

By Senator Childers

1-15A-98

1 A bill to be entitled
2 An act relating to title loan transactions;
3 creating the "Florida Title Loan Act";
4 providing definitions; requiring licensure by
5 the Department of Agriculture and Consumer
6 Services to be in the business as a title loan
7 lender; providing for eligibility for
8 licensure; providing for application; providing
9 for suspension or revocation of license;
10 providing for a title loan transaction form;
11 providing for recordkeeping and reporting and
12 safekeeping of property; providing for title
13 loan charges; providing a holding period when
14 there is a default under the title loan
15 agreement; providing for the disposal of
16 pledged property; providing for disposition of
17 excess proceeds; prohibiting certain acts;
18 providing for the right to redeem; providing
19 for lost title loan transaction forms;
20 providing for a title loan lenders lien;
21 providing for criminal penalties; providing for
22 certain records from the Department of Law
23 Enforcement; providing for subpoenas,
24 enforcement of actions, and rules; providing a
25 fine; providing for investigations and
26 complaints; providing an appropriation;
27 providing legislative intent; repealing s.
28 538.06(5), F.S., which allows a secondhand
29 dealer to engage in a title loan transaction;
30 repealing s. 538.15(4), (5), F.S., which
31 prohibit certain acts and practices by

1 secondhand dealers; amending s. 538.03, F.S.;
2 deleting references to title loans; providing
3 an effective date.

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

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

9 Section 2. Definitions.--As used in this act, the
10 term:

11 (1) "Department" means the Department of Agriculture
12 and Consumer Services.

13 (2) "Commercially reasonable" means a sale or disposal
14 which occurs and can be construed as an arms-length
15 transaction. Nonpublic sales or disposal of personal property
16 between licensees and business affiliates or family members
17 are sales and disposal which are presumed not to be
18 commercially reasonable.

19 (3) "Executive officer" means the president, chief
20 executive officer, chief financial officer, chief operating
21 officer, executive vice president, senior vice president,
22 secretary and treasurer.

23 (4) "Identification" means a government issued
24 photographic identification.

25 (5) "Licensee" means a person who is licensed under
26 this act.

27 (6) "Loan property" means any personal property
28 certificate of title that is deposited with a title loan
29 lender in the course of the title loan lender's business and
30 is the subject of a title loan agreement.

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1 (7) "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 unencumbered
5 titled personal property, except by a title loan agreement,
6 owned by the pledgor.

7 (8) "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 (9) "Title loan office" means the location at which,
11 or premises from which, a title loan lender regularly conducts
12 business.

13 (10) "Title loan transaction form" means the
14 instrument on which a title loan lender records title loan
15 agreements.

16 (11) "Titled personal property" means any personal
17 property that has as evidence of ownership a state-issued
18 certificate of title except for a mobile home that is the
19 primary residence of the pledgor.

20 (12) "Ultimate equitable owner" means a natural person
21 who, directly or indirectly, owns or controls an ownership
22 interest in a corporation, a foreign corporation, an alien
23 business organization, or any other form of business
24 organization, regardless of whether such natural person owns
25 or controls such ownership interest through one or more
26 natural persons or one or more proxies, powers of attorney,
27 nominees, corporations, associations, partnerships, trusts,
28 joint stock companies, or other entities or devices, or any
29 combination thereof.

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

8 (2) An application for a license under this act must
9 be submitted to the department on such form as the department
10 prescribes by rule. If the department determines that an
11 application should be granted, it shall issue the license for
12 a period not to exceed 1 year. A nonrefundable license fee of
13 \$1,500 and a nonrefundable investigation fee of \$250 must
14 accompany an initial application for each title loan location.
15 The revenue from these fees is intended to reasonably reflect
16 the actual cost of regulation.

17 (3) A license must be renewed annually and must be
18 accompanied by a nonrefundable fee of \$1,500. A license that
19 is not renewed by its expiration date shall automatically
20 expire and revert to inactive status. Such inactive license
21 may be reactivated within 3 months after its expiration date
22 upon submission of a completed reactivation form and payment
23 of a reactivation fee. A license that is not reactivated
24 within 3 months after becoming inactive may not be
25 reactivated.

26 (4) Each license must specify the location for which
27 it is issued and must be conspicuously displayed at that
28 location. When a licensee wishes to move a title loan office
29 to another location, the licensee shall give 30 days prior
30 written notice to the department by certified or registered
31 mail, return receipt requested, and the department shall then

1 amend the license accordingly. A license issued under this act
2 is not transferable or assignable.

