

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 Rules

BILL: SB 546

INTRODUCER: Senator Gruters

SUBJECT: Consumer Finance Loans

DATE: January 19, 2022

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Arnold</u>	<u>Knudson</u>	<u>BI</u>	Favorable
2.	<u>Harmsen</u>	<u>McKay</u>	<u>CM</u>	Favorable
3.	<u>Arnold</u>	<u>Phelps</u>	<u>RC</u>	Pre-meeting

I. Summary:

SB 546 amends the Florida Consumer Finance Act, ch. 516, F.S., to:

- Expressly prohibit prepayment penalties for consumer finance loans;
- Authorize an applicant for licensure as a consumer finance lender or a licensee to provide a surety bond, certificate of deposit, or letter of credit in the amount of \$25,000, in lieu of the application requirement to prove that they have at least \$25,000 in liquid assets;
- Require 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
- Make conforming changes.

The bill takes effect October 1, 2022.

II. Present Situation:

The Office of Financial Regulation's (OFR) Division of Consumer Finance (Division) licenses and regulates non-depository financial service entities and individuals, and conducts investigations of licensed entities to determine their compliance with Florida law.¹ One such product regulated by the OFR is consumer finance loans. A consumer finance loan is a loan of money, credit, goods, or interests valued at \$25,000 or less with permitted interest rates of between 18 and 30 percent per year.² This is not a traditional loan made by a bank, credit union,

¹ Fla. Office of Fin. Reg, *Division of Consumer Finance: What We Do*, <https://flofr.gov/sitePages/DivisionOfConsumerFinance.htm> (last visited Jan. 7, 2022).

² Sections 516.01(2) and 516.031(1), F.S. *See also*, Fla. Office of Fin. Reg, *Consumer Finance Companies*, <https://flofr.gov/sitePages/ConsumerFinanceCompanies.htm> (last visited Jan. 7, 2022).

or similar institution. The consumer finance lenders do not accept deposits, and earn their revenue from the fees charged on the loans they make.³

Licensure

Entities that engage in the business of making consumer finance loans must be licensed by the Office pursuant to the Florida Consumer Finance Act, ch. 516, F.S. (“the Act”). Each location of a consumer finance lender must be separately licensed, even if the separate locations are operated by the same business entity.⁴

As of February 16, 2021, there are 170 licensed consumer finance loan companies operating in Florida across a total of 382 locations. The yearly data for licensure under ch. 516, F.S., is contained in the charts below.⁵

Chapter 516, F.S., Licenses by Year										
	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

A consumer finance lender applicant must submit an application fee of \$625 and an investigation fee of \$200 with its application for licensure.⁶ At the time of application, the applicant must provide evidence that it has liquid assets of at least \$25,000 on deposit with an insured institution.⁷ An applicant’s failure to maintain liquid assets of at least \$25,000 constitutes grounds for denial of an application for licensure, and grounds for revocation or suspension of an active license.⁸ Consumer finance lender licenses granted under the Act must be renewed every two years, at which time the licensee must pay a \$625 biennial license fee.⁹

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.¹⁰

³ Naveen Reddy, *What are the Primary Functions of Finance Companies?* (Nov. 9, 2020), <https://smallbusiness.chron.com/primary-functions-finance-companies-40480.html> (last visited January 7, 2022). Also note, payday lenders are separately regulated pursuant to ch. 560, F.S.

⁴ Sections 516.01(6) and 516.05(3), F.S.

⁵ Office of Financial Regulation, *Active Licenses*, <https://www.flofr.com/sitePages/documents/finregstats.pdf> (last visited January 7, 2022).

⁶ Section 516.03(1), F.S. *See also*, Fla. Office of Fin. Reg., *Application for Consumer Finance Company License*, <https://flofr.gov/sitePages/documents/OFR-516-01.pdf> (last visited January 7, 2022).

⁷ Section 516.03(1), F.S. Fla. Admin. Code R. 69V-160.030(1)(d).

⁸ Section 516.07(1), F.S.

⁹ Sections 516.03(1) and 516.05(1) & (2), F.S.

