

STORAGE NAME: h0299a.brc

DATE: March 24, 1999

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
BUSINESS REGULATION AND CONSUMER AFFAIRS
ANALYSIS**

BILL #: HB 299

RELATING TO: Florida Title Loan Act

SPONSOR(S): Representative Sublette, with Reprs. Bainter, Wiles, Miller, Chestnut, Greenstein, Sobel, Futch, Effman, Bush, and Detert

COMPANION BILL(S): SB 868 by Senator Meek (s) and SB 898 by Senator Childers (s)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

(1)	FINANCIAL SERVICES	YEAS 9	NAYS 0
(2)	BUSINESS REGULATION AND CONSUMER AFFAIRS	YEAS 7	NAYS 1
(3)	CRIME AND PUNISHMENT		
(4)	GOVERNMENTAL RULES AND REGULATIONS		
(5)	GENERAL GOVERNMENT APPROPRIATIONS		

I. SUMMARY:

The Committee on Business Regulation and Consumer Affairs adopted four amendments to the strike everything amendment: 1) excludes financial institutions from the definition of title loans; 2) corrects a technical reference to certificates of deposit and letters of credit; 3) provides for a maximum interest rate of eight percent per month (the equivalent of 96 percent annual rate) and requires ten percent of payments be applied to principal; and 4) deletes the authority for more restrictive local ordinances.

A strike everything amendment was adopted by the Committee on Financial Services and is traveling with the bill. Numerous provisions of the bill are modified by the amendment for clarity and understanding. The amendment: eliminates recurring examination fees and increases application, renewal, and reactivation fees; prohibits charging a fee for providing a copy of a title loan agreement to a borrower; prohibits capitalization of interest rates in title loan extensions; and provides for eight FTEs rather than nine.

HB 299 provides for the following:

Agency Oversight: The Department of Banking and Finance (the department) would regulate and enforce the provisions of the title loan act. The bill requires an application fee (not to exceed \$500), an investigation fee (\$200), a reactivation fee (\$250), and a biennial renewal fee (not to exceed \$500). All fees would be deposited into the Department of Banking and Finance Regulatory Trust Fund (the Regulatory Trust Fund).

Interest rate: Provides for a maximum interest rate of 30 percent per annum on loans secured by motor vehicle titles computed on the first \$2,000 of the principal amount, 24 percent for the amount exceeding \$2,000 and not exceeding \$3,000, and 18 percent on the amount exceeding \$3,000. Compliance with statutory interest and finance charges shall be computed with simple interest and not add-on interest or any other computation.

Local Option: Does not preclude a county or municipality from adopting ordinances more restrictive than the provisions of the bill.

Appropriation: Provides for an appropriation in the amount of \$500,000 from the Regulatory Trust Fund to the department to fund nine positions for the purpose of carrying out the provisions of this act. Based on estimates provided by the department, the bill has an estimated impact of \$117,001 for FY 1999-2000, (\$364,899) for FY 2000-2001, and (\$64,899) for FY 2001-2002.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

A title loan is a transaction where money is lent with the title to a motor vehicle offered as security. Physical possession of the motor vehicle is maintained by the borrower and the motor vehicle title is held by the lender. Because the motor vehicle is not physically held by the title lender, the transaction is classified as a title loan and not a pawn.

The term "secondhand dealer" refers to pawnbrokers, title lenders, jewelers, precious metals dealers, garage sale operators, secondhand stores, and consignment shops. In 1993, the Legislature made it a misdemeanor for a secondhand dealer to accept title or any other form of security without having physical possession of the secondhand goods. In 1995, legislation was passed that allowed some secondhand dealers to engage in motor vehicle title loans where the motor vehicle was not physically held by the lender. The exact number of title loan lenders is not available since the Department of Revenue, which registers secondhand dealers, does not distinguish between secondhand dealers in general and secondhand dealers who engage in title loans.

Unlike other secondhand dealers (e.g., pawnbrokers), title lenders are not regulated by a state agency. The only state entity having direct interaction with the title loan industry is the Department of Revenue which requires all secondhand dealers to register with the department for tax purposes and to obtain a secondhand dealer's license. The cost of registration is \$45 plus \$6 for every location. The annual renewal fee is \$6 per location.

