

require a handling or delinquent charge of five payment of each one dollar (\$1.00), or fraction thereof on any loan made hereunder becomes past due three days; provided, that such charge shall not constitute the same default;

require an installment maintenance fee of: (a) \$2.50 per month on loans where the total amount of the loan is one hundred dollars (\$100); (b) \$3.50 per month where the total amount of the loan is one hundred dollars (\$100) or more but not more than seven hundred dollars (\$700); and (c) \$4.50 per month where the total amount of the loan is more than seven hundred dollars (\$700) but not more than one thousand dollars (\$1,000); provided, that such charge shall not exceed the original term of the loan; provided further, that any installment maintenance fee shall not be deducted in advance.

require the maximum maintenance fee for the term of the note evidencing that loan; provided, that any delinquent charges nor insurance charges are provided further, that any installment maintenance fee shall not be deducted in full of the note

require the payment by the borrower of any fees and other costs incurred in the collection of the note; and require and collect from the borrower, through the pawnbroker, a bad check charge as provided in this part, negotiable order of withdrawal or like instrument or other depository institution given by any person in full or partial repayment of a loan or other extension of credit if such instrument is not paid or dishonored by such institution; provided, that: (1) such instrument with such institution or person to the borrower or person to whom the credit was extended redemption of same; and (2) not more than one (1) bad check charge on any loan made hereunder becomes past due three days; provided, that such charge shall not constitute the same default; (3) require an installment maintenance fee of: (a) \$2.50 per month on loans where the total amount of the loan is one hundred dollars (\$100); (b) \$3.50 per month where the total amount of the loan is one hundred dollars (\$100) or more but not more than seven hundred dollars (\$700); and (c) \$4.50 per month where the total amount of the loan is more than seven hundred dollars (\$700) but not more than one thousand dollars (\$1,000); provided, that such charge shall not exceed the original term of the loan; provided further, that any installment maintenance fee shall not be deducted in advance.

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require the payment by the borrower of any fees and other costs incurred in the collection of the note; and require and collect from the borrower, through the pawnbroker, a bad check charge as provided in this part, negotiable order of withdrawal or like instrument or other depository institution given by any person in full or partial repayment of a loan or other extension of credit if such instrument is not paid or dishonored by such institution; provided, that: (1) such instrument with such institution or person to the borrower or person to whom the credit was extended redemption of same; and (2) not more than one (1) bad check charge on any loan made hereunder becomes past due three days; provided, that such charge shall not constitute the same default; (3) require an installment maintenance fee of: (a) \$2.50 per month on loans where the total amount of the loan is one hundred dollars (\$100); (b) \$3.50 per month where the total amount of the loan is one hundred dollars (\$100) or more but not more than seven hundred dollars (\$700); and (c) \$4.50 per month where the total amount of the loan is more than seven hundred dollars (\$700) but not more than one thousand dollars (\$1,000); provided, that such charge shall not exceed the original term of the loan; provided further, that any installment maintenance fee shall not be deducted in advance.

7, § 5 wrote (7) which read: "Registrants may also charge and collect from the borrower, through regular billing procedure or otherwise, a bad check charge of fifteen dollars (\$15.00) for any

check, draft, negotiable order of withdrawal or like instruments drawn on a bank or other depository institution given by any person in full or partial repayment of a loan or other extension of credit if such instrument is not paid or dishonored by such institution; provided, that the registrants must return dishonored instrument to the borrower or person to whom the credit was extended redemption of same."

Effective Dates. Acts 1998, ch. 576 July 1, 1998.

PART 6—INDUSTRIAL BANKS AND INDUSTRIAL INVESTMENT COMPANIES

45-5-607. Applicability of laws pertaining to banks.

Compiler's Notes. Section 45-2-209, referred to in this section, was repealed by Acts 1994, ch. 551, § 5.

CHAPTER 6

PAWNBROKERS

SECTION.

PART 2—PAWNBROKERS ACT OF 1988

- 45-6-203. Definitions.
45-6-204. Authority of licensed pawnbrokers.
45-6-206. Eligibility requirements for license.
45-6-209. Record of transactions required — Inspection.
45-6-210. Rate of interest — Other charges permitted.
45-6-211. Failure to redeem — Notice to pledgor.

SECTION.

- 45-6-212. Prohibited actions.
45-6-213. Identification of pawnors — Disposition of stolen property.
45-6-218. Penalties.
45-6-219. Authority of counties, incorporated municipalities, cities and districts to regulate.
45-6-221. Electronic information transfer

PART 2—PAWNBROKERS ACT OF 1988

45-6-201. Short title.

