

1 SB331
2 145262-3
3 By Senators Keahey, Figures, Beason, Irons, Coleman, Dunn,
4 Marsh, Taylor, Bussman, Smith, Fielding, Smitherman and Allen
5 RFD: Banking and Insurance
6 First Read: 12-MAR-13

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8 SYNOPSIS: This bill would create the "Alabama Title
9 Loan Act." The bill would provide legislative
10 intent. The bill would require licensure by the
11 State Banking Department for a person to act as a
12 title loan lender. The bill would provide for
13 application for licensure. The bill would require a
14 bond and a nonrefundable application and
15 investigation fee. The bill would provide for
16 inactive licenses. The bill would provide for
17 renewal and reactivation of licenses and a fee for
18 the license. The bill would provide for disposition
19 of certain moneys. The bill would provide for
20 acquisition of an interest in a licensee under
21 certain circumstance. The bill would provide for
22 denial, suspension, or revocation of licenses. The
23 bill would specify acts which constitute violations
24 for which certain disciplinary actions may be
25 taken. The bill would provide for the imposition of
26 a fine. The bill would provide remedies for title
27 loans made or serviced without proper licensure.

1 The bill would provide for a title loan agreement.
2 The bill would provide for reclaiming a repossessed
3 motor vehicle under certain circumstances. The bill
4 would provide entitlement to certain excess
5 proceeds of a sale or disposal of a motor vehicle.
6 The bill would provide for recordkeeping and
7 reporting and safekeeping of property. The bill
8 would provide for title loan interest rates. The
9 bill would provide for extensions. The bill would
10 provide for return of principal and interest to the
11 borrower under certain circumstances. The bill
12 would provide for a holding period when there is a
13 failure to reclaim loan property. The bill would
14 provide for the disposal of pledged property. The
15 bill would provide for disposition of excess
16 proceeds. The bill would prohibit certain acts. The
17 bill would provide for the right to reclaim
18 property. The bill would provide for lost title
19 loan agreements. The bill would provide for a title
20 loan lenders lien. The bill would provide for
21 criminal penalties. The bill would provide for
22 subpoenas, enforcement of actions, and rules. The
23 bill would provide for investigations and
24 complaints. The bill would authorize the department
25 to promulgate rules and regulations. The bill would
26 provide for more restrictive local ordinances.

1 Amendment 621 of the Constitution of Alabama
2 of 1901 prohibits a general law whose purpose or
3 effect would be to require a new or increased
4 expenditure of local funds from becoming effective
5 with regard to a local governmental entity without
6 enactment by a 2/3 vote unless: it comes within one
7 of a number of specified exceptions; it is approved
8 by the affected entity; or the Legislature
9 appropriates funds, or provides a local source of
10 revenue, to the entity for the purpose.

11 The purpose or effect of this bill would be
12 to require a new or increased expenditure of local
13 funds within the meaning of Amendment 621. However,
14 the bill does not require approval of a local
15 governmental entity or enactment by a 2/3 vote to
16 become effective because it comes within one of the
17 specified exceptions contained in Amendment 621.

18
19 A BILL

20 TO BE ENTITLED

21 AN ACT

22
23 An act relating to title loan transactions; creating
24 the "Alabama Title Loan Act"; to provide legislative intent;
25 to require licensure by the State Banking Department to act as
26 a title loan lender; to provide for application for licensure;
27 to require a bond, and a nonrefundable application and

1 investigation fee; to provide for inactive licenses; to
2 provide for renewal and reactivation of licenses; to provide
3 for a renewal fee and a reactivation fee; to provide for
4 disposition of certain moneys; to provide for acquisition of
5 an interest in a licensee under certain circumstances; to
6 provide for denial, suspension, or revocation of licenses; to
7 specify acts which would constitute violations for which
8 certain disciplinary actions may be taken; to provide a fine;
9 to provide remedies for title loans made or serviced without
10 licensure; to provide for a title loan agreement; to provide
11 requirements; to provide for reclaiming a repossessed motor
12 vehicle under certain circumstances; to provide entitlement to
13 certain excess proceeds of a sale or disposal of a motor
14 vehicle; to provide for recordkeeping and reporting and
15 safekeeping of property; to provide for title loan interest
16 rates; to provide for extensions; to provide for return of
17 principal and interest to the borrower under certain
18 circumstances; to provide a holding period when there is a
19 failure to reclaim; to provide for the disposal of pledged
20 property; to provide for disposition of excess proceeds;
21 prohibiting certain acts; to provide for the right to reclaim;
22 to provide for lost title loan agreements; to provide for a
23 title loan lenders lien; to provide for criminal penalties; to
24 provide for subpoenas, enforcement of actions, and rules; to
25 provide for investigations and complaints; to authorize the
26 department to adopt rules; and to provide for more restrictive
27 local ordinances; and in connection therewith would have as

1 its purpose or effect the requirement of a new or increased
2 expenditure of local funds within the meaning of Amendment 621
3 of the Constitution of Alabama of 1901.

