

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 Committee on Banking and Insurance

BILL: CS/SB 626

INTRODUCER: Banking and Insurance Committee and Senator Gaetz

SUBJECT: Consumer Credit

DATE: November 17, 2015 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Johnson	Knudson	BI	Fav/CS
2.			MS	
3.			FP	

Please see Section IX. for Additional Information:
 COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 626 authorizes the Office of Financial Regulation to enforce the provisions of the federal Military Lending Act (MLA), which provides greater consumer protections for servicemembers and their dependents in connection with a broad range of closed-end and unsecured, open-end types of consumer credit transactions. These consumer credit transactions include consumer finance loans, payday loans, title loans, overdraft lines of credit, small dollar loans, and credit cards accounts. The MLA caps the Military Annual Percentage Rate (MAPR) on these credit transactions at 36 percent, requires oral and written disclosures for the consumer, and prohibits certain terms and conditions on the loan, such as mandatory arbitration and prepayment penalties.

II. Present Situation:

Consumer Debt and the Military

Military personnel who have trouble handling their personal finances can quickly find their duty status, potential promotions, and even military careers in jeopardy. The Department of Defense (DoD) makes a significant investment in recruiting, training and retaining highly qualified service members. The DoD expects these servicemembers to maintain personal readiness standards, including paying their debts and maintaining their ability to attend to the financial

needs of their families.¹ Losing qualified servicemembers due to personal issues, such as financial instability, causes loss of mission capability and drives significant replacement costs. The DoD estimates that each separation costs the DoD \$58,250.²

Prior to entering the military, a 2014 DoD report³ notes that many servicemembers, particularly younger members, have limited money management skills, and are generally unprepared for their financial responsibilities. Surveys cited by the report indicate that 11 percent of enlisted servicemembers reported using payday loans, title loans, bank deposit advances, pawn shops, or installment loans with interest rates over 36 APR. Further, the report states that a substantial minority of servicemembers continue to report difficulty managing their finances, and have little access to safe, low-cost credit. The DoD concludes, “Limiting high-cost options assists the DoD in making the point clear to servicemembers...that high-cost loans are not fiscally prudent and that they are to resolve their financial problems through counseling and alternatives, rather than perpetuate them through predatory high-cost loans.”

In 2014, the Consumer Financial Protection Bureau, (CFPB) analyzed high-cost credit that was not subject to the MLA regulations, such as deposit advances structured as open-end lines of credit.⁴ Deposit advances are lines of credit offered by some depository institutions as a feature of an existing depository account. The CFPB findings indicate that some depository institutions extended millions of dollars in deposit advances to servicemembers with APRs that typically exceeded 300 percent. Credit limits were generally set as a percentage of the account holder’s monthly direct deposits. The cost of the deposit advances studied was disclosed as a fixed fee per amount borrowed, with a typical fee being \$10 per \$100 borrowed. Lenders generally required that deposit advances be repaid automatically when the next qualifying deposit was made into the consumer’s account; in the event that an outstanding balance was not fully repaid by incoming deposits within 35 days, the consumer’s account was debited for the amount due, even if this resulted in the associated deposit account being overdrawn.

Federal Consumer Protection Laws

Federal Truth in Lending Act (TILA)

The purpose of TILA,⁵ is to promote the informed use of credit through “a meaningful disclosure of credit terms so that the consumer will be able to compare more readily the various credit terms available.”⁶ Regulation Z, which implements TILA, requires the calculation and disclosure of the Annual Percentage Rate (APR) for consumer loans.⁷ Finance charges include interest, any charges, or fees payable by the consumer and imposed by the financial institution as an incident

¹ U.S. Department of Defense, Instruction 1344.09, Indebtedness of Military Personnel (2008). “Members of the Military Services are expected to pay their just financial obligations in a proper and timely manner [to include alimony and child support. A service member’s failure to pay a just financial obligation may result in disciplinary action under the Uniform Code of Military Justice [10 U.S.C. 801–940] or a claim pursuant to Article 139 of [10 U.S.C. 801–940].

