



**Tennessee Department of Financial Institutions**  
*The 2010 Report on the Title Pledge Industry*  
*Issued March 2010*

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## REGULATORY OVERVIEW

The activities of Title Pledge Lenders are governed by the “Tennessee Title Pledge Act”, codified at Tennessee Code Annotated (T.C.A.) Title 45, Chapter 15. This report is provided pursuant to the statutory provision of T.C.A. § 45-15-109(c)(5), requiring a biennial analysis and recapitulation of the reports, for calendar year 2008, for the purpose of reflecting the general results of operations of the industry. The compilation and analysis of information in this report was gathered from licensees in submission of their annual renewal applications. As part of the submission, licensees were required to attest, under oath, to the truthfulness and accuracy of the information. To further ensure the validity of this information, the Department will select, from a sampling, companies for on-site examination of the financial and transaction data submitted.

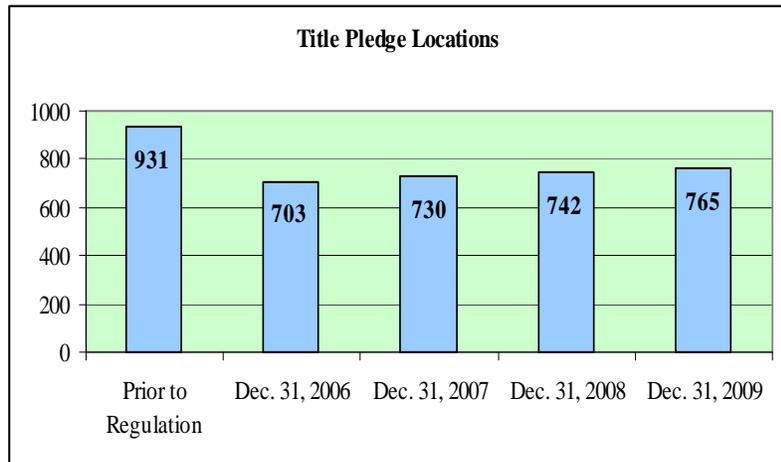
The Department’s regulatory oversight includes reviewing all applications to ensure that licensing requirements are met, conducting periodic on-site examinations for compliance with the Act, issuing corrective actions, and investigating consumer complaints.

## LICENSING

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Each application must meet the licensing eligibility requirements of T.C.A. § 45-15-106. Applicants shall demonstrate financial responsibility, financial condition, business experience, character, and general fitness to reasonably warrant the belief that the business will be operated lawfully and fairly.

The statute allows the Department up to 90 days to act on a “complete” application. As set forth in Department Rule 0180-33-.01, a nonrefundable fee of \$700 per location is required at the time of filing. The applicant must also provide a surety bond or irrevocable letter of credit in the amount of \$25,000 per location,



with the aggregate amount not to exceed \$200,000 for any single title pledge lender. A complete application must be notarized and include a listing of the owners, along with their resumes and credit reports.

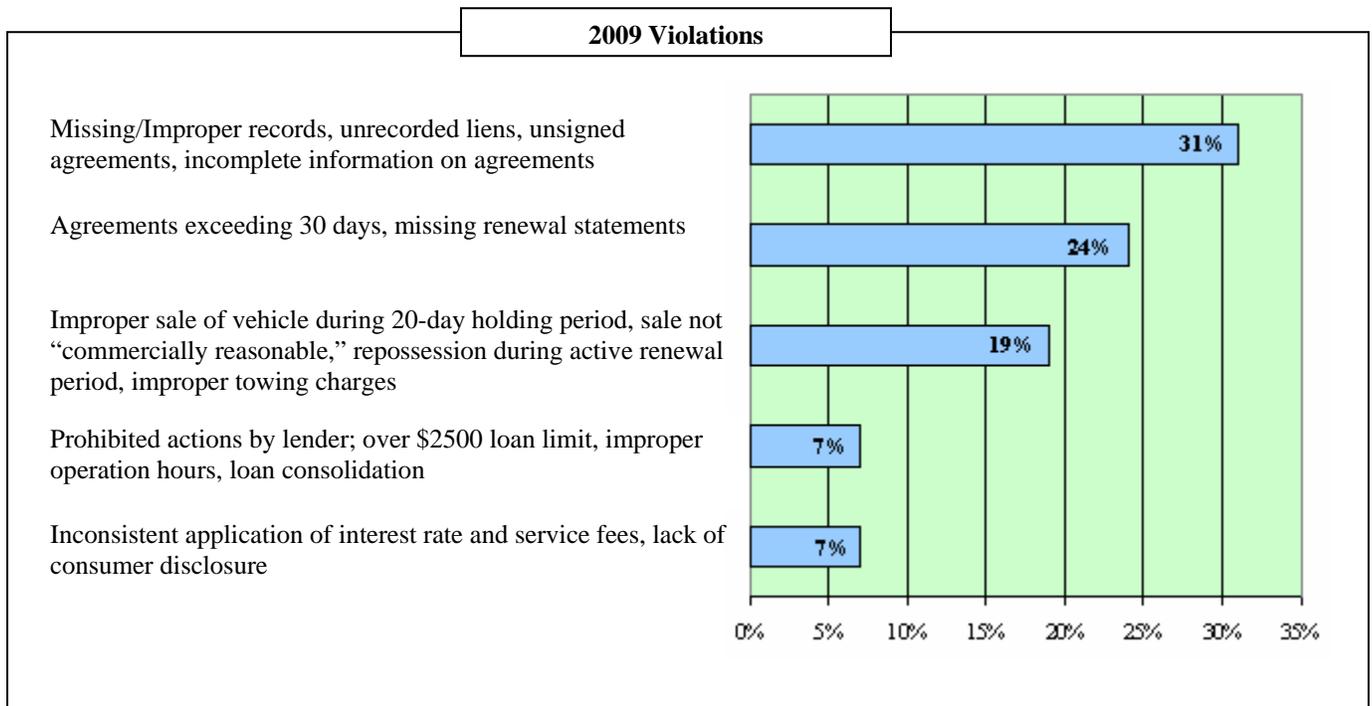
An applicant is required to submit a set of financial statements prepared by a certified public accountant or public accounting firm not affiliated with the applicant and in accordance with generally accepted accounting principles. The business must meet and maintain a tangible net worth of at least \$75,000 per location. Additional supporting documents may be requested to substantiate the value of assets reported. Applications that fail to meet the licensing requirements are recommended for denial. The Department denied three license applications in 2009 and four were withdrawn. Licenses are non-transferable or assignable and must be renewed annually.

## EXAMINATIONS

The regulatory oversight of licensees includes on-site compliance examinations conducted pursuant to T.C.A. § 45-15-108. Cited violations represent instances in which the licensee did not comply with statutory requirements. On-site examinations have proven an effective tool in detection and the prevention of violations of the Act. Examiners also review lenders' compliance with the U.S. Department of Defense Rule 32 CFR Part 232 ("DOD Rule"), that became effective October 1, 2007. One of the main provisions of that Rule, which covers members of the armed forces and their dependents, is a cap on the interest rate. The Military Annual Percentage Rate ("MAPR") may not exceed 36% inclusive of interest, fees, and other charges. In 2008, two lenders were cited for violation of the DOD Rule by exceeding the permissible MAPR. The lenders took corrective action by making refunds to consumers and/or reducing the rate on the loans to equal or below the permissible MAPR.

