
DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 793 Original

2016 Regular Session

Carmody

Abstract: Creates the Louisiana Installment Loan Act and regulates installment loans.

Proposed law enacts the Louisiana Installment Loan Act.

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

Proposed law makes it unlawful for any person to engage in the business of making installment loans unless the person is licensed to make installment loans pursuant to proposed law.

Proposed law deems a person to be engaged in the business of making installment loans in La. if the person induces a consumer, while located in La., to enter into an installment loan plan in La. through the use of facsimile, telephone, Internet, or other means. Proposed law declares that a separate license shall be required for each location from which the business of making installment loans is conducted.

Proposed law requires any nonresident person seeking licensure pursuant to proposed law to furnish the Commissioner ("commissioner") of the Office of Financial Institutions ("OFI") with the name and address of a resident of La. upon whom notices or orders issued by the commissioner, or process affecting a licensee pursuant to proposed law may be served.

Proposed law requires any nonresident licensee to promptly notify the commissioner in writing of any change in its designated agent for service of process, and the change shall not become effective until approved by the commissioner.

Proposed law requires an applicant for a license to make installment loans to meet the following requirements:

(1) A tangible net worth that comprises tangible assets, less liabilities, of not less than \$50,000 for each location.

(2) The financial responsibility, financial condition, business experience, character, and general fitness of the applicant shall reasonably warrant the belief that the applicant's business shall be conducted, lawfully, honestly, carefully and efficiently. In determining whether these qualifications have been met, and for the purpose of investigating compliance with this subtitle, the commissioner may review and approve any of the following:

(a) The relevant business records and the capital adequacy of the applicant.

(b) The competence, experience, integrity, and financial ability of any person who is a director, a shareholder with 10% or more shares of the applicant, or a person who owns or controls the applicant.

(c) Any record of the applicant or any person referred to in proposed law for any criminal activity, any fraud or other act of personal dishonesty, any act, omission, or practice that constitutes a breach of a fiduciary duty, or any suspension, revocation, or removal by any agency or department of the U.S. or any state, from participation in the conduct of any business.

Proposed law requires the commissioner to periodically review the licensee's compliance with proposed law.

Proposed law requires each application for a license shall be in a form established by the commissioner by promulgation of an administrative rule to include the following:

(1) The legal name, residence and business address of the applicant, and if the applicant is a partnership, association, or corporation, the legal name, residence and business address of every member, officer, managing employee, and director of the applicant.

(2) Every person licensed pursuant to proposed law shall maintain an agent in La. for service of process. The name, address, telephone number, and electronic mail address of the agent shall be filed with the application. The commissioner shall be notified in writing by the licensee at least 5 days prior to any change in the status of an agent.

(3) Other data and information the commissioner may reasonably require about the applicant, its directors, trustees, officers, members, managing employees, or agents.

Proposed law requires that each application for a license required by proposed law meet the following requirements or include the following:

(1)(a) A filing fee of \$715 and a supervision fee of \$500 which shall not be subject to refund unless the license is granted, and the filing fee shall constitute the license fee for the 1st license year or part thereof.

(b) The filing fee or supervision fee shall be applicable to each location.

(2)(a) An audited financial statement including but not limited to a balance sheet, a statement of income or loss, and a statement of changes in financial position for the immediately preceding fiscal year, prepared in accordance with generally accepted accounting principles by a certified public accountant or public accounting firm, neither of which is affiliated with the applicant.

(b)(i) For a newly created entity, the commissioner may accept only a balance sheet prepared by a certified public accountant or public accounting firm, neither of which is affiliated with the

applicant, accompanied by a projected income statement demonstrating that the applicant will have adequate capital after payment of start-up costs.

(ii) If the applicant does not have an audited financial statement meeting the requirements, it may submit a financial statement of its parent if the financial statement is audited in accordance with generally accepted accounting principles by a certified public accountant or public account firm, neither of which is affiliated with the applicant.

