

1988

## Session Law 88-342

Florida Senate & House of Representatives

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# FLORIDA LEGISLATURE

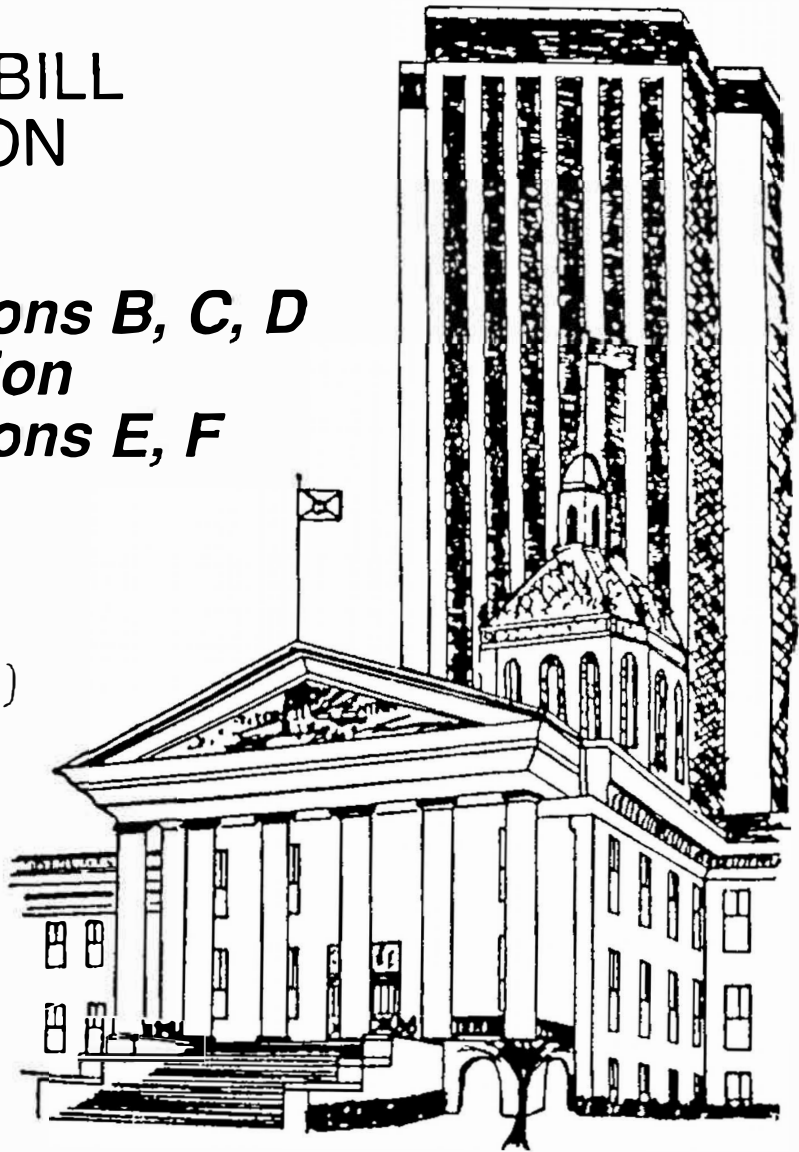
## FINAL LEGISLATIVE BILL INFORMATION

***1987 Special Sessions B, C, D  
1988 Regular Session  
1988 Special Sessions E, F***

RE: CHAPTER 88-342

HB 658 (Passed)

CS/SB 191 (substituted)



prepared by:

***Joint Legislative Management Committee***  
**Legislative Information Division**  
**Capitol Building, Room 826 — 488-4371**

HISTORY OF HOUSE BILLS

H 652 (CONTINUED)

05/23/88 HOUSE Subferred to Subcommittee on Education. On Committee agenda—Appropriations, 05/24/88, 8 00 am. Morris Hall—For ratification of subreferral  
06/07/88 HOUSE Died in Committee on Appropriations

H 653 GENERAL BILL by Irvine (Identical S 636)

Regional Hazardous Waste Sites, postpones date by which certain assessments & recommendations of D E R for regional hazardous waste facility sites are required to be submitted to Governor & Legislature Amends 403 7265 Effective Date Upon becoming law  
03/18/88 HOUSE Prefiled  
03/31/88 HOUSE Referred to Natural Resources  
04/05/88 HOUSE Introduced, referred to Natural Resources -HJ 62, On Committee agenda—Natural Resources, 04/06/88, 2 30 pm, Morris Hall—For ratification of subreferral  
04/07/88 HOUSE Subferred to Subcommittee III  
06/07/88 HOUSE Died in Committee on Natural Resources

H 654 GENERAL BILL/ENG by Rush (Similar CS/S 615)

Corporations/Control Shares, amends provision which provides requirements re control-share acquisitions to specify that certain persons shall not be deemed to be part of a "group" or to be an "acquiring person" for purposes of such requirements, amends provision re certain prohibited fiduciary functions of corporations to revise language re corporations as transfer agents. Amends 607 109, 660 41 Effective Date 06/16/88  
03/18/88 HOUSE Prefiled  
03/31/88 HOUSE Referred to Commerce  
04/05/88 HOUSE Introduced, referred to Commerce -HJ 62  
04/14/88 HOUSE On Committee agenda—Commerce, 04/18/88, 1 15 pm, 317C—For ratification of subreferral  
04/18/88 HOUSE On subcommittee agenda—Commerce, 04/20/88, 10 00 am, 317C  
04/20/88 HOUSE Subcommittee Recommendation pending ratification by full Committee Favorable with 2 amendments  
04/25/88 HOUSE On Committee agenda—Commerce, 04/27/88, 8.00 am, 317C  
04/27/88 HOUSE Preliminary Committee Action by Commerce Favorable with 2 amendments  
05/02/88 HOUSE Comm. Report: Favorable with 2 amendment(s) by Commerce, placed on Calendar -HJ 302  
05/10/88 HOUSE Placed on Special Order Calendar  
05/16/88 HOUSE Read second time -HJ 478, Amendments adopted -HJ 479  
05/17/88 HOUSE Read third time, Amendment adopted, Passed as amended, YEAS 113 NAYS 0 -HJ 504, Immediately certified -HJ 504  
05/17/88 SENATE In Messages  
05/19/88 SENATE Received, referred to Commerce -SJ 355  
05/25/88 SENATE Withdrawn from Commerce, Substituted for CS/SB 615, Passed, YEAS 35 NAYS 0 -SJ 403  
05/26/88 Ordered enrolled  
06/02/88 Signed by Officers and presented to Governor -HJ 1281  
06/16/88 Approved by Governor, Chapter No. 88-111

H 655 GENERAL BILL by Rush (Identical S 283)

Mortgage Satisfaction/Issuance, provides for discipline when satisfaction of mortgage is not issued in certain situations Amends 494.055 Effective Date 10/01/88  
03/18/88 HOUSE Prefiled  
03/31/88 HOUSE Referred to Commerce  
04/05/88 HOUSE Introduced, referred to Commerce -HJ 62  
04/14/88 HOUSE On Committee agenda—Commerce, 04/18/88, 1:15 pm, 317C—For ratification of subreferral  
04/18/88 HOUSE On subcommittee agenda—Commerce, 04/20/88, 10:00 am, 317C  
04/20/88 HOUSE Subcommittee Recommendation pending ratification by full Committee: Favorable with 2 amendments  
04/25/88 HOUSE On Committee agenda—Commerce, 04/27/88, 8 00 am, 317C  
04/27/88 HOUSE Preliminary Committee Action by Commerce Favorable with 2 amendments  
05/02/88 HOUSE Comm. Report: Favorable with 2 amendment(s) by Commerce, placed on Calendar -HJ 302  
05/31/88 HOUSE Placed on Special Order Calendar  
06/01/88 HOUSE Placed on Consent Calendar; Removed from Consent Calendar; Placed on Special Order Calendar; Retained on Regular Calendar  
06/07/88 HOUSE Died on Calendar

H 656 GENERAL BILL by Upchurch (Identical S 829)

Physical Therapy Practice Board, creates Physical Therapy Practice Board, transfers powers & duties of Board of Medicine & Physical Therapy Council, re regulation of practice of physical therapy, to newly created Board, provides certain penalties for giving false information re physical therapy practice, provides for regulation of advertising by physical therapists, provides for release of certain patient records, etc Amends 20.30, Chs 486, 455 Effective Date 10/01/88.  
03/21/88 HOUSE Prefiled  
03/31/88 HOUSE Referred to Regulatory Reform

H 656 (CONTINUED)

04/05/88 HOUSE Introduced, referred to Regulatory Reform -HJ 62  
05/04/88 HOUSE Subferred to Subcommittee on Professional Regulation, On subcommittee agenda—Regulatory Reform, 05/04/88, 8.15 am, Morris Hall—Temporarily passed, On Committee agenda, pending subcommittee action—Regulatory Reform, 05/05/88, 1 15 pm, Morris Hall—Not considered  
06/07/88 HOUSE Died in Committee on Regulatory Reform

H 657 GENERAL BILL by Regulatory Reform; Harris (Similar S 338)

Citrus Marketing Orders, (SUNDOWN) amends provision re citrus marketing order advisory councils, specifies appointing authority of such councils, provides for staggered terms of members, election of officers, & recordkeeping of council, clarifies provisions re reimbursement for travel & per diem, revises council duties, deletes obsolete language, etc Amends 601 154, revives/readopts 601 154(4) Effective Date 10/01/88  
03/21/88 HOUSE Prefiled  
03/31/88 HOUSE Placed on Calendar  
04/05/88 HOUSE Introduced, placed on Calendar -HJ 62  
04/13/88 HOUSE Placed on Special Order Calendar, Read second time -HJ 166  
04/19/88 HOUSE Read third time, Passed, YEAS 115 NAYS 0 -HJ 194  
04/21/88 SENATE In Messages  
04/26/88 SENATE Received, referred to Agriculture -SJ 181  
04/29/88 SENATE Extension of time granted Committee Agriculture, On Committee agenda—Agriculture, 05/03/88, 2 00 pm, Room-B  
05/03/88 SENATE Comm Report: Favorable by Agriculture, placed on Calendar -SJ 228  
05/11/88 SENATE Placed on Special Order Calendar -SJ 267, Passed, YEAS 35 NAYS 0 -SJ 270  
05/12/88 Ordered enrolled  
05/18/88 Signed by Officers and presented to Governor -HJ 589  
05/25/88 Approved by Governor, Chapter No 88-56 -HJ 719

H 658 GENERAL BILL/ENG by Regulatory Reform, Ostrau (Similar CS/S 141)

Consumer Finance, (SUNSET) requires license from Banking & Finance Dept to engage in business of making consumer finance loans, provides certain limitations on credit amounts & interest rates, provides biennial licensing period, increases interest rate which may be charged upon loan default, requires dept approval prior to change in place of business, provides for certain types of credit insurance, etc Amends/revives/readopts Ch 516 Effective Date 10/01/88  
03/21/88 HOUSE Prefiled  
03/31/88 HOUSE Referred to Finance & Taxation; Appropriations  
04/05/88 HOUSE Introduced, referred to Finance & Taxation, Appropriations -HJ 63  
04/12/88 HOUSE Withdrawn from Finance & Taxation -HJ 110, Now in Appropriations -HJ 110  
04/25/88 HOUSE Withdrawn from Appropriations -HJ 243, Placed on Calendar  
04/28/88 HOUSE Placed on Special Order Calendar, Read second time -HJ 285  
05/04/88 HOUSE Read third time, Passed, YEAS 106 NAYS 0 -HJ 329  
05/05/88 SENATE In Messages  
05/10/88 SENATE Received, referred to Commerce, Appropriations -SJ 254  
05/13/88 SENATE Extension of time granted Committee Commerce  
05/25/88 SENATE Withdrawn from Commerce, Appropriations; Substituted for CS/SB 141 -SJ 413; Passed as amended, YEAS 29 NAYS 0 -SJ 417  
05/26/88 HOUSE In Messages  
05/30/88 HOUSE Was taken up -HJ 847, Concurred, Passed as amended; YEAS 113 NAYS 0 -HJ 852  
05/30/88 Ordered engrossed, then enrolled  
06/21/88 Signed by Officers and presented to Governor  
07/06/88 Approved by Governor, Chapter No 88-342

H 659 GENERAL BILL/ENG by Regulatory Reform; Gordon; Grindle (Identical ENG/S 144)

Tourism Advisory Council, (SUNDOWN) deletes authority of Tourism Div. of Commerce Dept. to encourage organization of advisory boards or committees among interested groups of citizens, amends provision re Tourism Advisory Council, provides for purpose of council, term of office for members, & annual election of council chairman, provides for meetings, provides for council secretary & requires records of meetings, etc. Amends 288.34, amends/revives/readopts 288 347 Effective Date 10/01/88  
03/21/88 HOUSE Prefiled  
03/31/88 HOUSE Placed on Calendar  
04/05/88 HOUSE Introduced, placed on Calendar -HJ 63  
04/12/88 HOUSE Placed on Special Order Calendar; Read second time, Amendment adopted -HJ 111  
04/13/88 HOUSE Read third time, Iden/Sim Senate Bill substituted, Laid on Table under Rule, Iden/Sim/Compare Bill passed, refer to SB 144 (Ch 88-288) -HJ 162

H 660 GENERAL BILL by Coagrove (Compare CS/ENG/H 35)

Undergraduate Scholars' Fund, revises student eligibility for award of scholarships from Fla Undergraduate Scholars' Fund Amends 240 402 Effective Date.  
(CONTINUED ON NEXT PAGE)

HISTORY OF SENATE BILLS

**S 135 (CONTINUED)**

05/30/88 HOUSE Withdrawn from Appropriations -HJ 902, Placed on Calendar  
 05/31/88 HOUSE Substituted for HB 1577, Read second time, Read third time, CS passed, YEAS 116 NAYS 0 -HJ 915  
 05/31/88 Ordered enrolled -SJ 554  
 06/16/88 Signed by Officers and presented to Governor  
 07/01/88 Approved by Governor, Chapter No. 88-153

**S 136 GENERAL BILL/CS/CS by Finance, Taxation and Claims, Health and Rehabilitative Services; Woodson (Similar CS/H 1130)**

**Adult Congregate Living Facilities**, provides for registration of certain facilities with three or fewer residents; requires basic training programs, provides for access by district nursing home & long-term care facility ombudsman councils, requires media campaign, requires annual report to Legislature, provides penalty, provides for consultation by H.R.S. Dept.; modifies criteria for eligibility for optional supplementation payments Amends Ch. 400, 409 212 Appropriation \$50,000 Effective Date 10/01/88  
 01/07/88 SENATE Prefiled  
 01/15/88 SENATE Referred to Health and Rehabilitative Services, Finance, Taxation and Claims, Appropriations  
 04/05/88 SENATE Introduced, referred to Health and Rehabilitative Services, Finance, Taxation and Claims, Appropriations -SJ 19, On Committee agenda—Health and Rehabilitative Services, 04/06/88, 9 00 am, Room-A  
 04/06/88 SENATE Comm. Report, CS by Health and Rehabilitative Services -SJ 68  
 04/07/88 SENATE CS read first time -SJ 80, Now in Finance, Taxation and Claims -SJ 68  
 04/15/88 SENATE Extension of time granted Committee Finance, Taxation and Claims  
 04/29/88 SENATE Extension of time granted Committee Finance, Taxation and Claims  
 05/06/88 SENATE On Committee agenda—Finance, Taxation and Claims, 05/10/88, 3 00 pm, Room-1C  
 05/10/88 SENATE Comm Report CS/CS by Finance, Taxation and Claims -SJ 291  
 05/13/88 SENATE CS read first time -SJ 292; Now in Appropriations -SJ 291  
 05/19/88 SENATE Extension of time granted Committee Appropriations  
 06/07/88 SENATE Died in Committee on Appropriations

**S 137 GENERAL BILL by Woodson and others (Similar CS/CS/H 113)**

**Medicaid Eligibility/Nursing Homes**, provides for establishment of state Medicaid income eligibility standard for nursing home institutional care program at maximum allowed by federal regulation Creates 409 264 Appropriation \$2,767,330 Effective Date 07/01/88  
 01/07/88 SENATE Prefiled  
 01/15/88 SENATE Referred to Health and Rehabilitative Services, Appropriations  
 02/15/88 SENATE On Committee agenda—Health and Rehabilitative Services, 03/01/88, 2 00 pm, Room-A  
 03/01/88 SENATE Comm. Report: Favorable with 1 amendment(s) by Health and Rehabilitative Services, Now in Appropriations  
 04/05/88 SENATE Introduced, referred to Health and Rehabilitative Services; Appropriations -SJ 19, Comm Report: Favorable with 1 amendment(s) by Health and Rehabilitative Services -SJ 52; Now in Appropriations -SJ 53  
 05/04/88 SENATE Extension of time granted Committee Appropriations  
 05/19/88 SENATE Extension of time granted Committee Appropriations  
 06/07/88 SENATE Died in Committee on Appropriations

**S 138 GENERAL BILL/ENG by Beard (Compare CS/ENG/H 1674, S 223)**

**Parking Fee/Loading Zones & Scramble**, provides for issuance of loading zone & scramble parking permits for a fee, provides additional powers for Board of Regents. Amends 272 161, 240 209. Effective Date 07/02/88  
 01/07/88 SENATE Prefiled  
 01/15/88 SENATE Referred to Governmental Operations; Appropriations  
 02/15/88 SENATE On Committee agenda—Governmental Operations, 03/01/88, 2:00 pm, Room-H  
 03/01/88 SENATE Comm. Report: Favorable by Governmental Operations; Now in Appropriations  
 04/05/88 SENATE Introduced, referred to Governmental Operations, Appropriations -SJ 19, Comm Report: Favorable by Governmental Operations -SJ 52, Now in Appropriations -SJ 53  
 04/12/88 SENATE Withdrawn from Appropriations -SJ 81, Placed on Calendar  
 04/26/88 SENATE Placed on Special Order Calendar -SJ 165, Passed, YEAS 36 NAYS 0 -SJ 185  
 04/28/88 HOUSE In Messages  
 05/03/88 HOUSE Received, referred to Appropriations -HJ 304  
 05/18/88 HOUSE Withdrawn from Appropriations -HJ 561, Placed on Calendar  
 05/26/88 HOUSE Placed on Special Order Calendar

**S 138 (CONTINUED)**

05/30/88 HOUSE Read second time -HJ 878, Amendments adopted, Read third time, Passed as amended, YEAS 105 NAYS 9 -HJ 879, Recalled from Engrossing -HJ 879, Reconsidered, Motion to reconsider amendment failed two-thirds vote; Amendments adopted, Passed as amended, YEAS 92 NAYS 6 -HJ 880  
 05/30/88 SENATE In Messages  
 06/01/88 SENATE Refused to concur in amendments totaling 2, Requested House to recede, Concurred in amendments totaling 2; Passed as amended, YEAS 22 NAYS 0 -SJ 629  
 06/01/88 HOUSE In Messages  
 06/02/88 HOUSE Receded from amendments totaling 2, Passed as further amended, YEAS 114 NAYS 0 -HJ 1217  
 06/02/88 Ordered engrossed, then enrolled -SJ 753  
 06/16/88 Signed by Officers and presented to Governor  
 07/02/88 Became Law without Governor's Signature; Chapter No. 88-230

**S 139 GENERAL BILL by Johnson (Identical H 149)**

**Educational Personnel/Assessment**, revises assessment procedure requirements re performance of educational personnel Amends 231.29 Effective Date: 07/01/88 or upon becoming law, whichever occurs later  
 01/07/88 SENATE Prefiled  
 01/15/88 SENATE Referred to Education  
 04/05/88 SENATE Introduced, referred to Education -SJ 19  
 04/15/88 SENATE Extension of time granted Committee Education  
 04/21/88 SENATE On Committee agenda—Education, 04/25/88, 2 00 pm, Room-A—Temporarily postponed  
 04/29/88 SENATE Extension of time granted Committee Education  
 05/12/88 SENATE Withdrawn from Education, Indefinitely postponed -SJ 275

**S 140 GENERAL BILL by Peterson and others (Identical H 253, H 661)**

**Centers of Excellence Trust Fund**, creates said trust fund, provides for administration of fund by Bd of Directors of Fla Endowment Fund for Higher Education, provides for making challenge grants, establishes standards for allocating trust fund moneys, provides procedures & for establishment of new centers, provides restrictions on expenditure of trust fund moneys, requires annual audits to be provided as specified. Redesignates 240 498 as 240 61. Effective Date: 07/01/88 or upon becoming law, whichever occurs later.  
 01/07/88 SENATE Prefiled  
 01/15/88 SENATE Referred to Education, Appropriations  
 04/05/88 SENATE Introduced, referred to Education; Appropriations -SJ 19  
 04/15/88 SENATE On Committee agenda—Education, 04/19/88, 2 00 pm, Room-A—Temporarily postponed, Extension of time granted Committee Education  
 04/21/88 SENATE On Committee agenda—Education, 04/25/88, 2 00 pm, Room-A  
 04/25/88 SENATE Comm Report Favorable by Education -SJ 166  
 04/26/88 SENATE Now in Appropriations -SJ 166  
 05/04/88 SENATE Extension of time granted Committee Appropriations  
 05/19/88 SENATE Extension of time granted Committee Appropriations  
 05/30/88 SENATE Withdrawn from Appropriations -SJ 546; Placed on Calendar  
 06/07/88 SENATE Placed on Special Order Calendar -SJ 1089; Passed as amended, YEAS 31 NAYS 0 -SJ 1145  
 06/07/88 HOUSE In Messages, Died in Messages

**S 141 GENERAL BILL/CS by Commerce; Commerce (Similar ENG/H 658)**

**Consumer Finance (SUNSET)** requires license from Banking & Finance Dept. to engage in business of making consumer finance loans, provides certain limitations on credit amounts & interest rates; provides biennial licensing period, provides restrictions re use of homestead property as loan security, increases interest rate which may be charged upon loan default, requires dept approval prior to change in place of business, etc Amends/revives/readopts Ch. 516 Effective Date: 10/01/88  
 01/07/88 SENATE Prefiled  
 01/15/88 SENATE Referred to Commerce, Appropriations  
 02/15/88 SENATE On Committee agenda—Commerce, 03/01/88, 9 00 am, Room-A  
 03/01/88 SENATE Comm Report: CS by Commerce, Now in Appropriations  
 04/05/88 SENATE Introduced, referred to Commerce; Appropriations -SJ 19; Comm Report: CS by Commerce -SJ 53, CS read first time -SJ 55, Now in Appropriations -SJ 53  
 04/18/88 SENATE On Committee agenda—Appropriations, 04/20/88, 9:00 am, Room-A  
 04/20/88 SENATE Comm. Report: Favorable by Appropriations, placed on Calendar -SJ 142  
 05/25/88 SENATE Placed on Special Order Calendar -SJ 374, Ident./Sim. House Bill substituted -SJ 413; Laid on Table under Rule, Ident./Sim /Compare Bill passed, refer to HB 658 (Ch 88-342) -SJ 417

**S 142 GENERAL BILL by Grant (Identical H 329)**

**Tobacco Products/Distribution**, prohibits distribution, free or at nominal cost, (CONTINUED ON NEXT PAGE)

STORAGE NAME: 8spcb11.jdn  
Date: 1-14-88  
Revised: 3-2-88  
Final: \_\_\_\_\_

HOUSE OF REPRESENTATIVES  
COMMITTEE ON REGULATORY REFORM  
STAFF ANALYSIS

**HB 658**

BILL #: PCB 11  
RELATING TO: Consumer Finance  
SPONSOR(S): Committee on Regulatory Reform and Rep. Ostrau  
EFFECTIVE DATE: October 1, 1988  
COMPANION BILLS: \_\_\_\_\_  
OTHER COMMITTEES OF REFERENCE: (1) Commerce  
(2) \_\_\_\_\_

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I. SUMMARY:

PCB 11 continues the existence of Chapter 516 regulating consumer finance companies.

The chapter is reorganized into more logical units, obsolete language is eliminated and technical changes are made. Substantive changes are discussed below.

A. Present Situation:

Chapter 516, Florida Statutes requires persons wishing to make loans of less than \$5,000 and charge more than 18% interest to be licensed. Once licensed they are allowed to charge 30% on the first \$500, 24% on the second \$500 and 18% on the remainder. Licenses may loan up to \$25,000, but may charge these higher rates only on loans of less than \$5,000.

Applicants for licensure must have liquid assets of at least \$10,000 if they plan to locate in a community of fewer than 25,000 and \$25,000 if the community has a population in excess of 25,000. They must also demonstrate good character and general fitness. The department may examine the books and records of the licensee at any time it has cause and must do so at least annually. Examination fees are paid by the licensee and range from \$40 to \$250 depending on the loans outstanding at the time of the examination. The department may revoke or suspend a license for violations of the chapter and may enter cease and desist orders as necessary. It may also obtain injunctive relief and have a receiver appointed if one is needed to protect the public.

It is a second degree misdemeanor to charge excess interest, impose charges not authorized by the statute, split loans,

3 71

APR 28 1988

It is a second degree misdemeanor to charge excess interest, impose charges not authorized by the statute, split loans, operate without a license, change the place of business without approval or engage in false advertising.

The chapter contains a variety of protections for the borrower. Licensees are prohibited from taking a confession of judgment, power of attorney, assignment of wages, or security interest in land on loans of less than \$1,000, and from harassing debtors. They must also provide adequate disclosure.

The department is responsible for promoting and helping to establish consumer counseling services for individuals where a need has been established.

B. Effect of Proposed Changes:

The department is currently operating at a deficit and fee caps have been provided in the statute to allow the department to set fees commensurate with the cost of regulation.

License renewal has been changed to biennial and the entry requirements relating to liquid assets have been eliminated as such. It is now a disciplinary offense not to maintain liquid assets of \$25,000 at all times.

Disciplinary violations have been clarified and the disciplinary powers of the department have been expanded to include the ability to levy fines, to reprimand or place a licensee on probation or to place certain restrictions on a license. Criminal penalties have been increased to a first degree misdemeanor but now apply only to operating without a license or charging illegal or excess interest. The department is given authority to enforce Part III of Chapter 817 and Part II of Chapter 559, F.S., which deal with for-profit credit services or budget planning organizations, by using the civil disciplinary sanctions of Chapter 516.

Criminal penalties are increased to first degree misdemeanors but now cover only operating without a license, charging excess interest and taking a security interest in property when the loan is less than \$1,000.

Creditors will be allowed to charge the borrower the reasonable costs of repossessing, storing, and preparing collateral for sale if the creditor complies with the Uniform Commercial Code which requires that the repossession be peaceful and that the preparation and sale be commercially reasonable. They are presently able to levy these charges by interpretation of the department, but the statute does not clearly allow this practice.

II. ECONOMIC IMPACT:

A. Public:

The current fees are \$175 for the initial license and for annual renewal, \$200 for the application, and between \$40 and \$250 for the annual audits. In the bill, fee caps are \$650 for a biennial license; \$300 for the application; and \$200-\$425 for audits. The actual fees will be set by the department by rule. Language has been added to the bill which will require them to document the need for these increases. If these costs are passed on, the increase should be minimal and would compare favorably with the cost of deregulation. To some extent, the impact on the industry of the increase in fees may be offset by savings from biennial licensure.

B. Government:

All money collected by the division goes into the State Trust Fund. For fiscal year 1986-87, the division took in \$273,365 and expended \$363,182 for a deficit of \$90,192. Estimated revenue for fiscal year 1987-88 is \$303,360, and estimated expenditures are \$372,712 for a deficit of \$69,352. For 1988-89 the division estimates revenue of \$333,665 and expenditures of \$424,146 with a deficit of \$90,481. The fee increase and the savings realized from biennial licensure are expected to eliminate the deficit.

III. STATE COMPREHENSIVE PLAN IMPACT:

The bill does not conflict with the State Comprehensive Plan.

IV. COMMENTS:

Most of the substantive changes were requested by either the department or the industry. The department requested one major change which was not made: that it be allowed to shorten the process for enforcement of agency subpoenas by reducing what is essentially a three-step process under chapter 120 to a two-step process. In considering this proposal, staff checked Florida Statutes relating to other agencies which conduct similar investigations, or have similar enforcement duties. Section 895.06(5) requires the Attorney General's office, when civilly enforcing the RICO provisions to use the three-step procedure; ss. 626.989(3), 624.321, 626.8463 and 648.48(2), require the Commissioner of Insurance to use the three-step procedure when investigating insurance fraud, and other insurance investigations including those involving bail bondsmen. Section 455.223 requires the Department of Professional Regulation to use the regular process for all of the various professions and occupations it regulates and s.947.23(3) requires the parole and Probation Commission to follow this procedure when dealing with parole violations. Based on this information, the bill does not provide for the shortened process.

Page 4  
Bill #: PCB 11  
Date: 1-14-88

V. AMENDMENTS:

None.

VI. PREPARED BY: Joyce Davis, Staff Attorney

VII. STAFF DIRECTOR: Cliff Nilson *C*

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STORAGE NAME: h0658-f.rr  
Date: 6-8-88

HOUSE OF REPRESENTATIVES  
COMMITTEE ON REGULATORY REFORM  
FINAL STAFF ANALYSIS & ECONOMIC IMPACT STATEMENT

BILL #: HB 658

RELATING TO: Consumer Finance

SPONSOR(S): Committee on Regulatory Reform and Rep. Gutman

EFFECTIVE DATE: October 1, 1988

DATE BECAME LAW: 6-21-88

CHAPTER #: 88-342 Laws of Florida

COMPANION BILL(S): \_\_\_\_\_

OTHER COMMITTEES OF REFERENCE: (1) Commerce

(2) \_\_\_\_\_

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I. SUMMARY:

HB 658 continues the existence of Chapter 516 regulating consumer finance companies.

The bill eliminates obsolete language and makes technical changes. Substantive changes are discussed below.

A. Present Situation:

Chapter 516, Florida Statutes requires persons wishing to make loans of less than \$5,000 and charge more than 18% interest to be licensed. Once licensed they are allowed to charge 30% on the first \$500, 24% on the second \$500 and 18% on the remainder. Licenses may loan up to \$25,000, but may charge these higher rates only on loans of less than \$5,000.

Applicants for licensure must have liquid assets of at least \$10,000 if they plan to locate in a community of fewer than 25,000 and \$25,000 if the community has a population in excess of 25,000. They must also demonstrate good character and general fitness. The department may examine the books and records of the licensee at any time it has cause and must do so at least annually. Examination fees are paid by the licensee and range from \$40 to \$250 depending on the loans outstanding at the time of the examination. The department may revoke or suspend a license for violations of the chapter and may enter cease and desist orders as necessary. It may also obtain injunctive relief

and have a receiver appointed if one is needed to protect the public.

It is a second degree misdemeanor to charge excess interest, impose charges not authorized by the statute, split loans, operate without a license, change the place of business without approval or engage in false advertising.

The chapter contains a variety of protections for the borrower. Licensees are prohibited from taking a confession of judgment, power of attorney, assignment of wages, or security interest in land on loans of less than \$1,000, and from harassing debtors. They must also provide adequate disclosure.

The department is responsible for promoting and helping to establish consumer counseling services for individuals where a need has been established.

B. Effect of Proposed Changes:

The department is currently operating at a deficit and fees are increased to ensure the regulation pays for itself.

License renewal has been changed to biennial and the entry requirements relating to liquid assets have been eliminated as such. It is now a disciplinary offense not to maintain liquid assets of \$25,000 at all times.

Disciplinary violations have been clarified and the disciplinary powers of the department have been expanded to include the ability to levy fines, to reprimand or place a licensee on probation or to place certain restrictions on a license. Criminal penalties have been increased to a first degree misdemeanor and now apply to operating without a license, charging illegal or excess interest, dividing loans, operating more than one place of business under one license, changing the place of business without division permission, continuing to operate two businesses from the same location after the division issues a cease and desist order and false or fraudulent conduct. Violations of Part III of Chapter 817 and Part II of Chapter 559, F.S., which deal with for-profit credit services or budget planning organizations are violations of Chapter 516.

Creditors will be allowed to charge the borrower the reasonable costs of repossessing, storing, and preparing collateral for sale. They are presently able to levy these charges by interpretation of the department, but the statute does not clearly allow this practice.

II. ECONOMIC IMPACT:

A. Public:

The current fees are \$175 for the initial license and for annual renewal, \$200 for the application, and between \$40 and \$250 for the annual audits. In the bill, fees are \$550 for a biennial license; \$200 for the application; and \$100-\$325 for audits. The impact of these fee increases should be minimal since it is difficult to pass them onto the consumer because interest rates are capped by law.

B. Government:

All money collected by the division goes into the State Trust Fund. For fiscal year 1986-87, the division took in \$273,365 and expended \$363,182 for a deficit of \$90,192. Estimated revenue for fiscal year 1987-88 is \$303,360, and estimated expenditures are \$372,712 for a deficit of \$69,352. For 1988-89 the division estimates revenue of \$333,665 and expenditures of \$424,146 with a deficit of \$90,481. The fee increase and the savings realized from biennial licensure are expected to eliminate the deficit.

III. STATE COMPREHENSIVE PLAN IMPACT:

The bill does not conflict with the State Comprehensive Plan.

IV. COMMENTS:

Most of the substantive changes were requested by either the department or the industry. The department requested one major change which was not made: that it be allowed to shorten the process for enforcement of agency subpoenas by reducing what is essentially a three-step process under chapter 120 to a two-step process. In considering this proposal, staff checked Florida Statutes relating to other agencies which conduct similar investigations, or have similar enforcement duties. Section 895.06(5) requires the Attorney General's office, when civilly enforcing the RICO provisions to use the three-step procedure; ss. 626.989(3), 624.321, 626.8463 and 648.48(2), require the Commissioner of Insurance to use the three-step procedure when investigating insurance fraud, and other insurance investigations including those involving bail bondsmen. Section 455.223 requires the Department of Professional Regulation to use the regular process for all of the various professions and occupations it regulates and s.947.23(3) requires the parole and Probation Commission to follow this procedure when dealing with parole violations. Based on this information, the bill does not provide for the shortened process.

V. SIGNATURES:

SUBSTANTIVE COMMITTEE:  
Prepared by:

Joyce Davis

Staff Director:

Cliff Nilson 

**Journal**  
**of the**  
**S E N A T E**  
**State of Florida**

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**TWENTIETH REGULAR SESSION**  
**UNDER THE CONSTITUTION AS REVISED IN 1968**  
**APRIL 5 THROUGH JUNE 7, 1988**

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for so long as this subsection remains in effect. The liquidated damages apply only to the harm incurred by the home owner for having to relocate, and this provision shall not preclude incidental damages that might occur in relocating the mobile home;

2. Purchase the mobile home and all appurtenances thereto at a value to be determined as follows:

a. A mutually agreed upon appraiser will assess the book value of the mobile home and cash value of all appurtenances thereto and the market value of the mobile home as situated immediately prior to the notice of change in land use. The NADA Mobile Home/Manufactured Housing Appraisal Guide shall be used as a guide for determining such value.

b. The home owner will be entitled to the book value of the mobile home and cash value of the appurtenances.

c. The home owner will also be entitled to the following portion of the difference between the sum of the book value of the mobile home added to the cash value of the appurtenances and the market value of the mobile home. If the home owner has resided in the mobile home at the time of notice of land use change by the park owner:

0 years up to 5 years .	40 percent
5 years up to 15 years	60 percent
15 years up to 20 years	80 percent
20 years or more	100 percent

d. The home owner who has become a resident of the park within 0-5 years of the notice of change in land use shall be entitled, in addition to the compensation set forth above, to 60 percent of the difference between the book value and the market value of the mobile home.

e. Between the date of the appraisals referred to in this subsection and the delivery of title and possession of the mobile home and all appurtenances thereto to the park owner, the mobile home and the appurtenances shall be maintained by the home owner in the condition existing on the date of the appraisals, ordinary wear and tear excepted; or

3. Reach a mutually agreed to settlement between the park owner and the home owner.

(4) Any notice required by this section must be in writing, and the delivery of any such written notice required by this section shall begin on the date of postmark and be by certified or registered mail, return receipt requested, addressed to the mobile home owner at his last known address.

(Renumber subsequent section.)

**Point of Order**

Senator Margolis raised a point of order stating that pursuant to Rule 7.1 the amendment was not germane and therefore out of order.

On motion by Senator Barron, further consideration of CS for CS for SB 38 was deferred so that the chairman of the Committee on Rules and Calendar could advise the President on the point of order.

On motions by Senator Jennings, by two-thirds vote HB 658 was withdrawn from the Committees on Commerce and Appropriations.

