

## Notice of Public Hearing

### Ohio Department of Commerce Division of Financial Institutions Consumer Finance – Pawnbroker

At 10:00 a.m. on Tuesday, August 24, 2010, the Ohio Division of Financial Institutions will hold a public hearing regarding the Division's intent to rescind, amend and to promulgate new rules in the Ohio Administrative Code relating to the Ohio Pawnbroker Act. The hearing will be held in the 21st Floor Conference Room located at 77 South High Street, Columbus, Ohio 43215. A summary of the proposed rules follow:

#### Proposed No-Change Rule

**1301:8-5-05, Unlicensed pawnbrokers.** This rule is being filed as a no-change in order to maintain the rule that a person who acts illegally as an unlicensed pawnbroker may not profit from pawn loans and possess the property pledged. The rule provides that a person who makes a pawn loan without holding a pawnbroker license issued by the Division may not collect, receive or retain interest or charges on the loan and has no right to possess the personal property pledged as security for the loan.

#### Proposed Rescinded and New Rules

**1301:8-5-01, Liquid assets (Rescind).** The Division proposes to rescind this rule in order to replace it with a new 1301:8-5-01 definitions rule. The rule sets forth the definition of "liquid assets."

**1301:8-5-01, Definitions (New).** The Division is filing this rule in order to concentrate all definitions from this chapter into one rule. In paragraph (A), the rule defines "liquid assets," which is the same definition as found in proposed rescinded rule 1301:8-5-01. In paragraph (B), the rule gives a new definition for the phrase "each pawn or purchase" from R.C. Section 4728.08(B). In paragraph (C), "redemption" is defined, which was previously defined in 1301:8-5-08. The term "redeem" is also now included in the definition of "redemption." In addition, the rule in paragraph (D) defines "employee," which was previously defined in OAC 1301:8-5-09, and in paragraph (E) defines "verify," which was previously defined in OAC 1301:8-5-04.

**1301:8-5-02, Advertising (Rescind).** The Division proposes to rescind this rule because amendments to it are greater than 50%. The rule sets forth parameters and requirements for advertising, whether in print, on radio, on the internet, or otherwise. The rule prohibits anyone not licensed under R.C. Chapter 4727 from advertising in a telephone directory or similar medium under any category labeled "pawn," "pawnbroker," or words of similar import and makes such an act a violation of R.C. Section 4727.16(B). The rule also sets forth that a licensee shall maintain an advertising file of all advertising for one year from the date the advertisement is published or disseminated.

**1301:8-5-02, Advertising (New).** The Division is filing this rule to establish clear parameters and requirements for advertising, whether in print, on radio, on the internet or otherwise. The rule exempts from "advertisements" de minimis advertising, such as displays on pencils, and requires all advertisements to identify the licensee by business name, licensed address, and license number. The proposed rule also requires internet advertising to comply with all other advertising requirements in terms of identifying the licensee. Internet advertising must also be timely updated when the information becomes outdated. The rule also requires licensees to maintain advertising files of all advertising for two years from the date the advertisement is published or disseminated (up from one year).

**1301:8-5-03, Notifications to the superintendent (Rescind).** The Division proposes to rescind this rule because amendments to it are greater than 50%. In paragraph (A), the rule sets forth that notification concerning a licensee's move must be in writing and delivered to the superintendent at least thirty days prior to commencing business at the new location. In paragraph (B), the rule requires licensees to notify the superintendent within two business days in writing concerning changes to the licensee's posted hours of operation. Paragraph (C) sets forth the notification requirements for the surrender or non-renewal of a license although it incorrectly references R.C. Section 4727.03(G) where it should read R.C. Section 4727.03(H). Paragraph (D) requires notification within ten business days of the designation of a new salesperson for purposes of compliance with the R.C. Section 4727.19 continuing education requirement. Paragraph (E) permits written notifications required by this rule to be submitted through the mail, in person, or via fax.

**1301:8-5-03, Notifications (New).** This proposed new rule is being filed to clarify the manner in which notifications are to be submitted to the superintendent or pledgors/sellers and to remove any redundancies that existed between the rule, as currently in effect, and the statutes that it amplifies. In paragraph (A), the rule requires notification concerning a licensee's move to be in writing, but the language in the current rule that states when the notification must be received has been deleted because it unnecessarily duplicates R.C. Section 4727.04(A). In paragraph (B), the rule requires licensees to notify the superintendent in writing within at least five calendar days, instead of the current two business days, concerning changes to the licensee's posted hours of operation. Paragraph (C) corrects a reference to R.C. Section 4727.03 in the former rule and sets forth the notification requirements for surrendering/non-renewing licensees to indicate whether the licensee will continue operating another business at the same location. Language in paragraph (C) regarding when the notice should be received was stricken as the timeframe is already set forth in R.C. Section 4727.03. Paragraph (D) requires licensees to notify pledgors or sellers in writing if the licensee is going to sell, transfer, or assign an active loan. Paragraph (E) requires licensees to notify the superintendent within ten business days of the designation of a new salesperson for purposes of compliance with the R.C. Section 4727.19 continuing education requirements. Paragraph (F) requires applicants and licensees to update the information in their applications when changes occur. Lastly, in paragraph (E), the proposed new rule permits written notifications to be submitted in person or via mail, email, or fax.

**1301:8-5-04, Obstruction of inspection; verification; recordkeeping (Rescind).** The Division proposes to rescind the rule because amendments to it are greater than 50%. The rule prohibits

licensees from obstructing an inspection, examination, or investigation; defines what "verify" means with respect to confirming a redeemer's name; and sets forth that certain fees, interest, and payment information are to be recorded separately upon the licensee's copy of the pawn statement.

