HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 275 Consumer Finance Charges
SPONSOR(S): Insurance & Banking Subcommittee and Burgin
TIED BILLS: **IDEN./SIM. BILLS:** SB 438

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	9 Y, 6 N, As CS	Barnum	Cooper
2) Economic Affairs Committee			

SUMMARY ANALYSIS

Consumer finance loans involve loans or lines of credit in an amount up to $25,000, and are provided by entities licensed by the Office of Financial Regulation. At the present time there are approximately 301 licensed locations in Florida.

Under ch. 516, F.S., the Florida Consumer Finance Act, a consumer can borrow up to $25,000 for which a lender may charge an interest rate greater than 18 percent per year. The rates vary based upon the principal amount or parts thereof. The principal amounts upon which interest rates are computed were last adjusted in 1997. The law provides the lender the ability to charge a delinquency fee of up to $10 for each payment in default. That fee has been unchanged since 2000. Lenders are permitted to collect a bad check charge of no more than the greater of $20, or an amount equal to the actual charge made to the lender by the depository institution for the return of the unpaid or dishonored instrument. The last time the bad check charge was increased was in 1994.

CS/HB 275 increases from $2,000 to $3,000 the principal amount upon which the maximum interest rate of 30 percent per year may be charged. In like manner, there is a $1,000 upward adjustment to the segments of remaining principal to which lower interest rates apply. The 24 percent per annum rate will apply to that part of the principal amount exceeding $3,000 but not exceeding $4,000. A maximum interest rate of 18 percent per year will apply to that part of the principal amount exceeding $4,000.

The bill increases the authorized delinquency fee from $10 to $15.

The bill increases the maximum permissible bad check charge and places it on a sliding scale consistent with existing maximum worthless check service charges applicable in civil actions and in the state attorney bad check diversion program. The new bad check charge will be: $25, if the face value does not exceed $50; $30, if the face value exceeds $50 but does not exceed $300; $40 if the face value exceeds $300; or, 5 percent of the face amount of the check, whichever is greater.

The bill has no fiscal impact on state or local government.

Borrowers will be subject to increased interest charges and bad check charges, depending upon the principal amount of the loan and face amount of any bad check tendered as payment.

The changes only apply to those consumer finance loans entered into on or after July 1, 2012, the bill's effective date.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background:

The federal Truth in Lending Act (TILA) contains provisions regarding standardized disclosure of credit terms. It is intended to assure a meaningful disclosure of credit terms so that the consumer will be able to compare the various credit terms available, avoid the uninformed use of credit, and protect the consumer against inaccurate and unfair credit billing and credit card practices.[1] Regulation Z, adopted by the Board of Governors of the Federal Reserve System, implements TILA which requires creditors to disclose the cost of credit as a dollar amount (finance charge) and as an annual percentage rate. Finance charges include any charges or fees payable by the consumer and imposed by the creditor incident to or as a condition of an extension of consumer credit.

The Office of Financial Regulation (OFR) has regulatory authority over entities providing small consumer loans authorized under Chapter 516 (consumer finance), Chapter 520 (retail installment sellers), Chapter 537 (title loans), and Part IV of Chapter 560, (deferred presentment transactions or payday loans). Each of these loans provides for an exception from the 18 percent per year simple interest cap that is set forth in s. 687.02, F.S.

Under ch. 516, F.S., the Florida Consumer Finance Act, a consumer can borrow up to $25,000. Licensees charge an interest rate which can vary based upon the principal amount or parts thereof. The annual percentage rate must be computed and disclosed as required by the Truth in Lending Act and Regulation Z. The act allows a licensee to charge a borrower up to $25 for the costs of a credit check and an annual fee of $25 on the anniversary date of the line-of-credit account. In addition, other charges are permissible under specific circumstances. Each place of business must be licensed. The license fees under the act are $625 for the initial application, plus a $200 investigation fee, and $625 for a renewal. A license is valid for not more than two (2) years. The licensee must maintain evidence of liquid assets of at least $25,000. The OFR is authorized to examine and investigate any licensee, and take disciplinary actions against licensees violating the act.

Information provided by the Florida Financial Services Association[2] reflects that, for members doing business in Florida, the average loan amount for a large regional member is approximately $2,100 and a national company reports an average loan amount of $3,400. The average monthly payment made on these loans is approximately $140 and $156, respectively. The face value of the average returned check experienced by the regional member is approximately $137.

