

HB 1425

2016

1 A bill to be entitled

2 An act relating to consumer finance; creating s.  
3 516.40; creating the Increased Access to Responsible  
4 Small-Dollar Loans Pilot Program within the Office of  
5 Financial Regulation; providing definitions; requiring  
6 persons charging fees or using referral partners under  
7 the pilot program to obtain a license; providing  
8 licensing requirements; providing fee requirements;  
9 providing conditions and requirements for small loan  
10 licensees; providing loan requirements; providing  
11 disclosure requirements; providing requirements  
12 related to loan payment receipts; authorizing a small  
13 loan licensee to contract with a referral partner for  
14 certain purposes; regulating the activities and  
15 compensation of referral partners; providing  
16 recordkeeping requirements; requiring the office to  
17 examine licensees and referral partners; requiring  
18 licensees to reimburse the office for examination  
19 costs; providing grounds for disciplinary action;  
20 providing reporting requirements; providing for  
21 expiration of the pilot program; providing an  
22 effective date.

23  
24 Be It Enacted by the Legislature of the State of Florida:

25  
26 Section 1. Section 516.40, Florida Statutes, is created to

27 read:

28 516.40 Increased Access to Responsible Small-Dollar Loans  
29 Pilot Program.—

30 (1) There is created within the Office of Financial  
31 Regulation the Increased Access to Responsible Small-Dollar  
32 Loans Pilot Program. The purpose of the program is to fulfill  
33 consumer demand for loans with a principal amount of \$3,000 or  
34 less and improve consumers' credit ratings through these  
35 installment loans.

36 (2) DEFINITIONS.—As used in this section, the term:

37 (a) "Borrower" means a person who incurs either direct or  
38 contingent liability to repay a small loan.

39 (b) "Consumer reporting agency" has the same meaning as  
40 provided in 15 U.S.C. s. 1681a(p).

41 (c) "Credit score" has the same meaning as provided in s.  
42 626.9741.

43 (d) "Data furnisher" means a creditor that furnishes  
44 information to a consumer reporting agency.

45 (e) "Pilot program" means the Increased Access to  
46 Responsible Small-Dollar Loans Pilot Program.

47 (f) "Referral partner" means a person who directly or  
48 indirectly solicits or offers to solicit a small loan and  
49 accepts or offers to accept an application for a small loan. A  
50 referral partner is not a loan broker as defined in s. 687.14 or  
51 a credit service organization as defined in s. 817.7001.

52 (g) "Small loan" means a loan made pursuant to this

53 section.

54 (h) "Small loan license" or "license" means a license  
55 issued under this section to provide small loans.

56 (i) "Small loan licensee" or "licensee" means a person to  
57 whom a small loan license is issued.

58 (3) SMALL LOAN LICENSE; FEES.—A person may not impose any  
59 charges or fees or use a referral partner pursuant to this  
60 section without a valid small loan license. A person may apply  
61 for and obtain a small loan license pursuant to ss. 516.03 and  
62 516.05, with the following exceptions:

63 (a) A small loan license may be issued for more than one  
64 physical location if the licensee offers and accepts loan  
65 applications only through its website.

66 (b) An applicant must be a data furnisher with a consumer  
67 reporting agency at the time of application. However, the office  
68 may issue a small loan license to an applicant if the office  
69 reasonably believes that the applicant will qualify as a data  
70 furnisher within 6 months after receiving a small loan license.  
71 If the applicant fails to become a data furnisher within 6  
72 months after receiving a license, the office must revoke the  
73 small loan license.

74 (c) The small loan license fee shall be an amount  
75 necessary to cover the expenses of administering this section.

76 (4) SMALL LOANS.—A small loan licensee must comply with  
77 this chapter unless otherwise specifically provided by this  
78 section.

79        (a) A small loan licensee must offer consumer credit  
80 counseling services provided by the office or credit education  
81 programs offered by an independent third party to a prospective  
82 borrower during the loan application process. Such educational  
83 programs shall be provided to a prospective borrower free of  
84 charge. Attendance of such a program is not a condition of  
85 obtaining a small loan.

