

Amendment No. 01 (for drafter's use only)

	<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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The Committee on Financial Services offered the following:

Amendment (with title amendment)

On page 2, line 10,
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 state law affecting title loans to the extent of any conflict.

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

(1) "Commercially reasonable" means a sale or disposal which occurs and can be construed as an arms' length transaction. Nonpublic sales or disposal of titled personal property between licensees and business affiliates or family members are sales and disposal that are presumed not to be in

Amendment No. 01 (for drafter's use only)

1 a commercially reasonable fashion.

2 (2) "Department" means the Department of Banking and
3 Finance.

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

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

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

15 (6) "License" means a permit issued under this act to
16 make or service title loans in accordance with this act at a
17 single title loan office.

18 (7) "Licensee" means a person who is licensed as a
19 title loan lender.

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

24 (9) "Motor vehicle" means an automobile, motorcycle,
25 mobile home, truck, trailer, semitrailer, truck tractor and
26 semitrailer combination, or any other vehicle operated on the
27 public highways and streets of this state, used to transport
28 persons or property, and propelled by power other than
29 muscular power, but excluding a vehicle which runs only upon a
30 track and a mobile home that is the primary residence of the
31 owner.

Amendment No. 01 (for drafter's use only)

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

3 (11) "Title loan agreement" means a written agreement
4 in which a title loan lender agrees to make a title loan to a
5 borrower.

6 (12) "Title loan lender" means any person who engages
7 in the business of making or servicing title loans.

8 (13) "Title loan office" means the location at which,
9 or premises from which, a title loan lender regularly conducts
10 business under this chapter or any other location that is held
11 out to the public as a location at which a lender makes or
12 services title loans.

13 (14) "Titled personal property" means a motor vehicle
14 that has as evidence of ownership a state-issued certificate
15 of title except for a mobile home that is the primary
16 residence of the borrower.

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

26 Section 4. License required; license fees.--

27 (1) A person may not act as a title loan lender or own
28 or operate a title loan office unless such person has an
29 active title loan lender license issued by the department
30 under this act. A title loan lender may not own or operate
31 more than one title loan office unless the lender obtains a

Amendment No. 01 (for drafter's use only)

1 separate title loan lender license for each title loan office.

2 (2) A person applying for licensure as a title loan
3 lender shall file with the department an application, the bond
4 required by section 5(3), a nonrefundable application fee of
5 \$1,200, a nonrefundable investigation fee of \$200, and a
6 complete set of fingerprints taken by an authorized law
7 enforcement officer. The department shall submit such
8 fingerprints to the Department of Law Enforcement or the
9 Federal Bureau of Investigation for state and federal
10 processing. The department may waive, by rule, the requirement
11 that applicants must file a set of fingerprints or the
12 requirement that such fingerprints must be processed by the
13 Department of Law Enforcement or the Federal Bureau of
14 Investigation.

15 (3) If the department determines that an application
16 should be approved, the department shall issue a license for a
17 period not to exceed 2 years.

18 (4) A license shall be renewed biennially by filing a
19 renewal form and a nonrefundable renewal fee of \$1,200. A
20 license that is not renewed by the end of the biennial period
21 shall automatically revert to inactive status. An inactive
22 license may be reactivated within 6 months after becoming
23 inactive by filing a reactivation form, payment of the
24 nonrefundable \$1,200 renewal fee, and payment of a
25 nonrefundable reactivation fee of \$600. A license that is not
26 reactivated within 6 months after becoming inactive may not be
27 reactivated and shall automatically expire. The department
28 shall establish by rule the procedures for renewal and
29 reactivation of a license and shall adopt a renewal form and a
30 reactivation form.

31 (5) Each license must be conspicuously displayed at

Amendment No. 01 (for drafter's use only)

1 the title loan office. When a licensee wishes to move a title
2 loan office to another location, the licensee shall provide
3 prior written notice to the department.

4 (6) A license issued pursuant to this act is not
5 transferable or assignable.

6 (7) Each licensee shall designate and maintain a
7 registered agent in this state for service of process.

8 (8) Whenever a person or a group of persons, directly
9 or indirectly or acting by or through one or more persons,
10 proposes to purchase or acquire a 25 percent or more interest
11 in a licensee, such person or group shall submit an initial
12 application for licensure under this act prior to such
13 purchase or acquisition. The department shall adopt rules
14 providing for waiver of the application required by this
15 subsection when such purchase or acquisition of a licensee is
16 made by another licensee licensed under this act or when the
17 application is otherwise unnecessary in the public interest.

