



**House
Legislative
Analysis
Section**

Olds Plaza Building, 10th Floor
Lansing, Michigan 48909
Phone: 517/373-6466

PAWNBROKER AMENDMENTS

**House Bill 4009 as passed by the House
Second Analysis (1-2-96)**

**Sponsor: Rep. Floyd Clack
Committee: Regulatory Affairs**

THE APPARENT PROBLEM:

The pawnbrokers' act, Public Act 273 of 1917, has been virtually unchanged for decades. Allowable license fees have not kept pace with inflation, and various provisions, such as a ban on Sunday business, are considered antiquated. Some police officers argue that reporting requirements under the act are so minimal that pawnbrokers may report to police that they received a "gun", "jewelry", or "watch", with no descriptions or even a make or model, thus making it harder for police to track and retrieve stolen property. Meanwhile, some legitimate pawnbrokers feel that light penalties for such things as operating without a license or charging higher interest rates than the law allows creates an uneven playing field with those pawnbrokers operating illegally. Legislation has been proposed to address these concerns.

THE CONTENT OF THE BILL:

The bill would amend the pawnbrokers' act, Public Act 273 of 1917, to increase allowable license fees and surety bond amount, require permanent records on forms prescribed by the bill, increase monthly storage charges, and delete requirements for sales of unredeemed items to be by public auction. Pawnbrokers' business hours would be restricted to 9 a.m. to 9 p.m. The bill would repeal a requirement that a pawnbroker pay to the pawner any surplus resulting from the sale of the pawned item. Also repealed would be a ban on Sunday business and a section dealing with a bond that was declared unconstitutional by the Michigan Supreme Court in 1941. A section requiring a sworn statement of transactions with descriptions of the pawner and of the article received to be sent daily to the local chief of police, with the exception of Sunday, would be repealed and would be replaced with new language.

Pawnbrokers and Pawnshops. Currently, a pawnbroker is defined as a person, corporation, or member of a copartnership or firm who loans money on deposit or pledge of personal property or other valuable thing, other than such things as securities, and who deals in purchasing personal property on condition of selling it back at a stipulated price. The bill would

expand the definition to include those who buy personal property or valuable things without the condition of selling it back and those who exchange personal property for an article of near or equal value. A pawnshop would be defined as a place of business whose primary activity is to loan money on deposit or pledge of personal property or valuable things, other than securities; purchase personal property or things with or without the condition of selling it back at a stipulated price; or exchange personal property for an article of near or equal value. Consignment clothing stores or stores that only dealt with buying and selling used clothing would be excluded from the definition of a pawnshop.

Licenses. License requirements, at present limited to pawnbrokers in cities or villages with populations over 3,000, would apply to pawnbrokers in all cities, villages, or townships, regardless of population. The local authority granting licenses would be changed from the mayor or president of a city or village to the chief executive officer of the governmental unit. Currently, license fees may be from \$50 to \$500 per year; the bill would allow them to be up to \$1,000 per year. The amount of the required surety bond would increase from \$3,000 to \$10,000. A person, firm, or corporation licensed under the Precious Metal and Gem Dealers Act or Public Act 350 of 1917, which regulates second hand and junk dealers, would not be exempt from the licensing requirements of the bill.

Records and inspections. Records on pawned, purchased, or exchanged items would be maintained in a book, as currently required. Transactions recorded in the pawnbroker's book would be sequentially numbered and would include, in addition to currently-required information on the item and the pawner, the following: the make, model, and serial number of the article; the pawner's date of birth, race, sex, specific identifying physical characteristics, driver's license number, Social Security number, or other government identification number.

