



Journal of the Senate

Number 25—Regular Session

Friday, April 30, 1999

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[See end of Journal for Bill Action Summary]

CALL TO ORDER

The Senate was called to order by President Jennings at 9:15 a.m. A quorum present—40:

Madam President	Dawson-White	Jones	Mitchell
Bronson	Diaz-Balart	King	Myers
Brown-Waite	Dyer	Kirkpatrick	Rossin
Burt	Forman	Klein	Saunders
Campbell	Geller	Kurth	Scott
Carlton	Grant	Latvala	Sebesta
Casas	Gutman	Laurent	Silver
Childers	Hargrett	Lee	Sullivan
Clary	Holzendorf	McKay	Thomas
Cowin	Horne	Meek	Webster

Excused: Conferees periodically for purpose of working on Civil Litigation Reform: Senator Latvala, Chairman; Senators Grant, Laurent, Lee and Silver; Alternate, Senator Kurth

PRAYER

The following prayer was offered by Faye Blanton, Secretary of the Senate:

Dear God, it is our prayer that your will has been done during the sixty days of this session, and that we have truly served the people of our great state.

Please guide and bless each member of this Legislature, their staff and even the members of the Third House, as they return to their homes and their families.

We pray also that our point is well taken and that you concur as we send the final message for this 1999 Regular Session—we did our best.

Dear God, please bless us all and the citizens of the State of Florida whom we serve. In your holy name, we pray. Amen.

PLEDGE

Senate Pages Joshua Pritchard and Rachel Brigham of Orlando, led the Senate in the pledge of allegiance to the flag of the United States of America.

ADOPTION OF RESOLUTIONS

At the request of Senator Silver—

By Senator Silver—

SR 2730—A resolution supporting the rights of Holocaust victims to receive certain insurance proceeds.

WHEREAS, in 1998 the Florida Legislature passed the Holocaust Victims Insurance Act to provide that insurance claims of Holocaust victims and their heirs and beneficiaries be expeditiously identified and paid, and that Holocaust victims and their families receive appropriate assistance in the filing and payment of their claims, and

WHEREAS, the Department of Insurance has adopted rules to implement the Holocaust Victims Insurance Act, especially the creation of a registry of policy information from the European insurers and their affiliates in this state with respect to policies sold prior to World War II, and the establishment of a restitution program, and

WHEREAS, in 1998 the International Commission for the Resolution of Holocaust-Era Insurance Claims was created and included United States Insurance Commissioners, representatives of Jewish organizations, European Insurance Companies, and European regulators, and a chairman selected by the members, to which Bill Nelson was appointed, and

WHEREAS, the goal of the commission is to arrive at a framework for the settlement of the insurance claims of Holocaust victims and their beneficiaries, heirs, and descendants, for the purpose of expediting the resolution of these matters to avoid litigation and out of an overdue obligation to pay claims and return assets wrongfully withheld for over five decades, yet there may be pressure from the insurance companies and others to settle on terms less favorable than those intended or allowed by law, or otherwise on terms that are not just and fair to the Holocaust victims and their heirs and beneficiaries, and

WHEREAS, the Florida Senate declares its full support for the rights of victims of the Holocaust and their heirs and beneficiaries to receive compensation for all lost assets, including judicial remedies, and also supports a settlement process through the International Commission for the Resolution of Holocaust-Era Claims, if it meets the criteria listed herein and provides Holocaust victims and their heirs and beneficiaries with the ability to obtain full, fair, and expeditious compensation, NOW, THEREFORE,

Be It Resolved by the Senate of the State of Florida:

That Holocaust survivors or their elected representatives must have the predominant decision-making role regarding the disposition of unclaimed insurance proceeds, including long-term health care for every Holocaust survivor, regardless of whether they recover an actual insurance policy, and regardless of financial need;

That insurers must make a full, public disclosure of unpaid Holocaust-era policy holders and named beneficiaries, the values and status of the policies, and other relevant information, so that claimants and potential claimants have an opportunity to become fully apprised of their interests and so the public and the appropriate authorities can understand the magnitude of untraceable or heirless proceeds;

That every beneficiary, survivor, or legal heir must be paid a fair value in today's U.S. currency, including compound interest from the date the policy would have become due and payable, such as the death of the insured;

That claimants may establish their right to insurance proceeds with a reasonable and not unduly restrictive standard of proof, as provided by the Holocaust Victim's Insurance Act. Standards of proof must be at least as liberal as those established by the Department of Insurance, and

all processes must be transparent, with the claimants having access to the insurers' complete files to make a claim or an appeal;

That the commission must address all forms of insurance from the Holocaust era;

That any provisional settlement amount must be a minimum level for the companies' liability. No maximum liability can be established until the companies have made full and public disclosure of the number and total values of their insurance portfolios from the Holocaust era;

That any ultimate resolution must be subjected to a public review process during which the survivor community can have a full opportunity to be apprised of the terms of any claims process, as well as the amounts and process for disposition of any communal resources; and

That the Florida Senate will continue to ensure access to this state's courts for any claimant to seek redress for all wrongs committed by any insurer for any claim, including claims covered by the Holocaust Victim's Insurance Act.

—**SR 2730** was introduced, read and adopted by publication.

At the request of Senator Bronson—

By Senator Bronson—

SR 2738—A resolution commending the Osceola High School Kowboys Football Team for its 1998 football season and Class 5-A State Championship.

WHEREAS, the Osceola High School Kowboys Football Team, under the direction of Head Coach Jim Scible and his excellent staff, won twelve of their fourteen games during the regular season, and

WHEREAS, the Kowboys beat the Estero High School Wildcats 28 to 14 in the State Championship Game in Ben Hill Griffin Stadium in Gainesville, Florida, on December 18, 1998, and

WHEREAS, the Kowboys achieved this tremendous victory and the Class 5-A Championship by courageous teamwork, dedication, and perseverance, and

WHEREAS, the Kowboy's great achievement has brought statewide honor and recognition to Osceola High School, and

WHEREAS, the teamwork, competitiveness, clean living, citizenship, and discipline exhibited by the Kowboys have been a positive example for and influence upon the youth of Florida at a time when the young people of this state need role models who possess such ideals, and

WHEREAS, this great achievement could not have been attained without the hard work of Assistant Head Coach Alan Baker; Assistant Coaches Jim Bird, Gregg Scible, Jamie Baker, Doug Nichols, Wes Williams, Charles Baker, Joe Rice, and Danny Pitt; Film Man Paul Evans; and team members Robert Sippio, Anthony Jones, Robbie Beach, Chad Mascoe, Taurean Wilkerson, Quentin Smith, Stacey Brown, T.J. Bell, Chris Harmon, Sean Price, Chace Hulon, Darius McCrimon, Dwayne McGee, Jerrell Terry, Darryl Walls, Jermaine Bright, Shawn McCrimon, Jermaine Boston, Patrick Ortiz, Tony Paradiso, Ernest Varnado, Brandon Pitt, Willie Green, John Evans, Angel Maldonado, Henry Campbell, David Woelk, Reggie Bell, Jimmy McCrimon, A.J. Baker, Jared Stewart, Leroy Sanchez, Bill Smith, Eric Collette, Josh Day, David Zupofska, B.J. Ashley, Danny Serrano, Charlie Owen, Robert Martin, Shad Farling, Dale Boston, Matt Quinter, Jeremy Buxton, and Larry Anderson, NOW, THEREFORE,

Be It Resolved by the Senate of the State of Florida:

That the Florida Senate commends the Osceola High School Kowboys Football Team, Head Coach Jim Scible, and the coaching staff for their outstanding accomplishments in bringing Osceola High School to state prominence and excellence in high school football.

