

ORDINANCE NO. 99-15

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 EIGHTEEN (18) PERCENT PER MONTH FOR THE FIRST THREE MONTHS OF SUCH LOAN AND TO TWO (2) PERCENT PER MONTH THEREAFTER; PROVIDING FOR VIOLATIONS, PENALTIES AND ENFORCEMENT; PROVIDING FOR SEVERABILITY, INCLUSION INTO THE CODE 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 Hernando County Board of County Commissioners finds that consumers in Hernando County are in need of greater consumer protection for motor vehicle title loan transactions than is provided in Chapter 538, Part I, Florida Statutes;

NOW, THEREFORE, BE IT ORDAINED BY THE HERNANDO 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

FILED
1999 JUL 29 PM 2:52
DEPARTMENT OF STATE
TALLAHASSEE, FLORIDA

of the motor vehicle and shall have the right to cancel the motor vehicle title loan agreement within ten days of its execution upon verbal or written notice of cancellation to the lender and return of all funds borrowed pursuant to the agreement; 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 MAY 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 18% PER MONTH OR AN ANNUAL PERCENTAGE RATE OF 72%.**

(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. I also understand that I may cancel this contract within ten days of today's date if I return all money I am borrowing under this contract to the lender within the same ten days."

(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 smaller 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 MAY 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 18% PER MONTH OR AN ANNUAL PERCENTAGE RATE OF 72%.

Section 3. Maximum interest rate.

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

(a) A secondhand dealer may charge an interest rate not to exceed eighteen (18) percent per 30-day period for a maximum of three months from the date of the title loan agreement. Following such three-month period, if the title loan agreement remains outstanding and unsatisfied, the title loan lender may charge an interest rate not to exceed two percent per 30-day period. 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 period 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 ordinance.

(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 as part of the final installment or payment completing the contract for a title loan transaction at the end of the loan, upon presentation of a copy or copies of receipts showing payment of such fees or taxes by the title loan lender, 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 borrowers 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 motor vehicles. Any fee for services rendered by an individual or entity other than the title loan lender in taking possession of such motor vehicle may be included in the amount payable by the vehicle owner to redeem the 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 proceedings and may be made by way of one or more contracts, no earlier than ninety (90) days from the date of the last payment by the borrower on a motor vehicle title loan agreement. No additional interest shall accrue on the borrower's remaining contractual obligations after sixty (60) days from the date of the last payment. 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. The borrower shall receive all proceeds from the sale of the vehicle in excess of the amount of interest and principal remaining due and payable on the loan and documentary fees actually paid by the title loan lender in connection with transfer of title.

(e) Borrowers shall have no personal liability on a title loan transaction except in the case of willful destruction, disassembly or sale of the vehicle which title secures the loan.

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; except that, where a motor vehicle title loan agreement is with a borrower who has entered into a motor vehicle title loan agreement in the past with the same title loan lender and the contract relating to such prior transaction has been fully performed by all parties, a title loan agreement may provide for an amount of money advanced in an amount not exceeding one half 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 enforced 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 or a citizen, in addition to any other remedy provided by the Hernando 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- Inclusion in the Code.

It is the intention of the Board of County Commissioners of Hernando County, Florida, and it is hereby provided, that the provisions of this Ordinance shall become and be made a part of the Code of Ordinances of Hernando County, Florida. To this end, the sections of this Ordinance may be renumbered or relettered to accomplish such intention, and that the word "ordinance" may be changed to "section", "article", or other appropriate designation.

SECTION 8- 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 HERNANDO COUNTY BOARD OF COUNTY COMMISSIONERS in Regular Session this 13th day of July, 1999.

**BOARD OF COUNTY COMMISSIONERS
HERNANDO COUNTY, FLORIDA.**



Affest:

Michelle Heintona
KAREN NICOLAI *Deputy*
Clerk *Clerk*

By:

Pat Novy
PAT NOVY
Chairman