On motion by Senator Jennings—

**HB 658**—A bill to be entitled An act relating to consumer finance; revising and restructuring chapter 516, F.S., the Florida Consumer Finance Act; amending s. 516.01, F.S.; providing definitions; amending s. 516.02, F.S., specifying that licensees are not liable when acting in reliance upon an order, declaratory statement or rule of the Department of Banking and Finance, amending s. 516.03, F.S.; providing that amendments do not affect preexisting contracts; amending s. 516.031, F.S.; providing for public records; amending s. 516.035, F.S., providing penalties; amending s. 516.05, F.S., specifying that a license is required to engage in the business of making consumer finance loans; providing a maximum interest rate, providing for lines of credit; amending s. 516.07, F.S.; providing for license application; providing for license fees and investigation fees, amending s. 516.08, F.S., providing for biennial licensing; providing for inactive status and reactivation fees; providing requirements with respect to a licensee's place of business; amending s. 516.09, F.S., providing grounds for denial of license or disciplinary action, specifying disci-

plinary actions, providing for fines, providing licensees' responsibility for employees, amending s. 516.11, F.S., providing for posting of license; amending s. 516.12, F.S.; providing for records; amending s. 516.13, F.S.; providing duties of licensees, amending s. 516.15, F.S.; providing monthly installment requirement, amending s. 516.16, F.S., providing requirements for credit property and credit life and disability insurance; amending s. 516.17, F.S., prohibiting certain actions by licensees, amending s. 516.18, F.S., providing application of law to purchase or assignment of wages; amending s. 516.19, F.S., providing consumer protection provisions; amending s. 516.20, F.S., providing limitations and maximum interest rates and finance charges, specifying allowable charges, providing for refinancing; amending s. 516.21, F.S., providing rate of interest upon default; amending s. 516.22, F.S., providing restrictions on borrower's indebtedness; amending s. 516.221, F.S., providing investigative powers of the department, providing for examination fees; providing for complaints; amending s. 516.23, F.S., providing for rules and copies of documents, amending s. 516.26, F.S.; providing for injunctions and appointment of receivers, providing for civil enforcement of laws relating to budget planning and to credit service organizations, amending s. 516.27, F.S.; providing duties of department regarding consumer credit counseling; repealing s. 516.231, F.S., relating to appointment of managers for licensed locations, s. 516.29, F.S., relating to suspension or revocation of license for unreasonable collection tactics, s. 516.30, F.S., relating to a transition period, s. 516.31, F.S., relating to consumer protection provisions, s. 516.32, F.S., relating to consumer credit counseling, s. 516.33, F.S., relating to public disclosures, s. 516.34, F.S., relating to transfer of certain previous licenses, s. 516.35, F.S., relating to credit insurance, s. 516.36, F.S., relating to monthly installment requirement, and s. 516.37, F.S., relating to transactions governed by the act, saving chapter 516, F.S., from Sunset repeal; providing for future review and repeal, providing an effective date.

—a companion measure, was substituted for CS for SB 141 and read the second time by title.

Senator Jennings moved the following amendments which were adopted:

**Amendment 1**—On pages 3-28, strike everything after the enacting clause and insert:

Section 1. Section 516.01, Florida Statutes, is amended to read:

(Substantial rewording of section. See s. 516.01, F.S., for present text.)

516.01 Definitions.—As used in this chapter, the term:

(1) "Consumer finance borrower" or "borrower" means a person who has incurred either direct or contingent liability to repay a consumer finance loan.

(2) "Consumer finance loan" means 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 \$5,000 or less for which the lender charges, contracts for, collects, or receives interest at a rate greater than 18 percent per annum.

(3) "Department" means the Department of Banking and Finance.

(4) "Interest" means the cost of obtaining a consumer finance loan and includes any profit or advantage of any kind whatsoever that a lender may charge, contract for, collect, receive, or in anywise obtain, including by means of any collateral sale, purchase, or agreement, as a condition for a consumer finance loan. Charges specifically permitted by this chapter, including commissions received for insurance written as permitted by this chapter, shall not be deemed interest.

(5) "License" means a permit issued under this chapter to make and collect loans in accordance with this chapter at a single place of business.

(6) "Licensee" means a person to whom a license is issued.

Section 2. Section 516.02, Florida Statutes, is amended to read:

(Substantial rewording of section. See s. 516.02, F.S., for present text.)

516.02 Loans; lines of credit; rate of interest; license —

(1) A person must not engage in the business of making consumer finance loans unless he is authorized under this chapter or other statute and unless he first obtains a license from the department.

(2)(a) A person who is engaged in the business of making loans of money, except as authorized by this chapter or other statutes of this state, may not directly or indirectly charge, contract for, or receive any interest or consideration greater than 18 percent per annum upon the loan, use, or forbearance of money, goods, or choses in action, or upon the loan or use of credit, of the amount or value of \$5,000 or less.

(b) The prohibition in paragraph (a) applies to any lender who, as security for any such loan, use, or forbearance of money, goods, or choses in action, or for any such loan or use of credit, makes a pretended purchase of property from any person and permits the owner or pledgor to retain the possession thereof or who by any device or pretense of charging for services or otherwise seeks to obtain a greater compensation than is authorized by this chapter.

(c) A loan for which a greater rate of interest or charge than is allowed by this chapter has been contracted for or received, wherever made, is not enforceable in this state, and each person who in any manner participates therein in this state is subject to this chapter. However, this paragraph does not apply to loans legally made to a resident of another state by a person within that state if that state has in effect a regulatory small loan or consumer finance law similar in principle to this chapter.

(3) A licensee may offer lines of credit not exceeding \$25,000 and may charge, contract for, and receive interest charges and other charges pursuant to s. 516 031, except that a licensee may not offer a credit card.

(4) This chapter does not apply to any person who does business under, and as permitted by, any law of this state or of the United States relating to banks, savings banks, trust companies, building and loan associations, credit unions, or industrial loan and investment companies or to any bona fide pawnbroking business transacted under a pawnbroker's license. A pawnbroker may not be licensed to transact business under this chapter.

Section 3 Subsection (1) of section 516 03, Florida Statutes, is amended to read

516 03 Application for license, fees, etc.—

(1) APPLICATION—Application for a license to make loans under this chapter shall be in writing, under oath, and in the form prescribed by the department, and shall contain the name, residence and business addresses of the applicant and, if the applicant is a copartnership or association, of every member thereof and, if a corporation, of each officer and director thereof, also the county and municipality with the street and number or approximate location where the business is to be conducted, and such further relevant information as the department may require. At the time of making such application the applicant shall pay to the department a biennial license fee of \$550 ~~the sum of \$175 as an annual license fee for a period terminating on the last day of the current calendar year, and a further fee of \$200 for investigating the application and the applicants. Applications, except for applications to renew or reactivate a license, must be accompanied by an investigation fee of \$200~~

Section 4 Section 516 031, Florida Statutes, is amended to read

516 031 Finance charge; maximum rates.—

(1) INTEREST RATES.—Every licensee may lend any sum of money not exceeding \$25,000. A licensee may not take a security interest secured by land on any loan less than \$1,000. The licensee may charge, contract for, and receive thereon interest charges as provided and authorized by this section. The maximum interest rate shall be 30 percent per annum, computed on the first \$500 of the principal amount as computed from time to time, 24 percent per annum on that part of the principal amount as computed from time to time exceeding \$500 and not exceeding \$1,000, and 18 percent per annum on that part of the principal amount as computed from time to time exceeding \$1,000 and not exceeding \$5,000, on loans exceeding \$5,000, the total interest charged on the entire principal amount shall not exceed 18 percent per annum simple interest. The original principal amount as used in this section shall be the same amount as the amount financed as defined by the Federal Truth-In-Lending Act and Regulation Z of the Board of Governors of the Federal Reserve System. In determining compliance with the statutory maximum interest and finance charges set forth herein, the computations utilized shall be simple interest and not add-on interest or any other computations.

(2) ANNUAL PERCENTAGE RATE UNDER FEDERAL TRUTH-IN-LENDING ACT—The annual percentage rate of finance charge

which may be contracted for and received under any loan contract made by a licensee under this chapter may equal, but not exceed, the annual percentage rate which must be computed and disclosed as required by the Federal Truth-In-Lending Act and Regulation Z of the Board of Governors of the Federal Reserve System. The maximum annual percentage rate of finance charge which may be contracted for and received is 12 times the maximum monthly rate and the maximum monthly rate shall be computed on the basis of one-twelfth of the annual rate for each full month. The department shall by regulation establish the rate for each day in a fraction of a month when the period for which the charge is computed is more or less than 1 month.

(3) OTHER CHARGES —

(a) In addition to the interest and insurance charges herein provided for, no further or other charges or amount whatsoever for any examination, service, brokerage fee, commission, or other thing or otherwise shall be directly or indirectly charged, contracted for, or received as a condition to the grant of a loan, except:

1. Charges paid for title insurance and the appraisal of real property offered as security when paid to a third party and supported by an actual expenditure,

2. Intangible personal property tax on the loan note or obligation when secured by a lien on real property,

3. The documentary excise tax and lawful fees, if any, actually and necessarily paid out by the licensee to any public officer for filing, recording, or releasing in any public office any instrument securing the loan, which fees may be collected when the loan is made or at any time thereafter;

4. The premium payable for any insurance in lieu of perfecting any security interest otherwise required by the licensee in connection with the loan, if the premium does not exceed the fees which would otherwise be payable, which premium may be collected when the loan is made or at any time thereafter; or

5. Actual and reasonable attorney's fees and court costs as determined by the court in which suit is filed, or

6. Actual and commercially and court costs, including the actual and reasonable expenses of repossession, storing, repairing and placing in condition for sale, and selling of any property pledged as security.

Any charges, including interest, in excess of the combined total of all charges authorized and permitted by this chapter constitute a violation of chapter 687 governing interest and usury, and the penalties of that chapter apply. In the event of a bona fide error, the licensee shall refund or credit the borrower with the amount of the overcharge immediately but within 20 days from the discovery of such error.

(b) Notwithstanding the provisions of paragraph (a), any lender of money who receives a check, draft, negotiable order of withdrawal, or like instrument drawn on a bank or other depository institution, which instrument is given by a borrower as full or partial repayment of a loan, may, if such instrument is not paid or is dishonored by such institution, make and collect from the borrower a bad check charge of not more than the greater of \$10 or an amount equal to the actual charge made to the lender by the depository institution for the return of the unpaid or dishonored instrument.

(4) DIVIDED LOANS —No licensee shall induce or permit any borrower to split up or divide any loan. No licensee shall induce or permit any person, or any husband and wife, jointly or severally, to become obligated to him, directly or contingently or both, under more than one contract of loan at the same time, for the purpose, or with the result, of obtaining a greater finance charge than would otherwise be permitted by this section.

(5) APPLICABILITY OF CH 79 274. As amended by chapter 79 592, Laws of Florida, chapter 79 274, Laws of Florida, which amended subsection (1)

(a) Shall apply only to loans, advances of credit, or lines of credit made on or subsequent to July 1, 1979, and to loans, advances of credit, or lines of credit made prior to that date if the lender has the legal right to require full payment or to adjust or modify the interest rate, by renewal, assumption, reaffirmation, contract, or otherwise, and

(b) Shall not be construed as diminishing the force and effect of any laws applying to loans, advances of credit, or lines of credit, other than to those mentioned in paragraph (a), completed prior to July 1, 1970

(5)(6) UNPAID INTEREST UPON REFINANCING.—If all or part of the consideration for a new loan contract is the unpaid principal balance of a prior loan with the licensee, the principal amount payable under the new loan contract may include not more than 60 days' unpaid interest accrued on the prior loan.

Section 5 Section 516.035, Florida Statutes, is amended to read

516 035 Rate of interest upon default.—In the event that any balance remains unpaid at the expiration of the scheduled maturity date of a loan, licensees may continue to charge interest on the unpaid balance at the rate provided for in s 516 031(1) for a period not to exceed 12 months. Thereafter, the interest shall not exceed the permissible rate of interest provided by chapter 687 10 percent per annum. When advances are made pursuant to a line of credit, a licensee may charge interest on the unpaid balance at the rate provided for in s. 516 031(1) for the period a balance remains unpaid.

Section 6 Section 516 05, Florida Statutes, is amended to read

(Substantial rewording of section. See s 516 05, FS, for present text )

516 05 License.—

(1) Upon the filing of an application for a license and payment of all applicable fees, the department shall, unless the application is to renew or reactivate an existing license, make an investigation of the facts concerning the applicant's proposed activities. If the department determines that a license should be granted, it shall issue the license for a period not to exceed 2 years. Biennial licensure periods and procedures for renewal of licenses shall be established by the rule of the department. If the department determines that grounds exist under this chapter for denial of an application other than an application to renew a license, it shall deny such application, return to the applicant the sum paid as a license fee, and retain the investigation fee

(2) A license that is not renewed at the end of the biennium established by the department shall automatically revert to inactive status. An inactive license may be reactivated upon submission of a completed reactivation application, payment of the biennial license fee, and payment of a reactivation fee which shall equal the biennial license fee. A license expires on the date at which it has been inactive for 6 months.

(3) Only one place of business for the purpose of making loans under this chapter may be maintained under one license, but the department may issue additional licenses to a licensee upon compliance with all the provisions of this chapter governing issuance of a single license.

(4) A licensee may not change the place of business maintained under a license without prior approval of the department. When a licensee wishes to change a place of business, the licensee shall give written notice thereof to the department, and, if the department finds that the proposed location is reasonably accessible to borrowers under existing loan contracts, it shall permit the change and shall amend the license accordingly. If the department does not so find, it shall enter an order denying removal of the business to the requested location.

(5) A licensee may conduct the business of making loans under this chapter within a place of business in which other business is solicited or engaged in, unless the department shall find that the conduct of such other business by the licensee results in an evasion of this chapter. Upon such finding, the department shall order the licensee to desist from such evasion, provided, however, that no license shall be granted to or renewed for any person or organization engaged in the pawnbroker business.

(6) If any person purchases substantially all of the assets of any existing licensed place of business, the purchaser shall give immediate notice thereof to the department and shall be granted a 90-day temporary license for the place of business within 10 days after the department's receipt of an application for a permanent license. Issuance of a temporary license for a place of business nullifies the existing license for the place of business, and the temporary licensee is subject to any disciplinary action provided for by this chapter.

(7) Licenses are not transferable or assignable. A licensee may invalidate any license by delivering it to the department with a written notice

of the delivery, but such delivery does not affect any civil or criminal liability or the authority to enforce this chapter for acts committed in violation thereof.

(8) The department may refuse to process an initial application for a license if the applicant or any person with power to direct the management or policies of the applicant's business is the subject of a pending criminal prosecution in any jurisdiction, until conclusion of such criminal prosecution.

Section 7. Section 516.07, Florida Statutes, is amended to read

(Substantial rewording of section. See s 516 07, FS, for present text )

516.07 Grounds for denial of license or for disciplinary action —

(1) The following acts are violations of this chapter, and constitute grounds for denial of an application for a license to make consumer finance loans and grounds for any of the disciplinary actions specified in subsection (2)

(a) A material misstatement of fact in an application for a license;

(b) Failure to maintain liquid assets of at least \$25,000 at all times for the operation of business at a licensed location or proposed location,

(c) Failure to demonstrate financial responsibility, experience, character, or general fitness, such as to command the confidence of the public and to warrant the belief that the business operated at the licensed or proposed location is lawful, honest, fair, efficient, and within the purposes of this chapter.

(d) The violation, either knowingly or without the exercise of due care, of any provision of this chapter, any rule or order adopted under this chapter, or any written agreement entered into with the department;

(e) Any act of fraud, misrepresentation, or deceit, regardless of reliance by or damage to a borrower, or any illegal activity, where such acts are in connection with a loan under this chapter. Such acts include but are not limited to:

Wilful imposition of illegal or excessive charges, or

2. Misrepresentation, circumvention, or concealment of any matter required to be stated or furnished to a borrower;

(f) The use of unreasonable collection practices or of false, deceptive, or misleading advertising, where such acts are in connection with the operation of a business to make consumer finance loans,

(g) Any violation of part III of chapter 817 or part II of chapter 559,

(h) Failure to maintain, preserve, and keep available for examination, all books, accounts, or other documents required by this chapter, by any rule or order adopted under this chapter, or by any agreement entered into with the department, or

(i) Refusal to permit inspection of books and records in an investigation or examination by the department or refusal to comply with a subpoena issued by the department.

(2) Upon a finding by the department that any person has committed any of the acts set forth in subsection (1), the department may enter an order taking one or more of the following actions:

(a) Denying an application for a license,

(b) Revoking or suspending a license previously granted;

(c) Placing a licensee or an applicant for a license on probation for a period of time and subject to such conditions as the department may specify,

(d) Placing permanent restrictions or conditions upon issuance or maintenance of a license,

(e) Issuing a reprimand, or

(f) Imposing an administrative fine not to exceed \$1,000 for each such act.

(3) The department may take any of the actions specified in subsection (2) against any partnership, corporation, or association, if the department finds that any of the acts set forth in subsection (1) have been committed by any member of the partnership, any officer or direc-

tor of the corporation or association, or any person with power to direct the management or policies of the partnership, corporation, or association.

(4) A licensee is responsible for the acts of the licensee's employee or agent if, with knowledge of such acts, the licensee retained profits, benefits, or advantages accruing from such acts or ratified the conduct of the employee or agent as a matter of law or fact.

(5) Action taken under this section against a licensee does not impair the obligation of any lawful contract between the licensee and a borrower. This chapter does not prevent a licensee from lending to residents of any part of this state or any other state or country or prohibit the making of loans by mail.

Section 8. Section 516.11, Florida Statutes, is amended to read:

*(Substantial rewording of section See s 516 11, F S , for present text )*

516 11 Investigations and complaints —

(1) The department shall, at intermittent periods, make such investigations and examinations of any licensee or other person as it deems necessary to determine compliance with this chapter. For such purposes, it may examine the books, accounts, records, and other documents or matters of any licensee or other person and compel the production of all relevant books, records, and other documents and materials relative to an examination or investigation. Examinations of a licensee may not be made more often than once a year unless the department has reason to believe the licensee is not complying with this chapter. Each licensee shall pay to the department an examination fee based upon the amount of outstanding loans due the licensee at the time of the examination, as follows:

Amount Outstanding	Examination Fee
From \$0 to \$50,000 .....	\$100
From \$50,000.01 to \$100,000 .....	125
From \$100,000.01 to \$250,000 .....	150
From \$250,000.01 to \$500,000 .....	200
From \$500,000.01 and over .....	325

(2) Any person who has reason to believe that this chapter has been or will be violated may file a written complaint with the department.

Section 9. Section 516.19, Florida Statutes, is amended to read:

*(Substantial rewording of section See s 516 19, F S , for present text )*

516 19 Penalties —Any person who violates any of the provisions of s 516 02, s. 516.031, s. 516.05(3), s. 516.05(4), s 516 05(5), or s. 516 07(1)(e) is guilty of a misdemeanor of the first degree, punishable as provided in s 775.082, s 775 083, or s. 775 084.

Section 10 Section 516 21, Florida Statutes, is amended to read:

516.21 Restriction of borrower's indebtedness —

(1) No licensee shall directly or indirectly charge, contract for, or receive any interest, discount, or consideration greater than 18 percent per annum upon any loan, or upon any part or all of any aggregate loan indebtedness of the same borrower, of the amount of more than \$5,000. The foregoing prohibition shall also apply to any licensee who permits any person, as borrower or as endorser, guarantor, or surety for any borrower, or otherwise, or any husband and wife, jointly or severally, to owe directly or contingently or both to the licensee at any time a sum of more than \$5,000 for principal. However, if the proceeds of any loan of \$5,000 or less are used to discharge a preexisting debt of the borrower for goods or services owed directly to the person who provided such goods or services, the licensee may accept from such person a guaranty of payment of the principal of such loan with interest at a rate not exceeding 18 percent per annum, and the acceptance of one or more such guaranties in any aggregate amount shall not affect the rights of such licensee to make the charges against the primary borrower authorized by s 516 031, nor shall the limitation apply to the isolated acquisition directly or indirectly by purchase or by discount of bona fide obligations of a borrower. However, in the event a licensee makes a bona fide purchase of substantially all of the loans made under this chapter from another licensee or other lender not affiliated with the purchaser and such licensee or other lender has an existing loan outstanding to one or more of the borrowers whose loans are purchased, such licensee making such purchase shall be entitled to liquidate and collect the balances due on such loans, including all lawful charges and interest at the rates or amounts agreed upon in such loan contracts

(2) ~~As amended by chapter 79-592, Laws of Florida, chapter 79-274, Laws of Florida, which amended subsection (1)~~

(a) ~~Shall apply only to loans, advances of credit, or lines of credit made on or subsequent to July 1, 1979, and to loans, advances of credit, or lines of credit made prior to that date if the lender has the legal right to require full payment or to adjust or modify the interest rate, by renewal, assumption, reaffirmation, contract, or otherwise; and~~

(b) ~~Shall not be construed as diminishing the force and effect of any laws applying to loans, advances of credit, or lines of credit, other than to those mentioned in paragraph (a), completed prior to July 1, 1979.~~

Section 11. Section 516.23, Florida Statutes, is amended to read:

*(Substantial rewording of section See s 516 23, F.S , for present text )*

516.23 Subpoenas, enforcement actions; rules.—

(1) The department may issue and serve subpoenas to compel the attendance of witnesses and the production of documents, papers, books, records, and other evidence before it in any matter pertaining to this chapter. The department may administer oaths and affirmations to any person whose testimony is required. If any person refuses to testify, produce books, records, and documents, or otherwise refuses to obey a subpoena issued under this section, the department may enforce the subpoena in the same manner as subpoenas issued under the Administrative Procedure Act are enforced. Witnesses are entitled to the same fees and mileage as they are entitled to by law for attending as witnesses in the circuit court, unless such examination or investigation is held at the place of business or residence of the witness.

(2) In addition to any other powers conferred upon it to enforce or administer this chapter, the department may—

(a) Bring an action in any court of competent jurisdiction to enforce or administer this chapter, any rule or order adopted under this chapter, or any written agreement entered into with the department. In such action, the department may seek any relief at law or equity including temporary or permanent injunction, appointment of a receiver or administrator, or an order of restitution.

(b) Issue and serve upon a person an order requiring such person to cease and desist and take corrective action whenever the department finds that such person is violating, has violated, or is about to violate any provision of this chapter, any rule or order adopted under this chapter, or any written agreement entered into with the department.

(c) Impose and collect an administrative fine against any person found to have violated any provisions of this chapter, any rule or order adopted under this chapter, or any written agreement entered into with the department, in an amount not to exceed \$1,000 for each violation.

(3) The department may adopt rules and perform such other acts as are necessary for the proper administration, enforcement, and interpretation of this chapter.

Section 12 Section 516 26, Florida Statutes, is amended to read

516 26 Purchase or assignment of wages, salaries, etc.—The payment of \$25,000 ~~\$600~~ or less in money, credit, goods, or things in action as consideration for any sale or assignment of or order for the payment of wages, salary, commissions, or other compensation for services, whether earned or to be earned, shall, for the purposes of regulation under, and the enforcement and interpretation of, any law, civil or criminal, relating to loans, interest charges, or usury, be deemed a loan secured by such assignment, and the amount by which such assigned compensation exceeds the amount of such consideration actually paid shall, for the purpose of regulation under, and the interpretation and enforcement of, such law, be deemed interest upon such loan from the date of such payment until the date such compensation is payable. Each such transaction shall be governed by and subject in all respects to all provisions of law relating to loans, interest, charges, usury, and to the same extent as if it had been in form a loan of the sum paid for the assignment.

Section 13 Subsection (1) of section 516.31, Florida Statutes, is amended to read

516 31 Consumer protection, certain negotiable instruments restricted, assigns subject to defenses, limitation on deficiency claims; cross collateral —



(1) SCOPE—This section applies ~~shall apply~~ to every consumer finance loan or other contract authorized by this chapter ~~credit transaction and contract~~ in which any form of credit is extended to an individual to purchase or obtain goods or services for use primarily for personal, family, or household purposes.

Section 14. Section 516 35, Florida Statutes, is amended to read

516.35 Credit insurance must comply with Credit Insurance Act.—

(1) Tangible property offered as security may be reasonably insured against loss for a reasonable term, considering the circumstances of the loan. If such insurance is sold at standard rates through a person duly licensed by the Department of Insurance and if the policy is payable to the borrower or any member of his family, it shall not be deemed to be a collateral sale, purchase, or agreement even though a customary mortgagee clause is attached or the licensee is a coassured

(2) Credit property, credit life, and disability insurance may be ~~which is~~ provided at the expense of the borrowers and must be provided only under a group or individual insurance policy which complies with ss 627 676-627 684 and lawful regulations thereunder. The cost of such ~~credit life and disability insurance which is paid by borrowers~~ shall be deducted from the principal amount of the loan and shall be disclosed on the statement required by s. 516 15(1) or on a combined note and disclosure statement required by the federal Truth In Lending Act

Section 15. Sections 516 09, 516 13, 516.18, 516.20, 516 231, 516 29, 516 30, 516.34, and 516 37, Florida Statutes, are hereby repealed

Section 16 Notwithstanding the provisions of chapter 81-318, Laws of Florida, sections 516 001, 516 01, 516.02, 516.03, 516.031, 516 035, 516 05, 516.07, 516 08, 516 11, 516 12, 516.15, 516 16, 516 17, 516 19, 516.21, 516 22, 516.221, 516.23, 516.26, 516 27, 516 31, 516 32, 516 33, 516.35, and 516.36, Florida Statutes, shall not stand repealed on October 1, 1988, as scheduled by such law, but said sections, as amended, are hereby revived and readopted.

Section 17. Sections 516.001, 516 01, 516 02, 516 03, 516 031, 516 035, 516.05, 516.07, 516.08, 516 11, 516.12, 516.15, 516.16, 516 17, 516.19, 516 21, 516 22, 516 221, 516 23, 516 26, 516 27, 516 31, 516.32, 516 33, 516 35, and 516.36, Florida Statutes, are repealed effective October 1, 1988, and shall be reviewed by the Legislature prior to that date pursuant to section 11.61, Florida Statutes

Section 18. This act shall take effect October 1, 1988

**Amendment 2**—In title, on pages 1-3, strike everything before the enacting clause and insert: A bill to be entitled An act relating to consumer finance, amending s 516 01, F S., providing definitions, amending s. 516.02, F.S., requiring a license from the Department of Banking and Finance to engage in the business of making consumer finance loans, providing certain limitations on credit amounts and interest rates, excluding certain persons from regulation under ch. 516, F.S.; amending s 516.03, F.S., providing a biennial licensing period, increasing the license fee; amending s. 516 031, F S., providing clarifying language; deleting obsolete language, amending s 516 035, F S.; increasing the rate of interest which may be charged upon default of a loan; amending s. 516 05, F.S.; revising licensing requirements; providing for an inactive license, requiring department approval prior to a change in place of business, providing for temporary licensing; amending s. 516.07, F.S., providing grounds for denial of a license; providing grounds for disciplinary action; amending s 516.11, F.S.; providing for investigations and examinations by the department; providing examination fees, amending s. 516 19, F S.; providing a penalty; amending s. 516 21, F S.; deleting obsolete language; amending s. 516.23, F S.; providing for enforcement, amending s 516.26, F S., providing conforming language, amending s. 516.31, F.S.; providing for applicability; amending s 516 35, F.S., providing for certain types of credit insurance; repealing ss. 516.09, 516 13, 516.18, 516.20, 516.231, 516 29, 516 30, 516.34, 516.37, F S., relating to the regulation of consumer finance loans, saving ch. 516, F S., from Sunset repeal and providing for future review and repeal; providing an effective date.

On motion by Senator Jennings, by two-thirds vote HB 658 as amended was read the third time by title, passed and certified to the House. The vote on passage was:

Yeas—29

Beard	Girardeau	Kirkpatrick	Scott
Brown	Gordon	Lehtinen	Thomas
Childers, D	Grant	Maichon	Thurman
Childers, W D	Grizzle	McPherson	Weinstock
Crenshaw	Hollingsworth	Meek	Woodson
Deratany	Jenne	Myers	
Dudley	Jennings	Peterson	
Frank	Johnson	Ros-Lehtinen	

Nays—None

Vote after roll call.

Yea—Crawford, Hair, Stuart

On motions by Senator Thomas, by two-thirds vote HB 730 was withdrawn from the Committees on Agriculture and Appropriations

On motion by Senator Thomas—

**HB 730**—A bill to be entitled An act relating to quarter horse racing, creating s. 570 541, F S.; creating the Racing Quarter Horse Advisory Council within the Department of Agriculture and Consumer Services, providing legislative findings; providing for membership of the council, providing for terms of members, providing for meetings of the council, providing for annual election of a chairman and vice chairman; providing for a council secretary; providing recordkeeping requirements; providing for reimbursement of council members for per diem and travel expenses, providing for duties of the council; providing for the adoption of rules by the Department of Agriculture and Consumer Services, providing for future review and repeal; repealing s 550.265, F.S., relating to the creation of the Quarter Horse Advisory Council; providing an effective date

—a companion measure, was substituted for SB 959 and read the second time by title. On motion by Senator Thomas, by two-thirds vote HB 730 was read the third time by title, passed and certified to the House. The vote on passage was:

Yeas—26

Beard	Girardeau	Langley	Stuart
Brown	Grant	Lehtinen	Thomas
Childers, W D	Grizzle	Margolis	Thurman
Crenshaw	Hollingsworth	McPherson	Weinstock
Deratany	Jenne	Myers	Woodson
Dudley	Jennings	Peterson	
Frank	Johnson	Ros-Lehtinen	

Nays—None

Vote after roll call

Yea—Crawford, Hair, Hill, Kirkpatrick

On motion by Senator Deratany, by two-thirds vote HB 350 was withdrawn from the Committee on Finance, Taxation and Claims

On motion by Senator Deratany—

**HB 350**—A bill to be entitled An act relating to tax records, amending s. 192 105, F S., which provides an exemption from public records requirements for certain federal tax information, saving such exemption from repeal; providing for future review and repeal, providing an effective date

—a companion measure, was substituted for CS for SB 1050 and read the second time by title.

Senator Deratany moved the following amendment:

**Amendment 1**—On page 1, lines 11-24, strike everything after the enacting clause and insert

Section 1 Section 192.105, Florida Statutes, is amended to read:

192.105 Unlawful disclosure of federal tax information; penalty.—

(1) Notwithstanding s 119 14, it is unlawful for any person to divulge or make known federal tax information obtained pursuant to 26 U.S.C s 6103, except in accordance with a proper judicial order or as otherwise provided by law for use in the administration of the tax laws of this state, and such information is exempt from the requirements of s 119 07(1). This exemption is subject to the Open Government Sunset Review Act in accordance with s 119 14

## SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

<u>ANALYST</u>	<u>STAFF DIRECTOR</u>	<u>REFERENCE</u>	<u>ACTION</u>
1. <u>Jones</u>	<u>Fort</u>	1. <u>COM</u>	<u>Fav/CS</u>
2. <u>Barrett</u>	<u>Smith</u>	2. <u>AP</u>	<u>Favorable</u>
3. _____	_____	3. _____	_____
4. _____	_____	4. _____	_____

## SUBJECT:

Sunset Review of chapter 516,  
F.S., Consumer Finance

## BILL NO. AND SPONSOR:

CS/SB 141 by  
Commerce Committee

I. SUMMARY:

## A. Present Situation:

Chapter 516, F.S., "Florida Consumer Finance Act," regulates small loan-making in the state of Florida. The term "small loan" refers to loans under \$25,000 which are made by entities licensed under this chapter and who are not state or federal chartered banks, savings banks, trust companies, building and loan associations, credit unions, or industrial loan and investment companies. Pawnbrokers and pawnbroking businesses are also excluded from the provisions of this act.

Persons who wish to engage in the business of small loan-making must be licensed by the Department of Banking and Finance. Applicants for a license are subject to licensing fees (\$200) and an investigation to determine if the applicant has the necessary financial wherewithal, experience, character, and general fitness to operate a small loan business. Once licensed, licensees are subject to annual fees (\$175) and an annual examination (the examination fee varies depending upon the assets of the business) to ensure their continued operation is not detrimental to the public welfare.

Chapter 516, F.S., also contains certain statutory restrictions designed to protect the consumer. An example of such consumer protection is a statutorily mandated maximum rate of interest for small loans. Licensees who violate the provisions of this chapter are guilty of a second degree misdemeanor and are subject to various departmental sanctions.

Chapter 516, F.S., is scheduled for repeal on October 1, 1988, with a review scheduled prior to that date pursuant to the Regulatory Sunset Act (ch. 81-318, L.O.F.).

## B. Effect of Proposed Changes:

For ease of understanding, a section-by-section analysis is provided below:

Section 1: Section 516.01, F.S., is substantially reworded to include the definitions of "interest," "consumer finance borrower," and "consumer finance loan." The definition of interest remains generally the same and is merely transferred from s. 516.20, F.S. A consumer finance borrower is defined to include any person who is either directly or contingently liable to repay a consumer finance loan, while a consumer finance loan is a loan of \$5,000 or less which has an interest rate of greater than 18 percent per annum.

Section 2: Section 516.02, F.S., is substantially reworded and requires that a person be licensed before engaging in the business of consumer finance. This section also prohibits the receipt of any interest or consideration in excess of 18

percent per annum "except where authorized by this chapter or other statutes of this state."

A loan with an interest rate of greater than 18 percent per annum is unenforceable unless the loan was legally made to a "resident of another state by a person in that state." An additional requirement, which must be met for such a loan to be enforceable, is that the state in which the loan takes place must have a consumer finance law that is similar to the Florida Consumer Finance Act.

Section 3: This section changes the present annual license fee of \$175 to a biennial license fee of \$550.

Section 4: This section allows for the licensee to recover the actual and commercially reasonable expenses associated with preparing and selling any property pledged as security. The section also eliminates certain obsolete language contained within s. 516.031, F.S., and prohibits a licensee from taking a security interest on homestead property on any loan less than \$2,500.

Section 5: The allowable rate of interest, which may be charged when an unpaid balance exists past the maturity date of the loan, is increased from 10 percent to 18 percent. The rate of interest is increased to reconcile it with ch. 687, F.S., (Usury law). Presently, ch. 687, F.S., provides for an interest rate of 18 percent.

Section 6: This section authorizes the department to make an investigation of the facts concerning an applicant's proposed activities. If, after the investigation, the department determines that a license should be issued, the license will be "for a period not to exceed 2 years."

Additionally, the department is granted the authority to refuse to process an application "if the applicant or any person with power to direct the management or policies of the applicant . . . is the subject of a pending criminal prosecution . . . ."

An inactive status is also created for a license which is not timely renewed. An inactive license may be reactivated. However, if a license is not reactivated within 6 months of becoming inactive it will expire.

Section 7: This section expands and clarifies the violations upon which the department may take action against a licensee. In the case of fraud, misrepresentation, or gross negligence, the department may take action against the licensee "regardless of reliance by or damage to the borrower." In addition, the department is authorized to act against a licensee when the licensee fails to maintain liquid assets of at least \$25,000.

This section also increases the department's alternatives in addressing violations of ch. 516, F.S. Pursuant to this section, the department could employ any of the following penalties:

1. denying an application;
2. revoking or suspending a license;
3. placing a licensee on probation;
4. placing permanent restrictions or conditions on the issuance or maintenance of a license;
5. issuing a reprimand; or
6. imposing a fine of less than \$1,000.

The department may impose these penalties upon a business entity whenever a violation is committed by "a person with power to direct the management or policies" of the entity. A licensee is also responsible for the violations of employees and agents if the licensee obtained benefits from the violations or such violations were performed with the licensee's knowledge. Finally, this section makes any violation of part III of chapter 817, F.S., or part II of chapter 559, F.S., a violation of ch. 516, F.S.

Section 8: The department is required, at intermittent periods, to undertake examinations and investigations to ensure compliance with ch. 516, F.S. To accomplish this, the department has the power to examine and compel the production of all documents and persons which are needed to conclude an investigation. Generally, examinations will only be performed on an annual basis. However, an examination may be performed more frequently if there is reason to believe a licensee "is not complying with the provisions of this chapter." This section also provides for an increase in the examination fee.

Section 9: The penalty for a violation of ch. 516 is changed to a first degree misdemeanor.

Section 10: Obsolete language contained within s. 516.21, F.S., is removed.

Section 11: This section permits the department to issue subpoenas and states that "[c]osts incurred by the department to obtain an order granting . . . its petition shall be taxed against the subpoenaed person . . ." In addition, the section confers upon the department the authority to:

- (1) bring a court action to enforce this provision or any written agreement entered into with the department;
- (2) issue and serve cease and desist orders when one is violating or is about to violate this provision or a written agreement with the department; and
- (3) impose administrative fines of \$1,000 or less for violations of this provision or any written agreement entered into with the department.

Section 12: This section increases the loan amounts referred to in s. 516.26, F.S., to the current statutory limit of \$25,000.

Section 13: This section explicitly limits the consumer protection provisions of s. 516.31, F.S., to ch. 516, F.S. Presently, s. 516.31, F.S., is implicitly limited by the provisions of s. 516.37, F.S. Section 516.37 is repealed by section 15 of the bill.

Section 14: This section explicitly clarifies a licensee's ability to provide the borrower with credit property insurance.

Section 15: Provides for the repeal of ss. 516.09, 516.12, 516.18, 516.20, 516.231, 516.29, 516.30, 516.34, and 516.37, F.S.

Section 16: This section readopts ch. 516, F.S.

Section 17: This section provides for future review and repeal pursuant to s. 11.61, F.S., of ch. 516, F.S.

Section 18: Provides for an effective date of October 1, 1988.

**II. ECONOMIC IMPACT AND FISCAL NOTE:****A. Public:**

Generally, the only cost to the public for administering ch. 516, F.S., is indirect. This indirect cost results from the economic assumption that the industry will eventually pass, at least a portion of, the cost of ch. 516, F.S., to the borrower.