² 80 FR 43564.

³ Department of Defense, Report: Enhancement of Protections on Consumer Credit for Members of the Armed Forces and Their Dependents (2014).

⁴ Consumer Financial Protection Bureau, The Extension of High-Cost Credit to Servicemembers and Their Families (2014).

⁵ 15 U.S.C. s. 1601 et seq., as implemented by Regulation Z, 12 C.F.R. part 226.

⁶ 15 U.S.C. s. 1601(a).

⁷ 15 U.S.C. s. 1604-1606.

to or as a condition of an extension of consumer credit. Regulation Z includes examples, applicable both to open-end and closed-end credit transactions, of what must, must not, or need not be included in the calculation and disclosure of the finance charge.⁸ For example, the calculation of APR does not include premiums for credit life, accident, or health insurance when calculating the loan's finance charge, as long as the insurance products are voluntary, the lender tells borrower in writing that these products are voluntary, and the borrower consents in writing.⁹

Federal Military Lending Act

In 2006, Congress enacted the Military Lending Act (MLA),¹⁰ which provides covered members and dependents¹¹ with specific protections for their “consumer credit” transactions. These provisions include, but are not limited to, capping the annual percentage rate of interest that a creditor may extend consumer credit to such persons at no more than 36 percent; requiring disclosures for covered members; and prohibiting creditors from requiring a servicemember or dependent to submit to arbitration in the event of a dispute. The MLA also provides remedies for a covered borrower to recover damages from a creditor who violates a requirement of the MLA. The MLA is enforced by specified federal agencies.¹²

In the 2007 regulations implementing the MLA, the Department of Defense (DoD) applied the MLA provisions to the following “consumer credit” products of covered borrowers:¹³

- closed-end payday loans for no more than \$2,000 and with a term of 91 days or fewer;
- closed-end auto title loans with a term of 181 days or fewer; and
- closed-end tax refund anticipation loans.¹⁴

For covered borrowers, the cost of such consumer credit is capped at the military annual percentage rate (MAPR) of 36 percent. The MAPR is calculated based on Regulation Z; however, for purposes of MAPR, it also includes other costs, such as credit insurance premiums, and other specified fees.¹⁵

Under the 2007 regulations, any loan that does not fall into one of the three categories is not subject to the MLA's protections under the existing regulations. For example, lenders can avoid the MLA limitations when they offer open-end lines of credit, contract for an initial duration of greater than 91 days for payday loans or 181 days for auto title loans, or finance an initial amount of more than \$2,000 for payday loans. As a result, the DoD advocated that a wider range

⁸ 12 C.F.R. s. 1026.4.

⁹ 15 U.S.C. s. 1605(b).

¹⁰ Public Law 109-364, 120 Stat 2266.

¹¹ A covered member is a member of the armed forces who is on active duty under a call or order that does not specify a period of 30 days or less or on active Guard and Reserve Duty. A dependent with respect to a covered member is a spouse, child, or other specified dependent. [10 U.S.C. s. 987(i)]

¹² In 2013, the MLA was amended. [Public Law 112-239, 126 Stat. 1785]The MLA is implemented by the Department of Defense and, is enforced by the Federal Deposit Insurance Corporation, Office of the Comptroller of the Currency, National Credit Union Administration, Consumer Financial Protection Bureau (CFPB), Federal Trade Commission, and other specified agencies.

¹³ The 2007 final rule provides a safe harbor under which the creditor may require an applicant to sign a statement declaring whether or not he or she is a covered borrower. A covered borrower must meet the criteria as a covered member or the dependent of a covered member at the time of the consumer credit transaction. [32 C.F.R. 232.3 and 232.5]

¹⁴ 32 C.F.R. 232.3.