Cited: Dunlap v. Cash Am. Pawn, 158 Bankr. 724 (M.D. Tenn. 1993).

NOTES TO DECISIONS

1. In General.

The pawnbroker statutes are penal in nature, and must therefore be strictly construed.

Lynn v. Financial Solutions Corp., 173 Bankr. 894 (Bankr. M.D. Tenn. 1994).

45-6-203. Definitions. — As used in this part, unless the context otherwise requires:

(1) "Net assets" means the book value of the current assets of a person less its applicable liabilities as stated in this subdivision; and

(A) "Applicable liabilities" include trade or other accounts payable; accrued sales, income, or other taxes; accrued expenses and notes or other payables that are unsecured or secured in whole or in part by current assets; "Applicable liabilities" does not include liabilities secured by assets other than current assets;

(B) "Current assets" include the investments made in cash, bank deposits, merchandise inventory, and loans due from customers excluding the pa

shop charge. "Current assets" do not include the investments made in fixed assets of real estate, furniture, fixtures, or equipment, investments made in stocks, bonds, or other securities or investments made in prepaid expenses or other general intangibles;

(C) "Net assets" must be represented by a capital investment unencumbered by any liens or other encumbrances to be subject to the claims of general creditors. If the pawnshop is a corporation, the capital investment consists of common or preferred shares and capital or earned surplus, as those terms are defined by the Tennessee Business Corporation Act, as amended; if it is any other form of business entity, the capital investment consists of a substantial equivalent of that of a corporation and is determined by generally accepted accounting principles;

(2) "Pawn" or "pawn transaction" means either of the following transactions:

(A) "Buy-sell" agreement means any agreement whereby a pawnbroker agrees to hold a property (pledged goods) for a specified period of time not to be less than sixty (60) days to allow the seller the exclusive right to repurchase the property. A buy-sell agreement is not a loan of money, but shall still meet all recording procedures to law enforcement officers as with a pawn transaction; or

(B) "Loan of money" transaction means any loan on the security of pledged goods and being a written bailment of pledged goods as a security lien for such loan, for the cash advanced, interest and fees authorized by Acts 1995, ch. 186, redeemable on certain terms and with the implied power of sale on default;

For purposes of all state and federal bankruptcy laws, a pledgor's interest in the pledgor's pledged goods during the pendency of a pawn transaction shall be deemed to be that of a right of redemption only;

(3) "Pawnbroker" means any person, partnership or corporation engaged in the business of lending money on the security of pledged goods; or engaged in the business of purchasing tangible personal property on condition that it may be redeemed and repurchased by the seller for a fixed price within a fixed period of time; or engaged in the business of advancing money to a customer in consideration for the customer surrendering possession of tangible personal property on an agreement by which the property may be returned to the customer's possession on repayment of the money advanced; and engaged in the business of selling new and used tangible personal property, whether unredeemed tangible personal property resulting from a pawn transaction, or acquired by a purchase of tangible personal property not acquired in a pawn transaction or purchased merchandise for resale from dealers and traders;

(4) "Pawnshop" means the location at which or premises in which a pawnbroker regularly conducts business;

(5) "Person" means any individual, corporation, joint venture, association or any other legal entity however organized;

(6) "Pledged goods" means tangible personal property, other than choses in action, securities, printed evidences of indebtedness or title documents, which tangible personal property is purchased by, deposited with, or otherwise actually delivered into the possession of a pawnbroker in connection with a pawn transaction, and includes "pawn" or "pledged property" or similar words;

not include the investments made in fixed structures, or equipment, investments made in or investments made in prepaid expenses

represented by a capital investment unencumbered to be subject to the claims of if it is a corporation, the capital investment shares and capital or earned surplus, as Tennessee Business Corporation Act, as of business entity, the capital investment lent of that of a corporation and is determined by accounting principles;

means either of the following transactions: means any agreement whereby a pawnbroker (pledged goods) for a specified period of time not to allow the seller the exclusive right to sell agreement is not a loan of money, but procedures to law enforcement officers as with

means any loan on the security of pledged interest of pledged goods as a security lien for interest and fees authorized by Acts 1995, and with the implied power of sale on

in bankruptcy laws, a pledgor's interest in the pendency of a pawn transaction shall be exemption only;

person, partnership or corporation engaged in the security of pledged goods; or engaged in personal property on condition that it may the seller for a fixed price within a fixed business of advancing money to a customer in rendering possession of tangible personal which the property may be returned to the end of the money advanced; and engaged in used tangible personal property, whether property resulting from a pawn transaction, or personal property not acquired in a pawn merchandise for resale from dealers and traders; location at which or premises in which a business;

sole, corporation, joint venture, association or organized;

able personal property, other than choses in of indebtedness or title documents, which purchased by, deposited with, or otherwise sion of a pawnbroker in connection with a pawn or "pledged property" or similar words;

