The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Banking and Insurance

BILL: SB 1696

INTRODUCER: Senator Flores

SUBJECT: Consumer Finance Loans

DATE: February 15, 2016 REVISED: ______ ______ ______ ______

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Johnson	Knudson	BI	**Pre-meeting**
2.			AGG	
3.			AP	

I. Summary:

SB 1696 establishes the Increased Access to Responsible Small Dollar Loans Pilot Program. The intent of the program is to provide greater access to small dollar consumer loans and assist consumers in building their credit. The Office of Financial Regulation is responsible for regulating this program. The pilot program would operate under the following terms and conditions:

- A program licensee may make loans between $300 and $3,000, at a maximum interest rate of 36 percent per annum.
- A program licensee may also charge the borrower an origination fee of 7 percent of the principal amount of the program loan exclusive of the origination fee or $90, whichever is less. For a refinance program loan, a program licensee may also charge the borrower an origination fee of 6 percent exclusive of the origination fee or $75, whichever is less.
- The borrower has a right to rescind the program loan and return the principal amount by the end of the next business day.
- A program loan must have a minimum term of 90 days and may not have a prepayment penalty.
- A program licensee must underwrite each program loan to determine the borrower’s ability and willingness to repay. A program licensee must not make a program loan if the borrower’s monthly debt service, including the program loan, exceeds 50 percent of the borrower’s gross monthly income.
- The Office of Financial Regulation (OFR) is required to examine licensees at least once every 24 months.
- A program licensee may use a referral partner to perform marketing, servicing, and other services on behalf of the program licensee. The compensation for a referral partner is capped at $60 per program loan, on average, assessed annually, and $2 for each payment received by the referral partner on behalf of the program licensee.

- In order to participate in the pilot program, a person must be licensed as a consumer finance lender with the OFR under ch. 516, F.S., and must submit an application and fee as prescribed by rule. A pilot program applicant must be in good standing with the OFR and must not be the subject of an outstanding enforcement action or have a deficiency at the time of the person's application.

Currently, the Florida Consumer Finance Act (act) sets forth licensing requirements for consumer finance lenders and the terms and conditions under which a consumer finance loan is allowed in Florida. The act sets forth maximum interest rates for consumer finance loans, which are loans of money, credit, goods, or a provision of a line of credit, in an amount or to a value of $25,000 or less at an interest rate greater than 18 percent per annum. The allowable interest rates on such loans are tiered and limited based on the principal amount that falls within each tier of the loan, as follows:

- 30 percent a year, computed on the first $3,000 of the principal amount;
- 24 percent a year on that part of principal from $3,001 to $4,000; and
- 18 percent per year on that part of principal from $4,001 to $25,000.

II. Present Situation:

Federal Regulation of Consumer Lending

Consumer Financial Protection Bureau

On July 21, 2010, the federal Dodd-Frank Wall Street Reform and Consumer Protection Act[1] (Dodd-Frank) was signed into law. Title X of Dodd-Frank created the Consumer Financial Protection Bureau (CFPB) as an independent bureau housed within the Federal Reserve System, and reassigned most general rulemaking authority of the Truth in Lending Act (TILA) to the CFPB. Dodd-Frank assigned the CFPB broad authority to examine and enforce consumer protection regulations over all mortgage-related businesses, large non-bank financial companies, and banks and credit unions with assets greater than $10 billion. Dodd-Frank also consolidated and transferred most federal consumer financial protection authority under the CFPB's jurisdiction. Dodd-Frank also granted enforcement and rulemaking authority to the CFPB to protect consumers from unfair, deceptive, or abusive acts or practices under federal law in connection with consumer financial products or services.[2] The CFPB is also authorized to write rules to ensure consumers receive full, accurate, and effective disclosures relating to consumer financial products and services.[3]

Currently, the CFPB is considering the framework for proposed rules on short-term and long-term consumer credit products, focusing on stricter underwriting requirements (including borrowers' ability to repay), limitation on rollovers, limits on the number of loans within a 12-month period, an "off-ramp" for the repayment of debt, and restricting lenders' access to a borrower's checking account. The CFPB's proposals would establish minimum consumer

