

hbd-06 Bill No. CS for CS for SB 194, 1st Eng.
Amendment No. ____ (for drafter's use only)

	<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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ORIGINAL STAMP BELOW

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Representative(s) Sublette offered the following:

Amendment (with title amendment)

Remove from the bill: Everything after the enacting clause
and insert in lieu thereof:

Section 1. Short title.--This act may be cited as the
"Florida Title Loan Act."

Section 2. Legislative intent.--It is the intent of
the Legislature that title loans shall be regulated by the
provisions of this act. The provisions of this act shall
supersede any other provisions of law affecting title loans to
the extent of any conflict.

Section 3. Definitions.--As used in this act, unless
the context otherwise requires:

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

(2) "Commercially reasonable" means a sale or disposal
which occurs and can be construed as an arms' length
transaction. Nonpublic sales or disposal of personal property
between licensees and business affiliates or family members

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1 are sales and disposal that are presumed not to be in a
2 commercially reasonable fashion.

3 (3) "Executive officer" means the president, chief
4 executive officer, chief financial officer, chief operating
5 officer, executive vice president, senior vice president,
6 secretary, and treasurer.

7 (4) "Identification" means a government issued
8 photographic identification.

9 (5) "Interest" means the cost of obtaining a title
10 loan and includes any profit or advantage of any kind
11 whatsoever that a title loan lender may charge, contract for,
12 collect, receive, or in any way obtain, including, by means of
13 any collateral sale, purchase, or agreement, as a condition of
14 the title loan.

15 (6) "Licensee" means a person who is licensed pursuant
16 to the provisions of this act.

17 (7) "License" means a permit issued under this chapter
18 to make and collect title loans in accordance with this
19 chapter at a single place of business.

20 (8) "Loan property" means any motor vehicle
21 certificate of title that is deposited with a title loan
22 lender in the course of the title loan lender's business and
23 is the subject of a title loan agreement.

24 (9) "Motor vehicle" means an automobile, motorcycle,
25 truck, trailer, semi-trailer, truck tractor and semitrailer
26 combination, or any other vehicle operated on the public
27 highways and streets of this state, used to transport persons
28 or property, and propelled by power other than muscular power,
29 but excluding vehicles which run only upon a track.

30 (10) "Title loan" means a loan of money secured by
31 bailment of a certificate of title to a motor vehicle.

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1 (11) "Title loan agreement" means a written agreement
2 whereby a title loan lender agrees to make a loan of a
3 specific sum of money to a pledgor, and the pledgor agrees to
4 give the title loan lender a security interest in an
5 unencumbered motor vehicle certificate of title owned by the
6 pledgor. The term does not include an agreement made under a
7 "retail installment transaction" as defined in s. 520.02,
8 Florida Statutes.

9 (12) "Title loan lender" means any person who is
10 engaged in the business of making title loans or engaging in
11 title loan agreements with pledgors. The term does not include
12 a "financial institution" as defined in s. 655.005, Florida
13 Statutes.

14 (13) "Title loan office" means the location at which,
15 or premises from which, a title loan lender regularly conducts
16 business.

17 (14) "Title loan transaction" means any title loan of
18 a motor vehicle from lender to borrower for money. The term
19 does not include a "retail installment transaction" as defined
20 in s. 520.02, Florida Statutes.

21 (15) "Title loan transaction form" means the
22 instrument on which a title loan lender records title loan
23 agreements.

24 (16) "Titled personal property" means a motor vehicle
25 that has as evidence of ownership a state-issued certificate
26 of title except for a mobile home that is the primary
27 residence of the pledgor.

28 (17) "Ultimate equitable owner" means a natural person
29 who, directly or indirectly, owns or controls an ownership
30 interest in a corporation, a foreign corporation, an alien
31 business organization, or any other form of business

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1 organization, regardless of whether such natural person owns
2 or controls such ownership interest through one or more
3 natural persons or one or more proxies, powers of attorney,
4 nominees, corporations, associations, partnerships, trusts,
5 joint stock companies, or other entities or devices, or any
6 combination thereof.

7 Section 4. License required; license fees.--

8 (1) A person may not engage in business as a title
9 loan lender unless the person has a valid license issued by
10 the department authorizing the engagement in the business. A
11 separate license is required for each physical location of a
12 title loan office. The department shall issue more than one
13 license to a person who complies with the requirements of this
14 act for each license.

15 (2) An application for a license pursuant to this act
16 shall be submitted to the department on such forms as the
17 department prescribes by rule. If the department determines
18 that an application should be granted, the department shall
19 issue the license for a period not to exceed 2 years. A
20 nonrefundable license fee not to exceed \$500 and a
21 nonrefundable investigation fee of \$200 shall accompany an
22 initial application for each title loan location. The revenue
23 from such fees is intended to reasonably reflect the actual
24 cost of regulation.

25 (3) A license shall be renewed biannually and shall be
26 accompanied by a nonrefundable fee not to exceed \$500. A
27 license that is not renewed by its expiration date shall
28 automatically expire and revert to inactive status. Such
29 inactive license may be reactivated within 3 months after the
30 expiration date upon submission of a completed reactivation
31 form and payment of a reactivation fee of \$250. A license that

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1 is not reactivated within 3 months after becoming inactive may
2 not be reactivated.

3 (4) Each license must specify the location for which
4 the license is issued and must be conspicuously displayed at
5 that location. When a licensee wishes to move a title loan
6 office to another location, the licensee shall give 30 days'
7 prior written notice to the department by certified or
8 registered mail, return receipt requested, and the department
9 shall then amend the license accordingly. A license issued
10 pursuant to this act is not transferable or assignable.

11 (5) The department may deny an initial application for
12 a license if the applicant or any person with power to direct
13 the management or policies of the applicant is the subject of
14 a pending criminal prosecution or governmental civil
15 enforcement action, in any jurisdiction, until conclusion of
16 such criminal prosecution or enforcement action.

17 (6) Each licensee shall designate and maintain an
18 agent in this state for service of process.

19 (7) A person shall apply to the department for a new
20 license upon the change of any person owning 25 percent or
21 greater interest in any title loan office and shall pay the
22 nonrefundable license and investigation fees.

23 (8) All moneys collected by the department under this
24 act shall be deposited into the Regulatory Trust Fund of the
25 Department of Banking and Finance for the sole purpose of
26 implementing this act.

27 Section 5. Eligibility for license.--

28 (1) To be eligible for a title loan lending license,
29 an applicant must:

30 (a) Be of good moral character.

31 (b) File with the department a bond, in the amount of

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1 \$100,000 for each license, with a surety company qualified to
2 do business in this state. In lieu of the bond, the applicant
3 may establish a certificate of deposit or an irrevocable
4 letter of credit in a financial institution, as defined in s.
5 655.005, in the amount of the bond. The original bond,
6 certificate of deposit, or letter of credit shall be filed
7 with the department, and the department shall be the
8 beneficiary to that document. The bond, certificate of
9 deposit, or letter of credit shall be in favor of the
10 department for the use and benefit of any consumer who is
11 injured pursuant to a title loan transaction by the fraud,
12 misrepresentation, breach of contract, financial failure, or
13 violation of any provision of this act by the title loan
14 lender. Such liability may be enforced either by proceeding in
15 an administrative action or by filing a judicial suit at law
16 in a court of competent jurisdiction. However, in such court
17 suit, the bond, certificate of deposit, or letter of credit
18 posted with the department shall not be amenable or subject to
19 any judgment or other legal process issuing out of or from
20 such court in connection with such lawsuit, but such bond,
21 certificate of deposit, or letter of credit shall be amenable
22 to and enforceable only by and through administrative
23 proceedings before the department. It is the intent of the
24 Legislature that such bond, certificate of deposit, or letter
25 of credit shall be applicable and liable only for the payment
26 of claims duly adjudicated by order of the department. The
27 bond, certificate of deposit, or letter of credit shall be
28 payable on a pro-rata basis as determined by the department,
29 but the aggregate amount may not exceed the amount of the
30 bond, certificate of deposit, or letter of credit.

31 (c) Not have been convicted of a felony within the

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1 last 10 years or be acting as an ultimate equitable owner for
2 someone who has been convicted of a felony within the last 10
3 years.

4 (d) Not have been convicted, and not be acting as an
5 ultimate equitable owner for someone who has been convicted,
6 of a crime that the department finds directly relates to the
7 duties and responsibilities of a title loan lender within the
8 last 10 years.

9 (2) If an applicant for a title loan lending license
10 is other than a corporation, the eligibility requirements of
11 this section apply to each direct or ultimate equitable owner.

12 (3) If an applicant for a title loan lending license
13 is a corporation, the eligibility requirements of this section
14 apply to each direct or ultimate equitable owner of a least 25
15 percent of the outstanding equity interest of such corporation
16 and to each director and executive officer.

17 Section 6. Application for license.--

18 (1) Application for a license to make title loans
19 under this act shall be in writing, under oath, and in the
20 form prescribed by department rule, and shall:

21 (a) Contain the name and the residence and business
22 addresses of the applicant and, if the applicant is a
23 partnership or association, of every member of such
24 partnership or association and, if a corporation, of each
25 executive officer and director and ultimate equitable owner of
26 at least 25 percent of such corporation.

27 (b) State whether any of the above has, within the
28 last 10 years, been arrested for or convicted of, or is under
29 indictment or information for, a felony or crime that directly
30 relates to the duties and responsibilities of a title loan
31 lender and, if so, the nature of such felony or crime.

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1 (c) Identify the county and municipality with the
2 street and number or location where the business is to be
3 conducted.

4 (d) Contain such further relevant information as the
5 department requires pursuant to rule.

6
7 At the time of making such application the applicant shall pay
8 to the department a nonrefundable license fee not to exceed
9 \$500. Applications, except for applications to renew or
10 reactivate a license, must be accompanied by a nonrefundable
11 investigation fee of \$200.

