

SENATE BILL NO. 381

BY SENATOR WARD

1 AN ACT

2 To enact Chapter 15 of Title 51 of the Louisiana Revised Statutes of 1950, to be comprised
3 of R.S. 51:1501 through 1506, relative to the regulation of credit access loans; to
4 provide for terms, procedures, prohibitions, and penalties; to require disclosure; to
5 provide for definitions; and to provide for related matters.

6 Be it enacted by the Legislature of Louisiana:

7 Section 1. Chapter 15 of Title 51 of the Louisiana Revised Statutes of 1950,
8 comprised of R.S. 51:1501 through 1506, is hereby enacted to read as follows:

9 **CHAPTER 15. LOUISIANA CREDIT ACCESS LOAN ACT**

10 **§1501. Short title**

11 **This Chapter shall be known and may be cited as the "Louisiana Credit**
12 **Access Loan Act".**

13 **§1502. Scope**

14 **This Chapter shall not apply to any of the following:**

15 **(1) Any federally insured depository institution.**

16 **(2) A subsidiary of any state-chartered or federally chartered entity**
17 **described in Paragraph (1) of this Section in which eighty percent or more of**
18 **the ownership rests with such parent entity.**

19 **(3) Any loan subject to the provisions of the Louisiana Motor Vehicles**
20 **Sales Finance Act, R.S. 6:969.1 et seq.**

21 **(4) Deferred presentment transactions or small loans governed by the**
22 **Louisiana Deferred Presentment and Small Loan Act, R.S. 9:3578.1 et seq., or**
23 **any extension of credit made pursuant to or permissible under the Louisiana**
24 **Consumer Credit Law, R.S. 9:3510 et seq.**

25 **§1503. Definitions**

1 As used in this Chapter, the following words have the following
2 meanings:

3 (1) "Check" means any draft, item, orders, or requests for payment of
4 money, negotiable orders, withdrawal, or any other instrument used to pay a
5 debt or transfer money from one to another.

6 (2) "Commissioner" means the commissioner of the office of financial
7 institutions.

8 (3) "Consumer" or "borrower" means a natural person who purchases
9 goods, services, or movable or immovable property or rights therein, for a
10 personal, family, or household purpose, including the borrowing party in a
11 credit access loan.

12 (4) "Credit access loan" means any interest-bearing loan payable in
13 substantially equal installments, which satisfies all of the following criteria:

14 (a) The loan is offered by a licensee to a borrower in compliance with
15 this Chapter.

16 (b) The loan includes a principal amount not exceeding one thousand
17 five hundred dollars.

18 (c) The loan includes a loan term of not fewer than ninety days and not
19 more than three hundred sixty-five days.

20 (5) "Licensee" or "lender" means any person who engages in offering
21 credit access loans and who is licensed pursuant to the Louisiana Consumer
22 Credit Law, R.S. 9:3510 et seq.

23 (6) "OFI" means the office of financial institutions.

24 (7) "Principal" means the amount financed or amount deferred pursuant
25 to a credit access loan agreement executed between a consumer or borrower
26 and a licensee or lender.

27 §1504. Credit access loan; terms; disclosure; procedure

28 A. A credit access loan agreement entered into between a licensee and a
29 borrower pursuant to this Chapter shall satisfy all of the following criteria:

30 (1) The agreement authorizes the borrower to rescind the agreement

1 within one business day at no cost.

2 (2) The agreement contains a disclosure notice written in at least twelve-
3 point, bold font stating:

4 You are entitled by Louisiana law to cancel this
5 transaction at no cost to you by notifying your lender of
6 your intent to cancel this transaction by close of the
7 business day immediately following the date you sign this
8 agreement and by returning to the lender all loan
9 proceeds provided to you.

10 (3) The agreement contains a disclosure notice written in at least sixteen-
11 point, bold font on the first page of each credit access loan agreement stating:

12 You may request an extended payment plan once
13 in a twelve month period if you are unable to pay the loan
14 in full when due, but the request shall be made prior to
15 [Insert final payment due date here]. The request shall be
16 made in writing and be delivered by hand, by mail, or by
17 facsimile to: [Licensee/lender to insert name, email
18 address, phone number and facsimile number here].
19 Contact the Office of Financial Institutions (OFI) at 1-
20 888-525-9414, 8660 United Plaza Blvd, Baton Rouge, LA
21 70809, if [Licensee/lender name here] refuses to grant
22 your timely request for an extended payment plan or if
23 you have any other complaint regarding your lender's
24 activity.

25 B. The disclosure notices required pursuant to Subsection A of this
26 Section shall be visibly posted at each licensee location and on the homepage of
27 the licensee's website.

28 C. A licensee may contract for and receive the following from a
29 borrower:

30 (1)(a) A loan finance charge, calculated according to the actuarial

1 method, not exceeding thirty-six percent per year on the unpaid balances of the
2 principal.

3 (b) The loan finance charge described in Subparagraph (a) of this
4 Paragraph shall not include the fees or charges enumerated in Paragraphs (2)
5 through (5) of this Subsection.

6 (2) A monthly maintenance fee not exceeding thirteen percent of the
7 principal amount originally contracted but only if the fee is not added to the
8 unpaid balances of the principal subject to the loan finance charge described in
9 Paragraph (1) of this Subsection.

10 (3) Delinquency charges as authorized by R.S. 51:1506.

11 (4) Charges imposed by the licensee resulting from returned payments
12 related to dishonored checks, electronic funds transfers, negotiable orders of
13 withdrawal, or share drafts issued by the borrower.

