

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

Date: March 18, 1998 Revised: _____

Subject: Secondhand Dealers

	<u>Analyst</u>	<u>Staff Director</u>	<u>Reference</u>	<u>Action</u>
1.	Dugger	Miller	CJ	Favorable
2.	_____	_____	BI	_____
3.	_____	_____	WM	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

The bill provides for the licensure and regulation by the Department of Banking and Finance (DBF) of secondhand dealers who engage in motor vehicle title loan transactions. An applicant for licensure would pay a \$300 application fee for a biennial license and an initial investigation fee of \$200. The bill also exempts such secondhand dealers from the Department of Revenue registration requirements under s. 538.09, F.S.

The 22 percent monthly fee, or 264 percent annual fee, that a secondhand dealer may charge in a title loan transaction is reduced to a maximum of 30 percent per annum under the bill. The secondhand dealer is required to disclose the terms, the loan amount, the origination date, the rate of interest charged, as well as other specified information to the borrower, in a clear and distinct written statement when making the loan.

This bill amends sections 538.06 and 538.09, and creates sections 538.065, 538.067, and 538.069 of the Florida Statutes.

II. Present Situation:

Prior to engaging in title loan transactions, a secondhand dealer must apply for registration with the Department of Revenue (DOR) under s. 538.09, F.S. A fee equal to the federal and state costs associated with processing fingerprint cards must be submitted to the DOR. The DOR is authorized to suspend, revoke, or deny registration if the DOR determines that an applicant or registrant has violated any provision of ch. 538, F.S.

Once licensed, the premises and records of a dealer are subject to inspection by the police, if the premises are located in a municipality, or the sheriff, if the premises are located outside of the

municipality. The DOR is authorized to examine the books of a secondhand dealer for the purpose of determining sales tax liability. Pursuant to s. 538.06, F.S., all dealers shall maintain transaction records for 5 years.

Chapter 538, F.S., authorizes secondhand dealers to enter into title loan transactions whereby a dealer retains possession of only the title to a motor vehicle while the owner maintains possession or control of the vehicle. A title loan is defined under s. 538.03, F.S., as a loan of money secured by bailment of a certificate of title to a motor vehicle. Secondhand dealers are prohibited from charging rent or any other fee for the use of the motor vehicle and from engaging in pawn and title loan transactions from the same location. ss. 538.06 and 538.15, F.S. Under s. 538.06(5)(e), F.S., secondhand dealers are permitted to charge a maximum fee of 22 percent per month in a title loan transaction.

By way of comparison, in a pawn transaction whereby the pawnbroker maintains physical possession of the pledged goods for the duration of the pawn, the pawnbroker may contract and receive a pawn service charge. The interest component of a pawn service charge is 2 percent of the amount financed for each 30-day period in a pawn transaction, under s. 539.001(11), F.S. The pawnbroker may charge any amount of pawn service charge as long as the total amount, inclusive of the interest component, does not exceed 25 percent of the amount financed for each 30-day period in a pawn transaction. However, the pawnbroker is entitled to receive a minimum pawn service charge of \$5 for each 30-day period.

The interest rate or fee charged by title loan dealers varies in Florida and is influenced by numerous factors, such as whether or not an applicant's credit report is required and used as part of the application process, the amount of the loan, and the collateral used. In other states, the maximum amount of interest allowed by law varies. For example, Minnesota and Arizona cap the monthly interest rate at 3 percent and 6 percent (for the first 2 months and 3 percent for the remainder of the agreement), respectively.

The Federal Consumer Credit Protection Act, commonly referred to as the Truth-in-Lending Act, provides for the definition and determination of a finance charge. The amount of a finance charge in connection with any consumer credit transaction is calculated as the sum of all charges, payable directly or indirectly by the person to whom the credit is extended. Examples of charges which are included in the finance charge are interest, service or carrying charge, and a fee for an investigation or credit report. The Act also specifies the procedure for calculating the annual percentage rate (APR). The APR is the nominal annual rate which will yield a sum equal to the amount of the finance charge when it is applied to the unpaid balances of the amount financed.