12 (2) Notwithstanding subsection (1), the application
13 need not state the full name and address of each officer,
14 director, and shareholder if the applicant is owned directly
15 or beneficially by a person who as an issuer has a class of
16 securities registered pursuant to section 12 of the Securities
17 Exchange Act of 1934 or, pursuant to section 15(d) of such
18 act, is an issuer of securities which is required to file
19 reports with the Securities and Exchange Commission, if the
20 person files with the department any information, documents,
21 and reports required by such act to be filed with the
22 Securities and Exchange Commission.

23 (3) Upon the filing of an application for a license
24 and payment of all applicable fees, unless the application is
25 to renew or reactivate an existing license, the department
26 shall investigate the facts concerning the applicant's
27 proposed activities. The department shall investigate the
28 facts, and shall approve an application and issue to the
29 applicant a license that will evidence the authority to do
30 business under the provisions of this act if the department
31 finds that the eligibility requirements for the license are

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1 satisfied. The license must be prominently displayed at the
2 front desk or counter at the title loan office.

3 (4) A license that is not renewed by its expiration
4 date shall automatically revert to inactive status. An
5 inactive license may be reactivated upon submission of a
6 completed reactivation application, payment of the biannual
7 license fee, and payment of a reactivation fee of \$250. A
8 license expires on the date on which it has been inactive for
9 3 months.

10 (5) A licensee may not change the place of business
11 maintained under a license without prior notice to the
12 department. When a licensee wishes to change a place of
13 business, the licensee shall give written notice of such
14 change to the department.

15 (6) A licensee may not conduct the business of making
16 loans under this act within a place of business in which other
17 business is solicited or engaged in, unless the department
18 finds that the conduct of such other business by the licensee
19 does not result in either the evasion of this act or the
20 combining of such other business activities does not result in
21 practices that are detrimental, misleading, or unfair to
22 consumers. Upon such a finding, the department may authorize
23 the combining of such other business activities. However, no
24 license shall be granted to or renewed for any person or
25 organization engaged in the pawnbroking business.

26 (7) Licenses are not transferable or assignable. A
27 licensee may invalidate any license by delivering the license
28 to the department with written notice of its surrender by
29 certified or registered mail, return receipt requested, but
30 such delivery does not affect any civil or criminal liability
31 or the authority to enforce this act for acts committed in

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1 violation thereof.

2 Section 7. Suspension, revocation of license.--

3 (1) The following acts are violations of this act and
4 constitute grounds for the disciplinary actions specified in
5 subsection (2):

6 (a) Failure to comply with any provision of this act,
7 any rule or order adopted pursuant to this act, or any written
8 agreement entered into with the department.

9 (b) Fraud, misrepresentation, deceit, or gross
10 negligence in any title loan transaction, regardless of
11 reliance by or damage to the pledgor.

12 (c) Fraudulent misrepresentation, circumvention, or
13 concealment of any matter required to be stated or furnished
14 to a pledgor pursuant to this act, regardless of reliance by
15 or damage to the pledgor.

16 (d) Willful imposition of illegal or excessive charges
17 in any title loan transaction.

18 (e) False, deceptive, or misleading advertising by a
19 title loan lender.

20 (f) Failure to maintain, preserve, and keep available
21 for examination, all books, accounts, or other documents
22 required by this act, by any rule or order adopted pursuant to
23 this act, or by any agreement entered into with the
24 department.

25 (g) The title loan lender has aided, abetted, or
26 conspired with an individual or person to circumvent or
27 violate any of the requirements of this act.

28 (h) Refusal to permit inspection of books and records
29 in an investigation or examination by the department or
30 refusal to comply with a subpoena issued by the department.

31 (i) Criminal conduct in the course of a person's

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- 1 business as a title loan lender.
- 2 (2) Upon a finding by the department that any person
3 has committed any of the acts set forth in subsection (1), the
4 department may enter an order taking any of the following
5 actions:
- 6 (a) Issuing a notice of noncompliance pursuant to s.
7 120.695, Florida Statutes;
- 8 (b) Denying an application for a license pursuant to
9 this act;
- 10 (c) Revoking or suspending a license previously
11 granted pursuant to this act;
- 12 (d) Placing a licensee or an applicant for a license
13 on probation for a period of time and subject to such
14 conditions as the department specifies;
- 15 (e) Placing permanent restrictions or conditions upon
16 issuance or maintenance of a license pursuant to this act;
- 17 (f) Issuing a reprimand; or
- 18 (g) Imposing an administrative fine not to exceed
19 \$5,000 for each such act or violation.
- 20 (3) In addition to the acts specified in subsection
21 (1), the following shall be grounds for denial of a license
22 pursuant to this act, or for revocation, suspension, or
23 restriction of a license previously granted:
- 24 (a) A material misstatement of fact in an initial or
25 renewal application for a license.
- 26 (b) Having a license, registration, or the equivalent,
27 to practice any profession or occupation denied, suspended,
28 revoked, or otherwise acted against by a licensing authority
29 in any jurisdiction for fraud, dishonest dealing, or any act
30 of moral turpitude.
- 31 (c) Having been convicted or found guilty of a crime

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1 involving fraud, dishonest dealing, or any act of moral
2 turpitude.

