

# 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.)

BILL: CS/SBs 1834 & 694

SPONSOR: Governmental Oversight and Productivity Committee, Senators Latvala, Meek, and others

SUBJECT: Fair Accountability in Interest Rates Act of 2000

DATE: March 15, 2000 REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>White</u>	<u>Wilson</u>	<u>GO</u>	<u>Favorable/CS</u>
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

## I. Summary:

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. Title loan lenders are not regulated by a state agency.

Concerning title loans, the committee substitute (CS) provides for:

- **Agency Regulation:** The Department of Banking and Finance will regulate and enforce the provisions of the act, and is authorized to promulgate rules, impose and collect fines, and approve all forms.
- **Licensure Fees:** Requires a \$1200 application fee, \$200 investigation fee, a \$600 reactivation fee, and a \$1200 biennial renewal fee. Requires the posting of \$100,000 surety bond. All fees would be deposited into the Regulatory Trust Fund.
- **Interest Rate:** Provides for a maximum title loan 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 are to be computed with simple interest and not add-on interest or any other computation.
- **Lender Remedies:** Allows title loan lender to repossess vehicle 30 days after a loan payment was due, and to sell the vehicle through a licensed motor vehicle dealer. Lender must return to the borrower all sale proceeds in excess of the loan balance.
- **Criminal Violations:** Provides that it is a third degree felony to engage in the title loan business without a license and that it is a first degree misdemeanor to willfully violate any provision of the act or to willfully make a false entry in any record required by the act.

- Clarification/Conformity: Removes title loan transaction references from the statutes (Chapter 538, F.S.) which govern 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 eight positions for the purpose of carrying out the provisions of this act.

The CS also amends s. 560.309, F.S., to provide that businesses which cash payment instruments, other than travelers checks, foreign drawn payment instruments, and money orders, in exchange for a fee must deposit the payment instrument within two business days, excluding Saturdays and Sundays. If the payment instrument is deposited after that time, the transaction is considered to be a consumer finance loan and is subject to ch. 516, F.S.

This CS creates an unnumbered section of the Florida Statutes.

This CS amends the following sections of the Florida Statutes: 538.03, 538.16, and 560.309.

This CS repeals the following sections of the Florida Statutes: 538.03(1)(i), 538.06(5), and 538.15(4) and (5).

## **II. Present Situation:**

### **Title Loan Businesses**

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. The transaction is classified as a title loan and not a pawn because the motor vehicle is physically held by the title lender.

The term “secondhand dealer” refers to pawn brokers, title lenders, jewelers, precious metals dealers, garage sale operators, secondhand stores, and consignment shops.<sup>1</sup> 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 (DOR), 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 DOR which requires all secondhand dealers to register with the department for tax purposes and to obtain a secondhand dealer’s license.<sup>2</sup> For registration, a fee equal to the federal or state costs

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<sup>1</sup> Section 538.03, F.S.

<sup>2</sup> Section 538.09, F.S.

associated with processing fingerprint cards must be submitted to the DOR, along with a \$6 fee for each location.<sup>3</sup> The DOR is authorized to suspend, revoke, or deny registration if the DOR determines that an applicant or registrant has violated any provision of ch. 538, F.S.<sup>4</sup>

Once licensed, the premises and records of a secondhand dealer are subject to inspection by the police if the premises are located in a municipality or the sheriff is located outside of a municipality.<sup>5</sup> The DOR is permitted to examine the books of a secondhand dealer for the purpose of determining sales tax liability and dealers must maintain transaction records for five years.<sup>6</sup>

As previously indicated, secondhand dealers are authorized to enter into title loan transactions wherein a dealer retains possession of only the title to a motor vehicle while the owner maintains possession of or control over the vehicle.<sup>7</sup> A title loan is defined as a loan of money secured by bailment of a certificate of title to a motor vehicle.<sup>8</sup> Secondhand dealers are prohibited from charging rent or any other fee for the use of the vehicle and from engaging in pawn and title loan transactions from the same location.<sup>9</sup>

In comparison, a pawnbroker maintains physical possession of the pledged goods in a pawn transaction.<sup>10</sup> A pawnbroker may charge a pawn service charge, and the interest component of the pawn service charge is two percent of the amount financed for each 30-day period in a pawn transaction.<sup>11</sup> The pawnbroker may charge any amount of a 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.<sup>12</sup>

The maximum fee a secondhand dealer may charge is 22 percent per month for a title loan transaction.<sup>13</sup> This translates into an annual fee of 264 percent. Additionally, there is no prohibition in Florida against capitalizing the 22 percent rate.

