

1                                   A bill to be entitled  
2           An act relating to title loan transactions;  
3           creating the "Florida Title Loan Act";  
4           providing definitions; providing legislative  
5           intent; requiring licensure by the Department  
6           of Banking and Finance to be in the business as  
7           a title loan lender; providing for eligibility  
8           for licensure; providing for application;  
9           providing for suspension or revocation of  
10          license; providing for a title loan  
11          transaction form; providing for recordkeeping  
12          and reporting and safekeeping of property;  
13          providing for title loan charges; providing a  
14          holding period when there is a failure to  
15          redeem; providing for the disposal of pledged  
16          property; providing for disposition of excess  
17          proceeds; prohibiting certain acts; providing  
18          for the right to redeem; providing for lost  
19          title loan transaction forms; providing for a  
20          title loan lenders lien; providing for criminal  
21          penalties; providing for certain records from  
22          the Department of Law Enforcement; providing  
23          for subpoenas, enforcement of actions, and  
24          rules; providing a fine; providing for  
25          investigations and complaints; amending ss.  
26          538.03 and 538.16, F.S.; deleting provisions  
27          relating to title loan transactions; providing  
28          an appropriation; repealing ss. 538.03(1)(i),  
29          538.06(5), and 538.15(4) and (5), F.S.,  
30          relating to title loan transactions by  
31          secondhand dealers; providing effective dates.

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

2  
3 Section 1. Short title.--This act may be cited as the  
4 "Florida Title Loan Act."

5 Section 2. Legislative intent.--It is the intent of  
6 the Legislature that title loans shall be regulated by the  
7 provisions of this act. The provisions of this act shall  
8 supersede any other provisions of law affecting title loans to  
9 the extent of any conflict.

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

12 (1) "Department" means the Department of Banking and  
13 Finance.

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

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

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

26 (5) "Interest" means the cost of obtaining a title  
27 loan and includes any profit or advantage of any kind  
28 whatsoever that a title loan lender may charge, contract for,  
29 collect, receive, or in any way obtain, including, by means of  
30 any collateral sale, purchase, or agreement, as a condition of  
31 the title loan.

1           (6) "Licensee" means a person who is licensed pursuant  
2 to the provisions of this act.

3           (7) "License" means a permit issued under this chapter  
4 to make and collect title loans in accordance with this  
5 chapter at a single place of business.

6           (8) "Loan property" means any motor vehicle  
7 certificate of title that is deposited with a title loan  
8 lender in the course of the title loan lender's business and  
9 is the subject of a title loan agreement.

10           (9) "Motor vehicle" means an automobile, motorcycle,  
11 truck, trailer, semi-trailer, truck tractor and semitrailer  
12 combination, or any other vehicle operated on the public  
13 highways and streets of this state, used to transport persons  
14 or property, and propelled by power other than muscular power,  
15 but excluding vehicles which run only upon a track.

16           (10) "Title loan" means a loan of money secured by  
17 bailment of a certificate of title to a motor vehicle.

18           (11) "Title loan agreement" means a written agreement  
19 whereby a title loan lender agrees to make a loan of a  
20 specific sum of money to a pledgor, and the pledgor agrees to  
21 give the title loan lender a security interest in an  
22 unencumbered motor vehicle certificate of title owned by the  
23 pledgor.

24           (12) "Title loan lender" means any person who is  
25 engaged in the business of making title loans or engaging in  
26 title loan agreements with pledgors.

27           (13) "Title loan office" means the location at which,  
28 or premises from which, a title loan lender regularly conducts  
29 business.

30           (14) "Title loan transaction" means any title loan of  
31 a motor vehicle from lender to borrower for money.

1           (15) "Title loan transaction form" means the  
2 instrument on which a title loan lender records title loan  
3 agreements.

4           (16) "Titled personal property" means a motor vehicle  
5 that has as evidence of ownership a state-issued certificate  
6 of title except for a mobile home that is the primary  
7 residence of the pledgor.

