

Amendment No. 1 (for drafter's use only)

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

The Committee on Business Regulation & Consumer Affairs offered the following:

**Amendment (with title amendment)**

On page 2, line 3 through 26, line 8, remove from the bill: all of said lines

and insert in lieu thereof:

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

Section 2. Definitions.--As used in this act, unless the context otherwise requires:

(1) "Department" means the Department of Agriculture and Consumer Services.

(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 are sales and disposal which are presumed not to be in a commercially reasonable fashion.

(3) "Executive officer" means the president, chief

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1 executive officer, chief financial officer, chief operating  
2 officer, executive vice president, senior vice president,  
3 secretary and treasurer.

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

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

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

12 (7) "Title loan agreement" means a written agreement  
13 whereby a title loan lender agrees to make a loan of a  
14 specific sum of money to a pledgor, and the pledgor agrees to  
15 give the title loan lender a security interest in unencumbered  
16 titled personal property, except by a title loan agreement,  
17 owned by the pledgor.

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

21 (9) "Title loan office" means the location at which,  
22 or premises from which, a title loan lender regularly conducts  
23 business.

24 (10) "Title loan transaction form" means the  
25 instrument on which a title loan lender records title loan  
26 agreements.

27 (11) "Titled personal property" means any personal  
28 property that has as evidence of ownership a state-issued  
29 certificate of title except for a mobile home that is the  
30 primary residence of the pledgor.

31 (12) "Ultimate equitable owner" means a natural person

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1 who, directly or indirectly, owns or controls an ownership  
2 interest in a corporation, a foreign corporation, an alien  
3 business organization, or any other form of business  
4 organization, regardless of whether such natural person owns  
5 or controls such ownership interest through one or more  
6 natural persons or one or more proxies, powers of attorney,  
7 nominees, corporations, associations, partnerships, trusts,  
8 joint stock companies, or other entities or devices, or any  
9 combination thereof.

10 Section 3. License required; license fees.--

11 (1) A person may not engage in business as a title  
12 loan lender unless the person has a valid license issued by  
13 the department authorizing engagement in the business. A  
14 separate license is required for each physical location of a  
15 title loan office. The department shall issue more than one  
16 license to a person if that person complies with the  
17 requirements of this act for each license.

18 (2) An application for a license pursuant to this act  
19 must be submitted to the department on such form as the  
20 department may prescribe by rule. If the department determines  
21 that an application should be granted, it shall issue the  
22 license for a period not to exceed 1 year. A nonrefundable  
23 license fee of \$1,500 and a nonrefundable investigation fee of  
24 \$250 shall accompany an initial application for each title  
25 loan location. The revenue from these fees is intended to  
26 reasonably reflect the actual cost of regulation.

27 (3) A license shall be renewed annually and shall be  
28 accompanied by a nonrefundable fee of \$1,500. A license that  
29 is not renewed by the expiration date shall automatically  
30 expire and revert to inactive status. Such inactive license  
31 may be reactivated within 3 months after the expiration date

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1 upon submission of a completed reactivation form and payment  
2 of a reactivation fee. A license that is not reactivated  
3 within 3 months after becoming inactive may not be  
4 reactivated.

5 (4) Each license must specify the location for which  
6 it is issued and must be conspicuously displayed at that  
7 location. When a licensee wishes to move a title loan office  
8 to another location, the licensee shall give 30 days prior  
9 written notice to the department by certified or registered  
10 mail, return receipt requested, and the department shall then  
11 amend the license accordingly. A license issued pursuant to  
12 this act is not transferable or assignable.

13 (5) The department may deny an initial application for  
14 a license if the applicant or any person with power to direct  
15 the management or policies of the applicant is the subject of  
16 a pending criminal prosecution or governmental civil  
17 enforcement action, in any jurisdiction, until conclusion of  
18 such criminal prosecution or enforcement action.

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

21 (7) A person must apply to the department for a new  
22 license upon the change of any person owning 25 percent or  
23 greater interest in any title loan office and pay the  
24 nonrefundable license and investigation fees.

25 (8) All monies collected by the department under this  
26 chapter shall be deposited into the State Treasury to be  
27 placed in the General Inspection Trust Fund for the sole  
28 purpose of implementing this chapter.

29 Section 4. Eligibility for license.--

30 (1) To be eligible for a title loan lending license,  
31 an applicant shall:

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1           (a) Be of good moral character.  
2           (b) File with the department a bond in the amount of  
3 \$100,000 for each license with a surety company qualified to  
4 do business in this state. In lieu of the bond, the applicant  
5 may establish a certificate of deposit or an irrevocable  
6 letter of credit in a Florida financial institution in the  
7 amount of the bond. The original bond, certificate of deposit,  
8 or letter of credit shall be filed with the department, and  
9 the department shall be the beneficiary to said document. The  
10 bond, certificate of deposit, or letter of credit shall be in  
11 favor of the department for the use and benefit of any  
12 consumer who is injured pursuant to a title loan transaction  
13 by the fraud, misrepresentation, breach of contract, financial  
14 failure, or violation of any provision of this act by the  
15 title loan lender. Such liability may be enforced either by  
16 proceeding in an administrative action or by filing a judicial  
17 suit at law in a court of competent jurisdiction. However, in  
18 such court suit, the bond, certificate of deposit, or letter  
19 of credit posted with the department shall not be amenable or  
20 subject to any judgment or other legal process issuing out of  
21 or from such court in connection with such lawsuit; but such  
22 bond, certificate of deposit, or letter of credit shall be  
23 amenable to and enforceable only by and through administrative  
24 proceedings before the department. It is the intent of the  
25 Legislature that such bond, certificate of deposit, or letter  
26 of credit shall be applicable and liable only for the payment  
27 of claims duly adjudicated by order of the department. The  
28 bond, certificate of deposit, or letter of credit shall be  
29 payable on a pro rata basis as determined by the department,  
30 but the aggregate amount may not exceed the amount of the  
31 bond, certificate of deposit, or letter of credit.

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1           (c) Not have been convicted of a felony within the  
2 last 10 years or be acting as an ultimate equitable owner for  
3 someone who has been convicted of a felony within the last 10  
4 years.

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

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

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

18           Section 5. Application for license.--

19           (1) Application for a license to make title loans  
20 under this act shall be in writing, under oath, and in the  
21 form prescribed by department rule, and shall contain the  
22 name, residence and business addresses of the applicant and,  
23 if the applicant is a partnership or association, of every  
24 member thereof and, if a corporation, of each officer and  
25 director and ultimate equitable owner of at least 25 percent  
26 thereof; whether any of the above has been arrested within the  
27 last 10 years for, convicted of, or is under indictment or  
28 information for, a felony or crime that directly relates to  
29 the duties and responsibilities of a title loan lender and, if  
30 so, the nature thereof; the county and municipality with the  
31 street and number or location where the business is to be

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1 conducted; and such further relevant information as the  
2 department may require pursuant to department rule. At the  
3 time of making such application the applicant shall pay to the  
4 department a nonrefundable license fee of \$1,500.

5 Applications, except for applications to renew or reactivate a  
6 license, must be accompanied by a nonrefundable investigation  
7 fee of \$250.

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

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

31 (4) A license that is not renewed by the expiration

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1 date shall automatically revert to inactive status. An  
2 inactive license may be reactivated upon submission of a  
3 completed reactivation application, payment of the annual  
4 license fee, and payment of a reactivation fee of \$250. A  
5 license expires on the date at which it has been inactive for  
6 3 months.

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

12 (6) A licensee may conduct the business of making  
13 loans under this act within a place of business in which other  
14 business is solicited or engaged in, unless the department  
15 finds that the conduct of such other business by the licensee  
16 results in either the evasion of this act or combining such  
17 other business activities results in practices which are  
18 detrimental, misleading, or unfair to consumers. Upon such a  
19 finding, the department shall order the licensee to desist  
20 from such evasion or other business activities. However, no  
21 license shall be granted to or renewed for any person or  
22 organization engaged in the pawnbroking business.

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

30 Section 6. Suspension, revocation of license.--

31 (1) The following acts are violations of this act and



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1 constitute grounds for the disciplinary actions specified in  
2 subsection (2):

3 (a) Failure to comply with any provision of this act,  
4 any rule or order adopted pursuant to this act, or any written  
5 agreement entered into with the department;

6 (b) Fraud, misrepresentation, deceit, or gross  
7 negligence in any title loan transaction, regardless of  
8 reliance by or damage to the pledgor;

9 (c) Fraudulent misrepresentation, circumvention, or  
10 concealment of any matter required to be stated or furnished  
11 to a pledgor pursuant to this act, regardless of reliance by  
12 or damage to the pledgor;

13 (d) Willful imposition of illegal or excessive charges  
14 in any title loan transaction;

15 (e) False, deceptive, or misleading advertising by a  
16 title loan lender;

