

By the Committee on Governmental Oversight and Productivity;  
and Senators Latvala, Meek, Kurth and Saunders

302-1750A-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; amending ss.  
16 538.03, 538.16, F.S.; repealing provisions  
17 relating to title loan transactions; permitting  
18 more-restrictive local ordinances; providing an  
19 appropriation; repealing ss. 538.03(1)(i),  
20 538.06(5), 538.15(4) and (5), F.S., relating to  
21 title loan transactions by secondhand dealers;  
22 amending s. 560.309, F.S.; prescribing deposit  
23 requirements for payment instruments; providing  
24 for severability; providing effective dates.

25  
26 Be It Enacted by the Legislature of the State of Florida:

27  
28 Section 1. Short title.--Sections 1 through 16 of this  
29 act may be cited as the "Fair Accountability in Interest Rates  
30 Act of 2000."

31

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

12           Section 3. Definitions.--As used in this act, the  
13 term:

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

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

22           (3) "Executive officer" means the president, chief  
23 executive officer, chief financial officer, chief operating  
24 officer, executive vice president, senior vice president,  
25 secretary, and treasurer.

26           (4) "Identification" means a government-issued  
27 photographic identification.

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

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

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

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

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

20 (10) "Title loan" or "loan" means a loan of money  
21 secured by bailment of a certificate of title to a motor  
22 vehicle, except such a loan made by a person licensed under  
23 chapter 516, chapter 520, or chapters 655-667, Florida  
24 Statutes, or a person who complies with section 687.03,  
25 Florida Statutes.

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

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

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

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

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

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

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

26           (2) A person applying for licensure as a title loan  
27 lender shall file with the department an application; the bond  
28 required by section 5(3); a nonrefundable application fee of  
29 \$1,200; a nonrefundable investigation fee of \$200; and a  
30 complete set of fingerprints taken by an authorized law  
31 enforcement officer. The department shall submit such

1 fingerprints to the Department of Law Enforcement or the  
2 Federal Bureau of Investigation for state and federal  
3 processing. However, the department is not required to obtain  
4 a set of fingerprints if the applicant's fingerprints are on  
5 file with the department.

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

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

22 (5) Each license must be conspicuously displayed at  
23 the title loan office. When a licensee wishes to move a title  
24 loan office to another location, the licensee shall provide 30  
25 days' written notice to the department prior to the  
26 relocation.

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

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

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1           (8) Whenever a person or a group of persons, directly  
2 or indirectly or acting by or through one or more persons,  
3 proposes to purchase or acquire a 50 percent or more interest  
4 in a licensee, such person or group shall submit an initial  
5 application for licensure under this act prior to such  
6 purchase or acquisition.

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

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

13           Section 5. Application for license.--

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

16           (a) Contain the name and the residence and business  
17 address of the applicant. If the applicant is other than a  
18 natural person, the application shall contain the name and the  
19 residence and business address of each ultimate equitable  
20 owner of 10 percent or more of such entity and each director,  
21 general partner, and executive officer of such entity.

22           (b) State whether any individual identified in  
23 paragraph (a) has, within the last 10 years, pleaded nolo  
24 contendere to, or has been convicted or found guilty of, a  
25 felony, regardless of whether adjudication was withheld.

26           (c) Identify the county and municipality with the  
27 street and number or location where the business is to be  
28 conducted.

29           (d) Contain additional information as the department  
30 determines by rule to be necessary to ensure compliance with  
31 this act.

1           (2) Notwithstanding subsection (1), the application  
2 need not state the full name and address of each officer,  
3 director, and shareholder if the applicant is owned directly  
4 or beneficially by a person who as an issuer has a class of  
5 securities registered pursuant to section 12 of the Securities  
6 Exchange Act of 1934 or, pursuant to section 13 or section  
7 15(d) of such act, is an issuer of securities which is  
8 required to file reports with the Securities and Exchange  
9 Commission, if the person files with the department any  
10 information, documents, and reports required by such act to be  
11 filed with the Securities and Exchange Commission.

