

By Senator Garcia

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1 A bill to be entitled
2 An act relating to consumer finance; amending s.
3 516.031, F.S.; authorizing a licensee to make
4 specified loans under certain conditions; revising
5 provisions relating to certain other charges for
6 consumer loans; amending s. 516.36, F.S.; revising
7 installment requirements for consumer loans; providing
8 an effective date.

9
10 Be It Enacted by the Legislature of the State of Florida:

11
12 Section 1. Subsection (1) and paragraph (b) of subsection
13 (3) of section 516.031, Florida Statutes, are amended to read:
14 516.031 Finance charge; maximum rates.—

15 (1) INTEREST RATES.—A licensee may lend any sum of money up
16 to \$25,000. A licensee may not take a security interest secured
17 by land on any loan less than \$1,000. The licensee may charge,
18 contract for, and receive thereon interest charges as provided
19 and authorized by this section. If two or more interest rates
20 are applied to the principal amount of a loan, the licensee may
21 charge, contract for, and receive interest at that single annual
22 percentage rate that, if applied according to the actuarial
23 method to each of the scheduled periodic balances of principal,
24 would produce at maturity the same total amount of interest as
25 would result from the application of the two or more rates
26 otherwise permitted, based upon the assumption that all payments
27 are made as agreed.

28 (a) Except as provided in paragraph (b), the maximum
29 interest rate shall be 30 percent per annum, computed on the
30 first \$3,000 of the principal amount; 24 percent per annum on
31 that part of the principal amount exceeding \$3,000 and up to
32 \$4,000; and 18 percent per annum on that part of the principal

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33 amount exceeding \$4,000 and up to \$25,000. The original
34 principal amount as used in this paragraph ~~section~~ is the same
35 as the amount financed as defined by the federal Truth in
36 Lending Act and Regulation Z of the federal Consumer Financial
37 Protection Bureau ~~Board of Governors of the Federal Reserve~~
38 ~~System~~. In determining compliance with the statutory maximum
39 interest and finance charges set forth in this subsection
40 herein, the computations used must ~~shall~~ be simple interest and
41 not add-on interest or any other computations.

42 (b) A licensee may make a loan in a principal amount less
43 than \$10,000, and charge, contract for, and receive interest
44 charges and other charges authorized by this chapter, subject to
45 the following:

46 1. A borrower may rescind the loan by notifying the
47 licensee of such intent, and returning to the licensee the full
48 principal amount of the loan advanced to the borrower within 1
49 business day after the date the loan is made. The licensee must
50 disclose such right in writing to the borrower before the loan
51 is made.

52 2. A licensee may not take any security interest on the
53 loan.

54 3. The term of the loan may not be less than 120 days.

55 4. The maximum annual interest rate of the loan shall be 36
56 percent per annum, computed on the original principal amount of
57 the loan. The interest rate of the loan calculated as of the
58 date the loan is made must be fixed for the life of the loan.
59 The original principal amount of the loan is equal to the amount
60 financed as defined by the federal Truth in Lending Act and
61 Regulation Z of the federal Consumer Financial Protection

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62 Bureau. In determining compliance with the statutory maximum
63 interest rate in this paragraph, the computations used must be
64 simple interest and may not be add-on interest or any other
65 computations.

66 5. A licensee may not induce or permit any person to become
67 obligated to the licensee, directly or contingently, or both,
68 under more than one loan with the licensee made under this
69 paragraph at the same time.

70 6. A licensee may not refinance a loan made under this
71 paragraph with another loan made under this paragraph, unless
72 the borrower has repaid at least 60 percent of the outstanding
73 principal remaining on his or her loan and his or her
74 outstanding loan is not in default. For purposes of this
75 paragraph, the term "refinance" means the replacement or
76 revision of an existing loan contract with a borrower which
77 results in an extension of additional principal to that
78 borrower.

