Florida Usury Laws

Usurious lending practices have long been condemned, even before specific laws were enacted banning the practice. For example, in “The Diving Comedy,” Dante actually places lenders that charge usurious interest rates in what is known in the work as the Seventh Circle of Hell. This is a level in hell that ranks even below the place where people have committed suicide are condemned.

With that in mind, Florida actually has enacted a pretty liberal system when it comes to usurious lending practices at the present time. It ranks as one of the most liberal laws in the country when it comes to what lenders can charge in the way of interest on personal loans.

The State of Florida has established a two tier system when it comes to usury limitations on personal loans. On personal loans under $500,000, the general usury limit that has been established in Florida is at 18%.

In considering loans above $500,000, the general usury limitation has been set at 25%. As mentioned, this is one of the highest usury maximum rates to be found anywhere in the United States at this point in time. The rationale behind this interest rate generally is founded upon the idea that the lender has a great deal more at risk with a person loan of this magnitude. Therefore, a more substantial interest rate is suitable and appropriate to the circumstances. With that said, however, it is not common for interest rate on traditional personal loans to reach this interest rate level.

The statutory proscriptions against usurious interest rates generally are set forth in Title 39 of the Florida Code, as amended. There are also some relative statutory provisions that impact lending practices in Florida in Title 33 of the Florida Code.

Generally speaking, Florida courts are fairly restrictive when it comes to dealing with issues involving usury and lending practices. In this regard, if a loan agreement or contract that is brought before a court in Florida, and if that loan agreement calls for an interest rate that runs afoul of and counter to the statutory provisions and restrictions pertaining to interest rates, such an agreement will be struck down in most instances as illegal and unenforceable.

FLORIDA STATUTES

687.02 "Usurious contracts" defined.--

(1) All contracts for the payment of interest upon any loan, advance of money, line of credit, or forbearance to enforce the collection of any debt, or upon any obligation whatever, at a higher rate of interest than the equivalent of 18 percent per annum simple interest are hereby declared usurious. However, if such loan, advance of money, line of credit, forbearance to enforce the collection of a debt, or obligation exceeds

$500,000 in amount or value, then no contract to pay interest thereon is usurious unless the rate of interest exceeds the rate prescribed in s. 687.071.

(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. 4022, 1891; GS 3104; s. 1, ch. 5960, 1909; RGS 4850; CGL 6937; s. 1, ch. 29705, 1955; s. 1, ch. 73-298; ss. 12, 15, ch. 79-274; s. 1, ch. 79-592; s. 1, ch. 80-310.

687.03 "Unlawful rates of interest" defined; proviso.--

(1) Except as provided herein, it shall be usury and unlawful for any person, or for any agent, officer, or other representative of any person, to reserve, charge, or take for any loan, advance of money, line of credit, forbearance to enforce the collection of any sum of money, or other obligation a rate of interest greater than the equivalent of 18 percent per annum simple interest, either directly or indirectly, by way of commission for advances, discounts, or exchange, or by any contract, contrivance, or device whatever whereby the debtor is required or obligated to pay a sum of money greater than the actual principal sum received, together with interest at the rate of the equivalent of 18 percent per annum simple interest. However, if any loan, advance of money, line of credit, forbearance to enforce the collection of a debt, or obligation exceeds $500,000 in amount or value, it shall not be usury or unlawful to reserve, charge, or take interest thereon unless the rate of interest exceeds the rate prescribed in s. 687.071. The provisions of this section shall not apply to sales of bonds in excess of $100 and mortgages securing the same, or money loaned on bonds.

(2)(a) The provisions of this section and of s. 687.02 shall not apply to loans or other advances of credit made pursuant to:

1. A commitment to insure by the Federal Housing Administration.

2. A commitment to guarantee by the United States Department of Veterans Affairs.

3. A commitment to purchase a loan issued by the Federal National Mortgage Association; Government National Mortgage Association; Federal Home Loan Mortgage

Corporation; any department, agency, or instrumentality of the Federal Government; or any successor of any of them, pursuant to any provision of the acts of Congress or federal regulations.

