HOUSE OF REPRESENTATIVES
FINAL BILL ANALYSIS

BILL #:	CS/HB 239	**FINAL HOUSE FLOOR ACTION:**	
SUBJECT/SHORT TITLE	Consumer Finance	117 **Y's**	0 **N's**
SPONSOR(S):	Insurance & Banking Subcommittee and Fine	**GOVERNOR'S ACTION:**	Approved
COMPANION BILLS:	CS/SB 386		

SUMMARY ANALYSIS

CS/HB 239 passed the House on March 7, 2018, as CS/SB 386.

Loans permitted under the Florida Consumer Finance Act, ch. 516, F.S., (the Act) are commonly referred to as "consumer finance loans." Loans under the Act may not exceed $25,000 and must be repaid in monthly installments as nearly equal as mathematically practicable. The Act permits a lender to impose a delinquency charge of up to $15 for each payment in default for at least 10 days, if agreed upon in writing before the charge is imposed. Loans under the Act have a tiered interest rate structure such that the maximum interest rate allowed on each tier decreases as principle amounts increase:

- 30 percent per annum computed on the first $3,000.
- 24 percent per annum on principal above $3,000 and up to $4,000.
- 18 percent per annum on principal above $4,000 and up to $25,000.

The bill permits consumer finance loans made under the Act to be due every two weeks, semimonthly, or monthly, rather than only monthly under current law. The bill requires that such a loan be repaid in periodic installments as nearly equal as mathematically practicable, but the final payment may be less than the amount of the prior installments. For each payment in default for at least 10 days, the bill sets maximum delinquency charges as follows:

- For payments due monthly, the delinquency charge for a payment in default may not exceed $15.
- For payments due semimonthly, the delinquency charge for a payment in default may not exceed $7.50.
- For payments due every two weeks, the delinquency charge for a payment in default may not exceed $7.50 if two payments are due within the same calendar month, and may not exceed $5 if three payments are due within the same calendar month.

The bill has no impact on local governments or the state. The bill has an indeterminate fiscal impact on the private sector but may have a financially positive impact on consumers and lenders.

The bill was approved by the Governor on March 19, 2018, ch. 2018-17, L.O.F., and will become effective on July 1, 2018.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:
Background

The Office of Financial Regulation (OFR) is responsible for the regulation of banks, credit unions, other financial institutions, finance companies, and the securities industry.[1] The OFR's Division of Consumer Finance (Division) "licenses and regulates non-depository financial service industries and individuals and conducts examinations and complaint investigations for licensed entities to determine compliance with Florida law."[2]

One of the loan products regulated by the Division is set forth in the Florida Consumer Finance Act, ch. 516, F.S., (the Act). Loans permitted under the Act are commonly referred to as "consumer finance loans" and are "loan[s] of money, credit, goods, or choses in action, including, except as otherwise specifically indicated, provision of a line of credit, in an amount or to a value of $25,000 or less for which the lender charges, contracts for, collects, or receives interest at a rate greater than 18 percent per annum."[3] Although consumer finance loans may be secured or unsecured, the Act prohibits lenders from taking a security interest in certain types of collateral.[4]

Consumer finance loans made pursuant to the Act must be repaid in monthly installments as nearly equal as mathematically practicable,[5] and they have a tiered interest rate structure such that the maximum interest rate allowed on each tier decreases as principle amounts increase:

- 30 percent per annum computed on the first $3,000.
- 24 percent per annum on principal above $3,000 and up to $4,000.
- 18 percent per annum on principal above $4,000 and up to $25,000.[6]

The original principal amount is the amount financed, as defined by the federal Truth in Lending Act (TILA)[7] and TILA's federal implementing regulations.[8] For the purpose of determining compliance with these statutory maximum interest rates, the interest rate computations used must be simple interest.[9] In the event that two or more interest rates are applied to the principal amount of a loan,[10] a lender may charge interest at a single annual percentage rate (APR) which would produce at maturity the total amount of interest as permitted by the tiered interest rate structure above.[11] The APR charged by a lender may not exceed the APR that must be computed and disclosed according to TILA and its

