

1 STATE OF OKLAHOMA

2 1st Session of the 52nd Legislature (2009)

3 SENATE BILL 417

By: Bass

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5
6 AS INTRODUCED

7 An Act relating to professions and occupations;
8 amending Section 9, Chapter 240, O.S.L. 2003, as
9 amended by Section 6, Chapter 557, O.S.L. 2004,
10 Sections 12 and 13, Chapter 240, O.S.L. 2003 and
11 Section 18, Chapter 240, O.S.L. 2003, as amended by
12 Section 8, Chapter 557, O.S.L. 2004 (59 O.S. Supp.
13 2008, Sections 3109, 3112, 3113 and 3118), which
14 relate to the Deferred Deposit Lending Act; modifying
15 method of determining accuracy of certain affidavit;
16 deleting certain requirement relating to reporting
17 certain completion of a repayment plan; providing for
18 certain loans made by an unlicensed person; making
19 certain loans void; making certain borrowers not
20 obligated to pay certain loans or finance charges;
21 requiring certain refunds; providing for certain
22 cause of action; providing for certain costs and fees
23 to be paid if certain action is successful; adding
24 fee for certain licenses; providing for certain
administrative service fee; providing when service
fee shall not be assessed; modifying what the
Oklahoma Deferred Deposit Lending Regulatory
Revolving Fund shall consist of; and providing an
effective date.

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

22 SECTION 1. AMENDATORY Section 9, Chapter 240, O.S.L.
23 2003, as amended by Section 6, Chapter 557, O.S.L. 2004 (59 O.S.
24 Supp. 2008, Section 3109), is amended to read as follows:

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

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

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

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

15 a. the lender's own records, including both records
16 maintained at the location where the loan is being
17 applied for and records maintained at other locations
18 that are owned and operated by the lender or the
19 lender's affiliates, and

20 b. any private database approved by the Administrator of
21 Consumer Credit, ~~if the lender subscribes to such a~~
22 ~~database; provided, all lenders shall be required to~~
23 ~~subscribe to such a database or otherwise obtain the~~
24 ~~required information in a manner approved by the~~

1 ~~Administrator not later than July 1, 2004.~~ The lender
2 may charge the applicant a fee for database
3 verification not to exceed the actual fee charged to
4 the lender by the database provider.

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

8 C. A deferred deposit loan transaction is completed when the
9 lender presents the instrument for payment or initiates an ACH debit
10 to the debtor's bank account to collect on the instrument, or the
11 debtor redeems the instrument by paying the full amount of the
12 instrument to the lender. Once the debtor has completed the
13 deferred deposit loan transaction, the lender may enter into a new
14 deferred deposit loan agreement with the debtor, and the new
15 deferred deposit loan transaction shall not be deemed to be a
16 renewal of the previous deferred deposit loan; provided, a new
17 deferred deposit loan made within thirteen (13) calendar days after
18 a previous deferred deposit loan has been entered into between the
19 lender and the debtor shall be considered a renewal and shall not be
20 made.

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

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

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

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

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

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

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

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

1 SECTION 2. AMENDATORY Section 12, Chapter 240, O.S.L.
2 2003 (59 O.S. Supp. 2008, Section 3112), is amended to read as
3 follows:

4 Section 3112. A. No person may engage in the business of
5 making deferred deposit loans without first obtaining a license
6 pursuant to ~~this act~~ the Deferred Deposit Lending Act, unless exempt
7 under subsection B of Section ~~3~~ 3103 of this ~~act~~ title. A separate
8 license is required for each location where deferred deposit loans
9 are made. The licensee shall post its license to engage in the
10 business of making deferred deposit loans at each licensed location.

11 B. The Administrator may initiate administrative action against
12 an unlicensed person as if the person held a license under ~~this act~~
13 the Deferred Deposit Lending Act if the person is found to be
14 engaged in the business of making deferred deposit loans.

15 C. If an unlicensed person enters into a deferred deposit loan
16 transaction with a borrower who is a resident of this state:

17 1. The loan shall be void and the borrower is not obligated to
18 pay either the amount loaned or any finance charge in connection
19 with the transaction;

20 2. Any funds paid by the borrower shall be refunded by the
21 unlicensed person; and

22 3. If a borrower is entitled to a refund and an unlicensed
23 person refuses to make the refund within a reasonable time after
24 demand, the borrower shall have a cause of action against the

1 unlicensed person. If an action to enforce the liability is
2 successful, the costs of the action together with attorney's fees as
3 determined by the court, shall be awarded to the borrower.

4 D. The Administrator may issue a license for each location at
5 which deferred deposit loans are to be made to any person making
6 deferred deposit loans at multiple locations; provided, if such
7 licensee is not in compliance with ~~this act~~ the Deferred Deposit
8 Lending Act as to each license, any action to revoke, suspend or not
9 renew one license shall be applicable to all licenses issued to that
10 licensee. This subsection shall not be construed to require a
11 license for any place of business devoted to accounting or other
12 record keeping and where deferred deposit loans are not made.

