

By Representative Livingston

1 A bill to be entitled
2 An act relating to secondhand dealers; amending
3 s. 538.06, F.S.; providing additional
4 conditions where a secondhand dealer does not
5 have to maintain physical possession of certain
6 goods; revising language with respect to
7 secondhand dealers who engage in motor vehicle
8 title loan transactions; creating s. 538.065,
9 F.S.; providing for application for a motor
10 vehicle title loan license; providing fees and
11 procedures; creating s. 538.067, F.S.;
12 providing for investigations and records of
13 secondhand dealers making title loans; creating
14 s. 538.069, F.S.; providing for liability,
15 subpoenas, enforcement, and rules; amending s.
16 538.09, F.S.; providing that certain secondhand
17 dealers must be licensed by the Department of
18 Banking and Finance; providing an effective
19 date.

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

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23 Section 1. Section 538.06, Florida Statutes, is
24 amended to read:

25 538.06 Holding period; physical possession; records;
26 title loan transactions.--

27 (1) A secondhand dealer may ~~shall~~ not sell, barter,
28 exchange, alter, adulterate, or in any way dispose of any
29 secondhand goods within 15 calendar days after ~~of~~ the date of
30 acquisition of the goods. Such holding periods are not
31 applicable when the person known by the secondhand dealer to

1 be the person from whom the goods were acquired desires to
2 redeem, repurchase, or recover the goods, if ~~provided~~ the
3 dealer can produce the record of the original transaction with
4 verification that the customer is the person from whom the
5 goods were originally acquired.

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

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

26 (4) All dealers in secondhand property regulated by
27 this chapter must ~~shall~~ maintain transaction records for 5
28 years.

29 (5) Subject to the restrictions in ss. ~~s.~~ 538.15 and
30 538.065, a secondhand dealer may engage in a title loan
31 transaction, and the physical possession provisions of

1 subsection (2) ~~do shall~~ not apply if the following conditions
2 are met:

3 (a) The secondhand dealer maintains physical
4 possession of the motor vehicle title, provides the owner with
5 a copy of the title with the title's location marked on the
6 copy, and cooperates with the owner with respect to matters
7 requiring proof of 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 conspicuously shows the loan amount, origination
15 date, and maturity date, the nature of the security, the name
16 and address of the borrower and the dealer, and the rate of
17 interest charged designated as "interest." The statement
18 shall also fully disclose the terms of repossession in the
19 event of a default, and shall be initialed by the motor
20 vehicle owner at the initiation of the transaction.

21 (e) The secondhand dealer gives to the borrower a
22 plain and complete receipt for each payment made on account of
23 any loan at the time the payment is made, or, alternatively,
24 furnishes to the borrower a monthly statement showing the
25 amount of interest paid on the loan during the previous month
26 as well as the remaining balance on the loan, provided a
27 simple receipt is given to the borrower for each payment made
28 in cash and for any payment when requested in writing by the
29 borrower.

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1 (f) The secondhand dealer permits payment of the loan
2 in whole or in part prior to its maturity with interest on
3 such payment to the date thereof.

4 (g) Upon repayment of the loan in full, the secondhand
5 dealer marks indelibly every paper signed by the borrower with
6 the word "paid" or "canceled," and delivers to the borrower,
7 at the time that the loan has been repaid, the motor vehicle
8 title free of any encumbrances placed upon the title by the
9 secondhand dealer.

10 (6)(d) A secondhand dealer who engages in a motor
11 vehicle title loan transaction may ~~has the right to~~ repossess
12 the motor vehicle upon failure of the owner to redeem the
13 title. The secondhand dealer may ~~shall~~ only repossess a motor
14 vehicle through an agent who is licensed by the state to
15 repossess motor vehicles. The secondhand dealer may dispose of
16 the motor vehicle as provided in s. 538.16 and chapter 679.
17 Within 30 days after the sale of the motor vehicle, the
18 borrower shall be entitled to receive moneys from the sale of
19 the motor vehicle in excess of the principal amount of the
20 loan, interest on the loan up to the date of repossession, and
21 reasonable expenses for the repossession, holding, and sale of
22 the motor vehicle. the borrower shall be entitled to receive
23 reasonable attorney's fees and costs in any action to recover
24 the excess amount. However, any sale or disposal of the motor
25 vehicle ~~must shall~~ be made through a motor vehicle dealer
26 licensed under s. 320.27.

