

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1109

Title Loan Lenders

**SPONSOR(S):** Smith

**TIED BILLS:**

**IDEN./SIM. BILLS:** SB 1634

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Economic Development, Trade &amp; Banking Committee</u>	<u>7 Y, 4 N</u>	<u>Olmedillo</u>	<u>Carlson</u>
2) <u>State Administration Appropriations Committee</u>	<u></u>	<u>Rayman</u>	<u>Belcher</u>
3) <u>Commerce Council</u>	<u></u>	<u></u>	<u></u>
4) <u></u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

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### SUMMARY ANALYSIS

Chapter 537, Florida Statutes, the "Florida Title Loan Act" (the "Act"), became effective October 1, 2000, ch. 2000-138, LOF. Prior to ch. 2000-138, LOF, title lenders could charge interest rates up to 22 percent per month. The Act capped interest rates at a maximum of 30 percent per year. Subsequently, title loan licensees left the state or obtained licenses under the consumer finance or deferred presentment laws. Currently, there are no lenders registered under Chapter 537, F.S. This bill would encourage the title loan industry to return to Florida.

The bill raises the maximum allowable interest rates by authorizing a title lender to compute interest rates monthly rather than yearly, as follows:

- 22 percent per month computed on the first \$2,000 of the principal amount;
- 20 percent per month on that part of the principal amount exceeding \$2,000 and not exceeding \$3,000; and
- 18 percent per month on that part of the principal amount exceeding \$3,000.

The bill requires additional notices in larger bold type to be included in title loan agreements. The bill authorizes rollovers only if the borrower pays 5 percent of the unpaid balance each time. It prohibits certain legal actions to collect a deficiency.

The bill also provides protection for service-members and their spouses by:

- Maintaining current interest rates applicable only to them; and
- Prohibiting a lender from taking possession of a service-member's or service-member spouse's vehicle, if the service-member is deployed to combat or combat-support posting.

The bill prohibits title loan business from being conducted with any other business. The bill will pre-empt local government laws that more strictly regulate title loan transactions by repealing s. 537.018, F.S.

The Office of Financial Regulation fiscal projections are based on the 600 applicants requesting registration in Fiscal Year 2006-07 which will provide \$840,000 in regulation and investigation fees to be deposited into the Regulatory Trust Fund. Based on the estimate of 600 initial applicants/registrants, the Office of Financial Regulation anticipates it would require a total of ten positions and \$706,775 to regulate title lending as proposed by the bill. Biennial renewal results in the cost of regulation being greater than revenues. The bill does not provide an appropriation.

The bill provides an effective date of July 1, 2006.

**This document does not reflect the intent or official position of the bill sponsor or House of Representatives.**

**STORAGE NAME:** h1109b.STA.doc

**DATE:** 4/6/2006

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. HOUSE PRINCIPLES ANALYSIS:

Limited Government: The bill imposes new regulations on title loan lenders.

Individual Liberty: The bill will increase options for Floridians who seek short term high interest rate loans.

### B. EFFECT OF PROPOSED CHANGES:

#### **Present Situation:**

##### **Title Loans**

A title loan is a "loan of money secured by a bailment of a certificate of title to a motor vehicle."<sup>1</sup> The Florida Title Loan Act was enacted on October 1, 2000, to regulate title loan lenders in Florida.<sup>2</sup> Under the Act, a title loan lender must be licensed to conduct business, to own or operate a title loan office.<sup>3</sup> The Office of Financial Regulation (OFR) may issue a non-transferable license for a period not to exceed 2 years to a title loan lender who files a completed application pursuant to the Act and pays the appropriate fees.<sup>4</sup> Each office must have a separate loan license.<sup>5</sup> Florida also requires that an applicant file with OFR a bond, in the amount of \$100,000, or establish a certificate of deposit or irrevocable letter of credit for the amount of the bond.<sup>6</sup> The beneficiary of any such documents must be OFR.<sup>7</sup>

##### **Agreement**

Currently, a title loan lender shall execute an agreement with the borrower, which must provide certain disclosures and information, including the amount of the loan, annual percentage rate, finance charge, total amount of all payments, maturity date (30 days from the date of execution), and consequences of failing to pay under the agreement.<sup>8</sup>

Licensees may charge interest rates of 30 percent per annum computed on the first \$2,000 of the principal amount; 24 percent per annum on that part of the principal amount exceeding \$2,000 and not exceeding \$3,000; and 18 percent per annum on that part of the principal amount exceeding \$3,000.<sup>9</sup> The Act authorizes multiple rollovers for 30 day periods with the parties' mutual consent.<sup>10</sup>

If the consumer defaults, repossession of the vehicle is not permitted until the loan is at least 30-days overdue.<sup>11</sup> The title lender must also notify the borrower of the ability to pay off the loan prior to selling the vehicle.<sup>12</sup> The sale of the vehicle must be through a licensed motor vehicle dealer; however, the title loan lender cannot also be a licensed motor vehicle dealer.<sup>13</sup> Any excess money from the sale of the vehicle must be returned to the borrower.<sup>14</sup>

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<sup>1</sup> See ch. 537, F.S.