12           (3) An applicant for licensure shall file with the  
13 department a bond, in the amount of \$100,000 for each license,  
14 with a surety company qualified to do business in this state.  
15 However, in no event shall the aggregate amount of the bond  
16 required for a single title loan lender exceed \$1 million. In  
17 lieu of the bond, the applicant may establish an irrevocable  
18 letter of credit in a financial institution, as defined in  
19 section 655.005, Florida Statutes, in the amount of the bond.  
20 The original bond or letter of credit shall be filed with the  
21 department, and the department shall be made the beneficiary  
22 of that document. The bond or letter of credit shall be in  
23 favor of the department for the use and benefit of any  
24 consumer who is injured pursuant to a title loan transaction  
25 by the fraud, misrepresentation, breach of contract, financial  
26 failure, or violation of any provision of this act by the  
27 title loan lender. Such liability may be enforced either by  
28 proceeding in an administrative action or by filing a judicial  
29 suit at law in a court of competent jurisdiction. However, in  
30 such court suit, the bond or letter of credit posted with the  
31 department shall not be amenable or subject to any judgment or



1 other legal process issuing out of or from such court in  
2 connection with such lawsuit, but such bond or letter of  
3 credit shall be amenable to and enforceable only by and  
4 through administrative proceedings before the department. It  
5 is the intent of the Legislature that such bond or letter of  
6 credit shall be applicable and liable only for the payment of  
7 claims duly adjudicated by order of the department. The bond  
8 or letter of credit shall be payable on a pro rata basis as  
9 determined by the department, but the aggregate amount may not  
10 exceed the amount of the bond or letter of credit.

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

14 Section 6. Denial, suspension, or revocation of  
15 license.--

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

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

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

25 (c) Fraudulent misrepresentation, circumvention, or  
26 concealment of any matter required to be stated or furnished  
27 to a borrower pursuant to this act, regardless of reliance by  
28 or damage to the borrower.

29 (d) Imposition of illegal or excessive charges in any  
30 title loan transaction.

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1           (e) False, deceptive, or misleading advertising by a  
2 title loan lender.

3           (f) Failure to maintain, preserve, and keep available  
4 for examination all books, accounts, or other documents  
5 required by this act, by any rule or order adopted pursuant to  
6 this act, or by any agreement entered into with the  
7 department.

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

11           (h) Refusal to provide information upon request of the  
12 department, to permit inspection of books and records in an  
13 investigation or examination by the department, or to comply  
14 with a subpoena issued by the department.

15           (i) Pleading nolo contendere to or having been  
16 convicted or found guilty, regardless of whether adjudication  
17 was withheld, of a crime involving fraud, dishonest dealing,  
18 or any act of moral turpitude or acting as an ultimate  
19 equitable owner of 10 percent or more of a licensee who has  
20 pled nolo contendere to or who has been convicted or found  
21 guilty, regardless of whether adjudication was withheld, of a  
22 crime involving fraud, dishonest dealing, or any act of moral  
23 turpitude.

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

26           (k) Having been the subject of any decision, finding,  
27 injunction, suspension, prohibition, revocation, denial,  
28 judgment, or administrative order by any court of competent  
29 jurisdiction or administrative law judge, or by any state or  
30 federal agency, involving a violation of any federal or state  
31 law relating to title loans or any rule or regulation adopted

1 under such law, or having been the subject of any injunction  
2 or adverse administrative order by a state or federal agency  
3 regulating banking, insurance, finance or small loan  
4 companies, real estate, mortgage brokers, or other related or  
5 similar industries for acts involving fraud, dishonest  
6 dealing, or any act of moral turpitude.

7 (l) Failing to continuously maintain the bond or  
8 letter of credit required by section 5(3).

9 (m) Failing to timely pay any fee, charge, or fine  
10 imposed or assessed pursuant to this act or rules adopted  
11 under this act.

12 (n) Having had a license or registration, or the  
13 equivalent, to practice any profession or occupation denied,  
14 suspended, revoked, or otherwise acted against by a licensing  
15 authority in any jurisdiction for fraud, dishonest dealing, or  
16 any act of moral turpitude.

17 (o) Having demonstrated unworthiness, as defined by  
18 department rule, to transact the business of a title loan  
19 lender.