BE IT FURTHER RESOLVED that a copy of this resolution, with the Seal of the Senate affixed, be presented to the Osceola High School Kowboys Football Team and Coach Jim Scible as a tangible token of the sentiments of the Florida Senate.

—**SR 2738** was introduced, read and adopted by publication.

At the request of Senator Lee—

By Senator Lee—

SR 2740—A resolution honoring Roland Manteiga and recognizing September 25, 1999, as "Roland Manteiga Day."

WHEREAS, Roland Marcelo Manteiga was born January 16, 1920, in Tampa, Florida, and

WHEREAS, Roland's father, Victoriano Manteiga, emigrated from Cuba in 1913 and began publishing a daily Spanish-language newspaper, *La Gaceta*, in Tampa in 1922, and

WHEREAS, young Roland learned journalism and publishing from the ground up, beginning by delivering *La Gaceta* on his bicycle, and later by mastering advertising, circulation, writing, and editing while in his teens, and

WHEREAS, Roland Manteiga took a more active role in *La Gaceta* after serving in the Pacific Theater during World War II, and

WHEREAS, *La Gaceta* became a weekly publication in 1953 and added Italian-language features in addition to its Spanish and English, making it the only such trilingual newspaper in the United States, and

WHEREAS, Roland Manteiga was committed to his political ideology, often opinionated, but never dull, and his column of political commentary and speculation "As We Heard It" was required reading for Tampa Bay-area politicians and journalists for over 44 years, and

WHEREAS, Roland Manteiga, a champion of the underdog and a secret benefactor to people in need, was a modest man, honored many times for his civic and journalistic accomplishments, and

WHEREAS, Roland Manteiga loved Ybor City and has been recognized by community leaders as a gentleman devoted to his community, who sought to make a difference by reporting its history and celebrating its people, making them come alive for posterity, and

WHEREAS, although Roland Manteiga departed this life September 25, 1998, at the age of 78, his spirit lives on in Ybor City, and his legacy shall live on in the community he loved so much, and

WHEREAS, Roland Manteiga, pioneer journalist and editor, historian and chronicler of the rich traditions of Ybor City, a voice of conscience in the community, and a true friend to the powerful and the powerless alike, was a man who exemplified the virtues of hard work, insightful reporting, dedication to his community, modesty, and humanitarianism, and

WHEREAS, for over 40 years, Roland Manteiga served as owner and publisher of *La Gaceta*, a newspaper of unique significance in our nation, which portrays the multicultural diversity and spirit of our state and, through expressive and informative writing, draws together into one community people of many various backgrounds, NOW, THEREFORE,

Be It Resolved by the Senate of the State of Florida:

That the Florida Senate pauses in its deliberations to pay honor to the memory of Roland Manteiga and to recognize Saturday, September 25, 1999, as "Roland Manteiga Day" in Hillsborough County, Florida.

—**SR 2740** was introduced, read and adopted by publication.

At the request of Senator Jones—

By Senator Jones—

SR 2746—A resolution commending Chief Judge Joseph W. Hatchett for his outstanding accomplishments as a jurist, public servant, and distinguished American.

WHEREAS, The Honorable Joseph W. Hatchett has announced his intention to retire from the federal judiciary, effective May 14, 1999, and

WHEREAS, Joseph W. Hatchett's retirement will mark his completion of more than 30 years of distinguished public service to the State of Florida and the United States of America as a jurist and lawyer, and

WHEREAS, Joseph W. Hatchett is a native of Clearwater, Florida, and attended Florida Agricultural and Mechanical University (A.B. Degree, 1954 in Political Science); Howard University School of Law (J.D. Degree, 1959), and

WHEREAS, Joseph W. Hatchett served with great skill and dedication in the United States Marine Corps Reserve, Military Judge (Lieutenant Colonel), Retired, 1988; and the United States Army, 1954-1956, and

WHEREAS, Joseph W. Hatchett served as a United States Circuit Judge, United States Court of Appeals for the Eleventh Circuit (October 1, 1981 to September 30, 1996); United States Circuit Judge, United States Court of Appeals for the Fifth Circuit (July 1979 to October 1, 1981); Justice, Supreme Court of Florida (1975-1979); United States Magistrate for the Middle District of Florida (1971-1975); Special Hearing Officer for Conscientious Objectors, Department of Justice (1967-1968); First Assistant United States Attorney for the Middle District of Florida (1967-1971); Assistant United States Attorney, Jacksonville (1966); Contract Consultant to the City of Daytona Beach (1963-1966); and maintained a private law practice in Daytona Beach from 1959-1966 before assuming his current position as Chief Judge of the United States Court of Appeals for the Eleventh Circuit on October 1, 1996, and

WHEREAS, Joseph W. Hatchett was the first African-American to be appointed to a state's highest court since Reconstruction, and

WHEREAS, Joseph W. Hatchett was the first African-American to be elected to a statewide post in the Southern United States, and

WHEREAS, Joseph W. Hatchett was also the first African-American to serve on a federal appellate court in the Southern United States, and

WHEREAS, Joseph W. Hatchett has served in numerous elected and appointed positions achieving prominence throughout the legal community, and Omega Psi Phi Fraternity, and

WHEREAS, Joseph W. Hatchett has distinguished himself by publishing numerous articles and publications on the subjects of constitutional law, the judicial system, and criminal law in legal journals such as the George Mason University Civil Rights Law Journal, The Florida Bar Journal, the Florida Endowment for the Humanities Florida Forum, the University of Miami Law Review, and Case & Comment, and

WHEREAS, Joseph W. Hatchett has distinguished himself in the civil rights arena when such activism was unpopular and often life-threatening, and

WHEREAS, Joseph W. Hatchett has been a leader in the judiciary and legal profession, and an inspiration, mentor, and role model for countless Floridians, NOW, THEREFORE,

Be It Resolved by the Senate of the State of Florida:

That the Florida Senate commends Joseph W. Hatchett for his outstanding accomplishments as a jurist, public servant, and distinguished American and encourages all Floridians to pay tribute to his years of service to the State of Florida and the United States of America, and

BE IT FURTHER RESOLVED that a copy of this resolution, with the Seal of the Senate affixed, be presented to Joseph W. Hatchett at his retirement commemoration on May 21, 1999, as a tangible token of the sentiments of the Florida Senate.

—**SR 2746** was introduced, read and adopted by publication.

MOTIONS RELATING TO COMMITTEE REFERENCE

On motion by Senator McKay, by two-thirds vote **SB 1046** was withdrawn from the Committee on Fiscal Policy and **SJR 124** was withdrawn from the Committee on Rules and Calendar.

On motion by Senator Thomas, by two-thirds vote **SB 800** was withdrawn from the committees of reference and further consideration.

MOTIONS

On motions by Senator McKay, the rules were waived and by two-thirds vote **SB 898**, **SB 878** and **CS for SB 880** were placed on the Special Order Calendar to be considered before **CS for CS for SB 972**.

