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SENATE BILL 1544
By Herron

AN ACT to amend Tennessee Code Annotated, Section 45-1-104 and Title 45, Chapter 15, relative to title pledges.

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

SECTION 1. Tennessee Code Annotated, Section 45-1-104, is amended by deleting the language "or persons licensed under the Tennessee Title Pledge Act of 1995, chapter 15 of this title." and substituting instead the following language:

provided that the pawnbroker is not also a licensed title pledge lender and is not engaged in activities covered by the Tennessee Title Pledge Act of 1995, chapter 15 of this title.

SECTION 2. Tennessee Code Annotated, Section 45-15-103, is amended by adding the following language as appropriately designated subsections:

( ) "Commercially reasonable" has the same meaning as used in title 47, chapter 9. In addition, nonpublic sales or disposal of personal property between a title pledge lender and any business affiliates of a title pledge lender or a member of a title pledge lender's family are presumed not to be made in a commercially reasonable manner;

( ) "Commissioner" means the commissioner of the department of financial institutions;

( ) "Department" means the department of financial institutions;

SECTION 3. Tennessee Code Annotated, Section 45-15-104, is amended by deleting the language "of § 47-9-610, § 47-14-112, or § 47-14-117" and substituting instead the language "of § 47-14-112 or § 47-14-117" and is further amended by deleting the language "more than one (1) year" and substituting instead the language "more than five (5) years".

SECTION 4. Tennessee Code Annotated, Section 45-15-105, is amended by designating the existing language as subsection (a) and by adding the following language as new subsections to be designated as follows:

(b) Notwithstanding the penalties in § 45-15-117, any person who acts as a title pledge lender without first securing the license required by this chapter commits a Class D felony.

(c) Any property pledge or title pledge agreement made without benefit of a license is void, in which case the title pledge lender forfeits the right to collect any moneys, including principal and interest charged on the property pledge or title pledge loan, from the pledgor in connection with such agreement. The title pledge lender shall return to the pledgor any pledged property in the title pledge lender's possession, or the fair market value of such property, and all principal and interest paid by the pledgor. The pledgor is entitled to receive reasonable attorney's fees and costs in any action brought by the pledgor to recover the pledgor's property or the principal and interest paid by the pledgor from the title pledge lender.

SECTION 5. Tennessee Code Annotated, Section 45-15-106(a)(1), is amended by deleting the language "at least seventy-five thousand dollars ($75,000)" and substituting instead the language "at least one hundred thousand dollars ($100,000)" and is further amended by deleting the language "office; and" and substituting instead the language "office;"

SECTION 6. Tennessee Code Annotated, Section 45-15-106(a), is amended by adding the following language as subdivision (a)(2) and redesignating current subdivision (a)(2) as (a)(3):

(2). File with the department a bond designating the department as beneficiary, in the amount of one hundred thousand dollars ($100,000) per title pledge office, with a surety company qualified to do business in this state. In lieu of the bond, the applicant may establish a certificate of deposit or an irrevocable letter of credit in a bank, as defined in § 47-4-105, designating the department as beneficiary in the amount of the bond. The bond, certificate of deposit, or letter of credit is for the use and benefit of any consumer who is injured pursuant to a property pledge or title pledge agreement by the

fraud, misrepresentation, breach of contract, financial failure, or violation of any provision of this chapter by the title pledge lender. The title pledge lender's liability may be enforced either by proceeding in an administrative action or by filing a judicial suit at law in a court of competent jurisdiction. The bond, certificate of deposit, or letter of credit posted with the department is amenable to and enforceable only by and through administrative proceedings before the department and is not amenable or subject to any judgment or other legal process issuing out of or from a court in connection with such lawsuit. The bond, certificate of deposit, or letter of credit is 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; and

SECTION 7. Tennessee Code Annotated, Section 45-15-107(a), is amended by deleting the language "county clerk in the county in which the person's title pledge office is to be operated for a license to conduct such a business" and substituting instead the language "department for a license to conduct such a business".

