

HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

BILL #: CS/HB 123 Consumer Finance Loans
SPONSOR(S): Insurance & Banking Subcommittee, Stevenson and others
TIED BILLS: IDEN./SIM. **BILLS:** SB 546

FINAL HOUSE FLOOR ACTION: 113 Y's 0 N's **GOVERNOR'S ACTION:** Approved

SUMMARY ANALYSIS

CS/HB 123 passed the House on March 4, 2022, as SB 546 as amended. The Senate concurred in the House amendment to the Senate bill and subsequently passed the bill as amended on March 8, 2022.

The Florida Consumer Finance Act, 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 must maintain liquid assets of at least \$25,000 per location. In lieu of maintaining liquid assets, the bill authorizes consumer finance lenders to provide a surety bond, certificate of deposit, or letter of credit in the amount of \$25,000 for the first license and \$5,000 for each additional license, up to a maximum of \$100,000.

Consumer finance lenders are permitted to charge a borrower certain fees, including up to \$25 for investigating the credit and character of the borrower. The exclusion of "prepayment penalties" from the list of permissible fees implies that consumer finance lenders are prohibited from charging prepayment penalties. The bill provides an express prohibition on prepayment penalties for consumer finance loans.

The bill has no fiscal impact on state or local governments and an indeterminate but likely positive impact on the private sector.

The bill was approved by the Governor on May 20, 2022, ch. 2022-130, L.O.F., and will become effective on October 1, 2022.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Consumer Finance Loans

The Office of Financial Regulation's (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,¹ 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."² Although consumer finance loans may be secured or unsecured, the Act prohibits lenders from taking a security interest in certain types of collateral.³

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.⁴ Installments may be due every two weeks, semimonthly, or monthly.⁵ There is no minimum or maximum loan term under the Act. 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 \$25,000.⁶

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

¹ "Chose in action" is defined as "1. A property right in personam, such as a debt owed by another person . . . 2. The right to bring an action to recover a debt, money, or thing. 3. Personal property that one person owns but another person possesses, the owner being able to regain possession through a lawsuit." BLACK'S LAW DICTIONARY 101 (3d ed. 1996).

² S. 516.01(2), F.S.

³ 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).

⁴ S. 516.36, F.S. This section does not apply to lines of credit.

⁵ *Id.*

⁶ S. 516.031(1), F.S.

⁷ Codified at 15 U.S.C. § 1601 *et seq.*

⁸ Currently, the statute references TILA's implementing regulations as "Regulation Z of the Board of Governors of the Federal Reserve System." s. 516.031(1), F.S. However, the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, H.R. 4173, 124 Stat. 1376-2223, 111th Cong. (July 21, 2010), commonly referred to as the "Dodd-Frank Act", transferred rulemaking authority for TILA to the Bureau of Consumer Financial Protection, effective July 21, 2011. See also Truth in Lending (Regulation Z), 76 Fed. Reg. 79768 (Dec. 22, 2011).

⁹ *Id.*

¹⁰ For example, on a principle amount of \$3,500, an interest rate of 30 percent per annum may be applied to \$3,000 of the principle amount, and an interest rate of 24 percent per annum may be applied to the remaining \$500 of the principal amount.

¹¹ S. 516.031(1), F.S.

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

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

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

- Up to \$25 for investigating the credit and character of the borrower;
- A \$25 annual fee on the anniversary date of each line-of-credit account;
- Brokerage fees for certain loans, title insurance, and appraisals of real property offered as security;
- Intangible personal property tax on the loan note or obligation if secured by a lien on real property;
- Documentary excise tax and lawful fees for filing, recording, or releasing an instrument securing the loan;
- The premium for any insurance in lieu of perfecting a security interest otherwise required by the licensee in connection with the loan;
- Actual and reasonable attorney fees and court costs;
- Actual and commercially reasonable expenses for repossession, storing, repairing and placing in condition for sale, and selling of any property pledged as security;
- Depending on the frequency of payments, a delinquency charge of up to \$15 for each payment in default for at least 10 days, if agreed upon in writing before the charge is imposed; and
- A bad check charge of up to \$20.¹⁵

The exclusion of “prepayment penalties” from the list of permissible fees implies that consumer finance lenders are prohibited from charging prepayment penalties.¹⁶

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.¹⁷

Licenses granted under the Act are for a single place of business¹⁸ and must be renewed every two years.¹⁹ As of October 28, 2021, there are 188 licensed consumer finance loan companies operating across a total of 389 locations in Florida.²⁰

The historical yearly licensing data for ch. 516, F.S., is contained in the charts below.

