

Chapter 1

Automobile Issues



One of the biggest consumer problem areas for servicemembers is buying an automobile using financing. Many servicemembers are receiving regular paychecks for the first time in their lives and want to buy their first car. There are many threats to the wallet that servicemembers should watch out for when buying a car. “Yo-yo” scams, loan packing, “buy here, pay here” dealerships, and the sale of salvaged or flooded vehicles are examples of deceptive practices used by some car dealers. Consumers who have financial problems may choose to obtain a title loan on their current car.

The law provides some protections when a servicemember buys a car or obtains a title loan. This section covers issues to watch out for and what to do when they arise. Remember, regardless of the predatory business practice, education is the best defense.

Title Loans

In Tennessee, title loans are covered by the Tennessee Title Pledge Act. However, certain loans may be covered by the Military Lending Act (MLA). The following is helpful information from the Tennessee Department of Financial Institutions about the Tennessee Title Pledge Act:¹

- A title loan is a closed-end credit loan which has a term of 181 days or less and is secured by a clear title to a car registered to the borrower.
- The title loan lets the borrower secure a loan up to a maximum of \$2,500, based on the car’s appraised value.
- A title lender can charge an effective interest rate not exceeding 2% per month. Additionally, the title lender can include in the contract a fee that may equal but not exceed one-fifth of the original principal amount of the title loan. This equals a maximum monthly financing rate of 22%. Furthermore, all interest and fees are due and owed to the title lender on the date the title loan closes.
- Title loans should not last more than 30 days. This time period should be clearly stated on the Truth in Lending Disclosure paperwork, which the title lender should give the consumer at the closing of the loan. This time period should be easy to determine because the due date of the loan is always 30 days from the date the title pledge loan closed.

¹ Tenn. Code Ann. §§ 45-15-101 *et seq.*

- The title loan contract may include renewals for additional 30-day periods, which could be automatic. If the borrower is unable to pay the full amount of the title loan by the due date, he or she may renew the contract by paying the interest and fees owed for that 30-day period.
- If the borrower renews the title loan for a third time and is still unable to pay the contract in full, the borrower is required to make a payment of at least 5% of the original amount of the title loan, in addition to the interest and fees owed for that 30-day period.
- If the borrower does not pay when required, the title lender may take the car without a court order if this can be done peacefully, or it may seek a court order.
- After the title lender takes the car, the car must be held for a certain time period to give the borrower a chance to get the car back by paying all of the money owed. If the borrower pays the full amount, the title lender must give back the car and the title without charging any more money. If the borrower does not pay and take back the car within this time period, the lender may sell the car in a “commercially reasonable manner.”
- The money from the sale of the car will go first to paying off all of the money still owed on the title loan, and any leftover money must be returned to the borrower.
- Title loans are special because if the borrower doesn’t pay the loan on time, the title lender’s only option is to take the car. In this case, the borrower does not owe any more money to the lender once the car has been taken.

Title loans may also be covered by the MLA. Under the MLA, the maximum rate a title lender can charge is 36% annual percentage rate, and other consumer protections may be available to the servicemember. For more information on the MLA, turn to Chapter 3.

Servicemembers who have a complaint about a title loan should first try to resolve the issue with the financial institution. If they have attempted to work with the financial institution but need further assistance, they may file a complaint with the Tennessee Department of Financial Institutions. Complaints can be filed by phone by calling toll-free at 800-778-4215 or online at www.tennessee.gov/tdfi/crd/index1.shtml.

Yo-Yo Scams

“Yo-yo” automobile scams occur when a consumer buys a vehicle from a dealer and is contacted by the dealer days later and told he/she must return the vehicle to the lot because “financing was not approved” or the “loan did not go through.” Sometimes when the consumer returns the car, the dealership will try to get the consumer to buy a different car and/or enter a sales contract with a higher interest rate. Often, consumers are denied a refund of their down payment and are told their trade-in vehicle has been sold. Depending on the circumstances, these acts could be a violation of the Tennessee Consumer Protection Act (TCPA).