Section 538.06, F.S., provides that a secondhand dealer may not sell, barter, exchange, alter, adulterate, or in any way dispose of any secondhand goods within 15 calendar days of the date of acquisition of the goods. This holding period is not applicable when the seller of the goods is known by the secondhand dealer and desires to redeem, repurchase, or recover the goods, provided the secondhand dealer can produce the record of the original transaction with verification that the seller is the person from whom the goods were originally acquired. Upon

probable cause that the goods held by a secondhand dealer are stolen, a law enforcement officer with jurisdiction may extend the holding period to a maximum of 60 days.

Section 538.06, F.S., also provides that secondhand dealers have the right to repossess a motor vehicle through a licensed agent, if the title has not been redeemed by the owner or there has been no payment made by the owner on the title loan for a period of 60 days. Secondhand dealers must use licensed motor vehicle dealers to sell repossessed vehicles.

Section 538.16, F.S., provides that personal property pawned with a pawnbroker is subject to sale or disposal if the pawn is a loan of money and the property has not been redeemed or there has been no payment made on the account for 90 days, or if it is a title loan and the property has not been repurchased from the pawnbroker or the title has not been redeemed from the title lender or there has been no payment made on the account within 60 days.

III. Effect of Proposed Changes:

Section 1. This section amends s. 538.06, F.S., relating to the holding period, to require a secondhand dealer to obtain a motor vehicle title loan license prior to engaging in title loans. The secondhand dealer is also required to deliver to the borrower, at the time the loan is made, a statement delineating the terms of the loan, including the loan amount, the origination date, the maturity date, the nature of the security, and the rate of interest charged.

This section provides that a secondhand dealer may lend a maximum of \$25,000 in a vehicle title loan transaction. In addition, it establishes that the maximum interest that a secondhand dealer may charge in a title loan transaction is 30 percent per annum, to be computed on the first \$1,000 of the principal amount. The dealer would be authorized to charge 24 percent per annum on the part of the principal exceeding \$1,000 but not exceeding \$2,000. For amounts over \$2,000 but not exceeding \$25,000, the dealer would be authorized to charge 18 percent per annum.

In determining compliance with the statutory maximum interest and finance charges, the computations must be simple interest and not add-on interest or any other computations. The annual percentage rate must be computed and disclosed as required by the Federal Truth-in-Lending Act and Regulation Z of the Board of Governors of the Federal Reserve System. The maximum annual percentage rate of finance charge that may be charged is twelve times the maximum rate, and the maximum monthly rate must be computed on the basis of one-twelfth of the annual rate for each full month. Any charges, including interest, in excess of the combined total of all charges permitted under this chapter constitute a violation of ch. 678, F.S., governing interest and usury. If a legitimate error occurs, the secondhand dealer is required to refund the amount of the overcharge to the borrower within 20 days.

Section 2. This section creates s. 538.065, F.S., relating to the application for a motor vehicle title loan license and fees. An application for a license must be made to the DBF. Licenses are to be issued on a biennial basis. The applicant is required to submit a fee of \$300 for a biennial license. Applications, except for applications to renew or reactivate a license, must also be

accompanied by an investigation fee of \$200. The department is required to investigate any applicant prior to licensure. Liquid assets in the amount of at least \$25,000 must be maintained at all times for the operation of a business at a licensed location or proposed location. Only one place of business may be maintained under a license, but the department is authorized to issue additional licenses to a licensee upon compliance with the provisions governing the issuance of a single license.

Violations of ch. 538, F.S., constitute grounds for disciplinary actions, including, in part, the following: willful imposition of illegal or excessive charges, false or misleading advertising, unreasonable collection practices, failure to maintain the required records for inspection, and failing to maintain the required liquid assets. In addition to being able to revoke, suspend, or deny a license for one of these enumerated violations, the department is also authorized to impose other disciplinary actions, such as an administrative fine not exceeding \$1,000 for each violation. Other sanctions include placing a licensee or an applicant on probation, issuing a reprimand, or placing permanent restrictions upon the issuance of a license.