20 (2) Upon a finding by the department that any person  
21 has committed any of the acts set forth in subsection (1), the  
22 department may, in the manner provided by chapter 120, Florida  
23 Statutes, enter an order taking one or more of the following  
24 actions:

25 (a) Denying an application for licensure under this  
26 act.

27 (b) Revoking or suspending a license previously  
28 granted pursuant to this act.

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

1           (d) Issuing a reprimand.  
2           (e) Imposing an administrative fine not to exceed  
3 \$5,000 for each separate act or violation.  
4           (3) If a person seeking licensure is anything other  
5 than a natural person, the eligibility requirements of this  
6 section apply to each direct or ultimate equitable owner of 10  
7 percent or more of the outstanding equity interest of such  
8 entity and to each director, general partner, and executive  
9 officer.  
10          (4) It is sufficient cause for the department to take  
11 any of the actions specified in subsection (2), as to any  
12 entity other than a natural person, if the department finds  
13 grounds for such action as to any member of such entity, as to  
14 any executive officer or director of the entity, or as to any  
15 person with power to direct the management or policies of the  
16 entity.  
17          (5) Each licensee is subject to the provisions of  
18 subsection (2) for the acts of employees and agents of the  
19 licensee if the licensee knew or should have known about such  
20 acts.  
21          (6) Licensure under this act may be denied or any  
22 license issued under this act may be suspended or restricted  
23 if an applicant or licensee is charged, in a pending  
24 enforcement action or pending criminal prosecution, with any  
25 conduct that would authorize denial or revocation under this  
26 section.  
27          Section 7. Remedies for title loans made without  
28 licensure.--Any title loan made without benefit of a license  
29 is void, in which case the person making the title loan  
30 forfeits the right to collect any moneys, including principal  
31 and interest charged on the title loan, from the borrower in

1 connection with such agreement. The person making the title  
2 loan shall return to the borrower the loan property, the  
3 titled personal property pledged or the fair market value of  
4 such titled personal property, and all principal and interest  
5 paid by the borrower. The borrower is entitled to receive  
6 reasonable attorney's fees and costs in any action brought by  
7 the borrower to recover from the person making the title loan  
8 the loan property, the titled personal property, or the  
9 principal and interest paid by the borrower.

10 Section 8. Title loan agreement.--

11 (1) At the time a title loan lender makes a title  
12 loan, the lender and the borrower shall execute a title loan  
13 agreement, which shall be legibly typed or written in  
14 indelible ink and completed as to all essential provisions  
15 prior to execution by the borrower and lender. The title loan  
16 agreement shall include the following information:

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

19 (b) The vehicle identification number, or other  
20 comparable identification number, along with the license plate  
21 number, if applicable, of the titled personal property to  
22 which the loan property relates.

23 (c) The name, residential address, date of birth,  
24 physical description, and social security number of the  
25 borrower.

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

28 (e) The identification number and the type of  
29 identification, including the issuing agency, accepted from  
30 the borrower.

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1           (f) The amount of money advanced, designated as the  
2 "amount financed."

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

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

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

11           (j) The interest rate, computed in accordance with the  
12 regulations adopted by the Federal Reserve Board pursuant to  
13 the Federal Truth-in-Lending Act, designated as the "annual  
14 percentage rate."

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

17           (a) The name and physical address of the title loan  
18 office.

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

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

23           1. If the borrower fails to repay the full amount of  
24 the title loan on or before the end of the maturity date or  
25 any extension of the maturity date and fails to make a payment  
26 on the title loan within 30 days after the end of the maturity  
27 date or any extension of the maturity date, whichever is  
28 later, the title loan lender may take possession of the  
29 borrower's motor vehicle and sell the vehicle in the manner  
30 provided by law. If the vehicle is sold, the borrower is  
31 entitled to any proceeds of the sale in excess of the amount

1 owed on the title loan and the reasonable expenses of  
2 repossession and sale.

3 2. If the title loan agreement is lost, destroyed, or  
4 stolen, the borrower must immediately so advise the issuing  
5 title loan lender in writing.

6 (d) The statement that "the borrower represents and  
7 warrants that the titled personal property to which the loan  
8 property relates is not stolen and has no liens or  
9 encumbrances against it, the borrower has the right to enter  
10 into this transaction, and the borrower will not apply for a  
11 duplicate certificate of title while the title loan agreement  
12 is in effect."

