

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 Appropriations Subcommittee on General Government

BILL: CS/SB 872

INTRODUCER: Banking and Insurance Committee and Senator Rouson

SUBJECT: Consumer Finance Loans

DATE: April 12, 2017 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Matiyow</u>	<u>Knudson</u>	<u>BI</u>	<u>Fav/CS</u>
2.	<u>Sanders</u>	<u>Betta</u>	<u>AGG</u>	<u>Pre-meeting</u>
3.	<u> </u>	<u> </u>	<u>AP</u>	<u> </u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 872 establishes the Access to Responsible Credit Pilot Program. The purpose 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 (OFR) is responsible for regulating this program. The pilot program will operate under the following terms and conditions:

- A program licensee may make loans of at least \$300 and no more than \$3,000, at a maximum fixed interest rate of 36 percent.
- A program licensee may also charge the borrower an origination fee of six percent of the principal amount of the program loan 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 120 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 35 percent of the borrower's gross monthly income.
- The 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 a pilot program application and \$1,000 fee.

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. 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.

In order to implement the provisions of the bill, the OFR's licensing and examination software program would require updates at a projected cost of \$125,000. If participation in the program is small, the OFR indicated workload can be absorbed within existing resources.

The bill has an effective date of July 1, 2018.

II. Present Situation:

Federal Truth in Lending Act (TILA)

The purpose of the 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 the TILA, requires the calculation and disclosure of the 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

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).

³ 15 U.S.C. s. 1604-1606.

⁴ 12 C.F.R. s. 1026.4.

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

- 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.

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.

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

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 2010.¹³ The pilot program covers consumer loans of \$250-\$2,500. The goal was to increase consumers' access to capital by encouraging development of a more robust small dollar loan market in California. In 2015, California enacted legislation to revise provisions relating to the small-dollar loan pilot program.¹⁴ The new pilot program covers consumer loans of \$300-\$2,500 and 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.¹⁵

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.
- *Interest rates:* Smaller loans generally carried an annual percentage rate (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 seven 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 four-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.

¹² Section 516.36, F.S.

¹³ See http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=200920100SB1146 (last visited March 27, 2017).

¹⁴ See http://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201520160SB235 (last visited March 27, 2017).

¹⁵ Id.

- *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 ten. Additionally, the revisions did not significantly affect the amount of lending activity conducted by the individual companies.¹⁶

III. Effect of Proposed Changes:

Access to Responsible Credit Pilot Program (Section 1)

Section 1 creates s. 516.40, F.S., to establish the Access to Responsible Credit Pilot Program (program). The program will 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. Under current law, licensed consumer finance lenders may make loans in this amount at a maximum rate of 30 percent per annum, with no minimum or maximum loan term.

Definitions (Section 2)

Section 2 creates s. 516.41, F.S., to provide the definitions for purposes of the program.

The Fair Credit Reporting Act (FCRA) defines “consumer reporting agency” as 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.¹⁷

This section adopts the definition of a consumer reporting agency as defined in section 603(p) of 15 U.S.C. Section 1681a(p). Under this section, the FCRA defines a “consumer reporting agency that compiles and maintains files on consumers on a nationwide basis” as a consumer reporting agency that regularly engages in the practice of assembling or evaluating, and maintaining, for the purpose of furnishing consumer reports to third parties bearing on a consumer’s credit worthiness, credit standing, or credit capacity, each of the following regarding consumers residing nationwide:

- Public record information; and,
- Credit account information from persons who furnish that information regularly and in the ordinary course of business.¹⁸

The term “credit score,” as defined within the FCRA, means a numerical value or a categorization derived from a statistical tool or modeling system used by a person who makes or

¹⁶ 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 March 27, 2017).

¹⁷ Section 603(f) of the Fair Credit Reporting Act, 15 U.S.C. s. 1681a(f).

¹⁸ Section 603(p) of the Fair Credit Reporting Act, 15 U.S.C. s. 1681a(p).

arranges a loan to predict the likelihood of certain credit behaviors, including default (and the numerical value or the categorization derived from such analysis may also be referred to as a “risk predictor” or “risk score”). “Credit score” does not include any mortgage score or rating of an automated underwriting system that considers one or more factors in addition to credit information, including the loan to value ratio, the amount of down payment, or the financial assets of a consumer; or any other elements of the underwriting process or underwriting decision.¹⁹

“Data furnisher” means an entity that furnishes information relating to consumers to one or more consumer reporting agencies for inclusion in a consumer report. An entity is not a “data furnisher” when it:

- Provides information to a consumer reporting agency solely to obtain a consumer report in accordance with sections 605(a) and (f) of the FCRA;
- Is acting as a “consumer reporting agency” as defined in section 630(f) of the FCRA;
- Is a consumer to whom the furnished information pertains; or
- Is a neighbor, friend or associate of the consumer, or another individual with whom the consumer is acquainted or who may have knowledge about the consumer, and who provides information about the consumer’s character, general reputation, personal characteristics, or mode of living in response to a specific request from a consumer reporting agency.²⁰

“Pilot program or program” means the Access to Responsible Credit Pilot Program, as established by this bill.

“Pilot program license” means a license issued under ss. 516.40-516.46, F.S., authorizing a program licensee to make and collect program loans.

“Program branch office” means a location, other than a program licensee’s or referral partner’s principal place of business:

- The address of which appears on business cards, stationery, or advertising used by the program licensee in connection with the business conducted under this chapter;
- At which the program licensee’s name, advertising or promotional materials, or signage suggests that program loans are originated, negotiated, funded or serviced; or
- At which program loans are originated, negotiated, funded or serviced by a program licensee.

“Program branch office licensee” means a license issued to a program licensee for each program branch office in the state.

“Program licensee” means a person who is licensed to make and collect program loans under this chapter and who is approved by the office to participate in the program.

“Program loan” means a consumer finance loan with a principal amount of at least \$300 and no more than \$3,000 originated pursuant to ss. 516.40-516.44, F.S., excluding the amount of the origination fee authorized under s. 516.43(3), F.S.

¹⁹ See s. 609(f)(2)(A) of the Fair Credit Reporting Act, 15 U.S.C. s. 1681g(f)(2)(A).

²⁰ See s. 12 C.F.R. s. 1022.41(c).

“Referral partner” means an entity that, at the referral partner’s physical location for business or through other means, performs one or more of the services authorized in s. 516.44(2), F.S., on behalf of a program licensee. A referral partner is not a credit service organization as defined in s. 817.7001, F.S., or a loan broker as defined in s. 687.14, F.S.

“Refinance program loan” means a program loan that extends additional principal to a borrower and replaces and revises an existing program loan contract with the borrower. A refinance program loan does not include an extension, a deferral, or a rewrite of the program loan.

Regulation of Program Licensees (Lenders) and Referral Partners (Sections 3 and 5)

Program Licensees

Section 3 creates s. 516.42, F.S. to require persons seeking to participate in the program as a lender must obtain a pilot program license from the Office of Financial Regulation (OFR). Pilot program licensees must meet the following criteria:

- Be licensed to make consumer finance loans under ch. 516, F.S.;
- Not be the subject of any insolvency proceedings;
- Not be the subject of an enforcement action within the OFR or any another state, territory or jurisdiction; and
- Not have a deficiency at the time of the person’s application.

Applicants are required to pay a \$1,000 nonrefundable application fee and an application with the OFR. The biennial renewal fee is \$1,000. The legislation provides for the establishment of application forms by rule.

Each branch office of a program licensee requires licensure. The program licensee must submit an application and an initial nonfundable fee of \$30 per program branch office. The biennial renewal fee for each branch office is \$30.

The bill requires applicant’s acceptance as a “data furnisher” with a consumer-reporting agency²¹ before the OFR may approve an applicant as a program licensee. 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 six months of commencing lending under the pilot program.

Referral Partners

Section 5 creates s. 516.44, F.S., to allow 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 comply with s 16.44, 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.

²¹ 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.”

A referral partner may engage in the following activities:

- Advertising on behalf of the program licensee;
- Providing written factual information about the pilot program and discussing the program information with a prospective borrower in general terms;
- Notifying the prospective borrower of information needed to complete an application under the program;
- Entering 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;
- Assembling credit applications and other materials obtained in the course of a credit application transaction for submission to the program licensee;
- Contacting the program licensee to determine the status of a program loan application;
- Communicating with a borrower or respective borrower a response that is returned by the program licensee's automated underwriting system;
- Obtaining a borrower's signature on documents prepared by the program licensee, and delivering final copies of the documents to the borrower;
- Obtaining a borrower's signature on documents prepared by the program licensee and delivering final copies of the documents to the borrower;
- Disbursing program loan proceeds to a borrower, and receiving program loan payments from a borrower;
- Receiving a program loan payment from the borrower if this method of payment is acceptable to the borrower; and
- Operating an electronic access point through which a prospective borrower may directly access the website of the program licensee to apply for a program loan.

A referral partner is prohibited from participating in any of the following activities:

- Providing counseling or advice to a borrower or prospective borrower with respect to any loan term;
- Providing loan-related marketing material to the borrower or prospective borrower that has not been previously approved by the program licensee;
- Negotiating a loan term between a program licensee and a prospective borrower;
- Offering information pertaining to a single prospective borrower to more than one program licensee unless such program licensee has declined to offer a program loan to the prospective borrower and has done so in writing; and
- Requiring a borrower to pay any fees or charges to the referral partner or any other person in connection with a program loan other than those permitted under ss. 516.40-516.46, F.S.

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 information²². 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 two years, or for one month following a regular examination by the OFR, whichever is later.

²² See s. 516.43(1)(h), F.S.

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 is excluded from being charged 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; and
- 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.

Miscellaneous Provisions

A program licensee is required to furnish certain information to the OFR, within 15 days after entering into a contract with a referral partner. The information provided to the OFR must include the following:

- The name, business address, and licensing details of the referral partner and all locations at which the referral partner will perform services;
- The name and contact information for an employee of the referral partner who is knowledgeable about, and has the authority to execute, the referral partner agreement;
- The name and contact information for a referral partner’s employee or employees responsible for referring activities on behalf of the program licensee; and
- A statement by the program licensee that it has conducted due diligence regarding the referral partner and has confirmed the referral partner and, in some instances, the affiliated party²³, is not subject to:
 - A filing of petition of bankruptcy or reorganization under the United States Bankruptcy Code;
 - An administrative or judicial license suspension or revocation proceeding, or the denial of a license request or renewal, by any state, the District of Columbia, any United State territory, or any foreign country in which the referral partner operates, plans to operate or is licensed to operate;
 - A felony indictment;

²³ Affiliated Party, as defined in this section, means a director, an officer, a responsible person, an employee, or a foreign affiliate of a referral partner; or a partner who has a controlling interest in a referral partner.

- A felony conviction, guilty plea, or plea of nolo contendere, regardless of adjudication;
- Any suspected criminal act perpetrated in the State of Florida relating to this act; and
- Criminal investigation.

A referral partner must provide notices of changes to the program licensee, in writing and by registered mail, within 30 days after any changes occur to the information provided or after the occurrence or knowledge of any events specified in this section.

The program licensee is responsible for any violation of s. 516.40, F.S., by its referral partner, subject to the authority granted between the parties in their contract, if the program licensee had actual knowledge or should have known of the violation.

Terms and Conditions of the Small Dollar Loans (Section 4)

Section 4 creates s. 516.43, F.S., to require a program licensee to comply with certain conditions in making program loans, including the following:

- A program loan must:
 - Be unsecured;
 - Have a minimum term of 120 days, except it may not have a prepayment penalty;
 - Be repayable in substantially equal weekly, biweekly, or monthly installments;
 - 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 returning the principal advanced by the end of the business day after the program loan was consummated; and
 - 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 35 percent of the borrower's gross monthly income.

Fees

The bill allows a program licensee to contract for and receive an origination fee once within 12 months, which may not exceed six percent of the principal amount, exclusive of the origination fee, or \$75, whichever is less.

The bill imposes current law fees for insufficient funds of \$20, and a delinquency charge of \$15 for each payment in default greater than ten days.²⁴ 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 that 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; and
- A statement describing the borrower's right of rescission.

Additionally, the bill allows the disclosures to be completed in any language the loan is negotiated in; but requires a program licensee to pay for any translation costs incurred by the OFR when issuing loans in languages other than English.

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 and Disciplinary Actions of Program Licensees (Section 6)

Section 6 creates s. 516.45, F.S. to require that a program licensee or referral partner must maintain, preserve, and keep available for examination, all books, accounts, or other documents required by this chapter, by any rule or order adopted under this chapter, or by any agreement

²⁴ Section 516.01(3), F.S.

entered into with the OFR. The OFR is required to examine each program licensee at least once every 24 months. Costs of examination are borne by the program licensee.

A program licensee who violates any provision of this act is subject to disciplinary action.²⁵ Any referral partner who violates s. 516.44, F.S., is subject to the following disciplinary actions:

- Disqualification from performing services as defined in this act;
- Barred from performing services at one or more specific locations of the referral partner;
- Termination of a written agreement between the referral partner and the program licensee;
- Imposition of an administrative fine not to exceed \$1,000 for each violation; and
- Prohibition of the referral partner to use the referral partner, if OFR deems it to be in the public's interest.