(7) "Dealer and trader" means a person who holds a current certification registration with the department of revenue pursuant to title 67, chapter part 6;

(8) "Maturity date of pawn transaction" means the date the pawn transaction is due to be paid, which date shall not be less than thirty (30) days after the date of the pawn transaction; and

(9) "Pledgor" means the pawn loan customer of the pawnbroker, entered into a pawn transaction with the pawnbroker. [Acts 1988, ch. 724, § 3; 1995, ch. 539, § 1; 1995, ch. 186, §§ 1, 2.]

Compiler's Notes. Acts 1995, ch. 186, referred to in (2)(B), amended or enacted numerous sections in this title. Consult the Volume tables for a translation.

NOTES TO DECISIONS

1. Possession Required. A loan of money on a vehicle structured as a "pawn" or "pawn transaction" requires that the pawnbroker take actual possession of the vehicle. *Lynn v. Financial Solutions Corp., Bankr. 894 (Bankr. M.D. Tenn. 1994).*

45-6-204. Authority of licensed pawnbrokers. — (a) A pawnbroker licensed pursuant to this part has the power to:

(1) Make loans on the security of pledged goods as a pawn or pawn transaction;

(2) Purchase tangible personal property under a buy-sell agreement from individuals as a pawn or pawn transaction on the condition it may be redeemed or repurchased by the seller at a fixed price within a fixed time not to be less than sixty (60) days;

(3) Lend money on bottomry and respondentia security, at marine interest;

(4) Deal in bullion, stocks and public securities;

(5) Make loans on real estate, stocks and personal property;

(6) Purchase merchandise for resale from dealers and traders;

(7) Make over-the-counter purchases of goods which the seller does intend to buy back. The pawnbroker shall hold such goods for a period of less than twenty (20) business days before offering the merchandise for resale; and

(8) Use its capital and funds in any lawful manner within the general scope and purposes of its creation.

(b) Notwithstanding the provisions of this section, except for a pawn transaction authorized by Acts 1995, ch. 186, no pawnbroker shall have the power as enumerated in this section without first complying with the law regulating the particular transactions involved. [Acts 1988, ch. 724, § 4; 1995, ch. 186, § 3; 1997, ch. 409, § 1.]

Compiler's Notes. Acts 1995, ch. 186, referred to in (b), amended or enacted numerous provisions in this title. For disposition of the act, see the Volume 13 tables.

Amendments. The 1997 amendment substituted "twenty (20) business days" for "fifteen (15) days" in (a)(7).

Effective Dates. Acts 1997, ch. 409, effective October 1, 1997.

Section to Section References. This section is referred to in § 45-6-209.

NOTES TO DECISIONS

1. Loan on a Pledge of Any Nature.

A licensed pawnbroker can lend money on the security of a motor vehicle while allowing the borrower to retain possession of his vehicle provided that the loan is not otherwise a "pawn" or "pawn transaction," and the pawnbroker complies with other applicable laws. *Lynn v. Financial Solutions Corp.*, 173 Bankr. 894 (Bankr. M.D. Tenn. 1994).

If a pawnbroker's loan of money on a vehicle was construed as a "loan on a pledge of any

nature" and not a "pawn" or "pawn transaction," then it would be governed by Article 9 of the Uniform Commercial Code; therefore, where the pawnbroker failed to give proper notice of the sale of the vehicle, conducted a private sale unreasonable in its method, and received a grossly inadequate sale price, the sale of the repossessed vehicle was not conducted in a "commercially reasonable" manner. *Lynn v. Financial Solutions Corp.*, 173 Bankr. 894 (Bankr. M.D. Tenn. 1994).

45-6-206. Eligibility requirements for license. — (a) To be eligible for a pawnbroker's license, an applicant must:

- (1) Be of good moral character;
- (2) Have net assets, as defined herein, of at least seventy-five thousand dollars (\$75,000), readily available for use exclusively in conducting the business of each licensed pawnbroker;
- (3) Show that the business will be operated lawfully and fairly within the purpose of this part; and
- (4) [Deleted by 1995 amendment.]
- (5) If so requested by the appropriate law enforcement agency in any county having a population in excess of eight hundred thousand (800,000), according to the 1990 federal census or any subsequent federal census, have a computer system which is capable of electronically transferring information and shall electronically transfer such information on pledged goods to the sheriff or local law enforcement agency where such pawnshop will be located;

(b) Despite a person's eligibility for a pawnbroker's license under subsection (a), the county clerk shall find ineligible an applicant who has a prior felony conviction within ten (10) years next preceding which:

- (1) Directly relates to the duties and responsibilities of the occupation of a pawnbroker; or
- (2) Otherwise makes the applicant presently unfit for a pawnbroker's license.

