

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

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

22
23 Be It Enacted by the Legislature of the State of Florida:

24
25 Section 1. Short title.--This act may be cited as the
26 "Florida Title Loan Act."

27 Section 2. Legislative intent.--It is the intent of
28 the Legislature that title loans shall be regulated by the
29 provisions of this act. The provisions of this act shall
30 supersede any other provisions of state law affecting title
31 loans to the extent of any conflict.

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

3 (1) "Commercially reasonable" has the same meaning as
4 used in Article 9, part V of ch. 679, Florida Statutes, in
5 addition, nonpublic sales or disposal of personal property
6 between title loan lenders and their business affiliates or
7 family members are sales and disposal that are presumed not to
8 be in a commercially reasonable fashion.

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

11 (3) "Executive officer" means the president, chief
12 executive officer, chief financial officer, chief operating
13 officer, executive vice president, senior vice president,
14 secretary, and treasurer.

15 (4) "Identification" means a government-issued
16 photographic identification.

17 (5) "Interest" means the cost of obtaining a title
18 loan and includes any profit or advantage of any kind
19 whatsoever that a title loan lender may charge, contract for,
20 collect, receive, or in any way obtain as a result of a title
21 loan.

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

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

27 (8) "Loan property" means any motor vehicle
28 certificate of title that is deposited with a title loan
29 lender as a security for a title loan in the course of the
30 title loan lender's business.

31

1 (9) "Motor vehicle" means an automobile, motorcycle,
2 mobile home, truck, trailer, semitrailer, truck tractor and
3 semitrailer combination, or any other vehicle operated on the
4 public highways and streets of this state, used to transport
5 persons or property, and propelled by power other than
6 muscular power, but excluding a vehicle which runs only upon a
7 track and a mobile home that is the primary residence of the
8 owner.

9 (10) "Title loan" or "loan" means a loan of money
10 secured by bailment of a certificate of title to a motor
11 vehicle, except such loans made pursuant to licensees under
12 chapter 516, chapter 520 or chapter 655.

13 (11) "Title loan agreement" or "agreement" means a
14 written agreement in which a title loan lender agrees to make
15 a title loan to a borrower.

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

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

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

28 (15) "Ultimate equitable owner" means a person who,
29 directly or indirectly, owns or controls an ownership interest
30 in a corporation, a foreign corporation, an alien business
31 organization, or any other form of business organization,

1 regardless of whether such person owns or controls such
2 ownership interest through one or more persons or one or more
3 proxies, powers of attorney, nominees, corporations,
4 associations, partnerships, trusts, joint stock companies, or
5 other entities or devices, or any combination thereof.

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

7 (1) A person may not act as a title loan lender or own
8 or operate a title loan office unless such person has an
9 active title loan lender license issued by the department
10 under this act. A title loan lender may not own or operate
11 more than one title loan office unless the lender obtains a
12 separate title loan lender license for each title loan office.

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

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

29 (4) A license shall be renewed biennially by filing a
30 renewal form and a nonrefundable renewal fee of \$1,200. A
31 license that is not renewed by the end of the biennial period

1 shall automatically revert to inactive status. An inactive
2 license may be reactivated within 6 months after becoming
3 inactive by filing a reactivation form, payment of the
4 nonrefundable \$1,200 renewal fee, and payment of a
5 nonrefundable reactivation fee of \$600. A license that is not
6 reactivated within 6 months after becoming inactive may not be
7 reactivated and shall automatically expire. The department
8 shall establish by rule the procedures for renewal and
9 reactivation of a license and shall adopt a renewal form and a
10 reactivation form.

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

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

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

19 (8) Whenever a person or a group of persons, directly
20 or indirectly or acting by or through one or more persons,
21 proposes to purchase or acquire a 25 percent or more interest
22 in a licensee, such person or group shall submit an initial
23 application for licensure under this act prior to such
24 purchase or acquisition. The department shall adopt rules
25 providing for waiver of the application required by this
26 subsection when such purchase or acquisition of a licensee is
27 made by another licensee licensed under this act or when the
28 application is otherwise unnecessary in the public interest.

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

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

4 Section 5. Application for license.--

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

7 (a) Contain the name and the residence and business
8 address of the applicant. If the applicant is other than a
9 natural person, the application shall contain the name and the
10 residence and business address of each ultimate equitable
11 owner of 25 percent or more of such entity and each director,
12 general partner, and executive officer of such entity.

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

17 (c) Identify the county and municipality with the
18 street and number or location where the business is to be
19 conducted.

