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SENATE BILL 2591 By
Burks

HOUSE BILL 2658
By Winningham

AN ACT to amend Tennessee Code Annotated, Title 45, Chapter 15, Part 1, relative to regulation of title pledge companies.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 45-15-103, is amended by adding the following language as a new, appropriately designated subdivision:

() "Commissioner" means the commissioner of financial institutions.

SECTION 2. Tennessee Code Annotated, Section 45-15-107, is amended by adding the following language as a new subsection (c):

(c) Upon receipt of the application and the payment of the applicable fee, the county clerk shall forward the application for a license or license renewal to the commissioner.

SECTION 3. Tennessee Code Annotated, Section 45-15-108(a), is amended by deleting the period (.) at the end of the first sentence and adding the following language:

upon the completion of an investigation by the commissioner to ascertain whether the qualifications prescribed by §§45-15-106 and 45-15-107 have been satisfied. If the commissioner finds that the qualifications have been satisfied, and

approves the documents, the commissioner shall issue to the applicant a license or renew the license to engage in the title pledge business.

SECTION 4. Tennessee Code Annotated, Section 45-15-108(b), is amended by deleting the period (.) at the end of the subsection and adding the following language:

and upon receiving the approval for the license renewal from the commissioner in accordance with subsection (a).

SECTION 5. Tennessee Code Annotated, Section 45-15-108, is amended by adding the following language as a new subsection (c):

(c) A license issued pursuant to the provisions of this part shall remain in force and effect for one (1) year from the date of approval, unless earlier surrendered, suspended or revoked pursuant to this part.

SECTION 6. Tennessee Code Annotated, Section 45-15-117, is amended by adding the language "or the provisions of this part" after the language "45-15-111(c)" wherever it appears.

SECTION 7. Tennessee Code Annotated, Title 45, Chapter 15, Part 1, is amended by adding the following language as new, appropriately designated sections:

45-17-121.

(a) The commissioner may promulgate reasonable regulations in accordance with the Uniform Administrative Procedures Act, compiled in Title 4, Chapter 5, for the enforcement of this chapter. A copy of any rule or regulation adopted by the commissioner shall be mailed to each license holder at least thirty (30) days before the date it takes effect.

(b) To assure compliance with the provisions of this chapter, the commissioner may examine the relevant business, books and records of any licensee. The commissioner may charge and collect an examination fee of two hundred dollars (\$200)

per day per examiner for any compliance examination conducted by the commissioner, which fee shall not exceed one thousand two hundred dollars (\$1,200) per year.

(c) The commissioner, for the purpose of discovering violations of this chapter and for the purpose of determining whether persons are subject to the provisions of this chapter, is hereby authorized to examine persons licensed under this chapter and persons reasonably suspected by the commissioner of conducting business which requires a license under this chapter, including all relevant books, records and papers employed by such persons in the transaction of their business, and to summon witnesses and examine them under oath concerning matters relating to the business of such persons, or such other matters as may be relevant to the discovery of violations of this chapter, including, without limitation, the conduct of business without a license as required under this chapter.

45-17-122.

(a) If the commissioner determines that an applicant is not qualified to receive a license, the commissioner shall notify the applicant in writing that the application has been denied, stating the basis for denial.

(b) If the commissioner denies an application, or if the commissioner fails to act on an application within ninety (90) days after the filing of a properly completed application, the applicant may make written demand to the commissioner for a hearing before the commissioner on the question of whether the license should be granted.

(c) Any hearing on the denial of a license shall be conducted pursuant to the Uniform Administrative Procedures Act, compiled in Title 4, Chapter 5. In such hearing, the burden of proving that the applicant is entitled to a license shall be on the applicant. A decision of the commissioner following any hearing on the denial of a license is subject to review under the Uniform Administrative Procedures Act, compiled in Title 4, Chapter 5.

45-17-123.

(a) The commissioner may, after notice and hearing, suspend or revoke any license if the commissioner finds that the licensee has knowingly or through lack of due care:

(1) Failed to pay the annual license fee imposed by this chapter, or an examination fee imposed by the commissioner under the authority of this chapter;

(2) Has committed any fraud, engaged in any dishonest activities or made any misrepresentations;

(3) Has violated any provisions of this chapter or any administrative regulation issued pursuant thereto or has violated any other law in the course of such licensee's dealings as a licensee;

(4) Has made a false statement in the application for the license or failed to give a true reply to a question in the application; or

(5) Has demonstrated incompetency or untrustworthiness to act as a licensee.

(b) If the reason for revocation or suspension of a licensee's license at any one (1) location is of general application to all locations operated by a licensee, the commissioner may revoke or suspend all licenses issued to a licensee.

(c) A hearing shall be held on written notice given at least twenty (20) days prior to the date of the hearing and shall be conducted in accordance with the Uniform Administrative Procedures Act, compiled in Title 4, Chapter 5.

45-17-124. If, after notice and opportunity for a hearing, the commissioner finds that a person has violated this chapter, or any administrative regulation issued pursuant thereto, the commissioner may:

(1) Order the person to cease and desist violating the chapter or any administrative rules issued pursuant thereto;

(2) Require the refund of any fees collected by such person in violation of this chapter; and

(3) Order the person to pay to the commissioner a civil penalty of not more than one thousand dollars (\$1,000) for each transaction in violation of this chapter or each day that a violation has occurred and continues.

45-17-125.

(a) The commissioner may enter into consent orders at any time with any person to resolve any matter arising under this chapter. A consent order shall be signed by the person to whom it is issued, or a duly authorized representative, and shall indicate agreement to the terms contained therein. A consent order need not constitute an admission by any person that any provision of this chapter, or any rule, regulation or order promulgated or issued hereunder has been violated, nor need it constitute a finding by the commissioner that such person has violated any provision of this chapter or any rule, regulation or order promulgated or issued under this chapter.

(b) Notwithstanding the issuance of a consent order, the commissioner may seek civil or criminal penalties or compromise civil penalties concerning matters encompassed by the consent order.

(c) In cases involving extraordinary circumstances requiring immediate action, the commissioner may take any enforcement action authorized by this chapter without providing the opportunity for a prior hearing, but shall promptly afford a subsequent hearing upon an application to rescind the action taken which is filed with the commissioner within twenty (20) days after receipt of the notice of the commissioner's emergency action.

45-17-126.

(a) Any person aggrieved by the conduct of a licensee under this chapter in connection with the licensee's regulated activities may file a written complaint with the commissioner who may investigate the complaint.

(b) In the course of the investigation of the complaint, the commissioner may:

(1) Subpoena witnesses;

(2) Administer oaths;

(3) Examine any individual under oath; and

(4) Compel the production of records, books, papers, contracts or other documents relevant to such investigation.

(c) If any person fails to comply with a subpoena of the commissioner under this chapter or to testify concerning any matter about which the person may be interrogated under this chapter, the commissioner may petition any court of competent jurisdiction for enforcement.

(d) The license of any licensee under this chapter who fails to comply with a subpoena of the commissioner may be suspended pending compliance with the subpoena.

(e) The commissioner shall have exclusive administrative power to investigate and enforce any and all complaints filed by any person which are not criminal in nature, which complaint relates to the business of deferred presentment services.

SECTION 8. This act shall take effect July 1, 2002, the public welfare requiring it.