

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 877 Title Loans

SPONSOR(S): Gibbons

TIED BILLS: **IDEN./SIM. BILLS:** SB 990

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Consumer Affairs Subcommittee	1 Y, 12 N	Whittington	Creamer
2) Appropriations Committee			
3) Economic Affairs Committee			

SUMMARY ANALYSIS

HB 877 transfers regulation of Ch. 537, F.S., from the Department of Financial Services to the Department of Agriculture and Consumer Services, and conforms provisions of Ch. 537, F.S., to reflect the transfer. It preempts the regulation of motor vehicle title loans to the state. The bill makes all county or municipal regulations of motor vehicle title loans void. The bill repeals county and municipalities ability to adopt ordinances more restrictive than the regulations found in Ch. 537, F.S. Specifically the bill:

- Prohibits a title loan lender from providing deferred presentment transactions, and revises provisions related to recordkeeping.
- Revises the information that must be included in the title loan agreement. It requires a statement relating to the cost of the loan and revises the lender's actions upon executing an agreement.
- Extends the maturity timeframe from 30 days to at least 120 days but not more than one year, and prohibits a title loan agreement from being extended and revises provisions relating to title loan charges.
- Revises provisions relating to the repossession of a motor vehicle after loan default, and requires prior notice to the borrower before a vehicle can be repossessed. It also extends the time period between notification to the borrower and the sale of the borrower's vehicle from 10 to 15 days.
- The bill revises provisions for title loan lenders also engaging in the pawnbroker and deferred presentment business, and requires the lender to return a certificate of title within three days after regaining possession of the title if the borrower repays the loan in full while the lender is waiting to record its lien.

The bill has a positive fiscal impact to state funds. See fiscal section.

The bill has an effective date of July 1, 2011.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Title Loans

A title loan is a loan secured by bailment of a certificate of title to a motor vehicle. Effective September 1, 2000, Ch. 537, F.S., the Florida Title Loan Act (Act), requires licensure by the Office of Financial Regulation (Office) to act as a Title Loan Lender. The Office 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 Office by submitting a nonrefundable application fee of \$1,200, and a nonrefundable investigation fee of \$200. Renewal fees are \$1,200 biennially. Licensees must maintain a bond, certificate of deposit, or letter of credit of \$100,000 per location. According to the Office, at the present time there are no licensed Title Loan Companies.

Under the Act, a title loan lender may charge a maximum interest rate 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 3,000.¹ 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 loan term with unlimited rollovers of the loan. All loans require a written contract, which includes certain information about the borrower and the terms of the loan which include the amount of the loan, annual percentage rate, finance charge, total amount of all payments, maturity date, and consequences of failing to pay under the agreement.

A title loan agreement may be extended for one or more 30-day periods by mutual consent of the title loan lender and the borrower. The same rates of interest as described above apply to rollover transactions. Each extension of a title loan agreement shall be executed in a separate extension agreement each of which shall comply with the requirements for executing a title loan agreement as provided in this act. The interest rate charged in any title loan extension agreement shall not exceed the interest rate charged in the related title loan agreement. A title loan lender may not capitalize in any title loan extension agreement any unpaid interest due on the related title loan agreement or any subsequent extensions to that title loan agreement.

If the consumer defaults, repossession of the vehicle is not permitted until the loan is at least 30-days overdue. The title lender must also notify the borrower of the ability to pay off the loan prior to selling the vehicle. 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. Any excess money from the sale of the vehicle must be returned to the borrower within 30 days of receipt of the funds.

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. The Act further provides the Office 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.

The Act provides that an unlicensed title loan transaction is void, forfeiting both principal and interest. 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. Moreover, the Act provides that an unlicensed title loan lender who enters into title loan transactions commits a felony of the third degree.

¹ Section 537.011, F.S.

Deferred Presentment Transactions

Deferred presentment transactions, known as “payday loans,” are short term, high interest rate consumer loans. The Deferred Presentment Act,² was enacted in 2001, it provides requirements that apply to check cashing operations. Any person engaged in a deferred presentment transaction must register with the Office and is subject to its regulations.³

The maximum face amount of a check taken for deferred presentment cannot exceed \$500, excluding allowable fees. The maximum fee is 10 percent of the face amount, plus a maximum \$5.00 verification fee. Upon receipt of the customer’s check, the deferred presentment provider must immediately provide the customer 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. The provider cannot renew or extend any transaction or hold more than one outstanding check for any one customer at any one time.

Proposed Change

HB 877 transfers the regulation of the Act from the Department of Financial Services to the Department of Agriculture and Consumer Services (DACCS), and conforms provisions of Ch. 537, F.S., to reflect the transfer.

The bill preempts the regulation of all aspects of the business of offering title loans as provided in Ch. 537, F.S., to the state. It provides that any regulation adopted by a county or municipality, regardless of when it was adopted, is void. The bill also repeals s. 537.018, F.S., which allowed counties and municipalities to adopt ordinances more restrictive than the Act.