**B. Government:**

Financial data, provided by the division and covering fiscal years 1980 to 1987, indicate that the present fee structure is insufficient to sustain the required administrative costs of ch. 516, F.S. Within the period examined, costs of administering the chapter were greater than fee collections by an average of \$41,436 per year. Since it is the department's intent for ch. 516, F.S., to be financially self-sufficient, the deficits will have to be rectified by either an increase in fees or a reduction in administrative costs. This bill will provide for an average annual fee increase of \$150 per license based upon 650 licenses, for a total increase in annual trust fund revenue of \$97,500.

The change from an annual to a biennial license period will have certain financial benefits to the department. First, the department will recognize certain administrative savings due to a longer licensing period. In addition, the department will also receive an increase in interest income due to license fees being received sooner. However, at this date the overall monetary impact due to these changes is indeterminable.

**III. COMMENTS:**

CS for SB 141 addresses an ambiguity within ch. 516, F.S., which has resulted in litigation. The litigation generally concerns whether ch. 516, F.S., applies to loans in excess of \$5,000 when an interest rate of less than 18 percent is charged. CS for SB 141, in its present form, would ordinarily not be applicable to such loans.

Presently, ch. 687, F.S., (Usury law) allows an unlicensed person to engage in loan making as long as the interest rate charged is less than 18 percent. Many ch. 516 licensees use ch. 687, F.S., and make loans which do not come under the restrictions of ch. 516, F.S. A ch. 516 licensee will often create a separate but in-house subsidiary to handle such non-consumer finance loans. Thus, the consumer finance licensee is able to make two types of loans out of the same place of business. The rationale for permitting such transactions is that ch. 516, F.S., should only be applicable in those circumstances where an interest rate of greater than 18 percent is employed. The ch. 516 licensee is, thus, allowed to charge an interest rate in excess of 18 percent only where the consumer is provided the additional protections of ch. 516, F.S.

This act shall take effect October 1, 1988.

**IV. AMENDMENTS:**

None.

By the Committee on Regulatory Reform and Representative  
Ostrau

1 A bill to be entitled

2 An act relating to consumer finance; revising  
3 and restructuring chapter 516, F.S., the  
4 Florida Consumer Finance Act; amending s.  
5 516.01, F.S.; providing definitions, amending s.  
6 516.02, F.S.; specifying that licensees are not  
7 liable when acting in reliance upon an order,  
8 declaratory statement or rule of the Department  
9 of Banking and Finance; amending s. 516.03,  
10 F.S.; providing that amendments do not affect  
11 preexisting contracts, amending s. 516.031,  
12 F.S.; providing for public records; amending s.  
13 516.035, F.S.; providing penalties; amending s.  
4 516.05, F.S.; specifying that a license is  
5 required to engage in the business of making  
16 consumer finance loans; providing a maximum  
17 interest rate, providing for lines of credit;  
18 amending s. 516.07, F.S.; providing for license  
19 application; providing for license fees and  
20 investigation fees, amending s. 516.08, F.S.;  
21 providing for biennial licensing, providing for  
22 inactive status and reactivation fees;  
23 providing requirements with respect to a  
24 licensee's place of business; amending s.  
25 516.09, F.S.; providing grounds for denial of  
26 license or disciplinary action; specifying  
27 disciplinary actions; providing for fines,  
8 providing licensees' responsibility for  
9 employees; amending s. 516.11, F.S.; providing  
30 for posting of license; amending s. 516.12,  
31 F.S., providing for records, amending s.

1 516.13, F.S.; providing duties of licensees;  
2 amending s. 516.15, F.S.; providing monthly  
3 installment requirement; amending s. 516.16,  
4 F.S.; providing requirements for credit  
5 property and credit life and disability  
6 insurance; amending s. 516.17, F.S.;  
7 prohibiting certain actions by licensees;  
8 amending s. 516.18, F.S.; providing application  
9 of law to purchase or assignment of wages;  
10 amending s. 516.19, F.S.; providing consumer  
11 protection provisions; amending s. 516.20,  
12 F.S.; providing limitations and maximum  
13 interest rates and finance charges; specifying  
14 allowable charges; providing for refinancing;  
15 amending s. 516.21, F.S.; providing rate of  
16 interest upon default; amending s. 516.22,  
17 F.S.; providing restrictions on borrower's  
18 indebtedness; amending s. 516.221, F.S.;  
19 providing investigative powers of the  
20 department; providing for examination fees;  
21 providing for complaints; amending s. 516.23,  
22 F.S.; providing for rules and copies of  
23 documents; amending s. 516.26, F.S.; providing  
24 for injunctions and appointment of receivers;  
25 providing for civil enforcement of laws  
26 relating to budget planning and to credit  
27 service organizations; amending s. 516.27,  
28 F.S.; providing duties of department regarding  
29 consumer credit counseling; repealing s.  
30 516.231, F.S., relating to appointment of  
31 managers for licensed locations, s. 516.29,

1 F.S., relating to suspension or revocation of  
2 license for unreasonable collection tactics, s.  
3 516.30, F.S., relating to a transition period,  
4 s. 516.31, F.S., relating to consumer  
5 protection provisions, s. 516.32, F.S.,  
6 relating to consumer credit counseling, s.  
7 516.33, F.S., relating to public disclosures,  
8 s. 516.34, F.S., relating to transfer of  
9 certain previous licenses, s. 516.35, F.S.,  
10 relating to credit insurance, s. 516.36, F.S.,  
11 relating to monthly installment requirement,  
12 and s. 516.37, F.S., relating to transactions  
13 governed by the act; saving chapter 516, F.S.,  
14 from Sunset repeal, providing for future review  
15 and repeal; providing an effective date.  
16

17 Be It Enacted by the Legislature of the State of Florida:

18  
19 Section 1. Section 516.01, Florida Statutes, is  
20 amended to read:

21 516.01 Definitions; exemptions, exclusions ~~businesses~~  
22 ~~excluded.~~--

23 (1) DEFINITIONS.--As used in this chapter:

24 (a) "Consumer finance borrower" or "borrower" means a  
25 person who has incurred either direct or contingent liability  
26 to repay a consumer finance loan. ~~The word "person" shall~~  
27 ~~include individuals, partnerships, associations, trusts,~~  
28 ~~corporations, and any other legal entities;~~

29 (b) ~~The word "License" means shall mean~~ a permit  
30 issued under authority of this chapter to make and collect  
31



1 loans in accordance with the provisions of this chapter at a  
2 single place of business.†

3 (c) The word "Licensee" means shall-mean a person to  
4 whom one or more licenses have been issued.†

5 (d) The word "Department" means shall-mean the  
6 Department of Banking and Finance.†

7 (e) "Consumer finance loan" means an advance of money,  
8 credit, goods, or choses in action, including, except as  
9 otherwise specifically indicated, provision of a line of  
10 credit, in the amount or having the value of \$5,000 or less,  
11 for which the lender charges, contracts for, collects, or  
12 receives interest at a rate greater than 18 percent per annum.  
13 The word "loan" shall include a line of credit, except where  
14 otherwise indicated.

15 (f) "Interest" means the cost of obtaining a consumer  
16 finance loan and includes any profit or advantage of any kind  
17 that a lender may charge, contract for, collect, receive, or  
18 in any way obtain, including by means of any collateral sale,  
19 purchase, or agreement as a condition for a consumer finance  
20 loan. Charges specifically permitted by this chapter,  
21 including commissions received for insurance written as  
22 permitted by this chapter, shall not be deemed interest.

23 (2) EXEMPTIONS; EXCLUSIONS BUSINESSES-EXCLUDED.--

24 (a) Except as provided in s. 687.12, this chapter  
25 shall not apply to any person doing business under, and as  
26 permitted by, any law of this state or of the United States  
27 relating to banks, savings banks, trust companies, building  
28 and loan associations, credit unions, or industrial loan and  
29 investment companies or to any bona fide pawnbroking business  
30 transacted under a pawnbroker's license.

1           **(b)** No pawnbroker may be licensed to transact business  
2 under this chapter

3           Section 2. Section 516.02, Florida Statutes, is  
4 amended to read:

5           (Substantial rewording of section. See  
6 s. 516 02, F.S., for present text )

7           516.02 Liability when acting upon department's order,  
8 declaratory statement, or rule.--No person or licensee shall  
9 be deemed to be in violation of this chapter nor shall that  
10 person or licensee be subject to any civil or criminal  
11 liability for any act or omission to act in good faith in  
12 reliance upon an order, declaratory statement, or rule issued  
13 by the department, notwithstanding a subsequent administrative  
14 determination or decision by a court of competent jurisdiction  
15 invalidating the order, rule or declaratory statement.

16           Section 3. Section 516 03, Florida Statutes, is  
17 amended to read:

18           (Substantial rewording of section. See  
19 s 516 03, F.S., for present text )

20           516 03 Preexisting contracts.--This chapter or any  
21 part may be modified, amended, or repealed so as to effect a  
22 cancellation or alteration of any license or right of a  
23 licensee, provided that the cancellation or alteration shall  
24 not impair or affect the obligation of any preexisting lawful  
25 contract between any licensee and any obligor, and nothing in  
26 this chapter shall affect the obligation of any contract of  
27 loan which was lawfully entered into prior to the effective  
28 date of this act.

29           Section 4. Section 516.031, Florida Statutes, is  
30 amended to read:

31           (Substantial rewording of section. See

1 s. 516.031, F.S., for present text.)

2 516.031 Public disclosure.--All findings of fact and  
3 orders filed with the department shall be a public record.

4 Section 5 Section 516.035, Florida Statutes, is  
5 amended to read:

6 (Substantial rewording of section. See  
7 s. 516.035, F.S., for present text.)

8 516.035 Penalty for violations.--Any person who  
9 violates s 516.05 or s 516.17(3) is guilty of a misdemeanor  
10 of the first degree, punishable as provided in s 775.082 or  
11 s. 775.083.

12 Section 6. Section 516.05, Florida Statutes, is  
13 amended to read:

14 (Substantial rewording of section. See  
15 s. 516.05, F.S., for present text.)

16 516.05 License required; loans; lines of credit; rate  
17 of interest.--

18 (1) Except as provided in s. 687.12 or other statute,  
19 a person may not engage in the business of making consumer  
20 finance loans unless he first obtains a license from the  
21 department.

22 (2)(a) Except as authorized by this chapter, s.  
23 687.12, or other statutes of this state, a person who is  
24 engaged in the business of making loans of money may not  
25 directly or indirectly charge, contract for, or receive any  
26 interest or consideration greater than 18 percent per annum  
27 upon the loan, use, or forbearance of money, goods, or choses  
28 in action, or upon the loan or use of credit, in the amount or  
29 value of \$5,000 or less.

30 (b) The prohibition specified in paragraph (a) applies  
31 to any lender who, as security for any loan, use, or

1 forbearance of money, goods, or choses in action, or for any  
2 loan or use of credit, makes a pretended purchase of property  
3 from any person while permitting the owner or pledgor to  
4 retain possession or who by any device or pretense of charging  
5 for services or otherwise seeks to obtain compensation greater  
6 than is authorized by this chapter.

7       (c) Except as authorized by other statutes, any loan  
8 contract which provides for a rate of interest or charge  
9 greater than is allowed by this chapter shall not be  
10 enforceable in this state, regardless of where made. Each  
11 person who in any manner participates in such a loan in this  
12 state is subject to this chapter. However, this paragraph  
13 does not apply to loans legally made to a resident of another  
14 state by a person in that state if that state has in effect a  
15 regulatory small loan or consumer finance law similar in  
16 principle to this chapter.

17       (3) A licensee may offer lines of credit not exceeding  
18 \$25,000 and may charge, contract for, and receive interest  
19 charges and other charges pursuant to s. 516 20(1), except  
20 that a licensee may not offer a credit card.

21       Section 7. Section 516.07, Florida Statutes, is  
22 amended to read:

23       (Substantial rewording of section. See  
24 s. 516.07, F.S., for present text.)

25       516.07 Application for license; fees --

26       (1) Application for a license to make loans under this  
27 chapter shall be in writing, in the form prescribed by the  
28 department, and shall contain the name, residence and business  
29 addresses of the applicant and, if the applicant is a  
30 partnership or association, of every member and, if a  
31 corporation, of each officer and director. The application

1 shall also contain the county and municipality with the street  
2 and number or approximate location where the business is to be  
3 conducted and any other relevant information the department  
4 may require. At the time of making the application the  
5 applicant shall pay to the department a biennial license fee  
6 of no more than \$650. Applications for an initial license  
7 must be accompanied by a nonrefundable investigation fee of no  
8 more than \$300.

9 (2)(a) The department shall establish by rule the  
10 amount of the investigation and licensing fees based upon  
11 estimates by the department of the revenue required to  
12 implement this chapter.

13 (b) All moneys collected by the department from fees  
14 or fines or from costs obtained in any legal proceeding shall  
15 be paid into the State Treasury to the credit of the  
16 regulatory trust fund under the Division of Finance of the  
17 department. The Legislature shall appropriate funds from this  
18 trust fund sufficient to carry out the provisions of this  
19 chapter. The department shall maintain separate revenue  
20 accounts in the trust fund for each class of licensees within  
21 the department. The department shall provide for the  
22 proportionate allocation among the accounts of expenses  
23 incurred by the department in the performance of its duties  
24 with respect to each class of licensees. As part of its  
25 normal budgetary process the department shall prepare an  
26 annual report of revenue and allocated expenses related to the  
27 operation of each class of licensees which shall be used to  
28 determine the amount of necessary fees.

29 Section 8. Section 516.08, Florida Statutes, is  
30 amended to read:

31 (Substantial rewording of section. See

1 s. 516.08, F.S., for present text )

2 516.08 Issuance of license; denial; inactive status;  
3 place of business; purchase of assets.--

4 (1) Upon receipt of the application for an initial  
5 license and all applicable fees, the department shall  
6 investigate as necessary to determine if the applicant should  
7 be licensed.

8 (2)(a) If the department determines that a license  
9 should be granted, it shall issue the license for a period not  
10 to exceed 2 years. Biennial licensure periods and procedures  
11 for renewal of licenses shall be established by rule of the  
12 department.

13 (b) If the department determines the application  
14 should be denied, it shall deny the application and refund the  
15 license fee. However, the department shall retain the  
16 investigation fee.

17 (3) A license that is not renewed at the end of the  
18 biennial period shall automatically revert to inactive status.  
19 An inactive license may be reactivated upon submission of a  
20 completed reactivation application, payment of the biennial  
21 license fee, and payment of a reactivation fee not to exceed  
22 \$150. A license which has been inactive for 6 months shall  
23 expire.

24 (4) The department may refuse to process an initial  
25 application for a license if the applicant or any person with  
26 power to direct the management or policies of the applicant's  
27 business is the subject of a pending criminal prosecution in  
28 any jurisdiction, until conclusion of the criminal  
29 prosecution.

30 (5) A licensee shall maintain only one place of  
31 business for the making of loans under this chapter under each

1 license, but the department shall issue additional licenses to  
2 the same licensee upon compliance with all the provisions of  
3 this chapter governing issuance of a single license. However,  
4 this chapter shall not prevent a licensee from lending to  
5 residents of any part of this state or any other state or  
6 country nor prevent the making of loans by mail

7       (6) A licensee shall not change the place of business  
8 maintained under a license without prior approval of the  
9 department. When a licensee wishes to change a place of  
10 business, the licensee shall give written notice to the  
11 department, and, if the department finds that the proposed  
12 location is reasonably accessible to borrowers under existing  
13 loan contracts, it shall approve the change and shall amend  
14 the license accordingly. If the department does not so find,  
15 it shall deny removal of the business to the requested  
16 location.

17       (7) If any person purchases substantially all of the  
18 assets of any existing licensed place of business, the  
19 purchaser shall immediately notify the department and make  
20 application for a permanent license. Within 10 days of the  
21 department's receipt of the notice and application, it shall  
22 issue a 90-day temporary license for that location. Issuance  
23 of a temporary license for a place of business nullifies the  
24 existing license for that location, and the temporary licensee  
25 is subject to all provisions of this chapter.

26       (8) Licenses are not transferable or assignable to  
27 another person. A licensee may invalidate any license by  
28 delivering it to the department with a written notice of the  
29 delivery, but that delivery does not affect any civil or  
30 criminal liability or the authority to enforce this chapter.  
31

1       (9) A licensee may make loans in a place of business  
2 in which other business is conducted, unless the department  
3 finds that the conduct of the other business results in an  
4 evasion of this chapter. If the department so finds it shall  
5 order the licensee to desist from the evasion.

6       Section 9. Section 516.09, Florida Statutes, is  
7 amended to read:

8       (Substantial rewording of section. See  
9 s. 516.09, F.S., for present text.)

10       516.09 Grounds for denial of license or for  
11 disciplinary action.--

12       (1) The following acts are violations of this chapter,  
13 and constitute grounds for denial of an application for a  
14 license to make consumer finance loans and grounds for any of  
15 the disciplinary actions specified in subsection (2);

16       (a) A material misstatement of fact in an application  
17 for a license.

18       (b) Failure to maintain liquid assets of at least  
19 \$25,000 at all times for the operation of business at a  
20 currently licensed or proposed location.

21       (c) Failure to demonstrate financial responsibility,  
22 experience, character, or general fitness, which commands the  
23 confidence of the public and warrants the belief that the  
24 business will be operated lawfully, honestly, fairly,  
25 efficiently, and within the purposes of this chapter.

26       (d) The violation, either knowingly or without the  
27 exercise of due care, of any provision of this chapter, any  
28 rule or order adopted under this chapter, or any written  
29 agreement entered into with the department.

30       (e) Any act of fraud, misrepresentation, or deceit,  
31 regardless of reliance by or damage to a borrower, or any



1 illegal activity in connection with a loan under this chapter,  
2 including, but not limited to:

3 1. Willful imposition of illegal or excessive charges;  
4 or

5 2. Misrepresentation, circumvention, or concealment of  
6 any matter required to be stated or furnished to a borrower.

7 (f) The use of unreasonable collection practices or of  
8 false, deceptive, or misleading advertising in connection with  
9 the operation of a business to make consumer finance loans.

10 (g) Failure to maintain, preserve, and keep available  
11 for examination all books, accounts, or other documents  
12 required by this chapter, by any rule or order adopted under  
13 this chapter, or by any agreement entered into with the  
14 department.

15 (h) Refusal to permit inspection of books and records  
16 in an investigation or examination by the department or  
17 refusal to comply with a subpoena issued by the department.

18 (i) Failure to pay the biennial license fee.

19 (2) If the department finds that any person has  
20 committed any of the acts set forth in subsection (1), the  
21 department may enter an order taking one or more of the  
22 following actions:

23 (a) Denying an application for a license.

24 (b) Revoking or suspending a license.

25 (c) Placing a licensee or an applicant for a license  
26 on probation for a period of time and subject to conditions  
27 specified by the department.

28 (d) Placing temporary or permanent restrictions or  
29 conditions upon the issuance or maintenance of a license.

30 (e) Issuing a reprimand.

31

1 (f) Imposing an administrative fine not to exceed  
2 \$1,000 for each act.

3 (3) The department may take any of the actions  
4 specified in subsection (2) against any partnership,  
5 corporation, or association, if the department finds that any  
6 of the acts specified in subsection (1) have been committed by  
7 any member of the partnership, any officer or director of the  
8 corporation or association, or any person with power to direct  
9 the management or policies of the partnership, corporation, or  
10 association.

11 (4) For purposes of this section, a licensee is  
12 responsible for the acts of its employee or agent if, with  
13 knowledge of the acts, the licensee retained profits,  
14 benefits, or advantages accruing from those acts or ratified  
15 the conduct of the employee or agent as a matter of law or  
16 fact.

17 (5) Action taken under this section against a licensee  
18 or voluntary surrender of a license does not impair the  
19 obligation of any preexisting lawful contract between the  
20 licensee and any borrower.

21 Section 10. Section 516.11, Florida Statutes, is  
22 amended to read:

23 (Substantial rewording of section. See  
24 s. 516.11, F S., for present text )

25 516.11 License to be posted.--The licensee shall keep  
26 the license conspicuously posted in the place of business.

27 Section 11. Section 516.12, Florida Statutes, is  
28 amended to read:

29 516.12 Records to be kept by licensee.--The licensee  
30 shall keep and use in his business such books, accounts, and  
31 records in accordance with sound and accepted accounting

1 practices to enable the department to determine whether the  
2 such licensee is complying with the provisions of this chapter  
3 and with the rules ~~and-regulations~~ lawfully made by the  
4 department hereunder. Every licensee shall preserve the such  
5 books, accounts, and records, including cards used in the card  
6 system, if any, for at least 2 years after making the final  
7 entry on any loan recorded ~~therein~~.

8 Section 12. Section 516.13, Florida Statutes, is  
9 amended to read:

10 (Substantial rewording of section. See  
11 s. 516.13, F.S., for present text.)

12 516.13 Duties of licensee.--Every licensee shall:

13 (1) Deliver to the borrower at the time a loan is made  
14 a statement showing in clear and distinct terms the amount and  
15 date of the loan and the date of its maturity; the nature of  
16 the security, if any, for the loan; the name and address of  
17 the borrower and of the licensee; and the rate of interest  
18 charged. However, with respect to a line of credit, the  
19 statement need not show a maturity date.

20 (2) Give to the borrower a complete receipt for each  
21 payment made on account of any loan at the time the payment is  
22 made or, alternatively, furnish to the borrower an annual  
23 statement showing the amount of interest paid on the loan  
24 during the previous year as well as the remaining balance on  
25 the loan, provided a simple receipt is given to the borrower  
26 for each payment made in cash and for any payment when  
27 requested in writing by the borrower

28 (3) Permit early repayment of the loan in whole or in  
29 part with interest then due.

30 (4) Upon repayment of the loan in full, mark indelibly  
31 every paper signed by the borrower with the word "Paid" or

1 "Canceled" and release any mortgage, restore any pledge,  
2 cancel and return any note, and cancel and return any  
3 assignment given by the borrower as security.

4 Section 13. Section 516.15, Florida Statutes, is  
5 amended to read:

6 (Substantial rewording of section. See  
7 s. 516.15, F.S., for present text.)

8 516.15 Monthly installment requirement.--Every loan  
9 made pursuant to this chapter shall be repaid in monthly  
10 installments as nearly equal as mathematically practicable.  
11 This section shall not apply to lines of credit.

12 Section 14. Section 516.16, Florida Statutes, is  
13 amended to read:

14 (Substantial rewording of section. See  
15 s. 516.16, F.S., for present text.)

16 516.16 Credit property and credit life and disability  
17 insurance.--

18 (1) Tangible property offered as security may be  
19 reasonably insured against loss for a reasonable term,  
20 considering the circumstances of the loan. If such insurance  
21 is sold at standard rates through a person duly licensed by  
22 the Department of Insurance and if the policy is payable to  
23 the borrower or any member of his family, it shall not be  
24 deemed to be a collateral sale, purchase, or agreement even  
25 though a customary mortgagee clause is attached or the  
26 licensee is a coassured.

27 (2) Credit life and disability insurance which is  
28 provided at the expense of borrowers must be sold at standard  
29 rates by a person duly licensed by the Department of Insurance  
30 and provided only under a group or individual insurance policy  
31 which complies with ss. 627.676-627.684 and lawful rules

1 thereunder. The cost of any insurance which is paid by  
2 borrowers shall be deducted from the principal amount of the  
3 loan and shall be disclosed on the statement required by s.  
4 516.13(1) or, on a combined note and disclosure statement  
5 required by the federal Truth In Lending Act.

6 Section 15. Section 516.17, Florida Statutes, is  
7 amended to read:

8 (Substantial rewording of section. See  
9 s. 516.17, F S., for present text )  
10 516.17 Prohibited actions.--

11 (1) No licensee shall take any confession of judgment,  
12 power of attorney, or assignment of wages, and any assignment  
13 of, or order for the payment of any salary, wages,  
14 commissions, or other compensation for services, earned or to  
15 be earned, given to secure a loan shall be invalid.

16 (2) No licensee shall take any note, promise to pay,  
17 or security that does not state the actual amount of the loan,  
18 the time for which it is made, and the rate of interest  
19 charged, nor any instrument in which blanks are left to be  
20 filled after execution. However, with respect to a line of  
21 credit, the note, promise to pay, or security need not state  
22 the time for which it is made.

23 (3) No licensee shall take a security interest in land  
24 on any loan less than \$1,000.

25 (4) No licensee shall induce or permit any borrower to  
26 split up or divide any loan. No licensee shall induce or  
27 permit any person, or any husband and wife, jointly or  
28 severally, to become obligated to him directly or contingently  
29 or both, under more than one contract of loan at the same  
30 time, for the purpose, or with the result, of obtaining a

31

1 greater finance charge than would otherwise be permitted by  
2 this chapter.

3 Section 16. Section 516.18, Florida Statutes, is  
4 amended to read:

5 (Substantial rewording of section. See  
6 s. 516.18, F.S., for present text.)

7 516.18 Purchase or assignment of wages, salaries.--The  
8 payment of \$25,000 or less in money, credit, goods, or choses  
9 in action as consideration for any sale or assignment of or  
10 order for the payment of wages, salary, commissions, or other  
11 compensation for services, whether earned or to be earned,  
12 shall, for the purposes of regulation under, and the  
13 enforcement and interpretation of, any law, civil or criminal,  
14 relating to loans, interest charges, or usury, be deemed a  
15 loan secured by the assignment. The amount by which the  
16 assigned compensation exceeds the amount of the consideration  
17 actually paid shall, for the purpose of regulation under, and  
18 the interpretation and enforcement of, that law, be deemed  
19 interest upon the loan from the date of the payment until the  
20 date the compensation is payable. Each transaction shall be  
21 governed by and subject in all respects to all provisions of  
22 law relating to loans, interest, charges, usury, and to the  
23 same extent as if it had been in form a loan of the sum paid  
24 for the assignment.

25 Section 17. Section 516.19, Florida Statutes, is  
26 amended to read:

27 (Substantial rewording of section. See  
28 s. 516.19, F.S., for present text.)

29 516.19 Consumer protection provisions; chapter 520  
30 licensees.--

31

1       (1) This section shall apply to every consumer finance  
2 loan or other contract authorized by this chapter in which any  
3 form of credit is extended to an individual to purchase or  
4 obtain goods or services for use primarily for personal,  
5 family, or household purposes.

6       (2) A holder or assignee of any negotiable instrument  
7 or installment contract, other than a currently dated check,  
8 which originated from the purchase of certain consumer goods  
9 or services, is subject to all claims and defenses of the  
10 consumer debtor against the seller of those consumer goods or  
11 services. A debtor's liability under this section may not  
12 exceed the amount owing to the assignee when the claim or  
13 defense is asserted against the debtor.

14       (3) If a creditor takes possession of property which  
15 was collateral under a consumer finance loan, the consumer  
16 shall not be personally liable to the creditor for any unpaid  
17 balance of the obligation unless the unpaid balance of the  
18 consumer's obligation at the time of default was \$2,000 or  
19 more. When the unpaid balance is \$2,000 or more, the creditor  
20 shall be entitled to recover from the consumer the deficiency,  
21 if any, resulting from deducting the fair market value of the  
22 collateral from the unpaid balance due. In a proceeding for a  
23 deficiency, the fair market value of the collateral shall be a  
24 question for the trier of fact. Periodically published trade  
25 estimates of the retail value of goods shall, to the extent  
26 they are recognized in the particular trade or business, be  
27 presumed to be the fair market value of the collateral.

28       (4)(a) If debts arising from two or more retail  
29 installment sales or other credit contracts with individual  
30 consumers are secured by more than one security interest, or  
31 consolidated into one debt payable on a single schedule of

1 payments and the debt is secured by security interests taken  
2 with respect to one or more of the sales, payments received by  
3 the seller are deemed, for the purpose of determining the  
4 amount of the debt secured by the various security  
5 instruments, to have been applied first to the payment of the  
6 debt arising from the first sale made. To the extent that  
7 debts are paid according to this section, security interests  
8 in items of property terminate as the debt originally incurred  
9 with respect to each item is paid.

10       (b) Payments received by the seller or holder upon a  
11 revolving account are deemed, for the purpose of determining  
12 the amount of the debt secured by the various security  
13 interests, to have been applied first to the payment of  
14 finance charges in the order of their entry to the account and  
15 then to the payment of debts in the order in which the entries  
16 to the account showing the debts were made.

17       (c) If the debts consolidated arose from two or more  
18 credit sales or other credit contracts with an individual  
19 which were made on the same day, payments received by the  
20 seller or holder are deemed, for the purpose of determining  
21 the amount of the debt secured by the various security  
22 interests, to have been applied first to the payment of the  
23 smallest debt

24       (5) Waiver by the buyer of any provisions in this  
25 section shall be void and unenforceable as contrary to public  
26 policy.

27       (6) A licensee under this act who purchases or holds  
28 retail installment contracts as defined in s 520 51 in this  
29 state shall also be licensed under chapter 520 as an  
30 Installment Sales Finance Act licensee.

31



1 Section 18. Section 516.20, Florida Statutes, is  
2 amended to read:

3 (Substantial rewording of section. See  
4 s. 516 20, F.S., for present text )  
5 516.20 Maximum rates; other charges; refinancing.--

6 (1)(a) No licensee shall lend any sum of money  
7 exceeding \$25,000.

8 (b) No licensee shall charge, contract for, and  
9 receive interest charges except as provided and authorized by  
10 this section.

11 (c) On loans of less than \$5,000, the maximum interest  
12 rate shall be 30 percent per annum, computed on the first \$500  
13 of the principal amount as computed from time to time; 24  
14 percent per annum on that part of the principal amount as  
15 computed from time to time exceeding \$500 and not exceeding  
16 \$1,000; and 18 percent per annum on that part of the principal  
17 amount as computed from time to time exceeding \$1,000 and not  
18 exceeding \$5,000. On loans exceeding \$5,000, the total  
19 interest charged on the entire principal amount shall not  
20 exceed 18 percent per annum simple interest.

21 (d) The original principal amount as used in this  
22 section shall be the same amount as the amount financed as  
23 defined by the federal Truth-In-Lending Act and Regulation Z  
24 of the Board of Governors of the Federal Reserve System.

25 (e) In determining compliance with these statutory  
26 maximum interest and finance charges, the computations  
27 utilized shall be simple interest and not add-on interest or  
28 any other computations.

29 (2) The annual percentage rate of finance charge which  
30 may be contracted for and received under any loan contract  
31 made by a licensee may equal, but not exceed, the annual

1 percentage rate which must be computed and disclosed as  
2 required by the federal Truth In Lending Act and Regulation Z  
3 of the Board of Governors of the Federal Reserve System. The  
4 maximum annual percentage rate of finance charge which may be  
5 contracted for and received is 12 times the maximum monthly  
6 rate and the maximum monthly rate shall be computed on the  
7 basis of one-twelfth of the annual rate for each full month.  
8 The department shall by rule establish the rate for each day  
9 in a fraction of a month when the period for which the charge  
10 is computed is more or less than 1 month.

11 (3) In addition to the interest and insurance charges  
12 allowed by this chapter, no other charges or amount whatsoever  
13 for any examination, service, brokerage fee, commission, or  
14 other thing or otherwise shall be directly or indirectly  
15 charged, contracted for, or received as a condition to the  
16 grant of a loan, except:

17 (a) Charges paid for title insurance and the appraisal  
18 of real property offered as security when paid to a third  
19 party and supported by an actual expenditure.

20 (b) Intangible personal property tax on the loan note  
21 or obligation when secured by a lien on real property.

22 (c) The documentary excise tax and lawful fees, if  
23 any, actually and necessarily paid out by the licensee to any  
24 public officer for filing, recording, or releasing in any  
25 public office any instrument securing the loan, which may be  
26 collected when the loan is made or at any time thereafter.

27 (d) The premium payable for insurance in lieu of  
28 perfecting a security interest required by the licensee in  
29 connection with the loan, if the premium does not exceed the  
30 fees which would otherwise be payable, which may be collected  
31 when the loan is made or at any time thereafter.

1 (e) Actual and reasonable attorney's fees and court  
2 costs as determined by the court.

3 (f) The actual and reasonable expenses of  
4 repossession, storing, repairing and placing in condition for  
5 sale, and selling of any property pledged as security if the  
6 creditor complies with provisions of ss. 679.501-679 507.

7 (g) Any bad check charge of not more than the greater  
8 of \$10 or an amount equal to the actual charge made to the'  
9 lender by the depository institution for the return of the  
10 dishonored instrument

11  
12 Any charges, including interest, in excess of the combined  
13 total of all charges permitted by this chapter constitute a  
14 violation of chapter 687 governing interest and usury, and the  
15 penalties of that chapter apply. In the event of a bona fide  
16 error, the licensee shall refund or credit the borrower with  
17 the amount of the overcharge within 20 days from the discovery  
18 of the error

19 (4) If all or part of the consideration for a new loan  
20 contract is the unpaid principal balance of a prior loan with  
21 the licensee, the principal amount payable under the new loan  
22 contract may include not more than 60 days' unpaid interest  
23 accrued on the prior loan

24 Section 19. Section 516.21, Florida Statutes, is  
25 amended to read:

26 (Substantial rewording of section. See  
27 s. 516.21, F.S., for present text.)  
28 516 21 Rate of interest upon default.--

29 (1) In the event that any balance remains unpaid at  
30 the expiration of the scheduled maturity date of a loan, the  
31 licensees may continue to charge interest on the unpaid

1 balance at the rate provided for in s. 516 20(1) for a period  
2 not to exceed 12 months. Thereafter, the interest shall not  
3 exceed the permissible rate of interest as provided in chapter  
4 687.

5 (2) When advances are made pursuant to a line of  
6 credit, a licensee may charge interest on the unpaid balance  
7 at the rate provided for in s 516.20(1) for the period a  
8 balance remains unpaid.

9 Section 20. Section 516.22, Florida Statutes, is  
10 amended to read:

11 (Substantial rewording of section See  
12 s. 516 22, F.S., for present text.)

13 516.22 Restriction of borrower's indebtedness.--

14 (1) No licensee shall directly or indirectly charge,  
contract for, or receive any interest, discount, or  
16 consideration greater than 18 percent per annum upon any loan,  
17 or upon any part or all of any aggregate loan indebtedness of  
18 the same borrower, of the amount of more than \$5,000

19 (2) The prohibition provided in subsection (1) shall  
20 also apply to any licensee who permits any person, as borrower  
21 or as endorser, guarantor, or surety for any borrower, or  
22 otherwise, or any husband and wife, jointly or severally, to  
23 owe directly or contingently or both to the licensee at any  
24 time a sum of more than \$5,000 for principal. However, if the  
25 proceeds of any loan of \$5,000 or less are used to discharge a  
26 preexisting debt of the borrower for goods or services owed  
27 directly to the person who provided goods or services, the  
28 licensee may accept from that person a guaranty of payment of  
30 the principal of the loan with interest at a rate not  
31 exceeding 18 percent per annum, and the acceptance of one or  
more guaranties in any aggregate amount shall not affect the

1 rights of the licensee to make the charges against the primary  
2 borrower authorized by s 516.20(1), nor shall the limitation  
3 apply to the isolated acquisition directly or indirectly by  
4 purchase or by discount of bona fide obligations of a  
5 borrower. However, in the event a licensee makes a bona fide  
6 purchase of substantially all of the loans made under this  
7 chapter from another licensee or other lender not affiliated  
8 with the purchaser and the licensee or other lender has an  
9 existing loan outstanding to one or more of the borrowers  
10 whose loans are purchased, the licensee making the purchase  
11 shall be entitled to liquidate and collect the balances due on  
12 the loans, including all lawful charges and interest at the  
13 rates or amounts agreed upon in the loan contracts.

14 Section 21. Section 516.221, Florida Statutes, is  
15 amended to read:

16 (Substantial rewording of section. See  
17 s 516.221, F.S., for present text.)

18 516.221 Investigations and complaints.--

19 (1)(a) The department shall, at intermittent periods,  
20 investigate and examine any licensee or other person allegedly  
21 making consumer finance loans as it deems necessary to  
22 determine compliance with this chapter. For such purposes, it  
23 may examine and compel the production of the books, accounts,  
24 records, and other documents or materials of these persons  
25 relative to the examination or investigation.

26 (b) The department and all persons duly designated by  
27 it shall have authority to require the attendance of witnesses  
28 and to examine under oath all persons whose testimony it may  
29 require relative to any examinations, investigations, or  
30 hearings under this chapter.

31

(c) Examinations of a licensee shall be made at least once a year and more often if the department has reason to believe the licensee is not complying with this chapter. Each licensee shall pay to the department an examination fee based upon the amount of loans outstanding at the time of the examination not to exceed:

<u>Amount Outstanding</u>	<u>Examination Fee</u>
<u>From \$0 to \$50,000</u> .....	<u>\$200</u>
<u>From \$50,000.01 to \$100,000</u> .....	<u>.225</u>
<u>From \$100,000.01 to \$250,000</u> .....	<u>.250</u>
<u>From \$250,000.01 to \$500,000</u> .....	<u>.300</u>
<u>From \$500,000.01 and over</u> .....	<u>.425</u>

(2) Any person who has reason to believe that this chapter has been or will be violated may file a written complaint with the department.

Section 22. Section 516.23, Florida Statutes, is amended to read:

(Substantial rewording of section. See s. 516.23, F.S., for present text.)  
516.23 Rules; certified copies.--

(1) The department shall have the authority to make rules necessary to carry out the provisions of this chapter.