8           (17) "Ultimate equitable owner" means a natural person  
9 who, directly or indirectly, owns or controls an ownership  
10 interest in a corporation, a foreign corporation, an alien  
11 business organization, or any other form of business  
12 organization, regardless of whether such natural person owns  
13 or controls such ownership interest through one or more  
14 natural persons or one or more proxies, powers of attorney,  
15 nominees, corporations, associations, partnerships, trusts,  
16 joint stock companies, or other entities or devices, or any  
17 combination thereof.

18           Section 4. License required; license fees.--

19           (1) A person may not engage in business as a title  
20 loan lender unless the person has a valid license issued by  
21 the department authorizing the engagement in the business. A  
22 separate license is required for each physical location of a  
23 title loan office. The department shall issue more than one  
24 license to a person who complies with the requirements of this  
25 act for each license.

26           (2) An application for a license pursuant to this act  
27 shall be submitted to the department on such forms as the  
28 department prescribes by rule. If the department determines  
29 that an application should be granted, the department shall  
30 issue the license for a period not to exceed 2 years. A  
31 nonrefundable license fee not to exceed \$500 and a

1 nonrefundable investigation fee of \$200 shall accompany an  
2 initial application for each title loan location. The revenue  
3 from such fees is intended to reasonably reflect the actual  
4 cost of regulation.

5 (3) A license shall be renewed biannually and shall be  
6 accompanied by a nonrefundable fee not to exceed \$500. A  
7 license that is not renewed by its expiration date shall  
8 automatically expire and revert to inactive status. Such  
9 inactive license may be reactivated within 3 months after the  
10 expiration date upon submission of a completed reactivation  
11 form and payment of a reactivation fee of \$250. A license that  
12 is not reactivated within 3 months after becoming inactive may  
13 not be reactivated.

14 (4) Each license must specify the location for which  
15 the license is issued and must be conspicuously displayed at  
16 that location. When a licensee wishes to move a title loan  
17 office to another location, the licensee shall give 30 days'  
18 prior written notice to the department by certified or  
19 registered mail, return receipt requested, and the department  
20 shall then amend the license accordingly. A license issued  
21 pursuant to this act is not transferable or assignable.

22 (5) The department may deny an initial application for  
23 a license if the applicant or any person with power to direct  
24 the management or policies of the applicant is the subject of  
25 a pending criminal prosecution or governmental civil  
26 enforcement action, in any jurisdiction, until conclusion of  
27 such criminal prosecution or enforcement action.

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

30 (7) A person shall apply to the department for a new  
31 license upon the change of any person owning 25 percent or

1 greater interest in any title loan office and shall pay the  
2 nonrefundable license and investigation fees.

3 (8) All moneys collected by the department under this  
4 act shall be deposited into the Regulatory Trust Fund of the  
5 Department of Banking and Finance for the sole purpose of  
6 implementing this act.

7 Section 5. Eligibility for license.--

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

10 (a) Be of good moral character.

11 (b) File with the department a bond, in the amount of  
12 \$100,000 for each license, with a surety company qualified to  
13 do business in this state. In lieu of the bond, the applicant  
14 may establish a certificate of deposit or an irrevocable  
15 letter of credit in a financial institution, as defined in s.  
16 655.005, in the amount of the bond. The original bond,  
17 certificate of deposit, or letter of credit shall be filed  
18 with the department, and the department shall be the  
19 beneficiary to that document. The bond, certificate of  
20 deposit, or letter of credit shall be in favor of the  
21 department for the use and benefit of any consumer who is  
22 injured pursuant to a title loan transaction by the fraud,  
23 misrepresentation, breach of contract, financial failure, or  
24 violation of any provision of this act by the title loan  
25 lender. Such liability may be enforced either by proceeding in  
26 an administrative action or by filing a judicial suit at law  
27 in a court of competent jurisdiction. However, in such court  
28 suit, the bond, certificate of deposit, or letter of credit  
29 posted with the department shall not be amenable or subject to  
30 any judgment or other legal process issuing out of or from  
31 such court in connection with such lawsuit, but such bond,

1 certificate of deposit, or letter of credit shall be amenable  
2 to and enforceable only by and through administrative  
3 proceedings before the department. It is the intent of the  
4 Legislature that such bond, certificate of deposit, or letter  
5 of credit shall be applicable and liable only for the payment  
6 of claims duly adjudicated by order of the department. The  
7 bond, certificate of deposit, or letter of credit shall be  
8 payable on a pro-rata basis as determined by the department,  
9 but the aggregate amount may not exceed the amount of the  
10 bond, certificate of deposit, or letter of credit.