4 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

5 Section 1. This act may be cited as the "Alabama
6 Title Loan Act."

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

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

14 (2) Establish licensing requirements.

15 (3) Provide for the examination and regulation of
16 title lenders by the Alabama State Banking Department.

17 (4) Ensure financial responsibility to the public by
18 setting a reasonable interest rate.

19 (b) It is the intent of the Legislature that title
20 loans shall be regulated by this act, and it shall supersede
21 other state laws affecting title loans to the extent of any
22 conflict.

23 Section 3. As used in this act, the following terms
24 shall have the following meanings unless the context otherwise
25 requires:

26 (1) BORROWER. The person to whom the property is
27 titled.

1 (2) COMMERCIALLY REASONABLE. Has the same meaning as
2 used in Article 9, Part 5 Title 7, commencing with Section
3 7-9-501, Code of Alabama 1975. In addition, nonpublic sales or
4 disposal of personal property between a title loan lender and
5 any business affiliates of a title loan lender or a member of
6 the family of a title loan lender are presumed not to be made
7 in a commercially reasonable manner.

8 (3) DEPARTMENT. The State Banking Department.

9 (4) EXECUTIVE OFFICER. The president, chief
10 executive officer, chief financial officer, chief operating
11 officer, executive vice president, senior vice president,
12 secretary, and treasurer.

13 (5) IDENTIFICATION. A government-issued photographic
14 identification.

15 (6) INTEREST. The cost of obtaining a title loan and
16 includes any profit or advantage of any kind whatsoever that a
17 title loan lender may charge, contract for, collect, receive,
18 or in any way obtain as a result of a title loan.

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

22 (8) LICENSEE. A person who is licensed as a title
23 loan lender.

24 (9) LOAN PROPERTY. Any motor vehicle certificate of
25 title that is deposited with a title loan lender as a security
26 for a title loan in the course of the title loan lender's
27 business.

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

9 (11) PERSON. One or more individuals, corporations,
10 partnerships, or associations.

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

19 (13) TITLE LOAN or LOAN. A loan of money secured by
20 bailment of a certificate of title to a motor vehicle, except
21 the loan made by all persons who regularly engage in, and
22 whose business consists to a substantial extent of selling
23 goods to retail buyers.

24 (14) TITLE LOAN AGREEMENT or AGREEMENT. A written
25 agreement in which a title loan lender agrees to make a title
26 loan to a borrower.

1 (15) 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 (16) 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 (17) TITLED PERSONAL PROPERTY. A motor vehicle that
17 has as evidence of ownership a state-issued certificate of
18 title except for a mobile home that is the primary residence
19 of the borrower.

20 (18) 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. This includes offering or agreeing to enter a
10 title loan agreement with a borrower, or brokering or acting
11 as an agent for a third party in such a transaction,
12 regardless of whether approval, acceptance, or ratification is
13 necessary to create a legal obligation for the third party.
14 Actions, transactions and agreements entered into with
15 borrowers in the State of Alabama, including transactions
16 conducted through the Internet, facsimile, telephone, kiosk,
17 or other means.

18 (b) (1) A person applying for licensure as a title
19 loan lender shall file with the department all of the
20 following:

21 a. A written application on a form prescribed by the
22 department.

23 b. The bond required by subsection (c) of Section 5
24 of this act.

25 c. A nonrefundable application fee of one thousand
26 two hundred dollars (\$1,200).

1 d. A nonrefundable investigation fee of two hundred
2 dollar (\$200).

3 e. A complete set of fingerprints from each owner
4 and officer taken by an authorized law enforcement officer.

5 (2) The department shall submit the fingerprints to
6 the Department of Public Safety for state processing and it
7 shall forward the fingerprints to the Federal Bureau of
8 Investigation for national processing.

9 (c) If the department determines that an application
10 should be approved, the department shall issue a license for a
11 period not to exceed one year.

12 (d) A license shall be renewed annually by filing a
13 renewal form and a nonrefundable renewal fee of one thousand
14 two hundred dollars (\$1,200). A license that is not renewed by
15 the end of the annual period shall automatically revert to
16 inactive status. An inactive license may be reactivated within
17 six months after becoming inactive by filing a reactivation
18 form, payment of the nonrefundable one thousand two hundred
19 dollars (\$1,200) renewal fee, and payment of a nonrefundable
20 reactivation fee of six hundred dollars (\$600). A license that
21 is not reactivated within six months after becoming inactive
22 shall not be reactivated and automatically expires. The
23 department shall establish by rule the procedures for renewal
24 and reactivation of a license and adopt a renewal form and a
25 reactivation form.