By law, secondhand dealers may charge a maximum fee (as distinguished from an interest rate) of 22 percent per month on a title loan transaction. There is no prohibition against capitalizing (same effect as compounding) the 22 percent rate. This is in contrast to the maximum service charge allowed for pawnbrokers, which cannot exceed 25 percent per 30-day period on a pawn transaction. Pawn agreements may be extended monthly, with no limit on the number of extensions to which the parties may agree. Table 1 compares how much a person would pay for principal and interest on a \$1,500 title loan for 30 days, 90 days and when the loan is paid-off, assuming they are paying \$500 monthly, under current law regulating title loan lenders and current law regulating pawns.

Table 1. Comparing how much a person would pay for principal and interest on a \$1,500 title loan for 30 days, 90 days and at maturity, assuming they are paying \$500 monthly, under current law regulating title loan lenders and current law regulating pawns.			
	18 percent simple annum	Current law - title loans s.538.06(5)(e), F.S. - 22 percent per month	Current law - Pawn - 539.001(11)(a), F.S. pawn charge cannot exceed 25 percent per 30-day period - may be renewed monthly;
After 30 days	\$1,023 balance owed	\$1,330 balance owed	\$1,375 balance owed
After 90 days	\$67 balance owed	\$871 balance owed	\$1,024 balance owed
Pay-off date	Four months	Six months	Seven months
Total interest charges at pay-off date	\$90	\$1,224	\$1,618
Interest paid as percentage of original loan	6 percent	81.6 percent	107.8 percent
Total cost of \$1,500 loan	\$1,590	\$2,724	\$3,118

Staff of the Committee on Financial Services contacted local pawn shops which indicated that the average loan amount they extend is between \$40 to \$75. Pawn loans for large items, such as television sets, may exceed \$300. If a pawn shop loaned a customer \$300, and the customer

STORAGE NAME: h0299a.brc

DATE: March 24, 1999

PAGE 3

was able to pay only \$100 per month, the total cost of the \$300 loan, after paying it off in seven months, would be \$616. On an anecdotal note, two pawn shop operators indicated that a fair number of customers seeking loans on small items (jewelry, radios, VCRs) show no concern for redeeming their property (i.e., paying off the loan).

Table 2 provides references to Florida Statutes regulating usury, and statute references providing the maximum interest rate allowed for various consumer transactions, such as consumer finance loans, secondhand dealer/title loans, pawnbroker transactions, and credit cards.

USURY	DETAILS OF STATUTE	INTEREST RATES
687.02(1)	"Usurious contracts" defined	18 percent per annum simple interest
687.03(1)	"Unlawful rates of interest" defined; proviso	18 percent per annum simple interest
687.071(2)	Criminal usury; loan sharking;	2nd degree misdemeanor for charging interest over 25 percent but less than 45 percent per annum
687.071(3)	Criminal usury; loan sharking;	3rd degree felony for charging interest over 45 percent per annum
687.12(1)	Interest rates; parity among licensed lenders or creditors	Maximum rate is amount permitted by law
CONSUMER FINANCE 516.031(1)	Finance charge; maximum rates	No interest on principal less than \$1,000; 30 percent per annum on first \$2,000 of principal; 24 percent per annum on principal between \$2,000 and \$3,000; 18 percent per annum on principal between \$3,000 and \$25,000; not authorized to loan greater than \$25,000.
SECONDHAND DEALER/MOTOR VEHICLE TITLE LOANS 538.06(5)(e)	Holding period	22 percent per month
PAWNBROKERS 539.001(11)(a)	The Florida Pawnbroking Act	Service charge not to exceed 25 percent per 30-day period; agreements may be extended; no limit on the number of times agreements may be extended.
CREDIT CARDS 655.954	Financial institution loans; credit cards	Rate specified in written contract; requires compliance with federal Truth in Lending Act disclosures

The 1996 Legislature established the Florida Vehicle Title Loan Task Force to review industry practices and recommend any changes necessary to protect consumers. The task force met seven times and recommended that the 1995 act be repealed. However, prior to the final vote, the task force agreed that any regulatory program should:

1. Establish the Department of Agriculture and Consumer Services as the regulating agency;
2. Enact a new chapter to regulate title loans;
3. Establish bonding at \$200,000 net worth or \$100,000 bond, certificate of deposit, or letter of credit;
4. Require standardized transaction forms;
5. Require keeping transaction forms for two years and make them available upon request;
6. Omit contract length regulation;
7. Require use of terms "interest rate" and "loan;"
8. Require disclosure of loan as a lien;

STORAGE NAME: h0299a.brc

DATE: March 24, 1999

PAGE 4

9. Prohibit capitalizing interest;
10. Prohibit any fee in addition to interest rate, require full finance disclosure, and set maximum fine of \$5,000;
11. Require principal reduction payment for extended loans when service fees are paid in full;
12. Require 10-day holding period for repossessed vehicle prior to sale;
13. Require return of excess money collected in the sale of a repossessed vehicle, allow deduction of reasonable repossession costs, and prohibit further collections from a deficit sale;
14. Prohibit wholesaling repossessed vehicles to an affiliated entity; and
15. Establish fees according to estimated cost of regulation.

The task force did not agreed on the interest rate.

B. EFFECT OF PROPOSED CHANGES:

HB 299 encompasses part or all of 10 of the 15 provisions agreed to by the task force and provides the following:

- **Agency Oversight:** The Department of Banking and Finance (department) shall regulate and enforce the provisions of the act. The department is authorized to promulgate rules, impose and collect fines, and approve all forms.
- **Fees:** Provides for an application fee (not to exceed \$500), an investigation fee (\$200), a reactivation fee (\$250), and a biennial renewal fee (not to exceed \$500). All fees would be deposited into the Regulatory Trust Fund, and the revenues from the fees are intended to reasonably reflect the cost of regulation.
- **Interest rate:** Provides for a maximum interest rate of 30 percent per annum computed on the first \$2,000 of the principal amount, 24 percent for the amount exceeding \$2,000 and not exceeding \$3,000, and 18 percent on the amount exceeding \$3,000. Compliance with statutory interest and finance charges shall be computed with simple interest and not add-on interest or any other computation.

Table 3 compares how much a person would pay for principal and interest on a \$1,500 title loan for 30 days, 90 days and when paid-off, assuming they are paying \$500 monthly, under current law regulating title loan lenders with HB 299.

Table 3. Comparing how much a person would pay for principal and interest on a \$1,500 title loan for 30 days, 90 days and at maturity, assuming they are paying \$500 monthly, under current law regulating title loan lenders with HB 299.			
	18 percent simple annum	Current law - title loan s.538.06(5)(e), F.S. - 22 percent per month	HB 299 30 percent per annum
After 30 days	\$1,023 balance owed	\$1,330 balance owed	\$1,038 balance owed
After 90 days	\$67 balance owed	\$871 balance owed	\$575 balance owed
Pay-off date	Four months	Six months	Four months

STORAGE NAME: h0299a.brc

DATE: March 24, 1999

PAGE 5

	18 percent simple annum	Current law - title loan s.538.06(5)(e), F.S. - 22 percent per month	HB 299 30 percent per annum
Total interest charges on pay-off date	\$90	\$1,224	\$150
Interest paid as percentage of original loan	6 percent	81.6 percent	10 percent
Total cost of \$1,500 loan	\$1,590	\$2,724	\$1,613

- Licensure requirements: Applicants must be of good moral character, file a \$100,000 surety bond for each license. In lieu of a surety bond, the applicant may establish a certificate of deposit or an irrevocable letter of credit in a financial institution for the same amount. The department shall be designated as the beneficiary of the account, for the purpose of redress to a person injured pursuant to fraud, misrepresentation, or other violation of this act.
- Criminal violations: Provides for criminal penalties for those who engage in the title loan business without a license, and for willful violations of this act by licensed title loan lenders.
- Investigations: Provides the department with authority to make intermittent investigation and examination of licensed title lenders, and to compel the production of books and records of the licensee under investigation. Title loan lenders must maintain transaction forms for two years and make them available upon demand by the department.
- Requires a disclosure on the title loan transaction form of the interest designated as a "finance charge" and the amount due on the loan maturity date. The annual percentage rate must be computed and disclosed in accordance with the Federal Truth in Lending Act and regulation Z of the Board of Governors of the Federal Reserve System. Any charges in excess of the combined total of all charges permitted shall constitute a violation of Chapter 687, F.S., regulating usury.
- Differentiates from secondhand dealers: Removes title loan transaction references from the purview of Florida Statutes (Chapter 538, F.S.) regarding secondhand dealers.
- Appropriation: Provides for an appropriation in the amount of \$500,000 from the Regulatory Trust Fund to the Department of Banking and Finance to fund nine positions for the purpose of carrying out the provisions of this act.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

- a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

The department is authorized to promulgate rules to administer the provisions of the act.

STORAGE NAME: h0299a.brc

DATE: March 24, 1999

PAGE 6

- (2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

The department is authorized to regulate and enforce the provisions of the act. The department is authorized to promulgate rules, impose and collect fines, and approve all forms. The department is authorized to make intermittent investigations and examinations of licensed title lenders, and to compel the production of books and records of the licensee under investigation.

- (3) any entitlement to a government service or benefit?

N/A

- b. If an agency or program is eliminated or reduced:

- (1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

- (2) what is the cost of such responsibility at the new level/agency?

N/A

- (3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

- a. Does the bill increase anyone's taxes?

N/A

- b. Does the bill require or authorize an increase in any fees?

Application, investigation and renewal fees are instituted for applicants seeking licenses as title loan lenders.

- c. Does the bill reduce total taxes, both rates and revenues?

N/A

- d. Does the bill reduce total fees, both rates and revenues?

N/A

- e. Does the bill authorize any fee or tax increase by any local government?

N/A

STORAGE NAME: h0299a.brc

DATE: March 24, 1999

PAGE 7

3. Personal Responsibility:

- a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

N/A

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

N/A

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

No

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

The department is authorized to regulate and enforce the provisions of the act. The department is authorized to promulgate rules, impose and collect fines, and approve all forms. Title loan lenders are required to be licensed. The department is authorized to make intermittent investigations and examinations of licensed title lenders, and to compel the production of books and records of the licensee under investigation.

Additional restrictions are placed on title loan lenders relative to the amount of interest allowable on title loans, duration of such loans, and the disposal of property realized in default situations.

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

- (1) Who evaluates the family's needs?

N/A

- (2) Who makes the decisions?

N/A

- (3) Are private alternatives permitted?

N/A

- (4) Are families required to participate in a program?

N/A

- (5) Are families penalized for not participating in a program?

N/A

STORAGE NAME: h0299a.brc

DATE: March 24, 1999

PAGE 8

- b. Does the bill directly affect the legal rights and obligations between family members?

N/A

- c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

- (1) parents and guardians?

N/A

- (2) service providers?

N/A

- (3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

The bill does not cite a specific statutory chapter of the statutes for placement of the regulatory provisions of the bill.

Amends s. 538.03, F.S., and s. 538.16, F.S. Repeals s. 538.03(1)(i), s. 538.06(5), and s. 538.15(4) and (5), F.S.

E. SECTION-BY-SECTION ANALYSIS:

Section 1. Creates the Florida Title Loan Act.

Section 2. Provides legislative intent: (a) titles loans shall be regulated by this act; and (b) this act shall supersede other provisions of law affecting title loans to the extent of any conflict.

Section 3. Provides definitions.

Section 4. Provides licensure requirements and fees. A person engaged in title loan business must be licensed by the department. A separate license is required for each physical location of a title loan office. An application for a title loan license shall be submitted to the department, along with a non-refundable application fee of \$500 and a \$200 non-refundable investigation fee. An issued license must be renewed every two years, along with a \$500 renewal fee. A license that lapses may be reactivated within 3 months of the expiration date upon submission of a reactivation form and a \$250 reactivation fee. All fees would be deposited into the Regulatory Trust Fund.

A license must specify the location for which it is issued. Relocation of an office requires 30 days' written notice to the department.

The department may deny an application if the applicant or a person with management authority is the subject of a pending criminal action. A new license must be applied for, and fees paid, if a person owning 25 percent or greater interest in the title loan office leaves that licensed office.

Section 5. Establishes eligibility for licensure as a title loan business. Applicants must be of good moral character, and must file a \$100,000 surety bond for each license. In lieu of a surety bond,

STORAGE NAME: h0299a.brc

DATE: March 24, 1999

PAGE 9

the applicant may establish a certificate of deposit or an irrevocable letter of credit in a financial institution for the same amount. The department shall be designated as the beneficiary of the account, for the purpose of redress to a person injured pursuant to fraud, misrepresentation, or other violation of this act. Owners may not have any felony convictions within the 10 years preceding the application date. If the applicant for a license is other than a corporation, these requirements apply to each equitable owner.

Section 6. Provides for application procedures and license restrictions. The department may set by rule many procedures and requirements for licensure. No licensee may be engaged in the pawnbroker business or any other business which violates or evades the proposed Florida Title Loan Act. Licenses are not transferable or assignable.

Section 7. Lists violations of the Florida Title Loan Act and the disciplinary actions available to the department. Violations range from fraud, to the failure to maintain records in accordance with the act and failure to provide access to books and records to the department in the event of an investigation by the department. The department may issue a notice of non-compliance with the act pursuant to s. 120.695, F.S., deny or revoke a license, or impose an administrative fine of not more than \$5,000. Provides additional grounds for denial of a license application, or revocation, suspension or restriction of an existing license. Any title loan agreement made by an un-licensed title loan dealer is voidable.

Section 8. Provides minimum information required on a title loan transaction form. The design and format of the form will be approved by the department. Required information includes the title loan interest designated as a "finance charge" and the total amount due on the loan maturity date. The title loan lender is authorized to possess the certificate of title for the duration of the agreement. The pledgor may redeem the certificate of title by repaying the loan in full. The agreement shall provide that upon failure by the pledgor to redeem the title at the end of the agreement period, or at the end of the extension period, the title loan lender may take possession of the titled personal property. Further provides that if a motor vehicle is repossessed under this section, the borrower has 60 days to redeem the motor vehicle before it is subject to sale or disposal. If the motor vehicle is sold or disposed of, the borrower is entitled to excess proceeds, if any.

Section 9. Authorizes the department to prescribe the minimum information which must be maintained for at least two years after the conclusion of a loan. All title loan records must be provided to the department for inspection upon request of the department.

Section 10. Provides for a maximum interest rate of 30 percent per annum computed on the first \$2,000 of the principal amount, 24 percent for the amount exceeding \$2,000 and not exceeding \$3,000, and 18 percent on the amount exceeding \$3,000. Compliance with statutory interest and finance charges shall be computed with simple interest and not add-on interest or any other computation. The annual percentage rate must be computed and disclosed in accordance with the Federal Truth in Lending Act and regulation Z of the Board of Governors of the Federal Reserve System. Any charges, including interest, in excess of the combined total of all charges permitted by this act shall constitute a violation of Chapter 687, F.S., governing usury.

Section 11. Provides for the repossession of pledged property after the maturity date of a title loan, within 60 days after payment was due. The title loan lender may take possession of the motor vehicle through an agent that is licensed to repossess motor vehicles. Sale or disposal of the motor vehicle shall be made through a motor vehicle dealer licensed under s. 320.27, F.S. Within 30 days after the sale of the motor vehicle, the title loan borrower is entitled to receive monies from the sale of the motor vehicle in excess of the loan amount, interest on the loan amount to that date of repossession, and reasonable expenses for the lenders efforts in repossession, holding, and sale of the motor vehicle. Except as provided herein, the taking possession of, and sale or disposal of the motor vehicle is subject to the requirements of Chapter 679, F.S., Florida's UCC chapter regarding secured transactions.

STORAGE NAME: h0299a.brc

DATE: March 24, 1999

PAGE 10

Section 12. Prohibits certain acts by a title loan lender ranging from falsifying information in connection with a title loan transaction to using the words "interest free loans" or "no finance charges" in advertising the business.

Section 13. Provides for redemption procedures, and procedures if the pledgor's copy of the title loan transaction form is lost, destroyed or stolen.

Section 14. Provides for criminal penalties for those who engage in the title loan business without a license, and for willful violations of this act by licensed title loan lenders.

Section 15. Requires the Department of Law Enforcement to submit arrest and conviction records with the department for individuals applying for a title loan license.

Section 16. Provides powers to the department to bring an action in any court of competent jurisdiction to enforce the provisions of this act, to issue subpoenas, to issue cease and desist orders in certain circumstances, to impose and collect administrative fines, and promulgate rules as are necessary for the administration and enforcement of this act.

Section 17. Provides the department with authority to make intermittent investigation and examination of licensed title lenders, and to compel the production of books and records of the licensee under investigation. Investigations and examinations shall not be made more than once in a 12-month period unless there is good cause to believe there has been a violation of the Florida Title Loan Act. Provides limitations on the fees that may be charged by the department in the course of examinations. Any person who believes that the provisions of this act have been violated may file a written complaint with the department. Upon receipt, the department is authorized to inspect books, records, or other documentation relating to the specific written complaint.

