

STATE OF OKLAHOMA

2nd Session of the 43rd Legislature (1992)

HOUSE BILL NO. 2056

BY: COTNER

AS INTRODUCED

AN ACT RELATING TO PROFESSIONS AND OCCUPATIONS;

AMENDING 59 O.S. 1991, SECTIONS 1501, 1502, 1503,

1503A, 1504, 1505, 1506, 1508, 1509, 1512, 1514 AND

1515, WHICH RELATE TO THE OKLAHOMA PAWNSHOP ACT;

MODIFYING SHORT TITLE; ADDING DEFINITIONS;

PROVIDING FOR REGULATION OF SECONDHAND STORES AND

DEALERS UNDER OKLAHOMA PAWNSHOP AND PREVIOUSLY

OWNED GOODS ACT; AND PROVIDING AN EFFECTIVE DATE.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 59 O.S. 1991, Section 1501, is amended to read as follows:

Section 1501. This act shall be known and may be cited as the "Oklahoma Pawnshop and Previously Owned Goods Act".

SECTION 2. AMENDATORY 59 O.S. 1991, Section 1502, is amended to read as follows:

Section 1502. As used in this act:

1. "Administrator" means the Administrator of Consumer Affairs defined in the Uniform Consumer Credit Code.

2. "Month" means that period of time from one date in a calendar month to the corresponding date in the following calendar

month, but if there is no such corresponding date, then the last day of such following month, and when computations are made for a fraction of a month, a day shall be one-thirtieth (1/30) of a month.

3. "Pawnbroker" means a person engaged in the business of making pawn transactions.

4. "Pawn finance charge" means the sum of all charges, payable directly or indirectly by the customer and imposed directly or indirectly by the pawnbroker as an incident to the pawn transaction.

5. "Pawnshop" means the location at which or premises in which a pawnbroker regularly conducts business.

6. "Pawn transaction" means the act of lending money on the security of pledged goods or the act of purchasing tangible personal property on condition that it may be redeemed or repurchased by the seller for a fixed price within a fixed period of time.

7. "Person" means an individual, partnership, corporation, joint venture, trust, association or any other legal entity however organized.

8. "Pledged goods" means tangible personal property other than choses in action, securities or printed evidences of indebtedness, which property is deposited with or otherwise actually delivered into the possession of a pawnbroker in the course of his business in connection with a pawn transaction.

9. "Previously owned goods" means tangible personal property which has been sold to a consumer prior to a sale by a dealer, other than choses in action, securities or printed evidences of indebtedness, which is sold or traded or offered for sale or trade by a dealer in the course of the business of the dealer.

10. "Dealer" means any person, firm, corporation, partnership or other entity which engages in, does or transacts any business in this state by offering for sale or trade or selling or trading previously owned goods.

11. "Secondhand store" means the location at which or the premises on which a dealer regularly conducts business.

SECTION 3. AMENDATORY 59 O.S. 1991, Section 1503, is amended to read as follows:

Section 1503. No person shall engage in business as a pawnbroker or dealer without first obtaining a license from the Administrator specifically authorizing engagement in such business.

SECTION 4. AMENDATORY 59 O.S. 1991, Section 1503A, is amended to read as follows:

Section 1503A. A. To be eligible for a pawnshop or dealer's license, an applicant shall:

1. Be of good moral character;
2. Have net assets of at least Twenty-five Thousand Dollars (\$25,000.00); and
3. Show that the pawnshop or secondhand store will be operated lawfully and fairly within the purpose of the Oklahoma Pawnshop and Previously Owned Goods Act, Section 1501 et seq. of Title 59 of the Oklahoma Statutes.

B. The Administrator shall find ineligible an applicant who has a felony conviction which directly relates to the duties and responsibilities of the occupation of pawnbroker.

C. If the Administrator is unable to verify that the applicant meets the net assets requirement for a pawnshop license, the Administrator may require a finding, including the presentation of a current balance sheet, by an accounting firm or individual holding a permit to practice public accounting in this state, that the accountant has reviewed the books and records of the applicant and that the applicant meets the net assets requirement.