18 (9) The department may adopt rules to allow for
19 electronic filing of applications, fees, and forms required by
20 this act.

21 (10) All moneys collected by the department under this
22 act shall be deposited into the Regulatory Trust Fund of the
23 Department of Banking and Finance.

24 Section 5. Application for license.--

25 (1) A verified application for licensure under this
26 act, in the form prescribed by department rule, shall:

27 (a) Contain the name and the residence and business
28 address of the applicant. If the applicant is other than a
29 natural person, the application shall contain the name and the
30 residence and business address of each ultimate equitable
31 owner of 25 percent or more of such entity and each director,

Amendment No. 01 (for drafter's use only)

1 general partner, and executive officer of such entity.

2 (b) State whether any individual identified in
3 paragraph (a) has, within the last 10 years, pleaded nolo
4 contendere to, or has been convicted or found guilty of, a
5 felony, regardless of whether adjudication was withheld.

6 (c) Identify the county and municipality with the
7 street and number or location where the business is to be
8 conducted.

9 (d) Contain additional information as the department
10 determines by rule to be necessary to ensure compliance with
11 this act.

12 (2) Notwithstanding subsection (1), the application
13 need not state the full name and address of each officer,
14 director, and shareholder if the applicant is owned directly
15 or beneficially by a person who as an issuer has a class of
16 securities registered pursuant to section 12 of the Securities
17 Exchange Act of 1934 or, pursuant to section 13 or section
18 15(d) of such act, is an issuer of securities which is
19 required to file reports with the Securities and Exchange
20 Commission, if the person files with the department any
21 information, documents, and reports required by such act to be
22 filed with the Securities and Exchange Commission.

23 (3) An applicant for licensure shall file with the
24 department a bond, in the amount of \$100,000 for each license,
25 with a surety company qualified to do business in this state.
26 However, in no event shall the aggregate amount of the bond
27 required for a single title loan lender exceed \$1 million. In
28 lieu of the bond, the applicant may establish a certificate of
29 deposit or an irrevocable letter of credit in a financial
30 institution, as defined in s. 655.005, Florida Statutes, in
31 the amount of the bond. The original bond, certificate of

Amendment No. 01 (for drafter's use only)

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

26 (4) The department shall approve an application and
27 issue a license if the department determines that the
28 applicant satisfies the requirements of this act.

29 Section 6. Denial, suspension, or revocation of
30 license.--

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

Amendment No. 01 (for drafter's use only)

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 borrower.

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

13 (d) Imposition of illegal or excessive charges in any
14 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) Aiding, abetting, or conspiring by a title loan
23 lender with a person to circumvent or violate any of the
24 requirements of this act.

25 (h) Refusal to provide information upon request of the
26 department, to permit inspection of books and records in an
27 investigation or examination by the department, or to comply
28 with a subpoena issued by the department.

29 (i) Having been convicted of a crime involving fraud,
30 dishonest dealing, or any act of moral turpitude or acting as
31 an ultimate equitable owner of 10 percent or more of a

Amendment No. 01 (for drafter's use only)

1 licensee who has been convicted of a crime involving fraud,
2 dishonest dealing, or any act of moral turpitude.

3 (j) Making or having made material misstatement of
4 fact in an initial or renewal application for a license.

5 (k) Having been the subject of any decision, finding,
6 injunction, suspension, prohibition, revocation, denial,
7 judgment, or administrative order by any court of competent
8 jurisdiction or administrative law judge, or by any state or
9 federal agency, involving a violation of any federal or state
10 law relating to title loans or any rule or regulation adopted
11 under such law, or has been the subject of any injunction or
12 adverse administrative order by a state or federal agency
13 regulating banking, insurance, finance or small loan
14 companies, real estate, mortgage brokers, or other related or
15 similar industries for acts involving fraud, dishonest
16 dealing, or any act of moral turpitude.

17 (l) Pleading nolo contendere to, or being convicted or
18 found guilty of, a crime involving fraud, dishonest dealing,
19 or any act of moral turpitude, regardless of whether
20 adjudication was withheld.

21 (m) Failing to continuously maintain the bond required
22 by section 5(3).

23 (n) Failing to timely pay any fee, charge, or fine
24 imposed or assessed pursuant to this act or rules adopted
25 under this act.

