

**LOUISIANA REVISED STATUTES  
TITLE 9 CIVIL CODE BOOK III-OF THE DIFFERENT MODES OF ACQUIRING  
THE OWNERSHIP OF THINGS**

**CHAPTER 2. LOUISIANA CONSUMER CREDIT LAW**

**PART I. GENERAL PROVISIONS AND DEFINITIONS**

**(Current through 2021 Regular Legislative Session)**

**§ 3510. Short title**

This chapter shall be known and may be cited as the Louisiana Consumer Credit Law.

**§ 3511. Scope**

A. Subject to the provisions of R.S. 9:3511(B), the parties to a consumer credit transaction may agree that the law of the place wherein the consumer credit transaction was entered into or the law of the residence of the buyer or debtor shall apply. For the purposes of this Chapter the residence of a buyer or debtor is the address given by him as his residence in any writing signed by him in connection with a consumer credit transaction. Until he notifies the creditor of a new or different address, the given address is presumed to be unchanged.

B. Whenever an action is brought in this state to enforce rights arising from consumer credit transactions wherever made the creditor shall, where applicable, reduce the charges so that they do not exceed those provided in Part II and/or III of this chapter.

C. Except as otherwise provided herein, the following agreements by a consumer are invalid with respect to consumer credit transactions, or modifications thereof, to which this chapter applies:

- (1) by which the consumer consents to the jurisdiction of another state; and
- (2) that fix venue.

D. All fees and charges authorized under this Chapter, whether or not such fees and charges constitute or are considered to be loan finance charges, shall be deemed to be “material to the determination of the interest rate” for purposes of exportation to borrowers residing in other states under the most favored lender doctrine of federal law.

E. All consumer credit transactions shall comply with federal Regulation Z of the Board of Governors of the Federal Reserve System. Failure to comply with Regulation Z is a violation of this Chapter.

F. The Louisiana S.A.F.E. Residential Mortgage Lending Act, R.S. 6:1081 et seq., is the primary law governing residential mortgage loans as defined in the Louisiana S.A.F.E. Residential Mortgage Lending Act. A residential mortgage lender, broker, and a natural person who is a residential mortgage loan originator shall comply with the licensing provisions of the Louisiana S.A.F.E. Residential Mortgage Lending Act, R.S. 6:1081, et seq., unless otherwise exempt by the Act. Notwithstanding any other law to the contrary, parties to a consumer loan, as defined in this Part, which is secured by a mortgage, deed of trust, or other equivalent consensual security

interest on a dwelling as defined in 15 U.S.C 1602(v), or on residential immovable property upon which is constructed or intended to be constructed a dwelling, whether or not such a loan includes any additional security interest in movable property, may agree by contract that such a loan shall be governed by the Louisiana Consumer Credit Law, provided the lenders, brokers, and originators are properly licensed under this Part and the Louisiana S.A.F.E. Residential Mortgage Lending Act or otherwise exempt under R.S. 6:1081 et seq.

### **§ 3512. Exclusions**

This law does not apply to:

- (1) Extensions of credit to organizations, including government or governmental agencies or instrumentalities.
- (2) The sale of insurance by an insurer, except as otherwise provided in the part on insurance; however, this law shall apply to the sale of insurance by an insurance agent in which such agent charges a credit service charge and the insured is permitted to defer all or part of the amount due such agent in two or more installments excluding the down payment, and which otherwise constitutes a “consumer credit sale”.
- (3) Transactions under public utility or common carrier tariffs if a subdivision or agency of this state or of the United States regulates, approves, or consents to the charges for the services involved, the charges for delayed payment, and any discount allowed for early payment.
- (4) Motor vehicle credit transactions, including refinancings, subject to the Motor Vehicle Sales Finance Act, R.S. 6:969.1 et seq.
- (5) Federally chartered and state chartered credit unions and transactions between credit unions and the members thereof.
- (6) Pawn brokerage services.
- (7) Credit transactions involving extensions of credit for business, commercial, or agricultural purposes.
- (8) Federally related mortgage loans. This exclusion does not apply to loans secured by residential property made specifically subject to the Louisiana Consumer Credit Law by contract.

### **§ 3513. Waiver, agreement to forego rights**

A consumer may not waive or agree to forego rights or benefits under this chapter except that a claim, if disputed in good faith, may be settled by compromise or agreement.

### **§ 3514. Agreement to contract; disclosures of the contract**

A. The parties to a transaction other than a consumer credit transaction may contract with one another that such transactions shall be subject to the provisions of this Chapter, in which event the transaction shall be a consumer credit transaction within the provisions of this Chapter. Notwithstanding the foregoing, the parties to a consumer credit transaction otherwise subject to the Motor Vehicle Sales Finance Act, R.S. 6:969.1 et seq. may not contract to become subject to the provisions of this Chapter. Unless a creditor is exempt from the licensing requirements of this

Chapter under R.S. 9:3560, a creditor may not contract more than four transactions under the provisions of this Chapter over any calendar year without first complying with the licensing requirements under Part IX of this Chapter.

B. Written credit contracts and agreements shall accurately reflect the actual terms, conditions, applicable amount of fees, and repayment schedule agreed to by the parties. If a loan is to be repaid on demand, in a lump sum, or at undefined intervals of time, interest on the loan shall be computed by the actuarial or simple interest method when allocating payments made on the loan.

### **§ 3515. Conduct of certain business other than making consumer loans prohibited**

A. (1)(a) A licensed lender shall not engage in the business of making sales of goods at any location where consumer loans are made. The sale and financing of a home protection plan, thrift and buying club memberships, auto club memberships, insurance authorized by the Louisiana Insurance Code, similar consumer benefit club memberships, or financial and tax services, including the use of stored value cards or electronic cash for loan disbursement, shall not be deemed a violation of this Chapter. The word “location” as used in this Section means the entire space in which consumer loans are made and said location must be separated from any location in which merchandise is sold or displayed by walls that may be broken only by a passageway to which the public is not admitted.

(b) In addition, the cost of any home protection plan, club membership, insurance, or service offered pursuant to this Section may, at the option of the consumer, be payable from the proceeds of consumer loans and included on the amount financed, provided that:

(i) The sale of a home protection plan, club membership or service is not a factor in the approval and this fact is clearly disclosed in writing to the consumer.

(ii) In order to obtain a home protection plan, club membership, insurance, or service, the consumer gives a specific affirmative written indication of his desire to purchase it after receiving written disclosure of the cost.

(2) Nothing contained herein shall be construed to prohibit a licensed lender from conducting the business of making consumer loans under this Chapter on the same premises where a person, not an affiliate of said licensed lender, is engaged in the business of making sales of goods, provided that such licensed lender is not an affiliate.

B. A sale of goods or services made with the use of a seller credit card or lender credit card or other credit arrangement at a location other than that of the licensee does not violate this section. Formal application for a loan must be made at the location of the licensed lender; however, when a loan application is taken by persons not employed by the licensed lender, such application shall not be deemed a violation of this section.

C. An occasional sale of property used in the ordinary course of the business of the licensee does not violate this section.

D. A sale of property seized or legally recovered by the licensed lender does not violate this Section.

E. No licensed lender shall conduct the business of making consumer loans under this Chapter under any name and from or at any place of business within this state, other than that stated in the license. The closing of a consumer loan on immovable property in the office of a notary public shall not violate this Section. Loans made by mail where credit approval is given at the location of the lender and loans made with the use of a lender credit card shall not violate this Section. Loans governed by R.S. 9:3550 that are closed at an insurance agent/broker's location shall not violate this Section provided the loan shall be accepted by a licensed lender.

F. The commissioner may issue a permit to persons licensed and regulated by the Office of Financial Institutions under the provisions of R.S. 37:1781 through 1808 to conduct the sale of goods and services at a location where consumer loans are made pursuant to the provisions of this Chapter. The commissioner shall have the authority to deny the permit or suspend and/or terminate the permit for violations of this Chapter. The commissioner may adopt rules to implement the provisions of this Subsection. Such rules shall require the commissioner to grant or deny the permit within thirty days from the date the application for a permit is filed with the Office of Financial Institutions.

### **§ 3516. Definitions**

(1) "Affiliate", as used in this Chapter, means a specific person who is directly or indirectly, through one or more intermediaries, controlled by, or controls, or is under common control with the person specified.

(2) "Agricultural purpose" means a purpose related to the production, harvest, exhibition, marketing, transportation, processing, or manufacture of agricultural products by a natural person who cultivates, plants, propagates or nurtures the agricultural products. "Agricultural products" includes products such as horticultural, and dairy products, livestock, wildlife, poultry, bees, forest products, fish and shell fish, and any products thereof, including processed and manufactured products, and any and all products raised or produced on farms and any processed or manufactured products thereof.

(3) "Amount deferred" means the cash price, subtracting any down payment, under a consumer credit sale, revolving charge or seller credit card account, plus any other charges, fees and closing costs authorized by law, that are financed by the creditor under the transaction or included in or added to the balance of the consumer's indebtedness subject to credit service charges.

(4) "Amount financed" means the amount borrowed under a consumer loan, revolving loan or lender credit card account, plus any other charges, fees, and closing costs authorized by law, that are financed by the creditor under the transaction, or included in or added to the balance of the consumer's indebtedness subject to loan finance charges. Amount financed also includes premiums payable for insurance procured in lieu of perfecting a security interest otherwise required by the creditor in connection with the sale, lease, or loan if the premiums do not exceed the fees and charges which would otherwise be payable, and premiums payable for any insurance authorized by the Louisiana Insurance Code purchased by the consumer, at rates set forth herein or, when no rate is specified herein, at lawful rates in accordance with the provisions of the Louisiana Insurance Code.

(5) "Billing period" or "billing cycle" means the time interval between regular periodic billing statement dates. Such intervals may be considered equal intervals of time unless a billing date varies more than four days from the regular date.

(5.1) “Cash advance” means an advance of cash or a cash equivalent under a lender credit card account including but not limited to the purchase of a money order, wire transfer services, or the use of a convenience check to purchase goods or services.

(6) “Cash price” of goods and services means the price for which the seller would have sold to the consumer and the consumer would have bought from the seller, the thing that is the subject matter of the consumer credit transaction, if such sale had been a sale for cash instead of a consumer credit transaction. The cash price may include any taxes and charges for delivery, installation, servicing, processing, repairs, alterations or improvements.

(7) “Check” means any check, draft, item, orders or requests for payment of money, negotiable orders, withdrawal or any other instrument used to pay a debt or transfer money from one to another.

(8) “Closing costs” with respect to a debt secured by a mortgage, lien, or privilege on immovable property includes:

(a) fees or premiums for title examination, title curative expenses, title insurance, or similar purposes including surveys, and essential public certificates,

(b) fees for preparation of an act, settlement statement, or other documents,

(c) escrows for future payments of taxes and insurance,

(d) notarial fees,

(e) recording fees,

(f) appraisal fees, and

(g) credit reports.

(9) “Commissioner” means the commissioner of financial institutions.

(10) “Consumer” means a natural person who purchases goods, services, or movable or immovable property or rights therein, for a personal, family, or household purpose and includes a purchaser or buyer in a consumer credit sale or transaction made with the use of a seller credit card or otherwise, or a borrower or debtor in a consumer loan, revolving loan account, or a lender credit card.

(11) “Consumer credit insurance” means insurance, other than insurance on property, by which the satisfaction of debt in whole or in part is a benefit provided, but does not include

(a) insurance issued as an isolated transaction on the part of the insurer not related to an agreement or plan for insuring debtors of the creditor; or

(b) insurance indemnifying the creditor against loss due to the debtor’s default.

(12) A “consumer credit sale” is the sale of a thing, other than the sale of religious periodicals, books, and other religious materials by bona fide religious associations, or immovable property, in

which a credit service charge is charged and the purchaser is permitted to defer all or part of the purchase price or other consideration in two or more installments excluding the down payment when the thing is purchased primarily for personal, family, or household purposes, and the purchaser is a person other than an organization. “Consumer credit sale” shall not include a lease of movable property under which the lessee agrees to pay as compensation for use a sum substantially equivalent to, or in excess of, the initial value of the leased property and under which the lessee will become, or has the option to become, for no additional consideration or for nominal consideration, the owner of the leased property upon compliance with the agreement.

(13) “Consumer credit transaction” means a consumer loan or a consumer credit sale but does not include a retail installment contract made pursuant to R.S. 6:951 et seq.

(14) “Consumer loan” means a loan of money or its equivalent made by a supervised financial organization, a licensed lender, or lender in which the debtor is a consumer, and the loan is entered into primarily for personal, family, or household purposes and includes debts created by the use of a lender credit card, revolving loan account, or similar arrangement, as well as insurance premium financing.

(15) “Credit card” means any card, plate, coupon book, or other single credit device that may be used from time to time to obtain credit.

(16)(a) “Credit service charge” means the sum of the following:

(i) All charges payable directly or indirectly by the consumer and imposed directly or indirectly by the seller as an incident to the extension of credit, including any of the following types of charges that are applicable: time price differential; service; carrying or other charge, however denominated; premium or other charge for any guarantee or insurance protecting the seller against the consumer’s default or other credit loss; and

(ii) Charges paid by the consumer for investigating the collateral or credit worthiness of the consumer or for commissions or brokerage for obtaining the credit, irrespective of the person to whom the charges are paid or payable, unless the seller had no notice of the charges when the credit was granted.

(b) The term does not include default charges, delinquency charges, deferral charges, N.S.F. check charges as set forth in R.S. 9:3529, origination fees as set forth in R.S. 9:3530, or any of the items enumerated in R.S. 9:3516(3)(c).

(17) “Down payment” means an amount, including the value of any property used as a trade-in, paid to a seller to reduce the cash price of goods or services purchased under a consumer credit sale.

(18) The term “extender of credit” or “creditor” as used in this Chapter includes a seller in a consumer credit sale, revolving charge account, or transaction made with the use of a seller credit card or otherwise, or a lender in a consumer loan, a revolving loan account, or a lender credit card transaction. “Creditor” also includes a subsequent assignee or transferee of the consumer’s obligation, but does not include a bona fide pledgee.

(19) “Federally related mortgage loan” as used in this Chapter shall have the same meaning as defined in the Residential Mortgage Lending Act, specifically R.S. 6:1083(3.1).

(19.1) “Home protection plan” means a contract between the homeowner and a warranty or service company wherein the company is obligated to pay or reimburse the cost to repair or replace the covered built-in appliances or major mechanical systems of the consumer’s home in the event of breakdown.

(20) A “home solicitation sale” is a consumer credit sale of goods or services or both, other than motor vehicles, farm equipment, or services, in which the seller or a person acting for him engages in a personal solicitation of the sale at any place other than the business establishment of the seller and consumer’s agreement or offer to purchase is there given to the seller or a person acting for him. This definition shall also include all telephone sales in which the seller has initiated contact regardless of his location, and the consumer’s agreement to purchase is made at the consumer’s home. It does not include a sale made pursuant to a preexisting revolving charge account, a catalogue credit sale, a preexisting consumer credit sale agreement providing for a series of sales, or a sale made pursuant to prior negotiations between the parties at a business establishment at a fixed location where goods or services are offered or exhibited for sale, or a sale that may have been initiated by the consumer by communication with the seller at his business establishment.

(21) “Lender credit card” means a revolving loan account that may be accessed by use of a credit card. For limited purposes of R.S. 9:3516(23)(b), 3517(B), 3524(D), 3527, 3529, and 3530, a “lender credit card” includes a travel and entertainment credit card account that is not subject to loan finance charges or credit service charges.

(22) “Licensed lender” means a person licensed by the commissioner to make consumer loans pursuant to this Chapter.

(23)(a) “Loan finance charge” means the sum of the following:

(i) All charges payable directly or indirectly by the consumer and imposed directly or indirectly by the lender as a requirement of the extension of credit, including any of the following types of charges that are applicable: interest or any amount payable under a point, discount, or other system of charges, however denominated; and

(ii) Charges paid by the consumer for investigating the collateral or credit worthiness of the consumer.

(b) The term does not include default charges, deferral charges, delinquency charges, N.S.F. check charges as set forth in R.S. 9:3529, reasonable membership charges in connection with an open-end credit plan, origination and other fees as set forth in R.S. 9:3530, any of the items enumerated in Subparagraph (8)(b) of this Section, or other fees and charges that are not considered to be a finance charge under the Federal Truth in Lending Act and Regulation Z of the Board of Governors of the Federal Reserve System.

(24) “Organization” means corporation, government or governmental subdivision or agency, trust, estate, partnership, cooperative, or association.

(24.1) “Person” as used in this Chapter means an individual or corporation, partnership, trust, association, joint venture pool, syndicate, sole proprietorship, unincorporated organization, or any other form of entity not specifically listed herein.

(25) “Precomputed consumer credit transaction” means a consumer credit transaction under which loan finance charges or credit service charges are computed in advance over the entire scheduled term of the transaction and capitalized into the face amount of the debtor’s promissory note or other evidence of indebtedness.

(26) “Prepaid finance charge” in connection with a simple interest transaction means any loan finance charge or credit service charge paid separately in cash or by check before or at consummation of the transaction, or withheld from the proceeds of the transaction at any time. Prepaid finance charges may be funded under the loan at the borrower’s request by increasing the original amount financed or amount deferred under the borrower’s note, with such increased amount, including prepaid finance charges, being subject to simple interest over the loan term. [effective 1/1/2009]

(27) “Principal” means the amount financed or amount deferred under a consumer credit transaction.

(28) “Pro rata” as used in this chapter refers to a method of computing deferral charges by dividing the precomputed loan finance charge or precomputed credit service charge by the total number of days in the contract and multiplying the sum by the number of days that are deferred.

(29) “Revolving charge account” means an arrangement between a seller or issuer of a seller credit card honored by the seller and a consumer pursuant to which:

(a) The creditor permits the consumer to purchase goods or services on a preauthorized basis;

(b) The creditor reasonably contemplates repeated transactions;

(c) The creditor may impose a credit service charge from time to time on the outstanding unpaid balance of the consumer’s account;

(d) The amount of credit that may be extended to the consumer, up to any limit set by the creditor, is generally made available to the extent that any outstanding balance is repaid; and

(e) No credit service charges may be imposed upon the consumer for a billing period if the account is paid in full within a period of twenty-five days from the billing date.

(30)(a) “Revolving loan account” means an arrangement between a lender and a consumer pursuant to which:

(i) The creditor may permit the consumer to obtain consumer loan advances on a preauthorized basis;

(ii) The creditor reasonably contemplates repeated transactions;

(iii) The creditor may impose a loan finance charge from time to time on the outstanding unpaid balance of the consumer’s account; and

(iv) The amount of credit that may be extended to the consumer under the account, up to any limit set by the creditor, is generally made available to the extent that any unpaid balance is repaid.

(b) The amount borrowed under a revolving loan account may include, if required by the creditor, an amount not greater than ninety-nine dollars and ninety-nine cents exceeding the draft or similar order if said amount is immediately credited to the consumer's deposit account with the creditor or with the creditor's agent.

(31) "Seller credit card" means a revolving charge account that may be accessed by use of a credit card.

(32) "Simple interest transaction" means a consumer credit transaction under which loan finance charges or credit service charges are assessed by application of a contractual simple interest rate or rates to the unpaid balance of the debtor's promissory note, account or other evidence of indebtedness.

(33) "Supervised financial organization" means either of the following:

(a) A banking or similar organization organized, certified, and supervised by an agency of either the United States of America or the state of Louisiana or any other state pursuant to the banking, currency, and related laws of the United States of America or of the state of Louisiana or any other state.

(b) An organization which is an approved lender under the rules and regulations of the Federal Housing Administration, the Veterans Administration, or the Federal Home Loan Mortgage Corporation.

(34) Repealed by Acts 1995, No. 1184, § 4.

(35) "Thing" as used in the chapter is as defined by law and includes movable and immovable property and rights therein, goods, or services.

(36) "Unconscionable" A contract or clause is unconscionable when at the time the contract is entered into it is so onerous, oppressive or one-sided that a reasonable man would not have freely given his consent to the contract or clause thereof in question; provided, however, for the purposes of this chapter, an agreement, clause, charge or practice expressly permitted by this chapter or any other law or regulation of this state or of the United States or subdivision of either, or an arrangement, clause, charge or practice necessarily implied as being permitted by this chapter or any other law or regulation of this state or the United States or any subdivision of either is not unconscionable.

(37) "Unpaid debt" as used in this Chapter means the total of the amount financed, loan finance charges, default charges, and delinquency charges including the amount due at the time of default plus all interest which may accrue from the time of default until the entire balance is paid.

### **§ 3517. Terms; construction; additional fees and charges**

A. Wherever applicable in this Chapter, use of the masculine includes the feminine and use of the plural includes the singular and vice versa.

B. As a general rule of construction, persons may look to comparable rules, definitions, and principles under the Federal Real Estate Settlement Procedures Act and Regulation X of the Office of the Secretary of the Department of Housing and Urban Development, the Federal Truth

in Lending Act, and Regulation Z of the Board of Governors of the Federal Reserve System for guidance in further defining and interpreting terms and concepts that are not otherwise defined or specified under the provisions of this Chapter. For example, those fees and charges that are not classified as or considered to be finance charges for Federal Truth in Lending purposes are not considered to be loan finance charges for purposes of this Chapter. In addition, nothing contained in the provisions of this Chapter shall be construed to prohibit the imposition of fees and charges which are otherwise permissible under R.S. 6:548.

C. The commissioner shall prescribe, by rule not inconsistent with the provisions of this Chapter, additional fees and charges which may be imposed and collected by an extender of credit if such fees and charges have been contractually provided for in the consumer's promissory note, or credit contract or agreement.

### **§ 3518. Construction against implicit repeal**

This chapter being a general act intended as a unified coverage of its subject matter, no part of it shall be deemed impliedly repealed by subsequent legislation if such construction can reasonably be avoided.

#### **§ 3518.1. Records of the office of financial institutions**

A. Except as otherwise provided, all records of the office of financial institutions shall be kept strictly confidential within the office, and such records and reports shall not be subject to subpoena or other legal process.

B. The commissioner, in his sole discretion, when requested in writing, may disclose or cause the employees of the office of financial institutions to disclose records of the office of financial institutions concerning any person governed by this Chapter of the Louisiana Revised Statutes of 1950, when such records are requested by another state or federal agency having authority to investigate or license such person governed by this Chapter, or are requested by a bankruptcy trustee or any law enforcement agency in connection with an investigation to recover assets of a current or former licensee.

C. Confidential records of either the office of financial institutions or of one of its supervised entities licensed under this Chapter, produced by discovery or introduced into evidence as part of a public hearing conducted under the Louisiana Administrative Procedure Act shall remain confidential and not be deemed public.

D. Notwithstanding any provision of law to the contrary, except for documents or information of other federal or state regulatory or law enforcement agencies in the possession of the office of financial institutions, any federal or state district court within Louisiana may order the office of financial institutions to disclose information and produce documents belonging to the office of financial institutions which are relevant to claims or issues at dispute in a lawsuit subject to the following conditions:

(1) The requesting party shall file the appropriate motion in the proper federal or state court setting forth the documents or information requested with sufficient specificity and the basis for such request.

(2) The requesting party shall provide the office of financial institutions with a copy of any such filing prior to any scheduled proceeding designed to resolve the motion to allow the office a reasonable period of time within which to respond to such filing in an adequate manner, but in no event fewer than ten days prior to such scheduled hearing date.

(3) When no other source for such information requested is available, and upon a showing by the requesting party of good cause and substantial need, the court may require the disclosure of all or a part of the information requested subject to a protective order. The contents and terms of such protective order shall be determined solely by the office of financial institutions with the approval of the court.

