

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

Date: March 27, 1998 Revised: _____

Subject: Title Loan Transactions

	<u>Analyst</u>	<u>Staff Director</u>	<u>Reference</u>	<u>Action</u>
1.	<u>Dugger</u>	<u>Miller</u>	<u>CJ</u>	<u>Favorable/CS</u>
2.	<u>Keating</u>	<u>Smith</u>	<u>WM</u>	<u>Favorable/CS</u>
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

Committee Substitute for Committee Substitute for Senate Bill 194 creates the “Florida Title Loan Act,” which provides for licensure and regulation by the Department of Agriculture and Consumer Services of all title loan lenders engaging in title loan transactions in Florida. Presently, title loan lenders are required to be registered with the Department of Revenue.

The CS for CS requires an application and renewal fee, on an annual basis, in the amount of \$1,500. The CS for CS does not provide for a refund of the initial application fee, if the applicant is denied a license. In addition, an applicant for a title loan lender license is required to submit a nonrefundable investigation fee of \$250 to the Department of Agriculture and Consumer Services. The fees will generate sufficient revenues to administer the program. All fees collected by the department are to be deposited into the General Inspection Trust Fund. An applicant and licensee are required to file with the department a surety bond, or other acceptable collateral, in the amount \$100,000 for each license or provide proof that their net worth exceeds \$1 million.

The CS for CS delineates prohibited acts for a title loan lender, or any agent or employer of such title loan lender and provides grounds for suspension and revocation of a license, denial of a license, criminal penalties, and enforcement authority for the department. The department is authorized to conduct examinations and investigations of entities engaging in title loans. The CS for CS provides that each licensee is responsible for the acts of its employees and agents if, with actual knowledge of such acts, it retains profits, benefits, or advantages from such acts or ratifies the conduct of the employee or agent as matter of law or fact.

The CS for CS defines titled personal property to prohibit a title loan on a mobile home that is the primary residence of the pledgor.

The CS for CS creates uniform disclosure requirements for each title loan transaction form. The form must include disclosures regarding the amount financed, the maturity date, the total title loan interest charge (or finance charge), the total amount financed (plus finance charge), and the annual percentage rate, computed in accordance with the Federal Truth-in-Lending Act. The CS for CS provides a maximum finance charge of up to 22 percent per month for a 4-month period. Subsequently, a lender would be authorized to charge 1.5 percent per month for eight months. Thereafter, the lender could charge 18 percent per annum.

In the event the borrower does not redeem the certificate of title, procedures for the repossession of the pledged property are provided. Limitations are placed on the amount of repossession fees a title loan lender may assess.

The CS for CS provides for an appropriation of \$700,000 from the General Inspection Trust Fund to the Department of Agriculture and Consumer Services and authorizes eight positions to administer and enforce the provisions of the act.

This CS for CS creates yet unnumbered sections of the Florida Statutes. The CS for CS substantially amends sections 538.03 and 538.16, and repeals subsections (4) and (5) of section 538.15, and subsection (5) of section 538.06, Florida Statutes.

II. Present Situation:

Prior to engaging in title loan transactions, a secondhand dealer must apply for registration with the Department of Revenue (DOR) under s. 538.09, F.S. A fee equal to the federal and state costs associated with processing fingerprint cards must be submitted to DOR. DOR is authorized to suspend, revoke, or deny registration if DOR determines that an applicant or registrant has violated any provision of ch. 538, F.S.

Once licensed, the premises and records of a dealer are subject to inspection by the police, if the premises are located in a municipality, or the sheriff, if the premises are located outside of the municipality. DOR is authorized to examine the books of a secondhand dealer for the purpose of determining sales tax liability. Pursuant to s. 538.06, F.S., all dealers shall maintain transaction records for 5 years.

Chapter 538, F.S., authorizes secondhand dealers to enter into title loan transactions whereby a dealer retains possession of only the title to a motor vehicle while the owner maintains possession or control of the vehicle. A title loan is defined under s. 538.03, F.S., as a loan of money secured by bailment of a certificate of title to a motor vehicle. Sections 538.06 and 538.15, F.S., prohibit secondhand dealers from charging rent or any other fee for the use of the motor vehicle, and from engaging in pawn and title loan transactions from the same location. 8Under s. 538.06(5)(e), F.S., secondhand dealers are permitted to charge a maximum fee of 22 percent per month in a title loan transaction.