[1] Pub. L. No. 111-203, H.R. 4173.
[2] 12 U.S.C. s. 5531.
[3] 12 U.S.C. s. 5532.

protections for "covered loans," which could include payday loans, deposit advance products, vehicle title loans, high-cost installment loans, open-end lines of credit, and other loans.[4]

Truth in Lending Act and Regulation Z

The purpose of TILA and Regulation (Reg) Z is to promote the informed use of credit through "a meaningful disclosure of credit terms so that the consumer will be able to compare more readily the various credit terms available."[5] As mentioned above, TILA and Reg Z requires the calculation and disclosure of Annual Percentage Rate (APR) for all consumer loans.[6] The TILA does not include premiums for credit life, accident, or health insurance when calculating the loan's finance charge, if the insurance products are voluntary, the lender tells the borrower in writing that these products are voluntary, and the borrower consents in writing.[7]

Federal Deposit Insurance Corporation's Small-Dollar Loan Pilot Program

The Federal Deposit Insurance Corporation's (FDIC) instituted a 2-year Small-Dollar Loan Pilot Program that concluded in the fourth quarter of 2009.[8] The pilot was a case study designed to illustrate how banks can profitably offer affordable small-dollar loans as an alternative to high-cost credit products such as payday loans and fee-based overdraft programs. The pilot began with 31 banks and concluded with 28 banks participating across 27 states.
The following are some of the primary features of the program:

- Loan amounts of up to $2,500;
- Payment periods that extend beyond a single paycheck cycle;
- Loans for 90 days or more;
- APRs below 36 percent;
- Low or no origination fees;
- No prepayment penalties;
- Streamlined underwriting;
- Prompt loan application processing;
- Automatic savings component; and
- Access to financial education

Underwriting processes varied somewhat among pilot banks and were streamlined compared with other loans, but bankers reported that some basic elements were important in minimizing defaults. Notably, most pilot banks required a credit report to help determine loan amounts and repayment ability and to check for fraud or recent bankruptcy. Few banks used credit scoring in the underwriting process, but those that did had low minimum thresholds, such as a Fair Isaac Corporation (FICO) score in the low to mid-500s. In addition to the credit report, all pilot banks required proof of identity, address, and income.

[4] CONSUMER FINANCIAL PROTECTION BUREAU, *CFPB Considers Proposal to End Payday Debt Traps*, http://www.consumerfinance.gov/newsroom/cfpb-considers-proposal-to-end-payday-debt-traps/ (last visited Feb. 13, 2016).
[5] 15 U.S.C. s. 1601(a).
[6] 15 U.S.C. ss. 1604-1606.
[7] 15 U.S.C. s. 1605(b).
[8] See https://www.fdic.gov/smalldollarloans/ (last visited Feb. 13, 2016).

Pilot bankers indicated that a longer loan term was critical to loan performance because it gave consumers more time to recover from a financial emergency than a single pay cycle for payday loans, or the immediate repayment often required for fee-based overdrafts. Pilot bankers and other banks that have started or have expressed interest in starting a small-dollar loan program indicated that the primary obstacles to entry are the cost of launching and maintaining the program and concerns about defaults. Given the small size of small dollar loans ($1,000 or less) and to a lesser extent nearly small dollar loans (between $1,000 and $2,500), the interest and fees generated are not always sufficient to achieve robust short-term profitability. It was noted that most pilot bankers sought to generate long-term profitability through volume and by using small-dollar loans to cross-sell additional products.

California Small Dollar Loan Pilot Programs

Based on a business model developed by California-based Progreso Financiero (Progress Financial), the California State Assembly enacted the Affordable Credit Building Opportunities Pilot Program in 2010.[9] The goal was to increase consumers' access to capital by encouraging development of a more robust small dollar loan market in California. Due to a low lender participation rate, it was replaced by a 2013 pilot program,[10] which will remain in effect until January 1, 2018, unless extended by its state legislature and governor. In 2015, California enacted legislation to revise provisions relating to the small-dollar loan pilot program.[11] The pilot program covers consumer loans of $300-$2,499.

