# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

BILL: SB 898

SPONSOR: Senator Childers

SUBJECT: Title Loan Transactions

DATE: March 29, 1999 REVISED: 4/14/99

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|---|---|---|---|---|
| 1. | Akhavein | Poole | AG | Fav/2 amendments |
| 2. | Woodham | Deffenbaugh | BI | Fav/2 amendments |
| 3. | Hendon | Hadi | FP | Fav/3 amendments |
| 4. | | | | |
| 5. | | | | |

## I. Summary:

This bill creates the "Florida Title Loan Act," which provides for licensure and regulation by the Department of Agriculture and Consumer Services, of all title loan lenders engaging in title loan transactions in Florida. Presently, title loan lenders are required to be registered as secondhand dealers with the Department of Revenue, pursuant to chapter 538.

This bill requires a nonrefundable licensing fee of $1,500, and nonrefundable investigation fee of $250 to be submitted with an initial application for each title loan location. Total fees for a single title loan lender with multiple title loan branches would not exceed $15,000. The bill also provides for renewal and reactivation fees. The revenue from these fees is intended to reasonably reflect the actual cost of regulation by the department. All fees collected by the department would be deposited into its General Inspection Trust Fund.

In order to be eligible for a title loan lending license, the applicant must be of good moral character and not have been found guilty of a crime of moral turpitude. A surety bond in the amount of $100,000, or proof that the applicant has a net worth in excess of one million dollars, must be filed with the department for each license. The applicant must not have been convicted of a felony within the last 10 years or be acting on behalf of an ultimate equitable owner who has been convicted of a felony within the last 10 years. The applicant also must not have been convicted, or not be acting as an ultimate equitable owner for someone who has been convicted, of a crime that the department finds directly relates to the duties and responsibilities of a title loan lender within the past 10 years.

The bill delineates prohibited acts for a title loan lender, or any agent or employee of such title loan lender and provides grounds for suspension, revocation, and denial of a license, criminal penalties, and enforcement authority for the department. The department is authorized to conduct examinations and investigations of entities engaging in title loans, and requires the Department of Law Enforcement to supply any records in its possession that the department requests concerning any arrest and conviction of an individual applying for or holding a title loan lending license.

The bill provides that each licensee is responsible for the acts of its employees and agents if, "with actual knowledge of such acts," it retained profits, benefits, or advantages from such acts. The bill also provides that the licensee is responsible if it ratified the conduct of the employee or agent as matter of law or fact.

The bill creates uniform disclosure requirements for each title loan transaction form. The form would include disclosures regarding the amount financed, the maturity date, the total title loan interest charge (or finance charge), the total amount financed (plus finance charge), and the annual percentage rate, computed in accordance with the Federal Truth-in-Lending Act. The amount of interest charged in any one month may not exceed 22 percent, and a title loan lender may charge no more than 22 percent per month for 4 months during the first year, and no more than 10 percent per month thereafter. The finance charge may not exceed 168 percent simple interest per year, for the first year of the agreement. See the amendment below, adopted by the Senate Agriculture and Consumer Services Committee.

Procedures are provided for the repossession of pledged property, in the event a pledgor defaults under the title loan agreement or fails to redeem the certificate of title. The bill provides procedures for redeeming property. It requires the person redeeming the property to present the pledgor's copy of the title loan transaction form to the title loan lender, which the lender may retain as evidence of such person's receipt of the property. If the pledgor's copy of the title loan transaction form is lost, stolen or destroyed, the pledgor is required to notify the lender by certified mail or in person.

The bill provides for an appropriation of $700,000 and nine positions from the General Inspection Trust Fund to the Department of Agriculture and Consumer Services to administer and enforce the provisions of the act.

Amendment 1 by the Agriculture and Consumer Services Committee amends the title loan charges section of the bill. It prohibits a title loan lender from charging a finance charge which exceeds 96 percent, rather than 168 percent, simple interest during the first year of the loan. The finance charge may not exceed 22 percent per month during any month of the first year of the title loan agreement.