26 (e) Each license shall be conspicuously displayed at
27 the title loan office. When a licensee wishes to move a title

1 loan office to another location, the licensee shall provide
2 prior written notice to the department.

3 (f) A license issued pursuant to this act is not
4 transferable or assignable.

5 (g) Each licensee shall designate and maintain in
6 this state a registered agent for service of process.

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

13 (i) All moneys collected by the department pursuant
14 to this act, shall be used by the department to regulate all
15 entities covered by this act.

16 Section 5. (a) A verified application for licensure
17 pursuant to this act, in a form prescribed by this act, shall
18 contain all of the following:

19 (1) The name, and the residence and business
20 addresses of the applicant. If the applicant is other than a
21 natural person, the application shall contain the name and the
22 residence and business address of each ultimate equitable
23 owner of 10 percent or more of the entity and each director,
24 general partner, and executive officer of the entity.

25 (2) A statement whether any individual identified in
26 subdivision (1) has, within the last 10 years, pleaded guilty
27 to, or has been convicted of a felony, regardless of whether

1 adjudication was withheld or be acting as beneficial owner for
2 someone who has been convicted of a felony in the last 10
3 years.

4 (3) Identify the county and municipality with the
5 street and number or location where the business is to be
6 conducted.

7 (4) Contain additional information as the department
8 determines by rule to be necessary to ensure compliance with
9 this act.

10 (b) Notwithstanding subsection (a), the application
11 need not state the full name and address of each officer,
12 director, and shareholder if the applicant is owned directly
13 or beneficially by a person who as an issuer has a class of
14 securities registered pursuant to Section 12 of the Securities
15 Exchange Act of 1934 or, pursuant to Section 13 or Section 15
16 of that act, is an issuer of securities that is required to
17 file reports with the Securities and Exchange Commission, if
18 the person files with the department any information,
19 documents, and reports required by this act to be filed with
20 the Securities and Exchange Commission.

21 (c) An applicant for licensure shall file with the
22 department a bond, in the amount of one hundred thousand
23 dollars (\$100,000) for each license, with a surety company
24 qualified to do business in this state. However, in no event
25 shall the aggregate amount of the bond required for a single
26 title loan lender exceed one million dollars (\$1,000,000). In
27 lieu of the bond, the applicant may establish a certificate of

1 deposit or an irrevocable letter of credit in a financial
2 institution, regulated or licensed by the department in the
3 amount of the bond. The original bond, certificate of deposit,
4 or letter of credit shall be filed with the department, and
5 the department shall be the beneficiary to that document. The
6 bond, certificate of deposit, or letter of credit shall be in
7 favor of the department for the use and benefit of any
8 consumer who is injured pursuant to a title loan transaction
9 by the fraud, misrepresentation, breach of contract, financial
10 failure, or violation of this act by the title loan lender.
11 The liability may be enforced either by proceeding in an
12 administrative action or by filing a judicial suit at law in a
13 court of competent jurisdiction. However, in the court suit,
14 the bond, certificate of deposit, or letter of credit posted
15 with the department shall not be amenable or subject to any
16 judgment or other legal process issuing out of or from the
17 court in connection with the lawsuit, but the bond,
18 certificate of deposit, or letter of credit shall be amenable
19 to and enforceable only by and through administrative
20 proceedings before the department. The bond, certificate of
21 deposit, or letter of credit shall be payable on a pro rata
22 basis as determined by the department, but the aggregate
23 amount shall not exceed the amount of the bond, certificate of
24 deposit, or letter of credit.

25 (d) It is the intent of the Legislature that the
26 bond, certificate of deposit, or letter of credit shall be

1 applicable and liable only for the payment of claims duly
2 adjudicated by order of the department.

3 (e) The department shall approve an application and
4 issue a license if the department determines that the
5 applicant satisfies the requirements of this act.

6 Section 6. (a) The department may invoke
7 disciplinary action as outlined in subsection (b) of this
8 section, whenever it is to the satisfaction of the department,
9 after notice and a hearing, that any licensee has been guilty
10 of any of the following:

11 (1) Failure to comply with this act, any rule or
12 rules adopted pursuant to this act, or any written agreement
13 entered into with the department.

