

STORAGE NAME: H0795.brc
DATE: April 4, 1997

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

BILL #: HB 795
RELATING TO: Florida Title Loan Act
SPONSOR(S): Representative Healey
STATUTE(S) AFFECTED: None.
COMPANION BILL(S): SB 1432 (i)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:
(1) BUSINESS REGULATION AND CONSUMER AFFAIRS
(2) CRIME AND PUNISHMENT
(3) FINANCE AND TAXATION
(4) GENERAL GOVERNMENT APPROPRIATIONS
(5)

I. SUMMARY:

This bill establishes the Florida Title Loan Act. A title loan is a transaction where money is lent with the title to a motor vehicle offered as security. The bill sets the finance charge at 22% simple interest per 30-day period for the first 120 days. A minimum \$25 finance charge per 30-day period for the first 120 days is authorized. Thereafter, the rate is 18 percent per annum.

The provisions encompass all or part of 12 of the 15 recommendations made by the Florida Vehicle Title Loan Task Force. Those provisions include establishing the Department of Agriculture and Consumer Services (DACS) as the regulatory agency and eliminating the current registration responsibilities of the Department of Revenue.

The bill establishes maximum levels for biennial registration at \$500 and for initial investigation at \$250 for each title loan location. There are an estimated 400 such lenders in the state. Using the maximum levels, the fees would generate \$300,000 the first two years. The DACS estimates the cost of implementing the new program is approximately \$700,000 the first year and \$600,000 the second year. At these levels the program is under funded by approximately \$1M after two years.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

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

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

Unlike other secondhand dealers (e.g., pawnbrokers), title lenders are not regulated by a state agency. The only state entity having direct interaction with the title loan industry is the Department of Revenue which requires all secondhand dealers to register with the department for tax purposes and to obtain a secondhand dealer's license. The cost of registration is \$45 plus \$6 for every location. The annual renewal fee is \$6 per location.

By law, secondhand dealers may charge a maximum fee (as distinguished from an interest rate) of 22 percent per month on a title loan transaction. There is no prohibition against capitalizing (same effect as compounding) the 22 percent rate. This is in contrast to the maximum service charge allowed for pawnbrokers, which cannot exceed 25 percent per 30-day period on a pawn transaction. This potentially high fee for title loans extended over several months is at the center of the controversy over the current law.

The 1996 Legislature established the Florida Vehicle Title Loan Task Force to review industry practices and recommend any changes necessary to protect consumers. The task force met seven times and recommended, by a 4 to 3 vote, to repeal the 1995 act. However, prior to the final vote, the task force agreed that a regulatory program should: (1) Establish the Department of Agriculture and Consumer Services (DACS) as the regulating agency; (2) Enact a new chapter to regulate title loans; (3) Establish bonding at \$200,000 net worth or \$100,000 bond, certificate of deposit, or letter of credit; (4) Require standardized transaction forms; (5) Require keeping transaction forms for two years and make them available upon request; (6) Omit contract length regulation; (7) Require use of terms "interest rate" and "loan"; (8) Require disclosure of loan as a lien; (9) Prohibit capitalizing interest; (10) Prohibit any fee in addition to interest rate, require full finance disclosure, and set maximum fine of \$5,000; (11) Require principal reduction payment for extended loans when service fees are paid in full; (12) Require 10-day holding period for repossessed vehicle prior to sale; (13) Require return of excess money collected in sale of repossessed vehicle, allow deduction of reasonable repossession costs, and prohibit further collections from a deficit sale; (14) Prohibit wholesaling repossessed vehicles to an affiliated entity; and (15) Establish fees

according to estimated cost of regulation. The task force did not agreed on the interest rate.

B. EFFECT OF PROPOSED CHANGES:

This bill establishes the Florida Title Loan Act and sets the interest rate, called a finance charge, at three percent lower than the total amount pawnbrokers are allowed to charge under s. 539.001(11)(a), F.S. That section allows 25% simple interest, plus \$5 per 30-day period. Therefore, title loan lenders may charge 22% simple interest per 30-day period. The bill also provides that the minimum finance charge per 30-day period is \$25. After 120 days, the maximum finance charge may not exceed 18% per annum for the time a title loan is outstanding beyond 120 days. No other fees may be charged in connection with a title loan, except those fees or taxes paid to a governmental agency (i.e., to register a lien).