This bill creates yet unnumbered sections of the Florida Statutes. The bill substantially amends the Secondhand Dealers chapter, ss. 538.03 and 538.16, F.S., and repeals subsections (5) of s. 538.06, F.S., and subsections (4) and (5) of s. 538.15, F.S.

## II. Present Situation:

A title loan is a transaction where money is lent with the title to a motor vehicle offered as security. Physical possession of the motor vehicle is maintained by the borrower and the motor vehicle title is held by the lender. Because the motor vehicle is not physically held by the title lender, the transaction is classified as a title loan and not a pawn.

The term "secondhand dealer" refers to pawn brokers, title lenders, jewelers, precious metals dealers, garage sale operators, secondhand stores, and consignment shops. Prior to 1995, secondhand dealers could not extend loans to motor vehicle owners without the liability and

expense of storing the motor vehicle. Chapter 95-278, Laws of Florida, also prohibits a secondhand dealer from charging rent or any other fee for the use of the motor vehicle and capped the maximum fee charged in a title loan transaction at 22 percent.

Currently, prior to engaging in title loan transactions, a secondhand dealer must apply for registration with the Department of Revenue (DOR), pursuant to s. 538.09, F.S. A fee equal to the federal and state costs associated with processing fingerprint cards must be submitted to DOR. DOR is authorized to suspend, revoke, or deny registration if DOR determines that an applicant or registrant has violated any provision of chapter 538, F.S.

Once licensed, the premises and records of a dealer are subject to inspection by the police, if the premises are located in a municipality, or the sheriff, if the premises are located outside of the municipality. DOR is authorized to examine the books of a secondhand dealer for the purpose of determining sales tax liability. Pursuant to s. 538.06, F.S., all second hand dealers shall maintain transaction records for 5 years.

Chapter 538, F.S., authorizes secondhand dealers to enter into title loan transactions whereby a dealer retains possession of only the title to a motor vehicle while the owner maintains possession or control of the vehicle. A title loan is defined under s. 538.03, F.S., as a loan of money secured by bailment of a certificate of title to a motor vehicle. Sections 538.06 and 538.15, F.S., prohibit secondhand dealers from charging rent or any other fee for the use of the motor vehicle, and from engaging in pawn and title loan transactions from the same location. Pursuant to s. 538.06(5)(e), F.S., secondhand dealers are permitted to charge a maximum fee of 22 percent per month in a title loan transaction. This translates into an annual fee of 264 percent.

In comparison, a pawnbroker, regulated by the Department of Agriculture and Consumer Services, may contract and receive a pawn service charge in a pawn transaction when the pawnbroker maintains physical possession of the pledged goods for the duration of the pawn. The interest component of a pawn service charge is 2 percent of the amount financed for each 30-day period in a pawn transaction, under s. 539.001(11), F.S. The pawnbroker may charge any amount of pawn service charge, as long as the total amount, inclusive of the interest component, does not exceed 25 percent of the amount financed for each 30-day period in a pawn transaction; except that the pawnbroker is entitled to receive a minimum pawn service charge of $5 for each 30-day period.

The interest rate or fee charged by title loan dealers varies in Florida, is influenced by numerous factors, such as whether or not an applicant's credit report is required and used as part of the application process, the amount of the loan, and the collateral used.

The Federal Consumer Credit Protection Act, cited as the Truth-in-Lending Act, provides for the definition and determination of a finance charge. The amount of a finance charge in connection with any consumer credit transaction is calculated as the sum of all charges, payable directly or indirectly by the person to whom the credit is extended. Examples of charges which are included in the finance charge are interest, service or carrying charge, and fee for an investigation or credit report. The Act also specifies the procedure for calculating the annual percentage rate (APR). The APR is the nominal annual rate which will yield a sum equal to the amount of the finance charge when it is applied to the unpaid balances of the amount financed.

