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Amendment No. ____ (for drafter's use only)

| | <u>Senate</u> | CHAMBER ACTION | <u>House</u> |
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ORIGINAL STAMP BELOW

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Representative(s) Sublette offered the following:

Amendment (with title amendment)

Remove from the bill: Everything after the enacting clause
and insert in lieu thereof:

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

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

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

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

(2) "Commercially reasonable" means a sale or disposal
which occurs and can be construed as an arms' length
transaction. Nonpublic sales or disposal of personal property
between licensees and business affiliates or family members

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1 are sales and disposal that are presumed not to be in a
2 commercially reasonable fashion.

3 (3) "Executive officer" means the president, chief
4 executive officer, chief financial officer, chief operating
5 officer, executive vice president, senior vice president,
6 secretary, and treasurer.

7 (4) "Identification" means a government issued
8 photographic identification.

9 (5) "Interest" means the cost of obtaining a title
10 loan and includes any profit or advantage of any kind
11 whatsoever that a title loan lender may charge, contract for,
12 collect, receive, or in any way obtain, including, by means of
13 any collateral sale, purchase, or agreement, as a condition of
14 the title loan.

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

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

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

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

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

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1 (11) "Title loan agreement" means a written agreement
2 whereby a title loan lender agrees to make a loan of a
3 specific sum of money to a pledgor, and the pledgor agrees to
4 give the title loan lender a security interest in an
5 unencumbered motor vehicle certificate of title owned by the
6 pledgor.

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

10 (13) "Title loan office" means the location at which,
11 or premises from which, a title loan lender regularly conducts
12 business.

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

15 (15) "Title loan transaction form" means the
16 instrument on which a title loan lender records title loan
17 agreements.

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

22 (17) "Ultimate equitable owner" means a natural person
23 who, directly or indirectly, owns or controls an ownership
24 interest in a corporation, a foreign corporation, an alien
25 business organization, or any other form of business
26 organization, regardless of whether such natural person owns
27 or controls such ownership interest through one or more
28 natural persons or one or more proxies, powers of attorney,
29 nominees, corporations, associations, partnerships, trusts,
30 joint stock companies, or other entities or devices, or any
31 combination thereof.

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1 Section 4. License required; license fees.--
2 (1) A person may not engage in business as a title
3 loan lender unless the person has a valid license issued by
4 the department authorizing the engagement in the business. A
5 separate license is required for each physical location of a
6 title loan office. The department shall issue more than one
7 license to a person who complies with the requirements of this
8 act for each license.

9 (2) An application for a license pursuant to this act
10 shall be submitted to the department on such forms as the
11 department prescribes by rule. If the department determines
12 that an application should be granted, the department shall
13 issue the license for a period not to exceed 2 years. A
14 nonrefundable license fee not to exceed \$500 and a
15 nonrefundable investigation fee of \$200 shall accompany an
16 initial application for each title loan location. The revenue
17 from such fees is intended to reasonably reflect the actual
18 cost of regulation.

19 (3) A license shall be renewed biannually and shall be
20 accompanied by a nonrefundable fee not to exceed \$500. A
21 license that is not renewed by its expiration date shall
22 automatically expire and revert to inactive status. Such
23 inactive license may be reactivated within 3 months after the
24 expiration date upon submission of a completed reactivation
25 form and payment of a reactivation fee of \$250. A license that
26 is not reactivated within 3 months after becoming inactive may
27 not be reactivated.

28 (4) Each license must specify the location for which
29 the license is issued and must be conspicuously displayed at
30 that location. When a licensee wishes to move a title loan
31 office to another location, the licensee shall give 30 days'

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1 prior written notice to the department by certified or
2 registered mail, return receipt requested, and the department
3 shall then amend the license accordingly. A license issued
4 pursuant to this act is not transferable or assignable.

5 (5) The department may deny an initial application for
6 a license if the applicant or any person with power to direct
7 the management or policies of the applicant is the subject of
8 a pending criminal prosecution or governmental civil
9 enforcement action, in any jurisdiction, until conclusion of
10 such criminal prosecution or enforcement action.