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

17 (3) Fraudulent misrepresentation, circumvention, or
18 concealment of any matter required to be stated or furnished
19 to a borrower pursuant to this act, regardless of reliance by
20 or damage to the borrower.

21 (4) Imposition of illegal or excessive charges in
22 any title loan transaction.

23 (5) False, deceptive, or misleading advertising by a
24 title loan lender.

25 (6) Failure to maintain, preserve, and keep
26 available for examination all books, accounts, or other
27 documents required by this act, by any rule or order adopted

1 pursuant to this act, or by any agreement entered into with
2 the department.

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

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

10 (9) Pleading guilty to or having been convicted or
11 found guilty, regardless of whether adjudication was withheld,
12 of a crime involving fraud, dishonest dealing, or any act of
13 moral turpitude or acting as an ultimate equitable owner of 10
14 percent or more of a licensee who has pled guilty to or has
15 been convicted or found guilty, regardless of whether
16 adjudication was withheld, of a crime involving fraud,
17 dishonest dealing, or any act of moral turpitude.

18 (10) Making or having made material misstatement of
19 fact in an initial or renewal application for a license.

20 (11) Having been the subject of any decision,
21 finding, injunction, suspension, prohibition, revocation,
22 denial, judgment, or administrative order by any court of
23 competent jurisdiction or administrative law judge, or by any
24 state or federal agency, involving a violation of any federal
25 or state law relating to title loans or any rule or regulation
26 adopted under the law, or has been the subject of any
27 injunction or adverse administrative order by a state or

1 federal agency regulating banking, insurance, finance or small
2 loan companies, real estate, mortgage brokers, or other
3 related or similar industries for acts involving fraud,
4 dishonest dealing, or any act of moral turpitude.

5 (12) Failing to continuously maintain the bond,
6 certificate of deposit, or letter of credit as required by
7 subsection (c) of Section 5 of this act.

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

11 (14) Having a license or registration, or the
12 equivalent, to practice any profession or occupation denied,
13 suspended, revoked, or otherwise acted against by a licensing
14 authority in any jurisdiction for fraud, dishonest dealing, or
15 any act of moral turpitude.

16 (15) Having demonstrated unworthiness, as defined by
17 department rule, to transact the business of a title loan
18 lender.

19 (16) No revocation, suspension, or surrender of any
20 license shall impart or affect the obligation of any
21 preexisting lawful contract between the licensee and any
22 borrower.

23 (17) The department may reinstate suspended licenses
24 or issue new licenses to a person whose license or licenses
25 have been revoked if no fact or condition then exists that
26 clearly would have justified the department in originally
27 refusing to issue a license under this act.

1 (b) Upon a finding by the department that any person
2 has committed any of the acts set forth in subsection (a) of
3 this section, the department may enter an order taking one or
4 more of the following actions:

5 (1) Denying an application for licensure under this
6 act.

7 (2) Revoking or suspending a license previously
8 granted pursuant to this act.

9 (3) Placing a licensee or an applicant for a license
10 on probation for a period of time and subject to the
11 conditions as the department specifies.

12 (4) Issuing a reprimand.

13 (5) Imposing an administrative fine not to exceed
14 five thousand dollars (\$5,000) for each separate act or
15 violation.

16 (c) If a person seeking licensure is an entity other
17 than a natural person, the eligibility requirements of this
18 section apply to each direct or ultimate equitable owner of 10
19 percent or more of the outstanding equity interest of the
20 entity and to each director, general partner, and executive
21 officer.

22 (d) It is sufficient cause for the department to
23 take any of the actions specified in subsection (b) of this
24 section, as to any entity other than a natural person, if the
25 department finds grounds for the action as to any member of
26 the entity, as to any executive officer or director of the

1 entity, or as to any person with power to direct the
2 management or policies of the entity.

3 (e) Each licensee is subject to the provisions of
4 subsection (b) of this section for the acts of employees and
5 agents of the licensee if the licensee knew or should have
6 known about the acts.

7 (f) Licensure under this act may be denied or any
8 license issued under this act may be suspended or restricted
9 if an applicant or licensee is charged, in a pending
10 enforcement action or pending criminal prosecution, with any
11 conduct that would authorize denial or revocation under this
12 section.

13 Section 7. Any title loan made without benefit of a
14 license is void, in which case the person making the title
15 loan forfeits the right to collect any moneys, including
16 principal and interest charged on the title loan, from the
17 borrower in connection with the agreement. The person making
18 the title loan shall return to the borrower the loan property,
19 the titled personal property pledged or the fair market value
20 of the titled personal property, and all principal and
21 interest paid by the borrower. The borrower is entitled to
22 receive reasonable attorney's fees and costs in any action
23 brought by the borrower to recover from the person making the
24 title loan the loan property, the titled personal property, or
25 the principal and interest paid by the borrower.

