CHAPTER 514
PUBLIC SWIMMING AND BATHING FACILITIES

514.02 Supervision by department. — The Department of Health and Rehabilitative Services shall have supervision over the sanitation, healthfulness, safety, and cleanliness of public swimming pools and bathing places, including, but not limited to, swimming pools, bathhouses, public swimming and bathing places; water recreation attractions, including water slides, water amusement lagoons, and wave pools; hydrotherapy facilities, whirlpools, and spa pools; wading pools; special purpose pools; and any other type of public swimming pool or bathing facility the primary purpose of which is for the partial or total immersion of the body in water, and all related appurtenances; and the department may make and enforce such rules pertaining thereto as it shall deem proper. However, water therapy facilities connected with hospitals, medical doctors' offices and licensed physical therapy establishments shall be exempt from supervision under this chapter.

History. — s. 2, ch. 7825, 1919; CGL 3769; ss. 19, 35, ch. 69-106; s. 3, ch. 75-158; s. 447, ch. 77-147; s. 1, ch. 77-457; ss. 2, 9, ch. 78-356; s. 2, ch. 81-318.
Note. — Repealed effective October 1, 1985, by s. 2, ch. 81-318, and scheduled for review pursuant to s. 11.61 in advance of that date.

514.03 Permit necessary to construct, develop, add to, or modify public swimming pools or bathing places. — It is unlawful for any person, institution, municipality, or county to construct, develop, add to, or modify any public swimming pool or bathing place without an unrevoked permit from the Department of Health and Rehabilitative Services, such permit to be obtained in the following manner:

(1) Any person, institution, municipality, or county desiring to construct, develop, add to, or modify any public swimming pool or bathing place within the state shall file application for permit with the department, on application forms provided by the department, and shall accompany such application with:
   (a) Descriptions of the structure, its appurtenances, and its operation.
   (b) Method and manner of water purification, treatment, disinfection, heating, and other regulation.
   (c) Any other information and statistics required by the department.

(2) Upon receiving the application, the department may cause an investigation to be made of the proposed public swimming pool or bathing place.

(3) If, based upon the application and any necessary investigation, the department determines the proposed construction of, development of, addition to, or modification of a public swimming pool or bathing place might reasonably be expected to meet standards of public health and safety, the department shall grant the application for permit under such restrictions as it shall deem proper.

(4) If, based upon the application or any necessary investigation, the department determines the proposed construction of, development of, addition to, or modification of a public swimming pool or bathing place would fail to meet standards of public health and safety, the department shall deny the application.

History. — s. 1, ch. 7825, 1919; CGL 3768; ss. 19, 35, ch. 69-106; s. 3, ch. 75-158; s. 447, ch. 77-147; s. 1, ch. 77-457; ss. 2, 9, ch. 78-356; s. 2, ch. 81-318.
Note. — Repealed effective October 1, 1985, by s. 2, ch. 81-318, and scheduled for review pursuant to s. 11.61 in advance of that date.
Upon receiving the application, the department shall cause an investigation to be made of the public swimming pool or bathing place, which investigation may include onsite investigation.

If, after application and investigation are completed, the department determines the proposed or existing public swimming pool or bathing place is or may reasonably be expected to be operated continuously in a clean, sanitary, and safe manner and will not constitute a menace to public health, safety, or well-being, the department shall grant the application for permit under such restrictions as it shall deem proper.

If, based upon application or investigation, the department determines the proposed or existing public swimming pool or bathing place is or may reasonably be expected to become unclean, unsafe, or unsanitary, or may constitute a menace to public health, safety, or well-being, the department shall deny the application for permit. Such denial shall be in writing and shall list circumstances for denial. Upon correction of such circumstances, an applicant previously denied permission to operate a public swimming pool or bathing place may reapply for a permit.

Operating permits shall not be transferable. However, when the ownership or name of an existing public swimming pool or bathing place is changed, and such establishment is operating at time of the change with an unrevoked permit from the Department of Health and Rehabilitative Services, the owner of the establishment shall apply to the department, upon forms provided by the department, for a reissuance of the existing permit.

Delegation of authority to local health units.—The Department of Health and Rehabilitative Services shall delegate to local health units that are staffed with qualified engineering or environmental health personnel the functions of reviewing applications and plans for the construction or development of or modification of or addition to public swimming pools or bathing places; conducting inspections for determination of issuance of permits to operate such establishments; and the issuing of all permits. The department shall make the determination concerning the qualifications of local health unit personnel to perform these functions, and may make and enforce such rules pertaining thereto as it shall deem proper. The department shall delegate to all local health units the responsibility for surveillance of all public swimming pools and bathing places, including all routine and complaint investigations.

Creation of fee schedules authorized.—(1) The Department of Health and Rehabilitative Services is authorized to establish a schedule of fees to be charged by the department or by any authorized local health unit as detailed in s. 514.032 for the review of applications and plans to construct, develop, modify, or add to a public swimming pool or bathing place and for the issuance of permits to operate such establishments. It is the intent of the Legislature that total fees assessed under this act shall be in an amount sufficient to meet the cost of carrying out the provisions of this chapter. The fee schedule for fiscal year 1983-1984 shall be the minimum fees provided in this section and such schedule shall remain in effect until the effective date of a fee schedule promulgated by rule by the Department of Health and Rehabilitative Services. The fee schedule shall be: for original construction or development, not less than $100 or more than $250; for a modification or an addition, not less than $85 or more than $85; for initial operation, not less than $65 or more than $85; for reissuance, not less than $65 or more than $85; and for annual renewal, not less than $15 or more than $25. Fifty percent of the fees charged for annual renewals shall be deposited into a trust fund established as set forth in subsection (3), and 50 percent shall be returned to the counties for deposit into the local health unit trust funds to be used toward payment of the costs incurred in the administration of the responsibilities of the local health units under this chapter.

(2) Fee payment shall accompany the initial submission of an application to construct, develop, modify, add to, or operate a public swimming pool or bathing place, or for reissuance or annual renewal of permit. Fee payments are not refundable.

(3) Fees charged by the Department of Health and Rehabilitative Services for the payment of costs incurred in the administration of this chapter except as provided in subsection (1). However, any local health unit performing review and permitting functions under the provisions of s. 514.032 shall deposit any funds collected thereby into the local health unit trust fund.

Inspectors may enter premises.—For the purpose of this chapter, the Department of Health and Rehabilitative Services, its agents, and its inspectors at any reasonable time may enter upon any and all parts of the premises of such public swimming pools and bathing places to make examination and investigation to determine the sanitary and safety condition of such places and whether the provisions of this chapter or rules of the department pertaining thereto are being violated.

Permit may be revoked.—Any permit granted by the Department of Health and Rehabilitative Services as provided in this chapter shall be revocable or subject to suspension at any time, if it shall determine as a fact that the public swimming pool or bathing place is being conducted in a manner unsanitary, unclean, or dangerous to public health or safety.
'514.06  Injunction to restrain violations. — Any public swimming pool or bathing place constructed, developed, operated, or maintained contrary to the provisions of this chapter is declared to be a public nuisance, dangerous to health or safety. Such nuisances may be abated or enjoined in an action brought by the local health unit or the Department of Health and Rehabilitative Services.

History.—s. 5, ch. 7825, 1919; CGL 3772; ss. 19, 35, ch. 69-106; s. 139, ch. 71-355; s. 3, ch. 76-168; s. 2, ch. 81-318.

Note.—Repealed effective October 1, 1985, by s. 2, ch. 81-318, and scheduled for review pursuant to s. 11.61 in advance of that date.

cf.—ch. 60 Injunctions.

'514.07  Penalties for violation of law relating to sanitation and safety of public swimming pools and bathing places. — Any person, whether as principal or agent, employer or employee, who violates any of the provisions of ss. 514.02-514.06, shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, and each day that conditions or actions in violation of ss. 514.02-514.06 shall continue shall be a separate and distinct offense.

History.—s. 6, ch. 7825, 1919; CGL 7838; s. 485, ch. 71-136; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 6, 9, ch. 78-356; s. 2, ch. 81-318.

Note.—Repealed effective October 1, 1985, by s. 2, ch. 81-318, and scheduled for review pursuant to s. 11.61 in advance of that date.

'514.081  Saving clause. — Any person, institution, municipality, or county holding a valid permit granted by the Department of Health and Rehabilitative Services on or before June 30, 1978, to construct, add to, modify, or operate any public swimming pool or bathing place may continue under provisions of said permit so long as it remains valid and unrevoked.

History.—s. 8, ch. 78-356; s. 2, ch. 81-318.

Note.—Repealed effective October 1, 1985, by s. 2, ch. 81-318, and scheduled for review pursuant to s. 11.61 in advance of that date.
CHAPTER 516
CONSUMER FINANCE

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

516.01 Definitions; businesses excluded.—
(a) The word “person” shall include individuals, partnerships, associations, trusts, corporations, and any other legal entities;
(b) The word “license” shall mean a permit issued under authority of this chapter to make and collect loans in accordance with the provisions of this chapter at a single place of business;
(c) The word “licensee” shall mean a person to whom one or more licenses have been issued;
(d) The word “department” shall mean the Department of Banking and Finance.

516.02 Loans; rate of interest; license.—
(1) No person shall engage in the business of making loans of money, credit, goods, or choses in action in the amount, or to the value of $2,500 or less, and charge, contract for, or receive a greater rate of interest than 18 percent per annum therefor except as authorized by this chapter or other statute and without first obtaining a license from the department.

(b) 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 those mentioned in paragraph (a), completed prior to July 1, 1979.

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 the sum of $175
as an annual license fee for a period terminating on the last day of the current calendar year, and a further fee of $200 for investigating the application and the applicants.

(2) FEES.—Fees herein provided for shall be collected by the department and shall be turned into the State Treasury to the credit of the regulatory trust fund under the Division of Finance of the department. The department shall have full power to employ such examiners or clerks to assist the department as may from time to time be deemed necessary and fix their compensation.

History.—s. 2, ch. 10177, 1925; CGL 4000, s. 1, ch. 20728, 1941; s. 127, ch. 28696, 1951; s. 3, ch. 57-201; ss. 12, 33, ch. 69-106; s. 128, ch. 71-355; s. 3, ch. 72-192; s. 3, ch. 75-309; s. 144, ch. 79-164; s. 2, ch. 81-318.

§ 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 interest rate charged shall be 30 percent per annum, computed on the first $500 of the principal amount as computed from time to time; 24 percent per annum on that part of the principal amount as computed from time to time exceeding $500 and not exceeding $1,000; and 18 percent per annum on that part of the principal amount as computed from time to time exceeding $1,000 and not exceeding $2,500; on loans exceeding $2,500, the total interest charged on the entire principal amount shall not exceed 18 percent per annum simple interest. The original principal amount as used in this section shall be the same as the amount financed as defined by the Federal Truth-In-Lending Act and Regulation Z of the Board of Governors of the Federal Reserve System. In determining compliance with the statutory maximum interest and finance charges set forth herein, the computations utilized shall be simple interest and not add-on interest or any other computations.

(2) ANNUAL PERCENTAGE RATE UNDER FEDERAL TRUTH-IN-LENDING ACT.—The annual percentage rate of finance charge which may be charged, 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 charged, 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.—In addition to the interest and insurance charges herein provided for, no further or other charges or amount whatsoever for any examination, service, brokerage, commission, or other thing or otherwise shall be directly or indirectly charged, contracted for, or received, except charges paid for title insurance and appraisal of real property offered as security when paid to a third party and supported by an actual expenditure; intangible personal property tax on the loan note or obligation when secured by a lien on real property; 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; or actual and reasonable attorney's fees as determined by the court in which suit is filed and court costs, including the actual and reasonable expenses of repossession, storing, repairing and placing in condition for sale, and selling of any property pledged as security. Any charges, including interest, in excess of the combined total of all charges authorized and permitted by this chapter shall constitute a violation of chapter 687 governing interest and usury, and the penalties of chapter 687 shall apply. In the event of a bona fide error, the licensee shall refund or credit the borrower with the amount of such overcharge immediately but within 20 days from the discovery of such error.

(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.


(a) Shall apply only to loans, advances of credit, or lines of credit made on or subsequent to July 1, 1979, and 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 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

Note.—Repealed effective October 1, 1986, by s. 2, ch. 81-318, and scheduled to become operative on the 1st day of the month following the closing date of the fiscal year in which the act becomes effective.
TION.—Upon the filing of such application and the payment of such fees, the department shall make an investigation into the facts concerning the application and the requirements provided for in subsection (2). At least 10 days before entering an order granting or denying the application, it shall mail a notice of the receipt of the application to the local small loan exchange (if there be one) in the community where the applicant proposes to do business. If any licensee or registered files an objection to the issuance of the license to said applicant, or if the department has any doubts of the applicant meeting the standards of subsection (2), it shall order a hearing on such application pursuant to chapter 120 not more than 60 days from the date of mailing such notice. In addition to such hearing, the department may make such further and other investigation relative to the application and the requirements as it may deem fit.

(2) ISSUANCE OR DENIAL OF LICENSE.—If the department shall find:

(a) That the financial responsibility, experience, character, and general fitness of the applicant, and of the members thereof, if the applicant is a copartnership or association, and of the officers and directors thereof, if the applicant be a corporation, are such as to command the confidence of the public and to warrant belief that the business will be operated lawfully, honestly, fairly, and efficiently within the purposes of this chapter;

(b) That the applicant has available for the operation of such business at the specified location liquid assets of at least $50,000, if the specified location is in a community of 25,000 or less population, according to the last United States census, or $25,000, if the specified location is in a community of more than 25,000 population, according to said census,

it shall thereupon enter an order granting such application and issue and deliver a license to the applicant to make loans in accordance with the provisions of this chapter at the location specified in the said application (provided that nothing in this chapter shall be construed to prevent a licensee from lending to residents of any part of this state or any other state or country nor to prohibit the making of loans by mail when authorized by the department). Said license shall remain in full force and effect until surrendered, revoked or suspended as provided by law or as may be prohibited by the provisions of this chapter. If the department shall not so find, it shall thereupon enter an order denying such application and return the sum paid as a license fee, retaining the $200 investigation fee to cover the cost of investigating the application.

(3) EXISTING LICENSES; PURCHASE OF ASSETS.—Any licensee having a license under this chapter at the effective date of this amendment shall be conclusively presumed to have established the convenience and advantage of its business to the community wherein it is licensed. In the event any person shall purchase substantially all of the assets of any existing licensed office, the purchaser, if not a licensee hereunder, upon application, shall be granted a 90-day temporary license hereunder, applicable to the same location, within 10 days of such purchase, and the department shall cause an investigation to be made as provided by subsection (1) to determine whether a license shall be issued, provided such purchaser shall not be required to meet the provisions of paragraph (2)(b). Where the purchaser is a licensee hereunder the department shall issue a license within 10 days of such purchase if the purchaser meets the requirements of this chapter provided that such purchaser shall not be required to meet the requirements of paragraph (2)(b) and the licensee selling such assets shall surrender its license for such location to the department.

History.—s. 4, ch. 10177, 1925; CGL 4004; s. 3, ch. 20728, 1941; s. 4, ch. 57-201; s. 17, ch. 69-106; ss. 4, 15, ch. 73-122; s. 2, ch. 77-306; s. 7, ch. 78-85; s. 2, ch. 81-318.

2516.07 Revocation, reinstatement, surrender, etc., of license.—

(1) REVOCATION OR SUSPENSION.—The department may revoke or suspend only the particular license with respect to which ground for revocation or suspension may occur or exist, or, if it shall find that such grounds for revocation or suspension are of general application to all offices or to more than one office operated by such licensee, it shall revoke or suspend all of the licenses issued to said licensee or such licensees as such grounds apply to, as the case may be.

(2) LICENSES AFFECTED BY REVOCATION OR SUSPENSION.—The department may revoke or suspend only the particular license with respect to which ground for revocation or suspension may occur or exist, or, if it shall find that such grounds for revocation or suspension are of general application to all offices or to more than one office operated by such licensee, it shall revoke or suspend all of the licenses issued to said licensee or such licensees as such grounds apply to, as the case may be.

(3) SURRENDER OF LICENSE.—Any licensee may surrender any license by delivering it to the department with a written notice that he thereby surrenders it, but such surrender shall not affect his civil or criminal liability for acts committed prior thereto.

(4) PREEXISTING CONTRACTS.—No revocation, suspension, or surrender of any license shall impair or affect the obligation of any preexisting lawful contract between the licensee and any borrower.

(5) REINSTATEMENT OF LICENSE.—Every license issued hereunder shall remain in force and effect until the same shall have been surrendered, revoked, or suspended in accordance with the provisions of this chapter, but the department shall have authority on its own initiative to reinstate suspended licenses or to issue new licenses to a person whose license or licenses have been revoked if no fact or condition then exists which clearly would have warranted the department in refusing originally to issue such license under this chapter.

History.—s. 6, ch. 10177, 1925; CGL 4004; s. 2, ch. 20728, 1941; ss. 12, 35, ch. 69-106; s. 7, ch. 78-85; s. 145, ch. 79-164; s. 2, ch. 81-318.

*Note.—Repealed effective October 1, 1988, by s. 2, ch. 81-318, and scheduled for review pursuant to s. 11.01 in advance of that date.

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License to be posted.—The license shall be kept conspicuously posted in the place of business of the licensee.

License, removal, other business.—

(1) PLACE OF BUSINESS.—Not more than one place of business for the making of loans under this chapter shall be maintained under the same license, but the department shall issue additional licenses to the same licensee upon compliance with all the provisions of this chapter governing issuance of a single license.

(2) REMOVAL.—No change in the place of business of a licensee to a location outside of the original county shall be permitted under the same license. When a licensee wishes to change his place of business within the same county, he shall give written notice thereof to the department. If the department finds that the proposed location is reasonably accessible to borrowers under existing loan contracts, it shall enter an order permitting the change and shall amend the license accordingly. If the department does not so find, it shall enter an order denying the removal of the license to the requested location.

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

Investigation by department.—

(1) EXAMINATIONS.—For the purpose of discovering violations of this chapter or securing information lawfully required by it hereunder, the department may at any time investigate the loans and business, and examine the books, accounts, records, and files used therein, of every licensee and of every person who shall be engaged in the business described in s. 516.02. If the department shall have reason to believe that any act or business is being done, or is about to be done, which is illegal under this chapter, it may make all examinations and take all steps authorized under this subsection, whether such person shall act or claim to act as principal or agent, or under or without the authority of this chapter. Any person who shall advertise for, solicit, or hold himself out as willing to make loan transactions in the 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.

Records to be kept by licensee.—

(1) BOOKS AND RECORDS.—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 licensed pawnbroker shall preserve such books, accounts, papers, 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.

ANNUAL REPORTS.—Each licensee shall annually on or before April 1 file a report with the department for the preceding calendar year. Such report shall give information with respect to the financial condition of such licensee and shall include the name and address of the licensee; balance sheets at the beginning and end of the accounting period; a statement of income and expense for said period; a schedule of assets used and useful in the small loan business; an analysis of charges, size of loans, and types of security on loans permitted by this chapter; an analysis of delinquent accounts; an analysis of loans made during the preceding calendar year; and such other relevant information as the department may reasonably require concerning the business and operations during the preceding calendar year of each licensed place of business conducted by such licensee.
within the state. Such report shall be made under oath and shall be in the form prescribed by the department, which shall make and publish annually an analysis and recapitulation of such reports. Should said annual report not be filed on or before April 1 of each year, the licensee shall pay a penalty of $5 per day for each day of delinquency. Upon application to the department made prior to said date, the department may, for good cause shown, extend such filing date for a reasonable period of time without such penalty.

History.—s. 11, ch. 10177, 1925; CGL 4009; s. 5, ch. 20729, 1941; s. 7, ch. 57-201; ss. 12, 35, ch. 69-106; s. 8, ch. 73-192; s. 2, ch. 81-318.

"Note.—Repealed effective October 1, 1988, by s. 2, ch. 81-318, and scheduled for review pursuant to s. 11.61 in advance of that date.

516.13 False publications prohibited.—No licensee subject to this chapter shall advertise, display, distribute, broadcast, or televise, or cause or permit to be advertised, displayed, distributed, broadcast, or televised, in any manner whatsoever, any false, misleading, or deceptive statement concerning the business authorized under this chapter.

History.—s. 12, ch. 10177, 1925; CGL 4010; s. 2, ch. 81-318.

"Note.—Repealed effective October 1, 1988, by s. 2, ch. 81-318, and scheduled for review pursuant to s. 11.61 in advance of that date.

516.14 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 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. Upon such statement there shall be printed in English a copy of s. 516.031.

(2) Give to the borrower a plain and complete receipt for all payments made on account of any loan at the time payments are made.

(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.

"Note.—Repealed effective October 1, 1988, by s. 2, ch. 81-318, and scheduled for review pursuant to s. 11.61 in advance of that date.

516.16 Confession of judgment; power of attorney; contents of notes and security.—No licensee shall accept any confession of judgment or any power of attorney. Nor shall he take any note, promise to pay, or security that does not state the actual amount of the loan, the time for which it is made, and the rate of interest charged, nor any instrument in which blanks are left to be filled after execution.

History.—s. 15, ch. 10177, 1925; CGL 4013; s. 2, ch. 81-318.

"Note.—Repealed effective October 1, 1988, by s. 2, ch. 81-318, and scheduled for review pursuant to s. 11.61 in advance of that date.

516.17 Assignment of wages, etc., given to secure loans.—No assignment of, or order for the payment of, any salary, wages, commissions, or other compensation for services, earned or to be earned, given to secure any such loans shall be valid.

History.—s. 16, ch. 10177, 1925; CGL 4014; s. 1, ch. 38011, 1963; s. 8, ch. 73-192; s. 2, ch. 81-318.

"Note.—Repealed effective October 1, 1988, by s. 2, ch. 81-318, and scheduled for review pursuant to s. 11.61 in advance of that date.

516.18 Rate of interest or consideration.—

(1) No person engaged in the business of making loans of money, except as authorized by this chapter or other statutes of this state, shall directly or indirectly charge, contract for, or receive any interest or consideration greater than 18 percent per annum upon the loan, use, or forbearance of money, goods, or things in action, or upon the loan or use of credit, of the amount or value of $2,500 or less.

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

(3) No loan for which a greater rate of interest or charge than is allowed by this chapter has been contracted for or received, whatever made, shall be enforced in this state, and every person in anywise participating therein in this state shall be subject to the provisions of this chapter. However, the foregoing shall not apply to loans legally made to a resident of another state by a person within that state where that state has in effect a regulatory small loan or consumer finance law similar in principle to this chapter.


(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 July 1, 1979, the lender has the legal right to require full payment or to adjust or modify the interest rate, by renewal, assumption, reaffirmation, contract, or otherwise; and

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

History.—s. 17, ch. 10177, 1925; CGL 4015; s. 10, ch. 57-201; s. 9, ch. 73-192; s. 1, ch. 77-256; s. 3, ch. 79-274; s. 1, ch. 79-592; s. 2, ch. 81-318.

"Note.—Repealed effective October 1, 1988, by s. 2, ch. 81-318, and scheduled for review pursuant to s. 11.61 in advance of that date.

516.19 Penalty for violations.—Any person who shall violate any of the provisions of this act or any false, misleading, or deceptive statement concerning the business authorized under this chapter shall be subject to the provisions of this chapter. However, the foregoing shall not apply to loans legally made to a resident of another state by a person within that state where that state has in effect a regulatory small loan or consumer finance law similar in principle to this chapter.

History.—s. 18, ch. 10177, 1925; CGL 4016; s. 12, ch. 79-274; s. 16, ch. 79-592; s. 3, ch. 81-318.

"Note.—Repealed effective October 1, 1988, by s. 2, ch. 81-318, and scheduled for review pursuant to s. 11.61 in advance of that date.

516.20 "Interest" defined.—

(1) Any profit or advantage of any kind whatsoever that any licensee may contract for, collect, re-
receive, or in anywise obtain by a collateral sale, purchase, or agreement, in connection with any loan regulated by this chapter, shall be deemed to be interest or consideration for the purposes of regulation taxable under this chapter. Such transactions shall be governed by and subject to the provisions of this chapter, except commissions received as a person licensed by the Department of Insurance on insurance written as hereinafter permitted. However, security consisting of tangible property offered as security may be reasonably insured against loss for a reasonable term, considering the circumstances of the loan, and such insurance shall not be deemed such collateral sale, purchase, or agreement when the policy is payable to the borrower or any member of his family, even though the customary mortgagee clause is attached or the licensee is a coassured; provided such insurance is sold at standard rates through a person duly licensed by the Department of Insurance.

