

STORAGE NAME: h0659.brc

DATE: April 4, 1997

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
BUSINESS REGULATION AND CONSUMER AFFAIRS
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: HB 659

RELATING TO: Secondhand Dealers (Motor Vehicle Title Loans)

SPONSOR(S): Representative Livingston and others

STATUTE(S) AFFECTED: Sections 538.06, 538.065, 538.067, 538.069, and 538.09, F.S.

COMPANION BILL(S): SB 36 (s)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) BUSINESS REGULATION AND CONSUMER AFFAIRS
- (2) FINANCE AND TAXATION
- (3)
- (4)
- (5)

I. SUMMARY:

This bill amends ch. 538, F.S., providing for the regulation of the title loan industry. The proposed regulations require secondhand dealers who engage in title loans (title lenders) to provide clear and detailed information regarding a loan to a borrower. Title lenders also must follow certain procedures associated with a title loan transaction. The maximum interest rate allowed for a title loan, designated as an interest rate, is 15 percent simple interest for the first month and, thereafter, is capped at 31 percent simple interest per annum. If there is a default and a motor vehicle is repossessed, title lenders must repay the borrower any money which remains after the amount due at the time of repossession minus disposal costs. Secondhand dealers engaging in title loans must be licensed by the Department of Banking and Finance. The department must examine title lenders, at the title lender's expense, to ensure compliance with the chapter. The department is authorized to take action against title lenders who violate the law.

The bill generates revenues from initial application fees, biennial license fees, and examination fees. These fees result in revenues of approximately \$175,000 during FY 1997-98 and \$65,000 in FY 1998-99 and expenditures of \$104,287 in FY 1997-98 and \$144,447 in FY 1998-99. The bill results in an approximate net loss of \$9,000 through FY 1998-99.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

A title loan is a transaction where money is lent with the bailment of a certificate of title to a motor vehicle as security. Physical possession of the motor vehicle is maintained by the borrower and the motor vehicle title is held by the lender throughout the term of the transaction. Because the motor vehicle is not physically held by the title lender, the transaction is classified as a title loan and not a pawn.

The term "secondhand dealers" generally refers to pawnbrokers, title lenders, jewelers, precious metals dealers, garage sale operators, secondhand stores, and consignment shops. In 1993, the Legislature made it a misdemeanor for a secondhand dealer to accept title or any other form of security in secondhand goods without having actual physical possession of the secondhand goods. In 1995, legislation was enacted that allowed some secondhand dealers to engage in motor vehicle title loans where the motor vehicle was not physically held by the lender. The Department of Banking and Finance estimates there are approximately 350 title lenders currently doing business in the state. The exact number of title lenders is not available since the Department of Revenue, which registers secondhand dealers, does not distinguish between secondhand dealers in general and secondhand dealers who engage in title loans.

Unlike other secondhand dealers (e.g., pawnbrokers), secondhand dealers who engage in title lending are not regulated by a specific state agency. The only state entity that has any direct interaction with the title loan industry is the Department of Revenue which requires all secondhand dealers to register with the Department for tax purposes and obtain a secondhand dealer's license. The cost of registration with the Department of Revenue is forty-five dollars plus six dollars for every location for an initial application. The annual renewal fee is six dollars per location.

By law, secondhand dealers can charge a maximum "fee" (as distinguished from an "interest rate") of 22 percent per month on a title loan transaction. No other fees associated with the transaction are permitted. This is in contrast to the maximum service charge allowed for pawnbrokers, which cannot exceed 25 percent per 30-day period on a pawn transaction.

A secondhand dealer may repossess a motor vehicle if the owner defaults on a loan. The secondhand dealer may sell or dispose of a repossessed motor vehicle. Any money collected from a sale or disposal of a repossessed motor vehicle which exceeds the amount of the original title loan does not have to be repaid to the borrower.

B. EFFECT OF PROPOSED CHANGES:

The proposed regulations in HB 659 require title lenders to provide certain information, such as the loan maturation date, interest rate, and terms of repossession to borrowers entering into a title loan transaction. Title lenders must follow certain procedures with respect to loan initiation, loan payments, and repossession in the event of a loan default.

