

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Banking and Insurance

BILL: SB 874

INTRODUCER: Senator Rouson

SUBJECT: Consumer Finance Loans

DATE: March 15, 2019 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Matiyow	Knudson	BI	Pre-meeting
2.	_____	_____	FT	_____
3.	_____	_____	RC	_____

I. Summary:

SB 874 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 \$90, 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 depending on the amount borrowed 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 50 percent of the borrower's gross monthly income when borrowing less than \$3,000 and may not exceed 36 percent of the borrower's gross monthly income when borrowing more than \$3,000.
- The OFR is required to examine licensees at least once every 24 months beginning after January 1, 2022.
- A program licensee may use an access partner to perform marketing, servicing, and other services 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., not be subject of any insolvency proceedings and not be subject to any enforcement action by a state or federal regulatory agency.

Currently, the Florida Consumer Finance Act (act) sets forth licensing requirements for consumer finance lenders and the terms and conditions under which a consumer finance loan is allowed in Florida. The act sets forth maximum interest rates for consumer finance loans, which are loans of money, credit, goods, or a provision of a line of credit, in an amount or to a value of \$25,000 or less. The allowable interest rates on such loans are tiered and limited based on the principal amount that falls within each tier of the loan, as follows:

- 30 percent a year, computed on the first \$3,000 of the principal amount;
- 24 percent a year on that part of principal from \$3,001 to \$4,000; and
- 18 percent per year on that part of principal from \$4,001 to \$25,000.

The pilot program would increase these maximum allowed percentages by 6 percent per tier.

II. Present Situation:

Federal Truth in Lending Act (TILA)

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

State Regulation of Consumer Lending

The Office of Financial Regulation (OFR) has regulatory oversight of state-chartered financial institutions, securities brokers, investment advisers, mortgage loan originators, deferred presentment providers or payday loan lenders, consumer finance companies, title loan lenders, debt collectors, and other financial service entities. The Division of Financial Institutions of the OFR charters regulates entities that engage in financial institution business in Florida in accordance with the Florida Financial Institutions Codes (codes).⁵ The OFR may examine, investigate, and take disciplinary actions against such state-chartered financial institutions for violation of the codes.⁶

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

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

² 15 U.S.C. s. 1601(a).

³ 15 U.S.C. s. 1604-1606.

⁴ 12 C.F.R. s. 1026.4.

⁵ Chapters 655, 657, 658, 660, 663, 665, and 667, F.S.

⁶ These entities are also subject to laws and regulation by various federal entities. For example, the Federal Deposit Insurance Corporation (FDIC) supervises state-chartered banks that are not members of the Federal Reserve System and state-chartered savings associations. The FDIC also insures deposits in banks and savings associations in the event of bank failure. The Federal Reserve Board supervises state-chartered banks that are members of the Federal Reserve System.

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.”⁷ The maximum allowable interest rates on consumer finance loans are tiered and limited based on the principal amount that falls within each tier of the loan, as provided below:

- 30 percent a year, computed on the first \$3,000 of the principal amount;
- 24 percent a year on that part of principal between \$3,001 to \$4,000; and
- 18 percent a year on that part of principal between \$4,001 to \$25,000.⁸

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

- Up to \$25 for investigating the credit and character of the borrower;
- A \$25 annual fee on the anniversary date of each line-of-credit account;
- Brokerage fees for certain loans and appraisals of real property offered as security;
- Intangible personal property tax, if secured by a loan note on real property;
- Documentary excise tax and lawful fees;
- Insurance premiums;
- Actual and reasonable attorney fees and court costs;
- Actual and commercially reasonable expenses for recovering the collateral property;
- Delinquency charges of up to \$15 for each payment in default for at least 10 days, if agreed upon in writing before the charge is imposed; and
- A dishonored check charge of up to \$20.

Lastly, the act requires all consumer finance loans must be repaid in equal monthly installments, except for repayment on lines of credit.¹²

California Small Dollar Loan Pilot Programs

Based on a business model developed by California-based Progreso Financiero (Progress Financial), the California State Assembly enacted the Affordable Credit Building Opportunities Pilot Program in 2010.¹³ 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.¹⁴ The new pilot program covers consumer loans of \$300-\$2,500 and allows the use of “finders” to connect borrowers with lenders. Finders

⁷ Section 516.01(2), F.S.