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

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

17 (4) At the time of the transaction, the title loan  
18 lender shall deliver to the borrower an exact copy of the  
19 executed title loan agreement.

20 (5) Upon execution of a title loan agreement, the  
21 title loan lender may take possession of the loan property and  
22 retain possession of such property until such property is  
23 redeemed. The borrower shall have the exclusive right to  
24 redeem the loan property by repaying all amounts legally due  
25 under the agreement. When the loan property is redeemed, the  
26 lender shall immediately return the loan property and commence  
27 action to release any security interest in the titled personal  
28 property. During the term of the agreement or any extension of  
29 the agreement, a title loan lender may retain physical  
30 possession of the loan property only. A title loan lender  
31 shall not require a borrower to provide any additional

1 security or guaranty as a condition to entering into a title  
2 loan transaction.

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

6 Section 9. Recordkeeping; reporting; safekeeping of  
7 property.--

8 (1) Every title loan lender must maintain, at the  
9 lender's title loan office, such books, accounts, and records  
10 of the business conducted under the license issued for such  
11 place of business as will enable the department to determine  
12 the licensee's compliance with this act.

13 (2) The department may authorize the maintenance of  
14 books, accounts, and records at a location other than the  
15 lender's title loan office. The department may require books,  
16 accounts, and records to be produced and available at a  
17 reasonable and convenient location in this state within a  
18 reasonable period of time after such a request.

19 (3) The title loan lender must maintain the original  
20 copy of each completed title loan agreement on the title loan  
21 office premises, and may not obliterate, discard, or destroy  
22 any such original copy for a period of at least 2 years after  
23 making the final entry on any loan recorded in such office, or  
24 until the original copy is examined by the department,  
25 whichever occurs later.

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

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1           (5) The department may prescribe by rule the books,  
2 accounts, and records, and the minimum information to be shown  
3 in the books, accounts, and records, of licensees so that such  
4 records will enable the department to determine compliance  
5 with this act.

6           Section 10. Title loan charges.--

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

26           (2) The annual percentage rate that may be charged for  
27 a title loan may equal, but not exceed, the annual percentage  
28 rate that must be computed and disclosed as required by the  
29 federal Truth in Lending Act and Regulation Z of the Board of  
30 Governors of the Federal Reserve System. The maximum annual  
31 percentage rate of interest that may be charged is 12 times

1 the maximum monthly rate, and the maximum monthly rate must be  
2 computed on the basis of one-twelfth of the annual rate for  
3 each full month. The Department of Banking and Finance shall  
4 establish by rule the rate for each day of a fractional month  
5 when the period for which the charge is computed is more or  
6 less than 1 month.

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

19 (4) Any interest contracted for or received, directly  
20 or indirectly, by a title loan lender, or an agent of the  
21 title loan lender, in excess of the amounts authorized under  
22 this chapter are prohibited and may not be collected by the  
23 title loan lender or an agent of the title loan lender.

24 (a) If such excess interest resulted from a bona fide  
25 error by the title loan lender, or an agent of the title loan  
26 lender, the title loan agreement is voidable, and the lender  
27 must refund the excess interest to the borrower within 20 days  
28 after discovery by the lender or borrower of the bona fide  
29 error, whichever occurs first.

30 (b) If such excess interest results from an act by the  
31 title loan lender, or an agent of the title loan lender, for

1 the purpose of circumventing the maximum title loan interest  
2 allowed by this act, the title loan agreement is void, and the  
3 lender must refund to the borrower any interest paid on the  
4 title loan and return to the borrower the loan property. The  
5 title loan lender also forfeits the lender's right to collect  
6 any principal owed by the borrower on the title loan.

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

10 (5) Any interest contracted for or received, directly  
11 or indirectly, by a title loan lender, or an agent of the  
12 title loan lender, in excess of the amount allowed by this act  
13 constitutes a violation of chapter 687, Florida Statutes,  
14 governing interest and usury, and the penalties of that  
15 chapter apply.

