

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 1264

SPONSOR: Banking and Insurance Committee and Senator Rossin

SUBJECT: Consumer Finance

DATE: March 9, 1999 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Deffenbaugh</u>	<u>Deffenbaugh</u>	<u>BI</u>	<u>Favorable/CS</u>
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

The committee substitute makes the following changes to chapter 516 (consumer finance) and chapter 520 (retail installment loans), Florida Statutes:

- ▶ increases license application and renewal fees, eliminates the authority of the Department of Banking and Finance to set fees by rule, eliminates fees and expenses charged to a licensee for an examination at a Florida location, and limits charges to a licensee for travel and per diem expenses for department examinations in another state;
- ▶ eases notification requirements for relocation of offices;
- ▶ requires licensees to notify the department if the licensee is the subject of a bankruptcy action;
- ▶ expands the grounds for disciplinary action by the department to include a plea of nolo contendere to a crime involving fraud, dishonest dealing, or any other act of moral turpitude;
- ▶ requires motor vehicle installment contracts to disclose certain additional information and requires lenders to provide the borrower evidence of satisfaction and to ensure that the title or contract indicates that the lien has been satisfied or released;
- ▶ authorizes lenders who make simple interest loans pursuant to the motor vehicle sales finance act to impose up to a \$75 charge if the contract is prepaid within 6 months after the effective date of the contract, and to defer the scheduled due date of any installment payment, upon the request of the buyer, and to collect a \$15 fee for such deferment; and
- ▶ authorizes retail sellers to collect a \$10 processing fee for retail installment contracts which would not be considered interest or finance charges.

The fiscal impact to the Department of Banking and Finance Regulatory Trust Fund is estimated to be: \$0 for FY 1999-2000, a positive impact of \$956,000 for FY 2000-2001, and a negative fiscal impact of (\$289,000) for FY 2001-2002.

This bill amends the following sections of the Florida Statutes: 516.03, 516.05, 516.07, 516.11, 516.12, 520.02, 520.03, 520.07, 520.085, 520.31, 520.32, 520.34, 520.52, 520.61, 520.63, 520.994, 520.995, 520.996, 520.997, 559.9232, 681.102, and 697.05.

II. Present Situation:

Consumer Finance Companies (Chapter 516, F.S.)

Chapter 516, Florida Statutes, provides for the regulation of consumer finance companies by the Department of Banking and Finance. Persons licensed under this chapter are allowed to make consumer finance loans up to \$25,000. The maximum interest rate is 30 percent per year for the first \$2,000; 24 percent on the amount financed between \$2,000 and \$3,000; and 18 percent on the remainder of the financed amount between \$3,000 and \$25,000. In addition, a consumer finance company is authorized to charge a \$10 maximum fee for credit investigation of a loan applicant, and to assess a \$25 annual fee on a line-of-credit account. Consumer finance companies (or any other person or entity) may make personal loans of any amount, including loans in excess of \$25,000, if the interest rate does not exceed 18 percent per annum.

Currently, applicants for initial licensure as a consumer finance company under Chapter 516 pay: 1) an application fee of \$550 plus a \$200 investigation fee; 2) a biennial renewal fee of \$550; 3) an examination fee ranging from \$100 to \$325, based upon the amount of outstanding loans due the licensee at the time of the examination; and 4) travel and per diem allowance for department examiners, limited to 30 worker days in any 1 year unless the examination is due to fraudulent practices of the licensee, in which case this limit does not apply.

A consumer finance company may not change the place of business maintained under its license without prior approval of the department, which approval is based on whether the proposed location is reasonably accessible to borrowers under existing loan contracts. (s. 516.05, F.S.)

Consumer finance companies with two or more offices are permitted to maintain books and records at any office in this or any other state if the licensee files a "request" with the department.

There is no requirement in current law that any licensee under chapters 516 or 520, F.S., notify the Department of Banking and Finance in the event that it is the subject of a voluntary or involuntary bankruptcy filing.