E. Notwithstanding any other provision of law to the contrary, including but not limited to R.S. 49:956(8)(c), there shall be no liability on the part of, and no cause of action shall rise against, the Office of Financial Institutions or its agents or employees for any good faith release or disclosure of information or for statements made in good faith in any administrative hearings or in any reports or communications concerning regulatory issues and the supervision and regulation of all entities under the jurisdiction of the Office of Financial Institutions.

### **§ 3518.2 Credit cards; unsolicited delivery or mailing prohibited; penalty**

A. As used in this Section, “credit card” means any credit card as defined in R.S. 9:3516(15) and any other document or device intended or adopted for the purpose of establishing the identity and credit of any person in connection with the purpose of renting on credit goods or services, or obtaining loans.

B.(1) Except as provided in Subsection C of this Section, it shall be unlawful for any financial institution, retail merchant, or other person to mail or otherwise deliver any credit card in this state.

(2) Whoever violates this Subsection may, upon conviction, be sentenced to pay a fine of not more than one thousand dollars per occurrence.

C. This Section shall not apply to any credit card when mailed or otherwise delivered either:

(1) In response to a request or application for a credit card.

(2) As a replacement for a credit card previously issued to the person to whom the credit card is shipped or mailed.

D. If any credit card is issued to a person who has not requested or accepted by use the issuance of such credit card, the issuer shall be liable to the person whose name appears on the credit card for any damages and expenses or either, including attorney’s fees, which the person incurs due to the use of such credit card without permission of the person to whom it is issued.

### **§ 3518.3. Credit cards; printing of accounting numbers on sales receipts; liability**

A. As used in this Section, the following terms shall have the following meanings:

(1) "Cardholder" means the person named on the face of a credit card to whom or for whose benefit the credit card is issued by an issuer and shall include any employee or other agent or authorized user of the card.

(2) "Credit card" means any instrument or device, whether known as a credit card, credit plate, bank service card, bank card, check guarantee card, debit card, or by any other name, including an account number, issued with or without fee by an issuer for the use of a cardholder in obtaining money, goods, services, or anything else of value or for use in an automated banking device to obtain any of the services offered through the device.

(3) "Issuer" means the financial institution or other business organization which issues a credit card or its duly authorized agent.

(4) "Person" means an individual or corporation, partnership, trust association, joint venture pool, syndicate, sole proprietorship, unincorporated organization, or any other legal entity.

(5) "Provider" means a person who furnishes money, goods, services, or anything else of value upon presentation, whether physically, in writing, verbally, electronically, or otherwise of a credit card by the cardholder, or any agent or employee of such person.

B. Except as otherwise provided in this Section, no provider shall print or otherwise produce or reproduce, or permit the printing or other production or reproduction of either of the following:

(1) Any part of the credit card account number, other than the last five digits or other characters on any receipt provided or made available to the cardholder.

(2) The credit card expiration date on any receipt provided or made available to the cardholder.

C.(1) This Section shall not apply to a credit card transaction in which the sole means available to the provider of recording the credit card account number is by handwriting or by imprint of the card.

(2) This Section shall not apply to receipts issued for transactions on the electronic benefits transfer card system in accordance with 7CFR 274.12(g)(3).

D. Any provider who violates the provisions of this Section shall be liable to the cardholder and the issuer for any damages or expenses, or both, including attorney fees, which the cardholder or issuer incurs due to the use of the cardholder's credit card without the permission of the cardholder.

E.(1) The provisions of this Section shall become operative on January 1, 2004, with respect to any cash register or other machine or device that electronically prints receipts for credit card transactions that is in use prior to January 1, 2002.

(2) The provisions of this Section shall become operative on January 1, 2002, with respect to any cash register or other machine or device that electronically prints receipts for credit card transactions that is first put into use on or after January 1, 2002.

#### **§ 3518.4. Contract validity; consumer credit transactions; deferred presentment transactions**

A. (1) A consumer credit transaction as defined by R.S. 9:3516(13) or deferred presentment transaction as defined by R. S. 9:3578.3(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, if required by this Chapter or R.S. 9:3578.1 et seq., at the time the transaction is made.

(2) The creditor shall forfeit all loans or transactions proceeds, fees, charges, and other amounts paid in association with the transaction or loan.

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

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

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

## PART II. MAXIMUM CHARGES

### § 3519. Consumer loans

A. The maximum loan finance charge for any consumer loan other than one made with a lender credit card that may be charged, contracted for or received by a licensed lender or supervised financial organization may equal but not exceed:

(a) Thirty-six percent per year for that portion of the unpaid principal amount of the loan not exceeding one thousand four hundred dollars;

(b) Twenty-seven percent per year for that portion of the unpaid principal amount of the loan exceeding one thousand four hundred dollars and not exceeding four thousand dollars;

(c) Twenty-four percent per year for that portion of the unpaid principal amount on the loan exceeding four thousand dollars and not exceeding seven thousand dollars; and

(d) Twenty-one percent per year for that portion of the unpaid principal amount of the loan exceeding seven thousand dollars.

B. This Section does not limit or restrict the manner of contracting for loan finance charges under a consumer loan, whether by way of precomputed interest, simple interest, or otherwise, so long as the annualized loan finance charge rate computed on an actuarial or U.S. Rule basis over the entire scheduled term of the transaction, assuming that all payments will be made when due and disregarding the possible effects of early prepayment or acceleration of maturity, does not exceed the maximum rates permitted in this Chapter. Demand loans shall have presumed term of five years.

C. For the purposes of this section, the term of a loan commences with the date the loan is made. Differences in the lengths of months are disregarded and a day may be counted as one-thirtieth of a month. Subject to classifications and differentiations the lender may reasonably establish, a part of a month in excess of fifteen days may be treated as a full month if periods of fifteen days or less are disregarded and if that procedure is not consistently used to obtain a greater yield than would otherwise be permitted.

D. With respect to a consumer loan made pursuant to a revolving loan account

(1) the loan finance charge shall be deemed not to exceed the maximum annual rates if the loan finance charge contracted for and received does not exceed a charge in each monthly billing cycle which is one-twelfth of the maximum annual rates computed on an amount no greater than

(a) the average daily balance of the debt;

(b) the unpaid balance of the debt on the 1st day of the billing cycle, or,

(c) the median amount within a specified range within which the average daily balance or the unpaid balance of the debt, on the first day of the billing cycle, is included; for the purposes of this subparagraph and subparagraph (b), a variation of not more than four days from month to month is “the first day of the billing cycle”;

(2) if the billing cycle is not monthly, the loan finance charge shall be deemed not to exceed the maximum annual rates if the loan finance charge contracted for and received does not exceed a percentage which bears the same relation to the maximum annual rates as the number of days in the billing cycle bears to 360.

E. Notwithstanding any provision of Subsection A the extender of credit may contract for and receive a minimum loan finance charge of not more than fifteen dollars when the amount advanced does not exceed two hundred dollars or twenty-five dollars when the amount advanced exceeds two hundred dollars; such charge shall be in lieu of all other finance charges.

### **§ 3520. Consumer credit sale**

A. Except as otherwise provided by R.S. 9:3521, the maximum credit service charge for any consumer credit sale other than one made pursuant to a revolving charge account, may not exceed the equivalent of the greater of any of the following:

(1) the total of

(a) twenty-four percent per year on that part of the unpaid balances of the amount deferred which is not in excess of \$1,750.00; and

(b) eighteen percent per year on that part of the unpaid balances of the amount deferred which is more than \$1,750.00 and not exceeding \$5,000.00;

(c) twelve percent per year on that part of the unpaid balance of the amount deferred which is more than \$5,000.00; or

(2) eighteen percent per year on the unpaid balances of the amount deferred; or

(3) any other method of computation which would not yield a greater credit service charge than (1) or (2) of this section.

B. Notwithstanding Subsection A, the seller may contract for and receive a minimum credit service charge of not more than five dollars when the amount deferred does not exceed seventy-five dollars, or seven dollars and fifty cents when the amount deferred exceeds seventy-five dollars.

C. This Section does not limit or restrict the manner of contracting for credit service charges under a consumer credit sale, whether by way of precomputed interest, simple interest, or otherwise, so long as the annualized credit service charge rate computed on an actuarial or U.S. Rule basis over the entire scheduled term of the transaction, assuming that all payments will be made when due and disregarding the possible effects of early prepayment or acceleration of maturity, does not exceed the maximum rates permitted in this Chapter.

D. It shall be unlawful for a seller to charge a consumer a fee for sending an initial billing statement; however, the seller may charge a fee for any additional billing statement sent at the request of the consumer.

### **§ 3521. Maximum charges after negotiations**

A. The obligation arising out of any consumer credit sale, including a revolving charge account, may be evidenced by a written agreement which may provide for a credit service charge not in excess of the maximum loan finance charge which could be charged, contracted for, or received by a supervised financial organization, lender who files notification pursuant to R.S. 9:3564, or licensed lender in a consumer loan transaction where the principal is the same as the amount financed and the term is a corresponding term.

B. Such written agreement must be transferred or assigned to a supervised financial organization, lender who files notification pursuant to R.S. 9:3564, or a licensed lender within thirty-five days from the date of making. If such written agreement is not so transferred or assigned within the said time limit the seller or holder shall:

(1) Notify the maker that the written agreement was not transferred or assigned.

(2) Credit the obligation with any amounts contracted for in excess of the credit service charge authorized by R.S. 9:3520 and 9:3521. Such computation shall be made as of the date of making and the debtor shall be notified of such credit.

(3) Provide the debtor, prior to the first installment due date, with a new payment schedule reflecting the change in terms.

(4) Notify the debtor of the address where payments are to be made if such address is different from the address previously given to the debtor.

### **§ 3522. Maximum charges after maturity**

In the case of a precomputed consumer credit transaction which is unpaid at contractual maturity, the rate of the loan finance charge or the credit service charge for the period beginning as of contractual maturity until payment in full may not exceed the rate of the loan finance charge or the credit service charge previously agreed to by the extender of credit and the debtor at the time the consumer credit transaction was entered into. Provided however, beginning one year after contractual maturity, the rate shall not exceed 18% per annum.

### **§ 3523. Credit service charge for revolving charge accounts**

On a revolving charge account, the extender of credit, issuer of a seller credit card honored by the extender of credit, or their assignee, may charge and collect a credit service charge in each billing period at a rate

(1) not in excess of one and one-half percent per month computed on (a) the average daily balance of the account or (b) the balance of the account on the first day of each billing period without regard to transactions affecting the account during the billing period; provided, however, that a minimum credit service charge not in excess of fifty cents per month may be charged and collected; and provided further that no credit service charge shall be charged unless the bill is mailed no later than ten days (Saturdays, Sundays and legal holidays excluded) after the billing date stated on the bill; or

(2) any other method of computation which would not yield a greater credit service charge than subsection (1) of this section.

## **§ 3524. Loan finance charge on lender credit card accounts**

A. (1) On a revolving loan account made with a lender credit card, an extender of credit or an assignee or a transferee thereof may receive or contract to receive and collect a loan finance charge in an amount not in excess of one and one-half percent per month computed in accordance with the following:

(a) For the period ending December 31, 1974, on either:

- (i) The average daily unpaid balance of the principal of the debt during the billing period; or
- (ii) The balance of the account on the first day of each billing period without regard to transactions affecting the account during the billing period.

(b) Commencing January 1, 1975 and thereafter:

- (i) On the average daily unpaid balance of the principal of the debt during the billing period; or
- (ii) Any method of loan finance charge computation which may produce yield not in excess of the average daily balance method of loan finance charge calculation as provided for in (1)(b)(i) above.

(2) For purposes of the foregoing computation, a month shall be deemed as any time of thirty consecutive days, or alternatively, any calendar month.

(3) An extender of credit may impose such a loan finance charge from the date that goods, property, or services are purchased or cash advances are obtained under a lender credit card plan; however, an extender of credit may not impose or collect a loan finance charge on goods, property, or services purchased under a lender credit card plan for the first twenty-five days of any billing cycle when the borrowing consumer pays the entire billed balance of his account within said initial twenty-five day period.

B. Repealed by Acts 1988, No. 629, Sec. 2.

C. If the billing period is more frequent than monthly, the maximum loan finance charge for such billing period shall be the percentage which bears the same relation to the monthly percentage provided for in Subsection A of this section as the number of days in the billing period bears to thirty.

D. In addition to the loan finance charge provided for in Subsection A of this section, extenders of credit under a lender credit card plan may lawfully receive, contract for and collect a fee for the privilege of receiving cash advances under such a lender credit card plan. The fee shall not exceed four percent of the amount of the cash advance.

E. Where an account has the attributes of both a revolving loan account and a lender credit card account, the creditor may elect to treat such an account as either a revolving loan account subject to R.S. 9:3519(D), or as a lender credit card account subject to this Section. Examples of such accounts include, without limitation:

- (1) Overdraft lines of credit that may be accessed by use of an automated teller machine.

(2) An independent line of credit issued by a supervised financial organization in conjunction with a travel and entertainment credit card account offered by a third party creditor.

### **§ 3525. Leap years**

The effects of a leap year may be disregarded for purposes of determining whether the annualized loan finance charge rate or credit service rate under a consumer credit transaction exceeds the maximum rate limitations provided in this Part.

### **§ 3526. Variable rates**

A. Licensed lenders and supervised financial organizations may enter into variable rate consumer credit transactions under this Chapter in the manner provided under R.S. 6:242(A)(2) and regulations issued by the commissioner.

B. Licensed lenders and supervised financial organizations may also enter into graduated payment mortgage loans and adjustable rate mortgage loans under this Chapter in the manner provided under R.S. 9:3504(C) and 3504(D), respectively.

### **§ 3527. Maximum delinquency charges; notice of conversion**

A. The parties to a consumer credit transaction may contract for the payment of a delinquency charge on any installment or other regular payment not paid in full within ten days after its scheduled or deferred due date either one of the following amounts:

(1) Five percent of the unpaid amount of the delinquent installment or ten dollars, whichever is greater.

(2) The deferral charge that would be permitted to defer the unpaid amount of the installment or other regular payment for the period that it is delinquent.

B. The parties to a revolving loan account or lender credit card account may contract for the payment of a delinquency charge not to exceed fifteen dollars on any regularly scheduled payment not paid in full within ten days of the payment due date.

C. (1) A delinquency charge may be collected only once on an installment or other payment however long it remains delinquent. No such delinquency charge may be collected if the installment or other payment has been deferred and a deferral charge has been paid or incurred, provided that the deferred payment is paid within ten days of its deferred date. Such a delinquency charge may be collected at the time it accrues or at any time thereafter.

(2) No such delinquency charge may be collected on an installment or other regular payment that is paid in full within ten days after its scheduled due date even though an earlier maturing installment, other payment, or delinquency charge on an earlier installment or other payment may not have been paid in full. For purposes of determining delinquency, payments are deemed to be applied first to current installments or other payments due and then to delinquent installments or other payments and then to delinquent and other charges.

(3) An extender of credit is prohibited from levying or collecting any delinquency charge on a payment when the only delinquency is attributable to late fees or delinquency charges assessed on

earlier installments, and the payment is otherwise a full payment for the applicable period and is paid on its due date or within an applicable grace period.

(4) Nothing in this Subsection shall be construed to prohibit the extender of credit from assessing and collecting a finance charge on any delinquency or deferral charges not paid when due. Such finance charges shall not exceed the contract rate charged on the consumer transaction.

D. If two installments or other regular payments or parts thereof of a precomputed consumer credit transaction are in default for ten days or more, the extender of credit may, upon first giving the consumer written notice, elect to convert the precomputed consumer credit transaction into a simple interest transaction. The notice must state the exact date on which the conversion will occur, the interest rate to be charged under the simple interest transaction, the balance due on the loan at the time of the conversion, and whether or not there will be a balloon payment. In this event he shall make a rebate pursuant to the provisions on rebate upon prepayment as of the maturity date of a delinquent installment or other regular payment, and thereafter may make a loan finance charge or credit service charge as authorized by this Part. The amount of the rebate shall not be reduced by the amount of any minimum loan finance charge or minimum credit service charge as provided in R.S. 9:3519(E) and 3520(B); however, the extender of credit may deduct a prepayment charge as provided in R.S. 9:3532.

E. A creditor may contractually reserve the right to prospectively increase the simple interest rate under a consumer loan transaction upon or at any time following the borrower's default. However, such a default interest rate shall not exceed the loan finance charge rate or rates authorized under R.S. 9:3519(A).

### **§ 3528. Maximum deferral charges**

A. (1) With respect to a precomputed consumer credit transaction payable in more than one installment, the parties before or after default may agree in writing to a deferral of all or part of one or more unpaid installments, and the extender of credit may make and collect a charge not exceeding the rate previously stated to the consumer calculated without regard to differences in the lengths of months, but proportionately for a part of a month, counting each day as one-thirtieth of a month. A deferral charge may be collected at the time it is assessed or at any time thereafter.

Deferral charges on a precomputed consumer credit transaction may be computed on a pro rata basis or any other method of calculation that does not yield a greater sum than the maximum rates permitted in this Chapter.

(2) In lieu of a deferral charge, the entire unpaid balance of the transaction may be deferred by charging an amount equal to the rate previously stated to the consumer times the balance at the time of deferral for the period of deferral. In such a case, the transaction maturity date will be extended by the number of months that the balance is deferred.

B. The parties may agree in writing at the time of a precomputed consumer credit transaction that if an installment is not paid within ten days after its due date, the extender of credit may unilaterally grant a deferral and make charges as provided in this Section, provided the transaction consists of more than one installment. No deferral charge may be made for a period after the date that the extender of credit elects to accelerate the maturity of the agreement. A delinquency charge made by the extender of credit on an installment may not be retained if a deferral charge is made pursuant to this Section with respect to the period of delinquency.

C. In addition to the lawful rate of loan finance charges that may be assessed on the outstanding balance of a simple interest consumer credit transaction, the parties may before or after default agree in writing to a deferral of all or part of one or more unpaid installments, and the extender of credit may make and collect an additional deferral charge in an amount not to exceed twenty-five dollars. This deferral charge may be collected at the time it is assessed or at any time thereafter. Whether accrued interest is designated as "loan finance charges" or "interest to date", payment of interest shall not constitute payment of a deferral charge.

D. The extender of credit, in addition to the deferral charge, may make appropriate charges for insurance for the extended period and the amount of these charges which is not paid in cash may be added to the amount for the purpose of calculating the deferral charge.

### **§ 3529. Installment of consumer credit transaction returned; additional charge to account**

The parties in a consumer credit transaction may contract for an additional charge to be assessed against the consumer's account if the consumer tenders a check or makes an electronic debit in payment on such account and such check or electronic debit is returned from any bank, savings and loan association, thrift institution, or credit union or any other organization or institution authorized by the state of Louisiana or the United States to issue checks, drafts, or similar negotiable instruments or payments by electronic means, due to insufficient credit or funds in the account for payment of such check or electronic payment in full upon its presentation, or due to account closure, stop payment, drawn on uncollected funds, or any other reason for which the instrument or electronic payment is not paid. The additional charge shall not exceed twenty-five dollars or five percent of the amount of the check or electronic payment, whichever is greater. The charge shall be in addition to any delinquency charge assessed under the provisions of R.S. 9:3527. For the purposes of this Section, the phrase "due to insufficient credit or funds" means a check or electronic payment returned unpaid for any reason.

### **§ 3530. Fees; origination; notary, documentation; over-the-credit-limit fee**

A.(1) A lender may charge an origination fee that does not exceed fifty dollars on a consumer loan or revolving loan account.

(2) The origination fee may be charged only once in connection with a single loan to one borrower over any consecutive thirty-day period, regardless of the number of renewals or refinances during the same thirty-day period. An origination fee may be charged on any new loan made during a prior loan's consecutive thirty-day period provided the new loan is not a renewal, refinance, or rollover of the prior loan. When a loan is paid in full, an origination fee may be charged on any subsequent new loan without regard to the prior loan's consecutive thirty-day period.

(3) Notwithstanding any other law to the contrary, an origination fee shall not be considered a loan finance charge and shall not be subject to refund upon prepayment or acceleration of maturity.

B. Non-real estate related notary fees assessed in connection with consumer credit transactions subject to this Chapter are limited to a maximum of fifteen dollars.

C.(1) A lender may charge a documentation fee in an amount not to exceed one-half of the amount authorized in Paragraph (4) of this Subsection, in connection with a non-real estate consumer loan transaction.

(2) Notwithstanding any other law to the contrary, a documentation fee shall not be considered as interest nor shall it be included in the calculation of interest.

(3) An insurance premium finance company may not charge a documentation fee under this Subsection.

(4) In lieu of the documentation fee provided in Paragraph (1) of this Subsection, a lender may charge a documentation fee, not to exceed twenty dollars, in connection with any non-real estate consumer loan not subject to R.S. 9:3578.1 through 3578.8.

D. A lender upon entering into a revolving loan or lender credit card account that is secured by a collateral mortgage or equivalent security interest on immovable (real) property, may assess an origination fee in an amount not to exceed two percent of the consumer's established credit limit. Such origination fees may be assessed in addition to permissible loan finance charges and are not subject to rebate upon cancellation or termination of the consumer's account.

E.(1) A lender may contract for and receive reasonable over-the-credit-limit fees in connection with revolving loan, lender credit card, revolving charge and seller credit card accounts that are payable whenever the consumer exceeds the credit limit established for the account.

(2) A lender shall cease the assessment of over-the-credit-limit fees in connection with lender credit card and seller credit card accounts upon termination of the contract.

F.(1) A lender may collect a convenience charge authorized by R.S. 47:532.1(C) for services performed by a public license tag agent as well as any E.L.T. fees pursuant to R.S. 32:707.2. Such charge or fees shall not be assessed to the consumer more than once.

(2) Notwithstanding any other law to the contrary, the convenience charge authorized by R.S. 47:532.1(C) as well as any E.L.T. fees shall not be considered as interest, nor shall they be included in the calculation of interest.

G. Notwithstanding the limitations set in this Section or any other law to the contrary, a federally insured depository institution entering into a consumer credit transaction as defined in R.S. 9:3516(13) may contract for and receive the types of fees provided for in Subsection A, C, and D of this Section in any amount agreed to in a written agreement signed by the consumer. Fees charged under this Subsection by a federally insured depository institution shall not be considered loan finance charges or credit service charges under this Chapter.

## **PART III. PREPAYMENT OF CONSUMER CREDIT TRANSACTIONS**

### **§ 3531. Right to prepay**

A. Notwithstanding any contrary provision of a consumer credit transaction, the consumer may prepay in full the unpaid balance at any time. An extender of credit may within its discretion accept the amount tendered by the consumer to be a prepayment in full of a simple interest loan if the amount tendered is within one dollar, or to the extent provided by federal law, more or less, of the amount actually owed. Under such circumstances, the extender of credit may retain any excess amount tendered by the consumer provided that the amount tendered does not exceed the amount actually owed by more than one dollar, or to the extent provided by federal law.

B.(1) The extender of credit shall provide the consumer, within five days of the date a written request is received from the consumer, with the amount necessary to prepay the account in full; and if the amount disclosed includes an amount which is required to be refunded under this Section with respect to such prepayment, the amount of such refund.

(2) A consumer shall be entitled to receive one such disclosure of information statement each year without charge. Thereafter, the extender of credit may impose a reasonable fee to cover the cost of providing an additional disclosure statement; however, the charge imposed must be disclosed to the consumer before furnishing such disclosure statement.

### **§ 3532. Rebate upon prepayment**

A. Upon prepayment in full of a precomputed consumer credit transaction, the extender of credit shall refund unearned loan finance charges or credit service charges and such refund shall represent at least as great a proportion of the loan finance charge or credit service charge after first deducting from such charge a prepayment charge of not more than twenty-five dollars as the sum of the monthly time balances beginning one month after the month in which prepayment is made, bears to the sum of all the monthly time balances under the schedule of payments in the contract; this method of rebate upon prepayment is commonly referred to as the "Rule of 78's" or the "Sum of Digits" rebate method. If more than one-half of the term of the installment contract has elapsed, the rebate shall be computed without deducting a prepayment charge. For the purposes of rebate upon prepayment, deferral charges are not required to be rebated. No rebate less than one dollar, or to the extent provided for by federal law is required.