In an attempt to address the controversy which has surrounded the high fees that are charged for title loan transactions, the Legislature passed ch. 96-227, L.O.F., which created the Vehicle Title Loan Task Force. The mission of the task force was to conduct a review of the practices of the

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<sup>3</sup> Section 538.09(1), F.S.

<sup>4</sup> Sections 538.09(4) and (5), F.S.

<sup>5</sup> Section 538.05, F.S.

<sup>6</sup> Sections 538.06 and 538.11, F.S.

<sup>7</sup> Section 538.06(5), F.S.

<sup>8</sup> Section 538.03(I), F.S.

<sup>9</sup> Sections 538.06 and 538.15, F.S.

<sup>10</sup> Section 539.001(1)(h), F.S.

<sup>11</sup> Section 539.001(11), F.S.

<sup>12</sup> Section 539.001(11), F.S.

<sup>13</sup> Section 538.05(5)(e), F.S.

title loan industry in order to make recommendations to the Legislature as to how consumers could be protected. As a result of the discussion and testimony generated at the meetings, the Task Force identified and agreed upon the following issues:

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 chapter dedicated to the regulation of the industry.
3. Bonding should be established at \$200,000 net worth or \$100,000 bond, certificate of deposit, or letter of credit.
4. Unified forms should conform to minimum statutory requirements.
5. Documents should be available upon request and be held for two years following completion of the transaction.
6. The contract length should not be regulated.
7. The amount charged per month should be defined as interest and the transaction should be considered a loan.
8. Language should be included which clarifies that motor vehicle title loan is a lien on that title.
9. Interest should not be capitalized.
10. Any fee in addition to the interest should be prohibited, full finance disclosure should be required, and a maximum fine of \$5,000 should be set.
11. If a contract is extended and the borrower pays the service fee in full, the dealer should accept a principal reduction payment if offered by the borrower.
12. A 10-day holding period should be required for a repossessed vehicle prior to its sale.
13. Excess money collected from the sale of a repossessed vehicle should be refunded.
14. Wholesaling of repossessed vehicles should be prohibited.
15. Fees should be established based on estimated cost of regulation.

The Legislature has unsuccessfully attempted to pass a bill regulating the title loan industry during the past three sessions. As of November, 1999, 21 counties in Florida have passed ordinances restricting interest rates to no more than 30 percent.

### **Check Cashing Businesses**

Part III of Chapter 560, F.S., of the Money Transmitters' Code entitled the "Check Cashing and Foreign Currency Exchange Act" provides that the Department of Banking and Finance shall regulate certain payment instrument cashing businesses. Cashing is defined as, "providing currency for payment instruments, except for travelers checks and foreign-drawn payment instruments."<sup>14</sup> Payment instrument is defined as, "a check, draft, warrant, money order, travelers check or other instrument or payment of money, whether or not negotiable. Payment instrument does not include an instrument that is redeemable by the issuer in merchandise or service, a credit card voucher, or a letter of credit."<sup>15</sup>

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<sup>14</sup> Section 560.302(1), F.S.

<sup>15</sup> Section 560.103(14), F.S.

In order to engage in the business of cashing payment instruments or the exchanging of foreign currency, a person must register with the department.<sup>16</sup> An application for registration must be accompanied by a \$250 investigation fee.<sup>17</sup> The registration is effective through the remainder of the second calendar year following the date of its issuance.<sup>18</sup>

The registration may be renewed by the filing of a renewal form, and payment of a fee not to exceed \$500. In addition to the renewal fee, the registrant must also pay a \$50 registration fee for each location, or may pay a total two-year registration fee of \$5,000 to register all operating locations in the state.<sup>19</sup>

When charging fees for cashing payment instruments or exchanging foreign currency, the check casher shall not:

- \* charge more than five percent of the face amount, six percent if no identification is provided, or \$5, whichever is greater;
- \* charge more than three percent of the face amount, four percent if no identification is provided, or \$5, whichever is greater, for cashing a state public assistance or social security check; and
- \* charge more than ten percent of the face amount or \$5, whichever is greater, for cashing personal checks or money orders.<sup>20</sup>

Currently, some check cashing businesses accept post-dated instruments or agree to delay depositing a check that is presented in exchange for the fee that may legally be charged for cashing the instrument. Additionally, check cashing businesses sometimes “roll-over” these delayed presentments by accepting another held check in order to renew the loan in exchange for another check cashing fee.