Retail Installment Contracts (Chapter 520, F.S.)

Chapter 520, F.S., provides for the regulation of retail installment transactions, both sales and loans. Generally, a retail installment transaction means a contract entered into between a retail buyer and a seller, under which the retail buyer buys goods or services from the seller, or borrows money from a lender, which may be paid for in installments or loan payments. Chapter 520 regulates motor vehicle sales finance under Part I, retail installment sales under Part II, installment

sales finance under Part III, and home improvement sales and finance under Part IV, collectively referred to in this analysis as “retail installment sellers.”

Retail installment sellers must be licensed by the Department. Banks, trust companies, savings and loan associations, and credit unions authorized to do business in Florida are exempted from this licensure requirement.

Currently, applicants for licensure as a retail installment seller must pay: 1) an initial application and renewal fee set by rule that does not exceed \$200, currently set at \$100; and, 2) an examination fee of \$250 per 8-hour day plus travel and per diem allowance for each examiner.

A retail installment seller must notify the department if its principal place of business or branch location changes and the department must “endorse” the change.

Section 520.07 requires that motor vehicle sales finance contracts disclose a separate written itemization of the amount financed, including the cash price, the amount of the down payment, the difference between these two amounts, the amount included for insurance and other benefits, if any, and any taxes and fees. The current statute does *not* require motor vehicle retail installment sellers to disclose the number of payments, the amount of each payment, and the due date of the first payment on the written itemization that is given to borrowers. In addition, the statute does not require a lender to provide the borrower evidence of satisfaction of the lien.

Motor vehicle retail installment loans under chapter 520, F.S., are subject to maximum finance charges. Finance charges may be computed on the amount financed, commonly referred to as an “add-on” rate, limited to \$10 per \$100 per year for a new motor vehicle, \$11 per \$100 per year for a vehicle not more than 2 years old, \$15 per \$100 per year for a vehicle not more than 4 years old, and \$17 per \$100 per year for a vehicle more than 4 years old. [s. 520.08, F.S.] Alternatively, a motor vehicle retail installment contract may have a finance charge that is calculated on a simple-interest basis equivalent to these maximum finance charges. [s. 520.085, F.S.] On a simple-interest basis, the maximum interest rate ranges from approximately 17 percent to 27 percent, depending on the age of the car and the term of the loan.

In addition to the finance charges, the lender may impose up to \$200 as a processing fee for a motor vehicle automobile retail installment loan. [Rule 3D-50.075, Fla. Admin. Code] Also, if the buyer (borrower) pays off the debt in full at any time before maturity, the lender may charge an acquisition fee (prepayment penalty) of \$25 and “refund” to the borrower the same proportion of the finance charge as the sum of the remaining monthly balances bears to the sum of all the monthly balances under the schedule of payments in the contract. This refund is actually a method of calculating interest known as the “rule of 78ths” which, for example, results in the borrower paying approximately 35 percent of the total finance charges (\$753 of \$2,172) due under a 36-month, \$15,000 loan at a 9 percent add-on interest rate, if the loan is paid off in 6 months, (in addition to the \$25 fee). However, only those lenders using the add-on interest rate method may charge the \$25 and use the rule of 78ths interest rate calculation. A lender using the simple interest method may charge the maximum \$200 processing fee, but may not impose the \$25 prepayment fee or use the rule of 78ths interest rate calculation. [s. 520.085(3), F.S.] Under the same example used above, but applied to a simple interest contract, the borrower would pay

approximately 29 percent of the total finance charges (\$634 of \$2172) if the borrower pays off the loan in 6 months.