B.(1) There is no requirement that prepaid finance charges be rebated upon prepayment in full of a simple interest transaction prior to maturity, provided that all of the following conditions are satisfied:

(a) The original amount financed under the transaction was ten thousand dollars or more.

(b) The original scheduled term of the transaction was thirty-six months or longer.

(c) Prepaid finance charges assessed under the transaction did not exceed five percent of the original amount financed or amount deferred.

(2) Where any one or more of the foregoing conditions are not satisfied, prepaid finance charges shall be subject to rebate upon prepayment in full of a simple interest transaction under the same method in Subsection A of this Section.

C. Compliance with the provisions of this Section shall constitute compliance with the provisions of R.S. 9:3519.

**§ 3532.1. Prepayment penalties in connection with simple interest real estate secured loans**

A. As a condition of the consumer's being permitted to prepay a consumer loan secured by a mortgage on immovable property in full prior to the loan's maturity, an extender of credit may contract for and receive a prepayment penalty in an amount not to exceed:

(1) Five percent of the unpaid principal balance if the loan is prepaid in full during the first year of its term.

(2) Four percent of the unpaid principal balance if the loan is prepaid in full during the second year of its term.

(3) Three percent of the unpaid principal balance if the loan is prepaid in full during the third year of its term.

(4) Two percent of the unpaid principal balance if the loan is prepaid in full during the fourth year of its term.

(5) One percent of the unpaid principal balance if the loan is prepaid in full during the fifth year of its term.

B. No prepayment penalties shall be assessed if the loan is prepaid in full after the fifth year of its term. Prepayment penalties may be assessed under this Section only with respect to consumer real estate secured loans that bear simple interest, and that have an original principal balance of twenty-five thousand dollars or more, and that are payable over a term of seven years or longer.

C. Notwithstanding any other provision of law to the contrary, no prepayment penalty or similar fee or charge shall be due, assessed, charged, collected, paid, held in escrow, or contracted to be paid if all or part of a prepayment of all or part of an outstanding loan balance is made from proceeds paid in full or partial satisfaction of a claim or claims made under a policy or policies of insurance insuring against casualty, flood, or other loss or damage to property securing the loan being prepaid in connection with a gubernatorially declared disaster.

**§ 3533. Rebate after acceleration of maturity**

Except as provided in R.S. 9:3527, if the maturity of a consumer credit transaction is accelerated for any reason and suit is filed, the obligation shall be credited with the same rebate required under R.S. 9:3532(A) or (B), as applicable, as if prepayment in full had been made as of the date the maturity of the obligation is accelerated at the creditor's election, except that any credit life insurance and health and accident insurance in force at such time shall not be rebated until payment is made in full; thereafter the obligation sued upon shall be deemed to bear a loan finance charge or credit service charge on the amount due at the annualized rate previously agreed to by the consumer until the transaction is paid in full.

## PART IV. LIMITATIONS ON AGREEMENTS AND PRACTICES

### § 3534. Fees; attorney, collection agency

A. Any consumer credit transaction agreement may provide for the payment by the consumer of attorney's fees not in excess of twenty-five per cent of the unpaid debt after default and referral to an attorney for collection.

B. An extender of credit may not contract with a consumer for the reimbursement of fees paid to a collection agency employed to collect the consumer's indebtedness.

### § 3534.1. Collection agent; registration; assignment of debt to collector

A. For purposes of this Section, "collection agency" and "debt collector" are synonymous and interchangeable terms and mean any person, other than a licensed Louisiana attorney, who uses any instrumentality of intrastate or interstate commerce or the mails in any business the principal purpose of which is the collection of any debts, or who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another, and relative to Louisiana clients, notwithstanding the fact that such person has no employees, offices, equipment, or other physical facilities in this state, or any person who regularly attempts to collect, directly or indirectly, debts owed or due, or asserted to be owe or due another, and who is located in the state regardless of whether the person has Louisiana clients.

B. Any collection agency or debt collector doing business in this state shall register with the secretary of state. The secretary of state shall promulgate rules and regulations necessary to provide for the registration required by this Section.

C. In any suit brought by a collection agency or debt collector to collect a debt acquire from a client or customer via assignment, an agreement in writing by the such collector to expend time, effort, money, or other resources in pursuit of such debt, and to pay the credit grantor a net percentage of the amount collected on the debt shall be deemed a valid and enforceable assignment pursuant to this Section, and all other applicable laws of Louisiana.

D. When such collector attempts the collection of a debt owed a credit grantor, the representation of the credit grantor by such collector shall in all instances be deemed as an assignment and authorization for the purpose of allowing such collector to bring legal action to collect the debt. When such legal action is brought through an attorney licensed to practice law by the Supreme Court of Louisiana it shall not be a violation of any state law, rule, or regulation including but not limited to R.S. 37:212.

E. In any suit brought by a collection agency or debt collection to collect the debt of a client or customer, the formal assignment of the debt to such collector shall be presumed valid if a copy of the assignment is filed in court with the petition. If the defendant fails to object to the validity of the assignment prior to the filing of an answer, then the assignment shall be conclusively presumed valid.

F. Subsections C and D of this Section shall apply in all instances whether or not the debt is assigned for valuable consideration; whether or not the services performed by the attorney were for the collector alone; whether or not the collector hired the attorney; and whether or not the collector's fees are contingent upon the amount collected by the attorney.

### **§ 3535. Use of multiple agreements**

An extender of credit shall not divide a consumer credit transaction into multiple agreements for the purpose of obtaining a higher credit service charge, loan finance charge, or any other additional fee or charge permitted by this Chapter.

### **§ 3536. Referral sales**

With respect to a consumer credit transaction, the extender of credit may not give or offer to give a rebate or discount or otherwise pay or offer to pay value to the consumer as an inducement for a sale in consideration of his giving to the extender of credit the names of prospective purchasers or otherwise aiding the extender of credit in making a sale to another person, if the earning of the rebate, discount or other value is contingent upon the occurrence of an event subsequent to the time the consumer agrees to buy. If a consumer is induced by a violation of this Section to enter into a consumer credit transaction, the agreement is unenforceable by the extender of credit and the consumer, at his option, may rescind the agreement or retain the goods delivered and the benefit of any services performed, without any obligation to pay for them.

### **§ 3537. Repealed by Acts 1980, No. 694, § 2**

## PART V. HOME SOLICITATION SALES

### § 3538. Consumer's right to cancel

A. Except as provided in subsection (E) of this section, in addition to any right otherwise to revoke an offer, the consumer has the right to cancel a home solicitation sale until midnight of the third business day after the day on which the consumer signs an agreement or offer to purchase.

B. Cancellation occurs when the consumer gives written notice of cancellation to the seller at the address stated in the agreement or offer to purchase.

C. Notice of cancellation, if given by mail, is given when it is deposited in a mailbox properly addressed and postage prepaid.

D. Notice of cancellation given by the consumer need not take a particular form and is sufficient if it indicates by any form of written expression the intention of the consumer not to be bound by the home solicitation sale.

E. The consumer may not cancel a home solicitation sale if the consumer requests the seller to provide goods or services without delay because of an emergency, and

(1) the seller in good faith makes a substantial beginning of performance of the contract before the consumer gives notice of cancellation, and

(2) in the case of goods, the goods cannot be returned to the seller in substantially as good condition as when received by the consumer.

F. The term "home solicitation sale" as used in this Part, shall be defined as provided in R.S. 9:2711.1 and R.S. 9:3516(20).

### § 3538.1. [Blank]

### § 3539. Form of agreement or offer; statement of consumer's right; compliance

A. In a home solicitation sale, unless the consumer requests the seller to provide goods or services without delay in an emergency, the seller must present to the consumer and obtain his signature to a written agreement or offer to purchase that designates as the date of the transaction the date on which the consumer actually signs and contains a statement of the consumer's rights that complies with subsection B of this section.

B. The statement must

(1) appear under the conspicuous caption: "CONSUMER'S RIGHT TO CANCEL", and

(2) read as follows: "If this agreement was solicited at your residence and you do not want the goods or services, you may cancel this agreement by mailing a notice to the seller. The notice must say that you do not want the goods or services and must be mailed before midnight of the third business day after you sign this agreement. The notice must be mailed to: (Insert name and mailing address of seller). If you cancel, the seller must return all of your cash down payment."

C. Until the seller has complied with this section the consumer may cancel the home solicitation sale by notifying the seller in any manner and by any means of his intention to cancel.

D. Compliance with the notice requirements of the consumer's right to cancel a home solicitation sale of the Code of Federal Regulations Title 12, Part 226, commonly known as Regulation Z of the Consumer Credit Protection Act, 15 United States Code, Sections 1601 through 1681 or the Federal Trade Commission trade regulation providing for a cooling-off period for door-to-door sales of the Code of Federal Regulations, Title 16, Part 429 shall constitute compliance with this Section.

#### **§ 3540. Restoration of down payment; retention of cancellation fee**

A. Except as provided in this section, within ten days after a home solicitation sale has been cancelled or an offer to purchase revoked the seller must tender to the consumer any payments made by the consumer and any note or other evidence of indebtedness.

B. If the down payment includes goods traded in, the goods must be tendered in substantially as good condition as when received by the seller. If the seller fails to tender the goods as provided by this section, the consumer may elect to recover an amount equal to the trade-in allowance stated in the agreement.

C. The seller may retain as a cancellation fee five percent of the cash price but not exceeding the amount of the cash down payment. If the seller fails to comply with an obligation imposed by this section, or if the consumer avoids the sale on any ground independent of his right to cancel provided by the provisions on the consumer's right to cancel (R.S. 9:3538) or revokes his offer to purchase, the seller is not entitled to retain a cancellation fee.

D. Until the seller has complied with the obligations imposed by this section the consumer may retain possession of goods delivered to him by the seller and has a privilege on the goods in his possession or control for any recovery to which he is entitled.

#### **§ 3541. Duty of consumer; no compensation for services prior to cancellation**

A. Except as provided by the provisions on retention of goods by the consumer (R.S. 9:3540(D)), within a reasonable time after a home solicitation sale has been cancelled or an offer to purchase revoked, the consumer upon demand must tender to the seller any goods delivered by the seller pursuant to the sale but he is not obligated to tender at any place other than his residence. If the seller fails to demand possession of goods within a reasonable time after cancellation or revocation, the goods become the property of the consumer without obligation to pay for them. For the purpose of this section, forty days is presumed to be a reasonable time.

B. The consumer has a duty to take reasonable care of the goods in his possession before cancellation or revocation and for a reasonable time thereafter, during which time the goods are otherwise at the seller's risk.

C. If the seller has performed any services pursuant to a home solicitation sale prior to its cancellation, the seller is entitled to no compensation except the cancellation fee provided in this part.

**§ 3541.1. Consumer’s right to cancel mail and check solicitation sales**

A. (1) In addition to any right otherwise to revoke an offer, a consumer shall have the right to cancel a mail and check solicitation sale, except when the sale is made to and accepted by a customer who has an existing loan, revolving account, or other line of credit with the party making and check solicitation sale.

(2) For purposes of this Section, a “mail and check solicitation sale” means a consumer credit sale of a thing or service, a consumer credit transaction, a revolving loan account, or a credit card, if such sale, transaction, loan, or the use of such credit card is contracted:

- (a) Pursuant to a solicitation received by the consumer through the mail.
- (b) Through the cashing of a check by the consumer that was sent to him with the solicitation.

B. The consumer has the right to cancel such mail and check solicitation sale for at least sixty days and receive a refund for the return of unused and undamaged goods or cancellations of unused services.

C. (1) Cancellation occurs when the consumer gives notice of cancellation to the person making such solicitation.

(2)(a) Notice of cancellation given by the consumer need not take a particular form and is sufficient if it indicates by any form of expression the intention of the consumer not to be bound by the check and mail solicitation sale.

(b) Notice of cancellation, if given by mail, is given when it is deposited in a mailbox properly addressed and postage prepaid.

D. The cancellation of the mail and check solicitation sale shall occur even if the consumer has cashed the check or utilized the credit, loan account, or credit card.

E. In addition such a check shall contain the following language as a conspicuous caption;  
“WARNING: THE CASHING OF THIS CHECK WILL ENROLL YOU IN A PROGRAM OR A LOAN, OR WILL CAUSE YOU TO BE BOUND TO REPAY THE LOAN OR PURCHASE GOODS OR SERVICES WHICH MAY COST YOU ADDITIONAL MONEY.”

## **PART V-A. HOME SOLICITATION OF AGED PERSONS**

### **§ 3541.21. Definitions**

In this Part, the following words and terms have these meanings:

- (1) “Aged person” means a natural person who is sixty-five years of age or older.
- (2) “Consumer” means a natural person who purchases goods, services, or movable or immovable property or rights therein, for a personal, family, household, or agricultural purpose and includes a purchaser or buyer in a consumer credit sale or transaction made with the use of a seller credit card or otherwise, or a borrower or debtor in a consumer loan, revolving loan account, or a lender credit card.
- (3) “Disabled person” means a natural person who has a physical or mental impairment which substantially limits one or more major life activities.
- (4) “Goods” means tangible objects bought or leased for use primarily for a personal, family, or household purpose, including certificates or coupons exchangeable for these goods which, at the time of the sale or subsequently, are to be so affixed to immovable property as to become a part of the immovable property whether or not severable therefrom.
- (5) A “home solicitation sale” is a consumer credit sale of goods or services or both, other than motor vehicles, farm equipment, or services, in which the seller or a person acting for him engages in a personal solicitation of the sale at any place other than the business establishment of the seller and a consumer’s agreement or offer to purchase is given to the seller or a person acting for him. This definition shall include all telephone sales in which the seller has initiated contact regardless of his location, and the consumer’s agreement to purchase is made at the consumer’s home. It does not include a sale made pursuant to a preexisting revolving charge account, a catalogue credit sale, a preexisting consumer credit sale agreement providing for a series of sales, or a sale made pursuant to prior negotiations between the parties at a business establishment at a fixed location where goods or services are offered or exhibited for sale, or a sale that may have been initiated by the consumer by communication with the seller at his business establishment.
- (6) “Person” means an individual, partnership, corporation, limited liability company, association, or other group, however organized.
- (7) “Services” means work, labor, and services for other than a commercial or business and including services furnished in connection with the sale or repair of goods.
- (8) “Transaction” means an agreement between a consumer and any other person, whether or not the agreement is a contract enforceable by action, and includes the making of, and the performance pursuant to, that agreement.

### **§ 3541.22. Prohibited practices**

A. The home solicitation of any consumer where a loan is made encumbering the primary residence of that consumer for the purposes of paying for home improvements and where the transaction is part of a pattern or practice in violation of either Subsection (h) or (i) of Section

1639 of Title 15 of the United States Code or Subsection (e) of Section 226.32 of Title 12 of the Code of Federal Regulations is prohibited.

B. A third party holder in due course of a loan made in violation of Subsection A of this Section shall not be in violation of the prohibitions in this Section unless there was an agency relationship between the person who engaged in home solicitation and the third party holder, or the third party holder had actual knowledge of or participated in the transaction.

## PART VI. INSURANCE

### § 3542. Requirement of insurance

A. In any consumer credit transaction made under the authority of this Chapter, other than insurance premium financing, an extender of credit may request or require a consumer to provide credit life insurance, credit dismemberment insurance, and credit health and accident insurance as additional security for such contract or agreement. If the extender of credit provides credit life insurance, credit dismemberment insurance, or credit health and accident insurance to a consumer, he shall disclose to the consumer at the time of contracting his option to purchase such insurance coverage or shall make such disclosures as are required by Regulation Z of the Board of Governors of the Federal Reserve System, 12 C.F.R. 226.1 et seq. The cost of such insurance, if required by the extender of credit, is deemed to be a portion of the credit service charge or loan finance charge for the purpose of computing maximum rates. More than one policy of credit life insurance, policy of credit dismemberment insurance, or policy of credit health and accident insurance, or any combination thereof, on any one consumer may be in force with respect to any one contract or agreement at any one time; however, the coverage of credit life insurance, credit dismemberment insurance, or credit health and accident insurance on any one consumer with respect to any one contract or agreement may not exceed the total sum payable under such contract including all loan finance charges and credit service charges.

B. (1) On all consumer credit transactions, entered into on or after January 1, 1998, the premium rates shall be as follows:

(a) The premium rate for declining balance credit life insurance shall not exceed ninety cents per one hundred dollars per annum.

(b) The premium rate for joint credit life insurance coverage shall not exceed one dollar and thirty-five cents per one hundred dollars per annum.

(c) The premium rate for level term credit life insurance shall not exceed one dollar and eighty cents per one hundred dollars per annum.

(d) The premium rate for joint level term credit life insurance shall not exceed two dollars and seventy cents per one hundred dollars per annum.

(2) Beginning on or after January 1, 1999, on all consumer credit transactions entered into, the premium rates shall be as follows:

(a) The premium rate for declining balance of credit life insurance shall not exceed eighty cents per one hundred dollars per annum.

(b) The premium rate for level term credit life insurance shall not exceed one dollar and sixty cents per one hundred dollars per annum.

(c) The premium rate for joint credit life insurance shall not exceed one dollar and twenty cents per one hundred dollars per annum.

(d) The premium rate for joint level term credit life insurance shall not exceed two dollars and forty cents per one hundred dollars per annum.

(3) The amount of credit life insurance issued pursuant to a consumer credit transaction shall not exceed the total sum payable under such contract including all loan finance and credit service charges. However, credit life insurance in the amount of the total amount payable not to exceed the maximum limits for each individual otherwise provided by law, may be issued on each of the lives of individuals who are co-obligors with respect to that consumer credit transaction.

(4) The premium rate for credit dismemberment insurance shall not exceed twenty-five cents per one hundred dollars per annum.

C. No policy of health and accident insurance may be issued pursuant to a consumer credit transaction other than seven day, fourteen day or thirty day retroactive health and accident insurance. The premium rates for retroactive accident and health insurance issued pursuant to a consumer credit transaction shall not exceed the rates set forth in the following schedule:

<b><u>Amount per</u></b>			
<b><u>\$100.00</u></b>			
<b><u>Months</u></b>	<b><u>7-Day</u></b>	<b><u>14-Day</u></b>	<b><u>30-Day</u></b>
	<b><u>Retro</u></b>	<b><u>Retro</u></b>	<b><u>Retro</u></b>
0 -6	\$ 1.75	\$ 1.10	\$ .85
more than 6 through 12	3.50	2.20	1.70
more than 12 through 24	4.30	3.00	2.50
more than 24 through 36	5.10	3.80	3.30
more than 36 through 48	5.60	4.60	4.10
more than 48 through 60	6.00	5.40	4.90
more than 60 through 72	6.80	6.20	5.70
more than 72 through 84	7.60	7.00	6.50
more than 84 through 96	8.40	7.80	7.30
more than 96 through 108	9.20	8.60	8.10
more than 108 through 120	10.00	9.40	8.90

D. An extender of credit may offer credit life insurance in connection with a revolving loan account, lender credit card account, revolving charge account, or seller credit card account. The premium rate for individual credit life insurance offered in connection with such accounts shall not exceed .154 dollars per one hundred dollars, or portion thereof, per thirty day billing period that coverage is afforded. The premium rate for joint credit life insurance offered in connection with such accounts shall not exceed .231 dollars per one hundred dollars, or portion thereof, per thirty day billing period that the coverage is afforded. The charge for the revolving credit life insurance premium for each billing period shall not be due and payable until the end of the billing period that it insures.

E. An extender of credit may offer any credit insurance authorized by the Louisiana Insurance Code in connection with a revolving loan account, lender credit card account, revolving charge account, or seller credit card account. The premium rate for these insurances shall not exceed the actuarial equivalent of the maximum rates allowed by law. Such rates shall have prior approval by the appropriate state agency. The charge for the revolving credit insurance premium for each billing period shall not be due and payable until the end of the billing period that it insures.

F. In connection with a single consumer credit transaction, an extender of credit may not request or require a consumer to provide any credit insurance that provides duplicate or substantially the

same protection against a single peril or loss as that furnished by any other credit insurance provided in connection with the same consumer credit transaction.

G. Notwithstanding any other provision of law to the contrary, an extender of credit may offer any credit insurance authorized by the Louisiana Insurance Code in connection with any extension of credit authorized by this Chapter.

### **§ 3543. Property insurance**

A. An extender of credit may, in addition, request or require a consumer to insure property, all or part of which is involved in a contract or agreement, made under the authority of this Chapter, and include the cost of the insurance as a separate charge in the contract or agreement. The property shall be described so as to readily identify it and such description shall be included as part of the contract or agreement. This insurance and the premiums or charges thereon shall bear a reasonable relationship to the amount, term, and conditions of the contract or agreement, and to the existing hazards or risk of loss, damage, or destruction. This insurance and the premiums or charges thereon shall also bear a reasonable relationship to the character and value of the property insured or to be insured, when, in the event of loss, such insurance policy does not pay off the entire balance of the loan. Such insurance shall not provide for unusual or exceptional risks or coverages which are not ordinarily included in policies issued to the general public.

B. Where a consumer fails to maintain required property insurance or fails to provide the creditor with timely notice of the purchase or renewal of such insurance coverage, the creditor may, after notice to the consumer and expiration of a fifteen day curative period from the mailing of said notice, purchase insurance on the customer's property, including insurance protecting only the creditor's interest in such property. Such insurance premiums may be added to the outstanding balance of the customer's indebtedness and made subject to additional loan finance charges or credit service charges at the rate previously agreed to by the consumer.

### **§ 3544. Existing insurance**

When consumer credit insurance is required in connection with such a contract or agreement made under this chapter, the extender of credit shall furnish the consumer a statement which shall clearly and conspicuously state that consumer credit insurance is required in connection with the contract, and that the consumer shall have the option of furnishing the required insurance either through existing policies of insurance coverages through any insurance company authorized to transact business in Louisiana.

### **§ 3545. Limitations on insurance rates; contract requirements**

Any insurance provided, sold, or obtained through an extender of credit shall be written at lawful rates and in accordance with the provisions of the Louisiana Insurance Code by a company authorized to do business in this state which is not under a court-ordered rehabilitation, conservation, liquidation, or dissolution; provided, however, that such insurance may be written in accordance with R.S. 22:431 through 444 if the provisions thereof are applicable. Any extender of credit which writes insurance in compliance with the preceding requirements shall not be liable to any insured as a result of the insurer's inability to pay any claim to an insured due to insolvency, or pursuant to any court-ordered rehabilitation, conservation, liquidation, or dissolution. The contract or agreement must briefly indicate the kind, coverage, term, and amount of premium of such insurance.

### **§ 3546. Choice of insurer**

The consumer shall have the privilege at the time of execution of the contract or agreement of purchasing any required or requested insurance from an agent or broker of his own selection and of selecting an insurance company acceptable to the extender of credit but, in such cases, the inclusion of the insurance premium in the contract or agreement shall be optional with the extender of credit. However, any licensed admitted property and casualty insurer possessing a valid certificate of authority to transact property and liability insurance coverage in the state of Louisiana shall be deemed to be an acceptable insurer for the provisions of this Chapter. The extender of credit may refuse any otherwise acceptable insurer which is under court-ordered rehabilitation, conservation, liquidation, or dissolution.

### **§ 3547. Conditions applying to insurance provided by the extender of credit**

If a creditor agrees with a debtor to obtain or provide insurance

(1) the insurance shall be evidenced by an individual policy or certificate of insurance delivered to the debtor, or sent to him at his address as stated by him, within forty-five days after the term of the insurance commences; or

(2) the creditor shall promptly notify the debtor of any failure or delay in providing or obtaining the insurance, individual policy or certificate of insurance.

