

## Notice of Rulemaking Hearing

### Department of Commerce and Insurance Insurance Division

There will be a hearing before the Insurance Division of the Department of Commerce and Insurance ("Division") to consider the promulgation of rules. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in Conference Room A of the Davy Crockett Tower located at 500 James Robertson Parkway, Nashville, Tennessee 37243 at 9:00 a.m. CST on the 20<sup>th</sup> day of December, 2007.

Any individuals with disabilities who wish to participate in these proceedings should contact the Division to discuss any auxiliary aids or services needed to facilitate such participation. Such initial contact may be made no less than ten (10) days prior to the scheduled meeting date, to allow time for the Division to determine how it may reasonably provide such aid or service. Initial contact may be made with the Division's ADA Coordinator at Davy Crockett Tower, 500 James Robertson Parkway, Nashville, Tennessee 37243 and (615) 741-6500.

For a copy of this notice of rulemaking hearing contact: Amy B. Smith, Staff Attorney, Office of Legal Counsel, Department of Commerce and Insurance, Davy Crockett Tower, Twelfth Floor, Nashville, Tennessee 37243, and (615) 741-2199.

### Chapter 0780-01-85 Tennessee Automobile Club and Association Regulations

#### New Rules

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#### 0780-01-85-.01 Purpose.

The purpose of this Chapter is to set standards to assist the commissioner in administering the laws relating to the licensure and regulation of automobile clubs and associations, as provided for in T.C.A. §§ 55-18-103.

Authority: T.C.A. § 55-18-103.

#### 0780-01-85-.02 Scope.

This Chapter applies to all persons acting as an automobile club and/or association in this State.

Authority: T.C.A. § 55-18-103.

0780-01-85-.03 Authority.

This Chapter is issued pursuant to the authority vested in the commissioner pursuant to T.C.A. §§ 55-18-101, *et seq.*

Authority: T.C.A. § 55-18-103.

0780-01-85-.04 Definitions.

- (1) "Automobile club or association" means any person, firm, association, copartnership, corporation, company or other organization which undertakes for consideration paid by or on behalf of its members to defray all or a part of the expenses of such member or members with reference to motor club service, or which issues a certificate which provides for the payment of such benefits to such member or members in services, cash, by furnishing bail, or otherwise;
- (2) "Bail bond service" means any act by an automobile club or association the purpose of which is to furnish to, or procure for, any person accused of violation of any law of this state, a cash deposit, bond or other undertaking required by law in order that the accused might enjoy personal freedom pending trial;
- (3) "Buying and selling service" means any act by an automobile club or association whereby the member of any such automobile club or association is aided in any way in the purchase or sale of an automobile or the purchase or sale of any accessories or equipment related to automobiles or travel, or any purchase of travel services;
- (4) "Commissioner" means the Commissioner of the Tennessee Department of Commerce and Insurance;
- (5) "Department" means the Tennessee Department of Commerce and Insurance;
- (6) "Discount service" means any act by an automobile club or association resulting in the giving of special discounts, rebates or reductions of price on gasoline, oil, repairs, parts, accessories or service for motor vehicles, to members of any such automobile club or association;
- (7) "Emergency road service" means any act by an automobile club or association consisting of the adjustment, repair or replacement of the equipment, tires or mechanical parts of an automobile so as to permit it to be operated under its own power;
- (8) "Financial service" means any act by an automobile club or association whereby loans or other advances of money, with or without security, are made to or arranged for members of any such automobile club or association;
- (9) "Insurance service" means the selling or giving by an automobile club or association to a member, of a policy of accident insurance covering liability or loss by a member as the result of death or personal injury or loss of or damage to the personal property of such member, or the selling of a hospital indemnity policy;
- (10) "Legal service" means any act by an automobile club or association consisting of the hiring, retaining, engaging or appointing of an attorney or other person to give professional advice to, or represent, a member of any such automobile club or association, in any court, as the result of liability incurred by the right of action accruing to the member as a result of the ownership, operation, use or maintenance of a motor vehicle;

