



S.B. 73

123rd General Assembly
(As Introduced)

Sen. Blessing

BILL SUMMARY

- Establishes a new category of lender, the title pledge lender, to offer loans secured by a security interest in a motor vehicle.
- Provides for registration with the Division of Financial Institutions of title pledge lenders that make short-term, small loans of \$2,500 or less in return for a security interest in a motor vehicle.
- Provides requirements for surety bonds, title pledge agreement provisions, service charges, title pledge transaction forms, and for the replacement, extension, continuation, or redemption of a title pledge agreement.
- Specifies prohibitions and administrative and criminal penalties that apply to violations of the bill.

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CONTENT AND OPERATION

Overview

Currently, the Small Loan Law, specifically R.C. 1321.01 to 1321.19, regulates small lenders by requiring registration with the Division of Financial Institutions of any person making loans of \$5,000 or less, regulates the interest and other charges assessed in connection with these loans, and specifies other requirements in connection with these loans. The Pawnbrokers' Law (Chapter 4727.) regulates pawnbrokers, by requiring registration with the Division of Financial Institutions and specifying lawful interest and other charges and additional requirements. Generally, the bill establishes a new category of lender, the title pledge lender, to offer short-term (30 days or less), small loans of \$2,500 or less secured by a security interest in an unencumbered motor vehicle. The bill provides for registration with the Division of Financial Institutions, sets forth surety bond requirements, specifies disclosure, service charge, and other requirements that apply to these type of loans, and contains administrative and criminal penalties that apply to violations of the bill. The Division also is authorized to adopt rules to provide enforcement of the bill's provisions.

Registration of title pledge lenders; definitions

(secs. 1321.02, 1321.87(A) to (G), 1321.88, and 4727.14)

The bill prohibits any person from acting or engaging in business as a title pledge lender, or advertising, transacting, or soliciting business as a title pledge lender, unless the person has obtained a certificate of registration issued by the Division of Financial Institutions. The bill also states that the Small Loan Law and the Pawnbrokers' Law do not apply to a person registered with the Division under the bill's provisions.

Under the bill, a person may obtain more than one certificate of registration, and a separate certificate of registration must be obtained for each title pledge office operated by a title pledge lender. The bill provides that a title pledge agreement entered into with a person without such a certificate of registration is voidable, in which case the lender forfeits the right to collect any moneys from the pledgor in connection with the agreement and is obligated to return to the pledgor the certificate of title to a motor vehicle pledged in connection with the agreement.

The bill defines "title pledge lender" as any person engaged in the business of making title pledge agreements with pledgors. "Title pledge agreement" means a written agreement under which a title pledge lender agrees to make a short-term, small loan to a pledgor, and the pledgor agrees to give the title pledge lender a security interest in an unencumbered motor vehicle owned by the pledgor and to allow the title pledge lender to retain possession of the certificate of title to the pledged motor vehicle. "Motor vehicle" has the same meaning as under the Motor Vehicle Law, and "pledged motor vehicle" means any motor vehicle that is the subject of a title pledge agreement, the certificate of title for which having been deposited with a title pledge lender in the course of the title pledge lender's business. "Short-term" means 30 days or less in duration, and "small loan" means a loan of \$2,500 or less. "Title pledge office" means the location at which, or premises in which, a title pledge lender regularly conducts business.

Application for registration; application fees

(secs. 1321.20, 1321.89, and 1321.90(B))

The bill requires that an individual's application for a certificate of registration, for the transfer of an existing certificate of registration, or for the approval of a change in the ownership (discussed below) of a title pledge office be under oath and state (1) the full name and place of residence of the applicant, (2) the location where the title pledge lender's business is to be conducted, and (3) any other information required by the Division of Financial Institutions.

An application for a certificate of registration submitted by a partnership, association, trust, corporation, or other legal entity, must state the full name and address of each officer, director, and direct or beneficial owner of at least a 10% equity interest in the entity. However, an applicant is not required to provide the full name and address of each of these officers, directors, and direct or beneficial owners, if (1) the applicant is owned directly or beneficially by a person which, as an issuer, has a class of securities registered pursuant to section 12 of the Securities Exchange Act of 1934, or which is an issuer of securities that is required to file reports with the Securities and Exchange Commission (SEC) pursuant to section 15(d) of the Securities Exchange Act of 1934, and (2) the applicant files with the Division of Financial Institutions all information, documents, and reports required to be filed with the SEC pursuant to the Securities Exchange Act of 1934.