In addition, the bill would require permanent records of transactions to be recorded on forms provided by pawnbrokers on a form substantially complying with a

House Bill 4009 (1-2-96)

form prescribed by the bill. The forms would include the same information required to be recorded in the pawnbroker's book with the addition of the pawn's thumbprint and the pawn's place of employment. Within 24 hours after receiving an item, one copy of the record of transaction would be sent to the local police agency. Local authorities may at present inspect pawnbroker premises and records; the bill would explicitly extend this authority to the state police. (Note: Public Act 231 of 1945 requires a pawnbroker or secondhand dealer to take the thumbprint of someone from whom property was received, and to send a copy of the thumbprint, along with a description of the property, to the local chief of police or chief police officer, and also to the state police, within 48 hours.)

Pawn tickets. The memorandum that a pawnbroker must give a pawn would bear substantially the same notice that is now given: that if interest charges in excess of three percent per month (the bill would add the words "which is 36% if annualized") plus allowable storage charges are asked or received (the bill would limit storage charges to less than \$1 per month and \$6 per year), the loan is void and the borrower cannot be made to pay back the money loaned, and the pawnbroker loses all right to the possession of the goods. The bill would require that the memorandum contain the same transaction number and rate of interest recorded in the pawnbroker's book when the article was pawned. An individual would be able to sue for damages, court costs, and attorney fees for any damages or legal costs incurred as a result of a pawnbroker failing to give a memorandum at the time an article was pawned.

Items accepted for pawn. Under the bill, a pawnbroker would be required to return to the lawful owner at no cost any article in his or her possession determined by a court with jurisdiction or agreed upon by the parties to be stolen property. A pawnbroker would not be barred by the bill from seeking civil remedies against the pawn for an article confiscated by police and returned to the rightful owner. However, a pawnbroker would be banned from accepting an article that customarily has a manufacturer's serial number or other identifying insignia unless the number or insignia was clearly visible on the item.

Storage charges. Allowable storage charges would be raised from 50 cents to \$1 a month or part of a month, and would be limited to no more than \$6 for any 12-month period. Other limits on the duration of storage charges and a ban on storage charges on jewelry would be eliminated.

Storage and sales of pawned items. As with current law, a pawnbroker could not sell an item until it had been in his or her possession for at least six months. However, the bill would delete provisions requiring sales to be by public auction following newspaper notice, and requiring notices to be filed with the county clerk. The bill would require that an item remain in the same building where the item was received, and that the building be easily accessible to inspection by authorities. A pawnbroker, immediately upon receiving an article, would attach to it a tag bearing the transaction number assigned to that pawn. In the case of a loan of \$25 or more, a pawnbroker would send a written notice by first-class mail to the person who pawned the article; the notice would be sent no later than two weeks before the expiration date of the loan (the bill does not state what this notice would say).

Penalties. Penalties for violation of the act would be changed. A violation of the act would continue to be a misdemeanor punishable by a fine or a jail term, or both, but imprisonment would be changed from 10 days to 3 months to being from 10 days to 93 days, and the range of the fine would be increased from the current \$25 to \$100, to between \$500 and \$1,000. Five or more violations of the act or a similar local ordinance would constitute a felony. (Note: When a misdemeanor charge carries a jail term of at least 92 days, a law enforcement agency is required to send two sets of fingerprints to the Michigan state police, one of which is forwarded to the Federal Bureau of Investigation and the other to the Central Records Division of the Department of State Police [MCL 28.243].)

Under current law, a pawnbroker's license must be revoked for one year upon the conviction of the pawnbroker or his or her employee for a violation of the act. Under the bill, the license revocation would be at the option of the licensing municipality, but would be mandatory upon a fifth conviction. Also under the bill, the pawnbroker's license would be revoked for an employee's violation only if the employee's action was one that reasonably should have been prevented through supervision by the pawnbroker. A license revocation under this subsection would be preceded by a notice and an opportunity for a hearing.

The bill would take effect January 1, 1996.

MCL 446.201 et al.