¹⁵ 32 C.F.R. 232.3(h).

of credit products offered or extended to servicemembers be subject to the protections of the MLA. The DoD opined that the extremely narrow definition of “consumer credit” permits creditors to structure credit products in order to reduce or avoid altogether the obligations of the MLA.¹⁶

In 2015, the DOD significantly amended the regulations¹⁷ to provide that consumer credit covered under the MLA includes “credit offered or extended to a covered borrower to a covered borrower primarily for personal, family, or household purposes, and that is subject to a finance charge or payable by a written agreement in more than four installments.”¹⁸ As a result, the definition of “consumer credit” applies to wider range of credit regardless of the duration or amount of the loan. This includes closed-end credit and unsecured, open-end credit products, such as, refund anticipation loans,¹⁹ credit cards accounts, deposit advance loans, consumer loans with banks or credit unions, and all forms of title loans and payday loans. The regulations continue the 36 percent MAPR cap²⁰ in connection with an extension of consumer credit to a covered borrower.²¹ The MAPR, or the cost of the consumer credit as an annual rate or APR, is calculated following Regulation Z with the inclusion of additional cost elements required under the MLA, such as fees and premiums for credit insurance and other fees.²²

Consistent with the 2007 regulation, a creditor is not required to check the status of a consumer to determine whether a consumer is a covered borrower. A creditor may use its own assessment method. However, creditors are provided a safe harbor if they use either or both of two specified methods provided in the final rule, namely, the DoD MLA database²³ or consumer reports from a nationwide consumer credit reporting agency to verify covered borrower status and comply with recordkeeping requirements.²⁴ Creditors are allowed to rely on the initial covered borrower check for up to 60 days after a firm offer of credit is extended to the borrower.

Further, the regulation provides the following terms and conditions relating to the extension of consumer credit to a covered member:

- Mandates certain disclosures (*e.g.*, a statement of the MAPR and disclosures consistent with TILA) before a loan is made.
- Prohibits prepayment penalty fees if a covered borrower prepays all or part of the consumer credit.

¹⁶ 79 FR 58603.

¹⁷ The effective date of the final rule is October 1, 2015. Generally, compliance is required by October 3, 2016, for credit established on or after that date. The rule provides a temporary exemption for credit card accounts under an open-end consumer credit plan until October 3, 2017. [32 C.F.R. part 232]

¹⁸ The scope of credit products covered under the MLA regulations are consistent with credit that is subject to TILA. [80 FR 43563] In accordance with the MLA, the MLA regulation continues to exclude residential mortgages and credit extended to finance the purchase of, and secured by, personal property, such as vehicle purchase loans. [10 U.S.C. 987]

¹⁹ A tax refund anticipation loan is a closed-end, short-term loan to a consumer that is based on the amount of the consumer’s tax refund. The consumer receives an amount up to the refund amount less the loan fee, tax preparation, and other fees. Generally, the proceeds of the tax refund are used to repay the loan and fees.

²⁰ 32 C.F.R. 232.4(b).

²¹ 32 C.F.R. 232.3(g).

²² 32 C.F.R. 232.4(c). The charges for MAPR must include any credit insurance premium or fee, fees for a credit-related ancillary product sold in connection with the credit transaction, finance charge, application fee, and other specified fees.

²³ 80 FR 43609. According to the final rule, the database is accessible at <https://www.dmdc.osd.mil/mla/welcome.xhtml>.

²⁴ 32 C.F.R. 232.5.

- Prohibits a creditor from “rolling-over” or refinancing the same loan with exceptions for depository institutions.
- Prohibits a creditor from requiring the covered borrower to submit to arbitration.
- Prohibits a creditor from requiring a covered borrower to waive his or her rights under the Servicemembers Civil Relief Act.²⁵
- Prohibits mandatory allotments to repay the loan as a condition for receiving the loan.
- Prohibits a creditor from using the title of a vehicle as security for the obligation involving the consumer credit with exceptions for depository institutions.
- Prohibits a creditor from using a check to access a financial account of covered borrower except in connection with a consumer credit transaction with an MAPR consistent with federal regulations.²⁶

The final rule provides penalties and remedies for covered borrowers and implements enforcement provisions that permit covered borrowers to recover damages from a creditor who violates a requirement of the MLA.²⁷ Any credit agreement that fails to comply with the MLA regulations or contains one or more prohibited provisions under the regulations is void from the inception of the contract.²⁸

State Regulation of Consumer Lending

The Office of Financial Regulation (OFR) has regulatory oversight of state-chartered financial institutions, securities brokers, investment advisers, mortgage loan originators, deferred presentment providers or payday loan lenders, consumer finance companies, title loan lenders, debt collectors, and other financial service entities.

