

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 469 Consumer Finance Loans
SPONSOR(S): Insurance & Banking Subcommittee, Fernandez-Barquin and others
TIED BILLS: IDEN./SIM. **BILLS:** SB 874

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	14 Y, 1 N, As CS	Hinshelwood	Luczynski
2) Government Operations & Technology Appropriations Subcommittee			
3) Commerce Committee			

SUMMARY ANALYSIS

The Florida Consumer Finance Act in ch. 516, F.S., permits licensed lenders to make secured or unsecured loans up to \$25,000 with a tiered interest rate structure such that the maximum annual interest rate allowed on each tier decreases as principle amounts increase:

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

Consumer finance lenders are permitted to charge certain fees, including up to \$25 for investigating the credit and character of the borrower. Consumer finance loans do not have a minimum or maximum term and are repayable in installments every two weeks, semimonthly, or monthly. No underwriting criteria is specified and a determination of the borrower's ability to repay is not required. However, consumer finance lenders may choose to do so in order to avoid costs associated with defaults and collection efforts.

The bill creates a second loan product within ch. 516, F.S., as a pilot program. Loans may be \$300 to \$7,500 and must be unsecured. Loan terms must be 120 days to 60 months for a loan amount of \$300 to \$3,000, and 12 to 60 months for a loan amount of more than \$3,000. The maximum interest rates are:

- 36 percent on unpaid principal up to and including \$3,000.
- 30 percent on unpaid principal exceeding \$3,000 and up to and including \$4,000.
- 24 percent on unpaid principal exceeding \$4,000 and up to and including \$7,500.

Borrowers may qualify for an interest rate reduction of at least 1 percent under certain circumstances. Pilot program licensees are permitted to charge an origination fee up to the lesser of 6 percent of the principal amount of the program loan (exclusive of the origination fee) or \$90; only two origination fees may be charged to a borrower in any 12-month period. The bill specifies underwriting criteria based on the borrower's ability to repay and contains restrictions on refinancing program loans. Additionally, a borrower cannot receive a program loan exceeding \$4,000 and cannot receive a refinance program loan unless the borrower has paid in full the outstanding principal, interest, and fees on a program loan; the borrower's credit score has increased from the time of application for the borrower's first consummated program loan; and the borrower was never delinquent on the program loan. Unlike current consumer finance lenders, the bill would permit program licensees to contract with and use the services of one or more "access partners" whose permissible services are specified. Compensation to an access partner is capped at \$65 per consummated program loan and may not be charged directly or indirectly to the borrower. A program licensee must report a borrower's payment performance to at least one consumer reporting agency. The bill requires annual reporting of certain program related data.

The bill will have a negative fiscal impact on the state and an indeterminate fiscal impact on the private sector.

The bill provides an effective date of January 1, 2020, and provides that the pilot program expires five years after the date on which the OFR posts its first annual program report, or approximately January 1, 2027.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h0469.IBS

DATE: 3/21/2019

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Consumer Finance Loans

The Florida Office of Financial Regulation (OFR)'s Division of Consumer Finance is responsible for the licensing and regulation of non-depository financial service entities and individuals, and conducts examinations and complaint investigations for licensed entities to determine compliance with Florida law.

One of the loan products regulated by the OFR's Division of Consumer Finance is the Florida Consumer Finance Act, ch. 516, F.S. ("the Act"). Loans permitted under the Act are commonly referred to as "consumer finance loans", which 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."¹ Although consumer finance loans may be secured or unsecured, the Act prohibits lenders from taking a security interest in certain types of collateral.²

Consumer finance loans made pursuant to the Act must be repaid in periodic installments as nearly equal as mathematically practicable, except that the final payment may be less than the amount of the prior installments.³ Installments may be due every two weeks, semimonthly, or monthly.⁴ Consumer finance loans have a tiered interest rate structure such that the maximum annual interest rate allowed on each tier decreases as principle amounts increase:

- 30 percent on the first \$3,000.
- 24 percent on principal above \$3,000 and up to \$4,000.
- 18 percent on principal above \$4,000 and up to \$25,000.⁵

The original principal amount is the amount financed, as defined by the federal Truth in Lending Act (TILA)⁶ and TILA's federal implementing regulations.⁷ For the purpose of determining compliance with these statutory maximum interest rates, the interest rate computations used must be simple interest.⁸ In the event that two or more interest rates are applied to the principal amount of a loan,⁹ 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.¹⁰ The APR charged by a lender may not exceed the APR that must be computed and disclosed according to TILA and its implementing regulations.¹¹ A licensee may not induce or permit a borrower to divide a loan and may

¹ S. 516.01(2), F.S.

² 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).

³ S. 516.36, F.S. This section does not apply to lines of credit.

⁴ *Id.*

⁵ S. 516.031(1), F.S.

⁶ Codified at 15 U.S.C. § 1601 *et seq.*

⁷ 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).

