

STORAGE NAME: h0301.brc

DATE: January 27, 2000

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
BUSINESS REGULATION & CONSUMER AFFAIRS
ANALYSIS**

BILL #: HB 301

RELATING TO: Title Loan Transactions

SPONSOR(S): Representative Sublette

TIED BILL(S):

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) FINANCIAL SERVICES YEAS 9 NAYS 0
 - (2) BUSINESS REGULATION & CONSUMER AFFAIRS
 - (3) GOVERNMENTAL RULES AND REGULATION
 - (4) FINANCE AND TAXATION
 - (5) GENERAL GOVERNMENT APPROPRIATIONS
-

I. SUMMARY:

A title loan is a transaction where money is lent with the title to a motor vehicle offered as security. Physical possession of the motor vehicle is maintained by the borrower and the motor vehicle title is held by the lender. Because the motor vehicle is not physically held by the title lender, the transaction is classified as a title loan and not a pawn. Unlike other secondhand dealers (e.g., pawnbrokers), title lenders are not regulated by a state agency.

This bill provides:

- **Agency Oversight:** The Department of Banking and Finance (department) will regulate and enforce the provisions of the act, and is authorized to promulgate rules, impose and collect fines, and approve all forms.
- **Nonrefundable Fees:** Provides for an application fee (\$1,200), an investigation fee (\$200), a reactivation fee (\$600), and a biennial renewal fee (\$1,200). All fees would be deposited into the Regulatory Trust Fund.
- **Interest rate:** Provides for a maximum interest rate of 30 percent per annum computed on the first \$2,000 of the principal amount, 24 percent for the amount exceeding \$2,000 and not exceeding \$3,000, and 18 percent on the amount exceeding \$3,000. Compliance with statutory interest and finance charges will be computed with simple interest and not add-on interest or any other computation.
- **Criminal violations:** Establishes criminal penalties for those who engage in the title loan business without a license, and for willful violations of this act by licensed title loan lenders.
- **Clarification/conformity:** Removes title loan transaction references from the statutes (Chapter 538, F.S.) which govern secondhand dealers.
- **Appropriation:** Provides for an appropriation in the amount of \$500,000 from the Regulatory Trust Fund to the Department of Banking and Finance to fund eight positions for the purpose of carrying out the provisions of this act.

STORAGE NAME: h0301.brc

DATE: January 27, 2000

PAGE 2

For a more comprehensive examination of the bill's provisions, please see the SECTION-BY-SECTION ANALYSIS section in Part D.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

1. Less Government Yes No N/A

The bill provides for an appropriation of \$500,000 to fund eight new positions for the department to regulate the industry. The bill also authorizes rulemaking authority to the department.

2. Lower Taxes Yes No N/A

The bill creates a regulatory fee structure for title loan lenders who are not currently regulated.

3. Individual Freedom Yes No N/A

Restrictions are placed on title loan lenders relative to the amount of interest allowable on title loans, duration of such loans, and the disposal of property realized in default situations.

4. Personal Responsibility Yes No N/A

5. Family Empowerment Yes No N/A

B. PRESENT SITUATION:

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

The term "secondhand dealer" refers to pawnbrokers, title lenders, jewelers, precious metals dealers, garage sale operators, secondhand stores, and consignment shops. In 1993, the Legislature made it a misdemeanor for a secondhand dealer to accept title or any other form of security without having physical possession of the secondhand goods. In 1995, legislation was passed that allowed some secondhand dealers to engage in motor vehicle title loans where the motor vehicle was not physically held by the lender. The exact number of title loan lenders is not available since the Department of Revenue, which registers secondhand dealers, does not distinguish between secondhand dealers in general and secondhand dealers who engage in title loans.

Unlike other secondhand dealers (e.g., pawnbrokers), title lenders are not regulated by a state agency. The only state entity having direct interaction with the title loan industry is the Department of Revenue which requires all secondhand dealers to register with the department for tax purposes and to obtain a secondhand dealer's license. The cost of registration is \$45 plus \$6 for every location. The annual renewal fee is \$6 per location.

