

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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11 Representative(s) Sublette offered the following:

12

13 **Amendment (with title amendment)**

14 Remove from the bill: Everything after the enacting clause

15

16 and insert in lieu thereof:

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

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

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

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

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

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

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.

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

- 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.
- 7       (12) "Title loan lender" means any person who is  
8 engaged in the business of making title loans or engaging in  
9 title loan agreements with pledgors.
- 10       (13) "Title loan office" means the location at which,  
11 or premises from which, a title loan lender regularly conducts  
12 business.
- 13       (14) "Title loan transaction" means any title loan of  
14 a motor vehicle from lender to borrower for money.
- 15       (15) "Title loan transaction form" means the  
16 instrument on which a title loan lender records title loan  
17 agreements.
- 18       (16) "Titled personal property" means a motor vehicle  
19 that has as evidence of ownership a state-issued certificate  
20 of title except for a mobile home that is the primary  
21 residence of the pledgor.
- 22       (17) "Ultimate equitable owner" means a natural person  
23 who, directly or indirectly, owns or controls an ownership  
24 interest in a corporation, a foreign corporation, an alien  
25 business organization, or any other form of business  
26 organization, regardless of whether such natural person owns  
27 or controls such ownership interest through one or more  
28 natural persons or one or more proxies, powers of attorney,  
29 nominees, corporations, associations, partnerships, trusts,  
30 joint stock companies, or other entities or devices, or any  
31 combination thereof.

hbd-06

Bill No. CS for CS for SB 194, 1st Eng.

Amendment No. \_\_\_\_ (for drafter's use only)

1           Section 4. License required; license fees.--  
2           (1) A person may not engage in business as a title  
3 loan lender unless the person has a valid license issued by  
4 the department authorizing the engagement in the business. A  
5 separate license is required for each physical location of a  
6 title loan office. The department shall issue more than one  
7 license to a person who complies with the requirements of this  
8 act for each license.

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

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

28           (4) Each license must specify the location for which  
29 the license is issued and must be conspicuously displayed at  
30 that location. When a licensee wishes to move a title loan  
31 office to another location, the licensee shall give 30 days'

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

1 prior written notice to the department by certified or  
2 registered mail, return receipt requested, and the department  
3 shall then amend the license accordingly. A license issued  
4 pursuant to this act is not transferable or assignable.

5 (5) The department may deny an initial application for  
6 a license if the applicant or any person with power to direct  
7 the management or policies of the applicant is the subject of  
8 a pending criminal prosecution or governmental civil  
9 enforcement action, in any jurisdiction, until conclusion of  
10 such criminal prosecution or enforcement action.

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

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

17 (8) All moneys collected by the department under this  
18 act shall be deposited into the Regulatory Trust Fund of the  
19 Department of Banking and Finance for the sole purpose of  
20 implementing this act.

21 Section 5. Eligibility for license.--

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

24 (a) Be of good moral character.

25 (b) File with the department a bond, in the amount of  
26 \$100,000 for each license, with a surety company qualified to  
27 do business in this state. In lieu of the bond, the applicant  
28 may establish a certificate of deposit or an irrevocable  
29 letter of credit in a financial institution, as defined in s.  
30 655.005, in the amount of the bond. The original bond,  
31 certificate of deposit, or letter of credit shall be filed

hbd-06

Bill No. CS for CS for SB 194, 1st Eng.

Amendment No. \_\_\_\_ (for drafter's use only)

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

25 (c) Not have been convicted of a felony within the  
26 last 10 years or be acting as an ultimate equitable owner for  
27 someone who has been convicted of a felony within the last 10  
28 years.

29 (d) Not have been convicted, and not be acting as an  
30 ultimate equitable owner for someone who has been convicted,  
31 of a crime that the department finds directly relates to the

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

1 duties and responsibilities of a title loan lender within the  
2 last 10 years.

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

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

11 Section 6. Application for license.--

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

15 (a) Contain the name and the residence and business  
16 addresses of the applicant and, if the applicant is a  
17 partnership or association, of every member of such  
18 partnership or association and, if a corporation, of each  
19 executive officer and director and ultimate equitable owner of  
20 at least 25 percent of such corporation.

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

26 (c) Identify the county and municipality with the  
27 street and number or location where the business is to be  
28 conducted.

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

31

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

1 At the time of making such application the applicant shall pay  
2 to the department a nonrefundable license fee not to exceed  
3 \$500. Applications, except for applications to renew or  
4 reactivate a license, must be accompanied by a nonrefundable  
5 investigation fee of \$200.

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

17 (3) Upon the filing of an application for a license  
18 and payment of all applicable fees, unless the application is  
19 to renew or reactivate an existing license, the department  
20 shall investigate the facts concerning the applicant's  
21 proposed activities. The department shall investigate the  
22 facts, and shall approve an application and issue to the  
23 applicant a license that will evidence the authority to do  
24 business under the provisions of this act if the department  
25 finds that the eligibility requirements for the license are  
26 satisfied. The license must be prominently displayed at the  
27 front desk or counter at the title loan office.

28 (4) A license that is not renewed by its expiration  
29 date shall automatically revert to inactive status. An  
30 inactive license may be reactivated upon submission of a  
31 completed reactivation application, payment of the biannual



hbd-06

Bill No. CS for CS for SB 194, 1st Eng.

Amendment No. \_\_\_\_ (for drafter's use only)

1 license fee, and payment of a reactivation fee of \$250. A  
2 license expires on the date on which it has been inactive for  
3 3 months.

4 (5) A licensee may not change the place of business  
5 maintained under a license without prior notice to the  
6 department. When a licensee wishes to change a place of  
7 business, the licensee shall give written notice of such  
8 change to the department.

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

20 (7) Licenses are not transferable or assignable. A  
21 licensee may invalidate any license by delivering the license  
22 to the department with written notice of its surrender by  
23 certified or registered mail, return receipt requested, but  
24 such delivery does not affect any civil or criminal liability  
25 or the authority to enforce this act for acts committed in  
26 violation thereof.

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

28 (1) The following acts are violations of this act and  
29 constitute grounds for the disciplinary actions specified in  
30 subsection (2):

31 (a) Failure to comply with any provision of this act,

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

1 any rule or order adopted pursuant to this act, or any written  
2 agreement entered into with the department.

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

6 (c) Fraudulent misrepresentation, circumvention, or  
7 concealment of any matter required to be stated or furnished  
8 to a pledgor pursuant to this act, regardless of reliance by  
9 or damage to the pledgor.

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

12 (e) False, deceptive, or misleading advertising by a  
13 title loan lender.

14 (f) Failure to maintain, preserve, and keep available  
15 for examination, all books, accounts, or other documents  
16 required by this act, by any rule or order adopted pursuant to  
17 this act, or by any agreement entered into with the  
18 department.

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

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

25 (i) Criminal conduct in the course of a person's  
26 business as a title loan lender.

27 (2) Upon a finding by the department that any person  
28 has committed any of the acts set forth in subsection (1), the  
29 department may enter an order taking any of the following  
30 actions:

31 (a) Issuing a notice of noncompliance pursuant to s.

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

- 1 120.695, Florida Statutes;
- 2 (b) Denying an application for a license pursuant to
- 3 this act;
- 4 (c) Revoking or suspending a license previously
- 5 granted pursuant to this act;
- 6 (d) Placing a licensee or an applicant for a license
- 7 on probation for a period of time and subject to such
- 8 conditions as the department specifies;
- 9 (e) Placing permanent restrictions or conditions upon
- 10 issuance or maintenance of a license pursuant to this act;
- 11 (f) Issuing a reprimand; or
- 12 (g) Imposing an administrative fine not to exceed
- 13 \$5,000 for each such act or violation.
- 14 (3) In addition to the acts specified in subsection
- 15 (1), the following shall be grounds for denial of a license
- 16 pursuant to this act, or for revocation, suspension, or
- 17 restriction of a license previously granted:
- 18 (a) A material misstatement of fact in an initial or
- 19 renewal application for a license.
- 20 (b) Having a license, registration, or the equivalent,
- 21 to practice any profession or occupation denied, suspended,
- 22 revoked, or otherwise acted against by a licensing authority
- 23 in any jurisdiction for fraud, dishonest dealing, or any act
- 24 of moral turpitude.
- 25 (c) Having been convicted or found guilty of a crime
- 26 involving fraud, dishonest dealing, or any act of moral
- 27 turpitude.
- 28 (d) Being insolvent or having demonstrated a lack of
- 29 honesty or financial responsibility.
- 30 (e) A fact or condition exists which, if it had
- 31 existed or had been known to exist at the time of the original