27 (a)(e) A secondhand dealer who accepts a motor vehicle
28 title in a title loan transaction may charge a maximum rate of
29 interest ~~fee~~ of 15 22 percent per month simple interest for
30 the first month. In order to enter into a title loan
31 transaction with a duration longer than 1 month:

1 1. After the first month, the title loan will be
2 limited to 31 percent per annum simple interest; and

3 2. Any refinance, extension, renewal, or rollover of a
4 title loan transaction where the total duration of the loan is
5 longer than 1 month shall be subject to the 31 percent per
6 annum simple interest limitation.

7 (b) No secondhand dealer shall induce or permit any
8 borrower to split up or divide any title loan. No secondhand
9 dealer shall induce or permit any person, or any husband and
10 wife, jointly or severally, to become obligated to him,
11 directly or contingently or both, under more than one contract
12 of title loan at the same time, for the purpose, or with the
13 result, of obtaining a greater finance charge than would
14 otherwise be permitted by this section.

15 (c) If all or part of the consideration for a new loan
16 contract is the unpaid principal balance of a prior loan with
17 the licensee, the principal amount payable under the new loan
18 contract may include not more than 60 days' unpaid interest
19 accrued on the prior loan.

20 (d) No assignment of, or order for the payment of, any
21 salary, wages, commissions, or other compensation for
22 services, earned or to be earned, given to secure any such
23 loans shall be valid.

24 (e) Any charges, including interest, in excess of the
25 combined total of all charges permitted by this chapter
26 constitute a violation of chapter 687 governing interest and
27 usury, and the penalties of that chapter apply. If a bona
28 fide error occurs, the dealer must refund or credit the
29 borrower with the amount of the overcharge within 20 days
30 after the discovery of such error.

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1 (f) A loan for which a greater rate of interest or
2 charge than is allowed by this chapter has been contracted for
3 or received, wherever made, is not enforceable in this state,
4 and each person who in any manner participates therein in this
5 state is subject to this chapter. However, this paragraph
6 does not apply to loans legally made to a resident of another
7 state by a person within that state if that state has in
8 effect a regulatory small loan or consumer finance law similar
9 in principle to this chapter.

10 (g) The secondhand dealer shall forfeit to the
11 borrower any excess interest collected in violation of this
12 section. The secondhand dealer may not engage in repossession
13 if the title loan is made in violation of the interest rates
14 provided in this paragraph.

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

19 Section 2. Section 538.065, Florida Statutes, is
20 created to read:

21 538.065 Application for motor vehicle title loan
22 license; fees; procedures.--

23 (1) A person must not engage in the business of making
24 consumer finance loans unless he is authorized to do so under
25 this chapter or other statutes and unless he first obtains a
26 license from the department.

27 (2) Application for a license to make motor vehicle
28 title loans under this chapter must be in writing, under oath,
29 in the form prescribed by the Department of Banking and
30 Finance, and must contain the name and residence and business
31 addresses of the applicant and, if the applicant is a

1 partnership or association, of each member thereof and, if a
2 corporation, of each officer and director thereof, the county
3 and municipality with the address where the business is to be
4 conducted, and any other information the department requires.
5 The applicant shall pay a biennial license fee of \$300.
6 Applications, except for applications to renew or reactivate a
7 license, must be accompanied by an investigation fee of \$200.

8 (3) Fees shall be collected by the Department of
9 Banking and Finance and deposited into the State Treasury to
10 the credit of the department. The department may employ
11 examiners or clerks as necessary and fix their compensation.

12 (4) Upon the filing of an application for licensure
13 and payment of all fees, the Department of Banking and Finance
14 shall investigate the facts concerning the applicant's
15 proposed activities. If the department determines that a
16 license should be granted, it shall issue the license for a
17 period not to exceed 2 years. Biennial licensure periods and
18 procedures for renewal of licenses shall be established by the
19 department. If the department determines that grounds exist
20 for denial of an application other than an application to
21 renew a license, it shall deny such application, return to the
22 applicant the license fee, and retain the investigation fee.