(2) No licensee shall enter into any contract for a loan under this chapter for $600 or less which provides for scheduled repayment of principal more than 24 months and 15 days from the date the loan is made, nor enter into any contract for a loan under this chapter for $2,500 or less, but more than $600, which provides for scheduled repayment of principal more than 36 months and 15 days from the date the loan is made. On loans in an amount of more than $2,500, scheduled repayment may exceed 36 months and 15 days.

History.—s. 7, ch. 20728, 1941; s. 11, ch. 57-201; ss. 13, 35, ch. 69-106; s. 10, ch. 73-192; s. 1, ch. 77-174; s. 2, ch. 80-412; s. 190, ch. 81-259; s. 2, ch. 81-318.

516.21 Restriction of borrower’s indebtedness.—
(1) No licensee shall directly or indirectly charge, contract for, or receive any interest, discount, or consideration greater than 18 percent per annum upon any loan, upon any part or all of any aggregate loan indebtedness of the same borrower, of the amount of more than $2,500. 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 $2,500 for principal; provided, however, that if the proceeds of any loan of $2,500 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 guarantees 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 satisfaction 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 shall make 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 shall have 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.


(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. 4, ch. 20728, 1941; s. 11, ch. 73-192; s. 1, ch. 79-592; s. 2, ch. 81-318.

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, 25, ch. 69-106; s. 194, ch. 71-377; s. 7, ch. 78-368; s. 146, ch. 79-164; s. 2, ch. 81-318.

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.

516.23 Injunctions; receivers.—In addition to all other powers granted to it under this chapter, the department may:

(1) Whenever it has reasonable cause to believe any person is violating or is about to violate any provision of this chapter or any order or regulation lawfully made pursuant to the authority of this chapter, enter an order requiring such person to desist from such violation;

(2) Bring an action in the name of the state in the
circuit court of the county in which the licensed place of business is located on the relation of the Department of Legal Affairs and the Department of Banking and Finance against such person to enjoin such person from engaging in or continuing such violation or doing any act or acts in furtherance thereof. In any such action, an order or judgment may be entered awarding such temporary or permanent injunction as may be deemed proper.

(3) In addition to all other means provided by law for the enforcement of a temporary restraining order, temporary injunction, or permanent injunction, said circuit court shall have power and jurisdiction to impound, and to appoint a receiver for, the property and business of the defendant including books, papers, documents, and records appertaining thereto or so much thereof as the court may deem reasonably necessary to prevent further violation of this chapter through or by means of the use of said property and business. Such receiver, when appointed and qualified, shall have powers and duties as to custody, collection, administration, winding up, and liquidation of said property and business as shall from time to time be conferred upon him by the court.

'516.231 Appointment of managers; qualifications.—Upon application for an original or renewal license, each applicant or licensee shall designate or appoint a manager for each location to be licensed. Each such manager shall have been employed by a licensee under this chapter or under former chapter 519, or by a subsidiary, affiliate, parent, or partner of the licensee, for a total period of at least 12 months or shall have successfully passed an examination based on the law and provisions of this chapter or former chapter 519 and rules and regulations thereunder. The foregoing requirement shall not apply to any person employed as such principal manager by a licensee on October 1, 1973.

History.—s. 9, ch. 20728, 1941; ss. 11, 12, 35, ch. 69-106; s. 2, ch. 81-318.

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

History.—s. 1, ch. 20206, 1941; s. 14, ch. 57-201; s. 191, ch. 77-104; a. 2, ch. 81-318.

'516.27 Preexisting contracts.—This chapter or any part thereof may be modified, amended, or repealed so as to effect a cancellation or assignment 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; a. 2, ch. 81-318.

'516.29 Suspension or revocation of license for unreasonable collection tactics.—The department shall have the authority to suspend or revoke the license of any licensee found guilty by it of using unreasonable collection tactics.

History.—s. 25, ch. 57-201; ss. 12, 35, ch. 69-106; s. 2, ch. 81-318.

'516.30 Period of transition allowed.—Upon this law taking effect the department is hereby authorized to permit or allow a period of 60 days for the transition of the business of the then licensees.

History.—s. 17, ch. 57-201; s. 2, ch. 81-318.

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

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

(2) RESTRICTION ON CERTAIN NEGOTIABLE INSTRUMENTS AND INSTALLMENT CONTRACTS.—A holder or assignee of any negotiable instrument or installment contract, other than a currently dated check, which originated from the purchase of certain consumer goods or services is subject to all claims and defenses of the consumer debtor against the seller of those consumer goods or services. A person’s liability under this section may not exceed the amount owing to the person when the claim or defense is asserted against the person.

(3) LIMITATIONS ON DEFICIENCY CLAIMS.—If a creditor takes possession of property which was collateral under a consumer credit transaction, the consumer shall not be personally liable to the creditor for any unpaid balance of the obligation unless the unpaid balance of the consumer’s obligation at the time of default was $2,000 or more. When the unpaid balance is $2,000 or more, the creditor shall be entitled to recover from the consumer the deficiency, if any, resulting from deducting the fair market value of the collateral from the unpaid balance due. In a proceeding for a deficiency, the fair market value of the collateral shall be a question for the trier of fact. Periodically published trade estimates of the retail value of goods shall, to the extent they are recognized in the particular trade or busi-
ness, 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 516 to promote and help establish consumer credit counseling services for individuals in areas where a need has been established. The purposes of the consumer credit counseling service shall be to:

(1) Assist and educate individual consumers as to money management.

(2) Assist individual consumers in consolidating obligations when a situation exists in which the individual consumer is in need of such assistance.

(3) Work with consumer credit grantors in an effort to establish better relations with the individual consumer and with state and federal regulatory agencies.

History.—s. 12, ch. 73-192; s. 2, ch. 81-318.

(Note.—Repealed effective October 1, 1988, by s. 2, ch. 81-318, and scheduled for review pursuant to s. 11.61 in advance of that date.)

516.33 Public disclosures.—All findings of fact and orders filed with the department shall be public record.

History.—s. 12, ch. 73-192; s. 2, ch. 81-318.

(Note.—Repealed effective October 1, 1988, by s. 2, ch. 81-318, and scheduled for review pursuant to s. 11.61 in advance of that date.)

516.34 Transfer of licenses held under former chapter 519.—All persons holding licenses under former chapter 519, on October 1, 1973, shall become licensees under chapter 516, and licenses issued under former chapter 519 shall be reissued by the department showing their new designation as licenses issued under chapter 516.

History.—s. 12, ch. 73-192; s. 2, ch. 81-318.

(Note.—Repealed effective October 1, 1988, by s. 2, ch. 81-318, and scheduled for review pursuant to s. 11.61 in advance of that date.)

516.35 Credit insurance must comply with Credit Insurance Act.—Credit life and disability insurance which is provided at the expense of borrowers must be provided only under a group or individual insurance policy which complies with ss. 627.675-627.684 and lawful regulations thereunder. The cost of credit life and disability insurance which is paid by borrowers shall be deducted from the principal amount of the loan and shall be disclosed on the statement required by s. 516.15(1) or on a combined note and disclosure statement required by the federal Truth in Lending Act.

History.—s. 13, ch. 73-192; s. 2, ch. 81-318; s. 536, ch. 82-243.

(Note.—Repealed effective October 1, 1988, by s. 2, ch. 81-318, and scheduled for review pursuant to s. 11.61 in advance of that date.)

516.36 Monthly installment requirement.

—Every loan made pursuant to this chapter shall be repaid in monthly installments as nearly equal as mathematically practicable.

History.—s. 13, ch. 73-192; s. 2, ch. 81-318.

(Note.—Repealed effective October 1, 1988, by s. 2, ch. 81-318, and scheduled for review pursuant to s. 11.61 in advance of that date.)

516.37 Transactions governed.—Nothing in chapter 516 shall apply to any transaction, contract, or loan other than one involving an extension of credit by a licensee as defined in this chapter.

History.—s. 16, ch. 73-192; s. 2, ch. 81-318.

(Note.—Repealed effective October 1, 1988, by s. 2, ch. 81-318, and scheduled for review pursuant to s. 11.61 in advance of that date.)
CHAPTER 517
SECURITIES TRANSACTIONS

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SECURITIES TRANSACTIONS F.S. 1983
Any person who acts as a promoter for and on behalf of a partnership of any kind to be formed shall be the general public as an investment adviser and has state; any bank holding company as defined in the Bank Holding Company Act of 1956, as amended, authorized to do business in this state; any trust company having trust powers; any person who renders investment adviser services in connection with the regular practice of his profession; any bank authorized to do business in this state: any trust company having trust powers, except a which it is authorized to exercise in this state, which renders or performs services in a fiduciary capacity incidental to the exercise of its trust powers; any wholesaler selling exclusively to dealers; any person buying and selling exclusively through a registered dealer or stock exchange; or, pursuant to s. 517.061(12), any person associated with an issuer of securities if such person is a bona fide employee of the issuer who has not participated in the distribution or sale of any securities within the preceding 12 months and who primarily performs, or is intended to perform at the end of the distribution, substantial duties for, or on behalf of, the issuer other than in connection with transactions in securities.

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

(9) "Investment adviser" means any person who for compensation engages for all or part of his time, directly, indirectly, or through publications or writings, in the business of advising others as to the value of securities or as to the advisability of investments in, purchasing, or selling of securities, except a dealer whose performance of these services is solely incidental to the conduct of his business as a dealer and who receives no special compensation for such services. The term "investment adviser" does not include any licensed practicing attorney who renders or performs services in connection with the regular practice of his profession; any bank authorized to do business in this state; any bank holding company as defined in the Bank Holding Company Act of 1956, as amended, authorized to do business in this state; any trust company having trust powers which it is authorized to exercise in the state, which renders or performs services in a fiduciary capacity incidental to the exercise of its trust powers; any person who renders investment advice exclusively to insurance or investment companies; or any person who does not hold himself out to the general public as an investment adviser and has no more than 15 clients within 12 consecutive months in any state.

(10) "Issuer" means any person who proposes to issue, has issued, or shall hereafter issue any security. Any person who acts as a promoter for and on behalf of a corporation, trust, or unincorporated association or partnership of any kind to be formed shall be deemed an issuer.

(11) "Offer to sell," "offer for sale," or "offer" means any attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security for value.

(12) "Person" means a natural person, a corporation created under the laws of this or any other state, country, sovereignty, or political subdivision thereof, a partnership, an association, a joint-stock company, a trust, or an unincorporated organization.

(13) "Principal" means an executive officer of a corporation, partner of a partnership, sole proprietor of a sole proprietorship, trustee of a trust, or any other person with similar supervisory functions with respect to any organization, whether incorporated or unincorporated.

(14) "Sale" or "sell" means any contract of sale or disposition of a security or interest in a security, for value. The term defined in this subsection does not include preliminary negotiations or agreements between an issuer or any person on whose behalf an offering is to be made and any underwriter or among underwriters who are or are to be in privity of contract with an issuer. Any security given or delivered with, or as a bonus on account of, any purchase of securities or any other thing shall be conclusively presumed to constitute a part of the subject of such purchase and to have been offered and sold for value. The issue or transfer of a right or privilege, when originally issued or transferred with a security, giving the holder of such security the right to convert such security into another security of the same issuer or of another person or giving a right to subscribe to another security of the same issuer or of another person, which right cannot be exercised until some future date, shall not be deemed to be an offer or sale of such other security; but the issue or transfer of such other security upon the exercise of such right of conversion or subscription shall be deemed a sale of such other security.

(15) "Salesman" means any natural person, other than a dealer, employed, appointed, or authorized by a dealer or issuer to sell securities in any manner or act as an investment adviser as defined in this section. The partners of a partnership and the executive officers of a corporation or other association registered as a dealer are not salesmen within the meaning of this definition.

(16) "Security" means any note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation, warehouse receipt or other commodity warehouse receipt, right to subscribe to any of the foregoing; certificate of interest in a profit-sharing agreement or the right to participate therein; certificate of interest in an oil, gas, petroleum, mineral, or mining title or lease, or the right to participate therein; collateral trust certificate, reorganization certificate, preorganization subscription, or any transferable share, investment contract, or beneficial interest in title to property, profits, or earnings; interests in or under a profit-sharing or participation agreement or scheme, or any other instrument commonly known as a security, including an interim or temporary bond, debenture, note, certificate, or receipt for a security or for subscription to a security.
(17) "Securities option" means any contract which entitles the holder to purchase or sell a given amount of the underlying security at a fixed price within a specified period of time.

(18) "Underwriter" means any person who has purchased from an issuer or an affiliate of an issuer with a view to, or offers or sells for an issuer or an affiliate of an issuer in connection with, the distribution of any security, or participates or has a direct or indirect participation in any such undertaking, or participates or has a participation in the direct or indirect underwriting of any such undertaking; provided that a person shall be presumed not to be an underwriter with respect to any securities which he has owned beneficially for at least 1 year; and provided, further, that a dealer shall not be considered an underwriter with respect to any securities which do not represent part of an unsold allotment to or subscription by the dealer as a participant in the distribution of such securities by the issuer or an affiliate of the issuer; provided, further, that in the case of securities acquired on the conversion of another security without payment of additional consideration, the length of time such securities have been beneficially owned by a person shall include the period during which the convertible security was beneficially owned and the period during which the security acquired on conversion has been beneficially owned.

History.—s. 1, ch. 78-435; s. 147, ch. 79-164; ss. 1, 15, ch. 79-381; s. 5, ch. 83-204; ss. 1, 6, ch. 81-115; ss. 2, 3, ch. 81-319; s. 1, ch. 83-394; s. 1, ch. 83-265.

Note.—Repealed effective October 1, 1990, by s. 2, ch. 81-318, and scheduled for review pursuant to s. 11.61 in advance of that date.

'517.03 Power of department to make rules.

(1) The Department of Banking and Finance shall administer and provide for the enforcement of all the provisions of this chapter. The department shall make, adopt, promulgate, amend, and repeal all rules necessary or convenient for the carrying out of the duties, obligations, and powers conferred on said department and perform any other acts necessary or convenient for the proper administration, enforcement, or interpretation of this chapter, including, without limitation, adopting rules and forms governing reports. The department shall also have the non-exclusive power to define by rule any term, whether or not used in this chapter, insofar as the definition is not inconsistent with the provisions of this chapter.

(2) No provision of this chapter imposing liability shall apply to an act done, or omitted to be done, in conformity with a rule of the department in existence at the time of the act or omission, even though such rule may thereafter be amended or repealed or determined by judicial or other authority to be invalid for any reason.

History.—s. 1, ch. 1499, 1931; CGL 1936 Supp. 600370; s. 1, ch. 59-423; s. 2, ch. 65-454; ss. 12, 35, ch. 69-106; s. 106, ch. 71-377; s. 3, ch. 76-160; s. 1, ch. 77-457; s. 2, 15, ch. 79-381; ss. 4, 5, ch. 80-234; ss. 2, 2, ch. 81-318.

Note.—Repealed effective October 1, 1990, by s. 2, ch. 81-318, and scheduled for review pursuant to s. 11.61 in advance of that date.

'517.051 Exempt securities.—The registration provisions of s. 517.07 do not apply to any of the following securities:

(1) Any security issued or guaranteed by the United States or any territory or insular possession thereof, by the District of Columbia, or by any state of the United States or by any political subdivision or agency thereof.

(2) Any security issued or guaranteed by any foreign government with which the United States is at the time of the sale or offer of sale thereof maintaining diplomatic relations, or by any state, province, or political subdivision thereof having the power of taxation or assessment, which security is recognized at the time it is offered for sale in this state as a valid obligation by such foreign government or by such state, province, or political subdivision thereof issuing the same.

(3) Any security issued or guaranteed by:
   (a) A national bank or a federally chartered savings and loan association, or the initial subscription for equity securities in such national bank or federally chartered savings and loan association;
   (b) Any federal land bank, joint-stock land bank, or national farm loan association under the provisions of the Federal Farm Loan Act of July 17, 1916;
   (c) An international bank of which the United States is a member; or
   (d) A corporation created and acting as an instrumentality of the government of the United States.

(4) Any security issued or guaranteed, as to principal, interest, or dividend, by a corporation owning or operating a railroad or any other public service utility, provided, that such corporation is subject to regulation or supervision whether as to its rates and charges or as to the issue of its own securities by a public commission, board, or officer of the government of the United States, of any state, territory, or insular possession thereof, of any municipality located therein, of the District of Columbia, of the Dominion of Canada or of any province thereof; also equipment securities based on chattel mortgages, leases, or agreements for conditional sale of cars, motive power, or other rolling stock mortgaged, leased, or sold to or furnished for the use of or upon such railroad or other public service utility corporation or where the ownership or title of such equipment is pledged or retained in accordance with the provisions of the laws of the United States or of any state or of the Dominion of Canada to secure the payment of such equipment securities; also bonds, notes, or other evidences of indebtedness issued by a holding corporation and secured by collateral consisting of any securities hereinabove described; provided, further, that the collateral securities equal in fair value at least 125 percent of the par value of the bonds, notes, or other evidences of indebtedness so secured.

(5) Any security issued or guaranteed by any domestic or foreign bank, trust company, or savings institution or building or savings and loan association of this state subject to the examination, supervision, or control of this state; or the initial subscription for equity securities in such bank, trust company, savings institution, or building or savings and loan association of this state under like supervision.

(6) Any security, other than common stock, providing for a fixed return, which has been outstanding in the hands of the public for a period of not less than 5 years, upon which no default in payment of principal or failure to pay the fixed return has occurred for an immediately preceding period of 5 years.
(7) Securities of nonprofit agricultural cooperatives organized under the laws of this state when said securities are sold or offered for sale to persons principally engaged in agricultural production or selling agricultural products.

(8) Any note, draft, bill of exchange, or banker's acceptance having a unit amount of $25,000 or more which arises out of a current transaction, or the proceeds of which have been or are to be used for current transactions, and which has a maturity at the time of issuance of not exceeding 9 months exclusive of days of grace, or any renewal thereof the maturity of which is likewise limited.

(9) Any security issued by a corporation organized exclusively for religious, educational, benevolent, fraternal, charitable, or reformatory purposes and not for pecuniary profit, and no part of the net earnings of which inures to the benefit of any private stockholder or individual; provided that no person shall directly or indirectly offer or sell securities under this subsection except by an offering circular containing full and fair disclosure, as prescribed by the rules of the department, of all material information, including, but not limited to, a description of the securities offered and terms of the offering; a description of the nature of the issuer's business; a statement of the purpose of the offering and the intended application by the issuer of the proceeds thereof; and financial statements of the issuer prepared in conformity with generally accepted accounting principles.

History.—s. 1, ch. 78-435; ss. 3, 5, ch. 79-381; s. 5, ch. 80-254; ss. 2, 6, ch. 81-175; ss. 3, 2, ch. 81-318; ss. 3, ch. 82-255.

Note.—Repealed effective October 1, 1990, by s. 2, ch. 81-318, and scheduled for review pursuant to s. 11.61 in advance of that date.

517.061 Exempt transactions.—The registration provisions of s. 517.07 do not apply to any of the following transactions:

(1) At any judicial, executor's, administrator's, guardian's, or conservator's sale, or at any sale by a receiver or trustee in insolvency or bankruptcy, or any transaction incident to a judicially approved reorganization in which a security is issued in exchange for one or more outstanding securities, claims, or property interests.

(2) By or for the account of a pledgee or mortgagee selling or offering for sale or delivery in the ordinary course of business and not for the purposes of avoiding the provisions of this chapter, to liquidate a bona fide debt, a security pledged in good faith as security for such debt.

(3) The isolated sale or offer for sale of securities when made by or on behalf of a vendor not the issuer or underwriter thereof, who, being the bona fide owner of such securities, disposes of his own property for his own account, and such sale is not made directly or indirectly for the benefit of the issuer or an underwriter of such securities or for the direct or indirect promotion of any scheme or enterprise with the intent of violating or evading any provision of this chapter. For purposes of this subsection, isolated offers or sales include, but are not limited to, isolated offers or sales when made by or on behalf of a vendor of securities not the issuer or underwriter thereof if:

(a) The offer or sale of securities is in a transaction satisfying all of the requirements of subpara-

graphs (12)(a)1., 2., 3., and 4. and paragraph (12)(b);

(b) The offer or sale of securities is in a transaction exempt under s. 4(1) of the Securities Act of 1933, as amended.

For purposes of this subsection, any person, including, without limitation, a promoter or affiliate of an issuer, shall not be deemed an underwriter, an issuer, or a person acting for the direct or indirect benefit of the issuer or an underwriter with respect to any securities of the issuer which he has owned beneficially for at least 1 year.

(4) The distribution by a corporation, trust, or partnership, actively engaged in the business authorized by its charter or other organizational articles or agreement, of securities to its stockholders or other equity security holders, partners, or beneficiaries as a stock dividend or other distribution out of earnings or surplus.

(5) The issuance of securities to such equity security holders or other creditors of a corporation, trust, or partnership sold or distributed by it among its own stockholders, partners, or beneficiaries, exclusively, when no commission or other remuneration is paid or given directly or indirectly in connection with the sale or distribution of such additional securities.

(7) The offer or sale of securities to a bank or trust company, whether acting in its individual or fiduciary capacity; savings institution; insurance company, dealer; regulated investment company; or pension or profit-sharing plan having assets not less than $500,000; provided that such offer or sale of securities is not for the direct or indirect promotion of any scheme or enterprise with the intent of violating or evading any provision of this chapter.

(8) The sale of securities from one corporation to another corporation provided that:

(a) The sale price of the securities is $50,000 or more; and

(b) The buyer and seller corporation each have assets of $500,000 or more.

(9) The offer or sale of securities from one corporation to another corporation, or to security holders thereof, pursuant to a vote or consent of such security holders as may be provided by the articles of incorporation and the applicable corporate statutes in connection with mergers, consolidations, or sale of corporate assets.

(10) The issuance of notes or bonds in connection with the acquisition of real property or renewals thereof, if such notes or bonds are issued to the sellers of, and are secured by all or part of, the real property so acquired.

(11) The issue and delivery of any security in ex-
change for any other security of the same issuer pursuant to a right of conversion entitling the holder of the security surrendered, provided that the security surrendered had been registered under the law when sold or was, when sold, exempt from the registration provisions of this chapter.

(12)(a) The offer or sale, by or on behalf of an issuer, of its own securities, which offer or sale is part of an offering made in accordance with all of the following conditions:

1. There are no more than 35 purchasers, or the issuer reasonably believes that there are no more than 35 purchasers, of the securities of the issuer in this state during an offering made in reliance upon this subsection or, if such offering continues for a period in excess of 12 months, in any consecutive 12-month period.

2. Neither the issuer nor any person acting on behalf of the issuer offers or sells securities pursuant to this subsection by means of any form of general solicitation or general advertising in this state.

3. Prior to the sale, each purchaser or his representative, if any, is provided with, or given reasonable access to, full and fair disclosure of all material information.

4. No person defined as a dealer in this chapter is paid a commission or compensation for the sale of the issuer's securities unless such person is registered as a dealer under this chapter.

5. When sales are made to five or more persons in this state, any sale in this state made pursuant to this subsection shall be voidable by the purchaser in such sale either within 3 days after the first tender of consideration is made by such purchaser to the issuer, an agent of the issuer, or an escrow agent or within 3 days after the availability of that privilege is communicated to such purchaser, whichever occurs later.

(b) The following purchasers shall be excluded from the calculation of the number of purchasers under subparagraph (a)1:

1. Any relative or spouse, or relative of such spouse, of a purchaser who has the same principal residence as such purchaser.

2. Any trust or estate in which a purchaser, any of the persons related to such purchaser specified in subparagraph 1. of this paragraph, and any corporation or organization of which a purchaser, any of the persons related to such purchaser specified in subparagraph 1. of this paragraph, and any trust or estate specified in subparagraph 2. of this paragraph collectively have more than 50 percent of the beneficial interest (excluding contingent interest).