Consumers should pay close attention to the paperwork that they sign when buying the vehicle. If a dealer is pressuring a consumer to rush through the paperwork, the consumer should be suspicious and ask for enough time to read all the paperwork. Consumers should watch for anything in the paperwork that says the purchase price changes based on how the car is paid for or which type of car loan is used. Consumers should take a friend or family member with them to pay close attention to the negotiations. The friend or family member can help ask direct and specific questions about the terms and carefully read the sales agreement to make sure the sales price is what was agreed upon. If a dealer says something about financing or car loans, consumers should ask the dealer to put the statement in writing.

Loan Packing

Servicemembers should read vehicle sales paperwork to make sure the dealership is not adding products that were not discussed during negotiations. Adding in these products is called “loan packing.” Many times, the dealer will not include these add-ons in the advertisement or price told to the consumer. Examples of add-ons to watch out for include extended warranties, limited warranties, tire protection, gap insurance, Vehicle Identification Number (VIN) etching, fabric protection, and paint protection. Often, add-ons like fabric protection and paint protection are nothing more than commonly used products found at an automotive store added on by the

dealership for an increased fee. Consumers should not feel pressured to agree to add-ons. If a dealer or advertisement offers a vehicle at a particular price, the consumer should not be asked to pay any more for the vehicle other than tax, title, license, and registration fees. It is important to slow down, ask questions, and know exactly what each add-on actually is.

“Buy Here, Pay Here” Dealerships

“Buy here, pay here” dealerships are automobile dealers who typically focus on selling to consumers with bad or no credit. These dealers often focus on young servicemembers who are receiving their first paycheck and have not yet built a credit history. The dealership acts as the “bank” in these transactions by financing the sale itself and usually charges a high interest rate. Often, the actual price of the car will not be initially disclosed to the consumer, as the dealership will want to first learn the consumer’s credit history and income to determine how much the consumer can afford to pay. Servicemembers should read the sales terms carefully to learn what happens if they are late on a payment. Often, when a weekly or monthly payment is missed, the dealership will repossess the car and the consumer will not be able to recover the down payment or any other payments made to the dealer. Servicemembers thinking about buying a car from a “buy here, pay here” dealership should be wary of high-pressure sales tactics and should make sure they read and understand all of the paperwork before they sign. Servicemembers may want to ask if they may take a copy of the contract and review it with a friend or family member before signing. Servicemembers should also consider trying to obtain pre-approval for a car loan from a source that is not the dealership before looking to buy a car.

Tennessee Lemon Law²

What is a Lemon?

Most people buy a new car because they expect it to be free from defects. When a consumer is faced with paying a new car price, he or she can become very frustrated if the car has mechanical problems. The obvious reaction is to ask the car dealership or manufacturer to fix the car. Although asking that a new car be fixed seems simple, consumers can face a wide variety of problems and may be left with an unrepaired vehicle after several unsuccessful attempts.

Tennessee has a Lemon Law to help protect consumers and inform them of their rights when dealing with a “lemon.”³ A “lemon” is defined as a:

- motor vehicle sold or leased after January 1, 1987;
- that has a defect or condition that substantially impairs⁴ the motor vehicle; and
- the manufacturer, its agent, or authorized dealer cannot fix the vehicle after three attempts or the vehicle is out of service for repairs for a cumulative total of 30 or more days during the term of protection.

The Lemon Law only applies if the vehicle was bought new. Under the law, if a motor vehicle is a “lemon,” the manufacturer must replace the motor vehicle or refund the purchase price (minus a reasonable allowance for use).

² Portions of this section were taken from the Tennessee Division of Consumer Affairs’ website at tn.gov/consumer/lemon.shtml.

³ Tenn. Code Ann. §§ 55-24-101 *et seq.*

⁴ “Substantially impair” means a motor vehicle is unreliable or unsafe for normal operation, or its resale market value is reduced below the average resale value for comparable motor vehicles.

What Should a Consumer Do if He or She Has a Lemon?