(3)(a) A surety bond issued by an insurer regulated by the office of the commissioner of insurance of this state and not affiliated with the applicant, in the amount of \$25,000 for each location. However, the aggregate amount of the surety bond required for a single licensee shall not exceed \$200,000.

(b) In lieu of the surety bond, the applicant shall file an irrevocable letter of credit, in the amount of the surety bond, issued by any federally insured bank, savings bank, or credit union, none of which is affiliated with the applicant.

(c) The surety bond or irrevocable letter of credit shall be in a form satisfactory to the office of the commissioner of insurance and shall be payable to the office of financial institutions for the benefit of any person who is injured pursuant to an installment loan by the fraud, misrepresentation, breach of contract, financial failure or violation of any provision of proposed law by a licensee.

(d)(i) In the case of a surety bond, the aggregate liability of the surety bond shall not exceed the principal sum of the surety bond.

(ii) In the case of an irrevocable letter of credit, applicants shall obtain letters of credit for terms of not less than 3 years and renew the letters of credit annually.

(e) If the licensee fails to pay a person or the commissioner, as required by proposed law, then a person may bring suit against the licensee directly on the surety bond or irrevocable letter of credit in any court of competent jurisdiction, or the commissioner may bring suit in the Parish of East Baton Rouge ("EBR"), which shall have exclusive venue in all matters relating to proposed law on behalf of those persons, in either one or successive actions. The surety bond or irrevocable letter of credit shall be maintained by the licensee for not less than 3 years following the expiration, revocation, or surrender of the licensee's license.

Proposed law authorizes the commissioner to require an applicant for a license to consent to a criminal history records check and to provide fingerprints with the application in a form acceptable to the commissioner. Proposed law authorizes the commissioner to require such consent and fingerprints from any individual who is a director, officer, or 10+% shareholder of the applicant or who owns or controls the applicant, as well as from any other individual associated with the applicant as is reasonably necessary to meet the purposes of proposed law. Proposed law clarifies that refusal of any person to consent to a criminal history records check or to provide fingerprints pursuant to proposed law constitutes grounds for the commissioner to deny the applicant a license. Proposed law requires that any criminal history records check conducted pursuant to proposed law

shall be conducted by the La. Bureau of Criminal Id. and Information, the FBI, or both, and the results of the criminal history records check shall be forwarded to the commissioner.

Proposed law declares that if the commissioner finds that all licensing requirements have been satisfied and approves the documents, then the commissioner shall issue to the applicant a license to engage in the business of making installment loans in La.

Proposed law requires that any license shall be conspicuously posted in the licensee's place of business at all times.

Proposed law declares that a license issued pursuant to proposed law shall remain effective through the remainder of the year ending on December 31st after its date of issuance unless earlier surrendered, suspended, or revoked pursuant to proposed law.

Proposed law requires the commissioner to provide written notice to any applicant when the application has been denied, including the basis for denial. Proposed law provides that when the commissioner denies an application or if the commissioner fails to act on an application within 90 days after the filing of a properly completed application the applicant may make a written demand to the commissioner for a hearing before the commissioner on the question of whether the license should be granted. Proposed law requires that any hearing on the denial of a license shall be conducted pursuant to the Administrative Procedure Act ("APA"). Proposed law provides that the burden of proof that the applicant is entitled to a license shall be on the applicant. Proposed law further clarifies that any decision of the commissioner following any hearing on the denial of a license is subject to review pursuant to the provisions of the APA.

Proposed law declares that licenses issued pursuant to proposed law shall expire on December 31st annually. Proposed law provides that any license may be renewed for the ensuing 12 month period upon submission of an application by the license holder showing continued compliance with the requirements of proposed law. Proposed law requires an annual license renewal fee of \$290 to be submitted to the commissioner by December 1st annually. Proposed law provides that a licensee making timely and complete application for renewal of its license shall be permitted to continue to operate pursuant to its existing license until its application is approved or denied.