11 (c) Not have been convicted of a felony within the  
12 last 10 years or be acting as an ultimate equitable owner for  
13 someone who has been convicted of a felony within the last 10  
14 years.

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

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

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

28 Section 6. Application for license.--

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

1           (a) Contain the name and the residence and business  
2 addresses of the applicant and, if the applicant is a  
3 partnership or association, of every member of such  
4 partnership or association and, if a corporation, of each  
5 executive officer and director and ultimate equitable owner of  
6 at least 25 percent of such corporation.

7           (b) State whether any of the above has, within the  
8 last 10 years, been arrested for or convicted of, or is under  
9 indictment or information for, a felony or crime.

10           (c) Identify the county and municipality with the  
11 street and number or location where the business is to be  
12 conducted.

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

15  
16 At the time of making such application the applicant shall pay  
17 to the department a nonrefundable license fee not to exceed  
18 \$500. Applications, except for applications to renew or  
19 reactivate a license, must be accompanied by a nonrefundable  
20 investigation fee of \$200.

21           (2) Notwithstanding subsection (1), the application  
22 need not state the full name and address of each officer,  
23 director, and shareholder if the applicant is owned directly  
24 or beneficially by a person who as an issuer has a class of  
25 securities registered pursuant to section 12 of the Securities  
26 Exchange Act of 1934 or, pursuant to section 15(d) of such  
27 act, is an issuer of securities which is required to file  
28 reports with the Securities and Exchange Commission, if the  
29 person files with the department any information, documents,  
30 and reports required by such act to be filed with the  
31 Securities and Exchange Commission.



1           (3) Upon the filing of an application for a license  
2 and payment of all applicable fees, unless the application is  
3 to renew or reactivate an existing license, the department  
4 shall investigate the facts concerning the applicant's  
5 proposed activities. The department shall investigate the  
6 facts, and shall approve an application and issue to the  
7 applicant a license that will evidence the authority to do  
8 business under the provisions of this act if the department  
9 finds that the eligibility requirements for the license are  
10 satisfied. The license must be prominently displayed at the  
11 front desk or counter at the title loan office.

12           (4) A license that is not renewed by its expiration  
13 date shall automatically revert to inactive status. An  
14 inactive license may be reactivated upon submission of a  
15 completed reactivation application, payment of the biannual  
16 license fee, and payment of a reactivation fee of \$250. A  
17 license expires on the date on which it has been inactive for  
18 3 months.

19           (5) A licensee may not change the place of business  
20 maintained under a license without prior notice to the  
21 department. When a licensee wishes to change a place of  
22 business, the licensee shall give written notice of such  
23 change to the department.

24           (6) A licensee may not conduct the business of making  
25 loans under this act within a place of business in which other  
26 business is solicited or engaged in, unless the department  
27 finds that the conduct of such other business by the licensee  
28 does not result in either the evasion of this act or the  
29 combining of such other business activities does not result in  
30 practices that are detrimental, misleading, or unfair to  
31 consumers. Upon such a finding, the department may authorize

1 the combining of such other business activities. However, no  
2 license shall be granted to or renewed for any person or  
3 organization engaged in the pawnbroking business.

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

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

12 (1) The following acts are violations of this act and  
13 constitute grounds for the disciplinary actions specified in  
14 subsection (2):

15 (a) Failure to comply with any provision of this act,  
16 any rule or order adopted pursuant to this act, or any written  
17 agreement entered into with the department.