By direction of the President, the rules were waived and the Senate proceeded to—

SPECIAL ORDER CALENDAR

The Senate resumed consideration of—

SB 898—A bill to be entitled An act relating to title loan transactions; creating the "Florida Title Loan Act"; providing definitions; requiring licensure by the Department of Agriculture and Consumer Services to be in the business as a title loan lender; providing fees; providing for eligibility for licensure; providing for application; providing for suspension or revocation of license; providing for a title loan transaction form; providing for recordkeeping and reporting and safekeeping of property; providing for title loan charges; prohibiting certain acts; providing for the right to redeem; providing for lost title loan transaction forms; providing for a title loan lender's lien; providing for criminal penalties; providing for certain records from the Department of Law Enforcement; providing for subpoenas, enforcement of actions, and rules; providing a fine; providing for investigations and complaints; providing an appropriation; providing legislative intent; repealing s. 538.06(5), F.S., which allows a secondhand dealer to engage in a title loan transaction; repealing s. 538.15(4), (5), F.S., which prohibit certain acts and practices by secondhand dealers; amending ss. 538.03, 538.16, F.S.; deleting references to title loans; providing an effective date.

—which was previously considered and amended April 23. Pending **Amendment 10** by Senator Childers was withdrawn.

Senator Childers moved the following amendment which was adopted:

Amendment 11 (472872)(with title amendment)—Delete everything after the enacting clause and insert:

Section 1. *Short title.*—*This act may be cited as the "Florida Title Loan Act."*

Section 2. *Definitions.*—*As used in this act, the term:*

(1) "Department" means the Department of Agriculture and Consumer Services.

(2) "Commercially reasonable" means a sale or disposal which occurs and can be construed as an arms-length transaction. Nonpublic sales or disposal of personal property between licensees and business affiliates or family members are sales and disposal which are presumed not to be commercially reasonable.

(3) "Executive officer" means the president, chief executive officer, chief financial officer, chief operating officer, executive vice president, senior vice president, secretary, or treasurer.

(4) "Identification" means a government issued photographic identification.

(5) "Licensee" means a person who is licensed under this act.

(6) "Loan property" means any personal property certificate of title that is deposited with a title loan lender in the course of the title loan lender's business and is the subject of a title loan agreement.

(7) "Title loan agreement" means a written agreement whereby a title loan lender agrees to make a loan of a specific sum of money to a pledgor, and the pledgor agrees to give the title loan lender a security interest in unencumbered titled personal property, except by a title loan agreement, owned by the pledgor.

(8) "Title loan lender" means any person who is engaged in the business of making title loans or engaging in title loan agreements with pledgors, except such laws made pursuant to licensees under chapter 516, chapter 520, or chapter 655.

(9) "Title loan office" means the location at which, or premises from which, a title loan lender regularly conducts business.

(10) "Title loan transaction form" means the instrument on which a title loan lender records title loan agreements.

(11) "Titled personal property" means any personal property that has as evidence of ownership a state-issued certificate of title, except for a mobile home that is the primary residence of the pledgor.

(12) "Ultimate equitable owner" means a natural person who, directly or indirectly, owns or controls an ownership interest in a corporation, a foreign corporation, an alien business organization, or any other form of business organization, regardless of whether the person owns or controls such ownership interest through one or more natural persons or one or more proxies, powers of attorney, nominees, corporations, associations, partnerships, trusts, joint stock companies, or other entities or devices, or any combination thereof.

Section 3. License required; license fees.—

(1) A person may not engage in business as a title loan lender without a valid license issued by the department. A separate license is required for each physical location of a title loan office. The department shall issue more than one license to a person who complies with the requirements of this act for each license.

(2) An application for a license must be submitted to the department on forms prescribed by departmental rule. If the department determines that an application should be granted, it shall issue the license for a period not to exceed 1 year. A nonrefundable license fee of \$1,500 and a nonrefundable investigation fee of \$250 must accompany an initial application for each title loan location. The revenue from these fees is intended to reasonably reflect the actual cost of regulation. However, in no event shall the initial license fees payable by a single title loan lender with multiple title loan offices exceed \$15,000 in the aggregate.

(3) A license must be renewed annually and must be accompanied by a nonrefundable fee of \$1,500. However, in no event shall the renewal fees payable by a single title loan lender with multiple title loan offices exceed \$15,000 in the aggregate. A license that is not renewed by its expiration date automatically reverts to inactive status. A license may be reactivated within 3 months after it becomes inactive, upon submission of a completed reactivation form and payment of a reactivation fee. A license may not be reactivated more than 3 months after it becomes inactive.

(4) Each license must specify the location for which it is issued and must be conspicuously displayed at that location. In order to move a title loan office to another location, a licensee must give 30 days prior written notice to the department by certified or registered mail, return receipt requested, and the department shall then amend the license accordingly. A license is not transferable or assignable.

(5) The department may deny an initial application for a license if the applicant or any person with power to direct the management or policies of the applicant is the subject of a pending criminal prosecution or governmental civil enforcement action in any jurisdiction until the conclusion of the criminal prosecution or enforcement action.

(6) A licensee must designate and maintain an agent in this state for service of process.

(7) A person must apply to the department for a new license upon the change of any person owning 25 percent or greater interest in any title loan office and must pay the nonrefundable license and investigation fees, up to a maximum of \$10,000.

(8) All moneys collected by the department under this act shall be deposited into the State Treasury to be placed in the General Inspection Trust Fund for the sole purpose of implementing this act.

Section 4. Eligibility for license.—

(1) To be eligible for a title loan lending license, an applicant must:

(a) Be of good moral character and not have been found guilty of a crime of moral turpitude.

(b) File with the department a bond in the amount of \$100,000 for each license with a surety company qualified to do business in this state.

However, in no event shall the aggregate amount of the bond required for a single title loan lender exceed \$1 million. In lieu of the bond, the applicant may provide proof to the department that it has a net worth in excess of \$1 million; the applicant may provide to the department a current audited financial statement that documents that the applicant's net worth is in excess of \$1 million; or the applicant may establish a certificate of deposit or an irrevocable letter of credit in a Florida financial institution, as defined in chapter 655.005, Florida Statutes, in the amount of the bond. The original bond, certificate of deposit, or letter of credit must be filed with the department, and the department must be the beneficiary of the document. The bond, certificate of deposit, or letter of credit must be in favor of the department for the use and benefit of any consumer who is injured pursuant to a title loan transaction by the fraud, misrepresentation, breach of contract, financial failure, or violation of any provision of this act by the title loan lender. The liability may be enforced by an administrative action or lawsuit in a court of competent jurisdiction. However, in a lawsuit, the bond, certificate of deposit, or letter of credit posted with the department is not subject to any judgment or other legal process issuing out of or from such court in connection with the lawsuit, but the bond, certificate of deposit, or letter of credit is enforceable only by administrative proceedings before the department. It is the intent of the Legislature that such bond, certificate of deposit, or letter of credit shall be applicable and liable only for the payment of claims duly adjudicated by the department. The bond, certificate of deposit, or letter of credit shall be payable on a pro rata basis as determined by the department, but the aggregate amount may not exceed the amount of the bond, certificate of deposit, or letter of credit.

