

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 1436

INTRODUCER: Senator Burton

SUBJECT: Consumer Finance Loans

DATE: January 19, 2024

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. <u>Moody</u>	<u>Knudson</u>	<u>BI</u>	<u>Favorable</u>
2. _____	_____	<u>AEG</u>	_____
3. _____	_____	<u>FP</u>	_____

I. Summary:

Senate Bill 1436 revises laws governing consumer finance loans, which are loans of \$25,000 or less for which a lender charges an interest rate greater than 18 percent per annum. The Florida Consumer Finance Act (Act) in ch. 516, F.S., provides an exemption from Florida's prohibition against usurious contracts, under which any interest rate greater than 18 percent per annum is prohibited.

The bill modifies the limits of consumer finance loan interest rates to no more than 36 percent per annum, computed on the first \$10,000 of the principal amount; 30 percent per annum on that part of the principal amount exceeding \$10,000 and up to \$20,000; and 24 percent per annum on that part of the principal amount exceeding \$20,000 and up to \$25,000.

The bill increases the number of days a payment must be in default before a delinquency charge may be imposed from 10 days in default to 12 days in default.

The bill revises the licensure process to allow a single licensure application for the principle place of business and all branches. The bill defines a "branch" as any location, other than a licensee's principal place of business, at which a licensee operates or conducts consumer finance loan business or controls for the purpose of conducting consumer finance loan business.

The bill requires consumer finance lenders, in any county designated in a Federal Emergency Management Agency (FEMA) major disaster declaration, to suspend for 90 days after the initial date of such declaration, the following:

- The application of delinquency charges for payments in default for at least 12 days;
- Repossessions of collateral pledged to a consumer finance loan; and
- The filing of civil actions for the collection of amounts owed under a consumer finance loan.

The bill also requires consumer finance lenders to:

- Provide notice to the Office of Financial Regulation (OFR) of any assistance program offered by the lender to borrowers impacted by a disaster subject to a FEMA major disaster declaration; and
- Annually report information to the OFR detailing loans issued by the lender during the previous calendar year.

The OFR estimates that the bill will result a recurring reduction of \$5,000 in revenues per fiscal year but the loss is negligible and would not impact operations.

The effective date of the bill is July 1, 2024.

II. Present Situation:

The OFR's 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 between 18 and 30 percent per year.² A consumer finance loan is not a traditional loan made by a bank, credit union, 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 OFR 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

A consumer finance lender applicant must submit an application fee of \$625 and an investigation fee of \$200 with its application for licensure.⁵ 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.⁶

¹ Fla. Office of Fin. Reg., *Division of Consumer Finance: What We Do*, <https://flofr.gov/sitePages/DivisionOfConsumerFinance.htm> (last visited January 16, 2024).

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 January 16, 2024).

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 16, 2024). 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 Section 516.03(1), F.S. *See also*, Fla. Office of Fin. Reg., *Form OFR-516-01 Application for Consumer Finance Company License*, <https://flofr.gov/sitePages/documents/OFR-516-01.pdf> (last visited January 16, 2024).

⁶ Sections 516.03(1) and 516.05(1) & (2), F.S.

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.⁷

Permissible Interest Rates and Fees

Florida's prohibition on usury⁸ generally prohibits⁹ interest rates in excess of 18 percent per annum simple interest on any loan, advance of money, line of credit, or forbearance.¹⁰ 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:¹¹

- 30 percent on the first \$3,000 of the principal amount;
- 24 percent on principal above \$3,000 and up to \$4,000; and
- 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:¹²

- 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 for each payment in default for at least 10 days, if agreed upon in writing before the charge is imposed, of up to \$15 for payments due monthly, \$7.50 for payments due semimonthly or every two weeks, and five dollars if three payments are due in the same calendar month; and
- A bad check charge of up to \$20.

⁷ Section 516.02(4), F.S.

⁸ Usury is the act of lending money at an interest rate that is considered unreasonably high or that is higher than the rate permitted by law. Julia Kagan, Investopedia, *What is Usury? Definition, How It Works, Legality, and Example* (February 7, 2022), <https://www.investopedia.com/terms/u/usury.asp> (last visited January 16, 2024). See ss. 687.02 and 687.03, F.S.