(b) This act shall apply only to loans or advances of credit made subsequent to the effective date of this act. All present laws shall remain in full force and effect as to loans or advances of credit made prior to the effective date of this act.

(c) Notwithstanding any other provision of this section, any lessor or merchant, or any person who lends money or extends any other form of credit, who is regularly engaged in the business of selling or leasing merchandise, goods, or services which are for other than personal, family, or household purposes, or any assignee of such lessor, merchant, or person who lends money or extends any other form of credit, who is the holder of a commercial installment contract, each of which persons or entities is subject to the laws of any jurisdiction of the United States, any state, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or insular possession of the United States, may, if the contract so provides, charge a delinquency charge on each installment which is in default for a period of not less than 10 days in an amount not in excess of 5 percent of such installment. However, only one such delinquency charge may be collected on any installment, regardless of the period during which it remains in default. A delinquency charge imposed pursuant to this paragraph shall not be deemed interest or a finance charge made incident to or as a condition to the grant of the loan or other extension of credit and shall not be included in determining the limit on charges, as provided by this section, which may be made in connection with the loan or other extension of credit as provided by law of this state.

(3) For the purpose of this chapter, the rate of interest on any loan, advance of money, line of credit, forbearance to enforce the collection of a debt, or other obligation to pay interest shall be determined and computed upon the assumption that the debt will be paid according to the agreed terms, whether or not said loan, advance of money, line of credit, forbearance to enforce collection of a debt, or other obligation is paid or collected by court action prior to its term, and any payment or property charged, reserved, or taken as an advance or forbearance, which is in the nature of, and taken into account in the calculation of, interest shall be valued as of the date received and shall be spread over the stated term of the loan, advance of money, line of credit, forbearance to enforce collection of a debt, or other obligation for the purpose of determining the rate of interest. The spreading of any such advance or forbearance for the purpose of computing the rate of interest shall be calculated by first computing the advance or forbearance as a percentage of the total stated amount of such loan, advance of money, line of credit, forbearance to enforce collection of a debt, or other obligation. This percentage shall then be divided by the number of years, and fractions thereof, of the loan, advance of money, line of credit, forbearance to enforce collection of a debt, or other obligation according to its stated maturity date, without regard to early maturity in the event of default. The resulting annual percentage rate shall then be added to the stated annual percentage rate of interest to produce the effective rate of interest for purposes of this chapter. Moreover, for the purposes of this chapter, a loan, advance of

money, line of credit, forbearance, or other obligation shall be deemed to exceed $500,000 in amount or value if:

(a) The outstanding principal indebtedness of such loan, advance of money, line of credit, forbearance, or other obligation initially exceeds $500,000; or

(b) The aggregate principal indebtedness of such loan, advance of money, line of credit, forbearance, or other obligation may reasonably be expected to exceed $500,000 during the term thereof, notwithstanding the fact that less than that amount in the aggregate is initially or at any time thereafter advanced in one transaction or a series of related transactions; or

(c) Such loan, advance of money, line of credit, forbearance, or other obligation exceeds $500,000 at any time, notwithstanding the fact that such indebtedness is or is not subsequently reduced to less than $500,000 and thereafter additional amounts are advanced in one transaction or a series of related transactions which in the aggregate do not exceed $500,000.

(4) If, as provided in subsection (3), a loan, advance of money, line of credit, forbearance, or other obligation exceeds $500,000, then, for the purposes of this chapter, interest on that loan, advance of money, line of credit, forbearance, or other obligation shall not include the value of property charged, reserved, or taken as an advance or forbearance, the value of which substantially depends on the success of the venture in which are used the proceeds of that loan, advance of money, line of credit, forbearance, or other obligation. Stock options and interests in profits, receipts, or residual values are examples of the type of property the value of which would be excluded from calculation of interest under the preceding sentence.

(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.

History.--s. 2, ch. 4022, 1891; GS 3105; s. 2, ch. 5960, 1909; RGS 4851; CGL 6938; s. 2, ch. 29705, 1955; s. 1, ch. 70-331; s. 2, ch. 73-298; s. 1, ch. 74-232; ss. 1, 2, ch. 76-124; s. 1, ch. 77-374; s. 1, ch. 78-211; ss. 13, 15, ch. 79-274; s. 258, ch. 79-400; s. 1, ch. 79-592; s. 2, ch. 80-310; s. 34, ch. 93-268; s. 4, ch. 95-234.

