

CHAPTER 516

CONSUMER FINANCE

- 516.001 Short title.
- 516.01 Definitions.
- 516.02 Loans; lines of credit; rate of interest; license.
- 516.03 Application for license; fees; etc.
- 516.031 Finance charge; maximum rates.
- 516.035 Rate of interest upon default.
- 516.05 License.
- 516.07 Grounds for denial of license or for disciplinary action.
- 516.08 License to be posted.
- 516.11 Investigations and complaints.
- 516.12 Records to be kept by licensee.
- 516.15 Duties of licensee.
- 516.16 Confession of judgment; power of attorney; contents of notes and security.
- 516.17 Assignment of wages, etc., given to secure loans.
- 516.19 Penalties.
- 516.21 Restriction of borrower's indebtedness.
- 516.22 Regulations; certified copies.
- 516.221 Liability when acting upon department's order, declaratory statement, or rule.
- 516.23 Subpoenas; enforcement actions; rules.
- 516.26 Purchase or assignment of wages, salaries, etc.
- 516.27 Preexisting contracts.
- 516.31 Consumer protection; certain negotiable instruments restricted; assigns subject to defenses; limitation on deficiency claims; cross collateral.
- 516.32 Consumer credit counseling.
- 516.33 Public disclosures.
- 516.35 Credit insurance must comply with credit insurance act.
- 516.36 Monthly installment requirement.

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; ss. 16, 17, ch. 88-342; s. 4, ch. 91-429.

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 \$25,000 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.

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. 69-106; s. 193, ch. 71-377; s. 189, ch. 77-104; s. 2, ch. 81-318; s. 1, ch. 86-100; ss. 1, 16, 17, ch. 88-342; s. 1, ch. 90-104; s. 4, ch. 91-429.

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 to do so under this chapter or other statutes 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 \$25,000 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. This chapter also does not apply to title loans as defined in s. 538.03(1)(i) or pawns as defined in s. 538.03(1)(d). A pawnbroker may not be licensed to transact business under this chapter.

History.—s. 1, ch. 10177, 1925; CGL 3999; s. 2, ch. 57-201; 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; s. 2, ch. 86-100; ss. 2, 16, 17, ch. 88-342; s. 2, ch. 90-104; s. 68, ch. 91-220; s. 4, ch. 91-429; s. 5, ch. 95-287.

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

(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. 20728, 1941; s. 127, ch. 26869, 1951; s. 3, ch. 57-201; 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; ss. 3, 16, 17, ch. 88-342; s. 4, ch. 91-429.

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 \$1,000 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 \$1,000 and not exceeding \$2,000; and 18 percent per annum on that part of the principal amount as computed from time to time exceeding \$2,000 and not exceeding \$25,000. 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. When two or more interest rates are to be applied to the principal amount of a loan, the licensee may charge, contract for, and receive interest at that single annual percentage rate which if applied according to the actuarial method to each of the scheduled periodic balances of principal would produce at maturity the same total amount of interest as would result from the application of the two or more rates otherwise permitted, based upon the assumption that all payments are made as agreed.

(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, 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. An amount not to exceed \$10 to reimburse a portion of the costs for investigating the character and credit of the person applying for the loan;

2. An annual fee of \$25 on the anniversary date of each line-of-credit account;

3. Charges paid for brokerage fee on a loan or line of credit of more than \$10,000, title insurance, and the appraisal of real property offered as security when paid to a third party and supported by an actual expenditure;

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

5. 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;

6. 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;

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

8. Actual and commercially 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 \$20 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) **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.

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. 80-412; s. 1, ch. 81-299; s. 2, ch. 81-318; s. 1, ch. 84-193; s. 2, ch. 85-32; ss. 4, 16, 17, ch. 88-342; s. 3, ch. 90-104; s. 4, ch. 91-429; s. 1, ch. 94-108.

1Note.—Section 4, ch. 94-108, provides that "[t]his act applies only to a loan made or line of credit account created on or after July 1, 1994."

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. 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. 79-59; s. 2, ch. 81-318; s. 5, ch. 85-32; s. 3, ch. 86-100; ss. 5, 16, 17, ch. 88-342; s. 4, ch. 91-429.

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 reactiva-

tion 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.

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; ss. 6, 16, 17, ch. 88-342; s. 4, ch. 91-429.

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:

1. Willful 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 or of any rule adopted under 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 director 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.

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, ss. 7, 16, 17, ch. 88-342; s. 4, ch. 90-104; s. 4, ch. 91-429.

516.08 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 4005; s. 2, ch. 81-318; ss. 16, 17, ch. 88-342; s. 4, ch. 91-429.

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, the department 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) The licensee shall also pay the travel expense and per diem subsistence allowance provided for state employees in s. 112.061. The licensee shall not be required to pay a per diem fee and expenses of an examination which shall consume more than 30 worker-days in any one year unless such examination or investigation is due to fraudulent practices of the licensee, in which case such licensee shall be required to pay the entire cost regardless of time consumed.

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

History.—s. 10, ch. 10177, 1925; CGL 4008; 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; ss. 8, 16, 17, ch. 88-342; s. 4, ch. 91-429; s. 2, ch. 94-108.

Note.—Section 4, ch. 94-108, provides that "[t]his act applies only to a loan made or line of credit account created on or after July 1, 1994."

516.12 Records to be kept by licensee.—

(1) 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.

(2) A licensee, operating two or more licensed places of business in this state, may maintain the books, accounts, and records of all such offices at any one of such offices, or at any other office maintained by such licensee, upon the filing of a written request with the department designating therein the office at which such records are maintained.

History.—s. 11, ch. 10177, 1925; CGL 4009; s. 5, ch. 20728, 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; ss. 16, 17, ch. 88-342; s. 4, ch. 91-429; s. 3, ch. 94-108.

Note.—Section 4, ch. 94-108, provides that "[t]his act applies only to a loan made or line of credit account created on or after July 1, 1994."

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; ss. 16, 17, ch. 88-342; s. 4, ch. 91-429.

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. 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; ss. 16, 17, ch. 88-342; s. 4, ch. 91-429.

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; ss. 16, 17, ch. 88-342; s. 4, ch. 91-429.

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 or s. 775.083.

History.—s. 18, ch. 10177, 1925; CGL 7880; s. 487, ch. 71-136; s. 13, ch. 73-192; s. 2, ch. 81-318; ss. 9, 16, 17, ch. 88-342; s. 8, ch. 90-104; s. 4, ch. 91-429.

516.21 Restriction of borrower's indebtedness.—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 \$25,000. 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 \$25,000 for principal. However, if the proceeds of any loan of \$25,000 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.

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; ss. 10, 16, 17, ch. 88-342; s. 7, ch. 90-104; s. 4, ch. 91-429.

516.22 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. 194, ch. 71-377; s. 7, ch. 78-95; s. 146, ch. 79-164; s. 2, ch. 81-318; ss. 16, 17, ch. 88-342; s. 4, ch. 91-429.

516.221 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, ss. 16, 17, ch. 88-342; s. 4, ch. 91-429.

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 a 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 provision 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.

History.—s. 9, ch. 20726, 1941; ss. 11, 12, 35, ch. 69-106; s. 2, ch. 81-318; ss. 11, 16, 17, ch. 88-342; s. 4, ch. 91-429.

516.26 Purchase or assignment of wages, salaries, etc.—The payment of \$25,000 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, sal-

ary, 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; ss. 12, 16, 17, ch. 88-342; s. 4, ch. 91-429.

516.27 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; ss. 16, 17, ch. 88-342; s. 4, ch. 91-429.

516.31 Consumer protection; certain negotiable instruments restricted; assigns subject to defenses; limitation on deficiency claims; cross collateral.—

(1) SCOPE.—This section applies to every consumer finance loan or other contract authorized by this chapter 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; ss. 13, 16, 17, ch. 88-342; s. 4, ch. 91-429.

516.32 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; ss. 16, 17, ch. 88-342; s. 4, ch. 91-429.

516.33 Public disclosures.—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; ss. 16, 17, ch. 88-342; s. 4, ch. 91-429.

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 provided at the expense of the borrowers and must be provided under a group or individual insurance policy which complies with ss. 627.676-627.684 and lawful regulations thereunder. The cost of such insurance 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; ss. 14, 16, 17, ch. 88-342; s. 4, ch. 91-429.

516.36 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; ss. 16, 17, ch. 88-342; s. 4, ch. 91-429.