violating proposed law or any administrative rule promulgated pursuant thereto.

(2) Requiring the refund of any fees collected by the person in violation of proposed law.

(3) Ordering the person to pay to OFI a civil penalty of not more than \$1,000 for each transaction in violation of proposed law or for each day that a violation occurs or continues.

Proposed law authorizes the commissioner to impose the following when such penalties are in the public interest:

(1) Censure of the violator.

(2) Suspension of the violator for a period not to exceed 12 months.

(3) Barring a person from any position of employment, management, or control of a licensee when the violator has done one of the following:

(a) Been convicted or pled guilty to, or pled nolo contendere to, any crime.

(b) Been held liable by final judgment or any administrative judgment by any public agency, when the criminal, civil, or administrative judgment involved any offense reasonably related to the qualifications, functions, or duties of a person engaged in the business of making installment loans pursuant to proposed law.

Proposed law prohibits persons suspended or barred pursuant to proposed law from participating in any business activity of a licensee and from engaging in any business activity on the premises where a licensee is conducting its business. Proposed law shall not be construed to prohibit suspended or barred persons from having their personal transactions processed by a licensee.

Proposed law authorizes the commissioner to enter into a consent order at any time with any person to resolve any matter arising pursuant to proposed law. Proposed law requires a consent order to be signed by the person to whom it is issued, or a duly authorized representative, and shall indicate agreement to the terms contained in the order. Proposed law declares that a consent order need not constitute an admission by any person that any provision of proposed law or any administrative rule or order promulgated or issued pursuant to proposed law has been violated nor need it constitute a finding by the commissioner that the person has violated proposed law. Proposed law declares that, notwithstanding the issuance of a consent order, the commissioner may seek civil or criminal penalties concerning matters encompassed by the consent order. Proposed law authorizes the

commissioner to take any enforcement action authorized by proposed law without providing the opportunity for a prior hearing in cases involving extraordinary circumstances requiring emergency action. However, proposed law requires the commissioner to promptly afford a subsequent hearing upon an application to rescind the action taken that is filed with the commissioner within 20 days after receipt of the notice of the commissioner's emergency action.

Proposed law authorizes any person aggrieved by the conduct of a licensee pursuant to proposed law, in connection with the licensee's regulated activities, to file a written complaint with the commissioner who may investigate the complaint. Proposed law empowers the commissioner to do any of the following:

- (1) Subpoena witnesses.
- (2) Administer oaths.
- (3) Examine any individual under oath or affirmation.
- (4) Compel the production of records, books, papers, contracts, or other documents relevant to the investigation.

Proposed law declares that if any person fails to comply with a subpoena of the commissioner or fails to testify concerning any matter about which the person may be interrogated, the commissioner may petition any court of competent jurisdiction for enforcement. Proposed law authorizes the commissioner to suspend the license of any licensee who fails to comply with a subpoena of the commissioner. Proposed law declares that the commissioner shall have exclusive administrative power to investigate and enforce any and all complaints relating to the business of making installment loans filed by any person that are not criminal in nature.

Proposed law requires that within fifteen days of any one of the following events, a licensee shall file a written report with the commissioner describing the event and its expected impact on the activities of the licensee in this state:

- (1) The filing for bankruptcy or reorganization by the licensee.
- (2) Revocation or suspension proceedings instituted against the licensee by any state or governmental authority.
- (3) The denial of the opportunity to engage in the business of making loans by any state or governmental authority.
- (4) Any felony indictment of the licensee or any of its directors, officers, or principals.
- (5) Any felony conviction of the licensee or any of its directors, officers, or principals.
- (6) Other events that the commissioner may determine and identify by administrative regulation.

Proposed law provides for annual reports by requiring each licensee to file an annual report with the commissioner on the date of the renewal application as required pursuant to proposed law containing the following information:

- (1) The names and addresses of persons owning a controlling interest in each licensee.
- (2) The location of all places of business operated by the licensee and the nature of the business conducted at each location.

(3) The names and addresses of all affiliated entities regulated pursuant to proposed law doing business in La.

(4) An audited financial statement including but not limited to a balance sheet, statement of income or loss, and statement of changes in financial position for the immediately preceding fiscal year end prepared in accordance with generally accepted accounting principles by a certified public accountant or public accounting firm, neither of which is affiliated with the licensee.