Section 12 of the Securities Exchange Act of 1934 generally requires registration pursuant to federal law by issuers of a security before any transaction is undertaken dealing with that security, and section 15(d) of that Act generally requires the filing with the SEC of specified supplemental and periodic information regarding registered securities.

The bill specifies that the following requirements apply to individual applicants for a certificate of registration as a title pledge lender, and to the operators, direct or beneficial owners of at least a 10% equity interest, and officers and directors of an applicant that is a partnership, association, trust, corporation, or other legal entity: (1) all persons must be of good moral character, (2) the person must not have been convicted of a felony within the last ten years or be acting as a beneficial owner for someone convicted of a felony within the last ten years, and (3) the person must not have been convicted, or be acting as a beneficial owner for someone convicted, of a crime within the last ten years, which crime the Division finds directly relates to the duties and responsibilities of a title pledge lender.

Under the bill, each application for a certificate of registration is to be accompanied by (1) an application fee not to exceed \$50 set by the Division, (2) a \$300 fee for the first year's operation, and (3) a fee set by the Division to cover the Division's costs of investigating the applicant. The bill also provides that the application fee is nonrefundable.

For renewal of a certificate of registration, the bill requires that a title pledge lender annually, prior to June 30, pay the Division a fee not to exceed \$250 for each certificate of registration held. The amount of this fee is to be established, pursuant to the Small Loan Law, by the Superintendent of Financial Institutions on or about April 15 each year. If the renewal fee remains unpaid for 30 days after the certificate holder receives written notice of delinquency from the Division, the bill provides that the certificate of registration expires on the expiration date specified in the nonrenewed certificate of registration.

Investigation and issuance of a certificate of registration by the Division

(sec. 1321.90(A), (C), and (D))

Under the bill, when the Division of Financial Institutions receives an application accompanied by the required fees, the Division must investigate the facts and must approve an application and issue a certificate of registration, if the Division finds that the eligibility requirements for the certificate are satisfied.

A certificate of registration remains in full force and effect until relinquished, suspended, revoked, or expired. Upon issuance, the bill requires a registrant to post the certificate of registration in a conspicuous place in the title pledge office and prohibits a title pledge lender from transacting business at any location other than at a title pledge office named in a certificate of registration.

Surety bond requirement

(sec. 1321.91(A) to (C))

The bill requires that an applicant for a certificate of registration file a bond with the Division of Financial Institutions in the amount of \$120,000 for each certificate of registration sought. The bond must be issued by a surety company authorized to do business in Ohio.

In lieu of a surety bond, the bill permits an applicant to establish a certificate of deposit or an irrevocable letter of credit in a bank or other financial institution in the amount of the bond. The certificate of deposit or letter of credit is to be filed with the Division, and the Division is to be the beneficiary of the certificate or letter.

Under the bill, the bond, certificate of deposit, or letter of credit filed with the Division is for the use and benefit of any consumer injured by a title pledge lender's fraud, misrepresentation, breach of contract, financial failure, or violation of any of the bill's provisions.

Provisions of title pledge agreement

(sec. 1321.92(A))

The bill requires that a title pledge agreement provide the following: (1) the pledgor has the exclusive right to redeem the pledged certificate of title by repaying the loan in full and by complying with the title pledge agreement, (2) when the pledgor redeems the pledged certificate of title, the title pledge lender must release the lender's security interest in the pledged motor vehicle and return the certificate of title to the pledgor, and (3) upon the failure of the pledgor to redeem a pledged certificate of title at the end of the original 30-day agreement period, or at the end of any extension or continuation of the agreement permitted by the bill, the title pledge lender is allowed to take possession of the pledged motor vehicle. A title pledge agreement must require the title pledge lender to retain physical possession of the certificate of title for the entire length of the title pledge agreement, but must not require the title pledge lender to take physical possession of the pledged motor vehicle at any time.

Under the bill, a title pledge lender may hold only unencumbered certificates of title for pledge, and a title pledge lender must record the title pledge lender's security interest in a pledged motor vehicle by noting the lien on the certificate of title for that motor vehicle.

Title pledge service charges

(secs. 1321.92(C) and 1321.87(H))

The bill permits a title pledge lender to contract for and receive a title pledge service charge, instead of interest and other charges, for all services, expenses, costs, and losses of every nature. Under the bill, "title pledge service charge" means a charge for (1) investigating the title, (2) appraising the pledged motor vehicle to which the title pledge agreement relates, (3) documenting and closing the title pledge agreement transaction, and (4) all other services provided by the title pledge lender.

