

By Senator Baker

20-03683-08

20082638__

1 A bill to be entitled

2 An act relating to credit enhancement loans; providing for
3 the licensure of lenders by the Department of Financial
4 Services; providing penalties for violations; providing
5 for licensure fees, payable to the department; providing
6 licensure requirements; providing the form and contents of
7 a licensure application; requiring that the licensee
8 maintain a minimum net worth; providing for the revocation
9 or suspension of a license; providing loan and interest
10 rate limits; authorizing a licensee to charge certain fees
11 in addition to interest charges; prohibiting multiple
12 loans in certain situations; providing for enforcement of
13 loan agreements; providing for disclosure forms for the
14 customer; providing for reports to credit bureaus;
15 requiring the maintenance of financial records by
16 licensees; prohibiting a licensee from accepting an
17 assignment of earnings from a customer or requiring a
18 customer to execute a confession of judgment; requiring
19 that a licensee maintain records for a specified period
20 and allow the department to examine its records; requiring
21 that certain reports be filed with the department;
22 authorizing the department to adopt rules; authorizing the
23 department to issue subpoenas and compel testimony;
24 providing for desist orders and injunctions; providing for
25 appeals from actions of the department; providing that
26 certain credit enhancement loans are not enforceable;
27 providing an effective date.

28
29 Be It Enacted by the Legislature of the State of Florida:

20-03683-08

20082638__

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31 Section 1. Credit enhancement loans; license required.--

32 (1) (a) A person may not engage in the business of offering
33 credit enhancement loans in amounts of \$3,000 or less or contract
34 for or receive in connection with any credit enhancement loan any
35 fees that, in the aggregate, are greater than authorized by this
36 section. A person may not engage in the business of offering
37 credit enhancement loans without being licensed. The Department
38 of Financial Services shall regulate the credit enhancement loan
39 business and is responsible for the licensure and regulation of
40 persons who offer credit enhancement loans.

41 (b) A person who violates this section commits a
42 misdemeanor of the second degree for a first offense, punishable
43 as provided in s. 775.082 or s. 775.083, Florida Statutes, and
44 commits a misdemeanor of the first degree for a second or
45 subsequent offense, punishable as provided in s. 775.082 or s.
46 775.083, Florida Statutes. Each violation of this section is a
47 separate offense.

48 (c) Any contract for the extension of credit, the making or
49 collecting of which violates this section, except as a result of
50 an accidental error or error of computation, is void. The
51 licensee or any other party in violation has no right to receive
52 or retain any principal or charges pursuant to the transaction.

53 (2) The Department of Financial Services shall issue a
54 license to engage in the credit enhancement loan business to any
55 person who:

56 (a) Has, on a consolidated basis and computed in accordance
57 with generally accepted accounting principles, a minimum net
58 worth of not less than \$1 million;

20-03683-08

20082638__

59 (b) Submits a complete application; and

60 (c) Submits a nonrefundable application fee of \$2,500.

61 (3) The application for licensure shall be made on a
62 departmental form, sworn to, and shall state:

63 (a) That the applicant desires to engage in the credit
64 enhancement loan business;

65 (b) Whether the applicant is an individual, partnership,
66 association, corporation, or other legal entity;

67 (c) The name and address of the person who will manage and
68 be in immediate control of the business;

69 (d) Except for publicly held corporations and their
70 operating subsidiaries, the names and addresses of the owners of
71 the business and their percentage of equity in the business; and

72 (e) The date upon which the applicant proposes to commence
73 operations.

74 (4) (a) The department shall act on a completed license
75 application within 90 days after the application is submitted.
76 The department shall notify the applicant when the application is
77 complete and may extend the 90-day period with the written
78 consent of the applicant. If the department does not approve,
79 deny, or grant an extension within 90 days, the application is
80 deemed approved and the department shall issue the license
81 immediately thereafter.