Under this section, a licensee is responsible for the acts of its employees and agents if, with knowledge of such acts, it retains profits, benefits, or advantages resulting from such acts or ratifies the conduct of the employee or agent as a matter of law or fact.

Section 3. This section creates s. 538.067, F.S., relating to investigations and records of secondhand dealers making title loans. The DBF is authorized to examine the books of a licensee not more often than once a year, unless the department has reason to believe the licensee is not complying with the provisions of ch. 538, F.S. The section also establishes examination fees based on the total loan amount outstanding.

Section 4. This section creates s. 538.069, F.S., relating to liability, subpoenas, enforcement, and rules. The DBF is authorized to issue and serve subpoenas, initiate enforcement actions, and adopt rules to administer and enforce this act, including the imposition and collection of an administrative fine not to exceed \$1,000 for each violation.

Section 5. This section amends s. 538.09, F.S., relating to registration, to exempt a secondhand dealer who engages in a motor vehicle title loan transaction from the provisions of this section. However, a secondhand dealer who is exempted from this section is required to be licensed by the department under the newly created provisions of s. 538.065, F.S.

Section 6. This section provides that the act will take effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

Applicants for a title loan lender license will be required to submit a biennial licensure fee of \$300, an initial investigation fee of \$200, and an examination fee based on the total loan amount outstanding.

B. Private Sector Impact:

The reduction of the annual fee from 264 percent to a maximum of 30 percent will benefit consumers trying to obtain a title loan. Conversely, persons who own title loan businesses will experience an indeterminate negative fiscal impact.

C. Government Sector Impact:

According to the Department of Revenue, as of December 1997, there were 617 title lenders presently registered with the department as secondhand dealers. If 617 lenders apply for licensure under the bill, this should generate up to \$185,100 in biennial application/renewal fees, up to \$123,400 in initial investigation fees, and up to \$123,400 in examination fees (the Department of Banking and Finance estimates that the average examination fee will be \$200), for total revenues of \$431,900 for the first year; \$123,400 for the second year; and \$431,900 for the third year.

According to Department of Banking and Finance, implementation of this act will require the following budget:

Expenditures:	FY 1998-99 (9 months)	FY 1999-00	FY 2000-01
Non-Recurring:	\$ 43,911	\$ 0	\$ 0
Recurring: 9 FTEs	\$235,620	\$314,160	\$314,160
Total Expenses	\$ 66,969	\$ 89,292	\$ 89,292
TOTAL	\$346,500	\$403,452	\$403,452

VI. Technical Deficiencies:

None.

VII. Related Issues:

Chapter 96-227, L.O.F., created the Vehicle Title Loan Task Force to conduct a review of the practices of the title loan industry in order to make recommendations to the Legislature as to the necessity of changing the current regulations of the industry based upon a consumer protection perspective. The Task Force was comprised of representatives of the Department of Agriculture and Consumer Services, the Department of Legal Affairs, and the Department of Banking and Finance. In addition, the Governor appointed an industry representative. The Department of Agriculture and Consumer Services designated one of its representatives as the chairperson of the Task Force. As a result of the discussion and testimony generated at the December 12, 1996 meeting, the Task Force identified and agreed upon the following issues that needed to be addressed:

1. The industry should be regulated by the state. The suggested regulatory entity was the Department of Agriculture and Consumer Services.
2. Title loans should have a unified statutory scheme; a chapter dedicated to the regulation of the industry.
3. Forms should conform to minimum statutory requirements.
4. Documents should be available upon request and be held for a period of two years, following the completion of the transaction.
5. If a contract is extended, and the borrower pays the service fee in full, then the dealer must accept a principal reduction payment, if offered by the borrower.
6. The contract length should not be regulated.
7. The amount charged per month should be defined as interest.
8. Interest should not be capitalized.

On January 23, 1997, the Task Force voted 4-3 to recommend that the current law relating to vehicle title loans be revised to reflect the former 1993 law, which essentially treated a vehicle title loan as a pawn transaction, requiring the vehicle to remain in the possession of the lender during the period of the loan.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