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

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

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

15 (8) All moneys collected by the department under this
16 act shall be deposited into the State Treasury to be placed in
17 the General Inspection Trust Fund for the sole purpose of
18 implementing this act.

19 Section 4. Eligibility for license.--

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

22 (a) Be of good moral character.

23 (b) File with the department a bond in the amount of
24 \$100,000 for each license with a surety company qualified to
25 do business in this state. In lieu of the bond, the applicant
26 may provide proof to the department that it is a company whose
27 stock is regularly traded on a national securities exchange,
28 not over-the-counter, and which has a net worth in excess of
29 \$1 million; the applicant may provide to the department a
30 current audited financial statement that documents that the
31 applicant's net worth is in excess of \$1 million; or the

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

29 (c) Not have been convicted of a felony within the
30 last 10 years or be acting on behalf of an ultimate equitable
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1 owner who has been convicted of a felony within the last 10
2 years.

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

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

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

16 Section 5. Application for license.--

17 (1) Application for a license to make title loans
18 under this act must be in writing, under oath, and in the form
19 prescribed by department rule, and must contain the name and
20 residence and business addresses of the applicant, and, if the
21 applicant is a partnership or association, of every member
22 thereof, and, if a corporation, of each executive officer and
23 director and ultimate equitable owner of at least 25 percent
24 thereof; must state whether any of the above has been arrested
25 within the last 10 years for, convicted of, or is under
26 indictment or information for, a felony or crime that directly
27 relates to the duties and responsibilities of a title loan
28 lender, and, if so, the nature thereof; must specify the
29 county and municipality, with the street and number or
30 location, where the business is to be conducted; and must
31 provide such further relevant information as the department

1 requires by rule. At the time of making such application, the
2 applicant shall pay to the department a nonrefundable license
3 fee of \$1,500. Applications, except for applications to renew
4 or reactivate a license, must be accompanied by a
5 nonrefundable investigation fee of \$250.

6 (2) Notwithstanding the foregoing, 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) thereof is
12 an issuer of securities which is required to file reports with
13 the Securities and Exchange Commission, if the person files
14 with the department any information, documents, and reports
15 required by that act to be filed with the Securities and
16 Exchange Commission.

17 (3) Upon the filing of an application for a license
18 and payment of all applicable fees, the department shall,
19 unless the application is to renew or reactivate an existing
20 license, 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 this act if the department finds that the
25 eligibility requirements for the license are satisfied. The
26 license must be prominently displayed at the front desk or
27 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 annual

1 license fee, and payment of a reactivation fee of \$250. A
2 license expires on the date at 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 thereof to
8 the department.

9 (6) A licensee may 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 results in either the evasion of this act or combining such
14 other business activities results in practices which are
15 detrimental, misleading, or unfair to consumers. Upon such a
16 finding, the department shall order the licensee to desist
17 from such evasion or other business activities. However, a
18 license may not 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 it to the
22 department with written notice of its surrender by certified
23 or registered mail, return receipt requested, but such
24 delivery does not affect any civil or criminal liability or
25 the authority to enforce this act for acts committed in
26 violation thereof.

27 Section 6. 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):

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1 (a) Failure to comply with any provision of this act,
2 any rule or order adopted under this act, or any written
3 agreement entered into with the department;

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

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

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

13 (e) False, deceptive, or misleading advertising by a
14 title loan lender;

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

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 one or more of the
30 following actions:

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

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

13 (5) Each licensee under this act is responsible for
14 the acts of its employees and agents if, with actual knowledge
15 of such acts, it retained profits, benefits, or advantages
16 accruing from such acts or ratified the conduct of the
17 employee or agent as a matter of law or fact.

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

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

26 Section 7. Title loan transaction form.--

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

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

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

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

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

14 (d) The date of the transaction.

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

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

20 (g) The maturity date of the title loan agreement,
21 which must occur 30 days after the date of the transaction.

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

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

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

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1 (2) The following information must 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 that consumers may use to make 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 this 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, that it has no liens or
20 encumbrances against it, that the pledgor has the right to
21 enter into this transaction, and that the pledgor will not
22 apply for a duplicate certificate of title while the title
23 loan agreement 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.
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1 (3) At the time of the transaction, the title loan
2 lender shall deliver to the pledgor an exact copy of the
3 completed title loan transaction form.