Under the interest rate parity statute, banks, credit unions and other licensed lenders and creditors may charge interest on loans at the maximum rate of interest permitted by law to be charged on similar loans by any lender in Florida, subject to other statutory restrictions relating thereto.[s. 687.12, F.S.] Therefore, banks, credit unions, and other licensed lenders make motor vehicle loans subject to the interest rate restrictions of chapter 520, F.S. Typically, banks and credit unions will use the simple interest method authorized under that chapter which allows for a \$200 processing fee, but does not allow for a prepayment penalty, as described above. Sources in the banking industry report that there has been an increase in the number of automobile retail installment sales contracts being prepaid within the first few months of placement, due to solicitation of borrowers from lending institutions that offer a lower interest rate, and the increased access to competitors to new customer loan information via the Internet. The original lender who incurred costs in acquiring and setting up the loan has less profit or loses money if a loan is prepaid within the first several months. Even though a processing fee of \$200 may be charged when initially setting up the loan, market forces have limited the actual fee currently charged to about \$50 to \$75, according to sources in both the banking industry and the department.

There is no specific authority for a lender who makes a motor vehicle retail installment loan to charge a fee for deferring the scheduled due date of all or any part of any installment payment. However, a lender using the “add-on” rate of calculating interest can effectively charge a greater amount than a lender using a simple interest method of calculating interest.

Other aspects of current law affected by this bill are addressed in the section-by-section analysis, below.

III. Effect of Proposed Changes:

The bill makes the following changes to chapter 516 (consumer finance) and chapter 520 (retail installment loan), Florida Statutes:

- ▶ increases license application and renewal fees, eliminates the authority of the Department of Banking and Finance to set fees by rule, eliminates fees and expenses charged to a licensee for an examination at a Florida location, and limits charges to a licensee for travel expense and per diem expenses for department examinations in another state;
- ▶ requires that the department conduct all examinations at a convenient location in Florida (for which no expenses would be charged to the licensee), unless the department determines that it is more effective or cost-efficient to perform an examination at the licensee’s out-of-state location;
- ▶ eliminates the requirement that a consumer finance company obtain the approval of the department prior to relocating its place of business;
- ▶ requires the licensee to notify the department if it is the subject of a bankruptcy action;

- ▶ expands the grounds for disciplinary action against a licensee by the department to include a plea of nolo contendere to a crime involving fraud, dishonest dealing, or any other act of moral turpitude, and to include certain additional grounds;
- ▶ authorizes the department to require a consumer finance company to make all records from multiple places of business available at a convenient location in Florida;
- ▶ requires motor vehicle retail sales contracts to disclose the number of scheduled payments, the amount of each payment, and the date of the first payment; and when the contract is paid in full, requires lenders to provide the borrower evidence of satisfaction and to ensure that the title or contract indicates that the lien has been satisfied.
- ▶ requires that the calculation for the amount financed under a motor vehicle retail sales contract include any additional amount that is financed to discharge a security interest, lien, or lease interest on a motor vehicle that is traded in connection with the contract (“negative equity”);
- ▶ authorizes lenders who use a simple interest method of calculating interest to charge a \$75 fee if the contract is paid in full within 6 months after the effective date of the contract, and to defer the scheduled due date of any installment payment, upon the request of the buyer, and to collect a \$15 fee for such deferment;
- ▶ authorizes retail sellers to charge a \$10 processing fee for retail installment contracts, which would not be considered interest or finance charges;
- ▶ authorizes the department to adopt rules to allow electronic submission of any required form, document, or fee; and
- ▶ makes numerous technical revisions to correct statutory cross reference citations.

A section-by-section analysis follows:

Sections 1 through 5 apply to Consumer Finance Companies (Ch. 516, F.S.)

Section 1. Amends s. 516.03, F.S., increasing the amount of the application and biennial license renewal fee from \$550 to \$625. It further deletes the requirement that the application be “in writing, under oath” and authorizes the department to prescribe, by rule, the form of application, which may allow electronic (Internet) filing of applications and other documents.

Section 2. Amends s. 516.05, F.S., removing the requirement for department approval of relocations of a consumer finance company’s business and, instead, requires prior notice of a relocation, in the manner prescribed by department rule. The bill further requires that a licensee notify the department within 7 business days after the filing of a voluntary or involuntary bankruptcy filing.