The principal amounts upon which interest rates are computed were last adjusted in 1997.[3] The ability to charge a delinquency fee of up to $10 for each payment in default was added to the act in 2000,[4] and there have been no changes to that fee since it was authorized. Lenders are permitted to collect a bad check charge for the return of an unpaid or dishonored check. The last time the bad check charge was increased was in 1994.[5]

Current Situation:

Chapter 516, F.S. is the governing statute for consumer finance loans.[6] It provides for a maximum interest rate of 30 percent per year, computed on the first $2,000 of the principal amount; 24 percent per year on that part of the principal amount exceeding $2,000 but not exceeding $3,000; and 18

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[1] Section 102 of title I of the Act of May 29, 1968 (Pub. L. No. 90--321; 82 Stat. 146), effective May 29, 1968, as amended.
[2] A trade association with membership consisting of consumer finance companies providing consumer loans in Florida.
[3] s. 1, ch. 97-181, L.O.F.
[4] s. 1, ch. 2000-127, L.O.F.
[5] s. 1, ch. 94-108, L.O.F.
[6] s. 516.01(2) defines "consumer finance loan" as a loan of money, credit, goods, or provision of a line of credit, in an amount or to a value of $25,000 or less at an interest rate greater than 18 percent per annum.

percent per year on that part of the principal amount exceeding $3,000. In addition to interest, current law allows for specified other charges, such as delinquency, insurance premiums, and costs associated with property pledged as security. The authorized delinquency fee, not to exceed $10 for each payment in default, must be agreed, in writing, before the fee can be imposed. Lenders are authorized to collect a bad check charge if a check, draft, or like instrument drawn on a depository institution is not paid or dishonored. That charge can be no more than the greater of $20, or an amount equal to the actual charge made to the lender by the depository institution for the return of the unpaid or dishonored instrument.

"Administrative fees" are neither defined nor permitted. Rather, aside from clearly defined exceptions, no other charges or amount for any examination, service, commission, or other thing shall be directly or indirectly charged, contracted for, or received as a condition to the grant of a loan.[7] At the present time there are approximately 301 licensed locations in Florida.[8]

Effect of Proposed Changes:

The bill increases from $2,000 to $3,000 the principal amount upon which the maximum interest rate of 30 percent per year may be charged. In like manner, there is a $1,000 upward adjustment to the segments of remaining principal to which lower interest rates apply. The 24 percent per annum rate will apply to that part of the principal amount exceeding $3,000 but not exceeding $4,000. A maximum interest rate of 18 percent per year will apply to that part of the principal amount exceeding $4,000. The following chart depicts these changes.

Interest Rate	Current Law		House Bill 275	
30% per annum	Part of Principal	$1 - $2,000	Part of Principal	$1 - $3,000
24% per annum	Part of Principal	>$2,000 - $3,000	Part of Principal	>$3,000 - $4,000
18% per annum	Part of Principal	>$3,000 - $25,000	Part of Principal	>$4,000 - $25,000

Using the national company's average loan amount reported by the Florida Financial Services Association, for an amortized loan[9] of $3,400, the impact of the proposed increases would be as follows:

Amortization Period	Interest Under Current Law	Interest Under HB 275	Amount of Interest Increase
6 Months	$288.00	$301.50	$13.50
12 Months	$549.50	$574.34	$24.84
24 Months	$1,102.45	$1,156.41	$53.96

In addition, the bill increases the authorized delinquency fee from $10 to $15. The requirement remains that an agreement in writing must be executed before the delinquency fee may be imposed.

The bill increases the maximum permissible bad check charge and places it on a sliding scale consistent with existing maximum worthless check service charges applicable in civil actions[10] and in the state attorney bad check diversion program.[11] The new bad check charge will be: $25, if the face value does not exceed $50; $30, if the face value exceeds $50 but does not exceed $300; $40, if the face value exceeds $300; or, 5 percent of the face amount of the check, whichever is greater.

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[7] s. 516.031(3)(a), F.S.
[8] Office of Financial Regulation Analysis of HB 275 dated November 7, 2011, on file with the Insurance & Banking Subcommittee.
[9] Periodic payments of principal and interest whereby the principal amount upon which interest is computed continually decreases.
[10] s. 68.065(2), F.S.
[11] s. 832.08(5), F.S.

The following chart provides a comparison between current law and the proposed maximum permissible bad check charges.

Bad Check Face Amount	Bad Check Charge Current Law [1]	Bad Check Charge House Bill 275
$25	$20	$25
$250	$20	$30
$500	$20	$40
$1,000	$20	$50
$5,000	$20	$250
$25,000	$20	$1,250

(1) Current law allows for the greater of $20 or the amount charged the lender depositing the non-sufficient funds check. That amount may vary from depository institution to depository institution, and may be based upon the depositor's relationship with the institution. In some cases, no charge may be levied.

All other provisions of the Florida Consumer Finance Act remain unchanged.

B. SECTION DIRECTORY:

Section 1. Amends s. 516.031, F.S., by increasing the dollar amounts upon which the various interest rates are computed, and increasing the "bad check charge".

Section 2. Reenacts and amends s. 516.19, F.S., by incorporating the amendment to s. 516.031, F.S. into provisions for which violations are subject to penalties.

Section 3. Provides for an effective date of July 1, 2012, with changes applying to consumer finance loans entered into on or after that date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Borrowers will be subject to increased interest charges and bad check charges, depending upon the principal amount of the loan and face amount of any bad check tendered as payment.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to: require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

At the November 16, 2011 meeting of the Insurance & Banking Subcommittee, one amendment was proposed and adopted. The bill was reported favorably as a Committee Substitute.

The amendment clarified that the changes only apply to those consumer finance loans entered into on or after July 1, 2012.

The analysis is drafted to the Committee Substitute.