



Sub. H.B. 467

123rd General Assembly
(As Passed by the General Assembly)

Reps. Schuler, Allen, Vesper, Britton, Evans, DePiero, Mottley, Perry, Barrett, Grendell

Sens. Blessing, Garnder, Spada, Mumper, Watts

Effective date: *

ACT SUMMARY

- Specifies that the Superintendent of Financial Institutions makes the final determination of whether an applicant for a pawnbroker's license demonstrates a thorough working knowledge of all pawnbroker laws and rules.
- Raises from \$25,000 to \$100,000 the minimum amount of liquid assets an applicant must have at the time of applying for an initial pawnbroker's license.
- Raises from \$10,000 to \$50,000 the minimum amount of liquid assets that an applicant for an initial pawnbroker's license must demonstrate an ability to maintain.
- Requires a licensed pawnbroker to either maintain liquid assets in the amount of at least \$50,000, or to obtain a surety bond in a penal sum of at least \$25,000.
- Enacts surety bond provisions applicable to certain pawnbrokers.
- Establishes mandatory continuing education requirements for pawnbrokers and persons designated as the "salespersons" of certain pawnbrokers.

* *The Legislative Service Commission had not received formal notification of the effective date at the time this analysis was prepared.*

- Establishes a specific procedure whereby a pawnbroker may obtain a temporary exhibition permit under the Precious Metals Dealers Law to transact business at any auction, convention, exhibition, fair, or show.
- Generally conditions the ability of a pawnbroker to collect interest and storage charges on any given day on whether the pawnbroker is open for business "as posted" on that day.
- Extends from one year to 18 months, the maximum interval between the Superintendent of Financial Institutions' regular investigations of a pawnbroker's business.
- Raises, by \$1, certain charges that a pawnbroker may collect in addition to interest on any loan.
- Authorizes a pledgor to pay a portion of any outstanding principal loan balance at any time.
- Allows electronic or computerized recordkeeping by pawnbrokers, imposes certain recordkeeping requirements on them, and requires that their records be made in the English language.
- Specifies the type of information a pawnbroker must provide to the chief of police of a municipal corporation or township, or to a county sheriff, who has jurisdiction over the location of the pawnbroker's business.
- Allows under specified "redemption or forfeiture" circumstances a pledgor to either redeem pledged articles, or to pay all interest and storage charges due, within 30 days after notification to retain the pledgor's interest in the pledged articles.
- Specifies the nature of the record that must be kept and retained in a pawnbroker's place of business with respect to a redemption.
- Allows only licensed pawnbrokers to advertise as pawnbrokers.
- Specifies certain procedures for the transfer of 10% or more of an ownership interest in a pawnbroker's business.
- Specifies that, upon the suspension or revocation of a pawnbroker's license, certain persons may not be allowed to receive such a license within two years from the date of the suspension or revocation.

- Delineates the Superintendent's cease and desist order authority, subpoena power authority, and ability to seek injunctive relief, in order to enforce the Pawnbrokers Law.
- Confers confidentiality and non-public records status on information obtained in investigations of pawnbrokers and certain other persons by the Superintendent.
- Allows the Superintendent to consider an application for a pawnbroker's license withdrawn and to retain the associated investigation fee if required information is not provided on an application within 90 days after the Superintendent's request for the information.
- Repeals current law's mandatory or permissive "revocation" of a pawnbroker's license provisions related to certain criminal convictions, and enacts an entirely new disciplinary procedure for pawnbrokers that involves the Superintendent's discretion, that generally focuses on license "suspensions," without prior hearings, "in the public interest," and that varies depending upon the type of criminal conviction involved.
- Makes other changes in the Pawnbrokers Law.

TABLE OF CONTENTS

Application for a pawnbroker's license.....	4
Demonstrating experience and fitness to be licensed as a pawnbroker.....	5
Former law.....	5
Changes made by the act.....	5
Continuing education requirements.....	6
Claims against a pawnbroker and the pawnbroker's surety bond.....	6
Notices.....	6
Maintenance.....	7
Surety liability.....	7
Posting notice regarding stolen goods.....	7
Temporary exhibition permits.....	8
Hours of operation.....	8
Standard investigations.....	8
Computing interest, charges that may be collected, and redemption/prepayments.....	9
Interest provisions.....	9
Charges.....	9
Redemption and prepayments.....	9

