

HOUSE SUMMARY OF SENATE AMENDMENTS

House Bill No. 766 by Representative Ponti

FINANCIAL INSTITUTIONS: Provides relative to consumer credit transactions

Synopsis of Senate Amendments

1. Changes the effective date from September 30, 2014 to January 1, 2015.
2. Makes technical changes.
3. Provides that the provisions of proposed law which would make certain consumer credit transactions or deferred presentment transactions null, void, unenforceable, and uncollectible would not be applicable to any non-recourse consumer financial transaction.

Digest of Bill as Finally Passed by Senate

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

Proposed law shall not apply to creditors exempt from consumer loan licensing requirements, any non-recourse consumer financial transaction, or any other creditor not required to be licensed by OFI.

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 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 La. 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 La. secretary of state and be in possession of a certificate of authority to transact business pursuant to present law (R.S. 12:304 or 1345, or R.S. 9:3422), as applicable.

Proposed law authorizes certain finance charges and fees in conjunction with a deferred presentment transaction or small loan.

Present law provides that if the loan remains unpaid at contractual maturity, then the licensee may charge (1) 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 (2) a one-time delinquency charge of 5% of the unpaid amount or \$10, whichever is greater.

Proposed law removes that authority of the licensee to charge the one-time delinquency charge of 5% of the unpaid amount or \$10, whichever is greater.

Proposed law permits a consumer who is unable to repay either a deferred presentment transaction or small loan when due to a licensee to elect once in any 12-month period to repay the licensee the amount due by means of installments, referred to as an extended payment plan.

Proposed law provides that a consumer is ineligible for an extended payment plan if the consumer previously obtained an extended payment plan from the licensee within the preceding 12 months.

Proposed law requires the consumer to request to enter into the plan before the due date of the outstanding deferred presentment transaction or small loan.

Proposed law provides that if a consumer is unable to request to enter into an extended payment plan prior to the due date of the outstanding deferred presentment transaction or small loan because of incapacitation that results in or from hospitalization, upon the consumer's presentation of proof of hospitalization, the lender shall allow the consumer to request to enter into the plan within 72 hours from the discharge of the consumer from the hospital.

Proposed law requires the licensee and consumer to execute an agreement, in writing, that modifies the terms of the outstanding small loan or deferred presentment plan and establishes the terms of the extended payment plan.

Proposed law provides that the terms of the extended payment plan shall:

- (1) Allow the consumer to repay the outstanding deferred presentment transaction or small loan, including any fees due prior to entering into the plan, in at least four substantially equal installments.
- (2) Allow the consumer to prepay sums due pursuant to an extended payment plan in full at any time without penalty.
- (3) Prohibit the licensee from charging the consumer any interest, or additional charges or fees during the term of the plan.
- (4) Require that the first plan installment shall be due no sooner than thirty days

following the execution of the plan, unless a shorter period of time is agreed to by the consumer and licensee based on when the consumer receives income. The dollar amount of each installment shall be substantially the same and the installment due dates shall be spread out substantially evenly over the term of the extended payment plan.

Proposed law provides that the terms of the extended payment plan may permit the licensee to do either of the following:

- (1) With each payment under the plan by a consumer, provide for the return of the consumer's previously held check and require a new check for the remaining balance under the plan.
- (2) Require the consumer to provide multiple checks, one for each of the installments in the amounts of each installment at the time the plan is executed.

Proposed law requires that a licensee immediately give a consumer receipts, signed and dated by the licensee, for any payments made in connection with the extended payment plan. The receipts shall also state the balance due under the extended payment plan after each payment.

Proposed law provides that if the consumer fails to pay any extended payment plan installment when due, the consumer shall be in default of the extended payment plan and the licensee may immediately accelerate payment on only the remaining balance of the extended payment plan.

Proposed law provides that upon default, the licensee may take action to collect only the amount outstanding on the extended payment plan.

Proposed law provides that a licensee is prohibited from collecting any amount on an extended payment plan other than what the consumer owes pursuant to the plan on the date of default.

Proposed law provides that if a consumer enters into an extended payment plan, the consumer and licensee are prohibited from entering into a subsequent deferred presentment transaction or small loan until repayment in full of the extended payment plan.

Proposed law provides that at each licensed location or on the homepage of a licensee's website, a licensee shall prominently post a notice visible to the public and all those visiting the website stating that if a consumer is unable to repay either a deferred presentment transaction or small loan when due, the consumer can enter into one extended payment plan for either a deferred presentment transaction or small loan if he notifies the licensee before the payment is due of his inability to make payment.

Proposed law provides that a licensee shall also notify a person of his right to enter into an extended payment plan by including the following statement, in at least sixteen-point bold type, on the first page of each deferred presentment transaction or small loan agreement: "IF YOU CANNOT MAKE PAYMENT WHEN DUE, YOU CAN ASK TO ENTER INTO AN EXTENDED PAYMENT PLAN ONCE IN A TWELVE-MONTH PERIOD, BUT THE REQUEST MUST BE MADE BEFORE PAYMENT IS DUE. SHOULD YOUR LENDER (LICENSEE) REFUSE TO ENTER INTO AN EXTENDED PAYMENT PLAN UPON YOUR REQUEST BEFORE THE DUE DATE, CONTACT THE OFFICE OF FINANCIAL INSTITUTIONS AT 1-888-525-9414."

Proposed law requires a consumer to sign a statement acknowledging that he has been informed of the extended payment plan. The statement shall be in at least twelve-point bold type, on the first page of each deferred presentment transaction or small loan agreement.

Present 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 present law, in a conspicuous manner by the licensee at the lending location.

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 present 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 both a physical location in the state and a website.

Effective January 1, 2015.

(Amends R.S. 9:3557(B), 3560(A)(8), 3561(A), 3561.1(G)(1), 3578.4(A)(2) and 3578.7; adds R.S. 9:3518.4, 3561.2, and 3578.4.1); repeals R.S. 9:3560(A)(9))