SECTION 5. AMENDATORY 59 O.S. 1991, Section 1504, is amended to read as follows:

Section 1504. A. Applications for a pawnshop or dealer's license shall be completed under oath and shall state the full name

and place of residence of the applicant. If the applicant is a partnership, the full name and place of residence of each member thereof shall be stated. If the applicant is a corporation, the full name and place of residence of each officer or major stockholder thereof shall be stated. The application shall give the approximate location from which the business is to be conducted, and shall contain such relevant information as the Administrator may require.

B. Each applicant for a pawnshop or dealer's license at the time of filing application shall file with the Administrator a bond satisfactory to him and in the amount of Five Thousand Dollars (\$5,000.00) for each license with a surety company qualified to do business in this state. The said bond shall run to the state for the use of the state and of any person or persons who may have cause of action against the obligor of said bond under the provisions of this act. Such bond shall be conditioned that the obligor will comply with the provisions of this act and of all rules and regulations lawfully made by the Administrator hereunder, and will pay to the state and to any such person or persons any and all amounts of money that may become due or owing to the state or to such person or persons from said obligor under and by virtue of the provisions of this act during the time such bond is in effect.

C. Each licensee shall maintain on file with the Administrator a written appointment of a resident of this state as his agent for service of all judicial or other process or legal notice, unless the licensee has appointed an agent under another statute of this state. In case of noncompliance, such service may be made on the Administrator.

SECTION 6. AMENDATORY 59 O.S. 1991, Section 1505, is amended to read as follows:

Section 1505. A. Upon the filing of an application and bond and payment of the annual license fee of One Hundred Dollars

(\$100.00) and an investigation fee of One Hundred Twenty-five Dollars (\$125.00), the Administrator shall conduct an investigation. If he finds that the financial responsibility, experience, character and general fitness of the applicant are such as to warrant belief that the business will be operated lawfully and fairly, within the purposes of Section 1501 et seq. of this title, and the applicant meets the eligibility requirements of Section 7 1503A of this ~~act~~ title, he shall grant the application and issue to the applicant a license which will evidence his authority to do business under the provisions of Section 1501 et seq. of this title. Provided, that if a license is granted pursuant to an application filed after June 30 of any year, the license fee for the balance of such year shall be Fifty Dollars (\$50.00).

B. If the Administrator does not so find facts sufficient to warrant issuance of a license, he shall notify the applicant. If within thirty (30) days of such notification the applicant requests a hearing on the application, a hearing shall be held within sixty (60) days after the date of the request. In the event of the denial of a license, the investigation fee shall be retained by the Administrator, but the annual license fee shall be returned to the applicant.

C. The Administrator shall grant or deny each application for license within sixty (60) days from its filing with the required fees, or from the hearing thereon, if any, unless the period is extended by written agreement between the applicant and the Administrator.

D. No license to engage in the business of a pawnbroker or dealer shall be issued for any location where a license has been issued and is in effect under the provisions of Section 3-501 et seq. of Title 14A of the Oklahoma Statutes. The word "location" as used in this subsection means the entire space in which a Title 14A licensee conducts business. No pawnshop or secondhand store may be

connected with any location in which a Title 14A licensee conducts business, except by a passageway to which the public is not admitted.

SECTION 7. AMENDATORY 59 O.S. 1991, Section 1506, is amended to read as follows:

Section 1506. A. Each license shall state the name of the licensee and the address at which the business is to be conducted. The license shall be displayed at the place of business named in the license. The license shall not be transferable or assignable except upon approval by the Administrator.

B. A separate license shall be required for each pawnshop or secondhand store operated under this act.

The Administrator may issue more than one license to any one person upon compliance with the provisions of this act as to each license. When a licensee wishes to move his pawnshop or secondhand store to another location, he shall give thirty (30) days' written notice to the Administrator, who shall amend the license accordingly.

C. Each license shall remain in full force and effect until relinquished, suspended, revoked or expired. Every licensee, on or before each December 1, shall pay the Administrator One Hundred Dollars (\$100.00) for each license held by him as the annual fee for the succeeding calendar year. If the annual fee remains unpaid fifteen (15) days after written notice of delinquency has been given to the licensee by the Administrator, the license shall thereupon expire, but expiration shall not occur before December 31 of any year for which an annual fee has been paid.