Examiners document and present the examination findings to the licensee in a written report. The licensee is given a period of time to respond in writing to the examination findings. The response generally details the actions the licensee took to correct any violation(s). Most exam findings are resolved by field personnel. Unresolved issues, systemic problems, apparent criminal activity, significant refunds, unlicensed activity or repeat violations are referred to the Chief Administrator in the Nashville office for follow-up with the licensee and issuance of corrective action as needed.

The following graph reflects the most prevalent violations found in 2009:



## REFUNDS AND CORRECTIVE ACTIONS

As noted previously, licensees must detail in writing what steps were taken to correct violations of the Act which may include consumer refunds when applicable. Though it appears from examinations that lenders are not charging more than the statutory limit of 22% per month, refunds were made in 2008 and 2009 due to other improper charges or for other reasons the most prevalent of which are outlined below.

### 1) Unlicensed Activity:

- Evidence of unlicensed activity may result in refunds of all interest and fees collected and the imposition of monetary penalties. License renewal applications must be filed on or before October 1, of each year. Licensees that file timely may continue operating after the October 31 expiration date until such time as the Department acts on the renewal application. If a licensee fails to file a renewal timely, the existing license expires by operation of law and a new license application must be filed.

### 2) Repossession of collateral during an active renewal period:

- Lenders are required to refund to consumers towing charges and any interest and fees assessed. Once a renewal agreement is entered into, the lender cannot declare default within the thirty-day renewal period. The Department issued industry Bulletin C-08-1 on January 25, 2008 to explain and clarify this position.

### 3) Improper application of the 5% principal reduction under T.C.A. § 45-15-113(d):

- Lenders may be required to refund any overcharges to the consumer if the principal loan amount was not reduced by 5% in the correct renewal period. Overcharges occur when lenders collect interest and fees on the outstanding loan amount before reducing it by the required 5%. This is further clarified in this report under, "Application of Principal Reduction Requirements" from a 2009 Attorney General's Opinion, No. 09-155 (Exhibit A).

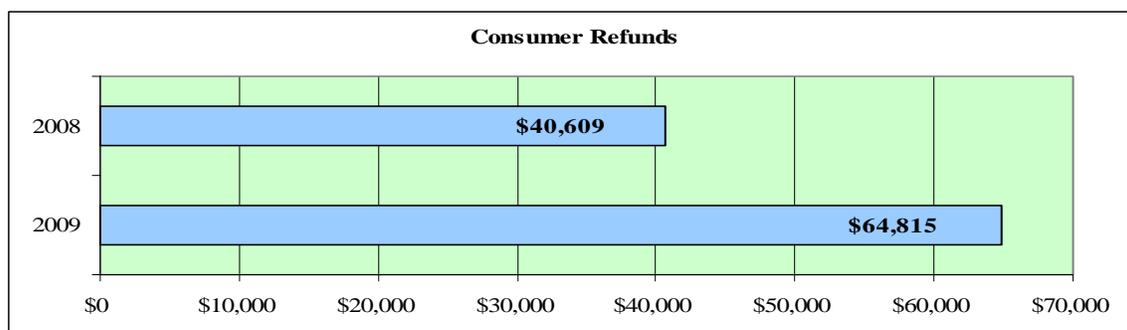
### 4) Lenders collected 22% interest and fees when the stated rate in the agreement was less:

- Lenders were required to refund these overcharges to the consumers.

### 5) Unsigned Agreements:

- Lenders were required to refund any interest and fees collected if the loan agreement was not signed by either the consumer or lender.

In 2008, the Department conducted 772 examinations, resulting in consumer refunds of \$40,609. In 2009, 812 examinations were conducted, resulting in refunds of \$64,815.



## Administrative Enforcement Actions in 2008 and 2009

	2008	2009
Total Number of Administrative Enforcement Actions Filed	12	6
Emergency Cease & Desist Orders	1	1
Civil Monetary Penalties	\$3,275	\$7,276

The Compliance Division of the Department is also responsible for the licensing and regulatory supervision of other non-depository financial institutions including mortgage brokers, lenders, and servicers, mortgage loan originators, check cashing, deferred presentment, premium finance, and industrial loan and thrift companies. Division-wide consumer refunds, for all regulated institutions, totaled \$2,244,216 in 2008 and \$1,676,123 in 2009. In 2008, of a total of 113 enforcement actions that were filed Division-wide, 12 resulted from violations of the Title Pledge Act. In 2009, 6 enforcement actions resulted from violations of the Title Pledge Act whereas a total of 138 enforcement actions were filed Division-wide. Civil Monetary Penalties totaled \$165,913 for 2008 and \$405,303 for 2009.

## CONSUMER COMPLAINTS

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The Consumer Resources Division responds to all formal consumer complaints filed against licensees. Pursuant to T.C.A. § 45-15-118(c)(1), the consumer must file a written complaint with the Division for investigation of the licensee's conduct. The lender must provide a written response to all allegations.

For calendar year 2008, the department received and investigated 30 consumer complaints against title pledge lenders. The most frequent allegations involved repossession issues reported in seven complaints, payment processing disputes in seven complaints, and customer services issues also noted in seven complaints. Investigations revealed that the issues giving rise to the complaints were not the result of a violation of law.

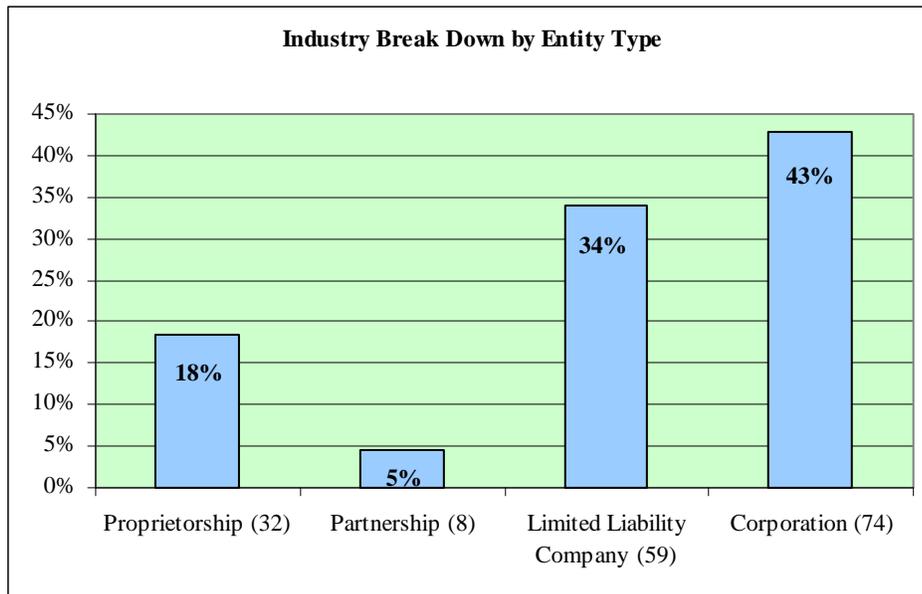
In 2009, the Department received and investigated 34 consumer complaints against title pledge lenders resulting in total refunds of \$1,151 for the year which is in addition to examination refunds. The most frequent allegations involved payment processing or payment history disputes reported in six complaints. In each case, it appears the accounts had been accurately credited. However, lenders made several concessions. Among these, one consumer received a refund for \$820, and the others reached settlements for reduced balances.