20 (d) Contain additional information as the department
21 determines by rule to be necessary to ensure compliance with
22 this act.

23 (2) Notwithstanding subsection (1), the application
24 need not state the full name and address of each officer,
25 director, and shareholder if the applicant is owned directly
26 or beneficially by a person who as an issuer has a class of
27 securities registered pursuant to section 12 of the Securities
28 Exchange Act of 1934 or, pursuant to section 13 or section
29 15(d) of such act, is an issuer of securities which is
30 required to file reports with the Securities and Exchange
31 Commission, if the person files with the department any

1 information, documents, and reports required by such act to be
 2 filed with the Securities and Exchange Commission.
 3 (3) An applicant for licensure shall file with the
 4 department a bond, in the amount of \$100,000 for each license,
 5 with a surety company qualified to do business in this state.
 6 However, in no event shall the aggregate amount of the bond
 7 required for a single title loan lender exceed \$1 million. In
 8 lieu of the bond, the applicant may establish a certificate of
 9 deposit or an irrevocable letter of credit in a financial
 10 institution, as defined in s. 655.005, Florida Statutes, in
 11 the amount of the bond. The original bond, certificate of
 12 deposit, or letter of credit shall be filed with the
 13 department, and the department shall be the beneficiary to
 14 that document. The bond, certificate of deposit, or letter of
 15 credit shall be in favor of the department for the use and
 16 benefit of any consumer who is injured pursuant to a title
 17 loan transaction by the fraud, misrepresentation, breach of
 18 contract, financial failure, or violation of any provision of
 19 this act by the title loan lender. Such liability may be
 20 enforced either by proceeding in an administrative action or
 21 by filing a judicial suit at law in a court of competent
 22 jurisdiction. However, in such court suit, the bond,
 23 certificate of deposit, or letter of credit posted with the
 24 department shall not be amenable or subject to any judgment or
 25 other legal process issuing out of or from such court in
 26 connection with such lawsuit, but such bond, certificate of
 27 deposit, or letter of credit shall be amenable to and
 28 enforceable only by and through administrative proceedings
 29 before the department. It is the intent of the Legislature
 30 that such bond, certificate of deposit, or letter of credit
 31 shall be applicable and liable only for the payment of claims

1 duly adjudicated by order of the department. The bond,
2 certificate of deposit, or letter of credit shall be payable
3 on a pro rata basis as determined by the department, but the
4 aggregate amount may not exceed the amount of the bond,
5 certificate of deposit, or letter of credit.

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

9 Section 6. Denial, suspension, or revocation of
10 license.--

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

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

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

20 (c) Fraudulent misrepresentation, circumvention, or
21 concealment of any matter required to be stated or furnished
22 to a borrower pursuant to this act, regardless of reliance by
23 or damage to the borrower.

24 (d) Imposition of illegal or excessive charges in any
25 title loan transaction.

26 (e) False, deceptive, or misleading advertising by a
27 title loan lender.

28 (f) Failure to maintain, preserve, and keep available
29 for examination all books, accounts, or other documents
30 required by this act, by any rule or order adopted pursuant to
31

1 this act, or by any agreement entered into with the
2 department.

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

6 (h) Refusal to provide information upon request of the
7 department, to permit inspection of books and records in an
8 investigation or examination by the department, or to comply
9 with a subpoena issued by the department.

10 (i) Having been convicted of a crime involving fraud,
11 dishonest dealing, or any act of moral turpitude or acting as
12 an ultimate equitable owner of 10 percent or more of a
13 licensee who has been convicted of a crime involving fraud,
14 dishonest dealing, or any act of moral turpitude.

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

17 (k) Having been the subject of any decision, finding,
18 injunction, suspension, prohibition, revocation, denial,
19 judgment, or administrative order by any court of competent
20 jurisdiction or administrative law judge, or by any state or
21 federal agency, involving a violation of any federal or state
22 law relating to title loans or any rule or regulation adopted
23 under such law, or has been the subject of any injunction or
24 adverse administrative order by a state or federal agency
25 regulating banking, insurance, finance or small loan
26 companies, real estate, mortgage brokers, or other related or
27 similar industries for acts involving fraud, dishonest
28 dealing, or any act of moral turpitude.

29 (l) Pleading nolo contendere to, or being convicted or
30 found guilty of, a crime involving fraud, dishonest dealing,
31

1 or any act of moral turpitude, regardless of whether
2 adjudication was withheld.

