

SB 160-FN – FINAL VERSION

03/16/11 0705s

2012 SESSION

11-0992  
08/04

SENATE BILL        ***160-FN***

AN ACT            relative to the definition and regulation of installment loans.

SPONSORS:        Sen. Carson, Dist 14; Sen. Boutin, Dist 16; Rep. Matt Quandt, Rock 13;  
Rep. Sapareto, Rock 5

COMMITTEE:      Commerce

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ANALYSIS

This bill defines and regulates installment loans.

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Explanation:        Matter added to current law appears in ***bold italics***.  
Matter removed from current law appears [~~in brackets and struck through.~~]  
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

SB 160-FN – FINAL VERSION

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STATE OF NEW HAMPSHIRE

*In the Year of Our Lord Two Thousand Twelve*

AN ACT relative to the definition and regulation of installment loans.

*Be it Enacted by the Senate and House of Representatives in General Court convened:*

1 1 New Chapter; Installment Loans. Amend RSA by inserting after chapter 384-G the following  
2 new chapter:

3 CHAPTER 384-H

4 INSTALLMENT LOANS

5 384-H:1 Short Title. This act may be cited as the “Credit Access Reform and Employment Act.”

6 384-H:2 Definitions. As used in this chapter:

7 I. “Consumer” means any natural person who, individually or jointly with another  
8 individual, enters into a loan.

9 II. “Gross monthly income” means monthly income as demonstrated by official  
10 documentation of the income, including a pay stub or a receipt reflecting payment of government  
11 benefits, for the most recent pay period available.

12 III. “Installment loan” or “loan” means a loan, advance of money, or extension of credit with  
13 a repayment term agreed to by the parties and not exceeding 180 days, including any loan  
14 transaction conducted via any medium whatsoever, including paper, facsimile, Internet, or  
15 telephone.

16 IV. “Lender” or “licensee” mean any person or entity, including any affiliate or subsidiary of  
17 a lender or licensee, that offers or makes an installment loan under this chapter.

18 V. “Commissioner” means the bank commissioner.

19 384-H:3 Applicability.

20 I. Except as otherwise provided in this section, this chapter applies to any lender that offers  
21 or makes an installment loan to a consumer in New Hampshire under the alternative fees and  
22 maturities set forth in this chapter.

23 II.(a) No lender or licensee licensed under RSA 399-A shall make installment loans under  
24 this chapter without first having obtained an additional license pursuant to RSA 384-H:12.

25 (b) Lenders or licensees licensed under RSA 399-A may only make installment loans  
26 under this chapter without a license if such lender or licensee has a license application pending  
27 under this chapter and until such time as their application is approved or denied.

28 III. Banks, savings banks, savings and loan associations, credit unions, and insurance  
29 companies organized, chartered, or holding a certificate of authority to do business under the laws of  
30 this state or any other state or under the laws of the United States are exempt from the provisions of

1 this chapter.

2 384-H:4 Loan Terms.

3 I. An installment loan:

4 (a) Shall be fully amortizing, with a finance charge calculated on the principal balance  
5 scheduled to be outstanding and be repayable in substantially equal and consecutive installments,  
6 according to a payment schedule agreed to by the parties with not less than 13 days and not more than  
7 one month between payments; except that the first installment period may be longer than the remaining  
8 installment periods by not more than 15 days, and the first installment payment may be larger than the  
9 remaining installment payments by the amount of finance charges applicable to the extra days.

10 (b) May be refinanced by a new installment loan once during the term of the initial loan.  
11 For purposes of this chapter, a refinancing occurs when an existing installment loan is paid in full  
12 from the proceeds of a new installment loan.

13 (c) Shall not be offered or made to the consumer for at least 2 calendar days after the  
14 original installment loan is paid in full, so long as such payment occurs prior to the date on which  
15 the last scheduled installment payment before maturity is due.

16 II. No lender shall make an installment loan to a consumer if:

17 (a) The total of all loan payments for that loan coming due within the first calendar  
18 month of the loan exceeds the lesser of:

19 (1) \$1,000; or

20 (2) Thirty-five percent of the consumer's gross monthly income.

21 (b) The consumer has another outstanding installment loan with the lender.

22 III. When any loan contract is paid in full, the licensee shall refund any unearned finance  
23 charge. Such charge shall be calculated based on a method that is at least as favorable to the  
24 consumer as the actuarial method, as defined by the federal Truth in Lending Act. The sum of the  
25 digits or rule of 78<sup>ths</sup> method of calculating prepaid interest refunds is prohibited.

