HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1267 Consumer Finance Loans
SPONSOR(S): Insurance & Banking Subcommittee, Fernandez-Barquin
TIED BILLS: **IDEN./SIM. BILLS:** SB 580

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	14 Y, 0 N, As CS	Fletcher	Lloyd
2) State Administration & Technology Appropriations Subcommittee	11 Y, 3 N	Perez	Topp
3) Commerce Committee			

SUMMARY ANALYSIS

The Florida Consumer Finance Act, ch. 516, F.S. (Act), prohibits individuals and entities from engaging in the business of making consumer finance loans unless first authorized to do so under the Act. It 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 principal amount increases:

- 30% per annum, computed on the first $3,000 of the principal amount;
- 24% per annum on that part of the principal amount exceeding $3,000 and up to $4,000; and
- 18% per annum on that part of the principal amount exceeding $4,000 and up to $25,000.

The Act provides that, at the time of applying for a license, the applicant shall pay to the office a nonrefundable biennial license fee of $625. Applications, except for applications to renew or reactivate a license, must also be accompanied by a nonrefundable investigation fee of $200. The Act prohibits licensees from applying delinquency charges until a borrower has been in default for 10 days.

The bill:

- Provides a definition for the term “branch;”
- Prohibits a person from operating a branch engaged in the business of making consumer finance loans without first obtaining a license;
- Requires an application fee of $625 to be paid to the Office of Financial Regulation (OFR) for each branch application filed;
- Increases the maximum interest rate for a consumer finance loan to 36% and removes the tiered-interest structure altogether;
- Changes the 10-day rule for a licensee applying delinquency charges to 12 days;
- Requires licensees providing assistance programs during a disaster to report to the Office of Insurance Regulation (OIR) details of such assistance programs; and
- Requires licensees to annually submit to OFR reports of certain information, which OFR may publish in a report after consolidating the data for all licensees.

The bill has a negative, likely insignificant, fiscal impact on state government, no impact on local government, and an indeterminate fiscal impact on the private sector.

The bill provides an effective date of July 1, 2023.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

The Florida Office of Financial Regulation (OFR) is responsible for all activities of the Financial Services Commission (Commission) relating to the regulation of banks, credit unions, other financial institutions, finance companies, and the securities industry.[1] OFR's Division of Consumer Finance (Division) licenses and regulates non-depository financial service industries and individuals, and conducts examinations and complaint investigations for licensed entities to determine compliance with Florida law.[2]

The Florida Consumer Finance Act, ch. 516, F.S. (Act), prohibits individuals and entities from engaging in the business of making consumer finance loans unless first authorized to do so under the Act.[3] A consumer finance loan is defined as "a loan of money, credit, goods, or choses in action, 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."[4]

Currently, the Act provides that, at the time of applying for a license, the applicant shall pay to the office a nonrefundable biennial license fee of $625. Applications, except for applications to renew or reactivate a license, must also be accompanied by a nonrefundable investigation fee of $200.

The Act 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 principal amounts increase:

- 30% per annum, computed on the first $3,000 of the principal amount;
- 24% per annum on that part of the principal amount exceeding $3,000 and up to $4,000; and
- 18% per annum on that part of the principal amount exceeding $4,000 and up to $25,000.

Effect of the Bill

<u>General</u>

The bill provides a definition for the term "branch," namely, "any location, other than a licensee's principal place of business, at which a licensee operates or conducts business … or which the licensee owns or controls for the purposes of conducting business…."

The bill clarifies a person must not engage in the business of making consumer finance loans *or operate a branch of such business* unless first authorized to do so under the Act. The bill requires an application fee of $625 be paid to OFR for each branch application filed, which is in addition to the $625 application fee for the branch's principal place of business. The bill provides that applications for a license for the principal place of business be accompanied by a nonrefundable investigation fee of $200.

<u>Maximum Rate Increase; Delinquency Charges</u>

The bill increases the maximum interest rate a licensee may charge for a loan from 30% to 36% and removes the tiered interest rate structure altogether. The bill also changes the 10-day rule for delinquency

[1] S. 20.121(3)(a)2., F.S. *See also* Florida Office of Financial Regulation, Agency Analysis of 2023 House Bill 1267, p. 1 (Mar. 10, 2023).
[2] Florida Office of Financial Regulation, *Division of Consumer Finance*, https://flofr.gov/sitePages/DivisionOfConsumerFinance.htm (last visited Mar. 13, 2023).
[3] S. 516.02(1), F.S.
[4] S. 516.01(2), F.S.

charges to 12 days, such that, licensees may not charge delinquency charges until the borrower has been in default for 12 days rather than 10 days.

Disaster Relief and Suspension of Penalties

The bill provides that in the event of a Federal Emergency Management Agency (FEMA) response to a Presidential Disaster Declaration in Florida, if a licensee offers any assistance program to borrowers impacted by the disaster, the licensee must send to the office a written notice within 10 days after the licensee's establishment of the assistance program. The notice must include, at a minimum, the following:

- The licensed locations impacted by the disaster, including the physical addresses, if applicable;
- The telephone number, e-mail address, or other contact information for the licensee;
- A brief description of the assistance programs available to borrowers in the impacted areas; and
- The start date and, if known, the end date of the assistance program.

Similarly, in the event of a FEMA response to a Presidential Disaster Declaration in Florida, the bill requires a licensee operating in a county designated in the disaster declaration to suspend, within 90 days after the date of the initial declaration, all of the following:

- Application of delinquency charges;
- Repossessions of collateral pledged to loans made under the Act; and
- Filing of lawsuits for collection of amounts owed for loans made under the Act.

