

By the Committee on Business Regulation & Consumer Affairs and Representatives Sublette, Fasano, Goodlette, Stafford, Wiles, Fiorentino, Posey, Turnbull, L. Miller, Sanderson, Rojas, Maygarden, Boyd, J. Miller, Andrews, Ritchie, C. Green, (Additional Sponsors on Last Printed Page)

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

1 providing for extensions; providing for return  
2 of principal and interest to the borrower under  
3 certain circumstance; providing a holding  
4 period when there is a failure to reclaim;  
5 providing for the disposal of pledged property;  
6 providing for disposition of excess proceeds;  
7 prohibiting certain acts; providing for the  
8 right to reclaim; providing for lost title loan  
9 agreements; providing for a title loan lenders  
10 lien; providing for criminal penalties;  
11 providing for subpoenas, enforcement of  
12 actions, and rules; providing for  
13 investigations and complaints; authorizing the  
14 department to adopt rules; amending ss. 538.03  
15 and 538.16, F.S.; deleting provisions relating  
16 to title loan transactions; providing for more  
17 restrictive local ordinances; providing an  
18 appropriation; repealing ss. 538.03(1)(i),  
19 538.06(5), and 538.15(4) and (5), F.S.,  
20 relating to title loan transactions by  
21 secondhand dealers; providing severability;  
22 providing effective dates.

23  
24 Be It Enacted by the Legislature of the State of Florida:

25  
26 Section 1. Short title.--This act may be cited as the  
27 "Florida Title Loan Act."

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

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

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

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

13 (3) "Executive officer" means the president, chief  
14 executive officer, chief financial officer, chief operating  
15 officer, executive vice president, senior vice president,  
16 secretary, and treasurer.

17 (4) "Identification" means a government-issued  
18 photographic identification.

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

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

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

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

3 (9) "Motor vehicle" means an automobile, motorcycle,  
4 mobile home, truck, trailer, semitrailer, truck tractor and  
5 semitrailer combination, or any other vehicle operated on the  
6 public highways and streets of this state, used to transport  
7 persons or property, and propelled by power other than  
8 muscular power, but excluding a vehicle which runs only upon a  
9 track and a mobile home that is the primary residence of the  
10 owner.

11 (10) "Title loan" or "loan" means a loan of money  
12 secured by bailment of a certificate of title to a motor  
13 vehicle, except such loan made by a person licensed under  
14 chapter 516, chapter 520, chapter 655, chapter 657, chapter  
15 658, chapter 660, chapter 663, chapter 665, or chapter 667,  
16 Florida Statutes, or a person who complies with s. 687.03,  
17 Florida Statutes.

18 (11) "Title loan agreement" or "agreement" means a  
19 written agreement in which a title loan lender agrees to make  
20 a title loan to a borrower.

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

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

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

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

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

13 (1) A person may not act as a title loan lender or own  
14 or operate a title loan office unless such person has an  
15 active title loan lender license issued by the department  
16 under this act. A title loan lender may not own or operate  
17 more than one title loan office unless the lender obtains a  
18 separate title loan lender license for each title loan office.

19 (2) A person applying for licensure as a title loan  
20 lender shall file with the department an application, the bond  
21 required by section 5(3), a nonrefundable application fee of  
22 \$1,200, a nonrefundable investigation fee of \$200, and a  
23 complete set of fingerprints taken by an authorized law  
24 enforcement officer. The department shall submit such  
25 fingerprints to the Department of Law Enforcement or the  
26 Federal Bureau of Investigation for state and federal  
27 processing. The department may waive, by rule, the requirement  
28 that applicants must file a set of fingerprints or the  
29 requirement that such fingerprints must be processed by the  
30 Department of Law Enforcement or the Federal Bureau of  
31 Investigation.

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

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

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

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

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

25       (8) Whenever a person or a group of persons, directly  
26 or indirectly or acting by or through one or more persons,  
27 proposes to purchase or acquire a 50 percent or more interest  
28 in a licensee, such person or group shall submit an initial  
29 application for licensure under this act prior to such  
30 purchase or acquisition.