Pawn and purchase forms	10
Recordkeeping and location of pledges	11
Furnishing information.....	12
Prohibited transactions	12
Redemption or forfeiture of pledged articles	13
Advertising by a pawnbroker	13
Transfer of ownership interests in a pawnbroker business.....	14
License suspension or revocation.....	14
Investigation and administrative powers	15
Confidentiality and the investigation process.....	16
Exemptions	16

CONTENT AND OPERATION

Application for a pawnbroker's license

Under former law, no person was allowed to act as a pawnbroker, or to advertise, transact, or solicit business as a pawnbroker, without first having obtained a pawnbroker's license from the Division of Financial Institutions in the Department of Commerce. Under the act, a license to operate as a pawnbroker must be obtained from the *Superintendent of Financial Institutions*. (Sec. 4727.02.)

An application for a pawnbroker's license formerly had to contain the full name and address of the person or corporation, and of every member of the firm, partnership, or association, authorized to do business under the application. The act instead requires an application for a pawnbroker's license to contain the full name and address of the applicant and of every member, partner, stockholder, or owner of an applicant. (Sec. 4727.04.)

The act allows the Superintendent to consider an application *withdrawn* and to retain the full *investigation fee* associated with the application if the applicant does both of the following (sec. 4727.03(C)):

- (1) Fails to supply all of the information required in the application regarding "experience and fitness in the capacity involved" as discussed below;
- (2) Fails to submit that information within 90 days after the Superintendent requests it in writing.

Finally, the act provides that a pawnbroker's license issued by the Superintendent is *not transferable or assignable* (sec. 4727.03(B)).

Demonstrating experience and fitness to be licensed as a pawnbroker

Former law

Under former law, the Division of Financial Institutions could grant a pawnbroker's license to any person of good character who also had "experience and fitness in the capacity involved to engage in the business of pawnbroking" and who paid the necessary licensing and investigation fees (sec. 4727.03). Under that law, "experience and fitness in the capacity involved" was determined by the following (sec. 4727.03(A)(1) to (4) and (E)):

(1) Prior or current ownership or management of, or employment in, a pawnshop;

(2) *Demonstration* to the satisfaction of the Superintendent of Financial Institutions *of a thorough working knowledge of all pawnbroker laws and rules* related to the actual operation of a pawnshop;

(3) A submission by the applicant for licensure, any stockholders, directors, or officers of the pawnshop, and employees of the applicant to a *police record check*;

(4) *Liquid assets* in a minimum amount of \$25,000 at the time of applying for initial licensure, and demonstration of the ability to maintain liquid assets at a minimum amount of \$10,000 for the duration of holding a valid pawnbroker's license.

Changes made by the act

The act adds a requirement that a satisfactory demonstration of a thorough working knowledge of pawnbroker laws and rules must include a demonstration of an ability to properly complete forms, knowledge of how to properly calculate interest and storage charges, and knowledge of legal notice and forfeiture procedures, and it specifies that the Superintendent of Financial Institutions makes the final determination of whether an applicant's demonstration is adequate. The act also adds owners and managers of a pawnshop to the list of persons who must submit to a police record check and generally increases the minimum liquid assets at the time of application for initial licensure to *\$100,000* and the demonstration of the ability to maintain liquid assets to a minimum of *\$50,000*. But, as an alternative to those liquid asset requirements, the act allows a licensee to obtain a surety bond issued by a bonding company or insurance company authorized to do business in Ohio in a penal sum of at least \$25,000. Such a bond must be in favor of the Superintendent, and a copy of it must be filed with the Superintendent. The act specifies that the bond is for the exclusive benefit of any person injured by a

licensee's violation of the Pawnbrokers Law. (Secs. 4727.03(A)(2), (3), and (4) and 4727.20(A).)

Continuing education requirements

Commencing with the two-year period that begins June 30, 2000, and every two-year period thereafter, the act requires *each person licensed as a pawnbroker* to complete, by the end of the two-year period, at least 12 hours of continuing education instruction offered in a course or program approved by the Superintendent of Financial Institutions. In making the decision to approve a course or program, the Superintendent is required to consult with an industry representative selected by the Superintendent. (Sec. 4727.19(A).)

The act requires that any person who is licensed to act as a pawnbroker and has more than three employees, designate an individual as a *salesperson* and report this designation to the Superintendent. Effective with the two-year period that begins June 30, 2000, and every two-year period thereafter, a salesperson must complete, by the end of the two-year period, at least eight hours of continuing education instruction offered in a course or program approved by the Superintendent in consultation with a designated industry representative. Each pawnbroker location with three or more employees must have at least one salesperson who meets this continuing education requirement. (Sec. 4727.19(B) and (C).)

The act allows the Superintendent to adopt rules under the Administrative Procedure Act (APA) regarding continuing education fees, locations, times, frequency, and waivers of requirements. It also permits the Superintendent, in accordance with APA-adopted rules, to suspend, revoke, or refuse to renew the license of any "licensee" who fails to comply with the relevant continuing education requirements. (Sec. 4727.19(D) and (E).)

Claims against a pawnbroker and the pawnbroker's surety bond

Notices

The act requires a licensed pawnbroker to give notice to the Superintendent of Financial Institutions by certified mail, return receipt requested, of any action that is brought against the licensee by, and of any judgment that is entered against the licensee and (apparently) in favor of a person injured by a violation of the Pawnbrokers Law. The notice must provide details sufficient to identify the action or judgment and must be filed with the Superintendent within ten days after the commencement of the action or notice to the licensee of entry of a judgment. If a surety bond exists (see "**Demonstrating experience and fitness to be licensed as a pawnbroker**," above), the surety, within ten days after it pays any claim or

judgment, must give notice to the Superintendent by certified mail, return receipt requested, of the payment, with details sufficient to identify the person and the claim or judgment paid. (Sec. 4727.20(B).)

The act prohibits a licensee from canceling a surety bond except upon notice to the Superintendent by certified mail, return receipt requested. The act further specifies that the cancellation is not effective prior to 30 days after the Superintendent receives that notice. (Sec. 4727.20(E).)

A licensee also is specifically prohibited from failing to comply with the act's requirements that the licensee maintain specific liquid assets or obtain a surety bond as well as the act's above-described notice and cancellation provisions and its below-described new or additional bond provisions (sec. 4727.20(F)). A violation of that prohibition is a *misdemeanor* of the third degree on a first offense and a misdemeanor of the second degree on a subsequent offense (sec. 4727.99).

Maintenance

Under the act, whenever the penal sum of a surety bond is reduced by one or more recoveries or payments, the licensee must furnish a *new or additional bond* so that total or aggregate penal sum of the bond or bonds equals the sum required by the act (\$25,000 at least), or must furnish an endorsement executed by the surety reinstating the bond to its required penal sum (sec. 4727.20(C)).

Surety liability

The act specifies that the aggregate liability of a surety for any and all breaches of the conditions of a pawnbroker's surety bond is not to exceed the penal sum of the bond. The liability of the surety on the bond to the Superintendent and to any person injured by a violation of the Pawnbrokers Law is not affected in any way by any misrepresentation, breach of warranty, or failure to pay the premium, by any act or omission on the part of the licensee, by the insolvency or bankruptcy of the licensee, or by the insolvency of the licensee's estate. The liability for any act or omission that occurs during the term of the surety bond must be maintained and in effect for at least two years after the date on which the surety bond is terminated or canceled. (Sec. 4727.20(A)(2) and (D).)

Posting notice regarding stolen goods

Under former law, a licensed pawnbroker was required to post a conspicuous notice (1) that the licensee had no right to retain goods stolen from the true owner and (2) that the owner could recover goods or their value from the pawnbroker in an action at law or, if the police had taken custody of goods, by police release. The act eliminates this provision. (Sec. 4727.04(B).)

Temporary exhibition permits

Under former law, the Superintendent of Financial Institutions could issue a temporary exhibition permit under the Precious Metals Dealers Law to a licensed pawnbroker (sec. 4727.04(B)).

The act continues that authority but provides that a licensee who wishes to be issued such a temporary exhibition permit must request the permit by a *letter* that is addressed to the Superintendent and contains the licensee's name, permanent business address, and pawnbroker's license number. Upon receipt of a temporary exhibition permit, the pawnbroker-permit holder must *conspicuously display* it at the place where the pawnbroker-permit holder transacts business at any auction, convention, exhibition, fair, or show. The act further requires every pawnbroker-permit holder who wishes to participate in an auction, convention, exhibition, fair, or show to *notify*, at least two weeks prior to the event's opening, the Superintendent and the chief of police of the municipal corporation in which the event is to take place or, if it is to take place outside of a municipal corporation, the sheriff of the county in which it is to take place. The notice must be made by letter and include the pawnbroker-permit holder's name, permanent business address, permit number, and the place where the event is scheduled to be held. (Sec. 4727.04(B).)

