



153120

LEGISLATIVE ACTION

| Senate | . | House |
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| Comm: RCS | . | |
| 03/25/2019 | . | |
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The Committee on Banking and Insurance (Rouson) recommended the following:

1 **Senate Substitute for Amendment (402070) (with title**
2 **amendment)**

3
4 Delete lines 146 - 672
5 and insert:

6 (c) Demonstrate financial responsibility, experience,
7 character, or general fitness, such as to command the confidence
8 of the public and to warrant the belief that the business
9 operated at the licensed or proposed location is lawful, honest,
10 fair, efficient, and within the purposes of this chapter.



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11 (d) Not be subject to the issuance of a cease and desist
12 order; the issuance of a removal order; the denial, suspension,
13 or revocation of a license; or any other action within the
14 authority of the office, any financial regulatory agency in this
15 state, or any other state or federal regulatory agency that
16 affects the ability of such person to participate in the
17 program.

18 (3) (a) A program applicant must file with the office a
19 digital application in a form and manner prescribed by
20 commission rule which contains all of the following information
21 with respect to the applicant:

22 1. The legal business name and any other name under which
23 the applicant operates.

24 2. The applicant's main address.

25 3. The applicant's telephone number and e-mail address.

26 4. The address of each program branch office.

27 5. The name, title, address, telephone number, and e-mail
28 address of the applicant's contact person.

29 6. The license number, if the applicant is licensed under
30 s. 516.05.

31 7. A statement as to whether the applicant intends to use
32 the services of one or more access partners under s. 516.44.

33 8. A statement that the applicant has been accepted as a
34 data furnisher by a consumer reporting agency and will report to
35 a consumer reporting agency the payment performance of each
36 borrower on all program loans.

37 9. The signature and certification of an authorized person
38 of the applicant.

39 (b) A person who desires to participate in the program but



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40 who is not licensed to make consumer finance loans pursuant to
41 s. 516.05 must concurrently submit the following digital
42 applications in a form and manner specified in this chapter to
43 the office:

44 1. An application pursuant to s. 516.03 for licensure to
45 make consumer finance loans.

46 2. An application for admission to the program in
47 accordance with paragraph (a).

48 (4) Except as otherwise provided in ss. 516.405-516.46, a
49 program licensee is subject to all the laws and rules governing
50 consumer finance loans under this chapter. A program license
51 must be renewed biennially.

52 (5) Notwithstanding s. 516.05(3), only one program license
53 is required for a person to make program loans under ss.
54 516.405-516.46, regardless of whether the program licensee
55 offers program loans to prospective borrowers at its own
56 physical business locations, through access partners, or via an
57 electronic access point through which a prospective borrower may
58 directly access the website of the program licensee.

59 (6) Each branch office of a program licensee must be
60 licensed under this section.

61 (7) The office shall issue a program branch office license
62 to a program licensee after the office determines that the
63 program licensee has submitted a completed electronic
64 application for a program branch office license in a form
65 prescribed by commission rule. The program branch office license
66 must be issued in the name of the program licensee that
67 maintains the branch office. An application is considered
68 received for purposes of s. 120.60 upon receipt of a completed



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69 application form. The application for a program branch office
70 license must contain the following information:

71 (a) The legal business name and any other name under which
72 the applicant operates.

73 (b) The applicant's main address.

74 (c) The applicant's telephone number and e-mail address.

75 (d) The address of each program branch office.

76 (e) The name, title, address, telephone number, and e-mail
77 address of the applicant's contact person.

78 (f) The applicant's license number, if the applicant is
79 licensed under this chapter.

80 (g) The signature and certification of an authorized person
81 of the applicant.

82 (8) Except as provided in subsection (9), a program branch
83 office license must be renewed biennially at the time of
84 renewing the program license.

85 (9) Notwithstanding subsection (7), the office may deny an
86 initial or renewal application for a program license or program
87 branch office license if the applicant or any person with power
88 to direct the management or policies of the applicant's
89 business:

90 (a) Fails to demonstrate financial responsibility,
91 experience, character, or general fitness, such as to command
92 the confidence of the public and to warrant the belief that the
93 business operated at the licensed or proposed location is
94 lawful, honest, fair, efficient, and within the purposes of this
95 chapter.