(c) Not have been convicted of a felony within the last 10 years or be acting on behalf of an ultimate equitable owner who has been convicted of a felony within the last 10 years.

(d) Not have been convicted, and not be acting as an ultimate equitable owner for someone who has been convicted, of a crime that the department finds directly relates to the duties and responsibilities of a title loan lender within the last 10 years.

(2) An applicant for a title loan lending license may not be a motor vehicle dealer licensed under chapter 320 or be related to a licensed motor vehicle dealer by common officers, directors, principals, stockholders, agents, family, or employees.

(3) If an applicant for a title loan lending license is other than a corporation or limited liability company, the eligibility requirements of this section apply to each direct or ultimate equitable owner.

(4) If an applicant for a title loan lending license is a corporation or limited liability company, the eligibility requirements of this section apply to each direct or ultimate equitable owner of at least 25 percent of the outstanding equity interest of such corporation and to each director and executive officer.

Section 5. Application for license.—

(1) An application for a license to make title loans must be in writing, under oath, and in the form prescribed by departmental rule, and must contain the name and residence and business addresses of the applicant, and, if the applicant is a partnership or association, of every member thereof, and, if a corporation, of each executive officer and director and ultimate equitable owner of at least 25 percent thereof; must state whether any of the above has been arrested within the last 10 years for, convicted of, or is under indictment or information for, a felony or crime that directly relates to the duties and responsibilities of a title loan lender, and, if so, the nature thereof; must specify the county and municipality, with the street and number or location, where the business is to be conducted; and must provide such further relevant information as the department requires by rule. At the time of application, the applicant must pay the nonrefundable license fees specified in section 3. Applications, except for applications to renew or reactivate a license, must be accompanied by a nonrefundable investigation fee of \$250.

(2) Notwithstanding the foregoing, the application need not state the full name and address of each officer, director, and shareholder if the applicant is owned directly or beneficially by a person who as an issuer has a class of securities registered pursuant to Section 12 of the Securities Exchange Act of 1934, or pursuant to Section 15 (d) thereof is an issuer of securities which is required to file reports with the Securities and Exchange Commission, if the person files with the department any infor-

mation, documents, and reports required by that act to be filed with the Securities and Exchange Commission.

(3) Upon the filing of an application for a license and payment of all applicable fees, the department shall, unless the application is to renew or reactivate an existing license, investigate the facts concerning the applicant's proposed activities. The department shall investigate the facts and shall approve an application and issue to the applicant a license that will evidence the authority to do business under this act if the department finds that the eligibility requirements for the license are satisfied. The license must be prominently displayed at the front desk or counter at the title loan office.

(4) A license that is not renewed by its expiration date shall automatically revert to inactive status. An inactive license may be reactivated upon submission of a completed reactivation application, payment of the annual license fee, and payment of a reactivation fee of \$250. A license expires on the date at which it has been inactive for 3 months.

(5) A licensee may not change the place of business maintained under a license without giving prior written notice to the department.

(6) A licensee may make loans within a place of business in which other business is solicited or engaged in, unless the department finds that the conduct of the other business by the licensee results in the evasion of this act or combining such other business activities results in practices that are detrimental, misleading, or unfair to consumers. Upon such a finding, the department shall order the licensee to desist from such evasion or other business activities. A license may not be granted to or renewed for any person or organization engaged in the pawnbroking business.

(7) Licenses are not transferable or assignable. A licensee may invalidate any license by delivering it to the department with written notice of its surrender by certified or registered mail, return receipt requested, but such delivery does not affect any civil or criminal liability or the authority to enforce this act for acts committed in violation thereof.

Section 6. Suspension, revocation of license.—

(1) The following acts are violations of this act and constitute grounds for the disciplinary actions specified in subsection (2):

(a) Failure to comply with any provision of this act, any rule or order adopted under this act, or any written agreement entered into with the department;

(b) Fraud, misrepresentation, deceit, or gross negligence in any title loan transaction, regardless of reliance by or damage to the pledgor;

(c) Fraudulent misrepresentation, circumvention, or concealment of any matter required to be stated or furnished to a pledgor under this act, regardless of reliance by or damage to the pledgor;

(d) Willful imposition of illegal or excessive charges in any title loan transaction;

(e) False, deceptive, or misleading advertising by a title loan lender;

(f) Failure to maintain, preserve, and make available for examination, all books, accounts, or other documents required by this act, by any rule or order adopted under this act, or by any agreement entered into with the department;

(g) Aiding, abetting, or conspiring with another person to circumvent or violate this act;

(h) Refusal to permit inspection of books and records in an investigation or examination by the department or refusal to comply with a subpoena issued by the department; or

(i) Criminal conduct in the course of a person's business as a title loan lender.

(2) Upon a finding by the department that a person has committed an act prohibited by subsection (1), the department may:

(a) Issue a notice of noncompliance pursuant to section 120.695, Florida Statutes;

(b) Deny an application for a license;

(c) Revoke or suspend a license;

(d) Place a licensee or an applicant on probation for a period of time and subject to such conditions as the department specifies;

(e) Place permanent restrictions or conditions upon issuance or maintenance of a license;

(f) Issue a reprimand; or

(g) Impose an administrative fine not to exceed \$5,000 for each act or violation.

(3) In addition to the acts prohibited by subsection (1), the following acts are grounds for denial of a license or for revocation, suspension, or restriction of a license:

(a) Making a material misstatement of fact in an initial or renewal application for a license;

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

(c) Having been convicted or found guilty of a crime involving fraud, dishonest dealing, or any act of moral turpitude;

(d) Being insolvent or having demonstrated a lack of honesty or financial responsibility; or

(e) The existence of a fact or condition that, if it had existed or had been known to exist at the time of the original issuance of the license, would have justified the department in refusing a license.

(4) The department may take any action specified in subsection (2) as to any partnership, corporation, or association if the department finds grounds for such action as to any member of the partnership, as to any executive officer or director of the corporation or association, or as to any person who has power to direct the management or policies of the partnership, corporation, or association.

(5) A licensee is responsible for the acts of its employees and agents if, with actual knowledge of such acts, it retained profits, benefits, or advantages accruing from such acts or ratified the conduct of the employee or agent as a matter of law or fact.

(6) The manner of giving notice and conducting a hearing is governed by chapter 120, Florida Statutes.

(7) Any title loan agreement made by an unlicensed person is voidable, in which case the person forfeits the right to collect any moneys, including principal and finance charges, from the pledgor in connection with the agreement and must return to the pledgor the loan property in connection with the agreement or the fair market value of the property.

Section 7. Title loan transaction form.—

(1) At the time a title loan lender enters into each title loan agreement, the title loan lender shall complete a title loan transaction form for such transaction, and the pledgor shall sign such completed form. The department shall approve the design and format of the title loan transaction form, which shall elicit the information required under this section. In completing the title loan transaction form, the title loan lender shall record the following information, which must be typed or written indelibly and legibly in English:

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

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

(c) The name, address, date of birth, physical description, and social security number of the pledgor.

(d) The date of the transaction.

(e) The identification number and the type of identification, including the issuing agency, accepted from the pledgor.

(f) The amount of money advanced, which must be designated as the "amount financed."

(g) The maturity date of the title loan agreement.

