

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 Military and Veterans Affairs, Space, and Domestic Security

BILL: CS/SB 626

INTRODUCER: Banking and Insurance Committee and Senator Gaetz

SUBJECT: Consumer Credit

DATE: November 30, 2015 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Johnson</u>	<u>Knudson</u>	<u>BI</u>	<u>Fav/CS</u>
2.	<u>Sanders</u>	<u>Hrdlicka</u>	<u>MS</u>	<u>Pre-meeting</u>
3.	<u> </u>	<u> </u>	<u>FP</u>	<u> </u>

Please see Section IX. for Additional Information:
COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 626 authorizes the Office of Financial Regulation to enforce the provisions of the federal Military Lending Act (MLA) for state financial institutions, deferred presentment providers (payday lenders), consumer finance lenders, title loan lenders. The MLA provides greater consumer protections for servicemembers and their dependents in connection with a broad range of consumer credit transactions, including consumer finance loans, payday loans, title loans, overdraft lines of credit, small dollar loans, and credit card accounts. The MLA caps the Military Annual Percentage Rate on these credit transactions at 36 percent, requires oral and written disclosures for the consumer, and prohibits certain terms and conditions on the loan, such as mandatory arbitration and prepayment penalties.

The bill takes effect on October 3, 2016.

II. Present Situation:

Federal Consumer Protection Laws

Federal Truth in Lending Act

The purpose of the Truth in Lending Act (TILA) 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.”¹ Regulation Z, which implements the TILA, requires the calculation and disclosure of the Annual Percentage Rate (APR) for consumer loans.² Lines of consumer credit covered by the TILA include mortgage loans, home equity lines of credit, reverse mortgages, open-end credit, certain student loans, and installment loans.³

State Regulation of Consumer Lending

The Florida Office of Financial Regulation (OFR) has regulatory oversight of state-chartered financial institutions, securities brokers, investment advisers, mortgage loan originators, deferred presentment providers or payday loan lenders, consumer finance companies, title loan lenders, debt collectors, and other financial service entities.

Regulation of State Financial Institutions

The Division of Financial Institutions of the OFR charters and regulates entities that engage in financial institution business in Florida in accordance with the Florida Financial Institutions Codes (codes).⁴ The OFR may examine, investigate, and take disciplinary actions against state-chartered financial institutions for violation of the codes.⁵

Deferred Presentment Transactions or Payday Loans

Part IV of ch. 560, F.S., regulates deferred presentment providers (or payday loan lenders) and deferred presentment transactions. A deferred presentment transaction, or “payday loan”, is a type of loan where a person exchanges a check, like a paycheck, up to \$500 in exchange for currency or a payment instrument (e.g., electronic funds transfer, check, or money order) and the lender agrees to hold the check for a specified period of time before depositing or redeeming the check.⁶ Repayment terms range from a minimum of 7 days to a maximum of 31 days. The maximum allowable fees are 10 percent of the currency or payment instrument provided, as well as a verification fee of up to \$5 per transaction. For each transaction, the deferred presentment provider must comply with the disclosure requirements of Regulation Z. Borrowers may have only one active payday loan at a time, but may secure a new loan 24 hours after paying off the original loan.⁷

Consumer Finance Loans

The Florida Consumer Finance Act, codified at ch. 516, F.S., sets forth licensing requirements for consumer finance lenders and the terms and conditions under which a consumer loan is authorized in Florida. The act sets forth maximum interest rates for a consumer finance loan,

¹ 15 U.S.C. s. 1601(a). TILA is codified at 15 U.S.C. s. 1601 et seq., as implemented by Regulation Z, 12 C.F.R. part 226.

² 15 U.S.C. s. 1604-1606.

³ Consumer Financial Protection Bureau, *eRegulations: 12 CFR Part 1026 (Regulation Z)*, available at <http://www.consumerfinance.gov/eregulations/1026> (last visited Nov. 24, 2015).

⁴ Chapters 655, 657, 658, 660, 663, 665, and 667, F.S.

⁵ These entities are also subject to laws and regulation by various federal entities. For example, the Federal Deposit Insurance Corporation (FDIC) supervises state-chartered banks that are not members of the Federal Reserve System and state-chartered savings associations. The FDIC also insures deposits in banks and savings associations in the event of bank failure. The Federal Reserve Board supervises state-chartered banks that are members of the Federal Reserve System.