The bill expressly prohibits a title loan lender from providing deferred presentment transactions and locating their title loan office within 1,000 feet of any location owned or operated by a person who owns or controls an ownership interest with the title loan lender if title loans or deferred presentment transactions are provided at the other location.

The bill revises the information that must be contained within the title loan agreement executed by the borrower and the lender. It extends the maturity date of the title loan agreement from 30 days to at least 120 days but not more than 1 year, after the date upon which the title loan agreement is executed. Under the bill, a title loan agreement may not be extended, renewed, or refinanced. Although the bill extends the maturity date of the title loan, the bill does not change the current statutory prohibition on lenders charging a prepayment penalty.⁴

The agreement must disclose the amount financed, the finance charge, the total payments, and the annual percentage rate computed in accordance with the federal Truth in Lending Act.⁵ It revises the required statement relating to the cost of the loan that must be printed on the title loan agreement form, and provides that the required statement must be placed immediately above the borrower’s signature line. The bill revises the loan lender’s actions upon executing an agreement, and provides that a title loan lender may not enter into a title loan agreement if the certificate of title of the motor vehicle serving as collateral for the loan evidences that the vehicle is security for another loan or is already encumbered by a lien.

The bill revises the interest rate a title loan lender may charge and collect on a title loan to:

² Part IV of Ch. 560, F.S.

³ Section 560.403, F.S.

⁴ Section 537.013(1), F.S.

⁵ Public Law 90-321, 82 Stat. 146 (1968).

- 22% per month on the portion of the principal which does not exceed \$700;
- 18% per month on the portion of the principal which exceeds \$700 but does not exceed \$1,400;
- 15% per month on the portion of the principal which exceeds \$1,400.

The bill changes the method the interest rate is calculated from per annum to per month. It provides that interest may be charged only upon principal balances outstanding from time to time. Interest may not be charged on an add-on basis and may not be compounded, paid, deducted, or received in advance. For title loans that exceed \$700, a title loan lender may accrue interest using a single blended interest rate, but the interest charged may not exceed the maximum charge seen above.

The bill provides that notwithstanding the interest rate allowed by statute, and any provision of a title loan agreement, interest may not accrue on the principal balance of a title loan after:

- The date upon which the motor vehicle that serves as collateral for the title loan is repossessed by the licensee making the loan. However, if the licensee allows the borrower to redeem the motor vehicle while any portion of the principal balance remains unpaid, interest accrual may resume upon the borrower's regaining possession of the motor vehicle
- The 60th day after the borrower fails to make a monthly payment on the title loan as required by the loan agreement, unless the borrower fails to surrender the motor vehicle and conceals, thereby preventing repossession of, the motor vehicle.

Nor may a title loan lender directly or indirectly charge, receive or require a borrower to pay any amount in addition to the loan principal, interest, and fees allowed under s. 537.011, F.S., except for the title loan lender's actual cost of perfecting its security interest in the motor vehicle that serves as collateral and the title loan lender's reasonable and actual cost of repossession, storage, and sale of the motor vehicle, if the borrower defaults under the terms of the title loan agreement.

The bill revises the provisions related to the repossession of the motor vehicle serving as collateral in the event of a loan default. It provides that a title loan lender must, at least 10 days before repossessing the motor vehicle serving as collateral, send to the borrower, by first-class mail, written notice advising the borrower that the title loan is in default and that the motor vehicle may be reprocessed unless the principle and interest owed under the loan agreement are paid. The bill extends the period before the sale of the motor vehicle, from 10 days to 15 days, that a title loan lender must notify the borrower of the date and time after which the motor vehicle is subject to sale.

The bill extends the period, from 30 days to 60 days after receipt of the funds, in which the title loan lender must return all proceeds from the sale of the motor vehicle serving as collateral in excess of the principal amount, interest accrued, and the reasonable expenses incurred by the title loan lender is taking possession, storing, preparing the vehicle for sale, and selling the vehicle. In addition, the bill removes the ability of borrowers to recover reasonable attorney's fees and costs incurred in any action brought to recover such proceeds that results in the title loan lender being ordered to return all or part of such amount.

The bill prohibits title loan lenders from seeking a personal money judgment against borrowers except in four specified cases. It requires that the lender to return the certificate of title to the borrower within 3 days after regaining possession of the title if the borrower repays the title loan in full while the title loan lender is awaiting return of the certificate of title pending recording of the lender's lien.

Further, it revises provisions relating to prohibit acts under the chapter, and includes new prohibited acts. It prohibits a title loan lender from engaging in the pawnbroker business or deferred presentment business, or causing a borrower to be obligated for a title loan for a principal amount that exceeds 50% of the fair market value of the motor vehicle in which the title loan lender is securing an interest. The bill also removes the prohibition on title loan companies using the words "interest free loans" or "no finance charges" in advertisements.