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
Applications Received	318	44	136	82	48	72	192	30	52	32

¹² S. 516.031(2), F.S.

¹³ S. 516.031(4), F.S.

¹⁴ S. 516.031(5), F.S.

¹⁵ S. 516.031(3), F.S.

¹⁶ *Id.*; Office of Financial Regulation, Agency Analysis of 2022 Senate Bill 546, pp. 2-3 (Nov. 19, 2021).

¹⁷ S. 516.35(2), F.S.

¹⁸ Ss. 516.01(1) and 516.05(3), F.S.

¹⁹ Ss. 516.03(1) and 516.05(1) and (2), F.S.

²⁰ Office of Financial Regulation, *supra* note 16 at p. 2.

Applications Approved	228	136	125	76	43	64	95	29	18	19
Active Licenses	589	607	568	609	532	584	626	600	390	386
Renewals & Reactivations	496	1	542	0	523	1	569	0	388	0

Chapter 516, F.S., Licenses by Year (Cont'd)										
	10-11	11-12	12-13	13-14	14-15	15-16	16-17	17-18	18-19	19-20
Applications Received	175	41	82	116	66	102	55	96	109	100
Applications Approved	137	37	53	113	37	81	36	83	104	98
Active Licenses	347	303	293	349	331	349	338	373	348	390
Renewals & Reactivations	226	0	258	0	312	0	326	0	342	0

An application to become a consumer finance lender must be accompanied by a nonrefundable application fee of \$625 and a nonrefundable investigation fee of \$200.²¹ Licenses must be renewed biennially, at which time the licensee must pay a nonrefundable biennial license fee of \$625.²² At the time of application, the applicant must provide evidence of liquid assets of at least \$25,000, and a licensee must at all times maintain such liquid assets.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

Deferred Presentment Transactions (Payday Loans)

Although the bill relates only to consumer finance loans under ch. 516, F.S., questions often arise as to how consumer finance loans compare to other consumer loans authorized in statute, particularly payday loans. Deferred presentment transactions, commonly referred to as “payday loans”, are a small-dollar loan product under the OFR’s regulatory authority. These transactions are governed by ch. 560, part IV, F.S.

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

²¹ S. 516.03(1), F.S.

²² *Id.*; s. 516.05(1), F.S.

²³ Ss. 516.03(1) and 516.07(1)(b), F.S.

²⁴ S. 516.05(3), F.S.

²⁵ S. 516.02(4), F.S.

²⁶ S. 560.402(2) and (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.*

businesses licensed under ch. 560, part II²⁸ or part III,²⁹ F.S.

There are two types of payday loan products permitted in Florida:

- *Deferred presentment transaction not repayable in installments*: The face amount of a check taken for this type of deferred presentment transaction may not exceed \$500, exclusive of fees.³⁰ Fees may not exceed 10 percent of the 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
- *Deferred presentment installment transaction*: 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 \$1,000.³³ 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.³⁴ 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.³⁵ Prepayment penalties are prohibited.³⁶

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.³⁷ 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.³⁸ 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.³⁹

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.⁴⁰ 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.⁴¹

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

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, part III, F.S.

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.

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(5) and (8), F.S.

³⁴ S. 560.404(6), F.S.

³⁵ S. 560.404(26), F.S.

³⁶ S. 560.404(6)(c), F.S.

³⁷ S. 560.404(19), F.S.

³⁸ S. 560.404(19)(a) and (23), F.S.

³⁹ S. 560.404(18), F.S.

⁴⁰ S. 560.404(22), F.S.

⁴¹ *Id.*

defer a scheduled payment for no additional fee or charge.⁴² 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.⁴³ 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 agreement or any provision of ch. 560, part IV, F.S.⁴⁴ A deferred presentment provider must comply with state and federal disclosure requirements.⁴⁵

Effect of the Bill

The bill amends various provisions related to consumer finance loans under ch. 516, F.S.

Surety Bond, Certificate of Deposit, or Letter of Credit in Lieu of Liquid Assets

The bill authorizes consumer finance lenders to provide the OFR a surety bond, certificate of deposit, or irrevocable letter of credit in lieu of maintaining liquid assets. The surety bond must be issued by a bonding company or insurance company authorized to do business in this state. The certificate of deposit must be deposited in a financial institution.⁴⁶ The letter of credit must be issued by a financial institution.⁴⁷

The surety bond, certificate of deposit, or letter of credit must be in the amount of at least \$25,000. However, a company with multiple licensed locations is authorized to provide a rider or surety bond, certificate of deposit, or letter of credit in the amount of at least \$5,000 for each additional license after the first. The aggregate amount of the surety bond, certificate of deposit, or letter of credit required for a company with multiple licenses is capped at \$100,000.

