

ORDINANCE NO. 99-19

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF NASSAU COUNTY, FLORIDA, REGULATING THE MOTOR VEHICLE TITLE LOAN INDUSTRY; PROVIDING FOR AN EXERCISE OF COUNTY POWERS; PROVIDING FOR PRIVATE RIGHT OF ACTION; PROVIDING 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 Board of County Commissioners of Nassau County, Florida, finds that consumers in Nassau County are in need of greater consumer protection for motor vehicle title loan transactions than are provided in Chapter 538, Part I, Florida Statutes.

NOW, THEREFORE, BE IT ORDAINED this 24th day of May, 1999, by the Board of County Commissioners of Nassau County, Florida as follows:

SECTION ONE.

Part I - Motor Vehicle Title Loans.

- (1) The Board of County Commissioners has the authority pursuant to Section 538.17, Florida Statutes and under Florida Statutes 125 to enact this Ordinance.
- (2) 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.

Part II. Motor vehicle title loan transactions.

A secondhand dealer registered under Chapter 538, Part I, 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 statement printed in not less than 14 point type:

- (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 repay 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 1½% PER MONTH OR AN ANNUAL PERCENT RATE OF 18%.
- (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) If you are a member of the Armed Forces of the United States of America, you may be eligible for financial assistance. You are urged to explore these options with a representative of your commanding officer.

(6) 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 instrument."

(7) 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 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 WIL 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 1½% PER MONTH OR AN ANNUAL PERCENTAGE RATE OF 18%.

MEMBERS OF THE UNITED STATES ARMED SERVICES MAY BE ELIGIBLE FOR FINANCIAL ASSISTANCE AND THEY ARE URGED TO EXPLORE ALL OPTIONS WITH REPRESENTATIVES OF THEIR COMMANDING OFFICER".

Part III. 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 1½ 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 added-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 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.

Part IV. 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 motor vehicles.
- (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 public or private proceedings 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.

Part V. Licenses.

- (a) No secondhand dealer may engage in business as a title loan lender two months after the effective date of this ordinance unless the secondhand dealer has a valid license issued by the County Coordinator's Office and a county occupational license issued by the Tax Collector. A

separate license from the County Coordinator will be required for each physical location of title loan business. The County Coordinator or his designee shall issue more than one license to an applicant if that applicant complies with the requirements of this Part for each license.

- (b) An application for a license pursuant to this Part must be submitted to the County Coordinator's Office on such form as the County Coordinator may prescribe. If the County Coordinator determines that an application should be granted, he/she shall issue the license for a period not to exceed two years. A non-refundable application and license fee not exceeding \$800.00 shall accompany an initial application for each title loan location.
- (c) The County Coordinator shall charge a biennial renewal fee of \$800.00. A license that is not renewed at the end of each two-year period shall automatically become inactive. An inactive license may be reactivated within 90 days after the date it became inactive upon the submission of a completed reactivation form and payment of a reactivation fee not exceeding \$100.00 and a biennial license fee of \$800.00. No inactive license may be reactivated after 90 days.
- (d) Each license must specify the location for which it is issued and must be conspicuously displayed at that location. When a licensee wishes to move a title loan office to another location the licensee shall give 30 days prior written notice to the County Coordinator by certified or registered mail, return receipt requested, and the County Coordinator shall then amend the license

accordingly. A license issued pursuant to this Part is not transferable or assignable. The location or locations must be properly zoned pursuant to the Nassau County Zoning Code.

(e) Books, accounts, and records; maintenance and examination by the County Coordinator.

(1) Each licensee shall maintain, at the principal place of business designated on the license, all books, accounts, records, and documents necessary to determine the licensee's compliance with this Part.

(2) The County Coordinator or his designee may require books and record to be produced and available at a reasonable and convenient location within Nassau County.

(3) All books, accounts, records, documents and receipts for expenses paid by the licensee on behalf of the borrower, including each contract signed by the borrower and expenses incurred by the licensee in event of foreclosure and property recovery, will be preserved and kept available for examination by the County Coordinator for two (2) years after the date of original entry.

(4) The County Coordinator may prescribe by written regulation the minimum information to be shown in the books, accounts, records, and documents of licensees so that such records will enable the department to determine the licensee's compliance with this Part.

(f) Each licensee shall designate and maintain an agent in this state for service of process.

(g) A licensee must apply to the County Coordinator's Office for a new license upon a change in ownership of 25% or more by a natural person in any title loan location or office. No application for a license or an application for transfer of an existing license is required for any change, directly, or beneficially, in the ownership of a title loan location if one or more of the holders of at least 75 percent of the outstanding equity interest in the title loan location or office before the change in ownership continue to hold at least 75 percent of the outstanding equity interest in the title loan location or office after the change in ownership.

(h) To be eligible for a title loan lending license, an applicant shall:

(1) File with the County Coordinator a bond in the amount of \$25,000.00 for each license with a surety company qualified to do business in this state. In lieu of the bond, the applicant may establish a certificate of deposit or an irrevocable letter of credit in a Florida financial institution in the amount of the bond. The original bond, certificate of deposit, or letter of credit shall be filed with the County Coordinator and the county shall be the beneficiary of such instrument. The bond, certificate of deposit, or letter of credit shall be in favor of the county for the use and benefit of any consumer who is injured in the context of a title loan transaction by the fraud, misrepresentation, breach of contract, financial failure, unfair or deceptive trade

practice, disclosure violation or violations of any provision of this Part by the licensee. Such liability shall be enforced by the filing of a suit in a court of competent jurisdiction.