Section 538.06, F.S., provides that secondhand dealers may not sell, barter, exchange, alter, adulterate, or in any way dispose of any secondhand goods within 15 calendar days of the date of acquisition of the goods. This holding period is not applicable when the seller of the goods is known by the secondhand dealer and desires to redeem, repurchase, or recover the goods, provided the secondhand dealer can produce the record of the original transaction with verification that the seller is the person for whom the goods were originally acquired. Upon probable cause that the goods held by a secondhand dealer are stolen, a law enforcement officer with jurisdiction may extend the holding period to a maximum of 60 days.

Secondhand dealers have the right to repossess a motor vehicle through a licensed agent, if the title has not been redeemed by the owner or there has been no payment made by the owner on the title loan for a period of 60 days. Secondhand dealers must use licensed motor vehicle dealers to sell repossessed vehicles.

Section 538.16, F.S., provides that a motor vehicle in a title loan transaction is subject to sale or disposal if the property has not been repurchased from the pawnbroker or the title has not been redeemed from the title lender or there has been no payment made on the account within the previous 60 days.

In an attempt to address the controversy focused on the high rates or fees charged on title loan transactions, the perception that the industry uses unfair and deceptive trade practices, and the lack of auditing and regulations, the Legislature passed Chapter 96-227, L.O.F., creating the Vehicle Title Loan Task Force. The task force was to conduct a review of the practices of the industry in order to make recommendations to the Legislature as to the necessity of changing the current regulations of the industry from a consumer protection perspective. As a result of the discussion and testimony generated at the December 12, 1996, meeting, the task force identified and agreed upon the following important issues that needed to be addressed:

1. The industry should be regulated by the state. The suggested regulatory entity was the Department of Agriculture and Consumer Services.
2. Title loans should have a unified statutory scheme, a chapter dedicated to the regulation of the industry.
3. Bonding should be established at $200,000 net worth or $100,000 bond, certificate of deposit or letter of credit.
4. Forms should conform to minimum statutory requirements.
5. Documents should be available upon request and be held for a period of two years, following the completion of the transaction.
6. The contract length should not be regulated.
7. The amount charged per month should be defined as interest and the transaction should be considered a loan.
8. Include language clarifying that a motor vehicle title loan is a lien on that title.
9. Interest should not be capitalized.
10. Prohibit any fee in addition to interest rate, require full disclosure, and set a maximum fine of $5000.
11. If a contract is extended, and the borrower pays the service fee in full, then the dealer must accept a principal reduction payment, if offered by the borrower.
12. Require a 10-day holding period for a repossessed vehicle prior to its sale.

13. Surplus money collected from the sale of the repossessed vehicle must be returned to the borrower. Allow reasonable, actual repossession costs, and prohibit further collections from a deficit sale.
14. Wholesaling repossessed vehicles to an affiliated entity should be prohibited.
15. The Legislature should establish fees according to estimated cost of regulation.

Subsequently, on January 23, 1997, the task force voted 4-3 to recommend that the current statutory provisions be repealed and the law relating to title loans should be revised to reflect the 1993 law, which essentially treated a vehicle title loan as a pawn transaction, requiring the vehicle to remain in the possession of the lender during the period of the loan.

## III. Effect of Proposed Changes:

**Section 1.** Creates the "Florida Title Loan Act."

**Section 2.** Provides definitions for terms used in the act. The "Department" refers to the Department of Agriculture and Consumer Services. A "title loan agreement" is defined as a written agreement whereby a title loan lender agrees to make a loan of a specific sum of money to a pledgor, and the pledgor agrees to the give the title loan lender a security interest in unencumbered titled personal property owned by the pledgor. The "loan property" is the certificate of title given to the lender by the pledgor.

**Section 3.** Provides licensing requirements for a title loan lender. Requires a person to obtain a license from the department. A separate license is required for each physical location of an office, and the license period is for 1 year. An applicant is required to submit an application, a nonrefundable license fee of $1,500, and a $250 nonrefundable investigation fee for an initial application for each office. The initial license fees payable by a single title loan lender with multiple title loan offices shall not exceed $15,000. An annual renewal fee of $1,500 per location is required. However, renewal fees paid by a single title loan lender with multiple title loan offices shall not exceed $15,000.