By way of comparison, in a pawn transaction whereby the pawnbroker maintains physical possession of the pledged goods for the duration of the pawn, the pawnbroker may contract and receive a pawn service charge. The interest component of a pawn service charge is 2 percent of the amount financed for each 30-day period in a pawn transaction, under s. 539.001(11), F.S. The pawnbroker may charge any amount of pawn service charge, as long as the total amount, inclusive of the interest component, does not exceed 25 percent of the amount financed for each 30-day period in a pawn transaction; except that the pawnbroker is entitled to receive a minimum pawn service charge of \$5 for each 30-day period.

The interest rate or fee charged by title loan dealers varies in Florida and is influenced by numerous factors, such as whether or not an applicant's credit report is required and used as part of the application process, the amount of the loan, and the collateral used. In other states, the maximum amount of interest allowed by law varies. For example, Minnesota and Arizona cap the monthly interest rate at 3 percent and 6 percent (for the first 2 months and 3 percent for the remainder of the agreement), respectively.

The Federal Consumer Credit Protection Act, commonly referred to as the Truth-in-Lending Act, provides for the definition and determination of a finance charge. The amount of a finance charge in connection with any consumer credit transaction is calculated as the sum of all charges, payable directly or indirectly by the person to whom the credit is extended. Examples of charges which are included in the finance charge are interest, service or carrying charge, and a fee for an investigation or credit report. The Act also specifies the procedure for calculating the annual percentage rate (APR). The APR is the nominal annual rate which will yield a sum equal to the amount of the finance charge when it is applied to the unpaid balances of the amount financed.

Section 538.06, F.S., provides that a secondhand dealer may not sell, barter, exchange, alter, adulterate, or in any way dispose of any secondhand goods within 15 calendar days of the date of acquisition of the goods. This holding period is not applicable when the seller of the goods is known by the secondhand dealer and desires to redeem, repurchase, or recover the goods, provided the secondhand dealer can produce the record of the original transaction with verification that the seller is the person for whom the goods were originally acquired. Upon probable cause that the goods held by a secondhand dealer are stolen, a law enforcement officer with jurisdiction may extend the holding period to a maximum of 60 days.

Section 538.06, F.S., also provides that secondhand dealers have the right to repossess a motor vehicle through a licensed agent, if the title has not been redeemed by the owner or there has been no payment made by the owner on the title loan for a period of 60 days. Secondhand dealers must use licensed motor vehicle dealers to sell repossessed vehicles.

Section 538.16, F.S., provides that personal property pawned with a pawnbroker 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 made on the account for 90 days, or if it is a title loan and the property has not been repurchased from the pawnbroker or the title has not been redeemed from the title lender or there has been no payment made on the account within 60 days.

III. Effect of Proposed Changes:

Committee Substitute for Committee Substitute for Senate Bill 194 creates the “Florida Title Loan Act,” which provides for licensure and regulation by the Department of Agriculture and Consumer Services of all title loan lenders engaging in title loan transactions in Florida.

Section 1. Creates an act that may be cited as the “Florida Title Loan Act.”

Section 2. Provides definitions for terms used in the act. The department is the Department of Agriculture and Consumer Services. A title loan agreement is defined as a written agreement whereby a title loan lender agrees to make a loan of a specific sum of money to a pledgor, and the pledgor agrees to give the title loan lender a security interest in the unencumbered titled personal property owned by the pledgor. As a condition to the loan, the pledgor agrees to give the lender possession of the certificate of title.

Titled personal property is defined to mean any personal property that has as evidence of ownership a state-issued certificate of title, except for a mobile home that is the primary residence of the pledgor. A title loan lender means any person who engages in the business of making title loans or engaging in title loan agreements with pledgers.

Section 3. Provides licensing requirements for a title loan lender. A separate annual license is required for each physical location of an office. An applicant is required to submit a nonrefundable application and license fee in the amount of \$1,500 and a nonrefundable investigation fee of \$250 for an initial application for each office. A subsequent annual renewal fee in the amount of \$1,500 is required.

The department is authorized to deny an initial application for a license if the applicant or any person with power to direct the management or policies of the applicant is the subject of a pending criminal prosecution or a governmental civil enforcement action until the conclusion of such criminal prosecution or enforcement action.

If there is a change of ownership of 25 percent or greater in a title loan office, an individual is required to apply to the department for a new license, and to pay the nonrefundable license and investigation fees, up to a maximum of \$10,000. All monies collected by the department under this chapter are to be deposited into the General Inspection Trust Fund for the sole purpose of implementing this chapter.