26 Section 8. (a) At the time a title loan lender makes
27 a title loan, the lender and the borrower shall execute a

1 title loan agreement, which shall be legibly typed and
2 completed as to all essential provisions prior to execution by
3 the borrower and lender. The title loan agreement shall
4 include all of the following:

5 (1) The make, model, and year of the titled personal
6 property to which the loan property relates.

7 (2) The vehicle identification number, or other
8 comparable identification number, along with the license plate
9 number, if applicable, of the titled personal property to
10 which the loan property relates.

11 (3) The name, residential address, date of birth,
12 physical description, and social security number of the
13 borrower.

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

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

19 (6) The amount of money advanced, designated as the
20 "amount financed."

21 (7) The maturity date of the title loan agreement,
22 which shall be 30 days after the date the title loan agreement
23 is executed by the title loan lender and the borrower.

24 (8) The total title loan interest payable on the
25 maturity date, designated as the "finance charge."

26 (9) The amount financed plus the finance charge,
27 which shall be paid to reclaim the loan property on the

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

3 (10) The interest rate, computed in accordance with
4 the regulations adopted by the Federal Reserve Board pursuant
5 to the Federal Truth-in-Lending Act, designated as the "annual
6 percentage rate."

7 (b) The following information shall also be printed
8 on all title loan agreements:

9 (1) The name and physical address of the title loan
10 office.

11 (2) The name and address of the department as well
12 as a telephone number to which consumers may address
13 complaints.

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

17 "I understand that there is no penalty for early
18 payments but I am required, at a minimum, to make each payment
19 on the day it is due. If I miss a payment, I may be charged a
20 late fee. If I do not pay the payment plus a late fee within
21 30 days after the payment's original due date, I will be in
22 default and the lender will repossess my vehicle. I have 15
23 days after repossession to reclaim my vehicle by paying all
24 money owed, including principal, interest and other fees.
25 Otherwise, I will lose any right to the vehicle and it will be
26 sold to pay off this debt. I do have a right to the surplus

1 amount from the sale, after the principal, interest and actual
2 costs are paid to the lender.

3 "I have a right to enter into this transaction. The
4 vehicle I am using as collateral for this loan is not stolen
5 and no other creditor has a claim to or lien against it. I
6 will not apply for a duplicate certificate of title while the
7 loan agreement is in effect.

8 "I have read this document and that, to the best of
9 my knowledge and belief, the facts contained in it are true
10 and correct."

11 (4) A blank line for the signature of the borrower
12 and the title loan lender or the lender's agent. All owners of
13 the titled personal property shall sign the title loan
14 agreement.

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

23 (d) Upon execution of a title loan agreement, the
24 title loan lender may take possession of the loan property and
25 retain possession of the property until the property is
26 redeemed. The borrower shall have the exclusive right to
27 redeem the loan property by repaying all amounts legally due

1 under the agreement. When the loan property is redeemed, the
2 lender shall immediately return the loan property and commence
3 action to release any security interest in the titled personal
4 property. During the term of the agreement or any extension of
5 the agreement, a title loan lender may retain physical
6 possession of the loan property only. A title loan lender
7 shall not require a borrower to provide any additional
8 security or guaranty as a condition to entering into a title
9 loan transaction.

10 Section 9. (a) Every title loan lender shall
11 maintain, at the title loan office of the lender, the books,
12 accounts, and records of the business conducted under the
13 license issued for the place of business as will enable the
14 department to determine the compliance of the licensee with
15 this act.

16 (b) The department may authorize the maintenance of
17 books, accounts, and records at a location other than the
18 title loan office of the lender. The department may require
19 books, accounts, and records to be produced and available at a
20 reasonable and convenient location in this state within a
21 reasonable period of time after the request.

22 (c) The title loan lender shall maintain the
23 original copy of each completed title loan agreement on the
24 title loan office premises, and shall not obliterate, discard,
25 or destroy any of the original copy for a period of at least
26 two years after making the final entry on any loan recorded in

1 the office or after a department examination, whichever is
2 later.

3 (d) Loan property which is delivered to a title loan
4 lender shall be securely stored and maintained at the title
5 loan office unless the loan property has been forwarded to the
6 appropriate state agency for the purpose of having a lien
7 recorded or deleted.

8 (e) The department may prescribe by rule the books,
9 accounts, and records, and the minimum information to be shown
10 in the books, accounts, and records, of licensees so that the
11 records will enable the department to determine compliance
12 with this act.

