

2018 Regular Session

SENATE BILL NO. 365

BY SENATOR WARD

LOANS. Creates the Louisiana Credit Access Loan Act. (8/1/19)

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AN ACT

To enact Chapter 20 of Title 6 of the Louisiana Revised Statutes of 1950, to be comprised of R.S. 6:1371 through 1379, relative to the regulation of installment loans; to enact the Louisiana Credit Access Loan Act; to provide relative to installment loans and payment plans; to provide certain terms, procedures, conditions, requirements, restrictions, prohibitions, exemptions, and definitions; to provide for certain charges; to provide relative to default and penalties; to provide for certain powers of the commissioner; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. Chapter 20 of Title 6 of the Louisiana Revised Statutes of 1950, comprised of R.S. 6:1371 through 1379, is hereby enacted to read as follows:

§1371. Short title

This Chapter shall be known and may be cited as the "Louisiana Credit Access Loan Act".

§1372. Definitions

A. As used in this Chapter, the following terms and phrases have the meanings herein ascribed to them:

1 (1) "Installment loan" means any loan offered by a licensee that is
2 subject to and meets the requirements imposed by the provisions of this
3 Chapter.

4 (2) "Licensee" means any person who offers installment loans and is
5 licensed pursuant to Chapter 2-A of Title 9 of the Louisiana Revised Statutes of
6 1950, comprised of R.S. 9:3578.1 through 3578.8.

7 (3) "Commissioner" means the commissioner of the office of financial
8 institutions.

9 §1373. Installment loan; terms; restrictions

10 A. Any installment loan offered by a licensee shall adhere to the
11 following requirements:

12 (1) The term of the loan shall not be less than three months and shall not
13 exceed twelve months.

14 (2) The amount of the loan shall not be less than five hundred dollars and
15 shall not exceed eight hundred seventy-five dollars.

16 (a) The restriction imposed by this Paragraph shall be adjusted every
17 other year by the commissioner to reflect the percentage changes indicated in
18 the most recent Consumer Price Index as published by the Bureau of Labor
19 Statistics of the Department of Labor.

20 (b) The intent of Subparagraph (a) of this Paragraph is to allow for
21 installment loan limits to increase in conjunction with increases in the cost of
22 living and other market fluctuations as represented by the Consumer Price
23 Index.

24 (3) A licensee is prohibited from imposing any penalty for the
25 prepayment of an installment loan.

26 (4) A licensee is prohibited from offering any installment loan that
27 requires the aggregate of payments coming due in a month to exceed twenty
28 percent of the gross monthly income of the borrower.

29 (a) For the purposes of determining a borrower's gross monthly income

1 pursuant to this Paragraph, a licensee shall obtain and maintain third-party
2 verification of all income considered in making the determination.

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

7 (5) Scheduled repayment of an installment loan is permitted on a
8 biweekly, bimonthly, or monthly basis, and in substantially equal installments.

9 B. An installment loan may be either unsecured or secured by personal
10 property of the borrower.

11 C. An installment loan shall include, along with any other applicable
12 state or federal law requirements, the following:

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

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

18 §1374. Finance charge; payment plan; conditions

19 A. In conjunction with an installment loan, a licensee may impose a
20 monthly service charge not in excess of nine percent of the original loan amount.

21 B. In conjunction with an installment loan, a borrower may do the
22 following:

23 (1) After entering into an initial installment loan, a borrower may enter
24 into one consecutive unsecured loan; however, the borrower shall not be
25 permitted to enter into any additional consecutive unsecured loan until at least
26 thirty days have lapsed from the conclusion of the consecutive unsecured loan,
27 as verified by a private third party database, approved by the commissioner of
28 financial institutions.

29 (2)(a) Relative to any consecutive unsecured loan described in Paragraph

1 (1) of this Subsection, a borrower may opt into an extended payment plan at no
2 cost imposed by the licensee.

3 (b) The extended payment plan shall provide the borrower with an
4 additional sixty days in which to pay the remainder of the consecutive
5 unsecured loan amount and allow the borrower to pay such amount in up to a
6 maximum of four separate payments.