3. Any corporation or other organization of which a purchaser, any of the persons related to such purchaser specified in subparagraph 1. of this paragraph, and any trust or estate specified in subparagraph 2. of this paragraph collectively are beneficial owners of more than 50 percent of the equity securities or equity interest.

4. Any purchaser who makes a bona fide investment of $100,000 or more, provided such purchaser or his representative receives, or has access to, the information required to be disclosed by subparagraph (a)3.

5. Any accredited investor.

(c)1. For purposes of determining which offers and sales of securities constitute part of the same offering under this subsection and are therefore deemed to be integrated with one another:

a. Offers or sales of securities occurring more than 6 months prior to an offer or sale of securities made pursuant to this subsection shall not be considered part of the same offering, provided there are no offers or sales by or for the issuer of the same or a similar class of securities during such 6-month period.

b. Offers or sales of securities occurring at any time after 6 months from an offer or sale made pursuant to this subsection shall not be considered part of the same offering, provided there are no offers or sales by or for the issuer of the same or a similar class of securities during such 6-month period.

2. Offers or sales which do not satisfy the conditions of any of the provisions of subparagraph 1. may or may not be part of the same offering, depending on the particular facts and circumstances in each case. The department may, but is not required to, adopt a rule or rules indicating what factors should be considered in determining whether offers and sales not qualifying for the provisions of subparagraph 1. are part of the same offering for purposes of this subsection.

(d) Offers or sales of securities made pursuant to and in compliance with any other subsection of this section or any subsection of s. 517.051 shall not be considered part of an offering pursuant to this subsection, regardless of when such offers and sales are made.

(13) The sale of securities by a bank or trust company organized or incorporated under the laws of the United States or this state at a profit to such bank or trust company of not more than 2 percent of the total sale price of such securities; provided that there is no solicitation of this business by such bank or trust company where such bank or trust company acts as agent in the purchase or sale of such securities.

(14) An unsolicited purchase or sale of securities on order of, and as the agent for, another by a dealer registered with the Department of Banking and Finance pursuant to the provisions of s. 517.12; provided that this exemption shall apply solely and exclusively to such registered dealers and shall not authorize or permit the purchase or sale of securities on order of, and as agent for, another by any person other than a dealer so registered; and further, that such purchase or sale shall not be directly or indirectly for the benefit of the issuer or an underwriter of such securities or for the direct or indirect promotion of any scheme or enterprise with the intent of violating or evading any provision of this chapter.

(15) The offer or sale of shares of a corporation which represent ownership, or entitle the holders thereof to possession and occupancy, of specific apartment units in property owned by such corporation and organized and operated on a cooperative basis, solely for residential purposes.

(16) The offer or sale of securities under a bona fide employer-sponsored stock option, stock purchase, pension, profit-sharing, savings, or other benefit plan when offered only to employees of the sponsoring organization or to employees of its controlled subsidiaries.

(17) The sale by or through a registered dealer of any securities option if at the time of the sale of the option:
(a) The performance of the terms of the option is guaranteed by any dealer registered under the federal Securities Exchange Act of 1934, as amended, which guaranty and dealer are in compliance with such requirements or rules as may be approved or adopted by the department; or

(b) Such options transactions are cleared by the Options Clearing Corporation or any other clearinghouse recognized by the department; and

(c) The option is not sold by or for the benefit of the issuer of the underlying security; and

(d) The underlying security may be purchased or sold on a recognized securities exchange or is quoted on the National Association of Securities Dealers Automated Quotation System; and

(e) Such sale is not directly or indirectly for the direct or indirect benefit of an issuer or controlling persons of such issuer or if such securities constitute the whole or part of an unsold allotment to or subscription or tender of consideration is made by the purchaser to the issuer, an agent of the issuer, or an escrow agent for the sale of the issuer, an agent of the issuer, or an escrow agent on behalf of the issuer, and the title of the securities to be offered in any sale made pursuant to this subsection is voidable or evades any provisions of this chapter.

(18)(a) The offer or sale of securities, as agent or principal, by a dealer registered pursuant to s. 517.12, when such securities are offered or sold at a price reasonably related to the current market price of such securities, provided such securities are:

1. Prior to the sale, each purchaser or his representative is provided with, or given reasonable access to, any stock of which is so listed or approved for listing upon notice of issuance, or representations of subscription rights which have been so listed or approved for listing upon notice of issuance, or evidences of indebtedness guaranteed by companies any stock of which is so listed or approved for listing upon notice of issuance, such securities to be exempt only so long as such listings or approvals shall remain in effect. The exemption provided for herein shall not apply when the securities are suspended from listing approval for listing or trading; or

2. Securities appearing in any list of securities dealt in on any stock exchange registered pursuant to the Securities Exchange Act of 1934, as amended, and which securities have been listed or approved for listing upon notice of issuance by such exchange, and also all securities senior to any securities so listed or approved for listing upon notice of issuance, or representations of subscription rights which have been so listed or approved for listing upon notice of issuance, or evidences of indebtedness guaranteed by companies any stock of which is so listed or approved for listing upon notice of issuance, such securities to be exempt only so long as such listings or approvals shall remain in effect. The exemption provided for herein shall not apply when the securities are suspended from listing approval for listing or trading; or

3. Securities as to which the following information is published in a recognized manual of securities:

a. A balance sheet as of a date not more than 18 months prior to the date of the sale; and

b. Profit and loss statements for a period of not less than 3 years next prior to the date of the balance sheet or for the period as of the date of the balance sheet if the period of existence is less than 2 years.

(b) The exemption provided in this subsection shall not apply if the sale is made for the direct or indirect benefit of an issuer or controlling persons of such issuer or if such securities constitute the whole or part of an unsold allotment to or subscription or participation by a dealer as an underwriter of such securities.

(c) The department may deny this exemption with reference to any particular security by order published in such manner as the department shall find proper.

(19)(a) The offer or sale of securities pursuant to a registration statement filed under the Securities Act of 1933, provided that prior to the sale the registration statement has become effective and the department has received:

1. A notice of intention to sell which has been executed by the issuer, any other person on whose behalf the offering is made, a dealer registered under this chapter, or any duly authorized agent of any such person and which sets forth the name and address of the applicant, the name and address of the issuer, and the title of the securities to be offered in this state;

2. Copies of such documents filed with the Securities and Exchange Commission as the department may by rule require; and

3. The irrevocable written consent as required by s. 517.101.

(b) The person filing a notice of intention shall at the time of filing pay the department a nonreturnable fee of 0.1 percent of the aggregate sales price of the securities offered or to be offered in this state, but not less than $20 or more than $750. The fee required by this paragraph shall be paid to the department for each 36-consecutive-month period in which the securities are offered and sold. The 36-consecutive-month period shall be prescribed by rule of the department. An amendment to the notice of intention which increases the maximum aggregate offering price of securities offered in this state shall require an additional fee computed at the rate of 0.1 percent of the increased amount, but in no event shall total fees exceed $750 per application.

"(20)(a) The offer or sale, by or on behalf of an issuer, of its own securities, made solely for the purpose of constructing rental housing, provided that:

1. There are no more than 35 purchasers of the securities of the issuer in this state within the immediately preceding 12-month period in reliance upon this subsection.

2. Prior to the sale, each purchaser or his representative is provided with, or given reasonable access to, full and fair disclosure of all material information.

3. No person defined as a dealer in this chapter is paid a commission or compensation for the sale of the issuer's securities, unless such person is registered as a dealer under this chapter.

4. When sales are made to five or more persons, any sale made pursuant to this subsection is voidable by the purchaser either within 3 days after the first tender of consideration is made by the purchaser to the issuer, an agent of the issuer, or an escrow agent on behalf of the issuer, and the title of the securities to be offered in any sale made pursuant to this subsection is voidable by the purchaser, whichever occurs later.

5. The rental housing constructed is to be used solely as rental housing for a period of not less than 10 years; such fact is disclosed to all potential purchasers; and such provision is included as a deed restriction in any conveyance of the property on which the rental housing is constructed.

6. Each purchaser of the securities of the issuer has taxable income taxed by the Internal Revenue Service at a rate not less than 50 percent or has a net worth in excess of $150,000. This requirement shall be prominently displayed in any advertising or solic-
517.07 Registration of securities.—No securities except of a class exempt under any of the provisions of s. 517.051 or unless sold in any transaction exempt under any of the provisions of s. 517.061 shall be sold or offered for sale within this state unless such securities have been registered, as hereinafter defined, and unless prior to each sale the purchaser is furnished with a prospectus meeting the requirements of rules adopted by the department. The department shall issue a permit when such registration has been granted by the department.

(1) Except as provided in subsection (2), a permit to sell securities is effective for 1 year from the date it was granted. Registration of securities shall be deemed to include the registration of rights to subscribe to such securities if the application under s. 517.051 or s. 517.061 is filed before the effective date of the permit issued thereunder, and only after filing the registration, the application of the issuer and the issuer's representation to the purchaser of the security of the information required to be disclosed by the department, the issuer shall furnish annually to the department financial statements certified by a principal of the business and shall notify the department of material changes in information contained in the registration.

(2) The department shall receive and act upon applications to have securities registered and may prescribe forms on which it may require such applications to be submitted. Applications shall be duly registered in the manner provided by this section.

(3) The department may issue a permit for the office and of its principal office in this state, if any.

517.081 Registration procedure.—

(1) All securities required by this chapter to be registered before being sold in this state shall be registered in the manner provided by this section.

(2) The department shall receive and act upon applications to have securities registered and may prescribe forms on which it may require such applications to be submitted. Applications shall be duly signed by the applicant, sworn to by any person having knowledge of the facts, and filed with the department. An application may be made either by the issuer of the securities for which registration is applied or by any registered dealer desiring to sell the same within the state.

(3) The department may require the applicant to submit to the department the following information concerning the issuer and such other relevant information as the department may in its judgment deem necessary to enable it to ascertain whether such securities shall be registered pursuant to the provisions of this section:

(a) The names and addresses of the directors, trustees, and officers, if the issuer be a corporation, association, or trust; of all the partners, if the issuer be a partnership; or of the issuer, if the issuer be an individual.

(b) The location of the issuer's principal business office and of its principal office in this state, if any.

(c) The general character of the business actually to be transacted by the issuer and the purposes of the proposed issue.

(d) A statement of the capitalization of the issuer.

(e) A balance sheet showing the amount and general character of its assets and liabilities on a day not more than 90 days prior to the date of filing such balance sheet or such longer period of time, not exceeding 6 months, as the department may permit at the written request of the issuer on a showing of good cause therefor.
(f) A detailed statement of the plan upon which the issuer proposes to transact business.

(g) A specimen copy of the security and a copy of any circular, prospectus, advertisement, or other description of such securities.

(h) A statement of the amount of the issuer's income, expenses, and fixed charges during the last fiscal year or, if in actual business less than 1 year, then for such time as the issuer has been in actual business.

(i) A statement of the issuer's cash sources and application during the last fiscal year or, if in actual business less than 1 year, then for such time as the issuer has been in actual business.

(j) A statement showing the maximum price at which such security is proposed to be sold, together with the maximum amount of commission, including expenses, or other form of remuneration to be paid in cash or otherwise, directly or indirectly, for or in connection with the sale or offering for sale of such securities.

(k) A copy of the opinion or opinions of counsel concerning the legality of the issue or other matters which the department may determine to be relevant to the issue.

(l) A detailed statement showing the items of cash, property, services, patents, good will, and any other consideration in payment for which such securities have been or are to be issued.

(m) The amount of securities to be set aside and disposed of and a statement of all securities issued from time to time for promotional purposes.

(n) If the issuer is a corporation, there shall be filed with the application a copy of its articles of incorporation with all amendments and of its existing bylaws, if not already on file in the department. If the issuer is a trustee, there shall be filed with the application a copy of all instruments by which the trust is created or declared and in which it is accepted and acknowledged. If the issuer is a partnership, unincorporated association, joint-stock company, or any other form of organization whatsoever, there shall be filed with the application a copy of its articles of partnership or association and all other papers pertaining to its organization, if not already on file in the department.

(4) All of the statements, exhibits, and documents of every kind required by the department under this section, except properly certified public documents, shall be verified by the oath of the applicant or of the issuer in such manner and form as may be required by the department.

(5) The department may by rule fix the maximum discounts, commissions, expenses, remuneration, and other compensation to be paid in cash or otherwise, not to exceed 20 percent, directly or indirectly, for or in connection with the sale or offering for sale of such securities in this state.

(6) An issuer filing an application under this section shall, at the time of filing, pay the department a nonrefundable fee computed at the rate of 0.1 percent of the maximum aggregate offering price of the securities to be offered in this state, but not less than $50 or more than $1,000. An amendment to the application which increases the maximum aggregate offering price offered in this state shall require an additional fee computed at the rate of 0.1 percent of the increased amount, but in no event shall total fees exceed $1,000 per application.

(7) If upon examination of any application the department shall find that the sale of the security referred to therein would not be fraudulent and would not work or tend to work a fraud upon the purchaser, that the terms of the sale of such securities would be fair, just, and equitable, and that the enterprise or business of the issuer is not based upon unsound business principles, it shall record the registration of such security in the register of securities; and thereupon such security so registered may be sold by any registered dealer, subject, however, to the further order of the department.

History.---s. 3, ch. 78-435; s. 148, ch. 79-164; ss. 6, 15, ch. 79-381; ss. 2, 5, ch. 80-254; ss. 2, 3, ch. 81-318.

Note.---Repealed effective October 1, 1990, by s. 2, ch. 81-318, and scheduled for review pursuant to s. 11.61 in advance of that date.

517.101 Consent to service.---

(1) Upon any application for registration under s. 517.081, the issuer shall file with such application the irrevocable written consent of the issuer that in suits, proceedings, and actions growing out of the violation of any provision of this chapter, the service on the department of a notice, process, or pleading therein, authorized by the laws of this state, shall be as valid and binding as if due service had been made on the issuer.

(2) Any such action shall be brought either in the county of the plaintiff's residence or in the county in which the department has its official headquarters. The written consent shall be authenticated by the seal of said issuer, if it has a seal, and by the acknowledged signature of a member of the copartnership or company, or by the acknowledged signature of any officer of the incorporated or unincorporated association, if it be an incorporated or unincorporated association, duly authorized by resolution of the board of directors, trustees, or managers of the corporation or association, and shall in such case be accompanied by a duly certified copy of the resolution of the board of directors, trustees, or managers of the corporation or association, authorizing the officers to execute the same. In case any process or pleadings mentioned in this chapter are served upon the department, it shall be by duplicate copies, one of which shall be filed in the department and another immediately forwarded by the department by registered mail to the principal office of the issuer against which said process or pleadings are directed.

History.---s. 3, ch. 78-435; s. 5, ch. 80-254; s. 198, ch. 81-318; ss. 2, 3, ch. 81-318.

Note.---Repealed effective October 1, 1990, by s. 2, ch. 81-318, and scheduled for review pursuant to s. 11.61 in advance of that date.

517.111 Revocation or denial of registration of securities.---

(1) The department may revoke or suspend the registration of any security, or may deny any application to register securities, if upon examination into the affairs of the issuer of such security it shall appear that:

(a) The issuer is insolvent;

(b) The issuer or any controlling person has violated any provision of this chapter or any rule made...
hereunder or any order of the department of which such issuer has notice;
(c) The issuer or any controlling person has been or is about to engage in fraudulent transactions;
(d) The issuer or any controlling person is in any other way dishonest or has made any fraudulent representations in any prospectus or in any circular or other literature that has been distributed concerning the issuer or its securities; or
(e) The terms of the offer or sale of such securities would not be fair, just, or equitable.

In making such examination, the department shall have access to and may compel the production of all the books and papers of such issuer and may administer oaths to and examine the officers of such issuer or any other person connected therewith as to its business and affairs and may also require a balance sheet exhibiting the assets and liabilities of any such issuer or his income statement, or both, to be certified to by a public accountant either of this state or of any other state where the issuer's business is located. Whenever the department may deem it necessary, it may also require such balance sheet or income statement, or both, to be made more specific in such particulars as the department may require.

(2) If any issuer shall refuse to permit an examination to be made by the department, it shall be proper ground for revocation of registration.

(3) If the department shall deem it necessary, it may enter an order suspending the right to sell securities pending any investigation, provided that the order shall state the department's grounds for taking such action.

(4) Notice of the entry of such order shall be given by mail, personally, by telephone confirmed in writing, or by telegraph to the issuer. Before such order is made final, the issuer applying for registration shall, on application, be entitled to a hearing.

1517.12 Registration of dealers, associated persons, and investment advisers.—
(1) No dealer, associated person, or issuer of securities shall sell or offer for sale any securities in or from offices in this state, or sell securities in this state to persons thereof from offices outside this state, or mail or otherwise, unless the person has been registered with the department pursuant to the provisions of this section.

(2) The registration requirements of this section do not apply to the issuers of securities exempted by s. 517.061(1)-(8).

(3) Except as otherwise provided in s. 517.061(12)(a)4. and s. 517.061(20)(a)3., the registration requirements of this section do not apply in a transaction exempted by s. 517.061(1)-(13), (15), (16), and (20).

(4) No investment adviser shall engage in business from offices in this state, or render investment advice to persons thereof, by mail or otherwise, unless the investment adviser has been registered with the department pursuant to this section. A dealer or associated person who is registered pursuant to this section may render investment advice upon notification to the department.

(b) The applicant’s form and place of organization and, if the applicant is a corporation, a copy of its articles of incorporation and amendments thereto or, if a partnership, a copy of the partnership agreement.

(c) The applicant’s proposed method of doing business and financial condition and history, including a certified financial statement showing all assets and all liabilities, including contingent liabilities of the applicant as of a date not more than 90 days prior to the filing of the application.

(d) The names and addresses of all salesmen of the applicant to be employed in this state and the offices to which they will be assigned.

(6) The application shall also contain such information as the department may require about the applicant, any partner, officer, or director of the applicant, any person having a similar status or performing similar functions, any person directly or indirectly controlling the applicant, or any employee of a dealer or of an investment adviser rendering investment advisory services. Each applicant shall file a complete set of fingerprints taken by an authorized law enforcement officer. Such fingerprints shall be submitted to the Department of Law Enforcement or the Federal Bureau of Investigation for state and federal processing. The department may waive, by rule, the requirement that applicants must file a set of fingerprints or the requirement that such fingerprints must be processed by the Department of Law Enforcement or the Federal Bureau of Investigation. The department may require information about any such applicant or person concerning such person's previous history.

(a) His full name, age, photograph, qualifications, educational and business history, and any other names by which he may have been known.

(b) Any injunction or administrative order by any state or federal agency, national securities exchange, or national securities association involving a security or any aspect of the securities business and any injunction or administrative order by a state or federal agency regulating banking, insurance, finance, or small loan companies, real estate, mortgage brokers, or other related or similar industries, which injunctions or administrative orders relate to such person.

(c) His conviction of, or plea of nolo contendere to, a criminal offense or his commission of any acts which would be grounds for refusal of an application under s. 517.161.

(d) The names and addresses of other persons of whom the department may inquire as to his character, reputation, and financial responsibility.

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(7) The department may require the applicant or one or more principals or general partners, or natural persons exercising similar functions, or any agent-applicant to successfully pass oral or written examinations. The examination standards may be higher for a dealer, office manager, principal, or person exercising similar functions than for a nonsupervisory salesman. The department may waive the examination process when it determines that such examinations are not in the public interest. The department shall waive the examination requirements for any person who has passed any tests as prescribed in s. 15(b)(7) of the Securities Exchange Act of 1934.

(8) The department may by rule require the maintenance of a minimum net capital for registered dealers and investment advisers, or prescribe a ratio between net capital and aggregate indebtedness, to assure adequate protection for the investing public.

(9) An applicant for registration shall pay an assessment fee of $100, in the case of a dealer or investment adviser, or $20, in the case of an associated person. There shall be no fee for reaffiliation of a registered associated person. Each dealer and each investment adviser shall pay an assessment fee of $50 for each office it maintains, except its designated principal office. Such fees become the revenue of the state, except for those assessments provided for under s. 517.131(1) until such time as the Security Guaranty Fund satisfies the statutory limits, and are not returnable in the event that registration is withdrawn or not granted.

(10) If the department finds that the applicant is of good repute and character and has complied with the provisions of this section and the rules made pursuant hereto, it shall register the applicant. The registration of each dealer, investment adviser, associated person, and branch office shall expire on December 31 of the year in which it became effective, except that the department may by rule provide for an equitable method of staggering the expiration dates of registrations using a date other than December 31 of each year. Registration may be renewed by furnishing such information as the department may require, together with payment of the fee required in subsection (9) for dealers, investment advisers, associated persons, or branch offices.

(11)(a) The department may issue a license to a dealer, salesman, officer, or investment adviser to evidence registration under this chapter. The department may require the return of the department of any license it may issue prior to issuing a new license.

(b) Every dealer shall promptly file with the department, as prescribed by rules adopted by the department, notice as to the termination of employment of any associated person registered for such dealer in this state and shall also furnish the reason or reasons for such termination.

(c) Each dealer shall designate in writing to the department a manager for each office the dealer has in this state, and each manager shall be registered as a principal.

(12) Changes in registration occasioned by changes in personnel of a partnership or in the principals, copartners, officers, or directors of any dealer or investment adviser or by changes of any material fact or method of doing business shall be reported by written amendment in such form and at such time as the department may specify.

(13) A dealer, associated person, or investment adviser registered under this section shall maintain such books and records as the department may prescribe by rule. The department shall have authority to visit and examine the affairs and records of each registered dealer, associated person, or investment adviser or require such records and reports submitted to it as it may require by rule.

(14) In lieu of filing with the department the applications specified in subsection (5), the fees required by subsection (9), and the termination notices required by subsection (11), the department may by rule establish procedures for the deposit of such fees and documents with the Central Registration Depository of the National Association of Securities Dealers, Inc., as developed under contract with the North American Securities Administrators Association, Inc.; provided, however, that such procedures shall provide the department with the information and data as required by this section.

History.--s. 11, ch. 14899, 1931; s. 6, ch. 17253, 1935; CGL 1936 Supp. 6002(12); s. 3, ch. 20960, 1941; s. 1, ch. 21709, 1943; s. 1, ch. 57-288, a. 1, ch. 59-165; s. 1, ch. 63-321; s. 6, ch. 65-646; ss. 1, 3, 6, ch. 69-106; s. 6, ch. 71-96; s. 5, ch. 72-192; s. 1, ch. 73-58; s. 1, ch. 74-278; s. 1, ch. 75-168; s. 1, ch. 76-168; s. 1, ch. 77-104; s. 1, ch. 77-457; s. 6, ch. 78-430; s. 19, ch. 79-84; s. 1, ch. 79-164; s. 1, ch. 79-381; s. 3, ch. 80-254; s. 2, ch. 80-603; ss. 4, 6, ch. 81-115; ss. 2, 3, ch. 81-116; s. 3, ch. 82-186; s. 5, ch. 83-202; s. 3, ch. 84-108.

Sec. 517.131 Security Guaranty Fund.

(1) Effective November 1, 1978, the Treasurer shall establish a Security Guaranty Fund. An amount not exceeding 20 percent of all revenues received as assessment fees pursuant to s. 517.12(9) and (10) shall be allocated to the fund. This assessment fee shall be part of the regular license fee and shall be transferred to or deposited in the Security Guaranty Fund. If the fund at any time exceeds $250,000, collection of special fees for this fund shall be discontinued at the end of that license year, and such special fees shall not be reimposed unless the fund is reduced below $150,000 by disbursement made in accordance with s. 517.141.

(2) The Security Guaranty Fund shall be disbursed as provided in s. 517.141 to any person who is adjudged by a court of competent jurisdiction to have suffered monetary damages as a result of any of the following acts committed by a dealer, salesman, or investment adviser who was licensed under this chapter at the time the act was committed:

(a) A violation of s. 517.07.

(b) A violation of s. 517.301.

(3) Any person shall be eligible to seek recovery from the Security Guaranty Fund if:

(a) Such person has received final judgment in a court of competent jurisdiction in any action wherein the cause of action was based on a violation of those sections in subsection (2).

(b) Such person has caused to be issued a writ of execution upon such judgment and the officer executing the same has made a return showing that no personal or real property of the judgment debtor liable to be levied upon in satisfaction of the judgment shall be part of the regular license fee and shall be transferred to or deposited in the Security Guaranty Fund. If the fund at any time exceeds $250,000, collection of special fees for this fund shall be discontinued at the end of that license year, and such special fees shall not be reimposed unless the fund is reduced below $150,000 by disbursement made in accordance with s. 517.141.