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

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

7       Section 5. Application for license.--

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

10       (a) Contain the name and the residence and business  
11 address of the applicant. If the applicant is other than a  
12 natural person, the application shall contain the name and the  
13 residence and business address of each ultimate equitable  
14 owner of 10 percent or more of such entity and each director,  
15 general partner, and executive officer of such entity.

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

20       (c) Identify the county and municipality with the  
21 street and number or location where the business is to be  
22 conducted.

23       (d) Contain additional information as the department  
24 determines by rule to be necessary to ensure compliance with  
25 this act.

26       (2) Notwithstanding subsection (1), the application  
27 need not state the full name and address of each officer,  
28 director, and shareholder if the applicant is owned directly  
29 or beneficially by a person who as an issuer has a class of  
30 securities registered pursuant to section 12 of the Securities  
31 Exchange Act of 1934 or, pursuant to section 13 or section

1 15(d) of such act, is an issuer of securities which is  
2 required to file reports with the Securities and Exchange  
3 Commission, if the person files with the department any  
4 information, documents, and reports required by such act to be  
5 filed with the Securities and Exchange Commission.  
6 (3) An applicant for licensure shall file with the  
7 department a bond, in the amount of \$100,000 for each license,  
8 with a surety company qualified to do business in this state.  
9 However, in no event shall the aggregate amount of the bond  
10 required for a single title loan lender exceed \$1 million. In  
11 lieu of the bond, the applicant may establish a certificate of  
12 deposit or an irrevocable letter of credit in a financial  
13 institution, as defined in s. 655.005, Florida Statutes, in  
14 the amount of the bond. The original bond, certificate of  
15 deposit, or letter of credit shall be filed with the  
16 department, and the department shall be the beneficiary to  
17 that document. The bond, certificate of deposit, or letter of  
18 credit shall be in favor of the department for the use and  
19 benefit of any consumer who is injured pursuant to a title  
20 loan transaction by the fraud, misrepresentation, breach of  
21 contract, financial failure, or violation of any provision of  
22 this act by the title loan lender. Such liability may be  
23 enforced either by proceeding in an administrative action or  
24 by filing a judicial suit at law in a court of competent  
25 jurisdiction. However, in such court suit, the bond,  
26 certificate of deposit, or letter of credit posted with the  
27 department shall not be amenable or subject to any judgment or  
28 other legal process issuing out of or from such court in  
29 connection with such lawsuit, but such bond, certificate of  
30 deposit, or letter of credit shall be amenable to and  
31 enforceable only by and through administrative proceedings



1 before the department. It is the intent of the Legislature  
2 that such bond, certificate of deposit, or letter of credit  
3 shall be applicable and liable only for the payment of claims  
4 duly adjudicated by order of the department. The bond,  
5 certificate of deposit, or letter of credit shall be payable  
6 on a pro rata basis as determined by the department, but the  
7 aggregate amount may not exceed the amount of the bond,  
8 certificate of deposit, or letter of credit.

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

12 Section 6. Denial, suspension, or revocation of  
13 license.--

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

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

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

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

27 (d) Imposition of illegal or excessive charges in any  
28 title loan transaction.

29 (e) False, deceptive, or misleading advertising by a  
30 title loan lender.

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

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

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

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

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

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

1 regulating banking, insurance, finance or small loan  
2 companies, real estate, mortgage brokers, or other related or  
3 similar industries for acts involving fraud, dishonest  
4 dealing, or any act of moral turpitude.  
5 (l) Failing to continuously maintain the bond,  
6 certificate of deposit, or letter of credit required by  
7 section 5(3).  
8 (m) Failing to timely pay any fee, charge, or fine  
9 imposed or assessed pursuant to this act or rules adopted  
10 under this act.  
11 (n) Having a license or registration, or the  
12 equivalent, to practice any profession or occupation denied,  
13 suspended, revoked, or otherwise acted against by a licensing  
14 authority in any jurisdiction for fraud, dishonest dealing, or  
15 any act of moral turpitude.  
16 (o) Having demonstrated unworthiness, as defined by  
17 department rule, to transact the business of a title loan  
18 lender.  
19 (2) Upon a finding by the department that any person  
20 has committed any of the acts set forth in subsection (1), the  
21 department may enter an order taking one or more of the  
22 following actions:  
23 (a) Denying an application for licensure under this  
24 act.  
25 (b) Revoking or suspending a license previously  
26 granted pursuant to this act.  
27 (c) Placing a licensee or an applicant for a license  
28 on probation for a period of time and subject to such  
29 conditions as the department specifies.  
30 (d) Issuing a reprimand.  
31