SECTION 8. Tennessee Code Annotated, Section 45-15-107(b)(4), is amended by deleting the language ";and" and by substituting instead the following language:

and a complete set of fingerprints taken by an authorized law enforcement officer. The department shall submit the set of fingerprints to the Tennessee bureau of investigation for state processing, and the Tennessee bureau of investigation shall forward the set of fingerprints to the federal bureau of investigation for national processing; and

SECTION 9. Tennessee Code Annotated, Section 45-15-107(b)(5), is amended by deleting the language "the amount of fifty dollars ($50.00) payable to the county clerk to defray costs." and substituting instead the language "the amount of five hundred dollars ($500) payable to the department to defray costs; and"

SECTION 10. Tennessee Code Annotated, Section 45-15-107(b), is amended by adding the following language as subdivision (6):

(6) Other information as required.

SECTION 11. Tennessee Code Annotated, Section 45-15-108(a), is amended by deleting the language “Every person” at the beginning of the subsection and substituting the following language:

> Following verification by the department of the information contained in the petition, every person

SECTION 12. Tennessee Code Annotated, Section 45-15-108(a), is further amended by inserting the language “Each license must be conspicuously displayed at the title pledge office.” between the third and fourth sentence and by deleting from the last sentence the following language:

> but may be transferred from one location to another, or from one county to another, upon payment to the county clerk of any county involved in the transfer, a fee of fifty dollars ($50.00).

and substituting instead the language:

> but, upon approval of the commissioner, may be transferred from one location to another upon payment to the department a fee of five hundred dollars ($500).

SECTION 13. Tennessee Code Annotated, Section 45-15-108(b), is amended by deleting the language “upon payment of the business tax.” and substituting the following language:

> upon payment of an annual fee of five hundred dollars ($500) and compliance with the provisions of this chapter.

SECTION 14. Tennessee Code Annotated, Section 45-15-108, is amended by adding the following language as a new subsection (c):

> (c) Whenever a person or group of persons directly or indirectly or acting by or through one or more persons, proposes to purchase or acquire a fifty percent (50%) or more interest in a licensed title pledge lender, the person or group shall submit an initial application for licensure under this chapter prior to such purchase or acquisition.

SECTION 15. Tennessee Code Annotated, Section 45-15-109(c), is amended by deleting the following language:

This information shall be made available for inspection by the sheriff of the county and the chief of police of the municipality in which the title pledge lender is located during the regular business hours of the title pledge office.

and substituting instead the following language:

This information shall be maintained at the title pledge office location, approved by the department, and made available for inspection by the law enforcement agencies where the title pledge lender is located, during the regular business hours of the title pledge office.

SECTION 16. Tennessee Code Annotated, Section 45-15-109(c), is further amended by adding the following new subdivisions:

(1)

(A) Every title pledge lender doing business under the laws of this state is subject to inspection by the commissioner or by an examiner appointed by the commissioner in accordance with § 45-1-116. A title pledge lender shall be examined at least once and not more than twice every twenty-four (24) months unless it appears from examination or from the report of the title pledge lender that it has failed to comply with laws or administrative regulations relating to title pledge lenders or has engaged in unsafe or unsound practices.

(B) The commissioner, each assistant commissioner, and each examiner may compel the appearance of any person for the purpose of the examination. The examination shall be made in the presence of one of the officers of the title pledge lender or the title pledge lender's designee.

(2) In undertaking the examination of any title pledge lender, neither the state, the commissioner, nor any examiner employed by the state is liable to any pledgor if the examination or an omission in the examination fails to fully and effectively disclose the financial condition of the title pledge lender.

