

**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.)

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Prepared By: The Professional Staff of the Committee on Rules

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BILL: SB 640

INTRODUCER: Senator Rouson

SUBJECT: Consumer Finance Loans

DATE: February 28, 2018

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Matiyow</u>	<u>Knudson</u>	<u>BI</u>	<b>Favorable</b>
2.	<u>Harmsen</u>	<u>McKay</u>	<u>CM</u>	<b>Favorable</b>
3.	<u>Matiyow</u>	<u>Phelps</u>	<u>RC</u>	<b>Pre-meeting</b>

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**I. Summary:**

SB 640 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 \$10,000, 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 a maximum term of 60 months and may not impose 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 plus \$30 per branch office.

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 of \$25,000 or less. The allowable interest rates on such loans are tiered, based on the principal amount, 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) regulates 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.<sup>5</sup> 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>6</sup> The OFR may examine, investigate, and take disciplinary actions against such state-chartered financial institutions for violation of the codes.<sup>7</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

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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> See generally, Florida Office of Financial Regulation, *About OFR*, <https://www.flofr.com/StaticPages/AboutOFR.htm> (last visited Jan. 26, 2018).

<sup>6</sup> Florida Office of Financial Regulation, *Welcome to the Division of Financial Institutions*, <https://www.flofr.com/StaticPages/DivisionOfFinancialInstitutions.htm> (last visited Jan. 26, 2018). The “codes” consist of chs. 655, 657, 658, 660, 663, 665, and 667, F.S.

<sup>7</sup> These entities are also subject to laws and regulation of 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.

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.”<sup>8</sup> The maximum allowable interest rates on consumer finance loans are tiered, 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>9</sup>

These principal amounts are the same as the financed amounts determined by the TILA and Regulation Z.<sup>10</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>11</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>12</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 to be repaid in equal monthly installments, except for repayment on lines of credit.<sup>13</sup>

### **California Small Dollar Loan Pilot Programs**

Based on a business model developed by California-based Progreso Financiero (Progress Financial, which also operates under the name Opportun), the California State Assembly enacted the Affordable Credit Building Opportunities Pilot Program in 2010.<sup>14</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>15</sup> The new pilot program covers consumer loans of \$300-\$2,500 and allows the use of

<sup>8</sup> Section 516.01(2), F.S.

<sup>9</sup> Section 516.031(1), F.S.

<sup>10</sup> Section 516.031(2), F.S.

<sup>11</sup> *Id.*

<sup>12</sup> Section 516.031(3), F.S.

<sup>13</sup> Section 516.36, F.S.

<sup>14</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 January 26, 2018).

<sup>15</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 January 26, 2018).

“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.<sup>16</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>17</sup>

### III. Effect of Proposed Changes:

#### Access to Responsible Credit Pilot Program

**Section 1** of 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

<sup>16</sup> *Id.*

<sup>17</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 January 26, 2018).

\$300 and up to a maximum of \$10,000 at an interest rate not to exceed 36 percent per annum. Under 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** creates s. 516.41, F.S., which provides definitions for the following terms: consumer reporting agency, credit score, data furnisher, pilot program or program, pilot program license, program branch office, program licensee, program loan, referral partner, and refinance program loan.

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

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

**Section 3** requires persons seeking to participate as a lender under the program to file a digital application with the OFR. Applicants must be licensed to make consumer finance loans under ch. 516, F.S., not be the subject of any insolvency proceedings or 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 to and file an application with the OFR. The biennial renewal fee is \$1,000. The OFR may adopt application forms for the program by rule.

Each branch office of a program licensee must be licensed. The program licensee must submit an application and an initial nonrefundable 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>18</sup> before the OFR may approve an applicant as a program licensee.

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

**Section 5** of the bill allows a program licensee to engage in arrangements with referral partners. All such arrangements must be in writing; provide that the referral partner agrees to comply with s. 516.44, F.S., and allow 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;

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<sup>18</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."

- Enter information provided by a prospective borrower on a preprinted or electronic application form or in a preformatted computer database;
- Assemble credit applications and other materials obtained in the course of a credit application transaction for submission to the program licensee;
- Contact 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;
- Disburse program loan proceeds to a borrower if this method of disbursement is acceptable to the borrower;
- Receive a program loan payment from the borrower if this method of payment is acceptable to the borrower; and
- Operate 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 give a receipt to the borrower that includes specific information. Additionally, the bill holds a borrower harmless if a referral partner fails to transmit, or delays transmission of, a payment to the program licensee. A referral partner must maintain records related to disbursements and payments for 2 years.

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.

The bill allows a program licensee to compensate a referral partner pursuant to a written agreement and mutually agreed upon compensation schedule. Compensation paid to a referral partner may not be passed on to a borrower. 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 \$60 per program loan, on average, and \$2 per payment that is received by the referral partner on behalf of the program licensee.

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;
- 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, except where a program licensee has provided notification of its denial of a program loan to the borrower; and
- Requiring a borrower to pay any fees other than those permitted under the bill.

The program licensee is responsible for violations of ch. 516, F.S., that are committed by a referral partner.

### **Terms and Conditions of the Small Dollar Loans**

**Section 4** 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 and a maximum term of 60 months and may not impose a prepayment penalty.
- A program loan must be repayable by the borrower in substantially equal periodic installments made every 2 weeks, semimonthly or monthly.
- 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 must apply an interest rate 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. The maximum per annum interest rate depends on the size of the loan, as follows:
  - For loans up to and including \$3,000, the maximum annual interest rate is 36 percent.
  - For loans over \$3,000, and up to and including \$4,000, the maximum annual interest rate is 30 percent.
  - For loans over \$4,000 and up to and including \$10,000, the maximum interest rate is 24 percent.
- A program licensee must provide a receipt for payments made.

Loans made under the pilot program are permitted to charge a higher annual interest rate than loans made by a traditional consumer finance lender who is licensed under ch. 516, F.S.

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.

The bill prohibits a program licensee from refinancing a program loan unless all of the following conditions are met:

- The principal amount payable does not include more than 60 days of unpaid interest accrued on the previous program loan;

- For program loans with an original term of less than 25 months, the borrower has repaid at least 60 percent of the outstanding principal remaining on the existing program loan;
- For program loans with an original term of greater than 25 months but no more than 60 months, the borrower has made current payments for at least 9 months on the program loan; and
- The borrower is current on his or her outstanding program loan.

### ***Program Loan Underwriting***

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.

The program licensee is required to seek information and documentation pertaining to all of a borrower's outstanding debt obligations during the loan application and underwriting process, including loans that are self-reported by the borrower but not available through independent verification. The program licensee shall verify such information using a credit report from at least one consumer reporting agency that compiles and maintains files on consumers on a nationwide basis or through other available electronic debt verification services. The program licensee is not required to consider loans made to a borrower by friends or family in determining the borrower's debt-to-income ratio.

The program licensee is required to verify the borrower's income in determining the debt-to-income ratio using information from:

- Electronic means or services that provide reliable evidence of the borrower's actual income; or
- Internal Revenue Service Form W-2, tax returns, payroll receipts, bank statements, or other third-party documents that provide reasonably reliable evidence of the borrower's actual income.

### ***Interest Rate Reduction***

The program licensee must reduce the rate on each subsequent loan to the same borrower by at least one-twelfth of 1 percent per month if all of these conditions are met:

- The subsequent program loan is originated no more than 180 days after the prior program loan is fully repaid;
- The borrower was never more than 15 days delinquent on the prior program loan; and
- The prior program loan was outstanding for at least one-half of its original term before its repayment.

The bill prohibits a program licensee from inducing or permitting any person from becoming obligated to the program licensee under more than one program loan at the same time with the program licensee.

### ***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. A program licensee may not charge a borrower an origination fee more than twice in any 12-month period.

The bill caps the fee for insufficient funds at \$20, and any delinquency charge is capped at \$15 for each calendar month for payments in default for at least 10 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 a program licensee to 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 provide a credit education program or materials to the borrower at no cost to the borrower. The borrower is not required to participate in the program.

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 of Program Licensees**

**Section 6** requires the OFR to examine program licensees at least once every 24 months. Costs of examination are borne by the program licensee. A program licensee who violates any applicable provision of ch. 516, F.S., is subject to disciplinary action. A program licensee is also liable for violations of the program's regulations committed by one of its referral partners.

## **Reporting Requirements**

### ***Program Licensee***

**Section 4** of 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** requires the program licensee 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. The program licensee must conduct due diligence with respect to the referral partner and confirm to the OFR that the referral partner has not filed a bankruptcy or reorganization petition and is not currently subject to an administrative or judicial license suspension or revocation proceeding. The program licensee must confirm to the OFR that the referral partner or an affiliated party has not been convicted of a felony and is not subject to a felony indictment. Finally, the program licensee must confirm to OFR that it does not suspect that the referral partner has committed a criminal act and that there has not been notification that the referral partner is under criminal investigation. The referral partner must report changes in this information to the program licensee.

### ***OFR Program Report***

**Section 7** requires a program licensee 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, 2021, 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.

The report must include the following information specific to refinanced program loans:

- 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, 2023, unless reenacted or superseded by another enacted law before that date.

**Section 9** provides the act shall take effect October 1, 2018.

**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) are 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..

**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. The intent of the program is to provide greater access to small dollar consumer loans. The maximum annual interest rates for such loans under the bill is increased by 6 percent over the maximum interest rates currently authorized for consumer finance loans under ch. 516, F.S. The bill requires a reduction of the interest rate on subsequent loans under the pilot program of at least one-twelfth of 1 percent on subsequent loans if certain conditions are met.

**C. Government Sector Impact:**

The OFR will be required to take on additional duties to implement and maintain the pilot, including processing of licenses and related documents; investigations of complaints; and, if necessary, prosecution for non-compliance or fraud.

As of December 31, 2016, the state of California had a total of 14 program licensees. Assuming a comparable number of businesses apply to become a program licensee, the OFR estimates that it would need less than one full-time equivalent resource to handle the additional duties and responsibilities proposed in this bill. The OFR proposes to closely monitor and track the added duties and responsibilities and use current OPS funding if it determines an additional resource is required. Subsequent to that determination, the OFR may request additional funding in future fiscal years for an added full-time equivalent

position(s). The OFR would also incur insignificant costs associated with rulemaking which can be absorbed within its current budget.

The bill will require configuration and other updates to the OFR's Regulatory Enforcement and Licensing (REAL) internal system and website. The bill will also 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 an estimated \$150,000.<sup>19</sup>

## VI. Technical Deficiencies:

None.

## VII. Related Issues:

It is unclear whether the receipt of loan payments by a referral partner might subject a referral partner to provisions related to debt collectors under part VI of ch. 559, F.S., "Consumer Collection Practices."

The OFR registers and regulates consumer collection agencies and their employee debt collectors.<sup>20</sup> These entities must operate pursuant to both the federal Fair Debt Collection Practices Act and state law.<sup>21</sup> A debt collector is any person who uses an instrumentality of commerce in the business of debt collection, or who regularly attempts, directly or indirectly, to collect or collects a debt owed or due to another. A debt collector may attempt to collect a debt, or obligation of a consumer to pay money, before it has been reduced to judgment by a court.<sup>22</sup>

An officer or employee of the creditor on behalf of whom the debt is being collected is not considered a debt collector.<sup>23</sup> Additionally, a licensed consumer finance company and any of its wholly owned subsidiaries and affiliates are exempt from registration as a consumer collection agency.<sup>24</sup>

Additionally, s. 559.72, F.S., governs the practices of *any person* during the collection of debts, prohibiting, among other behaviors, the simulation of an attorney, law enforcement agent, or government representative; disclosure of specific information to third parties; use of threats, violence, or obscene or abusive language; and communication with a debtor outside of particular hours.

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<sup>19</sup> Office of Financial Regulation, *Bill Analysis of SB 640*, December 7, 2017 (on file with the Committee).

<sup>20</sup> Section 559.554, F.S.; Office of Financial Regulation, *Consumer Collection Agencies*, <https://www.flofr.com/StaticPages/ConsumerCollectionAgencies.htm> (last visited Jan. 26, 2018).

<sup>21</sup> See, s. 559.552, F.S.

<sup>22</sup> Section 559.55(6), F.S.

<sup>23</sup> Section 559.55(7), F.S.

<sup>24</sup> Section 559.553(3), 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.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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