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

13 (7) A person shall apply to the department for a new
14 license upon the change of any person owning 25 percent or
15 greater interest in any title loan office and shall pay the
16 nonrefundable license and investigation fees.

17 (8) All moneys collected by the department under this
18 act shall be deposited into the Regulatory Trust Fund of the
19 Department of Banking and Finance for the sole purpose of
20 implementing this act.

21 Section 5. Eligibility for license.--

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

24 (a) Be of good moral character.

25 (b) File with the department a bond, in the amount of
26 \$100,000 for each license, with a surety company qualified to
27 do business in this state. In lieu of the bond, the applicant
28 may establish a certificate of deposit or an irrevocable
29 letter of credit in a financial institution, as defined in s.
30 655.005, in the amount of the bond. The original bond,
31 certificate of deposit, or letter of credit shall be filed

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1 with the department, and the department shall be the
2 beneficiary to that document. The bond, certificate of
3 deposit, or letter of credit shall be in favor of the
4 department for the use and benefit of any consumer who is
5 injured pursuant to a title loan transaction by the fraud,
6 misrepresentation, breach of contract, financial failure, or
7 violation of any provision of this act by the title loan
8 lender. Such liability may be enforced either by proceeding in
9 an administrative action or by filing a judicial suit at law
10 in a court of competent jurisdiction. However, in such court
11 suit, the bond, certificate of deposit, or letter of credit
12 posted with the department shall not be amenable or subject to
13 any judgment or other legal process issuing out of or from
14 such court in connection with such lawsuit, but such bond,
15 certificate of deposit, or letter of credit shall be amenable
16 to and enforceable only by and through administrative
17 proceedings before the department. It is the intent of the
18 Legislature that such bond, certificate of deposit, or letter
19 of credit shall be applicable and liable only for the payment
20 of claims duly adjudicated by order of the department. The
21 bond, certificate of deposit, or letter of credit shall be
22 payable on a pro-rata basis as determined by the department,
23 but the aggregate amount may not exceed the amount of the
24 bond, certificate of deposit, or letter of credit.

25 (c) Not have been convicted of a felony within the
26 last 10 years or be acting as an ultimate equitable owner for
27 someone who has been convicted of a felony within the last 10
28 years.

29 (d) Not have been convicted, and not be acting as an
30 ultimate equitable owner for someone who has been convicted,
31 of a crime that the department finds directly relates to the

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1 duties and responsibilities of a title loan lender within the
2 last 10 years.

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

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

11 Section 6. Application for license.--

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

15 (a) Contain the name and the residence and business
16 addresses of the applicant and, if the applicant is a
17 partnership or association, of every member of such
18 partnership or association and, if a corporation, of each
19 executive officer and director and ultimate equitable owner of
20 at least 25 percent of such corporation.

21 (b) State whether any of the above has, within the
22 last 10 years, been arrested for or convicted of, or is under
23 indictment or information for, a felony or crime that directly
24 relates to the duties and responsibilities of a title loan
25 lender and, if so, the nature of such felony or crime.

26 (c) Identify the county and municipality with the
27 street and number or location where the business is to be
28 conducted.

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

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1 At the time of making such application the applicant shall pay
2 to the department a nonrefundable license fee not to exceed
3 \$500. Applications, except for applications to renew or
4 reactivate a license, must be accompanied by a nonrefundable
5 investigation fee of \$200.

6 (2) Notwithstanding subsection (1), the application
7 need not state the full name and address of each officer,
8 director, and shareholder if the applicant is owned directly
9 or beneficially by a person who as an issuer has a class of
10 securities registered pursuant to section 12 of the Securities
11 Exchange Act of 1934 or, pursuant to section 15(d) of such
12 act, is an issuer of securities which is required to file
13 reports with the Securities and Exchange Commission, if the
14 person files with the department any information, documents,
15 and reports required by such act to be filed with the
16 Securities and Exchange Commission.

17 (3) Upon the filing of an application for a license
18 and payment of all applicable fees, unless the application is
19 to renew or reactivate an existing license, the department
20 shall investigate the facts concerning the applicant's
21 proposed activities. The department shall investigate the
22 facts, and shall approve an application and issue to the
23 applicant a license that will evidence the authority to do
24 business under the provisions of this act if the department
25 finds that the eligibility requirements for the license are
26 satisfied. The license must be prominently displayed at the
27 front desk or counter at the title loan office.

