

ARIZONA STATE SENATE

RESEARCH STAFF



TO: MEMBERS OF THE SENATE
APPROPRIATIONS COMMITTEE

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SUBJECT: Strike everything amendment to H.B. 2496, relating to consumer access line of credit

Purpose

Requires the Arizona Department of Financial Institutions (DFI) to establish a licensure process for a consumer access line of credit (CALC). Establishes qualifications for licensure, fees, reporting and the Community Development Services Fund.

Background

The DFI, formerly known as the State Banking Department, was originally codified in 1922 and enacted into law in 1973. The purpose of DFI is to safeguard the public welfare by protecting the financial assets of the citizens of Arizona.

DFI is statutorily charged with the licensing, supervision and regulation of state-chartered financial institutions and enterprises, by ensuring the safety and soundness of the financial services industry in Arizona, as well as compliance with state and applicable federal laws. DFI also investigates complaints that are filed by consumers against licensed entities and directs appropriate remedial action if the violations are substantiated.

There is no anticipated fiscal impact to the state General Fund associated with this legislation. With passage of this legislation, DFI is permitted to use up to ten percent of the Community Development Services Fund for costs of administering the Fund.

Provisions

1. Requires the superintendent to assess a fee not to exceed \$65.00 per hour for each examiner employed in the examination of a CALC lender.
2. Imposes a fee to be determined by the Superintendent to apply for a consumer access line of credit loan plan lender license.
3. Imposes an annual renewal fee for a consumer access line of credit loan plan lender of \$1,000 plus \$200 for each branch office.
4. Defines a *CALC loan plan* as a written or electronic agreement in a record between a licensee and a consumer establishing an open-end credit plan under which the licensee contemplates repeated noncommercial loans for personal, family or household purposes that are all of the following:
 - a) unsecured by personal property or real estate.
 - b) without fixed maturities or limitation as to the length of term.
 - c) subject to prepayment in whole or in part at any time without charge or penalty.

Licensure

5. Prohibits a person from engaging in the business of entering into CALC loan plans and making CALC loans unless the person is licensed.
6. Stipulates that a person is engaged in the business of entering into CALC loan plans and making CALC loans if the person induces a consumer, while located in this state, to enter into a CALC loan plan or making a CALC loan in this state through the use of the internet, a fax, a telephone or another means.
7. Allows a nonresident person to be licensed to enter into CALC loan plans and make CALC loans.
8. Requires any nonresident person seeking a license to furnish the Superintendent with the name and address of a resident of this state on whom notices or orders issued by the Superintendent or process affecting a licensee may be served.
9. Requires the nonresident licensee to promptly notify the Superintendent in a written or electronic record of every change in the nonresident licensee's designated agent for service of process.
10. Stipulates that the business of entering into CALC loan plans and making CALC loans is not subject to or controlled by any other law governing the imposition of interest, fees or loan charges.
11. Stipulates that this chapter does not prevent a licensee from conducting the business of entering into CALC loan plans and making CALC loans over the internet.

Qualifications for Licensure

12. Requires that an applicant for a license shall:
 - a) have a tangible net worth that comprises tangible assets minus liabilities of at least \$50,000; and
 - b) have financial responsibility, a financial condition, business experience, character and general fitness to reasonably warrant the belief that the applicant's business will be conducted lawfully and fairly.
13. Allows the Superintendent to review:
 - 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, officer or ten percent or more shareholder of the applicant;
 - c) any record on the part of the applicant or controlling person of:
 - i) any criminal activity, fraud or other act of personal dishonesty;
 - ii) any act, omission or practice that constitutes a breach of a fiduciary duty; and
 - iii) any suspension, removal or administrative action by any agency or department of the United States or any state that is related to participation in the conduct of any business.

