

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; providing an
 7 effective date.

8
 9 Be It Enacted by the Legislature of the State of Florida:

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 11 Section 1. Section 516.01, Florida Statutes, is amended to
 12 read:

13 516.01 Definitions.--As used in this chapter, the term:
 14 (1)~~(3)~~ "Commission" means the Financial Services
 15 Commission.

16 (2)~~(1)~~ "Consumer finance borrower" or "borrower" means a
 17 person who has incurred either direct or contingent liability to
 18 repay a consumer finance loan or a nonrecourse loan.

19 (3)~~(2)~~ "Consumer finance loan" means a loan of money,
 20 credit, goods, or choses in action, including, except as
 21 otherwise specifically indicated, provision of a line of credit,
 22 in an amount or to a value of \$25,000 or less for which the
 23 lender charges, contracts for, collects, or receives interest at
 24 a rate greater than 18 percent per annum.

25 (4)~~(8)~~ "Control person" means an individual, partnership,
 26 corporation, trust, or other organization that possesses the
 27 power, directly or indirectly, to direct the management or
 28 policies of a company, whether through ownership of securities,

29 | by contract, or otherwise. A person is presumed to control a
 30 | company if, with respect to a particular company, that person:

31 | (a) Is a director, general partner, or officer exercising
 32 | executive responsibility or having similar status or functions;

33 | (b) Directly or indirectly may vote 10 percent or more of
 34 | a class of a voting security or sell or direct the sale of 10
 35 | percent or more of a class of voting securities; or

36 | (c) In the case of a partnership, may receive upon
 37 | dissolution or has contributed 10 percent or more of the
 38 | capital.

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

47 | (6) "License" means a permit issued under this chapter to
 48 | make and collect loans in accordance with this chapter at a
 49 | single place of business.

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

51 | (8) "Nonrecourse loan" means a loan of \$5,000 or less that
 52 | is unsecured or may be secured by the personal property of the
 53 | borrower, that has a term of not more than 3 years, that fully
 54 | amortizes over the term of the loan, and for which the borrower
 55 | has no liability beyond the property that is security for the
 56 | loan if such loan is secured, except in the instance of fraud.

57 ~~(9)(4)~~ "Office" means the Office of Financial Regulation
58 of the commission.

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

64 516.031 Finance charge; maximum rates.--

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

71 ~~(4)(3)~~ OTHER CHARGES.--

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

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

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

83 3. Charges paid for brokerage fee on a loan or line of
84 credit of more than \$10,000, title insurance, and the appraisal

85 of real property offered as security when paid to a third party
 86 and supported by an actual expenditure;

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

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

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

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

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

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

109
 110 Any charges, including interest, in excess of the combined total
 111 of all charges authorized and permitted by this chapter
 112 constitute a violation of chapter 687 governing interest and

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113 | usury, and the penalties of that chapter apply. In the event of
114 | a bona fide error, the licensee shall refund or credit the
115 | borrower with the amount of the overcharge immediately but
116 | within 20 days from the discovery of such error.

117 | Section 3. This act shall take effect July 1, 2009.