

STORAGE NAME: h1139z.fs
DATE: May 18, 2000

****AS PASSED BY THE LEGISLATURE****
CHAPTER #: 2000-127, Laws of Florida

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
FINANCIAL SERVICES
FINAL ANALYSIS**

BILL #: HB 1139
RELATING TO: Consumer finance
SPONSOR(S): Representative Littlefield
TIED BILL(S):

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) FINANCIAL SERVICES YEAS 11 NAYS 0
 - (2)
 - (3)
 - (4)
 - (5)
-

I. SUMMARY:

Florida Statutes regulate entities which are not financial institutions as defined by Ch. 655, F.S., that provide credit agreements for consumer goods and services: Ch. 516, F.S. (Consumer Finance), Ch. 520, F.S. (Retail Installment Sales), and Ch. 627, F.S., Part XV (Premium Finance Companies). Of the chapters listed, only Ch. 516 does not expressly provide for an assessment of a late charge for an account that is delinquent.

The bill permits a consumer finance lender licensed under Ch. 516, F.S., to charge a maximum of \$10 for a consumer loan payment in default for not less than 10 days, if the charge is agreed upon, in writing, between the parties before imposing the charge.

In addition, the bill amends s. 520.07, F.S., revising disclosure requirements for retail installment contracts by moving a subsection that required the lender to disclose (1) the number of scheduled payments, (2) the amount of each payment and, (3) the date of the first payment, from a separate, written itemization document, to the actual contract itself.

This bill does not appear to impact the General Revenue Fund. Although the bill may have some affect on a portion of the financial services industry and consumers of that industry's services, it does not appear to directly impact any state agency or enlarge regulation of the industry.

Please see Part VI. for the history of this bill, and that of the Senate companion bill.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|---|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

Consumer Finance Loan Delinquency Charges

Chapter 687, F.S. (Interest and Usury; Lending Practices), provides for parity among licensed lenders or creditors regarding interest rates. The chapter permits any lender or creditor licensed under Chs. 516 (Consumer finance), 520 (Retail installment sales), 655 (Financial institutions, generally), 657 (Credit unions), 658 (Banks and trust companies), or part XV of 627 (premium finance companies), as well as former chapters 659, 664, or 656, F.S., to charge interest on loans or extensions of credit at the maximum rate of interest permitted by law to be charged on similar loans or extensions of credit made by any lender or creditor in the state, unless otherwise restricted by statute.

While loans and extensions of credit were largely deregulated and made contractual for financial institutions and their customers (Section 655.954, F.S.), other entities that provide credit agreements for consumer goods and services (for example, consumer finance lenders or installment sales retailers) are regulated by the statutory provisions discussed above regarding rates of interest and other charges that may be charged to consumers. Of these various provisions, only Ch. 516, F.S., does not expressly provide for the collection of a delinquency charge for an overdue payment.

Chapter 516, F.S., addresses the licensure and regulation of consumer finance loans. A consumer finance loan is defined to mean a loan of money, credit, goods, or action, including, except as otherwise indicated, provision of a line of credit, in an amount or to a value of \$25,000 or less for which the lender charges, contracts for, collects, or receives interest at a rate greater than 18 percent per year.

Section 516.01, F.S., provides that interest means the cost of obtaining a loan and includes any profit or advantage of any kind whatsoever that a lender may charge, contract for, collect, receive, or obtain, including by means of any collateral sale, purchase, or agreement, as a condition for a loan. Charges, including commissions for insurance written, are not deemed interest.

Section 516.031, F.S., provides a list of other charges which may be charged to a consumer loan customer as a condition to the grant of a loan in addition to the interest and insurance charges provided. For example, a licensee may collect an amount not to exceed

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\$10 for the costs of investigating the credit of an applicant and an annual fee of \$25 on each line-of-credit. This section does not expressly provide for an assessment for a late payment.

Part XV of Ch. 627, F.S. (Premium Finance Companies), permits a licensee to assess a delinquency charge to an installment that is late not less than five days in an amount not to exceed \$10, or five percent of the installment amount, whichever is greater. Section 627.841(1), F.S., further states that “[o]nly one such delinquency and collection charge may be collected on any such installment regardless of the period during which it remains in default.”

Part I of Ch. 520, F.S. (Motor Vehicle Sales Finance), permits holders to charge up to five percent of the installment amount that is late not less than 10 days. Section 520.07(6), F.S. Part II of Chapter 520, F.S. (Retail Installment Sales), provides for a \$10 delinquency charge for each late installment for revolving accounts. Section 520.35(3), F.S. Part IV of Ch. 520, F.S. (Home Improvement Sales and Finance), permits a delinquency charge of not more than five percent of the installment amount that is late by no less than 10 days. Section 520.85, F.S.

According to industry representatives for entities licensed under Chs. 516 and 520, F.S., on an annual basis approximately two to four percent of accounts generated under Ch. 516 are delinquent by not less than 10 days. The industry represents that it spends approximately \$50 in personnel time and equipment costs servicing each account that is 10 to 30 days past due. The industry believes that permitting a \$10 delinquency charge will help the industry recoup some of the costs of servicing delinquent accounts and may provide incentive for account holders to pay on time.