The Department also received five complaints alleging incorrect fees. The Department substantiated three of these, resulting in consumer refunds. Although four complaints noted customer service issues, these matters are generally subjective. The Department's role as a regulator is to enforce compliance with applicable law, and facilitate resolution of customer service disputes when possible. Finally, four complaints centered on repossession issues. While two of these were unsubstantiated, one issue involved personal items reportedly being removed from the vehicle during repossession. Neither the borrower, nor the title pledge lender, could confirm what items had been in the vehicle. The lender in the fourth complaint allowed the borrower to redeem the vehicle after it was repossessed; yet, the fees paid to recover it were correct under the statute.

## ANALYSIS OF OPERATIONS

The data which follows was compiled from information provided by 173 title pledge lenders, representing 700 locations in Tennessee, and reflects the general results of operations for calendar year 2008. There is a difference between the number of licensed locations (742), reported in the graph on page 1, and the number of reporting locations (700), for calendar year 2008. The difference is attributed to locations licensed in 2008, but that did not begin operating until 2009. The remaining locations, although licensed in 2008, either closed before the filing deadline for annual report submission or failed to renew timely.

T.C.A. § 45-15-106(i) provides that the licensing year shall end on October 31. The license renewal application must be filed with the Department on or before October 1. Licensees must submit, together with the applications, supplemental financial reports for the preceding calendar year. This information, submitted for 2008, contributed to the data analysis and results of operations presented in the following tables and graphs.



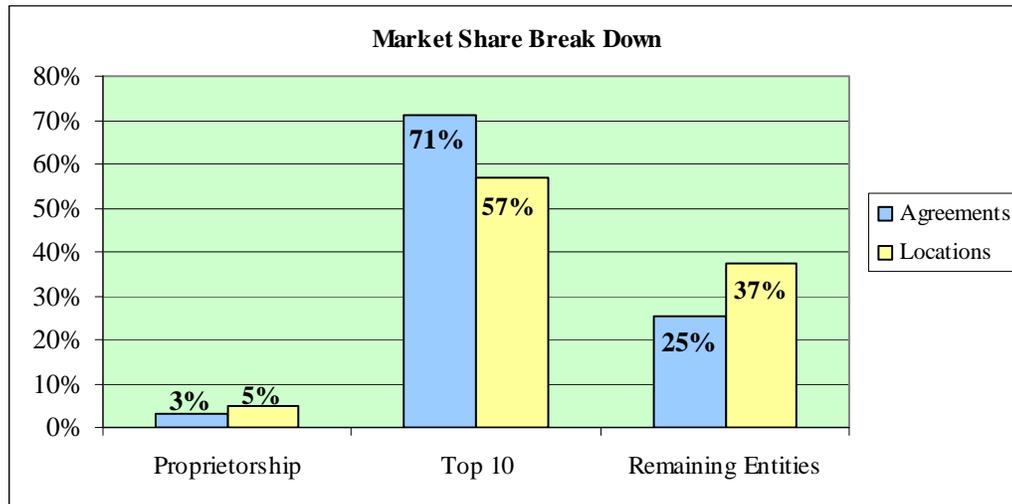
Companies, engaging in more than one line of business were asked to segment their income and expenses and report such data exclusively for their title pledge business. T.C.A. § 45-15-106(d)(2) requires a licensee to submit financial statements prepared by a non-affiliated CPA, or public accounting firm, according to generally accepted accounting principles.

## MARKET SHARE

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Title pledge lenders entered into 161,417 new agreements with consumers in calendar year 2008 representing \$103,074,433 in loan volume. When lenders are ranked by their number of locations in Tennessee, the top 10 companies account for 402 or 57% of the 700 reporting locations statewide. These top 10 companies entered into 115,044 new agreements representing 71% of the market share. In contrast, 32 proprietorships, accounting for only 5% of the locations (36), entered into 5,525 agreements or 3% of the total.

The remaining 131 reporting companies, representing 262 locations (37%), entered into 40,848 of the new agreements (25%). Based upon this analysis, it appears that the top 10 companies control a major portion of the market share of agreements entered into in 2008.



## DEMAND FOR NEW TITLE PLEDGE AGREEMENTS

For calendar year 2008, licensees entered into a total of 161,417 new title pledge agreements which does not include renewals of these initial agreements. Eighty-six percent (86%) of the new agreements were for \$1000 or less, whereas only 3% were made for amounts between \$2,251 and \$2,500 which is the maximum loan amount permitted by law. The following presents a breakdown of new title pledge agreements by loan amount:

New Agreements by Loan Amount		
	Number	% of Total
\$250 or Less	31,836	20%
\$251 - \$500	63,938	40%
\$501 - \$750	22,414	14%
\$751 - \$1000	19,656	12%
\$1001 - \$1250	6,421	4%
\$1251 - \$1500	5,198	3%
\$1501 - \$1750	1,835	1%
\$1751 - \$2000	4,249	3%
\$2001 - \$2250	500	<1%
\$2251 - \$2500	5,370	3%
<b>Total Number of Agreements</b>	<b>161,417</b>	<b>100%</b>

## ANALYSIS OF AGREEMENTS RENEWED

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From the following analysis, 117,941 agreements were renewed during calendar year 2008. Of these, 22% were renewed only one time. The majority (63%) were renewed six times or less.

Total Number of Agreements Renewed in 2008						
	Number	% of Total		Number	% of Total	
1 Time	26,174	22%		12 Times	2,232	2%
2 Times	13,132	11%		13 Times	1,715	1%
3 Times	11,070	9%		14 Times	1,603	1%
4 Times	9,442	8%		15 Times	1,541	1%
5 Times	8,257	7%		16 Times	1,305	1%
6 Times	7,186	6%		17 Times	903	1%
7 Times	6,866	6%		18 Times	766	1%
8 Times	5,438	5%		19 Times	812	1%
9 Times	4,437	4%		20 Times	746	1%
10 Times	10,730	9%		21 Times	696	1%
11 Times	2,498	2%		22 Times	392	<1%

## APPLICATION OF PRINCIPAL REDUCTION REQUIREMENTS

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Prior to the 2005 amendments to the Act, a title pledge loan could be renewed indefinitely and the interest and fees charged over the life of the loan were unlimited. With the amendments to the Act, and pursuant to T.C.A. § 45-15-113(d), the borrower is required to make a 5% principal reduction during the third renewal of the title pledge agreement. This enables the consumer to reduce the original loan amount by 5% with each payment, resulting in a decrease in interest and fees with each successive renewal. All title pledge loan agreements are written for 30 days and are limited to 22 renewals over the life of the loan.

A 2009 Attorney General's Opinion, No. 09-155, clarifies that payment of the (5%) principal reduction can be made anytime during the third renewal period and each successive renewal. The principal amount, upon which interest and fees are calculated, is not reduced with respect to the particular renewal period in which it is paid. The 5% principal reduction must occur at the beginning of the subsequent renewal period according to the Opinion. (Refer to Exhibit A)

In the event the consumer cannot make the scheduled principal reductions, the lender may defer such payment(s) until the end of the title pledge agreement. However, the lender must still reduce the outstanding principal balance by 5% per month at the beginning of the fourth renewal, and charge interest and fees based on the reduced principal amount. This allows the consumer to defer all or some portion of the principal to the end of the loan agreement. Of the 114,129 agreements outstanding, representing over \$60 million, the number of deferred principal reduction payments in 2008 was 16,847. Please refer to the Title Pledge Amortization Schedule in Exhibit B to see the effects of the 5% principal reduction payments over the life of the loan.

