

By Senator Childers

1-4B-99

1                                   A bill to be entitled  
2           An act relating to title loan transactions;  
3           creating the "Florida Title Loan Act";  
4           providing definitions; requiring licensure by  
5           the Department of Agriculture and Consumer  
6           Services to be in the business as a title loan  
7           lender; providing fees; providing for  
8           eligibility for licensure; providing for  
9           application; providing for suspension or  
10          revocation of license; providing for a title  
11          loan transaction form; providing for  
12          recordkeeping and reporting and safekeeping of  
13          property; providing for title loan charges;  
14          prohibiting certain acts; providing for the  
15          right to redeem; providing for lost title loan  
16          transaction forms; providing for a title loan  
17          lender's lien; providing for criminal  
18          penalties; providing for certain records from  
19          the Department of Law Enforcement; providing  
20          for subpoenas, enforcement of actions, and  
21          rules; providing a fine; providing for  
22          investigations and complaints; providing an  
23          appropriation; providing legislative intent;  
24          repealing s. 538.06(5), F.S., which allows a  
25          secondhand dealer to engage in a title loan  
26          transaction; repealing s. 538.15(4), (5), F.S.,  
27          which prohibit certain acts and practices by  
28          secondhand dealers; amending ss. 538.03,  
29          538.16, F.S.; deleting references to title  
30          loans; providing an effective date.  
31

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

2  
3 Section 1. Short title.--This act may be cited as the  
4 "Florida Title Loan Act."

5 Section 2. Definitions.--As used in this act, the  
6 term:

7 (1) "Department" means the Department of Agriculture  
8 and Consumer Services.

9 (2) "Commercially reasonable" means a sale or disposal  
10 which occurs and can be construed as an arms-length  
11 transaction. Nonpublic sales or disposal of personal property  
12 between licensees and business affiliates or family members  
13 are sales and disposal which are presumed not to be  
14 commercially reasonable.

15 (3) "Executive officer" means the president, chief  
16 executive officer, chief financial officer, chief operating  
17 officer, executive vice president, senior vice president,  
18 secretary, or treasurer.

19 (4) "Identification" means a government issued  
20 photographic identification.

21 (5) "Licensee" means a person who is licensed under  
22 this act.

23 (6) "Loan property" means any personal property  
24 certificate of title that is deposited with a title loan  
25 lender in the course of the title loan lender's business and  
26 is the subject of a title loan agreement.

27 (7) "Title loan agreement" means a written agreement  
28 whereby a title loan lender agrees to make a loan of a  
29 specific sum of money to a pledgor, and the pledgor agrees to  
30 give the title loan lender a security interest in unencumbered  
31

1 titled personal property, except by a title loan agreement,  
2 owned by the pledgor.

3 (8) "Title loan lender" means any person who is  
4 engaged in the business of making title loans or engaging in  
5 title loan agreements with pledgors.

6 (9) "Title loan office" means the location at which,  
7 or premises from which, a title loan lender regularly conducts  
8 business.

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

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

16 (12) "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 the person owns or  
21 controls such ownership interest through one or more natural  
22 persons or one or more proxies, powers of attorney, nominees,  
23 corporations, associations, partnerships, trusts, joint stock  
24 companies, or other entities or devices, or any combination  
25 thereof.

26 Section 3. License required; license fees.--

27 (1) A person may not engage in business as a title  
28 loan lender without a valid license issued by the department.  
29 A separate license is required for each physical location of a  
30 title loan office. The department shall issue more than one  
31

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

3 (2) An application for a license must be submitted to  
4 the department on forms prescribed by departmental rule. If  
5 the department determines that an application should be  
6 granted, it shall issue the license for a period not to exceed  
7 1 year. A nonrefundable license fee of \$1,500 and a  
8 nonrefundable investigation fee of \$250 must accompany an  
9 initial application for each title loan location. The revenue  
10 from these fees is intended to reasonably reflect the actual  
11 cost of regulation. However, in no event shall the initial  
12 license fees payable by a single title loan lender with  
13 multiple title loan offices exceed \$15,000 in the aggregate.