Annual Reports

The bill requires a licensee, by March 15, 2024, and annually thereafter, to file a report with the office, in a form and manner prescribed by commission rule, using aggregated and anonymized data without reference to any borrower's nonpublic personal information. The bill requires the report to include the following information for the preceding calendar year:

- The number of licenses under the Act held by the licensee as of December 31st of the preceding calendar year;
- The number of loan originations by the licensee from all licenses held under the Act during the preceding calendar year;
- The total number and dollar amount of loans outstanding by the licensee from all licenses held under the Act as of December 31st of the preceding calendar year;
- The total number of unsecured loans as of December 31st of the preceding calendar year;
- The total number of loans separated by principal amount in the following ranges as of December 31st of the preceding calendar year:
    - From $0 to $5,000
    - From $5,001 to $10,000
    - From $10,001 to $15,000
    - From $15,001 to $20,000
    - From $20,001 to $25,000;
- The total number and dollar amount of loans charged off as of December 31st of the preceding calendar year; and
- The total number and dollar amount of loans with delinquency status listed as:
    - Current or less than 30 days past due.
    - From 30 to 59 days past due.
    - From 60 to 89 days past due.
    - At least 90 days past due.

The bill requires a licensee to submit the report to OFR with an accompanying affidavit certifying that all the information submitted is designated as trade secret. The bill allows OFR to publish a report of the information submitted if all the data published in the report are anonymized aggregate data from all licensees.

B. SECTION DIRECTORY:

Section 1. Amends s. 516.01, F.S., relating to definitions.

Section 2. Amends s. 516.02, F.S., relating to loans; lines of credit; rates of interest; license.

Section 3. Amends s. 516.03, F.S., relating to application for license; fees; etc.

Section 4. Amends s. 516.031, F.S., relating to finance charge; maximum rates.

Section 5. Amends 516.15, F.S., relating to duties of licensee.

Section 6. Creates s. 516.151, F.S., relating to suspension of penalties and remedial measures after disaster declaration.

Section 7. Creates s. 516.331, F.S., relating to annual reports by licensees.

Section 8. Provides an effective date of July 1, 2023.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The OFR estimates its revenues may decrease by as much as $5,000 per fiscal year if it no longer receives the background investigation fee of $200 required for each additional location once replaced by a branch office license requirement.[5] The OFR considers this to be a negligible amount which would not impact its operations.[6] Additionally, according to the OFR, the reduction in staff time no longer needed to review a full license application for each additional location when replaced with a branch office license would likely offset any loss in revenues.[7]

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill has an indeterminate fiscal impact on the private sector.[8] Applicants will no longer be required to pay a $200 background investigation fee for each additional location with the implementation of a branch office license.[9] This may save applicants up to $5,000 per fiscal year in reduced fees.[10]

D. FISCAL COMMENTS:

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[5] Florida Office of Financial Regulation, Agency Analysis of 2023 HB 1267, p. 5 (Mar. 10, 2023).
[6] *Id.*
[7] *Id.*
[8] *Id.*
[9] *Id.*
[10] *Id.*

The bill proposes to create a branch license in lieu of a full license for each additional location of a licensee.[11] The branch licenses will not include the $200 background investigation fee and thus result in a fee reduction.[12]

Additionally, the bill would require the OFR to make technology changes to its internal licensing system to create a branch office license and annual reporting functionality.[13] The cost of these changes would be negligible and could be covered within the OFR's existing budget.[14]

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

   The bill could require a fee bill, as the bill creates a branch license fee in lieu of a full license fee for each additional location of a licensee.

B. RULE-MAKING AUTHORITY:

The bill creates a new section of statute that will require a licensee to file an annual report with the office "in a form and manner prescribed by commission rule." This section will require rulemaking. Rule 69V-160.111, F.A.C., which adopts Disciplinary Guidelines for Consumer Finance Companies, will also require an update.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Lines 207-2010: The term "assistance program" is undefined. While the OFR is not tasked with approving the assistance program, it is unclear how the OFR will determine whether a program is actually an assistance program that may be noticed to the OFR pursuant to s. 516.15(5), F.S.[15]

Lines 223-234: It is unclear when the suspension on application of delinquency charges, repossession of collateral, and filing of lawsuits for collections would begin or end. "Within 90 days" does not specify the precise starting date, implying that the lender can start or suspend anytime from the day of the declaration through the following 90 days.

Line 238: It is unclear whether the deadline will be March 15th of each year.

Line 251: This line references "loans outstanding by the licensee." Replacing the word "with" instead of the word "by" may provide clarity.

Line 272-274: The bill requires the licensee to submit a certification that all information reported required to be reported under the bill is trade secret information. However, trade secret protections are a question of law and fact to be decided by a court of competent jurisdiction upon an action by a licensee to defend against publication pursuant to a public record request. It may be appropriate to

[11] *Id.* at 5.
[12] *Id.*
[13] *Id.* at 6.
[14] *Id.* at 6.
[15] *Id.*

revise the bill to state that the license shall submit a certification identifying those portions of information submitted that the licensee claims to be trade secret.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On March 27, 2023, the Insurance & Banking Subcommittee considered the bill, adopted one amendment, and reported the bill favorably as a committee substitute. The amendment requires that licensees submit the total number and dollar amount of loans with delinquency status, categorized by amount of days past due, in addition to the other annual reporting requirements proposed by the bill.

The analysis is drafted to the committee substitute as passed by the Insurance & Banking Subcommittee.