7 §1375. Default; penalty

8 A.(1) In the event a borrower is delinquent in a payment pursuant to the
9 terms of an installment loan, the licensee may charge and collect from the
10 borrower a late charge of ten percent of the delinquent amount, provided that
11 the terms of such a charge are clearly disclosed in the installment loan
12 agreement.

13 (2) No such charge as described in Paragraph (1) of this Subsection may
14 be imposed against a borrower unless the borrower has failed to pay the
15 delinquent amount within ten business days after the due date.

16 B. In the event that a borrower is delinquent in a payment for more than
17 sixty days, the licensee may charge and collect from the borrower reasonable
18 attorney fees and costs awarded by a court, if the charge and collection for such
19 fees and costs have been clearly disclosed in the installment loan agreement.

20 §1376. Prohibited acts

21 A licensee shall not:

22 (1) Except for reasonable attorney fees and costs awarded by a court,
23 charge, contract for, receive, or collect a loan finance charge or credit service
24 charge, or any other fee or charge other than as provided in Section 1374 of this
25 Chapter.

26 (2) Refuse a partial loan payment of fifty dollars or greater.

27 (3) Divide a deferred presentment transaction or small loan into multiple
28 agreements for the purpose of obtaining a higher fee or charge.

29 (4) Threaten any customer with prosecution or refer for prosecution any

1 check accepted as payment of a deferred presentment transaction and returned
2 by the lender's depository institution for reason of insufficient funds.

3 (5) Structure the repayment of a loan in such a manner as to attempt to
4 circumvent the provisions of this Chapter.

5 §1377. Posting of notice; toll-free number

6 The commissioner may provide a notice, which includes a toll-free
7 number to the commissioner's office, which shall be posted, along with the fees
8 as allowed under this Chapter, in a conspicuous place and manner by the
9 licensee at the lending location or on the homepage of the website of the licensee,
10 or both if the licensee has a physical location in the state and a website.

11 §1378. Powers of the commissioner; adoption of rules and regulations

12 A. Except where inconsistent with the provisions of this Chapter, the
13 commissioner may apply the provisions of Parts I, VII, VIII, IX, and X of
14 Chapter 2 of this Code Title, the Louisiana Consumer Credit Law, for purposes
15 of administering and regulating the activities of licensees and the provisions of
16 this Chapter.

17 B. The commissioner may adopt rules and regulations as he deems
18 necessary to implement the purposes and provisions of this Chapter.

19 §1379. Exemptions

20 The provisions of this Chapter shall not apply to:

21 (1) Any federally-insured depository institution.

22 (2) A subsidiary of any state chartered or federally chartered entity
23 described in Paragraph (1) of this Section in which eighty percent or more of
24 the ownership rests with such parent entity.

25 Section 2. The provisions of this Act shall become effective on August 1, 2019.

The original instrument was prepared by Nancy Vicknair. The following digest, which does not constitute a part of the legislative instrument, was prepared by Jerry G. Jones.

DIGEST

SB 365 Engrossed 2018 Regular Session Ward

Proposed law enacts the Louisiana Credit Access Loan Act.

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

Proposed law provides that any installment loan offered by a licensee shall adhere to the following requirements:

- (1) The term of the loan shall not be less than 3 months and shall not exceed 12 months.
- (2) The amount of the loan shall not be less than \$500 and shall not exceed \$875.
 - (a) The restriction imposed by proposed law, relative to maximum loan amounts, shall be adjusted every other year by the Commissioner (commissioner) of the Office of Financial Institutions (OFI) to reflect the percentage changes indicated in the most recent Consumer Price Index (CPI) as published by the Bureau of Labor Statistics of the Dept. of Labor.
 - (b) The intent of proposed law is to allow for installment loan limits to increase in conjunction with increases in the cost of living and other market fluctuations as represented by the CPI.
- (3) A licensee is prohibited from imposing any penalty for the prepayment of an installment loan.
- (4) A licensee is prohibited from offering any installment loan that requires the aggregate of payments coming due in a month to exceed twenty percent of the gross monthly income of the borrower.
 - (a) For the purposes of determining a borrower's gross monthly income pursuant to proposed law, a licensee shall obtain and maintain third-party verification of all income considered in making the determination.
 - (b) For the purposes of proposed law, "monthly" 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.
- (5) Scheduled repayment of an installment loan is permitted on a biweekly, bimonthly or monthly basis, and in substantially equal installments.