28 (4) A license that is not renewed by its expiration
29 date shall automatically revert to inactive status. An
30 inactive license may be reactivated upon submission of a
31 completed reactivation application, payment of the biannual

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1 license fee, and payment of a reactivation fee of \$250. A
2 license expires on the date on which it has been inactive for
3 3 months.

4 (5) A licensee may not change the place of business
5 maintained under a license without prior notice to the
6 department. When a licensee wishes to change a place of
7 business, the licensee shall give written notice of such
8 change to the department.

9 (6) A licensee may not conduct the business of making
10 loans under this act within a place of business in which other
11 business is solicited or engaged in, unless the department
12 finds that the conduct of such other business by the licensee
13 does not result in either the evasion of this act or the
14 combining of such other business activities does not result in
15 practices that are detrimental, misleading, or unfair to
16 consumers. Upon such a finding, the department may authorize
17 the combining of such other business activities. However, no
18 license shall be granted to or renewed for any person or
19 organization engaged in the pawnbroking business.

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

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

28 (1) The following acts are violations of this act and
29 constitute grounds for the disciplinary actions specified in
30 subsection (2):

31 (a) Failure to comply with any provision of this act,

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1 any rule or order adopted pursuant to this act, or any written
2 agreement entered into with the department.

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

6 (c) Fraudulent misrepresentation, circumvention, or
7 concealment of any matter required to be stated or furnished
8 to a pledgor pursuant to this act, regardless of reliance by
9 or damage to the pledgor.

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

12 (e) False, deceptive, or misleading advertising by a
13 title loan lender.

14 (f) Failure to maintain, preserve, and keep available
15 for examination, all books, accounts, or other documents
16 required by this act, by any rule or order adopted pursuant to
17 this act, or by any agreement entered into with the
18 department.

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

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

25 (i) Criminal conduct in the course of a person's
26 business as a title loan lender.

27 (2) Upon a finding by the department that any person
28 has committed any of the acts set forth in subsection (1), the
29 department may enter an order taking any of the following
30 actions:

31 (a) Issuing a notice of noncompliance pursuant to s.

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1 120.695, Florida Statutes;

2 (b) Denying an application for a license pursuant to
3 this act;

4 (c) Revoking or suspending a license previously
5 granted pursuant to this act;

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

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

11 (f) Issuing a reprimand; or

12 (g) Imposing an administrative fine not to exceed
13 \$5,000 for each such act or violation.

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

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

20 (b) Having a license, registration, or the equivalent,
21 to practice any profession or occupation denied, suspended,
22 revoked, or otherwise acted against by a licensing authority
23 in any jurisdiction for fraud, dishonest dealing, or any act
24 of moral turpitude.

25 (c) Having been convicted or found guilty of a crime
26 involving fraud, dishonest dealing, or any act of moral
27 turpitude.

28 (d) Being insolvent or having demonstrated a lack of
29 honesty or financial responsibility.

30 (e) A fact or condition exists which, if it had
31 existed or had been known to exist at the time of the original

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1 issuance of the license, would have justified the department
2 in refusing a license.

3 (4) It is sufficient cause for the department to take
4 any of the actions specified in subsection (2), as to any
5 partnership, corporation, or association, if the department
6 finds grounds for such action as to any member of the
7 partnership, as to any executive officer or director of the
8 corporation or association, or as to any person with power to
9 direct the management or policies of the partnership,
10 corporation, or association.

11 (5) Each licensee licensed pursuant to this act is
12 responsible for the acts of employees and agents of the
13 licensee if the licensee knew or should have known about such
14 acts and the licensee retained the profits, benefits, or
15 advantages accruing from such acts or ratified the conduct of
16 the employee or agent as a matter of law or fact.

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

19 (7) Any title loan agreement made without benefit of a
20 license is voidable, in which case the person forfeits the
21 right to collect any moneys, including principal and finance
22 charges, from the pledgor in connection with such agreement,
23 and shall return to the pledgor the loan property in
24 connection with such agreement or the fair market value of
25 such property and all principal and interest made by the
26 pledgor.