The service charge must not exceed 25% of the original principal of the title pledge agreement, which charge must be fully earned, due, and owing as of the maturity date of the title pledge agreement and as of the maturity date of any extension or continuation of the agreement. The bill designates that any interest, charge, or fee contracted for in excess of 25% of the original principal of the title pledge agreement is uncollectable.

Title pledge transaction forms

(secs. 1321.87(I) and 1321.93(A) to (D))

The bill requires that a title pledge lender complete a consecutively numbered title pledge transaction form at the time it enters into a title pledge agreement. The pledgor must sign the completed title pledge transaction form, and must receive a copy of the completed title pledge transaction form at that time. The bill specifies that the title pledge lender must maintain the original copy of each completed title pledge transaction form on the title pledge office premises for a period of at least two years after the date of the transaction. Under the bill, "title pledge transaction form" means the instrument on which a title pledge lender records title pledge agreements pursuant to the bill.

Under the bill, the Division of Financial Institutions controls the design and format of title pledge transaction forms, which are required to elicit the information required by the bill. Accordingly, the bill requires that the following information be included on each title pledge transaction form used in connection with a title pledge agreement:

- (1) The make, model, year, and vehicle identification number of the motor vehicle covered by the title pledge agreement;
- (2) The name, address, date of birth, and Social Security number of the pledgor;
- (3) The name and address of the title pledge office;
- (4) The date of the title pledge agreement;

(5) The amount of money advanced to the pledgor, to be designated the "amount financed";

(6) The maturity date of the title pledge agreement, which must be 30 days after the transaction;

(7) The total title pledge service charge payable on the maturity date, to be designated the "finance charge";

(8) The total amount that must be paid to redeem the pledged certificate of title on the maturity date, that amount being the sum of the amount financed plus the finance charge, to be designated the "total of payments";

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

Additionally, the following notice is to appear in bold-face type on the front of each title pledge transaction form:

The pledgor is not obligated to redeem the pledged certificate of title. If the pledgor does not redeem the pledged certificate of title by the maturity date of the title pledge agreement, the title pledge lender may repossess the pledged motor vehicle to which the certificate of title relates. The title pledge lender must then retain possession of the motor vehicle for a thirty-day holding period. If the pledgor does not redeem the pledged certificate of title within that thirty-day holding period by paying all outstanding principal, interest, and other fees and service charges, including the title pledge lender's actual repossession costs, then the pledgor shall forfeit all right, title, and interest in and to the pledged motor vehicle and certificate of title to the title pledge lender, which lender shall acquire an absolute right of title and ownership to the motor vehicle.

If the title pledge transaction form is lost, destroyed, or stolen, the pledgor should immediately advise the issuing title pledge lender in writing.

The bill also provides that the following statement must appear on a title pledge transaction form immediately above the blank line for the signature of the pledgor:

The pledgor represents and warrants that the pledged motor vehicle that is the subject of this title pledge agreement is not stolen and has no liens or encumbrances against it, and the pledgor has the right to enter into this transaction. I 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.

Replacement of a title pledge transaction form

(sec. 1321.94(B))

Under the bill, if the pledgor's copy of the title pledge transaction form is lost, destroyed, or stolen, the pledgor must notify the title pledge lender. This notification must be made either in writing, by certified or registered mail, return receipt requested, or in person, evidenced by a signed receipt. The title pledge lender's receipt of this notice invalidates the lost, destroyed, or stolen title pledge transaction form, if the pledged certificate of title is not yet redeemed.

Before redeeming a pledged certificate of title or issuing a new title pledge transaction form, the bill provides that the title pledge lender must require the pledgor to provide a written statement of the loss, destruction, or theft of the pledgor's copy of the title pledge transaction form. The pledgor also must present identification at the time of the delivery of the written statement to the title pledge lender. The title pledge lender must record the following on the written statement: (1) the type of identification provided and the identification number, (2) the date of the title pledge lender's receipt of the written statement, and (3) the number of the title pledge transaction form that was lost, destroyed, or stolen. The title pledge lender, or the title pledge lender's employee, also must sign the written statement. Upon receipt of the pledgor's written statement, the bill requires the title pledge lender to issue a new title pledge transaction form and permits a title pledge lender to impose a fee not to exceed \$2 for each lost, destroyed, or stolen title pledge transaction form.

