

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Banking and Insurance Committee

BILL: SB 1634

INTRODUCER: Senator Baker

SUBJECT: Title Loans

DATE: April 21, 2006

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Johnson	Deffenbaugh	BI	Pre-meeting
2.	_____	_____	CA	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

A title loan is typically a small loan secured by the borrower's vehicle. The borrower keeps possession of the car during the term of the loan, but leaves the title with the lender as a security for repayment of the loan. Chapter 537, F.S., the "Florida Title Loan Act" (act), became effective October 1, 2000. Prior to the act, title lenders could charge a maximum interest rate of 22 percent *per month* under the statutory provisions for secondhand dealers. The 2000 law capped current interest rates at 30 percent *per year*.

Generally, the bill increases the maximum allowable interest rates by authorizing a title lender to compute interest rates *monthly* rather than *yearly*, for the current statutory caps, as follows:

- 22 percent *per month*, rather than the current 30 percent *per year*, computed on the first \$2,000 of the principal amount;
- 24 percent *per month*, rather than per year, on that part of the principal amount exceeding \$2,000 and not exceeding \$3,000; and
- 18 percent *per month*, rather than per year, on that part of the principal amount exceeding \$3,000.

However, the bill retains the current statutory caps on interest rate caps for U.S. military service members and their spouses and prohibits a lender from taking possession of a vehicle owned by a military service member or his or her spouse, if the service-member is deployed to combat or combat-support posting. These current statutory interest rate caps, which are retained for the service members and their spouses, are:

- 30 percent *per year* computed on the first \$2,000 of the principal amount;

- 24 percent *per year* on that part of the principal amount exceeding \$2,000 and not exceeding \$3,000; and
- 18 percent *per year* on that part of the principal amount exceeding \$3,000.

The bill would prohibit local governments from enacting ordinances that provide more stringent regulation of title loan transactions. Currently, 34 counties have passed ordinances regulating title loan lenders. Thirty of these counties have adopted ordinances that cap the annual interest rate of such loans at 30 percent.

The bill authorizes rollovers, or extensions of a loan, if the borrower pays 5 percent of the unpaid balance each time the loan is extended. The bill requires additional notices in larger bold type to be included in title loan agreements. It prohibits certain legal actions to collect a deficiency and prohibits title loan business from being conducted with any other business.

This bill substantially amends the following sections of the Florida Statutes: 494.00797, 537.008, 537.011, and 537.013. The bill repeals the following section of the Florida Statutes: 537.018.

II. Present Situation:

In 2000, the Legislature enacted the “Florida Title Loan Act” (act), which regulates businesses that are engaged in title loan transactions. A title loan is a loan secured by bailment of a certificate of title to a motor vehicle. The act specifically authorizes local governments to enact stricter laws governing these transactions, which 34 counties have passed.¹ The Office of Financial Regulation (OFR) is responsible for enforcing the act under the provisions of ch. 537, F.S.

Prior to engaging in title loan lending, a person must secure a license through the OFR. The nonrefundable application fee is \$1,400, which includes a \$200 investigation fee. The biennial renewal fee is \$1,200. Any title loan made by a person without a license is void, and the unlicensed person cannot collect any moneys from the borrower. Moreover, a person who acts as a title loan lender without a license commits a third degree felony. Criminal penalties are also provided under the act. Licensees must maintain a bond, certificate of deposit, or letter of credit of \$100,000 per location and designate the OFR as the beneficiary.

Licensees may charge a maximum interest rate of 30 percent per annum, or year, 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. No other fee may be charged for a title loan, and a title loan lender is expressly prohibited by the act from advertising the loans as “interest free” or “no finance charge.” The law provides for a 30-day term. Rollovers, however, are permitted and the law does not limit the number of rollovers. The same rates of interest as described above apply to rollover transactions.²

¹ Section 537.018, F.S.

² Section 537.011, F.S.

All loans require a written contract. The act provides that a title loan agreement must contain certain information including: (a) the make, model, year, vehicle identification number, and license plate number of the titled property; (b) the name, address, date of birth, physical description, and social security number of the borrower; (c) the date of the loan and the maturity date of the loan, which must be 30 days after the agreement is executed; and (d) the total loan interest payable on the maturity date, the total amount of all loan payments, and the interest rate.³

The act also sets forth the remedies available to a title loan lender in the event the borrower defaults on the loan.⁴ A title loan lender may take possession of the titled property 30 days after a payment was due from the borrower. The lender must provide the borrower with an opportunity to make the titled property available to the lender; however, if the borrower fails to provide the titled property, the property may be repossessed by a licensed repossession agent. After taking possession of the property, the lender may sell it through a licensed motor vehicle dealer. Ten days prior to the sale the lender must provide the borrower with notice of the sale, along with an accounting of all amounts owed by the borrower under the loan. The borrower may redeem the titled property at any time prior to the sale. Within 30 days after the sale, all proceeds in excess of the amount owed must be returned to the borrower.

Before passage of the act, persons engaging in title loans were considered secondhand dealers under chapter 538, F.S. The only state agency that had direct interaction with the title loan industry was the Department of Revenue, which required all secondhand dealers to register with the department for tax purposes and to obtain a secondhand dealer's license permit. At that time, title lenders were allowed to charge 22 percent *per month* interest.