D. No licensing requirement or license fee shall be required, levied or collected by any municipal corporation of this state; provided that municipal corporations may require the payment of regulatory fees not in excess of Fifty Dollars (\$50.00) per annum.

SECTION 8. AMENDATORY 59 O.S. 1991, Section 1508, is amended to read as follows:

Section 1508. A. At such times as the Administrator may deem necessary, the Administrator or his duly authorized representative may make an examination of the place of business of each licensee and may inquire into and examine the transactions, books, accounts, papers, correspondence and records of such licensee insofar as they pertain to the business regulated by this act. Such books, accounts, papers, correspondence, records and property taken, purchased or received shall also be open for inspection at any reasonable time to federal law enforcement officials and the chief of police, district attorney, sheriff or written designee of the law enforcement body in whose jurisdiction the pawnshop is located, without any need of judicial writ or other process. In the course of an examination, the Administrator or his duly authorized representative or any authorized peace officer shall have free access to the office, place of business, files, safes and vaults of such licensee, and shall have the right to make copies of any books, accounts, papers, correspondence and records insofar as they pertain to the business regulated by Section 1501 et seq. of this title. The Administrator or his duly authorized representative may, during the course of such examination, administer oaths and examine any person under oath upon any subject pertinent to any matter about which the Administrator is authorized or required by this act to consider, investigate or secure information. Any licensee who fails or refuses to permit the Administrator or his duly authorized representative or any authorized peace officer to examine or make copies of such books or other relevant documents shall thereby be deemed in violation of this act and such failure or refusal shall constitute grounds for the suspension or revocation of such license. The information obtained in the course of any examination or inspection shall be confidential, except in civil or administrative

proceedings conducted by the Administrator, or criminal proceedings instituted by the state. Each licensee shall pay to the Administrator an amount assessed by the Administrator to cover the direct or indirect cost of such examination, not to exceed Two Hundred Dollars (\$200.00) in any calendar year.

B. For the purpose of discovering violations of this act or of securing information required hereunder, the Administrator or his duly authorized representative may investigate the books, accounts, papers, correspondence and records of any licensee or other person who the Administrator has reasonable cause to believe is violating any provision of this act whether or not such person shall claim to be within the authority or scope of this act. For the purpose of this section, any person who advertises for, solicits or holds himself out as willing to make pawn transactions or sales of previously owned goods, shall be presumed to be a pawnbroker or dealer.

C. Each licensee shall keep or make available in this state such books and records relating to pawn transactions and sales of previously owned goods made under this act as are necessary to enable the Administrator to determine whether the licensee is complying with this act. Such books and records shall be consistent with accepted accounting practices.

D. Each licensee shall preserve or make available such books and records in this state relating to each of its pawn transactions and sales of previously owned goods for four (4) years from the date of the transaction, or two (2) years from the date of the final entry made thereon, whichever is later. Each licensee's system of records shall be accepted if it discloses such information as may be reasonably required under this act. All agreements signed by customers shall be kept at an office in this state designated by the licensee, except when transferred under an agreement which gives the Administrator access thereto. All credit sales made by a pawnbroker

or dealer, other than those sales defined in paragraph 6 of Section 1502 of this title, as a pawn transaction, shall be made in accordance with and subject to the provisions of Title 14A of the Oklahoma Statutes.

E. Each licensee shall, annually on or before the first day of May or other date thereafter fixed by the Administrator, file a report with the Administrator setting forth such relevant information as the Administrator may reasonably require concerning the business and operations during the preceding calendar year for each licensed place of business conducted by such licensee within the state. Such report shall be made under oath and shall be in the form prescribed by the Administrator, who may make and publish annually a consolidated analysis and recapitulation of such reports, but the individual reports shall be held confidential.