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

23 Section 8. Recordkeeping; reporting; safekeeping of
24 property.--

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

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1 conducted under the license available at a convenient location
2 in this state upon request of the department.

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

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

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

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

25 Section 9. Title loan charges.--

26 (1) In a title loan agreement, a title lender may
27 contract for and receive a finance charge only. The finance
28 charge may not exceed 22 percent simple interest per 30-day
29 period.

30 (2) Any extension must be executed in writing and must
31 clearly specify the new maturity date, the title loan finance

1 charges paid for the extension, and title loan finance charges
2 owed on the new maturity date, and a copy must be supplied to
3 the pledgor. In this event, the daily title loan finance
4 charge for the extension shall be equal to the title loan
5 finance charge for the original 30-day period divided by 30
6 days, one-thirtieth of the original total title loan finance
7 charge. A title loan lender is not permitted to capitalize any
8 unpaid finance charge as part of the amount financed in a
9 subsequent title loan transaction.

10 (3)(a) If a title loan agreement has not been
11 satisfied within 120 days after its inception, the title loan
12 lender is entitled to receive a finance charge on the
13 outstanding principal balance at a rate not to exceed 8
14 percent per month for the period of time that the loan remains
15 outstanding, not to exceed 240 days, after the initial 120-day
16 period. However, the title loan lender may collect a finance
17 charge as set forth in subsection (1) for the first 120 days
18 that the title loan agreement is in effect.

19 (b) If a title loan agreement has not been satisfied
20 within 360 days after its inception, the title loan lender is
21 entitled to receive a finance charge on the outstanding
22 principal balance at a rate not to exceed 18 percent per annum
23 for the period of time that the loan remains outstanding
24 beyond 360 days.

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

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

21 (5) Any fees or taxes paid to a governmental agency
22 and directly related to a particular title loan transaction
23 may be collected from the pledgor and shall be in addition to
24 the permitted finance charge.

25 Section 10. Ten-day holding period; failure to redeem;
26 default.--

27 (1) Upon the pledgor's default under the title loan
28 agreement or failure to redeem the pledged property on or
29 before the maturity date of the title loan agreement, the
30 title loan lender has the right to take possession of the
31 titled personal property. Any repossession of a motor vehicle

1 must be through an agent who is licensed by the state to
2 repossess motor vehicles. After taking possession of the
3 titled personal property, the title loan lender shall retain
4 possession of the titled personal property and the certificate
5 of title for a minimum 10-day holding period commencing on the
6 date of repossession.

7 (2) If, during the 10-day holding period, the pledgor
8 redeems the titled personal property and certificate of title
9 by paying all outstanding principal and finance charges and
10 repossession and storage charges permitted in section 11, the
11 pledgor shall be given possession of the titled personal
12 property and the certificate of title without further charge.

13 (3) If the pledgor fails to redeem the titled personal
14 property and certificate of title during the 10-day holding
15 period, then the pledgor shall thereby forfeit all right,
16 title, and interest in and to the titled personal property and
17 certificate of title to the title loan lender, who shall
18 thereby acquire an absolute right of title and ownership to
19 the titled personal property. The title loan lender shall then
20 have the sole right and authority to sell or dispose of the
21 unredeemed titled personal property.

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

24 (1) The title loan lender shall dispose of the pledged
25 personal property within a reasonable length of time after the
26 expiration of the 10-day holding period in a commercially
27 reasonable fashion so as to produce the highest proceeds from
28 such disposal. After the pledged personal property has been
29 disposed of, the title loan lender shall deduct from said
30 proceeds the outstanding principal balance and finance charges
31 that have accrued up until the expiration of the 10-day

1 holding period and the incurred repossession and storage
2 charges which are actual and reasonable. Title loan lenders
3 may assess and collect, as reimbursement, only a repossession
4 and storage charge that does not exceed the actual amount
5 charged by an independent and unaffiliated third-party company
6 or contractor that was hired to repossess or store the titled
7 personal property to which the loan property relates. The
8 total amount of reimbursement that the title loan lender may
9 receive as reimbursement for any outstanding charges, except
10 the principal and finance charges, may not exceed \$350 for a
11 motor vehicle repossessed within this state or \$500 for a
12 motor vehicle repossessed outside this state.

