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LEGISLATIVE ACTION

Senate

.

House

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Floor: WD/2R

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04/28/2009 04:11 PM

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Senator Haridopolos moved the following:

Senate Amendment (with title amendment)

Between lines 1759 and 1760

insert:

Section 22. Section 516.01, Florida Statutes, is amended to read:

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

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

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



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13 (3)~~(2)~~ "Consumer finance loan" means a loan of money,
14 credit, goods, or choses in action, including, except as
15 otherwise specifically indicated, provision of a line of credit,
16 in an amount or to a value of \$25,000 or less for which the
17 lender charges, contracts for, collects, or receives interest at
18 a rate greater than 18 percent per annum.

19 (4)~~(8)~~ "Control person" means an individual, partnership,
20 corporation, trust, or other organization that possesses the
21 power, directly or indirectly, to direct the management or
22 policies of a company, whether through ownership of securities,
23 by contract, or otherwise. A person is presumed to control a
24 company if, with respect to a particular company, that person:

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

27 (b) Directly or indirectly may vote 10 percent or more of a
28 class of a voting security or sell or direct the sale of 10
29 percent or more of a class of voting securities; or

30 (c) In the case of a partnership, may receive upon
31 dissolution or has contributed 10 percent or more of the
32 capital.

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

41 (6) "License" means a permit issued under this chapter to



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42 make and collect loans in accordance with this chapter at a
43 single place of business.

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

45 (8) "Nonrecourse loan" means a loan of \$5,000 or less that
46 is unsecured or may be secured by the personal property of the
47 borrower, that has a term of not more than 3 years, that fully
48 amortizes over the term of the loan, and for which the borrower
49 has no liability beyond the property that is security for the
50 loan if such loan is secured, except in the instance of fraud.

51 (9)~~(4)~~ "Office" means the Office of Financial Regulation of
52 the commission.

53 Section 23. Subsections (2) through (5) of section 516.031,
54 Florida Statutes, are renumbered as subsections (3) through (6),
55 respectively, a new subsection (2) is added to that section, and
56 present paragraph (a) of subsection (3) of that section is
57 amended, to read:

58 516.031 Finance charge; maximum rates.-

59 (2) NONRECOURSE LOAN.-In a nonrecourse loan transaction,
60 every licensee may charge, contract for, and receive interest
61 not to exceed 48 percent per annum on the outstanding principal
62 balance of the nonrecourse loan plus a monthly administrative
63 fee not to exceed 10 percent per month on the outstanding
64 principal balance of the nonrecourse loan

65 (4)~~(3)~~ OTHER CHARGES.-

66 (a) In addition to the interest, administrative fee,
67 delinquency, and insurance charges herein provided for, no
68 further or other charges or amount whatsoever for any
69 examination, service, commission, or other thing or otherwise
70 shall be directly or indirectly charged, contracted for, or



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- 71 received as a condition to the grant of a loan, except:
- 72 1. An amount not to exceed \$25 to reimburse a portion of
- 73 the costs for investigating the character and credit of the
- 74 person applying for the loan;
- 75 2. An annual fee of \$25 on the anniversary date of each
- 76 line-of-credit account;
- 77 3. Charges paid for brokerage fee on a loan or line of
- 78 credit of more than \$10,000, title insurance, and the appraisal
- 79 of real property offered as security when paid to a third party
- 80 and supported by an actual expenditure;
- 81 4. Intangible personal property tax on the loan note or
- 82 obligation when secured by a lien on real property;
- 83 5. The documentary excise tax and lawful fees, if any,
- 84 actually and necessarily paid out by the licensee to any public
- 85 officer for filing, recording, or releasing in any public office
- 86 any instrument securing the loan, which fees may be collected
- 87 when the loan is made or at any time thereafter;
- 88 6. The premium payable for any insurance in lieu of
- 89 perfecting any security interest otherwise required by the
- 90 licensee in connection with the loan, if the premium does not
- 91 exceed the fees which would otherwise be payable, which premium
- 92 may be collected when the loan is made or at any time
- 93 thereafter;
- 94 7. Actual and reasonable attorney's fees and court costs as
- 95 determined by the court in which suit is filed;
- 96 8. Actual and commercially reasonable expenses of
- 97 repossession, storing, repairing and placing in condition for
- 98 sale, and selling of any property pledged as security; or
- 99 9. A delinquency charge not to exceed \$10 for each payment



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100 in default for a period of not less than 10 days, if the charge
101 is agreed upon, in writing, between the parties before imposing
102 the charge.

103
104 Any charges, including interest, in excess of the combined total
105 of all charges authorized and permitted by this chapter
106 constitute a violation of chapter 687 governing interest and
107 usury, and the penalties of that chapter apply. In the event of
108 a bona fide error, the licensee shall refund or credit the
109 borrower with the amount of the overcharge immediately but
110 within 20 days from the discovery of such error.

111
112 ===== T I T L E A M E N D M E N T =====

113 And the title is amended as follows:

114 Delete line 136

115 and insert:

116 requirement; amending s. 516.01, F.S.; providing a definition;
117 amending s. 516.031, F.S.; authorizing licensees to charge and
118 receive interest and a monthly administrative fee in nonrecourse
119 loan transactions; providing limitations; providing an effective
120 date.