Many other states authorize consumer finance lenders to impose a charge for delinquent loan or installment payments. At least ten states have enacted a version of the Uniform Commercial Credit Code which authorizes such a charge, and many other states otherwise provide for delinquency charges on consumer loans. In Florida’s immediate region, Alabama, Georgia, Louisiana, and Mississippi all allow consumer finance lenders to impose a delinquency charge, though the amounts permitted vary from a maximum of \$5 in Mississippi to a maximum of \$60 in Georgia (this amount represents a charge of \$.05 per \$1 and a maximum loan amount of \$3,000).

Motor Vehicle Sales Contracts

Section 520.07, F.S. (Motor Vehicle Sales Finance - retail installment contracts), prescribes requirements and prohibitions for content of motor vehicle sales contracts. For instance, contracts must contain the amount financed (and provides a formula to calculate the amount), the finance charge, the total of payments, and the total sales price. In addition, the seller must provide a separate, written itemization document which discloses the sales price, the amount of down payment, the difference between the two previous amounts, the amounts for any add-ons, taxes and other fees not included in the cash price, and the number of payments, the amount of each payment, and the date of the first payment.

C. EFFECT OF PROPOSED CHANGES:

A person licensed under Ch. 516, F.S., to make consumer finance loans may charge a maximum of \$10 for a consumer loan payment in default for 10 or more days, if the charge is agreed upon, in writing, between the parties before imposing the charge.

In addition, the bill amends s. 520.07, F.S., revising disclosure requirements for retail installment contracts by moving a subsection that required the lender to disclose (1) the number of scheduled payments, (2) the amount of each payment and, (3) the date of the first payment, from a separate, written itemization document, to the actual contract itself.

D. SECTION-BY-SECTION ANALYSIS:

Section 1. Amends s. 516.031, F.S., permitting a person licensed under Ch. 516, F.S., to make consumer finance loans may charge a maximum of \$10 for a consumer loan payment in default for more than 10 days, if the loan is agreed upon, in writing, between the parties before imposing the charge.

Section 2. Amends s. 520.07, F.S., revising disclosure requirements for retail installment contracts by moving a subsection that required the lender to disclose (1) the number of scheduled payments, (2) the amount of each payment and, (3) the date of the first payment, from a separate, written itemization document, to the actual contract itself.

Section 3. Provides an effective date of July 1, 2000.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

This bill does not appear to impact the General Revenue Fund. Although the bill may have some affect on a portion of the financial services industry and consumers of that industry's services, it does not appear to directly impact any state agency or enlarge regulation of the industry.

2. Expenditures:

N/A

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

N/A

2. Expenditures:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Consumers who execute credit agreements with entities licensed under Ch. 516, F.S., may be required to pay a \$10 fee if they are late paying an installment by not less than 10 days.

According to industry representatives, they expend approximately \$50 in personnel time and equipment servicing each account which is late between 10 to 30 days. This provision will allow the industry to recoup some of that cost. The industry believes the occurrence

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rate of delinquent accounts (between two to four percent, annually) may decrease due to deterrent effect of possible late payment assessments.

D. FISCAL COMMENTS:

N/A

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The bill will not reduce the authority of counties and municipalities to raise revenues.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill will not reduce the state tax shared with counties and municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

Because this bill permits a licensee to charge a maximum of \$10 for a consumer loan payment in default for more than 10 days, only if the loan is agreed upon, in writing, between the parties before imposing the charge, this change may not be imposed upon existing contracts without a written modification negotiated between the parties. Therefore, impairment of existing contracts is not an issue.

B. RULE-MAKING AUTHORITY:

N/A

C. OTHER COMMENTS:

N/A

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

Disposition of the House Bill:

House Bill 1139 was prefiled by Representative Littlefield on February 15, 2000, and referred to the Committee on Financial Services. The Committee passed the bill unanimously on March 7, 2000. On April 12, 2000, the bill was amended on the floor by the bill's sponsor, and the House passed the bill as amended by a vote of 115 - 1. The amendment revised disclosure requirements for retail installment contracts by moving a subsection that required the lender to disclose (1) the number of scheduled payments, (2) the amount of each payment and, (3) the

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date of the first payment, from a separate, written itemization document, to the actual contract itself.

Disposition of Senate Bill:

Senate bill 2028 (Grant) was filed on March 7, 2000, and referred to the Committee on Banking and Insurance on March 9, 2000. The bill was amended to mirror the amended House Bill and passed by Committee unanimously, on March 20, 2000. On April 12, 2000, the House version was substituted for the Senate bill, which was laid on the table, and the House bill was passed by a vote of 39 - 0.

VII. SIGNATURES:

COMMITTEE ON FINANCIAL SERVICES:

Prepared by:

Staff Director:

Michael A. Kliner/William Garner

Susan F. Cutchins

FINAL ANALYSIS PREPARED BY THE COMMITTEE ON FINANCIAL SERVICES:

Prepared by:

Staff Director:

Michael A. Kliner/William Garner

Susan F. Cutchins