(h) The total title loan charge payable on the maturity date, designated as the "finance charge."

(i) The total amount, amount financed plus finance charge, which must be paid to redeem the loan property on the maturity date, designated as the "total amount of all payments."

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

(2) The following information must also be printed on title loan transaction forms:

(a) The name and address of the title loan office.

(b) The name and address of the department and a telephone number that consumers may use to make complaints.

(c) A statement in not less than 12-point type that:

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 term. 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 AN ANNUAL PERCENTAGE RATE LOWER THAN THAT SHOWN ON THIS FORM.

(d) The statement that "The pledgor represents and warrants that the titled personal property to which the loan property relates is not stolen, that it has no liens or encumbrances against it, that the pledgor has the right to enter into this transaction, and that the pledgor will not apply for a duplicate certificate of title while the title loan agreement is in effect."

(e) Immediately above the signature of the pledgor, the statement that "I, the pledgor, declare under penalty of perjury that I have read the foregoing document and that to the best of my knowledge and belief the facts contained in it are true and correct."

(f) A blank line for the signature of the pledgor.

(3) At the time of the transaction, the title loan lender shall deliver to the pledgor an exact copy of the completed title loan transaction form.

(4) The pledgor shall agree for the title loan lender to keep possession of the certificate of title. The pledgor shall have the exclusive right to redeem the certificate of title by repaying the loan in full and by complying with the title loan agreement. When the certificate of title is redeemed, the title loan lender shall release the security interest in the titled personal property and shall return the personal property certificate of title to the pledgor. The title loan agreement shall provide that upon failure by the pledgor to redeem the certificate of title at the end of the original agreement period, or at the end of any extension thereof, the title loan lender may take possession of the property. The title loan lender shall retain physical possession of the certificate of title for the duration of the title loan agreement, but may not be required to retain physical possession of the titled personal property at any time. A title loan lender may hold only unencumbered certificates of title for loan.

Section 8. Recordkeeping; reporting; safekeeping of property.—

(1) A title loan lender shall maintain, at its principal place of business, such books, accounts, and records of the business conducted under the license issued for such place of business as will enable the department to determine the licensee's compliance with this act. The licensee shall

make all such books, accounts, and records of business conducted under the license available at a convenient location in this state upon request of the department.

(2) The department may allow the maintenance of books, accounts, and records at a location other than a principal place of business and may require them to be produced and available at a reasonable and convenient location in this state within a reasonable period of time.

(3) The title loan lender shall maintain the original copy of each completed title loan transaction form, and may not obliterate, discard, or destroy any original copy, for at least 2 years after making the final entry on any loan recorded therein.

(4) All loan property, or property related to the title loan transaction, which is delivered to a title loan lender must be securely stored and maintained at the title loan office unless the title document has been forwarded to the appropriate state agency for the recording or deletion of a lien.

(5) The department may prescribe the minimum information to be shown in the books, accounts, and records of licensees so that the department can determine compliance with this act.

Section 9. Title loan charges.—

(1) In a title loan agreement, a title lender may contract for and receive a finance charge. The finance charge under a title loan agreement may not exceed 63 percent simple interest during the first year that the agreement is in effect nor may the amount of interest charged exceed 18 percent in any of the first 3 months or 1 percent in any of the remaining 9 months. In addition, a title loan lender may charge the borrower an application fee of \$22 or 10 percent of the loan amount, whichever is less.

(2) Any extension must be executed in writing and must clearly specify the new maturity date, the title loan finance charges paid for the extension, and title loan finance charges owed on the new maturity date, and a copy must be supplied to the pledgor. A title loan lender may not capitalize any unpaid finance charge as part of the amount financed in a subsequent title loan transaction.

(3) Payment by a title loan borrower may not be considered late unless it is received more than 7 working days after the date the payment is due. If a late fee is charged by the title loan lender, the total amount of the late fee may not exceed 10 percent of the amount of the payment that is late.

(4) If a title loan agreement is not satisfied within 1 year after its inception, the title loan lender may receive a finance charge on the outstanding principal balance at a rate not to exceed 18 percent per annum for the period of time that the loan remains outstanding beyond 1 year.

(5) Interest on a Title loan may be charged only on the principal amount of the loan and may not be compounded.

(6) Any finance charge contracted for or received, directly or indirectly, in excess of the amounts authorized under this section are prohibited, may not be collected, and render the title loan agreement voidable, in which case the title loan lender shall forfeit the right to collect any interest or finance charges. Upon the pledgor's written request delivered to the title loan lender by certified mail, return receipt requested, within 30 days after the maturity date, the title loan lender must return to the pledgor the loan property delivered to the title loan lender upon payment of the balance of the principal remaining due; there is no penalty for a violation resulting from an accidental and bona fide error that is corrected upon discovery. Any action to circumvent the limitation on title loan interest or any other amounts collectible under this act is voidable. Any transaction involving a person's delivery of a personal property certificate of title in exchange for the advancement of funds on the condition that the person shall or may redeem or repurchase the certificate of title upon the payment of a sum of money, whether the transaction is characterized as a "buy-sell agreement," "sale-leaseback agreement," or otherwise, is a violation of this act if the sum exceeds the amount that a title loan lender may collect in a title loan agreement or if the terms of the transaction otherwise conflict with the permitted terms and conditions of a title loan agreement.

(7) Any fees or taxes paid to a governmental agency and directly related to a particular title loan transaction may be collected from the pledgor, in addition to the permitted finance charge.

(8) The title loan lender must require a borrower who is in active military service to sign an affidavit informing the borrower that the borrower has 10 days within which to rescind the contract and repay only the principal without penalty or interest, and the title loan lender shall retain a copy of the affidavit and give a copy to the borrower to take to the military legal officer. However, the lender also is responsible for informing the military legal office or of the loan and rescision agreement.

Section 10. Failure to redeem; default.—

(1) Upon a pledgor's default under the title loan agreement or failure to redeem the pledged property on or before the maturity date of the title loan agreement, the title loan lender may take possession of the titled personal property.

(2) A title loan lender who takes possession of the titled personal property must comply with the applicable requirements of part V of chapter 679.

Section 11. Prohibited acts.—A title loan lender, or agent or employee of a title loan lender, may not:

(1) Falsify or fail to make an entry of any material matter in a title loan lender transaction form.

(2) Refuse to allow the department to inspect completed title loan transaction forms or loan property during the ordinary hours of the title loan lender's business or at other times acceptable to both parties.

(3) Enter into a title loan agreement with a person under the age of 18 years.

(4) Make any agreement requiring or allowing for the personal liability of a pledgor or the waiver of any provision of this act.

(5) Knowingly enter 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 or her own name or the registered name of his or her business.

(6) Fail to exercise reasonable care in the safekeeping of loan property or titled personal property repossessed under this act.

(7) Fail to return loan property or repossessed titled personal property to a pledgor, with the title loan lender's liens on the property properly released, upon payment of the full amount due the title loan lender, 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.

(8) Sell or otherwise charge for insurance in connection with a title loan agreement, if the title loan lender realizes a profit thereon.

(9) Charge or receive any finance charge, interest, or fees which are not authorized by this act.

(10) Engage in business as a title loan lender without first securing the license.

(11) Refuse to accept a partial repayment of the amount financed, if all accrued finance charges have been paid.

