

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 2028

SPONSOR: Banking and Insurance Committee and Senator Grant

SUBJECT: Consumer Finance

DATE: March 21, 2000 REVISED: \_\_\_\_\_

|    | ANALYST        | STAFF DIRECTOR     | REFERENCE | ACTION              |
|----|----------------|--------------------|-----------|---------------------|
| 1. | <u>Johnson</u> | <u>Deffenbaugh</u> | <u>BI</u> | <u>Favorable/CS</u> |
| 2. | _____          | _____              | _____     | _____               |
| 3. | _____          | _____              | _____     | _____               |
| 4. | _____          | _____              | _____     | _____               |
| 5. | _____          | _____              | _____     | _____               |

## I. Summary:

The Department of Banking and Finance licenses and regulates consumer finance (ch. 516, F.S.) and retail installment sales (ch. 520, F.S.), which includes motor vehicle sales finance and installment sales finance. A late charge, or delinquent fee, is authorized for the late payment on a retail installment loan made under the provisions of ch. 520, F.S. However, ch. 516, F.S., does not expressly provide for an assessment of a late charge for an account that is delinquent.

The bill authorizes a consumer finance lender licensed under ch. 516, F.S., to charge a maximum fee 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.

The bill also transfers the disclosure requirement relating to the number and the amount of each payment and date of first payment from the separate itemized document to the written contract to conform to federal disclosure requirements.

This bill amends the following sections of the Florida Statutes: 516.031 and 520.07

## II. Present Situation:

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 chs. 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 (s. 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 statutory provisions regarding rates of interest and other fees that may be charged to consumers. Of these various provisions, only ch. 516, F.S., does not expressly provide for the assessment 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 fees 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 \$10 for the costs of investigating the credit of an applicant and an annual fee of \$25 on each line-of-credit. A late payment fee is not expressly authorized in this section.

Subsections (2) and (3) of s. 520.07, F.S., relating to disclosure requirements for retail installment contracts, requires the *contract* to include 1) the amount financed; 2) the finance charge; 3) the total of payments; and 4) the total sale price. A *separate document* must disclose the following information: 1) the cash price; 2) the amount of down payment; 3) the difference between the cash price and the amount of down payment; 4) the amounts for insurance or other benefits; 5) any taxes and official fees not included in the cash price; and 6) the number and amount of scheduled payments, including the date of first payment.

Section 520.07(6), F.S., relating to motor vehicle sales finance, permits holders to charge up to 5 percent of the installment amount that is late not less than 10 days. Section 520.35(3), F.S., relating to retail installment sales, provides for a \$10 delinquency charge for each late installment for revolving accounts. Section 520.85, F.S., relating to home improvement sales and finance, permits a delinquency charge of not more than 5 percent of the installment amount that is late by no less than 10 days.

According to industry representatives for entities licensed under chs. 516 and 520, F.S., approximately 2 - 4 percent of accounts generated under ch. 516 are delinquent by not less than 10 days on an annual basis. The industry represents that it spends approximately \$50 in personnel time and equipment costs servicing each account that is 10 - 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.

### III. Effect of Proposed Changes:

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

**Section 2.** Amends subsections (2) and (3) of section 520.07, F.S., relating to retail installment contract disclosures, to transfer the disclosure relating to the number and amount of payments and the first date of payment from the separate itemization document to the contract. This is consistent with federal truth-in-lending requirements.

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

### IV. Constitutional Issues:

#### A. Municipality/County Mandates Restrictions:

None.

#### B. Public Records/Open Meetings Issues:

None.

#### C. Trust Funds Restrictions:

None.

#### D. Other 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.

### V. Economic Impact and Fiscal Note:

#### A. Tax/Fee Issues:

None.

#### B. Private Sector Impact:

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 10 - 30 days past due. This provision will allow the industry to recoup some of that cost. The industry believes the occurrence rate of delinquent accounts may decrease due to deterrent effect of possible late payment assessments.

By amending s. 520.07, and transferring the disclosure requirements related to payments on retail installment contracts, disclosures will be consistent with federal requirements.

**C. Government Sector Impact:**

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

None.

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

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