**1301:8-5-04, Obstruction of inspection; statement to pledgor; authorized fees (New).** The proposed rule, which is in part based upon current rule 1301:8-5-04, prohibits licensees from obstructing inspections, examinations or investigations; requires licensees to provide notice of fees, interest and principal reduction payments on pawn statements and to retain proof of third-party fees; and prohibits licensees from charging fees other than those authorized by law. The rule no longer defines the term "verify" as the definition has been moved to proposed rule 1301:8-5-01, the definitions rule.

**1301:8-5-06, Purchase/repurchase transactions (Rescind).** The Division proposes to rescind this rule because it duplicates the definition of "pawnbroker" with respect to purchase/repurchase transactions and unnecessarily restates that such transactions are subject to other sections of R.C. Chapter 4727. Because purchase/repurchase transactions fall within the definition of pawnbrokering, it follows that these transactions are subject to R.C. Chapter 4727.

**1301:8-5-06, Purchases; list of property held for sale (New).** This proposed new rule is a renumbering of proposed rescinded-rule 1301:8-5-07 though the last two sentences in 1301:8-5-07(B) are being deleted because they duplicate R.C. Section 4727.08(D). In paragraph (A), the rule prohibits owners, officers, members, partners, stockholders, agents and employees from purchasing personal property in circumvention of the record-keeping requirements of R.C. Chapter 4727. Paragraph (B) requires licensees to document the acquisition of all property held for sale on the licensed premises through a pawn ticket, purchase ticket, sales receipt, bill of sale, consignment agreement or barter agreement. Finally, the rule requires consignment or barter agreements to include the property and pledgor/seller information listed in R.C. Section 4727.08(B).

**1301:8-5-07, Purchases; list of property held for sale (Rescind).** This rule is being rescinded for two reasons. First, the text of the rule is being moved to 1301:8-5-06. Second, the Division proposes to strike the last two sentences of paragraph (B) because it duplicates language already found in R.C. Section 4727.08. The elimination of these two sentences results in a greater than 50% change to the rule.

**1301:8-5-07, Payments on a pawn loan (New).** This proposed new rule regarding payments on a pawn loan is a renumbering of proposed rescinded rule 1301:8-5-08. In addition, amendments to proposed rescinded rule 1301:8-5-08 are greater than 50%, which requires a new rule. In paragraph (A), the rule prohibits licensees from accepting interest or storage payments for the month in which the pawn loan is made and for any subsequent months prior to the loan's due date. The rule permits a pawnbroker to assess a full month's interest and storage charge for any fraction of a month that exists at the time the loan is redeemed. Paragraph (B) prohibits refinancing a pawn loan, prohibits a licensee from redeeming a pawn loan on behalf of a pledgor, and prohibits pro-rata payments on interest or other charges. Paragraph (C) forbids a licensee from establishing a new pawn date for a pawn loan when a payment is made but no redemption occurs. In paragraph (D), the rule explains

that when a pawn account is not paid in full on or before the thirtieth day from the date the forfeiture warning notice was mailed, the property forfeits to the licensee on the thirty-first day.

**1301:8-5-08, Payments on a pawn loan (Rescind).** This rule is being rescinded for two reasons. First, the content of the rule is being moved to 1301:8-5-07. Second, more than 50% of the rule is being amended. The definitions of "month" and "fraction of a month," which are found in paragraph (A), are being stricken because "month" is already defined in R.C. 1.45 and the definition of "fraction of a month" caused confusion. Paragraph (B), which explains how to compute interest, is being deleted because it unnecessarily duplicates R.C. Section 4727.06(A). Paragraph (D), which addresses how to apply payments, is being stricken because there is no statutory authority for this language. Lastly, the definition of "redemption" in paragraph (F) is being moved to the new definitions section, 1301:8-5-01.

**1301:8-5-08, Continuing education (New).** This proposed new rule regarding continuing education is a renumbering of proposed rescinded rule 1301:8-5-09, which now applies for both classroom and online instruction. The proposed rule, in paragraph (A) and related subparagraphs, establishes the requirements to apply for course approval. In paragraph (B) and related subparagraphs, the rule establishes criteria for approval of a course. Pursuant to the proposed rule, courses may not exceed eight credit hours in any one day, which is increased from six credit hours in one day under proposed rescinded rule 1301:8-5-09. Paragraph (C) and related subparagraphs provide parameters for permissible equivalent/alternative activities that will permit participants to receive continuing education credit. Paragraph (C) was renumbered from the previous version in proposed rescinded rule 1301:8-5-09. In paragraph (D) and related subparagraphs, the rule sets forth who must take continuing education for the pawnbroker, while paragraph (E) and related subparagraphs set forth how the designated salesperson is determined for purposes of satisfying the continuing education requirement of R.C. Section 4727.19.

**1301:8-5-09, Continuing education (Rescind).** This rule is being rescinded because the content of the rule is being moved to 1301:8-5-08.

Copies of the proposed rule filing may be obtained by contacting the Ohio Division of Financial Institutions at the above address or by calling Allyson Porter at (614) 644-7487. Copies of the proposed rule amendments may also be obtained from the Division's Internet homepage located at <http://www.com.state.oh.us> or the Register of Ohio located at [www.registerofohio.state.oh.us](http://www.registerofohio.state.oh.us).