27 Section 8. Title loan transaction form.--

28 (1) At the time a title loan lender enters into each
29 title loan agreement, the title loan lender shall complete a
30 title loan transaction form for such transaction, and the
31 pledgor shall sign such completed form. The department shall

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- 1 approve the design and format of the title loan transaction
2 form, which shall elicit the information required under this
3 section. In completing the title loan transaction form, the
4 title loan lender shall record the following information,
5 which shall be typed or written indelibly and legibly in
6 English.
- 7 (a) The make, model, and year of the titled personal
8 property to which the loan property relates.
- 9 (b) The vehicle identification number, or other
10 comparable identification number, along with the license plate
11 number, if applicable, of the titled personal property to
12 which the loan property relates.
- 13 (c) The name, address, date of birth, physical
14 description, and social security number of the pledgor.
- 15 (d) The date of the transaction.
- 16 (e) The identification number and the type of
17 identification, including the issuing agency, accepted from
18 the pledgor.
- 19 (f) The amount of money advanced, which shall be
20 designated as the "amount financed."
- 21 (g) The maturity date of the title loan agreement,
22 which shall be 30 days after the date of the transaction.
- 23 (h) The total title loan charge payable on the
24 maturity date, designated as the "finance charge."
- 25 (i) The total amount, amount financed plus finance
26 charge, which must be paid to redeem the loan property on the
27 maturity date, designated as the "total amount of all
28 payments."
- 29 (j) The annual percentage rate, computed in accordance
30 with the regulations adopted by the Federal Reserve Board
31 pursuant to the Federal Truth-in-Lending Act.

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

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

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

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

8 1. The pledgor is not obligated to redeem the subject
9 certificate of title.

10 2. If the pledgor does not redeem the certificate of
11 title before the maturity date of the title loan agreement,
12 the title loan lender may repossess the titled personal
13 property to which the certificate of title relates.

14 3. If the title loan transaction form is lost,
15 destroyed, or stolen, the pledgor should immediately so advise
16 the issuing title loan lender in writing.

17 (d) The statement that "The pledgor represents and
18 warrants that the titled personal property to which the loan
19 property relates is not stolen and has no liens or
20 encumbrances against it, the pledgor has the right to enter
21 into this transaction, and the pledgor will not apply for a
22 duplicate certificate of title while the title loan agreement
23 is in effect."

24 (e) Immediately above the signature of the pledgor,
25 the statement that "I, the pledgor declare under penalty of
26 perjury that I have read the foregoing document and that, to
27 the best of my knowledge and belief, the facts contained in it
28 are true and correct."

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

30 (3) At the time of the transaction, the title loan
31 lender shall deliver to the pledgor an exact copy of the

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1 completed title loan transaction form.

2 (4) The pledgor shall agree for the title loan lender
3 to keep possession of the certificate of title. The pledgor
4 shall have the exclusive right to redeem the certificate of
5 title by repaying the loan of money in full and by complying
6 with the title loan agreement. When the certificate of title
7 is redeemed, the title loan lender shall release the security
8 interest in the titled personal property and return the
9 personal property certificate of title to the pledgor. The
10 title loan agreement shall provide that upon failure by the
11 pledgor to redeem the certificate of title at the end of the
12 original 30-day-agreement period, or at the end of any 30-day
13 extension of such period, the title loan lender shall be
14 allowed to take possession of the titled personal property.
15 The title loan lender shall retain physical possession of the
16 certificate of title for the entire term of the title loan
17 agreement, but shall not be required to retain physical
18 possession of the titled personal property at any time. A
19 title loan lender may only hold unencumbered certificates of
20 title for loan.

21 Section 9. Recordkeeping; reporting; safekeeping of
22 property.--

23 (1) Every title loan lender shall maintain, at the
24 principal place of business, such books, accounts, and records
25 of the business conducted under the license issued for such
26 place of business as will enable the department to determine
27 the licensee's compliance with this act. The licensee shall
28 make all such books, accounts, and records of business
29 conducted under the license available at a convenient location
30 in this state upon request of the department.