Hours of operation

Under the act, every licensed pawnbroker must *post* at the *main door* of the licensee's place of business, the hours or times when the establishment is open for business. The act generally prohibits a licensee from failing to observe these posted hours of operation. A violation of this prohibition carries the misdemeanor penalties mentioned under "**Claims against a pawnbroker and the pawnbroker's surety bond**," above. (Secs. 4727.04(C) and (D) and 4727.99.)

The act bars a licensee from collecting *interest and storage charges* on any loan for any regular business day that the licensee's establishment is not open for business as posted, unless prior notice of a closing is posted on the door or the closing takes place as a result of an act of God, unforeseen emergency, or other event beyond the control of the licensee. (These events are exceptions to the prohibition mentioned above.) A licensee also must notify the Superintendent of Financial Institutions of any change in its posted hours of operation. (Sec. 4727.04(C).)

Standard investigations

Under former law, the Superintendent of Financial Institutions was required to investigate, at least *once per year*, either personally or by designee, the business

of every person licensed as a pawnbroker, and every person, "copartnership, and corporation" by whom or for which any loan or purchase was made, whether the person, "copartnership, or corporation" acted, or claimed to act, as principal, agent, or broker, or under or without the authority of the Pawnbrokers Law. The act changes the interval of this required investigation to *once every 18 months*. (Sec. 4727.05.)

Computing interest, charges that may be collected, and redemption/prepayments

Interest provisions

Former law specified that a pawnbroker was not allowed to charge, receive, or demand interest for any loan *in excess of 5% per month* or fraction of a month on the unpaid principal. It also provided that monthly interest charges had to be computed on the amount of the principal remaining unpaid on the first day of the month and could not be compounded. The act continues both of these provisions, but combines them in the same location. (Sec. 4727.06(A).)

Charges

Former law allowed a pawnbroker to collect the *following charges* in addition to interest (sec. 4727.06(A)):

(1) A storage charge of no more than \$2 per month or fraction of a month for all pledged articles held as security for a loan, to be agreed to in writing at the time the loan is made;

(2) \$3 plus the actual cost of shipping, when the pawnbroker is to deliver or forward a pledged article by express or parcel post to the pledgor;

(3) \$1 for the loss of the original statement issued to the pledgor by the pawnbroker, upon redemption of the pledged articles;

(4) \$1 for the cost of notifying a pledgor by mail that pledged articles may be forfeited to the pawnbroker pursuant to law.

The act raises by \$1 the maximum amount of each of these charges. It also refers to pledged articles held as security "or stored" for a loan in connection with the new \$3 storage charge (see (1) above). (Sec. 4727.06(B).)

Redemption and prepayments

Former law prohibited the deduction or advance payment of interest and the charges listed above prior to the dates that the interest and charges were due, except upon redemption of pledged articles (sec. 4727.06(A)(4)). The act

eliminates this prohibition, but provides in another location and in a generally similar manner that a pledgor may not prepay *interest or storage charges*, except when the pledgor redeems the pledged property. The act allows a pledgor to pay a portion of the outstanding *principal loan balance* at any time, and a pledgor may redeem a *pawn loan* at any time after 72 hours have passed since the pledge was made. (Sec. 4727.06(D).)

Pawn and purchase forms

Former law required a licensed pawnbroker to keep and use separate pawn forms and purchase forms approved by the Superintendent of Financial Institutions. The forms had to disclose, at the time of each purchase or loan, an accurate description of the goods, articles, or things deposited, including specified identifying features; the time of pledging or selling; the amount of money loaned or paid; the rate of interest and charges to be paid on a loan; the time within which a pawn was to be redeemed; and the name, age, place of residence, driver's or commercial driver's license number, Social Security number, or other personal identification of the pledgor or seller, and a short physical description of the pledgor or seller. (Sec. 4727.08.)

The act restructures the requirement so that a pawnbroker must record all of the following information on the appropriate form for each pawn or purchase (sec. 4727.08(B)):

- (1) The date and time of the pledging or purchasing;
- (2) The amount of the loan or the purchase price;
- (3) The rate of interest and the charges to be paid on a loan;
- (4) The time within which the pledgor is to redeem the pledged property;
- (5) The name, age, and address of the pledgor or seller;
- (6) A driver's license number, *military identification number*, or other personal identification number (probably still could be the pledgor's Social Security number);
- (7) A physical description of the pledgor or seller;
- (8) An accurate description of the pledged or purchased property, including the name of the manufacturer, any serial and model numbers, any identifying features, and identifying letters or marks;
- (9) Any other disclosures required by federal law.

Recordkeeping and location of pledges

Former law required that all pawn and purchase forms (1) be kept in numerical order in an active or inactive file or in bound books, (2) be kept at a pawnbroker's licensed location, and (3) be available for inspection by the Superintendent of Financial Institutions or the *chief of police of the municipal corporation*, a police officer deputized or authorized by that chief of police, or the *mayor of the municipal corporation* in which the pawnbroker did business. All form numbers had to be "accountable." (Sec. 4727.08.) The act continues to require that each form used in a pawn or purchase be kept in numerical order in an active or inactive file (it removes the reference to "bound books"--but see below) and that the licensee account for all form numbers. But it requires that the forms be available for inspection at the licensee's business location, by the Superintendent and by the chief of police of the municipal corporation *or township* in which the licensee's place of business is located or, if the place of business is not located within a municipal corporation or a township that has a chief of police, by the sheriff of the county in which the place of business is located. (Sec. 4727.08(C) and (D).)

The act also requires every licensed pawnbroker to keep and use an *intelligible set of books and records in the English language* in order to comply with the Pawnbrokers Law with respect to recording the details of each purchase or loan. All information generally is required to be entered in a *bound book* or on *loose-leaf, permanent forms* used exclusively for that purpose. Forms must be identical and consecutively numbered, and each form must contain two or more pages. One part of the form must be detachable and, when completed, serve as the statement to be given by the licensee to the pledgor or seller. The remaining part of the form is to be retained in the licensee's permanent records, and a licensee must account for all of these forms. Notwithstanding these bound book and form provisions, a licensee is permitted to use other methods (such as electronic or computerized methods) of recording data and keeping records provided that written printouts or hard copies of the required data are available in a form approved, in advance, by the Superintendent. (Sec. 4727.08(F) and (J).)

The act prohibits a licensee from requiring a borrower to affix the borrower's signature to a blank or partially filled out pawn form or other record; a violation of this prohibition carries the misdemeanor penalties mentioned under "Claims against a pawnbroker and the pawnbroker's surety bond," above (secs. 4727.08(G) and 4727.99). It also requires (1) every licensee to preserve the licensee's books, forms, accounts, and records for at least two years after making the final entry regarding any purchase or pledge of property and (2) all pawn and purchase forms, legal notices, and payment receipt forms to reflect the name under

which the licensee is registered with the Superintendent and the complete address of the licensee's place of business (sec. 4727.08(H) and (I)).

Finally, former law required a licensee to keep all pledges (other than a pledged motor vehicle, watercraft, or outboard motor) and purchased goods at the *licensee's place of business* unless a pledgor *agreed* otherwise at the time a pledge was made. The act requires that the pledgor's agreement be *in writing* to be effective. (Sec. 4727.08(E).)

Furnishing information

Former law required a pawnbroker, on each business day, to make available to the chief of police or the head of the police department, on forms furnished by the department, a description of all articles received by pledge or sale on the business day immediately preceding, together with the number of the ticket issued (sec. 4727.09).

The act requires a licensed pawnbroker, every day, to furnish the following information to the chief of police of the municipal corporation or township in which the licensee's place of business is located or, if the place of business is not located within a municipal corporation or township that has a chief of police, to the sheriff of the county in which the place of business is located (sec. 4727.09(A)):

- (1) A description of all property pledged with or purchased by the licensee;
- (2) The number of the pawn or purchase form the licensee used to document the pledge or purchase.

A licensee is required to provide only the type of information specified in (1) and (2) above to the chief of police or sheriff. But the licensee must provide the property description and pawn or purchase form number on the form furnished by the law enforcement officer requesting the information. The completed form may be communicated by electronic transfer or be in a magnetic media format. (Sec. 4727.09(B) and (C).)

Prohibited transactions

Continuing law prohibits licensed pawnbrokers from receiving a pledge or purchasing any articles from any minor, any person who is intoxicated or under the influence of a controlled substance, or any person who is *known or believed by the licensee* to be a thief or receiver of stolen property. The act adds that a pawnbroker is not allowed to accept a pledge or purchase articles from any person identified in writing to the licensee by the chief of police of a municipal

corporation or township, the sheriff, or the State Highway Patrol as a known or suspected thief or receiver of stolen property. (Sec. 4727.10.)

Redemption or forfeiture of pledged articles

Former law required that, if a pledgor of pawned articles who received a loan from a pawnbroker *failed to redeem or pay interest* on the articles within a specified two-month period, the pawnbroker had to notify the pledgor by mail that, unless the pledged articles were redeemed within *one month* from the date the notice was mailed, the articles would be forfeited. If the pledgor failed to redeem the articles within the period specified in the notice, the pawnbroker had to take ownership of the articles. (Sec. 4727.11(A).)

The act generally continues these provisions, but with two changes. First, the pledgor must have failed to *pay interest* within the specified two-month period to a pawnbroker (in contrast to former law's "failure to redeem the pledged articles" or pay interest). Second, the notice from the pawnbroker to the pledgor must provide the pledgor with the *option* to either redeem the articles (similar to former law) or pay *all interest due and storage charges within 30 days* (replacing former law's one month) in order to retain ownership of the articles. (Sec. 4727.11(A).)

The act also specifies that, when an account is paid in full, the pawnbroker must return the pledged articles immediately to the pledgor. But, if a pledgor sells, transfers, or assigns pledged articles, the pawnbroker (apparently before returning the articles to the purchaser, transferee, or assignee) must verify the name of the person redeeming the pledge and record that person's name, driver's license number, and signature on the permanent copy of the statement of the pledge. The pawnbroker also must obtain the signature of the pledgor, or other person redeeming pledged articles, on a *separate record of the transaction* that acknowledges the total dollar amount paid for redemption and the date of redemption. All of these records must be kept in the pawnbroker's place of business. (Sec. 4727.11(D).) The latter requirements are in addition to continuing law's verification and record requirements when a person other than a pledgor seeks to redeem pledged articles; the act modifies those recording requirements to remove references to a person's "commercial driver's" license number and Social Security number and to add a reference to "a personal identification number" other than a driver's license number (sec. 4727.11(B)).

Advertising by a pawnbroker

The act specifies that a licensed pawnbroker must state the license number issued by the Superintendent of Financial Institutions in all advertisements, offers, and solicitations. A person who is not a licensed pawnbroker is prohibited by the

act from advertising as one. A violation of that prohibition carries the misdemeanor penalties mentioned under "*Claims against a pawnbroker and the pawnbroker's surety bond*," above. (Secs. 4727.16 and 4727.99.)

Transfer of ownership interests in a pawnbroker business

The act specifies that every sale, transfer, or hypothecation of any stock, security, membership, partnership, or other equitable, beneficial, or ownership interest in a licensed pawnbroker, in an amount representing a 10% or greater equitable, membership, partnership, beneficial, or other ownership interest in the licensee, must be approved in writing by the Superintendent of Financial Institutions prior to the sale, transfer, or hypothecation of the interest in the licensee. Every person acquiring or receiving such an interest is subject to the licensing requirements of the Pawnbrokers Law as if the person were a new and separate license applicant. (Sec. 4727.17.)

License suspension or revocation

Under former law, whenever a pawnbroker's license was suspended or revoked, the Division of Financial Institutions (changed by the act to the Superintendent of Financial Institutions) was not allowed to issue another license to the licensee, to the legal spouse of the licensee, to any "copartnership or corporation" (changed by the act to "business entity") of which the licensee was an officer, or to any person employed by the licensee, until the expiration of at least *one year* from the date of the revocation or suspension of the license. The act lengthens to *two years* the time until any of those persons may receive a pawnbroker's license and also includes among those persons "any business entity of which the licensee is a *member or partner*." (Sec. 4727.03(F).)

Under former law, upon *any criminal conviction for a violation of the Pawnbrokers Law*, the Division of Financial Institutions *had to revoke* a pawnbroker's license. The Division also could impose a penalty against a pawnbroker "or revoke or suspend," pursuant to the Administrative Procedure Act, a pawnbroker's license for a criminal conviction of the licensee *for apparently any "other" criminal offense*. (Secs. 4727.03(B) and 4727.15.)

