

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1109 CS

Title Loan Lenders

**SPONSOR(S):** Smith

**TIED BILLS:**

**IDEN./SIM. BILLS:** SB 1634

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Economic Development, Trade &amp; Banking Committee</u>	<u>7 Y, 4 N</u>	<u>Olmedillo</u>	<u>Carlson</u>
2) <u>State Administration Appropriations Committee</u>	<u>5 Y, 4 N, w/CS</u>	<u>Rayman</u>	<u>Belcher</u>
3) <u>Commerce Council</u>	<u></u>	<u></u>	<u></u>
4) <u></u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

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### SUMMARY ANALYSIS

Chapter 537, Florida Statutes, the "Florida Title Loan Act" (the "Act"), became effective October 1, 2000, ch. 2000-138, LOF. Prior to ch. 2000-138, LOF, title lenders could charge interest rates up to 22 percent per month. The Act capped interest rates at a maximum of 30 percent per year. Subsequently, title loan licensees left the state or obtained licenses under the consumer finance or deferred presentment laws. Currently, there are no lenders registered under Chapter 537, F.S. This bill would encourage the title loan industry to return to Florida.

The bill increases license fees:

- Licensee shall pay a license fee to the office of \$10,000 for the first licensed location and \$2,500 for each additional location, replacing the \$1,200 fee, and
- Renewal fee for a license shall be renewed biennially by filing a renewal form and a nonrefundable renewal fee of \$10,000 for the first licensed location and \$2,500 for each additional location, replacing the \$1,200 fee. The payment of a nonrefundable reactivation fee of \$5,000 is increased from \$600.

The bill raises the maximum allowable interest rates by authorizing a title lender to compute interest rates monthly rather than yearly, as follows:

- 22 percent per month computed on the first \$2,000 of the principal amount; and
- 20 percent per month on that part of the principal amount exceeding \$2,000 and not exceeding \$3,000.

The bill allows that the title loan agreement may be extended up to five additional 30-day periods by mutual consent of the title loan lender and the borrower, up to 180 days.

The bill requires additional notices in larger bold type to be included in title loan agreements. The bill authorizes rollovers only if the borrower pays 5 percent of the unpaid balance each time. It prohibits certain legal actions to collect a deficiency.

The bill also provides protection for service-members and their spouses by:

- Maintaining current interest rates applicable only to them; and
- Prohibiting a lender from taking possession of a service-member's or service-member spouse's vehicle, if the service-member is deployed to combat or combat-support posting.

The bill prohibits title loan business from being conducted with any other business. The bill will pre-empt local government laws that more strictly regulate title loan transactions by repealing s. 537.018, F.S.

The bill creates statutes to provide credit counseling services and a repayment plan.

The Office of Financial Regulation fiscal projections are based on the 350 applicants requesting registration in Fiscal Year 2006-07 which will provide \$1,320,000 in regulation and investigation fees to be deposited into the Regulatory Trust Fund. The Office of Financial Regulation anticipates it would require a total of ten positions and \$706,775 to regulate title lending as proposed by the bill. The bill appropriates funding. The bill provides an effective date of July 1, 2006.

**This document does not reflect the intent or official position of the bill sponsor or House of Representatives.**

**STORAGE NAME:** h1109c.STA.doc

**DATE:** 4/17/2006

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. HOUSE PRINCIPLES ANALYSIS:

Limited Government: The bill imposes new regulations on title loan lenders.

Individual Liberty: The bill will increase options for Floridians who seek short term high interest rate loans.

