

Bill No. CS for SB's 1834 & 694

Amendment No. ____

| <u>Senate</u> | CHAMBER ACTION | <u>House</u> |
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Senator Latvala moved the following amendment:

Senate Amendment (with title amendment)

Delete everything after the enacting clause

and insert:

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

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

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

(1) "Commercially reasonable" has the same meaning as used in part V of chapter 679, Florida Statutes. In addition, nonpublic sales or disposal of personal property between a title loan lender and any business affiliates of a title loan lender or a member of a title loan lender's family are presumed not to be made in a commercially reasonable manner.

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

3 (3) "Executive officer" means the president, chief
4 executive officer, chief financial officer, chief operating
5 officer, executive vice president, senior vice president,
6 secretary, and treasurer.

7 (4) "Identification" means a government-issued
8 photographic identification.

9 (5) "Interest" means the cost of obtaining a title
10 loan and includes any profit or advantage of any kind
11 whatsoever that a title loan lender may charge, contract for,
12 collect, receive, or in any way obtain as a result of a title
13 loan.

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

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

19 (8) "Loan property" means any motor vehicle
20 certificate of title that is deposited with a title loan
21 lender as a security for a title loan in the course of the
22 title loan lender's business.

23 (9) "Motor vehicle" means an automobile, motorcycle,
24 mobile home, truck, trailer, semitrailer, truck tractor and
25 semitrailer combination, or any other vehicle operated on the
26 public highways and streets of this state, used to transport
27 persons or property, and propelled by power other than
28 muscular power, but excluding a vehicle which runs only upon a
29 track and a mobile home that is the primary residence of the
30 owner.

31 (10) "Title loan" or "loan" means a loan of money

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1 secured by bailment of a certificate of title to a motor
2 vehicle, except such loan made by a person licensed under
3 chapter 516, chapter 520, chapter 655, chapter 657, chapter
4 658, chapter 660, chapter 663, chapter 665, or chapter 667,
5 Florida Statutes, or a person who complies with s. 687.03,
6 Florida Statutes.

7 (11) "Title loan agreement" or "agreement" means a
8 written agreement in which a title loan lender agrees to make
9 a title loan to a borrower.

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

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

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

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

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

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1 (1) A person may not act as a title loan lender or own
2 or operate a title loan office unless such person has an
3 active title loan lender license issued by the department
4 under this act. A title loan lender may not own or operate
5 more than one title loan office unless the lender obtains a
6 separate title loan lender license for each title loan office.

7 (2) A person applying for licensure as a title loan
8 lender shall file with the department an application, the bond
9 required by section 5(3), a nonrefundable application fee of
10 \$1,200, a nonrefundable investigation fee of \$200, and a
11 complete set of fingerprints taken by an authorized law
12 enforcement officer. The department shall submit such
13 fingerprints to the Department of Law Enforcement for state
14 processing and the Department of Law Enforcement shall forward
15 the fingerprints to the Federal Bureau of Investigation for
16 national processing.

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

20 (4) A license shall be renewed biennially by filing a
21 renewal form and a nonrefundable renewal fee of \$1,200. A
22 license that is not renewed by the end of the biennial period
23 shall automatically revert to inactive status. An inactive
24 license may be reactivated within 6 months after becoming
25 inactive by filing a reactivation form, payment of the
26 nonrefundable \$1,200 renewal fee, and payment of a
27 nonrefundable reactivation fee of \$600. A license that is not
28 reactivated within 6 months after becoming inactive may not be
29 reactivated and shall automatically expire. The department
30 shall establish by rule the procedures for renewal and
31 reactivation of a license and shall adopt a renewal form and a

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1 reactivation form.

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

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

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

10 (8) Whenever a person or a group of persons, directly
11 or indirectly or acting by or through one or more persons,
12 proposes to purchase or acquire a 50 percent or more interest
13 in a licensee, such person or group shall submit an initial
14 application for licensure under this act prior to such
15 purchase or acquisition.