(2) The Security Guaranty Fund shall be disbursed as provided in s. 517.141 to any person who is adjudged by a court of competent jurisdiction to have suffered monetary damages as a result of any of the following acts committed by a dealer, salesman, or investment adviser who was licensed under this chapter at the time the act was committed:

(a) A violation of s. 517.07.

(b) A violation of s. 517.301.

(3) Any person shall be eligible to seek recovery from the Security Guaranty Fund if:

(a) Such person has received final judgment in a court of competent jurisdiction in any action wherein the cause of action was based on a violation of those sections in subsection (2).

(b) Such person has caused to be issued a writ of execution upon such judgment and the officer executing the same has made a return showing that no personal or real property of the judgment debtor liable to be levied upon in satisfaction of the judgment shall be part of the regular license fee and shall be transferred to or deposited in the Security Guaranty Fund. If the fund at any time exceeds $250,000, collection of special fees for this fund shall be discontinued at the end of that license year, and such special fees shall not be reimposed unless the fund is reduced below $150,000 by disbursement made in accordance with s. 517.141.

(2) The Security Guaranty Fund shall be disbursed as provided in s. 517.141 to any person who is adjudged by a court of competent jurisdiction to have suffered monetary damages as a result of any of the following acts committed by a dealer, salesman, or investment adviser who was licensed under this chapter at the time the act was committed:

(a) A violation of s. 517.07.

(b) A violation of s. 517.301.
can be found or that the amount realized on the sale of the judgment debtor's property pursuant to such execution was insufficient to satisfy the judgment;

(c) Such person has made all reasonable searches and inquiries to ascertain whether the judgment debtor possesses real or personal property or other assets subject to being sold or applied in satisfaction of the judgment, and by his search he has discovered no property or assets or he has discovered property and assets and has taken all necessary action and proceedings for the application thereof to the judgment, but the amount thereby realized was insufficient to satisfy the judgment;

(d) Such person has applied any amounts recovered from the judgment debtor, or from any other source, to the damages awarded by the court; and,

(e) The act for which recovery is sought occurred on or after January 1, 1979.

(4) Any person who files an action that may result in the disbursement of funds from the Security Guaranty Fund pursuant to the provisions of s. 517.141 shall give written notice to the department as soon as practicable after such action has been filed. The failure to give such notice shall not bar a payment from the Security Guaranty Fund if all of the conditions specified in subsection (3) are satisfied.

History.--s. 5, ch. 78-435; ss. 8, 15, ch. 79-381; s. 5, ch. 80-254; ss. 2, 3, ch. 81-318.

1 Note.--Repealed effective October 1, 1990, by s. 2, ch. 81-318, and scheduled for review pursuant to s. 11.61 in advance of that date.

'517.141 Payment from the fund.--

(1) Any person who meets all of the conditions prescribed in s. 517.131 may apply to the department for payment to be made to such person from the Security Guaranty Fund in the amount equal to the unsatisfied portion of such person's judgment or $10,000, whichever is less, but only to the extent and amount reflected in the judgment as being actual or compensatory damages.

(2) Upon receipt by the claimant of the payment from the Security Guaranty Fund, the claimant shall assign any additional right, title, and interest in the judgment, to the extent of such payment, to the department.

(3) Payments for claims shall be limited in the aggregate to $100,000, regardless of the number of claimants involved, against any one dealer, salesman, or investment adviser. If the total claims exceed the aggregate limit of $100,000, the department shall pro-rate the payment based upon the ratio that the person's claim bears to the total claims filed.

(4) If at any time the money in the Security Guaranty Fund is insufficient to satisfy any valid claim or portion thereof, the department shall satisfy such unpaid claim or portion thereof as soon as a sufficient amount of money has been deposited in or transferred to the fund. When there is more than one unsatisfied claim outstanding, such claims shall be paid in the order in which the claims were filed with the department.

(5) All payments and disbursements made from the Security Guaranty Fund shall be made by the Treasurer upon a voucher signed by the Comptroller, as head of the department, or such agent as he may designate.

History.--s. 5, ch. 78-435; s. 5, ch. 80-254; ss. 2, 3, ch. 81-318.

Note.--Repealed effective October 1, 1990, by s. 2, ch. 81-318, and scheduled for review pursuant to s. 11.61 in advance of that date.

'517.151 Investments of the fund.--The funds of the Security Guaranty Fund shall be invested by the Treasurer under the same limitations as other state funds, and the interest earned thereon shall be deposited to the credit of the fund and available for the same purpose as other moneys deposited in the Security Guaranty Fund.

History.--s. 5, ch. 78-435; s. 5, ch. 80-254; ss. 2, 3, ch. 81-318.

Note.--Repealed effective October 1, 1990, by s. 2, ch. 81-318, and scheduled for review pursuant to s. 11.61 in advance of that date.

'517.161 Revocation, denial, or suspension of registration of dealer, investment adviser, or salesman.--

(1) Registration under s. 517.12 may be denied or any registration granted may be revoked or suspended by the department if the department determines that such applicant or registrant:

(a) Has violated any provision of this chapter or any rule or order made hereunder;

(b) Has made a material false statement in the application for registration;

(c) Has been guilty of a fraudulent act in connection with any sale of securities, has been or is engaged or is about to engage in making fictitious or pretended sales or purchases of any such securities, or has been or is engaged or is about to engage in any practice or sale of securities which is fraudulent or in violation of the law;

(d) Has made any misrepresentation or false statement to, or concealed any essential or material fact from, any person in the sale of a security to such person.

(e) Has failed to account to persons interested for all money and property received;

(f) Has not delivered, after a reasonable time, to persons entitled thereto securities held or agreed to be delivered by dealer, broker, or investment adviser, as and when paid, and due to be delivered;

(g) Is selling or offering for sale securities through any salesman not registered in compliance with the provisions of this chapter;

(h) Has demonstrated his unworthiness to transact the business of dealer, investment adviser, or salesman:

(i) Is, in the case of the dealer or investment adviser, insolvent;

(j) Has been convicted of, or entered a plea of nolo contendere to, a crime against the laws of this state or any other state or of the United States involving moral turpitude or fraudulent or dishonest dealing, or has had a final judgment entered against him in a civil action upon grounds of fraud, embezzlement, misrepresentation, or deceit; or

(k) Is of bad business repute.

(2) The payment of any amount from the Security Guaranty Fund in settlement of a claim or in satisfaction of a judgment against a licensee shall constitute prima facie grounds for the revocation of the license of such licensee.

(3) In the event the department determines to deny an application or revoke a registration, it shall enter a final order with its findings on the register of dealers and salesmen; and denial, suspension, or revocation of the registration of a dealer or investment
adviser shall also suspend or revoke the registration of all his salesmen.

(4) It shall be sufficient cause for denial of an application or revocation of registration, in the case of a partnership, corporation, or unincorporated association, if any member of the partnership or any officer or director of the corporation or association has been guilty of any act or omission which would be cause for denying or revoking the registration of an individual dealer, investment adviser, or salesman.

(5) The department may deny any request to terminate or withdraw any application or registration if the department shall believe that an act which would be grounds for denial, suspension, or revocation under this chapter has been committed.

History.-s. 5, ch. 78-435; s. 5, ch. 80-254; s. 393, ch. 81-259; s. 2, 3, ch. 81-318.

Note.-Repealed effective October 1, 1990, by s. 2, ch. 81-318, and scheduled for review pursuant to s. 11.61 in advance of that date.

1517.171 Burden of proof.—It shall not be necessary to negate any of the exemptions provided in this chapter in any complaint, information, indictment, action, or proceeding brought under this chapter; and the burden of establishing the right to any exemption shall be upon the party claiming the benefit of such exemption.

History.-s. 5, ch. 78-435; s. 5, ch. 80-254; s. 394, ch. 81-259; ss. 2, 3, ch. 81-318.

Note.-Repealed effective October 1, 1990, by s. 2, ch. 81-318, and scheduled for review pursuant to s. 11.61 in advance of that date.

1517.181 Escrow agreement.—

(1) If the statement containing information as to securities to be registered, as provided for in s. 517.081, shall disclose that any such securities or any securities senior thereto shall have been or shall be intended to be issued for any patent right, copyright, trademark, process, formula, or goodwill; for organization or promotion fees or expenses; or for goodwill or going-concern value or other intangible assets, then the amount and nature thereof shall be fully set forth, and the department may require that such securities or issued in payment of such patent right, copyright, trademark, process, formula, or goodwill; for organization or promotion fees or expenses; or for goodwill or going-concern value or other intangible assets shall be delivered in escrow to the department or other depository satisfactory to the department under an escrow agreement. The escrow agreement shall be in a form suitable to the department and shall provide for the escrow or impoundment of such securities for a reasonable length of time determined by the department to be in the best interest of other shareholders. The securities subject to escrow shall also include any dividend, cash, or stock that may be paid during the life of the escrow and any stock issued through, or by reason of, any stock split, exchange of shares, recapitalization, merger, consolidation, reorganization, or similar combination or subdivision in substitution for or in lieu of any securities subject to this provision; and in the case of dissolution or insolvency during the time such securities are held in escrow, the owners of such securities shall not participate in the assets until after the owners of all other securities shall have been paid in full.

(2) Any securities held in escrow under this section on November 1, 1978, may be released to the owners thereof upon request, if satisfactory financial data is submitted to the department showing that the issuer is currently operating on sound business principles and has net income in accordance with criteria- implementing rules of the department relating to escrow of securities. At any time, the department may review any existing escrow agreement made under this section and determine that the same may be amended in order to permit a subsequent release of the securities upon terms and conditions which are just and equitable as defined by said rules.

(3) When it shall appear from information available to the department that the issuer of securities held in escrow has been dissolved or disbanded or is defunct or no longer actively engaged in business and such securities are of no value, the department, after giving at least 60 days' notice in at least one newspaper of general circulation and after giving interested parties opportunity for hearing, may enter its order authorizing the destruction of said securities. Any affected escrow agent may rely on such order and shall not be required to determine the validity or sufficiency thereof.

History.-s. 5, ch. 78-435; s. 5, ch. 80-254; ss. 2, 3, ch. 81-318.

Note.-Repealed effective October 1, 1990, by s. 2, ch. 81-318, and scheduled for review pursuant to s. 11.61 in advance of that date.

1517.191 Injunction to restrain violations.—

(1) When it shall appear to the department, either upon complaint or otherwise, that a person has engaged or is about to engage in any act or practice constituting a violation of this chapter or a rule or order hereunder, the department may investigate; and whenever it shall believe from evidence satisfactory to it that any such person has engaged, is engaged, or is about to engage in any act or practice constituting a violation of this chapter or a rule or order hereunder, the department may, in addition to any other remedies, bring action in the name and on behalf of the state against such person and any other person concerned in or in any way participating in or about to participate in such practices or engaging therein or doing any act or acts in furtherance thereof or in violation of this chapter to enjoin such person or persons from continuing such fraudulent practices or engaging therein or doing any act or acts in furtherance thereof or in violation of this chapter. In any such court proceedings, the department may apply for, and on due showing be entitled to have issued, the court's subpoena requiring forthwith the appearance of any defendant and his employees, salesmen, or agents and the production of documents, books, and records that may appear necessary for the hearing of such petition, to testify or give evidence concerning the acts or conduct or things complained of in such application for injunction. In such action, the court's subpoena shall have jurisdiction of the subject matter, and a judgment may be entered awarding such injunction as may be proper.

(2) In addition to all other means provided by law for the enforcement of any temporary restraining order, temporary injunction, or permanent injunction issued in any such court proceedings, the court shall have the power and jurisdiction, upon application of the department, to impound and to appoint a receiver or administrator for the property, assets, and business of the defendant, including, but not limited to,
the books, records, documents, and papers appertaining thereto. Such receiver or administrator, when appointed and qualified, shall have all powers and duties as to custody, collection, administration, winding up, and liquidation of said property and business as shall from time to time be conferred upon him by the court. In any such action, the court may issue orders and decrees staying all pending suits and enjoining any further suits affecting the receiver’s or administrator’s custody or possession of the said property, assets, and business or, in its discretion, may with the consent of the presiding judge of the circuit require that all such suits be assigned to the circuit court judge appointing the said receiver or administrator.

3. In addition to any other remedies provided by this chapter, the department may apply to the court hearing this matter for an order of restitution whereby the defendants in such action shall be ordered to make restitution of those sums shown by the department to have been obtained by them in violation of any of the provisions of this chapter. Such restitution shall, at the option of the court, be payable to the administrative receiver appointed pursuant to this section or directly to the persons whose assets were obtained in violation of this chapter.

History.—s. 5, ch. 78-435; s. 5, ch. 80-254; s. 395, ch. 81-259; ss. 2, 3, ch. 81-318.

*517.201 Investigations; subpoenas; hearings; witnesses.—

1. The department:
   (a) May make investigations within or outside of this state as it deems necessary
   1. To determine whether a person has violated or is about to violate any provision of this chapter or a rule or order hereunder; or
   2. To aid in the enforcement of this chapter.
   (b) May require or permit a person to file a statement in writing, under oath or otherwise as the department determines, as to all the facts and circumstances concerning the matter to be investigated.
   (2) When it is proposed to conduct an investigation, the department may gather evidence in the matter. The department may administer oaths, examine witnesses, and issue subpoenas.

3. Subpoenas for witnesses whose evidence is deemed material to any investigation may be issued by the department under the seal of the department, or by any county court judge or clerk of the circuit court or county court, commanding such witnesses to appear before the department at a time and place to be therein named and to bring such books, records, and documents as may be specified or to submit such books, records, and documents to inspection; and such subpoenas may be served by an authorized representative of the department.

4. When any witness who has been served with a subpoena fails or refuses to be or appear at the time and place named, fails or refuses to answer any lawful questions propounded or produce the books, records, or documents required, or is guilty of disorderly or contumacious conduct at the hearing, the facts shall be made known to a circuit judge of the county who shall forthwith issue an attachment for such witness and cause him to be brought before the judge. Upon appearance, if the witness fails to purge himself of such failure, refusal, or conduct, the judge shall proceed further as in cases of contempt of court; and said witness shall pay the costs of said attachment.

5. Witnesses shall be entitled to the same fees and mileage as they may be entitled by law for attending as witnesses in the circuit court, except where such examination or investigation is held at the place of business or residence of the witness.

6. The material compiled by the department in an investigation under this chapter is confidential until the investigation is complete. The material compiled by the department in an investigation under this chapter remains confidential after the department’s investigation is complete if the department has submitted the material or any part of it to any law enforcement agency for further investigation or for the filing of a criminal prosecution and that agency has not completed its investigation or prosecution.

History.—s. 5, ch. 78-435; s. 5, ch. 80-254; ss. 2, 3, ch. 81-318.

Note.—Repealed effective October 1, 1990, by s. 2, ch. 81-318, and scheduled for review pursuant to s. 11.61 in advance of that date.

*517.211 Remedies available in cases of unlawful sale.—

1. Every sale made in violation of either s. 517.07 or s. 517.12 may be rescinded at the election of the purchaser, and the person making the sale and every director, officer, partner, or agent of or for the seller, if the director, officer, partner, or agent has personally participated or aided in making the sale, shall be jointly and severally liable to the purchaser in an action for rescission, if the purchaser still owns the security, or for damages, if the purchaser has sold the security. No purchaser otherwise entitled shall have the benefit of this subsection who has refused or failed, within 30 days of receipt, to accept an offer made in writing by the seller, if the purchaser has not sold the security, to take back the security in question. To aid in the enforcement of this chapter.

2. Any person purchasing or selling a security in violation of s. 517.07 and every director, officer, partner, or agent of or for the purchaser or seller, if the director, officer, partner, or agent has personally participated or aided in making the sale or purchase, shall be jointly and severally liable to the person selling the security to or purchasing the security from such person in an action for rescission, if the plaintiff still owns the security, or for damages, if the plaintiff has sold the security.

3. In an action for rescission:
   (a) A purchaser may recover the consideration paid for the security, plus interest thereon at the legal rate, less the amount of any income received by
the purchaser on the security upon tender of the security.

(b) A seller may recover the security upon tender of the consideration paid for the security, plus interest at the legal rate, less the amount of any income received by the defendant on the security.

(4) In an action for damages brought by a purchaser of a security, the plaintiff shall recover an amount equal to the difference between:
   (a) The consideration paid for the security, plus interest thereon at the legal rate from the date of purchase; and
   (b) The value of the security at the time it was disposed of by the plaintiff, plus the amount of any income received on the security by the plaintiff.

(5) In an action for damages brought by a seller of a security, the plaintiff shall recover an amount equal to the difference between:
   (a) The value of the security at the time of the complaint, plus the amount of any income received by the defendant on the security; and
   (b) The consideration received for the security, plus interest at the legal rate from the date of sale.

(6) In any action brought under this section, including an appeal, the court shall award reasonable attorneys' fees to the prevailing party unless the court finds that the award of such fees would be unjust.

History.—s. 5, ch. 78-435; s. 9, ch. 79-381; s. 5, ch. 80-254; ss. 5, 6, ch. 81-115; ss. 2, 3, ch. 81-318; s. 3, ch. 82-765. 8 Note.—Repealed effective October 1, 1990, by s. 2, ch. 81-318, and scheduled for review pursuant to s. 11.61 in advance of that date.

517.221 Cease and desist orders.—

(1) The department may issue and serve upon a person a cease and desist order whenever the department has reason to believe that such person is violating, has violated, or is about to violate any provision of this chapter, any rule or order promulgated by the department, or any written agreement entered into with the department.

(2) The cease and desist order shall contain a statement of facts and a notice for a hearing pursuant to s. 120.57.

(3) The department may impose an administrative fine not to exceed $1,000 against any person found to have violated any cease and desist order of the department. All fines collected under this section shall be paid into the State Treasury and credited to the General Revenue Fund.

History.—s. 5, ch. 78-435; ss. 9, 15, ch. 79-381; s. 5, ch. 80-254; ss. 5, 6, ch. 81-115; ss. 2, 3, ch. 81-318; s. 3, ch. 82-765.

517.241 Remedies.—

(1) Any person aggrieved by a final order of the department may have said order reviewed as provided by chapter 120, the Administrative Procedure Act.

(2) Nothing in this chapter shall limit any statutory or common-law right of any person to bring any action in any court for any act involved in the sale of securities or the right of the state to punish any person for any violation of any law.

(3) The same civil remedies provided by laws of the United States for the purchaser or seller of securities under any such laws, in interstate commerce, shall extend also to purchasers or sellers of securities under this chapter.

(4) When not in conflict with the Constitution or laws of the United States, the courts of this state have the same jurisdiction over civil suits instituted in connection with the sale or offer of sale of securities under any laws of the United States as they may have under similar cases instituted under the laws of the state.

History.—s. 5, ch. 78-435; ss. 10, 15, ch. 79-381; s. 5, ch. 80-254; ss. 2, 3, ch. 81-318.

517.301 Fraudulent transactions; falsification or concealment of facts.—It is unlawful and a violation of the provisions of this chapter for any person:

(1) In connection with the offer, sale, or purchase of any security, including any security exempted under the provisions of s. 517.051 and including any security sold in any transaction exempted under the provisions of s. 517.061, directly or indirectly:
   (a) To employ any device, scheme, or artifice to defraud;
   (b) To obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or
   (c) To engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

(2) To publish, give publicity to, or circulate any notice, circular, advertisement, newspaper, article, letter, investment service, communication, or broadcast which, though not purporting to offer a security for sale, describes such security for a consideration received or to be received directly or indirectly from an issuer, underwriter, or dealer, or from an agent or employee of an issuer, underwriter, or dealer, without fully disclosing the receipt, whether past or prospective, of such consideration and the amount thereof.

(3) In any matter within the jurisdiction of the department, to knowingly and willfully falsify, conceal, or cover up, by any trick, scheme, or device, a material fact, make any false, fictitious, or fraudulent statement or representation, or make or use any false writing or document, knowing the same to contain any false, fictitious, or fraudulent statement or entry.

History.—s. 1, ch. 65-102; s. 488, ch. 71-136; s. 3, ch. 72-80; s. 1, ch. 77-457; s. 6, ch. 78-435; ss. 4, 5, ch. 80-254; s. 396, ch. 81-259; ss. 2, 3, ch. 81-318. 8 Note.—Repealed effective October 1, 1990, by s. 2, ch. 81-318, and scheduled for review pursuant to s. 11.61 in advance of that date.

517.302 Penalty.—Whoever violates any of the provisions of this chapter is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. The statute of limitations for prosecution of offenses committed under this chapter shall be 5 years.

History.—s. 1, ch. 65-102; s. 488, ch. 71-136; s. 3, ch. 72-80; s. 1, ch. 77-457; ss. 4, 5, ch. 80-254; s. 397, ch. 81-259; ss. 2, 3, ch. 81-318. 8 Note.—Repealed effective October 1, 1990, by s. 2, ch. 81-318, and scheduled for review pursuant to s. 11.61 in advance of that date.

517.311 False representations; deceptive words; enforcement.—
(1) It is unlawful for any person in issuing or selling any security within the state, including any security exempted under the provisions of s. 517.061 and including any transactions exempted under the provisions of s. 517.061, to misrepresent that such security or company has been guaranteed, sponsored, recommended, or approved by the state or any agency or officer thereof or the United States or any agency or officer thereof.

(2) It is unlawful for any person registered or required to be registered under any section of this chapter, including such persons and issuers within the purview of ss. 517.051 and 517.061, to misrepresent that such person has been sponsored, recommended, or approved, or that his abilities or qualifications have in any respect been passed upon, by the state or any agency or officer thereof or the United States or any agency or officer thereof.

(3) No provision of subsection (1) or subsection (2) shall be construed to prohibit a statement that a person or security is registered under this chapter if such statement is true in fact, and if the effect of such statement of registration is not misrepresented.

(4) This section may be enforced only by the department in an action or proceeding brought under s. 517.191 or s. 517.221.

History.—s. 1, ch. 63-98; ss. 12, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 8, ch. 78-445; ss. 11, 13, ch. 79-381; ss. 4, 5, ch. 80-204; s. 398, ch. 81-259; ss. 2, 3, ch. 81-318.

'Note.—Repealed effective October 1, 1990, by s. 2, ch. 81-318, and scheduled for review pursuant to s. 11.61 in advance of that date.

'517.315 Fees.—All fees and charges of any nature collected by the department pursuant to this chapter, except the fees and charges collected pursuant to s. 517.131, shall be paid into the State Treasury and credited to the General Revenue Fund; and an appropriation shall be made annually of necessary funds for the administration of the provisions of this chapter.

History.—s. 7, ch. 78-445; s. 5, ch. 80-204; ss. 2, 3, ch. 81-318.

'Note.—Repealed effective October 1, 1990, by s. 2, ch. 81-318, and scheduled for review pursuant to s. 11.61 in advance of that date.

'517.32 Exemption from excise tax, certain obligations to pay.—There shall be exempt from all excise taxes imposed by chapter 201 all promissory notes, nonnegotiable notes, and other written obligations to pay money bearing dates subsequent to July 1, 1957, when the maker thereof is a security dealer registered by the department under this chapter and when such promissory note, nonnegotiable note or notes, or other written obligation to pay money shall be for the duration of 30 days or less and secured by pledge or deposit, as collateral security for the payment thereof, security or securities as defined in s. 517.021, provided all excise taxes imposed by chapter 201 shall have been paid upon such collateral security.

History.—s. 1, ch. 57-823; ss. 12, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457; ss. 4, 5, ch. 80-204; s. 398, ch. 81-259; ss. 2, 3, ch. 81-318.

'Note.—Repealed effective October 1, 1990, by s. 2, ch. 81-318, and scheduled for review pursuant to s. 11.61 in advance of that date.

517.313 Destroying certain records; reproduction. (1) The department is authorized to photograph, microphotograph, or reproduce on film or prints documents, records, data, and information of a permanent character.

