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 Rules

BILL: CS/SB 386

INTRODUCER: Banking and Insurance Committee and Senator Garcia and others

SUBJECT: Consumer Finance

DATE: February 6, 2018 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Matiyow	Knudson	BI	**Fav/CS**
2.	Harmsen	McKay	CM	**Favorable**
3.	Matiyow	Phelps	RC	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 386 allows consumer finance loans made pursuant to ch. 516, F.S., to be repaid in installments due every 2 weeks, semimonthly, or monthly. Currently, consumer finance loans may only be repaid in monthly installment payments. Additionally, the bill permits a borrower's final payment to be less than his or her prior installments, and sets a maximum delinquency charge, depending on the number of scheduled payments in a month.

II. Present Situation:

The Florida Office of Financial Regulation (OFR) regulates Florida-chartered banks, credit unions, finance companies, other financial institutions, and the securities industry.[1] The OFR's Division of Consumer Finance (division) licenses and regulates non-depository financial service industries and individuals and conducts examinations and complaint investigations of licensed entities to determine compliance with Florida law.[2]

The division regulates consumer finance loans under the Florida Consumer Finance Act, ch. 516, F.S. (the Act). A consumer finance loan, as compared to a traditional loan, is any loan valued at

[1] Section 20.121(3)(a)2., F.S.

[2] Office of Financial Regulation, *Fast Facts*, p. 3 (4th ed. Dec. 2016), *available at* http://www.flofr.com/StaticPages/documents/FastFacts.pdf. *See also*, Office of Financial Regulation, *Welcome to the Division of Consumer Finance*, https://www.flofr.com/StaticPages/DivisionOfConsumerFinance.htm (last visited Jan. 12, 2018).

$25,000 or less, with an interest rate greater than 18 percent per annum.[3] As of November 2017, 174 consumer finance loan companies are licensed at 361 locations in Florida.[4] The Act does not apply to banks, trust companies, building and loan associations, credit unions, or industrial loan and investment companies.[5] Nor does the Act apply to pawn or title loans.[6] A common example of a consumer loan company is an automobile finance company; however, it is not a payday loan, title loan, or retail installment loan company.[7]

Regulatory Restrictions on Consumer Finance Loans

A consumer finance loan may be secured or unsecured, but the Act prohibits lenders from taking a security interest in certain types of collateral.[8]

Consumer finance loans have a tiered interest rate structure such that the maximum interest rate allowed on each tier decreases as principle amounts increase:
- 30 percent per annum computed on the first $3,000;
- 24 percent per annum on principal above $3,000 and up to $4,000; and
- 18 percent per annum on principal above $4,000 and up to $25,000.[9]

This interest rate structure defines "original principal" as the "amount financed" as defined in the federal Truth in Lending Act (TILA)[10] and its implementing rule, "Regulation Z."[11] Therefore, Florida law bases its maximum interest rates for consumer finance loans on the loan principal, minus any prepaid finance charges and any other required deposit balance.[12] Additionally, the interest rate must be computed based on simple interest.[13] If two or more interest rates are applied to a loan's principal,[14] a lender may charge interest at a single annual percentage rate (APR) which would produce a total amount of interest that does not exceed the tiered interest

[3] Section 516.01(2), F.S.
[4] Email from OFR staff (Nov. 29, 2017) (on file with the Senate Committee on Banking and Insurance).
[5] Section 516.02(4), F.S.
[6] Office of Financial Regulation, *Welcome to the Division of Consumer Finance*, https://www.flofr.com/StaticPages/DivisionOfConsumerFinance.htm (last visited Jan. 12, 2018).
[7] Susan Ladika, *How Finance Companies Differ from Credit Cards, Banks* (May 29, 2015), available at http://www.nasdaq.com/article/how-finance-companies-differ-from-credit-cards-banks-cm481759 (last visited Jan. 12, 2018).
[8] *See* s. 516.031(1), F.S. (prohibition on taking a security interest in land for a loan less than $1,000); s. 516.17, F.S. (prohibition on assignment of, or order for payment of, wages given to secure a loan).
[9] Section 516.031(1), F.S. 30% is the maximum interest rate percentage per annum allowed under the Act.
[10] Codified at 15 U.S.C. § 1601 *et seq.*
[11] Currently, the statute references Truth in Lending Act's (TILA) implementing regulations as "Regulation Z of the Board of Governors of the Federal Reserve System." Section 516.031(1), F.S. However, the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, H.R. 4173, 124 Stat. 1376-2223, 111th Cong. (July 21, 2010), commonly referred to as the "Dodd-Frank Act", transferred rulemaking authority for TILA to the Bureau of Consumer Financial Protection, effective July 21, 2011. *See also* Truth in Lending (Regulation Z), 76 CFR § 79768 (Dec. 22, 2011).
[12] "Amount financed" is the amount of the loan principal, less prepaid finance charges and any required deposit balance. 12 CFR §1026.18(b).
[13] Section 516.031(1), F.S.
[14] For example, on a principle amount of $3,500, an interest rate of 30 percent per annum may be applied to $3,000 of the principle amount, and an interest rate of 24 percent per annum may be applied to the remaining $500 of the principal amount.