82 (b) If the applicant does not satisfy the conditions for
83 licensure, the department shall notify the applicant in writing
84 of the denial, specifying the findings of fact and reasons for
85 the denial. The applicant may request an informal hearing on the
86 decision, in writing, within 30 days after receipt of the
87 notification. The department shall reconsider the application

20-03683-08

20082638__

88 and, after the hearing, shall issue a written order granting or
89 denying the application.

90 (5) A licensee shall maintain, on a consolidated basis, a
91 minimum net worth of \$1 million at all times. The failure to
92 maintain this minimum net worth is grounds for revocation of a
93 license.

94 (6) A licensee may operate only at locations that are
95 approved by the department. A change of location may not be made
96 without prior written notice to and approval by the department.
97 The department may issue more than one license to the same
98 licensee for multiple business locations.

99 (7) If a change occurs in the name or address of the
100 licensee, the legal agent of a licensed corporation, or the
101 ownership of more than 5 percent of a licensee that is not a
102 natural person, the licensee shall file a sworn statement of the
103 change with the department within 30 days after such change.

104 (8) (a) The department may revoke or suspend a license if it
105 finds, after due notice and a hearing, that the licensee or an
106 officer, director, agent, or employee of the licensee:

107 1. Materially failed to comply with any rule or order of
108 the department;

109 2. Materially failed or refused to make any required
110 report;

111 3. Failed to pay any required fee; or

112 4. Knowingly furnished false or misleading information to
113 the department.

114 (b) Within 5 days after the entry of an order revoking or
115 suspending a license, the department shall file the findings of
116 fact and mail a copy to the licensee. Upon receipt of the order,

20-03683-08

20082638__

117 the licensee shall immediately surrender the license certificate
118 to the department.

119 (9) (a) The license of a licensee who does not make any
120 extensions of credit for 1 year after being licensed is
121 automatically void and must be surrendered to the department.

122 (b) A licensee may voluntarily surrender a license by
123 delivering it to the department with written notice of the
124 surrender.

125 (c) The revocation, suspension, or surrender of a license
126 does not affect the obligation of any preexisting contract
127 between the licensee and an obligor or the licensee's liability
128 for acts committed prior to the revocation, suspension, or
129 surrender.

130 (d) The department may reinstate a suspended license or
131 reissue a license to a person whose license has been revoked if
132 it determines that no fact or condition exists which justifies a
133 refusal to reissue or reinstate the license.

134 (10) A credit enhancement loan may not exceed \$3,000 or
135 have an interest rate greater than 19.9 percent per annum and
136 must meet the following criteria:

137 (a) Loan interest shall be at the single simple interest
138 rate applied to the outstanding balance that would earn the same
139 amount of interest as the initial rate for payment, according to
140 a schedule.

141 (b) Interest may not be paid or deducted in advance or
142 compounded.

143 (c) Interest on extensions of credit shall be computed:

144 1. Only as a percentage of the unpaid principal balance or
145 portion of the unpaid principal balance; and

20-03683-08

20082638__

146 2. On the basis of the number of days actually elapsed.

147 (d) If any consideration for the loan is the unpaid
148 principal balance of a prior credit enhancement loan, the
149 principal amount payable under a new loan may include the unpaid
150 interest on the prior loan which accrued within 90 days before
151 the new loan was made.

152 (e) For the purpose of computing interest, a day is 1/365
153 of a year.

154 (f) Payments shall be applied in order, first to any
155 accrued fees, then interest, and then principal. Any part of the
156 principal balance of a loan may be prepaid at any time without
157 penalty.

158 (g) Minimum principal payment requirements are 4 percent of
159 the loan amount or \$25, whichever is greater. Customers shall be
160 billed monthly, at a minimum.

161 (h) In addition to the interest authorized by this section,
162 a credit enhancement loan may have:

163 1. A maximum annual processing fee of \$180, amortized in 12
164 equal installments;

165 2. A maximum one-time underwriting fee of \$10;

166 3. A maximum monthly maintenance fee of \$15;

167 4. A maximum late payment fee of \$25;

168 5. A maximum returned-check fee of \$30; and

169 6. A minimum term of 3 months.