(12) Charge a prepayment penalty.

(13) Advertise using the words "interest free loans" or "no finance charges."

Section 12. Right to redeem; lost title loan transaction form.—

(1) Any person presenting identification as the pledgor and presenting the pledgor's copy of the title loan transaction form to the title loan lender is presumed to be entitled to redeem the loan property described in the title loan lender transaction form. However, if the title loan lender determines that the person is not the pledgor, the title loan lender is not required to allow the redemption of the loan property by such person. The person redeeming the loan property must sign the pledgor's copy of the title loan transaction form, which the title loan lender may retain to evidence such person's receipt of the loan property. A person redeeming the loan property who is not the pledgor must show identification to the title loan lender and written authorization from the pledgor, and the title

loan lender must record that person's name and address on the title loan transaction form retained by the title loan lender. In such case, the person redeeming the pledgor's copy of the title loan transaction form must be given a copy of the signed form as evidence of the concerned transaction.

(2) If the pledgor's copy of the title loan transaction form is lost, destroyed, or stolen, the pledgor must notify the title loan lender in writing by certified or registered mail, return receipt requested, or in person evidenced by a signed receipt, and receipt of the notice invalidates the title loan transaction form if the loan property has not previously been redeemed. Before delivering the loan property or issuing a new title loan transaction form, the title loan lender shall require the pledgor to make a written statement of the loss, destruction, or theft of the pledgor's copy of the title loan transaction form. The title loan lender shall record on the written statement the type of identification and the identification number accepted from the pledgor, the date the statement is given, and the number or date of the title loan transaction form lost, destroyed, or stolen. The statement must be signed by the title loan lender or the title loan office employee who accepts the statement from the pledgor.

Section 13. Title loan lender's lien.—

(1) The title loan lender may record its security interest in the titled personal property to which the loan property relates by noting the lien on the certificate of title.

(2) The title loan lender is, upon entering into a title loan agreement and taking possession of the borrower's certificate of title, a bona fide lienholder whose interest has been perfected.

Section 14. Criminal penalties.—

(1) A person who engages in business as a title loan lender without a license commits a felony of the third degree, punishable as provided in section 775.082, Florida Statutes, section 775.083, Florida Statutes, or section 775.084, Florida Statutes.

(2) In addition to any other penalty, any person who willfully violates this act or who willfully makes a false entry in any record specifically required by this act commits a misdemeanor of the first degree, punishable as provided in section 775.082, Florida Statutes, or section 775.083, Florida Statutes.

(3) The possession of a certificate of title by a title loan lender pursuant to a title loan agreement shall not be considered a bailment of the titled personal property.

Section 15. Records from the Department of Law Enforcement.—The Department of Law Enforcement, on request, shall supply to the department any arrest and conviction records in its possession of an individual applying for or holding a license under this act.

Section 16. Subpoenas; enforcement actions; rules.—

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

(2) In addition to other powers to administer this act, the department may:

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

(b) Issue and serve upon a person an order requiring that person to cease and desist and take corrective action whenever the department

finds that such person is violating, has violated, or is about to violate this act, any rule or order adopted under this act, or any written agreement entered into with the department.

(c) If the department finds that conduct described in paragraph (b) presents an immediate danger to the public health, safety, or welfare requiring an immediate final order, issue an emergency cease and desist order reciting with particularity the facts underlying such findings. The emergency cease and desist order is effective immediately upon service of a copy of the order on the respondent named therein and remains effective for 90 days. If the department begins nonemergency proceedings under paragraph (b), the order remains effective until the conclusion of the proceedings under sections 120.569 and 120.57, Florida Statutes.

(d) Impose and collect an administrative fine against any person found to have violated this act, any rule or order adopted under this act, or any written agreement entered into with the department, in an amount not to exceed \$5,000 for each violation.

(3) The department may adopt rules to administer this act.

Section 17. Investigations and complaints.—

(1) The department may, at intermittent periods, make investigations and examinations of any licensee or other person to determine compliance with this act. For such purposes, it may examine the books, accounts, records, and other documents or matters of any licensee or other person. It may compel the production of all relevant books, records, and other documents and materials relative to an examination or investigation. Such investigations and examinations shall not be made more often than once during any 12-month period unless the department has good cause to believe that the licensee is not complying with this act.

(2) Any person having reason to believe that this act has been violated may file with the department a written complaint setting forth the details of the alleged violations and the department, upon receipt of the complaint, may inspect the pertinent books, records, letters, and contracts of the licensee and of the seller involved, relating to the complaint.

Section 18. *The sum of \$700,000 is appropriated from the General Inspection Trust Fund to the Department of Agriculture and Consumer Services to administer this act and to pay the salaries and other administrative expenses for nine positions to implement this act during the 1999-2000 fiscal year.*

Section 19. Legislative intent.—*It is the intent of the Legislature that title loans shall be regulated by this act. This act supersedes any other law affecting title loans to the extent of the conflict.*

Section 20. Subsection (1) of section 538.03, Florida Statutes, is amended to read:

538.03 Definitions; applicability.—

(1) As used in this part, the term:

(a) "Secondhand dealer" means any person, corporation, or other business organization or entity which is not a secondary metals recycler subject to part II and which is engaged in the business of purchasing, consigning, or pawning secondhand goods ~~or entering into title loan transactions~~. However, secondhand dealers are not limited to dealing only in items defined as secondhand goods in paragraph (g). Except as provided in subsection (2), the term means pawnbrokers, jewelers, precious metals dealers, garage sale operators, secondhand stores, and consignment shops.

(b) "Precious metals dealer" means a secondhand dealer who normally or regularly engages in the business of buying used precious metals for resale. The term does not include those persons involved in the bulk sale of precious metals from one secondhand or precious metals dealer to another.

(c) "Pawnbroker" means any person, corporation, or other business organization or entity which is regularly engaged in the business of making pawns but does not include a financial institution as defined in s. 655.005 or any person who regularly loans money or any other thing of value on stocks, bonds, or other securities.

(d) "Pawn" means either of the following transactions:

1. Loan of money.—A written or oral bailment of personal property as security for an engagement or debt, redeemable on certain terms and with the implied power of sale on default.

2. Buy-sell agreement.—An agreement whereby a purchaser agrees to hold property for a specified period of time to allow the seller the exclusive right to repurchase the property. A buy-sell agreement is not a loan of money.

(e) "Secondhand store" means the place or premises at which a secondhand dealer is registered to conduct business as a secondhand dealer, or conducts business, including pawn shops.

(f) "Consignment shop" means a shop engaging in the business of accepting for sale, on consignment, secondhand goods which, having once been used or transferred from the manufacturer to the dealer, are then received into the possession of a third party.

(g) "Secondhand goods" means personal property previously owned or used, which is not regulated metals property regulated under part II and which is purchased, consigned, or pawned as used property. Such secondhand goods shall be limited to watches; diamonds, gems, and other precious stones; fishing rods, reels, and tackle; audio and video electronic equipment, including television sets, compact disc players, radios, amplifiers, receivers, turntables, tape recorders; video tape recorders; speakers and citizens' band radios; computer equipment; radar detectors; depth finders; trolling motors; outboard motors; sterling silver flatware and serving pieces; photographic equipment, including cameras, video and film cameras, lenses, electronic flashes, tripods, and developing equipment; microwave ovens; animal fur coats; marine equipment; video games and cartridges; power lawn and landscape equipment; office equipment such as copiers, fax machines, and postage machines but excluding furniture; sports equipment; golf clubs; weapons, including knives, swords, and air guns; telephones, including cellular and portable; firearms; tools; calculators; musical instruments, excluding pianos and organs; lawnmowers; bicycles; typewriters; motor vehicles; gold, silver, platinum, and other precious metals excluding coins; and jewelry, excluding costume jewelry.