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

5 (n) Failing to timely pay any fee, charge, or fine
6 imposed or assessed pursuant to this act or rules adopted
7 under this act.

8 (o) Having a license or registration, or the
9 equivalent, to practice any profession or occupation denied,
10 suspended, revoked, or otherwise acted against by a licensing
11 authority in any jurisdiction for fraud, dishonest dealing, or
12 any act of moral turpitude.

13 (p) Having demonstrated unworthiness, as defined by
14 department rule, to transact the business of a title loan
15 lender.

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

20 (a) Denying an application for licensure under this
21 act.

22 (b) Revoking or suspending a license previously
23 granted pursuant to this act.

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

27 (d) Issuing a reprimand.

28 (e) Imposing an administrative fine not to exceed
29 \$5,000 for each separate act or violation.

30 (3) If a person seeking licensure is anything other
31 than a natural person, the eligibility requirements of this

1 section apply to each direct or ultimate equitable owner of 10
2 percent or more of the outstanding equity interest of such
3 entity and to each director, general partner, and executive
4 officer.

5 (4) It is sufficient cause for the department to take
6 any of the actions specified in subsection (2), as to any
7 entity other than a natural person, if the department finds
8 grounds for such action as to any member of such entity, as to
9 any executive officer or director of the entity, or as to any
10 person with power to direct the management or policies of the
11 entity.

12 (5) Each licensee is subject to the provisions of
13 subsection (2) for the acts of employees and agents of the
14 licensee if the licensee knew or should have known about such
15 acts.

16 (6) Licensure under this act may be denied or any
17 license issued under this act may be suspended or restricted
18 if an applicant or licensee is charged, in a pending
19 enforcement action or pending criminal prosecution, with any
20 conduct that would authorize denial or revocation under this
21 section.

22 Section 7. Remedies for title loans made without
23 licensure.--Any title loan made without benefit of a license
24 is void, in which case the person making the title loan
25 forfeits the right to collect any moneys, including principal
26 and interest charged on the title loan, from the borrower in
27 connection with such agreement. The person making the title
28 loan shall return to the borrower the loan property, the
29 titled personal property pledged or the fair market value of
30 such titled personal property, and all principal and interest
31 paid by the borrower. The borrower is entitled to receive

1 reasonable attorney's fees and costs in any action brought by
2 the borrower to recover from the person making the title loan
3 the loan property, the titled personal property, or the
4 principal and interest paid by the borrower.

5 Section 8. Title loan agreement.--

6 (1) At the time a title loan lender makes a title
7 loan, the lender and the borrower shall execute a title loan
8 agreement, which shall be legibly typed or written in
9 indelible ink and completed as to all essential provisions
10 prior to execution by the borrower and lender. The title loan
11 agreement shall include the following information:

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

14 (b) The vehicle identification number, or other
15 comparable identification number, along with the license plate
16 number, if applicable, of the titled personal property to
17 which the loan property relates.

18 (c) The name, residential address, date of birth,
19 physical description, and social security number of the
20 borrower.

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

23 (e) The identification number and the type of
24 identification, including the issuing agency, accepted from
25 the borrower.

26 (f) The amount of money advanced, designated as the
27 "amount financed."

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

31

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

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

6 (j) The interest rate, computed in accordance with the
7 regulations adopted by the Federal Reserve Board pursuant to
8 the Federal Truth-in-Lending Act, designated as the "annual
9 percentage rate."

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

12 (a) The name and physical address of the title loan
13 office.

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

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

18 1. If the borrower fails to repay the full amount of
19 the title loan on or before the end of the maturity date or
20 any extension thereof and fails to make a payment on the title
21 loan within 30 days after the end of the maturity date or any
22 extension thereof, whichever is later, the title loan lender
23 may take possession of the borrower's motor vehicle and sell
24 it in the manner provided by law. Should the vehicle be sold,
25 the borrower is entitled to any proceeds of the sale in excess
26 of the amount owed on the title loan and the reasonable
27 expenses of repossession and sale.

28 2. If the title loan agreement is lost, destroyed, or
29 stolen, the borrower should immediately so advise the issuing
30 title loan lender in writing.

31

1 (d) The statement that "The borrower represents and
2 warrants that the titled personal property to which the loan
3 property relates is not stolen and has no liens or
4 encumbrances against it, the borrower has the right to enter
5 into this transaction, and the borrower will not apply for a
6 duplicate certificate of title while the title loan agreement
7 is in effect."

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

10 (3) At the time of the transaction, the title loan
11 lender shall deliver to the borrower an exact copy of the
12 executed title loan agreement.

13 (4) Upon execution of a title loan agreement, the
14 title loan lender may take possession of the loan property and
15 retain possession of it until the loan property is redeemed.
16 The borrower shall have the exclusive right to redeem the loan
17 property by repaying all amounts legally due under the
18 agreement. When the loan property is redeemed, the lender
19 shall immediately return the loan property and commence action
20 to release any security interest in the titled personal
21 property. During the term of the agreement or any extension
22 thereof, a title loan lender may retain physical possession of
23 the loan property only. A title loan lender shall not require
24 a borrower to provide any additional security or guaranty as a
25 condition of entering into a title loan transaction.

26 Section 9. Recordkeeping; reporting; safekeeping of
27 property.--

28 (1) Every title loan lender shall maintain, at the
29 lender's title loan office, such books, accounts, and records
30 of the business conducted under the license issued for such
31

1 place of business as will enable the department to determine
2 the licensee's compliance with this act.

3 (2) The department may authorize the maintenance of
4 books, accounts, and records at a location other than the
5 lender's title loan office. The department may require books,
6 accounts, and records to be produced and available at a
7 reasonable and convenient location in this state within a
8 reasonable period of time after such a request.

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

14 (4) Loan property which is delivered to a title loan
15 lender shall be securely stored and maintained at the title
16 loan office unless the loan property has been forwarded to the
17 appropriate state agency for the purpose of having a lien
18 recorded or deleted.

19 (5) The department may prescribe by rule the books,
20 accounts, and records, and the minimum information to be shown
21 in the books, accounts, and records, of licensees so that such
22 records will enable the department to determine compliance
23 with the provisions of this act.

24 Section 10. Title loan charges.--

25 (1) A title loan lender may charge a maximum interest
26 rate of 30 percent per annum computed on the first \$2,000 of
27 the principal amount, 24 percent per annum on that part of the
28 principal amount exceeding \$2,000 and not exceeding \$3,000,
29 and 18 percent per annum on that part of the principal amount
30 exceeding \$3,000. The original principal amount is the same
31 amount as the amount financed, as defined by the federal Truth

1 in Lending Act and Regulation Z of the Board of Governors of
 2 the Federal Reserve System. In determining compliance with the
 3 statutory maximum interest, the computations must be simple
 4 interest and not add-on interest or any other computations.
 5 When two or more interest rates are to be applied to the
 6 principal amount, the lender may charge interest at that
 7 single annual percentage rate which, if applied according to
 8 the actuarial method to each of the scheduled periodic
 9 balances of principal, would produce at maturity the same
 10 total amount of interest as would result from the application
 11 of the two or more rates otherwise permitted, based upon the
 12 assumption that all payments are made as agreed.

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

25 (3) A title loan agreement may be extended for one or
 26 more 30-day periods by mutual consent of the title loan lender
 27 and the borrower. Each extension of a title loan agreement
 28 shall be executed in a separate extension agreement each of
 29 which shall comply with the requirements for executing a title
 30 loan agreement as provided in this act. The interest rate
 31 charged in any title loan extension agreement shall not exceed

1 the interest rate charged in the related title loan agreement.

2 A title loan lender may not capitalize in any title loan
3 extension agreement any unpaid interest due on the related
4 title loan agreement or any subsequent extensions to that
5 title loan agreement.

6 (4) Any interest contracted for or received, directly
7 or indirectly, by a title loan lender, or an agent of the
8 title loan lender, in excess of the amounts authorized under
9 this chapter are prohibited and may not be collected by the
10 title loan lender or an agent of the title loan lender.

11 (a) If such excess interest resulted from a bona fide
12 error by the title loan lender, or an agent of the title loan
13 lender, the title loan agreement shall be voidable and the
14 lender shall refund the excess interest to the borrower within
15 20 days after discovery by the lender or borrower of the bona
16 fide error, whichever occurs first.

17 (b) If such excess interest resulted from an act by
18 the title loan lender, or an agent of the title loan lender,
19 to circumvent the maximum title loan interest allowed by this
20 act, the title loan agreement is void. The lender shall refund
21 to the borrower any interest paid on the title loan and return
22 to the borrower the loan property. The title loan lender
23 forfeits the lender's right to collect any principal owed by
24 the borrower on the title loan.

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

28 (5) Any interest contracted for or received, directly
29 or indirectly, by a title loan lender, or an agent of the
30 title loan lender, in excess of the amount allowed by this act
31 constitutes a violation of chapter 687, Florida Statutes,

1 governing interest and usury, and the penalties of that
2 chapter apply.

