

STORAGE NAME: h1169.fs

DATE: April 6, 2000

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
FINANCIAL SERVICES
ANALYSIS**

BILL #: HJR 1169

RELATING TO: Consumer Loans and Credit Sales

SPONSOR(S): Representative Reddick

TIED BILL(S):

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) FINANCIAL SERVICES
 - (2) JUDICIARY
 - (3) GOVERNMENTAL RULES & REGULATIONS
 - (4) GENERAL GOVERNMENT APPROPRIATIONS
 - (5)
-

I. SUMMARY:

Chapter 687, F.S., is entitled: Interest and Usury; Lending Practices. Section 687.02, F.S., provides an interest rate cap of 18 percent per annum simple interest for all contracts for the payment of interest on any loan, advance of money, line of credit, or on any obligation of under \$500,000. Loans over that amount, unless otherwise specified by law are governed by the provisions of s. 687.071, F.S. which provides criminal penalties for interest rates in excess of 25 per cent per annum.

While Chapter 687, F.S., governs lending practices in Florida in general, it also permits any lender or creditor licensed under Chs. 516 (Consumer finance), 520 (Retail installment sales), 655 (Financial institutions, generally), 657 (Credit unions), 658 (Banks and trust companies), or part XV of 627 (premium finance companies), as well as former chapters 659, 664, or 656, F.S., to charge interest on loans or extensions of credit at the maximum rate of interest permitted by law to be charged on similar loans or extensions of credit made by any lender or creditor in the state, unless otherwise restricted by statute.

This House Joint Resolution would amend the Florida Constitution to restrict the allowable interest rate on all Florida based consumer loan or credit sale contracts with individuals for amounts under \$500,000, to no more than 31 percent simple interest per annum. The implementation of this resolution is contingent on approval by the general electorate at the November 2000 general election. The ballot title and substance of the amendment are included in this resolution and will apply to all consumer loans or credit sale contracts made subsequent to the effective date of the amendment (the first Tuesday after the first Monday in January following the election).

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|---|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

Chapter 687, F.S., is entitled: Interest and Usury; Lending Practices. Section 687.01, F.S., provides for loans made without contracts and sets the interest rate to correspond to that annually set by the Comptroller for judgements (s. 55.03, F.S.) An interest rate cap of 18 percent per annum simple interest, is set by s. 687.02, F.S., for all contracts for the payment of interest on any loan, advance of money, line of credit, or on any obligation under \$500,000. Loans over that amount, unless otherwise specified by law are governed by the provisions of s. 687.071, F.S. which provides criminal penalties for interest rates in excess of 25 per cent per annum. Section 687.03, F.S., provides exceptions for loans made pursuant to certain federal laws or commitments to insure, guarantee or purchase loans by certain, appropriate (named) federal institutions.

While Chapter 687, F.S., governs lending practices in Florida in general it also permits any lender or creditor licensed under Chs. 516 (Consumer finance), 520 (Retail installment sales), 655 (Financial institutions, generally), 657 (Credit unions), 658 (Banks and trust companies), or part XV of 627 (premium finance companies), as well as former chapters 659, 664, or 656, F.S., to charge interest on loans or extensions of credit at the maximum rate of interest permitted by law to be charged on similar loans or extensions of credit made by any lender or creditor in the state, unless otherwise restricted by statute. The following outlines the practices authorized under the above chapters:

CONSUMER FINANCE

- 516.031(1), F.S., provides finance charge, and maximum rates, and provides the following: No interest on principal less than \$1,000; 30 percent per annum on first \$2,000 of principal; 24 percent per annum on principal between \$2,000 and \$3,000; 18 percent per annum on principal between \$3,000 and \$25,000; not authorized to loan greater than \$25,000.

SECONDHAND DEALER/MOTOR VEHICLE TITLE LOANS

- 538.06(5)(e), F.S., concerns the holding period, and provides a cap of interest at 22 percent per month.

PAWNBROKERS

- 539.001(11)(a), F.S., is the Florida Pawnbroking Act, and provides that the service charge not to exceed 25 percent per 30-day period; agreements may be extended; no limit on the number of times agreements may be extended.

CREDIT CARDS

- 655.954, F.S., describes financial institution loans on credit cards and or overdraft financing arrangements. Rate is specified in the written contract, and requires compliance with the Federal Truth in Lending Act disclosures.

FINANCIAL INSTITUTIONS

- 658.49, F.S., limits the amount of interest state chartered banks can charge on loans of \$50,000 or less to 18 percent per annum, simple interest.

The term "secondhand dealer" refers to pawnbrokers, title lenders, jewelers, precious metals dealers, garage sale operators, secondhand stores, and consignment shops. Unlike other secondhand dealers (e.g., pawnbrokers), title lenders are not regulated by a state agency. Under s. 538.06(5)(e), a title loan lender may charge a maximum fee (as distinguished from an interest rate) of 22 percent per month on a title loan transaction. There is no prohibition against capitalizing (same effect as compounding) the 22 percent rate. At this time, however, more than half of Florida's counties have enacted local ordinances restricting title loan companies to interest rates of 30 percent per annum or less.