23 (a) A license that is not renewed at the end of the
24 biennium automatically reverts to inactive status. An
25 inactive license may be reactivated upon submission of a
26 completed reactivation application, payment of the biennial
27 license fee, and payment of a reactivation fee equal to the
28 biennial license fee. A license expires on the date on which
29 it has become inactive for 6 months.

30 (b) Only one place of business may be maintained under
31 a license, but the department may issue additional licenses to

1 a licensee upon compliance with the provisions governing
2 issuance of a single license.

3 (c) A licensee may not change the place of business
4 maintained under a license without prior approval of the
5 department. A licensee who wishes to change a place of
6 business must give written notice to the department, and, if
7 the department finds that the proposed location is reasonably
8 accessible to borrowers under existing loan contracts, it
9 shall amend the license accordingly. If the department does
10 not so find, it shall enter an order denying relocation of the
11 business to the requested location.

12 (d) A licensee may make vehicle title loans within a
13 place of business in which other business is conducted, unless
14 the department finds that the conduct of such other business
15 results in an evasion of this chapter. Upon such finding, the
16 department shall order the licensee to desist from such
17 activities.

18 (e) A person who purchases substantially all of the
19 assets of any existing licensed vehicle title loan business
20 must give immediate notice to the department and shall be
21 granted a 90-day temporary license for the place of business
22 within 10 days after the department receives an application
23 for a permanent license. Issuance of a temporary license for
24 a business nullifies the existing license for that business.

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

30 (g) The department may deny a license application if
31 the applicant or any person with power to direct the

1 management or policies of the applicant's business is the
2 subject of a pending criminal prosecution in any jurisdiction,
3 until conclusion of such criminal prosecution.

4 (5) The following acts are violations of this chapter
5 and constitute grounds for the disciplinary actions in
6 subsection (6):

7 (a) A material misstatement of fact in an application
8 for a license;

9 (b) Failure to maintain liquid assets of at least
10 \$25,000 at all times for the operation of business at a
11 licensed location or proposed location;

12 (c) Failure to demonstrate financial responsibility,
13 experience, character, or general fitness required to command
14 the confidence of the public and to warrant the belief that
15 the business is lawful and within the purposes of this
16 chapter;

17 (d) The violation, knowingly or without the exercise
18 of due care, of this chapter, any rule or order adopted under
19 this chapter, or any written agreement entered into with the
20 Department of Banking and Finance;

21 (e) Any act of fraud, misrepresentation, or deceit,
22 regardless of reliance by or damage to a borrower, or any
23 illegal activity, in connection with a transaction under this
24 chapter. Such acts include, but are not limited to, the
25 willful imposition of illegal or excessive charges or
26 misrepresentation, circumvention, or concealment of any matter
27 required to be revealed to a borrower;

28 (f) The use of unreasonable collection practices or
29 false, deceptive, or misleading advertising in connection with
30 vehicle title loans, including, but not limited to, the
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1 representation that "no interest" will be charged on a loan if
2 there is a fee or charge for the loan;
3 (g) Failure to maintain records required by this
4 chapter, by any rule or order adopted under this chapter, or
5 by any agreement entered into with the Department of Banking
6 and Finance; or
7 (h) Refusal to permit inspection of books or records
8 in an investigation or examination by the Department of
9 Banking and Finance or refusal to comply with a subpoena
10 issued by the department.
11 (6) Upon a finding by the Department of Banking and
12 Finance that a person has committed any of the acts in
13 subsection (5), the department may enter an order:
14 (a) Denying an application for a license;
15 (b) Revoking or suspending a license;
16 (c) Placing a licensee or an applicant on probation
17 for a period of time and subject to such conditions as the
18 department may specify;
19 (d) Placing permanent restrictions or conditions upon
20 issuance or maintenance of a license;
21 (e) Issuing a reprimand; or
22 (f) Imposing an administrative fine not to exceed
23 \$1,000 for each act.
24 (7) The Department of Banking and Finance may take any
25 of the actions specified in subsection (6) against any
26 partnership, corporation, or association, if the department
27 finds that any of the acts in subsection (5) have been
28 committed by a member of the partnership, an officer or
29 director of the corporation or association, or any person with
30 power to direct the management or policies of the partnership,
31 corporation, or association.

