

ORDINANCE NO. 00- 01

AN ORDINANCE RELATING TO REGULATION OF TITLE LOAN TRANSACTIONS; PROVIDING DEFINITIONS; PROVIDING DISCLOSURE IN TITLE LOAN TRANSACTIONS; LIMITING THE LAWFUL INTEREST RATE IN TITLE LOAN TRANSACTIONS TO TWO AND ONE-HALF (2½) PERCENT PER MONTH; PROVIDING FOR VIOLATIONS, PENALTIES AND ENFORCEMENT; PROVIDING FOR SEVERABILITY, AND AN EFFECTIVE DATE.

WHEREAS, Section 538.17, Florida Statutes permits political subdivisions of the State of Florida to enact laws more restrictive than the provisions of Chapter 538, Part I, Florida Statutes, and

WHEREAS, the Holmes County Board of County Commissioners finds that consumers in Holmes County are in need of greater consumer protection for motor vehicle title loan transactions than are provided in Chapter 538, Page I, Florida Statutes;

NOW, THEREFORE, BE IT ORDAINED BY THE HOLMES COUNTY BOARD OF COUNTY COMMISSIONERS:

SECTION 1. DEFINITIONS

(a) "Title Loan Agreement" means a written agreement whereby a secondhand dealer agrees to make a loan of a specific sum of money to the owner of a motor vehicle, and the owner of the motor vehicle agrees to give the secondhand dealer a security interest in a motor vehicle certificate of title owned by the borrower and encumbered only by a title loan agreement.

(b) "Secondhand dealer" has the same meaning as used in Section 538.03(1)(a), Florida Statutes, as it may be amended from time to time

SECTION 2. MOTOR VEHICLE TITLE LOAN TRANSACTIONS

A secondhand dealer registered under Chapter 538, Part 1, Florida Statutes, may engage in motor vehicle title loan transactions, as that term is used in Chapter 538, Part I, Florida Statutes, if the following conditions are met:

(a) the secondhand dealer maintains physical possession of the motor vehicle certificate of title; and

(b) the borrower maintains possession of, or control over, the motor vehicle throughout the term of the loan; and

(c) the borrower is not required to pay rent or any other charge for the use of the motor vehicle; and

(d) the secondhand dealer delivers to the borrower, at the time a loan is made, a statement showing the loan amount, origination date, maturity date, finance charges, a description of the security, the name and address of the borrower and the secondhand dealer, the rate of interest expressed in terms of annual Percentage rate, the total number of Payments required, and the total amount required to be paid over the life of the loan. In the event the borrower has a right to renew the loan, the secondhand dealer must deliver a statement with the information required herein for each renewal; and

(e) the title loan agreement contains the following statements printed in not less than 14 point type and with the indicated language in upper case;

(1) Your vehicle has been pledged as security for this loan and if you do not repay this loan in full, including the finance charge, **YOU WILL LOSE YOUR VEHICLE.**

(2) You are encouraged to repay this loan at the end of the 30 day period. The lender is not required to extend or renew your loan. It is important that you plan your finances so that you can re-pay this loan as soon as possible.

(3) **THIS LOAN HAS A VERY HIGH INTEREST RATE. DO NOT COMPLETE THIS LOAN TRANSACTION IF YOU HAVE THE ABILITY TO BORROW FROM ANOTHER SOURCE AT A RATE LOWER THAN 2½% PER MONTH OR AN ANNUAL PERCENTAGE RATE OF 30%.**

(4) The borrower represents and warrants that the motor vehicle and the certificate of title is not stolen, it has no liens or encumbrances against it, the borrower has the right to enter into this transaction, and the borrower will not attempt to sell the motor vehicle or apply for a duplicate certificate of title while the title loan agreement is in effect, and that doing so will be a violation of law.

(5) Immediately above the signature of the borrower the statement that "I, the borrower declare that the information I have provided is true and correct and I have read and understand the foregoing document."

(6) A blank line for the signature of the borrower.