Effectively, these check cashing businesses are providing loans for which they may be receiving more than 18 percent annual interest. Presently, Florida statute does not expressly prohibit the delayed presentment of checks, and the Department of Banking and Finance is currently involved in litigation which will determine whether “roll-over” transactions are unauthorized by statute. However, normally under Florida law, pursuant to the Florida Consumer Finance Act, it is necessary to obtain a consumer finance lender’s license in order to charge more than 18 percent

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<sup>16</sup> Section 560.303, F.S.

<sup>17</sup> Section 560.307, F.S.

<sup>18</sup> Section 560.308, F.S.

<sup>19</sup> Section 560.308, F.S.

<sup>20</sup> Section 560.309, F.S.

annual interest.<sup>21</sup> Consequently, check cashing businesses engaging in these loan-like practices are avoiding the requirements of this act.

### III. Effect of Proposed Changes:

**Section 1.** This section creates an act that may be cited as the “Fair Accountability in Interest Rates Act of 2000.”

**Section 2.** This section provides legislative intent stating that title loans shall be regulated by the provisions of this act, that the deferred presentment of checks and other payment instruments shall be subject to the provisions amended by the act, and that the act supersedes any provisions of law affecting title loans or deferred presentment to the extent of any conflict.

**Section 3.** This section provides definitions for terms used in the act:

- \* “Commercially reasonable” has the same meaning as used in ch. 679, Part V, F.S.<sup>22</sup>, and any nonpublic sale 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 is presumed commercially unreasonable.
- \* “Department” means the Department of Banking and Finance.
- \* “Executive officer” means president, chief executive officer, chief financial officer, chief operating officer, executive vice president, senior vice president, secretary, and treasurer.
- \* “Identification” means a government-issued photographic identification.
- \* “Interest” means the cost of obtaining a title loan and includes any profit or advantage which a title loan lender may charge.
- \* “License” means a permit issued at a title loan office to make or service title loans.
- \* “Licensee” means a licensed title loan lender.
- \* “Loan property” means any motor vehicle certificate of title that is deposited with a title loan lender as security for a title loan in the course of the title loan lender’s business.

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<sup>21</sup> The Florida Consumer Finance Act prohibits persons from making consumer finance loans unless they are authorized to do so under ch. 516, F.S., or other statutes. Section 516.02(1), F.S. A consumer finance loan is a loan in the amount of \$25,000 or less with an annual interest rate greater than 18 percent. Section 516.01(2), F.S. Specific statutes authorizing consumer finance loans are found in ch. 516, F.S. (consumer loans), ch. 520, F.S. (retail installment loans), ch. 538, F.S. (title loans), ch. 539, F.S. (pawns), and ch. 655, F.S. (credit cards).

<sup>22</sup> The term “commercially reasonable” is not expressly defined in ch. 679, Part V, F.S.; however, guidelines for commercial reasonableness are provided in ss. 679.504 and 679.507(2), F.S. *Bank of Oklahoma v. Little Judy Industries, Inc.*, 387 So.2d 1002 (Fla. 3rd DCA 1980). Commercially reasonable includes selling collateral in the usual manner in a recognized market therefor, and selling in a manner approved in a judicial proceeding.

- \* “Motor vehicle” means any vehicle operated on the public roadways, used to transport persons or property, and propelled by power other than muscular power, but excluding a vehicle which runs only on a track and mobile home that is the primary residence of the owner.
- \* “Title loan or loan” means a loan of money secured by a bailment of certificate of title to a motor vehicle except such loan made by a person licensed under chs. 516, 520, and chs. 655-667, F.S., or by a person who complies with s. 687.03, F.S.
- \* “Title loan agreement” means a written agreement in which a title loan lender agrees to make a title loan to a borrower.
- \* “Title loan lender” means any person who makes or services title loans.
- \* “Title loan office” means the location where the title loan lender regularly conducts business or any other location held out to the public where the lender makes or services title loans.
- \* “Titled personal property” means a motor vehicle with a state certificate of title, except a mobile home that is the primary residence of the borrower.
- \* “Ultimate equitable owner” means a person who, directly or indirectly, owns or controls an ownership interest in any form of business organization.

**Section 4.** This section provides licensing requirements for a title loan lender. In order to be a title loan lender or to own or operate a title loan office, the person must have a license from the department for each title loan office which must be conspicuously displayed in the title loan office. An applicant for a title loan must file an application, post a \$100,000 surety bond, produce nonrefundable \$1,200 application and \$200 investigation fees, and submit a set of fingerprints. The department is required to submit the fingerprints for processing by the Florida Department of Law Enforcement and Federal Bureau of Investigation. The department, however, need not obtain a set of fingerprints if the applicant’s fingerprints are on file with the department.