F. The Administrator may make regulations necessary for the enforcement of this act and consistent with all its provisions. Before making such a regulation relating to the licensees subject to this act, the Administrator shall give each licensee at least thirty (30) days' written notice of a public hearing, stating the time and place thereof and the terms or substance of the proposed regulation. At the hearing, any licensee or other person may be heard and may introduce evidence, data or arguments or place the same on file. The Administrator, after consideration of all relevant matters presented, shall adopt and promulgate every regulation in written form, stating the date of adoption and date of promulgation. Each such regulation shall be entered in a permanent record book which shall be public record and be kept in the Administrator's office. A copy of every regulation shall be mailed to each licensee, and no such regulation shall become effective until the expiration of at least twenty (20) days after such mailing. On the application of any person and payment of the cost thereof, the Administrator shall furnish such person a certified copy of such regulation.

G. Except as otherwise expressly provided in this act the Administrative Procedures Act, Section 251 et seq. and 301 et seq. of Title 75 of the Oklahoma Statutes, applies to and governs all administrative actions and civil proceedings taken by the Administrator pursuant to this act.

SECTION 9. AMENDATORY 59 O.S. 1991, Section 1509, is amended to read as follows:

Section 1509. A. General Disclosure Requirements. 1. All disclosures required by this act shall be made in accordance with the regulations of the Administrator and, in addition, such disclosures as applicable:

- a. shall be made clearly and conspicuously;
- b. shall be in writing, a copy of which shall be delivered to the customer;
- c. may be supplemented by additional information or explanations supplied by the pawnbroker or dealer;
- d. need be made only to the extent applicable and only, in the case of pawn transactions, as to those items for which the pawnbroker makes a separate charge to the customer; and
- e. shall comply with this section although rendered inaccurate by any act, occurrence or agreement subsequent to the required disclosure.

2. The disclosures required by this section for pawn transactions shall be made before credit is extended, but may be made in the pawn transaction, refinancing or consolidation agreement, or other evidence of the pawn transaction agreement to be signed by the customer if set forth conspicuously therein, and need be made only to one customer if there is more than one. The disclosures required by this section for sales of previously owned goods shall be made on the bill of sale with a copy to be retained

by the purchaser, and the disclosure statement is to be completed at the time of the transaction. It shall contain the following:

- a. the name and address of the dealer;
- b. the name and address of the customer and the customer's description or the distinctive number from the customer's driver's license or military identification; and
- c. the date of the transaction.

3. If any evidence of the pawn transaction agreement or sale is signed by the customer, the pawnbroker or dealer shall give him a copy when the writing is signed.

4. Except as provided with respect to civil liability for violations of disclosure provisions, written acknowledgment of receipt by a customer to whom a statement is required to be given pursuant to this section:

- a. in an action or proceeding by or against the original pawnbroker, creates a presumption that the statement was given; and
- b. in an action or proceeding by or against an assignee without knowledge to the contrary when he acquires the obligation, is conclusive proof of the delivery of the statement and, unless the violation is apparent on the face of the statement, of compliance with this act.

5. Where the terms "finance charge" and "annual percentage rate" are required to be used, they shall be printed more conspicuously than other terminology required by this act. All numerical amounts and percentages shall be stated in figures and shall be printed in not less than the equivalent of ten point type, .075-inch computer type, or elite size typewritten numerals, or shall be legibly handwritten.

B. Calculation of Rate to be Disclosed. 1. If a pawnbroker is required to give to a customer a statement of the rate of the pawn

finance charge, he shall state the rate in terms of an annual percentage rate calculated according to the actuarial method designated as "annual percentage rate" with respect to a pawn transaction, which is the quotient expressed as a percentage of the total pawn finance charge for the period to which it relates divided by the amount financed, multiplied by the number of these periods in a year.

2. A statement of rate complies with this act if it does not vary from the accurately computed rate by more than one quarter of one percent (1/4 of 1%) for a pawn transaction.

C. Overstatement. The disclosure of an amount or percentage which is greater than the amount or percentage required to be disclosed under this act does not in itself constitute a violation of this act if the overstatement is not materially misleading and is not used to avoid meaningful disclosure.