1       (e) Imposing an administrative fine not to exceed  
2 \$5,000 for each separate act or violation.

3       (3) If a person seeking licensure is anything other  
4 than a natural person, the eligibility requirements of this  
5 section apply to each direct or ultimate equitable owner of 10  
6 percent or more of the outstanding equity interest of such  
7 entity and to each director, general partner, and executive  
8 officer.

9       (4) It is sufficient cause for the department to take  
10 any of the actions specified in subsection (2), as to any  
11 entity other than a natural person, if the department finds  
12 grounds for such action as to any member of such entity, as to  
13 any executive officer or director of the entity, or as to any  
14 person with power to direct the management or policies of the  
15 entity.

16       (5) Each licensee is subject to the provisions of  
17 subsection (2) for the acts of employees and agents of the  
18 licensee if the licensee knew or should have known about such  
19 acts.

20       (6) Licensure under this act may be denied or any  
21 license issued under this act may be suspended or restricted  
22 if an applicant or licensee is charged, in a pending  
23 enforcement action or pending criminal prosecution, with any  
24 conduct that would authorize denial or revocation under this  
25 section.

26       Section 7. Remedies for title loans made without  
27 licensure.--Any title loan made without benefit of a license  
28 is void, in which case the person making the title loan  
29 forfeits the right to collect any moneys, including principal  
30 and interest charged on the title loan, from the borrower in  
31 connection with such agreement. The person making the title

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

9 Section 8. Title loan agreement.--

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

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

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

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

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

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

30 (f) The amount of money advanced, designated as the  
31 "amount financed."

- 1       (g) The maturity date of the title loan agreement,  
2 which shall be 30 days after the date the title loan agreement  
3 is executed by the title loan lender and the borrower.
- 4       (h) The total title loan interest payable on the  
5 maturity date, designated as the "finance charge."
- 6       (i) The amount financed plus finance charge, which  
7 must be paid to reclaim the loan property on the maturity  
8 date, designated as the "total amount of all payments."
- 9       (j) The interest rate, computed in accordance with the  
10 regulations adopted by the Federal Reserve Board pursuant to  
11 the Federal Truth-in-Lending Act, designated as the "annual  
12 percentage rate."
- 13       (2) The following information shall also be printed on  
14 all title loan agreements:
- 15       (a) The name and physical address of the title loan  
16 office.
- 17       (b) The name and address of the department as well as  
18 a telephone number to which consumers may address complaints.
- 19       (c) The following statement in not less than 12-point  
20 type that:
- 21           1. If the borrower fails to repay the full amount of  
22 the title loan on or before the end of the maturity date or  
23 any extension of the maturity date and fails to make a payment  
24 on the title loan within 30 days after the end of the maturity  
25 date or any extension of the maturity date, whichever is  
26 later, the title loan lender may take possession of the  
27 borrower's motor vehicle and sell the vehicle in the manner  
28 provided by law. If the vehicle is sold, the borrower is  
29 entitled to any proceeds of the sale in excess of the amount  
30 owed on the title loan and the reasonable expenses of  
31 repossession and sale.

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

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

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

13           (3) At the time of the transaction, the title loan  
14 lender shall deliver to the borrower an exact copy of the  
15 executed title loan agreement.

