

By Senators Williams and Latvala

4-368-98

1 A bill to be entitled
 2 An act relating to secondhand dealers; amending
 3 s. 538.06, F.S.; providing limitations on
 4 vehicle title loan transactions; creating s.
 5 538.065, F.S.; providing for the licensure of
 6 dealers making title loan transactions;
 7 providing fees; providing for regulation by the
 8 Department of Banking and Finance; providing
 9 guidelines for the operation of title loan
 10 businesses; providing grounds for discipline of
 11 licensees; providing penalties; prohibiting
 12 certain acts; creating s. 538.067, F.S.;
 13 providing for the examination of certain
 14 records; providing examination fees; creating
 15 s. 538.069, F.S.; providing immunity; providing
 16 for the issuance of subpoenas; providing powers
 17 and duties of the Department of Banking and
 18 Finance; providing for the adoption of rules;
 19 amending s. 538.09, F.S.; exempting certain
 20 secondhand dealers from registering with the
 21 Department of Revenue; providing an effective
 22 date.

23
 24 Be It Enacted by the Legislature of the State of Florida:

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 26 Section 1. Section 538.06, Florida Statutes, is
 27 amended to read:
 28 538.06 Holding period; physical possession; records;
 29 title loan transactions.--
 30 (1) A secondhand dealer may ~~shall~~ not sell, barter,
 31 exchange, alter, adulterate, or in any way dispose of any

1 secondhand goods within 15 calendar days after ~~of~~ the date of
2 acquisition of the goods. Such holding periods are not
3 applicable when the person known by the secondhand dealer to
4 be the person from whom the goods were acquired desires to
5 redeem, repurchase, or recover the goods, if ~~provided~~ the
6 dealer can produce the record of the original transaction with
7 verification that the customer is the person from whom the
8 goods were originally acquired.

9 (2) A secondhand dealer must maintain actual physical
10 possession of all secondhand goods throughout a transaction
11 and may not. ~~It is unlawful for a secondhand dealer to accept~~
12 title to or any other form of security in secondhand goods in
13 lieu of actual physical possession. A secondhand dealer who
14 accepts title or any other form of security in secondhand
15 goods in lieu of actual physical possession commits a
16 misdemeanor of the first degree, punishable as provided in s.
17 775.082 or s. 775.083.

18 (3) Upon probable cause that goods held by a
19 secondhand dealer are stolen, a law enforcement officer with
20 jurisdiction may extend the holding period to a maximum of 60
21 days. However, the holding period may be extended beyond 60
22 days by a court of competent jurisdiction upon a finding of
23 probable cause that the property is stolen and further holding
24 is necessary for the purposes of trial or to safeguard such
25 property. The dealer shall assume all responsibility, civil
26 or criminal, relative to the property or evidence in question,
27 including responsibility for the actions of any employee with
28 respect thereto.

29 (4) All dealers in secondhand property regulated by
30 this chapter must ~~shall~~ maintain transaction records for 5
31 years.

1 (5) Subject to the restrictions in s. 538.15 and s.
2 538.065, a secondhand dealer may engage in a title loan
3 transaction, and the physical possession provisions of
4 subsection (2) ~~do shall~~ not apply if the following conditions
5 are met:

6 (a) The secondhand dealer maintains physical
7 possession of the motor vehicle title.

8 (b) The owner maintains possession of, or control
9 over, the motor vehicle throughout the transaction.

10 (c) The owner is not required to pay rent or any other
11 charge for the use of the motor vehicle.

12 (d) The secondhand dealer delivers to the borrower, at
13 the time a loan is made, a clear and distinct statement in
14 English which shows the loan amount, origination date, and
15 maturity date; the nature of the security; the name and
16 address of the borrower and the dealer; and the rate of
17 interest charged.