13 Section 10. (a) A title loan lender may contract for
14 and receive an interest rate not to exceed a rate equal to 36
15 percent annual percentage rate of the principal amount
16 advanced in the title loan transaction. The maximum monthly
17 rate shall be computed on the basis of one-twelfth of the
18 annual rate for each full month. No other interest
19 arrangement, including the provisions of Section 8-8-5, Code
20 of Alabama 1975, shall apply to any title loan agreements
21 under this act. This rate may be imposed only if disclosed in
22 full at the time the contract is created, and cannot be
23 modified. No additional fees may be imposed on the borrower,
24 except a late charge if it is specified in the title loan
25 agreement and the actual costs expended on repossession and
26 sale as described in this act.

1 (b) Any interest, charge, or fees contracted for or
2 received, directly or indirectly, in excess of the amount
3 permitted under subsection (a) shall be uncollectible and the
4 title loan agreement shall be void.

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

13 (d) A title loan agreement may be extended for one
14 or more 30-day periods by mutual consent of the title loan
15 lender and the borrower. Each extension of a title loan
16 agreement shall be executed in a separate extension agreement
17 each of which shall comply with the requirements for executing
18 a title loan agreement as provided in this act. The interest
19 rate charged in any title loan extension agreement shall not
20 exceed the interest rate charged in the related title loan
21 agreement. A title loan lender shall not capitalize in any
22 title loan extension agreement any unpaid interest due on the
23 related title loan agreement or any subsequent extensions to
24 that title loan agreement.

25 (e) (1) Any interest contracted for or received,
26 directly or indirectly, by a title loan lender, or an agent of
27 the title loan lender, in excess of the amounts authorized

1 under this act are prohibited and may not be collected by the
2 title loan lender or an agent of the title loan lender.

3 (2) If the excess interest resulted from a bona fide
4 error by the title loan lender, or an agent of the title loan
5 lender, the title loan agreement shall be voidable and the
6 lender shall refund the excess interest to the borrower within
7 20 days after discovery by the lender or borrower of the bona
8 fide error, whichever occurs first.

9 (3) If the excess interest resulted from an act by
10 the title loan lender, or an agent of the title loan lender,
11 to circumvent the maximum title loan interest allowed by this
12 act, the title loan agreement is void. The lender shall refund
13 to the borrower any interest paid on the title loan and return
14 to the borrower the loan property. The title loan lender
15 forfeits the right of the lender to collect any principal owed
16 by the borrower on the title loan.

17 (4) The department may order a title loan lender, or
18 an agent of the title loan lender, to comply with the
19 provisions of subdivisions (2) and (3).

20 Section 11. (a) A borrower shall have no obligation
21 to redeem pledged property or make any payment on a title loan
22 transaction.

23 (b) A title loan lender may pay all proceeds for a
24 title loan transaction either in cash directly to the borrower
25 or through an electronic funds transfer directly to the
26 borrower or borrower's account. The period of the title loan
27 transaction shall not begin until the funds are received by

1 the borrower. There shall be no additional charge related to
2 the payment of the proceeds of any title loan transaction.

3 (c) The title loan lender shall not impose a penalty
4 for early payment of any amount owed before the maturity date.
5 The lender must accept payments of any amount at any time.

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

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

1 inform the borrower that the property may be repossessed on
2 this deadline if full payment is not received. This notice
3 must be in writing, personally served or sent by certified or
4 registered mail, return receipt requested.

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

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

1 lender shall then have the sole right and authority to sell or
2 dispose of the titled personal property.

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

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

20 Section 12. (a) A title loan lender, or any agent or
21 employee of a title loan lender, shall not do any of the
22 following:

23 (1) Falsify or fail to make an entry of any material
24 matter in a title loan agreement or any extension of the
25 agreement.

26 (2) Refuse to allow the department to inspect
27 completed title loan agreements, extensions of the agreements,

1 or loan property during the ordinary operating hours of the
2 business of the title loan lender or other times acceptable to
3 both parties.

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

6 (4) Make any agreement requiring or allowing for the
7 personal liability of a borrower or the waiver of any of the
8 provisions of this act.

9 (5) Knowingly enter into a title loan agreement with
10 any person who is under the influence of drugs or alcohol when
11 the condition is visible or apparent, or with any person using
12 a name other than the name of the person or the registered
13 name of the business owned by the person.

14 (6) Fail to exercise reasonable care, as defined by
15 department rule, in the safekeeping of loan property or of
16 titled personal property repossessed pursuant to this act.

17 (7) Fail to return loan property or repossessed
18 titled personal property to a borrower, with any and all of
19 the title loan lender's liens on the property properly
20 released, upon payment of the full amount due the title loan
21 lender, unless the property has been seized or impounded by an
22 authorized law enforcement agency, taken into custody by a
23 court, or otherwise disposed of by court order.