(2) The department is authorized to destroy any of said documents after audit of the office has been completed for the period embracing the dates of said instruments, after complying with the provisions of chapter 119.
CHAPTER 518

INVESTMENT OF FIDUCIARY FUNDS

518.01 Investments of funds received from Veterans Administration.—Subject to the conditions herein contained, and except as otherwise authorized by law, guardians holding funds received from, or currently in receipt of funds from, the Veterans Administration, to the extent of those funds alone, may invest such funds only in the following:

(1) UNITED STATES GOVERNMENT OBLIGATIONS.—In bonds or other obligations, either bearing interest or sold on a discount basis, of the United States, or the United States Treasury, or those for the payment of the principal and interest of which the faith and credit of the United States is pledged, including such bonds or obligations of the District of Columbia.

(2) BONDS AND OBLIGATIONS OF STATES AND TERRITORIES.—In bonds or other interest-bearing obligations of any state of the United States, or the Territory of Puerto Rico; provided such state or territory has not, within 10 years previous to the date of making such investment, defaulted for more than 90 days in the payment of any part of the principal or interest of any of its bonded indebtedness.

(3) BONDS, AND OTHER OBLIGATIONS OF POLITICAL SUBDIVISIONS WITHIN THE STATE OF FLORIDA.—In bonds or other interest-bearing obligations of any incorporated county, city, town, school district, or road and bridge district located within the state and which has according to the federal census next preceding the date of making the investment, a population of not less than 2,000 inhabitants and for which the full faith and credit of such political subdivision has been pledged; provided, that such political subdivision or its successor through merger, consolidation, or otherwise, has not within 5 years previous to the making of such investment, defaulted for more than 6 months in the payment of any part of the principal or interest of its bonded indebtedness.

(4) BONDS AND OBLIGATIONS OF POLITICAL SUBDIVISIONS LOCATED OUTSIDE THE STATE OF FLORIDA.—In bonds or other interest-bearing obligations of any incorporated county, city, or town located outside of the state, but within another state of the United States, which county, city, or town has, according to the federal census next preceding the date of making the investment, a population of not less than 40,000 inhabitants and the indebtedness of which does not exceed 7 percent of the last preceding valuation of property for the purposes of taxation; provided, that the full faith and credit of such political subdivision shall have been pledged for the payment of the principal and interest of such bonds or obligations, and provided further, that such political subdivision or its successor, through merger, consolidation, or otherwise, has not within 15 years previous to the making of such investment, defaulted for more than 90 days in the payment of any part of the principal or interest of its bonded indebtedness.

(5) BONDS OR OBLIGATIONS OF FEDERAL LAND BANKS AND FARM CREDIT INSTITUTIONS.—In the bonds or other interest-bearing obligations of any federal land bank organized under any Act of Congress enacted prior to June 14, 1937, provided such bank is not in default in the payment of principal or interest on any of its obligations at the time of making the investment; and on any notes, bonds, debentures, or other similar obligations, consolidated or otherwise, issued by farm credit institutions pursuant to the Farm Credit Act of 1971, Pub. L. No. 92-181.

(6) BONDS OF RAILROAD COMPANIES.—

(a) Bonds bearing a fixed rate of interest secured by first mortgage, general mortgage, refunding mortgage, or consolidated mortgage which is a lien on real estate, rights or interest therein, leaseholds, right-of-way, trackage, or other fixed assets; provided, that such bonds have been issued or assumed by a qualified railroad company or guaranteed as to principal and interest by indorsement by a qualified railroad company or guaranteed as to principal and interest by indorsement, which guaranty has been assumed by a qualified railroad company.

(b) In bonds secured by first mortgage upon ter-
minal, depot, or tunnel property, including buildings and appurtenances used in the service or transportation by one or more qualified railroad companies; provided that such bonds have been issued or assumed by a qualified railroad company or guaranteed as to principal and interest by indorsement by a qualified railroad company, or guaranteed as to principal and interest by indorsement, which guaranty has been assumed by a qualified railroad company.

(c) As used in this subsection, the words "qualified railroad company" means a railroad corporation other than a street railroad corporation which, at the date of the investment by the fiduciary, meets the following requirements:

1. It shall be a railroad corporation incorporated under the laws of the United States or of any state or commonwealth thereof or of the District of Columbia.

2. It shall own and operate within the United States not less than 500 miles of standard gauge railroad lines, exclusive of sidings.

3. Its railroad operating revenues derived from the operation of all railroad lines operated by it, including its subsidiary and lines owned or leased by a subsidiary corporation, all of the voting stock of which, except directors' qualifying shares, is owned by it, for its fiscal year next preceding the date of the investment, shall have been not less than $10 million.

4. At no time during its fiscal year in which the investment is made, and its 5 fiscal years immediately prior thereto, shall it have been in default in the payment of any part of the principal or interest owing by it upon any part of its funded indebtedness.

5. In at least 4 of its 5 fiscal years immediately preceding the date of investment, its net income available for fixed charges shall have been at least equal to its fixed charges, and in its fiscal year immediately preceding the date of investment, its net income available for fixed charges shall have been not less than 1 1/4 times its fixed charges.

(d) As used in this subsection, the words "income available for fixed charges" mean the amount obtained by deducting from gross income all items deductible in ascertaining the net income other than contingent income interest and those constituting fixed or contingent income ascertained in the accounting report of common carriers as prescribed by the accounting regulations of the Interstate Commerce Commission.

(e) As used in this subsection, the words "fixed charges" mean rent for leased roads, miscellaneous rents, funded debt interest, and amortization of discount on funded debt.

(7) BONDS OF GAS, WATER OR ELECTRIC COMPANIES.—In bonds issued by, or guaranteed as to principal and interest by, or assumed by, any gas, water, or electric company, subject to the following conditions:

(a) Gas, water, or electric companies by which such bonds are issued, guaranteed, or assumed, shall be incorporated under the laws of the United States or any state or commonwealth thereof or of the District of Columbia.

(b) The company shall be an operating company transacting the business of supplying water, electrical energy, artificial gas, or natural gas for light, heat, power, and other purposes, and provided that at least 75 percent of its gross operating revenue shall be derived from such business and not more than 15 percent of its gross operating revenues shall be derived from any other one kind of business.

(c) The company shall be subject to regulation by a public service commission, a public utility commission, or any other similar regulatory body duly established by the laws of the United States or any state or commonwealth or of the District of Columbia in which such company operates.

(d) The company shall have all the franchises necessary to operate in the territory in which at least 75 percent of its gross revenues are obtained, which franchises shall either be indeterminate permits of, or agreements with, or subject to the jurisdiction of, a public service commission or other duly constituted regulatory body, or shall extend at least 5 years beyond the maturity of the bonds.

(e) The company shall have been in existence for a period of not less than 8 fiscal years, and at no time within the period of 8 fiscal years immediately preceding the date of such investment shall such company have failed to pay punctually and regularly the matured principal and interest of any bond, or assumed or guaranteed bond, the period of life of the company, together with the period of life of any predecessor company, or company from which a major portion of its property was acquired by consolidation, merger, or purchase, shall be considered together in determining such required period.

(f) For a period of 5 fiscal years immediately preceding the date of the investment, net earnings shall have averaged per year not less than 2 times the average annual interest charges on its entire funded debt, applicable to that period and for the last fiscal year preceding the date of investment, such net earnings shall have been not less than 2 times such interest charges for that year.

(g) The bonds of any such company must be part of an issue of not less than $1 million and must be mortgage bonds secured by a first or refunding mortgage upon property owned and operated by the company issuing or assuming them or must be underlying mortgage bonds secured by property owned and operated by the companies issuing or assuming them. The aggregate principle and interest of all the outstanding bonds, shall not exceed 60 percent of the value of the physical property owned, which shall be book value less such reserves for depreciation or retirement, as the company may have established, and subject to the lien of such mortgage or mortgages securing the total mortgage debt. If such mortgage is a refunding mortgage, it must provide for the retirement on or before the date of maturity of all bonds secured by prior liens on the property.

(h) As used in this subsection, the words "gross operating revenues and expenses" mean, respectively, the total amount earned from the operation of, and the total expenses of maintaining and operating, all property owned and operated by, or leased and operated by, such companies, as determined by the system of accounts prescribed by the Public Service Commission or other similar regulatory body having jurisdiction.
(i) As used in this subsection, the words "net earnings" mean the balance obtained by deducting from its gross operating revenues, its operating and maintenance expenses, taxes, other than federal and state income taxes, rentals, and provisions for depreciation, renewals and retirements of the physical assets of the company, and by adding to such balance its income from securities and miscellaneous sources, but not, however, exceeding 15 percent of such balance.

(8) BONDS OF TELEPHONE COMPANIES.—In bonds issued by, or guaranteed as to principal and interest by, or assumed by, any telephone company, subject to the following conditions:

(a) The telephone company by which such bonds are issued shall be incorporated under the laws of the United States and shall be in the business of supplying telephone service in the United States and shall be subject to regulations by the Federal Communications Commission, a public service commission, a public utility commission, or any similar regulatory body duly established by the laws of the United States or of any state or commonwealth or of the District of Columbia in which such company operates.

(b) The company by which such bonds are issued, guaranteed, or assumed shall have been in existence for a period of not less than 8 fiscal years, and at no time within the period of 8 fiscal years immediately preceding the date of such investment shall such company have failed to pay punctually and regularly the matured principal and interest of all its indebtedness, direct, assumed, or guaranteed, but the period of life of the company, together with the period of life of any predecessor company, or company from which a major portion of its property was acquired by consolidation, merger, or purchase, shall be considered together in determining such required period. The company shall file with the Federal Communications Commission, or a public service commission or similar regulatory body having jurisdiction over it, and make public in each year a statement and a report giving the income account covering the previous fiscal year, and a balance sheet showing in reasonable detail the assets and liabilities at the end of the year.

(c) For a period of 5 fiscal years immediately preceding the investment, the net earnings of such telephone company shall have averaged per year not less than twice the average annual interest charges on its outstanding obligations applicable to that period, and for the last fiscal year preceding such investment, such net earnings shall have been not less than twice such interest charges for that year.

(d) The bonds must be part of an issue of not less than $5 million and must be mortgage bonds secured by a first or refunding mortgage upon property owned and operated by the company issuing or assuming them, or must be underlying mortgage bonds similarly secured. As of the close of the fiscal year preceding the date of the investment by the fiduciary, the aggregate principal amount of bonds secured by such first or refunding mortgage, plus the principal amount of all the underlying outstanding bonds, shall not exceed 60 percent of the value of the real estate and tangible personal property owned absolutely, which value shall be book value less such reserves for depreciation or retirement as the company may have established, and subject to the lien of such mortgage, or mortgages, securing the total mortgage debt. If such mortgage is a refunding mortgage, it must provide for the retirement, on or before the date of their maturity, of all bonds secured by prior liens on the property.

(e) As used in this subsection, the words "gross operating revenues and expenses" mean, respectively, the total amount earned from the operation of, and the total expenses of maintaining and operating all property owned and operated by, or leased and operated by, such company as determined by the system of accounts prescribed by the Federal Communications Commission, or any other similar federal or state regulatory body having jurisdiction in the matter.

(f) As used in this subsection, the words "net earnings" mean the balance obtained by deducting from the telephone company's gross operating revenues its operating and maintenance expenses, provision for depreciation of the physical assets of the company, taxes, other than federal and state income taxes, rentals, and miscellaneous charges, and by adding to such balance its income from securities and miscellaneous sources but not, however, to exceed 15 percent of such balance.

(9) FIRST MORTGAGES.—In mortgages signed by one or more individuals or corporations, subject to the following conditions:

(a) If the taking of the mortgages as an investment for any particular trust, estate, or guardianship will not result in more than 40 percent of the then value of the principal of such trust, estate, or guardianship being invested in mortgages.

(b) Within 30 days preceding the taking of a mortgage as an investment, the property encumbered thereby shall be appraised by two or more reputable persons especially familiar with real estate values. The fair market value of the property as disclosed by the appraisal of such persons shall be set forth in a writing dated and signed by them and in such writing they shall certify that their valuation of the property was made after an inspection of the same, including all buildings and other improvements.

(c) The mortgage shall encumber improved real estate located in the state and in or within 5 miles of the corporate limits of a city or town having a population of 2,000 or more, according to the federal census next preceding the date of making any such investment.

(d) The mortgage shall be or become, through the recordation of documents simultaneously filed for record, a first lien upon the property described therein prior to all other liens, except taxes previously levied or assessed but not due and payable at the time the mortgage is taken as an investment.

(e) The mortgage shall secure no indebtedness other than that owing to the executor, administrator, trustee, or guardian taking the same as an investment.

(f) The amount of the indebtedness secured by the mortgage shall not exceed 60 percent of the fair market value, as determined in accordance with the
provisions of paragraph (b), of the property encumbered or to be encumbered by said mortgage.

(g) If the amount of the indebtedness secured by the mortgage is in excess of 50 percent of the fair market value, as determined in accordance with the provisions of paragraph (b), of the property encumbered or to be encumbered by said mortgage, then the mortgage shall require principal payments, at annual or more frequent intervals, sufficient to reduce by or before the expiration of 3 years from the date the mortgage is taken as an investment, the unpaid principal balance secured thereby to an amount not in excess of 50 percent of the fair market value of said property, as determined in accordance with the provisions of paragraph (b).

(h) The mortgage shall contain a covenant of the mortgagor to keep insured at all times the improvements on the real estate encumbered by said mortgage, with loss payable to the mortgagee, against loss and damage by fire, in an amount not less than the unpaid principal secured by said mortgage.

(i) Provided, however, that the foregoing limitations and requirements shall not apply to notes or bonds secured by mortgage or trust deed insured by the Federal Housing Administrator, and that notes or bonds secured by mortgage or trust deed insured by the Federal Housing Administrator are declared to be eligible for investment under the provisions of this chapter.

(10) LIFE INSURANCE.—Annuity or endowment contracts with any life insurance company which is qualified to do business in the state under the laws thereof.

(11) SAVINGS AND LOAN ASSOCIATIONS.—In savings share or investment share accounts of any federal savings and loan association chartered under the laws of the United States, and doing business in this state, and in the shares of any Florida building and loan association which is a member of the Federal Home Loan Bank System.

(12) SAVINGS ACCOUNTS, CERTIFICATES OF DEPOSIT; STATE AND NATIONAL BANKS.—In savings accounts and certificates of deposit in any bank chartered under the laws of the United States and doing business in this state, and in savings accounts and certificates of deposit in any bank chartered under the laws of this state.

(13) SAVINGS SHARE ACCOUNTS, CREDIT UNIONS.—In savings share accounts of any credit union chartered under the laws of the United States and doing business in this state, and savings share accounts of any credit union chartered under the laws of this state, provided the credit union is insured under the federal share insurance program or an approved state share insurance program.

In determining the qualification of investments under the requirements of this section, published statements of corporations or statements of reliable companies engaged in the business of furnishing statistical information on bonds may be used.

History.—s. 1, ch. 71320, 1953; CGL 1936 Supp. 7100(1); s. 1, ch. 17960, 1937; s. 2, ch. 28154, 1953.

518.07 Investment of fiduciary funds in bonds, etc., issued by Federal Housing Administrator.—

(1) Banks, savings banks, trust companies, building and loan associations, insurance companies, and guardians holding funds received from or currently in receipt of funds from the Veterans Administration to the extent of those funds alone, may:

(1) Make such loans and advances of credit, and purchases of obligations representing loans and advances of credit, as are insured by the Federal Housing Administrator, and obtain such insurance;

(2) Make such loans secured by real property or leasehold as the Federal Housing Administrator insures or makes a commitment to insure, and obtain such insurance.

History.—s. 1, ch. 17130, 1935; CGL 1936 Supp. 7100(4); s. 1, ch. 17960, 1937; s. 2, ch. 28154, 1953.

518.08 Applicability of laws requiring security, etc.—No law of this state requiring security upon which loans or investments may be made, prescribing the nature, amount, or form of such security, prescribing or limiting interest rates upon loans or investments, limiting investments of capital or deposits, or prescribing or limiting the period for which loans or investments may be made, shall be deemed to apply to loans or investments made pursuant to ss. 518.06 and 518.07.

History.—s. 3, ch. 17130, 1935; CGL 1936 Supp. 7100(3).

518.09 Housing bonds legal investments and security.—The state and all public officers, municipal corporations, political subdivisions, and public bodies, all banks, bankers, trust companies, savings banks and institutions, building and loan associations, savings and loan associations, investment companies, all insurance companies, insurance associations, and other persons carrying on an insurance business, and guardians holding funds received from
or currently in receipt of funds from the Veterans Administration to the extent of those funds alone may legally invest any sinking funds, moneys, or other funds belonging to them or within their control in any bonds or other obligations issued by a housing authority pursuant to the Housing Authorities Law of this state (chapter 421), or issued by any public housing authority or agency in the United States, when such bonds or other obligations are secured by a pledge of annual contributions to be paid by the United States Government or any agency thereof; and such bonds and other obligations shall be authorized security for all public deposits; it being the purpose of this section to authorize any person, associations, political subdivisions, bodies, and officers, public or private, to use any funds owned or controlled by them, including, but not limited to, sinking, insurance, investment, retirement, compensation, pension, and trust funds, and funds held on deposit, for the purchase of any bonds or other obligations; provided, however, that nothing contained in this section shall be construed as relieving any person from any duty of exercising reasonable care in selecting securities.

History.—s. 6, ch. 28154, 1953.

518.115 Power of fiduciary or custodian to deposit securities in a central depository.—
(1)(a) Notwithstanding any other provision of law, any fiduciary, as defined in s. 518.10, holding securities, as defined in s. 678.102(1), in its fiduciary capacity, and any bank or trust company holding securities as a custodian, managing agent, or custodian for a fiduciary, is authorized to deposit or arrange for the deposit of such securities in a clearing corporation, as defined in s. 678.102(3). When such securities are so deposited, certificates representing securities of the same class of the same issuer may be merged and held in bulk in the name of the nominee of such clearing corporation with any other such securities deposited in such clearing corporation by any person, regardless of the ownership of such securities, and certificates of small denomination may be merged into one or more certificates of larger denomination.

(b) A bank or a trust company so depositing securities with a clearing corporation shall be subject to such rules and regulations with respect to the making and maintenance of such deposit as, in the case of state-chartered institutions, the Department of Banking and Finance and, in the case of national banking associations, the Comptroller of the Currency may from time to time issue.

(c) Notwithstanding any other provisions of law, ownership of, and other interests in, the securities credited to such account may be transferred by entries on the books of said clearing corporation without physical delivery of the securities, and the records of such fiduciary and the records of such bank or trust company acting as custodian, managing agent, or custodian for a fiduciary shall at all times show the name of the party for whose account the securities are so deposited. A bank or trust company acting as custodian for a fiduciary shall, on demand by the fiduciary, certify in writing to the owner or to such party, the amount of such securities deposited by such bank or trust company in such clearing corporation for the account of such fiduciary. A fiduciary shall, on demand by any party to a judicial proceeding for the settlement of such fiduciary's account or on demand by the attorney for such party, certify in writing to such party the securities deposited by such fiduciary in such clearing corporation for its account as such fiduciary.

(2) This section shall apply to any fiduciary holding securities in its fiduciary capacity, and to any bank or trust company holding securities as a custodian, managing agent, or custodian for a fiduciary, acting on June 18, 1974, or who thereafter may act regardless of the date of the agreement, instrument, or court order by which it is appointed and regardless of whether or not such fiduciary, custodian, managing agent, or custodian for a fiduciary owns capital stock of such clearing corporation.

History.—s. 1, ch. 74-224.

518.116 Power of certain fiduciaries and custodians to deposit United States Government and agency securities with a Federal Reserve bank.—
(1)(a) Notwithstanding any other provision of law, any fiduciary, as defined in s. 518.10, which is a bank or trust company holding securities in its fiduciary capacity, and any bank or trust company hold-
ing securities as a custodian, managing agent, or custodian for a fiduciary, is authorized to deposit or arrange for the deposit with the Federal Reserve Bank in its district of any securities, the principal and interest of which the United States Government or any department, agency, or instrumentality thereof has agreed to pay or has guaranteed payment, to be credited to one or more accounts on the books of said Federal Reserve Bank in the name of such bank or trust company to be designated fiduciary or safekeeping accounts, to which account other similar securities may be credited.

(b) A bank or trust company so depositing securities with a Federal Reserve Bank shall be subject to such rules and regulations with respect to the making and maintenance of such deposits as, in the case of state-chartered institutions, the Department of Banking and Finance and, in the case of national banking associations, the Comptroller of the Currency may from time to time issue. The records of such bank or trust company shall at all times show the ownership of the securities held in such account.

(c) Notwithstanding any other provision of law, ownership of, and other interests in, the securities credited to such account may be transferred by entries on the books of said Federal Reserve Bank without physical delivery of any securities. The records of such fiduciary and the records of such bank or trust company acting as custodian, managing agent, or custodian for a fiduciary shall at all times show the name of the party for whose account the securities are so deposited. A bank or a trust company acting as custodian for a fiduciary shall, on demand by the fiduciary, certify in writing to the fiduciary the securities so deposited by such bank or trust company with such Federal Reserve Bank for the account of such fiduciary. A fiduciary shall, on demand by any party to a judicial proceeding for the settlement of such fiduciary's account or on demand by the attorney for such party, certify in writing to such party the securities deposited by such fiduciary with such Federal Reserve Bank for its account as such fiduciary.

(2) This section shall apply to any fiduciary and to any bank or trust company holding securities as custodian, managing agent, or custodian for a fiduciary acting on June 18, 1974, or who thereafter may act regardless of the date of the instrument or court order by which it is appointed.

History.—s. 2, ch. 74-224; s. 1, ch. 77-174.

518.12 Instrument creating or defining powers, duties of fiduciary not affected.—Nothing contained in ss. 518.10-518.14 shall be construed as conferring a power of sale upon any fiduciary not possessing such power or as authorizing any departure from, or variation of, the express terms or limitations set forth in any will, agreement, court order, or other instrument creating or defining the fiduciary's duties and powers, but the terms "legal investment" or "authorized investments" or words of similar import, as used in any such instrument, shall be taken to mean any investment which is permitted by the terms of s. 518.11.

History.—s. 7, ch. 28154, 1953; s. 1, ch. 57-120.

518.13 Authority of court to permit deviation from terms of instrument creating trust not affected.—Nothing contained in ss. 518.10-518.14 shall be construed as restricting the power of a court of proper jurisdiction to permit a fiduciary to deviate from the terms of any will, agreement, or other instrument relating to the acquisition, investment, reinvestment, exchange, retention, sale, or management of fiduciary property.

History.—s. 8, ch. 28154, 1953.

518.14 Scope of ss. 518.10-518.13.—The provisions of ss. 518.10-518.13 shall govern fiduciaries acting under wills, agreements, court orders, and other instruments now existing or hereafter made.

History.—s. 9, ch. 28154, 1953.

518.15 Bonds or motor vehicle tax anticipation certificates legal investments and security.—Notwithstanding any restrictions on investments contained in any law of this state, the state and all public officers, municipal corporations, political subdivisions, and public bodies, all banks, bankers, trust companies, savings banks, building and loan associations, savings and loan associations, investment companies, and all persons carrying on an insurance business, and all executors, administrators, guardians, trustees, and other fiduciaries may legally invest any sinking funds, moneys or other funds belonging to them or within their control in bonds or motor vehicle anticipation certificates issued under authority of s. 18, Art. XII of the State Constitution of 1885 as adopted by s. 9(d) of Art. XII, 1968 revised constitution, and the additional provisions of s. 9(d), and such bonds or certificates shall be authorized security for all public deposits, including, but not restricted to, deposits as authorized in s. 18.10, it being the purpose of this act to authorize any person, firm or corporation, association, political subdivision, body, and officer, public or private, to use any funds owned or controlled by them, including, but not limited to, sinking, insurance, investment, retirement, compensation, pension, and trust funds, and funds held on deposit, for the purchase of any such bonds or anticipation certificates, up to the amount as authorized by law to be invested in any type of security, including United States Government Bonds.

History.—s. 1, ch. 27990, 1953; s. 31, ch. 69-216.