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

1 issuance of the license, would have justified the department  
2 in refusing a license.

3 (4) It is sufficient cause for the department to take  
4 any of the actions specified in subsection (2), as to any  
5 partnership, corporation, or association, if the department  
6 finds grounds for such action as to any member of the  
7 partnership, as to any executive officer or director of the  
8 corporation or association, or as to any person with power to  
9 direct the management or policies of the partnership,  
10 corporation, or association.

11 (5) Each licensee licensed pursuant to this act is  
12 responsible for the acts of employees and agents of the  
13 licensee if the licensee knew or should have known about such  
14 acts and the licensee retained the profits, benefits, or  
15 advantages accruing from such acts or ratified the conduct of  
16 the employee or agent as a matter of law or fact.

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

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

27 Section 8. Title loan transaction form.--

28 (1) At the time a title loan lender enters into each  
29 title loan agreement, the title loan lender shall complete a  
30 title loan transaction form for such transaction, and the  
31 pledgor shall sign such completed form. The department shall

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

1 approve the design and format of the title loan transaction  
2 form, which shall elicit the information required under this  
3 section. In completing the title loan transaction form, the  
4 title loan lender shall record the following information,  
5 which shall be typed or written indelibly and legibly in  
6 English.

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

9 (b) The vehicle identification number, or other  
10 comparable identification number, along with the license plate  
11 number, if applicable, of the titled personal property to  
12 which the loan property relates.

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

15 (d) The date of the transaction.

16 (e) The identification number and the type of  
17 identification, including the issuing agency, accepted from  
18 the pledgor.

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

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

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

25 (i) The total amount, amount financed plus finance  
26 charge, which must be paid to redeem the loan property on the  
27 maturity date, designated as the "total amount of all  
28 payments."

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

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

- 1           (2) The following information shall also be printed on  
2 all title loan transaction forms:
- 3           (a) The name and address of the title loan office.  
4           (b) The name and address of the department as well as  
5 a telephone number to which consumers may address complaints.  
6           (c) The following statement in not less than 12-point  
7 type that:
- 8           1. The pledgor is not obligated to redeem the subject  
9 certificate of title.
- 10           2. If the pledgor does not redeem the certificate of  
11 title before the maturity date of the title loan agreement,  
12 the title loan lender may repossess the titled personal  
13 property to which the certificate of title relates.
- 14           3. If the title loan transaction form is lost,  
15 destroyed, or stolen, the pledgor should immediately so advise  
16 the issuing title loan lender in writing.
- 17           (d) The statement that "The pledgor represents and  
18 warrants that the titled personal property to which the loan  
19 property relates is not stolen and has no liens or  
20 encumbrances against it, the pledgor has the right to enter  
21 into this transaction, and the pledgor will not apply for a  
22 duplicate certificate of title while the title loan agreement  
23 is in effect."
- 24           (e) Immediately above the signature of the pledgor,  
25 the statement that "I, the pledgor declare under penalty of  
26 perjury that I have read the foregoing document and that, to  
27 the best of my knowledge and belief, the facts contained in it  
28 are true and correct."
- 29           (f) A blank line for the signature of the pledgor.  
30           (3) At the time of the transaction, the title loan  
31 lender shall deliver to the pledgor an exact copy of the

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

1 completed title loan transaction form.