31 (2) The department may authorize the maintenance of

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1 books, accounts, and records at a location other than a
2 principal place of business. The department may require books,
3 accounts, and records to be produced and available at a
4 reasonable and convenient location in this state within a
5 reasonable period of time after such a request.

6 (3) The title loan lender shall maintain the original
7 copy of each completed title loan transaction form on the
8 title loan office premises, and shall not obliterate, discard,
9 or destroy any such original copy, for a period of at least 2
10 years after making the final entry on any loan recorded in
11 such office.

12 (4) All loan property, or property related to the
13 title loan transaction, which is delivered to a title loan
14 lender shall be securely stored and maintained at the title
15 loan office unless the title document has been forwarded to
16 the appropriate state agency for the purpose of having a lien
17 recorded or deleted.

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

22 Section 10. Title loan charges.--

23 (1)(a) A title loan lender may charge a maximum
24 interest rate of 11 percent per 30-day period. An extension of
25 the initial 30-day period must be executed in writing and must
26 clearly specify the new maturity date, the interest rate
27 computed for the extension, the amount of interest paid for
28 the extension, and the amount of interest owed on the new
29 maturity date, and a copy must be given to the pledgor. The
30 daily interest rate charged for the extension must be equal to
31 the interest rate for the original 30-day period divided by 30

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1 days, one-thirtieth of the original interest rate. A title
2 loan lender may not capitalize any unpaid interest as part of
3 the amount financed in a subsequent title loan transaction.

4 (b) If the title loan agreement is not satisfied
5 within 120 days after its inception, the title loan lender may
6 charge a maximum interest rate on the outstanding principal
7 balance not to exceed 1 percent per 30-day period for the
8 period that the loan remains outstanding. However, the title
9 loan lender may collect the maximum interest rate in paragraph
10 (a) for the first 120 days that the title loan agreement is in
11 effect.

12 (c) The original principal amount is the same amount
13 as the amount Truth in Lending Act and Regulation Z of the
14 Board of Governors of the Federal Reserve System. In
15 determining compliance with the statutory maximum interest and
16 finance charges, the computations must be simple interest and
17 not add-on interest or any other computations. When two or
18 more interest rates are to be applied to the principal amount,
19 the lender may charge interest at that single annual
20 percentage rate which, if applied according to the actuarial
21 method to each of the scheduled periodic balances of
22 principal, would produce at maturity the same total amount of
23 interest as would result from the application of the two or
24 more rates otherwise permitted, based upon the assumption that
25 all payments are made as agreed.

26 (2) The annual percentage rate that may be charged in
27 a title loan transaction may equal, but not exceed, the annual
28 percentage rate that must be computed and disclosed as
29 required by the federal Truth in Lending Act and Regulation Z
30 of the Board of Governors of the Federal Reserve System. The
31 maximum annual percentage rate of finance charge that may be

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1 charged is 12 times the maximum monthly rate, and the maximum
2 monthly rate must be computed on the basis of one-twelfth of
3 the annual rate for each full month. The Department of Banking
4 and Finance shall establish the rate for each day in a
5 fraction of a month when the period for which the charge is
6 computed is more or less than 1 month.

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

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

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1 certificate of title in exchange for the advancement of funds
 2 on the condition that the person shall or may redeem or
 3 repurchase the certificate of title upon the payment of a sum
 4 of money, whether the transaction be characterized as a
 5 "buy-sell agreement," "sale-leaseback agreement," or
 6 otherwise, shall be deemed a violation of this act if such sum
 7 exceeds the amount that a title loan lender may collect in a
 8 title loan agreement under this act or if the terms of the
 9 transaction otherwise conflict with the permitted terms and
 10 conditions of a title loan agreement under this act.

11 Section 11. Disposal of pledged property; excess
 12 proceeds.--

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

21 (2) A title loan lender has the right to take
 22 possession of the motor vehicle upon failure of the owner to
 23 redeem the title within the time period specified in
 24 subsection (1). The title loan lender shall only take
 25 possession of a motor vehicle through an agent who is licensed
 26 by the state to repossess motor vehicles. The title loan
 27 lender may dispose of the motor vehicle as provided in this
 28 section. Any sale or disposal of the motor vehicle shall be
 29 made through a motor vehicle dealer licensed under s. 320.27.