<sup>2</sup> See Id.

<sup>3</sup> See Id.

<sup>4</sup> See Id.

<sup>5</sup> See Id.

<sup>6</sup> See Id.

<sup>7</sup> See Id.

<sup>8</sup> See Id.

<sup>9</sup> See Id.

<sup>10</sup> See Id.

<sup>11</sup> See Id.

<sup>12</sup> See Id.

<sup>13</sup> See Id.

<sup>14</sup> See Id.

## Fees

Title loan lender application and licensee fees are as follows:

- \$1,200 registration fee (biennial)
- \$200 investigation fee (at time of initial application)
- \$1,200 renewal fee
- \$1,200 renewal + \$600 reactivation (if licensed became inactive)<sup>15</sup>

## Violations

The Act provides a number of violations and prohibited activities, including, but not limited to fraud, misrepresentation, imposition of illegal excessive charges, failure to maintain books or records, refusal to provide information, aiding, abetting or conspiring to circumvent the Act, failing to maintain a bond, certificate of deposit or letter of credit, and failing to pay a fee as provided by the Act.<sup>16</sup> The Act further provides OFR with the authority to deny, revoke or suspend a license, place a licensee or applicant on probation, issue a reprimand, or impose an administrative fee if a title loan lender violates any of the foregoing prohibited activities.<sup>17</sup>

## Remedies

The Act provides that an unlicensed title loan transaction is void, forfeiting both principal and interest.<sup>18</sup> In addition, a borrower who was a party to such transaction is entitled to collect attorney's fees and cost in any action to recover from the person who issued the loan.<sup>19</sup> Moreover, the Act provides that an unlicensed title loan lender who enters into title loan transactions commits a felony of the third degree.<sup>20</sup>

## No State Pre-emption

The Act specifically authorizes local governments to enact stricter laws governing these transactions.<sup>21</sup>

## Florida Consumer Finance Act

Under Chapter 516, F.S., the Florida Consumer Finance Act, a consumer can borrow up to \$25,000 at the same rates of interest rates provided under the current Title Loan Act (i.e., maximum of 30% per year.)<sup>22</sup> The Office currently licenses over 500 locations under Chapter 516. License fees under the Consumer Finance Act are significantly lower than those required by the Title Loan Act. Under the Consumer Finance Act, license fees are \$825 for initial applications and \$625 for renewals.<sup>23</sup> Under the Title Loan Act, license fees are \$1,400 for initial applications and \$1,200 for renewals.<sup>24</sup> Additionally, the Consumer Finance Act requires a \$25,000 bond per location; whereas, the Title Loan Act requires a \$100,000 bond per location.<sup>25</sup>

## Deferred Presentment Transactions

Deferred presentment transactions, known as "payday loans," are short term, high interest rate consumer loans. The Deferred Presentment Act (Act),<sup>26</sup> which was enacted in 2001, provides requirements that apply to check cashing operations. Any person engaged in a deferred presentment transaction (deferred presentment provider<sup>27</sup>) must register with OFR and is subject to its regulation.<sup>28</sup>

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<sup>15</sup> See Id.

<sup>16</sup> See Id.

<sup>17</sup> See Id.

<sup>18</sup> See Id.

<sup>19</sup> See Id.

<sup>20</sup> See Id.

<sup>21</sup> See s. 537.018, F.S. See also s. 494.00797, F.S.

<sup>22</sup> See s. 516.031, F.S.

<sup>23</sup> See s. 516.003, F.S.

<sup>24</sup> See s. 537.005, F.S.

<sup>25</sup> See Id.

<sup>26</sup> See Part IV of chapter 560, F.S.

<sup>27</sup> Deferred presentment providers are more commonly known as "pay-day lenders." Deferred presentment providers are businesses that charge a fee for cashing a customer's check and agreeing to hold that check for a certain number of days prior to depositing or redeeming the check. See Section 560.402(6), F.S.