687.0303 "Line of credit" defined.--

(1) The term "line of credit," whenever used in this chapter, means an arrangement under which one or more loans or advances of money may be made available to a debtor in one transaction or a series of related transactions.

(2) The Legislature hereby declares that, as a matter of law, "line of credit," as such term is defined in this section, is deemed to have been included in and governed by the provisions of this chapter as it existed prior to, on, and subsequent to July 1, 1979.

History.--ss. 2, 3, ch. 80-310.

687.0304 Credit agreements.--

(1) DEFINITIONS.--For the purposes of this section:

(a) "Credit agreement" means an agreement to lend or forbear repayment of money, goods, or things in action, to otherwise extend credit, or to make any other financial accommodation.

(b) "Creditor" means a person who extends credit under a credit agreement with a debtor.

(c) "Debtor" means a person who obtains credit or seeks a credit agreement with a creditor or who owes money to a creditor.

(2) CREDIT AGREEMENTS TO BE IN WRITING.--A debtor may not maintain an action on a credit agreement unless the agreement is in writing, expresses consideration, sets forth the relevant terms and conditions, and is signed by the creditor and the debtor.

(3) ACTIONS NOT CONSIDERED AGREEMENTS.--

(a) The following actions do not give rise to a claim that a new credit agreement is created, unless the agreement satisfies the requirements of subsection (2):

1. The rendering of financial advice by a creditor to a debtor;

2. The consultation by a creditor with a debtor; or

3. The agreement by a creditor to take certain actions, such as entering into a new credit agreement, forbearing from exercising remedies under prior credit agreements, or extending installments due under prior credit agreements.

(b) A credit agreement may not be implied from the relationship, fiduciary, or otherwise, of the creditor and the debtor.

History.--s. 1, ch. 89-130.

687.031 Construction, ss. 687.02 and 687.03.--Sections 687.02 and 687.03 shall not be construed to repeal, modify or limit any or either of the special provisions of existing statutory law creating exceptions to the general law governing interest and usury and specifying the interest rates and charges which may be made pursuant to such exceptions, including but not limited to those exceptions which relate to banks, Morris Plan banks, discount consumer financing, small loan companies and domestic building and loan associations.

History.--s. 3, ch. 29705, 1955.

687.04 Penalty for usury; not to apply in certain situations.--Any person, or any agent, officer, or other representative of any person, willfully violating the provisions of s. 687.03 shall forfeit the entire interest so charged, or contracted to be charged or reserved, and only the actual principal sum of such usurious contract can be enforced in any court in this state, either at law or in equity; and when said usurious interest is taken or reserved, or has been paid, then and in that event the person who has taken or reserved, or has been paid, either directly or indirectly, such usurious interest shall forfeit to the party from whom such usurious interest has been reserved, taken, or exacted in any way double the amount of interest so reserved, taken, or exacted. However, the penalties provided for by this section shall not apply:

(1) To a bona fide endorsee or transferee of negotiable paper purchased before maturity, unless the usurious character should appear upon its face, or unless the said endorsee or transferee shall have had actual notice of the same before the purchase of such paper, but in such event double the amount of such usurious interest may be recovered after payment, by action against the party originally exacting the same, in any court of competent jurisdiction in this state, together with an attorney's fee, as provided in s. 687.06; or

(2) If, prior to the institution of an action by the borrower or the filing of a defense under this chapter by the borrower or receipt of written notice by the lender from the borrower that usury has been charged or collected, the lender notifies the borrower of the usurious overcharge and refunds the amount of any overcharge taken, plus interest on the overcharge taken at the maximum lawful rate in effect at the time the usurious interest was taken, to the borrower and makes whatever adjustments in the appropriate contract or account as are necessary to ensure that the borrower will not be required to pay further interest in excess of the amount permitted by s. 687.03.

History.--s. 3, ch. 4022, 1891; GS 3106; s. 3, ch. 5960, 1909; RGS 4852; CGL 6939; s. 1, ch. 79-90.