⁸ Section 516.031(1), F.S.

⁹ Section 516.031(2), F.S.

¹⁰ *Id.*

¹¹ Section 516.031(3), F.S.

¹² Section 516.36, F.S.

¹³ See http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=200920100SB1146 (last visited March 10, 2019).

¹⁴ See http://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201520160SB235 (last visited March 10, 2019).

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.¹⁵

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.¹⁶

III. Effect of Proposed Changes:

The bill establishes the Access to Responsible Credit Pilot Program (program). The program would allow consumers to enter into a program loan with a principal amount of at least \$300 and up to a maximum of \$10,000 at an interest rate not to exceed 36 percent per annum. Under

¹⁵ Id.

¹⁶ 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. (last visited March 10, 2019).

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.

Access to Responsible Credit Pilot Program (Section 1)

Creates s. 516.405, F.S., which states that the Access to Responsible Credit Pilot Program is created within the OFR to allow more Floridians to obtain responsible consumer finance loans with principal amounts of at least \$300 but not more than \$10,000.

Definitions (Section 2)

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

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

Regulation of Program Licensees (Lenders) and Access Partners (Sections 3 and 5)

Program Licensees (Section 3)

Persons seeking participation under the program as a lender are required to be licensed to make consumer finance loans under ch. 516, F.S., not be subject of any insolvency proceedings, and not be the subject of an enforcement action by the OFR or any state or federal regulatory agency. Application forms are to be adopted by rule. Each branch office of a program licensee must be included in the program application to the OFR.

The bill requires applicants to be accepted as a “data furnisher” with a consumer-reporting agency¹⁷ before the OFR may approve an applicant as a program licensee.

Access Partners (Section 5)

The bill allows a program licensee to engage in arrangements with access partners. All such arrangements must be in writing; must contain a provision that the access partner agrees to comply with s. 516.44, F.S., and must contain a provision allowing the OFR access to the access

¹⁷ 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.”

partner's books and records related to the access partner's operations under the agreement with the program licensee.

An access partner may engage in the following activities:

- Advertise on behalf of the program licensee;
- Provide written factual information about the pilot program and discuss the program information with a prospective borrower in general terms;
- Notify the prospective borrower of information needed to complete an application under the program;
- Enter information provided by a prospective borrower on a preprinted or electronic application form or in a preformatted computer database;
- Assemble credit applications 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, and receive program loan payments from a 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 an access partner must be applied to the program loan and be deemed received by the program licensee at the time the access partner receives the payment. When payment is made, an access partner must deliver a receipt to the borrower that includes certain information. Additionally, the bill holds a borrower harmless if an access partner fails to transmit, or is delayed in transmitting, a payment to the program licensee. An access partner must maintain records related to disbursements and payments for 2 years.

Access partners are required to provide certain communications and disclosures to program loan applicants related to identifying information of the program licensee and access partner. The bill requires an access partner to make a good faith effort to assist the applicant in making direct contact with the program licensee in cases where an access partner is not permitted to answer questions about the loan program.

The bill allows a program licensee to compensate an access partner. Compensation paid to an access partner may not be passed on to a borrower. The compensation must be made pursuant to a written agreement and a mutually agreed upon compensation schedule. Additionally, the compensation must not be paid to an access partner until the program loan is consummated.

The bill prohibits an access 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;
- Negotiate 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 any violations of ch. 516, F.S., committed by an access partner.

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

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

Unsecured Loan Term, Repayment Schedule, and Right of Rescission

- A program loan must be unsecured.
- A program loan must have a minimum term of 120 days for a loan amount that is at least \$300 but no more than \$3,000; the minimum term is 12 months, but not more than 60 months, for a loan with a principal balance upon origination of more than \$3,000. All loans 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.