14 (3) A license must be renewed annually and must be  
15 accompanied by a nonrefundable fee of \$1,500. However, in no  
16 event shall the renewal fees payable by a single title loan  
17 lender with multiple title loan offices exceed \$15,000 in the  
18 aggregate. A license that is not renewed by its expiration  
19 date automatically reverts to inactive status. A license may  
20 be reactivated within 3 months after it becomes inactive, upon  
21 submission of a completed reactivation form and payment of a  
22 reactivation fee. A license may not be reactivated more than 3  
23 months after it becomes inactive.

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

31

1           (5) The department may deny an initial application for  
2 a license if the applicant or any person with power to direct  
3 the management or policies of the applicant is the subject of  
4 a pending criminal prosecution or governmental civil  
5 enforcement action in any jurisdiction until the conclusion of  
6 the criminal prosecution or enforcement action.

7           (6) A licensee must designate and maintain an agent in  
8 this state for service of process.

9           (7) A person must apply to the department for a new  
10 license upon the change of any person owning 25 percent or  
11 greater interest in any title loan office and must pay the  
12 nonrefundable license and investigation fees, up to a maximum  
13 of \$10,000.

14           (8) All moneys collected by the department under this  
15 act shall be deposited into the State Treasury to be placed in  
16 the General Inspection Trust Fund for the sole purpose of  
17 implementing this act.

18           Section 4. Eligibility for license.--

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

21           (a) Be of good moral character and not have been found  
22 guilty of a crime of moral turpitude.

23           (b) File with the department a bond in the amount of  
24 \$100,000 for each license with a surety company qualified to  
25 do business in this state. However, in no event shall the  
26 aggregate amount of the bond required for a single title loan  
27 lender exceed \$1 million. In lieu of the bond, the applicant  
28 may provide proof to the department that it has a net worth in  
29 excess of \$1 million; the applicant may provide to the  
30 department a current audited financial statement that  
31 documents that the applicant's net worth is in excess of \$1

1 million; or the applicant may establish a certificate of  
2 deposit or an irrevocable letter of credit in a Florida  
3 financial institution, as defined in chapter 655.005, Florida  
4 Statutes, in the amount of the bond. The original bond,  
5 certificate of deposit, or letter of credit must be filed with  
6 the department, and the department must be the beneficiary of  
7 the document. The bond, certificate of deposit, or letter of  
8 credit must be in favor of the department for the use and  
9 benefit of any consumer who is injured pursuant to a title  
10 loan transaction by the fraud, misrepresentation, breach of  
11 contract, financial failure, or violation of any provision of  
12 this act by the title loan lender. The liability may be  
13 enforced by an administrative action or lawsuit in a court of  
14 competent jurisdiction. However, in a lawsuit, the bond,  
15 certificate of deposit, or letter of credit posted with the  
16 department is not subject to any judgment or other legal  
17 process issuing out of or from such court in connection with  
18 the lawsuit, but the bond, certificate of deposit, or letter  
19 of credit is enforceable only by administrative proceedings  
20 before the department. It is the intent of the Legislature  
21 that such bond, certificate of deposit, or letter of credit  
22 shall be applicable and liable only for the payment of claims  
23 duly adjudicated by the department. The bond, certificate of  
24 deposit, or letter of credit shall be payable on a pro rata  
25 basis as determined by the department, but the aggregate  
26 amount may not exceed the amount of the bond, certificate of  
27 deposit, or letter of credit.

28 (c) Not have been convicted of a felony within the  
29 last 10 years or be acting on behalf of an ultimate equitable  
30 owner who has been convicted of a felony within the last 10  
31 years.

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

6           (2) An applicant for a title loan lending license may  
7 not be a motor vehicle dealer licensed under chapter 320 or be  
8 related to a licensed motor vehicle dealer by common officers,  
9 directors, principals, stockholders, agents, family, or  
10 employees.

11           (3) If an applicant for a title loan lending license  
12 is other than a corporation or limited liability company, the  
13 eligibility requirements of this section apply to each direct  
14 or ultimate equitable owner.

15           (4) If an applicant for a title loan lending license  
16 is a corporation or limited liability company, the eligibility  
17 requirements of this section apply to each direct or ultimate  
18 equitable owner of at least 25 percent of the outstanding  
19 equity interest of such corporation and to each director and  
20 executive officer.