Extension or continuation of a title pledge agreement

(sec. 1321.92(B))

By agreement of the pledgor and the title pledge lender, the bill provides that the maturity date of the title pledge agreement may be extended or continued for 30-day periods, provided the maximum rate for service charges permitted under the bill (discussed above) is not exceeded during the extension or continuation periods. All extensions or continuations of the title pledge agreement are to be evidenced in writing, and no accrued interest is to be capitalized or added to the original principal of the title pledge agreement during any extension or continuation.

Redemption of a pledged certificate of title

(sec. 1321.94(A) and (C))

Under the bill, any person presenting identification and the pledgor's copy of the title pledge transaction form to the title pledge lender is presumed to be entitled to redeem the pledged certificate of title described in the title pledge transaction form. However, if the person is not the original pledgor, the title pledge lender must have the person redeeming the pledged certificate of title sign the pledgor's copy of the title pledge transaction form, which the title pledge lender may retain to evidence that person's receipt of the pledged certificate of title. The title pledge lender also must record the name and address of the person redeeming the pledged certificate of title, as shown on the identification presented, on the title pledge transaction form retained by the title pledge lender. The bill specifies that the title pledge lender is not liable to the pledgor for another person's redemption of the pledged certificate of title, if the title pledge lender acts in accordance with the bill's provisions.

Upon a pledgor's failure to redeem a pledged certificate of title on or before the maturity date of the title pledge agreement, the bill provides that the title pledge lender has the right to take possession of the pledged motor vehicle. In taking possession, the title pledge lender or an agent of the title pledge lender may proceed without judicial process, if this may be done without breach of the peace. If necessary to maintain the peace, the title pledge lender must obtain judicial process to take possession of the pledged motor vehicle. After taking possession of the pledged motor vehicle, the bill requires that a title pledge lender retain possession of the motor vehicle and the certificate of title for that motor vehicle for a 30-day holding period, commencing on the date of the repossession.

Under the bill, a pledgor may redeem a pledged certificate of title, and may take possession of the certificate of title and repossessed motor vehicle without further charge, by paying the repossession fee and all outstanding principal, interest, and other service charges or fees, during the 30-day holding period. If the pledgor fails to redeem the pledged certificate of title during this holding period,

then the pledgor forfeits all right, title, and interest in and to the pledged motor vehicle and certificate of title to the title pledge lender, and the title pledge lender acquires an absolute right of title and ownership to the motor vehicle and certificate of title. Upon acquiring this absolute right of title and ownership, the bill specifies that the title pledge lender has the sole right and authority to sell or dispose of the motor vehicle.

Changes in the ownership or location of certificate holder; temporary certificates

(sec. 1321.90(E) and (F))

Under the bill, a certificate holder must apply to the Division of Financial Institutions for a new certificate of registration or for the transfer of a certificate of registration upon any change, directly or beneficially, in the ownership of any title pledge office. An application for a new certificate of registration or for the transfer of a certificate of registration is not required to be made if one or more of the holders, directly or beneficially, of at least 90% of the outstanding equity interest in a title pledge office before a change in ownership continues to hold, directly or beneficially, at least 90% of the outstanding equity interest in the title pledge office after the change in ownership.

Also, under the bill, the Division may issue a temporary certificate of registration authorizing the operation of a title pledge office upon the Division's receipt of an application for a renewal certificate of registration, or for the transfer of a certificate of registration, involving principals and owners that are substantially identical to the principals and owners of an existing certificate of registration. The bill specifies that the temporary certificate of registration is effective until a permanent certificate of registration is either issued or denied.

Finally, the Division must amend a certificate of registration upon a title pledge office's move to a new location. A certificate holder must give 30 days' prior written notice of the move to the Division by certified or registered mail, return receipt requested, and the Division must then amend the certificate of registration accordingly.