By law, secondhand dealers may charge a maximum fee (as distinguished from an interest rate) of 22 percent per month on a title loan transaction. There is no prohibition against capitalizing (same effect as compounding) the 22 percent rate. This is in contrast to the

STORAGE NAME: h0301.brc

DATE: January 27, 2000

PAGE 4

maximum service charge allowed for pawnbrokers, which cannot exceed 25 percent per 30-day period on a pawn transaction. Pawn agreements may be extended monthly, with no limit on the number of extensions to which the parties may agree. For instance, the following compares how much a person would pay for principal and interest on a \$1,500 title loan for 30 days, 90 days and at maturity, assuming they are paying \$500 monthly, under current law regulating title loan lenders and current law regulating pawns:

With 18 percent simple annum:

- After 30 days \$1,023 balance owed
- After 90 days \$67 balance owed
- Pay-off date Four months
- Total interest charges at pay- off date \$90
- Interest paid as percentage of original loan 6 percent
- Total cost of \$1,500 loan \$1,590

Current law - title loans s.538.06(5)(e), F.S. - 22 percent per month

- After 30 days \$1,330 balance owed
- After 90 days \$871 balance owed
- Pay-off date Six months
- Total interest charges at pay- off date \$1,224
- Interest paid as percentage of original loan 81.6 percent
- Total cost of \$1,500 loan \$2,724

Current law - Pawn - 539.001(11)(a), F.S. pawn charge cannot exceed 25 percent per 30-day period - may be renewed monthly

- After 30 days \$1,375 balance owed
- After 90 days \$1,024 balance owed
- Pay-off date Seven months
- Total interest charges at pay- off date \$1,618
- Interest paid as percentage of original loan 107.8 percent
- Total cost of \$1,500 loan \$3,118

Staff of the Committee on Financial Services contacted local pawn shops which indicated that the average loan amount they extend is between \$40 to \$75. Pawn loans for large items, such as television sets, may exceed \$300. If a pawn shop loaned a customer \$300, and the customer was able to pay only \$100 per month, the total cost of the \$300 loan, after paying it off in seven months, would be \$616. On an anecdotal note, two pawn shop operators indicated that a fair number of customers seeking loans on small items (jewelry, radios, VCRs) show no concern for redeeming their property (i.e., paying off the loan).

The following provides references to Florida Statutes regulating usury, and statute references providing the maximum interest rate allowed for various consumer transactions, such as consumer finance loans, secondhand dealer/title loans, pawnbroker transactions, and credit cards.

USURY

- 687.02(1), F.S., defines “usurious contracts” and caps interest rates at 18 percent per annum simple interest.
- 687.03(1), F.S., defines “unlawful rates of interest” and caps interest rates at 18 percent per annum simple interest.
- 687.071(2), F.S., details criminal usury, and loan sharking, and imposes a penalty of 2nd degree misdemeanor for charging interest over 25 percent but less than 45 percent per annum.

STORAGE NAME: h0301.brc

DATE: January 27, 2000

PAGE 5

- 687.071(3), F.S., details criminal usury, and loan sharking, and imposes a penalty of 3rd degree felony for charging interest over 45 percent per annum.
- 687.12(1), F.S., regards interest rates; parity among licensed lenders or creditors, and permits the maximum rate is amount permitted by law.

CONSUMER FINANCE

- 516.031(1), F.S., provides finance charge, and maximum rates, and provides the following: No interest on principal less than \$1,000; 30 percent per annum on first \$2,000 of principal; 24 percent per annum on principal between \$2,000 and \$3,000; 18 percent per annum on principal between \$3,000 and \$25,000; not authorized to loan greater than \$25,000.

SECONDHAND DEALER/MOTOR VEHICLE TITLE LOANS

- 538.06(5)(e), F.S., concerns the holding period, and provides a cap of interest at 22 percent per month.

