

Proposed Rules
Of
Department of Financial Institutions
Compliance Division

Chapter 0180-34
Title Pledge Lenders – Recordkeeping and Business Practices

Presented herein are proposed rules of the Department of Financial Institutions submitted pursuant to T.C.A. § 4-5-202 in lieu of a rulemaking hearing. It is the intent of the Department of Financial Institutions to promulgate these rules without a rulemaking hearing unless a petition requesting such hearing is filed within thirty (30) days of the publication date of the issue of the Tennessee Administrative Register in which the proposed rules are published. Such petition to be effective must be filed in the Department of Financial Institutions, 511 Union Street, 4th Floor, Nashville City Center, Nashville, Tennessee 37219 and in the Department of State, Eighth Floor, Tennessee Tower, William Snodgrass Building, 312 8th Avenue North, Nashville, TN 37243, and must be signed by twenty-five (25) persons who will be affected by the rule, or submitted by a municipality which will be affected by the rule, or an association of twenty-five or more members, or any standing committee of the General Assembly.

For a copy of this proposed rule, contact Kevin C. Bartels, Legal Division, Department of Financial Institutions, 511 Union Street, 4th Floor, Nashville City Center, Nashville, Tennessee 37219, telephone number (615) 741-0346.

The text of the proposed rules is as follows:

New Rules

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0180-34-.01 Definitions.

- (1) “Act” means the Tennessee Title Pledge Act, as amended, at Tenn. Code Ann. §§ 45-15-101 *et seq.*;
- (2) “Applicant” means a person who applies for a license or renewal of a license to act as a title pledge lender;
- (3) “Commissioner” means the Commissioner of the Department of Financial Institutions;
- (4) “Department” means the Tennessee Department of Financial Institutions;
- (5) “Default” means failure of a pledgor to make payment of any principal, interest and/or fees due and owing pursuant to a title pledge agreement or a breach by a pledgor of any provision of a title pledge agreement;

- (6) “Grace Period” means a period not to exceed sixty (60) calendar days during which a pledgor has not made payment due under a title pledge agreement and where the title pledge lender has elected to permit the pledgor a specific number of additional days in which to make payment;
- (7) “Records” means any and all books, accounts, papers, records, files, software, information stored in electronic format, mail, email and other documents regardless of what format in which they are kept, that are used in the title pledge lender’s business;
- (8) The definitions in this Chapter are intended to supplement and not conflict with those definitions contained in Tenn. Code Ann. § 45-15-103, as amended.

Authority: Tenn. Code Ann. §§ 45-1-107(h); 45-15-108 (a) – (d); and 45-15-113.

0180-34-.02 Recordkeeping.

- (1) Each title pledge lender shall keep and use in its business any records and other documentation, in written and/or electronic form, required by the Commissioner to carry into effect the provisions of the Act and this Chapter. Each title pledge lender shall preserve these records and other documentation for a period of at least twenty-four (24) months after making the last entry on any transaction and twenty-five (25) months for all rejected applications.
- (2) At a minimum, these books, accounts, records and other documentation shall include the following, in addition to the records required to be kept under the Act, whether kept in written or electronic form, provided that such records are readily accessible and printable upon request:
 - (a) A consecutively numbered record or log of each title pledge or property pledge agreement executed by the title pledge lender and pledgor, with that number being placed on the corresponding title pledge or property pledge agreement.
 - (b) The following information for each title pledge or property pledge agreement entered into by a title pledge lender, maintained on ledger card or computer system that can be printed upon request:
 - 1. Name, address, date of birth and physical description of the pledgor (for example, a copy of a current driver’s license);
 - 2. Date and agreement number;
 - 3. Total amount of payments made by the pledgor, including the date of each payment;
 - 4. Fees and interest charged to the pledgor;
 - 5. Terms of repayment;
 - 6. Description of titled personal or pledged property, including the vehicle identification number (VIN), as applicable;
 - 7. Maturity date;
 - 8. Unpaid balance;

