

By Representative Sublette

1                                   A bill to be entitled  
2           An act relating to title loan transactions;  
3           creating the "Florida Title Loan Act";  
4           providing legislative intent; providing  
5           definitions; requiring licensure by the  
6           Department of Banking and Finance to be in the  
7           business as a title loan lender; providing for  
8           fees; providing for eligibility for licensure;  
9           providing for application; providing for  
10          suspension or revocation of license; providing  
11          a fine; providing for a title loan transaction  
12          form; providing requirements; providing for  
13          redemption of a repossessed motor vehicle under  
14          certain circumstances; providing entitlement to  
15          certain excess proceeds of a sale or disposal  
16          of a motor vehicle; providing for recordkeeping  
17          and reporting and safekeeping of property;  
18          providing for title loan charges and interest  
19          rates; providing a holding period when there is  
20          a failure to redeem; providing for the disposal  
21          of pledged property; providing for disposition  
22          of excess proceeds; prohibiting certain acts;  
23          providing for the right to redeem; providing  
24          for lost title loan transaction forms;  
25          providing for a title loan lenders lien;  
26          providing for criminal penalties; providing for  
27          certain records from the Department of Law  
28          Enforcement; providing for subpoenas,  
29          enforcement of actions, and rules; providing a  
30          fine; providing for investigations and  
31          complaints; amending ss. 538.03 and 538.16,

1 F.S.; deleting provisions relating to title  
2 loan transactions; providing for more  
3 restrictive local ordinances; providing an  
4 appropriation; repealing ss. 538.03(1)(i),  
5 538.06(5), and 538.15(4) and (5), F.S.,  
6 relating to title loan transactions by  
7 secondhand dealers; providing effective dates.

8

9 Be It Enacted by the Legislature of the State of Florida:

10

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

13 Section 2. Legislative intent.--It is the intent of  
14 the Legislature that title loans shall be regulated by the  
15 provisions of this act. The provisions of this act shall  
16 supersede any other provisions of law affecting title loans to  
17 the extent of any conflict.

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

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

22 (2) "Commercially reasonable" means a sale or disposal  
23 which occurs and can be construed as an arms' length  
24 transaction. Nonpublic sales or disposal of personal property  
25 between licensees and business affiliates or family members  
26 are sales and disposal that are presumed not to be in a  
27 commercially reasonable fashion.

28 (3) "Executive officer" means the president, chief  
29 executive officer, chief financial officer, chief operating  
30 officer, executive vice president, senior vice president,  
31 secretary, and treasurer.

1       (4) "Identification" means a government-issued  
2 photographic identification.

3       (5) "Interest" means the cost of obtaining a title  
4 loan and includes any profit or advantage of any kind  
5 whatsoever that a title loan lender may charge, contract for,  
6 collect, receive, or in any way obtain, including, by means of  
7 any collateral sale, purchase, or agreement, as a condition of  
8 the title loan.

9       (6) "License" means a permit issued under this chapter  
10 to make and collect title loans in accordance with this  
11 chapter at a single place of business.

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

14       (8) "Loan property" means any motor vehicle  
15 certificate of title that is deposited with a title loan  
16 lender in the course of the title loan lender's business and  
17 is the subject of a title loan agreement.

18       (9) "Motor vehicle" means an automobile, motorcycle,  
19 truck, trailer, semitrailer, truck tractor and semitrailer  
20 combination, or any other vehicle operated on the public  
21 highways and streets of this state, used to transport persons  
22 or property, and propelled by power other than muscular power,  
23 but excluding vehicles which run only upon a track.

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

26       (11) "Title loan agreement" means a written agreement  
27 whereby a title loan lender agrees to make a loan of a  
28 specific sum of money to a borrower, and the borrower agrees  
29 to give the title loan lender a security interest in an  
30 unencumbered motor vehicle certificate of title owned by the  
31 borrower.

1       (12) "Title loan lender" means any person who is  
2 engaged in the business of making title loans or engaging in  
3 title loan agreements with borrowers.

4       (13) "Title loan office" means the location at which,  
5 or premises from which, a title loan lender regularly conducts  
6 business.

7       (14) "Title loan transaction" means any title loan of  
8 a motor vehicle from lender to borrower for money.

