

Committee Substitute for House Bill No. 301

An act relating to title loan transactions; creating the “Florida Title Loan Act”; providing legislative intent; providing definitions; requiring licensure by the Department of Banking and Finance to act as a title loan lender; providing for application for licensure; requiring a bond, a nonrefundable application fee, a nonrefundable investigation fee, and fingerprinting; providing for waiver of fingerprinting; providing for inactive licenses; providing for renewal and reactivation of licenses; providing for a renewal fee and a reactivation fee; providing for disposition of certain moneys; providing for acquisition of an interest in a licensee under certain circumstance; providing for denial, suspension, or revocation of license; specifying acts which constitute violations for which certain disciplinary actions may be taken; providing a fine; providing remedies for title loans made or serviced without licensure; providing for a title loan agreement; providing requirements; providing for reclaiming a repossessed motor vehicle under certain circumstances; providing entitlement to certain excess proceeds of a sale or disposal of a motor vehicle; providing for recordkeeping and reporting and safekeeping of property; providing for title loan interest rates; providing requirements and limitations; providing for extensions; providing for return of principal and interest to the borrower under certain circumstance; providing a holding period when there is a failure to reclaim; providing for the disposal of pledged property; providing for disposition of excess proceeds; prohibiting certain acts; providing for the right to reclaim; providing for lost title loan agreements; providing for a title loan lenders lien; providing for criminal penalties; providing for subpoenas, enforcement of actions, and rules; providing for investigations and complaints; authorizing the department to adopt rules; amending ss. 538.03 and 538.16, F.S.; deleting provisions relating to title loan transactions; providing for more restrictive local ordinances; providing an appropriation; repealing ss. 538.03(1)(i), 538.06(5), and 538.15(4) and (5), F.S., relating to title loan transactions by secondhand dealers; providing severability; providing effective dates.

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

Section 1. Short title.—This act may be cited as the “Florida Title Loan Act.”

Section 2. Legislative intent.—It is the intent of the Legislature that title loans shall be regulated by the provisions of this act. The provisions of this act shall supersede any other provisions of state law affecting title loans to the extent of any conflict.

Section 3. Definitions.—As used in this act, unless the context otherwise requires:

(1) “Commercially reasonable” has the same meaning as used in part V of chapter 679, Florida Statutes. In addition, nonpublic sales or disposal of personal property between a title loan lender and any business affiliates of a title loan lender or a member of a title loan lender’s family are presumed not to be made in a commercially reasonable manner.

(2) “Department” means the Department of Banking and Finance.

(3) “Executive officer” means the president, chief executive officer, chief financial officer, chief operating officer, executive vice president, senior vice president, secretary, and treasurer.

(4) “Identification” means a government-issued photographic identification.

(5) “Interest” means the cost of obtaining a title loan and includes any profit or advantage of any kind whatsoever that a title loan lender may charge, contract for, collect, receive, or in any way obtain as a result of a title loan.

(6) “License” means a permit issued under this act to make or service title loans in accordance with this act at a single title loan office.

(7) “Licensee” means a person who is licensed as a title loan lender.

(8) “Loan property” means any motor vehicle certificate of title that is deposited with a title loan lender as a security for a title loan in the course of the title loan lender’s business.

(9) “Motor vehicle” means an automobile, motorcycle, mobile home, truck, trailer, semitrailer, truck tractor and semitrailer combination, or any other vehicle operated on the public highways and streets of this state, used to transport persons or property, and propelled by power other than muscular power, but excluding a vehicle which runs only upon a track and a mobile home that is the primary residence of the owner.

(10) “Title loan” or “loan” means a loan of money secured by bailment of a certificate of title to a motor vehicle, except such loan made by a person licensed under chapter 516, chapter 520, chapter 655, chapter 657, chapter 658, chapter 660, chapter 663, chapter 665, or chapter 667, Florida Statutes, or a person who complies with s. 687.03, Florida Statutes.

(11) “Title loan agreement” or “agreement” means a written agreement in which a title loan lender agrees to make a title loan to a borrower.

(12) “Title loan lender” or “lender” means any person who engages in the business of making or servicing title loans.

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

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

(15) "Ultimate equitable owner" means a person who, directly or indirectly, owns or controls an ownership interest in a corporation, a foreign corporation, an alien business organization, or any other form of business organization, regardless of whether such person owns or controls such ownership interest through one or more persons or one or more proxies, powers of attorney, nominees, corporations, associations, partnerships, trusts, joint stock companies, or other entities or devices, or any combination thereof.

Section 4. License required; license fees.—

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

(2) A person applying for licensure as a title loan lender shall file with the department an application, the bond required by section 5(3), a nonrefundable application fee of \$1,200, a nonrefundable investigation fee of \$200, and a complete set of fingerprints taken by an authorized law enforcement officer. The department shall submit such fingerprints to the Department of Law Enforcement for state processing and the Department of Law Enforcement shall forward the fingerprints to the Federal Bureau of Investigation for national processing.

