

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: CS/SB 594

INTRODUCER: Banking and Insurance Committee and Senator Garcia

SUBJECT: Consumer Finance

DATE: March 27, 2017

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|---------|----------------|-----------|--------|
| 1. | Matiyow | Knudson | BI | FAV/CS |
| 2. | | | AGG | |
| 3. | | | AP | |
| 4. | | | RC | |

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 594 allows a licensee under ch. 516, F.S., to make a consumer finance loan of less than \$5,000 with a maximum annual interest rate of 36 percent per year. Such loans are subject to additional restrictions and underwriting standards. The current maximum allowable interest rates for such loans are:

- 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.

The bill also allows the repayment of any loan under ch. 516, F.S., to be paid in equal biweekly or monthly installments.

II. Present Situation:

Federal Truth in Lending Act (TILA)

The purpose of TILA,¹ 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.”² Regulation Z, which implements TILA, requires the calculation and disclosure of the

¹ 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. 1601(a).

Annual Percentage Rate (APR) for consumer loans.³ Finance charges include interest, any charges, or fees payable by the consumer and imposed by the financial institution as an incident to or as a condition of an extension of consumer credit. Regulation Z includes examples applicable both to open-end and closed-end credit transactions, of what must, must not, or need not be included in the calculation and disclosure of the finance charge.⁴

State Regulation of Consumer Lending

The 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. 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).⁵ The OFR may examine, investigate, and take disciplinary actions against such state-chartered financial institutions for violation of the codes.⁶

Consumer Finance Loans

The Florida Consumer Finance Act (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 consumer finance loans, which are “loan[s] 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.”⁷ 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 to \$4,000; and
- 18 percent per year on that part of principal between \$4,001 to \$25,000.⁸

These principal amounts are the same as the financed amounts determined by the TILA and Regulation Z.⁹ 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.¹⁰ Lenders are required to provide written disclosures to consumers that include the APR under Regulation Z. Besides the applicable interest rates described above, the act allows consumer finance lenders to charge borrowers the following charges and fees:¹¹

³ 15 U.S.C. s. 1604-1606.

⁴ 12 C.F.R. s. 1026.4.

⁵ Chapters 655, 657, 658, 660, 663, 665, and 667, F.S.

⁶ 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.

⁷ Section 516.01(2), F.S.

⁸ Section 516.031(1), F.S.

⁹ Section 516.031(2), F.S.

¹⁰ *Id.*

¹¹ Section 516.031(3), F.S.

- 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 dishonored check charge of up to \$20.

Lastly, the act requires all consumer finance loans must be repaid in equal monthly installments, except for repayment on a line of credit.¹²

III. Effect of Proposed Changes:

The bill allows for an interest rate of no more than 36 percent per annum to be applied to consumer finance loans with a principal amount less than \$5,000. Such loans must:

- Provide written notice to the borrower that the borrower may rescind the loan by returning the full principal amount borrowed within 2 business days after the loan was made.
- Prohibit the lender from taking any security interest on the loan.
- Provide that the loan term is a minimum of 120 days and a maximum of 37 months.
- Require simple interest be fixed for the life of the loan and be computed on the original principal amount.

Consumer finance lenders are prohibited from inducing a borrower from taking out more than one loan. Refinancing the loan is prohibited unless 60 percent of the original loan's principal is not in default.

Before issuing a loan the lender must determine if the borrower's residual income allows them to afford the loan payment while still being able to afford basic living expenses. Residual income is verified by payroll receipts, tax returns, bank statements, benefit letters, or other reliable third party means, less debt payments and basic living expenses. The lender must also disclose to the borrower information regarding the OFR's consumer credit counseling services.

The consumer finance lender must report each borrower's full payment performance under the loan to at least one consumer reporting agency.

The bill also allows the repayment of any loan under ch. 516, F.S., to be paid in equal biweekly or monthly installments.

The bill restricts the lender from requiring repayment by one or more electronic funds transfers or predated checks. The lender also may not attempt more than two consecutive electronic funds

¹² Section 516.36, F.S.

transfers for payment when the account in which the payment withdrawal had been approved by the borrower indicates there are insufficient funds. The bill allows an insufficient funds fee of \$20 to be applied to electronic funds transfers. Currently, a lender is allowed to charge a \$15 delinquency fee if more than 10 days past due on a payment.¹³ However, due to the added bi-weekly payment schedule allowed, the bill prohibits a lender from collecting more than one delinquency fee per month regardless if the borrower was delinquent more than once during the month.

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:

Borrowers could be subject to higher interest rates than currently allowed.

The OFR provided the below chart comparing a \$2,500 and \$5,000 loan under current law versus the change in interest rate proposed in the bill.¹⁴

| Law | Principal Amount | Term | Interest Rate | Finance Charge | Difference | Payment | Difference |
|-------------|------------------|-----------|---------------|----------------|------------|----------|------------|
| Current Law | \$2,500 | 24 Months | 30% | \$854.83 | \$186.65 | \$139.78 | \$7.97 |
| SB 594 | \$2,500 | 24 Months | 36% | \$1,041.48 | | \$147.75 | |
| Current Law | \$5,000 | 24 Months | Approx 28.42% | \$1,612.48 | \$473.15 | \$275.52 | \$19.72 |
| SB 594 | \$5,000 | 24 Months | 36% | \$2,085.63 | | \$295.24 | |

¹³ Section 516.031(3)(a)9., F.S.

¹⁴ Email received by the Office on March 27, 2017 (on file with the Senate Committee on Banking and Insurance).

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 516.031, 516.36.

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 March 27, 2017:

The CS:

- Allows a borrower to return the full principal amount borrowed and rescind the agreement within 2 business days of receiving the loan.
- Reduces the maximum loan amount from \$10,000 to \$5,000 for loans that allow interest of up to 36 percent.
- Sets the maximum terms for such loans at no more than 37 months.
- Clarifies a lender cannot offer any other loan when issuing a 36 percent interest loan.
- Removes the debt to income threshold for offering such loans of no more than 50 percent and replaces it with an evaluation of basic living expenses compared to verified residual income.
- Allows one delinquency charge of \$15 per month, even if the borrower is delinquent more than one time during the month.
- Makes technical changes when referencing federal regulations.

B. Amendments:

None.