Reporting Requirements (Sections 4, 5, and 7)

Program Licensee

Section 4. 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.

OFR Program Report

Section 7 creates s. 516.46, F.S., to establish annual reports for the program licensee and the OFR. 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. The bill directs the OFR to post a report on its website by January 1, 2020, summarizing the results of the program. The report must include information on licensed program participants, the loans themselves, and borrowers. Such information includes but is not limited to, the number of licensed participants in the program, the number and total amount of program loans made, the average size of the increased credit score, and information on delinquency charges assessed.

Section 8 provides that ss. 516.40-516.47, F.S., are subject to repeal on December 31, 2022, unless reenacted or superseded by another enacted law before that date.

Section 9 provides the act is effective July 1, 2018.

²⁵ See ss. 516.07(2), 516.44 and 120.60, F.S.

In its bill analysis, the OFR provided the below chart comparing a \$1,100 and \$300 loan under current law versus the change in interest rate and fees proposed in the bill.²⁶

Law	Principal Amount	Term (Days)	Interest Rate	Finance Charge	Fees	APR	Total	Difference
Current	\$1,100	480	30% per year	\$433.97	\$0.00	30.00%	\$1,533.97	
Proposed	\$1,100	480	36% per year plus 6% of loan amount	\$520.77	\$66.00	40.56%	\$1,686.77	\$152.79
Current	\$300	120	30% per year	\$29.59	\$0.00	30.00%	\$329.59	
Proposed	\$300	120	36% per year plus 6% of loan amount	\$35.51	\$18.00	54.25%	\$353.51	\$23.92

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 Access to Responsible Credit Pilot Loan Program (program) will be required to obtain a consumer finance license as well as a program license. The bill requires a \$1,000 application fee and \$1,000 biennial renewal fee for program licensees in addition to a \$30 branch application and \$30 renewal fee.

Furthermore, the bill provides for a \$30 referral partner fee for each referral partner filed

²⁶ Office of Financial Regulation, Senate Bill 872 Bill Analysis (Feb. 22, 2017) (on file with the Senate Committee on Banking and Insurance.)

with the Office of Financial Regulation (OFR). The bill also provides rulemaking authority to establish costs for examinations of program licensees.

In allowing weekly and bi-weekly payment schedules, the bill allows for two delinquency chargers assessed per 30-day period, current law only allows one delinquency charge per 30-day period.

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 Office of Financial Regulation (OFR) 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 will likely require the OFR to create electronic forms for applications and reporting. The bill requires the OFR to post on its website a report that includes extensive information regarding the pilot program. Implementing such changes are expected to cost the agency approximately \$125,000.²⁷

The OFR is currently in the process of redesigning its online portal; the redesign is set to conclude in fall of 2017. Staff has requested an effective date of July 1, 2018, to allow time to input the new system changes required by the bill.²⁸

The OFR may experience a slight increase in revenue due to the application and renewal fees related to program licensees, branch applications and referral partner licensing.

VI. Technical Deficiencies:

Line 262 should clarify the 36 percent interest is per annum.

Lines 678-679 should begin on January 1, 2019.

²⁷ Office of Financial Regulation, Senate Bill 872 Bill Analysis (Feb. 22, 2017) (on file with the Senate Committee on Banking and Insurance.)

²⁸ *Id.*

VII. Related Issues:

The legislation allows the Office of Financial Regulation (OFR) to examine the records of licensees and 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. There are currently no public records exemptions for ch. 516, F.S.

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 and 516.46.

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:

- Defines a program branch office license.
- Clarifies an applicant cannot be subject to any disciplinary actions in another state, territory or jurisdiction.
- Changes digital application to electronic.
- Removes contradicting language regarding an applicant's need to be licensed under ch. 516, F.S.
- Removes the ability for an applicant to apply for two licenses at the same time.
- Removes semi-monthly as a payment term.
- Requires a program licensee to pay for any translation costs incurred by the office when issuing loans in languages other than English.
- Limits origination fees by a lender to no more than one per 12 months.
- Restores the current \$20 limit on an insufficient funds fee, changes the limit on a delinquency fee to \$15, and restores current delinquency timeframe to more than 10 days.
- Clarifies the section pertaining to certain rights that cannot be negotiable within a loan.
- Requires a program licensee or referral partner must maintain, preserve, and keep available for examination, all books, accounts, or other documents required by this chapter, by any rule or order adopted under this chapter, or by any agreement entered into with the office.
- Changes the effective date to July 1, 2018.

B. Amendments:

None.