Consumer Finance Loans

The Florida Consumer Finance Act (Chapter 516, F.S.) sets forth licensing requirements for consumer finance lenders and the terms and conditions under which a consumer loan is authorized in Florida. The act sets forth maximum interest rates for consumer finance loans, which are “loan[s] of money, credit, goods, or a 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.²⁹” The maximum 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 provided below:

- 30 percent a year, computed on the first \$3,000 of the principal amount;
- 24 percent a year on that part of principal between \$3,001 to \$4,000; and
- 18 percent per year on that part of principal between \$4,001 to \$25,000.³⁰

²⁵ The act provides for the temporary suspension of judicial and administrative proceedings and transactions that may adversely affect the civil rights of servicemembers during their military service. 50 U.S.C. App. 501 *et. seq.*

²⁶ 32 C.F.R. 232.8.

²⁷ 32 C.F.R. 232.9.

²⁸ *Id.*

²⁹ Section 516.01(2), F.S.

³⁰ Section 516.031(1), F.S.

These principal amounts are the same as the financed amounts determined by the TILA and Regulation Z.³¹ The APR for all loans under the act may equal, but cannot exceed, the APR for the loan as required to be computed and disclosed by the TILA and Regulation Z.³² Lenders are required to provide written disclosures to consumers that include the APR under Regulation Z. Besides the applicable interest rates described above, the act allows consumer finance lenders to charge borrowers the following charges and fees:³³

- Up to \$25 for investigating the credit and character of the borrower;
- A \$25 annual fee on the anniversary date of each line-of-credit account;
- Brokerage fees for certain loans and appraisals of real property offered as security;
- Intangible personal property tax, if secured by a loan note on real property;
- Documentary excise tax and lawful fees;
- Insurance premiums;
- Actual and reasonable attorney fees and court costs;
- Actual and commercially reasonable expenses for recovering the collateral property;
- Delinquency charges of up to \$15 for each payment in default for at least 10 days, if agreed upon in writing before the charge is imposed; and
- A dishonored check charge of up to \$20.

Title Loans

The Florida Title Loan Act (Chapter 537, F.S.) sets forth licensing requirements for title loan lenders and the terms and conditions under which a title loan is authorized in Florida. A title loan is secured through transfer of a motor vehicle certificate of title, with the loan amount dependent on the vehicle's value. Title lenders charge tiered interest rates, based on the principal amount, calculated and disclosed pursuant to Regulation Z.³⁴ The maturity date of a title loan is 30 days after the agreement date, but the loan can be extended for one or more 30-day periods by mutual consent of the lender and the borrower.³⁵ Title lenders are prohibited from selling or charging for any type of insurance in connection with the loan.³⁶

Payday Loans or Deferred Presentment Transactions

Part IV of ch. 560, F.S., regulates deferred presentment providers³⁷ and deferred presentment transactions, which are loans that offer currency or a payment instrument (e.g., electronic funds transfer, check, or money order) in exchange for a person's paycheck up to \$500 and agree to hold it for a specified period. Repayment terms range from a minimum of 7 days to a maximum of 31 days. The maximum allowable fees are 10 percent of the currency or payment instrument provided, as well as a verification fee of up to \$5.00 per transaction. For each transaction, the deferred presentment provider must comply with the disclosure requirements of Regulation Z.

³¹ Section 516.031(2), F.S.

³² *Id.*

³³ Section 516.031(3), F.S.

³⁴ 30 percent of interest on the first \$2,000 of the principal amount, 24 percent on the principal exceeding \$2,000 and not exceeding \$3,000, and 18 percent on the principal amount exceeding \$3,000. [s. 537.011(1), F.S.]