Chapter 560, F.S., provides limitations on all persons in the business of cashing payment instruments (checks) or exchanging foreign currency for the following fees:

- 1) except as otherwise provided, no more than 5 percent of the face amount of a check, or 6 percent without identification, or \$5, whichever is greater;
- 2) for state public assistance or federal social security benefit check payable to the bearer no more than 3 percent of the face amount of a check, or 4 percent without identification, or \$5, whichever is greater;
- 3) for personal checks or money orders no more than 10 percent of the face amount, or \$5, whichever is greater.

A person registered under this part as being in the business of cashing checks ("registrant") may charge up to 10% of the face amount of a personal check as a fee for this service, as shown above. The registrant may accept a post-dated check or agree to wait a certain number of days to cash the check. If a licensed check casher holds the check for a period of time the transaction has some characteristics of a loan, and it is the department's position that although this transaction is not expressly prohibited by the statute it is probable the drafters of the statute did not contemplate this practice which are also known as deferred presentments. Additionally, under the recently revised (March 22, 2000) Regulation Z of the Board of Governors of the Federal Reserve Board, deferred presentment transactions are considered "credit" and therefore are loans and providers must abide by Regulation Z which requires the disclosure of interest rates.

It is the position of the department that licensed check cashers are not permitted to execute "roll-overs" of these transactions because a "roll-over" would clearly convert the transaction into a loan of a type not authorized by any Florida statute. Should a licensee engage in a "roll-over," it is the department's position that it would be both a regulatory violation which

could result in civil penalties and a criminal violation of Chapter 687, F.S., should the interest rate exceed 18 percent per annum.

Under these current Florida usury laws, the aggregate cap on consumer loans and credit sales agreements under \$500,000, which can be offered by state licensed entities is no more than 30 percent per annum. National banks under Federal law (12 U.S.C. 85) may charge interest at the highest rate allowed to competing lenders by the state where the bank is located without regard to the location of the borrower. Consequently, national banks can "export" the rate of interest allowed by its home state to customers in other states. Currently California, Connecticut, Idaho, Illinois, Iowa, Michigan, Montana, Nevada, New Mexico, North and South Dakota, Oregon, Utah, Vermont, and Virginia do not have a cap on interest rates and other states have a variety of rates exceeding Florida's.

An example of this practice can be seen in Marion County. Testimony has been given the past couple of years in committee meetings in the Florida House and Senate by representatives of companies that offer title loans that being restricted to a 30 percent per annum rate of interest would put their companies out of business because it is not profitable to offer high risk, short term loans at that rate. Recently, however, a nationally chartered bank began to offer short term loans at a rate of 25 percent per month which corresponds to approximately 300 percent per annum. This rate of interest was exported from the bank's offices in Illinois.

C. EFFECT OF PROPOSED CHANGES:

This House Joint Resolution would amend the Florida Constitution to restrict the allowable interest rate on all Florida based consumer loan or credit sale contracts with individuals for amounts under \$500,000, to no more than 31 percent simple interest per annum. The implementation of this resolution is contingent on approval by the general electorate at the November 2000 general election. The ballot title and substance of the amendment are included in this resolution and will apply to all consumer loans or credit sale contracts made subsequent to the effective date of the amendment (the first Tuesday after the first Monday in January following the election).

The bill provides parameters for the loan or credit sale contracts to be governed by the constitution. The definition given in the bill for a "consumer loan or credit sale" would limit it to amounts of no more than \$500,000 which are extended to natural persons (not companies or commercial concerns) primarily for personal, family, or household purposes. Additionally, the bill clarifies that the newly created section of the constitution is not to be construed to conflict with certain federal laws or commitments to insure, guarantee or purchase loans by certain, appropriate (named) federal institutions.

Loans in excess of \$500,000 and corporate loans would not be impacted by this legislation if such is passed by the general electorate. Since s. 538.06(5)(e), F.S., the amount a title loan lender may charge, references a maximum fee, as distinguished from an interest rate, and since Chapter 560, F.S., also references a fee for cashing checks (whether presentment is deferred or not) it is unclear whether the cap proposed by this amendment to the constitution would apply. Additionally, national banks could avoid this limitation by exporting more favorable interest rates to Florida from other more lenient states.

D. SECTION-BY-SECTION ANALYSIS:

N/A

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

N/A

2. Expenditures:

N/A

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The implementation of this constitutional amendment would not impose any additional fees on entities licensed to provide consumer loans or credit sale contracts nor would it subject any additional entities to regulation so no direct private sector cost is apparent.

D. FISCAL COMMENTS:

None.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The bill will not reduce the authority of counties and municipalities to raise revenues.

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C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill will not reduce the state tax shared with counties and municipalities.

V. COMMENTS:

Statutes that govern interest rates and can be amended annually could be made to respond to a dramatic change in financial markets in a potentially shorter time period than it would take to amend a constitutional provision.

A. CONSTITUTIONAL ISSUES:

Article XI, Section 1, of the Florida Constitution provides that the Legislature may propose an amendment to the constitution by joint resolution which contains the text of the amendment. The joint resolution must be agreed to by three-fifths of the membership of each house. Section 5, provides that each proposed amendment must be submitted to the general electorate of the state at the next general election or under specified circumstances at a special election. The provisions of the amendment would be effective on the first Tuesday after the first Monday in January following the election unless otherwise specified in the joint resolution.

B. RULE-MAKING AUTHORITY:

N/A

C. OTHER COMMENTS:

N/A

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON FINANCIAL SERVICES:

Prepared by:

Staff Director:

Susan F. Cutchins

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