⁸ *Id.*

⁹ 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.

¹⁰ S. 516.031(1), F.S.

¹¹ S. 516.031(2), F.S.

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.¹²

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.¹³

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 \$20.¹⁴

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.¹⁵

The Act provides grounds for disciplinary action by the OFR against an applicant or a licensee.¹⁶ In particular, s. 516.07(1)(k), F.S., provides that it is grounds for administrative action, for a consumer finance lender to pay money or anything else of value, either directly or indirectly, to any person as compensation, inducement, or reward for referring a loan applicant to a licensed consumer finance lender, if such amount is charged directly or indirectly to the borrower. In other words, a consumer finance lender can pay a referral fee so long as such fee is not charged directly or indirectly to the borrower.

Licenses granted under the Act are for a single place of business¹⁷ and must be renewed every two years.¹⁸ As of February 2019, there are 154 licensed consumer finance loan companies operating in Florida.¹⁹ As of June 30, 2018, there were 373 active consumer finance licenses, which includes branch locations.²⁰

¹² S. 516.031(4), F.S.

¹³ S. 516.031(5), F.S.

¹⁴ S. 516.031(3), F.S.

¹⁵ S. 516.35(2), F.S.

¹⁶ S. 516.07, 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, Agency Analysis of 2019 House Bill 469 (Feb. 11, 2019).

²⁰ Office of Financial Regulation, *Active Licenses*, <https://www.flofr.com/sitePages/documents/finregstats.pdf> (last visited Mar. 16, 2019).

The yearly data for licensure under ch. 516, F.S., is contained in the chart below.²¹

Chapter 516, F.S., Licenses by Year																		
	00-01	01-02	02-03	03-04	04-05	05-06	06-07	07-08	08-09	09-10	10-11	11-12	12-13	13-14	14-15	15-16	16-17	17-18
Applications Received	318	44	136	82	48	72	192	30	52	32	175	41	82	116	66	102	55	96
Applications Approved	228	136	125	76	43	64	95	29	18	19	137	37	53	113	37	81	36	83
Active Licenses	589	607	568	609	532	584	626	600	390	386	347	303	293	349	331	349	338	373
Renewals & Reactivations	496	1	542	0	523	1	569	0	388	0	226	0	258	0	312	0	326	

An application to become a consumer finance lender must be accompanied by a nonrefundable application fee of \$625 and a nonrefundable investigation fee of \$200.²² Licenses must be renewed biennially, at which time the licensee must pay a nonrefundable biennial license fee of \$625.²³ Each location of a consumer finance lender must be separately licensed.²⁴

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.²⁵

The Act does not specify underwriting criteria or require a determination of the borrower's ability to repay. However, consumer finance lenders may choose to do so in order to avoid costs associated with defaults and collection efforts. There is no minimum or maximum loan term under the Act. Each location of a consumer finance company is required to hold a consumer finance license. Current law does not require reports to be issued by the OFR regarding consumer finance loans.

Deferred Presentment Transactions (Payday Loans)

Deferred presentment transactions, commonly referred to as "payday loans", are another small-dollar loan product under the OFR's regulatory authority. These transactions are governed by ch. 560, F.S., part IV.

A deferred presentment transaction means providing currency or a payment instrument in exchange for a drawer's (borrower's) check and agreeing to hold the check for a number of days until depositing, presenting, or redeeming the payment instrument.²⁶ The only persons who may engage in deferred presentment transactions are financial institutions as defined in s. 655.005, F.S.,²⁷ and money services business licensed under ch. 560, F.S., part II²⁸ or part III.²⁹

²¹ *Id.*

²² S. 516.03(1), F.S.

²³ *Id.*; s. 516.05(1), F.S.

²⁴ S. 516.05(3), F.S.

²⁵ S. 516.02(4), F.S.

²⁶ S. 560.402(2), (3), F.S.

²⁷ Section 655.005, F.S., defines a "financial institution" to mean a state or federal savings or thrift association, bank, savings bank, trust company, international bank agency, international banking corporation, international branch, international representative office, international administrative office, international trust entity, international trust company representative office, qualified limited service affiliate, credit union, or an agreement corporation operating pursuant to s. 25 of the Federal Reserve Act, 12 U.S.C. ss. 601 *et seq.* or Edge Act corporation organized pursuant to s. 25(a) of the Federal Reserve Act, 12 U.S.C. ss. 611 *et seq.*

²⁸ Licensure as a money transmitter. A money transmitter is defined by s. 560.103(23), F.S., as a corporation, limited liability company, limited liability partnership, or foreign entity qualified to do business in this state which receives currency, monetary value, or payment instruments for the purpose of transmitting the same by any means, including transmission by wire, facsimile, electronic transfer, courier, the Internet, or through bill payment services or other businesses that facilitate such transfer within this country, or to or from this country. Money transmitters may engage in check cashing under ch. 560, F.S., part III.