170 (i) A licensee shall report, on a periodic basis and based
171 on accepted industry standards, credit-related data as incurred
172 and without discrimination to major credit bureaus in order to
173 assist customers who pay in a timely manner rebuild their credit
174 histories.

20-03683-08

20082638__

175 (j) A licensee shall endeavor to graduate customers to more
176 favorable interest rates or terms, based on positive payment
177 histories, in a manner submitted by the licensee and approved by
178 the department.

179 (k) When a customer applies for a loan, the licensee shall
180 provide information about consumer credit enhancement products to
181 inform the consumer of the importance of improving his or her
182 credit score. The information shall include:

183 1. Information about how making timely payments will help
184 raise the consumer's overall credit score and could lead to
185 better rates or terms.

186 2. Information about how making payments late will lower
187 the consumer's credit score.

188 3. Locations where the consumer can get free financial
189 literacy information.

190 (l) A licensee shall offer and encourage its customers to
191 participate in programs designed to enhance their financial
192 literacy.

193 (m) If a monetary judgment is obtained against any person
194 on a credit enhancement loan, neither the judgment nor the loan
195 balance may carry, from the date of the judgment, interest in
196 excess of 8 percent per annum.

197 (n) A licensee shall determine the credit worthiness of
198 each customer applying for a loan according to industry-accepted
199 or proprietary credit models.

200 (o) A licensee may not make credit enhancement loans in one
201 office to a customer who has an outstanding credit enhancement
202 loan from another office operated by the licensee or by another
203 licensee that is an affiliate, parent, or subsidiary of the

20-03683-08

20082638__

204 licensee, or that is under the same ownership, management, or
205 control as the licensee.

206 (p) A licensee may service loans and modify the terms of
207 the loans at any office operated by that licensee regardless of
208 where the loan was originated.

209 (11) (a) A licensee may not accept an assignment of earnings
210 of a customer for payment or as security for payment of a credit
211 enhancement loan. Any assignment of earnings is void and
212 unenforceable by the assignee and is revocable by the customer.
213 However, a customer may agree to repay the loan through automatic
214 payroll deduction, direct withdrawal from a checking account, or
215 other automatic repayment plan.

216 (b) An agreement between a licensee and a customer pursuant
217 to a credit enhancement loan pertaining to default by the
218 customer is enforceable only to the extent that the customer
219 fails to make a payment as required by the agreement.

220 (c) A licensee may not deny a credit enhancement loan or
221 discriminate in the amount, duration, application procedure, or
222 other terms or conditions of the loan or services based on the
223 race, color, religion, national origin, gender, or marital status
224 of the applicant or any other person connected with the
225 transaction.

226 (d) A credit enhancement loan or service made pursuant to
227 this section may not provide for payment of attorney's fees by
228 the customer.

229 (e) A credit enhancement loan may not be secured by real
230 property.

231 (f) A licensee may not engage in any unfair method of
232 competition or unfair or deceptive trade practice in providing

20-03683-08

20082638__

233 credit enhancement loans or services or in collecting money
234 allegedly owed by a customer.

235 (12) At the time a credit enhancement loan is offered to a
236 customer, the licensee shall deliver to the customer a written
237 statement, showing in clear and distinct terms:

238 (a) The name and address of the licensee and one of the
239 primary obligors on the loan;

240 (b) The date of the contract;

241 (c) A schedule of required payments;

242 (d) All applicable interest rates; and

243 (e) Any available financial literacy materials.

244 (13) At each business location a licensee shall have
245 available to the customer, on a departmental form, a complete and
246 accurate schedule of charges on all credit enhancement loans it
247 offers. A copy of the schedule shall be filed with the
248 department.

249 (14) A licensee may not require a customer to agree to or
250 execute any confession of judgment or power of attorney in favor
251 of the licensee or any other person. Any document executed in
252 violation of this subsection is void.