In addition, the bill encompasses part or all of 12 of the 15 provisions agreed to by the task force. It:

- Establishes the DACS as the agency to implement a unified regulatory program and eliminates the registration requirements of the Department of Revenue (1 & 2);
- Requires title loan companies to register with the DACS and show a \$200,000 net worth or post a \$100,000 bond, certificate of deposit or letter of credit (3);
- Requires title loan companies to keep transaction forms for two years (5);
- Places no restriction on the number of times a title loan transaction may be extended, though each transaction may cover only a 30-day period (6);
- Refers to title loan transactions and calls the contract a title loan agreement (part of 7);
- Prohibits capitalizing finance charges (9);
- Requires full disclosure of the financing and caps administrative fines at up to \$5,000 per violation (part of 10);
- Requires principal reduction payment for extended loans when finance charge is paid in full (11);
- Requires title loan lenders to hold a repossessed vehicle for 10 days before sale (12);
- Requires title loan lenders to return, within 10 days, any excess money collected from the sale of a repossessed vehicle, minus the outstanding loan, finance charges and the specified repossession costs. It prohibits further collections from the borrower (13); and
- Prohibits selling repossessed vehicles to affiliated parties (14).

The biennial registration fees are capped at \$500, with an initial investigation fee capped at \$250. These fees are not sufficient to cover the DACS's estimated cost of implementing the new regulatory program.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

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

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

Yes; the DACS is given rulemaking authority.

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

Yes. This is a new consumer protection regulatory program placed under the authority of the DACS.

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

No.

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

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

The registration responsibilities of the Department of Revenue are eliminated and a new regulatory program is established in the DACS.

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

The DACS estimates it will cost approximately \$700,000 the first year and \$600,000 thereafter to implement the law.

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

The provisions of ch. 120, F.S., are available to title loan companies.

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No.

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

Yes. Increased registration and new investigation fees are authorized.

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

No.

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

No.

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

No.

3. Personal Responsibility:

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

No.

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

Yes.

4. Individual Freedom:

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

No.

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

It creates new regulations on the title loan industry.

5. Family Empowerment:

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

(1) Who evaluates the family's needs?

N/A

(2) Who makes the decisions?

N/A

(3) Are private alternatives permitted?

N/A

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

N/A

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

N/A

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

No.

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

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. SECTION-BY-SECTION RESEARCH:

Section 1. Creates the Florida Title Loan Act.

Section 2. Provides definitions for the Florida Title Loan Act.

Section 3. Provides licensing procedures, conditions, and fees. A title lender must be licensed by the DACS, with one license for each business location. The initial

investigation fee and biennial license fee shall not exceed \$250 and \$500 respectively. Specific procedures and fees for licensing, renewal, and reactivation will be set by DACS rule.

Section 4. Provides eligibility requirements for a title loan license including proving a net worth of at least \$200,000 or posting a \$100,000 bond or certificate of deposit for the benefit of any consumer who is injured pursuant to a title loan transaction. Owners may not have any felony convictions within the 10 years preceding the application date.

Section 5. Provides for application procedures and license restrictions. The DACS will set by rule many procedures and requirements for licensure. No licensee may be engaged in the pawnbroker business or any other business which violates or evades the proposed Florida Title Loan Act. Licenses are not transferable or assignable.

Section 6. Lists violations of the Florida Title Loan Act and the disciplinary actions available to the DACS. Violations range from fraud to the failure to maintain records to the satisfaction of the DACS. Disciplinary actions range from denial or revocation of a license to the imposition of an administrative fine of not more than \$5,000. Provides additional grounds for denial of a license application, or revocation, suspension or restriction of an existing license. Any title loan agreement made by an unlicensed title loan dealer is voidable.

Section 7. Provides minimum information required on a title loan transaction form. The design and format of the form will be approved by the DACS. Required information includes the title loan interest designated as a "finance charge" and the total amount due on the loan maturity date.

Section 8. Authorizes the DACS to prescribe the minimum information which must be maintained for at least two years after the conclusion of a loan. All title loan records must be provided to the DACS for inspection upon request of the DACS.

Section 9. Provides for a finance charge of no more than 22% per 30-day period on a title loan transaction, except that a title lender is entitled to a minimum finance charge of \$25 for every 30-day period. After 120 days, the maximum finance charge may not exceed 18% per annum for the time a title loan is outstanding beyond 120 days. No other fees may be charged in connection with a title loan, except those fees or taxes paid to a governmental agency.

Section 10. Provides for the repossession of pledged property after the maturity date of a title loan. A title lender must hold repossessed property for at least 10 days after the date of repossession. After the 10-day holding period, a title lender may sell or dispose of the repossessed property.