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[1] s. 20.121(3)(a)2., F.S.
[2] Office of Financial Regulation, FAST FACTS, 3 (5th ed. Dec. 2017), *available at* http://www.flofr.com/StaticPages/documents/FastFacts.pdf.
[3] s. 516.01(2), F.S.
[4] *See* s. 516.031(1), F.S. (prohibition on taking a security interest in land for a loan less than $1,000); s. 516.17, F.S. (prohibition on assignment of, or order for payment of, wages given to secure a loan).
[5] s. 516.36, F.S. This section does not apply to lines of credit.
[6] s. 516.031(1), F.S.
[7] Codified at 15 U.S.C. § 1601 *et seq.*
[8] Currently, the statute references TILA's implementing regulations as "Regulation Z of the Board of Governors of the Federal Reserve System." s. 516.031(1), F.S. However, the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, H.R. 4173, 124 Stat. 1376-2223, 111th Cong. (July 21, 2010), commonly referred to as the "Dodd-Frank Act", transferred rulemaking authority for TILA to the Bureau of Consumer Financial Protection, effective July 21, 2011. *See also* Truth in Lending (Regulation Z), 76 Fed. Reg. 79768 (Dec. 22, 2011).
[9] *Id.*
[10] For example, on a principle amount of $3,500, an interest rate of 30 percent per annum may be applied to $3,000 of the principle amount, and an interest rate of 24 percent per annum may be applied to the remaining $500 of the principal amount.
[11] s. 516.031(1), F.S.

implementing regulations.[12] A licensee may not induce or permit a borrower to divide a loan and may not induce or permit a person to become obligated to the licensee under more than one loan contract for the purpose of obtaining a greater finance charge than would otherwise be permitted under the parameters described above.[13]

If consideration for a new loan contract includes the unpaid principal balance of a prior loan with the licensee, then the principal amount of the new loan contract may not include more than 60 days' unpaid interest accrued on the prior loan.[14]

The Act prohibits lenders from directly or indirectly charging borrowers additional fees as a condition to the grant of a loan, except for the following allowable fees:

- 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, title insurance, and appraisals of real property offered as security;
- Intangible personal property tax on the loan note or obligation if secured by a lien on real property;
- Documentary excise tax and lawful fees for filing, recording, or releasing an instrument securing the loan;
- The premium for any insurance in lieu of perfecting a security interest otherwise required by the licensee in connection with the loan;
- Actual and reasonable attorney fees and court costs;
- Actual and commercially reasonable expenses for repossession, storing, repairing and placing in condition for sale, and selling of any property pledged as security;
- A delinquency charge 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 bad check charge of up to $20.[15]

Optional credit property, credit life, and disability insurance may be provided at the borrower's expense via a deduction from the principal amount of the loan.[16]

Licenses granted under the Act are for a single place of business[17] and must be renewed every two years.[18] As of December 2017, there were 169 licensed consumer finance loan companies operating at 339 locations in Florida.[19]

The Act does not apply to persons doing business under state or federal laws governing banks, savings banks, trust companies, building and loan associations, credit unions, or industrial loan and investment companies.[20]

Effect of the Bill

The bill permits consumer finance loans made under the Act to be due every two weeks, semimonthly, or monthly, rather than only monthly under current law. The bill requires that such a loan be repaid in

[12] s. 516.031(2), F.S.
[13] s. 516.031(4), F.S.
[14] s. 516.031(5), F.S.
[15] s. 516.031(3), F.S.
[16] s. 516.35(2), F.S.
[17] ss. 516.01(1) and 516.05(3), F.S.
[18] ss. 516.03(1) and 516.05(1)&(2), F.S.
[19] Office of Financial Regulation, *supra* note 2, at 3.
[20] s. 516.02(4), F.S.

periodic installments as nearly equal as mathematically practicable, but the final payment may be less than the amount of the prior installments. For each payment in default for at least 10 days, the bill sets maximum delinquency charges as follows:

- For payments due monthly, the delinquency charge for a payment in default may not exceed $15.
- For payments due semimonthly, the delinquency charge for a payment in default may not exceed $7.50.
- For payments due every two weeks, the delinquency charge for a payment in default may not exceed $7.50 if two payments are due within the same calendar month, and may not exceed $5 if three payments are due within the same calendar month.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:
   None.

2. Expenditures:
   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:
   None.

2. Expenditures:
   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:
Although the impact on the private sector is indeterminate, the bill may have a positive effect on the default rate of loans made pursuant to the Act. One member of the industry who operates in multiple states conducted a test to determine the effect of placing borrowers on a monthly payment schedule rather than a biweekly or semimonthly payment schedule.[21] Return customers with a low risk profile and high ability to repay were offered a monthly payment option instead of a payment schedule every two weeks.[22] When compared to the default rate among customers on biweekly and semimonthly payment schedules, the customers who were placed on a monthly payment schedule had a default rate 25 percent higher.[23] The difference in default rate may have been even higher if all customers (including those with a higher risk profile and relatively lower ability to repay) had been placed on the monthly payment schedule.[24] If fewer defaults occur among borrowers who are placed on a payment schedule every two weeks or semimonthly, then the impact of the bill will be financially positive for both consumers and lenders.

D. FISCAL COMMENTS:
None.

[21] Email from Ron LaFace, representative of Oportun, Re: HB 239 (Nov. 3, 2017).
[22] *Id.*
[23] *Id.*
[24] *Id.*