### **§ 3548. Cancellation of insurance; refund or credit upon cancellation**

A. When a consumer credit transaction is paid in full for any reason, the insurance paid by the debtor and provided, sold, or obtained through the extender of credit in connection therewith shall be cancelled; however, this provision shall not apply to credit life insurance and property insurance other than contents insurance which is the subject of a specific written request by the consumer requesting that such insurance remain in force beyond the provision of this Section.

B. When insurance paid by the debtor is canceled, or terminated for any reason, the refund for unearned insurance premiums received by the extender of credit shall, at the extender's option, be applied toward payment of the premium for insurance to replace the coverage canceled, adjusted, or terminated, or toward payment of the unpaid balance of the consumer credit transaction. The order of applying said unearned premium shall be inverse to the order in which the installments of the consumer credit transaction are payable according to its terms, beginning with the installment due on the final due dates and not to the next ensuing installment which shall remain payable as originally scheduled. The remaining balance of unearned insurance premiums, if any, shall be refunded to the consumer; however, no cash refund shall be required if the amount thereof is less than one dollar, or to the extent provided for by federal law.

### **§ 3549. Gain from insurance**

Any gain, or advantage to the extender of credit, or any employee, officer, director, agent, general agent, affiliate or associate from such insurance or its provisions or sale shall not be considered as a further charge nor a further credit service charge or loan finance charge in violation of this chapter in connection with any contract or agreement made under this part.

## **§ 3550. Insurance premium finance companies**

A. This Section shall apply to any person engaged in the business of financing insurance premiums for consumers entering into premium finance agreements or otherwise acquiring premium finance agreements.

B. For purposes of this Section:

(1) “Insurance premium finance company” means a person engaged in the business of entering into premium finance agreements.

(2) “License” means an insurance premium finance company holding a license issued under this Section.

(3) “Person” includes an individual, limited liability company, partnership, association, business corporation, nonprofit corporation, common law trust, joint-stock company, or any other group of individuals however organized.

(4) “Premium finance agreement” means an agreement by which an insured or prospective insured promises to pay to an insurance premium finance company the amount advanced or to be advanced under the agreement to an insurer or to an insurance agent or broker in payment of premiums on an insurance contract together with a service charge as authorized and limited by this Section. With respect to qualified homeowners’ insurance policies, a premium finance agreement may also include a separate loan agreement with the policyholder for wind mitigation retrofits to the insured property. In order to qualify, the homeowners’ insurance policy shall be issued to a homeowner who has financed the cost of wind mitigation retrofits with a consumer finance company licensed pursuant to this Chapter, in part, for the purpose of obtaining wind mitigation and other credits on his homeowners’ insurance policy. Upon cancellation, expiration, or nonrenewal of the qualifying homeowners’ insurance policy, the wind mitigation loan agreement shall continue to be administered pursuant to its terms until paid in full and any cancellation, expiration, or nonrenewal of the qualifying homeowners’ insurance policy shall not accelerate the due date of such wind mitigation loan. A premium finance agreement shall not include an agreement on the part of an extender of credit to finance credit life, credit disability, and credit property insurance coverage as an incident to a consumer credit transaction subject to this Chapter or subject to any other applicable provision of Louisiana or federal law.

C. (1) No person, unless otherwise exempt from the licensing requirement of this Chapter, shall engage in the business of financing insurance premiums in this state or out of this state with Louisiana consumers, enter into premium finance agreements, or otherwise acquire premium finance agreements subject to the Louisiana Consumer Credit Law, without first having obtained a license as an insurance premium finance company from the commissioner as provided in Subsection A of this Section.

(2) The commissioner may in his discretion give prior written approval for an unlicensed person to acquire insurance premium finance agreements in connection with securitized financing arrangements.

(3) The commissioner may issue insurance premium finance licenses for a temporary period, or subject to any restrictions or conditions he deems necessary. The application, license,

examination, survey, renewal, and change of name or location fees shall be the same as those for a licensed lender as provided in R.S. 9:3561.1.

D. (1) Premium finance agreements shall:

(a) Be dated and signed by the insured or by its agent under a validly executed power of attorney.

(b) Contain the name and place of business of the insurance agent who negotiated the related insurance contract, and a brief description of the insurance contract involved.

(c) Include, either as part of the insurance premium finance agreement or refer to a separate document which shall be made a part of the insurance premium finance agreement by reference, an itemized listing of the premium cost, and each charge, fee, or other amount that is part of the total cost of obtaining the insurance coverage sought by the insured.

(d) Contain the address of the insured and other persons who are entitled to receive all notices required under this Chapter. The address may be in the form of an electronic address or a physical address.

(2) Upon accepting, funding, or declining a premium finance agreement of a related insurance contract primarily for personal, family, or household use, when the premiums were paid or were to be paid to the providing insurance agent, the premium finance company shall deliver or mail accountable written or electronic notification within five business days advising the insurer, managing general agent, or general agent of its actions to accept, fund, or decline the premium finance agreement. The notification shall state the insured's full name and address, the producing insurance agent's full name and address, the total policy cost, and the premiums that were paid to the producing insurance agent, or that the payment of premium was declined. With respect to commercial policies, the insurer, managing general agent, or general agent receiving notification shall deliver or mail accountable written or electronic notification within ten business days advising the premium finance company that an insurance contract or contracts or endorsements listed in and related to the premium finance agreement was not issued.

E. An insurance premium finance company shall not 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 this Subsection or in Subsection F:

(1) The loan finance charge or credit service charge shall be computed on the balance of the premium due, less the down payment made by the insured in accordance with the premium finance agreement. Loan finance charges or credit service charges accrue from the effective date of the insurance coverage for which the premiums are being advanced to and including the date when the final installment of the premium finance agreement is paid.

(2) The loan finance charge or credit service charge shall not exceed the charges permitted under this law. The loan finance charge or credit service charge permitted by this Subsection anticipates repayment in consecutive monthly installments equal in amount for a period of one year. For repayment in greater or lesser periods or in unequal, irregular, or other than monthly installments, the credit service charge may be computed at an equivalent effective rate having due regard for the installments as scheduled.

(3) Notwithstanding the provisions of any premium finance agreement, any insured may prepay the obligation in full at any time. In such an event he shall receive a refund credit consisting of precomputed finance charges or credit service charges that shall represent at least as great a proportion of the loan finance charge or credit service charge as the sum of the periodic balances after the month in which prepayment is made bears to the sum of all periodic balances under the schedule of installments in the agreement. Where the amount of the refund credit is less than one dollar, or to the extent provided for by federal law, no refund need be made.

F. A premium finance agreement may provide for the payment by the insured of the delinquency charge in accordance with R.S. 9:3527, the N.S.F. check charge in accordance with R.S. 9:3529, an origination fee in accordance with R.S. 9:3530(A), attorney collection fees in accordance with R.S. 9:3534, and any charges as provided in this Subsection and in Subsection E. If the nonpayment by the consumer results in default and subsequently, results in cancellation of any insurance contract listed in the agreement, the agreement may provide for the payment by the insured of a cancellation charge not to exceed twenty-five dollars, which need not be rebated or credited to the consumer in the event that the premium finance agreement is subsequently reinstated.

G. Insurance contracts may be canceled upon default as follows:

(1) When a premium finance agreement contains a power of attorney enabling the insurance premium finance company to cancel any insurance contract<sub>2</sub> or contracts, or endorsements listed in the agreement, the insurance contract<sub>2</sub> or contracts, or endorsements shall not be canceled by the insurance premium finance company unless such cancellation is effectuated in accordance with this Subsection.

(2) Upon default of the insurance premium finance agreement by the debtor, the premium finance company shall mail or send an electronic notice of cancellation to the insured, at his last known mailing or electronic address as shown on the records of the insurance premium finance company. In the event the default is timely cured, the premium finance company shall, within three business days from the time the default was cured, mail or send electronic notice of rescission of the cancellation notice to the insured, at his last known mailing or electronic address as shown on the records of the premium finance company and to all other parties who had previously been sent notice of cancellation. In the event the default is not timely cured as provided herein and the insurance policy is canceled pursuant to the terms of the insurance premium finance agreement, a copy of the notice of cancellation of the insurance contract shall also be sent to the insurance agent negotiating the related insurance contract whose name and place of business appears on the insurance premium finance agreement. Such notice of cancellation shall also state the name of any governmental agency, holder of a security interest in the insured property, or third party also requiring notice of cancellation as shown on the insurance premium finance agreement.

(3)(a) Ten days after notice of cancellation has been mailed to the insured, if the default has not been cured, the insurance premium finance company may thereafter effect cancellation of such insurance contract<sub>2</sub> or contracts, or endorsements by sending to the insurer, by depositing in the mail or with a private carrier, or via electronic mail, within five business days after the date of cancellation, except when the payment has been returned uncollected, a copy of the notice of cancellation together with a statement certifying that:

(i) The premium finance agreement contains a valid power of attorney as provided in Paragraph (1) of this Subsection.

(ii) The premium finance agreement is in default and the default has not been timely cured.

(iii) Upon default, a notice of cancellation was sent to the insured as provided in Paragraph (2) of this Subsection, specifying the date of sending by the premium finance company to the insured.

(iv) Copies of the notice of cancellation were sent to all persons shown by the premium finance agreement to have an interest in any loss which may occur thereunder, specifying the names and addresses of any governmental agencies, holders of a security interest in the insured property, or third parties to whom the insurance premium finance company has sent notice of cancellation.

(b)(i) Upon receipt of such notice of cancellation and statement from the premium finance company, the insurer shall consider that cancellation of the insurance contract or contracts has been requested by the insured but without requiring the return of the insurance contract or contracts and the insurer may proceed to cancel such contract or contracts as provided in R.S. 22:885. The effective date of cancellation shall be as of 12:01 A.M. on the tenth day after the date of sending of the notice of cancellation as shown in said statement furnished to the insurer by the premium finance company.

(ii) The time period between the date of the late notice and notice of cancellation was sent shall commence upon the date the late notice is sent.

(iii) Payment of an insurance premium installment by the insured, or on behalf of the insured, with a check or other instrument, which is returned to the premium finance company by the financial institution or other entity upon which it is drawn for insufficient funds available in the account, lack of credit, closed account, stopped payment, or for any other reason, shall be deemed grounds for the premium finance company to cancel the insurance policy pursuant to terms of the power of attorney from the date the insurance policy could have been canceled upon default for nonpayment.

(c) The receipt of such notice of cancellation and statement by the insurer shall create a conclusive presumption that the facts stated in said notice and statement are correct, that the insurer is entitled to rely on such facts and that the cancellation of the insurance contract or contracts is concurred in and authorized by the insured. No liability of any nature whatsoever either in favor of the insured, any governmental agency, holder of a security interest in the insured property, or third party shall be imposed upon the insurer as a result of any misstatement of fact contained in said notice of cancellation or statement furnished by the insurance premium finance company to the insurer, or as a result of failure by the insured, any governmental agency, holder of a security interest in the insured property, or third party to receive the notice of cancellation required by Paragraph (2) of this Subsection, or as a result of failure of the insurance premium finance company to comply with any of the requirements of this Subsection. Upon mailing of any unearned premium and unearned commission to the insurance premium finance company as soon as practicable following such cancellation, the insurer shall be fully discharged from all liability under the insurance contract or contracts for any loss occurring subsequent to the effective date of cancellation.

(4) Upon receipt of the notice of cancellation, the insurer shall give notice to any governmental agency, holder of a security interest in the insured property, or other third party as shown in the

records of the insurer requiring statutory, regulation, or contractual notice and which were not given by the premium finance company as provided in Paragraph (3) of this Subsection. The insurer shall give the prescribed notice on behalf of itself or the insured to any governmental agency, holder of a security interest in the insured property, or third party on or before the fifth business day after the day it receives a copy of the notice of cancellation from the insurance premium finance company and shall determine the effective date of cancellation taking into consideration the number of days notice required to complete the cancellation if such notice is given by the insurer, otherwise the effective date of cancellation shall be calculated from the date the premium finance company sent the notice to such governmental agency, holder of a security interest in the insured property, or other third party taking into consideration the number of days notice required to complete the cancellation.

H. Whenever the financed insurance contract, or contracts, or endorsements are canceled, the insurer shall return whatever unearned premiums and unearned commissions that are due under the insurance contract to the insurance premium finance company for the account of the insured or insureds as soon as reasonably possible but in no event shall the period for payment exceed sixty days after the effective date of cancellation. In the event that the crediting of return premiums and commissions to the account of the insured results in a surplus over the amount due from the insured, the insurance premium finance company shall refund such excess to the insured within sixty days of receipt of the proceeds from the insurer unless the commissioner grants, upon a showing of good cause, an extension pursuant to a request for additional time, provided that no such refund shall be required if it amounts to less than one dollar, or to the extent provided by federal law. The parties to an insurance premium finance agreement may agree that the unearned premiums and unearned commissions may be retained by or paid to the insurance company in order to purchase continued coverage under the insurance contract. In such event, the insurance premium finance company shall only retain the funds necessary to pay the amount required to pay the insurance premium finance agreement in full and shall transfer such excess funds to the insurance company in a timely manner to assure that the insurance coverage is not terminated. When the insurance agent provides proof that any check, money order, bank draft, or other means of payment used to pay the down payment was returned by the financial institution for whatever reason, the refund of surplus funds shall be made from the lender to the agent. The refund shall be made payable to both the agent and the insured.

I. No filing of the premium finance agreement shall be necessary to perfect the validity of such agreement as a secured transaction as against creditors, subsequent purchasers, pledges, encumbrances, successors, or assigns.

J. No insurer or its agent may refuse to issue a policy of insurance solely because the premiums therefore have been advanced by a premium finance company licensed in Louisiana. Nor shall any insurer or its agent discriminate, intimidate, or retaliate against a producing agent/broker who uses premium financing by denying him the same rights accorded agents/brokers whose insureds pay their policies in a different manner.

## **PART VII. REMEDIES AND PENALTIES**

### **§ 3551. Unconscionability**

With respect to a consumer credit transaction, if the court as a matter of law finds the agreement or any clause of the agreement to have been unconscionable at any time it was made the court may refuse to enforce the agreement, or it may enforce the remainder of the agreement without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result; provided, however, for the purposes of this chapter, an agreement, clause, charge or practice expressly permitted by this chapter or any other law or regulation of this state or of the United States or subdivision of either, or an agreement, clause, charge or practice necessarily implied as being permitted by this chapter or any other law or regulation of this state or the United States or any subdivision of either is not unconscionable.

### **§ 3552. Effect of violations on rights of parties**

#### **A. Violations discovered as a result of written consumer complaint**

##### **(1) Intentional violations or violations not caused by good faith errors.**

(a) If the court finds that the extender of credit has intentionally or as a result of error not in good faith violated the provisions of this chapter, the consumer is entitled to a refund of all loan finance charges or credit service charges and has the right to recover three times the amount of such loan finance charge or credit service charge together with reasonable attorney's fees. The right to recover the civil penalty under this subsection accrues only after

(i) written notice is given to the extender of credit by certified mail addressed to the extender of credit's place of business in which the consumer credit transaction arose;

(ii) a copy of such notice is mailed to the extender of credit's agent for service of process; and

(iii) thirty days have elapsed since receipt of such notice by the extender of credit, and the violation has not been corrected.

(b) Except as otherwise provided herein, if the notices provided for in Subsection A(1)(a) of this section have been given by the consumer, the following acts by the extender of credit shall be presumed to be an intentional violation or a violation not resulting from good faith error:

(i) Failure to return or give credit for an overcharge in the loan finance charge or credit service charge or, failure to return a deficiency in the rebate within the time period set forth in Subsection A(1)(a)(iii) of this section when such overcharge or deficiency exceeds the greater of (1) ten percent of such loan finance charge, credit service charge or rebate; or (2) fifteen dollars.

(c) If the extender of credit fails to return or give credit for an overcharge or deficiency as provided in Subsection A(1)(b) of this section, in addition to the penalties in Subsection A(1)(a) of this section, the consumer executing the consumer credit transaction and giving the required notices shall be entitled to collect from the extender of credit up to one hundred dollars of his actual documented out-of-pocket expenses incurred as a direct result of such failure to act.

(d) In the case of multiple violations involving an overcharge in the loan finance charge, credit service charge or rebate of the size described in Subsection A(1)(b)(i) of this section, the extender

of credit must notify the commissioner of the existence of such multiple violation and must give the commissioner a reasonable description of such multiple violation within thirty days after the receipt of the written notice from the complaining consumer, and the extender of credit must correct such multiple violation as to each consumer affected thereby within thirty days of the receipt of the written notice from the complaining consumer. Upon good cause shown, the commissioner may grant up to two thirty day extensions within which the extender of credit must correct the violation. If the extender of credit fails to give the commissioner the required notice or fails to correct such multiple violation as required herein, then from such failure it shall be presumed that such multiple violation was intentional or not in good faith.

(2) Unintentional violations or violations caused by good faith errors.

(a) If a violation of this chapter is not intentional or is made in good faith on the part of the extender of credit the court may require the extender of credit to correct the violation, but the consumer is not entitled to the civil remedies granted by this section; provided however the provisions hereof shall not protect the extender of credit if the provisions of Subsections A(1)(b) and A(1)(d) of this section are applicable.

(b) If the complaining consumer gives the extender of credit written notice as provided in Subsections A(1)(a)(i) and A(1)(a)(ii) of this section of an alleged violation of the provisions of this chapter, although such violation was unintentional or resulted from good faith error or did not in fact exist, the extender of credit must give the complaining consumer a reasonable response to the complaint in writing within thirty days of the receipt of written notice from the complaining consumer. If the extender of credit fails to give such response timely, the complaining consumer shall be entitled to collect from the extender of credit up to one hundred dollars of his actual documented out-of-pocket expenses incurred as a direct result of the failure of the extender of credit to comply with the provisions hereof.

B. Self-discovered violations

(1) An extender of credit has no liability for the civil remedies granted by this section in all instances other than multiple violations and whether intentional or resulting from good faith error or not, if: (a) within fifteen days after discovering a violation and prior to receipt of written notice of such violation from a consumer, or (b) within fifteen days after the occurrence of such violation, regardless of receipt of such notice from a consumer, the extender of credit gives written notice to the consumer or his designated agent of the violation and corrects the violation. If the violation consists of a prohibited agreement, giving the consumer a corrected copy of the writing containing the violation is sufficient notification and correction. If the violation consists of an excess charge, correction shall be made by an adjustment or refund.

(2) In the case of all self discovered multiple violations whether intentional or resulting from good faith error or not, the extender of credit shall have no liability for the civil remedies granted by this section if: (a) within fifteen days after discovering such violations the commissioner is notified of the existence of such multiple violation and given a reasonable description thereof, and (b) such violations are corrected as to each consumer affected thereby within thirty days after discovering such violations. Upon good cause shown the commissioner may grant up to two thirty day extensions within which the extender of credit may correct the violation. If a consumer delivers written notice of such violation at any time after the commissioner is notified by the extender of credit, it shall not affect the rights of the extender of credit to be relieved of liability as provided herein.

C. No act done or omitted in conformity with any advisory opinion or interpretation issued by the office of financial institutions at the time of the act or omission or subsequent to the act or omission shall constitute a violation of this Chapter, notwithstanding that after such act or omission has occurred, such advisory opinion or interpretation is amended, rescinded, or determined by judicial or other authority to be invalid for any reason. Advisory opinions and interpretations of the office of financial institutions shall not be considered rules requiring compliance with the rulemaking process of the Louisiana Administrative Procedure Act. The commissioner and the employees of the office of financial institutions shall have no liability to any person with respect to an advisory opinion or interpretation issued in connection with this Chapter.

D. Except as otherwise provided herein, any written notice required in this section may be mailed by registered, certified, first class, or air mail at the sender's option. Proof of receipt by the extender of credit may consist of a return receipt executed by an employee of the extender of credit. Proof of receipt by the consumer may be a return receipt executed by the consumer. Proof of mailing any written notice may be a postmarked registered mail receipt, a postmarked certified mail receipt, or a post office certificate of mailing. The written notice shall identify the contract, state the names of the extender of credit and the consumer, and shall include the date and a reasonable description of the violation. In any case where the extender of credit must respond in writing to a complaining consumer, the written notice or other required written response shall be mailed to the last address contained in the extender of credit's file on that consumer, unless the consumer specifies a different address in his written notice sent to the extender of credit.

E. Any civil action under this section must be brought within sixty days of final payment of the consumer credit contract, or in the case of a revolving loan or revolving charge account, within one year of the date of the violation.

F. Definitions of terms used in this section:

(1) The term "civil remedies" as used herein shall include civil penalties, attorney's fees and out-of-pocket expenses.

(2) The term "good faith error" as used herein shall include errors of law as well as errors of fact.

(3) The term "multiple violation" as used herein means a violation which has recurred more than one hundred times as a result of a common error.

G. Attorney fees shall be measured by the time reasonably expended by the consumer's attorney and not by the amount of recovery.

### **§ 3553. Criminal penalties**

A. (1) An extender of credit and any individual directly involved in the extension of credit who willfully makes charges in excess of those permitted by the provisions of this chapter is guilty of a misdemeanor and upon conviction may be sentenced to pay a fine not less than two hundred fifty dollars or more than five thousand dollars, or to imprisonment not exceeding one year, or both.

(2) A person, other than a supervised financial organization, who willfully engages in the business of making or taking assignments of consumer loans without a license in violation of the provisions of this Chapter applying to authority to make consumer loans is guilty of a misdemeanor and upon conviction may be sentenced to pay a fine not less than two hundred fifty dollars nor more than five thousand dollars, or to imprisonment not exceeding one year, or both.

(3) A person who willfully engages in the business of making consumer credit transactions, or of taking assignments of rights against consumers arising therefrom and undertakes direct collection of payments or enforcement of these rights, without complying with the provisions of this Chapter concerning notification (R.S. 9:3563-3565), is guilty of a misdemeanor and upon conviction may be sentenced to pay a fine not exceeding one thousand dollars, or to imprisonment not exceeding four months, or both.

(4) A person who willfully engages in the business of consumer loan brokering without complying with the provisions of this Chapter concerning registration (R.S. 9:3572.1 et seq.) is guilty of a misdemeanor, and upon conviction may be sentenced to pay a fine not exceeding five thousand dollars, or to imprisonment not exceeding one year, or both.

B. When the extender of credit is a corporation, its officers, directors or stockholders who are not personally involved in violations of this chapter, shall not be subject to the criminal penalties of this Section.

## PART VIII. ADMINISTRATION

### § 3554. Powers of commissioner

A. In addition to other powers granted by this Chapter, the commissioner within the limitations provided by law may:

- (1) Receive and act on complaints, take action designed to obtain voluntary compliance with this Chapter, including entering into voluntary consent or compliance agreements with persons conducting activities regulated by this Chapter without the necessity of a hearing or order, or commence proceedings on his own initiative;
- (2) Counsel persons and groups on their rights and duties under this Chapter.
- (3) Establish programs for the education of consumers with respect to credit practices and problems.
- (4) Make studies appropriate to effectuate the purposes and policies of this Chapter and make the results available to the public.
- (5) Adopt, amend, and repeal substantive rules when specifically authorized by this Chapter, and adopt, amend, and repeal procedural rules to carry out the provisions of this Chapter.
- (6) Collect and compile information and data from all licensees concerning the operation, function, and extent of all consumer loan activities. The information and data collected by the commissioner from the licensee shall include, for the preceding year, the following:
  - (a) The total number and dollar amount of consumer loans originated including installment, insurance premium finance, deferred presentment, and any other type of loan as may be applicable.
  - (b) The total number and dollar amount of consumer loans outstanding including installment, insurance premium finance, deferred presentment, and any other types of loans as may be applicable.
  - (c) The aggregate amount of fees earned including interest, service charges, late fees, origination fees, documentation fees, and insufficient funds fees.
  - (d) The total number of consumer loans in default or collection status and the balance of those loans as of the reporting date.
  - (e) The total number of consumer loans reduced to judgment and the principal amount of those judgments.