(2) On application of any person and payment of costs set at the same rate as allowed clerks of the circuit court, the department shall furnish a certified copy of any license, regulation, or order. In any court or other proceeding, the copy shall be prima facie evidence of the issuance of the license, regulation, or order.

Section 23. Section 516.26, Florida Statutes, is amended to read:

(Substantial rewording of section. See

1 s. 516.26, F.S., for present text.)

2 516.26 Injunctions, receivers.--In addition to all  
3 other powers granted to it under this chapter, the department  
4 may:

5 (1) Whenever it has reasonable cause to believe any  
6 person is violating or is about to violate any provision of  
7 this chapter or any order or lawful rule, enter an order  
8 requiring that person to desist from the violation.

9 (2) Bring an action in the name of the state in the  
10 circuit court of the county in which the licensed place of  
11 business is located against the person to enjoin that person  
12 from the violation or any act in furtherance of it. In any  
13 action, the department may seek and the court may award any  
14 relief at law or in equity including a temporary or permanent  
15 injunction as appropriate.

16 (3) In addition to all other means provided by law for  
17 the enforcement of a temporary restraining order, temporary,  
18 or permanent injunction, the circuit court shall have power  
19 and jurisdiction to impound, and to appoint a receiver for,  
20 the property and business of the defendant including books,  
21 papers, documents, and records as the court may deem  
22 reasonably necessary to prevent further violation of this  
23 chapter through or by means of the use of the property and  
24 business. The receiver, when appointed and qualified, shall  
25 have powers and duties as to custody, collection,  
26 administration, winding up, and liquidation of the property  
27 and business as are conferred upon him by the court.

28 (4) The department shall have the authority to civilly  
29 enforce violations of part II of chapter 559 and part III of  
30 chapter 817 using the enforcement powers of this chapter.

31

1 Section 24. Section 516.27, Florida Statutes, is  
2 amended to read:  
3 (Substantial rewording of section. See  
4 s. 516.27, F.S., for present text )  
5 516.27 Consumer credit counseling.--The department  
6 shall aggressively promote and help establish consumer credit  
7 counseling services for individuals in areas where a need has  
8 been established. The purposes of the consumer credit  
9 counseling service shall be to:  
10 (1) Assist and educate individual consumers as to  
11 money management.  
12 (2) Assist individual consumers in consolidating  
13 obligations when the individual consumer is in need of such  
14 assistance and it is in his best interest to do so.  
15 (3) Work with consumer credit grantors in an effort to  
16 establish better relations with the individual consumer and  
17 with state and federal regulatory agencies.  
18 Section 25. Sections 516.231, 516.29, 516.30, 516.31,  
19 516.32, 516.33, 516.34, 516.35, and 516.37, Florida Statutes,  
20 and section 516.36, Florida Statutes, as amended by chapter  
21 86-100, Laws of Florida, are hereby repealed.  
22 Section 26. Notwithstanding the provisions of the  
23 Regulatory Sunset Act or of any other provision of law which  
24 provides for review and repeal in accordance with s. 11.61,  
25 Florida Statutes, and except as otherwise specifically  
26 provided herein, chapter 516, Florida Statutes, shall not  
27 stand repealed on October 1, 1988, and shall continue in full  
28 force and effect as amended herein.  
29 Section 27. Chapter 516, Florida Statutes, is repealed  
30 on October 1, 1998, and shall be reviewed by the Legislature  
31 pursuant to s. 11.61, Florida Statutes.



1 Section 28. This act shall take effect October 1,  
2 1988.

3  
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5 HOUSE SUMMARY

6 Revises and restructures the Florida Consumer Finance  
7 Act. Provides definitions. Increases certain penalties.  
8 Provides for biennial licensing of persons engaging in  
9 the business of making consumer finance loans. Provides  
10 maximum license and investigative fees and authorizes the  
11 Department of Banking and Finance to set such fees by  
12 rule. Provides for inactive license status and for  
13 reactivation and reactivation fees.

14 Specifies grounds for denial of license or disciplinary  
15 action and specifies disciplinary action that may be  
16 taken by the department, including administrative fines.  
17 Provides requirements relating to credit property and  
18 credit life and disability insurance Provides maximum  
19 interest and finance charges and specifies those charges  
20 that are allowed. Specifies investigative powers of the  
21 department and specifies maximum examination fees.  
22 Provides for civil enforcement of laws relating to budget  
23 planning and to credit service organizations by the  
24 department, using the enforcement powers of the act.

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20 This publication was produced at an average cost of 1.12 cents  
21 per single page in compliance with the Rules and for  
22 the information of members of the Legislature and the public

By the Committee on Commerce

A bill to be entitled

1 An act relating to consumer finance; amending  
2 s. 516.01, F.S.; providing definitions;  
3 amending s. 516.02, F.S.; requiring a license  
4 from the Department of Banking and Finance to  
5 engage in the business of making consumer  
6 finance loans; providing certain limitations on  
7 credit amounts and interest rates; excluding  
8 certain persons from regulation under ch. 516,  
9 F.S.; amending s. 516.03, F.S.; providing a  
10 biennial licensing period; increasing the  
11 license fee; amending s. 516.031, F.S.;  
12 providing clarifying language; deleting  
13 obsolete language; amending s. 516.035, F.S.;  
14 increasing the rate of interest which may be  
15 charged upon default of a loan; amending s.  
16 516.05, F.S.; revising licensing requirements;  
17 providing for an inactive license; requiring  
18 department approval prior to a change in place  
19 of business; providing for temporary licensing;  
20 amending s. 516.07, F.S.; providing grounds for  
21 denial of a license; providing grounds for  
22 disciplinary action; amending s. 516.11, F.S.;  
23 providing for investigations and examinations  
24 by the department; providing examination fees;  
25 amending s. 516.19, F.S.; providing a penalty;  
26 amending s. 516.21, F.S.; deleting obsolete  
27 language; amending s. 516.23, F.S.; providing  
28 for enforcement; amending s. 516.26, F.S.;  
29 providing conforming language; amending s.  
30 516.31, F.S.; providing for applicability;  
31

1 amending s. 516.35, F.S.; providing for certain  
2 types of credit insurance; repealing ss.  
3 516.13, 516.18, 516.20, 516.231, 516.29,  
4 516.30, 516.34, 516.37, F.S., relating to the  
5 regulation of consumer finance loans; saving  
6 ch. 516, F.S., from Sunset repeal and providing  
7 for future review and repeal, providing an  
8 effective date.

9  
10 Be It Enacted by the Legislature of the State of Florida:

11  
12 Section 1. Section 516.01, Florida Statutes, is  
13 amended to read:

14 (Substantial rewording of section. See  
15 s. 516.01, F.S., for present text.)

16 516.01 Definitions.--As used in this chapter, the  
17 term:

18 (1) "Consumer finance borrower" or "borrower" means a  
19 person who has incurred either direct or contingent liability  
20 to repay a consumer finance loan.

21 (2) "Consumer finance loan" means a loan of money,  
22 credit, goods, or choses in action, including, except as  
23 otherwise specifically indicated, provision of a line of  
24 credit, in an amount or to a value of \$5,000 or less, for  
25 which the lender charges, contracts for, collects, or receives  
26 interest at a rate greater than 18 percent per annum.

27 (3) "Department" means the Department of Banking and  
28 Finance.

29 (4) "Interest" means the cost of obtaining a consumer  
30 finance loan and includes any profit or advantage of any kind  
31 whatsoever that a lender may charge, contract for, collect,

1 receive, or in anywise obtain, including by means of any  
2 collateral sale, purchase, or agreement, as a condition for a  
3 consumer finance loan. Charges specifically permitted by this  
4 chapter, including commissions received for insurance written  
5 as permitted by this chapter, shall not be deemed interest.

6 (5) "License" means a permit issued under this chapter  
7 to make and collect loans in accordance with this chapter at a  
8 single place of business.

9 (6) "Licensee" means a person to whom a license is  
10 issued.

11 Section 2. Section 516.02, Florida Statutes, is  
12 amended to read:

13 (Substantial rewording of section. See  
14 s. 516.02, F.S., for present text.)

15 516.02 Loans; lines of credit; rate of interest;  
16 license.--

17 (1) A person must not engage in the business of making  
18 consumer finance loans unless he is authorized under this  
19 chapter or other statute and unless he first obtains a license  
20 from the department.

21 (2)(a) A person who is engaged in the business of  
22 making loans of money, except as authorized by this chapter or  
23 other statutes of this state, may not directly or indirectly  
24 charge, contract for, or receive any interest or consideration  
25 greater than 18 percent per annum upon the loan, use, or  
26 forbearance of money, goods, or choses in action, or upon the  
27 loan or use of credit, of the amount or value of \$5,000 or  
28 less

29 (b) The prohibition in paragraph (a) applies to any  
30 lender who, as security for any such loan, use, or forbearance  
31 of money, goods, or choses in action, or for any such loan or

1 use of credit, makes a pretended purchase of property from any  
 2 person and permits the owner or pledgor to retain the  
 3 possession thereof or who by any device or pretense of  
 4 charging for services or otherwise seeks to obtain a greater  
 5 compensation than is authorized by this chapter.

6 (c) A loan for which a greater rate of interest or  
 7 charge than is allowed by this chapter has been contracted for  
 8 or received, wherever made, is not enforceable in this state,  
 9 and each person who in any manner participates therein in this  
 10 state is subject to this chapter. However, this paragraph  
 11 does not apply to loans legally made to a resident of another  
 12 state by a person within that state if that state has in  
 13 effect a regulatory small loan or consumer finance law similar  
 14 in principle to this chapter.

15 (3) A licensee may offer lines of credit not exceeding  
 16 \$25,000 and may charge, contract for, and receive interest  
 17 charges and other charges pursuant to s. 516.031, except that  
 18 a licensee may not offer a credit card.

19 (4) This chapter does not apply to any person who does  
 20 business under, and as permitted by, any law of this state or  
 21 of the United States relating to banks, savings banks, trust  
 22 companies, building and loan associations, credit unions, or  
 23 industrial loan and investment companies or to any bona fide  
 24 pawnbroking business transacted under a pawnbroker's license.  
 25 A pawnbroker may not be licensed to transact business under  
 26 this chapter.

27 Section 3. Subsection (1) of section 516.03, Florida  
 28 Statutes, is amended to read:

29 516.03 Application for license; fees; etc.--

30 (1) APPLICATION.--Application for a license to make  
 31 loans under this chapter shall be in writing, under oath, and

1 in the form prescribed by the department, and shall contain  
2 the name, residence and business addresses of the applicant  
3 and, if the applicant is a copartnership or association, of  
4 every member thereof and, if a corporation, of each officer  
5 and director thereof, also the county and municipality with  
6 the street and number or approximate location where the  
7 business is to be conducted, and such further relevant  
8 information as the department may require. At the time of  
9 making such application the applicant shall pay to the  
10 department a biennial license fee of \$550 ~~the sum of \$175 as~~  
11 ~~an annual license fee for a period terminating on the last day~~  
12 ~~of the current calendar year, and a further fee of \$200 for~~  
13 ~~investigating the application and the applicants.~~

14 Applications, except for applications to renew or reactivate a  
15 license, must be accompanied by an investigation fee of \$200.

16 Section 4. Section 516.031, Florida Statutes, is  
17 amended to read:

18 516.031 Finance charge; maximum rates.--

19 (1) INTEREST RATES.--Every licensee may lend any sum  
20 of money not exceeding \$25,000. A licensee may not take a  
21 security interest secured by land on any loan less than  
22 \$1,000. The licensee may charge, contract for, and receive  
23 thereon interest charges as provided and authorized by this  
24 section. The maximum interest rate shall be 30 percent per  
25 annum, computed on the first \$500 of the principal amount as  
26 computed from time to time; 24 percent per annum on that part  
27 of the principal amount as computed from time to time  
28 exceeding \$500 and not exceeding \$1,000; and 18 percent per  
29 annum on that part of the principal amount as computed from  
30 time to time exceeding \$1,000 and not exceeding \$5,000; on  
31 loans exceeding \$5,000, the total interest charged on the

1 entire principal amount shall not exceed 18 percent per annum  
2 simple interest. The original principal amount as used in  
3 this section shall be the same amount as the amount financed  
4 as defined by the Federal Truth-In-Lending Act and Regulation  
5 Z of the Board of Governors of the Federal Reserve System. In  
6 determining compliance with the statutory maximum interest and  
7 finance charges set forth herein, the computations utilized  
8 shall be simple interest and not add-on interest or any other  
9 computations.

10 (2) ANNUAL PERCENTAGE RATE UNDER FEDERAL TRUTH-IN-  
11 LENDING ACT.--The annual percentage rate of finance charge  
12 which may be contracted for and received under any loan  
13 contract made by a licensee under this chapter may equal, but  
14 not exceed, the annual percentage rate which must be computed  
15 and disclosed as required by the Federal Truth-In-Lending Act  
16 and Regulation Z of the Board of Governors of the Federal  
17 Reserve System. The maximum annual percentage rate of finance  
18 charge which may be contracted for and received is 12 times  
19 the maximum monthly rate and the maximum monthly rate shall be  
20 computed on the basis of one-twelfth of the annual rate for  
21 each full month. The department shall by regulation establish  
22 the rate for each day in a fraction of a month when the period  
23 for which the charge is computed is more or less than 1 month.

24 (3) OTHER CHARGES.--

25 (a) In addition to the interest and insurance charges  
26 herein provided for, no further or other charges or amount  
27 whatsoever for any examination, service, brokerage fee,  
28 commission, or other thing or otherwise shall be directly or  
29 indirectly charged, contracted for, or received as a condition  
30 to the grant of a loan, except:

1           1. Charges paid for title insurance and the appraisal  
2 of real property offered as security when paid to a third  
3 party and supported by an actual expenditure;

4           2. Intangible personal property tax on the loan note  
5 or obligation when secured by a lien on real property;

6           3. The documentary excise tax and lawful fees, if any,  
7 actually and necessarily paid out by the licensee to any  
8 public officer for filing, recording, or releasing in any  
9 public office any instrument securing the loan, which fees may  
10 be collected when the loan is made or at any time thereafter;

11           4. The premium payable for any insurance in lieu of  
12 perfecting any security interest otherwise required by the  
13 licensee in connection with the loan, if the premium does not  
14 exceed the fees which would otherwise be payable, which  
15 premium may be collected when the loan is made or at any time  
16 thereafter; or

17           5. Actual and reasonable attorney's fees and court  
18 costs as determined by the court in which suit is filed; or

19           6. Actual and commercially ~~and court costs, including~~  
20 ~~the actual and~~ reasonable expenses of repossession, storing,  
21 repairing and placing in condition for sale, and selling of  
22 any property pledged as security.

23  
24 Any charges, including interest, in excess of the combined  
25 total of all charges authorized and permitted by this chapter  
26 constitute a violation of chapter 687 governing interest and  
27 usury, and the penalties of that chapter apply. In the event  
28 of a bona fide error, the licensee shall refund or credit the  
29 borrower with the amount of the overcharge immediately but  
30 within 20 days from the discovery of such error.



1 (b) Notwithstanding the provisions of paragraph (a),  
 2 any lender of money who receives a check, draft, negotiable  
 3 order of withdrawal, or like instrument drawn on a bank or  
 4 other depository institution, which instrument is given by a  
 5 borrower as full or partial repayment of a loan, may, if such  
 6 instrument is not paid or is dishonored by such institution,  
 7 make and collect from the borrower a bad check charge of not  
 8 more than the greater of \$10 or an amount equal to the actual  
 9 charge made to the lender by the depository institution for  
 10 the return of the unpaid or dishonored instrument.

11 (4) DIVIDED LOANS.--No licensee shall induce or permit  
 12 any borrower to split up or divide any loan. No licensee  
 13 shall induce or permit any person, or any husband and wife,  
 14 jointly or severally, to become obligated to him, directly or  
 15 contingently or both, under more than one contract of loan at  
 16 the same time, for the purpose, or with the result, of  
 17 obtaining a greater finance charge than would otherwise be  
 18 permitted by this section.

19 ~~(5)--APPLICABILITY OF CH. 79-274.--As amended by~~  
 20 ~~chapter 79-592, laws of Florida, chapter 79-274, Laws of~~  
 21 ~~Florida, which amended subsection (1):~~

22 ~~(a)--Shall apply only to loans, advances of credit, or~~  
 23 ~~lines of credit made on or subsequent to July 1, 1979, and to~~  
 24 ~~loans, advances of credit, or lines of credit made prior to~~  
 25 ~~that date if the lender has the legal right to require full~~  
 26 ~~payment or to adjust or modify the interest rate by renewal,~~  
 27 ~~assumption, reaffirmation, contract, or otherwise, and~~

28 ~~(b)--Shall not be construed as diminishing the force~~  
 29 ~~and effect of any laws applying to loans, advances of credit,~~  
 30 ~~or lines of credit, other than to those mentioned in paragraph~~  
 31 ~~(a), completed prior to July 1, 1979.~~

1           (5)†6† UNPAID INTEREST UPON REFINANCING.--If all or  
2 part of the consideration for a new loan contract is the  
3 unpaid principal balance of a prior loan with the licensee,  
4 the principal amount payable under the new loan contract may  
5 include not more than 60 days' unpaid interest accrued on the  
6 prior loan.

7           Section 5. Section 516.035, Florida Statutes, is  
8 amended to read:

9           516.035 Rate of interest upon default.--In the event  
10 that any balance remains unpaid at the expiration of the  
11 scheduled maturity date of a loan, licensees may continue to  
12 charge interest on the unpaid balance at the rate provided for  
13 in s. 516.031(1) for a period not to exceed 12 months.

14 Thereafter, the interest shall not exceed the permissible rate  
15 of interest provided by chapter 687 10-percent-per-annum.

16 When advances are made pursuant to a line of credit, a  
17 licensee may charge interest on the unpaid balance at the rate  
18 provided for in s. 516.031(1) for the period a balance remains  
19 unpaid.

20           Section 6. Section 516.05, Florida Statutes, is  
21 amended to read.

22           (Substantial rewording of section. See  
23 s. 516.05, F.S., for present text.)

24           516.05 License.--

25           (1) Upon the filing of an application for a license  
26 and payment of all applicable fees, the department shall,  
27 unless the application is to renew or reactivate an existing  
28 license, make an investigation of the facts concerning the  
29 applicant's proposed activities. If the department determines  
30 that a license should be granted, it shall issue the license  
31 for a period not to exceed 2 years. Biennial licensure

1 periods and procedures for renewal of licenses shall be  
2 established by the rule of the department. If the department  
3 determines that grounds exist under this chapter for denial of  
4 an application other than an application to renew a license,  
5 it shall enter an order denying such application, return to  
6 the applicant the sum paid as a license fee, and retain the  
7 investigation fee.

8 (2) A license that is not renewed at the end of the  
9 biennium established by the department shall automatically  
10 revert to inactive status. An inactive license may be  
11 reactivated upon submission of a completed reactivation  
12 application, payment of the biennial license fee, and payment  
13 of a reactivation fee which shall equal the biennial license  
14 fee. A license expires on the date at which it has been  
15 inactive for 6 months.

16 (3) Only one place of business for the purpose of  
17 making loans under this chapter may be maintained under one  
18 license, but the department may issue additional licenses to a  
19 licensee upon compliance with all the provisions of this  
20 chapter governing issuance of a single license.

21 (4) A licensee may not change the place of business  
22 maintained under a license without prior approval of the  
23 department. When a licensee wishes to change a place of  
24 business, the licensee shall give written notice thereof to  
25 the department, and, if the department finds that the proposed  
26 location is reasonably accessible to borrowers under existing  
27 loan contracts, it shall enter an order permitting the change  
28 and shall amend the license accordingly. If the department  
29 does not so find, it shall enter an order denying removal of  
30 the business to the requested location.

31

1 (5) If any person purchases substantially all of the  
2 assets of any existing licensed place of business, the  
3 purchaser shall give immediate notice thereof to the  
4 department and shall be granted a 90-day temporary license for  
5 the place of business within 10 days after the department's  
6 receipt of an application for a permanent license. Issuance  
7 of a temporary license for a place of business nullifies the  
8 existing license for the place of business, and the temporary  
9 licensee is subject to any disciplinary action provided for by  
10 this chapter.

11 (6) Licenses are not transferable or assignable. A  
12 licensee may invalidate any license by delivering it to the  
13 department with a written notice of the delivery, but such  
14 delivery does not affect any civil or criminal liability or  
15 the authority to enforce this chapter for acts committed in  
16 violation thereof.

17 (7) The department may refuse to process an initial  
18 application for a license or an application for reactivation  
19 of an expired license if the applicant or any person with  
20 power to direct the management or policies of the applicant's  
21 business is the subject of a pending criminal prosecution or  
22 governmental enforcement action, in any jurisdiction, until  
23 conclusion of such criminal prosecution or enforcement action.

24 Section 7. Section 516.07, Florida Statutes, is  
25 amended to read:

26 (Substantial rewording of section. See  
27 s. 516.07, F.S., for present text.)

28 516.07 Grounds for denial of license or for  
29 disciplinary action.--

30 (1) The following acts are violations of this chapter,  
31 and constitute grounds for denial of an application for a

1 license to make consumer finance loans and grounds for any of  
2 the disciplinary actions specified in subsection (2).

3 (a) A material misstatement of fact in an application  
4 for a license;

5 (b) Failure to maintain liquid assets of at least  
6 \$25,000 at all times for the operation of business at a  
7 licensed location or proposed location;

8 (c) Failure to demonstrate financial responsibility,  
9 experience, character, or general fitness, such as to command  
10 the confidence of the public and to warrant the belief that  
11 the business operated at the licensed or proposed location is  
12 lawful, honest, fair, efficient, and within the purposes of  
13 this chapter.

14 (d) The violation, either knowingly or without the  
15 exercise of due care, of any provision of this chapter, any  
16 rule or order adopted under this chapter, or any written  
17 agreement entered into with the department;

18 (e) Any act of fraud, misrepresentation, or deceit,  
19 regardless of reliance by or damage to a borrower, or any  
20 illegal activity, where such acts are in connection with a  
21 loan under this chapter. Such acts include but are not  
22 limited to:

23 1. Willful imposition of illegal or excessive charges;

24 or

25 2. Misrepresentation, circumvention, or concealment of  
26 any matter required to be stated or furnished to a borrower;

27 (f) The use of unreasonable collection practices or of  
28 false, deceptive, or misleading advertising, where such acts  
29 are in connection with the operation of a business to make  
30 consumer finance loans;

31

1 (g) Failure to maintain, preserve, and keep available  
2 for examination, all books, accounts, or other documents  
3 required by this chapter, by any rule or order adopted under  
4 this chapter, or by any agreement entered into with the  
5 department; or

6 (h) Refusal to permit inspection of books and records  
7 in an investigation or examination by the department or  
8 refusal to comply with a subpoena issued by the department.

9 (2) Upon a finding by the department that any person  
10 has committed any of the acts set forth in subsection (1), the  
11 department may enter an order taking one or more of the  
12 following actions:

13 (a) Denying an application for a license;

14 (b) Revoking or suspending a license previously  
15 granted;

16 (c) Placing a licensee or an applicant for a license  
17 on probation for a period of time and subject to such  
18 conditions as the department may specify;

19 (d) Placing permanent restrictions or conditions upon  
20 issuance or maintenance of a license;

21 (e) Issuing a reprimand; or

22 (f) Imposing an administrative fine not to exceed  
23 \$1,000 for each such act.

24 (3) The department may take any of the actions  
25 specified in subsection (2) against any partnership,  
26 corporation, or association, if the department finds that any  
27 of the acts set forth in subsection (1) have been committed by  
28 any member of the partnership, any officer or director of the  
29 corporation or association, or any person with power to direct  
30 the management or policies of the partnership, corporation, or  
31 association.

1 (4) A licensee is responsible for the acts of the  
2 licensee's employee or agent if, with knowledge of such acts,  
3 the licensee retained profits, benefits, or advantages  
4 accruing from such acts or ratified the conduct of the  
5 employee or agent as a matter of law or fact.

6 (5) Action taken under this section against a licensee  
7 does not impair the obligation of any lawful contract between  
8 the licensee and a borrower. This chapter does not prevent a  
9 licensee from lending to residents of any part of this state  
10 or any other state or country or prohibit the making of loans  
11 by mail.

12 Section 8. Section 516.11, Florida Statutes, is  
13 amended to read:

14 (Substantial rewording of section. See  
15 s. 516.11, F.S., for present text.)

16 516.11 Investigations and complaints.--

17 (1) The department shall, at intermittent periods,  
18 make such investigations and examinations of any licensee or  
19 other person as it deems necessary to determine compliance  
20 with this chapter. For such purposes, it may examine the  
21 books, accounts, records, and other documents or matters of  
22 any licensee or other person and compel the production of all  
23 relevant books, records, and other documents and materials  
24 relative to an examination or investigation. Examinations of  
25 a licensee may not be made more often than once a year unless  
26 the department has reason to believe the licensee is not  
27 complying with this chapter. Each licensee shall pay to the  
28 department an examination fee based upon the amount of  
29 outstanding loans due the licensee at the time of the  
30 examination, as follows:

31 Amount Outstanding	Examination Fee
-----------------------	-----------------

1	From \$0 to \$50,000 .....	\$100
2	From \$50,000.01 to \$100,000.....	125
3	From \$100,000.01 to \$250,000 .....	150
4	From \$250,000.01 to \$500,000 .....	200
5	From \$500,000.01 and over.....	325

6           (2) Any person who has reason to believe that this  
7 chapter has been or will be violated may file a written  
8 complaint with the department.

9           Section 9. Section 516.19, Florida Statutes, is  
10 amended to read:

11           (Substantial rewording of section. See  
12           s. 516.19, F.S., for present text.)

13           516.19 Penalties.--Any person who violates any  
14 provision of this chapter is guilty of a misdemeanor of the  
15 first degree, punishable as provided in s. 775.082, s.  
16 775.083, or s. 775.084.

17           Section 10. Section 516.21, Florida Statutes, is  
18 amended to read:

19           516.21 Restriction of borrower's indebtedness.--  
20           †† No licensee shall directly or indirectly charge,  
21 contract for, or receive any interest, discount, or  
22 consideration greater than 18 percent per annum upon any loan,  
23 or upon any part or all of any aggregate loan indebtedness of  
24 the same borrower, of the amount of more than \$5,000. The  
25 foregoing prohibition shall also apply to any licensee who  
26 permits any person, as borrower or as endorser, guarantor, or  
27 surety for any borrower, or otherwise, or any husband and  
28 wife, jointly or severally, to owe directly or contingently or  
29 both to the licensee at any time a sum of more than \$5,000 for  
30 principal. However, if the proceeds of any loan of \$5,000 or  
31 less are used to discharge a preexisting debt of the borrower



1 for goods or services owed directly to the person who provided  
 2 such goods or services, the licensee may accept from such  
 3 person a guaranty of payment of the principal of such loan  
 4 with interest at a rate not exceeding 18 percent per annum,  
 5 and the acceptance of one or more such guaranties in any  
 6 aggregate amount shall not affect the rights of such licensee  
 7 to make the charges against the primary borrower authorized by  
 8 s. 516.031, nor shall the limitation apply to the isolated  
 9 acquisition directly or indirectly by purchase or by discount  
 10 of bona fide obligations of a borrower. However, in the event  
 11 a licensee makes a bona fide purchase of substantially all of  
 12 the loans made under this chapter from another licensee or  
 13 other lender not affiliated with the purchaser and such  
 14 licensee or other lender has an existing loan outstanding to  
 15 one or more of the borrowers whose loans are purchased, such  
 16 licensee making such purchase shall be entitled to liquidate  
 17 and collect the balances due on such loans, including all  
 18 lawful charges and interest at the rates or amounts agreed  
 19 upon in such loan contracts.

20 ~~(2) -- As amended by chapter 79-5927, Laws of Florida~~  
 21 ~~chapter 79-2747, Laws of Florida which amended subsection (1):~~  
 22 ~~(a) -- Shall apply only to loans, advances of credit, or~~  
 23 ~~lines of credit made on or subsequent to July 17, 1979, and to~~  
 24 ~~loans, advances of credit, or lines of credit made prior to~~  
 25 ~~that date if the lender has the legal right to require full~~  
 26 ~~payment or to adjust or modify the interest rate, by renewal,~~  
 27 ~~assumption, reaffirmation, contract, or otherwise; and~~  
 28 ~~(b) -- Shall not be construed as diminishing the force~~  
 29 ~~and effect of any laws applying to loans, advances of credit,~~  
 30 ~~or lines of credit, other than to those mentioned in paragraph~~  
 31 ~~(a), completed prior to July 17, 1979.~~

1 Section 11. Section 516.23, Florida Statutes, is  
2 amended to read:

3 (Substantial rewording of section. See  
4 s. 516.23, F.S., for present text.)

5 516.23 Subpoenas; enforcement actions; rules.--

6 (1) The department may issue and serve subpoenas to  
7 compel the attendance of witnesses and the production of  
8 documents, papers, books, records, and other evidence before  
9 it in any matter pertaining to this chapter. The department  
10 may administer oaths and affirmations to any person whose  
11 testimony is required. If any person refuses to testify,  
12 produce books, records, and documents, or otherwise refuses to  
13 obey a subpoena issued under this section, the department may  
14 present its petition to a court of competent jurisdiction in  
15 or for the county in which such person resides or has its  
16 principal place of business, whereupon the court shall issue  
17 its rule nisi requiring such person to obey forthwith the  
18 subpoena issued by the department or show cause for failing to  
19 obey such subpoena. Unless the person shows sufficient cause  
20 for failing to obey the subpoena, the court shall forthwith  
21 direct such person to obey the subpoena, subject to such  
22 punishment as the court may direct, including, but not limited  
23 to, the restraint, by injunction or by appointment of a  
24 receiver, of any transfer, pledge, assignment, or other  
25 disposition of such person's assets or any concealment,  
26 alteration, destruction, or other disposition of subpoenaed  
27 books, records, or documents as the court deems appropriate,  
28 until such person has fully complied with such subpoena and  
29 the department has completed its investigation or examination.  
30 The department is entitled to the summary procedure provided  
31 in s. 51.011, and the court shall advance the cause on its

1 calendar. Costs incurred by the department to obtain an order  
2 granting, in whole or in part, its petition shall be taxed  
3 against the subpoenaed person, and failure to comply with such  
4 order is a contempt of court. Witnesses are entitled to the  
5 same fees and mileage as they are entitled to by law for  
6 attending as witnesses in the circuit court, unless such  
7 examination or investigation is held at the place of business  
8 or residence of the witness.

9 (2) In addition to any other powers conferred upon it  
10 to enforce or administer this chapter, the department may:

11 (a) Bring an action in any court of competent  
12 jurisdiction to enforce or administer this chapter, any rule  
13 or order adopted under this chapter, or any written agreement  
14 entered into with the department. In such action, the  
15 department may seek any relief at law or equity including  
16 temporary or permanent injunction, appointment of a receiver  
17 or administrator, or an order of restitution.

18 (b) Issue and serve upon a person an order requiring  
19 such person to cease and desist and take corrective action  
20 whenever the department finds that such person is violating,  
21 has violated, or is about to violate any provision of this  
22 chapter, any rule or order adopted under this chapter, or any  
23 written agreement entered into with the department.

24 (c) Impose and collect an administrative fine against  
25 any person found to have violated any provisions of this part,  
26 any rule or order adopted under this chapter, or any written  
27 agreement entered into with the department, in an amount not  
28 to exceed \$1,000 for each violation.

29 (3) The department may adopt rules and perform such  
30 other acts as are necessary or convenient for the proper  
31

1 administration, enforcement, and interpretation of this  
2 chapter.

3 Section 12. Section 516.26, Florida Statutes, is  
4 amended to read:

5 516.26 Purchase or assignment of wages, salaries,  
6 etc.--The payment of \$25,000 ~~\$600~~ or less in money, credit,  
7 goods, or things in action as consideration for any sale or  
8 assignment of or order for the payment of wages, salary,  
9 commissions, or other compensation for services, whether  
10 earned or to be earned, shall, for the purposes of regulation  
11 under, and the enforcement and interpretation of, any law,  
12 civil or criminal, relating to loans, interest charges, or  
13 usury, be deemed a loan secured by such assignment, and the  
14 amount by which such assigned compensation exceeds the amount  
15 of such consideration actually paid shall, for the purpose of  
16 regulation under, and the interpretation and enforcement of,  
17 such law, be deemed interest upon such loan from the date of  
18 such payment until the date such compensation is payable.  
19 Each such transaction shall be governed by and subject in all  
20 respects to all provisions of law relating to loans, interest,  
21 charges, usury, and to the same extent as if it had been in  
22 form a loan of the sum paid for the assignment.

23 Section 13. Subsection (1) of section 516.31, Florida  
24 Statutes, is amended to read:

25 516.31 Consumer protection; certain negotiable  
26 instruments restricted; assigns subject to defenses;  
27 limitation on deficiency claims; cross collateral.--

28 (1) SCOPE.--This section applies ~~shall apply~~ to every  
29 consumer finance loan or other contract authorized by this  
30 chapter ~~credit-transaction-and-contract~~ in which any form of  
31 credit is extended to an individual to purchase or obtain

1 goods or services for use primarily for personal, family, or  
2 household purposes.

3 Section 14. Section 516.35, Florida Statutes, is  
4 amended to read:

5 516.35 Credit insurance must comply with Credit  
6 Insurance Act.--

7 (1) Tangible property offered as security may be  
8 reasonably insured against loss for a reasonable term,  
9 considering the circumstances of the loan. If such insurance  
10 is sold at standard rates through a person duly licensed by  
11 the Department of Insurance and if the policy is payable to  
12 the borrower or any member of his family, it shall not be  
13 deemed to be a collateral sale, purchase, or agreement even  
14 though a customary mortgagee clause is attached or the  
15 licensee is a coassured.

16 (2) Credit property, credit life, and disability  
17 insurance may be which-is provided at the expense of the  
18 borrowers and must be provided only under a group or  
19 individual insurance policy which complies with ss. 627.676-  
20 627.684 and lawful regulations thereunder. The cost of such  
21 credit-life-and-disability insurance which-is-paid-by  
22 borrowers shall be deducted from the principal amount of the  
23 loan and shall be disclosed on the statement required by s.  
24 516.15(1) or on a combined note and disclosure statement  
25 required by the federal Truth In Lending Act.

26 Section 15. Sections 516.13, 516.18, 516.20, 516.231,  
27 516.29, 516.30, 516.34, and 516.37, Florida Statutes, are  
28 hereby repealed.

29 Section 16. Notwithstanding the provisions of chapter  
30 81-318, Laws of Florida, sections 516.001, 516.01, 516.02,  
31 516.03, 516 031, 516.035, 516.05, 516.07, 516.08, 516.09,

1 516.11, 516.12, 516.15, 516.16, 516.17, 516.19, 516.21,  
 2 516.22, 516.221, 516.23, 516.26, 516.27, 516.31, 516.32,  
 3 516.33, 516.35, and 516.36, Florida Statutes, shall not stand  
 4 repealed on October 1, 1988, as scheduled by such law, but  
 5 said sections, as amended, are hereby revived and readopted.

6 Section 17. Sections 516.001, 516.01, 516.02, 516.03,  
 7 516.031, 516.035, 516.05, 516.07, 516.08, 516.09, 516.11,  
 8 516.12, 516.15, 516.16, 516.17, 516.19, 516.21, 516.22,  
 9 516.221, 516.23, 516.26, 516.27, 516.31, 516.32, 516.33,  
 10 516.35, and 516.36, Florida Statutes, are repealed effective  
 11 October 1, 1998, and shall be reviewed by the Legislature  
 12 prior to that date pursuant to section 11.61, Florida  
 13 Statutes.

14 Section 18. This act shall take effect October 1,  
 15 1988.

17 \*\*\*\*\*

#### 18 SENATE SUMMARY

19 Pursuant to Sunset review, continues the provisions of  
 20 ch. 516, F.S., relating to the regulation of consumer  
 21 finance loans by the Department of Banking and Finance.  
 22 Defines the terms "consumer finance borrower" and  
 23 "consumer finance loan." Revises licensing requirements  
 24 for engaging in the business of making consumer finance  
 25 loans. Revises certain obsolete language. Provides for  
 26 a biennial license. Increases such license fee to \$550.  
 27 Increases the rate of interest which may be charged after  
 28 default of a loan. Provides for investigation by the  
 29 department of an applicant for licensure. Provides for  
 30 inactive licenses. Requires department approval of a  
 31 change in a place of business by a licensee. Provides  
 for a temporary license following the sale of an existing  
 licensed business. Provides additional grounds for the  
 denial of a license by the department. Provides grounds  
 for disciplinary action. Provides for investigations by  
 the department. Provides examination fees based upon the  
 amount of outstanding loans due a licensee. Provides a  
 penalty. Provides for enforcement of ch. 516, F.S., by  
 the department. Provides for insuring tangible property  
 offered as security for a loan.

by the Committee on Commerce

A bill to be entitled

An act relating to consumer finance; amending  
 s. 516.01, F.S.; providing definitions;  
 amending s. 516.02, F.S.; requiring a license  
 from the Department of Banking and Finance to  
 engage in the business of making consumer  
 finance loans; providing certain limitations on  
 credit amounts and interest rates, excluding  
 certain persons from regulation under ch. 516,  
 F.S.; amending s. 516.03, F.S.; providing a  
 biennial licensing period; increasing the  
 license fee; amending s. 516.031, F.S.;  
 providing clarifying language; deleting  
 obsolete language; providing restrictions  
 relating to the use of homestead property as  
 loan security; amending s. 516.035, F.S.;  
 increasing the rate of interest which may be  
 charged upon default of a loan; amending s.  
 516.05, F.S.; revising licensing requirements;  
 providing for an inactive license; requiring  
 department approval prior to a change in place  
 of business; providing for temporary licensing;  
 amending s. 516.07, F.S.; providing grounds for  
 denial of a license; providing grounds for  
 disciplinary action; amending s. 516.11, F.S.;  
 providing for investigations and examinations  
 by the department; providing examination fees;  
 amending s. 516.19, F.S.; providing a penalty,  
 amending s. 516.21, F.S.; deleting obsolete  
 language; amending s. 516.23, F.S.; providing  
 for enforcement; amending s. 516.26, F.S.;

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1 providing conforming language; amending s.  
2 516.31, F.S.; providing for applicability;  
3 amending s. 516.35, F.S.; providing for certain  
4 types of credit insurance; repealing ss.  
5 516.09, 516.13, 516.18, 516.20, 516.231,  
6 516.29, 516.30, 516.34, 516.37, F.S., relating  
7 to the regulation of consumer finance loans;  
8 saving ch. 516, F.S., from Sunset repeal and  
9 providing for future review and repeal;  
10 providing an effective date.