26 (o) Having a license or registration, or the
27 equivalent, to practice any profession or occupation denied,
28 suspended, revoked, or otherwise acted against by a licensing
29 authority in any jurisdiction for fraud, dishonest dealing, or
30 any act of moral turpitude.

31 (p) Having demonstrated unworthiness, as defined by

Amendment No. 01 (for drafter's use only)

1 department rule, to transact the business of a title loan
2 lender.

3 (2) Upon a finding by the department that any person
4 has committed any of the acts set forth in subsection (1), the
5 department may enter an order taking one or more of the
6 following actions:

7 (a) Denying an application for licensure under this
8 act.

9 (b) Revoking or suspending a license previously
10 granted pursuant to this act.

11 (c) Placing a licensee or an applicant for a license
12 on probation for a period of time and subject to such
13 conditions as the department specifies.

14 (d) Issuing a reprimand.

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

17 (3) If a person seeking licensure is anything other
18 than a natural person, the eligibility requirements of this
19 section apply to each direct or ultimate equitable owner of 10
20 percent or more of the outstanding equity interest of such
21 entity and to each director, general partner, and executive
22 officer.

23 (4) It is sufficient cause for the department to take
24 any of the actions specified in subsection (2), as to any
25 entity other than a natural person, if the department finds
26 grounds for such action as to any member of such entity, as to
27 any executive officer or director of the entity, or as to any
28 person with power to direct the management or policies of the
29 entity.

30 (5) Each licensee is subject to the provisions of
31 subsection (2) for the acts of employees and agents of the

Amendment No. 01 (for drafter's use only)

1 licensee if the licensee knew or should have known about such
2 acts.

3 (6) Licensure under this act may be denied or any
4 license issued under this act may be suspended or restricted
5 if an applicant or licensee is charged, in a pending
6 enforcement action or pending criminal prosecution, with any
7 conduct that would authorize denial or revocation under this
8 section.

9 Section 7. Remedies for title loans made without
10 licensure.--Any title loan made without benefit of a license
11 is void, in which case the person making the title loan
12 forfeits the right to collect any moneys, including principal
13 and interest charged on the title loan, from the borrower in
14 connection with such agreement. The person making the title
15 loan shall return to the borrower the loan property, the
16 titled personal property pledged or the fair market value of
17 such titled personal property, and all principal and interest
18 paid by the borrower. The borrower is entitled to receive
19 reasonable attorney's fees and costs in any action brought by
20 the borrower to recover from the person making the title loan
21 the loan property, the titled personal property, or the
22 principal and interest paid by the borrower.

23 Section 8. Title loan agreement.--

24 (1) At the time a title loan lender makes a title
25 loan, the lender and the borrower shall execute a title loan
26 agreement, which shall be legibly typed or written in
27 indelible ink and completed as to all essential provisions
28 prior to execution by the borrower and lender. The title loan
29 agreement shall include the following information:

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

Amendment No. 01 (for drafter's use only)

1 (b) The vehicle identification number, or other
2 comparable identification number, along with the license plate
3 number, if applicable, of the titled personal property to
4 which the loan property relates.

5 (c) The name, residential address, date of birth,
6 physical description, and social security number of the
7 borrower.

8 (d) The date the title loan agreement is executed by
9 the title loan lender and the borrower.

10 (e) The identification number and the type of
11 identification, including the issuing agency, accepted from
12 the borrower.

13 (f) The amount of money advanced, designated as the
14 "amount financed."

15 (g) The maturity date of the title loan agreement,
16 which shall be 30 days after the date the title loan agreement
17 is executed by the title loan lender and the borrower.

18 (h) The total title loan interest payable on the
19 maturity date, designated as the "finance charge."

20 (i) The amount financed plus finance charge, which
21 must be paid to reclaim the loan property on the maturity
22 date, designated as the "total amount of all payments."

23 (j) The interest rate, computed in accordance with the
24 regulations adopted by the Federal Reserve Board pursuant to
25 the Federal Truth-in-Lending Act, designated as the "annual
26 percentage rate."

27 (2) The following information shall also be printed on
28 all title loan agreements:

29 (a) The name and physical address of the title loan
30 office.

31 (b) The name and address of the department as well as

Amendment No. 01 (for drafter's use only)

1 a telephone number to which consumers may address complaints.