## CONSUMER DEFAULT AND BAD DEBT EXPENSE

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Under the accrual basis of accounting, title pledge lenders record revenue when the customer enters into an agreement to borrow money. The customer is legally obligated to pay back the principal, interest and fees. If the customer defaults, the lender's recourse is limited to taking possession of the pledged collateral. In 2008, the industry repossessed 14,832 vehicles due to non-payment. If the customer fails to redeem the titled property during a 20 day holding period, the lender has 60 days to sell it. Proceeds from the sale must be applied against the loan and any excess returned to the borrower in accordance with the 2005 amendments to the Act. The industry returned a total of \$251,047 to consumers in 2008.

Bad debt expense is defined as expense associated with a firm's inability to collect accounts receivable, classified usually as an administrative or selling expense. Unless all proceeds from the sale of pledged collateral offset the debt, the balance due is considered uncollectible by the lender and is subsequently charged-off. This amount is classified as bad debt expense on the income statement. Sometimes, the lender cannot locate the collateral and, therefore, the entire debt is deemed uncollectible and charged-off against accounts receivable. In 2008, lenders charged-off \$13.6 million due to non-payment of all or part of the original principal balance, representing 15% of total revenues.

## ANALYSIS OF PROFITABILITY

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In analyzing industry-wide profitability, this report focuses on net income before tax and performs a break-even analysis based upon interest and fees charged. Net income before tax is the company's revenue from operations less business expenses. In the industry, the revenue is made up of customary interest and fees, not to exceed 22% by statute. This equates to an annual percentage rate (APR) of 264%. General expenses include, but are not limited to, advertising, salaries, rent, utilities, insurance, regulation, repossessions and bad debt expense.

Net income before tax, rather than after tax, is more meaningful when comparing income between entities within the title pledge industry. The industry is comprised of various business structures including corporations, limited liability companies, partnerships and sole proprietorships. Although the administrative and operational expenses generally run consistent from one business structure to another, income tax differs because the tax treatment associated with each type of entity varies significantly. For instance, the income of a corporation is taxed first at the corporate level before it is distributed to shareholders; whereas, proprietorships pay tax on income at the individual tax rate. The combined net income before tax for the 173 companies (700 licensed locations) reporting was approximately \$11.5 million.

Overall, the title pledge industry generated over \$93 million in revenue during 2008. Forty-five percent of revenue was paid toward general expenses including, but not limited to, rent, utilities, advertising, regulation and supplies. The next largest expense category was employee salaries which made up 25% of total revenues. Bad debt and repossession expenses accounted for 18% of revenues with net income making up 12%. Owner compensation was reported to be \$7.4 million, representing approximately 65% of net income. Although the industry as a whole was profitable, there was a wide disparity in the level of profitability within the industry.

## INDUSTRY REVENUE AND EXPENSES FOR 2008

The following tables group the 700 reporting locations into four categories and show the income and expenses of each.

December 31, 2008		
	Companies	Locations
Single Location	114	114
Small: 2-9 Licensed Locations	47	163
Medium: 10-24 Licensed Locations	7	99
Large: 25 or More Licensed Locations	5	324
<b>Total</b>	<b>173</b>	<b>700</b>

Income Statement Summary					
	Industry	Single Location	Small: 2-9 Locations	Medium: 10-24 Locations	Large: 25 or More Locations
Revenue	\$93,399,478	\$ 10,858,019	\$ 12,416,689	\$ 9,689,080	\$ 60,435,690
Employee Salaries	\$23,771,821	\$ 2,522,075	\$ 2,709,392	\$ 2,560,907	\$ 15,979,447
Bad Debts	\$13,619,798	\$ 875,521	\$ 1,301,406	\$ 2,001,405	\$ 9,441,466
Repossession Expense	\$ 2,538,526	\$ 404,072	\$ 346,940	\$ 263,721	\$ 1,523,793
General Expenses	\$42,000,449	\$ 4,591,213	\$ 5,611,654	\$ 4,033,926	\$ 27,763,656
Total Expenses	\$81,930,594	\$ 8,392,881	\$ 9,969,392	\$ 8,859,959	\$ 54,708,362
Net Income Before Tax*	\$11,468,884	\$ 2,465,138	\$ 2,447,297	\$ 829,121	\$ 5,727,328

\* This number includes Officer/Owner Compensation

Officer/Owner Compensation	\$ 7,418,578	\$ 1,232,824	\$ 1,224,849	\$ 1,346,581	\$ 3,614,324
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Percentage of Revenue					
	Industry	Single Location	Small: 2-9 Locations	Medium: 10-24 Locations	Large: 25 or More Locations
Employee Salaries	25%	23%	22%	26%	26%
Bad Debts	15%	8%	10%	21%	16%
Repossession Expense	3%	4%	3%	3%	3%
General Expenses	45%	42%	45%	42%	46%
Total Expenses	88%	77%	80%	92%	91%

Officer/Owner Compensation	8%	11%	10%	14%	6%
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## BREAK-EVEN ANALYSIS

A break-even analysis is another financial tool which provides a specific level of price, or interest and fees in this case, at which there is neither a profit nor a loss. A major component of the break-even analysis is the profit margin. Profit margin illustrates how much of every dollar of gross revenues a company retains in earnings after expenses. The profit margin is calculated by dividing net income by total revenues. Total revenues and expenses reported by the industry as a whole on their financial reports as of December 31, 2008 are noted below. The following net income includes compensation for the owners and officers.

Revenue	\$ 93,399,478	100%	
Expenses	\$ 81,930,594	88%	
Net Income	\$ 11,468,884	12%	Profit Margin Ratio

By dividing net income of \$11,468,884 by total revenue of \$93,399,478, the profit margin ratio of the title pledge industry as a whole was 12%. This means that, on average, for every dollar of revenue made, 12 cents (\$.12) went to net income. Net income, often referred to as “the bottom line,” is equal to the income a business has after subtracting total expenses from total revenue. It can be distributed among the owners or held by the entity as retained earnings. In 2008, 65% of net income went to the owners, totaling \$7,418,578; whereas, 35% of net income went to retained earnings, totaling \$4,050,306. Of every dollar earned, 88 cents (\$.88) was used to offset business expenses.

## COMPANIES CHARGING 22%

Since the break-even analysis is designed to determine a specific level of interest and fees necessary to be profitable, it is appropriate to look at those title pledge lenders charging 22% (2% interest/20% service fee), the maximum amount allowable by law, versus a lower amount. It was determined that 130 companies, (372 locations/53%) charged 22% on all agreements. The following amounts were compiled from income statements.

Revenue	\$ 29,811,211	100%	
Expenses	\$ 22,717,652	76%	
Net Income	\$ 7,093,559	24%	Profit Margin Ratio

Lenders charging 22% reported \$29,811,211 in gross revenue resulting in a profit margin ratio of 24%. This means that for every dollar of revenue generated \$.24 went to net income. Therefore, on a \$100 loan at 22%, lenders earned \$22, of which \$5.28 (\$22 x 24% profit margin ratio) went to net income, and \$16.72 (\$22 x 76% expense ratio) was used to defray expenses. The following analysis translates the profit margin into the actual amount of interest and fees necessary for the company to break-even assuming that costs remain the same as reported.