Title Loan Market

The average income of a borrower varies. For example, the average salary for a borrower was less than \$25,000 in Missouri⁵ and, less than \$20,000 in Illinois.⁶ In 2004, New Mexico regulators reported that the average income of title loan borrowers in that state, as reported by licensees, was \$21,818.⁷ An analysis of the customer base of one of the largest title lenders, Title Loans of America, indicated that 20 percent of the borrowers earned less than \$20,000 annually, while almost half of the borrowers earned more than \$40,000, annually.⁸ An Illinois study found that the duration of the loans, including extensions, was approximately 4 months. According to one title loan lender, who is a proponent of the bill, their average loan is outstanding for 3 or 4 months and the average loan amount is \$400. A 1999 nationwide study provided by the proponent indicated that 20.5 percent of the borrowers had income of \$19,999 or less, 17 percent of the borrowers had income in the range of \$20,000 - \$29,999, and 21.4 percent of the borrowers had income in the range of \$50,000 - \$74,999.

Regulation of Title Loans in other States

A number of states, including Idaho, Illinois, Missouri, New Hampshire, New Mexico, Oregon, and Utah do not cap the interest rates that title loan lenders may charge. Florida limits interest

³ Section 537.008, F.S.

⁴ Section 537.012, F.S.

⁵ Missouri State Auditor Report No. 2001-36.

⁶ Illinois Department of Financial Institutions 1999 Short-Term Lending Report.

⁷ Consumer Federation of America, Driven into Debt: CFA Car Title Loan Store and Online Survey. (November 2005).

⁸ *A Helping Hand, or New Age Loan Sharking?* Fedgazette, Federal Reserve of Minneapolis, October 2000.

rates to 30 percent per annum on the \$2,000 of a loan. Kentucky effectively limits the interest rate to 36 percent per year by limiting the monthly interest rate to 3 percent per month.⁹ North Dakota limits the interest rate to 30 percent a year on the first \$1,000. Minnesota also caps the interest rate at 3 percent per month; however, the law authorizes monthly fees of up to \$20. A number of states, including Illinois, Kentucky, Mississippi, Montana, Nevada, New Hampshire, and Tennessee limit the amount of the loan.¹⁰

Other Types of Lenders Providing Small Consumer Loans

Consumer Finance Loans -- Under Chapter 516, F.S., the Florida Consumer Finance Act, a consumer can borrow up to \$25,000 at the same rates of interest provided under the current Title Loan Act (i.e., maximum of 30 percent per year). The OFR currently licenses over 500 locations under Chapter 516. The license fees under the Consumer Finance Act are \$825 for the initial application and \$625 for a renewal.

Deferred Presentment Transactions (“Payday Loans”) -- Another loan program that is available under current law is a payday loan. Under part IV of Ch. 560, F.S., a consumer can obtain a payday loan by providing a personal, post-dated check. When the loan is due, the lender cashes the check or, if the borrower cannot repay it, may renew the loan. The check is held for a minimum of 7 days, but not longer than 31 days. The amount of the loan may not exceed \$500. The fees allowed for a payday loan are 10 percent of the loan amount plus a verification fee, which may not exceed \$5. In most states, a payday loan is intended to be repaid within a week to one month. 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 percent.

In contrast to title loans, payday lenders are prohibited from taking additional collateral and engaging in rollover transactions. Other consumer protections for payday loans include a 24-hour waiting period between transactions. 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. In these cases, the consumer must participate in credit counseling in order to be afforded the grace period. The OFR 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. The OFR currently licenses over 1,200 payday lender locations.

Pawnbroking -- Pawnbroking transactions are regulated under ch. 539, F.S. A pawn is defined to mean “. . . any advancement of funds on security of pledged goods on condition that the pledged goods are left in the possession of the pawnbroker for the duration of the pawn and may be redeemed by the pledgor on the terms and conditions . . .”¹¹ The pawnbroker is entitled to pawn service charged in which the interest component of such charge is 2 percent of the amount financed for each 30-day period in a transaction. The pawnbroker may charge any amount of pawn service charge, so long as the total amount, inclusive of the interest rate, does not exceed 25 percent of the amount financed for each 30-day period, except that a pawnbroker is entitled to receive a minimum pawn service charge of \$5 for each 30-day period.¹² In contrast with title loans, pawn loans are possessory, collateral loans that involve the storing, insuring, and reporting

⁹ Ky. Rev. Stat. Ann. Ss. 368.260(1), 288.530(1).

¹⁰ Consumer Federation of America, *Driven into Debt: CFA Car Title Loan Store and Online Survey*. November 2005.

¹¹ Section 539.001(1)(h), F.S.

¹² Section 539.001(11), F.S.

pledged merchandise by the pawnbroker. Pawn loans generally involve the pawn of a household items, tool, television, musical instrument, or jewelry.

III. Effect of Proposed Changes:

Section 1 amends s. 494.00797, F.S., to prohibit such local governments from adopting local ordinances to regulate title loans regulated under s. 537.004, F.S. Presently, 34 counties have enacted ordinances regulating title loans.

