

1 SB301
2 173229-1
3 By Senator Orr
4 RFD: Fiscal Responsibility and Economic Development
5 First Read: 24-FEB-16

2
3
4
5
6
7
8 SYNOPSIS: Under existing law, title loan lenders are
9 not licensed.

10 This bill would provide for the licensure
11 and regulation of title loan lenders by the State
12 Banking Department.

13 This bill would prescribe maximum annual
14 interest rates for title loans.

15 This bill would prescribe procedures when
16 there is a default of a title loan.

17 This bill would prohibit the issuance of a
18 title loan to a person under the age of 19 years.

19 This bill would provide for the enforcement
20 of the act by fines and criminal penalties.

21 Amendment 621 of the Constitution of Alabama
22 of 1901, now appearing as Section 111.05 of the
23 Official Recompilation of the Constitution of
24 Alabama of 1901, as amended, prohibits a general
25 law whose purpose or effect would be to require a
26 new or increased expenditure of local funds from
27 becoming effective with regard to a local

1 governmental entity without enactment by a 2/3 vote
2 unless: it comes within one of a number of
3 specified exceptions; it is approved by the
4 affected entity; or the Legislature appropriates
5 funds, or provides a local source of revenue, to
6 the entity for the purpose.

7 The purpose or effect of this bill would be
8 to require a new or increased expenditure of local
9 funds within the meaning of the amendment. However,
10 the bill does not require approval of a local
11 governmental entity or enactment by a 2/3 vote to
12 become effective because it comes within one of the
13 specified exceptions contained in the amendment.

14
15 A BILL
16 TO BE ENTITLED
17 AN ACT
18

19 Relating to title loans; to provide for the
20 licensure and regulation of title loan lenders by the State
21 Banking Department; to prescribe maximum annual interest rates
22 for title loans; to prescribe procedures when there is a
23 default of a title loan; to prohibit the issuance of a title
24 loan to a person under the age of 19 years; to provide for the
25 enforcement of the act by fines and criminal penalties; and in
26 connection therewith would have as its purpose or effect the
27 requirement of a new or increased expenditure of local funds

1 within the meaning of Amendment 621 of the Constitution of
2 Alabama of 1901, now appearing as Section 111.05 of the
3 Official Recompilation of the Constitution of Alabama of 1901,
4 as amended.

5 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

6 Section 1. This act shall be known and may be cited
7 as the Alabama Title Loan Act.

8 Section 2. (a) The Legislature finds that the making
9 of title loans vitally affects the general economy of this
10 state and the public interest and welfare of its citizens. It
11 is the policy of this state and the purpose of this act to do
12 all of the following:

13 (1) Ensure a sound system of making title loans
14 through statewide licensing of title loan lenders by the State
15 Banking Department.

16 (2) Provide for the licensing, examination, and
17 regulation of title lenders by the State Banking Department.

18 (3) Ensure financial responsibility to the public by
19 setting a reasonable interest rate that correctly reflects the
20 risk incurred by lenders on these secured loans and by
21 requiring consideration of borrowers' ability to repay these
22 loans.

23 (b) All loans secured by a motor vehicle title shall
24 be regulated under this act. This act shall supersede other
25 state laws affecting title loans to the extent of any
26 conflict.

1 Section 3. As used in this act, the following words
2 and phrases shall have the following meanings:

3 (1) BORROWER. The owner of any titled personal
4 property who pledges the property to a title lender pursuant
5 to a title loan agreement.

6 (2) COMMERCIALLY REASONABLE. The same meaning as
7 Part 6, commencing with Section 7-9A-601, Article 9A, Title 7,
8 Code of Alabama 1975. In addition, nonpublic sales or disposal
9 of personal property between a title loan lender and any
10 business affiliate of a title loan lender or a member of the
11 family of a title loan lender are presumed not to be made in a
12 commercially reasonable manner.

13 (3) DEPARTMENT. The State Banking Department.

14 (4) EXECUTIVE OFFICER. The president, chief
15 executive officer, chief financial officer, chief operating
16 officer, executive vice president, senior vice president,
17 secretary, and treasurer.

18 (5) IDENTIFICATION. A government-issued photo
19 identification.

20 (6) INTEREST. The cost of obtaining a title loan,
21 including, but not limited to, any profit or advantage of any
22 kind whatsoever that a title loan lender may charge, contract
23 for, collect, receive, or in any way obtain, as a result of a
24 title loan.

25 (7) LICENSE. A permit issued pursuant to this act to
26 make or service title loans at a single title loan office in
27 accordance with this act.

1 (8) LICENSEE. A person who is licensed as a title
2 loan lender under this act.