11  
12 Be It Enacted by the Legislature of the State of Florida:

13  
14 Section 1. Section 516.01, Florida Statutes, is  
15 amended to read:

16 (Substantial rewording of section. See  
17 s. 516.01, F.S., for present text.)

18 516.01 Definitions.--As used in this chapter, the  
19 term:

20 (1) "Consumer finance borrower" or "borrower" means a  
21 person who has incurred either direct or contingent liability  
22 to repay a consumer finance loan.

23 (2) "Consumer finance loan" means a loan of money,  
24 credit, goods, or choses in action, including, except as  
25 otherwise specifically indicated, provision of a line of  
26 credit, in an amount or to a value of \$5,000 or less for which  
27 the lender charges, contracts for, collects, or receives  
28 interest at a rate greater than 18 percent per annum.

29 (3) "Department" means the Department of Banking and  
30 Finance.



1 (4) "Interest" means the cost of obtaining a consumer  
2 finance loan and includes any profit or advantage of any kind  
3 whatsoever that a lender may charge, contract for, collect,  
4 receive, or in anywise obtain, including by means of any  
5 collateral sale, purchase, or agreement, as a condition for a  
6 consumer finance loan. Charges specifically permitted by this  
7 chapter, including commissions received for insurance written  
8 as permitted by this chapter, shall not be deemed interest.

9 (5) "License" means a permit issued under this chapter  
10 to make and collect loans in accordance with this chapter at a  
11 single place of business.

12 (6) "Licensee" means a person to whom a license is  
13 issued.

14 Section 2. Section 516.02, Florida Statutes, is  
15 amended to read:

16 (Substantial rewording of section. See  
17 s. 516.02, F.S., for present text.)

18 516.02 Loans; lines of credit; rate of interest;  
19 license.--

20 (1) A person must not engage in the business of making  
21 consumer finance loans unless he is authorized under this  
22 chapter or other statute and unless he first obtains a license  
23 from the department.

24 (2)(a) A person who is engaged in the business of  
25 making loans of money, except as authorized by this chapter or  
26 other statutes of this state, may not directly or indirectly  
27 charge, contract for, or receive any interest or consideration  
28 greater than 18 percent per annum upon the loan, use, or  
29 forbearance of money, goods, or choses in action, or upon the  
30 loan or use of credit, of the amount or value of \$5,000 or  
31 less.

1 (b) The prohibition in paragraph (a) applies to any  
2 lender who, as security for any such loan, use, or forbearance  
3 of money, goods, or choses in action, or for any such loan or  
4 use of credit, makes a pretended purchase of property from any  
5 person and permits the owner or pledgor to retain the  
6 possession thereof or who by any device or pretense of  
7 charging for services or otherwise seeks to obtain a greater  
8 compensation than is authorized by this chapter.

9 (c) A loan for which a greater rate of interest or  
10 charge than is allowed by this chapter has been contracted for  
11 or received, wherever made, is not enforceable in this state,  
12 and each person who in any manner participates therein in this  
13 state is subject to this chapter. However, this paragraph  
14 does not apply to loans legally made to a resident of another  
15 state by a person within that state if that state has in  
16 effect a regulatory small loan or consumer finance law similar  
17 in principle to this chapter.

18 (3) A licensee may offer lines of credit not exceeding  
19 \$25,000 and may charge, contract for, and receive interest  
20 charges and other charges pursuant to s. 516.031, except that  
21 a licensee may not offer a credit card.

22 (4) This chapter does not apply to any person who does  
23 business under, and as permitted by, any law of this state or  
24 of the United States relating to banks, savings banks, trust  
25 companies, building and loan associations, credit unions, or  
26 industrial loan and investment companies or to any bona fide  
27 pawnbroking business transacted under a pawnbroker's license.  
28 A pawnbroker may not be licensed to transact business under  
29 this chapter.

30 Section 3. Subsection (1) of section 516.03, Florida  
31 Statutes, is amended to read:

1 516.03 Application for license; fees; etc.--

2 (1) APPLICATION.--Application for a license to make  
3 loans under this chapter shall be in writing, under oath, and  
4 in the form prescribed by the department, and shall contain  
5 the name, residence and business addresses of the applicant  
6 and, if the applicant is a copartnership or association, of  
7 every member thereof and, if a corporation, of each officer  
8 and director thereof, also the county and municipality with  
9 the street and number or approximate location where the  
10 business is to be conducted, and such further relevant  
11 information as the department may require. At the time of  
12 making such application the applicant shall pay to the  
13 department a biennial license fee of \$550 ~~the sum of \$175 as~~  
14 ~~an annual license fee for a period terminating on the last day~~  
15 ~~of the current calendar year, and a further fee of \$200 for~~  
16 ~~investigating the application and the applicants.~~  
17 Applications, except for applications to renew or reactivate a  
18 license, must be accompanied by an investigation fee of \$200.

19 Section 4. Section 516.031, Florida Statutes, is  
20 amended to read:

21 516.031 Finance charge; maximum rates.--

22 (1) INTEREST RATES.--Every licensee may lend any sum  
23 of money not exceeding \$25,000. A licensee may not take a  
24 security interest secured by land on any loan less than \$1,000  
25 and a licensee may not take a security interest on homestead  
26 property, as described in s. 4(a)(1), Art. X of the State  
27 Constitution, on any loan less than \$2,500. The licensee may  
28 charge, contract for, and receive thereon interest charges as  
29 provided and authorized by this section. The maximum interest  
30 rate shall be 30 percent per annum, computed on the first \$500  
31 of the principal amount as computed from time to time; 24

1 percent per annum on that part of the principal amount as  
2 computed from time to time exceeding \$500 and not exceeding  
3 \$1,000; and 18 percent per annum on that part of the principal  
4 amount as computed from time to time exceeding \$1,000 and not  
5 exceeding \$5,000; on loans exceeding \$5,000, the total  
6 interest charged on the entire principal amount shall not  
7 exceed 18 percent per annum simple interest. The original  
8 principal amount as used in this section shall be the same  
9 amount as the amount financed as defined by the Federal Truth-  
10 In-Lending Act and Regulation Z of the Board of Governors of  
11 the Federal Reserve System. In determining compliance with  
12 the statutory maximum interest and finance charges set forth  
13 herein, the computations utilized shall be simple interest and  
14 not add-on interest or any other computations.

15 (2) ANNUAL PERCENTAGE RATE UNDER FEDERAL TRUTH-IN-  
16 LENDING ACT.--The annual percentage rate of finance charge  
17 which may be contracted for and received under any loan  
18 contract made by a licensee under this chapter may equal, but  
19 not exceed, the annual percentage rate which must be computed  
20 and disclosed as required by the Federal Truth-In-Lending Act  
21 and Regulation Z of the Board of Governors of the Federal  
22 Reserve System. The maximum annual percentage rate of finance  
23 charge which may be contracted for and received is 12 times  
24 the maximum monthly rate and the maximum monthly rate shall be  
25 computed on the basis of one-twelfth of the annual rate for  
26 each full month. The department shall by regulation establish  
27 the rate for each day in a fraction of a month when the period  
28 for which the charge is computed is more or less than 1 month.

29 (3) OTHER CHARGES.--

30 (a) In addition to the interest and insurance charges  
31 herein provided for, no further or other charges or amount

1 whatsoever for any examination, service, brokerage fee,  
2 commission, or other thing or otherwise shall be directly or  
3 indirectly charged, contracted for, or received as a condition  
4 to the grant of a loan, except:

5 1. Charges paid for title insurance and the appraisal  
6 of real property offered as security when paid to a third  
7 party and supported by an actual expenditure;

8 2. Intangible personal property tax on the loan note  
9 or obligation when secured by a lien on real property;

10 3. The documentary excise tax and lawful fees, if any,  
11 actually and necessarily paid out by the licensee to any  
12 public officer for filing, recording, or releasing in any  
13 public office any instrument securing the loan, which fees may  
14 be collected when the loan is made or at any time thereafter;

15 4. The premium payable for any insurance in lieu of  
16 perfecting any security interest otherwise required by the  
17 licensee in connection with the loan, if the premium does not  
18 exceed the fees which would otherwise be payable, which  
19 premium may be collected when the loan is made or at any time  
20 thereafter; or

21 5. Actual and reasonable attorney's fees and court  
22 costs as determined by the court in which suit is filed; or

23 6. Actual and commercially and-court-costs,-including  
24 ~~the-actual-and~~ reasonable expenses of repossession, storing,  
25 repairing and placing in condition for sale, and selling of  
26 any property pledged as security.

27  
28 Any charges, including interest, in excess of the combined  
29 total of all charges authorized and permitted by this chapter  
30 constitute a violation of chapter 687 governing interest and  
31 usury, and the penalties of that chapter apply. In the event

1 of a bona fide error, the licensee shall refund or credit the  
 2 borrower with the amount of the overcharge immediately but  
 3 within 20 days from the discovery of such error.

4 (b) Notwithstanding the provisions of paragraph (a),  
 5 any lender of money who receives a check, draft, negotiable  
 6 order of withdrawal, or like instrument drawn on a bank or  
 7 other depository institution, which instrument is given by a  
 8 borrower as full or partial repayment of a loan, may, if such  
 9 instrument is not paid or is dishonored by such institution,  
 10 make and collect from the borrower a bad check charge of not  
 11 more than the greater of \$10 or an amount equal to the actual  
 12 charge made to the lender by the depository institution for  
 13 the return of the unpaid or dishonored instrument.

14 (4) DIVIDED LOANS.--No licensee shall induce or permit  
 15 any borrower to split up or divide any loan. No licensee  
 16 shall induce or permit any person, or any husband and wife,  
 17 jointly or severally, to become obligated to him, directly or  
 18 contingently or both, under more than one contract of loan at  
 19 the same time, for the purpose, or with the result, of  
 20 obtaining a greater finance charge than would otherwise be  
 21 permitted by this section.

22 ~~(5)--AFFIDAVIT OF CHIT--79-274--As amended by~~  
 23 ~~chapter-79-592, laws of Florida, chapter-79-274, laws of~~  
 24 ~~Florida which amended subsection (1):~~

25 ~~(a)--Shall apply only to loans, advances of credit, or~~  
 26 ~~lines of credit made on or subsequent to July 17, 1979, and to~~  
 27 ~~loans, advances of credit, or lines of credit made prior to~~  
 28 ~~that date if the lender has the legal right to require full~~  
 29 ~~payment or to adjust or modify the interest rate, by renewal,~~  
 30 ~~assumption, reaffirmation, contract, or otherwise, and~~

1           ~~(b) -- Shall not be construed as diminishing the force~~  
 2 ~~and effect of any laws applying to loans, advances of credit,~~  
 3 ~~or issues of credit, other than to those mentioned in paragraph~~  
 4 ~~(a) completed prior to July 17, 1979.~~

5           (5)(6) UNPAID INTEREST UPON REFINANCING.-- If all or  
 6 part of the consideration for a new loan contract is the  
 7 unpaid principal balance of a prior loan with the licensee,  
 8 the principal amount payable under the new loan contract may  
 9 include not more than 60 days' unpaid interest accrued on the  
 10 prior loan.

11           Section 5. Section 516.035, Florida Statutes, is  
 12 amended to read:

13           516.035 Rate of interest upon default.-- In the event  
 14 that any balance remains unpaid at the expiration of the  
 15 scheduled maturity date of a loan, licensees may continue to  
 16 charge interest on the unpaid balance at the rate provided for  
 17 in s. 516.031(1) for a period not to exceed 12 months.

18 Thereafter, the interest shall not exceed the permissible rate  
 19 of interest provided by chapter 687 10-percent-per-annum.

20 When advances are made pursuant to a line of credit, a  
 21 licensee may charge interest on the unpaid balance at the rate  
 22 provided for in s. 516.031(1) for the period a balance remains  
 23 unpaid.

24           Section 6. Section 516.05, Florida Statutes, is  
 25 amended to read.

26           (Substantial rewording of section. See

27 s. 516.05, F.S., for present text.)

28           516.05 License --

29           (1) Upon the filing of an application for a license  
 30 and payment of all applicable fees, the department shall,  
 31 unless the application is to renew or reactivate an existing

1 license, make an investigation of the facts concerning the  
2 applicant's proposed activities. If the department determines  
3 that a license should be granted, it shall issue the license  
4 for a period not to exceed 2 years. Biennial licensure  
5 periods and procedures for renewal of licenses shall be  
6 established by the rule of the department. If the department  
7 determines that grounds exist under this chapter for denial of  
8 an application other than an application to renew a license,  
9 it shall deny such application, return to the applicant the  
10 sum paid as a license fee, and retain the investigation fee.

11 (2) A license that is not renewed at the end of the  
12 biennium established by the department shall automatically  
13 revert to inactive status. An inactive license may be  
14 reactivated upon submission of a completed reactivation  
15 application, payment of the biennial license fee, and payment  
16 of a reactivation fee which shall equal the biennial license  
17 fee. A license expires on the date at which it has been  
18 inactive for 6 months.

19 (3) Only one place of business for the purpose of  
20 making loans under this chapter may be maintained under one  
21 license, but the department may issue additional licenses to a  
22 licensee upon compliance with all the provisions of this  
23 chapter governing issuance of a single license.

24 (4) A licensee may not change the place of business  
25 maintained under a license without prior approval of the  
26 department. When a licensee wishes to change a place of  
27 business, the licensee shall give written notice thereof to  
28 the department, and, if the department finds that the proposed  
29 location is reasonably accessible to borrowers under existing  
30 loan contracts, it shall permit the change and shall amend the  
31 license accordingly. If the department does not so find, it



1 shall enter an order denying removal of the business to the  
2 requested location.

3 (5) A licensee may conduct the business of making  
4 loans under this chapter within a place of business in which  
5 other business is solicited or engaged in, unless the  
6 department shall find that the conduct of such other business  
7 by the licensee results in an evasion of this chapter. Upon  
8 such finding, the department shall order the licensee to  
9 desist from such evasion, provided, however, that no license  
10 shall be granted to or renewed for any person or organization  
11 engaged in the pawnbroker business.

12 (6) If any person purchases substantially all of the  
13 assets of any existing licensed place of business, the  
14 purchaser shall give immediate notice thereof to the  
15 department and shall be granted a 90-day temporary license for  
16 the place of business within 10 days after the department's  
17 receipt of an application for a permanent license. Issuance  
18 of a temporary license for a place of business nullifies the  
19 existing license for the place of business, and the temporary  
20 licensee is subject to any disciplinary action provided for by  
21 this chapter.

22 (7) Licenses are not transferable or assignable. A  
23 licensee may invalidate any license by delivering it to the  
24 department with a written notice of the delivery, but such  
25 delivery does not affect any civil or criminal liability or  
26 the authority to enforce this chapter for acts committed in  
27 violation thereof.

28 (8) The department may refuse to process an initial  
29 application for a license if the applicant or any person with  
30 power to direct the management or policies of the applicant's  
31 business is the subject of a pending criminal prosecution in

1 any jurisdiction, until conclusion of such criminal  
2 prosecution.

3 Section 7. Section 516.07, Florida Statutes, is  
4 amended to read:

5 (Substantial rewording of section. See  
6 s. 516.07, F.S., for present text.)

7 516.07 Grounds for denial of license or for  
8 disciplinary action.--

9 (1) The following acts are violations of this chapter,  
10 and constitute grounds for denial of an application for a  
11 license to make consumer finance loans and grounds for any of  
12 the disciplinary actions specified in subsection (2):

13 (a) A material misstatement of fact in an application  
14 for a license;

15 (b) Failure to maintain liquid assets of at least  
16 \$25,000 at all times for the operation of business at a  
17 licensed location or proposed location;

18 (c) Failure to demonstrate financial responsibility,  
19 experience, character, or general fitness, such as to command  
20 the confidence of the public and to warrant the belief that  
21 the business operated at the licensed or proposed location is  
22 lawful, honest, fair, efficient, and within the purposes of  
23 this chapter.

24 (d) The violation, either knowingly or without the  
25 exercise of due care, of any provision of this chapter, any  
26 rule or order adopted under this chapter, or any written  
27 agreement entered into with the department;

28 (e) Any act of fraud, misrepresentation, or deceit,  
29 regardless of reliance by or damage to a borrower, or any  
30 illegal activity, where such acts are in connection with a  
31

1 loan under this chapter. Such acts include but are not  
2 limited to:

3 1. Willful imposition of illegal or excessive charges;

4 or

5 2. Misrepresentation, circumvention, or concealment of  
6 any matter required to be stated or furnished to a borrower;

7 (f) The use of unreasonable collection practices or of  
8 false, deceptive, or misleading advertising, where such acts  
9 are in connection with the operation of a business to make  
10 consumer finance loans;

11 (g) Any violation of part III of chapter 817 or part  
12 II of chapter 559;

13 (h) Failure to maintain, preserve, and keep available  
14 for examination, all books, accounts, or other documents  
15 required by this chapter, by any rule or order adopted under  
16 this chapter, or by any agreement entered into with the  
17 department; or

18 (i) Refusal to permit inspection of books and records  
19 in an investigation or examination by the department or  
20 refusal to comply with a subpoena issued by the department.

21 (2) Upon a finding by the department that any person  
22 has committed any of the acts set forth in subsection (1), the  
23 department may enter an order taking one or more of the  
24 following actions:

25 (a) Denying an application for a license;

26 (b) Revoking or suspending a license previously  
27 granted;

28 (c) Placing a licensee or an applicant for a license  
29 on probation for a period of time and subject to such  
30 conditions as the department may specify;

31

1 (d) Placing permanent restrictions or conditions upon  
2 issuance or maintenance of a license;

3 (e) Issuing a reprimand; or

4 (f) Imposing an administrative fine not to exceed  
5 \$1,000 for each such act.

6 (3) The department may take any of the actions  
7 specified in subsection (2) against any partnership,  
8 corporation, or association, if the department finds that any  
9 of the acts set forth in subsection (1) have been committed by  
10 any member of the partnership, any officer or director of the  
11 corporation or association, or any person with power to direct  
12 the management or policies of the partnership, corporation, or  
13 association.

14 (4) A licensee is responsible for the acts of the  
15 licensee's employee or agent if, with knowledge of such acts,  
16 the licensee retained profits, benefits, or advantages  
17 accruing from such acts or ratified the conduct of the  
18 employee or agent as a matter of law or fact.

19 (5) Action taken under this section against a licensee  
20 does not impair the obligation of any lawful contract between  
21 the licensee and a borrower. This chapter does not prevent a  
22 licensee from lending to residents of any part of this state  
23 or any other state or country or prohibit the making of loans  
24 by mail.

25 Section 8. Section 516.11, Florida Statutes, is  
26 amended to read:

27 (Substantial rewording of section. See

28 s. 516.11, F.S., for present text.)

29 516.11 Investigations and complaints.--

30 (1) The department shall, at intermittent periods,  
31 make such investigations and examinations of any licensee or

1 other person as it deems necessary to determine compliance  
 2 with this chapter. For such purposes, it may examine the  
 3 books, accounts, records, and other documents or matters of  
 4 any licensee or other person and compel the production of all  
 5 relevant books, records, and other documents and materials  
 6 relative to an examination or investigation. Examinations of  
 7 a licensee may not be made more often than once a year unless  
 8 the department has reason to believe the licensee is not  
 9 complying with this chapter. Each licensee shall pay to the  
 10 department an examination fee based upon the amount of  
 11 outstanding loans due the licensee at the time of the  
 12 examination, as follows:

13 Amount Outstanding	13 Examination Fee
14 From \$0 to \$50,000 .....	14 \$100
15 From \$50,000.01 to \$100,000.....	15 125
16 From \$100,000.01 to \$250,000 .....	16 150
17 From \$250,000.01 to \$500,000 .....	17 200
18 From \$500,000.01 and over.....	18 325

19 (2) Any person who has reason to believe that this  
 20 chapter has been or will be violated may file a written  
 21 complaint with the department.

22 Section 9. Section 516.19, Florida Statutes, is  
 23 amended to read:

24 (Substantial rewording of section. See  
 25 s. 516.19, F.S., for present text.)

26 516.19 Penalties.--Any person who violates any  
 27 provision of this chapter is guilty of a misdemeanor of the  
 28 first degree, punishable as provided in s. 775.082, s.  
 29 775.083, or s. 775.084.

30 Section 10. Section 516.21, Florida Statutes, is  
 31 amended to read:

## 1           516.21 Restriction of borrower's indebtedness.--

2           ~~f~~ No licensee shall directly or indirectly charge,  
3 contract for, or receive any interest, discount, or  
4 consideration greater than 18 percent per annum upon any loan,  
5 or upon any part or all of any aggregate loan indebtedness of  
6 the same borrower, of the amount of more than \$5,000. The  
7 foregoing prohibition shall also apply to any licensee who  
8 permits any person, as borrower or as endorser, guarantor, or  
9 surety for any borrower, or otherwise, or any husband and  
10 wife, jointly or severally, to owe directly or contingently or  
11 both to the licensee at any time a sum of more than \$5,000 for  
12 principal. However, if the proceeds of any loan of \$5,000 or  
13 less are used to discharge a preexisting debt of the borrower  
14 for goods or services owed directly to the person who provided  
15 such goods or services, the licensee may accept from such  
16 person a guaranty of payment of the principal of such loan  
17 with interest at a rate not exceeding 18 percent per annum,  
18 and the acceptance of one or more such guaranties in any  
19 aggregate amount shall not affect the rights of such licensee  
20 to make the charges against the primary borrower authorized by  
21 s. 516.031, nor shall the limitation apply to the isolated  
22 acquisition directly or indirectly by purchase or by discount  
23 of bona fide obligations of a borrower. However, in the event  
24 a licensee makes a bona fide purchase of substantially all of  
25 the loans made under this chapter from another licensee or  
26 other lender not affiliated with the purchaser and such  
27 licensee or other lender has an existing loan outstanding to  
28 one or more of the borrowers whose loans are purchased, such  
29 licensee making such purchase shall be entitled to liquidate  
30 and collect the balances due on such loans, including all  
31

1 lawful charges and interest at the rates or amounts agreed  
2 upon in such loan contracts.

3 ~~(2) As amended by chapter 79-592, Laws of Florida,~~  
4 ~~chapter 79-274, Laws of Florida, which amended subsection (1):~~

5 ~~(a) Shall apply only to loans, advances of credit, or~~  
6 ~~lines of credit made on or subsequent to July 17, 1979, and to~~  
7 ~~loans, advances of credit, or lines of credit made prior to~~  
8 ~~that date if the lender has the legal right to require full~~  
9 ~~payment or to adjust or modify the interest rate, by renewal,~~  
10 ~~assumption, reaffirmation, contract, or otherwise; and~~

11 ~~(b) Shall not be construed as diminishing the force~~  
12 ~~and effect of any laws applying to loans, advances of credit,~~  
13 ~~or lines of credit, other than to those mentioned in paragraph~~  
14 ~~(a); completed prior to July 17, 1979.~~

15 Section 11. Section 516.23, Florida Statutes, is  
16 amended to read:

17 (Substantial rewording of section. See  
18 s. 516.23, F.S., for present text.)

19 516.23 Subpoenas, enforcement actions; rules.--

20 (1) The department may issue and serve subpoenas to  
21 compel the attendance of witnesses and the production of  
22 documents, papers, books, records, and other evidence before  
23 it in any matter pertaining to this chapter. The department  
24 may administer oaths and affirmations to any person whose  
25 testimony is required. If any person refuses to testify,  
26 produce books, records, and documents, or otherwise refuses to  
27 obey a subpoena issued under this section, the department may  
28 present its petition to a court of competent jurisdiction in  
29 or for the county in which such person resides or has its  
30 principal place of business, whereupon the court shall issue  
31 its rule nisi requiring such person to obey forthwith the

1 subpoena issued by the department or show cause for failing to  
2 obey such subpoena. Unless the person shows sufficient cause  
3 for failing to obey the subpoena, the court shall forthwith  
4 direct such person to obey the subpoena, subject to such  
5 punishment as the court may direct, including, but not limited  
6 to, the restraint, by injunction or by appointment of a  
7 receiver, of any transfer, pledge, assignment, or other  
8 disposition of such person's assets or any concealment,  
9 alteration, destruction, or other disposition of subpoenaed  
10 books, records, or documents as the court deems appropriate,  
11 until such person has fully complied with such subpoena and  
12 the department has completed its investigation or examination.  
13 The department is entitled to the summary procedure provided  
14 in s. 51.011, and the court shall advance the cause on its  
15 calendar. Costs incurred by the department to obtain an order  
16 granting, in whole or in part, its petition shall be taxed  
17 against the subpoenaed person, and failure to comply with such  
18 order is a contempt of court. Witnesses are entitled to the  
19 same fees and mileage as they are entitled to by law for  
20 attending as witnesses in the circuit court, unless such  
21 examination or investigation is held at the place of business  
22 or residence of the witness.

23 (2) In addition to any other powers conferred upon it  
24 to enforce or administer this chapter, the department may:

25 (a) Bring an action in any court of competent  
26 jurisdiction to enforce or administer this chapter, any rule  
27 or order adopted under this chapter, or any written agreement  
28 entered into with the department. In such action, the  
29 department may seek any relief at law or equity including  
30 temporary or permanent injunction, appointment of a receiver  
31 or administrator, or an order of restitution.



1 (b) Issue and serve upon a person an order requiring  
2 such person to cease and desist and take corrective action  
3 whenever the department finds that such person is violating,  
4 has violated, or is about to violate any provision of this  
5 chapter, any rule or order adopted under this chapter, or any  
6 written agreement entered into with the department.

7 (c) Impose and collect an administrative fine against  
8 any person found to have violated any provisions of this  
9 chapter, any rule or order adopted under this chapter, or any  
10 written agreement entered into with the department, in an  
11 amount not to exceed \$1,000 for each violation.

12 (3) The department may adopt rules and perform such  
13 other acts as are necessary or convenient for the proper  
14 administration, enforcement, and interpretation of this  
15 chapter.

16 Section 12. Section 516.26, Florida Statutes, is  
17 amended to read:

18 516.26 Purchase or assignment of wages, salaries,  
19 etc.--The payment of \$25,000 ~~\$600~~ or less in money, credit,  
20 goods, or things in action as consideration for any sale or  
21 assignment of or order for the payment of wages, salary,  
22 commissions, or other compensation for services, whether  
23 earned or to be earned, shall, for the purposes of regulation  
24 under, and the enforcement and interpretation of, any law,  
25 civil or criminal, relating to loans, interest charges, or  
26 usury, be deemed a loan secured by such assignment, and the  
27 amount by which such assigned compensation exceeds the amount  
28 of such consideration actually paid shall, for the purpose of  
29 regulation under, and the interpretation and enforcement of,  
30 such law, be deemed interest upon such loan from the date of  
31 such payment until the date such compensation is payable.

1 Each such transaction shall be governed by and subject in all  
2 respects to all provisions of law relating to loans, interest,  
3 charges, usury, and to the same extent as if it had been in  
4 form a loan of the sum paid for the assignment.

5 Section 13. Subsection (1) of section 516.31, Florida  
6 Statutes, is amended to read:

7 516.31 Consumer protection; certain negotiable  
8 instruments restricted; assigns subject to defenses;  
9 limitation on deficiency claims; cross collateral.--

10 (1) SCOPE.--This section applies shall-apply to every  
11 consumer finance loan or other contract authorized by this  
12 chapter credit-transaction-and-contract in which any form of  
13 credit is extended to an individual to purchase or obtain  
14 goods or services for use primarily for personal, family, or  
15 household purposes.

16 Section 14. Section 516.35, Florida Statutes, is  
17 amended to read:

18 516.35 Credit insurance must comply with Credit  
19 Insurance Act.--

20 (1) Tangible property offered as security may be  
21 reasonably insured against loss for a reasonable term,  
22 considering the circumstances of the loan. If such insurance  
23 is sold at standard rates through a person duly licensed by  
24 the Department of Insurance and if the policy is payable to  
25 the borrower or any member of his family, it shall not be  
26 deemed to be a collateral sale, purchase, or agreement even  
27 though a customary mortgagee clause is attached or the  
28 licensee is a coassured.

29 (2) Credit property, credit life, and disability  
30 insurance may be which-is provided at the expense of the  
31 borrowers and must be provided only under a group or

1 individual insurance policy which complies with ss. 627.676-  
2 627.684 and lawful regulations thereunder. The cost of such  
3 ~~credit-life-and-disability~~ insurance ~~which-is-paid-by~~  
4 ~~borrowers~~ shall be deducted from the principal amount of the  
5 loan and shall be disclosed on the statement required by s.  
6 516.15(1) or on a combined note and disclosure statement  
7 required by the federal Truth In Lending Act.

8 Section 15. Sections 516.09, 516.13, 516.18, 516.20,  
9 516.231, 516.29, 516.30, 516.34, and 516.37, Florida Statutes,  
10 are hereby repealed.

11 Section 16. Notwithstanding the provisions of chapter  
12 81-318, Laws of Florida, sections 516.001, 516.01, 516.02,  
13 516.03, 516.031, 516.035, 516.05, 516.07, 516.08, 516.11,  
14 516.12, 516.15, 516.16, 516.17, 516.19, 516.21, 516.22,  
15 516.221, 516.23, 516.26, 516.27, 516.31, 516.32, 516.33,  
16 516.35, and 516.36, Florida Statutes, shall not stand repealed  
17 on October 1, 1988, as scheduled by such law, but said  
18 sections, as amended, are hereby revived and readopted.

19 Section 17. Sections 516.001, 516.01, 516.02, 516.03,  
20 516.031, 516.035, 516.05, 516.07, 516.08, 516.11, 516.12,  
21 516.15, 516.16, 516.17, 516.19, 516.21, 516.22, 516.221,  
22 516.23, 516.26, 516.27, 516.31, 516.32, 516.33, 516.35, and  
23 516.36, Florida Statutes, are repealed effective October 1,  
24 1998, and shall be reviewed by the Legislature prior to that  
25 date pursuant to section 11.61, Florida Statutes.

26 Section 18. This act shall take effect October 1,  
27 1988.

STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
COMMITTEE SUBSTITUTE FOR  
Senate Bill 141

Substantial changes included in CS/SB 141 prohibits a licensee from taking a security interest in homestead property on any loan less than \$2,500; relieves the Department of Banking and Finance from entering an order to deny an application or permit an authorized change of business; prohibits the Department of Banking and Finance from delaying an initial application until conclusion of a governmental enforcement action; provides that violations of part III, chapter 817, F.S., or part II, chapter 559, F.S., are also violations of chapter 516, F.S.; and, provides editorial changes.

A REVIEW OF  
CHAPTER 516, FLORIDA STATUTES  
CONSUMER FINANCE

By the Staff of  
The Florida Senate Committee on Commerce  
January 1988

A Review of Chapter 516, Florida Statutes  
Consumer Finance

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A REVIEW OF CHAPTER 516, FLORIDA STATUTES  
CONSUMER FINANCE

I.        INTRODUCTION

The Regulatory Sunset Act, chapter 81-318, Laws of Florida, provides for a systematic repeal of those statutes which regulate initial entry and practice of certain professions and occupations. Each year, several statutes are scheduled for repeal or reenacted after an orderly review process. This particular review concerns chapter 516, Florida Statutes, entitled the "Florida Consumer Finance Act." Chapter 516 will be repealed on October 1, 1988, unless it is reenacted by the Legislature.

The Regulatory Sunset Act sets forth specific criteria for the review of statutes scheduled for repeal. Essentially, these criteria mandate a determination as to whether the law is a legitimate exercise of the state's police power. Stated alternatively, the primary question considered in this review is:

Does chapter 516 protect the public from serious potential harm, to the extent that if the act were repealed there would be a threat to the public's health, safety, or welfare?<sup>1</sup>

If the answer is negative, then the statute must fall. However, if the answer is positive, then the statute must be evaluated to determine if it addresses the potential for serious public harm at the least

public cost. This review begins with an examination of the statute, its origin, and its operation. An effort was made to avoid lengthy quotations from the chapter, as the entire chapter is set forth in the appendix. The rules are reviewed next, followed by a discussion of the Division of Finance within the Department of Banking and Finance, the administering agency. Finally, the costs and benefits of the law are evaluated from the perspective of the regulating entity, the consumer finance industry, and the public. These findings are followed by conclusions and recommendations.

This review is a product of staff research, meetings with the staff of the division, and information received from consumer finance industry representatives.



## II. SUMMARY

This review addresses the question of whether the Legislature should reenact, revise, or repeal chapter 516, the "Florida Consumer Finance Act." This review summarizes the statutory requirements, reviews the chapter's operation as enforced by the Division of Finance of the Department of Banking and Finance,<sup>2</sup> and evaluates the costs and benefits of the regulation. Finally, the review will address the criteria established by the Regulatory Sunset Act regarding the protection of the public health, safety, or welfare.<sup>3</sup>

The primary impetus of chapter 516 is to provide regulation and consumer protection relating to consumer finance arrangements. One of the requirements for licensing includes the submission of a written application to the department. The department also has the option of requesting additional information as may be required.<sup>4</sup>

The potential licensee must tender a \$200 fee to cover the cost of the initial fitness investigation. Licenses are renewed upon payment of an annual license fee of \$175.<sup>5</sup> A licensee is also responsible for an annual examination fee which is based upon the aggregate amount of outstanding loans at the date of the department examination.<sup>6</sup>

The department has the authority to revoke or suspend a licensee's license under several circumstances. These circumstances include, for example, violating a provision of chapter 516 or a department rule.

Since chapter 516 is primarily concerned with regulating consumer finance companies, the chapter's primary purpose is directed toward protecting the public welfare. Chapter 516 accomplishes this purpose in basically two ways. The first is by requiring the department to perform examinations of potential and existing licensees, while the second is by providing borrowers with certain mandated consumer protections.<sup>7</sup>

Thus, it is concluded that the repeal of chapter 516, the "Florida Consumer Finance Act," would significantly threaten the welfare of Floridians and that responsibility for this concern should remain with the Division of Finance of the Department of Banking and Finance. Therefore, it is recommended that chapter 516 be reenacted with certain modifications. These modifications should generally focus on:

1. enhancing the readability of chapter 516;
2. eliminating obsolete language contained within the chapter; and
3. ensuring that ample statutory provisions exist to adequately provide for the enforcement of chapter 516.

### III. FINDINGS

#### A. The Law

##### 1. History

Laws pertaining to small consumer loans first appeared around 1913. It was during this period that many states began enacting laws that allowed lenders to make small consumer oriented loans. Generally, these consumer loans were small in amount and carried a higher than usual interest rate. The higher interest rate was viewed as justified due to the higher risk associated with these type loans. The higher interest rate was also viewed as an incentive to finance companies to provide credit for this particular segment of the credit market.

In 1925, Florida joined the national trend, at that time, and enacted a law which provided both the availability of credit and protection for the borrower.<sup>8</sup> Florida's version of the Small Loan Law allowed a maximum loan amount of \$300. One of the primary highlights of the law was the inclusion of a "convenience and advantage" clause. This clause permitted only a certain number of licenses to be issued based upon the perceived requirements of the citizens of Florida.

The early version of the Small Loan Law permitted a potential licensee to apply for two types of

licenses. The first, under chapter 516, accrued interest on a daily basis while the second, pursuant to chapter 519, allowed interest to be precomputed and a monthly service charge to be imposed.

Generally, the only substantial change to the Small Loan Law occurred in 1973.<sup>9</sup> This major revision resulted in the present Consumer Finance Act of chapter 516. The 1973 revision also resulted in the removal of chapter 519,<sup>10</sup> leaving only one type of consumer finance license. Another major change was the removal of the convenience and advantage clause<sup>11</sup> which allowed an increase in the number of licenses which the department could issue.