Section 18. Amends s. 538.03, F.S., 1998 Supplement, removing title loan transactions from the purview of the definitions of that act relating to "secondhand dealer."

Section 19. Amends s. 538.16, F.S., removing title loan transactions from the purview of that section regulating secondhand dealers and the disposal of property.

Section 20. Authorizes local county and municipal governments to adopt more restrictive ordinances than those of the provisions of the Florida Title Loan Act.

Section 21. Effective July 1, 1999, provides for an appropriation in the amount of \$500,000 from the Regulatory Trust Fund to the Department of Banking and Finance to fund nine positions for the purpose of carrying out the provisions of this act.

Section 22. Repeals s. 538.03 (1)(i), F.S., 1998 Supplement, removing the definition of "title loan" from the definition section of the chapter regulating secondhand dealers. Repeals 538.06(5), F.S., removing title loan-related provisions from the chapter regulating secondhand dealers. Repeals s. 538.15(4) and (5), F.S., removing title loan-related provisions from the chapter regulating secondhand dealers.

Section 23. Provides an effective date of October 1, 1999, for the provisions of this act.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. <u>Non-recurring Effects:</u>	<u>FY 1999-00</u>		
<u>Revenues:</u>	\$120,000		
<u>Expenses:</u>			
Department of Banking and Finance			
Regulatory Trust Fund			
Operating Capital Outlay ¹	(\$44,325)		
2. <u>Recurring Effects:</u>	<u>FY 1999-00</u>	<u>FY 2000-01</u>	<u>FY 2001-02</u>
<u>Revenues:</u>			
Department of Banking and Finance			
Regulatory Trust Fund			
Fees (licensing and examination) ²	\$360,000	\$60,000	\$360,000
<u>Expenses:</u>			
Department of Banking and Finance			
Regulatory Trust Fund			
Salaries and benefits ³	(\$318,674)	(\$424,899)	(\$424,899)
3. <u>Long Run Effects Other Than Normal Growth:</u>			
N/A			
4. <u>Total Revenues and Expenditures:</u>	<u>FY 1999-00</u>	<u>FY 2000-01</u>	<u>FY 2001-02</u>
Department of Banking and Finance			
Regulatory Trust Fund	\$117,001	(\$364,899)	(\$64,899)

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:
 N/A

¹The department's estimates are based on nine FTE's at \$3,215 each, with expenses \$1,710 x 9.

²According to the department, revenues to fund the program would come from licensing (600 x \$500 every two years) and examination fees (300 x \$200 each year). The Department of Revenue currently registers second hand dealers, and has just begun to distinguish how many of these provide title loans.

³The act provides for an appropriation of \$500,000 and nine FTE positions. The department estimates are based on nine professional FTE's at \$36,720 annually. Expenses are estimated at \$6,891 x 9. Travel expenses are estimated at \$3,600 x 9. The first fiscal year estimate is based on salaries and expenses for nine months.

STORAGE NAME: h0299a.brc

DATE: March 24, 1999

PAGE 12

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

The bill would reduce fee revenues for title loan lenders. For instance, in Table 3, located in Section II.B., a \$1,500 loan with monthly payments of \$500 per month would net title loan businesses approximately \$1,111 less in interest payments under the terms of this bill in comparison to current practices.

Title loan companies will pay a biennial license fee of up to \$500, an initial investigation fee of \$200, and an examination fee not to exceed \$250 per eight-hour day per examiner every other year (\$200 per examination is estimated by the department).

2. Direct Private Sector Benefits:

Consumers would experience lower fees for title loans. For instance, in Table 3, located in Section II.B., a \$1,500 loan with monthly payments of \$500 per month would save the consumer approximately \$1,111 in interest payments.

The bill would reduce the amount of interest charged to consumers. The bill creates a regulatory framework for title loan businesses which may result in consumer safeguards.

3. Effects on Competition, Private Enterprise and Employment Markets:

The fee structure places an additional cost of doing business for title loan companies operating in Florida. All title loan companies must pay the new fees, therefore, competition will not be affected within the industry.