A license which is not renewed by its expiration date, automatically reverts to inactive status. A license may be reactivated within 3 months after it becomes inactive, upon submission of a reactivation form and payment of a reactivation fee. A license may not be reactivated more than 3 months after it becomes inactive.

Each license must specify the location for which the license is issued, and the license must be conspicuously displayed at that location. In order to move a title loan office to another location, a licensee must give 30 days prior written notice to the department, via certified or registered mail, so the department can amend the license. A license is not transferable or assignable. A licensee must designate and maintain an agent in Florida for service of process.

The department is authorized to deny an initial application for a license if the applicant or any person with power to direct the management or policies of the applicant is the subject of a pending criminal prosecution or governmental civil enforcement action, in any jurisdiction, until conclusion of such criminal prosecution or enforcement action.

If there is a change of ownership of 25 percent or greater in a title loan office, an individual is required to apply to the department for a new license, and pay the nonrefundable license and investigation fees, up to a maximum of $10,000. All monies collected by the department under this chapter would be deposited into the General Inspection Trust Fund for the sole purpose of implementing this act.

**Section 4.** Provides eligibility requirements for a license. An applicant must:
(1) Be of good moral character and not have been found guilty of a crime of moral turpitude;
(2) File with the department a surety bond or other acceptable collateral in the amount of $100,000 for each license, in favor of the department, the aggregate amount for a single title loan lender not to exceed $1 million. This bond is not subject to any judgment obtained against the title loan lender, but is enforceable by administrative proceedings before the department. The bond is only for payment of claims duly adjudicated by the department;
(3) Not have been convicted of a felony within the last 10 years or be acting as an ultimate equitable owner for someone who has been convicted of a felony in the last 10 years;
(4) Not have been convicted, and not be acting as an ultimate equitable owner for someone who has been convicted, of a crime that the department finds directly relates to the duties of a title loan lender within the last 10 years.

An applicant may not be a motor vehicle dealer licensed under chapter 320 or related to a licensed motor vehicle dealer by common officers, directors, principal, stockholders, agents, family or employees. If an applicant is a corporation or limited liability company, the above requirements apply to each director ultimate equitable owner of at least 25 percent of the outstanding equity interest of such corporation and to each director and executive officer.

**Section 5.** Provides application procedures for obtaining a title loan lending license. The applicant is required to file an application, in writing and under oath, containing the name, residence, and business address of the applicant; if the applicant is a partnership or association, every member thereof; and if a corporation, every officer or director or ultimate equitable owner of at least 25 percent. The applicant must also state whether any of the above has been arrested or convicted of, or is under indictment for, a felony or crime that directly relates to the duties and responsibilities of a title loan lender. An applicant must remit a nonrefundable license fee of $1,500, and a nonrefundable investigation fee in the amount of $250.

If the applicant is owned directly or beneficially by a person, pursuant to certain provisions of the Securities Exchange Act of 1934, the application need not disclose the full name and address of each officer, director, or shareholder.

The department is required to investigate the facts concerning a new applicant's eligibility before approving an application and issuing a license. This does not apply to renewals or reactivations.

The license must be displayed at the front desk or counter of the title loan office. A licensee is authorized to engage in the business of making loans under this act in a place of business within which other business is solicited or engaged in, unless the department finds that the conduct of such other business results in the evasion of this act, or that combining such other business activities results in practices that are detrimental, misleading, or unfair to consumers. However, a

license may not be granted to or renewed for any person or organization engaged in the pawnbroking business.

A license is not transferable or assignable, but may be invalidated by delivering it to the department with written notice of its surrender, by certified or registered mail, return receipt requested.