⁹ 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.

¹⁰ Sections 687.02 and 687.12, F.S.

¹¹ Section 516.031(1), F.S.

¹² Section 516.031(3), F.S.

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.¹³

Licensees under ch. 516, F.S., are expressly prohibited from charging prepayment penalties on consumer finance loans.¹⁴

Federal Emergency Management Agency

Robert T. Stafford Disaster Relief and Emergency Assistance Act¹⁵ (Stafford Act)

Under the Stafford Act, Public Law No. 100-107, the President of the United States is authorized to declare emergency and major disaster declarations. An emergency declaration can be declared for any occasion or instance the President determines federal assistance is needed. Emergency declarations supplement state and local or Indian tribal emergency service efforts, which include protection of lives, property, public health and safety or lessens the threat of a catastrophe in any part of the United States.¹⁶ Assistance provided under an emergency declaration may not exceed five million dollars. The President can declare a major disaster for any natural event¹⁷ which the President has determined has caused severe damage beyond the combined capabilities of state and local governments to respond.¹⁸ Such declaration of a major disaster provides federal assistance programs to individuals and public infrastructure, including emergency and permanent work.¹⁹

Before such declaration can be determined, the governor of a state or Tribal Chief Executive of the affected Tribe must submit a request, within thirty days of the occurrence, to the President through a FEMA Regional Administrator. Federal assistance is determined by the Governor's or Tribal Chief's request and the needs identified during preliminary damage assessments.²⁰

III. Effect of Proposed Changes:

Senate Bill 1436 revises laws governing consumer finance loans, which are loans of \$25,000 or less for which a lender charges an interest rate greater than 18 percent per annum. The Florida Consumer Finance Act (Act) in ch. 516, F.S., provides an exemption from Florida's prohibition against usurious contracts, under which any interest rate greater than 18 percent per annum is prohibited.

¹³ Section 516.35(2), F.S.

¹⁴ Section 516.031(6), F.S.

¹⁵ The Stafford Act constitutes the statutory authority for most Federal disaster response activities, especially as related to the FEMA and FEMA programs. PL 100-707 (November 23, 1988); amended the Disaster Relief Act of 1974, PL 93-288. <https://www.fema.gov/disaster/stafford-act> (last visited January 16, 2024).

¹⁶ FEMA, *How a Disaster Gets Declared, Emergency Declarations*, <https://www.fema.gov/disaster/how-declared> (last visited January 16, 2024).

¹⁷ Natural events include hurricanes, tornadoes, storms, high water, wind-driven water, tidal waves, tsunamis, earthquakes, volcanic eruptions, landslides, snowstorms, mudslides, or drought, or regardless of cause, fire, flood or explosion. FEMA, *How a Disaster Gets Declared, Major Disaster Declarations*, <https://www.fema.gov/disaster/how-declared#:~:text=The%20President%20can%20declare%20a,that%20the%20President%20determines%20has> (last visited January 17, 2024).

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

Section 1 amends s. 516.01, F.S., to define the term “branch” to mean any location, other than a licensee’s principal place of business, at which a licensee operates or conducts business under this chapter or which the licensee owns or controls for the purpose of conducting consumer finance loan business.

Section 2 amends s. 516.02, F.S., to clarify a person must not engage in the business of making consumer finance loans or operate a branch of such a business unless first authorized to do so.

Section 3 amends s. 516.03, F.S., to revise the licensure process to allow a single licensure application for the principal place of business and all branches. The bill provides applications for a license for the principal place of business to be accompanied by a nonrefundable investigation fee of \$200.

Section 4 amends s. 516.031, F.S., to increase the maximum interest rate that may be charged to no more than 36 percent per annum, computed on the first \$10,000 of the principal amount; 30 percent per annum on that part of the principal amount exceeding \$10,000 and up to \$20,000; and 24 percent per annum on that part of the principal amount exceeding \$20,000 and up to \$25,000.

Section 4 also increases the number of days a payment must be in default before a delinquency charge may be imposed from 10 days in default to 12 days in default.

