

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.

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

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

Section 2. Legislative intent.--It is the intent of
the Legislature that title loans shall be regulated by the
provisions of this act. The provisions of this act shall

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 for state
26 processing and the Department of Law Enforcement shall forward
27 the fingerprints to the Federal Bureau of Investigation for
28 national processing.

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

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

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

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

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

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

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

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

4 Section 5. Application for license.--

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

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

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

17 (c) Identify the county and municipality with the
18 street and number or location where the business is to be
19 conducted.

20 (d) Contain additional information as the department
21 determines by rule to be necessary to ensure compliance with
22 this act.

23 (2) Notwithstanding subsection (1), the application
24 need not state the full name and address of each officer,
25 director, and shareholder if the applicant is owned directly
26 or beneficially by a person who as an issuer has a class of
27 securities registered pursuant to section 12 of the Securities
28 Exchange Act of 1934 or, pursuant to section 13 or section
29 15(d) of such act, is an issuer of securities which is
30 required to file reports with the Securities and Exchange
31 Commission, if the person files with the department any

1 information, documents, and reports required by such act to be
2 filed with the Securities and Exchange Commission.

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

1 duly adjudicated by order of the department. The bond,
2 certificate of deposit, or letter of credit shall be payable
3 on a pro rata basis as determined by the department, but the
4 aggregate amount may not exceed the amount of the bond,
5 certificate of deposit, or letter of credit.

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

9 Section 6. Denial, suspension, or revocation of
10 license.--

11 (1) The following acts are violations of this act and
12 constitute grounds for the disciplinary actions specified in
13 subsection (2):

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

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

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

24 (d) Imposition of illegal or excessive charges in any
25 title loan transaction.

26 (e) False, deceptive, or misleading advertising by a
27 title loan lender.

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

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

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

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

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

21 (k) Having been the subject of any decision, finding,
22 injunction, suspension, prohibition, revocation, denial,
23 judgment, or administrative order by any court of competent
24 jurisdiction or administrative law judge, or by any state or
25 federal agency, involving a violation of any federal or state
26 law relating to title loans or any rule or regulation adopted
27 under such law, or has been the subject of any injunction or
28 adverse administrative order by a state or federal agency
29 regulating banking, insurance, finance or small loan
30 companies, real estate, mortgage brokers, or other related or
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1 similar industries for acts involving fraud, dishonest
2 dealing, or any act of moral turpitude.

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

6 (m) Failing to timely pay any fee, charge, or fine
7 imposed or assessed pursuant to this act or rules adopted
8 under this act.

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

14 (o) Having demonstrated unworthiness, as defined by
15 department rule, to transact the business of a title loan
16 lender.

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

21 (a) Denying an application for licensure under this
22 act.

23 (b) Revoking or suspending a license previously
24 granted pursuant to this act.

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

28 (d) Issuing a reprimand.

29 (e) Imposing an administrative fine not to exceed
30 \$5,000 for each separate act or violation.

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

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

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

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

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

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

7 Section 8. Title loan agreement.--

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

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

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

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

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

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

28 (f) The amount of money advanced, designated as the
29 "amount financed."

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

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

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

1 Section 9. Recordkeeping; reporting; safekeeping of
2 property.--

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

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

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

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

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

30 Section 10. Title loan charges.--

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

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

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

13 (4) Any interest contracted for or received, directly
14 or indirectly, by a title loan lender, or an agent of the
15 title loan lender, in excess of the amounts authorized under
16 this chapter are prohibited and may not be collected by the
17 title loan lender or an agent of the title loan lender.

18 (a) If such excess interest resulted from a bona fide
19 error by the title loan lender, or an agent of the title loan
20 lender, the title loan agreement shall be voidable and the
21 lender shall refund the excess interest to the borrower within
22 20 days after discovery by the lender or borrower of the bona
23 fide error, whichever occurs first.

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

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

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

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

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

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

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1 may authorize a third party to retain physical possession of
2 the titled personal property.