- (2) Not have been convicted of a felony within the last ten years or be acting in behalf of a beneficial owner who has been convicted of a felony within the last ten years.
- (3) Not have been convicted of a felony, and not acting in behalf of a beneficial owner who has been convicted of a crime that the division finds directly related to the duties and responsibilities of a title loan lender within the past ten years.
- (4) Provide a copy of the occupational license.
- (i) The County Coordinator or his designee shall determine the form of the license.
- (j) No part of this Ordinance may be construed to impair or affect the obligation of any title loan agreement which was lawfully entered into prior to the effective date of this ordinance.
- (k) Licensees shall report changes in address, location of records, and any change of any executive officer within 30 days of the change.

Part VI. Violations and Penalties.

- (a) The following acts are violations of this Part and shall constitute grounds for disciplinary action:

- (1) Failure to comply with any provision of this Part or regulations promulgated by the Board of County Commissioners.
- (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) False, deceptive, or misleading advertising by a licensee.
- (6) Failure to maintain, preserve, and keep available for examination, all books, accounts, or other documents required by this Part, state or federal law, or by any agreement entered into with the county.
- (7) Aiding, abetting, or conspiring with an individual to circumvent or violate any of the requirements of this Part or state or federal law.
- (8) Refusal to permit inspection of books or records in an investigation or examination by the county or refusal to comply with a subpoena issued by the county.
- (9) Criminal conduct in the course of a licensee's business as a title lender.
- (10) Knowingly entering into a title loan agreement with a person under the age of 18 years.

- (11) Making any agreement requiring or allowing for the personal liability of a pledgor or the waiver of any of the provisions of this Part.
- (12) 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.
- (13) 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. The county, shall determine the method of assessing the value of the pledged property.
- (14) Failure to exercise reasonable care in the safekeeping of the certificate of title or motor vehicle repossessed pursuant to this Part.
- (15) 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.
- (16) Charging or receiving any finance charge, interest, cost, or fee which is not permitted by this Part.
- (17) Engaging in business as a title lender without first securing the required license.

- (18) Refusing to accept partial repayment of the amount financed when all accrued finance charges have been paid.
- (19) Charging a prepayment penalty.
- (20) Capitalizing any unpaid finance charge as part of the amount financed in the renewal of a title loan agreement.
- (21) Acting as a title loan lender in this county six months after the effective date of this ordinance without a current, active license issued by the County Coordinator's Office pursuant to this Ordinance.
- (22) 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 willfully employ any devise, scheme or artifice 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.
- (23) In any manner within the jurisdiction of the county, 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.

(24) Commission of fraud, misrepresentation, concealment, dishonest dealing by trick, scheme or device, culpable negligence, or breach of trust in any title loan transaction in Nassau County; or aiding, assisting, or conspiring with any other person engaged in any such misconduct and in furtherance thereof.

(25) Failure to maintain a current occupational license.

(b) Upon a recommendation by the County Coordinator and the County Attorney that the licensee or applicant has committed any of the acts set forth in subsection (a) hereof, the County Commissioners may enter an order and take one or more of the following actions:

(1) Deny the application for a license pursuant to this ordinance.

(2) Revoke or suspend a license previously granted pursuant to this Part.

(3) Place a licensee or applicant for a license on probation for a period of time and subject to such conditions as the county may specify.

(4) Issue a letter of concern or reprimand.

(5) Place permanent restrictions or conditions upon issuance or maintenance of a license pursuant to this ordinance.

(6) Impose an administrative fine not to exceed \$1,500.00 for each violation of this Part.

(7) The County shall be entitled to a reasonable attorney's fees, including appellate fees and costs, in an action successfully enforcing any fine imposed under this Part.

(c) When the County has reasonable cause to believe that a licensee is operating in violation of this Part, it may bring a civil action in any court of competent jurisdiction to enforce or administer this Part including a temporary or permanent injunction, or appointment of a receiver.

Part VII. Additional Remedy to Borrower, Private Right of Action.

Any borrower injured by a violation of this Part may bring an action for recovery of damages including twice the interest previously paid and the forfeiture of all interest charged, or contracted to be charged or reserved. Said borrower may recover reasonable attorney's fees and costs of such action. An award may be entered for punitive damages. The remedies provided for under this part are in addition to any other procedures or remedies for any violation provided in any other law or ordinance.

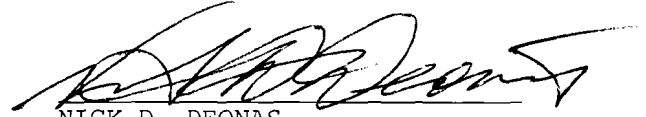
Part VIII. Transition Period for Regulations, Restrictions, and Licensure Provisions.

Each secondhand dealer operating as a title loan lender on the effective date of this ordinance shall have two months from the effective date of this ordinance to comply with the regulations, restrictions, and licensure provisions of this Part before the county may initiate any administrative or civil action, or refer a matter for criminal prosecution.

SECTION TWO.

This Ordinance shall become effective upon its being filed in the Office of the Secretary of State.

BOARD OF COUNTY COMMISSIONERS
NASSAU COUNTY, FLORIDA



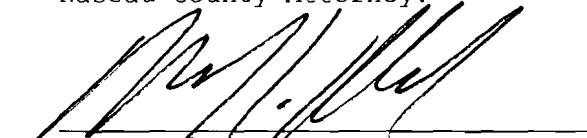
NICK D. DEONAS
Its: Vice Chairman

ATTEST:



J. M. "CHIP" OXLEY JR.
Its: Ex-Officio Clerk

Approved as to form by the
Nassau County Attorney:



MICHAEL S. MULLIN