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

30           Section 9. Recordkeeping; reporting; safekeeping of  
31 property.--

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

6       (2) The department may authorize the maintenance of  
7 books, accounts, and records at a location other than the  
8 lender's title loan office. The department may require books,  
9 accounts, and records to be produced and available at a  
10 reasonable and convenient location in this state within a  
11 reasonable period of time after such a request.

12       (3) The title loan lender shall maintain the original  
13 copy of each completed title loan agreement on the title loan  
14 office premises, and shall not obliterate, discard, or destroy  
15 any such original copy, for a period of at least 2 years after  
16 making the final entry on any loan recorded in such office or  
17 after a department examination, whichever is later.

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

23       (5) The department may prescribe by rule the books,  
24 accounts, and records, and the minimum information to be shown  
25 in the books, accounts, and records, of licensees so that such  
26 records will enable the department to determine compliance  
27 with the provisions of this act.

28       Section 10. Title loan charges.--

29       (1) A title loan lender may charge a maximum interest  
30 rate of 30 percent per annum computed on the first \$2,000 of  
31 the principal amount, 24 percent per annum on that part of the



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

17 (2) The annual percentage rate that may be charged for  
18 a title loan may equal, but not exceed, the annual percentage  
19 rate that must be computed and disclosed as required by the  
20 federal Truth in Lending Act and Regulation Z of the Board of  
21 Governors of the Federal Reserve System. The maximum annual  
22 percentage rate of interest that may be charged is 12 times  
23 the maximum monthly rate, and the maximum monthly rate must be  
24 computed on the basis of one-twelfth of the annual rate for  
25 each full month. The Department of Banking and Finance shall  
26 establish by rule the rate for each day in a fraction of a  
27 month when the period for which the charge is computed is more  
28 or less than 1 month.

29 (3) A title loan agreement may be extended for one or  
30 more 30-day periods by mutual consent of the title loan lender  
31 and the borrower. Each extension of a title loan agreement

1 shall be executed in a separate extension agreement each of  
2 which shall comply with the requirements for executing a title  
3 loan agreement as provided in this act. The interest rate  
4 charged in any title loan extension agreement shall not exceed  
5 the interest rate charged in the related title loan agreement.  
6 A title loan lender may not capitalize in any title loan  
7 extension agreement any unpaid interest due on the related  
8 title loan agreement or any subsequent extensions to that  
9 title loan agreement.

10 (4) 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 amounts authorized under  
13 this chapter are prohibited and may not be collected by the  
14 title loan lender or an agent of the title loan lender.

15 (a) If such excess interest resulted from a bona fide  
16 error by the title loan lender, or an agent of the title loan  
17 lender, the title loan agreement shall be voidable and the  
18 lender shall refund the excess interest to the borrower within  
19 20 days after discovery by the lender or borrower of the bona  
20 fide error, whichever occurs first.

21 (b) If such excess interest resulted from an act by  
22 the title loan lender, or an agent of the title loan lender,  
23 to circumvent the maximum title loan interest allowed by this  
24 act, the title loan agreement is void. The lender shall refund  
25 to the borrower any interest paid on the title loan and return  
26 to the borrower the loan property. The title loan lender  
27 forfeits the lender's right to collect any principal owed by  
28 the borrower on the title loan.

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

1       (5) Any interest contracted for or received, directly  
2 or indirectly, by a title loan lender, or an agent of the  
3 title loan lender, in excess of the amount allowed by this act  
4 constitutes a violation of chapter 687, Florida Statutes,  
5 governing interest and usury, and the penalties of that  
6 chapter apply.

7           Section 11. Repossession, disposal of pledged  
8 property; excess proceeds.--

9           (1) If a borrower fails to repay all amounts legally  
10 due under the title loan agreement on or before the end of the  
11 title loan's maturity date or any extension of such date and  
12 fails to make a payment on the loan within 30 days after the  
13 end of the loan's maturity date or any extension of such date,  
14 whichever is later, the title loan lender may take possession  
15 of the titled personal property. A lender may take possession  
16 of the titled personal property only through an agent who is  
17 licensed by the state to repossess motor vehicles.