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

21 (c) Fraudulent misrepresentation, circumvention, or  
22 concealment of any matter required to be stated or furnished  
23 to a pledgor pursuant to this act, regardless of reliance by  
24 or damage to the pledgor.

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

27 (e) False, deceptive, or misleading advertising by a  
28 title loan lender.

29 (f) Failure to maintain, preserve, and keep available  
30 for examination, all books, accounts, or other documents  
31 required by this act, by any rule or order adopted pursuant to

1 this act, or by any agreement entered into with the  
2 department.

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

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

9 (i) Criminal conduct by a title loan lender.

10 (2) Upon a finding by the department that any person  
11 has committed any of the acts set forth in subsection (1), the  
12 department may enter an order taking any of the following  
13 actions:

14 (a) Issuing a notice of noncompliance pursuant to s.  
15 120.695, Florida Statutes;

16 (b) Denying an application for a license pursuant to  
17 this act;

18 (c) Revoking or suspending a license previously  
19 granted pursuant to this act;

20 (d) Placing a licensee or an applicant for a license  
21 on probation for a period of time and subject to such  
22 conditions as the department specifies;

23 (e) Placing permanent restrictions or conditions upon  
24 issuance or maintenance of a license pursuant to this act;

25 (f) Issuing a reprimand; or

26 (g) Imposing an administrative fine not to exceed  
27 \$5,000 for each such act or violation.

28 (3) In addition to the acts specified in subsection  
29 (1), the following shall be grounds for denial of a license  
30 pursuant to this act, or for revocation, suspension, or  
31 restriction of a license previously granted:

1           (a) A material misstatement of fact in an initial or  
2 renewal application for a license.

3           (b) Having a license, registration, or the equivalent,  
4 to practice any profession or occupation denied, suspended,  
5 revoked, or otherwise acted against by a licensing authority  
6 in any jurisdiction for fraud, dishonest dealing, or any act  
7 of moral turpitude.

8           (c) Having been convicted or found guilty of a crime  
9 involving fraud, dishonest dealing, or any act of moral  
10 turpitude.

11           (d) Being insolvent or having demonstrated a lack of  
12 honesty or financial responsibility.

13           (e) A fact or condition exists which, if it had  
14 existed or had been known to exist at the time of the original  
15 issuance of the license, would have justified the department  
16 in refusing a license.

17           (4) It is sufficient cause for the department to take  
18 any of the actions specified in subsection (2), as to any  
19 partnership, corporation, or association, if the department  
20 finds grounds for such action as to any member of the  
21 partnership, as to any executive officer or director of the  
22 corporation or association, or as to any person with power to  
23 direct the management or policies of the partnership,  
24 corporation, or association.

25           (5) Each licensee licensed pursuant to this act is  
26 responsible for the acts of employees and agents of the  
27 licensee if the licensee knew or should have known about such  
28 acts and the licensee retained the profits, benefits, or  
29 advantages accruing from such acts or ratified the conduct of  
30 the employee or agent as a matter of law or fact.

31

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

3           (7) Any title loan agreement made without benefit of a  
4 license is voidable, in which case the person forfeits the  
5 right to collect any moneys, including principal and finance  
6 charges, from the pledgor in connection with such agreement,  
7 and shall return to the pledgor the loan property in  
8 connection with such agreement or the fair market value of  
9 such property and all principal and interest made by the  
10 pledgor.

11           Section 8. Title loan transaction form.--

12           (1) At the time a title loan lender enters into each  
13 title loan agreement, the title loan lender shall complete a  
14 title loan transaction form for such transaction, and the  
15 pledgor shall sign such completed form. The department shall  
16 approve the design and format of the title loan transaction  
17 form, which shall elicit the information required under this  
18 section. In completing the title loan transaction form, the  
19 title loan lender shall record the following information,  
20 which shall be typed or written indelibly and legibly in  
21 English.

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

24           (b) The vehicle identification number, or other  
25 comparable identification number, along with the license plate  
26 number, if applicable, of the titled personal property to  
27 which the loan property relates.

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

30           (d) The date of the transaction.