9       (15) "Title loan transaction form" means the  
10 instrument on which a title loan lender records title loan  
11 agreements.

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

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

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

27       (1) A person may not engage in business as a title  
28 loan lender unless the person has a valid license issued by  
29 the department authorizing the engagement in the business. A  
30 separate license is required for each physical location of a  
31 title loan office. The department shall issue more than one

1 license to a person who complies with the requirements of this  
2 act for each license.

3 (2) An application for a license pursuant to this act  
4 shall be submitted to the department on such forms as the  
5 department prescribes by rule. If the department determines  
6 that an application should be granted, the department shall  
7 issue the license for a period not to exceed 2 years. A  
8 nonrefundable license fee not to exceed \$500 and a  
9 nonrefundable investigation fee of \$200 shall accompany an  
10 initial application for each title loan location. The revenue  
11 from such fees is intended to reasonably reflect the actual  
12 cost of regulation.

13 (3) A license shall be renewed biannually and shall be  
14 accompanied by a nonrefundable fee not to exceed \$500. A  
15 license that is not renewed by its expiration date shall  
16 automatically expire and revert to inactive status. Such  
17 inactive license may be reactivated within 3 months after the  
18 expiration date upon submission of a completed reactivation  
19 form and payment of a reactivation fee of \$250. A license that  
20 is not reactivated within 3 months after becoming inactive may  
21 not be reactivated.

22 (4) Each license must specify the location for which  
23 the license is issued and must be conspicuously displayed at  
24 that location. When a licensee wishes to move a title loan  
25 office to another location, the licensee shall give 30 days'  
26 prior written notice to the department by certified or  
27 registered mail, return receipt requested, and the department  
28 shall then amend the license accordingly. A license issued  
29 pursuant to this act is not transferable or assignable.

30 (5) The department may deny an initial application for  
31 a license if the applicant or any person with power to direct

1 the management or policies of the applicant is the subject of  
2 a pending criminal prosecution or governmental civil  
3 enforcement action, in any jurisdiction, until conclusion of  
4 such criminal prosecution or enforcement action.

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

7 (7) A person shall apply to the department for a new  
8 license upon the change of any person owning 25 percent or  
9 greater interest in any title loan office and shall pay the  
10 nonrefundable license and investigation fees.

11 (8) All moneys collected by the department under this  
12 act shall be deposited into the Regulatory Trust Fund of the  
13 Department of Banking and Finance for the sole purpose of  
14 implementing this act.

15 Section 5. Eligibility for license.--

16 (1) To be eligible for a title loan lending license,  
17 an applicant must:

18 (a) Be of good moral character.

19 (b) File with the department a bond, in the amount of  
20 \$100,000 for each license, with a surety company qualified to  
21 do business in this state. In lieu of the bond, the applicant  
22 may establish a certificate of deposit or an irrevocable  
23 letter of credit in a financial institution, as defined in s.  
24 655.005, Florida Statutes, in the amount of the bond. The  
25 original bond, certificate of deposit, or letter of credit  
26 shall be filed with the department, and the department shall  
27 be the beneficiary to that document. The bond, certificate of  
28 deposit, or letter of credit shall be in favor of the  
29 department for the use and benefit of any consumer who is  
30 injured pursuant to a title loan transaction by the fraud,  
31 misrepresentation, breach of contract, financial failure, or

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

19 (c) Not have been convicted of a felony within the  
20 last 10 years or be acting as an ultimate equitable owner for  
21 someone who has been convicted of a felony within the last 10  
22 years.

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

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

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

6           Section 6. Application for license.--

7       (1) Application for a license to make title loans  
8 under this act shall be in writing, under oath, and in the  
9 form prescribed by department rule, and shall:

10       (a) Contain the name and the residence and business  
11 addresses of the applicant and, if the applicant is a  
12 partnership or association, of every member of such  
13 partnership or association and, if a corporation, of each  
14 executive officer and director and ultimate equitable owner of  
15 at least 25 percent of such corporation.

16       (b) State whether any individual identified in  
17 paragraph (a) has, within the last 10 years, been arrested for  
18 or convicted of, or is under indictment or information for, a  
19 felony or crime.