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

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

22 Section 5. Application for license.--

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

25 (a) Contain the name and the residence and business
26 address of the applicant. If the applicant is other than a
27 natural person, the application shall contain the name and the
28 residence and business address of each ultimate equitable
29 owner of 10 percent or more of such entity and each director,
30 general partner, and executive officer of such entity.

31 (b) State whether any individual identified in

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1 paragraph (a) has, within the last 10 years, pleaded nolo
2 contendere to, or has been convicted or found guilty of, a
3 felony, regardless of whether adjudication was withheld.

4 (c) Identify the county and municipality with the
5 street and number or location where the business is to be
6 conducted.

7 (d) Contain additional information as the department
8 determines by rule to be necessary to ensure compliance with
9 this act.

10 (2) Notwithstanding subsection (1), the application
11 need not state the full name and address of each officer,
12 director, and shareholder if the applicant is owned directly
13 or beneficially by a person who as an issuer has a class of
14 securities registered pursuant to section 12 of the Securities
15 Exchange Act of 1934 or, pursuant to section 13 or section
16 15(d) of such act, is an issuer of securities which is
17 required to file reports with the Securities and Exchange
18 Commission, if the person files with the department any
19 information, documents, and reports required by such act to be
20 filed with the Securities and Exchange Commission.

21 (3) An applicant for licensure shall file with the
22 department a bond, in the amount of \$100,000 for each license,
23 with a surety company qualified to do business in this state.
24 However, in no event shall the aggregate amount of the bond
25 required for a single title loan lender exceed \$1 million. In
26 lieu of the bond, the applicant may establish a certificate of
27 deposit or an irrevocable letter of credit in a financial
28 institution, as defined in s. 655.005, Florida Statutes, in
29 the amount of the bond. The original bond, certificate of
30 deposit, or letter of credit shall be filed with the
31 department, and the department shall be the beneficiary to

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

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

27 Section 6. Denial, suspension, or revocation of
28 license.--

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

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

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

7 (c) Fraudulent misrepresentation, circumvention, or
 8 concealment of any matter required to be stated or furnished
 9 to a borrower pursuant to this act, regardless of reliance by
 10 or damage to the borrower.

11 (d) Imposition of illegal or excessive charges in any
 12 title loan transaction.

13 (e) False, deceptive, or misleading advertising by a
 14 title loan lender.

15 (f) Failure to maintain, preserve, and keep available
 16 for examination all books, accounts, or other documents
 17 required by this act, by any rule or order adopted pursuant to
 18 this act, or by any agreement entered into with the
 19 department.

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

23 (h) Refusal to provide information upon request of the
 24 department, to permit inspection of books and records in an
 25 investigation or examination by the department, or to comply
 26 with a subpoena issued by the department.

27 (i) Pleading nolo contendere to or having been
 28 convicted or found guilty, regardless of whether adjudication
 29 was withheld, of a crime involving fraud, dishonest dealing,
 30 or any act of moral turpitude or acting as an ultimate
 31 equitable owner of 10 percent or more of a licensee who has

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1 pled nolo contendere to or has been convicted or found guilty,
2 regardless of whether adjudication was withheld, of a crime
3 involving fraud, dishonest dealing, or any act of moral
4 turpitude.

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

7 (k) Having been the subject of any decision, finding,
8 injunction, suspension, prohibition, revocation, denial,
9 judgment, or administrative order by any court of competent
10 jurisdiction or administrative law judge, or by any state or
11 federal agency, involving a violation of any federal or state
12 law relating to title loans or any rule or regulation adopted
13 under such law, or has been the subject of any injunction or
14 adverse administrative order by a state or federal agency
15 regulating banking, insurance, finance or small loan
16 companies, real estate, mortgage brokers, or other related or
17 similar industries for acts involving fraud, dishonest
18 dealing, or any act of moral turpitude.

19 (l) Failing to continuously maintain the bond,
20 certificate of deposit, or letter of credit required by
21 section 5(3).

22 (m) Failing to timely pay any fee, charge, or fine
23 imposed or assessed pursuant to this act or rules adopted
24 under this act.