3 (d) Being insolvent or having demonstrated a lack of
4 honesty or financial responsibility.

5 (e) A fact or condition exists which, if it had
6 existed or had been known to exist at the time of the original
7 issuance of the license, would have justified the department
8 in refusing a license.

9 (4) It is sufficient cause for the department to take
10 any of the actions specified in subsection (2), as to any
11 partnership, corporation, or association, if the department
12 finds grounds for such action as to any member of the
13 partnership, as to any executive officer or director of the
14 corporation or association, or as to any person with power to
15 direct the management or policies of the partnership,
16 corporation, or association.

17 (5) Each licensee licensed pursuant to this act is
18 responsible for the acts of employees and agents of the
19 licensee if the licensee knew or should have known about such
20 acts and the licensee retained the profits, benefits, or
21 advantages accruing from such acts or ratified the conduct of
22 the employee or agent as a matter of law or fact.

23 (6) The manner of giving notice and conducting a
24 hearing is governed by chapter 120, Florida Statutes.

25 (7) Any title loan agreement made without benefit of a
26 license is voidable, in which case the person forfeits the
27 right to collect any moneys, including principal and finance
28 charges, from the pledgor in connection with such agreement,
29 and shall return to the pledgor the loan property in
30 connection with such agreement or the fair market value of
31 such property and all principal and interest made by the

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1 pledgor.

2 Section 8. Title loan transaction form.--

3 (1) At the time a title loan lender enters into each
4 title loan agreement, the title loan lender shall complete a
5 title loan transaction form for such transaction, and the
6 pledgor shall sign such completed form. The department shall
7 approve the design and format of the title loan transaction
8 form, which shall elicit the information required under this
9 section. In completing the title loan transaction form, the
10 title loan lender shall record the following information,
11 which shall be typed or written indelibly and legibly in
12 English.

13 (a) The make, model, and year of the titled personal
14 property to which the loan property relates.

15 (b) The vehicle identification number, or other
16 comparable identification number, along with the license plate
17 number, if applicable, of the titled personal property to
18 which the loan property relates.

19 (c) The name, address, date of birth, physical
20 description, and social security number of the pledgor.

21 (d) The date of the transaction.

22 (e) The identification number and the type of
23 identification, including the issuing agency, accepted from
24 the pledgor.

25 (f) The amount of money advanced, which shall be
26 designated as the "amount financed."

27 (g) The maturity date of the title loan agreement,
28 which shall be 30 days after the date of the transaction.

29 (h) The total title loan charge payable on the
30 maturity date, designated as the "finance charge."

31 (i) The total amount, amount financed plus finance

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1 charge, which must be paid to redeem the loan property on the
2 maturity date, designated as the "total amount of all
3 payments."

4 (j) The annual percentage rate, computed in accordance
5 with the regulations adopted by the Federal Reserve Board
6 pursuant to the Federal Truth-in-Lending Act.

7 (2) The following information shall also be printed on
8 all title loan transaction forms:

9 (a) The name and address of the title loan office.

10 (b) The name and address of the department as well as
11 a telephone number to which consumers may address complaints.

12 (c) The following statement in not less than 12-point
13 type that:

14 1. The pledgor is not obligated to redeem the subject
15 certificate of title.

16 2. If the pledgor does not redeem the certificate of
17 title before the maturity date of the title loan agreement,
18 the title loan lender may repossess the titled personal
19 property to which the certificate of title relates.

20 3. If the title loan transaction form is lost,
21 destroyed, or stolen, the pledgor should immediately so advise
22 the issuing title loan lender in writing.

23 (d) The statement that "The pledgor represents and
24 warrants that the titled personal property to which the loan
25 property relates is not stolen and has no liens or
26 encumbrances against it, the pledgor has the right to enter
27 into this transaction, and the pledgor will not apply for a
28 duplicate certificate of title while the title loan agreement
29 is in effect."

30 (e) Immediately above the signature of the pledgor,
31 the statement that "I, the pledgor declare under penalty of

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1 perjury that I have read the foregoing document and that, to
2 the best of my knowledge and belief, the facts contained in it
3 are true and correct."

4 (f) A blank line for the signature of the pledgor.

5 (3) At the time of the transaction, the title loan
6 lender shall deliver to the pledgor an exact copy of the
7 completed title loan transaction form.

8 (4) The pledgor shall agree for the title loan lender
9 to keep possession of the certificate of title. The pledgor
10 shall have the exclusive right to redeem the certificate of
11 title by repaying the loan of money in full and by complying
12 with the title loan agreement. When the certificate of title
13 is redeemed, the title loan lender shall release the security
14 interest in the titled personal property and return the
15 personal property certificate of title to the pledgor. The
16 title loan agreement shall provide that upon failure by the
17 pledgor to redeem the certificate of title at the end of the
18 original 30-day-agreement period, or at the end of any 30-day
19 extension of such period, the title loan lender shall be
20 allowed to take possession of the titled personal property.
21 The title loan lender shall retain physical possession of the
22 certificate of title for the entire term of the title loan
23 agreement, but shall not be required to retain physical
24 possession of the titled personal property at any time. A
25 title loan lender may only hold unencumbered certificates of
26 title for loan.