Revenue	\$ 29,811,211	100%	x 22%	=	22.0%	
Expenses	\$ 22,717,652	76%	x 22%	=	16.7%	Break Even
Net Income	\$ 7,093,559	24%	Profit Margin Ratio x 22%	=	5.3%	

\*Annualized, the net return on each \$100 in receivables would be \$63.60 (5.3% x 12 months).

It appears from this analysis that if these lenders had charged 16.7% instead of 22% on their loans, they would have made just enough revenue to offset total expenses without making a profit based on expenses remaining unchanged. A rate higher than 16.7% would have generated a profit, and anything less would have resulted in a loss. This analysis is based on industry averages. The following tables give the break-even according to company size:

### Single Location Title Pledge Lenders

Revenue	\$ 8,857,376	100%	x 22%	=	22.0%	
Expenses	\$ 6,968,714	79%	x 22%	=	17.4%	Break Even
Net Income	\$ 1,888,662	21%	Profit Margin Ratio x 22%	=	4.6%	

\*Annualized, the net return on each \$100 in receivables would be \$55.20 (4.6% x 12 months).

### Small Location Title Pledge Lenders: 2–9 Locations

Revenue	\$ 8,705,640	100%	x 22%	=	22.0%	
Expenses	\$ 7,095,721	82%	x 22%	=	18.0%	Break Even
Net Income	\$ 1,609,919	18%	Profit Margin Ratio x 22%	=	4.0%	

\*Annualized, the net return on each \$100 in receivables would be \$48.00 (4.0% x 12 months).

### Medium Location Title Pledge Lenders: 10–24 Locations

Revenue	\$ 341,129	100%	x 22%	=	22.0%	
Expenses	\$ 254,361	75%	x 22%	=	16.5%	Break Even
Net Income	\$ 86,768	25%	Profit Margin Ratio x 22%	=	5.5%	

\*Annualized, the net return on each \$100 in receivables would be \$66.00 (5.5% x 12 months).

### Large Location Title Pledge Lenders: 25 or More Locations

Revenue	\$ 11,907,067	100%	x 22%	=	22.0%	
Expenses	\$ 8,398,856	71%	x 22%	=	15.6%	Break Even
Net Income	\$ 3,508,211	29%	Profit Margin Ratio x 22%	=	6.4%	

\*Annualized, the net return on each \$100 in receivables would be \$76.80 (6.4% x 12 months).

### COMPANIES CHARGING LESS THAN 22%

For companies charging less than 22%, the rate varied between 10% and 21%. In the industry, 43 companies (328 locations/47%) charged less than the maximum allowable rate of 22%. From the following table, \$.93 of every dollar was used to offset expenses; whereas, \$.07 went to profit.

Revenue	\$ 63,588,267	100%	
Expenses	\$ 59,212,942	93%	
Net Income	\$ 4,375,325	7%	Profit Margin Ratio

The comparison on this page shows the profit margin ratio for companies charging 22% was higher than for those averaging lower rates.

Companies Charging 22%		
130 Companies / 372 Locations		
Revenue	\$29,811,211	100%
Expenses	\$22,717,652	76%
Net Income	\$ 7,093,559	24%

Companies Charging Less Than 22%		
43 Companies / 328 Locations		
Revenue	\$63,588,267	100%
Expenses	\$59,212,942	93%
Net Income	\$ 4,375,325	7%

## COMPARSION TO PRIOR REPORT

The table below compares the results of operations in the previous report to this report.

Income Statement Comparison				
	175 Companies 672 Locations		173 Companies 700 Locations	
	Calendar 2006	Percentage of Revenue	Calendar 2008	Percentage of Revenue
Revenue	\$ 72,125,249		\$ 93,399,478	
Employee Salaries	\$ 15,891,949	22%	\$ 23,771,821	25%
Bad Debts	\$ 11,394,220	16%	\$ 13,619,798	15%
Repossession Expense	\$ 3,227,022	4%	\$ 2,538,526	3%
General Expenses	\$ 32,291,558	45%	\$ 42,000,449	45%
Total Expenses	\$ 62,804,749	87%	\$ 81,930,594	88%
Net Income Before Tax*	\$ 9,320,500	13%	\$ 11,468,884	12%

\* This number includes Officer/Owner Compensation

Officer/Owner Compensation	\$ 5,164,888	7%	\$ 7,418,578	8%
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The table below compares the break-even in the previous report to this report.

Break Even Comparison		
	Calendar 2006	Calendar 2008
	22%	22%
<b>Industry</b>	<b>17.6%</b>	<b>16.7%</b>
Single	15.8%	17.4%
Small	17.6%	18.0%
Medium	20.1%	16.5%
Large	20.0%	15.6%

## CONCLUSION

Title Pledge lending in Tennessee continues to be a significant segment of the financial services sector. Based on reported information covering calendar year 2008, 161,417 new title pledge agreements were entered into during the reporting period. This compares to 139,319 new agreements for the prior reporting period covering calendar year 2006, or a 16% increase in the number of new agreements. The total dollar volume of these new agreements amounted to \$103,074,433 compared to \$77,698,729 for the prior reporting period or a 33% increase.

An important and continuing market trend appears to be that the number of smaller companies is declining while the largest companies are expanding their locations. For example, the number of companies comprising the “Small” group declined by 13% from the prior reporting period. The top ten companies, based on the number of locations, account for 71% of the overall market share of agreements. If it is the case, as we believe, that the largest companies sometimes offer rates less than 22% and at times significantly less, then it may be that some small companies cannot compete and some borrowers may benefit by receiving a lower rate. A lowering of rates could be a consideration that might still permit a segment of the industry to operate depending on the level of rate reduction.

Bad debt expense, as a percentage of revenue, varies widely among company size categories ranging from 8% for single location companies to 21% for companies in the medium size category. Conversely there is little variance in other expense categories among companies of various size. We continue to speculate that the current rate provides enough cushion and perhaps incentive for some companies to operate at a less than optimum efficiency. Whether rates are lowered statutorily or not, there appear to be some competitive market forces that influence rates and fees in urban areas where there is a high concentration of title pledge lenders versus rural areas where there are comparatively few licensees. Approximately 45% of title pledge lender locations are in five counties (Knox, Hamilton, Davidson, Rutherford, and Shelby). The greatest single concentration is in Shelby County with 158 (or 21%) of the total locations in Tennessee. There appears to continue to be a trend toward consolidation and in those areas of the state where there is little or no competition, rates are not likely to move downward by market pressure.

As a whole, companies charging 22% were profitable although there was a wide disparity in level of profitability. During the period January 1 through December 31, 2008, the large location lenders appear to have fared the best from an economic return standpoint. These locations reflected a profit margin ratio of 29%. Correspondingly this group had the lowest break-even point at 15.6%.

For those companies charging 22%, the ability of the large companies to out perform other size categories is reflected in the break-even analysis. The overall break-even point for the industry is 16.7% which is .90% less than reflected in the prior reporting period at 17.6%. However, a more significant difference is noted in comparing company size. Single and Small location lenders experienced an increase in their break-even point from the prior reporting period at 1.6% and .40% respectively (15.8% to 17.4% and 17.6% to 18.0%). However, the break-even point for “Medium” and “Large” size companies was

significantly lower by 3.6% and 4.4% respectively (from 20.1% to 16.5% and 20.0% to 15.6%).

