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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/27/2017	.	
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The Committee on Banking and Insurance (Garcia) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

Section 1. Subsections (1) and (3) of section 516.031,  
Florida Statutes, are amended to read:

516.031 Finance charge; maximum rates.—

(1) INTEREST RATES.—A licensee may lend any sum of money up  
to \$25,000. A licensee may not take a security interest secured  
by land on any loan less than \$1,000. The licensee may charge,



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11 contract for, and receive thereon interest charges as provided  
12 and authorized by this section. If two or more interest rates  
13 are applied to the principal amount of a loan, the licensee may  
14 charge, contract for, and receive interest at that single annual  
15 percentage rate that, if applied according to the actuarial  
16 method to each of the scheduled periodic balances of principal,  
17 would produce at maturity the same total amount of interest as  
18 would result from the application of the two or more rates  
19 otherwise permitted, based upon the assumption that all payments  
20 are made as agreed.

21 (a) Except as provided in paragraph (b), the maximum  
22 interest rate shall be 30 percent per annum, computed on the  
23 first \$3,000 of the principal amount; 24 percent per annum on  
24 that part of the principal amount exceeding \$3,000 and up to  
25 \$4,000; and 18 percent per annum on that part of the principal  
26 amount exceeding \$4,000 and up to \$25,000. The original  
27 principal amount as used in this ~~paragraph section~~ is the same  
28 as the amount financed as defined by the federal Truth in  
29 Lending Act and Regulation Z of the federal Consumer Financial  
30 ~~Protection Bureau Board of Governors of the Federal Reserve~~  
31 ~~System~~. In determining compliance with the statutory maximum  
32 interest and finance charges set forth in this subsection  
33 ~~herein~~, the computations used must ~~shall~~ be simple interest and  
34 not add-on interest or any other computations.

35 (b) A licensee may make a loan in a principal amount less  
36 than \$5,000 and charge, contract for, and receive interest  
37 charges and other charges authorized by this chapter, subject to  
38 the following:

39 1. A borrower may rescind the loan by notifying the



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40 licensee of such intent, and returning to the licensee the full  
41 principal amount of the loan advanced to the borrower, as well  
42 as any payments made for ancillary products, within 2 business  
43 days after the date the loan is made. The licensee must disclose  
44 such right in writing to the borrower before the loan is made.

45 2. A licensee may not take any security interest on the  
46 loan.

47 3. The term of the loan may not be less than 120 days or  
48 more than 37 months.

49 4. The maximum annual interest rate of the loan shall be 36  
50 percent per annum, computed on the original principal amount of  
51 the loan. The interest rate of the loan calculated as of the  
52 date the loan is made must be fixed for the life of the loan.  
53 The original principal amount of the loan is equal to the amount  
54 financed as defined by the federal Truth in Lending Act and  
55 Regulation Z of the federal Consumer Financial Protection  
56 Bureau. In determining compliance with the statutory maximum  
57 interest rate in this paragraph, the computations used must be  
58 simple interest and may not be add-on interest or any other  
59 computations.

60 5. A licensee may not induce or permit any person to become  
61 obligated to the licensee, directly or contingently, or both,  
62 under more than one loan with the licensee made under this  
63 subsection at the same time.

64 6. A licensee may not refinance a loan made under this  
65 paragraph with another loan made under this paragraph, unless  
66 the borrower has repaid at least 60 percent of the principal  
67 amount of his or her outstanding loan and his or her outstanding  
68 loan is not in default. For purposes of this paragraph, the term



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69 "refinance" means the replacement or revision of an existing  
70 loan contract with a borrower that results in an extension of  
71 additional principal to that borrower.

72 7. A licensee shall make a determination of a borrower's  
73 ability to repay a loan made under this paragraph by determining  
74 that the borrower's residual income will be sufficient for the  
75 consumer to make the scheduled payments when due under the loan  
76 and meet basic living expenses during the term of the loan. The  
77 borrower's residual income must be calculated using net income,  
78 verified by payroll receipts, tax returns, bank statements,  
79 benefit letters, or other reliable third party means, less debt  
80 payments and basic living expenses. Basic living expenses,  
81 including housing and utility costs, may be estimated using any  
82 reasonable means or database.

83 8. The licensee must report each borrower's full payment  
84 performance under the loan, including positive payment  
85 performance, to at least one consumer reporting agency that  
86 compiles and maintains files on consumers on a nationwide basis  
87 as defined in s. 603(p) of the federal Fair Credit Reporting  
88 Act, 15 U.S.C. s. 1681a(p), upon the licensee's acceptance as a  
89 data furnisher by that consumer reporting agency.

90 9. Before making the loan, the licensee must disclose in  
91 writing to the borrower information about the office's consumer  
92 credit counseling services available under s. 516.32.

93 10. A licensee shall make available to the borrower by  
94 electronic or physical means, at the time that a payment is made  
95 by the borrower, a plain and complete receipt of payment.