13 (2) After such deductions, any remaining balances or
14 surpluses must be given to the pledgor within 10 days after
15 such disposal. Under no circumstances, including the case in
16 which the sale or disposal proceeds fail to cover the loan
17 amount, shall any deficiency be allowed to be attributed to
18 any pledgor or borrower.

19 Section 12. Prohibited acts.--A title loan lender, or
20 any agent or employee of such title loan lender, may not:

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

23 (2) Refuse to allow the department to inspect
24 completed title loan transaction forms or loan property during
25 the ordinary hours of the title loan lender's business or at
26 other times acceptable to both parties.

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

29 (4) Make any agreement requiring or allowing for the
30 personal liability of a pledgor or the waiver of any of the
31 provisions of this act.

1 (5) Knowingly enter into a title loan agreement with
2 any person who is under the influence of drugs or alcohol when
3 such condition is visible or apparent, or with any person
4 using a name other than his or her own name or the registered
5 name of his or her business.

6 (6) Fail to exercise reasonable care in the
7 safekeeping of loan property or of titled personal property
8 repossessed under this act.

9 (7) Fail to return loan property or repossessed titled
10 personal property to a pledgor, with any and all of the title
11 loan lender's liens on the property properly released, upon
12 payment of the full amount due the title loan lender, unless
13 the property has been seized or impounded by an authorized law
14 enforcement agency, taken into custody by a court, or
15 otherwise disposed of by court order.

16 (8) Sell or otherwise charge for insurance in
17 connection with a title loan agreement.

18 (9) Charge or receive any finance charge, interest, or
19 fees which are not authorized by this act.

20 (10) Engage in business as a title loan lender without
21 first securing the license.

22 (11) Refuse to accept a partial repayment of the
23 amount financed, provided that all accrued finance charges
24 have been paid.

25 (12) Charge a prepayment penalty.

26 (13) Advertise using the words "interest free loans"
27 or "no finance charges."

28 Section 13. Right to redeem; lost title loan
29 transaction form.--

30 (1) Any person presenting identification of himself or
31 herself as the pledgor and presenting the pledgor's copy of

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

19 (2) If the pledgor's copy of the title loan
20 transaction form is lost, destroyed, or stolen, the pledgor
21 must notify the title loan lender in writing by certified or
22 registered mail, return receipt requested, or in person
23 evidenced by a signed receipt, and receipt of this notice
24 shall invalidate such title loan transaction form if the loan
25 property has not previously been redeemed. Before delivering
26 the loan property or issuing a new title loan transaction
27 form, the title loan lender shall require the pledgor to make
28 a written statement of the loss, destruction, or theft of the
29 pledgor's copy of the title loan transaction form. The title
30 loan lender shall record on the written statement the type of
31 identification and the identification number accepted from the

1 pledgor, the date the statement is given, and the number or
2 date of the title loan transaction form lost, destroyed, or
3 stolen. The statement shall be signed by the title loan lender
4 or the title loan office employee who accepts the statement
5 from the pledgor.

6 Section 14. Title loan lender's lien.--

7 (1) The title loan lender may record its security
8 interest in the titled personal property to which the loan
9 property relates by noting the lien on the certificate of
10 title.

11 (2) The title loan lender is, upon entering into a
12 title loan agreement, considered a bona fide lienholder whose
13 interest has been perfected.

14 Section 15. Criminal penalties.--

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

21 (2) In addition to any other penalty which may be
22 applicable, any person who willfully violates 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 degree
25 punishable as provided in section 775.082, Florida Statutes,
26 or section 775.083, Florida Statutes.

27 Section 16. 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 its possession of an individual applying for or
31 holding a license under this act.

1 Section 17. Subpoenas; enforcement actions; rules.--
2 (1) The department may issue and serve subpoenas to
3 compel the attendance of witnesses and the production of
4 documents, papers, books, records, and other evidence before
5 it in any matter pertaining to this act. The department may
6 administer oaths and affirmations to any person whose
7 testimony is required. If any person refuses to testify,
8 produce books, records, and documents, or otherwise refuses to
9 obey a subpoena issued under this section, the department may
10 enforce the subpoena in the same manner as subpoenas issued
11 under the Administrative Procedure Act are enforced. Witnesses
12 are entitled to the same fees and mileage as they are entitled
13 to by law for attending as witnesses in the circuit court,
14 unless such examination or investigation is held at the place
15 of business or residence of the witness.
16 (2) In addition to any other powers conferred upon it
17 to enforce or administer this act, the department may:
18 (a) Bring an action in any court of competent
19 jurisdiction to enforce or administer this act, any rule or
20 order adopted under this act, or any written agreement entered
21 into with the department. In such action, the department may
22 seek any relief at law or equity including a temporary or
23 permanent injunction, appointment of a receiver or
24 administrator, or an order of restitution.
25 (b) Issue and serve upon a person an order requiring
26 such person to cease and desist and take corrective action
27 whenever the department finds that such person is violating,
28 has violated, or is about to violate any provision of this
29 act, any rule or order adopted under this act, or any written
30 agreement entered into with the department.
31