3 (9) MOTOR VEHICLE. An automobile, motorcycle, mobile
4 home, truck, trailer, semitrailer, truck tractor, and
5 semitrailer combination, or any other vehicle operated on the
6 public highways and streets of this state, used to transport
7 persons or property, and propelled by power other than
8 muscular power, but excluding a vehicle that runs only upon a
9 track and a mobile home that is the primary residence of the
10 owner.

11 (10) PERSON. One or more individuals, corporations,
12 partnerships, associations, or other legal entities.

13 (11) PRINCIPAL BALANCE. The balance due and owed
14 exclusive of any interest, service charges, or other
15 loan-related charges.

16 (12) SECONDHAND DEALER. Any person, corporation, or
17 other business organization or entity that is not an
18 automotive dismantler and parts recycler and that is engaged
19 in the business of purchasing, consigning, or pawning
20 secondhand goods or entering into title loan transactions
21 including, but not limited to, pawnbrokers, jewelers, precious
22 metals dealers, garage sale operators, secondhand stores, and
23 consignment shops.

24 (13) TITLE LOAN AGREEMENT. A written agreement
25 whereby a title loan lender agrees to make a loan of money to
26 a borrower, and the borrower agrees to deposit the certificate
27 of title to the titled property with the lender as security.

1 (14) TITLE LOAN LENDER or LENDER. Any person engaged
2 in the business of making, offering, or brokering title loan
3 agreements. The term does not include a bank that is regulated
4 by the State Banking Department, the Comptroller of the
5 Currency of the United States, the Federal Deposit Insurance
6 Corporation, the Board of Governors of the Federal Reserve
7 System, or any other federal or state authority and all
8 affiliates of such bank, any state or federally chartered
9 credit union, and any finance company subject to licensing and
10 regulation by the State Banking Department.

11 (15) TITLE LOAN OFFICE. The location at which, or
12 premises from which, a title loan lender regularly conducts
13 business under this act or any other location that is held out
14 to the public as a location at which a lender makes or
15 services title loans.

16 (16) TITLED PERSONAL PROPERTY. A motor vehicle that
17 has as evidence of ownership a state-issued certificate of
18 title, whose certificate of title is given to the lender as
19 security for the title loan.

20 (17) ULTIMATE EQUITABLE OWNER. A person who,
21 directly or indirectly, owns or controls an ownership interest
22 in a corporation, a foreign corporation, an alien business
23 organization, or any other form of business organization,
24 regardless of whether the person owns or controls the
25 ownership interest through one or more persons or one or more
26 proxies, powers of attorney, nominees, corporations,

1 associations, partnerships, trusts, joint stock companies, or
2 other entities or devices, or any combination thereof.

3 Section 4. (a) A person may not act as a title loan
4 lender, or own or operate a title loan office unless the
5 person has an active title loan lender license issued by the
6 department under this act. A title loan lender may not own or
7 operate more than one title loan office unless the lender
8 obtains a separate title loan lender license for each title
9 loan office. Acting as a title loan lender includes offering
10 or agreeing to enter a title loan agreement with a borrower,
11 or brokering or acting as an agent for a third party in such a
12 transaction, regardless of whether approval, acceptance, or
13 ratification is necessary to create a legal obligation for the
14 third party. Actions, transactions, and agreements entered
15 into with borrowers in the state include transactions
16 conducted through the Internet, facsimile, telephone, kiosk,
17 or other means.

18 (b) The department, by rule, shall establish
19 procedures for securing a license in compliance with this act,
20 including, but not limited to, application procedures and
21 forms, applicable fees, bond requirements, and renewal
22 procedures.

23 (c) The department shall approve an application and
24 issue a license if the department determines that the
25 applicant satisfies the requirements of this act. If the
26 department determines that an application should be approved,

1 the department shall issue a license for a period not to
2 exceed one year.

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

7 (e) A license issued pursuant to this act is not
8 transferable or assignable.

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

11 (g) Whenever a person or a group of persons,
12 directly or indirectly or acting by or through one or more
13 persons, proposes to purchase or acquire a 50 percent or more
14 interest in a licensee, the person or group shall submit an
15 initial application for licensure pursuant to this act prior
16 to the purchase or acquisition.

17 (h) All moneys collected by the department pursuant
18 to this act shall be used by the department to regulate the
19 entities covered by this act.

20 Section 5. (a) After notice and a hearing, the
21 department may invoke disciplinary action as outlined in
22 subsection (b) whenever the department determines after notice
23 and a hearing, that a person has been guilty of any of the
24 following:

25 (1) Failure to comply with this act, any rule
26 adopted pursuant to this act, or any written agreement entered
27 into with the department.