- (11) "Map service" means any act by an automobile club or association by which road maps are furnished without cost to members of any such automobile club or association;
- (12) "Motor club service" means the rendering, furnishing, procuring or reimbursement for the expense of one or more of the following:
  - (a) Bail bond service;
  - (b) Buying and selling service;
  - (c) Discount service;
  - (d) Emergency road service;
  - (e) Financial service;
  - (f) Insurance service;
  - (g) Legal service;
  - (h) Map service;
  - (i) Theft service;
  - (j) Touring service; and
  - (k) Towing service;
- (13) "NAIC" means the National Association of Insurance Commissioners;
- (14) "Theft service" means any act by an automobile club or association the purpose of which is to locate, identify or recover a motor vehicle owned or controlled by a member of any such automobile club or association, which has been, or may be, stolen or to detect or apprehend the person guilty of such theft;
- (15) "Touring service" means any act by an automobile club or association by which touring information is furnished without cost to members of any such automobile club or association or the making of arrangements, reservations for lodging or the travel space, procurement of tickets or permits for travel to any place in the world for a member of any such automobile club or association; and
- (16) "Towing service" means any act by an automobile club or association consisting of the drafting or moving of a motor vehicle from one (1) place to another under other than its own power.
- (17) "Uniform Administrative Procedures Act" means the act compiled in T.C.A. §§ 4-5-301, *et seq.*

Authority: T.C.A. §§ 55-18-102 and 55-18-103.

0780-01-85-.05 Initial Licensing Requirements.

- (1) A person applying for a certificate of authority as an automobile club or association shall file the following with the commissioner:
  - (a) A completed application form adopted for use by the commissioner manually signed by an officer or director of the automobile club or association;
  - (b) A deposit in an amount not less than ten thousand dollars (\$10,000) in cash or securities as approved by the commissioner, or, in lieu thereof, a surety bond payable to the commissioner in the sum of twenty thousand dollars (\$20,000), issued by a Tennessee licensed insurance company, conditioned upon full compliance with this Chapter, and the performance of the obligations of such applicant to its members.
  - (c) Copies of the proposed form of membership applications, membership certificates, bylaws, contracts for service, and advertising materials;
  - (d) Copies of any insurance policy or policies which are to cover any insurance benefit or any feature, benefit, or service provided by the automobile club or association to its members in this State;
  - (e) A completed NAIC biographical affidavit form manually signed by all directors, officers, organizers and managers of the applicant;
  - (f) An appointment form notifying the commissioner of either:
    1. The automobile club or association's agent for service of process who shall be a resident of the state of Tennessee; or
    2. The appointment of the commissioner as its true and lawful attorney upon whom any and all lawful process may be served on behalf of the automobile club or association in connection with any business done by the automobile club in this State;
  - (g) A statement as to the financial condition of the automobile club or association as of the end of the automobile club or association's previous fiscal year in a form acceptable to the commissioner;
  - (h) A non-refundable filing fee in the amount of one hundred seventy-five dollars (\$175.00), or the pro rata portion thereof necessary to be paid to the end of the current fiscal year from the date of the application of such license; and
  - (i) A self addressed stamped envelope.
- (2) The commissioner may, after receiving an application under this Rule, request from an automobile club or association additional information as deemed necessary or appropriate in reviewing such application.
- (3) Unless directed otherwise by the Department, an applicant shall file the information required under this Rule with the commissioner by personal delivery or mail addressed to: Tennessee Department of Commerce and Insurance, 500 James Robertson Parkway, Davy Crockett Tower, Fourth Floor, Nashville, Tennessee 37243, Attention: Automobile Club and Association Specialist.

Authority: T.C.A. §§ 55-18-103 and 55-18-105.

0780-01-85-.06 Renewal Requirements.

- (1) A licensed automobile club or association shall renew its license every year prior to July 1 in order to continue to operate in this State. All applications for licensure years subsequent to the initial year shall contain the following:
  - (a) A completed renewal form adopted by the commissioner manually signed by an officer or director of the automobile club or association;
  - (b)
    1. A copy of all of the information required under Rule 0780-01-85-.05(1)(c) through (f);
    2. A statement attesting to the fact that there have been no changes in such information from the previous year's licensure or renewal; or
    3. A statement attesting to the fact that there has only been a change in some of the information provided since the previous year's licensure or renewal with a copy of all information that has changed since the previous year's licensure or renewal;
  - (c) A statement as to the financial condition of the automobile club or association as of the end of the automobile club or association's previous fiscal year in a form acceptable to the commissioner; and
  - (d) A non-refundable filing fee of one hundred seventy-five dollars (\$175.00).
- (2) The commissioner may, after receiving an application under this Rule, request from an automobile club or association additional information as deemed necessary or appropriate in reviewing such application.
- (3) Unless directed otherwise by the Department, an applicant shall file the information required under this Rule with the commissioner by personal delivery or mail addressed to: Tennessee Department of Commerce and Insurance, 500 James Robertson Parkway, Davy Crockett Tower, Fourth Floor, Nashville, Tennessee 37243, Attention: Automobile Club and Association Specialist.
- (4) In order to ensure the prompt review and granting of a renewal application, all licensed automobile clubs and associations must file all information required under Paragraph (1) of this Rule by June 1.
- (5) Any licensed automobile club or association that fails to have its certificate of authority renewed by July 1 must reapply as set forth in Paragraph (1) of Rule 0780-01-85-.05 in order to obtain a new certificate of authority.