518.151 Higher education bonds or certificates legal investments and security.—Notwithstanding any restrictions on investments contained in any law of this state, the state and all public officers, municipal corporations, political subdivisions, and public bodies, all banks, bankers, trust companies, savings banks, building and loan associations, savings and loan associations, investment companies, and all persons carrying on an insurance business, and all executors, administrators, guardians, trustees, and other fiduciaries may legally invest any sinking funds, moneys or other funds belonging to them or within their control in higher education bonds or certificates issued under authority of s. 19, Art. XII of the State Constitution of 1885 or of s. 9(a), Art. XII of the constitution as revised in 1968, as amended, and such bonds or certificates shall be authorized security for all public deposits, including, but not restricted to,
deposits as authorized in s. 18.10, it being the purpose of this act to authorize any person, firm or corporation, association, political subdivision, body, and officer, public or private, to use any funds owned or controlled by them, including, but not limited to, sinking, insurance, investment, retirement, compensation, pension, and trust funds, and funds held on deposit, for the purchase of any such bonds or certificates, up to the amount as authorized by law to be invested in any type of security, including United States Government Bonds.

History.—s. 1, ch. 65-443; s. 140, ch. 71-355.

518.152 Puerto Rican bonds or obligations, legal investments and securities.—Notwithstanding any restrictions on investments contained in any law of this state, all public officers and public bodies of the state, counties, municipal corporations, and other political subdivisions; all banks, bankers, trust companies, savings banks, building and loan associations, savings and loan associations, investment companies, and other persons carrying on a banking business; all insurance companies, insurance associations and other persons carrying on an insurance business; all persons holding in trust any pension, health and welfare, and vacation funds; all administrators, executors, guardians, trustees, and other fiduciaries of any public, quasi-public, or private fund or estate; and all other persons authorized to invest in bonds or other obligations may legally invest any sinking funds, moneys, or other funds belonging to them or within their control in bonds or other obligations issued by the Commonwealth of Puerto Rico, its agencies, authorities, instrumentalities, municipalities, or political subdivisions, provided such agency, authority, instrumentality, municipality, or political subdivision has not, within 5 years prior to the making of such investment, defaulted for more than 90 days in the payment of any part of the principal or interest of its bonded indebtedness. Such bonds or obligations shall be authorized security for all public deposits, including, but not restricted to, deposits as authorized in s. 18.10, it being the purpose of this section to authorize any person, firm, corporation, association, political subdivision, body, and officer, public or private, to use any funds owned or controlled by them, including, but not limited to, sinking, insurance, investment, retirement, compensation, pension and trust funds, and funds held on deposit, for the purchase of any such bonds or obligations up to the amount as authorized by law to be invested in any type of security, including United States Government Bonds. However, nothing contained in this section shall be construed as relieving any person from any duty of exercising reasonable care in selecting securities.

History.—s. 1, ch. 72-136.

518.16 Chapter cumulative.—This chapter shall be cumulative to any other law providing for investments and security for public deposits.

History.—s. 2, ch. 27990, 1953; s. 11, ch. 28154, 1953.
CHAPTER 520
RETAIL INSTALLMENT SALES

PART I MOTOR VEHICLES SALES FINANCE (ss. 520.01-520.13)

PART II RETAIL INSTALLMENT SALES (ss. 520.30-520.42)

PART III INSTALLMENT SALES FINANCE (ss. 520.50-520.57)

PART IV HOME IMPROVEMENT SALES AND FINANCE (ss. 520.60-520.992)

PART I
MOTOR VEHICLES SALES FINANCE

520.01 Motor Vehicles Sales Finance Act.
520.02 Definitions.
520.03 Licensing of sales finance companies and retail installment seller required.
520.04 Denial, suspension, or revocation of license.
520.041 Books, accounts, and records.
520.05 Investigations and complaints.
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520.10 Refinancing retail installment contract.
520.12 Penalties.
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520.02 Definitions.—In this act, unless the context or subject matter otherwise requires:

(1) "Cash price" means the price at which a seller, in the ordinary course of business, offers to sell for cash the property or service that is the subject of the transaction. At the seller's option, the term "cash price" may include the price of accessories, services related to the sale, service contracts, and taxes and fees for license, title, and registration of the motor vehicle. The term "cash price" does not include any finance charge.

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

(3) "Down payment" means the amount, including the value of any property used as a trade-in, paid to a seller to reduce the cash price of goods or services purchased in a credit sale transaction. A deferred portion of a down payment may be treated as part of the down payment if it is payable not later than the due date of the second otherwise regularly scheduled payment and is not subject to a finance charge.

(4) "Finance charge" means the cost of consumer credit as a dollar amount. The term "finance charge" includes any charge payable directly or indirectly by the buyer and imposed directly or indirectly by the seller as an incident to or a condition of the extension of credit. The term "finance charge" does not include any charge of a type payable in a comparable cash transaction.

(5) "Holder" of a retail installment contract means the retail seller of the motor vehicle under the contract or, if the contract is purchased by a sales finance company or another assignee, the sales finance company or other assignee.

(6) "Mobile home" means a structure, transportable in one or more sections, which is 8 body feet or more in width and is 32 body feet or more in length, designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning, and electrical systems contained therein.

(7) "Motor vehicle" means any device or vehicle, including automobiles, motorcycles, motor trucks, trailers, mobile homes, and all other vehicles operated over the public highways and streets of this state and propelled by power other than muscular power, but excluding traction engines, road rollers, implements of husbandry and other agricultural equipment, and vehicles which run only upon a track.

(8) "Official fees" means fees and charges prescribed by law which actually are or will be paid to public officials for determining the existence of, or for perfecting, releasing, or satisfying, any security related to the credit transaction, or the premium payable for any insurance in lieu of perfecting any security interest otherwise required by the creditor in connection with the transaction, if the premium does not exceed the fees and charges which would otherwise be payable to public officials.

(9) "Person" means an individual, partnership, corporation, association, and any other group however organized.

(10) "Retail buyer" or "buyer" means a person who buys a motor vehicle from a retail seller not principally for the purpose of resale, and who executes a retail installment contract in connection therewith or a person who succeeds to the rights and obligations of such person.

(11) "Retail installment contract" or "contract" means an agreement, entered into in this state, pursuant to which the title to, or a lien upon the motor vehicle, which is the subject matter of a retail installment transaction, is retained or taken by a retail sell-
er from a retail buyer as security, in whole or in part, for the buyer's obligation. The term includes a conditional sales contract and a contract for the bailment or leasing of a motor vehicle by which the bailee or lessee contracts to pay as compensation for its use a sum substantially equivalent to or in excess of its value and by which it is agreed that the bailee or lessee is bound to become, or for no further or a merely nominal consideration, has the option of becoming, the owner of the motor vehicle upon full compliance with the provisions of the contract.

(12) "Retail installment seller" or "seller" means a person engaged in the business of selling motor vehicles to retail buyers in retail installment transactions.

(13) "Retail installment transaction" means any transaction evidenced by a retail installment contract entered into between a retail buyer and a retail seller wherein the retail buyer buys a motor vehicle from the retail seller at a deferred payment price payable in one or more deferred installments.

(14) "Sales finance company" means a person engaged in the business of purchasing retail installment contracts from one or more retail sellers. The term includes, but is not limited to, a bank, trust company, or industrial bank, if so engaged. The term does not include the pledge of an aggregate number of such contracts to secure a bona fide loan thereon.

(15) Words in the singular include the plural and vice versa.

\[ \text{History.--s. 1, ch. 57-799; s. 1, ch. 59-456; s. 1, ch. 61-117; s. 1, ch. 63-101; s. 12, ch. 69-100; s. 1, ch. 69-370; s. 1, ch. 69-377; s. 1, ch. 74-168; s. 1, ch. 74-457; s. 1, ch. 80-256; s. 1, ch. 81-102; s. 1, ch. 81-259; s. 2, ch. 81-318; s. 1, ch. 83-123.} \]

\[ \text{Note.--Repealed effective October 1, 1990, by s. 2, ch. 81-318, and scheduled for review pursuant to s. 11.61 in advance of that date.} \]

\[ \text{520.031 Licensing of sales finance companies and retail installment seller required.} \]

(1) No person shall engage in the business of a retail installment seller or of a sales finance company in this state without a license therefor as provided in this act; however, no bank, trust company, savings and loan association, or industrial bank authorized to do business in this state shall be required to obtain a license under this act.

(2) The application for such license shall be in writing and in the form prescribed by the department. The application shall contain the name of the applicant; date of incorporation, if incorporated; the address where the business is or is to be conducted and similar information as to any branch office of the applicant; the name and residence address of the owner or partners or, if a corporation or association, of the directors, trustees, and principal officers, and such other pertinent information as the department may require.

(3) The license fee for each calendar year or part thereof shall be $50 for the principal place of business of each sales finance company, and $50 for the principal place of business of each retail installment seller of motor vehicles. A separate license fee of like amount shall be paid for each branch of the sales finance company and for each branch of a retail installment seller of motor vehicles maintained in this state; however, if a retail installment seller of motor vehicles has more than one location in the same county, only one license fee shall be paid for that county. Fees collected under this section shall be deposited in the State Treasury in the Regulatory Trust Fund under the Division of Finance of the department.

(4) Each license shall specify the location of the office or branch and must be conspicuously displayed thereon. In case such location is changed, the department shall endorse the change of location on the license without charge.

(5) Upon the filing of such application, and the payment of said fee, the department shall issue a license to the applicant to engage in the business of a sales finance company or of a retail installment seller under and in accordance with the provisions of this act for a period which shall expire the last day of December next following the date of its issuance. Such license shall not be transferable or assignable. No license shall transfer any business provided for by this act under any other name. Licenses shall be issued only to persons of good moral character, or to corporations whose officers are of good moral character.

\[ \text{History.--s. 2, ch. 57-799; s. 2, ch. 59-456; s. 12, 35, ch. 69-106; s. 128, ch. 71-335; s. 1, ch. 73-276; s. 3, ch. 73-339; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 150, ch. 79-164; s. 2, ch. 80-256; s. 2, ch. 81-318; s. 1, ch. 83-70.} \]

\[ \text{Note.--Repealed effective October 1, 1990, by s. 2, ch. 81-318, and scheduled for review pursuant to s. 11.61 in advance of that date.} \]

\[ \text{520.04 Denial, suspension, or revocation of license.} \]

(1) A license may be denied, suspended, or revoked by the department on the following grounds:

(a) Material misstatement in an application for license;

(b) Failure to comply with any provision of this act relating to retail installment contracts or any rule of the department;

(c) Defrauding any retail buyer to the buyer's damage;

(d) Fraudulent misrepresentation, circumvention, or concealment by the licensee, through whatever subterfuge or device, of any of the material particulars or the nature thereof required to be stated or furnished to the retail buyer under this act.

(2) If a licensee is a firm, association, or corporation, it shall be sufficient cause for the suspension or revocation of a license that any officer, director, or trustee of a licensed firm, association, or corporation, or any member of a licensed partnership, has so acted or failed to act as would be cause for suspending or revoking a license to such party as an individual. Each licensee shall be responsible for the acts of any or all of his employees while acting as his agent, if such licensee after actual knowledge of said acts retained the benefits, proceeds, profits, or advantages accruing from said acts or otherwise ratified said acts.

(3) No revocation, suspension, or surrender of any license shall impair or affect the obligation of any lawful retail installment contract acquired previously thereto by the licensee.

\[ \text{History.--s. 3, ch. 57-799; s. 3, ch. 59-456; s. 7, ch. 63-612; s. 12, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 7, ch. 78-99; ss. 3, 21, ch. 80-256; s. 2, ch. 81-318.} \]

\[ \text{Note.--Repealed effective October 1, 1990, by s. 2, ch. 81-318, and scheduled for review pursuant to s. 11.61 in advance of that date.} \]

\[ \text{520.041 Books, accounts, and records.} \]

(1) Every licensee shall maintain, at the place of
business designated in the license certificate, such books, accounts and records of the business conducted under the license issued for such place of business as will enable the department to determine whether the business of the licensee contemplated by this act is being operated in accordance with the provisions of this act.

(2) A licensee, operating two or more licensed places of business in this state, may maintain the general control 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 control records are maintained.

(3) All books, accounts and records of licensees, including any cards used in a card system, shall be preserved for examination or investigation by the department for at least 2 years after making the final entry therein.

(4) The department is hereby authorized and empowered to prescribe the minimum information to be shown in the books, accounts and records of licensees so that such records will enable the department to determine compliance with the provisions of this act.

History.—s. 4, ch. 59-456; s. 12, ch. 68-106; s. 5, ch. 76-108; s. 1, ch. 77-457; s. 21, ch. 80-296; s. 2, ch. 81-318; s. 2, ch. 82-70.

'520.06 Powers of department.—
(1) The department shall have power to issue subpoenas to compel the attendance of witnesses and the production of documents, papers, books, records, and other evidence before it in any matter over which it has jurisdiction, control, or supervision pertaining to this act. The department shall have the power to administer oaths and affirmations to any person whose testimony is required.

(2) If any person shall refuse to obey any such subpoena, or to give testimony, or to produce evidence as required thereby, any judge of the circuit court may, upon application and proof of such refusal, make an order awarding process of subpoena, or subpoena duces tecum, out of the circuit court, for the witness to appear before the department and to give testimony, and to produce evidence as required thereby.

520.05 Investigations and complaints.—
(1) The department shall, at intermittent periods, conduct investigations and examinations of any licensee or other person as it deems necessary to determine compliance with this act. For such purposes, it may examine the books, accounts, records, and other documents or matters of any licensee or other person. It shall have the power to compel the production of all relevant books, records, and other documents and materials relative to an examination or investigation. Such investigations and examinations shall not be made more often than once during a year unless the department has reason to believe the licensee is not complying with the provisions of this act. The expenses of the department incurred in such examination of a sales finance company licensed under this act shall be $100 per day or fraction thereof for each examiner and shall be paid by such sales finance company so examined within 30 days after demand therefor by the department. For examinations conducted outside the state, such company shall also pay the traveling expense and per diem subsistence allowance provided for state employees in s. 112.061. Expense thus recovered shall be deposited in the State Treasury in the Regulatory Trust Fund under the Division of Finance of the department as a reimbursement to the annual appropriation for expenses incurred in enforcing this act. The licensee shall not be required to pay a per diem fee and expenses of an examination which shall consume more than 30 man-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.

(2) Any retail buyer having reason to believe that this act relating to his retail installment contract has been violated may file with the department a written complaint setting forth the details of such alleged violations and the department upon receipt of such complaint, may inspect the pertinent books, records, letters and contracts of the licensee and of the retail seller involved, relating to such specific written complaint.

History.—s. 4, ch. 57-799; s. 5, ch. 59-456; s. 12, ch. 69-106; s. 138, ch. 77-457; s. 2, ch. 73-276; s. 3, ch. 73-320; s. 1, ch. 76-108; s. 1, ch. 77-457; s. 21, ch. 80-296; s. 2, ch. 81-318; s. 2, ch. 82-70.

'520.07 Requirements and prohibitions as to retail installment contracts.—
(1)(a) A retail installment contract shall be in writing, shall be signed by both the buyer and the seller, and shall be completed as to all essential provisions prior to the signing of the contract by the buyer.

(b) The printed portion of the contract, other than instructions for completion, shall be in at least 6-point type. The contract shall contain:
1. A specific statement that liability insurance coverage for bodily injury and property damage
caused to others is not included, if that is the case; and
2. The following notice in substantially this form:

Notice to the Buyer

a. Do not sign this contract before you read it or if it contains any blank spaces.
   b. You are entitled to an exact copy of the contract you sign. Keep it to protect your legal rights.

(c) The seller shall deliver to the buyer, or mail to him at his address shown on the contract, a copy of the contract signed by the seller. Before the transaction is consummated, a copy of the retail installment contract, or a separate statement by which the disclosures required by this section are made and on which the buyer and seller are identified, shall be delivered to the buyer. Until the seller has delivered or mailed to the buyer a copy of the retail installment contract, a buyer who has not received delivery of the motor vehicle shall have the right to rescind his agreement and to receive a refund of all payments made and return of all goods traded in to the seller on account of or in contemplation of the contract or, if such goods cannot be returned, the value thereof. Any acknowledgment by the buyer of delivery of a copy of the contract, if contained in the contract, shall appear directly above or adjacent to the buyer's signature.

(d) The contract shall contain the names of the seller and the buyer, the place of business of the seller, the residence or place of business of the buyer as specified by the buyer, and a description of the motor vehicle including its make, year model, and model and identification number or marks.

2. The contract shall contain the following:
   a. Amount financed.—The “amount financed,” using that term, and a brief description such as “the amount of credit provided to you or on your behalf.” The amount financed is calculated by:
      1. Determining the cash price, and subtracting any down payment;
      2. Adding any other amounts that are financed by the creditor and that are not part of the finance charge; and
   b. Finance charge.—The “finance charge,” using that term, and a descriptive explanation such as “the dollar amount the credit will cost you.”
   c. Total of payments.—The “total of payments,” using that term, and a descriptive explanation such as “the amount you will have paid when you have made all scheduled payments.”
   d. Total sale price.—In a credit sale, the “total sale price,” using that term, and a descriptive explanation, including the amount of any down payment, such as “the total price of your purchase on credit, including your down payment of $____.” The total sale price is the sum of the cash price, the items described in subparagraph (a)2., and the finance charge disclosed under paragraph (b).

Except for the requirement in subsection (3) that a separate written itemization of the amount financed be provided, a contract which complies with the federal Truth in Lending Act, 15 U.S.C. ss. 1601 et seq., as now existing or hereafter amended, and any regulations which are issued, or which may be issued, thereunder shall be deemed to comply with the provisions of this subsection and subsection (3). However, in any proceeding to enforce the provisions of this section, the burden of alleging and proving compliance with the federal Truth in Lending Act shall be on the party claiming compliance.

3. The seller shall provide a separate written itemization of the amount financed, which itemization shall disclose the following:
   a. The cash price;
   b. The amount of down payment;
   c. The difference between the amounts disclosed under paragraphs (a) and (b);
   d. The amounts, if any, included for insurance and other benefits, specifying the types of coverages and benefits; and
   e. Any taxes and official fees not included in the cash price.

The itemization required by this subsection may appear on a disclosure statement separate from all other material, or it may be placed on the same document with the contract or other information so long as it is clearly and conspicuously segregated from everything else on the document.

4. The amount, if any, included for insurance which may be purchased by the holder of the retail installment contract may not exceed the applicable premiums chargeable in accordance with the rates filed with the Department of Insurance. If dual interest insurance on the motor vehicle is purchased by the holder, it shall, within 30 days after execution of the retail installment contract, send or cause to be sent to the buyer a policy or policies or certificate of insurance, written by an insurance company authorized to do business in this state, clearly setting forth the amount of the premium, the kind or kinds of insurance, the coverages, and all the terms, exceptions, limitations, restrictions, and conditions of the contract or contracts of insurance. Nothing in this act shall impair or abrogate the right of a buyer, as defined herein, to procure insurance from an agent and company of his own selection as provided by the insurance laws of this state; and nothing contained in this act shall modify, amend, alter, or repeal any of the insurance laws of the state, including any such laws enacted by the 1957 Legislature.

5. If any insurance is canceled, or the premium adjusted, unearned insurance premiums refunded received by the holder and any unearned finance charges thereon shall, at his option, be credited to the final maturing installments of the contract or paid to the buyer, except to the extent applied toward payment for similar insurance protecting the interests of the buyer and the holder, or either of them. The finance charge on the original transaction shall be separately computed:
   a. With the premium for the canceled or adjusted insurance included in the “amount financed”; and
   b. With the premium for the canceled insurance or the amount of the premium adjustment excluded from the “amount financed.”
The difference in the finance charge resulting from these computations shall be the portion of the finance charge attributable to the canceled or adjusted insurance and the unearned portion thereof shall be determined by the use of the rule of 78ths. "Cancellation of insurance" occurs at such time as the seller or holder receives from the insurance carrier the proper refund of unearned insurance premiums.

(5) The holder may, if the contract or refinancing agreement so provides, collect a delinquency and collection charge on each installment in default for a period not less than 10 days in an amount not in excess of 5 percent of each installment or $5, whichever is less. In addition to such delinquency and collection charge, the contract may provide for the payment of reasonable attorney’s fees when such contract is referred for collection to an attorney not a salaried employee of the holder of the contract plus the court costs.

(7) No retail installment contract shall be signed by any party thereto when it contains blank spaces to be filled in after it has been signed, except that, if delivery of the motor vehicle is not made at the time of the execution of the contract, the identifying numbers or marks of the motor vehicle or similar information and the due date of the first installment may be inserted in the contract after its execution. The buyer’s written acknowledgment, conforming to the requirements of paragraph (1)(c), of delivery of a copy of a contract shall be presumptive proof of such delivery, that the contract when signed did not contain any blank spaces except as herein provided, and of compliance with this section in any action or proceeding by or against the holder of the contract.

(8) Upon written request from the buyer, the holder of a retail installment contract shall give or forward to the buyer a written statement of the dates and amounts of payments and the total amount unpaid under such contract. A buyer shall be given a written receipt for any payment when made in cash.

(9) The department may order a seller to refund any amounts assessed and charged on a retail installment contract which exceed the maximum charges provided by this act or by rules of the department.

(10) The holder may agree in any retail installment contract to the contrary, any buyer who has not more than 4 years prior to the year in which the sale is made—$15 per $100 per year.

(11) Class 4. Any used motor vehicle not in Class 2 or Class 3 and designated by the manufacturer by a year model more than 4 years prior to the year in which the sale is made—$17 per $100 per year.

(2) Such finance charge shall be computed on the amount financed as determined under s. 520.07(2) on contracts payable in successive monthly payments substantially equal in amount. Such finance charge may be computed on the basis of a full month for any fractional-month period in excess of 10 days. A minimum finance charge of $25 may be charged on any retail installment transaction.

(3) When a retail installment contract provides for unequal or irregular installment payments, the finance charge may be at a rate which will provide the same yield as is permitted on monthly payment contracts under subsections (1) and (2) having due regard for the schedule of payment.

(4) Any sales finance company may purchase or acquire or agree to purchase or acquire from any seller any contract on such terms and conditions as may be agreed upon between them. Filing of the assignment, notice to the buyer of the assignment, and any requirement that the holder maintain dominion over the payments or the motor vehicle if repossessed shall not be necessary to the validity of a written assignment of a contract as against creditors, subsequent purchasers, pledgees, mortgagees and lien claimants of the seller. Unless the buyer has notice of the assignment of his contract, payment thereunder made by the buyer to the last known holder of such contract shall be binding upon all subsequent holders.

(5) The provisions of subsection (1) shall not apply to any retail installment contract for the purchase of a mobile home, titled as a motor vehicle, when such contract is entered into pursuant to a commitment to guarantee issued by the Veterans Administration or pursuant to a commitment to insure issued by the Federal Housing Administration.


(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) of this subsection, completed prior to July 1, 1979.

History.—s. 7, ch. 57-799; s. 7, ch. 59-456; s. 3, ch. 69-370; s. 3, ch. 77-435; s. 1, ch. 77-457; s. 218, ch. 79-400; ss. 5, 21, ch. 80-256; s. 2, ch. 81-312; s. 1, ch. 82-283; s. 1, ch. 83-136; s. 3, ch. 84-195; s. 3, ch. 85-356; s. 1, ch. 86-288; s. 2, ch. 87-139; s. 1, ch. 88-168; s. 2, ch. 89-132.

1Note.—Repealed effective October 1, 1990, by s. 3, ch. 90-425.

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of any retail installment contract and in so paying such debt shall receive a refund credit thereon for such anticipation of payments. The amount of such refund shall represent at least as great a proportion of the finance charge after first deducting from such finance charge an acquisition cost of $25, as the sum of the monthly balances after the month in which prepayment is made, bears to the sum of all the monthly balances under the schedule of payments in the contract. Where the amount of credit is less than $1 no refund need be made.

History.—s. 8, ch. 57-799; s. 4, ch. 69-370; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 21, ch. 80-256; s. 2, ch. 81-318.

Note.—Repealed effective October 1, 1990, by s. 2, ch. 81-318, and scheduled for review pursuant to s. 11.61 in advance of that date.