14 (5) An underwriting fee not exceeding fifty dollars but only when the
15 principal amount originally contracted for is at least four hundred dollars.

16 D.(1) All fees and charges imposed relating to the credit access loan,
17 except those charges described in Paragraphs (C)(3) and (4) of this Section, shall
18 be included in the calculation of the total amount of fees and charges and shall
19 not exceed one thousand five hundred dollars.

20 (2) Fees or charges not authorized by this Chapter shall not be imposed,
21 relative to a credit access loan, including but not limited to any charges related
22 to cashing loan proceeds, if such proceeds are delivered by check.

23 (3) Notwithstanding any other provision of law, a lender shall not
24 contract for, charge, collect, or receive in connection with a credit access loan
25 made pursuant to this Section a total amount of fees and charges, over the life
26 of a loan made in accordance with Subsection C of this Section that exceeds one
27 hundred percent of the principal amount contracted for in the original loan.

28 E.(1) Prior to offering a credit access loan agreement to a borrower, a
29 licensee shall reasonably attempt to verify either the borrower's gross monthly
30 income, exclusive of any income other than gross pay received, or the

1 borrower's monthly funds received net of taxes and other deductions.

2 (2) A licensee shall be in compliance with this Subsection if the licensee
 3 obtains at least one document from the borrower, which is dated not earlier
 4 than ninety days before the date of the borrower's initiation of the loan
 5 transaction and not later than the date the loan is made, that reasonably verifies
 6 the information required by Paragraph (1) of this Subsection, including but not
 7 limited to a recent pay stub.

8 §1505. Prohibitions; violation

9 A. A licensee shall not do any of the following related to a credit access
 10 loan:

11 (1) Use any device or agreement that charges or collects more fees,
 12 payments, or interest from the borrower than authorized by this Chapter,
 13 including execution of another financial agreement with the buyer other than
 14 an extended payment plan; a sales, leaseback, or rebate agreement; catalog
 15 sales; or any other transaction with the borrower intended or designed to evade
 16 the requirements of this Chapter.

17 (2) Include in a credit access loan agreement any of the following:

18 (a) A hold harmless clause.

19 (b) A confession of judgment clause.

20 (c) A provision in which the borrower agrees not to assert a claim or
 21 defense arising out of the agreement.

22 (d) A provision by which a person acting on behalf of the licensee is
 23 treated as an agent of the borrower relating to the credit access loan.

24 (3) Accept real or personal property or any interest in property other
 25 than a check.

26 (4)(a) Draft funds electronically from a borrower's account without the
 27 borrower's express written authorization.

28 (b) Notwithstanding any provision of this Section, nothing in this
 29 Chapter shall be construed to prohibit the conversion of a negotiable instrument
 30 into an electronic form for processing through an automated clearing house

1 system.

2 (5) Fail to stop attempts to draft funds electronically from a borrower's
3 account upon request of such from the borrower or the borrower's authorized
4 agent.

5 (6) Fail to consider whether the borrower can repay the loan according
6 to its terms and whether the borrower's original request regarding loan term
7 and amount were within the limitations imposed according to this Chapter.

8 (7) Charge, contract for, receive, or collect a loan finance charge, credit
9 service charge, or any other fee not authorized by this Chapter, except for
10 reasonable attorney fees and costs awarded by a court.

11 (8) Refuse a partial loan payment of at least fifty dollars.

12 (9) Divide a credit access loan into multiple agreements for the purpose
13 of obtaining a higher fee or charge.

14 (10) Threaten any customer with prosecution or refer for prosecution
15 any check accepted as payment of a credit access loan and returned by the
16 lender's depository institution for reason of insufficient funds.

17 (11) Execute or structure loan repayment in a manner intended or
18 designed to evade the requirements of this Chapter.

19 B. Notwithstanding any provision of this Chapter, any credit access loan
20 complying with the provisions of this Chapter shall be exempt from and shall
21 not constitute a violation of R.S. 14:511.

22 C. OFI and the commissioner may administer and enforce compliance
23 with this Chapter according to applicable law, including but not limited to the
24 Louisiana Consumer Credit Law, R.S. 9:3510 et seq. and the Administrative
25 Procedure Act, R.S. 49:950 et seq.

26 §1506. Borrower default; delinquent penalty

27 A.(1) A licensee may charge and collect from the borrower a late penalty
28 of no more than ten percent of the delinquent amount but only when the terms
29 of the penalty are clearly disclosed, in writing, in the credit access loan
30 agreement.

1 (2) Notwithstanding Paragraph (1) of this Subsection, a licensee shall not
 2 impose a delinquent penalty on any borrower unless the borrower has failed to
 3 pay the delinquent amount within ten days following the applicable due date.

4 B. A credit access loan agreement may require that the borrower pay all
 5 costs awarded by a court, but only when the borrower has defaulted and the
 6 licensee has referred the matter to an attorney for collection.

7 Section 2. The office of financial institutions shall promulgate any administrative
 8 regulations deemed necessary to implement and effectuate the purposes of this Act by no
 9 later than one hundred eighty days from the effective date of this Act.

10 Section 3. This Act shall become effective upon signature of the governor or, if not
 11 signed by the governor, upon expiration of the time for bills to become law without signature
 12 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
 13 vetoed by the governor and subsequently approved by the legislature, this Act shall become
 14 effective on the day following such approval.

 PRESIDENT OF THE SENATE

 SPEAKER OF THE HOUSE OF REPRESENTATIVES

 GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____