The department determines whether an application should be approved, and may issue a license for up to two years. If a licensee wishes to move a title loan, the licensee must provide the department with 30 days written notice prior to relocation. The license may be renewed biennially by filing a renewal form and paying a nonrefundable renewal fee of \$1,200. Any license not renewed by the end of the biennial period automatically becomes inactive, but may be reactivated within six months by filing a reactivation form, paying the \$1,200 renewal fee, and paying a \$600 reactivation fee. After six months, the license automatically expires. The department is required to promulgate rules establishing the procedures for renewal and reactivation of a license, and must adopt renewal and reactivation forms. A license may not be transferred or assigned.

If a person or group proposes to purchase or acquire a 50 percent or greater interest in a title loan office, the person or group is required to apply for a license. Moneys collected by the department are to be deposited into the department’s Regulatory Trust Fund.

**Section 5.** This section provides requirements for the content of the application. A verified application for licensure must: (a) provide the name and residence and business address of the applicant; (b) state whether the applicant has within the previous 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 address of where the business is to be conducted; and (d) contain other information as the department determines by rule to be necessary to ensure compliance with the act.

An applicant for licensure must post a \$100,000 surety bond for each license, the aggregate of which shall not exceed \$1 million. Instead of the bond, the applicant may establish an irrevocable letter of credit in a financial institution for the same amount. The bond or letter of credit must name the department as the beneficiary in order to enable the department to compensate a consumer, who is injured by the title loan lender.

**Section 6.** This section provides grounds for disciplinary actions where the department finds that an applicant or licensee has committed certain acts including: (a) failing to comply with act; (b) committing fraud, misrepresentation, deceit or gross negligence in a title loan transaction; (c) imposing illegal or excessive charges in a title loan transaction; (d) producing false, deceptive, or misleading title loan advertising; (e) failing to maintain documents and accounts as required by act; (f) aiding, abetting, or conspiring by a title loan lender with a person to circumvent or violate act; (g) refusing to comply with a department request, inspection, or subpoena; (h) pleading no contest or being convicted of a crime involving moral turpitude; and (i) making a material misstatement of fact in a license application.

If the department finds that an applicant or licensee has committed one of the aforementioned acts, it may do one or more of the following: (a) deny an application for licensure; (b) revoke or suspend a license; (c) place the licensee on probation for a certain period of time subject to conditions specified by the department; (d) issue a reprimand; or (e) impose an administrative fine not to exceed \$5,000 for each violation. Furthermore, the department may deny a license or suspend or restrict a license, 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 the act. The department's enforcement of the act must be in compliance with the Administrative Procedures Act contained in ch. 120, F.S.

**Section 7.** This section provides remedies for title loans made without a license. Any title loan made without a license is void, and the unlicensed person making the loan cannot collect any moneys from the borrower. The person making the loan must return the loan property to the borrower, the titled personal property pledged or the fair market value of the 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 an action to recover the property, or the principal and interest.

**Section 8.** This section provides requirements for title loan agreement. The title loan agreement must be typed or written in ink and must include: (a) the make, model, and year of the titled personal property; (b) the vehicle identification number or other comparable number, and the license plate number if applicable; (c) the name, address, date of birth, physical description, and social security number of the borrower; (d) the date the agreement is executed; (e) the borrower's



identification number and type of identification; (f) the amount of money loaned; (g) the maturity date of the loan, which must be 30 days after the date the agreement is executed; (h) the total loan interest payable on the maturity date; (i) the total amount of all payments; (j) the interest rate; (k) the name and address of the title loan office; (l) the name and address of the department and a telephone number where complaints may be lodged; (m) a statement that the lender may take possession of the vehicle and sell it as provided by law if the borrower fails to make a loan payment within 30 days after the end of the maturity date, and that the borrower is entitled to any proceeds of the sale in excess of the amount owed and the reasonable expenses of repossession and sale; (n) a statement that if the title loan agreement is lost, destroyed or stolen that the borrower must immediately advise the lender in writing; (o) a statement that the borrower warrants that the titled personal property is not stolen and has no liens or encumbrances; and (p) signature lines for the borrower and lender.