520.10 Refinancing retail installment contract.—The holder of a contract, upon request by the buyer, may extend the scheduled due date of all or any part of any installment or installments or deferred payment or payments or renew or restate the unpaid balance of such contract, the amount of the installments, and the time schedule therefor and may collect for such extension, deferral, renewal, or restatement a finance charge computed as follows: In the event the unpaid balance of the contract is extended, deferred, renewed, or restated, the holder must compute the finance charge on such amount, by adding to the unpaid balance the cost for insurance and other benefits incidental to the refinancing plus any accrued delinquency and collection charges, after deducting any refund which may be due the buyer at the time of the renewal or restatement by prepayment pursuant to s. 520.09, at the rate of the finance charge specified in s. 520.08(1) and by reclassifying the motor vehicle by its then year model, for the term of the refinancing agreement, but otherwise subject to the provisions of this act governing computation of the original finance charge. The provisions of this act relating to minimum finance charges under s. 520.08(2) and acquisition costs under the refund schedule in s. 520.09 shall not apply in calculating refinancing charges on the contract extended, deferred, renewed, or restated. If all unpaid installments are deferred, the holder may, at his election, charge and collect for such deferment an amount equal to the difference between the refund required for payment in full under s. 520.09 as of the scheduled due date of the first deferred installment and the refund required for prepayment in full as of 1 month prior to said date times the number of months in which no scheduled payment is made.

History.—s. 9, ch. 57-799; s. 8, ch. 69-404; s. 5, ch. 69-370; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 21, ch. 80-256; s. 2, ch. 81-318.

Note.—Repealed effective October 1, 1990, by s. 2, ch. 81-318, and scheduled for review pursuant to s. 11.61 in advance of that date.

520.125 Variable rate contracts; mobile homes.—A retail installment contract for the purchase of a mobile home may provide that the rate of finance charge may be adjusted at stated regular intervals, in which case the retail installment contract shall be subject to the following provisions:

1. Instead of a finance charge computed on the amount financed as determined under s. 520.07(2), the seller may compute the finance charge on the unpaid balance as it changes from time to time or by any other method. For purposes of this section, the class of any mobile home as provided in s. 520.08(1) shall be determined at the time of execution of the retail installment contract.

2. Adjustments to the rate of finance charge shall be based on changes in the monthly average yield on United States Treasury securities adjusted to a constant maturity of 5 years as published in the Federal Reserve Bulletin, multiplied by 2.0, hereinafter referred to as "index value."

3. Adjustments to the rate of finance charge may not exceed 0.5 percent a year for any 6-month period. The maximum net adjustment over the term of the retail installment contract shall not exceed 5 percentage points.

4. The rate of finance charge shall not increase or decrease during the 6-month period beginning with the date of execution of the contract, and at least 6 months shall elapse between changes.

5. Subject to the limitations prescribed by this section, the adjustments, either up or down, to the rate of finance charge on each rate adjustment date shall be equal:

(a) For an initial adjustment, to the difference between the index value for the third calendar month preceding the month in which the rate adjustment date falls and the index value for the month of execution of the retail installment contract.

(b) For an adjustment after the initial adjustment, to the difference between the index value for the third calendar month preceding the month in which the rate adjustment date falls and the index value for the third calendar month preceding the month in which the immediately preceding rate adjustment date fell.

6. Any increase in the rate of finance charge permitted by this section may be waived at the option of the seller. Subject to the limitations prescribed in this section, decreases in the rate of finance charge are mandatory in the event of any decrease in the index value exceeding one-tenth of 1 percentage point in any 6-month period. If the seller and buyer agree in writing to impose limitations on the frequency or amount of increases in the rate of finance charge which are less than the limitations permitted under this section, those limitations shall also apply to decreases in the rate of finance charge. Changes in the index value which are not taken may be accumulated by the seller in the case of an increase, and shall be accumulated in the case of a decrease, and taken at a later time or used to offset other changes. Such changes shall not exceed the maximum provided in subsection (3).

7. By written agreement of the buyer and the seller, adjustments to the rate of finance charge may result in changes in the amount of any installment.
payment due under the retail installment contract, changes in the term of the retail installment contract, or a combination of such changes in amount and term.

(8) The buyer and seller may agree in writing that any change in the amount of any installment payment which results from an adjustment to the rate of finance charge may be applied to any subsequent installment payments. Adjustments to the amount of the installment payments may be made less frequently than adjustments to the rate of finance charge.

(9) The seller shall send the buyer written notice of any rate adjustment by United States mail, at least 35 days prior to the effective date of the new rate. The notification shall include:

(a) The current and new rates of finance charge.

(b) The index value used to calculate the new change in the rate of finance charge and the index value for the month of execution of the retail installment contract or, for adjustments after the initial adjustment, the index value used for the immediately preceding rate adjustment.

(c) The amounts of new installment payments and the remaining maturity.

(d) For increases and decreases in the rate of finance charge, the method by which the changes will be applied.

(10) The disclosures required pursuant to ss. 520.07(2) and (7) shall be made on the basis of the rate of finance charge in effect at the time the disclosure is made assuming that each scheduled payment is made on the date it is due and in the scheduled amount.

(11) The provisions of s. 520.09 which prescribe a refund credit upon prepayment in full before the maturity of the unpaid balance of the retail installment contract shall not be applicable in a simple interest contract.

(12) In the event the unpaid balance of the retail installment contract is extended, deferred, renewed, or restated, the holder may compute the refinance charge in accordance with the provisions of this section.

520.30 Short title.—This act may be cited as "The Retail Installment Sales Act."

520.31 Definitions.—Unless otherwise clearly indicated by the context, the following words when used in this act, for the purposes of this act, shall have the meanings respectively ascribed to them in this section:

(1) “Cash price” means the price at which the seller, in the ordinary course of business, offers to sell for cash the property or service that is the subject of the transaction. At the seller’s option, the term “cash price” may include the price of accessories, services related to the sale, service contracts, and taxes. The term “cash price” does not include any finance charge.

(2) “Department” means the Department of Banking and Finance.

(3) “Down payment” means the amount, including the value of any property used as a trade-in, paid to a seller to reduce the cash price of goods or services purchased in a credit sale transaction. A deferred portion of a down payment may be treated as part of the down payment if it is payable not later than the due date of the second otherwise regularly scheduled payment and is not subject to a finance charge.

(4) “Finance charge” means the cost of consumer credit as a dollar amount. The term “finance charge” includes any charge payable directly or indirectly by the buyer and imposed directly or indirectly by the seller as an incident to or a condition of the extension of credit. The term “finance charge” does not include any charge of a type payable in a comparable cash transaction.

(5) “Goods” means all personalty when purchased primarily for personal, family, or household use, including certificates or coupons issued by a retail seller, exchangeable for personalty or services, but not including other choses in action, personality sold for commercial or industrial use, money, motor vehicles or construction, mining, or quarrying equipment. The term “goods” includes such personalty which is furnished or used, at the time of sale or subsequently, in the modernization, rehabilitation, repair, alteration, improvement, or construction of real property as to become a part thereof, whether or not severable therefrom.

(6) “Motor vehicle” means any device or vehicle operated over the public highways and streets of this state and propelled by other than muscular power, but does not include traction engines, road rollers,
implements of husbandry and other agricultural equipment, and such vehicles as run only upon a track.

“Official fees” means fees and charges prescribed by law which actually are or will be paid to public officials for determining the existence of, or for perfecting, releasing, or satisfying, any security related to the credit transaction or the premium payable for any insurance in lieu of perfecting any security interest otherwise required by the creditor in connection with the transaction, if the premium does not exceed the fees and charges which would otherwise be payable to public officials.

(8) “Retail buyer” or “buyer” means a person who buys goods or obtains services from a retail seller in a retail installment transaction and not principally for the purpose of resale.

(9) “Retail installment contract” or “contract” means an instrument or instruments reflecting one or more retail installment transactions entered into in this state pursuant to which goods or services may be paid for in installments. It does not include a revolving account or an instrument reflecting a sale pursuant thereto.

(10) “Retail installment transaction” or “transaction” means a contract to sell or furnish or the sale of or the furnishing of goods or services by a retail seller to a retail buyer pursuant to a retail installment contract or a revolving account.

(11) “Retail seller” or “seller” means a person regularly engaged in, and whose business consists to a substantial extent of, selling goods to a retail buyer. The term also includes a seller who regularly grants credit to retail buyers pursuant to a retail installment contract or a revolving account.

(12) “Revolving account” or “account” means an instrument or instruments prescribing the terms of retail installment transactions which may be made thereafter from time to time pursuant thereto, under which the buyer’s total unpaid balance thereunder, whenever incurred, is payable in installments over a period of time and under the terms of which a finance charge is to be computed in relation to the buyer’s unpaid balance from time to time.

“Services” means work, labor, or other personal services furnished for personal, family, or household use, including but not limited to the delivery, installation, servicing, repair, or improvement of goods, and includes such work or labor furnished in connection with the modernization, rehabilitation, repair, alteration, improvement, or construction upon or in connection with real property.

(13) “Services” means work, labor, or other personal services furnished for personal, family, or household use, including but not limited to the delivery, installation, servicing, repair, or improvement of goods, and includes such work or labor furnished in connection with the modernization, rehabilitation, repair, alteration, improvement, or construction upon or in connection with real property.

“Services” means work, labor, or other personal services furnished for personal, family, or household use, including but not limited to the delivery, installation, servicing, repair, or improvement of goods, and includes such work or labor furnished in connection with the modernization, rehabilitation, repair, alteration, improvement, or construction upon or in connection with real property.

(1) A license may be denied, suspended or revoked by the department on the following grounds:

(a) Material misstatement in application for license;

(b) Willful failure to comply with any provision of this act relating to retail installment contracts;

(c) Defrauding any retail buyer to the buyer’s damage;

(d) Fraudulent misrepresentation, circumvention or concealment by the licensee through whatever subterfuge or device of any of the material particulars or the nature thereof required to be stated or furnished to the retail buyer under this act.

(2) If the licensee is a firm, association, or corporation, it shall be sufficient cause for the suspension or revocation of a license that any officer, director or trustee of a licensed firm, association or corporation, or any member of a licensed partnership, has so acted or failed to act as would be cause for suspending or revoking a license to such party as an individual.

Each licensee shall be responsible for the acts of any person regularly engaged by him, the employees of any person regularly engaged by him, or all of his employees while acting as his agent, if such licensee after actual knowledge of said acts received the benefits, proceeds, profits or advantages thereby levied and assessed upon every such retail seller, for each store located and operated within this state for the conduct of such business, an annual license fee in the sum of $25.

(2) Licenses shall be issued under and in accordance with the provisions of this act for a period which will expire December 31 next following the date of issuance. Such licenses shall not be transferable or assignable. Each license shall specify the location of the office or branch and must be conspicuously displayed there. In case such location is changed, the department shall endorse the change of location on the license without charge. No licensee shall transact any business provided for by this act under any other name. Licenses shall be issued only to persons of good moral character or to corporations whose officers are of good moral character. Fees collected under this section shall be deposited in the State Treasury in the Regulatory Trust Fund under the Division of Finance of the department.

(3) The provisions of this section shall not be construed to require the obtaining of a license or payment of a fee by any retail seller whose retail installment transactions are limited to the honoring of credit cards issued by dealers in oil and petroleum products licensed to do business in this state.

1520.331 Denial, suspension or revocation of licenses.—

(1) A license may be denied, suspended or revoked by the department on the following grounds:

(a) Material misstatement in application for license;

(b) Willful failure to comply with any provision of this act relating to retail installment contracts;

(c) Defrauding any retail buyer to the buyer’s damage;

(d) Fraudulent representation, circumvention or concealment by the licensee through whatever subterfuge or device of any of the material particulars or the nature thereof required to be stated or furnished to the retail buyer under this act.

(2) If the licensee is a firm, association, or corporation, it shall be sufficient cause for the suspension or revocation of a license that any officer, director or trustee of a licensed firm, association or corporation, or any member of a licensed partnership, has so acted or failed to act as would be cause for suspending or revoking a license to such party as an individual.

Each licensee shall be responsible for the acts of any one of his employees while acting as his agent, if such licensee after actual knowledge of said acts received the benefits, proceeds, profits or advantages thereby levied and assessed upon every such retail seller, for each store located and operated within this state for the conduct of such business, an annual license fee in the sum of $25.

(2) Licenses shall be issued under and in accordance with the provisions of this act for a period which will expire December 31 next following the date of issuance. Such licenses shall not be transferable or assignable. Each license shall specify the location of the office or branch and must be conspicuously displayed there. In case such location is changed, the department shall endorse the change of location on the license without charge. No licensee shall transact any business provided for by this act under any other name. Licenses shall be issued only to persons of good moral character or to corporations whose officers are of good moral character. Fees collected under this section shall be deposited in the State Treasury in the Regulatory Trust Fund under the Division of Finance of the department.

(3) The provisions of this section shall not be construed to require the obtaining of a license or payment of a fee by any retail seller whose retail installment transactions are limited to the honoring of credit cards issued by dealers in oil and petroleum products licensed to do business in this state.
§520.332 Power of department; rules.—The department may adopt such rules as it may deem necessary in the administration of this part, which are not inconsistent with the provisions of this part.

History.—s. 4, ch. 63-547; ss. 12, 35, ch. 69-106; s. 3, ch. 70-108; s. 1, ch. 77-457; s. 3, ch. 80-556; s. 2, ch. 81-318.

Note.—Repealed effective October 1, 1990, by s. 2, ch. 81-318, and scheduled for review pursuant to s. 11.05 in advance of that date.

§520.34 Retail installment contracts.—

(1)(a) A retail installment contract shall be in writing, shall be signed by both the buyer and the seller, and shall be completed as to all essential provisions prior to the signing of the contract by the buyer.

(b) The printed portion of the contract, other than instructions for completion, shall be in at least 6-point type. The contract shall contain the following notice in substantially this form:

Notice to the Buyer

a. Do not sign this contract before you read it or if it contains any blank spaces.
b. You are entitled to an exact copy of the contract you sign. Keep it to protect your legal rights.

c. The seller shall deliver to the buyer, or mail to him at his address shown on the contract, a copy of the contract signed by the seller. Before the transaction is consummated, a copy of the retail installment contract, or a separate statement by which the disclosures required by this section are made and on which the buyer and seller are identified, shall be delivered to the buyer, except as provided in s. 520.35. Any acknowledgment by the buyer of delivery of a copy of the contract, if contained in the contract, shall appear directly above or adjacent to the buyer's signature.

d. The contract shall contain the names of the seller and the buyer, the place of business of the seller, the residence or place of business of the buyer as specified by the buyer, and a description of the goods.

(2) The contract shall contain the following:

(a) *Amount financed.* —The "amount financed," using that term, and a brief description such as "the amount of credit provided to you or on your behalf."

The amount financed is calculated by:

1. Determining the cash price, and subtracting any down payment.
2. Adding any other amounts that are financed by the creditor and that are not part of the finance charge; and

(b) *Finance charge.* —The "finance charge," using that term, and a brief description such as "the dollar amount the credit will cost you."

(c) *Total of payments.* —The "total of payments," using that term, and a descriptive explanation such as "the amount you will have paid when you have made all scheduled payments."

(d) *Total sale price.* —In a credit sale, the "total sale price," using that term, and a descriptive explanation, including the amount of any down payment, such as "the total price of your purchase on credit, including your down payment of $_____." The total sale price is the sum of the cash price, the items described in subparagraph (a)2., and the finance charge disclosed under paragraph (b).

Except for the requirement in subsection (3) that a separate written itemization of the amount financed be provided, a contract which complies with the federal Truth in Lending Act, 15 U.S.C. ss. 1601 et seq., as now existing or hereafter amended, and any regulations which are issued, or which may be issued, thereunder shall be deemed to comply with the provisions of this subsection and subsection (3). However, in any proceeding to enforce the provisions of this section, the burden of alleging and proving compliance with the federal Truth in Lending Act shall be on the party claiming compliance.

(3) The seller shall provide a separate written itemization of the amount financed, which itemization shall disclose the following:

(a) *The cash price;*

(b) *The amount of down payment;*

(c) *The difference between the amounts disclosed under paragraphs (a) and (b);*

(d) *The amounts, if any, included for insurance and other benefits, specifying the types of coverages and benefits; and*

(e) *Any taxes and official fees not included in the cash price.*

The itemization required by this subsection may appear on a disclosure statement separate from all other material, or it may be placed on the same document with the contract or other information so long as it is clearly and conspicuously segregated from everything else on the document.

(4) The maximum number of payments and the amount and date of each payment need not be separately listed if the payments are stated in terms of a series of scheduled amounts and if the amount of the final payment does not exceed the scheduled amount of any preceding installment; in such case, the amount of the scheduled final payment may be stated as the remaining unpaid balance. The initial date for the payment of the first installment may be a calendar date or may refer to the time of delivery or installation.

(5) A retail installment contract need not be contained in a single document. If the contract is contained in more than one document, then one such document may be an original document applicable to purchases of goods or services to be made by the retail buyer from time to time, and in such case such document, together with the sales slip, account book, or other written statement relating to each purchase, shall set forth all of the information required by subsections (1) and (2) and shall constitute the retail installment contract for each such purchase.

(6) (a) Notwithstanding the provisions of any other law, the seller under a retail installment contract may charge, receive, and collect a finance charge which may not exceed the following rates: On the amount financed, $12 per $100 per year. The finance charge under this subsection shall be computed on the amount financed of each transaction, as determined under paragraph (2)(f), on contracts payable in successive monthly payments substantially equal in amount, for the period from the date of the contract to and including the date when the final installment thereunder is payable. When a retail installment contract is payable other than in successive
monthly payments substantially equal in amount, the finance charge may be at the effective rates pro-
vided in this subsection, having due regard for the schedule of payments. The finance charge may be computed on the basis of a full month for any fractional-month period in excess of 10 days. Notwith-
standing the other provisions of this subsection, a minimum finance charge not in excess of the follow-
ing amounts may be charged on any retail installment contract: $12 on any retail installment contract involving an initial amount financed of $50 or more; $7.50 on a retail installment contract involving an initial amount financed of more than $25 and less than $50; and $5 on a retail installment contract in-
volving an initial amount financed of $25 or less.

(b) The holder of a retail installment contract, upon request by the buyer, may extend the scheduled due date of all or any part of any installment. In the event the unpaid time balance of the contract is ex-
tended, the holder may, at his election, charge and collect for each 30 days' extension an amount not to exceed one-twelfth of the maximum allowable rate per annum of the unpaid balance at the time of ex-
tension.

(7) No retail installment contract shall be signed by the buyer when it contains blank spaces to be filled in after it has been signed, except that, if delivery of the goods or services is not made at the time of execution of the contract, the identification of the goods or services and the due date of the first install-
ment may be left blank and later inserted by the seller in the contract. When the amount of such refund credit is less than $1, no refund need be made.

(8) The seller under any retail installment con-
tract shall, within 30 days after execution of the con-
tract, deliver or mail or cause to be delivered or 
mailed to the buyer at his aforesaid address any poli-
cy or policies of insurance the seller has agreed to 
purchase in connection therewith, or in lieu thereof a 
certificate or certificates of such insurance. The 
amount, if any, included for insurance shall not ex-
ceed the applicable premiums chargeable in accord-
ance with the rates filed with the Department of In-
surance; if any such insurance is canceled, unearned 
insurance premium refunds and any unearned fi-
nance charges thereon received by the holder shall, at 
his option, be credited to the final maturing install-
ments of the contract or paid to the buyer, except to 
the extent applied toward the payment for similar in-
surance protecting the interests of the seller and the 
holder or either of them. The finance charge on the 
original transaction shall be separately computed:

(a) With the premium for the canceled or adjust-
ed insurance included in the "amount financed"; and

(b) With the premium for the canceled insurance 
or the amount of the premium adjustment excluded 
from the "amount financed."

The difference in the finance charge resulting from 
these computations shall be the portion of the fi-
nance charge attributable to the canceled or adjusted 
insurance, and the unearned portion thereof shall be 
determined by the use of the rule of 78ths. "Cancella-
tion of insurance" occurs at such time as the seller or 
holder receives from the insurance carrier the proper 
refund of unearned insurance premiums. Nothing in 
this act shall impair or abrogate the right of a buyer 
to procure insurance from an agent and company of 
his own selection, as provided by the insurance laws 
of this state; and nothing contained in this act shall 
modify, alter, or repeal any of the insurance laws of 
this state. The term "holder," as used in this act, 
means the retail seller unless the seller has assigned 
the contract, in which case "holder" means the assign-
ee of such contract at the time of the determination.

(9) If the buyer so requests, the holder shall give 
the buyer a written statement of the dates and amounts 
of payments and the total amount, if any, unpaid thereunder. Such a statement shall be supplied by the holder 
within 30 days after the holder receives a request by the buyer, the holder shall supply such 
statement to the buyer at a charge not exceeding $1 
each additional statement so supplied.

(10) After payment of all sums for which the buyer 
is obligated under a contract, and upon written de-
mand made by the buyer, the holder shall deliver or 
mail to the buyer, at his last known address, one or 
more good and sufficient instruments to acknowledge 
payment in full and shall release all security in the 
goods.

(11) Notwithstanding the provisions of any retail 
installment contract to the contrary, any buyer may 
prepay in full at any time before maturity the unpaid 
balance of any retail installment contract and in so 
paying such unpaid balance shall receive a refund 
credit thereon for such anticipation of payments. The 
amount of such refund shall represent at least as 
great a proportion of the finance charge, after first 
subtracting therefrom an acquisition cost of $15, as 
the sum of the monthly balances beginning 1 month after 
prepayment is made bears to the sum of all the 
monthly balances under the schedule of payments in 
the contract. When the amount of such refund credit 
less than $1, no refund need be made.

(12) The seller shall not request or accept a cer-
cificate of completion signed by the buyer prior to the 
actual delivery of the goods and completion of the 
work to be performed under the contract. 

(13) As amended by chapter 79-592, Laws of 
Florida, chapter 79-274, Laws of Florida, which 
amended subsection (5):

(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 le-
teral right to require full payment or to adjust or modi-
ify the interest rate, by renewal, assumption, reaffir-
mation, 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
'520.35 Revolving accounts.—

(1) Every revolving account shall be in writing and shall be completed prior to the signing thereof by the retail buyer. The printed portion other than instructions for completion of any revolving account executed on or after January 1, 1960, shall be in at least 6-point type. Any such account shall contain the names of the seller and the buyer, the place of business of the seller, the residence or place of business of the buyer as specified by the buyer, and substantially the following notice:

"Notice to the Buyer

a. Do not sign this before you read it or if it contains any blank spaces.
b. You are entitled to an exact copy of the paper you sign."

A copy of any such account executed on or after January 1, 1960, shall be delivered or mailed to the retail buyer by the retail seller prior to the date on which the first payment is due thereunder. Any acknowledgment by the buyer of delivery of a copy of the account shall be in a size equal to at least 6-point type and, if contained in the account, shall appear directly below the signature of the buyer. No account executed on or after January 1, 1960, shall be signed by the buyer when it contains blank spaces to be filled in after it has been signed. The buyer's acknowledgment, conforming to the requirements of this subsection, of delivery of a copy of an account, shall be presumptive proof, in any action or proceeding, of such delivery and that the account, when signed, did not contain any blank spaces as herein provided. All accounts executed on or after January 1, 1960, shall state the amount of, or the method of calculating, the finance charge to be charged and paid pursuant thereto or shall state that a finance charge not in excess of that permitted by this law will be charged and paid pursuant to such account.

(2) (a) The retail seller under a revolving account shall promptly supply the retail buyer thereunder with a statement as of the end of each monthly period (which need not be a calendar month), or other regular period agreed upon by the retail seller and the retail buyer, in which there is any unpaid balance thereunder, which statement shall recite the following:

1. The unpaid balance under the account at the beginning and end of the period, using the terms "previous balance" and "new balance";
2. Unless otherwise furnished by the retail seller to the retail buyer by sales slip, memorandum, or otherwise, the cash price and the date of each purchase during the period;
3. The payments made by the retail buyer to the retail seller and any other credits to the retail buyer during the period, using the terms "payments" and "credits";
4. The amount of the finance charge itemized, if any.

The items need not be stated in the sequence or order set forth in this paragraph, and additional items may be included to explain the computations made in determining the amount to be paid by the retail buyer.

(b) A statement which complies with the federal Truth in Lending Act, 15 U.S.C. ss. 1601 et seq., as now existing or hereafter amended, and any regulations which are issued, or which may be issued, thereafter shall be deemed to comply with the provisions of this subsection. However, in any proceeding to enforce the provisions of this section, the burden of alleging and proving compliance with the federal Truth in Lending Act shall be on the party claiming compliance.

