

By the Committee on Banking and Insurance; and Senator Garcia

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1 A bill to be entitled
2 An act relating to consumer finance; amending s.
3 516.031, F.S.; authorizing a licensee under the
4 Florida Consumer Finance Act to charge, contract for,
5 and receive a specified interest rate on certain
6 loans; authorizing such licensee to make certain loans
7 subject to certain conditions; defining the term
8 "payment transfer"; specifying limitations for
9 delinquency charges; revising a provision authorizing
10 insufficient funds fees under certain circumstances;
11 providing an effective date.

12
13 Be It Enacted by the Legislature of the State of Florida:

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15 Section 1. Subsections (1) and (3) of section 516.031,
16 Florida Statutes, are amended to read:

17 516.031 Finance charge; maximum rates.—

18 (1) INTEREST RATES.—A licensee may lend any sum of money up
19 to \$25,000. A licensee may not take a security interest secured
20 by land on any loan less than \$1,000. The licensee may charge,
21 contract for, and receive thereon interest charges as provided
22 and authorized by this section. If two or more interest rates
23 are applied to the principal amount of a loan, the licensee may
24 charge, contract for, and receive interest at that single annual
25 percentage rate that, if applied according to the actuarial
26 method to each of the scheduled periodic balances of principal,
27 would produce at maturity the same total amount of interest as
28 would result from the application of the two or more rates
29 otherwise permitted, based upon the assumption that all payments

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30 are made as agreed.

31 (a) Except as provided in paragraph (b), the maximum
32 interest rate shall be 30 percent per annum, computed on the
33 first \$3,000 of the principal amount; 24 percent per annum on
34 that part of the principal amount exceeding \$3,000 and up to
35 \$4,000; and 18 percent per annum on that part of the principal
36 amount exceeding \$4,000 and up to \$25,000. The original
37 principal amount as used in this paragraph ~~section~~ is the same
38 as the amount financed as defined by the federal Truth in
39 Lending Act and Regulation Z of the federal Consumer Financial
40 Protection Bureau ~~Board of Governors of the Federal Reserve~~
41 ~~System~~. In determining compliance with the statutory maximum
42 interest and finance charges set forth in this subsection
43 herein, the computations used must ~~shall~~ be simple interest and
44 not add-on interest or any other computations.

45 (b) A licensee may make a loan in a principal amount less
46 than \$5,000 and charge, contract for, and receive interest
47 charges and other charges authorized by this chapter, subject to
48 the following:

49 1. A borrower may rescind the loan by notifying the
50 licensee of such intent, and returning to the licensee the full
51 principal amount of the loan advanced to the borrower, as well
52 as any payments made for ancillary products, within 2 business
53 days after the date the loan is made. The licensee must disclose
54 such right in writing to the borrower before the loan is made.

55 2. A licensee may not take any security interest on the
56 loan.

57 3. The term of the loan may not be less than 120 days or
58 more than 37 months.

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59 4. The maximum annual interest rate of the loan shall be 36
60 percent per annum, computed on the original principal amount of
61 the loan. The interest rate of the loan calculated as of the
62 date the loan is made must be fixed for the life of the loan.
63 The original principal amount of the loan is equal to the amount
64 financed as defined by the federal Truth in Lending Act and
65 Regulation Z of the federal Consumer Financial Protection
66 Bureau. In determining compliance with the statutory maximum
67 interest rate in this paragraph, the computations used must be
68 simple interest and may not be add-on interest or any other
69 computations.

70 5. A licensee may not induce or permit any person to become
71 obligated to the licensee, directly or contingently, or both,
72 under more than one loan with the licensee made under this
73 subsection at the same time.

74 6. A licensee may not refinance a loan made under this
75 paragraph with another loan made under this paragraph, unless
76 the borrower has repaid at least 60 percent of the principal
77 amount of his or her outstanding loan and his or her outstanding
78 loan is not in default. For purposes of this paragraph, the term
79 "refinance" means the replacement or revision of an existing
80 loan contract with a borrower that results in an extension of
81 additional principal to that borrower.

82 7. A licensee shall make a determination of a borrower's
83 ability to repay a loan made under this paragraph by determining
84 that the borrower's residual income will be sufficient for the
85 consumer to make the scheduled payments when due under the loan
86 and meet basic living expenses during the term of the loan. The
87 borrower's residual income must be calculated using net income,

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88 verified by payroll receipts, tax returns, bank statements,
89 benefit letters, or other reliable third party means, less debt
90 payments and basic living expenses. Basic living expenses,
91 including housing and utility costs, may be estimated using any
92 reasonable means or database.

93 8. The licensee must report each borrower's full payment
94 performance under the loan, including positive payment
95 performance, to at least one consumer reporting agency that
96 compiles and maintains files on consumers on a nationwide basis
97 as defined in s. 603(p) of the federal Fair Credit Reporting
98 Act, 15 U.S.C. s. 1681a(p), upon the licensee's acceptance as a
99 data furnisher by that consumer reporting agency.

