

**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: SB 872

INTRODUCER: Senator Rouson

SUBJECT: Consumer Finance Loans

DATE: March 24, 2017      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Matiyow	Knudson	BI	<b>Pre-meeting</b>
2.			AGG	
3.			AP	

**I. Summary:**

SB 872 establishes the Access to Responsible Credit Pilot Program. The intent 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 would 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 per annum.
- A program licensee may also charge the borrower an origination fee of 6 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.

## II. Present Situation:

### Federal Truth in Lending Act (TILA)

The purpose of TILA,<sup>1</sup> 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.”<sup>2</sup> Regulation Z, which implements TILA, requires the calculation and disclosure of the Annual Percentage Rate (APR) for consumer loans.<sup>3</sup> 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.<sup>4</sup>

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

### 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]

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<sup>1</sup> 15 U.S.C. s. 1601 et seq., as implemented by Regulation Z, 12 C.F.R. part 226.

<sup>2</sup> 15 U.S.C. s. 1601(a).

<sup>3</sup> 15 U.S.C. s. 1604-1606.

<sup>4</sup> 12 C.F.R. s. 1026.4.

<sup>5</sup> Chapters 655, 657, 658, 660, 663, 665, and 667, F.S.

<sup>6</sup> 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.

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.<sup>7</sup> 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.<sup>8</sup>

These principal amounts are the same as the financed amounts determined by the TILA and Regulation Z.<sup>9</sup> 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.<sup>10</sup> 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:<sup>11</sup>

- 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 lines of credit.<sup>12</sup>

### **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.<sup>13</sup> 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.<sup>14</sup> 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

<sup>7</sup> Section 516.01(2), F.S.

<sup>8</sup> Section 516.031(1), F.S.

<sup>9</sup> Section 516.031(2), F.S.

<sup>10</sup> *Id.*

<sup>11</sup> Section 516.031(3), F.S.

<sup>12</sup> Section 516.36, F.S.

<sup>13</sup> See [http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=200920100SB1146](http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=200920100SB1146) (last visited March 20, 2017).

<sup>14</sup> See [http://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill\\_id=201520160SB235](http://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201520160SB235) (last visited March 20, 2017).

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.<sup>15</sup>

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 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 7 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 4-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.
- *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 10. Additionally, the revisions did not significantly affect the amount of lending activity conducted by the individual companies.<sup>16</sup>

### III. Effect of Proposed Changes:

#### Access to Responsible Credit Pilot Program (Section 1)

The bill establishes the Access to Responsible Credit Pilot Program (program). The program would 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 per annum. Under

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<sup>15</sup> Id.

<sup>16</sup> 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](http://www.dbo.ca.gov/Licensees/Finance_Lenders/pdf/Pilot%20Program%20Report%202015%20Final.pdf). (last visited March 20, 2017).

current law, licensed consumer finance lenders may make loans in this amount at a maximum rate of 30 percent, with no minimum or maximum loan term.

### **Definitions (Section 2)**

The bill creates s. 516.41, F.S., to provide the following definitions for purposes of the pilot program:

- Consumer reporting agency
- Credit score
- Data furnisher
- Pilot program or program
- Pilot program license
- Program branch office licensee
- Program loan
- Referral partner
- Refinance program loan

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

#### ***Program Licensees***

Persons seeking participation under the program as a lender are required to be licensed to make consumer finance loans under ch. 516, F.S., not be subject of any insolvency proceedings, and not be the subject of an enforcement action by the OFR or any financial regulatory agency in Florida or 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 must be licensed. 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 applicants to be accepted as a "data furnisher" with a consumer-reporting agency<sup>17</sup> 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 6 months of commencing lending under the pilot program.

#### ***Referral Partners***

The bill allows 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

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<sup>17</sup> 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."

comply with s. 516.44, 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.

A referral partner may engage in the following activities:

- Advertise on behalf of the program licensee;
- Provide written factual information about the pilot program and discuss the program information with a prospective borrower in general terms;
- Notify the prospective borrower of information needed to complete an application under the program;
- Enter 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;
- Communicate to a borrower a response that is returned by the program licensee's automated underwriting system, obtain a borrower's signature on documents prepared by the program licensee, and deliver 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;
- Disburse program loan proceeds to a borrower, and receive 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.

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 information. 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 2 years, or for 1 month following a regular examination by the OFR, whichever is later.

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 may not be passed on 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.
- 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.

The bill prohibits a referral partner from engaging in the following activities:

- Providing counseling or advice to a borrower or prospective borrower;
- Providing to a borrower or prospective borrower loan-related marketing material that has not been approved by the program licensee; and
- Offering information pertaining to a single prospective borrower to more than one program licensee, except where a program licensee has provided notification of its denial of a program loan to the borrower.

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

The bill requires a program licensee to comply with certain conditions in making program loans, including the following:

- A program loan must be unsecured.
- A program loan must have a minimum term of 120 days, except it may not have a prepayment penalty.
- A program loan must 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 return the principal advanced by the end of the business day after the program loan was consummated.
- A program loan may 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, which may not exceed 6 percent of the principal amount, exclusive of the origination fee, or \$75, whichever is less.

The bill caps the fee for insufficient funds at \$25, and any delinquency charge is capped at \$14 for each payment in default for at least 7 days. 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.

Currently, under ch. 516, F.S., the fee for an insufficient check is capped at \$20 and the fee for a delinquency charge for a late payment is capped at \$15 for a payment at least 10 days past due.<sup>18</sup>

**Consumer Disclosures.** The bill requires 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.
- A statement describing the borrower's right of rescission.