96 (b) Pled nolo contendere to, or was convicted or found
97 guilty of, a crime involving fraud, dishonest dealing, or any



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98 act of moral turpitude, regardless of whether adjudication was
99 withheld.

100 (c) Is subject to the issuance of a cease and desist order;
101 the issuance of a removal order; the denial, suspension, or
102 revocation of a license; or any other action within the
103 authority of the office, any financial regulatory agency in this
104 state, or any other state or federal regulatory agency that
105 affects the applicant's ability to participate in the program.

106 (10) The commission shall adopt rules to implement this
107 section.

108 Section 4. Section 516.43, Florida Statutes, is created to
109 read:

110 516.43 Requirements for program loans.—

111 (1) REQUIREMENTS.—A program licensee shall comply with each
112 of the following requirements in making program loans:

113 (a) A program loan must be unsecured.

114 (b) A program loan must have:

115 1. A term of at least 120 days, but not more than 36
116 months, for a loan with a principal balance upon origination of
117 at least \$300, but not more than \$3,000.

118 2. A term of at least 12 months, but not more than 60
119 months, for a loan with a principal balance upon origination of
120 more than \$3,000.

121 (c) A program loan must not impose a prepayment penalty. A
122 program loan must be repayable by the borrower in substantially
123 equal, periodic installments, except that the final payment may
124 be less than the amount of the prior installments. Installments
125 must be due either every 2 weeks, semimonthly, or monthly.

126 (d) A program loan must include a borrower's right to



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127 rescind the program loan by notifying the program licensee of
128 the borrower's intent to rescind the program loan and returning
129 the principal advanced by the end of the business day after the
130 day the program loan is consummated.

131 (e) Notwithstanding s. 516.031, the maximum annual interest
132 rate charged on a program loan to the borrower, which must be
133 fixed for the duration of the program loan, is 36 percent on
134 that portion of the unpaid principal balance up to and including
135 \$3,000; 30 percent on that portion of the unpaid principal
136 balance exceeding \$3,000 and up to and including \$4,000; and 24
137 percent on that portion of the unpaid principal balance
138 exceeding \$4,000 and up to and including \$10,000. The original
139 principal amount of the program loan is equal to the amount
140 financed as defined by the federal Truth in Lending Act and
141 Regulation Z of the Board of Governors of the Federal Reserve
142 System. In determining compliance with the maximum annual
143 interest rates in this paragraph, the computations used must be
144 simple interest through the application of a daily periodic rate
145 to the actual unpaid principal balance each day and may not be
146 added-on interest or any other computations.

147 (f) If two or more interest rates are applied to the
148 principal amount of a program loan, the program licensee may
149 charge, contract for, and receive interest at that single annual
150 percentage rate that, if applied according to the actuarial
151 method to each of the scheduled periodic balances of principal,
152 would produce at maturity the same total amount of interest as
153 would result from the application of the two or more rates
154 otherwise permitted, based upon the assumption that all payments
155 are made as agreed.



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156 (g) The program licensee shall reduce the interest rates
157 specified in paragraph (e) on each subsequent program loan to
158 the same borrower by a minimum of 1 percent, up to a maximum of
159 6 percent, if all of the following conditions are met:

160 1. The subsequent program loan is originated within 180
161 days after the prior program loan is fully repaid.

162 2. The borrower was never more than 15 days delinquent on
163 the prior program loan.

164 3. The prior program loan was outstanding for at least one-
165 half of its original term before its repayment.

166 (h) The program licensee may not induce or permit any
167 person to become obligated to the program licensee, directly or
168 contingently, or both, under more than one program loan at the
169 same time with the program licensee.

170 (i) The program licensee may not refinance a program loan
171 unless all of the following conditions are met at the time the
172 borrower submits an application to refinance:

173 1. The principal amount payable may not include more than
174 60 days' unpaid interest accrued on the previous program loan
175 pursuant to s. 516.031(5).

176 2. For a program loan with an original term up to and
177 including 25 months, the borrower has repaid at least 60 percent
178 of the outstanding principal remaining on his or her existing
179 program loan.

180 3. For a program loan with an original term of more than 25
181 months, but not more than 60 months, the borrower has made
182 current payments for at least 9 months on his or her existing
183 program loan.