31

1       (e) The identification number and the type of  
2 identification, including the issuing agency, accepted from  
3 the pledgor.

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

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

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

10       (i) The total amount, amount financed plus finance  
11 charge, which must be paid to redeem the loan property on the  
12 maturity date, designated as the "total amount of all  
13 payments."

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

17       (2) The following information shall also be printed on  
18 all title loan transaction forms:

19           (a) The name and address of the title loan office.

20           (b) The name and address of the department as well as  
21 a telephone number to which consumers may address complaints.

22           (c) The following statement in not less than 12-point  
23 type that:

24               1. The pledgor is not obligated to redeem the subject  
25 certificate of title.

26               2. If the pledgor does not redeem the certificate of  
27 title before the maturity date of the title loan agreement,  
28 the title loan lender may repossess the titled personal  
29 property to which the certificate of title relates.

30  
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1           3. If the title loan transaction form is lost,  
2 destroyed, or stolen, the pledgor should immediately so advise  
3 the issuing title loan lender in writing.

4           (d) The statement that "The pledgor represents and  
5 warrants that the titled personal property to which the loan  
6 property relates is not stolen and has no liens or  
7 encumbrances against it, the pledgor has the right to enter  
8 into this transaction, and the pledgor will not apply for a  
9 duplicate certificate of title while the title loan agreement  
10 is in effect."

11           (e) Immediately above the signature of the pledgor,  
12 the statement that "I, the pledgor declare under penalty of  
13 perjury that I have read the foregoing document and that, to  
14 the best of my knowledge and belief, the facts contained in it  
15 are true and correct."

16           (f) A blank line for the signature of the pledgor.

17           (3) At the time of the transaction, the title loan  
18 lender shall deliver to the pledgor an exact copy of the  
19 completed title loan transaction form.

20           (4) The pledgor shall agree for the title loan lender  
21 to keep possession of the certificate of title. The pledgor  
22 shall have the exclusive right to redeem the certificate of  
23 title by repaying the loan of money in full and by complying  
24 with the title loan agreement. When the certificate of title  
25 is redeemed, the title loan lender shall release the security  
26 interest in the titled personal property and return the  
27 personal property certificate of title to the pledgor. The  
28 title loan agreement shall provide that upon failure by the  
29 pledgor to redeem the certificate of title at the end of the  
30 original 30-day-agreement period, or at the end of any 30-day  
31 extension of such period, the title loan lender shall be

1 allowed to take possession of the titled personal property.  
2 The title loan lender shall retain physical possession of the  
3 certificate of title for the entire term of the title loan  
4 agreement, but shall not be required to retain physical  
5 possession of the titled personal property at any time. A  
6 title loan lender may only hold unencumbered certificates of  
7 title for loan.

8 Section 9. Recordkeeping; reporting; safekeeping of  
9 property.--

10 (1) Every title loan lender shall maintain, at the  
11 principal place of business, such books, accounts, and records  
12 of the business conducted under the license issued for such  
13 place of business as will enable the department to determine  
14 the licensee's compliance with this act. The licensee shall  
15 make all such books, accounts, and records of business  
16 conducted under the license available at a convenient location  
17 in this state upon request of the department.

18 (2) The department may authorize the maintenance of  
19 books, accounts, and records at a location other than a  
20 principal place of business. The department may require books,  
21 accounts, and records to be produced and available at a  
22 reasonable and convenient location in this state within a  
23 reasonable period of time after such a request.

24 (3) The title loan lender shall maintain the original  
25 copy of each completed title loan transaction form on the  
26 title loan office premises, and shall not obliterate, discard,  
27 or destroy any such original copy, for a period of at least 2  
28 years after making the final entry on any loan recorded in  
29 such office.

30 (4) All loan property, or property related to the  
31 title loan transaction, which is delivered to a title loan



1 lender shall be securely stored and maintained at the title  
2 loan office unless the title document has been forwarded to  
3 the appropriate state agency for the purpose of having a lien  
4 recorded or deleted.