PAWNBROKERS

- 539.001(11)(a), F.S., is the Florida Pawnbroking Act, and provides that the service charge not to exceed 25 percent per 30-day period; agreements may be extended; no limit on the number of times agreements may be extended.

CREDIT CARDS

- 655.954, F.S., describes financial institution loans, and credit cards. Rate is specified in the written contract, and requires compliance with federal Truth in Lending Act disclosures.

The 1996 Legislature established the Florida Vehicle Title Loan Task Force to review industry practices and recommend any changes necessary to protect consumers. The task force met seven times and recommended that the 1995 act be repealed. However, prior to the final vote, the task force reached general agreement that any regulatory program should:

1. Establish the Department of Agriculture and Consumer Services as the regulating agency;
- *2. Enact a new chapter to regulate title loans;
- *3. Establish bonding at \$200,000 net worth or \$100,000 bond, certificate of deposit, or letter of credit;
- *4. Require standardized transaction forms;
- *5. Require keeping transaction forms for two years and make them available upon request;
6. Omit contract length regulation;
- *7. Require use of terms "interest rate" and "loan;"
- *8. Require disclosure of loan as a lien;
- *9. Prohibit capitalizing interest;
- *10. Prohibit any fee in addition to interest rate, require full finance disclosure, and set maximum fine of \$5,000;
11. Require principal reduction payment for extended loans when service fees are paid in full;
- *12. Require 10-day holding period for repossessed vehicle prior to sale;

STORAGE NAME: h0301.brc

DATE: January 27, 2000

PAGE 6

- *13. Require return of excess money collected in the sale of a repossessed vehicle, allow deduction of reasonable repossession costs, and prohibit further collections ~~definitive~~ sale;
- 14. Prohibit wholesaling repossessed vehicles to an affiliated entity; and
- *15. Establish fees according to estimated cost of regulation.

The task force did not agreed on the interest rate.

* Indicates provision is included in HB 301.

For the past three consecutive Regular Sessions, the Legislature has attempted to pass a bill regulating the title loan industry statewide but has yet to be successful in passing one agreed upon by both houses. As of November, 1999, however, 21 counties have approved ordinances restricting rates to no more than 30 percent, and another 10 counties have similar ordinances under consideration.

C. EFFECT OF PROPOSED CHANGES:

This bill encompasses part or all of 11 of the 15 provisions generally agreed to by the task force and provides the following:

- **Agency Oversight:** The Department of Banking and Finance (department) will regulate and enforce the provisions of the act. The department is authorized to promulgate rules, impose and collect fines, and approve all forms.
- **Nonrefundable Fees:** Provides for an application fee (\$1,200), an investigation fee (\$200), a reactivation fee (\$600), and a biennial renewal fee (\$1,200). All fees would be deposited into the Regulatory Trust Fund.
- **Interest rate:** Provides for a maximum interest rate of 30 percent per annum computed on the first \$2,000 of the principal amount, 24 percent for the amount exceeding \$2,000 and not exceeding \$3,000, and 18 percent on the amount exceeding \$3,000. Compliance with statutory interest and finance charges shall be computed with simple interest and not add-on interest or any other computation.
- **Licensure requirements:** Establishes application requirements for licensure as a title loan business, and requires that applicants file a \$100,000 surety bond for each license, the aggregate of which shall not exceed \$1 million. In lieu of a surety bond, the applicant may establish a certificate of deposit or an irrevocable letter of credit in a financial institution for the same amount. The department will be designated as the beneficiary of the account, for the purpose of redress to a person injured pursuant to fraud, misrepresentation, or other violation of this act.
- **Criminal violations:** Provides for criminal penalties for those who engage in the title loan business without a license, and for willful violations of this act by licensed title loan lenders.
- **Investigations:** Provides the department with authority to make intermittent investigation and examination of licensed title lenders, and to compel the production of books and records of the licensee under investigation. Title loan lenders must maintain

STORAGE NAME: h0301.brc

DATE: January 27, 2000

PAGE 7

transaction forms for two years and make them available upon demand by the department.