The revised California pilot program also allows the use of "finders" to connect borrowers with lenders. Finders cannot provide advice or counseling to borrowers. They can distribute lenders' marketing materials, provide information about loan terms and conditions, help borrowers with loan applications and obtain borrowers' signatures on documents, and other functions. Their fees are capped at $65 per loan plus $2 for each payment received by a finder. The fees are paid by lenders, cannot be based on the principal amount of loans, and cannot be passed on to borrowers. According to the California Senate staff analysis, the proponents view the use of finders as a means to lower costs of customer acquisition, which is the largest cost of maintaining a small dollar loan program.[12]

The California pilot program legislation also required the state's Department of Business Oversight (DBO) to post a report summarizing findings of the pilot program. In June 2015, the California DBO's report noted the following findings from 2011-2014:

- *Lender participation*: At the end of 2014, six lenders and six finders participated in the program.
- *Loan applications*: Borrower applications increased by 58.5 percent after the state revised the pilot program.
- *Dollar amounts*: Smaller loans ($300-$499) decreased by 42.3 percent, while larger loans ($500-$999) increased by 106 percent.

[9] See http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=200920100SB1146 (last visited Feb. 13, 2016).

[10] See http://www.leginfo.ca.gov/cgi-bin/waisgate?WAISdocID=37417715620+20+0+0&WAISaction=retrieve (last visited Feb. 13, 2016).

[11] See http://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201520160SB235 (last visited Feb. 13, 2016).

[12] Id.

- *Interest rates:* Smaller loans generally carried an APR of 40-50 percent. Mid-range loans generally carried an APR of 35-50 percent. Larger loans ($1,500-$2,499) saw a more even APR distribution.
- *Delinquency rates*: In 2014, 22.5 percent were delinquent for 7 days to 29 days, 7.3 percent were delinquent for 30 days to 59 days, and 3.9 percent were delinquent for 60 days or more.
- *Credit scores*: The share of multiple-loan borrowers who obtained higher credit scores on subsequent loans averaged 61 percent annually over the 4-year period.
- *Loan term:* In 2014, of the 164,300 loans made, 50.9 percent were for 360 days or more. The ratios for other terms: 120 days to 179 days, essentially 0 percent (only two loans); 180 days to 269 days, 20.2 percent; and 270 days to 359 days, 28.8 percent.
- *Loan purpose:* Of the 164,300 loans made in 2014, borrowers took out 45 percent (74,026) to build or repair credit.

The California DBO noted that while the revised pilot program did increase lender participation from its inception in 2010, the total number of participating lenders remains less than 10. Additionally, the revisions did not significantly affect the amount of lending activity conducted by the individual companies.[13]

Florida Regulation of Consumer Loans

The Division of Consumer Finance of the Florida Office of Financial Regulation (OFR) is responsible for the licensing and regulation of nondepository financial service entities and individuals, and conducts examinations and investigations of licensed entities to determine compliance with Florida law. One of these regulatory programs is the Florida Consumer Finance Act[14] (act), which sets forth licensing requirements for consumer finance lenders[15] and the terms and conditions under which a consumer finance loan is permitted in Florida. The act sets forth maximum interest rates for consumer finance loans, which are "loans of money, credit, goods, or a provision of a line of credit, in an amount or to a value of $25,000 or less at an interest rate greater than 18 percent per annum.[16]"

Consumer finance loans may be secured or unsecured. The allowable interest rates on consumer finance loans are tiered and limited based on the principal amount that falls within each tier of the loan. Consumer finance lenders licensed with the OFR may charge the following interest rates:

- 30 percent a year, computed on the first $3,000 of the principal amount;
- 24 percent a year on that part of principal from $3,001 to $4,000; and
- 18 percent per year on that part of principal from $4,001 to $25,000.[17]

[13] California Department of Business Oversight, Report of Activity under Small Dollar Loan Pilot Programs (Jun. 2015), at http://www.dbo.ca.gov/Licensees/Finance_Lenders/pdf/Pilot%20Program%20Report%202015%20Final.pdf. (last visited Feb. 13, 2016).
[14] Chapter 516, F.S.
[15] The act does not apply to persons doing business under state or federal laws governing banks, savings banks, trust companies, building and loan associations, credit unions, or industrial loan and investment companies. [s. 516.02(4), F.S.]
[16] Section 516.01(2), F.S.
[17] The TILA is codified at 15 U.S.C. s. 1601 et seq.; Reg Z is at 12 C.F.R. pt. 226.