(c) If an applicant for a pawnbroker's license is a business entity, the eligibility requirements of subsections (a) and (b) apply to each operator or beneficial owner, and as to a corporation, to each officer, shareholder, and director. [Acts 1988, ch. 724, § 6; 1994, ch. 935, § 1; 1995, ch. 186, § 4; 1997, ch. 409, § 4.]

Amendments. The 1997 amendment inserted "and shall electronically transfer such information" in (a)(5).

Effective Dates. Acts 1997, ch. 409, § 6. October 1, 1997.

45-6-209. Record of transactions required — Inspection. — (a) Every pawnbroker shall keep a consecutively numbered record of each and every pawn transaction which shall correspond in all essential particulars to the detachable pawn ticket attached. The consecutive numbering process for pawnbroker transactions dealing with over-the-counter purchases, described

REFERENCES TO DECISIONS

... nature" and not a "pawn" or "pawn transaction," then it would be governed by Article 9 of the Uniform Commercial Code; therefore, where the pawnbroker failed to give proper notice of the sale of the vehicle, conducted a private sale unreasonable in its method, and received a grossly inadequate sale price, the sale of the repossessed vehicle was not conducted in a "commercially reasonable" manner. *Lynn v. Financial Solutions Corp.*, 173 Bankr. 894 (Bankr. M.D. Tenn. 1994).

Requirements for license. — (a) To be eligible for a license, an applicant must:

(1) be at least twenty-one years of age; and
 (2) be a resident of the State of Tennessee, as defined herein, of at least seventy-five thousand dollars net worth, and have a net worth available for use exclusively in conducting the business of a pawnbroker; and
 (3) be operated lawfully and fairly within the State of Tennessee.

(b) An applicant for a license shall be a resident of the State of Tennessee, as defined herein, of at least seventy-five thousand dollars net worth, and have a net worth available for use exclusively in conducting the business of a pawnbroker; and
 (3) be operated lawfully and fairly within the State of Tennessee.

(c) An applicant for a license shall be a resident of the State of Tennessee, as defined herein, of at least seventy-five thousand dollars net worth, and have a net worth available for use exclusively in conducting the business of a pawnbroker; and
 (3) be operated lawfully and fairly within the State of Tennessee.

(d) An applicant for a license shall be a resident of the State of Tennessee, as defined herein, of at least seventy-five thousand dollars net worth, and have a net worth available for use exclusively in conducting the business of a pawnbroker; and
 (3) be operated lawfully and fairly within the State of Tennessee.

Effective Dates. Acts 1997, ch. 409, § 6. October 1, 1997.

Actions required — Inspection. — (a) Every record of each and every transaction shall be sequentially numbered and every number shall correspond in all essential particulars to the number of the transaction. The consecutive numbering process for records shall begin with over-the-counter purchases, described

in § 45-6-204(a)(7) shall be numbered and identified independently from each other, whether on a buy-sell agreement and/or a loan of money transaction.

(b) The pawnbroker shall, at the time of making the pawn transaction and/or buy-sell transaction, enter upon the pawnshop copy of the record, as well as on the pawn ticket, and/or buy-sell ticket, the following information, which shall be typed or written in ink and in the English language:

(1) A clear and accurate description of the property, including serial numbers if pledged articles shall bear such;

(2) The date of the pawn transaction;

(3) The amount of cash loan advanced on the pawn transaction;

(4) The exact value of property as stated by pledgor who pledges same;

(5) The maturity date of the pawn transaction, which date shall not be more than thirty (30) days after the date of the pawn transaction; and

(6) The name, race, sex, height, weight, date of birth, residence address and telephone numbers from the items used as identification. Acceptable items of identification are one (1) of the following documents:

(A) A state-issued driver license;

(B) A state-issued identification card;

(C) A passport;

(D) A valid military identification;

(E) A nonresident alien border crossing card;

(F) A resident alien border crossing card; or

(G) A United States immigration and naturalization service identification.

(c) The pledgor shall sign the stub providing the pledgor's residence address and shall receive the detached pawn ticket; the stub shall also be signed by the pawnbroker.