The break-even analysis is based on reported expenses. This report cannot make a judgment on the efficiency of licensee operations. For companies charging 22%, the break-even point for calendar year 2006 was 17.6. For calendar year 2008, the break-even point was 16.7%. Employee salaries and other expenses including utilities, rent, advertising, and office supplies have generally been consistent year-to-year. It appears from the analysis that the single greatest impact that management could make on costs would appear to be control of bad debt expense.

While attention, deservedly so, is placed on the rates and practices of title pledge lenders, we also see a more fundamental need facing a segment of Tennessee consumers. The lack of financial literacy among some citizens is a serious concern and we believe it is often a root problem for some of the ills we see in the financial services sector.

We understand that some individuals are hampered by circumstances beyond their control such as illness that may force a short term need for “fast cash” but we also know anecdotally of individuals who do not understand that title pledge transactions are not meant for long-term financing of basic necessities. Ironically, we have received complaints from borrowers who do not like the principal reduction feature of the Act because it interferes with their desire or need to enter into long term transactions even though principal reduction helps to prevent such borrowers from being mired in long term debt.

With the exception of unexpected events that may seem to force some to seek out fast cash, we believe that a lack of a basic understanding of financial concepts has permeated generations of Tennessee families and has created an environment that perhaps supports some of the numbers reported herein.

But there is some progress being made. We are certainly glad to see that a personal finance class has become mandatory in Tennessee schools. In recent years we have added financial literacy as a segment of our core operations and have reached out through public service announcements, workshops and partnerships with other public and private entities.

This Department is partnering with efforts such as Smart Tennessee out of the University of Memphis which seeks to educate students in basic financial concepts. We have worked for many years with organizations such as the Tennessee Jumpstart Coalition and others that have done much to promote financial literacy. The Department has also encouraged Tennessee’s mainstream banking community to consider making small dollar loans and there are Tennessee banks and credit unions providing alternative loan sources.

As we have for many years, this Department will continue to concentrate on the licensee-focused areas of applications, examinations and enforcement actions. While these three traditional areas of operation are very important, we realize that more attention needs to be placed directly on consumers before the receipt of consumer complaints. Not only is financial literacy a key for the welfare of the individual, but we believe it is a key factor for the health of well meaning financial institutions and ultimately for the Tennessee economy.

## Exhibit A

**S T A T E O F T E N N E S S E E**  
**OFFICE OF THE**  
**ATTORNEY GENERAL**  
**PO BOX 20207**  
**NASHVILLE, TENNESSEE 37202**

September 15, 2009

Opinion No. 09-155

Calculation of interest and fees under Tennessee Title Pledge Act

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### QUESTION

Does a pledgor's payment made pursuant to Tenn. Code Ann. § 45-15-113(d) of the Tennessee Title Pledge Act reduce the principal amount upon which interest and fees are calculated with respect to the particular renewal period in which such payment is made?

### OPINION

No.

### ANALYSIS

The Tennessee Title Pledge Act, codified at Tenn. Code Ann. §§ 45-15-101, *et seq.*, governs the making of title pledge loans in this state. Pursuant to Tenn. Code Ann. § 45-15-104, licensed title pledge lenders have the power to make loans of money on pledges of personal property certificates of title or on pledges of titled personal property. Title pledge agreements and property pledge agreements made pursuant to the Act are not to exceed thirty days in length; however, the agreements may provide for renewals for additional thirty-day periods, which may occur automatically, if certain events outlined in the statute have not occurred. Tenn. Code Ann. § 45-15-113(a). The amount of interest and fees for which a title pledge lender may contract is addressed in Tenn. Code Ann. § 45-15-111(a). This statutory provision also addresses when the interest and fees accrue. "The interest and fees shall be deemed to be earned, due and owing as of the date of the title pledge agreement or property pledge agreement and a like sum shall be deemed earned, due and owing on the same day of each subsequent thirty-day period." Tenn. Code Ann. § 45-15-111(a).

We turn now to your specific question concerning the calculation of interest and fees under Tenn. Code Ann. § 45-15-113(d). This statutory provision states:

Notwithstanding any provision of this chapter to the contrary, beginning with the third renewal or continuation and at each successive renewal or continuation thereafter, the pledgor shall be required to make a payment of at least five percent

(5%) of the original principal amount of the title pledge transaction, in addition to interest and fees authorized by this chapter. Interest and fees authorized by this chapter at each successive renewal or continuation shall be calculated on the outstanding principal balance. Principal payments in excess of the five percent (5%) required principal reduction shall be credited to the outstanding principal on the day received. If, at the maturity of any renewal requiring a principal reduction, the pledgor has not made previous principal reductions adequate to satisfy the current required principal reduction, and the pledgor cannot repay at least five percent (5%) of the original principal balance and any outstanding interest and fees authorized by this chapter, the title pledge lender may, but shall not be obligated to, defer any required principal payment until the end of the title pledge agreement or property pledge agreement. No further interest or fees may accrue on a principal amount thus deferred.

Tenn. Code Ann. § 45-15-113(d).

You ask whether a pledgor's payment made pursuant to Tenn. Code Ann. § 45-15-113(d) reduces the principal amount upon which interest and fees are calculated with respect to the particular renewal period in which such payment is made. For the reasons explained below, we believe interest and fees are to be calculated without taking into account a pledgor's payment made pursuant to this provision.

First, Tenn. Code Ann. § 45-15-113(d) states that the pledgor is obligated to make a payment of at least five percent of the original principal amount of the title pledge transaction "beginning with the third renewal or continuation and at each successive renewal or continuation thereafter." Subsection (d) ends by providing that the title pledge lender may defer any required principal payment "at the maturity of any renewal requiring a principal reduction" if the pledgor has not made previous principal reductions adequate to satisfy the current required principal reduction, and the pledgor cannot repay at least five percent (5%) of the original principal balance and any outstanding interest and fees. Based on the plain language of the statute, the pledgor is obliged to make a principal reduction of at least five percent of the original principal amount beginning with the pledgor's third renewal or continuation and at each successive renewal or continuation thereafter. Once this obligation arises, the pledgor has until "the maturity of" the renewal period to make the payment required by Tenn. Code Ann. § 45-15-113(d). In short, the pledgor can fulfill his or her obligation under Tenn. Code Ann. § 45-15-113(d) by making the required principal reduction at any point up until the renewal period "matures" or ends.

In contrast, interest and fees are due and owing on the first day of a renewal period because Tenn. Code Ann. § 45-15-111(a) states that interest and fees are “deemed to be earned, due and owing as of the date of the title pledge agreement or property pledge agreement and a like sum shall be deemed earned, due and owing *on the same day of each subsequent thirty-day period.*” Tenn. Code Ann. § 45-15-111(a) (emphasis added). Tenn. Code Ann. § 45-15-113(d) does not alter when interest and fees are due and owing because it simply provides that “[i]nterest and fees authorized by this chapter at each successive renewal or continuation shall be calculated on the outstanding principal balance.” Accordingly, the “outstanding principal balance” upon which interest and fees are calculated under Tenn. Code Ann. § 45-15-113(d) is the principal balance that exists on the first day of a renewal period. *See* Tenn. Code Ann. § 45-15-111(a).