30 (3) Within 30 days after the sale of the motor
 31 vehicle, the title loan borrower is entitled to receive moneys

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

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

12 Section 12. Prohibited acts.--

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

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

17 (b) Refuse to allow the department to inspect
18 completed title loan transaction forms or loan property during
19 the ordinary hours of the title loan lender's business or
20 other times acceptable to both parties.

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

23 (d) Make any agreement requiring or allowing for the
24 personal liability of a pledgor or the waiver of any of the
25 provisions of this act.

26 (e) Knowingly enter into a title loan agreement with
27 any person who is under the influence of drugs or alcohol when
28 such condition is visible or apparent, or with any person
29 using a name other than such person's own name or the
30 registered name of the person's business.

31 (f) Fail to exercise reasonable care in the

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1 safekeeping of loan property or of titled personal property
2 repossessed pursuant to this act.

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

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

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

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

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

18 (l) Charge a prepayment penalty.

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

21 Section 13. Right to redeem; lost title loan
22 transaction form.--

23 (1) Any person presenting identification of such
24 person as the pledgor and presenting the pledgor's copy of the
25 title loan transaction form to the title loan lender is
26 presumed to be entitled to redeem the loan property described
27 in the title loan lender transaction form. However, if the
28 title loan lender determines that the person is not the
29 pledgor, the title loan lender is not required to allow the
30 redemption of the loan property by such person. The person
31 redeeming the loan property must sign the pledgor's copy of

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

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

29 Section 14. Criminal penalties.--

30 (1) Any person who engages in business as a title loan
31 lender without first securing the license prescribed by this

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1 act commits a felony of the third degree, punishable as
2 provided in s. 775.082, s. 775.083, or s. 775.084, Florida
3 Statutes.

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

10 Section 15. Records from the Department of Law
11 Enforcement.--The Department of Law Enforcement, on request,
12 shall supply to the department any arrest and conviction
13 records in the possession of the Department of Law Enforcement
14 of an individual applying for or holding a license under this
15 act.

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

17 (1) The department may issue and serve subpoenas to
18 compel the attendance of witnesses and the production of
19 documents, papers, books, records, and other evidence before
20 the department in any matter pertaining to this act. The
21 department may administer oaths and affirmations to any person
22 whose testimony is required. If any person refuses to testify,
23 produce books, records, and documents, or otherwise refuses to
24 obey a subpoena issued under this section, the department may
25 enforce the subpoena in the same manner as subpoenas issued
26 under the Administrative Procedure Act are enforced. Witnesses
27 are entitled to the same fees and mileage as they are entitled
28 to by law for attending as witnesses in the circuit court,
29 unless such examination or investigation is held at the place
30 of business or residence of the witness.

31 (2) In addition to any other powers conferred upon the

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1 department to enforce or administer this act, the department
2 may:

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

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

16 (c) Whenever the department finds that conduct
17 described in paragraph (b) presents an immediate danger to the
18 public health, safety, or welfare requiring an immediate final
19 order, the department may issue an emergency cease and desist
20 order reciting with particularity the facts underlying such
21 findings. The emergency cease and desist order is effective
22 immediately upon service of a copy of the order on the
23 respondent named in the order and shall remain effective for
24 90 days. If the department begins nonemergency proceedings
25 under paragraph (b), the emergency cease and desist order
26 remains effective until the conclusion of the proceedings
27 under ss. 120.569 and 120.57, Florida Statutes.

28 (d) Impose and collect an administrative fine against
29 any person found to have violated any provision of this act,
30 any rule or order adopted under this act, or any written
31 agreement entered into with the department, in an amount not

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1 to exceed \$5,000 for each violation.