(f) the secondhand dealer must display, in a prominent place in the title loan premises, for customer viewing, a sign no small than three feet-by five feet with the following message written in upper case letters no less than two inches high:

"IF YOU RECEIVE A TITLE LOAN, YOUR VEHICLE WILL BE PLEDGED AS SECURITY FOR THE LOAN. IF YOU DO NOT REPAY THIS LOAN IN FULL, INCLUDING ALL FINANCE CHARGES, YOU WILL LOSE YOUR VEHICLE.

THIS LOAN HAS A VERY HIGH INTEREST RATE. DO NOT COMPLETE A TITLE LOAN TRANSACTION IF YOU HAVE THE ABILITY TO BORROW MONEY FROM ANOTHER SOURCE AT AN INTEREST RATE LOWER THAN 2½% PER MONTH OR AN ANNUAL PERCENTAGE RATE OF 30%.

SECTION 3. MAXIMUM INTEREST RATE

A secondhand dealer who engages in title loan transactions may not exceed the following interest rate:

(a) A secondhand dealer may charge an interest rate not to exceed two and one-half (2½) percent per 30-day period the title loan agreement remains outstanding and unsatisfied. In determining compliance with the maximum interest and finance charges, the computation must be simple interest and not add-on interest or any other interest computation.

(b) The annual percentage rate that may be charged in a motor vehicle title loan may equal, but not exceed, the annual percentage rate that must be computed and disclosed as required by the federal Truth in Lending Act and Regulation Z of the Board of Governors of the Federal Reserve System. When the period for which the charge is computed is more or less than one month, the maximum rate for the per month must be computed on a basis of 1/30 the applicable monthly interest rate, multiplied by the

number of days of the period.

(c) Any transaction involving a borrower's delivery of a motor vehicle certificate of title in exchange for the advancement of funds on the condition that the borrower shall or may redeem or repurchase the certificate of title upon the payment of a sum of money, whether the transaction be characterized as a "buy-sell agreement", "sale-leaseback agreement", or otherwise, shall be deemed a violation of this ordinance if such sum exceeds the amount that a secondhand dealer may collect in a title loan agreement under this ordinance or if the terms of the transaction otherwise conflict with the permitted terms and conditions of a title loan agreement under this agreement.

(d) Any fees or taxes paid to a state agency and directly related to an individual title loan transaction may be collected from the borrower, and shall be in addition to the permitted finance and interest charge.

(e) No charges, including interest, in excess of the combined total of all charges permitted by this section shall be allowed.

SECTION 4. TRANSACTION SATISFACTION AND DEFAULT

(a) When the title loan has been paid in full, the secondhand dealer must deliver to the borrower a certificate of title clear of all encumbrances placed upon the title by the secondhand dealer within 30 days of such payment in full.

(b) A secondhand dealer who engages in title loan transactions may take possession of the motor vehicle upon the borrower's default under the title loan agreement. Unless the borrower voluntarily surrenders the motor vehicle, the secondhand dealer may only take possession of a motor vehicle through an agent licensed by the State of Florida to repossess a motor vehicle.

(c) A secondhand dealer who takes possession of a motor vehicle pursuant to this section shall comply with the applicable requirements of Chapter 679, Part V, Florida Statutes.

(d) Disposition of the collateral or motor vehicle may be by a public or private proceeding and may be made by way of one or more contracts. Sale or other disposition may be as a unit or in parts and at any time and place and on any terms, but every aspect of the disposition including the method, manner, time, place and terms, including surplus of the debt must be commercially reasonable.

SECTION 5. VIOLATIONS AND PENALTIES

(a) The following acts are violations of this ordinance and shall constitute grounds for enforcement action:

- (1) Failure to comply with any provision of this Part.
- (2) Fraud, misrepresentation, deceit or gross negligence in any title loan transaction.
- (3) Fraudulent misrepresentation, circumvention, or concealment of any matter required to be stated or furnished to a consumer pursuant to this Part.
- (4) Willful imposition of illegal charges on any title loan transaction.
- (5) Aiding, abetting, or conspiring with an individual to circumvent or violate any of the requirements of this Part or state or federal law.