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

4 1. If the borrower does not pay the title loan in full
5 before the maturity date of the title loan agreement, the
6 title loan lender may repossess the motor vehicle.

7 2. If the title loan agreement is lost, destroyed, or
8 stolen, the borrower should immediately so advise the issuing
9 title loan lender in writing.

10 (d) The statement that "The borrower represents and
11 warrants that the titled personal property to which the loan
12 property relates is not stolen and has no liens or
13 encumbrances against it, the borrower has the right to enter
14 into this transaction, and the borrower will not apply for a
15 duplicate certificate of title while the title loan agreement
16 is in effect."

17 (e) A blank line for the signature of the borrower and
18 the title loan lender or the lender's agent.

19 (3) At the time of the transaction, the title loan
20 lender shall deliver to the borrower an exact copy of the
21 executed title loan agreement.

22 (4) The title loan lender shall retain the loan
23 property until the loan property is reclaimed by the borrower.
24 The borrower shall have the exclusive right to reclaim the
25 loan property by repaying the loan of money in full and by
26 complying with the title loan agreement. When the loan
27 property is reclaimed, the title loan lender shall release the
28 security interest in the titled personal property and return
29 the loan property to the borrower. The title loan agreement
30 shall provide that upon failure by the borrower to reclaim the
31 certificate of title at the end of the original

Amendment No. 01 (for drafter's use only)

1 30-day-agreement period, or at the end of any 30-day extension
2 of such period, the title loan lender shall be entitled to
3 take possession of the titled personal property. The title
4 loan lender shall retain physical possession of only the loan
5 property for the term of the title loan agreement.

6 Section 9. Recordkeeping; reporting; safekeeping of
7 property.--

8 (1) Every title loan lender shall maintain, at the
9 lender's title loan office, such books, accounts, and records
10 of the business conducted under the license issued for such
11 place of business as will enable the department to determine
12 the licensee's compliance with this act.

13 (2) The department may authorize the maintenance of
14 books, accounts, and records at a location other than the
15 lender's title loan office. The department may require books,
16 accounts, and records to be produced and available at a
17 reasonable and convenient location in this state within a
18 reasonable period of time after such a request.

19 (3) The title loan lender shall maintain the original
20 copy of each completed title loan agreement on the title loan
21 office premises, and shall not obliterate, discard, or destroy
22 any such original copy, for a period of at least 2 years after
23 making the final entry on any loan recorded in such office.

24 (4) Loan property which is delivered to a title loan
25 lender shall be securely stored and maintained at the title
26 loan office unless the loan property has been forwarded to the
27 appropriate state agency for the purpose of having a lien
28 recorded or deleted.

29 (5) The department may prescribe by rule the books,
30 accounts, and records, and the minimum information to be shown
31 in the books, accounts, and records, of licensees so that such

Amendment No. 01 (for drafter's use only)

1 records will enable the department to determine compliance
2 with the provisions of this act.

3 Section 10. Title loan charges.--

4 (1) A title loan lender may charge a maximum interest
5 rate of 30 percent per annum computed on the first \$2,000 of
6 the principal amount, 24 percent per annum on that part of the
7 principal amount exceeding \$2,000 and not exceeding \$3,000,
8 and 18 percent per annum on that part of the principal amount
9 exceeding \$3,000. The original principal amount is the same
10 amount as the amount financed, as defined by the federal Truth
11 in Lending Act and Regulation Z of the Board of Governors of
12 the Federal Reserve System. In determining compliance with the
13 statutory maximum interest, the computations must be simple
14 interest and not add-on interest or any other computations.
15 When two or more interest rates are to be applied to the
16 principal amount, the lender may charge interest at that
17 single annual percentage rate which, if applied according to
18 the actuarial method to each of the scheduled periodic
19 balances of principal, would produce at maturity the same
20 total amount of interest as would result from the application
21 of the two or more rates otherwise permitted, based upon the
22 assumption that all payments are made as agreed.

23 (2) The annual percentage rate that may be charged for
24 a title loan may equal, but not exceed, the annual percentage
25 rate that must be computed and disclosed as required by the
26 federal Truth in Lending Act and Regulation Z of the Board of
27 Governors of the Federal Reserve System. The maximum annual
28 percentage rate of interest that may be charged is 12 times
29 the maximum monthly rate, and the maximum monthly rate must be
30 computed on the basis of one-twelfth of the annual rate for
31 each full month. The Department of Banking and Finance shall

Amendment No. 01 (for drafter's use only)

1 establish by rule the rate for each day in a fraction of a
2 month when the period for which the charge is computed is more
3 or less than 1 month.