²⁹ Licensure as a check casher. A check casher is defined by s. 560.103(6), F.S., as a person who sells currency in exchange for payment instruments received, except travelers checks.

The face amount of a check taken for deferred presentment may not exceed \$500, exclusive of fees.³⁰ Fees may not exceed 10 percent of payment provided to the drawer plus a verification fee of up to \$5.³¹ The term of a deferred presentment agreement may not be less than seven days or greater than 31 days.³²

Effective July 1, 2019, a new type of deferred presentment transaction known as a deferred presentment installment transaction will be permitted.³³ A deferred presentment installment transaction is repayable in installments, has a term of 60 to 90 days, and may have an outstanding transaction balance (exclusive of fees) of up to \$1,000. The permissible fees are a verification fee of up to \$5 and up to 8 percent of the outstanding transaction balance on a biweekly basis. The installment periods must be 13 days to one calendar month, except that the first installment period may be longer than the remaining installment periods by not more than 15 days. Prepayment penalties are prohibited.

A deferred presentment provider may not enter into a deferred presentment transaction with a drawer who has an outstanding deferred presentment transaction with any provider or within 24 hours of the termination of a previous transaction.³⁴ In order to enforce this restriction, the OFR maintains a database against which a deferred presentment provider must verify each transaction before entering into the deferred presentment agreement.³⁵ A deferred presentment provider may not engage in the rollover of a deferred presentment agreement and may not redeem, extend, or otherwise consolidate a deferred presentment agreement with the proceeds of another deferred presentment transaction made by it or an affiliate.³⁶

For deferred presentment transactions not repayable in installments, if the drawer, by the end of the deferment period, informs the deferred presentment provider in person that the drawer cannot redeem or pay in full in cash the amount due, the drawer must be given a grace period that extends the term of the agreement for 60 additional days.³⁷ As a condition of receiving the grace period, the drawer must make an appointment with a consumer credit counseling agency within seven days after the end of the deferment period and complete counseling by the end of the grace period.³⁸

If the drawer in a deferred presentment installment transaction informs the deferred presentment provider in writing or in person by noon of the business day before a scheduled payment that the drawer cannot pay in full the scheduled payment, the provider must give the drawer one opportunity to defer a scheduled payment for no additional fee or charge.³⁹ The deferred payment is due after the last scheduled installment payment, at an interval which is no shorter than the intervals between the originally scheduled payments.⁴⁰ Thus, for a deferred presentment installment transaction in which payments are due once every two weeks, the deferred payment would be due at least two weeks after the final installment payment is due.

A deferred presentment provider may not include in the agreement a hold harmless clause, a confession of judgment clause, an assignment of or order for payment of wages or other compensation for services, or a provision in which the drawer waives any claim or defense arising out of the

³⁰ S. 560.404(5), F.S.

³¹ S. 560.404(6), F.S.

³² S. 560.404(8), F.S.

³³ S. 560.404, F.S.

³⁴ S. 560.404(19), F.S.

³⁵ S. 560.404(19)(a), (23), F.S.

³⁶ S. 560.404(18), F.S.

³⁷ S. 560.404(22), F.S.

³⁸ *Id.*

³⁹ S. 560.404, F.S.

⁴⁰ *Id.*

agreement or any provision of ch. 560, F.S., part IV.⁴¹ A deferred presentment provider must comply with state and federal disclosure requirements.⁴²

Effect of the Bill

Access to Responsible Credit Pilot Program (Section 1)

The bill creates s. 516.405, F.S., which establishes 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 up to a maximum of \$7,500. The bill states that “[t]he pilot program is intended to assist consumers in building their credit and to provide additional consumer protections for these loans that exceed current protections under general law.”

Definitions (Section 2)

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

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

Licensing and Program Participation Requirements (Sections 3 and 5)

The bill creates s. 516.42, F.S., to require a pilot program license in order to advertise, offer, or make a program loan, or impose any charges or fees under the program. In order to participate in the program, a person must be licensed as a consumer finance lender under the Act or submit an application to concurrently become licensed under the Act, be accepted as a data furnisher by a consumer reporting agency, not be the subject of any insolvency proceeding or a pending criminal prosecution, and not be the subject of specified administrative disciplinary actions. Additionally, a program applicant must file a digital application containing the following information:

- The legal business name and any other name under which the applicant operates.
- The applicant's main address.
- The applicant's telephone number and e-mail address.
- The address of each program branch office.
- The name, title, address, telephone number, and e-mail address of the applicant's contact person.
- The license number, if the applicant is licensed under the Act.
- A statement as to whether the applicant intends to use the services of one or more access partners.
- A statement that the applicant has been accepted as a data furnisher by a consumer reporting agency and will report to a consumer reporting agency the payment performance of each borrower on all program loans.
- The signature and certification of an authorized person of the applicant.

⁴¹ S. 560.404(10), F.S.

