

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

	<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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Representative(s) Sublette offered the following:

**Amendment (with title amendment)**

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

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

Section 2. Legislative intent.--It is the intent of the Legislature that title loans shall be regulated by the provisions of this act. The provisions of this act shall supersede any other provisions of 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" has the same meaning as used in Article 9, part V of ch. 679, Florida Statutes, in addition, nonpublic sales or disposal of personal property between title loan lenders and their business affiliates or family members are sales and disposal that are presumed not to be in a commercially reasonable fashion.

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

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

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

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

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

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

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

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

31           (10) "Title loan" or "loan" means a loan of money

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1 secured by bailment of a certificate of title to a motor  
2 vehicle, except such loans made pursuant to licensees under  
3 chapter 516, chapter 520 or chapter 655.

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

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

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

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

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

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

29 (1) A person may not act as a title loan lender or own  
30 or operate a title loan office unless such person has an  
31 active title loan lender license issued by the department

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1 under this act. A title loan lender may not own or operate  
2 more than one title loan office unless the lender obtains a  
3 separate title loan lender license for each title loan office.

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

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

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

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1 reactivation form.

2 (5) Each license must be conspicuously displayed at  
3 the title loan office. When a licensee wishes to move a title  
4 loan office to another location, the licensee shall provide  
5 prior written notice to the department.

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

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

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

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

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

26 Section 5. Application for license.--

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

29 (a) Contain the name and the residence and business  
30 address of the applicant. If the applicant is other than a  
31 natural person, the application shall contain the name and the

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1 residence and business address of each ultimate equitable  
2 owner of 25 percent or more of such entity and each director,  
3 general partner, and executive officer of such entity.

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

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

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

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

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

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1 institution, as defined in s. 655.005, Florida Statutes, in  
2 the amount of the bond. The original bond, certificate of  
3 deposit, or letter of credit shall be filed with the  
4 department, and the department shall be the beneficiary to  
5 that document. The bond, certificate of deposit, or letter of  
6 credit shall be in favor of the department for the use and  
7 benefit of any consumer who is injured pursuant to a title  
8 loan transaction by the fraud, misrepresentation, breach of  
9 contract, financial failure, or violation of any provision of  
10 this act by the title loan lender. Such liability may be  
11 enforced either by proceeding in an administrative action or  
12 by filing a judicial suit at law in a court of competent  
13 jurisdiction. However, in such court suit, the bond,  
14 certificate of deposit, or letter of credit posted with the  
15 department shall not be amenable or subject to any judgment or  
16 other legal process issuing out of or from such court in  
17 connection with such lawsuit, but such bond, certificate of  
18 deposit, or letter of credit shall be amenable to and  
19 enforceable only by and through administrative proceedings  
20 before the department. It is the intent of the Legislature  
21 that such bond, certificate of deposit, or letter of credit  
22 shall be applicable and liable only for the payment of claims  
23 duly adjudicated by order of the department. The bond,  
24 certificate of deposit, or letter of credit shall be payable  
25 on a pro rata basis as determined by the department, but the  
26 aggregate amount may not exceed the amount of the bond,  
27 certificate of deposit, or letter of credit.

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

31 Section 6. Denial, suspension, or revocation of

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1 license.--

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

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

8 (b) Fraud, misrepresentation, deceit, or gross  
9 negligence in any title loan transaction, regardless of  
10 reliance by or damage to the borrower.

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

15 (d) Imposition of illegal or excessive charges in any  
16 title loan transaction.

17 (e) False, deceptive, or misleading advertising by a  
18 title loan lender.

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

24 (g) Aiding, abetting, or conspiring by a title loan  
25 lender with a person to circumvent or violate any of the  
26 requirements of this act.

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

31 (i) Having been convicted of a crime involving fraud,



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1 dishonest dealing, or any act of moral turpitude or acting as  
2 an ultimate equitable owner of 10 percent or more of a  
3 licensee who has been convicted of a crime involving fraud,  
4 dishonest dealing, or any act of moral turpitude.

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

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

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

23 (m) Failing to continuously maintain the bond required  
24 by section 5(3).

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

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

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1 any act of moral turpitude.

2 (p) Having demonstrated unworthiness, as defined by  
3 department rule, to transact the business of a title loan  
4 lender.

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

9 (a) Denying an application for licensure under this  
10 act.

11 (b) Revoking or suspending a license previously  
12 granted pursuant to this act.

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

16 (d) Issuing a reprimand.

17 (e) Imposing an administrative fine not to exceed  
18 \$5,000 for each separate act or violation.