21           Section 5. Application for license.--

22           (1) An application for a license to make title loans  
23 must be in writing, under oath, and in the form prescribed by  
24 departmental rule, and must contain the name and residence and  
25 business addresses of the applicant, and, if the applicant is  
26 a partnership or association, of every member thereof, and, if  
27 a corporation, of each executive officer and director and  
28 ultimate equitable owner of at least 25 percent thereof; must  
29 state whether any of the above has been arrested within the  
30 last 10 years for, convicted of, or is under indictment or  
31 information for, a felony or crime that directly relates to

1 the duties and responsibilities of a title loan lender, and,  
2 if so, the nature thereof; must specify the county and  
3 municipality, with the street and number or location, where  
4 the business is to be conducted; and must provide such further  
5 relevant information as the department requires by rule. At  
6 the time of application, the applicant must pay the  
7 nonrefundable license fees specified in section 3.  
8 Applications, except for applications to renew or reactivate a  
9 license, must be accompanied by a nonrefundable investigation  
10 fee of \$250.

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

22 (3) Upon the filing of an application for a license  
23 and payment of all applicable fees, the department shall,  
24 unless the application is to renew or reactivate an existing  
25 license, investigate the facts concerning the applicant's  
26 proposed activities. The department shall investigate the  
27 facts and shall approve an application and issue to the  
28 applicant a license that will evidence the authority to do  
29 business under this act if the department finds that the  
30 eligibility requirements for the license are satisfied. The  
31



1 license must be prominently displayed at the front desk or  
2 counter at the title loan office.

3 (4) A license that is not renewed by its expiration  
4 date shall automatically revert to inactive status. An  
5 inactive license may be reactivated upon submission of a  
6 completed reactivation application, payment of the annual  
7 license fee, and payment of a reactivation fee of \$250. A  
8 license expires on the date at which it has been inactive for  
9 3 months.

10 (5) A licensee may not change the place of business  
11 maintained under a license without giving prior written notice  
12 to the department.

13 (6) A licensee may make loans within a place of  
14 business in which other business is solicited or engaged in,  
15 unless the department finds that the conduct of the other  
16 business by the licensee results in the evasion of this act or  
17 combining such other business activities results in practices  
18 that are detrimental, misleading, or unfair to consumers. Upon  
19 such a finding, the department shall order the licensee to  
20 desist from such evasion or other business activities. A  
21 license may not be granted to or renewed for any person or  
22 organization engaged in the pawnbroking business.

23 (7) Licenses are not transferable or assignable. A  
24 licensee may invalidate any license by delivering it to the  
25 department with written notice of its surrender by certified  
26 or registered mail, return receipt requested, but such  
27 delivery does not affect any civil or criminal liability or  
28 the authority to enforce this act for acts committed in  
29 violation thereof.

30 Section 6. Suspension, revocation of license.--  
31

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

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

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

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

14           (d) Willful imposition of illegal or excessive charges  
15 in any title loan transaction;

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

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

22           (g) Aiding, abetting, or conspiring with another  
23 person to circumvent or violate this act;

24           (h) Refusal to permit inspection of books and records  
25 in an investigation or examination by the department or  
26 refusal to comply with a subpoena issued by the department; or

27           (i) Criminal conduct in the course of a person's  
28 business as a title loan lender.

29           (2) Upon a finding by the department that a person has  
30 committed an act prohibited by subsection (1), the department  
31 may:

- 1           (a) Issue a notice of noncompliance pursuant to  
2 section 120.695, Florida Statutes;  
3           (b) Deny an application for a license;  
4           (c) Revoke or suspend a license;  
5           (d) Place a licensee or an applicant on probation for  
6 a period of time and subject to such conditions as the  
7 department specifies;  
8           (e) Place permanent restrictions or conditions upon  
9 issuance or maintenance of a license;  
10           (f) Issue a reprimand; or  
11           (g) Impose an administrative fine not to exceed \$5,000  
12 for each act or violation.  
13           (3) In addition to the acts prohibited by subsection  
14 (1), the following acts are grounds for denial of a license or  
15 for revocation, suspension, or restriction of a license:  
16           (a) Making a material misstatement of fact in an  
17 initial or renewal application for a license;  
18           (b) Having a license, registration, or the equivalent,  
19 to practice any profession or occupation denied, suspended,  
20 revoked, or otherwise acted against by a licensing authority  
21 in any jurisdiction for fraud, dishonest dealing, or any act  
22 of moral turpitude;  
23           (c) Having been convicted or found guilty of a crime  
24 involving fraud, dishonest dealing, or any act of moral  
25 turpitude;  
26           (d) Being insolvent or having demonstrated a lack of  
27 honesty or financial responsibility; or  
28           (e) The existence of a fact or condition that, if it  
29 had existed or had been known to exist at the time of the  
30 original issuance of the license, would have justified the  
31 department in refusing a license.