79 7. The licensee must underwrite each loan to determine a
80 borrower's ability and willingness to repay the loan pursuant to
81 the loan terms, and may not make a loan if it determines,
82 through its underwriting, that the borrower's total monthly debt
83 service payments, at the time of loan origination, including the
84 loan for which the borrower is being considered, and across all
85 outstanding forms of credit that can be independently verified
86 by the licensee, exceed 50 percent of the borrower's gross
87 monthly income. The licensee must seek information and
88 documentation relating to all of a borrower's outstanding debt
89 obligations during the loan application and underwriting
90 process, including loans that are self-reported by the borrower

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91 and not available for independent verification by the licensee.
92 The licensee must verify such information and documentation
93 using a credit report from at least one consumer reporting
94 agency that compiles and maintains files on consumers on a
95 nationwide basis or using other available electronic debt
96 verification services that provide reliable evidence of a
97 borrower's outstanding debt obligations. The licensee must also
98 verify the borrower's income upon which the licensee relies to
99 determine the borrower's debt-to-income ratio using reliable
100 evidence of the borrower's actual income.

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

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

111 10.a. A licensee may not initiate a payment transfer from a
112 borrower's bank account in connection with collecting an amount
113 due under the loan after the licensee has attempted to initiate
114 the payment transfer two consecutive times and each attempt
115 resulted in a return indicating that the borrower's bank account
116 lacked sufficient funds. A licensee may collect only one
117 insufficient funds fee for each payment transfer that is
118 dishonored, regardless of whether the payment transfer was
119 initiated and dishonored a second time. A licensee may not

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120 condition the making of a loan on the borrower's repayment by
121 one or more electronic funds transfers or predated checks.

122 b. For purposes of this paragraph, the term "payment
123 transfer" means a debit or funds withdrawal and includes, but is
124 not limited to, an electronic funds transfer as defined in the
125 federal Electronic Funds Transfer Act and Regulation E of the
126 federal Consumer Financial Protection Bureau, or a paper check
127 processed through a funds-transfer system, as defined in s.
128 670.105, or through the Automated Clearing House (ACH) network.

129 ~~If two or more interest rates are applied to the principal~~
130 ~~amount of a loan, the licensee may charge, contract for, and~~
131 ~~receive interest at that single annual percentage rate which, if~~
132 ~~applied according to the actuarial method to each of the~~
133 ~~scheduled periodic balances of principal, would produce at~~
134 ~~maturity the same total amount of interest as would result from~~
135 ~~the application of the two or more rates otherwise permitted,~~
136 ~~based upon the assumption that all payments are made as agreed.~~

137 (3) OTHER CHARGES.—

138 (b) Notwithstanding ~~the provisions of~~ paragraph (a), any
139 lender of money who receives a check, draft, electronic funds
140 transfer as defined in the federal Electronic Funds Transfer Act
141 and Regulation E of the federal Consumer Financial Protection
142 Bureau, negotiable order of withdrawal, or like instrument or
143 transfer drawn on a bank or other depository institution, which
144 instrument or transfer is given by a borrower as full or partial
145 repayment of a loan, may, if such instrument or transfer is not
146 paid or is dishonored by such institution, make and collect from
147 the borrower an insufficient funds fee ~~a bad check charge~~ of not
148 more than the greater of \$20 or an amount equal to the actual

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149 fee charged ~~charge made~~ to the lender by the depository
150 institution for the return of the unpaid or dishonored
151 instrument or transfer.

152 Section 2. Section 516.36, Florida Statutes, is amended to
153 read:

154 516.36 ~~Monthly~~ Installment requirement.—Every loan made
155 pursuant to this chapter shall be repaid in approximately equal,
156 periodic ~~monthly~~ installments, except that the amount of the
157 final installment may be less than the amount of the prior
158 installments. Installments must be paid biweekly or monthly ~~as~~
159 ~~nearly equal as mathematically practicable~~. This section shall
160 not apply to lines of credit.

161 Section 3. This act shall take effect July 1, 2017.