Title lenders could no longer charge a maximum "fee" of 22 percent per month, but instead are limited to 15 percent per month simple "interest" for the first month and, thereafter, 31 percent simple interest per annum.

Title lenders who repossess and sell a vehicle, which is under default, are required to refund any amount from the sale which exceeds the amount due at the time of repossession plus reasonable repossession, holding, and sales costs. Currently, title lenders are not required to refund these monies.

Secondhand dealers who wish to engage in title loans are licensed by the Department of Banking and Finance. The department must ensure that all title lenders are in compliance with the applicable regulations. Compliance is monitored in part by on-site examinations. On-site examinations may be administered no more than once a year, without the reasonable suspicion that a violation exists. The cost of these examinations is paid for by the title lender being examined. In addition to its powers of examination, the department is authorized to act against those title lenders who violate any applicable regulation. The options available to the department range from revocation or suspension of a license to the imposition of an administrative fine of not more than \$1,000 for each act.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

No.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

Yes, the Department of Banking and Finance shall license title lenders.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No.

b. Does the bill require or authorize an increase in any fees?

Yes, increased application, license and examination fees are authorized.

c. Does the bill reduce total taxes, both rates and revenues?

No.

d. Does the bill reduce total fees, both rates and revenues?

No.

e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

Yes.

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

No.

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

The bill creates new regulations for title loan lenders.

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

- (1) Who evaluates the family's needs?

N/A

- (2) Who makes the decisions?

N/A

- (3) Are private alternatives permitted?

N/A

- (4) Are families required to participate in a program?

N/A

- (5) Are families penalized for not participating in a program?

N/A

- b. Does the bill directly affect the legal rights and obligations between family members?

N/A

- c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. SECTION-BY-SECTION RESEARCH:

Section 1. Amends s. 538.06, F.S., addressing the physical possession of a motor vehicle and the motor vehicle title when involved in a title loan transaction, the recording of a title loan transaction, and the regulations governing a title loan transaction.

A secondhand dealer engaging in a title loan is required to provide a copy of the motor vehicle title to the owner, with the original title's location marked on the copy. The dealer also must give the borrower a statement which conspicuously displays the loan specifics, including the interest rate and terms of repossession in the event of a default.

The borrower may pay back a title loan in part or in full with the interest that has accrued on the loan up until the time of payment. Upon repayment of the loan in full, the secondhand dealer must return the motor vehicle title, free of encumbrances, to the borrower.

In the event of a loan default, a secondhand dealer may repossess a motor vehicle and sell it. If the secondhand dealer receives monies in excess of the principal amount of the loan plus interest and reasonable costs, then the borrower is entitled to those excess monies within 30 days of the sale of the motor vehicle.

A secondhand dealer entering into a title loan transaction may charge a maximum rate of 15% per month simple interest for the first month of the transaction. However, the total amount of interest paid on a title loan transaction shall not exceed 31 percent simple interest per annum.

Section 2. Creates s. 538.065, F.S., which details the regulations, fees, and procedures involved in applying for a motor vehicle title loan license from the Department of Banking and Finance. A secondhand dealer seeking to engage in title loans must apply for a license from the department. The application must include a \$200 investigation fee and a \$300 biennial license fee which are deposited into the State Treasury to the credit of the department. A license may only cover one place of business, but the department may issue multiple licenses to a qualified licensee.

The department may take disciplinary actions against a business which is in violation of the provisions of s. 538.065, F.S. Violations which the department may act upon include the failure to maintain at least \$25,000 in liquid assets at a location for the operation of the business, the willful imposition of illegal or excessive charges, or the

misrepresentation, circumvention, or concealment of any matter which must be revealed to a borrower.

The department, upon finding a business has violated s. 538.065, F.S., may take action ranging from the denial of a license application to the imposition of an administrative fine of not more than \$1,000 for each act.