4 (3) A title loan agreement may be extended for one or
5 more 30-day periods by mutual consent of the title loan lender
6 and the borrower. Each extension of a title loan agreement
7 shall be executed in a separate extension agreement each of
8 which shall comply with the requirements for executing a title
9 loan agreement as provided in this act. The interest rate
10 charged in any title loan extension agreement shall not exceed
11 the interest rate charged in the related title loan agreement.

12 A title loan lender may not capitalize in any title loan
13 extension agreement any unpaid interest due on the related
14 title loan agreement or any subsequent extensions to that
15 title loan agreement.

16 (4) Any interest contracted for or received, directly
17 or indirectly, by a title loan lender, or an agent of the
18 title loan lender, in excess of the amounts authorized under
19 this chapter are prohibited and may not be collected by the
20 title loan lender or an agent of the title loan lender.

21 (a) If such excess interest resulted from a bona fide
22 error by the title loan lender, or an agent of the title loan
23 lender, the title loan agreement shall be voidable and the
24 lender shall refund the excess interest to the borrower within
25 20 days after discovery by the lender or borrower of the bona
26 fide error, whichever occurs first.

27 (b) If such excess interest resulted from an act by
28 the title loan lender, or an agent of the title loan lender,
29 to circumvent the maximum title loan interest allowed by this
30 act, the title loan agreement is void. The lender shall refund
31 to the borrower any interest paid on the title loan and return

Amendment No. 01 (for drafter's use only)

1 to the borrower the loan property. The title loan lender
2 forfeits the lender's right to collect any principal owed by
3 the borrower on the title loan.

4 (c) The department may order a title loan lender, or
5 an agent of the title loan lender, to comply with the
6 provisions of paragraphs (a) and (b).

7 (5) Any interest contracted for or received, directly
8 or indirectly, by a title loan lender, or an agent of the
9 title loan lender, in excess of the amount allowed by this act
10 constitutes a violation of chapter 687, Florida Statutes,
11 governing interest and usury, and the penalties of that
12 chapter apply.

13 Section 11. Repossession, disposal of pledged
14 property; excess proceeds.--

15 (1) If a borrower fails to pay the title loan in full
16 by the end of the 30-day title loan agreement period or by the
17 end of any 30-day extension period, the title loan lender may
18 take possession of the titled personal property but shall not
19 be required to retain physical possession of the titled
20 personal property. Every title loan agreement and title loan
21 extension agreement shall contain a notice that discloses the
22 provisions of this section.

23 (2) If titled personal property is repossessed under
24 subsection (1), the borrower may pay the title loan in full
25 within 60 days after the date of repossession. If a borrower
26 fails to pay the title loan in full by the end of such 60-day
27 period, the lender may sell or dispose of the titled personal
28 property.

29 (3) The title loan lender shall only take possession
30 of a motor vehicle through an agent who is licensed by the
31 state to repossess motor vehicles. The title loan lender may

Amendment No. 01 (for drafter's use only)

1 dispose of the motor vehicle as provided in this section. Any
2 sale or disposal of the motor vehicle shall be made through a
3 motor vehicle dealer licensed under s. 320.27, Florida
4 Statutes.

5 (4) Any such sale or disposal shall vest in the
6 purchaser the right, title, and interest of the owner and the
7 title loan lender.

8 (5) The title loan lender shall return to the borrower
9 any proceeds from the sale of the titled personal property in
10 excess of the principal amount of the loan, interest on the
11 loan up to the date of repossession, and reasonable expenses
12 for the repossession, holding, and sale of the motor vehicle.
13 The borrower is entitled to receive reasonable attorney's fees
14 and costs in any action brought to recover the excess amount
15 that results in the title loan lender being ordered to return
16 all or part of such amount.

17 (6) Except as provided by this section, the taking
18 possession and sale or disposal of the motor vehicle is
19 subject to the requirements of chapter 679, Florida Statutes.

20 Section 12. Prohibited acts.--

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

23 (a) Falsify or fail to make an entry of any material
24 matter in a title loan agreement or any extension of such
25 agreement.