Section 3. Amends 516.07, F.S., providing that a plea of nolo contendere to a crime involving fraud, dishonest dealing, or any other act of moral turpitude is grounds for disciplinary action. The department has promulgated rules which prohibits certain acts under the chapter, which this section would serve to codify into statute, including the following, which would be grounds for disciplinary action:

- ▶ paying money or anything else of value as compensation or inducement for referring loan applicants to the licensee;
- ▶ allowing any other person to use the licensee's name, address, or telephone number in an advertisement;
- ▶ accepting money on deposit as consideration for the issuance of certificates of deposit, savings certificates or other similar instruments; and,
- ▶ failing to timely pay any fee, charge, or fine imposed pursuant to this chapter or any rule adopted under this chapter.

Section 4. Amends s. 516.11, F.S., eliminating fees charged to a consumer finance company for a department examination that currently range from \$100 to \$325, and limiting the authority for the department to charge per diem and travel expenses to those examinations performed outside of Florida. The bill further limits such expenses to the rate provided by law for up to 30 eight-hour days per year for each examiner who participates in the examination, unless the examination involves possible fraudulent conduct of the licensee, in which case the 30-day annual limit per examiner would not apply. The bill requires that the department conduct all examinations at a convenient location in Florida (for which no expenses would be charged to the licensee), unless the department determines that it is more effective or cost-efficient to perform an examination at the licensee's out-of-state location. This section has an effective date of January 1, 2001.

Section 5. Amends s. 516.12, F.S., authorizing the department to request all books and records of a licensee who has two or more places of business in the state to be produced at a (single) convenient location in this state. Currently, the licensee may maintain the records of all of its offices at any one office, upon the filing of a written request with the department.

Sections 6 - 9 apply to Motor Vehicle Sales Finance (Part I, Ch. 520, F.S.)

Section 6. Amends s. 520.02, F.S., providing definitions for the terms "branch" and "principal place of business," which are not currently defined in statute, but are referenced in the statutes and commonly used by the industry.

Section 7. Amends s. 520.03, F.S., establishing a \$175 initial application and renewal fee for motor vehicle retail installment seller licensees, rather than a fee to be set by rule not exceeding \$200 which currently is set at \$100. This section deletes the requirement for the department to "endorse" any relocation of a place of business under chapter 520, and simply requires licensees to notify the department prior to relocation. Technical revisions are also made to conform terms and eliminate unnecessary language.

Section 8. Amends s. 520.07, F.S., requiring motor vehicle retail sales contract to disclose the number of scheduled payments, the amount of each payment, and the date of the first payment. In addition, when a motor vehicle retail installment contract is paid in full, the bill requires lenders to

provide the borrower evidence of satisfaction and ensure that the title or contract indicates that the lien has been satisfied or released.

The bill also requires that the calculation for the amount financed under a motor vehicle retail sales contract include any additional amount that is financed to discharge a security interest, lien, or lease interest on a motor vehicle that is traded in connection with the contract. Such disclosure is currently required under federal Regulation Z adopted by the Federal Reserve Board to implement the federal Truth in Lending Act. This addresses the “negative equity” value of a vehicle that is traded in connection with the contract for which debt still exists from a prior transaction. The department has determined that the current statute does not expressly provide for the disclosure and inclusion of “negative equity,” that is part of the amount financed, but that the statute permits such disclosure and inclusion when disclosed in compliance with Regulation Z.

Section 9. Amends s. 520.085, F.S., relating to simple-interest motor vehicle retail sales finance contracts. The bill allows a licensee (or any other licensed lender pursuant to the interest rate parity statute) that uses the simple interest method of calculating finance charges to impose an “acquisition charge” (a prepayment penalty) for services performed on behalf of the borrower for preparation of the retail installment contracts, not to exceed \$75, if the contract is prepaid in full within 6 months after the effective date of the contract. (See Present Situation, above, for additional information.)