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

4 Section 17. Investigations and complaints.--

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

17 (2) The expenses of the department incurred in each
18 such examination may be established by department rule but
19 shall not exceed \$250 per 8-hour day for each examiner. Such
20 examination fee shall be calculated on an hourly basis and
21 shall be rounded to the nearest hour. The licensee shall also
22 pay the travel expense and per diem subsistence allowance
23 provided for state employees in s. 112.061. The licensee
24 shall not be required to pay a per diem fee and expenses of
25 an examination which shall consume more than 30 worker-days in
26 any one year unless such examination or investigation is due
27 to fraudulent practices of the licensee, in which case such
28 licensee shall be required to pay the entire cost regardless
29 of time consumed.

30 (3) Any person having reason to believe that any
31 provision of this act has been violated may file with the

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1 department a written complaint setting forth the details of
2 such alleged violation and the department upon receipt of such
3 complaint, may inspect the pertinent books, records, letters,
4 and contracts of the licensee and of the seller involved,
5 relating to such specific written complaint.

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

8 538.03 Definitions; applicability.--

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

10 (a) "Secondhand dealer" means any person, corporation,
11 or other business organization or entity which is not a
12 secondary metals recycler subject to part II and which is
13 engaged in the business of purchasing, consigning, or pawning
14 secondhand goods ~~or entering into title loan transactions.~~
15 However, secondhand dealers are not limited to dealing only in
16 items defined as secondhand goods in paragraph (g). Except as
17 provided in subsection (2), the term means pawnbrokers,
18 jewelers, precious metals dealers, garage sale operators,
19 secondhand stores, and consignment shops.

20 (h) "Transaction" means any ~~title loan~~, purchase,
21 consignment, or pawn of secondhand goods by a secondhand
22 dealer.

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

25 538.16 Secondhand dealers; disposal of property.--

26 (1) Any personal property pawned with a pawnbroker,
27 whether the pawn is a loan of money or a buy-sell agreement ~~or~~
28 ~~a motor vehicle which is security for a title loan~~, is subject
29 to sale or disposal if the pawn is a loan of money and the
30 property has not been redeemed or there has been no payment on
31 account made for a period of 90 days, or if the pawn is a

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1 ~~buy-sell agreement or if it is a title loan~~ and the property
2 has not been repurchased from the pawnbroker ~~or the title~~
3 ~~redeemed from the title lender~~ or there has been no payment
4 made on account within 60 days.

5 Section 20. Effective July 1, 1998, the sum of
6 \$500,000 is hereby appropriated for the 1998-1999 fiscal year
7 from the Regulatory Trust Fund of the Department of Banking
8 and Finance to the department to fund nine positions for the
9 purpose of carrying out the provisions of this act.

10 Section 21. Paragraph (i) of subsection (1) of section
11 538.03, Florida Statutes, subsection (5) of section 538.06,
12 Florida Statutes, and subsections (4) and (5) of section
13 538.15, Florida Statutes, are hereby repealed.

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

17
18

19 ===== T I T L E A M E N D M E N T =====

20 And the title is amended as follows:

21 remove from the title of the bill: the entire title

22

23 and insert in lieu thereof:

24 A bill to be entitled

25 An act relating to title loan transactions;
26 creating the "Florida Title Loan Act";
27 providing definitions; providing legislative
28 intent; requiring licensure by the Department
29 of Banking and Finance to be in the business as
30 a title loan lender; providing for eligibility
31 for licensure; providing for application;

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1 providing for suspension or revocation of
2 license; providing for a title loan
3 transaction form; providing for recordkeeping
4 and reporting and safekeeping of property;
5 providing for title loan charges; providing a
6 holding period when there is a failure to
7 redeem; providing for the disposal of pledged
8 property; providing for disposition of excess
9 proceeds; prohibiting certain acts; providing
10 for the right to redeem; providing for lost
11 title loan transaction forms; providing for a
12 title loan lenders lien; providing for criminal
13 penalties; providing for certain records from
14 the Department of Law Enforcement; providing
15 for subpoenas, enforcement of actions, and
16 rules; providing a fine; providing for
17 investigations and complaints; amending ss.
18 538.03 and 538.16, F.S.; deleting provisions
19 relating to title loan transactions; providing
20 an appropriation; repealing ss. 538.03(1)(i),
21 538.06(5), and 538.15(4) and (5), F.S.,
22 relating to title loan transactions by
23 secondhand dealers; providing effective dates.

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