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

4 (3) False, deceptive, or misleading advertising by a
5 title loan lender.

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

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

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

18 (7) Pleading guilty to or having been convicted or
19 found guilty of, regardless of whether adjudication was
20 withheld, a crime involving breach of trust, fraud, or
21 dishonesty or acting as an ultimate equitable owner of 10
22 percent or more of a licensee who has pled guilty to or has
23 been convicted or found guilty of, regardless of whether
24 adjudication was withheld, a crime involving breach of trust,
25 fraud, or dishonesty.

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

1 (9) Having been the subject of any decision,
2 finding, injunction, suspension, prohibition, revocation,
3 denial, judgment, or administrative order by any court of
4 competent jurisdiction or administrative law judge, or by any
5 state or federal agency, involving a violation of any state or
6 federal law, rule, or regulation relating to title loans, or
7 has been the subject of any injunction or adverse
8 administrative order by a state or federal agency regulating
9 banking, insurance, finance or small loan companies, real
10 estate, mortgage brokers, or other related or similar
11 industries for acts involving breach of trust, fraud, or
12 dishonesty.

13 (10) Failing to timely pay any fee, charge, or fine
14 imposed or assessed pursuant to this act or rules adopted
15 pursuant to this act.

16 (11) Having a license or registration, or the
17 equivalent, to practice any profession or occupation denied,
18 suspended, revoked, or otherwise acted against by a licensing
19 authority in any jurisdiction for breach of trust, fraud, or
20 dishonesty.

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

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

1 (1) Deny an application for licensure under this
2 act.

3 (2) Revoke or suspend a license previously granted
4 pursuant to this act.

5 (3) Place a licensee or an applicant for a license
6 on probation for a period of time and subject to the
7 conditions as the department specifies.

8 (4) Issue a reprimand.

9 (5) Impose an administrative fine not to exceed five
10 thousand dollars (\$5,000) for each separate act or violation.

11 (c) It is sufficient cause for the department to
12 take any of the actions specified in subsection (b) as to any
13 entity other than a natural person, if the department finds
14 grounds for the action as to any member of the entity, as to
15 any executive officer or director of the entity, or as to any
16 person with power to direct the management or policies of the
17 entity.

18 (d) Each licensee is subject to the provisions of
19 subsection (b) for the acts of employees and agents of the
20 licensee if the licensee knew or should have known about the
21 acts.

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

1 (f) No revocation, suspension, or surrender of any
2 license shall impart or affect the obligation of any
3 preexisting lawful contract between the licensee and any
4 borrower.

5 (g) The department may reinstate suspended licenses
6 or issue new licenses to a person whose license or licenses
7 have been revoked if no fact or condition then exists that
8 clearly would have justified the department in originally
9 refusing to issue a license under this act.

10 Section 6. Any title loan made without benefit of a
11 license is void, in which case the person making the title
12 loan forfeits the right to collect any moneys, including
13 principal and interest charged on the title loan, from the
14 borrower in connection with the agreement. The person making
15 the title loan shall return to the borrower the certificate of
16 title, the titled personal property or the fair market value
17 of the titled personal property, and all principal and
18 interest paid by the borrower. The borrower is entitled to
19 receive reasonable attorneys' fees and costs in any action
20 brought by the borrower to recover from the person making the
21 title loan the certificate of title, the titled personal
22 property, or the principal and interest paid by the borrower.

23 Section 7. (a) At the time a title loan lender makes
24 a title loan, the lender and the borrower shall execute a
25 title loan agreement, which shall be legibly typed and
26 completed as to all essential provisions prior to execution by
27 the borrower and lender.

1 (b) The title loan agreement shall include, at a
2 minimum, all of the following:

3 (1) The name and physical address of the title loan
4 office.

5 (2) The make, model, and year of the titled personal
6 property.

7 (3) The vehicle identification number, or other
8 comparable identification number, along with the license plate
9 number, if applicable, of the titled personal property.

10 (4) The name, residential address, date of birth,
11 physical description, and Social Security number of the
12 borrower.

13 (5) The date the title loan agreement is executed by
14 the title loan lender and the borrower.

15 (6) The identification number and the type of
16 identification, including the issuing agency, accepted from
17 the borrower.

18 (7) The amount of money advanced, designated as the
19 amount financed.

20 (8) The maturity date of the title loan agreement,
21 which shall be no less than 180 nor more than 365 days after
22 the date the title loan agreement is executed by the title
23 loan lender and the borrower.