The bill revises the borrower's right of rescission to allow a borrower under a title loan agreement to rescind the title loan without further cost or further obligation if the borrower returns the full amount of the loan proceeds in cash or returns the original loan check before the close of business on the business day immediately following the date on which the title loan agreement was executed.

B. SECTION DIRECTORY:

Section 1, amending s. 494.00797, F.S., exempting certain persons from specified financial and lending regulations adopted by counties and municipalities.

Section 2, amending s. 537.001, F.S., to conform the short title.

Section 3, amending s. 537.002, F.S., to revise legislative intent; provide that regulation of title loans is preempted to the state.

Section 4, amending s. 537.003, F.S., revising and providing definitions; transferring regulation of title loans from the Office of Financial Services to the Department of Agriculture and Consumer Services.

Section 5, amending s. 537.004, F.S., prohibiting certain activities at or within a certain proximity of title loan offices, and providing for deposit of certain moneys in the General Inspection Trust Fund.

Section 6, amending s. 537.005, F.S., conforming provisions.

Section 7, amending s. 537.006, F.S., to revise the grounds for disciplinary action against title loan lenders.

Section 8, amending s. 537.007, F.S., conforming provisions.

Section 9, amending s. 537.008, F.S., revising requirement for title loan agreements, for transferring possession of the motor vehicle's certificate of title, and for the recording and releasing of liens against the motor vehicles.

Section 10, amending s. 537.009, F.S., conforming provisions.

Section 11, amending s. 537.011, F.S., revising requirements for the accrual of interest on title loans; prohibiting the extension, renewal, and refinancing of title loans; authorizing certain fees and charges associated with title loans.

Section 12, amending s. 537.012, F.S., revising the requirements for the repossession and sale of motor vehicles to satisfy unpaid title loans and for the disbursement of excess proceeds from such sales to the borrowers; limiting the liability of borrowers for unpaid title loans, and authorizing a title loan lender to seek money damages against a borrower under certain circumstances.

Section 13, amending s. 537.013, F.S., revising and providing additional prohibited acts by title loan lenders or any agents or employees thereof to which penalties apply.

Section 14, amending s. 537.014, F.S., revising requirements for rescission of a title loan agreement; deleting procedures for lost, destroyed, or stolen title loan agreements; deleting a provision prohibiting a title loan lender from imposing a fee for providing the borrower with a copy of the title loan agreement.

Section 15, amending s. 537.015, F.S., conforming provisions.

Section 16, amending s. 537.016, F.S., conforming provisions.

Section 17, amending s. 537.017, F.S., conforming provisions.

Section 18, repealing s. 537.018, F.S., relating to the authority of counties and municipalities to adopt more restrictive ordinances regulating title loans.

Section 19 provides an effective date of July 1, 2011.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

General Inspection Trust Fund

According to DACS,⁶ it is estimated that there will approximately 150 new licenses issues in FY 2011-12, increasing to 300 licenses on an annual average thereafter. Based on \$1,200 per license fee, \$200 per investigation fee, and \$45.25 for fingerprinting, the estimated state trust fund revenues are \$216, 788 for FY 2011-12 and FY 2012-13.

General Revenue

The estimated positive fiscal impact to General Revenue from the 8% service charge imposed is \$17,343.

2. Expenditures:

General Inspection Trust Fund

According to DACS, the increased workload to implement and maintain the new licensing and investigations will require two new full-time employees. The estimated state trust fund costs to support these positions is \$132,887 in FY 2011-12 and a recurring \$135,268 each year thereafter. In addition, there will be an initial cost to the department for fingerprint processing, administrative support , and information technology to develop, test, and deploy the new software system of \$69,973 in FY 2011-12 and \$21,181 each year thereafter.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

Indeterminate. The bill preempts regulation of the business of offering title loans to the state and makes any regulation adopted by a county or municipality ordinance, regardless of when adopted, void. There is no estimate as to the fiscal impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Although interest rates on title loans are reduced, because the interest rates are computed monthly instead of annual and the loan term extended to 120 days, individuals taking out title loans may end up paying more interest rate charges on their loans. However, the bill does not affect a borrower's ability to prepay their obligation without penalty, and individuals who pay off their loans quickly may see their overall interest rates charges drop.

⁶ Department of Agriculture and Consumer Services, Analysis of HB 877 (March 8, 2011), on file with the Business and Consumer Affairs Subcommittee.

Borrowers who are forced to sue to recover any excess money over the principal, interest, and reasonable costs of the title loan lender received from the sale of their motor vehicle will no longer have the ability to recover attorney's fees and costs from lenders who are ordered to return all or part of the amount. This could adversely affect the ability of borrower's to bring these claims.

D. FISCAL COMMENTS:

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because the bill does not appear to: require the counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties and municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Rule-making authority is transferred from the Office to DACS to implement Ch. 537, F.S.

C. DRAFTING ISSUES OR OTHER COMMENTS:

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES