

SHORT TITLE: Pawnbrokers; providing for limited insurance representative license for persons selling certain insurance as part of pawn transaction; authorizing pawnbroker to offer insurance coverage to customer for value of pawn; making purchase of insurance optional for customer; effective date.

STATE OF OKLAHOMA

1st Session of the 44th Legislature (1993)

SENATE BILL NO. 141

By: Herbert

AS INTRODUCED

An Act relating to pawnbrokers; amending 36 O.S.

1991, Section 1424, which relates to licensure of insurance agents and 59 O.S. 1991, Section 1511, as amended by Section 4, Chapter 280, O.S.L. 1992 (59 O.S. Supp. 1992, Section 1511), which relates to pawn transactions; providing for limited insurance representative license for persons selling certain insurance as part of pawn transaction; exempting applicant from certain test; authorizing pawnbroker to offer insurance coverage to customer for value of pawn; making purchase of insurance optional for customer; prohibiting pawnbroker from offering insurance unless certain conditions are met; and providing an effective date.

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

SECTION 1. AMENDATORY 36 O.S. 1991, Section 1424, is amended to read as follows:

Section 1424. A. 1. No person shall act as or hold himself out to be an insurance agent, surplus lines insurance broker, limited insurance representative, managing general agent, or consultant unless duly licensed.

2. No insurance agent, surplus lines insurance broker, or limited insurance representative shall make application for,

procure, negotiate for, or place for others any policies for any lines of insurance as to which he is not then qualified and duly licensed.

a. An insurance agent or surplus lines insurance broker may receive qualification for a license in one or more of the following categories or lines of insurance:

- (1) Life insurance
- (2) Accident and health insurance
- (3) Property insurance
- (4) Vehicle insurance
- (5) Casualty insurance
- (6) Variable annuity contracts
- (7) Bail bonds
- (8) Title insurance

b. A limited insurance representative may receive qualification for a license in one or more of the following categories:

- (1) As a ticket-selling agent of a common carrier who acts only with reference to the issuance of insurance on personal effects carried as baggage, in connection with the transportation provided by such common carrier.
- (2) To engage in the sale of only limited travel accident insurance.
- (3) To engage in the sale of credit life insurance or credit accident and health insurance or both credit life insurance and credit accident and health insurance in connection with a credit transaction by which satisfaction of a debt in whole or in part is a benefit provided.
- (4) To engage in the sale of personal property floater insurance upon personal effects against

loss or damage from any cause in connection with a credit transaction of not more than Five Thousand Dollars (\$5,000.00) by which satisfaction of the credit transaction debt in whole or in part is a benefit provided, and such personal effects are used as collateral on the debt.

- (5) To engage in the sale of nonfiling insurance relating to mortgages and security interests arising under the Uniform Commercial Code, Section 1-101 et seq. of Title 12A of the Oklahoma Statutes.
- (6) Prepaid legal liability insurance, which means the assumption of an enforceable contractual obligation to provide specified legal services or to reimburse policyholders for specified legal expenses, pursuant to the provisions of a group or individual policy.
- (7) Job loss insurance, which means the sale of involuntary unemployment insurance in connection with a credit transaction by which satisfaction of a debt in whole or in part is a benefit provided.
- (8) To provide insurance coverage for pawn; provided no test shall be required of applicants for licensure in this category.

3. An insurance agent or limited insurance representative may solicit applications for and issue travel accident policies or baggage insurance by means of mechanical vending machines supervised by him, as follows:

- a. The Commissioner shall determine that the form of policy to be sold is reasonably suited for sale and

issuance through vending machines, that use of vending machines for the sale of said policies would be of convenience to the public, and that the type of vending machine to be used is reasonably suitable and practical for the sale and issuance of said policies. Policies so sold do not have to be countersigned.

- b. The Commissioner shall issue to the insurance agent or limited insurance representative a special vending machine license for each such machine to be used. The license shall specify the name and address of the insurer and licensee, the kind of insurance and type of policy to be sold, and the place where the machine is to be in operation. The license shall expire, be renewable, and be suspended or revoked coincidentally with the insurance agent license or limited representative license of the licensee. The license fee for each year or part thereof for each vending machine shall be that stated in the provisions of Section 1425 of this title. Proof of existence of the license shall be displayed on or about each machine in such manner as the Commissioner may reasonably require.

- 4. a. An insurance agent may place only a kind or kinds of insurance for which he is licensed and appointed by an insurer. An insurance agent may place a kind or kinds of insurance for which he is not appointed by an insurer, only by placing the insurance through a licensed agent holding an appointment for that kind or kinds of insurance from an insurer. This subparagraph shall not be interpreted to permit an agent to solicit insurance in a line for which the agent is not

licensed or solicit insurance on behalf of a company for which he is not appointed.

- b. A limited insurance representative may place only a kind or kinds of insurance for which he is licensed and appointed by an insurer. A limited insurance representative may place a kind or kinds of insurance for which he is not appointed as a limited insurance representative only by placing the insurance through a licensed limited insurance representative holding an appointment for that kind or kinds of insurance from an insurer.

B. 1. A partnership or corporation may be licensed as an insurance agent, surplus lines insurance broker, or limited insurance representative or insurance consultant.

2. In the case of a partnership which has been licensed each general partner and each other individual acting for the partnership, and in the case of a corporation which has been licensed each individual acting for the corporation as an agent, surplus lines insurance broker, limited insurance representative or consultant, shall be named in the license and shall qualify therefor as though an individual licensee. The Commissioner shall charge a full additional license fee and a separate license shall be issued for each individual so named in such license.

3. A nonresident of this state shall not be named in a license for a partnership or corporation, except one licensed as a nonresident, and shall not have the right to exercise the license powers.

4. A license shall not be issued to a corporation, except one licensed as a nonresident, unless said corporation is organized pursuant to the provisions of the laws of this state and maintains its principal place of business in this state.

5. A license shall not be issued in a trade name except upon proof satisfactory to the Commissioner that the trade name has been lawfully registered.

6. No partnership or corporation shall be licensed unless the business to be transacted pursuant to the license is the sole purpose of the partnership agreement or articles of incorporation. No corporation or partnership shall own any stock in or be a partner in any corporation or partnership licensed as an insurance agent pursuant to the provisions of this section except a corporation or partnership which is also licensed as an insurance agent pursuant to the provisions of this section, or which was primarily engaged in insurance agency activities on or before January 1, 1985, and was composed of five or more incorporated insurance agencies licensed in this state or any state with which the Commissioner has executed a reciprocal licensing agreement or which was principally engaged in the business of insurance on January 1, 1989, and whose principal officers reside within the State of Oklahoma. Notwithstanding any other provisions of this section, any person, partnership or corporation may own stock in or be a partner in any corporation or partnership licensed pursuant to the provisions of this section as a limited insurance representative. The provisions of this paragraph shall not apply to any person licensed as a title insurance agent.

7. The licensee shall notify the Commissioner of all changes among its members, directors, and officers, and all other individuals designated in the license within ten (10) working days after said change.

8. No person whose license as an insurance agent has been revoked by order of the Commissioner or any partnership or corporation in which such person shall have a majority interest, whether direct or indirect, shall own any stock in or be a partner in any corporation or partnership licensed pursuant to the provisions of this section.

C. 1. The Commissioner shall not grant, renew, continue, or permit to continue any license if he finds that the license is being or will be used by the applicant or licensee for the purpose of writing controlled business. "Controlled business" means:

- a. insurance written on the interests of the licensee or those of his relatives to the second degree or of his employer, or
- b. insurance covering the licensee or his relatives to the second degree or a corporation, association, or partnership of which he or a member of his immediate family is an officer, director, substantial stockholder, partner, associate, or employee, or the officers, directors, substantial stockholders, partners, or employees of such a corporation, association, or partnership. A vendor's or lender's interest in property sold or being sold pursuant to contract or which is security for any loan shall not be deemed for the purpose of this provision to constitute property or an interest of the vendor or lender.