⁴² S. 560.404(13), (20), F.S.

Only one program license is required for a person to make program loans, regardless of whether the program licensee offers program loans to prospective borrowers at its own physical business locations, through access partners, or via an electronic access point through which a prospective borrower may directly access the website of the program licensee. However, each branch office of a program licensee must itself be licensed by providing an application that contains the following information:

- The legal business name and any other name under which the applicant operates.
- The applicant's main address.
- The applicant's telephone number and e-mail address.
- The address of each program branch office.
- The name, title, address, telephone number, and e-mail address of the applicant's contact person.
- The applicant's license number, if the applicant is licensed under this chapter.
- The signature and certification of an authorized person of the applicant.

Section 4 of the bill also requires that an applicant be accepted as a data furnisher by a consumer reporting agency before the OFR can approve the applicant for a program license.

The OFR may deny an initial or renewal application for either a program license or program branch office license if the applicant or any person with power to direct the management or policies of the applicant's business is:

- The subject of any insolvency proceeding;
- The subject of a pending criminal prosecution; or
- Subject to specified administrative disciplinary actions.

Except as otherwise provided in the pilot program statutes, a program licensee is subject to all the laws and rules governing consumer finance loans under ch. 516, F.S.

A program license and a program branch office license must be renewed biennially. The bill does not provide for application or renewal fees related to the pilot program.

Program Loan Requirements (Section 4)

The bill creates s. 516.43, F.S., to establish the following requirements for a "program loan":

- Must be unsecured.
- Principal amount between \$300 and \$7,500;
- A term of:
 - At least 120 days, but not more than 60 months, for a loan with a principal balance upon origination of at least \$300, but not more than \$3,000.
 - At least 12 months, but not more than 60 months, for a loan with a principal balance upon origination of more than \$3,000.
- A borrower cannot receive a program loan for a principal balance exceeding \$4,000 and cannot receive a refinance program loan unless:
 - The borrower has paid in full the outstanding principal, interest, and fees on a program loan;
 - The borrower's credit score increased from the time of application for the borrower's first consummated program loan; and
 - The borrower was never delinquent on the program loan.
- Cannot have a prepayment penalty;
- Maximum fixed interest rates of:
 - 36 percent on unpaid principal up to and including \$3,000.
 - 30 percent on unpaid principal exceeding \$3,000 and up to and including \$4,000.
 - 24 percent on unpaid principal exceeding \$4,000 and up to and including \$7,500.
- Interest must be calculated by simple interest and not add-on interest or other computations.

- If two or more interest rates are applied to the principal amount of a program loan, the program licensee may charge, contract for, and receive interest at that single annual percentage rate that, if applied according to the actuarial method to each of the scheduled periodic balances of principal, would produce at maturity the same total amount of interest as would result from the application of the two or more rates otherwise permitted, based upon the assumption that all payments are made as agreed.
- Must be repayable in substantially equal, periodic installments, except that the final payment may be less than the amount of the prior installments. Installments must be due every two weeks, semimonthly, or monthly.
- Must include a borrower's right to rescind, which the borrower may do by notifying the licensee and returning the principal advanced by the end of the business day after the day the program loan is consummated.
- *Interest rate reduction* - Interest rates on each subsequent program loan to the same borrower must be reduced by a minimum of 1 percent, up to a maximum of 6 percent, if all of the following conditions are met:
 - The subsequent program loan is originated within 180 days after the prior program loan is fully repaid.
 - The borrower was never more than 15 days delinquent on the prior program loan.
 - The prior program loan was outstanding for at least one-half of its original term before its repayment.
- *Limit on number of outstanding loans* - The program licensee may not induce or permit any person to become obligated to the program licensee, directly or contingently, or both, under more than one program loan at the same time.
- *Refinancing* - The program licensee must underwrite a refinanced program loan in accordance with the same underwriting criteria as for the previous program loan. The program licensee may not refinance a program loan unless all of the following conditions are met at the time the borrower submits an application to refinance:
 - The principal amount payable may not include more than 60 days' unpaid interest accrued on the previous program loan.
 - For a program loan with an original term up to and including 25 months, the borrower has repaid at least 60 percent of the outstanding principal remaining on his or her existing program loan.
 - For a program loan with an original term of more than 25 months, but not more than 60 months, the borrower has made current payments for at least 9 months on his or her existing program loan.
 - The borrower is current on payments for his or her existing program loan.
 - The borrower has fully repaid a program loan not exceeding \$4,000 for which the borrower was never delinquent, and the borrower's credit score increased from the time of application for the borrower's first consummated program loan.
- *Receipts* - The program licensee or, if applicable, its access partner must provide the borrower a receipt containing specified information at the time that a payment is made.
- *Written disclosures* –
 - A program licensee may provide the loan contract and all written disclosures and statements in English or in the language in which the loan is negotiated.
 - The bill requires licensees to deliver a statement at the time the loan is made containing the following:
 - The amount and date of the loan and date of its maturity;
 - The name and address of the borrower and of the licensee; and
 - The rate of interest charged.
- *Origination fees* are permitted, are fully earned and nonrefundable immediately upon making the program loan, and may not exceed the lesser of 6 percent of the principal amount of the program loan made to the borrower (exclusive of the origination fee) or \$90. Program licensees may not charge the same borrower an origination fee more than twice in any 12-month period.
- *Insufficient funds fees* are permitted up to \$20.