D. Specific Disclosure Provisions. 1. The pawnbroker shall give the customer the following information:

- a. the name and address of the pawnbroker;
- b. the name and address of the customer and the customer's description or the distinctive number from customer's driver's license or military identification;
- c. the date of the transaction;
- d. the net amount paid to, receivable by, or paid or payable for the account of the customer, designated as "amount financed";
- e. the amount of the pawn finance charge, designated as "finance charge";
- f. the rate of the pawn finance charge as applied to the amount financed, in accordance with the provisions on calculation of rate in ~~Section 97~~ subsection B7 of

this ~~act~~ section designated as "annual percentage rate";

- g. the total amount which must be paid to redeem the pledged goods on the maturity date, designated as the "total of payments";
- h. an identification of the property to which any security interest held or to be retained or acquired relates, and shall include serial numbers if reasonably available;
- i. the maturity date of the pawn transaction; and
- j. a statement to the effect that the customer is not obligated to redeem the pledged goods, and that the pledged goods may be forfeited to the pawnbroker thirty (30) days after the specified maturity date, provided that the pledged goods may be redeemed by the customer within thirty (30) days following the maturity date of the pawn transaction by payment of the originally agreed redemption price and the payment of an additional pawn finance charge equal to one-thirtieth (1/30) of the original monthly pawn finance charge for each day following the original maturity date including the day on which the pledged goods are finally redeemed.

E. Consolidation. If the parties to a pawn transaction or consumer credit sale agree to a consolidation, the pawnbroker shall give to the customer the information required with respect to pawn transaction provisions. That portion of the pawn finance charge earned at the time of consolidation shall be no greater than one-thirtieth (1/30) of the pawn finance charge for each elapsed day from the date of the transaction. The amount with respect to the previous transaction or sale to be consolidated shall be separately stated and shall be added to the net amount paid to, receivable by,

or paid or payable for the account of the customer in connection with the subsequent transaction.

F. Advertising. 1. No pawnbroker shall engage in this state in false or misleading advertising concerning the terms or conditions of credit with respect to a pawn transaction.

2. Without limiting the generality of ~~subsection~~ paragraph 1 of this ~~section~~ subsection an advertisement with respect to a pawn transaction made by the posting of a public sign, or by catalog, magazine, newspaper, radio, television or similar mass media, is misleading if:

- a. it states the rate of the pawn finance charge and the rate is not stated in the form required by the provisions on calculation of rate to be disclosed; or
- b. it states the dollar amounts of the pawn finance charge and does not also state the rate of any pawn finance charge.

3. In this section a catalog or other multiple-page advertisement is considered a single advertisement if it clearly and conspicuously displays a credit terms table setting forth the information required by this section.

4. This section imposes no liability on the owner or personnel, as such, of any medium in which an advertisement appears or through which it is disseminated.

5. Advertising which complies with the Federal Consumer Credit Protection Act does not violate ~~subsection~~ paragraph 2 of this ~~section~~ subsection.

SECTION 10. AMENDATORY 59 O.S. 1991, Section 1512, is amended to read as follows:

Section 1512. A. Rule Making Power. The Administrator shall have the same authority to adopt, amend and repeal rules as is conferred upon him by Section 6-104 (1) (e), (2) and (3) of Title 14A of the Oklahoma Statutes, as applicable, and such rules shall

have the same effect as provided in Section 6-104 (4) thereunder. In addition, the Administrator may adopt, amend and repeal such other rules as are necessary for the enforcement of the provisions of this act and consistent with all its provisions.

B. Administrative Enforcement. Compliance with the provisions of this act may be enforced by the Administrator who may exercise, for such purpose, all the powers enumerated in Part 1 of Article 6, Title 14A of the Oklahoma Statutes, in the same manner as in relation to consumer credit transactions under that act, as well as those powers conferred in this act.

C. Criminal Penalties. 1. Any person who engages in the business of operating a pawnshop or a secondhand store without first securing the license prescribed by this act shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not in excess of One Thousand Dollars (\$1,000.00), by confinement in the county jail for not more than six (6) months or by both such fine and imprisonment.

2. Any person selling or pledging property to a pawnbroker or dealer who uses false or altered identification or a false declaration of ownership as related to the provisions of Section ~~10~~ 1515 of this ~~act~~ title shall be guilty of a felony and upon conviction shall be punished by imprisonment in the State Penitentiary not to exceed five (5) years or in the county jail not to exceed one (1) year, or by a fine not to exceed Five Hundred Dollars (\$500.00), or by both such imprisonment and fine.