The act removes the requirement for revocation of a pawnbroker's license *upon any criminal conviction* mentioned above and instead confers discretion on the Superintendent of Financial Institutions to *suspend* a pawnbroker's license, without a prior hearing, in the public interest in the case of a criminal conviction for a violation of the Pawnbrokers Law or a criminal conviction for theft, receiving stolen property, or money laundering under Ohio's Criminal Code or federal law; the conviction could be of the licensed pawnbroker or an employee, manager, officer, director, shareholder, member, or partner of the licensee. The

Superintendent subsequently could act to "revoke" the suspended pawnbroker's license pursuant to the Administrative Procedure Act (APA). For a criminal conviction for Ohio or federal crimes other than theft, receiving stolen property, or money laundering, the Superintendent may assess a penalty against the licensee or may act to revoke or suspend the pawnbroker's license; apparently, the Superintendent may not suspend a license "without a prior hearing" for these other crimes because the act requires that action to conform to the APA's notice and hearing provisions. In any case, it is within the discretion of the Superintendent whether to take any disciplinary action in connection with a licensee following any of the previously described types of criminal convictions. With respect to penalties, continuing law requires that a *penalty* that is assessed against a pawnbroker be appropriate to the violation but not be less than \$200 or more than \$2,000. (Secs. 4727.03(F) and 4727.15.)

Investigation and administrative powers

Under former law, the Director of Commerce had subpoena powers to compel witnesses to testify and to compel the production of any book, paper, or document pertaining to an investigation under the Pawnbrokers Law. If a person failed to comply with a subpoena, the Director could apply to the court of common pleas in the county where the investigation was taking place for an order to compel the person to comply with the subpoena or to be held in contempt of court if the person failed to do so. The act removes these powers of the Director (but see two paragraphs below). (Existing sec. 4727.03(D).)

Under continuing law, the Superintendent of Financial Institutions has general administrative powers to enforce the Pawnbrokers Law. Under the act, the Superintendent additionally may issue a *cease and desist order* against any person the Superintendent reasonably suspects has violated, is currently violating, or is about to violate the Pawnbrokers Law. The Superintendent also may apply to a court of common pleas for an order compelling a person to comply with any cease and desist order or any *subpoena* issued by the Superintendent, and may obtain from the court of common pleas *any form of injunctive relief* against any person who has violated, is currently violating, or is about to violate the Pawnbrokers Law. (Sec. 4727.13(A), (B), (C), and (D).)

To enforce the Pawnbrokers Law, the act allows the Superintendent to issue a subpoena to any person to compel the production of any item, record, or writing, including an electronic writing, and to issue a subpoena to any person to compel the person's appearance and rendering of testimony. The act also allows the Superintendent to examine and investigate the business (including the business location and any books, records, writings, including electronic writings, safes, files, or storage areas located in or utilized by the business location) of any person the Superintendent reasonably suspects to be advertising, transacting, or soliciting

business as a pawnbroker. The Superintendent may request the attendance and assistance of the appropriate municipal or township chief of police, the county sheriff, or the State Highway Patrol during the examination and investigation of such a business. (Sec. 4727.13(E) and (F).)

Confidentiality and the investigation process

The act makes any information arising from, obtained by, or contained in an investigation of a licensed pawnbroker, or an investigation of any person reasonably suspected of having violated or currently violating the Pawnbrokers Law, that is performed by the Superintendent of Financial Institutions under the Pawnbrokers Law to be *confidential information* and to be information that is not a public record for purposes of the Public Records Law. An exception is made for investigation information the Superintendent chooses to share with a law enforcement agency. (Sec. 4727.18.)

Exemptions

The Pawnbrokers Law formerly did not apply to persons licensed to provide small loans or licensed to provide second mortgage loans, or to national banks, state banks, savings and loan associations, or credit unions. The act eliminates the exemption for persons who make small loans or second mortgage loans and changes the terminology governing banks so that the Pawnbrokers Law does not apply to *federally insured depository institutions*, such as state or federally chartered banks, savings and loan associations, and credit unions. (Sec. 4727.14.)

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	10-05-99	p. 1233
Reported, H. Commerce & Labor	03-22-00	p. 1704
Passed House (93-1)	05-17-00	p. 1980
Reported, S. State & Local Government & Veterans Affairs	11-09-00	p. 2197
Passed Senate (32-0)	11-09-00	p. 2200
House concurred in Senate amendments (89-1)	11-14-00	p. 2335

00-HB467.123/ss