- *Delinquency charges* are allowed for each payment that is in default for at least 10 days if the charge is agreed upon, in writing, between the program licensee and the borrower before it is imposed. Delinquency charges may be imposed 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.
- *Minimum collection period* – The program licensee, or any wholly owned subsidiary of the program licensee, may not sell or assign an unpaid debt to a third-party for collection purposes unless the debt has been delinquent for at least 30 days.
- *Credit counseling/credit education* - before loan proceeds are disbursed, licensee must offer the borrower *consumer credit counseling* pursuant to s. 516.32, F.S., which is approved by the OFR, or may invite the borrower to a credit education program offered by an independent third party. However, the licensee cannot require borrower to attend either program and must provide the counseling at no cost.
- *Credit Reporting* - A program licensee is required to report each borrower's payment performance to at least one consumer reporting agency and to provide each borrower with the name or names of the consumer reporting agency or agencies to which it will report the borrower's payment history.
- *Underwriting* -
 - The program licensee must determine a borrower's ability and willingness to repay the program loan and is prohibited from making a program loan if it determines the borrower's total monthly debt service payments (at the time of origination and inclusive of the program loan and all outstanding forms of credit that can be independently verified by the program licensee) exceed 50 percent of the borrower's gross monthly income for a loan of \$3,000 or less or exceed 36 percent of the borrower's gross monthly income for a loan of more than \$3,000.
 - The program licensee must seek information and documentation pertaining to all of a borrower's outstanding debt obligations, including loans that are self-reported by the borrower but not available through independent verification. The program licensee must verify such information using a credit report from at least one consumer reporting agency 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 must verify the borrower's income by electronic means or services that provide reliable evidence of the borrower's actual income; or the Internal Revenue Service Form W-2, tax returns, payroll receipts, bank statements, or other third-party documents.
- *Waivers* – Program licensees cannot require prospective borrowers to waive specified rights and remedies, to agree to the application of laws other than those of Florida, or to agree to resolve disputes in a jurisdiction outside of Florida as a condition of the loan. A waiver that is required as a condition of doing business with the program licensee is presumed involuntary, unconscionable, against public policy, and unenforceable.

Access partners (Section 5)

The bill creates s. 516.44, F.S., to allow program licensees to contract with one or more access partners so long as the access partner agrees to comply with this section and rules adopted under it. An access partner may conduct any of the following services at its physical business location for the program licensee:

- Distributing, circulating, using, or publishing printed brochures, flyers, fact sheets, or other written materials relating to program loans that the program licensee may make or negotiate.

The written materials must be reviewed and approved in writing by the program licensee before being distributed, circulated, used, or published.

- Providing written factual information about program loan terms, conditions, or qualification requirements to a prospective borrower which has been prepared by the program licensee or reviewed and approved in writing by the program licensee. An access partner may discuss the information with a prospective borrower in general terms.
- Notifying a prospective borrower of the information needed in order to complete a program loan application.
- Entering information provided by the prospective borrower on the program licensee's preprinted or electronic application form or in the program licensee's preformatted computer database.
- 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 a response that is returned by the program licensee's automated underwriting system to a borrower or a prospective 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 if this method of disbursement is acceptable to the borrower. A loan disbursement made by an access partner is deemed to be made by the program licensee on the date that the funds are disbursed or otherwise made available by the access partner to the borrower.
- Receiving a program loan payment from the borrower if this method of payment is acceptable to the borrower.
- 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.

The bill prohibits access partners from:

- Providing counseling or advice to a borrower or prospective borrower with respect to any loan term.
- Providing loan-related marketing material that has not previously been approved by the program licensee to a borrower or a prospective borrower.
- 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. However, if a program licensee has declined to offer a program loan to a prospective borrower and has so notified the prospective borrower in writing, the access partner may then offer information pertaining to that borrower to another program licensee with whom it has an access partner agreement.
- Except for the purpose of assisting a borrower in obtaining a refinance program loan, offering information pertaining to a prospective borrower to any program licensee if the prospective borrower has an outstanding program loan.
- Requiring a borrower to pay any fees or charges to the access partner or to any other person in connection with a program loan other than those expressly permitted under the program.

If an access partner takes a program loan payment from the borrower, then:

- The loan payment must be applied to the borrower's program loan and be deemed received by the program licensee as of the date on which the payment is received by the access partner;
- The access partner must deliver to the borrower a receipt with specified information at the time the payment is made; and
- A borrower is not liable for a failure or delay by the access partner in transmitting the payment to the program licensee.

