

1                                   A bill to be entitled  
 2           An act relating to nonrecourse loans; amending s. 516.01,  
 3           F.S.; providing a definition; amending s. 516.031, F.S.;  
 4           authorizing licensees to charge and receive interest and a  
 5           monthly administrative fee in nonrecourse loan  
 6           transactions; providing limitations; amending s. 516.15,  
 7           F.S.; requiring licensees in a nonrecourse loan  
 8           transaction to submit certain information to major credit  
 9           reporting agencies; prohibiting a licensee from reporting  
 10          certain adverse information about the borrower under  
 11          certain circumstances; providing an effective date.

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

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 15           Section 1. Section 516.01, Florida Statutes, is amended to  
 16           read:

17           516.01 Definitions.--As used in this chapter, the term:

18           (1)~~(3)~~ "Commission" means the Financial Services  
 19           Commission.

20           (2)~~(1)~~ "Consumer finance borrower" or "borrower" means a  
 21           person who has incurred either direct or contingent liability to  
 22           repay a consumer finance loan or a nonrecourse loan.

23           (3)~~(2)~~ "Consumer finance loan" means a loan of money,  
 24           credit, goods, or choses in action, including, except as  
 25           otherwise specifically indicated, provision of a line of credit,  
 26           in an amount or to a value of \$25,000 or less for which the  
 27           lender charges, contracts for, collects, or receives interest at  
 28           a rate greater than 18 percent per annum.

29        (4)~~(8)~~ "Control person" means an individual, partnership,  
30 corporation, trust, or other organization that possesses the  
31 power, directly or indirectly, to direct the management or  
32 policies of a company, whether through ownership of securities,  
33 by contract, or otherwise. A person is presumed to control a  
34 company if, with respect to a particular company, that person:

35            (a) Is a director, general partner, or officer exercising  
36 executive responsibility or having similar status or functions;

37            (b) Directly or indirectly may vote 10 percent or more of  
38 a class of a voting security or sell or direct the sale of 10  
39 percent or more of a class of voting securities; or

40            (c) In the case of a partnership, may receive upon  
41 dissolution or has contributed 10 percent or more of the  
42 capital.

43        (5) "Interest" means the cost of obtaining a consumer  
44 finance loan and includes any profit or advantage of any kind  
45 whatsoever that a lender may charge, contract for, collect,  
46 receive, or in anywise obtain, including by means of any  
47 collateral sale, purchase, or agreement, as a condition for a  
48 consumer finance loan. Charges specifically permitted by this  
49 chapter, including commissions received for insurance written as  
50 permitted by this chapter, shall not be deemed interest.

51        (6) "License" means a permit issued under this chapter to  
52 make and collect loans in accordance with this chapter at a  
53 single place of business.

54        (7) "Licensee" means a person to whom a license is issued.

55        (8) "Nonrecourse loan" means a loan of \$5,000 or less that  
56 is unsecured or may be secured by the personal property of the

57 borrower, that has a term of not more than 3 years, that fully  
 58 amortizes over the term of the loan, and for which the borrower  
 59 has no liability beyond the property that is security for the  
 60 loan if such loan is secured, except in the instance of fraud.

61 (9)(4) "Office" means the Office of Financial Regulation  
 62 of the commission.

63 Section 2. Subsections (2) through (5) of section 516.031,  
 64 Florida Statutes, are renumbered as subsections (3) through (6),  
 65 respectively, a new subsection (2) is added to that section, and  
 66 present paragraph (a) of subsection (3) of that section is  
 67 amended, to read:

68 516.031 Finance charge; maximum rates.--

69 (2) NONRECOURSE LOAN.--In a nonrecourse loan transaction,  
 70 every licensee may charge, contract for, and receive interest  
 71 not to exceed 48 percent per annum on the outstanding principal  
 72 balance of the nonrecourse loan plus a monthly administrative  
 73 fee not to exceed 10 percent per month on the outstanding  
 74 principal balance of the nonrecourse loan

75 (4)(3) OTHER CHARGES.--

76 (a) In addition to the interest, administrative fee,  
 77 delinquency, and insurance charges herein provided for, no  
 78 further or other charges or amount whatsoever for any  
 79 examination, service, commission, or other thing or otherwise  
 80 shall be directly or indirectly charged, contracted for, or  
 81 received as a condition to the grant of a loan, except:

82 1. An amount not to exceed \$25 to reimburse a portion of  
 83 the costs for investigating the character and credit of the  
 84 person applying for the loan;

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

87           3. Charges paid for brokerage fee on a loan or line of  
88 credit of more than \$10,000, title insurance, and the appraisal  
89 of real property offered as security when paid to a third party  
90 and supported by an actual expenditure;

91           4. Intangible personal property tax on the loan note or  
92 obligation when secured by a lien on real property;

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

98           6. The premium payable for any insurance in lieu of  
99 perfecting any security interest otherwise required by the  
100 licensee in connection with the loan, if the premium does not  
101 exceed the fees which would otherwise be payable, which premium  
102 may be collected when the loan is made or at any time  
103 thereafter;

104           7. Actual and reasonable attorney's fees and court costs  
105 as determined by the court in which suit is filed;

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

109           9. A delinquency charge not to exceed \$10 for each payment  
110 in default for a period of not less than 10 days, if the charge  
111 is agreed upon, in writing, between the parties before imposing  
112 the charge.

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114 Any charges, including interest, in excess of the combined total  
115 of all charges authorized and permitted by this chapter  
116 constitute a violation of chapter 687 governing interest and  
117 usury, and the penalties of that chapter apply. In the event of  
118 a bona fide error, the licensee shall refund or credit the  
119 borrower with the amount of the overcharge immediately but  
120 within 20 days from the discovery of such error.

121 Section 3. Subsection (5) is added to section 516.15,  
122 Florida Statutes, to read:

123 516.15 Duties of licensee.--Every licensee shall:

124 (5) In a nonrecourse loan transaction, provided the  
125 borrower repays the loan pursuant to loan requirements, submit  
126 to a major credit reporting agency information confirming the  
127 borrower's satisfactory repayment of the loan. The licensee may  
128 not report any adverse information about the borrower to a major  
129 credit reporting agency relating to such a loan except in the  
130 event of fraud on the part of the borrower.

131 Section 4. This act shall take effect July 1, 2009.