These principal amounts are the same as the financed amounts determined by the Federal Truth-in-Lending Act (TILA), and Regulation Z (Reg Z) of the Board of Governors of the Federal Reserve System.[18] The maximum interest rates and finance charges under the act are computed on a simple-interest basis, and not a compounding or other basis. The APR for all loans under the act may equal, but cannot exceed, the APR for the loan as required to be computed and disclosed by TILA and Reg Z.[19]

Besides the applicable interest rates described above, the act allows consumer finance lenders to charge borrowers the following charges and fees:[20]

- Up to $25 for investigating the credit and character of the borrower;
- A $25 annual fee on the anniversary date of each line-of-credit account;
- Brokerage fees for certain loans and appraisals of real property offered as security;
- Intangible personal property tax, if secured by a loan note on real property;
- Documentary excise tax and lawful fees;
- Insurance premiums;
- Actual and reasonable attorney fees and court costs;
- Actual and commercially reasonable expenses for recovering the collateral property;
- Delinquency charges of up to $15 for each payment in default for at least 10 days, if agreed upon in writing before the charge is imposed; and
- A bad check charge of up to $20.

Credit insurance products for consumer finance loans must be optional (and not made a condition of the loan), and must comply with the applicable Insurance Code provisions.[21] In particular, credit insurance insures the debtor for loss of life, involuntary unemployment, illness, or damage or loss to any collateral property.[22] As described earlier, TILA and Reg Z do not include credit insurance premiums in the finance charge.

The act provides the grounds for denial of a license of other disciplinary action by the OFR. In particular, s. 516.07(1)(k), F.S., provides that it is grounds for administrative action, for any person to pay money or anything else of value, either directly or indirectly, to any person as compensation, inducement, or reward for referring a loan applicant to a licensed consumer finance lender. As of December 2014, there are 150 licensed consumer finance lenders operating in 331 locations in Florida.[23]

The OFR also has regulatory authority over other small consumer loans authorized under ch. 520 (retail installment sellers), ch. 537 (title loans), and part IV of ch. 560 (deferred presentment or payday loans), F.S.:

- *Title lenders* provide loans secured through transfer of a motor vehicle certificate of title, with the loan amount dependent on the vehicle's value. Title lenders charge tiered interest

[18] Section 516.031(1), F.S.

[19] Section 516.031(2), F.S.

[20] Section 516.031(3), F.S.

[21] Section 516.35, F.S.; and part IX, ch. 627, F.S. The Office of Insurance Regulation regulates insurers. [s. 20.121(3)(a), F.S.]

[22] ss. 627.682 and 627.6785, F.S.

[23] Office of Financial Regulation, *Fast Facts* (2015), http://flofr.com/StaticPages/documents/FastFacts2015.pdf.

rates according to principal amount, similar to the Act. The maturity date of a title loan is 30 days after the agreement date, but the loan can extended for one or more 30-day periods by mutual consent of the lender and the borrower.[24] One major difference between consumer finance loans and title loans is that title lenders are prohibited from selling or charging for any type of insurance in connection with a title loan.[25]

- *Retail installment lenders* under ch. 520, F.S., authorizes retail installment businesses, motor vehicle sellers, and home improvement businesses to finance personal, family, or household goods or services sold by an installment contract or a revolving charge account to retail buyers.[26] Finance charges under ch. 520, F.S., are expressed in dollar amounts (e.g., $12 per $100 per year for retail installment contracts).[27]
- *Deferred presentment or payday lenders* under part IV of ch. 560, F.S., offer currency or a payment instrument (e.g., electronic funds transfer, check, or money order) in exchange for a person's paycheck up to $500 and agree to hold it for a specified period. Repayment terms range from 7 to 31 days, and the maximum allowable fee is 10 percent of the currency or payment instrument provided, as well as a verification fee of up to $5.00 per transaction. Borrowers may have only one active payday loan at a time, but are allowed to secure a new loan 24 hours after paying off the original loan.[28]

Current law does not require any underwriting or determination of the borrower's ability to repay for any of these loans. Additionally, retail installment loans and consumer finance loans are excluded from the 18 percent per year simple interest cap set forth in the usury statute.[29] There is no minimum or maximum loan term. However, every loan made pursuant to ch. 516, F.S., except for lines of credit, is to be repaid in monthly installment as nearly equal as mathematically practicable.