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

22 (g) The title loan lender has aided, abetted, or  
23 conspired with an individual or person to circumvent or  
24 violate any of the requirements of this act;

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

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

30 (2) Upon a finding by the department that any person  
31 has committed any of the acts set forth in subsection (1), the

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1 department may enter an order taking one or more of the  
2 following actions:

3 (a) Issuing a notice of noncompliance pursuant to s.  
4 120.695;

5 (b) Denying an application for a license pursuant to  
6 this act;

7 (c) Revoking or suspending a license previously  
8 granted pursuant to this act;

9 (d) Placing a licensee or an applicant for a license  
10 on probation for a period of time and subject to such  
11 conditions as the department may specify;

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

14 (f) Issuing a reprimand; or

15 (g) Imposing an administrative fine not to exceed  
16 \$5,000 for each such act or violation.

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

21 (a) A material misstatement of fact in an initial or  
22 renewal application for a license;

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

28 (c) Having been convicted or found guilty of a crime  
29 involving fraud, dishonest dealing, or any act of moral  
30 turpitude;

31 (d) Being insolvent or having demonstrated a lack of

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1 honesty or financial responsibility; or

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

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

14 (5) Each licensee licensed pursuant to this act is  
15 responsible for the acts of its employees and agents, if, with  
16 actual knowledge of such acts, it retained profits, benefits,  
17 or advantages accruing from such acts or ratified the conduct  
18 of the employee or agent as a matter of law or fact.

19 (6) The manner of giving notice and conducting a  
20 hearing shall be as is required by chapter 120.

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

28 Section 7. Title loan transaction form.--

29 (1) At the time the title loan lender enters into each  
30 title loan agreement, the title loan lender shall complete a  
31 title loan transaction form for such transaction, and the

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1 pledgor shall sign such completed form. The department shall  
2 approve the design and format of the title loan transaction  
3 form, which shall elicit the information required under this  
4 section. In completing the title loan transaction form, the  
5 title loan lender shall record the following information,  
6 which shall be typed or written indelibly and legibly in  
7 English.

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

10 (b) The vehicle identification number, or other  
11 comparable identification number, along with the license plate  
12 number, if applicable, of the titled personal property to  
13 which the loan property relates.

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

16 (d) The date of the transaction.

17 (e) The identification number and the type of  
18 identification, including the issuing agency, accepted from  
19 the pledgor.

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

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

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

26 (i) The total amount, amount financed plus finance  
27 charge, which must be paid to redeem the loan property on the  
28 maturity date, designated as the "total amount of all  
29 payments."

30 (j) The annual percentage rate, computed in accordance  
31 with the regulations adopted by the Federal Reserve Board

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1 pursuant to the Federal Truth-in-Lending Act.

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

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

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

8 (c) The following statement in not less than 12 point  
9 type that:

10 1. The pledgor is not obligated to redeem the subject  
11 certificate of title.

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

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

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

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

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

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

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

23           Section 8. Recordkeeping; reporting; safekeeping of  
24 property.--

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

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1 in this state upon request of the department.

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

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

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

20 (5) The department is hereby authorized and empowered  
21 to prescribe the minimum information to be shown in the books,  
22 accounts, and records of licensees so that such records will  
23 enable the department to determine compliance with the  
24 provisions of this act.

25 Section 9. Title loan charges.--

26 (1) In a title loan agreement, a title lender may  
27 contract for and receive only a finance charge. The finance  
28 charge may not exceed 22 percent simple interest per 30-day  
29 period.

30 (2) Any extension must be done in writing, clearly  
31 specify the new maturity date, the title loan finance charges

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1 paid for the extension, and title loan finance charges owed on  
2 the new maturity date, and a copy must be supplied to the  
3 pledgor. In this event, the daily title loan finance charge  
4 for the extension shall be equal to the title loan finance  
5 charge for the original 30-day period divided by 30 days,  
6 one-thirtieth of the original total title loan finance charge.  
7 A title loan lender is not permitted to capitalize any unpaid  
8 finance charge as part of the amount financed in a subsequent  
9 title loan transaction.

10 (3) When a title loan agreement has not been satisfied  
11 within 90 days of its inception the title loan lender shall be  
12 entitled to receive a finance charge on the outstanding  
13 principal balance at a rate not to exceed 18 percent per annum  
14 for that period of time the loan remains outstanding beyond 90  
15 days. However, the title loan lender may collect a finance  
16 charge as set forth in subsection (1) for the first 90 days  
17 the title loan agreement is in effect.