At the time of the loan, the title loan lender must give the borrower a copy of the agreement and may take possession of the loan property until it is redeemed. The borrower has the exclusive right to redeem the loan property by repaying all amounts legally due under the agreement.

The title loan lender and any agent of the lender are subject to the consumer debt collection provisions provided in s. 559.72, F.S.

**Section 9.** This section provides recordkeeping requirements. All title loan lenders must maintain at its loan office business records which enable the department to determine compliance with the act. The department may require the records to be produced at a reasonable and convenient location in the state within a reasonable period of time after the request. The department may promulgate rules which prescribe the minimum information to be contained in the records.

**Section 10.** This section provides limits on title loan charges. A title loan lender may charge the maximum interest provided in s. 516.031, F.S., which governs consumer finance loans. This section provides that the following maximum simple interest rates may be charged per annum: (a) 30 percent for the first \$2,000; (b) 24 percent on the amount exceeding \$2,000, but not exceeding \$3,000; and (c) 18 percent for the amount exceeding \$3,000. 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.

If excess interest is charged by the lender as a result of a bona fide error, the title loan agreement is voidable, and the lender must refund the excess interest to the borrower within 20 days after discovery of the error. If excess interest is charged for the purpose of circumventing the act, the title loan agreement is void, and the lender forfeits any right to collect the loan principal, must refund to the borrower any interest paid, and must return the loan property. Any interest received by a lender or his or her agent in excess of the amount allowed by the act constitutes usury in violation of ch. 687, F.S.

**Section 11.** This section provides procedures for repossession and sale. A title loan lender may take possession of the titled property 30 days after a payment was due. When repossessing, the lender may only use an agent licensed in this state to repossess motor vehicles. Prior to engaging a repossession agent, the lender must afford the borrower an opportunity to make the titled

property available to the lender at a place, date, and time reasonably convenient to the lender and the borrower.

After taking possession of the titled property, the lender may sell it through a motor vehicle dealer licensed pursuant to s. 320.27, F.S. Ten days prior to the sale the lender must notify the borrower of the date, time, and place of sale, and provide the borrower with an accounting of the total amount due on the loan, along with amount due for the reasonable expenses of taking possession, preparing for sale, and selling the titled property. At any time prior to the sale, the lender must permit the borrower to redeem the titled property by tendering a money order or certified check for the total amount due.

Within 30 days after the sale of the titled property, the borrower is entitled to receive all proceeds of the sale in excess of the amount owed. The borrower may recover any attorney's fees and costs incurred in an action brought to recover the excess proceeds.

Except as provided under the act, the disposal of personal property is subject to the provisions of ch. 679, F.S., Florida's Uniform Commercial Code, governing secured transactions.

**Section 12.** This section prohibits certain acts by a title loan lender, including: (a) falsifying a title loan agreement; (b) refusing to allow the department to inspect records during ordinary business hours; (c) entering a title loan agreement with a minor or knowingly entering an agreement with a person under the influence of drugs or alcohol; (d) making any agreement requiring or allowing for the personal liability of a borrower or the waiver of any of the provisions of the act; (e) failing to use reasonable care in keeping loan property; (f) failing to return property upon repayment of loan; (g) selling any type of insurance in connection with the title loan agreement; (h) refusing to accept partial payments toward a title loan obligation; (I) charging a prepayment penalty; (j) engaging in the business of selling new or used motor vehicles and motor vehicle parts; (k) engaging in the pawnbroker business; and (l) advertising with the words "interest free loans" or "no finance charges."

**Section 13.** This section provides procedures to reclaim title and for a lost title loan agreement. If the borrower presents identification and his copy of the title loan agreement, he or she is entitled to reclaim the loan property. In order for a person other than the borrower to reclaim the loan property, the person must show identification and present a notarized written authorization from the borrower. If the borrower's copy of the title loan agreement is lost, destroyed, or stolen, the borrower must notify the lender in writing by certified or registered mail.

**Section 14.** This section provides criminal penalties. A person who acts as a title loan lender without a license commits a third degree felony. A person who willfully violates any provision of the act or who willfully makes a false entry in any record required by the act commits a first degree misdemeanor.

**Section 15.** This section provides the department with subpoena, enforcement, and rulemaking powers. The department may issue subpoenas to compel the attendance of witnesses and the production of records in any matter pertaining to the act. If a person refuses to comply with the subpoena, the department may enforce the subpoena in the manner provided in the Administrative Procedures Act.