184 4. The borrower is current on payments for his or her



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185 existing program loan.

186 5. The program licensee must underwrite the new program
187 loan in accordance with subsection (7).

188 (j) In lieu of the provisions of s. 687.08, the program
189 licensee or, if applicable, its approved access partner shall
190 make available to the borrower by electronic or physical means a
191 plain and complete receipt of payment at the time that a payment
192 is made by the borrower. For audit purposes, the program
193 licensee must maintain an electronic record for each receipt
194 made available to a borrower, which must include a copy of the
195 receipt and the date and time that the receipt was generated.

196 Each receipt made available to the borrower must show all of the
197 following:

198 1. The name of the borrower.

199 2. The name of the access partner, if applicable.

200 3. The total payment amount received.

201 4. The date of payment.

202 5. The program loan balance before and after application of
203 the payment.

204 6. The amount of the payment that was applied to the
205 principal, interest, and fees.

206 7. The type of payment made by the borrower.

207 8. The following statement, prominently displayed in a type
208 size equal to or larger than the type size used to display the
209 other items on the receipt: "If you have any questions about
210 your loan now or in the future, you should direct those
211 questions to ...(name of program licensee)... by ...(at least
212 two different ways in which a borrower may contact the program
213 licensee)...."



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214 (2) WRITTEN DISCLOSURES AND STATEMENTS.—

215 (a) Notwithstanding s. 516.15(1), the loan contract and all
216 written disclosures and statements may be provided by a program
217 licensee to a borrower in English or in the language in which
218 the loan is negotiated.

219 (b) The program licensee shall provide to a borrower all
220 the statements required of licensees under s. 516.15.

221 (3) ORIGINATION FEES.—Notwithstanding s. 516.031, a program
222 licensee may:

223 (a) Contract for and receive an origination fee from a
224 borrower on a program loan. The program licensee may either
225 deduct the origination fee from the principal amount of the loan
226 disbursed to the borrower or capitalize the origination fee into
227 the principal balance of the loan. The origination fee is fully
228 earned and nonrefundable immediately upon the making of the
229 program loan and may not exceed the lesser of 6 percent of the
230 principal amount of the program loan made to the borrower,
231 exclusive of the origination fee, or \$90.

232 (b) Not charge a borrower an origination fee more than
233 twice in any 12-month period.

234 (4) INSUFFICIENT FUNDS FEES AND DELINQUENCY CHARGES.—A
235 program licensee may:

236 (a) Notwithstanding s. 516.031, require payment from a
237 borrower of no more than \$20 for fees incurred by the program
238 licensee from a dishonored payment due to insufficient funds of
239 the borrower.

240 (b) Notwithstanding s. 516.031(3)(a)9., contract for and
241 receive a delinquency charge of up to \$15 in a calendar month
242 for one or more payments that are in default for at least 10



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243 days if the charge is agreed upon, in writing, between the
244 program licensee and the borrower before it is imposed.

245
246 The program licensee, or any wholly owned subsidiary of the
247 program licensee, may not sell or assign an unpaid debt to an
248 independent third party for collection purposes unless the debt
249 has been delinquent for at least 30 days.

250 (5) CREDIT EDUCATION.—Before disbursement of program loan
251 proceeds to the borrower, the program licensee must:

252 (a) Direct the borrower to the consumer credit counseling
253 services offered by an independent third party; or

254 (b) Provide a credit education program or seminar to the
255 borrower. The borrower is not required to participate in such
256 education program or seminar. A credit education program or
257 seminar offered pursuant to this paragraph must be provided at
258 no cost to the borrower.

259 (6) CREDIT REPORTING.—

260 (a) The program licensee shall report each borrower's
261 payment performance to at least one consumer reporting agency.

262 (b) The office may not approve an applicant for the program
263 license before the applicant has been accepted as a data
264 furnisher by a consumer reporting agency.

265 (c) The program licensee shall provide each borrower with
266 the name or names of the consumer reporting agency or agencies
267 to which it will report the borrower's payment history.