26 (b) Refuse to allow the department to inspect
27 completed title loan agreements, extensions of such
28 agreements, or loan property during the ordinary operating
29 hours of the title loan lender's business or other times
30 acceptable to both parties.

31 (c) Enter into a title loan agreement with a person

Amendment No. 01 (for drafter's use only)

1 under the age of 18 years.

2 (d) Make any agreement requiring or allowing for the
3 personal liability of a borrower or the waiver of any of the
4 provisions of this act.

5 (e) Knowingly enter into a title loan agreement with
6 any person who is under the influence of drugs or alcohol when
7 such condition is visible or apparent, or with any person
8 using a name other than such person's own name or the
9 registered name of the person's business.

10 (f) Fail to exercise reasonable care, as defined by
11 department rule, in the safekeeping of loan property or of
12 titled personal property repossessed pursuant to this act.

13 (g) Fail to return loan property or repossessed titled
14 personal property to a borrower, with any and all of the title
15 loan lender's liens on the property properly released, upon
16 payment of the full amount due the title loan lender, unless
17 the property has been seized or impounded by an authorized law
18 enforcement agency, taken into custody by a court, or
19 otherwise disposed of by court order.

20 (h) Sell or otherwise charge for any type of insurance
21 in connection with a title loan agreement.

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

24 (j) Act as a title loan lender without an active
25 license issued under this act.

26 (k) Refuse to accept partial payments toward
27 satisfying any obligation owed under a title loan agreement or
28 extension of such agreement.

29 (l) Charge a prepayment penalty.

30 (m) Engage in the business of selling new or used
31 motor vehicles, or parts for motor vehicles.

Amendment No. 01 (for drafter's use only)

1 (n) Act as a title loan lender under this act within a
2 place of business in which the licensee solicits or engages in
3 business outside the scope of this act if the department
4 determines that the licensee's operation of and conduct
5 pertaining to such other business results in an evasion of
6 this act. Upon making such a determination, the department
7 shall order the licensee to cease and desist from such
8 evasion, provided, no licensee shall engage in the pawnbroker
9 business.

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

12 Section 13. Right to reclaim; lost title loan
13 agreement.--

14 (1) Any person presenting identification of such
15 person as the borrower and presenting the borrower's copy of
16 the title loan agreement to the title loan lender is presumed
17 to be entitled to reclaim the loan property described in the
18 title loan agreement. However, if the title loan lender
19 determines that the person is not the borrower, the title loan
20 lender is not required to allow the redemption of the loan
21 property by such person. The person reclaiming the loan
22 property must sign the borrower's copy of the title loan
23 agreement which the title loan lender may retain to evidence
24 such person's receipt of the loan property. A person
25 reclaiming the loan property who is not the borrower must show
26 identification to the title loan lender, together with
27 notarized written authorization from the borrower, and the
28 title loan lender shall record that person's name and address
29 on the title loan agreement retained by the title loan lender.
30 In such case, the person reclaiming the borrower's copy of the
31 title loan agreement shall be provided a copy of such signed

Amendment No. 01 (for drafter's use only)

1 form as evidence of such agreement.

2 (2) If the borrower's copy of the title loan agreement
3 is lost, destroyed, or stolen, the borrower must notify the
4 title loan lender, in writing by certified or registered mail,
5 return receipt requested, or in person evidenced by a signed
6 receipt, and receipt of such notice shall invalidate such
7 title loan agreement if the loan property has not previously
8 been reclaimed. Before delivering the loan property or issuing
9 a new title loan agreement, the title loan lender shall
10 require the borrower to make a written statement of the loss,
11 destruction, or theft of the borrower's copy of the title loan
12 agreement. The title loan lender shall record on the written
13 statement the type of identification and the identification
14 number accepted from the borrower, the date the statement is
15 given, and the number or date of the title loan agreement
16 lost, destroyed, or stolen. The statement shall be signed by
17 the title loan lender or the title loan office employee who
18 accepts the statement from the borrower. The title loan
19 lender shall not impose any type of fee for providing the
20 borrower with a copy of the title loan agreement.

21 Section 14. Criminal penalties.--

22 (1) Any person who acts as a title loan lender without
23 first securing the license prescribed by this act commits a
24 felony of the third degree, punishable as provided in s.
25 775.082, s. 775.083, or s. 775.084, Florida Statutes.