100 9. Before making the loan, the licensee must disclose in
101 writing to the borrower information about the office's consumer
102 credit counseling services available under s. 516.32.

103 10. A licensee shall make available to the borrower by
104 electronic or physical means, at the time that a payment is made
105 by the borrower, a plain and complete receipt of payment.

106 11.a. A licensee may not initiate a payment transfer from a
107 borrower's bank account in connection with collecting an amount
108 due under the loan after the licensee has attempted to initiate
109 the payment transfer two consecutive times and each attempt
110 resulted in a return indicating that the borrower's bank account
111 lacked sufficient funds. A licensee may collect only one
112 insufficient funds fee for each payment transfer that is
113 dishonored, regardless of whether the payment transfer was
114 initiated and dishonored a second time. A licensee may not
115 condition the making of a loan on the borrower's repayment by
116 one or more electronic funds transfers or predated checks.

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117 b. For purposes of this paragraph, the term "payment
118 transfer" means a debit or funds withdrawal and includes, but is
119 not limited to, an electronic funds transfer as defined in the
120 federal Electronic Funds Transfer Act and Regulation E, 12
121 C.F.R. part 1005, of the federal Consumer Financial Protection
122 Bureau, or a paper check processed through a funds-transfer
123 system, as defined in s. 670.105, or through the Automated
124 Clearing House (ACH) network ~~If two or more interest rates are~~
125 ~~applied to the principal amount of a loan, the licensee may~~
126 ~~charge, contract for, and receive interest at that single annual~~
127 ~~percentage rate which, if applied according to the actuarial~~
128 ~~method to each of the scheduled periodic balances of principal,~~
129 ~~would produce at maturity the same total amount of interest as~~
130 ~~would result from the application of the two or more rates~~
131 ~~otherwise permitted, based upon the assumption that all payments~~
132 ~~are made as agreed.~~

133 (3) OTHER CHARGES.—

134 (a) In addition to the interest, delinquency, and insurance
135 charges provided in this section, further or other charges or
136 amount for any examination, service, commission, or other thing
137 or otherwise may not be directly or indirectly charged,
138 contracted for, or received as a condition to the grant of a
139 loan, except:

140 1. An amount of up to \$25 to reimburse a portion of the
141 costs for investigating the character and credit of the person
142 applying for the loan;

143 2. An annual fee of \$25 on the anniversary date of each
144 line-of-credit account;

145 3. Charges paid for the brokerage fee on a loan or line of

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146 credit of more than \$10,000, title insurance, and the appraisal
147 of real property offered as security if paid to a third party
148 and supported by an actual expenditure;

149 4. Intangible personal property tax on the loan note or
150 obligation if secured by a lien on real property;

151 5. The documentary excise tax and lawful fees, if any,
152 actually and necessarily paid out by the licensee to any public
153 officer for filing, recording, or releasing in any public office
154 any instrument securing the loan, which may be collected when
155 the loan is made or at any time thereafter;

156 6. The premium payable for any insurance in lieu of
157 perfecting any security interest otherwise required by the
158 licensee in connection with the loan if the premium does not
159 exceed the fees which would otherwise be payable, which may be
160 collected when the loan is made or at any time thereafter;

161 7. Actual and reasonable attorney fees and court costs as
162 determined by the court in which suit is filed;

163 8. Actual and commercially reasonable expenses for
164 repossession, storing, repairing and placing in condition for
165 sale, and selling of any property pledged as security; or

166 9. A delinquency charge of up to \$15 for each payment in
167 default for at least 10 days if the charge is agreed upon, in
168 writing, between the parties before imposing the charge. No more
169 than one delinquency charge may be imposed for each payment in
170 default. A maximum delinquency charge of \$15 may be imposed for
171 loans repayable in monthly installments. For loans repayable in
172 installments due less than monthly, the maximum of all
173 delinquency charges imposed during a calendar month may not
174 exceed \$15.

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176 Any charges, including interest, in excess of the combined total
177 of all charges authorized and permitted by this chapter
178 constitute a violation of chapter 687 governing interest and
179 usury, and the penalties of that chapter apply. In the event of
180 a bona fide error, the licensee shall refund or credit the
181 borrower with the amount of the overcharge immediately but
182 within 20 days after the discovery of such error.

183 (b) Notwithstanding ~~the provisions of~~ paragraph (a), any
184 lender of money who receives a check, draft, electronic funds
185 transfer as defined in the federal Electronic Funds Transfer Act
186 and Regulation E of the federal Consumer Financial Protection
187 Bureau, negotiable order of withdrawal, or like instrument or
188 transfer drawn on a bank or other depository institution, which
189 instrument or transfer is given by a borrower as full or partial
190 repayment of a loan, may, if such instrument or transfer is not
191 paid or is dishonored by such institution, make and collect from
192 the borrower an insufficient funds fee ~~a bad check charge~~ of not
193 more than the greater of \$20 or an amount equal to the actual
194 fee charged ~~charge made~~ to the lender by the depository
195 institution for the return of the unpaid or dishonored
196 instrument or transfer.

197 Section 2. This act shall take effect July 1, 2017.