268 (7) PROGRAM LOAN UNDERWRITING.—

269 (a) The program licensee must underwrite each program loan
270 to determine a borrower's ability and willingness to repay the
271 program loan pursuant to the program loan terms. The program



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272 licensee may not make a program loan if it determines that the
273 borrower's total monthly debt service payments at the time of
274 origination, including the program loan for which the borrower
275 is being considered and all outstanding forms of credit that can
276 be independently verified by the program licensee, exceed 50
277 percent of the borrower's gross monthly income for a loan of not
278 more than \$3,000, or exceed 36 percent of the borrower's gross
279 monthly income for a loan of more than \$3,000.

280 (b)1. The program licensee must seek information and
281 documentation pertaining to all of a borrower's outstanding debt
282 obligations during the loan application and underwriting
283 process, including loans that are self-reported by the borrower
284 but not available through independent verification. The program
285 licensee must verify such information using a credit report from
286 at least one consumer reporting agency or through other
287 available electronic debt verification services that provide
288 reliable evidence of a borrower's outstanding debt obligations.

289 2. The program licensee is not required to consider loans
290 made to a borrower by friends or family in determining the
291 borrower's debt-to-income ratio.

292 (c) The program licensee must verify the borrower's income
293 to determine the debt-to-income ratio using information from:

294 1. Electronic means or services that provide reliable
295 evidence of the borrower's actual income; or

296 2. The Internal Revenue Service Form W-2, tax returns,
297 payroll receipts, bank statements, or other third-party
298 documents that provide reasonably reliable evidence of the
299 borrower's actual income.

300 (8) WAIVERS.-



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301 (a) A program licensee may not require, as a condition of
302 providing the program loan, that the borrower:

303 1. Waive any right, penalty, remedy, forum, or procedure
304 provided for in any law applicable to the program loan,
305 including the right to file and pursue a civil action or file a
306 complaint with or otherwise communicate with the office, a
307 court, or any other governmental entity.

308 2. Agree to the application of laws other than those of
309 this state.

310 3. Agree to resolve disputes in a jurisdiction outside of
311 this state.

312 (b) A waiver that is required as a condition of doing
313 business with the program licensee is presumed involuntary,
314 unconscionable, against public policy, and unenforceable.

315 (c) A program licensee may not refuse to do business with
316 or discriminate against a borrower or an applicant on the basis
317 of the borrower's or applicant's refusal to waive any right,
318 penalty, remedy, forum, or procedure, including the right to
319 file and pursue a civil action or complaint with, or otherwise
320 communicate with, the office, a court, or any other governmental
321 entity. The exercise of a person's right to refuse to waive any
322 right, penalty, remedy, forum, or procedure, including a
323 rejection of a contract requiring a waiver, does not affect any
324 otherwise legal terms of a contract or an agreement.

325 (d) This subsection does not apply to any agreement to
326 waive any right, penalty, remedy, forum, or procedure, including
327 any agreement to arbitrate a claim or dispute after a claim or
328 dispute has arisen. This subsection does not affect the
329 enforceability or validity of any other provision of the



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330 contract.

331 Section 5. Section 516.44, Florida Statutes, is created to
332 read:

333 516.44 Access partners.-

334 (1) ACCESS PARTNER AGREEMENT.-All arrangements between a
335 program licensee and an access partner must be specified in a
336 written access partner agreement between the parties. The
337 agreement must contain the following provisions:

338 (a) The access partner agrees to comply with this section
339 and all rules adopted under this section regarding the
340 activities of access partners.

341 (b) The office has access to the access partner's books and
342 records pertaining to the access partner's operations under the
343 agreement with the program licensee in accordance with s.
344 516.45(3) and may examine the access partner pursuant to s.
345 516.45.

346 (2) AUTHORIZED SERVICES.-A program licensee may use the
347 services of one or more access partners as provided in this
348 section. An access partner may perform one or more of the
349 following services for the program licensee:

350 (a) Distributing, circulating, using, or publishing printed
351 brochures, flyers, fact sheets, or other written materials
352 relating to program loans that the program licensee may make or
353 negotiate. The written materials must be reviewed and approved
354 in writing by the program licensee before being distributed,
355 circulated, used, or published.

356 (b) Providing written factual information about program
357 loan terms, conditions, or qualification requirements to a
358 prospective borrower which has been prepared by the program



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359 licensee or reviewed and approved in writing by the program
360 licensee. An access partner may discuss the information with a
361 prospective borrower in general terms.

362 (c) Notifying a prospective borrower of the information
363 needed in order to complete a program loan application.

364 (d) Entering information provided by the prospective
365 borrower on a preprinted or an electronic application form or in
366 a preformatted computer database.

367 (e) Assembling credit applications and other materials
368 obtained in the course of a credit application transaction for
369 submission to the program licensee.

370 (f) Contacting the program licensee to determine the status
371 of a program loan application.

372 (g) Communicating a response that is returned by the
373 program licensee's automated underwriting system to a borrower
374 or a prospective borrower.

375 (h) Obtaining a borrower's signature on documents prepared
376 by the program licensee and delivering final copies of the
377 documents to the borrower.

378 (i) Disbursing program loan proceeds to a borrower if this
379 method of disbursement is acceptable to the borrower, subject to
380 the requirements of subsection (3). A loan disbursement made by
381 an access partner under this paragraph is deemed to be made by
382 the program licensee on the date that the funds are disbursed or
383 otherwise made available by the access partner to the borrower.

384 (j) Receiving a program loan payment from the borrower if
385 this method of payment is acceptable to the borrower, subject to
386 the requirements of subsection (3).

387 (k) Operating an electronic access point through which a



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388 prospective borrower may directly access the website of the
389 program licensee to apply for a program loan.

390 (3) RECEIPT OR DISBURSEMENT OF PROGRAM LOAN PAYMENTS.—

391 (a) A loan payment made by a borrower to an access partner
392 under paragraph (2) (j) must be applied to the borrower's program
393 loan and deemed received by the program licensee as of the date
394 on which the payment is received by the access partner.

395 (b) An access partner that receives a loan payment from a
396 borrower must deliver or cause to be delivered to the borrower a
397 plain and complete receipt showing all of the information
398 specified in s. 516.43(1) (j) at the time that the payment is
399 made by the borrower.

400 (c) A borrower who submits a loan payment to an access
401 partner under this subsection is not liable for a failure or
402 delay by the access partner in transmitting the payment to the
403 program licensee.

404 (d) An access partner that disburses or receives loan
405 payments pursuant to paragraph (2) (i) or paragraph (2) (j) must
406 maintain records of all disbursements made and loan payments
407 received for at least 2 years.

408 (4) PROHIBITED ACTIVITIES.—An access partner may not:

409 (a) Provide counseling or advice to a borrower or
410 prospective borrower with respect to any loan term.

411 (b) Provide loan-related marketing material that has not
412 previously been approved by the program licensee to a borrower
413 or a prospective borrower.

414 (c) Negotiate a loan term between a program licensee and a
415 prospective borrower.

416 (d) Offer information pertaining to a single prospective



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417 borrower to more than one program licensee. However, if a
418 program licensee has declined to offer a program loan to a
419 prospective borrower and has so notified the prospective
420 borrower in writing, the access partner may then offer
421 information pertaining to that borrower to another program
422 licensee with whom it has an access partner agreement.

423 (e) Require a borrower to pay any fees or charges to the
424 access partner or to any other person in connection with a
425 program loan other than those permitted under ss. 516.405-
426 516.46.

427 (5) DISCLOSURE STATEMENTS.-

428 (a) At the time that the access partner receives or
429 processes an application for a program loan, the access partner
430 shall provide the following statement to the applicant on behalf
431 of the program licensee, in at least 10-point type, and shall
432 request that the applicant acknowledge receipt of the statement
433 in writing:

434
435 Your loan application has been referred to us by
436 ...(name of access partner).... We may pay a fee to
437 ...(name of access partner)... for the successful
438 referral of your loan application. If you are approved
439 for the loan, ...(name of program licensee)... will
440 become your lender. If you have any questions about
441 your loan, now or in the future, you should direct
442 those questions to ...(name of program licensee)... by
443 ...(insert at least two different ways in which a
444 borrower may contact the program licensee).... If you
445 wish to report a complaint about ...(name of access



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446 partner)... or ...(name of program licensee)...
447 regarding this loan transaction, you may contact the
448 Division of Consumer Finance of the Office of
449 Financial Regulation at 850-487-9687 or
450 <http://www.flofr.com>.