Application

14. Requires each application for a license to be in a form prescribed by the Superintendent and to include certain specified information.
15. Requires each application to be accompanied by:
 - a) a fee, in the case of a nonresident applicant, the fee is applicable to the nonresident applicant's principal place of business;
 - b) an audited financial statement, including a balance sheet, statement of income or loss and statement of changes in financial position for the immediately preceding fiscal year end; and
 - c) evidence of a surety bond in the amount of at least \$25,000 for each location or, in the case of a nonresident applicant, for the nonresident applicant's principal place of business, and that is issued by a company that is authorized to do business in this state, that is approved by the Superintendent and that is not affiliated with the applicant. The aggregate amount of the surety bond required for a single licensee may not exceed \$250,000. In lieu of the surety bond, the applicant may file an irrevocable letter of credit that is in the amount of the surety bond and that is issued by any federally insured bank, savings bank or credit union. The Superintendent shall require a new bond or irrevocable letter of credit when the Superintendent has knowledge that a licensee's bond or letter of credit has expired or is insecure for any reason. Failure to post a replacement bond or irrevocable letter of credit within ten days after receipt of a notice shall result in immediate cancellation of the license.
16. Allows the Superintendent to require an applicant to submit a full set of fingerprints for the purpose of obtaining a state and federal criminal records check.
17. Allows the Department of Public Safety to exchange this fingerprint data with the Federal Bureau of Investigation.
18. States that refuse of any person to consent to a criminal records check or to provide fingerprints constitutes grounds to deny the applicant a license.
19. States that fingerprints are not required to be submitted by any shareholder if the applicant or its parent company is a publicly traded corporation.
20. Requires an applicant to pay all costs incurred in conducting a criminal records check.

Suitability Review

21. Requires the Superintendent, after receipt of application, fee and documents required, to issue a license if the application requirements are satisfied.
22. Requires that the license shall be conspicuously posted in the place of business of the licensee, except that a nonresident shall post the license in its principal place of business.
23. States that the license is valid through the remainder of the calendar year after its date of issuance unless earlier surrendered, suspended or revoked.

Denial of License

24. Requires the Superintendent to notify the applicant in written or electronic record that the application has been denied stating the basis for the denial, if the Superintendent determines that an applicant is not qualified.
25. Allows the applicant to make a demand in a written or electronic record to the Superintendent for a hearing, if the Superintendent denies an application or fails to act within 90 days.
26. Stipulates that in the hearing, the burden of proving that the applicant is entitled to a license is on the applicant.

Renewal; Reporting

27. States that licenses expire on December 31 and allows a licensee to renew a license for one year.
28. States that a licensee that makes a timely and complete application for renewal may continue to operate under its existing license until its application is approved or denied.
29. Allows the Superintendent to establish a biennial license for the filing of the application for license renewal except that the license fee may not be payable for more than one year at a time.
30. Requires the licensee to submit to the Superintendent an annual report with the renewal application and requires that the report contain specific components.
31. Allows a single composite report to be filed if the licensee holds two or more licenses.
32. Requires the report to be filed in a form prescribed by the Superintendent and to be sworn to by a responsible officer of the licensee.
33. Requires that the information submitted shall be afforded the same degree of confidentiality by DFI and the Superintendent as is applicable to reports filed by other regulated lenders.

Control Change

34. Specifies that a license is not transferable or assignable.
35. Specifies that the Superintendent's prior approval in a written or electronic record is required for the continued operation of a CALC loan business whenever a change in control of a licensee is proposed.
36. Allows the Superintendent to require the submittal of information to determine whether a new application is required.
37. Requires that reasonable and actual costs incurred by the Superintendent in investigating a change of control request shall be paid by the person requesting approval.

38. States that a person who owns, controls, holds the power to vote or holds proxies representing 25 percent or more of the then-outstanding voting securities issued by another person is presumed to control the other person.
39. Allows the Superintendent to determine whether a person controls another person.
40. Requires that the license shall be deemed revoked as of the date of any unlawful acquisition of control. The licensee or its controlling person shall surrender the license to the Superintendent on demand.
41. Requires a licensee to notify DFI five days before any change in the licensee's principal place of business, branch office or name.

Fees

42. Allows a licensee to only charge and collect a daily transaction fee to defray the ordinary costs of opening, administering and terminating a CALC loan plan, including certain specified costs.
43. States that the daily transaction fee is not interest and may not exceed a daily rate of 0.45 percent of the outstanding principal balance.
44. Prohibits a licensee from entering into a CALC loan plan or making a CALC loan plan having an annual percentage rate greater than that set forth in federal law to a person who is either: a member of the United States Armed Forces who is on active duty, on active national Guard and reserve duty, or a dependent of one of these persons.
45. Prohibits a CALC loan plan from having an outstanding principal balance in excess of \$2,500 at any time.
46. Requires a CALC loan plan to require a minimum payment on or before the due date of each billing cycle in an amount sufficient to reduce any outstanding principal balance by at least eight percent per month or an amount calculated to pay off the entire principal within one calendar year, whichever is greater.
47. Allows a licensee, if a consumer defaults under the terms of a CALC loan plan and the licensee refers the consumer's account to an attorney, to:
 - a) if allowed under the CALC loan plan, charge and collect from the consumer reasonable attorney fees;
 - b) refer the consumer to an approved consumer credit counseling agency and offer concessions with regard to daily transaction fee, repayment schedule and other terms as agreed; and
 - c) charge and collect interest following the default of the consumer or a judgment in favor of the licensee at a periodic interest rate not to exceed the United States prime rate plus 15 percent a year.
48. Prohibits a licensee from assessing any fee or charge in association with a CALC loan plan unless the fee or charge is authorized under this section.