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



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

15 (5) Any fees or taxes paid to a governmental agency  
16 and directly related to a particular title loan transaction  
17 may be collected from the pledgor and shall be in addition to  
18 the permitted finance charge.

19 Section 10. Ten-day holding period; failure to redeem;  
20 attempts at collection.--

21 (1) Upon the pledgor's failure to redeem the pledged  
22 property on or before the maturity date of the title loan  
23 agreement, the title loan lender has the right to take  
24 possession of the titled personal property. Any repossession  
25 of a motor vehicle must be through an agent who is licensed by  
26 the state to repossess motor vehicles. After taking possession  
27 of the titled personal property, the title loan lender shall  
28 retain possession of the titled personal property and the  
29 certificate of title for a minimum 10-day holding period  
30 commencing on the date of repossession.

31 (2) If, during the 10-day holding period, the pledgor

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1 redeems the titled personal property and certificate of title  
2 by paying all outstanding principal and finance charges, the  
3 pledgor shall be given possession of the titled personal  
4 property and the certificate of title without further charge.

5 (3) If the pledgor fails to redeem the titled personal  
6 property and certificate of title during the 10-day holding  
7 period, then the pledgor shall thereby forfeit all right,  
8 title, and interest in and to the titled personal property and  
9 certificate of title, to the title loan lender, who shall  
10 thereby acquire an absolute right of title and ownership to  
11 the titled personal property. The title loan lender shall then  
12 have the sole right and authority to sell or dispose of the  
13 unredeemed titled personal property.

14 (4) If the title loan lender, in attempting to collect  
15 moneys owed pursuant to a valid title pledge agreement,  
16 communicates with the pledgor no more than one time per day  
17 such communication shall not be considered harassment or abuse  
18 of the pledgor for purposes of s. 559.72.

19 Section 11. Disposal of pledged property; excess  
20 proceeds.--

21 (1) The title loan lender shall dispose of the pledged  
22 personal property within a reasonable length of time after the  
23 expiration of the 10-day holding period in a commercially  
24 reasonable fashion so as to produce the highest proceeds from  
25 such disposal. After the pledged personal property has been  
26 disposed of, the title loan lender shall deduct from said  
27 proceeds the outstanding principal balance and finance charges  
28 that have accrued up until the expiration of the 10-day  
29 holding period and the incurred repossession or storage  
30 charges which are actual and reasonable. Title loan lenders  
31 may only assess and collect, as reimbursement, a repossession

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1 or storage charge which does not exceed the actual amount  
2 charged by an independent and unaffiliated third-party company  
3 or contractor which was hired to repossess or store the titled  
4 personal property to which the loan property relates. The  
5 total amount of reimbursement that the title loan lender may  
6 receive as reimbursement, for any outstanding charges except  
7 the principal and finance charges, may not exceed \$350 for a  
8 motor vehicle repossessed within this state or \$500 for a  
9 motor vehicle repossessed outside this state.

10 (2) After such deductions, any remaining balances or  
11 surpluses, if any, shall be given to the pledgor within 10  
12 days after such disposal. Under no circumstances, including  
13 the case where the sale or disposal proceeds fail to cover the  
14 loan amount, shall any deficiency be allowed to be attributed  
15 to any pledgor or borrower.

16 Section 12. Prohibited acts.--A title loan lender, or  
17 any agent or employee of such title loan lender, shall not:

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

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

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

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

29 (5) Knowingly enter into a title loan agreement with  
30 any person who is under the influence of drugs or alcohol when  
31 such condition is visible or apparent, or with any person

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1 using a name other than his own name or the registered name of  
2 his business.

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

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

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

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

17 (10) Engage in business as a title loan lender without  
18 first securing the license.

19 (11) Refuse to accept a partial repayment of the  
20 amount financed provided all accrued finance charges have been  
21 paid.

22 (12) Charge a prepayment penalty.

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

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

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

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

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

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

3 Section 14. Title loan lender's lien.--

4 (1) The title loan lender may record its security  
5 interest in the titled personal property to which the loan  
6 property relates by noting the lien on the certificate of  
7 title.

8 (2) The title loan lender is, upon entering into a  
9 title loan agreement, considered a bona fide lienholder whose  
10 interest has been perfected.

11 Section 15. Criminal penalties.--

12 (1) Any person who engages in business as a title loan  
13 lender without first securing the license prescribed by this  
14 act commits a felony of the third degree, punishable as  
15 provided in s. 775.082, s. 775.083, or s. 775.084.