**Section 6.** Provides grounds for the suspension or revocation of a license. Grounds for suspension and revocation include the willful imposition of illegal or excessive charges, false or misleading advertising, fraudulent title loan transactions, failure to maintain the required records for inspection, refusal to permit the department to inspect books and records, being convicted of a crime involving fraud or dishonesty, conspiring with another person to violate this act, or being insolvent. In addition to the power to revoke, suspend or deny a license, the department is also authorized to issue a notice of noncompliance, or impose an administrative fine, not to exceed $5,000 for each violation. Other sanctions include placing a licensee or applicant on probation, issuing a reprimand, or placing permanent restrictions upon the issuance of a license.

Grounds for denial of a license or for revocation, suspension, or restriction of a license include: making a material misstatement of fact in an initial or renewal application for a license; having a license, registration or equivalent to practice any profession or occupation denied, suspended, revoked, or acted against for fraud, dishonest dealing, or any act of moral turpitude; being insolvent or having demonstrated a lack of honesty or financial responsibility; or the existence of a fact or condition, that if it had existed or had been known to exist at the time of the original issuance or the license, would have justified the department in refusing the license.

A licensee will be responsible for the acts of its employees and agents, if, with actual knowledge of such acts, it retained profits, benefits, or advantages resulting from such acts or ratified the conduct of the employee or agent as a matter of law or fact.

Notice and hearing requirements for this act are governed by chapter 120, F.S.

Any title loan agreement made by an unlicensed person is voidable, in which case the lender forfeits the right to collect any monies, including principal and finance charges, from the pledgor, and must return to the pledgor the loan property in connection with the agreement or the fair market value of the property.

**Section 7.** Provides for disclosures and terms for a title loan transaction form. The department is required to approve the design and format of the form. The form must include:

1. The make, model, and year of the titled personal property.
2. The vehicle identification number and license plate number.
3. The name, address, date of birth, physical description and social security number of the pledgor.
4. The date of the transaction.
5. The identification number and the type of identification, including the issuing agency accepted from the pledgor.
6. The amount of money advanced, which shall be designated as the amount financed.

7. The maturity date of the title loan agreement.
8. The total title loan charge payable on the maturity date, designated as the finance charge.
9. The total amount, amount financed plus finance charge, which must be paid to redeem the loan property on the maturity date.
10. The annual percentage rate, computed in accordance with the regulations adopted by the Federal Reserve Board pursuant to the Federal Truth-in-Lending Act.

In addition, the form would include the name and address of the title loan office and the name, address, and telephone number of the department which consumers may use to address complaints. The form must also state in 12 point or greater type that:

1. Your vehicle has been pledged as security for this loan and if you do not repay this loan in full, including the finance charge, YOU WILL LOSE YOUR VEHICLE.
2. You are encouraged to repay this loan at the end of the term. The lender is not required to extend or renew your loan. It is important that you plan your finances so that you can repay this loan as soon as possible.
3. THIS LOAN HAS A VERY HIGH INTEREST RATE. DO NOT COMPLETE THIS LOAN TRANSACTION IF YOU HAVE THE ABILITY TO BORROW FROM ANOTHER SOURCE AT AN ANNUAL PERCENTAGE RATE LOWER THAN THAT SHOWN ON THIS FORM.

Requires the form to contain the statement that "The pledgor represents and warrants that the titled personal property to which the loan property relates is not stolen, that it has no liens or encumbrances against it, that the pledgor has the right to enter into this transaction, and that the pledgor will not apply for a duplicate certificate of title while the title loan agreement is in effect."

Requires the pledgor to allow the title loan lender to keep possession of the certificate of title. Gives the pledgor the exclusive right to redeem the certificate of title by repaying the loan in full and by complying with the title loan agreement. If the pledgor fails to redeem the certificate of title at the end of the original agreement period, or at the end of any extension thereof, the title loan lender may take possession of the property. The title loan lender must retain physical possession of the certificate of title for the duration of the title loan agreement, but need not retain physical possession of the titled personal property.