Section 4. Provides eligibility requirements for a title loan lender license. An applicant must (1) be of good moral character, (2) file with the department a surety bond or other acceptable collateral in the amount of \$100,000 for each license or provide proof that his or her net worth exceeds \$1 million, (3) not have been convicted of a felony within the last 10 years or be acting on behalf of an ultimate equitable owner who has been convicted of a felony in the last 10 years, and (4) not have been convicted, and not be acting as an ultimate equitable owner for someone who

has been convicted, of a crime that the department finds directly relates to the duties of a title loan lender within the last 10 years.

If an applicant is a corporation, the above requirements apply to each direct or ultimate equitable owner of at least 25 percent of the outstanding equity interest of such corporation and to each executive officer and director.

Section 5. Provides application procedures for obtaining a title loan lender license. The applicant is required to remit a nonrefundable, annual license fee, in the amount of \$1,500, and a nonrefundable investigation fee in the amount of \$250. The applicant must disclose, if applicable, every member of a partnership or association. In the case of a corporation, the applicant must disclose the name of each officer and director and ultimate equitable owner of at least 25 percent. However, if the applicant is owned directly or beneficially by a person, under certain provisions of the Securities Exchange Act of 1934, the application need not disclose the full name and address of each officer, director, or shareholder. All applicants must disclose the required criminal history information and any other relevant information as provided by rule.

If the department grants a license after the investigation is completed, the licensee must prominently display the license at the title loan office location. A licensee may engage in the business of making loans under this act within a place of business in which other business is solicited or engaged in, unless the department finds that the conduct of such other business results in the evasion of this act or that combining such other activities results in practices unfair to consumers. However, a license may not be granted to or renewed for any person or organization engaged in the pawnbroking business.

Section 6. Provides grounds for the suspension or revocation of a title loan lender license. Grounds for suspension, revocation, or denial of a license include, in part, the following: willful imposition of illegal or excessive charges, false or misleading advertising, fraudulent title loan transactions, failure to maintain the required records for inspection, being convicted of a crime involving fraud or dishonesty, and being insolvent. In addition to being able to revoke, suspend, or deny a license for one of these enumerated violations, the department is also authorized to impose other disciplinary actions, such as an administrative fine not exceeding \$5,000 for each violation. Other sanctions include placing a licensee or an applicant on probation, issuing a reprimand, or placing permanent restrictions upon the issuance of a license.

Under this section, a licensee is responsible for the acts of its employees and agents if, with actual knowledge of such acts, it retains profits, benefits, or advantages resulting from such acts or ratifies the conduct of the employee or agent as a matter of law or fact.

Section 7. Provides for disclosure and terms for a title loan transaction form. The department is required to approve the design and format of the form. The form must include:

1. The make, model, and year of the titled personal property.
2. The vehicle identification number.

3. The date of the transaction.
4. The identification number and the type of identification, including the issuing agency accepted from the pledgor.
5. The amount of money advanced, which shall be designated as the amount financed.
6. The maturity date of the agreement, which must occur 30 days after the transaction date.
7. The total interest charge payable on the maturity date, designated as the finance charge.
8. The total amount (amount financed plus finance charge) which must be paid to redeem the loan property on the maturity date.
9. The annual percentage rate, computed in accordance with the regulations adopted by the Federal Reserve Board pursuant to the Federal Truth-in-Lending Act.
10. The name, address, birth date, physical description, and social security number of the pledgor.

In addition, the form must include the name and address of the title loan office and the name, address, and telephone number of the department upon which consumers may address complaints. The form must also state that the pledgor is not obligated to redeem the certificate of title; however, in the event the pledgor does not redeem the certificate of title, the lender may repossess the titled personal property. The pledgor must also attest that the titled personal property has no liens or encumbrances against it and the pledgor will not apply for a duplicate certificate of title while the title loan agreement is in effect.

Section 8. Establishes record keeping, reporting, and safekeeping of property requirements for the title loan lender. The lender is required to produce records at a reasonable and convenient location in Florida within a reasonable period of time after such a request by the department. The lender is required to maintain records for at least 2 years after making the final entry on any loan recorded. The department is authorized to establish the minimum information to be maintained.

Section 9. Establishes maximum title loan charges. Any extension of the original loan is required to be in writing and interest may only be calculated on the principal amount of the loan. The lender is authorized to charge an interest rate of up to 22 percent per month for the first 120 days. In the event the loan has not been satisfied within 120 days of its inception, the lender is entitled to receive a finance charge on the outstanding principal balance at a rate not to exceed 1.5 percent per 30-day period for a period not to exceed 240 days. Thereafter, the lender is entitled to a finance charge on the outstanding principal at a rate not to exceed 18 percent per year.