B. The commissioner shall have the power to promulgate rules and regulations necessary for the enforcement of but not inconsistent with this chapter. Such rules and regulations shall be referenced to the sections or subsections which they interpret or apply. Copies of rules and regulations shall be sent to all persons who have filed notification with the commissioner at least thirty days prior to the effective date of the rule or regulation.

C. (1) The commissioner is hereby authorized to request and obtain from any other department or agency of the state and such are hereby authorized to furnish to the commissioner any records

or information relevant to any consumer complaint or consumer credit transaction investigation or hearing by the commissioner, but excluding records or information otherwise provided by law to be privileged. The commissioner, in his sole discretion, when requested in writing, may disclose or cause the employees of the office of financial institutions to disclose records of the office of financial institutions concerning any person governed by Title 9, when such records are requested by another state or federal agency having authority to investigate or license such person governed by Title 9, or are requested by a bankruptcy trustee or any law enforcement agency in connection with an investigation to recover assets of a current or former licensee.

(2) If the lender's records are located outside the state, the lender, at the commissioner's option, shall make those records available to the commissioner at a location within the 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.

D. The commissioner shall have the power to subpoena any person for the purpose of discovering violations of this chapter.

E. The commissioner may, upon notice to a person regulated by this Chapter and reasonable opportunity to be heard at an administrative hearing, revoke or suspend the license, notification, or registration if:

(1) The person has violated any provisions of this Chapter or any rule or order lawfully made by the commissioner under this Chapter.

(2) The person has violated any provisions of a voluntary consent or compliance agreement which has been entered into with the commissioner.

(3)(a) The person has intentionally or knowingly provided or caused to be made any false or fraudulent information or financial statements to the commissioner.

(b) The person has intentionally or knowingly failed to state in any application for a license, registration, or notification any material fact which is required to be stated therein.

(c) The commissioner finds any fact or condition exists which, if it had existed at the time of the original application for licensure, notification, or registration, would have warranted the refusal of its issuance.

(4) The person fails to maintain records as required by the commissioner by rule, after being given written notice and thirty days within which to correct the failure to maintain such records. Upon good cause shown, the commissioner may grant up to two thirty-day extensions within which the recordkeeping violations may be corrected.

(5) The person violates any provision of a regulatory or prohibitory statute, and has been found to have violated such statute by the governmental agency responsible for determining such violations.

(6) The person engages in fraudulent conduct, including a finding of civil fraud.

(7) The person has been permanently or temporarily enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of the business of making loans.

(8) A license, notification, or registration the person holds in any other state to engage in the business of making consumer loans or consumer credit sales is revoked or suspended for acts or practices which also violate the provisions of this Chapter.

(9) The person violates the written restrictions or conditions under which his license, registration, or notification was issued.

(10) The person transfers consumer loans to an unlicensed or non-exempt person, without the prior written approval of the commissioner, except in accordance with the provisions of this Chapter or any rule pursuant thereto.

(11) The person has abandoned the physical location for which the license, registration, or notification was issued, has not applied for a change of location, and fails to respond within thirty days to a certified mail notice sent to his registered agent for service of process and to his mailing address.

(12) A person which is a business entity is used as a means of furthering a criminal act or a civil fraud.

(13) Another consumer loan license held by the same person or his parent company is revoked for serious and repeated violations of the Louisiana Consumer Credit Law.

(14) A person fails, after notice and without lawful excuse, to obey an order or subpoena issued by the commissioner.

F. The commissioner may, if he finds that the public safety or welfare requires emergency action, order an immediate suspension of a license, registration, or notification under this Chapter, or order a person to immediately cease and desist from an act or practice regulated by this Chapter and to take affirmative action to prevent the continuance of such act or practice pending a hearing, whenever it appears that any person has engaged in or is engaging in any act or practice which is prohibited by this Chapter, or by any rule, regulation, or order promulgated or issued thereunder, or any person has failed to act under any affirmative duty imposed by this Chapter, or rule or regulations promulgated or issued thereunder, subject to the right of such person to a hearing as provided in the Administrative Procedure Act. Such order shall become effective upon service upon such person and shall provide for a hearing and opportunity to be heard within ten days of the order, unless extended by mutual consent of the parties. An order of immediate suspension shall be temporary and shall expire automatically if the commissioner fails to afford notice and an opportunity for hearing pursuant to the Administrative Procedure Act. Such temporary order shall remain effective and enforceable pending the completion of such administrative proceedings or until such time as the commissioner shall dismiss the charges specified in such notice.

G. The commissioner shall conduct a hearing for the purpose of revoking or suspending the license of a licensed lender when three aggrieved parties not related by marriage to each other have filed affidavits stating facts reasonably showing that the licensed lender has engaged in fraudulent conduct.

H. The commissioner may, upon notice to a person engaging in activities regulated under this Chapter and a reasonable opportunity to be heard at an administrative hearing, do one or more of the following:

(1) Place permanent or temporary restrictions upon a person's exercise of any of the privileges granted by this Chapter, if the person is found to have violated any of the provisions of this Chapter or of any rule promulgated by the commissioner.

(2) Issue and serve upon a person an order requiring such person to cease and desist and take corrective action whenever the commissioner finds that such person is violating or has violated any provisions of this Chapter, any rule or order adopted under this Chapter, or any written agreement entered into with the office of financial institutions.

(3) Issue a public reprimand.

I. (1) The commissioner may remove from office any individual with power to direct the management or policies of a person regulated by this Chapter, including but not limited to any officer, director, or manager, if any such individual is convicted of, pleads guilty to, or is found guilty after a plea of nolo contendere, of any felony under any state or federal law, or of a misdemeanor of which fraud is an essential element or which involves any aspect of the business of making loans. Prior to such removal, the commissioner shall serve written notice upon such individual and upon the person regulated by this Chapter, of his intent to remove such individual from office. If such individual remains in office thirty days after such written notice, the commissioner may revoke the license or other privileges granted by this Chapter without any further notification or a hearing.

(2) The commissioner may, upon notice to an individual with the power to direct the management or policies of a person regulated by this Chapter, including but not limited to any officer, director, or manager, and after reasonable opportunity to be heard at an administrative hearing, remove the individual from participating in the affairs of a licensee if that individual has been prohibited, temporarily or permanently, by any other state or federal regulator from participating in activities for which he is licensed under this Chapter.

J. If it is found, after an administrative hearing, that consumers who have done business with the extender of credit have been aggrieved by an improper loan finance charge, credit service charge, deferral charge, delinquency charge, or improper rebate, or the inclusion of an improper item in the amount financed, the commissioner may institute a civil action on behalf of such consumers in any form which he deems appropriate to effectuate the provisions of this Subsection, in order to recover any such money improperly exacted from the consumer by the extender of credit, provided that sixty days have passed after giving notice by certified mail of his intentions. All monies recovered shall be returned to the aggrieved consumer in a manner deemed to be reasonable and which shall assure prompt and expeditious payment to the consumer, in whole or in part, and is calculated to minimize the expenses associated with the distribution of such monies.

K. Whenever an alleged violation has occurred under this Section which necessitates action on the part of the commissioner, and the person has arbitrarily refused to cooperate with the commissioner after due notice, the commissioner may send an investigator to investigate the alleged violation.

(1) The commissioner, after investigation of a complaint and after a proper opportunity for hearing and after finding that a provision of this Chapter has been violated, may issue an order to cease and desist from further violations of a like nature; or

(2) The commissioner, upon notice to the extender of credit and after reasonable opportunity to be heard, provided that he finds that the extender has willfully failed to comply with the provisions of this Chapter to an extent to warrant belief that the business will not be operated honestly and fairly within the purposes of this Chapter, may revoke the privileges granted under this Chapter.

L. The commissioner shall have authority to examine the books, records, and accounts of all persons regulated under or making loans subject to the Louisiana Consumer Credit Law. Such examination shall not occur more frequently than once a year unless there arises the necessity for an additional examination based on a probable cause.

M. If any part of the regulations promulgated is declared invalid, all parts that are severable from the invalid parts shall remain in effect.

N. The information and data collected by the commissioner pursuant to this Section shall be reported by the licensee, by March first of each year, through the Nationwide Mortgage Licensing System and Registry or in a format deemed acceptable by the commissioner as required by the licensing system or in a format prescribed by the commissioner. Upon request from the commissioner, all licensees shall submit any requested documentation to validate the information contained in the report in a format prescribed by the commissioner. Any licensee failing to adhere to the reporting requirements by filing untimely, inaccurate, or fraudulent reports may be subject to the assessment of penalties, remedies, or enforcement measures provided in this Part.

#### **§ 3554.1. Commissioner's powers; unlicensed persons**

A. For the purpose of discovering violations of this Chapter or securing information lawfully required by it hereunder, the commissioner may at any time investigate the loans and business and examine the books, accounts, records, and files used therein of every person engaged in or believed to be engaged in any business regulated by this Chapter, whether such person shall act or claim to act as principal or agent or within or without the authority of this Chapter. For such purpose the commissioner shall have free access to the offices and places of business, books, accounts, papers, records, files, safes, and vaults of such persons. The commissioner may require the attendance of and examine under oath all persons, may administer oaths or affirmations, and, upon his own motion or upon request of any party, may subpoena witnesses, compel their attendance, adduce evidence, and require the production of any matter which is relevant to the investigation, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of relevant facts, or any other matter reasonably calculated to lead to the discovery of admissible evidence.

B. No person, except as authorized by the provisions of this Chapter, shall, directly or indirectly, charge, contract for or receive any interest, charge, or consideration upon the loan, use, or forbearance of money or credit for a consumer purpose.

C. If any individual without lawful excuse fails to obey a subpoena or to give testimony when directed to do so by the commissioner or obstructs the proceedings by any means, whether or not

in the presence of the commissioner that individual is guilty of contempt. The commissioner may file a complaint in a district court setting forth the facts constituting the contempt and requesting an order returnable in not less than two days or more than five days, directing the alleged offender to show cause before the court why he should not be punished for contempt. If the court determines that the respondent has committed any alleged contempt, the court shall punish the offender for contempt.

D. If an investigation or examination by the commissioner shall disclose that any person has violated the provisions of this Chapter relative to licensing requirements other than as a result of a bona fide error, the costs of such investigation or examination shall be borne by the person investigated or examined and the commissioner may maintain an action in any court to recover such costs.

E. Whenever the commissioner has reasonable cause to believe that any person is violating, is threatening to violate, or is about to violate any provision of this Chapter relative to licensing, notification, or registration requirements, he may in addition to all actions provided for in this Chapter, and without prejudice thereto, order such person to cease and desist from such violation, and/or may order such person to cease collecting or enforcing such consumer loans subject to the Louisiana Consumer Credit Law, unless and until such person is licensed to make consumer loans pursuant to this Chapter. An action may be brought by the commissioner or by the attorney general of Louisiana to enjoin such person from engaging in or continuing such violation or from doing any act or acts in furtherance thereof. In any such action an order or judgment may be entered awarding such preliminary or final injunction as may be deemed proper. In addition to all other means provided by law for the enforcement of a restraining order or injunction, the court in which such action is brought shall have power and jurisdiction to impound, and to appoint a receiver for the property and business of the defendant, including books, papers, documents, and records pertaining thereto or so much thereto as the court may deem reasonably necessary to prevent violations of the licensing, notification, or registration provisions of this Chapter through or by means of the use of said property and business. Such receiver, when appointed and qualified, shall have such powers and duties as to custody, collection, administration, winding up, and liquidation of such property and business as shall from time to time be conferred upon him by the court.

F. In addition to any other authority conferred, the commissioner may impose a fine or penalty not exceeding one thousand dollars upon any person required to be licensed under this Chapter who, at an administrative proceeding is determined to have violated the licensing provisions of this Chapter. Such fines may be imposed by a court in which the commissioner has brought an action authorized by this Section. For the purposes of this Section, each day that an unlicensed person engages in the activities regulated by this Chapter shall constitute a separate violation.

#### **§ 3554.2. Reapplication after revocation of a license**

A. Any person whose licensure under this Chapter has been revoked for any reason, may not reapply for a license under this Chapter until after at least five years from the date of the order of suspension or revocation unless the Commissioner, in his sole discretion, prescribes an earlier or later date.

B. For purposes of this Section:

(1) The term “order” shall mean the commissioner’s notification of revocation of the person’s license.

(2) The term “person” shall include the applicant, its owners and its members if the applicant is a limited liability company, its partners if the applicant is a partnership, its officers and directors if the applicant is a corporation, and any other person determined by the commissioner, in his sole discretion, to be closely related to the person.

### **§ 3554.3. Cost of appeal; effect of final decision**

A. Subject to the provisions of R.S. 13:4521 and 4581, all estimated costs of appeal, including those involved in preparation of the administrative record for appeal, taken by a person in connection with an adverse ruling of an administrative law judge in connection with a hearing held pursuant to this Chapter and the Administrative Procedure Act, shall be paid by that person within sixty days of the filing of the petition for appeal in the district court. Failure to pay such estimated costs within the time specified herein shall result in said appeal being dismissed with prejudice and without the necessity of any further action being taken by any party.

B. Any final and definitive decision of an administrative law judge, or in the case such decision is appealed, a final and definitive judgment of an appellate court, issued in connection with any hearing held pursuant to this Chapter and the Administrative Procedure Act shall be considered a valid and final judgment that may be made executory by the commissioner in accordance with the Code of Civil Procedure.

### **§ 3555. Injunctions; investigations; enforcement actions; civil penalties; costs**

A. The commissioner may bring a suit in a court of competent jurisdiction and venue to restrain and enjoin an extender of credit or a person acting on his behalf or both from engaging in future violations of this Chapter or from engaging in a course of fraudulent conduct in inducing consumers to enter into fraudulent consumer credit transactions or in the collection of debts in violation of law.

B. If the court finds that there is reasonable cause to believe that the respondent is engaging in or is likely to engage in fraudulent conduct or in conduct that violates this Chapter, it may grant injunctive relief as otherwise provided by law but without the furnishing of a bond by the commissioner.

C. If an investigation or examination conducted by the commissioner discloses that any person has violated an order of the commissioner under the provisions of this Chapter, or has violated a consent agreement entered into with the commissioner, other than as a result of a bona fide error, the cost of such investigation or examination shall be borne by the person investigated or examined. If the commissioner is granted an injunction pursuant to this Section, or is granted a court order enforcing an order of the commissioner or enforcing any provision of a consent agreement, the commissioner may recover from the defendant or defendants costs and reasonable attorney fees incurred in bringing such action.

D. Civil penalties paid to the commissioner, and overcharge violations of five dollars or less per consumer ordered by the commissioner to be refunded, and paid to the commissioner, shall be deposited in the state treasury and, after compliance with the requirements of Article VII, Section

9(B) of the Constitution of Louisiana relative to the Bond Security and Redemption Fund shall be designated as self-generated revenues of the agency.

### **§ 3556. Method of procedure**

A. The commissioner may, in his discretion, conduct such investigations and hearings as he deems necessary to ascertain possible violations of this Chapter or any rule or order promulgated or issued hereunder. Such hearings may be private, if the commissioner, in his sole discretion, so determines after considering the interests of the person afforded the hearing and the need to protect the public interest. If a public hearing is held and any confidential records of the office of financial institutions are produced by discovery or introduced into evidence at the hearing, such records shall not become public but shall be sealed.

B. The Louisiana Administrative Procedure Act shall supplement this Chapter for the purpose of administrative hearings.

#### **§ 3556.1. Records; rules**

A. Each person regulated by this Part shall maintain records of its consumer credit sales or loans as required by the commissioner or by rule. Persons who make consumer credit sales and do not transfer or assign their agreements to a supervised financial organization, a lender who files notification pursuant to R.S. 9:3564, or a licensed lender within thirty-five days, as provided by R.S. 9:3521, shall comply with the Records Retention Rule for licensed lenders, and shall promptly notify the commissioner that such person is collecting or otherwise enforcing consumer sales agreements or consumer loans and shall further retain copies of all such documents and contracts on file for examination by the commissioner.

B. Any records to be retained pursuant to this Section or regulations promulgated hereunder may be reproduced by any photographic, photostatic, microfilm, microcard, or miniature or microphotographic process, or by any mechanical or electronic recording or re-recording electronic or optical imaging, chemical process, or other process or technique which accurately reproduces the original or forms or creates a durable medium for accurately reproducing the original record.

C. Each reproduction shall be treated for all purposes as if it were the original record, item, or instrument.

D. The commissioner may promulgate such rules and regulations in accordance with the Administrative Procedure Act as he deems necessary to effect the purposes of this Part.

#### **§ 3556.2. Guidance by commissioner; advisory opinions**

A. Advisory opinions and interpretations of the office shall not be considered rules requiring compliance with the rulemaking process under the Louisiana Administrative Procedure Act.

B. This Section shall only have prospective application.

#### **§ 3556.3. Violations; penalties**

A person subject to this Part who violates a provision of this Chapter may be fined up to one thousand dollars for each violation. The commissioner may maintain a civil action in a court of competent jurisdiction to recover such fines, together with his costs and attorney fees incident to such action.

## **PART IX. LICENSING PROVISIONS**

### **§ 3557. Authority to make consumer loans**

A. Unless a person has first obtained a license from the commissioner as provided under this Part, he shall not engage in the business of:

- (1) Making consumer loans; or
- (2) Making loans with the use of a lender credit card or similar arrangement.

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

C. Any person licensed under this Part shall not engage in the business of originating, lending, or brokering any loan primarily for personal, family, or household use that is secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling as defined in 15 U.S.C. 1602(v) or on residential immovable property upon which is constructed or intended to be constructed a dwelling, unless such person has also obtained a license pursuant to the Louisiana S.A.F.E. Residential Mortgage Lending Act, R.S. 6:1081 et seq.

### **§ 3558. License to make consumer loans**

A. The commissioner shall receive and act on all applications for licenses to make consumer loans under this Chapter. Applications shall be filed in the manner prescribed by the commissioner and shall contain the information the commissioner requires to make an evaluation of the financial responsibility, character, and fitness of the applicant.

B. No license shall be issued unless the commissioner, upon investigation, finds that the financial responsibility, character and fitness of the applicant, and of the members thereof (if the applicant is a partnership or association) and of the officers and directors thereof (if the applicant is a corporation), are such as to warrant belief that the business will be operated honestly and fairly within the purposes of this chapter.

C. Upon written request, the applicant is entitled to a hearing on the question of his qualifications for a license if (1) the commissioner has notified the applicant in writing that his application has been denied, or (2) the commissioner has not issued a license within sixty days after the application for the license was filed. A request for a hearing may not be made more than fifteen days after the commissioner has mailed a written notice to the applicant notifying him that the application has been denied and stating in substance the commissioner's findings supporting denial of the application.

D. The commissioner may grant restricted or conditional licenses. Violation of such restrictions or conditions by the licensee may constitute grounds for suspension or revocation of such license.

E.(1) Any person whose application or renewal application for licensure under this Chapter has been denied for any reason may not reapply for a license under this Chapter until after at least three years from the date of the order of denial, unless the commissioner, in his sole discretion, prescribes an earlier or later date.

(2) For purposes of this Section:

(a) The term “order” shall mean the date of the commissioner’s notification of denial of the person’s application.

(b) The term “person” shall include the applicant, its owners, and its members if the applicant is a limited liability company, its partners if the applicant is a partnership, its officers and directors if the applicant is a corporation, and any other person determined by the commissioner, in his sole discretion, to be closely related to the person.

### **§ 3559. Continuation of licensing**

A. All persons licensed or otherwise authorized under the provisions of the Louisiana Small Loan Act (R.S. 6:571-593), the Motor Vehicle Sales Finance Act or Direct Vehicle Loan Companies Act (R.S. 6:951-964; R.S. 6:970-976) and who have an occupational license to make loans not regulated by the above acts on January 1, 1973, are licensed to make consumer loans, and the commissioner shall, upon request, within forty-five days, deliver evidence of licenses to the person so previously licensed or authorized.

B. All persons previously licensed as set forth in Subsection A of this section desiring to become licensed lenders pursuant to this provision shall file notice of such intent with the commissioner within thirty days after the effective date of this chapter and shall be deemed a licensed lender within the meaning of this chapter from January 1, 1973, provided that notice is timely filed. Failure to file notice within the allotted time shall constitute a waiver of the rights granted under this section.

### **§ 3559.1. Regulation of former licensees**

A. A licensed lender whose license has been revoked, suspended, or canceled may, with the prior written consent of the commissioner, continue to collect payments on or enforce such loans without a license so long as it complies with each of the following:

(1) The record keeping requirements for licensed lenders.

(2) All other provisions of this Chapter.

(3) Pays the commissioner’s costs for conducting compliance examinations or investigations of its records.

(4) The terms of any valid order of the commissioner or of a court relative to provisions of this Chapter.

(5) All consent agreements entered into with the commissioner.

B. The commissioner may require such unlicensed persons to enter into a consent agreement containing the provisions of this Section and may require additional restrictions and conditions therein, as determined by the commissioner, as a condition to the former licensee's continued collection or enforcement of consumer loans.

C. The commissioner may assess civil money penalties of up to one thousand dollars per violation for violations of this Section. Such penalties may be recovered by the commissioner in a civil action brought in a court of competent jurisdiction, together with reasonable attorney fees and costs incurred in bringing such action.

### **§ 3560. Licenses not required**

A. Notwithstanding R.S. 9:3557, the following persons are exempt from the consumer loan licensing requirements under this Part:

(1)(a) A bank, savings bank, savings and loan association, or similar financial institution organized, certified, and supervised, or chartered, by an agency of the United States of America, the state of Louisiana, any other state or territory of the United States of America, or the District of Columbia pursuant to the banking, currency, and related laws of the United States of America, the state of Louisiana, any other state or territory of the United States of America, or the District of Columbia.

(b) A subsidiary of any state-chartered or federally chartered entity described in Subparagraph (a) of this Paragraph in which eighty percent or more of the ownership rests with such parent entity.

(2) A trust administered by a bank or a bank trust department.

(3) A governmental agency, instrumentality, or public entity organized by act of congress or the Legislature of Louisiana.

(4) An insurance company when entering into a life insurance loan to a policyholder.

(5) A qualified pension plan when entering into an extension of credit to a plan participant.

(6) A bona fide pledgee of a consumer credit transaction to secure a bona fide loan thereon.

(7) A seller or other creditor refinancing a retail installment transaction subject to the Motor Vehicle Sales Finance Act.

(8) Unless otherwise provided by rule or regulation of the commissioner, persons whose lending activities pertain to federally related mortgage loans, and who are subject to licensing, supervision or auditing by the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Government National Mortgage Association, the United States Department of Veterans Affairs, or the United States Department of Housing and Urban Development. Such lenders may also make loans secured by a second or junior lien or mortgage on owner-occupied one-to-four family residential immovable property made contemporaneously with federally related mortgage loans or as part of a mortgage revenue bond loan program, or sold on the secondary market to the Federal National Mortgage

Association, the Federal Home Loan Mortgage Corporation, or the Government National Mortgage Association, and the entity sells ten or fewer of such loans over any calendar year.

B. The commissioner is authorized to waive the consumer loan licensing and examination requirements for a subsidiary of an entity as described in Subparagraph (a) of this Paragraph where the holding company thereof has one or more state-chartered subsidiaries. In lieu of such licensure and examination, the commissioner may review relevant reports or portions thereof prepared by any subsidiary agency described in Subparagraph (a) of this Paragraph.