In addition to any other powers conferred on the department to enforce or administer the act, the department may bring an action in any court of competent jurisdiction to enforce or administer the act, any rule adopted pursuant to the act, or any written agreement entered into with the department. Additionally, the department may issue and serve upon a person an order requiring the person to cease and desist and take corrective action whenever the department finds that the person has or is about to violate the act, any rule or order adopted under the act or any written agreement entered into with the department. If the department finds that such violation 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, which is effective for 90 days from the date of service.

The department is permitted to adopt rules to implement the act.

**Section 16.** This section provides powers and restrictions relating to investigations and complaints. The department may investigate or examine any licensee or other person the department deems necessary to determine compliance with the act. Examinations, however, are limited to once per 12-month period, unless the department has reason to believe the licensee is not complying with the provisions of the act.

All examinations are to be conducted at a convenient location in the 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 at the out-of-state location, the licensee shall pay the travel expense and per diem of each department examiner for up to 30 eight-hour days per year.

If a person has reason to believe that the act is being violated, the person may file a written complaint with the department, and the department may investigate the complaint.

**Section 17.** This section amends s. 538.03, F.S., by removing title loan transactions from the purview of the definitions for that part relating to "secondhand dealer."

**Section 18.** This section amends s. 538.16, F.S., by removing title loan transactions from the purview of that section regulating secondhand dealers and the disposal of property.

**Section 19.** This section authorizes local governments to adopt ordinances more restrictive than the act.

**Section 20.** This section appropriates \$500,000 to the Department of Banking and Finance effective July 1, 2000, for the 2000-2001 fiscal year to fund eight positions for the purpose of carrying out the act.

**Section 21.** This section repeals ss. 538.03(1)(i), 538.06(5), and 538.15(4)-(5), F.S., to remove "title loan" provisions from the sections relating to secondhand dealers.

**Section 22.** This section amends s. 560.309(1), F.S., to provide that a payment instrument received from a customer which is not deposited within two business days, excluding Saturdays and Sundays, after receipt is considered a consumer finance loan and is subject to the provisions

of ch. 516, F.S. For purposes of the subsection, the term “payment instrument” does not include travelers checks, foreign drawn payment instruments, or money orders.

**Section 23.** This section provides that provisions of act are severable if such are found to be invalid.

**Section 24.** This section provides an effective date of October 1, 2000, except as otherwise provided in the act.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

None.

##### **B. Public Records/Open Meetings Issues:**

None.

##### **C. Trust Funds Restrictions:**

None.

#### **V. Economic Impact and Fiscal Note:**

##### **A. Tax/Fee Issues:**

Title loan lenders desiring to be licensed pursuant to the act will be required to pay fees as described in Section C., *infra*.

##### **B. Private Sector Impact:**

Limiting the maximum interest rate that may be charged for a title loan will benefit consumers who obtain such loans. Conversely, title loan lenders will incur a reduction in interest revenue on loans, and will incur increased costs due to licensure.

Furthermore, prohibiting check cashers from delaying the deposit of payment instruments for more than two business days may result in requiring check cashers, wishing to continue such practices, to register pursuant to the Florida Consumer Finance Act and to incur the registration fees required by the act.

##### **C. Government Sector Impact:**

According to the department, implementation of this act will require the following budget:

Revenues/Expenditures	FY 2000-01	FY 2001-02	FY 2002-03
Non-recurring Effects:			
Revenues:			
Department's initial investigation fee (\$200 x 600). <b>Note:</b> The Southern Association of Title Lenders estimates that there are 600 title loan locations in Florida. <sup>23</sup>	\$120,000	0	0
Expenditures:			
OCO (8 FTEs x \$3,215 each) and Expenses (8 FTEs x \$1,710 each)	\$39,400	0	0
Recurring Effects:			
Revenues:			
Revenue from license fees (600 x \$1200 every two years)	\$720,000	0	\$720,000
Expenditures:			
Salaries and benefits (8 FTEs x \$37,740 annually) plus expenses (8 FTEs x \$6,891 annually) plus travel expenses (8 FTEs x \$3,600 annually)	\$385,848	\$394,906	\$404,235
<b>TOTAL REVENUES</b>	\$840,000	0	\$720,000
<b>TOTAL EXPENSES</b>	\$425,248	\$394,906	\$404,235

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

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<sup>23</sup> The department's fiscal analysis presumes that no other \$200 investigation fees will be received beyond FY 2000-01. It is probable, however, that new title loan companies will apply for licensure beyond this time period; thereby, generating investigation fee revenue in FYs 2001-03.

**VIII. Amendments:**

None.

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

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