An access partner that disburses or receives loan payments must maintain records of all disbursements made and loan payments received for at least two years.

The bill provides a disclosure statement that the access partner must provide a program loan applicant upon receiving or processing an application, and the access partner must request that the applicant acknowledge receipt of the statement in writing. The disclosure statement provides such information as the name of the program licensee and access partner, the fact that a referral fee is permitted, and ways to contact the program licensee or the OFR if the borrower has any questions or complaints. If the applicant has questions about the program loan which the access partner is not permitted to answer, the access partner must make a good faith effort to assist the applicant in making direct contact with the program licensee before the program loan is consummated.

The program licensee may compensate an access partner pursuant to a mutually agreed upon written agreement and compensation schedule. The program licensee's compensation of an access partner is subject to the following restrictions:

- Compensation may not be paid unless the program loan is consummated.
- The access partner's location for services and other specified information must be reported to the OFR.
- Compensation may not exceed \$65 per consummated program loan and may not be charged directly or indirectly to the borrower.

A program licensee that uses the service of an access partner must provide specified information to the OFR within 15 days after entering into a contract with an access partner and before using such access partner's services. If changes in such information occur, an access partner must notify the program licensee and the OFR in writing within specified periods of time.

OFR's Examination and Enforcement Authority (Sections 5 and 6)

The OFR is required to examine program licensees at least once every 24 months, but the OFR may waive one or more branch office examinations if it finds that such examinations are not necessary for the protection of the public due to the program licensee's centralized operations or other factors acceptable to the OFR. The scope of any investigation or examination of a program licensee or access partner must be limited to those books, accounts, records, documents, materials, and matters reasonably necessary to determine compliance with ch. 516 F.S.

A program licensee who violates any applicable provision of ch. 516, F.S., is subject to disciplinary action pursuant to s. 516.07(2), F.S., which provides various administrative actions that the OFR can take for specified violations. A program licensee is also responsible for any violation of ch. 516, F.S., committed by its access partner or the access partner's employees. The program licensee is subject to disciplinary action for a violation of s. 516.44, F.S., relating to access partners, committed by any of its access partners or the access partner's employees. The bill provides the OFR with authority to take the following administrative actions in the event that an access partner violates s. 516.44, F.S.:

- Bar the access partner from performing services under ch. 516, F.S.
- Bar the access partner from performing services at one or more of its specific locations.
- Impose an administrative fine on the access partner not to exceed \$1,000 for each violation of s. 516.44, F.S.

Reporting by Program Licensees and by the OFR (Section 7)

Each program licensee must file with the OFR an annual report using aggregated and anonymized data without reference to any borrower's nonpublic personal identifying information and without a program licensee's or access partner's proprietary or trade secret information. The OFR must then post on its website an annual report summarizing the use of the program based on the information contained in the reports filed by program licensee's in the preceding year. The OFR's report must publish the information in the aggregate so as not to identify data by any specific program licensee. The report must include, but is not limited to, the following information for the period covered:

- The number of applicants approved for a program license by the OFR.

- The number of program loan applications received by program licensees, the number of program loans made under the program, the total amount loaned, the distribution of loan lengths upon origination, and the distribution of interest rates and principal amounts upon origination among those program loans.
- The number of borrowers who obtained more than one program loan and the distribution of the number of program loans per borrower.
- Of those borrowers who obtained more than one program loan and had a credit score by the time of their subsequent loan, the percentage of those borrowers whose credit scores increased between successive loans, based on information from at least one major credit bureau, and the average size of the increase. In each case, the report must include the name of the credit score, such as FICO or VantageScore, which the program licensee is required to disclose.
- The income distribution of borrowers upon program loan origination, including the number of borrowers who obtained at least one program loan and who resided in a low-income or moderate-income census tract at the time of their loan applications.
- The number of borrowers who obtained program loans for the following purposes, based on the borrowers' responses at the time of their loan applications indicating the primary purpose for which the program loans were obtained:
 - To pay medical expenses.
 - To pay for vehicle repair or a vehicle purchase.
 - To pay bills.
 - To consolidate debt.
 - To build or repair credit history.
 - To finance a small business.
 - To 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.
- For refinance program loans:
 - The number and percentage of borrowers who applied for a refinance program loan.
 - Of those borrowers who applied for a refinance program loan, the number and percentage of borrowers who obtained a refinance program loan.
- The performance of program loans as reflected by all of the following:
 - The number and percentage of borrowers who experienced at least one delinquency lasting between 7 and 29 days and the distribution of principal loan amounts corresponding to those delinquencies.
 - The number and percentage of borrowers who experienced at least one delinquency lasting between 30 and 59 days and the distribution of principal loan amounts corresponding to those delinquencies.
 - The number and percentage of borrowers who experienced at least one delinquency lasting 60 days or more and the distribution of principal loan amounts corresponding to those delinquencies.