Prohibitions

(sec. 1321.95)

Under the bill, a title pledge lender, or agent or employee of a title pledge lender, is prohibited from doing any of the following:

(1) Falsifying or intentionally failing to make an entry of any material matter in a title pledge transaction form;

(2) Falsifying any application, document, or record required to be submitted or retained pursuant to the bill's provisions;

(3) Refusing to allow the Division of Financial Institutions to inspect completed title pledge transaction forms or to inspect pledged certificates of title retained by the title pledge lender during the ordinary hours of the title pledge lender's business or at other times acceptable to both parties;

(4) Intentionally defrauding pledgors;

(5) Refusing or failing to produce any document or record, or disclosing any information, required to be produced or disclosed pursuant to the bill's provisions or administrative rules adopted under these provisions;

(6) Entering into a title pledge agreement with a person under the age of 18;

(7) Making any title pledge agreement requiring or allowing the personal liability of a pledgor, or the waiver of any of the bill's provisions;

(8) Knowingly entering into a title pledge 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 the person's own name or the registered name of the person's business;

(9) Entering into a title pledge agreement in which the amount of money loaned in consideration of the pledge of any single certificate of title exceeds \$2,500;

(10) Failing to exercise reasonable care in the safekeeping of a pledged certificate of title, or a motor vehicle repossessed pursuant to the bill's provisions, while the pledgor retains any right, title, or interest in or to the certificate of title or motor vehicle;

(11) Failing to return a pledged certificate of title, or a motor vehicle repossessed pursuant to the bill's provisions, with any of the title pledge lender's liens properly released, upon the payment of the full amount due the title pledge lender, while the pledgor retains any right, title, or interest in or to the certificate of title or motor vehicle;

(12) Selling or otherwise charging for insurance in connection with a title pledge agreement.

Administrative and criminal penalties

(secs. 1321.90(C), 1321.92(D), 1321.93(E), 1321.96, 1321.97, and 1321.99)

The bill provides that the Division of Financial Institutions may, after notice and a hearing held in accordance with the Administrative Procedure Act, suspend or revoke a certificate of registration, place a certificate holder on probation, or reprimand a certificate holder, upon a finding that (1) the certificate holder knowingly has violated the bill's provisions or has failed to exercise due care to prevent a violation, (2) a fact or condition exists, which, if it had been known to exist at the time of the original issuance of the certificate of registration, would have justified the Division in refusing to issue the certificate, or (3) the certificate holder has aided, abetted, or conspired with another to circumvent or violate the bill's provisions.

If required to surrender a certificate of registration to the Division, the bill provides that the certificate holder may surrender the certificate, along with written notice of its surrender, by way of certified or registered mail, return receipt requested. The bill also specifies that a surrender of a certificate of registration by a certificate holder does not affect the civil or criminal liability of the certificate holder for acts committed prior to the surrender of the certificate, and no revocation, suspension, or surrender of a certificate of registration impairs or affects the obligation of any pre-existing lawful contract between the certificate holder and a pledgor.

At its discretion, the Division may reinstate suspended certificates of registration or issue a new certificate of registration to a person whose certificate has been revoked, if no fact or condition then exists which would have justified the Division in originally refusing to issue a certificate of registration.

Under the bill, if the Division finds that a title pledge lender has violated, or is operating in violation of, the bill's provisions or of administrative rules adopted under these provisions, the Division may, if the Division provided the title pledge lender with notice and an opportunity for a hearing in the matter in accordance with the Administrative Procedure Act, enter an order imposing either or both of the following penalties and actions: (1) an administrative fine not to exceed \$5,000 for each action constituting a violation, or (2) a cease and desist order.

However, the bill also provides that, instead of imposing the penalties or taking the actions, specified above, the Division may enter into a supervisory agreement with a title pledge lender that the Division believes has violated, or is operating in violation of, any of the bill's provisions or administrative rules adopted under these provisions.

The bill specifies that these remedies are in addition to any other remedy provided by law. The bill also provides that, in accordance with the bill's provisions and except regarding the calculation of the annual percentage rate which is specified by the Federal Reserve Board, the Division of Financial Institutions is the sole regulator of persons engaged in business as title pledge lenders. The bill also specifies that, in accordance with the Administrative Procedure Act, the Division of Financial Institutions may adopt administrative rules that are necessary for the enforcement of the bill's provisions and consistent with those provisions.

Whoever violates the bill's prohibition against transacting business at an unauthorized location, the bill's provisions dealing with title pledge agreements or allowable service charges, the bill's title pledge agreement form requirements, or any of the bill's prohibitions (see, "Prohibitions," above) is guilty of a third degree misdemeanor on a first offense and a second degree misdemeanor on each subsequent offense. A violation of the bill's provisions dealing with registration of a title pledge lender with the Division of Financial Institutions is a fifth degree felony.

HISTORY

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