20       (c) Identify the county and municipality with the  
21 street and number or location where the business is to be  
22 conducted.

23       (d) Contain such further relevant information as the  
24 department requires pursuant to rule.

25  
26 At the time of making such application the applicant shall pay  
27 to the department a nonrefundable license fee not to exceed  
28 \$500. Applications, except for applications to renew or  
29 reactivate a license, must be accompanied by a nonrefundable  
30 investigation fee of \$200.

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1           (2) Notwithstanding subsection (1), the application  
2 need not state the full name and address of each officer,  
3 director, and shareholder if the applicant is owned directly  
4 or beneficially by a person who as an issuer has a class of  
5 securities registered pursuant to section 12 of the Securities  
6 Exchange Act of 1934 or, pursuant to section 15(d) of such  
7 act, is an issuer of securities which is required to file  
8 reports with the Securities and Exchange Commission, if the  
9 person files with the department any information, documents,  
10 and reports required by such act to be filed with the  
11 Securities and Exchange Commission.

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

23           (4) A license that is not renewed by its expiration  
24 date shall automatically revert to inactive status. An  
25 inactive license may be reactivated upon submission of a  
26 completed reactivation application, payment of the biannual  
27 license fee, and payment of a reactivation fee of \$250. A  
28 license expires 3 months after the date on which it became  
29 inactive.

30           (5) A licensee may not change the place of business  
31 maintained under a license without prior notice to the

1 department. When a licensee wishes to change a place of  
2 business, the licensee shall give written notice of such  
3 change to the department.

4 (6) A licensee may not conduct the business of making  
5 loans under this act within a place of business in which other  
6 business is solicited or engaged in, unless the department  
7 finds that the conduct of such other business by the licensee  
8 does not result in either the evasion of this act or the  
9 combining of such other business activities does not result in  
10 practices that are detrimental, misleading, or unfair to  
11 consumers. Upon such a finding, the department may authorize  
12 the combining of such other business activities. However, no  
13 license shall be granted to or renewed for any person or  
14 organization engaged in the pawnbroking business.

15 (7) Licenses are not transferable or assignable. A  
16 licensee may invalidate any license by delivering the license  
17 to the department with written notice of its surrender by  
18 certified or registered mail, return receipt requested, but  
19 such delivery does not affect any civil or criminal liability  
20 or the authority to enforce this act for acts committed in  
21 violation thereof.

22 Section 7. Suspension or revocation of license.--

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

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

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

1           (c) Fraudulent misrepresentation, circumvention, or  
2 concealment of any matter required to be stated or furnished  
3 to a borrower pursuant to this act, regardless of reliance by  
4 or damage to the borrower.

5           (d) Willful imposition of illegal or excessive charges  
6 in any title loan transaction.

7           (e) False, deceptive, or misleading advertising by a  
8 title loan lender.

9           (f) Failure to maintain, preserve, and keep available  
10 for examination all books, accounts, or other documents  
11 required by this act, by any rule or order adopted pursuant to  
12 this act, or by any agreement entered into with the  
13 department.

14           (g) The title loan lender has aided, abetted, or  
15 conspired with an individual or person to circumvent or  
16 violate any of the requirements of this act.

17           (h) Refusal to permit inspection of books and records  
18 in an investigation or examination by the department or  
19 refusal to comply with a subpoena issued by the department.

20           (i) Criminal conduct by a title loan lender.

21           (2) Upon a finding by the department that any person  
22 has committed any of the acts set forth in subsection (1), the  
23 department may enter an order taking any of the following  
24 actions:

25           (a) Issuing a notice of noncompliance pursuant to s.  
26 120.695, Florida Statutes;

27           (b) Denying an application for a license pursuant to  
28 this act;

29           (c) Revoking or suspending a license previously  
30 granted pursuant to this act;

31

1       (d) Placing a licensee or an applicant for a license  
2 on probation for a period of time and subject to such  
3 conditions as the department specifies;

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

6       (f) Issuing a reprimand; or

7       (g) Imposing an administrative fine not to exceed  
8 \$5,000 for each such act or violation.

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

13       (a) A material misstatement of fact in an initial or  
14 renewal application for a license.

