

By Senator Meek

36-674-99

See HB

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, 538.16, F.S.;

1 deleting provisions relating to title loan
2 transactions; providing for more restrictive
3 local ordinances; providing an appropriation;
4 repealing ss. 538.03(1)(i), 538.06(5),
5 538.15(4) and (5), F.S., relating to title loan
6 transactions by secondhand dealers; providing
7 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 which 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 that 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
24 section 655.005, Florida Statutes, in the amount of the bond.
25 The 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
26 section 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;

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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 section
13 320.27, 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 section 775.082, section 775.083, or section
21 775.084, Florida 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 section 775.082 or section
27 775.083, 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 sections 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 section 112.061, Florida
11 Statutes. The licensee shall not be required to pay per diem
12 and expenses of an examination which shall consume more than
13 30 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 appropriated for the 1999-2000 fiscal year from
29 the Regulatory Trust Fund of the Department of Banking and
30 Finance to the department to fund nine positions for the
31 purpose of carrying out the provisions of this act.

