

By Senators Latvala and Kurth

19-1303C-00

1 A bill to be entitled
2 An act relating to consumer financial
3 transactions; creating the "Fair Accountability
4 in Interest Rates Act of 2000"; providing
5 legislative intent; providing definitions;
6 requiring licensure by the Department of
7 Banking and Finance to act as a title loan
8 lender; providing for application for
9 licensure; requiring a bond, a nonrefundable
10 application fee, a nonrefundable investigation
11 fee, and fingerprinting; providing for waiver
12 of fingerprinting; providing for inactive
13 licenses; providing for renewal and
14 reactivation of licenses; providing for a
15 renewal fee and a reactivation fee; providing
16 for disposition of certain moneys; providing
17 for acquisition of an interest in a licensee
18 under certain circumstances; providing for
19 denial, suspension, or revocation of a license;
20 specifying acts that constitute violations for
21 which certain disciplinary actions may be
22 taken; providing a fine; providing remedies for
23 title loans made or serviced without licensure;
24 providing for a title loan agreement; providing
25 requirements; providing for reclaiming a
26 repossessed motor vehicle under certain
27 circumstances; providing entitlement to certain
28 excess proceeds of a sale or disposal of a
29 motor vehicle; providing for recordkeeping and
30 reporting and safekeeping of property;
31 providing for title loan interest rates;

1 providing requirements and limitations;
2 providing for extensions; providing for return
3 of principal and interest to the borrower under
4 certain circumstances; providing a holding
5 period when there is a failure to reclaim
6 pledged property; providing for the disposal of
7 pledged property; providing for disposition of
8 excess proceeds; prohibiting certain acts;
9 providing for the right to reclaim; providing
10 for lost title loan agreements; providing for a
11 title loan lender's lien; providing for
12 criminal penalties; providing for subpoenas,
13 enforcement of actions, and rules; providing
14 for investigations and complaints; authorizing
15 the department to adopt rules; requiring the
16 department to establish a consumer awareness
17 program; amending ss. 538.03, 538.16, F.S.;
18 repealing provisions relating to title loan
19 transactions; permitting more-restrictive local
20 ordinances; providing an appropriation;
21 repealing ss. 538.03(1)(i), 538.06(5),
22 538.15(4) and (5), F.S., relating to title loan
23 transactions by secondhand dealers; amending s.
24 560.309, F.S.; prescribing deposit requirements
25 for payment instruments; providing for
26 severability; providing effective dates.

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28 Be It Enacted by the Legislature of the State of Florida:
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1 Section 1. Short title.--Sections 1 through 16 of this
2 act may be cited as the "Fair Accountability in Interest Rates
3 Act of 2000."

4 Section 2. Legislative intent.--It is the intent of
5 the Legislature that certain consumer financial transactions
6 be regulated to protect consumers from unreasonably high
7 interest rates and unfair lending practices. Such transactions
8 include title loans, which shall be regulated by the
9 provisions of this act, and deferred presentment of checks and
10 other payment instruments, which shall be subject to the
11 provisions of section 560.309, Florida Statutes, as amended by
12 this act. This act supersedes any other provisions of state
13 law affecting title loans or deferred presentment to the
14 extent of any conflict.

15 Section 3. Definitions.--As used in this act, the
16 term:

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

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

25 (3) "Executive officer" means the president, chief
26 executive officer, chief financial officer, chief operating
27 officer, executive vice president, senior vice president,
28 secretary, and treasurer.

29 (4) "Identification" means a government-issued
30 photographic identification.

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

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

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

11 (8) "Loan property" means any motor vehicle
12 certificate of title that is deposited with a title loan
13 lender as a security for a title loan in the course of the
14 title loan lender's business.

15 (9) "Motor vehicle" means an automobile, motorcycle,
16 mobile home, truck, trailer, semitrailer, truck tractor and
17 semitrailer combination, or any other vehicle operated on the
18 public highways and streets of this state, used to transport
19 persons or property, and propelled by power other than
20 muscular power, but excluding a vehicle that runs only upon a
21 track and a mobile home that is the primary residence of the
22 owner.

23 (10) "Title loan" or "loan" means a loan of money
24 secured only by bailment of a certificate of title to a motor
25 vehicle, except such loan made by a person licensed under
26 chapter 516, chapter 520, or chapter 655, Florida Statutes.