Relating to disaster relief and suspension of penalties, **section 5** amends s. 516.15, F.S., and **section 7** creates s. 516.39, F.S., to require consumer finance lenders, in any county designated in a FEMA major disaster declaration, to suspend the following for 90 days after the initial date of such declaration:

- The application of delinquency charges for payments in default for at least 10 days;
- Repossessions of collateral pledged to a consumer finance loan; and
- The filing of civil actions for the collection of amounts owed under a consumer finance loan.

The bill also requires consumer finance lenders to provide notice to the OFR of any assistance program offered by the lender to borrowers impacted by a disaster subject to a FEMA major disaster declaration.

Section 6 creates s. 516.38, F.S., to require consumer finance licensees to annually report, by March 15, 2025, and by each March 15th thereafter, aggregated and anonymized data that does not reference any borrower’s nonpublic personal information to the OFR detailing the loans issued by the lender during the previous calendar year. The report must include:

- The number of locations held by the licensee as of December 31;
- The number of loan originations by the licensee under all licenses;
- The total dollar amount of loans and the number of loans outstanding by the licensee as of December 31;
- The total number of loans in which the licensee holds a security interest in collateral as of December 31;
- The total number of unsecured loans as of December 31;

- The total number of loans, separated by principal amount, in the following ranges as of December 31:
 - Up to and including \$5,000;
 - \$5,001 to \$10,000;
 - \$10,001 to \$15,000;
 - \$15,001 to \$20,000; and
 - \$20,001 to \$25,000;
- The total number and amount of loans charged off as of December 31; and
- The total dollar amount of loans and the number 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; and
 - At least 90 days past due.

Furthermore, licensees claiming any information submitted in the annual report contains a trade secret must submit to the OFR an affidavit and designate the information claimed to be a trade secret in accordance with s. 655.0591, F.S. The OFR may publish a report using the annual report data, provided all data published in the report is anonymized and aggregated from all licensees.

Section 8 reenacts s. 516.19, F.S., relating to penalties, to incorporate amendments made to ss. 516.02 and 516.031, F.S.

Section 9 provides an effective date of July 1, 2024.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

The bill allows the OFR to publish a report of information submitted by consumer finance lenders detailing their lending activities during the prior calendar year, “provided that all data published in the report is anonymized and aggregated from all licensees.” However, the lack of a public records exemption related to the reports submitted by insurers may result in the OFR having to provide the reports of individual lenders to a person making such a public records request. The report in each consumer finance lender’s report to the OFR could receive trade secret protection to the extent the lender, pursuant to s. 655.0591, F.S., claims a trade secret and is successful in obtaining a declaratory judgment from a circuit court that the documents in question constitute protected trade secrets.

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:

The bill revises the licensure process for consumer finance companies to allow a single licensure application for the principle place of business and all branches, thereby potentially reducing application and investigative fees. A fee bill is not anticipated.

B. Private Sector Impact:

The bill may result in more consumer finance loans being issued by Florida-licensed consumer finance lenders to borrowers who cannot currently qualify for loans given the current interest rate limits. However, such borrowers will be subject to greater interest payments than are allowed under current law.

Applicants for the new branch office license will no longer be required to pay the \$200 background investigation fee for each additional location. This may result in applicants saving up to \$5,000 in reduced fees per fiscal year.²¹

C. Government Sector Impact:

The bill proposes to create a branch license in lieu of a full license for each additional location of a licensee, which will not include the \$200 background investigation fee, resulting in a fee reduction. The OFR estimates a recurring reduction of \$5,000 in revenues but the loss is negligible and would not impact operations. Furthermore, the reduction in staff time reviewing full license applications for each additional location when replaced with a branch office license would likely offset any loss in revenue.²²

The changes proposed within the bill would require the OFR to update its internal licensing system to create a branch license and annual reporting functionality. The cost of such technology changes would be negligible and can be absorbed within existing resources.²³

VI. Technical Deficiencies:

None.

²¹ Office of Financial Regulation, *2024 Agency Legislative Bill Analysis of SB 1436*, at pg. 5, January 17, 2024 (on file with the Senate Banking and Insurance Committee).

²² *Id* at pg. 5.

²³ *Id* at pg. 6.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 516.01, 516.02, 516.03, 516.031, and 516.15.

This bill creates the following sections of the Florida Statutes: 516.38 and 516.39.

This bill reenacts the following sections of the Florida Statutes: 516.19.

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.