We believe the contrasting time frames for the accrual of interest and fees under Tenn. Code Ann. § 45-15-111(a) and a pledgor’s obligation to make the required principal reduction under Tenn. Code Ann. § 45-15-113(d) point to the conclusion that interest and fees are to be calculated without taking into account a pledgor’s payment made pursuant to this provision since interest and fees are due and owing the first day of a renewal period, whereas a pledgor’s payment under Tenn. Code Ann. § 45-15-113(d) is not due and owing until the maturity of the renewal period. Other provisions of Tenn. Code Ann. § 45-15-113(d) bolster our opinion. As referenced above, Tenn. Code Ann. § 45-15-113(d) states that interest and fees “shall be calculated on the outstanding principal balance.” If the General Assembly had wanted a pledgor’s payment under Tenn. Code Ann. § 45-15-113(d) to be taken into account before interest and fees were calculated, it would have so stated. Similarly, Tenn. Code Ann. § 45-15-113(d) provides that the pledgor is to make the required principal reduction “*in addition to* interest and fees authorized by this chapter.” (emphasis added). This provision, as well, indicates that the pledgor is to pay the interest and fees that are due and owing on the first day of the renewal period without taking into account any payment the pledgor may make pursuant to Tenn. Code Ann. § 45-15-113(d).

For all of the reasons above, we believe a pledgor’s payment made pursuant to Tenn. Code Ann. § 45-15-113(d) does not reduce the principal amount upon which interest and fees are calculated with respect to the particular renewal period in which such payment is made.

ROBERT E. COOPER, JR.  
Attorney General and Reporter

MICHAEL E. MOORE  
Solicitor General

LAURA T. KIDWELL  
Senior Counsel

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Requested by:

Commissioner Greg Gonzales  
Department of Financial Institutions 414 Union Street, Suite 1000  
Nashville, TN 37219

# Exhibit B

## Title Pledge Amortization Schedule

Principal Reduction: \$50.00  
 Amount Financed: \$1,000.00  
 Interest Rate: 22%

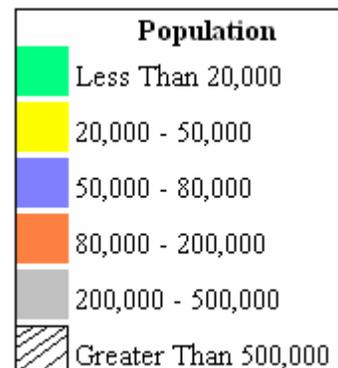
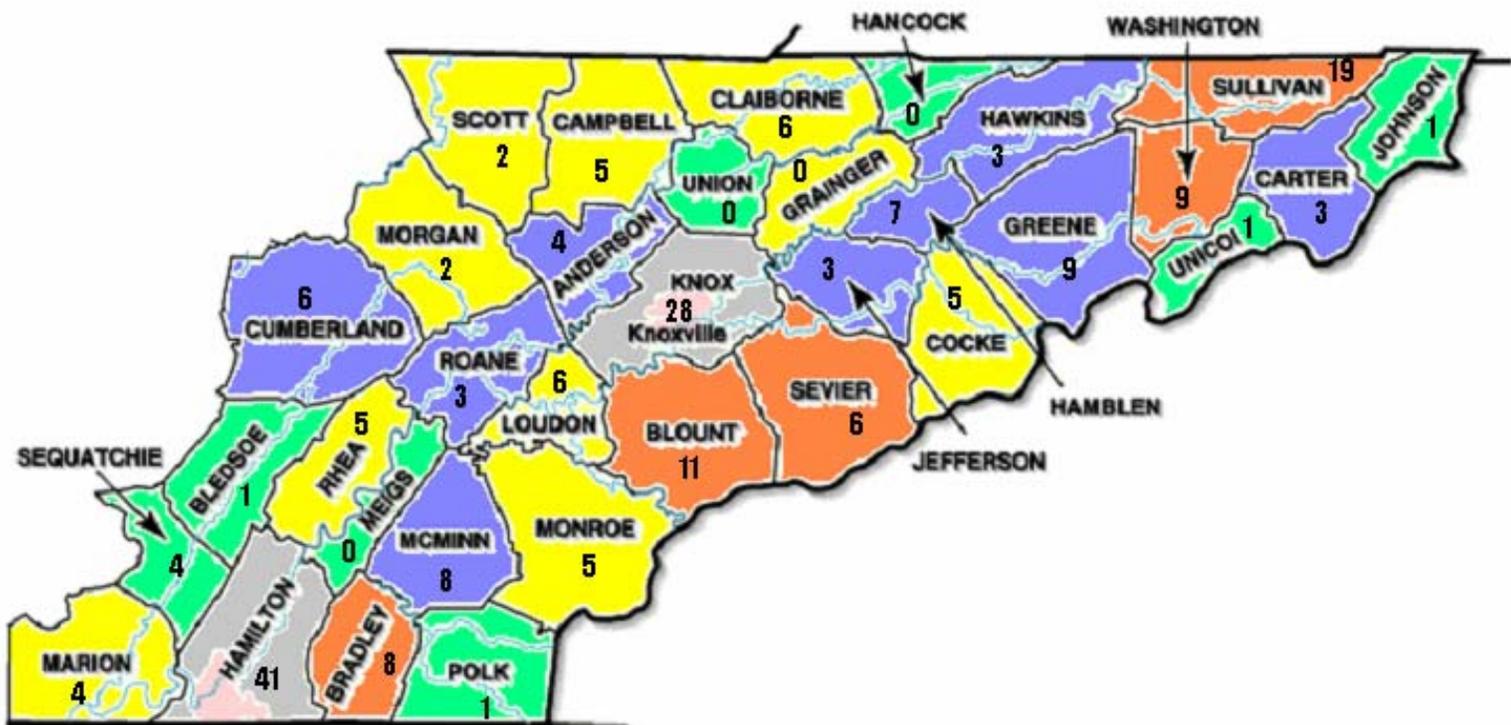
					A	B	C	D	
Transaction Date	Payment or Renewal	Total Paid	To Interest	To Principal	Principal Balance	5% Principal Reduction	Renewal Fee Due Ax22% = C	Minimum Amount Due B+C = D	Renewal Date
1/1/2010	Initial Loan				\$1,000.00		\$220.00	\$220.00	1/31/2010
	(1) Payment	\$220.00	\$220.00	\$0.00	\$1,000.00				
1/31/2010	Renewal				\$1,000.00		\$220.00	\$220.00	3/2/2010
	(2) Payment	\$220.00	\$220.00	\$0.00	\$1,000.00				
3/2/2010	Renewal				\$1,000.00		\$220.00	\$220.00	4/1/2010
	(3) Payment	\$220.00	\$220.00	\$0.00	\$1,000.00				
4/1/2010	Renewal				\$1,000.00	\$50.00	\$220.00	\$270.00	5/1/2010
	(4) Payment	\$270.00	\$220.00	\$50.00	\$950.00				
5/1/2010	Renewal				\$950.00	\$50.00	\$209.00	\$259.00	5/31/2010
	(5) Payment	\$259.00	\$209.00	\$50.00	\$900.00				
5/31/2010	Renewal				\$900.00	\$50.00	\$198.00	\$248.00	6/30/2010
	(6) Payment	\$248.00	\$198.00	\$50.00	\$850.00				
6/30/2010	Renewal				\$850.00	\$50.00	\$187.00	\$237.00	7/30/2010
	(7) Payment	\$237.00	\$187.00	\$50.00	\$800.00				
7/30/2010	Renewal				\$800.00	\$50.00	\$176.00	\$226.00	8/29/2010
	(8) Payment	\$226.00	\$176.00	\$50.00	\$750.00				
8/29/2010	Renewal				\$750.00	\$50.00	\$165.00	\$215.00	9/28/2010
	(9) Payment	\$215.00	\$165.00	\$50.00	\$700.00				
9/28/2010	Renewal				\$700.00	\$50.00	\$154.00	\$204.00	10/28/2010
	(10) Payment	\$204.00	\$154.00	\$50.00	\$650.00				
10/28/2010	Renewal				\$650.00	\$50.00	\$143.00	\$193.00	11/27/2010
	(11) Payment	\$193.00	\$143.00	\$50.00	\$600.00				
11/27/2010	Renewal				\$600.00	\$50.00	\$132.00	\$182.00	12/27/2010
	(12) Payment	\$182.00	\$132.00	\$50.00	\$550.00				
12/27/2010	Renewal				\$550.00	\$50.00	\$121.00	\$171.00	1/26/2011
	(13) Payment	\$171.00	\$121.00	\$50.00	\$500.00				
1/26/2010	Renewal				\$500.00	\$50.00	\$110.00	\$160.00	2/25/2011
	(14) Payment	\$160.00	\$110.00	\$50.00	\$450.00				
2/25/2011	Renewal				\$450.00	\$50.00	\$99.00	\$149.00	3/27/2011
	(15) Payment	\$149.00	\$99.00	\$50.00	\$400.00				
3/27/2010	Renewal				\$400.00	\$50.00	\$88.00	\$138.00	4/26/2011
	(16) Payment	\$138.00	\$88.00	\$50.00	\$350.00				
4/26/2010	Renewal				\$350.00	\$50.00	\$77.00	\$127.00	5/26/2011
	(17) Payment	\$127.00	\$77.00	\$50.00	\$300.00				
5/26/2010	Renewal				\$300.00	\$50.00	\$66.00	\$116.00	6/25/2011
	(18) Payment	\$116.00	\$66.00	\$50.00	\$250.00				
6/25/2010	Renewal				\$250.00	\$50.00	\$55.00	\$105.00	7/25/2011
	(19) Payment	\$105.00	\$55.00	\$50.00	\$200.00				
7/25/2011	Renewal				\$200.00	\$50.00	\$44.00	\$94.00	8/24/2011
	(20) Payment	\$94.00	\$44.00	\$50.00	\$150.00				
8/24/2011	Renewal				\$150.00	\$50.00	\$33.00	\$83.00	9/23/2011
	(21) Payment	\$83.00	\$33.00	\$50.00	\$100.00				
9/23/2011	Renewal				\$100.00	\$50.00	\$22.00	\$72.00	10/23/2011
	(22) Payment	\$72.00	\$22.00	\$50.00	\$50.00				
10/23/2011	Renewal				\$50.00	\$50.00	\$11.00	\$61.00	11/23/2011
	(23) Payment	\$61.00	\$11.00	\$50.00					
	<b>TOTAL</b>	\$3,970.00	\$2,970.00	\$1,000.00					