13 ~~D.~~ E. When a licensee wishes to move a licensed location to
14 another licensed location, the licensee shall give thirty (30) days'
15 written notice to the Administrator, who shall amend the license
16 accordingly.

17 SECTION 3. AMENDATORY Section 13, Chapter 240, O.S.L.
18 2003 (59 O.S. Supp. 2008, Section 3113), is amended to read as
19 follows:

20 Section 3113. A. To qualify for a license issued pursuant to
21 ~~this act~~ the Deferred Deposit Lending Act, an applicant shall have:

22 1. A minimum net worth, determined in accordance with generally
23 accepted accounting principles, of at least Twenty-five Thousand
24 Dollars (\$25,000.00) available for operation of each licensed

1 location, with a maximum aggregate net worth requirement of Two
2 Hundred Fifty Thousand Dollars (\$250,000.00) for an owner of
3 multiple locations; and

4 2. The financial responsibility, character, experience and
5 general fitness so as to command the confidence of the public and to
6 warrant the belief that the business will be operated lawfully,
7 honestly, fairly and efficiently.

8 B. An application for a license pursuant to ~~this act~~ the
9 Deferred Deposit Lending Act must be in writing, under oath, and on
10 a form prescribed by the Administrator of Consumer Credit. The
11 application must set forth all of the following:

12 1. The legal name and residence and business addresses of the
13 applicant and, if the applicant is a partnership, association or
14 corporation, of every member, officer, managing employee and
15 director of it;

16 2. The location of the registered office of the applicant;

17 3. The registered agent of the applicant if the applicant is
18 required by other law to have a registered agent;

19 4. The addresses of the locations to be licensed; and

20 5. Other information concerning the financial responsibility,
21 background, experience and activities, such as other partnerships,
22 associations and corporations located at or adjacent to the licensed
23 location of the applicant and its members, officers, managing
24 employees and directors as the Administrator may require.

1 C. On receipt of an application in the form prescribed by the
2 Administrator and accompanied by the required license fee, the
3 Administrator shall investigate whether the qualifications for
4 license are satisfied. If the Administrator finds that the
5 qualifications are satisfied, the Administrator shall issue to the
6 applicant a license to engage in the business of making deferred
7 deposit loans. If the Administrator fails to issue a license, the
8 Administrator shall notify the applicant of the denial and the
9 reasons for the denial. The provisions of the Administrative
10 Procedures Act shall apply to the appeal of the denial of a license.

11 D. Each application, regardless of the number of locations to
12 be operated by a single licensee, must be accompanied by payment of
13 an application fee of Two Hundred Fifty Dollars (\$250.00) and an
14 investigation fee of Five Hundred Dollars (\$500.00). These fees
15 shall not be refundable or abatable. If the license is granted,
16 however, payment of the application fee shall satisfy the fee
17 requirement for the first license year or its remainder.

18 E. Each license shall remain in full force and effect until
19 relinquished, suspended, revoked or expired. A license expires
20 annually and may be renewed on payment of a license fee of Two
21 Hundred Fifty Dollars (\$250.00). The annual license renewal fee for
22 an application with more than one location shall be Two Hundred
23 Fifty Dollars (\$250.00) for each location.

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1 F. The fee for a duplicate or amended license shall be Twenty-
2 five Dollars (\$25.00).

3 G. There shall be assessed, in addition to any other penalties
4 provided for by law, an administrative service fee of Twenty-five
5 Dollars (\$25.00) for any check returned to the Department of
6 Consumer Credit or any agent of the Department. However, the fee
7 provided in this subsection shall not be assessed for any check
8 returned because of "insufficient funds" unless the check has been
9 presented to the bank two times and payment declined by the bank.

10 SECTION 4. AMENDATORY Section 18, Chapter 240, O.S.L.
11 2003, as amended by Section 8, Chapter 557, O.S.L. 2004 (59 O.S.
12 Supp. 2008, Section 3118), is amended to read as follows:

13 Section 3118. There is hereby created in the State Treasury a
14 revolving fund for the Commission on Consumer Credit to be
15 designated the "Oklahoma Deferred Deposit Lending Regulatory
16 Revolving Fund". The fund shall consist of all ~~monies~~ fees and
17 fines received by the Administrator of Consumer Credit ~~as license~~
18 ~~fees, examination fees, investigation fees, application fees, fees~~
19 ~~imposed for consumer credit counseling education and any~~
20 ~~administrative fines imposed~~ pursuant to the Deferred Deposit
21 Lending Act. The revolving fund shall be a continuing fund not
22 subject to fiscal year limitations and shall be under the
23 administrative direction of the Administrator. Monies accruing to
24 the credit of this fund are hereby appropriated and may be budgeted

1 and expended by the Administrator upon warrants issued by the State
2 Treasurer against claims filed as prescribed by law with the
3 Director of State Finance for approval and payment.

4 SECTION 5. This act shall become effective November 1, 2009.

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