The maximum loan amount allowable pursuant to chapter 516 has been amended several times since 1925. In 1957, the maximum amount was raised from \$300 to \$600.<sup>12</sup> The amount was increased again in 1973 from \$600 to \$2,500.<sup>13</sup> Finally, in 1980, the loan amount was increased to its present level of \$25,000.<sup>14</sup>

## 2. Requirements

Chapter 516 prohibits a person from engaging in the business of consumer financing without first obtaining a license. The department issues licenses pursuant to chapter 516, but only after performing a fitness examination upon

the applicant.<sup>15</sup> In addition to undergoing a fitness examination, the licensee is also responsible for the payment of certain licensing fees.

Generally, there are three fees associated with licensing under chapter 516.<sup>16</sup> An initial fee of \$200 subsidizes the cost of the potential licensee's fitness examination. In addition to the initial fee, there is also an annual license fee of \$175 which terminates on the "last day of the current calendar year."<sup>17</sup>

The third fee relates to the department's annual examination of each licensee's place of business. The amount of the fee is based upon the aggregate amount of outstanding loans on the date of the examination. Thus, based upon the size of a finance company's loan portfolio, the annual examination fee can range from a low of \$40 to a high of \$250.<sup>18</sup>

A potential licensee is also required to fulfill certain liquidity requirements. Section 516.05(2)(b) requires an applicant to have liquid assets of either \$10,000 or \$25,000. The required amount depends on the population of the community where the licensee's business will be situated.<sup>19</sup>

Chapter 516 allows one place of business per license. However, a licensee may obtain more than one

license.<sup>20</sup> Chapter 516 also requires each licensee's place of business to have a designated manager. To be a manager a person must fulfill certain requirements prescribed by the department.<sup>21</sup> These requirements generally require a showing of expertise concerning chapter 516. Such expertise can be established through experience (working as a manager for at least 12 months) or passing a departmental examination relating to the rules and regulations of chapter 516.<sup>22</sup>

Section 516.05 sets forth the criteria in evaluating potential licensees. Ten days before reaching a decision, either to grant or deny an application, the department must provide notice of the receipt of any existing application to interested parties. If the applicant's fitness is questioned, a final determination on the application is made pursuant to a chapter 120, administrative hearing.<sup>23</sup>

In 1986, the department received 75 applications for chapter 516 licenses. Based on these 75 applications, the department issued 72 licenses (96 percent). The 1985 results are similar. Fifty-three applications were received by the department in 1985 with 52 being approved. Thus, from 1985 to 1986, only four applications did not ultimately result in the issuance of licenses. Furthermore, even these

four applications were not rejected by the department but rather were withdrawn by the potential licensees.<sup>24</sup>

A licensee must fulfill certain duties mandated by chapter 516. Section 516.15 requires the licensee to provide the borrower a statement at the time of the loan which must include:

1. the amount and date of the loan;
2. the date of its maturity;<sup>25</sup>
3. the nature of the security, if any;
4. the name and address of the borrower; and
5. the rate of interest to be charged.

In addition, the licensee must provide a "plain and complete receipt for each payment . or, alternatively, furnish to the borrower an annual statement."<sup>26</sup> If an annual statement is utilized, it must show the annual amount of interest paid as well as the remaining balance of the loan.<sup>27</sup> A licensee is also prohibited from refusing repayment of a loan prior to its maturity. Furthermore, if the borrower does decide to prepay, the licensee can only charge interest for the period in which the unpaid balance was outstanding.<sup>28</sup>

Chapter 516 also contains several consumer protection provisions. Section 516.31 applies to every consumer credit transaction in which credit is extended to an individual to

obtain a product for primarily personal purposes.<sup>29</sup> Pursuant to chapter 516, a consumer debtor preserves all claims and defenses. Thus, any claim or defense that the consumer had against the seller will also be valid against a "holder or assignee of any negotiable instrument . . . other than a currently dated check."<sup>30</sup> Liability, however, is limited to the "amount owing to the person when the claim or defense is asserted."

Section 516.31(3) limits the consumer's liability for a deficiency amount when the creditor takes possession of collateral and the loan's outstanding balance is less than \$2,000 at the time of default. A related provision also gives the department responsibility for promoting consumer credit counseling services in areas where a need has been established.<sup>31</sup> Finally, a consumer is unable to waive the provisions of section 516.31, and any attempt to do so is considered void and unenforceable as against public policy.<sup>32</sup>

A chapter 516 licensee is also subject to interest rate limitations. Section 516.031 provides that the "maximum interest shall be 30 percent per annum computed on the first \$500 of principal..."<sup>33</sup> On principal amounts greater than \$500, the maximum allowable interest rates are:



<u>Principal Amount</u>	<u>Maximum Rate of Interest</u>
\$ 0 - 500	30%
\$ 501 - 999	24%
\$1001 - 4999	18%
\$5000 -	18% 34

The definition of "principal amount" is based upon the Federal Truth-In-Lending Act and Regulation Z of the Board of Governors of the Federal Reserve System.<sup>35</sup>

The interest rate provisions of chapter 516 are enforced through certain express powers and duties that are granted to the department. Generally, the department is authorized to enforce all the provisions of chapter 516, and to adopt rules to implement such provisions.

Section 516.11 provides the department with extensive investigative powers. The department has the authority to investigate a licensee, or any person engaged in the business described in section 516.02 at anytime to verify whether violations are, or are about to occur.<sup>36</sup> In addition to investigating possible violations, the department is also required to conduct annual examinations of each licensee.

An audit trail is maintained for the department's annual examination as a result of section 516.12. Section 516.12 requires the licensee to utilize "sound and accepted accounting practices."<sup>37</sup> This section also requires a

licensee to maintain loan records for two years after a final entry is made on any particular loan.

### 3. Prohibited Acts and Penalties

Penalties are provided for violating certain provisions of chapter 516. Section 516.19 provides that "[a]ny person who shall violate any of the provisions of s. 516.02, s. 516.031, s. 516.09, s. 516.13, or s. 516.18, shall be guilty of a misdemeanor of the second degree . . . ."<sup>38</sup> Committing a misdemeanor of the second degree can result in imprisonment (less than 60 days) or a fine.<sup>39</sup> The fine may be \$500 or less or "[a]ny higher amount equal to double the pecuniary loss suffered by the victim."<sup>40</sup>

As an additional means of enforcing the provisions of chapter 516, the department can seek injunctive relief in the circuit courts.<sup>41</sup> The department also has the authority to issue desist orders whenever there is reason to believe that any person is violating or is about to violate a provision of chapter 516.<sup>42</sup>

A chapter 516 license may be revoked for any of the following reasons:

- 1) failure of the licensee to pay an annual license fee or to comply with a department order;

- 2) the licensee either with knowledge or without the exercise of due care violates a chapter 516 provision or a lawful department regulation; or
- 3) a fact is discovered which, if known at the time of the original application, would have resulted in the denial of the application.<sup>43</sup>

Generally, when a licensee has more than one license, the department may only revoke or suspend that particular license which is associated with the concerned violation. However, if the violations are of a general nature as to be applicable to all the licenses of a licensee, then the department may revoke all licenses held by the licensee.<sup>44</sup> The department may, on its own initiative, reinstate suspended licenses or issue new licenses, "if no fact or condition then exists which clearly would have warranted the department in refusing originally to issue such license . . ."45

Chapter 516 also defines certain acts as being prohibited. Generally, such prohibited acts relate to questionable business practices which, but for the existence of chapter 516, could be used to exploit a borrower.

The most important of these prohibitions relates to limiting the amount which may be charged as interest. Section 516.18 provides that no person may charge greater than "18 percent per annum" upon a loan of \$5,000 or less "except as authorized by this chapter or other statutes of

this state."<sup>46</sup> If the loan agreement contains an interest rate which is higher than allowed, the loan contract will be unenforceable. However, such a loan agreement will be enforceable if the loan was legally made to a resident of another state by a person within that state as long as the state has a comparable consumer finance law.<sup>47</sup>

Section 516.16 prohibits any licensee from obtaining a power of attorney or any confession of judgement from the borrower. This section also prohibits the use of "any note, promise to pay, or security" in which terms are left blank to be filled in after the date of execution. However, a line of credit may be used, even though no mention is made concerning the length of time credit is to be extended.<sup>48</sup>

B. Rules

Section 516.22 grants the department the power and authority to issue regulations.<sup>49</sup> The department's regulatory authority is also recognized in section 20.05 which provides that:

Each head of a department, except as otherwise provided herein, shall . . . have existing authority to promulgate rules pursuant and limited to the powers, duties and functions transferred herein and have authority to promulgate rules pursuant and limited to the powers, duties, and functions enacted hereby . . . .<sup>50</sup>

Furthermore, when a licensee relies in good faith upon a departmental rule, order, or declaratory statement the licensee is relieved from civil and criminal liability.<sup>51</sup>

Generally, the departmental regulations of chapter 30-160 are closely correlated to the statutory scheme of chapter 516. The department rules supplement ch. 516, F.S., by providing a detailed explanation of the requirements and responsibilities of both the department and the licensee. However, there are several departmental rules which deserve mention.

Rule 3D-160.02, Florida Administrative Code, prohibits any licensee from giving anything of value "to any person as compensation . . . for referring loan applicants to the licensee."<sup>52</sup> The regulations define a referrer as "any person engaged in the sale of goods or services including his or its salesmen and employees."<sup>53</sup> This prohibition, however, does not apply to commonly used advertising items (i.e. matches, pencils, calendars, etc.).

The department regulations also provide under what circumstances property insurance on loan collateral is mandated. Rule 3D-160.25, FAC, provides that a licensee may only provide property insurance based upon a written authorization of the borrower. In

addition, such insurance must be purchased through a duly licensed agent and from an insurance company qualified to do business in the state of Florida.<sup>54</sup> Furthermore, "[p]urchase of property insurance, from the licensee, shall be entirely voluntary on the part of the borrower and so stated in a signed application requesting the licensee to place property insurance on the collateral."<sup>55</sup>

The amount of property insurance must be limited to the lesser of the reasonable value of the insured property or the amount of indebtedness. If the insured property is totally destroyed, the property insurance must pay either "the original amount of the insurance . . . or the amount owing at the time such total loss occurs."<sup>56</sup>

#### C. Review of the Division of Finance

The administration of chapter 516 is presently the responsibility of the Division of Finance within the Department of Banking and Finance. The division is headquartered in Tallahassee, Florida, but also includes six branch offices located in various parts of the state.<sup>57</sup>

The division's primary objective, relative to chapter 516, is to assist in the availability of credit

and in the protection of borrowers through licensing and examinations. The duties and functions performed by the division include:

1. Establishing rules and regulatory guidelines;
2. Licensing qualified applicants;<sup>58</sup>
3. Performing annual examinations;<sup>59</sup>
4. Investigating consumer complaints;<sup>60</sup>  
and
5. Providing the public with consumer related financial information.

The division is primarily funded by examination and license fees. Once collected, the fees are "turned into the State Treasury to the credit of the regulatory trust fund."<sup>61</sup>

Financial data, provided by the division and covering fiscal years 1980 to 1987, indicate that the present fee structure is insufficient to sustain the required administrative costs of chapter 516. Within the period examined, costs of administering the chapter were greater than fee collections by an average of \$41,436 per year. (See Appendix D) Since it is the department's intent for chapter 516 to be financially self-sufficient, the above mentioned deficits will have to be rectified by either an increase in fees or a reduction in administrative costs.

D. Cost and Benefits

The regulations made applicable to the consumer finance industry have been imposed primarily to benefit the public. Accordingly, the current statutory provisions which govern consumer finance agreements should be examined in light of their impact upon licensees and consumers.

The greatest cost associated with the administration of chapter 516 is borne by the licensee through the remission of fees. However, through such fees, licensees benefit by having their profession adequately policed. Registration and enforcement procedures assure that only qualified personnel engage in the consumer finance business which results in greater public confidence in the industry as a whole.

Generally, the only cost to the consumer for administering chapter 516 is indirect. This indirect cost results from the economic assumption that the industry will eventually pass at least a portion of the cost of chapter 516 on to the borrower.

E. Potential Impact of Non-Regulation

The impact of nonregulation of the consumer finance industry is at best speculative. In Florida, the industry has been regulated to some extent since 1925 with the adoption of the Florida Small Loan Law. The underlying



rationale for the Florida Small Loan Law was to deter questionable loaning practices being utilized by certain lenders.<sup>62</sup> It would appear logical that the removal of the regulatory constraints of chapter 516 could once again result in a resurgence of questionable lending practices.<sup>63</sup>

However, the repeal of chapter 516 would not leave the consumer finance industry totally unregulated. There are other Florida statutory provisions that relate to lending but generally these statutes are enforced by the local state attorney and not by the department.<sup>64</sup> Thus, without chapter 516, a consumer would generally either have to hire a private attorney or convince an overworked local state attorney to resolve a consumer financing complaint.

The elimination of chapter 516 would also leave in place the federal regulations governing lending. However, the philosophy behind the federal regulations differ from that of the state. Federal law only imposes the requirement of full and fair disclosure while state law supplements federal legislation and contributes such additional requirements as interest rate restrictions.<sup>65</sup>

#### F. Alternatives to Present Regulation

The simplest alternative to regulation would be nonregulation. Repeal of chapter 516 would place the

consumer finance industry in a laissez-faire environment and require many unsophisticated borrowers to rely heavily upon the full disclosure requirements of federal law.

The termination of chapter 516 would also eliminate the initial and annual examinations conducted by the division. Both examinations focus on ensuring the financial stability of the entity. However, annual examinations provide additional consumer protection by requiring a review of records, interest charges, and refund policies.

There is, of course, a variety of combinations which could be achieved -- from reenacting none to reenacting all of the current provisions of chapter 516. For example, the present regulatory scheme could be replaced with a simplified licensing requirement. However, such limited regulatory supervision would not provide the consumer protection which has historically been deemed necessary. Thus, the debate centers not on whether the consumer finance industry should be regulated but the extent of such regulation.

#### IV. CONCLUSIONS AND RECOMMENDATIONS

The Regulatory Sunset Act contains criteria which the Legislature must consider in determining whether to reestablish a regulatory chapter. Provided below are the criteria to be considered and the conclusions reached based upon the findings of the foregoing sections:

**1. Would the absence of regulation significantly harm or endanger the public health, safety, or welfare?**

Yes. If Florida decided to deregulate the consumer finance industry, certain federal and state legislation would remain in effect. However, the philosophy behind such legislation differs somewhat from that of chapter 516.<sup>66</sup>

Chapter 516 is primarily concerned with protecting the public welfare. The legislation accomplishes this purpose in basically two ways. The first is by requiring the department to perform examinations of potential and existing licensees, while the second is by providing borrowers with certain mandated consumer protections. These consumer protections would be eliminated if chapter 516 was repealed.

**2. Is there a reasonable relationship between the exercise of the state's police power and the**

**protection of the public's health, safety, or welfare?**

Yes. The purpose of chapter 516 is to protect the consuming public. The means chosen to achieve that goal are licensing and enforcement. Present case law supports the premise that regulating the consumer finance industry is rationally related to protecting the consuming public.<sup>67</sup>

**3. Is there another, less restrictive, method of regulation available which could adequately protect the public?**

No. Possible less restrictive methods include: eliminating licensing and annual examinations of practitioners, adopting the federal philosophy of full and fair disclosure or deregulating the consumer finance industry completely.

However, all of the above alternatives, while being less restrictive, fail to adequately protect the public. Thus, chapter 516 is the most feasible alternative available to satisfy the concerns of efficient and effective regulation of the consumer finance industry.

**4. Does the regulation have the effect of directly or indirectly increasing the cost of goods or services involved and if so, to what degree?**

Yes. Licensing and examination fees are collected from practitioners. Therefore, it is reasonable to assume

that these fees would, to a certain extent, be passed on to the consuming public. Furthermore, if the division requires any general revenue funding to implement chapter 516, the tax burden upon the general public might be increased in recognition of such additional costs.

**5. Is the increase in cost more harmful to the public than the harm which could result from the absence of regulation?**

No. The minimal cost to the public is overshadowed by the benefit the consuming public receives from the protection the division provides. Protection to the consuming public is achieved by the licensing and enforcement provisions which are authorized under the act and the accompanying rules.

Furthermore, the cost of regulation is relatively small in comparison with other states. The annual license fee is \$175.00 and the annual audit fee is based on the amount of the licensee's outstanding loans up to a maximum cost of \$250.00.

**6. Are all facets of the regulatory process designed solely for the purpose of, and have as their primary effect, the protection of the public?**

Yes. Thus, it is recommended that the state continue to exercise its authority over this industry and that the Legislature reenact chapter 516 with certain modifications. These modifications should generally focus on:

1. enhancing the readability of chapter 516;
2. eliminating obsolete language contained within the chapter; and
3. ensuring that ample statutory provisions exist to adequately provide for the enforcement of chapter 516.

**V. ENDNOTES**

1. Section 11.61, F.S., provides for the Florida Legislature to consider the following criteria in determining whether to re-establish a particular function or program:
  1. Would the absence of regulation significantly harm or endanger the public health, safety, or welfare?
  2. Is there a reasonable relationship between the exercise of the police power of the state and the protection of the public health, safety, or welfare?
  3. Is there a less restrictive method of regulation available which would adequately protect the public?
  4. Does the regulation have the effect of directly or indirectly increasing the costs of any goods or services involved and, if so, to what degree?
  5. Is the increase in cost more harmful to the public than the harm which could result from the absence of regulation?
  6. Are all facets of the regulatory process designed solely for the purpose of, and have as their primary effect the protection of the public? Florida Statutes, section 11.61(6)(1985).
2. Hereinafter, the Division of Finance will be referred to as the "division," while the Department of Banking and Finance will be referred to as the "department."
3. Fla. Stat. s. 11.61(6)(1985).
4. Fla. Stat. s. 516.03(1)(1985).
5. Fla. Stat. s. 516.03(2)(1985).
6. Fla. Stat. s. 516.11(2)(1985).
7. See Fla. Stat. ss. 516.31 and 516.32 (1985).

8. The Florida Small Loan Law's primary rationale is set forth in the legislation's preamble. In pertinent part the preamble provides:

WHEREAS, the conduct of such loan business has long been a cause of general complaint and of much hardship and injustice to poor borrowers, and there is no existing legal regulation of the business of making small loans that has proved effective for the protection of such borrowers and for the punishment of usurious money-lenders, and the suppression of extortionate practices; and

WHEREAS, it is recognized that the business of lending small sums of money, repayable in weekly or monthly installments, unsecured or upon unsubstantial security, does exist and will persist through public necessity [sic] for such loan service and that there exists a legitimate need for a law which will enable such loans to be obtained and the lenders to be licensed and supervised under proper restrictions and regulation; and

WHEREAS, it is desired to suppress the "Loan Shark" evil, by authorizing and regulating the conduct of the business of making small loans, upon fair and lawful terms, thereby inducing reputable money-lenders to obtain State Licenses. 1925 Fla. Laws - ch. 10177.

9. 1973 Fla. Laws - ch. 192.
10. 1973 Fla. Laws - ch. 192 s. 15.
11. 1977 Fla. Laws - ch. 256 s. 2.
12. 1957 Fla. Laws - ch. 201 s. 9.
13. 1973 Fla. Laws - ch. 92 s. 1.
14. 1980 Fla. Laws - ch. 412 s. 1.
15. One purpose of the department's fitness examination is to determine "[t]hat the financial responsibility, experience, character, and general fitness of the applicant .... are such as to command the confidence of the public and to warrant belief that the business will be operated lawfully, honestly, fairly and efficiently ...." Fla. Stat. s. 516.05(2)(a)(1985).
16. Chapter 516, F.S., requires fees to be collected by the department and turned into the State Treasury. The State Treasury then credits the proceeds to "the



regulatory trust fund [which] is under the Division of Finance of the department." Fla. Stat. s. 516.03(2)(1985).

- 17. Fla. Stat. s. 516.03(1)(1985).
- 18. The examination fee schedule, relating to the department's annual ch. 516, F.S. audit is provided below:

<u>Amount Outstanding</u>	<u>Examination Fee</u>
From \$0 to \$25,000	\$40
From \$25,000.01 to \$50,000	60
From \$50,000.01 to \$100,000	90
From \$100,000.01 to \$250,000	115
From \$250,000.01 to \$500,000	150
From \$500,000.01 and over	250

Fla. Stat. s. 516.11(2)(1985).

- 19. Section 516.05(2)(b), F.S., mandates a liquidity requirement of \$10,000, "if the specified location is in a community of 25,000 or less population . . . or \$25,000, if the specified location is in a community of more than 25,000."
- 20. Fla. Stat. s. 516.09(1)(1985).
- 21. Fla. Stat. s. 516.231 (1985).
- 22. According to department representatives, the ch. 516, F.S., examination is administered by the department upon request and has a passing rate of approximately 99 percent.
- 23. Fla. Stat. s. 516.05(1)(1985).
- 24. Based upon departmental data the number of applications and approvals from 1982 to 1986 are provided below:

	<u>Applications Received</u>	<u>Applications Approved</u>
1982	18	16
1983	47	42
1984	95	92
1985	53	52
1986	<u>75</u>	<u>72</u>
TOTAL	288	274

25. If the loan amount is structured as a line of credit then the loan document need not include a maturity date. Fla. Stat. s. 516.15(1)(1985 & Supp. 1986).
26. Fla. Stat. s. 516.15(2)(1985 & Supp. 1986).
27. Even if an annual statement is used, a simple receipt must be provided when payment is made in cash or when a receipt is requested in writing by the borrower.
28. Fla. Stat. s. 516.15(3)(1985 & Supp. 1986).
29. Fla. Stat. s. 516.31(1)(1985).
30. Fla. Stat. s. 516.31(2)(1985).
31. The purpose of the consumer credit counseling service is to:
  - (1) Assist and educate individual consumers concerning money management.
  - (2) Assist individual consumers in consolidating obligations where necessary.
  - (3) Work with consumer credit grantors to establish better credit relations between individual consumers, state and federal regulatory agencies. Fla. Stat. s. 516.32(1985).
32. Fla. Stat. s. 516.31(6)(1985).
33. Fla. Stat. s. 516.031(1)(1985).
34. On loans exceeding \$5,000, the total interest charged on the entire principal amount cannot exceed 18 percent per annum simple interest. Fla. Stat. s. 516.031(1)(1987). Unpaid balances remaining at the expiration date of the loan and which are outstanding in excess of 12 months cannot exceed an interest rate of 10 percent. No such restriction applies to advances which are made pursuant to a line of credit. Fla. Stat. s. 516.035 (1985 & Supp. 1986).
35. Fla. Stat. s. 516.031(2)(1985).
36. Fla. Stat. s. 516.11(1)(1985).

37. Fla. Stat. s. 516.12 (1985).
38. Fla. Stat. s. 516.19 (1985).
39. Fla. Stat. ss. 775.082(4)(b)(1985) and 775.083(1)(c)(1985).
40. Fla. Stat. s. 775.083(1)(f)(1985). The fine may also be calculated as double the "pecuniary gain derived from the offense by the offender." Id.
41. Fla. Stat. s. 516.23(2) and (3)(1985).
42. Fla. Stat. s. 516.23(1)(1985).
43. Fla. Stat. s. 516.07(1)(1985).
44. Fla. Stat. s. 516.07(2)(1985).
45. Fla. Stat. s. 516.07(5)(1985).
46. Fla. Stat. s. 516.18(1)(1985). The 18 percent interest limitation would be violated in the circumstances of the lender making a pretended purchase or by "any device or pretense of charging for services" in excess of the 18 percent interest rate. Fla. Stat. s. 516.18(2)(1985).
47. Fla. Stat. s. 516.18(3)(1985).
48. Fla. Stat. s. 516.16 (1985 & Supp. 1986). Other prohibitions included within the provisions of ch. 516, F.S., include: false advertising (s. 516.13, F.S.); assignment of wages to secure loans (s. 516.17, F.S.); and the usage of unreasonable collection tactics (s. 516.29, F.S.).
49. Fla. Stat. s. 516.22(1)(1985).
50. Fla. Stat. s. 20.05(2)(1985).
51. Fla. Stat. s. 516.221(1985).
52. Fla. Admin. Code r. 3D-160.02 (1986).
53. Fla. Admin. Code r. 3D-160.03 (1986).
54. Fla. Admin. Code r. 3D-160.25(2)(1986).

55. Fla. Admin. Code r. 3D-160.25(3)(1986). Property insurance may not be placed where there are not specific household or appliance goods offered as collateral or where the borrower has valid and collectible fire and extended coverage insurance on the same collateral to offer the licensee. Fla. Admin. Code r. 3D-160.25(5)(1986).
56. Fla. Admin. Code r. 3D-160.25(9)(1986).
57. The Department of Banking and Finance, Division of Finance, has six branch offices in addition to a main office in Tallahassee. The addresses of these offices are provided below:

202 Blount Street, Suite 101  
Fuller Warren Building  
Tallahassee, FL 32301

401 N.W. 2nd Avenue, Suite 870  
Miami, FL 33128-1796

160 Governmental Ctr, Suite 701  
Pensacola, FL 32501-5794

Richard F. Daniel Service Center  
111 E. Coastline Drive, Room 610  
Jacksonville, FL 32202-3477

Regional Service Center  
1313 Tampa Street  
Tampa, FL 33602-3394

400 W. Robinson Street  
Orlando, FL 32801-1799

111 Georgia Avenue, Suite 211  
West Palm Beach, FL 33401-5293

58. Note, supra note 24.
59. The number of annual examinations performed by the department in FY 1986-87 was 685.
60. The department provided a sample of consumer complaints covering the years 1982 to 1987. Generally, these complaints can be grouped into three areas of concern:
- 1) interest charges;
  - 2) questionable collection tactics; and
  - 3) misinformation concerning the necessity to purchase insurance from the licensee.

Department investigations of interest charge complaints usually have resulted in favor of the licensee (i.e. charges were correctly calculated). However, complaints relating to collection tactics and insurance frequently resulted in department action

which was favorable to the consumer (i.e. desist orders, refunds, etc.).

61. Note, supra note 16.
62. Note, supra note 8.
63. A small loan borrower will often be quite vulnerable to the unscrupulous behavior of a lender because such a borrower is often an unsophisticated borrower who goes to a consumer finance company as a lender of last resort.
64. For a good example of this, see the usury provisions of ch. 687, F.S.
65. A good example of such legislation is The Federal Truth In Lending Act which requires that interest rates be expressed as a percentage but does not set any usury limits.
66. For a discussion of the philosophical differences of the federal and other state legislation (i.e. usury law), see section III, E of this report.
67. E.g., Jannett v. Windham, 109 Fla. 129, 153 So. 784 (1934); Beasley v. Cahoon, 109 Fla. 106, 147 So. 288 (1933).

**VI. Appendices**

- A. Chapter 516, Florida Statutes**
- B. Rules, Florida Administrative Code**
- C. Department Organizational Chart**
- D. Division Cost Allocation Chart**

APPENDIX A

Chapter 516, Florida Statutes

## CHAPTER 516

## CONSUMER FINANCE

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**516.001 Short title.**—This chapter shall hereafter be known, referred to, and cited as the "Florida Consumer Finance Act."

*History*—s 1 ch 73-192 s 2 ch 81-318  
*\*Note*—Repealed effective October 1, 1988 by s 2 ch 81-318 and scheduled for review pursuant to s 11.61 in advance of that date

**516.01 Definitions; businesses excluded.**—

(1) **DEFINITIONS**—As used in this chapter

(a) The word "person" shall include individuals, partnerships, associations, trusts, corporations, and any other legal entities,

(b) The word "license" shall mean a permit issued under authority of this chapter to make and collect loans in accordance with the provisions of this chapter at a single place of business.

(c) The word "licensee" shall mean a person to whom one or more licenses have been issued.

(d) The word "department" shall mean the Department of Banking and Finance

(2) **BUSINESSES EXCLUDED**—This chapter shall not apply to any person doing business under, and as permitted by, any law of this state or of the United States relating to banks, savings banks, trust companies, building and loan associations, credit unions, or industrial loan and investment companies or to any bona fide pawnbroking business transacted under a pawn broker's license. No pawnbroker may be licensed to transact business under this chapter.

*History*—s 19 ch 10177 1925 CGL 4016 s 6 ch 20728 1941 s 7 ch 22858 1945 s 1 ch 57201 ss 12 35 ch 69-106 s 193 ch 71-377 s 189 ch 77-104 s 2 ch 81-318

*\*Note*—Repealed effective October 1, 1988 by s 2 ch 81-318 and scheduled for review pursuant to s 11.61 in advance of that date

**516.02 Loans; rate of interest; license.**—

(1) No person shall engage in the business of making loans of money, credit, goods, or choses in action in the amount, or to the value of \$5,000 or less, and charge, contract for, or receive a greater rate of interest than 18 percent per annum therefor except as authorized by this chapter or other statute and without first obtaining a license from the department.

(2) As amended by chapter 79-592, Laws of Florida, chapter 79-274, Laws of Florida, which amended subsection (1)

(a) Shall apply only to loans, advances of credit, or lines of credit made on or subsequent to July 1, 1979, and to loans, advances of credit, or lines of credit made prior to that date if the lender has the legal right to require full payment or to adjust or modify the interest rate, by renewal, assumption, reaffirmation, contract, or otherwise, and

(b) Shall not be construed as diminishing the force and effect of any laws applying to loans, advances of credit, or lines of credit, other than to those mentioned in paragraph (a), completed prior to July 1, 1979.

*History*—s 1 ch 10177 1925 CGL 3999 s 2 ch 57201 ss 12 35 ch 69-106 s 2 ch 73-192 ss 1 15 ch 79-274 s 1 ch 79-592 s 2 ch 81-318 s 1 ch 85-32

*\*Note*—Repealed effective October 1, 1988 by s 2 ch 81-318 and scheduled for review pursuant to s 11.61 in advance of that date

**516.03 Application for license; fees; etc.**—

(1) **APPLICATION**—Application for a license to make loans under this chapter shall be in writing, under oath, and in the form prescribed by the department, and shall contain the name, residence and business addresses of the applicant and, if the applicant is a copartner or association, of every member thereof and, if a corporation, of each officer and director thereof, also the county and municipality with the street and number or approximate location where the business is to be conducted, and such further relevant information as the department may require. At the time of making such appli-



cation the applicant shall pay to the department the sum of \$175 as an annual license fee for a period terminating on the last day of the current calendar year, and a further fee of \$200 for investigating the application and the applicants

(2) FEES — Fees herein provided for shall be collected by the department and shall be turned into the State Treasury to the credit of the regulatory trust fund under the Division of Finance of the department. The department shall have full power to employ such examiners or clerks to assist the department as may from time to time be deemed necessary and fix their compensation.

*History* — s. 2 ch. 10177, 1925; CGL 4000 s. 1 ch. 20720, 1941; s. 127 ch. 26869, 1951; s. 3 ch. 57201, ss. 12, 35 ch. 69-106, s. 138 ch. 71-355, s. 3 ch. 73-192, s. 3 ch. 73-326, s. 144 ch. 79-164, s. 2 ch. 81-318.

*Note* — Repealed effective October 1, 1986, by s. 2 ch. 81-318 and scheduled for review pursuant to s. 11.61 in advance of that date.

#### 1516.031 Finance charge; maximum rates.—

(1) INTEREST RATES — Every licensee may lend any sum of money not exceeding \$25,000. A licensee may not take a security interest secured by land on any loan less than \$1,000. The licensee may charge, contract for, and receive thereon interest charges as provided and authorized by this section. The maximum interest rate shall be 30 percent per annum, computed on the first \$500 of the principal amount as computed from time to time, 24 percent per annum on that part of the principal amount as computed from time to time exceeding \$500 and not exceeding \$1,000, and 18 percent per annum on that part of the principal amount as computed from time to time exceeding \$1,000 and not exceeding \$5,000. On loans exceeding \$5,000, the total interest charged on the entire principal amount shall not exceed 18 percent per annum simple interest. The original principal amount as used in this section shall be the same amount as the amount financed as defined by the Federal Truth-in-Lending Act and Regulation Z of the Board of Governors of the Federal Reserve System. In determining compliance with the statutory maximum interest and finance charges set forth herein, the computations utilized shall be simple interest and not add-on interest or any other computations.

(2) ANNUAL PERCENTAGE RATE UNDER FEDERAL TRUTH IN LENDING ACT — The annual percentage rate of finance charge which may be contracted for and received under any loan contract made by a licensee under this chapter may equal, but not exceed, the annual percentage rate which must be computed and disclosed as required by the Federal Truth-in-Lending Act and Regulation Z of the Board of Governors of the Federal Reserve System. The maximum annual percentage rate of finance charge which may be contracted for and received is 12 times the maximum monthly rate and the maximum monthly rate shall be computed on the basis of one-twelfth of the annual rate for each full month. The department shall by regulation establish the rate for each day in a fraction of a month when the period for which the charge is computed is more or less than 1 month.

#### (3) OTHER CHARGES —

(a) In addition to the interest and insurance charges herein provided for, no further or other charges or amount whatsoever for any examination, service, bro-

kerage, commission, or other thing or otherwise shall be directly or indirectly charged, contracted for, or received as a condition to the grant of a loan, except

1 Charges paid for title insurance and the appraisal of real property offered as security when paid to a third party and supported by an actual expenditure.

2 Intangible personal property tax on the loan note or obligation when secured by a lien on real property.

3 The documentary excise tax and lawful fees, if any, actually and necessarily paid out by the licensee to any public officer for filing, recording, or releasing in any public office any instrument securing the loan, which fees may be collected when the loan is made or at any time thereafter.

4 The premium payable for any insurance in lieu of perfecting any security interest otherwise required by the licensee in connection with the loan, if the premium does not exceed the fees which would otherwise be payable which premium may be collected when the loan is made or at any time thereafter, or

5 Actual and reasonable attorney's fees as determined by the court in which suit is filed and court costs including the actual and reasonable expenses of repossession, storing, repairing and placing in condition for sale, and selling of any property pledged as security.

Any charges, including interest, in excess of the combined total of all charges authorized and permitted by this chapter constitute a violation of chapter 687 governing interest and usury, and the penalties of that chapter apply. In the event of a bona fide error, the licensee shall refund or credit the borrower with the amount of the overcharge immediately but within 20 days from the discovery of such error.

(b) Notwithstanding the provisions of paragraph (a), any lender of money who receives a check, draft, negotiable order of withdrawal, or like instrument drawn on a bank or other depository institution, which instrument is given by a borrower as full or partial repayment of a loan, may, if such instrument is not paid or is dishonored by such institution, make and collect from the borrower a bad check charge of not more than the greater of \$10 or an amount equal to the actual charge made to the lender by the depository institution for the return of the unpaid or dishonored instrument.

(4) DIVIDED LOANS — No licensee shall induce or permit any borrower to split up or divide any loan. No licensee shall induce or permit any person, or any husband and wife, jointly or severally, to become obligated to him, directly or contingently or both, under more than one contract of loan at the same time, for the purpose, or with the result, of obtaining a greater finance charge than would otherwise be permitted by this section.