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

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

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1           (5) Each licensee is subject to the provisions of  
2 subsection (2) for the acts of employees and agents of the  
3 licensee if the licensee knew or should have known about such  
4 acts.

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

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

25           Section 8. Title loan agreement.--

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

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

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1 office.

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

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

6 1. If the borrower fails to repay the full amount of  
7 the title loan on or before the end of the maturity date or  
8 any extension thereof and fails to make a payment on the title  
9 loan within 30 days after the end of the maturity date or any  
10 extension thereof, whichever is later, the title loan lender  
11 may take possession of the borrower's motor vehicle and sell  
12 it in the manner provided by law. Should the vehicle be sold,  
13 the borrower is entitled to any proceeds of the sale in excess  
14 of the amount owed on the title loan and the reasonable  
15 expenses of repossession and sale.

16 2. If the title loan agreement is lost, destroyed, or  
17 stolen, the borrower should immediately so advise the issuing  
18 title loan lender in writing.

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

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

28 (3) At the time of the transaction, the title loan  
29 lender shall deliver to the borrower an exact copy of the  
30 executed title loan agreement.

31 (4) Upon execution of a title loan agreement, the

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1 title loan lender may take possession of the loan property and  
2 retain possession of it until the loan property is redeemed.  
3 The borrower shall have the exclusive right to redeem the loan  
4 property by repaying all amounts legally due under the  
5 agreement. When the loan property is redeemed, the lender  
6 shall immediately return the loan property and commence action  
7 to release any security interest in the titled personal  
8 property. During the term of the agreement or any extension  
9 thereof, a title loan lender may retain physical possession of  
10 the loan property only. A title loan lender shall not require  
11 a borrower to provide any additional security or guaranty as a  
12 condition of entering into a title loan transaction.

13 Section 9. Recordkeeping; reporting; safekeeping of  
14 property.--

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

20 (2) The department may authorize the maintenance of  
21 books, accounts, and records at a location other than the  
22 lender's title loan office. The department may require books,  
23 accounts, and records to be produced and available at a  
24 reasonable and convenient location in this state within a  
25 reasonable period of time after such a request.

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

31 (4) Loan property which is delivered to a title loan

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1 lender shall be securely stored and maintained at the title  
2 loan office unless the loan property has been forwarded to the  
3 appropriate state agency for the purpose of having a lien  
4 recorded or deleted.

5 (5) The department may prescribe by rule the books,  
6 accounts, and records, and the minimum information to be shown  
7 in the books, accounts, and records, of licensees so that such  
8 records will enable the department to determine compliance  
9 with the provisions of this act.

10 Section 10. Title loan charges.--

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

30 (2) The annual percentage rate that may be charged for  
31 a title loan may equal, but not exceed, the annual percentage

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1 rate that must be computed and disclosed as required by the  
2 federal Truth in Lending Act and Regulation Z of the Board of  
3 Governors of the Federal Reserve System. The maximum annual  
4 percentage rate of interest that may be charged is 12 times  
5 the maximum monthly rate, and the maximum monthly rate must be  
6 computed on the basis of one-twelfth of the annual rate for  
7 each full month. The Department of Banking and Finance shall  
8 establish by rule the rate for each day in a fraction of a  
9 month when the period for which the charge is computed is more  
10 or less than 1 month.

11 (3) A title loan agreement may be extended for one or  
12 more 30-day periods by mutual consent of the title loan lender  
13 and the borrower. Each extension of a title loan agreement  
14 shall be executed in a separate extension agreement each of  
15 which shall comply with the requirements for executing a title  
16 loan agreement as provided in this act. The interest rate  
17 charged in any title loan extension agreement shall not exceed  
18 the interest rate charged in the related title loan agreement.  
19 A title loan lender may not capitalize in any title loan  
20 extension agreement any unpaid interest due on the related  
21 title loan agreement or any subsequent extensions to that  
22 title loan agreement.

23 (4) Any interest contracted for or received, directly  
24 or indirectly, by a title loan lender, or an agent of the  
25 title loan lender, in excess of the amounts authorized under  
26 this chapter are prohibited and may not be collected by the  
27 title loan lender or an agent of the title loan lender.

28 (a) If such excess interest resulted from a bona fide  
29 error by the title loan lender, or an agent of the title loan  
30 lender, the title loan agreement shall be voidable and the  
31 lender shall refund the excess interest to the borrower within



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1 20 days after discovery by the lender or borrower of the bona  
2 fide error, whichever occurs first.

3 (b) If such excess interest resulted from an act by  
4 the title loan lender, or an agent of the title loan lender,  
5 to circumvent the maximum title loan interest allowed by this  
6 act, the title loan agreement is void. The lender shall refund  
7 to the borrower any interest paid on the title loan and return  
8 to the borrower the loan property. The title loan lender  
9 forfeits the lender's right to collect any principal owed by  
10 the borrower on the title loan.

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

14 (5) Any interest contracted for or received, directly  
15 or indirectly, by a title loan lender, or an agent of the  
16 title loan lender, in excess of the amount allowed by this act  
17 constitutes a violation of chapter 687, Florida Statutes,  
18 governing interest and usury, and the penalties of that  
19 chapter apply.

20 Section 11. Repossession, disposal of pledged  
21 property; excess proceeds.--

22 (1) If a borrower fails to repay all amounts legally  
23 due under the title loan agreement on or before the end of the  
24 title loan's maturity date or any extension thereof and fails  
25 to make a payment on the loan within 30 days after the end of  
26 the loan's maturity date or any extension thereof, whichever  
27 is later, the title loan lender may take possession of the  
28 titled personal property. A lender may take possession of the  
29 titled personal property only through an agent who is licensed  
30 by the state to repossess motor vehicles.

31 (2) Prior to engaging a repossession agent, the lender

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1 shall afford the debtor an opportunity to make the titled  
2 personal property available to the lender at a place, date,  
3 and time reasonably convenient to the lender and the borrower.  
4 Prior to taking possession of titled personal property, the  
5 lender shall afford the borrower a reasonable opportunity to  
6 remove from the titled personal property any personal  
7 belongings without charge or additional cost to the borrower.  
8 Once the lender takes possession of the titled personal  
9 property, the lender, at the lender's sole expense and risk,  
10 may authorize a third party to retain physical possession of  
11 the titled personal property.

12 (3) Upon taking possession of titled personal  
13 property, the lender may dispose of the titled personal  
14 property by sale but may do so only through a motor vehicle  
15 dealer licensed under s. 320.27. At least 10 days prior to  
16 sale, the lender shall notify the borrower of the date, time,  
17 and place of the sale and provide the borrower with a written  
18 accounting of the principle amount due on the title loan,  
19 interest accrued through the date of the lender taking  
20 possession of the titled personal property, and any reasonable  
21 expenses incurred to date by the lender in taking possession  
22 of, preparing for sale, and selling the titled personal  
23 property. At any time prior to sale, the lender shall permit  
24 the borrower to redeem the titled personal property by  
25 tendering a money order or certified check for the principal  
26 amount of the title loan, interest accrued through the date of  
27 the lender taking possession, and any reasonable expenses  
28 incurred to date by the lender in taking possession of,  
29 preparing for sale, and selling the titled personal property.  
30 Nothing in this act nor in any title loan agreement shall  
31 preclude a borrower from purchasing the titled personal

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1 property at any sale.

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

5 (5) Within 30 days after the sale of the titled  
6 personal property, the borrower is entitled to receive all  
7 proceeds from the sale of the motor vehicle in excess of the  
8 principal amount due on the loan, interest on the loan up to  
9 the date of the lender taking possession, and the reasonable  
10 expenses incurred by the lender in taking possession of,  
11 preparing for sale, and selling the titled personal property.  
12 The borrower is entitled to reasonable attorney fees and costs  
13 incurred in any action brought to recover such proceeds that  
14 results the title loan lender being ordered to return all or  
15 part of such amount.

16 (6) The borrower shall not be personally liable to the  
17 lender for any balance due on the title loan remaining after  
18 applying the proceeds of the sale of the titled personal  
19 property to the principal amount due on the title loan,  
20 interest accrued through the date of the lender taking  
21 possession, and any reasonable expenses incurred by the lender  
22 in taking possession of, preparing for sale, and selling the  
23 titled personal property unless such balance exceeds \$2,000.  
24 If such balance exceeds \$2,000, the lender shall be entitled  
25 to reasonable attorney fees and costs incurred in any action  
26 brought to recover such balance that results in a judgment in  
27 favor of the lender.

28 (7) The rights and remedies referred to in this  
29 section are cumulative. Except as otherwise provided in this  
30 section, the disposal of titled personal property is subject  
31 to the provisions of ch. 679, Florida Statutes.

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1           (8) In taking possession and disposing of titled  
2 personal property by sale or otherwise, the title loan lender  
3 shall at all times proceed in a commercially reasonable  
4 manner.

5           Section 12. Prohibited acts.--

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

8           (a) Falsify or fail to make an entry of any material  
9 matter in a title loan agreement or any extension of such  
10 agreement.

11           (b) Refuse to allow the department to inspect  
12 completed title loan agreements, extensions of such  
13 agreements, or loan property during the ordinary operating  
14 hours of the title loan lender's business or other times  
15 acceptable to both parties.

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

18           (d) Make any agreement requiring or allowing for the  
19 personal liability of a borrower or the waiver of any of the  
20 provisions of this act.

21           (e) Knowingly enter into a title loan agreement with  
22 any person who is under the influence of drugs or alcohol when  
23 such condition is visible or apparent, or with any person  
24 using a name other than such person's own name or the  
25 registered name of the person's business.

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

29           (g) Fail to return loan property or repossessed titled  
30 personal property to a borrower, with any and all of the title  
31 loan lender's liens on the property properly released, upon

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1 payment of the full amount due the title loan lender, unless  
2 the property has been seized or impounded by an authorized law  
3 enforcement agency, taken into custody by a court, or  
4 otherwise disposed of by court order.

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

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

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

11 (k) Refuse to accept partial payments toward  
12 satisfying any obligation owed under a title loan agreement or  
13 extension of such agreement.

14 (l) Charge a prepayment penalty.

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

17 (n) Act as a title loan lender under this act within a  
18 place of business in which the licensee solicits or engages in  
19 business outside the scope of this act if the department  
20 determines that the licensee's operation of and conduct  
21 pertaining to such other business results in an evasion of  
22 this act. Upon making such a determination, the department  
23 shall order the licensee to cease and desist from such  
24 evasion, provided, no licensee shall engage in the pawnbroker  
25 business.

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

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

30 (1) Any person presenting identification of such  
31 person as the borrower and presenting the borrower's copy of

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1 the title loan agreement to the title loan lender is presumed  
2 to be entitled to reclaim the loan property described in the  
3 title loan agreement. However, if the title loan lender  
4 determines that the person is not the borrower, the title loan  
5 lender is not required to allow the redemption of the loan  
6 property by such person. The person reclaiming the loan  
7 property must sign the borrower's copy of the title loan  
8 agreement which the title loan lender may retain to evidence  
9 such person's receipt of the loan property. A person  
10 reclaiming the loan property who is not the borrower must show  
11 identification to the title loan lender, together with  
12 notarized written authorization from the borrower, and the  
13 title loan lender shall record that person's name and address  
14 on the title loan agreement retained by the title loan lender.  
15 In such case, the person reclaiming the borrower's copy of the  
16 title loan agreement shall be provided a copy of such signed  
17 form as evidence of such agreement.

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

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1 lost, destroyed, or stolen. The statement shall be signed by  
2 the title loan lender or the title loan office employee who  
3 accepts the statement from the borrower. The title loan  
4 lender shall not impose any type of fee for providing the  
5 borrower with a copy of the title loan agreement.

6 Section 14. Criminal penalties.--

7 (1) Any person who acts as a title loan lender without  
8 first securing the license prescribed by this act commits a  
9 felony of the third degree, punishable as provided in s.  
10 775.082, s. 775.083, or s. 775.084, Florida Statutes.

11 (2) In addition to any other applicable penalty, any  
12 person who willfully violates any provision of this act or who  
13 willfully makes a false entry in any record specifically  
14 required by this act commits a misdemeanor of the first  
15 degree, punishable as provided in s. 775.082 or s. 775.083,  
16 Florida Statutes.

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

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

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

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

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

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

29           (3) The department may adopt rules pursuant to ss.  
30 120.54 and 120.536(1) to implement this act.

31           Section 16. Investigations and complaints.--



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

12           (2) The department shall conduct all examinations at a  
13 convenient location in this state unless the department  
14 determines that it is more effective or cost-efficient to  
15 perform an examination at the licensee's out-of-state  
16 location. For an examination performed at the licensee's  
17 out-of-state location, the licensee shall pay the travel  
18 expense and per diem subsistence at the rate provided by law  
19 for up to 30 8-hour days per year for each department examiner  
20 who participates in such an examination. However, if the  
21 examination involves or reveals possible fraudulent conduct by  
22 the licensee, the licensee shall pay the travel expenses and  
23 per diem subsistence provided by law, without limitation, for  
24 each participating examiner.

25           (3) Any person having reason to believe that any  
26 provision of this act has been violated may file with the  
27 department a written complaint setting forth the details of  
28 such alleged violation and the department may investigate such  
29 complaint.