15       (b) Having a license or registration, or the  
16 equivalent, to practice any profession or occupation denied,  
17 suspended, revoked, or otherwise acted against by a licensing  
18 authority in any jurisdiction for fraud, dishonest dealing, or  
19 any act of moral turpitude.

20       (c) Having been convicted or found guilty of a crime  
21 involving fraud, dishonest dealing, or any act of moral  
22 turpitude.

23       (d) Being insolvent or having demonstrated a lack of  
24 honesty or financial responsibility.

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

29       (4) It is sufficient cause for the department to take  
30 any of the actions specified in subsection (2), as to any  
31 partnership, corporation, or association, if the department

1 finds grounds for such action as to any member of the  
2 partnership, as to any executive officer or director of the  
3 corporation or association, or as to any person with power to  
4 direct the management or policies of the partnership,  
5 corporation, or association.

6 (5) Each licensee licensed pursuant to this act is  
7 responsible for the acts of employees and agents of the  
8 licensee if the licensee knew or should have known about such  
9 acts and the licensee retained the profits, benefits, or  
10 advantages accruing from such acts or ratified the conduct of  
11 the employee or agent as a matter of law or fact.

12 (6) The manner of giving notice and conducting a  
13 hearing is governed by chapter 120, Florida Statutes.

14 (7) Any title loan agreement made without benefit of a  
15 license is voidable, in which case the person forfeits the  
16 right to collect any moneys, including principal and finance  
17 charges, from the borrower in connection with such agreement,  
18 and shall return to the borrower the loan property in  
19 connection with such agreement or the fair market value of  
20 such property and all principal and interest made by the  
21 borrower.

22 Section 8. Title loan transaction form.--

23 (1) At the time a title loan lender enters into each  
24 title loan agreement, the title loan lender shall complete a  
25 title loan transaction form for such transaction, and the  
26 borrower shall sign such completed form. The department shall  
27 approve the design and format of the title loan transaction  
28 form, which shall elicit the information required under this  
29 section. In completing the title loan transaction form, the  
30 title loan lender shall record the following information,  
31

- 1 which shall be typed or written indelibly and legibly in  
2 English:
- 3       (a) The make, model, and year of the titled personal  
4 property to which the loan property relates.
- 5       (b) The vehicle identification number, or other  
6 comparable identification number, along with the license plate  
7 number, if applicable, of the titled personal property to  
8 which the loan property relates.
- 9       (c) The name, address, date of birth, physical  
10 description, and social security number of the borrower.
- 11       (d) The date of the transaction.
- 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 of the transaction.
- 19       (h) The total title loan charge payable on the  
20 maturity date, designated as the "finance charge."
- 21       (i) The total amount, amount financed plus finance  
22 charge, which must be paid to redeem the loan property on the  
23 maturity date, designated as the "total amount of all  
24 payments."
- 25       (j) The annual percentage rate, computed in accordance  
26 with the regulations adopted by the Federal Reserve Board  
27 pursuant to the Federal Truth-in-Lending Act.
- 28       (2) The following information shall also be printed on  
29 all title loan transaction forms:
- 30       (a) The name and address of the title loan office.  
31

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 redeem the certificate of  
6 title before the maturity date of the title loan agreement,  
7 the title loan lender may repossess the motor vehicle to which  
8 the certificate of title relates.

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

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

19       (e) A blank line for the signature of the borrower.

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

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

1 borrower to redeem the certificate of title at the end of the  
2 original 30-day-agreement period, or at the end of any 30-day  
3 extension of such period, the title loan lender shall be  
4 allowed to take possession of the titled personal property.  
5 The title loan lender shall retain physical possession of the  
6 certificate of title for the entire term of the title loan  
7 agreement, but shall not be required to retain physical  
8 possession of the titled personal property at any time. A  
9 title loan lender may only hold unencumbered certificates of  
10 title for loan.

11 (5) If a motor vehicle is repossessed under subsection  
12 (4), the title loan borrower has 60 days to redeem the motor  
13 vehicle before the motor vehicle is subject to sale or  
14 disposal.

15 (6) The title loan borrower is entitled to the excess  
16 proceeds in the event the motor vehicle is sold or disposed of  
17 under subsection (5).

18 Section 9. Recordkeeping; reporting; safekeeping of  
19 property.--

20 (1) Every title loan lender shall maintain, at the  
21 principal place of business, such books, accounts, and records  
22 of the business conducted under the license issued for such  
23 place of business as will enable the department to determine  
24 the licensee's compliance with this act. The licensee shall  
25 make all such books, accounts, and records of business  
26 conducted under the license available at a convenient location  
27 in this state upon request of the department.

28 (2) The department may authorize the maintenance of  
29 books, accounts, and records at a location other than a  
30 principal place of business. The department may require books,  
31 accounts, and records to be produced and available at a



1 reasonable and convenient location in this state within a  
2 reasonable period of time after such a request.

3 (3) The title loan lender shall maintain the original  
4 copy of each completed title loan transaction form on the  
5 title loan office premises, and shall not obliterate, discard,  
6 or destroy any such original copy, for a period of at least 2  
7 years after making the final entry on any loan recorded in  
8 such office.

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

15 (5) The department may prescribe the minimum  
16 information to be shown in the books, accounts, and records of  
17 licensees so that such records will enable the department to  
18 determine compliance with the provisions of this act.

19 Section 10. Title loan charges.--

20 (1) A title loan lender may charge a maximum interest  
21 rate of 30 percent per annum computed on the first \$2,000 of  
22 the principal amount, 24 percent per annum on that part of the  
23 principal amount exceeding \$2,000 and not exceeding \$3,000,  
24 and 18 percent per annum on that part of the principal amount  
25 exceeding \$3,000. The original principal amount is the same  
26 amount as the amount financed, as defined by the federal Truth  
27 in Lending Act and Regulation Z of the Board of Governors of  
28 the Federal Reserve System. In determining compliance with the  
29 statutory maximum interest and finance charges, the  
30 computations must be simple interest and not add-on interest  
31 or any other computations. When two or more interest rates are

1 to be applied to the principal amount, the lender may charge  
2 interest at that single annual percentage rate which, if  
3 applied according to the actuarial method to each of the  
4 scheduled periodic balances of principal, would produce at  
5 maturity the same total amount of interest as would result  
6 from the application of the two or more rates otherwise  
7 permitted, based upon the assumption that all payments are  
8 made as agreed.

9       (2) The annual percentage rate that may be charged in  
10 a title loan transaction may equal, but not exceed, the annual  
11 percentage rate that must be computed and disclosed as  
12 required by the federal Truth in Lending Act and Regulation Z  
13 of the Board of Governors of the Federal Reserve System. The  
14 maximum annual percentage rate of finance charge that may be  
15 charged is 12 times the maximum monthly rate, and the maximum  
16 monthly rate must be computed on the basis of one-twelfth of  
17 the annual rate for each full month. The Department of Banking  
18 and Finance shall establish the rate for each day in a  
19 fraction of a month when the period for which the charge is  
20 computed is more or less than 1 month.

21       (3) Any charges, including interest, in excess of the  
22 combined total of all charges permitted by this act constitute  
23 a violation of chapter 687, Florida Statutes, governing  
24 interest and usury, and the penalties of that chapter apply.  
25 If a bona fide error occurs, the lender must refund or credit  
26 the borrower with the amount of the overcharge within 20 days  
27 after the discovery of such error.

28       (4) Any finance charge contracted for or received,  
29 directly or indirectly, in excess of the amounts authorized  
30 under this section are prohibited, may not be collected, and  
31 render the title loan agreement voidable, in which case the

1 title loan lender shall forfeit the right to collect any  
2 interest or finance charges. Upon the borrower's written  
3 request delivered to the title loan lender by certified mail,  
4 return receipt requested, within 30 days after the maturity  
5 date, the title loan lender shall be obligated to return to  
6 the borrower the loan property delivered to the title loan  
7 lender in connection with the title loan agreement upon  
8 payment of the balance of the principal remaining due,  
9 provided that there shall be no penalty for a violation  
10 resulting from an accidental and bona fide error that is  
11 corrected upon discovery. Any action to circumvent the  
12 limitation on title loan interest or any other amounts  
13 collectible under this act is voidable. Any transaction  
14 involving a person's delivery of a personal property  
15 certificate of title in exchange for the advancement of funds  
16 on the condition that the person shall or may redeem or  
17 repurchase the certificate of title upon the payment of a sum  
18 of money, whether the transaction be characterized as a  
19 "buy-sell agreement," "sale-leaseback agreement," or  
20 otherwise, shall be deemed a violation of this act if such sum  
21 exceeds the amount that a title loan lender may collect in a  
22 title loan agreement under this act or if the terms of the  
23 transaction otherwise conflict with the permitted terms and  
24 conditions of a title loan agreement under this act.

25       Section 11. Disposal of pledged property; excess  
26 proceeds.--

27       (1) Any motor vehicle which is security for a title  
28 loan is subject to sale or disposal if the title has not been  
29 redeemed from the title lender or there has been no payment  
30 made on account within 60 days after payment was due. Every  
31 title loan transaction form shall contain a notice of the

1 provisions of this subsection. Any such sale or disposal shall  
2 vest in the purchaser the right, title, and interest of the  
3 owner and the title loan lender.

4 (2) A title loan lender has the right to take  
5 possession of the motor vehicle upon failure of the owner to  
6 redeem the title within the time period specified in  
7 subsection (1). The title loan lender shall only take  
8 possession of a motor vehicle through an agent who is licensed  
9 by the state to repossess motor vehicles. The title loan  
10 lender may dispose of the motor vehicle as provided in this  
11 section. Any sale or disposal of the motor vehicle shall be  
12 made through a motor vehicle dealer licensed under s. 320.27,  
13 Florida Statutes.

14 (3) Within 30 days after the sale of the motor  
15 vehicle, the title loan borrower is entitled to receive moneys  
16 from the sale of the motor vehicle in excess of the principal  
17 amount of the loan, interest on the loan up to the date of  
18 repossession, and reasonable expenses for the repossession,  
19 holding, and sale of the motor vehicle. The borrower is  
20 entitled to receive reasonable attorney's fees and costs in  
21 any action brought to recover the excess amount that results  
22 in the title loan lender being ordered to return all or part  
23 of such amount.

24 (4) Except as provided by this section, the taking  
25 possession and sale or disposal of the motor vehicle is  
26 subject to the requirements of chapter 679, Florida Statutes.

27 Section 12. Prohibited acts.--

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

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

1           (b) Refuse to allow the department to inspect  
2 completed title loan transaction forms or loan property during  
3 the ordinary hours of the title loan lender's business or  
4 other times acceptable to both parties.

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

7           (d) Make any agreement requiring or allowing for the  
8 personal liability of a borrower or the waiver of any of the  
9 provisions of this act.

10           (e) Knowingly enter into a title loan agreement with  
11 any person who is under the influence of drugs or alcohol when  
12 such condition is visible or apparent, or with any person  
13 using a name other than such person's own name or the  
14 registered name of the person's business.

15           (f) Fail to exercise reasonable care in the  
16 safekeeping of loan property or of titled personal property  
17 repossessed pursuant to this act.

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

25           (h) Sell or otherwise charge for insurance in  
26 connection with a title loan agreement.

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

29           (j) Engage in business as a title loan lender without  
30 first securing a license.

31

1           (k) Refuse to accept a partial repayment of the  
2 obligation owed and outstanding.

3           (l) Charge a prepayment penalty.

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

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

8           Section 13. Right to redeem; lost title loan  
9 transaction form.--

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

29           (2) If the borrower's copy of the title loan  
30 transaction form is lost, destroyed, or stolen, the borrower  
31 must notify the title loan lender, in writing by certified or

1 registered mail, return receipt requested, or in person  
2 evidenced by a signed receipt, and receipt of such notice  
3 shall invalidate such title loan transaction form if the loan  
4 property has not previously been redeemed. Before delivering  
5 the loan property or issuing a new title loan transaction  
6 form, the title loan lender shall require the borrower to make  
7 a written statement of the loss, destruction, or theft of the  
8 borrower's copy of the title loan transaction form. The title  
9 loan lender shall record on the written statement the type of  
10 identification and the identification number accepted from the  
11 borrower, the date the statement is given, and the number or  
12 date of the title loan transaction form lost, destroyed, or  
13 stolen. The statement shall be signed by the title loan lender  
14 or the title loan office employee who accepts the statement  
15 from the borrower.

