

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 546

INTRODUCER: Senator Gruters

SUBJECT: Consumer Finance Loans

DATE: November 30, 2021 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Arnold	Knudson	BI	Pre-meeting
2.			CM	
3.			RC	

I. Summary:

SB 546 makes several amendment to the Florida Consumer Finance Act in ch. 516, F.S. The bill:

- Expressly prohibits prepayment penalties for consumer finance loans;
- Authorizes an applicant for licensure or a licensee to provide a surety bond, certificate of deposit, or letter of credit in the amount of \$25,000, in lieu of meeting the requirement to maintain \$25,000 in liquid assets;
- Requires a company with at least one currently licensed location to provide a rider or surety bond of at least \$5,000 for each additional license; however, the maximum aggregate requirement for such a company is \$100,000; and
- Additional conforming changes.

The bill takes effect October 1, 2022.

II. Present Situation:

Consumer Finance Loans

The Office of Financial Regulation’s (OFR) 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.

Consumer finance loans are one of the loan products regulated by the OFR’s Division of Consumer Finance through the Florida Consumer Finance Act, ch. 516, F.S. (“the Act”). A consumer finance loan” is a “loan of money, credit, goods, or choses in action,¹ including, except

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).

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.

Florida’s prohibition on usury generally prohibits⁶ interest rates in excess of 18 percent per annum simple interest on any loan, advance of money, line of credit, or forbearance.⁷ Licensed consumer finance lenders, however, may offer interest rates greater than 18 percent per annum simple interest, up to the limits provided in ch. 516, F.S.⁸ 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 \$25,000.⁹

The original principal amount is the amount financed, as defined by the federal Truth in Lending Act (TILA)¹⁰ and TILA’s federal implementing regulations.¹¹ For the purpose of determining compliance with these statutory maximum interest rates, the interest rate computations used must be simple interest.¹² In the event that two or more interest rates are applied to the principal amount of a loan,¹³ 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.¹⁴ The APR charged by a lender may not exceed the APR that must be computed

² Section 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 Various lenders and credits licensed or chartered under the laws of the United States or specified chapters of the Florida Statutes may charge interest at the maximum rate of interest permitted by law for similar loans or extensions of credit. See s. 687.12(1), F.S.

⁷ Section 687.02, F.S.

⁸ Section 687.12, F.S.

⁹ Section 516.031(1), F.S.

¹⁰ Codified at 15 U.S.C. § 1601 *et seq.*

¹¹ 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).

¹² *Id.*

¹³ 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.

¹⁴ Section 516.031(1), F.S.

and disclosed according to TILA and its implementing regulations.¹⁵ 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.¹⁶

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.¹⁷

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

- Up to \$25 for investigating the credit and character of the borrower;
- A \$25 annual fee on the anniversary date of each line-of-credit account;
- Brokerage fees for certain loans, title insurance, and appraisals of real property offered as security;
- Intangible personal property tax on the loan note or obligation if secured by a lien on real property;
- Documentary excise tax and lawful fees for filing, recording, or releasing an instrument securing the loan;
- The premium for any insurance in lieu of perfecting a security interest otherwise required by the licensee in connection with the loan;
- Actual and reasonable attorney fees and court costs;
- Actual and commercially reasonable expenses for repossession, storing, repairing and placing in condition for sale, and selling of any property pledged as security;
- A delinquency charge of up to \$15 for each payment in default for at least 10 days, if agreed upon in writing before the charge is imposed; and
- A bad check charge of up to \$20.¹⁸

Because the above list of permissible fees does not include a prepayment penalty, then impliedly a licensee is prohibited from charging a prepayment penalty.¹⁹

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.²⁰

Licenses granted under the Act are for a single place of business²¹ and must be renewed every two years.²² As of February 16, 2021, there are 170 licensed consumer finance loan companies operating in Florida operating across a total of 382 locations.²³

¹⁵ Section 516.031(2), F.S.

¹⁶ Section 516.031(4), F.S.

¹⁷ Section 516.031(5), F.S.

¹⁸ Section 516.031(3), F.S.

¹⁹ *Id.*; Office of Financial Regulation, *Agency Analysis of 2021 House Bill 895*, p. 2 (Feb. 17, 2021).

²⁰ Section 516.35(2), F.S.

²¹ Sections 516.01(1) and 516.05(3), F.S.

²² Sections 516.03(1) and 516.05(1) & (2), F.S.

²³ Office of Financial Regulation, *supra* note 16.

The yearly data for licensure under ch. 516, F.S., is contained in the charts below.²⁴

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
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 \$200.²⁵ Licenses must be renewed biennially, at which time the licensee must pay a nonrefundable biennial license fee of \$625.²⁶ At the time of application, the applicant must provide evidence of liquid assets of at least \$25,000.²⁷ Failure to maintain liquid assets of at least \$25,000 constitutes grounds for denial of license.²⁸ Each location of a consumer finance lender must be separately licensed.²⁹

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.³⁰

Deferred Presentment Transactions (Payday Loans)

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

²⁴ Office of Financial Regulation, *Active Licenses*, <https://www.flofr.com/sitePages/documents/finregstats.pdf> (last visited November 4, 2021).