This section further allows lenders who use a simple interest method of calculating finance charges and borrowers to agree to defer an installment payment and authorizes lenders to collect a \$15 fee for the service, for motor vehicle retail sales finance contracts. This fee may only be collected if the deferment option is provided for in the simple interest contract. The lender must disclose in the contract and in any offer to exercise the deferment option that, in addition to the \$15 fee and the costs of extending any required or optional insurance, the buyer will also be required to pay additional finance charges as a result of exercising the deferment option. The effect of this change is to make it more likely that a simple interest lender would be willing to agree to deferring an installment payment, since the simple interest rate alone may not be sufficient financial incentive. Currently, a simple interest lender may agree to extend or defer the loan payments, but the lender may only collect the simple interest rate for the period of extension. By comparison, a lender using the “add-on” interest rate method (see, Present Situation, above), is able to effectively charge a greater amount due to the method of calculating interest, depending on when the extension is provided, making such extension a more financially viable alternative for a lender using the add-on interest rate.

Sections 10 - 12 apply to Retail Installment Sales (Part II, Ch. 520, F.S.)

Section 10. Amends s. 520.31, F.S., providing definitions for the terms “branch” and “principal place of business,” which are not defined in Part II of the chapter although the terms are used in statute and by the industry.

Section 11. Amends s. 520.32, F.S., establishing a \$175 initial application and renewal fee for a retail installment seller licensee, rather than a fee to be set by rule not exceeding \$200 which currently is set at \$100. Technical revisions are also made to conform terms and eliminate unnecessary language.

Section 12. Amends s. 520.34, F.S., authorizing retail sellers to collect a \$10 processing fee for retail installment contracts and specifies that this fee shall not be considered interest or finance charges pursuant to chapter 687, F.S.

Sections 13 applies to Installment Sales Finance (Part III, Ch. 520, F.S.)

Section 13. Amends s. 520.52, F.S., establishing a \$175 initial application and renewal fee for a sales finance company license, rather than a fee to be set by rule not exceeding \$200 which currently is set at \$100. Technical revisions are also made to conform terms and eliminate unnecessary language.

Sections 14 - 15 apply to Home Improvement Sales and Finance (Part IV, Ch. 520, F.S.)

Section 14. Amends s. 520.61, F.S., adding definitions for the terms “branch” and “principal place of business” which are not defined in Part IV although the terms are used in statute and by the industry. The definitions in this section are identical to the definitions in Sections 6 and 10 of the bill.

Section 15. Amends s. 520.63, F.S., establishing a \$175 initial application and renewal fee for a home improvement finance license, rather than a fee set by rule not exceeding \$200 which currently is set at \$100. Technical revisions are also made to conform terms and eliminate unnecessary language.

Sections 16 - 19 apply to Department Regulation of Sales and Finance (Part V, Ch. 520, F.S.)

Section 16. Amends s. 520.994, F.S., authorizing the department to adopt rules to allow electronic submission of any required form, document, or fee.

Section 17. Amends 520.995, F.S., providing that a plea of nolo contendere to a crime involving fraud, dishonest dealing, or any other act of moral turpitude is grounds for disciplinary action. In addition, the failure to timely pay any fee, charge, or fine is also grounds for disciplinary action.

Section 18. Amends s. 520.996, F.S., eliminating fees charged to a licensee under chapter 520 for a department examination, which fees currently may not exceed \$250 per 8-hour day for each examiner. The bill limits the authority for the department to charge per diem and travel expenses to those examinations performed outside of Florida. The bill further limits such expenses to the rate provided by law for up to thirty 8-hour days per year for each examiner who participates in the examination, unless the examination involves possible fraudulent conduct of the licensee, in which case the 30-day annual limit per examiner would not apply. The bill requires that the department conduct all examinations at a convenient location in Florida (for which no expenses would be charged to the licensee), unless the department determines that it is more effective or cost-efficient to perform an examination at the licensee’s out-of-state location. This section has an effective date of January 1, 2001.

Section 19. Amends s. 520.997, F.S., requiring licensees under chapter 520 that are the subject of a voluntary or involuntary bankruptcy filing to report the filing within 7 business days after the filing date.