- **Disclosures:** Requires a disclosure on the title loan transaction form of the interest designated as a "finance charge" and the amount due on the loan maturity date. The annual percentage rate must be computed and disclosed in accordance with the Federal Truth in Lending Act and regulation Z of the Board of Governors of the Federal Reserve System. Any charges in excess of the combined total of all charges permitted shall constitute a violation of Chapter 687, F.S., regulating usury.
- **Clarification:** A differentiation is made between title loan lenders and secondhand dealers by removing title loan transaction references from the statutes (Chapter 538, F.S.) which govern secondhand dealers.
- **Appropriation:** Provides for an appropriation in the amount of \$500,000 from the Regulatory Trust Fund to the Department of Banking and Finance to fund eight positions for the purpose of carrying out the provisions of this act.

In short, the overall effect of the bill is to reduce the amount of interest currently charged to each consumer and, in addition, establish a regulatory framework for the title loan industry to provide consumer protections.

D. SECTION-BY-SECTION ANALYSIS:

Section 1. Creates the Florida Title Loan Act.

Section 2. Provides legislative intent: (a) titles loans shall be regulated by this act; and (b) this act shall supersede other provisions of state law affecting title loans to the extent of any conflict.

Section 3. Provides definitions.

Section 4. Provides licensure requirements and fees. A person engaged in the title loan business must be licensed by the department. A separate license is required for each physical location of a title loan office. An application for a title loan license shall be submitted to the department, along with a bond, a complete set of fingerprints (unless waived by the department according to rule), a non-refundable application fee of \$1,200 and a \$200 non-refundable investigation fee. An issued license must be renewed every two years, along with a non-refundable \$1,200 renewal fee. Licenses are not transferable or assignable. A license that lapses may be reactivated within 6 months of the expiration date upon submission of a reactivation form, a non-refundable renewal fee of \$1,200 and a \$600 reactivation fee. All fees would be deposited into the Regulatory Trust Fund.

The department may set by rule various procedures for licensure and for the electronic filing of applications, fees, and forms required under this act.

A license must specify the location for which it is issued. Relocation of an office requires prior written notice to the department. A new license must be applied for, and fees paid, if

STORAGE NAME: h0301.brc

DATE: January 27, 2000

PAGE 8

a person owning 25 percent or greater interest in the title loan office leaves that licensed office.

Section 5. Establishes application requirements for licensure as a title loan business. Applications must contain the name and residence and business address of the applicant. If the applicant for a license is other than a corporation, these requirements apply to each equitable owner. The application must state whether any individual identified in the application has pled nolo contendere to, or has been convicted or found guilty of a felony within the 10 years preceding the application date. The application must state the physical location of the business. Along with the application, the applicant must file a \$100,000 surety bond for each license, the aggregate of which shall not exceed \$1 million. In lieu of a surety bond, the applicant may establish a certificate of deposit or an irrevocable letter of credit in a financial institution for the same amount. The department shall be designated as the beneficiary of the account, for the purpose of redress to a person injured pursuant to fraud, misrepresentation, or other violation of this act.

Section 6. Lists violations of the Florida Title Loan Act and the disciplinary actions available to the department. Violations range from fraud, to the failure to maintain records in accordance with the act and failure to provide access to books and records to the department in the event of an investigation by the department. The department may enter an order taking one or more actions including: denying an application, revoking a license previously issue, placing a licensee on probation, issuing a reprimand or imposing an administrative fine not to exceed \$5,000 for each violation.

Section 7. Provides that any title loan agreement made by an un-licensed title loan dealer is void, and the person making the title loan forfeits the right to collect any moneys, including principal and interest. The person making the loan is required to return the loan property, the titled personal property pledged or the fair market value of the titled personal property, and all principal and interest. The borrower is entitled to receive reasonable attorneys fees and costs in any action brought by the borrower to recover the property, principal, and/or interest.