9. Copies of customer receipts which include amount and date of all payments;
10. Distribution of all payments to principal, fees and interest;
11. Copies of any agreement to purchase memberships in automobile clubs or associations, including the written notice to the pledgor that the membership is optional, can be purchased elsewhere, and that the purchase of the membership has no bearing on whether the pledgor receives a loan;
12. Records shall be maintained for each pledgor and shall include the title pledge or property pledge agreement and all other records pertaining thereto. All documents pertaining to a specific title pledge or property pledge agreement shall contain the title or property pledge number;
13. A checkbook register or cash register, in numerical order, indicating the distribution of funds under each title pledge or property pledge agreement and to whom such proceeds were disbursed;
14. A record indicating the total number of accounts and the dollar value of all title pledge or property pledge receivables shall be maintained and available on a monthly basis;
15. Any errors in records shall be recorded by a correcting entry rather than by erasure or obliteration with appropriate entries evidencing why, when and by whom such correcting entry was recorded;
16. Whenever an active loan is for any reason transferred to another licensed office in this state, the title pledge lender shall retain in the transferring office an exact copy of the individual account record and supporting legal documents;
17. Written proof of right of rescission until the close of the next business day provided to each customer;
18. Records of payments made to a customer's account that occur prior to the due date;
19. Copies of all renewal statements and past due notices required to be given to the pledgor pursuant to Tenn. Code Ann. § 45-15-113;
20. A log of each repossession of a pledgor's titled personal or pledged property, including the name, address, and account number of the pledgor and a description of the vehicle, including the VIN, as applicable; and,
21. Copies of disclosures of application of proceeds of sale of repossessed titled personal or pledged property made to customers, as provided in Rule 0180-34-.04(3) of this Chapter.

(3) This Rule shall not be construed to abrogate or otherwise limit the disclosures required to be kept by title pledge lenders pursuant to the federal Truth in Lending Act at 15 U.S.C. §§ 1601 *et seq.*, Regulation Z 12 C.F.R. Part 226 *et seq.* or any regulation promulgated

thereunder or any statute or regulation promulgated by the Commissioner requiring compliance with the Truth in Lending Act.

- (4) All title pledge lenders must comply with the Equal Credit Opportunity Act (“ECOA”) at 15 U.S.C §§ 1691 *et seq.*, and shall provide the applicant with a written notice of the reason for declining to offer a title pledge or property pledge agreement. The notice may be provided to the applicant at the time the title pledge or property pledge agreement is declined or the notice may be mailed to the applicant. A copy of the notice must be retained in the files of the title pledge lender.
- (5) At the time the Truth In Lending disclosure, required pursuant to 15 U.S.C. §§ 1601 *et seq.*, and Regulation Z 12 C.F.R. Part 226, is provided to the borrower by the title pledge lender, the title pledge lender must provide a statement that:
 - (a) Clearly describes under what circumstances the titled personal or pledged property may be repossessed and sold; and
 - (b) Informs the pledgor that if the titled personal or pledged property is sold, the pledgor may not receive any proceeds from the sale because of the costs incurred.
- (6) The recordkeeping provisions in this Chapter may be superceded, where applicable, by federal statutes, rules or regulations relating to title pledge lenders.

Authority: Tenn. Code Ann. §§ 45-1-107(h); 45-15-106, 45-15-108 (a) – (d); and 45-15-110.

0180-34-.03 Grace Period—Default of Obligations.

- (1) In the event a pledgor does not pay the required interest and fees due in the title or property pledge agreement and/or the required five percent (5%) of the original principal amount in full by the thirtieth day of the contract, then the due date of the contract may be extended for a grace period, provided that the title or property pledge agreement containing the grace period:
 - (a) Does not exceed, either directly or indirectly, the interest and fees permitted by Tenn. Code Ann. § 45-15-111(a);
 - (b) Is set out in the original title pledge agreement;
 - (c) Is set out in a written statement to the pledgor;
 - (d) Is retained by the title pledge lender in the pledgor’s file;
 - (e) Does not provide for accrued interest or fees to be capitalized or added to the original principal of the title pledge agreement; and
 - (f) Provides that the failure of the customer to pay within the stated grace period shall constitute default of the title pledge agreement by the pledgor.
- (2) Reduction in Principal: If the pledgor fails to pay the required interest and fees due in the title pledge agreement and/or the required five percent (5%) of the original principal reduction on the thirtieth day of the third renewal, the title pledge lender may allow the transaction to be continued by a grace period not to exceed sixty (60) days, provided the title pledge lender shall reduce the principal amount of the loan by five percent (5%) of the original principal amount each month solely for the purposes of calculating the

interest and fees. In addition, the following shall apply to any reduction in principal made during a grace period:

- (a) The reduction in principal shall continue to be owed by the pledgor in accordance with the title pledge agreement, but that amount shall not be entitled to accrue interest or fees thereafter;
- (b) If the pledgor fails to pay the required interest and fees due and/or the required five percent (5%) of the original principal amount at the end of any grace period, the title pledge lender shall declare the title pledge agreement in default;
- (c) The title pledge lender is entitled to any interest and fees earned up to the declaration of default upon repossession and sale of the vehicle.

Authority: Tenn. Code Ann. §§ 45-1-107(h); 45-15-108(a); 45-15-111; and 45-15-113.

0180-34-.04 Sale of Repossessed Vehicles.

- (1) Factors Considered in Determining Whether a Sale Is “Commercially Reasonable”: For purposes of determining compliance with the Act, the Commissioner may consider the following factors to determine if the elements of a sale described in this Rule have been met:
 - (a) Whether the title pledge lender either sold the titled personal or pledged property in the usual manner in any recognized market therefor or if it sold at the price current in such a market at the time of sale;
 - 1. For purposes of determining whether a title pledge lender has sold a repossessed vehicle at the current market price, the Commissioner may reference the published reports of valuations published in any of the automotive industry trade journals.
 - (b) Whether the sale was made in keeping with prevailing trade practices among reputable and responsible business and commercial enterprises engaged in the same or a similar business;
 - (c) If the sale was to the general public, whether and to what extent advertising was conducted in order to increase competitive bidding and maximize proceeds or, if the sale was not made to the general public, the number of bids solicited, received, amounts bid and whether such bids were sealed;
 - 1. Bids, if submitted, must be in writing and contain the identity of the vehicle, the amount of the bid, and the name and address of the bidder.
 - (d) Whether an independent appraisal was made of the titled personal property;
 - (e) Whether the sale price of the titled personal or pledged property was reasonably related to its actual value, as determined by independent appraisal of the property;
 - (f) The condition of the collateral at the time of sale; and
 - (g) Any special circumstances involved in the sale.

- (2) Application of proceeds of sale: As part of a “commercially reasonable” sale conducted pursuant to Tenn. Code Ann. § 45-15-114(b) and as described in Title 47, Chapter 9, Part 6 of the Tennessee Code Annotated, a title pledge lender may defray certain expenses from the proceeds of a sale of titled personal or pledged property obtained pursuant to a title pledge agreement, as provided herein:
 - (a) The reasonable, actual and documented expenses of preparing for disposition, processing, and disposing of the titled personal or pledged property;
 - (b) Documented improvements and/or repairs to the titled personal or pledged property completed that are reasonably calculated to increase the commercial value of the titled personal or pledged property;
 - (c) The title pledge lender shall deliver to the pledgor all proceeds of the sale exceeding the amount owed under the title pledge agreement and the reasonable, documented and actual costs associated with the repossession and sale and an accounting of the expenses, improvements and repairs made to the titled personal or pledged property. Delivery of the proceeds must be made not later than three (3) business days after the title pledge lender receives the proceeds of the sale. If the vehicle was paid for by a check, the title pledge lender may deliver the proceeds within three (3) days after the check has cleared.

Authority: Tenn. Code Ann. §§ 45-1-107(h); 45-15-108(a); 45-15-113; and 45-15-114.

0180-34-.05 Fraud, Dishonesty or Misrepresentation – Business Practices.

No title pledge lender shall directly or indirectly, by act or omission, do or permit another to do any of the following acts or conduct to occur in the course of its business:

- (1) Make any title pledge or property agreement or conduct business as a title pledge lender at any place other than at the title pledge lender’s licensed location.
- (2) Alter or change any title in its possession, other than to record a lien or to release a lien thereon.
- (3) Calculate daily interest based upon any time period other than a three hundred sixty (360), three hundred sixty-five (365) or three hundred sixty-six (366) day year.
- (4) Fail to disclose any fact or condition which exists that, if it had existed at the time when the title pledge lender applied for its license, would have been grounds for denying such application.
- (5) Violate any provision of federal law, rules or regulations applicable to title pledge lenders or title pledge or property pledge agreements.
- (6) Sell or provide an item, service, or commodity through any means that is incidental to the advance of funds pursuant to a title pledge or property pledge agreement when such item, service or commodity may confuse the customer as to the true nature of the title pledge or property pledge agreement.
- (7) Use any device or agreement, including agreements with affiliated title pledge lenders, with the intent to obtain greater charges than otherwise would be authorized by the Act, including, but not limited to, the following:

- (a) a transaction with the customer in which funds in connection with a title or property pledge agreement are provided;
 - (b) a “signature loan” and/or sales/leaseback arrangement;
 - (c) catalog sales;
 - (d) sales of cards, stamps, vouchers, certificates, coupons or the like in connection with a title pledge transaction;
 - (e) “cash-back” advertising sales; or
 - (f) internet sales.
- (8) Use any scheme, method or artifice designed to disguise transactions regulated by the Act or to appear to be ‘loans’ made by a national or state bank chartered in another State in which title or property pledge agreements and/or transactions are unregulated.
- (9) Require a pledgor to enter into a title or property pledge agreement containing a:
- (a) Hold harmless clause;
 - (b) Confession of judgment or other waiver of the right to notice and opportunity to be heard in the event of suit or process; or
 - (c) Provision in which the borrower agrees not to assert any claim or defense arising out of the contract against the title pledge lender.
- (10) Fail to pay in cash or by check to its customer the entire amount loaned.
- (11) Fail to pay in cash or by check on the same date the title of the titled personal property or pledged property is presented to the title pledge lender.

Authority: Tenn. Code Ann. §§ 45-1-107(h); 45-15-107(a); 45-15-108(a); and 45-15-115(a).

0180-34-.06 Severability.

If any section, term or provision of this Chapter shall be judged invalid for any reason, that judgment shall not affect, impair or invalidate any other section, term or provision of this Chapter, and the remaining sections, terms and provisions shall be and remain in full force and effect.

Authority: Tenn. Code Ann. §§ 45-1-107(h) and 45-15-108(b).

The proposed rules set out herein were properly filed in the Department of State on the 29th day of March, 2006, and pursuant to the instructions set out above, and in the absence of the filing of an appropriate petition calling for a rulemaking hearing, will become effective on the 28th day of July, 2006.

Notice of Withdrawal of Rules
Department of Financial Institutions
Compliance Division

The Department of Financial Institutions hereby gives notice of withdrawal of Proposed Rule 0180-34 relative to Title Pledge Lenders – Recordkeeping and Business Practices, filed with the Department of State on the 29th day of March, 2006, to have become effective on the 28th day of July, 2006.

Greg Gonzales
Acting Commissioner

Subscribed and sworn to before me this the _____ day of _____, 2006.

Notary Public

My commission expires on the _____ day of _____, 20 ____.

The notice of withdrawal of rules set out herein was properly filed in the Department of State on the 10th day of May, 2006.