²⁵ Sections 516.03(1), F.S.

²⁶ *Id.*; s. 516.05(1), F.S.

²⁷ Section 516.03(1), F.S.

²⁸ Section 516.07(1), F.S.

²⁹ Section 516.05(3), F.S.

³⁰ Section 516.02(4), 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.³¹ The only persons who may engage in deferred presentment transactions are financial institutions as defined in s. 655.005, F.S.,³² and money services business licensed under ch. 560, F.S., part II³³ or part III.³⁴

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 deferred presentment may not exceed \$500, exclusive of fees.³⁵ Fees may not exceed 10 percent of payment provided to the drawer plus a verification fee of up to \$5.³⁶ The term of a deferred presentment agreement may not be less than seven days or greater than 31 days.³⁷
- *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 \$1,000.³⁸ 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.³⁹ 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.⁴⁰ Prepayment penalties are prohibited.⁴¹

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.⁴² 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.⁴³ A deferred presentment provider may

³¹ Section 560.402(2) & (3), F.S.

³² Section 655.005, F.S., defines a "financial institution" to mean a state or federal savings or thrift association, bank, savings back, 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.*

³³ Licensure as a money transmitter. A money transmitter is defined by s. 560.103(23), F.S., as a corporation, limited liability company, limited liability partnership, or foreign entity qualified to do business in this state which receives currency, monetary value, or payment instruments for the purpose of transmitting the same by any means, including transmission by wire, facsimile, electronic transfer, courier, the Internet, or through bill payment services or other businesses that facilitate such transfer within this country, or to or from this country. Money transmitters may engage in check cashing under ch. 560, F.S., part III.

³⁴ 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.

³⁵ Section 560.404(5), F.S.

³⁶ Section 560.404(6), F.S.

³⁷ Section 560.404(8), F.S.

³⁸ Section 560.404(5) & (8), F.S.

³⁹ Section 560.404(6), F.S.

⁴⁰ Section 560.404(26), F.S.

⁴¹ Section 560.404(6)(c), F.S.

⁴² Section 560.404(19), F.S.

⁴³ Section 560.404(19)(a) & (23), F.S.

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.⁴⁴

If the drawer in a deferred presentment installment transaction informs the deferred presentment provider in writing or in person by noon of the business day before a scheduled payment that the drawer cannot pay in full the scheduled payment, the provider must give the drawer one opportunity to defer a scheduled payment for no additional fee or charge.⁴⁵ 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.⁴⁶ 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, F.S., part IV.⁴⁷ A deferred presentment provider must comply with state and federal disclosure requirements.⁴⁸

III. Effect of Proposed Changes:

Section 1 amends s. 516.03, F.S., governing application fees, to make conforming changes which reflect consumer finance lender licensing requirements amended in s. 516.05(10), F.S.

Section 2 amends s. 516.031, F.S., governing finance charges and maximum rates on consumer finance loans, to expressly prohibit prepayment penalties. Florida law allows consumer finance lenders to charge certain fees, including up to \$25 for investigating the credit and character of the borrower. Because the list of permissible fees does not include a prepayment penalty, then impliedly a licensee is prohibited from charging a prepayment penalty. The bill makes explicit the implied prohibition on prepayment penalties.

Section 3 adds subsection (10) to s. 516.05, F.S., governing consumer finance lender licenses, to provide the following alternatives to the \$25,000 liquid asset requirement:

- A surety bond in the amount of at least \$25,000 filed with the office;
- A certificate of deposit in the amount of at least \$25,000 filed with the office and deposited in a financial institution as defined in s. 655.005(1)(i), F.S; or
- A letter of credit in the amount of at least \$25,000 filed with the office.

The bill requires lenders with multiple locations to provide a surety bond or rider in the amount of at least \$5,000 for each additional license. The total aggregate amount of a surety bond required for a lender with multiple locations may not exceed \$100,000.

⁴⁴ Section 560.404(18), F.S.

⁴⁵ Section 560.404, F.S.

⁴⁶ *Id.*

⁴⁷ Section 560.404(10), F.S.

⁴⁸ Section 560.404(13) & (20), F.S.

The bill requires the surety bond, certificate of deposit, or letter of credit to be filed with the office, name the office as a beneficiary, and be payable on a pro rata basis. The surety bond, certificate of deposit, letter of credit may not be canceled without providing the office with 30 calendar days' notice. Following a licensee's cessation of licensed operation in the state, the surety bond, certificate of deposit, and letter of credit must remain in place for a period of 2 years.

The bill authorizes the Financial Services Commission to initiate rulemaking to adopt forms and procedures to implement the alternatives to the liquid asset requirement.

Section 4 amends s. 516.07, F.S., which provides grounds for denying a consumer finance lender license, to make conforming changes which reflect consumer finance loans licensing requirements amended in s. 516.05(10), F.S.

Section 5 amends s. 559.952, F.S. governing the Financial Technology Sandbox, to make conforming changes which reflect consumer finance lender licensing requirements amended in s. 516.05(10), F.S.

Section 6 provides an effective date of October 1, 2022.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

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:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 516.03, 516.031, 516.05, 516.07, and 559.952.

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.