**Section 8.** Establishes record keeping, reporting, and safekeeping of property requirements for the title loan lender. The lender is required to produce records at a reasonable and convenient location in Florida within a reasonable period of time after such a request by the department. The lender is required to maintain records for at least 2 years after making the final entry on any loan recorded. The department is authorized to establish the minimum information to be maintained.

**Section 9.** Establishes maximum title loan charges. In a title loan agreement, a title lender may contract for and receive a finance charge only. The total finance charge may not exceed 168 percent simple interest under a title loan agreement during the first year that it is in effect, and may not exceed 22 percent in any one month. A title lender may charge no more than 22 percent per month for 4 months during the first year, and no more than 10 percent per month thereafter.

Requires any extension of the original loan to be in writing and to clearly specify the new maturity date, the title loan finance charges paid for the extension, and title loan finance charges owed on the new maturity date, and a copy must be supplied to the pledgor. Prohibits a title loan lender from capitalizing on any unpaid finance charge as part of the amount financed in a subsequent title loan transaction. In the event that a title loan agreement is not satisfied within one year after its inception, the title loan lender may receive a finance charge on the outstanding principal balance at a rate not to exceed 18 percent per annum for the period of time that the loan remains outstanding beyond one year.

Any finance charge in excess of the amounts authorized under this act are prohibited, and are uncollectible, and render the agreement voidable. Upon the pledgor's written request mailed to the title loan lender, within 30 days after the maturity date, the title loan lender must return to the pledgor the loan property delivered to the title loan lender upon payment of the balance of the principal remaining due. Any action to circumvent the limitation on title loan interest or any other amounts collectible under this act is voidable.

A lender is authorized to collect from the pledgor any fees or taxes paid to a governmental agency and directly related to a loan transaction. Any such fees or taxes are in addition to the permitted finance charge.

**Section 10**. Authorizes a title loan lender to take possession of the titled personal property upon a pledgor's default or failure to redeem the pledged property on or before the maturity date of the title loan agreement. Requires the title loan lender who takes possession of the property to comply with the applicable requirement of part V of ch. 679, F.S., which discusses remedies and actions for default on secured transactions. Under part V, the pledgor is responsible for any deficiency after the sale of his personal property, unless otherwise agreed upon. The pledgor is entitled to any surplus from the sale of his property, after the lender deducts his reasonable expenses, including expenses of retaking, holding, preparing for sale or lease, and attorney's fees, if incurred.

**Section 11.** Delineates prohibited acts for a title loan lender, or any agent or employer of such a title loan lender. Prohibited acts include, in part, the following: falsifying any material matter in a title loan lender transaction form, refusing to allow the department to inspect records, entering into an agreement with a minor or knowingly entering into an agreement with someone under the influence of drugs or alcohol, failing to use reasonable care in safekeeping loan property, failing to return property to a pledgor upon repayment of a loan, selling or charging for insurance in connection with the agreement if the lender realizes a profit, engaging in business without first obtaining a license, charging a prepayment penalty, charging an unauthorized fee, and advertising using the words "interest free loans" or "no finance charges."

**Section 12**. Specifies that any person presenting identification as the pledgor and presenting the pledgor's copy of the title loan transaction form to the title loan lender is presumed to be entitled to redeem the loan property. However, if the title loan lender determines that the person is not the pledgor, the lender is not required to allow the redemption of the property by such person. Provides procedures for redeeming property. Requires the person redeeming the property to present the pledgor's copy of the title loan transaction form to the title loan lender, which the lender may retain as evidence of such person's receipt of the property.

If the pledgor's copy of the title loan transaction form is lost, stolen, or destroyed, the pledgor is required to notify the lender by certified or registered mail or in person, evidenced by a signed receipt. The pledgor must make a written statement of the loss, destruction, or theft of the pledgor's copy of the agreement.

**Section 13.** Authorizes the lender to record its security interest in the titled property to which the loan property relates by noting the lien on the certificate of title. This action deems the lender as a bona fide lienholder whose interest is perfected.