86        (b) A small loan licensee must report all payments from a  
87 borrower to a consumer reporting agency. A licensee that becomes  
88 a data furnisher for a consumer reporting agency must report all  
89 payments from a borrower to the data furnisher as soon as  
90 practicable.

91        (c) The licensee must attempt to collect a delinquent  
92 payment for a period of at least 30 days after the date that  
93 payment is due before selling or assigning the unpaid debt to an  
94 independent party for collection.

95        (d) A licensee may not make a loan to a prospective  
96 borrower with a debt-to-income ratio greater than 50 percent. As  
97 used in this paragraph, the term:

98        1. "Debt" means total monthly debt service payments,  
99 including the small loan being considered, across all  
100 outstanding forms of credit. Debt may, but is not required to,  
101 include loans from friends or family.

102        2. "Income" means the prospective borrower's gross monthly  
103 income.

104        (e) A licensee may not require a prospective borrower to

105 waive his or her legal rights as a condition of obtaining the  
106 small loan without the borrower's express informed consent to  
107 such waiver. Any waiver made by the borrower without informed  
108 consent is void but does not affect the validity or  
109 enforceability of other provisions of the loan agreement.

110 (5) FINANCE CHARGE; MAXIMUM RATES.—A small loan licensee  
111 may lend any sum of money in the principal amount of at least  
112 \$300 but not more than \$3,000. A small loan must have a term of  
113 90 days or longer and must be unsecured. Notwithstanding s.  
114 516.031, a licensee may charge, contract for, and receive  
115 interest and other charges as provided and authorized by this  
116 subsection.

117 (a) The maximum interest rate is 36 percent per annum. The  
118 interest must be calculated by simple interest and not add-on  
119 interest or any other computations. The interest rate must be  
120 fixed for the life of the loan.

121 (b) Section 516.031(5) applies to a small loan that is  
122 refinanced.

123 (c) A licensee may contract for and receive an origination  
124 fee on a small loan and the refinance of the loan. The fee may  
125 only be imposed once at the closing of a loan and may not be  
126 imposed more than once in any 4-month period.

127 1. On the first loan made to a borrower, the origination  
128 fee may not exceed the lesser of 7 percent of the principal  
129 amount or \$90.

130 2. On the second or subsequent loan, including a

131 refinanced loan, the origination fee may not exceed the lesser  
132 of 6 percent of the principal amount or \$75.

133 (d) A licensee may charge and receive a delinquency charge  
134 not to exceed \$14 for each payment in default for at least 7  
135 days. Only one delinquency charge may be imposed per delinquent  
136 payment, and no more than two delinquent charges may be imposed  
137 during a period of 30 consecutive days.

138 (e) A licensee or referral partner who receives a check,  
139 draft, negotiable order of withdrawal, or like instrument drawn  
140 on a bank or other depository institution, from a borrower as  
141 full or partial repayment of a loan, may make and collect from  
142 the borrower a bad check charge of not more than \$25 if such  
143 instrument is not paid or is dishonored by such institution.

144 (f) A licensee or any other person in connection with the  
145 making of a small loan may not offer, sell, or require the  
146 borrower to obtain credit insurance on a small loan.

147 (6) DISCLOSURE.—A licensee must deliver a statement  
148 pursuant to s. 516.15(1) to the borrower in at least 12-point  
149 type. The statement may be provided electronically to the  
150 borrower if the borrower has the option to print the statement  
151 in at least 12-point type. The statement must include:

152 (a) The periodic payment amount.

153 (b) The delinquency fee amount.

154 (c) The following statement: "Repaying your loan early  
155 will lower your borrowing costs by reducing the amount of  
156 interest you will pay. This loan has no prepayment penalty."

157        (d) The following statement: "The borrower has the right  
158 to rescind the loan by notifying the licensee and returning the  
159 principal advanced by the end of the business day after the date  
160 the loan proceeds are disbursed."

161        (e) The name of the consumer reporting agency to which the  
162 licensee shall report the borrower's payment history. If the  
163 licensee became a data furnisher after the loan is consummated,  
164 the licensee shall provide the name of the consumer reporting  
165 agency to the borrower as soon as practicable.