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

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

18 (3) The department has the authority to adopt rules
19 pursuant to the Administrative Procedure Act.

20 Section 18. Investigations and complaints.--

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

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

3 (2) Any person having reason to believe that the
4 provisions of this act have been violated may file with the
5 department a written complaint setting forth the details of
6 such alleged violations and the department, upon receipt of
7 such complaint, may inspect the pertinent books, records,
8 letters, and contracts of the licensee and of the seller
9 involved, relating to such specific written complaint.

10 Section 19. The sum of \$700,000 is appropriated from
11 the General Inspection Trust Fund to the Department of
12 Agriculture and Consumer Services to administer this act and
13 to pay the salaries and other administrative expenses for
14 eight positions to carry out the provisions of this act during
15 the 1997-1998 fiscal year.

16 Section 20. Legislative intent.--It is the intent of
17 the Legislature that title loans shall be regulated by the
18 provisions of this act. The provisions of this act supersede
19 any provisions of law affecting title loans to the extent of
20 any conflict.

21 Section 21. Subsection (1) of section 538.03, Florida
22 Statutes, is amended to read:

23 538.03 Definitions; applicability.--

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

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

30 However, secondhand dealers are not limited to dealing only in
31 items defined as secondhand goods in paragraph (g). Except as

1 provided in subsection (2), the term means pawnbrokers,
2 jewelers, precious metals dealers, garage sale operators,
3 secondhand stores, and consignment shops.

4 (b) "Precious metals dealer" means a secondhand dealer
5 who normally or regularly engages in the business of buying
6 used precious metals for resale. The term does not include
7 those persons involved in the bulk sale of precious metals
8 from one secondhand or precious metals dealer to another.

9 (c) "Pawnbroker" means any person, corporation, or
10 other business organization or entity which is regularly
11 engaged in the business of making pawns but does not include a
12 financial institution as defined in s. 655.005 or any person
13 who regularly loans money or any other thing of value on
14 stocks, bonds, or other securities.

15 (d) "Pawn" means either of the following transactions:

16 1. Loan of money.--A written or oral bailment of
17 personal property as security for an engagement or debt,
18 redeemable on certain terms and with the implied power of sale
19 on default.

20 2. Buy-sell agreement.--An agreement whereby a
21 purchaser agrees to hold property for a specified period of
22 time to allow the seller the exclusive right to repurchase the
23 property. A buy-sell agreement is not a loan of money.

24 (e) "Secondhand store" means the place or premises at
25 which a secondhand dealer is registered to conduct business as
26 a secondhand dealer, or conducts business, including pawn
27 shops.

28 (f) "Consignment shop" means a shop engaging in the
29 business of accepting for sale, on consignment, secondhand
30 goods which, having once been used or transferred from the
31

1 manufacturer to the dealer, are then received into the
2 possession of a third party.

3 (g) "Secondhand goods" means personal property
4 previously owned or used, which is not regulated metals
5 property regulated under part II and which is purchased,
6 consigned, or pawned as used property. Such secondhand goods
7 shall be limited to watches; diamonds, gems, and other
8 precious stones; fishing rods, reels, and tackle; audio and
9 video electronic equipment, including television sets, compact
10 disc players, radios, amplifiers, receivers, turntables, tape
11 recorders; video tape recorders; speakers and citizens' band
12 radios; computer equipment; radar detectors; depth finders;
13 trolling motors; outboard motors; sterling silver flatware and
14 serving pieces; photographic equipment, including cameras,
15 video and film cameras, lenses, electronic flashes, tripods,
16 and developing equipment; microwave ovens; animal fur coats;
17 marine equipment; video games and cartridges; power lawn and
18 landscape equipment; office equipment such as copiers, fax
19 machines, and postage machines but excluding furniture; sports
20 equipment; weapons, including knives, swords, and air guns;
21 telephones, including cellular and portable; firearms; tools;
22 calculators; musical instruments, excluding pianos and organs;
23 lawnmowers; bicycles; typewriters; motor vehicles; gold,
24 silver, platinum, and other precious metals excluding coins;
25 and jewelry, excluding costume jewelry.