The surety bond, certificate of deposit, or letter of credit must name the OFR as beneficiary and must be for the use and benefit of any borrower who is injured by acts of a licensee involving fraud, misrepresentation, or deceit, including willful imposition of illegal or excessive charges; or misrepresentation, circumvention, or concealment of any matter required to be stated or furnished to a borrower, where such acts are in connection with a consumer finance loan. The OFR, or any claimant, may bring an action in a court of competent jurisdiction on the surety bond, certificate of deposit, or letter of credit. The surety bond, certificate of deposit, or letter of credit must be payable on a pro rata basis, but the aggregate amount may not exceed the amount of the surety bond, certificate of deposit, or letter of credit.

The surety bond, certificate of deposit, or letter of credit may not be canceled by the licensee, bonding or insurance company, or financial institution except upon notice to the OFR by certified mail. A cancellation may not take effect until 30 calendar days after receipt by the OFR of the written notice.

If the bonding or insurance company or financial institution pays a claim, it must give written notice by certified mail to the OFR within 10 calendar days after it pays the claim. The notice must contain details sufficient to identify the claimant and the claim or judgment paid. If the principal sum of the surety bond, certificate of deposit, or letter of credit is reduced by one or more recoveries or payments, the consumer finance lender must furnish to the OFR a new or additional surety bond, certificate of deposit,

⁴² S. 560.404, F.S.

⁴³ *Id.*

⁴⁴ S. 560.404(10), F.S.

⁴⁵ S. 560.404(13) and (20), F.S.

⁴⁶ As defined in s. 655.005(1)(i), F.S.

⁴⁷ As defined in s. 655.005(1)(i), F.S.

or letter of credit so that the total or aggregate principal sum equals the required amount. Alternatively, a licensee may furnish an endorsement executed by the bonding or insurance company or financial institution reinstating the required principal amount.

The required surety bond, certificate of deposit, or letter of credit must remain in place for two years after the consumer finance lender ceases licensed operations in this state. During the two-year period, the OFR may allow for a reduction or elimination of the surety bond, certificate of deposit, or letter of credit to the extent the consumer finance lender's outstanding consumer finance loans in this state are reduced.

Failure to maintain the existing liquid asset requirement or the proposed alternatives of the surety bond, certificate of deposit, or letter of credit in the required amount is grounds for denial of license application and grounds for disciplinary action against a consumer finance lender.

The bill makes conforming changes under the Financial Technology Sandbox in s. 559.952, F.S.

Express Prohibition on Prepayment Penalties

The bill provides an express prohibition on prepayment penalties for consumer finance loans.

Effective Date

The bill provides an effective date of October 1, 2022.

Comparison Chart

Below is a chart comparing existing law regarding payday loans and consumer finance loans with the changes proposed by the bill.

	Payday Loans (Ch. 560, Part IV, F.S.)		Consumer Finance Loans (Ch. 516, F.S.)	
	Payday Loans (Non-Installment)	Payday Loans (Installment)	Current Law	HB 123 Proposed Changes
Loan Amount	\$500 (max)	\$1,000 (max)	\$25,000 (max)	(No change)
Length of Term	7 - 31 days	60 - 90 days	No min. or max.	(No change)
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 	(No change)
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 	(No change)
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"> Fees specified in s. 516.031(3), F.S., including up to \$25 for investigating the credit and character of the borrower No additional fees permitted 	<ul style="list-style-type: none"> Adds express prohibition on prepayment penalties

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None. The bill will require minimal changes to the OFR's Regulatory Enforcement and Licensing (REAL) system, but the cost of such changes can be implemented as part of the OFR's existing budget resources.⁴⁸

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill's provisions that would allow a consumer finance lender to provide a surety bond, certificate of deposit, or letter of credit in lieu of liquid assets may have a positive impact on consumer finance lenders and consumers. Shifting from maintaining liquid assets will free up capital for lending activity. In the event that consumer harm coincides with a consumer finance lender's bankruptcy, the surety bond, certificate of deposit, or letter of credit may provide consumers greater means of compensation as compared to the liquid assets. The bill's overall impact on the private sector, while likely positive, is indeterminate.

D. FISCAL COMMENTS:

None.

⁴⁸ Office of Financial Regulation, *supra* note 16 at p. 5.