18 (6)(d) A secondhand dealer who engages in a motor
19 vehicle title loan transaction may ~~has the right to~~ repossess
20 the motor vehicle upon failure of the owner to redeem the
21 title. The secondhand dealer may ~~shall~~ only repossess a motor
22 vehicle through an agent who is licensed by the state to
23 repossess motor vehicles. The secondhand dealer may dispose of
24 the motor vehicle as provided in s. 538.16. However, any sale
25 or disposal of the motor vehicle must ~~shall~~ be made through a
26 motor vehicle dealer licensed under s. 320.27.

27 (a) A secondhand dealer may lend a maximum of \$25,000
28 in a vehicle title loan transaction and may charge a maximum
29 interest rate of 30 percent per annum computed on the first
30 \$1,000 of the principal amount; 24 percent per annum on that
31 part of the principal amount exceeding \$1,000 and not

1 exceeding \$2,000; and 18 percent per annum on that part of the
2 principal amount exceeding \$2,000 and not exceeding \$25,000.
3 The original principal amount is the same amount as the amount
4 financed as defined by the federal Truth in Lending Act and
5 Regulation Z of the Board of Governors of the Federal Reserve
6 System. In determining compliance with the statutory maximum
7 interest and finance charges, the computations must be simple
8 interest and not add-on interest or any other computations.
9 When two or more interest rates are to be applied to the
10 principal amount, the dealer may charge interest at that
11 single annual percentage rate which, if applied according to
12 the actuarial method to each of the scheduled periodic
13 balances of principal, would produce at maturity the same
14 total amount of interest as would result from the application
15 of the two or more rates otherwise permitted, based upon the
16 assumption that all payments are made as agreed.

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

29 (c) Any charges, including interest, in excess of the
30 combined total of all charges permitted by this chapter
31 constitute a violation of chapter 687 governing interest and

1 usury, and the penalties of that chapter apply. If a bona fide
2 error occurs, the dealer must refund or credit the borrower
3 with the amount of the overcharge within 20 days after the
4 discovery of such error.

5 ~~(e) A secondhand dealer who accepts a motor vehicle~~
6 ~~title in a title loan transaction may charge a maximum fee of~~
7 ~~22 percent per month.~~

8 ~~(f) No charges other than those charges permitted in~~
9 ~~paragraph (e) shall be allowed, and said charges shall be~~
10 ~~fully disclosed, conspicuously in writing, and initialed by~~
11 ~~the motor vehicle owner at the initiation of the transaction.~~

12 Section 2. Section 538.065, Florida Statutes, is
13 created to read:

14 538.065 Application for motor vehicle title loan
15 license; fees; etc.--

16 (1) Application for a license to make motor vehicle
17 title loans under this chapter must be in writing, under oath,
18 in the form prescribed by the Department of Banking and
19 Finance, and must contain the name and residence and business
20 addresses of the applicant and, if the applicant is a
21 partnership or association, of each member thereof and, if a
22 corporation, of each officer and director thereof; the county
23 and municipality with the address where the business is to be
24 conducted; and any other information the department requires.
25 The applicant shall pay a biennial license fee of \$300.

26 Applications, except for applications to renew or reactivate a
27 license, must be accompanied by an investigation fee of \$200.

28 (2) Fees shall be collected by the Department of
29 Banking and Finance and deposited into the State Treasury to
30 the credit of the department. The department may employ
31 examiners or clerks as necessary and fix their compensation.

1 (3) Upon the filing of an application for licensure
2 and payment of all fees, the Department of Banking and Finance
3 shall investigate the facts concerning the applicant's
4 proposed activities. If the department determines that a
5 license should be granted, it shall issue the license for a
6 period not to exceed 2 years. Biennial licensure periods and
7 procedures for renewal of licenses shall be established by the
8 department. If the department determines that grounds exist
9 for denial of an application other than an application to
10 renew a license, it shall deny such application, return to the
11 applicant the license fee, and retain the investigation fee.

12 (a) A license that is not renewed at the end of the
13 biennium automatically reverts to inactive status. An inactive
14 license may be reactivated upon submission of a completed
15 reactivation application, payment of the biennial license fee,
16 and payment of a reactivation fee equal to the biennial
17 license fee. A license expires on the date on which it has
18 become inactive for 6 months.

