

By Senator Berman

26-00107-24

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1 A bill to be entitled
 2 An act relating to consumer finance loans; creating s.
 3 516.181, F.S.; prohibiting persons from engaging in
 4 actions to evade the requirements of ch. 516, F.S.;
 5 providing that consumer finance loans made in
 6 violation of such prohibitions are void and
 7 uncollectible; providing construction relating to when
 8 a person is deemed to be a lender subject to such
 9 prohibitions; providing an effective date.

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

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 13 Section 1. Section 516.181, Florida Statutes, is created to
 14 read:

15 516.181 Predatory loan prevention.-

16 (1) A person may not engage in any device, subterfuge, or
 17 pretense to evade the requirements of this chapter, including,
 18 but not limited to:

19 (a) Making, offering, or assisting, or arranging for, a
 20 borrower to obtain a consumer finance loan with a higher rate or
 21 amount of interest, consideration, charge, or other payment
 22 received incident to the loan than is authorized by this chapter
 23 through any method, including mail, telephone, the Internet, or
 24 any electronic means, regardless of whether the person has a
 25 physical location in this state; or

26 (b) Receiving interest, fees, charges, or other payments in
 27 excess of those authorized by this chapter, regardless of
 28 whether the payment purports to be voluntary.

29 (2) A consumer finance loan made in violation of this

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30 section is void and uncollectible as to any principal, fee,
31 interest, charge, or payment.

32 (3) If the consumer finance loan exceeds the rate
33 authorized by s. 516.031, a person is deemed a lender subject to
34 this section, regardless of whether the person purports to act
35 as an agent or a service provider or in another capacity for
36 another entity that is exempt from this chapter, if any of the
37 following applies:

38 (a) The person holds, acquires, or maintains, directly or
39 indirectly, the predominant economic interest, risk, or reward
40 in the loan.

41 (b) The person:

42 1. Markets, solicits, brokers, arranges, facilitates, or
43 services loans; and

44 2. Holds or has the right, requirement, or first right of
45 refusal to acquire the loans, a share of receivables, or another
46 direct or indirect interest in the loans or loan program.

47 (c) The totality of the circumstances indicates that the
48 person is the lender and that the transaction is structured to
49 evade the requirements of this chapter. Circumstances that weigh
50 in favor of a person being a lender subject to this section
51 include, without limitation, whether the person:

52 1. Indemnifies, insures, or protects an exempt entity from
53 any costs or risks related to the loan;

54 2. Predominantly designs, controls, or operates the loan
55 program;

56 3. Holds the trademark or intellectual property rights in
57 the brand, underwriting system, or other core aspects of the
58 loan program; or

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59 4. Purports to act as an agent or a service provider or in
60 another capacity for an exempt entity while acting directly as a
61 lender in other states.

62 Section 2. This act shall take effect July 1, 2024.