1           (4) The department may take any action specified in  
2 subsection (2) as to any partnership, corporation, or  
3 association if the department finds grounds for such action as  
4 to any member of the partnership, as to any executive officer  
5 or director of the corporation or association, or as to any  
6 person who has power to direct the management or policies of  
7 the partnership, corporation, or association.

8           (5) A licensee is responsible for the acts of its  
9 employees and agents if, with actual knowledge of such acts,  
10 it retained profits, benefits, or advantages accruing from  
11 such acts or ratified the conduct of the employee or agent as  
12 a matter of law or fact.

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

15           (7) Any title loan agreement made by an unlicensed  
16 person is voidable, in which case the person forfeits the  
17 right to collect any moneys, including principal and finance  
18 charges, from the pledgor in connection with the agreement and  
19 must return to the pledgor the loan property in connection  
20 with the agreement or the fair market value of the property.

21           Section 7. Title loan transaction form.--

22           (1) At the time a title loan lender enters into each  
23 title loan agreement, the title loan lender shall complete a  
24 title loan transaction form for such transaction, and the  
25 pledgor shall sign such completed form. The department shall  
26 approve the design and format of the title loan transaction  
27 form, which shall elicit the information required under this  
28 section. In completing the title loan transaction form, the  
29 title loan lender shall record the following information,  
30 which must be typed or written indelibly and legibly in  
31 English:

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

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

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

9       (d) The date of the transaction.

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

13       (f) The amount of money advanced, which must be  
14 designated as the "amount financed."

15       (g) The maturity date of the title loan agreement.

16       (h) The total title loan charge payable on the  
17 maturity date, designated as the "finance charge."

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

22       (j) The annual percentage rate, computed in accordance  
23 with regulations adopted by the Federal Reserve Board pursuant  
24 to the Federal Truth-in-Lending Act.

25       (2) The following information must also be printed on  
26 title loan transaction forms:

27       (a) The name and address of the title loan office.

28       (b) The name and address of the department and a  
29 telephone number that consumers may use to make complaints.

30       (c) A statement in not less than 12-point type that:

31

1           1. Your vehicle has been pledged as security for this  
2 loan and if you do not repay this loan in full, including the  
3 finance charge, YOU WILL LOSE YOUR VEHICLE.

4           2. You are encouraged to repay this loan at the end of  
5 the term, The lender is not required to extend or renew your  
6 loan. It is important that you plan your finances so that you  
7 can repay this loan as soon as possible.

8           3. THIS LOAN HAS A VERY HIGH INTEREST RATE. DO NOT  
9 COMPLETE THIS LOAN TRANSACTION IF YOU HAVE THE ABILITY TO  
10 BORROW FROM ANOTHER SOURCE AT AN ANNUAL PERCENTAGE RATE LOWER  
11 THAN THAT SHOWN ON THIS FORM.

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

19           (e) Immediately above the signature of the pledgor,  
20 the statement that "I, the pledgor, declare under penalty of  
21 perjury that I have read the foregoing document and that to  
22 the best of my knowledge and belief the facts contained in it  
23 are true and correct."

24           (f) A blank line for the signature of the pledgor.

25           (3) At the time of the transaction, the title loan  
26 lender shall deliver to the pledgor an exact copy of the  
27 completed title loan transaction form.

28           (4) The pledgor shall agree for the title loan lender  
29 to keep possession of the certificate of title. The pledgor  
30 shall have the exclusive right to redeem the certificate of  
31 title by repaying the loan in full and by complying with the

1 title loan agreement. When the certificate of title is  
2 redeemed, the title loan lender shall release the security  
3 interest in the titled personal property and shall return the  
4 personal property certificate of title to the pledgor. The  
5 title loan agreement shall provide that upon failure by the  
6 pledgor to redeem the certificate of title at the end of the  
7 original agreement period, or at the end of any extension  
8 thereof, the title loan lender may take possession of the  
9 property. The title loan lender shall retain physical  
10 possession of the certificate of title for the duration of the  
11 title loan agreement, but may not be required to retain  
12 physical possession of the titled personal property at any  
13 time. A title loan lender may hold only unencumbered  
14 certificates of title for loan.