27 Section 9. Recordkeeping; reporting; safekeeping of
28 property.--

29 (1) Every title loan lender shall maintain, at the
30 principal place of business, such books, accounts, and records
31 of the business conducted under the license issued for such

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1 place of business as will enable the department to determine
2 the licensee's compliance with this act. The licensee shall
3 make all such books, accounts, and records of business
4 conducted under the license available at a convenient location
5 in this state upon request of the department.

6 (2) The department may authorize the maintenance of
7 books, accounts, and records at a location other than a
8 principal place of business. The department may require books,
9 accounts, and records to be produced and available at a
10 reasonable and convenient location in this state within a
11 reasonable period of time after such a request.

12 (3) The title loan lender shall maintain the original
13 copy of each completed title loan transaction form on the
14 title loan office premises, and shall not obliterate, discard,
15 or destroy any such original copy, for a period of at least 2
16 years after making the final entry on any loan recorded in
17 such office.

18 (4) All loan property, or property related to the
19 title loan transaction, which is delivered to a title loan
20 lender shall be securely stored and maintained at the title
21 loan office unless the title document has been forwarded to
22 the appropriate state agency for the purpose of having a lien
23 recorded or deleted.

24 (5) The department may prescribe the minimum
25 information to be shown in the books, accounts, and records of
26 licensees so that such records will enable the department to
27 determine compliance with the provisions of this act.

28 Section 10. Title loan charges.--

29 (1)(a) A title loan lender may charge a maximum
30 interest rate of 18 percent per 30-day period. An extension of
31 the initial 30-day period must be executed in writing and must

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1 clearly specify the new maturity date, the interest rate
2 computed for the extension, the amount of interest paid for
3 the extension, and the amount of interest owed on the new
4 maturity date, and a copy must be given to the pledgor. The
5 daily interest rate charged for the extension must be equal to
6 the interest rate for the original 30-day period divided by 30
7 days, one-thirtieth of the original interest rate. A title
8 loan lender may not capitalize any unpaid interest as part of
9 the amount financed in a subsequent title loan transaction.

10 (b) If the title loan agreement is not satisfied
11 within 120 days after its inception, the title loan lender may
12 charge a maximum interest rate on the outstanding principal
13 balance not to exceed 1 percent per 30-day period for the
14 period that the loan remains outstanding, not to exceed 240
15 days, after the initial 120-day period. However, the title
16 loan lender may collect the maximum interest rate in paragraph
17 (a) for the first 120 days that the title loan agreement is in
18 effect.

19 (c) If the title loan agreement is not satisfied
20 within 360 days after its inception, the title loan lender may
21 charge a maximum interest rate on the outstanding principal
22 balance not to exceed 18 percent per annum for the period that
23 the loan remains outstanding beyond 360 days.

24 (d) The original principal amount is the same amount
25 as the amount Truth in Lending Act and Regulation Z of the
26 Board of Governors of the Federal Reserve System. In
27 determining compliance with the statutory maximum interest and
28 finance charges, the computations must be simple interest and
29 not add-on interest or any other computations. When two or
30 more interest rates are to be applied to the principal amount,
31 the lender may charge interest at that single annual

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1 percentage rate which, if applied according to the actuarial
2 method to each of the scheduled periodic balances of
3 principal, would produce at maturity the same total amount of
4 interest as would result from the application of the two or
5 more rates otherwise permitted, based upon the assumption that
6 all payments are made as agreed.

7 (2) The annual percentage rate that may be charged in
8 a title loan transaction may equal, but not exceed, the annual
9 percentage rate that must be computed and disclosed as
10 required by the federal Truth in Lending Act and Regulation Z
11 of the Board of Governors of the Federal Reserve System. The
12 maximum annual percentage rate of finance charge that may be
13 charged is 12 times the maximum monthly rate, and the maximum
14 monthly rate must be computed on the basis of one-twelfth of
15 the annual rate for each full month. The Department of Banking
16 and Finance shall establish the rate for each day in a
17 fraction of a month when the period for which the charge is
18 computed is more or less than 1 month.

19 (3) Any charges, including interest, in excess of the
20 combined total of all charges permitted by this act constitute
21 a violation of chapter 687, Florida Statutes, governing
22 interest and usury, and the penalties of that chapter apply.
23 If a bona fide error occurs, the lender must refund or credit
24 the borrower with the amount of the overcharge within 20 days
25 after the discovery of such error.