24 (9) The total title loan interest payable over the
25 loan term, designated as the finance charge.

26 (10) The amount financed plus the finance charge,
27 which shall be paid to reclaim the certificate of title on the

1 maturity date, designated as the "total amount of all
2 payments."

3 (11) The amount that the borrower must pay in each
4 installment, designated as the installment payments, and the
5 date that each installment payment is due, designated as
6 installment due dates. The installments must be substantially
7 equal amounts due at equal periodic intervals.

8 (12) The annual percentage rate, computed in
9 accordance with the regulations adopted by the Federal Reserve
10 Board pursuant to the Federal Truth-in-Lending Act.

11 (13) Any late charge that the title loan lender will
12 charge the borrower, and an explanation of when it will be
13 imposed, designated as the late fee.

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

17 (15) The following statement in not less than
18 14-point bold type immediately above the borrower's signature
19 that shall contain all of the following:

20 "I understand that there is no penalty for early
21 payments, and that I am entitled to receive a partial refund
22 of the interest paid if my loan is repaid before the maturity
23 date. I am required, at a minimum, to make each payment on the
24 day it is due. If I miss a payment, I may be charged a late
25 fee if one is agreed upon in this contract. If I do not pay
26 the payment plus a late fee within 30 days after the payment's
27 original due date, I will be in default and the lender will

1 repossess my vehicle. I have 15 days after repossession to
2 reclaim my vehicle by paying all money owed, including
3 principal, interest, and other fees. Otherwise, I will lose
4 any right to the vehicle and it will be sold to pay off this
5 debt. I do have a right to the surplus amount from the sale of
6 the vehicle, which is any amount remaining after the
7 principal, interest, and actual costs of sale are paid to the
8 lender. I certify that, to the best of my knowledge, I have a
9 right to enter into this transaction. The vehicle I am using
10 as collateral for this loan is not stolen and no other
11 creditor has a claim to or lien against it. I will not apply
12 for a duplicate certificate of title while the loan agreement
13 is in effect. I have read this document and that, to the best
14 of my knowledge and belief, the facts contained in it are true
15 and correct."

16 (16) A blank line for the signature of the borrower
17 and the title loan lender or the lender's agent. All owners of
18 the titled personal property shall sign the title loan
19 agreement.

20 (b) At the time of the transaction, the title loan
21 lender shall deliver to the borrower an exact copy of the
22 executed title loan agreement. The title loan lender shall
23 also provide the borrower with a pamphlet, in a form
24 consistent with regulations adopted by the department,
25 explaining in plain language the rights and responsibilities
26 of the borrower and providing a toll free number of the
27 department for assistance with complaints.

1 (c) Upon execution of a title loan agreement, the
2 title loan lender may take possession of the certificate of
3 title and retain possession of it until it is redeemed. The
4 borrower shall have the exclusive right to redeem the
5 certificate of title by repaying all amounts legally due under
6 the agreement. When the certificate of title is redeemed, the
7 lender shall immediately return the certificate of title and
8 commence action to release any security interest in the titled
9 personal property. During the term of the agreement or any
10 extension of the agreement, a title loan lender may retain
11 physical possession of the certificate of title only. A title
12 loan lender shall not take additional security or guaranty as
13 a condition to entering into a title loan transaction.

14 (d) The titled property may not be the subject of
15 more than one title loan at any time or be encumbered at the
16 time of the transaction.

17 Section 8. (a) Every title loan lender shall
18 maintain, at the title loan office of the lender, the books,
19 accounts, and records of the business conducted under the
20 license issued for the place of business as will enable the
21 department to determine the compliance of the licensee with
22 this act.

23 (b) The department may authorize the maintenance of
24 books, accounts, and records at a location other than the
25 title loan office of the lender. The department may require
26 books, accounts, and records to be produced and available at a

1 reasonable and convenient location in this state within a
2 reasonable period of time after the request.

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

10 (d) A certificate of title that is delivered to a
11 title loan lender shall be securely stored and maintained at
12 the title loan office unless the certificate of title has been
13 forwarded to the appropriate state agency for the purpose of
14 having a lien recorded or deleted.

15 (e) The department may prescribe by rule the books,
16 accounts, and records, and the minimum information to be shown
17 in the books, accounts, and records, of licensees so that the
18 records will enable the department to determine compliance
19 with this act.