### B. EFFECT OF PROPOSED CHANGES:

#### **Present Situation:**

##### **Title Loans**

A title loan is a “loan of money secured by a bailment of a certificate of title to a motor vehicle.”<sup>1</sup> The Florida Title Loan Act was enacted on October 1, 2000, to regulate title loan lenders in Florida.<sup>2</sup> Under the Act, a title loan lender must be licensed to conduct business, to own or operate a title loan office.<sup>3</sup> The Office of Financial Regulation (OFR) may issue a non-transferable license for a period not to exceed 2 years to a title loan lender who files a completed application pursuant to the Act and pays the appropriate fees.<sup>4</sup> Each office must have a separate loan license.<sup>5</sup> Florida also requires that an applicant file with OFR a bond, in the amount of \$100,000, or establish a certificate of deposit or irrevocable letter of credit for the amount of the bond.<sup>6</sup> The beneficiary of any such documents must be OFR.<sup>7</sup>

##### **Agreement**

Currently, a title loan lender shall execute an agreement with the borrower, which must provide certain disclosures and information, including the amount of the loan, annual percentage rate, finance charge, total amount of all payments, maturity date (30 days from the date of execution), and consequences of failing to pay under the agreement.<sup>8</sup>

Licensees may charge interest rates of 30 percent per annum computed on the first \$2,000 of the principal amount; 24 percent per annum on that part of the principal amount exceeding \$2,000 and not exceeding \$3,000; and 18 percent per annum on that part of the principal amount exceeding \$3,000.<sup>9</sup> The Act authorizes multiple rollovers for 30 day periods with the parties’ mutual consent.<sup>10</sup>

If the consumer defaults, repossession of the vehicle is not permitted until the loan is at least 30-days overdue.<sup>11</sup> The title lender must also notify the borrower of the ability to pay off the loan prior to selling the vehicle.<sup>12</sup> The sale of the vehicle must be through a licensed motor vehicle dealer; however, the title loan lender cannot also be a licensed motor vehicle dealer.<sup>13</sup> Any excess money from the sale of the vehicle must be returned to the borrower.<sup>14</sup>

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<sup>1</sup> See ch. 537, F.S.

<sup>2</sup> See Id.

<sup>3</sup> See Id.

<sup>4</sup> See Id.

<sup>5</sup> See Id.

<sup>6</sup> See Id.

<sup>7</sup> See Id.

<sup>8</sup> See Id.

<sup>9</sup> See Id.

<sup>10</sup> See Id.

<sup>11</sup> See Id.

<sup>12</sup> See Id.

<sup>13</sup> See Id.

<sup>14</sup> See Id.

## Fees

Title loan lender application and licensee fees are as follows:

- \$1,200 registration fee (biennial)
- \$200 investigation fee (at time of initial application)
- \$1,200 renewal fee
- \$1,200 renewal + \$600 reactivation (if licensed became inactive)<sup>15</sup>

## Violations

The Act provides a number of violations and prohibited activities, including, but not limited to fraud, misrepresentation, imposition of illegal excessive charges, failure to maintain books and records, refusal to provide information, aiding, abetting or conspiring to circumvent the Act, failing to maintain a bond, certificate of deposit or letter of credit, and failing to pay a fee as provided by the Act.<sup>16</sup> The Act further provides OFR with the authority to deny, revoke or suspend a license, place a licensee or applicant on probation, issue a reprimand, or impose an administrative fee if a title loan lender violates any of the foregoing prohibited activities.<sup>17</sup>

## Remedies

The Act provides that an unlicensed title loan transaction is void, forfeiting both principal and interest.<sup>18</sup> In addition, a borrower who was a party to such transaction is entitled to collect attorney's fees and cost in any action to recover from the person who issued the loan.<sup>19</sup> Moreover, the Act provides that an unlicensed title loan lender who enters into title loan transactions commits a felony of the third degree.<sup>20</sup>

## No State Pre-emption

The Act specifically authorizes local governments to enact stricter laws governing these transactions.<sup>21</sup>

## Florida Consumer Finance Act

Under Chapter 516, F.S, the Florida Consumer Finance Act, a consumer can borrow up to \$25,000 at the same rates of interest rates provided under the current Title Loan Act (i.e., maximum of 30% per year.)<sup>22</sup> The Office currently licenses over 500 locations under Chapter 516. License fees under the Consumer Finance Act are significantly lower than those required by the Title Loan Act. Under the Consumer Finance Act, license fees are \$825 for initial applications and \$625 for renewals.<sup>23</sup> Under the Title Loan Act, license fees are \$1,400 for initial applications and \$1,200 for renewals.<sup>24</sup> Additionally, the Consumer Finance Act requires a \$25,000 bond per location; whereas, the Title Loan Act requires a \$100,000 bond per location.<sup>25</sup>