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

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

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

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

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

(8) Whenever a person or a group of persons, directly or indirectly or acting by or through one or more persons, proposes to purchase or acquire

a 50 percent or more interest in a licensee, such person or group shall submit an initial application for licensure under this act prior to such purchase or acquisition.

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

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

Section 5. Application for license.—

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

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

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

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

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

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

(3) An applicant for licensure shall file with the department a bond, in the amount of \$100,000 for each license, with a surety company qualified to do business in this state. However, in no event shall the aggregate amount of the bond required for a single title loan lender exceed \$1 million. In lieu of the bond, the applicant may establish a certificate of deposit or an irrevocable letter of credit in a financial institution, as defined in s. 655.005, Florida Statutes, in the amount of the bond. The original bond, certificate of deposit, or letter of credit shall be filed with the department, and the department shall be the beneficiary to that document. The bond, certificate of deposit, or letter of credit shall be in favor of the department for the use and benefit of any consumer who is injured pursuant to a title loan transaction by the fraud, misrepresentation, breach of contract, financial failure, or

violation of any provision of this act by the title loan lender. Such liability may be enforced either by proceeding in an administrative action or by filing a judicial suit at law in a court of competent jurisdiction. However, in such court suit, the bond, certificate of deposit, or letter of credit posted with the department shall not be amenable or subject to any judgment or other legal process issuing out of or from such court in connection with such lawsuit, but such bond, certificate of deposit, or letter of credit shall be amenable to and enforceable only by and through administrative proceedings before the department. It is the intent of the Legislature that such bond, certificate of deposit, or letter of credit shall be applicable and liable only for the payment of claims duly adjudicated by order of the department. The bond, certificate of deposit, or letter of credit shall be payable on a pro rata basis as determined by the department, but the aggregate amount may not exceed the amount of the bond, certificate of deposit, or letter of credit.

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

Section 6. Denial, suspension, or revocation of license.—

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

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

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

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

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

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

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

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

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

(i) Pleading nolo contendere to or having been convicted or found guilty, regardless of whether adjudication was withheld, of a crime involving fraud, dishonest dealing, or any act of moral turpitude or acting as an ultimate

equitable owner of 10 percent or more of a licensee who has pled nolo contendere to or has been convicted or found guilty, regardless of whether adjudication was withheld, of a crime involving fraud, dishonest dealing, or any act of moral turpitude.

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

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

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

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

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

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

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

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

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

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

(d) Issuing a reprimand.

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

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

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

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

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

Section 7. Remedies for title loans made without licensure.—Any title loan made without benefit of a license is void, in which case the person making the title loan forfeits the right to collect any moneys, including principal and interest charged on the title loan, from the borrower in connection with such agreement. The person making the title loan shall return to the borrower the loan property, the titled personal property pledged or the fair market value of such titled personal property, and all principal and interest paid by the borrower. The borrower is entitled to receive reasonable attorney's fees and costs in any action brought by the borrower to recover from the person making the title loan the loan property, the titled personal property, or the principal and interest paid by the borrower.

Section 8. Title loan agreement.—

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

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

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

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

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

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

(f) The amount of money advanced, designated as the “amount financed.”

(g) The maturity date of the title loan agreement, which shall be 30 days after the date the title loan agreement is executed by the title loan lender and the borrower.

(h) The total title loan interest payable on the maturity date, designated as the "finance charge."

(i) The amount financed plus finance charge, which must be paid to reclaim the loan property on the maturity date, designated as the "total amount of all payments."

(j) The interest rate, computed in accordance with the regulations adopted by the Federal Reserve Board pursuant to the Federal Truth-in-Lending Act, designated as the "annual percentage rate."

(2) The following information shall also be printed on all title loan agreements:

(a) The name and physical address of the title loan office.

(b) The name and address of the department as well as a telephone number to which consumers may address complaints.

(c) The following statement in not less than 12-point type that:

1. If the borrower fails to repay the full amount of the title loan on or before the end of the maturity date or any extension of the maturity date and fails to make a payment on the title loan within 30 days after the end of the maturity date or any extension of the maturity date, whichever is later, the title loan lender may take possession of the borrower's motor vehicle and sell the vehicle in the manner provided by law. If the vehicle is sold, the borrower is entitled to any proceeds of the sale in excess of the amount owed on the title loan and the reasonable expenses of repossession and sale.

2. If the title loan agreement is lost, destroyed, or stolen, the borrower should immediately so advise the issuing title loan lender in writing.