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

9 Section 10. Title loan charges.--

10 (1) A title loan lender may charge a maximum interest  
11 rate of 30 percent per annum computed on the first \$2,000 of  
12 the principal amount, 24 percent per annum on that part of the  
13 principal amount exceeding \$2,000 and not exceeding \$3,000,  
14 and 18 percent per annum on that part of the principal amount  
15 exceeding \$3,000. The original principal amount is the same  
16 amount as the amount financed, as defined by the federal Truth  
17 in Lending Act and Regulation Z of the Board of Governors of  
18 the Federal Reserve System. In determining compliance with the  
19 statutory maximum interest and finance charges, the  
20 computations must be simple interest and not add-on interest  
21 or any other computations. When two or more interest rates are  
22 to be applied to the principal amount, the lender may charge  
23 interest at that single annual percentage rate which, if  
24 applied according to the actuarial method to each of the  
25 scheduled periodic balances of principal, would produce at  
26 maturity the same total amount of interest as would result  
27 from the application of the two or more rates otherwise  
28 permitted, based upon the assumption that all payments are  
29 made as agreed.

30 (2) The annual percentage rate that may be charged in  
31 a title loan transaction may equal, but not exceed, the annual

1 percentage rate that must be computed and disclosed as  
 2 required by the federal Truth in Lending Act and Regulation Z  
 3 of the Board of Governors of the Federal Reserve System. The  
 4 maximum annual percentage rate of finance charge that may be  
 5 charged is 12 times the maximum monthly rate, and the maximum  
 6 monthly rate must be computed on the basis of one-twelfth of  
 7 the annual rate for each full month. The Department of Banking  
 8 and Finance shall establish the rate for each day in a  
 9 fraction of a month when the period for which the charge is  
 10 computed is more or less than 1 month.

11 (3) Any charges, including interest, in excess of the  
 12 combined total of all charges permitted by this act constitute  
 13 a violation of chapter 687, Florida Statutes, governing  
 14 interest and usury, and the penalties of that chapter apply.  
 15 If a bona fide error occurs, the lender must refund or credit  
 16 the borrower with the amount of the overcharge within 20 days  
 17 after the discovery of such error.

18 (4) Any finance charge contracted for or received,  
 19 directly or indirectly, in excess of the amounts authorized  
 20 under this section are prohibited, may not be collected, and  
 21 render the title loan agreement voidable, in which case the  
 22 title loan lender shall forfeit the right to collect any  
 23 interest or finance charges. Upon the pledgor's written  
 24 request delivered to the title loan lender by certified mail,  
 25 return receipt requested, within 30 days after the maturity  
 26 date, the title loan lender shall be obligated to return to  
 27 the pledgor the loan property delivered to the title loan  
 28 lender in connection with the title loan agreement upon  
 29 payment of the balance of the principal remaining due,  
 30 provided that there shall be no penalty for a violation  
 31 resulting from an accidental and bona fide error that is

1 corrected upon discovery. Any action to circumvent the  
2 limitation on title loan interest or any other amounts  
3 collectible under this act is voidable. Any transaction  
4 involving a person's delivery of a personal property  
5 certificate of title in exchange for the advancement of funds  
6 on the condition that the person shall or may redeem or  
7 repurchase the certificate of title upon the payment of a sum  
8 of money, whether the transaction be characterized as a  
9 "buy-sell agreement," "sale-leaseback agreement," or  
10 otherwise, shall be deemed a violation of this act if such sum  
11 exceeds the amount that a title loan lender may collect in a  
12 title loan agreement under this act or if the terms of the  
13 transaction otherwise conflict with the permitted terms and  
14 conditions of a title loan agreement under this act.

15 Section 11. Disposal of pledged property; excess  
16 proceeds.--

17 (1) Any motor vehicle which is security for a title  
18 loan, is subject to sale or disposal if the title has not been  
19 redeemed from the title lender or there has been no payment  
20 made on account within 60 days after payment was due. Every  
21 title loan transaction form shall contain a notice of the  
22 provisions of this subsection. Any such sale or disposal shall  
23 vest in the purchaser the right, title, and interest of the  
24 owner and the title loan lender.