687.05 Provisions for payment of attorney's fees.--No provision for the payment of attorney's fees, or charge for exchange or similar charge shall render such instrument

subject to the terms of any statute of this state, limiting the amount of interest which shall be charged on such instrument.

History.--s. 2, ch. 4374, 1895; GS 3107; RGS 4853; CGL 6940.

687.06 Attorney's fee in enforcing nonusurious contracts; proviso; insurance premiums; attorney's fee provided in note.--This chapter shall not be so construed as to prevent provision for the payment of such attorney's fees as the court may determine in cases brought before the court to be reasonable and just for legal services rendered in enforcing nonusurious contracts, either at law or in equity. This chapter shall not be construed so as to prohibit mortgagees from contracting for or collecting premiums for insurance actually issued on the property mortgaged, with the usual loss payable or mortgage clause attached thereto; provided further, that it shall not be necessary for the court to adjudge an attorney's fee, provided in any note or other instrument of writing, to be reasonable and just, when such fee does not exceed 10 percent of the principal sum named in said note, or other instrument in writing.

History.--s. 4, ch. 5960, 1909; s. 1, ch. 6870, 1915; RGS 4854; CGL 6941; s. 26, ch. 73-334.

687.071 Criminal usury, loan sharking; shylocking.--

(1) DEFINITIONS.--The following words and phrases, as used in this section, shall have the following meanings:

(a) "Person" shall be construed to be defined as provided in s. 1.01.

(b) "Creditor" means any person who makes an extension of credit or any person claiming by, under, or through such person.

(c) "Debtor" means any person who receives an extension of credit or any person who guarantees the repayment of a loan of money for another person.

(d) "Extension of credit" means to make or renew a loan of money or any agreement for forbearance to enforce the collection of such loan.

(e) "Extortionate extension of credit" means any extension of credit whereby it is the understanding of the creditor and the debtor at the time an extension of credit is made that delay in making repayment or failure to make repayment could result in the use of violence or other criminal means to cause harm to the person, reputation, or property of any person.

(f) "Loan shark" or "shylock" means any person as defined herein who lends money unlawfully under subsection (2), subsection (3), or subsection (4).

(g) "Loan sharking" or "shylocking" means the act of any person as defined herein lending money unlawfully under subsection (2), subsection (3), or subsection (4).

(2) Unless otherwise specifically allowed by law, any person making an extension of credit to any person, who shall willfully and knowingly charge, take, or receive interest thereon at a rate exceeding 25 percent per annum but not in excess of 45 percent per annum, or the equivalent rate for a longer or shorter period of time, whether directly or indirectly, or conspires so to do, shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(3) Unless otherwise specifically allowed by law, any person making an extension of credit to any person, who shall willfully and knowingly charge, take or receive interest thereon at a rate exceeding 45 percent per annum or the equivalent rate for a longer or shorter period of time, whether directly or indirectly or conspire so to do, shall be guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(4) Any person who shall knowingly and willfully make an extortionate extension of credit to any person or conspire so to do shall be guilty of a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. In any prosecution under this subsection, evidence that the creditor then had a reputation in the debtor's community for the use or threat of use of violence or other criminal means to cause harm to the person, reputation, or property of any person to collect extensions of credit or to punish the nonrepayment thereof shall be admissible.

(5) Books of account or other documents recording extensions of credit in violation of subsections (3) or (4) are declared to be contraband, and any person, other than a public officer in the performance of his or her duty, and other than the person charged such usurious interest and person acting on his or her behalf, who shall knowingly and willfully possess or maintain such books of account or other documents, or conspire so to do, shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(6) No person shall be excused from attending and testifying or producing any books, paper, or other document before any court upon any investigation, proceeding, or trial, for any violation of this section upon the ground or for the reason that the testimony or evidence, documentary or otherwise, required of the person may tend to convict him or her of a crime or subject the person to a penalty or forfeiture, but no person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he or she may so testify or produce evidence, documentary or otherwise, and no testimony so given or produced shall be received against the person upon any criminal investigation or proceeding.

(7) No extension of credit made in violation of any of the provisions of this section shall be an enforceable debt in the courts of this state.