15 Section 8. Recordkeeping; reporting; safekeeping of  
16 property.--

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

25 (2) The department may allow the maintenance of books,  
26 accounts, and records at a location other than a principal  
27 place of business and may require them to be produced and  
28 available at a reasonable and convenient location in this  
29 state within a reasonable period of time.

30 (3) The title loan lender shall maintain the original  
31 copy of each completed title loan transaction form, and may

1 not obliterate, discard, or destroy any original copy, for at  
2 least 2 years after making the final entry on any loan  
3 recorded therein.

4 (4) All loan property, or property related to the  
5 title loan transaction, which is delivered to a title loan  
6 lender must be securely stored and maintained at the title  
7 loan office unless the title document has been forwarded to  
8 the appropriate state agency for the recording or deletion of  
9 a lien.

10 (5) The department may prescribe the minimum  
11 information to be shown in the books, accounts, and records of  
12 licensees so that the department can determine compliance with  
13 this act.

14 Section 9. Title loan charges.--

15 (1) In a title loan agreement, a title lender may  
16 contract for and receive a finance charge only. The finance  
17 charge may not exceed 168 percent simple interest under a  
18 title loan agreement during the first year it is in effect;  
19 however, the amount of interest charged in any one month may  
20 not exceed 22 percent, and a title loan lender may charge no  
21 more than 22 percent per month for 4 months during the first  
22 year and no more than 10 percent per month thereafter.

23 (2) Any extension must be executed in writing and must  
24 clearly specify the new maturity date, the title loan finance  
25 charges paid for the extension, and title loan finance charges  
26 owed on the new maturity date, and a copy must be supplied to  
27 the pledgor. A title loan lender may not capitalize any unpaid  
28 finance charge as part of the amount financed in a subsequent  
29 title loan transaction.

30 (3) If a title loan agreement is not satisfied within  
31 1 year after its inception, the title loan lender may receive



1 a finance charge on the outstanding principal balance at a  
2 rate not to exceed 18 percent per annum for the period of time  
3 that the loan remains outstanding beyond 1 year.

4 (4) Any finance charge contracted for or received,  
5 directly or indirectly, in excess of the amounts authorized  
6 under this section are prohibited, may not be collected, and  
7 render the title loan agreement voidable, in which case the  
8 title loan lender shall forfeit the right to collect any  
9 interest or finance charges. Upon the pledgor's written  
10 request delivered to the title loan lender by certified mail,  
11 return receipt requested, within 30 days after the maturity  
12 date, the title loan lender must return to the pledgor the  
13 loan property delivered to the title loan lender upon payment  
14 of the balance of the principal remaining due; there is no  
15 penalty for a violation resulting from an accidental and bona  
16 fide error that is corrected upon discovery. Any action to  
17 circumvent the limitation on title loan interest or any other  
18 amounts collectible under this act is voidable. Any  
19 transaction involving a person's delivery of a personal  
20 property certificate of title in exchange for the advancement  
21 of funds on the condition that the person shall or may redeem  
22 or repurchase the certificate of title upon the payment of a  
23 sum of money, whether the transaction is characterized as a  
24 "buy-sell agreement," "sale-leaseback agreement," or  
25 otherwise, is a violation of this act if the sum exceeds the  
26 amount that a title loan lender may collect in a title loan  
27 agreement or if the terms of the transaction otherwise  
28 conflict with the permitted terms and conditions of a title  
29 loan agreement.

30 (5) Any fees or taxes paid to a governmental agency  
31 and directly related to a particular title loan transaction

1 may be collected from the pledgor, in addition to the  
2 permitted finance charge.

3 Section 10. Failure to redeem; default.--

4 (1) Upon a pledgor's default under the title loan  
5 agreement or failure to redeem the pledged property on or  
6 before the maturity date of the title loan agreement, the  
7 title loan lender may take possession of the titled personal  
8 property.

9 (2) A title loan lender who takes possession of the  
10 titled personal property must comply with the applicable  
11 requirements of part V of chapter 679.

12 Section 11. Prohibited acts.--A title loan lender, or  
13 agent or employee of a title loan lender, may not:

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

16 (2) Refuse to allow the department to inspect  
17 completed title loan transaction forms or loan property during  
18 the ordinary hours of the title loan lender's business or at  
19 other times acceptable to both parties.