166        (f) If the borrower submitted a loan application to a  
167 referral partner, the referral partner must provide the  
168 following statement to the borrower:

169  
170        "Your loan application has been referred to us by  
171 ...(name of referral partner).... We may pay a fee to  
172 ...(name of referral partner)... for the successful  
173 referral of your loan application. IF YOU ARE APPROVED  
174 FOR THE LOAN, ...(NAME OF LICENSEE)... WILL BECOME  
175 YOUR LENDER. If you have any questions about your  
176 loan, now or in the future, you should direct those  
177 questions to ...(name of licensee)... by ...(insert at  
178 least two different ways in which a borrower may  
179 contact the licensee).... If you wish to report a  
180 complaint about ...(name of referral partner)... or  
181 ...(name of licensee)... regarding this loan  
182 transaction, you may contact the Florida Office of

183           Financial Regulation at ...(telephone number)...."  
 184  
 185           (7) RECEIPTS.—A licensee and a referral partner must  
 186 provide the borrower, at the time that payment is made, with a  
 187 plain and complete receipt for each payment made on account of  
 188 any loan. A licensee or referral partner who refuses, upon  
 189 demand, to give a receipt complying with this subsection  
 190 forfeits the entire interest upon such principal sum to the  
 191 borrower. A receipt for payment must contain:  
 192           (a) The name of the referral partner, if applicable.  
 193           (b) The total payment amount received.  
 194           (c) The date of payment.  
 195           (d) The loan balance before and after application of the  
 196 payment.  
 197           (e) The amount of the payment that is applied to  
 198 principal, interest, and fees.  
 199           (f) The form of payment, such as cash, check, or money  
 200 order.  
 201           (g) If the payment is received by a referral partner, the  
 202 following statement: "If you have any questions about your loan  
 203 now or in the future, you should direct those questions to  
 204 ...(name of licensee)... by ...(insert at least two different  
 205 ways in which a borrower may contact the licensee)...."  
 206           (8) REFERRAL PARTNERS.—  
 207           (a) A small loan licensee may contract with one or more  
 208 referral partners to:



- 209        1. Distribute marketing materials and other written  
210 information related to small loans.
- 211        2. Assist prospective borrowers in completing a loan  
212 application and update the prospective borrower on the status of  
213 the loan application.
- 214        3. Submit the loan applications to the licensee. The  
215 referral partner may only submit a loan application to one  
216 licensee. If the licensee declines to offer a loan to a  
217 prospective borrower, the referral partner may submit the loan  
218 application of that prospective borrower to another licensee.
- 219        4. Inform borrowers of the terms of the loan.
- 220        5. Close the loan transaction on behalf of the licensee  
221 and disburse the loan proceeds to the borrower.
- 222        5. Receive loan payments from a borrower.
- 223        (b) A referral partner may not:
- 224            1. Provide counseling or advice to the prospective  
225 borrower.
- 226            2. Negotiate the terms of the loan on behalf of the  
227 licensee or the prospective borrower.
- 228        (c) All marketing materials, written materials, and loan  
229 information provided by a referral partner must be prepared by  
230 the licensee or preapproved by the licensee. The licensee must  
231 be available to answer any questions that a prospective borrower  
232 has related to a small loan. The loan cannot be consummated  
233 until the borrower's questions are answered.
- 234        (d) A referral partner is an agent of the licensee and

235 must comply with this section and all applicable rules of the  
236 office.

237 (e) The licensee may compensate a referral partner for its  
238 services, subject to the following requirements:

239 1. A referral partner may not be compensated in connection  
240 with a loan application unless the loan is consummated. The  
241 compensation may not exceed \$60 per loan.

242 2. A referral partner may not be compensated more than \$2  
243 per loan payment received by the referral partner.

244 3. Compensation to a referral partner may not be based on  
245 the principal amount of the loan.

246 4. A licensee may not directly or indirectly charge a  
247 borrower any fee or expense incurred by the licensee related to  
248 the loan.

249 (e) If a licensee enters into a contract with a referral  
250 partner, the licensee must notify the office within 15 days  
251 after entering into the contract on a form prescribed by the  
252 office. The form must include the following information:

253 1. The name, business address, and licensing details of  
254 the referral partner and all locations at which the referral  
255 partner will perform services under this section.

256 2. The name and contact information for the person who  
257 executed the referral partner agreement on behalf of the  
258 referral partner.