19 (b) Only one place of business may be maintained under
20 a license, but the department may issue additional licenses to
21 a licensee upon compliance with the provisions governing
22 issuance of a single license.

23 (c) A licensee may not change the place of business
24 maintained under a license without prior approval of the
25 department. A licensee who wishes to change a place of
26 business must give written notice to the department, and, if
27 the department finds that the proposed location is reasonably
28 accessible to borrowers under existing loan contracts, it
29 shall amend the license accordingly. If the department does
30 not so find, it shall enter an order denying relocation of the
31 business to the requested location.

1 (d) A licensee may make vehicle title loans within a
2 place of business in which other business is conducted, unless
3 the department finds that the conduct of such other business
4 results in an evasion of this chapter. Upon such finding, the
5 department shall order the licensee to desist from such
6 activities.

7 (e) A person who purchases substantially all of the
8 assets of any existing licensed vehicle title loan business
9 must give immediate notice to the department and shall be
10 granted a 90-day temporary license for the place of business
11 within 10 days after the department receives an application
12 for a permanent license. Issuance of a temporary license for
13 a business nullifies the existing license for that business.

14 (f) Licenses are not transferable or assignable. A
15 licensee may invalidate any license by delivering it to the
16 department with a written notice of the delivery, but such
17 delivery does not affect any civil or criminal liability or
18 the department's authority to enforce this chapter.

19 (g) The department may deny a license application if
20 the applicant or any person with power to direct the
21 management or policies of the applicant's business is the
22 subject of a pending criminal prosecution in any jurisdiction,
23 until conclusion of such criminal prosecution.

24 (4) The following acts are violations of this chapter
25 and constitute grounds for the disciplinary actions in
26 subsection (5):

27 (a) A material misstatement of fact in an application
28 for a license;

29 (b) Failure to maintain liquid assets of at least
30 \$25,000 at all times for the operation of business at a
31 licensed location or proposed location;

1 (c) Failure to demonstrate financial responsibility,
2 experience, character, or general fitness required to command
3 the confidence of the public and to warrant the belief that
4 the business is lawful and within the purposes of this
5 chapter;

6 (d) The violation, knowingly or without the exercise
7 of due care, of this chapter, any rule or order adopted under
8 this chapter, or any written agreement entered into with the
9 Department of Banking and Finance;

10 (e) Any act of fraud, misrepresentation, or deceit,
11 regardless of reliance by or damage to a borrower, or any
12 illegal activity, in connection with a transaction under this
13 chapter. Such acts include the willful imposition of illegal
14 or excessive charges or misrepresentation, circumvention, or
15 concealment of any matter required to be revealed to a
16 borrower;

17 (f) The use of unreasonable collection practices or
18 false, deceptive, or misleading advertising in connection with
19 vehicle title loans;

20 (g) Failure to maintain records required by this
21 chapter, by any rule or order adopted under this chapter, or
22 by any agreement entered into with the Department of Banking
23 and Finance; or

24 (h) Refusal to permit inspection of books or records
25 in an investigation or examination by the Department of
26 Banking and Finance or refusal to comply with a subpoena
27 issued by the department.

28 (5) Upon a finding by the Department of Banking and
29 Finance that a person has committed any of the acts in
30 subsection (4), the department may enter an order:

31 (a) Denying an application for a license;