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

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

27 (5) Within 30 days after the sale of the titled
28 personal property, the borrower is entitled to receive all
29 proceeds from the sale of the motor vehicle in excess of the
30 principal amount due on the loan, interest on the loan up to
31 the date the lender took possession, and the reasonable

1 expenses incurred by the lender in taking possession of,
2 preparing for sale, and selling the titled personal property.
3 The borrower is entitled to reasonable attorney's fees and
4 costs incurred in any action brought to recover such proceeds
5 that results in the title loan lender being ordered to return
6 all or part of such amount.

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

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

15 Section 12. Prohibited acts.--

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

18 (a) Falsify or fail to make an entry of any material
19 matter in a title loan agreement or any extension of such
20 agreement.

21 (b) Refuse to allow the department to inspect
22 completed title loan agreements, extensions of such
23 agreements, or loan property during the ordinary operating
24 hours of the title loan lender's business or other times
25 acceptable to both parties.

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

28 (d) Make any agreement requiring or allowing for the
29 personal liability of a borrower or the waiver of any of the
30 provisions of this act.

31

1 (e) Knowingly enter into a title loan agreement with
2 any person who is under the influence of drugs or alcohol when
3 such condition is visible or apparent, or with any person
4 using a name other than such person's own name or the
5 registered name of the person's business.

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

9 (g) Fail to return loan property or repossessed titled
10 personal property to a borrower, with any and all of the title
11 loan lender's liens on the property properly released, upon
12 payment of the full amount due the title loan lender, unless
13 the property has been seized or impounded by an authorized law
14 enforcement agency, taken into custody by a court, or
15 otherwise disposed of by court order.

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

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

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

22 (k) Refuse to accept partial payments toward
23 satisfying any obligation owed under a title loan agreement or
24 extension of such agreement.

25 (l) Charge a prepayment penalty.

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

28 (n) Act as a title loan lender under this act within a
29 place of business in which the licensee solicits or engages in
30 business outside the scope of this act if the department
31 determines that the licensee's operation of and conduct

1 pertaining to such other business results in an evasion of
2 this act. Upon making such a determination, the department
3 shall order the licensee to cease and desist from such
4 evasion, provided, no licensee shall engage in the pawnbroker
5 business.

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

8 Section 13. Right to reclaim; lost title loan
9 agreement.--

10 (1) Any person presenting identification of such
11 person as the borrower and presenting the borrower's copy of
12 the title loan agreement to the title loan lender is presumed
13 to be entitled to reclaim the loan property described in the
14 title loan agreement. However, if the title loan lender
15 determines that the person is not the borrower, the title loan
16 lender is not required to allow the redemption of the loan
17 property by such person. The person reclaiming the loan
18 property must sign the borrower's copy of the title loan
19 agreement which the title loan lender may retain to evidence
20 such person's receipt of the loan property. A person
21 reclaiming the loan property who is not the borrower must show
22 identification to the title loan lender, together with
23 notarized written authorization from the borrower, and the
24 title loan lender shall record that person's name and address
25 on the title loan agreement retained by the title loan lender.
26 In such case, the person reclaiming the borrower's copy of the
27 title loan agreement shall be provided a copy of such signed
28 form as evidence of such agreement.

29 (2) If the borrower's copy of the title loan agreement
30 is lost, destroyed, or stolen, the borrower must notify the
31 title loan lender, in writing by certified or registered mail,

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

17 Section 14. Criminal penalties.--

18 (1) Any person who acts as a title loan lender without
 19 first securing the license prescribed by this act commits a
 20 felony of the third degree, punishable as provided in s.
 21 775.082, s. 775.083, or s. 775.084, Florida Statutes.

22 (2) In addition to any other applicable penalty, any
 23 person who willfully violates any provision of this act or who
 24 willfully makes a false entry in any record specifically
 25 required by this act commits a misdemeanor of the first
 26 degree, punishable as provided in s. 775.082 or s. 775.083,
 27 Florida Statutes.

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

29 (1) The department may issue and serve subpoenas to
 30 compel the attendance of witnesses and the production of
 31 documents, papers, books, records, and other evidence before

1 the department in any matter pertaining to this act. The
2 department may administer oaths and affirmations to any person
3 whose testimony is required. If any person refuses to testify,
4 produce books, records, and documents, or otherwise refuses to
5 obey a subpoena issued under this section, the department may
6 enforce the subpoena in the same manner as subpoenas issued
7 under the Administrative Procedure Act are enforced. Witnesses
8 are entitled to the same fees and mileage as they are entitled
9 to by law for attending as witnesses in the circuit court,
10 unless such examination or investigation is held at the place
11 of business or residence of the witness.