2. A license shall be deemed to have been or intended to be used for the purpose of writing controlled business if the Commissioner finds that during any twelve-month period the aggregate commissions earned from controlled business has exceeded twenty-five percent (25%) of the aggregate commissions earned on all business written by the applicant or licensee during the same period.

3. The prohibitions contained in this subsection concerning licensing for the writing of controlled business shall not apply to title insurance agents and limited insurance representatives.

D. No insurer, insurance agent, surplus lines insurance broker, or limited insurance representative shall pay, directly or indirectly, any commission, brokerage, or other valuable

consideration to any person for services as an insurance agent, surplus lines insurance broker, or limited insurance representative within this state unless the person performing services held at the time said services were performed a valid license for such services as required by the laws of this state. No person other than a person duly licensed by this state as an insurance agent, surplus lines insurance broker, or limited insurance representative at the time said services were performed shall accept any commission, brokerage, or other valuable consideration. Any person duly licensed as an insurance agent pursuant to the provisions of the Insurance Agents Licensing Act, Section 1421 et seq. of this title, may pay or assign his commissions or direct that his commissions be paid to a partnership licensed as an insurance agent pursuant to the provisions of this section of which he is a member, employee, or agent, or to a corporation licensed as an insurance agent pursuant to the provisions of this section of which he is an officer, employee, or agent, or to a corporation composed only of duly licensed insurance agents of which he is a member. The provisions of this section shall not prevent payment or receipt of renewal or other deferred commissions to or by any person entitled thereto pursuant to the provisions of this section. Any person duly licensed as a limited insurance representative may pay or assign his commissions or direct that his commissions be paid to a financial institution or supervised lender licensed and regulated pursuant to the laws of this state or of any state or of the United States, or to any principal, corporation, partnership or other entity which is the credit granting party in any credit transaction involved, its parent, affiliate, successor or assign, or to a partnership or corporation licensed as a limited insurance representative of which he is a member, officer, employee or agent.

E. 1. The name, resident address of the licensee, expiration date, the line or lines of insurance covered by the license, and

such other information as the Commissioner deems proper for inclusion in the license shall be indicated on the license.

2. An insurance agent or limited insurance representative may represent as many insurers as may appoint him in accordance with the provisions of the Insurance Agents Licensing Act.

F. All licenses issued pursuant to the provisions of the Insurance Agents Licensing Act shall continue in force not longer than twelve (12) months. The renewal dates for said licenses may be staggered throughout the year by notifying licensees in writing of the expiration and renewal date being assigned to said licensees by the Commissioner and by making appropriate adjustment in said annual licensing fee.

G. No license as an insurance agent, surplus lines insurance broker, or limited insurance representative shall be required of the following:

1. Any regular-salaried officer or employee of an insurance company, or of a licensed insurance agent, surplus lines insurance broker, or limited insurance representative, if the duties and responsibilities of said officer or employee do not include the negotiation or solicitation of insurance; or

2. Persons who secure and furnish information for the purpose of group or wholesale life insurance, or annuities, or group, blanket, or franchise health insurance, or for enrolling individuals in such plans or issuing certificates thereunder, or otherwise assisting in administering such plans, if no commission is paid for said service; or

3. Employers or their officers or employees, or the trustees of any employee trust plan, to the extent that said employers, officers, employees, or trustees are engaged in the administration or operation of any program of employee benefits for their own employees or the employees of their subsidiaries or affiliates which involves the use of insurance issued by a licensed insurance company

if said employers, officers, employees, or trustees are not in any manner compensated, directly or indirectly, by the insurance company issuing the insurance.