The bill provides an effective date of January 1, 2020, and provides that the pilot program expires five years after the date on which the OFR posts its first annual program report, or approximately January 1, 2027.

Below is a chart comparing payday loans, consumer finance loans, and loans under the proposed pilot program.

	Payday Loans (Ch. 560, Part IV, F.S.)		Consumer Finance Loans (Ch. 516, F.S.)	
	Payday Loans (Current Law)	Installment Payday Loans (Effective 7/1/19)	Consumer Finance Loans (Current Law)	Proposed Pilot Program (HB 469)
Loan Amount	\$500 (max)	\$1,000 (max)	\$25,000 (max)	\$300 - \$7,500
Length of Term	7 - 31 days	60 - 90 days	No min. or max.	<ul style="list-style-type: none"> • 120 days - 60 months for loans \$300 - \$3,000 • 12 months - 60 months for loans more than \$3,000
Payments	<ul style="list-style-type: none"> • Lump sum-at end of loan term 	<ul style="list-style-type: none"> • Installments with 13 days to 1 month in between each, except that the first installment period may be longer than the remaining installment periods by a maximum of 15 days 	<ul style="list-style-type: none"> • Installments due monthly, semi-monthly, or every 2 weeks 	<ul style="list-style-type: none"> • Installments due monthly, semi-monthly, or every 2 weeks
Interest Rate	<ul style="list-style-type: none"> • APR equivalent (assuming \$500 loan amount and \$5 verification fee): 129.52% for a 31 day loan, 573.57% for a 7 day loan 	<ul style="list-style-type: none"> • 8% biweekly on the outstanding transaction balance • APR equivalent: approx. 208% (will be slightly higher as a result of the \$5 verification fee) 	<ul style="list-style-type: none"> • 30% per year on the first \$3,000 of principal • 24% per year on principal above \$3,000 and up to \$4,000 • 18% per year on principal above \$4,000 and up to \$25,000 	<ul style="list-style-type: none"> • 36% per year on the first \$3,000 • 30% per year on principal above \$3,000 and up to \$4,000 • 24% per year on principal above \$4,000 and up to \$10,000
Other Upfront Fees Permitted	<ul style="list-style-type: none"> • 10% of loan amount • \$5 verification fee • No additional fees permitted 	<ul style="list-style-type: none"> • \$5 verification fee • No additional fees permitted 	<ul style="list-style-type: none"> • Up to \$25 for investigating the credit and character of the borrower • Fees specified in s. 516.031(3), F.S. • No additional fees permitted 	<ul style="list-style-type: none"> • Origination fee that may not exceed the lesser of 6% of the principal amount or \$90 • Additional fees not clearly prohibited

B. SECTION DIRECTORY:

Section 1. Creates s. 516.405, F.S., relating to the Access to Responsible Credit Pilot Program.

Section 2. Creates s. 516.41, F.S., relating to definitions.

Section 3. Creates s. 516.42, F.S., relating to requirements for program participation; program application requirements.

Section 4. Creates s. 516.43, F.S., relating to requirements for program loans.

Section 5. Creates s. 516.44, F.S., relating to access partners.

Section 6. Creates s. 516.45, F.S., relating to examinations, investigations, and grounds for disciplinary action.

Section 7. Creates s. 516.46, F.S., relating to annual reports by program licensees and the office.

Section 8. Provides for the repeal of ss. 516.405 - 516.46, F.S., five years after the date on which the OFR posts its first annual program report required by s. 516.46(2), F.S, unless reenacted or superseded by another law enacted by the Legislature before that date.

Section 9. Provides an effective date of January 1, 2020.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None. The bill does not authorize the agency to charge initial program license application fees, program license biennial renewal fees, initial program branch office application fees, program branch office biennial renewal fees, access partner notification fees, or examination fees. The OFR believes that without the ability to collect such fees it will not have the necessary revenue to complete those functions.⁴³