⁶ See Florida Office of Financial Regulation, *Deferred Presentment Provider*, available at <http://www.flofr.com/StaticPages/DeferredPresentmentProvider.htm> (last visited Nov. 25, 2015).

⁷ Section 560.404, F.S.

which is a loan 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.⁸ The maximum allowable interest rates on consumer finance loans are tiered and limited based on the principal amount that falls within each tier of the loan, as provided below:

- 30 percent a year, computed on the first \$3,000 of the principal amount;
- 24 percent a year on that part of principal between \$3,001 and \$4,000; and
- 18 percent per year on that part of principal between \$4,001 and \$25,000.⁹

These principal amounts are the same as the financed amounts determined by the TILA and Regulation Z.¹⁰ 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 the TILA and Regulation Z.¹¹ In addition to the applicable interest rates described above, the Florida law allows consumer finance lenders to charge borrowers the following charges and fees:

- 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 for public filing, recoding, and the like;
- 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 dishonored check charge of up to \$20.¹²

Title Loans

The Florida Title Loan Act, codified at ch. 537, F.S., sets forth licensing requirements for title loan lenders and the terms and conditions under which a title loan is authorized in Florida. A title loan is 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 rates based on the principal amount, which is calculated and disclosed pursuant to Regulation Z.¹³ The maturity date of a title loan is 30 days after the agreement date, but can be extended for one or more 30-day periods by mutual consent of the lender and the borrower.¹⁴ Title lenders are prohibited from selling or charging for any type of insurance in connection with the loan.¹⁵

⁸ Section 516.01(2), F.S.

⁹ Section 516.031(1), F.S.

¹⁰ *Id.*

¹¹ Section 516.031(2), F.S.

¹² Section 516.031(3), F.S.

¹³ The interest rate tiers are: 30 percent a year, computed on the first \$2,000 of the principal amount; 24 percent a year on that part of principal between \$2,001 and \$3,000; and 18 percent a year on that part of principal exceeding \$3,001. See s. 537.011(1), F.S.

¹⁴ Section 537.011(3), F.S.

¹⁵ Section 537.013(1)(h), F.S.

Consumer Debt and the Military

According to the U.S. Department of Defense (DoD), servicemembers, particularly younger members, have limited money management skills and are generally unprepared for their financial responsibilities prior to entering the military. According to the DoD, 41 percent of servicemembers reported using one or more sources of small dollar lending in the past 12 months. Examples of these small dollar loans included payday, vehicle title, bank deposit advance, pawn shop, cash advances on credit cards, overdraft loans, overdraft lines of credit, overdraft protection from other accounts, relief society loans, and loans from friends and family. Further, the report states that 47 percent of servicemembers reported difficulty managing their finances within the last 12 months.¹⁶

The DoD expects servicemembers “to maintain personal readiness standards, including paying their debts and maintaining their ability to attend to the financial needs of their families. Losing qualified servicemembers due to personal issues, such as financial instability, causes loss of mission capability and drives significant replacement costs. The DoD estimates that each separation costs the DoD \$58,250.”¹⁷ As a result, it is a priority of the DoD to educate servicemembers of the risks associated with high-cost loans and encourage them to resolve their financial problems through counseling and alternatives, rather than perpetuate the problems through predatory loans.

Federal Military Lending Act

Congress enacted the Military Lending Act (MLA) in 2006 to provide covered servicemembers and their dependents with specific protections for their consumer credit transactions.¹⁸ A servicemember is defined in law as a member of the armed forces who is on active duty for more than 30 days, or on active Guard and Reserve Duty.¹⁹ Covered dependents include the spouse, child, parent or parent-in-law, and an unmarried person for whom the covered servicemember has legal custody.²⁰

The MLA currently applies to the following “consumer credit” products of covered borrowers:

- Closed-end payday loans for no more than \$2,000 and with a term of 91 days or fewer;
- Closed-end auto title loans with a term of 181 days or fewer; and
- Closed-end tax refund anticipation loans.²¹

¹⁶ DoD, *Limitations on Terms of Consumer Credit Extended to Service Members and Dependents*, 79 FR 58602, 58604 (Sept. 29, 2014).

¹⁷ DoD, *Limitations on Terms of Consumer Credit Extended to Service Members and Dependents*, 80 FR 43560, 43564-43565 (July 22, 2015).

¹⁸ 10 U.S.C. s. 987. 32 C.F.R. part 232. The MLA is implemented by the DoD and is enforced by the Federal Deposit Insurance Corporation, Office of the Comptroller of the Currency, National Credit Union Administration, Consumer Financial Protection Bureau, Federal Trade Commission, and other specified agencies.

¹⁹ 10 U.S.C. s. 987(i)(1).

²⁰ 10 U.S.C. s. 987(i)(2).

²¹ 32 C.F.R. 232.3. Consumer Financial Protection Bureau, *Ask CFPB: What types of loans are covered under the Military Lending Act?*, (updated Jan. 15, 2014), available at <http://www.consumerfinance.gov/askcfpb/1785/what-types-loans-are-covered-under-military-lending-act.html> (last visited Nov. 25, 2015).

Any loan that does not fall into one of the aforementioned three categories is not subject to the MLA's protections under the existing regulations. This narrow definition of "consumer credit" was perceived by the DoD to permit creditors to structure credit products in order to reduce or avoid altogether the obligations of the MLA.²² As a result, the DoD significantly amended the regulations enforcing the MLA such that beginning generally in October 2016,²³ the definition of consumer credit is expanded to include a wider range of credit consistent with credit that is subject to the TILA, "namely: Credit offered or extended to a covered borrower primarily for personal, family, or household purposes, and that is (i) subject to a finance charge or (ii) payable by a written agreement in more than four installments."²⁴

A creditor is not required to check the status of a consumer to determine if he or she is a covered borrower. Should the creditor choose to check a consumer's status as a covered borrower it may use its own assessment method. However, creditors are provided a safe harbor if they use either one or both of the methods provided: the DoD MLA database and consumer reports from a nationwide consumer credit reporting agency.²⁵ A status check to verify eligibility as a covered borrower is valid up to 60 days after a firm offer of credit is extended to the consumer.

The MLA regulations outline the following terms and conditions relating to the extension of consumer credit to a covered borrower:

- Caps the annual percentage rate of interest for consumer credit to covered borrowers at no more than 36 percent, which is known as the Military Annual Percentage Rate (MAPR);²⁶
- Mandates certain disclosures (*e.g.*, a statement of the MAPR and disclosures consistent with TILA) before a loan is made;²⁷
- Prohibits prepayment penalty fees if a covered borrower prepays all or part of the consumer credit;
- Prohibits a creditor from "rolling-over" or refinancing the same loan with exceptions for depository institutions;
- Prohibits a creditor from requiring the covered borrower to submit to arbitration in the event of a dispute;
- Prohibits a creditor from requiring a covered borrower to waive his or her rights under the Servicemembers Civil Relief Act;²⁸
- Prohibits mandatory allotments to repay the loan as a condition for receiving the loan;

²² 79 FR 58603.

²³ The effective date of the final rule is October 1, 2015. Generally, compliance is required by October 3, 2016, for credit established on or after that date. The rule provides a temporary exemption for credit card accounts under an open-end consumer credit plan until October 3, 2017. See 32 C.F.R. 232.12.

²⁴ *Supra* note 17 at 43563. The scope of credit products covered under the MLA regulations are consistent with credit that is subject to TILA. In accordance with the MLA, the MLA regulation continues to exclude residential mortgages and credit extended to finance the purchase of, and secured by, personal property, such as vehicle purchase loans. See 10 U.S.C. 987(i)(6).

²⁵ 32 C.F.R. 232.5. The database is available at <https://www.dmdc.osd.mil/mla/welcome.xhtml>.

²⁶ For covered borrowers, the cost of such consumer credit is capped at the MAPR of 36 percent. The MAPR is calculated based on Regulation Z and also includes other costs, such as credit insurance premiums, and other specified fees. See 32 C.F.R. 232.4.

²⁷ 32 C.F.R. 232.6.