- 1 (b) Revoking or suspending a license;
2 (c) Placing a licensee or an applicant on probation
3 for a period of time and subject to such conditions as the
4 department may specify;
5 (d) Placing permanent restrictions or conditions upon
6 issuance or maintenance of a license;
7 (e) Issuing a reprimand; or
8 (f) Imposing an administrative fine not to exceed
9 \$1,000 for each act.
- 10 (6) The Department of Banking and Finance may take any
11 of the actions specified in subsection (5) against any
12 partnership, corporation, or association, if the department
13 finds that any of the acts in subsection (4) have been
14 committed by a member of the partnership, an officer or
15 director of the corporation or association, or any person with
16 power to direct the management or policies of the partnership,
17 corporation, or association.
- 18 (7) A licensee is responsible for the acts of the
19 licensee's employee or agent if, with knowledge of such acts,
20 the licensee retained profits, benefits, or advantages
21 accruing from such acts or ratified the conduct of the
22 employee or agent as a matter of law or fact.
- 23 (8) The license must be conspicuously posted in the
24 place of business of the licensee.
- 25 Section 3. Section 538.067, Florida Statutes, is
26 created to read:
- 27 538.067 Investigations and records of secondhand
28 dealers making title loans.--
- 29 (1)(a) The Department of Banking and Finance shall
30 investigate and examine any secondhand dealer who is licensed
31 to make motor vehicle title loans or other person as necessary

1 to determine compliance with this chapter. The department may
2 examine books, accounts, records, and other documents or
3 matters and compel the production of relevant books, records,
4 and other documents and materials relative to an examination
5 or investigation. Examinations of a licensee may not be made
6 more often than once a year unless the department has reason
7 to believe the licensee is not complying with this chapter.
8 Each licensee shall pay an examination fee based upon the
9 amount of outstanding loans due the licensee at the time of
10 the examination, as follows:

<u>Amount Outstanding</u>	<u>Examination Fee</u>
From \$0 to \$50,000.....	\$100
From \$50,000.01 to \$100,000.....	\$125
From \$100,000.01 to \$250,000.....	\$150
From \$250,000.01 to \$500,000.....	\$200
From \$500,000.01 and over.....	\$325

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19 (b) The licensee shall also pay the travel expense and
20 per diem subsistence allowance provided in s. 112.061, but is
21 not required to pay a per diem fee and expenses of an
22 examination that requires more than 30 worker-days in any one
23 year unless the examination is due to fraudulent practices of
24 the licensee, in which case the licensee must pay the entire
25 cost regardless of time consumed.

26 (2) Any person who has reason to believe that this
27 chapter has been or will be violated may file a written
28 complaint with the Department of Banking and Finance.

29 (3) Each licensee shall maintain, for at least 2 years
30 after making the final entry on any loan, records to enable
31

1 the Department of Banking and Finance to determine whether the
2 licensee is complying with this chapter.

3 (4) A licensee that operates two or more licensed
4 places of business in this state may maintain records of all
5 offices at one location, if a written request is filed with
6 the Department of Banking and Finance which designates the
7 location where the records are to be maintained.

8 Section 4. Section 538.069, Florida Statutes, is
9 created to read:

10 538.069 Liability; subpoenas; enforcement; rules.--

11 (1) A person is not in violation of this chapter nor
12 subject to any civil or criminal liability for any act or
13 omission made in good-faith reliance upon an order,
14 declaratory statement, or rule issued by the Department of
15 Banking and Finance, notwithstanding a subsequent decision by
16 a court of competent jurisdiction invalidating the order,
17 declaratory statement, or rule.

18 (2) The Department of Banking and Finance may issue
19 and serve subpoenas to compel the attendance of witnesses and
20 the production of documents in any matter pertaining to this
21 chapter. The department may administer oaths and affirmations
22 to any person whose testimony is required. If any person
23 refuses to testify or obey a subpoena, the department may
24 enforce the subpoena in the same manner as subpoenas issued
25 under the Administrative Procedure Act. Witnesses are entitled
26 to the same fees and mileage as they are entitled to by law
27 for serving as witnesses in the circuit court, unless the
28 examination or investigation is held at the place of business
29 or residence of the witness.

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1 (3) In addition to any other powers conferred upon it
2 to enforce or administer this chapter, the Department of
3 Banking and Finance may:

4 (a) Bring an action in any court of competent
5 jurisdiction to enforce or administer this chapter, any rule
6 or order adopted under this chapter, or any written agreement
7 entered into with the department. The department may seek any
8 relief at law or equity, including a temporary or permanent
9 injunction, appointment of a receiver or administrator, or an
10 order of restitution.

