

**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.*