20 (3) Enter into a title loan agreement with a person  
21 under the age of 18 years.

22 (4) Make any agreement requiring or allowing for the  
23 personal liability of a pledgor or the waiver of any provision  
24 of this act.

25 (5) Knowingly enter into a title loan agreement with  
26 any person who is under the influence of drugs or alcohol when  
27 such condition is visible or apparent, or with any person  
28 using a name other than his or her own name or the registered  
29 name of his or her business.

30  
31

1           (6) Fail to exercise reasonable care in the  
2 safekeeping of loan property or titled personal property  
3 repossessed under this act.

4           (7) Fail to return loan property or repossessed titled  
5 personal property to a pledgor, with the title loan lender's  
6 liens on the property properly released, upon payment of the  
7 full amount due the title loan lender, unless the property has  
8 been seized or impounded by an authorized law enforcement  
9 agency, taken into custody by a court, or otherwise disposed  
10 of by court order.

11           (8) Sell or otherwise charge for insurance in  
12 connection with a title loan agreement, if the title loan  
13 lender realizes a profit thereon.

14           (9) Charge or receive any finance charge, interest, or  
15 fees which are not authorized by this act.

16           (10) Engage in business as a title loan lender without  
17 first securing the license.

18           (11) Refuse to accept a partial repayment of the  
19 amount financed, if all accrued finance charges have been  
20 paid.

21           (12) Charge a prepayment penalty.

22           (13) Advertise using the words "interest free loans"  
23 or "no finance charges."

24           Section 12. Right to redeem; lost title loan  
25 transaction form.--

26           (1) Any person presenting identification as the  
27 pledgor and presenting the pledgor's copy of the title loan  
28 transaction form to the title loan lender is presumed to be  
29 entitled to redeem the loan property described in the title  
30 loan lender transaction form. However, if the title loan  
31 lender determines that the person is not the pledgor, the

1 title loan lender is not required to allow the redemption of  
2 the loan property by such person. The person redeeming the  
3 loan property must sign the pledgor's copy of the title loan  
4 transaction form, which the title loan lender may retain to  
5 evidence such person's receipt of the loan property. A person  
6 redeeming the loan property who is not the pledgor must show  
7 identification to the title loan lender and written  
8 authorization from the pledgor, and the title loan lender must  
9 record that person's name and address on the title loan  
10 transaction form retained by the title loan lender. In such  
11 case, the person redeeming the pledgor's copy of the title  
12 loan transaction form must be given a copy of the signed form  
13 as evidence of the concerned transaction.

14 (2) If the pledgor's copy of the title loan  
15 transaction form is lost, destroyed, or stolen, the pledgor  
16 must notify the title loan lender in writing by certified or  
17 registered mail, return receipt requested, or in person  
18 evidenced by a signed receipt, and receipt of the notice  
19 invalidates the title loan transaction form if the loan  
20 property has not previously been redeemed. Before delivering  
21 the loan property or issuing a new title loan transaction  
22 form, the title loan lender shall require the pledgor to make  
23 a written statement of the loss, destruction, or theft of the  
24 pledgor's copy of the title loan transaction form. The title  
25 loan lender shall record on the written statement the type of  
26 identification and the identification number accepted from the  
27 pledgor, the date the statement is given, and the number or  
28 date of the title loan transaction form lost, destroyed, or  
29 stolen. The statement must be signed by the title loan lender  
30 or the title loan office employee who accepts the statement  
31 from the pledgor.

1           Section 13. Title loan lender's lien.--

2           (1) The title loan lender may record its security  
3 interest in the titled personal property to which the loan  
4 property relates by noting the lien on the certificate of  
5 title.

6           (2) The title loan lender is, upon entering into a  
7 title loan agreement and taking possession of the borrower's  
8 certificate of title, a bona fide lienholder whose interest  
9 has been perfected.

10          Section 14. Criminal penalties.--

11          (1) A person who engages in business as a title loan  
12 lender without a license commits a felony of the third degree,  
13 punishable as provided in section 775.082, Florida Statutes,  
14 section 775.083, Florida Statutes, or section 775.084, Florida  
15 Statutes.

16          (2) In addition to any other penalty, any person who  
17 willfully violates this act or who willfully makes a false  
18 entry in any record specifically required by this act commits  
19 a misdemeanor of the first degree, punishable as provided in  
20 section 775.082, Florida Statutes, or section 775.083, Florida  
21 Statutes.

22          (3) The possession of a certificate of title by a  
23 title loan lender pursuant to a title loan agreement shall not  
24 be considered a bailment of the titled personal property.

25          Section 15. Records from the Department of Law  
26 Enforcement.--The Department of Law Enforcement, on request,  
27 shall supply to the department any arrest and conviction  
28 records in its possession of an individual applying for or  
29 holding a license under this act.

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

31

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

15           (2) In addition to other powers to administer this  
16 act, the department may:

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

24           (b) Issue and serve upon a person an order requiring  
25 that person to cease and desist and take corrective action  
26 whenever the department finds that such person is violating,  
27 has violated, or is about to violate this act, any rule or  
28 order adopted under this act, or any written agreement entered  
29 into with the department.

30           (c) If the department finds that conduct described in  
31 paragraph (b) presents an immediate danger to the public

1 health, safety, or welfare requiring an immediate final order,  
2 issue an emergency cease and desist order reciting with  
3 particularity the facts underlying such findings. The  
4 emergency cease and desist order is effective immediately upon  
5 service of a copy of the order on the respondent named therein  
6 and remains effective for 90 days. If the department begins  
7 nonemergency proceedings under paragraph (b), the order  
8 remains effective until the conclusion of the proceedings  
9 under sections 120.569 and 120.57, Florida Statutes.

10 (d) Impose and collect an administrative fine against  
11 any person found to have violated this act, any rule or order  
12 adopted under this act, or any written agreement entered into  
13 with the department, in an amount not to exceed \$5,000 for  
14 each violation.

15 (3) The department may adopt rules to administer this  
16 act.

17 Section 17. Investigations and complaints.--

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

29 (2) Any person having reason to believe that this act  
30 has been violated may file with the department a written  
31 complaint setting forth the details of the alleged violations

1 and the department, upon receipt of the complaint, may inspect  
2 the pertinent books, records, letters, and contracts of the  
3 licensee and of the seller involved, relating to the  
4 complaint.

5 Section 18. The sum of \$700,000 is appropriated from  
6 the General Inspection Trust Fund to the Department of  
7 Agriculture and Consumer Services to administer this act and  
8 to pay the salaries and other administrative expenses for nine  
9 positions to implement this act during the 1999-2000 fiscal  
10 year.

11 Section 19. Legislative intent.--It is the intent of  
12 the Legislature that title loans shall be regulated by this  
13 act. This act supersedes any other law affecting title loans  
14 to the extent of the conflict.

15 Section 20. Subsection (1) of section 538.03, Florida  
16 Statutes, is amended to read:

17 538.03 Definitions; applicability.--

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

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

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

29 (b) "Precious metals dealer" means a secondhand dealer  
30 who normally or regularly engages in the business of buying  
31 used precious metals for resale. The term does not include



1 those persons involved in the bulk sale of precious metals  
2 from one secondhand or precious metals dealer to another.

3 (c) "Pawnbroker" means any person, corporation, or  
4 other business organization or entity which is regularly  
5 engaged in the business of making pawns but does not include a  
6 financial institution as defined in s. 655.005 or any person  
7 who regularly loans money or any other thing of value on  
8 stocks, bonds, or other securities.

9 (d) "Pawn" means either of the following transactions:

10 1. Loan of money.--A written or oral bailment of  
11 personal property as security for an engagement or debt,  
12 redeemable on certain terms and with the implied power of sale  
13 on default.

14 2. Buy-sell agreement.--An agreement whereby a  
15 purchaser agrees to hold property for a specified period of  
16 time to allow the seller the exclusive right to repurchase the  
17 property. A buy-sell agreement is not a loan of money.

18 (e) "Secondhand store" means the place or premises at  
19 which a secondhand dealer is registered to conduct business as  
20 a secondhand dealer, or conducts business, including pawn  
21 shops.

22 (f) "Consignment shop" means a shop engaging in the  
23 business of accepting for sale, on consignment, secondhand  
24 goods which, having once been used or transferred from the  
25 manufacturer to the dealer, are then received into the  
26 possession of a third party.