III. Effect of Proposed Changes:

Increased Access to Responsible Small Dollar Loans Pilot Program (Sections 1 and 5)

The bill establishes a pilot program entitled Increased Access to Responsible Small Dollar Loans Pilot Program (program). The program would allow consumers to enter into a program loan with a principal amount of at least $300 and up to a maximum of $3,000, at an interest rate not to exceed 36 percent per annum. Under current law, licensed consumer finance lenders may make loans in this amount at a maximum rate of 30 percent, with no minimum or maximum loan term.

The bill provides that the new sections 516.40-516.47, F.S., do not exempt a licensee from a licensee from any other provision of the act.

[24] Section 537.011(3), F.S.
[25] Section 537.013(1)(h), F.S.
[26] Parts I, II, and IV, ch. 520, F.S.
[27] Section 520.34(6)(a), F.S.
[28] Section 560.404(6) and (8), F.S.; Rule 69V-560.801, F.A.C.
[29] Section 687.02, F.S.

Definitions (Section 2)

The bill creates s. 516.41, F.S., to provide the following definitions for purposes of the pilot program:

- Consumer reporting agency
- Credit score
- Data furnisher
- Pilot program or program
- Pilot program license
- Program licensee
- Program loan
- Referral partner
- Refinance program loan

Regulation of Program Licensees (Lenders) and Referral Partners

Program Licensees (Section 6)

Persons seeking participation under the program as a lender are required to be licensed to make consumer finance loans under ch. 516, F.S., be in good standing with the OFR, and not be the subject of an outstanding enforcement action, or have a deficiency at the time of the person's application. The legislation provides for the establishment of application forms and application fees by rule. Rules adopted by the Financial Services Commission would prescribe the amount of the application fee.

Although s. 516.05, F.S., currently requires a license for each location of a consumer finance company, the bill would allow a program licensee to obtain a license that covers more than one physical business location, if the person only offers program loans to prospective borrowers via an electronic access point through which the licensee's website may be accessed. (Section 3)

The bill requires applicants to be a "data furnisher" with a consumer-reporting agency[30] at the time of application, meaning a creditor that furnishes information to a consumer-reporting agency. However, the bill allows the OFR to issue a program license if the OFR has a "reasonable expectation" that the applicant will qualify as a data furnisher (and meet the required lending volume to become a data furnisher) within 6 months after receiving a license. The bill also provides that the OFR must "withdraw" approval for pilot program participation from a program licensee if the applicant fails to become a data furnisher by a consumer-reporting agency within 6 months of commencing lending under the pilot program.

Referral Partners

The bill allows a program licensee to engage in arrangements with referral partners. All such arrangements must be in writing; must contain a provision that the referral partner agrees to

[30] The bill defines "consumer reporting agency" as the same definition in federal Fair Credit Reporting Act: "Any person which, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties, and which uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports."

comply with s. 516.45, F.S., and must contain a provision allowing the OFR access to the referral partner's books and records related to the referral partner's operations under the agreement with the program licensee.
A referral partner may engage in the following activities:

- Advertise on behalf of the program licensee;
- Provide written factual information about the pilot program and discuss the program information with a prospective borrower in general terms;
- Notify the prospective borrower of information needed to complete an application under the program;
- Enter information provided by a prospective borrower on a preprinted or electronic application form or in a preformatted computer database, assemble credit applications, contact the program licensee to determine the status of the borrower's application;
- Communicate to a borrower a response that is returned by the program licensee's automated underwriting system, obtain a borrower's signature on documents prepared by the program licensee, and deliver final copies of the documents to the borrower; and
- Disburse program loan proceeds to a borrower, and receive program loan payments from a borrower.