Interest Rates

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 varies with the portion of the unpaid principal on the loan, as follows:

- For the portion of the principal up to and including \$3,000, the maximum annual interest rate is 36 percent.
- For the portion of the principal over \$3,000, and up to and including \$4,000, the maximum annual interest rate is 30 percent.
- For the portion of the principal over \$4,000 and up to and including \$10,000, the maximum interest rate is 24 percent.

If multiple interest rates are applied to the loan principal, the lender may charge interest at the 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 of interest as would result from the application of multiple interest rates, based on the assumption that all payments are made as agreed.

The program licensee must reduce the rate on each subsequent loan to the same borrower by at least 1 percent up to 6 percent if all the following 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;
- The prior program loan was outstanding for at least one half of its original term before its repayment.

Prohibition Against Multiple, Contemporaneous Program Loans from the Same Licensee

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.

Refinancing

The bill allows the refinancing of program loan under specified circumstances if the new loan is underwritten in accordance with the underwriting requirements created by the bill. A program licensee may refinance a program loan only if all of the following conditions are met at the time the borrower submits an application to refinance:

- 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;
- The borrower is current on his or her outstanding program loan.

Consumer Disclosures and Receipts

The bill requires a program licensee must provide the same disclosures as required in s. 516.15, F.S.,¹⁸ however the bill does allow the disclosures to be provided disclosures in other languages the loans were negotiated in.

The bill requires a program licensee or approved access partner to provide the borrower an electronic or physical receipt of payment at the time the borrower makes a payment. The receipt must include specified information that includes the borrower's name, the amount paid, the date of payment, the program loan balance before and after payment, they type of payment made, and a statement informing the borrower how to contact the lender to ask questions regarding the loan. The program licensee must maintain an electronic record of each receipt, which must include a copy of the receipt and the date and time the receipt was made.

¹⁸ Section. 516.15(1), F.S., deliver to the borrower at the time a loan is made a statement in the English language showing in clear and distinct terms the amount and date of the loan and the date of its maturity; the nature of the security, if any, for the loan; the name and address of the borrower and of the licensee; and the rate of interest charged. However, with respect to a line of credit, the statement need not show a maturity date.

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 \$90, 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.

Credit Education

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.

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, exceeds 50 percent of the borrower's gross monthly income when borrowing less than \$3,000 and may not exceed 36 percent of the borrower's gross monthly income when borrowing more than \$3,000.

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.

Waiver of Borrower's Rights

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)

The legislation requires the OFR to examine program licensees at least once every 24 months beginning after January 1, 2022. The scope of any investigation or examination of a program licensee or access partner is to be limited to those books, accounts, records, documents, materials, and matters reasonably necessary to determine compliance with the program. A program licensee who violates any applicable provision of ch. 516, F.S., is subject to disciplinary action. Any such disciplinary action is subject to s. 120.60, F.S. The program licensee is also subject to disciplinary action for a violations of s. 516.44, F.S., committed by any of its access partners.

The office may take any of the following actions against an access partner:

- Bar the access partner from performing services under the program.
- Bar the access partner from performing services at one or more of its specific locations.

The bill authorizes the OFR to waive branch examinations if the OFR finds such examination are unnecessary for the protection of the public due to the centralized operation of the program licensee or other factors acceptable to the office.

The bill provides the OFR rulemaking authority to implement the examination requirements.

Reporting Requirements (Sections 4, 5, and 7)

Credit Reporting (Section 4)

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.

Notice to the OFR (Section 5)

The program licensee is required to provide certain information to the OFR within 15 days after entering into a contract with an access partner. Such information includes the access 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 access partner and confirm to the OFR that the access 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 access 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 access partner has committed a criminal act and that there has not been notification that the access partner is under criminal investigation. The access partner must report changes in this information to the program licensee.