(d) The statement that "The borrower represents and warrants that the titled personal property to which the loan property relates is not stolen and has no liens or encumbrances against it, the borrower has the right to enter into this transaction, and the borrower will not apply for a duplicate certificate of title while the title loan agreement is in effect."

(e) A blank line for the signature of the borrower and the title loan lender or the lender's agent.

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

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

(4) Upon execution of a title loan agreement, the title loan lender may take possession of the loan property and retain possession of such property

until such property is redeemed. The borrower shall have the exclusive right to redeem the loan property by repaying all amounts legally due under the agreement. When the loan property is redeemed, the lender shall immediately return the loan property and commence action to release any security interest in the titled personal property. During the term of the agreement or any extension of the agreement, a title loan lender may retain physical possession of the loan property only. A title loan lender shall not require a borrower to provide any additional security or guaranty as a condition to entering into a title loan transaction.

Section 9. Recordkeeping; reporting; safekeeping of property.—

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

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

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

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

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

Section 10. Title loan charges.—

(1) 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. The original principal amount is the same amount as the amount financed, as defined by the federal Truth in Lending Act and Regulation Z of the Board of Governors of the Federal Reserve System. In determining compliance with the statutory maximum interest, the computations must be simple interest and not add-on interest or any other computations. When two or more interest rates are to be applied to the principal amount, the lender may charge interest at that single annual percentage rate which, if applied according to the actuarial method to each

of the scheduled periodic balances of principal, would produce at maturity the same total amount of interest as would result from the application of the two or more rates otherwise permitted, based upon the assumption that all payments are made as agreed.

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

(3) 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. 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.

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 12. Prohibited acts.—

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

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

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

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

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

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

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

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

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

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

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

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

(l) Charge a prepayment penalty.

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

(n) Act as a title loan lender under this act within a place of business in which the licensee solicits or engages in business outside the scope of this act if the department determines that the licensee's operation of and conduct pertaining to such other business results in an evasion of this act. Upon making such a determination, the department shall order the licensee to cease and desist from such evasion, provided, no licensee shall engage in the pawnbroker business.

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

Section 13. Right to reclaim; lost title loan agreement.—

(1) Any person presenting identification of such person as the borrower and presenting the borrower's copy of the title loan agreement to the title loan lender is presumed to be entitled to reclaim the loan property described in the title loan agreement. However, if the title loan lender determines that the person is not the borrower, the title loan lender is not required to allow the redemption of the loan property by such person. The person reclaiming the loan property must sign the borrower's copy of the title loan agreement which the title loan lender may retain to evidence such person's receipt of the loan property. A person reclaiming the loan property who is not the borrower must show identification to the title loan lender, together with notarized written authorization from the borrower, and the title loan lender shall record that person's name and address on the title loan agreement retained by the title loan lender. In such case, the person reclaiming the borrower's copy of the title loan agreement shall be provided a copy of such signed form as evidence of such agreement.

(2) If the borrower's copy of the title loan agreement is lost, destroyed, or stolen, the borrower must notify the title loan lender, in writing by certified or registered mail, return receipt requested, or in person evidenced by a signed receipt, and receipt of such notice shall invalidate such title loan agreement if the loan property has not previously been reclaimed. Before delivering the loan property or issuing a new title loan agreement, the title loan lender shall require the borrower to make a written statement of the loss, destruction, or theft of the borrower's copy of the title loan agreement. The title loan lender shall record on the written statement the type of identification and the identification number accepted from the borrower, the date the statement is given, and the number or date of the title loan agreement lost, destroyed, or stolen. The statement shall be signed by the title loan lender or the title loan office employee who accepts the statement from the borrower. The title loan lender shall not impose any type of fee for providing the borrower with a copy of the title loan agreement.

Section 14. Criminal penalties.—

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

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

Section 15. Subpoenas; enforcement actions; rules.—

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

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

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

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

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

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

Section 16. Investigations and complaints.—

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

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

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

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

538.03 Definitions; applicability.—

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

(a) “Secondhand dealer” means any person, corporation, or other business organization or entity which is not a secondary metals recycler subject to part II and which is engaged in the business of purchasing, consigning, or pawning secondhand goods ~~or entering into title loan transactions~~. However, secondhand dealers are not limited to dealing only in items defined as secondhand goods in paragraph (g). Except as provided in subsection (2), the term means pawnbrokers, jewelers, precious metals dealers, garage sale operators, secondhand stores, and consignment shops.

(h) “Transaction” means any ~~title loan~~, purchase, consignment, or pawn of secondhand goods by a secondhand dealer.

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

538.16 Secondhand dealers; disposal of property.—

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

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

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

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

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

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

Section 23. Except as otherwise provided in this act, this act shall take effect October 1, 2000.

Approved by the Governor May 18, 2000.

Filed in Office Secretary of State May 18, 2000.