1 (8) No licensee shall take any confession of judgment
2 or any power of attorney. Nor shall a licensee take any note,
3 promise to pay, or security that does not state the actual
4 amount of the loan, the time for which it is made, and the
5 rate of interest charged, nor any instrument in which blanks
6 are left to be filled after execution.

7 (9) A licensee is responsible for the acts of the
8 licensee's employee or agent if, with knowledge of such acts,
9 the licensee retained profits, benefits, or advantages
10 accruing from such acts or ratified the conduct of the
11 employee or agent as a matter of law or fact.

12 (10) The license must be conspicuously posted in the
13 place of business of the licensee.

14 (11) On application of any person and payment of the
15 costs thereof, at the same rate and fees as allowed clerks of
16 the circuit court by statute, the department shall furnish a
17 certified copy of any license, regulation, or order. In any
18 court or proceeding, such copy shall be prima facie evidence
19 of the fact of the issuance of such license, regulation, or
20 order.

21 (12) All findings of facts and orders filed with the
22 department shall be a public record.

23 Section 3. Section 538.067, Florida Statutes, is
24 created to read:

25 538.067 Investigations and records of secondhand
26 dealers making title loans.--

27 (1)(a) The Department of Banking and Finance shall
28 investigate and examine any secondhand dealer who is licensed
29 to make motor vehicle title loans or other person as necessary
30 to determine compliance with this chapter. The department may
31 examine books, accounts, records, and other documents or

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

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

15 (b) The license shall also pay the travel expense and
16 per diem subsistence allowance provided in s. 112.061, but is
17 not required to pay a per diem fee and expenses of an
18 examination that requires more than 30 worker-days in any 1
19 year unless the examination is due to fraudulent practices of
20 the licensee, in which case the licensee must pay the entire
21 cost regardless of time consumed.

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

25 (3)(a) Each licensee shall maintain, for at least 2
26 years after making the final entry on any loan, records to
27 enable the Department of Banking and Finance to determine
28 whether the licensee is complying with this chapter. The
29 licensee shall keep and use in his business such books,
30 accounts, and other records, including cards used in the card
31 system, if any, in accordance with sound and accepted

1 accounting practices to enable the department to determine
2 whether such licensee is complying with the provisions of this
3 chapter and with the rules and regulations lawfully made by
4 the department hereunder.

5 (b) A licensee, operating two or more licensed places
6 of business in this state, may maintain the books, accounts,
7 and records of all such offices at any one of such offices, or
8 at any other office maintained by such licensee, upon the
9 filing of a written request with the department designating
10 therein the office at which such records are maintained.

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

16 Section 4. Section 538.069, Florida Statutes, is
17 created to read:

18 538.069 Liability; subpoenas; enforcement; rules.--

19 (1) A person is not in violation of this chapter nor
20 subject to any civil or criminal liability for any act or
21 omission made in good-faith reliance upon an order,
22 declaratory statement, or rule issued by the Department of
23 Banking and Finance, notwithstanding a subsequent decision by
24 a court of competent jurisdiction invalidating the order,
25 declaratory statement, or rule.

26 (2) The Department of Banking and Finance may issue
27 and serve subpoenas to compel the attendance of witnesses and
28 the production of documents in any matter pertaining to this
29 chapter. The department may administer oaths and affirmations
30 to any person whose testimony is required. If any person
31 refuses to testify or obey a subpoena, the department may

1 enforce the subpoena in the same manner as subpoenas issued
2 under the Administrative Procedure Act. Witnesses are
3 entitled to the same fees and mileage as they are entitled to
4 by law for serving as witnesses in the circuit court, unless
5 the examination or investigation is held at the place of
6 business or residence of the witness.