26 (2) In addition to any other applicable penalty, any
27 person who willfully violates any provision of this act or who
28 willfully makes a false entry in any record specifically
29 required by this act commits a misdemeanor of the first
30 degree, punishable as provided in s. 775.082 or s. 775.083,
31 Florida Statutes.

Amendment No. 01 (for drafter's use only)

1 Section 15. Subpoenas; enforcement actions; rules.--

2 (1) The department may issue and serve subpoenas to
3 compel the attendance of witnesses and the production of
4 documents, papers, books, records, and other evidence before
5 the department in any matter pertaining to this act. The
6 department may administer oaths and affirmations to any person
7 whose testimony is required. If any person refuses to testify,
8 produce books, records, and documents, or otherwise refuses to
9 obey a subpoena issued under this section, the department may
10 enforce the subpoena in the same manner as subpoenas issued
11 under the Administrative Procedure Act are enforced. Witnesses
12 are entitled to the same fees and mileage as they are entitled
13 to by law for attending as witnesses in the circuit court,
14 unless such examination or investigation is held at the place
15 of business or residence of the witness.

16 (2) In addition to any other powers conferred upon the
17 department to enforce or administer this act, the department
18 may:

19 (a) Bring an action in any court of competent
20 jurisdiction to enforce or administer this act, any rule or
21 order adopted under this act, or any written agreement entered
22 into with the department. In such action, the department may
23 seek any relief at law or equity, including a temporary or
24 permanent injunction, appointment of a receiver or
25 administrator, or an order of restitution.

26 (b) Issue and serve upon a person an order requiring
27 such person to cease and desist and take corrective action
28 whenever the department finds that such person is violating,
29 has violated, or is about to violate any provision of this
30 act, any rule or order adopted under this act, or any written
31 agreement entered into with the department.

Amendment No. 01 (for drafter's use only)

1 (c) Whenever the department finds that conduct
2 described in paragraph (b) presents an immediate danger to the
3 public health, safety, or welfare requiring an immediate final
4 order, the department may issue an emergency cease and desist
5 order reciting with particularity the facts underlying such
6 findings. The emergency cease and desist order is effective
7 immediately upon service of a copy of the order on the
8 respondent named in the order and shall remain effective for
9 90 days. If the department begins nonemergency proceedings
10 under paragraph (b), the emergency cease and desist order
11 remains effective until the conclusion of the proceedings
12 under ss. 120.569 and 120.57, Florida Statutes.

13 (3) The department may adopt any rules, pursuant to
14 the Administrative Procedures Act, necessary to implement this
15 act.

16 Section 16. Investigations and complaints.--

17 (1) The department may make any investigation and
18 examination of any licensee or other person the department
19 deems necessary to determine compliance with this act. For
20 such purposes, the department may examine the books, accounts,
21 records, and other documents or matters of any licensee or
22 other person. The department may compel the production of all
23 relevant books, records, and other documents and materials
24 relative to an examination or investigation. Examinations
25 shall not be made more often than once during any 12-month
26 period unless the department has reason to believe the
27 licensee is not complying with the provisions of this act.

28 (2) The department shall conduct all examinations at a
29 convenient location in this state unless the department
30 determines that it is more effective or cost-efficient to
31 perform an examination at the licensee's out-of-state

Amendment No. 01 (for drafter's use only)

1 location. For an examination performed at the licensee's
2 out-of-state location, the licensee shall pay the travel
3 expense and per diem subsistence at the rate provided by law
4 for up to 30 8-hour days per year for each department examiner
5 who participates in such an examination. However, if the
6 examination involves or reveals possible fraudulent conduct by
7 the licensee, the licensee shall pay the travel expenses and
8 per diem subsistence provided by law, without limitation, for
9 each participating examiner.

10 (3) Any person having reason to believe that any
11 provision of this act has been violated may file with the
12 department a written complaint setting forth the details of
13 such alleged violation and the department may investigate such
14 complaint.

15 Section 17. Paragraphs (a) and (h) of subsection (1)
16 of section 538.03, Florida Statutes, 1998 Supplement, are
17 amended to read:

18 538.03 Definitions; applicability.--

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

20 (a) "Secondhand dealer" means any person, corporation,
21 or other business organization or entity which is not a
22 secondary metals recycler subject to part II and which is
23 engaged in the business of purchasing, consigning, or pawning
24 secondhand goods ~~or entering into title loan transactions.~~

25 However, secondhand dealers are not limited to dealing only in
26 items defined as secondhand goods in paragraph (g). Except as
27 provided in subsection (2), the term means pawnbrokers,
28 jewelers, precious metals dealers, garage sale operators,
29 secondhand stores, and consignment shops.