20 Section 9. (a) A title loan lender may contract for
21 and receive an interest rate not to exceed 36 percent per
22 annum computed on the first two thousand dollars (\$2,000) of
23 the principal amount, 24 percent per annum on that part of the
24 principal amount exceeding two thousand dollars (\$2,000) and
25 not exceeding three thousand dollars (\$3,000), and 18 percent
26 per annum on that part of the principal amount exceeding three
27 thousand dollars (\$3,000). In determining compliance with the

1 statutory maximum interest, the computations must be simple
2 interest and not add-on interest or any other computations.
3 Such charges shall be computed in advance at the agreed rate
4 on scheduled unpaid principal balances of the cash advance on
5 the assumption that all scheduled payments will be made when
6 due. No other interest arrangement, including the provisions
7 of Section 8-8-5, Code of Alabama 1975, shall apply to any
8 title loan agreements under this act. This rate may be imposed
9 only if disclosed in full at the time the contract is created,
10 and cannot be modified. Additional fees may not be imposed on
11 the borrower, except a late charge if it is specified in the
12 title loan agreement and the actual costs expended on
13 repossession and sale as described in this act.

14 (b) Any interest, charge, or fees contracted for or
15 received, directly or indirectly, by the title loan lender or
16 an agent of the title loan lender in excess of the amount
17 permitted under subsection (a) shall be uncollectible, and the
18 title loan agreement shall be void. If the excess interest
19 resulted from a bona fide error by the title loan lender or an
20 agent of the title loan lender, the title loan agreement shall
21 be voidable and the lender shall refund the excess interest to
22 the borrower within 20 days after discovery by the lender or
23 borrower of the bona fide error, whichever occurs first. If
24 the excess interest resulted from an act by the title loan
25 lender, or an agent of the title loan lender, to circumvent
26 the maximum title loan interest allowed by this act, the title
27 loan agreement is void. The lender shall refund to the

1 borrower any interest paid on the title loan and return to the
2 borrower the certificate of title. The title loan lender
3 forfeits the right of the lender to collect any principal owed
4 by the borrower on the title loan.

5 (c) The annual percentage rate that may be charged
6 for a title loan may not exceed the annual percentage rate
7 that shall be computed and disclosed as required by the
8 Federal Truth in Lending Act and Regulation Z of the Board of
9 Governors of the Federal Reserve System. The department shall
10 establish by rule the rate for each day in a fraction of a
11 month when the period for which the charge is computed is more
12 or less than one month.

13 Section 10. (a) A borrower shall have no obligation
14 to redeem the certificate of title or make any payment on a
15 title loan transaction.

16 (b) A title loan lender may pay all proceeds for a
17 title loan transaction either in cash directly to the borrower
18 or through an electronic funds transfer directly to the
19 borrower or borrower's account. The period of the title loan
20 transaction shall not begin until the funds are received by
21 the borrower. There shall be no additional charge related to
22 the payment of the proceeds of any title loan transaction.

23 (c) The title loan lender may not impose a penalty
24 for early payment of any amount owed before the installment
25 due date or maturity date. The lender must accept payments of
26 any amount at any time. If the loan is prepaid prior to the
27 maturity of the loan term, the lender shall refund to the

1 consumer a pro rata portion of the finance charge based upon
2 the ratio of time left before maturity to the loan term.

3 (d) When a scheduled installment payment is in
4 default or delinquent for five or more days, the title loan
5 lender may charge a late fee not to exceed the greater of
6 eighteen dollars (\$18) or five percent of the amount of the
7 scheduled payment in default. Each of the late charges
8 permitted under this subsection may be collected only once on
9 any scheduled payment, regardless of the period during which
10 the payment remains in default or is delinquent, and may only
11 be collected on or after the fifth day after the due date. The
12 late fee may be imposed only if the rate or amount was
13 explained in the title loan contract signed by the borrower.

14 (e) If the borrower does not make the scheduled
15 installment payment and pay any late charge by 30 days after
16 the scheduled installment due date, the title loan lender may
17 take possession of the titled personal property. In taking
18 possession, the title loan lender or his or her agent may
19 proceed without judicial process if this can be done without
20 breach of the peace or, if necessary, may proceed by action to
21 obtain judicial process. At least 15 days before the deadline,
22 the lender shall provide the borrower with notice of the
23 amount of the overdue payment, any late charge, and the
24 deadline to make these payments. The notice must also inform
25 the borrower that the property may be repossessed on this
26 deadline if full payment is not received. This notice must be

1 in writing, personally served or sent by certified or
2 registered mail, return receipt requested.

3 (f) If, within 15 days after the title loan lender
4 obtains possession of the personal property, the borrower
5 redeems the titled personal property by paying all outstanding
6 principal and applicable interest, late charges, and the
7 actual cost of repossession, the borrower shall be given
8 possession of the titled personal property and the certificate
9 of title without further delay. At the time of repossession or
10 within five days thereafter, the lender must provide the
11 borrower with notice of his or her right of redemption, the
12 deadline to redeem, and any actual costs incurred in
13 repossessing the titled personal property. This notice must be
14 in writing, personally served or sent by certified or
15 registered mail, return receipt requested.