(3) Notwithstanding the provisions of any other law, the seller under a revolving account may charge, receive, and collect a finance charge which may not exceed 15 cents per $10 per month, computed on all amounts unpaid thereunder from month to month (which need not be a calendar month) or other regular period; however, if the amount of the finance charge so computed shall be less than $1 for any such month, a finance charge of $1 for any such month may be charged, received, and collected. If the regular period is other than such monthly period or if the unpaid amount is less than or greater than $5, the permitted finance charge shall be computed proportionately. Such finance charge may be computed for all unpaid balances within a range of not in excess of $10 on the basis of the median amount within such range, if as so computed such finance charge is applied to all unpaid balances within such range.

History.—s. 6, ch. 59-414; s. 10, ch. 69-370; s. 9, ch. 76-168; s. 1, ch. 77-457; s. 6, ch. 79-274; s. 219, ch. 79-400; s. 1, ch. 79-500; s. 31, ch. 80-556; s. 2, ch. 81-318; s. 4, ch. 83-123.

'(Note.—Repealed effective October 1, 1990, by s. 2, ch. 81-318, and scheduled for review pursuant to s. 11.61 in advance of that date.)

'520.351 Consolidated debts.—

(1) If debts arising from two or more retail installment sales other than sales pursuant to a revolving account 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 each item is paid.

(2) Payments received by the seller 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 credit service 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.
(3) If the debts consolidated arose from two or more sales made on the same day, payments received by the seller 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.

1520.36 Mail order and telephone sales.—Retail installment contracts negotiated and entered into by mail or telephone without personal solicitation by salesmen or other representatives of the seller, when a catalog of the seller or other printed solicitation of business which is distributed and made available generally to the public clearly sets forth the cash price and other terms of sales to be made through such medium, may be made as provided in this section. All of the provisions of this part relating to contracts shall apply to such sales except that the seller shall not be required to deliver a copy of the contract to the buyer as provided in s. 520.34(1)(c), and if the contract when received by the seller contains any blank spaces, the seller may insert in the appropriate blank space the amounts of money and other terms which are set forth in the seller’s catalog or other printed solicitation which is then in effect. In lieu of sending the buyer a copy of the contract as provided in s. 520.34(1)(c), the seller shall deliver to the buyer, not later than the date the first payment is due, a written statement of all disclosures required by this part. The seller shall be required to deliver a copy of the contract to the buyer at any time not later than when the first payment is due. The seller or any finance charge, delinquency or collection charge for any transaction by any banking institution, state or federal savings and loan association, or credit union.

1520.37 Delinquency charges, attorney’s fees and court costs.—A retail installment contract may provide for payment by the buyer of a delinquency charge on each installment in default for a period not less than 10 days. Such charge may not exceed 5 percent of such installment or $5, whichever is less. A retail installment contract or a revolving account may provide for the payment of reasonable attorney’s fees if referred for collection to an attorney not a salaried employee of the retail seller and for the payment of court costs. The provisions of this act shall not be construed to affect any transaction covered by chapter 516 and part I of this chapter or any banking institution, state or federal savings and loan association, or credit union.

1520.38 Transfer of contracts.—Any retail seller may assign, pledge, hypothecate, or otherwise transfer a retail installment contract or revolving account to any banking institution, firm or corporation on such terms and conditions and for such price as may be mutually agreed upon. Filing of the assignment, notice to the buyer of the assignment, and any requirement that any person maintain dominion over the payments under the contract or account or over the goods if repossessed, shall not be necessary to the validity of a written assignment or transfer of a contract or account as against creditors, subsequent purchasers, pledgors, mortgagees and lien claimants of the seller. Unless the buyer has notice of the assignment, payment thereunder made by the buyer to the last known owner of the contract or account shall be binding on all subsequent owners thereof. The seller shall be required to deliver a copy of the contract as provided in s. 520.34(1)(c), the seller shall deliver to the buyer, not later than the date the first payment is due, a written statement of all disclosures required by this part. The seller shall be required to deliver a copy of the contract to the buyer at any time not later than when the first payment is due.

1520.39 Violations.—(1) Any person who shall willfully and intentionally violate any provision of this act shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.083.
(2) In case of a willful violation of this act with respect to any transaction, the retail buyer in such transaction may recover from the person committing such violation (or may set off or counterclaim in any action by such person) an amount equal to the finance charge and any delinquency charge and attorney’s fees and court costs charged and paid with respect to such transaction, but the retail seller may recover from the retail buyer an amount equal to the cash price of the goods or services in such transaction and the cost of any insurance purchased by the retail seller for the retail buyer in connection therewith.
(3) A violation of ss. 520.32, 520.34 or 520.35 by the seller or holder shall bar recovery of any finance charge, delinquency or collection charge on the contract.
(4) Notwithstanding the provisions of this section, no person shall be subject to any penalty for any failure to comply with any provision of this act until the retail buyer or the department has notified such person in writing of such failure and unless within 30 days after such notice such failure is not corrected by such person.

1520.40 Waiver.—Any waiver by the retail buyer of any provisions of this act or of any remedies granted to the buyer by this act shall be unenforceable and void.

1520.41 Prior contracts not affected.—The provisions of this act shall not make contracts or accounts in effect prior to July 1, 1980, unlawful.

1520.42 Construction.—Nothing in this act shall be construed to affect any transaction covered by chapter 516 and part I of this chapter or any banking institution, state or federal savings and loan association, or credit union.

Note.—Repealed effective October 1, 1990, by s. 2, ch. 81-318, and scheduled for review pursuant to s. 11.61 in advance of that date.
PART III
INSTALLMENT SALES FINANCE

520.50 Short title.
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'S. 520.50 Short title.—This act may be cited as "The Installment Sales Finance Act."

'S. 520.51 Definitions.—
(1) "Sales finance company" means a person engaged in the business of purchasing retail installment contracts from one or more retail sellers. The term includes but is not limited to a bank, trust company, industrial bank, or any other financial institution engaged in the business of purchasing retail installment contracts for a bona fide loan thereon.

(2) "Retail installment contract" or "contract" means an instrument or instruments reflecting one or more retail installment transactions entered into in this state pursuant to which goods or services may be paid for in installments. It does not include a revolving account or an instrument reflecting a sale pursuant thereto.

(3) "Goods" means all personalty when purchased primarily for personal, family or household use, including certificates or coupons issued by a retail seller exchangeable for personalty or services, but not including other choses in action, personality sold for commercial or industrial use, money, motor vehicles or construction, mining or quarrying equipment. The term "goods" includes such personalty which is furnished or used, at the time of sale or subsequently, in the modernization, rehabilitation, repair, alteration, improvement or construction of real property as to become a part thereof, whether or not severable therefrom.

(4) "Services" means work or labor furnished for personal, family or household use, whether or not furnished in connection with the delivery, installation, servicing, repair or improvement of goods, and includes such work or labor furnished in connection with the modernization, rehabilitation, repair, alteration, improvement or construction upon or in connection with real property.

(5) The "holder" of a retail installment contract means the retail seller of the goods or services under the contract or, if the contract is purchased by a sales finance company or other assignee, the sales finance company or other assignee.

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

'S. 520.52 Licenses.—
(1) No person shall engage in the business of a sales finance company in this state without a license therefor as provided in this act. However, no bank, trust company, savings association, or industrial bank authorized to do business in this state, shall be required to obtain a license under this act. The application for such licenses shall be in writing and in the form prescribed by the department. The license fee for each calendar year or part thereof shall be the sum of $50 for the principal place of business of each sales finance company, and separate license fees of like amount shall be paid for each branch maintained in this state by such licensee.

(2) Licenses shall be issued and in accordance with the provisions of this act for a period which will expire December 31 next following the date of issuance. Such licenses shall not be transferable or assignable. Each license shall specify the location of the office or branch and must be conspicuously displayed there. In case such location is changed, the department shall endorse the change of location on the license without charge. No licensee shall transact any business provided for by this act under any other name. Licenses shall be issued only to persons of good moral character, or to corporations whose officers are of good moral character. Fees collected under this section shall be deposited in the State Treasury in the Regulatory Trust Fund under the Division of Finance of the department.

'S. 520.53 Denial, suspension, or revocation of licenses.—
(1) A license may be denied, suspended or revoked by the department on the following grounds:

(a) Material misstatement in application for license;

(b) Willful failure to comply with any provision of this act or of part II of chapter 520, relating to retail installment contracts;

(c) Defrauding any retail buyer to the buyer's damage;

(d) Fraudulent misrepresentation, circumvention or concealment by the licensee through whatever subterfuge or device of any of the material particulars or the nature thereof required to be stated or furnished to the retail buyer under this act.

(2) If the licensee is a firm, association, or corporation, it shall be sufficient cause for the suspension or revocation of a license that any officer, director or trustee of a licensed firm, association or corporation, or any member of a licensed partnership, has acted or failed to act as would be cause for suspending or revoking a license to such party as an individual. Each licensee shall be responsible for the acts of any or all of his employees while acting as his agent, if such licensee after actual knowledge of said acts retained the benefits, proceeds, profits or advantages accruing from said acts or otherwise ratified said acts.

(3) No revocation, suspension, or surrender of
any license shall impair or affect the obligation of any lawful retail installment contract acquired previously thereby by the licensee.

History.—s. 4, ch. 63-244; ss. 12, 35, ch. 69-106; s. 1, ch. 69-267; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 7, ch. 78-98; s. 21, ch. 80-256; s. 2, ch. 81-318.

Note.—Repealed effective October 1, 1990, by s. 2, ch. 81-318, and scheduled for review pursuant to s. 11.61 in advance of that date.

1520.54 Books, accounts, and records.—
(1) Every licensee shall maintain, at the place of business designated in the license certificate, such books, accounts, and records of the business conducted under the license issued for such place of business as will enable the department to determine whether the business of the licensee contemplated by this act is being operated in accordance with the provisions of parts II and III of this chapter.

(2) A licensee operating two or more licensed places of business in this state, may maintain the general control 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 control records are maintained.

(3) All books, accounts and records of licensees, including any cards used in a card system, shall be preserved and available for examination by the department for at least 2 years after making the final entry therein.

(4) The department is hereby authorized and empowered to prescribe the manner in which to show in the books, accounts and records of licensees so that such records will enable the department to determine compliance with the provisions of parts II and III of this chapter.

History.—s. 5, ch. 63-244; ss. 12, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 21, ch. 80-256; s. 2, ch. 81-318.

Note.—Repealed effective October 1, 1990, by s. 2, ch. 81-318, and scheduled for review pursuant to s. 11.61 in advance of that date.

1520.55 Investigations and complaints.—
(1) The department may, at intermittent periods, make such investigations and examinations of any licensee or other person as it deems necessary to determine compliance with parts II and III of this chapter. For such purposes, it may examine the books, accounts, documents or matters of any licensee or other person. It shall have the power to compel the production of all relevant books, records, and other documents and materials relative to an examination or investigation. Such investigations and examinations shall not be made more often than once during a year unless the department has reason to believe the licensee is not complying with the provisions of parts II and III of this chapter. The expenses of the department incurred in such examination of a sales finance company licensed under this act shall be $100 per day or fraction thereof for each examiner and shall be paid by such finance company so examined within 30 days after demand therefor by the department. For examinations conducted outside the state, such company shall also pay the traveling expense and per diem subsistence allowance provided for state employees in s. 112.061. Expense thus recovered shall be deposited in the State Treasury as a reimbursement to the annual appropriation for expenses incurred in enforcing this act. The licensee shall not be required to pay a per diem fee and expenses of an examination which shall consume more than 30 man-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.

(2) Any retail buyer having reason to believe that part II or part III of this chapter relating to his retail installment contract has been violated may file with the department a written complaint setting forth the details of such alleged violations; and the department, upon receipt of such complaint, may inspect the pertinent books, records, letters and contracts of the licensee and of the retail seller involved, relating to such specific written complaint.

History.—s. 6, ch. 63-244; ss. 12, 35, ch. 69-106; s. 5, ch. 73-276; s. 1, ch. 73-305; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 21, ch. 80-256; s. 2, ch. 81-318; s. 6, ch. 82-70.

Note.—Repealed effective October 1, 1990, by s. 2, ch. 81-318, and scheduled for review pursuant to s. 11.61 in advance of that date.

1520.56 Powers of department.—
(1) The department shall have power to issue subpoenas to compel the attendance of witnesses and the production of documents, papers, books, records, and other evidence before it in any matter over which it has jurisdiction, control, or supervision pertaining to this act. The department shall have the power to administer oaths and affidavits or any person whose testimony is required.

(2) If any person shall refuse to obey any such subpoena, or to give testimony, or to produce evidence as required thereby, any judge of the circuit court may, upon application and proof of such refusal, make an order awarding process of subpoena, or subpoenas duces tecum, out of the circuit court, for the witness to appear before the department and to give testimony, and to produce evidence as required thereby. Upon filing such order in the office of the clerk of the circuit court, the clerk shall issue process of subpoena, as directed, under the seal of the court, requiring the person to whom it is directed, to appear at the time and place therein designated.

(3) If any person served with any such subpoena shall refuse to obey the same, to give testimony, and to produce evidence as required thereby, the department may apply to any judge of the circuit court for an attachment against such person, as for a contempt. The judge, upon satisfactory proof of such refusal, shall issue an attachment, directed to any sheriff or police officer, for the arrest of such person, and upon his being brought before such judge, proceed to a hearing of the case. The judge shall have power to enforce obedience to such subpoena, and the answering of any question, and the production of any evidence, that may be proper, by a fine, not exceeding $100, or by imprisonment in the county jail, or by both fine and imprisonment and to compel such witness to pay the costs of such proceeding to be taxed.

(4) The department may adopt such rules as it may deem necessary in the administration of this part, which are not inconsistent with the provisions of this part.

History.—s. 7, ch. 63-244; ss. 12, 35, ch. 69-106; s. 26, ch. 73-334; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 21, ch. 80-256; s. 2, ch. 81-318.

Note.—Repealed effective October 1, 1990, by s. 2, ch. 81-318, and scheduled for review pursuant to s. 11.61 in advance of that date.
520.57 Penalties.—

(1) Any person who shall willfully and intentionally violate any provision of parts II and III of this chapter or engage in the business of a sales finance company in this state without a license therefor as provided in this act shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.083.

(2) A willful violation of this act or of part II, chapter 520, relating to retail installment contracts, by the seller or the holder shall bar recovery of any finance charge, delinquency or collection charge on the contract.

520.60 Short title.—This act may be known and cited as “The Home Improvement Sales and Finance Act.”

520.61 Definitions.—As used in this act:

(1) “Banking institution” means any bank, bank and trust company, trust company, or industrial savings bank or any national banking association organized and doing business under the provisions of any state or of the United States.

(2) “Business day” means all calendar days except Sundays and the following legal public holidays: New Year’s Day, January 1; Washington’s Birthday, the third Monday in February; Memorial Day, the last Monday in May; Independence Day, July 4; Labor Day, the first Monday in September; Columbus Day, the second Monday in October; Veterans’ Day, November 11; Thanksgiving Day, the fourth Thursday in November; and Christmas Day, December 25.

(3) “Cash price” means the price at which a home improvement contractor, in the ordinary course of business, offers to sell for cash the property or service that is the subject of the transaction. At the contractor’s option, the term “cash price” may include the price of accessories, services related to the sale, service contracts, and taxes. The term “cash price” does not include any finance charge.

(4) “Debt consolidation” means any money advanced to an owner or his assignee in any connection with a home improvement contract.

(5) “Department” means the Department of Banking and Finance.

(6) “Down payment” means the amount paid in money and goods to the home improvement contractor and allowances given by the home improvement contractor to the buyer pursuant to a home improvement contract.

(7) “Finance charge” means the cost of consumer credit as a dollar amount. The term “finance charge” includes any charge payable directly or indirectly by the buyer and imposed directly or indirectly by the contractor as an incident to or a condition of the extension of credit. The term “finance charge” does not include any charge of a type payable in a comparable cash transaction.

(8) “Goods” means all personal chattels which are furnished or used in home improvement.

(9) “Home improvement” means repair, replacement, remodeling, alteration, conversion, modernization, or improvement of, or addition to, any land or building which is to be used as a single-family residence or dwelling place when such construction is done pursuant to a home improvement contract and a security interest in the real property is retained. “Home improvement” does not include:

520.97 Records of all transactions.
(a) The construction of a new home building or work done by a contractor in compliance with a guar­antee of completion of a new building project; or
(b) The sale of goods or materials by a seller who neither arranges to perform nor performs directly or indirectly any work or labor in connection with the installation of or application of the goods or materials.

(10) "Home improvement contract" means a writ­ten agreement contained in one or more documents between a home improvement contractor and an owner for the performance of a home improvement and includes all labor, materials, and services to be furnished when all or part of the contract price is to be paid in installments to the home improvement contractor, home improvement salesman, or home improvement finance agency or their assignees over a period of time greater than 90 days.

(11) "Home improvement contractor" means any person other than a bona fide employee of the owner who participates in any manner in two or more home improvements, each of which was for consideration of $500 or more, in any calendar year and includes a salesman who is not an employee of any licensed home improvement contractor.

(12) "Home improvement finance agency" means any person who directly or indirectly purchases, acquires, solicits, or arranges for the acquisition of home improvement contracts or connected obligations by purchase, discount, pledge, or otherwise.

(13) "Home improvement sale" or "sale" means the sale of goods and furnishing of services or the furnishing of services by a home improvement contractor to an owner pursuant to a home improvement contract.

(14) "Home improvement salesman" means any person, including nonresidents, who sells goods or services pursuant to a home improvement contract in a representative capacity, except a partner, officer, or owner of a licensed home improvement contractor.

(15) "Official fees" means fees actually paid to the appropriate public officer for obtaining any permit; filing, recording, or releasing any judgment, mortgage, or other lien; or perfecting any security in connection with a home improvement contract.

(16) "Owner" means any homeowner, tenant, or any other person who orders, contracts for, or purchases the services of a home improvement contractor or the person entitled to the performance of the work of a home improvement contractor pursuant to a home improvement contract.

(17) "Person" means an individual, partnership, association, business, corporation, banking institution, nonprofit corporation, common-law trust, joint stock company, or any other group of individuals, however organized.

(18) "Services" means labor furnished for home improvement.

1520.62 Administration.—This part shall be administered by the Department of Banking and Fi­nance, which shall appoint a staff and issue rules as necessary for the administration of this part.

1520.63 Licensees.—
(1) No person shall engage in or transact any business as a home improvement financing company, a home improvement contractor, or a home improvement salesman without first obtaining a license from the department, except that no banking institution, savings and loan association, credit union authorized to do business in this state, or licensee under chapter 494 shall be required to obtain a license to engage in home improvement financing.

(2) Engaging in or transacting business by mail from within or without the state is within the scope of subsection (1).

1520.64 Application for license.—
(1) Application for a license or renewal of a license shall be in writing, under oath, and shall be in the form prescribed by the department. The application shall state the name, residence, and business addresses of the applicant and, if the applicant is a corporation or association, of every member of such corporation or association and, if the applicant is a corporation, of each officer and director. It shall demonstrate the financial responsibility of the applicant and set forth any other information the department may require.

(2) No license to a salesman shall be issued unless the department receives written notice of appointment or employment signed by both the contractor and salesman, and only a natural person may be issued a salesman’s license.

1520.65 Licenses, fees.—
(1) No license issued under this act shall be transferred or assigned.

(2) No licensee shall transact any business subject to this chapter under any other name or maintain an office at any other location than that designated in the license. The licensee shall notify the department 10 days prior to a change in name or location, and the department shall endorse the change of location or name on the license without charge.

(3) Every licensee shall notify the department within 10 days after a change of control in ownership or change of management.

(4) At the time of making the application, and annually upon renewal, each home improvement finance agency and home improvement contractor shall pay a license fee of $50 and each home improvement salesman shall pay a license fee of $25.

(5) An additional license fee of $50 shall be paid by each home improvement contractor or finance agency for each additional office it maintains.
(6) No abatement in the license fee shall be made if the license is issued for less than a year or if the license is surrendered or revoked prior to its expiration date.

(7) A license may be renewed upon application for license renewal and payment of the fee before expiration of the license, and authority to do business shall continue unless the license is revoked or not renewed. Each license or annual renewal thereof shall be conspicuously displayed at the licensee's place of business as designated in the license.

(8) All fees collected under this act shall be deposited in the State Treasury in the Regulatory Trust Fund under the Division of Finance of the department.

History.—s. 1, ch. 69-44; ss. 12, 35, ch. 69-106; s. 138, ch. 71-355; s. 3, ch. 73-336; s. 3, ch. 76-108; s. 1, ch. 77-457; s. 103, ch. 79-184; ss. 15, 21, ch. 80-256; s. 2, ch. 81-318; s. 7, ch. 82-76.

'520.66 Issuance, refusal, renewal of licenses.—

(1) When a proper application is filed, within 60 days from the date the application is received, the department must issue or refuse to issue the appropriate license.

(2) A license may be refused an applicant for any reason for which a license may be revoked or not renewed.

(3) For the people's protection, the department shall not grant or continue a license if the department finds:

(a) The person or his management personnel has demonstrated lack of criminal responsibility, untruthfulness, dishonesty, or is otherwise not of good character.

(b) The home improvement business of the person has been marked by failure to perform contracts, by illegal manipulation of assets or accounts, or by fraud or bad faith.

(c) The person has violated the provisions of this act or has attempted to perform an act which violates this act.

History.—s. 1, ch. 69-44; s. 3, ch. 76-106; s. 1, ch. 77-457; s. 7, ch. 78-96; s. 21, ch. 80-256; s. 2, ch. 81-318.

Note.—Repealed effective October 1, 1990, by s. 2, ch. 81-318.

'520.67 Form, duration of license.—The department shall prescribe the form of licenses. Licenses issued shall expire June 30 of each year.

History.—s. 1, ch. 69-44; ss. 12, 35, ch. 69-106; s. 1, ch. 70-149; s. 1, ch. 70-439; s. 3, ch. 76-108; s. 1, ch. 77-457; s. 7, ch. 78-96; s. 21, ch. 80-256; s. 2, ch. 81-318.

Note.—Repealed effective October 1, 1990, by s. 2, ch. 81-318, and scheduled for review pursuant to s. 11.61 in advance of that date.

'520.68 Persons not required to be licensed.—No contractor's or salesman's license shall be required under this act of any person when acting in any capacity as a contractor or salesperson for the home improvement contractor.

(1) An individual who performs services for a home improvement contractor for wages or salary and who does not act in the capacity of salesman for the home improvement contractor.

(2) A plumber, electrician, architect, engineer, residential designer, or landscape architect who is required by state or local law to maintain standards of competency or experience as a prerequisite to engaging in such craft or profession and who is acting exclusively within the scope of the craft or profession for which he is currently licensed pursuant to such other law. The installation of central heating and air-conditioning systems by such a person shall be deemed within the scope of such person's craft or profession.

History.—s. 1, ch. 69-44; s. 3, ch. 76-168; s. 1, ch. 77-457; ss. 15, 21, ch. 80-256; 2. s. 2, ch. 81-318.

Note.—Repealed effective October 1, 1990, by s. 2, ch. 81-318, and scheduled for review pursuant to s. 11.61 in advance of that date.

'520.69 Scope of license authority; scope of act's provisions.—

(1) All persons engaged in the home improvement business as defined herein shall be required to obtain a license under this act as well as any other licenses required by law.

(2) No mortgage broker's license shall be required pursuant to chapter 494 of a person whose business is exclusively in home improvement contracts or related instruments.

(3) This act may not be construed to limit or restrict the power of a city or county to regulate the quality, performance, or character of work of contractors, including requiring submission to and approval by the city or county of plans and specifications for an installation or commencement of construction of the installation, inspection of work done, and regulation by a system of permits and inspections which are designed to secure compliance with, and aid in the enforcement of, applicable state and local building laws or enforcement of other laws necessary for the protection of the public health and safety.

(4) Nothing in this section may be construed to authorize a city or county to enact ordinances or regulations relating to the qualifications necessary to engage in the home improvement business.

History.—s. 1, ch. 69-44; s. 3, ch. 76-168; s. 1, ch. 77-457; ss. 15, 21, ch. 80-256; s. 2, ch. 81-318.

Note.—Repealed effective October 1, 1990, by s. 2, ch. 81-318, and scheduled for review pursuant to s. 11.61 in advance of that date.

'520.70 Salesman to act as agent of contractor.—