Section 8. Provides minimum information required on a title loan transaction form. Required information includes the title loan interest designated as a "finance charge," the interest rate, computed in accordance with the regulation adopted by the Federal Reserve Board pursuant to the Federal Truth-In-Lending Act, designated as the "annual percentage rate," and the "total amount of all payments" which is the amount financed plus finance charge. The title loan lender is authorized to possess the certificate of title for the duration of the agreement. The pledgor may redeem the certificate of title by repaying the loan in full.

The agreement shall provide that upon failure by the pledgor to redeem the title at the end of the agreement period, or at the end of the extension period, the title loan lender may take possession of the titled personal property and sell the property in the manner provided by law. If the vehicle is sold, the borrower is entitled to any proceeds of the sale in excess of the amount owed on the title loan and the reasonable costs of repossession and sale.

STORAGE NAME: h0301.brc

DATE: January 27, 2000

PAGE 9

Section 9. Authorizes the department to prescribe the minimum information which must be maintained for at least two years after the conclusion of a loan. All title loan records must be provided to the department for inspection upon request of the department.

Section 10. Provides for a maximum interest rate of 30 percent per annum computed on the first \$2,000 of the principal amount, 24 percent for the amount exceeding \$2,000 and not exceeding \$3,000, and 18 percent on the amount exceeding \$3,000. Compliance with statutory interest and finance charges shall be computed with simple interest and not add-on interest or any other computation. The annual percentage rate must be computed and disclosed in accordance with the Federal Truth in Lending Act and regulation Z of the Board of Governors of the Federal Reserve System. If the excess interest resulted from a bona fide error, the title loan agreement is voidable. If the excess interest resulted from an act by the title loan officer or an agent to circumvent the maximum title loan interest allowed by this act, the agreement is void. Any charges, including interest, in excess of the combined total of all charges permitted by this act shall constitute a violation of Chapter 687, F.S., governing usury.

Section 11. Provides for the repossession of pledged property after the maturity date of a title loan, within 30 days after payment was due. The title loan lender may take possession of the motor vehicle through an agent that is licensed to repossess motor vehicles. Sale or disposal of the motor vehicle shall be made through a motor vehicle dealer licensed under s. 320.27, F.S. Prior to repossession, the lender is required to permit the borrower to remove any personal, unpledged items from the titled property. The lender is required to notify the borrower of the date, time, and place of the sale 10 days prior, along with the total amount due on the loan. The borrower shall be permitted to redeem the property at any time prior to the sale, and nothing in the act shall preclude the borrower from purchasing the property at auction. Within 30 days after the sale of the motor vehicle, the title loan borrower is entitled to receive moneys from the sale of the motor vehicle in excess of the loan amount, interest on the loan amount to that date of repossession, and reasonable expenses for the lenders efforts in repossession, holding, and sale of the motor vehicle. The borrower shall not be personally liable to the lender for any balance due on the title loan after the sale, unless the balance exceeds \$2,000, in which case the lender is entitled to reasonable attorneys fees and costs incurred in an action to recover the balance. Except as provided herein, the taking possession of, and sale or disposal of the motor vehicle is subject to the requirements of Chapter 679, F.S., Florida's UCC chapter regarding secured transactions.

Section 12. Prohibits certain acts by a title loan lender ranging from falsifying information in connection with a title loan transaction to using the words "interest free loans" or "no finance charges" in advertising the business. No licensee may be engaged in the pawnbroker business or any other business which violates or evades the proposed Florida Title Loan Act.

Section 13. Provides for redemption procedures, and procedures if the pledgor's copy of the title loan transaction form is lost, destroyed or stolen.

Section 14. Provides for criminal penalties for those who engage in the title loan business without a license, and for willful violations of this act by licensed title loan lenders.