Proposed law declares that any license issued pursuant to proposed law is not transferable or assignable. Proposed law requires that the prior written approval of the commissioner is required for the continued operation of an installment loan business whenever a change in control of a licensee is proposed, and the commissioner may require information deemed necessary to determine whether a new application is required. Proposed law provides that reasonable and actual costs incurred by the commissioner in investigating a change of control request shall be paid by the person requesting approval. Proposed law mandates that if the person acquiring control of a licensee is already licensed pursuant to proposed law, the person must notify the commissioner 30 days prior to the acquisition. Proposed law states that whenever control is acquired or exercised in violation of proposed law, the license shall be deemed revoked as of the date of the unlawful acquisition of control, and the licensee or its controlling person shall surrender the license to the commissioner on demand. Proposed law requires any licensee to notify

the commissioner 30 days before any change in the licensee's principal place of business, branch office, or name.

Proposed law authorizes licensees to make installment loans pursuant to proposed law may charge and collect fees in a manner consistent with proposed law. Proposed law authorizes a licensee to charge and collect a periodic interest rate not to exceed 20% per month. Proposed law limits the maximum principal loan amount of an installment loan to \$1,500 and adjusted every other year by the commissioner to reflect the percentage changes in the Consumer Price Index published by the Bureau of Labor Statistics of the Dept. of Labor.

Proposed law further restricts a licensee from making an installment loan if the total of scheduled payments coming due in a month exceeds 20% of the borrower's gross monthly income. Proposed law declares that, for the purpose of determining a borrower's gross monthly income pursuant to proposed law, a lender shall obtain and maintain third party verification of all income considered in making the determination. Proposed law clarifies that a "month" means a period extending from a given date in one calendar month to the same date in the succeeding calendar month, or if there is no same date in the succeeding calendar month, the last day of the succeeding calendar month. Proposed law requires certain forms of payments on or before the due date of each billing cycle.

Proposed law establishes procedure for circumstances in which a customer defaults pursuant to the terms of an installment loan plan. Regarding customer default, proposed law authorizes licensees to refer the customer's account to an attorney for collection and do any of the following:

- (1) If the installment loan so provides, charge and collect from the customer a reasonable attorney fee.
- (2) If the installment loan, or in the case of secured plans, the security agreement or similar instrument, so provides, recover from the customer all collection and court costs, including, in the case of secured plans, all costs of enforcing the security agreement or similar instrument actually incurred by the licensee, including those incurred on appeal.
- (3) Dispose of property after default shall occur in a commercially reasonable manner in accordance with law.

Proposed law provides that if a check is returned to a licensee from a payor financial institution due to insufficient funds, no licensee shall have the authority to assess a handling charge against the maker or drawer of the returned check.

Proposed law requires licensees to provide each customer a written explanation, in clear, understandable language, of the fees and charges to be charged by the licensee. The style, content and method of executing the required written explanation shall comply with federal truth-in-lending laws and shall contain a statement that the customer may prepay the unpaid balance in whole or in part at any time without penalty. Proposed law requires installment loans to include a next-business-day customer's right of rescission for any installment loan and a notice informing the customer that complaints may be made to the commissioner, including the telephone number and address of OFI. Proposed law states that an installment loan may not be refinanced more than

1 time. Proposed law restricts refinanced installment loans by stating that the loan amount may not be for a greater than the original installment loan amount and must have payments less than the originally scheduled installment loan payments.

Proposed law requires each licensee to keep and use in its business any books, accounts and records the commissioner may require to effectuate the provisions of proposed law. Proposed law requires licensees to preserve the books, accounts, and records for at least 4 years but provides that any licensee, after receiving the prior written approval of the commissioner, may maintain records at a location within or outside La. Proposed law prohibits unfair or deceptive acts, practices, or advertising in the conduct of the licensed business. Proposed law prohibits the use any device or agreement, including agreements with affiliated licensees, with the intent to obtain greater charges than otherwise would be authorized by proposed law. Proposed law enumerates multiple provisions of present law

for the purpose of restricting the businesses of licensees. Proposed law prohibits installment loans from doing any of the following:

- (1) Provide that the law of a jurisdiction other than this state applies.
- (2) Provide that the customer consents to the jurisdiction of another state or foreign country.
- (3) Establish venue.
- (4) Waive any provision of this Chapter.