25 (2) A title loan lender has the right to take  
26 possession of the motor vehicle upon failure of the owner to  
27 redeem the title within the time period specified in  
28 subsection (1). The title loan lender shall only take  
29 possession of a motor vehicle through an agent who is licensed  
30 by the state to repossess motor vehicles. The title loan  
31 lender may dispose of the motor vehicle as provided in this

1 section. Any sale or disposal of the motor vehicle shall be  
2 made through a motor vehicle dealer licensed under s. 320.27.

3 (3) Within 30 days after the sale of the motor  
4 vehicle, the title loan borrower is entitled to receive moneys  
5 from the sale of the motor vehicle in excess of the principal  
6 amount of the loan, interest on the loan up to the date of  
7 repossession, and reasonable expenses for the repossession,  
8 holding, and sale of the motor vehicle. The borrower is  
9 entitled to receive reasonable attorney's fees and costs in  
10 any action brought to recover the excess amount that results  
11 in the title loan lender being ordered to return all or part  
12 of such amount.

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

16 Section 12. Prohibited acts.--

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

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

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

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

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

30 (e) Knowingly enter into a title loan agreement with  
31 any person who is under the influence of drugs or alcohol when

1 such condition is visible or apparent, or with any person  
2 using a name other than such person's own name or the  
3 registered name of the person's business.

4 (f) Fail to exercise reasonable care in the  
5 safekeeping of loan property or of titled personal property  
6 repossessed pursuant to this act.

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

14 (h) Sell or otherwise charge for insurance in  
15 connection with a title loan agreement.

16 (i) Charge or receive any finance charge, interest, or  
17 fees which are not authorized pursuant to this act.

18 (j) Engage in business as a title loan lender without  
19 first securing a license.

20 (k) Refuse to accept a partial repayment of the  
21 obligation owed and outstanding.

22 (1) Charge a prepayment penalty.

23 (2) Title loan companies may not advertise using the  
24 words "interest free loans" or "no finance charges."

25 Section 13. Right to redeem; lost title loan  
26 transaction form.--

27 (1) Any person presenting identification of such  
28 person as the pledgor and presenting the pledgor's copy of the  
29 title loan transaction form to the title loan lender is  
30 presumed to be entitled to redeem the loan property described  
31 in the title loan lender transaction form. However, if the

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

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

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1 or the title loan office employee who accepts the statement  
2 from the pledgor.

3 Section 14. Criminal penalties.--

4 (1) Any person who engages in business as a title loan  
5 lender without first securing the license prescribed by this  
6 act commits a felony of the third degree, punishable as  
7 provided in s. 775.082, s. 775.083, or s. 775.084, Florida  
8 Statutes.

9 (2) In addition to any other applicable penalty, any  
10 person who willfully violates any provision of this act or who  
11 willfully makes a false entry in any record specifically  
12 required by this act commits a misdemeanor of the first  
13 degree, punishable as provided in s. 775.082 or s. 775.083,  
14 Florida Statutes.

15 Section 15. Records from the Department of Law  
16 Enforcement.--The Department of Law Enforcement, on request,  
17 shall supply to the department any arrest and conviction  
18 records in the possession of the Department of Law Enforcement  
19 of an individual applying for or holding a license under this  
20 act.

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

22 (1) The department may issue and serve subpoenas to  
23 compel the attendance of witnesses and the production of  
24 documents, papers, books, records, and other evidence before  
25 the department in any matter pertaining to this act. The  
26 department may administer oaths and affirmations to any person  
27 whose testimony is required. If any person refuses to testify,  
28 produce books, records, and documents, or otherwise refuses to  
29 obey a subpoena issued under this section, the department may  
30 enforce the subpoena in the same manner as subpoenas issued  
31 under the Administrative Procedure Act are enforced. Witnesses

1 are entitled to the same fees and mileage as they are entitled  
2 to by law for attending as witnesses in the circuit court,  
3 unless such examination or investigation is held at the place  
4 of business or residence of the witness.