26 (4) Any finance charge contracted for or received,
27 directly or indirectly, in excess of the amounts authorized
28 under this section are prohibited, may not be collected, and
29 render the title loan agreement voidable, in which case the
30 title loan lender shall forfeit the right to collect any
31 interest or finance charges. Upon the pledgor's written

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1 request delivered to the title loan lender by certified mail,
2 return receipt requested, within 30 days after the maturity
3 date, the title loan lender shall be obligated to return to
4 the pledgor the loan property delivered to the title loan
5 lender in connection with the title loan agreement upon
6 payment of the balance of the principal remaining due,
7 provided that there shall be no penalty for a violation
8 resulting from an accidental and bona fide error that is
9 corrected upon discovery. Any action to circumvent the
10 limitation on title loan interest or any other amounts
11 collectible under this act is voidable. Any transaction
12 involving a person's delivery of a personal property
13 certificate of title in exchange for the advancement of funds
14 on the condition that the person shall or may redeem or
15 repurchase the certificate of title upon the payment of a sum
16 of money, whether the transaction be characterized as a
17 "buy-sell agreement," "sale-leaseback agreement," or
18 otherwise, shall be deemed a violation of this act if such sum
19 exceeds the amount that a title loan lender may collect in a
20 title loan agreement under this act or if the terms of the
21 transaction otherwise conflict with the permitted terms and
22 conditions of a title loan agreement under this act.

23 Section 11. Disposal of pledged property; excess
24 proceeds.--

25 (1) Any motor vehicle which is security for a title
26 loan, is subject to sale or disposal if the title has not been
27 redeemed from the title lender or there has been no payment
28 made on account within 60 days after payment was due. Every
29 title loan transaction form shall contain a notice of the
30 provisions of this subsection. Any such sale or disposal shall
31 vest in the purchaser the right, title, and interest of the

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1 owner and the title loan lender.

2 (2) A title loan lender has the right to take
3 possession of the motor vehicle upon failure of the owner to
4 redeem the title within the time period specified in
5 subsection (1). The title loan lender shall only take
6 possession of a motor vehicle through an agent who is licensed
7 by the state to repossess motor vehicles. The title loan
8 lender may dispose of the motor vehicle as provided in this
9 section. Any sale or disposal of the motor vehicle shall be
10 made through a motor vehicle dealer licensed under s. 320.27.

11 (3) Within 30 days after the sale of the motor
12 vehicle, the title loan borrower is entitled to receive moneys
13 from the sale of the motor vehicle in excess of the principal
14 amount of the loan, interest on the loan up to the date of
15 repossession, and reasonable expenses for the repossession,
16 holding, and sale of the motor vehicle. The borrower is
17 entitled to receive reasonable attorney's fees and costs in
18 any action brought to recover the excess amount that results
19 in the title loan lender being ordered to return all or part
20 of such amount.

21 (4) Except as provided by this section, the taking
22 possession and sale or disposal of the motor vehicle is
23 subject to the requirements of chapter 679, Florida Statutes.

24 Section 12. Prohibited acts.--

25 (1) A title loan lender, or any agent or employee of a
26 title loan lender, shall not:

27 (a) Falsify or fail to make an entry of any material
28 matter in a title loan lender transaction form.

29 (b) Refuse to allow the department to inspect
30 completed title loan transaction forms or loan property during
31 the ordinary hours of the title loan lender's business or

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1 other times acceptable to both parties.

2 (c) Enter into a title loan agreement with a person
3 under the age of 18 years.

4 (d) Make any agreement requiring or allowing for the
5 personal liability of a pledgor or the waiver of any of the
6 provisions of this act.

7 (e) Knowingly enter into a title loan agreement with
8 any person who is under the influence of drugs or alcohol when
9 such condition is visible or apparent, or with any person
10 using a name other than such person's own name or the
11 registered name of the person's business.

12 (f) Fail to exercise reasonable care in the
13 safekeeping of loan property or of titled personal property
14 repossessed pursuant to this act.

15 (g) Fail to return loan property or repossessed titled
16 personal property to a pledgor, with any and all of the title
17 loan lender's liens on the property properly released, upon
18 payment of the full amount due the title loan lender, unless
19 the property has been seized or impounded by an authorized law
20 enforcement agency, taken into custody by a court, or
21 otherwise disposed of by court order.

22 (h) Sell or otherwise charge for insurance in
23 connection with a title loan agreement.

24 (i) Charge or receive any finance charge, interest, or
25 fees which are not authorized pursuant to this act.

26 (j) Engage in business as a title loan lender without
27 first securing a license.

28 (k) Refuse to accept a partial repayment of the
29 obligation owed and outstanding.

30 (l) Charge a prepayment penalty.

31 (2) Title loan companies may not advertise using the

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1 words "interest free loans" or "no finance charges."