Section 2 amends s. 537.008, F.S., to require title loan agreements to provide certain disclosures regarding the title loan transaction, including the high interest rate, the risk of losing title of the vehicle in the event of default, and the consumer's right to rescind the contract within one business day.

Section 3 amends s. 537.011, F.S., to increase the maximum interest rates for title loans. Generally, the maximum interest rate that can be charged on the first \$2,000 of the principal amount is increased from 30 percent *per year* to 22 percent *per month*. For any amount exceeding \$2,000 and below \$3,000, the maximum interest rate is increased from 24 percent *per year* to 24 percent *per month*. For any principal amount exceeding \$3,000, the title lender may charge a maximum interest rate of 18 percent *per month*, rather than the current 18 percent *per year*. However, the bill retains the current maximum interest rate structure for transactions involving a borrower that is a service member of the United States Armed Forces or the spouse of such service member.

For example, for a \$500 title loan, which is secured by the consumer's vehicle, the cost of borrowing the money would be \$110 for 30 days, and the annual rate of interest would be 264 percent. 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.

Notwithstanding any provision of the law to the contrary, the bill requires the minimum repayment of 5 percent of the original principal of the loan in addition to fees and interest authorized under this chapter beginning with the first extension of the loan and at each successive extension. Interest and fees at each successive extension must be calculated on the outstanding principal balance. If the borrower has not paid adequate principal reductions to satisfy the current principal reduction at the time the extension expires, the lender may defer any required principal payment until the end of the title loan agreement. However, additional interest or fees may not accrue on any such deferred principal amount. The current law does not require such minimum repayment of the principal as a condition for extensions and prohibits a lender from capitalizing any unpaid interest due on the related title loan agreement or any subsequent extension to that title loan agreement.

Section 4 amends s. 537.013, F.S., to expand the list of prohibited acts of a title loan lender to include:

- Taking legal action to recover any deficiency balance if the proceeds from the sale of the titled personal property are less than the remaining balance due on the loan.

- Taking possession of a vehicle owned by a member of the U.S. Armed Forces who is deployed to a combat or combat-supported posting or is a member of the U.S. Reserve Forces or the National Guard who is called to active duty, or the spouse of the service member for the duration of the deployment or active duty service.
- Contacting the commanding officer of the service member or anyone in the chain of command of the service member in an effort to collect an obligation under a title loan transaction entered into with the service member or the spouse of the service member.
- Entering into a title loan agreement with a service member if a military base commander declares that a specific location of the lender's business is off limits to military personnel and formally notifies the lender of the declaration.

Section 5 repeals s. 537.018, F.S., which allows a county or municipality to adopt ordinances more restrictive, in whole or in part, than the title loan provisions in statute. Presently, 34 local governments have passed local ordinances regulating title loan transactions.

Section 6 provides that this act will take effect on July 1, 2006.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill will significantly impact consumers who obtain these loans. Currently, the maximum interest rate allowed by law is 30 percent per year for all borrowers. Generally, the bill increases the maximum permissible rate to 22 percent per month on loans up to \$2000, 24 percent per month on the amount of principal greater than \$2,000 and less than \$3,000, and 18 per month on principal amount greater than \$3,000. However the interest rate for borrowers who are members of the U.S. military or their spouses would be subject to the current maximum interest rates in law.

The OFR has noted that the interest rates authorized in the bill appear to be disproportionate when compared with other loan programs currently authorized under Florida law and considering the fact that the title loan is secured by the consumer’s vehicle title. The OFR noted that consumers who enter into these transactions risk losing a valuable asset and also potentially the ability to maintain transportation and employment.

Proponents of the bill contend that some consumers are unable to obtain other types of loans due to the lack of a checking account or bad credit history or lack of credit history, and title loans might be the only type of financing available to them.

Currently, there are no licensed title loan lenders in Florida. If the bill is implemented, which allows significantly higher interest rates to be charged, it is anticipated that a number of businesses would seek to engage in title loans.

C. Government Sector Impact:

Regulatory Trust Fund	2006-07	2007-08	2008-09
Revenues:			
Recurring	\$720,000	\$150,000	\$1,020,000
Nonrecurring	120,000	25,000	25,000
Total Revenues	\$840,000	\$175,000	\$1,045,000
Expenditures:			
Recurring	\$648,945	\$648,945	\$648,945
Nonrecurring	57,830		
Total Expenditures	\$706,775	\$648,945	\$648,945

According to the OFR, the projected revenues are based on 600 registrants, the number of entities projected to register by the title loan industry when the legislation was enacted in 2000. The registration fee would be \$1,200 (a biennial registration fee) plus \$200 investigative fee (at time of initial application only) for new registrants. The projections above are based on the 600 applicants requesting registration in FY 06-07 (soon after the effective date of the bill, July 1, 2006), with 125 new applications per year in remaining years. All active registrants would be required to renew in FY 08-09. 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, F.S.

Based on the estimate of 600 initial applicants or registrants, the OFR anticipates it would require a total of 10 full-time equivalent positions 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.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

VIII. Summary of Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