Proposed law clarifies that any prohibited provision as described in proposed law shall be void and not enforceable as a matter of public policy.

Proposed law clarifies the scope of the authority of proposed law and provides licensees with limited liability for adherence to the provisions of proposed law.

Proposed law clarifies that, for the purpose of discovering violations of proposed law and determining whether persons are subject to proposed law, the commissioner is authorized to investigate persons licensed pursuant to proposed law and persons reasonably suspected by the commissioner of conducting business that requires a license pursuant to proposed law. Proposed law authorizes the commissioner to summon witnesses and examine them under oath or affirmation and compel the production of books and records that may be relevant to the examination or investigation.

Proposed law provides that a licensee or unlicensed person subject to proposed law, who is examined or investigated in accordance with proposed law, shall pay to the commissioner the reasonable and actual expenses of the investigation or examination. Proposed law clarifies that the expenses shall be payable in addition to all other fees, taxes, and costs required by law.

Proposed law requires the commissioner to appoint an independent hearing examiner to conduct all administrative hearings involving alleged violations of proposed law. Proposed law requires that the independent hearing examiner shall have authority to exercise all powers granted by the APA in

conducting hearings. Proposed law requires the independent hearing examiner to recommend penalties authorized by proposed law and issue proposed orders with proposed findings of fact and proposed conclusions of law to the commissioner pursuant to the APA. Proposed law requires the commissioner to review the proposed order and issue a final agency order in accordance with the APA. Proposed law clarifies that the costs of the hearing examiner may be assessed by the hearing examiner against the respondent, unless the respondent is the prevailing party. Proposed law authorizes any person aggrieved by a final agency order of the commissioner to obtain judicial review in accordance with the APA. Proposed law declares that the jurisdiction and venue of any such action shall be in the district court of the Parish of East Baton Rouge. Proposed law authorizes the commissioner to, after notice and hearing, suspend or revoke any license if a licensee has knowingly or through lack of due care done any of the following:

- (1) Failed to pay any fees, expenses, or costs imposed by the commissioner pursuant to proposed law.
- (2) Committed any fraud, engaged in any dishonest activities, or made any misrepresentations.
- (3) Violated any provision of proposed law , any administrative rule promulgated pursuant to proposed law, or any other law in the course of the licensee's dealings as a licensee.
- (4) Made a false statement in the application for the license or failed to give a true reply to a question in the application.
- (5) Demonstrated incompetency or untrustworthiness to act as a licensee.

Proposed law clarifies that if the reason for revocation or suspension of a licensee's license at any one location is of general application to all locations operated by a licensee, the commissioner may revoke or suspend all licenses issued to a licensee. Proposed law requires that a hearing shall be held on written notice given at least 20 days prior to the date of the hearing and shall be conducted in accordance with the APA.

Proposed law establishes grounds for penalties that may include one or more of the following:

- (1) Ordering the person to cease and desist violating proposed law or any administrative rule promulgated pursuant thereto.
- (2) Requiring the refund of any fees collected by the person in violation of proposed law.
- (3) Ordering the person to pay to OFI a civil penalty of not more than \$1,000 for each transaction in violation of proposed law or for each day that a violation occurs or continues.

Proposed law authorizes the commissioner to impose the following when such penalties are in the public interest:

- (1) Censure of the violator.

(2) Suspension of the violator for a period not to exceed 12 months.

(3) Barring a person from any position of employment, management, or control of a licensee when the violator has done one of the following:

(a) Been convicted or pled guilty to, or pled nolo contendere to, any crime.

(b) Been held liable by final judgment or any administrative judgment by any public agency, when the criminal, civil, or administrative judgment involved any offense reasonably related to the qualifications, functions, or duties of a person engaged in the business of making installment loans pursuant to proposed law.

Proposed law prohibits persons suspended or barred pursuant to proposed law from participating in any business activity of a licensee and from engaging in any business activity on the premises where a licensee is conducting its business. Proposed law shall not be construed to prohibit suspended or barred persons from having their personal transactions processed by a licensee.

Proposed law authorizes the commissioner to enter into a consent order at any time with any person to resolve any matter arising pursuant to proposed law. Proposed law requires a consent order to be signed by the person to whom it is issued, or a duly authorized representative, and shall indicate agreement to the terms contained in the order. Proposed law declares that a consent order need not constitute an admission by any person that any provision of proposed law or any administrative rule or order promulgated or issued pursuant to proposed law has been violated nor need it constitute a finding by the commissioner that the person has violated proposed law. Proposed law declares that, notwithstanding the issuance of a consent order, the commissioner may seek civil or criminal penalties concerning matters encompassed by the consent order. Proposed law authorizes the commissioner to take any enforcement action authorized by proposed law without providing the opportunity for a prior hearing in cases involving extraordinary circumstances requiring emergency action. However, proposed law requires the commissioner to promptly afford a subsequent hearing upon an application to rescind the action taken that is filed with the commissioner within 20 days after receipt of the notice of the commissioner's emergency action.

Proposed law authorizes any person aggrieved by the conduct of a licensee pursuant to proposed law, in connection with the licensee's regulated activities, to file a written complaint with the commissioner who may investigate the complaint. Proposed law empowers the commissioner to do any of the following:

(1) Subpoena witnesses.

(2) Administer oaths.

(3) Examine any individual under oath or affirmation.

(4) Compel the production of records, books, papers, contracts, or other documents relevant to the investigation.

Proposed law declares that if any person fails to comply with a subpoena of the commissioner or fails to testify concerning any matter about which the person may be interrogated, the commissioner may petition any court of competent jurisdiction for enforcement. Proposed law authorizes the commissioner to suspend the license of any licensee who fails to comply with a subpoena of the commissioner. Proposed law declares that the commissioner shall have exclusive administrative power to investigate and enforce any and all complaints relating to the business of making installment loans filed by any person that are not criminal in nature.

Proposed law requires that within fifteen days of any one of the following events, a licensee shall file a written report with the commissioner describing the event and its expected impact on the activities of the licensee in this state:

- (1) The filing for bankruptcy or reorganization by the licensee.
- (2) Revocation or suspension proceedings instituted against the licensee by any state or governmental authority.
- (3) The denial of the opportunity to engage in the business of making loans by any state or governmental authority.
- (4) Any felony indictment of the licensee or any of its directors, officers, or principals.
- (5) Any felony conviction of the licensee or any of its directors, officers, or principals.
- (6) Other events that the commissioner may determine and identify by administrative regulation.

Proposed law provides for annual reports by requiring each licensee to file an annual report with the commissioner on the date of the renewal application as required pursuant to proposed law containing the following information:

- (1) The names and addresses of persons owning a controlling interest in each licensee.
- (2) The location of all places of business operated by the licensee and the nature of the business conducted at each location.
- (3) The names and addresses of all affiliated entities regulated pursuant to proposed law doing business in La.
- (4) An audited financial statement including but not limited to a balance sheet, statement of income or loss, and statement of changes in financial position for the immediately preceding fiscal year end prepared in accordance with generally accepted accounting principles by a certified public accountant or public accounting firm, neither of which is affiliated with the licensee.
- (5) If the licensee is a corporation, the names and addresses of its officers and directors; if the

licensee is a partnership, the names and addresses of the partners; or if the licensee is a limited liability company, the names and addresses of the board of governors or managers of the limited liability company.