## Deferred Presentment Transactions

Deferred presentment transactions, known as "payday loans," are short term, high interest rate consumer loans. The Deferred Presentment Act (Act),<sup>26</sup> which was enacted in 2001, provides requirements that apply to check cashing operations. Any person engaged in a deferred presentment transaction (deferred presentment provider<sup>27</sup>) must register with OFR and is subject to its regulation.<sup>28</sup>

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<sup>15</sup> See Id.

<sup>16</sup> See Id.

<sup>17</sup> See Id.

<sup>18</sup> See Id.

<sup>19</sup> See Id.

<sup>20</sup> See Id.

<sup>21</sup> See s. 537.018, F.S. See also s. 494.00797, F.S.

<sup>22</sup> See s. 516.031, F.S.

<sup>23</sup> See s. 516.003, F.S.

<sup>24</sup> See s. 537.005, F.S.

<sup>25</sup> See Id.

<sup>26</sup> See Part IV of chapter 560, F.S.

<sup>27</sup> Deferred presentment providers are more commonly known as "pay-day lenders." Deferred presentment providers are businesses that charge a fee for cashing a customer's check and agreeing to hold that check for a certain number of days prior to depositing or redeeming the check. See Section 560.402(6), F.S.

<sup>28</sup> See Section 560.403, F.S.

The maximum face amount of a check taken for deferred presentment cannot exceed \$500, excluding allowable fees.<sup>29</sup> The maximum fee is 10 percent of the face amount, plus a maximum \$5.00 verification fee.<sup>30</sup> Upon receipt of the customer's (drawer<sup>31</sup>) check, the deferred presentment provider must immediately provide the drawer with the amount of the check, minus the allowable fees. The deferred presentment agreement may not be for a term in excess of 31 days or less than seven days.<sup>32</sup> The provider cannot renew or extend any transaction (rollover) or hold more than one outstanding check for any one drawer at any one time.<sup>33</sup>

A deferred presentment provider cannot enter into a transaction with a person who has an outstanding transaction with any other provider, or with a person whose previous transaction with any provider was terminated in less than 24 hours.<sup>34</sup> To verify such information, the provider must access a database established by OFR<sup>35</sup> and must submit the following data on each transaction:

- Drawer's name, address, and drivers' license number;
- Drawer's social security or employment authorization alien registration number;
- Drawer's date of birth;
- Amount and date of the transaction;
- Date the transaction is closed; and
- Check number.<sup>36</sup>

For a \$500 payday loan with a term of 30 days, the consumer would pay \$55 in fees, which is an effective rate of interest of 134%. By contrast, in a title loan, which is secured by the consumer's vehicle, the cost of borrowing the money would \$125 and the effective rate of interest would be 264%. Additional fees and costs would also be applicable in a title loan transaction if the borrower was unable to repay the debt and the lender sold the borrower's vehicle to recover the debt.

Payday lenders are prohibited from taking additional collateral and engaging in rollover transactions.<sup>37</sup> Other consumer protections for payday loans include a 24-hour waiting period between transactions.<sup>38</sup> There is also a 60-day grace period if the consumer notifies the vendor before the due date that the consumer is unable to make the check good.<sup>39</sup> In these cases, the consumer must participate in credit counseling in order to be afforded the grace period.<sup>40</sup> The Office maintains a state-wide database to ensure that consumers do not have more than one outstanding payday loan at any one time and that they adhere to the 24-hour waiting period.<sup>41</sup>

The Office currently licenses over 1,200 payday lender locations.

