



Department of Banking and Finance

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Consumer Guidance on Unlicensed Installment Lending and Payday Lending January 27, 2021

As of July 1, 2020, regulation and enforcement of the Georgia Installment Loan Act (the “Act”) was transferred to the Department of Banking and Finance (“Department”). O.C.G.A. § 7-3-2. Generally, any entity making loans of \$3,000.00 or less to individuals must be licensed with the Department as an installment lender unless the entity falls into a specified exemption. *See e.g.*, O.C.G.A. § 7-3-4. Licensees may offer installment loans for up to 36 months and 15 days, may charge interest at a rate not to exceed 10 percent per annum of the face amount of the contract, and may charge other fees as allowed by the Act. O.C.G.A. § 7-3-11.

However, payday lending is illegal in Georgia. O.C.G.A. § 16-17-1 *et seq.* O.C.G.A. § 16-17-2(a) provides that it is unlawful for a person to “engage in any business in whatever form transacted, including, but not limited to, by mail, electronic means, the Internet, or telephonic means, which consists in whole or in part of making, offering, arranging, or acting as an agent in the making of loans of \$3,000.00 or less” unless the person falls into a specified exemption. Installment lenders licensed pursuant to the Act are exempt from these criminal provisions.

The Department has received complaints indicating that Georgia consumers have been offered loans of less than \$3,000.00 from entities that are not licensed by the Department and do not appear to satisfy an exemption from licensure. Additionally, these complaints often indicate that the interest rate charged by these unlicensed entities is well in excess of the 10 percent rate allowed by the Act. Many of the unlicensed entities offering these loans are located outside of the United States, in other states, or claim to be owned by Native American tribes. The fact that these entities are outside of the borders of Georgia does not excuse non-compliance with Georgia law. Pursuant to O.C.G.A. § 7-3-50, any loan for under \$3,000.00 that is made by an entity which is required to be licensed by the Act but who is not licensed is void. Further, in many instances, these loans will be considered payday loans. Entities that make payday loans are prohibited from the collection of indebtedness created by these loans. O.C.G.A. § 16-17-3. This means that an unlicensed entity making payday loans has no right to collect, receive, or retain any principal, finance charges, or other fees in connection with such loans. O.C.G.A. § 16-17-3 further provides that entities that violate O.C.G.A. § 16-17-2 may be liable in a civil action brought by a borrower.

Borrowers who believe that they have received loans from unlicensed entities or payday loans should contact an attorney or contact the lender directly to resolve the issue. The Department

cannot offer individuals legal advice on how to proceed and cannot intervene in disputes between consumers and entities.

However, the Department may use any information provided by consumers in the regulatory process. To file a complaint against an unlicensed installment lender engaging in transactions with Georgia consumers, please contact the Department directly at NDFIDivision@dbf.state.ga.us. In addition, borrowers with concerns regarding unlicensed installment lenders or payday lending should also file a complaint with the Consumer Financial Protection Bureau at www.consumerfinance.gov/complaint/.

To find out if an installment lender is licensed in Georgia, consumers may visit the NMLS Consumer Access Portal at <https://nmlsconsumeraccess.org/> and enter the name of the licensee.