26 IV. A lender shall not take or attempt to take an interest in any of the consumer's personal  
27 property to secure an installment loan.

28 384-H:5 Permitted Fees.

29 I. No lender shall charge more than \$15.50 per \$100 per installment on the initial principal  
30 balance and on the principal balance scheduled to be outstanding during any installment period on  
31 any installment loan. For purposes of determining the finance charge earned on an installment loan,  
32 the disclosed annual percentage rate shall be applied to the principal balance outstanding from time  
33 to time until the loan is paid in full, or until the maturity date, whichever occurs first.

34 II. No finance charge shall be imposed after the final scheduled maturity date.

35 III. If there are insufficient funds to pay a check or Automatic Clearing House (ACH) debit on  
36 the day of presentment and only after the lender has incurred an expense, a lender may charge a fee  
37 not to exceed \$25. Only one such fee may be collected by the lender with respect to a particular

1 check or ACH debit, even if it has been deposited and returned more than once. A lender shall not  
2 present the check or ACH debit more than twice. A fee charged under this section shall be a lender's  
3 only charge for late payment.

4 IV. Except for the finance charges specifically allowed by this section, a lender shall not  
5 impose on a consumer any additional finance charges, interest, fees, or charges of any sort for any  
6 purpose.

7 384-H:6 Required Disclosures.

8 I. Before an installment loan is made, a lender shall deliver to the consumer a pamphlet  
9 prepared by the commissioner that:

10 (a) Explains, in simple English, all of the consumer's rights and responsibilities in the  
11 loan transaction;

12 (b) Includes a toll-free number to the commissioner's office to address concerns or  
13 provide information about whether a lender is licensed, whether complaints have been filed with the  
14 banking commission, and the resolution of those complaints; and

15 (c) Provides information regarding the availability of debt management services.

16 II. Lenders shall provide consumers with a written agreement that may be kept by the  
17 consumer. The written agreement shall include the following information:

18 (a) The name and address of the lender making the loan;

19 (b) Disclosures required by the federal Truth in Lending Act;

20 (c) A clear description of the consumer's payment obligations under the loan;

21 (d) The following statement, in at least 14 point bold type face: "You cannot be  
22 prosecuted in criminal court to collect this loan." The information required to be disclosed under this  
23 subparagraph shall be conspicuously disclosed in the loan document and shall be located  
24 immediately preceding the signature of the consumer.

25 III. The following notices shall be conspicuously posted by a lender in each location of a  
26 business providing installment loans as licensed under this chapter:

27 (a) A notice that informs consumers that the lender cannot use the criminal process  
28 against a consumer to collect any loan.

29 (b) The schedule of all finance charges to be charged on loans with an example of the  
30 amounts that would be charged on an installment loan of \$400 payable on a monthly basis over 180  
31 days, giving the corresponding annual percentage rate.

32 384-H:7 Right to Rescind. A consumer may rescind an installment loan without cost or finance  
33 charges, no later than the end of the next business day immediately following the day on which the  
34 loan agreement was executed. To rescind, the consumer shall inform the lender that the consumer  
35 wants to rescind the transaction and cancel the future payment obligations on the loan and shall  
36 return the uncashed proceeds check or cash to the lender in an amount equal to the principal amount  
37 of the loan.

1           384-H:8 Proceeds and Payments.

2           I. A lender may issue the proceeds of a loan in the form of a check drawn on the lender's  
3 bank account, in cash, by money order, by debit card, or by electronic funds transfer. When the  
4 proceeds are issued in the form of a check drawn on the lender's bank account, by money order, or by  
5 electronic funds transfer, the lender shall not charge a fee for cashing the check, money order, or  
6 electronic funds transfer. When the proceeds are issued in cash, the lender must provide the  
7 consumer with written verification of the cash transaction and shall maintain a record of the  
8 transaction for at least 3 years.

9           II. After each payment made in full or in part on any loan, the lender shall give the  
10 consumer making the payment either a signed, dated receipt or a signed, computer generated receipt  
11 showing the amount paid and the balance due on the loan.

12           III. Before a loan is made, the lender shall provide the consumer, or each consumer if there  
13 is more than one, with a copy of the loan documents described in RSA 384-H:6.