¹⁰ Section 516.02(4), F.S.

Permissible Interest Rates and Fees

Florida's prohibition on usury generally prohibits¹¹ interest rates in excess of 18 percent per annum simple interest on any loan, advance of money, line of credit, or forbearance.¹² Licensed consumer finance lenders, however, may offer interest rates greater than 18 percent per annum simple interest, up to the following limits, which are based on the amount of the loan's principal:¹³

- 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.

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:¹⁴

- 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.

A consumer finance lender may offer optional credit property, credit life, and disability insurance at the borrower's expense via a deduction from the principal amount of the loan.¹⁵

A prepayment penalty is not included in the above permissible fees, then impliedly a licensee cannot charge a borrower a prepayment penalty.¹⁶

¹¹ 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.*

¹² Sections 687.02 and 687.12, F.S.

¹³ Section 516.031(1), F.S.

¹⁴ Section 516.031(3), F.S.

¹⁵ Section 516.35(2), F.S.

¹⁶ Section 516.031(3), F.S. Fla. Office of Fin. Reg., *Agency Analysis of 2021 House Bill 895*, p. 2 (Feb. 17, 2021) (on file with the Senate Committee on Commerce and Tourism).

III. Effect of Proposed Changes:

Prepayment Penalties

Section 2 amends s. 516.031, F.S., to expressly prohibit prepayment penalties on consumer finance loans. Florida law allows consumer finance lenders to charge certain expressly stated fees. Because the list of statutorily-permissible fees does not include a prepayment penalty, by implication, a consumer finance lender cannot charge a prepayment penalty. The bill makes this prohibition on prepayment penalties explicit.

Asset Requirements in Lender Application

Section 3 creates s. 516.05(10), F.S., to allow a consumer finance lender applicant or licensee to file proof of one of the following with the OFR in lieu of the current \$25,000 liquid asset application requirement:

- A surety bond in the amount of at least \$25,000 that is issued by a bonding company or an insurance company that is authorized to do business in Florida;
- A certificate of deposit in the amount of at least \$25,000 deposited in a financial institution as defined in s. 655.005(1)(i), F.S.; or
- An irrevocable letter of credit in the amount of at least \$25,000.

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.

If the licensee's surety bond, certificate of deposit, or letter of credit is reduced below the required amount at any point during the licensee's activity, the licensee must furnish additional instruments to restore its capacity to a sum equal that required by the bill. In the alternative, the licensee may provide an endorsement from the company that issued the original instrument that reinstates the required principal amount.

The applicant must file the surety bond, certificate of deposit, or letter of credit with the OFR, name the OFR as a beneficiary, and ensure that the instrument is payable on a pro rata basis. Although the OFR serves as the named beneficiary, the bill grants both the OFR and any claimant the right to bring an action on the bond, certificate of deposit, or letter of credit in the case of injury to a borrower who was injured by the licensee's wrongful acts. If any such claim is paid, the bonding company, insurance company, or financial institution that held the instrument must notify the OFR within 10 days of the claim.

A licensee cannot cancel its surety bond, certificate of deposit, or letter of credit without providing the OFR with 30 calendar days' notice by certified mail. Following the licensee's cessation of operation in the state, its surety bond, certificate of deposit, or letter of credit must remain in place for a period of 2 years, although the OFR may allow for a reduction in its amount to the extent that the licensee's outstanding loans are reduced.

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

Conforming Changes

Sections 1, 4, and 5 amend ss. 516.03, 516.07, 559.952, F.S., respectively, to make conforming changes to reflect the consumer finance loans licensing requirements added by section three of this bill.

Effective Date

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 identified.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

This may allow companies with less liquid assets to become licensed as a consumer finance lender.

C. Government Sector Impact:

The OFR may be required to update Rule 69V-160 of the Florida Administrative Code to reflect changes made by the bill. Additionally, the OFR may need to amend their applications for consumer finance loan company licenses to allow applicants to assert

what amount of liquid assets, surety bond, letter of credit, or certificate of deposit is required of them since their business relation to a previously-licensed entity may reduce their surety bond, letter of credit, or certificate of deposit requirements.

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.