253 (15) (a) A licensee may not advertise, display, distribute,
254 telecast, or broadcast false, misleading, or deceptive statements
255 or representations regarding rates, terms, or conditions of
256 credit enhancement loans. Charges or rates, if stated by a
257 licensee, shall be stated completely and clearly in a manner that
258 the department deems necessary to prevent any misunderstanding by
259 a prospective customer.

260 (b) The department may permit or require licensees to refer
261 in their advertising to the fact that the credit enhancement loan

20-03683-08

20082638__

262 business is under state supervision and subject to conditions
263 required by the department in order to prevent an erroneous
264 impression as to the scope or degree of protection provided by
265 the department or pursuant to this section.

266 (16) (a) A licensee shall maintain for 2 years all financial
267 books and records directly relating to credit enhancement loans
268 made as reasonably required by the department. The department may
269 examine the records at any reasonable time in order to determine
270 whether the licensee is complying with this section and the rules
271 adopted to administer this section.

272 (b) The required financial books and records may be
273 maintained in any form authorized by the department, but the
274 books and records of each office shall be clearly segregated. If
275 a licensee maintains its financial books and records outside this
276 state, the licensee shall make them available for examination at
277 the place where they are maintained and shall pay for all
278 reasonable and necessary expenses incurred by the department in
279 conducting an examination.

280 (c) If the data processing for a licensee is performed by a
281 person other than the licensee, the licensee shall execute and
282 provide to the department a copy of an agreement between the
283 licensee and the data processor which allows the department to
284 examine that data processor's activities and records pertaining
285 to the licensee to the same extent as if the data processing
286 services were performed by the licensee on its premises.

287 (d) A licensee shall reimburse the department for all costs
288 and expenses incurred by the department in conducting an
289 examination.

290 (e) A licensee shall file an annual report with the

20-03683-08

20082638__

291 department on or before March 31 for the 12-month period ending
292 the preceding December 31 on departmental forms. The report shall
293 disclose in detail and under appropriate headings any changes in
294 the information contained in the original license application and
295 other information necessary to show that the licensee is in
296 compliance with this section. Reports shall be verified by oath
297 or affirmation of the owner, manager, president, vice president,
298 cashier, secretary, or treasurer of the licensee.

299 (f) If a licensee conducts another business or is
300 affiliated with other licensees or if any other situation exists
301 under which expense allocations are necessary, the licensee shall
302 make that allocation according to appropriate and generally
303 accepted accounting principles.

304 (17) The department may adopt rules to administer this
305 section.

306 (18) The department may issue subpoenas and compel the
307 attendance of witnesses, administer oaths, conduct hearings, and
308 transcribe testimony necessary to discharge its duties under this
309 section.

310 (19) (a) If the department has reasonable cause, supported
311 by credible evidence, to believe that a person is violating this
312 section, it may, in addition to all actions authorized in this
313 section and without prejudice to those actions, enter an order
314 requiring the person to desist or refrain from such violation. An
315 action may also be brought to enjoin the person from engaging in
316 or continuing the violation. In such action, an order or judgment
317 may be entered awarding a preliminary or final injunction.

318 (b) In addition to other means provided by law for the
319 enforcement of a restraining order or injunction, the court in

20-03683-08

20082638__

320 which the action is brought may impound property and appoint a
321 receiver for the property and business of the defendant,
322 including any records that the court deems reasonably necessary
323 to prevent violations of this section. The receiver shall have
324 those powers and duties pertaining to custody, collection,
325 administration, winding up, and liquidation of the property and
326 business as conferred upon him or her by the court.

327 (20) Any person aggrieved by a rule or order of the
328 department may appeal to the department for review upon giving
329 notice in writing within 60 days after such rule or order is
330 adopted. The appeal shall be conducted pursuant to chapter 120,
331 Florida Statutes.

332 (21) A credit enhancement loan made outside this state
333 after July 1, 2008, in the amount of or value of \$3,000 or less
334 which carries greater consideration or charges than authorized by
335 this section is not enforceable in this state.

336 Section 2. This act shall take effect July 1, 2008.