If a consumer has bought a lemon, he or she must notify the manufacturer of the problem in writing by certified mail. The manufacturer is allowed a chance to fix the car within 10 days. If the manufacturer cannot fix the car and the manufacturer has an informal dispute settlement procedure that complies with Federal Trade Commission (FTC) regulations, the refund and replacement provisions of the Lemon Law won't apply until the consumer attempts to resolve the dispute using this procedure. Consumers are not bound by any decision of the settlement procedure and can still seek available legal remedies, including asking a court to award a replacement vehicle or to reimburse the purchase price (minus a reasonable allowance for use), plus attorney's fees and court costs.

When Can a Consumer Take Action?

A consumer can file a lawsuit under the Lemon Law within six months of either the expiration of the express warranty or one year following the original date of delivery, whichever is the later date. Extended warranties are not considered in determining the time to file suit. Consumers should consult an attorney well before the expiration of this time limit to be sure of preserving their legal rights.

Salvage/Flood Vehicles

Cars damaged by flood water and considered totaled by insurance companies should be sold as salvage or for parts and not resold to the public. Unfortunately, some flood-damaged vehicles may end up with businesses that will clean them up cosmetically, find a way to re-title them, and arrange to have them sold to unsuspecting buyers.

Being submerged in flood water, even for brief periods of time, can damage a car's electrical system, on-board computer systems, and safety equipment like anti-lock brakes and

airbags. Today's cars typically contain a dozen or more computer systems, which can be damaged after being submerged in water. Damage to the car may not become apparent until well after the water dries.

If servicemembers are in the market for a new or used car, here are some ways they can protect themselves from unknowingly buying a flood-damaged car:

- **Take the Car to a Reputable Mechanic Before Buying It.**
Before buying a car, always take it to a reputable independent mechanic for an inspection. Ask the mechanic to check for possible flood damage. To find a reputable mechanic, ask friends or family for references and cross-reference the mechanic's company. Check out the mechanic and car dealership with the Tennessee Division of Consumer Affairs (DCA), the Tennessee Motor Vehicle Commission (MVC), and the local Better Business Bureau (BBB) for consumer complaints.
- **Be Wary of Sight-Unseen Online Car Purchases.**
Be wary of buying something as expensive as a car over the Internet if the servicemember and his or her mechanic cannot get a chance to see the vehicle and actually take a test drive in it.
- **Safely Examine the Car for Flood Damage.**
Check for telltale signs of water damage like:
 - a smell of mildew in the car, or a strong deodorant smell that may be used to cover up the smell;
 - a water line along the upholstery, carpet, or door panels, in the engine compartment or trunk;
 - signs of moisture in the dashboard;
 - mud or sand in crevices or in the carpet; and
 - electrical problems, like a power window that works poorly.

Look carefully at seat belt retractors, door speakers, and spare tire nooks. Look for rust on the inside of the car, under the carpet, and under the car. Inspect interior upholstery, including door panels, for signs of fading. Check for rust on screws in the console, the inside portion of the roof, or other places where water would not normally reach. Without touching anything, carefully inspect the electrical wiring system for rusted components, water residue, or corrosion. If someone can safely do so, inspect alternator crevices, behind wiring harnesses and around the small recesses of starter motors, power steering pumps, and relays.

- **Consider Buying a Vehicle History Report But Know Its Limitations.**
Consider buying a vehicle history report from one of the companies that offers this service online to see whether a flood-damaged title has been issued for the car. However, please be aware that most reporting agencies do not possess information from every

state or from every insurance company. Also remember that databases are only as good as the information that is reported to them. In other words, these databases will not capture car damage that an owner has intentionally not reported. If the dealership offers to provide a vehicle history report, remember most of the companies only provide their guarantee to the person to whom the report is issued so a consumer needs to ask to have a report issued in his or her name.