3 Section 11. Repossession, disposal of pledged
4 property; excess proceeds.--

5 (1) If a borrower fails to repay all amounts legally
6 due under the title loan agreement on or before the end of the
7 title loan's maturity date or any extension thereof and fails
8 to make a payment on the loan within 30 days after the end of
9 the loan's maturity date or any extension thereof, whichever
10 is later, the title loan lender may take possession of the
11 titled personal property. A lender may take possession of the
12 titled personal property only through an agent who is licensed
13 by the state to repossess motor vehicles.

14 (2) Prior to engaging a repossession agent, the lender
15 shall afford the debtor an opportunity to make the titled
16 personal property available to the lender at a place, date,
17 and time reasonably convenient to the lender and the borrower.
18 Prior to taking possession of titled personal property, the
19 lender shall afford the borrower a reasonable opportunity to
20 remove from the titled personal property any personal
21 belongings without charge or additional cost to the borrower.
22 Once the lender takes possession of the titled personal
23 property, the lender, at the lender's sole expense and risk,
24 may authorize a third party to retain physical possession of
25 the titled personal property.

26 (3) Upon taking possession of titled personal
27 property, the lender may dispose of the titled personal
28 property by sale but may do so only through a motor vehicle
29 dealer licensed under s. 320.27. At least 10 days prior to
30 sale, the lender shall notify the borrower of the date, time,
31 and place of the sale and provide the borrower with a written

1 accounting of the principle amount due on the title loan,
2 interest accrued through the date of the lender taking
3 possession of the titled personal property, and any reasonable
4 expenses incurred to date by the lender in taking possession
5 of, preparing for sale, and selling the titled personal
6 property. At any time prior to sale, the lender shall permit
7 the borrower to redeem the titled personal property by
8 tendering a money order or certified check for the principal
9 amount of the title loan, interest accrued through the date of
10 the lender taking possession, and any reasonable expenses
11 incurred to date by the lender in taking possession of,
12 preparing for sale, and selling the titled personal property.
13 Nothing in this act nor in any title loan agreement shall
14 preclude a borrower from purchasing the titled personal
15 property at any sale.

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

19 (5) Within 30 days after the sale of the titled
20 personal property, the borrower is entitled to receive all
21 proceeds from the sale of the motor vehicle in excess of the
22 principal amount due on the loan, interest on the loan up to
23 the date of the lender taking possession, and the reasonable
24 expenses incurred by the lender in taking possession of,
25 preparing for sale, and selling the titled personal property.
26 The borrower is entitled to reasonable attorney fees and costs
27 incurred in any action brought to recover such proceeds that
28 results the title loan lender being ordered to return all or
29 part of such amount.

30 (6) The borrower shall not be personally liable to the
31 lender for any balance due on the title loan remaining after

1 applying the proceeds of the sale of the titled personal
2 property to the principal amount due on the title loan,
3 interest accrued through the date of the lender taking
4 possession, and any reasonable expenses incurred by the lender
5 in taking possession of, preparing for sale, and selling the
6 titled personal property unless such balance exceeds \$2,000.
7 If such balance exceeds \$2,000, the lender shall be entitled
8 to reasonable attorney fees and costs incurred in any action
9 brought to recover such balance that results in a judgment in
10 favor of the lender.

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

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

19 Section 12. Prohibited acts.--

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

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

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

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

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

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

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

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

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

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

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

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

28 (l) Charge a prepayment penalty.

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

31

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

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

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

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

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

1 degree, punishable as provided in s. 775.082 or s. 775.083,
2 Florida Statutes.

3 Section 15. 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 (3) The department may adopt rules pursuant to ss.
16 120.54 and 120.536(1) to implement this act.

17 Section 16. Investigations and complaints.--

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

29 (2) The department shall conduct all examinations at a
30 convenient location in this state unless the department
31 determines that it is more effective or cost-efficient to

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

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

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

19 538.03 Definitions; applicability.--

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

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

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

31

1 (h) "Transaction" means any ~~title loan~~, purchase,
2 consignment, or pawn of secondhand goods by a secondhand
3 dealer.

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

6 538.16 Secondhand dealers; disposal of property.--

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

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

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

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

29 Section 22. If any provision of this act or the
30 application thereof to any person or circumstance is held
31 invalid, the invalidity shall not affect other provisions or

1 applications of the act which can be given effect without the
2 invalid provision or application, and to this end the
3 provisions of this act are declared severable.

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

6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31