
The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Julie J. Baxter.

DIGEST

Nevers (SB 679)

Proposed law provides that a consumer credit transaction as defined by present law, including a deferred presentment transaction as defined by present law, shall be null, void, unenforceable, and uncollectible as being contrary to the policy of the state if the creditor has not obtained a license from the Office of Financial Institutions if required to do so.

Present law prohibits a creditor from taking assignments of and undertaking direct collection of payments from or enforcing rights against consumers arising from consumer loans without an office in this state and first having obtained a license from the commissioner of the Office of Financial Institutions (OFI).

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

Present law provides that a creditor having no office within this state who offers credit to Louisiana consumers through the mail and other means of interstate commerce is not required to be licensed by OFI.

Proposed law removes present law.

Present law provides that each licensee shall maintain a place of business in the state and, unless otherwise provided by rule, shall maintain records of its consumer loans at that location.

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

Present law provides that if the lender's records are located outside this state, the lender, at the commissioner's option, shall make them available to the commissioner at a location within this state convenient to the commissioner, or pay the reasonable and necessary expenses for the commissioner or his representatives to examine them at the place where they are maintained. The commissioner may designate representatives, including comparable officials of the state in which the records are located, to inspect them on his behalf.

Proposed law adds that if the lender's records are located outside this state, the lender, at the commissioner's option, shall make them available in a format deemed by the commissioner to be acceptable to include physical reproductions and digital electronically imaged records, or via electronic transmittal or delivery of optical imaging disc containing electronic copies of the records. The method of examination and delivery of records will be at the sole discretion of the commissioner.

Proposed law provides that any person required to be licensed pursuant to this Chapter shall, prior to application for licensure, be duly registered with the secretary of state and be in possession of a certificate of authority to transact business pursuant to present law, as applicable.

Proposed law provides that, with respect to a consumer credit transaction, except for a deferred presentment transaction or small loan pursuant to the Louisiana Deferred Presentment and Small Loan Act, an extender of credit shall not accept a check, as defined by R.S. 9:3516, from the issuer and agree to hold the check for a period of time in exchange for payment to the issuer.

Present law provides that a creditor having no office in this state offering credit of Louisiana consumers through the mail and other means of interstate commerce shall be exempt from the consumer loan licensing requirements under the licensing provisions of the Louisiana Consumer Credit Law.

Proposed law deletes present law.

Present law provides that each licensed lender under the Louisiana Consumer Credit Law shall maintain a place of business in the state and, unless otherwise provided by rule, shall maintain records of its consumer loans at that location.

Proposed law deletes present law, and provides that each licensee making consumer loans to Louisiana residents shall maintain records of its consumer loans at the location stated on its license.

Present law provides that if a licensed lender's records are located outside of Louisiana, 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.

Proposed law deletes present law, and provides that if the licensed lender's records are located outside of 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, 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. Proposed law further provides that the method of examination and delivery of records shall be at the sole discretion of the commissioner. Proposed law further provides that the commissioner shall define the method of examination and delivery of these records through promulgation of rules under the Administrative Procedures Act by August 1, 2015.

Proposed law provides that any person required to be licensed pursuant to the licensing provisions of the Louisiana Consumer Credit Law shall, prior to application for licensure, be duly registered with the 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.

Present law provides that in conjunction with a deferred presentment transaction or small loan, a licensee may charge a fee not to exceed 16.75% 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, regardless of the name or type of charge.

Proposed law deletes present law, and provides that in conjunction with a deferred presentment transaction or small loan, a licensee may charge a one-time loan origination fee of fifteen-percent of the face amount of the check, provided however that such fee or interest does not exceed \$45, regardless of the name or type of charge.

Present law further provides that if the loan remains unpaid at contractual maturity, the licensee may charge one of the following: (a) an amount equal to the rate of 36% per annum for a period not to exceed one year and beginning one year after contractual maturity, the rate shall not exceed 18% per annum, or (b) A one-time delinquency charge as authorized in R.S. 9:3527(A)(1).

Proposed law retains present law, except that it deletes the option for one-time delinquency charge as authorized in R.S. 9:3527(A)(1).

Proposed law further provides that under proposed law a borrower who is unable to repay either a deferred presentment transaction or small loan when due to a licensee may elect once in any 12-month period to repay the licensee the amount due under the deferred presentment transaction or small loan by means of a repayment plan as provided for in proposed law. Provides that the licensee shall inform the borrower verbally and in writing of the option and terms of this repayment plan option upon initial execution of the loan. Further provides that to be eligible for the repayment plan, the borrower shall request to enter into the plan before the due date of the outstanding deferred presentment transaction or small loan.

Proposed law provides that the terms of a repayment plan under proposed law shall include the following: (a) The licensee may not impose any additional charge on the borrower for using a repayment plan. Further provides that performance of the terms of the repayment plan extinguishes the consumer's obligation on the loan. (b) The borrower shall be allowed to repay the loan in at least four equal installments with at least 13 days between installments, provided that the term of the repayment plan does not exceed 90 days. Further provides that the first payment under the repayment plan shall not be due before at least 13 days after the repayment plan is signed by both parties. (c) The borrower may prepay the amount due under the repayment plan at any time without charge or penalty. (d) The length of time between installments may be extended by the parties so long as the total period of repayment does not exceed 90 days. Further provides that any such modification shall be in writing and signed by both parties.

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 deletes present law and 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.

Proposed law adds that a licensee shall not:

- (1) Enter into any loan made under proposed law with a person who has made five or more loans under proposed law with that licensee or with any other licensed lender within the previous twelve consecutive months. No borrower shall be permitted to have more than five loans made under proposed law within any twelve-month consecutive period.
- (2) Enter into any loan made under proposed law with a person for whom the total of all loan payments coming due within the first calendar month of the loan, when combined with the payment amount of the borrower's other outstanding deferred presentment transactions and small loans coming due within that same month, exceeds 25% of the borrower's gross monthly income. Further provides that the licensee is not in violation of this provision if the borrower presents evidence of his gross monthly income to the licensee and represents to the licensee in writing that the prospective loan amount together with the amount of any other outstanding loan made under proposed law does not exceed 25% of the borrower's expected gross monthly income when the prospective loan is made.
- (3) Enter into any loan made under proposed law with a person who has completed any deferred presentment transaction or small loan within the past thirty days. Provides that the licensee shall verify this information as follows:
 - (a) The licensee shall consult the real-time access database which the commissioner shall have established and implemented pursuant to proposed law. Provides that the licensee shall verify through this real-time access database whether that particular person has made five loans with the licensee or any other licensed lender within the previous twelve consecutive months, or whether that particular person has completed any loan under this Chapter with the licensee or with any other licensed lender within the previous thirty days.
 - (b) Until the commissioner has established and implemented a real-time access database pursuant to R.S. 9:3578.8, the licensed lender may rely upon the signed and written verification of the borrower indicating the following: "I have not made more than four deferred presentment transactions or small loans with a licensed lender within the past twelve consecutive months. I have not terminated or completed a deferred presentment transaction or small loan agreement with any licensed lender within the past 30 days."

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 provides 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.

Present law provides that once a deferred presentment transaction or small loan has been completed, a consumer may enter into a new transaction or loan with the licensee.

Proposed law provides that once a deferred presentment transaction or small loan has been completed, a consumer may enter into a new transaction or loan with the licensee, provided that 30 days have passed since completing the loan and provided that the loan will not place the consumer in violation of the limits provided for in this Section.

Present law provides that a deferred presentment transaction or small loan shall be considered completed when the amount advanced has been paid in full by the consumer.

Proposed law retains present law. Proposed law provides that a licensee under Louisiana's Deferred Presentment and Small Loan Act shall not through the use of mail, telephone, internet, electronic or any other means, engage in any device or subterfuge intended to evade the requirements of this Chapter, including but not limited to: 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 further provides that an extension of a deferred presentment transaction or small loan to a member of the U.S. military or a dependent of a member of the U.S. military must comply with 10 U.S.C. §987 and any regulations adopted under that law, to the extent applicable. Further provides that, notwithstanding any other provision of law, a violation of any provisions of 10 U.S.C. §987, or any regulation adopted pursuant thereto, shall be deemed a violation of present law.

Proposed law provides that the performance of one of the prohibited acts under Louisiana's Deferred Presentment and Small Loan shall constitute a violation of Louisiana's Unfair Trade Practices and Consumer Protection Law.

Proposed law provides for certain mandatory duties of the commissioner, for certain rules and

regulations to be promulgated, for certain non-aggregate data to be collected, and for the commissioner to submit to the legislature certain reports and data by February 1, 2014, each year.

Proposed law provides that the commissioner 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. Further provides that the database shall be accessible to the commissioner and to the licensees so that the commissioner shall be able to verify certain information. Further provides that on or before August 1, 2015, the commissioner shall provide by rules and regulations through the Administrative Procedures Act for the implementation of this real-time access common database.

Proposed law further provides that no licensee shall engage in lending activity with a consumer who has made more than five loans under proposed law within the previous twelve consecutive months.

Proposed law further provides that license shall submit such loan transaction data before entering into each transaction in such formate as required by the commissioner, and includes certain information necessary to be submitted.

Proposed law further provides that the legislative auditor as an agent of the commissioner shall have the authority to examine all records of deferred presentment transactions or small loans from the licensee.

Present law exempts deferred presentment transactions and small loans from Louisiana's Unfair Trade Practices and Consumer Protection Act.

Proposed law provides that licensed lenders who make deferred presentment transactions and small loans under the Louisiana Deferred Presentment Transaction and Small Loans Act, Chapter 2-A of Code Title XII of Title 9, shall be subject to this Section when interest, finance charges, fees or any other costs charged to the borrower exceed the amount allowed under Louisiana law, or if the licensed lender enters into a loan which would cause the licensee and the consumer to be in violation of the number of loans allowed per consumer per year under R.S. 9:3578.6(A).

Proposed law further removes certain exemptions from Louisiana's Unfair Trade Practices and Consumer Protection Law.

Effective August 1, 2014.

(Amends R.S. 9:3557(B), 3560(A), 3561(A), 3561.1(G), 3578.4(A), 3578.5, 3578.6 and 3578.8, R.S. 14:511, and R.S. 51:1406(1); adds R.S. 9:3518.4, 3537, 3561.2, 3578.4.1 and 3578.9)