14           IV. Loan payments may be electronically debited from the consumer's bank account. Except  
15 as provided by federal law, the lender shall obtain prior written approval from the consumer before  
16 electronically debiting funds from the consumer's bank account.

17           384-H:9 Default.

18           I. No legal proceeding of any kind, including a lawsuit or arbitration, shall be filed or  
19 initiated against a consumer to collect on an installment loan under this chapter, for 28 days after a  
20 consumer's default in making a scheduled payment.

21           II. Upon and after default, a lender shall not charge the consumer any additional finance  
22 charges, interest, fees, or charges of any kind other than those originally contracted for and the  
23 insufficient fund fee described in RSA 384-H:5.

24           384-H:10 Records and Examination.

25           I. A licensee shall keep and use books, accounts, and records that will enable the  
26 commissioner to determine if the licensee is complying with the provisions of this chapter and  
27 maintain any other records as required by the commissioner.

28           II. The commissioner may conduct examinations of the books, records, and loan documents  
29 of a licensee after giving reasonable notice to the licensee.

30           384-H:11 Advertising.

31           I. Advertising for installment loans transacted under this chapter shall not be false,  
32 misleading, or deceptive. No licensee shall advertise in any manner so as to indicate or imply that  
33 its rates or charges for loans are in any way recommended, approved, set, or established by the state.

34           II. If any advertisement for installment loans states the amount of any installment payment,  
35 the dollar amount of any finance charge, or the number of installments or the period of repayment,  
36 then the advertisement shall state all of the following items:

37           (a) The amount of the loan;

1 (b) The number, amount, and due dates or period of payments scheduled to repay the  
2 indebtedness if the credit is extended; and

3 (c) The finance charge expressed as an annual percentage rate.

4 384-H:12 Licensure Requirement.

5 I. A license to make an installment loan shall state the address, including city and state, at  
6 which the business is to be conducted and shall state fully the name of the licensee. The license shall  
7 be conspicuously posted in the place of business of the licensee and shall not be transferable or  
8 assignable.

9 II. An application for a license shall be in writing and in a form prescribed by the  
10 commissioner. The commissioner shall not issue an installment license until the following findings  
11 are made:

12 (a) The financial responsibility, experience, character, and general fitness of the  
13 applicant are such as to command the confidence of the public and to warrant the belief that the  
14 business will be operated lawfully and fairly and within the provisions and purposes of this chapter;

15 (b) The requirements under RSA 384-H:13 are satisfied;

16 (c) The payment of the annual license fee required under paragraph IV; and

17 (d) The applicant has submitted such other information as the commissioner may  
18 reasonably deem necessary.

19 III. A license shall be issued for no longer than one year, and no renewal of a license may be  
20 provided if a licensee has substantially violated this chapter and has not cured the violation to the  
21 satisfaction of the commissioner.

22 IV. A licensee shall pay an annual fee of \$450. In addition to the license fee, the reasonable  
23 expense of any examination or hearing by the commissioner under any provisions of this chapter  
24 shall be borne by the licensee. If a licensee fails to renew its license prior to its expiration, the  
25 license shall automatically expire; however, the commissioner, in his or her discretion, may reinstate  
26 an expired license upon:

27 (a) Payment of the annual fee within 30 days of the date of expiration; and

28 (b) Proof of good cause for failure to renew.

29 V. Not more than one place of business shall be maintained under the same license, but the  
30 commissioner may issue more than one license to the same licensee upon compliance with all the  
31 provisions of this chapter governing issuance of a single license.

32 VI. The commissioner shall maintain a list of licensees that shall be available to the public.

33 VII. The commissioner shall maintain a toll-free number whereby consumers may obtain  
34 information about licensees. The commissioner shall also establish a complaint process under which  
35 an aggrieved consumer may file a complaint against a licensee or nonlicensee who violates any  
36 provision of this chapter.

37 384-H:13 Net Worth. Each applicant and licensee shall maintain a positive net worth at all

1 times. Each applicant shall demonstrate that it has available for use in such business at each  
2 location specified in the application, at least \$25,000, or in the case of a licensee, has such amount  
3 available or actually invested in loans made under this chapter at each location or has posted a  
4 continuous surety bond in the amount of \$25,000 in the form and under the terms determined by the  
5 commissioner.