- **Insist on Seeing a Valid Car Title.**

Insist on seeing the vehicle's existing state-issued title. If the individual seller or dealership will not show the title, walk away. Ask about "damage disclosures" at dealerships, including whether the vehicle has been in an accident, has had flood damage, or has title issues. Ask that the answers received in response to these questions be put in writing. Consumers can ask their insurance agent to run the VIN through the National Insurance Crime Bureau, which has compiled a database of vehicles affected by some natural disasters.

- **Ask the Dealer or Seller.**

Dealers and individual sellers in Tennessee should disclose water damage in vehicles. If a consumer feels that the dealer or seller isn't giving a straight or definitive answer as to whether the car was flood damaged, he or she should walk away. Ask for any response saying the car does not have water damage be put in writing.

Tennessee Motor Vehicle Commission

The MVC is responsible for licensing automobile dealerships operating in the State of Tennessee. The MVC was created to enforce the Tennessee Motor Vehicle Dealer Licensing Act.⁵ The mission of the MVC is to protect consumers from fraud related to car dealerships.

Filing a Complaint with the MVC

Servicemembers may file a complaint with the MVC online at www.tn.gov/regboards/mvc/complaint.shtml. The complaint form can also be printed online at this same address and mailed to: State of Tennessee, Tennessee Motor Vehicle Commission, 500 James Robertson Parkway, Nashville, Tennessee, 37243-1153. A complaint should be very detailed, and all information and paperwork about the issue should be copied and sent with the complaint when filing. A copy of the MVC complaint form is included in Appendix A. These complaints may be made available for

⁵ Tenn. Code Ann. §§ 55-17-101 *et seq.*

public inspection, so please remove any personally identifiable information like Social Security numbers and bank account numbers. Upon receipt of the complaint, the MVC will send a copy of the servicemember's complaint to the dealer or dealership for a response. The dealer or dealership has 10 days to respond to the complaint. Once the response is received by the MVC, a determination will be made as to whether there are any violations of the MVC's rules. The MVC can only take action against the license of an individual and is not able to obtain dissolution of a contract, monetary reimbursement, or another civil-based restitution for a servicemember.

Car Buying Tips

The MVC offers the following tips for servicemembers to think about before buying an automobile:

1. Determine an affordable type of vehicle and price range.
2. Obtain pre-approval financing from a financial institution.
3. Choose a car dealership with a good reputation.
4. Check the vehicle history and obtain an independent evaluation from a mechanic with a good reputation (repair shops usually provide this service).
5. Understand the following about any car sales contract:
 - Vehicle price and any warranty or add-on prices, paperwork fees, etc.
 - The proposed trade-in allowance, if any (the amount of money the dealer is giving for the currently owned car).
 - The interest rate, first payment date, number of payments, and total finance charge over the term of the loan.
 - Any paperwork processing fee that the dealership charges (can be negotiated and is not required).
 - Any extended warranty (know the terms of the warranty before buying).
 - Gap insurance (not required but this covers any amount still owed in case of an accident if the value of the car is less than the amount owed).

This section was authored by Anthony Glandorf, Assistant General Counsel in the Tennessee Department of Commerce and Insurance.

“As-Is” Disclaimers

Federal laws require that dealers provide a Buyer’s Guide to a consumer that says whether the car comes with a warranty or is sold without a warranty. When a car is sold “as-is,” please understand that the dealer will not make any repairs after the servicemember has bought the car. If the dealer makes any promises about future repairs on an “as-is” sale, be sure the dealer makes that promise in writing before leaving with the purchased car.

Individual Sellers

While there are many opportunities to buy a car from individuals, servicemembers should be aware of these common issues:

- If buying a car from an online listing, make sure to get the name and address of the seller. Also, be sure that the name of the person selling the car matches the name of the person on the title. If not, consumers may end up owing more taxes (the ones the seller did not pay).
- Be wary of people stating they are out-of-state dealers. This is often a scam that gives the buyer a bill of sale from another state (like Alabama or Georgia). Consumers may also end up paying sales tax in two states. Remember, any dealer who sells cars in Tennessee must have a license issued by the State of Tennessee.