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

21 Section 9. Recordkeeping; reporting; safekeeping of  
22 property.--

23 (1) Every title loan lender shall maintain, at the  
24 principal place of business, such books, accounts, and records  
25 of the business conducted under the license issued for such  
26 place of business as will enable the department to determine  
27 the licensee's compliance with this act. The licensee shall  
28 make all such books, accounts, and records of business  
29 conducted under the license available at a convenient location  
30 in this state upon request of the department.

31 (2) The department may authorize the maintenance of

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

1 books, accounts, and records at a location other than a  
2 principal place of business. The department may require books,  
3 accounts, and records to be produced and available at a  
4 reasonable and convenient location in this state within a  
5 reasonable period of time after such a request.

6 (3) The title loan lender shall maintain the original  
7 copy of each completed title loan transaction form on the  
8 title loan office premises, and shall not obliterate, discard,  
9 or destroy any such original copy, for a period of at least 2  
10 years after making the final entry on any loan recorded in  
11 such office.

12 (4) All loan property, or property related to the  
13 title loan transaction, which is delivered to a title loan  
14 lender shall be securely stored and maintained at the title  
15 loan office unless the title document has been forwarded to  
16 the appropriate state agency for the purpose of having a lien  
17 recorded or deleted.

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

22 Section 10. Title loan charges.--

23 (1) A title loan lender may charge a maximum interest  
24 rate of 30 percent per annum computed on the first \$2,000 of  
25 the principal amount, 24 percent per annum on that part of the  
26 principal amount exceeding \$2,000 and not exceeding \$3,000,  
27 and 18 percent per annum on that part of the principal amount  
28 exceeding \$3,000. The original principal amount is the same  
29 amount as the amount financed, as defined by the federal Truth  
30 in Lending Act and Regulation Z of the Board of Governors of  
31 the Federal Reserve System. In determining compliance with the



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

1 statutory maximum interest and finance charges, the  
2 computations must be simple interest and not add-on interest  
3 or any other computations. When two or more interest rates are  
4 to be applied to the principal amount, the lender may charge  
5 interest at that single annual percentage rate which, if  
6 applied according to the actuarial method to each of the  
7 scheduled periodic balances of principal, would produce at  
8 maturity the same total amount of interest as would result  
9 from the application of the two or more rates otherwise  
10 permitted, based upon the assumption that all payments are  
11 made as agreed.

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

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

31 (4) Any finance charge contracted for or received,

hbd-06

Bill No. CS for CS for SB 194, 1st Eng.

Amendment No. \_\_\_\_ (for drafter's use only)

1 directly or indirectly, in excess of the amounts authorized  
2 under this section are prohibited, may not be collected, and  
3 render the title loan agreement voidable, in which case the  
4 title loan lender shall forfeit the right to collect any  
5 interest or finance charges. Upon the pledgor's written  
6 request delivered to the title loan lender by certified mail,  
7 return receipt requested, within 30 days after the maturity  
8 date, the title loan lender shall be obligated to return to  
9 the pledgor the loan property delivered to the title loan  
10 lender in connection with the title loan agreement upon  
11 payment of the balance of the principal remaining due,  
12 provided that there shall be no penalty for a violation  
13 resulting from an accidental and bona fide error that is  
14 corrected upon discovery. Any action to circumvent the  
15 limitation on title loan interest or any other amounts  
16 collectible under this act is voidable. Any transaction  
17 involving a person's delivery of a personal property  
18 certificate of title in exchange for the advancement of funds  
19 on the condition that the person shall or may redeem or  
20 repurchase the certificate of title upon the payment of a sum  
21 of money, whether the transaction be characterized as a  
22 "buy-sell agreement," "sale-leaseback agreement," or  
23 otherwise, shall be deemed a violation of this act if such sum  
24 exceeds the amount that a title loan lender may collect in a  
25 title loan agreement under this act or if the terms of the  
26 transaction otherwise conflict with the permitted terms and  
27 conditions of a title loan agreement under this act.

28 Section 11. Disposal of pledged property; excess  
29 proceeds.--

30 (1) Any motor vehicle which is security for a title  
31 loan, is subject to sale or disposal if the title has not been

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

1 redeemed from the title lender or there has been no payment  
2 made on account within 60 days after payment was due. Every  
3 title loan transaction form shall contain a notice of the  
4 provisions of this subsection. Any such sale or disposal shall  
5 vest in the purchaser the right, title, and interest of the  
6 owner and the title loan lender.