25 (n) Having a license or registration, or the
26 equivalent, to practice any profession or occupation denied,
27 suspended, revoked, or otherwise acted against by a licensing
28 authority in any jurisdiction for fraud, dishonest dealing, or
29 any act of moral turpitude.

30 (o) Having demonstrated unworthiness, as defined by
31 department rule, to transact the business of a title loan

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1 lender.

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

6 (a) Denying an application for licensure under this
7 act.

8 (b) Revoking or suspending a license previously
9 granted pursuant to this act.

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

13 (d) Issuing a reprimand.

14 (e) Imposing an administrative fine not to exceed
15 \$5,000 for each separate act or violation.

16 (3) If a person seeking licensure is anything other
17 than a natural person, the eligibility requirements of this
18 section apply to each direct or ultimate equitable owner of 10
19 percent or more of the outstanding equity interest of such
20 entity and to each director, general partner, and executive
21 officer.

22 (4) It is sufficient cause for the department to take
23 any of the actions specified in subsection (2), as to any
24 entity other than a natural person, if the department finds
25 grounds for such action as to any member of such entity, as to
26 any executive officer or director of the entity, or as to any
27 person with power to direct the management or policies of the
28 entity.

29 (5) Each licensee is subject to the provisions of
30 subsection (2) for the acts of employees and agents of the
31 licensee if the licensee knew or should have known about such

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1 acts.

2 (6) Licensure under this act may be denied or any
3 license issued under this act may be suspended or restricted
4 if an applicant or licensee is charged, in a pending
5 enforcement action or pending criminal prosecution, with any
6 conduct that would authorize denial or revocation under this
7 section.

8 Section 7. Remedies for title loans made without
9 licensure.--Any title loan made without benefit of a license
10 is void, in which case the person making the title loan
11 forfeits the right to collect any moneys, including principal
12 and interest charged on the title loan, from the borrower in
13 connection with such agreement. The person making the title
14 loan shall return to the borrower the loan property, the
15 titled personal property pledged or the fair market value of
16 such titled personal property, and all principal and interest
17 paid by the borrower. The borrower is entitled to receive
18 reasonable attorney's fees and costs in any action brought by
19 the borrower to recover from the person making the title loan
20 the loan property, the titled personal property, or the
21 principal and interest paid by the borrower.

22 Section 8. Title loan agreement.--

23 (1) At the time a title loan lender makes a title
24 loan, the lender and the borrower shall execute a title loan
25 agreement, which shall be legibly typed or written in
26 indelible ink and completed as to all essential provisions
27 prior to execution by the borrower and lender. The title loan
28 agreement shall include the following information:

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

31 (b) The vehicle identification number, or other

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1 comparable identification number, along with the license plate
2 number, if applicable, of the titled personal property to
3 which the loan property relates.

4 (c) The name, residential address, date of birth,
5 physical description, and social security number of the
6 borrower.

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

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

12 (f) The amount of money advanced, designated as the
13 "amount financed."

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

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

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

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

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

28 (a) The name and physical address of the title loan
29 office.

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

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

3 1. If the borrower fails to repay the full amount of
4 the title loan on or before the end of the maturity date or
5 any extension of the maturity date and fails to make a payment
6 on the title loan within 30 days after the end of the maturity
7 date or any extension of the maturity date, whichever is
8 later, the title loan lender may take possession of the
9 borrower's motor vehicle and sell the vehicle in the manner
10 provided by law. If the vehicle is sold, the borrower is
11 entitled to any proceeds of the sale in excess of the amount
12 owed on the title loan and the reasonable expenses of
13 repossession and sale.

14 2. If the title loan agreement is lost, destroyed, or
15 stolen, the borrower should immediately so advise the issuing
16 title loan lender in writing.

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

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

26 All owners of the titled personal property must sign
27 the title loan agreement.

28 (3) At the time of the transaction, the title loan
29 lender shall deliver to the borrower an exact copy of the
30 executed title loan agreement.

31 (4) Upon execution of a title loan agreement, the

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1 title loan lender may take possession of the loan property and
2 retain possession of such property until such property is
3 redeemed. The borrower shall have the exclusive right to
4 redeem the loan property by repaying all amounts legally due
5 under the agreement. When the loan property is redeemed, the
6 lender shall immediately return the loan property and commence
7 action to release any security interest in the titled personal
8 property. During the term of the agreement or any extension of
9 the agreement, a title loan lender may retain physical
10 possession of the loan property only. A title loan lender
11 shall not require a borrower to provide any additional
12 security or guaranty as a condition to entering into a title
13 loan transaction.

14 Section 9. Recordkeeping; reporting; safekeeping of
15 property.--

16 (1) Every title loan lender shall maintain, at the
17 lender's title loan office, such books, accounts, and records
18 of the business conducted under the license issued for such
19 place of business as will enable the department to determine
20 the licensee's compliance with this act.

21 (2) The department may authorize the maintenance of
22 books, accounts, and records at a location other than the
23 lender's title loan office. The department may require books,
24 accounts, and records to be produced and available at a
25 reasonable and convenient location in this state within a
26 reasonable period of time after such a request.

27 (3) The title loan lender shall maintain the original
28 copy of each completed title loan agreement on the title loan
29 office premises, and shall not obliterate, discard, or destroy
30 any such original copy, for a period of at least 2 years after
31 making the final entry on any loan recorded in such office or

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1 after a department examination, whichever is later.

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

7 (5) The department may prescribe by rule the books,
8 accounts, and records, and the minimum information to be shown
9 in the books, accounts, and records, of licensees so that such
10 records will enable the department to determine compliance
11 with the provisions of this act.

12 Section 10. Title loan charges.--

13 (1) A title loan lender may charge a maximum interest
14 rate of 30 percent per annum computed on the first \$2,000 of
15 the principal amount, 24 percent per annum on that part of the
16 principal amount exceeding \$2,000 and not exceeding \$3,000,
17 and 18 percent per annum on that part of the principal amount
18 exceeding \$3,000. The original principal amount is the same
19 amount as the amount financed, as defined by the federal Truth
20 in Lending Act and Regulation Z of the Board of Governors of
21 the Federal Reserve System. In determining compliance with the
22 statutory maximum interest, the computations must be simple
23 interest and not add-on interest or any other computations.
24 When two or more interest rates are to be applied to the
25 principal amount, the lender may charge interest at that
26 single annual percentage rate which, if applied according to
27 the actuarial method to each of the scheduled periodic
28 balances of principal, would produce at maturity the same
29 total amount of interest as would result from the application
30 of the two or more rates otherwise permitted, based upon the
31 assumption that all payments are made as agreed.

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

13 (3) A title loan agreement may be extended for one or
14 more 30-day periods by mutual consent of the title loan lender
15 and the borrower. Each extension of a title loan agreement
16 shall be executed in a separate extension agreement each of
17 which shall comply with the requirements for executing a title
18 loan agreement as provided in this act. The interest rate
19 charged in any title loan extension agreement shall not exceed
20 the interest rate charged in the related title loan agreement.
21 A title loan lender may not capitalize in any title loan
22 extension agreement any unpaid interest due on the related
23 title loan agreement or any subsequent extensions to that
24 title loan agreement.

25 (4) Any interest contracted for or received, directly
26 or indirectly, by a title loan lender, or an agent of the
27 title loan lender, in excess of the amounts authorized under
28 this chapter are prohibited and may not be collected by the
29 title loan lender or an agent of the title loan lender.

30 (a) If such excess interest resulted from a bona fide
31 error by the title loan lender, or an agent of the title loan

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1 lender, the title loan agreement shall be voidable and the
2 lender shall refund the excess interest to the borrower within
3 20 days after discovery by the lender or borrower of the bona
4 fide error, whichever occurs first.

5 (b) If such excess interest resulted from an act by
6 the title loan lender, or an agent of the title loan lender,
7 to circumvent the maximum title loan interest allowed by this
8 act, the title loan agreement is void. The lender shall refund
9 to the borrower any interest paid on the title loan and return
10 to the borrower the loan property. The title loan lender
11 forfeits the lender's right to collect any principal owed by
12 the borrower on the title loan.

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

16 (5) Any interest contracted for or received, directly
17 or indirectly, by a title loan lender, or an agent of the
18 title loan lender, in excess of the amount allowed by this act
19 constitutes a violation of chapter 687, Florida Statutes,
20 governing interest and usury, and the penalties of that
21 chapter apply.

22 Section 11. Repossession, disposal of pledged
23 property; excess proceeds.--

24 (1) If a borrower fails to repay all amounts legally
25 due under the title loan agreement on or before the end of the
26 title loan's maturity date or any extension of such date and
27 fails to make a payment on the loan within 30 days after the
28 end of the loan's maturity date or any extension of such date,
29 whichever is later, the title loan lender may take possession
30 of the titled personal property. A lender may take possession
31 of the titled personal property only through an agent who is

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1 licensed by the state to repossess motor vehicles.

2 (2) Prior to engaging a repossession agent, the lender
3 shall afford the debtor an opportunity to make the titled
4 personal property available to the lender at a place, date,
5 and time reasonably convenient to the lender and the borrower.
6 Prior to taking possession of titled personal property, the
7 lender shall afford the borrower a reasonable opportunity to
8 remove from the titled personal property any personal
9 belongings without charge or additional cost to the borrower.
10 After the lender takes possession of the titled personal
11 property, the lender, at the lender's sole expense and risk,
12 may authorize a third party to retain physical possession of
13 the titled personal property.

14 (3) Upon taking possession of titled personal
15 property, the lender may dispose of the titled personal
16 property by sale but may do so only through a motor vehicle
17 dealer licensed under s. 320.27, Florida Statutes. At least 10
18 days prior to sale, the lender shall notify the borrower of
19 the date, time, and place of the sale and provide the borrower
20 with a written accounting of the principal amount due on the
21 title loan, interest accrued through the date the lender takes
22 possession of the titled personal property, and any reasonable
23 expenses incurred to date by the lender in taking possession
24 of, preparing for sale, and selling the titled personal
25 property. At any time prior to such sale, the lender shall
26 permit the borrower to redeem the titled personal property by
27 tendering a money order or certified check for the principal
28 amount of the title loan, interest accrued through the date
29 the lender takes possession, and any reasonable expenses
30 incurred to date by the lender in taking possession of,
31 preparing for sale, and selling the titled personal property.

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1 Nothing in this act nor in any title loan agreement shall
2 preclude a borrower from purchasing the titled personal
3 property at any sale.

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

7 (5) Within 30 days after the sale of the titled
8 personal property, the borrower is entitled to receive all
9 proceeds from the sale of the motor vehicle in excess of the
10 principal amount due on the loan, interest on the loan up to
11 the date the lender took possession, and the reasonable
12 expenses incurred by the lender in taking possession of,
13 preparing for sale, and selling the titled personal property.
14 The borrower is entitled to reasonable attorney's fees and
15 costs incurred in any action brought to recover such proceeds
16 that results in the title loan lender being ordered to return
17 all or part of such amount.

18 (6) The rights and remedies provided in this section
19 are cumulative. Except as otherwise provided in this section,
20 the disposal of titled personal property is subject to the
21 provisions of chapter 679, Florida Statutes.

22 (7) In taking possession and disposing of titled
23 personal property by sale or otherwise, the title loan lender
24 shall at all times proceed in a commercially reasonable
25 manner.

26 Section 12. Prohibited acts.--

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

29 (a) Falsify or fail to make an entry of any material
30 matter in a title loan agreement or any extension of such
31 agreement.

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

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

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

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

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

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

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

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

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

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1 (k) Refuse to accept partial payments toward
2 satisfying any obligation owed under a title loan agreement or
3 extension of such agreement.

4 (l) Charge a prepayment penalty.