The bill allows a program licensee to provide the disclosures in a mobile or other electronic application if the program licensee complies with certain parameters. Additionally the bill allows the disclosures to be completed in any language the loan is negotiated in.

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.

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<sup>18</sup> Section 516.01(3), F.S.



### **Examination of Program Licensees (Section 6)**

The legislation requires the OFR to examine program licensees at least once every 24 months. Costs of examination are borne by the program licensee.

### **Reporting Requirements (Sections 4, 5, and 7)**

**Program Licensee.** 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 4)

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. (Section 5)

**OFR Program Report.** 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. (Section 7)

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 the following information:

- The period covered.
- The number of entities that applied and were accepted for program participation.
- The reasons for program rejection.
- The number of program loan applications received by participating program licensees.
- The number and total amount of program loans made.
- The distribution of loan lengths, interest rates, and principal amounts upon origination.
- The number of borrowers who obtained more than one program loan.
- The distribution of the number of program loans per borrower.
- Of the number of borrowers who obtained more than one program loan, the percentage of borrowers whose credit scores increased between successive loans.
- The average size of the increased credit score.
- The income distribution of borrowers upon program loan origination, including the number of borrowers who obtained a program loan and who resided in a low-income or moderate-income census tract at the time of loan application.
- The number of borrowers who obtained program loans for the following purposes, based on borrower responses:
  - Pay medical expenses.
  - Pay for vehicle repair or a vehicle purchase.
  - Pay bills.
  - Consolidate debt.
  - Build or repair credit history.
  - Pay other expenses.

- The number of borrowers who self-report that they had a bank account at the time of their loan application and the number of borrowers who self-report that they did not have a bank account at the time of their loan application.

In regards to refinanced program loans, the report must include the following information:

- The number and percentage of borrowers who applied for a refinance program loan.
- Of the borrowers who applied for a refinance program loan, the number and percentage of borrowers who obtained a refinance program loan.
- The number and type of referral partners used by program licensees.
- The number and percentage of borrowers who obtained one or more program loans where delinquency charges were assessed.
- The total amount of delinquency charges assessed.
- The average delinquency charge assessed by dollar amount and as a percentage of the principal amount loaned.

In addition, the report must address the performance of program loans as reflected by the following information:

- The number and percentage of borrowers who experienced at least one delinquency lasting between 7 to 29 days, 30 to 59 days, and 60 days or more.
- The distribution of principal loan amounts corresponding to those delinquencies.
- The number and types of documented violations of ss. 516.40-516.47, F.S., by referral partners and program licensees.
- The number of times the OFR disqualified a referral partner from performing services, barred a referral partner from performing services at a specific location, terminated a written agreement between a referral partner and a program licensee, or imposed an administrative penalty.
- The number and nature of complaints received about a program licensee or referral partner.
- Recommendations for improving the program, and whether the program should be reenacted after January 1, 2022.

**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 October 1, 2017.

In their 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.<sup>19</sup>

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<sup>19</sup> Office of Financial Regulation, Senate Bill 872 Bill Analysis (Feb. 22, 2017) (on file with the Senate Committee on Banking and Insurance.

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) would be required to obtain a consumer finance license as well as a program license. The bill provides for 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 with the OFR. The bill also provides rulemaking authority to establish costs for examinations of program licensees.

In allowing weekly, bi-weekly and semimonthly payment schedules, the bill allows two delinquency chargers could be 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 OFR resources will be required to process and possibly translate 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 would likely require the OFR to create electronic forms for applications and reporting. The bill would require the OFR to post on its website a report that includes extensive information regarding the pilot program. Implementing such changes would cost the agency approximately \$125,000.<sup>20</sup>

The OFR has indicated that they are currently in the process of redesigning their online portal, the redesign is set to conclude in fall of 2017. Staff has requested an effective date July 1, 2018, to allow for time to input the new system changes required by the bill.<sup>21</sup>

The OFR has indicated there could be indeterminate costs for translations services when examining loan contracts, written disclosures and written statements that the bill allows to be produced in any language. Current law restricts such documents to English only.

Lastly, the OFR is concerned s. 516.45(4), F.S., of the bill limits records available during an examination, this limitation may hinder the OFR's ability to properly detect violations.<sup>22</sup>

**VI. Technical Deficiencies:**

Lines 177 and 200 should use the term "electronic application" as used on line 223.

Lines 124-126: Defines the branch office location and not the license type. An additional definition may be needed defining a program branch office license.

Lines 163-164: Requires an applicant to be licensed under s. 516.05, F.S., however lines 188-189 and 242-243 requires the applicant to list their license number if licensed under this chapter.

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<sup>20</sup> Office of Financial Regulation, Senate Bill 872 Bill Analysis (Feb. 22, 2017) (on file with the Senate Committee on Banking and Insurance.)

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

Lines 166-170: Unclear if the OFR would have grounds for denial if a person has pending disciplinary actions in another state, territory or jurisdiction.

Line 196: Unclear if “authorized person” is the same as a “control person” as defined in section 516.01(8), F.S.

Lines 259-261: Unclear as to the difference between “biweekly” and “semimonthly.”

Lines 324 -328: appears to be a conflict between a. and b. and the “notwithstanding” provision.

## **VII. Related Issues:**

The legislation allows the 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 Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

### **B. Amendments:**

None.