The maximum face amount of a check taken for deferred presentment cannot exceed \$500, excluding allowable fees.<sup>29</sup> The maximum fee is 10 percent of the face amount, plus a maximum \$5.00 verification fee.<sup>30</sup> Upon receipt of the customer's (drawer<sup>31</sup>) check, the deferred presentment provider must immediately provide the drawer with the amount of the check, minus the allowable fees. The deferred presentment agreement may not be for a term in excess of 31 days or less than seven days.<sup>32</sup> The provider cannot renew or extend any transaction (rollover) or hold more than one outstanding check for any one drawer at any one time.<sup>33</sup>

A deferred presentment provider cannot enter into a transaction with a person who has an outstanding transaction with any other provider, or with a person whose previous transaction with any provider was terminated in less than 24 hours.<sup>34</sup> To verify such information, the provider must access a database established by OFR<sup>35</sup> and must submit the following data on each transaction:

- Drawer's name, address, and drivers' license number;
- Drawer's social security or employment authorization alien registration number;
- Drawer's date of birth;
- Amount and date of the transaction;
- Date the transaction is closed; and
- Check number.<sup>36</sup>

For a \$500 payday loan with a term of 30 days, the consumer would pay \$55 in fees, which is an effective rate of interest of 134%. By contrast, in a title loan, which is secured by the consumer's vehicle, the cost of borrowing the money would \$125 and the effective rate of interest would be 264%. Additional fees and costs would also be applicable in a title loan transaction if the borrower was unable to repay the debt and the lender sold the borrower's vehicle to recover the debt.

Payday lenders are prohibited from taking additional collateral and engaging in rollover transactions.<sup>37</sup> Other consumer protections for payday loans include a 24-hour waiting period between transactions.<sup>38</sup> There is also a 60-day grace period if the consumer notifies the vendor before the due date that the consumer is unable to make the check good.<sup>39</sup> In these cases, the consumer must participate in credit counseling in order to be afforded the grace period.<sup>40</sup> The Office maintains a state-wide database to ensure that consumers do not have more than one outstanding payday loan at any one time and that they adhere to the 24-hour waiting period.<sup>41</sup>

The Office currently licenses over 1,200 payday lender locations.

### **Effects of Proposed Changes:**

#### **Notice**

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<sup>28</sup> See Section 560.403, F.S.

<sup>29</sup> See Section 560.404(5), F.S.

<sup>30</sup> See Section 560.404(6), F.S. The maximum \$5.00 verification fee is established by Rule 69V-560.801, Fla. Admin. Code, as authorized by s. 560.309(4), F.S.

<sup>31</sup> A drawer is a person who writes a personal check and upon whose account the check is drawn. Section 560.402(7), F.S.

<sup>32</sup> See Section 560.404(8), F.S.

<sup>33</sup> See Section 560.404(18), F.S.

<sup>34</sup> See Section 560.404(19), F.S.

<sup>35</sup> OFR is required to establish this database of all deferred presentment transactions in the state and give providers real-time access through an Internet connection. OFR contracts with a private vendor, Veritec Solutions, Inc., to maintain the database. Senate Staff Analysis and Economic Impact Statement for S 7072, prepared by Banking and Insurance Committee, January 26, 2006, at 4.

<sup>36</sup> Section 560.404(23), F.S. All of the information is required by statute, except the drawer's date of birth and check number. Telephone conversation with staff of OFR, January 27, 2006.

<sup>37</sup> See s. 560.404, F.S.

<sup>38</sup> See Id.

<sup>39</sup> See Id.

<sup>40</sup> See Id.

<sup>41</sup> See Id.

The bill requires additional notices in larger type to be included in title loan agreements, stating that the loan is not intended to meet long-term financial needs; that the loan should only be used to meet short-term cash needs; that the borrower will be required to pay additional interest and fees if he or she renews the loan; that the loan is a higher interest rate loan; that the borrower is placing at risk his or her continued ownership of the pledged personal property; that if the borrower fails to pay the full amount of the loan on or the end of the maturity date or renewal of the loan, the title pledge lender may take possession of the property the title for which is pledged and sell the property in the manner provided by law; and that the borrower has a legal right of rescission.

### **Increase in Interest Rates**

The bill raises the maximum allowable interest rates from the present rate of 30 percent per annum on the first \$2,000 of the principal amount to 22 percent per month; from 24 percent per annum to 20 percent per month on that part of the principal amount exceeding \$2,000 and not exceeding \$3,000; and from 18 percent per annum to 18 percent per month on that part of the principal amount exceeding \$3,000. However, it requires additional disclosures in title loan agreements and maintains the current interest rate limitations for members of the United States Armed Forces and their spouses.

