

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

Prepared By: The Professional Staff of the Banking and Insurance Committee

BILL: SB 438

INTRODUCER: Senator Bennett

SUBJECT: Consumer Finance Charges

DATE: January 4, 2012

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Matiyow	Burgess	BI	<b>Pre-meeting</b>
2.			CM	
3.			BC	
4.				
5.				
6.				

**I. Summary:**

Chapter 516, F.S., the Florida Consumer Finance Act (Act), 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. The allowable interest rates on consumer finance loans are tiered and limited based on the principal amount that falls within each tier of the loan. As the principal amount increases, the allowable interest rate decreases, as follows:

- \$1 - \$2,000 principal, up to 30 percent allowable interest;
- \$2,001 - \$3,000 principal, up to 24 percent allowable interest;
- \$3,001 - \$25,000 principal, up to 18 percent allowable interest.

The bill increases by \$1,000 the principal amount that would be subject to the maximum amount of interest that is allowed to be charged within each tier. The bill increases from \$10 to \$15, the maximum amount that can be charged to a borrower for making a payment that is in default for at least 10 days.

The bill conforms to the fees that can be charged for worthless checks to the amounts permissible under s. 68.065, F.S.

This bill substantially amends the following sections of the Florida Statutes: 516.031 and 516.19.

## II. Present Situation:

Under ch. 516, F.S., the Florida Consumer Finance Act (Act), the Office of Financial Regulation (OFR) licenses entities that issue consumer finance loans.<sup>1</sup> 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. Under the requirements a 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. At present the Office of Financial Regulation licenses approximately 301 consumer finance lenders in Florida.<sup>2</sup>

Under the Act, interest rates on consumer finance loans are tiered and limited based on the principal amount subject to each tier of the loan.

- For principal amounts up to \$2,000, maximum interest rate of 30 percent per annum;
- For principal amounts between \$2,001 and \$3000, maximum interest rate of 24 percent per annum;
- For principal amounts between \$3,001 and \$25,000, maximum interest rate of 18 percent per annum.<sup>3</sup>

The principal amounts upon which interest rates are computed were last addressed by the Legislature in 1997.<sup>4</sup>

Additionally, the Act allows a lender to charge a delinquency fee of up to \$10 for each payment that is in default for at least 10 days. Under the Act the delinquency fee must first be agreed upon in writing by both parties.<sup>5</sup> The delinquency fee was last addressed by the Legislature in 2000.<sup>6</sup>

Under the Act, lenders are also permitted to impose a bad check charge of no more than \$20, or the actual fee charged to the lender by a depository institution for the return of the unpaid or dishonored instrument.<sup>7</sup> The last time the bad check fee was addressed by the Legislature was in 1994.<sup>8</sup>

## III. Effect of Proposed Changes:

The bill increases by \$1,000 the principal amount that would be subject to the maximum amount of interest that is allowed to be charged for each tier.

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<sup>1</sup> Section 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.

<sup>2</sup> Office of Financial Regulation Analysis of HB 275 dated November 7, 2011, on file.

<sup>3</sup> Section 516.031(1), F.S.

<sup>4</sup> Section 1, ch. 97-181, L.O.F.

<sup>5</sup> Section 516.031(3)(a)9., F.S.

<sup>6</sup> Section 1, ch. 2000-127, L.O.F.

<sup>7</sup> Section 516.031(3)(b), F.S.

<sup>8</sup> s. 1, ch. 94-108, L.O.F.

<b>Proposed Change</b>	<b>Current Law</b>
\$1 - \$3,000 at up to 30 percent interest	\$1 - \$2,000 at up to 30 percent interest
\$3,001 - \$4,000 at up to 24 percent interest	\$2,001 - \$3,000 at up to 24 percent interest
\$4,001 - \$25,000 at up to 18 percent interest	\$3,001 - \$25,000 at up to 18 percent interest

Under the proposed change, consumers who borrow could be subject to an additional 6 percent of annual interest on up to \$1,000 on monies borrowed above \$2,000 and another 6 percent of annual interest on up to \$1,000 on monies borrowed above \$3,000.

The bill increases from \$10 to \$15, the maximum amount that can be charged for a payment in default for at least 10 days, and keeps the requirement that both parties must first agree in writing to the delinquency fee.

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<sup>9</sup> and in the state attorney bad check diversion program.<sup>10</sup> 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 takes effect July 1, 2012.

**Other Potential Implications:**

**IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

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<sup>9</sup> s. 68.065(2), F.S.

<sup>10</sup> s. 832.08(5), F.S.

**B. Private Sector Impact:**

Consumers who borrow could be subject to an additional 6 percent of annual interest on up to \$1,000 on monies borrowed above \$2,000 and another 6 percent of annual interest on up to \$1,000 on monies borrowed above \$3,000.

Borrowers who default on a payment could be subject to an additional \$5 in charges for each defaulted payment.

Borrowers who issue worthless checks as payment to a lender could be subject to additional fees consistent with existing maximum worthless check service charges: \$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.

**C. Government Sector Impact:**

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Additional Information:****A. Committee Substitute – Statement of Substantial Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

**B. Amendments:**

None.