2 Section 13. Right to redeem; lost title loan
3 transaction form.--

4 (1) Any person presenting identification of such
5 person as the pledgor and presenting the pledgor's copy of the
6 title loan transaction form to the title loan lender is
7 presumed to be entitled to redeem the loan property described
8 in the title loan lender transaction form. However, if the
9 title loan lender determines that the person is not the
10 pledgor, the title loan lender is not required to allow the
11 redemption of the loan property by such person. The person
12 redeeming the loan property must sign the pledgor's copy of
13 the title loan transaction form, which the title loan lender
14 may retain to evidence such person's receipt of the loan
15 property. A person redeeming the loan property who is not the
16 pledgor, must show identification to the title loan lender,
17 together with written authorization from the pledgor, and the
18 title loan lender shall record that person's name and address
19 on the title loan transaction form retained by the title loan
20 lender. In any such case, the person redeeming the pledgor's
21 copy of the title loan transaction form shall be provided a
22 copy of such signed form as evidence of such transaction.

23 (2) If the pledgor's copy of the title loan
24 transaction form is lost, destroyed, or stolen, the pledgor
25 must notify the title loan lender, in writing by certified or
26 registered mail, return receipt requested, or in person
27 evidenced by a signed receipt, and receipt of such notice
28 shall invalidate such title loan transaction form if the loan
29 property has not previously been redeemed. Before delivering
30 the loan property or issuing a new title loan transaction
31 form, the title loan lender shall require the pledgor to make

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1 a written statement of the loss, destruction, or theft of the
2 pledgor's copy of the title loan transaction form. The title
3 loan lender shall record on the written statement the type of
4 identification and the identification number accepted from the
5 pledgor, the date the statement is given, and the number or
6 date of the title loan transaction form lost, destroyed, or
7 stolen. The statement shall be signed by the title loan lender
8 or the title loan office employee who accepts the statement
9 from the pledgor.

10 Section 14. Criminal penalties.--

11 (1) Any person who engages in business as a title loan
12 lender without first securing the license prescribed by this
13 act commits a felony of the third degree, punishable as
14 provided in s. 775.082, s. 775.083, or s. 775.084, Florida
15 Statutes.

16 (2) In addition to any other applicable penalty, any
17 person who willfully violates any provision of this act or who
18 willfully makes a false entry in any record specifically
19 required by this act commits a misdemeanor of the first
20 degree, punishable as provided in s. 775.082 or s. 775.083,
21 Florida Statutes.

22 Section 15. Records from the Department of Law
23 Enforcement.--The Department of Law Enforcement, on request,
24 shall supply to the department any arrest and conviction
25 records in the possession of the Department of Law Enforcement
26 of an individual applying for or holding a license under this
27 act.

28 Section 16. Subpoenas; enforcement actions; rules.--

29 (1) The department may issue and serve subpoenas to
30 compel the attendance of witnesses and the production of
31 documents, papers, books, records, and other evidence before

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1 the department in any matter pertaining to this act. The
2 department may administer oaths and affirmations to any person
3 whose testimony is required. If any person refuses to testify,
4 produce books, records, and documents, or otherwise refuses to
5 obey a subpoena issued under this section, the department may
6 enforce the subpoena in the same manner as subpoenas issued
7 under the Administrative Procedure Act are enforced. Witnesses
8 are entitled to the same fees and mileage as they are entitled
9 to by law for attending as witnesses in the circuit court,
10 unless such examination or investigation is held at the place
11 of business or residence of the witness.

12 (2) In addition to any other powers conferred upon the
13 department to enforce or administer this act, the department
14 may:

15 (a) Bring an action in any court of competent
16 jurisdiction to enforce or administer this act, any rule or
17 order adopted under this act, or any written agreement entered
18 into with the department. In such action, the department may
19 seek any relief at law or equity including a temporary or
20 permanent injunction, appointment of a receiver or
21 administrator, or an order of restitution.

22 (b) Issue and serve upon a person an order requiring
23 such person to cease and desist and take corrective action
24 whenever the department finds that such person is violating,
25 has violated, or is about to violate any provision of this
26 act, any rule or order adopted under this act, or any written
27 agreement entered into with the department.

28 (c) Whenever the department finds that conduct
29 described in paragraph (b) presents an immediate danger to the
30 public health, safety, or welfare requiring an immediate final
31 order, the department may issue an emergency cease and desist

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1 order reciting with particularity the facts underlying such
2 findings. The emergency cease and desist order is effective
3 immediately upon service of a copy of the order on the
4 respondent named in the order and shall remain effective for
5 90 days. If the department begins nonemergency proceedings
6 under paragraph (b), the emergency cease and desist order
7 remains effective until the conclusion of the proceedings
8 under ss. 120.569 and 120.57, Florida Statutes.

9 (d) Impose and collect an administrative fine against
10 any person found to have violated any provision of this act,
11 any rule or order adopted under this act, or any written
12 agreement entered into with the department, in an amount not
13 to exceed \$5,000 for each violation.

14 (3) The department may adopt rules pursuant to the
15 Administrative Procedure Act to implement this act.

16 Section 17. Investigations and complaints.--

17 (1) The department may make any investigation and
18 examination of any licensee or other person the department
19 deems necessary to determine compliance with this act. For
20 such purposes, the department may examine the books, accounts,
21 records, and other documents or matters of any licensee or
22 other person. The department may compel the production of all
23 relevant books, records, and other documents and materials
24 relative to an examination or investigation. Such
25 investigations and examinations shall not be made more often
26 than once during any 12-month period unless the department has
27 good cause to believe the licensee is not complying with the
28 provisions of this act.