26 (h) "Transaction" means any ~~title loan~~, purchase,
27 consignment, or pawn of secondhand goods by a secondhand
28 dealer.

29 ~~(i) "Title loan" means a loan of money secured by~~
30 ~~bailment of a certificate of title to a motor vehicle. A~~
31 ~~title loan is not a pawn if the secondhand dealer does not~~

1 ~~maintain physical possession of the vehicle throughout the~~
2 ~~term of the transaction.~~

3 (i)~~(j)~~ "Precious metals" means any item containing any
4 gold, silver, or platinum, or any combination thereof,
5 excluding:

6 1. Any chemical or any automotive, photographic,
7 electrical, medical, or dental materials or electronic parts.

8 2. Any coin with an intrinsic value less than its
9 numismatic value.

10 3. Any gold bullion coin.

11 4. Any gold, silver, or platinum bullion that has been
12 assayed and is properly marked as to its weight and fineness.

13 5. Any coin which is mounted in a jewelry setting.

14 (j)~~(k)~~ "Department" means the Department of Revenue.

15 (k)~~(i)~~ "Pledge" means pawn or buy-sell agreement.

16 Section 22. Subsection (1) of section 538.16, Florida
17 Statutes, is amended to read:

18 538.16 Pawnbrokers ~~Secondhand dealers~~; disposal of
19 property.--

20 (1) Any personal property pawned with a pawnbroker,
21 whether the pawn is a loan of money or a buy-sell agreement ~~or~~
22 ~~a motor vehicle which is security for a title loan~~, is subject
23 to sale or disposal if the pawn is a loan of money and the
24 property has not been redeemed or there has been no payment on
25 account made for a period of 90 days, or if the pawn is a
26 buy-sell agreement ~~or if it is a title loan~~ and the property
27 has not been repurchased from the pawnbroker ~~or the title~~
28 ~~redeemed from the title lender~~ or there has been no payment
29 made on account within 60 days.

30
31

1 Section 23. Subsection (5) of section 538.06, Florida
2 Statutes, and subsections (4) and (5) of section 538.15,
3 Florida Statutes, are repealed.

4 Section 24. This act shall take effect October 1,
5 1998, except that this section and section 19 shall take
6 effect July 1, 1998.

7
8 *****

9 SENATE SUMMARY

10 Creates the Florida Title Loan Act. Requires a person to
11 be licensed as a title loan lender by the Department of
12 Agriculture and Consumer Services to engage in the
13 business of making title loans. Provides definitions.
14 Provides procedures for proving eligibility for a
15 license, application for a license, and revocation or
16 suspension of a license. Prescribing title loan
17 application forms. Requires recordkeeping, reporting, and
18 safekeeping of pledged property. Authorizes title loan
19 charges. Authorizes a lender to take possession of
20 pledged property if the pledgor defaults under the title
21 loan agreement or fails to redeem the pledged property on
22 or before the maturity date of the agreement. After
23 holding the pledged property for a minimum of 10 days,
24 the lender has the right to sell or dispose of the
25 unredeemed property. Any excess proceeds, after the
26 allowed deductions to the lender, which may be recovered
27 by the lender from the disposal of the pledged property
28 must be returned to the pledgor. Prohibits lenders from
29 engaging in certain acts and prescribes criminal
30 penalties. Provides that a lender may record its security
31 interest in the pledged property by noting the lien on
32 the certificate of title. Requires the Department of Law
33 Enforcement to supply information, upon request of the
34 Department of Agriculture and Consumer Services, relating
35 to an applicant for license. Provides the department with
36 investigative and subpoena powers, and authorizes it to
37 take other legal enforcement actions through the courts.
38 Authorizes the department to impose administrative fines
39 against any person violating the act. Repeals s.
40 538.06(5), F.S., which authorizes secondhand dealers to
41 engage in title loan transactions. Repeals s. 538.15(4),
42 (5), F.S., which prohibits a secondhand dealer from
43 engaging in both pawn transactions and title loan
44 transactions from the same dealer location and from using
45 the words "pawn" or "pawnbroker" in the dealer's business
46 if the dealer engages in title loan transactions.