451
452 (b) If the loan applicant has questions about the program
453 loan which the access partner is not permitted to answer, the
454 access partner must make a good faith effort to assist the
455 applicant in making direct contact with the program licensee
456 before the program loan is consummated.

457 (6) COMPENSATION.-

458 (a) The program licensee may compensate an access partner
459 in accordance with a written agreement and a compensation
460 schedule that is agreed to by the program licensee and the
461 access partner, subject to the requirements in paragraph (b).

462 (b) The compensation of an access partner by a program
463 licensee is subject to the following requirements:

464 1. Compensation may not be paid to an access partner in
465 connection with a loan application unless the program loan is
466 consummated.

467 2. The access partner's location for services and other
468 information required in subsection (7) must be reported to the
469 office.

470 (7) NOTICE TO OFFICE.-A program licensee that uses the
471 service of an access partner must notify the office, in a form
472 and manner prescribed by commission rule, within 15 days after
473 entering into a contract with an access partner regarding all of
474 the following:



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475 (a) The name, business address, and licensing details of
476 the access partner and all locations at which the access partner
477 will perform services under this section.

478 (b) The name and contact information for an employee of the
479 access partner who is knowledgeable about, and has the authority
480 to execute, the access partner agreement.

481 (c) The name and contact information of one or more
482 employees of the access partner who are responsible for that
483 access partner's referring activities on behalf of the program
484 licensee.

485 (d) A statement by the program licensee that it has
486 conducted due diligence with respect to the access partner and
487 has confirmed that none of the following apply:

488 1. The filing of a petition under the United States
489 Bankruptcy Code for bankruptcy or reorganization by the access
490 partner.

491 2. The commencement of an administrative or a judicial
492 license suspension or revocation proceeding, or the denial of a
493 license request or renewal, by any state, the District of
494 Columbia, any United States territory, or any foreign country in
495 which the access partner operates, plans to operate, or is
496 licensed to operate.

497 3. A felony indictment involving the access partner or an
498 affiliated party.

499 4. The felony conviction, guilty plea, or plea of nolo
500 contendere, regardless of adjudication, of the access partner or
501 an affiliated party.

502 5. Any suspected criminal act perpetrated in this state
503 relating to activities regulated under this chapter by the



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504 access partner.

505 6. Notification by a law enforcement or prosecutorial
506 agency that the access partner is under criminal investigation,
507 including, but not limited to, subpoenas to produce records or
508 testimony and warrants issued by a court of competent
509 jurisdiction which authorize the search and seizure of any
510 records relating to a business activity regulated under this
511 chapter.

512
513 As used in this paragraph, the term "affiliated party" means a
514 director, officer, responsible person, employee, or foreign
515 affiliate of an access partner; or a person who has a
516 controlling interest in an access partner.

517 (e) Any other information requested by the office, subject
518 to the limitations specified in s. 516.45(3).

519 (8) NOTICE OF CHANGES.—An access partner must provide the
520 program licensee with a written notice sent by registered mail
521 within 30 days after any change is made to the information
522 specified in paragraphs (7) (a)-(c) and within 30 days after the
523 occurrence or knowledge of any of the events specified in
524 paragraph (7) (d).

525 (9) RESPONSIBILITY FOR ACTS OF AN ACCESS PARTNER.—A program
526 licensee is responsible for any act of its access partner if
527 such act is a violation of this chapter.

528 (10) RULEMAKING.—The commission shall adopt rules to
529 implement this section.

530 Section 6. Section 516.45, Florida Statutes, is created to
531 read:

532 516.45 Examinations, investigations, and grounds for



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533 disciplinary action.-

534 (1) Notwithstanding any other law, the office may examine
535 each program licensee that is accepted into the program and each
536 branch office of the program licensee in accordance with this
537 chapter.

538 (2) Notwithstanding any other law, the office may examine
539 each access partner that is accepted into the program in
540 accordance with this chapter.

541

542 ===== T I T L E A M E N D M E N T =====

543 And the title is amended as follows:

544 Delete lines 53 - 55

545 and insert:

546 creating s. 516.45, F.S.; authorizing the office to
547 examine each program licensee, branch office, and
548 access partner;