C. The commissioner may enter into a supervisory agreement with any supervisory agency described in Subparagraph (A)(1)(a) of this Section where such supervisory agency agrees to periodically examine the entity which is subject to its jurisdiction for compliance with this Chapter. Where such an agreement has been entered into, the commissioner may accept relevant reports or portions thereof prepared by such supervisory agency in lieu of the licensing and examination requirements of this Chapter.

### **§ 3561. Single place of business; additional licenses**

A. Each licensee making consumer loans to Louisiana residents shall maintain records of its consumer loans at the location stated on its license. Not more than one place of business shall be maintained under the same license, but the commissioner shall issue additional licenses to the same licensed lender upon his compliance with all the provisions of this Part governing issuance of a license.

B. A licensed lender may change the location of the business only after written approval of the commissioner. The application to change the location shall be filed at least thirty days prior to the proposed relocation date. Upon receipt of the application, the commissioner may cause a survey to be made to determine if the proposed location meets the requirements imposed for a new licensed location. If the requirements are met, the application shall be approved.

C. A license to make consumer loans may not be sold or otherwise transferred. However, all accounts and other assets may be sold or transferred to another licensed lender, upon prior written approval of the commissioner. After the sale or transfer of all accounts, the license of the selling or transferring licensee shall be surrendered to the commissioner as cancelled.

D. (1) No person shall acquire or control a consumer loan license through the acquisition or control twenty-five percent or more of the ownership interest in a licensee without first having obtained written approval from the commissioner, pursuant to an application for a change of control in ownership of the licensee filed in the manner and on a form prescribed by the commissioner and accompanied by a fee of three hundred dollars. Any person who acquires controlling interest in a licensee without first having filed an application for change of control with the commissioner shall be deemed to be operating without proper authority under this Chapter and is subject to the penalties of R.S. 9:3554.1.

(2) For the purposes of this Section, a person acquires or controls the licensee when the person directly or acting through one or more other persons owns a twenty-five percent or more interest in the licensee, or exercises a controlling influence over the management or the policies of the licensee as determined by the commissioner after notice and an opportunity for an informal meeting, not subject to the Administrative Procedure Act, regardless of whether the acquisition or control occurs incrementally over a period of time or as one transaction.

E. A licensed lender may change its name only after written application to and approval by the commissioner.

F. (1) Unless prior written approval is obtained from the commissioner, a licensed lender may not assign or otherwise transfer ownership of consumer loans, including insurance premium financing agreements, to a person who is not a licensed lender, or who has not complied with R.S. 9:3557(B), or who is not exempt from the licensing requirements as provided in R.S. 9:3560.

(2) A licensee shall keep a record or list of all consumer loans which it has purchased, sold, assigned, or otherwise transferred or acquired. The records shall include the name and address of the persons from which the loans were acquired or to whom the notes were transferred, indicate any affiliation between the seller and buyer, the date and dollar amount of each such transaction, and account names and numbers.

### **§ 3561.1. License; examination; renewal fees; records**

A. The initial application, survey, and license fee for a license to make consumer loans shall be six hundred fifty dollars payable in a form acceptable to the commissioner when the application is filed. Such application, survey, and license fee shall be nonrefundable. If the license is not issued for any reason, upon written request of the applicant, the fee shall be applied to the submission of a new application.

B. The annual renewal fee, including examination, shall be five hundred dollars, payable on or before December thirty-first of each year.

C. (1) The survey fee for an application to change the location of a licensed lender shall be one hundred dollars. If the change in location is approved by the commissioner of financial institutions, no additional fee shall be required for the transfer of the existing license to the new location.

(2) The fee to change the name or the mailing address of a licensed lender that does not involve the relocation of the lender shall be fifty dollars.

(3) However, a fee of fifty dollars shall be assessed if a licensed lender changes locations without complying with the provisions of R.S. 9:3561(B) or changes its name without complying with the provisions of R.S. 9:3561(E). Whenever the commissioner learns that a licensed lender has changed locations or name without complying with the provisions of R.S.

9:3561(B) or (E), he shall notify the licensed lender by certified mail, return receipt requested, that the fee has been assessed.

D. If the commissioner has not received the assessed fee within thirty days after the date the licensed lender received his notification of assessment, he shall revoke the licensed lender's license without hearing or further notification. The license shall not be reinstated. However, the former licensee may apply for a new license.

E. No fee shall be prorated.

F. (1) If the commissioner has not received the annual renewal fee from a licensed lender on or before December thirty-first, he shall notify the licensed lender and assess a late fee of one hundred dollars.

(2) If the commissioner has not received the annual renewal fee and late fee before March first of the following year, the license to make consumer loans and insurance premium finance loans shall lapse without a hearing or notification, and the license shall not be reinstated; however, the person whose license has lapsed may apply for a new license.

G. (1) If the lender's records are located outside this state, the lender, at the commissioner's option, shall make them available in a format deemed by the commissioner to be acceptable to include physical reproductions and digital electronically imaged records. The lender shall make these available 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, or pay the reasonable and necessary expenses for the commissioner or his representatives to examine them at the place where they are maintained. The method of examination and delivery of records will be at the sole discretion of the commissioner. The commissioner may designate representatives, including comparable officials of the state in which the records are located, to inspect them on his behalf.

(2) The commissioner shall have the authority to examine the books, records, and accounts of any former licensed lender or other permit holder which is being liquidated or is engaging in the collection or enforcement of consumer loans.

(3) Persons regulated by this Chapter, including persons engaged in the collection or enforcement of consumer loans who have not paid an examination fee for any reason, including revocation, suspension, cancellation, relinquishment, or non-renewal of permit, shall, upon examination, pay an examination fee to the commissioner of fifty dollars per hour per examiner. If the examination fee is not paid within thirty days after its assessment, the person examined is subject to an administrative penalty of not more than one hundred dollars each day that it is late. The penalty, together with the amount due, may be recovered by the commissioner in a civil action brought in any court of competent jurisdiction.

H. The commissioner may promulgate rules or regulations to reduce the fees described in Subsections A and B of this Section with respect to their application to automated loan machines.

I. Any person required to be licensed by this Chapter shall pay all applicable fees to utilize any electronic database licensing system as described in R.S. 6:121.8.

**§ 3561.2. Registration of licensees with the secretary of state**

Any person required to be licensed pursuant to this Chapter shall, prior to application for licensure, be duly registered with the Louisiana secretary of state and be in possession of a certificate of authority to transact business pursuant to R.S. 12:304 or 1345 or R.S. 9:3422, as applicable.

## PART X. COLLECTION PRACTICES

### § 3562. Unauthorized collection practices

Except as otherwise provided by law or this section, the creditor, including, but not limited to the creditor in a consumer credit transaction, shall not contact any person other than an extender of credit or credit reporting agency who is not living, residing, or present in the household of the debtor regarding the debtor's obligation to pay a debt.

(1) Notwithstanding R.S. 9:3513 the debtor may waive the benefits of this section at any time by giving consent, provided such consent is given at a time subsequent to the date the debt arises.

(2) The creditor may contact any person without the debtor's consent:

(a) To ascertain information bearing on a debtor's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics or mode of living which is used or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing the debtor's eligibility for credit or insurance provided such contacts are not designed to collect a delinquent debt, or

(b) To ascertain the whereabouts of the debtor when the creditor has reason to believe the debtor has changed his employment or has moved from his last known address.

(3) If the debtor has defaulted on his promise to pay, and if he has given specific notice in writing by registered or certified mail, instructing the creditor to cease further contacts with the debtor in regard to the indebtedness, the creditor shall thereafter limit mail contacts to one notice per month so long as the notice is not designed to threaten action not otherwise permitted by law. If the debtor has instructed the creditor to cease further contact, as heretofore provided, the creditor may make a maximum of four personal contacts with the debtor for the purpose of settling the obligation provided such contacts are not designed to threaten action not otherwise permitted by law.

(4) This section shall not prohibit the extender of credit from

(a) contacting any person in order to discover property belonging to the debtor that may be seized to satisfy a debt that has been reduced to judgment;

(b) making amicable demand and filing suit on the debt; or

(c) contacting persons related to the debtor if permission is specifically given in writing at the time the debt arises or at any time thereafter, provided that such contacts are reasonable.

(5) This section shall not limit a debtor's right to bring an action for damages provided by Article 2315 of the Louisiana Civil Code.

(6) Notwithstanding the provisions of Paragraph (3), when the extender of credit has filed suit and obtained judgment he shall be permitted to resume contacts with the consumer against whom judgment has been obtained.

## **PART XI. NOTIFICATION AND FEES**

### **§3563. Applicability**

This Part applies to a person engaged in this state in making consumer credit sales or consumer loans and to a person who takes assignments of and undertakes direct collection of payments from or enforcement of rights against debtors arising from these sales or loans. This Part shall not apply to a licensed lender or to any person whose only act of extending credit is the making of a sale to a consumer by honoring a credit card issued by a supervised financial organization subject to regulation, supervision, or auditing by any state or federal agency, and where such seller receives payment for the sale from the credit card issuer and retains neither an interest in the extension of the credit nor a right of recourse against the buyer in the event of nonpayment of the account.

#### **§3563.1. Financial institutions exempt**

Notwithstanding the provisions of R.S. 9:3563, banks, savings and loan associations, savings banks, and credit unions, as well as any nonpublic elementary and secondary schools that finance their tuition, shall be exempt from the notification filing requirements under this Part. Such institutions, except as provided in R.S. 9:3512, shall be subject to the provisions of this Chapter on all consumer credit transactions made by the institution. "Consumer credit transactions" is as defined in R.S. 9:3516(13).

### **§3564. Notification**

A. Persons subject to this Part shall file notification with the commissioner within thirty days after commencing business in this state, and thereafter, on or before April first of each year. The notification shall state:

- (1) The name of the person.
- (2) The name in which business is transacted if different from (1).
- (3) The address of the principal office, which may be located outside this state.
- (4) The address of each office or retail store in this state, if any, at which consumer credit sales or consumer loans are made. If a person takes assignments of obligations, the notification shall state the offices or places of business within this state at which business is transacted.
- (5) If consumer credit sales or consumer loans are made otherwise than at an office or retail store in this state, a brief description of the manner in which they are made.
- (6) The address of the designated agent upon whom service of process may be made in this state.
- (7) Whether or not consumer loans are made.

(8) Any other information that may be required by the commissioner.

B. If information in a notification becomes inaccurate after filing, the filer shall correct the inaccurate information within sixty days by written notice to the commissioner.

C. Each branch or location of a business shall be considered as a separate entity, notification shall be filed for each entity.

### **§3565. Notification fee**

A. Each entity required to file notification with the commissioner shall remit with that notification a fee as set forth in Subsection B of this Section.

B. (1) The notification fee for each entity engaged in making consumer credit sales shall be as follows:

(a) An entity with a preceding calendar year consumer credit sales total of not more than five hundred thousand dollars shall pay seventy-five dollars.

(b) An entity with a preceding calendar year consumer credit sales total of more than five hundred thousand but less than one million dollars shall pay one hundred fifty dollars.

(c) An entity with a preceding calendar year consumer credit sales total of more than one million but less than two million dollars shall pay three hundred seventy-five dollars.

(d) An entity with a preceding calendar year consumer credit sales total of more than two million dollars shall pay seven hundred fifty dollars.

(2) Repealed by Acts 1992, No. 282, § 1.

(3) Repealed by Acts 1986, No. 584, §. 4, eff. July 2, 1986.

(4) Each entity that takes assignments and undertakes direct collection of payments from or enforcement of rights against debtors arising from consumer credit sales or loans shall pay seventy-five dollars.

C. If the required notification and notification fee are not received by the commissioner, postmarked by April sixteenth of each year, a late fee of fifty dollars shall be assessed. If the required notification, notification fee, and late fee are not received by the commissioner, postmarked by May thirtieth of that year, the commissioner shall notify the person that if the notification and fees are not received by the commissioner, postmarked by June sixteenth of that year, the person shall forfeit his right to engage in the privileges provided for in this Part.

D. A person shall not be authorized to engage in the activities regulated by this Part unless such person has complied with the notification provisions of this Part and the notification

filing has not been suspended or revoked by the commissioner as provided for in this Chapter.

E. No new license shall be issued upon the filing of a new application by any person against whom any penalty or fee has been imposed unless and until such penalty or fee previously accrued under this Section has been paid.

**§3566. Repealed by Acts 1997, No. 48, § 1**

**§3567. Repealed by Acts 1997, No. 63, § 3.**

## PART XII. IDENTIFY THEFT

### §3568. Identity theft

**A. Police reports.** Notwithstanding the fact that jurisdiction may lie elsewhere for investigation and prosecution of a crime of identity theft, victims of identity theft may file police reports about the identity theft with the Louisiana Department of Justice, office of the attorney general, and/or in the municipality or parish in which the victim is domiciled. The Louisiana Department of Justice, office of the attorney general, and/or the municipal police department or sheriff's office shall receive and file any report of identity theft filed by victims as authorized under this Subsection. For the purpose of this Subsection, "police report" means a loss or other similar report filed with the Louisiana Department of Justice, office of the attorney general, and/or the municipal police department, or with a sheriff's department, or with a similar law enforcement agency.

**B. Creditors to make information available.** (1) Each creditor who grants credit as a result of information which was obtained through an identity theft shall make available to the victim of the identity theft application information and transactional information, such as a copy of one or more complete monthly billing statements prepared in the regular course of business by a financial institution, in the possession of the creditor which the victim needs to undo the effects of the identity theft. Prior to providing information to the victim, the creditor or its representative may require the victim to submit a written statement, dated and signed by the victim of identity theft, which (a) provides information sufficient to verify the identity of the victim and the existence of an identity crime, including a copy of the police report and a copy of the victim's state-issued identification card, and (b) states that the consumer authorizes disclosure of the information, and (c) identifies the information the victim requests to be disclosed.

(2) No creditor may be held liable for an action taken in good faith to provide information regarding potential or actual violations of this Part to other financial information repositories, financial service providers, merchants, law enforcement authorities, victims, or any person alleging to be a victim who complies with Paragraph (1) of this Subsection, or to assist a victim in recovery of fines, restitution, and rehabilitation of the victim's credit, or such other relief as may be appropriate.

**C. Security alerts.** (1) A person who receives notification of a security alert under R.S. 9:3571.1 in connection with a request for a consumer report for the approval of a credit-based application, including an application for a new extension of credit, a purchase, lease, or rental agreement for goods, or for an application for a noncredit-related service, shall not lend money, extend credit, or authorize an application without taking reasonable steps to verify the consumer's identity. For the purpose of this Section, "extension of credit" does not include an increase in an existing open-end credit plan, as defined in Regulation Z of the Federal Reserve System (12 C.F.R. 226.2), or any change to or review of an existing credit account.

(2) If a consumer has included with a security alert a specified telephone number to be used for identity verification purposes, a person who receives that number with a security alert shall contact the consumer using that number or take reasonable steps to verify the consumer's identity and confirm that the application for an extension of credit is not the result of financial theft before lending money, extending credit, or completing any purchase, lease, or rental of goods, or approving any noncredit-related services.

(3) If a person uses a consumer report to facilitate the extension of credit or for any other transaction on behalf of a subsidiary, affiliate, agent, assignee, or prospective assignee, that person, rather than the subsidiary, affiliate, agent assignee, or prospective assignee, may verify the consumer's identity.

**D. Damages.** Effective January 1, 2004, each creditor, potential creditor, credit reporting agency, or other entity which violates the provisions of this Part shall be liable to the victim of an identity theft for all of the documented out-of-pocket expenses caused by such creditor, potential creditor, credit reporting agency, or other entity and suffered by the victim as a result of the identity theft, plus reasonable attorney fees.

## **PART XIII. DISCLOSURE OF PERSONAL CREDIT INFORMATION**

### **§3571. Dissemination of specific credit information; subpoena of records; requirements; penalties**

A savings bank, a savings and loan association, a company issuing credit cards, or a business offering credit shall disclose financial records of its customers only pursuant to R.S. 6:333.

#### **§3571.1. Credit reporting agency information and reports; consumer access to files; right of correction; dissemination or maintenance of untrue or misleading credit information by credit reporting agency; investigation; right to recovery**

A. (1) Each credit reporting agency shall, within five business days of receipt of a written request from a consumer, mail, first class, to that consumer a copy of his credit report, including the nature and substance of any information being provided to credit reporting agency customers of the agency.

(2) Any consumer appearing in person during normal business hours at the office of a full service credit reporting agency location which offers customer service shall, upon presentation of clear and proper identification, be immediately given a copy of his report unless the agency has reason to believe the requestor is an impostor.

(3) The credit reporting agency may charge the consumer a fee not to exceed eight dollars for each requested copy of his credit report, whether the request is made in person or in writing. The eight dollar fee maximum may be increased each year on August twenty-first by an amount not to exceed the annual percentage increase in the retail Consumer Price Index in the preceding year. Such annual adjustment shall be rounded to the nearest half-dollar.

B. Any credit reporting agency doing business in this state shall maintain reasonable procedures to comply with the federal Fair Credit Reporting Act, the Consumer Credit Protection Act, and all provisions of this Section. Each credit reporting agency shall use reasonable care to insure the maximum possible accuracy of the credit reports it disseminates.

C. Upon written notification by the affected consumer disputing the completeness or accuracy of any item so maintained or disseminated, a credit reporting agency shall initiate an investigation of the disputed item. Within forty-five calendar days of receipt of such written notification, the credit reporting agency shall either promptly correct the disputed item or shall provide a written update of the current status of the disputed file items after investigation of said items. When the consumer provides evidence substantiating his claim, the credit reporting agency shall consider such information. If the investigation does not resolve the dispute, the consumer may file a brief statement setting forth the nature of the dispute. The credit reporting agency may limit such statements to not more than one hundred words if it provides the consumer with assistance in writing a clear summary of the dispute. Whenever a dispute statement is filed, unless there are compelling grounds to believe such dispute is frivolous or irrelevant, the credit reporting agency shall in any subsequent report

containing the information in question clearly note that it is disputed and provide either the consumer's statement or a clear and accurate summary thereof.

D. Any consumer who is denied credit, insurance, or employment on the whole or partial basis of information provided by a credit reporting agency shall be entitled to a copy of his credit report without charge, provided that he requests such report in writing from the agency within sixty days of being denied credit by a third party. The third party shall upon request by the consumer provide the name of the credit reporting agency which provided information used in the credit denial decision.

E. Each credit reporting agency shall maintain a record of the recipients of any credit report which was furnished for employment consideration purposes in the two years preceding the request, and such agency shall also maintain a record of the recipients of a report requested for any other purpose during the six-month period preceding the request.

F. Any person damaged by an intentional or negligent violation of Subsections A through E may bring an action for and shall be entitled to recovery of actual damages, plus reasonable attorney fees, court costs, and other reasonable costs of prosecution of the suit.

G. (1) Any person who is denied credit, insurance, or employment on the basis of erroneous or inaccurate information furnished by a credit reporting agency is entitled to the recovery from such agency of his actual damages, plus reasonable attorney fees and court costs, if both of the following exist:

(a) The erroneous or inaccurate information was a significant material cause of the denial of credit, insurance, or employment.

(b) The credit reporting agency failed to use ordinary care in obtaining or amassing the information or failed to exercise due diligence in discovering such error.

(2) Any person who is required to have erroneous or inaccurate information removed from his credit report as a condition to having his credit, insurance, or employment application approved is entitled to the recovery of his actual damages, plus reasonable attorney fees and court costs, if both of the following exist:

(a) The erroneous or inaccurate information was a significant material cause of the request for the removal of such information.

(b) The credit reporting agency failed to use ordinary care in obtaining or amassing the information or failed to exercise due diligence in discovering such error.

(3) For purposes of this Subsection, the failure to use ordinary care or exercise due diligence shall mean the failure to comply with the federal Fair Credit Reporting Act, the Consumer Credit Protection Act, or any provision of this Section. Such failure to comply shall be presumptive evidence that the credit reporting agency failed to use ordinary care or exercise due diligence.

H. For the purposes of this Section:

(1) "Clear and proper identification" means information generally deemed sufficient to identify a person.

(2) "Credit report" means any written, oral, or other communication of any credit information by a credit reporting agency, as defined in the federal Fair Credit Reporting Act, which operates or maintains a database of consumer credit information bearing on a consumer's credit worthiness, credit standing, or credit capacity.

(3) "Credit reporting agency" means any person who, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties, and who uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports. For the purposes of this Section, "Credit Reporting Agency" shall not mean a check acceptance service which provides check approval and guarantees services to merchants.

(4) "Security alert" means a notice placed on a consumer file, at the request of the consumer, that is sent to a recipient of a consumer report involving that consumer file, signifying the fact that the consumer's identity may have been used without the consumer's consent to fraudulently obtain goods or services in the consumer's name.

(5) "Security freeze" means a notice placed on a consumer file, at the request of the consumer and subject to certain exceptions, that prohibits a credit reporting agency from releasing the consumer's credit report or credit score without the express authorization of the consumer.

I. Upon a request by a consumer in writing or by telephone, with proper identification provided by the consumer, a consumer reporting agency shall place a security alert on the consumer's file not later than five business days after the date the agency receives the request. The security alert must remain in effect for not less than ninety days after the date the agency places the security alert on file. There is no limit on the number of security alerts a consumer may request. At the termination of the security alert, upon written request or telephone authorization by the consumer, and with proper identification provided by the consumer, the agency shall provide the consumer with a copy of the consumer's file.

J. A consumer reporting agency shall send an alert to each person who requests a consumer report if a security alert is in effect for the consumer file involved regardless of whether a full credit report, or summary report is requested.

K. A consumer reporting agency that compiles and maintains files on a nationwide basis, as defined by 15 U.S.C. §1681a(p) shall maintain a toll-free telephone number that will accept security alert requests from consumers twenty-four hours a day, seven days a week, subject to reasonable maintenance, or service outages beyond the control of the consumer reporting agency.

L. The following persons are not required to place a security alert or a security freeze on a consumer report in accordance with this Part:

(1) A check services or fraud prevention services company, which issues reports on incidents of fraud or authorizations for the purpose of approving or processing negotiable instruments, electronic funds transfers, or similar methods of payments.

(2) A deposit account information service company, which issues reports regarding account closures due to fraud, substantial overdrafts, ATM abuse, or similar negative information regarding a consumer, to inquiring banks or other financial institutions for use only in reviewing a consumer request for a deposit account at the inquiring bank or financial institution.

(3) A reseller of credit information that assembles or merges information contained in the database of another consumer reporting agency or multiple consumer reporting agencies, and does not maintain a permanent database of credit information from which new consumer reports are produced.

(4) Any database or file which consists solely of any information adverse to the interests of the consumer, including but not limited to criminal record information, which is used for fraud prevention or detection, tenant screening, employment screening, or any purpose permitted by the federal Fair Credit Reporting Act, 15 U.S.C. §1681b.

(5) A person to the extent such person offers fraud prevention services that issues reports on incidents of fraud or reports used primarily in the detection or prevention of fraud.

(6) A bank, as defined in 12 U.S.C. 1813(a) and Title 6 of the Louisiana Revised Statutes of 1950.

M. (1) A consumer may elect to place a security freeze on his credit report by any of the following methods:

(a) By written request, sent by standard or certified mail, that includes clear and proper identification, to a credit reporting agency.

(b) Telephone call.

(c) Electronically by secure website.

(2) A credit reporting agency shall place a security freeze on a consumer's credit report no later than five business days after receiving a written request for the security freeze from the consumer by mail. A credit reporting agency that receives such a request electronically by secure website or by telephone shall comply with the request within twenty-four hours of receiving the request.

(3) When a security freeze is in place, information from a consumer's credit report shall not be released to a third party without prior express authorization from the consumer. This Subsection does not prevent a credit reporting agency from advising a third party that a security freeze is in effect with respect to the consumer's credit report.