(h) "Transaction" means any ~~title loan~~, purchase, consignment, or pawn of secondhand goods by a secondhand dealer.

~~(i) "Title loan" means a loan of money secured by bailment of a certificate of title to a motor vehicle. A title loan is not a pawn if the secondhand dealer does not maintain physical possession of the vehicle throughout the term of the transaction.~~

~~(j)~~ (i) "Precious metals" means any item containing any gold, silver, or platinum, or any combination thereof, excluding:

1. Any chemical or any automotive, photographic, electrical, medical, or dental materials or electronic parts.
2. Any coin with an intrinsic value less than its numismatic value.
3. Any gold bullion coin.
4. Any gold, silver, or platinum bullion that has been assayed and is properly marked as to its weight and fineness.
5. Any coin which is mounted in a jewelry setting.

~~(j)~~ (k) "Department" means the Department of Revenue.

~~(k)~~ (l) "Pledge" means pawn or buy-sell agreement.

Section 21. Subsection (1) of section 538.16, Florida Statutes, is amended to read:

538.16 Pawnbrokers ~~Secondhand dealers~~; disposal of property.—

(1) Any personal property pawned with a pawnbroker, whether the pawn is a loan of money or a buy-sell agreement ~~or a motor vehicle which is security for a title loan~~, is subject to sale or disposal if the pawn is a loan of money and the property has not been redeemed or there has been no payment on account made for a period of 90 days, or if the pawn is a buy-sell agreement ~~or if it is a title loan~~ and the property has not been repurchased from the pawnbroker ~~or the title redeemed from the title lender~~ or there has been no payment made on account within 60 days.

necessary to enforce requirements of the opportunity scholarship program is *not* expanded.

Students with Disabilities:

Creates a pilot program in Sarasota County to provide scholarships for students with disabilities who have failed to meet specific performance levels identified in the student's IEP. The parents may apply for a scholarship regardless of the grade of the school their child attends. Student participation is limited in the first year to 5% of students with disabilities, in the second year to 10% of students with disabilities, and in the third year and subsequent years to 20% of students with disabilities at the participating school.

Powers and Duties of the Commissioner:

Revises powers of the Commissioner to implement a program of school improvement and education accountability designed to provide all students the opportunity to make adequate learning gains in each year of school. The Commissioner shall *annually* prepare and publish reports giving statistics and other useful information pertaining to the Opportunity scholarship program.

Educational Planning:

Enhances the comprehensive management information system to clarify that the system must be able to collect, via electronic transfer, all student and school performance data and produce a comprehensive annual report on school and district performance.

Educational Evaluation Procedures:

Requires the SBE to approve student performance standards in key academic subject areas and grade levels, and eliminates the requirement that the Commissioner designate program categories and grade levels for which performance standards are to be approved.

Student Assessment Program:

Establishes requirements for the design of the student assessment program. Requires the Commissioner to direct Florida school districts to participate in the administration of the NAEP.

DOE must develop a statistical assessment tool for measuring pupil progress. The system must measure student learning on teacher, school, and district levels. The system must look at "effects" of instruction and must be able to express the distributions in linear scales.

The student achievement testing program of the statewide assessment program must be administered *annually in grades 3 through 10* to measure student proficiency in reading, writing, mathematics, and other content areas. Adds *science* to the areas of proficiency for which the statewide assessment must measure. Science proficiency must be measured statewide beginning in 2003.

All school districts must participate in the statewide assessment system, both the annual testing of children in grades 3 through 10 and the measurement for annual student learning and school performance. The districts must also report assessment results as required by the enhanced management information system.

Student performance data must be used in developing objectives of the school improvement plan, evaluation of instructional and administrative personnel, assignment of staff, allocation of resources, acquisition of instructional materials and technology, and promotion and assignment of students into educational programs.

The Commissioner must prepare annual reports that include the descriptions of the performance of all schools participating in the assessment program, including their *major student populations*. The reports must also include the median scores of all students who scored *at or in the lowest 25th percentile* of the state in the prior school year. Student records shall remain private.

Beginning with the 1998-99 school year, the annual report must identify schools as being "A" through "F", as defined by SBE rule:

- In the 1998-99 and 1999-2000 school years, a school's grade will be determined by students' FCAT scores and other appropriate performance data, including, but not limited to: attendance and dropout rates, school discipline data, and student readiness for college.
- Beginning with the 2000-2001 school year, a school's grade will be based on a combination of students' FCAT achievement scores, the learning gains of the students, and other appropriate performance data, including, but not limited to: attendance and dropout rates, school discipline data, and student readiness for college.
- Beginning with the 2001-2002 school year and thereafter, a school's grade will be based on student learning gains as measured by the annual student FCAT assessments in grades 3-10, and on other

appropriate performance data, including, but not limited to: attendance and dropout rates, school discipline data, cohort graduation rate, and student readiness for college.

For purposes of implementing the opportunity scholarship program, a school identified as critically low performing based on both 1996-97 and 1997-98 school performance data and state board-adopted criteria, and that receives a school grade of "F" based upon 1998-99 school performance data is considered to have failed to make adequate progress for 2 years. All other schools that receive a school grade of "F" based on 1998-99 school performance data are considered to have failed to make adequate progress for 1 year. If any of the 4 schools that were critically low performing 96-97 and 97-98 receives an "F" in 98-99 they are considered as failing for 2 years.

Beginning in the 1999-2000 school year, each school designated in performance grade category "A," making excellent progress, or as having improved at least two performance grade categories, shall have greater authority over the allocation of the school's total budget generated from the FEFP, state categoricals, lottery funds, grants, and local funds, as specified in state board rule. The rule will provide that the increased budget authority shall remain in effect until the school's performance grade declines.

Student assessment data used in determining a school grade must include: 1) the median scores of all eligible students enrolled in the school who were assessed on the FCAT, and 2) the median scores of all eligible students enrolled in the school who were assessed on the FCAT and scored at or in the lowest 25th percentile in the state the prior school year. The DOE shall study the effects of mobility on the performance of highly mobile students and recommend programs to improve the performance of such students.

Beginning with the 1999-2000 school year, schools will be given an improvement rating. The annual report must identify each school's performance as having improved, remained the same, or declined. The improvement rating is based on a comparison of the current year's and prior year's student and school performance data. Schools that improve at least one grade are eligible for school recognition awards.

School report cards must be published annually by the DOE and the school district. They must be in an easy-to-read format. Parents and guardians are entitled to a school report card for the school in which their child is enrolled.