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, the bill would have no fiscal impact on the state. Since local

governmental units would retain discretion in setting license and violation fees within the prescribed range set by the bill, the increase in revenue at the local level would be indeterminate. (1-2-96)

ARGUMENTS:

For:

Pawnshops do provide a service to consumers, often being the only source for loans for people, such as the poor, who do not have access to more traditional bank loans. According to a series of newspaper articles a couple of years ago, a number of pawnbrokers in a major metropolitan area routinely charged loan and storage rates that amounted to 20 percent a month, despite current restrictions on interest rates (three percent per month) and storage charges (fifty cents a month). The requirements of the bill, such as more detailed recordkeeping on items pawned, should discourage the illegal operations so common today. Stiffer license fees would help to ensure that only stable, legitimate businesses were licensed, thus improving the industry as a whole and helping to protect consumers from shady operators. Consumers would benefit from a provision that would explicitly require a pawnbroker to notify a pawnor by mail when the deadline for paying the loan was approaching. Also, stolen property would have to be returned to the owner at no cost, thus ending the current practice of many pawnshops charging the lawful owner to redeem his or her own property. The limit on operating hours should make it harder for thieves to quickly turn stolen items into hard cash; this would act as a deterrent for robberies and breaking and entering to steal household items.

Pawnbrokers would similarly be aided by the elimination of antiquated restrictions on the sales of unredeemed items, and would be allowed to keep the surplus over the amount loaned. Further, requirements for newspaper notice and public auction would be eliminated. These provisions would help legitimate pawnbrokers offset higher operating costs since license fees would increase but interest charges would remain the same. Pawnbrokers are heavily regulated and would continue to be so; what the bill would do is promote a more stable and level playing field for legitimate pawnbrokers.

For:

The bill would increase the maximum jail term for a violation of the act from three months to 93 days. In this way, any violator receiving 93 days would permanently have his or her fingerprints on file with the Michigan Department of State Police and with the FBI. Currently, fingerprints of persons sentenced to 92 days

or less are sent temporarily to the state police for the purpose of identification. After completing the identification process, the department must return the set of fingerprints to the local police agency. Therefore, the tougher reporting standards would better enable state and local police to identify repeat offenders and to discourage violators, including illegitimate pawnbrokers from other states, to relocate and set up shop in different locales or under different names.

Against:

The definition of "pawnshop" in the bill is so broad as to include all businesses that buy and sell used merchandise except for stores that deal in old clothes such as consignment clothing stores. Therefore, used sporting goods stores, antique shops, flea markets, and possibly even car dealerships would have to be licensed under the act and subject to the same reporting requirements as pawnshops, even though they clearly are not pawnshops and do not dispense loans. Since these stores may be licensed under other acts, the additional license fees and reporting requirements would be burdensome.

Response:

Unfortunately, many stolen items are sports equipment and antiques, especially jewelry. By including "buy/sell" shops under the requirements of the bill, police would have an increased ability to locate, and therefore return, stolen property. Besides, some pawnshops have tried to skirt the restrictions and penalties under current law by no longer accepting items for pawn, instead buying the items outright. According to proponents of the bill, the legislation would eliminate the confusion between pawnbrokers and second-hand dealers by making the law pertain to both types of operations.

Against:

If pawnshops are so beneficial to the poor, who presumably have less access to banks for loans, then why does the legislation allow the poor to be charged such outrageous interest rates as 36 percent a year? In fact, some have already pointed out the practice of pawn shops charging far more -- usually 20 percent per month, which is 240 percent if annualized. The bill needs to do more to protect this vulnerable section of society.

Response:

The three percent monthly interest rate has been in existence since 1917. Even with the so-called "high" rate, pawnbrokers report that over 90 percent of pawned items are redeemed by the pawnees. Since the loans are usually under \$150 and are for six months or less duration, the actual loan charges are small. With the increases in insurance and other operating costs,

legitimate pawnbrokers could not stay in business if less interest was charged.

POSITIONS:

The Michigan Consumers Federation supports the bill.
(1-2-96)

The Department of State Police supports the bill. (1-2-96)

The Michigan Retailers Association has no formal position, but due to the broad definitions of pawnbroker and pawnshop contained in the bill, has indicated concern and is reviewing the impact of the definitions upon its membership. (1-2-95)