H. Any person or agent who receives exclusive agency contract overrides upon business written in this state shall be licensed as an insurance agent in this state and shall file with his application a copy of each exclusive agency contract which is used to obtain commission on business in this state.

SECTION 2. AMENDATORY 59 O.S. 1991, Section 1511, as amended by Section 4, Chapter 280, O.S.L. 1992 (59 O.S. Supp. 1992, Section 1511), is amended to read as follows:

Section 1511. A. Multiple Agreements. No pawnbroker shall separate or divide a pawn transaction into two or more transactions for the purpose or with the effect of obtaining a total pawn finance charge in excess of that authorized for an amount equal to the total of the amounts financed in the resulting transactions.

B. Customer's Personal Liabilities Prohibited. Even though a pawn transaction subject to Section 1501 et seq. of this title creates a debtor-creditor relationship, no pawnbroker shall make any agreement requiring the personal liability of a customer in connection with a pawn transaction, and no customer shall have an obligation to redeem pledged goods or make any payment on a pawn transaction. The only recourse of a pawnbroker where the customer has pledged goods shall be to the pledged goods themselves, unless the pledged goods are found to be stolen, embezzled, mortgaged or otherwise pledged or encumbered. Upon the customer being officially notified by a peace officer that the goods he pledged or sold to a pawnbroker were stolen or embezzled, the customer shall be liable to repay the pawnbroker the full amount the customer received from the pawn or buy transaction. Any pledged goods not redeemed within thirty (30) days following the last fixed maturity date may

thereafter, at the option of the pawnbroker, be forfeited and become the property of the pawnbroker.

C. Prohibited Practices. A pawnbroker shall not:

1. Accept a pledge or purchase property from a person, male or female, under the age of eighteen (18) years;

2. Accept any waiver, in writing or otherwise, of any right or protection accorded a customer under this act;

3. Fail to exercise reasonable care to protect pledged goods from loss or damage;

4. Fail to return pledged goods to a customer upon payment of the full amount due the pawnbroker on the pawn transaction, unless a hold order has been placed on the pledged goods by an authorized peace officer or the pledged goods are in the custody of law enforcement;

5. Make any charge for insurance in connection with a pawn transaction, except as provided in subsection F of this section;

6. Enter any pawn transaction which has a maturity date more than one (1) month after the date of the transaction; or

7. Accept collateral or buy merchandise from a person unable to supply verification of identity by photo I.D. 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 record.

D. Presumption. Except as otherwise provided by this act, any person properly identifying himself as the original customer in the pawn transaction or as the assignee thereof, and presenting a pawn transaction agreement to the pawnbroker shall be presumed to be entitled to redeem the pledged goods described therein.

E. Lost or Destroyed Transaction Agreement. If the pawn transaction agreement is lost, destroyed or stolen, the customer may so notify the pawnbroker in writing, and receipt of such notice

shall invalidate such pawn transaction agreement, if the pledged goods have not previously been redeemed. Before delivering the pledged goods or issuing a new pawn transaction agreement, the pawnbroker may require the customer to make affidavit of the loss, destruction or theft of the agreement.

F. Insurance. 1. A pawnbroker may offer insurance coverage to a customer at the time of the transaction for the declared value of items pawned and for a time period which shall be specified in the pawn transaction. The purchase of insurance shall be at the option of the customer.

2. A pawnbroker may not offer insurance coverage unless the pawnbroker:

- a. is licensed as a limited insurance representative for the purpose of providing insurance coverage for pawn, as required by Section 1424 of Title 36 of the Oklahoma Statutes,
- b. has filed with the Administrator of the Department of Consumer Credit a copy of the insurance policy which shall have been issued by an insurer authorized by the Insurance Commissioner to transact insurance in this state, and
- c. has posted a copy of the policy in a conspicuous place which is readily available to the customer.

SECTION 3. This act shall become effective September 1, 1993.

44-1-0427

JY