18           (2) Prior to engaging a repossession agent, the lender  
19 shall afford the debtor an opportunity to make the titled  
20 personal property available to the lender at a place, date,  
21 and time reasonably convenient to the lender and the borrower.  
22 Prior to taking possession of titled personal property, the  
23 lender shall afford the borrower a reasonable opportunity to  
24 remove from the titled personal property any personal  
25 belongings without charge or additional cost to the borrower.  
26 After the lender takes possession of the titled personal  
27 property, the lender, at the lender's sole expense and risk,  
28 may authorize a third party to retain physical possession of  
29 the titled personal property.

30           (3) Upon taking possession of titled personal  
31 property, the lender may dispose of the titled personal

1 property by sale but may do so only through a motor vehicle  
2 dealer licensed under s. 320.27, Florida Statutes. At least 10  
3 days prior to sale, the lender shall notify the borrower of  
4 the date, time, and place of the sale and provide the borrower  
5 with a written accounting of the principal amount due on the  
6 title loan, interest accrued through the date the lender takes  
7 possession of the titled personal property, and any reasonable  
8 expenses incurred to date by the lender in taking possession  
9 of, preparing for sale, and selling the titled personal  
10 property. At any time prior to such sale, the lender shall  
11 permit the borrower to redeem the titled personal property by  
12 tendering a money order or certified check for the principal  
13 amount of the title loan, interest accrued through the date  
14 the lender takes possession, and any reasonable expenses  
15 incurred to date by the lender in taking possession of,  
16 preparing for sale, and selling the titled personal property.  
17 Nothing in this act nor in any title loan agreement shall  
18 preclude a borrower from purchasing the titled personal  
19 property at any sale.

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

23 (5) Within 30 days after the sale of the titled  
24 personal property, the borrower is entitled to receive all  
25 proceeds from the sale of the motor vehicle in excess of the  
26 principal amount due on the loan, interest on the loan up to  
27 the date the lender took possession, and the reasonable  
28 expenses incurred by the lender in taking possession of,  
29 preparing for sale, and selling the titled personal property.  
30 The borrower is entitled to reasonable attorney's fees and  
31 costs incurred in any action brought to recover such proceeds

1 that results in the title loan lender being ordered to return  
2 all or part of such amount.

3 (6) The borrower shall not be personally liable to the  
4 lender for any balance due on the title loan remaining after  
5 applying the proceeds of the sale of the titled personal  
6 property to the principal amount due on the title loan,  
7 interest accrued through the date the lender took possession,  
8 and any reasonable expenses incurred by the lender in taking  
9 possession of, preparing for sale, and selling the titled  
10 personal property unless such balance exceeds \$2,000. If such  
11 balance exceeds \$2,000, the lender shall be entitled to  
12 reasonable attorney's fees and costs incurred in any action  
13 brought to recover such balance that results in a judgment in  
14 favor of the lender.

15 (7) 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 (8) 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, shall 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 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.
- 8 (e) Knowingly enter into a title loan agreement with  
9 any person who is under the influence of drugs or alcohol when  
10 such condition is visible or apparent, or with any person  
11 using a name other than such person's own name or the  
12 registered name of the person's business.
- 13 (f) Fail to exercise reasonable care, as defined by  
14 department rule, in the safekeeping of loan property or of  
15 titled personal property repossessed pursuant to this act.
- 16 (g) Fail to return loan property or repossessed titled  
17 personal property to a borrower, with any and all of the title  
18 loan lender's liens on the property properly released, upon  
19 payment of the full amount due the title loan lender, unless  
20 the property has been seized or impounded by an authorized law  
21 enforcement agency, taken into custody by a court, or  
22 otherwise disposed of by court order.
- 23 (h) Sell or otherwise charge for any type of insurance  
24 in connection with a title loan agreement.
- 25 (i) Charge or receive any finance charge, interest, or  
26 fees which are not authorized pursuant to this act.
- 27 (j) Act as a title loan lender without an active  
28 license issued under this act.
- 29 (k) Refuse to accept partial payments toward  
30 satisfying any obligation owed under a title loan agreement or  
31 extension of such agreement.