N. The credit reporting agency shall, no later than five business days after the date the agency receives the request for a security freeze, provide the consumer with a unique personal identification number or password to be used by the consumer when providing authorization for the access to his credit file for a specific period of time. In addition, the credit reporting agency shall simultaneously provide to the consumer in writing the process of placing, removing, and temporarily lifting a security freeze and the process for allowing access to information from the consumer's credit file for a specific period while the security freeze is in effect.

O. A consumer may request a replacement personal identification number or password. The request shall comply with the requirements for requesting a security freeze under Subsection M of this Section. The credit reporting agency shall, not later than the fifth business day after the date the agency receives the request for a replacement personal identification number or password, provide the consumer with a new, unique personal identification number or password to be used by the consumer instead of the number or password that was provided under Subsection N of this Section.

P. A credit reporting agency shall notify a person who requests a consumer report or score if a security freeze is in effect for the consumer file involved in that report or score.

Q. If a third party requests access to a consumer credit report on which a security freeze is in effect, and this request is in connection with an application for credit or any other use, and the consumer does not allow his credit report to be accessed for that specific period of time, the third party must treat the application as incomplete.

R. If the consumer wishes to allow his credit report or score to be accessed for a specific period of time while a freeze is in place, he shall contact the credit reporting agency by a method provided for in Subsection M of this Section and request that the freeze be temporarily lifted, and provide the following:

(1) Clear and proper identification.

(2) The unique personal identification number or password provided by the credit reporting agency pursuant to Subsection N or O.

(3) The proper information regarding the time period for which the report shall be available to users of the credit report.

S. A credit reporting agency that receives a request by mail from a consumer to temporarily lift a freeze on a credit report pursuant to Subsection R of this Section shall comply with the

request no later than three business days after receiving the request. A credit reporting agency that receives such a request electronically by secure website or by telephone shall comply with the request within twenty-four hours of receiving the request.

T. A credit reporting agency shall remove or temporarily lift a freeze placed on a consumer's credit report only in the following cases:

(1) Upon consumer request as provided in this Section.

(2) If the consumer's credit report was frozen due to a material misrepresentation of fact by the consumer. If a credit reporting agency intends to remove a freeze upon a consumer's credit report pursuant to this Paragraph, the credit reporting agency shall notify the consumer in writing prior to removing the freeze on the consumer's credit report.

U. A security freeze shall remain in place until the consumer requests that the security freeze be temporarily lifted for a specific period of time or removed. A credit reporting agency shall remove a security freeze within three business days of receiving a written request for removal from the consumer or within twenty-four hours of receiving an electronic request by secure website or telephonic request for removal from the consumer, who provides both of the following:

(1) Clear and proper identification.

(2) The unique personal identification number or password provided by the credit reporting agency.

V. A security freeze does not apply to a consumer report provided to:

(1) A federal, state, or local governmental entity, including a law enforcement agency, or court, or their agents or assigns.

(2) A private collection agency for the sole purpose of assisting in the collection of an existing debt of the consumer who is the subject of the credit report requested.

(3) A person or entity, or a subsidiary, affiliate, or agent of that person or entity, or an assignee of a financial obligation owing by the consumer to that person or entity, or a prospective assignee of a financial obligation owing by the consumer to that person or entity in conjunction with the proposed purchase of the financial obligation, with which the consumer has or had prior to assignment an account or contract, including a demand deposit account, or to whom the consumer issued a negotiable instrument, for the purposes of reviewing the account or collecting the financial obligation owing for the account, contract, or negotiable instrument. For purposes of this Paragraph, "reviewing the account" includes activities related to account maintenance, monitoring, credit line increases, and account upgrades and enhancements.

(4) A subsidiary, affiliate, agent, assignee, or prospective assignee of a person to whom access has been granted under Subsection R for the purposes of facilitating the extension of credit.

(5) A person, for the purposes of prescreening as provided by the federal Fair Credit Reporting Act.

(6) A credit reporting agency for the purposes of providing a consumer with a copy of his own report on his request.

(7) A child support enforcement agency.

(8) A credit reporting agency that acts only as a reseller of credit information by assembling and merging information contained in the database of another credit reporting agency or multiple credit reporting agencies and does not maintain a permanent database of credit information from which new credit reports are produced. However, a credit reporting agency acting as a reseller shall honor any security freeze placed on a credit report by another credit reporting agency.

(9) A check services or fraud prevention services company, which issues reports on incidents of fraud or authorizations for the purpose of approving or processing negotiable instruments, electronic funds transfers, or similar methods of payments.

(10) A deposit account information service company, which issues reports regarding account closures due to fraud, substantial overdrafts, ATM abuse, or similar negative information regarding a consumer, to inquiring banks or other financial institutions for use only in reviewing a consumer request for a deposit account at the inquiring bank or financial institution.

W. A credit reporting agency may impose a reasonable charge on a consumer for initially placing a security freeze on a consumer file. The amount of the charge may not exceed ten dollars. The charge to temporarily lift the security freeze may not exceed eight dollars per request. At no time shall the consumer be charged for revoking the freeze. On January first of each year, a credit reporting agency may increase the charge for placing a security alert based proportionally on changes to the Consumer Price Index of All Urban Consumers as determined by the United States Department of Labor with fractional changes rounded to the nearest twenty-five cents. An exception shall be allowed whereby the consumer will be charged zero dollars by the consumer reporting agency placing the security freeze if any of the following applies:

(1) If the consumer is a victim of identity theft and, upon the request of the consumer reporting agency, provides the credit reporting agency with a police report described in R.S. 9:3568.

(2) If the consumer is sixty-two years of age or older.

X. If a security freeze is in place, a credit reporting agency shall not change any of the following official information in a consumer credit report without sending a written confirmation of the change to the consumer within thirty days of the change being posted to the consumer's file: name, date of birth, social security number, and address. Written confirmation is not required for technical modifications of a consumer's official information, including name and street abbreviations, complete spellings, or transposition of numbers or letters. In the case of an address change, the written confirmation shall be sent to both the new address and to the former address.

Y. Any consumer damaged by an intentional or negligent violation of Subsections M through U may bring an action for and shall be entitled to recovery of actual damages, plus reasonable attorney fees, court costs, and other reasonable costs of prosecution of the suit.

Z. A credit reporting agency is not required to place, remove, or temporarily lift a security freeze within the time periods provided in this Section, only for such time as the occurrences prevent compliance, if any of the following occurrences apply:

(a) The consumer fails to provide information required by this Section or commits or attempts to commit a fraud or misrepresentation.

(b) The credit reporting agency's ability to place, remove, or temporarily lift the security freeze is prevented by any of the following circumstances:

(i) An act of God, including fire, earthquakes, hurricanes, storms, or similar natural disaster or phenomena.

(ii) Unauthorized or illegal acts by a third party, including terrorism, sabotage, riot, vandalism, labor strikes or disputes disrupting operations, or similar occurrence.

(iii) Operational interruption, including electrical failure, unanticipated delay in equipment or replacement part delivery, computer hardware or software failures inhibiting response time, or similar disruption.

(iv) Governmental action, including emergency orders or regulations, judicial or law enforcement action, or similar directives.

(v) Regularly scheduled maintenance, during other than normal business hours, of, or updates to, the credit reporting agency's systems.

(vi) Commercially reasonable maintenance of, or repair to, the credit reporting agency's systems that is unexpected or unscheduled.

**§3571.2. Limitations on use of consumer's credit report**

A. No motor vehicle dealer shall request, obtain, or review a consumer's credit report in connection with the following activities unless, prior to the activity, the dealer has received an application from the consumer to lease or finance a motor vehicle or a written authorization from the consumer for such request or review:

- (1) A request to test drive or the test driving of a motor vehicle.
- (2) A request for information concerning pricing or financing.
- (3) Negotiating with a consumer.

B. Whoever violates the provisions of this Section shall be subject to civil penalties not to exceed two thousand five hundred dollars per violation.

## **PART XIV. LOAN BROKERS**

### **§3572.1. Loan broker defined**

A “loan broker” is defined as any person who, for compensation or the expectation of compensation, obtains or offers to obtain a consumer loan from a third party either for another person domiciled in Louisiana, or for another person wherever domiciled, if the broker is operating in Louisiana.

### **§3572.2. Exemptions; licensing and bonding; loan broker**

A. The following shall be excepted from the licensing and bonding provisions of this Part:

(1) A supervised financial organization that is exempt from the requirement of licensure as a licensed lender.

(2) A lender licensed by the commissioner of financial institutions to make consumer loans pursuant to the Louisiana Consumer Credit Law.

(3) An officer, director, or employee of the entities listed in Paragraph (1) or (2) of this Subsection when such person is acting within the scope of his duties to that supervised financial organization or licensed lender.

(4) Persons subject to licensing, supervision, or auditing by the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Government National Mortgage Association, the Veterans Administration, or the United States Department of Housing and Urban Development as an approved seller, servicer, or issuer, provided that all brokered loans comply with a program administered by a federal agency in which the broker is approved, licensed, supervised, or audited and provided further that all broker’s loans are subject to oversight by the approving federal agency.

B. The following shall be excepted from the definition of a loan broker:

(1) An attorney licensed to practice law in the state of Louisiana when such attorney is not actively engaged in the business of brokering consumer loans or federally related mortgage loans and when the brokering is incidental to the provision of other legal services.

(2) A person licensed by the Louisiana Real Estate Commission who arranges financing in the normal course of representation of a client for the purchase, sale, lease, or rental of real estate.

(3) A person licensed as an insurance agent or broker by the Louisiana Department of Insurance who arranges for the financing of insurance premiums with a financial institution or licensed insurance premium finance company, when the compensation received or expected to be received is paid only by the financial institution or insurance premium finance company.

(4) Any real estate broker or a real estate salesman who is not actively and principally engage in negotiating, placing, or finding mortgage loans when rendering professional services.

(5) Any real estate investment trust.

(6) Any securities broker-dealer registered with the federal Securities and Exchange Commission and the securities law division of the office of financial institutions, and the registered agents of the broker-dealer, when such persons are not principally engaged in negotiating, placing, or finding mortgage loans when rendering professional services.

(7) Any manufactured home dealer licensed pursuant to the provisions of R.S. 51:911.24 who arranges or assists in arranging for a customer a direct or indirect consumer of federally related mortgage loan secured in whole or in part by a manufactured home, when such dealer's business is not primarily that of a consumer loan broker.

(8) Any person who is licensed pursuant to the Residential Mortgage Lending Act, R.S. 6:1081 et seq., and whose primary business is that of a mortgage broker, mortgage lender, or both.

(9) An income tax preparer who is an authorized Internal Revenue Service e-file provider and whose only brokering activity is facilitating refund anticipation loans. For purposes of this Paragraph, "refund anticipation loan" means a loan whereby the creditor arranges to be repaid directly by the Internal Revenue Service from the anticipated proceeds of the debtor's income tax refund.

### **§3572.3. Licensure required**

A. (1) Unless a person has first been licensed by the commissioner as provided in this Part, he shall not engage in the business of loan brokering, and shall not advertise or solicit, whether in print, by letter, in person, or otherwise in Louisiana, that he will find lenders for consumer loans or federally related mortgage loans. The initial license and annual renewal fee shall be five hundred dollars. However, a natural person through whom a corporation brokers loans pursuant to R.S. 9:3572.4 shall pay an initial license and annual renewal fee of one hundred dollars. No portion of the fee shall be refunded if the application is denied.

(2) The annual renewal application and fee are due on or before January first of each year. The form and content of renewal applications shall be determined by the commissioner of financial institutions, and a renewal application may be denied upon the same grounds as would justify denial of an initial application, or may be denied if administrative proceedings to suspend or revoke the license have begun. If the commissioner has not received the annual renewal application and fee postmarked on or before January sixteenth, he shall notify the loan broker by United States mail and assess a late fee of one hundred dollars.

(3) If the commissioner has not received the annual renewal application, renewal fee and late fee postmarked on or before March thirty-first, the license shall automatically lapse

without a hearing or notification, and any consumer loan or federally related mortgage loan brokered after that date shall be a violation and punishable pursuant to R.S. 9:3572.12(B).

B.(1) In the event that a broker wishes to change its name, location, or mailing address, it shall notify the commissioner by written notice within thirty days prior to such change and submit a fee of fifty dollars. If the broker fails to notify the commissioner or remit the required fee within the required thirty days, the commissioner may assess the licensee one hundred dollars as a penalty.

(2) If any information furnished by the broker becomes inaccurate after its filing, the broker shall correct the inaccuracy by written notice to the commissioner within thirty days after the information becomes inaccurate. No additional fee shall be required.

#### **§3572.4. Corporation**

A corporation that is a loan broker shall be licensed and shall act as a loan broker only through natural persons who are loan brokers.

#### **§3572.5. Application form**

A. The commissioner of financial institutions shall provide an application form that requires at least the following information which shall be given by the applicant:

(1) For a natural person:

(a) Full name.

(b) Date of birth.

(c) Place of birth.

(d) Business address.

(e) Home address.

(f) Name and address of employer.

(g) Names and addresses of the lenders through which the principal amount of the consumer loans or federally related mortgage loans are brokered.

(h) Number of consumer loans or federally related mortgage loans brokered in the past one-year period.

(i) A certified copy of the bond or of the formal notification by the depository of the establishment of the trust account required by R.S. 9:3572.8.

(2) For a corporation:

(a) Name.

(b) Copy of the certificate of incorporation if a Louisiana corporation.

(c) Copy of certificate authorizing the corporation to do business in Louisiana, if a foreign corporation.

(d) Address of the corporation in Louisiana.

(e) Address of the main corporate office, if outside of Louisiana.

(f) Name and address of president, secretary, and treasurer of the corporation.

(g) Name of each licensed loan broker through which it will conduct business.

(h) Names and addresses of the lenders through which the principal amount of consumer loans or federally related mortgage loans are brokered.

(i) Number of consumer loans or federally related mortgage loans brokered in the past one-year period.

(j) A certified copy of the bond or of the formal notification by the depository of the establishment of the trust account required by R.S. 9:3572.8.

B. (1) The commissioner may deny an application if he finds that the financial responsibility, character, and fitness of the applicant and its principals, owners, officers, directors, partners, and members, and the character and fitness of its managers are such as to warrant a belief that the business will not be operated honestly and fairly within the purposes of this Part.

(2) Upon written request, the applicant is entitled to a hearing on the question of his qualifications for a loan broker license if either of the following occurs:

(a) The commissioner has notified the applicant in writing that his application has been denied.

(b) The commissioner has not issued a permit within sixty days after the application therefor was filed.

(3) A request for a hearing may not be made more than fifteen days after the commissioner has mailed a written notice to the applicant notifying him that the application has been denied and stating in substance the commissioner's findings supporting denial of the application.

### **§3572.6. Restrictions; records**

A. A loan broker shall broker a consumer loan or federally related mortgage loan only to a lender licensed by the office of financial institutions, or to a supervised financial organization or a lender that is exempt from licensure.

B. (1) Each loan broker shall maintain a copy of all Federal Disclosure Statements from each loan that he brokers and a copy of the signed “Loan Brokerage Agreement and Disclosure Statement” given to each person pursuant to R.S. 9:3572.11, which shall be available for inspection.

(2) If the records of the loan broker are located outside this state, the broker shall, at the option of the commissioner, make such records available to the commissioner at a specified location within this state convenient to the commissioner, or the broker shall pay the reasonable and necessary expenses for the commissioner to examine the records at the location specified in the records of the office. The commissioner may designate representatives from his office or, if available and more practical, officials serving in similar capacity in the state in which the records are located to inspect them on his behalf.

C. Except as specified by this Part, no loan broker may assess, contract for, or receive any type of fee, interest, or other charge in advance, except for expense deposits under conditions specified in this Subsection, from a potential borrower for the procurement of a loan. A loan broker may accept an advance expense deposit, but such deposit shall not exceed the good faith estimate of the actual cost of any appraisal, title search, credit reports performed by an independent person and required by the originating lender for the evaluation of the potential borrower’s loan application, or the actual cost of any charge of no more than twenty-five dollars assessed to a loan broker by Fannie Mae for “Desktop Underwriter” or Freddie Mac for “Loan Prospector”. Any expense deposit that exceeds the actual cost of any appraisal, title search, credit reports, or charge assessed to a loan broker by Fannie Mae for “Desktop Underwriter” or Freddie Mac for “Loan Prospector” must be promptly refunded to the borrower or credited to the borrower’s account at the time of the loan closing.

### **§3572.7. Examination; rules**

A. The commissioner of financial institutions, through his employees, may examine the records of a loan broker at any time during normal business hours without prior notice.

B. The commissioner may issue rules and regulations to implement this Part and may require that additional information be disclosed in the licensure form.

### **§3572.8. Bond or trust account required**

A. Every loan broker, except those loan brokers employed by a corporation with a valid loan broker’s license, must obtain a surety bond issued by a surety company authorized to do business in Louisiana, or establish a trust account with a federally insured bank or savings institution located in Louisiana. The amount of the bond or trust account shall be twenty-five

thousand dollars. The bond or trust account shall be in favor of the state of Louisiana. Any person damaged by the loan broker's breach of contract or of any obligation arising therefrom, or by any violation of law, or the attorney general seeking additional relief from R.S. 51:1408, may bring an action against the bond or trust account to recover monies therefrom. The aggregate liability of the surety or trustee shall be only for actual damages or additional relief under R.S. 51:1408 and in no event shall exceed the amount of the bond or trust account.

B. The term of the bond shall be continuous, but it shall be subject to termination by the surety upon giving sixty days written notice to the principal and to the commissioner. The bond shall continue in effect during the sixty-day period.

C. A copy of said bond shall be conspicuously posted at any business location of the broker near the location where payments are received.

D. It shall be unlawful for any loan broker or its agent or employee to post an expired bond or a bond which does not meet the requirements of this Section.

#### **§3572.9. Rebate upon prepayment**

Whenever a lender that funded a brokered consumer loan or federally related mortgage loan is required to rebate unearned loan finance charges or credit service charges to the consumer due to prepayment or the acceleration of maturity, the loan broker shall refund to the lender the proportion of the broker's fee that must be rebated by the lender. This refund shall be made within seven days of the lender's furnishing proof to the broker of the required rebate.

#### **§3572.10. Right of cancellation**

An applicant for a consumer or federally related mortgage loan shall have the right to cancel a "Loan Brokerage Agreement and Disclosure Statement" required by R.S. 9:3572.11 within five business days of signing such agreement. The applicant may exercise the right to cancel until midnight of the fifth business day following his signing of such statement. The applicant borrower shall have been considered to have exercised his right of cancellation when written notification has been postmarked or otherwise delivered to the loan broker's designated place of business within the prescribed time.

#### **§3572.11. Loan brokerage statement; disclosure statement required**

A. (1) Each application for a consumer or federally related mortgage loan in which a loan broker is involved shall be accompanied by a written "Loan Brokerage Agreement and Disclosure Statement" which shall be signed by all contracting parties. A copy of the signed agreement shall be presented to the applicant at the time of signing.

(2) The initial paragraph of the "Loan Brokerage Agreement and Disclosure Statement" shall be entitled in at least ten point bold-face capital letters "DISCLOSURE REQUIRED BY LOUISIANA LAW". Under this title shall appear the statement in at least ten point type

that “The state of Louisiana does not approve or disapprove any loan brokerage contract. The information contained in this disclosure has not been verified by the state. If you have any questions see an attorney before you sign a contract agreement.”

B. The “Loan Brokerage Agreement and Disclosure Statement” shall contain the following information:

(1) The name of the loan broker; whether the loan broker is doing business as an individual, partnership, limited liability company, or corporation; the names under which the loan broker has done, is doing, or intends to do business; and the name of any parent or affiliated companies providing a settlement service.

(2) Repealed by Acts 1999, No. 1160, § 2.

(3) The length of time the loan broker has conducted business as a loan broker.

(4) A full and detailed description of the actual services that the loan broker undertakes to perform for the prospective borrower.

(5) One of the following statements, whichever is appropriate:

(a) “As required by Louisiana law, this loan broker has secured a bond by \_\_\_\_\_, a surety authorized to do business in this state. A certified copy of this bond is filed with the commissioner of financial institutions. Before signing a contract with this loan broker, you should check with the surety company to determine the bond’s current status”, or

(b) “As required by Louisiana law, this loan broker has established a trust account (number of account) with (name/address of bank or savings institution). Before signing a contract with this loan broker you should check with the bank or savings institution to determine the current status of the trust account.”

### **§3572.12. Violations; penalties**

A. A loan made in violation of this Part shall not be invalid solely for that reason.

B. A person who violates a provision of this Part may be assessed a civil penalty of not more than one thousand dollars for each violation. The commissioner may maintain a civil action in a court of competent jurisdiction to recover such a civil penalty, together with his costs and attorney fees incident to such action.

C. (1) The commissioner may, after a hearing pursuant to the Administrative Procedure Act, suspend or revoke the license of a loan broker, upon a finding that any fact or condition exists which, if it had existed at the time of the original application for licensure, would have warranted the denying of its issuance.

(2) The commissioner may, after a hearing pursuant to the Administrative Procedure Act, suspend or revoke the license of a loan broker, upon a finding that the loan broker violated a

provision of this Part or a rule or regulation of the commissioner issued pursuant thereto, or that the loan broker willfully, either orally or in writing, misrepresented the terms, benefits, privileges, or provisions of any service contract issued or to be issued by the loan broker or by any lender.

D. The contracting to receive any fee, interest, or other charge in violation of this Chapter shall result in forfeiture by the loan broker to the benefit of the aggrieved person of the entire fee, plus damages in the amount of twice the fee. In case the fee has been paid, the person by whom it has been paid may recover from the loan broker the amount of the fee thus paid, plus damages in the amount of twice the fee.

E. Whenever it shall appear to the commissioner, either upon complaint or otherwise, that any person has engaged in, is engaging in, or is about to engage in any act, practice, or transaction which is prohibited by this Part or by any order of the commissioner issued pursuant to any Section of this Part, or which is declared to be illegal in this Part, the commissioner may, in his discretion:

(1) Issue any order, including but not limited to cease and desist orders, which he deems necessary or appropriate in the public interest or for the protection of the public. Any person aggrieved by an order issued pursuant to this Subsection may request a hearing before the commissioner if such request is made within ten days after receipt of the order. Any such hearing or appeal therefrom shall be held in accordance with the Administrative Procedure Act.

(2) Apply to the district court of any parish in this state for an injunction restraining such person and the agents, employees, partners, officers, and directors of such person from continuing such act, practice, or transaction or engaging therein or doing any acts in furtherance thereof, and for such other and further relief as he deems necessary.

## **PART XVI. ADVANCE FEE LOANS**

### **§ 3574.1. Short title**

This Part shall be known and may be cited as the “Louisiana Advance Fee Loan Law”.

### **§ 3574.2. Definitions**

As used in this Part, unless the context otherwise requires:

(1) “Advance fee” means any consideration which is assessed or collected prior to the issuance of a written commitment to make a loan that is binding on the lender, provided that certain conditions precedent are satisfied.

(2) “Borrower” means a person obtaining or desiring to obtain a loan of money, a credit card, or a line of credit.

(3) “Loan originator or broker” means any person, except any regulated or supervised financial organization, credit union, licensed commercial or consumer lender, insurance company, consumer loan broker, or mortgage broker or lender, provided that the person excepted is licensed or registered with and subject to regulation or supervision by an agency of the United States or any state and is acting within the scope of the license, charter, or other permit, who:

(a) For, or in expectation of, consideration paid by the borrower, directly or indirectly arranges or attempts to arrange, or offers to fund or make a loan of money, a credit card, or a line of credit.

(b) For, or in expectation of, consideration paid by the borrower, assists or advises a borrower, wherever located, in obtaining or attempting to obtain a loan of money, a credit card, a line of credit, or a related guarantee, enhancement, or collateral of any kind or nature.

