

By Senator Meek

36-572-00

See HB 301

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

23  
24  
25  
26  
27  
28  
29  
30  
31

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

Section 1. Short title.--Sections 1 through 16 of 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 supersede

1 any other provisions of state law affecting title loans to the  
2 extent of any conflict.

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

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  
31

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 that 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, or chapter 655, Florida Statutes.

15 (11) "Title loan agreement" or "agreement" means a  
16 written agreement in which a title loan lender agrees to make  
17 a title loan to a borrower.

18 (12) "Title loan lender" or "lender" means any person  
19 who engages in the business of making or servicing title  
20 loans.

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

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

30 (15) "Ultimate equitable owner" means a person who,  
31 directly or indirectly, owns or controls an ownership interest

1 in a corporation, a foreign corporation, an alien business  
2 organization, or any other form of business organization,  
3 regardless of whether such person owns or controls such  
4 ownership interest through one or more persons or one or more  
5 proxies, powers of attorney, nominees, corporations,  
6 associations, partnerships, trusts, joint stock companies, or  
7 other entities or devices, or any combination thereof.

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

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

15 (2) A person applying for licensure as a title loan  
16 lender shall file with the department an application; the bond  
17 required by section 5(3); a nonrefundable application fee of  
18 \$1,200; a nonrefundable investigation fee of \$200; and a  
19 complete set of fingerprints taken by an authorized law  
20 enforcement officer. The department shall submit such  
21 fingerprints to the Department of Law Enforcement or the  
22 Federal Bureau of Investigation for state and federal  
23 processing. The department may waive, by rule, the requirement  
24 that applicants must file a set of fingerprints or the  
25 requirement that such fingerprints must be processed by the  
26 Department of Law Enforcement or the Federal Bureau of  
27 Investigation.

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

31

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 25 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. The department shall adopt rules  
28 providing for waiver of the application required by this  
29 subsection when such purchase or acquisition of a licensee is  
30 made by another licensee licensed under this act or when the  
31 application is otherwise unnecessary in the public interest.

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 25 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 section 655.005, Florida Statutes,  
14 in 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 made the beneficiary  
17 of that document. The bond, certificate of deposit, or letter  
18 of 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.

31

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) Having been convicted of a crime involving fraud,  
14 dishonest dealing, or any act of moral turpitude or acting as  
15 an ultimate equitable owner of 10 percent or more of a  
16 licensee who has been convicted of a crime involving fraud,  
17 dishonest dealing, or any act of moral turpitude.

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

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

1           (l) Pleading nolo contendere to, or being convicted or  
2 found guilty of, a crime involving fraud, dishonest dealing,  
3 or any act of moral turpitude, regardless of whether  
4 adjudication was withheld.

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

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

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

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

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

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

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

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

29           (d) Issuing a reprimand.

30           (e) Imposing an administrative fine not to exceed  
31 \$5,000 for each separate act or violation.

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."

30  
31

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 must 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 must 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 must maintain the original  
13 copy of each completed title loan agreement on the title loan  
14 office premises, and may 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.

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

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

27           Section 10. Title loan charges.--

28           (1) A title loan lender may charge a maximum interest  
29 rate of 30 percent per annum computed on the first \$2,000 of  
30 the principal amount, 24 percent per annum on that part of the  
31 principal amount exceeding \$2,000 and not exceeding \$3,000,



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

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

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

1 which must comply with the requirements for executing a title  
2 loan agreement as provided in this act. The interest rate  
3 charged in any title loan extension agreement may not exceed  
4 the interest rate charged in the related title loan agreement.

5 A title loan lender may not capitalize in any title loan  
6 extension agreement any unpaid interest due on the related  
7 title loan agreement or any subsequent extensions to that  
8 title loan agreement.

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

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

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

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

31

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 occurs later, the title loan lender may take  
15 possession of the titled personal property. A lender may take  
16 possession of the titled personal property only through an  
17 agent who is licensed by the state to repossess motor  
18 vehicles.

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

31

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

22           (4) Any such sale or disposal vests in the purchaser  
23 the right, title, and interest of the owner and the title loan  
24 lender.

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

1 The borrower is entitled to reasonable attorney's fees and  
2 costs incurred in any action brought to recover such proceeds  
3 which results in the title loan lender being ordered to return  
4 all or part of such amount.

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

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

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

25 Section 12. Prohibited acts.--

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

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

31

1           (b) Refuse to allow the department to inspect  
2 completed title loan agreements, extensions of such  
3 agreements, or loan property during the ordinary operating  
4 hours of the title loan lender's business or at other times  
5 acceptable to both parties.

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

8           (d) Make any agreement requiring or allowing for the  
9 personal liability of a borrower or the waiver of any of the  
10 provisions of this act.

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

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

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

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

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

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

1           (k) Refuse to accept partial payments toward  
2 satisfying any obligation owed under a title loan agreement or  
3 extension of such agreement.

4           (l) Charge a prepayment penalty.

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

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

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

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

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

1 must show identification to the title loan lender, together  
2 with notarized written authorization from the borrower, and  
3 the title loan lender must record that person's name and  
4 address on the title loan agreement retained by the title loan  
5 lender. In such case, the person reclaiming the borrower's  
6 copy of the title loan agreement must be provided a copy of  
7 such signed form as evidence of such agreement.

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

27 Section 14. Criminal penalties.--

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



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

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

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

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

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

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

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

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

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

21 (3) The department may adopt rules pursuant to ss.  
22 120.54 and 120.536(1) to implement this act.

23 Section 16. Investigations and complaints.--

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

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

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

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

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

24 538.03 Definitions; applicability.--

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

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

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

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

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

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

10 538.16 Secondhand dealers; disposal of property.--

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

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

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

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