### **Effects of Proposed Changes:**

#### **License Fees**

The bill amends s. 537.004, F.S., License fees. Subsection (3) is amended to add a provision that upon being notified that the license application has been approved, and prior to the license being issued by the office, a licensee shall pay a license fee to the office of \$10,000 for the first licensed

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<sup>29</sup> See Section 560.404(5), F.S.

<sup>30</sup> See Section 560.404(6), F.S. The maximum \$5.00 verification fee is established by Rule 69V-560.801, Fla. Admin. Code, as authorized by s. 560.309(4), F.S.

<sup>31</sup> A drawer is a person who writes a personal check and upon whose account the check is drawn. Section 560.402(7), F.S.

<sup>32</sup> See Section 560.404(8), F.S.

<sup>33</sup> See Section 560.404(18), F.S.

<sup>34</sup> See Section 560.404(19), F.S.

<sup>35</sup> OFR is required to establish this database of all deferred presentment transactions in the state and give providers real-time access through an Internet connection. OFR contracts with a private vendor, Veritec Solutions, Inc., to maintain the database. Senate Staff Analysis and Economic Impact Statement for S 7072, prepared by Banking and Insurance Committee, January 26, 2006, at 4.

<sup>36</sup> Section 560.404(23), F.S. All of the information is required by statute, except the drawer's date of birth and check number. Telephone conversation with staff of OFR, January 27, 2006.

<sup>37</sup> See s. 560.404, F.S.

<sup>38</sup> See Id.

<sup>39</sup> See Id.

<sup>40</sup> See Id.

<sup>41</sup> See Id.

location and \$2,500 for each additional location. Subsection (4) is amended for the amount of renewal fee for a license shall be renewed biennially by filing a renewal form and a nonrefundable renewal fee of \$10,000 for the first licensed location and \$2,500 for each additional location, replacing the \$1,200 fee. A license that is not renewed by the end of the biennial period shall automatically every to inactive status. An inactive license may be reactivated within 6 months after becoming inactive by filing a reactivation form, payment of the nonrefundable \$1,200 renewable fee is increase to \$10,000 for the first licensed location and \$2,500 for each additional location, and payment of a nonrefundable reactivation fee of \$5,000 is increased from \$600.

### **Notice**

The bill requires additional notices in larger type to be included in title loan agreements, stating that the loan is not intended to meet long-term financial needs; that the loan should only be used to meet short-term cash needs; that the borrower will be required to pay additional interest and fees if he or she renews the loan; that the loan is a higher interest rate loan; that the borrower is placing at risk his or her continued ownership of the pledged personal property; that if the borrower fails to pay the full amount of the loan on or the end of the maturity date or renewal of the loan, the title pledge lender may take possession of the property the title for which is pledged and sell the property in the manner provided by law; and that the borrower has a legal right of rescission.

### **Increase in Interest Rates**

The bill raises the maximum allowable interest rates from the present rate of 30 percent per annum on the first \$2,000 of the principal amount to 22 percent per month; from 24 percent per annum to 20 percent per month on that part of the principal amount exceeding \$2,000 and not exceeding \$3,000. The bill allows that the title loan agreement may be extended up to five additional 30-day periods by mutual consent of the title loan lender and the borrower, up to 180 days. However, it requires additional disclosures in title loan agreements and maintains the current interest rate limitations for members of the United States Armed Forces and their spouses.

### **Rollovers**

The bill authorizes rollovers only if the borrower pays at least 5 percent of the original unpaid balance each time a rollover occurs. The lender may, but is not obligated to, defer any required principal reduction payments and collect it at the time the loan is finally paid off; however, the lender can not charge any additional interest on the deferred principal amounts.

### **Prohibited Actions**

The bill prohibits legal actions to recover deficiency balances. In addition, the bill prohibits the title lender from taking possession of a vehicle of a service-member or spouse of a service-member, if the service-member is deployed to a combat or combat support posting. Moreover, title lenders may not contact the commanding officer of a service-member or spouse about a title loan or do business with a service-member if the commanding officer declares the specific location off limits and notifies the business. The bill also prohibits title loan lenders from conducting title loan business within any location in which any other business is solicited, conducted, or to conduct title loan business in association or conjunction with such other business, or share common areas or employees with any other business.