Proposed law provides that an installment loan may be either unsecured or secured by personal property of the borrower.

Proposed law provides that an installment loan shall include, along with any other applicable present law requirements, the following:

- (1) A next-business-day customer's right of rescission for any installment loan.
- (2) A notice informing the customer that complaints may be made to the commissioner,

including the telephone number and address of the office of the commissioner.

Proposed law states that, in conjunction with an installment loan, a licensee may impose a monthly service charge not in excess of 9% of the original loan amount.

Proposed law states that, in conjunction with an installment loan, a borrower may do the following:

- (1) After entering into an initial installment loan, a borrower may enter into one consecutive unsecured loan; however, the borrower shall not be allowed to enter into any additional consecutive unsecured loan until at least 30 days have lapsed from the conclusion of the consecutive unsecured loan, as verified by a private third-party database, approved by the commissioner of financial institutions.
- (2)
 - (a) Relative to any consecutive unsecured loan described in proposed law, a borrower may opt into an extended payment plan at no cost imposed by the licensee.
 - (b) The extended payment plan shall provide the borrower with an additional 60 days in which to pay the remainder of the consecutive unsecured loan amount and allow the borrower to pay such amount in up to a maximum of four separate payments.

Proposed law provides that, in the event a borrower is delinquent in a payment pursuant to the terms of an installment loan, the licensee may charge and collect from the borrower a late charge of 10% of the delinquent payment amount, provided that the terms of such a charge are clearly disclosed in the installment loan agreement.

Proposed law states that no such charge as described in proposed law may be imposed against a borrower unless the borrower has failed to pay the delinquent amount within 10 business days after the due date.

Proposed law further states, that in the event that a borrower is delinquent in the payment of a monthly payment for more than 60 days, the licensee may charge and collect from the borrower reasonable attorney fees and costs awarded by a court, if the charge and collection for such fees and costs have been clearly disclosed in the installment loan agreement.

Proposed law further provides that a licensee shall not:

- (1) Except for reasonable attorney fees and costs awarded by a court, charge, contract for, receive, or collect a loan finance charge or credit service charge, or any other fee or charge other than as provided in proposed law.
- (2) Refuse a partial loan payment of \$50 or greater.
- (3) Divide a deferred presentment transaction or small loan into multiple agreements for the purpose of obtaining a higher fee or charge.
- (4) Threaten any customer with prosecution or refer for prosecution any check accepted as payment of a deferred presentment transaction and returned by the lender's depository institution for reason of insufficient funds.
- (5) Structure the repayment of a loan in such a manner as to attempt to circumvent the provisions of proposed law.

Proposed law provides that the commissioner may provide a notice, which includes a toll-free number to the commissioner's office, which shall be posted, along with the fees as allowed under proposed law, in a conspicuous place and manner by the licensee at the

lending location or on the homepage of the website of the licensee, or both if the licensee has a physical location in the state and a website.

Proposed law further provides that commissioner may adopt rules and apply certain present law for purposes of administering and regulating the activities of licensees and the provisions of proposed law.

Proposed law provides that it does not apply to any federally-insured depository institution, or a subsidiary of any state chartered or federally chartered entity in which 80% or more of the ownership rests with such parent entity.

Effective August 1, 2019.

(Adds R.S. 6:1371-1379)

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Commerce, Consumer Protection, and International Affairs to the original bill

1. Changes name of Act to Louisiana Credit Access Loan Act.
2. Changes effective date from Jan. 1, 2019, to Aug. 1, 2019.
3. Revises provisions relative to installment loan terms, restrictions, and exemptions.