Any finance charge or fees in excess of the amounts authorized under this act are prohibited, and are uncollectible, and render the agreement voidable. The lender is authorized to collect any fees or taxes paid to a governmental agency and directly related to a loan transaction. Any such fees or taxes are in addition to the permitted finance charge.

Section 10. Provides for a 10-day holding period and procedures for collection. If the pledgor defaults or fails to redeem the pledged property on or before the maturity date of the loan, the lender is authorized to take possession of the titled personal property. After taking possession, the lender must retain possession for a period of 10 days commencing on the date of such

repossession. If the pledgor redeems the pledged property during the 10-day holding period by paying the outstanding principal and finance charges, as well as any authorized repossession and storage charges, the pledgor must be given possession of the property and the certificate of title, without further charge. However, if the pledgor fails to redeem the loan within the 10-day holding period, then the pledgor forfeits all rights in the property. Any repossession of a motor vehicle must be done by an agent who is licensed by the state to repossess motor vehicles.

Section 11. Provides for disposal of pledged property and excess proceeds. The lender is authorized to dispose of the property within a reasonable length of time after the expiration of the 10-day holding period. Lenders are authorized to assess and collect the actual amount charged to repossess and store the property. The repossession charges are capped at \$350 in Florida and \$500 outside of Florida. After such deductions, the remaining balance or surplus, if any, must be given to the pledgor within 10 days after such disposal. If the proceeds from the disposal fail to cover the loan amount, the lender is prohibited from collecting any deficiency from the pledgor.

Section 12. Delineates prohibited acts for a title loan lender, or any agent or employer of a title loan lender. Prohibited acts include, in part, the following: falsifying any material matter in a title loan lender transaction form, refusing to allow the department to inspect records, entering into an agreement with a minor or knowingly entering into an agreement with someone under the influence of drugs or alcohol, failing to use reasonable care in safekeeping loan property, charging a prepayment penalty, and charging an unauthorized fee.

Section 13. Provides procedures for the right to redeem property and for lost title loan transaction forms. The section requires that the person redeeming the property must present the pledgor's copy of the title loan transaction form to the title loan lender, which the lender may retain as evidence of such person's receipt of the property. If the pledgor's copy of the title loan transaction form is lost, stolen, or destroyed, the pledgor is required to notify the lender by certified mail or in person.

Section 14. Authorizes the lender to record its security interest in the titled property to which the loan property relates by noting the lien on the certificate of title. The lender becomes a bona fide lienholder whose interest is perfected once he or she enters into a title loan agreement.

Section 15. Provides criminal penalties. Any person who engages in business as a title loan lender without obtaining a license commits a third degree felony. Any person who willfully violates this act or willfully makes a false entry in any record required by the act commits a first degree misdemeanor.

Section 16. Requires the Department of Law Enforcement, upon request, to supply to the department any arrest and conviction records in its possession of an individual applying or holding a license under this act.

Section 17. Authorizes the department to issue and serve subpoenas, initiate enforcement actions, and to adopt rules to administer and enforce this act.

Section 18. Authorizes the department to conduct examinations and investigations. Such investigations and examinations are limited to one during any 12-month period, unless the department has good cause to believe that the licensee is not complying with the provisions of the act.

Section 19. Appropriates from the General Inspection Trust Fund to the Department of Agriculture and Consumer Services, for fiscal year 1998-99, nine positions and \$700,000 to administer the provisions of the act.

Section 20. Provides legislative intent stating that title loans shall be regulated by the provisions of this act and that the act supersedes any provisions of law affecting title loans to the extent of any conflict.

Section 21. Amends s. 538.03, F.S., relating to secondhand dealers, to delete references to title loans and title loan transactions. Since the CS for CS creates a separate act to regulate title loan transactions, these references are deleted.

Section 22. Amends s. 538.16, F.S., relating to secondhand dealers, to eliminate references to title loan transactions. Since the CS for CS creates a separate act to regulate title loan transactions, these references are deleted.

Section 23. Repeals subsection (5) of s. 538.06, F.S., and subsections (4) and (5) of s. 538.15, F.S., relating to prohibited title loan acts and transactions of secondhand dealers. Since the CS for CS creates a separate act to regulate title loan transactions, these references are deleted.

