

**LOUISIANA OFFICE OF FINANCIAL INSTITUTIONS  
NON-DEPOSITORY DIVISION  
2014 Legislation Summary**

**OFI BILLS:**

**Act 636 (HB 766) is effective January 1, 2015 and applies to all consumer lenders and deferred presentment and small loan lenders.**

The Act provides that a consumer credit transaction as defined by present law (R.S. 9:3516(13)) or deferred presentment transaction as defined by present law (R.S. 9:3578(2)) shall be null, void, unenforceable, and uncollectible as being contrary to the policy of this state if the creditor has not obtained a license from the Office of Financial Institutions (OFI) if required to do so. However, these provisions would not be applicable to creditors exempt from consumer loan licensing requirements, any non-recourse consumer financial transaction, or any other creditor not required to be licensed by OFI.

The Act removes the requirement that a creditor have an office in Louisiana and that a creditor having no office within this state who offers credit to Louisiana consumers through the mail and other means of interstate commerce is no longer exempt from licensure. Each licensee making consumer loans to Louisiana residents, shall maintain records of its consumer loans at the location stated on its license. In other words, all consumer lenders who make loans to Louisiana consumers (or purchase La. consumer loans) must be licensed by OFI regardless if they are an internet lender, an out-of-state lender or maintain a location in the State of Louisiana.

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

The Act requires that any person required to be licensed pursuant to this Chapter shall, prior to application for licensure, be duly registered with the La. Secretary of State and be in possession of a certificate of authority to transact business pursuant to present law (R.S. 12:304 or 1345, or R.S. 9:3422), as applicable.

**THE FOLLOWING REQUIREMENTS ARE ONLY APPLICABLE TO DEFERRED PRESENTMENT TRANSACTIONS AND SMALL LOANS**

The Act **eliminates the one-time delinquency charge** of 5% of the unpaid amount or \$10, whichever is greater for deferred presentment transactions and small loans.

The Act **provides for an extended payment plan** that permits a consumer who is unable to repay either a deferred presentment transaction or small loan when due to a licensee to elect once in any 12-month period to repay the licensee the amount due by means of installments. A consumer is ineligible for an extended payment plan if the consumer previously obtained an extended payment plan from the licensee within the preceding 12 months. The Act requires the consumer to request to enter into the plan before the due date of

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

The Act requires the licensee and consumer to execute an agreement, in writing, that modifies the terms of the outstanding small loan or deferred presentment plan, establishes the terms of the extended payment plan and provides that the terms of the extended payment plan shall:

- (1) Allow the consumer to repay the outstanding deferred presentment transaction or small loan, including any fees due prior to entering into the plan, in at least four substantially equal installments.
- (2) Allow the consumer to prepay sums due pursuant to an extended payment plan in full at any time without penalty.
- (3) Prohibit the licensee from charging the consumer any interest, or additional charges or fees during the term of the plan.
- (4) Require that the first plan installment shall be due no sooner than thirty days following the execution of the plan, unless a shorter period of time is agreed to by the consumer and licensee based on when the consumer receives income. The dollar amount of each installment shall be substantially the same and the installment due dates shall be spread out substantially evenly over the term of the extended payment plan.

The Act further provides that the terms of the extended payment plan may permit the licensee to do either of the following:

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

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

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

A "notice" is required wherein at each licensed location or on the homepage of a licensee's website, a licensee shall prominently post a notice visible to the public and all those visiting the website stating that if a consumer is unable to repay either a deferred presentment transaction or small loan when due, the consumer can enter into one extended payment plan for either a deferred presentment transaction or small loan if he notifies the licensee before the payment is due of his inability to make payment. A licensee shall also notify a person of his right to enter into an extended payment plan by including the following statement, in at least sixteen-point bold type, on the first page of each deferred presentment transaction or small loan agreement: "IF YOU CANNOT MAKE PAYMENT WHEN DUE, YOU CAN ASK TO ENTER INTO AN EXTENDED PAYMENT PLAN ONCE IN A TWELVE-MONTH PERIOD, BUT THE REQUEST MUST BE MADE BEFORE PAYMENT IS DUE. SHOULD YOUR LENDER (LICENSEE) REFUSE TO ENTER INTO AN EXTENDED PAYMENT PLAN UPON YOUR REQUEST BEFORE THE DUE DATE, CONTACT THE OFFICE OF FINANCIAL INSTITUTIONS AT 1-888-525-9414."

The Act requires a consumer to sign a statement acknowledging that he has been informed of the extended payment plan. The statement shall be in at least twelve-point bold type, on the first page of each deferred presentment transaction or small loan agreement. 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 in a conspicuous manner by the licensee at the lending location or on the homepage of the website of the licensee, or both if the licensee has both a physical location in the state and a website.

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**Act 293 (SB 241) is effective August 1, 2014; Applies to all consumer lenders and deferred presentment and small loan lenders.**

The Act provides that the commissioner within the limitations provided by law may 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:

- (1) The total number and dollar amount of consumer loans originated including installment, insurance premium finance, deferred presentment, and any other loan type as may be applicable.
- (2) The total number and dollar amount of consumer loans outstanding including installment, insurance premium finance, deferred presentment, and other types of loans as may be applicable.
- (3) The aggregate amount of fees earned including interest, service charges, late fees, origination fees, documentation fees and insufficient funds fees.
- (4) The total number of consumer loans in default or collection status and the balance of those loans as of the reporting date.
- (5) The total number of consumer loans reduced to judgment and the principal amount of those judgments.

The Act also provides that the above information and data shall be reported to the Commissioner by March 1<sup>st</sup> of each year, through the Nationwide Mortgage Licensing System and Registry ("NMLS") OR in a format deemed acceptable by the commissioner OR in a format prescribed by the commissioner. OFI anticipates that the initial report for 2015 will be in paper form. The Act authorizes the Commissioner to request the documentation to validate the information contained in the report. 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 as provided by law.

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*For more information regarding these legislative acts and how they may affect your company, please contact Deputy Chief Examiner Darin Domingue at (225) 925-2596 or Michelle Jeansonne at (225) 925-3828. These are merely highlights of the bills for information purposes and are not official interpretations or opinions. Please visit [www.legis.la.gov](http://www.legis.la.gov) to review the entirety of the Acts.*

**Act 260 (HB 807) is effective June 30, 2014; however, mortgage servicers have until June 30, 2015 to obtain a Louisiana license pursuant to the Louisiana Secure and Fair Enforcement of Mortgage Licensing Act of 2009 (SAFE Act).**

This Act adds licensure requirement for persons engaged in residential mortgage servicing. Present law provides for the purpose of the Louisiana Secure and Fair Enforcement of Mortgage Licensing Act of 2009 (SAFE Act) and makes the purpose applicable to residential mortgage servicers.

The Act defines "mortgage servicing" as a means of collecting or remitting payment for another, or the right to collect or remit payments for another, relative to the principal, interest, tax, insurance, or other payment under a mortgage loan. The Act also amends the definition of "residential loan transaction" and "residential mortgage lending activity" and adds the definition of "mortgage servicing".

The Act subjects mortgage servicers to the same licensure requirements as well as the application, renewal, and surety bond requirements as other mortgage brokers and lenders. Mortgage servicers are required to obtain a license on or before June 30, 2015 utilizing the online Nationwide Mortgage Licensing System.

If an entity is currently licensed in Louisiana for mortgage brokering or lending activities, there is no requirement for an additional license to perform mortgage servicing. However, if an entity performs mortgage servicing for Louisiana consumers, the entity is required to designate mortgage servicing as a "business activity" of their Louisiana license in the NMLS online licensing system (Nationwide Mortgage Licensing System).

Potential mortgage servicers can apply for the residential mortgage license at any time and request the license be issued at a future date, but not later than June 30, 2015, once the application is complete. Should the applicant choose a date in 2014 to be licensed, the applicant would be required to renew the license for 2015 and pay all applicable fees on or before 12/31/2014. In addition, if a mortgage servicer is negotiating terms of loans, such as a refinance or a modification, the entity should ensure that the individuals who are performing the functions of a residential mortgage loan originator for Louisiana consumers, should also apply and obtain a Louisiana residential mortgage originators license.

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**Act 359 (HB 1169) is effective 8/1/14 and removes the fourteen-day notice requirement applicable to out-of-state insurance premium finance companies**

Present law defines an "insurance premium finance company" as a person engaged in the business of entering into premium finance agreements. Effective 8/1/2014, the Act removes the 14 day delay requirement that was applicable to only out-of-state insurance premium finance companies and provides that if the default of an insured, pursuant to the premium finance agreement, has not been cured within 10 days after notice of cancellation has been mailed to the insured from an insurance premium finance company, the insurance premium finance company may effect cancellation of the insurance contract, 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 other statements of specified certification relative to the effect of cancellation.

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**Act 125 (SB 362) is effective May 16, 2014 and requires all check cashers to transition to the Nationwide Mortgage Licensing System beginning January 1, 2015.**

The Act requires that the application for a license be made under oath and on a form prescribed by the commissioner and that any person required to be licensed under present law shall, prior to application for licensure, be duly registered with the secretary of state and be in possession of a certificate of authority to transact business in this state.

The Act establishes a new licensing system and provides that the provisions of prior law shall expire and no longer have any effect after such licensing system is available for use.

Beginning January 1, 2015, and thereafter, a licensee may submit through the Nationwide Mortgage Licensing System and Registry his renewal application on or before December 31st of each year in a manner and form prescribed by the commissioner. The Act also provides that the renewal application shall be accompanied by a renewal fee of \$250 plus an additional fee of \$50 for each currency exchange location in this state, not to exceed \$3,000, payable on or before December 31st of each year.

The renewal application submitted through the Nationwide Licensing System and Registry after December 31st and before March first of the following year shall be charged a late fee of \$100 dollars and if the renewal application is submitted timely on or before December 31st, the license shall remain in force and effect until the renewal application is either approved or denied by the commissioner.

The Act precludes the commissioner from implementing any administrative or enforcement actions authorized by law for violations of certain provisions of law or for any material misrepresentation that may have occurred prior to the renewal date of a license. However, the Act provides that if the commissioner has not received the renewal fee and late fee before March first, the license to engage in currency exchange shall lapse without hearing or notification, and the license shall not be reinstated. Persons whose license has lapsed may apply for a new license.

The Act became effective upon signature of the governor or May 16, 2014. However, the requirements to utilize the online licensing system begin on January 1, 2015.

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**OTHER BILLS THAT AFFECT NON-DEPOSITORY ENTITIES**

**HCR 3 amends the Office of Financial Institution's Rule that regulates Repossession Agencies and Apprentices to provide for a minimum number of hours an apprentice must be supervised by a licensed repossession agent**

This is a House Concurrent Resolution that is effective when the rule changes are printed and incorporated into the Louisiana Administrative Code. The changes amend LAC 10:XV.1303(E)(3) and 1315(A)(4) to provide that an apprentice working to become a repossession agent may physically obtain possession of collateral for a secured party, without the direct supervision and presence of a licensed repossession agent, if the apprentice completes a minimum of 250 hours of qualifying experience under the direction and supervision of the sponsor and meets all of the following additional qualifications:

- (1) Is at least 18 years or older and a citizen of the United States or a resident alien holding proper documentation.
- (2) Is of good character and fitness.
- (3) Has not been convicted of a felony in the previous 10 years unless the conviction was expunged, set aside, or the individual received a first offense pardon.
- (4) Has received a designation as a certified recovery specialist from a recognized national certification program.

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**Act 516 (HB 539) amends the Additional Default Remedies Act that regulates Repossession Agencies to amend the time delay and methods of timely submission relative to a "Notice of Repossession" and payments of certain fees.**

Deletes requirement for signature confirmation from the recipient if notice of repossession or payment is sent by mail and adds authorization to prove timeliness of mailing by an official receipt or Certificate from private delivery service.

The Act deletes the three-day filing period of present law and requires a secured party's "Notice of Repossession" to be delivered in person or sent by mail to the recorder of mortgages and to the appropriate official within three business days of taking possession of the collateral. The timeliness of a notice sent by mail is shown only by official U.S. postmark, receipt, or certificate of the U.S. Postal Service or private delivery service.

The Act also requires a secured party to pay \$75 to the recorder of mortgages and \$250 to the appropriate official for each "Notice of Repossession" filed in person or sent by mail within three business days of taking possession of the collateral. The timeliness of a payment sent by mail is shown only by official U.S. postmark, receipt, or certificate of the U.S. Postal Service or private delivery service.

The Act requires that if the sheriff is the appropriate official in Orleans Parish, no fee shall be paid to the sheriff; however, the "Notice of Repossession" shall still be filed with the sheriff to be delivered in person or sent by mail to the sheriff within three business days of taking possession of the collateral. The timeliness of a notice sent by mail is shown only by official U.S. postmark, receipt, or certificate of the U.S. Postal Service or private delivery service.