24 (8) Sell or otherwise charge for any type of
25 insurance in connection with a title loan agreement.

26 (9) Charge or receive any finance charge, interest,
27 or fees which are not authorized pursuant to this act.

1 (10) Act as a title loan lender without an active
2 license issued under this act.

3 (11) Refuse to accept partial payments toward
4 satisfying any obligation owed under a title loan agreement or
5 extension of the agreement.

6 (12) Charge a prepayment penalty.

7 (13) Act as a title loan lender under this act
8 within a place of business in which the licensee solicits or
9 engages in business outside the scope of this act if the
10 department determines that the licensee's operation of and
11 conduct pertaining to the other business results in an evasion
12 of this act. Upon making the determination, the department
13 shall order the licensee to cease and desist from the evasion,
14 provided, no licensee shall engage in the pawnbroker business.

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

20 (15) Use or threaten force or violence against any
21 borrower, nor threaten criminal prosecution or use printed
22 materials that resemble legal process. No licensee shall
23 trespass on a borrower's property, other than taking
24 possession without a breach of the peace, or make collection
25 attempts at unreasonable hours of the night.

1 (16) Directly or indirectly employ any scheme,
2 device, or artifice to defraud or mislead the borrower,
3 another lender, or the department.

4 (17) 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 to
8 same.

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

11 Section 13. (a) Any person presenting identification
12 of the person as the borrower and presenting a copy of the
13 title loan agreement of the borrower to the title loan lender
14 is presumed to be entitled to reclaim the loan property
15 described in the title loan agreement. However, if the title
16 loan lender determines that the person is not the borrower,
17 the title loan lender is not required to allow the redemption
18 of the loan property by the person. The person reclaiming the
19 loan property shall sign the copy of the title loan agreement
20 of the borrower that the title loan lender may retain to
21 evidence the receipt of the loan property of the person. A
22 person reclaiming the loan property who is not the borrower
23 shall show identification to the title loan lender, together
24 with notarized written authorization from the borrower, and
25 the title loan lender shall record the name and address of
26 that person on the title loan agreement retained by the title
27 loan lender. In that case, the person reclaiming the copy of

1 the title loan agreement of the borrower shall be provided a
2 copy of the signed form as evidence of the agreement.

3 (b) If the copy of the title loan agreement of the
4 borrower is lost, destroyed, or stolen, the borrower shall
5 notify the title loan lender in writing by certified or
6 registered mail, return receipt requested, or in person
7 evidenced by a signed receipt, and receipt of the notice shall
8 invalidate the title loan agreement if the loan property has
9 not previously been reclaimed. Before delivering the loan
10 property or issuing a new title loan agreement, the title loan
11 lender shall require the borrower to make a written statement
12 of the loss, destruction, or theft of the copy of the title
13 loan agreement of the borrower. The title loan lender shall
14 record on the written statement the type of identification and
15 the identification number accepted from the borrower, the date
16 the statement is given, and the number or date of the title
17 loan agreement lost, destroyed, or stolen. The statement shall
18 be signed by the title loan lender or the title loan office
19 employee who accepts the statement from the borrower. The
20 title loan lender shall not impose any type of fee for
21 providing the borrower with a copy of the title loan
22 agreement.

23 Section 14. (a) In addition to any other penalty
24 which may be applicable, any licensee or employee who
25 willfully violates any provision of this act, or who willfully
26 makes a false entry in any record specifically required by

1 this act, shall be guilty of a Class A misdemeanor per
2 violation and shall render the title loan agreement void.

3 (b) In addition to any other penalty which may be
4 applicable, any licensee or employee who fails to make a
5 record of a title loan transaction and subsequently sells or
6 disposes of the pledged property from the transaction shall be
7 punished as follows:

8 (1) For a first offense, the licensee or employee
9 shall be guilty of a misdemeanor and, upon conviction thereof,
10 shall be guilty of a Class A misdemeanor.

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

13 Section 15. (a) The department may issue and serve
14 subpoenas to compel the attendance of witnesses and the
15 production of documents, papers, books, records, and other
16 evidence before the department in any matter pertaining to
17 this act. The department shall administer oaths and
18 affirmations to any person whose testimony is required. If any
19 person refuses to testify, produce books, records, and
20 documents, or otherwise refuses to obey a subpoena issued
21 under this section, the department may enforce the subpoena in
22 the same manner that subpoenas issued under the Administrative
23 Procedure Act are enforced. Witnesses are entitled to the same
24 fees and mileage as they are entitled to by law for attending
25 as witnesses in the circuit court, unless the examination or
26 investigation is held at the place of business or residence of
27 the witness.