OFR Program Report (Section 7)

A program licensee is required to file, on or before March 15 of each year beginning in year 2021, 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, 2022, summarizing the results of the program. The report must include the following information:

- The period covered.
- The number of applicants approved for program licensure.
- The number of program loan applications received by participating program licensees.
- The number and total amount of program loans made.
- The distribution of loan lengths, interest rates, and principal amounts upon origination.
- The number of borrowers who obtained more than one program loan.
- The distribution of the number of program loans per borrower.
- Of the number of borrowers who obtained more than one program loan, the percentage of borrowers whose credit scores increased between successive loans.
- The average size of the increased credit score.
- The income distribution of borrowers upon program loan origination, including the number of borrowers who obtained a program loan and who resided in a low-income or moderate-income census tract at the time of loan application.
- The number of borrowers who obtained program loans for the following purposes, based on borrower responses:
 - Pay medical expenses.
 - Pay for vehicle repair or a vehicle purchase.
 - Pay bills.
 - Consolidate debt.
 - Build or repair credit history.
 - Pay other expenses.
- The number of borrowers who self-report that they had a bank account at the time of their loan application and the number of borrowers who self-report that they did not have a bank account at the time of their loan application.

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

- The number and percentage of borrowers who applied for a refinance program loan.
- Of the borrowers who applied for a refinance program loan, the number and percentage of borrowers who obtained a refinance program loan.

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 bill provides rulemaking authority for the OFR to implement the reporting requirements.

Section 8 provides that ss. 516.40-516.47, F.S., are subject to repeal on January 1, 2027, unless reenacted or superseded by another enacted law before that date.

Section 9 provides the act shall take effect January 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

The bill may need a companion public records exemption bill as information gathered as part of an examination, investigation, or complaint related to a program loan would contain personal identifying and financial information about loan applicants and borrowers. Without a companion public records exemption bill this information could be subject to public inspection.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Indeterminate at this time. The number of lenders, access 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 1 percent up to 6 percent on subsequent loans if certain conditions are met.

C. Government Sector Impact:

Office of Financial Regulation resources will be required to process applications; process access partner notices; process complaints; examine records of program licensees and access partners; and, if necessary, initiate enforcement actions for non-compliance or fraud. Additionally, the bill will require configuration and other updates to the OFR's Regulatory Enforcement and Licensing (REAL) system 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 an estimated \$380,000 non-recurring and \$501,776.96 annually recurring cost to the OFR.¹⁹

The bill also provides that the program loan contracts, written disclosures, and statements may be provided to the borrower in English or in the language in which the loan is negotiated; however, the bill does not authorize the OFR to collect fees for translating the contracts as part of its examination requirement.

It is unclear if criminal history information is intended to be obtained through state or state and national criminal history record checks, accessible through FDLE. Section 943.051, F.S., established FDLE as the central repository of criminal history information for the state of Florida. Both FDLE and the FBI (when FDLE begins participation in the federal program) retain the fingerprints, search the fingerprints against incoming arrests, and FDLE will notify the agency if the retained fingerprints match an incoming arrest. The cost for such background checks is \$37.25 and typically borne by the applicant. The bill does not address the cost for background checks and it is presumed this cost would be borne by FDLE who conducts the check. If this is the case the fiscal impact to FDLE would be significant, however, indeterminate depending on the number of applicants.

VI. Technical Deficiencies:

Lines 245-247: A program loan between \$300 and \$3000 has a minimum term of 120 days, but does not prescribe a maximum term. A program loan more than \$3000 and up to the maximum \$10,000 must have a term between 12 and 60 months. There may be a need for a cap on the term of a loan between \$300 and \$3000.

Lines 146 and 227: Provides that a program loan applicant must not be the subject of an insolvency proceeding to meet the requirements of licensure. This provision fails to

¹⁹ Office of Financial Regulation, *Bill Analysis of SB 874*, March 4, 2019 (on file with the Banking and Insurance committee).

define the term ‘insolvency,’ which could prove problematic when enforcing the provision.

Lines 228-229: Provides that the OFR may deny an initial or renewal 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 a pending criminal prosecution. The provision allows the Office to deny in all circumstances involving a pending criminal prosecution; however, the provision prevents denial in situations where an applicant or person with the power to direct the management or policies of the applicant’s business was convicted, pled guilty, or pled nolo contendere, resulting in less protection for borrowers. Similarly, the provision does not allow the Office to deny the application if there is a pending administrative enforcement action.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates the following sections of the Florida Statutes: 516.405, 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.