Proposed law allows composite reports if the licensee holds 2 or more licenses or is affiliated with other licensees, but a composite report shall not be required. Proposed law requires annual reports to be filed in a form reasonably required by the commissioner and shall be sworn to by a responsible officer of the licensee. Proposed law states that the annual reports shall be confidential.

Proposed law authorizes the commissioner to require persons to be licensed through a multi-state automated licensing system. Pursuant to this authority, the commissioner may do any of the following:

- (1) Promulgate administrative rules that are reasonably necessary for participation in, transition to, or operation of a multi-state automated licensing system.
- (2) Establish relationships or enter into agreements that are reasonably necessary for participation in, transition to, or operation of a multi-state automated licensing system. The agreements may include but are not limited to operating agreements, information sharing agreements, interstate cooperative agreements, and technology licensing agreements.
- (3) Require that applications for licensing and renewals of such licenses be filed with a multi-state automated licensing system.
- (4) Require that any fees required be paid through a multi-state automated licensing system.
- (5) Establish deadlines for transitioning licensees to a multi-state automated licensing system.
- (6) Deny any applications or renewal applications not filed with a multi-state automated licensing system after such deadlines have passed, notwithstanding any dates established elsewhere in this Chapter; however, the commissioner shall provide reasonable notice of any transition deadlines to licensees.
- (7) Take such further actions as are reasonably necessary to give effect to proposed law .

Proposed law maintains the scope of authority of the commissioner as provided for in proposed law. Proposed law requires applicants for and holders of licenses to pay all costs associated with submitting an application to or transitioning a license to a multi-state automated licensing system, as well as all costs required by a multi-state automated licensing system for maintaining and renewing any license issued by the commissioner on a multi-state automated licensing system.

Proposed law authorizes the commissioner to use a multi-state automated licensing system as an agent for channeling information, whether criminal or noncriminal in nature, whether derived from or distributed to the U.S. Dept. of Justice or any other state or federal governmental agency, or any other source, that the commissioner is authorized to request from, or distribute to, pursuant to

proposed law.

Proposed law requires the following provisions to apply to the information or material after the information or material has been disclosed to a multi-state automated licensing system:

(1) Any requirements pursuant to any federal or state law regarding the privacy or confidentiality of any information or material provided to a multi-state automated licensing system, and any privilege arising pursuant to federal or state law, including the rules of any federal or state court with respect to such information or material.

(2) Any such information or material may be shared with all state and federal regulatory officials with consumer credit oversight authority without the loss of privilege or the loss of confidentiality protections provided by federal or state law, including the protection available pursuant to state law.

Proposed law authorizes the commissioner to enter into agreements or sharing agreements with other governmental agencies, the Conference of State Bank Supervisors, or other associations representing governmental agencies as established by rule or order of the commissioner. Proposed law exempts information or material that is subject to a privilege or confidential pursuant to proposed law from any of the following:

(1) Disclosure pursuant to any federal or state law governing the disclosure to the public of information held by an officer or any agency of the federal government or the respective state.

(2) Subpoena, discovery, or admission into evidence in any private civil action or administrative process, unless with respect to any privilege held by a multi-state automated licensing system applicable to such information or material, the person to whom such information or material pertains waives that privilege, in whole or in part, in the discretion of such person.

Proposed law shall supersede any inconsistent provisions of law pertaining to the records open to public inspection. Proposed law shall not apply with respect to information or material relating to publicly adjudicated disciplinary and enforcement actions against persons subject to proposed law that is included in a multi-state automated licensing system for access by the public.

Proposed law declares that local government units including but not limited to cities, towns, and counties shall have no authority to regulate installment plan loans.

Proposed law directs OFI to promulgate any rules and regulations in accordance with the Administrative Procedure Act necessary to implement the provisions of proposed law.

Effective January 1, 2017.

(Adds R.S. 6:1371-1395)