Section 24. Provides that this act shall take effect October 1, 1998, except that this section and section 19 shall take effect July 1, 1998.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

This bill initially falls under subsection (b) of section 18 of Article VII, Florida Constitution. Subsection (b) requires a two-thirds vote of the membership of each house in order to enact a general law reducing the authority that municipalities and counties had on February 1, 1989 to raise revenues in the aggregate. By adding an exemption to the state sales tax, the bill has the effect of adding an exemption to the local option county sales surtax. Since the annual local revenue loss is estimated to be less than \$1.4 million, the bill will be exempt from the requirements of subsection (b) due to the insignificant negative fiscal impact as permitted under subsection (d) of s. 18, Art. VII, State Constitution. (See subsection (d) of s. 18, Art. VII, State Constitution, for various types of general laws, including those with insignificant fiscal impact.)

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

Applicants for a title loan lender license will be required to submit an annual licensure fee of \$1,500, and a nonrefundable, initial investigation fee of \$250. A licensee will be required to remit \$1,500 fee for an annual renewal.

B. Private Sector Impact:

The CS for CS provides that the interest rates that may be charged by title loan lenders is 22 percent per month for the first 120 days (4 months). After the first 120 days, the lender is authorized to charge 1.5 percent per month for a period of up to 240 days (8 months). Thereafter, the lender is authorized to charge 18 percent per year. (Currently, there is no limitation imposed on the monthly 22 percent interest rate.) The CS for CS also prohibits compounding of the interest from month to month.

The CS for CS also prescribes the maximum repossession and storage fees that can be charged to a person who seeks to recover property (\$350 in Florida and \$500 outside of Florida), and provides requirements for a commercially reasonable sale of repossessed property with excess amounts returned to the borrower.

C. Government Sector Impact:

According to the Department of Revenue, as of December 1997, there were 617 title lenders presently registered with the department as secondhand dealers. If 617 lenders apply for licensure under the CS for CS, this should generate an estimated \$.9 million in annual application/renewal fees and up to an estimated \$.2 million in initial investigation fees, for total first year revenues of \$1.1 million. Of the \$1.1 million, \$1.0 million would be deposited into the General Inspection Trust Fund and \$.1 million in the General Revenue Fund in service charges.

According to Department of Agriculture and Consumer Services, implementation of this act would require the following budget:

Expenditures:	FY 1998-1999	FY 1999-2000	FY 2000-2001
Non-Recurring: (capital expenditures, data processing)	\$184,108	\$ 0	\$ 0
Recurring: 9 FTEs	\$384,307	\$395,835	\$407,711
Total Expenses	\$244,149	\$210,304	\$212,569
TOTAL	\$812,564	\$606,139	\$620,280

VI. Technical Deficiencies:

None.

VII. Related Issues:

Chapter 96-227, L.O.F., created the Vehicle Title Loan Task Force to conduct a review of the practices of the title loan industry in order to make recommendations to the Legislature as to the necessity of changing the current regulations of the industry based upon a consumer protection perspective. The Task Force was comprised of representatives of the Department of Agriculture and Consumer Services, the Department of Legal Affairs, and the Department of Banking and Finance. In addition, the Governor appointed an industry representative. The Department of Agriculture and Consumer Services designated one of its representatives as the chairperson of the Task Force. As a result of the discussion and testimony generated at the December 12, 1996 meeting, the Task Force identified and agreed upon the following issues that needed to be addressed:

1. The industry should be regulated by the state. The suggested regulatory entity was the Department of Agriculture and Consumer Services.
2. Title loans should have a unified statutory scheme, a chapter dedicated to the regulation of the industry.
3. Forms should conform to minimum statutory requirements.
4. Documents should be available upon request and be held for a period of two years, following the completion of the transaction.
5. If a contract is extended, and the borrower pays the service fee in full, then the dealer must accept a principal reduction payment, if offered by the borrower.
6. The contract length should not be regulated.
7. The amount charged per month should be defined as interest.
8. Interest should not be capitalized.

On January 23, 1997, the Task Force voted 4 to 3 to recommend that the current law relating to vehicle title loans be revised to reflect the former 1993 law, which essentially treated a vehicle title loan as a pawn transaction, requiring the vehicle to remain in the possession of the lender during the period of the loan.

Committee Substitute for Committee Substitute for Senate Bill 194 implements many of these recommendations, excluding the one to require possession of the vehicle by the lender for the duration of the loan.

VIII. Amendments:

None.

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