**Section 14.** Provides criminal penalties for any person who engages as a title loan lender without obtaining a license (third-degree felony), willfully violates this act, or willfully makes a false entry in any record required by the act (misdemeanor of the first degree). Possession of a certificate of title by a title loan lender shall not be considered a bailment of the titled personal property.

**Section 15.** Requires the Department of Law Enforcement, upon request, to supply to the department any arrest and conviction records in its possession of an individual applying or holding a license under this act.

**Section 16.** Authorizes the department to issue and serve subpoenas, to initiate enforcement actions, impose and collect fines, and adopt rules to administer and enforce this act.

**Section 17.** Authorizes the department to conduct examinations and investigations. Such investigations and examinations are limited to one during any 12-month period, unless the department has cause to believe that the licensee is not complying with the provisions of the act. Any person having reason to believe that this act has been violated is authorized to file a written complaint with the department.

**Section 18.** Appropriates from the General Inspection Trust Fund to the Department of Agriculture and Consumer Services, for fiscal year 1999-00, nine positions and $700,000 to administer the provisions of the act.

**Section 19.** Provides legislative intent stating that title loan should be regulated by the provisions of this act. The provisions of this act would supersede any other law affecting title loans to the extent of any conflict.

**Section 20.** Amends s. 538.03, F.S., relating to secondhand dealers, to delete references to title loans and title loan transactions, since the bill creates a separate act to regulate title loan transactions.

**Section 21**. Amends s. 538.16, F.S., to designate secondhand dealers as pawnbrokers for purposes of the disposal of property section. Eliminates references to title loan transactions, since the bill creates a separate act to regulate title loan transactions.

**Section 22**. Repeals subsection (5) of s. 538.06, F.S., and subsections (4) and (5) of s. 538.15, F.S., relating to prohibited title loan acts and transactions of secondhand dealers.

**Section 23**. Provides for an effective date of October 1, 1999, except that this section and section 18, which contains the appropriations for the act, shall take effect July 1, 1999, the first day of the state fiscal year.

## IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

This act would preempt the authority of local governments to adopt more stringent standards and ordinances regarding title loan rates.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

## V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

Applicants for a license would be required to submit a nonrefundable license application fee of $1,500, and a nonrefundable initial investigation fee of $250. A licensee would be required to remit $1,500 fee for an annual renewal.

B. Private Sector Impact:

The intent of this bill is to provide greater protection for consumers. It provides consumers with the right to redeem their property before it can be disposed of by the title loan lender, and sets the maximum amount of finance charge that a title loan lender may charge the consumer. In a title loan agreement, a title lender may contract for and receive a finance charge only. The finance charge may not exceed 168 percent simple interest under a title loan agreement during the first year it is in effect. However, the amount of interest charged in any one month may not exceed 22 percent. A title loan lender may not charge more than 22 percent per month for 4 months during the first year, and no more than 10 percent per month thereafter.

The bill imposes various requirements that would benefit consumers, including licensure and regulation by the Department of Agriculture and Consumer Services, surety bond requirements, suspension or revocation of a license or fines for various prohibited acts, disclosure of information on the title loan transaction form, and record keeping and reporting requirements.

The establishment of a statewide regulatory and licensure mechanism would benefit consumers by providing for the standardization of industry practices regarding loan

agreement terms and disclosures, maximum allowable amount of interest, and repossession procedures.

The persons subject to the provisions of this act will be required to pay an initial registration and investigation fee, and an annual registration fee thereafter. Registrants will be required to maintain a net worth of at least $1,000,000 or a $100,000 security. There will be no adverse effect on competition, since all title loan lenders are treated equally under this act.

C. Government Sector Impact:

The Department of Revenue, the agency with whom secondhand dealers are currently required to register, is not primarily a consumer protection agency. That function, as it relates to pawnbrokers, has been performed by the Department of Agriculture and Consumer Services. The Department of Revenue would be relieved of some of it regulatory duties, if the title loan lenders are licensed and regulated by the Department of Agriculture and Consumer Services.