Section 11. Requires that repossessed property held after the 10-day holding period be disposed of within a reasonable period of time, and for a commercially reasonable price. If a title lender sells repossessed property, then the original principal and accrued finance charges plus reasonable repossession, holding, and sales fees are subtracted from the sale price, and any remaining money must be returned to the pledgor within 10 days. Reasonable repossession, holding, and sales fees may not exceed \$350 for an in-state repossession and \$500 for an out-of-state repossession. If the sale proceeds

do not cover the principal and fees on a loan, the title lender may not seek further payment from the pledgor.

Section 12. Prohibits certain acts by a title loan lender ranging from falsifying information in connection with a title loan transaction to charging interest or fees not permitted under the Florida Title Loan Act.

Section 13. Provides for redemption procedures.

Section 14. Allows the imposition of a lien on pledged property in a title loan transaction.

Section 15. Provides for criminal penalties.

Section 16. Requires the Department of Law Enforcement to supply arrest and conviction records to the DACS for individuals applying for a title loan license.

Section 17. Pertains to subpoenas, enforcement actions, and rules.

Section 18. Provides for the intermittent investigation and examination of licensed title lenders, but never more than once in a 12-month period unless there is good cause to believe there has been a violation of the Florida Title Loan Act.

Section 19. Provides for the appropriation of funds from the General Revenue Fund to the DACS for the administration and enforcement of the provisions of the Florida Title Loan Act. However, the exact appropriation has not been inserted, awaiting cost estimates from the DACS.

Section 20. Provides the legislative intent of the Florida Title Loan Act.

Section 21. Provides an effective date of October 1, 1997.

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

<u>Revenues:</u>	1997-98
Department of Agriculture & Consumer Services	
No fund is provided	\$100,000

<u>Expenditures:</u>	
Department of Agriculture & Consumer Services	
Operating Capital Outlay	
General Revenue	\$30,199

Data Processing Consultant

STORAGE NAME: H0795.brc

DATE: April 4, 1997

PAGE 9

General Revenue \$80,000

2. Recurring Effects:

<u>Revenues:</u>	1997-98	1998-99
Department of Agriculture & Consumer Services		
General Revenue	\$200,000	\$0

Expenditures:

Department of Agriculture & Consumer Services		
Salaries & Benefits (8 FTE)	\$362,154	\$373,020
Expenses	\$106,704	\$106,704
Rent	\$21,650	\$22,732
Investigations	\$24,000	\$24,000
Miscellaneous	\$2,517	\$2,517
General Revenue	\$517,015	\$528,973
Non-Operating Costs		
Administrative/Indirect	\$38,337	\$40,429
General Revenue Service Charge	\$21,900	\$0
General Inspection Trust Fund	\$60,237	\$40,429
Data Processing		
General Revenue	\$40,000	\$40,000

3. Long Run Effects Other Than Normal Growth:

The \$250 investigation fee is a one-time assessment; therefore, the revenues are reduced by an estimated \$100,000 in the third fiscal year.

4. Total Revenues and Expenditures:

<u>Revenues:</u>	1997-98	1998-99
Department of Agriculture & Consumer Services		
General Revenue	\$300,000	\$0
<u>Expenditures:</u>		
Department of Agriculture & Consumer Services		
General Revenue	\$727,461	\$609,402
TOTAL	(\$427,461)	(\$609,402)

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

Title loan companies will pay a new, one-time investigation fee of \$250, and a new biennial registration fee of \$500.

2. Direct Private Sector Benefits:

The title loan industry requested this new regulatory program to ensure the public is protected.

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

This bill should not adversely affect competition, private enterprise or employment markets since all title loan companies are treated equally.

D. FISCAL COMMENTS:

There are an estimated 400 title companies in the state that will register with the DACS and pay the initial \$250 investigation fee and the \$500 biennial registration fee.

The DACS estimates it will need 8 new, full-time positions and 640 OPS hours to implement the program. The revenue generated by the bill does not cover the anticipated costs, resulting in an estimated deficit of approximately \$1 M at the end of the first two years.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

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

B. REDUCTION OF REVENUE RAISING AUTHORITY:

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

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

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

STORAGE NAME: H0795.brc

DATE: April 4, 1997

PAGE 12

V. COMMENTS:

The rulemaking authority does not conform to the language requested by the Joint Administrative Procedures Committee.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None.

VII. SIGNATURES:

COMMITTEE ON BUSINESS REGULATION AND CONSUMER AFFAIRS:

Prepared by:

Legislative Research Director:

Rebecca R. Everhart

Lucretia Shaw Collins