27 (11) "Title loan agreement" or "agreement" means a
28 written agreement in which a title loan lender agrees to make
29 a title loan to a borrower.

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

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

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

13 (15) "Ultimate equitable owner" means a person who,
14 directly or indirectly, owns or controls an ownership interest
15 in a corporation, a foreign corporation, an alien business
16 organization, or any other form of business organization,
17 regardless of whether such person owns or controls such
18 ownership interest through one or more persons or one or more
19 proxies, powers of attorney, nominees, corporations,
20 associations, partnerships, trusts, joint stock companies, or
21 other entities or devices, or any combination thereof.

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

23 (1) A person may not act as a title loan lender or own
24 or operate a title loan office unless such person has an
25 active title loan lender license issued by the department
26 under this act. A title loan lender may not own or operate
27 more than one title loan office unless the lender obtains a
28 separate title loan lender license for each title loan office.

29 (2) A person applying for licensure as a title loan
30 lender shall file with the department an application; the bond
31 required by section 5(3); a nonrefundable application fee of

1 \$1,200; a nonrefundable investigation fee of \$200; and a
2 complete set of fingerprints taken by an authorized law
3 enforcement officer. The department shall submit such
4 fingerprints to the Department of Law Enforcement or the
5 Federal Bureau of Investigation for state and federal
6 processing. The department may waive, by rule, the requirement
7 that applicants must file a set of fingerprints or the
8 requirement that such fingerprints must be processed by the
9 Department of Law Enforcement or the Federal Bureau of
10 Investigation.

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

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

27 (5) Each license must be conspicuously displayed at
28 the title loan office. When a licensee wishes to move a title
29 loan office to another location, the licensee shall provide 30
30 days' written notice to the department prior to the
31 relocation.

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

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

5 (8) Whenever a person or a group of persons, directly
6 or indirectly or acting by or through one or more persons,
7 proposes to purchase or acquire a 25 percent or more interest
8 in a licensee, such person or group shall submit an initial
9 application for licensure under this act prior to such
10 purchase or acquisition. The department shall adopt rules
11 providing for waiver of the application required by this
12 subsection when such purchase or acquisition of a licensee is
13 made by another licensee licensed under this act or when the
14 application is otherwise unnecessary in the public interest.

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

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

21 Section 5. Application for license.--

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

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

30 (b) State whether any individual identified in
31 paragraph (a) has, within the last 10 years, pleaded nolo

1 contendere to, or has been convicted or found guilty of, a
2 felony, regardless of whether adjudication was withheld.

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

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

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

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

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

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

22 Section 6. Denial, suspension, or revocation of
23 license.--

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

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

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1 **(b) Fraud, misrepresentation, deceit, or gross**
2 **negligence in any title loan transaction, regardless of**
3 **reliance by or damage to the borrower.**

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

8 **(d) Imposition of illegal or excessive charges in any**
9 **title loan transaction.**

10 **(e) False, deceptive, or misleading advertising by a**
11 **title loan lender.**

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

17 **(g) Aiding, abetting, or conspiring by a title loan**
18 **lender with a person to circumvent or violate any of the**
19 **requirements of this act.**

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

24 **(i) Having been convicted of a crime involving fraud,**
25 **dishonest dealing, or any act of moral turpitude or acting as**
26 **an ultimate equitable owner of 10 percent or more of a**
27 **licensee who has been convicted of a crime involving fraud,**
28 **dishonest dealing, or any act of moral turpitude.**

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

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

13 (l) Pleading nolo contendere to, or being convicted or
14 found guilty of, a crime involving fraud, dishonest dealing,
15 or any act of moral turpitude, regardless of whether
16 adjudication was withheld.

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

19 (n) Failing to timely pay any fee, charge, or fine
20 imposed or assessed pursuant to this act or rules adopted
21 under this act.

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

27 (p) Having demonstrated unworthiness, as defined by
28 department rule, to transact the business of a title loan
29 lender.