27 (g) "Secondhand goods" means personal property  
28 previously owned or used, which is not regulated metals  
29 property regulated under part II and which is purchased,  
30 consigned, or pawned as used property. Such secondhand goods  
31 shall be limited to watches; diamonds, gems, and other

1 precious stones; fishing rods, reels, and tackle; audio and  
2 video electronic equipment, including television sets, compact  
3 disc players, radios, amplifiers, receivers, turntables, tape  
4 recorders; video tape recorders; speakers and citizens' band  
5 radios; computer equipment; radar detectors; depth finders;  
6 trolling motors; outboard motors; sterling silver flatware and  
7 serving pieces; photographic equipment, including cameras,  
8 video and film cameras, lenses, electronic flashes, tripods,  
9 and developing equipment; microwave ovens; animal fur coats;  
10 marine equipment; video games and cartridges; power lawn and  
11 landscape equipment; office equipment such as copiers, fax  
12 machines, and postage machines but excluding furniture; sports  
13 equipment; golf clubs; weapons, including knives, swords, and  
14 air guns; telephones, including cellular and portable;  
15 firearms; tools; calculators; musical instruments, excluding  
16 pianos and organs; lawnmowers; bicycles; typewriters; motor  
17 vehicles; gold, silver, platinum, and other precious metals  
18 excluding coins; and jewelry, excluding costume jewelry.

19 (h) "Transaction" means any title loan, purchase,  
20 consignment, or pawn of secondhand goods by a secondhand  
21 dealer.

22 ~~(i) "Title loan" means a loan of money secured by~~  
23 ~~bailment of a certificate of title to a motor vehicle. A~~  
24 ~~title loan is not a pawn if the secondhand dealer does not~~  
25 ~~maintain physical possession of the vehicle throughout the~~  
26 ~~term of the transaction.~~

27 (i)~~(j)~~ "Precious metals" means any item containing any  
28 gold, silver, or platinum, or any combination thereof,  
29 excluding:

30 1. Any chemical or any automotive, photographic,  
31 electrical, medical, or dental materials or electronic parts.

- 1           2. Any coin with an intrinsic value less than its  
3           3. Any gold bullion coin.  
4           4. Any gold, silver, or platinum bullion that has been  
6           5. Any coin which is mounted in a jewelry setting.  
7           ~~(k)~~ "Department" means the Department of Revenue.  
            (k)~~(l)~~

9           Section 21. Subsection (1) of section 538.16, Florida  
10 Statutes, is amended to read:

Pawnbrokers ~~Secondhand dealers~~; disposal of  
12 property.--

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

23           Section 22. Subsection (5) of section 538.06, Florida  
24 Statutes, and subsections (4) and (5) of section 538.15,  
25 Florida Statutes, are repealed.

26           Section 23. This act shall take effect October 1,  
27 1999, except that this section and section 19 shall take  
28 effect July 1, 1999.

29  
30  
31

1  
2  
3  
4  
5  
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

\*\*\*\*\*

SENATE SUMMARY

Creates the Florida Title Loan Act. Requires a person to be licensed as a title loan lender by the Department of Agriculture and Consumer Services to engage in the business of making title loans. Prescribes fees. Provides definitions. Provides procedures for proving eligibility for a license, application for a license, and revocation or suspension of a license. Prescribing title loan application forms. Requires recordkeeping, reporting, and safekeeping of pledged property. Authorizes title loan charges. Authorizes a lender to take possession of pledged property if the pledgor defaults under the title loan agreement or fails to redeem the pledged property on or before the maturity date of the agreement. Prohibits lenders from engaging in certain acts. Provides the pledgor of property with a right to redeem. Provides that a lender may record its security interest in the pledged property by noting the lien on the certificate of title. Provides criminal penalties. Requires the Department of Law Enforcement to supply information, upon request of the Department of Agriculture and Consumer Services, relating to an applicant for license. Provides the department with investigative and subpoena powers, and authorizes it to take other legal enforcement actions through the courts. Authorizes the department to impose administrative fines against any person violating the act. Repeals s. 538.06(5), F.S., which authorizes secondhand dealers to engage in title loan transactions. Repeals s. 538.15(4), (5), F.S., which prohibits a secondhand dealer from engaging in both pawn transactions and title loan transactions from the same dealer location and from using the words "pawn" or "pawnbroker" in the dealer's business if the dealer engages in title loan transactions.