

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 Commerce and Tourism Committee

BILL: SB 438

INTRODUCER: Senator Bennett

SUBJECT: Consumer Finance Charges

DATE: February 6, 2012 REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|---------|----------------|-----------|--------------------|
| 1. | Matiyow | Burgess | BI | Favorable |
| 2. | Philo | Hrdlicka | CM | Pre-meeting |
| 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 the fees that can be charged for worthless checks to the amounts permissible under s. 68.065, F.S.

This bill substantially amends ss. 516.031 and 516.19, F.S.

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.¹ The license fees under the act are \$625 for the initial application, plus a \$200 investigation fee, and \$625 for a renewal.² A license is valid for not more than 2 years.³ Under the requirements a licensee must maintain evidence of liquid assets of at least \$25,000.⁴ The OFR is authorized to examine and investigate any licensee, and take disciplinary actions against licensees violating the act.⁵ As of October 20, 2011, there were 301 licensed locations in Florida.⁶

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 \$3,000, 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.⁷

The principal amounts upon which interest rates are computed were last addressed by the Legislature in 1997.⁸

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.⁹ The delinquency fee was last addressed by the Legislature in 2000.¹⁰

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.¹¹ The last time the bad check fee was addressed by the Legislature was in 1994.¹²

¹ Section 516.01(2), F.S., 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.

² Section 516.03(1), F.S.

³ Section 516.05(1), F.S.

⁴ Sections 516.03(1) and 516.07(1)(b), F.S.

⁵ Sections 516.05-516.11, F.S.

⁶ OFR, *Analysis of HB 275 by Representative Burgin* (Nov. 7, 2011), at 2 (on file with the Senate Committee on Commerce and Tourism).

⁷ Section 516.031(1), F.S.

⁸ Chapter 97-181, s. 1, L.O.F.

⁹ Section 516.031(3)(a)9., F.S.

¹⁰ Chapter 2000-127, s. 1, L.O.F.

¹¹ Section 516.031(3)(b), F.S.

¹² Chapter 94-108, s. 1, L.O.F.

III. Effect of Proposed Changes:

Section 1 of the bill amends s. 516.031, F.S., to increase by \$1,000 the principal amount that would be subject to the maximum amount of interest that is allowed to be charged for each principal tier:

| <u>Interest Rate</u> | <u>Current Law</u> | <u>Senate Bill 438</u> |
|----------------------|------------------------------|-----------------------------|
| 30% per annum | Principal \$1 - \$2,000 | Principal \$1 - 3,000 |
| 24% per annum | Principal >\$2,000 - \$3,000 | Principal >\$3,000 - 4,000 |
| 18% per annum | Principal >\$3,000 - 25,000 | Principal >\$4,000 - 25,000 |

The bill also 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 also 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 actions¹³ and the state attorney bad check diversion program.¹⁴ 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.

Section 2 of the bill reenacts and grammatically amends s. 516.19, F.S., to provide that any person who violates any of the subject provisions “commits” (as opposed to “is guilty of”) a first-degree misdemeanor.

Section 3 of the bill provides an effective date of July 1, 2012.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

¹³ Section 68.065(2), F.S.

¹⁴ Section 832.08(5), F.S.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Consumers who borrow will 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. Using a national company’s average loan amount reported by the Florida Financial Services Association, for an amortized loan of \$3,400, the impact of the proposed increases would be as follows:¹⁵

| <u>Amortization Period</u> | <u>Interest Under Current Law</u> | <u>Interest Under SB 438</u> | <u>Amount of Interest Increase</u> |
|----------------------------|-----------------------------------|------------------------------|------------------------------------|
| 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 |

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

Borrowers who issue bad checks as payment to a lender will be subject to additional fees consistent with existing maximum bad 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.¹⁶

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

¹⁵ Memoranda to Florida House of Representatives Insurance and Banking Subcommittee from Legislative Consultants James H. Thompson and Joseph S. Shuler (Nov. 8 & 14, 2011), and OFR, *Chart: Recap of Interest Accrual Calculations* (all on file with the Senate Committee on Commerce and Tourism).

¹⁶ OFR Bill Analysis, at 2.

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.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