D. FISCAL COMMENTS:

According to the department, it will propose an amendment to consolidate licensing and examination fees to conform this bill to other fee and examination consolidation measures the department is proposing for all industries the agency regulates.

This bill is nearly identical to the title loan bill which passed the House last year, but died in messages (HB 3975). HB 3975 required the department to perform annual exams for the nearly 600 title loan offices statewide and, therefore, provided for nine FTE's for the department to administer the act. The present bill, however, requires only bi-annual exams and according to department estimates, fewer FTEs are needed to administer the act.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The bill will not reduce the authority of counties and municipalities to raise revenues.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill will not reduce the state tax shared with counties and municipalities.

V. COMMENTS:

Technical and stylistic differences notwithstanding, HB 299 is identical to the 2nd engrossed version of HB 3975, which the House passed by a vote of 115 - 0 on April 27, 1998. The bill subsequently died in messages.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On March 17, 1999, the Committee on Business Regulation and Consumer Affairs adopted four amendments to the strike everything amendment which was adopted on March 3, 1999, by the Committee on Financial Services and is traveling with the bill.

Amendment 1 - Excludes loans by consumer finance companies, retail installment loans, and loans by financial institutions from the definition of "title loan".

Amendment 2 - Includes the failure to maintain a "certificate of deposit or letter of credit" as grounds for disciplinary action.

Amendment 3 - Provides for a maximum interest rate of eight percent per month which is the equivalent of 96 percent per year. Requires that ten percent of a payment by the borrower be applied to the reduction of principal.

Amendment 4 - Deletes the provision allowing more restrictive local ordinances and provides a statement of legislative intent that title loans shall be regulated by this act and the act supersedes any other conflicting law.

On March 3, 1998, the Committee on Financial Services adopted one "strike everything" amendment offered by the bill's sponsor, Rep. Sublette. The amendment:

- Conforms title loan regulations with other regulatory and enforcement provisions implemented by the department.
- Permits a mobile home to be the subject property of a title loan as long as it is not the primary residence of the borrower.
- Extends the criteria of who may be an "ultimate equitable owner" of a title loan business to that of artificial entities. Eligibility requirements for licensure apply to each owner of more than 10 percent of the entity.
- Eliminates recurring examination fees and increases application, renewal and reactivation fees, as follows:

<i>Comparison between the current bill and the amendment regarding fee schedules and the inactive license dormancy threshold periods</i>		
	Current Bill	Amendment
Application fee	\$500	\$1,200
Investigation fee	\$200	same

STORAGE NAME: h0299a.brc

DATE: March 24, 1999

PAGE 14

Biennial renewal fee	\$500	\$1,200
Reactivation fee	\$200	\$600
Inactive period threshold	3 months	6 months

- Provides for electronic filing of application, fees, and forms;
- Increases notification requirement for licensee's past legal infractions to include pleading nolo contendere, and whether adjudication was ever withheld;
- Maintains the requirement for a \$100,000 bond for each license (principal place of business and each branch), but caps the aggregate of all bonds for a single title loan lender at \$1 million;
- Under the section addressing grounds for disciplinary action, takes out specific intent for the act of imposing illegal or excessive charges;
- Clarifies types of "criminal conduct" by a license that is subject to disciplinary action;
- Provides that any title loan made without a license is void, rather than voidable, and requires return of property or value, and also provides for an award of attorneys fees;
- Provides that an error in calculation of interest rate resulting in excessive rates renders the contract voidable and the excess must be refunded. (A bona fide error still makes the lender susceptible to disciplinary action). A willful overcharging renders the contract void. In either case, overcharging may constitute a violation of Chapter 687 (Lending practices - usury), and available remedies include attorneys fees and punitive damages;
- Permits multiple-activity business sites unless the department determines that such practices results in an evasion of the act;
- Prohibits charging a fee for providing a copy of the title loan agreement to a borrower.
- Prohibits capitalization of interest rates in title loan extensions;
- Provides for eight FTEs rather than nine; and,

VII. SIGNATURES:

COMMITTEE ON FINANCIAL SERVICES:

Prepared by:

Michael A. Kliner

Staff Director:

Susan F. Cutchins

AS REVISED BY THE COMMITTEE ON BUSINESS REGULATION AND CONSUMER AFFAIRS:

Prepared by:

Alan W. Livingston

Staff Director:

Rebecca R. Everhart