STORAGE NAME: h0301.brc

DATE: January 27, 2000

PAGE 10

Section 15. Provides powers to the department to bring an action in any court of competent jurisdiction to enforce the provisions of this act, to issue subpoenas, to issue cease and desist orders in certain circumstances, to impose and collect administrative fines, and promulgate rules to implement this act.

Section 16. Provides the department with authority to make intermittent investigation and examination of licensed title lenders, and to compel the production of books and records of the licensee under investigation. Investigations and examinations shall not be made more than once in a 12-month period unless there is good cause to believe there has been a violation of the Florida Title Loan Act. Provides limitations on the fees that may be charged by the department in the course of examinations. Any person who believes that the provisions of this act have been violated may file a written complaint with the department. Upon receipt, the department is authorized to inspect books, records, or other documentation relating to the specific written complaint.

Section 17. Amends s. 538.03, F.S., removing title loan transactions from the purview of the definitions of that act relating to "secondhand dealer."

Section 18. Amends s. 538.16, F.S., removing title loan transactions from the purview of that section regulating secondhand dealers and the disposal of property.

Section 19. Authorizes local county and municipal governments to adopt more restrictive ordinances than those of the provisions of the Florida Title Loan Act.

Section 20. Effective July 1, 2000, provides for an appropriation in the amount of \$500,000 from the Regulatory Trust Fund to the Department of Banking and Finance to fund eight positions for the purpose of carrying out the provisions of this act.

Section 21. Repeals s. 538.03 (1)(I), F.S., removing the definition of "title loan" from the definition section of the chapter regulating secondhand dealers. Repeals 538.06(5), F.S., removing title loan-related provisions from the chapter regulating secondhand dealers. Repeals s. 538.15(4) and (5), F.S., removing title loan-related provisions from the chapter regulating secondhand dealers.

Section 22. Provides that provisions of this act may be severable if such are found to be invalid.

Section 23. Provides an effective date of October 1, 2000, for the provisions of this act.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

	2000-01	2001-02	2002-03
Department of Banking and Finance Regulatory Trust Fund Fees (investigative and licensing)	\$840,000	\$0	\$720,000

2. Expenditures:

	2000-01	2001-02	2002-03
Department of Banking and Finance One-time expenses: Regulatory Trust Fund	\$ 39,400		
Recurring expenses: Regulatory Trust Fund	\$385,848	\$394,906	\$404,235
<hr/> Total Expenses: Regulatory Trust Fund (Eight FTEs)	<hr/> \$425,288	<hr/> \$394,906	<hr/> \$404,235

(\$39,400 in FY 2000-01 is for one-time expenses associated with the eight new positions.)

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Direct private sector costs: Title loan companies will pay a new biennial license fee of \$1,200 and an initial investigation fee of \$200.

Direct private sector benefits: The bill reduces the amount of interest currently charged to each consumer. In addition, a regulatory framework for the title loan industry should provide consumer protections.

D. FISCAL COMMENTS:

None

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The bill will not reduce the authority of counties and municipalities to raise revenues.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill will not reduce the state tax shared with counties and municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None noted.

B. RULE-MAKING AUTHORITY:

The bill authorizes the department to implement rules to allow for electronic filing of applications, fees, and forms required by the act. The department is also authorized to implement rules regarding the amount and type of information to be kept by licensees in order that the department may determine compliance with the act.

C. OTHER COMMENTS:

Title loan industry representatives have asserted repeatedly that a 30 percent APR would drive the industry out of business. In contrast, the Miami Herald published a story on October 25, 1999, reporting that title loan offices in Miami-Dade County are surviving despite the interest rate cap passed by the local governments there. Eleven auto title stores registered to do business in Broward, where the limit took effect in August, and in Miami-Dade County, seven stores had filed applications under an identical cap which took effect October 17, 1999.

STORAGE NAME: h0301.brc

DATE: January 27, 2000

PAGE 13

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None.

VII. SIGNATURES:

COMMITTEE ON FINANCIAL SERVICES:

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