29 (2) The expenses of the department incurred in each
30 such examination may be established by department rule but
31 shall not exceed \$250 per 8-hour day for each examiner. Such

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1 examination fee shall be calculated on an hourly basis and
2 shall be rounded to the nearest hour. The licensee shall also
3 pay the travel expense and per diem subsistence allowance
4 provided for state employees in s. 112.061. The licensee
5 shall not be required to pay a per diem fee and expenses of
6 an examination which shall consume more than 30 worker-days in
7 any one year unless such examination or investigation is due
8 to fraudulent practices of the licensee, in which case such
9 licensee shall be required to pay the entire cost regardless
10 of time consumed.

11 (3) Any person having reason to believe that any
12 provision of this act has been violated may file with the
13 department a written complaint setting forth the details of
14 such alleged violation and the department upon receipt of such
15 complaint, may inspect the pertinent books, records, letters,
16 and contracts of the licensee and of the seller involved,
17 relating to such specific written complaint.

18 Section 18. Paragraphs (a) and (h) of subsection (1)
19 of section 538.03, Florida Statutes, are amended to read:

20 538.03 Definitions; applicability.--

21 (1) As used in this part, the term:

22 (a) "Secondhand dealer" means any person, corporation,
23 or other business organization or entity which is not a
24 secondary metals recycler subject to part II and which is
25 engaged in the business of purchasing, consigning, or pawning
26 secondhand goods ~~or entering into title loan transactions.~~

27 However, secondhand dealers are not limited to dealing only in
28 items defined as secondhand goods in paragraph (g). Except as
29 provided in subsection (2), the term means pawnbrokers,
30 jewelers, precious metals dealers, garage sale operators,
31 secondhand stores, and consignment shops.

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1 (h) "Transaction" means any ~~title loan~~, purchase,
2 consignment, or pawn of secondhand goods by a secondhand
3 dealer.

4 Section 19. Subsection (1) of section 538.16, Florida
5 Statutes, is amended to read:

6 538.16 Secondhand dealers; disposal of property.--

7 (1) Any personal property pawned with a pawnbroker,
8 whether the pawn is a loan of money or a buy-sell agreement ~~or~~
9 ~~a motor vehicle which is security for a title loan~~, is subject
10 to sale or disposal if the pawn is a loan of money and the
11 property has not been redeemed or there has been no payment on
12 account made for a period of 90 days, or if the pawn is a
13 buy-sell agreement ~~or if it is a title loan~~ and the property
14 has not been repurchased from the pawnbroker ~~or the title~~
15 ~~redeemed from the title lender~~ or there has been no payment
16 made on account within 60 days.

17 Section 20. Effective July 1, 1998, the sum of
18 \$500,000 is hereby appropriated for the 1998-1999 fiscal year
19 from the Regulatory Trust Fund of the Department of Banking
20 and Finance to the department to fund nine positions for the
21 purpose of carrying out the provisions of this act.

22 Section 21. Paragraph (i) of subsection (1) of section
23 538.03, Florida Statutes, subsection (5) of section 538.06,
24 Florida Statutes, and subsections (4) and (5) of section
25 538.15, Florida Statutes, are hereby repealed.

26 Section 22. Except as otherwise provided in this act,
27 this act shall take effect October 1 of the year in which
28 enacted.

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1 ===== T I T L E A M E N D M E N T =====

2 And the title is amended as follows:

3 remove from the title of the bill: the entire title

4

5 and insert in lieu thereof:

6 A bill to be entitled
7 An act relating to title loan transactions;
8 creating the "Florida Title Loan Act";
9 providing definitions; providing legislative
10 intent; requiring licensure by the Department
11 of Banking and Finance to be in the business as
12 a title loan lender; providing for eligibility
13 for licensure; providing for application;
14 providing for suspension or revocation of
15 license; providing for a title loan
16 transaction form; providing for recordkeeping
17 and reporting and safekeeping of property;
18 providing for title loan charges; providing a
19 holding period when there is a failure to
20 redeem; providing for the disposal of pledged
21 property; providing for disposition of excess
22 proceeds; prohibiting certain acts; providing
23 for the right to redeem; providing for lost
24 title loan transaction forms; providing for a
25 title loan lenders lien; providing for criminal
26 penalties; providing for certain records from
27 the Department of Law Enforcement; providing
28 for subpoenas, enforcement of actions, and
29 rules; providing a fine; providing for
30 investigations and complaints; amending ss.
31 538.03 and 538.16, F.S.; deleting provisions

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1 relating to title loan transactions; providing
 2 an appropriation; repealing ss. 538.03(1)(i),
 3 538.06(5), and 538.15(4) and (5), F.S.,
 4 relating to title loan transactions by
 5 secondhand dealers; providing effective dates.
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