5 (2) In addition to any other powers conferred upon the  
6 department to enforce or administer this act, the department  
7 may:

8 (a) Bring an action in any court of competent  
9 jurisdiction to enforce or administer this act, any rule or  
10 order adopted under this act, or any written agreement entered  
11 into with the department. In such action, the department may  
12 seek any relief at law or equity including a temporary or  
13 permanent injunction, appointment of a receiver or  
14 administrator, or an order of restitution.

15 (b) Issue and serve upon a person an order requiring  
16 such person to cease and desist and take corrective action  
17 whenever the department finds that such person is violating,  
18 has violated, or is about to violate any provision of this  
19 act, any rule or order adopted under this act, or any written  
20 agreement entered into with the department.

21 (c) Whenever the department finds that conduct  
22 described in paragraph (b) presents an immediate danger to the  
23 public health, safety, or welfare requiring an immediate final  
24 order, the department may issue an emergency cease and desist  
25 order reciting with particularity the facts underlying such  
26 findings. The emergency cease and desist order is effective  
27 immediately upon service of a copy of the order on the  
28 respondent named in the order and shall remain effective for  
29 90 days. If the department begins nonemergency proceedings  
30 under paragraph (b), the emergency cease and desist order

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1 remains effective until the conclusion of the proceedings  
2 under ss. 120.569 and 120.57, Florida Statutes.

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

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

10 Section 17. Investigations and complaints.--

11 (1) The department may make any investigation and  
12 examination of any licensee or other person the department  
13 deems necessary to determine compliance with this act. For  
14 such purposes, the department may examine the books, accounts,  
15 records, and other documents or matters of any licensee or  
16 other person. The department may compel the production of all  
17 relevant books, records, and other documents and materials  
18 relative to an examination or investigation. Such  
19 investigations and examinations shall not be made more often  
20 than once during any 12-month period unless the department has  
21 good cause to believe the licensee is not complying with the  
22 provisions of this act.

23 (2) The expenses of the department incurred in each  
24 such examination may be established by department rule but  
25 shall not exceed \$250 per 8-hour day for each examiner. Such  
26 examination fee shall be calculated on an hourly basis and  
27 shall be rounded to the nearest hour. The licensee shall also  
28 pay the travel expense and per diem subsistence allowance  
29 provided for state employees in s. 112.061. The licensee  
30 shall not be required to pay a per diem fee and expenses of an  
31 examination which shall consume more than 30 worker-days in

1 any one year unless such examination or investigation is due  
2 to fraudulent practices of the licensee, in which case such  
3 licensee shall be required to pay the entire cost regardless  
4 of time consumed.

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

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

14 538.03 Definitions; applicability.--

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

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

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

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

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

31 538.16 Secondhand dealers; disposal of property.--

1           (1) Any personal property pawned with a pawnbroker,  
2 whether the pawn is a loan of money or a buy-sell agreement ~~or~~  
3 ~~a motor vehicle which is security for a title loan~~, is subject  
4 to sale or disposal if the pawn is a loan of money and the  
5 property has not been redeemed or there has been no payment on  
6 account made for a period of 90 days, or if the pawn is a  
7 buy-sell agreement ~~or if it is a title loan~~ and the property  
8 has not been repurchased from the pawnbroker ~~or the title~~  
9 ~~redeemed from the title lender~~ or there has been no payment  
10 made on account within 60 days.

11           Section 20. Effective July 1, 1998, the sum of  
12 \$500,000 is hereby appropriated for the 1998-1999 fiscal year  
13 from the Regulatory Trust Fund of the Department of Banking  
14 and Finance to the department to fund nine positions for the  
15 purpose of carrying out the provisions of this act.

16           Section 21. Paragraph (i) of subsection (1) of section  
17 538.03, Florida Statutes, subsection (5) of section 538.06,  
18 Florida Statutes, and subsections (4) and (5) of section  
19 538.15, Florida Statutes, are hereby repealed.

20           Section 22. Except as otherwise provided in this act,  
21 this act shall take effect October 1 of the year in which  
22 enacted.

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