30 (2) Upon a finding by the department that any person
31 has committed any of the acts set forth in subsection (1), the

1 department may enter an order taking one or more of the
2 following actions:
3 (a) Denying an application for licensure under this
4 act.
5 (b) Revoking or suspending a license previously
6 granted pursuant to this act.
7 (c) Placing a licensee or an applicant for a license
8 on probation for a period of time and subject to such
9 conditions as the department specifies.
10 (d) Issuing a reprimand.
11 (e) Imposing an administrative fine not to exceed
12 \$5,000 for each separate act or violation.
13 (3) If a person seeking licensure is anything other
14 than a natural person, the eligibility requirements of this
15 section apply to each direct or ultimate equitable owner of 10
16 percent or more of the outstanding equity interest of such
17 entity and to each director, general partner, and executive
18 officer.
19 (4) It is sufficient cause for the department to take
20 any of the actions specified in subsection (2), as to any
21 entity other than a natural person, if the department finds
22 grounds for such action as to any member of such entity, as to
23 any executive officer or director of the entity, or as to any
24 person with power to direct the management or policies of the
25 entity.
26 (5) Each licensee is subject to the provisions of
27 subsection (2) for the acts of employees and agents of the
28 licensee if the licensee knew or should have known about such
29 acts.
30 (6) Licensure under this act may be denied or any
31 license issued under this act may be suspended or restricted

1 if an applicant or licensee is charged, in a pending
2 enforcement action or pending criminal prosecution, with any
3 conduct that would authorize denial or revocation under this
4 section.

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

19 Section 8. Title loan agreement.--

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

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

28 (b) The vehicle identification number, or other
29 comparable identification number, along with the license plate
30 number, if applicable, of the titled personal property to
31 which the loan property relates.

1 (c) The name, residential address, date of birth,
2 physical description, and social security number of the
3 borrower.

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

6 (e) The identification number and the type of
7 identification, including the issuing agency, accepted from
8 the borrower.

9 (f) The amount of money advanced, designated as the
10 "amount financed."

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

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

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

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

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

25 (a) The name and physical address of the title loan
26 office.

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

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

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

12 2. If the title loan agreement is lost, destroyed, or
13 stolen, the borrower must immediately so advise the issuing
14 title loan lender in writing.

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

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

24 (3) All owners of the titled personal property must
25 sign the title loan agreement.

26 (4) At the time of the transaction, the title loan
27 lender shall deliver to the borrower an exact copy of the
28 executed title loan agreement.

29 (5) Upon execution of a title loan agreement, the
30 title loan lender may take possession of the loan property and
31 retain possession of such property until such property is

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

12 (6) A title loan lender and any agent of a title loan
13 lender are subject to the consumer debt collection provisions
14 of section 559.72, Florida Statutes.

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

17 (1) Every title loan lender must maintain, at the
18 lender's title loan office, 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.

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

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

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

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

13 Section 10. Title loan charges.--

14 (1) A title loan lender may charge a maximum interest
15 rate as provided in section 516.031, Florida Statutes.

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

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

3 (a) If such excess interest is changed as a result of
4 a bona fide error by the title loan lender, or an agent of the
5 title loan lender, the title loan agreement is voidable, and
6 the lender must refund the excess interest to the borrower
7 within 20 days after discovery by the lender or borrower of
8 the bona fide error, whichever occurs first.

9 (b) If such excess interest results from an act by the
10 title loan lender, or an agent of the title loan lender, for
11 the purpose of circumventing the maximum title loan interest
12 allowed by this act, the title loan agreement is void, and the
13 lender must refund to the borrower any interest paid on the
14 title loan and return to the borrower the loan property. The
15 title loan lender also forfeits the lender's right to collect
16 any principal owed by the borrower on the title loan.

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

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

26 Section 11. Repossession, disposal of pledged
27 property; excess proceeds.--

28 (1) If a borrower fails to repay all amounts legally
29 due under the title loan agreement on or before the end of the
30 title loan's maturity date or any extension of such date and
31 fails to make a payment on the loan within 30 days after the

1 end of the loan's maturity date or any extension of such date,
2 whichever occurs later, the title loan lender may take
3 possession of the titled personal property. A lender may take
4 possession of the titled personal property only through an
5 agent who is licensed by the state to repossess motor
6 vehicles.

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

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

1 property by tendering a money order or certified check for the
2 principal amount of the title loan, interest accrued through
3 the date the lender takes possession, and any reasonable
4 expenses incurred to date by the lender in taking possession
5 of, preparing for sale, and selling the titled personal
6 property. Nothing in this act nor in any title loan agreement
7 precludes a borrower from purchasing the titled personal
8 property at any sale.

9 (4) Any such sale or disposal vests in the purchaser
10 the right, title, and interest of the owner and the title loan
11 lender.

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

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

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

31 Section 12. Prohibited acts.--

1 (1) A title loan lender, or any agent or employee of a
2 title loan lender, may not:

3 (a) Falsify or fail to make an entry of any material
4 matter in a title loan agreement or any extension of such
5 agreement.

6 (b) Refuse to allow the department to inspect
7 completed title loan agreements, extensions of such
8 agreements, or loan property during the ordinary operating
9 hours of the title loan lender's business or at other times
10 acceptable to both parties.

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

13 (d) Make any agreement requiring or allowing for the
14 personal liability of a borrower or the waiver of any of the
15 provisions of this act. Any such agreement or waiver is void
16 and unenforceable.

17 (e) Knowingly enter into a title loan agreement with
18 any person who is under the influence of drugs or alcohol when
19 such condition is visible or apparent, or with any person
20 using a name other than such person's own name or the
21 registered name of the person's business.

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

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

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

3 (i) Charge or receive any finance charge, interest, or
4 fees that are not authorized pursuant to this act.

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

7 (k) Refuse to accept partial payments toward
8 satisfying any obligation owed under a title loan agreement or
9 extension of such agreement.

10 (l) Charge a prepayment penalty.

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

13 (n) Act as a title loan lender under this act within a
14 place of business in which the licensee solicits or engages in
15 business outside the scope of this act if the department
16 determines that the licensee's operation of and conduct
17 pertaining to such other business results in an evasion of
18 this act. Upon making such a determination, the department
19 shall order the licensee to cease and desist from such
20 evasion. However, a licensee may not engage in the pawnbroker
21 business.

22 (2) Title loan companies may not advertise using the
23 phrases "interest-free loans," "zero-percent interest," or "no
24 finance charges."

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

27 (1) Any person presenting identification of such
28 person as the borrower and presenting the borrower's copy of
29 the title loan agreement to the title loan lender is presumed
30 to be entitled to reclaim the loan property described in the
31 title loan agreement. However, if the title loan lender

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

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

1 title loan lender may not impose any type of fee for providing
2 the borrower with a copy of the title loan agreement.

3 Section 14. Criminal penalties.--

4 (1) Any person who acts as a title loan lender without
5 first securing the license prescribed by this act commits a
6 felony of the third degree, punishable as provided in section
7 775.082, section 775.083, or section 775.084, Florida
8 Statutes.

9 (2) In addition to any other applicable penalty, any
10 person who willfully violates any provision of this act or who
11 willfully makes a false entry in any record specifically
12 required by this act commits a misdemeanor of the first
13 degree, punishable as provided in section 775.082 or section
14 775.083, Florida Statutes.

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

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

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

4 (a) Bring an action in any court of competent
5 jurisdiction to enforce or administer this act, any rule or
6 order adopted under this act, or any written agreement entered
7 into with the department. In such action, the department may
8 seek any relief at law or equity, including a temporary or
9 permanent injunction, appointment of a receiver or
10 administrator, or an order of restitution.

11 (b) Issue and serve upon a person an order requiring
12 such person to cease and desist and take corrective action
13 whenever the department finds that such person is violating,
14 has violated, or is about to violate any provision of this
15 act, any rule or order adopted under this act, or any written
16 agreement entered into with the department.

17 (c) Whenever the department finds that conduct
18 described in paragraph (b) presents an immediate danger to the
19 public health, safety, or welfare requiring an immediate final
20 order, the department may issue an emergency cease and desist
21 order reciting with particularity the facts underlying such
22 findings. The emergency cease and desist order is effective
23 immediately upon service of a copy of the order on the
24 respondent named in the order and shall remain effective for
25 90 days. If the department begins nonemergency proceedings
26 under paragraph (b), the emergency cease and desist order
27 remains effective until the conclusion of the proceedings
28 under sections 120.569 and 120.57, Florida Statutes.

29 (3) The department may adopt rules to administer this
30 act.