16 (2) In addition to any other penalty which may be  
17 applicable, any person who willfully violates this act or who  
18 willfully makes a false entry in any record specifically  
19 required by this act commits a misdemeanor of the first degree  
20 punishable as provided in s. 775.082 or s. 775.083.

21 Section 16. Records from the Department of Law  
22 Enforcement.--The Department of Law Enforcement, on request,  
23 shall supply to the department any arrest and conviction  
24 records in its possession of an individual applying for or  
25 holding a license under this act.

26 Section 17. Subpoenas; enforcement actions; rules.--

27 (1) The department may issue and serve subpoenas to  
28 compel the attendance of witnesses and the production of  
29 documents, papers, books, records, and other evidence before  
30 it in any matter pertaining to this act. The department may  
31 administer oaths and affirmations to any person whose

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1 testimony is required. If any person refuses to testify,  
2 produce books, records, and documents, or otherwise refuses to  
3 obey a subpoena issued under this section, the department may  
4 enforce the subpoena in the same manner as subpoenas issued  
5 under the Administrative Procedure Act are enforced. Witnesses  
6 are entitled to the same fees and mileage as they are entitled  
7 to by law for attending as witnesses in the circuit court,  
8 unless such examination or investigation is held at the place  
9 of business or residence of the witness.

10 (2) In addition to any other powers conferred upon it  
11 to enforce or administer this act, the department may:

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

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

25 (c) Whenever the department finds that conduct  
26 described in paragraph (b) presents an immediate danger to the  
27 public health, safety, or welfare requiring an immediate final  
28 order, issue an emergency cease and desist order reciting with  
29 particularity the facts underlying such findings. The  
30 emergency cease and desist order is effective immediately upon  
31 service of a copy of the order on the respondent named therein

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1 and remains effective for 90 days. If the department begins  
2 nonemergency proceedings under paragraph (b), the emergency  
3 cease and desist order remains effective until the conclusion  
4 of the proceedings under ss. 120.569 and 120.57.

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

10 (3) The department has the authority to adopt rules  
11 pursuant to the Administrative Procedure Act.

12 Section 18. Investigations and complaints.--

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

25 (2) Any person having reason to believe that the  
26 provisions of this act have been violated may file with the  
27 department a written complaint setting forth the details of  
28 such alleged violations and the department upon receipt of  
29 such complaint, may inspect the pertinent books, records,  
30 letters, and contracts of the licensee and of the seller  
31 involved, relating to such specific written complaint.



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1           Section 19. There is hereby appropriated for the  
2 1997-1998 fiscal year \$700,000 and eight positions from the  
3 General Inspection Trust Fund to the Department of Agriculture  
4 and Consumer Services to administer this act.

5           Section 20. Legislative intent.--It is the intent of  
6 the Legislature that title loans shall be regulated by the  
7 provisions of this chapter. The provisions of this chapter  
8 shall supersede any provisions of law affecting title loans to  
9 the extent of any conflict.

10          Section 21. Chapter 95-287, Laws of Florida, is  
11 repealed.

12          Section 22. This act shall take effect October 1,  
13 1997, except that section 19 shall take effect July 1, 1997.

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15  
16 ===== T I T L E   A M E N D M E N T =====

17 And the title is amended as follows:

18           On page 1....., line(s) 1.....,  
19 remove from the title of the bill: all of said lines

20  
21 and insert in lieu thereof:

22           An act relating to title loan transactions;  
23           creating the "Florida Title Loan Act";  
24           providing definitions; requiring licensure by  
25           the Department of Agriculture and Consumer  
26           Services to be in the business as a title loan  
27           lender; providing for eligibility for  
28           licensure; providing for application; providing  
29           for suspension or revocation of license;  
30           providing for a title loan transaction form;  
31           providing for recordkeeping and reporting and

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1 safekeeping of property; providing for title  
 2 loan charges; providing a holding period when  
 3 there is a failure to redeem; providing for  
 4 attempts at collection; providing for the  
 5 disposal of pledged property; providing for  
 6 disposition of excess proceeds; prohibiting  
 7 certain acts; providing for the right to  
 8 redeem; providing for lost title loan  
 9 transaction forms; providing for a title loan  
 10 lenders lien; providing for criminal penalties;  
 11 providing for certain records from the  
 12 Department of Law Enforcement; providing for  
 13 subpoenas, enforcement of actions, and rules;  
 14 providing a fine; providing for investigations  
 15 and complaints; providing an appropriation;  
 16 providing legislative intent; repealing ch.  
 17 95-287, Laws of Florida; providing an effective  
 18 date.

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