

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 151 Criminal Usury

**SPONSOR(S):** Schwartz and others

**TIED BILLS:** **IDEN./SIM. BILLS:**

	<b>REFERENCE</b>	<b>ACTION</b>	<b>ANALYST</b>	<b>STAFF DIRECTOR</b>
1)	Public Safety & Domestic Security Policy Committee	9 Y, 0 N	Padgett	Kramer
2)	Insurance, Business & Financial Affairs Policy Committee	18 Y, 0 N	Tanner	Cooper
3)	Criminal & Civil Justice Policy Council	12 Y, 0 N	Padgett	Havlicak
4)	Policy Council			
5)				

### SUMMARY ANALYSIS

Currently, s. 687.071, F.S., prohibits criminal usury and is titled, "Criminal usury, loan sharking; shylocking." The term "usury" is not specifically defined, but three circumstances that constitute criminal usury are listed. A person commits a second degree misdemeanor if the person extends credit to another and willfully and knowingly charges that person an interest rate greater than 25% per year, but not greater than 45% per year. A person commits a third degree felony if the person extends credit to another and willfully and knowingly charges an interest rate of greater than 45% per year. A person commits a second degree felony if the person knowingly and willfully makes an extortionate extension of credit to another person.

The term "shylock" is defined synonymously with the term "loan shark" to mean any person who lends money and violates any of the provisions above. The term "shylocking" is defined synonymously with the term "loan sharking" to mean the act of any person who lends money and violates any of the above provisions.

The term "shylock" is derived from a character in William Shakespeare's play, *The Merchant of Venice*. Shylock is a Jewish character who lends money to another character in the play with no interest, but demands "a pound of flesh" in return if the loan is not repaid. The "pound of flesh" Shylock demands as security for the loan is an example of a loan with unfair and abnormally high repayment terms.

The bill deletes the terms, "shylock" and "shylocking" from the title of s. 687.071, F.S., and all other references in the criminal usury statute.

The bill does not have a fiscal impact on state government, local government, or the private sector.

The bill provides an effective date of October 1, 2009.

## HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Present Situation

Currently, s. 687.071, F.S., prohibits criminal usury. Section 687.071, F.S., is titled, "Criminal usury, loan sharking; shylocking."<sup>1</sup> The term "usury" is not specifically defined, but three circumstances that constitute criminal usury are listed.<sup>2</sup> A person commits a second degree misdemeanor<sup>3</sup> if the person extends credit<sup>4</sup> to another and willfully and knowingly charges that person an interest rate greater than 25% per year, but not greater than 45% per year.<sup>5</sup> A person commits a third degree felony<sup>6</sup> if the person extends credit to another and willfully and knowingly charges an interest rate of greater than 45% per year.<sup>7</sup> A person commits a second degree felony<sup>8</sup> if the person knowingly and willfully makes an extortionate extension of credit<sup>9</sup> to another person.

The term "shylock" is defined synonymously with the term "loan shark" to mean any person who lends money and violates any of the provisions above.<sup>10</sup> The term "shylocking" is defined synonymously with the term "loan sharking" to mean the act of any person who lends money and violates any of the above provisions.<sup>11</sup>

The term "shylock" is derived from a character in William Shakespeare's play, *The Merchant of Venice*.<sup>12</sup> Shylock is a Jewish character who lends money to another character in the play with no interest, but demands "a pound of flesh" in return if the loan is not repaid.<sup>13</sup> The "pound of flesh" Shylock demands as security for the loan is an example of a loan with unfair and abnormally high

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<sup>1</sup> Section 687.071, F.S.

<sup>2</sup> *Id.*

<sup>3</sup> A second degree misdemeanor is punishable by up to 60 days in jail and a \$500 fine. Sections 775.082, 775.083, F.S.

<sup>4</sup> Extension of credit is defined to mean to make or renew a loan of money or any agreement for forbearance to enforce the collection of such a loan. Section 687.071(1)(d), F.S.

<sup>5</sup> Section 687.071(2), F.S.

<sup>6</sup> A third degree felony is punishable by up to 5 years imprisonment and a \$5,000 fine. Sections 775.082, 775.083, F.S.

<sup>7</sup> Section 687.071(3), F.S.

<sup>8</sup> A second degree felony is punishable by up to 15 years imprisonment and a \$10,000 fine. Section 775.082, 775.083, 775.084, F.S.

<sup>9</sup> Extortionate extension of credit is defined to mean any extension of credit whereby it is the understanding of the creditor and debtor at the time of the extension of credit is made that the delay in repayment or failure to make repayment could result in the use of violence or other criminal means to cause harm to the person, reputation, or property of any person. Section 687.071(1)(e), F.S.

<sup>10</sup> Section 687.071(1)(f), F.S.

<sup>11</sup> Sections 687.071(1)(g), F.S.

<sup>12</sup> <http://www.online-literature.com/shakespeare/merchant>. Last visited March 2, 2009.

repayment terms.<sup>14</sup> Thus, the term “shylock” has come to be synonymous with a “loan shark,” and “shylocking” has come to mean the act of lending money at illegal or unfair terms.<sup>15</sup>

### Proposed Changes

The bill deletes the terms, “shylock” and “shylocking” from the title of s. 687.071, F.S. and from all other references in the criminal usury statute.

The bill has an effective date of October 1, 2009.

#### B. SECTION DIRECTORY:

Section 1: Amends s. 687.071, F.S., relating to criminal usury.

Section 2: Amends s. 772.102, F.S., relating to definitions.

Section 3: Provides an effective date of October 1, 2009.

## 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:

None.

#### D. FISCAL COMMENTS:

None.

## III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

##### 1. Applicability of Municipality/County Mandates Provision:

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<sup>13</sup> *Id.*

<sup>14</sup> <http://www.bartleby.com/59/4/poundofflesh.html>

<sup>15</sup> <http://www.websters-online-dictionary.org/sh/shylock.html>

The bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The term "loan shark" and "shylock" are defined as any person who violates the criminal penalties in this section. Neither term is used in s. 687.071, F.S. The terms are not used anywhere else in the Florida Statutes. Therefore, it is likely that neither term needs to be defined and could be removed from the section entirely.

#### **IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES**