

By the Committees on Ways and Means, Criminal Justice and  
Senators Childers and Lee

301-1920-98

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 lender's 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 ss. 538.03,  
2           538.16, F.S.; deleting references to title  
3           loans; providing an effective date.

4  
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, up to a maximum  
15 of \$10,000.

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

20 Section 4. Eligibility for license.--

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

23 (a) Be of good moral character.

24 (b) File with the department a bond in the amount of  
25 \$100,000 for each license with a surety company qualified to  
26 do business in this state. In lieu of the bond, the applicant  
27 may provide proof to the department that it has a net worth in  
28 excess of \$1 million; the applicant may provide to the  
29 department a current audited financial statement that  
30 documents that the applicant's net worth is in excess of \$1  
31 million; or the applicant may establish a certificate of

1 deposit or an irrevocable letter of credit in a Florida  
2 financial institution as defined in chapter 655.005, Florida  
3 Statutes, 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, and shall  
11 not obliterate, discard, or destroy any such original copy,  
12 for a period of at least 2 years after making the final entry  
13 on any loan recorded therein.

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

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

24 Section 9. Title loan charges.--

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

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



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

9 (3)(a) If a title loan agreement has not been  
10 satisfied within 120 days after its inception, the title loan  
11 lender is entitled to receive a finance charge on the  
12 outstanding principal balance at a rate not to exceed 1.5  
13 percent per month for the period of time that the loan remains  
14 outstanding, not to exceed 240 days, after the initial 120-day  
15 period. However, the title loan lender may collect a finance  
16 charge as set forth in subsection (1) for the first 120 days  
17 that the title loan agreement is in effect.

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

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

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

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

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

26 (1) Upon the pledgor's default under the title loan  
27 agreement or failure to redeem the pledged property on or  
28 before the maturity date of the title loan agreement, the  
29 title loan lender has the right to take possession of the  
30 titled personal property. Any repossession of a motor vehicle  
31 must be through an agent who is licensed by the state to

1 repossess motor vehicles. After taking possession of the  
2 titled personal property, the title loan lender shall retain  
3 possession of the titled personal property and the certificate  
4 of title for a minimum 10-day holding period commencing on the  
5 date of repossession.

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

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

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

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

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

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

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

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

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

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

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

31

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, if the title loan  
18 lender realizes a profit thereon.

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

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

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

26           (12) Charge a prepayment penalty.

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

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

31

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

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

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

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

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

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

16 Section 15. Criminal penalties.--

17 (1) Any person who engages in business as a title loan  
18 lender without first securing the license prescribed by this  
19 act commits a felony of the third degree, punishable as  
20 provided in section 775.082, Florida Statutes, section  
21 775.083, Florida Statutes, or section 775.084, Florida  
22 Statutes.

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

29 Section 16. Records from the Department of Law  
30 Enforcement.--The Department of Law Enforcement, on request,  
31 shall supply to the department any arrest and conviction

1 records in its possession of an individual applying for or  
2 holding a license under this act.

3 Section 17. Subpoenas; enforcement actions; rules.--

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

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



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

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

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

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

22 Section 18. Investigations and complaints.--

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

1 than once during any 12-month period unless the department has  
2 good cause to believe the licensee is not complying with the  
3 provisions of this act.

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

11 Section 19. The sum of \$700,000 is appropriated from  
12 the General Inspection Trust Fund to the Department of  
13 Agriculture and Consumer Services to administer this act and  
14 to pay the salaries and other administrative expenses for nine  
15 positions to carry out the provisions of this act during the  
16 1998-1999 fiscal year.

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

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

24 538.03 Definitions; applicability.--

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

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

31 However, secondhand dealers are not limited to dealing only in

1 items defined as secondhand goods in paragraph (g). Except as  
2 provided in subsection (2), the term means pawnbrokers,  
3 jewelers, precious metals dealers, garage sale operators,  
4 secondhand stores, and consignment shops.

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

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

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

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

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

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

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

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                           STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
9                           COMMITTEE SUBSTITUTE FOR  
10                           CS/SB 194

11 1. When there is a change of ownership of 25 percent or  
12 greater in a title loan office, an individual is required to  
13 apply for a new license, and to pay the nonrefundable license  
and investigation fees. The committee substitute caps these  
fees at a maximum of \$10,000.

14 2. Deletes the provision that all loans properly delivered to  
15 a title loan lender must be securely stored and maintained at  
the title loan office.

16 3. Reduced the finance charge on the outstanding principal  
17 balance left after 120 days from 8% to 1.5% per 30-day period  
for a period not to exceed 240 days.