6 384-H:14 Closing of Business; Surrender of License. At least 10 days before a licensee ceases  
7 operations, closes the business, or files for bankruptcy, the licensee shall:

8 I. Notify the commissioner of its intended action in writing.

9 II. With the exception of filing for bankruptcy, surrender its license to the commissioner for  
10 cancellation. The surrender of the license shall not affect the licensee's civil or criminal liability for  
11 acts committed before or after the surrender or entitle the licensee to a return of any part of the  
12 annual license fee.

13 III. Notify the commissioner of the location where the books, accounts, contracts, and records  
14 will be maintained.

15 384-H:15 Prohibited Acts. A licensee or any other person making installment loans shall not  
16 commit, or have committed on behalf of the licensee or other person, any of the following acts:

17 I. Threatening to use or using the criminal process in this or any other state to collect on the  
18 installment loan.

19 II. Using any device or agreement that would have the effect of charging or collecting more  
20 fees or charges than allowed by this chapter, including, but not limited to, entering into a different  
21 type of transaction with the consumer.

22 III. Engaging in unfair, deceptive, or fraudulent practices in the making or collecting of a loan.

23 IV. Charging any fees or charges other than those specifically authorized by this chapter.

24 V. Threatening to take any action against a consumer that is prohibited by this chapter or  
25 making any misleading or deceptive statements regarding the loan or any consequences thereof.

26 VI. Making a misrepresentation of a material fact by an applicant for licensure in obtaining  
27 or attempting to obtain a license.

28 VII. Taking any power of attorney.

29 VIII. Taking any security interest in real estate.

30 IX. Making a loan in violation of this chapter.

31 384-H:16 Enforcement and Remedies.

32 I. Subject to RSA 541-A, the commissioner may hold hearings, make findings of fact,  
33 conclusions of law, issue cease and desist orders, have the power to issue fines of up to \$1,000 per  
34 violation, refer the matter to the appropriate law enforcement agency for prosecution under this  
35 chapter, and suspend or revoke a license granted under this chapter. All proceedings shall be open  
36 to the public.

37 II. All final administrative decisions of the commissioner under this chapter are subject to

**SB 160-FN – FINAL VERSION**  
**- Page 7 -**

1 judicial review pursuant to the provisions of RSA 541-A and any rules adopted pursuant thereto.  
2 384-H:17 Rulemaking.

3 I. The commissioner shall administer and enforce the provisions of this chapter.

4 II. The commissioner shall adopt rules under RSA 541-A relative to:

5 (a) The application form for licenses required under RSA 384-H:3;

6 (b) The form of license issued to licensees under RSA 384-H:3;

7 (c) The publishing and distribution of informational pamphlets under RSA 384-H:6; and

8 (d) A hearing process and fine schedule for violations of this chapter.

9 III. All rules, regulations, and directions of a general character shall be printed and copies  
10 thereof mailed to all licensees.

11 2 Effective Date. This act shall take effect 30 days after its passage.

12

13 VETOED: January 27, 2012

**SB 160-FN - FISCAL NOTE**

AN ACT                    relative to the definition and regulation of installment loans.

**FISCAL IMPACT:**

The Banking Department states this bill, **as amended by the Senate (Amendment #2011-0705s)**, will increase state restricted revenues by \$235,767 in FY 2012 and each fiscal year thereafter, and state restricted expenditures by \$237,017 in FY 2012 and each fiscal year thereafter. There will be no fiscal impact on county and local revenues or expenditures.

**METHODOLOGY:**

The Banking Department states this bill defines and regulates loans, including the requirement of the Department to examinations of installment loan licensees as part of regularly scheduled examination of small loan lenders. The Department estimates the additional examinations will increase examination expenditures and revenue by \$236,667 in FY 2012 and each year thereafter. The Department would also have increased costs of \$350 a year related to installing a toll free number to address concerns or provide information about whether a lender is licensed to make installment loans and in preparing a pamphlet with consumer rights and responsibilities to be printed by the lenders. The bill as amended decreases the licensee fee from \$500 to \$450. The Department states this will impact approximately 25 licensed small loan lenders, which would result in a decrease in restricted revenue of \$1,250 (25 licensees \* \$50). The net impact on revenues as a result of this bill is an increase of \$235,767 (\$236,667 + \$350 - \$1,250 = \$235,767) and the net impact on expenditures is \$237,017 (\$236,667 + \$350 = \$237,017). The Department is self-funded, with its costs and expenses being paid for through fees and fines collected from those entities it regulates, and assessments on entities regulated if the fees and fines do not cover the Department's costs.