(3)

(A) Reports of examination, and correspondence that relates to the report of examination, are considered confidential information. No officer or

director of a title pledge lender or employee of the department shall release any information contained in the examination, except if:

(i) Required in a proper legal proceeding in which a subpoena and protective order insuring confidentiality have been issued by a court of competent jurisdiction; or

(ii) The information is referred to an appropriate prosecuting attorney for possible criminal proceedings, to outside persons providing professional services to the title pledge lender, or to outside persons for the purpose of evaluating the title pledge lender for acquisition. Reports of examination released to outside persons providing professional services to the title pledge lender or for the purpose of evaluating the title pledge lender for possible acquisition, shall require a written request from the outside person and prior approval by the board of directors or an executive committee of the title pledge lender.

(B) The department may furnish to and exchange information and reports with officials and examiners of other properly authorized state or federal regulatory authorities.

(C) Every official report concerning a title pledge lender, and every report of examination, shall be prima facie evidence of the facts stated therein for all purposes in any action in which the department or title pledge lender is a party.

(4) The department shall establish a fee to be collected by the department for any examination. The fee shall be sufficient to cover the cost of the examination based upon fair compensation for time and actual expense.

SECTION 17. Tennessee Code Annotated, Section 45-15-111(a), is amended by deleting the language “receive an effective rate of interest not to exceed two percent (2%) per month” and substituting instead the language "receive an effective rate of interest on the original principal amount not to exceed two percent (2%) per month” and is further amended by deleting the language following the first sentence and substituting instead the following language:

The customary fee will not be deemed interest for any purpose of law and may equal no more than one fifth (1/5) of the original principal amount of the property pledge or title pledge agreement, or the total unpaid balance due at the inception of any renewal of the property pledge or title pledge agreement. The original principal amount is the same amount as the amount financed, as defined by the federal truth in lending laws and Regulation Z of the Board of Governors of the Federal Reserve System. In determining compliance with the statutory maximum interest, the computations must be simple interest and not add-on interest or any other computations. Interest and fees are earned, due and owing on the same day of each subsequent thirty-day period.

SECTION 18. Tennessee Code Annotated, Section 45-15-111(c), is amended by deleting the following language:

Notwithstanding the provisions of § 45-1-104, or any other law to the contrary, in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, the department of financial institutions shall promulgate rules

and substituting instead the following language:

The department shall promulgate rules in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5

SECTION 19. Tennessee Code Annotated, Section 45-15-111, is amended by adding the following as new, appropriately designated subsections:

( ) Any interest contracted for or received, directly or indirectly, by a title pledge lender, or an agent of the title pledge lender, in excess of the amounts authorized under this chapter is prohibited and may not be collected by the title pledge lender or an agent of the title pledge lender.

(1) If such excess interest resulted from good faith error by the title pledge lender, or an agent of the title pledge lender, the property pledge or title pledge agreement is voidable and the title pledge lender shall refund excess interest to the borrower within twenty (20) days after discovery by the title pledge lender or pledgor of the good faith error, whichever occurs first.

(2) If such excess interest resulted from an act by the title pledge lender, or an agent of the title pledge lender, to circumvent the maximum interest allowed by this chapter, the property pledge or title pledge agreement is void. The title pledge lender shall refund to the pledgor any interest paid on the property pledge or title pledge loan and return to the pledgor the pledged property. The title pledge lender forfeits the title pledge lender's right to collect any principal owed by the pledgor on the property pledge or title pledge loan.

(3) The department may order a title pledge lender, or an agent of the title pledge lender, to comply with the provisions of sections (1) and (2).

( ) Any interest contracted for or received, directly or indirectly, by a title pledge lender, or an agent of the title pledge lender, in excess of the amount allowed by this chapter constitutes a violation of title 47, chapter 14, governing interest and usury, and the penalties of that chapter apply.

SECTION 20. Tennessee Code Annotated, Section 45-15-113(a), is amended by adding the following language as subdivision (a)(1) and redesignating subdivisions (a)(1) through (a)(4) accordingly:

(1) The property pledge or title pledge agreement has been renewed, rolled over, or otherwise consolidated three times in succession;

SECTION 21. Tennessee Code Annotated, Section 45-15-113, is amended by adding the following language as subsections (c) and (d):

(c) No accrued interest or service charge shall be capitalized or added to the original principal of the property pledge or title pledge agreement during any renewal.

(d) The interest rate charged in any property pledge or title pledge extension agreement shall not exceed the interest rate charged in the related property pledge or title pledge agreement.

SECTION 22. Tennessee Code Annotated, Section 45-15-114(a), is amended by inserting the following language between the first and second sentences:

Interest and fees, other than storage fees, shall cease to accrue upon the commencement of the twenty (20) day holding period.

SECTION 23. Tennessee Code Annotated, Section 45-15-114(b), is amended by inserting the following language between the second and third sentences:

Interest and fees, other than storage fees, shall cease to accrue following repossession.

SECTION 24. Tennessee Code Annotated, Section 45-15-114, is amended by adding the following language as appropriately designated subsections:

( ) Following the expiration of the twenty (20) day holding period, the title pledge lender shall have a period of sixty (60) days in which to sell, in a commercially reasonable manner, the pledged property. At least ten (10) days prior to the sale, notice of the proposed sale shall be given to the pledgor and to any other secured party from whom the title pledge lender has received written notice prior to the notification sent to the pledgor, of a claim of interest in the pledged property. The proceeds of the commercially reasonable sale shall be applied to the principal, interest, and all fees owed by pledgor to the title pledge lender. Any surplus amounts shall be remitted to the pledgor within thirty (30) days of the sale. The pledgor is entitled to reasonable attorney's fees and costs incurred in any successful action brought to recover all or part of such surplus amounts.

( ) At any time prior to the sale, the title pledge lender shall permit the pledgor to redeem the pledged property by tendering a money order or certified check for the principal amount of the property pledge or title pledge loan, interest accrued through the date the title pledge lender takes possession, and any reasonable expenses incurred to date by the title pledge lender in taking possession of, preparing for sale, and selling the pledged property. Nothing in this chapter nor in any property pledge or title pledge agreement shall preclude a pledgor from purchasing the titled personal property at any sale.

SECTION 25. Tennessee Code Annotated, Section 45-15-115, is amended by adding the following language as appropriately designated subsections:

( ) Sell or otherwise charge for any type of insurance in connection with a property pledge or title pledge agreement;

( ) Charge a prepayment penalty;

( ) Advertise using the words “interest free loans” or “no finance charges”;

( ) Require a pledgor to provide any additional guaranty as a condition to entering into a property pledge or title pledge agreement.

SECTION 26. Tennessee Code Annotated, Section 45-15-115(1), is amended by inserting the following language after the language “to be intoxicated,”:

with any person using a name other than such person’s own name or the registered name of the person’s business,

SECTION 27. Tennessee Code Annotated, Section 45-15-115(9), is amended by deleting the language “department of financial institutions” and substituting the language “department”.

SECTION 28. Tennessee Code Annotated, Section 45-15-117(b)(1), is amended by deleting the subdivision in its entirety and substituting the following language instead:

(1) Apart from or in addition to any sanctions which may be imposed pursuant to this chapter, upon an administrative finding by the department that a title pledge lender has knowingly violated the provisions of § 45-15-111(c), the license of such title pledge lender shall be suspended by the department for a period not to exceed forty-five (45) days. Upon a finding by the department that a title pledge lender has repeatedly and persistently engaged in a pattern of knowingly violating the provisions of § 45-15-111(c), the license of such title pledge lender shall be suspended by the department for a period of not less than ninety (90) days or alternatively shall be revoked by the department. All findings and actions by the department acting pursuant to this subsection shall be undertaken in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

SECTION 29. Tennessee Code Annotated, Section 45-15-117, is amended by adding the following language as a new, appropriately designated subsection:

( ) In addition to the sanctions which may be imposed under subsection (b)(1) of this section, the department may impose a fine against any person for a violation of this

chapter of no less than five hundred dollars ($500) and no more than one thousand dollars ($1000) per violation.

SECTION 30. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 31. This act shall take effect July 1, 2005, the public welfare requiring it.