### **Rollovers**

The bill authorizes rollovers only if the borrower pays at least 5 percent of the original unpaid balance each time a rollover occurs. The lender may, but is not obligated to, defer any required principal reduction payments and collect it at the time the loan is finally paid off; however, the lender can not charge any additional interest on the deferred principal amounts.

### **Prohibited Actions**

The bill prohibits legal actions to recover deficiency balances. In addition, the bill prohibits the title lender from taking possession of a vehicle of a service-member or spouse of a service-member, if the service-member is deployed to a combat or combat support posting. Moreover, title lenders may not contact the commanding officer of a service-member or spouse about a title loan or do business with a service-member if the commanding officer declares the specific location off limits and notifies the business. The bill also prohibits title loan lenders from conducting title loan business within any location in which any other business is solicited, conducted, or to conduct title loan business in association or conjunction with such other business, or share common areas or employees with any other business.

### **State Pre-emption**

The bill will pre-empt local government laws that more strictly regulate title loan transactions by repealing s. 537.018, F.S.

## **C. SECTION DIRECTORY:**

Section 1. Amends s. 494.00797, F.S., removing local government authority to regulate title loans.

Section 2. Amends s. 537.008, F.S., requiring certain disclosures.

Section 3. Amends s. 537.011, F.S., regarding interest rates and limitations.

Section 4. Amends s. 537.012, F.S., tolling time requirements for the military in the event of title lender repossession and title lender disposal of pledged property.

Section 5. Amends s. 537.013, F.S., relating to title loan lender prohibited acts, including prohibition regarding legal actions to collect deficiency balances and prohibitions against military.

Section 6. Creates s. 537.019, F.S., prohibiting conducting title loan business with another business.

Section 7. Repeals s. 537.018, F.S., to pre-empt local laws regarding title loans.

Section 8. Provides an effective date of July 1, 2006.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE AGENCIES:	FY 2006-07	FY 2007-08
1. Revenues		
Regulatory Trust Fund		
a. Recurring	\$ 720,000	\$ 150,000
b. Non-Recurring	<u>120,000</u>	<u>25,000</u>
Total Revenue	840,000	175,000
2. Expenditures:		
Recurring		
Salaries and Benefits (10 FTE) (Salary rate 415,996)	\$ 544,985	\$ 544,985
Expenses	100,030	100,030
Human Resources Services	<u>3,930</u>	<u>3,930</u>
Total – recurring	\$ 648,945	\$ 648,945
Non-Recurring		
Expenses	\$ 33,430	
Operating Capital Outlay	<u>24,400</u>	
Total – non-recurring	\$ 57,830	
Total Expenditures:		
Regulatory Trust Fund	\$ 706,775	\$ 648,945

### B. ESTIMATED FISCAL IMPACT ON LOCAL GOVERNMENTS:

None.

### C. ESTIMATED FISCAL IMPACT ON PRIVATE SECTOR:

The proposed bill will significantly impact consumers who make use of these loans. Currently, the maximum interest rate allowed is 30% per annum. The bill will increase the maximum permissible rate to 22% per month on loans up to \$2,000, 20% per month on loans between \$2,000 and \$3,000, and 18% per month on loans between \$3,000 and \$5,000.

### D. FISCAL COMMENTS:

The Office of Financial Regulation projections are based on the 600 applicants requesting registration in FY 2006-07 (shortly after the effective date of the proposed bill), with 125 new applications per year in remaining years. The registration fee is \$1,200 (biennial) plus \$200 investigative fee. All active registrants would be required to renew in FY 2008-09. Based on the allowable interest rates, growth in the industry is anticipated but the level of growth is not known at this time. Currently there are no lenders registered under Chapter 537, FS.

Based on the estimate of 600 initial applicants/registrants, the Office anticipates it would require a total of ten positions and \$706,775 to regulate title lending as proposed by the bill. Staff would be needed to review and process applications for registration, and would be placed around the State to examine the on-going operations and investigate consumer complaints related to title loans.

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

##### 1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

##### 2. Other:

None.

#### B. RULE-MAKING AUTHORITY:

None.

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill needs an appropriation amendment to provide 10 positions and \$760,775 from the Regulatory Trust Fund for the Office of Financial Regulation to carry out the regulatory responsibilities of the bill. The bill does not currently provide an appropriation.

### IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES