

STATE OF OKLAHOMA

1st Session of the 50th Legislature (2005)

SENATE BILL 892

By: Eason McIntyre

AS INTRODUCED

An Act relating to deferred deposit loans; amending Sections 6, 8, 9 and 10, Chapter 240, O.S.L. 2003, as amended by Sections 4, 5, 6 and 7, Chapter 557, O.S.L. 2004 and Section 11, Chapter 240, O.S.L. 2003 (59 O.S. Supp. 2004, Sections 3106, 3108, 3109 and 3111), which relate to the Deferred Deposit Lending Act; modifying minimum loan term; prohibiting certain practices for specified borrowers; modifying the maximum finance charge; establishing waiting period between completion of loan transaction and new loan agreement; modifying time period between certain loans under specified conditions, and creating exceptions thereto; modifying requirements for advertising loans; establishing new disclosure requirements; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY Section 6, Chapter 240, O.S.L. 2003, as amended by Section 4, Chapter 557, O.S.L. 2004 (59 O.S. Supp. 2004, Section 3106), is amended to read as follows:

Section 3106. A deferred deposit lender shall not:

1. Charge fees other than, or in excess of those authorized by the Deferred Deposit Lending Act;
2. Make deferred deposit loans at unlicensed locations;
3. Alter or delete the date on an instrument after it has been accepted by the lender pursuant to a deferred deposit loan;
4. Accept an undated instrument or an instrument dated on a date other than the date of the deferred deposit loan;
5. Accept an instrument unless the account on which the instrument is drawn is a legitimate, open and active account;

6. Require a debtor to provide security for the deferred deposit loan or require a debtor to provide a guaranty from another person;

7. Advance a loan amount greater than Five Hundred Dollars (\$500.00) to a borrower in one deferred deposit loan transaction exclusive of the finance charge allowed in Section 3108 of this title;

8. Engage in a deferred deposit loan with a term of less than ~~twelve (12)~~ fourteen (14) days or more than forty-five (45) days;

9. Negotiate or present an instrument for payment unless the instrument is endorsed with the actual business name of the lender;

10. Negotiate any instrument presented by a borrower if the borrower has redeemed the instrument by paying the full amount due under the deferred deposit loan;

11. Make any charge for insurance in connection with a deferred deposit loan transaction;

12. Refuse the borrower's right to rescind the deferred deposit loan at any time between the time of the deferred deposit loan transaction and 5 p.m. of the next business day following the deferred deposit loan transaction;

13. Charge the borrower an additional finance charge or fee for cashing a lender's business instrument, if the lender pays the proceeds from the loan transaction in the form of a business instrument;

14. Require or accept more than one dated instrument per deferred deposit loan; ~~or~~

15. Refuse the borrower's right to enter into an installment payment plan, pursuant to this act; or

16. If the borrower is an active member or the spouse of an active member of the United States Armed Forces:

a. garnish any military wages or salary,

- b. conduct any collection activity when the member is deployed to a combat or combat support posting, or is called to active duty if a member of the Reserves or National Guard, for the duration of the deployment or active duty service,
- c. contact the borrower's commanding officer or anyone in the chain of command, or
- d. make a deferred deposit loan if a military base commander has declared that a specific location of the deferred deposit lender's business is off limits to military personnel.

SECTION 2. AMENDATORY Section 8, Chapter 240, O.S.L. 2003, as amended by Section 5, Chapter 557, O.S.L. 2004 (59 O.S. Supp. 2004, Section 3108), is amended to read as follows:

Section 3108. A. Regardless of any other law governing the imposition of interest, fees, loan finance charges or the extension of credit, a deferred deposit lender may charge a finance charge for each deferred deposit loan that does not exceed ~~Fifteen Dollars (\$15.00)~~ Ten Dollars (\$10.00) for every One Hundred Dollars (\$100.00) advanced ~~up to the first Three Hundred Dollars (\$300.00) of the amount advanced; for the advance amounts in excess of Three Hundred Dollars (\$300.00), the lender may charge an additional finance charge of Ten Dollars (\$10.00) for every One Hundred Dollars (\$100.00) advanced in excess of Three Hundred Dollars (\$300.00).~~

The credit terms of the deferred deposit loan shall be disclosed in accordance with Regulation Z, including the terms "finance charge" and "annual percentage rate". The finance charge under this subsection shall be deemed fully earned as of the date of the transaction. Except for a fee for a dishonored instrument and the actual database verification fee pursuant to subparagraph b of paragraph 2 of subsection B of Section 3109 of this title, the

lender may charge only those charges expressly authorized in this subsection in connection with a deferred deposit loan.

B. If an instrument held by a lender as a result of a deferred deposit loan is returned to the lender from a payor financial institution due to insufficient funds, a closed account or a stop payment order, the lender shall have the right to exercise all civil means authorized by law to collect the amount of the instrument. In addition, the lender may contract for and collect a dishonored instrument charge, not to exceed Twenty-five Dollars (\$25.00); however, a dishonored instrument charge shall not be allowed if the instrument is dishonored by a financial institution, or the debtor places a stop payment order, due to forgery or theft of the instrument.

SECTION 3. AMENDATORY Section 9, Chapter 240, O.S.L. 2003, as amended by Section 6, Chapter 557, O.S.L. 2004 (59 O.S. Supp. 2004, Section 3109), is amended to read as follows:

Section 3109. A. A lender may not enter into a renewal of a deferred deposit loan transaction.

B. Upon any application being made for a deferred deposit loan, the lender shall determine if the applicant has any outstanding deferred deposit loans as follows:

1. The applicant shall be required to sign an affidavit stating whether the applicant has any deferred deposit loans outstanding with the lender or any other deferred deposit lender and if so, the status of each such loan; and

2. The lender shall be required to verify the accuracy of the affidavit through commercially reasonable means. A lender's method of so verifying shall be considered in compliance with the provisions of this section if the verification method includes a manual investigation or an electronic query of:

- a. the lender's own records, including both records maintained at the location where the loan is being

applied for and records maintained at other locations that are owned and operated by the lender or the lender's affiliates, and

- b. any private database approved by the Administrator of Consumer Credit, if the lender subscribes to such a database; provided, all lenders shall be required to subscribe to such a database or otherwise obtain the required information in a manner approved by the Administrator not later than July 1, 2004. The lender may charge the applicant a fee for database verification not to exceed the actual fee charged to the lender by the database provider.

If the lender determines that the applicant has ~~more than one~~ any outstanding deferred deposit loan, the loan applied for shall not be made.

C. A deferred deposit loan transaction is completed when the lender presents the instrument for payment or initiates an ACH debit to the debtor's bank account to collect on the instrument, or the debtor redeems the instrument by paying the full amount of the instrument to the lender. ~~Once~~ Twenty-four (24) hours after the debtor has completed the deferred deposit loan transaction, the lender may enter into a new deferred deposit loan agreement with the debtor, and the new deferred deposit loan transaction shall not be deemed to be a renewal of the previous deferred deposit loan; provided, a new deferred deposit loan made within ~~thirteen (13)~~ fifteen (15) calendar days after a previous deferred deposit loan has been entered into between the lender and the debtor shall be considered a renewal and shall not be made.

D. If a debtor enters into a third consecutive loan, the lender shall provide the consumer an option to repay such loan and each consecutive loan pursuant to a written repayment plan subject to the following terms:

1. The debtor shall request the repayment plan, either orally or in writing, prior to the due date of the loan;

2. The debtor shall repay the loan in four equal installments with one installment due on each of the next four dates on which the customer receives regular wages or compensation from an employer, pursuant to a written repayment plan agreement;

3. The consumer shall pay a processing fee of ten percent (10%) of the principal amount of the loan per loan not to exceed Fifteen Dollars (\$15.00) for administration of the payment plan;

4. The consumer shall agree not to enter into any additional deferred presentment loans during the repayment plan term and for a period of fifteen (15) days after termination of the repayment plan term; and

5. Upon positive completion of the repayment plan, the lender shall report the debtor's positive payment history to at least one national consumer credit reporting agency.

E. A lender shall negotiate or present an instrument for payment only if the instrument is endorsed with the actual business name of the lender.

F. Prior to the lender negotiating or presenting the instrument, the debtor shall have the right to redeem any instrument held by a lender as a result of a deferred deposit loan if the debtor pays to the lender the unpaid balance of the principal and all accrued fees and charges.

SECTION 4. AMENDATORY Section 10, Chapter 240, O.S.L. 2003, as amended by Section 7, Chapter 557, O.S.L. 2004 (59 O.S. Supp. 2004, Section 3110), is amended to read as follows:

Section 3110. After the debtor has entered into a fifth consecutive deferred deposit loan or has entered into six deferred deposit loans in any ninety-day period, a lender shall not make a deferred deposit loan to a debtor until ~~8:00 a.m. on the second business day after the fifth consecutive deferred deposit loan has~~

been paid in full ninety (90) days after the day the first loan was entered into; provided, such limit shall not apply if the debtor can demonstrate completion of a course in consumer counseling from a provider pursuant to Section 3119 of this title.

SECTION 5. AMENDATORY Section 11, Chapter 240, O.S.L. 2003 (59 O.S. Supp. 2004, Section 3111), is amended to read as follows:

Section 3111. A. No lender shall engage in this state in false or misleading advertising concerning the terms or conditions of credit with respect to a deferred deposit loan.

B. ~~Advertising which complies with Regulation Z does not violate subsection A of this section.~~ Any advertising materials used to promote deferred deposit loans shall include:

1. A statement of the fees and charges, expressed as an annual percentage rate, payable using as an example a three-hundred-dollar loan payable in fourteen (14) days; and

2. The following disclosure statements:

a. "A deferred deposit loan is an expensive form of credit. A deferred deposit loan is not intended to meet long-term financial needs. This loan should be used only to meet short-term cash needs.", and

b. "You have the right to rescind this deferred deposit loan no later than 5 p.m. of the next business day following this loan transaction."; and

3. In any print media advertisement, including any web page, used to promote deferred deposit loans, the disclosure statements shall be clear and conspicuous. If a single advertisement consists of multiple pages, folds, or faces, the disclosure requirement applies only to one page, fold, or face. If a television advertisement is used to promote deferred deposit loans, the visual disclosure legend shall include twenty scan lines in size. If a radio advertisement or advertisement communicated by telephone is

used to promote deferred deposit loans, the disclosure statement shall last at least five (5) seconds and the statement shall be spoken so that its contents may be easily understood.

SECTION 6. This act shall become effective November 1, 2005.

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