History.--s. 1, ch. 69-135; s. 676, ch. 71-136; s. 747, ch. 97-102.

687.08 Person lending money to give borrower receipt for payments; contents of receipt; penalty for violation.--

(1) Every person, or the agent, officer, or other representative of any person, lending money in this state upon security shall, whenever the borrower of such money makes a payment of any money, either principal or interest, immediately upon such payment being made, give to the borrower a receipt, dated of the date of such payment, which receipt shall state the amount paid and for what such payment is made. If such payment is for interest on the sum borrowed, the receipt shall so state. If the sum so paid is to be applied to the payment of the principal sum borrowed, the receipt shall so state. Every such receipt shall be duly and properly signed by the person, or the agent, officer, or other representative of the person, to whom such money is paid. In lieu of providing such receipt, a lender may 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; except that a simple receipt shall be given to the borrower for each payment which is made in cash or for any payment for which receipt is requested in writing by the borrower.

(2) Whoever refuses, upon demand, to give a receipt or statement complying with the requirements of this section shall forfeit the entire interest upon such principal sum to the borrower.

History.--s. 6, ch. 5960, 1909; RGS 4856; CGL 6943; s. 4, ch. 84-193.

687.09 Persons accepting chattel mortgage as security for loans under $100 to cause amount as principal, interest, and fees to be inserted.--Every mortgagee accepting a mortgage on personal property as security for the repayment of a loan of money less than $100 shall cause to be stated in such mortgage, separately and distinctly, the several amounts secured as principal, interest and fees, and any mortgagee willfully violating the provisions of this section shall forfeit all interest and fees secured by such mortgage, and be entitled to recover only the principal sum.

History.--s. 7, ch. 5960, 1909; RGS 4857; CGL 6944.

687.10 Not applicable to chartered banks, trust companies, building and loan associations, savings and loan associations, or insurance companies.--The provisions of ss. 687.08 and 687.09 shall not apply to chartered banks, state or national, trust companies, building and loan associations or to savings and loan associations, whether chartered under state or federal statutes, or insurance companies.

History.--s. 8, ch. 5960, 1909; RGS 4858; CGL 6945; s. 1, ch. 59-50.

687.12 Interest rates; parity among licensed lenders or creditors.--

(1) Any lender or creditor licensed or chartered under the provisions of chapter 516, chapter 520, chapter 657, chapter 658 or former chapter 659, former chapter 664 or former chapter 656, chapter 665, or part XV of chapter 627; any lender or creditor located in the State of Florida and licensed or chartered under the laws of the United States and authorized to conduct a lending business; or any lender or creditor lending through a licensee under ss. 494.006-494.0077, shall be authorized to charge interest on loans or extensions of credit to any person as defined in s. 1.01(3), or to any firm or corporation, 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 of Florida, except that the statutes governing the maximum permissible interest rate on any loan or extension of credit, and other statutory restrictions relating thereto, shall also govern the amount, term, permissible charges, rebate requirements, and restrictions for a similar loan or extension of credit made by any lender or creditor.

(2) This section shall be construed to permit any lender or creditor which is otherwise authorized to make a particular loan or extension of credit to charge interest at a rate permitted to be charged by other lenders or creditors on similar loans or extensions of credit, but shall not be construed to grant any lender or creditor the power or authority to make any particular type of loan or extension of credit which it is not otherwise authorized to make. For purposes of this section, direct loans for the purchase of goods or services, and extensions of credit for the acquisition of goods or services by the seller or provider thereof, shall be deemed to be similar loans or extensions of credit.

(3) In making loans or extensions of credit, lenders or creditors shall be subject only to the licenses, examinations, regulations, documents, procedures, and disclosures required by the respective laws under which each lender or creditor is licensed or organized, and not to those required by laws governing other lenders or creditors.

(4) In making loans or extensions of credit at a rate of interest that, but for this section, would not be authorized, lenders or creditors shall indicate on the promissory note or other instrument evidencing the loan or extension of credit the specific chapter of the Florida Statutes authorizing the interest rate charged.