16 (g) If the borrower fails to redeem the titled
17 personal property and certificate of title during the 15-day
18 period and has received notice of the right to redeem
19 according to subsection (f), then the borrower shall thereby
20 forfeit all right, title, and interest in and to the titled
21 personal property, other than his or her interest in the sale
22 proceeds specified in subsection (h), to the title loan lender
23 who shall thereby acquire an absolute right of title and
24 ownership to the titled personal property. The title loan
25 lender shall then have the sole right and authority to sell or
26 dispose of the titled personal property.

1 (h) If the property is sold after the 15-day period,
2 the title loan lender shall return to the borrower within 15
3 days the amount received from the sale less the amount of the
4 unpaid principal balance and interest, any outstanding late
5 charge, and the reasonable and necessary actual costs of the
6 repossession and sale. The cost of repossession shall include
7 reasonable towing charges, storage charges paid to a third
8 party, and repairs made to the property to render it operable.
9 Even if the lender believes that no money is due to the
10 borrower under this subsection, the lender shall provide the
11 borrower with a written statement documenting each of these
12 costs, including the amount and a short description of each
13 individual charge incurred in repossession.

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

18 Section 11. (a) Any person presenting identification
19 as the borrower and presenting a copy of the title loan
20 agreement to the title loan lender is presumed to be entitled
21 to reclaim the certificate of title taken by the lender that
22 corresponds to the titled personal property described in the
23 title loan agreement. However, if the title loan lender
24 determines that the person is not the borrower, the title loan
25 lender is not required to allow the redemption of the
26 certificate of title by that person. The person reclaiming the
27 certificate of title shall sign the copy of the title loan

1 agreement of the borrower, and the title loan lender may
2 retain as evidence the receipt of the certificate of title of
3 the person. If the person reclaiming the certificate of title
4 is not the borrower, the person shall show identification to
5 the title loan lender, together with notarized written
6 authorization from the borrower, and the title loan lender
7 shall record the name and address of that person on the title
8 loan agreement retained by the title loan lender. In that
9 case, the person reclaiming the copy of the title loan
10 agreement of the borrower shall be provided a copy of the
11 signed form as evidence of the agreement.

12 (b) If the copy of the title loan agreement of the
13 borrower is lost, destroyed, or stolen, the borrower shall
14 notify the title loan lender in writing by certified or
15 registered mail, return receipt requested, or in person
16 evidenced by a signed receipt, and receipt of the notice shall
17 invalidate the title loan agreement if the certificate of
18 title has not previously been reclaimed. Before delivering the
19 certificate of title or issuing a new title loan agreement,
20 the title loan lender shall require the borrower to make a
21 written statement of the loss, destruction, or theft of the
22 copy of the title loan agreement of the borrower. The title
23 loan lender shall record on the written statement the type of
24 identification and the identification number accepted from the
25 borrower, the date the statement is given, and the number or
26 date of the title loan agreement lost, destroyed, or stolen.
27 The statement shall be signed by the title loan lender or the

1 title loan office employee who accepts the statement from the
2 borrower. The title loan lender may not impose any type of fee
3 for providing the borrower with a copy of the title loan
4 agreement.

5 Section 12. (a) A title loan lender, or any agent or
6 employee of a title loan lender, may not do any of the
7 following:

8 (1) Falsify or fail to make an entry of any material
9 matter in a title loan agreement or any extension of the
10 agreement.

11 (2) Refuse to allow the department to inspect
12 completed title loan agreements, extensions of the agreements,
13 or any certificates of title held during the ordinary
14 operating hours of the business of the title loan lender or
15 other times acceptable to both parties.

16 (3) Enter into a title loan agreement with a person
17 under the age of 19 years.

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

21 (5) Make any loan with a loan term of less than 180
22 or more than 365 days.

23 (6) Knowingly enter into a title loan agreement with
24 any person who is under the influence of drugs or alcohol when
25 the condition is visible or apparent, or with any person using
26 a name other than the name of the person or the registered
27 name of the business owned by the person.

1 (7) Knowingly enter into a title loan agreement in
2 which the titled personal property is encumbered or subject to
3 any lien.

4 (8) Fail to exercise reasonable care, as defined by
5 department rule, in the safekeeping of certificates of title
6 or of titled personal property repossessed pursuant to this
7 act.