259 3. The name and contact information for at least one  
260 employee of the referral partner carrying out the terms of the

261 agreement.

262 4. Any other information requested by the office.

263 (9) RECORDS.—A small loan licensee and a referral partner  
264 must maintain books, accounts, and records as provided in s.  
265 516.12.

266 (10) INVESTIGATIONS.—The office shall examine a licensee  
267 and its referral partners as provided in s. 516.11 at least once  
268 every 24 months to determine compliance with this section. The  
269 office may waive the examination of one or more locations of the  
270 licensee if the office determines that the examination of that  
271 location is not necessary for protection of the public.

272 (a) The office shall randomly survey borrowers as part of  
273 its examination of licensees and referral partners.

274 (b) A licensee shall reimburse the office for the cost of  
275 examining the licensee and its referral partners. The office may  
276 bring an action in any court of competent jurisdiction against a  
277 licensee to recover the cost of examination of the licensee and  
278 its referral partners. In determining the cost of the  
279 examination, the office may use the estimated average hourly  
280 cost for all persons performing examinations of licensees or the  
281 licensee's referral partner.

282 (11) GROUNDS FOR DISCIPLINARY ACTION.—A small loan  
283 licensee or a referral partner who violates any applicable  
284 provision of this chapter is subject to disciplinary action  
285 pursuant to s. 516.07(2). A licensee is also subject to  
286 disciplinary action for a violation of this section committed by

287 any of its referral partners.

288 (12) REPORTING REQUIREMENTS.-

289 (a) A licensee must file with the office on or before  
 290 March 15, 2017, and annually thereafter, a report in a manner  
 291 prescribed by the office related to its small loans.

292 (b) The office must post on its website on or before  
 293 January 1, 2018, and annually thereafter, a report on the  
 294 effectiveness of the pilot program. The report may not identify  
 295 data by specific licensee, but must include:

- 296 1. The number of applicants for the pilot program.
- 297 2. The number of entities granted a small loan license.
- 298 3. The reasons that the office denied an applicant's  
 299 request to participate in the pilot program.
- 300 4. The number of applications for a small loan and the  
 301 number of small loans made.
- 302 5. The total principal amount of loans made under the  
 303 pilot program.
- 304 6. The duration of the loans and loan interest rates.
- 305 7. The number of borrowers who obtained more than one  
 306 small loan and the number of loans per borrower.
- 307 8. The effect of the pilot program on the borrowers'  
 308 credit score.
- 309 9. The income distribution of borrowers upon loan  
 310 origination.
- 311 10. The number of borrowers who reside in a low-income  
 312 area.

313 11. The number of borrowers who obtained loans for the  
314 following purposes:

315 a. Medical.

316 b. Vehicle repair or purchase.

317 c. Payment of household bills.

318 d. Debt consolidation.

319 e. Building or repairing credit history.

320 f. Other purposes not provided in subparagraphs a.-e.

321 12. The number of borrowers who maintained a bank account  
322 at the time of their loan application.

323 13. The number and percentage of borrowers who requested  
324 to refinance their small loans and the number and percentage of  
325 small loans actually refinanced.

326 14. The number and type of referral partners used by  
327 licensees.

328 15. The number and percentage of borrowers who were  
329 charged a delinquency fee, the number of days the loans were  
330 delinquent, the total amount of delinquency fees charged, and  
331 the average delinquency fee assessed by dollar amount and as a  
332 percentage of the principal amount loaned.

333 16. Comparable delinquency data for unsecured loans made  
334 under this chapter and by state-chartered banks and credit  
335 unions for principal loan amounts of at least \$300 but not more  
336 than \$3,000.

337 17. The number and types of violations of this section by  
338 licensees and referral partners and disciplinary actions taken

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339 by the office against licensees or referral partners.

340 18. The number of complaints received by the office from  
341 borrowers against licensees or referral partners and the nature  
342 of those complaints.

343 19. Results of surveys completed by borrowers relating to  
344 their experience with the pilot program.

345 20. Recommendations for improving the pilot program and  
346 recommendations regarding whether the program should be  
347 continued.

348 (13) This section expires January 1, 2022.

349 Section 2. This act shall take effect July 1, 2016.