(6) Knowingly entering into a title loan agreement with a person under the age of 18 years.

(7) Making any agreement requiring or allowing for the personal liability of a pledgor or the waiver of any of the provisions of this Part.

(8) Knowingly entering into a title loan agreement with any person who is under the influence of drugs or alcohol when such condition is visible or apparent, or with any person using a name other than his own name or the registered name of his business.

(9) Entering into a title loan agreement in which the amount of money advanced in consideration for the loan secured by any single certificate of title exceeds one third of the value of the motor vehicle.

(10) Failure to exercise reasonable care in the safekeeping of the certificate of title or motor vehicle repossessed pursuant to this Part.

(11) Failure to return the certificate of title or motor vehicle taken into possession to a borrower, with any and all of the title lender's liens on the property properly released, within 30 days of the payment of the full amount due, unless the property has been seized or impounded by an authorized law enforcement agency, taken into custody by a court, or otherwise disposed of by court order.

(12) Charging or receiving any finance charge, interest, cost, or fee which is not permitted by this Part.

(13) Refusing to accept partial repayment of the amount financed when all accrued finance charges have been paid.

(14) Charging a prepayment penalty.

(15) Capitalizing any unpaid finance charge as part of the amount financed in the renewal of a title loan agreement.

(16) In any practice or transaction or course of business relating to the making of a title loan, negotiation, promotion, advertisement or hypothecation of a title loan transaction, directly or indirectly

(a) To knowingly or willingly employ any devise, scheme or article to defraud;

(b) To engage in any transaction, practice or course of business which operates as a fraud upon any person in connection with the purchase or sale of any title loan;

(c) To obtain property by fraud, willful misrepresentation of a future act or false promise.

(17) In any manner, to knowingly and willfully falsify, conceal or cover up by a trick, scheme or devise a material fact, make any false or fraudulent statement or representation, or make or use any false writing or document, knowing the same to contain any false or fraudulent statement or entry.

(18) Commission of fraud, misrepresentation, concealment, dishonest dealing by trick,

scheme or device, culpable negligence, or breach of trust in any title loan transaction in this county; or aiding assisting, or conspiring with any other person engaged in any such misconduct and in furtherance thereof.

(b) The provisions of this ordinance shall be enforce by any authorized code enforcement officer or law enforcement officer. Violations may be prosecuted as misdemeanors are prosecuted, upon complaint to the prosecuting attorney by a law enforcement officer of a citizen, in addition to any other remedy provided by the Holmes County Code of Ordinances or applicable law, including but not limited to notice of violation and citation by a code enforcement officer. Upon conviction, violators shall pay a fine of not more than \$500, or shall be imprisoned for not more than 60 days, or both fined and imprisoned as authorized herein or by any other applicable law.

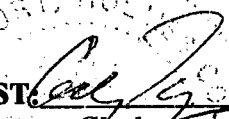
SECTION 6. SEVERABILITY

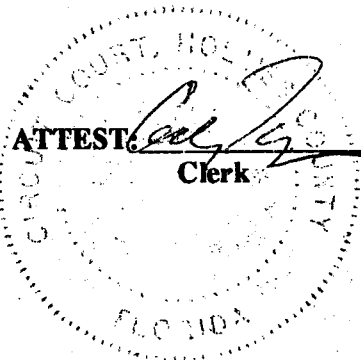
It is declared to be the intent of the Board of County Commissioners that if any section, subsection, clause, sentence, phrase or provision of this Ordinance is for any reason held unconstitutional or invalid, the invalidity thereof shall not affect the validity of the remaining portions of this Ordinance.

SECTION 7. EFFECTIVE DATE


This Ordinance shall become effective upon receipt of official acknowledgment from the Secretary of State that said Ordinance has been filed.

ADOPTED BY THE HOLMES COUNTY BOARD OF COUNTY COMMISSIONERS, in Regular Session this 15th day of March, 2000.

ATTEST:  (SEAL)
Clerk



**BOARD OF COUNTY COMMISSIONERS
OF HOLMES COUNTY, FLORIDA,**

BY: 
Chairman