30           Section 17. Paragraphs (a) and (h) of subsection (1)  
31 of section 538.03, Florida Statutes, 1998 Supplement, are

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1 amended to read:

2 538.03 Definitions; applicability.--

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

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

14 (h) "Transaction" means any ~~title loan~~, purchase,  
15 consignment, or pawn of secondhand goods by a secondhand  
16 dealer.

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

19 538.16 Secondhand dealers; disposal of property.--

20 (1) Any personal property pawned with a pawnbroker,  
21 whether the pawn is a loan of money or a buy-sell agreement ~~or~~  
22 ~~a motor vehicle which is security for a title loan~~, is subject  
23 to sale or disposal if the pawn is a loan of money and the  
24 property has not been redeemed or there has been no payment on  
25 account made for a period of 90 days, or if the pawn is a  
26 buy-sell agreement ~~or if it is a title loan~~ and the property  
27 has not been repurchased from the pawnbroker ~~or the title~~  
28 ~~redeemed from the title lender~~ or there has been no payment  
29 made on account within 60 days.

30 Section 19. Nothing in this act precludes a county or  
31 municipality from adopting ordinances more restrictive than

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1 the provisions of this act.

2 Section 20. Effective July 1, 1999, the sum of  
3 \$500,000 is hereby appropriated for the 1999-2000 fiscal year  
4 from the Regulatory Trust Fund of the Department of Banking  
5 and Finance to the department to fund eight positions for the  
6 purpose of carrying out the provisions of this act.

7 Section 21. Paragraph (i) of subsection (1) of section  
8 538.03, Florida Statutes, 1998 Supplement, subsection (5) of  
9 section 538.06, Florida Statutes, and subsections (4) and (5)  
10 of section 538.15, Florida Statutes, are repealed.

11 Section 22. If any provision of this act or the  
12 application thereof to any person or circumstance is held  
13 invalid, the invalidity shall not affect other provisions or  
14 applications of the act which can be given effect without the  
15 invalid provision or application, and to this end the  
16 provisions of this act are declared severable.

17 Section 23. Except as otherwise provided in this act,  
18 this act shall take effect October 1, 1999.

19  
20

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

22 And the title is amended as follows:

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

25  
26 and insert in lieu thereof:

27 An act relating to title loan transactions;  
28 creating the "Florida Title Loan Act";  
29 providing legislative intent; providing  
30 definitions; requiring licensure by the  
31 Department of Banking and Finance to act as a

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1 title loan lender; providing for application  
2 for licensure; requiring a bond, a  
3 nonrefundable application fee, a nonrefundable  
4 investigation fee, and fingerprinting;  
5 providing for waiver of fingerprinting;  
6 providing for inactive licenses; providing for  
7 renewal and reactivation of licenses; providing  
8 for a renewal fee and a reactivation fee;  
9 providing for disposition of certain moneys;  
10 providing for acquisition of an interest in a  
11 licensee under certain circumstance; providing  
12 for denial, suspension, or revocation of  
13 license; specifying acts which constitute  
14 violations for which certain disciplinary  
15 actions may be taken; providing a fine;  
16 providing remedies for title loans made or  
17 serviced without licensure; providing for a  
18 title loan agreement; providing requirements;  
19 providing for reclaiming a repossessed motor  
20 vehicle under certain circumstances; providing  
21 entitlement to certain excess proceeds of a  
22 sale or disposal of a motor vehicle; providing  
23 for recordkeeping and reporting and safekeeping  
24 of property; providing for title loan interest  
25 rates; providing requirements and limitations;  
26 providing for extensions; providing for return  
27 of principal and interest to the borrower under  
28 certain circumstance; providing a holding  
29 period when there is a failure to reclaim;  
30 providing for the disposal of pledged property;  
31 providing for disposition of excess proceeds;

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1           prohibiting certain acts; providing for the  
2           right to reclaim; providing for lost title loan  
3           agreements; providing for a title loan lenders  
4           lien; providing for criminal penalties;  
5           providing for subpoenas, enforcement of  
6           actions, and rules; providing for  
7           investigations and complaints; authorizing the  
8           department to adopt rules; amending ss. 538.03  
9           and 538.16, F.S.; deleting provisions relating  
10          to title loan transactions; providing for more  
11          restrictive local ordinances; providing an  
12          appropriation; repealing ss. 538.03(1)(i),  
13          538.06(5), and 538.15(4) and (5), F.S.,  
14          relating to title loan transactions by  
15          secondhand dealers; providing effective dates.

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