## Exhibit C

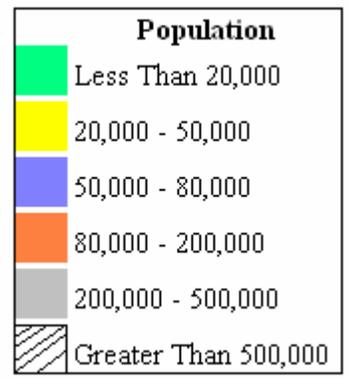
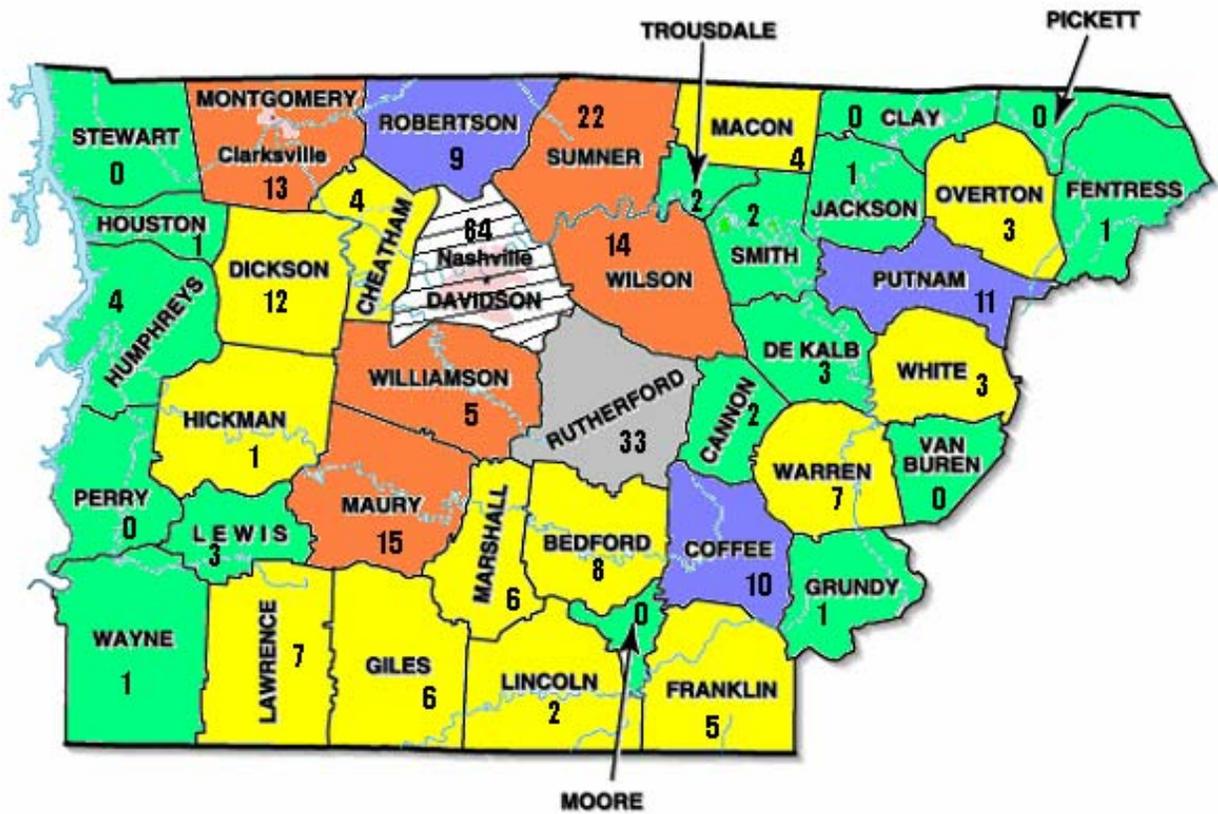
# DISTRIBUTION OF TITLE PLEDGE LENDERS BY COUNTY

The maps that follow depict the number of title pledge locations throughout Tennessee by county.

## East Tennessee



# Middle Tennessee



# West Tennessee