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

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

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

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

20 (1) Any person presenting identification of such
21 person as the borrower and presenting the borrower's copy of
22 the title loan agreement to the title loan lender is presumed
23 to be entitled to reclaim the loan property described in the
24 title loan agreement. However, if the title loan lender
25 determines that the person is not the borrower, the title loan
26 lender is not required to allow the redemption of the loan
27 property by such person. The person reclaiming the loan
28 property must sign the borrower's copy of the title loan
29 agreement which the title loan lender may retain to evidence
30 such person's receipt of the loan property. A person
31 reclaiming the loan property who is not the borrower must show

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1 identification to the title loan lender, together with
2 notarized written authorization from the borrower, and the
3 title loan lender shall record that person's name and address
4 on the title loan agreement retained by the title loan lender.
5 In such case, the person reclaiming the borrower's copy of the
6 title loan agreement shall be provided a copy of such signed
7 form as evidence of such agreement.

8 (2) If the borrower's copy of the title loan agreement
9 is lost, destroyed, or stolen, the borrower must notify the
10 title loan lender, in writing by certified or registered mail,
11 return receipt requested, or in person evidenced by a signed
12 receipt, and receipt of such notice shall invalidate such
13 title loan agreement if the loan property has not previously
14 been reclaimed. Before delivering the loan property or issuing
15 a new title loan agreement, the title loan lender shall
16 require the borrower to make a written statement of the loss,
17 destruction, or theft of the borrower's copy of the title loan
18 agreement. The title loan lender shall record on the written
19 statement the type of identification and the identification
20 number accepted from the borrower, the date the statement is
21 given, and the number or date of the title loan agreement
22 lost, destroyed, or stolen. The statement shall be signed by
23 the title loan lender or the title loan office employee who
24 accepts the statement from the borrower. The title loan
25 lender shall not impose any type of fee for providing the
26 borrower with a copy of the title loan agreement.

27 Section 14. Criminal penalties.--

28 (1) Any person who acts as a title loan lender without
29 first securing the license prescribed by this act commits a
30 felony of the third degree, punishable as provided in s.
31 775.082, s. 775.083, or s. 775.084, Florida Statutes.

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1 (2) In addition to any other applicable penalty, any
2 person who willfully violates any provision of this act or who
3 willfully makes a false entry in any record specifically
4 required by this act commits a misdemeanor of the first
5 degree, punishable as provided in s. 775.082 or s. 775.083,
6 Florida Statutes.

7 Section 15. Subpoenas; enforcement actions; rules.--

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

22 (2) In addition to any other powers conferred upon the
23 department to enforce or administer this act, the department
24 may:

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

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1 (b) Issue and serve upon a person an order requiring
2 such person to cease and desist and take corrective action
3 whenever the department finds that such person is violating,
4 has violated, or is about to violate any provision of this
5 act, any rule or order adopted under this act, or any written
6 agreement entered into with the department.

7 (c) Whenever the department finds that conduct
8 described in paragraph (b) presents an immediate danger to the
9 public health, safety, or welfare requiring an immediate final
10 order, the department may issue an emergency cease and desist
11 order reciting with particularity the facts underlying such
12 findings. The emergency cease and desist order is effective
13 immediately upon service of a copy of the order on the
14 respondent named in the order and shall remain effective for
15 90 days. If the department begins nonemergency proceedings
16 under paragraph (b), the emergency cease and desist order
17 remains effective until the conclusion of the proceedings
18 under ss. 120.569 and 120.57, Florida Statutes.

19 (3) The department may adopt rules to administer this
20 act.

21 Section 16. Investigations and complaints.--

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

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1 licensee is not complying with the provisions of this act.

2 (2) The department shall conduct all examinations at a
3 convenient location in this state unless the department
4 determines that it is more effective or cost-efficient to
5 perform an examination at the licensee's out-of-state
6 location. For an examination performed at the licensee's
7 out-of-state location, the licensee shall pay the travel
8 expense and per diem subsistence at the rate provided by law
9 for up to 30 8-hour days per year for each department examiner
10 who participates in such an examination. However, if the
11 examination involves or reveals possible fraudulent conduct by
12 the licensee, the licensee shall pay the travel expenses and
13 per diem subsistence provided by law, without limitation, for
14 each participating examiner.

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

20 Section 17. Paragraphs (a) and (h) of subsection (1)
21 of section 538.03, Florida Statutes, are amended to read:

22 538.03 Definitions; applicability.--

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

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

29 However, secondhand dealers are not limited to dealing only in
30 items defined as secondhand goods in paragraph (g). Except as
31 provided in subsection (2), the term means pawnbrokers,

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1 jewelers, precious metals dealers, garage sale operators,
2 secondhand stores, and consignment shops.

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

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

8 538.16 Secondhand dealers; disposal of property.--

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

19 Section 19. Nothing in this act precludes a county or
20 municipality from adopting ordinances more restrictive, in
21 whole or in part, than the provisions of this act.

22 Section 20. Effective July 1, 2000, the sum of
23 \$500,000 is hereby appropriated for the 2000-2001 fiscal year
24 from the Regulatory Trust Fund of the Department of Banking
25 and Finance to the department to fund eight positions for the
26 purpose of carrying out the provisions of this act.

27 Section 21. Paragraph (i) of subsection (1) of section
28 538.03, Florida Statutes, subsection (5) of section 538.06,
29 Florida Statutes, and subsections (4) and (5) of section
30 538.15, Florida Statutes, are repealed.

31 Section 22. If any provision of this act or the

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1 application thereof to any person or circumstance is held
2 invalid, the invalidity shall not affect other provisions or
3 applications of the act which can be given effect without the
4 invalid provision or application, and to this end the
5 provisions of this act are declared severable.

6 Section 23. Except as otherwise provided in this act,
7 this act shall take effect October 1, 2000.

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10 ===== T I T L E A M E N D M E N T =====

11 And the title is amended as follows:

12 Delete everything before the enacting clause

13

14 and insert:

15

A bill to be entitled

16

An act relating to title loan transactions;

17

creating the "Florida Title Loan Act";

18

providing legislative intent; providing

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definitions; requiring licensure by the

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Department of Banking and Finance to act as a

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title loan lender; providing for application

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for licensure; requiring a bond, a

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nonrefundable application fee, a nonrefundable

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investigation fee, and fingerprinting;

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providing for waiver of fingerprinting;

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providing for inactive licenses; providing for

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renewal and reactivation of licenses; providing

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for a renewal fee and a reactivation fee;

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providing for disposition of certain moneys;

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providing for acquisition of an interest in a

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licensee under certain circumstance; providing

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1 for denial, suspension, or revocation of
2 license; specifying acts which constitute
3 violations for which certain disciplinary
4 actions may be taken; providing a fine;
5 providing remedies for title loans made or
6 serviced without licensure; providing for a
7 title loan agreement; providing requirements;
8 providing for reclaiming a repossessed motor
9 vehicle under certain circumstances; providing
10 entitlement to certain excess proceeds of a
11 sale or disposal of a motor vehicle; providing
12 for recordkeeping and reporting and safekeeping
13 of property; providing for title loan interest
14 rates; providing requirements and limitations;
15 providing for extensions; providing for return
16 of principal and interest to the borrower under
17 certain circumstance; providing a holding
18 period when there is a failure to reclaim;
19 providing for the disposal of pledged property;
20 providing for disposition of excess proceeds;
21 prohibiting certain acts; providing for the
22 right to reclaim; providing for lost title loan
23 agreements; providing for a title loan lenders
24 lien; providing for criminal penalties;
25 providing for subpoenas, enforcement of
26 actions, and rules; providing for
27 investigations and complaints; authorizing the
28 department to adopt rules; amending ss. 538.03
29 and 538.16, F.S.; deleting provisions relating
30 to title loan transactions; providing for more
31 restrictive local ordinances; providing an

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1 appropriation; repealing ss. 538.03(1)(i),
2 538.06(5), and 538.15(4) and (5), F.S.,
3 relating to title loan transactions by
4 secondhand dealers; providing severability;
5 providing effective dates.
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