Any program payments received by a referral partner must be applied to the program loan and be deemed received by the program licensee at the time the referral partner receives the payment. When payment is made, a referral partner must deliver a receipt to the borrower that includes certain information. Additionally, the bill holds a borrower harmless if a referral partner fails to transmit, or is delayed in transmitting, a payment to the program licensee. A referral partner must maintain records related to disbursements and payments for 2 years, or for 1 month following a regular examination by the OFR, whichever is later.

Referral partners are required to provide certain communications and disclosures to program loan applicants related to identifying information of the program licensee and referral partner. The bill requires a referral partner to make a good faith effort to assist the applicant in making direct contact with the program licensee in cases where a referral partner is not permitted to answer questions about the loan program. A program licensee must ensure that consummation of the program loan does not occur until after two-way communication between the applicant and program licensee. The legislation provides a definition for the term "two-way communication."

The bill allows a program licensee to compensate a referral partner. Compensation paid to a referral partner may not be passed on to a borrower. The compensation must be made pursuant to a written agreement and a mutually agreed upon compensation schedule. Additionally, the compensation must meet the following requirements:

- Compensation may not be paid to a referral partner until the program loan is consummated.
- Compensation may not be paid to a referral partner based upon the principal amount of the program loan.
- The total compensation paid to a referral partner over the life of a program loan may not exceed the sum of the origination fee and interest charges paid by the borrower in connection with that program loan.

- Subject to certain limitations, the total compensation paid by a program licensee to a referral partner may not exceed the sum of $60 per program loan, on average; and $2 per payment received by the referral partner on behalf of the program licensee for the duration of the loan.

The bill prohibits a referral partner from engaging in the following activities:

- Providing counseling or advice to a borrower or prospective borrower;
- Providing to a borrower or prospective borrower loan-related marketing material that has not been approved by the program licensee; and
- Offering information pertaining to a single prospective borrower to more than one program licensee, except where a program licensee has provided notification of its denial of a program loan to the borrower.

Terms and Conditions of the Small Dollar Loans (Section 5)

The bill requires a program licensee to comply with certain conditions in making program loans, including the following:

- A program loan must be unsecured.
- A program loan must have a minimum term of 90 days, except it may not have a prepayment penalty.
- A program loan must include a borrower's right to rescind the program loan by notifying the program licensee of the borrower's intent to rescind the program loan and return the principal advanced by the end of the business day after the program loan was consummated.
- A program loan may not exceed an interest rate of 36 percent, which must be fixed for the term of the loan and be calculated on a simple-interest basis through the application of a daily periodic rate to the actual unpaid principal balance each day.
- A program licensee must provide a receipt for payments made.

When refinancing a program loan, the principal amount may not include more than 60 days' unpaid interest accrued on the previous program loan. Additionally, a program licensee is prohibited from refinancing a program loan unless the borrower is current on the outstanding program loan at the time the borrower submits an application to refinance.

A program licensee must underwrite each program loan to determine the borrower's willingness and ability to repay the program loan. A program licensee may not make a loan if it determines that a borrower's total monthly debt service payments, including the program loan and all outstanding forms of credit that can be independently verified by the program licensee, exceed 50 percent of the borrower's gross monthly income.

Fees. The bill allows a program licensee to contract for and receive an origination fee, which may not exceed:

- 7 percent of the principal amount, exclusive of the origination fee, or $90, whichever is less, on the first program loan; or
- 6 percent of the principal amount, exclusive of the origination fee, or $75, whichever is less, on subsequent program loans made to a borrower.

However, the bill prohibits a program licensee from charging the same borrower an origination fee in connection with a refinance program loan until 8 months have elapsed since receipt of the previous origination fee paid by the borrower. Currently, ch. 516, F.S., does not authorize origination fees.