(5) As amended by chapter 79-592, Laws of Florida, chapter 79-274, Laws of Florida, which amended subsection (1)

(a) Shall apply only to loans, advances of credit, or lines of credit made on or subsequent to July 1, 1979, and to loans, advances of credit, or lines of credit made prior to that date if the lender has the legal right to require full payment or to adjust or modify the interest rate, by renewal, assumption, reaffirmation, contract, or otherwise, and

(b) Shall not be construed as diminishing the force and effect of any laws applying to loans, advances of credit or lines of credit, other than to those mentioned in paragraph (a), completed prior to July 1, 1979

(6) If all or part of the consideration for a new loan contract is the unpaid principal balance of a prior loan with the licensee, the principal amount payable under the new loan contract may include not more than 60 days' unpaid interest accrued on the prior loan

*History* — s 7 ch 73 192 ss 1 2 ch 76 180, s 190 ch 77 104 s 1 ch 77 174 ss 2 15 ch 79 274 s 1 ch 79 592 s 1 ch 80 112 s 1 ch 81 299 s 2 ch 81 318 s 1 ch 84 193 s 2 ch 85 32

*Note* — Repealed effective October 1 1988 by s 2 ch 81 318 and scheduled for review pursuant to s 11 61 in advance of that date

**1516.035 Rate of interest upon default.**—In the event that any balance remains unpaid at the expiration of the scheduled maturity date of a loan, licensees may continue to charge interest on the unpaid balance at the rate provided for in s 516 031(1) for a period not to exceed 12 months Thereafter the interest shall not exceed 10 percent per annum

*History* — s 1 ch 79 59 s 2 ch 81 318 s 5 ch 85 32

*Note* — Repealed effective October 1 1988 by s 2 ch 81 318 and scheduled for review pursuant to s 11 61 in advance of that date

**1516 05 Issuance of license, denial; etc.—**

(1) INVESTIGATION OF APPLICATION —Upon the filing of such application and the payment of such fees, the department shall make an investigation of the facts concerning the application and the requirements provided for in subsection (2) At least 10 days before entering the order granting or denying the application, it shall mail a notice of the receipt of the application to the local small loan exchange (if there be one) in the community where the applicant proposes to do business If any licensee or registrant files an objection to the issuance of the license to said applicant, or if the department has any doubts of the applicant meeting the standards of subsection (2), it shall order a hearing on such application pursuant to chapter 120 not more than 60 days from the date of mailing such notice In addition to such hearing the department may make such further and other investigation relative to the application and the requirements as it may deem fit

(2) ISSUANCE OR DENIAL OF LICENSE —If the department shall find

(a) That the financial responsibility, experience, character, and general fitness of the applicant, and of the members thereof, if the applicant is a copartnership or association, and of the officers and directors thereof if the applicant be a corporation are such as to command the confidence of the public and to warrant belief that the business will be operated lawfully honestly, fairly and efficiently within the purposes of this chapter,

(b) That the applicant has available for the operation of such business at the specified location liquid assets of at least \$10,000, if the specified location is in a community of 25,000 or less population, according to the last United States census, or \$25,000, if the specified location is in a community of more than 25,000 population, according to said census,

it shall thereupon enter an order granting such application and issue and deliver a license to the applicant to make loans in accordance with the provisions of this

chapter at the location specified in the said application (provided that nothing in this chapter shall be construed to prevent a licensee from lending to residents of any part of this state or any other state or country nor to prohibit the making of loans by mail when authorized by the department) Said license shall remain in full force and effect until surrendered by the licensee or revoked or suspended as provided by law or as may be prohibited by the provisions of this chapter If the department shall not so find, it shall thereupon enter an order denying such application and return the sum paid as a license fee, retaining the \$200 investigation fee to cover the cost of investigating the application

(3) EXISTING LICENSES PURCHASE OF ASSETS —Any licensee having a license under this chapter at the effective date of this amendment shall be conclusively presumed to have established the convenience and advantage of its business to the community wherein it is licensed In the event any person shall purchase substantially all of the assets of any existing licensed office, the purchaser if not a licensee hereunder, upon application, shall be granted a 90 day temporary license hereunder, applicable to the same location, within 10 days of such purchase and the department shall cause an investigation to be made as provided by subsection (1) to determine whether a license shall be issued provided such purchaser shall not be required to meet the provisions of paragraph (2)(b) Where the purchaser is a licensee hereunder the department shall issue a license within 10 days of such purchase if the purchaser meets the requirements of this chapter provided that such purchaser shall not be required to meet the requirements of paragraph (2)(b) and the licensee selling such assets shall surrender its license for such location to the department

*History* — s 4 ch 10177 1925 CGL 4002 s 2 ch 20728 1941 s 4 ch 57 201 ss 12 35 ch 69 106 ss 4 15 ch 73 192 s 2 ch 77 256 s 7 ch 78 95 s 2 ch 81 318

*Note* — Repealed effective October 1 1988 by s 2 ch 81 318 and scheduled for review pursuant to s 11 61 in advance of that date

cf — s 112 011 Felons removal of disqualifications for employment exceptions

**1516.07 Revocation, reinstatement, surrender, etc., of license.—**

(1) REVOCATION OF LICENSE —The department may revoke any license issued hereunder if it shall find that

(a) The licensee has failed to pay the annual license fee or to comply with any order of the department lawfully made pursuant to and within the authority of this chapter

(b) The licensee, either knowingly or without the exercise of due care to prevent the same has violated any provision of this chapter or any regulation lawfully made by the department under and within the authority of this chapter, or

(c) Any fact or condition existed at the time of the original application for such license which clearly would have warranted the department in refusing originally to issue such license

(2) LICENSES AFFECTED BY REVOCATION OR SUSPENSION —The department may revoke or suspend only the particular license with respect to which ground for revocation or suspension may occur or exist, or, if it shall find that such grounds for revocation are of

general application to all offices or to more than one of fice operated by such licensee it shall revoke or suspend all of the licenses issued to said licensee or such licensees as such grounds apply to, as the case may be

(3) SURRENDER OF LICENSE —Any licensee may surrender any license by delivering it to the department with a written notice that he thereby surrenders it, but such surrender shall not affect his civil or criminal liability for acts committed prior thereto

(4) PREEXISTING CONTRACTS —No revocation, suspension, or surrender of any license shall impair or affect the obligation of any preexisting lawful contract between the licensee and any borrower

(5) REINSTATEMENT OF LICENSE —Every license issued hereunder shall remain in force and effect until the same shall have been surrendered, revoked, or suspended in accordance with the provisions of this chapter, but the department shall have authority on its own initiative to reinstate suspended licenses or to issue new licenses to a person whose license or licenses have been revoked if no fact or condition then exists which clearly would have warranted the department in refusing originally to issue such license under this chapter

*History* —s 6 ch 10177 1925 CGL 4004 s 3 ch 20728 1941 ss 12 35 ch 69 106 s 7 ch 78 95 s 145 ch 79 164 s 2 ch 81 318

*Note* —Repealed effective October 1 1988 by s 2 ch 81 318 and scheduled for review pursuant to s 11 61 in advance of that date

**1516.08 License to be posted.**—The license shall be kept conspicuously posted in the place of business of the licensee

*History* —s 7 ch 10177 1925 CGL 4006 s 2 ch 81 318  
*Note* —Repealed effective October 1 1988 by s 2 ch 81 318 and scheduled for review pursuant to s 11 61 in advance of that date

**1516.09 License, removal, other business.**—

(1) PLACE OF BUSINESS —Not more than one place of business for the making of loans under this chapter shall be maintained under the same license, but the department shall issue additional licenses to the same licensee upon compliance with all the provisions of this chapter governing issuance of a single license

(2) REMOVAL —No change in the place of business of a licensee to a location outside of the original county shall be permitted under the same license. When a licensee wishes to change his place of business within the same county, he shall give written notice thereof to the department. If the department finds that the proposed location is reasonably accessible to borrowers under existing loan contracts, it shall enter an order permitting the change and shall amend the license accordingly. If the department does not so find, it shall enter an order denying the removal of the license to the requested location

(3) OTHER BUSINESS IN THE SAME OFFICE —A licensee may conduct the business of making loans under this chapter within a place of business in which other business is solicited or engaged in, unless the department shall find that the conduct of such other business by the licensee results in an evasion of this chapter. Upon such finding, the department shall order the licensee to desist from such evasion, provided, however, that no license shall be granted to or renewed for any person or organization engaged in the pawnbroker business

*History* —s 8 ch 10177 1925 CGL 4006 s 5 ch 57 201 ss 12 35 ch 69 106 s 7 ch 78 95 s 1 ch 79 340 s 2 ch 81 318

*Note* —Repealed effective October 1 1988 by s 2 ch 81 318 and scheduled for review pursuant to s 11 61 in advance of that date

**1516.11 Investigation by department.**—

(1) EXAMINATIONS —For the purpose of discovering violations of this chapter or securing information law fully required by it hereunder, the department may at any time investigate the loans and business, and examine the books, accounts, records, and files used therein, of every licensee and of every person who shall be engaged in the business described in s 516.02. If the department shall have reason to believe that any act or business is being done, or is about to be done, which is illegal under this chapter, it may make all examinations and take all steps authorized under this subsection, whether such person shall act or claim to act as principal or agent, or under or without the authority of this chapter. Any person who shall advertise for, solicit, or hold himself out as willing to make loan transactions in the amount or of the value regulated by this chapter, whether as principal, agent, broker or otherwise shall, for the purposes of this subsection, be presumed to be engaged in such business. For the purposes of this section, the department and its duly designated representatives shall have and be given free access to the offices and places of business books accounts papers records files, safes and vaults of all such persons whether within or without the state. The department and all persons duly designated by it shall have authority to require the attendance of witnesses and to examine under oath all persons whomsoever whose testimony it may require relative to such loans or such business or to the subject matter of any examinations investigation, or hearing

(2) ANNUAL EXAMINATION —Once each year, the department or its duly authorized representatives shall make an examination of the place of business of each licensee and of the loans transactions, books, papers and records of such licensee insofar as they pertain to the business licensed under this chapter. Every licensee shall pay to the department an examination fee based upon the amount of outstanding loans due the licensee at the time of the examination, as follows:

Amount Outstanding	Examination Fee
From \$0 to \$25,000	\$ 40
From \$25,000.01 to \$50,000	60
From \$50,000.01 to \$100,000	90
From \$100,000.01 to \$250,000	115
From \$250,000.01 to \$500,000	150
From \$500,000.01 and over	250

(3) LIEN FOR FEES —The above examination fees shall be secured by a lien upon the assets of the licensee and if not paid within 30 days from and after the licensee is billed therefor by the department, the license of the licensee shall stand suspended until said examination fee is paid in full

*History* —s 10 ch 10177 1925 CGL 4006 s 4 ch 20728 1941 s 6 ch 57 201 ss 12 35 ch 69 106 s 5 ch 73 192 s 1 ch 77 356 s 2 ch 81 299 s 2 ch 81 318

*Note* —Repealed effective October 1 1988 by s 2 ch 81 318 and scheduled for review pursuant to s 11 61 in advance of that date

**1516.12 Records to be kept by licensee.**—The licensee shall keep and use in his business such books, accounts, and records in accordance with sound and

accepted accounting practices to enable the department to determine whether such licensee is complying with the provisions of this chapter and with the rules and regulations lawfully made by the department hereunder. Every licensee shall preserve such books, accounts, and records, including cards used in the card system, if any for at least 2 years after making the final entry on any loan recorded therein.

*History* — s 11 ch 10177 1925 CGL 4009 s 5 ch 20720 1941 s 7 ch 57 201 ss 12 35 ch 69-106 s 6 ch 73-192 s 2 ch 81 318 s 1 ch 85-27

*Note* — Repealed effective October 1 1988 by s 2 ch 81 318 and scheduled for review pursuant to s 11 61 in advance of that date

**516.13 False publications prohibited.**—No licensee subject to this chapter shall advertise, display, distribute broadcast, or televise, or cause or permit to be advertised, displayed, distributed, broadcast, or televised, in any manner whatsoever any false, misleading, or deceptive statement concerning the business authorized under this chapter.

*History* — s 12 ch 10177 1925 CGL 4010 s 8 ch 57 201 s 2 ch 81 318  
*Note* — Repealed effective October 1 1988 by s 2 ch 81 318 and scheduled for review pursuant to s 11 61 in advance of that date

**516.15 Duties of licensee.**—Every licensee shall

(1) Deliver to the borrower at the time a loan is made a statement in the English language showing in clear and distinct terms the amount and date of the loan and the date of its maturity, the nature of the security, if any, for the loan, the name and address of the borrower and of the licensee, and the rate of interest charged.

(2) Give to the borrower a plain and complete receipt for each payment made on account of any loan at the time the payment is made or, alternatively, furnish to the borrower an annual statement showing the amount of interest paid on the loan during the previous year as well as the remaining balance on the loan, provided a simple receipt is given to the borrower for each payment made in cash and for any payment when requested in writing by the borrower.

(3) Permit payment of the loan in whole or in part prior to its maturity with interest on such payment to the date thereof.

(4) Upon repayment of the loan in full, mark indelibly every paper signed by the borrower with the word "Paid" or "Canceled" and release any mortgage, restore any pledge cancel and return any note, and cancel and return any assignment given by the borrower as security.

*History* — s 14 ch 10177 1925 CGL 4012 s 13 ch 73-192 s 2 ch 81 318 s 2 ch 84 193

*Note* — Repealed effective October 1 1988 by s 2 ch 81 318 and scheduled for review pursuant to s 11 61 in advance of that date

**516.16 Confession of judgment; power of attorney; contents of notes and security.**—No licensee shall take any confession of judgment or any power of attorney. Nor shall he take any note, promise to pay, or security that does not state the actual amount of the loan, the time for which it is made and the rate of interest charged, nor any instrument in which blanks are left to be filled after execution.

*History* — s 15 ch 10177 1925 CGL 4013 s 2 ch 81 318  
*Note* — Repealed effective October 1 1988 by s 2 ch 81 318 and scheduled for review pursuant to s 11 61 in advance of that date

**516.17 Assignment of wages, etc., given to secure loans.**—No assignment of, or order for the payment of, any salary, wages, commissions, or other compensation

for services, earned or to be earned, given to secure any such loans shall be valid.

*History* — s 16 ch 10177 1925 CGL 4014 s 1 ch 28011 1953 s 8 ch 73-192 s 2 ch 81 318

*Note* — Repealed effective October 1 1988 by s 2 ch 81 318 and scheduled for review pursuant to s 11 61 in advance of that date

**516.18 Rate of interest or consideration.**—

(1) No person engaged in the business of making loans of money, except as authorized by this chapter or other statutes of this state, shall directly or indirectly charge, contract for or receive any interest or consideration greater than 18 percent per annum upon the loan, use, or forbearance of money, goods, or things in action, or upon the loan or use of credit, of the amount or value of \$5,000 or less.

(2) The foregoing prohibition shall apply to any lender who, as security for any such loan, use, or forbearance of money goods, or things in action, or for any such loan or use of credit, makes a pretended purchase of property from any person and permits the owner or pledgor to retain the possession thereof, or who by any device or pretense of charging for services or otherwise seeks to obtain a greater compensation than is authorized by this chapter.

(3) No loan for which a greater rate of interest or charge than is allowed by this chapter has been contracted for or received wherever made, shall be enforced in this state and every person in anywise participating therein in this state shall be subject to the provisions of this chapter. However, the foregoing shall not apply to loans legally made to a resident of another state by a person within that state where that state has in effect a regulatory small loan or consumer finance law similar in principle to this act.

(4) As amended by chapter 79 592, Laws of Florida, chapter 79-274, Laws of Florida, which amended subsection (1)

(a) Shall apply only to loans, advances of credit, or lines of credit made on or subsequent to July 1, 1979, and to loans, advances of credit, or lines of credit made prior to that date if the lender has the legal right to require full payment or to adjust or modify the interest rate, by renewal, assumption, reaffirmation, contract, or otherwise, and

(b) Shall not be construed as diminishing the force and effect of any laws applying to loans, advances of credit, or lines of credit other than to those mentioned in paragraph (a), completed prior to July 1, 1979.

*History* — s 17 ch 10177 1925 CGL 4015 s 10 ch 57 201 s 9 ch 73-192 s 1 ch 77 256 ss 3 15 ch 79-274 s 1 ch 79-592 s 2 ch 81 318 s 3 ch 85-32

*Note* — Repealed effective October 1 1988 by s 2 ch 81 318 and scheduled for review pursuant to s 11 61 in advance of that date  
cf — ch 687 Interest and usury

**516.19 Penalty for violations.**—Any person who shall violate any of the provisions of s 516 02, s 516 031, s 516 09, s 516 13, or s 516 18 shall be guilty of a misdemeanor of the second degree, punishable as provided in s 775 082 or s 775 083.

*History* — s 18 ch 10177 1925 CGL 4016 s 487 ch 71 136 s 13 ch 73-192 s 2 ch 81 318

*Note* — Repealed effective October 1 1988 by s 2 ch 81 318 and scheduled for review pursuant to s 11 61 in advance of that date

**516.20 "Interest" defined.**—

(1) Any profit or advantage of any kind whatsoever

that any licensee may contract for, collect, receive, or in anywise obtain by a collateral sale, purchase, or agreement as a condition to the grant of any loan regulated by this chapter shall be deemed to be interest or consideration for the purposes of regulation under this chapter. Such transactions, except commissions received by a person licensed by the Department of Insurance on insurance written as hereinafter permitted, are governed by and subject to the provisions of this chapter. However, security consisting of tangible property offered as security may be reasonably insured against loss for a reasonable term, considering the circumstances of the loan, and such insurance will not be deemed a collateral sale, purchase, or agreement if the policy is payable to the borrower or any member of his family, even though the customary mortgagee clause is attached or the licensee is a coassured, provided such insurance is sold at standard rates through a person duly licensed by the Department of Insurance.

(2) No licensee shall enter into any contract for a loan under this chapter for \$600 or less which provides for scheduled repayment of principal more than 24 months and 15 days from the date the loan is made or enter into any contract for a loan under this chapter for \$2,500 or less, but more than \$600, which provides for scheduled repayment of principal more than 36 months and 15 days from the date the loan is made. On a loan in an amount of more than \$2,500, scheduled repayment may exceed 36 months and 15 days.

*History*—s. 7 ch. 20728-1941; s. 11 ch. 57-201; ss. 13, 35 ch. 69-106; s. 10 ch. 73-192; s. 1 ch. 77-174; s. 2 ch. 80-412; s. 390 ch. 81-259; s. 2 ch. 81-318; s. 3 ch. 84-193.

*Note*—Repealed effective October 1, 1988, by s. 2 ch. 81-318 and scheduled for review pursuant to s. 11.61 in advance of that date.

#### 1516.21 Restriction of borrower's indebtedness.—

(1) No licensee shall directly or indirectly charge, contract for, or receive any interest, discount, or consideration greater than 18 percent per annum upon any loan, or upon any part or all of any aggregate loan in indebtedness of the same borrower, of the amount of more than \$5,000. The foregoing prohibition shall also apply to any licensee who permits any person as borrower or as endorser, guarantor, or surety for any borrower, or otherwise, or any husband and wife, jointly or severally, to owe directly or contingently or both to the licensee at any time a sum of more than \$5,000 for principal. However, if the proceeds of any loan of \$5,000 or less are used to discharge a preexisting debt of the borrower for goods or services owed directly to the person who provided such goods or services, the licensee may accept from such person a guaranty of payment of the principal of such loan with interest at a rate not exceeding 18 percent per annum, and the acceptance of one or more such guaranties in any aggregate amount shall not affect the rights of such licensee to make the charges against the primary borrower authorized by s. 516.031, nor shall the limitation apply to the isolated acquisition directly or indirectly by purchase or by discount of bona fide obligations of a borrower. However, in the event a licensee makes a bona fide purchase of substantially all of the loans made under this chapter from another licensee or other lender not affiliated with the purchaser and such licensee or other lender has an ex-

isting loan outstanding to one or more of the borrowers whose loans are purchased, such licensee making such purchase shall be entitled to liquidate and collect the balances due on such loans, including all lawful charges and interest at the rates or amounts agreed upon in such loan contracts.

(2) As amended by chapter 79-592, Laws of Florida, chapter 79-274, Laws of Florida, which amended subsection (1).

(a) Shall apply only to loans, advances of credit, or lines of credit made on or subsequent to July 1, 1979, and to loans, advances of credit, or lines of credit made prior to that date if the lender has the legal right to require full payment or to adjust or modify the interest rate, by renewal, assumption, reaffirmation, contract, or otherwise and

(b) Shall not be construed as diminishing the force and effect of any laws applying to loans, advances of credit or lines of credit, other than to those mentioned in paragraph (a), completed prior to July 1, 1979.

*History*—s. 8 ch. 20728-1941; s. 12 ch. 57-201; s. 11 ch. 73-192; ss. 4, 15 ch. 79-274; s. 1 ch. 79-592; s. 2 ch. 81-318; s. 4 ch. 85-32.

*Note*—Repealed effective October 1, 1988, by s. 2 ch. 81-318 and scheduled for review pursuant to s. 11.61 in advance of that date.

#### 1516.22 Regulations; certified copies.—

(1) REGULATIONS.—The department shall have the power and authority to issue regulations.

(2) CERTIFIED COPIES OF OFFICIAL DOCUMENTS.—On application of any person and payment of the costs thereof, at the same rate and fees as allowed clerks of the circuit court by statute, the department shall furnish a certified copy of any license, regulation, or order. In any court or proceeding, such copy shall be prima facie evidence of the fact of the issuance of such license, regulation, or order.

*History*—s. 9 ch. 20728-1941; s. 13 ch. 57-201; ss. 12, 35 ch. 69-106; s. 14 ch. 71-377; s. 7 ch. 78-95; s. 146 ch. 79-164; s. 2 ch. 81-318.

*Note*—Repealed effective October 1, 1988, by s. 2 ch. 81-318 and scheduled for review pursuant to s. 11.61 in advance of that date.

cf. s. 28.24 Service charges by clerks of circuit court.

1516.221 Liability when acting upon department's order, declaratory statement, or rule.—No person or licensee hereunder shall be deemed to be in violation of this chapter nor shall such person or licensee be subject to any civil or criminal liability for any act or omission to act in good faith in reliance upon a subsisting order, declaratory statement, or rule issued by the department notwithstanding a subsequent decision by a court of competent jurisdiction invalidating the order, declaratory statement, or rule.

*History*—s. 1 ch. 78-242; s. 2 ch. 81-318.

*Note*—Repealed effective October 1, 1988, by s. 2 ch. 81-318 and scheduled for review pursuant to s. 11.61 in advance of that date.

1516.23 Injunctions; receivers.—In addition to all other powers granted to it under this chapter, the department may

(1) Whenever it has reasonable cause to believe any person is violating or is about to violate any provision of this chapter or any order or regulation lawfully made pursuant to the authority of this chapter, enter an order requiring such person to desist from such violation,

(2) Bring an action in the name of the state in the circuit court of the county in which the licensed place of business is located on the relation of the Department of

Legal Affairs and the Department of Banking and Finance against such person to enjoin such person from engaging in or continuing such violation or doing any act or acts in furtherance thereof. In any such action, an order or judgment may be entered awarding such temporary or permanent injunction as may be deemed proper.

(3) In addition to all other means provided by law for the enforcement of a temporary restraining order, temporary injunction, or permanent injunction, said circuit court shall have power and jurisdiction to impound, and to appoint a receiver for, the property and business of the defendant including books, papers, documents, and records appertaining thereto or so much thereof as the court may deem reasonably necessary to prevent further violation of this chapter through or by means of the use of said property and business. Such receiver, when appointed and qualified, shall have powers and duties as to custody, collection, administration, winding up, and liquidation of said property and business as shall from time to time be conferred upon him by the court.

*History* — s 9 ch 20728 1941 ss 11 12 35 ch 69 106 s 2 ch 81 318

*Note* — Repealed effective October 1, 1988 by s 2 ch 81 318 and scheduled for review pursuant to s 11 61 in advance of that date

**1516.231 Appointment of managers; qualifications.** — Upon application for an original or renewal license, each applicant or licensee shall designate or appoint a manager for each location to be licensed. Each such manager shall have been employed by a licensee under this chapter or under former chapter 519, or by a subsidiary, affiliate, parent, or partner of the licensee, for a total period of at least 12 months or shall have successfully passed an examination based on the law and provisions of this chapter or former chapter 519 and rules and regulations thereunder. The foregoing requirement shall not apply to any person employed as such principal manager by a licensee on October 1, 1973.

*History* — s 12 ch 73-192 s 2 ch 81 318

*Note* — Repealed effective October 1, 1988 by s 2 ch 81 318 and scheduled for review pursuant to s 11 61 in advance of that date

**1516.26 Purchase or assignment of wages, salaries, etc.** — The payment of \$600 or less in money, credit, goods, or things in action as consideration for any sale or assignment of or order for the payment of wages, salary, commissions, or other compensation for services, whether earned or to be earned, shall, for the purposes of regulation under, and the enforcement and interpretation of, any law, civil or criminal, relating to loans, interest charges, or usury, be deemed a loan secured by such assignment, and the amount by which such assigned compensation exceeds the amount of such consideration actually paid shall, for the purpose of regulation under and the interpretation and enforcement of, such law be deemed interest upon such loan from the date of such payment until the date such compensation is payable. Each such transaction shall be governed by and subject in all respects to all provisions of law relating to loans, interest, charges, usury, and to the same extent as if it had been in form a loan of the sum paid for the assignment.

*History* — s 1 ch 20209 1941 s 14 ch 57 201 s 191 ch 77 104 s 2 ch 81 318

*Note* — Repealed effective October 1, 1988 by s 2 ch 81 318 and scheduled for review pursuant to s 11 61 in advance of that date

**1516.27 Preexisting contracts.** — This chapter or any part thereof may be modified, amended, or repealed so as to effect a cancellation or alteration of any license or right of a licensee hereunder, provided that such cancellation or alteration shall not impair or affect the obligation of any preexisting lawful contract between any licensee and any obligor, provided further, that nothing contained herein shall be construed so as to impair or affect the obligation of any contract of loan which was lawfully entered into prior to the effective date of this law.

*History* — s 15 ch 57 201 s 2 ch 81 318

*Note* — Repealed effective October 1, 1988 by s 2 ch 81 318 and scheduled for review pursuant to s 11 61 in advance of that date

**1516.29 Suspension or revocation of license for unreasonable collection tactics.** — The department shall have the authority to suspend or revoke the license of any licensee found guilty by it of using unreasonable collection tactics.

*History* — s 20 ch 57 201 ss 12 35 ch 69 106 s 2 ch 81 318

*Note* — Repealed effective October 1, 1988 by s 2 ch 81 318 and scheduled for review pursuant to s 11 61 in advance of that date

**1516.30 Period of transition allowed.** — Upon this law taking effect the department is hereby authorized to permit or allow a period of 60 days for the transition of the business of the then licensees.

*History* — s 17 ch 57 201 s 2 ch 81 318

*Note* — Repealed effective October 1, 1988 by s 2 ch 81 318 and scheduled for review pursuant to s 11 61 in advance of that date

**1516.31 Consumer protection; certain negotiable instruments restricted; assigns subject to defenses, limitation on deficiency claims, cross collateral.** —

(1) **SCOPE** — This section shall apply to every consumer credit transaction and contract in which any form of credit is extended to an individual to purchase or obtain goods or services for use primarily for personal, family, or household purposes.

(2) **RESTRICTION ON CERTAIN NEGOTIABLE INSTRUMENTS AND INSTALLMENT CONTRACTS** — A holder or assignee of any negotiable instrument or installment contract other than a currently dated check, which originated from the purchase of certain consumer goods or services is subject to all claims and defenses of the consumer debtor against the seller of those consumer goods or services. A person's liability under this section may not exceed the amount owing to the person when the claim or defense is asserted against the person.

(3) **LIMITATIONS ON DEFICIENCY CLAIMS** — If a creditor takes possession of property which was collateral under a consumer credit transaction, the consumer shall not be personally liable to the creditor for any unpaid balance of the obligation unless the unpaid balance of the consumer's obligation at the time of default was \$2,000 or more. When the unpaid balance is \$2,000 or more, the creditor shall be entitled to recover from the consumer the deficiency, if any, resulting from deducting the fair market value of the collateral from the unpaid balance due. In a proceeding for a deficiency, the fair market value of the collateral shall be a question for the trier of fact. Periodically published trade estimates of the retail value of goods shall, to the extent they are recognized in the particular trade or business, be presumed to be the fair market value of the collateral.

(4) **CROSS COLLATERAL**—If debts arising from two or more retail installment sales or other credit contracts with individual consumers are secured by more than one security interest, or consolidated into one debt payable on a single schedule of payments and the debt is secured by security interests taken with respect to one or more of the sales, payments received by the seller are deemed, for the purpose of determining the amount of the debt secured by the various security instruments, to have been first applied to the payment of the debt arising from the sale first made. To the extent that debts are paid according to this section, security interests in items of property terminate as the debt originally incurred with respect to each item is paid. Payments received by the seller or holder upon a revolving account are deemed, for the purpose of determining the amount of the debt secured by the various security interests, to have been applied first to the payment of finance charges in the order of their entry to the account and then to the payment of debts in the order in which the entries to the account showing the debts were made. If the debts consolidated arose from two or more credit sales or other credit contracts with an individual which were made on the same day, payments received by the seller or holder are deemed, for the purpose of determining the amount of the debt secured by the various security interests, to have been applied first to the payment of the smallest debt.

(5) **PURCHASERS OF RETAIL INSTALLMENT CONTRACTS MUST BE LICENSED UNDER CHAPTER 520**—A licensee under the Consumer Finance Act who purchases or holds retail installment contracts as defined in s 520.31 in this state shall also be licensed under chapter 520 as an Installment Sales Finance Act licensee.

(6) **WAIVER**—Waiver by the buyer of any provisions in this section shall be void and unenforceable as contrary to public policy.

*History*—s 12 ch 73-192 s 1 ch 77-174 s 2 ch 81-318  
*Note*—Repealed effective October 1, 1988 by s 2 ch 81-318 and scheduled for review pursuant to s 11.61 in advance of that date.

1516.32 **Consumer credit counseling**—The department shall be responsible for promoting a consumer credit counseling service for the purpose of promoting and helping establish consumer credit counseling services for individuals in areas where a need has been established. The purposes of the consumer credit counseling service shall be to

(1) Assist and educate individual consumers as to money management

(2) Assist individual consumers in consolidating obligations when a situation exists in which the individual consumer is in need of such assistance

(3) Work with consumer credit grantors in an effort to establish better relations with the individual consumer and with state and federal regulatory agencies

*History*—s 12 ch 73-192 s 2 ch 81-318  
*Note*—Repealed effective October 1, 1988 by s 2 ch 81-318 and scheduled for review pursuant to s 11.61 in advance of that date.

1516.33 **Public disclosure**—All findings of facts and orders filed with the department shall be a public record.

*History*—s 12 ch 73-192 s 2 ch 81-318  
*Note*—Repealed effective October 1, 1988 by s 2 ch 81-318 and scheduled for review pursuant to s 11.61 in advance of that date.

1516.34 **Transfer of licenses held under former chapter 519**—All persons holding licenses under former chapter 519, on October 1, 1973, shall become licensees under chapter 516, and licenses issued under former chapter 519 shall be reissued by the department showing their new designation as licenses issued under chapter 516.

*History*—s 12 ch 73-192 s 1 ch 77-174 s 2 ch 81-318  
*Note*—Repealed effective October 1, 1988 by s 2 ch 81-318 and scheduled for review pursuant to s 11.61 in advance of that date.

1516.35 **Credit insurance must comply with Credit Insurance Act**—Credit life and disability insurance which is provided at the expense of borrowers must be provided only under a group or individual insurance policy which complies with ss 627.676-627.684 and lawful regulations thereunder. The cost of credit life and disability insurance which is paid by borrowers shall be deducted from the principal amount of the loan and shall be disclosed on the statement required by s 516.15(1) or on a combined note and disclosure statement required by the federal Truth in Lending Act.

*History*—s 12 ch 73-192 s 2 ch 81-318 s 536 ch 82-243  
*Note*—Repealed effective October 1, 1988 by s 2 ch 81-318 and scheduled for review pursuant to s 11.61 in advance of that date.

1516.36 **Monthly installment requirement**—Every loan made pursuant to this chapter shall be repaid in monthly installments as nearly equal as mathematically practicable.

*History*—s 12 ch 73-192 s 2 ch 81-318  
*Note*—Repealed effective October 1, 1988 by s 2 ch 81-318 and scheduled for review pursuant to s 11.61 in advance of that date.

1516.37 **Transactions governed**—Nothing in chapter 516 shall apply to any transaction, contract, or loan other than one involving an extension of credit by a licensee as defined in this chapter.

*History*—s 12 ch 73-192 s 2 ch 81-318  
*Note*—Repealed effective October 1, 1988 by s 2 ch 81-318 and scheduled for review pursuant to s 11.61 in advance of that date.

## CHAPTER 516

## CONSUMER FINANCE

- 516 01 Definitions, businesses excluded  
 516 02 Loans, lines of credit, rate of interest, license  
 516 035 Rate of interest upon default  
 516 15 Duties of licensee  
 516 16 Confession of judgment, power of attorney,  
 contents of notes and security  
 516 20 "Interest" defined  
 516 36 Monthly installment requirement

**516 01 Definitions; businesses excluded.—**

(1) DEFINITIONS —As used in this chapter

(a) The word "person" shall include individuals, partnerships, associations, trusts, corporations, and any other legal entities.

(b) The word "license" shall mean a permit issued under authority of this chapter to make and collect loans in accordance with the provisions of this chapter at a single place of business.

(c) The word "licensee" shall mean a person to whom one or more licenses have been issued.

(d) The word "department" shall mean the Department of Banking and Finance.

(e) The word "loan" shall include a line of credit, except where otherwise indicated.

(2) BUSINESSES EXCLUDED —This chapter shall not apply to any person doing business under, and as permitted by, any law of this state or of the United States relating to banks, savings banks, trust companies, building and loan associations, credit unions, or industrial loan and investment companies or to any bona fide pawnbroking business transacted under a pawnbroker's license. No pawnbroker may be licensed to transact business under this chapter.

*History* —s. 19 ch. 10177, 1925 CGL 4016 s. 6 ch. 20728, 1941 s. 7 ch. 22858, 1945 s. 1 ch. 57-201 ss. 12, 35 ch. 68-106 s. 193 ch. 71-377 s. 189 ch. 77-104 s. 2 ch. 81-318 s. 1 ch. 86-100

*Note* —Repealed effective October 1, 1986 by s. 2 ch. 81-318 and scheduled for review pursuant to s. 11.61 in advance of that date.

**516 02 Loans; lines of credit; rate of interest; license.—**

(1) No person shall engage in the business of making loans of money, credit, goods or choses in action in the amount, or to the value of \$5,000 or less, and charge, contract for, or receive a greater rate of interest than 18 percent per annum therefor except as authorized by this chapter or other statute and without first obtaining a license from the department.

(2) As amended by chapter 79-592, Laws of Florida, chapter 79-274, Laws of Florida which amended subsection (1)

(a) Shall apply only to loans, advances of credit, or lines of credit made on or subsequent to July 1, 1979, and to loans, advances of credit, or lines of credit made prior to that date if the lender has the legal right to require full payment or to adjust or modify the interest rate, by renewal, assumption, reaffirmation, contract, or otherwise and

(b) Shall not be construed as diminishing the force and effect of any laws applying to loans, advances of credit, or lines of credit, other than to those mentioned in paragraph (a), completed prior to July 1, 1979.

(3) A licensee may offer lines of credit not exceeding \$25,000 under this chapter and may charge, contract for, and receive interest charges and other charges pursuant to s. 516 031, except that a licensee may not offer a credit card. A line of credit offered pursuant to this subsection shall not be considered a loan or extension of credit for purposes of s. 687 12, and the provisions of s. 687 12 shall not apply to a line of credit offered by a licensee.

*History* —s. 1 ch. 3177, 1925 CGL 3999 s. 2 ch. 57-201 ss. 12, 35 ch. 68-106 s. 2 ch. 73-192 ss. 1, 15 ch. 79-274 s. 1 ch. 79-592 s. 2 ch. 81-318 s. 1 ch. 85-32 s. 2 ch. 86-100

*Note* —Repealed effective October 1, 1986 by s. 2 ch. 81-318 and scheduled for review pursuant to s. 11.61 in advance of that date.

**516.035 Rate of interest upon default.—**In the event that any balance remains unpaid at the expiration of the scheduled maturity date of a loan, licensees may continue to charge interest on the unpaid balance at the rate provided for in s. 516 031(1) for a period not to exceed 12 months. Thereafter, the interest shall not exceed 10 percent per annum. When advances are made pursuant to a line of credit, a licensee may charge interest on the unpaid balance at the rate provided for in s. 516 031(1) for the period a balance remains unpaid.

*History* —s. 1 ch. 73-59 s. 2 ch. 81-318 s. 5 ch. 85-32 s. 3 ch. 86-100  
*Note* —Repealed effective October 1, 1986 by s. 2 ch. 81-318 and scheduled for review pursuant to s. 11.61 in advance of that date.

**516.15 Duties of licensee.—**Every licensee shall

(1) Deliver to the borrower at the time a loan is made a statement in the English language showing in clear and distinct terms the amount and date of the loan and the date of its maturity, the nature of the security, if any, for the loan, the name and address of the borrower and of the licensee and the rate of interest charged. However, with respect to a line of credit, the statement need not show a maturity date.

(2) Give to the borrower a plain and complete receipt for each payment made on account of any loan at



the time the payment is made or, alternatively, furnish to the borrower an annual statement showing the amount of interest paid on the loan during the previous year as well as the remaining balance on the loan, provided a simple receipt is given to the borrower for each payment made in cash and for any payment when requested in writing by the borrower

(3) Permit payment of the loan in whole or in part prior to its maturity with interest on such payment to the date thereof

(4) Upon repayment of the loan in full, mark indelibly every paper signed by the borrower with the word "Paid" or "Canceled" and release any mortgage, restore any pledge, cancel and return any note, and cancel and return any assignment given by the borrower as security

*History* — s 14 ch 10177 1925 CGL 4012 s 13 ch 73-192 s 2 ch 81-318 s 2 ch 84-193 s 4 ch 86-100

*Note* — Repealed effective October 1 1988 by s 2 ch 81-318 and scheduled for review pursuant to s 11 E1 in advance of that date

**1516.16 Confession of judgment, power of attorney; contents of notes and security** — No licensee shall take any confession of judgment or any power of attorney. Nor shall he take any note, promise to pay, or security that does not state the actual amount of the loan, the time for which it is made and the rate of interest charged, nor any instrument in which blanks are left to be filled after execution. However, with respect to a line of credit, the note, promise to pay, or security need not state the time for which it is made

*History* — s 15 ch 10177 1925 CGL 4013 s 2 ch 81-318 s 5 ch 86-100

*Note* — Repealed effective October 1 1988 by s 2 ch 81-318 and scheduled for review pursuant to s 11 E1 in advance of that date

**1516.20 "Interest" defined.** — Any profit or advantage of any kind whatsoever that any licensee may contract for, collect, receive or in anywise obtain by a collateral sale, purchase or agreement as a condition to the grant of any loan regulated by this chapter shall be deemed to be interest or consideration for the purposes of regulation under this chapter. Such transactions, except commissions received by a person licensed by the Department of Insurance on insurance written as herein after permitted are governed by and subject to the provisions of this chapter. However, security consisting of tangible property offered as security may be reasonably insured against loss for a reasonable term considering the circumstances of the loan, and such insurance will not be deemed a collateral sale, purchase, or agreement if the policy is payable to the borrower or any member of his family even though the customary mortgagee clause is attached or the licensee is a coassured, provided such insurance is sold at standard rates through a person duly licensed by the Department of Insurance.