96 11.a. A licensee may not initiate a payment transfer from a  
97 borrower's bank account in connection with collecting an amount



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98 due under the loan after the licensee has attempted to initiate  
99 the payment transfer two consecutive times and each attempt  
100 resulted in a return indicating that the borrower's bank account  
101 lacked sufficient funds. A licensee may collect only one  
102 insufficient funds fee for each payment transfer that is  
103 dishonored, regardless of whether the payment transfer was  
104 initiated and dishonored a second time. A licensee may not  
105 condition the making of a loan on the borrower's repayment by  
106 one or more electronic funds transfers or predated checks.

107 b. For purposes of this paragraph, the term "payment  
108 transfer" means a debit or funds withdrawal and includes, but is  
109 not limited to, an electronic funds transfer as defined in the  
110 federal Electronic Funds Transfer Act and Regulation E, 12  
111 C.F.R. part 1005, of the federal Consumer Financial Protection  
112 Bureau, or a paper check processed through a funds-transfer  
113 system, as defined in s. 670.105, or through the Automated  
114 Clearing House (ACH) network ~~If two or more interest rates are~~  
115 ~~applied to the principal amount of a loan, the licensee may~~  
116 ~~charge, contract for, and receive interest at that single annual~~  
117 ~~percentage rate which, if applied according to the actuarial~~  
118 ~~method to each of the scheduled periodic balances of principal,~~  
119 ~~would produce at maturity the same total amount of interest as~~  
120 ~~would result from the application of the two or more rates~~  
121 ~~otherwise permitted, based upon the assumption that all payments~~  
122 ~~are made as agreed.~~

123 (3) OTHER CHARGES.—

124 (a) In addition to the interest, delinquency, and insurance  
125 charges provided in this section, further or other charges or  
126 amount for any examination, service, commission, or other thing



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127 or otherwise may not be directly or indirectly charged,  
128 contracted for, or received as a condition to the grant of a  
129 loan, except:

130 1. An amount of up to \$25 to reimburse a portion of the  
131 costs for investigating the character and credit of the person  
132 applying for the loan;

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

135 3. Charges paid for the brokerage fee on a loan or line of  
136 credit of more than \$10,000, title insurance, and the appraisal  
137 of real property offered as security if paid to a third party  
138 and supported by an actual expenditure;

139 4. Intangible personal property tax on the loan note or  
140 obligation if secured by a lien on real property;

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

146 6. The premium payable for any insurance in lieu of  
147 perfecting any security interest otherwise required by the  
148 licensee in connection with the loan if the premium does not  
149 exceed the fees which would otherwise be payable, which may be  
150 collected when the loan is made or at any time thereafter;

151 7. Actual and reasonable attorney fees and court costs as  
152 determined by the court in which suit is filed;

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



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156           9. A delinquency charge of up to \$15 for each payment in  
157 default for at least 10 days if the charge is agreed upon, in  
158 writing, between the parties before imposing the charge. No more  
159 than one delinquency charge may be imposed for each payment in  
160 default. A maximum delinquency charge of \$15 may be imposed for  
161 loans repayable in monthly installments. For loans repayable in  
162 installments due less than monthly, the maximum of all  
163 delinquency charges imposed during a calendar month may not  
164 exceed \$15.

165  
166 Any charges, including interest, in excess of the combined total  
167 of all charges authorized and permitted by this chapter  
168 constitute a violation of chapter 687 governing interest and  
169 usury, and the penalties of that chapter apply. In the event of  
170 a bona fide error, the licensee shall refund or credit the  
171 borrower with the amount of the overcharge immediately but  
172 within 20 days after the discovery of such error.

173           (b) Notwithstanding ~~the provisions of~~ paragraph (a), any  
174 lender of money who receives a check, draft, electronic funds  
175 transfer as defined in the federal Electronic Funds Transfer Act  
176 and Regulation E of the federal Consumer Financial Protection  
177 Bureau, negotiable order of withdrawal, or like instrument or  
178 transfer drawn on a bank or other depository institution, which  
179 instrument or transfer is given by a borrower as full or partial  
180 repayment of a loan, may, if such instrument or transfer is not  
181 paid or is dishonored by such institution, make and collect from  
182 the borrower an insufficient funds fee ~~a bad check charge~~ of not  
183 more than the greater of \$20 or an amount equal to the actual  
184 fee charged ~~charge made~~ to the lender by the depository



185 institution for the return of the unpaid or dishonored  
186 instrument or transfer.

187 Section 2. This act shall take effect July 1, 2017.

188

189 ===== T I T L E A M E N D M E N T =====

190 And the title is amended as follows:

191 Delete everything before the enacting clause  
192 and insert:

193 A bill to be entitled

194 An act relating to consumer finance; amending s.  
195 516.031, F.S.; authorizing a licensee under the  
196 Florida Consumer Finance Act to charge, contract for,  
197 and receive a specified interest rate on certain  
198 loans; authorizing such licensee to make certain loans  
199 subject to certain conditions; defining the term  
200 "payment transfer"; specifying limitations for  
201 delinquency charges; revising a provision authorizing  
202 insufficient funds fees under certain circumstances;  
203 providing an effective date.