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

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

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

29 Section 12. Prohibited acts.--

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

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

- 1       (a) Falsify or fail to make an entry of any material  
2 matter in a title loan lender transaction form.
- 3       (b) Refuse to allow the department to inspect  
4 completed title loan transaction forms or loan property during  
5 the ordinary hours of the title loan lender's business or  
6 other times acceptable to both parties.
- 7       (c) Enter into a title loan agreement with a person  
8 under the age of 18 years.
- 9       (d) Make any agreement requiring or allowing for the  
10 personal liability of a pledgor or the waiver of any of the  
11 provisions of this act.
- 12       (e) Knowingly enter into a title loan agreement with  
13 any person who is under the influence of drugs or alcohol when  
14 such condition is visible or apparent, or with any person  
15 using a name other than such person's own name or the  
16 registered name of the person's business.
- 17       (f) Fail to exercise reasonable care in the  
18 safekeeping of loan property or of titled personal property  
19 repossessed pursuant to this act.
- 20       (g) Fail to return loan property or repossessed titled  
21 personal property to a pledgor, with any and all of the title  
22 loan lender's liens on the property properly released, upon  
23 payment of the full amount due the title loan lender, unless  
24 the property has been seized or impounded by an authorized law  
25 enforcement agency, taken into custody by a court, or  
26 otherwise disposed of by court order.
- 27       (h) Sell or otherwise charge for insurance in  
28 connection with a title loan agreement.
- 29       (i) Charge or receive any finance charge, interest, or  
30 fees which are not authorized pursuant to this act.
- 31       (j) Engage in business as a title loan lender without

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

1 first securing a license.  
2 (k) Refuse to accept a partial repayment of the  
3 obligation owed and outstanding.  
4 (1) Charge a prepayment penalty.  
5 (2) Title loan companies may not advertise using the  
6 words "interest free loans" or "no finance charges."  
7 Section 13. Right to redeem; lost title loan  
8 transaction form.--  
9 (1) Any person presenting identification of such  
10 person as the pledgor and presenting the pledgor's copy of the  
11 title loan transaction form to the title loan lender is  
12 presumed to be entitled to redeem the loan property described  
13 in the title loan lender transaction form. However, if the  
14 title loan lender determines that the person is not the  
15 pledgor, the title loan lender is not required to allow the  
16 redemption of the loan property by such person. The person  
17 redeeming the loan property must sign the pledgor's copy of  
18 the title loan transaction form, which the title loan lender  
19 may retain to evidence such person's receipt of the loan  
20 property. A person redeeming the loan property who is not the  
21 pledgor, must show identification to the title loan lender,  
22 together with written authorization from the pledgor, and the  
23 title loan lender shall record that person's name and address  
24 on the title loan transaction form retained by the title loan  
25 lender. In any such case, the person redeeming the pledgor's  
26 copy of the title loan transaction form shall be provided a  
27 copy of such signed form as evidence of such transaction.  
28 (2) If the pledgor's copy of the title loan  
29 transaction form is lost, destroyed, or stolen, the pledgor  
30 must notify the title loan lender, in writing by certified or  
31 registered mail, return receipt requested, or in person

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

1 evidenced by a signed receipt, and receipt of such notice  
2 shall invalidate such title loan transaction form if the loan  
3 property has not previously been redeemed. Before delivering  
4 the loan property or issuing a new title loan transaction  
5 form, the title loan lender shall require the pledgor to make  
6 a written statement of the loss, destruction, or theft of the  
7 pledgor's copy of the title loan transaction form. The title  
8 loan lender shall record on the written statement the type of  
9 identification and the identification number accepted from the  
10 pledgor, the date the statement is given, and the number or  
11 date of the title loan transaction form lost, destroyed, or  
12 stolen. The statement shall be signed by the title loan lender  
13 or the title loan office employee who accepts the statement  
14 from the pledgor.