History.--s. 1, ch. 77-371; s. 259, ch. 79-400; s. 474, ch. 81-259; s. 60, ch. 91-245; s. 206, ch. 92-303.

687.125 Compounding of interest.--Interest or finance charges on any loan or extension of credit secured by a mortgage which contains a provision for the compounding of interest may be compounded provided the total amount of interest received by the lender as a result of such compounding, including interest upon interest, produces an effective yield which does not exceed any interest rate limitation imposed by applicable law.

History.--s. 47, ch. 82-214.

687.13 International transactions.--

(1) The provisions of this chapter, other than s. 687.071, shall not apply to any loan made by any international bank agency or any bank, including an Edge Act corporation, organized under the laws of the United States or this state to borrowers who are neither residents nor citizens of the United States if such loan is clearly related to, and usual in, international or foreign business.

(2) The provisions of this chapter shall not apply to any international banking facility "deposit," "borrowing," or "extension of credit," as those terms are defined by the commission pursuant to s. 655.071.

History.--s. 1, ch. 79-138; s. 10, ch. 81-179; s. 1872, ch. 2003-261.

687.14 Definitions.--As used in this act, unless the context otherwise requires:

(1) "Advance fee" means any consideration which is assessed or collected, prior to the closing of a loan, by a loan broker.

(2) "Borrower" means a person obtaining or desiring to obtain a loan of money, a credit card, or a line of credit.

(3) "Commission" means the Financial Services Commission.

(4) "Loan broker" means any person, except any bank or savings and loan association, trust company, building and loan association, credit union, consumer finance company, retail installment sales company, securities broker-dealer, real estate broker or sales associate, attorney, federal Housing Administration or United States Department of Veterans Affairs approved lender, credit card company, installment loan licensee, mortgage broker or lender, or insurance company, provided that the person excepted is licensed by and subject to regulation or supervision of any agency of the United States or this state and is acting within the scope of the license; and also excepting subsidiaries of licensed or chartered consumer finance companies, banks, or savings and loan associations; who:

(a) For or in expectation of consideration arranges or attempts to arrange or offers to fund a loan of money, a credit card, or a line of credit;

(b) For or in expectation of consideration assists or advises a borrower in obtaining or attempting to obtain a loan of money, a credit card, a line of credit, or related guarantee, enhancement, or collateral of any kind or nature;

(c) Acts for or on behalf of a loan broker for the purpose of soliciting borrowers; or

(d) Holds herself or himself out as a loan broker.

(5) "Principal" means any officer, director, partner, joint venturer, branch manager, or other person with similar managerial or supervisory responsibilities for a loan broker.

(6) "Office" means the Office of Financial Regulation of the commission.

History.--s. 1, ch. 91-87; s. 35, ch. 93-268; s. 748, ch. 97-102; s. 57, ch. 2003-164; s. 1873, ch. 2003-261.

687.141 Loan brokers; prohibited acts.--No loan broker shall:

(1) Assess or collect an advance fee from a borrower to provide services as a loan broker.

(2) Make or use any false or misleading representations or omit any material fact in the offer or sale of the services of a loan broker or engage, directly or indirectly, in any act that operates or would operate as fraud or deception upon any person in connection with the offer or sale of the services of a loan broker, notwithstanding the absence of reliance by the buyer.

(3) Make or use any false or deceptive representation in its business dealings or to the office or conceal a material fact from the office.

History.--s. 2, ch. 91-87; s. 1874, ch. 2003-261.

687.142 Responsibility of principals.--Each principal of a loan broker may be sanctioned for the actions of the loan broker, including its agents or employees, in the course of business of the loan broker.

History.--s. 3, ch. 91-87.

687.143 Loan brokers; investigations; cease and desist orders; administrative fines.--

(1) The office may investigate the actions of any person for compliance with this act.

(2) The office may order a loan broker to cease and desist whenever the office determines that the loan broker has violated or is violating or will violate any provision of this act, any rule of the commission, order of the office, or written agreement entered into with the office.

(3) The office may impose and collect an administrative fine against any person found to have violated any provision of this act, any rule of the commission, order of the office, or written agreement entered into with the office in any amount not to exceed $5,000 for each such violation. All fines collected hereunder shall be deposited in the Bureau of Financial Investigations Administrative Trust Fund.