(c) Acts for, or on behalf of, a loan broker for the purpose of soliciting borrowers.

(d) Holds himself out as a loan broker.

(4) “Office” means the Office of Financial institutions in the office of the governor.

(5) “Person” means an individual or corporation, partnership, trust, association, joint venture pool, syndicate, sole proprietorship, unincorporated organization, or any other form of entity not specifically listed herein. A “person” shall not include an agency or instrumentality established or chartered under the laws of the United States.

(6) “Principal” means any officer, director, owner, sole proprietor, partner, member, joint venturer, manager, or other person with similar managerial or supervisory responsibilities for a person who makes or offers to make or broker loans, whatever his job title.

### **§ 3574.3. Advance fees; prohibited acts**

No loan originator or broker shall:

(1) Assess or collect an advance fee from a borrower to provide services as a loan originator or broker. Notwithstanding the foregoing, a person who originates or brokers commercial loans may accept from a potential borrower an advance expense deposit for commercial loans, but such deposit shall not exceed the good faith estimate of the actual cost of any appraisal, title search, or credit reports performed by a person independent of the loan originator or broker, and required by the originating lender for the evaluation of the potential borrower's commercial loan application. Any expense deposit which exceeds the actual cost of any appraisal, title search, or credit reports shall be promptly refunded to the borrower or credited to the borrower's account at the time of the commercial loan closing. For purposes of this Part, a "commercial loan" means any loan the purpose of which is not for personal, family, or household use.

(2) Make or use any false or misleading representations or omit any material fact in the offer or sale of his services, or engage, directly or indirectly, in any act that operates or would operate as fraud or deception upon any person in connection with the offer or sale of the services of a loan originator or broker, notwithstanding the absence of reliance by the buyer.

(3) Make or use any false or deceptive representation in its business dealings.

(4) Make or use any false or deceptive representation to the office or conceal a material fact from the office.

### **§ 3574.4. Responsibility of principals**

Each principal of a loan originator or broker may be sanctioned for actions by the loan originator or broker, including its agents or employees, engaged in during the course of business of the loan originator or broker.

### **§ 3574.5. Investigations; cease and desist orders; administrative fines**

A. The office may investigate the actions of any person for compliance with this Part.

B. The office may order a person to cease and desist whenever the office determines that the person has violated, is violating, or will violate any provision of this Part, any rule or order promulgated by the office, or any written agreement entered into with the office.

C. The office may impose and collect an administrative fine against any person found to have violated any provision of this Part, any rule or order promulgated by the office, or any written agreement entered into with the office in an amount not to exceed five thousand dollars for each such violation. Each loan originated or brokered may be considered a separate violation. All fines collected hereunder shall be deposited in the Louisiana

Consumer Credit Education Fund, provided such fund is in the existence at the time of payment of the fine.

**§ 3574.6. Investigations; examinations; subpoenas; hearings; witnesses**

A. The office may make investigations and examinations upon reasonable suspicion, within or outside of this state as it deems necessary, to determine whether a person has violated or is about to violate any provision of this Part, or any rule or order promulgated thereunder.

B. The office may gather evidence in the matter in any legally appropriate manner. The office may administer oaths, examine witnesses, and issue subpoenas.

C. Subpoenas for witnesses whose evidence is deemed material to any investigation or examination may be issued by the office under the seal of the office commanding such witnesses to appear before the office at a time and place to be therein named, and to bring such books, records, and documents as may be specified, or to submit such books, records, and documents to inspection. Such subpoenas may be served by an authorized representative of the office.

D. (1) In the event of substantial noncompliance with a subpoena or subpoena duces tecum issued by the office, the office may petition the district court of the parish in which the person subpoenaed resides or has its principal place of business for an order requiring the person to appear and fully comply with the subpoena. The court may grant injunctive relief restraining the violation of this Part and may grant such other relief including, but not limited to, the restraint, by injunction or appointment of a receiver, of any transfer, pledge, assignment, or other disposition of such person's assets or any concealment, alteration, destruction, or other disposition of subpoenaed books, records, or documents, as the court deems appropriate, until such person has fully complied with such subpoena or subpoena duces tecum and the office has completed its investigation or examination. The office is entitled to use summary proceedings as provided in the Louisiana Code of Civil Procedure, and the court shall advance the cause on its calendar. Costs incurred by the office to obtain an order granting, in whole or in part, such petition for enforcement of a subpoena or subpoena duces tecum shall be taxed against the subpoenaed person, and failure to comply with such order shall be a contempt of court.

(2) When it shall appear to the office that the compliance with a subpoena or subpoena duces tecum issued by the office is essential to an investigation or examination, the office, in addition to the other remedies provided for in this Part, may, by verified petition setting forth the facts, apply to the district court of the parish in which the subpoenaed person resides or has its principal place of business for any and all appropriate writs. The court may thereupon direct the issuance of the appropriate writ against the subpoenaed person requiring sufficient bond conditioned on compliance with the subpoena or subpoena duces tecum. The court shall cause to be endorsed on the writ a suitable amount of bond on payment of which the person named in the writ shall be freed, having a due regard to the nature of the case.

E. Witnesses shall be entitled to the same fees and mileage as they may be entitled to by law for attending as witnesses in the district court, except where such examination or investigation is held at the place of business or residence of the witness.

F. The material compiled by the office in an investigation or examination under this Part is confidential and not subject to the Public Records Act until the investigation or examination is complete. The investigation or examination is not deemed complete if the office has submitted the material or any part of it to any law enforcement agency or other regulatory agency for further investigation, or for the filing of criminal or civil prosecution, and such investigation and prosecution have not been completed or become inactive.

### **§ 3574.7. Injunction to restrain violations**

A. Whenever the office determines, from evidence satisfactory to it, that any person has engaged, is engaged, or is about to engage in an act or practice constituting a violation of this Part, or a rule or order promulgated thereunder, the office may bring action in the name and on behalf of the state against such person and any other person concerned in or in any way participating in or about to participate in such practice, or engaging therein, or doing any act or acts in furtherance thereof or in violation of this Part to enjoin the person or person from continuing the violation or acts in furtherance thereof. In such court proceedings, the office may apply for, and on due showing be entitled to have issued, the court's subpoena requiring the appearance of any defendant and his employees or agents, and the production of documents, books, and records that may appear necessary for the hearing of such petition, to testify or give evidence concerning the acts or conduct or things complained of in such application for injunction.

B. In addition to all other means provided by law for the enforcement of any temporary restraining order, temporary injunction, or permanent injunction issued in such court proceedings, the court shall have the power and jurisdiction, upon application of the office, to impound and to appoint a receiver or administrator for the property, assets, and business of the loan originator or broker, including but not limited to the books, records, documents, and papers appertaining thereto. Such receiver or administrator, when appointed and qualified, shall have all powers and duties as to custody, collection, administration, winding up, and liquidation of said property and business as shall from time to time be conferred upon him by the court. In such action, the court may issue orders and decrees staying all pending suits and enjoining any further suits affecting the receiver's or administrator's custody or possession of the said property, assets, and business or, in its discretion, may, with the consent of the presiding judge of the district, require that all such suits be assigned to the district court judge appointing the said receiver or administrator.

C. In addition to any other remedies provided by this Part, the office may apply to the court hearing this matter for an order of restitution whereby the defendants in such action shall be ordered to make restitution of those sums shown by the office to have been obtained by them in violation of any of the provisions of this Part. Such restitution shall, at the option of the court, be payable to the administrator or receiver appointed pursuant to this Section or directly to the persons whose assets were obtained in violation of this Part.

**§ 3574.8. Criminal penalties**

Whoever violates any provision of this Part commits a felony and shall be fined not more than fifty thousand dollars, or imprisoned with or without hard labor for not more than ten years, or both.

**§ 3574.9. Actions for damages**

A. Any borrower injured by a violation of this Part may bring an action for recovery of damages. Judgment shall be entered for actual damages, but in no case less than the amount paid by the borrower to the loan originator or broker, plus reasonable attorney fees and costs.

A penalty not to exceed three times the amount of actual damages may also be assessed the loan originator or broker and be awarded to the borrower.

B. Any borrower injured by a violation of this Part may bring an action against the surety bond or trust account, if any, of the loan originator or broker.

C. The remedies provided under this Part are in addition to any other procedures or remedies for any violation or conduct provided for in any other law.

**§ 3574.10. Duties and powers of the office**

A. The office shall be responsible for the administration and enforcement of this Part. The attorney general for the state of Louisiana may assist and cooperate in and have coordinate investigation and enforcement powers in actions seeking to remedy violations of this Part.

B. The office may adopt such rules as it may deem necessary in the administration of this Part and not inconsistent therewith.

**§ 3575. [Blank]**

**PART XVII. REFUND ANTICIPATION LOANS [REPEALED]**

**PART XVIII. COLLECTION AGENCY REGULATION ACT [REPEALED]**

## **PART XIX. COLLEGE CAMPUS CREDIT CARD SOLICITATION LAW**

### **§ 3577.1. Short title**

This Part may be cited as the “College Campus Credit Card Solicitation Act”.

### **§ 3577.2. Definitions**

The following words and phrases when used in this Part shall have the meanings ascribed to them below:

(1) “College campus” means the premises and grounds of an institution of postsecondary education.

(2) “Commissioner” means the commissioner of financial institutions.

(3) “Credit card” means a writing, number, or other evidence of an undertaking to pay for property or services delivered or rendered to or upon the order of a designated person or bearer.

(4) “Institution of postsecondary education” means any institution under the management of the Board of Supervisors for the University of Louisiana System, the Board of Supervisors of Louisiana State University and Agricultural and Mechanical College, the Board of Supervisors of Southern University and Agricultural and Mechanical College, and the Board of Supervisors of Community and Technical Colleges or any private or accredited college in the state.

(5) “Solicitation” means an act of asking, enticing, or requesting a student to read, review, or consider materials relating to an application for a credit card or to complete an application for a credit card.

(6) “Student” means a person who is under twenty-one years of age and who attends an institution of postsecondary education, whether enrolled on a full-time or part-time basis.

### **§ 3577.3. Registration prior to solicitation; inducements prohibited**

A. Prior to engaging in the solicitation of a student on a college campus, a credit card issuer shall register its intent to solicit the student for that purpose with an appropriate official of the institution of postsecondary education.

B. The registration shall include the principal place of business of the credit card issuer and shall be in such form as required by regulation of the commissioner.

C. It shall be unlawful for any credit card issuer to give or offer to give, directly or indirectly, orally or in writing, any gratuity or other thing of value, or advertise the offering of such as an inducement for a student to read, review, or consider materials relating to an

application for a credit card or to complete an application for a credit card, unless the student has been provided a credit card debt education brochure.

**§ 3577.4. Debt collection against parent or guardian prohibited**

It shall be unlawful for a credit card issuer to take any debt collection action, including but not limited to telephone calls or demand letters against the parent or legal guardian of a student for whom a credit card has been issued, unless the parent or legal guardian has agreed in writing to be liable for the debts of the student under the credit card agreement.

**§ 3577.5. Violations; penalties**

A person who violates any provision of this Part may be fined up to one thousand dollars for each violation. The commissioner may maintain a civil action in a court of competent jurisdiction to recover such fines, together with his costs and attorney fees incident to such action.

**§ 3577.6 to 3577.8. [Blank]**

## **CHAPTER 2-A. LOUISIANA DEFERRED PRESENTMENT AND SMALL LOAN ACT**

### **§3578.1. Short title**

This Chapter shall be known and may be cited as the “Louisiana Deferred Presentment and Small Loan Act”.

### **§3578.2. Legislative intent**

It is the intent of the legislature to regulate deferred presentment transactions and small loans. These loans meet a legitimate credit need for many consumers; however, in order to protect consumers from excessive charges, it is the intent of the legislature to put certain restrictions on lenders who make these loans.

### **§3578.3. Definitions**

As used in this Chapter, the following terms have the following meanings ascribed to them:

- (1) “Commissioner” means the commissioner of the office of financial institutions.
- (2) “Deferred presentment transaction” means a transaction made pursuant to a written agreement whereby a licensee:
  - (a) Accepts a check from the issuer dated as of the date it was written;
  - (b) Agrees to hold the check for a period of time not to exceed thirty days prior to negotiation or presentment; and
  - (c) Pays to the issuer of the check the amount of the check less the fee permitted in R.S. 9:3578.4(A). The amount paid to the issuer of the check may not exceed three hundred fifty dollars.
- (3) “Licensee” means a person licensed pursuant to this Chapter that offers deferred presentment transactions or small loans, or both.
- (4) “Partial payment” means a payment of fifty dollars or more on a deferred presentment transaction or small loan.
- (5) “Prepayment” means payment in full of the deferred presentment transaction or small loan amount prior to the end of the term of that transaction or loan.
- (6) “Small loan” means a consumer loan, as defined in R.S. 9:3516(14), of three hundred fifty dollars or less, made for a term of sixty days or less.

#### **§3578.4. Finance charge and fees**

A. (1) In conjunction with a deferred presentment transaction or small loan, a licensee may charge a fee not to exceed sixteen and seventy-five one hundredths percent 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 forty-five dollars, regardless of the name or type of charge.

(2) If the loan remains unpaid at contractual maturity, the licensee may charge an amount equal to the rate of thirty-six percent per annum for a period not to exceed one year and beginning one year after contractual maturity, the rate shall not exceed eighteen percent per annum.

B. A licensee may contract with the borrower for reimbursement of the actual fee assessed to the licensee by the licensee's depository institution as a result of a borrower's check being returned for any reason. The fee shall be reimbursed to the licensee only once per check, regardless of the number of times the check was returned by the depository institution.

C. Except for reasonable attorney fees and costs awarded by a court, and fees allowed under R.S. 9:3529 and 3530(C) no other fees or charges may be assessed or collected on a deferred presentment transaction or small loan, including any other fees as may be provided for under Chapter 2 of this Code Title or any other law.

#### **§3578.4. 1 Extended payment plan; terms; conditions**

A.(1) A consumer who is unable to repay either a deferred presentment transaction or small loan when due to a licensee, may elect once in any twelve-month period to repay the licensee the amount due under the deferred presentment transaction or small loan by means of installments, referred to as an extended payment plan in this Section.

(2) A consumer is ineligible for an extended payment plan if the consumer previously obtained an extended payment plan from the licensee within the preceding twelve months. The twelve-month period shall be measured from the date that the extended payment plan is executed between the licensee and the consumer.

B.(1) To be eligible for an extended payment plan, the consumer shall request to enter into the plan before the due date of the outstanding deferred presentment transaction or small loan.

(2) If a consumer is unable to request to enter into the 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 seventy-two hours from the discharge of the consumer from the hospital.

(3) The licensee and consumer shall execute an agreement, in writing, that modifies the terms of the outstanding small loan or deferred presentment transaction and establishes the terms of the extended payment plan.

C.(1) The terms of the extended payment plan shall provide for the following:

(a) 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.

(b) Allow the consumer to prepay sums due to an extended payment plan in full at any time without penalty.

(c) Prohibit the licensee from charging the consumer any interest, or additional charges or fees during the term of the plan.

(d) 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.

(2) The terms of the extended payment plan may permit the licensee to do either of the following:

(a) 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.

(b) 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.

D. A licensee shall immediately provide 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.

E.(1) 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.

(2) Upon default, the licensee may take action to collect only the amount outstanding on the extended payment plan. 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.

F. 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.

G.(1) At each licensed location or on the homepage of a licensee's website, the 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 may enter into one extended payment plan for either a deferred presentment transaction or small loan if he notifies the licensee as required by Paragraph (B)(1) of this Section before the payment is due of his inability to make payment.

(2)(a) 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 or small loan agreement:

**“IF YOU CANNOT MAKE A 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. REQUESTS MUST BE IN WRITING AND MAY BE MADE IN PERSON, BY EMAIL, OR FACSIMILE (LICENSEE/LENDER TO INSERT NAME, EMAIL ADDRESS, PHONE NUMBER, AND FACSIMILE NUMBER HERE). IF (LICENSEE/LENDER TO INSERT NAME HERE) REFUSES TO ENTER INTO AN EXTENDED PAYMENT PLAN UPON YOUR REQUEST BEFORE THE DUE DATE, CONTACT THE OFFICE OF FINANCIAL INSTITUTION AT 1-888-525-9414.”**

(b) In addition, a consumer shall sign the following 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 below the statement required by Subparagraph (a) of this Paragraph:

**“I acknowledge that I understand that I may be eligible to enter into an extended payment plan if I cannot make payment when due. In order to be potentially eligible for an extended payment plan, I understand that it is my responsibility to notify my lender that I cannot make payment before payment is due. I have asked any questions I have about the extended payment plan and lender (licensee) answered all question to my satisfaction.”**

**[SIGNATURE BLOCK]**

**[DATE]**

### **§3578.5. Rebate upon prepayment**

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 twenty dollars of the original fee, which shall be considered earned and shall not

be subject to refund. 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.

### **§3578.6. Prohibited acts**

A. 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 R.S. 9:3578.4.

(2) Sell any goods when those goods are financed with the proceeds of the loan or sell insurance in connection with a deferred presentment transaction or small loan. The sale and financing of services, including but not limited to utility payment services, financial or tax services, or the sale of prepaid telephone services and telephone-related products which are not financed with the proceeds of the loan, shall not be deemed a violation of this Chapter.

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

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

(5) 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.

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

(7) Renew or roll over a deferred presentment transaction or small loan. However, a licensee may accept a partial payment of twenty-five percent 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. Once a deferred presentment transaction or small loan has been completed, a consumer may enter into a new transaction or loan with the licensee. A deferred presentment transaction or small loan shall be considered completed when the amount advanced has been paid in full by the consumer.

(8) Take any direct or indirect interest, possessory or otherwise, whether perfected or unperfected, in any property in connection with a small loan, or a deferred presentment transaction.

B. It shall be unlawful for any small loan lender, for any reason and by any means, including but not limited to direct deposit and personal tender, to accept as payment, offer to accept as payment, or require for use as security any check issued pursuant to the federal Social Security Act. In addition, it shall be unlawful for any lender making small loans to act as a depository

institution for the acceptance of any check issued pursuant to the federal Social Security Act, unless such lender is a federally insured financial institution.

**§ 3578.7. Posting of notice; toll free number**

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 this Chapter, 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.

**§ 3578.8. Powers of the commissioner; adoption of rules and regulations**

A. The commissioner may apply the provisions of Parts I, VII, VIII, IX, and X of Chapter 2 of this Code Title, the Louisiana Consumer Credit Law, for purposes of administering and regulating the activities of licensees and the provisions of this Chapter.

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

C. (1) Beginning January 1, 2013, for a period of one year, the commissioner shall collect and compile information and data from licensees concerning the operation, function, and customers of deferred presentment transactions and small loan businesses.

(2) The information and data collected by the commissioner from a licensee shall include but not be limited to the following:

(a) The number of deferred presentment transactions and small loans issued quarterly.

(b) The fees collected quarterly on deferred presentment transactions and small loans.

(c) The location of the licensee's business.

(d) The number of checks returned unpaid for any reason and the amount of the fee charged by the licensee for such checks.

D. The commissioner shall compile and submit to the legislature, in an aggregate format, the information and data collected by April 1, 2014.

## CHAPTER 2-B. LOUISIANA TAX REFUND ANTICIPATION LOAN ACT

### § 3579.1. Short title

This Chapter shall be known and may be cited as the “Louisiana Tax Refund Anticipation Loan Act”.

### § 3579.2. Definitions

(1) “Borrower” means an individual who receives the proceeds of a refund anticipation loan.

(2) “Facilitator” means a person who, for compensation from a borrower or any other person, assists the borrower in applying for or obtaining a refund anticipation loan. “Facilitator” does not include a lender that makes a refund anticipation loan, an affiliate that is a servicer for such a lender, or any person who does not have direct contact with a borrower in connection with applying for or obtaining a refund anticipation loan. For the purposes of this Chapter, a “facilitator” shall also mean the individual or entity that signs the tax return on which the refund anticipation loan is based.

(3) “Lender” means a person who extends credit to a borrower in the form of a refund anticipation loan.

(4) “Refund anticipation loan” means a loan obtained by a taxpayer based on the taxpayer’s anticipated federal income tax refund.

(5) “Refund anticipation loan fee” means a fee imposed or other consideration required by the facilitator or the lender for a refund anticipation loan. The term does not include a fee usually imposed or other consideration usually required by the facilitator in the ordinary course of business for services not related to the making of loans, including a fee imposed for tax return preparation or for the electronic filing of a tax return.

### § 3579.3. Restriction on acting as facilitator

A. A person may not, individually or in conjunction or cooperation with another person, act as a facilitator unless he complies with all of the following requirements:

(1) Is engaged in the business of preparing tax returns, or employed by a person engaged in the business of preparing tax returns.

(2) Is primarily involved in financial services or tax preparations.

(3) Is authorized by the Internal Revenue Service as an e-file provider.

B. This Chapter shall not apply to any of the following entities:

(1) Federally insured financial institution.

(2) An affiliate that is a servicer of an entity described in Paragraph (1) of this Subsection, operating under the name of that entity.

(3) Any person or entity that acts solely as an intermediary and does not interact directly with a taxpayer in the making of the refund anticipation loan.

#### **§ 3579.4. Disclosure requirements**

A. A facilitator shall discuss with and clearly disclose to a borrower, after the borrower's tax return has been prepared and before the loan is closed, all of the following items:

(1) The refund anticipation loan fee schedule.

(2) A written statement disclosing all of the following items:

(a) That a refund anticipation loan is a loan and is not the borrower's actual income tax refund.

(b) That the taxpayer may file an income tax return electronically without applying for a refund anticipation loan.

(c) That the borrower is responsible for repayment of the loan and related fees if the tax refund is not paid or is insufficient to repay the loan.

(d) Any fee that will be charged if the loan is not approved.

(e) The average time, as published by the Internal Revenue Service, within which a taxpayer can expect to receive a refund for an income tax return filed by either of the following methods:

(i) Electronically, and the refund is delivered by either of the following methods:

(aa) Deposited directly into the taxpayer's bank account.

(bb) Mailed to the taxpayer.

(ii) By mail, and the refund is delivered by either of the following methods:

(aa) Deposited directly into the taxpayer's financial institution account.

(bb) Mailed to the taxpayer.

(f) That the Internal Revenue Service does not make either of the following guarantees:

(i) Payment of the full amount of the anticipated refund.

(ii) A specific date on which it will mail a refund or deposit the refund into a taxpayer's financial institution account.

(g) The estimated time within which the proceeds of the refund anticipation loan will be paid to the borrower if the loan is approved.

(3) All of the following information, specific to the borrower:

(a) The estimated total fees for the loan.

(b) The estimated annual percentage rate for the loan, calculated using the guidelines established under the Truth in Lending Act, 15 U.S.C. 1601 et seq.

(B) A refund anticipation loan fee schedule required by Paragraph (A)(1) of this Section, shall be a listing or table of refund anticipation loan fees charged by the lender for refund anticipation loan amounts. The schedule shall include all of the following:

(1) Each fee imposed related to the making of a refund anticipation loan listed separately.

(2) The total amount of fees imposed related to the making of a refund anticipation loan.

(3) For each stated loan amount, the estimated annual percentage rate for the loan, calculated using the guidelines established under the Truth in Lending Act, 15 U.S.C. 1601 et seq.

C. Tax preparers who facilitate refund anticipation loans shall post the schedule of fees imposed by the facilitator for making refund anticipation loans in a conspicuous manner at the tax preparer's location.

## Notice

**Please note that the excerpted version of this statute contained herein is unofficial and should not be relied on when making legal determinations affecting a person's rights or obligations without first consulting with competent legal counsel. A complete, but unofficial, copy of the entire Louisiana Revised Statutes is available through the State of Louisiana on the Louisiana Legislature's website located at [www.legis.louisiana.gov](http://www.legis.louisiana.gov).**