11 (b) Issue and serve upon a person an order requiring
12 the person to cease and desist and take corrective action
13 whenever the department finds that such person is violating,
14 has violated, or is about to violate this chapter, any rule or
15 order adopted under this chapter, or any written agreement
16 entered into with the department.

17 (c) Impose and collect an administrative fine against
18 any person found to have violated this chapter, any rule or
19 order adopted under this chapter, or any written agreement
20 entered into with the department, in an amount not to exceed
21 \$1,000 for each violation.

22 (4) The Department of Banking and Finance may adopt
23 rules to administer this act.

24 Section 5. Subsection (1) of section 538.09, Florida
25 Statutes, is amended to read:

26 538.09 Registration.--

27 (1) A secondhand dealer may ~~shall~~ not engage in the
28 business of purchasing, consigning, or pawning secondhand
29 goods from any location without registering with the
30 Department of Revenue. However, a secondhand dealer who
31 engages in a motor vehicle title loan transaction is exempt

1 from the provisions of this section, but must be licensed by
2 the Department of Banking and Finance pursuant to s. 538.065.
3 A fee equal to the federal and state costs for processing
4 required fingerprints must be submitted to the department with
5 each application for registration. One application is required
6 for each dealer. If a secondhand dealer is the owner of more
7 than one secondhand store location, the application must list
8 each location, and the department shall issue a duplicate
9 registration for each location. For purposes of subsections
10 (4) and (5) of this section, these duplicate registrations
11 shall be deemed individual registrations. A dealer must ~~shall~~
12 pay a fee of \$6 per location at the time of registration and
13 an annual renewal fee of \$6 per location on October 1 of each
14 year. All fees collected, less costs of administration, shall
15 be transferred into a trust fund to be established and
16 entitled the Secondhand Dealer and Secondary Metals Recycler
17 Clearing Trust Fund. The Department of Revenue shall forward
18 the full set of fingerprints to the Department of Law
19 Enforcement for state and federal processing, if ~~provided~~ the
20 federal service is available, to be processed for any criminal
21 justice information as defined in s. 943.045. The cost of
22 processing such fingerprints shall be payable to the
23 Department of Law Enforcement by the Department of Revenue.
24 The department may issue a temporary registration to each
25 location pending completion of the background check by state
26 and federal law enforcement agencies, but shall revoke such
27 temporary registration if the completed background check
28 reveals a prohibited criminal background. An applicant for a
29 secondhand dealer registration must be a natural person who
30 has reached the age of 18 years.
31

1 (a) If the applicant is a partnership, all the
2 partners must apply.

3 (b) If the applicant is a joint venture, association,
4 or other noncorporate entity, all members of such joint
5 venture, association, or other noncorporate entity must make
6 application for registration as natural persons.

7 (c) If the applicant is a corporation, the
8 registration must include the name and address of the ~~such~~
9 corporation's registered agent for service of process in the
10 state and a certified copy of statement from the Secretary of
11 State that the corporation is duly organized in the state or,
12 if the corporation is organized in a state other than Florida,
13 a certified copy of statement from the Secretary of State that
14 the corporation is duly qualified to do business in this
15 state. If the dealer has more than one location, the
16 application must list each location owned by the same legal
17 entity and the department shall issue a duplicate registration
18 for each location.

19 Section 6. This act shall take effect upon becoming a
20 law.

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23 SENATE SUMMARY

24 Provides for the regulation by the Department of Banking
25 and Finance of secondhand dealers who make title loan
26 transactions and exempts such dealers from registering
27 with the Department of Revenue. Establishes licensure and
28 examination requirements and fees. Prohibits certain acts
29 related to such transactions and prescribes penalties for
30 violations. Authorizes the Department of Banking and
31 Finance to issue subpoenas and adopt rules. Provides a
limitation of liability for certain persons. (See bill
for details.)