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

15 (10) Sell or otherwise charge for any type of
16 insurance or other ancillary product such as club memberships
17 in connection with a title loan agreement.

18 (11) Charge or receive any finance charge, interest,
19 or fee that is not authorized pursuant to this act, or require
20 the borrower to make installment payments that are not
21 substantially equal amounts due at equal periodic intervals.

22 (12) Act as a title loan lender, including through
23 the Internet or third party broker, without an active license
24 issued under this act.

25 (13) Refuse to accept partial payments toward
26 satisfying any obligation owed under a title loan agreement or
27 extension of the agreement.

1 (14) Charge a prepayment penalty or fail to refund
2 the pro rata interest as required under this act for any loan
3 that is prepaid.

4 (15) Act as a title loan lender under this act
5 within a place of business in which the licensee solicits or
6 engages in business outside the scope of this act if the
7 department determines that the licensee's operation of and
8 conduct pertaining to the other business results in an evasion
9 of this act. Upon making the determination, the department
10 shall order the licensee to cease and desist from the evasion.

11 (16) Refuse or fail to return to the borrower all
12 personal items contained in the vehicle, not reasonably
13 considered part of the vehicle, at the time of repossession or
14 otherwise deny the borrower use or access to personal property
15 not secured by the loan.

16 (17) Use or threaten force or violence against any
17 borrower or threaten criminal prosecution or use printed
18 materials that resemble legal process.

19 (18) Trespass on a borrower's property, other than
20 taking possession without a breach of the peace, or make
21 collection attempts at unreasonable hours of the night.

22 (19) Directly or indirectly employ any scheme,
23 device, or artifice to defraud or mislead the borrower,
24 another lender, or the department.

25 (20) Make any title loan without forming a good
26 faith belief that the borrower has the ability to repay the
27 title loan. In forming a good faith belief, the lender shall

1 consider factors adopted by the department by rule. A lender
2 that meets conditions adopted by the department by rule shall
3 be deemed to be in compliance with this section.

4 (21) Enter into a title loan agreement with any
5 member of the military services of the United States, or such
6 a member's spouse or dependent, unless in compliance with
7 Title 10 U.S.C. §987 or any regulation adopted pursuant
8 thereto.

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

11 Section 13. (a) In addition to any other penalty
12 which may be applicable, any licensee or employee of a
13 licensee who willfully violates any provision of this act, or
14 who willfully makes a false entry in any record specifically
15 required by this act, shall be guilty of a Class A misdemeanor
16 for each violation, and the title loan agreement is rendered
17 void.

18 (b) In addition to any other penalty which may be
19 applicable, any licensee or employee of a licensee who fails
20 to make a record of a title loan transaction and subsequently
21 sells or disposes of the titled personal property or
22 certificate of title that is the subject of the transaction
23 shall be punished as follows:

24 (1) For a first offense, the licensee or employee
25 shall be guilty of a Class A misdemeanor.

26 (2) For a second or subsequent offense, the licensee
27 or employee shall be guilty of a Class C felony.

1 Section 14. (a) The department may issue and serve
2 subpoenas to compel the attendance of witnesses and the
3 production of documents, papers, books, records, and other
4 evidence before the department in any matter pertaining to
5 this act. The department shall administer oaths and
6 affirmations to any person whose testimony is required. If any
7 person refuses to testify, produce books, records, and
8 documents, or otherwise refuses to obey a subpoena issued
9 under this section, the department may enforce the subpoena in
10 the same manner that subpoenas issued under the Administrative
11 Procedure Act are enforced. Witnesses are entitled to the same
12 fees and mileage as they are entitled to by law for attending
13 as witnesses in the circuit court, unless the examination or
14 investigation is held at the place of business or residence of
15 the witness.

16 (b) In addition to any other powers conferred upon
17 the department to enforce or administer this act, the
18 department may do any of the following:

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

26 (2) Issue and serve upon a person an order requiring
27 the person to cease and desist and take corrective action

1 whenever the department finds that the person is violating,
2 has violated, or is about to violate any provision of this
3 act, any rule or order adopted under this act, or any written
4 agreement entered into with the department.

5 (3) Whenever the department finds that conduct
6 described in subdivision (2) presents an immediate danger to
7 the public health, safety, or welfare requiring an immediate
8 final order, the department may issue an emergency cease and
9 desist order reciting with particularity the facts underlying
10 the findings. The emergency cease and desist order is
11 effective immediately upon service of a copy of the order on
12 the respondent named in the order and shall remain effective
13 for 90 days. If the department begins nonemergency proceedings
14 under subdivision (2), the emergency cease and desist order
15 remains effective until the conclusion of the proceedings.