2. Expenditures:⁴⁴

- OFR resources will be required to process applications; process access partner notices; process complaints; examine records of program licensees and access partners at least once every two years; and, if necessary initiate enforcement actions for non-compliance or fraud. As of December 31, 2017, the state of California had a total of sixteen program licensees, double the amount from 2015. As of February 2019, the OFR has 154⁴⁵ distinct entities licensed as consumer finance companies. Assuming a comparable number of businesses apply to become a program licensee as in California and all existing consumer finance licensees also apply for a program license, the OFR estimates that it will need eight full-time equivalent positions to handle the additional regulatory duties and responsibilities proposed in the bill. The fiscal impact to the OFR for salaries and benefits for eight full-time equivalent positions is as follows:
 - Total recurring costs of \$501,776.96
 - Total non-recurring costs of \$80,000.00
- The bill will require updates to the OFR's Regulatory Enforcement and Licensing (REAL) system's internal components that are used by the OFR as well as the REAL system's public-facing website. The bill will also require the OFR to create electronic forms for applications and reporting and require the OFR to post on its website a report that includes extensive information regarding the pilot program. Implementing such changes will cost the agency an estimated \$150,000.
- The OFR will incur insignificant costs associated with rulemaking which can be absorbed within its current budget.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill's impact on the private sector is indeterminate because the number of lenders, access partners, and borrowers who will participate in this pilot program is unknown. Moreover, the bill states that the pilot program is created "to allow more Floridians to obtain responsible consumer finance loans in principal amounts of at least \$300 but not more than \$7,500." However, it is unclear how many consumers will qualify for loans under the pilot program who could not have qualified for loans under the existing consumer finance loan product. For those consumers who could qualify for a loan under

⁴³ Office of Financial Regulation, *supra* note 19.

⁴⁴ *Id.*

⁴⁵ This count does not include branch locations of consumer finance companies. As of December 31, 2018, there were 373 active consumer finance licenses, which includes branch locations. Office of Financial Regulation, *supra* note 20.

the existing consumer finance loan product, the pilot program would simply result in the consumer paying the higher interest rates under the pilot program as compared to rates permitted under the existing consumer finance loan product.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill provides rulemaking authority for the Financial Services Commission to adopt rules regarding program loan licensee application forms and procedures, program branch office licenses, program participation, access partners, notifications to the OFR relating to contracted access partners, annual reports required of program loan licensees.

C. DRAFTING ISSUES OR OTHER COMMENTS:

- The bill defines "refinance program loan" as "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." The phrase "rewrite of a program loan" is ambiguous and may diminish consumer protections surrounding refinancing of program loans.
- Section 516.43(1)(j), F.S., relating to restrictions on refinancing a program loan, should be revised to incorporate the defined term "refinance program loan."
- It is unclear how the prohibition on refinancing more than 60 days' unpaid interest would function in relation to the prohibition on refinancing a program loan unless the borrower is current on payments. See s. 516.43(1)(j)1. and 4., F.S.
- The bill requires that the program branch office license be issued in the name of the program licensee that maintains the branch office. However, the application for a program branch office license requests the legal business name and any other name under which the applicant operates. This could result in a license being issued in the name of a company other than the name under which such company is actually operating.
- The bill supersedes s. 687.08, F.S., relating to required contents of receipts. In doing so, the bill overrides the consumer protection that states "[w]hoever refuses, upon demand, to give a receipt or statement complying with the requirements of this section shall forfeit the entire interest upon such principal sum to the borrower." s. 687.08(2), F.S.
- The underwriting criteria states that the program licensee must seek information and documentation pertaining to all of a borrower's outstanding debt obligations, including loans that are self-reported by the borrower but not available through independent verification. The debt-to-income cap is inclusive of all outstanding forms of credit *that can be independently verified by the program licensee*. It is unclear whether the cap on debt-to-income excludes loans that are self-reported by the borrower but not available through independent sources.
- The underwriting criteria does not include consideration of the impact of the borrower's non-debt expenses (e.g., rent) on ability to repay. Additionally, 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 bill does not clearly prohibit a program licensee from charging fees beyond those specified in the bill.
- The bill does not have a companion bill relating to public records in order to protect sensitive information from public disclosure.
- The OFR noted additional concerns in its analysis of the bill as filed.⁴⁶

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 19, 2019, the Insurance & Banking Subcommittee considered a proposed committee substitute and one amendment, and reported the bill favorably as a committee substitute. The proposed committee substitute as amended made the following changes to the bill:

- Lowers the maximum pilot program loan amount from \$10,000 to \$7,500.
- Requires access partners to operate from a physical location that it owns or rents.
- Clarifies that the maximum term is 60 months for program loans between \$300 and \$3,000.
- Restricts a borrower to a program loan of \$4,000 or less and prohibits a borrower from obtaining a refinance program loan until certain conditions are met.
- Deletes language that would have permitted a borrower to have more than one program loan so long as there is only one program loan per program licensee.
- Clarifies the delinquency fee applicable to loans payments that are due monthly, semimonthly, and every two weeks.
- Clarifies an access partner's permissible services.
- Prohibits an access partner from assisting a borrower in obtaining a program loan from another program loan licensee while the borrower has an outstanding program loan, except when the access partner is assisting a borrower in obtaining a refinance program loan.
- Provides a cap on compensation that may be paid by a program licensee to an access partner.
- Clarifies that notice of a program licensee's use of an access partner must be given to the OFR *before using the access partner's services*.
- Authorizes the OFR to impose an administrative fine on an access partner.
- Makes other technical changes.

The staff analysis has been updated to reflect the committee substitute.

⁴⁶ Office of Financial Regulation, *supra* note 19.
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