49. Prohibits a licensee from assessing a handling charge against the maker or drawer of a returned check, if a payer financial institution returns the check to a licensee due to insufficient funds.
50. Allows a consumer to void the CALC loan or CALC loan plan if a licensee fails to comply with this section. If the CALC loan or CALC loan plan is voided, the CALC loan or CALC loan plan is unenforceable under the law of this state.

Consumer Disclosure

51. Requires a licensee to provide each prospective consumer a written or electronic explanation, in clear, understandable language, of the interest, fees and charges to be charged by the licensee before entering into a CALC loan plan.
52. Requires the style, content and method of executing the required written or electronic explanation to comply with the Truth in Lending Act, and shall contain a statement that the consumer may prepay the unpaid balance in whole or in part at any time without penalty.
53. Allows the Superintendent to adopt rules establishing additional requirements in order to ensure complete and accurate disclosure of the interest, fees and charges to be charged by a licensee.
54. Requires an account-opening statement for any CALC loan plan to include a notice that informs that the consumer has the right of rescission on the next business day for any requested draw under the CALC loan plan and that complaints may be made to DFI.
55. States that the account-opening statement for any CALC loan plan may not require or provide the licensee the authority to require the consumer to draw the full amount of credit available at any time.
56. Requires a licensee to provide consumers with a periodic billing statement in compliance with the Truth in Lending Act.

Ability to Repay

57. Requires a licensee to underwrite each CALC loan to determine a consumer's ability and willingness to repay the CALC loan, before entering into a new CALC loan plan or increasing the credit limit of an existing CALC loan plan.
58. Requires a licensee to obtain information from the consumer relating to the consumer's income and expenses and to validate a consumer's supplied information using at least one consumer credit report.
59. Allows a licensee to validate a consumer's supplied information using other reasonably reliable sources such as debt verification services, the consumer's bank statements, tax returns, payroll information, benefits or child support statements or other information that is either provided by the consumer or is commercially available online.

60. States that a licensee may not be required to consider, for the purposes of debt-to-income evaluation, loans from friends or family.
61. Requires a licensee to report a consumer's payment history to at least one consumer reporting agency.
62. Requires a licensee to comply with all laws relating to data privacy and security, in determining a consumer's ability to repay.

Outstanding CALC Loans

63. Prohibits a consumer from having more than one CALC loan plan at any one time.
64. Allows the Superintendent to require licensees to confirm through the use of a state-approved database that a consumer does not have more than one outstanding CALC loan plan at any one time or that a CALC loan does not cause the CALC loan plan to exceed an outstanding principal balance in excess of \$2,500.
65. Requires that the database:
 - a) be capable of real-time queries;
 - b) be selected by the Superintendent through an open bidding and review process; and
 - c) have licensee-paid usage fees for the database and not have consumer-paid usage fees.
66. Requires the Superintendent to require the database vendor to be audited annually to determine privacy of the database and compliance with this chapter.
67. Requires the Superintendent to provide the audit results to each licensee.
68. Requires DFI to report annually to the Legislature on the operations of the database and on the continued need for such a system.
69. Allows a licensee to rely on the attestation of a consumer relating to the consumer's eligibility for a CALC loan plan, until a DFI-approved database system is operational.
70. Allows a consumer to void the CALC loan or CALC loan plan, if a licensee fails to comply with required provisions. If the CALC loan or CALC loan plan is void, the CALC loan or CALC loan plan is unenforceable.

Records

71. Requires each licensee to keep and use in its business any books, accounts and records that the Superintendent may require.
72. Requires every licensee to preserve the books, accounts and records for at least two years.
73. Allows a licensee to maintain records at a location within or outside Arizona., after receiving the Superintendent's prior written or electronic approval.

74. Allows any records required to be retained to be converted to or stored in an electronic format.
75. Requires a person who is subject to the licensing requirements and that is examined or investigated to pay to the Superintendent the reasonable and actual expenses of the investigation or examination.
76. Requires that the expenses shall be payable in addition to all other fees, taxes and costs required by law.