16 Section 11. Repossession, disposal of pledged  
17 property; excess proceeds.--

18 (1) If a borrower fails to repay all amounts legally  
19 due under the title loan agreement on or before the end of the  
20 title loan's maturity date or any extension of such date and  
21 fails to make a payment on the loan within 30 days after the  
22 end of the loan's maturity date or any extension of such date,  
23 whichever occurs later, the title loan lender may take  
24 possession of the titled personal property. A lender may take  
25 possession of the titled personal property only through an  
26 agent who is licensed by the state to repossess motor  
27 vehicles.

28 (2) Prior to engaging a repossession agent, the lender  
29 must afford the debtor an opportunity to make the titled  
30 personal property available to the lender at a place, date,  
31 and time reasonably convenient to the lender and the borrower.

1 Prior to taking possession of titled personal property, the  
2 lender must afford the borrower a reasonable opportunity to  
3 remove from the titled personal property any personal  
4 belongings without charge or additional cost to the borrower.

5 After the lender takes possession of the titled personal  
6 property, the lender, at the lender's sole expense and risk,  
7 may authorize a third party to retain physical possession of  
8 the titled personal property.

9       (3) Upon taking possession of titled personal  
10 property, the lender may dispose of the titled personal  
11 property by sale but may do so only through a motor vehicle  
12 dealer licensed under section 320.27, Florida Statutes. At  
13 least 10 days prior to sale, the lender must notify the  
14 borrower of the date, time, and place of the sale and provide  
15 the borrower with a written accounting of the principal amount  
16 due on the title loan, interest accrued through the date the  
17 lender takes possession of the titled personal property, and  
18 any reasonable expenses incurred to date by the lender in  
19 taking possession of, preparing for sale, and selling the  
20 titled personal property. At any time prior to such sale, the  
21 lender must permit the borrower to redeem the titled personal  
22 property by tendering a money order or certified check for the  
23 principal amount of the title loan, interest accrued through  
24 the date the lender takes possession, and any reasonable  
25 expenses incurred to date by the lender in taking possession  
26 of, preparing for sale, and selling the titled personal  
27 property. Nothing in this act nor in any title loan agreement  
28 precludes a borrower from purchasing the titled personal  
29 property at any sale.

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1           (4) Any such sale or disposal vests in the purchaser  
2 the right, title, and interest of the owner and the title loan  
3 lender.

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

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

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

23           Section 12. Prohibited acts.--

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

26           (a) Falsify or fail to make an entry of any material  
27 matter in a title loan agreement or any extension of such  
28 agreement.

29           (b) Refuse to allow the department to inspect  
30 completed title loan agreements, extensions of such  
31 agreements, or loan property during the ordinary operating

1 hours of the title loan lender's business or at other times  
2 acceptable to both parties.

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

5 (d) Make any agreement requiring or allowing for the  
6 personal liability of a borrower or the waiver of any of the  
7 provisions of this act. Any such agreement or waiver is void  
8 and unenforceable.

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

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

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

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

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

28 (j) Act as a title loan lender without an active  
29 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. However, a licensee may not engage in the pawnbroker  
15 business.

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

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

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

1 person reclaiming the loan property who is not the borrower  
2 must show identification to the title loan lender, together  
3 with notarized written authorization from the borrower, and  
4 the title loan lender must record that person's name and  
5 address on the title loan agreement retained by the title loan  
6 lender. In such case, the person reclaiming the borrower's  
7 copy of the title loan agreement must be provided a copy of  
8 such signed form as evidence of such agreement.

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

28       Section 14. Criminal penalties.--

29       (1) Any person who acts as a title loan lender without  
30 first securing the license prescribed by this act commits a  
31 felony of the third degree, punishable as provided in section



1 775.082, section 775.083, or section 775.084, Florida  
2 Statutes.

3 (2) In addition to any other applicable penalty, any  
4 person who willfully violates any provision of this act or who  
5 willfully makes a false entry in any record specifically  
6 required by this act commits a misdemeanor of the first  
7 degree, punishable as provided in section 775.082 or section  
8 775.083, Florida Statutes.

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

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

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

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

1 permanent injunction, appointment of a receiver or  
2 administrator, or an order of restitution.

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

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

21 (3) The department may adopt rules to administer this  
22 act.