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

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

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

23 (c) Impose and collect an administrative fine against
24 any person found to have violated this chapter, any rule or
25 order adopted under this chapter, or any written agreement
26 entered into with the department, in an amount not to exceed
27 \$1,000 for each violation.

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

30 (5) In addition to any other remedies which may be
31 available at law, anyone aggrieved by a violation of this

1 chapter with respect to a title loan transaction may bring an
2 action in any court of competent jurisdiction for declarative
3 relief, injunctive relief, actual damages, a fine for each
4 violation in the amount provided for in subparagraph (3)(c),
5 costs, and attorney's fees. A prevailing plaintiff shall be
6 entitled to receive reasonable attorney's fees and costs.

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

9 538.09 Registration.--

10 (1) A secondhand dealer may ~~shall~~ not engage in the
11 business of purchasing, consigning, or pawning secondhand
12 goods from any location without registering with the
13 Department of Revenue. However, a secondhand dealer who
14 engages in a motor vehicle title loan transaction is exempted
15 from the provisions of this section, but must be licensed by
16 the Department of Banking and Finance under s. 538.065. A fee
17 equal to the federal and state costs for processing required
18 fingerprints must be submitted to the department with each
19 application for registration. One application is required for
20 each dealer. If a secondhand dealer is the owner of more than
21 one secondhand store location, the application must list each
22 location, and the department shall issue a duplicate
23 registration for each location. For purposes of subsections
24 (4) and (5) of this section, these duplicate registrations
25 shall be deemed individual registrations. A dealer must ~~shall~~
26 pay a fee of \$6 per location at the time of registration and
27 an annual renewal fee of \$6 per location on October 1 of each
28 year. All fees collected, less costs of administration, shall
29 be transferred into a trust fund to be established and
30 entitled the Secondhand Dealer and Secondary Metals Recycler
31 Clearing Trust Fund. The Department of Revenue shall forward

1 the full set of fingerprints to the Department of Law
2 Enforcement for state and federal processing, ~~if provided~~ the
3 federal service is available, to be processed for any criminal
4 justice information as defined in s. 943.045. The cost of
5 processing such fingerprints shall be payable to the
6 Department of Law Enforcement by the Department of Revenue.
7 The department may issue a temporary registration to each
8 location pending completion of the background check by state
9 and federal law enforcement agencies, but shall revoke such
10 temporary registration if the completed background check
11 reveals a prohibited criminal background. An applicant for a
12 secondhand dealer registration must be a natural person who
13 has reached the age of 18 years.

14 (a) If the applicant is a partnership, all the
15 partners must apply.

16 (b) If the applicant is a joint venture, association,
17 or other noncorporate entity, all members of such joint
18 venture, association, or other noncorporate entity must make
19 application for registration as natural persons.

20 (c) If the applicant is a corporation, the
21 registration must include the name and address of ~~the~~ such
22 corporation's registered agent for service of process in the
23 state and a certified copy of statement from the Secretary of
24 State that the corporation is duly organized in the state or,
25 if the corporation is organized in a state other than Florida,
26 a certified copy of statement from the Secretary of State that
27 the corporation is duly qualified to do business in this
28 state. If the dealer has more than one location, the
29 application must list each location owned by the same legal
30 entity and the department shall issue a duplicate registration
31 for each location.

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

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HOUSE SUMMARY

Provides additional conditions which a secondhand dealer must comply with in order to engage in a title loan transaction where physical possession of the goods is not necessary. Revises language with respect to the right of the secondhand dealer who engages in a motor vehicle title loan transaction may repossess the goods. Reduces to 15 percent per month for the first month the maximum interest rate a secondhand dealer may charge in a motor vehicle title loan transaction. Provides interest rate maximums and criteria for loans in excess of 1 month. Provides that a person may not engage in the business of making consumer finance loans unless authorized to do so by law and unless licensed by the Department of Banking and Finance. Provides for application and procedures for obtaining a license to make motor vehicle title loans. Provides for investigations and records of secondhand dealers making title loans and provides for liability, subpoenas, enforcement, and rules. See bill for details.