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

15 (a) Bring an action in any court of competent
16 jurisdiction to enforce or administer this act, any rule or
17 order adopted under this act, or any written agreement entered
18 into with the department. In such action, the department may
19 seek any relief at law or equity, including a temporary or
20 permanent injunction, appointment of a receiver or
21 administrator, or an order of restitution.

22 (b) Issue and serve upon a person an order requiring
23 such person to cease and desist and take corrective action
24 whenever the department finds that such person is violating,
25 has violated, or is about to violate any provision of this
26 act, any rule or order adopted under this act, or any written
27 agreement entered into with the department.

28 (c) Whenever the department finds that conduct
29 described in paragraph (b) presents an immediate danger to the
30 public health, safety, or welfare requiring an immediate final
31 order, the department may issue an emergency cease and desist

1 order reciting with particularity the facts underlying such
2 findings. The emergency cease and desist order is effective
3 immediately upon service of a copy of the order on the
4 respondent named in the order and shall remain effective for
5 90 days. If the department begins nonemergency proceedings
6 under paragraph (b), the emergency cease and desist order
7 remains effective until the conclusion of the proceedings
8 under ss. 120.569 and 120.57, Florida Statutes.

9 (3) The department may adopt rules to administer this
10 act.

11 Section 16. Investigations and complaints.--

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

23 (2) The department shall conduct all examinations at a
24 convenient location in this state unless the department
25 determines that it is more effective or cost-efficient to
26 perform an examination at the licensee's out-of-state
27 location. For an examination performed at the licensee's
28 out-of-state location, the licensee shall pay the travel
29 expense and per diem subsistence at the rate provided by law
30 for up to 30 8-hour days per year for each department examiner
31 who participates in such an examination. However, if the

1 examination involves or reveals possible fraudulent conduct by
2 the licensee, the licensee shall pay the travel expenses and
3 per diem subsistence provided by law, without limitation, for
4 each participating examiner.

5 (3) Any person having reason to believe that any
6 provision of this act has been violated may file with the
7 department a written complaint setting forth the details of
8 such alleged violation and the department may investigate such
9 complaint.

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

12 538.03 Definitions; applicability.--

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

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

19 However, secondhand dealers are not limited to dealing only in
20 items defined as secondhand goods in paragraph (g). Except as
21 provided in subsection (2), the term means pawnbrokers,
22 jewelers, precious metals dealers, garage sale operators,
23 secondhand stores, and consignment shops.

24 (h) "Transaction" means any ~~title loan~~, purchase,
25 consignment, or pawn of secondhand goods by a secondhand
26 dealer.

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

29 538.16 Secondhand dealers; disposal of property.--

30 (1) Any personal property pawned with a pawnbroker,
31 whether the pawn is a loan of money or a buy-sell agreement ~~or~~

1 ~~a motor vehicle which is security for a title loan~~, is subject
2 to sale or disposal if the pawn is a loan of money and the
3 property has not been redeemed or there has been no payment on
4 account made for a period of 90 days, or if the pawn is a
5 buy-sell agreement ~~or if it is a title loan~~ and the property
6 has not been repurchased from the pawnbroker ~~or the title~~
7 ~~redeemed from the title lender~~ or there has been no payment
8 made on account within 60 days.

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

12 Section 20. Effective July 1, 2000, the sum of
13 \$500,000 is hereby appropriated for the 2000-2001 fiscal year
14 from the Regulatory Trust Fund of the Department of Banking
15 and Finance to the department to fund eight positions for the
16 purpose of carrying out the provisions of this act.

17 Section 21. Paragraph (i) of subsection (1) of section
18 538.03, Florida Statutes, subsection (5) of section 538.06,
19 Florida Statutes, and subsections (4) and (5) of section
20 538.15, Florida Statutes, are repealed.

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

27 Section 23. Except as otherwise provided in this act,
28 this act shall take effect October 1, 2000.
29
30
31