1           (l) Charge a prepayment penalty.  
2           (m) Engage in the business of selling new or used  
3 motor vehicles, or parts for motor vehicles.  
4           (n) Act as a title loan lender under this act within a  
5 place of business in which the licensee solicits or engages in  
6 business outside the scope of this act if the department  
7 determines that the licensee's operation of and conduct  
8 pertaining to such other business results in an evasion of  
9 this act. Upon making such a determination, the department  
10 shall order the licensee to cease and desist from such  
11 evasion, provided, no licensee shall engage in the pawnbroker  
12 business.  
13           (2) Title loan companies may not advertise using the  
14 words "interest free loans" or "no finance charges."  
15           Section 13. Right to reclaim; lost title loan  
16 agreement.--  
17           (1) Any person presenting identification of such  
18 person as the borrower and presenting the borrower's copy of  
19 the title loan agreement to the title loan lender is presumed  
20 to be entitled to reclaim the loan property described in the  
21 title loan agreement. However, if the title loan lender  
22 determines that the person is not the borrower, the title loan  
23 lender is not required to allow the redemption of the loan  
24 property by such person. The person reclaiming the loan  
25 property must sign the borrower's copy of the title loan  
26 agreement which the title loan lender may retain to evidence  
27 such person's receipt of the loan property. A person  
28 reclaiming the loan property who is not the borrower must show  
29 identification to the title loan lender, together with  
30 notarized written authorization from the borrower, and the  
31 title loan lender shall record that person's name and address

1 on the title loan agreement retained by the title loan lender.  
2 In such case, the person reclaiming the borrower's copy of the  
3 title loan agreement shall be provided a copy of such signed  
4 form as evidence of such agreement.

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

24 Section 14. Criminal penalties.--

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

29 (2) In addition to any other applicable penalty, any  
30 person who willfully violates any provision of this act or who  
31 willfully makes a false entry in any record specifically



1 required by this act commits a misdemeanor of the first  
2 degree, punishable as provided in s. 775.082 or s. 775.083,  
3 Florida Statutes.

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

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

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

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

29 (b) Issue and serve upon a person an order requiring  
30 such person to cease and desist and take corrective action  
31 whenever the department finds that such person is violating,

1 has violated, or is about to violate any provision of this  
2 act, any rule or order adopted under this act, or any written  
3 agreement entered into with the department.

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

16 (3) The department may adopt rules pursuant to ss.  
17 120.54 and 120.536(1) to implement this act.

18 Section 16. Investigations and complaints.--

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

30 (2) The department shall conduct all examinations at a  
31 convenient location in this state unless the department

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

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

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

19 538.03 Definitions; applicability.--

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

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

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

31

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

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

6           538.16 Secondhand dealers; disposal of property.--

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

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

20           Section 20. Effective July 1, 2000, the sum of  
21 \$500,000 is hereby appropriated for the 2000-2001 fiscal year  
22 from the Regulatory Trust Fund of the Department of Banking  
23 and Finance to the department to fund eight positions for the  
24 purpose of carrying out the provisions of this act.

25           Section 21. Paragraph (i) of subsection (1) of section  
26 538.03, Florida Statutes, subsection (5) of section 538.06,  
27 Florida Statutes, and subsections (4) and (5) of section  
28 538.15, Florida Statutes, are repealed.

29           Section 22. If any provision of this act or the  
30 application thereof to any person or circumstance is held  
31 invalid, the invalidity shall not affect other provisions or

1 applications of the act which can be given effect without the  
2 invalid provision or application, and to this end the  
3 provisions of this act are declared severable.

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

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ADDITIONAL SPONSORS

Brown, Hart, Greenstein, Kyle, Kelly, Brummer, Kilmer, Detert,  
Flanagan, Sorensen, Ball, Effman, Heyman, Casey, Reddick,  
Wilson, Melvin, Lacasa, Chestnut, Suarez, Jacobs, Futch,  
Starks and Hafner