License Revocation and Suspension

77. Allows the Superintendent, after notice and hearing, to suspend or revoke any license if the Superintendent finds that the licensee has knowingly or through lack of due care:
- a) failed to pay any fees, expenses or costs imposed by the Superintendent;
 - b) committed any fraud, engaged in any dishonest activities or made any misrepresentations;
 - c) violated this chapter in the course of the licensee's dealings as a licensee;
 - d) made a false statement in the application for the license or failed to give a true reply to a question in the application; or
 - e) demonstrated incompetency or untrustworthiness to act as a licensee.
78. Requires that a hearing shall be held on a licensee's written or electronic notice give to the Superintendent at least 20 days before the date of the hearing and shall be conducted pursuant to Uniform Administrative Hearing Procedures.

Violations

79. Requires the Superintendent to take the following actions if, after notice and opportunity for a hearing, the Superintendent finds that a person has violated this chapter:
- a) order the person to cease and desist violating the chapter;
 - b) require the refund of any fees collected by the person in violation; or
 - c) order the person to pay to the Superintendent a civil penalty of not more than \$1,000 for each transaction in violation.

Censures, Suspensions and Bars

80. Allows the Superintendent, after notice and opportunity for a hearing, to suspend for a period not to exceed 12 months, or bar a person from any position of employment, management or control of a licensee, if the Superintendent finds that the:
- a) suspension or bar is in the public interest and that the person has committed or caused a violation of this chapter or any order of the Superintendent; or
 - b) person has been either convicted or pled guilty to, or pled nolo contendere to, any crime; or held liable in any civil action by final judgment or any administrative judgment by any public agency if the civil or administrative judgment involved any offense reasonably related to this chapter.
81. Prohibits persons who are censured, suspended or barred 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 within this state. This does not prohibit censured, suspended or barred persons from having personal transactions processed by a licensee.

Consent Agreements

82. Allows the Superintendent to enter into a consent order at any time with any person to resolve any matter arising under this chapter.
83. Requires a consent order to be signed or authenticated in a record by the person whom it is issued or a duly authorized representative.
84. Specifies that a consent order is not required to constitute an admission by any person that a provision of this chapter or an order issued under this chapter has been violated, or a finding by the Superintendent that the person has violated this chapter or an order issued under this chapter.
85. Allows the Superintendent to take any enforcement action without providing the opportunity for a prior hearing, in cases involving extraordinarily circumstances that require immediate action, but shall promptly afford a subsequent hearing on an application to rescind the action taken that is filed with the Superintendent within 20 days after receipt of the notice.

Complaints

86. Allows any person aggrieved by the conduct of a licensee in connection with the licensee's regulated activities to file a written or electronic complaint with the Superintendent, and the Superintendent may investigate the complaint.
87. Allows the license of any licensee that fails to comply with a subpoena of the Superintendent to be suspended pending compliance with the subpoena.
88. Stipulates that the Superintendent shall have exclusive administrative power to investigate and enforce a complaint relating to the business of entering into CALC loan plans or making CALC loans filed by any person if the complaint is not criminal in nature.

Reporting

89. Requires a licensee to file, within 30 days after any occurrence, a report in a record with the Superintendent describing the event and its expected impact on the activities on the licensee in this state:
 - a) the filing for bankruptcy or reorganization by the licensee;
 - b) the institution of revocation or suspension proceedings against the licensee by any state or governmental authority;
 - c) the denial of the opportunity to engage in the business of making loans by any state or governmental authority;
 - d) any felony indictment of the licensee or any of its directors, officers or principals;
 - e) any felony conviction of the licensee or any of its directors, officers or principals; and
 - f) other events as determined by the Superintendent.