(5) If the licensee is a corporation, the names and addresses of its officers and directors; if the licensee is a partnership, the names and addresses of the partners; or if the licensee is a limited liability company, the names and addresses of the board of governors or managers of the limited liability company.

Proposed law allows composite reports if the licensee holds 2 or more licenses or is affiliated with other licensees, but a composite report shall not be required. Proposed law requires annual reports to be filed in a form reasonably required by the commissioner and shall be sworn to by a responsible officer of the licensee. Proposed law states that the annual reports shall be confidential.

Proposed law authorizes the commissioner to require persons to be licensed through a multi-state automated licensing system. Pursuant to this authority, the commissioner may do any of the following:

(1) Promulgate administrative rules that are reasonably necessary for participation in, transition to, or operation of a multi-state automated licensing system.

(2) Establish relationships or enter into agreements that are reasonably necessary for participation in, transition to, or operation of a multi-state automated licensing system. The agreements may include but are not limited to operating agreements, information sharing agreements, interstate cooperative agreements, and technology licensing agreements.

(3) Require that applications for licensing and renewals of such licenses be filed with a multi-state automated licensing system.

(4) Require that any fees required be paid through a multi-state automated licensing system.

(5) Establish deadlines for transitioning licensees to a multi-state automated licensing system.

(6) Deny any applications or renewal applications not filed with a multi-state automated licensing system after such deadlines have passed, notwithstanding any dates established elsewhere in this Chapter; however, the commissioner shall provide reasonable notice of any transition deadlines to licensees.

(7) Take such further actions as are reasonably necessary to give effect to proposed law .

Proposed law maintains the scope of authority of the commissioner as provided for in proposed law. Proposed law requires applicants for and holders of licenses to pay all costs associated with submitting an application to or transitioning a license to a multi-state automated licensing system, as well as all costs required by a multi-state automated licensing system for maintaining and renewing any license issued by the commissioner on a multi-state automated licensing system.

Proposed law authorizes the commissioner to use a multi-state automated licensing system as an agent for channeling information, whether criminal or noncriminal in nature, whether derived from or distributed to the U.S. Dept. of Justice or any other state or federal

governmental agency, or any other source, that the commissioner is authorized to request from, or distribute to, pursuant to proposed law.

Proposed law requires the following provisions to apply to the information or material after the information or material has been disclosed to a multi-state automated licensing system:

(1) Any requirements pursuant to any federal or state law regarding the privacy or confidentiality of any information or material provided to a multi-state automated licensing system, and any privilege arising pursuant to federal or state law, including the rules of any federal or state court with respect to such information or material.

(2) Any such information or material may be shared with all state and federal regulatory officials with consumer credit oversight authority without the loss of privilege or the loss of confidentiality protections provided by federal or state law, including the protection available pursuant to state law.

Proposed law authorizes the commissioner to enter into agreements or sharing agreements with other governmental agencies, the Conference of State Bank Supervisors, or other associations representing governmental agencies as established by rule or order of the commissioner. Proposed law exempts information or material that is subject to a privilege or confidential pursuant to proposed law from any of the following:

(1) Disclosure pursuant to any federal or state law governing the disclosure to the public of information held by an officer or any agency of the federal government or the respective state.

(2) Subpoena, discovery, or admission into evidence in any private civil action or administrative process, unless with respect to any privilege held by a multi-state automated licensing system applicable to such information or material, the person to whom such information or material pertains waives that privilege, in whole or in part, in the discretion of such person.

Proposed law shall supersede any inconsistent provisions of law pertaining to the records open to public inspection. Proposed law shall not apply with respect to information or material relating to publicly adjudicated disciplinary and enforcement actions against persons subject to proposed law that is included in a multi-state automated licensing system for access by the public.

Proposed law declares that local government units including but not limited to cities, towns, and counties shall have no authority to regulate installment plan loans.

Proposed law directs OFI to promulgate any rules and regulations in accordance with the Administrative Procedure Act necessary to implement the provisions of proposed law.

Effective January 1, 2017.

(Adds R.S. 6:1371-1395)