

- ***Retail installment sellers*** who sell goods and services to retail buyers for personal, family, or household use.
- ***Sales finance companies*** who are engaged in the business of purchasing retail installment contracts. (Banks and trust companies may engage in buying retail installment contracts without a license.)
- ***Home improvement finance sellers*** who sell goods or furnishing of services including all labor and materials for home improvement.

There is no requirement in current law that any licensee under chapters 516 or 520, F.S., notify the Department of Banking and Finance in the event that it is the subject of a voluntary or involuntary bankruptcy filing.

Motor vehicle retail installment loans under chapter 520, F.S., are subject to maximum finance charges. Finance charges may be computed on the amount financed, commonly referred to as an “add-on” rate, limited to \$10 per \$100 per year for a new motor vehicle, \$11 per \$100 per year for a vehicle not more than 2 years old, \$15 per \$100 per year for a vehicle not more than 4 years old, and \$17 per \$100 per year for a vehicle more than 4 years old.¹ Alternatively, a motor vehicle retail installment contract may have a finance charge that is calculated on a simple-interest basis equivalent to these maximum finance charges.² On a simple-interest basis, the maximum interest rate ranges from approximately 17% to 27%, depending on the age of the car and the term of the loan.³

In addition to the finance charges, the lender may impose up to \$200 as a processing fee for a motor vehicle automobile retail installment loan.⁴ Also, if the buyer (borrower) pays off the debt in full at any time before maturity, the lender may charge an acquisition fee (prepayment penalty) of \$25 and “refund” to the borrower the same proportion of the finance charge as the sum of the remaining monthly balances bears to the sum of all the monthly balances under the schedule of payments in the contract. This refund is actually a method of calculating interest known as the “rule of 78ths” which, for example, results in the borrower paying approximately 35% of the total finance charges (\$753 of \$2,172) due under a 36-month, \$15,000 loan at a 9% add-on interest rate, if the loan is paid off in 6 months, (in addition to the \$25 fee). However, only those lenders using the add-on interest rate method may charge the \$25 and use the rule of 78ths interest rate calculation. A lender using the simple interest method may charge the maximum \$200 processing

¹ Section 520.08, F.S.

² Section 520.085, F.S.

³ From add-on interest rate tables provided by The Department of Banking and Finance

⁴ Rule 3D-50.075, Fla. Administrative Code

fee, but may not impose the \$25 prepayment fee or use the rule of 78ths interest rate calculation.⁵ Under the same example used above, but applied to a simple interest contract, the borrower would pay approximately 29% of the total finance charges (\$634 of \$2172) if the borrower pays off the loan in 6 months.

Under the interest rate parity statute, banks, credit unions and other licensed lenders and creditors may charge interest on loans at the maximum rate of interest permitted by law to be charged on similar loans by any lender in Florida, subject to other statutory restrictions relating thereto.⁶ Therefore, banks, credit unions, and other licensed lenders make motor vehicle loans subject to the interest rate restrictions of chapter 520, F.S. Typically, banks and credit unions will use the simple interest method authorized under that chapter which allows for a \$200 processing fee, but does not allow for a prepayment penalty, as described above. Sources in the banking industry report that there has been an increase in the number of automobile retail installment sales contracts being prepaid within the first few months of placement, due to solicitation of borrowers from lending institutions that offer a lower interest rate, and the increased access to competitors to new customer loan information via the Internet. The original lender who incurred costs in acquiring and setting up the loan has less profit or loses money if a loan is prepaid within the first several months. Even though a processing fee of \$200 may be charged when initially setting up the loan, market forces have limited the actual fee currently charged to about \$50 to \$75, according to sources in both the banking industry and the department.

III. Effect of Proposed Changes:

Section 1. Amends s. 516.05, F.S., relating to consumer finance licenses. The bill would require that a licensee that is the subject of a voluntary or involuntary bankruptcy filing to report such filing to the Department of Banking and Finance within 7 business days after the filing date.

Section 2. Amends s. 520.085, F.S., relating to simple-interest motor vehicle retail sales finance contracts. The bill allows a licensee (or any other licensed lender pursuant to the interest rate parity statute) that uses the simple interest method of calculating finance charges to impose an “acquisition charge” (a prepayment penalty) for services performed on behalf of the borrower for preparation of the retail installment contracts, not to exceed \$75, if the contract is prepaid in full within 6 months after the effective date of the contract.

Section 3. Creates s. 520.997, F.S., relating to reports of action in bankruptcy. The bill would require that any retail installment seller licensed under chapter 520, (including motor vehicle retail finance sellers, retail installment sellers, sales finance companies, and home improvement finance sellers) that is the subject of a voluntary or involuntary bankruptcy filing to report such filing to the Department of Banking and Finance within 7 business days after the filing date.

⁵ Section 52085(3), F.S.

⁶ Section 687.12, F.S.

Section 4. Effective date of July 1, 1998.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

See Private Sector impact, below.

B. Private Sector Impact:

Persons who take out a motor vehicle finance loan either through a motor vehicle dealer or directly from a bank, credit union, other lending institution that uses a simple interest method of calculating the interest rate, would be subject to a maximum \$75 fee if the loan is paid off within the first 6 months. Lending institutions receiving this fee would be able to offset some of their costs in acquiring and setting up such loans. Even though current law allows up to a \$200 processing fee to set up a motor vehicle loan, current market forces have limited such fees to \$50 to \$75. The additional prepayment fee of \$75 is not likely to significantly discourage prepayment, assuming that any lower interest rate offered to the borrower reduces the interest payments by significantly more than the \$75 fee.

C. Government Sector Impact:

None

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