Authority: T.C.A. §§ 55-18-103 and 55-18-105.

0780-01-85-.07 Authorized Services.

- (1) Except as provided in Paragraph (2) of this Rule, an automobile club or association shall limit its activity to the offer and sale of motor club services, as defined in Rule 0780-85-.04(12).
- (2)
  - (a) Consistent with T.C.A. § 55-18-102, the commissioner may, within the commissioner's discretion, approve the offering by an automobile club or association of any additional

feature, benefit, or service that does not fall within the definition of motor club service.

- (b) An automobile club or association wishing to offer a feature, benefit or service under this Paragraph shall file a request for approval with the commissioner. All such requests shall contain the following information:
    - 1. A copy of the membership benefit plan describing the feature, benefit or service for which the automobile club or association is applying for under this Rule;
    - 2. A statement as to how the feature, benefit, or service either:
      - (i) Augments or is incidental to a motor club service; or
      - (ii) Is of assistance or beneficial to the members of the automobile club or association and is feasible for the automobile club or association to render.
  - (c) All requests for approval under this Paragraph shall be filed with the commissioner no later than thirty (30) days prior to the proposed date of offering of the feature, benefit or service by the automobile club or association.
  - (d) The commissioner may, after receiving a request for approval, request from an automobile club or association additional information as deemed necessary or appropriate in reviewing such request.
  - (e) Upon receiving a request for approval containing all of the information required by Subparagraph (b) of this Paragraph, and receiving all information requested pursuant to Subparagraph (d) of this Paragraph, the commissioner shall issue the requesting party in writing a notice of approval or denial of the request.
  - (f) An automobile club or association shall not offer in this State a feature, benefit or service under this Rule without the express written approval of the commissioner. Notwithstanding the foregoing, if the commissioner does not deny a request for approval within thirty (30) days of having received all requested information under Subparagraph (d) of this Paragraph, the request for approval shall be deemed to have been approved by the commissioner.
  - (g) The Department shall publish notice to all automobile clubs and associations of the commissioner's approval or denial of any feature, benefit or service applied for under this Rule. An automobile club or association may offer such feature, benefit or service upon providing notice to the Department.
  - (h) The commissioner may revoke approvals granted under this Rule upon providing written notice to any automobile club or association known to be offering such feature, benefit or service. Such revocation shall apply to any contracts for services entered into or renewed after the date of the revocation
- (3) Notwithstanding Paragraph (2) of this Rule, the commissioner shall not approve any feature, benefit or service that constitutes an insurance plan or insurance benefit, other than those meeting the definition of a motor club service, or any feature, benefit, or service which is similar to insurance unless the automobile club or association becomes licensed as an insurance company in this State or unless such feature, benefit or service is obtained by the automobile club or association from an insurance company licensed in this State.

Authority: T.C.A. § 55-18-103.

0780-01-85-.08 Examination Authority and Record Keeping Requirements.

- (1) The commissioner has the authority to examine the affairs of any automobile club or association that has applied for or received a certificate of authority under this Chapter in order to determine whether the automobile club or association is in compliance with all laws or regulations applicable to it. All expenses of such examinations shall be assessed against the automobile club or association.
- (2) The commissioner has the authority to investigate the affairs of any person acting as an automobile club or association in this state in order to determine whether such person is in violation of this Chapter.
- (3) Each automobile club and association shall maintain its accounts, books and records in a form and manner approved by the commissioner for a period of not less than five (5) years.

Authority: T.C.A. §§ 55-18-103 and 55-18-104.

0780-01-85-.09 Procedures for Public Complaints.

- (1) Complaints concerning automobile clubs and associations shall be handled by the Consumer Insurance Services Section (or successor organizational unit) of the Department's Insurance Division.
- (2) The Consumer Insurance Services Section (or successor organizational unit) shall record and review all complaints received under this Rule, and the process for such review and disposition shall be the same as that for all other complaints submitted to the Consumer Insurance Services Section.
- (3) Upon receiving notice of a complaint from the Consumer Insurance Services Section, an automobile club or association shall send a written response to the Consumer Insurance Services Section within thirty (30) days thereafter.

Authority: T.C.A. § 55-18-103.

0780-01-85-.10 Penalties.

- (1) In addition to any other reason set forth in statute, the commissioner may deny, non-renew, suspend or revoke the certificate of authority of any automobile club or association upon finding that:
  - (a) The automobile club or association has failed to provide any information required for a certificate of authority or renewal of a certificate of authority under this Chapter;
  - (b) The automobile club or association is violating any or any of the provisions of T.C.A. §§ 55-18-101 through 109, this Chapter or any other law or regulation applicable to it;
  - (c) The automobile club or association is not fulfilling its contractual obligations to its members;
  - (d) The automobile club or association is in such financial condition that it is unlikely, in the commissioner's opinion, that the automobile club or association will be able to provide the services that it contracts to provide; or

- (e) The automobile club or association is conducting business in a deceptive, untrustworthy or fraudulently manner.
- (2) All hearings to revoke or suspend a certificate of authority under this Rule shall be held in conformity with the Uniform Administrative Procedures Act and the Rules of Procedure for Contested Cases of the Rules of the Secretary of State as compiled at Chapter 1360-4-1.

Authority: T.C.A. § 55-18-103.

0780-01-85-.11 Automobile Club or Association Agents.

- (1) Before an agent may represent any automobile club or association in this state, such agent must first obtain a license from the commissioner and pay to the commissioner an annual license fee as provided for in T.C.A. § 55-18-106. All licenses issued under this Rule shall be valid until June 30 of the current fiscal year.
- (2) A person applying for a certificate of authority as an agent of an automobile club or association shall file the following with the commissioner:
  - (a) A completed application form adopted for use by the commissioner manually signed by the applicant and notarized;
  - (b) A certification of recommendation from the automobile club or association on behalf of which the agent intends on soliciting memberships;
  - (c) A Personnel Selection Report/Criminal Background Check or proof that the applicant holds an insurance producer license in this state or elsewhere; and
  - (d) A non-refundable licensing fee in an amount as follows:
    - 1. For applicants with a residence in a county having a population of fifty thousand (50,000) or more per annum, twenty dollars (\$20.00);
    - 2. For applicants with a residence in a county having a population of ten thousand (10,000) or more, and less than fifty thousand (50,000), per annum, fifteen dollars (\$15.00); and
    - 3. For applicants with a residence in a county having a population of less than ten thousand (10,000), per annum, ten dollars (\$10.00).
- (3) An agent of a licensed automobile club or association shall renew his/her license every year prior to July 1 in order to continue to operate in this State. All applications for licensure years subsequent to the initial year shall contain the following:
  - (a) A completed renewal form adopted by the commissioner manually signed by the agent and notarized; and
  - (b) A non-refundable filing fee in the amount set by Paragraph (2)(d) of this Rule.
- (4) The commissioner may place on probation, suspend, revoke or refuse to renew a license issued under Paragraph (1) of this Rule for any one or more of the following causes:
  - (a) Providing incorrect, misleading, incomplete or materially untrue information in the license application;

- (b) Violating any law, rule, regulation, subpoena or order of the commissioner or of another state's commissioner;
  - (c) Obtaining or attempting to obtain a license through misrepresentation or fraud;
  - (d) Improperly withholding, misappropriating or converting any moneys or properties received in the course of doing motor club service business;
  - (e) Intentionally misrepresenting the terms of an actual or proposed motor club service contract or application for motor club service;
  - (f) Having been convicted of a felony;
  - (g) Using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this state or elsewhere;
  - (h) Having any professional license denied, suspended or revoked in any state, province, district or territory;
  - (i) Forging another's name to an application for motor club service or to any document related to a motor club service transaction;
- (5) Any action by the commissioner to put on probation, suspend, revoke or deny the renewal of a license pursuant to this Chapter shall be governed by the Uniform Administrative Procedures Act, compiled in T.C.A. §§ 4-5-301, *et seq.*
- (6) The commissioner may serve a notice or order in any action arising under this Chapter by registered or certified mail to the automobile club or association agent at the address of record in the files of the Department. Notwithstanding any provisions of law to the contrary, service in the manner set forth herein shall be deemed to constitute actual service on such automobile club agent or applicant.
- (7) Unless directed otherwise by the Department, an applicant shall file the information required under this Rule with the commissioner by personal delivery or mail addressed to: Tennessee Department of Commerce and Insurance, 500 James Robertson Parkway, Davy Crockett Tower, Fourth Floor, Nashville, Tennessee 37243, Attention: Automobile Club and Association Specialist.

Authority: T.C.A. §§ 55-18-103 and 55-18-106.

The notice of rulemaking set out herein was properly filed in the Department of State on the 31st day of October, 2007. (FS 10-33-07; DBID 752)