The bill caps the fee for insufficient funds at $25, and any delinquency charge is capped at $15 for each payment in default for at least 10 days. Only one delinquency fee may be imposed per delinquent payment, and no more than two delinquency fees may be imposed during a period of 30 consecutive days. In attempting to collect a delinquent payment, a program licensee or its wholly owned subsidiary must attempt to collect the payment for 30 days before selling or assigning the unpaid debt to an independent party for collection.

Consumer Disclosures. The bill requires a program licensee must provide the following written disclosures to a borrower:

- The amount, date, and maturity date of the program loan.
- The name and address of the borrower and of the program licensee.
- The interest rate charged.
- The monthly installment payment amount.
- The delinquency charge amount.
- A specified statement relating to a borrower’s ability to reduce the interest amount by repaying the loan early.
- A statement describing the borrower’s right of rescission.

The bill allows a program licensee to provide the disclosures in a mobile or other electronic application if the program licensee complies with certain parameters.

Before disbursing program proceeds to a borrower, a program licensee must direct a borrower to consumer credit counseling services promoted by the OFR or invite the borrower to attend a free credit education program or free seminar offered by an independent third party.

The bill prohibits a program licensee from requiring a borrower to waive any right, penalty, remedy, forum, or procedure. Further, the lender may not require a borrower to agree to the application of laws other than those of Florida or require a borrower to agree to resolve disputes in a jurisdiction outside of Florida. Any waiver, other than a prohibited waiver, must be knowing, voluntary, in writing, and not expressly made as a condition of doing business with the program licensee. A waiver that is required as a condition of doing business with the program licensee is presumed involuntary, unconscionable, against public policy, and unenforceable. The program licensee has the burden of proving that a waiver of any rights, penalties, forums, or procedures was knowing, voluntary, and not expressly made a condition of the contract with the borrower.

Examination of Program Licensees (Section 7)

The legislation requires the OFR to examine program licensees at least once every 24 months. Costs of examination are borne by the program licensee.

Reporting Requirements (Sections 4, 5, 7, and 9)

Program Licensee. The bill requires a program licensee to report a borrower's payment performance to at least one consumer-reporting agency that compiles and maintains files on consumers on a nationwide basis. In addition, as part of the credit reporting requirements, a licensee must provide the borrower with the name(s) of the credit reporting agency or agencies to which it will report the borrower's payment history. (Section 5)

The program licensee is required to provide certain information to the OFR within 15 days after entering into a contract with a referral partner. Such information includes the referral partner's identifying information, and a provision that allows the OFR to request any other information. A program licensee is required to file, on or before March 15 of each year, a report with the OFR in a manner prescribed by rule.

OFR Program Report. The bill directs the OFR to post a report on its website by January 1, 2018, summarizing the results of the program. The report must include the following information:

- The period covered.
- The number of entities that applied and were accepted for program participation.
- The reasons for program rejection.
- The number of program loan applications received by participating program licensees.
- The number and total amount of program loans made.
- The distribution of loan lengths, interest rates, and principal amounts upon origination.
- The number of borrowers who obtained more than one program loan.
- The distribution of the number of program loans per borrower.
- Of the number of borrowers who obtained more than one program loan, the percentage of borrowers whose credit scores increased between successive loans.
- The average size of the increased credit score.
- The income distribution of borrowers upon program loan origination, including the number of borrowers who obtained a program loan and who resided in a low-income or moderate-income census tract at the time of loan application.

In regards to refinanced program loans, the report must include the following information:

- The number and percentage of borrowers who applied for a refinance program loan.
- Of the borrowers who applied for a refinance program loan, the number and percentage of borrowers who obtained a refinance program loan.
- The number and type of referral partners used by program licensees.
- The number and percentage of borrowers who obtained one or more program loans where delinquency charges were assessed.
- The total amount of delinquency charges assessed.
- The average delinquency charge assessed by dollar amount and as a percentage of the principal amount loaned.

