

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

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

The Committee on Governmental Rules & Regulations offered the following:

**Substitute Amendment for Amendment (112271) (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" 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

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

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

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

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

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

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

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

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

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

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

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

1 owner.

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

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

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

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

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

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

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

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

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

1 more than one title loan office unless the lender obtains a  
2 separate title loan lender license for each title loan office.

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

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

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

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

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

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

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

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

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

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

25           Section 5. Application for license.--

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

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

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

1 owner of 25 percent or more of such entity and each director,  
2 general partner, and executive officer of such entity.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

30           (i) Having been convicted of a crime involving fraud,  
31 dishonest dealing, or any act of moral turpitude or acting as



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

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

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

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

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

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

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

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

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

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

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

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

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

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

15           (d) Issuing a reprimand.

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

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

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

31           (5) Each licensee is subject to the provisions of

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

1 subsection (2) for the acts of employees and agents of the  
2 licensee if the licensee knew or should have known about such  
3 acts.

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

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

24 Section 8. Title loan agreement.--

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

31 (a) The make, model, and year of the titled personal

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

1 property to which the loan property relates.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

30 (5) The department may prescribe by rule the books,  
31 accounts, and records, and the minimum information to be shown

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

1 in the books, accounts, and records, of licensees so that such  
2 records will enable the department to determine compliance  
3 with the provisions of this act.

4 Section 10. Title loan charges.--

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

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

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

1 each full month. The Department of Banking and Finance shall  
2 establish by rule the rate for each day in a fraction of a  
3 month when the period for which the charge is computed is more  
4 or less than 1 month.

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

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

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

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



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

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

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

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

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

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

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

30 (3) The title loan lender shall only take possession  
31 of a motor vehicle through an agent who is licensed by the

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

1 state to repossess motor vehicles. The title loan lender may  
2 dispose of the motor vehicle as provided in this section. Any  
3 sale or disposal of the motor vehicle shall be made through a  
4 motor vehicle dealer licensed under s. 320.27, Florida  
5 Statutes.

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

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

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

21 Section 12. Prohibited acts.--

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

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

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

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

- 1           (c) Enter into a title loan agreement with a person  
2 under the age of 18 years.
- 3           (d) Make any agreement requiring or allowing for the  
4 personal liability of a borrower or the waiver of any of the  
5 provisions of this act.
- 6           (e) Knowingly enter into a title loan agreement with  
7 any person who is under the influence of drugs or alcohol when  
8 such condition is visible or apparent, or with any person  
9 using a name other than such person's own name or the  
10 registered name of the person's business.
- 11           (f) Fail to exercise reasonable care, as defined by  
12 department rule, in the safekeeping of loan property or of  
13 titled personal property repossessed pursuant to this act.
- 14           (g) Fail to return loan property or repossessed titled  
15 personal property to a borrower, with any and all of the title  
16 loan lender's liens on the property properly released, upon  
17 payment of the full amount due the title loan lender, unless  
18 the property has been seized or impounded by an authorized law  
19 enforcement agency, taken into custody by a court, or  
20 otherwise disposed of by court order.
- 21           (h) Sell or otherwise charge for any type of insurance  
22 in connection with a title loan agreement.
- 23           (i) Charge or receive any finance charge, interest, or  
24 fees which are not authorized pursuant to this act.
- 25           (j) Act as a title loan lender without an active  
26 license issued under this act.
- 27           (k) Refuse to accept partial payments toward  
28 satisfying any obligation owed under a title loan agreement or  
29 extension of such agreement.
- 30           (l) Charge a prepayment penalty.
- 31           (m) Engage in the business of selling new or used

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

1 motor vehicles, or parts for motor vehicles.

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

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

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

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

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

1 title loan agreement shall be provided a copy of such signed  
2 form as evidence of such agreement.

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

22 Section 14. Criminal penalties.--

23 (1) Any person who acts as a title loan lender without  
24 first securing the license prescribed by this act commits a  
25 felony of the third degree, punishable as provided in s.  
26 775.082, s. 775.083, or s. 775.084, Florida Statutes.

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

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

1 Florida Statutes.

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

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

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

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

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

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

1 agreement entered into with the department.

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

14 (3) The department may adopt rules pursuant to ss.  
15 120.54 and 120.536(1) to implement this 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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30  
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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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