³⁵ Section 537.011(3), F.S.

³⁶ Section 537.013(1)(h), F.S.

³⁷ A deferred presentment provider must be licensed under part II or part III, ch. 560, F.S., as a money services business, and meet other requirements.

Borrowers may have only one active payday loan at a time, but may secure a new loan 24 hours after paying off the original loan.³⁸

Regulation of State Financial Institutions

The Division of Financial Institutions of the OFR charters and regulates entities that engage in financial institution business in Florida in accordance with the Florida Financial Institutions Codes (codes).³⁹ The OFR may examine, investigate, and take disciplinary actions against such state-chartered financial institutions for violation of the codes.⁴⁰

III. Effect of Proposed Changes:

Section 1 authorizes the OFR to deny an application for a consumer finance license or take disciplinary action against a consumer finance lender for violating any provision of the MLA or the federal regulations implementing the MLA in connection with a consumer finance loan made under ch. 516, F.S. Currently, ch. 516 prescribes the calculation of the APR or interest cap pursuant to Regulation Z. The rate cap for loans made to the servicemembers and their dependents would be capped at 36 percent MAPR. The MAPR rate is calculated pursuant to the MLA, which requires the inclusion of additional fees and insurance products that are not included under Regulation Z.

Section 2 provides that a violation of any provision of the MLA or implementing regulations in connection with a title loan made under ch. 537, F.S., is a prohibited act, which would authorize the OFR to take disciplinary action against a title loan lender, or any agent or employee of a title loan lender.

Section 3 authorizes the OFR to take disciplinary action against a money services business, authorized vendor, or affiliated party that violates any provision of the MLA or the implementing regulations in connection with a deferred presentment transaction conducted under part IV of ch. 560, F.S.

Section 4 authorizes the OFR to conduct investigation to determine whether a financial institution, a subsidiary, a service corporation, an affiliate, or other person is engaging in or has engaged in conduct that is a violation of any provision of the MLA or implementing regulations. If the OFR has reason to believe that a person has violated any such provision or regulation, the OFR may initiate a proceeding against such person in accordance s. 655.033 (cease and desist orders), s. 655.034 (injunctive relief), 655.037 (removal of a financial institution affiliated party), or 655.041 (administrative fines and enforcement), F.S.

Section 5 provides that this act applies to a consumer credit transaction or account for consumer credit established on or after October 3, 2016, except it does not apply to a credit card account exempted under 32 C.F.R. s. 232.13(c) until the exemption expires.

³⁸ Section 560.404, F.S.

³⁹ Chapters 655, 657, 658, 660, 663, 665, and 667, F.S.

⁴⁰ These entities are also subject to laws and regulation by various federal entities. For example, the Federal Deposit Insurance Corporation (FDIC) supervises state-chartered banks that are not members of the Federal Reserve System and state-chartered savings associations. The FDIC also insures deposits in banks and savings associations in the event of bank failure. The Federal Reserve Board supervises state-chartered banks that are members of the Federal Reserve System.

Section 6 provides this act takes effect October 3, 2016.

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.

B. Private Sector Impact:

By authorizing the state regulator, the OFR, to enforce the federal Military Lending Act and regulations, servicemembers and their dependents will be provided greater consumer protections in connection with consumer credit transactions in Florida.

C. Government Sector Impact:

According to the OFR, the Division of Consumer Finance would incur additional duties and responsibilities to enforce the MLA and would need two additional FTEs to absorb the added duties. Salaries and benefits for the two positions (Financial Specialists) would total \$126,132.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 516.07, 537.013, and 560.114.

This bill creates section 655.035 of the Florida Statutes.

IX. Additional Information:

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

CS by Banking and Insurance on November 17, 2015:

In addition to issuing a cease and desist order, the CS also authorizes the OFR to seek injunctive relief, to remove a financial-institution-affiliated party, and to impose administrative fines against any financial institution, a subsidiary, a service corporation, an affiliate, or other person subject to the Financial Institutions Code that violates the MLA or the implementing regulations.

- B. **Amendments:**

None.