

STATE OF OKLAHOMA

2nd Session of the 48th Legislature (2002)

SENATE BILL 1643

By: Wilkerson

AS INTRODUCED

An Act relating to crimes and punishments and occupations; amending 21 O.S. 2001, Section 1092, which relates to embezzled or stolen property in possession of pawnbroker; vesting certain interest in pawned property by pawnbroker under certain circumstance; specifying certain interest does not supersede interest of bona fide owner; authorizing certain hold until owner is known; amending 59 O.S. 2001, Section 1508, which relates to investigations of pawnbroker transactions; making language gender neutral; updating reference; deleting authority to vest certain title in pawnbroker; deleting language; deleting notification of criminal case; deleting hold order for certain evidence; providing process to return property to bona fide owner; providing for evidence to be photographed and property returned to owner; construing right to restitution; providing for replevin action of certain property; vesting certain interest in property subject to replevin action; providing an effective date; and declaring an emergency.

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

SECTION 1. AMENDATORY 21 O.S. 2001, Section 1092, is amended to read as follows:

Section 1092. Any pawnbroker or person carrying on the business of a pawnbroker, and every junk dealer, who having received any goods which have been embezzled or stolen, refuses or omits to exhibit ~~them~~ such goods, upon demand, during the usual business hours, to the owner of ~~said~~ such goods or ~~his~~ the owner's agent authorized to demand an inspection thereof, or any peace officer, shall be guilty of a felony.

Any property pledged in a pawn transaction without knowledge of the pawnbroker that the property was embezzled or stolen shall vest an interest in such property in the pawnbroker to the extent of the

pawn loan amount, but such interest shall not supersede any interest of a prior lawful owner. Property believed to be stolen or embezzled shall be placed on hold as provided in Section 1508 of Title 59 of the Oklahoma Statutes until a bona fide owner is identified.

SECTION 2. AMENDATORY 59 O.S. 2001, Section 1508, is amended to read as follows:

Section 1508. A. At such times as the Administrator may deem necessary, the Administrator or ~~his~~ a 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 Section 1501 et seq. of this title. 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~~ a 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~~ a 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~~ law to consider, investigate or secure information. Any licensee who fails or refuses to permit the Administrator or ~~his~~ a 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~~ the Oklahoma Pawnshop 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. Whenever a peace officer has probable cause to believe that property in possession of a licensed pawnbroker is stolen or embezzled, the peace officer of the local law enforcement agency of the municipality or other political subdivision in which the pawnshop resides may place a written hold order on the property until the determination that the property is actually stolen or embezzled. The initial term of the written hold order shall not exceed thirty (30) days. However, the holding period may be extended in successive thirty (30) day increments upon written notification prior to the expiration of the initial holding period. ~~If the holding period has expired and has not been extended, the hold order shall be considered expired and no longer in effect, and title shall vest in the pawnbroker subject to any restrictions contained in the pawn contract.~~ The initial written hold order shall contain the following information:

1. Signature of the pawnbroker or ~~his~~ a designee;
2. Name, title and identification number of the peace officer placing the hold order;
3. Name and address of the agency to which the peace officer is attached and the offense number;

4. Complete description of the property to be held, including model number, serial number and transaction number;

5. Name of agency reporting the property to be stolen or embezzled;

6. Mailing address of the pawnshop where the property is held;

7. Expiration date of the holding period.

C. While a hold order is in effect, the pawnbroker may consent to release, upon written receipt, of the stolen or embezzled property to the custody of the local law enforcement agency to which the peace officer placing the hold order is attached. The consent to release the stolen or embezzled property to the custody of law enforcement is not a waiver or release of ~~the pawnbroker's property rights or any person's~~ interest in the property. ~~Otherwise, the pawnbroker shall not release or dispose of the property except pursuant to a court order or the expiration of the holding period including all extensions. The district attorney's office shall notify the pawnbroker in writing in cases where criminal charges have been filed that the property may be needed as evidence. The notice shall contain the case number, the style of the case, and a description of the property. The pawnbroker shall hold such property until receiving notice of the disposition of the case from the district attorney's office. The district attorney's office shall notify the pawnbroker in writing within fifteen (15) days of the disposition of the case.~~ Willful noncompliance of a pawnbroker to a written hold order shall be cause for the pawnbroker's license to either be suspended or revoked pursuant to paragraph 2 of subsection A of Section 1507 of this title. ~~A hold order may be released prior to the expiration of any thirty-day holding period by written release from the agency placing the initial hold order~~ A peace officer upon determination that the property is stolen or embezzled and a bona fide owner is known shall process the property as provided by law for the return of stolen or embezzled property.

Property needed as evidence shall be photographed as provided by law for photographing evidence and then the property returned to the bona fide owner. Nothing in this section shall preclude the pawnbroker from seeking restitution or damages or both from any criminal defendant who was responsible for the illegal pawn transaction. When pawned property is subject to a replevin action because the property was unlawfully pawned, the pawnbroker shall be notified of all hearings and shall not dispose of the property until the court orders a disposition in the case.

D. For the purpose of discovering violations of ~~this act~~ the Oklahoma Pawnshop Act or of securing information required hereunder, the Administrator or ~~his~~ a 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~~ the Oklahoma Pawnshop Act whether or not such person shall claim to be within the authority or scope of ~~this act~~ the Oklahoma Pawnshop Act. For the purpose of this section, any person who advertises for, solicits or ~~holds himself out as willing~~ indicates a willingness to make pawn transactions, shall be presumed to be a pawnbroker.

E. Each licensee shall keep or make available in this state such books and records relating to pawn transactions made under ~~this act~~ the Oklahoma Pawnshop Act as are necessary to enable the Administrator to determine whether the licensee is complying with ~~this act~~ the Oklahoma Pawnshop Act. Such books and records shall be consistent with accepted accounting practices.

F. Each licensee shall preserve or make available such books and records in this state relating to each of its pawn transactions 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, 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.

G. 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~~ The 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~~ provided, however, the individual reports shall be held confidential.

H. The Administrator may make regulations necessary for the enforcement of ~~this act~~ the Oklahoma Pawnshop Act and consistent with all its provisions. Before making ~~such~~ a regulation relating to the licensees subject to ~~this act~~ the Oklahoma Pawnshop 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~~ the person a certified copy of ~~such~~ any regulation.

I. Except as otherwise expressly provided in ~~this act~~ the Oklahoma Pawnshop 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~~ the Oklahoma Pawnshop Act.

SECTION 3. This act shall become effective July 1, 2002.

SECTION 4. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

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