### **State Pre-emption**

The bill will pre-empt local government laws that more strictly regulate title loan transactions by repealing s. 537.018, F.S.

### **Credit Counseling Services/Repayment Plan**

The bill creates section 537.020, F.S., adding language that (a) If prior to the maturity date of the original title loan agreement, or the maturity date of any extension of the title loan agreement, the borrower notifies the title loan lender in person that the borrower wishes to exercise their right to seek consumer credit counseling, the title loan lender shall offer the borrower the option of a grace period extending the term of the agreement for an additional four months from such notice, without any additional charge. The lender shall require that as a condition of providing this grace period that within the first 7 days of the grace period the borrower extend an appointment with a consumer credit

counseling agency and that this consumer credit counseling agency notify the title loan lender that such appointment occurred. The borrower may agree to, comply with, and adhere to a repayment plan approved by the counseling agency. If the borrower agrees to and comply with and adhere to a repayment plan approved by the counseling agency, and if such plan fully repays the title loan lender in near equal installments before the end of the grace period, with the first payment due no later than thirty days after the date the grace period commenced, the title loan lender is also required to comply with and adhere to the repayment plan. The title loan lender may not seek repossession of the borrower's motor vehicle during the grace period unless the borrower fails to comply with this section, or fails to make payments in compliance with the repayment plan. In the event the borrower fails to comply with this section, or fails to make payments in compliance with the repayment plan, the title loan lender may seek possession of the motor vehicle pursuant to the original terms of the title loan agreement. Before each title loan transaction, the title loan lender may verbally advise the borrower of the availability of the grace period consistent with the provisions of the written notice in subsection (d) of this section, and shall not discourage the borrower from using the grace period. For the purposes of calculation the remaining balance to be repaid pursuant to the repayment plan. The plan must include the repayment of all unpaid principle plus unpaid interest accrued on a daily basis through the first day of the grace period, provided however, if the borrower exercises their right to the grace period during the original term of the title loan agreement, the entire unpaid amount of the interest agreed to be paid for such initial term must be paid during the repayment plan.

(b) At the commencement of the grace period, the title loan lender shall provide the borrower:

1. Verbal notice of the availability of the grace period consistent with the written notice in subsection (d) of this section.
2. A list of approved consumer credit counseling agencies prepared by the office. The office list shall include nonprofit consumer credit counseling agencies affiliated with the National Foundation for Credit Counseling which provide credit counseling services to Florida residents in person, by telephone, or through the Internet. The office list must include phone numbers for the agencies, the counties served by the agencies, and indicate the agencies that provide telephone counseling and those that provide Internet counseling. The office shall update the list at least once each year.
3. A notice that should be in at least 14-point type.

(c) If a borrower completes an approved payment plan, the title loan lender shall pay \$25.00 to the consumer credit counseling agency.

(d) In addition to all other disclosures required by this Act, the title loan lender shall provide a notice in at least 14-point type conspicuously within the title loan agreement.

#### C. SECTION DIRECTORY:

Section 1. Amends s. 494.00797, F.S., removing local government authority to regulate title loans.

Section 2. Amends s. 537.004, F.S., increasing license fees.

Section 3. Amends s. 537.008, F.S., requiring certain disclosures.

Section 4. Amends s. 537.011, F.S., regarding interest rates and limitations, allows that the title loan agreement may be extended up to five additional 30-day periods by mutual consent of the title loan lender and the borrower, up to 180 days..

Section 5. Amends s. 537.012, F.S., tolling time requirements for the military in the event of title lender repossession and title lender disposal of pledged property.

Section 6. Amends s. 537.013, F.S., relating to title loan lender prohibited acts, including prohibition regarding legal actions to collect deficiency balances and prohibitions against military.

Section 7. Creates s. 537.019, F.S., prohibiting conducting title loan business with another business.

Section 8. Creates s. 537.020, F.S., providing credit counseling services and a repayment plan.

Section 9. Repeals s. 537.018, F.S., to pre-empt local laws regarding title loans.

Section 10 Provides appropriations and authorizes additional positions and salary rates.

Section 11. Provides an effective date of July 1, 2006.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE AGENCIES:	FY 2006-07	FY 2007-08
1. Revenues		
Regulatory Trust Fund		
a. Recurring	\$1,250,000	\$ 375,000
b. Non-Recurring	<u>70,000</u>	<u>12,000</u>
Total Revenue	1,320,000	387,000
2. Expenditures:		
Recurring		
Salaries and Benefits (10 FTE) (Salary rate 415,996)	\$ 544,985	\$ 544,985
Expenses	100,030	100,030
Human Resources Services	<u>3,930</u>	<u>3,930</u>
Total – recurring	\$ 648,945	\$ 648,945
Non-Recurring		
Expenses	\$ 33,430	
Operating Capital Outlay	<u>24,400</u>	
Total – non-recurring	\$ 57,830	
Total Expenditures:		
Regulatory Trust Fund	\$ 706,775	\$ 648,945

### B. ESTIMATED FISCAL IMPACT ON LOCAL GOVERNMENTS:

None.

### C. ESTIMATED FISCAL IMPACT ON PRIVATE SECTOR:

The proposed bill will significantly impact consumers who make use of these loans. Currently, the maximum interest rate allowed is 30% per annum. The bill will increase the maximum permissible rate to 22% per month on loans up to \$2,000, 20% per month on loans between \$2,000 and \$3,000, and 18% per month on loans between \$3,000 and \$5,000.

### D. FISCAL COMMENTS:

The Office of Financial Regulation projections are based on the 50 main office applicants at \$10,000, and 300 branch offices at \$2,500 requesting registration in FY 2006-07 (shortly after the effective date of the proposed bill), with 60 new applications per year in remaining years. All active registrants would be required to renew in FY 2008-09. Based on the allowable interest rates, growth in the industry is anticipated but the level of growth is not known at this time. Currently there are no lenders registered under Chapter 537, FS.

Based on the estimate of 350 initial applicants/registrants, the Office anticipates it would require a total of ten positions and \$706,775 to regulate title lending as proposed by the bill. Staff would be needed to review and process applications for registration, and would be placed around the State to examine the on-going operations and investigate consumer complaints related to title loans.

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

##### 1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

##### 2. Other:

None.

#### B. RULE-MAKING AUTHORITY:

None.

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill has amended section 537.004(3) to add language that a licensee shall pay a license (application) fee to the office of \$10,000 for the first licensed location and \$2,500 for each additional location. The increased application fee is in conflict with subsection (2) that states "A person applying for licensure as a title loan lender shall file with the office an application, the bond required by s. [537.005](#)(3), a nonrefundable application fee of \$1,200, a nonrefundable investigation fee of \$200, and a complete set of fingerprints taken by an authorized law enforcement officer."

### IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On April 17, 2006, the State Administration Appropriations Committee adopted six amendments to the Committee Substitute. The amendments made the following revisions to the bill:

- Provides appropriations from the Regulatory Trust Fund in the Office of Financial Regulation within Department of Financial Services for the purposes of funding the provisions of this legislation.
- Amends s. 537.004, F.S., increasing license fees.
- Amends s. 537.011, F.S., relating to title loan charges by removing the maximum 18 percent per month interest rate on principal amount of loan exceeding \$3,000.
- Amends s. 537.013, F.S., prohibiting a title loan principal to exceed \$3,000.
- Creates s. 537.020, F.S., providing credit counseling services and a repayment plan.
- Amends s. 537.011, F.S., regarding title loan charges, allows that the title loan agreement may be extended up to five additional 30-day periods by mutual consent of the title loan lender and the borrower.

This bill was then reported favorably with a committee substitute. The analysis has been updated for the amendments.