The Department of Revenue estimates that 750 title lenders are presently registered with the department as secondhand dealers. However, there are estimated to be 5 lenders who own 140 title loan locations, and the budget projections must be adjusted accordingly, once a more precise number is received, since these 5 lenders will not have to pay more than $15,000 per year for licensing fees.

If 750 lenders apply for licensure for FY 1999-00, this would generate up to $1,125,000 in initiation application/renewal fees (750 X $1500) and up to $187,500 in initial investigation fees (750 X $250), (totaling $1,312,500).

The following table details the costs estimated by Department of Agriculture and Consumer Services to implement the bill.

| **Expenditures** | **FY 1999-00** | **FY 2000-01** | **FY 2001-02** |
|---|---|---|---|
| Non-Recurring: (capital expenditures, data processing) | $96,052 | $0 | $0 |
| Recurring: 9 FTEs | $382,333 | $393,803 | $405,616 |
| Expenses (Professional and travel) | $140,499 | $140,499 | $140,499 |
| Non-Operating Costs (Administrative and GR Service Charge) | $129,913 | $117,767 | $117,767 |
| **TOTAL COSTS** | **$866,527** | **$732,356** | **$746,433** |
| **TOTAL REVENUES** (Registration and investigation fees) | **$1,155,000** | **$990,000** | **$990,000** |

## VI. Technical Deficiencies:

None.

## VII. Related Issues:

Duval County has enacted an ordinance setting title loan interest rates at 19 percent per year. This ordinance takes effect May 1999. Palm Beach County and Leon County have begun drafting similar ordinances. The Florida League of Cities proposes that the counties and municipalities should be allowed to adopt more stringent standards and ordinances regarding title loan rates, and be allowed to set county and city rates lower than 96 percent per year.

## VIII. Amendments:

#1 by Agriculture and Consumer Services Committee:
Provides that Section 18, rather than Section 19, takes effect on July 1, 1999. Section 18 is the appropriations portion of the act, and will take effect the first day of the state fiscal year. Section 19 will take effect on October 1, 1999.

#2 by Agriculture and Consumer Services Committee:
Amends section 9 regarding title loan charges. It prohibits a title loan lender from charging a finance charge that exceeds 96 percent simple interest during the first year of the loan. The finance charge

may not exceed 22 percent per month during any month of the first year of the title loan agreement. (The bill limits the interest rate to 168 percent simple interest per year during the first year, and limits the monthly interest rate to 22 percent per month for the first 4 months, and no more than 10 percent per month thereafter.)

# 1 by Banking and Insurance Committee:
Amends section 2 regarding the definition of "title loan lender". The amendment specifically excludes any loans made pursuant to chapters 516 (Consumer Finance), 520 (Retail Installment Sales) or 655 (Financial Institutions).

# 2 by Banking and Insurance Committee:
Amends section 20 regarding secondhand dealers. The amendment, technical in nature, removes the term "title loan" from the definition of "transaction" under s. 538.03(1)(h) of the Secondhand Dealers Act.

# 1 by Fiscal Policy Committee:
This is amendment to amendment # 2 by Agriculture and Consumer Services Committee regarding the interest rate. The amendment specifies that: the finance charge may not exceed 96 percent during the first year; that the monthly interest charge cannot exceed 22 percent; and that the lender may not charge more than 22 percent per month for the first four months and no more than 1 percent per month thereafter. It also states that the lender may set the finance charge at 8 percent per month on a 12 month contract.

# 2 by Fiscal Policy Committee:
Amends section 9 on title loan charges to state that a payment on a title loan may not be considered late unless it is received more than 7 working days after the date it is due. The amendment further states that any late fees may not exceed 10 percent of the amount of the payment that is late.

# 3 by Fiscal Policy Committee:
Amends section 9 on title loan charges to state that interest on a title loan may be charged only on the principal amount of the loan and that interest may not be compounded.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.