23 Section 16. Investigations and complaints.--

24 (1) The department may make any investigation and  
25 examination of any licensee or other person the department  
26 deems necessary to determine compliance with this act. For  
27 such purposes, the department may examine the books, accounts,  
28 records, and other documents or matters of any licensee or  
29 other person. The department may compel the production of all  
30 relevant books, records, and other documents and materials  
31 relative to an examination or investigation. Examinations

1 shall not be made more often than once during any 12-month  
2 period unless the department has reason to believe the  
3 licensee is not complying with this act.

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

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

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

24 538.03 Definitions; applicability.--

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

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

31 However, secondhand dealers are not limited to dealing only in

1 items defined as secondhand goods in paragraph (g). Except as  
2 provided in subsection (2), the term means pawnbrokers,  
3 jewelers, precious metals dealers, garage sale operators,  
4 secondhand stores, and consignment shops.

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

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

10 538.16 Secondhand dealers; disposal of property.--

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

21 Section 19. Nothing in this act precludes a county or  
22 municipality from adopting ordinances more restrictive than  
23 the provisions of this act.

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

30 Section 21. Paragraph (i) of subsection (1) of section  
31 538.03, Florida Statutes, subsection (5) of section 538.06,

1 Florida Statutes, and subsections (4) and (5) of section  
2 538.15, Florida Statutes, are repealed.

3           Section 22. Subsection (1) of section 560.309, Florida  
4 Statutes. is amended to read:

5           560.309 Rules.--

6           (1) Before a registrant shall deposit, with any  
7 financial institution, a payment instrument that is cashed by  
8 a registrant, each such item must be endorsed with the actual  
9 name under which such registrant is doing business. If a  
10 payment instrument received from a customer is not deposited  
11 within 2 business days, excluding Saturdays and Sundays, after  
12 receipt, the transaction is considered to be a consumer  
13 finance loan and is subject to the provisions of chapter 516.  
14 For purposes of this subsection, the term "payment instrument"  
15 does not include travelers checks, foreign drawn payment  
16 instruments, or money orders.

17           Section 23. If any provision of this act or the  
18 application thereof to any person or circumstance is held  
19 invalid, the invalidity shall not affect other provisions or  
20 applications of the act which can be given effect without the  
21 invalid provision or application, and to this end the  
22 provisions of this act are declared severable.

23           Section 24. Except as otherwise provided in this act,  
24 this act shall take effect October 1, 2000.

1                   STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
2                                   COMMITTEE SUBSTITUTE FOR  
3   SB 1834 and 694  
4                   Changes definition of "title loan" by also excepting loans  
5                   made by persons licensed pursuant to chs. 656-667, F.S., and  
6                   by persons complying with s. 687.03, F.S.  
7                   Increases the percentage of interest in a title loan business  
8                   necessary to require licensure from 25% to 50%.  
9                   Decreases the percentage of ownership necessary to require  
10                   certain information about an "ultimate equitable owner" from  
11                   25% to 10%.  
12                   Adds that the department need not obtain a title loan  
13                   applicant's fingerprints if the applicant's fingerprints are  
14                   on file with the department.  
15                   Removes provision allowing department to waive applicant  
16                   fingerprint requirement.  
17                   Clarifies that department's enforcement of the act is subject  
18                   to Chapter 120, F.S.  
19                   Eliminates option to file a certificate of deposit, rather  
20                   than a surety bond.  
21                   bhin that pleas of no contest to crimes involving fraud,  
22                   dishonest dealing, or moral turpitude may subject an applicant  
23                   to license denial or a licensee to enumerated sanctions.  
24                   Changes recordkeeping requirement by providing that lender  
25                   must maintain records for two years after the last entry on a  
26                   loan or until examined by the department, whichever occurs  
27                   later.  
28                   Removes provision stating that borrower is only personally  
29                   liable for the loan balance in excess of \$2,000 after vehicle  
30                   sale proceeds are applied.  
31                   Removes requirement that the department establish a consumer  
                 awareness program.  
                 Excepts travelers checks, foreign drawn payment instruments,  
                 and money orders from the definition of "payment instrument"  
                 contained in s. 560.309(1), F.S.