In addition, the report must address the performance of program loans as reflected by the following information:

- The number and percentage of borrowers who experienced at least one delinquency lasting between 7 to 29 days, 30 to 59 days, and 60 days or more.
- The distribution of principal loan amounts corresponding to those delinquencies.
- The number and types of documented violations of ss. 516.40-516.47, F.S., by referral partners and program licensees.
- The number of times the OFR disqualified a referral partner from performing services, barred a referral partner from performing services at a specific location, terminated a written agreement between a referral partner and a program licensee, or imposed an administrative penalty.
- The number and nature of complaints received about a program licensee or referral partner.
- Recommendations for improving the program, and whether the program should be reenacted after January 1, 2022.
- The findings of a random sample survey regarding a borrower's experience and program licensees' compliance with ss. 516.40-516.47, F.S.

If readily available, the following information must be included in the report:

- Comparable delinquency data for unsecured loans made by licensed persons under ss. 516.001-516.36, F.S., and part IV of ch. 560, F.S., for principal loan amounts between $300 and $3,000.
- Comparable delinquency data for unsecured extensions of credit made by state-chartered banks and credit unions under the OFR's jurisdiction in principal loan amounts between $300 and $3,000.

Section 9 provides that ss. 516.40-516.47, F.S., are subject to repeal on January 1, 2022, unless reenacted or superseded by another enacted law before that date.

Section 10 provides the act is effective July 1, 2016.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

Persons that want to participate in the Increased Access to Responsible Small Dollar Loans Pilot Program (program) would be required to obtain a consumer finance license as well as a program license. The fee for a program licensee would be prescribed by commission rule.

B. Private Sector Impact:

Indeterminate at this time. The number of lenders, referral partners, and borrowers who would participate in this pilot program is unknown at this time.

C. Government Sector Impact:

The OFR resources will be required to process applications; process complaints; examine records of program licensees and referral partners; and, if necessary, initiate enforcement actions for non-compliance or fraud. The state of California currently has eight program licensees. Assuming a comparable number of businesses apply to become a program licensee, the Division of Consumer Finance believes it can absorb the workload associated with the above-mentioned tasks.

However, implementation of the bill will require updates to the OFR's licensing and examination software as well as information technology support and increased data storage to integrate applications by program licensees. The bill would likely require the OFR to create electronic forms for applications and reporting. The bill would require the OFR to post on its website a report that includes extensive information regarding the pilot program. Implementing such changes would cost the agency approximately $116,650.[31]

VI. Technical Deficiencies:

None.

VII. Related Issues:

The OFR provided the following comments and concerns regarding the implementation of the bill:[32]

> The bill would require the OFR through the Financial Services Commission to amend existing rules. The OFR recommends an effective date of no earlier than January 1, 2017, (instead of July 1, 2016) to allow sufficient time for rulemaking.
>
> Upon enactment, the legislation would allow the OFR to withdraw approval for a licensee's participation in the program if the program licensee fails to meet a certain requirement. Such language conflicts with the provisions in s. 120.60, F.S., which mandates that an agency must provide notice and an opportunity to request a hearing when an agency attempts to withdraw a license. Additionally, the language of the bill is silent as to what happens to loans held by program licensees once withdrawal has taken place.

[31] Office of Financial Regulation, 2016 Agency Legislative Bill Analysis (Jan. 28, 2016)(on file with Senate Committee on Banking and Insurance).

[32] Id.

The legislation directs a program licensee and referral partner to comply with the enacted provisions. However, the provisions do not provide the OFR a mechanism to enforce violations.

The legislation allows the OFR to examine the records of referral partners but makes no mention as to whether such records become public record once examined by the OFR. Pursuant to ch. 119, F.S., records held by an agency are public records, unless expressly exempted.

It is unclear how ss. 516.01-516.36, F.S., interact with the language of this bill. For example, s. 516.07, F.S., provides the OFR with the necessary authority to take certain administrative actions such as assessing administrative fines, revoking a license, or denying a license application of a consumer finance company. However, the bill does not clearly explain the OFR's authority to take similar actions against a program licensee.

Section 516.45(6), F.S., in the bill prohibits the OFR from barring a referral partner's location. This appears to conflict with s. 516.47(1), F.S., in the bill which directs the OFR to report the barring of a referral partner's location.

VIII. Statutes Affected:

This bill creates the following sections of the Florida Statutes: 516.40, 516.41, 516.42, 516.43, 516.44, 516.45, 516.46, and 516.47.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.