(d) These records shall be delivered to the appropriate law enforcement agency, by mail or in person, within forty-eight (48) hours following the date of such transactions. Delivery by mail shall be deemed made when deposited in the United States mail, postage prepaid. Further, these records shall be made available for inspection each business day, except Sunday, by the sheriff of the county and the chief of police of the municipality in which the pawnshop is located.

(e) These records shall be a correct copy of the entries made of the pawn transactions and/or buy-sell transactions and shall be carefully preserved without alteration and shall be available during regular business hours for inspection by the appropriate law enforcement officers as herein provided.

(f) In any county having a population of more than eight hundred thousand (800,000) according to the 1990 federal census or any subsequent federal census each licensed pawnbroker shall retain these records for a period of one (1) year. After such time these records shall be delivered to the appropriate law enforcement agency in the county. [Acts 1988, ch. 724, § 9; 1994, ch. 935, § 6; 1995, ch. 186, §§ 5, 6; 1997, ch. 409, § 3.]

Amendments. The 1997 amendment added the last sentence in (a).

Effective Dates. Acts 1997, ch. 409, § 6. October 1, 1997.

Section to Section References. This section is referred to in §§ 45-6-212, 45-6-215, 45-6-219.

45-6-210. Rate of interest — Other charges permitted. — In connection with and for a pawn or pawn transaction, no pawnbroker shall demand and receive a rate of interest greater than two percent (2%) per month of the amount of the loan advance under the pawn or pawn transaction, and no other charge of any description, for any purpose whatsoever, shall be made by the pawnbroker; except that the pawnbroker may charge, contract for and receive a fee not to exceed one fifth ($\frac{1}{5}$) of the amount of the loan advance under the pawn or pawn transaction for investigating the title, storage, insuring the pledged goods, closing the loan, making daily reports to local law enforcement officers and for other expenses, losses of every nature whatsoever and for all other services. Such fee when made and collected shall not be deemed interest for any purpose of law. Such interest and fee shall be deemed to be earned, due and owing as of the date of the pawn transaction and a like sum shall be deemed earned, due and owing on the same day of each subsequent month. [Acts 1988, ch. 724, § 10; 1995, ch. 186, § 7.]

NOTES TO DECISIONS

1. Reasonable Charge Required.

A pawn agreement calling for interest at 2% per month on the value of the loan plus a pawn/loan service fee of 20% per month, mathematically requiring the payment of \$1,680 in pawn loan fees for a \$3,000 loan that had a

repayment life of less than three months, did not comply with the "reasonable" requirement of this section. *Lynn v. Financial Solutions Corp.*, 173 Bankr. 894 (Bankr. M.D. Tenn. 1994).

45-6-211. Failure to redeem — Notice to pledgor. — (a) In every pawn transaction made under a loan of money pawn transaction as defined in this part, the pawnbroker shall retain in the pawnbroker's possession the pledged goods for thirty (30) days after the maturity date of the pawn transaction. Pledged goods not redeemed by the pledgor on or before the maturity date of the pawn transaction set out in the pawn ticket issued in connection with any pawn transaction may be redeemed by the pledgor within such period of thirty (30) days after the maturity date of the pawn transaction by the payment of the originally agreed redemption price (interest, fee and loan amount), and the payment of the additional interest and fee for the period following the original maturity date due on the pawn transaction.

(b) If the pledgor fails to redeem the pledged goods within thirty (30) days after the maturity date of the pawn transaction, the pledgor shall thereby forfeit all right, title and interest of, in and to the pledged goods to the pawnbroker, who shall thereby acquire an absolute title to the pledged goods and the debt becomes satisfied, and the pawnbroker shall have the authority to sell or dispose of the unredeemed pledged goods as the pawnbroker's own and may sell the unredeemed pledged goods.

(c) If the pledgor loses the pawn ticket, the pledgor shall not thereby forfeit the right to redeem the pledged goods, but may promptly, before the lapse of the final redemption date, make affidavit for such loss, describing the pledged goods, which affidavit shall take the place of the pawn ticket, unless the pledged goods have already been redeemed under this part.

charges permitted. — In connection with any pawn transaction, no pawnbroker shall demand and receive more than two percent (2%) per month of the principal amount of the loan or pawn transaction, and no other charge whatsoever, shall be made by the pawnbroker on any charge, contract for and receive the amount of the loan advance under the terms of the agreement giving the title, storage, insuring the property, and making the necessary reports to local law enforcement agencies of every nature whatsoever and for all purposes collected shall not be deemed interest earned. The interest shall be deemed to be earned, due on the day of the transaction and a like sum shall be paid on the same day of each subsequent month. [Acts 1995, ch. 249, § 7.]

DECISIONS

Repayment life of less than three months, did not comply with the "reasonable" requirement of this section. *Lynn v. Financial Solutions Corp.*, 173 Bankr. 894 (Bankr. M.D. Tenn. 1994).

Right to pledge. — (a) In every pawn transaction, the pawnbroker shall retain possession of the pledged goods until the maturity date of the pawn transaction. The pawnbroker shall not return the goods to the pledgor on or before the maturity date of the pawn transaction unless the pledgor has paid the amount of the loan advance on the maturity date of the pawn transaction or has tendered the amount of the loan advance on the maturity date of the pawn transaction by the payment of the amount of the loan advance (including interest, fee and loan amount), and the pawnbroker has received the amount of the loan advance for the period following the original maturity date of the pawn transaction. If the pledgor does not pay the amount of the loan advance on the maturity date of the pawn transaction, the pawnbroker shall have the authority to sell the pledged goods as the pawnbroker's own property.

(b) If the pledgor does not pay the amount of the loan advance on the maturity date of the pawn transaction, the pawnbroker shall not thereby forfeit the pledged goods but may promptly, before the lapse of the period of time specified in the pawn ticket for such loss, describing the pledged goods, deliver the pledged goods to the pledgor in place of the pawn ticket, unless the pledgor agrees otherwise under this part.

(d) The following information shall be printed on all pawn tickets or buy-sell tickets:

(1) "ANY PERSONAL PROPERTY PLEDGED TO A PAWNBROKER WITHIN THIS STATE IS SUBJECT TO SALE OR DISPOSAL WHEN THERE HAS BEEN NO PAYMENT MADE ON THE ACCOUNT FOR A PERIOD OF THIRTY (30) DAYS AFTER THE MATURITY DATE OF THE PAWN TRANSACTION AND NO FURTHER NOTICE IS NECESSARY";

(2) "THE PLEDGOR OF THIS ITEM ATTESTS THAT IT IS NOT STOLEN, IT HAS NO LIENS OR ENCUMBRANCES AGAINST IT AND THE PLEDGOR HAS THE RIGHT TO SELL OR PAWN THE ITEM";

(3) "THE ITEM PAWNEED IS REDEEMABLE ONLY BY THE BEARER OF THIS TICKET"; and

(4) A blank line for the pledgor's signature. [Acts 1988, ch. 724, § 11; 1995, ch. 186, § 8.]

Section to Section References. This section is referred to in §§ 45-6-212, 45-6-213, 45-6-215, 45-6-219.

NOTES TO DECISIONS

ANALYSIS

1. Bankruptcy.
2. Maturity date.

1. Bankruptcy.

Tennessee law extinguishes all rights of the debtor in pawned property once the statutory redemption requirements have been met and the period has passed. Once redemption is no longer possible, the debtor loses any legal or equitable interest in a pawned good, and thus this good cannot be considered part of the bankruptcy estate. *Dunlap v. Cash Am. Pawn*, 158 Bankr. 724 (M.D. Tenn. 1993).

2. Maturity Date.

"Maturity" cannot be the date of execution of a pawn agreement, unless the agreement had called for immediate repayment or the pawnbroker had accelerated the loan upon a default on the same date. The "maturity of the loan" means when the loan becomes due by default and acceleration or by arrival of the due date as given on the face of the agreement; thus, failure of a pawnbroker to retain possession of pledged property for 50 days following the first date the pawnor failed to make a scheduled payment violated the requirements of this section. *Lynn v. Financial Solutions Corp.*, 173 Bankr. 894 (Bankr. M.D. Tenn. 1994).

45-6-212. Prohibited actions. — A pawnbroker shall not:

(1) Accept a pledge or purchase property from a person under eighteen (18) years of age, nor accept a pledge from anyone who appears intoxicated, nor from any person known to such pawnbroker to be a thief, or to have been convicted of larceny, burglary or robbery, without first notifying a police officer;

(2) Make any agreement requiring the personal liability of a pledgor in connection with a pawn transaction;

(3) Accept any waiver, in writing or otherwise, of any right or protection accorded a pledgor under this part;

(4) Fail to exercise reasonable care to protect pledged goods from loss or damage;

(5) Fail to return pledged goods to a pledgor upon payment of the full amount due the pawnbroker on the pawn transaction. In the event such pledged goods are lost or damaged while in the possession of the pawnbroker, it shall be the responsibility of the pawnbroker to replace the lost or damaged goods with like kind(s) of merchandise. In the event the pledgor and pawnbroker cannot agree as to replacement with like kind(s), the pawnbroker shall

reimburse the pledgor for the agreed upon value of the article as recited under § 45-6-209(b)(4);

(6) Purchase property in a pawn transaction for such pawnbroker's own personal use;

(7) Take any article in pawn, pledge, or as security or under a buy-sell agreement from any person, which article is known to such pawnbroker to be stolen;

(8) Sell, exchange, barter, or remove from their place of business, or permit to be redeemed any goods pledged, pawned, or disposed of by them for a period of forty-eight (48) hours after making the report as provided in § 45-6-209;

(9) Keep more than one (1) house, shop, or place for such business as a pawnbroker under one (1) license; provided, that such person may remove from one (1) place of business to another, as provided in § 45-6-208;

(10) Keep open such pawnbroker's place of business before eight o'clock a.m. (8:00 a.m.) or after six o'clock p.m. (6:00 p.m.) of any day during the year, with the exception of thirty (30) days before Christmas, meaning November 24 through December 24, of each year, and then the pawnbroker may open such place of business at eight o'clock a.m. (8:00 a.m.) and shall be entitled to close the same at nine o'clock p.m. (9:00 p.m.); provided, that any municipality which contains within its corporate limits a portion of a military reservation which is located partially within the boundary of the state of Tennessee and partially within the boundary of another state and which has a population of not less than fifty-three thousand (53,000) and not more than seventy-five thousand (75,000) according to the 1980 federal census or any subsequent federal census may extend such hours of operation by ordinance of the governing body beyond the hours of operation established pursuant to this subdivision, but such extension of hours shall not exceed the hours authorized in the closest contiguous state to such municipality; or

(11) Enter into any pawn transaction which has a maturity date less than thirty (30) days after the date of the pawn transaction. [Acts 1988, ch. 72 § 12; 1989, ch. 433, § 1; 1994, ch. 539, § 2; 1995, ch. 186, § 9.]

45-6-213. Identification of pawnors — Disposition of stolen property

(a) When any person sells property to a pawnbroker or pledges property as security for a loan, the pawnbroker shall obtain and record the information provided for in § 45-6-209(b)(6) and obtain a statement of the pledgor that the pledgor is the lawful owner of such item, as provided in § 45-6-211(d), and have the record signed by the person from whom the pawnbroker receives the property. This record shall be made available to any law enforcement agency or officer upon request.

(b)(1) The party asserting ownership of any property, which the party alleges is stolen and which is in the possession of a pawnbroker, may recover such property by making a report to any law enforcement agency of the location of such property and providing the law enforcement agency with proof of ownership of the property, provided, that a report of the theft of the property was made to the proper authorities within thirty (30) days after obtaining knowledge of the theft or loss; and provided further, that the party asserting ownership will assist in the prosecution of the party pawning such item. Upon

value of the article as recited under section for such pawnbroker's own

as security or under a buy-sell known to such pawnbroker to be

at their place of business, or permit or disposed of by them for a period report as provided in § 45-6-209; shop, or place for such business of that such person may remove from provided in § 45-6-208;

of business before eight o'clock a.m. n.) of any day during the year, with Christmas, meaning November 25 when the pawnbroker may open such (a.m.) and shall be entitled to close provided, that any municipality which is on of a military reservation which is in the state of Tennessee and partially which has a population of not less than seventy-five thousand plus or any subsequent federal census, inance of the governing body beyond want to this subdivision, but such e hours authorized in the closest

which has a maturity date less than pawn transaction. [Acts 1988, ch. 724, 2; 1995, ch. 186, § 9.]

Disposition of stolen property. A pawnbroker or pledges property as shall obtain and record the information in a statement of the pledgor that the name, as provided in § 45-6-211(d), and in whom the pawnbroker receives the title to any law enforcement agency or

of any property, which the party possession of a pawnbroker, may recover any law enforcement agency of the the law enforcement agency with proof that a report of the theft of the property within thirty (30) days after obtaining identified further, that the party asserting of party pawning such item. Upon

the receipt of such proof of ownership, any law enforcement officer is authorized to recover the property from the pawnbroker, without expense to the rightful owner thereof, unless the pawnbroker presents evidence of having received proof of ownership of such property by the person who sold same to pawnbroker or pledged the property as security for a loan. Any property recovered from a pawnbroker, pursuant to this section, shall be returned to the rightful owner thereof, subject to evidence in any criminal proceeding.

(2) In the event that the party asserting ownership of the pawned article has provided such timely report of the theft and/or loss of such article, and the pawnbroker presents acceptable evidence to the law enforcement agency of having received proper proof of ownership from the person selling or pledging the property, then and only then shall it be understood the law enforcement agency has satisfied its processes, duties and responsibilities. It shall then inform the party alleging ownership that it will be necessary for that person to commence an appropriate civil action for the return of the items within thirty (30) days of receiving such notice. The pawnbroker shall not be required to surrender such property to any law enforcement officer or agency or any other person absent an appropriate warrant.

(3) If for any reason after the local authorities have seized certain property and are unable to locate the rightful owner thereof after due diligence, then such property can be returned to the pawnbroker upon the pawnbroker executing a hold-harmless agreement to the local authorities pursuant to title 40, chapter 33. [Acts 1988, ch. 724, § 13; 1995, ch. 186, § 10.]

NOTES TO DECISIONS

1. **Duty to Report Theft.**

Upon locating and inspecting rugs he believed were his at defendant's pawn shop, plaintiff gained knowledge of sufficient facts to lead him to believe that the rugs had been disposed of without his consent. Because, six

months later, after his suit had been filed, plaintiff admitted that he had never reported the rugs as being stolen, he lost his rights to recover possession of them under the Pawnbrokers Act. *Alsafi Oriental Rugs v. American Loan Co.*, 864 S.W.2d 41 (Tenn. Ct. App. 1993).

45-6-218. Penalties. — (a) Every person, firm or corporation, or agents or employees thereof, who knowingly violates any of the provisions of this part shall, on conviction thereof, commits a Class A misdemeanor. If such violation is by an owner or major stockholder and/or managing partner of the pawnshop, and such violation is knowingly committed by the owner, major stockholder or managing partner of the pawnshop, then the license of such pawnbroker or pawnbrokers may be suspended or revoked at the discretion of the city and/or county clerk.

(b) The provisions of subsection (a) do not apply to violations of § 45-6-212(7) which deal with the taking of any article in pawn, pledge or as security under any buy-sell agreement from any person which is known to such pawnbroker to be stolen. Any violation under § 45-6-212(7) shall be prosecuted pursuant to § 39-14-103. [Acts 1988, ch. 724, § 18; 1989, ch. 591, §§ 1, 6; 1996, ch. 675, § 47.]

45-6-219. Authority of counties, incorporated municipalities, cities and taxing districts to regulate. — (a) Counties, incorporated municipal-

ities, cities and taxing districts in this state shall have the authority by ordinance to adopt the provisions of this part and shall have the authority to adopt such further rules and regulations as the legislative bodies of such counties, incorporated municipalities, cities and taxing districts may deem right and proper. No county, incorporated municipality, city or taxing district shall have authority to:

- (1) Regulate interest, fees and insurance charges;
- (2) Regulate hours;
- (3) Regulate the nature of the business or types of pawn transactions;
- (4) Regulate license requirements;
- (5) Require reports or pawn tickets providing identification, information or descriptions different from that required in § 45-6-209; or
- (6) Require a pawnbroker to hold over-the-counter purchase of goods which the seller does not intend to buy back for a period of more than twenty (20) business days before offering the merchandise for resale.

Counties shall have no more authority than incorporated municipalities, cities and taxing districts have under the provisions of this subsection in regulating pawnbrokers.

(b) A law enforcement official from any county, municipality, city or taxing district may not charge a pawnbroker, firm or corporation a fee for receiving, reviewing or processing daily reports or pawn tickets as defined in § 45-6-209, or any other information required by such law enforcement official. [Acts 1988, ch. 724, § 19; 1995, ch. 186, §§ 11, 12; 1996, ch. 885, §§ 1, 2; 1997, ch. 409, § 2.]

Amendments. The 1997 amendment substituted "twenty (20) business days" for "fifteen (15) days" in (a)(6).

Effective Dates. Acts 1997, ch. 409, § 6. October 1, 1997.

45-6-221. Electronic information transfer. — Each licensed pawnbroker, by January 1, 1996, shall have a computer system in operation, if so requested by the appropriate law enforcement agency in any county having a population in excess of eight hundred thousand (800,000) according to the 1990 federal census or any subsequent federal census, which is capable of electronically transferring information and shall electronically transfer such information on pledged goods to the sheriff or local law enforcement agency where such pawnshop is to be located. [Acts 1994, ch. 935, § 2; 1997, ch. 409, § 5.]

Amendments. The 1997 amendment inserted "and shall electronically transfer such information" near the end.

Effective Dates. Acts 1997, ch. 409, § 6. October 1, 1997.

CHAPTER 7

MONEY TRANSMISSION

SECTION.

PART 1—MONEY ORDERS

45-7-101 — 45-7-124. [Repealed.]

SECTION.

PART 2—MONEY TRANSMITTERS

45-7-201. Short title.