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

4 (1) Bring an action in any court of competent
5 jurisdiction to enforce or administer this act, any rule or
6 order adopted under this act, or any written agreement entered
7 into with the department. In the action, the department may
8 seek any relief at law or equity, including a temporary or
9 permanent injunction, appointment of a receiver or
10 administrator, or an order of restitution.

11 (2) Issue and serve upon a person an order requiring
12 the person to cease and desist and take corrective action
13 whenever the department finds that the person is violating,
14 has violated, or is about to violate any provision of this
15 act, any rule or order adopted under this act, or any written
16 agreement entered into with the department.

17 (3) Whenever the department finds that conduct
18 described in subdivision (2) of this section shall present an
19 immediate danger to the public health, safety, or welfare
20 requiring an immediate final order, the department may issue
21 an emergency cease and desist order reciting with
22 particularity the facts underlying the findings. The emergency
23 cease and desist order is effective immediately upon service
24 of a copy of the order on the respondent named in the order
25 and shall remain effective for 90 days. If the department
26 begins nonemergency proceedings under subdivision (2) of this

1 section, the emergency cease and desist order remains
2 effective until the conclusion of the proceedings.

3 Section 16. (a) The department may investigate and
4 examine any licensee or other person the department deems
5 necessary to determine compliance with this act. For this
6 purpose, the department may examine the books, accounts,
7 records, and other documents or matters of any licensee or
8 other person. The department may compel the production of all
9 relevant books, records, and other documents and materials
10 relative to an examination or investigation. Examinations
11 shall not be made more often than once during any 12-month
12 period unless the department has reason to believe the
13 licensee is not complying with this act.

14 (b) The department shall conduct all examinations at
15 a convenient location in this state unless the department
16 determines that it is more effective or cost-efficient to
17 perform an examination at the licensee's out-of-state
18 location. For an examination performed at the licensee's
19 out-of-state location, the licensee shall pay the travel
20 expense and per diem subsistence at the rate provided by law
21 for up to 30 eight-hour days per year for each department
22 examiner who participates in the examination. However, if the
23 examination involves or reveals possible fraudulent conduct by
24 the licensee, the licensee shall pay the travel expenses and
25 per diem subsistence provided by law, without limitation, for
26 each participating examiner.

1 (c) Any person having reason to believe that this
2 act has been violated may file with the department a written
3 complaint setting forth the details of the alleged violation
4 and the department may investigate the complaint.

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

20 Section 18. Nothing in this act precludes a
21 municipality from adopting ordinances more restrictive, in
22 whole or in part, than the provisions of this act.

23 Section 19. To administer this act, the department
24 may promulgate and enforce specific rules and regulations
25 establishing criteria, guidelines, and specific procedures to
26 be followed by persons affected by this act.

1 Section 20. (a) No titled personal property may be
2 confiscated by local law enforcement without the following
3 action having been accomplished:

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

5 (2) A warrant sworn out for the person who pledged
6 the property to the title loan lender.

7 (b) Pledged property may be put on a one-time
8 seven-day hold by the authorized law enforcement authorities.
9 This request for a seven-day hold shall be made in writing by
10 the authorized law enforcement authorities. (c) Confiscated
11 pledged property shall be returned to the title loan lender by
12 the law enforcement authorities as soon as possible when
13 determined that the pledged property has no rightful owner.

14 Section 21. (a) Each licensee under this act shall
15 annually, on or before December 1, file a written report with
16 the department containing such information as the department
17 may require concerning his business and operations during the
18 preceding calendar year as to each approved office. Reports
19 shall be made under oath and shall be in the form prescribed
20 by the department.

21 (b) Using the information reported to the department
22 under subsection (a) and the information contained in the
23 database, the department shall make and publish annually an
24 analysis and recapitulation of such reports regarding the
25 utilization of title loan transactions.

1 Section 22. Each title loan lenders in operation as
2 of the effective date of this act shall have until January 1,
3 2014, to apply for a license under this act.

4 Section 23. Although this bill would have as its
5 purpose or effect the requirement of a new or increased
6 expenditure of local funds, the bill is excluded from further
7 requirements and application under Amendment 621 because the
8 bill defines a new crime or amends the definition of an
9 existing crime.

10 Section 24. The provisions of this act are
11 severable. If any part of this act is declared invalid or
12 unconstitutional, that declaration shall not affect the part
13 that remains.

14 Section 25. This act shall become effective on the
15 first day of the third month following its passage and
16 approval by the Governor, or its otherwise becoming law.