D. Private Enforcement. 1. If any person engages in the business of operating a pawnshop or a secondhand store without first securing the license prescribed by this act, or if any pawnbroker contracts for, charges or receives a pawn finance charge in excess of that authorized by this act, the pawn transaction or sale of previously owned goods shall be void and the customer is not obligated to pay either the amount financed or the pawn finance

charge in connection with the transaction, and upon the customer's demand, the pawnbroker shall be obligated to return to the customer, as a refund, all amounts paid in connection with the transaction by the customer and the pledged goods delivered to the pawnbroker in connection with the pawn transaction or their value if the goods cannot be returned. If a customer is entitled to a refund under this section and a pawnbroker liable to the customer refuses to make the refund within a reasonable time after demand, the customer shall have an action against the pawnbroker and in the case of a successful action to enforce such liability, the costs of the action together with attorney's fees as determined by the court shall be awarded to the customer.

2. A pawnbroker or dealer who fails to disclose information to a customer entitled to the information under this act is liable to that person in an amount equal to the sum of:

- a. twice the amount of the pawn finance charge in connection with the transaction, or One Hundred Dollars (\$100.00), whichever is greater; and
- b. in the case of a successful action to enforce the liability under paragraph 1 of this subsection, the costs of the action together with reasonable attorneys' fees as determined by the court.

SECTION 11. AMENDATORY 59 O.S. 1991, Section 1514, is amended to read as follows:

Section 1514. Municipalities may enact ordinances which are in compliance with but not more restrictive than the provisions of the Oklahoma Pawnshop and Previously Owned Goods Act, Section 1501 et seq. of Title 59 of the Oklahoma Statutes. Any existing or future order, ordinance or regulation which conflicts with this provision shall be null and void.

SECTION 12. AMENDATORY 59 O.S. 1991, Section 1515, is amended to read as follows:

Section 1515. A. Any pawnbroker or dealer shall make available a copy or report within three (3) days of any buy or sale transaction to the local law enforcement agency of the municipality or other political subdivision in which the pawnshop or secondhand store is located; provided, merchandise bought on invoice from a manufacturer or wholesaler with an established place of business is exempt from this reporting requirement. However, such invoice shall be shown upon request to the Administrator or his duly authorized representative or any authorized peace officer. The copy or report shall include:

1. The name and address of the pawnshop or secondhand store;
2. The name, address, weight, height, date of birth and either identification number of the seller as verified by either a state-issued identification card, driver's license or federal government-issued identification card or by readable fingerprint of right or left index finger on the back of the pawn or buy transaction copy to be retained for the pawnbroker's or dealer's record;
3. The buy transaction number;
4. The date of the transaction;
5. The manufacturer of the item;
6. A description of the item; and
7. The serial number and model number where available and any other identifying markings.

B. Items bought, except on invoice from a manufacturer or wholesaler with an established place of business, shall be held for ten (10) days before being disposed of or sold.

C. Any pawnbroker or dealer shall make available a copy or report within three (3) days of any pawn transaction or sale of previously owned goods to the local law enforcement agency of the municipality or other political subdivision in which the pawnshop or secondhand store is located. The copy or report shall include:

1. The name and address of the pawnshop or secondhand store;
2. The name, address, weight, height, date of birth and either identification number of the person making the pawn transaction or sale of previously owned goods with the pawnshop or secondhand store as verified by either a state-issued identification card, driver's license or federal government-issued identification card or by readable fingerprint of right or left index finger on the back of the pawn or buy transaction copy to be retained for the pawnbroker's or dealer's record;
3. The pawn or buy transaction number;
4. The date of the transaction;
5. The manufacturer of the item;
6. A description of the item; and
7. The serial number and model number where available and any other identifying markings.

D. The pawnbroker or dealer shall obtain a written declaration of ownership from the seller or pledgor on all buy and pawn transactions, except refinance pawn transactions or merchandise bought from a manufacturer or wholesaler with an established place of business. The seller or pledgor shall be required to state how long he has owned the property described in the transaction. The declaration of ownership shall appear on the bill of sale or pawn ticket, to be completed by the seller or the pledgor at the time of the transaction.

SECTION 13. This act shall become effective September 1, 1992.

43-2-6854

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