²⁸ The act provides for the temporary suspension of judicial and administrative proceedings and transactions that may adversely affect the civil rights of servicemembers during their military service. 50 U.S.C. App. 501 *et. seq.*

- Prohibits a creditor from using the title of a vehicle as security for the obligation involving the consumer credit with exceptions for depository institutions; and
- Prohibits a creditor from using a check to access a financial account of covered borrower except in connection with a consumer credit transaction with an MAPR consistent with federal regulations.²⁹

Penalties and remedies are provided for covered borrowers, including enforcement provisions that permit a covered borrower to recover damages from a creditor who violates a requirement of the MLA.³⁰ Any credit agreement that fails to comply with the MLA regulations or contains one or more prohibited provisions under the regulations is void from the inception of the contract.³¹

III. Effect of Proposed Changes:

Section 1 authorizes the Office of Financial Regulation (OFR) to deny an application for a consumer finance license or take disciplinary action against a consumer finance lender for violating any provision of the Military Lending Act (MLA) or the federal regulations implementing the MLA in connection with a consumer finance loan made under ch. 516, F.S. (amending s. 516.07, F.S.). For example, ch. 516, F.S. currently prescribes the calculation of the Annual Percentage Rate (APR) or interest cap pursuant to Regulation Z. The rate cap for loans made to the servicemembers and their dependents is capped at 36 percent Military Annual Percentage Rate (MAPR). The MAPR is calculated pursuant to the MLA, which requires the inclusion of additional fees and insurance products that are not included under Regulation Z.

Section 2 provides that a violation of any provision of the MLA or implementing regulations in connection with a title loan made under ch. 537, F.S., is a prohibited act, which would authorize the OFR to take disciplinary action against a title loan lender or any agent or employee of a title loan lender (amending s. 537.013, F.S.).

Section 3 authorizes the OFR to take disciplinary action against a money services business, authorized vendor, or affiliated party that violates any provision of the MLA or the implementing regulations in connection with a deferred presentment transaction (payday loan) conducted under part IV of ch. 560, F.S. (amending s. 560.114, F.S.).

Section 4 authorizes the OFR to conduct an investigation to determine whether a financial institution, a subsidiary, a service corporation, an affiliate, or other person is engaging in or has engaged in conduct that is a violation of any provision of the MLA or implementing regulations (amending s. 655.035, F.S.). If the OFR has reason to believe that a person has violated any such provision or regulation, the OFR may initiate a proceeding against such person in accordance with s. 655.033 (cease and desist orders), s. 655.034 (injunctive relief), s. 655.037 (removal of a financial institution affiliated party), or s. 655.041 (administrative fines and enforcement), F.S., of the Financial Institution Codes.

Section 5 provides that this act applies to a consumer credit transaction or account for consumer credit established on or after October 3, 2016, except it does not apply to a credit card account

²⁹ 32 C.F.R. 232.8.

³⁰ 32 C.F.R. 232.9.

³¹ *Id.*

exempted under 32 C.F.R. s. 232.13(c) until the exemption expires. The MLA implementing regulations under 32 C.F.R. part 232 became effective October 1, 2015; however, compliance is only required for consumer credit transactions began or established on or after October 3, 2016. A limited exemption is provided for credit card accounts that delays compliance until October 3, 2017, which may be extended by the DoD until October 3, 2018.³²

Section 6 provides this act takes effect October 3, 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:

None.

B. Private Sector Impact:

By authorizing the state regulator, the OFR, to enforce the Military Lending Act and implementing regulations, servicemembers and their dependents will be provided greater consumer protections in connection with consumer credit transactions in Florida.

Additionally, while a business must already meet the requirements of the act, under the bill a business could be subject to penalties under state law for violations.

C. Government Sector Impact:

According to the OFR, the Division of Consumer Finance would incur additional duties and responsibilities to enforce the MLA and would need two additional FTEs to absorb the added duties. Salaries and benefits for the two positions would total \$126,132.³³

Any positive fiscal impact due to the ability of the OFR to enforce penalties, including fines, is indeterminate at this time.

³² 32 C.F.R. 232.13.

³³ Office of Financial Regulation (OFR), *SB 626 Agency Bill Analysis*, (Oct. 3, 2015) (on file with the Senate Committee on Military and Veterans Affairs, Space, and Domestic Security).

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 516.07, 537.013, and 560.114.

This bill creates section 655.035 of the Florida Statutes.

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Banking and Insurance on November 17, 2015:

In addition to issuing a cease and desist order, the CS also authorizes the OFR to seek injunctive relief, to remove a financial-institution-affiliated party, and to impose administrative fines against any financial institution, a subsidiary, a service corporation, an affiliate, or other person subject to the Financial Institutions Code that violates the MLA or the implementing regulations.

- B. **Amendments:**

None.