16 Section 14. Criminal penalties.--

17 (1) Any person who engages in business as a title loan  
18 lender without first securing the license prescribed by this  
19 act commits a felony of the third degree, punishable as  
20 provided in s. 775.082, s. 775.083, or s. 775.084, Florida  
21 Statutes.

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

28 Section 15. Records from the Department of Law  
29 Enforcement.--The Department of Law Enforcement, on request,  
30 shall supply to the department any arrest and conviction  
31 records in the possession of the Department of Law Enforcement

1 of an individual applying for or holding a license under this  
2 act.

3 Section 16. Subpoenas; enforcement actions; rules.--

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

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

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

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



1 act, any rule or order adopted under this act, or any written  
2 agreement entered into with the department.

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

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

20 (3) The department may adopt rules pursuant to the  
21 Administrative Procedure Act to implement this act.

22 Section 17. Investigations and complaints.--

23 (1) The department may make any investigation and  
24 examination of any licensee or other person the department  
25 deems necessary to determine compliance with this act. For  
26 such purposes, the department may examine the books, accounts,  
27 records, and other documents or matters of any licensee or  
28 other person. The department may compel the production of all  
29 relevant books, records, and other documents and materials  
30 relative to an examination or investigation. Such  
31 investigations and examinations shall not be made more often

1 than once during any 12-month period unless the department has  
2 good cause to believe the licensee is not complying with the  
3 provisions of this act.

4 (2) The expenses of the department incurred in each  
5 such examination may be established by department rule but  
6 shall not exceed \$250 per 8-hour day for each examiner. Such  
7 examination fee shall be calculated on an hourly basis and  
8 shall be rounded to the nearest hour. The licensee shall also  
9 pay the travel expenses and per diem subsistence allowance  
10 provided for state employees in s. 112.061, Florida Statutes.  
11 The licensee shall not be required to pay per diem and  
12 expenses of an examination which shall consume more than 30  
13 worker-days in any one year unless such examination or  
14 investigation is due to fraudulent practices of the licensee,  
15 in which case such licensee shall be required to pay the  
16 entire cost regardless of time consumed.

17 (3) Any person having reason to believe that any  
18 provision of this act has been violated may file with the  
19 department a written complaint setting forth the details of  
20 such alleged violation and the department, upon receipt of  
21 such complaint, may inspect the pertinent books, records,  
22 letters, and contracts of the licensee and of the seller  
23 involved relating to such specific written complaint.

24 Section 18. Paragraphs (a) and (h) of subsection (1)  
25 of section 538.03, Florida Statutes, 1998 Supplement, are  
26 amended to read:

27 538.03 Definitions; applicability.--

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

29 (a) "Secondhand dealer" means any person, corporation,  
30 or other business organization or entity which is not a  
31 secondary metals recycler subject to part II and which is

1 engaged in the business of purchasing, consigning, or pawning  
2 secondhand goods ~~or entering into title loan transactions.~~  
3 However, secondhand dealers are not limited to dealing only in  
4 items defined as secondhand goods in paragraph (g). Except as  
5 provided in subsection (2), the term means pawnbrokers,  
6 jewelers, precious metals dealers, garage sale operators,  
7 secondhand stores, and consignment shops.

8 (h) "Transaction" means any ~~title loan,~~ purchase,  
9 consignment, or pawn of secondhand goods by a secondhand  
10 dealer.

11 Section 19. Subsection (1) of section 538.16, Florida  
12 Statutes, is amended to read:

13 538.16 Secondhand dealers; disposal of property.--

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

24 Section 20. Nothing in this act precludes a county or  
25 municipality from adopting ordinances more restrictive than  
26 the provisions of this act.

27 Section 21. Effective July 1, 1999, the sum of  
28 \$500,000 is hereby appropriated for the 1999-2000 fiscal year  
29 from the Regulatory Trust Fund of the Department of Banking  
30 and Finance to the department to fund nine positions for the  
31 purpose of carrying out the provisions of this act.