16 Section 15. (a) The department may investigate and
17 examine any licensee or other person the department deems
18 necessary to determine compliance with this act. For this
19 purpose, the department may examine the books, accounts,
20 records, and other documents or matters of any licensee or
21 other person. The department may compel the production of all
22 relevant books, records, and other documents and materials
23 relative to an examination or investigation. Examinations may
24 not be made more often than once during any 12-month period
25 unless the department has reason to believe the licensee is
26 not complying with this act.

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

14 Section 16. (a) In addition to any other penalties
15 or remedies which may be applicable, a title loan lender who
16 fails to comply with any requirement imposed under this act in
17 any title loan transaction shall also be liable to the
18 borrower in an amount equal to the sum of:

19 (1) Any actual damage sustained by the borrower as a
20 result of the violation; and

21 (2) Twice the amount of the finance charge stated in
22 the title loan agreement.

23 (b) Any person having reason to believe that this
24 act has been violated may file with the department a written
25 complaint setting forth the details of the alleged violation
26 and the department shall investigate the complaint.

1 (c) Any borrower shall be entitled to pursue a
2 private right of action against a licensee for violation of
3 the provisions set forth in this act. Any borrower who is
4 successful in a claim under this subsection shall be entitled
5 to attorneys' fees.

6 (d) Any intentional violation of this act
7 constitutes an unfair or deceptive trade practice under the
8 Alabama Deceptive Trade Practices Act, commencing with Section
9 8-19-1, Code of Alabama 1975.

10 (e) The remedies provided in this section are not
11 intended to be the exclusive remedies available to a consumer
12 for a violation of this act.

13 Section 17. If any titled personal property from a
14 title loan transaction is found to be stolen and is returned
15 to the rightful owner by law enforcement authorities and if
16 the licensee who accepted the titled property has complied
17 with all of the duties and responsibilities as specified in
18 this act during the transaction, then the rightful owner of
19 the titled personal property shall be liable to the licensee
20 for the loan agreement amount if the rightful owner fails to
21 prosecute or cooperate in the criminal prosecution related to
22 the title loan agreement. It shall also be the responsibility
23 of the licensee to assist or cooperate in the criminal
24 prosecution related to the title loan transaction. If the
25 identity of a person who obtained a title loan using the
26 stolen goods can be determined, the district attorney may
27 prosecute the person for any applicable violations.

1 Section 18. Nothing in this act precludes a
2 municipality from adopting ordinances more restrictive, in
3 whole or in part, than the provisions of this act. This act
4 shall not repeal or be construed to repeal any provision of
5 the Uniform Commercial Code, Sections 7-1-101 et seq., Code of
6 Alabama 1975.

7 Section 19. To administer this act, the department
8 may promulgate and enforce specific rules establishing
9 criteria, guidelines, and procedures to be followed by persons
10 affected by this act.

11 Section 20. (a) Titled personal property may not be
12 confiscated by local law enforcement without the following
13 actions having been accomplished:

14 (1) A police report made in a timely manner.

15 (2) A warrant issued for the person who obtained a
16 title loan using the titled personal property.

17 (b) Titled personal property may be put on a
18 one-time seven-day hold by the authorized law enforcement
19 authorities. This request for a seven-day hold shall be made
20 in writing by the authorized law enforcement authorities.

21 (c) Confiscated titled property shall be returned to
22 the title loan lender by the law enforcement authorities as
23 soon as possible when determined that the titled personal
24 property has no rightful owner.

25 Section 21. (a) Each licensee under this act shall
26 file annually, on or before December 1, a written report with
27 the department containing such information as the department

1 may require concerning his or her business and operations
2 during the preceding calendar year as to each approved office.
3 Reports shall be made under oath and shall be in the form
4 prescribed by the department.

5 (b) Using the information reported to the department
6 under subsection (a), the department shall make and publish
7 annually an analysis and recapitulation of such reports
8 regarding the utilization of title loans in Alabama.

9 Section 22. Each title loan lender in operation as
10 of the effective date of this act shall have until January 1,
11 2017, to apply for a license under this act.

12 Section 23. Although this bill would have as its
13 purpose or effect the requirement of a new or increased
14 expenditure of local funds, the bill is excluded from further
15 requirements and application under Amendment 621, now
16 appearing as Section 111.05 of the Official Recompilation of
17 the Constitution of Alabama of 1901, as amended, because the
18 bill defines a new crime or amends the definition of an
19 existing crime.

20 Section 24. This act shall become effective on the
21 first day of the third month following its passage and
22 approval by the Governor, or its otherwise becoming law.