Statewide Assessments

- Must be capable of measuring a student's mastery of the Sunshing State Standards for that grade level and above.
- Must be capable of measuring the annual progress of each student in mastering the Sunshine State Standards.
- Must include measures in reading and mathematics in every grade level and measures for writing in grades 4, 8, and 10.
- Must include a norm-referenced subtest.
- Adds science to the measures tested in grades 4, 8, and 10. Science is to begin statewide in 2003.
- Assessments must be designed to protect integrity of the data and prevent score inflation.
- Assessment system must use measures of student learning to determine student, classroom, school, and district.
- DOE and OPPAGA must use recognized approaches to statistical variance and estimating random effects.

Annual assessments that do not contain performance items shall be administered *no earlier* than March of each school year. Subtests that contain performance items may be given earlier than March, if they provide valid data on comparisons of student learning from year to year.

Local assessments must measure subject and *grade levels* other than those required by state assessments. Assessments must be implemented statewide no later than the spring of the 2000-2001 school year. The Legislature may factor in school performance in calculating performance-based funding policy provided for in the GAA.

Comprehensive Revision of System of School Improvement:

- Adds conforming language to implement changes in Art. IX of the State Constitution.
- Provides for schools designated "D" and "F" to receive assistance and intervention.

Implementation of System of School Improvement:

- Deletes requirements of the annual identification of the allocation and uses of Education Enhancement Trust Funds in annual reports

- by schools and school districts.
- Precludes waiver of requirement for *reporting of out-of-field teaching assignments*. Adds provisions for deregulated status for schools (upon request of the school) designated as making excellent progress or schools that have improved at least two performance grade categories.
- Requires DOE to assign a community assessment team to each school district with a school designated as "D" or "F" to review the school performance data and determine causes for low performance. The team must make recommendations to the school board, DOE, and SBE for implementing an assistance and intervention plan. The assessment team must be made up of a DOE representative, parents, business representatives, educators, and community activists and must represent the demographics of the community.
- District school boards are encouraged to prioritize the expenditures of funds received from specific appropriation 110A of the General Appropriations Act of FY 1999-2000 to improved student performance in schools that receive a performance grade category designation of "D" or "F."

Florida Commission on Education Reform & Accountability:

Repeals the Florida Commission on Education Reform & Accountability.

Powers of School Board:

The school board must develop a **2-year** plan of increasing individualized assistance and intervention for each school *in danger* of not meeting state standards or making adequate progress.

The school board must notify the Commissioner and the SBE by the end of **2 years** of any school that fails to make adequate progress *in any 4 year period*. School districts must provide intervention and assistance to schools in danger of being designated as "F," failing to make adequate progress.

Authorizes school boards to declare an emergency when it they have 1 or more schools that are "D" or "F" and with appropriate bargaining units are able to free these schools from contract restrictions that limit the school's ability to implement programs and strategies needed to improve student performance.

Assessment Procedures and Criteria:

Revises the assessment procedure for school district instructional, administrative, and supervisory personnel. Beginning with full implementation of annual learning gains, such assessments must be based *primarily* on student performance.

Florida School Recognition Program:

Revises program to provide greater autonomy in addition to financial awards to schools that sustain high performance. The program must add school grade criteria and student learning gains in its initial eligibility criteria. Adds graduation rate and cohort graduation rate to the initial criteria for eligibility.

Pupil Progression:

Students must receive remediation or may be retained with an intensive program that is different from the previous year's program and that takes into account the student's learning style. School boards may not assign a student to a grade level based solely upon the student's age or other factors that constitute social promotion. They are directed to allocate remedial and supplemental instructional resources first to students who fail to meet achievement performance levels required for promotion.

Requires the state board rules to specifically address the promotion of students with limited English proficiency and students with disabilities, and a school district to consider an appropriate alternative placement for a student who has been retained for 2 or more years.

Supplemental Academic Instruction Categorical Fund:

Creates the Supplemental Academic Instruction Categorical Fund to provide supplemental instruction to students in kindergarten through grade 12. Beginning with the 1999-2000 school year, FTE funding in the FEFP for instruction beyond the regular 180-day school year will only be provided for students enrolled in juvenile justice education programs.

Summer school FTE membership is as set forth in statute unless otherwise provided in GAA. Dropout prevention programs are included in Group 1 programs under s. 236.081(1)(d)3., F.S., meaning the cap on student enrollment in dropout prevention programs is removed.

Each school district receiving funds from the Supplemental Categorical must submit to DOE a plan which identifies students to be served and the scope of the supplemental instruction to be provided. Districts must

also document the district's progress in the areas of academic improvement, graduation rate, dropout rate, attendance rate, retention/promotion rate. DOE must compile an annual report to be submitted to the presiding officers by Feb. 15.

FSU School:

Allows the FSU School to spend from its FEFP or lottery funds money for reading, writing or math remediation for any student who requires postsecondary remediation.

Definitions of FTE:

Eliminates certain provisions relating to calculations of the equivalent of a full-time student, and revises provisions relating to membership in programs scheduled for more than 180 days to include students enrolled in juvenile justice education programs.

Graduation and Dropout Rates:

Adopts new graduation and cohort graduation rates and study, which may include a 5-year rate as well as a 4-year rate.

Allocation of Lottery Revenue:

Effective July 1, 2002, failure of a district to adopt and implement a performance pay policy will also result in withholding allocations from the EETF.

Performance Pay Policy:

By June 30, 2002, school boards are required to adopt a performance pay policy which must base at least 5 percent of the salary of school administrators and instructional personnel on annual performance. The policy is subject to negotiation as provided in Ch. 447, F.S. Employees who demonstrate outstanding performance must be allowed to earn 5 percent of their individual salary. Failure to comply will result in withholding of lottery dollars.

Principals and Assistant Principals:

The SBE is required to approve criteria for selection of assistant principals and principals, and authorize school districts to contract with private entities for assessment, evaluation, and training.

Duties of Principals:

Principals are assigned the responsibility for performance of school personnel. They are required to apply a personnel assessment system approved by the school board.

Management Training Act:

The SBE must adopt rules regarding the training of school district management personnel. The bill directs OPPAGA, in consultation with DOE, to conduct a comprehensive review of the Management Training Act to determine its effectiveness and submit recommendations to the Legislature by January 1, 2000. The Management Training Act is repealed effective June 30, 2000.

Duties of Instructional Personnel:

The *primary* duties of instructional personnel are to help students meet or exceed learning goals, state and local achievement requirements, and to master skills to graduate from high school and be prepared for postsecondary education, technical education, or work. These duties apply to instructional personnel whether they teach or function in a support role. Adds provisions of technology-based instruction with regards to teacher's duty.

Teacher Teaching Out-of-Field:

School boards are required to adopt and implement a plan to ensure the *competency* of teachers with out-of-field teaching assignments. Out-of-field teachers must participate in a certification, staff development, or peer assistance program. The cost of the program must be funded by the school board.

CORRECTION AND APPROVAL OF JOURNAL

The Journal of April 29 was corrected and approved.

CO-SPONSORS

Senator Klein—SB 72, SB 248, CS for SB 714, CS for SB 716, SB 750, CS for SB 752, SB 1514

ADJOURNMENT

On motion by Senator McKay, the Senate adjourned sine die at 5:38 p.m.

JOURNAL OF THE SENATE

**Daily Indices for
April 30, 1999**

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BP — Bill Passed
CO — Co-Sponsors
CR — Committee Report

CS — Committee Substitute, First Reading
FR — First Reading
MO — Motion

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