30 (h) "Transaction" means any ~~title loan~~, purchase,
31 consignment, or pawn of secondhand goods by a secondhand

Amendment No. 01 (for drafter's use only)

1 dealer.

2 Section 18. Subsection (1) of section 538.16, Florida
3 Statutes, is amended to read:

4 538.16 Secondhand dealers; disposal of property.--

5 (1) Any personal property pawned with a pawnbroker,
6 whether the pawn is a loan of money or a buy-sell agreement ~~or~~
7 ~~a motor vehicle which is security for a title loan~~, is subject
8 to sale or disposal if the pawn is a loan of money and the
9 property has not been reclaimed ~~redeemed~~ or there has been no
10 payment on account made for a period of 90 days, or if the
11 pawn is a buy-sell agreement ~~or if it is a title loan~~ and the
12 property has not been repurchased from the pawnbroker ~~or the~~
13 ~~title redeemed from the title lender~~ or there has been no
14 payment made on account within 60 days.

15 Section 19. Nothing in this act precludes a county or
16 municipality from adopting ordinances more restrictive than
17 the provisions of this act.

18 Section 20. Effective July 1, 1999, the sum of
19 \$500,000 is hereby appropriated for the 1999-2000 fiscal year
20 from the Regulatory Trust Fund of the Department of Banking
21 and Finance to the department to fund eight positions for the
22 purpose of carrying out the provisions of this act.

23 Section 21. Paragraph (i) of subsection (1) of section
24 538.03, Florida Statutes, 1998 Supplement, subsection (5) of
25 section 538.06, Florida Statutes, and subsections (4) and (5)
26 of section 538.15, Florida Statutes, are repealed.

27 Section 22. Except as otherwise provided in this act,
28 this act shall take effect October 1, 1999.

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Amendment No. 01 (for drafter's use only)

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

2 And the title is amended as follows:

3 On page 1, line 2, through page 2, line 7,
4 remove from the title of the bill: all of said lines

5
6 and insert in lieu thereof:

7 An act relating to title loan transactions;
8 creating the "Florida Title Loan Act";
9 providing legislative intent; providing
10 definitions; requiring licensure by the
11 Department of Banking and Finance to act as a
12 title loan lender; providing for application
13 for licensure; requiring a bond, a
14 nonrefundable application fee, a nonrefundable
15 investigation fee, and fingerprinting;
16 providing for waiver of fingerprinting;
17 providing for inactive licenses; providing for
18 renewal and reactivation of licenses; providing
19 for a renewal fee and a reactivation fee;
20 providing for disposition of certain moneys;
21 providing for acquisition of an interest in a
22 licensee under certain circumstance; providing
23 for denial, suspension, or revocation of
24 license; specifying acts which constitute
25 violations for which certain disciplinary
26 actions may be taken; providing a fine;
27 providing remedies for title loans made or
28 serviced without licensure; providing for a
29 title loan agreement; providing requirements;
30 providing for reclaiming a repossessed motor
31 vehicle under certain circumstances; providing

Amendment No. 01 (for drafter's use only)

1 entitlement to certain excess proceeds of a
2 sale or disposal of a motor vehicle; providing
3 for recordkeeping and reporting and safekeeping
4 of property; providing for title loan interest
5 rates; providing requirements and limitations;
6 providing for extensions; providing for return
7 of principal and interest to the borrower under
8 certain circumstance; providing a holding
9 period when there is a failure to reclaim;
10 providing for the disposal of pledged property;
11 providing for disposition of excess proceeds;
12 prohibiting certain acts; providing for the
13 right to reclaim; providing for lost title loan
14 agreements; providing for a title loan lenders
15 lien; providing for criminal penalties;
16 providing for subpoenas, enforcement of
17 actions, and rules; providing for
18 investigations and complaints; authorizing the
19 department to adopt rules; amending ss. 538.03
20 and 538.16, F.S.; deleting provisions relating
21 to title loan transactions; providing for more
22 restrictive local ordinances; providing an
23 appropriation; repealing ss. 538.03(1)(i),
24 538.06(5), and 538.15(4) and (5), F.S.,
25 relating to title loan transactions by
26 secondhand dealers; providing effective dates.

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