*History* — s 7 ch 20728 1941 s 11 ch 57-201 ss 13 35 ch 69-106 s 10 ch 73-192 s 1 ch 77-174 s 2 ch 80-412 s 390 ch 81-259 s 2 ch 81-318 s 3 ch 84-193 s 7 ch 86-100

*Note* — Repealed effective October 1 1988 by s 2 ch 81-318 and scheduled for review pursuant to s 11 E1 in advance of that date

**1516.36 Monthly installment requirement.** — Every loan made pursuant to this chapter shall be repaid in monthly installments as nearly equal as mathematically practicable. This section shall not apply to lines of credit

*History* — s 12 ch 73-192 s 2 ch 81-318 s 6 ch 86-100

*Note* — Repealed effective October 1 1988 by s 2 ch 81-318 and scheduled for review pursuant to s 11 E1 in advance of that date

APPENDIX B

Rules, Florida Administrative Code

**RULES**  
**OF THE**  
**DEPARTMENT OF BANKING AND FINANCE**  
**CHAPTER 3D-160**  
**FLORIDA CONSUMER FINANCE ACT**

(Transferred from 3-2)

- 3D-160.01 Licensee Defined
- 3D-160.02 Referral Fees or Gifts
- 3D-160.03 Referrers, Advertising and Forms
- 3D-160.04 Acceptance of Deposits
- 3D-160.05 Statement of Loan Limits
- 3D-160.06 Simulation of Checks, Warrants, etc
- 3D-160.07 Comparative and Dual Advertising
- 3D-160.08 Insurance Companies and Agents
- 3D-160.09 Tangible Property Insurance
- 3D-160.10 Conversion or Embezzlement Insurance
- 3D-160.11 Insurance Premium Loans
- 3D-160.12 Deed or Other Conveyance as Collateral
- 3D-160.13 Disbursement Record
- 3D-160.14 Explaining and returning Loan Papers
- 3D-160.15 Delinquent Charges
- 3D-160.16 Computations
- 3D-160.17 Application of Payments
- 3D-160.18 Deductions and Distributions
- 3D-160.19 Monthly Installments Defined
- 3D-160.20 Overcharges
- 3D-160.21 Annual Reports, Extension Request
- 3D-160.22 Application to Change Location
- 3D-160.23 Liquid Assets Defined
- 3D-160.24 Names and Addresses of Corporate Officers
- 3D-160.25 Property Insurance on Loans
- 3D-160.26 Application for New License
- 3D-160.27 Monthly Billing Statements as Receipts for Payment
- 3D-160.28 Form of Records Kept by Licensee

**3D-160.01 Licensee Defined.** For the purposes of the rules in this chapter, "licensee" shall mean and intend any licensee under Chapter 516, F.S.; and, with respect to any prohibited activities in said Chapter, the term shall also include officers, directors, managers and employees of the licensee

Specific Authority 20 05(5) 516 22(1) FS Law Implemented 516 02 FS History—Amended 10-20-73, Renumbered from 3 2 01 to 3D-160 01 on 8-11-75, Redopted 9-1-75

**3D-160.02 Referral Fees or Gifts** No licensee shall pay or give money or anything else of value, either directly or indirectly, to any person as compensation, inducement or reward for referring loan applicants to the licensee. This regulation is not intended to prohibit the distribution of normal advertising items such as matches, calendars, pencils, etc., bearing the name and address of the licensee

Specific Authority 20 05(5) 516 22(1) FS Law Implemented 516 13 FS History—Amended 10-20-73, Renumbered from 3-2 02 to 3D-160 02 on 8-11-75, Amended 9-1-75

**3D-160.03 Referrers; Advertising and Forms.** A licensee shall not permit his name, address, or telephone number to appear in any advertising bearing the name, address or telephone number of a referrer. A licensee shall not permit a referrer to use and keep in his place of

business the licensee's forms for notes, security instruments, applications for loan or any of the other forms used in the licensee's office for making loans. The term "referrer" used in this regulation shall mean any person engaged in the sale of goods or services including his or its salesmen and employees

Specific Authority 20 05(5) 516 22(1) FS Law Implemented 516 13, 516 09(1) FS History—Amended 10-20-73, Renumbered from 3-2 03 to 3D-160 03 on 8-11-75, Amended 9-1-75

**3D-160.04 Acceptance of Deposits.** No licensee shall accept or advertise that he accepts money on deposit or as consideration for the issuance or delivery of certificates of deposit, savings certificates or similar instruments except to the extent the same may be permitted under the provisions of Chapter 517, Florida Statutes, regarding the sale of securities or by the Division of Securities, Department of Banking and Finance, pursuant to said chapter

Specific Authority 20 05(5) 516 22(1) FS Law Implemented 516 13 659 52 FS History—Amended 10-20-73, Renumbered from 3-2 04 to 3D-160 04 on 8-11-75, Amended 9-1-75

**3D-160.05 Statement of Loan Limits.**

Specific Authority 20 05(5) 516 22(1), 519 12(6) FS Law Implemented 516 13 519 10(3) FS History—Repealed 11-17-73, Renumbered from 3 2 05 to 3D-160 05 on 8-11-75

**3D-160.06 Simulation of Checks, Warrants, etc**

Specific Authority 20 05(5) 516 22(1), 519 12(6) FS Law Implemented 516 13 519 10(3) FS History—Repealed 11-17-73, Renumbered from 3 2 06 to 3D-160 06 on 8-11-75

**3D-160.07 Comparative and Dual Advertising.**

Specific Authority 20 05(5), 516 22(1) 519 12(6) FS Law Implemented 516 13 519 10(3) FS History—Repealed 11-17-73 Renumbered from 3 2 07 to 3D-160 07 on 8-11-75

**3D-160.08 Insurance Companies and Agents** Upon request, the licensee shall furnish to the department the name and address of the insurance company writing insurance in connection with loans made by the licensee

Specific Authority 20 05(5) 516 22(1), FS Law Implemented 516 20(1) FS History—Amended 10-20-73, Renumbered from 3 2 08 to 3D-160 08 on 8-11-75, Redopted 9-1-75

**3D-160.09 Tangible Property Insurance.**

Specific Authority 20 05(5) 516 22(1) 519 12(6) FS Law Implemented 516 13 519 10(3) FS History—Repealed 11-17-73, Renumbered from 3 2 09 to 3D-1 09 on 5-16-75, Renumbered from 3D 1 09 to 3D 160 09 on 8-11-75

**3D-160.10 Conversion or Embezzlement Insurance.**

Specific Authority 20 05(5), 516 22(1) 519 12(6) FS Law Implemented 516 13 519 10(3) FS History—Repealed 11-17-73 Renumbered from 3 2 10 to 3D-160 10 on 8-11-75

**3D-160.11 Insurance Premium Loans**

Specific Authority 20 05(5) 516 22(1) 519 12(6) FS Law Implemented 516 13 519 10(3) FS History—Repealed 11-17-73 Renumbered from 3 2 11 to 3D-160 11 on 8-11-75

**3D-160.12 Deed or Other Conveyance as Collateral** A licensee shall not permit a borrower to execute and deliver to licensee a deed or other unconditional

conveyance transferring ownership or borrower's real or personal property as security or collateral for a loan. Any collateral or security shall be evidenced by an appropriate mortgage or other security instrument. A deed or other conveyance transferring ownership of real or personal property to the borrower shall not be held or kept as collateral or security by a licensee.

Specific Authority 20 05(5), 516 22(1) FS Law Implemented 516 16 FS History—Amended 10-20-73, Renumbered from 3-2 12 to 3D-160 12 on 8-11-75, Readopted 9-1-75

**3D-160.13 Disbursement Record.** For each loan, the licensee shall prepare and keep a disbursement record which shall show deductions and distributions made from the proceeds of the loan.

Specific Authority 20 05(5), 516 22(1) FS Law Implemented 516 12(1) FS History—Amended 10-20-73, Renumbered from 3-2 13 to 3D-160 13 on 8-11-75, Amended 9-1-75

**3D-160.14 Explaining and Returning Loan Papers.**

(1) Explaining loan papers. The licensee shall explain fully to all signers of loan papers:

(a) That the loan is made under the Florida Consumer Finance Act.

(b) That the terms of the loan provide for interest and charges pursuant to the Florida Consumer Finance Act; and

(c) the nature of the security for the loan.

(2) All loan papers signed by the borrower shall be returned by the licensee to the borrower marked plainly with the words "Paid" or "Cancelled" within thirty days of the full payment of the loan, provided however:

(a) Where a real estate mortgage has been recorded, after the loan is paid a mortgage release or satisfaction shall be issued and filed by the licensee in the county of record within a reasonable time

(b) Where a financing statement has been filed, and after full payment, a termination statement shall be issued by the licensee to the borrower within a reasonable time.

Specific Authority 20 05(5), 516 22(1) FS Law Implemented 516 15, 579 9-4 04 FS History—Amended 10-20-73 Renumbered from 3-2 14 to 3D-160 14 on 8-11-75, Amended 9-1-75, 10-21-75, 3-21 77

**3D-160.15 Delinquent Charges.** Any charge that a licensee may impose or collect pursuant to Section 516.031(2), Florida Statutes, shall for all purposes be considered interest and shall be subject to the maximum rates provided and authorized by Chapter 516, Florida Statutes.

Specific Authority 20 05(5), 516 22(1) FS Law Implemented 516 031(1)(2)(4)(5) FS History—Revised 10-20-73, Renumbered from 3-2 15 to 3D-160 15 on 8-11-75, Readopted 9-1-75

**3D-160.16 Computations.** The rate of interest for each day shall not be greater than 1/365th of the maximum annual rate of interest charge permitted under Chapter 516, Florida Statutes.

Specific Authority 20 05(5), 516 22(1) FS Law Implemented 516 031(4) FS History—Revised 10-20-73, Renumbered from 3-2 16 to 3D-160 16 on 8-11-75, Readopted 9-1-75

**3D-160.17 Application of Payments.** Each payment shall be applied first to the accumulated interest charges and the remainder of the payment applied to the unpaid principal balance, provided that if the amount of the payment is insufficient to pay the accumulated interest charge, the unpaid accrued interest charge may continue to accumulate and the same may be paid from the proceeds of subsequent payments and shall not be added to the principal balance. No payment shall be accepted on the principal balance unless interest is paid to date or is waived by license, except such payment may credited to the

principal where the amount thereof is not sufficient to pay the interest due for one day

Specific Authority 20 05(5), 516 22(1) FS Law Implemented 516 031(1) FS History—Revised 10-20-73, Renumbered from 3 2 17 to 3D 160 17 on 8-11-75, Readopted 9-1-75

**3D-160.18 Deductions and Distributions**

(1) The following are the only deductions and distributions permitted to be made by the licensee from the principal amount of a loan.

(a) Documentary excise taxes

(b) Fees required to be paid for the filing, recording or releasing of any instrument securing the loan

(c) Premiums for insurance purchased pursuant to and to and to the extent the same are permitted by Chapter 516, Florida Statutes, or the Florida Insurance Code and any rules and regulations thereunder

(d) Distributions on behalf of the borrower, including payments of obligations due licensee

(e) Fees required to be paid for title insurance, title search fees, and an opinion from an attorney licensed to practice law in Florida

(f) Fees paid for appraisal of real property offered as security when paid to a third party and supported by an actual expenditure.

(2) Documentary stamps and recording. Upon completion of the loan transaction, documentary stamps shall be attached to the appropriate document and cancelled. Instruments on which the borrower has paid the fees for filing and recording shall be recorded among the public records within thirty (30) days from the date of the instruments. All deductions from the principal amount of the loan provided by Chapter 516, Florida Statutes, are permitted only to the extent they are actually paid, used or disbursed for the purposes stated.

Specific Authority 20 05(5), 516 22(1) FS Law Implemented 516 15(1), 516 031(5) FS History—Amended 10-20-73, Renumbered from 3 2 18 to 3D-160 18 on 8-11-75, Readopted 9-1-75, Amended 10-21 75 4 2 81

**3D-160.19 Monthly Installments Defined.** Loans shall be made repayable in equal monthly installments, including both principal and interest, with interest charges calculated on the assumption that all scheduled payments will be made when due. Provided, however, if the repayment schedule is otherwise than regular, the first installment period only may exceed one month by as much as fifteen (15) days, and the additional interest for such excess days may be added to the first installment payment.

Specific Authority 20 05(5), 516 22(1) FS Law Implemented 516 20(2), 516 36 FS History—Revised 10-20-73 Renumbered from 3-2 19 to 3D 160 19 on 8-11-75 Readopted 9-1-75

**3D-160.20 Overcharges.** Should a licensee charge, contract for, or receive interest or charges in excess of those permitted, and such overcharge is a result of a bona fide error, the loan contract shall remain valid and no penalty shall result, provided that the licensee shall refund or credit the borrower with the amount of such overcharge within twenty (20) days of the licensee's discovery of such error. In the event that the discovery of such overcharge was the result of a complaint by a borrower or of the Department, the Department shall investigate the circumstances surrounding the making of the overcharge and shall determine whether it was the result of bona fide error.

Specific Authority 20 05(5), 516 22(1) FS Law Implemented 516 031(5) FS History—Revised 10-20-73 Renumbered from 3-2 20 to 3D-160 20 on 8-11-75 Readopted 9-1-75

**3D-160.21 Annual Reports; Extension Request.** Any application for permission to extend the time for

filing an annual report as provided for in Section 156.12(2), Florida Statutes, shall be in writing  
 Specific Authority 20.05(5), 516.22(1), 519.12(6) FS Law Implemented 516.12(2) FS History—Amended 10-20-73, Renumbered from 3-2-71 to 3D-160.21 on 8-11-75, Readopted 9-1-75

### 3D-160.22 Application to Change Location.

Specific Authority 20.05(5), 516.22(1), 519.12(6) FS Law Implemented 516.09(2), 519.07(10) FS History—Repealed 11-17-73, Renumbered from 3-2-71 to 3D-160.22 on 8-11-75

### 3D-160.23 Liquid Assets Defined.

Specific Authority 20.05(5), 516.22(1), 519.12(6) FS Law Implemented 516.05(2), 519.07(4)(c) FS History—Repealed 11-17-73, Renumbered from 3-2-71 to 3D-160.23 on 8-11-75

**3D-160.24 Names and Address of Corporate Officers.** A licensee constituted in the corporate form shall furnish the department the name and address of each officer of its corporation and when any officer of the corporation is changed, the department shall immediately be notified of the change and the name and address of any new officer or officers.

Specific Authority 20.05(5), 516.22(1) FS Law Implemented 516.12(1)(2), 516.05(2)(a), 516.07(1)(c) FS History—Amended 10-20-73, Renumbered 3-2-71 to 3D-160.24 on 8-11-75, Readopted 9-1-75

### 3D-160.25 Property Insurance on Loans.

(1) Coverage. When, at the written request of the borrower, the licensee places insurance to protect household goods and appliances used as collateral for a loan, the policy shall include coverage against the perils of fire and broad-form extended coverage. At the option of the borrower, the policy may contain the following coverages: transportation and change of location; burglary; and rental reimbursement in event of loss.

(2) Issuer. A licensee may provide property insurance only on written authorization signed by the borrower through a duly licensed agent and an insurance company qualified by the Insurance Commissioner to do business in the State of Florida.

(3) Insurance voluntary. The borrower shall not be required to purchase a policy from any certain company, agent, broker or person as a condition precedent to the granting of a loan. Purchase of property insurance shall be entirely voluntary on the part of the borrower and so stated in a signed application requesting the licensee to place property insurance on the collateral.

(4) Forms and rates. The policy forms and rates charged must be in compliance with the Florida Insurance Code and regulations of the Commissioner of Insurance. The licensee shall retain, on the premises of the lending institution office, complete copies of the policy forms used and manuals of rates charged.

(5) Limitation. Property insurance may not be placed where there are not specific household or appliance goods offered as collateral or where the borrower has valid and collectible fire and extended coverage insurance on the same collateral to offer the licensee.

(6) Delivery of policy. The licensee shall deliver or cause to be delivered to the borrower evidence of insurance at the time the loan is made and deliver or cause to be delivered to the borrower a copy of the policy within fifteen days from the date the loan was made.

(7) Amount. The amount of property insurance shall be limited to the amount of indebtedness or the reasonable value of the property insured, whichever is less.

(8) Unearned premium. The unearned premium resulting in cancellations shall be computed and refunded in accordance with the cancellation provisions of the insurance policy placed by the licensee on behalf of the borrower. Any minimum retained premium shall not exceed \$3.00. A prorata refund shall be allowed on loan renewals.

(9) Total losses. On total losses, the property insurance shall pay the original amount of insurance, regardless of the value of the property or the amount owing at the time such total loss occurs. Partial losses shall be settled on an actual cost to repair or replace basis and there shall be no deductions from the amount of settlement for depreciation or betterment.

(10) Description. Where the licensee provides property insurance on specific household or appliance goods, the credit files of the licensee shall contain a description sufficient for identification of all the property insured as collateral.

(11) Rules to be displayed. The licensee shall display in a conspicuous place in the office of the lending institution the rules contained herein governing insurance on household goods and appliances. Upon request of the borrower, the licensee shall explain clearly to the borrower his rights and limitations as set forth in said rules.

Specific Authority 20.05(5), 516.22(1) FS Law Implemented 516.03, 516.05, 516.11 FS History—New 9-1-75

### 3D-160.26 Application for New License.

(1) Forms. A copy of the forms to be used for applying for a license under Chapter 516 appears in Chapter 3-2 of these rules as form DBF-F-1.

(2) Requirements. Persons seeking licenses under Chapter 516 must comply with all requirements set forth therein.

#### (3) Procedures for processing applications

(a) Filing. The application is to be filed with the Division of Finance, Suite 1401, the Capitol, Tallahassee, Florida 32301, in triplicate and should be accompanied by two checks, one for \$200 to cover the investigation fee and the other for \$175 to cover the annual license fee.

(b) Assets. It is necessary for the applicant to establish the fact that it has at least \$10,000 of liquid assets (cash) in the bank for use in the consumer finance business, if the location of the office is to be in a community of twenty-five thousand or less population, if the location of the office is to be in a community of population of more than 25,000 people, the amount of liquid assets required is \$25,000. This should be done by a letter from the applicant's bank to the department stating that the applicant has this amount of money on deposit for use in the consumer finance business.

(c) Name of business. Processing of the application can be expedited if the applicant has the name of the proposed consumer finance business approved by the department prior to filing the application, such approval can be obtained by written request.

(d) Reference letters. Reference letters should be furnished by persons or corporations other than applicants' associates and its attorney.

(e) Notice. Within 21 days after receipt of an application and the proper filing fee, the applicant and the Lenders Exchange and Trade Association are notified thereof and a copy of the application is sent to the appropriate field office for investigation. Approximately five days after such notices are sent,

hearing notices are sent to the Exchange, if a hearing is to be held. The applicant and other interested parties also receive a notice as to the date and time of the hearing.

(f) Investigation. As part of the department's investigation, references are contacted and an investigation is made as to applicant's character and fitness. If the applicant is a corporation, its charter, as filed with the Secretary of State, is checked and a determination is made to see if company has proper funds (liquid assets) available to be used in the business.

(g) Hearing. Hearings must be held not less than forty days or more than sixty days from the date of filing Exchange notices, and will be conducted in accordance with Chapter 120, F.S. and Chapter 3-3 of these rules.

Specific Authority 20 05(5), 516 22(1) FS Law Implemented 516 03, 516 05, 516 11 FS Chapter 77 256 L.O.P. History--New 8-1-75, Amended 1-10-79 4-2-81

**3D-160.27 Monthly Billing Statements as Receipts for Payment.** The duty of a licensee to give to the borrower a plain and complete receipt for all payments made on account of any loan at the time payments are made pursuant to Subsection 516 15(2), is discharged when payments are through mail by check or money order by furnishing the borrower with a monthly billing statement detailing payments.

Specific Authority 20 05(5), 516 22(1) FS Law Implemented 516 15(2) FS History--New 4-2-81

**3D-160.28 Form of Records Kept by Licensee.** The records required by Subsection 516 12(1), F.S., shall be kept in accordance with sound and accepted accounting practices, but no particular form is required for keeping the records. Such forms and systems of accounting shall be used as will enable the Department to determine compliance with the Florida Consumer Finance Act. Contemplated herein is the use of electronic data systems.

Specific Authority 20 05(5), 516 22(1) FS Law Implemented 516 12(1) FS History--New 4-2-81

ADDENDUM - SUPPLEMENTAL RULES

AMENDMENTS

3D-160.25 Property Insurance Loans

(1) - (2) No change

(3) Insurance voluntary. The borrower shall not be required to purchase a policy from any certain company, agent, broker or person as a condition precedent to the granting of a loan. Purchase of property insurance, from the licensee, shall be entirely voluntary on the part of the borrower and so stated in a signed application requesting the licensee to place property insurance on the collateral.

(4) - (11) No change.

(12) Collateral Insurance. When real or personal property, other than household goods and appliances, are used as collateral for a loan and the borrower is required, by the loan contract, to keep the collateral insured, a physical damage policy may be required naming the licensee as "Loss Payee." Should such insurance expire or be cancelled, the borrower may be required to furnish the licensee with replacement coverage. Should the borrower fail to furnish such a policy on written request, either a vender's single interest or a dual interest replacement policy may be obtained by the licensee and the premium charged to the loan account.

SPECIFIC AUTHORITY: 516.031(3), F.S.

HISTORY: New 9-1-75

AMENDED: 8-16-83

3D-160.26 Application for New License

(1) - (3)(f) No change

(3)(g) If the applicant fails to meet the requirements of Section 516.05, F.S., or otherwise has violated any of the provisions of Chapter 516, F.S., or any rule or regulation of the Department, the Department may refuse to grant the license and shall notify the applicant of this decision, stating the grounds for refusal. The applicant aggrieved by such refusal shall be entitled to a hearing pursuant to Chapter 120.57, F.S. Procedures for such hearing appear in Chapter 3-3 of the Rules and Regulations.

SPECIFIC AUTHORITY: 20.05(5), 516.22(1), F.S.

LAW IMPLEMENTED: 516.03, 516.05, 120.60(2), F.S.

HISTORY: New 9-1-75

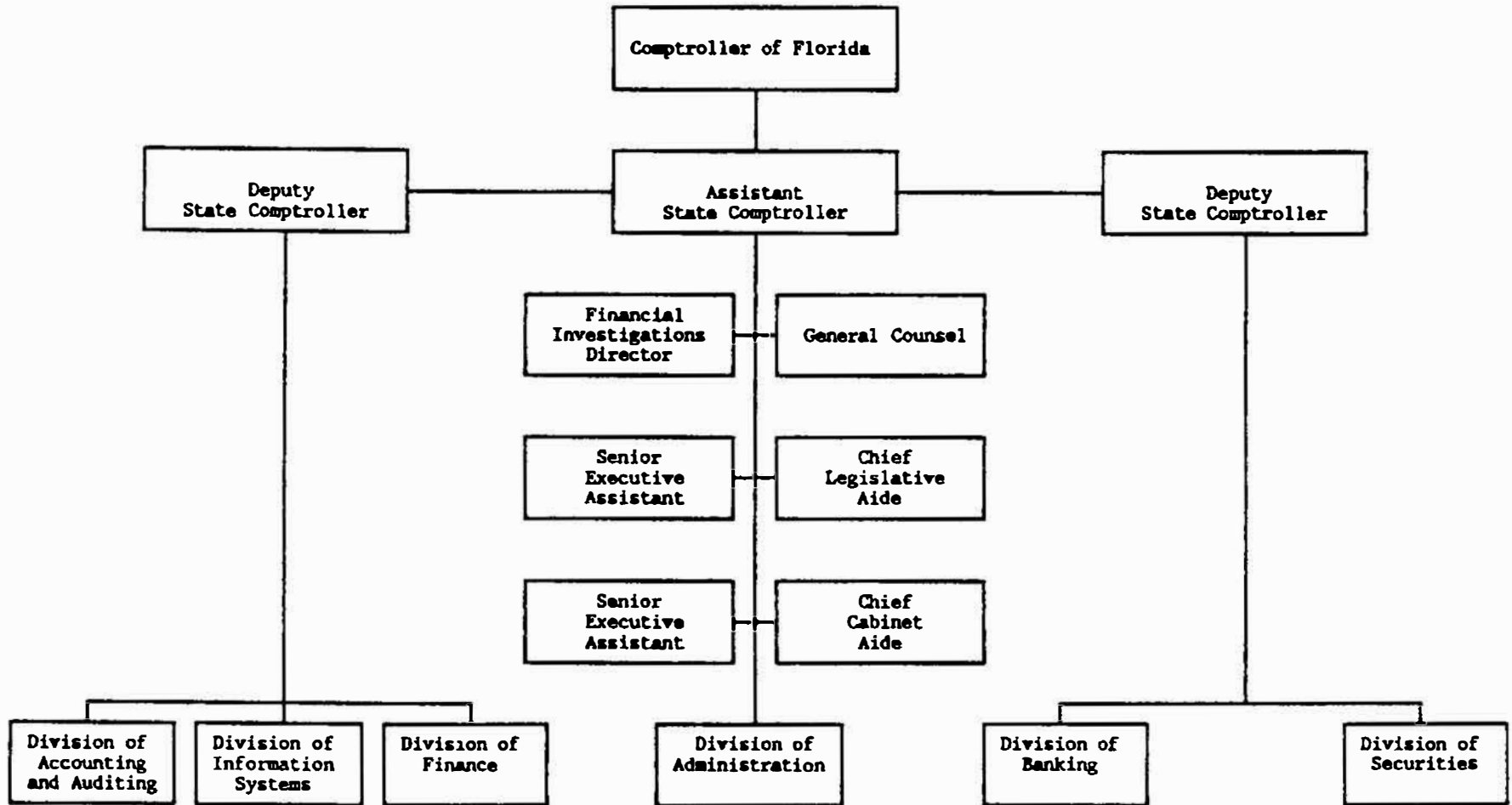
AMENDED: 1-10-79, 4-2-81, 8-10-83

APPENDIX C

Department Organizational Chart



DEPARTMENT OF BANKING AND FINANCE  
ORGANIZATION CHART



Source: Department of Banking and Finance.

APPENDIX D

Division Cost Allocation Chart

**Division of Finance**  
**Consumer Finance Cost Allocation for FYs 1980-1987**

Fiscal Years	Receipts Less Refunds	Allocated Costs		Total Costs	Surplus (Deficit)	% of Total* Cost
		Direct	Indirect			
1980-81	276,230	263,611	46,811	310,422	(34,192)	17.8
1981-82	269,472	254,116	72,900	327,016	(57,544)	16.2
1982-83	257,053	236,956	67,500	304,456	(47,403)	14.5
1983-84	246,952	226,555	55,552	282,107	(35,155)	11.2
1984-85	266,365	209,999	55,800	265,799	566	9.3
1985-86	250,360	228,715	47,775	276,490	(26,130)	9.1
1986-87	272,990	285,553	77,629	363,182	(90,192)	9.6

\* - Column represents that portion of total costs which the division allocated toward regulating the consumer finance industry for any particular fiscal year

Florida Information Associates  
Florida Legislature  
Staff Analyses  
1988 Sessions

LAWS OF FLORIDA CHAPTER NO.

88-0342

PRIME BILL NUMBER

88/H0658 \*

TYPE OF BILL

general

SPONSOR

H. Reg. Reform Committee

PRIME BILL TITLE (short title)

Consumer Finance

SIMILAR/IDENTICAL BILL SUBSTITUTED BY PRIME BILL: 88/S0141

DOCUMENTATION REPRODUCED

Analysis

PRIME SENATE COMMITTEE:

n/a

( )

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FINAL SENATE COMMITTEE:

n/a

( )

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PRIME HOUSE COMMITTEE:

Regulatory Reform

( X )

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FINAL HOUSE COMMITTEE:

Regulatory Reform

( )

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SUBSTITUTED BILL:

(88/S0141)

( X )

-----  
OTHER:

( )

**NOTE:** Consult the Final Legislative Bill Information (from Joint Legislative Management Committee, Division of Legislative Information, 1988) for more detailed bill history data. If prime bill number above is followed by an asterisk (\*), it was amended on the floor, and the staff analysis for that bill may not be in accordance with the enacted law. The analyses reproduced here were supplied by the appropriate committee, who is solely responsible for their accuracy and completeness.

ADDITIONAL INFORMATION:

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

<u>ANALYST</u>	<u>STAFF DIRECTOR</u>	<u>REFERENCE</u>	<u>ACTION</u>
1. <u>Jones</u>	<u>Fort</u>	1. <u>COM</u>	<u>Fav/CS</u>
2. <u>Barrett</u>	<u>Smith</u>	2. <u>AP</u>	<u>Favorable</u>
3. _____	_____	3. _____	_____
4. _____	_____	4. _____	_____

SUBJECT: Sunset Review of chapter 516, F.S., Consumer Finance

BILL NO. AND SPONSOR: CS/SB 141 by Commerce Committee

I. SUMMARY:

A. Present Situation:

Chapter 516, F.S., "Florida Consumer Finance Act," regulates small loan-making in the state of Florida. The term "small loan" refers to loans under \$25,000 which are made by entities licensed under this chapter and who are not state or federal chartered banks, savings banks, trust companies, building and loan associations, credit unions, or industrial loan and investment companies. Pawnbrokers and pawnbroking businesses are also excluded from the provisions of this act.

Persons who wish to engage in the business of small loan-making must be licensed by the Department of Banking and Finance. Applicants for a license are subject to licensing fees (\$200) and an investigation to determine if the applicant has the necessary financial wherewithal, experience, character, and general fitness to operate a small loan business. Once licensed, licensees are subject to annual fees (\$175) and an annual examination (the examination fee varies depending upon the assets of the business) to ensure their continued operation is not detrimental to the public welfare.

Chapter 516, F.S., also contains certain statutory restrictions designed to protect the consumer. An example of such consumer protection is a statutorily mandated maximum rate of interest for small loans. Licensees who violate the provisions of this chapter are guilty of a second degree misdemeanor and are subject to various departmental sanctions.

Chapter 516, F.S., is scheduled for repeal on October 1, 1988, with a review scheduled prior to that date pursuant to the Regulatory Sunset Act (ch. 81-318, L.O.F.).

B. Effect of Proposed Changes:

For ease of understanding, a section-by-section analysis is provided below:

Section 1: Section 516.01, F.S., is substantially reworded to include the definitions of "interest," "consumer finance borrower," and "consumer finance loan." The definition of interest remains generally the same and is merely transferred from s. 516.20, F.S. A consumer finance borrower is defined to include any person who is either directly or contingently liable to repay a consumer finance loan, while a consumer finance loan is a loan of \$5,000 or less which has an interest rate of greater than 18 percent per annum.

Section 2: Section 516.02, F.S., is substantially reworded and requires that a person be licensed before engaging in the business of consumer finance. This section also prohibits the receipt of any interest or consideration in excess of 18

percent per annum "except where authorized by this chapter or other statutes of this state."

A loan with an interest rate of greater than 18 percent per annum is unenforceable unless the loan was legally made to a "resident of another state by a person in that state." An additional requirement, which must be met for such a loan to be enforceable, is that the state in which the loan takes place must have a consumer finance law that is similar to the Florida Consumer Finance Act.

Section 3: This section changes the present annual license fee of \$175 to a biennial license fee of \$550.

Section 4: This section allows for the licensee to recover the actual and commercially reasonable expenses associated with preparing and selling any property pledged as security. The section also eliminates certain obsolete language contained within s. 516.031, F.S., and prohibits a licensee from taking a security interest on homestead property on any loan less than \$2,500.

Section 5: The allowable rate of interest, which may be charged when an unpaid balance exists past the maturity date of the loan, is increased from 10 percent to 18 percent. The rate of interest is increased to reconcile it with ch. 687, F.S., (Usury law). Presently, ch. 687, F.S., provides for an interest rate of 18 percent.

Section 6: This section authorizes the department to make an investigation of the facts concerning an applicant's proposed activities. If, after the investigation, the department determines that a license should be issued, the license will be "for a period not to exceed 2 years."

Additionally, the department is granted the authority to refuse to process an application "if the applicant or any person with power to direct the management or policies of the applicant . . . is the subject of a pending criminal prosecution . . . ."

An inactive status is also created for a license which is not timely renewed. An inactive license may be reactivated. However, if a license is not reactivated within 6 months of becoming inactive it will expire.

Section 7: This section expands and clarifies the violations upon which the department may take action against a licensee. In the case of fraud, misrepresentation, or gross negligence, the department may take action against the licensee "regardless of reliance by or damage to the borrower." In addition, the department is authorized to act against a licensee when the licensee fails to maintain liquid assets of at least \$25,000.

This section also increases the department's alternatives in addressing violations of ch. 516, F.S. Pursuant to this section, the department could employ any of the following penalties:

1. denying an application;
2. revoking or suspending a license;
3. placing a licensee on probation;
4. placing permanent restrictions or conditions on the issuance or maintenance of a license;
5. issuing a reprimand; or
6. imposing a fine of less than \$1,000.

The department may impose these penalties upon a business entity whenever a violation is committed by "a person with power to direct the management or policies" of the entity. A licensee is also responsible for the violations of employees and agents if the licensee obtained benefits from the violations or such violations were performed with the licensee's knowledge. Finally, this section makes any violation of part III of chapter 817, F.S., or part II of chapter 559, F.S., a violation of ch. 516, F.S.

Section 8: The department is required, at intermittent periods, to undertake examinations and investigations to ensure compliance with ch. 516, F.S. To accomplish this, the department has the power to examine and compel the production of all documents and persons which are needed to conclude an investigation. Generally, examinations will only be performed on an annual basis. However, an examination may be performed more frequently if there is reason to believe a licensee "is not complying with the provisions of this chapter." This section also provides for an increase in the examination fee.

Section 9: The penalty for a violation of ch. 516 is changed to a first degree misdemeanor.

Section 10: Obsolete language contained within s. 516.21, F.S., is removed.

Section 11: This section permits the department to issue subpoenas and states that "[c]osts incurred by the department to obtain an order granting . . . its petition shall be taxed against the subpoenaed person . . . ." In addition, the section confers upon the department the authority to:

(1) bring a court action to enforce this provision or any written agreement entered into with the department;

(2) issue and serve cease and desist orders when one is violating or is about to violate this provision or a written agreement with the department; and

(3) impose administrative fines of \$1,000 or less for violations of this provision or any written agreement entered into with the department.

Section 12: This section increases the loan amounts referred to in s. 516.26, F.S., to the current statutory limit of \$25,000.

Section 13: This section explicitly limits the consumer protection provisions of s. 516.31, F.S., to ch. 516, F.S. Presently, s. 516.31, F.S., is implicitly limited by the provisions of s. 516.37, F.S. Section 516.37 is repealed by section 15 of the bill.

Section 14: This section explicitly clarifies a licensee's ability to provide the borrower with credit property insurance.

Section 15: Provides for the repeal of ss. 516.09, 516.12, 516.18, 516.20, 516.231, 516.29, 516.30, 516.34, and 516.37, F.S.

Section 16: This section readopts ch. 516, F.S.

Section 17: This section provides for future review and repeal pursuant to s. 11.61, F.S., of ch. 516, F.S.

Section 18: Provides for an effective date of October 1, 1988.

II. ECONOMIC IMPACT AND FISCAL NOTE:

## A. Public:

Generally, the only cost to the public for administering ch. 516, F.S., is indirect. This indirect cost results from the economic assumption that the industry will eventually pass, at least a portion of, the cost of ch. 516, F.S., to the borrower.

## B. Government:

Financial data, provided by the division and covering fiscal years 1980 to 1987, indicate that the present fee structure is insufficient to sustain the required administrative costs of ch. 516, F.S. Within the period examined, costs of administering the chapter were greater than fee collections by an average of \$41,436 per year. Since it is the department's intent for ch. 516, F.S., to be financially self-sufficient, the deficits will have to be rectified by either an increase in fees or a reduction in administrative costs. This bill will provide for an average annual fee increase of \$150 per license based upon 650 licenses, for a total increase in annual trust fund revenue of \$97,500.

The change from an annual to a biennial license period will have certain financial benefits to the department. First, the department will recognize certain administrative savings due to a longer licensing period. In addition, the department will also receive an increase in interest income due to license fees being received sooner. However, at this date the overall monetary impact due to these changes is indeterminable.

III. COMMENTS:

CS for SB 141 addresses an ambiguity within ch. 516, F.S., which has resulted in litigation. The litigation generally concerns whether ch. 516, F.S., applies to loans in excess of \$5,000 when an interest rate of less than 18 percent is charged. CS for SB 141, in its present form, would ordinarily not be applicable to such loans.

Presently, ch. 687, F.S., (Usury law) allows an unlicensed person to engage in loan making as long as the interest rate charged is less than 18 percent. Many ch. 516 licensees use ch. 687, F.S., and make loans which do not come under the restrictions of ch. 516, F.S. A ch. 516 licensee will often create a separate but in-house subsidiary to handle such non-consumer finance loans. Thus, the consumer finance licensee is able to make two types of loans out of the same place of business. The rationale for permitting such transactions is that ch. 516, F.S., should only be applicable in those circumstances where an interest rate of greater than 18 percent is employed. The ch. 516 licensee is, thus, allowed to charge an interest rate in excess of 18 percent only where the consumer is provided the additional protections of ch. 516, F.S.

This act shall take effect October 1, 1988.

IV. AMENDMENTS:

None.