rate structure above.[15] The APR charged by a lender may not exceed the APR that must be computed and disclosed according to TILA and its implementing regulations.[16]

If consideration for a new loan contract includes the unpaid principal balance of a prior loan with the licensee, then the principal amount of the new loan contract may not include more than 60 days' unpaid interest accrued on the prior loan.[17]

The Act prohibits lenders from directly or indirectly charging borrowers additional fees as a condition of a loan's approval, except for the following permissible fees:

- Up to $25 for investigating a borrower's credit and character;
- A $25 annual fee on the anniversary date of each line-of-credit account;
- Brokerage fees for certain loans, title insurance, and appraisals of real property offered as security;
- Intangible personal property tax on the loan note or obligation if secured by a lien on real property;
- Documentary excise tax and lawful fees for filing, recording, or releasing an instrument securing the loan;
- The premium for any insurance in lieu of perfecting a security interest otherwise required by the licensee in connection with the loan;
- Actual and reasonable attorney fees and court costs;
- Actual and commercially reasonable expenses for repossession, storing, repairing and placing in condition for sale, and selling of any property pledged as security;
- A delinquency charge 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 bad check charge of up to $20.[18]

A licensee may not divide a loan or allow a borrower to take on more than one loan from its business for the purpose of obtaining a greater finance charge than would otherwise be legal.[19]

A licensee may provide optional credit property, credit life, and disability insurance to the borrower, at his or her expense, via a deduction from the principal amount of the loan.[20]

A borrower must repay his or her consumer finance loan in monthly installments that are as nearly equal as mathematically practicable.[21]

III. Effect of Proposed Changes:

The bill permits consumer finance loans made pursuant to ch. 516, F.S., to be repaid in installments due every 2 weeks, semimonthly, or monthly, rather than only monthly under current law. The bill requires that such a loan be repaid in periodic installments and allows the

[15] Section 516.031(1), F.S.
[16] Section 516.031(2), F.S.
[17] Section 516.031(5), F.S.
[18] Section 516.031(3), F.S.
[19] Section 516.031(4), F.S.
[20] Section 516.35(2), F.S.
[21] Section 516.36, F.S. This section does not apply to lines of credit.

final payment may be less than the amount of the prior installments. Lastly, the bill establishes the maximum delinquency charge for each payment in default at least 10 days:

- $15 per default if one payment is due in a month.
- $7.50 per default if two payments are due in a month.
- $5.00 per default if three payments are due in a month.

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:

Although the impact on the private sector is indeterminate, the bill may have a positive effect on the default rate of loans made pursuant to the Act. A member of the industry that operates in multiple states, but not Florida, conducted a study to determine the effect of a monthly repayment schedule compared to a biweekly or semimonthly repayment schedule.[22] In the study, return customers with a low-risk profile and high ability to repay were offered a single monthly payment option instead of a payment schedule every 2 weeks.[23] Customers on a monthly payment schedule had a default rate 25 percent higher than customers on biweekly and semimonthly payment schedules.[24]

If fewer defaults occur among borrowers who are placed on a payment schedule every 2 weeks or semimonthly, then the impact of the bill will be financially positive for both consumers and lenders.

C. Government Sector Impact:

None.

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[22] Email from representative of Oportun, (Nov. 17, 2017) (on file with the Senate Committee on Banking and Insurance).
[23] *Id.*
[24] *Id.*

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends sections 516.031 and 516.36 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 December 5, 2017:
The CS:
- Removed the term "approximately equal" and clarified loans are to be repaid in periodic installments; and
- Established the maximum delinquency charge for each payment in default at least 10 days depending on the number of scheduled payments in a month:
  - $15 per default if one payment is due in a month;
  - $7.50 per default if two payments are due in a month;
  - $5.00 per default if three payments are due in a month.

B. Amendments:

None.