Sections 20, 21 and 22 amend ss. 559.9232, 681.102, and 697.05, F.S., to make technical revisions to correct statutory cross-reference citations.

Section 23. Provides an effective date of October 1, 1999, except as otherwise provided in the bill.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

See Private Sector Impact, below.

B. Private Sector Impact:

The bill increases license application and renewal fees, eliminates the authority of the Department of Banking and Finance to set fees by rule, eliminates fees and expenses charged to a licensee for an examination at a Florida location, and limits charges to a licensee for travel expense and per diem expenses for department examinations in another state. The impact of these changes on the private sector are illustrated on the table, below, as estimated by the department:

Private Sector Costs (Savings):

	<u>FY 1999-00</u>	<u>FY 2000-01</u>	<u>FY 2001-02</u>
Reimbursement of examination staff travel expenses for out-of-state examinations under chapter 516 and 520, F.S.* (Est. \$1000 per exam X 50 exams)	\$50,000	\$50,000	\$50,000
Elimination of examination fees under ch. 516, 520, F.S.	\$0	(\$289,000)	(\$289,000)
Increase in licensing fees under ch. 516, 520, F.S.	<u>\$0</u>	<u>\$1,245,000</u>	<u>\$0</u>
Total Private Sector Costs (Savings)	\$50,000	\$1,006,000	(\$239,000)

*The department does not currently charge a licensee for expenses for an out-of-state exam, even though it is currently authorized; if the bill becomes law, the department plans to charge for such expenses.

Lenders who make motor vehicle retail installment loans would be required to make disclosures of certain additional information, which may require revising contract forms and to provide the borrower evidence of satisfaction and to ensure that the title or contract indicates that the lien has been satisfied or released.

The bill eases notification requirements for relocation of offices and establishes a requirement to notify the department if the licensee is the subject of a bankruptcy action.

Persons who take out a motor vehicle finance loan either through a motor vehicle dealer or directly from a bank, credit union, other lending institution that uses a simple interest method of calculating the interest rate, would be subject to a maximum \$75 fee if the loan is paid off within the first 6 months. Lending institutions receiving this fee would be able to offset some of their costs in acquiring and setting up such loans. Even though current law allows up to a \$200 processing fee to set up a motor vehicle loan, current market forces have limited such fees to \$50 to \$75. The additional prepayment fee of \$75 is not likely to significantly discourage prepayment, assuming that any lower interest rate offered to the borrower reduces the interest payments by significantly more than the \$75 fee.

Persons who take out a motor vehicle finance loan from a lender that uses a simple interest method of calculating interest would also be subject to a maximum fee of \$15 to extend the term of the loan.

Persons who take out a retail installment loan would be subject to a maximum \$10 processing fee.

C. Government Sector Impact:

According to department estimates, the bill is expected to result in a \$0 fiscal impact for FY 1999-2000, a positive impact of \$956,000 for FY 2000-2001, and a negative fiscal impact of (\$289,000) for FY 2001-2002, for the Department of Banking and Finance Regulatory Trust Fund, as follows:

Revenues:

	<u>FY 1999-00</u>	<u>FY 2000-01</u>	<u>FY 2001-02</u>
Reimbursement of actual travel expenses for out-of-state exams under Ch. 516, 520, F.S.	\$0	\$0	\$0
Loss of examination fees under Ch. 516, 520, F.S. (\$1000 per examination)	\$0	(\$289,000)	(\$289,000)
Increase in licensing fees under Ch. 516, 520, F.S. (66,600 licensees X \$75 increase)	\$0	\$1,245,000	\$0
TOTAL: Department Regulatory Trust Fund	\$0	\$956,000	(\$289,000)

The department asserts that the additional revenues generated by this bill will be offset by the eight FTEs that are proposed in their Legislative Budget Request for performing examinations of licensees under chapters 494, 516, and 520, F.S. However, this legislative budget request is not directly related to this bill, which generally does not increase the responsibilities or workload of the department.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.