15 Section 14. Criminal penalties.--

16 (1) Any person who engages in business as a title loan  
17 lender without first securing the license prescribed by this  
18 act commits a felony of the third degree, punishable as  
19 provided in s. 775.082, s. 775.083, or s. 775.084, Florida  
20 Statutes.

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

27 Section 15. Records from the Department of Law  
28 Enforcement.--The Department of Law Enforcement, on request,  
29 shall supply to the department any arrest and conviction  
30 records in the possession of the Department of Law Enforcement  
31 of an individual applying for or holding a license under this

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

1 act.

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

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

17 (2) In addition to any other powers conferred upon the  
18 department to enforce or administer this act, the department  
19 may:

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

27 (b) Issue and serve upon a person an order requiring  
28 such person to cease and desist and take corrective action  
29 whenever the department finds that such person is violating,  
30 has violated, or is about to violate any provision of this  
31 act, any rule or order adopted under this act, or any written

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

1 agreement entered into with the department.

2 (c) Whenever the department finds that conduct  
3 described in paragraph (b) presents an immediate danger to the  
4 public health, safety, or welfare requiring an immediate final  
5 order, the department may issue an emergency cease and desist  
6 order reciting with particularity the facts underlying such  
7 findings. The emergency cease and desist order is effective  
8 immediately upon service of a copy of the order on the  
9 respondent named in the order and shall remain effective for  
10 90 days. If the department begins nonemergency proceedings  
11 under paragraph (b), the emergency cease and desist order  
12 remains effective until the conclusion of the proceedings  
13 under ss. 120.569 and 120.57, Florida Statutes.

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

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

21 Section 17. Investigations and complaints.--

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



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

1 good cause to believe the licensee is not complying with the  
2 provisions of this act.

3 (2) The expenses of the department incurred in each  
4 such examination may be established by department rule but  
5 shall not exceed \$250 per 8-hour day for each examiner. Such  
6 examination fee shall be calculated on an hourly basis and  
7 shall be rounded to the nearest hour. The licensee shall also  
8 pay the travel expense and per diem subsistence allowance  
9 provided for state employees in s. 112.061. The licensee  
10 shall not be required to pay a per diem fee and expenses of  
11 an examination which shall consume more than 30 worker-days in  
12 any one year unless such examination or investigation is due  
13 to fraudulent practices of the licensee, in which case such  
14 licensee shall be required to pay the entire cost regardless  
15 of time consumed.

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

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

25 538.03 Definitions; applicability.--

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

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

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

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

6 (h) "Transaction" means any ~~title loan~~, purchase,  
7 consignment, or pawn of secondhand goods by a secondhand  
8 dealer.

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

11 538.16 Secondhand dealers; disposal of property.--

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

22 Section 20. Effective July 1, 1998, the sum of  
23 \$500,000 is hereby appropriated for the 1998-1999 fiscal year  
24 from the Regulatory Trust Fund of the Department of Banking  
25 and Finance to the department to fund nine positions for the  
26 purpose of carrying out the provisions of this act.

27 Section 21. Paragraph (i) of subsection (1) of section  
28 538.03, Florida Statutes, subsection (5) of section 538.06,  
29 Florida Statutes, and subsections (4) and (5) of section  
30 538.15, Florida Statutes, are hereby repealed.

31 Section 22. Except as otherwise provided in this act,

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

1 this act shall take effect October 1 of the year in which  
2 enacted.

3  
4

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

6 And the title is amended as follows:  
7 remove from the title of the bill: the entire title  
8  
9 and insert in lieu thereof:

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

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

1 for subpoenas, enforcement of actions, and  
 2 rules; providing a fine; providing for  
 3 investigations and complaints; amending ss.  
 4 538.03 and 538.16, F.S.; deleting provisions  
 5 relating to title loan transactions; providing  
 6 an appropriation; repealing ss. 538.03(1)(i),  
 7 538.06(5), and 538.15(4) and (5), F.S.,  
 8 relating to title loan transactions by  
 9 secondhand dealers; providing effective dates.

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