Multistate Automated Licensing System

90. Allows the Superintendent to require persons subject to this chapter to be licensed through a multistate automated licensing system.
91. Allows the Superintendent to:
 - a) adopt rules that are reasonably necessary for participation in, transition to or operation of a multistate automated licensing system;
 - b) establish relationships or enter into agreements that are necessary for the participation in, transition to or operation of a multistate automated licensing system;
 - c) require that applications for licensing under this chapter and renewals of licenses be filed with a multistate automated licensing system;
 - d) require that any fees required to be paid under this chapter be paid through a multistate automated licensing system;
 - e) establish deadlines for transitioning licensees to a multistate automated licensing system;
 - f) deny any applications or renewal applications that are not filed with a multistate automated licensing system after the deadlines have passed if the Superintendent provides reasonable notice of any transition deadlines to the licensees; and
 - g) take further actions as are reasonably necessary to give effect to this section.
92. States that this section does not authorize the Superintendent to require a person that is not subject to this chapter to submit information to, or to participate in, a multistate automated licensing system that is operated or participated in pursuant to this chapter.
93. States that nothing in this section shall be deemed to be a reduction or derogation of the Superintendent's authority and discretion to administer and enforce this chapter.
94. Requires all licensees and applicants to pay all costs associated with submitting an application or transitioning a license to a multistate automated licensing system and all costs required by a multistate automated licensing system for maintaining and renewing any license issued by the Superintendent on a multistate automated licensing system.
95. Allows the Superintendent to use a multistate automated licensing system to request or distribute information that the Superintendent is authorized to request or distribute under this chapter.
96. States that the federal or state requirements regarding the privacy or confidentiality of any information provided to a multistate automated licensing system, and any privilege arising under federal or state law, continue to apply to the information or material after the information or material has been disclosed to a multistate automated licensing system.
97. Allows the information or material to be shared with all state and federal regulatory officials that have consumer credit oversight authority without the loss of privilege or the loss of confidentiality protections.
98. Allows the Superintendent to enter into agreements with other governmental agencies or other associations representing governmental agencies as established by the Superintendent.

99. Stipulates that information or material that is subject to a privilege or that is confidential is not subject to:

- a) disclosure under 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; or
- b) subpoena, discovery or admission into evidence in any private civil action or administrative process, unless with respect to any privilege held by a multistate automated licensing system applicable to the information or material, the person to whom the information or material pertains waives that privilege, in the discretion of the person.

100. States that this section supersedes any inconsistent provisions of Title 39 (Public Records, Printing and Notices) and does not apply to information or material relating to publicly adjudicated disciplinary and enforcement actions against persons subject to this chapter.

Financial Literacy

101. Allows the Superintendent to require licensees to provide consumers with access to financial literacy educational material, or, in the event of default, to offer educational material in conjunction with approved consumer credit counseling providers.

Community Development Services Fund

102. Requires the Superintendent to collect a fee per transaction from each licensee in an amount to be determined by the Superintendent, to be deposited into the Community Development Services Fund (Fund).

103. Prohibits the Superintendent from collecting more than \$10 million.

104. Allows the Superintendent to suspend or revoke the licensee's license, if a licensee does not pay the fee.

105. Establishes the Fund consisting of transaction fees and donations.

106. Requires the Superintendent to administer the Fund.

107. Specifies that not more than ten percent of the monies deposited in the Fund annually shall be used for the cost of administering the Fund.

108. Continuously appropriates the Fund.

109. Requires that monies in the Fund shall be used to provide grants to nonprofit organizations that provide any of the following to individuals in this state:

- a) consumer credit counseling services;
- b) financial literacy and financial education training and resources; and
- c) direct, one-time emergency assistance funds.

110. Requires the Superintendent to annually audit the programming policies and accounting records of any grant recipients.

111. Requires the Superintendent to enter into an agreement with either a certified public accountant or an attorney to conduct an annual broad-based assessment of the grant recipients.

112. Repeals the Fund on January 1, 2028.

Repayment Plan

113. Allows a consumer, if a consumer access line of credit has accumulated a past-due balance but has not defaulted, once per year, to request, and the licensee shall approve, that the past-due balance be repaid on an interest-free balance in equal installments to be added to the minimum payment for the outstanding line.

114. Allows a consumer who has a past-due balance and who has not defaulted and a licensee to agree to other repayment options by mutual agreement.

115. Allows a consumer to request and a licensee to approve a lower pay-down rate or minimum payment, except that a minimum payment that would fail to reduce outstanding principal by at least two percent per billing cycle may not be approved.

116. Allows a licensee to refer a consumer to an approved credit counseling agency and include repayments in a negotiated debt management plan.

117. Prohibits a licensee from entering into a repayment plan with a consumer for past-due amounts owed at a daily transaction fee in excess of what is authorized.

Liability of Superintendent

118. Specifies that the Superintendent is not subject to any civil or criminal liability, if acting in good faith when establishing and approving a database, for:

- a) providing verification that the consumer does not have more than one outstanding CALC loan plan totaling more than \$2,500; or
- b) any reach of the database.

Miscellaneous

119. Exempts DFI from rulemaking requirements for one year after the effective date of this act.

120. Requires a committee of reference, ten years after the effective date of the act, to review the provisions of the Consumer Access Line of Credit. Requires the committee to report to the Legislature on or before December 1, 2027.

121. Provides definitions.

122. Repeals the provisions, with noted exception, on January 1, 2038.

123. Becomes effective on January 1, 2018.