31 Section 16. Investigations and complaints.--

1 (1) The department may make any investigation and
2 examination of any licensee or other person the department
3 deems necessary to determine compliance with this act. For
4 such purposes, the department may examine the books, accounts,
5 records, and other documents or matters of any licensee or
6 other person. The department may compel the production of all
7 relevant books, records, and other documents and materials
8 relative to an examination or investigation. Examinations
9 shall not be made more often than once during any 12-month
10 period unless the department has reason to believe the
11 licensee is not complying with this act.

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

25 (3) Any person having reason to believe that any
26 provision of this act has been violated may file with the
27 department a written complaint setting forth the details of
28 such alleged violation and the department may investigate such
29 complaint.

30 Section 17. The Department of Banking and Finance
31 shall establish a consumer awareness program to assist

1 consumers in understanding their rights and responsibilities
2 under this act.

3 Section 18. Paragraphs (a) and (h) of subsection (1)
4 of section 538.03, Florida Statutes, are amended to read:

5 538.03 Definitions; applicability.--

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

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

12 However, secondhand dealers are not limited to dealing only in
13 items defined as secondhand goods in paragraph (g). Except as
14 provided in subsection (2), the term means pawnbrokers,
15 jewelers, precious metals dealers, garage sale operators,
16 secondhand stores, and consignment shops.

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

20 Section 19. Subsection (1) of section 538.16, Florida
21 Statutes, is amended to read:

22 538.16 Secondhand dealers; disposal of property.--

23 (1) Any personal property pawned with a pawnbroker,
24 whether the pawn is a loan of money or a buy-sell agreement ~~or~~
25 ~~a motor vehicle which is security for a title loan,~~ is subject
26 to sale or disposal if the pawn is a loan of money and the
27 property has not been redeemed or there has been no payment on
28 account made for a period of 90 days, or if the pawn is a
29 buy-sell agreement ~~or if it is a title loan~~ and the property
30 has not been repurchased from the pawnbroker ~~or the title~~
31

1 ~~redeemed from the title lender~~ or there has been no payment
2 made on account within 60 days.

3 Section 20. Nothing in this act precludes a county or
4 municipality from adopting ordinances more restrictive than
5 the provisions of this act.

6 Section 21. Effective July 1, 2000, the sum of
7 \$500,000 is appropriated for the 2000-2001 fiscal year from
8 the Regulatory Trust Fund of the Department of Banking and
9 Finance to the Department of Banking and Finance to fund eight
10 positions for the purpose of carrying out the provisions of
11 this act.

12 Section 22. Paragraph (i) of subsection (1) of section
13 538.03, Florida Statutes, subsection (5) of section 538.06,
14 Florida Statutes, and subsections (4) and (5) of section
15 538.15, Florida Statutes, are repealed.

16 Section 23. Subsection (1) of section 560.309, Florida
17 Statutes. is amended to read:

18 560.309 Rules.--

19 (1) Before a registrant shall deposit, with any
20 financial institution, a payment instrument that is cashed by
21 a registrant, each such item must be endorsed with the actual
22 name under which such registrant is doing business. If a
23 payment instrument received from a customer is not deposited
24 within 2 business days, excluding Saturdays and Sundays, after
25 receipt, the transaction is considered to be a consumer
26 finance loan and is subject to the provisions of chapter 516.

27 Section 24. If any provision of this act or the
28 application thereof to any person or circumstance is held
29 invalid, the invalidity shall not affect other provisions or
30 applications of the act which can be given effect without the
31

1 invalid provision or application, and to this end the
2 provisions of this act are declared severable.

3 Section 25. Except as otherwise provided in this act,
4 this act shall take effect October 1, 2000.

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7 LEGISLATIVE SUMMARY

8
9 Creates the "Fair Accountability in Interest Rates Act of
10 2000" and requires licensure by the Department of Banking
11 and Finance to be in the business as a title loan lender.
12 Provides for eligibility for licensure; for applications;
13 for suspension or revocation of licenses; for
14 recordkeeping, reporting, and safekeeping of property;
15 for title loan charges; for the disposal of pledged
16 property; and for disposition of excess proceeds.
17 Prohibits specified acts. Provides for a right to redeem;
18 for a title loan lender's lien; for criminal penalties;
19 for accessing records from the Department of Law
20 Enforcement; for subpoenas, enforcement of actions, and
21 rules; and for complaints and investigations. Provides
22 for more-restrictive local ordinances. (See bill for
23 details.)
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