



157894

LEGISLATIVE ACTION

Senate

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House

Senator Berman moved the following:

Senate Amendment (with title amendment)

Between lines 234 and 235

insert:

Section 6. Section 516.181, Florida Statutes, is created to read:

516.181 Predatory loan prevention.—

(1) A person may not engage in any device, subterfuge, or pretense to evade the requirements of this chapter, including, but not limited to:

(a) Making, offering, or assisting, or arranging for, a



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12 borrower to obtain a consumer finance loan with a higher rate or
13 amount of interest, consideration, charge, or other payment
14 received incident to the loan than is authorized by this chapter
15 through any method, including mail, telephone, the Internet, or
16 any electronic means, regardless of whether the person has a
17 physical location in this state; or

18 (b) Receiving interest, fees, charges, or other payments in
19 excess of those authorized by this chapter, regardless of
20 whether the payment purports to be voluntary.

21 (2) A consumer finance loan made in violation of this
22 section is void and uncollectible as to any principal, fee,
23 interest, charge, or payment.

24 (3) If the consumer finance loan exceeds the rate
25 authorized by s. 516.031, a person is deemed a lender subject to
26 this section, regardless of whether the person purports to act
27 as an agent or a service provider or in another capacity for
28 another entity that is exempt from this chapter, if any of the
29 following apply:

30 (a) The person holds, acquires, or maintains, directly or
31 indirectly, the predominant economic interest, risk, or reward
32 in the loan.

33 (b) The person:

34 1. Markets, solicits, brokers, arranges, facilitates, or
35 services loans; and

36 2. Holds or has the right, requirement, or first right of
37 refusal to acquire the loans, a share of receivables, or another
38 direct or indirect interest in the loans or loan program.

39 (c) The totality of the circumstances indicate that the
40 person is the lender and that the transaction is structured to



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41 evade the requirements of this chapter. Circumstances that weigh
42 in favor of a person being a lender subject to this section
43 include, without limitation, whether the person:

44 1. Indemnifies, insures, or protects an exempt entity from
45 any costs or risks related to the loan;

46 2. Predominantly designs, controls, or operates the loan
47 program;

48 3. Holds the trademark or intellectual property rights in
49 the brand, underwriting system, or other core aspects of the
50 loan program; or

51 4. Purports to act as an agent or a service provider or in
52 another capacity for an exempt entity while acting directly as a
53 lender in other states.

54
55 ===== T I T L E A M E N D M E N T =====

56 And the title is amended as follows:

57 Delete line 19

58 and insert:

59 construction; creating s. 516.181, F.S.; prohibiting
60 persons from engaging in actions to evade the
61 requirements of ch. 516, F.S.; providing that consumer
62 finance loans made in violation of such prohibitions
63 are void and uncollectable; providing construction
64 relating to when a person is deemed to be a lender
65 subject to such prohibitions; creating s. 516.38,
66 F.S.; requiring