History.--s. 4, ch. 91-87; s. 3, ch. 97-60; s. 1875, ch. 2003-261.

TLPJ Successfully Argues That Court Must Decide Whether Payday Loan Agreement is Legal Before Enforcing Agreement's Arbitration Clause

IMPORTANT FLORIDA SUPREME COURT CASE RECASTING LOAN SUBSTANCE OVER FORM:

The Supreme Court of Florida has refused to enforce a binding mandatory arbitration clause in a payday loan contract charging interest rates of up to 1,300 percent, and ruled that low income borrowers can not be forced to arbitrate their claims that the loans violated state usury laws. Trial Lawyers for Public Justice (TLPJ) and a team of consumer advocates representing borrowers are challenging the legality of the high interest "payday loan" rates charged by Buckeye Check Cashing – a nationwide company with over 90 locations – and successfully argued that consumers cannot be forced out of court and into arbitration.

The Court's January 20, 2005, decision held that Florida courts must first decide whether a legal agreement exists before enforcing the agreement's binding mandatory arbitration (BMA) clause. The 5 to1 ruling overturned the decision of Florida's Fourth District Court of Appeals, which held that Buckeye's BMA clause should be enforced even though the plaintiffs were challenging the legality of the entire payday loan contract.

"Payday lending companies like Buckeye that charge interest rates up to 1,300 percent should not be allowed to shield these illegal loan-sharking schemes by forcing borrowers into private arbitration," said TLPJ Staff Attorney F. Paul Bland, Jr., who argued the appeal. "The Florida Supreme Court was completely correct that companies cannot use an illegal contract to force consumers to give up their day in court."
"Payday lending companies like Buckeye that charge interest rates up to 1,300 percent should not be allowed to shield these illegal loan-sharking schemes by forcing borrowers into private arbitration."

Plaintiffs John Cardegna, Donna Reuter, and thousands of other Florida residents borrowed money from Buckeye and received immediate payments of cash in exchange for post-dated personal checks for substantially greater sums of money. When the time came for Buckeye to cash the checks, borrowers who could not afford the greater amount due were allowed to "roll over" the loan by paying an additional "fee" equal to the difference between the amount owed and the amount borrowed, even though they did not receive any additional loan. These added "fees" on deferred payments produced interest rates between 137 percent and 1,317 percent.

Cardegna and Reuter filed suit against Buckeye on behalf of all its Florida borrowers, alleging that Buckeye's "deferred check-cashing" transactions were actually usurious consumer loans wherein low income borrowers were required to pay exorbitant interest rates in violation of numerous state consumer protection statutes. Buckeye responded by moving to compel arbitration, arguing that all of its borrowers should be forced out of

court and into individual private arbitration proceedings pursuant to the BMA clause in its loan contracts.

"Buckeye wanted to force our clients into secret arbitration proceedings so no court could ever issue a binding judgment saying that its ‘check-cashing’ business is an illegal scheme to commit usury," said Richard M. Fisher of Cleveland, Tennessee, who is co-lead counsel for the plaintiffs. "If Buckeye had pulled off this gambit, it would have been impossible for us to publicly vindicate the rights of thousands of Floridians."

The Florida trial court initially denied Buckeye’s motion for arbitration, but the Fourth District Court of Appeals reversed and held that the plaintiffs’ claims that Buckeye’s loan contracts were illegal and void had to be resolved through arbitration. The state supreme court granted review and then reversed the appeals court, holding that "an arbitration provision in a contract which is void under Florida law cannot be separately enforced while there is a claim pending . . . that the contract containing the arbitration provision is itself illegal and void ab initio."

"We are pleased that the Supreme Court found that our clients are entitled to their day in court," said Chris Casper of James, Hoyer, Newcomer & Smiljanich in Tampa, who is also co-lead counsel for the plaintiffs. "Now, we have the chance to hold Buckeye accountable for its repeated violations of Florida’s usury and consumer protection laws."

In addition to Bland, Fisher, and Casper, plaintiffs were also represented by E. Clayton Yates of Fort Pierce, Florida.