Section 3. Creates s. 538.067, F.S., authorizing the department to examine any title lender or person as necessary to determine compliance with ch. 538, F.S. Examinations may not be made more than once a year without reasonable cause. The licensee shall pay an examination fee based upon the amount of outstanding loans due to the licensee at the time of examination. Fees range from \$100, for loan balances less than \$50,000, to \$325 for balances more than \$500,000. The licensee must also pay the travel expenses and per diem subsistence allowance provided in s. 112.061, F.S. Title loan records must be maintained for a minimum of two years after completing a loan transaction.

Section 4. Creates s. 538.069, F.S., which pertains to liability, subpoenas, and the enforcement of rules.

Section 5. Amends s. 538.09, F.S., which exempts a secondhand dealer who engages in a motor vehicle title loan transaction from the provisions of this section, provided that the secondhand dealer is licensed by the department under s. 538.065, F.S.

Section 6. This act shall take effect October 1, 1997.

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

| <u>Revenues:</u> | FY 1997-98 | 1998-99 |
|-----------------------------------|------------|----------|
| Department of Banking and Finance | | |
| Initial investigaton fee (\$200) | | |
| Regulatory Trust Fund | \$80,000 | \$10,000 |

| <u>Expenditures:</u> | | |
|-----------------------------------|----------|-----|
| Department of Banking and Finance | | |
| Operating Capital Outlay | | |
| Standard Package (3 FTE) | | |
| Regulatory Trust Fund | \$ 6,387 | \$0 |

2. Recurring Effects:

| <u>Revenues:</u> | FY 1997-98 | 1998-99 |
|-----------------------------------|------------|-----------|
| Department of Banking and Finance | | |
| Regulatory Trust Fund | \$105,000 | \$ 55,000 |

Expenditures:

| | | |
|--|----------|-----------|
| Department of Banking and Finance Salaries and Benefits (4 FTE) Regulatory Trust Fund | \$97,900 | \$134,477 |
|--|----------|-----------|

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

| <u>Revenues:</u> | FY 1997-98 | 1998-99 |
|---|------------|----------|
| Department of Banking and Finance Regulatory Trust Fund | \$175,000 | \$65,000 |

Expenditures:

| | | |
|---|-----------|-----------|
| Department of Banking Finance Regulatory Trust Fund | \$104,287 | \$144,447 |
|---|-----------|-----------|

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

Title loan companies will pay a new biennial license fee of \$300, an initial investigation fee of \$200, and an annual examination fee based on the amount of outstanding loans (\$200 per examination is estimated).

2. Direct Private Sector Benefits:

None.

3. Effects on Competition, Private Enterprise and Employment Markets:

All title loan companies must pay the new fees so competition will not be affected. The fees place an additional cost of doing business on companies operating in Florida.

D. FISCAL COMMENTS:

The bill will generate an approximate funding deficit of \$9,000 after two years based on the estimated revenues and expenditures.

Salaries and benefits for FY 1997-98 are pro-rated due to the bill's October 1, 1997, effective date. However, The Department of Banking and Finance estimates that individual professional staff cost \$36,720 annually and individual support staff cost \$20,400 annually. Salaries in FY 1998-99 are adjusted to represent an increase of 3 percent over the previous fiscal year.

FY 1997-98 revenue estimates are calculated with 350 title lenders, and FY 1998-99 revenue estimates are calculated with the addition of 50 new title lenders, for a total of 400 title lenders.

Title lender examinations are paid for by the title lenders being examined. Therefore, the examination fee revenue is equal to the examination cost. The Department of Banking and Finance estimates that the average cost of an examination is approximately \$200. Examinations are not required every year and a title lender can be examined more than once a year if there is reason to believe that a title lender is not complying with the regulations in ch. 538, F.S. Revenues and expenditures are calculated with an estimate of 200 examinations per year.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that counties or municipalities have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

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V. COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None.

VII. SIGNATURES:

COMMITTEE ON BUSINESS REGULATION AND CONSUMER AFFAIRS:

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